Negotiating skills in engineering and construction

Bill Scott and Bertil Billing

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Dedication

Georgie and Birgit

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Barbara E. Clowe
David Sanders
David F. Sutton

About the authors

W. P. Scott, MA(Cantab)

Bill Scott is an independent consultant and author. He specialises in the fields of negotiation and communication skills and his regular clients have for many years included the Institution of Civil Engineers, together with major companies in engineering consultancy and contracting. About 30% of his client work is in the United Kingdom, 70% abroad. His overseas interests are strong in Northern Europe, and he works also in Asia, Australia and South America. His earlier career included senior appointments in industry and in universities. He is author of ten major works, including *Communication for Professional Engineers* (Thomas Telford, 1984), *The Skills of Negotiating* (Gower, 1981), and *Constructive Negotiation* (Gower TFI, 1986).

Bertil Billing, MSc (Civil Eng), MSVR

Since 1971 Bertil Billing has worked with all aspects of the international activities of Skanska – a leading Swedish construction contractor and real estate developer. His present position is Deputy Manager of the company's International Division. He has also acted as an internal consultant to the group management, trouble-shooting for international projects and subsidiaries. His experience in negotiating covers a wide range of subjects, both technical and financial, and includes construction contracts as well as sub-contracts of various kinds, day-to-day negotiations of project management as well as settling of claims and major disputes. His international experience includes a large number of countries in all parts of the world.

Contributors

The authors are grateful for advice and contribution to the drafting of this book by the following authorities.

Ray Flint, MA, BSc, was a Commercial Director with Wimpey and continues to act for them as consultant. He has vast experience in negotiating major engineering contracts with owners, contractors, sub-contractors and vendors. He participates extensively in training seminars.

Tony Farmer's background is in building. He is Director of Bovis International, with some 20 years' experience of negotiating major contracts (especially management contracts).

Alan S. N. Foster, BSc(Eng), CEng, FIEE, MIMechE, is formerly Manager, Sales and Contracts, Control Gear Division, English Electric Co. Ltd; Commercial Manager, Shelley Furnaces Ltd; Sales Director, Rupert Neve and Co. Ltd (manufacturers of professional audio control consoles); Joint MD, The David Ball Co. Ltd (refractory and thermal insulation engineers). Presently he is practising as an Energy Consultant.

Geoffrey Beresford Hartwell, CEng, FIMechE, Companion IEE, MInstMC, MINucE, MConsE, FCIArb, is a former nautical engineer and is expert in the fields of instrumentation, power, etc. He is much occupied as Expert Witness and as Arbitrator.

Basil Isaacs, BSc, FICE, FIStructE, FCIArb, has recently retired as a Consulting Engineer with almost 40 years' experience. He has been an active practical negotiator in the construction industry for the past 28 years. During this period he was a Senior Partner

and subsequently a Director of Ove Arup & Partners. In addition to acting as an Arbitrator and Mediator, he is now lecturing on a variety of management skills in the construction field.

Dan Otteborn is a mechanical engineer also holding university degrees in business administration and marketing. During the past 12 years he has been in international marketing of technical equipment, mainly to state-owned organisations.

Note to reader

This note is to outline the purpose and scope of this book, its origins and its use of language.

Purpose

The book is written for engineers who are involved in the conduct of negotiations. It is intended for all engineers — all disciplines and levels of seniority. The main focus however is towards the engineer who has reached that stage of his career at which he has to negotiate substantial contracts. It will be of interest also to the even more senior engineer who has built his qualities as negotiator through a long period of experience. And to the less experienced — he or she has to negotiate, even within his or her own office, from early career stages.

This is a book on negotiating skills. Such skills can no more be taught than the ability to swim or to ride a bike or to play golf. All are skills which develop through practice and experience. They may be coached (and experience of negotiating can be compressed and set in order, in active practical seminars). But negotiating skill is not an academic matter.

The book's aim is therefore not to teach, but to set in order. To offer a systematic framework for considering a process (negotiating) which may heretofore have seemed ill-defined or undefined. Hopefully, it will help to set the reader's own experience in context; help him or her to recognise his or her strengths and so build confidence; and will indicate some skills which could be polished.

Scope

This is a book on negotiating *skills*. On the ability to handle negotiations, as distinct from professional and technical competence in engineering.

It is not a book about contract law, nor does it advise on the differences between the various Standard Forms of Contract and the ways in which they have been interpreted in practice and by the Courts. Nor does it deal with what is needed to make a project happen nor with setting up an efficient project structure nor yet with managing a project. There are plenty of other books on those subjects.

We are concerned with negotiating skills in major contracts. The authors have had the benefit of advice and contributions from other specialists and the scope includes civil, mechanical, electrical, and related disciplines. By extension, similar contracts are negotiated over a much wider range of industries from shipbuilding to aero engineering, from military to conservation projects. Whilst these fields are not central to the scope of this book, we trust that those experts will also find the book of interest.

The book aims to restrict its scope to commercial and operational negotiations. It is not the task of this book to deal with the well-trodden ground of labour negotiations, nor to cover the fields of marketing or of project management — except at the points at which those fields overlap with negotiations.

Its scope is the personal skill of engineers negotiating contracts and negotiating during and after contracts.

Origins

There are three main impulses giving rise to this book.

A. Thomas Telford, as publishers of Bill Scott's best selling book *Communication for Professional Engineers*, noted the heavy demand from engineers for such 'skills' software.

B. Bill Scott, as author of another best seller, *The Skills of Negotiating* (Gower, 1981) and of other publications in the same field, was keen to explore the skills of negotiating set in an engineering context.

C. Together, they convened a group of distinguished engineers from the civil, mechanical and electrical fields. This work

group confirmed the need for such a book and have been supportive through its drafting. We appreciate and acknowledge their contributions though of course we take responsibility for any inadequacies.

Use of language

There are two uses of pronouns in this book which need prior explanation.

First, the third person pronoun. 'The negotiator' is a clumsy word to keep repeating but unfortunately there is no generic pronoun to cover it. Equally, the phrase 'he or she' is annoying when used repeatedly. We will therefore use the conventional 'he' as generic for 'he or she'.

Second, the first person pronoun. The singular 'I' is generally used to signal the opinion or experience of either author or of both together or of a contributor. 'We' is used for the experience or activity of one of the organisations whom they have represented.

One choice of noun also offers alternatives. The person at the top of the executive chain is normally referred to in this book by the noun 'Chairman'. If your top person has a title other than Chairman — maybe Managing Director or Vice President or Senior Partner — please make the necessary translation.

Thank you for reading this preliminary note. We hope you will find as much satisfaction from reading the book as we have found in writing it.

Bill Scott
21 Hartley Crescent
Southport PR8 4SQ
England

Bertil Billing
Mahognygatan 6
23040 Bara
Sweden

Contents

1

Engineers' negotiations

Engineers constantly confer with other people to reach agreement or compromise. With other engineers and with non-engineers. They constantly negotiate.

They negotiate in all sorts of scenarios, at different times demanding different skills.

In some ways, the variety of engineers' negotiations seem almost baffling.

> The Mechanical Engineer seeking the contract to build a power station. Negotiating the main contract with a powerful buyer. Negotiating various forms of alliance for that project with Civil and Electrical Engineers, negotiating with the buyer's representatives (Consultants, surveyors, financial backers). Then by sudden metamorphosis becoming the powerful buyer of equipment and of sub-contracted services. And with a host of other negotiations looming as the project gets underway.

> The Civil Engineer in search of a contract for some major construction works. He too has a host of preliminary negotiations. Electrical and Mechanical Engineers are amongst those with whom he will probably negotiate. For example, most modern construction works have electrical lighting and power systems and environmental systems broadly grouped as 'services'. They are ancillary to the construction and likely to be the subject of sub-contracts, although some specialist features – e.g. telephones – may be the subject of nominated sub-contracts.

> There are contracts for the supply or installation of machinery either alone or with some minor construction work. Printing presses, process machinery, product packaging, mechanical handling systems might be examples

The seller Engineer has his counterpart in the engineer who is a buyer, maybe an employee in a real estate company.

Each engineer is faced with a changing panorama of other negotiators. They constantly appear in different guises: buyers, sellers, competitors, advisors, partners, the powerful and the meek. And the people from other cultures with widely different approaches to negotiating and even to integrity.

Even when an engineer is awarded a contract, there still needs to be negotiation of the written contract.

And during the contract there are always fresh issues which have to be discussed with other people to reach agreement or compromise. Delays, acts of God, variances. And the consequences of each for co-operation and co-ordination between all the parties involved. Often, the need to negotiate when relationships are turning sour, even embittered.

Even after the contract is concluded there are still settlements to be negotiated.

That is a wide panorama of different negotiating scenarios, and no doubt every reader can add a few more.

It is the task of this book to suggest the skills which engineers use in their negotiations and to cover the panorama in a digestible manner.

To do so we shall be using four main models.

First, we shall be thinking of the engineer as negotiator in three distinct roles

- The Engineer as Buyer
- The Engineer as Seller
- The Engineer as Partner.

Second, negotiations at different times during the life of a contract

- Before the Contract
- During the Contract
- After the Contract.

Third, 'the negotiation' is rarely at just one stage. The sub-contractor probably comes on the stage after the main contractor. The sub-contractor, *before* he gets his contract, is negotiating with

the contractor *during* the latter's contract. The cycle Before, During and After repeats itself – both sub-contractor and contractor go through it, but not at the same time. For the sake of simplicity, this book will look from the perspective of one party rather than trying constantly to dodge backwards and forwards between the perspectives of those who go before and those who go after. Please will Consulting Engineers – likely to be appointed at an early stage and then to become advisors about choice of contractors – please will they recognise that the words Before/During/After imply different time frames to those of the same words of a contractor. Equally, will sub-contractors please accept that Before they negotiate a sub-contract, the main contractors are probably already appointed. This does not affect the negotiating skills to be discussed, but it makes the discussing easier!

Fourth, we shall be concerned with negotiating with different attitudes.

- Constructive negotiating: where our attitude is to reach agreement with business friends, actual or potential.
- Aggressive negotiating: where our attitude is that our advantage depends on the other party giving way.

The first part of the book is mainly set Before the Contract. In this phase, some engineers act on behalf of buyers. Others act at first in the role of seller and (having succeeded as sellers) may later become buyers. Whichever it may be, the engineer in this phase is a seller and/or a buyer.

The second part of the book deals with the Engineer as Partner. The parties – including buyers and sellers – are now locked in and have the joint (partnership) intention of completing. Other negotiations come into this picture: consortia, joint ventures, internal negotiations for example. And the Engineer has to negotiate with his partners both During and After the negotiation. And to negotiate back home with his own colleagues.

The third part of the book deals with universal issues such as teamwork in negotiations, different styles and cultures, strategies.

The final chapter is an overview and summary of the skills of negotiating in engineering and construction.

Part 1

The Engineer as Seller and Buyer

Synopsis of Part 1

Up to the stage of signing a contract, engineers negotiate in the roles of Buyer or Seller.

The foundations for negotiations are being laid well ahead of the negotiations taking place (chapter 2).

In all negotiations, it is important to develop a procedure for the conduct of the negotiation (chapter 3) and to have one's thinking prepared in advance (chapter 4).

Negotiations then proceed through stages of Bidding or Tendering (chapter 5), Bargaining (chapter 6) and Settling on a contract (chapter 7).

The skills of negotiating as Seller are usually those of Constructive Negotiation. But occasionally, the Engineer has to use different skills — those of the Competitive or Aggressive Negotiator (chapter 8).

From a different perspective, the Engineer negotiates as Buyer with prospective suppliers and sub-contractors (chapter 9).

2

Early stages

The foundations of a negotiation start being laid far in advance of arriving at the negotiating table.

One fact is that everybody has some experience of contracts before coming to negotiate a new one. Knowledge for example that the goodwill which exists when a contract is signed often gives way to wrangling and even dispute as a contract proceeds.

Buyers are likely in advance to know most prospective sellers or at the least to know of them. Each seller will have an image for better or for worse with the buyer. Image formation is of course a marketing responsibility, not within our scope here, but nevertheless the perceived image influences the seller's strength in his negotiation.

The preliminaries to negotiation probably start with the buyer having some vision. Gradually, that vision is clarified and its economic feasibility evaluated. As it takes shape, so he needs the support of advisors — possibly designers or architects, financial advisors, and engineering advisors. He is likely to have many prospective suppliers or sellers, and to have to narrow his choice to a short list.

Through these early stages, the Seller Engineer is rarely in a position to negotiate with the buyer. He may have the opportunity to join in technical negotiations — for example in pre-qualification rituals — but little opportunity yet to deal and bargain in commercial terms.

Nevertheless, a great deal of foundation is being laid which will influence his later ability to negotiate. These are important matters for the negotiator, areas in which he needs to exert his skill so that he is ultimately well positioned.

Through these early stages, the climate for negotiation is being established. For better or for worse, the chemistry of the relationships of buyer and seller organisations and between buyer and seller individuals is becoming established. First impressions have heavy and lasting influence. You haven't much hope later on if they look at you askance from the outset.

Expectations are being formed.

The wise seller is exploring what the buyer requires — what he wants, what he needs and what his idiosyncrasies are. At the same time, he is hoping to display some ability appealing to the buyer — at its best, a unique flowering of mutual regard and creativity to ensure that he will have a privileged position in later negotiations.

As the project takes shape, so the seller may come to preliminary negotiations such as the pre-qualification ritual or technical negotiations.

These are all issues in which the negotiator needs to display his skills and we shall discuss that in more depth. But first some examples.

Illustrations

The illustrations here and in subsequent chapters are based on cases from the experience of the contributors. In most cases, they have been camouflaged to protect the anonymity of the parties involved.

A Polish shipyard was contemplating a new dry dock to take super-tankers. As part of their preliminary work, they visited most large dry docks throughout the world for discussion with the owners. We had recently completed one major dry dock using new technology and we were invited by the owners to meet the Poles.

This sort of dry dock measures some 400 m by 75 m. In its dry state, there is great pressure from below and the tradition is to make a very heavy construction which will not rise from the sea bed. We had developed the technology of a drained dock which has a much lower investment cost, but higher running expenditure.

Our technical staff made a presentation of this technology and of all the research they had put into it. The Poles were greatly impressed, and in particular the Professor who was their technical expert was intrigued. In their visits to other shipyards, they had apparently only met experts on the use of dry docks; we were their first experts on dry dock construction.

As the negotiations developed we were in a privileged position.

When we have earned the respect of a prospective customer overseas, it is quite common for us to be invited to draft for them parts of their invitation to tender.

And it is by no means uncommon to be asked to help in the evaluation of some aspects of the tenders they later receive.

In training seminars, I often use a case study which includes buyers and sellers and I am privileged to see different engineers behaving in their different ways. One seller made a brilliant presentation: he had marshalled his facts superbly and put them over to the buyers with quite extraordinary skill. As a specialist in such presentations, I revelled in admiration.

But the buyers bought from a competitor.

It is rare to find such an extraordinary presentation but on other occasions there seems to be confirmatory evidence. It is not the brilliant presenter whom buyers most esteem. It seems to be the relatively quiet person, the one who is the more effective listener.

Skills

What skills do Engineers need in the early stages of negotiation? We shall discuss

- Style in the early stages
- The climate
- Exploration
- Pre-qualification
- Technical negotiation.

Style in the early stages

The aim of negotiators, before a contract, should be to work towards an agreement.

Towards a mutually profitable and successful project.

This is a basic question of the attitudes which will influence negotiating behaviour.

If attitudes are constructive, developmental, there is hope of establishing a constructive relationship.

If, on the other hand, attitudes are aggressive, seeking to exploit the other party, then the relationship between the parties is bound to be aggressive. Instead of working constructively together in their joint interests, they will work as opponents —

opponents at the negotiating table, opponents in the execution of the contract.

The Seller Engineer does not alone have the ability to set the style of negotiations. Sometimes he will have to trade with others who are implacable aggressors. There are even some buyers who are trained to negotiate aggressively. The Engineer will find that their attitudes and behaviour and the procedure they follow are all consistently aggressive. He may be forced to behave in like mould, and we shall discuss that mould in chapter 8.

But for the moment we are concerned with the norm when the seller, before the contract, should try to use the skills of constructive negotiation.

It is such constructive skills to which we will confine discussion during the next five chapters.

Climate formation

The foundations for constructive negotiation include the early establishment of *a positive climate* and of *mutual credibility*.

The *climate* needs to be

- Cordial
- Co-operative
- Brisk
- Businesslike.

The cordial characteristic will not be achieved if the parties are in business the moment they first meet. People need time to establish a common wavelength, time free from the heavy load of negotiating their different business interests. For a minor negotiation, this time may be the ice-breaking ritual at the start of a half-hour meeting. For a major contract the lead time may be spread over contacts which have taken place during months or even years.

The co-operative nature requires that the parties establish their ability to agree. For example, prior agreements to have technical co-operation. Or minor agreements which can be shown to have been successful on a small scale — holding promise for the large scale.

But the merely cordial and co-operative is not enough to satisfy capable business people. They look for achievement in a brisk and businesslike way.

There are other desirable attributes:

- Trust
- Optimism and energy
- Credibility.

In constructive negotiation *trust* becomes intertwined with respect and even liking or admiration. Trust always has to be earned and trust can never be complete. One can only hope to earn trust by frankness, openness and proven ability to live up to one's promises.

Trust is also a matter of style. Different people earn trust in different ways. The Autocrat, by the power with which he expresses his position and forces results to conform to his predictions. The Bureaucrat by the way in which he stands on the rules and regulations and by the efficiency of his systems. The Democrat by the way in which he seeks advice and consensus. All, by readiness to receive and respect confidences. And their readiness openly and honestly to offer their assessments of situations.

Optimism and energy are as necessary as good manners, neat dress and clean fingernails. The right initial impact — way back in prior contracts — sets an aura of optimism and energy which can be durable through negotiations.

Credibility is another key element of prior impressions. It depends on

- Perceived achievement. Not necessarily what we have achieved, but what we are thought to have achieved. This may be better than actual achievement. Or it may be worse. But now we venture into the field of marketing!
- Reputation. What other people report — or are thought to report — about our performance. Once again, a marketing issue.
- Trust. The further credibility we can earn in the way in which we generate prior impressions.

Exploration

Another skill is in the conduct of preliminary exploratory discussions. If successfully conducted, the exploration phase can start a feeling of affinity of purpose.

Each party enters this exploration stage with its own perspective. The buyer with his opening vision, hopes, prior impressions and concerns. These might be pictured as a series of horizontal lines (Figure 2.1).

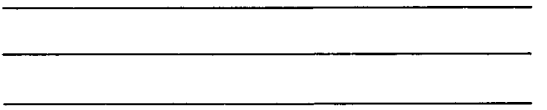


Figure 2.1 Buyer's opening perspective

The seller at the outset perceives only a fraction of the buyer's perspective (Figure 2.2).

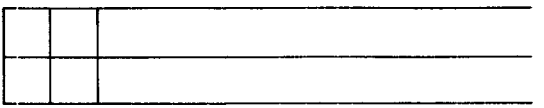


Figure 2.2 Seller sees only part of the picture

But of course the seller's perspective includes a wide range of expertise — and of impressions, hopes and fears — unknown to the buyer (Figure 2.3).

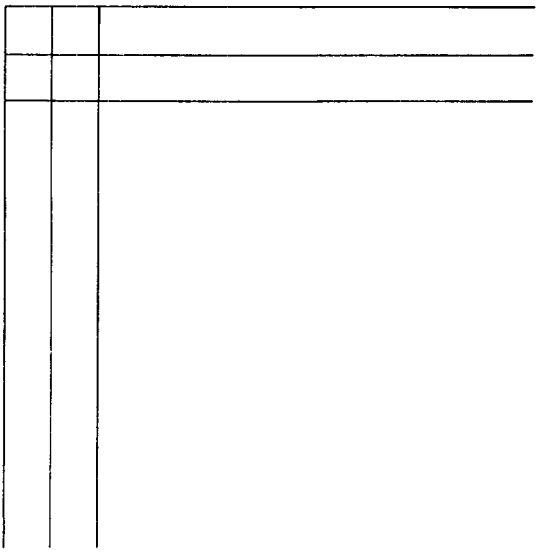


Figure 2.3 Seller sees other things from a different perspective

The two perspectives have a little in common, a lot which is not shared. And in any full picture there is bound to be much which neither party can perceive (Figure 2.4).

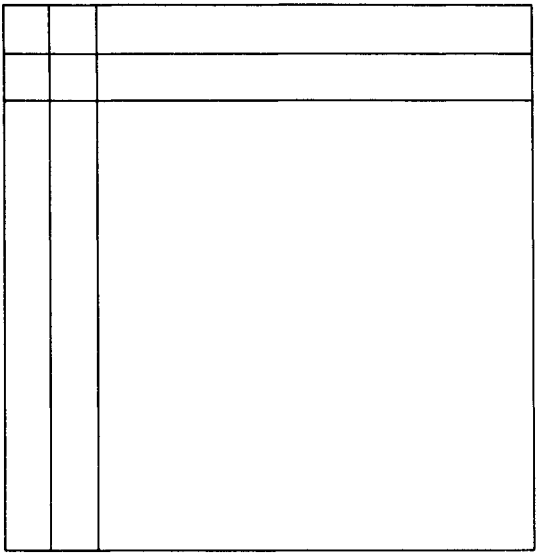


Figure 2.4 There is much which neither party perceives

Exploration is not easy. It is simple for a seller to swamp a buyer with information, with an oversell of his own expertise.

It is much more difficult to transfer the desire for ownership of that expertise to the buyer.

It is most difficult for him, the seller, to discover more about the buyer's perspective. For one thing, the buyer may not realise what information would be helpful to the seller. For another, the buyer may be reluctant to disclose information. And for a third — it is a characteristic of aggressive salesmen — the seller may be so busy projecting his wares that he never has time to listen.

He doesn't listen to what is offered, let alone ask sensitive questions to find out the buyer's perspective.

If, despite these restraints, the buyer manages to receive a little more of the seller's perspective he may be able to take a great leap forward and conceive radically new possibilities for his vision. Correspondingly, the seller, who receives more of a buyer's perspective, can also take a great leap forward.

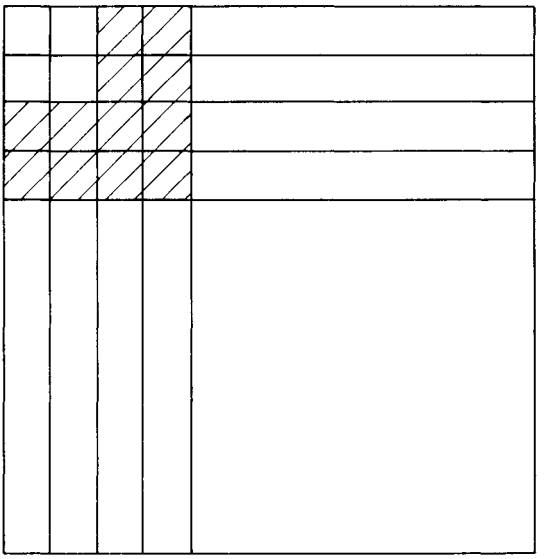


Figure 2.5 Exploration opens up new perspectives for both parties and increases shared perceptions (hatched)

As each party sees new possibilities (Figure 2.5), so their area of shared viewpoint expands.

Therein lie the fruits of constructive exploration leading to enhanced climate and credibility and to a new sense of affinity.

The skills which negotiators need for this phase are

- The skills of presenting their wares
- The skills of listening
- The flexibility to seek creative new possibilities
- The skills of creating trust.

Pre-qualification

On major projects the buyer will invite contractors to pre-qualify. From those who submit pre-qualification data, a number (three? four? six?) will be invited to submit full tenders. In getting to this position the contractors will have had to demonstrate their stability, competence, strengths, track record.

The 'examination' is partly written and partly oral. In both the presentation of the written response, and in the oral, the seller needs to sell himself. Presentations need to be skillfully planned and rehearsed, colleagues invited to act as probing examiners

before key meetings with buyers, team-members coached in presentation skills.

Often the seller's aim is to continue to obtain guidance on the buyer's priorities. To go about this search openly means offering something in exchange such as a premature and (so far as is compatible with commercial integrity) confidential disclosure of seller's strengths and weaknesses. One comes back quickly to the concept of trust and the generation and maintenance of an aura of mutual confidence and compatibility.

Positions of special privilege are shown by the sellers in the illustrations which opened this chapter — the one who had the specialist expertise in dry dock construction, and the one who was invited to draft parts of the invitation to tender.

Technical negotiations

It is conventional to hold technical negotiations ahead of the commercial — to ensure the ability to perform before negotiating the terms and conditions for that performance.

Such technical negotiations are very much the province of the Engineer as Seller.

He needs the skills of establishing suitable climate with his technical counterparts and the skills of exploration with them. He needs the skill of presenting the prospective technical performance of his organisation — it is in a sense the phase of making technical bids and of conferring with his opposite numbers to reach compromise or agreement. These are all skills which we discuss either earlier in this chapter or in subsequent chapters.

The distinctive feature of technical negotiations is that they often take place ahead of commercial. It is all too easy, in the satisfaction of outlining our technical competence, to find ourselves getting into the territory of the commercial negotiator. It is all too easy to give ground which would be valuable to him later on.

> A North Sea oil company was buying some four million dollars worth of cables. Their buyer came to negotiate a couple of weeks after technical discussions. He found that his technical colleagues, enjoying highly cordial relationships with their counterparts, had stated such strong preference for this supplier that there was no credible alternative. The seller's technical people had achieved a coup. The buyer was powerless in his negotiations.

The skills for technical negotiations include the same range as commercial negotiations.

They also require teamwork skills which we shall be discussing in chapter 16. And they do need a clear recognition of responsibilities. There are some which are clearly the responsibility of technical staffs, for example compliance with specification, functional adequacy. There are others which are clearly not — price, payment terms, warranties. In some cases technical and commercial negotiation is the responsibility of the same person — at managerial or director level.

The more dangerous areas are those in which technical and commercial staffs share responsibility. Typically these might include delivery/completion date, quality assurance, aesthetics. It is important that the technical and commercial representatives identify such fields of joint interest and agree who will be responsible for what.

Summary

1. Foundations for negotiation are being laid long before negotiators meet at the table.
2. The seller should aim for a constructive style of negotiating before the contract.
3. The climate to be established should be cordial and co-operative, brisk and businesslike. It should include trust, optimism and energy, and flexibility.
4. Credibility hinges on perceived achievement, on reputation and on trust.
5. The skills of exploration include
   - The skill of presentation
   - The skills of listening
   - The flexibility to seek creative new possibilities
   - The skills of creating trust.
6. Pre-qualification rituals may give the first opportunity to display presentation skills, both oral and written.
7. Technical negotiations need all the skills of negotiating plus demarcation of the joint interests of technical and commercial specialists.

3

Negotiating procedure

Some negotiating skills need to be in constant use, whatever stage of negotiation has been reached. This chapter and the next deal with skills which should be used throughout the negotiating processes.

First, the skill of planning and control of negotiations.

We shall first tackle planning, considering *what* needs to be planned, suggestions of *how to* promote the plans, and the *benefits* which should follow from this process. Then follows a section on *control* during a negotiating meeting.

The components of a plan

In any negotiating meeting, there are three procedural areas which it is all too easy to assume.

We can assume that the other party has the same view as we do about the *purpose* of the meeting. Too often, we go to meetings without having even thought out for ourselves the purpose for which we want them. If the other party has done the same, we can easily find ourselves in a muddled meeting.

They may be assuming (without having articulated it) that the purpose of the meeting is to evaluate our technical competence and to receive details of a technical proposal from us. We may be assuming that the purpose is to receive a briefing on their technical requirements, so that we will be able to prepare a detailed proposal.

Either could be justification for holding a meeting.

But if the parties are not clear which is the purpose — or even whether it is both — there's trouble ahead. We're heading for

a confusing situation in which each will recognise that the other is not communicating on the same wavelength and will retire suspicious, wondering why.

The second component of procedure which needs to be clarified is the *plan* or agenda for discussion. Again, it is all too easy to stumble into a discussion without much sense of the direction it will follow. Discussion is then disorderly and confusing.

An the third component is that of time. The *pace* at which the meeting will go. Negotiators with an indefinite amount of time will always let discussion fill out, often longer than is needed, sometimes curtailed by the need to go home before reaching a conclusion.

If negotiators have established a procedure for their negotiations, and for each meeting along the line, defining *purpose, plan*, and *pace*, then the efficiency of their discussions is higher.

Establishing procedure

A crucial part of establishing procedure is one's preparation in advance of a discussion. The way in which one prepares one's own thinking for that discussion. We shall have more to say on this in the next chapter.

Assuming that one has prepared and has a sense of the purpose, plan and pace, how do we make use of this in the negotiation meeting?

First it is important that we agree on procedure with the other party. Not to have thought about a procedure simply for our own benefit, not seek to impose it willy-nilly on the other party, but to discuss (negotiate) and agree the procedure with the other party.

That agreement is important in one sense because it can from the outset symbolise the co-operative character of a relationship.

Having broken the ice and sat down at the negotiating table, it can be a routine to open with the question (I put it as a paraphrase for the moment), 'Well, can we just agree on procedure to start with?' And, provided we manage the wording a little more subtly, the only possible answer is 'Yes'. We are establishing as soon as we sit down that we are co-operative people and we are already agreeing.

And we go on to agree (Yes) on purpose and Yes on plan and again Yes on pace.

The first reason to agree procedure is thus to develop the co-operative element of the climate.

The next reason is that it is no use our having a sense of procedure which is not shared by the other party. We may be able to use the homework we have done on procedure to keep the discussion thrusting along our lines, but that is not enough. We must make sure that it satisfies the other party too so that we can march ahead through the discussion with a shared purpose, plan, and pace. It may be necessary for us to be flexible, to modify our views about the procedure. The key consideration is to emerge with a purpose, plan, and pace — agreed.

For major negotiations, these procedural aspects may be established in prior correspondence. If they are, so much the better. Even so it is important that the parties be strongly aware of these procedures, these *agreed* procedures, as they meet. Steps need to be taken to get them into one another's consciousness. Not just a vague sense at the back of the mind that we did something in advance, not just an inanimate something in writing in front of us, but a stated reminder that we have *agreed* on *this* (purpose) and we have *agreed* on *that* (plan) and we have *agreed* on *the other* (time).

Even for major negotiations when the agenda has been pre-arranged, it is likely that there will be a series of meetings. Maybe one or more for each item on the full agenda. It is then important to ensure that the procedure is considered and agreed — the purpose, plan, and pace agreed — for each successive meeting.

It has to be done sensitively. You might find as you sit down that the other party is already raising a hare which they are anxious to chase. It can be counter-productive to try to deflect them. They will be disturbed if you push them to discuss procedure until they have hunted their particular hare.

Words too must be chosen sensitively. The concept is: 'Can we agree on procedure? On purpose, plan, and pace?' The actual words used should be the simple and obvious words that one would use in a dialogue with this particular party. Maybe it's something more like: 'Well, Jack, can we just agree how we are going to tackle this afternoon? I mean why we are here and what sort of agenda we should follow and how long we have got — that sort of thing?'

Do *agree* on procedure. Do make sure that your suggestion has his real approval and do be prepared to be flexible. Adapt towards his counter-suggestions if he has any. A genuinely agreed procedure is a good ally. A procedure imposed on an unwilling partner can be an enemy.

