Developing a Winning IT Negotiations Strategy

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Negotiations can be such a dreaded topic with business people that it is often avoided until the last possible minute and is then viewed as dragging on far longer than really necessary. Investing a small amount of time and resources developing your negotiations strategy early in the process can often reap substantial benefits later on.

Start Developing Your Strategy Early

In some organizations, a negotiations strategy is part of the corporate culture. Such strategies can either be formulated expressly by design, through high-level meetings or a standardized set of form agreements, or developed implicitly, through long practice and a set of historical contract precedents. They can also range from very aggressive (“we dictate the terms”), to middle-of-the-road (“let’s all be fair”), to very non-confrontational (“do whatever it takes to get this deal done”). While enterprise-wide negotiations strategies are more prevalent, and probably more successful, in large, long-established organizations with lots of leverage, they can also be advantageous in small organizations. In either case, they set a common direction and provide some tools to help you get there.

Regardless of whether your organization has an institutionalized negotiations strategy, you will still need to examine your negotiations strategy in light of each particular deal. While the mix of competitive bidders interested in a particular project, and the differences in functionality and price among the products or services that they offer, are often the most important considerations, there are also many other factors to evaluate, such as how large, critical, or strategic the contract is to your organization and how much leverage your organization can expect to wield in negotiations.

The time to start thinking about your negotiations strategy for a particular deal is very early in the contracting process. If you are planning to issue an RFP, then determine your desired or preferable negotiations strategy in advance.

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Including contractual provisions in an RFP can often give you better leverage and lead to a stronger or more favorable contract. But remember to have your legal counsel review the contractual provisions before issuing the RFP, as it is often much more efficient to involve legal counsel earlier rather than later, when your options have been limited. You should also research the vendors that respond to your RFP and contact some of their customers, especially those who have just recently become former customers. Doing your homework can avoid costly mistakes.

Consider establishing and committing to a firm negotiations schedule in advance, with firm dates specified for when activities will occur. Allowing only a limited number of sessions and a limited amount of time for negotiations forces each party to prioritize issues. Require the vendor to present its best and final offer by a certain date and hold them to it. Controlling negotiations in this way can be a very efficient and effective strategy in getting negotiations completed more quickly.

As strange as it might sound, also consider conducting parallel negotiations with two potential vendors simultaneously. This often isn’t as difficult as you might expect, and the results can be quite dramatic. You never truly know how far a vendor is willing to go until it is faced with the possibility of losing a deal at the last minute to a strategic competitor.

Establish an Executive Steering Committee

Establishing an executive steering committee before negotiations begin is an important part of ensuring your success. Management representatives from each group or department within your organization that has a significant stake or interest in the project need to be actively involved. Nothing is more frustrating or wasteful than working hard to negotiate what you think is an acceptable agreement, only to discover that one or more groups within your organization haven’t been adequately consulted and that major issues have to be reopened and renegotiated.

Present the vendor with an appearance of unity and solidarity within your own organization, discouraging “end-run” tactics such as...
Playing different departments or executives off against one another. Try to avoid information leaks by members of your steering committee. But be prepared for them, just in case a vendor happens to dangle irresistible tee times or sporting event tickets in front of the right executive. Try to anticipate all contingencies and lay the foundation for a solid, unified front before negotiations begin.

**Your Negotiations Team Leader**

Selecting an effective negotiations team leader is often one of the most important aspects of implementing your negotiations strategy. Too often there is either no designated team leader or the responsibility of that position is diffused among various different individuals, each of whom already has lots of other responsibilities, resulting in a lack of focus that carries over into negotiations themselves.

Legal counsel are often capable or appropriately positioned to function as the de facto negotiations team leader, but the result is seldom equal to what might have been obtained had another motivated, capable, and knowledgeable individual been expressly designated as negotiations team leader. It may sound corny, but there can also be advantages to allowing your lawyer to play the role of “bad cop” to your designated team leader’s “good cop” in negotiations. The interplay between these roles can often be used quite effectively to obtain concessions from the other party.

The negotiations team leader that you select must be qualified, capable, and responsible for the success of the project. He or she must also be given the appropriate authority to enable them to fulfill that responsibility and allow negotiations to succeed. Preferably, an organization would dedicate a significant portion of the team leader’s time to the negotiations, give the team leader the authority both to direct and to reward the efforts of the other team members, and base a considerable portion of the team leader’s job performance evaluation on the outcome of negotiations. Even better, consider tying some portion of the team leader’s compensation directly to the outcome. These tactics tend to result in a highly focused and motivated team leader, with a personal interest in driving the negotiations to a successful conclusion.

