



THE VALUE OF NEGOTIATIONS

The ability to negotiate is an important step in the process for competitive proposals and evaluations. A state's ability to negotiate and when it is allowed to negotiate is almost always explicitly authorized by statute.¹ Successful negotiations can improve quality, delivery, and cost performance, providing best value for the state. Negotiations may be necessary to provide clarity for specifications or terms and conditions in contracts.

GENERAL NEGOTIATION PROCESS OVERVIEW



¹ Procurement U. (2020, May 8). *Procurement 101: Foundations of Public Procurement*. [Online course]. ELogicLearning. <https://procurementu.elogiclearning.com/>

STEP 1: Receive and Evaluate Offers

The negotiation process begins when the solicitation closes. The first step of negotiation is providing the due diligence and verifying of each proposal or bid received.



DO

Verify criteria to ensure bidder or offeror is responsive and responsible.

DON'T

Take all proposals at face value. Trust but verify.

STEP 2: Determine Need for Formal Negotiation

Procurement officials should be aware of any applicable statutes and policies that may determine the need for formal negotiation. Furthermore, consider the amount of time and resources that negotiating could require and weigh them against the expected potential benefits of negotiating.

DO

Prioritize and identify each issue to be negotiated.

DON'T

Set unrealistic goals and expectations for the negotiation.



STEP 3: Select Negotiation Team

Your negotiation team should include cross-functional representation of all key stakeholders.² The State of Wisconsin's *IT Procurement Best Practices Playbook*, provides an easy to remember acronym for those who should be involved in the negotiation process:

T.E.A.M.

T- Technical staff

E- Expert in procurement or purchasing

A- Attorney

M- Management of the program



DO

Level the playing field and negotiate on an even basis. If a supplier has legal or technical support, your negotiation team should bring your qualified counterparts.

DON'T

Underestimate the experience or knowledge of the supplier's negotiating party.

STEP 4: Research and Plan a Negotiating Strategy

This is the most important step in the negotiation process. Research and preparation should include market research, cost/price analysis, analyzing the positions of each party, identifying areas of compromise, and understanding the supplier's potential negotiating strategy.³

DO

Identify and be prepared to discuss alternative acceptable criteria or outcomes of the proposal.

DON'T

Negotiate areas beyond the scope of the RFP.

² NASPO (2019). *State and Local Government Procurement: A Practical Guide*, 3rdEd. Lexington, KY, 148.

³ NASPO (2019). *State and Local Government Procurement: A Practical Guide*, 3rdEd. Lexington, KY, 149.

STEP 5: Strategy Meeting and Finalization of the Negotiation Plan

Once you have identified the negotiable criteria, selected the negotiation team, and developed a negotiation strategy, you are ready to schedule your strategy finalization meeting. During this meeting all negotiating team members and key stakeholders should be invited to review the negotiation strategy, the roles of each member of the team, and all applicable guidelines and policies.

DO *Practice role playing negotiation scenarios to better prepare.*

DON'T *Assume your negotiation team is already aware of all relevant policies, procedures, statutes, and regulations. Be thorough in your finalization meeting.*



STEP 6: NEGOTIATE

During your negotiation meeting, it is critical for both parties to identify areas of agreement and focus on the interests of both parties in pursuit of a win-win outcome. An agreement should be reached on all contract terms. Negotiations may take additional meetings, depending upon the complexity of the project or terms being negotiated.

DO *Try to come to an agreement on one point of discussion before moving onto the next. Be courteous and considerate. Stay open minded, ethical, and fair. Avoid quick deals but be willing to accept a good offer.*

DON'T *Disagree with members of your team in front of the supplier. Do not take discussions personally or react emotionally. You should never make a concession without obtaining one.*

STEP 7: Document the Negotiation Process and Outcome

A key foundational block of the procurement process is transparency. When in the negotiation process, each step should be thoroughly documented in compliance with all applicable statutes, regulations, and policies. Documentation should be retained with the contract and project file for future review and as part of the official records.



DO *Get all agreed upon solutions in writing.*

DON'T *Accept oral explanations or agree to modifications without getting them in writing.*

It is best practice for the public procurement officer to request that those offerors who engaged in negotiations or discussions submit revisions to their proposals. This is often referred to as a best and final offer and is required under federal procurement law and recommended under the **Model Procurement Code**.⁴



TOOLS TO LEARN MORE

Take the Procurement U Course, [Negotiations 104: Introduction to Negotiations](#) for deeper understanding of the who, when, where and how of negotiation.

Read [The Two-Faces of Negotiation](#) to get an inside look into the negotiation process, and what challenges you might face.

Keep up on the IT procurement negotiation discussion by reading this [joint paper](#) from NASCIO & NASPO.

Open up your copy of [State and Local Government Procurement: A Practical Guide](#) to Chapter 9!

Check out the State of Wisconsin's 4th play in their [IT Procurement Best Practices Playbook](#) for tips on negotiations for IT procurement.

Check out the UPPCC recommended book [Getting to Yes: Negotiating Agreement Without Giving In](#).

⁴NASPO (2019). *State and Local Government Procurement: A Practical Guide*, 3rdEd. Lexington, KY