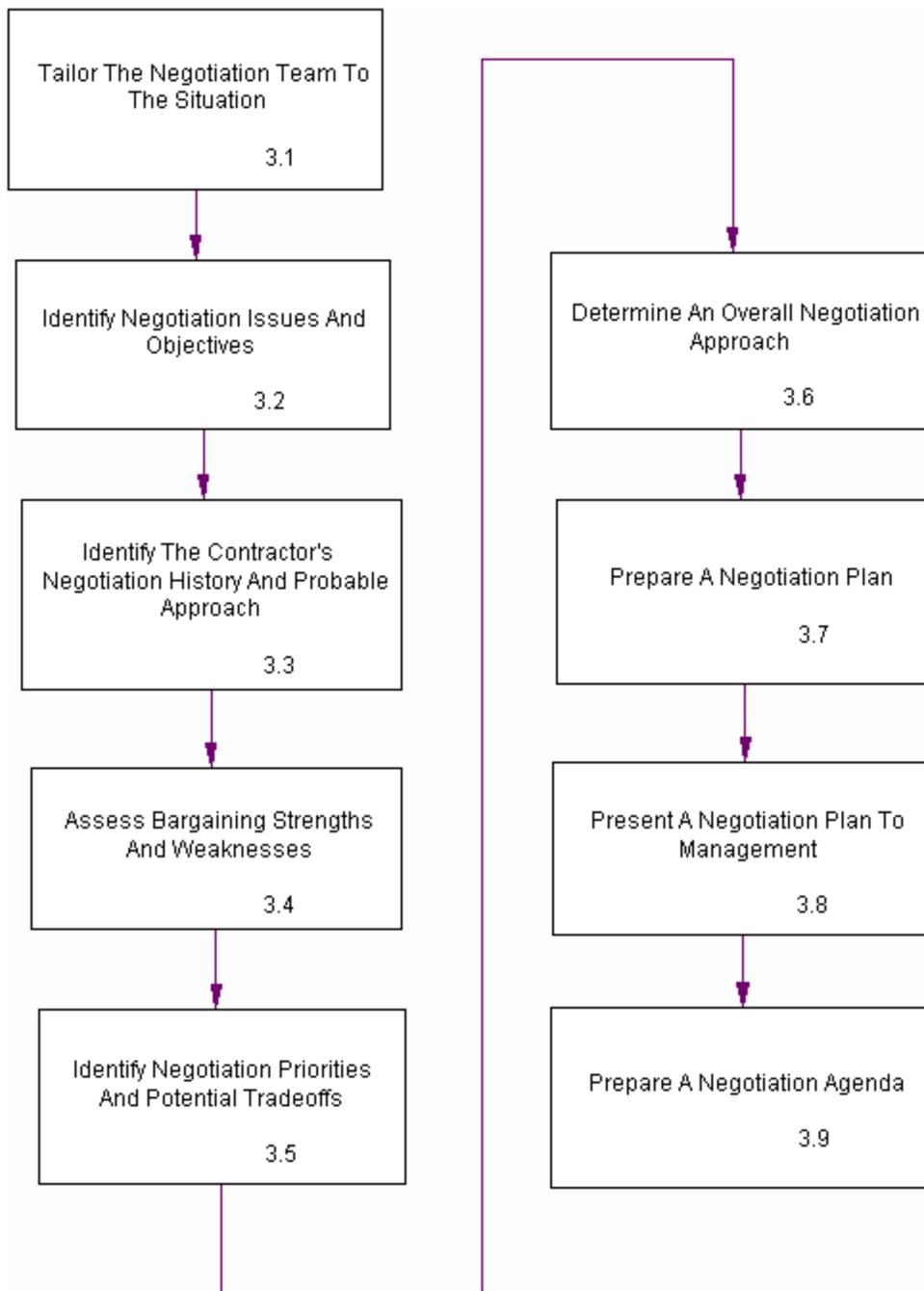


## Ch 3 - Negotiation Preparation

- 3.0 - [Chapter Introduction](#)
  - 3.1 - [Tailoring The Negotiation Team To The Situation](#)
  - 3.2 - [Identifying Negotiation Issues And Objectives](#)
  - 3.3 - [Identifying The Contractor's Probable Approach To Negotiation](#)
  - 3.4 - [Assessing Bargaining Strengths And Weaknesses](#)
  - 3.5 - [Identifying Negotiation Priorities And Potential Tradeoffs](#)
  - 3.6 - [Determining An Overall Negotiation Approach](#)
  - 3.7 - [Preparing A Negotiation Plan](#)
  - 3.8 - [Presenting A Negotiation Plan To Management](#)
  - 3.9 - [Preparing A Negotiation Agenda](#)
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### **3.0 Chapter Introduction**

*Procedural Steps.* The following flow chart outlines the steps in negotiation preparation:



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*Need for Preparation.* Thorough preparation is the most important prerequisite to effective negotiation. Neither experience, bargaining skill, nor persuasion on the part of the negotiator can compensate for the absence of preparation.

