



# The Public Procurement Payoff

Master the art of contract negotiations



# Daily deliberations

You just did it. There, you did it again – negotiating with yourself if this piece is valuable enough to use some of your most precious commodity: time. Since you just successfully completed an informal negotiation, let's turn our attention to the more formal kind.

As you know, the top priority for procurement officials is to acquire products and services for their agencies while adhering to budgets, timelines, and compliance regulations. One way you can succeed more efficiently is to become a master of negotiation.

Stop and ask yourself: What are you doing to ensure you are receiving the best value and/or price during the award process?

The art of negotiation, formal or informal, is a skill every public buyer can — and should — consider adding to their repertoire to better assist throughout the contracting process. In this guide you will learn four steps to help navigate a successful negotiation, while gaining valuable insights from procurement peers to use along the way.

*“Negotiation in the classic diplomatic sense assumes parties are more anxious to agree than to disagree.”*

– Dean Acheson, 51st U.S. Secretary of State

# Set negotiation boundaries

## What is negotiation?

Let's define negotiation, which is intentional conversation with another person or group designed to reach an agreement benefitting both parties. When you identify the advantages you have in the situation, use it as leverage. Eric Dickey, Chief Procurement Officer at the University of North Florida, says successful negotiations take time to find common ground. Negotiations are available for not only large purchases, but also for smaller, more mundane purchases. Eric continues with the reminder saying, "Remember, everything is negotiable."

## Can I do that?

Most importantly, you must unlock the option to negotiate during the development of the Request for Proposal document. For example, each Sourcewell RFP document includes Article D — Rights Reserved, which reads: "Sourcewell reserves the right to: reject any and all proposals received, clarify any part of a proposal and discuss any aspect of the proposal with any proposer; and negotiate with more than one proposer." Including such wording empowers the requesting agency — in this case, Sourcewell — with several beneficial aspects throughout the competitive process, including the final negotiation and contracting phase. You can also use this added language to help resolve disputes.

Although negotiating is potentially intimidating, don't make it complex. The term "negotiation" may immediately trigger thoughts of business transactions or conversations with commissioned sales representatives, but negotiation encompasses much more and is a part of everyday life. Situations where parents discuss with their children when to go to the park, friends converse about what time to meet, partners talk about where to go to dinner, and you deciding if it's valuable to continue reading this guide are all negotiations.

## Meet the contributors

When negotiating contracts, there is no "secret sauce," so we are relying on these procurement pros to help guide this overall recipe to contract success. Just like any good recipe, you might have to make a few adjustments to make it work best for your organization. Thank you, Eric, Greg, and Charlie for giving us all a proven procurement plan.



**Eric Dickey**

Chief Procurement Officer  
University of North Florida



**Greg Long**

Director of Purchasing  
Seminole County Public Schools



**Charlie Rosol**

Director of Procurement  
Cleveland Metroparks

# The four steps to a successful negotiation

As you've already discovered, negotiation can be a delicate art, requiring strategy and effective communication. To navigate the process successfully, let's break it down into four crucial steps to achieve your desired outcome and build positive relationships along the way.

Although the four steps always work together, let's take an in-depth look at each step separately here, diving into critical questions and considerations to guide you in building your skillset to master the art of negotiation.



## Develop a framework

An effective negotiator must have the authority to make decisions, or an established chain-of-command, to make the process as smooth as possible.



## Dig up the details

Do your homework and be thorough. You'll discover putting in extra prep in advance will pay off later in the process.



## Know your number

Be sure to predetermine the amount you are willing to spend on the needed product or service. Strong negotiators know their number and never let the other party know what it is.



## Execute an agreement

When the negotiation is complete with mutual agreement, execute the contract. Be sure all items changed in the negotiation period are written into the contract.

