

Negotiating and Contracting for Success

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ACKNOWLEDGEMENTS;

1. Where I am, how I am able to negotiate will almost universally be different from your situation;
2. Many of the concepts here, are from the book, "Getting to Yes – Negotiating Agreement Without Giving In" by Roger Fisher, William Ury and Bruce Patton – each of these are from the Harvard Negotiation Project (HNP). I will provide the page numbers from the book next to the topics ();
3. I am not an expert on this topic, but I am a very principled negotiator, which will be referenced during this hour.

TOPICS

- What is Negotiating and What role does/should Supply Chain play?
- Types of Negotiators
- What is Principled Negotiation
- Examples
- Takeaways
- Questions and Answers



Two people are sitting at a table. They are staring at each other intently. Sweat is on the upper lip on one of the parties, as they look down at a slip of paper. They write a number on that paper, and then they slide it across the table to their partner.

The other party reads the paper, angrily crosses out the number that was written, writes a new number, and slides the paper back across the table to the offeror.

Can anyone guess what negotiation is taking place?

What is Negotiating?

[Black's Law Dictionary] The deliberation, discussion, or conference upon the terms of a proposed agreement; the act of settling or arranging the terms and conditions of a bargain, sale, or other business transaction...

What is Negotiating?

Any method of negotiation may be fairly judged by three criteria (4):

- 1) It should produce a wise agreement if agreement is possible;
- 2) It should be efficient; and
- 3) It should improve or at least not damage the relationship between parties.

What role does/should Supply Chain play?

From the White Paper: Spend Matters – *The Art of Cost Reduction* by Pierre Mitchell, Chief Research Officer, Spend Matters;

If procurement involvement starts only at the negotiating stage, savings average is only 11.4%. But if involvement begins at requirements definition, that number jumps to over 17% (individual results will vary, of course).

Types of Negotiators

Two principal methods are in use:

- 1) Soft. Sees the other party as friends, instead of looking for a victory, this Negotiator is simply trying to reach agreement. This Negotiator is more likely to make offers and concessions, trust the other side, be friendly and yield as necessary to avoid confrontation;
- 2) Hard. Can be seen as the opposite, where the Negotiator believes that the other party is an adversary, that the goal is victor at all costs. They distrust the other party, make threats, and will apply pressure and will attempt to win the contest of will.



Types of Negotiators

At HNP they developed a different model, one that they refer to as *Principled Negotiation or Negotiation on Merits*. This type of negotiation focuses on four basic elements of Negotiation;

- People
- Interest
- Options
- Criteria

Basic Element One - People

1. Separate People from the Problem;
2. A basic fact about negotiations, easy to forget in corporate and international transactions is that you are dealing not with abstract representatives of the 'other side,' but with human beings. They have emotions, deeply held value and different backgrounds and viewpoints...(21)

Basic Element One - People

3. How you see the world depends on where you sit...Out of a mass of detailed information, they tend to pick out and focus on those facts that confirm their prior perceptions and to disregard, or misinterpret, those that call their perceptions into questions. (25)
4. Face Saving involves reconciling an agreement with principle and with the self-image of the negotiators. Its importance should not be underestimated. (31)

Basic Element One - People

5. No one is perfect or entirely consistent about anything, but unconsciously that can be painful and uncomfortable to accept. (33)
6. In the '50's, the Human Relations Committee, a labor management group, was set up in the steel industry to handle emerging conflicts before they became serious problems. The members of the committee adopted the rule that **only one person could get angry at a time**. (34) (Do the others get thrown in a penalty box?)
7. Whatever you say, you should expect that the other side will almost always hear something different. (35)

Basic Element One - People

8. **Understanding is not agreeing**. One can at the same time understand perfectly and disagree completely with what the other side is saying. (37)
9. It is easy to forget sometimes that a negotiation is not a debate. Nor is it a trial. You are not trying to persuade some third party. (38)

Basic Element Two - Interest

Focus on Interest, not positions. The most powerful interests are basic human needs. These include:

- 1) Security
- 2) Economic Well Being
- 3) A Sense of Belonging
- 4) Recognition
- 5) Control over one's life. (50)

Basic Element Two - Interest

Three points about shared interest are worth remembering:

- 1) Shared interests lie latent in every negotiation;
- 2) Shared interest are opportunities, not Godsend. To be of use, you have to make something out of them;
- 3) Stressing your shared interests can make the negotiations smoother or more amicable. (74)

Basic Element Three - Options



Basic Element Three - Options

When preparing – if you have the time to prepare – you should create multiple options, looking for mutual gains before deciding what to do.