- In general, thorough preparation improves the likelihood of a win/win negotiation that will produce a quality contract and set the foundation for timely and effective contract performance.
- Specifically, thorough preparation produces tangible rewards, including:
  - Fewer contract modifications because the technical requirements are well conceived and well defined;
  - Better technical performance because requirements were well defined; and
  - Cost estimates closer to actual contract costs.

*Contractor Preparation.* Structure is forced upon the contractor by the proposal preparation process. To complete an effective proposal, the contractor must:

- Understand contract requirements before beginning proposal preparation;
- Establish and use an estimating system designed to meet contractor and Government requirements;
- Identify assumptions related to contract performance (e.g., current competition, market alternatives, possible performance problems, and effect of the market on contract costs);
- Evaluate performance alternatives and determine the most effective way to meet contract requirements; and
- Structure a proposal to meet Government technical and pricing requirements.

*Government Preparation.* To be effective in negotiation, the Government's preparation must mirror the depth and intensity of the contractor's. Thoroughness is important because contractors are typically well prepared. Government representatives must:

- Conduct market research to understand the product, the technical factors affecting contractor performance, and the market factors affecting product price;
- Prepare or review contract documents (e.g., solicitation, contract, or contract modification) considering the current market situation;
- Analyze the contractor's proposal based on the current market situation and specific contract requirements;
- When necessary, use exchanges to clarify information received from the contractor and support further analysis; and

- Develop a negotiation plan based on that analysis.

*Available Information.* Without adequate information, you can neither prepare for nor conduct effective contract negotiations. As you prepare for contract negotiations, you should already have:

- The solicitation, unilateral contract modification, or any other document that prompted the contractor's proposal;
- The proposal and all information submitted by the contractor to support the proposal;
- Information from your market research concerning the product, the market, and any relevant acquisition history;
- Any relevant field pricing or audit analyses;
- In-house technical analyses;
- Your initial analysis of the proposed price and, where appropriate, of the different cost elements.
- The results of any exchange(s) with the contractor.

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### **3.1 Tailoring The Negotiation Team To The Situation**

*Potential Team Size.* Normally, you should use the smallest team practical to efficiently and effectively formulate and attain the Government negotiation objectives.

For smaller less complex contract actions, the contracting officer or contract specialist may be the only Government representative participating in the negotiation.

As the value and complexity of the contract action increase, you will likely need additional experts. However, a smaller team is normally better unless the additional member(s) can make an effective contribution. As the team size grows:

- Team control during negotiations becomes more difficult;
- Team communications become more complex; and
- The personnel cost associated with the negotiation increases.

*Potential Team Members.* The table below identifies common roles in negotiations and potential team members to fill

those roles. Note that the roles and potential team members are identical to those identified for face-to-face exchanges. However, you should also note that actual team membership on the two teams may be substantially different.

<b>Negotiation Team Selection</b>	
<b>Team Role</b>	<b>Potential Team Member</b>
Team leader	<ul style="list-style-type: none"> <li>• Contracting officer</li> <li>• Contract specialist</li> </ul>
Technical analyst	<ul style="list-style-type: none"> <li>• Engineer</li> <li>• Technical specialist</li> <li>• Project or requirements manager</li> <li>• End user</li> <li>• Commodity specialist</li> <li>• Inventory manager</li> <li>• Transportation manager</li> <li>• Property manager</li> <li>• Logistics manager</li> </ul>
Pricing analyst	<ul style="list-style-type: none"> <li>• Auditor</li> <li>• Cost/Price Analyst</li> </ul>
Business terms analyst	<ul style="list-style-type: none"> <li>• Legal Counsel</li> <li>• Administrative Contracting Officer</li> <li>• Administration Specialist</li> </ul>

*Team Leader.* In contract negotiations, the ultimate team leader is the contracting officer responsible for the contract action. The contracting officer has ultimate responsibility for the negotiation, because only the contracting officer has the authority to bind the Government to a contract.

