Ch 1 - Introduction To Negotiations

- 1.1 - Describing Negotiations
- 1.2 - Recognizing Possible Negotiation Outcomes And Styles
- 1.3 - Describing Attitudes That Lead To Successful Negotiations

---

1.1 Describing Negotiations

Negotiation Is Part of Life (FAR 15.402). Negotiation is a part of normal everyday life. In fact, experts on the subject have said that life, itself, is just one continuous negotiation.

Still, many people feel that they are not experienced contract negotiators. Perhaps they do not realize that there are many types of contracts. Not all are complex written agreements. Most contracts are oral agreements which may or may not involve the exchange of monetary consideration.

Without realizing it, you have probably been involved in a variety of contract negotiations every day of your life. In fact, we constantly bargain with other people to fulfill both our monetary and non-monetary needs.

- At work, you are probably involved in continuing negotiations with your superiors, subordinates, and coworkers concerning a variety of personal and professional issues. They may be as minor as deciding who will make the next pot of coffee or as major as the rating on your annual performance evaluation.
- At home, you are probably involved in continuing negotiations with your family over a wide variety of issues. They may be as minor as the time for dinner or as major as where you will live. A child crying for a favorite toy can be a formidable negotiator.
- You have likely been involved in numerous negotiations that will have a long-term affect on the course of your life, including:
    - The terms of your current employment;
    - An automobile purchase contract or lease agreement; or
    - Your home mortgage or apartment rental agreement.

In fact, you must negotiate for most things you want in life. You can only avoid negotiation if you have no desire for anything held or controlled by someone else. Regardless of your profession, skill as a negotiator is essential to your success. In Government contracting, the skill is particularly important because your daily work requires you to obtain supplies and services from responsible sources at fair and reasonable prices.

Description of Negotiation. Negotiation is a process of communication by which two parties, each with its own viewpoint and objectives, attempt to reach a mutually satisfactory result on a matter of common concern.

In negotiation, a mutually satisfactory result is vital, because even though the parties may have opposing interests they also are dependent on each other. Labor and management, for example, need each other to produce products efficiently and effectively. Likewise, buyers and sellers need each other to transact business. Both sides must be willing to live with the result.

Negotiation is not one party dictating or imposing terms on another. When that happens, the outcome will rarely produce mutual satisfaction. The result can only be mutually satisfactory if both differences and common interests are considered.

To obtain agreement, you must generally sacrifice or yield something in order to get something in return. In other words, you must give to get. But as long as the anticipated benefit is greater than your sacrifice, a negotiated agreement is beneficial. The limit on yielding is reached when one party believes that concessions would be more costly than the benefits of agreement.

While negotiation is often a process of mutual sacrifice, it should also be a process of finding ways whereby both parties will have their interests optimized under the circumstances. Negotiations should not just be aimed at how to split the pie. Instead they should be aimed at finding optimal solutions -- ways to make the pie larger for all concerned. For example, both parties benefit when negotiators find that a change in buyer requirements will enable the seller to deliver a higher-quality standard product instead of a specially built product. The seller realizes lower risks or perhaps more profit from the sale

of a standard product. The buyer pays a lower price for a product that meets the buyer's real needs.

Negotiated Contracts vs. Sealed Bidding (FAR 14.101(d), 15.000, and FAR 52.215-1). The Federal Acquisition Regulation (FAR) states that any contract awarded using other than sealed bidding procedures is considered a negotiated contract.

- Procedures for contracting by sealed bidding require the Government to evaluate bids without discussions and award to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government considering only price and price related factors. Negotiations are not permitted prior to contract award.
- Procedures for contracting by negotiation permit negotiations prior to contract award. However, a solicitation under procedures for contracting by negotiation may or may not actually require negotiations. For example, the Instructions to Offerors -- Competitive Acquisition:
  - Standard provision states that the "Government intends to evaluate proposals and award without discussions." When that provision is used, actual negotiations are not permitted unless the contracting officer determines in writing that they are necessary.
  - Alternate I, states that the "Government intends to evaluate proposals and award a contract after conducting discussions with offerors whose proposals have been determined to be within the competitive range." Here negotiations are required with any offeror(s) in the competitive range.

In Government contracting: (FAR 15.306(d)). Negotiations are exchanges, in either a competitive or sole source environment, between the Government and offerors, that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place

after establishment of the competitive range and are called discussions.

The key word in this definition is "bargaining." The Government anticipates that bargaining will occur in competitive as well as noncompetitive negotiations.

