

Mitigating Risk in Project Negotiations with Proper Pre-Planning **Ben E. Voivedich Jr., PMP President PMCC, Inc.**

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Introduction

As projects continue to become more complex and involve ever changing technologies, the need for the project teams to negotiate with stakeholders involves levels of risk to the overall project that may be uncomfortable or unacceptable to the project owners or client. Yet, my unscientific survey of training class participants over the last five years has revealed that less than 20% of those who claim the title of project manager or team member have received any formal Negotiation training.

Given a negotiating life cycle that includes pre-planning, formal planning, performing the negotiation, and post negotiation review, this paper is oriented toward project team members without formal negotiation training that are looking for easy to follow “guide posts” to pre-plan and get ready for negotiations with vendors, business unit representatives, and other project stakeholders. It is assumed that the negotiations are not always adversarial in nature and that the stakeholders have a general interest in working together to resolve the problem. The guidepost or checklist items are meant to serve as a “mental launching pad” for an upcoming negotiation or as an organizer for the planning of a larger full-blown negotiation.

Before addressing negotiation pre-planning, it might be useful to characterize what a negotiation is and is not. My trusty old copy of the American Heritage Dictionary of the English Language provided to me as a plebe at the United States Military Academy in 1971 defines negotiate as “to treat with another or others in order to come to terms or reach an agreement.” Negotiating is not haggling which is defined as “arguing in an attempt to come to terms.” Yet, I have been in many project negotiations that reminded me more of a scene from a bazaar in the Middle East where a merchant and I haggled over the price for a gold necklace than the type of negotiation needed between project stakeholders to meet the deliverables of the project. Haggling is invariably focused on price and pride (and in some cases delivery) and when the negotiation is narrowed to one and only one issue, there will usually be a “winner” and a “loser”.

In Dr. Howard Raiffa’s book, the Art and Science of Negotiation, he describes an auctioning scenario in which he has pairs of students “bid” on a dollar (US) bill. [Graphic of two people tugging in opposite directions on a dollar bill] The highest bidder gets the dollar bill and the loser pays whatever they bid to the good doctor as the “auctioneering fee.” How high to you think students will go? In some cases, the winning bid for a dollar bill can exceed four dollars and the role-play scenario passes from lesson to genuine anger and frustration between the two bidding students. That same sort of mindset can prevail when project teams haggle instead of negotiate. Instead of focusing on the goals of the deliverables of the project, the negotiation can degenerate into a personality clash between individuals or departments with no focus on the project deliverables.

So, assuming that you are interested in conducting a negotiation instead of a haggling session, what are some ways that we can mitigate the risk of failure? I propose the following checklist items that you should review every time you pre-plan for a negotiation:

1. Are there more than two major parties involved in the negotiation?
2. Can the other party do the deal now?
3. Is the negotiation repetitive?
4. Is there more than one issue and, if so, can they be linked?
5. Can the other party impose a time window?
6. Are threats possible and if so, do I have a BATNA?
7. Is Agreement required?
8. What does agreement look like and how will we seal the deal?
9. Are the negotiations public or private?
10. What are the cultural norms?
11. Are your emotions (and prejudices!) under control?
12. Can we involve a third party to help the negotiating process?

By reviewing the list and thinking it through, hopefully you will be better prepared to engage in a “small” negotiation or begin the actual planning of a larger or more complex one.