The contracting officer may act as the day-to-day team leader or delegate that responsibility to a contract specialist after considering factors such as the:

- Dollar value of the contract action;
- Complexity of the issues involved in the negotiation;
- Contractual and operational importance of the contract action;

- Policy of the contracting activity; and
- Experience of the assigned contract specialist.

*Principal Negotiator.* The principal negotiator is the person who represents the Government during contract negotiations and does most of the bargaining. The team leader is normally the principal negotiator because the team leader has the broadest perspective of key negotiation issues. However, the team leader may designate others to fill the role of principal negotiator.

- Another individual may be designated as the principal negotiator because of that person's particular expertise in analysis and negotiation. For example, a price analyst may be designated to serve as the principal negotiator when the price analyst is the most informed and capable negotiator. Of course, the team leader is still responsible for the results of the negotiation.
- To take advantage of varying kinds of expertise, different principal negotiators can be used to bargain different issues. For example, an engineer might negotiate technical issues (e.g., labor hours) while a price analyst negotiates indirect cost rates. When using this approach the team leader must be particularly vigilant to assure that the various negotiators share information and work toward the same objectives.

*Other Team Members.* Individuals should only be selected for team membership when they can add to the efficiency and effectiveness of team efforts to formulate and attain negotiation objectives. In particular, additional team members may be required when their expertise is needed to:

- Support Government efforts to understand the contractor's position; or
- Explain the Government position.

Questions and responses on key issues generally continue throughout the negotiation process. Expert support:

- Is generally only needed until the differences between the Government and contractor positions are clearly defined. After that, expert support may actually be detrimental to the negotiation. The experts on both

sides may be so convinced that their position is correct that they will consciously or unconsciously sabotage any efforts at compromise.

- May be needed throughout the negotiation whenever certain very important and very complex issues are discussed. Mutual understanding on such issues may be critical for successful contract performance.

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### **3.2 Identifying Negotiation Issues And Objectives**

*Identifying Issues.* An issue is any assertion about which the Government and the contractor disagree. In contrast, nonissues are assertions about which both parties agree.

Typically, issues arise when the Government and the contractor make different assertions based on the same or related facts. Differences occur because the two parties have different perspectives and interests in the negotiation.

- A nonissue can become an issue if it is challenged during the course of negotiations.
- An issue can become a nonissue if the assertion is no longer challenged.

*Sources of Issues.* In contract negotiation, an issue can come from any challenge to an assertion made by the contractor or the Government. Generally, an assertion made in the contractor's proposal is challenged based on:

- The field pricing report;
- The audit report;
- The in-house technical analysis;
- Your cost or price analysis;
- Exchanges with the contractor; or
- Another type of Government analysis.

The issue may also be related to a contractor challenge of Government requirements as stated in the solicitation, contract, or contract modification.

*Issues and Objectives.* Issues are the bases for the differences between the Government and contractor negotiation positions. For example, the positions on labor rates might differ because the Government challenges the

contractor's use of a particular labor index to estimate future direct labor rates.

Because issues are the bases for differences between the Government and contractor positions, you must identify the key issues that effect those positions before you develop your prenegotiation objectives. If you do not, there is a good chance that your objective on one issue will not be consistent with your objectives on related issues. For example, if the Government challenges the use of a particular index to forecast direct labor rates, that challenge should effect all similar rates estimated under similar conditions.

*Pre negotiation Objectives* ([FAR 15.101](#) and [15.402\(a\)](#)). Your objective in any contract negotiation should be best value for the Government.

- In a competitive negotiation, the objective in negotiating with each contractor should be a final proposal revision that provides the best value based on the contractor's proposal, the solicitation criteria, and the conditions affecting the contractor's operations. The Government can then award a contract to the firm whose proposal provides the overall best value.
- In a noncompetitive negotiation, best value is a contract with a responsible source that:
  - Will satisfy Government requirements in terms of product quality and timely delivery:
  - Has a fair and reasonable price:
  - Fairly apportions risk between the Government and the contractor; and
  - Satisfies Government socioeconomic goals (e.g., small business set-asides).

*Technical Objectives.* Government technical objectives are based on Government's requirements and its evaluation of the contractor's technical proposal based on those requirements. Technical objectives should center on whether the contractor can effectively and efficiently meet Government requirements. Typically, technical objectives deal with the:

- Acceptability of the contractor's technical proposal. For example, the Government may maintain that a larger motor is required to meet an equipment requirement.

