CHAPTER 1: INTRODUCTION TO NEGOTIATION

Learning Objectives

At the end of this chapter you will be able to:

Primary Learning Objective (PLO)
Describe general negotiation concepts.

Classroom Learning Objective 1/1
Describe the meaning of negotiation.

Classroom Learning Objective 1/2
Identify success factors and possible outcomes of the negotiation process.

Classroom Learning Objective 1/3
Describe the overriding negotiation themes.

Contents and Procedures

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1.0 Chapter Overview

Introduction to Negotiation

Negotiation is a part of normal everyday life. In fact, many experts on the subject have said that life, itself, is just one continuous negotiation. Yet, many readers may feel that they are not experienced negotiators because only a few hands go up whenever I ask the question “Who has had experience negotiating contracts?”. Perhaps those who feel they do not have experience negotiating do not realize that contracts include both oral agreements and agreements which involve only the exchange of non-monetary considerations.

Since the utilization of negotiation skills is not limited to government contracts, the first step to improving your bargaining ability is to realize that you already have considerable experience in negotiating agreements. Without realizing it, you negotiate with your superiors, subordinates, co-workers, and family members all the time. In short, we constantly bargain with other people to fulfill both our monetary and our non-monetary needs.

It has been said that “We have to negotiate for everything we want in life.” In other words, negotiation can be avoided only when we have no desire for something someone else has. Because of this truism, everything we learn during this course can help us reach both our personal and our professional goals by improving our ability to negotiate successfully.

Government Contract Negotiations

Part 15 of the Federal Acquisition Regulation (FAR) establishes general procedures for the negotiation of contracts between the government and industry. For this purpose, the FAR 15.101 states that negotiation means:

FAR 15.101

> "contracting through the use of either competitive or other-than-competitive proposals and [conducting] discussions. Any contract awarded without using sealed bidding procedures is a negotiated contract."

FAR 15.102

FAR 15.102 further describes negotiation:

> "as a procedure that includes the receipt of proposals from offerors, permits bargaining, and usually affords offerors an opportunity to revise their offers before award of a contract. Bargaining -- in the sense of discussion, persuasion, alteration of initial assumptions and positions, and give-and-take -- may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract."

The key word in these definitions is "bargaining." The FAR anticipates that bargaining will occur in competitive as well as "other-than-competitive" negotiations. The FAR and the Comptroller General have prescribed special rules for bargaining in a "competitive" environment, which will be covered in Chapter 8.

FAR 15.601

The FAR also separately defines the term "discussion" (FAR 15.601) to mean:

> "any oral or written communication between the government and an offeror (other than communications conducted for the purpose of minor clarification), whether or not initiated by the government, that (a) involves

information essential for determining the acceptability of a proposal, or (b) provides the offeror an opportunity to revise or modify its proposal."

The term "offeror" instead of "contractor" is used by the FAR to refer to the other party in government contract negotiations. The term "offeror" is correct because a "contract" does not exist until the negotiations conclude and the contractual terms are agreed upon by both sides. However, this textbook will use the term "contractor" instead of "offeror" because contracting specialists often use the term "contractor" when referring to the other party in government contract negotiations.

For the purposes of this textbook, the term "discussion" will encompass both "factfinding" sessions (Chapter 2), "bargaining" or "negotiation" sessions in a non-competitive environment (Chapters 3, 4, and 9), and "competitive discussions" (Chapter 8).

1.1 The Negotiation Process

Description of Negotiation

Negotiation is a process of communication by which two parties, each with its own viewpoints and objectives, attempt to reach a mutually satisfactory agreement on, or settlement of, a matter of common concern.

The "mutually satisfactory agreement" in the end can be satisfactory to both parties only when the differences of viewpoints have been discussed and there is a meeting of the minds as well as acceptance of the viewpoints by both sides. However, it must be understood that negotiation is not a process of mutual sacrifice for the sake of agreement. Rather, it is a process of finding ways whereby both parties will have their interests maximized. It should also be understood that negotiation is not the same as "dictation," where one side imposes terms on the other side.

There is something special about the ambivalent relationships of the parties who negotiate in an attempt to reach an agreement: They are dependent on each other and yet have opposing interests. Labor and management, for example, cannot produce without each other. Likewise, buyers and sellers need each other to transact business. Whether in government or in business, people and organizations gain by making agreements.