Benefits

Early in any discussion, agreement on procedure gives the following benefits

- Affinity. We have agreed, we can work together, we know how we can work together.
- Reduces uncertainty. Human beings can cope with difficult issues which they can see. But the human brain is confused and frustrated when it doesn't know what it's grappling with. In any significant negotiation, the human brain is going to receive an enormous range of impressions. Always with elements of doubt about how to interpret those impressions, always (even when there is great trust established) with some uncertainty about the credibility of those impressions.
- If we don't know where we are in the discussion and we don't know where the discussion is going next and we don't know how long we've got, then we have an unnecessary area of uncertainty. A sound and agreed procedure minimises that particular area of uncertainty.
- Basis for control. As we shall see in a moment, the plan can make an overwhelming contribution to subsequent control of a negotiation.
- Confidence. The early agreement on procedure is a wonderful support for each of the negotiators. It boosts their confidence through the remainder of the discussion.
- Routine. In our next chapter, we shall discuss the need for routines within the way we tackle negotiations. For the moment, note that early agreement on procedure can be a routine in the conduct of negotiation.

Control of negotiations

Skill in negotiating includes being in control of the way a discussion develops.

It includes control of

- What is being discussed
- Time.

The skilled negotiator tries to keep discussion to agreed and important points of the agenda. He tries to inhibit the pursuit of red herrings. He tries to prevent too much time being absorbed on trivialities and he tries to ensure that meetings make due progress within reasonable time. Not for him the sort of discussions which regularly take an hour or a week longer than they should.

It sounds easy enough.

In practice, it is far from easy. Each negotiator is wrapped up in the content of what he is discussing — in arguing the performance, the payments, the pounds. That is very energy-demanding. In practice it is difficult, concurrently with that concern, to find the ability to control progress and time. You need all your concentration to argue the performance — you can't be concentrating on the clock.

Yet unless one acquires the skill of control, too many negotiations will get out of control.

How to?

If negotiating in a team, appoint one member of the team to have the planning and control responsibility. Not necessarily the team leader. Some leaders are so strong as spokesman for their team that they are incapacitated from clock watching: they should appoint another team member to worry about procedure.

A different sort of team leader sees his role as a co-ordinator and prompter of discussion, with the detailed discussion to be handled by his team members. He is the sort of leader more likely to keep control of progress and time.

But what about the individual, negotiating on his own? How does he keep this form of control?

It is extremely difficult for him. However capable he may be, his concentration is so heavily demanded by the content of the discussion that he has no spare energy for control. If highly skilled — including if highly trained — it can become a reflex action to check periodically.

There are two periods at which it seems helpful for this reflex to operate. One period is hourly, when it becomes sensible to take a refreshing break.

The other period is every 15 or 20 minutes when some such questions as the following are appropriate

- Can we just summarise how far we have got?
- Are we making enough progress on this item or should we leave it aside for the moment?
- Should we be moving on to consider . . .?
- What sort of progress are we making on our agenda?
- What about the time factor for this discussion?
- Are we moving fast enough?

The negotiator's ability to raise these questions is very much stronger if the discussion is taking place within an agreed procedure, to an agreed plan and against agreed time constraint. It is much easier for the other party to perceive the significance of this control when operating to an agreed plan, and to co-operate in ensuring effectiveness of the negotiation.

•

The benefits of this control are of two forms. First, the efficiency of discussion. Taking the essentials at a measured pace, keeping the trivia within bounds, blocking off the red herrings. All at satisfying speed.

Second, control is powerful. He who steers the discussion is ever in a powerful position.

Summary

1. A skill needed at any stage of negotiation is procedural skill.
2. Procedure includes planning and control. It includes purpose, plan, and pace.
3. Seek for agreement on procedure at the outset of any meeting.
4. Be sensitive in seeking this agreement.
5. Try to develop the discipline of periodic control over progress and time.

4

Preparation

So we come to the second area of skill needed at any point in a sequence of negotiations: the skill of getting one's thinking into order beforehand.

We take it as axiomatic that any engineer will do his technical homework. He will research standards, check specifications, consult the designs. He will worry about the quality and the time and the money. He will investigate legal and contractual issues, if appropriate.

This chapter is concerned with the different forms of homework of the Engineer in his role as negotiator.

We shall be concerned with the need for preparation, the content of preparation, methods of preparation.

The need for preparation

Negotiating is a searching task.

Sitting there, the Engineer needs to be able to offer information, to receive from the other side, subtly to influence. He is meanwhile engulfed by a whole host of impressions. What is the point being made? How on earth is it relevant? Why have they introduced this? Can I believe what they're saying? How can I reply? What subtle development should I be seeking? How can I tactfully get them off this dangerous ground? How can I induce them to see our special merits and what on earth was all that about planning and control of negotiations?

Those are all valid concerns. They're made much easier by being written here, nicely and clearly. In practice, they're all likely to be jumbled together in a mish-mash.

For any negotiator, it is not simply a full load. It is an overload.

Overload is a fact in any negotiation. It always will be. We can't stop it.

What we can do is reduce the degree of overload.

There are two sorts of steps which we can take to contain overload. One is in the way in which we get our thinking into order beforehand (the other, which we shall be treating in other chapters, is to develop a number of routines for critical moments in a negotiation. Routines to follow automatically, without adding to the overload. An example is the routine in chapter 3 of always agreeing procedure at the outset).

In this chapter we are concerned with getting our thinking in order in advance of a discussion.

Content of preparation

The end point of skilled preparation is something which reduces overload during the negotiation. It needs to be something which is held at the back of the mind, influencing the mêlée which is the overload at the front.

There is no use in consigning a mass of worthy thoughts to the back of the mind. There, they can only lie as likely triggers to even more confusion. What we need is something very sharp and simple.

Something at the back of the mind so sharp and simple that the subconscious can handle the lines from the simplicity back there to the confusion out front.

The simple answer is *four key words*.

Reduce one's thinking in advance to the simplicity of four key words which summarise the essence.

Each word is a key to one headline in that thinking. Tucked under each headline there may be sub-headings and paragraphs galore, but the simplicity we need is at the level of a headline, sharpened to a *key word*.

Four is that number of key words which the back of the mind can store and retain vividly for use in the later state of overload.

•

Four headlines about what?

Four headlines on those aspects of a negotiation for which it is important to have the back of the mind cleared!

And in any negotiation, the mind will have to operate in three different ways.

- As a *transmitter*
- As a *receiver*
- As a *controller.*

Transmitter

As a transmitter the mind is called on for presentation of our side of a negotiation. The mind needs to be clear in advance about that presentation, clear to the point at which our thinking takes on the simplicity of four key words.

If our preparation stops at that point, then we go into the discussion with minds sharpened only to present our case. Our concentration is on making our presentation. Our minds are not prepared for anything else; we are even resistant to anything that interferes with our presentation.

But the good negotiator is at least as skilled a listener as a presenter.

Receiver

As a listener (receiver), he again needs the back of his mind well organised.

No two people receive identical messages during a negotiation. Often, in the heat of the fray, one completely fails to hear an important point.

> It is a matter which can be proven in active training seminars. For example, the Director of Purchasing for a North Sea oil company was a participant, negotiating a synthetic case. In the post-mortem, he criticised the other party for not having told him of a vital point. To their repeated assurances that they had told him, he was equally adamant — they had not.
>
> That happened to be a 'negotiation' which had been tele-recorded, and as we later reviewed the recording, there was the evidence: that particular point had been made not once, but three times.

The individual in that example was a particularly able person: he was not to 'blame' for the incident. And it is an incident which I have often found repeated. Even highly capable people, in the heat of a negotiation, cannot receive and digest all the information

which is flowing around them, while at the same time making their own contributions.

The fact of having prepared one's own presentation means that the brain is organised to be a transmitter. It will concentrate on transmitting with scant regard for receiving, unless it has prepared for its receiver role.

Now the need is to have thought through the sort of information one would like to receive during discussion, to have organised that thinking into four headlines and to have sharpened it to the point of four key words.

The purpose of this preparation is to alert the mind to its function as listener. As we enter the discussion, we know what we are looking for, and so we are alert also to other messages being offered to us. In practice, we do not often come away with all our headline questions (and sub-questions) answered. What we do come away with is a grasp of the other party's viewpoint, a grasp denied to those who have not so sensitised their listening.

Controller

The third aspect of preparation is for the role of controller. Readying the mind for its role in the planning and control of the negotiation.

The end product of this form of planning is slightly more than four key words. It includes

- Purpose — One key word
- Plan — Four key words
- Pace — A couple of figures for duration.

There is one variation to these suggestions. For major negotiations it is usually wise to agree agenda in prior correspondence. Such an agenda will include more than four points. Nevertheless, such a long agenda lasts over many meetings, and the four-point formula still works well for each successive meeting.

Preparation record

So the end point of our preparation for any meeting is key words for each of the three aspects

- Presentation: four key words
- Listening: four key words

- Control: four or five key words plus a couple of figures.

The form in which I find it helpful to record this end product is that of an A4 sheet, folded into four. That is, a booklet of four leaves, the size of postcards.

Page 1: Control of process
At the top of the front page I write PROC, and under that, down the left hand side, three capital Ps

- Opposite the first P one key word on the *Purpose* of the meeting
- Opposite the second P, four key words, one for each item of a four-point *Plan* or agenda
- Opposite the third P an indication of the time (*Pace*) I will suggest.

The PROC page is page 1 of my four-page booklet.

Page 4: Listener/receiver
The back of the booklet, page 4, is headed QNs (for questions). It contains the four key words which alert the back of the mind for its role as receiver.

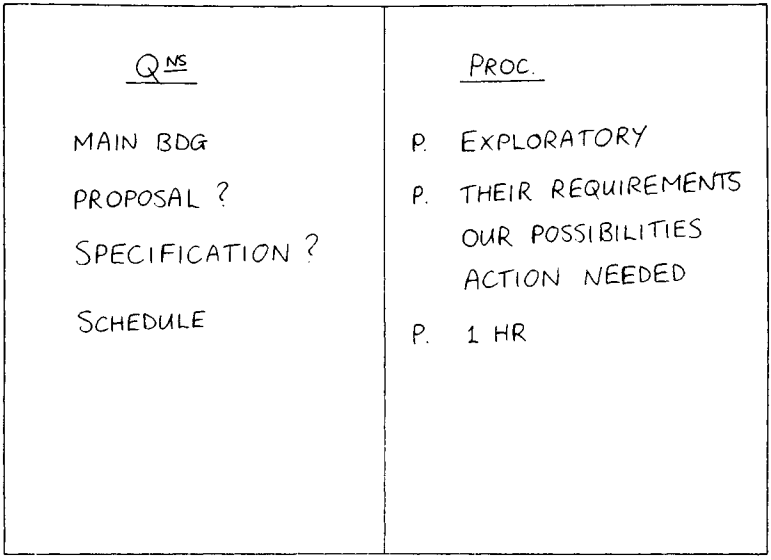
Page 3: Transmitter/presenter
Inside, page 3 has the heading O. ST. (for 'opening statement'). Four key words for my presentation.

Page two is normally blank, but is available for any key figures I need to have to hand. Note key figures only — a mass of data is more than the mind can comfortably handle in overload conditions. Keep it simple.

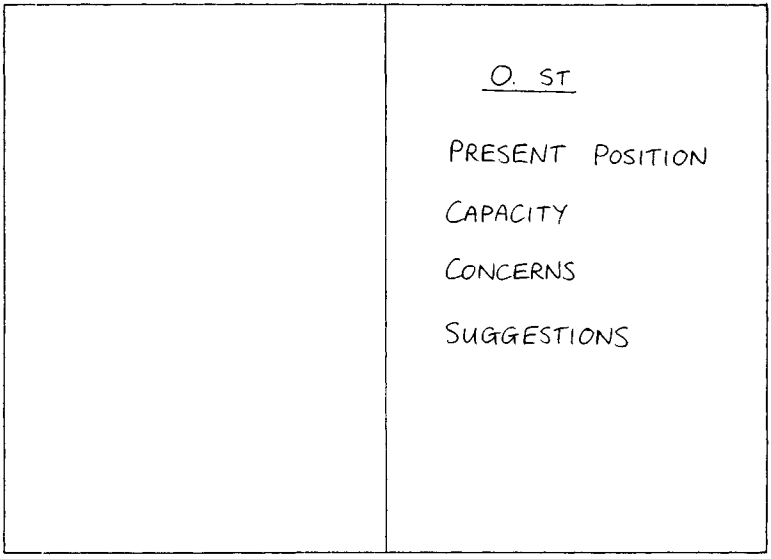
All the key words on each page are printed large. That way they seem to have impact on the back of my mind. Written small and neat they lose impact.

An example of such a booklet appears as Figure 4.1. The setting for this preparation, and a possible method of preparing for it, are given in subsequent parts of this chapter.

This simple little four-page booklet goes into my jacket pocket before I set out for the meeting. It comes out in the plane or taxi on the way, to refresh my thinking. Thereafter it usually stays in the pocket. Occasionally it is pulled out during a discussion to remind me of a key point, but usually it can stay



(a)



(b)

Figure 4.1 The four-page booklet: (a) outside; (b) inside

away. It has done its job by the time my mind is prepared to handle the three key aspects, each simplified to four key words.

Method of preparation

How to get to a position of such simplicity?

Very few of us have the ability to convert our muddled thinking into such key words. Here is a suggestion of one way to build that sort of clarity.

Receiver/listener

First, take the aspects of the mind's job as receiver and follow an A4–A5–A6 line of approach.

A4 stage — start with a sheet of clean A4 paper and go through a brainstorming exercise. Think of the meeting you will go to. Imaginatively, creatively, quickly, scribble down all your thoughts about the sort of information you might pick up at the forthcoming discussion. Don't worry about anything else. Just concentrate on the information that you might receive, want to receive or must receive.

If (best practice) you do this as a concentrated exercise, you won't have time to write down all your thoughts in full. The mind can be very fertile, very productive for a short while. Scribble just one word for each idea as it comes to mind and hurry on. Think of trying to complete a couple of columns of single words within two minutes.

This is a mind clearing exercise. It is an important stage, clearing one part of the mind so that a different part is free to concentrate in the next stage. (Unless you split the functions of idea-producing from analytical thought, you have another sort of brain overload. Anyone who has sat down to write a report, 'knowing all about it' and later found himself frustrated, has been the victim of similar overload).

> For an example of such an A4 stage, suppose we are constructing an industrial building. The buyer decides to have a security office at the gates. (The original design, for which we have the contract, assumed security to be housed in the main building, with gates remotely controlled from there).
>
> Figure 4.2 gives an example of a 'Listener's A4'.

Once the A4 has been filled in, it has served its purpose. Often

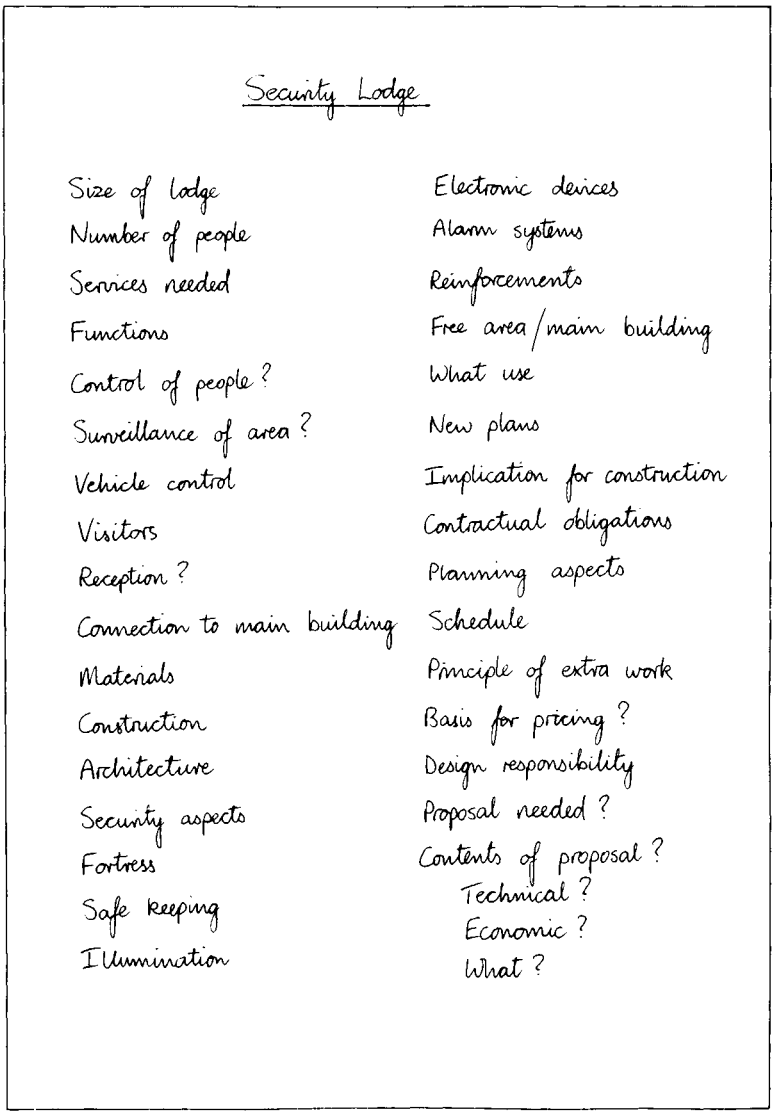


Figure 4.2 A 'listener's' A4

it could now be thrown in the waste paper basket. The mind is free for the thinking task.

Throw away the A4, or at the least turn it over.

Some people find it difficult to throw it away. The first few times you try this method you may have an urge to retain the A4 to check later that you have remembered all the good ideas. I myself found after a few such checks that they were unnecessary and that they clogged my thinking in the next stage.

Now to the *A5 stage*. This is the key thinking time. Pen down, lean back in your chair, relax and calmly think about it. What sort of meeting am I going to? Whom am I going to meet? What would I like to learn from them? What are the four headlines of what I would like to learn?

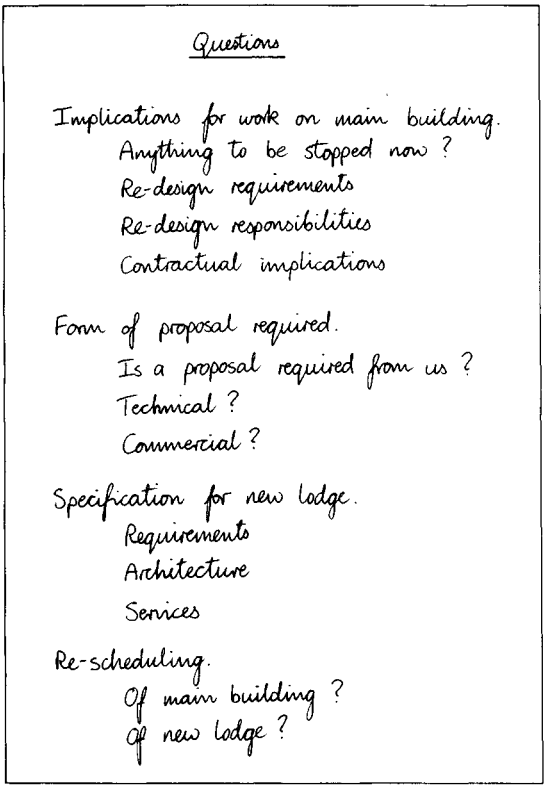


Figure 4.3 A 'listener's' A5

Don't worry about what you are going to say, how you will present your case, what they may respond. Concentrate on the information that you want to receive from the other party. You need four main items.

Take your time, lean back, relax, let the ideas build up gradually. You will find that if you're aiming for four headlines, you reasonably quickly establish some number between three and six and because you are dealing with small numbers it is not difficult to amalgamate, to reach your four, to review their sequence.

Satisfied, set them down on a clean A5 sheet (or A4 folded in half), leaving as much space as possible between successive headlines.

Now think through and insert two or three subordinate questions under each of the headlines. You now have your 'Listener's A5.' An example is given in Figure 4.3.

The *A6 stage* is simply a question of picking out one key word in each of the headlines and then printing it large on an A6 sheet or postcard. Since it is the listening aspect we have chosen to illustrate, these four key words will go on the back of our little booklet under the heading 'QNs' (see Figure 4.4).

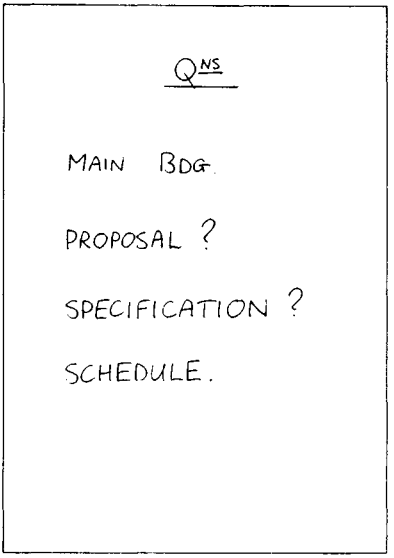


Figure 4.4 A 'listener's' A6

Transmitter/speaker

Then take the mind's job as transmitter and follow the same A4–A5–A6 line of approach.

A4 stage — start with a sheet of clean A4 paper and go through a new brainstorming exercise. Imaginatively, creatively, quickly, scribble down all your thoughts about what you should include in your opening statement. Don't worry about anything else. Just concentrate on what you want to tell them or what you must tell them.

As before, think of trying to complete a couple of columns of single words within two minutes. When the A4 sheet has been filled in, throw it away or turn it over.

A5 stage. Change the pace. This is the important time for thinking of the opening statement. Lean back in your chair and think about it calmly. Who are these people I am going to meet? What do they know about the topic? What will interest them? What are the four headlines of what they would like to learn?

Don't worry about what they may tell you or what information you want from them. Concentrate on your own statement and structure it in the way that you think will be interesting to the other party. You need four headlines.

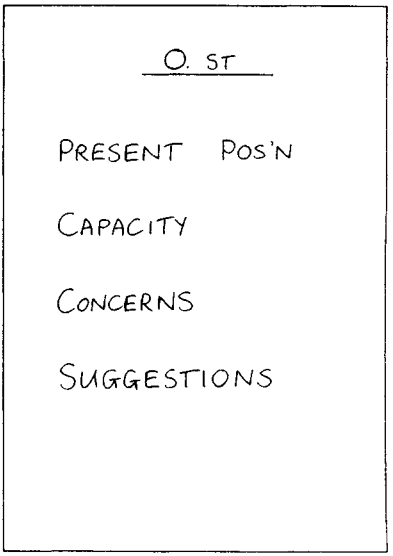


Figure 4.5 Opening statement A6

Put the four headlines down on a clean A5 sheet, leaving as much space as possible between them.

Now insert two or three subordinate items under each of the headlines. And so you have your A5.

The *A6 stage* is simply a question of picking out one key word from each of the headlines and then printing it large. Since this preparation concerns the opening statement, these four key words will go on page 3 of our little booklet under the heading 'O.ST.' It is illustrated — for the same scenario as before — in Figure 4.5.

Preparation of procedure

Again we can use an A4–A5–A6 method to prepare our procedures.

First the brainstorming A4.

Then the disciplined thoughtful stage, the A5.

- Start this stage by writing 'Purpose' as a top sub-heading, 'Plan' for second, and 'Pace' at the bottom.
- Define the purpose in 10–15 words.
- Aim for a plan (agenda) under 4 main headlines, if necessary breaking some into sub-headings.

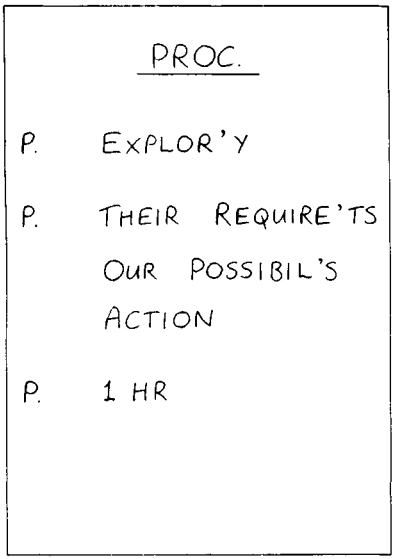


Figure 4.6 Procedural A6

- Finally, the pace — the duration you estimate for this particular negotiation meeting.

Then reduce to key words — one for purpose, four for plan, a couple of figures for pace — and transfer to the front page of the booklet.

In the scenario we have been using as an example (addition of a security lodge during an industrial building contract), the purpose of the opening meeting would — let us suppose — be purely exploratory. The procedural A6 might then take the form of Figure 4.6.

And so we complete the simple little booklet referred to earlier in the chapter (Figure 4.1).

Costs and benefits

The discipline we are here suggesting is that of having four key words each for opening statement and for questions, and a corresponding clarity for procedure. One way of getting there is the use of the A4–A5–A6 approach.

What about the time this takes?

This negotiating homework when first practised takes between one and two hours. The learning curve, however, is most helpful; and also most negotiators find themselves discovering repetitive situations.

If used regularly it is a discipline which — after three or four practices — takes no more than half an hour. Once it becomes a routine of your armoury, it becomes less and less of a time consumer.

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The benefits are

1. Mind prepared to transmit essentials
2. Mind anxious to receive essentials
3. Mind readied to control negotiation
4. Overload during negotiation reduced.

Further preparation

For negotiations of major importance further steps are justified. We make a great deal of use of 'what if' in our preparations.

We try to cover every possible contingency, commercial or technical.

Take a presentation. If they say 'you will have half an hour to present the proposals', what if they start throwing questions as soon as we arrive?

What if we are successful in getting a contract and the client (government) hasn't any money?

What if they insist on liability to legal processes under local law?

We are competing for a major contract and have to present ourselves at their headquarters. They want to see our team — it's vital in their choice — they expect each member to present himself. What if one dries up?

Another element of preparation is rehearsal. For a major negotiation, invite colleagues to act as the other party and to rehearse the negotiation as far as possible.

For team negotiations — discussed further in chapter 16 — preparation needs to cover the roles of each team member. A well-organised team, respecting one another's roles, is impressive.

Summary

1. Any negotiator is going to be overloaded in the middle of a difficult negotiation.
2. One way to reduce the degree of overload is to get thinking in order beforehand.
3. Keep it simple. The simplicity of four key words.
4. One set of key words for each of the three aspects
    - Transmitter
    - Receiver
    - Controller.
5. One way of achieving such simplicity is the A4–A5–A6 discipline.
6. For major negotiations, further preparations include contingency planning, rehearsal and role allocations.

5

Bidding and tendering

Following the chapters in which we have looked at negotiating procedure and preparation we now revert to the theme of the Engineer as Seller. This chapter is concerned with the phase of bidding and tendering.

The basic assumption to which we are working is that there is one buyer and a number of competitive sellers. And that the seller at this stage aims to negotiate in a constructive style.

In this chapter we will follow the sequence of first noting bidding procedures, then discussing what to bid and giving illustrations.

Bidding procedure

There is a spectrum of procedures which bidding may follow.

The traditional pattern, particularly for Civil and Mechanical projects, is that of pure price competition with tenders based on given documents. The tender documents in that case must specify the project in detail, both technically and commercially.

Other models for tendering have been developed and are growing in importance. One example is the turn-key tender on the basis of given requirement. In that case the buyer specifies the result that he wants to achieve and the surrounding conditions of different kinds. The means to achieve the result are left for the seller to specify or develop.

Another example of a different model of tendering is the BOT concept, which has become popular in recent years. BOT stands for build, operate, transfer. The BOT concept is typically applied to a public utility project, a road, a bridge or a power station.

The seller builds the project, operates it during a certain period of time and collects the revenue.

At the end of the period the seller hands over the project to the buyer. This model normally requires co-operation on the seller side between investors, contractors and designers. Consortia are common. The BOT concept typically requires innovative thinking and unorthodox solutions, particularly for the financing. Constructive negotiating is required, both within the consortium and in the negotiations between buyer and seller.

A third new model of tendering is where the result is the formation of a joint venture company. Here the traditional roles of buyer and seller become more diffuse. One party initiates the process and searches for a partner that will be the best match.

> An example is the government of a poor country, sitting on a big mineral deposit and lacking funds to develop it. It may search for a partner among those who have the process technology or among those who master the marketing. In either case, the result will be a new partnership, an entity that in itself may become a buyer, or a seller, or both.

We further discuss negotiating, consortia and joint ventures in chapter 18.

What to bid?

The first issue is not what to bid but whether to bid. Tenders are costly both in money and in the time of key people. Those key people need not only to participate in the tendering, they need to be available for subsequent negotiations. Key project staff — including the prospective Contract Manager — have to be involved throughout the tender and negotiating phases, or they will not have the same commitment when appointed to the project.

> On a project in Uganda, we were forced to appoint a Project Manager who had not been a member of the negotiating team. His first reaction — and his second and his third — was that we had created an impossible contract. We hadn't — it went very well — but only after we had changed the Project Manager, replacing our first appointment with someone from the negotiating team whom we could ill afford.

It is difficult to tie up the services of somebody of Project

Manager calibre for several years when there is a risk of not securing the contract in three or six months' time. The costs in money terms are too high: £50,000 soon goes; £250,000 is not uncommon.

Few companies can afford to risk this sort of investment unless the chance of success is substantial. For that reason the seller should have investigated his position in the early stages of exploration. He should know the competition. He should have a shrewd idea of which competitors will be in the field. For a major contract, an early step should be to evaluate the competitors: to assess their strengths and their vulnerabilities, to anticipate the strategies they are likely to follow, and to decide on counter-strategies.

At the very least, the seller should know the number of competitors involved. The theories on bidding tell you that if there are 10 competitors bidding for the same contract, the chance of success for each is 10%. That means that if the same field of competitors continuously bid for the same contracts, the best result that any of them can hope for is to be awarded one contract out of ten. If each bid will cost £200,000 to prepare, each competitor will have to include £2 million in his price in every bid, just to cover the cost of tendering.

Experience also shows that in every large field of competitors there are extreme underestimators (and extreme overestimators, but they are normally of less concern). This means that if there are 25 competitors, two or three of them will make such serious errors in their estimates that their prices will be far below the real cost. One of those will be awarded the contract and stands to lose a fortune.

This thesis is valid the other way around, too. If you are awarded a contract after competing in a large field, the risk is obviously that you are one of the underestimators.

The conclusion of the above is that when you compete among a large number of bidders either you lose the competition and your costs of tendering, or you win the contract and make a loss on that. Most companies that I know who have analysed this situation have put a limit at about 5–6. If they are one of four invited to bid they will; if they are one of seven, they won't.

Decision number one is thus to decide whether to bid.

Once we have decided to bid, we are now faced with two conflicting objectives.

1. To ensure that the bid we make is low enough to get us to the negotiating table.
2. To ensure that if we get there, we will have enough margin in hand to do a deal and still to show profits.

In considering bids, it is tempting to think simply of price. But it is not just the price we are bidding. It is the panorama of conditions headed by quality, time and money — maybe design, technology, expertise as well. Each heading has its host of sub-headings — money for example is not only price but also payment terms, inflation/escalation, exchange rate fluctuations, warranties and rewards/penalties for virtuous/defective performance. However much the buyer may try to specify irrevocable conditions, the seller must have qualifications enabling him to vary the non-price factors. He can squeeze the bundle of price and all else nearer to his desired shape.

The bid thus needs to be seen as the panorama of all that is being offered and not simply as the price element.