1. Are there more than two major parties involved in the negotiation?

Envision that you are preparing to meet with a valve vendor to finalize the design and delivery of some critical items for a capital project at your plant. Are you, as the project manager or the team member responsible for the deliverable, and the vendor sales representative the only two parties to the negotiation? In training class situations when I have asked this question, often times the answer is a resounding yes from the engineers that are present, "It's my deliverable. I have the technical expertise and the authority to award the work." Yet upon further reflection or prodding, team members come to realize that there are very few situations where there are only two major parties. In our scenario, what about the Procurement department's involvement? If they have the ability to cancel the deal, they are a major party, and should be consulted before the negotiation. While the decision on which valve to use may be the engineer's choice, the actual award of the work often involves a purchase order or AFE process? How will Procurement's involvement affect the timing for the award and the delivery? Is the vendor on the qualified list? Do they have the necessary insurances? Are they ISO compliant? Even if your company procedures make you, as the engineer, the lead negotiator, you can still benefit from discussing with a procurement professional what is required from the vendor to comply with the corporate procurement guidelines or policies.

The "learning" from this checklist item: Mentally, go over the parties to the negotiation on BOTH sides. How can you represent the interests of those who are not present but are part of your team? How will you be impacted by the other party's "hidden" partners? Is there a third party with whom both of the current parties to the negotiation must deal or will be impacted by? Failure to identify and involve ALL major parties to a negotiation represents a significant risk on the project.

(For those attending the seminar, we will cover a case study involving the site selection for a plant and the impact of unidentified major parties.)

2. Can the other party do the deal now?

In the United States, the purchase of a new car often involves haggling over the price at a car dealership and the car sales personnel are usually highly adept and trained with a thorough knowledge of negotiating techniques. When you show up on the car lot the very first thing that most people will do is request a test drive. The salesperson will smile and promise to hurry back with the keys. As you settle behind the wheel of that shiny new car with that delightful "new car" smell, the salesperson will invariably ask, "Provided that we have the car that you want at the price you are looking for, is there any reason why you couldn't drive away in that car today?" If you reply that you are waiting on an inheritance check from the death of your favorite relative that isn't due for three months, do you believe that the salesperson will quote you their best price now? Or wait until you return with the money before getting down to the hard bargaining session that is part of any actual negotiation.

One of the very first questions that you should ask in any negotiation is whether the other party can do the deal now? Sometimes they will reply that they have to "run the deal" by their manager but they don't anticipate any problems. You don't have to stop the negotiation but you will probably want to hold on to some bargaining chips!

The "learning" for this checklist item: First, plan to ask the question early in the probing phase of the actual negotiation. Then mentally plan how and what you will negotiate in this session if you know that another session will be needed to "close the deal".

3. Is the negotiation repetitive?

Traditionally, as a consulting firm, my company represents owner/clients. But when I was younger, I was general manager for a large contracting company. In talking to client/owner project teams about project negotiations, I am amazed that they often overlook the power in a negotiation that can be derived from the

ability to award repetitive work. My years of experience have taught me to always look for honest opportunities to include the possibility of repetitive work; it will drive down prices and sometimes lead to accelerated deliveries.

The “learning” for this checklist item: Decide whether the upcoming negotiation involves the possibility of repetitive work. If it does, how can that fact be applied during the actual negotiation? My own experience is that parties that know that they will be working together on unrelated future projects often avoid “death grip” haggling. This symbiosis is particularly prevalent among industrial plants and the limited number of service contractors that can meet their exacting needs.

4. Is there more than one issue and, if so, can they be linked?

My experience is that most people believe that all project negotiations boil down to the “bottomline” costs. Yet, I also know that in a number of project negotiations that claimed to be focused solely on the “bottom line” that offers to trade increased cost for accelerated delivery were quickly accepted. You have nothing to lose most of the time in a negotiation by probing; all they can do is say no! So try to link issues: “I envision a scenario where I’ll do this if you will do that. Is that acceptable to you?”

Another example of linkage that a company might use in a negotiation with a contractor is the use of the company name on client websites. Most contractors (and consultants) highly value the ability to reference the Name and types of work done for clients on their websites. Savvy client negotiators could use this “throw away” negotiating point to wring a small and/or needed monetary concession from the contractor representative. “Listen, boss, I had to drop my price another 2% but the client agreed to let us link our website to theirs and we can use their name in our advertising material provided we don’t list specific projects.” Linkages that align the interests of the parties are proverbial “win win” situations; proactively seek them out!

