

# Strategies for Better Negotiations

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# Today's Learning Objectives

- Discuss the value of principled negotiation, as well as common challenges.
- Identify methods to develop an effective negotiation strategy
- Identify strategies that can be utilized to improve negotiations

How much experience do *you* have with negotiation?

**How would you describe  
negotiation in one word?**



**Negotiation is just conversation!**

# Focusing on Win-Win instead of Win-Lose

## Cooperative Negotiation: Win-Win

- Both sides can win
- Pie is expandable
- Joint problem-solving: continuing relationship is important
- Building transparency and trust

## Competitive Negotiation: Win-Lose

- Only one side can win
- Fixed pie
- Substance only: Relationship isn't as important
- Maximizing one's own interests

# Develop a Negotiation Strategy

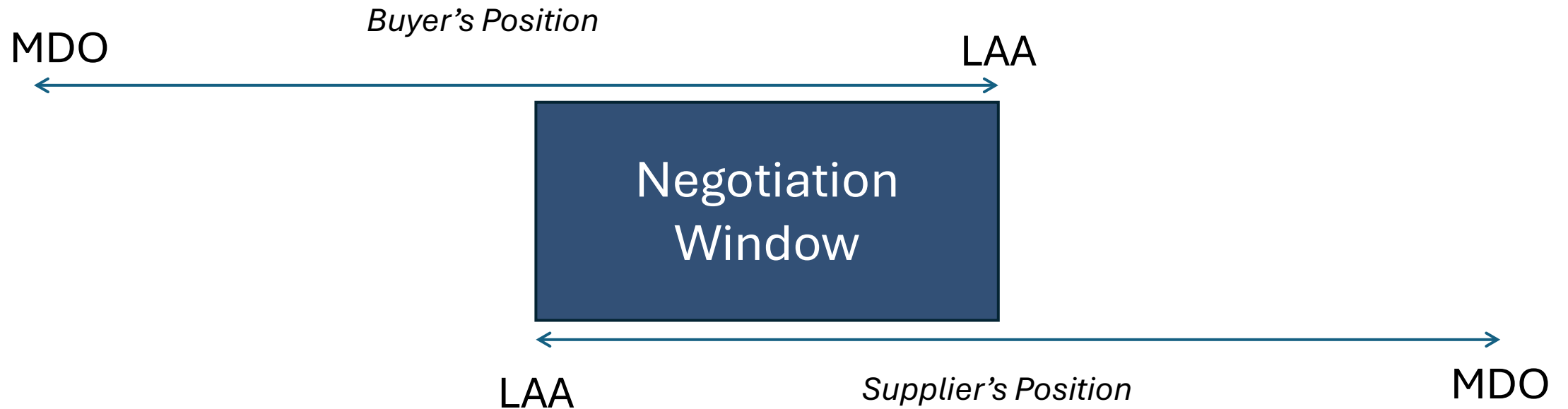
## Most Desirable Outcome (MDO)

- What we want
- Ideal outcome

## Least Acceptable Agreement (LAA)

- What we need
- Required outcome

# The Negotiation Window



# The Negotiation Window



# Best Alternative to a Negotiated Agreement

- BATNA: Best Alternative to an Negotiated Agreement
- Best option if you cannot make a deal
- Not the same as an LAA
- Identify before negotiating
- Keeps you from agreeing to anything just to make a deal



*There is power in walking away*

# Examples

Scenario	LAA	MDO	BATNA
Purchasing peanuts by the pound	\$8 per pound	\$5 per pound	Market price is \$10 per pound
Negotiating shipping terms	Delivery within 40 days	Delivery within 30 days	Supplier guarantees delivery within 45 days for all customers
Negotiating terms and conditions with a supplier	Up to 5 modifications to the terms and conditions	No modifications to the terms and conditions	Contract with a different supplier OR adopt a PA where most of the terms are already negotiated

