Ch 7 - Bargaining Tactics


- 7.1 - Using Win/Win Tactics
- 7.2 - Identifying Win/Lose Tactics And Appropriate Countermeasures


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*Endless Array of Tactics*. There is an almost endless array of negotiation tactics. Many are designed to foster win/win results, but others are orientated toward win/lose approaches to negotiation. Most have several variations and can be used in conjunction with other tactics depending on the unique circumstances surrounding the negotiation.

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## 7.1 Using Win/Win Tactics

*Tactics for Win/Win Results*. The tactics outlined in this section are generally used to facilitate win/win results. Accordingly, countermeasures are generally not necessary. However, even win/win tactics can be abused and used as negotiating ploys by win/lose negotiators. Countermeasures to win/lose use are identified for each tactic throughout this section. For most tactics, there are more countermeasures than those described in this section.

*Forbearance*. Forbearance is the act of refraining or abstaining from action. In negotiation forbearance allows both parties to agree to disagree and move on to the next issue without making a commitment one way or another.

- **Win/Win Use.** When you and the contractor's negotiator disagree on an issue, you can use forbearance to prevent the negotiation from bogging down on that issue. Instead, you can search for issues where you can agree. Delaying action affords you both more time to view the unresolved issue in a different light.
- **Win/Lose Use.** Forbearance can be used by win/lose negotiators to stall agreement on any issue and place increasing pressure on the other party to make concessions.
- **Countermeasure To Win/Lose Use.** Offer to trade concessions on areas of disagreement. You make a concession on one issue in return for a contractor concession of equal importance.

*Questioning*. Questioning involves the use of questions to probe the position of the other party.

- **Win/Win Use.** You can ask questions for many useful win/win purposes, including:
  - Obtaining additional facts or specific information on the other party's position.
  - Seeking a specific response, such as "What is the best you can do?"
  - Identifying an alternative by using a question that begins with "Have you considered .?"
  - Breaking impasses using questions such as, "Why.?" or "Suppose.?"
  - Assisting the other party in reaching agreement with questions such as, "When can you start work?" Such questions can often precipitate a settlement.
- **Win/Lose Use.** A win/lose negotiator might question you in an attempt to gain information on the limits of your negotiation position. For example, a negotiator might ask "How much money is available for this contract?" If you answer honestly, the negotiator can adopt that figure as the contractor's negotiation objective for the remainder of the negotiation.
- **Countermeasure To Win/Lose Use.** If you suspect questioning is being used to obtain win/lose results, counter by either:
  - Not answering the question;
  - Rephrasing the question into a question that you can answer without harming your negotiation position;
  - Responding with another question; or
  - Just listening.

*Trial Balloon*. A trial balloon is a tentative plan offered to test the reaction of a particular audience. You can offer a trial balloon by presenting the contractor's negotiator with an offer prefaced with the words "what if .." Without committing yourself, you can politely bring up solutions for discussion and give the contractor's negotiator the right to accept, reject, or offer an alternative without making a firm commitment. For example, you might say, "How would your company feel about this alternative?"

- **Win/Win Use.** Using this tactic allows you to suggest win/win solutions. It can be particularly useful if

you phrase the trial balloon in a way that encourages the contractor's negotiator to offer alternative solutions.

- **Win/Lose Use.** A win/lose negotiator might use a trial balloon as a trap. For example, the negotiator might offer a price for settlement. If you accept, the negotiator finds a reason not to accept it. The negotiator gains insight into your objective without giving up anything.
- **Countermeasure To Win/Lose Use.** When in doubt about the acceptability of a trial balloon, take time to formulate your response. Trial balloons often require substantial time to answer and generally cannot be analyzed on the spot. Be particularly careful when accepting the trial balloon that would require you to move to the limit of your negotiating range.

*Alternative Positions*. By offering two or more alternative positions at the same time, you can indicate that you would be willing to accept more than one way of settling a particular issue or group of issues. It is different than the trial balloon, because you are making a commitment to accept any option that the contractor's negotiator selects.

- **Win/Win Use.** You offer alternatives acceptable to the Government. The contractor's negotiator has the opportunity to select the option or alternative course of action most favorable to the contractor's position. You gain an acceptable resolution, and the cost to the contractor's position is minimized. In addition, the selection process gives the contractor's negotiator a sense of ownership in the solution. That sense of ownership may improve the general negotiation atmosphere and lead to the satisfactory resolution of other issues.
- **Win/Lose Use.** A win/lose negotiator might offer two or more unacceptable solutions to key issues. When you refuse them all, the negotiator could use your refusal to support a charge that you are being unreasonable.
- **Countermeasure To Win/Lose Use.** The pros and cons of each alternative position may not be readily apparent. Spend enough time to thoroughly analyze the merits and drawbacks of every option before making your selection. Never accept an unreasonable solution simply because it is the most attractive one offered. If all alternatives are unacceptable, offer another alternative rather than simply rejecting them.

