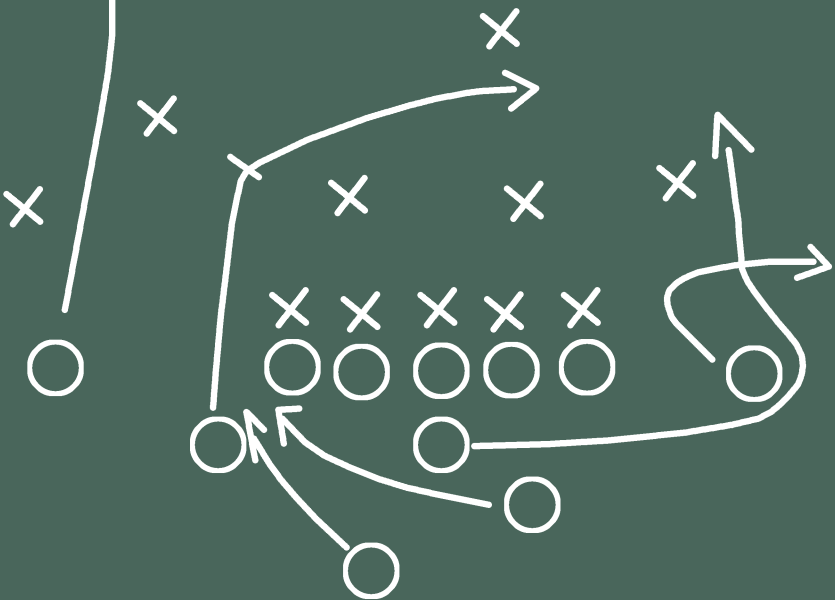


BEST PRACTICE PLAYBOOK

IT PROCUREMENT



**Wisconsin Department of
Administration**

State Bureau of Procurement

IT Procurement Playbook

Contents

| | Page |
|--|------|
| Play #1: Shift your perspective | 2 |
| Play #2: Talk to Your Customers Early and Often | 4 |
| Play #3: Get Ahead of the Competition | 6 |
| Play #4: There's No "I" In Team | 8 |
| Play #5: Sharing is Caring...When Done Strategically | 10 |
| Play #6: Recognize Divide and Conquer..... | 12 |
| Play #7: Send a Message | 14 |
| Play #8: Karma Chameleon | 16 |
| Play #9: Beware the Bowtie | 18 |
| Play #10: Keep a Watchful Eye | 20 |
| Play #11: Oral Agreement is Worth the Paper it is Written On.... | 22 |
| Play #12: The Best Defense is a Good Offense | 24 |
| Play #13: Don't Let the Anchor Drag You Down | 26 |
| Play #14: The Element of Surprise | 28 |
| Play #15: Momentum Matters..... | 30 |
| Play #16: Sandbag Excessive Revenue Streams..... | 32 |
| Play #17: Licensing Line of Attack..... | 34 |
| Play #18: Huddle Up on Statements of Work | 36 |
| Play #19: A Rose By Any Other Name... .. | 38 |
| Play #20: Not all Plays are Created Equal | 40 |
| The Extra Point: Considerations in the Cloud | 42 |
| The Extra Point: Common Irritations | 43 |

PLAY #1: SHIFT YOUR PERSPECTIVE

- Vendor Point of View
- In development, ask yourself:
 - Will these requirements decrease competition?
 - Will any of these requirements increase the cost to respond?
 - Is there language in this bid that is not familiar to the industry?
 - Does the cost structure align with the market?
- Consider the motivations or position of the likely vendor pool
- Are they a small or niche player that is likely to be purchased by a larger company?
- Are they a young company that may be looking to strike a good deal just for the opportunity?
- Are they a company that is new to government business and may need more explanation as to how agencies purchase?

When you think of who your customer is, what comes to mind? Naturally your internal program area staff come up first, as they are the ones asking for the solution you're procuring. Next you might think of the taxpayer, for whom we are responsible to in all things we do. But what about the supplier community? Just as each government entity is different, so too should we expect a diversity of experience, expertise and capabilities from the suppliers we work with. This play is ultimately about putting yourself in their shoes and asking, "Would I want to respond to this bid?"

Have you clearly communicated what is being procured? Go the extra mile to ensure acronyms that are specific to your state or program are defined. Thoughtfully weigh the qualification requirements. Know *why* it matters. Does your cost model reflect how most of the market prices their products?

The length and complexity of your documents should also drive your turnaround time. Even large companies with staff specifically responsible for responding to proposals are not sitting idly, waiting for an RFP to be posted. If you know your turnaround time will be cut short, find every way to cut the complexity of the bid where you can. Better yet, help your internal customer understand that short turnaround times can result in ill-prepared proposals with inflated costs to minimize the supplier's risk.