The question remains: What to bid?

There are elaborate theories on how to work out a tender. Many of them emanate from the mathematical theory of games. These are highly elegant but require a host of assumptions and attempts to quantify qualitative judgements. It makes them so difficult to use as to be well nigh impossible and we do not know any engineers who regularly use them.

So you will normally add up your costs. You will assess the risks for such issues as labour productivity, material costs, weather, wage inflation, reliability of buyer and others. You will decide how you propose to allocate those risks between yourself and the buyer (and how much of them you can pass on to sub-contractors) and arrive at a cost for the risks involved. And whatever system you use, somewhere in the equation, you need to have built in a profit margin and possibly a negotiating margin.

The level of tender after the arithmetic is a matter of commercial judgement. That judgement should be informed by an assessment of the buyer's preferences and the assessment of competitors' strengths/vulnerabilities/strategies.

That judgement should also influence the arithmetic, by the way. The correct way to put a price on a risk is to take the cost, if the risk will occur, and multiply it with the probability that the risk will occur. If I will lose £1.00 every time the dice shows

three, each throw will cost me almost 17p. So if the bid shall include only one throw, the price of the risk is 17p. If two throws shall be included the price of the risk is 33p. Only if six throws must be made will we add the full £1 to the price.

Sometimes, in internal discussions on pricing of tenders (but only half joking) I claim that there is an extension of this principle, that may be worth thinking about. There is one risk of paramount importance. That is the risk that we will be awarded the contract. The price of all other risks, and indeed the price of our bid as a whole, must be considered in the light of the risk that we will be awarded the contract.

If we know for certain that we will get the contract, we must cover all our costs, including the prices of all risks. And if we know for certain that we will not get the contract, at least the probability that the risks will cause us costs will be naught. So there is no need to cover any risks in our price. If we are certain that we will not get the contract, maybe we should not even give a tender. But if we do anyway, we can safely quote any price, without any risk of loss.

The bid has to be low enough to get us to the negotiating table. If we can't achieve that and still have hope of profit, we shouldn't be bothering with this one.

Within the scope of 'Low enough to get us to the negotiating table' we should make the *highest defensible bid*. Note the similarities between this macro level (submitting a formal tender) and the micro level (putting forward a bid in a negotiation meeting). A bid from the seller, as a general rule, should be the highest defensible.

Highest both because our profits will be the measure of our success, and because of the objective of creating bargaining room.

Defensible for many reasons.

1. Unless it's defensible, we don't deserve to get to the negotiating table.
2. Even if we do get to the negotiating table, astute buyers can quickly force us down from an indefensible bid. Once they have us on the run, we are quickly forced below what earlier would have been defensible.
3. Defensible in ways which will confirm our credibility.
4. Defensible culturally. For example, in many Eastern countries, a good haggle is a proper and correct way of

doing business. Nobody but a fool would expect to end up with the price first mentioned. You have to allow plenty of leeway. That same leeway would not be culturally acceptable in Northern Europe.

We had a recent example. During a current project in Hungary, the Hungarians asked if they could tender for steel supply as counter-trade.

When the tenders were opened, this offer was 50% above valid competition and our Swedish buyers politely wrote to thank them and decline this offer. The Hungarians were furious. For them, the bid was an opening gambit — they'd have cut their price heavily. Whereas our people never considered that suppliers might so inflate their price demands.

It was a straight cultural blockage — and their price was not culturally defensible.

In constructive negotiations, we aim to be open and honest. We aim to obtain from the buyer the benefit of the doubt — that degree of trust which gives us a privileged position in negotiations.

It is always possible to play the sharp game: cutting estimates to the bone, inserting awkward qualifications, being vague and ambiguous, and looking for every loophole on which we might later make a profit. The further we go (and the further the buyer may make us go) along this path, the greater the trouble we are storing up for a later date. It is going to give us — and the buyer — a fraught project and a later mass of claims and counter-claims.

'What to bid?' is thus in the final analysis a matter of commercial judgement. It needs to get us to the negotiating table with as much margin as possible to do a deal and still make a profit.

In one competitive tendering process, we did our estimating on the basis of consultant's drawings and documents. This led us to an estimate of 480 as a reasonable cost of the project, exclusive of profit. We decided that we wanted a profit of 100 if we were to execute this project. Our price would thus be 580.

Our evaluation of the competitors, known to be very anxious to get the project, was that they would offer 520 or even less. We were not interested in taking the contract at that sort of price but we did have an alternative to the consultant's solution. The alternative had many advantages and some disadvantages but on balance it was

a better project with more modern technology. The estimate for the alternative was a cost of 400, and a price of 480 would give us the margin that we wanted.

We reckoned that if we tendered at 580 (with alternative at 480) we would not get to the negotiating table because we would be considered expensive. So we tendered at 510 (alternative 480), intending to use the emergency exit if they fastened onto the 510. That got us to the negotiating table where we were then able to negotiate on our preferred solution.

Further considerations

For engineering projects, it is almost mandatory to submit a written quotation before coming into negotiation. It is then important to work as much as possible of your negotiation strategy into the written quotation. The analysis of the customer's preferences and way of negotiating should be made before the written quotation is submitted. If quoting to an aggressive customer known to bargain on price, make sure that you have a margin to give way.

If quoting to a constructive customer putting a lot of interest on technical solutions, you could quote with many technical options and sometimes with quite a lot of ambiguity. The negotiation will then concentrate on technical matters and quite often you will increase the price by using the options and straightening out the ambiguities. Options and ambiguities also make life harder for your competitors who in many cases will have access to your quotation.

Quite often when selling to bureaucratic organisations, when a lot of people are involved in the evaluation of your bid, you must be aware that all your written material ends up in your competitors' offices. It is not uncommon that opponents in the buyer's organisation ask your competitors to help them to find the weak points in your proposal. Simultaneously, your friends ask you to do the same. The consequence of this is that you must know your competitors' strengths and be prepared to assist in evaluating their tenders.

The need for good legal advisors should be stressed. In nearly every country there are imperative laws which may override certain paragraphs of the contract you have negotiated with the buyer. Such imperative law can be used later or even by a third

party and may ruin an otherwise excellent contract. Examples: tax laws, laws governing transmittal of licence fees, etc.

Summary

1. Tendering should be based not only on buyer's documentation but also on
   A. Deeper understanding of his priorities and idiosyncrasies
   B. Evaluation of competitors' strengths/vulnerabilities/ strategies.
2. Tendering is costly in time and in money — too costly to indulge in when there are scant hopes of reward.
3. The bid is not just the price but the accompanying package of quality, time, technology.
4. Bids must meet the conflicting objectives
   A. To get to the negotiating table
   B. With enough in hand to make a profitable deal.
5. Elaborate theories of bidding are no substitute for commercial judgement.
6. Constructive negotiators aim to be open and honest in their bidding — not to set up a morass of booby-traps and loopholes.
7. Within the over-riding need to get to the negotiating table, they submit the highest defensible bid.

6

Bargaining

Now we approach the nub of the matter, the negotiation of the contract.

This usually takes place in two distinguishable phases. In the first, there is a short list of possible sellers in competition with one another. In the second phase, the buyer has signalled his preference for one of the competitors and is negotiating with that one only.

We continue for the moment to assume that it is in the best interests of the sellers to negotiate in a constructive style. That assumption must however be reviewed before the end of the chapter.

We shall accordingly develop the chapter under the headings

- Principles of bargaining
- Face saving
- Behaviour
- Negotiating while there's competition
- Illustration
- The micro negotiation
- Countering aggression
- Preparation for bargaining.

Negotiations on a one-to-one basis — after the buyer has signalled his preference amongst the sellers — will be handled in chapter 7.

Principles of bargaining

There is basic difference between the *attitudes* of constructive and of competitive negotiators. This difference of attitude is reflected in differences of *behaviour* which we shall shortly discuss.

But first a few *principles* about bargaining. These are

- Ensure value
- Identify issues
- Trade concessions
- Move at a measured pace.

Ensure value

Make sure that you get value for your own side. And make sure also that the other party values what you are offering. The objective should be for both parties to end up satisfied, for both to profit in whatever mixture of ways is to their best advantage. The negotiator who tamely surrenders to another party neither gets value for himself nor gives the other the satisfaction of having earned a valued reward.

Identify issues

Be clear what is negotiable. Build lists of the issues.

Make the lists as large as possible.

And having identified the issues, find from the other party which of them he sees as snags inhibiting him from accepting your proposals.

Then prioritise. Find out which seem to him to be the Big Snags and which are relatively little snags. Then solicit hints and indications — get him to give you some idea of How Big are the Big Snags.

Identify the issues and find out his view about snags, priorities, indications.

Trade concessions

In any bargaining process you are going to have to give a little. If you are going to have best value, you must get a little too.

Never just give. The other party will very quickly forget about your gift and be seeking further concessions. That way he will expect you to give, give, give. And the readier you are to give, the less he will value your gift.

I was recently at a negotiation in Brazil, where the visiting party was from Panama. The Brazilian asked for this, that and the other and surprisingly the Panamanian quickly gave this, that and the other. I later asked the Panamanian what she thought of the deal. 'Good' she said 'We were forced to give the absolute maximum that I could go to, but we managed to get the order'.

And I also asked the Brazilian what he felt. 'A bit disappointing' he said. 'They were able to give us everything we asked for without any difficulty and it is obvious that we could have got a much better deal if only we had pressed a bit harder.'

If only the visitor had insisted on some counter-concession(s), she would have achieved a better deal *and* the Brazilian would have been more satisfied.

Trade concessions. If it is time to give a little, make sure you get a little in return.

There are phrases recognised by negotiators as signals that one is now ready to trade concessions.

- 'Well, we have been talking about this issue of (price) for some time and we do need now to make progress, but can we first discuss when payments will be made?' (Meaning: 'Okay, you've made your point on price — I'm prepared to budge on that provided you will give me a bit on payment terms.')
- 'If you ... then we ...'
- 'If you will give us another couple of months then we can reduce the price by x%.'

Move at a measured pace. If there is a difference between two parties on price (say seller has bid 120 and buyer has offered 100), there is a likely compromise ground somewhere near the middle.

Beware of the instant offer of that compromise.

If the buyer recognising that each party is standing for their respective figures of 100 and 120, if the buyer now makes the compromise suggestion of 110, what does the seller respond? '110? But that's impossible. As I've already explained the least we can possibly manage is 120.' And the buyer is now stranded. He has given away the middle ground. The seller knows that 110 would have been acceptable and the negotiating ground is now between 110 and 120. The probable settlement area has gone up from 110 to somewhere between 110 and 120.

Move at a measured pace. Expect to have to move through several stages, from the original gap of 100/120 to (say) 105/115 and 108/112 before reaching the compromise around 110.

An incidentally, do not expect to follow precisely this pattern, but anticipate that each step on price will be matched by a trade-off on some other issue. For example

- Stage 1: 100—120
- Stage 2: 100 + earlier payment—115
- Stage 3: 105—115 + new maintenance offer

and so on.

The principles common to different styles of bargaining, to summarise, are

- Identify the issues
- Ensure value for both sides
- Trade concessions
- Move at a measured pace.

Face-saving

Face-saving is also important for negotiators in either style.

It is the duty of any negotiator to represent his side staunchly. To present all the arguments which ensure that he gets best value.

It is then difficult for his side to compromise from those strongly stated positions. It is difficult for his side, but not impossible — it must be possible if the other side is going to achieve their value.

It is difficult for *his side* but it is even more difficult for *him*. He is personally behind his position and he personally will feel a loss of self-esteem (and he may feel that he sacrifices the other party's esteem) if he has to withdraw from that position. He fears losing face.

And so differences between the parties can become personal affairs and lead to impasse.

The first way to avoid loss of face is surprisingly simple. Simply introduce any other variable into the discussion.

> 'Well look, we've been discussing this price issue for a long time and we have to find ways to bridge a gap between 100 and 120. Would it help us to make progress if we just had a brief word now about terms of payment?' (Or maintenance arrangements or insurance or fire risks or anything else at all).

The introduction of the other variable deflects the head-on conflict and suddenly paves the way for new progress.

Keep it fluid. Introduce an extra variable or a couple of extra variables and then try to squeeze the package into mutually acceptable shape.

> 'Yes, by all means let us talk about the payment terms. Are you interested in frequency of settlement, or in the amount of credit?'

And now we have three variables — price, frequency and credit — for the parties to squeeze into acceptable shape.

Keep it fluid, but not too fluid. The human brain can cope with trading three or four issues at one time but half a dozen issues is too much to handle concurrently. Two or three, possibly even four, help the face-saving; five or six are overloading and frustrating.

If an impasse is looming and such immediate face-saving measures are not proving sufficient then it is time to take a break, to get away from the cloying climate at the negotiating table. Maybe even to go off together to the golf club or the sauna.

The negotiator's 'face' can be as important an obstacle to progress as the real divisions between the parties. Seek face-saving devices. Keep it fluid.

Behaviour

There is a wide difference in *behaviour* reflecting the differences of *attitude* between Constructive Bargaining and Aggressive Bargaining.

To start with, in constructive bargaining, the preliminaries are carried out in a climate cordial, co-operative and trusting. The early stages of negotiating are handled to re-inforce that positive climate. Exploration is founded in open honest dialogue, in both presenting one's own position and in listening to identify that of the other party. A lot of effort goes into creating common ground and into searching for best ways, technically and commercially, to build business relationships.

Under such circumstances, snags are anticipated. The parties do not come to the stage at which there are Big Snags, yawning gaps to be painfully forded in a bargaining process.

There will of course be some gaps, and maybe lots of little gaps, but no host of Big Gaps.

To resolve the gaps his behaviour needs to

- Be patient. Recognise that it may take time to bridge even small gaps. Recognise that there is a ripening time and that both parties can recognise when the time is ripe to make fresh progress. In bargaining, you come a cropper if you try to rush your fences.
- Be staunchly honest. The trust — if not the whole truth. Ideally, all papers available for scrutiny.
- Follow basic principles — identify issues, ensure mutual value, trade concessions and move at a measured pace.
- Avoid loss of face.
- Take recesses. A break in a negotiation not only enables both parties to take fresh stock and make new plans. It also revitalises vigour likely to be sapped in prolonged negotiations.
- Counter-offer. If you do not like the offer of the other party, do not simply demand that he improves on it. That leaves him in the dark about how much improvement you want and forces him onto the defensive. Instead, make your counter-offer so that the two of you together can constructively find how to bridge the gap.

Negotiating while there's competition

After the stages of pre-qualification and invitation to tender, and of tendering or bidding, the field of prospective suppliers is reduced, possibly to three or four.

The engineer as seller — having committed himself thus far — has one primary objective: to become the one selected.

That primary objective has to be balanced against the next objective — to be selected with sufficient margin to make a profit. The pressure of the first objective can become intense. In the scramble to win the order, the single-minded salesman can pursue his main goal, cutting profit to the bone.

The wise buyer at this stage is seeking the best possible deal. He is comparing the offers of the best possible suppliers. He is impressed by the price level set by the cheapest offer, impressed by the best technical package, impressed by the best terms and conditions. The ideal for him would be a reliable supplier offering

the best of all possible worlds, but no reliable supplier can offer technically the best at the cheapest price on the best terms.

It is difficult for the buyer to compare different offers. Usually the range of qualifications submitted with tenders makes comparison difficult. Sometimes this difficulty can be reduced by demanding 'fully compliant' tenders, but only at the expense of rigidity and reduction of the suppliers' ability to contribute their expertise.

The buyer needs reliable help in making his decision. He has of course got his battery of advisors, but he has to favour the supplier whom he judges most reliable.

Here we come to the vital importance of the foundations which should have been laid over the months. The climate. The business and personal relationships. The trust and credibility. The effectiveness with which meetings have been planned and controlled. The affinity from exploration. The manner in which the supplier has prepared himself for each successive stage so far.

Even now, the buyer needs help in clearing his ideas. He is helped by negotiating with people who are keen to listen, keen to find out what are the snags and the priorities and the fads.

The micro negotiation

We have discussed a sequence of a major (macro) negotiating process in which there are phases of Exploration, Bidding, and Bargaining, to which we will shortly add Settling.

This EBBS sequence is not simply a macro model. It is also a micro model. Each successive meeting within the macro bargaining phase, should be taken through its micro exploration, then the tabling of offers and counter-offers (bidding), then a phase of trading or dealing to narrow gaps.

Through exploration, exchange of interests and hopes is time-consuming. But not as time-consuming as protracted wrangling.

Always, competent exploration begets affinity.

Wrangling begets conflict.

When it comes to applying the principles of bargaining, they are likely in the first instance to centre on technical negotiations. Normal patterns are to ensure technical feasibility before starting on commercial. Principles of bargaining apply to the technical just as much as the commercial. Sometimes, the bargaining may be carried out at arm's length. Some buyers try to secure

concessions in correspondence, telex or fax, and to avoid meetings. Again, the same basic principles apply.

Find out what he really wants.

Make him value our offer.

Even if we have to concede quite heavily in order to get the order, make sure he values that concession. Make him pay for it with some counter-concession. And use time — move at a measured pace — avoid the instant bowing to his pressures.

Sustain your qualifications. If being forced into concessions, have it recognised that this may force you to make further qualifications.

The package to be agreed will have main features of quality, time, money and risk. Each has a host of sub-features. In a good constructive bargaining process, that package is squeezed and manipulated by the two parties until it reaches the best shape to their mutual advantage.

As ever in a process of negotiation, there is a need to keep good records. They are essential fodder for later drafting of contracts and may be needed for reference on points of controversy during and after the contract.

Within reason, the negotiator should try to establish the authority of his notes. Ideally, agreed minutes. As second best, a letter confirming points of agreement. But 'within reason': there are times when another party interprets our minutes as attempts to manipulate. Even with the best of goodwill, interpretations of any discussion are prone to differ and the different interpretations can damage goodwill. If there is a climate of trust, it may be better to resist too much elaboration in seeking agreement to written records. Even so, keep them in the files — they may well come in useful one day.

The essence of this section has been that the principles of bargaining need to be applied by the Engineer as Seller. Both in technical and in commercial negotiations, he must work with his counterpart to squeeze the package into that best shape which is to their best mutual profit. He must betimes be ensuring that the counterpart recognises the value of the offer.

Illustration

Consider a case typical of many in developing countries. Finance probably comes through the patronage of the World Bank. The key

character is a civil servant in one of the ministries. Call him Caphez. He has tenders from competing firms, each anxious to win a contract, most of them naturally motivated to negotiate constructively. There will of course be exceptions. There will be those who try all sorts of tricks, those who are more than happy to misrepresent. But the majority of the suppliers are likely to be constructive.

The majority of buyers in these circumstances can afford to be equally constructive. And so there can be constructive negotiations.

But not every Caphez is constructively minded. Some are naturally suspicious, even excessively suspicious. Some love the power of forcing the limits of competition amongst possible suppliers. And there are even some who have been educated to believe that an aggressive style is the only way to negotiate.

Usually the parties will negotiate constructively, but occasionally they will take on an aggressive style.

The following is a recent case where the dialogue stage has been unusually intense.

It concerns an industrial plant, turn-key delivery, in Turkey, for a private buyer. Tenders were invited on the basis of both a detailed design made by an international consulting engineering firm and a specification of requirements from the same consultant. After an ordinary pre-qualification process, 8 tenderers submitted tenders.

The tender opening gave the results in Table 6.1. After the initial evaluation by the buyer and his consultant, the buyer decided to negotiate with DGB, PGA and KBS. A correct price of the basic proposal should have been about 50.0 (although the consultant's

Table 6.1 Results of opening tender

Tenderer	Basic price	Alternative
WSO	39.0	—
HBA	46.3	—
DGB	47.8	36.9
PAL	47.9	—
PGA	48.0	—
SST	51.2	52.7
KBS	52.0	50.0
ASE	67.7	—

estimate was much less) but it is not known why the two lowest bidders were disregarded.

The alternative proposals by DGB and KBS were considered very interesting. Both represented different technology, and the KBS proposal would reduce the energy consumption enormously.

The buyer then started to bargain for lower prices, while the consultant kept a check that the technical contents of the tenders were retained. At the end of this phase the buyer decided to start contract negotiations with DGB, who had then offered to execute the original proposal for a price of 32.0 (reduced from 47.8). PGA and KBS had made reductions of a similar magnitude.

Now, how is that possible? The cost to do the work is about 45 or 50 (it depends on which technology is used), but in order to get into negotiations DGB had to offer a price of 32. We don't know the end of the story yet, because no contract has been signed, but it is obvious that DGB is unable to give a subsidy of that size. Either the price will have to be increased to about 47 or the project will have to be reduced to about 32.

There are many features typical of this 'dialogue phase'. The buyer has used his power to reduce the price, the tenderers have been very keen to get the contract, which is quite prestigious in the trade. But the buyer has made a miscalculation of the reasonable price (or more likely he has not calculated at all), and thus he has abused his power.

DGB is in desperate need for this project. They have suffered heavy losses lately and their financial situation is critical. Their overwhelming objective was clearly to get into the contract negotiations. Because the buyer put his emphasis on price in the dialogue phase DGB had to accept any price that was offered by the buyer.

Now that competition has been eliminated DGB can concentrate on negotiating contract terms that will be acceptable. It is only to be hoped that they have not prejudiced their position too much.

We, who were on the losing side in the dialogue, were keen not to prejudice our position. We made several reductions of price, equal in size to those that DGB made. But we always covered ourselves by some kind of qualification that could be referred to in the later negotiations. Some were quite hair-raising.

The proposed conditions of contract included a bonus for early completion of maximum 1·0. We claimed that our schedule was based on completing the works so that we would get the maximum bonus, so that if for some reason we were delayed, the price would have to be increased by 1·0.

The high inflation rate in Turkey and the continuous devaluation of the Turkish Lira also gave the opportunity for some tricks that

gave a cosmetic reduction only of the price. We played all of those tricks in full awareness that even though they resulted in an offer that looked like something near 33, we would not sign a contract that gave us less than about 47. We were prepared to take the difficulties of the later contract negotiation, because the buyer insisted so strongly on a price reduction that was in fact unrealistic.

We would not have signed a contract on unacceptable terms, but we were quite prepared to give an offer that was not serious in order to eliminate the competition. Others may be prepared to sign even an unacceptable contract and seek to get an acceptable result out of it anyway. In the case of DGB they may do it, because they can return to the buyer after the contract has been signed and say: 'Look, it's a bankruptcy for us, and no project for you, or a better price'.

In this illustration, tenderers put forward their offers with what we can assume to have been constructive intentions. The subsequent bargaining was conducted by the buyer in such a way that every supplier was forced to the limit. Each supplier resorted to every conceivable subterfuge (for example the way risks were defined, the way inflation and currency exchange were used as tactical weapons). And so before the project started, contractors had offered bids apparently around 30, fully expecting that the deviousness of their proposals would ensure final payments around 45 or 50 — no doubt plus unforeseeables. It really had been aggressive negotiation.

The consequences for the project are not fully known, but we can be pretty certain that the subsequent relationships between buyer and seller took the form of a running battle. Really heavy Competitive Bargaining.

Countering aggression

The explicit assumption in previous chapters has been that the seller will negotiate constructively. The skills we have discussed have been those of constructive negotiation.

Sometimes the seller is faced with so much aggression that he must counter. It is all too easy to become defensive/aggressive and counter-offensive. Radically different skills are needed to pursue such a pattern of negotiation, and we postpone discussion of them until chapter 8.

At this stage, we are concerned with trying to keep the negotiation constructive.

Being a seller, how should you defend against a fighting buyer who obviously doesn't know his own good?

The best way is to have such good relations, personal or industrial, that the buyer will listen to your reasoning and not fight. If you have built relations that are solid you should be able to tell the buyer when he is not acting in his own best interest, and be believed, or at least understood.

Fighting in the dialogue phase often starts with qualifications in the seller's tender. Typical buyer reaction: 'Withdraw your qualifications and conditions, or I won't even consider your tender'.

The answer is that risks must be shared one way or another. 'If you want me to take more risks, I can do it. But it is necessary for me to put a price on those risks. And that means that if I'm lucky and the risks don't occur I'll have a very handsome profit. And if my luck is bad I may even lose money, and you know that that's not good for the project. I think that it would be favourable to you to take those risks yourself. Your cost will be lower if the risks don't occur and I'll be happy with the profit that I can influence myself. If the risks occur you will have a higher cost, but you know that you'll get the same project.

Buyer: 'Your competitors have accepted to take all risks and their prices are still lower than yours'.
Seller: 'If you're certain they'll deliver the same project as we, you should buy from them. But if the risks occur, will they deliver at all? You know that we've never let you down, etc.'.

Regularly you can hope to steer negotiations along constructive lines. Occasionally, however hard you try, you will be forced onto the defensive and the counter-offensive. For that you will need the skills to be discussed in chapter 8.

Preparation for bargaining

The basic recommendations which we made in chapter 4 for preparation were

- Reduce to keywords
- Prepare to be presenter and listener and controller
- Use an A4–A5–A6 approach.

The process of preparing is not simply a way to achieve a product on a piece of paper. It is something which puts the back of one's mind into a particular order.

In constructive negotiating, the search is for mutual responsibility, trust and problem resolution.

It is important to have tried to identify issues which may be controversial and to have considered one's stance on each. That is a part of the essential preparation.

It is easy to over-prepare in this mould. The mind which has concentrated on minimum demands on controversial points will find itself willy-nilly bringing those demands and those controversial points to the forefront of subsequent negotiations. This is part of the path towards aggressive bargaining.

The constructive negotiator concentrates at least as much effort in preparing to discover the other party's viewpoints. Even in the bargaining stage, he prepares to be a good listener. He knows his bottom line, but that is not his only preparedness. He is equipped and ready to be flexible and to manipulate the package of his proposals. He is looking towards constructive discussion with his potential business partner.

Summary

1. This chapter has concentrated on a constructive style of bargaining.
2. The basic principles include
    - Identify the issues
    - Identify the snags, the priorities and the indications of magnitude
    - Trade concessions
    - Move at a measured pace
    - Help the other party to avoid loss of face.
3. Constructive behaviour is patient, uses breaks, is staunchly honest and includes counter offers.
4. Preparation for constructive bargaining allows flexibility in bargaining.

7

Settling

We reach the stage at which the buyer signals his preference for one seller. There remains a great deal of negotiation before the contract is duly agreed and signed.

We shall tackle this chapter under the headings

- New scenery
- The scope for negotiation
- Negotiating the written contract
- Skills and techniques.

New scenery

Suddenly the scenery is quite different.

The Engineer as Seller has been in the role of supplicant, one of several supplicants, each striving to be first past the winning line. He has had to try to be constructive, often in the face of tough competition, sometimes in the face of an aggressive buyer. Sometimes, he has had to look for loopholes and ambiguities and qualifications which enable him to match the competition on apparent price or apparent service.

Now all is different. All of a sudden, we are transformed from supplicant into partner. We can take our seat at the negotiating table alongside the buyer and his battery of advisors. Now we are *the* experts in our own engineering field, no longer *one of* the people being judged.

True, the buyer still has the possibility to change his mind if the seller mishandles his new status. The seller can still be replaced — right until the contract is signed — but that is now

difficult and if the buyer chose that option, he would weaken his position in dealing later with the second preference seller.

The selected seller is in a new position in the power stakes. As always it is important to use that power and important not to use it improperly. The contractual relationships will last for a long time, and either side pushing its power invites retaliation.

The situation calls for a continuity of constructive negotiation. The two chief parties are still moving to build their basic agreement (the signed contract). They need to do this in the spirit of newly formed partnership, working to their joint advantage. This style pays off in two ways. It should enable them to create the most mutually profitable contract. It should enable them to enter the performance phase. During the Contract, with the best climate, the best goodwill.

The next moves have to include negotiating the form of contract and negotiating the full written documents. Sometimes this may be done expeditiously — for example for relatively standard mechanical or electrical goods, or for construction projects where all the engineers and the quantity surveyors can focus on some established form of contract. It becomes more complex, particularly in the international field when the project is novel and may be outside the experience of one of the key parties. It may then take months to negotiate the contract — even years if there are hazards of translations and of different legal systems.

The scope for negotiation

A special position may develop in which there is great pressure to get on with the work whilst at the same time there is a lot of negotiating to be done on the contract. The pressure to get on with it is of course paralleled by the engineer's natural desire to get on with the interesting part of his profession, rather than to be sidelined into a continuing, sometimes frustrating, round of negotiations. It may be that he will be pressed to go ahead simply on the basis of a Letter of Intent. This has its own traps. Disputatious matters may well be outside the existing written agreements and can rupture the constructive climate developed over the months.

We shall have a little to say in chapter 10 about the transitional stage when work may be starting in parallel with the final contract

negotiation. For the time being, let us concentrate on that final contract negotiation.

A great deal of the early scope for negotiation will have been taken up already. As the project progressively took shape in the buyer's mind and the seller had his influence on that shape, as the invitation to tender was drafted and despatched, as the tender was submitted with its qualifications and as all these were debated: so progressively the negotiating scope was diminishing. Concessions were being made, provisos entered.

During this process, some differences between the parties would almost certainly be suppressed. Better to let them lie dormant whilst pursuing the first objective of becoming the first selected seller. If the buyer — or indeed competitors — were particularly ruthless, then negotiations would force the seller into finding loopholes in the contract documents.

> The illustration in the previous chapter — the turn-key project in Turkey — was a clear example of contractors forced into 'hair-raising' manoeuvres. No way could any contractor stand to subsidise a project by 50% of the tender price. So the selected seller had to negotiate the form of contract so that it still remained potentially profitable for him. We may imagine the surprises which the buyer found during the final negotiation of the written contract, or those which he discovered only later, when the project was underway. They are of course a penalty for indulging in ruthless negotiation at an earlier stage.

There are two different schools, when it comes to the question of the scope of the contract negotiations.

One school claims that all aspects of the contract must be discussed in detail. All possibilities must be considered and the parties must agree, already at this stage, how every possible situation will be handled. A typical argument from this school is this: the time to agree on the divorce settlement is just before you get married. Then the climate is most likely to give both parties a fair settlement.

The advantage of this method is that both parties become well prepared for the difficulties that will appear during the contract. They may even feel a great relief during the contract, when all the difficulties don't appear.

The disadvantage is that strange issues of low significance often obstruct the proper negotiation of important subjects.

The other school prefers to leave all the trivia to a standard form of contract, trusting that all possibilities will be covered there, one way or another. The contract negotiation, according to this school, should concentrate on issues that are known to be particular to this project.

The advantage of this other method is that the parties don't waste time on unnecessary issues. The disadvantage is that during the contract they often get unpleasant surprises when unexpected difficulties appear. The disciples of this school lean towards the opinion that no difficulties are expected to appear.

Negotiating the written contract

As the negotiation of a written contract proceeds, so people change. The engineer's orientation is moving from that of seller to that of producer. The role of contract negotiator is increasingly demanding the expertise of accountants and lawyers. Now there are new faces and new needs for teamwork in negotiations — the subject of chapter 16.

It is hard to overemphasise the importance of the written word in contract negotiations.

A contract negotiation is a negotiation that concerns a written contract. The result of the negotiation is the written contract, which is a record of what the parties have agreed. But the contract is also the law that the parties must live with during the contract period.

