

Negotiating a Contract^{1, 2}

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ABSTRACT

The paper provides a procedural explanation of how a contract is negotiated. It explains the terms negotiation and leverage, and how gaining leverage is the main outcome of negotiating a contract. The paper looks into various negotiation tactics and analyzes them with reference to a survey. The final goal is to determine the best tactic to perform during negotiation. This is concluded upon the analysis which was done on all the tactics recognized by AMA survey. The paper mainly answers the questions - “what are the tactics followed by negotiators” and which is the best in terms of overall efficiency. A Multi Attribute Decision Making (MADM) based on satisfying conditions is used to approach the problem. A tactic by the name highball/lowball is concluded as the best tactic to follow by a negotiator. The paper also provides a post evaluation and performance monitoring for the result obtained. No negotiation tactic is more influential than the other however, under most of the conditions one of them is likely to perform better over the others if followed properly.

Keywords: Negotiation, Business Contract, Finance & Banking, Mergers & Strategic Transaction, Intellectual Property, Litigation & Disputes, Agreement.

INTRODUCTION

Negotiation is a discussion which aims at reaching an agreement by the contractor and the client. It is a process that is found as a part of contract management. Negotiation becomes a necessity as it is vital that the contractor and the client are on the same grounds when making decisions that can affect an organization or a company. The negotiator might encounter a few problems during negotiation which include falling into a dilemma due to the exposure to a large amount of facts and figures or might sacrifice the negotiation stance due to an unarguable offer. In the process of negotiation, it necessary to take into consideration the views of the client and make

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deals that wouldn't drastically effect the contractor as well. Hence it is vital to follow a certain rules and methodologies to negotiate successfully.

The concept of leverage is an influential part of negotiation. Leverage can be considered as the political advantage a contractor has over the counter-part which can help him/her seize the deal. It is directly proportional to the ability to award benefits to the counter-part. Gaining leverage is the final goal of negotiation. It is important to understand why the client may not agree with the contractor's position to discover the client's goals. It is also important to analyze the position of the counter-part. Another leverage point would be to align the contractor's interest with that of the client's necessities.

The contractor is compelled to understand the position of the counter-part by understanding the needs of the other party. A major problem is the misunderstanding of the position which might stall the negotiation. Not having a wide range of options might also be a problem because it aids in settling onto an agreement at a faster pace. One of the major problems also include 'authority of negotiation'. It occurs when the contractor makes a deal with the counter-part without knowing if he/she has the authority to make decisions. This is a massive disadvantage to the negotiator as it is a waste of time and effort. Negotiations can be intimidating. Sarcasm and bully tactics are commonly used to make the party feel inferior and uncomfortable to gain one's demands. In a negotiation, the purpose is to come to a mutual agreement. At times, aggressive behavior might build up a hostile environment and poor relationships. The two parties might not understand each other's needs due to a rise in emotions which leads to concentrating on the needs of their own rather than coming to a common ground for settling an agreement.

STEP 1: Problem recognition, Definitions and Evaluation

Contractors might encounter a problem with communication as one of the parties may not intently listen or understand the problem of the other part which may lead the negotiation to stall or show unproductive results. One of the biggest challenges in negotiation is the lack of ability to understand the position of the counter-part as one might pay too much attention to his/her interests. Another major problem could be the lack of time or preparation. Sometimes the counter-part might be underestimated and thus a contractor might go unprepared. Few negotiators use sarcasm to let down the other party to make them feel inferior. Making last minute changes will reduce the efficiency of the negotiation.

Problems faced during negotiation must be dealt with patience and confidence as they are vital for communicating the problems efficiently with the counter-part. This article will present a few tactics which can aid the contractor during the process of negotiation. The paper mainly answers the following questions:

- 1) The best method to negotiate a contract?
- 2) What the various tactics followed by negotiators are?

METHODOLOGY

STEP 2: Development of Feasible Alternatives

To avoid all the problems mentioned above, few alternatives need to be developed. Selection of any method starts with a good understanding of the choices available. Negotiators must think of the impact of each choice because each method influences the choice of contractual relationships. In a negotiation, both parties work to obtain the most feasible result for their company/organization. During negotiation, there are several tactics that might be utilized to gain leverage. Although these tactics might not be followed by every person, they are recognized by the AMA survey as the most prevailing tactics.

In the following paragraphs, few of those tactics are explained which can aid the gain of leverage from the negotiator:

- Highball/Lowball
- Bogey
- Snowjob
- Nibble
- lack of authority
- Good cop/ Bad cop
- Deadlines
- The Brink

STEP 3: Development of the outcomes for each alternative

To know which tactic is the best while negotiating, it is important to analyze each method and its outcomes which can affect the contractual relationship with the counter-part. The methods listed above might have different outcomes temporarily, but on the large scale it only results in establishing the negotiator and the counter-part on the same grounds.

Highball/Lowball

When the negotiation commences, the counter-part will present with an offer that is either very high or very low which can make the negotiator question about his/her resistance points and goals. It is one of the oldest tactics which exists. If the negotiator has not done research or is unaware of what is happening, this is a very effective approach to gain leverage.

