

PROCUREMENT GUIDANCE



Negotiations and Best and Final Offer (BAFO)

Use of Negotiations and BAFO in
procurement of Goods, Works, and Non-
consulting Services



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Common Abbreviations and Defined Terms

This section explains the common terms and abbreviations used in this Guidance Document. Defined terms are written using capital letters.

Abbreviation / term	Full terminology / definition
BAFO	Best and final offer.
BATNA	Best Alternative to a Negotiated Agreement.
Bank	IBRD and/or IDA (whether acting on its own account or in its capacity as administrator of trust funds provided by other donors).
Bid	An offer, by a firm or joint venture, in response to a Request for Bids to provide the required Goods, Works or Non-consulting Services.
Bidder	A firm or joint venture that submits a Bid for Goods, Works, or Non-consulting Services in response to a Request for Bids.
Borrower	A Borrower or recipient of Investment Project Financing (IPF) and any other entity involved in the implementation of a project financed by IPF.
Contractor	A Firm that is contracted to provide Works.
Goods	A category of Procurement that includes: commodities, raw material, machinery, equipment, vehicles, Plant, and related services such as transportation, insurance, installation, commissioning, training, and initial maintenance.
IPF	Investment Project Financing.
Investment Project Financing (IPF)	The Bank's financing of investment projects that aims to promote poverty reduction and sustainable development. IPF supports projects with defined development objectives, activities, and results, and disburses the proceeds of Bank financing against specific eligible expenditures.
Most Advantageous Bid/Proposal	The Bid/Proposal that meets the qualification criteria and has been determined to be substantially responsive to the Request for Bids/Request for Proposals document; and is also the highest ranked Bid/Proposal.
Negotiation	Negotiation is a process through which each party tries to achieve their goals in the context of the relationship with the other party.

Abbreviation / term	Full terminology / definition
Non-consulting Services	Services which are not Consulting Services. Non-consulting Services are normally Bid and contracted on the basis of performance of measurable outputs, and for which performance standards can be clearly identified and consistently applied. Examples include: drilling, aerial photography, satellite imagery, mapping, and similar operations.
NPF	2016 Procurement Framework.
Probity Assurance Provider	An independent third party that provides specialist probity services for concurrent monitoring of the Procurement Process.
Procurement Documents	A generic term used in the World Bank Procurement Regulations for Investment Project Financing (IPF) Borrowers to cover all Procurement Documents issued by the Borrower. It includes: GPN, SPN, EOI, REOI, Prequalification document, Initial Selection document, RFB and RFP, including any addenda.
Procurement Process	The process that starts with the identification of a need and continues through planning, preparation of specifications/ requirements, budget considerations, selection, contract award, and contract management. It ends on the last day of the warranty period.
Project Procurement Strategy for Development (PPSD)	A Project-level strategy document, prepared by the Borrower, that describes how procurement in IPF operations will support the development objectives of the Project and deliver VfM.
Proposal	An offer, in response to a Request for Proposals, which may or may not include price, by one party to provide Goods, Works, Non-consulting Services or Consulting Services to another party.
Proposer	An individual entity or joint venture that submits a Proposal for Goods, Works, and Non-consulting Services in response to a Request for Proposals.
RFB	Request for Bid.
RFP	Request for Proposal.
SLA	Service Level Agreement.
Standard Procurement Documents (SPDs)	Procurement Documents issued by the Bank to be used by Borrowers for IPF financed projects. These include, GPN, SPN, EOI, REOI, Prequalification document, Initial Selection documents, RFB and RFP documents.
SPN	Specific Procurement Notice.

Abbreviation / term	Full terminology / definition
Substantially Responsive Bid	A Bid that is assessed to be complete and without major deviations from the eligibility, technical and commercial requirements in the Procurement Documents.
Supplier	A Firm that is contracted to supply Goods and required associated services.
VfM	Value for Money.
Value for Money	The principle of Value for Money means the effective, efficient, and economic use of resources, which requires an evaluation of relevant costs and benefits, along with an assessment of risks, and non-price attributes and/or life cycle costs, as appropriate. Price alone may not necessarily represent Value for Money.
Win-Win	Win-Win' is a strategy in Negotiation when both parties work together to achieve some or all of their objectives.
Win-Lose	This term refers to a distributive Negotiation whereby one party's gain is another party's loss. Both parties are competing to get the most individual value from the Negotiation.
Works	A category of Procurement that refers to construction, repair, rehabilitation, demolition, restoration, maintenance of civil work structures, and related services such as transportation, insurance, installation, commissioning, and training.

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Section I. Introduction

Purpose

The purpose of this document is to provide the Borrower with guidance on how to use Negotiation and Best and Final Offer (BAFO) in international competitive procurements.

This guidance aims to provide practical advice on using Negotiation and BAFO. The objective of using Negotiation and BAFO is to enable the Borrower to engage further with Bidders/Proposers, after Bid/Proposal submission,) to obtain greater Value for Money (VfM).

This guidance should be read in conjunction with the World Bank Procurement Regulations for IPF Borrowers (Regulations), the Standard Procurement Documents¹ (SPDs) and if applicable, the associated user guide relevant to the selected SPD.

Background

Negotiation and BAFO are new features in the 2016 Procurement Framework (NPF) and these market approaches can be used for projects that are applying the Regulations. The Borrower can use either Negotiation or BAFO, with prior approval from the Bank, but they can't be used together.

The Borrower should justify the use of either Negotiation or BAFO in the Project Procurement Strategy for Development (PPSD).

The use of Negotiation or BAFO should be enabled by completing the appropriate sections of the Bid/Proposal Data Sheet within the relevant SPD for the contract.

Negotiation

Negotiation is a process through which each party tries to achieve their goals in the context of the relationship with the other party. Negotiation can support the Borrower in achieving the optimum Fit for Purpose solution, as Negotiation allows for an iterative two-way communication between Borrowers and Bidders/Proposers, focusing on improving various aspects of Bids/Proposals. As a pre-requisite for successful Negotiation, the Borrower needs to be clear about their objectives, and their plan for achieving them. These objectives should include consideration of the:

- Commercial targets such as price and payment terms;
- Delivery aspects including delivery timetable, methodology, and environmental, social and health and safety;
- Technical aspects such as design, material quality and innovation;
- Risk elements such as where the risk sits, who is responsible for managing them and where the commercial impact of a risk that materialize lies; and
- Type of relationship with desired potential Supplier/Contractor.

¹ <http://www.worldbank.org/en/projects-operations/products-and-services/brief/procurement-new-framework>

In all instances, Negotiation cannot be used to change the minimum requirements of the Bid/Proposal.

Best and Final Offer (BAFO)

BAFO refers to a multi-stage procurement process, in which Borrowers invite Bidders/Proposers that have submitted substantially responsive Bids/Proposals to submit their Best and Final Offer.

BAFO is appropriate when the procurement process may benefit from Bidders/Proposers having a final opportunity to improve their Bid/Proposal, including by reducing prices, clarifying or modifying their Bid/Proposal, or providing additional information. It is normally particularly effective when markets are known to be highly competitive and there is strong competitive tension between Bidders/Proposers.

The objectives of BAFO are to:

- Increase understanding by Bidders/Proposers of the Borrower's requirements;
- Enhance competition amongst Bidders/Proposers who have made a Bid/Proposal submission;
- Create competitive tension amongst highly motivated Bidders/Proposers, which means the procurement process can be concluded quicker as Bidders/Proposers may be more willing to accept a higher risk profile to win the contract;
- Encourage creative or innovative solutions and allowing for different options for delivery to be considered;
- Expose potential risks such as technical shortfalls or depth of competencies;
- Develop contract management objectives and performance metrics to address inherent areas of risk; and
- To allow Bidders/Proposers to adjust their Bids/Proposals for new market conditions and to update their submissions around the edges for new technologies and practices.

Section II. Negotiation

Introduction

The following sections are intended to guide the Borrower on undertaking Negotiation following an international competitive procurement. Elements of the guidance may also be helpful for undertaking Negotiation where a competitive process has not been followed, although this guidance doesn't detail the procedural requirements of Direction Selection Negotiation, as detailed in the Regulations.

In international competitive procurement subject to prior review, the Bank may agree to the Borrower's use of Negotiation following Bid/Proposal evaluation and before final contract award.

Any Negotiation must be in accordance with the requirements set out in the Request for Bid (RFB) or Request for Proposal (RFP) procurement documents. When Negotiation is undertaken, they must be held in the presence of a Probity Assurance Provider, agreed with the Bank.

Negotiation may involve negotiating terms and conditions, price, social and environmental aspects and innovations providing they do not change the minimum requirements set out in the Procurement Documents. The Negotiation is about creating extra value to the Borrower and the Bidder/Proposer, it is not solely about trying to reduce the price.

Once the Negotiation is completed the Bidder/Proposer shall submit their final Bid/Proposal that includes all the negotiated outcomes.

The Borrower reserves the right to **NOT** negotiate even if the Procurement Documents have stated that Negotiations will be used.

Why Negotiate

There are many reasons why entering Negotiations with the Bidder/Proposer can add additional value to the Borrower, such as:

- a) Terms and requirements can be varied;
- b) Agreement and conflict exist simultaneously;
- c) Improve on the current position;
- d) To reach an agreement;
- e) To deliver business requirements and effective outcomes; and
- f) To receive a more economically advantageous Bid.

Negotiation Principles and Ethics

The word Negotiation can have a negative connotation. This is normally associated with circumstances where negotiations are not undertaken on an ethical basis.

A definition of ethics is: "a system of moral principles or values, the rules or standards governing a person's behavior or the conducting of an activity". Thus, ethics establishes the means of doing what is right, fair and honest.

There are some basic principles that should be followed to ensure Negotiations are undertaken in an ethical manner and in accordance with the World Bank's core Procurement Principles of value for money, economy, integrity, fit for purpose, efficiency, transparency and fairness. In particular, abiding by the principles of transparency, integrity and fairness will ensure an ethical approach to Negotiations.

In terms of conducting a Negotiation, all Bidders/Proposers invited to the Negotiation must be treated equally and, specifically:

- Information must not be provided in a discriminatory manner so as not to confer advantage to one Bidder/Proposer over another;
- Confidential information such as another Bidders/Proposers solution, any commercially confidential information and intellectual property of any Bidder/Proposer must not be shared with another Bidder/Proposer without their express agreement in writing; and
- Information from Bidders/Proposers must not be shared to enhance the Bid/Proposal of another to improve the technical solution or merge two or more technical solutions into a single optimum solution.

In terms of Negotiation behaviors, the following 5 principles should be followed:

- **Empathy** - Would I want to be treated this way if I was the Bidder/Proposer?
- **Publicity** - Would I be happy if my actions were exposed to public scrutiny?
- **Professional** - Would I advise colleagues to undertake a Negotiation in the same manner?
- **Impact** - Will my approach to Negotiation negatively impact how a Bidder/Proposer works with the client post contract award?
- **Complaints** - Is my approach to Negotiation likely to give rise to a formal complaint for not following an ethical approach based on the World Bank's Core Procurement Principles?

The Probity Auditor will be required to confirm Negotiations have been carried out in accordance with the principles of transparency, integrity and fairness.

Negotiation Approaches

Effective Negotiation helps to resolve situations when what the Borrower may want conflicts with what the Bidder/Proposer is willing to offer. This is best achieved by taking a Win-Win approach. The aim of a 'Win-Win' Negotiation is to find a solution that is acceptable to both parties, and leaves both parties feeling that they've won, in some way, after the Negotiation.

There are different approaches that can be used in Negotiations, depending on the circumstances. When you do not expect to deal with the Bidder/Proposer again and you do not need their goodwill, then it may be appropriate to negotiate hard (play hardball), seeking to win a Negotiation while the other party loses out known as 'Win-Lose'.

The Win-Lose approach is usually effective for resolving disputes with Suppliers or Contractors with whom you have an ongoing relationship: If one side plays hardball, then this disadvantages the other side. Similarly, using tricks and manipulation during a

Negotiation can undermine trust and damage teamwork. While a manipulative negotiator may not get caught out if Negotiation is infrequent, this is not the case when people work together routinely.

Section III. Negotiation Process

Procurement Types

The World Bank Procurement Regulations for IPF Borrowers state that Negotiations can only be used for the following selection methods with prior approval from the Bank:

- Request for Proposals;
- Request for Bids;
- Direct Selection; and
- Public-Private Partnerships.

Choosing to use Negotiation

In making the decision to use Negotiation as part of the selection method, Borrowers should consider the following:

- a) What benefits are there to negotiating;
- b) Is there the capacity and capability in the team to conduct the Negotiations; and
- c) What elements should be negotiated.

Justifying the Choice

Borrowers are required to prepare a PPSD for each project. The PPSD should set out the justification for the use of Negotiation as part of the selection method. This justification should be supported by answering the questions above. The use of Negotiation should also be detailed in the Procurement Documents, which should be sent to the Bank for their no objection.

It is good practice for the Borrower to prepare a Negotiation plan to aid the Negotiation which should be reviewed by the Bank.

Bid/Proposal Opening

The date and time for the Bid/Proposal opening shall be the same as for the deadline for receipt of Bids/Proposals or promptly thereafter, and shall be announced, together with the place for Bid/Proposal opening, in the RFB/RFP document and/or the Specific Procurement Notice (SPN). In a single stage, two-envelope process, the date, time and place for opening the second envelope shall also be appropriately announced.

When Negotiations take place, the technical Proposal shall be opened in public, however, the opening of the financial Proposal should not be opened in public but in the presence of a Probity Assurance Provider acceptable to the Bank.

At the Bid/Proposal opening, the Borrower shall neither discuss the merits of any Bid/Proposal nor reject any Bid/Proposal that has been received on time.

In a multistage process in which the first-stage submission does not include prices, the information to be read out is the same as in a single stage, two-envelope process. In a multi-stage, two-envelope process, where Negotiation will take place, the opening of the financial

part of the Bid/Proposal will not take place in public, but in the presence of a Probity Assurance Provider.

A copy of the record of Bid/Proposal opening shall be promptly sent to all Bidders/Proposers whose Bid/Proposals were opened and to the Bank for information. The financial Bid/Proposal opening should always be done in the presence of a Probity Assurance Provider, this information will be included in the Probity Assurance Provider's probity report. The probity report shall be sent by the Borrower to the Bank, and all such Bidders/Proposers along with the Notice of Intention to Award the contract.

Bids/Proposals not opened and read out at the Bid/Proposal opening shall not be considered.