Satisfactory Negotiation Results (FAR 15.101, 15.402(a), 43.103(a), and 49.201(a)). What is a satisfactory result in a Government contract negotiation? That depends on whether the negotiation is competitive or noncompetitive and when it takes place in the contracting process.

- Competitive discussions may take place either before contract award or before award of a task/delivery order under an indefinite-delivery indefinite-quantity contract. The discussions with each offeror in the competitive range should be directed to facilitating preparation of a final proposal revision that will provide the best value for the Government, given the award criteria, the offeror's proposal, and existing constraints within the offeror's organization. Then the Government can evaluate the available proposals to determine which proposal offers the overall best value.
- Noncompetitive negotiations can take place either before or after award. In noncompetitive negotiations for:
    - Award of a new contract or a task/delivery order under an existing indefinite-delivery indefinite-quantity contract, the satisfactory result is a contract or order that provides for the purchase of the required supplies or services from a responsible source at a fair and reasonable price.
    - A bilateral contract modification, the satisfactory result is a contract modification that reflects the agreement of the parties about any modification of contract terms, including any necessary equitable adjustment related to the modification.
    - A fixed-price termination for convenience settlement, the satisfactory result is a settlement that fairly compensates the contractor for the work done and the preparations made for the terminated portions of the contract, including a reasonable allowance for profit.

The Other Party in Government Contract Negotiation. In preaward Government contract negotiations, a potential recipient of the Government contract is normally referred to as an "offeror." In post-award situations, the contractor may still be considered an offeror, because the negotiation centers on the offer submitted by the contractor. However, most contracting professionals use the term contractor after contract award. It would be particularly confusing to refer to a firm submitting a contract termination proposal as an offeror.

To avoid confusion, this text will consistently use the term "contractor" in referring to the non-Government party in a Government contract negotiation.

Negotiation Success. A successful negotiation is a product of many factors. Factors that contribute to success in any negotiation always include:

- **The specific circumstances surrounding each negotiation.** This may be viewed as the bargaining leverage available to each party involved. For example, the circumstances often favor the contractor when the Government is bargaining for a high-demand product in short supply. Similarly, the circumstances will generally favor the Government when several firms are vying to provide a product only demanded by the Government.
- **The skill of the negotiators.** Highly skilled negotiators will have a greater probability of negotiation success than negotiators who do not have the requisite skills. Good negotiators can often obtain favorable deals under adverse circumstances. Conversely, negotiators with poor bargaining skills sometimes fail to obtain satisfactory agreements even when the circumstances favor their bargaining position.
- **The motivation and fairness of each party.** The greater the motivation and fairness on each party, the more likely it is that the negotiations will end with a satisfactory agreement.
    - Successful outcomes are more likely when one or both parties are willing to make fair concessions.
    - The likelihood of successful negotiation decreases when either party is poorly motivated or unfair. Achieving negotiation success becomes

particularly difficult when one party is unwilling to compromise or show any flexibility.

Negotiator Abilities. The best negotiators exhibit the ability to:

- **Plan carefully.** Planning begins with requirement development and continues through negotiation. It includes market research, solicitation preparation, and proposal evaluation. You must know the product, the rules of negotiation, and your alternatives.
- **Gain management support.** Management support is vital to your success as a negotiator. If contractor personnel know that management does not support your objectives, the contractor's negotiators may simply tolerate you until they can escalate the negotiation to management.
- **Effectively apply bargaining techniques.** Good negotiators are capable of employing bargaining techniques which facilitate negotiation success.
- **Communicate effectively.** Good negotiators:
  - Sell others on their bargaining position by speaking in an articulate, confident, and businesslike manner.
  - Disagree with others in a cordial and non-argumentative manner.
  - Listen effectively. Many otherwise good negotiators begin to concentrate on their answer almost as soon as the other party begins speaking. As a result, they miss the true meaning of the communication.
- **Tolerate conflict while searching for agreement.** Most contract negotiations involve some conflict. After all, no two people on earth agree on everything all the time. Negotiators who:
  - Can agree to disagree in a polite and respectful manner will be able to search for ways to achieve a mutually satisfactory outcome.
  - Will give anything to avoid conflict are often not able to secure satisfactory results for their side.
  - Who display a tendency for arguing will increase the conflict and make a satisfactory outcome all the more difficult to attain.
- **Project honesty.** Good negotiators are honest and they make others believe that they are honest. Securing trust is vital to securing a mutually satisfactory

outcome. Concessions are difficult to obtain when other do not trust you.

