



Treasury Board of Canada
Secrétariat

Secrétariat du Conseil du Trésor
du Canada

Canada

Contract Negotiations

Acquired Services and Assets

Sector,

Office of the Comptroller General

October 7, 2020



AGENDA

Context

What is negotiation?

When and What to negotiate?

Types of Negotiations

Phases in the Negotiation

Process

Barriers to Successful

Negotiations

Guidelines to Improving

Communication & to Build Trust

Context - priorities

Alignment with Government of Canada Priorities



PSPC to modernize procurement practices

The 2015 Mandate Letter of the Minister of Public Services and Procurement Canada included direction to **modernize procurement practices so that they are simpler and less administratively burdensome**. The 2019 letter specified to continue to collaborate with TBS.

TBS to modernize comptrollership

The 2015 Mandate Letter of the President of Treasury Board and Minister of Digital Government specified to **modernize comptrollership, which includes procurement policies and community**.

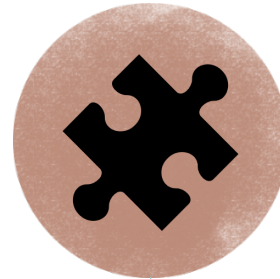
Budget commitment

Budget committed to **strengthening the Public Service** to ensure it is innovative, agile, collaborative and high performing.

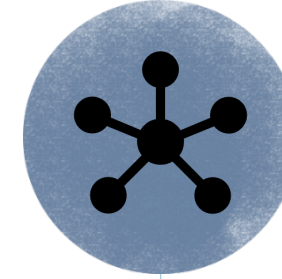
Current Environment



The GoC has introduced **new functional and technical competencies** that are essential to the procurement function.



Many organizations **currently struggle** with a lack of e-enablement, resourcing, poor planning, a gap in skills and knowledge, and limited time to be strategic.



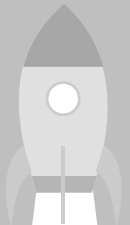
The procurement function has evolved to a **function at the center of government's capacity** to deliver departmental programs and onboard government priorities.

Context – Procurement Modernization Initiatives

Procurement Modernization Integration Team

May 2016 – April 2018

Initiated development of the future procurement professionals' vision;
Future of Procurement Community Workshop (Feb 2017)



Internal Audit Evaluation of Certification Program

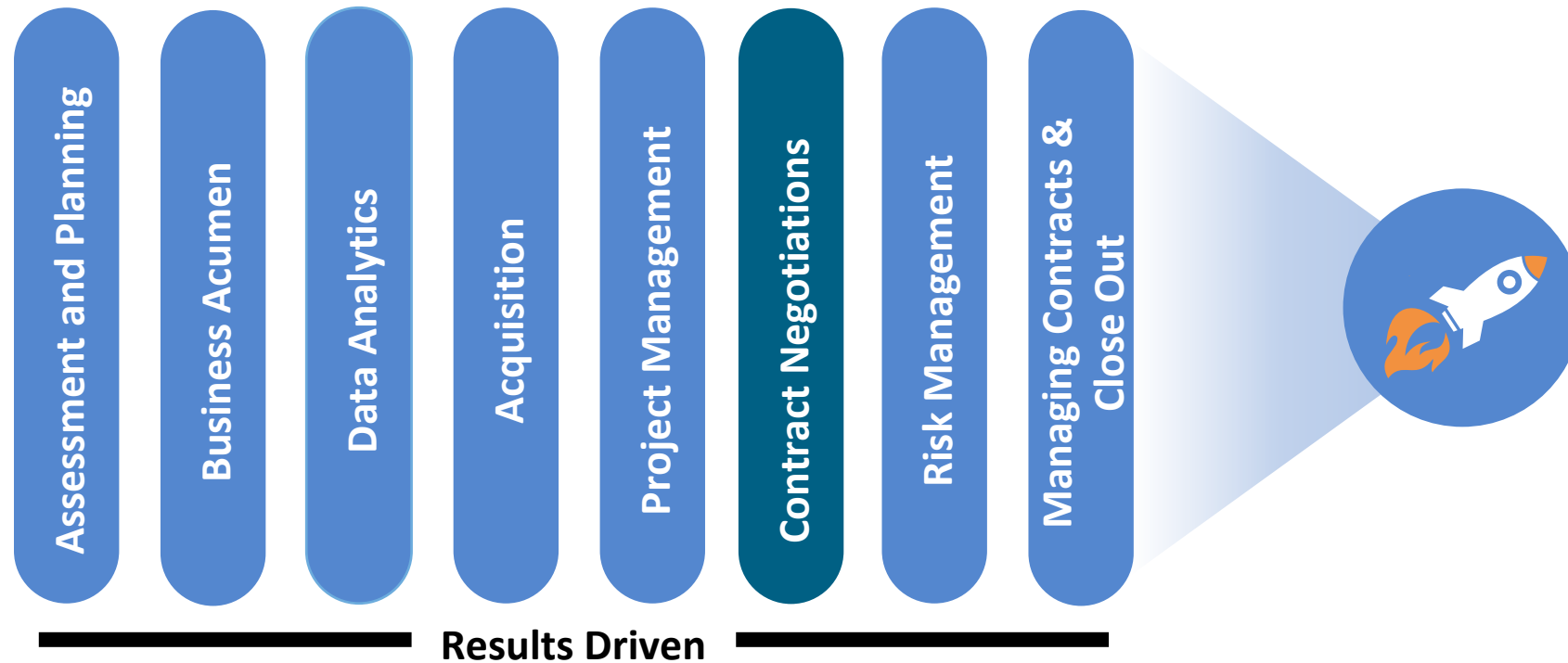


Continue work with CSPS to identify alternative service providers for training on complex procurement and the new procurement competencies
Research approaches for revised Certification Program