Bid/Proposal Evaluation

The evaluation criteria and methodology must be specified in detail in the RFB/RFP document. The evaluation criteria and methodology should be appropriate to the type, nature, market conditions, and complexity of what is being procured.

For international competitive procurement, the Bank's requirements for the submission of Bid/Proposal prices (format, structure and details), and method of comparison and evaluation of Bid/Proposal prices (including treatment of taxes levied in the Borrower's country for procurement of Goods, Works, Non-consulting services, and Consulting Services), are detailed in the appropriate Bank's SPDs.

When the Bid/Proposal evaluation method is based on rated criteria and Negotiation is used as part of the procurement process, the Borrower can negotiate with the Bidder/Proposer that submitted the Most Advantageous Bid/Proposal that meets the qualification criteria and that has a substantially responsive RFB/RFP and is the highest ranked Bid/Proposal.

When rated criteria is not used and Negotiation are used as part of the procurement process, the Borrower can enter Negotiations with the Bidder/Proposers that submitted the Most Advantageous Bid/Proposal that meets the qualification criteria and whose Bid/Proposal has been determined to be substantially responsive and is the lowest evaluated compliant Bid/Proposal. If the outcome of the Negotiation is unsuccessful or an agreement is not reached, the Borrower may then negotiate with the next Most Advantageous Bid/Proposal and so on down the list until a satisfactory outcome is achieved.

What can be Negotiated

As part of the Negotiation the Borrower can negotiate many different elements that form part of the Bid/Proposal and that make up the final contract. The following are things that can be negotiated.

- a) Price;
- b) Technical Proposal;
- c) Risk Transfer;
- d) Payment Schedule;
- e) Scheduling;

- f) Warranties;
- g) Service Level Agreements (SLAs);
- h) Service and Maintenance;
- i) Training; and
- j) Upgrades.

Administration

The task of making logistical arrangements and ensuring a sound audit trail to support the Negotiation is significant. Borrowers should ensure that adequate administration and secretariat resources are in place prior to the Negotiation.

Arrangements for preparing and issuing Negotiation agendas, preparing, reviewing and approving minutes should be put in place and agreed between both parties. This helps ensure that responsibility for noting and agreeing negotiated points and matters agreed during Negotiation are allocated. Consideration should be given to the use of recording equipment during the Negotiation to maintain a full record of the discussions. The Bidders/Proposers consent to recording should be obtained in writing in advance of the Negotiation. Copies of the unedited recordings should be made available to the Bidder/Proposer with whom the Borrower was negotiating.

Process Flow Charts

Below outlines the process that should be followed when using Negotiation in the procurement process.

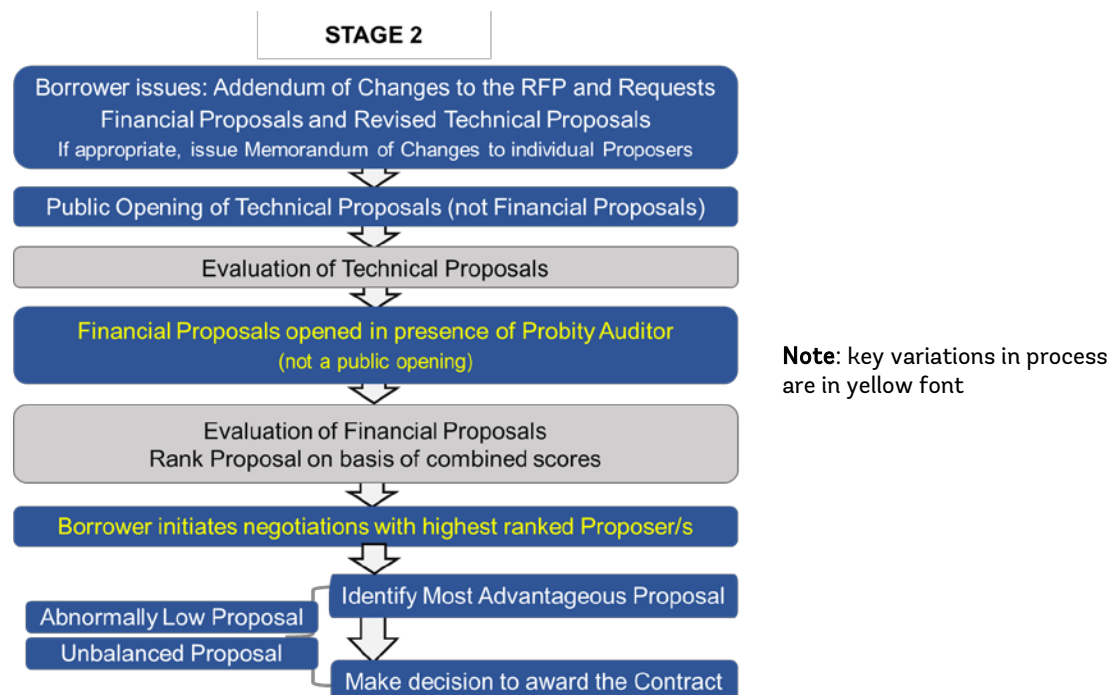


Figure 1: NEGOTIATIONS: Key process variation to RFP Model 1 for Negotiations

The Borrower shall also meet the requirements described in paragraphs 3.4 to 3.6 of the Selection Methods annex (Annex XII) in the World Bank Procurement Regulations for IPF Borrowers.

Procurement Prior Review

Procurements that includes the use of Negotiation in a competitive procurement process for Goods, Works and Non-consulting Services shall be subject to prior review by the Bank.

If the procurement process involves Negotiation between the Borrower and the Bidder/Proposer, the minutes of Negotiations and the draft contract should be initialed by both parties and submitted to the Bank. The probity audit report produced by the Probity Assurance Provider should also be submitted with the minutes of the Negotiation. This doesn't apply for Direct Selection.

Probity

Probity is the demonstration that the procurement process will be conducted ethically and fairly, with all participants provided an equal opportunity. All procurement processes need to win the trust of Bidders/Proposers so that they feel confident that their offers will remain confidential and that the best Bid/Proposal will win. However, probity is of special concern to the public sector, as not only do public sector procurement processes need to be conducted in a transparent and impartial way, procurement professionals need to be able to demonstrate the integrity of the process in the event of challenge. For example, if one Bidder/Proposer asks a question about a procurement process, the answer should be shared with all Bidders/Proposers. Probity policies and probity audits are an integral part of procurement governance to ensure that decision making is transparent, confidential information is treated appropriately and that conflicts of interests are effectively managed.

Probity Assurance Provider

When Negotiation applies, the Borrower shall appoint a Probity Assurance Provider (Probity Auditor) acceptable and approved by the Bank, to oversee the integrity of the procurement process, and in particular the conduct of Negotiations. For the Stage 2 opening of the second envelopes (financial Proposals):

- a) The second envelopes shall not be opened at a public opening, but at an opening in the presence of the Probity Auditor; and
- b) The Borrower shall prepare a record of the opening of the financial Proposal which shall be signed by the Probity Auditor.

More information on how to select a Probity Auditor is detailed in Annex A and an example TOR for a Probity Auditor is detailed in Annex C.

Probity Report

When the Borrower has made the decision to award the contract, the Probity Auditor shall prepare a probity report. The report should be provided to the Borrower and a copy sent to the Bank. To ensure transparency and accountability the Probity Auditor's report shall be sent by the Borrower to all Bidders/Proposers that submitted a Bid/Proposal in a Single Stage process and to all Bidders/Proposers that were requested to submit the second stage in a two-stage process, and published on the Borrower's website. This shall be done at the same time as transmission of the Notice of Intention to Award the contract.

Section IV. Keys to Effective Negotiation

Stages to Effective Negotiation

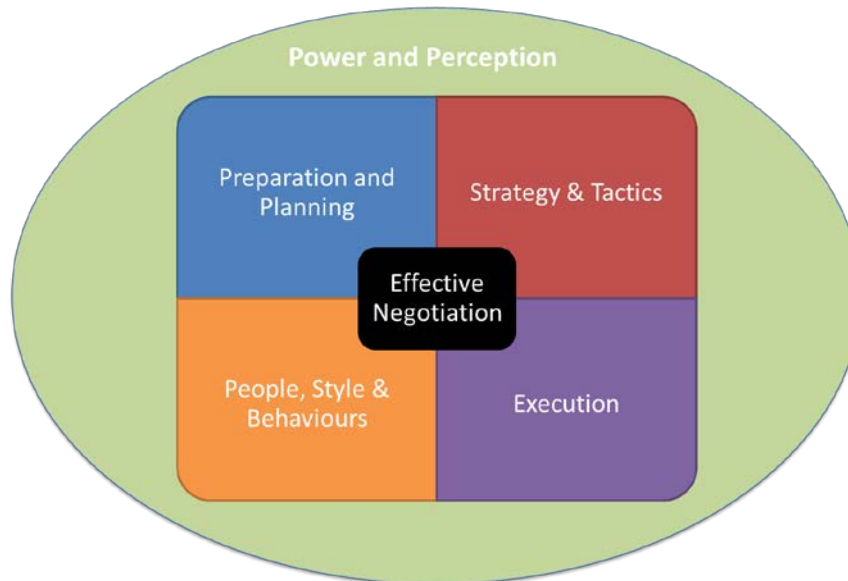


Figure II – Stages to Effective Negotiation

Preparation and Planning

Before entering Negotiations, there is the preparation and planning stage. All parties of a Negotiation should use the planning stage to prepare their side of the discussion in the hope of gaining an advantage by the time the Negotiation is concluded. It is therefore critical that the Borrower fully prepares and produces a Negotiation plan (see Annex B). It is good practice that the Negotiation plan is sent to the Bank for review before entering any formal Negotiation. If agreement is not reached with the Most Advantageous Bid/Proposal the Borrower can then negotiate with the next Most Advantageous Bid/Proposal. Before entering these negotiations, the Borrower should again fully prepare produce another Negotiation plan.

Strategy & Tactics

Before you enter any Negotiation, you first need to clarify your organization's 'needs', 'wants' and 'limits'. Each of these might be different, and crystallizing them beforehand will allow you to negotiate with greater skill. It will inherently give you flexibility, as well as a point at which you may need to stop the Negotiation.

People, Style & Behaviors

Successful negotiators have a positive vision of success, fully understand the subject matter and have a firm grasp of the Negotiation process. In addition, they can also read people very well. Accomplished negotiators know not only their own personal Negotiation style, but also their counterpart's preferred style and they use this knowledge to build a stronger relationship which will help to achieve their goals.

Most people undervalue the impact of behavioral styles on a Negotiation. Many negotiators use the same approach in every Negotiation and are surprised when they do not obtain consistent results. An approach that works well for one counterpart's negotiating style can create a deadlock with a counterpart who has a different style. Everyone is different and every Negotiation is different. People, who understand these differences and change their approach to the Negotiation can be very effective. Successful negotiators tailor their approach to the behavioral style and needs of their counterparts.

Execution

The execution stage can also be viewed as preparation for the next Negotiation opportunity. It is critical that both the Borrower and the Bidder/Proposer follows through on promises made to strengthen the relationship and to build trust. You will learn more in this stage about the other side. This will lead to easier Negotiations next time around.

Negotiation Phases

The Negotiation can be broken down into four phases.

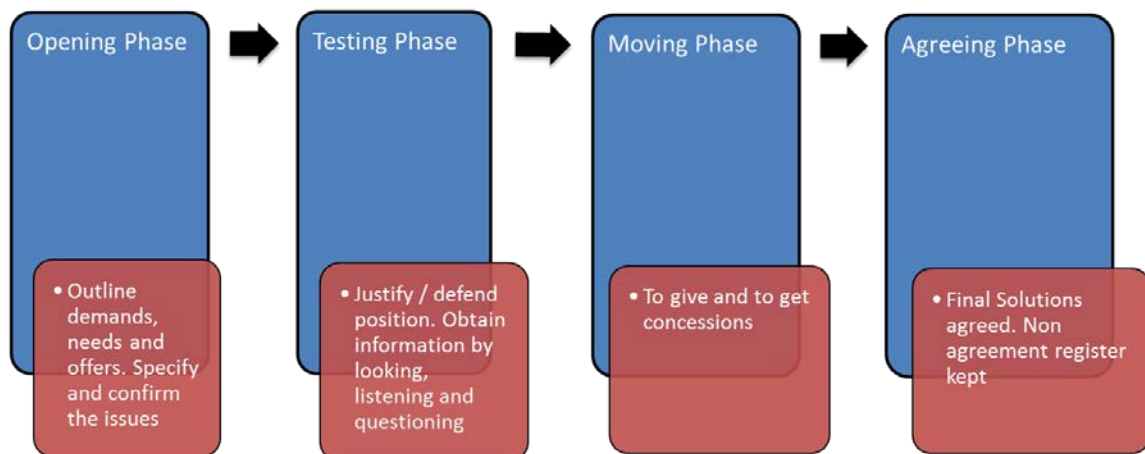


Figure III – Negotiation Phases

Opening Phase

The first phase in a Negotiation is the opening phase, when the Borrower and Bidder/Proposer outline their opening demands, needs or offers. At this stage the opening demands, needs and offers are usually rejected by both sides. In the opening stage, it is critical to invest time and to create the 'warm and tough' environment. The Borrower should also start to condition the Bidder/Proposers expectations.

Testing phase

The second phase of a Negotiation is the testing phase. At this stage, the Borrower and the Bidder/Proposer justifies and/or defends their own position. This can be characterized by using probing techniques and attacks to find weaknesses and to test your assumptions, and the Bidders/Proposers position. In this stage, it is important to obtain information by:

- a) Looking;

- b) Listening;
- c) Questioning; and
- d) Obtain knowledge that can be used later in the Negotiation.

Moving phase

The third phase of a Negotiation is the moving phase, this is when the real Negotiation starts. In this phase, the Borrower and the Bidder/Proposer start to give and receive concessions. It is important for the Borrower to control concessions and when trading concessions to know their true cost and value. In the moving phase, it is important to consider the following:

- a) Help the discussion flow – verbal behavior;
- b) Listen for verbal signs;
- c) Look for non-verbal signs;
- d) Can be characterized by each party trying to assist each other to see if the other party can shift position without losing face;
- e) Make creative Proposals;
- f) Don't expect the Bidder/Proposer to do all the talking; and
- g) Don't be afraid to ask for the 'impossible'.