Of course, you can’t link issues that you have not identified, so you must make a list of the issues and then look for the links. Time, cost, delivery, varying grade of material, specification references, codes, packaging and shipping and vendor drawings are just a few of the issues that even a “small” negotiation can involve in the Oil, Gas, and Petrochemical industries. (Having worked a number of Information Technology projects over the years, I can tell you that their list of issues is just as daunting and includes items like what code to use (Java or C++), what CASE tools, what databases, what operating system, what networking hardware, etc.)

The “learning” from this checklist item: Make a list of all the issues and look for linkages that you see and that you believe the other party will see. Differing views of the value of stocks serves as the engine of exchange for stock markets around the world. Differing views with regards to the various project issues can serve as the engine that drives the project negotiation to a deal that serves the interests of all parties.

During the seminar presentation, we will deal with a case study of the ability of the “smaller” party to link issues to defeat the “larger” party to the negotiation.

5. Can the other party impose a time window?

As a young project manager/estimator for an offshore fabricator of jackets and decks, I had a vendor representative whose valves were specified in the contract call and arrange a meeting with me at 2:30 pm to close an order. When he arrived, as we were sitting down at the conference table, he asked me how long it took to get to the airport because he had a 5 pm flight back to Houston. I replied that it took about an hour and half. “Good, then we need to get started because I need to get out of here in an hour to catch my flight!” What had happened? The negotiation has begun quickly and I needed to make a key decision. Why would this skilled salesman ask such an obvious question about the travel time to the airport? Because he wanted to put me into a time window that accelerated the process and might possibly forced me to make a quick decision without reviewing all the issues. In the actual case, I replied, “Listen, I think we need more than an hour to discuss all the issues but I don’t want you to miss your flight. I have to make a

decision by day after tomorrow; can you come back by then? If you can't, I'll have to deal with another local vendor who handles "or equal" equipment specified in the engineering documents. I don't like dealing with "or equal" components because this client usually doesn't like it, but I'll do what I have to do to meet my project milestones." The salesman thought for a second and then asked me if I had a phone he could use. When he returned, "Listen, I just found out that there are flights back to Houston as late as 9:30 tonight. Tell you what if this goes past 5 pm, I'll buy the pizza." Pizza wasn't needed and we got the deal done by close of business at 5 pm.

The "learning" from this checklist item: The party that negotiates under time pressure can make decisions that they will later regret. Since most negotiations do involve some sort of time pressure, planning in advance can yield big dividends. And, by the way, don't put yourself in the time box early by giving your own management unrealistic delivery dates! (Could be a subject for lots of future Seminar/Symposium papers.)

6. Are threats possible and, if so, what is your BATNA?

In project negotiations, parties can make threats, especially if things are not going the way they like. I have read dozens of negotiating case studies of political situations where threats occurred. However in dealing with heavy industrial projects, I can't claim to have seen a lot of overt threats in the concept or development phases of the project life cycle but there have been many implied ones. Again, because of the symbiotic relationship between, for example, oil companies and their highly specialized engineering contractors, both parties have a vested interest in not letting things get "out of hand" while negotiating for the work. But because threats are always possible, I believe that it is prudent, even on "small" negotiations, for the parties to know their BATNA. This acronym, Best Alternative to a Negotiated Agreement, is taken from what I believe is the best single book on negotiations on the market, "Getting to Yes, Negotiating Agreement without Giving In" by Roger Fisher, William Ury, and Bruce Patton. It is only a couple of hundred pages long and can be read over a weekend. (It is my hope that it will become part of the PMP training packet in the future!) By forcing yourself to visualize what you will do if you don't reach agreement, it can assist you in both being more realistic about how best to serve your interests in the present negotiation and also how to mitigate your risks if the negotiation fails.