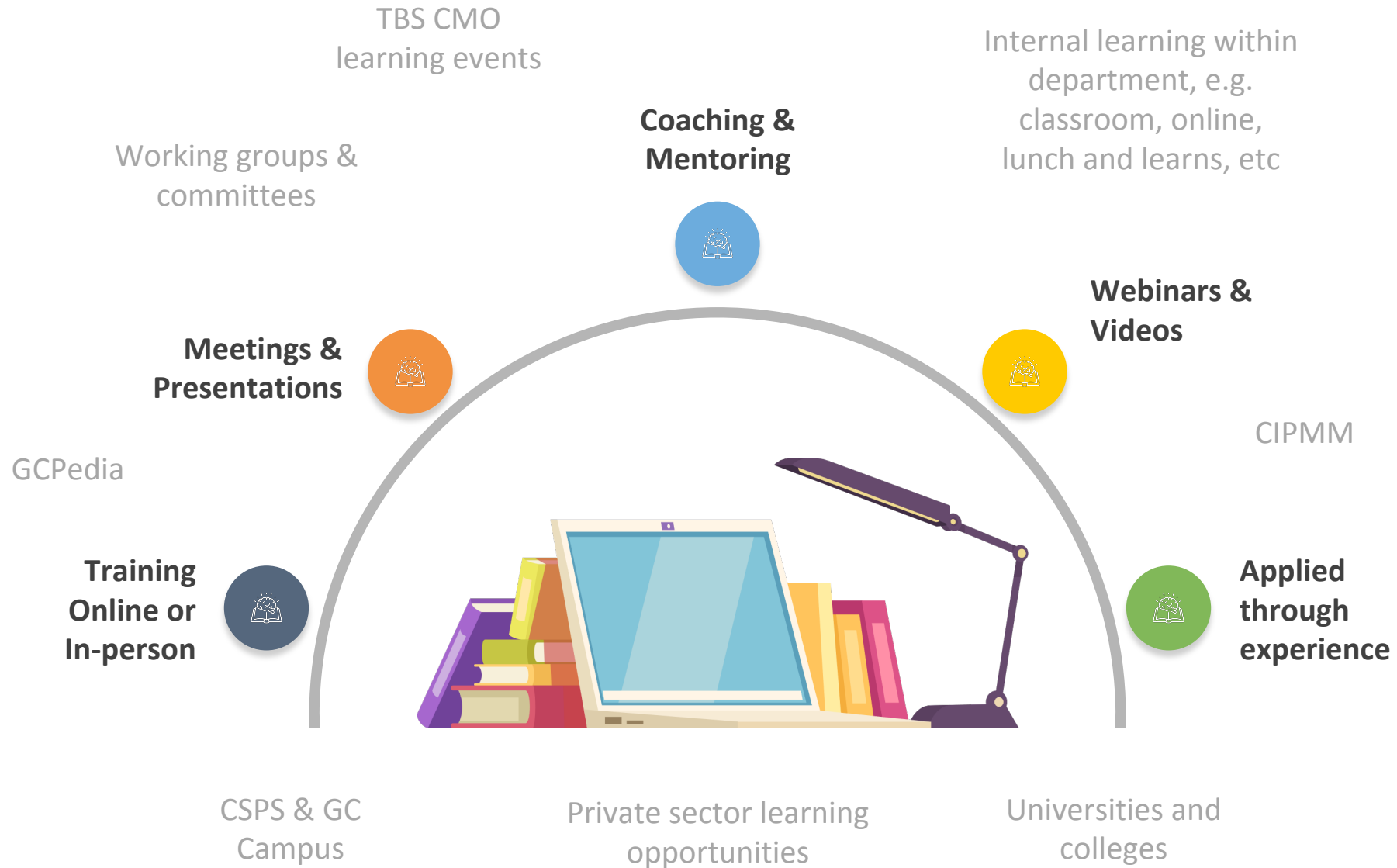
Context – Strengthen Procurement Community

Solution

Modernizing the procurement competencies to help professionalize the function, increasing recruitment and community development efforts, equipping the community with new tools, and transitioning to a more principles-based policy approach.



Learning Opportunities for Procurement Professionals



Learning Objectives

- This webinar is intended to build awareness at an introductory level on some of the concepts related to contract negotiations, but it is not an exhaustive list.
- The appropriate negotiation tactic selected should be treated on a case by case basis in consideration of the current environment, context, priorities and options available.
- This webinar is targeted to procurement professionals with an intermediate level of knowledge and experience in procurement.

What is Negotiation?

- Negotiation is the process by which two or more parties with conflicting interests try to come to a **common consensus or common agreement for a mutual benefit** through a constant process of interaction and communication.
- It is done through a **collection of behaviours** that involves communication, sales, marketing, psychology, sociology, assertiveness, and conflict resolution.
- A **negotiator** can be a buyer or a seller, a customer or a supplier, a boss or an employee, a business partner, a diplomat or civil servant, and on a more personal level a spouse, a friend, parent, or child.



