



# NAC Executive Insights

## Negotiating Tidbits: A Contractor's Perspective

### Key Points

- If you don't ask for it, you won't get it.
- Negotiate the scope of the agreement first—this builds rapport and gets issues on the table.
- Negotiate price and terms in parallel.
- Be patient, especially in the last phase of negotiations.
- Control your temper. It hardens negotiating positions.
- Share your problems and concerns with the other party—let them help with the solutions.
- Know what your “walk away” limits are.
- Use “company policy” to keep certain items off the negotiating table.
- Have a higher approval authority who is not a direct party to the negotiation.
- Keep the “gumdrops” your client wants in the middle of the table.

### Introduction

In the business of engineering and construction, we face numerous negotiating settings. They range from negotiation of a client contract, a subcontractor or supplier agreement, or a change order to a compensation agreement with a key hire, or even more challenging negotiations that occur in stakeholder settings.

The intent of the negotiating tidbits that follow is to inform as well as refresh the reader's own experiences. They will enable the reader to identify the points that best resonate or recall a negotiation. They reflect the author's experience as well as observations of others he has collected over the years.

### “Gumdrops”

Over the years I have had the opportunity to participate in and observe an indeterminate number of negotiations. I have sat in both the buyer's chair and the seller's chair and from those perspectives I have noticed an important event: a turning point occurs in most negotiations where one or the other parties so much wants what the other has put on the table that they rapidly move to their final position.

My analogy for describing this is “gumdrops.” Think of a negotiating session in which one party has gumdrops and the other party wishes to purchase them. If the seller of the gumdrops keeps

the gumdrops (the things that are attractive to the other party) out of sight and well hidden, then the price the prospective purchaser is willing to pay is reduced from what they might otherwise be willing to pay. If, however, the seller of the gumdrops proceeds to leave their gumdrops on the table throughout the negotiating process, the attraction to the prospective purchaser greatly increases. As the pile of gumdrops grows larger the prospective buyer of the gumdrops begins to suffer from a weakening will (and could be salivating). When the pile of gumdrops on the table becomes sufficiently large or the price enters the range of what the seller wants, the sale will be closed. Thus, “gumdrops” are perhaps the most effective negotiating tool ever invented.

Buyers of products and services make their buying decisions with all their senses. This is a sales technique that each of us has experienced many times with respect to consumer products or other retail goods. I would suggest, however, that it is no less effective with respect to the selling of services. Every buying decision represents a certain degree of subjectivity. We often see this as a “gray area” whose full impact on the transaction we do not fully understand. If, however, we look at this “gray area” as one which we may use to our advantage by satisfying the “needs” in this area, we can place it on our side of the scale.

In that previously described transaction between the gumdrop buyer and the gumdrop seller, the scales were tilted by clearly placing the gumdrops in sight.

Similarly and all too often at the negotiating table, we fail to clearly demonstrate and keep in view the extra value that bring to a client. We often see the gumdrops (projects) that our client has placed on the table and rush eagerly towards securing those gumdrops without attempting to put some of our own gumdrops on the table.

## **Negotiating Tips**

The negotiating phase is a key step in the overall marketing process. While the tips offered here are written from that perspective, they can more broadly be used in any negotiating setting.

Successful negotiations have many characteristics. The negotiating process we use and the results we obtain are key in determining client satisfaction, project performance, and profitability. Each negotiation is an opportunity to build a win-win relationship where both sides benefit. Negotiations shape the project and the client's expectations on the services to be provided. Both parties' definition of success must be aligned. The following paragraphs look at negotiating characteristics and offer tips for a successful negotiation.

## **Negotiations Must Be Comprehensive**

Scope, schedule, and budget are all linked in achieving client satisfaction, project performance, and profit. So are terms, conditions, methods of payment, and a host of other issues. The process of negotiating each of these aspects:

- Educates your client and your project team about the project scope and the challenges they will collectively face.