- Performance risk associated with the contractor's technical proposal. For example, the technical proposal may propose to perform the required service with individuals who may not be qualified.
- Technical factors that may unreasonably affect cost -- often referred to as "gold plating." For example, the contractor may be proposing stainless steel nails to build wooden cabinets. Common nails would work just as well at a fraction of the cost.

*Cost or Price Objectives.* Issues related to technical issues and issues related to rates and factors will eventually effect cost and price objectives, because the "total package" under consideration will in part determine what price is fair and reasonable.

Whether your negotiation involves price analysis supported by cost analysis or price analysis alone, you must establish an overall price objective. Without an overall price objective, negotiations will often flounder and result in settlements that can be neither explained nor defended. Negotiating cost element by cost element can be risky unless you understand the affect of these agreements on overall price.

Objectives such as "the lowest price we can get" or "a price about ten percent lower than the proposed price" do not qualify as acceptable objectives because they are not in the win/win spirit and are too vague. Price objectives should be planned in terms of a definite dollar amount reflecting a reasonable evaluation of contract requirements and the methods proposed by the contractor to meet those requirements.

*Objectives May Change During Negotiation.* Your prenegotiation objectives represent your best judgment based on the information available prior to negotiations. As more information becomes available, your objectives may change.

When you must obtain management approval of your negotiation objectives, that approval should address the latitude that you will have to adjust your objectives during negotiations. Depending on your contracting activity's policies and the situation, you may have complete latitude or you may be required to obtain a new approval any time your objectives change. A requirement for

a new approval is most likely when a change in your objectives will probably lead to a higher contract price.

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### **3.3 Identifying The Contractor's Probable Approach To Negotiation**

*Need to Identify the Contractor's Approach.* You have identified issues and the objectives that will drive the negotiation. Now you need to learn more about the contractor's objectives and the road map that the contractor's negotiator will likely follow in attaining those objectives.

*Information Sources.* Information on how the contractor might approach the negotiation can come from a wide variety of sources. Some of the most important include the following:

- The contract proposal and all information submitted with the proposal should clearly explain the contractor's approach to contract performance and contract pricing.
  - A well supported proposal may indicate that the contractor expects to negotiate a contract close to the proposal.
  - Minimal support may indicate that the contractor is not firmly committed to negotiating a contract.
  - Poor support may mean that extensive negotiations will be required to attain a quality contract.
- Previous proposals and contracts for identical or similar products may give you an idea about how flexible the contractor is during negotiations. Many contractors expect to lose a certain percentage of the proposed price during negotiations. To compensate, they may include "padding" in their proposals so that they can negotiate it away and still have an acceptable contract.
- Price negotiation memoranda (PNMs) with the same contractor for similar work should provide detailed information on where the contractor is likely to be flexible in negotiations and where the contractor is likely to be firm.
- Contract administrators, negotiators, and other Government employees who have had previous dealings

- with the contractor can provide more personal information on the company's negotiating style and the approach taken by individual negotiators.
- Information from exchange sessions may indicate where the contractor's position is firm and where the contractor may be more flexible.
  - Other information from contract files may indicate how proposals compare with contract performance. For example, during negotiation, the contractor may constantly point out the high risk in performing certain contract activities. Then immediately after contract award, the contractor uses a firm fixed-price subcontract to shift that risk to a subcontractor.

*Key Questions to Consider.* As you collect information on how the contractor might approach the negotiation, ask yourself the following questions:

- ***What objectives and priorities has the contractor probably established for the contract negotiation?***

Identify the contractor's contract objectives and related priorities. Consider stated and readily apparent objectives along with the contractor's unstated needs. While contract price is always important, every negotiation includes non-price objectives.

- ***How will the contractor's general business objectives and priorities affect the negotiation?***

Determine how the proposed contract action will affect the contractor's ability to meet its general business objectives. Most contractors look at a contract as part of the firm's sales mix. Each contract has its own requirements and potential rewards, but is also related to the other business of the firm. Possible objectives might include increasing market share, entry into a new field, improved cash flow, avoiding unnecessary cost risk, or continued Government business.

- ***How will the individual objectives and priorities of the contractor's negotiator affect negotiations?***

Identify factors that may cause the negotiator's objectives and priorities to differ from those of the contractor. For example, a new negotiator may feel a need to prove his/her capabilities by refusing to compromise. A negotiator who

receives an incentive based on the profit/fee rate negotiated, may be willing to concede costs dollars to keep that profit/fee rate high.

- ***What negotiation styles and tactics will the contractor's negotiator likely use?***

Collect information about how the contractor and the projected negotiator have negotiated in the past.