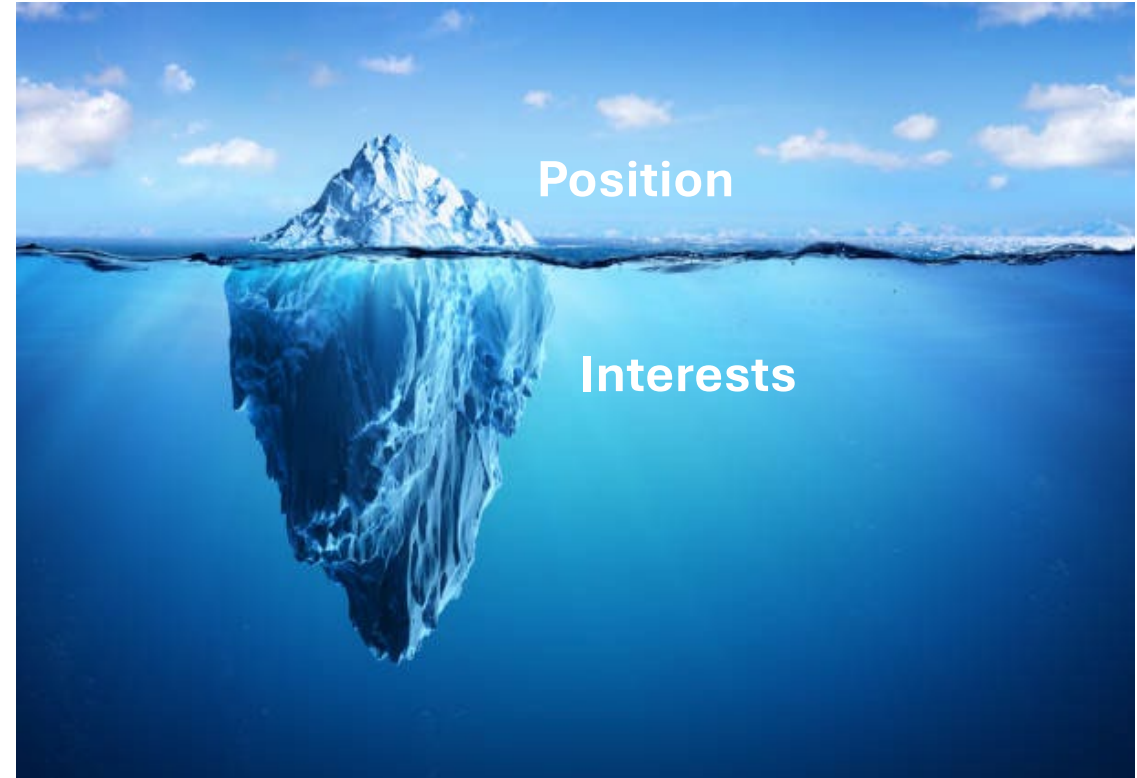
# Research is the Key to Successful Negotiations

- Conduct market research
- Research the key players
- Who *should* be in the room?
  - SMEs?
  - Finance?
  - End-users?
  - Contract Administrator?
  - Legal?
- Determine the appropriate venue for your discussions
- Identify your LAA, MDO, and BATNA

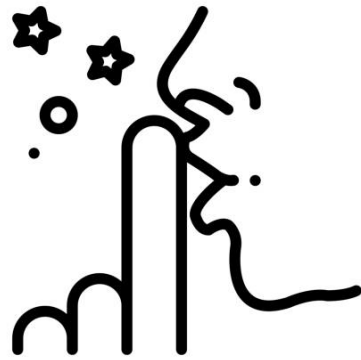


# Conducting the Negotiation

- Focus on interests rather than positions
- Build rapport
- Just. Ask.
- Focus on win-win instead of win-lose
- Be creative: invent options for mutual gain



# Conducting the Negotiation: Tactics



Silence



Clarifying  
Questions

*There is a tactics handout at your table*

# Conducting the Negotiation: Documentation

- If you didn't get it in writing, it didn't happen!
- Take notes during negotiation sessions
- Send detailed follow-up emails
- Memorialize your negotiated terms in the contract documents
- Identify what worked well, and what didn't

## Sample follow-up Email:

Hi Sarah,

Thanks for meeting with our team today to discuss the draft contract! Today, we discussed delivery, pricing, and inspection. We agreed to the following:

- All orders will be delivered within 30 days.
- Your proposed pricing will include the state's admin fee.
- The buyers have 5 Business days (instead of 10) to inspect deliveries and inform you of any issues.

**Please let me know if my understanding of this is incorrect.**

We will meet again next week to discuss indemnification and subcontracting.

