



# 6 Steps to a Technology Procurement Negotiation

Negotiating an expensive technology purchase can become a win-win for both parties by following this six-step action plan.

By Neil Horden

**Negotiation:** You don't always get what you want, but you never get more than you negotiate. The purchase of a major technology system, such as a Project 25 (P25) network or a next-generation 9-1-1 (NG 9-1-1) center, can be an arduous process. This article addresses the negotiation phase of the procurement process and how to position yourself for a successful outcome. Before starting negotiations, review the following six actions.

## 1. Set the Ground Rules

Before addressing those you intend to negotiate with, understand your own position. These ground rules cover the importance of understanding the project and establishing the structure and organization of your negotiation team.

**Do Your Research.** Understanding the project is a key step to positioning your team for success. What are the project needs? Who are the stakeholders and end users? What is being

purchased and why? These answers will enable you to understand what you are negotiating for and to structure a team with the skills and authority needed to achieve the desired outcome. Review the procurement documents, such as the request for proposals (RFP) and proposal.

Also research recent successful negotiations with the selected vendor on similar systems. Knowing where others had success and where they had to resort to stopping negotiations will better position your decision point once negotiations begin.

**Develop Your Team.** Developing the negotiation team is critically important to assembling the appropriate technical and non-technical staff. Some negotiation managers attempt to run the team lean and pull in resources as needed, but it can become difficult to maintain continuity and appropriate information flow while doing so. A better method is to create a team that

covers the full range of skills, responsibilities and levels of authority that may be needed in the process. To best use resources, the team should be segmented into a core group involved in the majority of negotiation activities and a broader group to call in as needed.

Consider the need for at least one person who has either recently negotiated with the specific vendor or recently negotiated a similar procurement. If your organization does not have this resource, it may be well worth bringing in someone from the outside.

**Define a Chain of Command and Team Roles.** While most find it obvious that a chain of command is required, few make sure that one is established early in the process. Each person must understand the levels of authority to make decisions and the report-to managers who can escalate difficult situations. A chain of command should also address the process for issues of contractual liability, which



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may involve the organization's legal department. Acknowledging the chain of command helps prevent a team member from inadvertently overstepping his role, by making commitments or accepting concessions outside of his domain. Each team member should also understand responsibilities and what is expected as part of the negotiation team.

**Set the Strategy.** This may involve the whole or majority of the negotiation team. We define strategy as a plan for action. The strategy details what you are going to accomplish, not how it will be accomplished. This simple definition helps keep the discussion at the strategic level and avoids the distraction of details and tactics.

With this definition in mind, have a clear vision of the most desirable and realistic outcome anticipated from the negotiation. Your research should have already defined what you are trying to achieve and if your stakeholders would be satisfied with that result. A vision makes it easier to lay out the negotiation steps and specific milestones required to achieve that vision — an action plan. Milestones are key in providing valuable, measurable steps to ensure the negotiation is proceeding as planned. Your strategy should also define which issues are simply non-negotiable, triggering the need to stop negotiations all together.

**Establish Vendor Expectations.** Once you formulate ground rules, flow those rules down to the vendor. This may require communications with the vendor prior to beginning negotiations for the purchase. Has the vendor defined its team and confirmed its chain of command? Can the vendor comply with the established milestones in the negotiation plan? Will vendor decision-makers be available to ensure the negotiation can progress as planned? The vendor should address these questions to ensure they are also prepared to begin negotiations.

By stepping the vendor's team through these rules, you avoid the potential of negotiating only to find that the vendor made agreements

## 6 Negotiation Steps

1. Set the Ground Rules
2. Define Documentation
3. Establish the Statement of Work
4. Demand Test Plans
5. Take Ownership
6. Avoid a Contest

above its authority or that it cannot live up to. In addition, there should be an understanding between your organization and the vendor on what the goal of the negotiation is and what the contract requirements are. A well-defined proposal and technical specifications are important baselines at this stage.

