

BEST PRACTICES IN CONTRACT NEGOTIATIONS

**2017 CIPMM National Workshop
Master Class
June 6, 2017**

Louis Poliquin

Objectives

- Identify the unique challenges of contract negotiations in public procurement
- Highlight current best practices in contract negotiations



Topics Not Covered

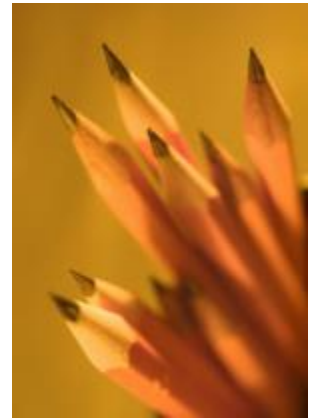
- Blue Sky
- Blue Print 20-20
- Renewal agenda
- Integrated business planning
- KLC



Reflecting Back

Historically

- Procurement is a subset of military logistics
- Paper based
- Governments funded infrastructure procurement by appropriation
- Prevalence of cost plus contracts for complex requirements



A Different World



Historically

- Procurement techniques a subset of military logistics
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Now and the Future

- Procurement and materiel management coming of age into civilian procurement
- IT driven
- PPP in wider use for infrastructures
- Moving away from cost plus type of contract for complex to FFP contracts



Procurement Management Manual:

To what extent does it deal with negotiation skills?

- Presented as a Tool in the Knowledge Area of Conducting the Negotiations
- Responsibility Matrix: Suggests that Procurement takes the lead and the Client contributes during conducting the procurement process and during administration
- Section 5.85 describes when but not the how
- <https://buyandsell.gc.ca/policy-and-guidelines/supply-manual/section/5/85>

What are the Challenges Here



- Negotiating with client departments
- How to manage the whole process
 - Preparation
 - Conducting
 - Post negotiations
- Tools and techniques

Additional Challenges

- Widening of socio-economic objectives
- Opening of procurement to international trade agreements
- Increased scrutiny
- Protests



Broadening the Scope of Contract Negotiations

- Negotiation with the team, the client
- Negotiation of scope of work and evaluation criteria
- Negotiation of contract changes
- Mitigation of disagreements and disputes before they escalate

Obstacles to a Win-Win Outcome in Government Contracting

- Fear of favorable treatment of vendor
- Trust building is difficult
 - Face-to-face meetings are minimal
- Not understanding the needs
- Personal negotiation style
- Organizational culture
- Lack of time



Challenges of Negotiating Contracts in a Government Environment

- Multiple parties on one side of the table (the client) negotiating with one single entity (vendor)
- Asymmetry of technical knowledge
- Diverging interests: low price vs profit
- Strict government rules about favouring a vendor at the expense of competing vendors

Contract Negotiations Desired Outcome

- Win-Win
 - Why



Go back three spaces...

NEGOTIATING WITH A SOLE SOURCE



Negotiating with a Sole Source

- When you are negotiating an amendment, you are in a sole source situation!



So let's Reframe...

- Negotiation with a sole source or a contract amendment with an existing contractor is just as challenging



BACK TO BASICS



W5 +H

- What
- Why
- Who
- When
- Where
- How



What do we Negotiate

- Everything!
 - Deadlines
 - Quality
 - Budgets
 - Resources
 - ETC.



Where we negotiate

- At work
- At home
- With contractors
- Buying cars



Why we negotiate

- Because we want to get along better
- Because we have no choice
- Because we want to improve a situation
- Because it is fun
- Because we need to change a chaotic situation



Who do we negotiate with

- Life partners
- Children
- Friends
- Colleagues
- Managers
- Clients
- Vendors



When do we negotiate

- When we least expect to
- When we have a problem to resolve
- When it is part of our job
- When we have needs unmet
- When we want to change something



How we negotiate



- Face-to-face
- On the phone
- By e-mail
- Teleconference



When Negotiations Are Left to Chance

- Win – Win outcomes become a game of chance
- Agreements need to be re-opened
- Delays in start up
- Delays in program
- Confusion and ambiguity ensues
- Stage is set for disputes



Rehabilitating Negotiations as a Skill

- It is a thing lawyers do behind closed doors
- It is associated with a certain trait of character, a cultural trait
- It is a thing a certain president believes he excels at...
- Confusion between bargaining and negotiations

Strategic Importance of Negotiation Skills

- When successful:
 - Programs are successful
 - Needs are met
 - Taxpayers money is well spent



15 ~~BEST~~ Worst Practices



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- Play out of role
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- Don't know when to stop
- When stuck, persevere and persuade
- Impose your agenda
- Delays
- Forget about verifying who has authority
- No need for a flip chart

SO, WHAT ARE THE BEST PRACTICES...?