- **Foster team cooperation.** All members of the negotiation team may not agree on every issue. Disagreements must be resolved in a manner that fosters team cooperation and the appearance of team unity during contract negotiations.
- **Apply good business judgment.** Good negotiators are able to evaluate every change in a negotiating position based on its overall effect on attaining a mutually satisfactory result.

1.2 Recognizing Possible Negotiation Outcomes And Styles

Negotiation Outcomes. In general, there are three possible outcomes to every negotiation. These outcomes are known as "win/win," "win/lose," and "lose/lose." Any negotiation can conceivably result in any of these outcomes, but different negotiation styles can make one or the another more likely.

Win/Win Outcomes (FAR 15.101, 15.402(a), 43.103(a), and 49.201(a). A win/win outcome (also known as a both-win outcome) occurs when both sides achieve long-term satisfaction with negotiation results. Negotiations emphasize developing a mutually beneficial agreement. For example, awarding a contract at a fair and reasonable price is in the best interest of both the contractor and the Government.

Commercial businesses are emphasizing win/win negotiations because of the increasing importance of long-term business relationships. Each side has a vested interest in mutual long-term satisfaction. Any short-term advantage achieved by wringing out every last concession is usually not as important a long-lasting business relationship.

There are several important reasons why Government negotiators should also strive for win/win outcomes.

- FAR guidelines emphasize a mutually satisfactory result by using negotiation guidelines such as best value, fair and reasonable price, equitable adjustment, and fair compensation for work performed.

These guidelines emphasize that the Government should not win at the expense (or loss) of the contractor.

- The Government has a vested interest in the long-term contractor success and survival.
  - Well-stocked good-quality suppliers providing goods and services at reasonable prices are essential to Government operations.
  - Contractor success enhances competition by encouraging more firms to do business with the Government, and increased competition reduces contract prices and improves quality.
- Win/win negotiators often achieve better outcomes. A negotiator is less likely to be giving and trusting when the other negotiator displays selfishness and mistrust. The genuine concern demonstrated by win/win negotiators is frequently reciprocated by the other party.
- Win/win negotiations are typically much less confrontational and tend to foster better long-term relationships.
- Win/win negotiations are characterized by much higher levels of trust and cooperation which facilitate the negotiation process.

Win/Lose Outcomes. When a negotiation results in a win/lose outcome, one side is perceived as having done significantly better at the expense of the other. This type of negotiation tends to be highly competitive, with a large degree of mistrust on both sides.

In commercial business, win/lose outcomes often occur when the negotiators do not anticipate additional business beyond the initial transaction. There is no motivation to ensure long-term satisfaction for the other side. Examples of win/lose outcomes abound in everyday life, such as private home and auto sales where the negotiators generally do not anticipate additional negotiations with the other party.

- Both sides often feel that they are the losers in a win/lose negotiation because of the competitiveness and mistrust that characterized the negotiation.
- The losing side might feel good at the conclusion of the win/lose negotiation because of their immediate perception that they obtained the best deal possible under the circumstances.

- In the long run, the losing party often regrets the agreement after discovering that the deal was not a good one after all.
- The losing party becomes even more mistrustful of the other party and reluctant to continue any sort of business relationship.

In a monopsony situation, where the Government is the only buyer, the Government could achieve many short-term wins to the detriment of contractors by dictating contract terms. But win/lose outcomes may have the following negative long-term consequences:

- Suppliers on the losing end of win/lose negotiations may be forced out of business.
- High-quality suppliers may no longer be willing to do business with the Government.
- Contracts with the remaining suppliers may have a greater risk of poor-quality or overpriced deliverables.

Lose/Lose Outcomes. When there is a deadlock, the negotiating outcome is known as a lose/lose outcome. A deadlock occurs when final agreement cannot be obtained. Since both parties had a stake in a successful outcome of the negotiation (or they would not have been negotiating in the first place), both sides lose when negotiations stalemate and deadlock occurs.

The contractor side may lose more than just the profit projected for the lost Government contract.

- Any contribution income (i.e., the difference between revenue and variable cost) that could have been used to help absorb contractor fixed costs may be lost. As a result, all fixed costs must be absorbed by the other business of the firm. The resulting cost increases for those items may reduce company profits and may even contribute to overall company losses.
- The direct labor associated with the proposed contract may no longer be needed by the contractor. As a result, the contractor may be forced to lay off employees. A lay-off may affect labor management relations. It may also increase direct labor costs for other contracts, because lay-offs typically affect lower-paid employees first.