### 2. Define Documentation

If it is not in writing, it does not exist. A lot will be said during the vendor presentations, interviews, demonstrations and across the table during negotiations. While this discussion is valuable, anything verbally agreed on is usually not binding unless it is in writing. During the negotiation, every issue that results in an agreed-to change in scope or specific terms must be documented in writing. Any verbal information that changes the vendor proposal in any way must be documented to ensure accountability.

**Choose Your Method.** There are various documentation methods at your disposal. Depending on the project scope or purchase, some suggest recording discussion sessions including video recording, tape recording or taking meeting minutes. At the end of the verbal presentation, all changes should be delivered by the vendor in writing with the buyer having the right to accept or reject the change. For backup or to ensure understanding, email communications should also be considered record.

**Specify Contract Terms.** All parties must agree that the words in the negotiated contract accurately reflect the intent of the discussion. Use plain language, and clearly define all terms.

The more clearly each statement is

written, the more easily it can be interpreted and considered binding. Any vague terms should be addressed and revised to avoid subjective interpretations of the agreement. Different interpretations can negate important terms intended to be binding.

Contracts and any applicable documentation should be thoroughly reviewed by someone experienced in procurement, contracting or legal matters to ensure there are no contradictory statements or clauses that may cause deviation from the desired outcome. Ensure that statements or clauses elsewhere in the contract do not override the terms agreed to. This is why overly verbose and lengthy documents are more difficult to manage than those that are clear and concise.

An important concept when building a contract is the order of the precedence of documentation. The contract should state which documents have precedence and in what order, meaning which documents are considered higher level and will override the lower-level ones. A single general statement in a document with a high level of precedence could negate the specifics of many issues negotiated in lower-level documents.

Also make sure the documents contain all required details. It is important that each item is clearly defined in the contract terms and that all parties agree to those terms. Do not overlook these critical items:

- Defined responsibilities between the purchaser and vendor
- Delegated staff and key personnel
- Detailed equipment lists
- Title and title transfer terms
- Clear statement of confidentiality and/or proprietary protection where required

### 3. Establish the Statement of Work

The single most critical document in the contract package is the statement of work (SOW). The SOW should list every task required to complete the project and the allotted time frame to do so. Three critical components of the SOW include the implementation plan,

schedule and responsibility matrix.

The SOW is typically presented in a descriptive narrative for each task in the implementation plan. Additionally, a work breakdown structure (WBS) or other table of tasks is often provided. In either case, the tasks should be clearly and concisely presented similarly to the terms in the contract.

The SOW schedule may be presented as a project calendar or in a Gantt chart format. The specific schedule format is not critical, but it must effectively define the work to be completed. The expected timeframe to complete the task and deadline should be clearly defined in the SOW.

Each task should include a clear delineation of the party responsible for its completion. This can be provided within the SOW, WBS or schedule, as well as in a separate responsibility matrix document.

To avoid areas of discrepancy, the implementation plan or original SOW from the proposal, if it must be included, should have a lower precedence

than the negotiated final SOW. For example, the original documents could be listed as an addendum or appendix so they are not confused with the final contractual SOW document.

#### 4. Demand Test Plans

If it cannot be measured, it cannot be assured. Focus often shifts from negotiating to implementing once a project begins; it is easy to assume that the action on the ground overrides all words on paper. However, the test plans and any measurement guidelines must be defined in negotiations and included in contract documentation.

By documenting test plans and measurements during the contract negotiation process, it is easier to assure the system operates as contractually promised. For this to happen, the test plans must be aligned with the SOW and contract requirements. In essence, there should be a defined test point for each requirement. For example, even something as simple as assuring that the contracted quantities of

equipment are delivered, an inventory must be taken, recorded and verified to ensure the inventory purchased was actually received.

For something as complex as system load testing, a comprehensive test plan must be developed and documented to ensure the system operates as expected. If you want every feature of the system tested, documenting each step in the test phase ensures the vendor cannot choose what is and is not tested. It is also important that exact testing plans are documented and included in the proposed budget, so all parties understand the level of effort required.

Test plans should include the following at a minimum:

- Expected functionality of the proposed system design including standard features
- Defined success criteria with testing outcomes
- Defined requirements and allowances for retesting should any testing fail

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## Negotiation is not successful if one side loses.