When to negotiate?

Before a contract entry:

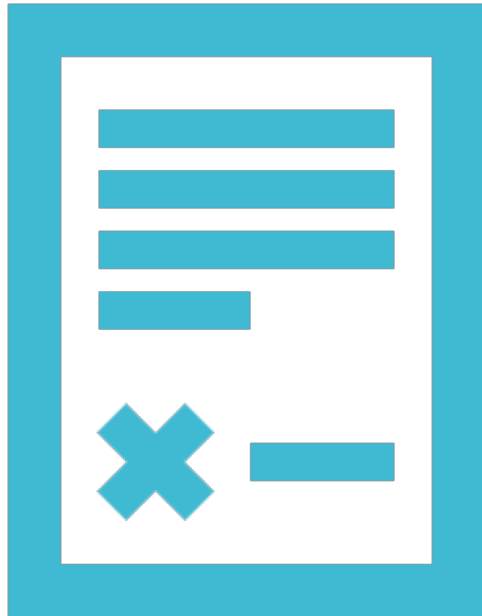
- to establish timelines, deliverables, scope, and sourcing strategy with the client and key stakeholders
- to clarify issues or concerns between the parties involved
- to improve or refine on the current offer (e.g. price, conditions, service levels)
- to resolve and explore complex or unusual circumstances
- to address risks by the parties to identify options to reduce or transfer the risk exposure

While the contract is in operation:

- when there are concerns over supplier performance, it is preferable to negotiate and solve the problem rather than litigate or terminate the contract
- when amendments to the contract are being considered, it will be necessary to negotiate the terms and conditions for the amendment
- respond to risks or unforeseen circumstances that may arise and need to be explored by the parties
- motivate suppliers to implement process improvements or innovative approaches to resolving issues
- address transition measures from one supplier to another

What can be negotiated?

- Negotiations are not solely focused on price but may include a wider array of opportunities to improve overall value for money.
- Areas of focus may include:
 - **financial aspects** - payment terms, discounts, payment schedule, advance payments, travel costs, cancellation penalties etc
 - **technical support aspects** - warranties, life-cycle support, maintenance agreements, etc
 - **risk management aspects** - sureties and financial guarantees, insurances, warranties, type of contract used, service standards, liquidated damages clause, indemnification etc
 - **management information aspects** - access to information, reporting, documentation, attendance at progress meetings etc
 - **government support aspects** - government provided facilities and information, access to government staff etc
 - **timeframes** - completion dates, delivery dates, milestone achievement, length of contract etc
 - **performance incentives or penalties**
 - **general matters** including packaging and freight, use of specified personnel, sub-contracting arrangements etc.
- After these matters have been negotiated, it would be appropriate to negotiate on price as you will then have a full understanding of the scope of the offering.



Poll Question # 1

What have you negotiated?

Select all that apply:

- Scope, timelines, deliverables and sourcing strategy with the client and key stakeholders.
- Contract terms and conditions with the successful bidder and bid prices when there is only one compliant bidder.
- Performance related issues with the supplier.
- Scope, price revisions, payment terms, and timelines with the supplier due to unforeseen circumstances.
- Process improvements or innovation strategies from your suppliers.
- Transition from one supplier to the next when the contract terminates.
- Other.
- I have never negotiated a contract.

Skills and Competencies Required to Negotiate

The ability to effectively negotiate is not based on just one skill and competency but many.



Effective negotiation requires advance planning, knowledge of negotiation techniques, and practice.