It is virtually impossible to conduct a substantial contract negotiation without a written draft of the contract as a basis for the negotiation. The party that prepares the first draft has an enormous advantage. It doesn't matter how thorough or detailed the negotiations may be, and how much of the basic draft may be modified, the spirit of the basic draft will normally prevail even in the final contract.

If you get an opportunity to prepare the draft contract for negotiations, grab it! A problem for sellers is that buyers always have that opportunity and often use it. Another problem is that if you are handed a ready-written contract, it can feel as though you have been hit with it!

How can you then defend against a draft by the other party?

If you are the buyer and are presented with a draft prepared by the seller, you can probably present your own draft (if you

have one) as a counterproposal and insist that it will be the basis for the negotiations. If you don't have a draft ready, you may save the situation by referring to a standard form, such as FIDIC, ICE, RIBA, AIA, UNECE, or similar and it will be difficult for the seller to insist on using his own draft as a basis.

If you are the seller and the buyer provides the basic draft, you would normally have difficulty in replacing that basic draft without ruining relations. A standard form may be the solution, but it requires a lot of tact and a good climate.

A standard form of contract is always the best excuse to replace a basic draft from the other party. For that reason, when you make a basic draft, base it on a standard form to make it more difficult to replace.

A quite common situation is that an awkward contract draft is provided by the buyer at the tendering stage, often with a condition that no qualifications, reservations or deviations will be permitted. My experience is that the tender can be qualified anyway and it will not be rejected on formal grounds if it is interesting to the buyer. If it isn't interesting, on the other hand, it won't be accepted even if it follows requirements to the dot.

When you submit a tender in conflict with prescribed contract conditions, you need to know your priorities again. If your objective is to get into a negotiation situation it is probably advisable to hide the conflict as much as possible. Then you will have difficulties when the conflicts become apparent. If your objective is to facilitate the negotiations you should prepare the ground by pointing out the possible conflicts, but then you may never reach the negotiation stage.

In the period of negotiating the written contract, full notes/records/minutes from all previous discussions are essential. We have previously referred to the crucial importance of keeping records in writing. Now is the first time they pay off. Now is the time that they remind us of details we must protect in the written contract. Now is the time that the records can be proffered to the other party, with integrity and with authority, as our justification for important points. If a few months ago we conceded A in order to get B, the other party may now think to re-insert their form of B — not out of bloody-mindedness, but because time has obscured their recollection of that little deal. Unless we have the backing of the written word we may be forced

afresh into negotiation of item B. Our early concession on A was so much waste.

Several years ago, we negotiated a construction contract in Eastern Europe. At an early stage of the negotiation the buyer requested an export credit for the whole contract sum. There was one snag, however. It was politically impossible to accept the rate of interest that could be obtained from the financial institutions, although the seller was aware of the actual interest.

A solution to that little problem was agreed. The seller would subsidise the interest rate to the lender and compensate for that subsidy in his price. With a difference of 3% per year and a 10 year credit period, it became a substantial amount that was added to the price.

Thus, a formal credit offer was presented, with an acceptably low interest, and at the same time a revised tender, including the subsidy.

Later in the contract negotiation the buyer found an alternative source of financing, that meant a lower total cost to him. He then declared that he would not use our credit offer and asked us to take the interest subsidy out of our contract price. So we did, and the negotiations continued for several weeks more.

In the morning of the day when the contract was to be signed at noon the leader of our team was approached by the leader of the buyer's team. He said that the Ministry of Finance had disapproved the alternative financing of the project. But that is no problem, he said, we can take your credit offer and sign a credit agreement with you on that basis at noon too.

I will never know if the buyer had forgotten the arrangements surrounding the credit offer or if he really tried to cheat us of some 15%. In either case, we remembered what we had done. And when we reminded the buyer, he remembered it too.

Skills and techniques

We have pointed out how the EBBS structure (exploration, bidding, bargaining, settling) applies in general to all negotiation situations. In the micro level within each meeting, and even within parts of meetings, and in the macro level of the project development as a whole. In the macro level, the process of negotiating the contract spans the major part of the phase of bargaining and the phase of settling.

It needs the battery of bargaining skills discussed in chapter 6. Constructive negotiating with climate cordial, co-operative

and trusting; meetings efficiently planned, controlled and conducted, exploring different viewpoints and seeking affinity of purpose on them before taking stances and getting into the ultimate bargaining phase.

There are special skills in the handling of controversial issues.

- The first is to set the controversial detail in perspective: 'It is only a detail in the great pattern of the partnership being formed, only a detail which the parties must overcome amicably'.
- Second, whether before or after presenting your own position, do make sure that you hear and understand the other party's position.
- Third, in formulating your own position, make sure in advance that you have thought it through. What are the arguments which favour your line of action? What are the opposing line of arguments?
- Fourth, do not present all the evidence in your favour. If there are a dozen points in favour, you can be sure the other party will instantly seize on the twelfth, the weakest. So the negotiation concentrates on that twelfth and you are exposed to negotiating on the strength of your weakest point. It won't do. Concentrate your presentation on the four favourable points which are irrefutable and forget the rest.

  It may just be worth taking the strongest opposing point and quietly murdering it. ('We agree another 2″ of concrete here would cost another £10 000, but this must be seen in the context of a substructure with delicate contents costing one and a half million'). But the main thrust is on the four irrefutable arguments in our favour.

The negotiation of the written contract for a substantial project may become very complex. There are a very large number of different but connected issues. It is often difficult to see how the discussion on the present issue will affect other issues. Indeed, it is often difficult enough to see how the proposed contract language will affect the issue under discussion.

The most obvious way to handle these difficulties is to prepare oneself thoroughly. It is so obvious that it feels almost trivial to mention it here. But experience shows how often people fail

to prepare properly and thus it is obvious that we need to be continuously reminded of even the most obvious and trivial matters.

One technique that has been tested both in preparations for and in discussions of complicated issues is the technique of extreme simplification. It normally works surprisingly well.

> In one case we negotiated a contract for construction of a complex civil engineering work, including roads, bridges, tunnels, canals, dams, etc. The contract can be described as a fast-track, price incentive type. The target price was not determined when the contract was signed, because the design had then not yet been made. It was very difficult to grasp the effects of the various contract conditions on the many different aspects of the work.
>
> So we simplified matters to the extreme. We assumed, for the sake of discussions, that the project was the simplest possible. In many cases we discussed on the basis that the project was only to dig a hole in the ground.
>
> When we came to some conditions we had to assume that we had staff working, so we agreed the basic assumption that the hole was too big for one man to handle. In other cases we assumed that equipment was needed to dig the hole. We kicked that hole around a lot, we moved it, changed the design, even filled it.
>
> Because the model was so simple we were able to discuss the principles of the contract, and the complexity of the actual project was not felt as a burden at that stage. When we then had agreed on the principles, we would check how each contract condition would affect the actual project. That check was then merely to confirm that the principles that we had agreed for the simple model would still apply to the real project.
>
> The check was a joint exercise. When a discrepancy was found, as happened quite often, the negotiation concerned how to make the agreed principle valid. This was a task that was complicated enough. If we had been forced to negotiate both the principle and how to apply it at the same time, we would have been in trouble.

And so, after all the preliminaries, all the exploration, all the negotiations, we move closer to the signing of the contract and to the celebratory dinner.

Summary

1. Once the preferred seller is selected, the scenery is transformed. He is becoming partner, no longer supplicant.

2. New-found power should be used wisely, every effort made to keep style of negotiating constructive.
3. The scope for negotiating has been progressively reduced. Yet there remains a great deal to be negotiated before the contract is signed.
4. If at all possible grab the leading role in drafting and re-drafting of contract. If that is difficult, seek use of standard forms as far as possible.
5. The battery of constructive negotiating skills is needed throughout bargaining towards the written contract.
6. In presenting your views, stick to the irrefutable.
7. Use extreme simplification to make contract conditions understandable.

8

Aggressive negotiating

So far, this book has concentrated on a constructive style of negotiating. We have recognised that in some cases the seller is faced with an inexorably aggressive buyer and forced to negotiate in that mould, and we have promised to devote a chapter to it.

This is that chapter. In it we shall discuss

- The different styles of negotiating
- The aggressive pattern
- Aggressive bargaining
- Tactics and counter-tactics
- Preparation for aggressive negotiating.

The different styles of negotiating

In the first style, constructive negotiating, the parties view one another as prospective partners. People with whom they are anxious to work harmoniously. This is the style previously discussed as desirable, particularly in the partnership-building phase Before The Contract. The climate characterised as cordial, co-operative, trusting; behaviour open and honest. Much effort put into exploration, developing trust, building the mutual ground.

The second style will be termed *aggressive negotiating*. Each party mistrusts the other. Each approaches any negotiation suspicious of the other. Each approaches prepared for a contest, determined to assert its own side, seeking by all means to exploit the other side.

These are extreme definitions of the differing styles, constructive and aggressive negotiating. It is of course possible for there to be constructive behaviour, without quite such a high level of trust. It is possible in a competitive style to have some respect for the other party, whilst yet mistrusting them. (The buyer may feel as the contract progresses that he got the best possible contractor. Even so, the contractor is not living up to expectations and cannot be trusted.)

There is little middle ground however between the constructive and competitive styles. *Either* one believes that the other is competent, co-operative, trustworthy, and one approaches negotiation constructively. *Or* one suspects that he is not and one approaches negotiations anticipating non-cooperation or even subterfuge, prepared to react to any hint of it. Those are characteristics which it is all too easy to suspect and even 'identify' if one is looking for them. It is all too easy for negotiations to develop an aggressive style and so to prejudice smooth conduct of contracts.

This is at heart a matter of attitudes — and attitudes reflect personal values and beliefs. If I believe that other people are out to rob me, then I take steps to protect myself and to get my own back. Believing that I must negotiate for reward at the other party's expense, I am fundamentally aiming to *get*. I am very wary of any request to *give*. I want to get before I give anything. The more I get and the less I give, the greater I believe my negotiating skill to be.

I want to get an understanding of your strengths and especially of your weaknesses so that I can exploit them, use them as leverage in later negotiations. I prefer to get your bids rather than having to give you mine. I want to get your concessions, not to give any. I want to get the most and the biggest concessions.

For me, getting is the priority. My behaviour is get/give.

I have no respect for those who talk about a world in which we negotiate to form a business partnership. It is a rough old world out there and I need to get from it.

The aggressive pattern

Having such attitudes and values, the aggressive negotiator behaves distinctively at each stage of the negotiation.

The climate he seeks is brisk and businesslike. But cordial?

A familiar face on Concorde is the Finance Director of an American conglomerate. Let's give him the pseudonym Hank.

On Concorde, he is a great companion. Warm. Charming. If he finds we are going to be visiting his home town he invites us to dinner, to his home, to meet the family. Most cordial.

Once in the negotiating room, Hank is a different person. He is tough and abrasive. Nothing is right for him. It seems to be a matter of principle to reject the first suggestion that is made. As one colleague put it: 'If you ask him whether he would like to sit down, he'll spend the whole meeting standing up'.

Not a very cordial climate. Nor is it a co-operative climate. He is assertive. He thinks trust is soppy.

Open and honest? Of course you mustn't be deliberately *dis*honest but a little bluff is a part of the way that all negotiations are conducted, isn't it? And anyway, it is his duty to get advantage from the other side. He doesn't do that by putting his cards on the table but by trying to find out what sort of hand the other party holds.

The climate is distinctive and the strong aggressive negotiator is taught to exploit from the outset. His training is to look for advantage and leverage. From the moment he enters the negotiating room he's looking for knowledge of our situation. He's already researched it, of course, but he does want confirmation. He wants to know how badly we need to do a deal with him. Even the phrase 'How's business?', which might be a casual ice-breaking question for some unskilled negotiators, is from him an attempt to get another bit of leverage.

By the time we have moved to the negotiating table and sat down, we should already have seen signals about the climate and about whether the other party wants to negotiate in a constructive or an aggressive style.

At the procedural level, the aggressive negotiator sees the same need for efficiency as the constructive. He will have done his homework thoroughly and he is likely particularly to have developed his own proposals for the agenda. We shall have more to say about his planning later in this chapter (under Preparation). Suffice for the moment to say he will have a different plan to the constructive negotiator.

He will want to assert this plan. Whereas the constructive negotiator is concerned to establish mutual agreement to a plan,

the aggressive negotiator wants to enforce his. It is the second feature likely to confirm, from an early stage, the probable style to be followed by the other party.

The exploration phase is both more limited and different in comparison with constructive negotiation. This is not now a phase of two-way exchange, looking for creative/best possible outcomes in mutual interests. It is more limited because the aggressive negotiator considers the later bargaining phase to be the nub of all negotiating. Exploration is a relatively minor phase, to be got through as quickly as possible.

It is different in nature because the aggressive seek to get more leverage and to establish some early outposts for the later phases of negotiating.

Aggressive bargaining

The basic attitude is of course get/give. The style of bargaining is likely to be vertical rather than lateral. That is to say, to take any one issue (such as price or terms or delivery or . . .) and to dive deeply (vertically) into that issue. As distinct from a style of making gradual progress on a broader (lateral) front.

The strategy in bargaining is typically chip-away. That is, get the other party's offer and then keep chipping away at it, knocking it down a bit at a time (this contrasts with the constructive strategy of counter-offer and looking for most mutually profitable settling of points).

Time is a dimension to be used heavily in aggressive negotiations. If the other party want to move quickly, then it must be to our interest to delay them. They will have to give way on something if they want us to move at a faster pace.

Quickly, the aggressive negotiator establishes the level of the other party's offer on each issue for negotiation. He assesses which for him are acceptable and which are not acceptable. The unacceptable are split into two groups: the no-concessions list, issues where he *must* be given what he wants, and the negotiable group.

Within the negotiable group, he prepares for each negotiable issue. He assumes that it will take several rounds of negotiating to move from present differences to an acceptable compromise, and he sets targets for how far each party should concede in each round.

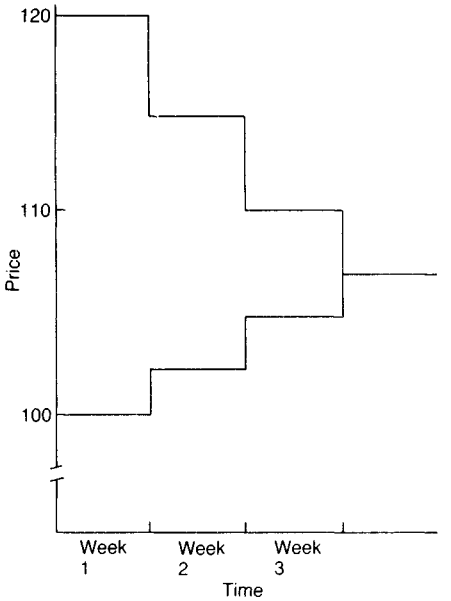

Figure 8.1 Plan for concessions and counter-concessions

If for example he is the buyer, having hoped to buy at 100 whereas the seller is strong for 120, then the buyer might strategise on some such lines as

- 'The best I can hope to get on this is 107.
- 'After one week I will expect him to come down to 115 and I will be prepared in return to go up to 103.
- 'At the end of the second week he will have to come down to 110 and I will have to go as far as 105.
- 'That way by the end of week three we should be able to settle out at 107.'

For these purposes, he can readily chart that thought process (Figure 8.1).

The literature on aggressive negotiation has some intriguing questions about this approach to bargaining. Is it better for example to look for large concessions in the early rounds, small in the later? Or vice versa?

Should it be three periods? More? Less? And what about the length of each period? Three periods of one week each? Or ten days, three days, two days?

The issues are intriguing, but the answers are not conclusive.

Aggressive bargaining is also strong in its consideration of tactics and counter-tactics.

Tactics and counter-tactics

First, the use of time. This has already been referred to. If they are in a hurry then we can seek to wrest advantage by slowing things down. And vice versa.

The counter-tactic depends on how much weight you ascribe to the issue of time. If you have to buy time, make sure you get a counter-concession of some sort.

Be wary about this tactic. Many negotiators are excessively suspicious of delay.

There is a natural sequence of any negotiation: productivity high at the outset then quickly tailing off and becoming less and less until a last-minute spurt of energy.

If you go to China for a three-week negotiation, you will find that things move fast for two or three days but have slowed down by the end of week one. Week two goes very slowly and week three is snail-like until Thursday. Then all of a sudden energy returns, there is a great burst of activity and development.

Westerners suspect that this has been a Chinese trap to gain advantage through the three-week process. The Chinese equally suspect that there has been some devious Western delaying tactic.

Both are wrong. It is the normal pattern in any negotiation — early achievement gives way to laborious discussion before the final spurt of energy.

Poker face. On the basis that our task is to get information and not to give any, we are well advised to keep a poker face. Never to give away anything.

There is a counter to it. It rests in the study of body signals and body language. Our postures, the way we sit in the chair and hold our arms, the way we cross our hands and legs and rub our noses and 'steeple' our hands and pull our ears, even the rate at which we blink: all these are said to be sending messages. Some authorities recommend that the skilled negotiator should be trained to look out for and recognise these signals. The next phase of training after that is of course to learn to send false signals.

I am sceptical of these arguments. When I really try to observe and interpret signals, it takes a great deal of my energy, and that's in short supply. I'm already overloaded with the need to present my arguments, to listen to what the other party is saying, to look for the way forward together — and to keep control. I haven't surplus energy for this scrutiny for signals. Even when I recognise them I may misinterpret them — particularly when negotiating abroad where the same signal means something quite different.

Cut and run. Or at any rate threaten to cut out of discussions.

Difficult to counter. If the other party is one with whom you would still like to work despite his aggressive negotiation, count the cost. You will have to make some concession to keep him at the negotiating table, or you will have to call his bluff. If he threatens to cut and run but continues to sit intently at the negotiating table he is probably bluffing — it's one of the signals I can recognise without having to think about it. But if he threatens and gathers his papers together and puts them in his briefcase then he's more likely serious about it. If you still want to bother with him, then use the 'If you . . . then we . . .' counter.

'Well look, your greatest concern seems to be on the issue of price. If you will reduce your payment period to blank, then we could take another look at the price question.'

The good guy/bad guy tactic. Make life difficult by sending a thoroughly awkward negotiator, then replace him briefly with a good guy prepared to trade some concession.

Use recesses. Take breaks at regular intervals — five minutes in the middle of a one-hour negotiation; half a day in the middle of a one week negotiation.

In general, the recess is one of few universally positive tactics. It enables each party to go away and re-think its position. It can revive energy which would otherwise go on flagging. Properly handled, it can enable the parties to reconvene in a fresh mood of search for solution.

'Properly handled' has three characteristics

A. Once a recess is proposed, take it quickly. Otherwise energy will only flag further.

B. On reconvening, a mini ice-breaking — let the minds get re-attuned before getting back into business.

C. Restart with summary of how far we've reached and agree new plan for next phase.

The problem with recesses is the suspicion that the other party may use them aggressively — to find some cunning new way of getting without giving. It's a risk, but of course if the style of negotiating is aggressive then we need the same opportunity at least as much as the other party.

The Golf Club. This is the tactic recommended for team negotiations when an impasse has been developing. The theory is that the two team leaders should have stayed aloof from the controversies being handled by their members. As impasse approaches, the leaders leave the scene of heated controversy and go to some other ambience in which the atmosphere is one of light and trust, a meeting of minds. In America it's the golf club. In Britain, it's the club — it used to be called a gentleman's club, but now of course there is mixed membership. In Finland it's the sauna.

Good tactic. Agree to it!

Plead lack of authority. In aggressive negotiation, one of the first questions when seated at the negotiating table should be 'Do you have authority to settle a deal?'

Make mountains out of molehills. Make a tremendous fuss about something trivial in the hope that you will later squeeze through some major point 'on the nod'.

Difficult to counter. It is in the best tradition of bureaucratic procedure, to use this tactic and to slip in the critical item on the nod in 'any other business.' So is the next device.

Manipulate the minutes. It is said to be a particular tactic in some Balkan countries, that the negotiators depart worn out at the end of each day. After a hard evening preparing for the morrow and without really enough sleep one enters the following morning to find freshly typed minutes of yesterday's meeting.

Unless you are careful, this tactic gets you into one of two evils. Either you start reading and questioning the minutes there and then. In which case, you are almost certainly heading for disagreement on ground for which you are ill-prepared.

Or you ignore the minutes and carry on with the day's agenda.

In this case the other party may claim later that you agreed by default.

The manipulated minutes are an awkward tactic to counter.

Either you need your own support party to draw up your own minutes, daily. Or you have to state that you cannot accept the minutes until you have been given the opportunity to study them. But this is dangerous because the minutes go on mounting up daily and by the time you go home — and at last find time to study them — you will be astonished by what you read. It will be very fortunate, not to say time consuming, to find your own notes enable you to refute the manipulated minutes.

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Such tactics are part of the armoury of aggressive negotiators, and there are a host more. A longer list appears in Appendix 1.

Preparation for aggressive negotiation

The process of preparing is not simply a way to achieve a product on a piece of paper. It is something which puts the back of one's mind into a particular order.

The basic recommendations which we made for preparation in chapter 4 were

Reduce to keywords

Prepare to be presenter and listener and controller

Use an A4–A5–A6 approach.

For *aggressive negotiation* there is the normal need to prepare procedure. It needs to take a slightly different form.

There is a particular form of agenda which is recommended by all the authorities on aggressive negotiation. Bear in mind that in aggressive bargaining, there is deep diving on each issue. The recommended agenda is

A. Start with a minor issue. One on which we will be ready to give something.

   This is the exception to the normal rule of get before you give. The purpose is to establish our status as good and generous negotiators.

B. The second issue should also be a minor one. One in which we will expect to get from them.

   The purpose of this item is to take note of the negotiating style of the other party. Once this is established, we have a check on our strategies.

C. Most important issue.

D. Other issues in decreasing order of significance. Except for:

E. The last item. One where we have kept just enough in reserve to finally swing the deal for us.

•

This is the pattern of agenda repeated in various books on this style of negotiating. The assertion of such an agenda is one of the signals to which we referred earlier — signals of aggressive negotiators.

Aggressive negotiators also consider, at the same time as procedure, the tactics they will use in negotiating.

For them, it is important to know what information they want to get from the other party. It is important to know what stances they want to take.

This compares with preparation to be listener and to be presenter. Whilst there is some correspondence, there is much more rigidity in the preparation of the aggressive negotiator.

Quickly, he wants to establish his no-concession list, and his graded lists of concession and counter concessions as in Figure 8.1.

From an early stage his preparation is in that form. His attitudes and values and his style point him towards aggressive behaviour.

His ability to behave in that mode is reinforced by the way he tackles his preparation. He becomes bound by that preparation, unable to think outside its boundaries.

He can be highly skilful at operating this way. We earlier counselled Engineers as Sellers to try to negotiate constructively. We must add that if they are forced into an aggressive style, then they must prepare themselves in that style and try to develop the skills of that style.

Summary

1. An aggressive style of negotiation is founded on the belief that we can only win at the expense of other people.
2. Get/give is the ruling philosophy.
3. The climate will be brisk and businesslike. Tough and bluff and masterful are other characteristics.

4. Procedural planning and control remain important.
5. Exploration is more limited.
6. The pattern of bargaining is vertical, piece by piece, using a chip-away strategy.
7. Tactics may be heavily used.
8. Preparation is more rigid and leads quickly and forcefully into the bargaining phase.

9

The engineer as buyer

In this book so far, we have been concerned with the engineer as salesman. He has been the supplicant, one of many supplicants, struggling to earn the favours of the powerful buyer.

On the other hand, in his relationship with many other parties, the engineer appears to be in the powerful position.

- The powerful buyer himself is often an engineer.
- The buyer's consultant appears powerful to the competing contractors.
- The chosen contractor, to sub-contractor, suppliers and vendors.
- The Electrical Engineer chosen to supply generators, to the Civils competing to supply the housing for them.

From the perspective of the Engineer as Buyer it is important to use his power to obtain the maximum benefit. This is more difficulty than it sounds, and it is all too easy to abuse the power.

The simplest rule of economy for a buyer is this: you cannot expect to get anything more than you pay for. If you use your superior power as a buyer at the pre-negotiation stage to force the seller to make concessions that he considers unfair, you can be very sure that the seller will compensate one way or another.

What style should the engineer use as buyer, when choosing amongst prospective sellers?

Choice of style

The engineer is in a powerful role. Is he to be constructive or aggressive?

It is tempting to be aggressive. There is something appealing in having the status of the strong, the ability to use it over the supplicants.

No supplicant is perfect. Each will inevitably display some loophole. And it is tempting to concentrate on those loopholes. It is certainly no easier to work constructively with two or three potential suppliers in the search for best partner in mutual interests.

What are the consequences of the two approaches?

Suppose we adopt an aggressive style.

What we are hoping for is best position in the quality/time/money configuration. There are three possible outcomes. By being aggressive

1. We achieve a better position. We force the seller to the limits and he ends up broken, our project in ruins.
2. We achieve an apparently better position, but one in which the seller has taken counter measures. He has protected his position, qualified it, found loopholes. There is trouble in store when it comes to execution of the project.
3. The aggressive behaviour does not really improve the position.

There is another consequence apart from the effect on our position in quality/time/money. It is the consequence for the climate, the goodwill, the way in which the project will be conducted.

If the Engineer as Buyer has acted aggressively before appointing his suppliers, they will seek to counter-attack when the project gets underway. There will be ample opportunity for them — there always is — to exploit loopholes in a contract or at least to 'work to rule' and not stretch to be co-operative.

Now then, suppose we adopt a constructive style. What now are the consequences?

1. The climate will be constructive.
2. Exploration should enable us to draw on the suppliers' specialist knowledge. We have hopes of having a better quality/time/money position.
3. Bargaining, before we select our supplier, will be open and

honest. It will nevertheless be competitive and we can expect best 'real' quality/time/money position to appear.

4. Bargaining between choosing supplier and negotiating written contract will not be characterised by the supplier having to cover his earlier concessions.
5. Above all, the two parties go forward to project execution in a positive climate.

Caution

These arguments seem to favour the Engineer as Buyer adopting a constructive style of negotiating.

In general it is our belief and experience that this is a fair conclusion.

But beware! A good constructive negotiator can never beat a good aggressive negotiator. After all, the idea of warfare — of 'beating' one another — is foreign to the person trying to form a profitable business partnership.

We all from time to time come up against aggressive salesmen. They will try all sorts of tricks to take advantage of us. If we cannot quickly convert them to negotiate constructively with us, we have to defend ourselves — and that means either counter-aggression or crossing them off our short list.

A special case for this strategy is dealing with some other cultures — some countries have a custom of aggressive negotiation. (More on other cultures in chapter 21).

For the individual, there is an influence also from his organisation's style. If it is to be aggressive, he earns no kudos from unorthodox behaviour. It might be in the interests of the organisation to change that culture, but that is a massive task. The short-term solution is that the engineer can be forced into adopting an aggressive style.

The caveat is that there are times when the Engineer as Buyer has to adopt an aggressive style. The suggested rule is that generally, his interests are better served by being constructive.

Illustrations

A constructive buyer example.

Construction of an office block. Negotiations were started early, before the project was totally defined. In the beginning there were

three contractors competing, but after preliminary discussion the developer decided to try to negotiate a contract with only one. The developer had long-standing connections with the chosen general contractor.

The seller was told that he would be awarded the contract, provided that reasonable prices and conditions could be agreed. The buyer also stated that his prime objectives were completion time, quality and long-term cost efficiency.

The parties defined the project together. Expertise in building maintenance and knowledge of the costs of such maintenance were combined with expertise in construction and knowledge of its costs. A steel superstructure was selected, jointly, chiefly for reasons of time. Surface materials were selected in a wide range, for optimum benefit. Expensive natural stone for some areas, simple painting for others.

Different combinations of air-conditioning systems, heating methods, insulation thickness and window sizes were discussed and the optimum solution was decided (balanced ventilation with energy recovery, separate cooling coils for each individual unit, electrical heating and large but fixed windows).

In parallel the conditions of contract and the price were negotiated. After a couple of months the contract could be signed.

There is no doubt that the buyer achieved his objectives easier and better in this way than if he had adopted an aggressive manner. In the aggressive manner he would have had to decide on solutions without the assistance of the seller's expertise. It would have taken longer to arrive at a contract, the solutions would probably not have been as well founded, and the risk of delays would have been bigger. But the price (the original contract price, not necessarily the final price) would probably have been less.

A previous example in chapter 6 — the turn-key project in Turkey — was an extreme example of buyer misusing power to force down tender prices. It illustrated how the prudent seller has to find devices which protect his real price needs. The buyer apparently achieved a price of 32 but the seller fully expected to invoice at least 47.

A prominent American oil company in the Middle East has a reputation for highly aggressive buying. It is a reputation which applies to both contract negotiation, and to subsequent negotiation throughout a contract.

It is known that many capable engineers fight shy of working on their contracts.

Companies that bid for their contracts apply a special factor to their ordinary prices to compensate for the additional costs that the buyer's aggressive behaviour causes them. Flaws in contracts and

specifications must be exploited to a maximum. Claims occur daily. Disputes and law suits are common.

This is an example in which we were the aggressive negotiators.

The buyer was the main contractor for a big hotel project, the seller was sub-contractor for carpets. The buyer was a big construction company, the seller was essentially a one-man company. The seller was recommended by the client's representative so strongly that he was close to being a 'nominated sub'. I still believe that he had bribed the client's representative, one way or another.

The seller was a man who looked like a crook and behaved like a crook in all respects. He was very kind — too kind — and he entertained lavishly. He or his company had never done any carpet-fitting before; his normal trade was suspended ceilings and other interior decoration work. To execute this project he had hired a gang of carpet fitters and made deals with two or three carpet factories who would provide the carpets.

We were sceptical of him from the start and we made him sign a sub-contract that gave him very few rights and us all the power. We were certain that he would try to cheat us and we decided to do our best not to be cheated.

It was a tough contract.

We were aggressive as a defence against his expected aggressiveness. In theory this is a proper way to defend, and we did it well. To the sub-contractor it was pure disaster.

In the end it became obvious that he was absolutely honest and straight towards us. His work was excellent, and he lost a fortune because we treated him like a crook.

The seller had many claims that would have been legitimate under a reasonable contract. In this case there were no legitimate claims under the contract because we had assumed that he was going to make a lot of unreasonable claims.

In this case the buyer applied a fighting mode because he thought that the seller would fight. The seller in fact tried to co-operate and he tried to build relations, but he was not believed. The result was a total defeat.

The seller would have needed to fight back. He would then certainly have been better off than he was. If he had fought hard from the start he may even had obtained a truce and co-operation after that. Now he invited fighting by appearing to be faking co-operation (when in fact he was co-operating).

The moral of the example: It's alright to co-operate, but if somebody fights you, for whatever reason, you must fight back, or you will certainly lose.

'It's unwise to pay too much, but it's unwise to pay too little. When you pay too much you lose a little money. That is all. When you pay too little, you sometimes lose everything, because the thing you bought was incapable of doing the thing you bought it to do. The common law of business balance prohibits paying a little and getting a lot. It cannot be done. If you deal with the lowest bidder, it is well to add something for the risk you run. And if you do that, you will have enough to pay for something better'.

John Ruskin (1819–1900).

Summary

1. The engineer is not only a supplier. He is often a buyer.
2. As buyer, he usually has a greater degree of power.
3. It is easy to abuse that power.
4. In most situations, a skilled constructive negotiator is the more successful buyer.
5. There are exceptions when he is forced into an aggressive mould.