Agreeing phase

The final phase of a Negotiation is the agreeing phase, which is when the deal is done. It is important that the Borrower controls the meeting and regularly summarizes the discussion. If you can control how the Negotiation is shaped and what happens when, then you can have a significant effect over what perceptions are gained and what decisions are made. Controlling the process can often be done invisibly to the other person, who is focused on the substantive outcomes. It can thus be a subtle method of reaching a satisfying conclusion. Control allows you to, for example, decide who goes first in opening or naming a price or giving or receiving concessions. Control also allows you to say no and to question the process at any time.

In this phase, the final solutions should be tabled and a non-agreement register kept which details the areas that no agreement was reached, before the Negotiation closes.

Moving through the Phases

The main Negotiation really starts at phase three. However, it is important not to rush through the phases as each phase has a very important role. Each phase will provide information and insight, wait for each phase and try to recognize when you move phases. It is important for the Borrower's negotiating team to recognize mood changes and to adjust their style depending on the mood and the phase of the Negotiation.

Section V. Preparation and Planning

Negotiation Planning

Planning for a Negotiation requires extensive preparation and, depending on the complexity of the situation, rehearsals. Areas that the Negotiation team needs to concentrate on are:

- a) Establishing a proactive Negotiation plan and strategy through thorough planning and preparation based on the Borrower's needs;
- b) Understanding what issues or concerns (all parties) need to be negotiated and their individual/collective importance;
- c) Understanding the Bidders/Proposers needs:
 - Financial position; profitability, cash-flow, end of period;
 - Risk; and
 - Reputation.
- d) Understanding human behavioral and communication styles;
- e) Establishing and using bargaining tactics;
- f) Resolving deadlocks and impasses;
- g) Gathering information prior to and during the Negotiation; and
- h) Establishing individual and team Negotiation roles.

It is important for the negotiating team to carry out detailed research on the market and the Bidder/Proposer that they will be entering Negotiations. The amount of research should be proportional to the complexity and value of the procurement. This research should include:

- a) Review of annual accounts and reports;
- b) Trade press;
- c) Internet searches;
- d) References;
- e) Previous experience with the Bidder/Proposer;
- f) Known problems;
- g) Organizational culture; and
- h) Proposals/Bids submitted by other Proposers/Bidders.

At the same time, the negotiating team needs to carry out the same exercise for their own organization covering:

- a) What is the budget for the procurement?
- b) What are the cost breakdowns – capital and revenue?
- c) How have these been estimated and how have the existing costs been validated?
- d) What are your current costs?
- e) What is affordable – both now and in the future?
- f) What is the total costs of ownership including future running costs?

- g) Will future investment be required? and
- h) What benefits are you expecting?

Negotiation Planning Steps

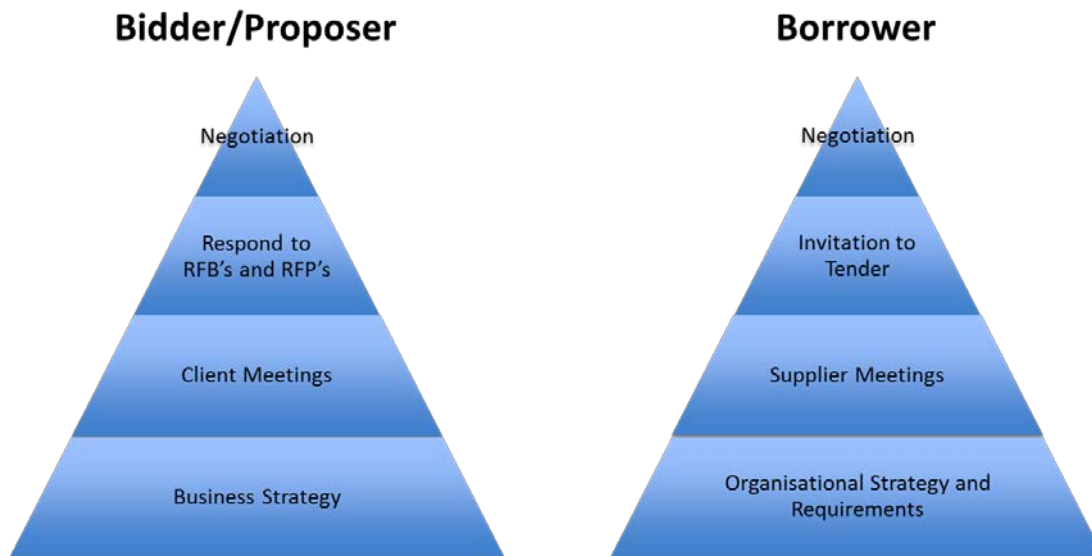


Figure IV – Negotiation Cycle

Step One – Set your Objectives

The first step in Negotiation planning is to set your objectives. It is critical that you clearly think about the objectives of the Negotiation. When setting the objectives, the following should be considered.

- a) What do you want to achieve?
- b) What are your long-term objectives?
- c) What is the impact of achieving your objectives? and
- d) What are the Bidders/Proposers objectives?

Step Two – Set your Negotiation Parameters

The second step in Negotiation planning is to set your parameters. When setting the parameters, the following should be considered.

- a) Set your ideal position;
- b) Set your realistic or fallback position; and
- c) Set your walkaway position.

This is key if you want to achieve what you planned otherwise it is too easy to make a mistake or to overlook something in the heat of the Negotiation.

Step Three – Identify Issues and Priorities

The third step in Negotiation planning is to identify the potential issues and to priorities these issues so that the negotiating team is fully prepared. At this stage, the Borrower should.

- a) List everything, they are interested in;
- b) List all the issues the Bidder/Proposer could raise;
- c) Determine what are your non-negotiables;
- d) Determine what are likely to be the Bidders/Proposers non-negotiables;
- e) Prioritize your issues;
- f) Prioritize what you think will be important to the Bidder/Proposer;
- g) Complete a comparison exercise to compare the lists and identify the mismatches;
- h) Identify issues that are important to the Bidder/Proposer but not to you – don't give these away and always get something in return, preferably something that is important to you;
- i) Identify issues that are important to you but not the Bidder/Proposer – try and get these early; and
- j) Remember – something that costs less than the value the other party gives to it are 'valuable'.

Step Four – Set your Targets

The fourth step in Negotiation planning is to set your negotiating targets. Do you want to maximize the short term value or work to establish a longer term collaboration that will grow value over time with the Bidder/Proposer. It is important to know what you want before going into the Negotiation, instead of settling for what you end up with following the Negotiation. It is recommended that the Borrower prepares a SWOT analysis (see Annex D), a simple tool that is often overlooked. Think of the real external opportunities and threats as the walk away positions on both sides. True power in any Negotiation is having developed a good walk away alternative. Understanding this may not get you what you want, but it will prevent you from agreeing to a not so favorable outcome. At this stage, the Borrower should.

- a) Determine what is the worst-case scenario for each issue identified;
- b) Determine what is the best-case scenario for each issue identified; and
- c) What is the combined and / or cumulative position.

It is also important to do the same from the Bidders/Proposers perspective which can be informed by the upfront research.

Step Five – Calculate the cost of Concessions

The fifth step in Negotiation planning is to calculate the cost of concessions. This helps determine when to agree to concessions being offered or to give a concession. Below are things that should be considered.

- a) Be precise as small figures, compounded, can make a massive difference to the overall deal;
- b) Convert percentages into a monetary value;
- c) Consider the impact of internal costs as well as external costs; and
- d) The costs of concessions are not always financial they can set uneasy precedents that have further impacts at later stages of the Negotiation.

Step Six – Identify your BATNA

The final step in Negotiation planning is to identify your Best Alternative to a Negotiated Agreement (BATNA). To identify your BATNA the first thing that should be done is to list everything you could do if you don't reach agreement. Then you should explore each of your options and try to improve on them and then finally you need to choose your best option which is your BATNA.

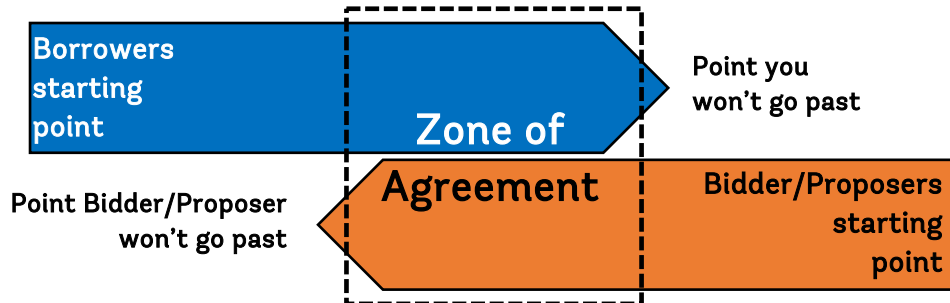


Figure V – Negotiation Cycle

Negotiation Plan and Agenda

Once the Negotiation planning steps are completed the outputs should be used to produce a detailed Negotiation plan and strategy, which should be shared with all members of the Borrowers Negotiation team.

The Borrower should also prepare an agenda for the Negotiation which should be shared in advance with the Bidder/Proposer invited to negotiate.

The Negotiation Team

It is always best practice to build a negotiating team and to avoid negotiating alone.

In a Negotiation, there are many roles to be played, particularly if it is likely to be long and with high stakes. Not all the roles below need be held by separate people, for example the leader may also play the relater or critic and the secretary may also be an observer. Roles that may conflict with one another, such as relater and critic, however, are usually best separated and taken by different people.

It is important to ensure that these roles are filled with people with the right specialties, and could comprise of people from procurement, finance, legal and technical experts.

It is the responsibility of the lead negotiator to ensure that the Negotiation team are clear on the negotiating strategy and their roles. Without it, you run the risk of contradicting each other at the negotiating table.

The leader should also be the decision maker and have the authority to make decisions and to agree to concessions. If the leader doesn't have the authority to take decisions it can delay Negotiations if they have to get internal agreement before anything can be agreed between both parties.

Leader

The leader has two main roles, first to coordinate the actions of the team and second to provide the main 'face' of the negotiating team. In fact, the leader may at times have separate conversations with the leader of the Bidders/Proposers team, when things have come to standstill. Much can be completed in one-to-one discussions that may get delayed when multiple people are each adding their thoughts.

The leader may be a senior person who has the authority to make decisions, however, there can be a risk in this when the person is not experienced in Negotiations and may make elementary mistakes.

Critic

The critic is the 'bad cop' of the team, always looking for flaws and problems. They may have an internal focus, criticizing their own team's activities (in private) and may focus more in the room, criticizing points made by the Bidder/Proposer. The internal role is helpful for avoiding problems like complacency and antagonism where the team moves away from an effective way of working together or with the Bidder/Proposer.

Being a verbal critic in the negotiating room can be useful for giving a focus for the opposing team's frustration, which the leader or relater may later offer to quell, in exchange for agreement. It also frees up the leader and relater to build relationships without having to cope with criticism.

Relater

The relater is the friendly face of the team. They build relationships with individuals in the Bidders/Proposers team and may through this gain useful pieces of information. They also act to intervene when there is conflict between personalities and can act as mediator or other supporting roles.

The relater may well avoid the harder substance of the Negotiation, focusing more on relationships. However, they may at times need to use the relationship bridge to talk about aspects of the Negotiation.

Expert

Experts may be brought into the Negotiation as needed to provide evidence or assessments in key areas, for example knowledge of the sector, technology or law. Typically, they do not do any direct negotiating, but give information and answer questions. When they are not there permanently, they may need to be briefed before they enter the negotiating room so their comments can be adjusted to align with the position of their team.

Recorder

The recorder (often called a scribe or secretary) takes notes about what is said. They note what people are requesting and what offers are made. While they may occasionally ask questions to ensure they take accurate notes, they are mostly silent. This allows them to act as another observer and they may make side notes that they can bring up with the leader or team later.

Builder

The builder is the person who creates the concessions, putting together packages of things to exchange for other packages in return. They may also have a financial role where they assess the cost and value of items being exchanged. Often in Negotiations, people over-value what they offer and under-value what they might receive. The builder seeks the truth of such positions and provides the leader with facts to enable an informed sound decision.

Observer

The observer has a watching brief, paying attention to the subtleties of words and non-verbal body language. They may pass notes to the leader about their observations and discuss what they see in breaks between meetings. Hence, for example, they watch for signs of untruthful comments and other tensions. While this is not an exact science, people do send many unconscious signals that other members of the team may miss as they focus more on the substance of the Negotiations.

Section VI. Strategy & Tactics

Negotiation Strategy & Tactics

It's important to go into the Negotiation with a defined strategy and tactics, but at the same time you must be prepared to change strategies or tactics. For example, avoid starting out with hardline tactics, but you may have to resort to them if all else fails.

Negotiating tactics are the detailed methods employed by negotiators to gain an advantage. Negotiating tactics are often deceptive and manipulative and are used to fulfil one party's goals and objectives which can often be to the detriment of others. This makes most tactics 'Win-Lose' by nature.

Negotiators should only make use of ethical Negotiation tactics, and to think first about the context of your Negotiation. When negotiators learn how to better collaborate to achieve more mutual 'Win-Win' outcomes, the attraction for Negotiation tactics recedes. It is however important to learn how to identify and counter against Negotiation tactics.

There are many tactics that a negotiator can use in a Negotiation. The most common tactics are outlined below and possible counters when these tactics are used.

Straw Issues

In most Negotiations, it's wise to give yourself room to make concessions if needed. Straw issues are demands made specifically for the purpose of trading them away later to gain something of greater importance. Straw issues have exchange value, but they are not crucial to the overall deal the negotiator seeks to close. They are demands that can be easily sacrificed. Of course, the other party can rarely be certain that the straw issue demand is of less importance than others on the table. Like every other demand that a negotiator makes, it creates a degree of difficulty for the other party.

How to Counter Straw Issues – One way to counter the straw issues tactic is to let the other party make all the offers first. This enables you to ask questions that reveal their needs and concerns, and leaves you in a position to use the straw issues on the other party.

Broken Record

Repeatedly stating a position and refusing to look at options. One of the most difficult negotiators to deal with is the unilateral thinker who can see only one possible outcome to a Negotiation.

How to Counter Broken Record - There are several counters that may be effective in this situation. Apologizing and responding to the Bidders/Proposers frustration with empathy is a great place to start. Brainstorming alternative solutions with the Bidder/Proposer or suggesting other alternatives that might work could also be effective.

Saying No

Holding firm on an issue. Sometimes the most effective tactic in a Negotiation is simply to say, “No, I am not going to do that” or, “That will not work for me.” This is an easy tactic to utilize, although it may be difficult for people who value being nurturing and supportive.