Bogey

One of the parties can present with a topic highly emphasized which may not be of a great importance but when the negotiator surrenders to this offer, he/she might also agree to the main

necessity of the counter-party as a consequence. Such a tactic is known as the **Bogey**. When the topic is highly emphasized, the minor offer presented later might be ignored and also it is rare that one might recognize the other party's intentions hence this is a hard tactic to detect. Asking as many questions as possible is the way out of this tactic.

Snowjob

At times the counter-party might present with overwhelming information and figures which tend to confuse the negotiator and might end up in a dilemma. This could lead the negotiator to agree to the demands of the counter-part. The main aim of this tactic is to distract the negotiator. The most relevant and compelling solution is to establish a strong ground about the negotiation stance and continuing to emphasize it every now and then in the process of negotiation to prevent any sort of dilemma.

Nibble

This tactic is usually performed at the end of the negotiation. After a long and worn out discussion, the counter-part will present the required offer with a stipulation which was not discussed earlier. This is an effective tactic as the negotiator might not pay attention to the stipulated offer as he/she wants the deal to be seized as soon as possible. The best way to overcome this is to make the negotiation stance very clear and asking the counter-part to do so.

Take It or Leave It (The Brink)

According to the title, the counter-part may seize the negotiation by citing only one offer and is left open also for denial. The best way to overcome this is to lay the stance clearly and present offers which can benefit both the parties.

STEP 4: Selection of criteria

To determine the best negotiation tactic, it is important to determine the criteria which can potentially affect the negotiation. The criteria which effect the selection of our alternatives are as follows:

- First, the time that is spent on negotiation must not be overwhelming.
- The tactic that is followed during negotiation must not affect the contractual relationship with the counter-part
- The outcome obtained must be leveraged to the negotiator and counter-part.
- The efficiency of the tactic is also taken into consideration.

A table based on the multi attribute decision making based on satisfying conditions will be used to determine the most effective negotiation tactics.

| Attribute | Highball/Lowball | Bogey | Snow job | Nibble | Take it or leave it(The brink) |
|--------------------------|------------------|-------|----------|--------|--------------------------------|
| Contractual relationship | Excellent | Good | Good | Poor | Poor |
| Outcome Leveraged | Good | Good | Fair | Fair | Fair |
| Frequency of occurrence | Good | Fair | Fair | Poor | Poor |

Based on the above criteria, a judgment can be made on the overall performance of a tactic during negotiation which will lead to determining the best tactic to be followed during negotiation. It can be seen that the fourth and the fifth alternatives do not blend very well with the given attributes and hence can be eliminated.

FINDINGS

STEP 5: Analysis and Comparison of the Alternatives

| | Highball/Lowball | Bogey | Snowjob |
|---|--|---|--|
| The time spent negotiating using this tactic | One of the parties opens with an offer which doesn't consume much time as it leads to settling a deal faster. | It consumes more time than the high-balling as it doesn't approach the required offer, instead opens with an overly emphasized topic to distract the counter-part | Consumes a great amount of time as the negotiation stance is not clearly laid till the end of the negotiation. |
| The contractual relationship built between the contractor and the counter-part | There is an effective contractual relationship built between the two parties as the negotiation stance is established clearly from the beginning itself. | The relationship built between the contractor and the counter-part is not up to the mark as the counter-part is not fully aware of the negotiation stance till the end of the process and an issue of trust is created. | The relationship built is also not up to the mark as it is very time consuming and it creates a barrier of misunderstanding between the two parties. |

| | | | |
|---|---|---|---|
| The outcome Leveraged between both parties | The outcome is equally leveraged i.e., both parties are profited as a result of an effective contractual relationship | The outcome is equally leveraged between both the parties as both the parties are benefited at the end of the negotiation, since both the parties reach similar grounds at the end. | The outcome leveraged may or may not be equal as the one of the parties is left confused due to the overwhelming facts and figures. |
| Frequency of occurrence | According to the AMA survey, this tactic is found to be used 29% of the times. | According to the AMA survey, this tactic is found to be used 17% of the times. | According to the AMA survey, this tactic is found to be used 12% of the times. |

The table below shows the score corresponding to each attribute:

| Attribute | Score |
|-----------|-------|
| Excellent | 3 |
| Good | 2 |
| Fair | 1 |
| Poor | 0 |