Part 2

The Engineer as Partner

Synopsis of Part 2

A great change is coming over the scenery. As the contract gets under way there is another pattern of negotiation (chapter 10).

It is important to have co-operation throughout the project. A technique which can enhance co-operation is that of role negotiation (chapter 11).

There is a distinctive group of negotiating issues and skills during the contract (chapter 12), and claims have to be negotiated both during and after contracts (chapter 13).

Many issues during a contract are multi-sided; several parties must meet to negotiate on them (chapter 14).

Yet another pattern of negotiation may develop in the making of settlements after the contract (chapter 15).

There are three other aspects of negotiation for the engineer as partner. One is his role as team-member in some negotiations (chapter 16). Second, invariably his negotiations outside the firm are founded on and followed by internal negotiations (chapter 17). Third, engineers regularly become partners in consortia and joint ventures (chapter 18).

10

Another pattern of negotiation

Now to work. After all the contract negotiations, it is time to have the production line established, the jigs and tools set up, the earth moved.

New patterns of negotiation now emerge. This opening chapter introduces them under the headings 'New forms of negotiation', and then 'First impressions'.

New forms of negotiation

The pattern of negotiation changes as the project gets under way. There are new people, a new distribution of power, new subjects for negotiation, a new climate.

The people are changing. Previously we had the negotiating teams. At first it may have been the buyer negotiating with his consultants. Later the buyer and his consultants negotiating with prospective contractors or suppliers.

Now the dominant figures become the contractor's site agent and the buyer's Resident Engineer. They may previously have been members of negotiating teams, but now they are paramount.

Each has his own team, and many more teams will come into the picture as the project develops. A host of specialists, sub-contractors, suppliers, and services.

A fresh climate will be established. There will of course be a carry-over from earlier negotiations. If those earlier negotiations were aggressive then there will be a carry-over of combativeness which will be very difficult to change.

If previous negotiations have been carried through

constructively, then the new teams can come together in a cordial and co-operative spirit. That aura may of course be disturbed by events or by the nature of the people involved; but it is at least a good beginning.

There are then new people, many new people, representing many groupings of interests. There will be a complex web of relationships, between people of different trades. There will be people who know each other, people who know of each other, and people who could hardly imagine that the other existed. They are now committed to implement the project together.

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The power position has changed. Previously, there had been competitors (usually competing sellers, single buyer, so that the buyer was dominant). That position has changed.

The parties are locked into the project. No escape short of disaster. They now have to work together in partnership; the power is shared. But there is often a carry-over from the previous position. More about that later.

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The forms of negotiation change.

Previously, we could be reasonably visionary. We were negotiating with prospective business partners for something that was to happen in the future.

Now our negotiations are with people to whom we are firmly committed. Now we are no longer negotiating visions of the future. We are in a world of the present reality. We must live up to optimistic promises sought and given Before. We must negotiate through to-day's trials and tribulations.

As the parties meet, particularly as the seller's site agent and the buyer's Resident Engineer (RE) meet, there is likely to be a degree of wariness. There are too many tales of disastrous relationships between site agents and REs.

Is there to be a tussle for supremacy? Or a striving for co-operation?

All the other relationships — as for example contractor with sub-contractor — are likely to start with some degree of wariness. The ripples from the climate between site agent and RE stretch out to influence the whole network of relationships.

It is important to get them right from the start.

First impressions

First impressions are crucial in forming the potential climate.

Within the first hour of meeting (even within the first minutes or seconds) impressions have been formed of the other person. If quickly there is an air of controversy, then from the outset each will be defensive, which means defensive-aggressive.

The need is to develop a positive relationship before getting into controversial business. Follow the basic rules of ice-breaking — stick to neutral topics, preferably meet in an ambience which encourages relaxed behaviour. Some people find it in the golf club, others over dinner or at a theatre; in Scandinavia it's the sauna. Whatever the venue, key people should first meet there and agree to keep off business topics for the day.

Having broken the ice, still do not rush headlong towards conflict. Meet in the offices, but start on semi-neutral topics. Talk about respective planning methods, the points at which they interact, methods to get the best out of planning in joint interests. Talk about the need for communication and liaison meetings. Gradually build the foundations on which controversial topics can be negotiated openly and constructively.

Unless good foundations are quickly laid, trouble soon looms. For example, when work on a Civil contract starts, the buyer's representative (the RE) is typically in an advantageous position towards the seller's site agent. He has usually been involved with the project for a longer time than the site agent, and he knows more about it. When routines are established, the normal procedure is that the seller proposes and the buyer approves or rejects the proposals. This adds to the buyer's power. The fact that the buyer sits on the money chest also makes the parties feel that the buyer is the more powerful. 'The golden rule in contracting is that the guy with the gold makes the rules'.

The climate can all too easily deteriorate into a relationship where the buyer dominates the seller. If the buyer then abuses his power, the seller stands to lose a lot. He is then at the mercy of the buyer. The site agent who lets himself be dominated cannot normally put matters right later. If he establishes himself as an underdog, he will never get up to equality. Thereafter, if you want to improve the climate, you have to replace the site agent. And the new guy will certainly have difficulties too.

Normally it is not possible to improve the climate softly if it is really bad. It requires fighting. You may even need to get

the RE replaced before you can hope to build a new climate — and in those circumstances, it will be building on bad ground, because replacing an RE may require bloodshed.

If you are the seller and your site agent has got into this kind of bad climate, you must realise how difficult it is to improve it. It's not enough that you are best friends with the chairman of the buyer. The relationship which counts is that between the site agent and the RE. If you see signs that your site agent cannot cope with the RE, replace the site agent. If nobody can cope with the RE, get the RE replaced.

But if you go for replacing the RE you must remember the old anarchist rule: when you attack the king, make sure he is killed. The RE is king of the site. If you challenge him and fail to remove him you are much worse off than you were. So you need to put down a lot of effort and you need to be very determined.

As an alternative, if you get into the situation where you would like to get the RE replaced but you are unable or unwilling to stage the all-out war that would be required, you may resort to guerilla warfare. That means to let the RE rule, keep him happy, try to keep your costs low and collect evidence and prepare for claims which you may submit when he cannot retaliate. To be effective, a guerilla attack must come as a surprise.

If you are the site agent (or the RE), how can you build a good climate with an opponent who tries to dominate you? There certainly are no easy solutions to that problem. How do you make friends generally?

Your opponent is in the same trade as you. You probably have the same or similar education. If the RE is, or believes he is, a qualified Engineer, ask for his advice on technical matters, but in private. He will be flattered that you appreciate his experience and seek his advice. Start on small matters that have no significance for the contract works. 'Do you think we should use a gas or electrical water heater for the office?'

It may be essential that a demonstration of your own skills, competence, experience or whatever will help you build the climate. Your opponent should like you as a person and respect you as a professional. Showing or indicating strength is often a good way to create respect. 'Speak softly and carry a big stick'.

You must meet often at the start of the project. It is preferable to meet even more often than necessary. It's difficult to remain

unfriendly with a person whom you see several times a day. If you start to get unfriendly, you typically stop seeing each other for coffee and a chat. But if you insist on continuing to meet for semi-social purposes (which sometimes feels hard) even when controversies occur, the climate will improve.

> A construction site in West Africa was a bit off city limits. The buyer had an expatriate staff of about ten engineers, the Seller had about eight. They all decided to build a joint canteen where they could have lunch. To go home to the city was not practical — it would have taken several hours.
>
> A simple structure was created on the beach. An open air kitchen and a roof to be used in case of bad weather. Most days the table would be laid under the palm trees on the beach. All the people would meet there for lunch at the fixed time, and lunch was served at a long table where all 18 sat.
>
> It was virtually impossible to carry through a serious dispute at that site. The simple fact that people met every day for a joint lunch helped create a very good climate. The food was excellent too.

It's important that you talk to each other. The climate will suffer if you resort to simply sending letters. In the ideal climate you can discuss the draft with your opposite numbers before you send the letter formally. But behold and beware, informal handling of issues favours the weak. If your position is strong, e.g. in a claims situation, you must use your strength to your best advantage. It is easier to build a good climate out of a position of strength than the opposite. The climate will not suffer if you use your strength, only if you abuse it.

It is so important to ensure good relationships from the outset that we will in the next chapter consider role negotiation.

Summary

1. As work starts, there is a new pattern of negotiation.
2. There are new people, many new people, a labyrinth of new relationships.
3. The parties are locked into a new partnership. It can be a tussle for supremacy or a striving for co-operation.
4. Negotiation ceases to be about the future and its visions. It is now about the present and its problems.
5. Negotiations become multi-sided.
6. First impressions are highly important.

11

Role negotiation

Deteriorating relationships are a feature — a costly feature — in many projects. Techniques of role negotiation can avert or reduce that deterioration.

The sequence of this chapter is first to discuss role confusion, then to give illustrations, to discuss how role negotiation can help, and to suggest role negotiation processes.

Role confusion

Whatever my role — be it as engineer or as manager, as spouse or as parent, as neighbour or as club member — there is always some element of confusion around it.

There is always

- What I do in my role
- What other people expect me to do in the role.

This is a normal factor of life. So far as we know, it has not been researched for engineering. Research in American industry shows that there is only 35% overlap between that which top people expect their close subordinates to do, and that which the subordinates themselves think they should do.

Misunderstandings are inevitable, particularly under the sorts of stress that abound in important projects.

Some degree of role confusion is inevitable during a major project. It may be tolerable provided that there is reasonable trust and understanding between the parties. Once that trust and understanding starts to be undermined, it can quickly deteriorate into buck passing, scapegoating, name calling. It is

particularly probable in matters for which there is shared responsibility and mutual dependency.

Such shared responsibility and mutual dependence are often unrecognised. I just don't realise that I am making life difficult for you. Even if I do recognise that my actions affect you, I am likely to underestimate the effect. My estimate of effect is almost certainly less than yours.

And you *never* realise how difficult you make life for me.

The drawing up of job specifications, and their publication, is not enough to resolve this problem. It is only resolved where the parties come together to discuss their joint responsibilities and to agree on them — to *negotiate their roles*.

Such mutual understanding is needed not simply at the level of one to one (one person with one other). It is needed also team to team. Not only trust between the RE and the site agent (and the architect and the quantity surveyor) but also trust between the members of their teams.

Role negotiation processes

First impressions are critical. They are durable and will have continuing influence throughout a project. But of course even when first impressions are good, trust and understanding will still be stressed at times during a prolonged project.

Role negotiation is therefore necessary at the outset of a project, as people are coming together in their teams for the first time; plus some refresher periodically during the life of the project.

The form taken by role negotiation is typically that of a key work group coming together for some intensive practical work on their roles. The size of the work group should be no more than 20 or 25 key people. Maybe for one project, it would be four or five people each from buyer, consultants, contractors, and one each from half a dozen key suppliers and sub-contractors.

The form of activity is for people first to work within their own teams, setting down expectations (hopes and fears) for the project. Subsequently, they discuss their expectations with other teams, noting similarities and differences at the different teams.

Then, back again in their original teams, to discuss perceptions of roles — both our own and those of other people. These role discussions must include a combination of responsibilities and/or

of objectives and/or communication arrangements; and especially they must handle areas in which there are shared objectives/responsibilities. The full work group (possibly splitting into smaller groups drawn from different teams) can then recognise the points of interaction between them.

And so to a final process, now definitely working in cross-team groups, of deciding actions to ensure co-operation at critical points.

Such a process of role negotiation at the outset of a project demands about two days' effort. It has dramatic consequences in providing the foundations for future co-operation. It has deeper significance at the personal level in building trust and confidence. It both reduces inevitable role confusion and creates trust and tolerance when difficulties do occur.

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Even such an established level of co-operation is inevitably placed under the stress of events as a project develops. It needs means of sustenance. It needs a periodic refresher.

Bring such a work group together again for half a day every x (6?) months. Have similar processes of teams first working independently, and then regrouped so that new actions are formulated by cross-team groups. Depending on the way the project is proceeding, let the focus be either on problem solving, or (preferably) on problem prevention. Or possibly on a re-negotiation of roles.

The problem-solving, of course, needs to confront real problems where co-operation is proving difficult, and to use problem-solving techniques which help the development of mutual trust. More on this in chapter 19.

Such forms of role negotiation, both at the outset and as refreshers, need professional leadership, and there are consultants who specialise in such assignments.

Summary

1. Role confusion is inevitable during projects.
2. It can be kept in bounds by role negotiation.
3. The optimum first impulse for role negotiation is a two-day process at the start of a project.
4. It needs to be followed up by periodic refreshers.

12

Negotiating skills during the contract

The two previous chapters have been concerned with laying new foundations for negotiations after the contract has been signed.

This chapter focuses on some of the subjects which are most likely to cause negotiations during the contract period.

I have previously recommended that *before* a contract is agreed, negotiations should be carried out in a constructive as opposed to an aggressive mode. There are exceptions when the buyer may win some temporary advantage by being aggressive, but to the seller, constructive contract negotiating is *always* to be preferred. To the buyer, constructive contract negotiating is *almost* always to be preferred.

Now, *during* the contract period, it becomes increasingly essential to the buyer to negotiate constructively. At the same time, there are now some occasions when it is profitable to the seller to negotiate aggressively. This may seem rather simple, but let us look at the position in more depth.

The issues that most commonly give rise to negotiations during the contract are of the following kinds

- Extra work
- Deleted work
- Non-compliance with specifications
- Non-compliance with contractual conditions
- Delays
- Late payment
- Taking over
- Warranties.

Let us look at each of those issues in turn. But first, a word about the context — the context of continuity and of the long term.

In the context of continuity, the contract situation is continuous while it lasts. The parties must live with each other for the duration of the contract. You must always expect that there will be at least one more negotiation before the contract is completed. When you operate in an aggressive way, you must always expect that your opponent will seek opportunities to strike back.

The longer-term context is that the present contract is but one in a series. The reputation we acquire during this contract will undoubtedly reach the ears of future prospective partners. It may even be that our next contract will be at the offering of the present partners.

For both reasons, the context is of pressures towards a constructive style of negotiating.

Now let us look at the issues for negotiation within that context, and the way they should influence our strategy.

Extra work

This simple heading covers a whole range of issues that may all become disputes, including

- Is the work extra? i.e. Interpretation of the contractual specification.
- Has the extra work been ordered by the buyer or has it been executed anyway?
- What price is applicable for the extra work?

Resolving these three issues by negotiation requires different skills of both parties.

'Is the work extra?'

An issue of contract interpretation will not be resolved properly and fairly by aggressive negotiation. It requires constructive efforts by both parties. If one of the parties applies a fighting mode in such a situation, the other party has two choices: either give in, be nice and be run over, and blame yourself (I have never heard of a contract with so much money in profit that the seller can afford to let the buyer decide what the contractual work

includes); or fight back and risk a formal dispute that will be resolved by arbitration or litigation.

Most sellers are anxious not to get into arbitration and litigation, at least not against current buyers. It is considered bad for the business and for the reputation. In many cases the buyer is an entity that is stronger financially than the seller. This is an important factor, because litigation and arbitration are expensive pursuits and the outcome always carries a large element of uncertainty.

Often buyers are aware of the seller's reluctance to resort to the formal ways of solving disputes. Clever buyers can use this reluctance in their favour by applying the fighting mode. In my opinion it is doubtful whether that gives any real favour to the buyer, although it may seem to at first. If the seller feels that he is forced into an unfair 'agreement' he will try to get even on other issues, and that is likely to cost the buyer more than he has earned on the first issue.

One device often used by buyers (and their consultants) is to order extra work, claiming that it is not extra work. 'You are hereby requested, within your contractual obligations under clause XX, to execute ... etc.' This is typically aggressive behaviour. It may be difficult for the seller to recognise the odd extra work that will be slipped in among all genuine contractual requests that may be made.

The seller may counter if he feels that the buyer tries to take advantage and sneak in additional work among that contracted. The seller may then develop a routine to claim that each request by the buyer is extra work. That puts the onus back on the buyer to reject those claims which are not legitimate.

The situation may then easily deteriorate into an 'American' relationship where the parties use printed forms of waivers, claims and rejections as standard procedure. The result is a fraught climate, which is disastrous to the issue of negotiating whether 'extra work' is really extra or not.

Buyer Ploy: Try to consider all work part of the contractual work. Use language in orders or requests to the effect that the seller automatically waives any claims. In other words: Try being aggressive. If the seller fights back, try to get back into a constructive mode and bring the seller with you. The latter is very difficult, so be a bit careful. If you think that the seller will fight back, don't start the fight.

Seller Ploy: Try to consider all requests by the buyer as extra work. Use a routine to claim extra payment for each request that he makes. That is: If the buyer seems weak, try being aggressive. If the buyer fights back, make a truce and try to become constructive.

Traps: A fair settlement of the issue requires constructive negotiation from both parties. Either party may get an advantage, possibly unfairly, by using aggressive ploys, provided that the other party does not defend properly.

If the aggressive ploys fail, the party trying them loses the more.

'Has the extra been ordered?'

Extra work is usually initiated by the buyer. He may not be aware that the work is extra when he initiates it, or there may be a dispute as to whether it is extra. Still, there is often an order or some other kind of documentation.

Then we have the case when it can be questioned whether the extra work has been ordered (or rather the case when it has not been ordered explicitly). This is often a very interesting case. In theory it is simple: If the seller has executed work on a project outside the contractual scope on his own initiative, he is not entitled to any extra payment.

> The buyer has bought a transformer, standard specification. The seller plates it with gold before applying the finish paint. The result is a more expensive transformer, possibly but not necessarily of better quality than ordered (but certainly not worse, or we will get into another negotiation issue).
>
> There is no reason why the buyer in this case should pay a penny for the gold: he didn't want it, he didn't order it, and he has no benefit from it. If the seller opens a dispute on the issue of payment for the gold and goes to litigation, there is no way that he will win. He will be deemed to have applied the gold plating at his own risk and for any reason that may have been made sense to himself at the time.

This negotiation issue calls for aggressive negotiating. Claiming payment for something that he has done on his own initiative is in itself an aggressive action. The buyer has received the project as it is. The project will not change its specification or quality, whether he pays for the extra work or not. In other words a typically aggressive negotiation.

If this negotiation is properly handled by both parties, there is no question of the result. The seller gets nothing.

In real life the situation becomes different surprisingly often. I have been involved in a number of instances (as seller) when we have submitted claims for extra works, real or alleged, near the completion of a project. In practically no case has the buyer rejected such a claim on the ground of no order. Oddly enough this applies even to a couple of very aggressive organisations, including one large American defence contractor.

The latter case is particularly interesting. The American company had a turn-key contract for large installations in Saudi Arabia. We were one of their sub-contractors. Our sub-contract became a financial disaster, and we made a big loss, for reasons that are interesting but outside the scope of this book.

When the project was near completion we tried to save what could be saved, in several ways. One way was to fire a large number of claims at the American. Most of these claims were for extra work, and many of them were in actual fact more or less invented for the purpose. I'm not particularly proud of having taken part in that exercise but the situation was desperate and it became an interesting experience.

I have often wondered why the American didn't reject the claims on ground of formalities, but in fact he didn't. He rejected most of the claims, but never because the works had not been ordered. Instead he started to discuss whether the works had really been executed and what the proper price would be.

Maybe the buyer felt that he should be seen to act reasonably as the project was nearing completion. At that stage it was possibly important to the buyer that the seller should complete his work and not be unnecessarily upset by bad behaviour of the buyer. Until then, there is no doubt that the buyer had dominated the seller totally. The buyer had acted in the typical American style and the seller had been very weak and had been run over time and again during the contract period.

It is also possible that the buyer felt that he had a very strong case even if he agreed to discuss each claim on its merit. The fact is that he had, because many of the claims were rather fictitious. The buyer's people on the site knew that. Unfortunately for the buyer, his site staff left when the project was completed. When it came to final agreement on the claims, the people with knowledge were just not available.

The result was astonishing. We actually got about twelve times as much money out of the claims as we had expected originally.

There were several factors behind that result, of course, but one very important factor was that the buyer failed to defend himself properly from the start. One reason may have been that he underestimated the seller, who previously had not acted toughly. Another reason may have been that he knew that he had a strong case, but was not able to prove it.

Seller Ploy: Don't worry unduly about lack of formal orders for extra work. Try a claim anyway. If the buyer doesn't defend himself properly, it is pure profit.

Buyer Ploy: Take all claims seriously, even if they seem ridiculous. Never try constructive negotiating for settlement of a claim for extra work that has been executed.

'What price for the extra work?'

Negotiating the price for extra work requires different skills and styles, depending on the situation.

A common situation is that the extra work will be proposed by the buyer, well in advance of execution. The buyer then normally asks the seller for a quotation of the price of the extra work. The seller quotes a price, often with documents justifying it.

On the rare occasions when the buyer is not satisfied with the quoted price, negotiations follow. Such negotiations should be constructive. It is in fact a new contract negotiation of a little contract within the main contract.

The fact that the main contract is in force means that certain parameters for the 'extra work contract' are fixed. But there is still room for a complete contract negotiation, with all its phases.

- Exploration: the buyer has checked his requirement and what possibilities exist.
- Bidding: the seller quotes a price for the extra work. The ordinary rule of pricing applies: highest defensible!
- Bargaining and settling: that is what the negotiation is about, to agree on terms, specifications and price for the extra work.

It is advisable to negotiate constructively. If the negotiation is only about the price, in aggressive style, conflict is imminent. The parties should explore the situation, identify the different issues and possibilities and negotiate everything concerning the extra work, almost as if it were a separate contract.

On the other hand, in many cases the work will have been ordered and executed before a formal agreement on price and conditions has been reached. Most standard contracts allow this, and in many cases it will be reasonable.

If the extra work has been completed before the price (and any other condition such as additional time) has been agreed, the negotiation suddenly becomes a typical case for aggressive negotiating.

We may have only one item to discuss (money) or possibly two (money and time). If you realise this, and apply an aggressive style, you will trade better. If you negotiate constructively and the other party negotiates aggressively, he will win and you will lose.

Deleted work

The negotiation issues of deleted work are relatives of those of extra work. But it is too simple to regard deletions only as negative extras.

Fair enough, if the deletion is coupled to an extra work or is otherwise proposed and quoted for before the decision is made. Then the situation is the same as for an extra. It is a case for constructive negotiating.

Possibly, the seller has an advantageous position. The contract has been agreed and signed. The contract specifies that all the work will be done. The seller reasonably expects that he will deliver all the work. If the buyer later wishes to delete some work, his position may become a little difficult.

If no agreement on the change (i.e. deletion) is reached, there are two immediate possibilities. Either the buyer will decide that the change will not be made, i.e. the work will be made according to contract. That is clearly not satisfactory to him, or he would not have proposed the deletion.

Or the buyer will decide that the deletion will be made and the consequences will be sorted out later. Most contracts allow for this possibility, which is reasonable. In this case the situation becomes the same as if no attempt had been made to reach an agreement before the decision.

If this situation occurs, we will find ourselves in an aggressive negotiating setting again, and this time the buyer will be on very thin ice.

The buyer has ordered a big transformer. For some reason he has required it to be plated with gold under the finish paint and the contract has been signed with that specification. After a while he finds that he must cut down on unnecessary expenses and he gives the seller a change order to delete the gold.

Everybody who has been in that kind of a situation, on either side of the fence, knows that the buyer will probably have to pay for most of the gold anyway. The case is not quite as clear as when the seller adds something without an order, but almost. The buyer is in a weak position.

Buyer Ploy: The buyer should always try to negotiate deletions in a constructive manner. If he is lucky, the seller will be used to negotiating constructively, in which case a better deal can be obtained by the buyer. If the seller negotiates aggressively, the buyer always loses on deletions, so it will pay to get the negotiation constructive.

Seller Ploy: Don't fall into the buyer's trap, don't be too constructive. The seller's position in a negotiation on deletions is strong. He is well advised to use that strength to his advantage. But beware not to abuse the strength.

Where is the limit between use and abuse? Simple! If the other party feels that you have abused your power, you have. Then he will retaliate when he gets an opportunity.

If the other party doesn't feel that you have abused your power, you haven't, no matter how much it has cost him. Then he will respect you.

It has become quite common with certain international buyers that they delete a part of the works and then let that same part be executed by somebody else at a lower price. Such buyers deserve nothing but the harshest aggressive treatment.

If the buyer of the famous golden transformer has requested the seller to delete the gold and then let another seller make the gold plating, should the original price be reduced by the price of the gold? Certainly not! There is a contract to provide a gold plated transformer at a fixed price, and a gold plated transformer has been provided. If somebody else has been kind enough to put on the gold, why should that change the price?

I'm convinced that such an extreme attitude will be correct in such a case. If the buyer acts in the mode already described, there is probably no use in the seller restraining himself from using all the power he can muster.

Non-compliance with specifications

This negotiation issue appears to be similar to that of deleted work. Normally the seller is the party that doesn't comply with the specification, and the buyer requests compensation.

But this issue requires different negotiating skills! When the issue is deleted work, the buyer should negotiate constructively and the seller may be better off using a fighting mode. When the issue is non-compliance the buyer's position is strong and the seller is weak. That means that the seller should try to have the negotiation carried through in a constructive mode. The buyer can possibly get a better deal in this particular case by negotiating aggressively but a constructive attitude is normally preferable.

There is sometimes an analogy between the issue of non-compliance and the issue of extra work. I refer to the case when the buyer claims non-compliance by the seller after completion of the work. Some buyers sometimes use this method as a means to retrieve money from sellers, just like sellers sometimes submit claims for extra work just before completion.

As previously pointed out, the proper defence against claims for unordered extras is tough fighting. Likewise, the proper defence against late non-compliance claims from buyers is straight rejection on formal grounds. It may be more difficult to apply that fighting attitude by the seller, because the buyer may hold back money, but the principle is obvious.

Turn-key contracts are often the venue of non-compliance claims. The specification of a turn-key contract typically specifies a functional requirement rather than pure technical details. Using our ordinary transformer as an example again, a turn-key contract needs only to specify that the transformer shall be capable of transforming x kVA of incoming high tension (y kV) to z V low tension. There may be additional requirements specified, e.g. for noise level, maximum temperature, etc., but the typical turn-key specification will not specify the type of core, materials or structure.

> Hotels are often subjects of turn-key construction contracts. In that case the specification may stipulate that the noise level in each hotel room at night may not exceed a certain level, say 35 dB(A). It is then up to the turn-key contractor to select materials, systems, structures and equipment that comply with the specification.

The main sources of noise are typically the outside traffic and the hotel's own ventilation system. The turn-key contractor may use a thick wall and an expensive window and be able to buy cheaper ventilation equipment, or vice versa. In either case he will be responsible for complying with the specification. If he fails to reach the required nose level he may have to change the windows or replace the fans, at his own expense.

Non-compliance claims in turn-key contracts normally become complicated. That means that constructive negotiating should be preferred on both sides, provided that the claims are genuine. In a traditional contract the seller is required to supply the specified window. If he supplies that window he has complied with the specification. If he doesn't, he is in non-compliance. In a turn-key contract the window is typically not specified in detail, it is merely a part of a more complex system. In fact it is rather part of several different complex systems. The non-compliance claim cannot simply state 'you have supplied the wrong window'. It states 'the noise level in the rooms is 42 dB'.

Seller Ploy: In turn-key contracts, the sellers always try to get away from the pure turn-key concept, and they always succeed. That is because the buyers of this form of contract are never prepared to trust the sellers as far as they should in an ideal world. In the ideal turn-key contract the buyer and seller sign the contract and then the buyer goes on a round-the-world cruise to return only for the handing over of the completed project. In practice, the buyer will at least check what is being done during construction. Most likely, he will also require that all materials will be approved by him before being built in.

When it comes to windows, the seller presents some samples that he promises will comply with specifications. The buyer will approve one, adding to his approval that this approval does not relieve the seller of any obligation to comply with the specifications.

In many cases, however, the buyer will require something other than the seller has first presented. Then the pure turn-key concept becomes compromised. As soon as the buyer requires something different, the seller gets the opportunity to claim

1. That the buyer's requirement means extra work, beyond the contractual specification
2. That the new requirements mean that the contractual specification cannot be complied with.

The turn-key contract is an efficient form of contract for qualified buyers and sellers. The buyer has a legitimate right to influence details of specifications even in such a contract. The only way to handle this is for both parties to use a very constructive attitude in all negotiations during the entire contract.

Non-compliance with contractual conditions

When this becomes the issue of negotiation, it can be either seller or buyer who is at fault. If the seller is at fault, the issue is very similar to that of non-compliance with specifications, so the following paragraphs are devoted to non-compliance by the buyer.

When the contract is signed and the contractual conditions are agreed by the parties, each of them is entitled to assume that the other party will comply with the conditions. If one party doesn't, for whatever reason, the entire system of conditions may become upset.

Thus, when it comes to non-compliance with conditions, the purpose of negotiations must normally be to rectify the situation. This can be done either by making the defaulting party comply with the conditions, or by adapting the system of conditions to the situation that a particular condition will not be complied with.

Normally, it will not so much be a question of money or any other compensation. It will more likely be a negotiation to find a new way around the difficulty that the non-compliance has caused. This is a typical case for constructive negotiation.

As always when constructive negotiation is to be preferred, it may be necessary to use forceful tactics from time to time, in order to counteract similar ploys from the other party or to make them realise the seriousness of the situation.

Two illustrations of this:

> Once in a contract negotiation I represented the seller, and I tried to introduce a new clause in the conditions of contract. My clause would give the seller the right to terminate the contract if the buyer did not make interim payments properly. I explained to the buyer's representative that most standard contracts contain such a clause and I would like to see it in.
>
> He said that it would not be necessary, because he intended to pay. I replied that if he intended to pay the clause would be harmless

to him, but would provide security to us in case something should happen to prevent him from paying. I said that otherwise the contract would in theory require us to continue working and spend our own money even if he didn't pay as promised.

He then said: 'Would you really be that stupid? If I break the contract, you break the contract and stop working! Who am I to blame you for that?' Of course he was right. If he had stopped paying and become in non-compliance with the payment conditions we should have responded by the extremely fighting tactic of stopping work, although that (too) would have been a breach of contract. At worst, that would have reduced our immediate loss. At best it would have given the buyer a strong incentive to comply with the conditions or to negotiate new ones.

The second illustration is the story about the fastest contractor claim that I have experienced.

We signed a contract for four substantial grain storage plants in India. World Bank financing, standard form of contract, more or less. The contract provided that the buyer would place all the four different sites at the seller's 'entire disposal' with 'unhindered access' at the date of signing the contract. On the same date the local building permits required would be made available by the buyer.

Of course, nothing was ready on the contract date. Really, nobody had expected it to be. But at the joint dinner party on contract signing date, celebrating the signing, and after the speeches of co-operation and of how pleased the parties were to have entered into this fruitful contractual relation, just after midnight we handed over our notice of claims because the sites and permits were not available.

The reaction was interesting and it might lead too far to get into details here. Suffice to say that you should not try such a ploy with somebody that you don't know rather well! You also need a strong personality yourself to handle the situation that immediately arises.

In this case the result was intense activity to make all the necessary arrangements. This activity was made jointly by both parties and served the dual purpose of making the two teams start working together and speeding up the bureaucratic process. By the fighting tactic of submitting the claim almost unfairly early we had shown strength. By then co-operating intimately and immediately, we re-established and re-inforced a constructive climate.

The contract was a success.

These are examples of the need for sellers to adopt a forceful strategy when faced with buyer's non-compliance with conditions.