To obtain agreement you must generally yield something in order to get something in return. In other words, “you have to give to get.” As long as the gain you anticipate from the agreement is greater than the cost of what you would yield, you must be willing to yield and obtain agreement. The limit on yielding is reached when one or the other party believes that to yield more would be more costly than the gains from the agreement.

Success Factors In Negotiation

Successful negotiation — the achievement of an agreement that satisfies the best interests of your side — 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 side. For example, the circumstances would generally favor the contractor if the government was bargaining for a high-demand product in short supply. Similarly, the circumstances favored General Schwarzkopf in the cease-fire negotiations he held with the defeated Iraqi generals after the Gulf War. After all, the Iraqi army had just taken a horrendous beating compared to the relatively minor losses of the allied coalition.

- **The bargaining skills of the negotiators.**

Highly skilled negotiators have greater opportunities for negotiation success than do negotiators who do not know how to bargain very well.

- The motivation and fairness of each party.

The greater the motivation and fairness on each side, the more likely it is that the negotiations will end in agreement. Conversely, the likelihood of successful negotiation decreases when either side is poorly motivated or unfair.

- The willingness of each party to make concessions.

Achieving successful negotiation becomes increasingly difficult when either side is unwilling to show any flexibility. **In contrast, successful outcomes become more likely when both parties are willing to yield and make concessions.**

Contract Bargaining Skills

To be an effective contract negotiator for the government, you need to acquire a number of skills that are taught in government courses. The following table outlines these skills and lists specific courses that enable negotiators to further develop contract bargaining skills:

Contract Skill	Course
Researching the requirement and the market for a particular product or service	Federal Acquisition Institute (FAI) "Procurement Planning" DoD "Management of Defense Acquisition Contracts Basic" (CON 101)
Applying policies and procedures for: • Soliciting • Awarding • Modifying contracts	FAI "Contract by Negotiation" FAI "Government Contract Administration" DoD "Management of Defense Acquisition Contracts Basic" (CON 101) DoD Intermediate Pricing Course (CON 211)
Analyzing costs and prices	FAI "Price Analysis" FAI "Cost Analysis" DoD "Principles of Contract Pricing" (CON 104)
• Factfinding • Preparation for negotiations • Conduct of negotiations • Bargaining techniques • Bargaining tactics • Nonverbal negotiating	You will learn these skills in this course

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1.2 Negotiation Outcomes

Outcomes/ Styles

In general, there are three possible outcomes to every negotiation, depending on the long-term success or failure of each side. These outcomes are known as “Win/Lose,” “Win/Win,” and “Lose/Lose.”

Two basic negotiation styles closely relate to the three different outcomes. There are win/win negotiators who strive for win/win outcomes, and there are win/lose negotiators who strive for win/lose and even lose/lose outcomes.

Win/Lose Outcomes

When a negotiation results in a win/lose outcome, one side does significantly better than the other side and “wins,” while the second party does poorly and “loses.” The win/lose outcome is characterized in the framework where one side must lose in order for the other side to win. This type of negotiation tends to be highly competitive, with a large degree of mistrust on both sides.

Ironically, both sides often feel that they are the "losers" in a win/lose negotiation because of the rancor and mistrust that characterized the negotiation. Yet even the "losing" side might feel good at the conclusion of the win/lose bargaining session because of their immediate perception that they obtained the best deal possible under the circumstances. However, in the long run, the "losing" party often regrets the agreement after discovering that the deal wasn't so good after all. Consequently, the losing party becomes even more mistrustful of the other party and even more reluctant to continue a business relationship.

Win/lose outcomes often occur in one-time-only relationships involving private parties. Since neither party anticipates 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 bargainers generally do not have any more transactions with the other side.

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 would have the following negative long-term consequences:

- Many suppliers on the losing end of win/lose government contracts would eventually be forced out of business.
- Other high-quality suppliers would no longer be willing to do business with the government
- There would be greater risk of poor-quality, overpriced deliverables from the remaining suppliers still willing to do business with the government.