In “Getting to Yes,” the authors describe an attorney they know who attributes his success directly to his ability to invent solutions which are advantageous to both sides. He is said to **expand the pie before dividing it**. Skill at inventing options is one of the most useful assets a negotiator can have.

Basic Element Four - Criteria

If trying to settle differences of interest on the basis of will has such high costs, the solution is to negotiate on some basis independent of the will of either side – that is on the basis of objective criteria. (83)

Basic Element Four - Criteria

Negotiating Price? Why not insist on objective standards such as market value, replacement cost, depreciated book value or competitive prices instead of whatever the seller demands? (83)

Ideally, objective criteria should be not only independent of will, but also both legitimate and practical. (86) Whatever criteria is agreed upon must be applicable to both sides.

Basic Element Four - Criteria

A principled negotiator is open to reasoned persuasion on the merits; a positional bargainer (think Hard negotiator) is not. It is a combination of openness to reason with insistence on a solution based on objective criteria that makes principled negotiation so persuasive and so effective at getting the other side to play. (91)

Examples

This is what we refer to as a Stacked and Ranked. This provides analysis on the EXACT product or product segment and show how we ranked based on the Price Index – the higher the figure the worse our pricing and and how much we spend.

HCO	Price Index	Annual Spend
HCO 59	13.0	\$2,442,187
HCO 364	6.1	\$1,937,650
HCO 453	44.9	\$1,307,407
HCO 640	6.7	\$1,208,708
HCO 23	24.1	\$1,142,752
HCO 325	31.9	\$1,070,752
Vidant	84.5	\$1,066,521
HCO 435	9.8	\$890,045
HCO 163	48.7	\$824,885
HCO 405	10.5	\$815,549
HCO 422	40.4	\$739,042
HCO 327	69.2	\$707,835
HCO 579	52.1	\$669,191
HCO 371	38.1	\$607,809
HCO 333	12.3	\$549,816
HCO 107	75.4	\$440,320
HCO 374	70.6	\$421,401
HCO 104	45.2	\$397,964
HCO 523	60.9	\$395,111
HCO 135	29.8	\$392,409
HCO 231	86.0	\$372,042
HCO 99	78.5	\$335,904
HCO 357	43.0	\$333,554
HCO 361	56.6	\$326,056
HCO 353	67.1	\$283,795
HCO 158	93.6	\$278,224
HCO 274	51.5	\$270,053
HCO 548	45.5	\$251,442
HCO 5	72.3	\$251,272
HCO 349	10.2	\$232,464
HCO 625	91.8	\$231,822
HCO 347	47.8	\$221,333
HCO 445	57.7	\$210,397
HCO 169	80.6	\$196,432
HCO 244	91.7	\$191,008

Early Termination/Shortfall Fees

Accordingly, both parties hereby agree to the following calculation, not as a **penalty** but as a reasonable assessment of the loss incurred by Vendor as a result of the early termination. The "Early Termination Fee" that Customer agrees to pay will be: (a) the pro rata amount of the Total Term Commitment applicable to the twelve (12) months following the date of termination plus any commitment not yet met as of the date of termination,... **provided however that Customer may satisfy this obligation by purchasing Products equaling such an amount from Vendor, which shall be ordered and delivered pursuant to the terms of this Agreement;**

Examples

The shortfall calculation is made by determining the amount of purchases that should have been made during the period of Noncompliance to meet the Minimum Commitment per applicable Product Category (such collective sum is the "Required Purchase"). The shortfall shall be equal to (1) Fifty percent (.50%) PD Products; and (2) Fifty percent (.50%) HD Products the Required Purchase (the "Shortfall").



Deniz, Irma

Note to Customer: Vendor can offer 50% PD and 70% HD for shortfall. Rep will discuss the remainder with you directly.