Delays

Murphy's Law can be formulated: 'Nothing is as easy as it looks, everything takes longer than expected, and if anything can go wrong it will, at the worst possible moment.'

The first two phrases almost invariably apply to construction contracts. Nothing is as easy as it looks, and everything does take longer than expected. That is the reason why issues concerning delays are so common.

In most cases it will be in the best interest of both parties to avoid delays and to remedy delays that have already occurred. The prime objective of negotiations on issues of delay should thus be how to avoid negative effects of the delay and how to avoid further delay. This typically calls for constructive negotiating.

There is the odd case when the prime objective of the other party (never yourself!) is to put the blame on you for the delay. That means starting a fight, and you had better fight back. But reasonable, sensible and intelligent people don't start fights just for the fun of fighting and the pleasure of winning. So the basic rule for negotiations on delays is to be constructive. This rule applies even when your position is strong, maybe even particularly when your position is strong. In those cases the other party will be vulnerable; he will know that his position is weak. Rather than lose easily, he may put up a bitter fight if you start to attack him.

I was involved in the construction of a parking garage of twelve floors, a rather large structure. The buyer caused a couple of substantial delays at the start. There was no question that he had caused the delays, so at an early stage we gave notice of claim for delay.

As usual in delay claims we didn't specify the total delay. 'The resulting delay cannot yet be foreseen.' But at the negotiation, because the reason for the delay was so obviously the buyer's fault I bid a number of months that was certainly excessive. This was a long time ago, I didn't have my present experience and theoretical background, and the bid was an optimistic view of the 'highest defensible'. It was totally unacceptable to the buyer and we came very close to an awkward dispute, saved only by the intervention of our Director in charge of that client.

We now saved the situation by not making a final agreement. We agreed in principle that the buyer was responsible for the delay.

We promised we would do our best to accelerate the work. The buyer agreed that when it came to completion we would get the formal extension of time we needed. Our relations became excellent.

I won't withhold the end of the story. The building was completed a couple of months after the original schedule. At the handing over, the Buyer's representative suggested a solution to a problem that I had not known that he had. He suggested that the completion certificate would be dated on the scheduled completion date, instead of granting an extension of time as we had agreed a year before. The reason was that if an extension had been granted, he would have to explain why to his superiors and to some superior organisation. That would have embarrassed him and his staff. It was easier to pretend that everything had gone according to schedule.

I had no objection. It was certainly a constructive move. It reduced the warranty period, but that was not a problem to the buyer in this case and certainly not to us. It was a result of the constructive and co-operative relations that both parties had developed. We did it that way.

The tangible result is that I have in my possession a copy of a 'certificate of substantial completion', together with documents showing that on the date of that certificate the top floor of the building had not yet been constructed. I use this sometimes to demonstrate the meaning of the expression 'substantial completion'. I then claim that 'substantial' means that most of the floors, such as 11 out of 12, shall have been constructed. Most people won't believe that this is a proper definition of 'substantial completion'.

I'd made a mistake by behaving aggressively over the issue of buyer's non-compliance. I was rescued by my Director — and by good luck.

Late payment

In general terms, the negotiations which create a contract should be conducted in a constructive mode. During the execution of the work the parties should ideally continue to operate constructively.

In the rare occasions when one party finds it essential to adopt forceful tactics, it is essential that the basic co-operative relations are retained. Otherwise the other party will retaliate.

The main possible fields of retaliation are

- For buyer: late payments
- For seller: bad work.

If either of the parties decides to retaliate it becomes extremely difficult for the other party to defend itself. A total war has no winner.

If the buyer begins to delay payments and you are the seller, you need to react immediately and strongly. Be constructive and co-operative, but show that you will not accept any deviation from the buyer's payment obligations. Find out why the payment has been delayed.

If the buyer has true difficulties in making proper payments, negotiate the necessary amendments to the contract. The seller has a strong position in those negotiations.

If the buyer signals the start of a war by his non-payment, find the reason. It may be that he has difficulties in expressing himself in constructive terms. He may not know any other remedy against a fault by seller than to stop payment. Then you must find the way to avoid escalation. Of course you must be prepared to rectify faults that you have made. But you must never be seen to be weak, to give in to pressure. If you do, you invite further attacks and the escalation that you should avoid.

Taking over

The ordinary contract between buyer and seller has basic provisions which are often not expressed in the contract. Such foundations are for example that the buyer wants the item that he buys and that the seller wants to deliver it.

I have no experience of any case when the seller has changed his mind concerning delivery. On second thoughts, possibly one:

> We had a long-term contract with a Polish state organisation to deliver cement to us at a fixed price. They would deliver a total quantity during five years at the world market price at contract date. After a couple of years the world market price had increased to more than twice the contractual price. At that stage the seller declared that he could no longer deliver the cement he had contracted to deliver, because manufacture of that cement had stopped. To help us get cement, however, he was able to offer cement from another manufacturer, with the same specification, at a little more than twice the contractual price.

I guess that this is typical. If the seller changes his mind it is either because he cannot deliver or because he wants more

money and thinks he can get it. Pygmalion cases are probably very rare.

In the strange situation that the world has been in during the last few years, I have seen a number of cases, however, where the buyer has changed his mind. He just doesn't want the project when it has been completed. When the contract was signed he wanted it, but when it is ready to be handed over, everything has changed. He has no need for the project, he cannot use it, he doesn't even have the staff to take it over. The money that he still owes he feels could be better used for other purposes.

This is an extremely difficult situation to handle. You can bring the horse to water but you cannot force it to drink. In the same manner, you cannot use force to make the buyer take over against his will. You must use constructive negotiating. You must convince him that the proper thing for him to do is to comply with the contract. You must make him co-operate.

Everybody who has been involved in any substantial construction project knows that it is always possible to find flaws and imperfections, no matter how perfect the work is in fact. Thus it is always possible for a buyer to find reasons, real or imagined, not to accept the work and take it over.

When you try to make him take it over it is easy to get into a situation where you develop a dispute over technical details. One thing may lead to another and soon you may be in a major dispute. If the buyer indicates the most minute reluctance to take over the works on completion, beware! It is an indication that something is seriously wrong, i.e. the foundation of the contract.

Look for the real reasons. Try to co-operate to resolve the buyer's problems. Avoid getting involved in strange technical discussions at completion. Alleged non-compliance with specifications at this stage is a bad sign. You must defend forcefully against such and at the same time co-operate.

Warranties

Negotiations on issues of warranty can be regarded as close relatives of non-compliance claims. They occur towards the end of the contract period, normally when the project has been completed.

Warranty claims are always raised by the buyer and defended by the seller. There is an important difference between genuine warranty claims, and others made only to retrieve money.

Looking first at the genuine warranty claims, these require constructive negotiating by the buyer. In this case some part of the project has broken down or otherwise failed. The interest of the buyer is to have it rectified so that the project will function properly. To achieve that rectification the buyer needs the co-operation of the seller. The co-operation will not be worth much if it has to be forced upon the seller. You can force the seller to make a repair, but to get good work done you need his true co-operation.

To the seller the warranty claims are pains in the neck. All sellers know that warranties will be claimed from time to time, but they rarely plan for them. Thus the warranty claims disturb the seller's schedule. They take capacity off his next project where he is always, it seems, at a critical stage.

The seller has two options. He wants to put the matter to rest as soon as possible. Either he refuses flatly, rejects the claim and regards it as a fake, hoping that it will die (fighting attitude). Or he takes the claim seriously and negotiates constructively to settle it early.

The latter manner is always to be preferred if the warranty claim is genuine and if the buyer has a constructive attitude. If the buyer starts a fight, the seller must fight back. In that case the settlement will take longer to reach, but that will be necessary.

If the warranty claim is not genuine but only an attempt to collect money, that claim is an aggressive act in itself. It must be responded to in the same mode, the harsher the better.

Summary

All matters that become the subject of negotiations during the contract period are potential disputes. Even matters that could have been the subject of negotiations, although they were not, are potential disputes. 'Negotiations' in this sense are even informal talks.

In fact, you may generalise the above into a statement that everything that happens and everything that doesn't happen during a contract is a potential cause of dispute. For that reason, and to be able to defend yourself if it should be required, you

need two things: knowledge of facts, in detail, and records of the facts.

The importance of collecting knowledge and records cannot be overemphasised.

If you prepare yourself as though you would have to go to court on every possible issue, you will be well prepared to negotiate those issues favourably if and when negotiation becomes necessary.

Try to keep the climate constructive throughout the contract, but don't be afraid to use aggressive tactics when it will be in your best interest.

13

Claims

Claims play an important part in the everyday life of many engineers. Claims mean different things in different cultures, and attitudes to claims vary widely.

In some environments, a claim is a very natural thing. In those cultures the monthly request for ordinary payment is sometimes referred to as a 'claim'.

In other cultures a claim is regarded as a declaration of war. It is something that signals a serious dispute. In some cultures you won't submit a claim unless your intention is to cut off friendly relations with the receiver.

In this chapter we use the word 'claim' in the most common European sense. It then means a request for additional payment, for whatever reason. Because it is additional, it may be disputatious. Most disputes and contractual conflicts are started, or made known, by a claim. But most claims don't lead to disputes. They are settled by negotiation between the parties.

Those negotiations are dealt with in chapter 12. In the present chapter the concentration is on disputatious claims, and the claim situation is seen chiefly from the Seller's perspective.

The sequence which this chapter follows is

- Always claim
- Marshal the arguments
- Timing.

Always claim

It is easy to find excuses for not making claims. It is easy to go broke by being charitable.

Buyers and consulting engineers dislike claims instinctively. In their opinion sellers always make too many claims and the claims are almost always without merit.

Most of my experience is from the seller side and my opinion is different. I have found that site agents are normally reluctant to submit claims, to the extent that they avoid them at almost any cost. The reasons they give are typically

- We have such a good climate on site, we won't destroy it by claiming.
- It's such a small claim anyway, it's not worth risking my relationship with the RE.
- The fact is that we are not without blame ourselves; if we claim, they can hit us back with these arguments . . .

The above confirms that in the contract administration phase the climate is most important to the buyer. By maintaining a good climate he avoids claims, because the seller wants to maintain the good climate. The seller's reaction is unnecessary, however. In a good climate it's always possible to submit defensible claims without risking the climate.

For the buyer, it may be wise to keep the climate constructive through the whole contract period, including the claims negotiations. This is because claims negotiated in a constructive climate are likely to cost less than if the seller negotiates aggressively. Still, it is quite common for buyers to have started the earlier contract negotiations in an aggressive climate, which always induces a host of claims at a later stage. Then, when the works get near to completion, the buyer realises that he needs the co-operation of the seller to get a proper result — you cannot force anybody to do his best — and tries to change his mode into constructive.

Sellers often make the opposite mistake. In the beginning the seller needs co-operation more than the buyer. But the nice and constructive contracts negotiator, who can establish the best climate for the contract, cannot be expected to be the fighter that gets the most out of claims in the end.

A claims negotiation concerns compensation for something unexpected that has happened or for extra work. It is a typical case for aggressive negotiation; the profit of one party is the loss of the other.

Thus, it should be noted that different skills are required for a successful contracts negotiator and a successful claims negotiator. This is a dilemma, because very often the same persons are involved in both situations. And it is a fact that most people are either naturally constructive or naturally aggressive negotiators.

By education, such as reading good books on the subject of negotiations, and by training, most people can however improve their skills as negotiators in all styles.

Let's return to the subject of claims with an example of how it pays to claim all you can.

I was involved at a late stage in the bad contract which was cited in chapter 12. We were losing heavily and put in claims which were weak in many cases. We originally hoped for about 10% and ended up with 85%.

Claim all you can.

In another example, in Eastern Europe, the most obvious cause of delay was that the buyer didn't make the site available. So we claimed for extension of time and the buyer had to admit that it was their fault.

This was an industrial plant and it was important to the buyer that the original completion date was kept. So we agreed to accelerate the work to reach the original completion date in spite of the delay of several months. The buyer agreed to pay a compensation for the acceleration.

When the work got into full swing, we found that we could accelerate even more. In fact, we were able to complete the works several months before even the original contractual completion date. That made us eligible for a bonus for early completion under the contract.

The contract also had an inflation clause. It provided for adjustment of the price in relation to an official index. The wording of the clause based the adjustment on the original contract period, plus any extension of time allowed under the contract. If the seller would delay the work, no compensation would be payable for the inflation during that delay. This clause gave us the opportunity to claim an adjustment of the contract price, based on the change in the index up to the date of the allowed extension. That date was in fact almost a year later than the actual completion date, but that was what the contract stipulated.

So we claimed for

1. Extension of time

2. Acceleration
3. Bonus for early completion
4. Compensation for inflation including the period of extension.

The other party accepted the first three. When it came to the inflation clause the buyer's representative said, 'I understand you've got a claim, but I won't stick my neck out and sign it. We'll have to take this one to the arbitration court.' It was smooth riding through the arbitration.

It might seem unreasonable to the layman that you should be compensated for inflation in a period after you have finished the work. But the contract said so, and the arbitrators could not award otherwise.

Always claim.

Marshal the arguments

The first essential is to have the arguments. Records, Records, Records.

Diaries, photographs. Minutes, letters. Unless there has been diligence in keeping records throughout the negotiations before and during the contract, the negotiator will be thrust naked into the fray after the contract. He needs all the evidence he can secure.

We had a project manager who was an inveterate note-taker. Notes during every meeting — who was there, what was discussed, who said what. Notes during every telephone conversation — with whom, what discussed. Notes of his own decisions and the reasons for them.

In this case we were sub-contractors and a key question was whether we would be entitled to a Completion Certificate when we finished our work, or only when everybody had completed. The key person on the other side had died and our project manager was on another project half way around the world.

The mood between the parties had become acrimonious.

The buyer claimed that the matter had never been discussed, but we were able to produce our man's notes of relevant discussions.

It was an example of the importance of keeping records.

Then marshal the facts. As ever, it pays to concentrate on the few (four?) arguments which are irrefutable. Do not be tempted also to offer your weak planks — the other side will quickly detect the weakest and start hammering holes.

Presenting the arguments demands a great deal of skill.

> If we work out that they owe us 100, we can so easily go into a negotiation thinking of little but that 100. Quickly we find that they are talking only of 20 'and that only as a gesture because really we don't need to give you anything' — the scene is soon set for strife. It's going to be an aggressive negotiation, the parties are likely to be intransigent long before a solution is reached. We're set for impasse and escalation.

A more constructive approach is still capable of yielding higher dividends. Try to do some Exploration before getting into heavy bidding and bargaining.

Try in that exploration to have the present issue set in a larger and more positive context — the helicopter view.

> 'Let me say to start with how glad we are that this project has been so successfully completed. Great credit to our respective people and to the way we have co-operated. Anxious to get the present issue out of the way today — important to preserve goodwill — it's a small issue in the context of ten thousand (thousand)'. And so on, leading into a constructive bargaining phase — unless the other party is proving adamantly aggressive.

Marshal the arguments and present them appropriately — preferably in a constructive style.

Timing

Timing applies to the time at which claims are submitted and to the timeliness with which they are defended.

It is never too early to submit a claim.

> I have already quoted one case where the first claim was submitted at the end of the joint dinner party that celebrated the signing of the contract on the same day.

At an early stage of a contract, the seller is most anxious to be co-operative. This often manifests itself in a reluctance to make claims. 'A claim may ruin the climate'. In fact it seldom does. If a claim is defendable, it should be made. It will not affect the climate. If the claim cannot be defended, don't make it.

Substantial claims should be presented as quickly as possible. And a timely and adequate response serves to strengthen the defence.

Small claims are another matter. We can all handle substantial and difficult problems but daily pin-pricks become very irritating. There is a strong case for holding back small claims and bunching them so that they are only sent say every couple of months.

There is another advantage. The other side is doubtless recognising claims on us. If each of us waits until we have a parcel of small ones, there is chance to do a deal on the parcels rather than the constant pitting of wits over the scraps.

I know a number of cases where claims were submitted very late, at the end of the contract period, but in no case has the buyer refused to answer the claim on formal grounds. In some of these cases every reasonable period after the event giving rise to the claim had expired, but the buyer still agreed to discuss claims, of course, but only because he considered the foundations invalid. It has even happened that (in a FIDIC-type contract) the Engineer has refused to consider a claim because of late submission, but the buyer has requested him to disregard formalities. This is a good illustration of the fact that the buyer needs a co-operative climate towards the completion of works, more than the seller needs it at that time.

Summary

1. Always claim
2. Marshal the arguments
3. Present constructively
4. Timing: it's never too early to claim, it's never too late and it's important to be timely in responding.

14

Multi-sided negotiations

This book has so far dealt with negotiations as though they always take place between two parties. It is, however, common for negotiations to involve several parties and that's what this chapter is about.

Multi-sided negotiations may take place within a series of regular contract meetings or at special sessions on topical issues.

In such negotiations, it is customary for one person to be responsible for the leadership of the meeting. Whether that position is formally defined or simply informally recognised, there is a chairman with responsibility for ensuring that the meeting is effectively conducted.

Negotiations during the weekly or monthly site meeting, bringing together the many parties 'co-operating' on site. On some projects, a one-hour meeting with encouraging progress and acceptable decisions. In other projects, the one hour extends to half a day or more, people come out with their backs up feeling time has been wasted and decisions not clearly reached.

The *ad hoc* trouble-shooting meeting. A component has not arrived on time. The interests of all parties demand that means be found to circumvent the delay. If we're lucky, we have a meeting which achieves just that. If we are unlucky, the supplier starts by saying the delay was due to a sub-contractor asking for variation of specification and the electricians not having the power lines installed. Sub-contractor and electrician start their vigorous defences and once again we're in for half a day of frustration and failure to circumvent the problem.

The concrete floor has cracked. It turns out that the thickness, specified to be x cm, varied between $x-2$ and $x+4$. The parties

concerned include the owner, the Resident Engineer, the contractor who had prepared the foundations himself, the concreting sub-contractor and the Mechanical Engineer who was installing his heavy equipment. The urgent need is to make good the defect. What happens is often a jostling for who will chair a meeting and an ill-tempered fracas of passing the blame.

The client liaison meeting. Client requires some minor change in specification. It should not be too difficult to handle and yet it can so easily become a source of fresh acrimony.

Such communication hazards both blight the form of negotiations, and increase the needs for further rounds of negotiation at later stages. How to circumvent?

The key to chaired negotiations

The key lies in the skill of the chairman. It is a demanding task, one requiring a total commitment of his energy and concentration. His wholehearted commitment of that skill, energy and concentration can make the difference between a purposeful and effective one-hour meeting, and a frustrating half-day which is frankly ineffective.

The person to chair the meeting is usually one of unimpeachable seniority and technical excellence. It is natural for him to contribute his technical expertise to any discussion, unnatural for him to concentrate on the conduct of a smooth meeting.

Yet he cannot do both. Nobody has the capacity both to be a leading advocate and to be a competent chairman at one and the same time.

Rule number one to circumvent meeting hazards is therefore:

- If you are chairman, avoid being the expert for your side. Take along a colleague for that role and ensure that he speaks to it.

The next requirement is that the chairman should be conscious of his own objectives.

There is one objective that applies to the majority of business meetings. It is:

- *To reach unanimous assent in minimum time.*

Unanimous because people go away committed to action only if they all feel involved.

Assent is a key word. Assent, not agreement. Suppose Alan and Arthur both believe in path A whereas Brian and Barry are for path B (and David and Douglas don't much mind). If the chairman hopes Brian and Barry will agree to path A, he is doomed to a long and disappointing acrimony. Equally, Alan and Arthur would not agree to path B. The chairman's technique here is to get some opinion from a neutral, say David. Say it points towards B. Then quickly to get confirmation from Douglas towards B. And at earliest to get the more constructive of the A's — say it is Alan — to accept that the majority view is pointing towards B.

A reasonable Alan, a reasonable Arthur, can accept that the majority view is pointing in a certain direction. He can assent without that loss of face which is forced on him if people demand agreement.

Unanimous assent should be a key part of the chairman's objectives.

In minimum time is an obvious part of the objective. The 'minimum' implies that members should not feel steam-rollered — they should feel they have a reasonable chance to express their views. But in my observation, more meetings are ruined by allowing excessive time for red herrings or personal foibles, than by undercutting a reasonable minimum.

•

In this section on formal meetings we have said that a chairman's role is to concentrate on conducting the process of a meeting. He has not the capacity to be an advocate as well.

His objectives include seeking unanimous assent in minimum time.

What of technique to achieve that objective? We will tackle technique in four stages

- Handling the subject
- Handling the members
- Opening the meeting
- Impartiality.

Handling the subject

Central features of handling the subject are purpose, plan and limits.

There is a general objective for most business meetings: to reach unanimous assent in minimum time. There is a further specific purpose for any item to be discussed.

If the delivery of pumps is late, then half a dozen busy people can gather, only to hear the chairman open the meeting: 'We are here today to talk about the late delivery of the pumps'. They might as well write off the rest of the day after an opening like that.

A very different meeting will follow if the opening remark is: 'We are here today to plan for the future of the project, taking account of revised delivery for the pumps'.

Or there might be some different purpose. 'To review the order system in the light of late delivery of pumps' or 'to review the progress chasing system', or . . .

The chairman needs to have thought through why it is necessary to have this particular meeting. *Why* are we meeting?

Having cleared his mind about the *purpose*, his next step is to think through his *plan* to handle the subject of the meeting.

The mere definition of purpose ('plan for the future of the project') leaves a dangerously wide boundary from which to follow side-tracks. There is a need to chart a path which will enable members to make those points they will want to put and to come to unanimous assent. There is a need for three or four signposts outlining a suitable route.

In the example we are following, a possible route might for example be

- What is revised delivery date?
- What plans are affected?
- What *joint* decisions are needed?
- Which decisions?

In advance also, the chairman needs to consider limits to the discussion. Side issues which are not an essential part of this meeting. Red herrings. Personal foibles.

Following our example, if the suggested plan is acceptable, one dangerous side-track would be to get into the causes for the late delivery. That way lies a certain afternoon of mutual accusations, recriminations and bitterness. Some people call it the rough-and-tumble of a site meeting; others recognise it as a heated way of wasting time.

'That way', reviewing the history, might of course be necessary if the purpose of the meeting were to learn lessons about progress chasing. But in this case there would be a different purpose to the meeting, the chairman should have a different plan, and the limits should be different.

The chairman should foresee the red herring and rail it off in his opening remarks. 'And we don't want to start passing the blame this afternoon, do we?'

The chairman who is to conduct a meeting so effectively must have organised his thinking in advance of the meeting. He must think out for the meeting as a whole — and for each item if it is a multi-item agenda

- Purpose. Why need we discuss this?
- Plan. What three or four signposts delineate a suitable route?
- Limits. What foreseeable sidelines or red herrings should I inhibit?

His thinking needs to be advanced to that simplicity which is shown by key words. He should take into the meeting a paper with, printed large, for each main agenda item

- One key word for the purpose
- Four key words, one (occasionally two) for each signpost in his plan
- One or two key words for his limits to the discussion.

A final item on that paper might be his estimate of time needed.

One method to get there corresponds to the A4–A5–A6 approach outlined in chapter 4. An illustration of the resultant A6 for the current example is given in Figure 14.1.

Having so prepared, the chairman is in a good position to open the meeting and handle the members of it. We shall be considering in a later section the ways in which he makes use of his preparation to open the meeting, but it is appropriate here to consider the way he makes use of his preparation to handle the subject matter as the meeting develops.

The essence is to keep to the plan and to keep members aware of progress. Make sure first that the revised delivery date is identified, understood, and accepted for decision-making purposes.

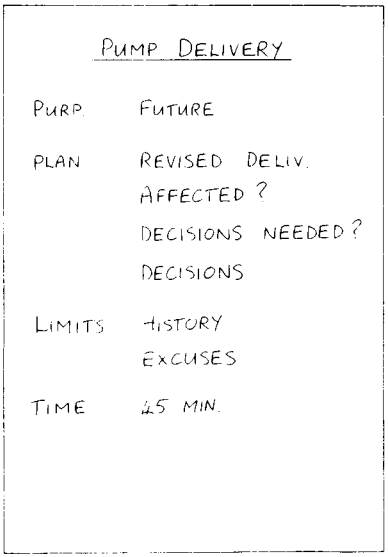

Figure 14.1 Illustrations of chairman's A6

Do not let discussion get into the effects until point one has been settled.

When it is identified, restate that delivery date and then ask what plans will be affected. Avoid discussions of decisions needed until point two has been settled.

And so on, keeping discussion to the agreed route.

Limiting it to that route, railing off the foreseen limits and on the alert for unforeseen side-tracks.

The sharp clear picture from his homework is an invaluable aid to the chairman in this control of the discussion.

Handling the members

Four considerations determine the way in which the chairman should handle the members

- Momentum
- Continuity
- Involvement
- Temper.

Momentum implies that the meeting is conducted at a suitable pace. There are neither protracted gaps nor frantic speed. There

is a businesslike progression at a rate which satisfies and even impresses the members.

Continuity in the discussion. Ensuring that a suitable path is being followed. Looking constantly to see where the balance of opinion is pointing on each point (where the facts lie if there is no scope for opinions about them). Recognising the direction of opinion for each item, then working as quickly as possible to achieve unanimous assent to it. Not the frustrating search for full agreement. Only as a last resort, the divisive tactic of putting matters to a vote. As unanimous assent is achieved on one point, summarising and then moving clearly onto the next phase, the next signpost along the route for discussion.

Involvement. Ensuring that members are brought into the discussion — all of them, or the quieter will bottle up their comments until they explode.

Keeping the vociferous within bounds. Ensuring that those primarily affected by a decision have an opportunity to comment.

And

Temper. Always seeking to lubricate the discussion. Never seeking to dominate. The kid glove, never the mailed fist.

When one member sets off on his hobby horse about car parking, maybe we are lucky enough to have anticipated this one in our limits. Then it's easy enough. 'Well, gentlemen, we appreciate Harry's concern to ensure car parking, but we did earlier agree to exclude car parking from this discussion on pump delivery, didn't we? Well, gentlemen, do you wish to change that previous decision?' And quick as a flash, the members will squash Harry's side-track.

If it is a side-track which had not been foreseen during the chairman's preparation — not one of his predetermined limits — the technique is still to use the members to control Harry.

There are two possible ways of dealing with it.

'Ah yes, Harry, that is a point about car parking. Let me make a note of it on my agenda paper here for discussion when we have settled the matter of the pump delivery.' Then when the pump matter is settled, at the meeting is about to break up, check whether the members really want to stay behind to get onto the car parking.

Or alternatively, if Harry is likely to be truculent about reserving his hobby horse for later discussion, then immediately use the other members for control. 'Thank you, Harry. That leads us into the area of car parking. We had of course agreed earlier on a plan for this meeting with the objective of deciding on the future of the project in relation to the pump delivery. We have agreed the revised

delivery and recognised what plans will be affected and we are now trying to consider what decisions are needed in view of the late delivery.' (Turning from Harry to the other members). 'Well, gentlemen, do you want to give priority here to the discussion of the car park?'

Constantly, the skilled chairman is recognising and seeking contributions to the progress of the meeting, curbs to the dissipation of the meeting. Note his constant deference to the members, keeping them conscious of progress and seeking their pressure to progress. And note how heavy a load this is on any chairman — how impossible both to be an effective chairman and at the same time an advocate for his own party.

Much of his ability to perform the task depends on his recognition of his role, on his preparation to handle the subject matter and on his conduct in handling the members.

Crucial in his handling of the members is the way in which he opens the meeting.

Opening the meeting

The opening minutes of any meeting establish much of the character of that meeting. And the critical moments of the opening minutes are the first few seconds.

What is needed is a first few seconds which will concentrate attention and establish momentum.

It's easy to go wrong in those few seconds. Some members are bound to be chattering. Calling them to order can be interpreted as a dictatorial thrust. It may be resented both by those who were chattering and by those near them.

Equally, some member is likely to be still rustling his papers, fiddling in his briefcase. His attention is not ripe to start the meeting.

The technique to achieve the opening concentration is simple. Chairman sits up, looks around with welcoming smile then fixes his gaze first on the briefcase fiddler. Other peoples' eyes switch to the fiddler, he feels the force of their attention, puts aside his briefcase and stops fiddling.

Chairman now switches eyes to the chatterers, other people's eyes shift to them, they too feel the force (if they don't a neighbour will automatically tap one of them on the shoulder). As they look up, a quick smile from the chairman and we're ready to start.

With these few seconds of silence, using his eyes and his posture to secure attention, the chairman creates the concentration for the meeting.

Then with his opening words, he creates the momentum.

The pace at which he speaks sets the pace for the meeting. If he is stuttering and hesitant, he is creating that sort of pace for his meeting. If his words are hurried he is setting the standard for a rushed meeting. If he can set a businesslike balance between the extremes he has the standard of a businesslike meeting.

What opening words?

- Welcome
- Purpose
- Plan
- Time.

As he works through these opening remarks (we will give examples in a moment) he should also be already involving the members in the meeting, checking his plan with them, and ensuring their assent to the procedure.

'Good morning ladies and gentlemen and welcome to this meeting. As I see it, the purpose of this meeting is to make plans for the future of the project in the light of revised dates for pump delivery. Is that how you see it? Jack, is that the purpose as you would see it?'

(Note the detail of waffling on for three or four words after mentioning Jack's name. Just long enough for him to collect his thoughts and reply without that hesitation which would interrupt the momentum being established).

'May I suggest that we take matters in the following order.

- First, identify the revised delivery dates.
- Second, see which plans will be affected.
- Third, agree what decisions we need to take.
- Fourth, agree on the decisions.

'Will that be satisfactory to everybody? Eileen, will that enable you to make any points you wish to? George, alright for you?

'May I also suggest a couple of limits to the discussion. This is the sort of meeting at which I suggest it will pay us to avoid wasting time on the histories of pump deliveries, isn't it? No witch hunts please, ladies and gentlemen.

'And secondly, I don't think we want to hear excuses or justifications, do we?

'Our purpose is to plan for the future. We'll take whatever time is necessary, but may I suggest that we have our sights on 45 minutes. That is, we aim to finish by 9.45. Is that acceptable?

'Thank you ladies and gentlemen. The first main point to consider, then, is to identify revised delivery dates. George, can you tell us about this one please?

And now, as the meeting develops, the chairman has the momentum established, the members involved. He will need to concentrate hard on the discussion, to ensure that it keeps on the rails he has suggested, and to ensure that he is involving the membership.

From now on he needs to talk relatively little himself. He controls the meeting with gestures of hand and face, movements of the eyes and changes of posture.

In the opening moments he has

1. Established concentration
2. Established momentum
3. Acquired assent to a procedure (purpose, plan, limits, time)
4. Involved the members
5. Set them off on track.

Impartiality

It is important that a chairman be seen to be impartial. One who is seen to be leaning towards one side or another attracts the obstinacy of the opposition. What's more, neutral members then tend to resist. They sense a chairman trying to railroad them and become resistant.

The chairman must be *seen to be* impartial. This is not to say that he must be impartial. The skilled chairman is a great user of delicate timing. He senses the moment at which neutral members may be influenced by a particular statement in favour of his side. He then turns to a neutral member and asks, 'Norman, does that seem significant to you?' Then with the backing of a further two neutrals he can turn to one of the opposition and ask whether he can accept that the majority view seems to be . . .

