

UNIT 43: CONDUCTING DISCUSSIONS/NEGOTIATIONS

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Duty	Conduct a negotiation session and document in the contract file the principle elements of the negotiated agreement.
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Conditions	Given acquisition planning, the solicitation (if any), proposal(s) or quotation(s), technical reports, cost/price analysis, prenegotiation objectives, and a prenegotiation strategy.
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Overall Standard	Select and correctly apply tactics to accomplish the Government's negotiation strategy, resulting in best value to the Government from competitive final proposal revisions or a sole source negotiated agreement.
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In documenting the negotiations, identify and discuss all negotiation issues in sufficient detail to allow accurate reconstruction of the procurement for immediate review and future reference. The documentation must fully support the recommendation for award.

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Policies

<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>
3.104		Procurement integrity—protecting source selection and proprietary information during discussions.
15.201(f)		Contracting officer is the focal point for exchanges after release of the solicitation and limits on release of information.
15.303(c)		Contracting officer is the focal point for exchanges after release of the solicitation and responsible for controlling exchanges after receipt of proposals.
15.306(d)		Exchanges with offerors after establishment of the competitive range.
15.306(e)		Limits on exchanges.
15.307		Proposal revisions.
15.308		Source selection decision (including documentation requirements).
15.404-4(a)(3)		Negotiations aimed at reducing profit are not in the Government's interest.
15.405		Price negotiation.
15.406-3		Documenting the negotiation.
52.215-1(c)(2)		Contractor proposal agreement on terms, information on authorized negotiators, and persons authorized to sign a contract.

Other KSAs

1. Knowledge of basic principles for the conduct of discussions established in Comptroller General decisions and other case law.
2. Knowledge of basic principles for trade off decisions established in Comptroller General decisions and other case law.
3. Knowledge of the role of cost realism analysis, as represented in Comptroller General decisions and other case law.
4. Knowledge of win-win negotiation tactics and how to apply them in contract negotiations.
5. Knowledge of win-lose negotiation tactics and how to counteract them in contract negotiations.
6. Skill at leading team contract negotiations.

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7. Skill at controlling a meeting to resolve complex issues.
8. Skill at applying negotiation tactics and techniques in contract negotiations.
9. Ability to read and understand complex proposals and proposal updates/revisions.
10. Ability to write clearly in preparing written offers and other documentation associated with contract negotiations.
11. Ability to complete the arithmetic calculations required to consider the appropriate affect of negotiation tradeoffs on contract price.
12. Ability to apply appropriate new techniques to contract negotiations.
13. Ability to communicate orally during contract negotiations.
14. Ability to demonstrate the interpersonal skills required to deal with difficult people during contract negotiations.
15. Ability to consider the affect of any negotiation tradeoffs on the customer.
16. Ability to motivate the Government negotiation team in its effort to obtain best value.
17. Ability to make sound well-informed business decisions during contract negotiations.
18. Ability to identify relationships that explain facts.
19. Ability to identify problems, related facts, and alternatives for resolution.
20. Ability to maintain the attention to detail necessary to communicate on issues.
21. Ability to resolve complex issues using mathematics and other objective mechanisms.
22. Ability to implement a negotiation strategy including the ability to identify changes needed to achieve negotiation objectives.
23. Ability to maintain a positive view and display a professional image.
24. Ability to display a high level of initiative.
25. Ability to calmly and effectively deal with high stress situations.

