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GOVBUY PROCUREMENT CONFERENCE

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Evaluation and Negotiation: A Practical Guide

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Evaluation and Negotiation: A Practical Guide

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On the Agenda

- Primer: Sources of Power in Acquisition
- The Foundation of Success is a Good Solicitation
- Evaluation Strategies
- Negotiation Fundamentals
- Formal Negotiations
- A Negotiation Scenario



About Your Speaker

- Former Deputy CIO for Texas and Director of the State Council on Competitive Government
- Certified Public Procurement Officer
- Founded company Civic Initiatives in 2010; 50+ employees – Support work in NY
- Regular procurement conference speaker



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Primer: Sources of Power In Acquisition



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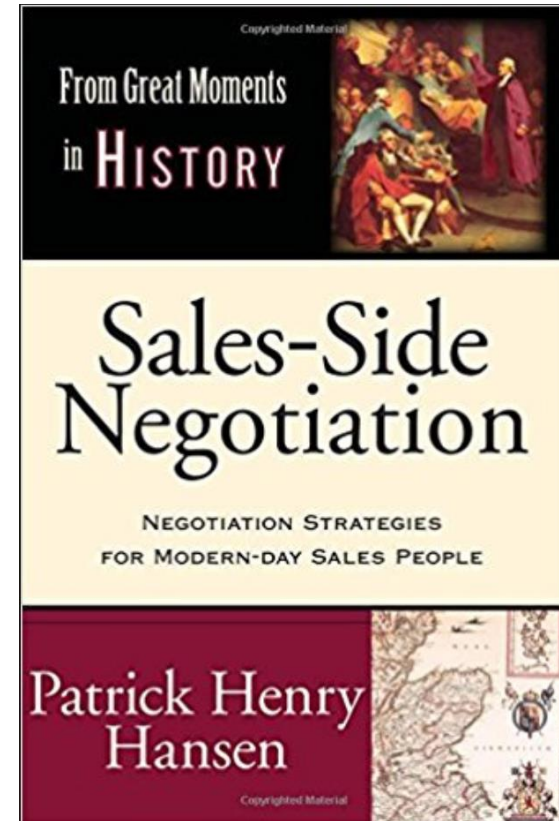
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Sources of Power

“Power is the single most important component of negotiation, even more important than skill. The more power a negotiator has, the less relevant skills become.”

Let's Discuss:

- Sources of Seller Power
- Sources of Buyer Power
- Considering Power in Our Approach to Contracting



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Sources of Seller Power

- **Capabilities** – Seller has invested intellectual capital into (goods/services/software) that the buyer does not want to replicate.
- **Knowledge & Experience** – Seller has high expertise and capacity in the market segments of interest to the buyer.
- **Experience** – Sellers for large companies are also highly experienced at the sourcing process – you may buy this once a decade, they sell it every week.
- ***Differentiation** – Creating competitive advantage in products and capabilities that are unique to the company



Sources of (Public Sector) Buyer Power

- **Money** – The Golden Rule
- **Time** – Buyers’ creation and management of opportunity also influences sellers to invest time, money, and effort into the sale to make it difficult for the seller to walk away or push back on “price pinches” or “nibbling”
- **Options** – Revert to Status Quo; Co-op for a Competitor; Explained Delay; Unexplained Delay
- **Process** – Cone of Silence; Designated Point of Contact; Appeal to a Third Party; Power of the Bureaucracy; tightly managed orals; “*BAFO, BAFO, BARFO*”; Cost breakdowns
- ***Commoditization** – Creating methods to compare and contrast capacities that reduce unique advantages and strengthen competition



The Key Pivot

Differentiation

Commoditization



- For Public Sector Procurement, the most influenceable element of power is managing the reality (or perception) of commoditization of the supplier solution
- This is accomplished primarily through:
 - Excellent market research
 - Thoughtful requirements
 - A solicitation process that emphasizes competition
 - Ongoing refinement of strategies in each category to increase competitive supply sources in the future



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The Foundation of Success Is a Good Solicitation