In IT, we cannot afford to simply "dust off" last year's bid or to make assumptions about the supplier community. We owe it to our internal customers to stay informed about the dynamics of the markets we're buying in so we can make sure that we are achieving best value.

PLAY #2: TALK TO YOUR CUSTOMERS EARLY AND OFTEN

- ☑ Planning is everything in IT procurement
- ☑ Ask your customers to involve you in planning when a purchase is a possibility or set standing meetings
- ☑ Ask to be involved, or to be the central POC, for all vendor interaction
- ☑ Set parameters and clear roles
 - Provide templates, examples
 - Set deadlines for yourself (and them)
 - Assuage concerns about who is responsible for what components of the process

We've all heard the common adage, "By failing to prepare, you are preparing to fail." This quote is widely attributed to Benjamin Franklin, and just as this was true for him in his time, and is true in business in general, it is just as applicable to IT procurement. However, another popular saying in just about all aspects of life is, "that's easier said than done."

In our experience, early involvement of procurement staff in an IT project results in a higher level of successful outcomes for IT contracts — customers get what they really need at a price they can anticipate and that is affordable.

Too often procurement staff are physically and organizationally independent from IT staff, which increases the likelihood that you won't be brought in until the last minute, much to everyone's detriment.

Proactively engage your IT department on a standing basis and on a project basis. Make it easy for them to approach you by employing "yes, and" in place of "no". Make the mountain of government procurement rules feel like a molehill to your customer. And when roles and responsibilities in an IT procurement project are unclear, be actively involved in clarifying them. If *you* don't, someone else will.

Promote the benefit of your early involvement by providing tools that make the process faster, such as templates, so they can anticipate what working with procurement will be like. Specifically call out tasks that you'll be doing that will make the process easier for them, like becoming the central point of vendor contact so IT won't have to field inquiries.

Our customers, especially those involved in supporting critical applications and infrastructure, want to feel that you share their goal of a timely solution.

PLAY #3: GET AHEAD OF THE COMPETITION

- ☑ Vendors are our customers, but they can also be our competition when setting expectations with our internal stakeholders
 - Vendor-generated demand
 - Focus on the facts—who's asking for this?
- ☑ Common for vendors to push for the use of an existing contract in another jurisdiction, or any other alternative to an RFP
 - Research consortium contracts
 - Vet proposed alternatives quickly and share results with customers
 - Explain the benefits of bidding

Procurement as a function would not exist without something to buy, which is, of course, where our suppliers come in. We acknowledge suppliers as another customer of our services (see Play #1) and in that respect, they should expect a collaborative and deliberate business relationship.

It must also be acknowledged that we operate at cross purposes with suppliers — our goal is to save as much money as possible and they are in the business of making money. It is as simple as that, so it should come as no surprise that suppliers would assertively pursue sales with your customers. Once they are awarded a competitively bid contract, we should not be surprised that they are marketing it. When a new solution becomes available, it is their job to let customers know.

Too often, however, suppliers also take on the role of a sourcing advisor to our internal customers in the frame of being helpful. How often have we heard a consortium contract pitched “to avoid an RFP”? There is a line where this advisory service is inappropriate and we need to draw that line.

When a customer comes to you having already identified another contract to “piggyback”, be prompt in vetting it and returning recommendations on how to proceed. It’s not uncommon that you will spend just as much time reviewing the contract of another jurisdiction as you would in working with your IT staff on drafting solid, concise requirements for a procurement event that is custom to their needs.

No one likes to hear “no”, but in this case, it may be necessary. For example, if your IT department is looking to spend a small amount on an experimental application, go ahead and entertain the use of another established contract. But is it really appropriate to spend millions on a cybersecurity solution for your entire state using the authority of a contract established by a township of another state? Likely, not.

PLAY #4: THERE'S NO "I" IN TEAM

☑ Try to approach every procurement project with a well-balanced team

- From the State Bureau of Procurement "Negotiations" class:
 - Technical or program staff
 - Expert on procurement/purchasing
 - Attorney
 - Management of program

☑ Benefits of a team approach:

- Diverse perspectives and expertise
- Understand all needs for the contract
- Delegate work to streamline development
- Balance of approaches to negotiation, preparing for a successful contract

In Wisconsin, we spend a lot of time in the classroom training new procurement agents on how to procure goods and services on behalf of our great state. Many of our classes are geared toward the agent, written from their perspective.

Our training puts a heavy emphasis on preparing procurement documents (for bids and RFPs) and then continuing to manage more documents after a contract is signed. But some time ago we realized that our classes were missing two things — one, the focus on working as a team to obtain those goods and services, and two, the reality that since bids do not just magically turn into contracts (especially in IT), we needed to train our staff on how to negotiate.