How to Counter Saying No - Two counters are possible, and both lead to the same goal. First, the negotiator might ask if the other party would consider another option. Second, the negotiator might try asking an open-ended question that would provide them with more information and help them understand the negotiator’s position.

Battle Front

Being presented with two options, option A and option B, one worse than the other. This is designed to pressure you into choosing the lesser of two evils. Remember two wrongs don’t make it right, attach your own considerations as condition of acceptance.

How to Counter Battle Front - If you are faced with a Bidder/Proposer using this tactic, the best way to counter is to generate other options.

Taking a Time Out

Taking a break from a Negotiation can sometimes be the best thing for both parties. You may want to just use the restroom, let tension disperse, or locate additional information before making a decision. A break might last 10 minutes, overnight or a whole weekend.

How to Counter Taking a Time Out - If your counterpart thinks they are winning the discussion and you are taking a break for the sole purpose of avoiding the issue being discussed, they may want to insist on resolving the issue immediately. As another option, they could make sure you establish a specific time to reconvene.

Stalling for Concessions

Delaying a Negotiation or decision to encourage the impatient counterpart to make a better offer. But impatience may encourage a negotiator to make unnecessary concessions. Knowing this, a savvy counterpart might stall for time, trying to make the impatient negotiator nervous and more willing to make trade-offs.

How to Counter Stalling for Concessions - You should never offer something before your counterpart tells you there is a need to do so. The best counter in this situation would be for the negotiator to wait patiently for a reply. When a counterpart is obviously stalling, be patient. Don’t keep using the same tactic to make contact.

Persistence

Refusing to take no for an answer. Parents that have children, especially teenagers, know that sometimes you may give in to their demands just to be able to get on with your life. The same tactic works quite well in procurement Negotiations.

How to Counter Persistence - In this example, the best defense would be not caving in to persistence.

Take it or Leave it

Sending the message that if the counterpart doesn't agree to the offer, the Negotiation is finished. An effective tactic used by negotiators is saying, "This is our best and final offer. Take It or Leave It." This tactic, is designed to discourage additional Negotiation. Making a fixed offer sends the message that if the counterpart does not agree, there will be no further discussion.

How to Counter Take it or Leave it - One effective counter to take it or leave it is deflecting an answer with a great question. You could ask, "What will happen if we do not get this dispute resolved?" This tactic is designed to force one party to face the consequences of the other party walking out of the Negotiation. A second option might be to use the tactic of calling your bluff. One party could walk out or tell the other party, "Okay then, you might as well leave now." The effectiveness of this tactic depends on which side is least committed to the relationship. Another possible counter is asking an open-ended question to verify the validity of the other parties' threat. Finally, one party could simply ignore the other parties take it or leave it tactic and continue negotiating. This is probably the best approach when the goal is to build a 'Win-Win' relationship based on trust.

Slicing

Asking for concessions one at a time, to make them more palatable. Few people eat a whole salami in one and instead it is easier if you cut it into small pieces. The same principle applies to Negotiation. Your counterpart will be more likely to make major concessions with less resistance if you cut the concessions into several small pieces.

How to Counter Slicing - If the negotiator realizes the slicing tactic is being used, they have several options. They can expose the technique, pointing out that they have made concession after concession, and the Negotiation is no longer 'Win-Win'. Second, the other option is to counter, using the trade-off concession.

Making the First Offer

Being the first to put forth an offer in a Negotiation. Some negotiators believe you should never make the first offer. However, Negotiations can stall if neither counterpart is willing to make the initial move. If you have conducted thorough research, planned well, set high aspirations, and made a commitment to a 'Win-Win' outcome, you shouldn't have concerns about making the first offer.

How to Counter Making the First Offer - One effective counter is to conduct your own competitive market analysis and counter accordingly, using the tactic of facts and statistics. Another counter could be the tactic of asking an open-ended question.

Call your Bluff

Telling a counterpart to go ahead and act on a 'threat' or 'challenge'. Occasionally, one party in a Negotiation may say something outrageous in the belief that their counterpart does not have enough information to challenge. The appropriate tactic in this situation is to simply call the first party's bluff.

How to Counter Call your Bluff - A counter to this tactic is not needed if you are negotiating honestly and providing full disclosure. If a counterpart tries calling your bluff with a good question, simply reply, "That's a great question," and give the honest reason why you are negotiating.

Moving the Goal Post

Adjusting goals when it appears the original goals are unobtainable. Sometimes you may be unable to accomplish your Negotiation goals. In those instances, it may be best to quickly switch goals.

How to Counter Moving the Goal Post - The most effective protection when a counterpart switches positions on you is to have a very clear picture of the outcome you need to create a Win-Win situation. When you have a firm bottom line, you cannot be taken advantage of.

Tradeoffs

Getting something in return for everything that is given up. A good rule to remember in Negotiation is to get something in return every time you give up something.

How to Counter Tradeoffs - One party might respond to the other parties' counteroffer with another deal point. When using the trade-off concession, the following are good rules to keep in mind: If you can, encourage your counterpart to concede first: a) Exchange concessions for deal points that have less value to you, but greater value to your counterpart, b) Concede in small increments, c) Consider phrases like, "I'll consider it," and, "Let me think about that." Just say "no" if the concession is not in your best interests, and d) Do not concede anything without getting something in return. Your counterpart will have more appreciation for the final outcome.

Facts and Statistics

Using statistics to support an offer or a point of view. Anytime you can incorporate facts and statistics into your presentation, you have a tool that your counterpart will find difficult to handle. Reliable facts can add a tremendous amount of power and credibility. But be careful, if you quote statistics incorrectly and your counterpart proves you wrong, you lose your credibility.

How to Counter Facts and Statistics- First, the other party could question the validity of the facts and statistics. A second option is to delay the Negotiation process to give the party time to do some research and develop their own facts and statistics.

Open ended Questions

Using an open-ended question to get more expansive or revealing information from a counterpart. They play a strong role in Negotiations as techniques for gaining as much accurate information as possible.

How to Counter Open Ended Questions - Sometimes you have no idea why a counterpart is asking you a specific question, in which case it may be wise to ask your counterpart a question to clarify or verify why the information is important. A second counter is to rephrase the question as a closed question and then answer it.

Persuasion Execution

How persuasion and the types of persuasion used and how they are executed is fundamental to effective Negotiations. It is not only important to prepare for the Negotiation but to also plan the execution and to create and maintain the right atmosphere for effective and efficient Negotiations. The Negotiation team should use the persuasion spectrum (see figure VI) and bargain based on the agreed plan to ensure that concessions of value are not given away.

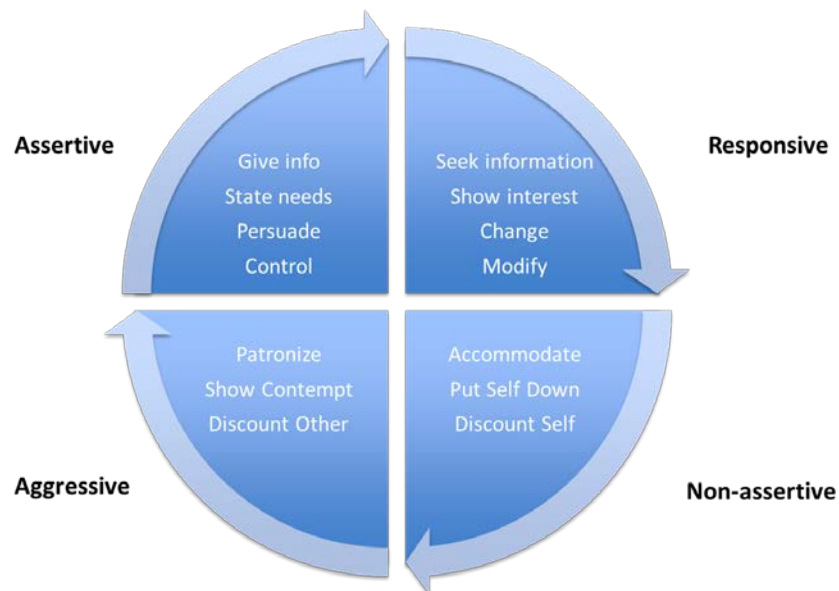


Figure VI – The Behavioral Spectrum

It is important in the execution that both the Borrower and the Bidder/Proposer tries to avoid deadlock and to agree a deal that works for the Borrower and the Bidder/Proposer. It is important to note that in a longer-term relationship the Bidder/Proposer will have plenty of opportunity to recoup concessions given away if you pursue a 'Win-Lose' outcome.

Section VII. People, Style & Behaviors

What makes a good Negotiator

Successful and effective negotiators have the necessary knowledge, experience and skills to navigate the Negotiation process with all its rules, rituals, strategies and tactics in a way that achieves mutually acceptable results. Good negotiators also do it in a warm manner that enhances the relationship they have with the Bidder/Proposer. Other traits that make a good negotiator are:

- a) Tough and firm, and show persistence;
- b) Are happy to say no and will push one final time;
- c) Are trustworthy and reliable, but this must be earned;
- d) Are patient, as it won't go all your own way and proposals will take time to emerge and there may be set backs along the way; and
- e) Are decisive, as this helps build confidence with Bidder/Proposer as it gives the impression the negotiator knows what they want and that they are the decision maker.

Good negotiators do the following well.

Leave little to chance

Good negotiators know that everything that can go wrong could go wrong. Negotiating is a dynamic process with numerous moving parts, all of which are negotiable. They expect the unexpected and prepare accordingly:

- a) Who am I negotiating with?
- b) Why are we negotiating?
- c) Where is the best place for the Negotiation to take place?
- d) What is the timeframe for the Negotiation?
- e) How will I manage the Negotiation?
- f) What are the key issues and outside influencing factors?
- g) Do I have a prioritized list of potential concessions and trade-offs? and
- h) How do I break a potential deadlock?

Being patient, persistent and creative

Negotiation is a complex process that takes time and progress usually comes in small increments. Impatient negotiators who lack persistence often leave potential results on the table and make costly mistakes. The most successful and effective negotiators are the most creative. Good solutions eventually come to those with the patience to wait for them, the persistence works for them.

The Power of Listening

The most successful and effective negotiators spend far more time listening and asking questions than they do talking. Gathering information and then thoroughly understanding that information takes precedence over sharing information. Once you fully comprehend the Bidder/Proposer's position, it's easier to know what to share and how to share it to build trust and respect and move the Negotiation forward. Successful and effective negotiators use:

- a) Active listening techniques (they suspend judgment and focus on understanding what is said by the other negotiator.
- b) Reflective listening techniques (they summarize or reflect back to the other negotiator what they just heard in question format).

These techniques are used to gain valuable information about the other parties' positions and rationale. Successful and effective negotiators realize that it's next to impossible to persuade the Bidder/Proposer to adjust their point of view if they themselves don't understand it.

Active Listening

Active listening is a skill that can be acquired and developed with practice. However, active listening can be difficult to master and will, therefore, take time and patience to develop.

Active listening means, as its name suggests, actively listening. That is fully concentrating on what is being said rather than just passively hearing the message of the speaker. Active listening involves listening with all senses. As well as giving full attention to the other parties' negotiator, it is important that the active listener is also seen to be listening, otherwise the negotiator may conclude that what they are speaking about is uninteresting or not important to the Borrower.

Interest can be conveyed to the other negotiator by using both verbal and non-verbal messages such as maintaining eye contact, nodding your head and smiling, agreeing by saying 'Yes' to encourage them to continue. By providing this feedback the person speaking will usually feel more at ease and therefore communicate more easily, openly and honestly.

Non-Verbal Signs of Attentive or Active Listening

Negotiators who are listening are more likely to display at least some of these active listening signs. However, these signs may not be appropriate in all situations and across all cultures.

- **Smile** - Small smiles can be used to show that the negotiator is paying attention to what is being said or as a way of agreeing or being happy about the messages being received. Combined with nods of the head, smiles can be powerful in affirming that messages are being listened to and understood.
- **Eye Contact** - It is normal and usually encouraging for the listening negotiator to look at the speaking negotiator. Eye contact can however be intimidating, especially for more shy negotiators therefore you should gauge how much eye contact is appropriate for any given situation. Combine eye contact with smiles and other non-verbal messages.

- **Posture** - Posture can tell a lot about the sender and receiver in interpersonal interactions. The attentive listener tends to lean slightly forward or sideways whilst sitting. Other signs of active listening may include a slight slant of the head or resting the head on one hand.
- **Mirroring** - Automatic reflection/mirroring of any facial expressions used by the speaker can be a sign of attentive listening. These reflective expressions can help to show sympathy and empathy in more emotional situations. Attempting to consciously mimic facial expressions can be a sign of inattention.
- **Distraction** - The active listener will not be distracted and therefore will refrain from fidgeting, looking at a clock or watch etc.

Verbal Signs of Attentive or Active Listening

Although some positive words of encouragement may be beneficial to the speaking negotiator the listening negotiator should use them sparingly so as not to distract from what is being said or place unnecessary emphasis on parts of the message.

Casual and frequent use of words and phrases, such as: 'very good', 'yes' or 'indeed' can become irritating to the speaker. It is usually better to elaborate and explain why you are agreeing with a certain point.

- **Remembering** - The human mind is notoriously bad at remembering details, especially for any length of time. However, remembering a few key points, or even the name of the negotiator, can help to reinforce that the messages sent have been received and understood. Remembering details, ideas and concepts from previous Negotiations and conversations proves that attention was kept and is likely to encourage the negotiator to continue. During longer Negotiations, it is important to make notes to act as a memory jog when questioning or clarifying later.
- **Questioning** - The listener can demonstrate that they have been paying attention by asking relevant questions and/or making statements that build or help to clarify what the negotiator has said. By asking relevant questions the listener also helps to reinforce that they have an interest in what the negotiator has said.
- **Reflection** - Reflecting is closely repeating or paraphrasing what the negotiator has said in order to show comprehension. Reflection is a powerful skill that can reinforce the message of the negotiator and demonstrate understanding.
- **Clarification** - Clarifying involves asking questions of the negotiator to ensure that the correct message has been received. Clarification usually involves the use of open questions which enables the negotiator to expand on certain points as necessary.
- **Summarization** - Repeating a summary of what has been said back to the speaking negotiator is a technique used by the listening negotiator to repeat what has been said in their own words. Summarizing involves taking the main points of the received message and reiterating them in a logical and clear way, giving the speaker chance to correct if necessary.