*Acceptance Time*. Acceptance time is a definite period of time that one party to a negotiation has to accept an offer by another party. Instead of forcing a quick decision, you can use this tactic to deliberately give the contractor's negotiator more time to grasp your solution or ideas.

- **Win/Win Use.** You can increase acceptance time by making a offer near the end of the day and then suggesting a break in negotiations until the next day. Overnight, the negotiator will have time to think about your offer and maybe discuss it with higher management. Negotiators, like people in general, need time to accept something new or different.
- **Win/Lose Use.** A win/lose negotiator might use acceptance time as a delaying tactic. It could be particularly useful when you are under severe time pressure or the momentum of the negotiation appears to be in your favor.
- **Countermeasure To Win/Lose Use.** Do not take too much time to respond to an offer because the momentum could be lost for quick agreement. Taking too much time could also allow a win/lose negotiator an opportunity to develop further delaying tactics.

*Brainstorming*. Brainstorming is a technique to develop alternative solutions through an unrestrained exchange of ideas. Negotiators using this tactic think out loud and openly discuss many alternative solutions or ways to resolve issues. No value judgment is placed on any idea during the brainstorming session. Ideas are simply recorded for later evaluation and possible use.

- **Win/Win Use.** When negotiators are sincere and open to new ideas, brainstorming can be a useful tactic to identify a wide variety of alternatives on ways to reach a win/win result. During the brainstorming session and later evaluation of the ideas presented, new insights can also be gained on the hidden pressures and needs that the parties involved bring to the negotiation.
- **Win/Lose Use.** For brainstorming to work, the negotiators must be sincere and open to new ideas. A win/lose negotiator who is not sincere could use a brainstorming session to gain information about alternatives that another negotiator might be willing to accept, while revealing nothing. That insight could

then be used to win/lose negotiator's advantage for the remainder of the negotiation.

- **Countermeasure To Win/Lose Use.** The win/lose counter is to simply say nothing and listen. Either both parties share ideas or neither shares.

*Salami*. The negotiator using this tactic makes demands one demand at a time rather than requesting everything all at once.

- **Win/Win Use.** Using the salami approach permits you to divide complex issues into more understandable components. You have an opportunity to fully explain and sell each position before moving on to another issue. Clear understanding positions on these components can give you a better understanding of different positions on the overall issue. Its like a complicated mathematics problem. Most people cannot look at the problem and tell you the answer. They must complete all the individual calculations needed to find that answer.
- **Win/Lose Use.** A win/lose negotiator might use this technique to win concessions on a variety of issues, before you realize just how many issues there are. Before you know it, you have negotiated away all your flexibility and you have not even gotten to the tough issues.
- **Countermeasure To Win/Lose Use.** When you suspect the other party is a win/lose negotiator, the best countermeasure is to make the negotiator specify all demands before you make your first concession. Refuse piecemeal results.

*Blanketing*. Blanketing is the opposite of the salami approach. It is designed to get all the issues on the table at the beginning of the negotiation. Negotiators using the blanketing tactic open the negotiation by outlining all their demands at once.

- **Win/Win Use.** When used by win/win negotiators, this is tactic puts all of the issues on the table, so that everyone understands the magnitude of the negotiation task. Otherwise, substantial time may be wasted on trivial issues while key issues are left to be squeezed in at the end.
- **Win/Lose Use.** A win/lose negotiator can use this tactic to bury you like a heavy snowfall blankets a

city and with the same effect -- paralysis. The negotiator hopes that you will be overwhelmed with the extent of all the demands and that you will not be able to dig out the key issues until its too late.

- **Countermeasure To Win/Lose Use.** Before making any concessions, prioritize the issues involved to determine what is really essential to the other party and how important each issue is to the Government.

*Bracketing*. A bracket is a group or class of issues or solutions that are linked together. Negotiators can use this technique to identify issues that are critical to a mutually satisfactory result.