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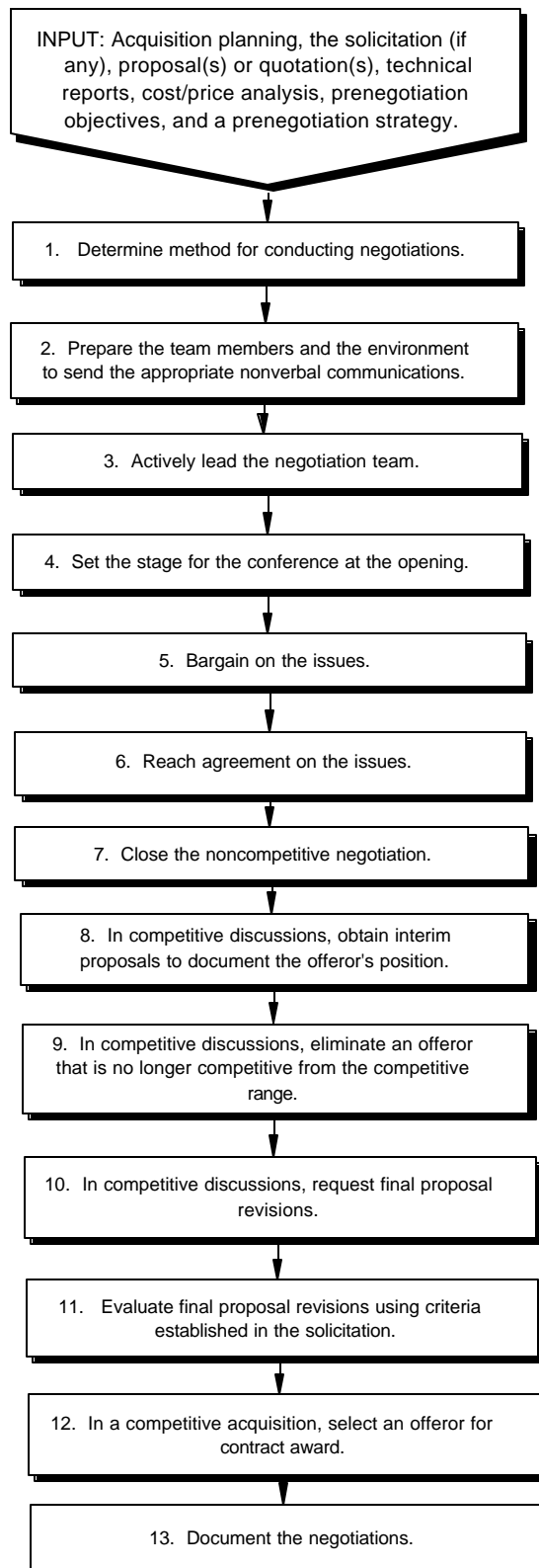
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26. Ability to remain open to new information presented during negotiations.
27. Ability to use imagination to develop new insights and apply innovative solutions.
28. Ability to identify and gather the information needed to communicate ideas effectively during negotiations.
29. Ability to maintain the honesty and integrity of the acquisition process.

Other Policies and References (Annotate As Necessary):

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Related Standards

<p>1. Determine method for conducting negotiations.</p>	<p>Tailor the method of conducting negotiations to the particulars of each offer. Consider such methods as:</p> <ul style="list-style-type: none">• Telephone conference;• Letter;• E-mail;• Videoconference;• Conference at the Government facility; and• Visit to the offeror's facility.
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Related Standards

2. Prepare the team members and the environment to send the appropriate nonverbal communications.

Research has shown that 70 to 90 percent of the communications spectrum is nonverbal. In particular, final preparations need to consider:

- Body language:
 - Elements that indicate positive attitudes;
 - Elements that indicate negative attitudes; and
 - Gestures that may offend or confuse others.
- Physical environment elements that transmit important nonverbal messages, such as the messages:
 - A negotiation conference facility sends about the organization and the importance of the negotiation;
 - Conference table configuration sends about trust and willingness to communicate;
 - Conference table size sends about the flow of communications;
 - The principal negotiator's position at a conference table sends about the flow of communications;
 - The physical distance between negotiators sends about your ability to freely exchange information;
 - The relative elevation of negotiators sends concerning attempts to control negotiations; or
 - The availability of visual aid devices sends about interest in aiding the flow of information.
- Personal attributes that transmit important nonverbal messages, including attributes such as:
 - Personal dress;
 - Personal grooming;
 - Vocal cues; and
 - Handshake cues.

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Related Standards

Tasks	Related Standards
<p>3. Actively lead the negotiation team.</p>	<p>From the beginning of the negotiation conference, the negotiation team must function as a single entity. That requires leadership throughout the conference, including:</p> <ul style="list-style-type: none"> • Assuring that the preparations are complete before opening the negotiation conference; • Assuring that team support is available when needed; • Controlling team member participation; • Using caucuses to maintain a unified position; and • Using breaks to relieve tension and control the pace of negotiations.
<p>4. Set the stage for the conference at the opening.</p>	<p>Establish a positive win/win environment by:</p> <ul style="list-style-type: none"> • Greeting the other team cordially; • Taking time to introduce participants; • Helping participants feel at ease; • Briefly reviewing background information; • Emphasizing the goal of a win-win outcome; and • Reviewing the negotiation agenda.