# Negotiation Tips

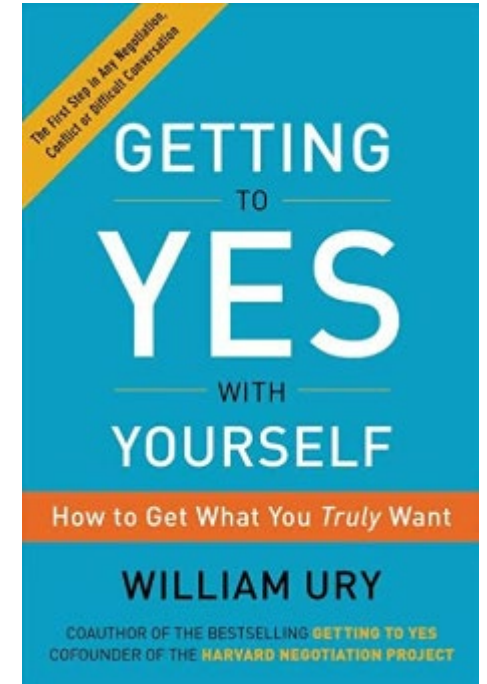
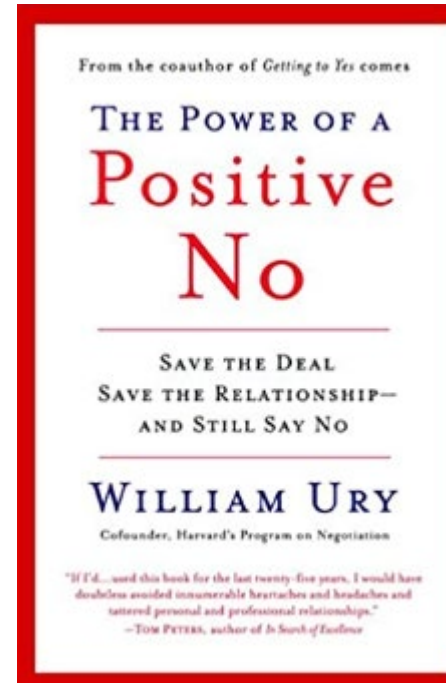
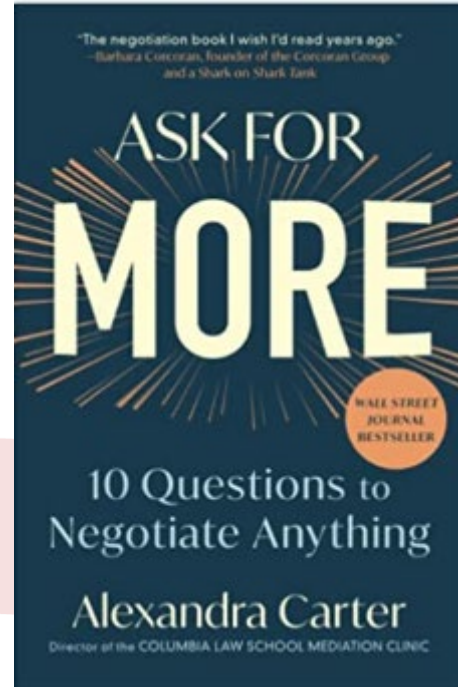
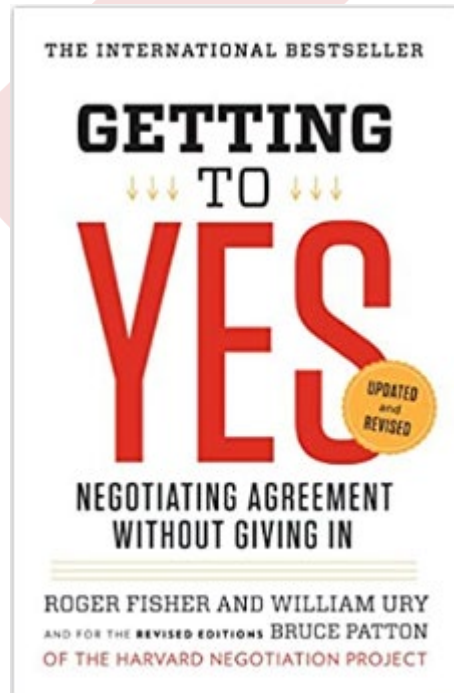
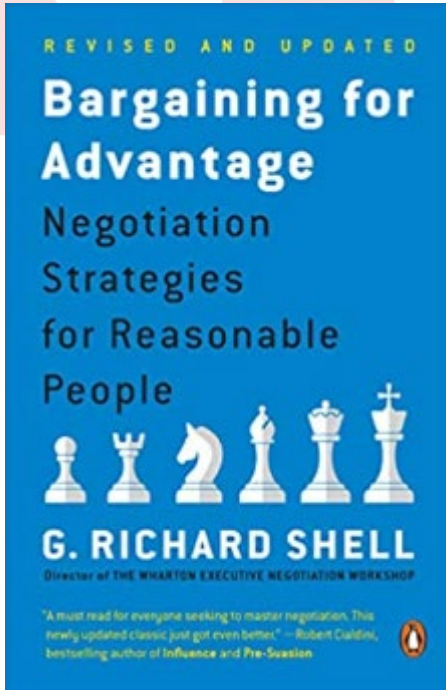
- Plan ahead!
- Do the little things well, and the rest fall into place
- Focus on interests instead of positions
- Develop a negotiation style that's authentic to *you*.
- Conduct low-stakes negotiations as much as possible