When a deadlock occurs, the Government side also suffers a considerable loss because the desired supply or service often cannot be procured in a timely manner. This is particularly true when the Government is negotiating with a single firm under an exception to full and open competition. When deadlock occurs with a sole source contractor, the unique product or service cannot be obtained.

FAR 15.405(d). Sometimes, avoiding a deadlock is very difficult when the other party is unfair or uncompromising. The Government must decide on the better alternative: deadlocking or being on the losing end of a win/lose outcome. Considerable effort should be made to avoid a deadlock because the Government side will suffer a loss whenever one occurs.

If the contractor insists on an unreasonable price or demands an unreasonable profit/fee, **take all authorized actions to resolve the deadlock**. Determine the feasibility of developing an alternative source. Consider other available alternatives (e.g., delaying the contract, revising requirements, or Government performance). If the contracting officer cannot resolve the deadlock, the contract action must be referred to higher-level management. Management involvement assures a unified Government approach to resolving or accepting the deadlock.

Win/Win Negotiation Style. The win/win negotiation style is to negotiate based on the merits of the situation to obtain a satisfactory result. Generally, you will find that win/win negotiators:

- **Attack the problem not each other.** The differences between the two sides are a mutual problem. In a win/win negotiation, discussions center on identifying and resolving these differences, not attacking the messenger. Negative personal comments can add nothing to attaining a mutually satisfactory result. Ideally, negotiators should think of themselves as working side-by-side to resolve differences in a cordial and businesslike manner.
- **Focus on long-term satisfaction and common interests.** Many negotiators become so involved with their objectives in a particular negotiation that they lose sight of the bottom line -- long-term satisfaction. Winning a particular point in a negotiation may mean

losing a chance to achieve a mutually satisfactory result.

- **Consider available alternatives.** Your solution may not be the only right solution to a particular point in the negotiation. The same may be true of the contractor's position. Attempt to identify other solutions for consideration. The final solution may not be any better than the original solution offered by one side or the other. However, it is perceived as better, because it was reached through mutual cooperation.
- **Base results on objective standards whenever possible.** Negotiators are more likely to be satisfied with a particular result, when it is based on an objective standard. Do not refuse to compromise simply because "that's the auditor's recommendation." What was the standard used by the auditor in developing that recommendation? There may be many standards to consider including:
  - Historical experience;
  - Industry practice; or
  - Projections developed using quantitative analysis.
- **Focus on positive tactics to resolve differences.** Do not rely on deceptive behavior or bargaining ploys. Tricking another negotiator may win an apparently favorable result, but the results during contract performance or in the next negotiation may be devastating.
- **Emphasize the importance of a win/win result.** Remain positive during and after the negotiation. Never gloat about winning the negotiation, even as a joke.
  - The perception of the result by each side determines whether an outcome is win/win or win/lose. In other words, the same contractual result could be viewed as being either win/win or win/lose depending on the eyes of the beholder. For example, a $700,000 contract price could be considered a win/win or win/lose outcome depending on how the contractor views that price.
  - The negotiator's behavior during and after negotiation is often the primary influence on the other side's perception.
  - Regardless of the negotiation result, the contractor is more likely to perceive a win/win outcome when the Government negotiator exhibits win/win behavior.

    - The contractor is more likely to perceive a win/lose result when the Government side appears to have a win/lose attitude.
    - You should exhibit a win/win attitude before, during, and after negotiation.

Win/Lose Negotiation Style. The win/lose negotiation style is to negotiate based on power and using that power to force one negotiator's will on the other. That power could be real or only perceived by the other negotiator. Generally, win/lose negotiators tend to:

- **Use deceptive negotiation tactics to increase or emphasize their relative power in the negotiation.** These deceptive tactics may work, but once identified by another negotiator, their use can actually jeopardize the possibility of a mutually satisfactory result. Several of the more commonly used tactics will be described later in this text.
- **Focus on negotiating positions rather than long-term satisfaction.** Focusing on the legitimacy of a single position (rather than the reasons for differences between positions) emphasizes disagreement rather than agreement.
- **Be argumentative.** Focusing on positions leads to arguments over whose position is better, instead of how to reach agreement.
- **Show reluctance to make any meaningful concessions.** Focusing on positions also makes them unwilling to make meaningful concessions. Any concession might lead to questions about the legitimacy of their position. Such questions may weaken their actual or perceived power in the negotiation.
- **Be highly competitive and mistrustful of other negotiators.** They do not share information unless it is absolutely necessary. Alternatively, they may try to hide relevant information by overloading the other negotiator with irrelevant information.