Poll Question # 2

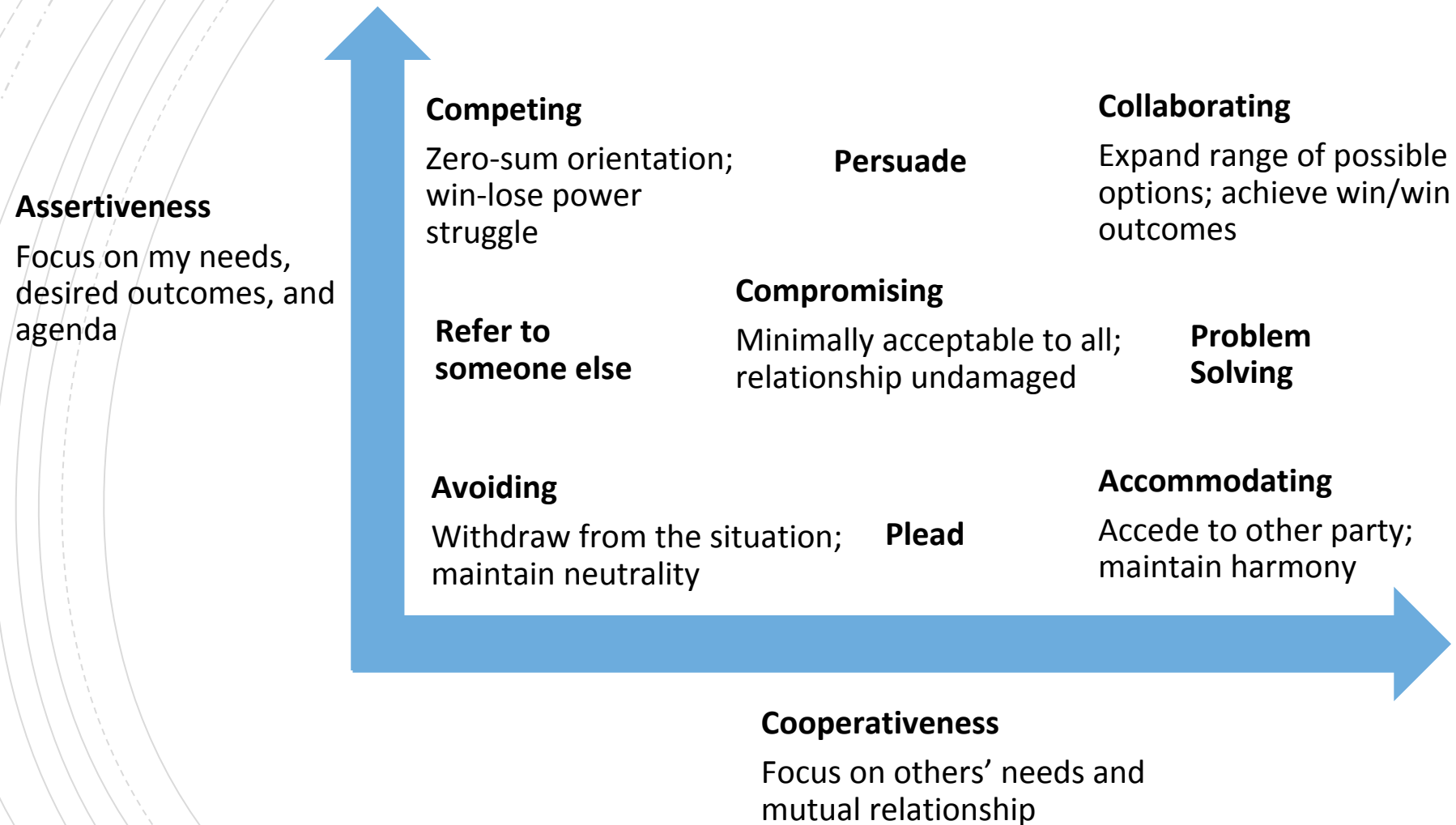
- What are the top 3 aspects you find most challenging?

Select up to three (3):

- Communication and Listening
- Research
- Financial Analysis
- Data Analysis
- Systems Thinking and Business Acumen
- Relationship management
- Dealing with Difficult Situations or People
- Project management
- Problem Solving and Decision Making
- Risk Management

Types of Negotiation

Types of Approaches





Poll Question # 3

What are the top two types of negotiation styles do you naturally gravitate towards?

Select the top two (2):

- Competing
- Refer to someone else
- Avoiding
- Persuade
- Compromising
- Plead
- Collaborating
- Problem solving
- Accommodating

Collaborative, Integrative or Interest-base Negotiations



- **Win-win!**
- Collaborative / mutual problem solving to achieve results benefiting both parties
- Value for both sides is created through weaving common interests
- Open about information and circumstances
- Building relationships and long term gains is the focus
- Decision is based on merit
- Multiple issues and concessions made by both parties

Competing, Distributive or Adversarial Negotiations

- **Win-lose** - one party's gain is another party's loss
- Focus on positions / non-compromising
- Fixed value is at stake – usually price or a single issue
- Goal is to get as much as possible or haggling!
- Short term wins forfeited for long term gains
- No information sharing / secretive but gather as much information as possible from other party
- Discourages exploration of options
- Can be aggressive and manipulative
- Does not foster good will or build good business relations
- Competition is key!



Stage 1: Preparation



Stage 1 – Preparation

- **Framing the problem** and **identifying the issues** jointly and independently
- Setting an **agenda** and order (forces decisions to be made in that order);
- Establish **parties involved** ahead of time in the negotiation and ensure **equal representation**
- **Break down the negotiation down into parts**
- **Coordinating the logistics** – location, media choices, date, time and duration (max 2 hours; 15-20 per issue)
- **Prioritize and evaluate trade-offs** for both sides (i.e. BATNA)
- **Define targets** for key issues (i.e. ZOPA) – ideal, flexible, deal breakers and leverage points
- **Seek approval** from management, if necessary
- **Know when to walk away** (i.e. reservation price)
- **Exchange of factual data** before negotiations, which helps overcome delays and confusion and clarify positions
- **Gather background information** about the other party
- **Rehearse** opening statement





Poll Question # 4

Do you normally feel adequately prepared for a contract negotiation?

Select the best one that applies:

- Never
- Rarely
- Sometimes
- Most of the time
- All the time

Know Your BATNA!

- **Best Alternative to a Negotiated Agreement (BATNA)**
- Typical example: negotiate or go to court
- Factors to consider: the cost, feasibility, impact, and consequences
- Always try to improve your situation by identifying ways to:
 - Improve your BATNA
 - Identify the other side's BATNA
 - Weaken the other party's BATNA
- Only accept a proposal if the negotiated agreement is better or equal to your "best alternative," you should take it. Otherwise, go back to the negotiating table to try again or leave the table to pursue your other option(s).
- Improving your BATNA increases your negotiating power.