# Develop a framework



Effectively negotiating contracts requires a strategic framework. To ensure successful negotiation, it is important for your organization to have a plan. The negotiation process, as well as your reasoning driving it, is key to success. Developing a framework from a blank slate is no easy task. Greg Long, Director of Purchasing for Seminole County Public Schools in Stanford, Florida, recommends asking yourself the following questions before beginning any negotiation:

- Are you the negotiator?
- Do you have the skillset to be the negotiator?
- Have you been given the authority to negotiate? And to what extent?

You'll find the answers are critical to the success of a negotiation. If you've answered "no" to these questions, get the right voices in the room as soon as possible. An effective

negotiator must have the authority to make decisions or an established chain of command to make the process as smooth as possible.

On the other side of the conversation, you will want to identify right away the most effective point person from the supplier's team.

## Establish goals

Identify goals to help guide your framework. Start by setting goals and determining exactly what is needed, when the deadline is, and other potential preferences when purchasing this product or service. This step should be a collaborative effort between contract managers and impacted end users. You should also consult with department heads, subject matter experts (SMEs), and legal teams at this time to identify any potential barriers and provide valuable input.

# Dig up the details

Do your homework and be thorough. You'll discover putting in extra prep in advance will pay off later in the process.

## Conduct research

After establishing the negotiator and overall goals, use effective research to solidify and strengthen your position prior to negotiations. At this stage, you will want to ask yourself the following questions:

- **Why do we need this product/service?**  
During the research period, pull SMEs in to ask the same questions. If you are asked to procure a specific piece of equipment you will want to connect with end users to determine if they have a brand-specific requirement or if they would be open to alternative solutions. The answer to these questions will determine the position you have when negotiating.
- **Are there any alternative solutions?**  
When you're considering alternatives, it is important to gather information on all viable options. Does the end user want a specific brand? Can the piece of equipment be used for another year, or do we need it immediately? Asking these types of questions to the SMEs will help determine if alternatives are even possible.
- **Can I walk away?**  
If you can, then you increase your bargaining power. Maintaining an open line of communication with internal customers will give you a better understanding of your position. Ask the end users how soon they need the item and if there is any other solution. Their answers will help clarify your ability to walk away. If you are unwilling to walk away from the agreement, you will have less room to ask for major alterations.
- **Is there a political landscape to navigate?**  
Are there existing local policies in place or local officials who want, or require, you to purchase from local stores to meet certain social goals? These factors will also help guide your negotiation strategy.

If you determine negotiation will be geared toward terms and conditions rather than a specific item, ask yourself again



about the political impacts. Identify the appropriate parties to discuss requirements and tactics.

## Review information

After extensive research, review the gathered information and compare it to the supplier's response to your solicitation. Creating a comparison will help identify potential response areas where a supplier is lacking and may be negotiation points.

Compare other solutions to the one you are reviewing and analyze the similarities and differences between respondents to identify any gaps. If there is a gap, where is it? Look at common gap areas, such as price, proposed service, or timeline. Ask yourself if your entity can work with the gap or if you need to make changes.

Sometimes negotiations cost time and money. Negotiating opens the door for back-and-forth conversations among you, the supplier, and potentially legal teams — increasing the time it takes to deliver the product.

While it might seem counterintuitive, negotiations can cost your organization more money than the time is worth. Gauge the importance of each of your negotiation requests and rank them. If your greatest priority is the terms and conditions (warranty, insurance limits, timeframe, service, etc.) you may have to sacrifice in less important areas. When time is money, the longer you spend negotiating, the more costly it could be.

With an open line of communication, as well as the completed research, you should be able to determine your agency's position prior to entering negotiation. During the research-and-review period, remember you are not alone. Take advantage of your network of colleagues and peers who are more than willing to help make public procurement pay off.

# Know your number

Be sure to predetermine the amount you are willing to spend on the needed product or service. Strong negotiators know their number and never let the other party know what it is.

If the other party asks what your number is, seize the opportunity to do more research by telling them, “The best price you give to all other public organizations.” You might

just gain some insight into the going market rate so you can adjust your number accordingly.