# Questions? Comments?



# Resources



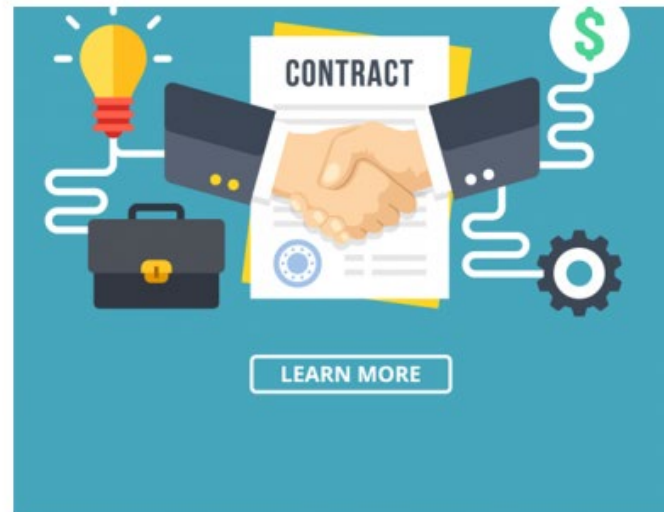
# Courses Available Through Procurement U

Visit

[www.naspo.org/course/negotiations-104-introduction-to-negotiations/](http://www.naspo.org/course/negotiations-104-introduction-to-negotiations/) to register!

And be on the lookout for our 200-level course on Negotiation Strategies.

## Negotiations 104: Introduction to Negotiations



This web-based, self-paced course can be accessed through the Procurement U Learning Management System (LMS).

[Review and download the syllabus here](#)

**Delivery Method:** Web Based, Self-Paced

**Contact Hours:** 1

**Registration:** FREE as part of *Procurement U Gives Back Program*.

Register Now >

# Thank you!

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# NEGOTIATIONS IN NORTH CAROLINA

# NEGOTIATIONS IN NORTH CAROLINA

- What if a Vendor submits its own terms or want to alter the NC terms and conditions?
  - How should they do this?
  - What should the purchaser do?
  - Should this always go to legal?

# MODIFICATIONS TO THE SOLICITATION

Vendor modifications can take a variety of forms:

- Vendor takes exceptions and submits ***alternative language***
- Vendor submits a modified solicitation document with ***redlined edits***
- Vendor says State terms do not apply and submits its ***own standard*** T&Cs with its own liability and indemnification terms
- Vendor says that its Proposal is subject to ***further negotiations***
- Vendor says that Proposal is ***not a firm offer*** for acceptance and that a mutually acceptable contract

# NEGOTIATION RULE

## 01 NCAC 05B .0503 - Negotiation

(a) The Purchasing Agency may negotiate with one or more Responsive Vendors or reject all Offers under the provisions of Rule .0501 of this Subchapter and negotiate with one or more sources of supply that may be capable of satisfying the requirement. Negotiations may also be conducted under conditions that merit a waiver of Competition pursuant to Rule .1401 of this Section. (As amended August 1, 2020)

# NEGOTIATION RULE CONTINUED

- Provides three options:
  1. Negotiate with one or more Responsive Vendors.
  2. Reject all Offers and negotiate with one or more sources of supply.
  3. Negotiate under conditions that merit a Waiver of Competition pursuant to Rule .1401.
- Negotiations are conducted by the Agency if the Solicitation is under its Bid Value Benchmark or General Delegation.
- An Agency may request the participation of the Division in any Negotiation, if personnel are available.
- Memorialize negotiations afterwards in a written agreement. - BAFO

# NC NEGOTIATIONS

- **Preferred:** *No exceptions or modified terms, no contingent offers, no deletions or changes to the State's terms*
  - Vendor **completely** agrees to the State's T&Cs
- Vendor's may request different T&Cs during the Q&A period, and State will respond in an addendum
  - Yes or No (as applicable to **all** Vendors), or
  - State is willing to discuss amendments, if Vendor is selected for award

# NC NEGOTIATIONS

- Vendors may submit modifications in several ways:
  - As a separate document with, but not a part of, Vendor Proposal (includes specific language of the proposed change)
  - By redlining the solicitation document
  - By attaching their own, additional T&Cs
- If a Vendor is selected for award, the State will review these proposed changes and agree to, reject or negotiate each one.
  - Good faith consideration
  - State has full discretion regarding any change (Vendor takes the risk its modifications will be rejected)
  - Fairness? Negotiation?