Spectrum of Negotiation Styles. Negotiation styles are rarely pure win/win or win/lose. Instead, they cover a wide spectrum between the two extremes. You should strive for a pure win/win style, but many negotiators exhibit a combination of win/win and win/lose traits during the course of a negotiation.

For example, mildly deceptive behavior is sometimes exhibited by even the best win/win negotiators. The use of some win/lose traits may even be justified, particularly when dealing with a win/lose negotiator. Similarly, win/lose negotiators often exhibit some win/win traits even though this behavior may only be intermittent or a ploy to deceive the other negotiator.

The figure below depicts the range of negotiation styles with win/win and win/lose at opposite ends of the range. While the spectrum of styles ranges from 100 percent win/win to 100 percent win/lose, the overwhelming majority of negotiators have a style that falls somewhere between the two extremes.

```
                  Win/Win

  100% 90% 80% 70% 60% 50% 40% 30% 20%
                 10% 0%

<---------------------------------------
        ----------------------->

 0% 10% 20% 30% 40% 50% 60% 70% 80% 90%
                  100%

                                  Win/Lose
```

No negotiation style or combination of styles assures a win/win outcome. In fact, following a particular style does not even guarantee that others will perceive that you are following that style. Behavior that is 60 percent win/win and 40 percent win/lose may be perceived as win/lose by the contractor and may even result in deadlock. Likewise, there is always a possibility that a negotiating style that is 30 percent win/win and 70 percent win/lose may be perceived as win/win by the contractor.

While the proportion of win/win behavior needed to produce a win/win outcome varies by negotiation and is never certain, the probability of a win/win outcome typically increases in proportion to the win/win behavior exhibited by the negotiators. Conversely, the probability of either a win/lose or lose/lose outcome increases in

proportion to the win/lose behavior exhibited by the negotiators.

Negotiation Style Comparison. The following table compares win/win and win/lose negotiation styles:

Characteristic	**Win/Win Style**	**Win/Lose Style**
Negotiation Goal	Obtain a result that is satisfactory to both sides, including a fair and reasonable price.	Obtain the best possible deal for your side regardless of consequences to the other side.
Focus	Solve mutual problems.	Defeat the other party.
Environment	Cooperation and trust	Mistrust and gamesmanship
Negotiation Characteristics	• Negotiators attack the problem not each other • Focus on long-term satisfaction • Available alternatives considered • Results based on objective standards • Focus on positive tactics to resolve differences • Emphasis on a win/win result.	• Tactics designed to increase or emphasize relative power. • Focus on negotiating positions rather than long-term satisfaction. • Argumentative • Reluctance to make any meaningful concessions • Highly competitive

1.3 Describing Attitudes That Lead To Successful Negotiations

Overriding Negotiation Themes. Government negotiators should always keep in mind the following basic attitudes when negotiating Government contracts:

- Think win/win;
- Sell your position;
- Win results not arguments;
- Everything is negotiable; and
- Make it happen.

Think Win/Win. A win/win outcome is the paramount objective in a Government contract negotiation. Consequently, you should consciously display a win/win attitude and negotiating style throughout the negotiation process. Use win/win negotiation tactics and avoid tactics that might lead the contractor to perceive that you are using a win/lose style.

Sell Your Position. During negotiations, you are acting as an agent of the Government trying to sell your positions to the contractor's team. Accordingly, you should strive to be persuasive while being respectful and polite. In negotiations as in other forms of sales, it is easier to sell a product when the prospective customer likes and respects you.

Win Results Not Arguments. Trying to win the argument is too often a sign of a win/lose negotiation. When argumentative behavior characterizes negotiations, one or both sides are likely to perceive a win/lose outcome even when the final outcome could otherwise appear balanced and fair. Remember that persuasion is not only a matter of logic and content, but also significantly depends on the manner of presentation.

Everything Is Negotiable. No negotiation position is sacred and off limits if it prevents the more important goal of a mutually satisfactory outcome. Consequently, you must always be prepared and willing to negotiate all issues.

Make It Happen. To achieve long-term satisfaction, you may need to display creativity, initiative, and even courage. Your goal is a mutually satisfactory outcome. Find a way to make it happen.