In our Negotiations class, we teach attendees that the agent cannot act alone to achieve success in our field. The ideal approach is to seek out others to create well-balanced groups to make decisions on IT contracts that reflect the requirements of the bid or RFP, meet the business needs of the program area, minimize the risk to the state and result in fiscally sound deals for the taxpayers.

This requires diversity of expertise, such as employing the TEAM method, but also a level of facilitation skills to effectively delegate tasks, manage productive meetings and recognize the strengths and communication styles of those on the team.

Whether you're negotiating with suppliers remotely or in person, team dynamics contribute to the "voice" the supplier hears from your state. While we recommend only one person be the central point of contact in these events, that person should be supported and informed by a cross-functional team.

As Michael Jordan so aptly said, "There is no 'I' in team but there is in 'win'."

PLAY #5: SHARING IS CARING...WHEN DONE STRATEGICALLY

- ☑ There are many tools we can use to learn about products, services and markets before going to bid
 - Trial Agreements/Demonstration Equipment
 - Request for Information (RFI)
 - Draft RFP for comment
 - Pilots/Proof of Value for Software

- ☑ However you obtain information from vendors, resist the urge for reciprocity
 - Unless you share information equally...
 - And it's in your best interest to share

Proper market research takes time...period. "Time" is not a word your IT customers want to hear, unless you're telling them that you're saving it. Add the fact that in IT, you rarely have the luxury of buying something you've bought in the past that hasn't dramatically changed over time. The perfect storm of no time and ever-evolving technology puts procurement at a disadvantage when it comes to knowing enough about a market and the solutions available in order to draft smart, comprehensive documents in the time our customers expect.

We must rely on and trust that a level of diligent market research is done by our technical experts, but there are cases when this is not enough and the box of tools must be opened.

Carefully use product trials to "kick the tires" on hardware, avoiding the dreaded auto-purchase clause if the trial goes longer than allowed. RFI's are helpful when you know little to nothing about a market. Publish a draft RFP to test the validity of requirements you already have. Pilots or "POVs" for software might give your customer insight into the innerworkings of an application, test their assumptions and give you a head start on licensing terms. All of these tools require you to actively engage suppliers for information and input which means they will reasonably expect information back from you. However, you should not share information that you are not certain of or would reduce your competitive position. For example, "Hey, can you send me the final specs of the draft RFP, we want to get a head start on our proposal...".

Even if these methods are not official procurement actions, we recommend communicating with suppliers in an equal way, just as you would in an RFP. For example, if you do an RFI and a supplier suggests a cloud option when you were only considering on-premise, tell all the other suppliers participating in the RFI that this is now an option you want more information about. It's never too early to send the message to suppliers that fair and open is how you operate.

PLAY #6: RECOGNIZE DIVIDE AND CONQUER

- ☑ Vendors are rarely “just in the neighborhood”
 - Require appointments
 - Require agendas for any discussions
 - Anyone that may be a bidder commits all questions to writing
- ☑ Explain to your internal customers the importance of not having any discussions with vendors about a solicitation while it’s in progress
 - This is for your protection, and that of all vendors
- ☑ Answer shopping
 - Be consistent and make no exceptions

Procurement offices have a duty to educate — educate your internal stakeholders about the rules that apply to them and educate suppliers about how you do business. In order to perform our duty to educate and assist, we must stay engaged. The reality in IT is that “partnerships” and heavy investments in supplier products (and therefore, relationships) are common and that’s not necessarily a bad thing.

Just as your IT staff need to form these relationships, procurement staff must as well — it is all part of good vendor management practices.

However, when it comes to getting new business, procurement staff need to manage and, in some cases, control communication differently than we would for day-to-day operational matters.

Help suppliers understand that it’s in no one’s best interest to give information about the future of a purchase before it is publicly available because someone is always left out and some day it will be them. While a solicitation is in progress, everyone should understand that the conversations they’re used to having with their incumbent supplier may need to change or, in some cases, stop entirely when that incumbent supplier is also competing in a new sourcing event. This is not a purely defensive move to protect your customer — it is for the supplier’s protection as well. A state’s goals and requirements during the development and management of a sourcing event can be fluid and changing and it helps no one to send a supplier down a path that could lead to a deficient proposal.

We recommend being prudent while interacting with suppliers during these times by requiring meeting agendas to be drafted in advance to ensure that the meeting is productive for all parties and, more importantly, to keep record of the topics you meet about.