Win/Win Outcomes

In contrast to the win/lose outcome, the win/win outcome is the scenario in which both sides achieve long-term satisfaction because each party feels that its side "won" and the "victory" was not at the expense of the other side. In a commercial relationship, each side has a vested interest in satisfying the long term goals of the other side. Any short term advantage achieved by wringing out every last concession is usually not as important as securing a long-lasting business relationship.

Win/win negotiations, also known as "both win" outcomes, are characterized by much higher levels of trust and cooperation. Win/win negotiations are also much less confrontational and contentious than the win/lose negotiations. Since each side expects to do business with the other side after the bargaining session is concluded, a primary negotiating goal of each party is the long-term satisfaction of the other side. Many bargaining sessions between commercial businesses are win/win negotiations because a win/lose outcome would jeopardize the long-term business relationship.

FAR 15.802

There are important reasons why government negotiators should strive for win/win outcomes. First, the Federal Acquisition Regulation (FAR) requires government contracting officials to obtain a price that is fair and reasonable to both sides. This requirement implies that the government should not "win" at the expense (or "loss") of the contractor. Secondly, the government has a vested interest in the long-term success and survival of government contractors. Not only are government contractors indispensable sources for products and services, but a win/win attitude enhances competition by encouraging more firms to do business with the government. In turn, increased competition reduces contract costs and improves quality. Moreover, well-stocked base of good-quality suppliers and vendors providing goods and services at reasonable prices is essential to the operations of the federal government.

Finally, win/win negotiators often achieve better outcomes because win/lose styles frequently result in demonstrations of similar tendencies by the other side. After all, who wants to be giving and trusting when the other negotiators display selfishness and mistrust. In contrast, the genuine concern demonstrated by win/win negotiators is, in turn, frequently reciprocated by the other party.

Lose/Lose Outcomes

A negotiating outcome where both sides lose is known as deadlock, or 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 bargaining session or they would not have been negotiating in the first place, both sides suffer a considerable loss when negotiations stalemate and deadlock occurs.

The contractor side loses more than just the profit projected on the lost government contract. The fixed costs associated with the contract must be absorbed by other business or contracts of the firm. This, in turn, either reduces company profit and may even contribute to overall company losses.

The fixed costs that would have been absorbed by the government contract, along with the profit associated with the contract, are known as contribution income. Besides losing contribution income, the contractor in a deadlock will not be paid for the direct costs that would have been associated with the government contract. The reduction in direct costs will often cause the contractor to lay off employees.

When a deadlock occurs, the government side also suffers a considerable loss because the desired deliverable 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.

Sometimes, avoiding deadlock is very difficult when dealing with unfair or unyielding parties. The government negotiator must then decide on the better alternative: deadlocking or being on the losing end of a win/lose outcome. Nevertheless, considerable effort should be made to avoid a deadlocked negotiation because the government side will still suffer a significant loss.

The Importance of Perception in Determining Negotiation Outcome

Except for lose/lose outcomes, 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" or the perception of each side.

For example, a $100,000 contract price could be considered a win/win or win/lose outcome depending on how the contractor views that price. Since the government side should strive for win/win results, the perception of the contractor side becomes paramount. It is not enough for just the government to perceive a win/win outcome when the contractor side feels it was the victim of a win/lose result.

Because the other side's perception is so significant in determining negotiation outcomes, the negotiation style assumes utmost importance. The style or presentation is often the primary influence on the other side's perception. Regardless of the contract price, the contractor side is more likely to perceive win/win outcomes when the government exhibits win/win behavior. Conversely, the contractor side is more likely to perceive a win/lose result when the government side appears to have a win/lose attitude. Consequently, government negotiators should exercise great care in exhibiting the appropriate attitude or manner when negotiating.

Negotiation Styles

Win/lose styles can often be easily recognized because win/lose negotiators often give tell-tale signs that they are striving for this kind of result. Win/lose negotiators tend to be highly competitive and mistrustful of the other side. They are also generally argumentative and tend to focus on areas of disagreement. Another hallmark of win/lose bargainers is their reluctance to make any meaningful concessions. Since many win/lose negotiators are prone to deceptive behavior, they often resort to win/lose tactics and "gamesmanship" during the bargaining session.