The table below shows the score of each alternative with respect to its attributes and also its totals:

| Attribute | Highball/Lowball | Bogey | Snowjob |
|--------------------------|------------------|-------------|-------------|
| Contractual relationship | 3.00 | 2.00 | 2.00 |
| Outcome Leveraged | 2.00 | 2.00 | 1.00 |
| Frequency of occurrence | 2.00 | 1.00 | 1.00 |
| TOTALS | 7.00 | 5.00 | 4.00 |

| CRITERIA | RELATIVE RANK | NORMALIZED WEIGHT (A) | HIGHBALL/LOWBALL | | BOGEY | | SNOWJOB | |
|--------------------------|---------------|-------------------------|------------------|-------|------------|-------|------------|-------|
| | | | B | A * B | C | A * C | D | A * D |
| Contractual Relationship | 3 | 0.5 (3 / 6) | 3 | 1.5 | 2 | 1.00 | 2 | 1.00 |
| Outcome leveraged | 2 | 0.33 (2 / 6) | 2 | 0.66 | 2 | 0.66 | 1 | 0.33 |
| Time spent | 1 | 0.17 (1 / 6) | 2 | 0.34 | 2 | 0.34 | 1 | 0.17 |
| Frequency of occurrence | 0 | 0 (0 / 6) | 2 | 0 | 1 | 0 | 1 | 0 |
| SUM | 6 | 1 | 2.5 | | 2.0 | | 1.5 | |

STEP 6: Selection of the Preferred Alternative

From the above analysis it can be clearly seen that two of the three tactics result in good contractual relationships and also yield profits for both parties. And the other is not completely up to the mark. It is important factor to consider the terms at which the negotiator and the counter-part are left after the negotiation. From the table obtained in the selection of criteria, the score of each alternative can be determined and presented in the form of a table.

From the table, it can be deduced that the **Highball/Lowball** obtains the most score as it is highly optimized to fit the environment of a negotiation process. It consumes optimum amount of time compared to the others and also leaves the negotiator and the counter-part on similar grounds which can help benefit both the parties.⁷

| ORDINAL RANKING | | RELATIVE RANKING BASED ON ATTRIBUTES |
|-----------------|--------------------------|--------------------------------------|
| 3 | Contractual relationship | Highball/lowball > Bogey > Snowjob |
| 2 | Outcome leveraged | Highball/Lowball = Bogey > Snowjob |
| 1 | Time spent | Snowjob > Bogey > Highball/Lowball |
| 0 | Frequency of occurrence | Highball/Lowball > Bogey > Snowjob |

STEP 7: Performance Monitoring and Post Evaluation Results

All negotiators are not aware of all the negotiation methods. They keep following the method which they think is safe and right.

In my view, there should be easy availability of programs and material to educate the contractors about the different types of techniques and they should be aware of all the advantages and disadvantages.

The success path starts right from the selection of the right tactic. The contractors should be made aware of the different methods and techniques which could be convenient and more contract friendly as compared to their regular methods. Contractors should know that no method is more influential over another. However, some methods prove to be best under most negotiating environments. In such cases it is advised to follow the most determining surveys in the market. By following a survey, an organization/company has a track of all the tactics that are followed by negotiators which are also proven psychologically. From the table in step 5, it is clearly visible that the highball/lowball strategy is twice more efficient than the Bogey from the overall scores. ($7 - 5 = 2$). Similarly for the Bogey, the relative score stands one. ($5 - 4 = 1$).

From this it can also be noted that the highball/lowball is 28.8% more efficient than the bogey. ($(2 / 7) * 100 \rightarrow$ by dividing the relative score by its overall score and multiplying it by 100)

Similarly, the Bogey is 20% more efficient than the Snow job. From this it can also be concluded that Highball/Lowball is 48.8% more efficient than Snow job. ($28.8\% + 20\% \rightarrow$ adding the relative scores.)

Conducting mock sessions of negotiations in an organization/ company can also aid to make the right choice when actually making a deal. Also as the Highball/Lowball tactic is the most highly used by people hence there is a possibility of determining what the counter-part requires and can seize a deal more efficiently.

CONCLUSIONS

In a negotiation two parties make effort to reach a common stance to make a deal which can benefit both the companies/organizations. There are various methods which are followed by contractors to gain leverage over the other which are also called as negotiation tactics. Various tactics like Highball/Lowball, Bogey, Snow job, nibble, the brink, the good cop/ bad cop routine and deadlines. The paper analyses the efficiency of each tactic and determines its overall performance and hence concludes the best tactic to follow when negotiating. The highball/lowball tactic is the most efficient in terms of time, contractual relationship and the outcome leveraged between both the parties. It is also the most widely used tactic in negotiation.

Following a tactic which is proven both psychologically and by means of survey can aid the contractor to establish a good negotiation stance with the counter-part.

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About the Author



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Raghu Kuppa is a design engineer currently pursuing a Master's degree in Program and Project management and Business development in Skema Business School, Paris. He has an experience on managing a design project as the design lead for 2 years and two years as a design engineer at Premium Composite Technologies. He has also designed high performance racing yachts IRC52, MAXI 72, TRANSPAC 52, MELGES 40 and CARKEEK 40 using polymers and composites and is especially experienced with plastics.

He also worked at Johnson Controls for one year and at L&T for 2 years. He is highly experienced in the field of design and has knowledge of 4 professional design software. He has an overall experience in design including Cars and Nuclear submarines. Most of his projects use carbon fiber as the fundamental material. Raghu has a knowledge of the software Catia V5, Rhino, AutoCAD and the Microsoft tools. He is also an RYA qualified Sailor and has participated in offshore races in Dubai and PRO-AM race from Volvo Ocean Race.

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