The "learning" from this checklist item: Always know your BATNA even if you don't anticipate threats. It is an essential risk mitigation strategy for negotiations.

7. Is Agreement Required?

It is important to envision the outcome for the negotiating session that you are planning for. Not all negotiation sessions need to end with agreement. As discussed previously, the current negotiation session may be designed only to layout the issues with a future meeting involving higher level management input to the present session serving as the basis of the 'hard bargaining' phase.

Sometimes, one of the parties to a negotiation may not want to reach an agreement. Some negotiating teams hope that with the passage of time that either the issue will go away or be resolved by external events occurring in the same time frame. If your side wants to reach agreement, one course of action is to raise the issue with the delaying party and see what they say. Another course of action is to suspend the negotiation. A fundamental tenet of negotiation, in my opinion, is that you shouldn't talk for talk's sake. Never accept the statement, "Well, we're not ready to negotiate but there is no harm in getting together and talking." Just talking can raise expectations about an impending negotiation and put you, inadvertently, into a time box. This is particularly true of public and political negotiations but I have seen it occur on projects.

The "learning" from this checklist item: To mitigate the damage from unrealistic expectations for the impending negotiation, know whether agreement is required or expected by your management. And also assess whether you think the other party is motivated to come to an agreement.

8. What does the Agreement look like and how will we seal the deal?

How do you know when you have an agreement? In sales, there is an old saying about “you can talk yourself into a deal and then talk yourself out of one!” I have seen this happen a couple of times over the years and it mainly involves one or both of the parties not knowing exactly what it is that they want.

Once you have a deal, how will you seal it? Often times this involves a contract signing or approving a change to the contract. In either case, you must know the contract and its terms and conditions! You would be amazed at the number of times I have been on projects where the project manager did not know the contract terms under which the project was undertaken. Negotiating changes in this scenario can be very risky!

The learning from this checklist item: Before you begin any negotiation, develop a list of things that must be addressed to your satisfaction. Also review all proposed contract documents and attachments. By the way, once your list of negotiating goals is reached, you don’t immediately have to bring the negotiation to a close (but I usually do). If the other party wants to keep talking, there may be additional “wish list” items that you may be able to negotiate.

9. Are the negotiations public or private?

Most project negotiations that I have been involved with have involved “private” parties. But once in a while, a private negotiation can go public and then all the “rules” change! If any of you, particularly engineers, want to enter a public negotiation just armed with the facts, be prepared for severe disappointment. In a public negotiation, the whole gauntlet of human emotions come into play and demanding that the other party deal with the facts can appear “hard hearted” at worst or naïve at best.

As part of the Seminar presentation, I will present a real case scenario of a private negotiation that goes public.

The learning from this checklist item: If your negotiation will be done in public and/or involve the media, be sure to discuss the matter with the corporate public relations department or legal department. They are trained in dealing with the media and public issues. They can keep you from looking like a “hard hearted” project manager that is unsympathetic to the needs of “kind hearted” political activists!

10. What are the cultural norms?

When discussing cultural norms, a lot of people mistakenly assume that you are going to address international negotiations. While international negotiations can be interesting to study, understanding the culture that exists within your own company and that of the other party to the negotiation is critical.

One element of the culture is how we negotiate. When dealing with engineers, scientists, and other highly intelligent team members it can be difficult to convince them that the price negotiation will involve give and take and that our first offered price may not be acceptable. Some members of your team may consider it disreputable to make a first offer to perform a job for \$300,000 when the facts indicate that it can be done for \$275,000 including an acceptable level of profit. They consider starting a negotiation from a higher number to be a waste of time and, in some cases, unethical. In this type of scenario, I have asked the team how we will be perceived if we started with our “bottom line” number and the other party kept asking for additional concessions and we said no because we gave them our best offer to begin with. Most replied out of frustration, “Well, they can take it or leave it” even though they knew better and knew that agreement would be required that would in fact cut into the profit of the job. If your projects operate in a culture where the price negotiation involves “give and take” then you must deal with this fact in preparing for the negotiation. If you do not, you can be perceived as “hard headed” when you view yourself as being highly ethical because you put your best deal on the table immediately. And the negotiation may drag on needlessly because the other party simply needed a small price concession to “save face” with their management.