PLAY #7: SEND A MESSAGE

- ☑ Competition is a very good thing
 - Maintains fairness
 - Opens up opportunities for all businesses
 - Keeps incumbents honest

- ☑ Let everyone know that you will do what it takes to maintain this balance
 - Transition Service language in contracts
 - Negotiation time clock in RFP, going to next bidder
 - Don't auto renew contracts
 - Stay sharp on alternatives
 - Publicize a mission statement, expressing how important competition is to your business

Imagine you are getting ready to watch the College Football Championship game. You're excited because the Wisconsin Badgers are playing in the game and it's the first time they're competing at this level in many years. They're an underdog (somehow) playing against a team that seems to go to the big game every year. Kickoff is close and out steps the favored team on to the field. You wait for the Badgers to storm the field but nothing happens. The announcer says the game is cancelled, because we all know the other team is going to win anyway, so let's skip to the trophy ceremony...and they do. What happened to the highly anticipated competition?

Few will disagree that competition is a good thing, especially in procurement contracts. Incumbent suppliers are valuable to the organization because they offer consistency of supply, ease of doing business, etc. But sometimes disruption is necessary, either because it is truly in your state's best interest or because the cycle of a contract has simply run out and it must be done. When you're working with your IT program staff, make sure they understand the impact of making supplier transitions and "walk the talk" when you are challenged about re-competing an expiring contract.

Transition clauses let your supplier know that you don't expect the relationship to last forever and if a new contract goes to another supplier, you expect reasonable cooperation. In a new RFP, let proposers know that if they don't work well or in a timely manner with you in a negotiation, you will go to the next proposer in 60 days. Make every renewal "mutually agreeable" (rather than automatic) so the incumbent knows that renewal is an opportunity for you to seek better pricing or terms to keep the agreement working well.

The bottom line is, no matter who the incumbent supplier is, they should expect at some point to have to play a game on the field before they get to the trophy ceremony.

PLAY #8: KARMA CHAMELEON

- Play the role your customers require
 - Bid/RFP Manager
 - Mediator
 - Protector of Information
 - Facilitator
 - Researcher
 - Service Provider
- Don't make them afraid to come to you, and be responsive to their needs
- Be a better strategic partner to your internal customers than your vendor can be

When you visit a hotel, restaurant, car dealership, etc., you expect a good customer service experience. If you don't get one, most times you take your business elsewhere and feel just fine about that. But when you don't have a choice and the only source for your service doesn't live up to expectations, frustration with having no options usually leads to avoidance – sometimes avoidance at all costs.

In state procurement, for your agency customers and stakeholders, you are the only game in town to get them the contracts that supply them with the goods and services that they need. We recommend that you make the most of that relationship. Turn your “captive audience” into willing participants in the procurement process.

IT contracting can be complex and most large deals have many elements, considerations, risks and decisions. Be the provider of service that your customer needs to tackle all of those elements! Facilitate meetings to get a consensus on a difficult decision. Give them confidence that you are the expert in running the competitive process and will make sure they stay on track no matter what comes about. Research answers to questions they have about options, suppliers, product alternatives and what their peers in other states might be doing. Be the protector of their information when it counts. Assist them in turning a wish list of ideas into sound, defensible specifications.

Forging a more proactive, positive and collaborative customer service relationship is not only good for them as the service recipient, but is good for you, because the alternative to forging that relationship is for them to avoid the process altogether (see Play #3).

PLAY #9: BEWARE THE BOWTIE

- ☑ Many systems and software procurements involve vendor demonstrations of how the solution works
- ☑ Remind your teams that you aren't buying the salesperson
 - Maintain objectivity
 - Stick to the script
- ☑ Watch out for red flag statements
 - “This is just a test environment, but the production system works the way you've specified, trust us”
 - “We're planning to release that function with the next version, just in time for when this contract will be getting awarded”
- ☑ Get the presentation in hard copy

When we invite a supplier to do a demonstration or meeting to discuss their proposal, we request that they send representatives that can answer specific, technical questions. At that point of the process, we are not interested in window dressing or elaborate marketing materials (which, not unlike other states, we ask them to forego in the original written proposal as well).

On the day of the meeting or demo, sometimes we are speaking with the team we asked for and sometimes we are not. Instead, the representative from the company may be a sales executive with no ability to answer technical questions. Without your permission, the supplier has just tailored the presentation to what they are best able to present. This move can happen so seamlessly that the evaluators could be swayed by the presentation, using memory and impression as a guidepost for score adjustments.

At this point, the role of the procurement professional is to ensure that unanswered technical questions get addressed in another way and that evaluators are making decisions on objective facts rather than positive impressions. We recommend ensuring that suppliers are responding to a set of questions that the state agency has posed and are not demonstrating only the features that are working best at that time. We also recommend briefing evaluators on what can and cannot be taken into consideration when scoring the technical aspects of a proposal following a demonstration.

