

ADVANCING YOUR BUSINESS NEGOTIATION SKILLS



**SHEET METAL & AIR CONDITIONING CONTRACTORS'
NATIONAL ASSOCIATION**

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Advancing Your Business Negotiation Skills



Negotiations are done with a mutual give and take. Negotiation is simply a mode of settling differences by avoiding conflicts and reaching common conclusions.

1.

Key Negotiation Skills



Build a Business Relationship

- ✓ Build a relationship and make time for a personal conversation to build rapport before beginning the process.
- ✓ Negotiation is just a process to understand each other's end goals, shared areas, and gaps.
- ✓ All parties should strive to achieve a "partnering" relationship.
- ✓ Invoke the shared interest and common good, emphasize the collective benefits and downplay personal costs.



Plan the BATNA

- ✓ List all alternatives to the current negotiation — What could you do if negotiations fall through?
- ✓ Evaluate the value of each alternative — How much is each worth to you?
- ✓ Select the alternative that would provide the highest value to you (this is your BATNA).
- ✓ After determining your BATNA, calculate the lowest-valued deal you are willing to accept.



Negotiation the Process

- ✓ Do not assume that both parties will agree on determining where and when to meet, the agenda items, and who should attend.
- ✓ Determining negotiation ground rules & time frames.
- ✓ Identifying a meeting facilitator.
- ✓ Outlining the agenda and order of the discussion issues.
- ✓ Primary escalation contacts for each party.



Listen

- ✓ Resist the urge to think about what you will say while others are talking.
- ✓ Personal emotional management is an important fundamental skill during negotiations.
- ✓ Understand your weaknesses and strengths.
- ✓ Do not unwittingly offend other parties during talks.
- ✓ Dialogue must be clear and accurate.



The Negotiation Anchor

- ✓ The anchoring effect is a bias that stems from the typical human propensity to depend on the initial piece of information presented.
- ✓ The first proposal given in a negotiation significantly impacts the subsequent discussions.
- ✓ Request both parties justify any changes to drafts.



Option Clauses

- ✓ Negotiators sometimes get stuck when they cannot agree on how a given situation will unfold over time.
- ✓ Suggest optional deal clauses, a measured bet on how future events will play out.
- ✓ Enables both parties to participate in the upside if the work is completed early and controls the risk.



Lower Risk with Milestones

- ✓ Provide benchmarks and deadlines to ensure that obligations are fulfilled.
- ✓ Clearly define and document the impact for both parties if a milestone deliverable is missed.
- ✓ Incorporate daily or weekly meetings into the contract to monitor progress and, if applicable, renegotiate to maintain profitability.



Advancing Your Business Negotiation Skills



2. Control the Playing Field



Identify the participants & involve the influential players.



Define where negotiations occur and whether to meet in person, have conference calls, video conferences, or both.



Provide a purposeful, carefully thought-out initial draft to avoid starting from scratch.



3. Close the Deal



Benchmarks and Deadlines

- ✓ Deadlines are essential.
- ✓ Set short-term benchmarks and a reasonable deadline to complete discussions.
- ✓ Deadlines can drive concessions and creative thinking from both sides.
- ✓ To avoid unnecessary delays, make sure to include language in contracts that defines the parameters, including time to respond, payment terms, etc.



The Pace of Negotiations

- ✓ Slowing down negotiations if things get emotional.
- ✓ Try to “end on a good note” & table more contentious items for a later meeting.
- ✓ Allowing time to elapse provides a less anxious and stressful environment for assessing the next steps.
- ✓ Speeding up negotiations can also be productive by providing an outline of terms early in the process to frame the negotiations.
- ✓ Make the process as efficient and concise as possible by demonstrating familiarity with the current job as a differentiator.



4. Common Negotiation Errors



Poor Planning

Make detailed plans, know the important issues, and understand the alternatives should they fail to reach an agreement.



The Fixed Pie Concept

Realize a “congruent issue,” where both parties want the same thing.



Do Not Focus on Anchors

Present options that the other party can select from or combine in an à la carte style.



Skip the Victory Lap

Maintain professional relations with opposing parties because there may be future opportunities ahead.

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INTRODUCTION

Most people in negotiation situations view it as a competitive war with a winner and a loser. There is typically a fear of “not getting enough” from the transaction or “leaving something on the table.” The most successful negotiators explore options to increase the value of the entire deal and look for ways to reduce the reliance on adversarial tactics. However, the most robust strategy is to look for solutions that benefit both sides. This paper will show recommended best practices for both Pre-contract and Post-contract negotiations.