Show empathy

Empathy is defined as “the intellectual identification with or vicarious experiencing of the feelings, thoughts, or attitudes of another.” In a Negotiation, empathy is an important asset because it allows both parties to see the other’s perspective and conduct the Negotiation in a way that is beneficial to both parties.

Empathy is an attempt to understand, be aware of and sensitive to the feelings, thoughts, experiences, interests, needs and priorities and positions of the Bidder/Proposer. Successful and effective negotiators understand that to manage conflicting points of view, you must provide the other party with convincing reasons to exchange their ideas for the ones you suggest. The other party will be much more receptive and your rationale much more convincing if the other party is confident that you understand and that you are sensitive to their point of view, interests, needs, priorities and position. Empathy builds rapport, encourages information sharing, establishes mutual respect and moves the Negotiation forward in a positive direction.

Another benefit of empathy lies in the fact that if you properly construct your reflective response, the Bidder/Proposer’s natural reaction will be to provide more explanation and information. The following tips can be helpful in learning to be more empathetic.

- a) ***Recognize and identify emotions*** - Most inexperienced negotiators are not adept at recognizing emotions. However, you will find it easier to identify others’ emotions if you can easily identify your own. The following should be used to recognize the Bidder/Proposer emotions:
 - Recognize body language;
 - Skillful questioning; and
 - Attentive listening.
- b) ***Rephrase the content*** – Do not restate the Bidder/Proposer’s comments word for word, doing so not only sounds awkward, but can also makes the Bidder/Proposer upset. The key is to restate the content using different words.
- c) ***Make noncommittal responses*** - A good way to start reflective statements is with such phrases as ‘It sounds like...’; ‘It appears that...’; or ‘It seems like...’ These phrases work well because they are noncommittal. If you blatantly state, “You are angry because...” most people will proceed to tell you why you are incorrect.
- d) ***Make educated guesses*** – It is good to make estimated guesses. Educated guesses work well because even if your guess is not entirely accurate, it will most likely encourage the Bidder/Proposer to clarify his true feelings.

Body language & nonverbal sources

Successful and effective negotiators are not only sensitive to body language and nonverbal cues, they can also read the ones that matter. Experienced negotiators are excellent at sending nonverbal cues meant to disguise information. Successful negotiators focus on the eyes and the voice that are difficult for inexperienced negotiators to control. People’s eyes and voice can provide valuable nonverbal information about both the relationship and the emotional state of the parties in a Negotiation. When messages delivered verbally conflict with messages delivered nonverbally from the eyes and voice, experienced negotiators tend to attribute more credibility to the nonverbal signs.

In the Negotiation, it is important to ensure that you maintain eye contact with the other parties' negotiator and to show nonverbal signs that you have understood and heard their position or point of view such as the nodding of the head.

It's not personal

Successful and effective negotiators have learned to detach themselves emotionally by accepting the fact that the beliefs, attitudes and behaviors of the other parties' negotiators(s) do not belong to them and they don't take responsibility for them either.

Good problem solver

Successful and effective negotiators are good problem solvers and when they find themselves faced head-on with problematic issues that impede the movement towards a mutually acceptable conclusion, they suggest the following joint problem-solving approach. This requires both negotiators to view problem issues as opportunities rather than impossible barriers. Good problem solvers:

- a) Clearly identify 'problem issues': their causes, effects and impact on the Negotiation;
- b) Prompt each side to explain their interests (needs/priorities) in relation to the problem issues and why they are important;
- c) Clarify similarities and differences between the parties' interests (needs/priorities) and how they impact the development of appropriate solution; and
- d) Propose trade-offs.

Questioning

Questions and how they are asked and when they are asked is critical when in a Negotiation. Following are the types of questions to ask in a Negotiation to both move the Negotiation in your desired direction, or simply to get the information you need.

- ***Closed Questions*** - Closed questions invite a short-focused answer. Answers to closed questions can often, but not always, be either right or wrong. Closed questions are usually easy to answer as the choice of answer is limited and they can be effectively used early in Negotiations to encourage participation and can be very useful to determine facts.
- ***Open Questions*** - In contrast to closed questions, open questions allow for much longer responses and therefore potentially more information. There are lots of different types of open questions.
- ***Factual Questions*** - Factual questions aim to collect information about things for which there is a correct answer. In principle, such information could be obtained by other means of observation. Factual questions can be about a variety of things, such as figure-based facts.
- ***Probing Questions*** - Probing questions are intended to help the negotiator think more deeply about the issue at hand. If a probing question doesn't have that effect, it is either a clarifying question or a recommendation with an upward inflection at the end. Probing is asking follow-up questions when we do not fully understand a

response, when answers are vague or ambiguous or when we want to obtain more specific or in-depth information.

- **Multiple Questions** – Multiple questions are a series of questions strung together. They can cause problems for the responder who may not remember all the parts of the question and consequently, or sometimes deliberately, answer one part, usually the last part.
- **Leading Questions** - A leading question is a type of question that implies or contains its own answer. By contrast, a neutral question is expressed in a way that doesn't suggest its own answer. Leading questions can serve as a form of persuasion. They are rhetorical in the sense that the implied answers can be an attempt to shape or determine a response.
- **Reflective Questions** - Reflective questioning means that you take some information you gathered previously, and use it in a question. Reflective questions can work very well, because they show that you have been listening, and help you to focus on determining the exact needs of the Bidder/Proposer.
- **Hypothetical Questions** – Hypothetical questions are questions based on certain proven or assumed facts, and formulated to arrive at a generalized answer applicable in most such situations in the absence of dependable data.

When negotiating, you ask questions to get information you need to improve the offer from the Bidders/Proposers. Most of the time we're using questions to get your counterpart to collaborate with you and not against you. It is important to think about how to best use your communication skills to get the best results. The manner in which you ask your questions can have a powerful bearing on the results of your Negotiation so, 'Think before you speak'.

Persuasion

When negotiating, the Borrower is seeking to persuade the other party to allow the Borrower to seek their objectives. If objectives are the 'what', then persuasion is the 'how' of Negotiation. Being persuasive in a Negotiation can enhance the probability of a successful Negotiation outcome. A key part of being able to negotiate successfully is to be able to persuade and influence others.

Most procurement professionals use facts, data and information to persuade others, as the presentation of evidence creates legitimacy around the position adopted. For example, a Supplier's objective is to achieve a 5% price increase but knows that simply asking for it will not achieve results. Instead the seller attempts to persuade the buyer by producing facts, charts and information as evidence to support the claim that a 5% price increase is warranted. The buyer responds with their own facts, for example, that their budgets have been cut by 5%. The parties then explore alternative methods of persuasion, such as bargaining, for example, the buyer offers an extended contract if the Supplier withdraws the proposed increase.

If persuasion does not work, the parties may agree to 'split the difference', as that is 'fair'. For example, the Supplier may be proposing 3% price rise and the buyer offering a 1% price rise, and the parties may settle on a 2% increase. Each party loses a little, but an equal amount, and agreement is reached.

Developing a 'Win-Win' solution involves far more than making an offer and waiting for the other party to respond. Being able to advocate successfully for your suggestion, and persuade others of its merits, are key.

There are many types of persuasion that a negotiator can use in a Negotiation. These different types are outlined below.

Types of Persuasion

Logic

The strategy behind logic is not to just quote a fact or number and have that be your argument, but rather to use factual or agreed upon information to provide a foundation for your argument. Logic gives the audience a tangible comparison and is especially useful because it's extremely difficult to argue with sound logic. A logical, well-structured argument can be very persuasive.

Bargaining

Bargaining is one of the easiest and most popular methods of Negotiation. To bargain effectively, you don't need to have strong influencing skills. However, you do need higher levels of intuition because it can be costly to use bargaining at the wrong time, such as too soon in a Negotiation.

For example, you're in Negotiations with a large software firm, trying to get a lower price for a large number of software licenses. Your objective is to not leave the Negotiations until you get at least a 20 percent discount off the retail price. Once you sense that the Bidder/Proposer really needs your business, you begin bargaining by asking for 30 percent off. You then go back and forth with the Bidder/Proposer, bargaining for a lower price, until you both agree on a 22 percent discount.

Power and coercion

Power can be defined as the ability to influence people or situations. With this definition, power is neither good nor bad. There are various types of power which can influence the outcome of a Negotiation. The following are a few types of power that can be significant in the negotiating process:

- a) **Position** - Some measure of power is conferred based on one's formal position in an organization.
- b) **Knowledge or expertise** - Knowledge in itself is not powerful, it is the application of knowledge that confers power. It's important to take the time prior to a Negotiation to research facts and statistics, find out what the Bidder/Proposers goals are, and discover what areas they consider negotiable and then use this knowledge.
- c) **Character** - Individuals who are seen as trustworthy have a great deal of power in Negotiations.
- d) **Reward and Punishment** - Those who are able to bestow rewards or perceived rewards hold power. Conversely, those who have the ability to create a negative outcome for the other party also have power.

Behavior style can be important in a Negotiation and most people exhibit one or a combination of the following behavior styles:

- a) **Analytical** – process oriented, methodical;
- b) **Driven** – task oriented, goal directed; and
- c) **Supportive** – relationship oriented, focused on feelings.

Which behavioral style is most appropriate depends on the situation. You gain real power from a knowledge of behavior styles only if you can read a situation and adapt your style to it. It is also important not to mistake power for assertion or being positive.

Mutually advantageous concessions

Compromise is a vital part of Negotiation. The most successful negotiators are masters of when and how to make concessions. The concessions that you make, when you make them, and how you make them will all have a significant effect on the outcome of the Negotiation. As part of the planning stage the negotiating team should prepare a list of concessions and the order they should be used in the Negotiation.

The negotiator should not appear overly generous or rush to make concessions. Concede slowly and in small amounts. Concessions too large or given too quickly may:

- a) Unnecessarily raise the expectations of the other negotiator. Instead of bringing the parties closer together, the increased expectations of the other negotiator may result in the two negotiators actually being farther apart;
- b) Give the other negotiator the impression that the concessions were not that important to you or that you are overly anxious for a settlement. Several small concessions will more clearly demonstrate fairness and reasonableness than one or two large concessions;
- c) Leave little room for further maneuvering; and
- d) Be more than necessary to achieve a mutually satisfactory result.

Concessions should be linked with the spirit of compromise.

- a) Whenever practical, indicate your appreciation for previous concessions and emphasize the need for additional concessions; and
- b) Never make a concession without getting, or at least asking for, a concession in return. For example, end concession statements by saying ‘provided that’ to insure your sacrifice is linked to a concession by the Bidder/Proposer. Linking concessions may:
 - Make your concessions appear more valuable. Negotiators, like most people, generally put a higher value on something that requires a sacrifice on their part; and
 - Force Bidder/Proposer’s concessions that otherwise would not have been made.

Negotiators often demand equal concessions, particularly when negotiating contract price. For example, “We are lowering our price by \$100,000 and we hope that you can at least match that concession.” While matching a concession may appear logical, there are two major problems with demands for equal concessions:

- a) Equal concessions are only equal if you are equally far from your objective. The Contractor may be \$300,000 above your objective and you only \$150,000 below it. If you both concede \$100,000, you would be left with little room to compromise; and
- b) This demand is a form of bargaining on positions. Once you get away from the issues, it may be impossible to return.

Splitting the difference is a form of the equal-concession trap. It is most often offered in price Negotiations and it often sounds reasonable. However, there is no guarantee that the resulting price will be fair and reasonable. For example, if the Bidder/Proposer's position is unreasonably high and you are close to your objective, splitting the difference will likely result in a price that is not fair and reasonable.

- a) Repetitive splitting the difference over relatively small amounts should be avoided. This technique often portrays the user in a 'Win-Lose' vein as someone more concerned about small amounts than a 'Win-Win' outcome.
- b) If a Bidder/Proposer offer to split the difference will not enable you to meet your objective, accept the offer as a new Bidder/Proposer position and continue Negotiations from there. Remember that when the Bidder/Proposer's negotiator offered to split the difference, that negotiator, in reality, adopted a new Negotiation position. If you refuse to split, the negotiator making the offer normally cannot easily retreat from it.

Emotion to change attitudes

Expressing positive emotions may increase the willingness of Bidder/Proposer to agree to your Proposals and to view you and the situation in a better light, for example.

- a) Beliefs and attitudes are not founded on fact;
- b) Often defended vigorously;
- c) Emotion often defeats logic and threat; and
- d) Emotion makes people more susceptible to change.

Compromise

Compromise is a basic Negotiation process in which both parties give up something that they want in order to get something else they want more. Compromises usually occur in 'Win-Lose' situations when there is a fixed pie to be divided up, and whatever one side gets, the other side loses. A compromising negotiator's main concern is finding middle ground and doing what's fair for both parties. They would rather compromise and settle with less than anticipated, in order to satisfy the needs of the other party. They may rush Negotiations and make concessions too quickly which can ultimately lead to a loss.

When does compromise work:

- a) When you need to fix, or maintain relationships with the Bidder/Proposer. Compromising reduces the strain of negotiating;
- b) When you are pushed for time and dealing with a party you have dealt with before and trust;

- c) When you have nothing else you can possibly offer in the Negotiation, you may have to settle for less than you hoped for; and
- d) Most likely to win against an avoiding negotiator.

When to be careful:

- a) Never compromise on something where the outcome is critical to your party;
- b) Don't become known as a compromiser. The other party may wise up to your style which will leave you weak; and
- c) Compromising often happens when you have not prepared enough for the Negotiation. Preparation is paramount to a successful Negotiation.

The use of compromise in Negotiations benefits those that take the most extreme position and can be viewed as abdication rather than Negotiation and should be used sparingly. It is best used at the end of the Negotiation on outstanding issues and the lead negotiator should always check their objectives and targets before compromising.

The Persuasion Tools Model

The Persuasion Tools Model was developed by Andrea Reynolds in 2003. The model is based on work by the psychologist Kenneth Berrien and it links Negotiation and persuasion style to emotional intelligence.

This model can help to find the best Negotiation approach to use, based on your level of intuition and your influencing capabilities. You can use the model to develop your influencing and persuasion skills, and become a better negotiator.