- Company negotiation strategy and tactics will affect negotiations no matter who represents the firm. For example, some contractor's may have a policy of providing the minimum price-related information possible to the Government. If you need more price-related information to determine price reasonableness, that policy may limit your ability to obtain it.
- A particular negotiator's style can also be important. For example, if the negotiator is prone to use win/lose tactics, you should consider the use of effective countermeasures to put the negotiation on a win/win path.

- ***What pressures and constraints will affect the contractor's approach to negotiations?***

Learn what pressures and constraints will affect negotiations. For example, some contractor's give negotiators little or no latitude in negotiation. Such restrictions can make it difficult to reach agreement. Early knowledge of this restriction may permit you to use a win/win approach to encourage the contractor to give the negotiator the flexibility needed to reach an agreement.

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### **3.4 Assessing Bargaining Strengths And Weaknesses**

*Bargaining Power.* Bargaining power is relative. It comes in many forms and is never totally one-sided, because both parties have bargaining strengths and weaknesses. Recognizing the relative strengths and weaknesses of the parties involved in any negotiation will help you achieve a win/win result.

- The Government may have bargaining power because it is the only customer for a particular product. However, that power may be offset because the contractor is the only supplier.
- A world-renowned scientist may have bargaining power based on expertise and reputation. However, an experienced technical analyst may be able to offset much of that power.
- Contractors often enjoy bargaining power because the Government lacks knowledge about the existence of potential competitors or substitute products. However, the Government negotiator's knowledge of Government requirements may offset that power.
- An experienced negotiator may have bargaining power because of a reputation gained over the years. However, knowledge of the negotiator's approach to negotiation may offset much of that power.

*Bargaining Power and Perception* ([FAR 31.201-3\(a\)](#) and [52.243-1](#)). Bargaining power has to be perceived by the other party to have an effect on negotiations. In fact, the power does not have to be real as long it is perceived. For example, many Government negotiators believe that contractors have far superior bargaining power in negotiations to definitize a unilateral contract modification. They point out that the contractor can drag out negotiations while continuing to perform the modified contract and incurring actual costs. However, they do not realize that the Government also has substantial power in that situation. Contracting officers are prohibited from accepting unreasonable actual costs. If an agreement cannot be reached, the contracting officer can make the equitable adjustment by using a unilateral decision. Of course, the contractor can dispute that decision, but it will likely take months or years before the dispute is resolved. Legal fees may be more than the disputed amount. Obviously, a negotiated agreement is in the best interest of both the Government and the contractor.

*Sources of Bargaining Power.* The following are some of the factors that you should consider as you assess the bargaining strengths and weaknesses of each party involved in a particular negotiation:

- **Competition.** The availability or lack of competition may give one side the upper hand.

- Sellers enjoy more bargaining power when available sources or alternatives are limited.
  - Buyers enjoy more bargaining power when multiple sources or alternatives are available. Bargaining alternatives exist even during sole source negotiations. The Government may be able to gain bargaining strength by researching the practicality of other alternatives, such as:
    - Performing the required effort in-house;
    - Changing requirements to encourage competition;
    - Developing new source(s) by providing start-up funds to other contractors;
    - Postponing contract award until other sources become available; or
    - Breaking out and separately competing components.
- **Knowledge.** The cliché "Knowledge is power" certainly applies to contract negotiation. The more that you know about the negotiation issues, objectives, priorities, and the parties involved, the greater your bargaining power. Thorough preparation is essential.
- **Time Constraints.** Time constraints affect every negotiation (e.g., time available for negotiations, time available for contract completion, date when work must start, or the expiration of funding). Time constraints become a source of power when the constraint appears to affect one party and not the other. Do not be fooled though. A time constraint that appears to affect only one party may actually affect both. For example, expiring funds place a constraint on the Government. If the contractor has substantial business alternatives, the time constraint on the Government may give bargaining power to the contractor. However, if the contractor needs the contract, the time constraint applies equally to both parties. Relative bargaining power is not affected.
- **Bargaining Skills.** Many contractors have personnel that specialize in contract negotiation. Their bargaining experience and expertise can give them both the perception and the reality of bargaining power. However, applying the concepts presented in this text should improve your bargaining skills and your confidence in your ability to negotiate effectively. Your bargaining power should increase accordingly.
- **Importance of the Contract to Each Party.** As the table below shows, successful negotiations can reward both the organization and the individual. The importance of the Government contract to each side is determined by

how much the rewards benefit the organization and the individual participants.

