**Negotiating Contracts**

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**Project Managers in Negotiations**

Why involve project managers in the negotiation phase of securing a commission?
- If involved in the proposal preparation, the project manager probably best knows the scope of work.
- Being present at the negotiation session gives the project manager good insight into the client’s attitude to the commercial aspects of the project.
- Involvement in negotiation enables the project manager to make a higher level of commitment.
- Participation during the negotiations eases “passing the baton” from principal and/or marketing people to the project manager as the focal point for the client.

**Negotiation Outcomes**

<table>
<thead>
<tr>
<th>Firm</th>
<th>Client</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wins</td>
<td>Wins</td>
<td>Ideal outcome</td>
</tr>
<tr>
<td>Wins</td>
<td>Loses</td>
<td>Worst result</td>
</tr>
<tr>
<td>Loses</td>
<td>Wins</td>
<td>Worst result</td>
</tr>
<tr>
<td>Loses</td>
<td>Loses</td>
<td>Second best</td>
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**The Negotiating Team**

The required skills of the negotiation team are:
- Understand the people
- Know what promises or commitments have been made
- Understand the legal aspects
- Can commit the firm

**The Perfect Contract - 1**

- Detailed scope of work - no interpretation necessary
- Responsibilities of both parties clearly understood
- Monthly progress payments
- Interest penalty guaranteed on overdue payments
- A fee retainer credited on overdue payments
- Limit on length of construction administration phase
- Approval of work - who, where, when, how
The Perfect Contract - 2

- For cost reimbursable contracts, specify a fixed overhead rate (as high as justifiable) if the actual overhead rate is expected to increase.
- Court remedies and who pays legal costs (watch out for arbitration since it could invalidate your professional liability coverage).
- For changes in scope, bilateral agreement and an equitable adjustment in fee.
- In case of termination of contract, opportunity for consultant to explain and rectify circumstances.

Negotiation - Preparation

<table>
<thead>
<tr>
<th>Best Position</th>
<th>Limit</th>
</tr>
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<tbody>
<tr>
<td>A</td>
<td>B</td>
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</table>

Bargaining Ground

- Good preparation must clarify the following:
  - Your own "best position"
  - Your own "break off position"
  - Your opponent's "best position"
  - Your opponent's "break off position"

Negotiation - Strategy

Keep these factors in mind:

- Don't take stances. You are not trying to win a debate, you're trying to achieve your aims.
- You gain nothing by an approach which damages the relationship.
- Keep the alternatives in mind.
- Concentrate on solutions which increase the size of the cake rather than who gets the biggest piece.

Negotiation - Process

In negotiation there are a number of activities which do not necessarily follow any strict sequence. These include:

- Presentation of a case
- Listening to a presentation
- Argument
- Bargaining
- Agreement

Negotiation - Presenting

The three rules for presenting a case in a negotiation are:

- Present your case positively
- Present your case precisely
- Be polite

Negotiation - Listening

Some suggestions:

- Listen very carefully
- Listen actively (see listening skills)
- Take notes but not at the expense of total loss of eye contact
- After listening ask questions, clarify points
- Use time to gain understanding
- Listen/look for signals, e.g. "My committee will not ....", "..... but .....", "If you ..... then .....". Also body language.
**Negotiation - Arguing**

Arguing is the stage where the basis of the case is examined and analysed. This is the term for bobbing and weaving; for keeping your defences up to avoid their jabbing. Argument skills include:
- **Questioning**
- **Summarising**
- **Adjourning**

Using open questions
Playback of your opponents' understanding of their case
A tactic when the negotiation becomes vitriolic and makes an unexpected turn

**Negotiation - Bargaining 1**

Bargaining is the crucial part of negotiation. It is the process of exchanging and trading things that you have for what they want. Follow these rules:
- Never accept the first offer. The opponent probably is willing to make some concessions
- Never give a concession without getting one in return. A concession granted too easily does not contribute to the opponent’s satisfaction nearly as much as one he or she struggles to obtain
- Don’t make the first concession. Research shows that losers tend to make the first concessions on major issues
- When the opponent makes a concession, don’t feel shy or guilty about accepting it. Take it.

**Negotiation - Bargaining 2**

- Don’t lose track of how many concessions have been made. The overall amount can provide bargaining leverage. Keep a record.
- Before negotiating, draw up a list of every issue. Establish an aspiration level, a minimum acceptable level, and an initial asking price for each issue.
- Every concession should move the negotiations closer to some goal. Spend concessions wisely.
- Be careful not to telegraph the concession pattern. Each concession should point to a possible area of settlement. But the other side should not be certain where it will be.
- Don’t honour the opponent’s high demand by making a counter-offer. Insist on a reduction in the initial demand.

**Negotiation - Bargaining 3**

- Don’t concede on a quid-pro-quo basis. Concessions do not have to be matched in kind. Negotiating goals: exchange little for much, later for now, little issues for bigger issues, and obscure items for clear ones.
- Don’t feel compelled to stick with a specific concession. Warn the opponent that all concessions on individual issues are tentative, based on reaching a satisfactory overall agreement
- Try to identify one minor issue on which you will make the last concession that will terminate the negotiation. This will allow your client to leave the negotiation in a positive frame of mind.
- Remember that you will very likely have to work with the people you negotiate with. Don’t give them the idea that you are trying to extract that last ounce of advantage.

**Negotiation - Agreement**

- The longer the negotiation, the more time is available to both extract and make concessions
- Closure is a matter of judgement
- To close, both sides must agree to move from the negotiation arena
- Thus, closing position or final offer must be:
  - **Credible.** Don’t make a final offer if it’s not a final offer. Your opponent will test this if you start to concede.
  - **Acceptable.** Your final offer must take into account your opponent’s aims or you’ll blow it.
- Capture the agreement in print and make sure the terms of the agreement are crystal clear. If the agreement is oral, make sure the written summary is sent to your opponent very quickly after the negotiation.