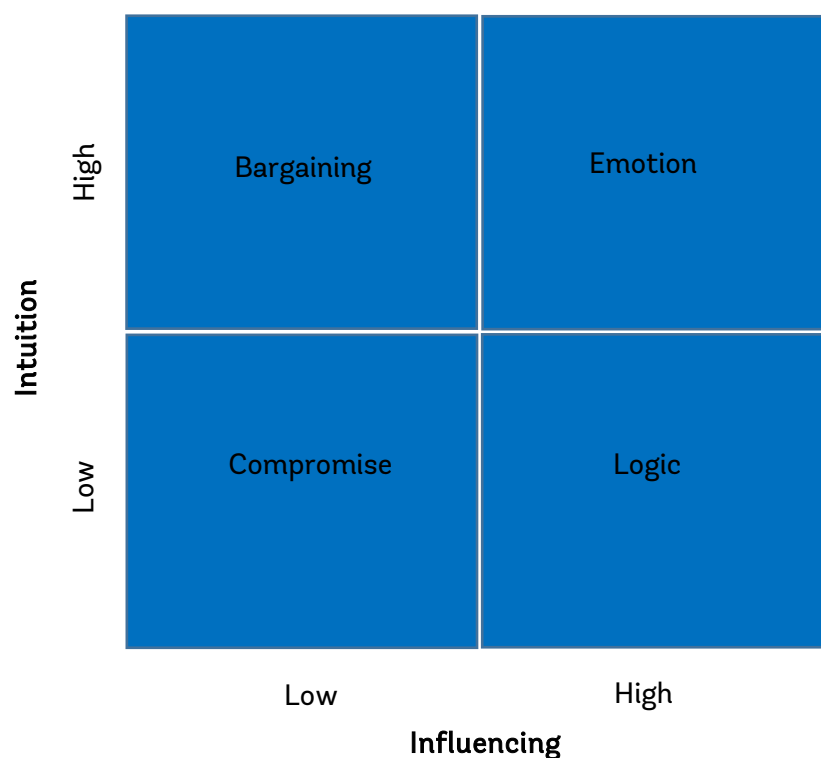


Figure VII – The Persuasion Tools Model

In figure VII the horizontal axis represents influencing, which is a measure of your overall persuasion capability. The vertical axis represents the level of intuition required when using a certain Negotiation style.

The quadrants highlight Negotiation approaches that may work best for you, based on your levels of intuition and your influencing skills. These approaches are emotion, logic, bargaining, and compromise.

For example, if you have a low level of intuition but you're good at influencing others, the best approach would be to use logic in a Negotiation. However, if you have low intuition and are poor at influencing others, the best approach would be to use compromise.

Movement Model

The movement model below details the ideal sequence you would use to run through the various persuasion techniques.

Logic	<ul style="list-style-type: none"> • Use your logic first • Don't ask why as there will always be an answer
Threat	<ul style="list-style-type: none"> • Threaten the organisation or the business, not the person • Remember what goes around comes around
Emotion	<ul style="list-style-type: none"> • Emotion defeats logic - normally • Use it sparingly and keep control
Bargain	<ul style="list-style-type: none"> • Trade issues of low value for those that you value as high
Compromise	<ul style="list-style-type: none"> • Don't rush to it and use to unblock at the end • Compromise is not 50/50
Accept	<ul style="list-style-type: none"> • Don't go there too early • Keep the supplier selling

Figure VIII – The movement model

Section VIII. Execution

The execution stage can also be viewed as preparation for the next Negotiation opportunity. You must ensure that you follow through on promises made to strengthen the relationship and to build trust. You will learn more in this stage about the other side. This will lead to easier Negotiations next time around.

Once a contract has been negotiated and put into writing, it must be sent to the Bank for no objection.

Section IX. Best and Final Offer (BAFO)

Background

In international competitive procurement, subject to prior review, the Bank may agree to the Borrowers use of BAFO. BAFO is an option under which the Borrower invites Bidders/Proposers that have submitted Substantially Responsive Bids/Proposals to submit their BAFO.

BAFO may be appropriate when the procurement process would benefit from Bidders/Proposers having a final opportunity to improve their Bids/Proposals, including by reducing prices, clarifying or modifying their Bid/Proposal, or providing additional information.

In particular, BAFO should be used where:

- All Bids/Proposals submitted do not sufficiently address the procurement requirements;
- Each such Bid/Proposal is in some respect otherwise unclear or deficient; and
- All Bid/Proposal costs are too high and/or not within the project budget estimate.

BAFO is an additional step in the procurement process designed to achieve better VfM outcomes. It is a process where Bidders/Proposers are invited to submit their BAFO. The Bidders/Proposers must have submitted Substantially Responsive Bids/Proposals, and have achieved a specified minimum score (if applicable).

Only one round of BAFO should be undertaken.

Bidders/Proposers are given the opportunity to improve their Bids/Proposals. This may include, for example: price reduction, clarification or modification of any aspect of the Bid/Proposal or the provision of additional information. However, a Bidder/Proposer doesn't have to revise their Bid/Proposal when BAFO is used if they are content with their original Bid/Proposal.

The decision to use BAFO shall be reflected in the PPSD analysis and development of the Procurement Plan. When the use of BAFO has been agreed by the Borrower and the Bank, the Borrower shall inform prospective Bidders/Proposers of this in the respective RFB/RFP document². At a minimum, the information shall state that:

- a) BAFO will be used;
- b) Bidders/Proposers are not obliged to submit a BAFO; and
- c) There will be no Negotiation following BAFO.

The use of BAFO does not apply to Consulting Services. BAFO can only be used once in a procurement process and cannot be used in conjunction with Negotiation, each are mutually exclusive.

² <http://www.worldbank.org/en/projects-operations/products-and-services/brief/procurement-new-framework#SPD>

When BAFO is used, discussions covering Bid clarifications must at some point be terminated so that the Bidder/Proposer can submit their BAFO in writing. The Borrower can then proceed to select one or more Bid/Proposal for award. To close discussions, a final deadline for submission is established for formal submissions of BAFOs. All remaining Bidders/Proposers are notified, in writing, of the deadline for submission. The time between notification and the deadline for submission must allow the Bidders/Proposers sufficient time to prepare and submit their BAFOs. It is important that there is no change in the specified business function or performance requirement.

Procurement Prior Review

Procurement that includes the use of BAFO in a competitive procurement process for Goods, Works and Non-consulting Services shall be subject to prior review by the Bank. The procurement should still be prior reviewed even if BAFO isn't used by the Borrower.

If BAFO is used, the evaluation report prior to requesting BAFO's and the final evaluation report prior to award of the contract are both subject to the Banks no objection.

Probity Assurance Provider

When BAFO applies, the Borrower shall appoint a Probity Assurance Provider (Probity Auditor) acceptable and approved by the Bank, to oversee the integrity of the procurement process, and in particular the conduct of the BAFO. For the Stage 2 (see Figure VIII) opening of the second envelopes (financial Proposals):

- a) The second envelopes shall not be opened at a public opening, but at an opening in the presence of the Probity Auditor; and
- b) The Borrower shall prepare a record of the opening of the financial Proposal which shall be signed by the Probity Auditor.

More information on how to select a Probity Auditor is detailed in Annex A.

Probity Report

When the Borrower has made the decision to award the contract, the Probity Auditor shall prepare a probity report. The report should be provided to the Borrower and a copy sent to the Bank. To ensure transparency and accountability the Probity Auditor's report shall be sent by the Borrower to all Bidders/Proposers (that is every Bidder/Proposer that submitted a Stage 2 Proposal regardless of whether they were invited to submit a BAFO), and published on the Borrower's website. This shall be done at the same time as transmission of the Notice of Intention to Award the contract.

BAFO Process & Requirements

Upon completion of the technical and financial evaluation, the Borrower shall issue to all Bidders/Proposers that have submitted Substantially Responsive Bids/Proposals a request for their BAFOs. All Bidders/Proposers that are substantially responsive shall be provided with an opportunity to submit a BAFO. The request shall include:

- a) Notice that evaluations are concluded;
- b) Notice that they have an option to submit a BAFO;
- c) A deadline for submission of a BAFO that allows a reasonable opportunity for submission of written BAFO; and

- d) Notice that if any BAFO is submitted, it must be received by the date and time specified.

A suggested approach to BAFO is to:

- Undertake the Bid/Proposal evaluation and make a decision on whether a BAFO is required. Any meetings or communications on the decision whether to undertake a BAFO must be in the presence of the Probity Auditor;
- Set out the plan and timescales for the stages of the BAFO;
- Send a formal communication to all Bidders/Proposers who have submitted a Bid/Proposal confirming BAFO is being used, as detail in the RFB/RFP;
- Formally write to each Bidder/Proposer identifying areas of concern or deficiency in their Bid/Proposal. This can be in the form of a list of questions;
- Undertake clarification meetings with each Bidder/Proposer. These can be face to face meetings, telephone/conference calls and video conferences or any combination of. It is essential that all Bidders/Proposers are offered the same mode of communication method(s). It is acceptable for Bidders/Proposers to choose different communication methods as long as the Bidders/Proposers have been offered the same alternative methods. The Probity Auditor must attend all meetings;
- Once all BAFO clarification meetings have been completed, the Borrower should write to all Bidders/Proposers confirming the request for a BAFO and the Bid/Proposal Opening;
- After receipt of BAFOs, the Borrower shall not undertake further dialogue with any Bidder/Proposer, beyond normal Bid/Proposal clarification, until pre-contract discussions with the successful Bidder/Proposer;
- Reevaluate Bids/Proposals using the same evaluation methodology and criteria as used for the original evaluation; and
- Following evaluation of the BAFOs, the Borrower shall select the Most Advantageous Bid/Proposal, in accordance with the applicable selection method.

Process Flow Charts

Figure IX outlines the process that should be followed when using BAFO in the procurement process.

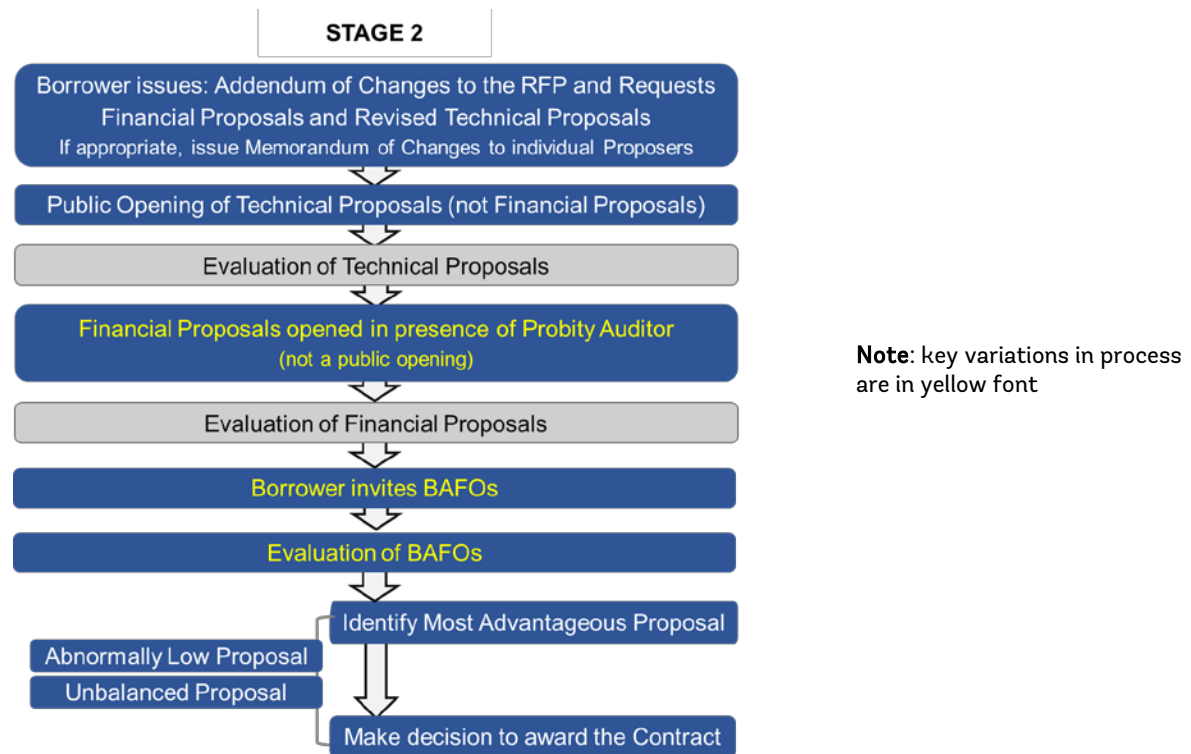


Figure IX: BAFO: Key process variations to RFP Model 1 for BAFO

The Borrower shall meet also the requirements described in paragraphs 3.4 to 3.6 of the Selection Methods annex (Annex XII) in the World Bank Procurement Regulations for IPF Borrowers.

Bid/Proposal Opening

The date and time for the Bid/Proposal opening shall be the same as for the deadline for receipt of Bids/Proposals or promptly thereafter, and shall be announced, together with the place for Bid/Proposal opening, in the RFB/RFP document and/or the SPN. In a single stage, two-envelope process, the date, time and place for opening the second envelope shall also be appropriately announced.

When BAFO is to be used the technical Bid/Proposal opening will take place in public. The opening of the financial Proposal will not be opened in public but in the presence of a Probity Assurance Provider acceptable to the Bank.

At the Bid/Proposal opening, the Borrower shall neither discuss the merits of any Bid/Proposal nor reject any Bid/Proposal that has been received on time.

In a multistage process in which the first-stage submission does not include prices, the information to be read out is the same as in a single stage, two-envelope process. In a multi-stage, two-envelope process, where BAFO will take place, the opening of the financial part of the Bid/Proposal will not take place in public, but in the presence of a Probity Assurance Provider acceptable to the Bank.

A copy of the record of Bid/Proposal opening shall be promptly sent to all Bidders/Proposers whose Bids/Proposals were opened and to the Bank for prior review. The financial Bid/Proposal opening should always be done in the presence of a Probity

Assurance Provider, this information will be included in the Probity Assurance Provider's probity report.

Bids/Proposals not opened and read out at the Bid/Proposal opening shall not be considered.

Guidelines for the Borrower

Requesting a BAFO

Requests for BAFO's must be in writing. The letter requesting BAFO's should contain the following:

- a) Specific notice that discussions have been concluded;
- b) Notice that this is the opportunity for the Bidders/Proposers to submit a BAFO;
- c) A definite, deadline for submission date and time that allows a reasonable opportunity for the preparation and submission of the BAFO; and
- d) Notice that the final offer must be received at the place designated by the time and date set in the request and is subject to any provisions dealing with late submissions, modifications and withdrawals of Proposals set forth in the solicitation.