The chairman must be *seen to be* impartial.

Members of formal meetings

90% of the success (or failure) of a formal meeting depends on the skills of the chairman.

There remains 10% which the members can make or mar, however good the chairman may be.

Members who have organised their thinking in advance are great assets. Members who have prepared their contributions to the simplicity of a summary in four key words.

Members who support the chairman procedurally can be a great help. In the welter of a free-flowing discussion, it is all too easy to lose sight of the path being followed. Even a good chairman can be uncertain whether it is time for him to intervene.

At such a stage, it is invaluable if a member of the meeting asks a 'process' question. That is, one about the progress of the meeting, rather than one about the pumps.

Examples:

> 'Mr Chairman, could you just summarise where we have got to so far?'
>
> 'Mr Chairman, it would help me if you could remind us of the agenda and how we are progressing.'
>
> 'Mr Chairman, could you tell us how we are getting on in relation to your time targets? Can we still shoot for 9.45?'

It helps a meeting also if some members are curbs to the unruly. There is always likely to be the odd poor member who will try to start up a *sotto voce* conversation with a neighbour. It's bad practice, it intrudes into the concentration of the meeting, it dissipates efforts, and it extends time. It is avoided if the neighbour disdains listening to the *sotto voce* comment, let alone responding.

If the neighbour does not control the chatterer, there is a technique for the chairman. He looks (startled) at chatterer, turns to whoever is contributing and — midsentence — holds up a hand to stop contributor. Turns his (chairman's) gaze full force onto chatterer — rest of meeting switches attention full force.

Chatterer is set down. No need for formal rebuke. Just turn back to the contributor and say, 'Sorry about that Conrad. You were saying you thought the effects on . . .'

Chairman's technique can control the unruly. Life is easier if ordinary members take that responsibility.

Summary

1. At multi-party negotiations, the chairman's skill in conducting the meeting is crucial.

2. He cannot do a good job of *both* being a chairman *and* being spokesman for one of the parties.
3. His general objective is to achieve unanimous assent in minimum time.
4. To handle the subject, he needs a preconceived route/agenda, and preconceived limits.
5. He needs to organise his thinking in advance to the simplicity of key words covering
    - Purpose
    - Plan
    - Limits
    - Time.
6. He handles the members with kid gloves and not with mailed fists.
7. His opening of the meeting establishes (for better or for worse) concentration, momentum, procedure and involvement of members.
8. He must be seen to be impartial.
9. Members of meeting should be alert to contribute to the process/progress of the meeting as well as to the subject matter.

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Negotiations after the contract

After the contractual works have been completed there may still be outstanding issues to negotiate. Typical issues concern

- Completion
- Release of bank guarantees
- Wrap-up with authorities
- Warranties and disputed claims
- Debt collection
- Recourse to third parties.

This chapter includes brief descriptions of each of these issues and suggests the negotiating skills required for each.

Completion

Very often there arises an issue of completion itself. The issue is: Have the contractual works been completed as required by the contract? To the layman this may seem like an easy question, but anybody who has been involved in the completion of a large project knows that it is not a question of fact. It is a question of reasonable judgement. Hence the expression 'substantial completion' used in civil works contracts.

In any large project completion gradually converts into ordinary maintenance. Most large cathedrals seem to be said to have a curse put on them by some evil spirit. The curse says that the cathedral will never be finished, and indeed, some sort of work is always going on. All large projects that I know of can be said to lie under the same spell. They never get to a stage

where everybody involved will say, 'That's it, there is absolutely nothing more to be done.'

Sometimes attempts are made to nail down the exact requirements of how complete 'complete' shall be in the contract conditions. These attempts invariably fail in practice. You may prescribe that the factory shall have reached a production of 98% of design capacity for completion to occur. But how do you handle potholes in the parking lot and a broken cover of the light switch in the secretary's office?

To negotiate the issue of completion requires co-operative skills. Constructive and reasonable parties will find a solution which is acceptable to both. Aggressive parties may easily end up in court.

We once had a contract that went that way. It was a sub-contract for building works. The main contractor was an engineering company and they had several other sub-contracts for mechanical, electrical and electronic works. In this case we got into a contractual dispute, in addition to an 'ordinary' over when our work was complete.

We claimed that we were entitled to a final payment, completion certificate, start of warranty, etc. when our work was complete. The main contractor claimed that we would have nothing of the kind until all the sub-contractors had completed their work and the client would take over the whole. Besides, he would not accept even that our work was complete, because this and that was missing.

A factor in this story is that the main contractor's style was extremely aggressive. All through the contract, our people had been dominated by the main contractor. I came in towards the end to help sort things out.

One of the first things I did was to send formal notice that the works had been completed. The contract required such a notice. Our people on the site had not sent that notice because they knew that it would not be accepted. The main contractor had made it very clear that he would not even make a final inspection until the client was prepared to take part in it. The contract said nothing of a formal final inspection.

The reaction was as predicted. The main contractor disputed our notice and would not even inspect the works.

The arbitration award, more than two years later, confirmed our right to certificate, payment, etc. The award also confirmed that the work had been completed on the day of our notice. Thus the warranty period of one year was judged to have ended well before the arbitration was delivered.

At the time the client had still not taken over the works. The electronic sub-contractor had got into technical difficulties and had suffered enormous delays. When I lost touch with the project a couple of years later they had still not completed.

In this case we came out on top of an aggressive opponent because we countered him with aggressive behaviour of our own. We insisted on formalities of the contract that were in our favour. He tried to use his dominating influence to change the practical implementation of the contract in his own favour. As a result, he lost our co-operation.

That is the exception where we had to resort to arbitration to have completion agreed. The normal rule is to achieve the same results by constructive negotiation.

Release of bank guarantees

This issue normally becomes actual at a very, very late stage of the contract. It ought to be a simple issue, but often it proves difficult.

The bank guarantees (normally for performance and/or advance payment and/or retention) provide a security for the buyer towards possible debts of the seller. Often it proves very difficult for me, the buyer, to tell you, the seller: 'Dear seller, I am now convinced that you have done everything that you contracted to do. You do not owe me or anybody I know any money or any further obligation.'

I guess it's human nature that makes us so reluctant to cut things off. At least to make cuts that mean that we abstain from a real or imagined or possible favour.

The skill to be used is constructive. Through constructive negotiation, reasonable solution will be found.

Wrap-up with authorities

This issue too is one that requires constructive negotiating skills. The items typically concern the customs authorities and the tax authorities. Normally, there is no use going against such institutions in an aggressive manner.

In ordinary cases, such authorities are not aggressive. They are typically bureaucratic organisations. You need to follow the rules. You may need to help the other side find an applicable

rule. That is a constructive tactic that often works against a bureaucratic opponent.

You normally need a lot of knowledge and expertise to handle the authorities.

You need that even before the time to wrap up, to deal with the authorities during the contract period. If you have handled these matters correctly you will have built up a co-operative climate with the relevant staff at the authority. Retain that climate all the way, for instance by keeping the same staff on your side.

Some cases are known when a government buyer has conspired with other authorities after the completion of a contract, to take money back from the seller. These cases are extremely few and extremely difficult to handle.

I have recently seen another kind of aggressive behaviour from an authority. This was from the customs authority in Libya and started a couple of years ago. At that time the Libyan economy was very bad. All their authorities were urged to save on expenses, particularly in foreign currency. I don't know if the authorities were also told to try to get their hands on as much foreign currency as possible.

Obviously many 'peoples' committees' felt that it was a patriotic act to squeeze money out of foreigners. The 'peoples' committee' running the airport invented a compulsory money exchange of $500 per traveller and let no foreigner into the country until he had visited the 'bank'. It was just like Eastern Europe, but the measures had no support in law and official decrees. It was a pure private initiative by the local peoples' committee.

The customs authority embarked on a similar route. We had just finished a large contract with the State Social Security Institution as buyer. The Institution enjoyed exemption from import duties on their investments. Our contract was based on that fact. In practice, the Institution signed the contract, had it ratified by the Government and at the same time received a certificate confirming the exemption from import duties for the project. The certificate was sent to the customs authorities and reference was made to the certificate whenever imports were made for the project.

It had worked for several years, and the project had been completed. Then, suddenly, the customs authority decided that the certificate was illegal, or at least wrong in some other way, so that it should not have been applied. As a result, all the importation that had been made for the project was regarded as smuggling. For that reason they now claimed custom duty on all the imports.

In addition, because of the 'smuggling', they claimed a fine to the amount of 50% of the custom duty plus 150% of the value of

the goods. They claimed it all from the foreign seller whom they said had committed the smuggling offence.

The claim that the customs authority made looked dangerous because the amount was so big. It was even bigger than the whole contract sum of the completed contract. But it was not so dangerous in reality. The general experience from Libyan courts is that they judge fairly and you will get justice. We had that experience and we had experts who knew the laws and the customs regulations.

A less experienced and less expert organisation, subject to the same kind of attack, might have been scared. A scared negotiator is not likely to be able to negotiate a reasonable settlement.

Wrap-up with the authorities is not usually so startling a problem. But it is difficult enough, and requires skills of constructive negotiation and the ability to play bureaucratic games.

Warranties and disputed claims

The issues of warranties and disputed claims are similar to the corresponding issues that have been negotiated during the contract. In many cases the issues may even be exactly the same.

When we have reached the stage After the Contract these issues become more and more appropriate subjects for aggressive negotiation.

The issues can usually be reduced to simple issues at this stage.

For warranties, the subject is how much remedial work the seller will do at no cost to the buyer.

For claims, the subject is how much money the seller will get for extra work that he has already performed.

The simpler the subject, the better it is suited for aggressive negotiating. It may still be negotiated in a constructive mode, if both parties negotiate strictly constructively. But if just one of the parties uses aggressive tactics he will win.

It may seem sad to us, typical European constructive negotiators, but it remains a fact. If one good constructive negotiator and one good aggressive negotiator negotiate a simple subject, the aggressive will prevail.

The obvious recommendation for negotiating this kind of issue is thus: be aggressive!

Debt collection

Unfortunately, this issue is more common than it ought to be. Many buyers have difficulties in paying or they simply don't want to pay. If the latter is the case and the buyer is merely practising 'cash management', show no mercy. In that case, the buyer has resorted to extremely aggressive tactics. It must be met with aggressive countermeasures.

Court actions, liens, seizure of property can be appropriate. Be a nice guy and talk to the buyer, try to convince him to pay. If he is as aggressive as his action indicates, he will laugh at you. But not pay.

Show your muscles, let him know that you carry a big stick and that you can be mean when provoked. Then he may respect you, and foremost: he may pay.

If the buyer has genuine payment problems you must be constructive, not aggressive. There is no use whipping a dead horse. And there is no use killing a horse that is struggling, unless you're after the meat.

Be constructive, without prejudicing your rights. Help him, within reason, to get back on his feet. You will be rewarded if he becomes able to reward you.

So: if he's in genuine difficulties in finding payment, be constructive. If he's just being awkward, be aggressive.

Recourse to third parties

If the two parties fail to reach agreement on outstanding issues after a contract, they have the possibility of going to third parties. They can go outside to conciliation, arbitration or courts.

It is only as a last resort that they should do so. That path becomes costly, goodwill is almost invariably ruined, and the only winners are lawyers and other third parties.

What if an impasse is reached in the negotiations?

It is best avoided! Prevention is better than cure. If a constructive pattern of negotiation has been the consistent rule between the parties, Before, During, and After the contract, therein lies high expectation of reaching agreement without any impasse having arisen.

If impasse seems to be threatening, use time and space to avert the problem. Agree to suspend negotiations for a while and to take fresh stock. When the new meeting takes place, ensure that

it starts with a systematic exploration. What is the perspective of the one party? What is the perspective of the other party? What do they have in common? What is the context of mutual interest?

Avoid concentrating only on the detail of the dispute. That way, the dispute magnifies and can grow into an impasse.

Ensure thorough exploration. Then identify the gap between the parties which has to be narrowed, set it in the context of all we have achieved together, and go on to use the bargaining skills discussed in chapter 6.

Use space as well. Shift meetings from the surroundings in which dispute is looming, to fresh ground where a fresh start can be made.

If still it is proving difficult to avoid an impasse, try changing the negotiators. Bring in fresh blood rather than resort to the costly and stultifying course of going outside to third parties.

That is the rule. It is not a universal rule.

In some countries (Norway is one example) there is a higher tendency to have matters settled in court. 'If there is a difference between us, we are both honourable people, let us have it settled by the courts. That way we can still stay friends.'

Another exception was cited in chapter 13.

> A contract in Eastern Europe in which the buyer delayed the start and we claimed successively under four headings
>
> - Delay
> - Acceleration
> - Early completion
> - Compensation for inflation.
>
> The buyer's representative accepted the first three, but not the fourth.
>
> Relationships had been constructive all along and the project had been completed ahead of time to the great benefit of the buyer. But this matter could not be resolved amicably. The buyer's representative confessed his own situation: 'I know the contract. I understand the condition and what it says. When we agreed on it we (both parties) never thought that this situation could happen. I see that based on the contract you're entitled to the money you claim. But I won't stick my neck out and authorise payment of the amount. Every official in the ministry would think that you've bribed me and neither of us can afford that. We shall have to go to arbitration.'

The end was happy. The arbitrators awarded the money as expected. The buyer's representative had his honour intact. He is now a top-ranking official in the ministry and does a lot of good for his country. In this case the resort to arbitration was good for both parties.

But for the majority of us, escalation of disputes to third parties is to be seen only as a last resort after impasse has been reached.

To avoid impasse, offer the other party ways to save face. Take recesses to anticipate and prevent the climate collapsing. Look for concessions to be traded. Take time about it if necessary.

The advice is familiar — it appeared previously in chapter 6, on bargaining.

Summary

1. If it's a difficult problem, it is best solved by co-operative skills. That applies to disputes on completion, release of bank guarantees, wrap-up with authorities, and much of debt collection.
2. There's little hope of being co-operative and constructive when an aggressive opponent is baring his fangs. Then you must counter-attack. Strongly.
3. If it's a simple problem, there's often profit in being more aggressive. For example, when handling simple claims or dealing with bad debts from the rich reluctant to pay up. But beware of queering the goodwill pitch for other current or potential negotiations — put a value on that.
4. Recourse to third parties is costly and usually counter-productive. Constructive negotiation throughout a project should help to prevent the need to go outside.

16

Choosing negotiators and forming teams

This is the chapter in which we turn the spotlight onto the people involved. The choice of the individuals. The way negotiating teams are chosen and behave.

After a couple of opening illustrations we shall be concerned with

- Choosing a negotiator
- Team selection
- Team preparation
- Team behaviour.

Illustrations

Two of us went to negotiate with the Mexicans. It was difficult enough to negotiate with the Mexicans. It was pure hell to cope with my colleague.

Quite often I have been out with Ted, who is one of our most reliable technical experts. If I need a technical opinion, I can always turn to Ted, confident that he knows the right answers. The difficulty is that the rest of the time he looks to be dozing quietly — except for occasional mutterings with his technical opposite number on the other side of the table.

There are other times when my colleague is another expert, John. Quite a different chap. I'm not sure whether he's as good technically, but he is always responsive when I turn to him. More important, he is constantly lively, nodding his agreement to anything I say, grunting approvingly, looking at the others and listening to them with due shows of encouragement or scepticism.

It makes for a totally different pattern of negotiation.

Choosing a negotiator

Engineers are not chosen to negotiate primarily for their abilities as negotiators. They are chosen primarily for their professional knowledge and expertise in their own engineering discipline.

Other characteristics which the negotiator needs are maturity, patience and creativity. His appearance should conform to expectations of other parties — in general, this means we are looking for an extroverted personality.

The negotiator is going to be involved in one-to-one communications. For this, he will need to be a good presenter of our side's cases. One who will in advance do his homework, prepare the material, choose what will influence the other side and decide how best to present it. One who will then put it over effectively with the other party.

At least as important — I am beginning to believe it is more important — is his skill as a listener. The sort of person who will want to hear what the other party has to say. Who will have prepared himself for that role. Who will — apart from occasional questions or encouragement — be keen to listen actively. The sort of person whose postures and gestures and eyes convey such interests as listener.

If we have choice, it is important to choose somebody who will relate readily to the style of the other party. Most engineers have a reasonable insight into the sort of people with whom they negotiate. They know who will be frosty, who constructive, and who aggressive.

If the other party is German, then it is desirable to be represented by a negotiator who likes formality, whose preparation is precise, whose qualifications are long and strong. If we're going to negotiate with the French, then we look for somebody who is French speaking. And so on — more on styles and cultures in chapter 21.

So far as possible we should bend our choice of negotiator to match the other culture, but most often we will be bound by who is available with the requisite engineering experience and status.

What about the training of our negotiators?

The ability to negotiate depends a little on inherited character. It may be stimulated by a little knowledge of the subject of negotiating (we trust you find stimulus from this book). But there is no substitute for experience in negotiating. It is like other skills

— riding a bike, learning to swim — all the teaching in the world will not enable you to stay on a bike, to keep on top of the water or to be an effective negotiator. You need experience.

It is possible to compress negotiating experience in active participative seminars. It is possible to codify one's experience, to recognise one's strengths and to see new possibilities in such seminars. But that's the limit.

Team selection

The team leader is critical. The calibre of individual must relate to the calibre of the negotiation.

Whatever his status in his organisation, it must be seen to be appropriately impressive. If for example he is to negotiate in the East, he must have an impressive title. (I have one client who designates all his overseas marketing staff as vice-presidents). He must be authorised to use hotels and to hire cars symbolic of the status of his counterpart.

What about the leader's style? There are those who consider that a team leader should be the team's spokesman and that the other delegates are there to support him, to give him information, but he is the filter and the speaker. There are good reasons in support of this line of argument. One assertive and vigorous mind can present a single perspective to the other party, whereas a series of minds inevitably add differences of perception and projection.

There is the counter-argument. The team leader cannot be expert in everything. His task (this argument runs) is to co-ordinate the experts, to set the strategies and plans and then to leave his own team members to bear the brunt of negotiation in exchanges with their opposite numbers. This way he can sit back as his team's controller of the negotiation. This way, if negotiations are leading into difficult confrontation, he can move aside with his opposite number — hopefully one who is no more involved in the emotional conflict — head for the club or the sauna, and find a new way forward.

Both arguments have merit. Neither is very realistic.

The reality is that every organisation has its own way of operating. If it's authoritarian, the boss says what is to be done and everybody is automatically responsive. They're lost without that form of authoritative leadership.

In another organisation, the boss is co-ordinator and delegator. Other people are expected to take heavier responsibility, frustrated if responsibility is not allowed them.

The style of the team leader for a negotiation has to align to the reality of his organisation. It will do so naturally. People do behave in the patterns of their organisations and there is little point in debating how a team leader should operate with his members. He will operate in the way that comes naturally to him.

Here is a striking example of a chairman acting naturally, to the benefit of his delegates and of the negotiations.

> We were a team of four who negotiated a very large final settlement in a country in the Middle East. It was a hard negotiation; the difference between the parties was vast. The negotiation was going on for a long while. Our chairman visited several times and participated in the negotiations, together with his counterpart on the other side.
>
> Our team acted more or less democractically, each member took part in the discussion. The other team was autocratic. Their chairman often led the team and then only he would speak. When he was absent, his deputy spoke.
>
> At this meeting both chairmen were present. A critical item was to be discussed. The member of our team who had the expertise did the talking. To the surprise of both teams he made an extremely aggressive statement. It was a statement that was in his opinion true.
>
> Nobody knew the facts better and he probably was right. But the statement was aggressive, beyond the limits of insulting. He attacked the competence of the buyer's staff, the experience of the buyer's representatives, the professional integrity of the (British) quantity surveyor. The first reaction was the deep silence of collective shock.
>
> After a few seconds the buyer's chairman had composed himself. He answered with an equally aggressive statement, directed against our offending team member. The buyer's chairman reacted against the choice of words and our member was told that such behaviour would not be tolerated.
>
> Those two statements were such that had it been 200 years ago, both speakers would have had to meet with pistols or swords at dawn the next day. The climate at the meeting froze instantly.
>
> In that tense situation our chairman did what proved to be the absolutely correct way to handle the matter. He did nothing. He didn't move, he didn't interfere in the dispute in any way.

Instead, our member who had been attacked spoke again. He made a very good statement, quite emotional. He asked forgiveness for having used too harsh language, and he assured the buyer's chairman that he had the highest regard for the qualifications and competence of the chairman's team, many of whom he regarded as friends. At the same time he underlined the seriousness of the subject matter and the importance that it was properly handled. It was his concern for this that had caused him to exceed the limits of acceptable behaviour. He was very sorry if he had offended anybody and asked them please to forgive him in that case.

The buyer's chairman answered immediately, in a similar manner. We were all astonished, because this was the first and only time any of us heard him apologise for anything at all.

The climate in the meeting became even better than before, much like there can be an instant improvement of the weather just after a thunderstorm has passed.

I have often thought about the way our chairman handled the situation and admired the way he stayed cool. Most chairmen would probably have interrupted, because at that critical moment, after the buyer's chairman's first answer, the climate seemed to have collapsed completely. The money that we were talking about was about £100 million, pure money in the claimed amount, not a contract sum. If he had interrupted he would either have apologised for his team member, in which case he would have had to send him away, he would have lost a valuable team member and he would have broken the team in front of the opposition. The other possibility would have been to side with the team member, start an awkward argument and lose the climate totally.

Instead, that chairman showed confidence in the team member by sitting silent. He showed his support for the negotiator by not interfering, at a time when his instinctive reaction must have been to interfere to save the day.

What about numbers in a negotiating team? In one sense, the fewer the better. The larger the team grows, the greater are the problems of communication and co-ordination between them. If you have ten people in a team, do not expect that they will be able to carry on negotiating for a week — after a couple of days' negotiating, they'll need several days to sort themselves out.

But of course teams do need to include different forms of expertise, more than can be carried by one or two members. There seems to be a limit to how many can effectively sit in the negotiating seats. That limit is four.

Team preparation

Once a team is appointed, it must become a capable working unit. At least, this means careful definition of the roles which each member will take. There will otherwise be friction, and the team is likely to be exposed when, in important meetings, members start speaking out of turn.

At the least, their roles need to be defined.

An important negotiation is best rehearsed, getting colleagues to take the role of the other party. That should enable us to learn both about our presentations and our team roles and relationships. We can also learn a great deal from rehearsals in which we sit in the other party's seats while colleagues present 'our' arguments to us.

At the most, if our team members are going to be tackling major protracted negotiations, they need to be welded into a professional mutually-supportive work group. Techniques of role negotiation (chapter 11) can play a part in this. So can hardships jointly suffered and survived.

The negotiating team needs to be one unit. All the team members need to have a common aim to achieve. At the outset they may have different interests, possibly conflicting. They need to agree between themselves on the purpose of the negotiation, on what they want to achieve and on how to carry on the negotiation. In other words: they need to form a team and they need to sustain the team.

Some people may say that there is little need for negotiation in the forming of a team on the grounds that the leader makes the plans and decisions and informs the team. This is true if you are the leader of a span of dogs or if you talk about a military operation. But in engineering negotiations you want team members to contribute their competence, not just to have them sitting there. They cannot be expected to be of optimum use unless they are fully involved in what the team is doing.

> I was once a member of a team negotiating a major international civil works contract. It was a difficult contract which included a large number of unusual features. Often you are able to find an old contract that can be used as a basis to draft the new contract — just clean it a bit and polish the details. In this case there was no precedent. We had to prepare the draft from virtually nil.
>
> A team was formed to prepare our contract proposal which was to be given to the other party. Because everything had to be done

> from the beginning and because the team was composed of a number of well-qualified specialists the discussions were deep and seemingly endless. We had very little idea of how to organise that work, and we were probably not very efficient. But we went through the travail of preparing a draft together and this bound us into a team for the ensuing negotiation. It was a team which had thrashed out practically every word of the draft and which stood together behind each word.

It is not only the roles of specialists which need to be allocated and defined. Not only such roles as quality advisor, financial expert, shipping specialist. The effective negotiating team is in command of the planning and control of negotiations. A role is needed as controller of the negotiating process. Some member who will take responsibility for ensuring that plans for each meeting are considered and agreed between the parties. Responsibility for ensuring that progress and time are regularly monitored.

There is often discussion as to whether this 'controller-role' should be handled by the team leader or by one of his team members.

It is an appropriate role for the sort of team leader who acts as co-ordinator, encouraging his members to take the lead in discussing points with their opposite numbers.

It is not desirable when the team-leader is the mouthpiece for all the discussions from his side. Such a team leader is overloaded by the weight of the subject matter for which he is taking total responsibility. Better for him to delegate the 'controller role' to a team member.

The negotiators will naturally prepare themselves to handle the technical aspects of the negotiation. Before setting course for a round of negotiations they need to have determined their strategies and tactics and if possible to have agreed by correspondence (telex, fax) on agenda and schedule — not to mention practical details such as travel, venue, accommodation.

Daily, teams need to review what has been achieved and to prepare for the morrow. Suggestions for this preparation have already been offered (chapter 3).

Team behaviour

Team behaviour must always be seen to be supportive.

Inevitably, colleagues are going to make statements which take one by surprise. There are even going to be occasions when it is more than surprise — sometimes it is downright astonishment and even disbelief. Nevertheless, team behaviour must be seen to be supportive. The necessary reaction is to smile and nod whatever one's partner may have said and then — if it's surprising — quickly to propose a recess. Any sign of discord within the team undermines the team's credibility.

If there is once a sign of discord, it is most likely to be repeated and before long the other party is confused. Life is difficult enough without having to negotiate with a party which speaks with different voices.

Always support.

> 'That's absolutely right, John, and from my point of view it is the more important because . . .'.

Always be seen to support. It is a blessing to have the colleague who constantly looks lively and affirmative. Non-verbally communicating his approval of everything we say — the way he sits, the way he faces, the way he uses his eyes and his head and his hands — all solidly backing me.

Summary

1. The people who negotiate are usually chosen for their technical strengths more than their negotiating skills.
2. They cannot be taught to negotiate — they must develop through experience. Practical training can compress some of that experience.
3. Team leaders need both the calibre and the perceived status to fulfil their roles.
4. Team members must be welded into supportive teams.
5. Preparation is needed both for the whole of a major negotiation and for each session within it.
6. Team behaviour must always be supportive.

17

Internal negotiations

The negotiating team negotiates on behalf of its organisation. The team leader may have a formal power of attorney to negotiate, to make decisions and agreements, and to sign documents binding the organisation. In practice he still has a constant need to confer not only with other team members but also with colleagues, subordinates and superiors back home in the organisation. He needs to agree with them on strategies and tactics of the negotiation and on different aspects of the subject matter. He must ensure that his commitments will be supported and implemented by his back-home colleagues. He needs to negotiate with them.

This chapter treats internal negotiations under the headings

- The need
- The climate
- Formal liaison
- Informal negotiations.

The need

Each negotiator needs support from home. Even if he has the formal authority to negotiate with the other party and the authority to make any deal, commitment or concession, he needs support from home.

He needs to check constantly that he is acting within the organisation's policy. He may have to establish a new policy for the organisation if the matter is important. He needs the commitment of his home office to whatever deal he makes.

Just think of the engineer negotiating a contract to provide engineering services for a major project. The implementation of the contract may require hundreds of engineers during several years. If the engineer has signed the contract without his company's support, where will he stand? Can he return to the buyer next week and say: 'I'm sorry, my chairman thinks that this job isn't profitable enough so he won't put our best staff on it. We'll hire some new hands if we can get any and we'll do our best to get out of the contract as cheaply as possible.'?

Lack of proper support from home can be an enormous problem to the negotiator. When it happens during a negotiation the result can be disastrous. It may even be that the negotiator alienates himself from his home organisation and mentally joins the other side. This psychological phenomenon is well known from hostage situations.

> I have a similar but less dramatic experience from a contract negotiation I described in the previous chapter — the one where the extreme difficulty of drafting served to fuse us into a team.
>
> That contract negotiation took rather a long time. It was made with two teams on each side. The buyer's A team negotiated with the seller's A team and the buyer's B team negotiated with the seller's B team. The A teams were on chairman level or next to it. The A teams did not meet every day but often, maybe every second day during the negotiation period. They discussed a few very essential subjects, such as the price and the rates of interest for the financing. Most of their meetings were 'only' social, and the climate was excellent.
>
> The B teams negotiated the text of the contract. They worked very intensely, meeting for 12–14 hours every day for three months. The climate was excellent, typically constructive on both sides.
>
> There were no essential problems of lack of support between our A and B teams, and I don't think there were any between their A and B teams either. But still it became very obvious at the end of the negotiating period that there had been a shift of sympathies. It was not our teams against theirs. When there was a dispute it was our B team and their B team together against our A team and their A team. This happened several times at the end of the period.

Even when relationships are supportive, there is tendency for the distant party (like the hostages) to become associated with the other side. It is the current negotiation which fills our lives, the work we are doing with the other party, and relationships with the back-home team can easily be fractured.

Often, in the world of mechanical and electrical engineering, the sales engineer is seen from the production point of view as being 'on the customer's side'. Often the customer is desperate for a change to be made to his order, without putting back delivery or commissioning. He might be prepared to pay money for the change but not to pay by later delivery.

A minor change may be managed by simply getting somebody to work in a drawing office through a weekend. Bigger changes are likely to need heavier internal negotiations — they will involve the drawing office, purchasing department, production control, works management, maybe other departments. The consequences may stretch to influence delivery to other customers — and then damage limitation becomes a primary consideration. ('But we can't possibly put Blenkinsops back again.')

Examples:

> A vertical car stacking lift. Half-way through, new safety requirements have to be met, and yet there is insistence on maintaining original delivery.
>
> Power station contracts. If one contractor is late, the whole thing is delayed. Yet at the last minute there might be desire to incorporate some extra control or other device.
>
> A large broadcasting organisation ordered a mixing console for new studios. Dates were fixed and publicised months ahead. Then belatedly, the organisation found a demand for two more headphone output circuits.

Each is an example of a belated customer requirement forcing some negotiation between customer and supplier, but much more internal negotiation between sales engineer and colleagues.

There are plenty of other examples of internal negotiations, not least the annual budget round. Everyone tries, with a mixture of honesty and ingenuity, to estimate needs. 'Always ensure you're spent up, or you'll be cut back next year, and leave enough room for them to cut back a little'. Always, there is need to play this game by the rules of the house — and by prudent internal negotiation.

The climate

As ever, the climate is crucial for satisfactory negotiations. The only difference is that now we discuss internal negotiations.

For the negotiator involved at the front of contract negotiations, each external meeting has its own degree of drama. It should be exciting, the adrenalin flowing, important deals developing. For the negotiator in a negotiation meeting that meeting is the most important thing at that moment. He cannot afford to spend energy on anything else at that time.

The back-home team has other responsibilities. Whatever those responsibilities may be, this contract negotiation is not the centre of their interest. It may be a secondary interest, or it may be simply an additional burden.

Yet if the negotiator is to win a successful contract — and to ensure it is well implemented — then he needs a great deal more than mere tolerance. At best, he needs to ignite a crusading zeal. Colleagues keen to press him, not simply support him.

The negotiator needs all his energy and all his concentration on the negotiation with the other party. The energy and the concentration which he needs to devote to negotiate within the team and with his home organisation reduces his energy and concentration for the crucial negotiation with the other party.