Organizational Rewards	Individual Rewards
Money/Profit	Increased Self-Worth
Unique Product or Service	Safety
Property	Prestige
Information Rights	Self-Esteem
Privileges	Self-Actualization
Commercial Opportunities	Security
Future Business	Reputation
Product Control	Increased Pay

As with other forms of bargaining power, perception is the key. If a negotiator perceives that a contract is more important to the other party, the negotiator may be less willing to make concessions.

- **Contract Risk.** Every contract involves risks and both the Government and the contractor have an interest in assuring that those risks do not preclude effective and efficient contract performance. However, one negotiator may gain power by taking action to reduce the risk exposure perceived by the other party. That power can be real, even if the negotiator taking the action does not perceive the same level of risk.
  - There are many methods that you should consider for reducing and controlling contract risk. Among the most important are the appropriate use of:
    - Fixed-price or cost-reimbursement contract pricing arrangements;
    - Clear technical requirements;
    - Government furnished property; and

- o Other contract terms and conditions.
  - o While you can reduce or control contract risk you cannot eliminate it completely. Trying to eliminate risk entirely may actually weaken your bargaining power by presenting an image of weakness rather than an image of cooperation.
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### **3.5 Identifying Negotiation Priorities And Potential Tradeoffs**

*Prioritize Issues.* Rank potential negotiation issues in relative order of importance to the Government. After ranking, determine whether each issue is:

- **Nonnegotiable issues or "must points."** These are the issues where you cannot make concessions because of their importance to the Government position.
- **Issues open to concession or "give points."** These are issues that have relatively low importance to the Government but may be valuable to the contractor. As a result, they are projected for probable concession during negotiation. Hopefully concessions on these issues will win concessions from the contractor.
- **Issues to avoid during negotiations or "avoid points."** These are issues that you do not want to discuss during contract negotiations. For example, they may be controversial or weak areas in the Government position.
- **Issues open to bargaining or "bargaining points."** These are issues where the Government may be willing to make meaningful concessions in return for meaningful concessions by the contractor. For example, in a noncompetitive negotiation, price is a bargaining point. The Government and contractor typically reach agreement on a dollar value somewhere between the two opening bargaining positions.

*Need for Tradeoff Positions.* You should have an objective for each negotiation issue. You should also identify several tradeoff positions that you would consider accepting.

- In a competitive negotiation, you can use these positions to evaluate the contractor's final proposal revision.

- In a noncompetitive negotiation, you can use these positions to develop counteroffers and establish your negotiation limits.

*Tradeoff Positions.* As you identify tradeoff positions for each issue, there are three questions that you should consider.

- ***What result do you feel is most reasonable based on the available information?***

Use your answer to establish your negotiation objective.

- ***What is the most desirable result that you could reasonably expect to achieve on this issue?***

Use your answer to establish one limit to your range of acceptable tradeoffs.

- ***What is the least desirable result that you would be willing to accept on this issue?***

Use your answer to establish the other limit to your range of acceptable tradeoffs.

*Tradeoff Positions On Price.* Price is an issue that must be considered in every contract negotiation. Many contracting activities consider tradeoff positions on price so important that they require negotiators to obtain management approval of their minimum, objective, and maximum positions on price prior to the start of all major noncompetitive contract negotiations.

- **Objective Position.** This is your best estimate of a fair and reasonable price based on your price/cost analysis. It is the price that you want to negotiate. Other positions should help you reach your objective.
- **Minimum Position.** In a win/win negotiation, your minimum price should be the lowest fair and reasonable price. When used as your first counteroffer, your minimum position should provide room to negotiate. Never offer a price lower than your minimum position, because such an offer would be unreasonable.
  - Establish your minimum position based on a reasonable price for your anticipated best-case scenario of contract performance. That scenario must be based on a reasonable analysis of

available information. It must not be based on an unlikely "pie in the sky" scenario.

- The use of an arbitrary "nice low figure" as a minimum position is neither appropriate nor defensible. Using an arbitrarily low minimum position is not in the win/win spirit and may even be counterproductive. For example, an indefensible or unreasonable opening position may cause the Government to lose credibility and make attaining a win/win outcome difficult or even impossible.
- When you use cost analysis, you should establish a minimum position for each major element of contract cost and profit/fee.
- **Maximum Position.** In a win/win negotiation, your maximum price should be equivalent to the highest fair and reasonable price.
  - Establish your maximum position based on a reasonable price for your anticipated worst case scenario of contract performance. That scenario must be based on a reasonable analysis of available information and not an unrealistic scenario.
  - There may be other limits (e.g., the availability of funds or a ceiling price) on the maximum contract price. Such limits provide a defensible maximum position even though the amount is less than the highest price that could be considered fair and reasonable.
  - When you use cost analysis, you should establish a maximum position for each major element of contract cost and profit/fee.