The Borrower is responsible for reviewing Bids/Proposals prior to any request for BAFOs. Significant aspects of these reviews should include ensuring regulatory compliance, the inclusion of current mandatory provisions/clauses, and that the terms and conditions are clear, concise, and not subject to interpretation. With the exception of pricing issues, all major discussion points on the technical Proposal should be clarified prior to requesting BAFOs from all Bidders/Proposers who are substantially responsive.

Once clarifications have been sought and BAFOs have been received, discussions shall not be reopened.

Submission of a BAFO

In submitting a BAFO, a Bidder/Proposer is free to make such technical or price/cost changes to its earlier Bid/Proposal as it believes will best enhance its competitive position. However, the Bidder/Proposer is not allowed to reduce the minimum technical requirements as this would make their Bid/Proposal non-responsive. Therefore, it should be made clear to Bidders/Proposers, through the written notification, that they are being asked to submit their BAFO written revision to their Bid/Proposal and not just to confirm or reconfirm prior offers. If the Bidder/Proposer chooses to submit a revised BAFO, the written response must be submitted by the date and time specified if it is to be considered by the Borrower. If no revised BAFO is received, then the Borrower should presume that the Bidder/Proposer is happy with their original Bid/Proposal.

Opening of a BAFO

The opening of a BAFO for a Bid/Proposal will not take place in public, but in the presence of a Probity Assurance Provider acceptable to the Bank, and this information must be included in the Probity Assurance Provider's probity report.

Evaluation of a BAFO

Upon receipt of the BAFO(s) within the given timeframe, the Borrower should evaluate each Bid/Proposal. Once evaluated the Borrower should be able to recommend award to a Bidder/Proposer in accordance with the terms and conditions of the procurement documents and once no objection is received from the Bank.

If the BAFO fails to correct deficiencies/weaknesses which were pointed out in written or oral discussions, the prior evaluation stands.

Annex A. Probity Assurance Provider

Background

A probity audit is an assurance engagement, in which a Probity Auditor provides independent scrutiny of a Procurement Process and expresses an objective opinion as to whether the prescribed probity requirements have been adhered to. The conclusion expressed should be based on evidence gathered against prescribed criteria.

Independence is essential to a probity audit. A third party to the Procurement Process should be able to rely on the probity audit to obtain confidence that the probity requirements of that Procurement Process have been adhered to.

Key elements of a probity audit are:

- **Criteria** - These are the predetermined benchmarks used to measure and evaluate whether the probity requirements within the Procurement Process have been met. The criteria should be clarified and agreed prior to commencement of the audit.
- **Evidence** - The Probity Auditor is required to obtain sufficient, appropriate evidence for all established criteria. The Probity Auditor's decision must be supported by robust facts and documentary evidence. It is not sufficient for professional judgement to be used as the justification for decisions that are not otherwise supported by the facts and circumstances of the audit or sufficient relevant evidence. However, the Probity Auditor will use professional judgement as to whether the evidence is adequate to support the decision based on the determined criteria.

The results and opinion of the Probity Auditor as to whether the probity requirements have been met are documented in a probity audit report, which includes any significant issues that have been identified and that impact upon the opinion that the Probity Auditor provides.

Auditor Independence

Ensuring the independence of the Probity Auditor will help to make sure that they provide an objective and impartial view of probity within the Procurement Process.

The involvement of an independent Probity Auditor provides greater assurance to the Bank and to Bidders/Proposers wishing to do business with the Borrower as to the probity of the Procurement Process.

Determining Independence

A key element of independence is impartiality, which 'means' being free from bias and not affected by influences or interests that compromise professional judgment.

Impartiality allows the Probity Auditor to act with integrity and to exercise objectivity in respect of the probity engagement. For a Probity Auditor to be impartial and free from bias, they should not be exposed to situations or relationships that may impair their objectivity with respect to the engagement, or that may be perceived as impairing their objectivity with respect to the engagement.

Probity auditors must not only be independent in action but must also be perceived to be independent. The appearance of independence, as demonstrated by external facts and circumstances, provides an important indicator of actual independence.

There are many potential threats to independence as well as potential safeguards that mitigate these threats. A summary of these is provided below.

Threats to Independence

- **Self-Interest** - This occurs where the Probity Auditor stands to benefit from a financial or significant non-financial interest in a probity client (Borrower or Bidder/Proposer). When evaluating the significance of the self-interest threat, consider the type of interest (direct or indirect) and the materiality of the interest.
- **Self-Review** - This occurs where a Probity Auditor reviews their own advice. For example, a Probity Auditor provides advice regarding probity within a Procurement Process and then conducts a probity audit over the procurement.
- **Advocacy** - This occurs where the Probity Auditor promotes, or may be perceived to promote, a Borrower's or Bidder/Proposer position to the point that objectivity may, or may be perceived to be, compromised. For example, this can arise where a Probity Auditor entity promotes a particular procurement approach to market and selection method which has not been reviewed for probity by a third party.
- **Familiarity** - This occurs where a close relationship between the Probity Auditor and a Borrower or Bidder/Proposer causes the Probity Auditor to become biased to the Borrower or Bidder/Proposer.
- **Intimidation** - This occurs where the Probity Auditor is deterred from acting objectively, by threats (actual or perceived) from other parties associated with the procurement. For example, a Probity Auditor may be threatened with replacement over a disagreement over a probity issue in the Procurement Process, or have their credibility threatened.

Safeguards for Independence

Where there is a potential threat to the independence of the Probity Auditor, the Borrower should determine whether there are any safeguards that could eliminate or reduce the threats to independence. Safeguards could include:

- a) A governance structure that provides oversight and support for probity within procurement.
- b) Training Borrower staff so that they are well informed with regard to probity requirements in Bank financed contracts.
- c) Following a structured process in the appointment of the Probity Auditor to ensure independence.

Conflict of interest

Conflicts of interest represent one of the potential threats to independence. A conflict of interest means having an interest (whether personal, financial or otherwise) which conflicts with, or may reasonably be perceived as conflicting with, the ability of the Probity Auditor to perform their obligations fairly and objectively. Perceived or potential conflicts of interest can be as damaging as actual conflicts of interest.

Recommended Practice

The issue of independence should be specifically considered and addressed prior to engaging a Probity Auditor. At this stage, potential threats to independence should be considered as well as any safeguards that might eliminate or reduce the threats to independence.

In the case of a Probity Audit, independence is essential. A third party to the procurement should be able to rely on the Probity Audit to obtain greater confidence regarding whether the probity requirements of that procurement have been adhered to.

Potential Probity Auditor should be required to divulge all potential threats to independence, including conflicts of interest, at the time of offer or as soon as any conflict becomes apparent during the probity service engagement. The Probity Auditor should be required to provide written assurance that they have no conflict of interest in the procurement, can remain objective and impartial throughout the engagement, and will provide notification of any conflict of interest, or compromise to independence, that arises during the Probity services engagement.

If the Borrower is advised of any threat to independence that has arisen during the probity service engagement, its impact on the engagement should be considered including how the threat will be managed.

Annex B. Negotiating Plan & Strategy Example

Introduction

The tender submissions have shown a significant increase in cost (hourly rate per grade) when compared to previous Contracts or current term agreements.

This Negotiation strategy aims to focus on reducing rates, while establishing the principles on and the framework in which the Borrower wishes to operate during the term of the Framework Agreement (3 to 5 years).

However, considering hourly rates in isolation does not take account of a Bidder/Proposer ability to innovate and use labor more productively. Negotiation on staff utilization in a framework agreement is difficult to undertake and quantify, but the variance in levels submitted in the tenders justifies its consideration.

Objectives

The Negotiation team's objectives are:

- a) To provide the Borrower with a group of Suppliers that have the skills and commitment necessary for the Program to be delivered successfully.
- b) Confirm that the Borrower will be able to work with each of the appointed Bidder/Proposer to achieve overall Best Practice performance, while ensuring that the Borrower is recognized as being a Best Practice client.
- c) To drive into individual Contracts demonstrative VFM.
- d) Negotiate terms and conditions of contract that will give flexibility for review and improvement as the contract is extended over the period of program operation i.e. achieves higher and higher VFM.
- e) Conclude the Negotiations with the Bidder/Proposer feeling that Negotiations have been tough but fair, while ensuring that they are committed to the aims of and working with the Borrower, over the entire period of the Program.
- f) To demonstrate the soundness of the strategy to procure work through a nationally coordinated contract strategy and program.
- g) To move quickly to recommendation, approval and letting of commissions.

Attached to this paper is a table detailing the specific ideal, realistic and walkaway position for each of the Bidder/Proposer.

Bidder/Proposers Objectives

Attached to this paper is an appraisal of each Bidder/Proposer perceived objectives, as well as their strengths and weaknesses.

Strategy

Six out of the twelve Bidders/Proposers have been short-listed for Negotiations on the basis of the rankings achieved in the tender evaluation process.

Negotiations will be in two phases and a different team will undertake each phase. The first phase will attempt to condition the Bidders/Proposers and Negotiations will be carried out in a co-operative and integrative manner. Phase two will involve a change of style and will be more competitive and distributive.

Team

The Team is:

Name	Role
	Lead
	Technical
	Technical
	Commercial

Short-listed Bidders/Proposers

Short-listed Bidders/Proposers are:

Bidder/Proposer	Date	Time

Meeting Agenda

1. Introduction
2. Time scales
3. Tender Overview
4. Partnership and Conflict Resolution
5. Capacity, Resourcing and Utilization
6. Technical Clarification
7. Professional Services Contract
8. Outstanding Performance Issues
9. Commercial Considerations
10. Close

Structure

OPENING PHASE – The aim of this stage is to obtain the maximum amount of information on the Bidder/Proposers realistic settlement position and even their fallback position. At this stage, the intention is not to reveal the Borrower's position.

The meeting needs to be managed positively to achieve the stated objectives. The basic structure of the meeting is:

- Initial Introduction

- XX will introduce the Borrower team.
- XX will clarify the general high-level objectives of the meeting, which are:
 - Clarify key areas of the tender which will include:
 - tenders on a general basis
 - not individual commissions
 - cultural compatibility
 - capacity
 - utilization
 - hours
 - survey sub-contracts
 - PSC
 - finance
 - Final agreed position on the Tender

TESTING PHASE – The aim of this stage is to influence what the other party really thinks they will obtain from the Negotiations. It is important that the Bidder/Proposer perceive their position as being weaker than originally thought or the Borrower's position as being stronger.

This phase needs to define the merits of the Program strategy in terms of:

- partnership
- high profile
- best practice
- bigger picture e.g. links with the operations review, giving insight into Borrower's newest strategy
- cultural change

Partnership - Set out the Borrower's broader strategy.

- XX will introduce XX to give a resume of the Borrower strategy - not only the Program but also the operations strategy relating to the future management of the capital investment program. The briefing will emphasize that the Program is a trailblazer and any company that makes its name with the Program initiative will gain significant credibility for the other area of the Borrower's work and the market in general.
- The Bidder/Proposer will be asked how he will seek to foster Partnership, deliver Best Practice and demonstrate VFM.

Capacity - Make clear what the Borrower seeks from the Bidder/Proposer in terms of resource availability/reliability.

- Ask searching questions about personnel/resource management and if they do run into resource problems how they would respond.
- Challenge staff utilization and establishing targets for improvement

Financial – Confirm conflict between their response to Partnership and Capacity and actual tendered rates.

- Challenge the rates/costs put forward and ask them to justify their submission.
- Bring up each of the variables identified one by one as areas where they could make efficiency improvements.

MOVING PHASE – This is the stage where both the Borrower and the Bidder/Proposer will move from its original position, however the aim is to force maximum movement from the Bidder/Proposer.

AGREEING/CLOSING PHASE – Reaching final agreement of the issues in Negotiation 1 will involve Bidder/Proposers coming back with Proposals.

Summarize the Negotiations and the agreement:

- Particular issues that the meeting has progressed
- Items that the parties need to consider and come back on.
- Agree time-scales for confirmation of decisions.
- Set date for next meeting.

Data Available

- Tendered Rates
- Previous Contract rates
- Current Term Agreements
- Tendered Hours
- Sub-contract Rates
- PSC Contract Data
- Technical Appraisals
- Capacity Levels

Rates

The data available indicates that there has been considerable rate inflation:

Company	Average Percentage Uplift	Current Market Analysis Percentage Uplift
	2%	-10%
	25%	15%
	11%	5%
	24%	20%
	-6%	0%
	29%	25%

Listed below are the factors that may have influenced perceptions:

Increases – Bidder/Proposer	Reduction – Borrower
Single national rate	Economies of scale
Inclusion of expenses	Guaranteed work load
New set of terms and conditions	Consistency
Limited opportunity for claims	PSC removes / manages risk

Limited opportunities for increasing hours	Payment for compensation events as they occur
Lack of continuity	Certainty of work
Best staff put forward	Reduction in administration costs
Single rate for a grade	Standardization of specification
Rate fixed for a 12-month period	Contribute to developing performance based specifications/ability to innovate
Constraint on salary increases	Planned and programmed work loads
Rates fixed for a commission duration	Continuity and higher staff utilization
Need to invest in new equipment	Continuous improvement
Borrower inefficiency	Security of payment
Market pressures	Learning curve
Market changes	Consolidation
Greater technical uncertainty	Target fee incentives performance
Target fee increases administration overheads	Target fee provides contribution to cost over run
Training costs	No marketing costs
Partnering costs	Focused innovation, research and development

Negotiation Variables

Variables for Negotiation have been identified and their relative value to both the Borrower and Bidder/Proposer prioritized and detailed below:

Variable	Borrower Value	Bidder/Proposer Value
1) Retro rebate	M	L
2) Fixed fee	L	M
3) Multipliers	H	H
4) Reduction strategy – hours and cost	H	L
5) Geographical rates	M	H
6) Expenses	L	H
7) Region alignment	L	H
8) Continuity, capacity and staff utilization	L	H
9) Packaging	L	H
10) Current commissions	L	H
11) % mark up for Project Management of Survey	H	L
12) Staff progression	L	H
13) Named staff	H	L
14) Fixed teams	M	L
15) Price escalation strategy	L	H
16) Rate transparency	H	L
17) Comparison with other partnership organizations	H	L
18) Publicity	L	H
19) Joint training	M	M
20) Contribute to the Development Groups	H	H
21) Cost plus pricing strategy	H	L
22) Pricing methodologies and breakdown	H	L
23) Dedicated proven staff	H	L

24) Secondments	M	L
25) Payment terms	L	H
26) Growth plans	M	H
27) Incentivization and reward	H	H
28) Materials / software	L	M
29) Survey best practice	M	L
30) Continuous improvement	H	M
31) Best practice	H	M
32) Office location of staff	L	H
33) Risk sharing	H	L
34) Terms and Conditions	H	H
35) Submission preparation cost	L	H

Feedback and Reporting

At the end of each Negotiation key issues agreed will be noted and Bidder/Proposers will be requested to formally submit their revised Proposals.