Additionally, if your number incorporates factors beyond price alone, such as sustainability or sourcing goals mandated by your organization, you might have to move up a little on your bottom-line price if a certain supplier helps your organization meet those goals.



Know the market rate.

# Execute an agreement

When the negotiation is complete with mutual agreement, execute the contract. Be sure all items changed in the negotiation period are written into the contract. Know who is writing the contract, who is reviewing it, and who is signing it.

If it is a small negotiation, you may be the one executing the agreement. However, if the negotiation is on a larger scale,

you might need multiple levels of review, redlining, and board approval prior to a contract execution. It all depends on how much authority you have to complete a contract.

Remember, nothing is official until the agreement is executed.



Document all negotiated details.



# Advice from your procurement peers



## Avoid emotion

You might find negotiations fun, but do not take it personally if things are not going your way. Refrain from getting emotional and know when to walk away. Realize there are two sides to the negotiation table and the supplier has responsibilities just like you do. They must also ensure their company is meeting their own requirements and the supplier can deliver all promises.

Longtime procurement pro Greg Long tells the story of an issue encountered while he was the head of procurement at a state college in Central Florida when a contractor was not following through on promises. With the existing contractor unable to meet the needs of the college, Long had a goal to negotiate a price for the work already completed so they could bring in someone new to finish. The negotiation was to get the contractor to leave the project alone and vacate. While Greg had the authority to agree to a price up to \$58,000 (a percentage of the contract) and was able to negotiate the contractor down to \$42,000, he and the college's president decided to not present the buyout option to their board and to pursue litigation instead. Long uses this story to illustrate that a favorable negotiation can still cause frustration and end without an executed agreement. He also uses this story to caution others to be realistic during negotiations and make only promises you can keep.

The give and take between parties is more acceptable when both parties have honest intentions. Avoid showing extreme emotion and look for opportunities to display your unique personality to help build a rapport. When you build a relationship on trust, you'll find it much easier to negotiate.



## Create a win-win scenario

If you help create a win-win contract, you've just discovered the holy grail of negotiations. To do this, you must compromise and communicate. It is rare for everyone involved to get exactly what they want. Talk to the other team to better understand their goals. Look for middle ground. Determine which goals are most important to you and compare them to the main goals of the supplier team. A local supplier might have a margin they need to hit to stay in business, which means they are not able to meet your target number. By talking and listening through this situation, you'll create a more successful outcome than determining in advance you will not budge at all. Just because a supplier is unable to meet you in one area does not mean they are unwilling to meet you in another to help create a mutually beneficial contract.



The give and take between parties is more acceptable when both parties have honest intentions.



## Consider a Best and Final Offer (BAFO)

You can use BAFO at multiple points in the evaluation process if permitted in the solicitation document. For instance, if an Invitation to Bid was issued requiring all bids to be evaluated exclusively on pricing – so the bid submitted would be considered the bidder’s best and final offer – negotiations would not be permitted.

Alternatively, an RFP document may permit negotiations with qualifying proposers. In this instance the proposer may consider their original proposal as the BAFO – or if they engage in negotiation, the supplier can submit a BAFO after one or multiple rounds of contract talks. For instance, Sourcewell incorporates a table within the response template labeled “Exceptions to Terms, Conditions, or Specifications Form.” Using this form, a proposer can request an exception to contract terms and conditions or propose alternate specifications, signaling to Sourcewell evaluators a desire to enter negotiations should the proposal score within the competitive range.

Charlie Rosol, Director of Procurement for Cleveland Metroparks states, “We use BAFO in its simplest form. Nothing formal, but after we receive proposals and during negotiations (if we hold negotiations), we may ask for a BAFO – if we are trying to clear up some loose ends, the vendor didn’t hit on a topic we liked from another vendor’s response, during the negotiation process something new surfaces, or simply after our discussions they come up with something new from what they propose – we will ask the vendor for a BAFO. This could have happened by email or simply by talking.”