To the extent that a presentation is prepared, require the proposer to give you a written copy. Set ground rules for presentations and, if possible, specify and limit attendees.

The bottom line is that suppliers will come to a demonstration prepared to sell you their solution – and while your teams are there for that as well, the details matter and must be accounted for (see Play #10).

PLAY #10: KEEP A WATCHFUL EYE

- ☑ During any vendor meeting or demonstration during a bid process, observe more than what is being said
 - Look for what each person on the team is doing
 - Take notes in a pad with a cover
 - You write the script, ask for vendors to send people that can answer technical questions

- ☑ Keep your team on the same page
 - No side conversations
 - No intros
 - No business cards

This playbook has been presented to many audiences since it was first printed and the reaction to this play is typically, “Seriously? No business cards?”. Yes and no.

The point of this play is to shed light on the real dynamics that are at play in any demonstration, in-person negotiation or other meeting between teams. If you’ve participated in an event like this, you have observed people’s behavior and seen the effect that behavior has on the other people participating in that discussion.

Just as you are strategizing with your team (see Play #4) on who will run meetings, take notes and speak for your group, supplier teams are doing the same thing. Some participants may have the role of speaking, someone else may take notes and others are just there to observe and glean information about the people on your team.

We are simply recommending that you be aware of these dynamics and avoid encouraging side conversations that might derail the agreements you are trying to achieve as a team. We understand you’ve got a friendly crew and it feels rude to avoid small talk. Think of it this way – keeping vendor meetings “all business” sends a message that you’re serious about ensuring a fair, open and competitive process. In the end, the suppliers will remember if they were treated impartially, not whether Joe said “hi.”

During sessions that are part of an RFP evaluation process specifically, we do not recommend doing personal introductions or sharing business cards of all team members. There should be only one, already established point of contact in the process, so business cards are superfluous. Save a tree!

If you do nothing else, take notes in a pad with a cover when you are in a contract negotiation session.

PLAY #11: ORAL AGREEMENT IS WORTH THE PAPER IT IS WRITTEN ON

- ☑ Live demonstrations, meetings or interviews have the power to change people's minds
- ☑ Most vendor licenses and contracts will expressly disclaim the validity of any promises made in conversation, sales brochures, ads, etc.
- ☑ None of that changes the expectations for your customer
 - Seek out vendor's own words and add into supplement or weave into terms that are being negotiated
 - Take comments in redlines and work them into contract language
 - Summarize meetings in email and request written confirmation of mutual understanding
 - Add language into solicitation that vendor will honor representations made in all forms

If you've read a software license, you have undoubtedly run into a clause that reads something like, "The customer cannot rely on any representations from our company about the software and how well it works regardless of whether those promises were made orally or in marketing materials." Chances are you read this during a negotiation with a supplier you just awarded a large contract to through an RFP.

And if you've had this experience, you've also likely had a moment of frustration thinking, "My evaluation committee increased scores based on that demonstration — how can we not be able to rely on it in the contract?"

This is the reality of IT procurement. There are ways to mitigate the risk in attempting to renegotiate clauses like this which are reactive, meaning you are trying to fix language presented by a supplier *after* a decision has already been made. The good news is you can also get ahead of this one by inserting language into your original bid or RFP, like:

"The Proposer will be making a number of representations outside of its formal Proposal document in, possibly, discussions, presentations, negotiations, demonstrations, sales or reference material and other information-providing interactions and as such hereby warrants that the State can rely on these as inducements into any subsequent contract and be made a part thereof."

Keep written notes of representations that are made to later build that language into a negotiated version of this clause.

Don't forget to play defense on potential reversals of statements made during a competitive process in the draft statement of work (see Play #18).

PLAY #12: THE BEST DEFENSE IS A GOOD OFFENSE

- ☑ Use your paper! Always include your form contract in all solicitations
 - Instruct vendors on how to respond to those terms as part of their proposal or bid
 - Disallow any replacement of your contract with theirs
 - Require all binding contract documents that they expect you to consider to be included as part of their proposal

- ☑ When an additional vendor document must be included...
 - Watch for conflicting and overlapping terms with the language of your form contract
 - Use the “say it once” principle
 - Stay on top of the order of precedence (literally)

If there's one topic in the field of technology procurement that gets the most attention, without debate that topic is "terms and conditions". In articles, "Ts&Cs" are generalized as all problematic, a time-taker and a universal frustration point. In person, mention "Ts&Cs" to your customer or a supplier and queue the eyeroll. However, the reality is that the contract is what counts when doing business, in IT or otherwise, so smart approaches to tackling contract terms and conditions is the answer.