- Directly impacts the budget available to achieve the client's objectives, the time available to achieve them, and how much profit can potentially be made.
- Builds on and reinforces the relationships of the project team with the client's organization. (Note: I didn't say *establishes* them since this must happen much earlier.)
- Identifies areas that will require close cooperation between the client's staff and project team.
- Provides a well-documented contract that should protect the client and you from problems caused by the other party and minimize the opportunity for disputes. "Partnering" starts with clear requirements and a common understanding.
- Provides you with your best and maybe only time to set the stage to make a profit on the project. Invest your time wisely at this stage.

## Sequence Counts

Negotiate the scope first. The scope is the basis for all other elements of the negotiation.

By first negotiating scope, several other benefits can occur:

- It fosters the team building process since you actively encourage the client to talk about their project, their needs, their wants (different than needs), and their expectations. It is an excellent opportunity to build counterpart relationships, especially between client staff and your team members who have not worked together before.
- It provides a forum for testing client acceptance of approaches that might reduce your overall cost of delivering the client's project. Cost savings should not be the proposed rationale for these alternative approaches. Don't yield cost concessions at this stage.
- It is an opportunity to get client data and assumptions on the table and into the contract, reducing exposure to a later change.
- It helps the client start associating scope with costs. When you move to the price negotiation phase, you can communicate back to them what they have asked for. This will help in achieving an acceptable price or revising the project scope accordingly.
- It helps you plan for project execution. In effect, you are developing your project plan and bringing your project team up to speed.
- It clarifies ambiguities and defines realistic expectations. Remember, the longer the schedule, the greater the effort in meetings, outreach coordination, and adjustments to incorporate changes.

Next, get agreement with the client on the schedule. The schedule affects how resources will be employed. Will overtime or rush charges be encountered? Try to understand the importance and value of time to market or early completion to the client. This represents a possible increase in profits when you get to price negotiations.

Finally, negotiate the price and the terms and conditions in parallel. Terms and conditions represent an area of risk (to be mitigated or limited) as well as an area of opportunity. While a contractor's focus on risk is typically good, their focus on opportunity can be improved. Some terms and conditions clauses worth real money include:

- Mobilization payments
- Limits on retainage
- Ability to invoice labor separately from other costs, including subcontractors and directs...and where possible to invoice labor every two weeks
- Interest for late payment
- Milestone-linked payments versus invoice- or cost-linked payments
- Schedule of fees for direct charges rather than actual costs
- Limitations on meetings
- Adjustment charges for client delay in completion of client activities
- Schedule incentives
- Limitations on audit requirements

There are many more. You probably won't get them all, but if you don't ask, you won't get any.

Price proposal offers (for part or all the project) should be used as an opportunity to introduce a proposed profit-enhancing term and condition. Don't let price concessions just be *quid pro quo* (or a favor for a favor). Just because the client puts another dollar on the table doesn't mean you have to. Try a smaller figure or a comparable one, asking for some additional agreement related to terms and conditions.

If the scope is well-defined and the terms and conditions are robustly developed, a final price offer can be one that now is a fair price but is linked to a lump sum contract. Salary multiplier and cost-plus fixed fee contracts limit profit potential unless they are aggressively negotiated. "Not-to-exceed" contracts are the worst of all. Attempt to move these to lump sum wherever possible. Your downside doesn't change, but at least you have an upside opportunity.

## Some General Negotiating Tips

Each client and each negotiation is different. Some general tips include:

- **Be patient**, especially in the last phase of negotiations. Understand the importance of any agreed-to or client-imposed negotiating time limits.
- **Use time well** (building a comprehensive scope with client-defined assumptions) and to your own advantage.
- **Take breaks** when you need them and conversely keep the client at the table when you don't. Use your whole negotiating team to help you keep perspective.
- **Control your temper.** Flare-ups harden negotiating positions.
- **Try to make concessions late in the negotiating process.** Use upfront time to develop a comprehensive project scope and to define alternative approaches. This will reduce your cost of delivery (onboard reviews vs

formal submittals; performance specs vs detailed design where possible; submission of electronic files vs hard copy submittals; and client-provided information in a format directly compatible with yours).