*Tradeoff Positions On Other Issues.* Price is not the only important issue in contract negotiation. In most contract negotiations, you will also need to develop tradeoff positions for several other key issues, such as:

- Contract type;
- Warranties;
- Delivery schedule; or
- Other business terms and conditions

*Base Tradeoff Positions on Clear and Consistent Criteria.* A win/win outcome is practically impossible if negotiation positions are not based on clear and consistent criteria. Remember that a win/win outcome is a mutually satisfactory

outcome and a mutually satisfactory outcome is a matter of perception. The best way to maintain the perception of a mutually satisfactory outcome over the long term is to base your positions on clear and consistent criteria.

Without clear and consistent criteria, the negotiation will almost certainly turn into a win/lose or lose/lose situation.

- Negotiators will be encouraged to use win/lose tactics.
- The party that stubbornly refuses to concede anything will usually win. If both parties refuse to move, both sides will lose.
- Even if the outcome is fair and reasonable, one-or-both could eventually feel that they were treated unfairly.

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### **3.6 Determining An Overall Negotiation Approach**

*Plan the Order for Addressing Issues.* Carefully plan the order in which issues will be addressed during negotiations. There is no one right approach.

- One approach is to start with the least important issues and proceed to the more important ones. Concessions on several less important issues may limit or eliminate the need for concessions on a more important issue.
- Another approach is to address issues according to the anticipated ease of reaching agreement. Early agreements hopefully will create an atmosphere of agreement that will continue as you proceed to the harder issues.
- Normally, contract negotiations follow a building-block approach:
  - Basic contract requirements are addressed and resolved before contract price is addressed.
  - Tradeoffs between contract requirements and contract price are addressed after resolution of other technical issues.
  - Contract price is not finally resolved until all other issues are settled, because contract price must consider all the other elements of the contract. The result should be a fair and

reasonable price for each contract item, not an element-by-element agreement on contract costs.

*Identify Potential Concessions.* Flexibility is vital to win/win negotiations. Negotiators expect to gain something as a result of their negotiation efforts. Refusing to make concessions will frustrate the other negotiator and may lead to a lose/lose situation, no matter how reasonable your position.

A concession may be accepting a different interpretation of existing facts (e.g., accepting that production hours per unit will not be reduced as fast as you estimated in your previous pricing position) or it may be an action to change the facts (e.g., change the contract type). As you consider possible concessions, you should identify:

- Potential concessions that you would be willing to make in response to projected contractor concessions.
- Concessions that you would expect from the contractor in response to your potential concessions.

*Plan Bargaining Tactics.* Your selection of negotiation tactics should depend on your personality and the results of your research on the tactics that will probably be used by the contractor's negotiator.

- **Avoid the use of win/lose tactics. Government negotiators should always pursue a win/win outcome.**
- Do not try to be someone you are not. A tactic that works well for another negotiator may not work for you. However, that does not mean that you should never try something new.
- The successful application of any negotiation tactic requires a great deal of planning. The negotiator must be prepared to respond in a manner that protects the Government and makes progress toward agreement. This preparation is accomplished by anticipating the probable contractor tactics and developing countermeasures in advance.

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### 3.7 Preparing A Negotiation Plan

*Draft a Plan.* Draft a negotiation plan. Contents may vary based on agency and contracting activity requirements, but the plan should include information such as the following:

- Background (e.g., contract, contractor, and negotiation situation);
- Major and minor negotiation issues and objectives (both price and non-price);
- Negotiation priorities and positions on key issues (including minimum, objective, and maximum positions on price); and
- Negotiation approach.

*Review the Plan.* Review the negotiation plan with key negotiation team members.

- Present the plan to the team.
- Encourage input from others on the team to identify weaknesses and alternatives. Normally, you should give special attention to input from those with more experience in negotiations with the same contractor.
- Revise the plan as necessary.
- Define the role each team member will play in putting the plan into action.
- Ensure positions and the overall plan are fair and reasonable.

*Team Member Plans.* Assure that team members have individual plans designed to support the overall negotiation plan.