Our first recommendation is to start with your "paper" whenever you can. Create and attach a contract template to your RFPs. Supply a base statement of work template and ask the supplier to fill it in with their expected responsibilities and deliverables. Tether contract business to your form amendments and renewal documents. Even order forms and forms used to solicit reportable data (e.g., spend, fill rates, etc.) should be driven by the state wherever possible.

After a basis has been set, establish rules for how you will consider and negotiate any terms using a reasonable person standard (e.g., how would you like to be treated?). For example, it is reasonable to expect an explanation for a deletion of language.

Where you have little choice but to allow and consider terms drafted by the supplier, establish a "say it once" principle, meaning you will deal with a contractual concept only once and in the right document. For example, if your master contract template requires acceptance of a deliverable before a vendor is paid, a statement of work attached to that master contract should not also cover acceptance payments and certainly should not contradict the terms of the master.

PLAY #13: DON'T LET THE ANCHOR DRAG YOU DOWN

- ☑ The first offer or proposal, especially when it's your lowest bid, can be a powerful anchor in determining the final price you end up with in the contract

- ☑ Do the research
 - Is even my lowest bid fair?
 - Best I can get for my volume?
 - Better than similar governmental entities?

- ☑ If a vendor had more information about your budget than they should have going in, their proposal will be bracketed based on that number
 - As will the way they frame how great of a deal you're getting

One of the classic conundrums in state procurement is how to handle disclosure of your budget for a project—to include, or not to include? If you are statutorily or otherwise constrained to the dollar and cannot afford to waste time considering proposals over that amount, it might make sense to disclose the information. However, you should understand that disclosing a fixed budget will undoubtedly anchor the offers you receive to a razor-thin margin of that figure. Experience demonstrates this — publish a budget of \$50,000 and your proposals will come in remarkably close. In this situation your budget is the anchor.

Anchoring is a form of priming a person to give more weight or importance to the first “thing” you were offered, and then use the power of that first anchor to frame all subsequent changes. For example, how does a low bid of \$1000 for a laptop look in these two scenarios:

- Purchasing Agent A is analyzing bid pricing and the lowest price comes in at \$1000. The bid price is next to a retail price of \$2400. Purchasing Agent A may consider \$1000 a competitive price and award on that basis. What a great discount!
- Purchasing Agent B gets the same information that Purchasing Agent A has, but in addition, contacts a nearby agency to ask how much they are paying for the same laptop and under similar conditions, they received a price of \$900 and \$875. Purchasing Agent B is unhappy with the \$1000 price.

Same laptop. Same bid. Same price. Different effort, and therefore, different results.

We recommend challenging the anchoring effect with prudent research.

PLAY #14: THE ELEMENT OF SURPRISE

- ☑ No one likes unpleasant surprises, which is what a “forgotten” term, condition or caveat is when introduced into the negotiation process
- ☑ Combat this with education on the original requirements from your solicitation
- ☑ If you have no choice but to consider a new document (revised terms for a new product, statement of work), never allow any repetition or conflict with what you’ve already agreed to
 - New sales reps have to honor the word of their predecessor
 - Sales and a vendor’s legal counsel are representing the same company, so they should be agreeing to the same things
- ☑ In this case, reciprocity is important
 - Don’t introduce brand new contractual terms to the vendor that weren’t in the original solicitation

Consistency and, to some extent, predictability are desired attributes of dealing with state government. It is easier to work with someone when you can predict how they will respond and when you understand their ground rules.

State government publishes a lot of information on how we do business through policy, procedure, forms, templates, user guides, instruction manuals, standard terms and conditions, etc.. If a procurement office is doing its part for transparency, suppliers will be well positioned to learn how to approach contracting with any given state.

State procurement managers do not have the same wealth of information about our supplier community. We learn through marketing materials, asking lots of questions and the internet. When preparing for a procurement event and contract negotiation, you'll save time and give your team a leg up on negotiations by asking for all the terms, conditions and obligations that the supplier desires for the state to agree to upfront so proper vetting and planning can begin.

Because we ask for the supplier's paper as part of the procurement process we can more easily decline new or "surprise" documents presented after a negotiation has started. However, it is not uncommon for a supplier to try to do so, at which point you must decide how to proceed.

If the terms must be considered, do not allow any "restart" on a concept that you've already come to agreement on. Likewise, the replacement of a team member also should not reset any negotiations where the prior participants, operating in good faith, came to an agreement.

This is also an area where we must follow the golden rule and treat others how we want to be treated.

PLAY #15: MOMENTUM MATTERS

- ☑ The pace of a negotiation can be just as important as the commitment you're making or your anticipated volume
 - Vendor quarter-close or year-end timing
 - Critical service, avoid disruption

- ☑ Try to remove all unnecessary barriers to making steady, consistent progress to a final agreement
 - No "hurry up and wait"
 - Set a target date to complete
 - Follow up, don't let it rest
 - Expect curve balls (e.g., "that would set a precedent", "sounds good to me, but I can't make any commitments")

Being speedy is not necessarily something public procurement is known for, particularly if an IT customer is asked about their view of the general pace of doing business.