A successful negotiation can potentially deliver significant cost savings or economies of scale. Savings like these usually go hand-in-hand with a higher profit margin and a stronger competitive position. They can occur in negotiations to win contracts, change orders, price escalation clauses, schedules, back charges, and payment terms with suppliers.

KEY NEGOTIATION SKILLS

Negotiation is a method by which different parties can work out their differences, and it uses the adjustment of expectations or compromise. Typically, settlement of differences is done with a mutual give and take; however, these skills are not always innate and must be developed through learning. Negotiation is simply a mode of settling differences by avoiding conflicts and reaching common conclusions, and there are specific skills required to achieve successful negotiations.

Build a Business Relationship & Communication Skills

One of the most essential negotiating skills is building a relationship and making time for a personal conversation to build rapport before beginning the process. With this, one's party and the opposing party on the other side of the negotiations may be more likely to work cooperatively on a solution and agree on various points. This might not always be possible, but research has shown that getting to know the other person can bring tangible benefits to creating cooperative discussions.¹

Every day everyone has an opportunity to negotiate, not just within significant contractual circumstances. There will be conflict whenever there is interpersonal communication, and strong communication and negotiation are required to resolve these situations. A critical component of this communication is that

each party should actively listen to what the opposing party seeks to accomplish. Realize that there will be highs and lows in the negotiation process, keep a long focus, and do not get bogged down on intermediate discussion points. Overall, negotiation is just a process to understand each other's end goals, shared areas, and gaps.

Many published books present deceitful techniques that are often used to outmaneuver the other party. Contrary to popular belief, these methods do not end up with mutually acceptable agreements for the most part. *Research has shown that the least effective negotiators use such tactics.*² Negotiation involves persuasion and assertiveness and requires active listening and significant creativity to generate attractive options for both parties. Each party should be as open as possible in terms of the overarching goals of the negotiation during the initial offers, demonstrating how persuasion and communication skills can shape the tone of the discussions. While competition is an integral aspect of negotiations, all parties should strive to achieve a “partnering” relationship. This means it is crucial to communicate each party's interests and what concessions they seek.

Both parties must cooperate to overcome communication breakdowns. If one party is hostile, it can burn the relationship and effectively kill the negotiation process. This concept of “cooperating and competing” simultaneously is tricky, and all negotiating parties need to keep emotions under control.

After each party's positions have been clarified, it may not be apparent at first that there is a cooperative path because each party's initial offers may be vastly different. This is when a negotiator's communication skills enable them to make a crucial and imaginative win-win deal.

Persuasive communication skills aid negotiation by resolving dialogue gaps, disputes, and costly deadlocks. Negotiators with well-developed communication skills will convince their critics to change their minds by making appropriate concessions. Negotiators would usually set their terms from the start to avoid any standoffs during the negotiating process. Each point should be documented, and each party should have a copy of the agreed-upon point.

There is often a disparity in communication skills, and negotiations may become counterproductive, distracting, and redundant.³ Bridging these gaps and addressing the complex construction and technical issues of a negotiation can be difficult, but setting agendas ahead of time, organizing stakeholders, and ensuring all interested parties are kept up to date with developments can minimize unnecessary delays. In addition, good judgment, intuition, and creative ideas are vital to the negotiation process, but keep in mind that poor judgment will hinder the communication process.

People unconsciously tend to negotiate based on positions and seek to explore possible options to advance their interests. This communication may be seen as authentic, but these personal interests may bias the individual. Recognizing these positions and building communication skills enable negotiating parties to better understand each other's perceptions.⁴ Developing a solid business relationship with the other party allows the negotiating process to generate various creative possibilities by helping to avoid narrowing it down to positions and personal interests. Building communication skills in negotiation requires structured arguments and can also be used by skillful negotiators to positively influence the other party, as filling in communication gaps is also essential.⁵ Without question, having strong communication skills enables a negotiator to express their feelings about a particular point in an acceptable, nonconfrontational way.

As a back-and-forth persuasion procedure, negotiation requires that the parties frame the issues accordingly. Make note that most negotiating parties perceive their values and interests differently.⁶ In persuasive arguments, best-in-class negotiators invoke the shared interest and common good, emphasize the collective benefits and downplay personal costs. Strong negotiators broaden or narrow the focus strategically and table any contentious issues by making upfront commitments to allow the parties to move through issues that generate momentum and a sense of accomplishment within both parties. Top negotiators discourage any counterarguments early in the process. Effective negotiation relationships are forward-looking, fair, achievable by both parties, and forgiving by introducing shared-risk options.