Of course, your negotiations team leader needs to possess relevant business knowledge and skills, especially communications and organizational skills. Your team leader also needs to be intimately familiar with the structure of your organization and how it operates. It can be very helpful to choose a team leader who has worked in several different positions in your organization and has developed an extensive network of internal contacts. Such a preexisting network of contacts can help dramatically in coordinating and obtaining the cooperation of individuals scattered throughout your organization. It can also help ensure that all necessary groups and individuals are involved, eliminating delays and the need to revisit issues.

While a general understanding of the relevant technology can often be quite helpful in a team leader, subject-matter experts can often effectively provide your negotiations team with detailed technical knowledge. Be aware, however, that if your negotiations team leader isn’t at all technical, these subject-matter experts will need to be involved much more heavily in negotiating the technical provisions of the contract.

**Your IT Lawyer**

Choosing the right lawyer to be part of your negotiations team can significantly influence how successful you will be in negotiating IT contracts and how long it will take to close a particular deal. Take into consideration how experienced your legal counsel is regarding information technology in general, the particular type of deal that you are doing, and the specific vendor that you will be negotiating with. Knowledge and experience can be very powerful negotiating tools, and hiring legal counsel with lots of prior experience in IT, and especially with a particular IT vendor, can often result in obtaining much more favorable terms in a much shorter period of time. If your lawyers already know how far a vendor has been willing to go in other deals, they can provide you with realistic expectations and help avoid wasting lots of time in fruitless negotiations.

**Other Negotiations Team Members**

In addition to carefully chosen legal counsel, be sure to involve knowledgeable and capable representatives from all affected groups and departments as technical members of your negotiations team. Try to anticipate and arrange for the participation of all necessary subject-matter experts as far in advance as possible, getting the necessary buy-in and commitment of their management so that negotiations can stay on schedule.

Be sure to appropriately manage the involvement of these technical team members, however, and avoid making your core negotiating team overly large. It is much easier to negotiate effectively with a team of three or four key individuals than it is with a team of twelve. Having too
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many different voices involved in actual negotiations will only delay inking the deal. A team composed of the negotiations team leader, your legal counsel, and one or perhaps two technical project managers is often most efficient.

Having this core team meet both before and after negotiating sessions, again involving technical experts as appropriate, can also significantly improve the effectiveness of your team. Vendors often have an advantage in this regard, as the same individuals often work together over and over again and come to learn what to expect of each other in negotiations.

Just as with your negotiations team leader, ownership and accountability are critical in your other negotiations team members. An appropriate portion of each member's time needs to be dedicated to the effort and the outcome of the negotiations needs to constitute an appropriate portion of what each team member's job performance and compensation will be based upon.

Special Concerns and Changed Circumstances

Of course, there may be special circumstances involved with your particular negotiations effort that don't allow you to follow the negotiations strategy that you might otherwise prefer. For example, negotiations might have to be kept under wraps if they could impact the employment of a significant number of personnel or otherwise attract lots of unwanted public attention. Such special circumstances need to be anticipated and made an express part of your negotiations strategy in advance. Try to foresee all possible contingencies and always have a backup plan ready, just in case.

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Conclusion

Developing a negotiations strategy in advance can help ensure a predictable and positive result from your IT contract negotiations. Start early, draw upon the existing resources of your organization, and involve legal counsel as necessary. Form an executive steering committee and get the necessary management commitment before negotiations begin. Select a capable, qualified team leader, grant them the appropriate authority, and encourage them to succeed. Choose capable legal counsel with lots of IT experience, preferably with the vendor you will be negotiating with. Involve necessary technical resources as appropriate. Finally, adapt your negotiations strategy to unexpected events or circumstances, should they occur. Such a negotiations strategy will help you obtain a more favorable IT contract in a shorter period of time.

Note: The information contained in this article is current as of July 30, 2002, and is subject to change at any time. This article is intended to alert the reader to some of the legal issues discussed herein. The impact of the law for each particular situation depends on a variety of factors; therefore, we strongly recommend you engage legal counsel to assess and help minimize your legal liability based on the particular requirements of your institution. Like any article, this is not meant to be used as a substitute for legal counsel.

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