## Consider a Best Alternative to Negotiated Agreement (BATNA)

Just like you must anticipate the need to negotiate ahead of time, you must also carve out the right to use BATNA when creating solicitation documents. If the solicitation states a contract will be awarded to the lowest bidder or highest scoring proposer, you’ll have little to no opportunity to use a BATNA. Including BATNA language empowers negotiations by letting competing suppliers know you have the option to walk if negotiations or a BAFO offer does not meet your organization’s needs. You can address this in a “Rights Reserved” section of an RFP document.

For Sourcewell solicitations, one of the rights reserved is to “reject all proposals received.” Experts consider regular response rejections a poor business practice by establishing a reputation of wasting supplier time, which could steer proposers away from doing business with your organization. By conducting the BATNA analysis prior to developing the solicitation document, you might discover the best opportunity for negotiation is to forego your own solicitation and leverage another agency’s cooperative agreement, including terms to negotiate.

While BATNA can be an effective negotiation mechanism, use sparingly during a competitive process. Most procurement professionals use it as an alternative to conducting their own competitive procurement process.

# Advice from your procurement peers



## Harness negotiation flexibility with cooperative contracts

By using Sourcewell's competitive solicitation process you'll find flexibility to support vast procurement requirements. We create broad RFPs to meet the needs of clients nationwide. Broad solicitations attract well-rounded solutions so you can choose from a larger selection of quality suppliers. Because of an RFP with multiple awards, you'll unlock a variety of tools to negotiate using these cooperative contracts.

### Customize your procurement

Most importantly, Sourcewell contracts are customizable. If interested in certain contracts, you should thoroughly read those contracts because terms and conditions may vary (warranty, indemnity, insurance, pricing terms, etc.). Public buyers can work directly with local dealers when purchasing goods through a Sourcewell contract. Procurement staff can propose changes to the contract to a local dealer, just like they would a national supplier. You might recognize this is a prime example of a negotiation, meaning the dealer is not required to agree to the proposed terms and conditions. Supplemental transaction documents may be used during procurement (e.g., purchase orders, leases/licenses, participating addendum, etc.). Utilize the contract flexibility to negotiate terms with a dealer relating to local mandates or grant/funding required terms.

### Price is still negotiable

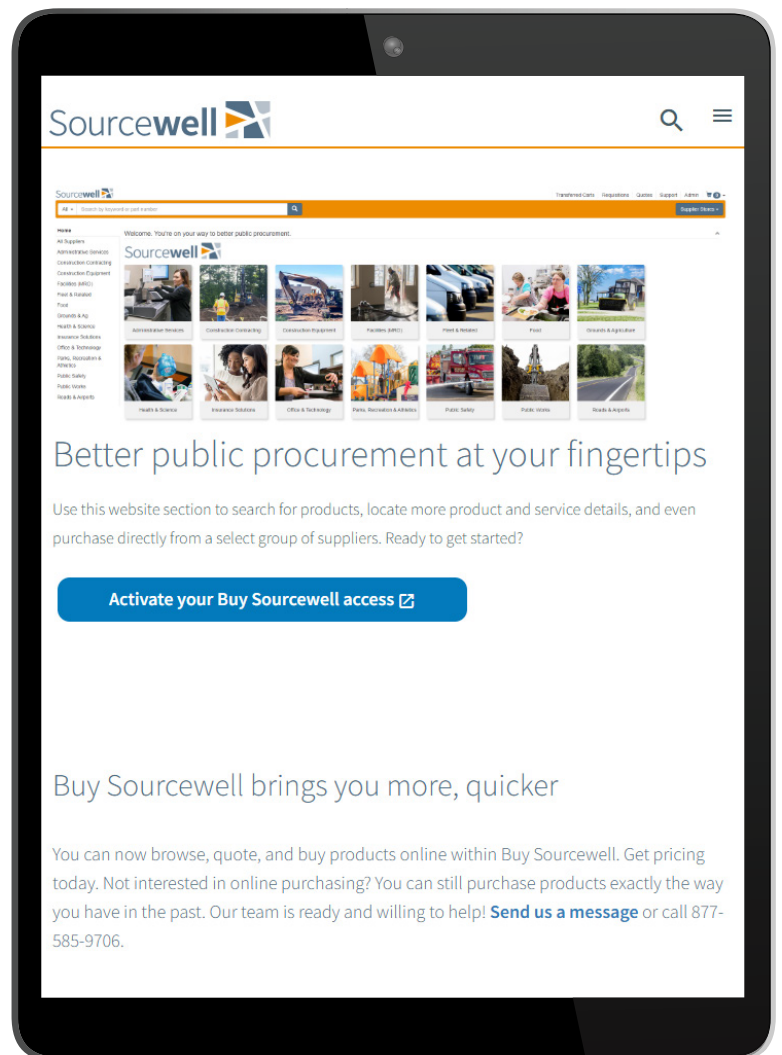
When discussing the pricing of an item with a local dealer, remember the Sourcewell pricing model utilizes "not-to-exceed price," so agency representatives always have the option to negotiate. The stated not-to-exceed price is the highest price for which equipment, products, or services can be billed. However, a supplier or their dealer representative can lower the price to win your business.