Plan the BATNA

The Best Alternative To a Negotiated Agreement (BATNA) is defined as the best alternative option a negotiating party uses if an agreement cannot be reached.⁷ In plain terms, the BATNA is the alternative – or “Plan B” – if negotiations fail. BATNA is the most potent option that enables a party to walk away from the talks. Before beginning discussions, it is best to invest the time in identifying the BATNA for one's party.

The following is a specific process developed by Harvard Law School that is used to create the BATNA:⁸

1. List all alternatives to the current negotiation – What could you do if negotiations fall through?
2. Evaluate the value of each alternative – How much is each worth to you?
3. Select the alternative that would provide the highest value to you (this is your BATNA).
4. After determining your BATNA, calculate the lowest-valued deal you are willing to accept.

Negotiate the Process

Do not assume that both parties will agree on determining where and when to meet, the agenda items, and who should attend the negotiations. Instead, carefully discuss how you will negotiate in advance, as this is essentially the plan for the negotiation. A best practice is to have all these process-related issues discussed and agreed to before the start of negotiations.

Most participants have difficulty closing the deal because they fail to negotiate a specific process at the beginning of discussions. Before discussing the particular parameters of one's party's talks, agree on how the negotiation should proceed. These parameters include:

- Determining negotiation ground rules
- Identifying a meeting facilitator
- Deciding on the negotiation environment
- Outlining the agenda and order of the discussion issues
- Defining a time frame for the process
- Primary escalation contacts for each party at a management level that can resolve issues by a phone call when needed.
- For post-contact negotiations, outline how to handle resistance to proposed changes to a contract.

Listen

When the negotiations start, most participants cannot resist the urge to think about what they will say while others are still making their point. Instead, leading negotiators listen carefully to the other party's arguments, paraphrase what was said to confirm that they understood, and acknowledge any frustration or emotion in the discussion. This typically allows them to acquire valuable information and influence the opposing party to mirror their effective listening skills. Communication should focus on how each party is affected by what is said, meaning upstream and downstream across the trades.

When all sides in a negotiating phase discuss issues freely and receptively, they can better hear and appreciate the opposing party's message, allowing them to react respectfully and productively. A clear presentation of the discussion points ensures that the message is understood correctly. Advanced negotiators try to block out all internal and external distractions and focus on the negotiations.

To ensure active listening by both parties, reschedule meetings if there is a time conflict, or insist on breaks to keep the teams engaged and available. Active listening without disruptions is necessary for successful communication.⁹

The best negotiators have excellent listening skills; they are quiet listeners who maintain eye contact, do not disturb the other party when speaking, and negotiate cooperatively and competitively.¹⁰

Competitive negotiators may lie to obtain a favorable outcome. They attempt to alter the opponent's viewpoint and persuade them of how unproductive it would be if the other party used their terms. Competitive negotiators seek out and exploit weaknesses in the opposing party and the deal usually only involves short-term relationships. In collaborative negotiation, both sides work together. Cooperative negotiators set long-term goals and are willing to work together to attain them. Negotiation, at its heart, includes a fundamental conflict between whether parties believe they need to collaborate or compete to achieve their objectives. However, it is crucial to remember that reaching an acceptable agreement involves both cooperative and competing goals. As a result, to find a settlement, both cooperation and competition are required to some level, with a heavy focus on cooperation/partnering.

Personal emotional management is an important fundamental skill to have during the negotiating process, particularly when communicating, and it begins with understanding one's weaknesses and strengths. It is essential to ensure that comments do not unwittingly offend other parties during talks. To this end, the dialog must be clear and accurate.

Communication will help you build confidence, and it is also essential to know the difference between aggressive and assertive behavior. Though both attempt to influence another person's decisions, assertive behavior differs significantly from aggressive behavior. The Center for Management & Organization Effectiveness defines these behaviors as:

- **Aggressive:** Denies the rights of others, insults, wins at all costs, is emotionally charged, lacks empathy, and damages others' self-esteem.¹¹
- **Assertive:** Is non-emotional, honest, fair, direct, allows others to save face, uses eye contact and positive body language, and has good listening skills.¹²

Since human emotions are unpredictable, developing strong communication skills in negotiation processes is vital. Negotiations are best presented as joint problems with standard solutions. Adept negotiators can establish a sense of transparency, comfort, and unity in the pursuit of a solution. They are constructive communicators who convey the importance and legitimacy of the concern to the opposing party without delivering lengthy monologues.