Reservation Price

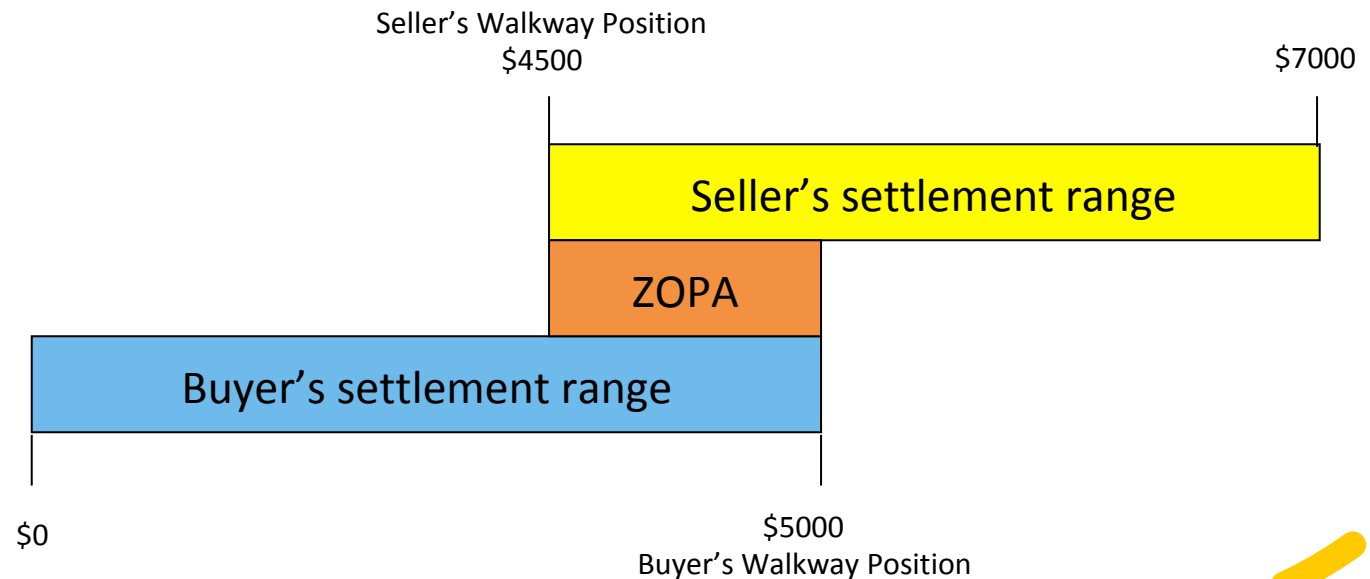
- The least favourable point at which one will accept a deal
- The “walk-away”

Example: you are looking for larger office space.
You set your BATNA at \$20/SF and your Reservation Price at \$30/SF



ZOPA

- **Zone of Possible Agreement (ZOPA)**
- The bargaining range where two or more negotiating parties find a common ground.
- An agreement can only occur when there is some overlap in expectations between both parties.



Value Creation Through Trades

Trade things you value less (financial and non-financial) to the other party (i.e. leverage points).


Example:

For a supplier the greater value may be not price but an extended delivery time.

For a customer, extended warranty versus price.

For an employee, working at home versus salary.





Stage 2: Conducting Negotiations

Conducting Negotiations

- Lead discussions and opening statements to set control; 2-3 min opening speech
- Be open and cooperative environment
- Communicate clearly and respectfully
- Focus on the interests not the positions
- Separate the people from the problem
- Invent options for mutual gain
- Use objective criteria
- Silence allows other party to provide for concessions first



Cialdini's Six Laws of Persuasion

1. **Reciprocity:** exchange for something of value, attractiveness of the contract
2. **Scarcity:** creation of a benefit or risks, market options and alternatives
3. **Authority:** credibility, knowledge and expertise
4. **Consistency:** prior behaviours, opinions, actions or statement
5. **Liking:** mutual, similar or cooperation; relationship
6. **Social Proof:** validation from others, association, perceptions





Poll Question # 5

What aspect do you find influences your negotiation the most?

Select the best one that applies:

1. **Reciprocity:** exchange for something of value, attractiveness of the contract
2. **Scarcity:** creation of a benefit or risks, market options and alternatives
3. **Authority:** credibility, knowledge and expertise
4. **Consistency:** prior behaviours, opinions, actions or statement
5. **Liking:** mutual, similar or cooperation; relationship
6. **Social Proof:** validation from others, association, perceptions

Tactics to Strengthening Your Position

- Having a good BATNA!
- Devise a **good solution to the problem** that addresses the interests of both sides.
- Ability to **listen, emphasize and communicate** clearly and effectively are crucial in negotiating effective agreements, including **awareness of various negotiating styles and cultural differences**.
- **Compromise and concessions** are essential aspects of negotiation. Attachment of conditions to the concessions equally necessary.
- The use of **emotion** in negotiation should be **avoided**.
- Use humour to **reduce tension and keep heaviness out** and also avoids confrontations.
- Do not commit to definite statements until you are confident that this will **not prejudice your position**.
- The **art of reading between the lines** helps to avoid errors in perception.
- Leaks allow you to **test the waters**.





Stage 3: Implementing and Closing the Deal

Stage 3: Implementing and Closing the Deal

- **Signal the end** before you get there. The closer to the end, the more sensitive the discussion becomes and is handled.
- Allow for **flexibility** and **contingency** for handling breakdowns and poor implementations.
- **Discourage** the other side from seeking further concessions.
- Before finalizing, it is advisable to **check** that all aspects in the deal have been taken care of, particularly dates for implementation, completion time, and definition and meaning of each term.
- **Confirm understanding** of the agreement and get confirmation in writing.
- Time arrangements are to be made for **final binding offer**.