After each session, Team Members, will provide feedback to each other on how they viewed the session in terms of successes and failures.

Annex C. Sample Terms of Reference for Probity Audits

For Borrowers Implementing Agency (Client) to complete

The Implementing Agency (referred to as the client of this Probity Assurance Provider Order) to complete this and send the entire form to potential Providers.

Today's Date		Client	
Contact Name		Client Email Address	
Contact Title		Contact Phone	
Project Name			
<p>A. Purpose and Project Background</p> <p><i>PIU to complete information on the background of the project</i></p>			
<p>B. Objectives of the Assignment</p> <p>The Probity Assurance Auditor will provide probity assurance services in relation to the Negotiation or BAFO of the contract for (Insert the Name of the Project) to ensure that:</p> <ul style="list-style-type: none"> a) The Negotiation or BAFO process is consistent with the applicable World Bank Procurement Guidelines, the Procurement Documents as issued to the Bidders/Proposers and any applicable national policies or procedures; b) The Negotiation or BAFO process as conducted is fair, balanced, transparent and conducted with integrity, so that no party is treated unfairly; c) Risks are identified and mitigating actions are taken in a timely, effective manner; and d) Probity principles are applied and probity practices are applied with integrity. 			
<p>C. Scope of Work</p> <p>The Probity Assurance Provider shall:</p> <ul style="list-style-type: none"> 1. Examine and evaluate documentation, information and processes: <ul style="list-style-type: none"> a) Review the RFP/RFB document, draft form of contract and the Bidders/Propers submission; b) Reviewing the Procurement Document and advising the Borrower on any identified aspects therein that may compromise probity; c) Observing the Bid/Proposal opening and signing the minutes of opening; d) Confirm that the price information as evaluated by the Borrower fully reflects the Bidders/Proposers prices as observed at the closed opening; 			

- e) Observe that no undue advantage was given to any Bidder/Proposer during the Negotiation or BAFO process;
 - f) Observe that the Borrower maintained appropriate confidentiality throughout the Negotiation or BAFO process;
 - g) Noting that the Borrower has already evaluated the Bidders/Proposers Bid/Proposal as substantially technically responsive and taking into account the terms and conditions of the Procurement Documents as issued and the draft form of contract as subsequently provided by the Borrower to the Bidder on (insert date), identify potential areas of vulnerability in the Negotiation or BAFO process, such as issues which might give rise to the risk of failure of the contract Negotiations; these might include areas where certain aspects of the Bidders/Proposers Bid/Proposal may not be entirely consistent with the technical or commercial requirements of the Procurement Documents or draft form of contract. Pay attention to these issues in the observation of the contract Negotiations or BAFO process to ensure that, to the greatest extent possible, they are appropriately handled, negotiated and resolved by the parties during contract Negotiations or BAFO process;
 - h) Act as an independent observer of the Negotiation or BAFO process, including written and face-to-face communications between the Borrower and Bidder/Proposer and comment on all aspects of the negotiation or BAFO including:
 - i. briefing meetings and evaluation committee meetings held among Borrower officials to discuss the Negotiations or BAFO;
 - ii. Negotiation between the Borrower and the Bidder/Proposer; and
 - iii. correspondence and documentation recording the Negotiation or BAFO process.
 - i) Scrutinize the Negotiation or BAFO process to determine whether the applicable World Bank Procurement Guidelines and any applicable Borrower guidelines or policies are followed and that best practice has been applied;
 - j) Ensure that the process has been impartial and fair, with no party being given advantage over another or unfairly discriminated against;
 - k) Ensure that participants in the process are aware of their responsibilities to disclose any potential or actual conflicts of interest;
 - l) Review and assess all relevant documentation to ensure accountability. For example, check that Borrower decisions have been correctly recorded, that participating officials are duly authorized to make decisions and commit their part(ies) to agreements reached with the Bidder/Proposer, check that any departures from applicable Guidelines or procedures have been correctly recorded and approved, as necessary. Check that clearances are obtained from the Bank, as and when required; and
 - m) Monitor the procedures used by the Borrower to protect confidential information.
2. Advise on the management of probity issues that may arise
- a) Conduct a risk assessment and identify possible probity issues that may arise before the Negotiation or BAFO process commences (for more detailed

information on risk assessment, refer to the ICAC's publication Practical Guide to Corruption Prevention: Module 2 - Corruption Risk Assessment and Management);

- b) Provide impartial probity advice to the Borrower, as necessary or as requested, on how emerging issues can be resolved or managed, for example, conflicts of interest. However, it must be emphasized that the Probity Auditor is not part of the decision-making process;
 - c) Assist with improving the level of decision-making, if the circumstances so warrant;
 - d) Observe and document the process followed and document and report on any probity issues that may arise; and
 - e) Liaise with other departments of the Borrower, if appropriate, for example, Ministry of Legal Affairs, tax authorities, etc.
3. Document information and report to the organization
- a) Obtain, analyze, interpret and document information to support the outcomes of the probity assurance process;
 - b) Submit reports to management based on predetermined Negotiation or BAFO milestones or as requested or, when considered necessary, provide a record of the process confirming that probity has been observed;
 - c) Document matters, obtain sufficient and appropriate information to support any conclusions on which reports are based, and identify any areas where information has been withheld by either party; and
 - d) Prepare a signed, written final report describing the Borrower's performance when conducting the process.

The report should present the purpose, scope and results of the probity assurance audit and include an expression of the Probity Auditor's opinion regarding the Objective of Assignment set out in paragraph xx above. Reports should highlight significant findings and recommendations and inform management of any major deviation from the applicable Procurement Guidelines and the reason for those deviations.

D. List of Reports, Schedule of Deliveries & Period of Performance

PIU to insert.

E. Data, Documents, Local Services, Personnel and Facilities to be Provided by the Borrower

PIU to list documents, data and information that the Government will make available to the Probity Assurance Provider, as well as other local services, such as office facilities, internet access, secretarial services, local transportation etc. that the Borrower will provide.

F. Institutional and Organizational Arrangements and Reporting Relationship

PIU to describe to whom / which institution the Probity Assurance Provider will be contracted and to whom s/they will report.

G. Timeframes

PIU to add when the Probity Assurance Services are required.

H. Outputs of the Services

On completion of the Project the Provider is to provide a report outlining:

1. Compliance with the timeline, scope and the cost of the completed services; and
2. A breakdown of the cost for the completed contract; and any recommendations for future contracts.

I. Qualification Requirements

The Probity Assurance Provider should meet the following requirements:

1. Bachelor's degree in a related field;
2. Minimum of 10 years of demonstrable relevant auditing/probity experience covering large infrastructure projects;
3. Experience of working in the country or region;
4. Fluent in English, French or Spanish depending on project location; and
5. The Probity Assurance Provider must be an experienced, qualified and reputable Probity Auditor who is familiar working in the public sector.

Annex D. SWOT Analysis

SWOT Analysis

SWOT is an analysis of the internal influences on a Borrower's organization, over which the Borrower has an element of control. Opportunities and Threats are an analysis of external influences on a Borrower's organization, over which the Borrower tends to have far less control.

When using a SWOT analysis (Figure X), the objective is to help Borrower's develop a full awareness of all the factors, positive and negative, that may affect the delivery of the procurement and Project. It will assist with the identification of the procurement approach that will best deliver the fit for purpose procurement approach and the Project requirements.

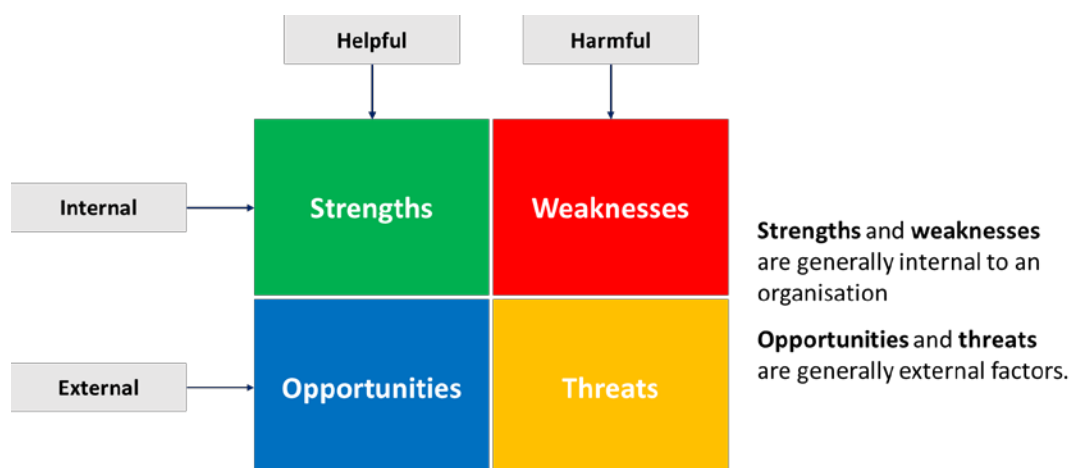


Figure X – SWOT Analysis Model

Strengths are the qualities that enable the Borrower to deliver a successful Project. Strengths can be either tangible or intangible. Basically, these are “what the Borrower does well” and are seen as core expertise including staff capability, experience, financial resources, effective processes, and reputation, etc.

Weaknesses are what may prevent a Borrower delivering a successful Project and can be seen to limit the achievement of optimum VfM. Weaknesses in a Borrower may be insufficient capacity, poor governance and decision-making, etc. Weaknesses are controllable and need to be identified and either minimized or eliminated, wherever possible.

Opportunities are factors that exist in the external business environment within which a Borrower operates. Opportunities are factors that allow a Borrower to take advantage of conditions in its business environment to better plan and improve the execution and implementation of procurement approaches that enable it to deliver a Project successfully.

A fundamental element of developing a fit for purpose procurement approach is to identify and leverage opportunities whenever they arise, to achieve the benefit of these

opportunities. Opportunities may arise from a variety of sources such as a Bidder/Proposers ability to offer innovation, strong competition in a marketplace, attractiveness of the contract, and utilizing new technology.

Threats arise when conditions in the external environment jeopardize the delivery of a Project. Examples of threats are; unrest among stakeholders, quickly changing technology, and increasing competition leading to excess capacity, price wars, and reduction of industry profits.

Figure X outlines a summary of the typical issues that a Borrower should consider when completing a SWOT analysis, while Figure XI is an example of how these considerations can be summarized into several key questions.

<p>Strengths</p> <ul style="list-style-type: none"> • What implementation advantages does your organization have? • What does your organization do better than anyone else? • What resources does your organization have access to? • What do stakeholders see as your organization's strengths? 	<p>Weaknesses</p> <ul style="list-style-type: none"> • What could your organization improve? • What should your organization avoid? • What are stakeholders likely to see as your organization's weaknesses? • What factors negatively impact on results?
<p>Opportunities</p> <ul style="list-style-type: none"> • Where can you find good opportunities? • Useful opportunities can come from such things as: <ul style="list-style-type: none"> • Changes in technology and markets on both a broad and narrow scale • Changes in government policy related to the requirements • Changes in social patterns, population profiles, lifestyle changes • Local events. • What are the trends? 	<p>Threats</p> <ul style="list-style-type: none"> • What would happen if delivery of the goods/services/works failed? • What are the obstacles to delivery? • What do suppliers do that cause concern? • Are stakeholders' needs changing? • Is changing technology threatening your organization's position? • Are there any budget restrictions? • Could any of your organization's weaknesses seriously threaten delivery? • What systems and procedures are in place to identify failure early? • What is the reputational risk? • Are there any political, policy or legal changes that could threaten the procurement? • What challenges are there relating to the geography/geographic location of the Project?

Figure XI – SWOT Analysis Questions

1. Was the information that the vendors were provided to produce a bid unclear enough that all of them could have reasonably misunderstood the information and bid things that are incorrect?
2. Has there been new information since the bid that would substantially change all of the bids?
3. Was the new information out of the "reach" of all of the bidders?

If the answer is yes to all three questions, then you should probably enter a BAFO process. When doing so you must make sure that you communicate clearly with all of the vendors. Simply sending out an email to each of the vendors with a chunk of information and asking for a revised number on a specific date could make it appear like bid shopping. The best rule is to view the BAFO process from their eyes. Most vendors have a pretty good idea of where the numbers sit right after the bid, so any new request from you to provide numbers could look like a way for you to pad your pockets after award, which will only hurt your reputation.

The BAFO process serves a very important need in purchasing. It can be abused and will hurt you in the long run if it is not executed properly. Always communicate clearly with everyone involved and never share numbers or information between the bidders. If one of the vendors has a unique way of providing for the job, he should win the job, that idea should not be shared in a BAFO process. The easiest way to decide if a BAFO process is right for your vendors, ask yourself "if you were in their shoes, would you feel good about it, or would you think your customer is being unfair.

It is a process where you are expected to give your best and final proposal for the work after you have turned in your actual bid number. It may be preceded with a list of questions or changes in the scope of work, but it typically does not involve substantive scope modifications. So is it an ethic practice?

BAFO practices were probably founded by the Government and serve a valuable purpose on specific types of projects. For example think about a design-build bid for creating the Space Shuttle. The time between when you turn in a proposal and they have a chance to fairly evaluate the proposals would be great (probably around 6 months). . Assuming that all of the competing proposals are 100% confidential and no information has been leaked, it becomes clear that the BAFO process is not only ethical, but is also a valuable tool for the Owner and the Contractor.

The Government along with Private Owners and Contractors have expanded the definition of BAFO to many other instances than the complex example I noted above. It appears that this becomes nothing more than a buyout practice to minimize the sales price, maximize the scope for the price, and improve the margin of the Client. When a project bids in February for construction of a building and 4 weeks later they ask for the Best and Final Offer, they are not utilizing like the tool it should be and they are creating an environment where there is an impression of poor ethics.

Remember that in order for any BAFO to work, you must keep all competing proposals 100% confidential. For General Contractors that are competing on projects, this becomes a very difficult process. When more than one GC is bidding on a project there will be multiple subcontractors. Even if the Owner is holding the information in the strictest confidence, are all of the General Contractors?



For additional information, such as Standard Procurement Documents (SPDs), Guidance, briefing, training and e-learning materials see www.worldbank.org/procurement