To an extent, this is intentional. It is difficult to be both speedy and diligent, to make quick decisions and have them be fully informed and prudent, and to produce contract awards swiftly while drafting documentation that is defensible and sound.

To take a page out of a project manager's playbook, procurement professionals also need to be diligent about managing dates, so we can keep the cycle of contracts running at a reasonable clip.

In managing the pace of a negotiation, we recommend starting with a clear expectation that is mutually applied. For example, "Each party will respond to the other with a decision or ETA on a decision or deliverable within 2 days of receipt.". And at the point that something does not meet the standard set, keep the other party informed of when to expect it.

When it becomes clear that stalling or a "hurry up and wait" practice is at play, it is important to not let anything slip or go unaddressed. For example, if a supplier has held a redlined contract in their possession for one week, it is not reasonable to request a conference call from a procurement agent one hour after receiving the redlines back.

Conversely, when dealing with suppliers that are more likely to propose aggressive discounts based on a fiscal calendar for their company, it is most important to set expectations with your IT customer as to whether or not "up to the minute"-type activity is manageable.

PLAY #16: SANDBAG EXCESSIVE REVENUE STREAMS

A good deal is only truly “good” if you can consider all costs

- Seek out and question all opportunities for additional costs, such as surcharges, penalties, inflated maintenance and support costs
- Cap all potential price increases on term contracts up front

In software...

- Call out charges for reinstatement of software support and maintenance
- Don't tie increases to a then-current list price
- Amount due after a compliance audit

In telecommunications...

- Call out surcharges, loosely tied to their cost to comply with federal and state regulations
- Try to limit them to only the surcharges in place at the time of the bid, require formal amendment for any new surcharges that are mandated by the government to pass to the customer
- No charges to recoup the cost of charging you (admin fees)

Without question, a company needs to maintain healthy sales and revenue to be sustainable, responsible sources for the state. Inversely, the state as a customer has to be reasonable about the amounts we pay for the products and services we consume. These are two premises that can be understood by all as legitimate. But there is a lot of room between a fair price that should be paid and prices that states are asked to pay.

When the Bureau of Procurement started teaching the Negotiations class, we noticed some hesitation on the part of some attendees who wondered aloud whether they would be comfortable questioning an initial price from a supplier. But as stewards of taxpayer dollars, we have a responsibility to make sure that the prices we pay are fair. Particularly in IT and telecom contracts, there are many sources of potential revenue (and for the customer, loss) that can be minimized or closed.

For example, if you regularly receive an inaccurate wireless services bill, why not question the \$1.25/month surcharge for generating the bill? If you know you will be using a software application for multiple years, why not place a cap on the percent a price can increase in those years? In telecom, where regulations play a role in the fees and prices you pay, question each one and whether it is one degree (or more) removed from the actual regulating entity. For example, if a surcharge for police and fire services is passed on to the customer, that is easy to understand. But an additional upcharge for the “convenience” of passing that charge is not.

PLAY #17: LICENSING LINE OF ATTACK

- ☑ It is difficult to start with your own paper when it comes to a software license
 - Custom to the publisher
 - Custom to the solution
 - Often linked to other terms housed on vendor's site
 - Use of the reasonable person standard
 - Leveling amount of pushback with what the business area can stomach

- ☑ Where to throw the flag:
 - "Sole" or "exclusive" when pertaining to vendors' rights
 - One-sided clauses that protect, absolve
 - Unclear or missing definitions, express rights of the customer

- ☑ On audits...
 - They need to be fair and equitable
 - Performed by the vendor, not their assigned third-party

See the Software Licensing Practical Guide for more tools on how to negotiate these terms. It is the second half of this book, so in the meantime, enjoy this space for notes!

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PLAY #18: HUDDLE UP ON STATEMENTS OF WORK

- ☑ More than most other documents, the SOW is critical to your internal customer; if they haven't been engaged in negotiation of any other terms, they must be brought in now
 - How are the vendor's people going to work with yours?
 - Who's responsible for what?
 - Specific work rules? Staff availability concerns? Only they will know.

- ☑ Special teams' strategies:
 - Establish clear goals, pay on deliverable when you can
 - Benchmark against other market indices on hourly rate
 - Avoid paying upfront
 - Don't pay maintenance until after the software is implemented
 - Requirements, SLAs of a procurement are reflected in the final contract

Let's say you're preparing to host Thanksgiving at your home. You wake up early that day, ready to get started and your sink is broken. You run to the phone and start dialing a plumber. What do you need in that case and what will you pay for? You need the sink fixed (a result) and once it is fixed, you will pay. This is understood by the plumber that arrives at your home to save the day. So why not expect results-based service contracts on IT projects?