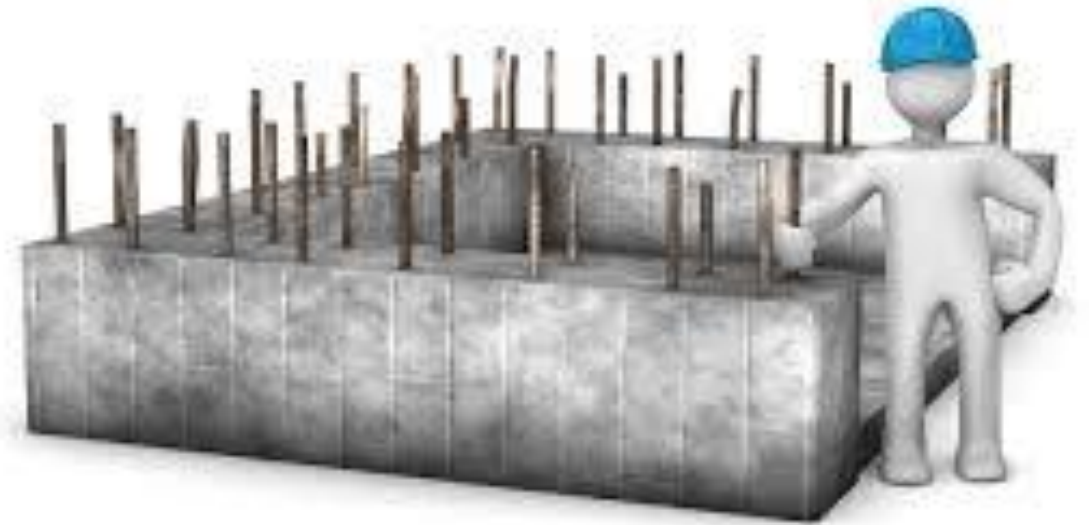


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Good RFP Design is the Foundation

- Conduct a market analysis to understand our leverage
- Develop clear requirements and specifications that allow for differentiation in scoring
- Create additional opportunities for differentiation for the “1000 things or People Die” RFP’s
- Create equal access to information that allows multiple vendors to see an opportunity to win
- Leave some space for the vendor to be the expert



You Cede All Power Without Multiple Competitive Responses

- Solicitations are expensive, time-consuming and complex to respond to
- All vendors make an internal calculation regarding the likelihood of success
 - “If you ain’t first, you’re last” – Ricky Bobby
- When vendors believe an incumbent or well-positioned competitor has access to information that gives an undue advantage, they will not invest the time to respond, which directly limits competition and therefore leverage
- Consider how to include background information to level the playing field:
 - Prior Reports
 - Environmental Narratives
 - Relevant Integration Information
 - Other examples?





Evaluation Strategies



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Evaluation Strategies

- Key Practices to understand include:
 - Fixed Weighted Criteria with Sub-categories
 - Adjectival Ratings
 - Recent and Relevant
 - “The Iowa Curve”
 - Score the Orals



Standard Approach

- Assign weights to each evaluation criteria by percentage, including sub-categories
 - **Price (40%)**
 - **Proposed Services (25%)**
 - Schedule – 15%
 - Work Plan – 10%
 - **Experience & Qualifications (35%)**
 - Firm Experience – 15%
 - Key Personnel – 20%



Avoid micropointing unless you know why you are doing it



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Adjectival Rating

- Adjectival rating provides guidance to evaluators to judge on standard criteria, not assign points on a curve

The procurement team should define each adjective and then the scoring against adjectives determines the points

- **Superior:** Response meets all the requirements and has demonstrated in a clear and concise manner a thorough knowledge and understanding of the subject matter and project. The proposer provides insight into its expertise, knowledge, and understanding of the subject matter
- **Exceeds:** Response provides useful information, while showing experience and knowledge within the category. Response demonstrates above average knowledge and ability in a highly professional manner
- **Meets:** Response meets minimum requirements and demonstrates marginal expertise or knowledge of the subject matter but no apparent defects
- **Inadequate:** Response does not meet minimum requirements in all areas with defects that do not collectively meet the requirements.
- **Does Not Meet:** Response does not meet minimum requirements with substantial defects that are not responsive to the requirements