By utilizing cooperative contracts, you'll unlock another negotiation tool when conducting a "mini competition" among awarded suppliers. Public purchasers are encouraged to request a quote from each manufacturer awarded in each category, conduct a mini-evaluation (quality, price, continuity of fleet, etc.), and make decisions based on these comparisons. With not-to-exceed prices, you might be able to position a quote you received from a competitor as negotiating leverage with the supplier your end-user department really wants.

Similarly, a public buyer can do a "final draw down" where a cooperative's competitive process acts as a form of prequalification, then negotiates as allowed within the Master Framework Agreement Sourcewell awarded.

## Capture procurement efficiency with Buy Sourcewell

As you already know, requesting quotes from each individual supplier can be quite tedious. To help streamline the purchasing process for public agencies, Sourcewell has expanded website functionality with Buy Sourcewell. By using this online procurement platform, public procurement pros can save additional time when they quickly request multiple quotes from different suppliers. Buyers can also purchase a variety of items 100% online using their p-card, which is an employee-issued purchasing card (procurement card) used much like a credit or debit card. With many awarded suppliers already integrated within Buy Sourcewell, you can now log in, search for specific products, request quotes, and purchase directly through the website.



## Final negotiating point

Congratulations, you made it. You successfully negotiated your way through this guide. Hopefully, you've gained insights to trust and lean into your own contract negotiating plan and skills. By using contract negotiations, you're unlocking a great opportunity to figure out the strengths and weaknesses of potential suppliers before executing an agreement. You're also giving possible suppliers an opportunity to learn more about your organization so they can tailor an agreement to serve you best. Essentially, you are making public procurement pay off with better relationships by mastering the art of contract negotiations.



## Simplify procurement with cooperative purchasing

Reclaim focus on your top priorities by using Sourcewell cooperative purchasing to complement your procurement strategy.

Save time and reduce the effort required to run your own solicitation by accessing competitively awarded contracts and leveraging the buying power of 50,000 participating agencies. Choose from hundreds of awarded suppliers to find the products and services you need, delivered through local dealers and representatives.

As a 10-time recipient of the NPI Achievement of Excellence in Procurement award, Sourcewell offers a competitive solicitation process backed by decades of experience.

### Help when you need it.

Sourcewell is government empowering government since 1978 — partnering with education and government leaders to impact student and community success. Sourcewell staff measure their achievements by the success of the people they serve — you.

877-585-9706

← *Contact us today!* →

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*Purchasing agencies must complete due diligence and ensure compliance with all relevant laws and funding requirements.*

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