In contrast to the win/lose style, negotiators exhibiting win/win styles are far more cooperative and trusting of the other side. Negotiators seeking win/win outcomes are more likely to make concessions when it is in the mutual interest. They tend to be more respectful of the other side, and attempt to seek agreement rather than to prove they are right and win arguments. Finally, win/win negotiators rely far less on deceptive behavior and, instead, focus on bargaining tactics that are win/win in orientation.

Spectrum of Negotiation Styles

Negotiation styles cover a wide range or spectrum because the behavior of negotiators is rarely either purely win/win or win/lose. Although government negotiators should conscientiously strive for pure win/win outcomes, many bargainers exhibit a combination of win/win and win/lose traits during the course of the negotiation.

For example, mildly mistrustful or 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 win/lose negotiators on the other side. Similarly, win/lose negotiators often exhibit some win/win traits even though this behavior may be only intermittent or used as a ploy to deceive the other side.

The illustration below shows the two negotiation styles at each end. While the spectrum of styles ranges from 100 percent win/win to 100 percent win/lose, the overwhelming majority of negotiations styles fall 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
```

Since the type of outcome is determined by the perception of the other side, there is no definitive point on the spectrum that can separate win/win from win/lose outcomes. For instance, government behavior that is 60 percent win/win and 40 percent win/lose may be considered win/lose by the contractor and could even result in deadlock. Likewise, there is always the possibility that a negotiating style that is 30 percent win/win and 70 percent win/lose may be perceived as a win/win outcome by the other side.

While the proportion of win/win behavior needed to produce win/win outcomes varies by negotiation and can never be known, the probability of a win/win outcome increases in proportion to the win/win behavior exhibited during the bargaining session. Conversely, the more win/lose behavior is used, the greater the likelihood of either win/lose or lose/lose outcomes.

Comparison of Negotiation Styles

The following table compares win/win and win/lose negotiation styles:

Outcome	Win/Win	Win/Lose
Negotiation Goal	Obtain agreement acceptable 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	• Resolve conflict • Obtain both short- and long-term satisfaction • Establish cordial, business-like relations • Combine efforts to satisfy the other side and solve problem	• Make extreme initial demands • Use deceptive ploys • Make stingy or no concessions • Attempt to win arguments instead of agreements

1.3 Overriding Negotiation Themes

Overriding Negotiation Themes

Government bargainers should always keep in mind the following overriding themes when negotiating government contracts:

- Think Win/Win
- Sell Your Position
- Win Agreements Instead of Arguments
- Everything Is Negotiable
- Make It Happen

Think Win/Win

Since win/win outcomes are preferred they are the paramount objective in government contract negotiations. Consequently government negotiators should consciously display win/win attitudes and negotiation styles. Most bargaining ploys and negotiation tactics should be avoided because these devices are deceptive in nature and generally give the other side the perception of win/lose negotiation style.

Sell Your Position

Negotiators are agents for the government trying to "sell" their positions to the other side. Accordingly, government bargainers 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 the salesperson.

Win Agreements Instead of Arguments

Negotiators should support their positions by winning *agreements* with the other side. 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 agreement could otherwise appear balanced or 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 fair and reasonable settlement. Consequently, government negotiators must always be prepared to use common sense and be open to negotiate all issues.

Make It Happen

Negotiators as agents for their side are responsible for securing whatever their party needs from the other side by obtaining a negotiated settlement. To reach agreement, negotiators must often display creativity, initiative, and even courage. When the benefits of an agreement outweigh the costs, bargainers must somehow find a way to secure the deal and "make it happen!"

1.4 Chapter Summary

Summary

Since negotiation is a necessary part of everyday life, good bargaining skills are an asset for the individual as well as the government. Negotiation is basically a communications process where both sides try to reach a satisfactory agreement on issues of mutual interest.

The win/win outcome is the best of the three possible negotiation outcomes and should be the objective of every government negotiation. However, the type of outcome largely depends on the perception of each side. Consequently, the government's negotiation style is extremely important because it influences the perception of outcome type.

Government negotiators should always keep five overriding themes in mind during every negotiation:

- "Think Win/Win"
- "Sell Your Position"
- "Win Agreements Instead of Arguments"
- "Everything Is Negotiable"
- "Make It Happen"