- **Win/Win Use.** You can use bracketing to group major issues in an attempt to reach a mutually satisfactory result on those issues. This tactic can be particularly useful when there are a large number of issues, but only a few are critical. It may be impossible to reach a satisfactory result on every issue in the bracket, but you can reach a result that provides overall satisfaction. Once you reach a satisfactory result on the critical issues, you should be able to resolve the relatively less important issues more quickly.
- **Win/Lose Use.** A win/lose negotiator might attempt to group issues in a way that resolves the issues critical to him/her but leaves your critical issues unresolved. In that situation, you might trade away your flexibility only to find that the really important issues are still unresolved.
- **Countermeasure To Win/Lose Use.** Make sure the brackets include your critical issues. To maintain more flexibility, you might also consider qualified or tentative acceptance of the results. Later if you feel that the results are unfair, you can withdraw your acceptance.

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## 7.2 Identifying Win/Lose Tactics And Appropriate Countermeasures

*Tactics for Win/Lose Results*. The tactics in this section are generally considered win/lose tactics because they represent negotiation ploys or ways to facilitate negotiation objectives by deceiving the other party.

Because of the inherently dishonest nature of these win/lose tactics, they are not generally not recommended for negotiators seeking win/win results.

Nevertheless, by understanding these tactics, you will be better able to defend against their successful application. Recognition is the universal countermeasure. In addition, the employment of some win/lose tactics by win/win negotiators may sometimes be desirable when facing a win/lose negotiator.

*Funny Money*. Many issues in Government contract negotiations relate to percentages, factors, or other estimating relationships. Bargaining on these relationships is essential to reaching a mutually satisfactory result. However, these relationships can become funny money if you allow a negotiator to use them to distract you from their effect on the total contract.

- **Use.** A win/lose negotiator might use these relationships to distract your attention from the true effect on cost or price. For example, a negotiator might say "The Government's position on material overhead is 7.0 percent; the corporation's position is 6.0 percent. The corporation's position on manufacturing overhead is 111.0 percent; the Government's position is 110.0 percent. Since the difference is 1.0 percent in both cases, we propose a compromise where we accept your position on material overhead and you accept our position on G&A expense." That sounds like an even swap until you realize that the contract allocation base for material overhead is $75,000 and the base for manufacturing overhead is $800,000. That even swap would cost the Government $7,250.
- **Countermeasure.** Translate all funny money terms to their actual monetary equivalent. For example, when negotiating indirect costs, always consider the effect of rate changes on total cost or price.

*Surprise*. Negotiators may introduce a behavior, issue, or goal at an unexpected point in the proceedings. The negotiator plans an apparently_spontaneous event (e.g., an emotional outburst) to surprise or shock the other negotiator.

- **Use.** In general, the surprise tactic is used to disrupt negotiations and move you away from your negotiation plan. The win/lose negotiator hopes that you will have an emotional response (e.g., anger, shock, or even fear) to the surprise. The further hope is that emotion will adversely affect your negotiation efforts. Anger might cause you to lash out and make statements that can later be used to show that you are unreasonable. Shock or fear might cause you to capitulate on a particular issue to avoid further and possibly more intense conflict.
- **Countermeasure.** Knowledge can be the best countermeasure. Some negotiators are known for their use of surprise tactics (e.g. outbursts of anger). A display that might be frightening if you do not expect it. It can be almost entertaining if you do. Surprised or not, do not respond until you are prepared. When necessary, call for a team caucus to make sure that you are responding with reason and not emotion (e.g., anger or frustration).

*Undermining*. The negotiator using this tactic attempts to put the other party on the defensive using threats, insults, or ultimatums. Although this tactic often backfires because most people resent verbal attacks, it can sometimes be effective when used against an easily intimidated negotiator.

- **Use.** The negotiator using this risky tactic hopes to gain concessions by bullying the other party. Some contractor negotiators have tried to lower the confidence of the Government negotiator by making negative comments about the competence of Government personnel and their frustration with the "red tape" involved in selling to Federal agencies.
- **Countermeasure.** There are several countermeasures to undermining:
    - If the threat is unethical, unlawful, or immoral, state that you intend to report the threat to the proper authorities (e.g., the negotiator's higher-level management).
    - Explain the long-range risks and costs that would result if the contractor party decides to carry out the threat.
    - Play dumb by failing to understand the threat and go on to the next issue.

    - Do not become shaken or emotional when this tactic takes the form of an insult. Insist on respect but continue to be businesslike and polite.

*Silence*. Silence is the absence of mention. In other words, a negotiator using this tactic does not say anything about a negotiation point. The primary hope is that the issue will not come up. If the issue does come up, the negotiator remains silent or avoids it by talking about something else.