Deniz, Irma

Note to Customer: Vendor cannot agreed to the 60% HD shortfall. The shortfall calculation is made by determining the amount of purchases that should have been made during the period of Noncompliance to meet the Minimum Commitment per Product Category. This only applies if noncompliance took place.

Deniz, Irma

Note to Customer: HD shortfall has been changed to 50%. Also, Vendor is accepting Customer language and revising language accordingly.

Examples

ARTICLE 17. SUBSTITUTION OF KEY PERSONNEL

Examples

Vendor agrees to load GPO Contract Products within five (5) business days of electronic transmission to Vendor, as long as Vendor receives appropriate and required information from the applicable supplier. The information needed by the Vendor is shown in Schedule D. Vendor agrees to load Customer's Local Agreements within three (3) business days of electronic transmission to Vendor, as long as Vendor receives appropriate and required information from the applicable supplier. The information needed by the Vendor is shown in Schedule D.

Takeaway

Negotiations need to become, if they are not already, reasonable and practical. But you also must have a BATNA prepared.

Best Alternative to a Negotiated Agreement. (99)

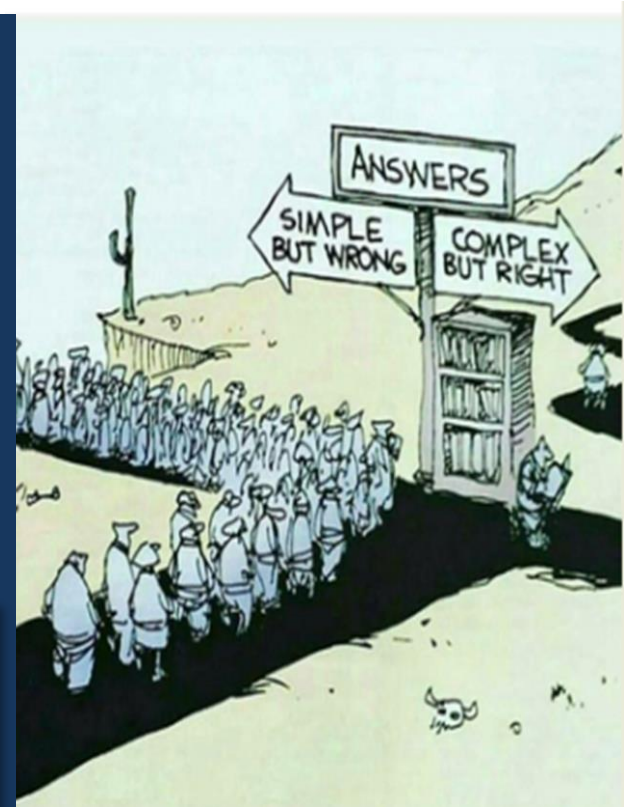
What does it mean if we walk away. Every negotiation needs to establish this, and this is how any proposed agreement should be measured.

Identify ways to improve your confidence and build positive relationships during contract negotiation

Meaningful
Collaboration

Two-Way
Expectations

Value defined



Meaningful Collaboration

Step 1)

- **Understand the mutual pain points to success**
- **Be highly objective as it relates to challenges you are trying to eliminate for your health system**



Meaningful Collaboration

Step 2)

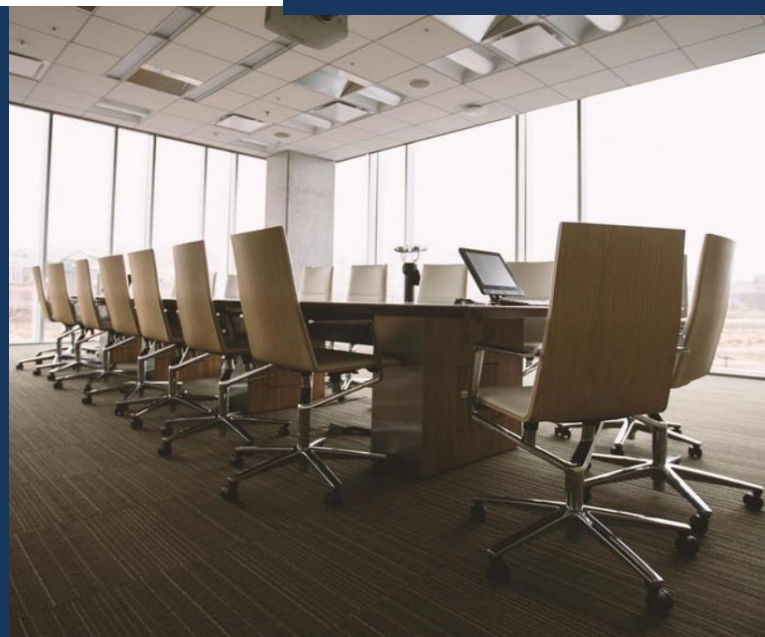
- Openly talk about what a successful relationship looks like
- We need “real talk” that won’t be penalized on both sides