4 Superior

3 Exceeds
Expectations

2 Meets
Expectations

1 Inadequate

0 Not
Adequate



Recent And Relevant

- When requesting references to evaluate, require that they be “recent” and “relevant” and score on both criteria:
 - Recent: 1-2, 2-3, 3-5, over 5 not responsive
 - Relevant: Create Adjectival Ratings for Superior, Meets Relevant Standards, Does Not Meet Relevant Standards
 - Encourages potential suppliers to “spruce up the archive”



“The Iowa Curve”

- In a bid we responded to and won several years ago for the State of Iowa, they employed a complex scoring methodology
- Your available points in “cost” was directly modified by won points in “technical”
- Cost impact was further modified by a formula comparing the cost proposal to the lowest cost received.
- A simpler alternative commonly employed is not scoring cost unless a minimum technical is reached

Points Possible for Respondent =
 $\frac{\text{Technical Evaluation Points Received}}{\text{Technical Evaluation Points Possible}} \times \text{Maximum Points in Cost Evaluation}$

Cost Evaluation Points Awarded =
 $\frac{\text{Lowest Cost Proposal Received}}{\text{Cost Proposal Being Evaluated}} \times \text{Points Possible for Respondent}$



Score the Orals if it fits in your strategy

Some entities will avoid orals because of concern that orals will influence the scoring – We say, lean into that!

- County of Sonoma – Direct scoring of orals as a component of the evaluation
- Washington State – Scoring of a one-on-one interview with proposed project manager
- Nebraska – Rescoring of technical as a designed stage of the solicitation
- Oklahoma – Performance Information Procurement System (PIPS) entirely based on upfront interviews scored to “find the expert”



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Negotiation Fundamentals



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How Can We Negotiate in Public Procurement?

- We have published what is important to us and how important it is in the evaluation criteria...
- We are bound by evaluation criteria and published requirements for award provided in the RFP...
- If we change in meaningful ways, we may not be able to award without successful protest...
- So, what exactly are we negotiating anyways?

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.

- FAR Subpart 15.3



Examples of Where Negotiation Occurs

- Exceptions to requirements
- Tradeoff of schedule
- Vendor proposed funding/payment alternatives
- Service level agreements
- Acceptance Criteria and Deliverable Expectation
- Final project/implementation plans
- Staff acceptance/subcontractor acceptance
- Contracts where renewals or extensions are approaching
- Price, Hours Estimates (i.e., Price), Volume Criteria (i.e., Price, Fee) Setting/Sharing (i.e., Price), Holdback (i.e., Price), Rebates (i.e., Price)