Many statements of work (SOW) are written to give you access to resources which will *try* to help you, but do not commit to the results you can expect — at least not without costly change orders.

If the team that will be interfacing most with the supplier under a statement of work has not been very engaged in the contract process, the SOW review is the time they must be involved.

This is also the best time to play “what if?”. What if a contractor doesn't have the expertise contemplated in the SOW? What if they provide no deliverable at a certain milestone? What if they provide a PowerPoint as a final product without any supporting detail? What will you do if they consider a task to be successfully completed and you don't?

There are many state and supplier dependencies in a SOW. A clear, comprehensive SOW will help lay a solid understanding between you and the supplier and prevent many disputes about who is responsible for what.

PLAY #19: A ROSE BY ANY OTHER NAME...

These are contract documents, the only tools you have if there is a dispute of any kind — make it count by using the right words

- Use binding, clear and consistent language

Words that Commit

- Deliver
- Agree
- Provide
- Warrant
- Will
- Represent
- Create
- Shall

Words that Circumvent

- Endeavour
- Assist
- Target
- Aid
- Support
- Attempt
- Facilitate
- Help

If you've ever had a conversation with a small child who wants something from you, you know the difference between words that commit and words that, well, *don't*.

"Mom, can I play video games?"

"It's a possibility."

"That's not a yes or a no. Can I play or not?"

The child is frustrated by a non-answer. They want clarity and commitment and don't want to navigate how to respond to "a possibility". The same holds true for procurement professionals reviewing contract language from suppliers that use words that have no enforcement potential. But in the latter case, the stakes and risks of something not happening the way you expected is much greater.

Even if you've had a good working relationship with a supplier, established an amount of trust in their capabilities and believe they share your interest in mutual success, the contract is the only thing that will help you if any of that trust or mutual interest goes sideways.

This is where a trusty thesaurus comes in handy; we recommend replacing non-committal words like "endeavor" with a committal alternative like "will". Replace "assist" with "responsible for", etc. In keeping with the grammar theme, adjectives and adverbs may not be your friend. Question words ending in -ly, for example, "supplier will quickly respond to customer's call". Who gets to define "quickly"? If you can put specifics to something, do it. Don't assume you and the supplier have the same definition.

When this is done properly, there should be little reason for any party to object.

PLAY #20: NOT ALL PLAYS ARE CREATED EQUAL

- ☑ You can't always get what you want, so there are some things that are more important to get than others

- ☑ Naturally anything you must have because of the law (common examples):
 - Nondiscrimination in Employment
 - Non-Appropriation
 - Applicable Law - Choice and Venue
 - Contract survives acquisition by Third Party
 - Arbitration Provisions
 - Customer Indemnifying Vendor
 - Disclosure, Public Records Issues
 - Payment Turnaround

In our training courses, we often find ourselves covering the distinction between wants vs. needs. In bid or RFP development class, procurement staff are trained to work with their standards committees to write required specifications based on “needs” and separate value-added specifications as “wants”.

In negotiations class, we tie “needs” to the development of your team’s interests, as opposed to “wants” which are the team’s positions.

In contract terms and conditions, we must also have a sophisticated understanding of language that we *need* (because of the law, regulation) and language we *desire* (to mitigate risk, favor our operations and rights).

As we ask our procurement staff to be more flexible in their approach to IT contract terms, we have also noticed a concerning trend among some suppliers — a refusal to consider any modifications to terms that favor them unless it is required by law, and a request for the state to identify such legal citation to prove it is necessary.

We recommend that procurement, as a function, stays open to ways to compromise based on the legitimate needs of a supplier, because even a template with uniform terms is not an effective “size” that “fits all”. However, we must always expect that the supplier meets us with the same willingness to compromise on terms.

THE EXTRA POINT: CONSIDERATIONS IN THE CLOUD

- ☑ Silence is not golden when it comes to talking about your data
 - Own, protect and retrieve

- ☑ When you negotiate terms for your specific deal, don't chase links to terms on a vendor's site that might override
 - Have the referenced document printed as an exhibit to the contract at the time it's signed

- ☑ Don't build Fort Knox to guard a tinker toy
 - Work with your technical staff to truly understand the kind of data that will be floating in the cloud and how much it would harm you if something happened to it

THE EXTRA POINT: COMMON IRRITATIONS

- Contracts in PDF
- Blanket deletions
- Redlines without explanation
- Musical chairs
- Chasing links
- Refusal to engage
- Feigned offense
- The runaround

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