Meaningful Collaboration

Step 3)

- In building a positive foundation focus on mutual goals with simplistic solutions
- It's essential to rank priorities



Meaningful Collaboration

Step 4)

- Mutually create a work plan with specific milestones including the most painless way to collect data
- How do we get buy-in
 - **Impactful relationships drive price and value**
 - **Relationships are always the long-game**
 - **Don't overload the focus**





Two-Way
Expectations

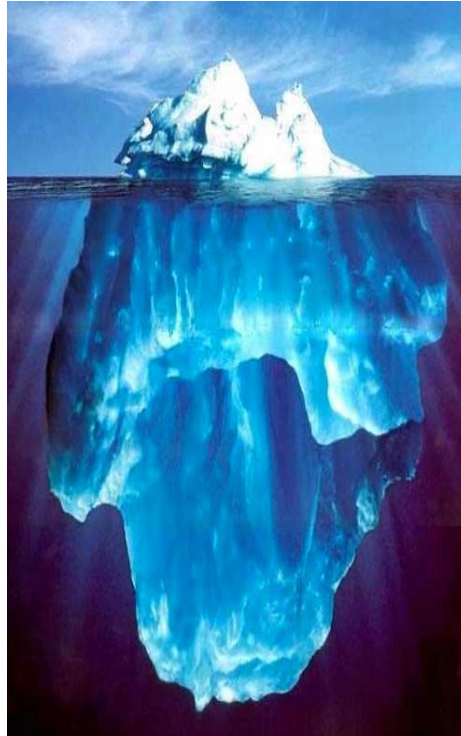
- Mutual clear understanding of IDN Long Range Plan
- Contracting Strategy objectives
- Who needs to buy-in
- Properly leveraging Business Reviews
- Get comfortable with your data being questioned



Two-Way
Expectations

- Balance of innovation and clinical evidence
- Proper partnering
- Implementation support
- Change management
- The Value of Relationships defined

Value defined



Worried About Price Alone? Are you buying “Price” or “Value?”

- Contracting
- Procurement
- Distribution
- Vendor fees
- Freight
- Inventory Management
- Carrying cost
- Receiving
- Internal distribution
- Payment
- Terms
- Processing
- Discrepancy management
- Returns
- Recall management
- Item registry
- Service
- Maintenance
- Vendor support
- Training
- Education
- Conversion
- Data management
- Item file

Value defined

- Savings and Opportunity reporting philosophy:
 - **Data Driven**
 - **Defined Forecast and consistent savings collection**
 - **Validated Benchmark and Market Intelligence**
 - **Clear definable actions that leverage spend intelligence and system impact**
 - **Data Cultural Tenants: Proactive | Financially Accountable | Innovative | Open-Minded | Change**

Value defined

- *Revenue Generation*: Supply Chain directly drives a new net revenue stream for the organization.
- *Cost Avoidance*: Supply Chain negotiating price reductions before the purchase. This is also savings to our budgeted expenses.
- *Forgone Savings*: Cost reduction or cost avoidance that we decided not to execute due to specific circumstances but are documented and tracked.

Value defined

- *Rebates*: Due to benchmarking concerns many suppliers don't offer "price at the pump" discounts buy leverage rebates to drive price discounts. As an organization we want to track these rebates and be accountable for their impact.
- *Cost Reduction*: Confirmed current define expense stream and the related specific expense reduction which is new for a given 12-month period (or defined period)