Contract Negotiations Best Practices

- Negotiations start with preparation
 - Active participation of the client during preparation
 - Clarifying needs
 - Establishing your BATNA
 - Preparing the team
 - Developing an agenda collaboratively

Contract Negotiations Best Practices

- Negotiations start with preparation
- Redefine the framework of contract negotiations
 - Wherever possible, meet face-to-face
 - Not restricted to the commercial transaction but all terms and conditions
 - Focus on the process
 - Rapport
 - Explore
 - Bargain
 - Close

Contract Negotiations Best Practices

- Negotiations start with preparation
- Redefine the framework of contract negotiations
- Know your personal negotiation style and its impact on the negotiation outcome

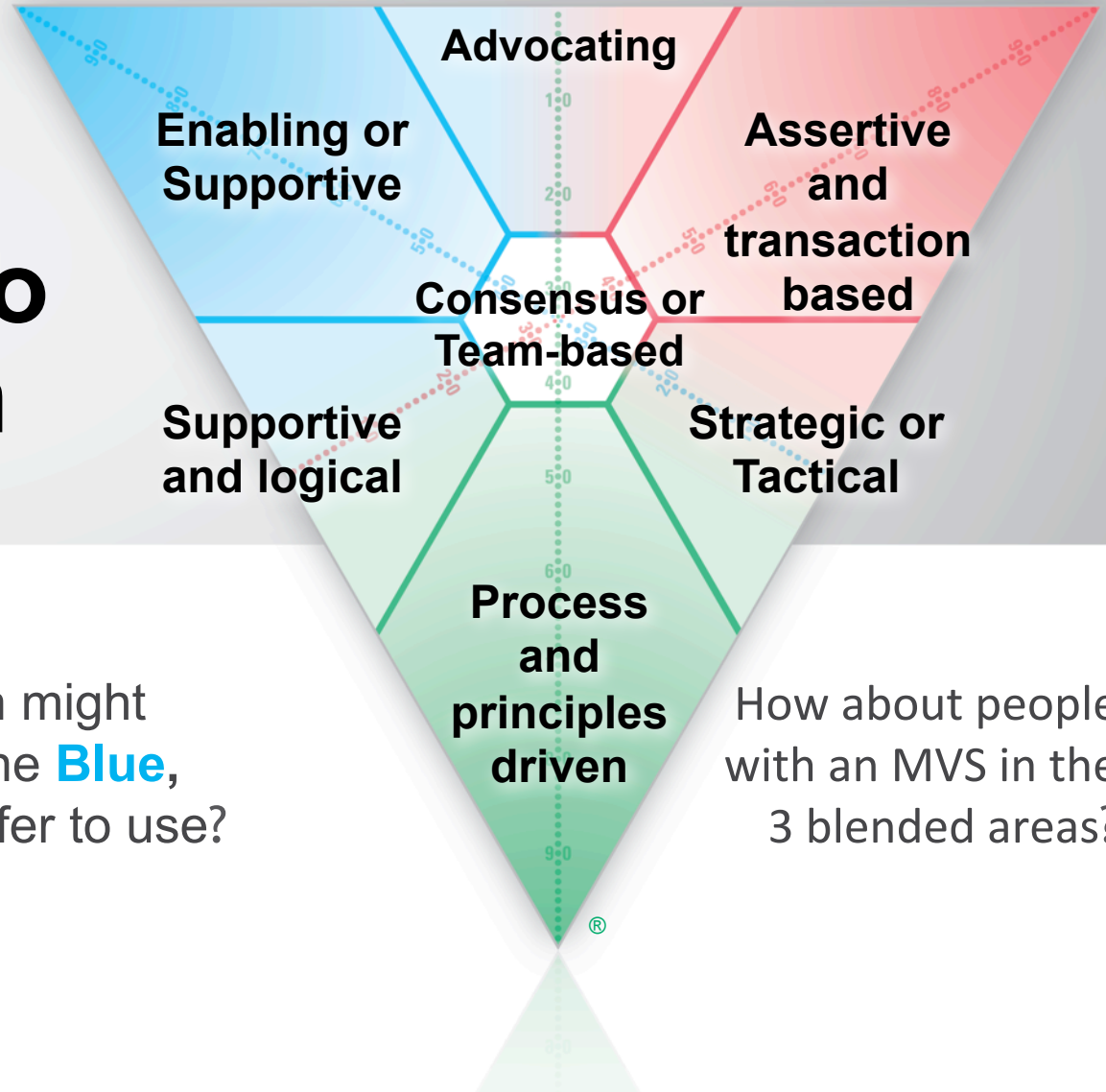


Discovering your Personal Negotiation Style

- DISC
- MBTI
- SDI
- And a lot more...



Approach to Negotiation



What style of negotiation might people with an MVS in the **Blue**, **Red**, **Green**, or **Hub** prefer to use?

How about people with an MVS in the 3 blended areas?