- Defined test plans and number of tests per requirement
- Defined requirements for coverage, voice quality, message success and other performance tests

An objective test plan specifies performance measurements and the threshold for passing. Only after completion of the test plan should acceptance be considered. Agreeing on what is considered a successful test phase should be documented in the contract to protect the purchaser from any claim against proper, complete testing.

### 5. Take Ownership

Taking ownership or system acceptance is typically the point at which the vendor stops having full responsibility for the maintenance and repair of the system, and the buyer inherits responsibility. At this time, the effective date of the warranty period typically begins. The last contractual step prior to taking ownership of a new or upgraded system is the acceptance phase of the test

plan. During negotiation, system acceptance terms should be clearly defined to avoid unintended acceptance of the system.

Acceptance terms, including specific testing steps, completion of all SOW tasks, and even clearing punch list items, should be documented in the contract. This way, all parties clearly understand how and when system acceptance can occur.

**Define System Use.** System acceptance also typically starts the warranty period. Early system acceptance results in an early expiration of warranty, which may have cost implications to the system owner should any functional issues arise after acceptance. Often buried in the contract is a “beneficial use” clause or terms that define “use for intended purpose” that trigger automatic acceptance. This language associated with automatic acceptance must be well understood to avoid unintended system acceptance. Any statements that can automatically trigger system acceptance should be removed

from the contract during negotiations to avoid inadvertent or unintentional system acceptance.

**System Maintenance.** The responsibility for system maintenance prior to acceptance and during reacceptance testing must also be clearly stated and should reside with the vendor. If the system has active users, there should be an allowance for your personnel to take any maintenance actions necessary during testing and prior to acceptance. This is required because the maintenance responsibility lies with the vendor, and critical operations could be interrupted or significant delays in repair can occur without such a provision.

### 6. Avoid a Contest

Negotiation is not successful if one side loses. Too many people go into negotiations with a win/lose mindset, trying to get all they can and give up as little as possible. In the end, that rarely works. By making the vendor lose, you build an adversarial relationship with

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your partner for the life of the system. When one side loses, the entire dynamic of the relationship and the project outcome are affected.

You need a system that meets your requirements; the vendor needs the sale to be a good business decision. You both benefit from a showcase implementation. With the correct resources on your team and knowledge from other successful negotiations, you can help the vendor see the added value with regard to providing your organization what it desires, which results in a successful sale and a win-win for both parties.

Negotiation failures are rarely a success for anyone. You will have wasted a sizable amount of time and resources just getting to that point, only to have to start over, sometimes with the same vendor, which you have made an adversary. Or you may have to start over with a different vendor, who will have more information about the negotiation failure than you care to have shared. Nothing of value is

gained from starting over, except what you may have learned from the prior failed experience.

Not every negotiation can and should result in a win-win situation for all parties. Sometimes you have to call off negotiations when it becomes obvious that continued negotiations will not yield a workable contract.

Know your parameters, limits and when to call it quits. Part of your negotiation strategy should include exact items that are simply not negotiable. Whether it is many small issues or one large one, your strategy should identify exactly who needs to be involved in that decision and who has the authority to make that call. Having thought the limits through before any issues come up allows for an easier decision process. If your strategy or team is not established, working through critical issues after negotiations have begun typically results in taking either too lenient or too aggressive a posture. The slightly detached view of an outside consultant on your

team can often provide a valuable perspective, if the call to close negotiations is made.

Heading into negotiations armed with the proper team and a unified understanding of what you want, what you need, and what you cannot accept is the best way to help assure the best possible outcome. ■

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Neil Horden, chief consultant for Federal Engineering, has more than 30 years' experience in wireless communications spanning public-safety, commercial and industrial markets and diverse technologies. Horden is a member of the Association of Public-Safety Communications Officials (APCO) International, Institute of Electrical and Electronic Engineers (IEEE) and the Radio Club of America (RCA). He is a member of the board of directors of the Project 25 Technology Interest Group (PTIG) and participates on several National Public Safety Telecommunications Council (NPSTC) working groups. Horden is also a member of the *MissionCritical Communications* editorial advisory board.

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