- Emphasize:
  - The Government's commitment to a win/win approach to contract negotiation
  - That the Government's principal negotiator's role is the principal speaker and "chairperson" of the Government team. **Other team members must realize that the principal negotiator is the only individual authorized to negotiate with the contractor.**
  - That other team members are at the negotiation to provide support, listen, and evaluate information provided by the contractor. They must not address the contractor's negotiator(s) unless directed by the Government's principal negotiator.
  - That, during negotiation sessions, other team members must not openly disagree with the Government position on any point under

discussion. If they have a concern, they should discretely communicate with the principal negotiator. If necessary, the principal negotiator could call for a caucus to address the concern.

- Assure that each team member understands his/her specific role in the negotiation session.
  - Identify any issue that the team member should be prepared to address during negotiations.
  - Assure that the team member understands the related Government position.
  - Review their anticipated role (e.g., present the Government position, answer contractor questions about that position, or both).
- For all negotiations, warn team members:
  - Not to communicate with contractor personnel outside the negotiation conference on issues related to the negotiation.
  - To safeguard information on the Government position from contractor personnel and other unauthorized persons.
  - About ethical considerations (e.g., no free lunches or favored treatment).
- For competitive negotiations, warn team members not to engage in conduct that:
  - Favors one contractor over another;
  - Reveals a contractor's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise a contractor's intellectual property to another contractor;
  - Reveals a contractor's price without that contractor's permission;
  - Reveals the names of individuals providing reference information about a contractor's past performance; or
  - Knowingly furnishes source selection information to anyone other than Government personnel who have a need to know.

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### **3.8 Presenting A Negotiation Plan To Management**

*Need for Management Support.* To be successful in a contract negotiation, you must have management support. If management does not support you, other members of the

Government negotiation team and the contractor will soon know. When this happens, team members and the contractor will no longer come to you for guidance and answers. Instead, they will go to management.

You should have continuing communications with management, just as you do with the contractor and members of the negotiation team.

- For contracts that attract a relatively low level of management interest (e.g., small dollar contracts with no major issues), communications will likely center on available funding, workload, and other general management concerns.
- For contracts that attract higher-level management interest, communications should center on the key issues involved. Typically, these communications will involve a briefing on key elements of the negotiation plan, especially the team's negotiation objectives.

*Management Briefing.* A management briefing gives you an opportunity to obtain policy guidance and management observations on the strengths and weaknesses of the negotiation plan. In fact, multiple briefings may be required to involve different levels of management in the negotiation process.

The prenegotiation briefing can take many forms, including:

- An informal oral presentation;
- A formal oral presentation; or
- A written document (e.g., a prenegotiation or business clearance memorandum).

The actual briefing format will depend on many factors including agency policy, contracting activity policy, and the personalities involved. For example, some managers may feel that they can better evaluate an oral presentation, while others may want the detail that a written business clearance provides.

*Management Feedback.* Whatever the form of the prenegotiation briefing, there must be provision for management feedback. In particular management should have the opportunity to:

- Approve or reject the negotiation plan.
  - Identify any management limits on negotiation flexibility. The negotiation team must know what happens if the team changes its evaluation of one or more key issues during negotiation (e.g., a price higher than the original objective now appears reasonable). The team might be:
    - Empowered to negotiate any position as long as the contracting officer considers the position fair and reasonable;
    - Empowered to negotiate a position within specific limits approved by management; or
    - Limited to the prenegotiation positions specifically approved by management.
  - Approve or reject changes to the plan that will permit the team to exceed any previously-established management limit.
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### **3.9 Preparing A Negotiation Agenda**

*Need for an Agenda.* One of the most difficult tasks during a negotiation is to confine the discussion to what is important while avoiding irrelevant subjects. One of the best ways to promote productive and efficient discussion is to establish an agenda for both sides to follow.

*Timing.* Whenever practical, you should prepare a draft agenda for contractor review prior to the start of contract negotiations. This gives the contractor an overview of what the Government feels is important and provides the contractor an opportunity to recommend changes.

Some negotiators prefer to wait until the start of negotiations to present the agenda. Though often appropriate, this may delay the start of meaningful negotiations while the agenda is being addressed. Negotiations may be further affected if the contractor is not prepared to discuss key issues identified in the agenda.

*Prepare Negotiation Agenda.* The negotiation agenda should include the following items:

- Topics to be addressed and the order in which they will be considered;

- A general time schedule for the negotiation sessions;
- Location(s) of the negotiation session(s).
- Names and titles of Government and contractor team members. Include office symbols and phone numbers when appropriate.