- **Use.** This tactic is generally used when negotiators do not want to disclose weaknesses in their position. For example, a contractor trying to sell parts to the Government might not want to mention the fact that the parts are not covered by any warranty. The tactic is also used when negotiators want to obtain information by letting the other party do the talking. In this case, some negotiators feel obligated to talk and reveal information on their position when the other party is deliberately silent. Sometimes these negotiators will even end up talking themselves into accepting the other party's positions.
- **Countermeasure.** Persistently ask effective questions to uncover information on the avoided topic.

*Feinting*. Feinting is the use of a pretense or action designed to mislead. In negotiations, this tactic normally involves the use of true but misleading statement or behavior.

- **Use.** Feinting gives the other negotiator a false impression or deceives the negotiator into believing something that is not true. For example, a contractor might feint by telling you that a construction project had already begun when only some minor tree clearing had taken place. In fact, the contractor might be unable to start construction because the necessary earth-moving equipment is still being used on another job.
- **Countermeasure.** Ask probing questions to determine the real situation or bring out the hidden topic. For the example above, the obvious question would be "How much work has been completed?"

*Limited Authority*. When large organizatio accept a position because related actions have already been completed. For example, the negotiator may present you with a signed subcontract and tell you that the subcontract cost is no longer subject to negotiation because the subcontract price has been set.

- **Countermeasure.** Insist that everything is negotiable. For the example above, point out that even if cost is an actual cost, the burden for proving reasonableness rests with the contractor (FAR 31.201-3).

*Bogey*. A bogey is standard of performance set up as a mark to be attained. A negotiator using the bogey tactic blames the negotiation position on a standard set by a third party or a situation beyond the negotiator's control (e.g., management policy). Any reason might be used as long as it is beyond the negotiator's control.

- **Use.** Win/lose negotiators using the bogey tactic attempt to convince you that they do not have authority to negotiate the issue because the bogey is beyond their control. They hope that this lack of authority will lower your expectations without you blaming them. Unfortunately, many Government negotiators use this tactic with statements such as "This is the audit-recommended rate, I have to use it."
- **Countermeasure.** Bogey countermeasures include:
  - Question the reasonableness of the bogey and stand firm on your position. In the example above, a contractor might question why you think the audit-recommended rate is fair and reasonable.
  - Offer to negotiate with the person or persons responsible for the bogey.
  - Counter the bogey directly. In the example above, the contractor might state that other negotiators in your office have accepted the proposed rate.

*Crunch*. The crunch tactic is designed to take another bite at your position no matter how reasonable it is. The user of this tactic is never satisfied and responds in words such as, "You have to do better than that," or "That is not good enough."

- **Use.** Win/lose negotiators using this tactic are attempting to make you doubt the reasonableness of your own position, without offering a specific alternative. The tactic may even make you grateful for a second chance.
- **Countermeasure.** Keep the burden of proof on the contractor by asking the negotiator for specifics. It is not enough to say that your position is not good enough. If you feel that your position is reasonable. Do not move until the contractor offers information that puts that reasonableness in doubt.

*Decoy*. A decoy is a person or thing that lures you into danger. In negotiations, the danger is an unsatisfactory outcome. The lure is a position or issue that appears important to the negotiator, but in reality is not. The issue or position can be completely fabricated or one whose importance is simply blown way out of proportion.

- **Use.** Negotiators using this tactic intend to trade the decoy for a concession of value. Effectively applied, this tactic enables the user to obtain a valuable concession without giving up anything important in return. For example, the contractor might offer to grudgingly concede on a minor estimating error in return for your concession on a more important issue. The actual error might be real or deliberately placed for you to find.
- **Countermeasure.** Decoy countermeasures include:
  - Conceding the decoy issue and holding out on the important issues.
  - Calling the negotiator's bluff by challenging the validity or importance of the decoy issue.

*Legitimacy*. Legitimacy is the state or condition of complying with established rules and standards. Negotiators often rely on commonly accepted standards (e.g., past practice, official policy, or written documents) to support a negotiation position.

- **Use.** Win/lose negotiators might use questionable or nonexistent standards to support their negotiation position. For example, the negotiator might say "This is the catalog price." By conveying legitimacy on the price, the negotiator hopes to reduce or eliminate questions. Most people are reluctant to challenge the

status quo or question a position that is supported by an official document.

- **Countermeasure.** Consider generally accepted standards, but do not accept them blindly. Insist that everything is negotiable. For example, the catalog price cited above might be based on sales of 10 or 20 units to retail buyers, when you are negotiating to buy 10,000 units. You should consider the catalog price, but use all available information to negotiate a fair and reasonable contract price.