Make Trade-offs That Work

Participants are constantly forced to make concessions and requests on an area, such as price, but the best negotiators seek multiple issues to get more of what both sides want. During negotiations, the best negotiators look for trade-offs. They explore numerous issues and specifically identify those that the other party values highly and those they value less. Then they request that the other party concede an area of lower value in return for a concession on one of their high-priority areas. Ultimately, such trade-offs result in an advantageous outcome for both parties.

The Negotiation Anchor

Anchoring happens when a party uses only the initial information provided to make subsequent decisions during the negotiation process. When making decisions, the anchoring effect is a bias that stems from

the typical human propensity to depend on the initial piece of knowledge presented to them. Because other choices are apparent only by moving away from the anchor, there is a bias against pursuing further details once an anchor is placed.¹³

According to research, the first number or suggested method given in a negotiation significantly impacts the subsequent discussions, no matter how arbitrary. Knowing this bias is an advantage for a negotiator to help justify why either party is holding a particular position. If the other side anchors first, it is best to keep their objectives and BATNA close by and revisit them as needed.¹⁴

The party who makes the initial offer in a negotiation is more likely to influence the direction of the talks in their favor due to the anchoring bias, and the same is true for the party who drafts the first agreement.¹⁵ However, to achieve true value for all, a better approach is to request that both parties justify any changes to either reduction in scope, other responsibilities, or liabilities.

Option Clauses

Negotiators sometimes get stuck when they cannot agree on how a given situation will unfold over time. In these situations, the best negotiators will suggest optional deal clauses, a measured bet on how future events will play out. For example, if one doubts a subcontractor's ability to complete a project on time, offer a "shared risk" contract option that allows for upside financial benefits if they finish early and a shared monetary impact if they are late. This enables both parties to participate in the upside if the work is completed early and controls the risk. They should have no issues accepting these contractual terms if they believe in their arguments.

Lower Risk with Milestones

Another way that the best negotiators strengthen the long-term value of their contracts is to provide benchmarks and deadlines to ensure that obligations are fulfilled. Clearly define and document the impact for both parties if a milestone deliverable is missed.

Incorporate daily or weekly meetings into the contract to monitor progress and, if applicable, renegotiate to maintain profitability.

CONTROL THE PLAYING FIELD

Identify Who is Involved in Negotiations

The most successful negotiators take ample time to think about who should be involved. Although most management teams believe they know better and are best qualified to conduct the negotiations, this is not always obvious. The answer is to identify new sources of value and creative deal structures. The book “3-D Negotiation: Powerful Tools to Change the Game in Your Most Important Deals” recommends identifying the “highest value” players that can propel the negotiation to:

- Create the best possible relationship and highest possible value for the customer;
- Identify the lead point person for each party – This can vary depending on if it is a pre-contract or post-contract negotiation situation;
- Involve the complete set of potentially influential players;
- Identify potential deal blockers; and
- Include agents and other representatives, those who must sign off on a deal, and those who must implement an agreement.¹⁶

Identifying these participants in the negotiation allows the most successful negotiators to understand and have perspective when negotiations become challenging and who to look to move things forward again.

Define Where Negotiations Will Occur

Typically, the first negotiation design decisions are whether to meet in person, have conference calls or video conferences, or use a combination of these methods. Most negotiators are usually optimistic about winning a “home court advantage” and prefer to negotiate “on their own turf.”¹⁷ When faced with

a complex negotiation, familiarity with your office atmosphere will put you at ease. You can also manage the setting, including the conference room layout while negotiating in your offices. Going to the other party’s office to negotiate, on the other hand, has significant benefits by letting the other party know you are flexible and willing to travel to them, and you have an opportunity to learn about the opposing party’s company and culture.¹⁸ Allowing for alternate locations for negotiations will help all sides learn and show their flexibility in the negotiations.

Negotiating via video conference or teleconference may be helpful if time constraints prohibit the parties from meeting in person. However, this can present issues when negotiators have a hard time identifying physical cues from one another. It can lead to miscommunication, confrontation, and wasted time, making negotiations difficult and increasing the chance of a deal falling through.

The Initial Draft Agreement to the Other Party

A draft agreement is a non-binding document that has no legal force. It is a short action plan for the parties to convert a “draft agreement” into a legally binding contract. The most successful negotiators present the other party with a draft agreement rather than starting deal negotiations from scratch. Draft agreements are commonly used in construction-related negotiations, although these drafts are not always appropriate because they may influence the negotiation and create anchoring bias. Therefore, negotiators must put forth a purposeful, carefully thought-out initial draft and be aware of the potential negative aspects of anchoring bias when presenting draft agreements. In other terms, you can define agreement as any arrangement between two or more parties to achieve common goals.