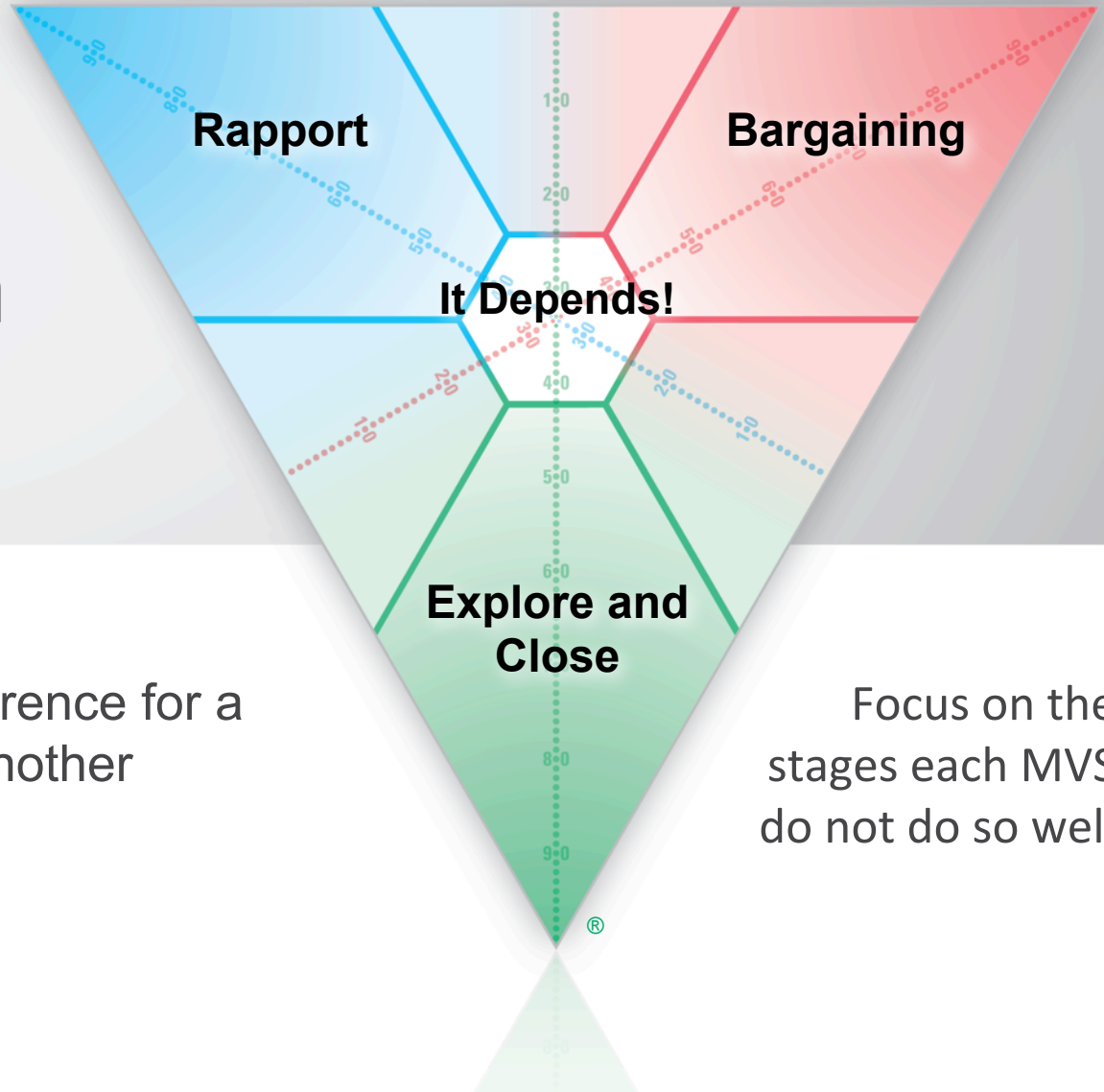


Negotiation Style Defined as...

- The negotiation stage you like to do and; the stage you do not do well at;
- The techniques you like to use and the others you tend not to use...



Negotiation Styles



Each MVS have a preference for a set of techniques over another

Focus on the stages each MVS do not do so well



Contract Negotiations Best Practices

- Negotiations start with preparation
- Redefine the framework of contract negotiations
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- Understand differences between collaborative and competitive schools of negotiations and when to shift

Should I compete or collaborate?

	Competitive	Collaborative
Dynamic	Distributive	Integrative
Outcome	Win-Lose, Win-Win, Lose-Lose	Win-Win
Perspective	Positions	Needs (interests)
Conflict Resolution Mode	Force, withdraw, smooth, compromise	Problem solving
Concession making	Game of chance	In-turn
Time Perspective	Short Term	Long Term
Attitude	Us vs Them	We are in this together

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- Cross-cultural awareness

Develop cross-cultural awareness

- National cultures
- Organizational cultures
- Sectorial cultures



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- Cross-cultural awareness
- In-class training

Why in-class training?

- Soft skills require critical thinking, and learning from peers and feedback;
- Simulations of one-on-one and team negotiations
- Video-based feedback
- Self-discovery of personal style



Conclusion:

There is no App for That

(at least not yet...)

- The needs of the public procurement community (public sector broadly) go beyond learning to negotiate with vendors only
- Applying this soft skill effectively is essential to spend taxpayers' money prudently and helping clients execute successful programs



Learning for Performance™

Algonquin College
Corporate Training Centre
340 Albert Street, 11th Floor
Constitution Square
Ottawa, Ontario K1R 7Y6

Telephone: (613) 727-7729
training@algonquincollege.com
www.algonquincollege.com/corporate