Poll Question # 6

Do you typically achieve the intended outcomes from your negotiations?

Select the best one that applies:

- Never
- Rarely
- Sometimes
- Most of the time
- All the time

Planning for Contingencies

- Arriving at an agreement is not an end in itself. The purpose with which negotiation are carried is to **reach an outcome or action**.
- An agreement is not successful until it has been **effectively implemented**. Adequate information and explanation should be supplied to those who are affected or apply the agreement.
- Negotiations are **not always successful**. At times an agreement may not be achieved and this requires other arrangements.
- A **contingency plan** should be kept in case of failure of the negotiations. The major options for handling breakdowns are either to go ahead on your own and take a decision that is best or seek third party intervention.





Poll Question # 7

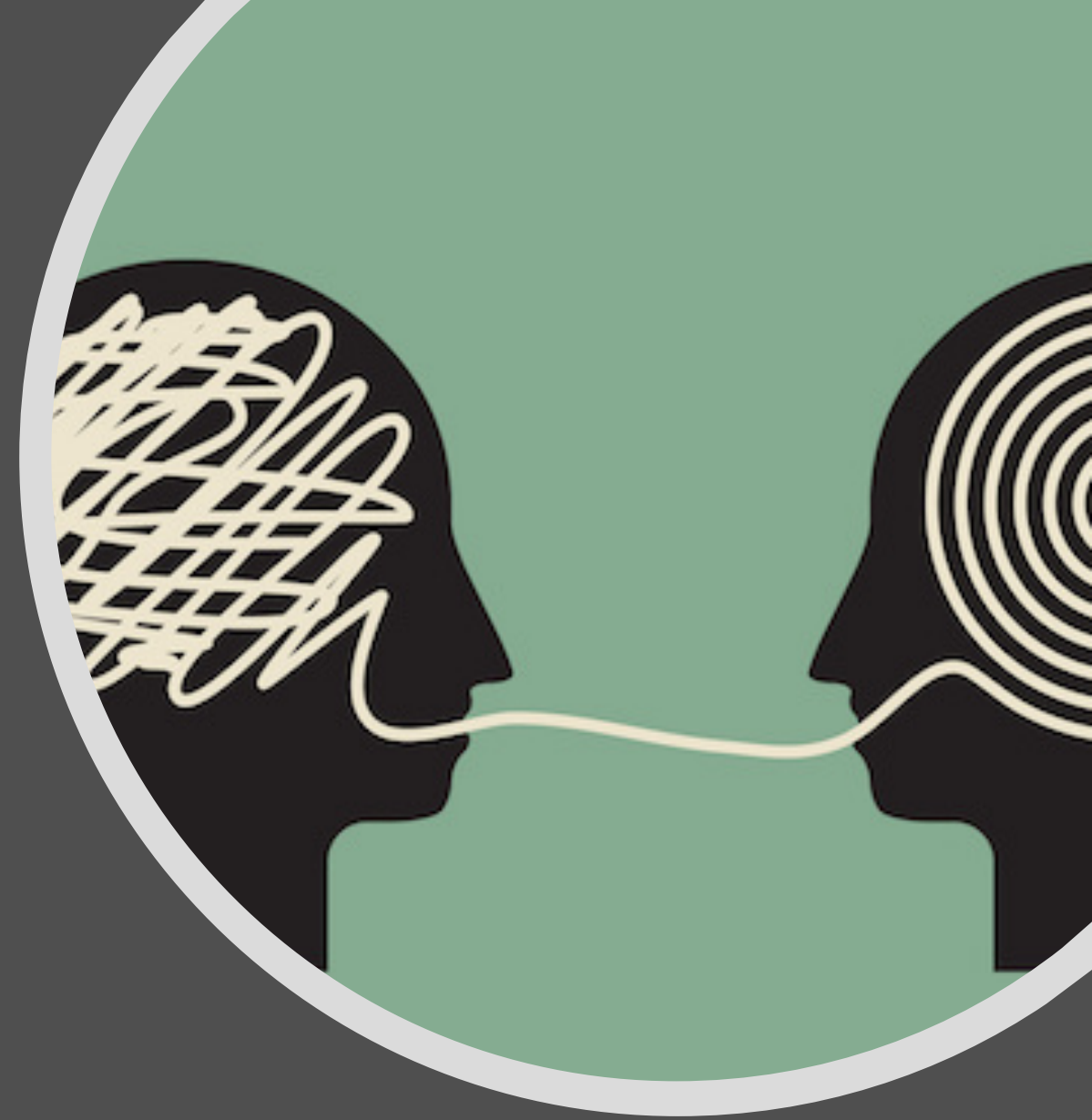
Do you typically plan ahead of time for contingencies if the negotiations fails?

Select the best one that applies:

- Never
- Rarely
- Sometimes
- Most of the time
- All the time

Barriers to Successful Negotiations

- Poor communications
- Hardball attitudes or inflexibility
- Unable to build a deal that has value for both parties
- Negotiating with the wrong people
- Unrealistic demands or expectations
- Lack of trust





Poll Question # 8

Do you feel adequately prepared to deal with difficult situations or people?