CLOSE THE DEAL

Benchmarks and Deadlines

When it comes to moving stalled negotiations forward, deadlines are essential. When designing the negotiation process, it is a best practice to set short-term benchmarks and a reasonable deadline to complete discussions. As the deadline approaches, inexperienced negotiators are always concerned that they will compromise too much but bear in mind that the other party is also impacted by the deadline. Accordingly, deadlines can drive concessions and creative thinking from both sides.¹⁹

To avoid unnecessary delays, make sure to include language in contracts that defines the parameters, including time to respond, pay, late payment fees, early payment terms, etc.

The Pace of Negotiations

When the negotiations are getting too emotional, or when delaying can apply pressure on the other party to reach an agreement, slowing down negotiations can be advantageous. In simple terms, when “time is on your side.” It may also be beneficial to “end on a good note” and table more contentious items for a later meeting.

While it may seem counterproductive, deferring negotiations to the next day, week, or even longer may encourage the other party to close sooner. Allowing time to elapse provides a less anxious and stressful environment for assessing the next steps. It helps each party determine what has been achieved, what problems remain, and whether they can continue with discussions or regroup to evaluate options.

Speeding up negotiations can also be productive by providing an outline of terms early in the process to frame the negotiations. All parties can then have a clear view of generalized terms and negotiate from there.

Especially in post-contract negotiations, it is very important to be prepared to make the process as efficient and concise as possible by demonstrating familiarity with the current job as a differentiator.

COMMON NEGOTIATION ERRORS

Poor Planning

The most successful negotiators make detailed plans, know the important issues, and understand the alternatives should they fail to reach an agreement. They know their party’s bottom line and the walkaway point. After preparing the agenda, outline the same for the other party: their preferences, alternatives, and bottom line. When negotiations begin, test the assumptions to determine the opposing party’s priorities.

The Fixed Pie Concept

Many novice negotiators make the common mistake of not realizing a “congruent issue,” which means both parties want the same thing. The person’s thinking is, “We cannot expect to get everything we want, so we will split the difference.” This assumption that the negotiation is a zero-sum game, in which their interests conflict directly with the other party’s interests, is a very narrow view. In contrast, more successful negotiators seek ways to expand the pie through collaboration rather than overtly trying to get a bigger slice.

Do Not Focus on the Anchors

Anchors, discussed previously, are a part of the “anchoring and adjustment” negotiating dynamic, which involves setting the parameters for negotiation. When one side makes the first bid, backed by what they have learned about what is needed and what the opposing party needs, they anchor the agreement closer to their goal agreement.

You can do a few things to make the first offer more attractive to the recipient. Present options that the other party can select from or combine in an à la carte style. Keep in mind that precise numbers are preferable to rounded ones. “For instance, research shows that homes with precise listing prices sell for more, on average, than those with a more rounded listing – even when that rounded figure was higher.”²⁰

Skip the Victory Lap

Finally, never publicly celebrate when parties negotiate a strong deal in favor of one side (such as turning to the other party and letting them know they could have negotiated a better deal). This will only encourage the other party to not work cooperatively in the future and seek “payback.” Maintaining professional relations with opposing parties is important because there may be a future opportunity to partner and work on a joint venture project.

- Use objective criteria.
- Control the playing field.

In business, negotiation skills are not just “nice to have.” They are essential. Finally, a best practice is creating a plan ahead of the actual negotiations to give the negotiator more confidence by knowing the potential paths in the process. The most successful company negotiations lead to better and more consistent results by having this plan.

SUMMARY

Taking a revised view of negotiating is the first step to improved negotiating performance and results. Using joint problem-solving instead of a series of compromises can yield long-lasting solutions for both parties. Recognizing why people behave the way they do and having the ability to communicate in a wide range of behavioral styles will allow the skilled negotiator to consistently achieve satisfactory outcomes. Most negotiators “follow the plan” or strategy, but understanding the techniques of the other negotiating party and modifying the approach accordingly can be the key to success.

This approach will allow both parties in a discussion to feel as if they have reached an acceptable agreement and no party lost out on a fair deal. It is particularly advantageous when you have an ongoing relationship with the other party and wish to remain on good terms. In summary:

- Take a proactive approach.
- Know your party’s BATNA.
- Separate the people from the problem.
- Focus on listening and building a solid business relationship.
- Concentrate on your party’s interests, not anchored positions.
- Develop creative options for mutual gain that expand the pie.

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