# NON-NEGOTIABLE STATE TERMS

Some examples:

- Sovereign Immunity
- NC Law and Venue
- Vendor Indemnification of the State
- Public Audit Provisions/Inspection of Records
- Availability of Funds
- Taxes
- Non-discrimination Clauses

# INAPPROPRIATE VENDOR TERMS

Some examples:

- Indemnification of Vendors or third parties
- Foreign law or venue
- Attorney fees, late payment fees, penalties
- “Deemed” or automatic acceptance of goods
- Automatic contract renewals
- Unilateral price increases or contract changes
- Arbitration, mediation, or any limitation trial by jury

# LEGAL INVOLVEMENT IN NEGOTIATIONS

- Legal does not need to be involved if a BAFO is issued, or negotiation is entered into, and the only potential modification is for pricing.
- Legal should be consulted where a Vendor is seeking changes to the State's Terms and Conditions or is attempting to include its own Terms and Conditions.

# BUSINESS DECISION NEGOTIATIONS

1. Vendor wants to request an additional paragraph requiring certain usage guidelines for equipment under the service plan before they will agree to begin maintenance of the equipment.
2. Vendor is requesting to omit the NC Contract Number and the Vendor and Manufacturer Part Numbers from the Invoice line-item information under 4.3 INVOICES.
3. Vendor wants to include language stating that all work will be performed in accordance with standards of care and diligence consistent with the practices, procedures and techniques then prevailing in the trade.
4. Vendor wants to change Attachment C: GENERAL TERMS AND CONDITIONS Paragraph 8 CONDITION AND PACKAGING to allow for refurbished, like new machine parts to be provided in the case of warranty repairs.
5. Vendor wants to remove the clause allowing for a performance bond to be required.

# LEGAL DECISION NEGOTIATIONS

1. Vendor wants to limit its total cumulative liability not to exceed the total amount of fees paid by the State over the duration of the contract.
2. Vendor wants the contract to be governed under California law, because that is where the Vendor is headquartered.
3. Vendor does not allow purchasers to inspect their facilities and wants to strike Attachment B: INSTRUCTIONS TO VENDORS Paragraph 24, which states in part that the State reserves the right to inspect, at a reasonable time, the equipment, item, plant or other facilities of a prospective Vendor.
4. Vendor wants to change the 1.75% E-Procurement fee to 1.0%.
5. Vendor wants to strike any language in the body of the RFP stating that the bid submitted is a firm offer and instead wants to make all submissions subject to negotiation.

**It has been determined that negotiations are necessary, now what?**

# NON- T&C NEGOTIATIONS

- Agencies submit negotiation requests inside the Sourcing Project workflow in NC eProcurement .
- Submit Rationale Memo and Draft Bid BAFO Document for review, via Ariba Sourcing Task to SS, DSPO-SS, DSPO-CMS, and SPO for feedback/approval.
- Submit Bid BAFO to Vendor(s) in Ariba Sourcing tool
- Receive BAFO Response(s) and continue with approval process for contract award.

# NEGOTIATION FALSEHOODS

The BAFO is the negotiation document that should be utilized when negotiating with Vendors.

The BAFO document can be used to correct deficiencies in the vendor's response

Agencies should not communicate or meet with vendors during the negotiation process

# NEGOTIATION TIPS

1. Build time in the project timeline for negotiation with each solicitation
2. Develop a negotiation plan
3. Consult w/ SMEs, Stakeholders, Legal for input
4. Collaborate/ Negotiate with the Vendor prior to sending the BAFO request.
5. CALL the vendor to alert that the BAFO document will be forthcoming.
6. Acquire approvals prior to releasing formal BAFO Request.
7. Consult w/your P&C Service Team for Support
8. Refer to NCAC for rules associated with who and when you can negotiate.



# PEAK THANK YOU!

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