The learning from this checklist item: Negotiation involves more than “just the facts.” While facts are powerful “tools” for a negotiation, dealing with human emotions is also important, no matter how “distasteful” you may find it. In most corporate cultures, the “client/owner” representative can “lose face” if they do not receive some type of price concession as part of the overall negotiation. Be prepared to deal with this fact. (And, by the way, as a young production engineer, I was one of those that wanted to get “straight to the bottom line” and I considered most price negotiations as a needless waste of time. I learned with experience that negotiations involve dealing with both facts and human emotions.)

11. Are your emotions (and prejudices) under control?

If you are to be the lead negotiator for a project team, it goes without saying that you must keep your emotions under control. But what about your prejudices; those preconceived notions that may not bear up under examination? Examples include:

- Those operations people are always trying to “gold plate” the job
- Programmers are arrogant
- Consultants read a book one day and charge outrageous rates to implement what they read the next day!
- Engineers will never give you a simple yes or no.

All of us have prejudices of one sort or another. Most are benign and involve things such as choices of restaurants, clothing, and the like. But in project negotiations, prejudices about particular people, departments, and policies can be roadblocks to a successful negotiation and, in some cases, illegal under current law.

The learning from this checklist item: Know thyself. If you feel your emotions and prejudices are not under control, as a practical suggestion let someone else lead the negotiation. My first negotiating experiences involved situations where my boss didn’t like dealing with a particular department and would send me to negotiate delivery dates since “If I go, they’ll just say no to any dates I ask for.” If you are a team member in a negotiation, “bite your tongue” rather than blurt out an emotional retort to a “provocation” from the other side. They could very well be trying to manipulate you into an emotional display that serves their interests and not yours.

12. Can we involve a third party to help the negotiating process?

There are basically three types of people that can assist a negotiation: facilitators, mediators, and arbitrators. Facilitators help with environmental issues such as keeping the meeting moving and allowing all parties time to express their ideas or viewpoint. Mediators help to “flesh out” positions and offer areas of common interest to parties that may be having trouble reaching an agreement. Arbitrators (and there are several different kinds) will often review the issues and decide when the parties cannot reach agreement on their own.

Only recently have the industries with which I work begun to make regular use of facilitators. (A lot of them have realized that most experienced project managers are by training “natural” facilitators” and can be used to facilitate meetings for other projects.) Formal mediation and the use of arbitrators are not in common use on the projects I am involved with. While I can envision several scenarios where a mediator could be of use in major negotiations, I can think of no situation where arbitration would serve the interests of the project team in the industries that I serve. In an arbitrated negotiation, there will be a winner and a loser. And given the previously stated symbiotic relationships that exist in the industries I serve, the losers can have a very long memory (and tenure) at the companies they represent

The learning from this checklist item: As a project manager, you are often expected to be the facilitator for a negotiation. If you are uncomfortable in this role or would prefer to be able to observe the other party during the negotiation, by all means, use a facilitator for the meeting. The other party may also feel more comfortable using a facilitator instead of you as the project manager “setting the agenda.”

In closing, I would like to reiterate the importance of planning for a negotiation. Like all other facets of project management, there is often a rush to “do” when “planning” is properly called for. Sitting down and going through a mental checklist before holding a negotiation isn’t “sexy” or “exciting” but it is something that professional project managers and team members must do if they want to mitigate the risks of project failure.

For those of you who are fortunate enough to attend this year’s Seminar/Symposium; see you there! If you cannot and have any comments on this paper, please feel free to contact me at benvee@pmcctech.com.

References:

Books

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