Select the best one that applies:

- Never
- Rarely
- Sometimes
- Most of the time
- All the time



Handling Difficult Negotiations

Every negotiator, may not necessarily be easy to deal with.

Some negotiators turn aggressive to create an impression of their being tough.

Instead of getting intimidated, winning is more important.

To handle such outrageous behaviour:

- Speak more quietly than them.
- Have more space in between your words than them.
- If they interrupt, pause for a few seconds after they finish.
- Be critical of foul language.
- Do not rise to a bait if they attack or blame you.
- Ignore all threats.

Guidelines to Improving Communication

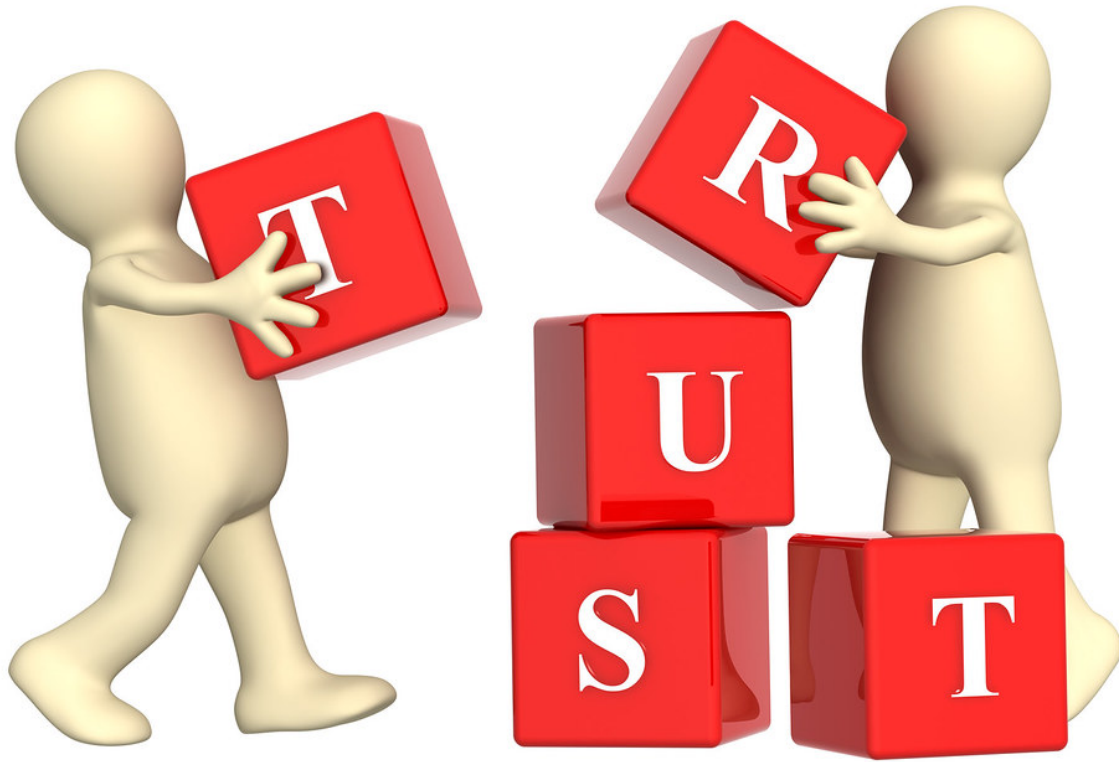
- Be **CLEAR** - use simplicity and relevance.
- **Adapt** to circumstances
- Be **consistent** and credible.
- Use popular and **conventional symbols** to encode and decode messages.
- **Avoid technical jargon** unless dealing with subject matter experts.
- **Involve every individual** affected directly and indirectly with the message and avoid secrecy.
- **Highlight importance and relevance** upfront to motivate receiver.



Guidelines to Improving Communication

- **Reinforce and repeat** the message consistently with a mix of verbal and non-verbal communication tactics.
- **Control** is an essential part of communication to ensure that it does not deviate from the original course.
- **Listen** (70/30 rule), be attentive, empathetic, ask for clarification when required.
- **Pick the timing, channel, structure, delivery style and mode appropriately.**
- Continuously use feedback to **confirm understanding** of the message.





- Know their language
- Manage your reputation
- Make dependence a factor
- Make unilateral concessions
- Label your concessions
- Explain your demands

... your level of concern and competence relates to the trust given

Ways to build trust

Lessons Learned and Preventing Future Negotiations

- Once the contract is awarded, the incentive for the supplier to provide competitive prices and adjust the contract is limited.
- A review of lessons learned should be conducted and shared with key stakeholders to prevent negotiations and costly overruns in the future.
- This requires analysis of:
 - Historical problems or issues that prompted negotiations;
 - Market competition, structure, trends and capabilities by using tools such as a PESTLE analysis;
 - Supplier motivation and incentives;
 - The elements that are driving costs up or down;
- Together this should form part of your future requirements and sourcing strategy in order to motivate and influence suppliers to submit more favourable bids and control or limit cost overruns.



Poll Question # 9

Do you typically apply these lessons learned to prevent future negotiations?