- **Don't make cost concessions during the scope negotiations phase.**
- **Don't make unilateral concessions.**
- **Don't make *quid pro quo* concessions.** Hold a little back or ask for an additional consideration (option for another project; additional time; risk reducing or profit enhancing terms and conditions).
- **Keep scope and price in balance.** Don't work for free.
- **Understand the value you are creating for the client.** Try to capture some of it.
- **Remember you are still building a long-term relationship.**
- **Share your problems and concerns with the client.**
- **Know what your "walk away" limits are** and don't go past them. Get agreement on them upfront. Remember, the client has a lot invested in the negotiations and really doesn't want to start over.
- **Use "company policy" to keep certain items off the negotiating table.**
- **Have a higher approval authority who is not a direct party to the negotiation.** (Match your decision authority to that of the client's representative.)

## Another Slice of Salami

Growing up in the Bronx, I watched the older and wiser women shoppers in the butcher shop or deli buying cold cuts. After the butcher had sliced the salami and weighed it and just before he wrapped it, they would ask if he could add just another slice of salami. Customer relations were important to the butcher and another slice of salami was not a big ask. When he would add another slice of salami, he would not reweigh what he had sliced. The same techniques work in business.

Consider a scenario where the negotiations are winding down and the deal is essentially done. Only the final document preparation remains. You have built a good relationship with the client and by focusing on the project you have created a perception that you are already working on the job.

## Stop

It's time to try something creative. Time to try to get something you might otherwise not get. Turn to your client and say, "No matter what happens, at this point we have a deal, but I would like to make a suggestion. My team is making a long-term commitment to your project and our relationship. If you could see your way to adding another \$5,000 (to our profit or our contract amount if it's a small study or a lump sum project), it would help us considerably." Point out the small impact on the overall project cost but stress the impact it will have on your team's results. Think of the impact if each office did this once or twice a year with each client.

A real negotiating nugget says, "If you don't ask for it, you won't get it."

## More Negotiating Tips

- Come prepared with the right attitude and the right information. (Be prepared.)
- Know your limits. (Don't let yourself be surprised.)
- Keep your emotions in check.
  - Stay objective.
  - Don't react to everything that's said.
- Align your interests with the clients.
  - Avoid an "us against them" mentality.
- "Value" everything you offer.
- "Flinch" to outrageous demands...otherwise the client thinks they may be possible.
  - Get something for every concession. Don't think you have to give tit for tat. Don't feel you have to split 50-50. If the client gives 60, give 40.
- Make concessions that give nothing away.
- Conserve your concessions.
- Let the buyer win.
  - Let them make the last suggestion and agree to it.
- Educate yourself.
  - Understand your client's wants and needs.
- Rehearse possible negotiating scenarios.
  - You invested your time in getting here...don't give it away now.

## Closing a Sale When the Client Has Concerns

You're with the client. The sale is just a nod away, but the client has some concerns. How do you close the sale in the face of those concerns? Here are some suggestions about closing that may help:

- Acknowledge, instead of arguing with, the client's concern.
- Don't get defensive...keep your focus on the customer. Say:
  - "I hear your concern about..." or...
  - "I understand the issue."
- Clarify the client's concerns before you respond. Ask questions to get details. Ensure that the real issue doesn't lie deeper.
- Listen to everything the buyer says as well as what *isn't* said. What is motivating the client's concern?
- Move the conversation to a higher level. Align your objectives with the client's. Build a sense of common purpose and desired results.
- State your "value proposition" in a way that satisfies the client's wants and needs. Make them want to buy.
- Move on after addressing the client's concerns. Pick up where you left off and ask them to take the next step to a sale.

- Don't forget to ask for the job.

## Tips for Better Negotiating

A key part of the business of engineering and construction is negotiating outcomes—a contract, a short listing, a change order, and other situations. Become a better negotiator with these tips:

