

YOUR FOUR-STEP NEGOTIATION CHECKLIST

BY JOHN "JOHNNY" E. MILLER

Negotiations are won or lost depending on the quality of preparation and planning. Use this checklist to ensure your team has all bases covered.



Negotiation—start out with an ideal and end up with a deal.¹ Negotiating is the process by which two or more parties with different needs and goals work to find a mutually acceptable solution to an issue.²

In my 30-year contract management career, I have negotiated many contracts and other deals. In order to systematically cover the multitude of issues in a typical negotiation, I have developed a practical four-step negotiation checklist.

STEP #1

Facilitate development of a negotiation plan, which includes the team's key strategies, your position going in, and your desired outcome.

Many negotiations are won or lost depending on the quality of preparation and planning for a specific negotiation—the more difficult the negotiation, the more intensive the preparation and planning. The negotiation team has to dedicate the time and energy to properly prepare and plan for negotiations.

Lack of adequate preparation and planning is the single most serious handicap for a negotiation team, despite the negotiation experience of the individuals on the negotiation team. By failing to prepare, you are preparing to fail.³ Prepare a specific, written goal-oriented negotiation game plan.

Select the members of your negotiating team and choose the venue where negotiations will be conducted. What documents and other materials will be required? Do your homework. Will your team be able to conduct a dry run of the negotiation plan? Give each team member a copy of the plan so that each member can stay sharply focused during the negotiations.

Identify and prioritize each of your team's negotiation goals. Commit to goals that are specific, concrete, justified, legitimate, achievable, optimistic, and challenging. Have appropriately high expectations. Have clarity of purpose and be goal-focused. Strive for a principled integrative interest-based negotiation (problem solving) rather than a positional negotiation (my way or the highway).

For this specific situation (situational analysis), state the negotiation team's key actions, strategies, tactics, counter tactics, and defenses that are best suited to achieve the team's negotiation goals.

How will the other party view the situation? Put yourself in their shoes. What do you think are the other party's prioritized goals of the negotiation? Do they see the relationship as important? Do the stakes matter as much to them as they do to your team? Based on a situational analysis of the other party, anticipate the strategies the other side can be expected to use to achieve their negotiation goals.

Plan to have the right people at the negotiation effectively discuss the applicable technical, operational, financial, and contractual issues with the other party.

Are there any personality types, bargaining styles, or emotional issues to anticipate and address prior to the start of negotiations? Will relationships play a role in the negotiation?

Plan to be an active listener. The key communication skill in negotiations is listening. Plan to be silent at times while using active listening to de-escalate conflicts. We have one mouth and two ears...use them in that ratio. You can observe a lot just by watching.⁴

Plan to act with personal integrity. Credibility is an important short-term and long-term asset. What goes around comes around.⁵

STEP #2

Lead the team in implementing the negotiation plan.

After facilitating development of an appropriately written, effective negotiation plan based upon the specific situation, plan to actively lead your team to fully implement the plan before, during, and after negotiations.

STEP #3

Adjust strategies and methods as needed during negotiations to achieve the desired outcome.

Negotiation is different than flying an airplane. A pilot follows a precise pre-flight process before takeoff—there is no room for deviation. However, the negotiation process involves continuous choices and adjustments of strategies, methods, and approaches. Being locked into one negotiation strategy or set of tactics and methods to implement the pre-determined negotiation strategy is inefficient and often results in unwise solutions.

Be flexible and creative. Adjust your walking-in bottom line and your walking-in best alternative to the negotiated agreement (BATNA) if the “trip wires” and other negotiation dynamics alter them. Be flexible but smart about making concessions. Brainstorm options. Be flexible about strategies for effectively closing the negotiations.

STEP #4

Facilitate assessment of the negotiation team's activities.

After the completion of negotiations, prepare an honest written assessment of the negotiation team's activities and performance. Do a “lessons learned” analysis with the assistance of the other team members. For continuous improvement purposes, plan to document the lessons learned by your negotiating team. Distribute the lessons learned write-up to the other team members and your supervisor.

This negotiation checklist is not exhaustive. Every deal has some unique aspects that may not be addressed in the steps above. However, if you routinely use this practical four-step negotiation checklist as a resource when you negotiate a contract, you will be pleasantly surprised with the

STAGES OF INTERACTIVE NEGOTIATION

- 1 ESTABLISHING RAPPORT.** Obtain information on interests, issues, and perceptions of the other party. Exchange information. Probe first, then disclose. Plan on how your team will handle the other party's leverage (if any). Plan how your team will use its leverage (if any). Establish an agenda.
- 2 DETERMINING YOUR OPENING POSITION.** Will your team open negotiations or will the other party open negotiations? What is your team's going-in/opening position?
- 3 GAINING AND MAINTAINING CONTROL.** How will you influence the flow, timing, and content of the negotiations? Plan on having your team use this negotiation plan as its agenda. Separate the people from the problem. Focus on interests, not positions. Use objective criteria, standards, or other external benchmarks. Make a list of things you want, can't give up, and are willing to trade. Pursue fairness. Be creative. Invent options for mutual gain. Be flexible (when you come to a fork in the road, take it).⁶ Be patient and fight fires without burning bridges.
- 4 PLANNING FOR ALTERNATIVES AND YOUR BOTTOM LINE.** What are the "trip wire" signals to watch out for (contract type, scope, schedule, risks, terms and conditions, cost/price, capped overhead, indemnity, consequential, cap on liability, etc.)? Avoid an arbitrary selection of a bottom-line position (least acceptable deal) since it changes dynamically during negotiations.

What are your best alternatives to a negotiated agreement (BATNA) if you are not successful that you would use as walk-away alternatives? It's been said before, but you indeed need to know when to hold 'em and know when to fold 'em.⁷ You have a strong BATNA if the other party needs you to reach their objectives. Are the trip wires and the other negotiation dynamics affecting your walk-in BATNA or bottom line? What is your walk-away point (worse than your least acceptable deal)? Plan on analyzing what the other party's bottom line, BATNA, and walk-away positions might be.
- 5 MAKING CONCESSIONS, IF NECESSARY.** What concessions is your team willing to make? What is your team's concession strategy during negotiations? Do you plan to proceed slowly in diminishing amounts toward an expected level; make big moves on little issues, little moves on big issues; brainstorm options; present several options at once; or use other concession strategies? Don't "split the difference," but rather, base your decisions on facts and values. Leverage is the key to concession-making, so the higher your leverage, the fewer concessions that you may need to make; the lower your leverage, the more concessions that you may need to make. Concessions are the language of cooperation, so, if reasonable, plan to leave bargaining room in order to make concessions. Generally, don't make a concession unless you get something in return.
- 6 CLOSING THE NEGOTIATION.** What is your team's closing strategy?
- 7 DEFINITIZING THE NEGOTIATION.** Confirm and record each provision agreed to. How will the details of the negotiated agreement be memorialized? Who will draft the contract? Make every bargain clear and plain that none may afterward complain.⁸
- 8 GAINING COMMITMENT BY BOTH PARTIES.** Plan how your team will display commitment to the deal.
- 9 LESSONS LEARNED.** For continuous improvement purposes, plan to document the lessons learned by your negotiating team.

large number of substantive and material negotiation issues that will be surfaced for proper resolution. **CM**

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ENDNOTES

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