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5. Bargain on the issues.	<p>Bargaining includes persuasion, alteration of assumptions and positions, as well as give and take on the issues, including price, schedule, technical requirements, contract type, and other terms of the proposed contract.</p> <ul style="list-style-type: none"> • In noncompetitive negotiations: <ul style="list-style-type: none"> - Follow the negotiation plan; - Begin bargaining with issues related to contract requirements; and - Bargain on price after agreement on technical issues. • In competitive discussions: <ul style="list-style-type: none"> - Follow the negotiation plan; - Explain that proposal deficiencies must be corrected; - Explain that correcting weaknesses will improve the proposal; - Identify other proposal aspects for possible improvement; - Never engage in inappropriate conduct; and - Never mislead the offeror.
6. Reach agreement on the issues.	<p>In a noncompetitive negotiation, remember that agreement has to be reached that considers all issues, but the parties do not have to agree on every issue as long as you agree on contract requirements and price. During negotiations:</p> <ul style="list-style-type: none"> • Periodically review areas of agreement; • Sequence the approach to addressing the areas of disagreement; • Use mutual problem solving to reach agreements; • Use tradeoffs to reach agreements; • Keep a written record of offers, counteroffers, agreements, and unresolved issues; and • Reach agreement.

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7. Close the noncompetitive negotiation.	<p>Close the negotiation conference as soon as possible after an agreement is reached. During closure:</p> <ul style="list-style-type: none"> • Review key elements of the agreement to confirm agreement; and • Seal the agreement with a handshake. <p>If no agreement can be reached, elevate the negotiations, as appropriate, to a higher authority for review and a decision on appropriate action.</p>
8. In competitive discussions, obtain interim proposals to document the offeror's position.	<p>Do not obtain an interim proposal unless one is necessary to document the course of discussions. In particular, consider requesting an interim proposal when negotiations center on new and unique approaches to complex requirements.</p>
9. In competitive discussions, eliminate an offeror that is no longer competitive from the competitive range.	<p>If during the course of discussions it becomes evident that an offer previously included in the competitive range is no longer among the proposals rated most highly, that proposal may be dropped without giving the offeror an opportunity to revise it.</p>
10. In competitive discussions, request final proposal revisions.	<p>At the conclusion of discussions, give each offeror still in the competitive range an opportunity to submit a final proposal revision (FPR). The request should be brief, but it must:</p> <ul style="list-style-type: none"> • Establish cut-off date for receipt of FPRs from all offerors still in the competitive range; and • Advise each offeror that: <ul style="list-style-type: none"> - Its FPR must be in writing, and - The Government intends to make award without obtaining further revisions.

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<p>11. Evaluate final proposal revisions using criteria established in the solicitation.</p>	<p>Treat a late FPR as a late proposal. If no timely FPR is received, evaluate the proposal based on prior submissions.</p> <p>In rating proposals, only use criteria established in the solicitation. With other members of the source selection team:</p> <ul style="list-style-type: none"> • Evaluate the proposal using technical or management factors established in the solicitation. • Evaluate the proposal using price and price-related factors. • Establish an overall ranking for each proposal.
<p>12. In a competitive acquisition, select an offeror for contract award.</p>	<p>If the Contracting Officer is the Source Selection Authority (SSA), the Contracting Officer must select the offeror for contract award. If the Contracting Officer is not the SSA, the Contracting Officer must make a recommendation to the SSA with final determination by the SSA.</p> <p>Document the decision as required to comply with the Source Selection Plan and any applicable agency or activity requirements.</p> <ul style="list-style-type: none"> • The award decision must be made considering the evaluation criteria presented in the solicitation. • The award decision must consider the facts found during proposal evaluations. • The SSA is not obligated to follow any recommendation presented by evaluators. • The decision must be documented to demonstrate how the evaluation criteria and available information were used in making the decision.

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Related Standards

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<p>13. Document the negotiations.</p>	<p>The price negotiation memorandum (PNM) or similar document must include the following:</p> <ul style="list-style-type: none"> • The purpose of the negotiation. • A description of the acquisition, including appropriate identifying numbers. • The name, position, and organization of each person representing the contractor and the Government in the negotiation. • The current status of any contractor systems to the extent they affected and were considered in the negotiation. • If cost or pricing data were not required for any price negotiation exceeding the cost or pricing data threshold, the exception used and the basis for it. • If cost or pricing data were required, the extent to which the Contracting Officer: <ul style="list-style-type: none"> - Relied on the cost or pricing data submitted and used them in negotiating the price; - Recognized any inaccurate, incomplete, or noncurrent cost or pricing data; or - Determined that an exception applied after the data were submitted and, therefore, considered not to be cost or pricing data. • A summary of the contractor's proposal, any field pricing assistance recommendations, including the reasons for any pertinent variances, the Government's negotiation objective, and the negotiated position. • The most significant facts or considerations controlling the establishment of the prenegotiation objectives and the negotiated agreement including an explanation of any significant differences between the two. • Any significant impact of direction given by Congress or others. • The basis for the profit or fee prenegotiation objective and the profit or fee negotiated. • Documentation of fair and reasonable pricing.