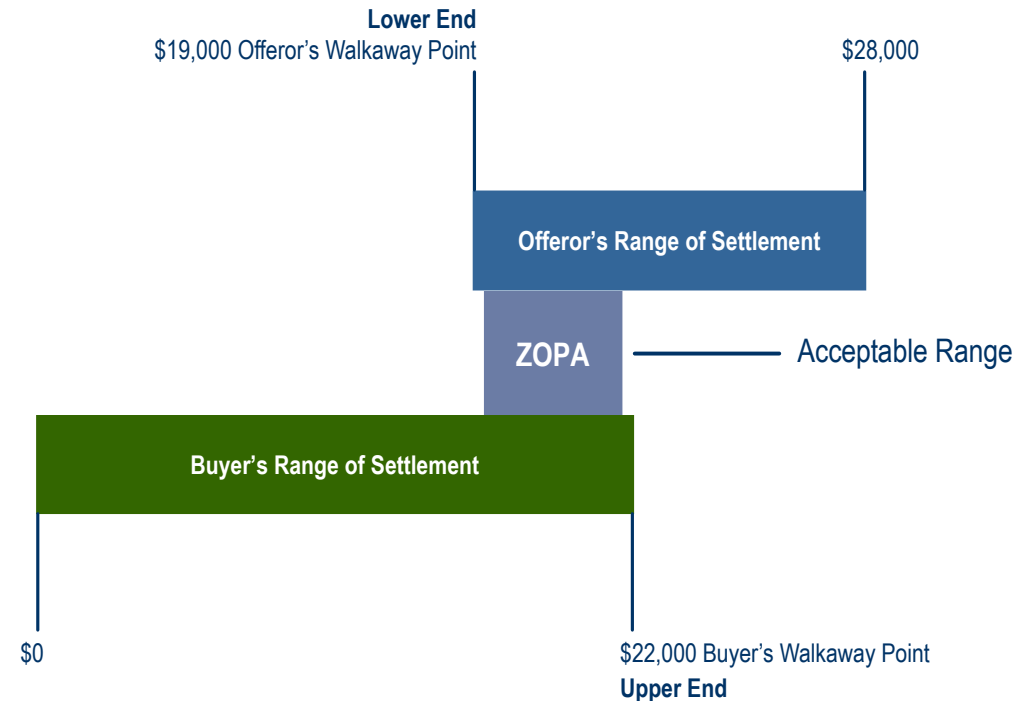
Formal Negotiations

- Can Occur:
 - With a single vendor following an Intent to Award
 - With an awarded vendor at key contract points (change of contract terms; extension determination)
- Key Elements:
 - ZOPA and BATNA
 - Preparing for the Discussion
 - Focus on Interests – Not Positions
 - Tactics to Avoid
 - Managing Concessions
 - Avoiding Emotional Reactions
 - The Magic Sentence for dealing with aggressive negotiators



The Zone of Possible Agreement (ZOPA)

- ZOPA = the actual bargaining range
 - The upper end of this zone indicates the point at which the buyer will walk away
 - The lower end indicates the point at which the seller will walk away



- ZOPA exists if the potential for negotiating an agreement would benefit both parties more than the alternative option of walking away from the deal



BATNA

- **Best Alternative to a Negotiated Agreement (BATNA)** is the most advantageous alternative course of action a party can take if negotiations fail and an agreement cannot be reached
 - BATNA = Walk Away and Do It A Different Way



Preparing for the Discussion

Description	Client	Provider
Most Desired Outcome	General description of state - key factors, schedule, commitments, success factors. How do we want this to work? What is the best definition of success?	What the other party says they want. Make an educated guess while planning based on how they will ideally want to satisfy their own interests. Fill in as you learn more from them.
Zone of Possible Agreement	The minimum you can accept. How far back from the maximum success definition would you be willing to retreat and still enter into an agreement.	Make an educated guess at what the other party must have before walking away - what they must get.
Best Alternatives to a Negotiated Outcome	Best Alternative to a Negotiated Agreement. What are the contingency plans if an agreement for some reason can't be reached.	Consider possible and probable BATNAs the other party may have. Assess their willingness and ability to implement their BATNAs.
Known Facts that Impact Negotiation	What facts that you know to be true and that impact negotiations?	What does the other party know at this point that could positively or negatively impact negotiations?
Assumptions that Impact Negotiations	Factors that you believe to be true, but aren't sure, that could impact negotiations.	What assumptions might the other party make that you should explicitly confirm, or that are incorrect, and you need to explore and refute? Be sure to correct any misconceptions.
"Don't Knows" that Impact Negotiation	List important factors that you need to know - many of these unknowns to known facts before making or responding to offers.	What the other party is likely to ask about – consider difficult questions coming your way. Also include what you want them to know that they may not already know.
Must Haves	Non-negotiables should be included in your opening positions.	What are the other party's must haves? Test your assumptions and probe beyond simple answers.
Trade Inventory (Equal/Mutual/Toss-Ins)	List concessions you would be willing to make in exchange. Weight and prioritize to anticipate exchange.	What concessions could the other party make? Weight and prioritize to anticipate exchange.
Stakeholders and Their interests	What internal and external constituencies to be considered?	What external constituencies are they worried about?