- **Listen** — Let the client talk. Watch for non-verbal clues.
- **Ask Probing Questions** — Avoid asking questions that can be answered “yes” or “no.” Such answers won't tell you a lot. Be prepared with second-order questions to ensure the client's real issues are made clear and to show genuine interest.
- **Plan your strategy ahead of time** — Go prepared. Don't “shoot from the hip.” Plan your strategy with alternatives (“What if...”).
- **Hold your concessions** — Don't give away everything right away. Make the other party feel he or she has gained something also. Plan the inclusion of points you are prepared to give up. Be careful not to negotiate with yourself before you go into the negotiation with the client.
- **Take your time** — Don't rush into negotiating. Deadlines and quotas are important, but don't press. It takes time to build a relationship.
- **Team build** — If you negotiate as a team, then plan as a team. Determine who will say what. Don't override each other. Never negotiate alone.
- **Take notes** — Don't rely on your memory; ask the client if it's okay to take notes.
- **Ask the client to help you solve a problem** — Explain your concerns around a specific point. Ask the client how your dilemma might be solved. This shows respect for his or her input and helps move the negotiations in your direction.
- **Get agreement on something** — Leave the negotiating session with some sort of agreement. It may be only to meet again but agree on some point. The sense of progress helps create the right climate for future negotiations.
- **Be flexible.**

## What Do Your Clients Want from a Negotiation?

This section takes you to the other side of the table to look at what your client wants from a negotiation.

Over the years I've had the opportunity to start with a more extensive list of “wants” that I have subsequently boiled down to two different types of wants: hard wants and soft wants.

**Hard wants** basically address the framework within which the negotiation takes place and the resulting agreement. Hard wants can be summed up as follows:

1. A process that's on schedule and on budget.
  - o Remember, there's a timeframe within which your client must act and there is a limit to the resources they can apply to reaching a deal with you.
2. A legally binding and comprehensive agreement.
  - o Your client needs to be able to hold you accountable for delivering what they believe they need.
  - o The client's perception of risk must be adequately addressed, and the client must clearly understand what risks you have assumed and which ones have been retained.

Regarding risks, I've found two different perceptions of to exist:

1. A conventional perception of risk.
2. An unconventional perception of risk.

Briefly, the conventional perception segregates risks into three categories:

1. Known knowns
2. Known unknowns
3. Unknown unknowns

The first two can be dealt with in many ways, the third must be avoided. Your approach to negotiation must make your client feel unknown unknowns are limited but are the client's.

The unconventional perception recognizes two broad types:

1. The risk of action
2. The risk of inaction

The risk of inaction is greater than the aggressively managed risks of action. If your client's perception of risk is "unconventional," several strategies will suggest themselves in the negotiating process to allow you to capitalize on the client's desire to minimize the risk of inaction.

The third hard want is an agreement within your client's "walk away" framework. The client has no latitude here.

**Soft wants** have to do with emotions, a sense of winning, being free from criticism, as described below:

- Winning — While in any good negotiation there must be no losers, it is important for your client to feel they have won (as opposed to your having lost).
- Needs to be above criticism by other stakeholders — The negotiation process and the resulting agreement is rarely confined to the parties directly involved. Your client has other stakeholders who must feel their



needs have also been satisfactorily addressed. Early in the negotiation process, you should seek to identify your client's stakeholders and their needs. The opportunity to trade-off satisfaction of a "soft" want for one of your "hard" wants may exist during the negotiation process.

- Wants goodwill created, not destroyed, in the process — Completion of negotiations marks a *change of phase* in the client/provider relationship cycle, not a *completion* of a relationship. The client is seeking the negotiating process to build a strong relationship between the client and the project team being entrusted to resolve his needs.
- Need to feel good the morning after — Simply put, no second thoughts, no regrets, only a conviction the client has done the right thing. An early, comprehensive understanding of the client's wants as well as your own will help you move through each step of the negotiation process.

People are not simple creatures. They have needs, emotional and social, that need to be satisfied in addition to their "hard" wants. The true quality of the agreement negotiated may best be judged over time by how necessitated changes are handled. They are better handled if, during the initial negotiation, the "soft" wants are also satisfied.

## Summary

Gumdrops are the key to negotiating a favorable agreement. So are preparation, a structured approach, discipline, and patience. Every negotiation is an opportunity to improve an outcome. In this Executive Insight negotiating tips have been offered to help the reader find those that will work best for them.

## For Further Reading — Executive Insights

- Know What You Are Trying to Accomplish: The Primacy of the Scope Baseline
- Managing Risks on Large Complex Projects
- White Space Opportunities
- Considerations in Cross Cultural Negotiations

## Reference

*Vision, Focus, Drive: Ingredients of Successful Professional Services Sales* (2017); eBook ISBN 978-1-387-41795-7

## About the Author

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