Select the best one that applies:

- Never
- Rarely
- Sometimes
- Most of the time
- All the time



Thank you

Annex

PESTLE Analysis: Macro analysis of external factors that can affect procurement

Political	Economic	Social	Technological	Environmental	Legal
<ul style="list-style-type: none"> Foreign government jurisdiction or other third party or stakeholder(s) Environmental or Labour law considerations Political stability Trade restrictions Conflict, civil unrest Fiscal policy Indigenous considerations Openness, fairness and transparency Dependency to other requirements Regulatory obligations 	<ul style="list-style-type: none"> Market availability Market rates Financial stability and liquidity Inflation rates Exchange rates Short vs long term obligations Planned vs unplanned requirements Available funds or authority 	<ul style="list-style-type: none"> Health and safety considerations Indigenous considerations or other affected communities Accessibility considerations Demographic analysis considerations Organizational impact and reputation Public interest and sensitivity Conflict of interest Cultural barriers 	<ul style="list-style-type: none"> Technology incentives Level of innovation Automation R&D activity Technological capabilities Technological change Technological awareness 	<ul style="list-style-type: none"> Environmental sustainability Environmental issues – current and present High risk climatic zones (flood, fire, smoke, lighting, water, windstorm, & earthquake) Environmental restrictions Geographical location and accessibility 	<ul style="list-style-type: none"> Acceptable terms and conditions Complexity of agreement, including number of parties, type of transaction, guarantees, etc Legal jurisdiction Trade agreement obligations Length of agreement and surviving provisions Risks of complaints Current or previous litigation Various laws that may impact the procurement

The more factors that will be impacted, the higher the risk and complexity requiring strong leadership, effective governance, good risk management, and well-planned strategy to resolve these issues.

References

- **Getting to Yes: Negotiating Agreement Without Giving In**, Roger Fisher and William Ury & Bruce Patton, 2nd Edition, Houghton Mifflin, 1991
- **Getting Past No: Negotiating with Difficult People**, William Ury, Bantam Books, 1991
- **Negotiation**, Harvard Business School Press, 2003.
- **Negotiation**. The State of Queensland (Department of Housing and Public Works) 2018.
- **Negotiation: The Art of Getting What you Want**. Michael Schatzki and Wayne R. Coffey, Signet Books, 1981
- **Negotiation Theory and Practice: A Review of the Literature**. Tanya Alfredson and Azeta Cungu, Food and Agriculture Organization of the United Nations, FAO, 2008.
- **Step into my parlor: A survey of strategies and techniques for effective negotiation**. Anderson, T. *Business Horizons*, May-June 1992, 75.





Additional Resources Available

Additional Resources Available

- Explore other relevant courses offered by the Canada School of Public Service.
- Explore additional courses in negotiation such as the Harvard School of Business [Negotiation Mastery](#) online 8-week program.
- Register for other webinars or learning opportunities provided by CIPMM or other organizations within the government of Canada
- Refer to the [Communities of Practice GCPedia site](#) for additional information related to Competencies, upcoming events and latest updates.

STRATEGIC THINKING:

- Developing the Strategic Thinking Skill of Seeing the Big Picture (X007)
- Using Strategic Thinking to Consider the Big Picture (G028)
- Leading Strategically (P113)

ANALYSIS:

- Business Analysis (F106)
- Big Data Fundamentals (I017)
- Big Data Interpretation (I018)

PROBLEM SOLVING:

- Getting to the root of a problem (T041)
- Defining Alternative Solutions to a Problem (D009)
- Investigating Arguments (C054)
- Reaching Sound Conclusions (D012)
- Choosing and Using the Best Solution (D007)
- Confronting your Assumptions (W023)

NEGOTIATION:

- Negotiation Essentials: Planning for Negotiation (X037)

PROCESS IMPROVEMENT:

- Fundamentals of Process Management (T400)
- Innovating with Lean Product Management (T935)
- Introduction to Six Sigma (X010)

RISK MANAGEMENT:

- Identifying Risks in your Organization (G017)
- Assessing Your Organization's Risks (G008)
- Integrated Risk Management (C361)
- Responding Effectively to Risks (D013)
- Analyzing Risk (PMBOK® GUIDE SIXTH EDITION) (T933)

CONFLICT MANAGEMENT:

- Handling Team Conflict (W008)
- Facing and Resolving Conflict in the Workplace (W022)
- The Many Approaches to Facing Workplace Conflict (W016)
- Controlling Conflict, Stress and Time in a Customer Service Environment (W021)
- Difficult People: Strategies to Keep Everyone Working Together (W020)
- Effective Team Communication (X170)
- Creating a Respectful Workplace (G417)

FINANCIAL MANAGEMENT:

- Comprehending Financials: A Guide to Financial Statements (F004)
- Financial Statement Analysis for Non-Financial Professionals (F005)
- Choosing and using the best solution (D007)
- Aligning unit goals and imperatives (G007)

CHANGE MANAGEMENT:

- Managing Change: Building Positive Support for Change (X031)
- Managing Change: Dealing with Resistance to Change (X032)
- Managing Change: Sustaining Organizational Change (X033)
- Managing Change: Understanding Change (X034)
- Managing Change Stick (X181)
- Leading Change (X026)
- Managing Change in Complex Times (E301)
- Moving Forward with Change Planning (X180)

REPORTS AND WRITING:

- Preparing a business case (C220)
- Developing an Effective Business Case (T038)
- Preparing and implementing a business plan (C073)
- How to do a 2-minute briefing (Video)
- Managing a meeting (C332)

TIME MANAGEMENT:

- The Art of Staying Focused (D014)