Focus on Interests – Not Positions

- Interests are the needs, desires and fears that drive positions
- Look for interests – in front of every interest there are usually several possible positions that can contribute to or take away from agreement
- People often choose the most obvious position, when there are others to consider
- It is equally important (and often more difficult) to ask the same questions about your own positions
- Offer alternatives that may be agreeable to the other party (while staying within the published parameters to not change the contracting objectives)



Negotiation Tactics to Avoid

- **Technical Leveling**
 - Help a vendor bring its proposal up to the level of other proposals through successive rounds of discussion, usually by identifying proposal weaknesses
- **Technical Transfusion**
 - Disclose technical information or approaches from competitors' proposals
- **Auctioneering**
 - Disclose competing vendors' cost/prices
 - Indicate a cost/price that must be met
 - Advise a vendor of its price standing relative to other vendors



Managing Concessions

- Respond to requests with an “if” statement...“*Yes, I can do that, if you can ...*”
- It may be also be appropriate to respond with a “*No, but I may consider that if you could ...*”
- All concessions should remain provisional pending a total agreement

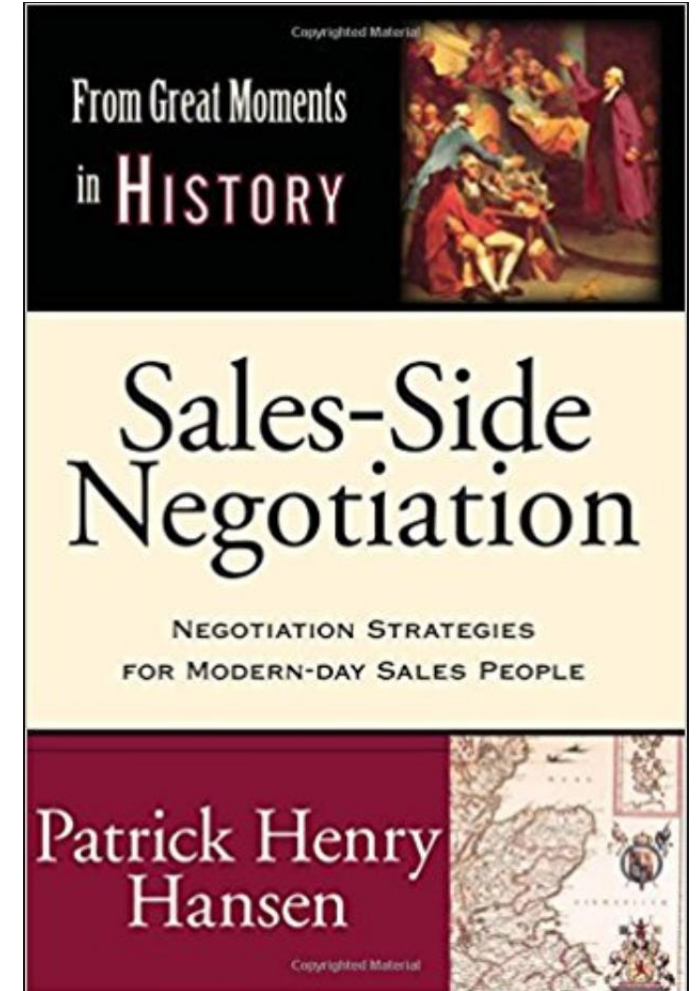


Why Make Counter Demands

“When buyers make demands, seller concessions should always be followed with counter demands. There are no exceptions to this rule.”

Four Reasons:

- Counter demands balance power
- Counter demands prevent future demands
- Counter demands add value to the concession
- Counter demands give sellers something of value in exchange for the concession



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Avoid Emotional Reactions

- Emotional reactions take negotiations from issues to personalities
- Remain Calm
 - Take a beat and a breath
 - Express surprise
 - Take a break – interrupt the pace
- Don't take rude behavior personally. The other party may have less discipline; some aggressive negotiators may also use it to throw you off your game



The Magic Sentence

**“I CAN’T HEAR YOU
WHEN YOU ARE
INTERRUPTING ME”**



Discussion?



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THANK YOU!