It is extremely important, for that reason, that the internal negotiations take as little energy and concentration as possible. The climate of internal negotiations of course must be cordial and co-operative, trusting and enthusiastic. If, as a negotiator, you have to fight a two or three-front battle, you are in trouble.

> Once I visited a friend in his office. My friend was chief estimator for a large construction company. He explained his situation; he was working on a big project, a team was negotiating for the contract with the buyer, he supported them with estimates during the negotiation. He showed me the estimates, a long row of files containing calculations, descriptions, alternatives.
>
> He opened a locked cabinet and pointed at the files that held the summaries.
>
> 'This is the summary that I use together with the negotiators when we decide on what prices we put for different alternatives.'
>
> 'This is the summary that they bring with them to the negotiations. We have made it in a different way, with false figures, because we suspect that the buyer uses hotel staff and others to get information out of our files.'
>
> 'This is the summary that I keep for the chairman. He comes in every now and then to check on what the leader of the negotiating team reports to him. You know, the chairman dislikes the leader personally and he would love to kill the project if he can find reason.

But he won't kill a profitable project. So the leader and I have agreed on what I'll show the chairman.'

In this case the team leader did not have the wholehearted support of his chairman. They had been at odds with each other for years. The team leader had to negotiate a home support sufficient to circumvent his influential enemy.

I have experienced several examples of how a simple act of trust from the home organisation builds up the internal climate and lets the negotiator concentrate on his task to negotiate with the opposition. Here's just one example.

I was conducting a negotiation in America. It was an aggressive negotiation on a large number of claims. Our team was small, just a lawyer and myself representing a European company. The negotiation was started in Washington. Progress was slow but steadily going our way, I thought. I reported to the chairman every now and then, but found it impossible to tell whether he was satisfied or not. I had a feeling that he would have been happier if progress had been faster.

Then we agreed to move the negotiation to New York. It was a concession on our part, because the other party's lawyers had their office in New York while our lawyer was in Washington. Their lawyer booked rooms for us at The Plaza, which was conveniently located.

I was feeling a bit uneasy when I called the chairman in the evening. I couldn't report any progress and we had made a concession by moving from our base to theirs. Moreover, I was sitting in the most expensive hotel in the city. 'Where do you stay?', he asked. 'The Plaza', I said. 'That's a nice hotel', he said. 'I stayed there myself last month. Promise me you'll go to the Oyster Bar and have a Fisherman's Platter, you'll like it!'

That simple remark made it quite clear that I could concentrate on the external negotiation. He still wanted reports, he was keen to follow our progress, he gave the advice I asked for, but he was wise enough not to try to exercise remote control.

That's one example of the way trust can support a negotiator. I imagine we could all add other examples of trust — and of lack of trust making life difficult for us.

How can you build the internal climate that is needed, within the negotiating team and between negotiators and home organisation?

The best way to build the internal climate is to grind the parts of the teams together. If they are permitted to work together

for a long time, if they all are good and if they suit each other, they will probably find their natural places in the teams and they will develop together. Unfortunately, this will only seldom be possible. Usually a new team has to be formed for each project, and even a team that is successful in one setting is not necessarily as good in another. You would not send a polo team to a water polo match, but often you don't hesitate to send a production team into a contract negotiation.

One special means of building a team in a limited time is the method of role negotiation discussed in chapter 11. Or rather, a similar method adapted to the special circumstances of each new project.

Formal liaison

Some internal negotiation has to be channelled through regular liaison meetings. This is particularly true when the organisation contains foreign elements. An example of such a situation is when the organisation is a consortium or a joint venture of different companies or other organisations. This situation is discussed in chapter 18.

Even within the same basic organisation, formal meetings will be required. The formal meeting, if correctly handled, is an excellent tool to keep all concerned parties informed, to extract essential information from all relevant internal sources, and to ensure the necessary support from the home organisation.

Internal formal meetings can be very efficient. The people involved will normally know each other and they will have had many similar meetings on other or similar subjects before. There should be no role confusion. The chairman will be the natural chairman of the meeting and he should preferably be able to concentrate on the chairman's role, free from having to represent one particular interest. The finance director will be expected to give his views on the financial matters. He may stay in the meeting while the concrete quality is discussed (although most finance directors that I know would leave), but he won't have any opinion on that, and nobody will ask him for one.

Typical subjects for internal formal meetings in connection with major contract negotiations are

- Start-up meeting, when the project team is formed and the guidelines for the pre-negotiation work are drawn up.

- Bid preparation meeting, when the technical, commercial and contractual contents of the bid will be agreed, before the bid will be submitted.
- Negotiations start-up meeting, when the negotiation team is finally formed and the directives for the negotiation are agreed.
- Negotiation progress meetings, at intermediate steps when the negotiating team returns home after a session of negotiation meetings.

The negotiating team has to earn and sustain the support of their colleagues at such meetings. This means the usual run of meeting skills. The ability to anticipate the main issues which will need to be secured. The ability to marshal the relevant facts. The ability to choose and present. And on the keenest issues, the ability behind the scenes to negotiate support or at least tolerance before a meeting.

Informal negotiation

In contract negotiations with outside parties, the negotiator is at first independent of the other party. Once a contract is signed, the engineer is locked into a relationship with that party for the duration of the project. However good or bad the relationship with the other party, it is going to continue for a finite period and end when the project ends.

Internal negotiations are different. They are usually with people with whom one has a permanent relationship. A relationship that has already existed before the project started and that will continue regardless of the project being completed.

Always such relationships fall into one of three categories. There are friends, allies and enemies. Friends are the sort of people whom we can trust, with whom we can be open, with whom we can easily communicate. We can laugh together, we can share our likes and dislikes, we can give one another impulses. Working together on a project, we can make it sparkle.

Allies are another category. People with whom we can work in the interests of getting the job done. Not necessarily friends but co-operative colleagues.

Then there are enemies. Enemies too can be seen in three categories.

- The *organisational* enemy: one with whom we have regularly to take joint decisions, yet the relationship is forever tense — he always underestimates the difficulties his decisions are causing me (and he thinks that I underestimate in the opposite direction).
- Then there is the *positional* enemy. The one whose job it is to act in a different way. The engineer's job is (often) to spend money; the controller's job (often) is to inhibit spending.
- Third, there is the *personality* enemy. The one who doesn't like me. And quite frankly I don't think much of him.

The categories friend, ally and enemy apply in every group of relationships. Each needs distinctive treatment within the scope of internal negotiations.

Friendships need to be polished. Ensure that we continue to merit trust. Ensure that we keep on enjoying ourselves with our friends and they with us. Trust them with the inside story of what we are trying to achieve through our current negotiations, internal and external, and rely on them for support.

Allies are different. We have to negotiate their support. We have to discover some point at which they will want our support, then point out that if they would support us, we would want to support them . . .

Organisational enemies are difficult. They are not enemies of malice, but enemies of misunderstanding. If we can have the opportunity of talking through our respective roles (chapter 11) or of getting down to some joint problem solving (chapter 19), we can get close to being on the same wavelength and may even be able to build friendships and alliances.

Positional enemies are not difficult. It may be that the controller and I have conflicting interests, but that does not stop me from recognising that he's a damn good controller. Nor does it stop him from accepting my competence as engineer. It is again possible to negotiate openly and honestly with people for whom one can have professional respect, even though our positions are in opposition.

It is the third enemy who is the most difficult, the divergent personality. Each of us no doubt makes every effort to form truces with such enemies, even to build them to friendships. But when we find ourselves unable to succeed, our internal negotiations

may force us to circumvent this sort of enemy. We need to draw on our friends and our allies. To discuss with them informally the business for future meetings, to make sure that we have strategies to handle the crucial items, to make sure that we will win our internal negotiations despite our personal enemies.

Summary

1. The negotiator needs to negotiate the support of his back-home colleagues.
2. Unless support and trust have been well established, the negotiator's energy can be too much diverted from crucial negotiations with the other party, to negotiating back-home support.
3. The negotiating team needs the trust of superiors back home.
4. Some parts of the internal negotiations can be channelled through formal liaison meetings.
5. Other aspects must be handled discreetly with friends, allies, enemies back home.

18

Consortia and joint ventures

With the scale of projects ever growing, with internationalisation ever growing, there is a corresponding growth in the way engineers need to negotiate in partnership. There are consortia, there are joint ventures, there are turn-key projects. There is a proliferation of the forms which each can take and of the way in which risk, reward and responsibility are shared between partners.

Concerned with negotiating skills, we shall here take one short chapter on negotiating skills in such partnerships.

Establishing a partnership

Two or more partners form a temporary partnership for a project, in order to pursue their common interest in that project. The most typical forms of such partnerships are normally called joint ventures and consortia.

The term 'joint venture' normally means that the parties take joint responsibility for all aspects. This might for example be appropriate when two Civil Engineers pool their resources to tackle a major venture. The term 'consortium' normally means that the responsibilities are split between them on some agreed basis. The consortium is typically used between different disciplines, such as a civil engineering and a mechanical contractor combining forces to undertake a complete project that neither would have the competence for alone.

These terms are not fixed. The content of the partnership agreement defines the form of the partnership. There are no standard forms of agreement that are universally accepted like

there are standard forms of contracts. Each new partnership has to be defined from top to bottom and the written agreement must be worded in a way that describes exactly that partnership.

Negotiating a partnership has much in common with negotiating a contract.

The parties have come together because they have a common interest to join each other. It is obvious, even more obvious than in the case of a contract negotiation, that constructive negotiating is required.

My experience is that most engineers recognise this need to be constructive in this form of negotiation. The relationships are creative, the climate is good, and the parties work together trustingly to establish the contract between them. Usually they do.

It is not always thus.

When large engineering organisations come together, as they must for large projects, the negotiations between them tend to be conducted at two levels. Policies and some principles are determined by teams at the level of chairman, or near that level. Let us call that the A level. The more detailed arrangements between them, and the full written agreements, are negotiated by support teams. Call them the B level.

I have seen a number of good-looking prospective partnerships fall to pieces because of the manner in which the A team negotiations were conducted.

> Here is one extreme case-history. It was a joint venture for an enormous construction project, to be formed between an American and a European company. Very soon it became obvious to most people in both companies that the styles and methods of the two companies were wide apart.
>
> The top level persons were the Vice Presidents of both companies. They were experienced negotiators, both of them leaning towards aggressive negotiating.
>
> Our Vice President had a favourite tactic that he used very often; I believe that it was natural to him. He would leave controversial issues aside if he could not win them at once. He would then, after a brief exploration of the subject, assure his opponent that the difference between them was really of minor importance. He would concentrate on convincing his opposite number that although they could not agree on this subject now, their opinions were so close that they were almost in agreement, there was no use wasting time on that now, next subject, please.

Normally, that tactic works. When you return to the subject, your opposite number remembers that your opinions were almost the same and when you state your proposal for an agreement, he agrees.

In this case the other party also used the same device, also without being conscious of it, as a negotiating tactic. The result was ridiculous. The two top persons were sitting there spending their energy on convincing each other that they were almost in agreement. They did practically no exploration. They did no real bargaining. Neither of them moved an inch, but they actually convinced each other that they were very, very close.

In fact, they were miles apart and simply camouflaging the differences between them. If they had been more open negotiators, they could have confronted the problems. As it was, they handed to the B teams an impossible task — that of sorting out the obscured differences of policies and principles. We lost a great deal of time in false negotiations and — not surprisingly — failed to secure the project.

To summarise: Partnership negotiations should be carried out in a constructive manner. The climate should be cordial, co-operative and trusting; at the same time, open and honest.

A partnership negotiation between two parties cannot have one winner and one loser. It has either two winners or two losers.

Implementation

Once the partnership has been formed, it starts to operate. Typically, a number of individuals from each of the partners are appointed to form a joint team, charged with achieving the objectives of the partnership.

That team needs to develop an internal climate which is cordial and co-operative, trusting and enthusiastic. Not always easy. The team will probably include people who barely know each other. They know colleagues from their own company, are used to working in that company's style; they don't know the people from the other company, aren't used to working their way. All too easily, the project team becomes 'us' and 'them'. That soon becomes critical. You either underestimate the persons whom you don't know; you don't trust them and you don't benefit from their capacity. Or you overestimate them and get disappointed when it turns out that they couldn't do what they were expected to do.

When forming a joint team in a partnership, do consider using the role negotiation approach described in chapter 11. I know that when you begin a partnership, you are always hard-pressed for time. You and I both know also the way in which negotiations between the partners can quickly deteriorate and become embittered. The investment of two or three days in negotiating constructive (role) relationships is a cost to be compared to the costs — in time and in money — of future problems.

The second problem of the joint team is to establish the internal climate with the home organisations. Oddly enough, it has been my experience that this is normally easier than uniting the team itself. I guess that this has to do with the goodwill that the successful creation of the partnership brings. Each home organisation starts with a generally positive attitude towards the joint venture. The joint team must sustain that climate.

It should be easy, but distant teams are prone to run into disagreement with those at home.

> Example — distance lends disenchantment. A highly integrated American team worked on the design and prototype for a part of the moon landing programme. When the prototype was completed, half the team went a hundred miles out into the desert for several months to carry out field trials. The other half stayed home as support.
>
> Within three weeks there was friction between the two sections. Within a couple of months, the highly integrated team had become two warring factions. 'Those bums over there just haven't a clue.'

Such is the innate tendency for distant sections to become warring factions. The possibilities of disenchantment are of course increased when the project team has to sustain its links with not one but two back home groupings.

•

A first task for the joint project team could typically be to prepare the formal tender. Most joint ventures that I have worked with have decided to facilitate that work by doing it separately rather than jointly.

Experience is that it is virtually impossible for two different organisations to prepare a joint estimate. If it is to be of any value, each must do it in his own way. Then, it is possible to compare the estimates. It is quite remarkable how well the totals normally compare, even if the valuations of each detail seem

to be miles apart. That, of course, depends on different definitions of the details.

My advice to everybody who gets into this situation is: start with the totals and work backwards with the comparisons. If you do it the other way round, you will probably get into disputes (with your partner!) on absolutely ridiculous subjects, such as definition of labour hours, or whether the cost of transporting an excavator to the site should really be distributed on the excavated volume.

The spirit of a joint project team is weak in the beginning, even if positive, and needs nurturing. Disputes, even on ridiculous subjects, can be disastrous and spoil the spirit for a long time.

When you build the climate of the joint team, don't believe that it can be done without conflict, however. You must be prepared for differences of opinions and for friction between the members of the team. Not because the other party will have different objectives, but because he honestly believes that his way is the best for both of us.

You need to avoid unnecessary conflicts, because the necessary conflicts will be many enough and difficult enough to cope with. Quite often, when working in a joint venture, the real difficulties lie in co-operating with your friends, the partners. The enemy is normally easier to handle. That is ordinary business. The partner who gets involved in my work (gets in my way, it feels) is more tricky.

It has never been expressed better than by the chief quantity surveyor of our partner in one very happy and successful joint venture. Often we would disagree with one another. Then he would look me in the eyes during our interminable internal negotiations and ask: 'Who needs enemies?'

And we were friends with a genuine liking for each other!

Summary

1. It is increasingly common for negotiations to take place in partnership.
2. The partnerships themselves are typically negotiated at two levels: chairman level and support level.
3. At both levels, these negotiations need to be constructive. Cordial, co-operative, open, honest.

4. Implementation usually needs a project team to be formed from members of each partner. The *modus operandi* of the project team is helped by role negotiation.
5. Even in happy and successful joint ventures, the strain of sustaining good relationships is enormous.
6. Unless the internal relations are developed, nurtured, sustained, the project becomes overtaxing, the results unsuccessful.

Part 3

Universal Issues

Synopsis of Part 3

This book is concerned with the negotiating skills of engineers. We have looked at some of the negotiating skills the engineer needs as seller, as buyer and as partner.

In the final part of the book we will be concerned with some negotiating skills and issues which are not restricted to any one of those roles.

First, with some problem-solving skills which may be needed during and after contracts (chapter 19).

Then with some negotiating devices, some ploys and traps (chapter 20).

Next a chapter devoted to different cultures in negotiating.

We discussed negotiating tactics in chapter 8. How about negotiating strategies? Chapter 22.

Our final chapter draws together strands of the negotiating skills we have been discussing. It puts them into a simple framework, says a very little about background theory and ends up with a practical action summary.

19

Problem solving

The engineer has professional training and expertise in the solving of engineering problems. He is rarely trained to solve the problems which arise in relationships in negotiations during and after projects.

When such problems arise and are the responsibility of one individual, then life is relatively simple. Life is not so simple if problems involve many people, many parties.

If there is fertile ground — if there is a positive climate — problems can be solved by a few words informally. If there is barren ground, a fractious climate, a molehill of a problem becomes a giant ant hill and all sorts of little bugs have their bite.

Such problems do not cause difficulty only to engineers.

> In one of the great chemical companies there was for long a running battle between the secretary's department, the treasurer's department and the controller's department. It was reflected in the personal relationships between secretary, treasurer and controller. It was not only the great affairs of the company that were hampered; even such trivialities as the ordering of stationery gave rise to their own rounds of acrimony.

> In a manufacturing organisation, there were three shifts, red, blue and white. Within each shift, there were eight supervisors — two preparation, three production, two finishing, one maintenance. Problems abounded — damaged goods, absenteeism, low performance. The problems were attributed chiefly to the friction between the different shift supervisors. When that problem was tackled it revealed that the greater schism was between the departmental supervisors — preparation *v.* production *v.* finishing *v.* maintenance.

It is not only in the rest of the world that problems become catastrophies. It happens in engineering too.

We shall tackle it with illustrations, then discuss the form of such problems, and so to problem-solving methods.

Illustrations

Foundations not secure.

A European country has a development programme of substantial volume in an African country. To implement the programme a large number of European staff will be sent to Africa. Most of them will be stationed in the capital where the housing situation is already chaotic. The European development agency decides to build a house to accommodate its staff in the capital.

The agency hires an architect to design the house and invites tenders from contractors. The house is to be located in the capital city and approximately the same size as the surrounding buildings. The contractor is required to make the structural design and to comply with the building codes of the European country, in addition to the laws and regulations of the host country.

After normal processes, a contractor is awarded the contract and the structural design is prepared.

When the design of foundations is submitted for approval it is rejected. The foundations were designed just like the foundations of the surrounding buildings of the same size. A traditional, simple foundation.

The agency's consultant requires piling. The load-bearing capacity of the ground, calculated according to the European building code, is not sufficient to carry the load of the building, also calculated according to the European building code. The fact that similar buildings have stood next to the site on simple foundations for many years does not impress the consultant.

The problem includes the following parties

- The buyer (the European development agency)
- The buyer's consultant who checks the designs and also has appointed the Resident Engineer on the site
- The seller (the European contractor) and his project manager
- The local sub-contractor who has mobilised most of the available resources to press ahead with the foundation work.

What actually happened was that the foundations caused a long-running battle between the parties. The basic problem was not solved in its infancy, each of the main parties became entrenched in their positions, and eventually one contractor withdrew.

The consequences were

1. Bad will between buyer, seller and consultant
2. Seller loses prospective work in the main development programme
3. Buyer loses time and loses a good contractor
4. Local sub-contractor goes bankrupt.

Lift installation delayed. Involves Mechanical Engineer, Electrical, Civil; Architect and RE and two or three more on the fringes.

Payments are in arrears. The mechanical sub-contractor on a hospital project doesn't receive his progress payments. The main contractor refers to the back-to-back arrangement of the sub-contract. He says that he is entitled to withhold payment until he has received money from the buyer. And the buyer hasn't paid the main contractor's bills for some time.

The main contractor has submitted a couple of major claims to the buyer. The buyer has become very upset with these claims. He has responded by raising counterclaims for alleged damages that exceed the contractor's claims by far.

As a result, the buyer considers the contractor to owe him money. For that reason the buyer cannot pay anything to the contractor.

The contractor considers the buyer's counterclaims to be fiction only. He must consider the buyer's failure to pay the progress payments as a case of default. The sub-contract provides that the sub-contractor will be paid only if and when and to the extent that the buyer pays the corresponding sums.

The sub-contractor considers himself entitled to payment. He has done his work. There is no dispute that concerns him.

Nature of problem

Each of the illustrations shows a real problem.

Each such problem is defined more easily in a book than in real life. There it is surrounded by a number of contributory factors which caused it. There are a variety of different problems which arise from the same combination of causes. Each can be overshadowed by the thoughts of later claims and the need to prepare one's position for that time. Always there are a variety of different solutions, each with its own difficulties for someone or for everybody.

In the rough and tumble of many a site meeting, the problem is obscure. Quickly there can be accusations, counter-accusations

and a heated inquisition to find the guilty. Some of the guilty may be found and chastised. Some may escape. Some of the innocent may be caught in the crossfire.

That's not what matters. What really matters is the continuing conduct of the project. (As far as possible, in everybody's joint interests.)

Solving the problem

There are some approaches to problem solving which can be applied to any such problem besmirching the relationships — and the negotiations! — between the parties.

Stage one is always to get the problem clearly defined.

It is important for this stage to start by agreeing to concentrate on identifying the problem and agreeing not (yet) to consider other issues.

Not (yet) to consider the causes of the problem.

Not (yet) to consider the consequences.

Not (yet) to consider what to do about the problem.

Identify the problem. Get the parties to concentrate on it. However hard they may strive to do so, they will find themselves edging towards causes and consequences and cures and it needs a tough but sympathetic leader to keep the discussion in bounds.

If he is successful, they will end up with an agreed definition of the problem. One not travailed by verbose circumlocution. It needs to be in at most 15 pithy words.

The advantage of such a first stage is not simply that it produces a clear definition of the problem. It also avoids mudslinging and concentrates minds on a positive and useful first step to be taken together.

It is a first stage in creating a new positive climate, as opposed to the rough and tumble of embattled voices.

•

The outcome of the problem-solving needs to be action. Action can be in four dimensions.

- First and foremost, short-term action. How to overcome, now, the fact that the foundations are not secure. What needs to be done now. Who should do what.
- Second, what is to be learnt about improvements to site operations and particularly to systems of co-ordination

between parties. (These need to be negotiated. There are also issues of pure contract administration, which can influence each party's planning and control systems.)

- Third, there may be claims and implications for the negotiation of claims.
- Fourth, there may be lessons to be learnt about degrees of co-operation between the parties and possible need to strengthen them. This leads us to refer back to the idea of role negotiation (chapter 11). Role negotiation is a fertile way of improving relationships, and problem solving can be a good start point for role negotiation.

This chapter has thus far been presented on the basis that the parties might find the thoughts helpful for themselves negotiating solutions to their common problems. There are also consultants who specialise in helping their clients through such problem solving, and each will have special expertise and tools that they use in the process. Here are a couple of the models which I use.

First, a model used when it looks as though we will be concerned with a short-term problem.

A. Ensure that concern to solve the problem is shown by all the parties. If not, find an opportunity for preliminary discussion with each. Unless people then really want to seek a solution, don't waste time trying.

B. Assuming desire to find a solution, bring the parties together for at least half a day.

C. Start by getting the parties independently, amongst themselves, to write their definition of what is the problem.

D. Put parties together (in a number of groups if there are a lot of people) to produce an agreed definition of the problem.

E. Back to parties working independently. Now try to identify the causes of the problem.

F. Next stage: still operating as the parties independently, analyse those causes into three categories

    1. Things (systems, outside events)
    2. Other people — how they've contributed to the problem
    3. Ourselves — how we contributed.

Always, there is at first a hush when one demands that this (3) be as long as the other lists. The results are rewarding!

G. Now bring the parties together, if necessary breaking down into smaller groupings. Have them compare their analysis of causes under the it/them/me headings.

H. Continue with the parties identifying prospective cures. The understanding bred between the parties in this phase of working together is a potent force in the weeks and months ahead.

I. Then they go on to action plans to implement the cures.

J. And with follow-up/review plans to ensure that those actions are implemented.

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A second model, one used for longer-term problems. It too needs delicate handling of the way in which people are grouped and changed to negotiate. The headlines for this longer-term approach:

- What is the problem?
- What would be ideal solutions?
- What are the real constraints?
- What are realistic solutions?
- Immediate/urgent action
- Developmental action.

Illustration

The following is an example of such a problem-solving approach in action. It relates to the industrial case quoted at the beginning of the chapter.

There was heavy schism amongst the supervisors. It showed itself in a whole variety of ways, in a complex web of relationships.

After introductory steps to establish a positive climate, each supervisor was asked to define a difficulty he experienced with another department. The supervisors were then divided into trios: one with his problem, the second from the 'offending' department, and a third 'neutral'. The two main proponents were led through

the sequence of problem identification, analysis of causes into 'it/them/me', and recognising cures. They worked on each step independently, then compared their views with the third supervisor acting as consultant to them.

Later, roles were changed so that eventually each of the 24 supervisors had taken each of the three roles — analysing and discussing his own problem, discussing a colleague's problem, and acting as consultant.

They then reported — with a sense of surprise and of accomplishment — that they had resolved 17 out of the 24 problems. For this, they were chastised and sent away to find the answers to the other seven.

The end point was their conclusion: 'We've only one left unsolved. That's a problem of personality of the production director. We can't solve that, but at least we can see better how to work with him.'

This incident was immediately useful in handling a series of production problems, More significantly, it laid new foundations for the workings of the factory and was an important step in the factory's long-term efficiency.

Subsequent internal negotiations were simpler, and the need for negotiation rarer.

Summary

1. This chapter has tackled the concept of problems which recur in any ongoing working relationships. Problems which may create the need for negotiations. Problems which multiply if negotiations are incompetent.
2. The handling of problems can develop into accusations and dispute.
3. Positive problem-solving demands firstly problem identification. It is imperative to exclude searches for causes, consequences and cures until the problem is defined.
4. In day-to-day problem-solving it usually pays to concentrate on defining the problem and agreeing remedial action.
5. If problems are becoming too frequent and feelings too enraged, it may be worth bringing in consultants specialising in this field.

20

Negotiating devices

'Clever' negotiators have a battery of ploys and tactics which they use as devices to throw the other party off balance. Most such devices are out of place in constructive negotiations: they serve often as irritants; they do more harm than good.

These ploys are *not* recommended for most engineering negotiations. They appear here, however, for two reasons. First, as examples of some devices which may be used by other parties: devices which — in most cases — need to be recognised and countered.

Second, some are ploys which can win advantage for aggressive negotiators, and there are times, During and After a contract, when an engineer may need to act with a degree of aggression.

It seems to us that some of the clever ploys inevitably do more harm than good. This group we have gathered together under the heading 'Traps'.

The form of the chapter will thus be first to consider some ploys and counter-ploys. Then to look at a number of traps.

Ploys

The first group of ploys can be called the *multiple approach.*

One form of multiple approach is the multi-level approach. Not simply buyer negotiator meeting seller negotiator, but also a host of other meetings. Chairman to Chairman, technical staff meetings, treasurer to treasurer, quality controllers' meetings, etc.

In general, counter-measures are not needed — it can be a constructive ploy to mutual advantage. But ensure that the contenders for our business

are reduced to a short list before opening the doors — it is impossibly time-consuming if each of 25 competitors seek such entrée.

Another form of multiple approach is where the key negotiator of one team seeks to meet many people in the other party. He may recognise — rightly — that his counterpart does not alone make decisions and may seek contact with those who influence him. There are always some higher in the organisation and others buried within it, often difficult to identify. He tries to identify and influence them all.

Unless there is an extremely high degree of trust, this ploy should be resisted. It will lead to an undermining of our negotiator's position. And he has more than a full load to carry at any negotiating table, without having to worry whether sub-deals have been discussed outside his presence.

'Going upstairs' is another variation. If it is felt that the other negotiator is being obdurate beyond reason, then circumvent him. Go upstairs to his boss or his boss's boss.

It's a dangerous ploy — any boss worth his salt will protect his subordinate from such ploys and react against the ploy-maker. Rightly so.

Distinguish though the escalation ploy. If two negotiators really are reaching an impasse, they might circumvent by agreeing that a particular point should be resolved informally, Chairman to Chairman.

It must of course be kept for rare use. No negotiator will find that regularly passing the buck earns him kudos.

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Records and putting matters in writing can be a crucial basis for negotiations During and After a contract. Records, minutes, letters, diaries, photographs, telex and fax, notes of phone discussions. Their importance cannot be over-emphasised. At the same time, it is possible to misplay the written word.

There is the excess letter. The one which goes to the very limit in confirming a discussion according to our interpretation.

Response: 'we can agree with some of the points made but would need much further discussion before there was complete agreement'.

Bunching minor matters. A long list of minor faults, delivered at an opportune time, is more valuable than a constant stream. A stream of pinpricks is a constant irritant. A package of

pinpricks can be handled — and negotiated — with better concentration.

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Conflict resolution. There's always bound to be disputatious problems demanding resolution. Some of the devices to deflect the conflict are:

Act helpless, attract sympathy. Make him help you, act like you depend on him. Build the climate that way. The ordinary aggressive negotiator will muse to his colleagues how easily the negotiating is going. 'It's like stealing candy from kids.'

This is a ploy to help an aggressive party become constructive. It is based on the fact that most adults don't steal candy from kids. Even if they want the candy and they have the physical power to take it, they are often relucant to use such an opportunity. And the reluctance grows with increasing difference in power. Virtually no sane adult would steal candy from a handicapped baby.

Accentuate the positive. Keep emphasising points on which there is agreement, starting from opening *agreement* on agenda. Set conflicting points in context: 'This is only one small point of disagreement amongst all the wealth of points on which we are agreed'.

Procrastinate and defer. The problem may disappear or may be overlaid by something much larger. 'This is not a point of vast significance. Let's put it aside for the moment'.

Time can be a great healer. An isolated sore may heal — there may be merit in leaving one, but of course there is no merit in ignoring a whole series of problems.

Deliberate ambiguity. If there is conflict for example in drafting a detail of contract, there can be merit in deliberately covering the difference by being ambiguous. After all, the feared consequence may never arise. It is time-consuming to spend hours arguing about the highly improbable.

And of course it is dangerous to rely regularly on deliberate ambiguity.

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Some ploys are designed to earn merit-points.

Transfer of ownership. If I have a bright idea and suggest it to someone else, he may not feel for it. If on the other hand

the discussion can be led so that he first articulates the idea, then it is his idea, meritorious.

'Transfer of ownership' often depends on asking questions rather than making dogmatic assertions. *Not* 'It would be best if we substituted material X', *but* 'Are there other materials we could use?'

'Free advice'. Where a negotiator has special expertise within his establishment, he may offer 'free' advice as a device to ensure that he is amongst those who will later be invited to the negotiating table.

There is rightly a rub-off effect in preliminary discussions. We should be flexible and learn from each meeting we attend. There is however a limit, a point at which one becomes obligated to another party. Better, if possible, to find ways to repay — maybe by a payment for some specified know-how or development sub-contract; or by some non-money trade off.

Competitive merit. It is right and proper that attention is drawn to our strengths, especially when there are risks in going to competitors. It has to be subtly done. The ploy runs the hazard that 'knocking the opposition' is often regarded as unethical behaviour.

Traps

Each of the devices listed previously is a ploy which in some circumstances might help its user. There are other devices which seem to us to be traps — clever dodges which are almost sure to do more harm than good.

The first two come under the heading of 'putting it in writing'.

The skilled writer of minutes or correspondence, who may go beyond the generally accepted but ill-defined limits of overstating his case.

And the excessive writer. It is important for us to have records, records, records. Those records gain strength if they can be said to carry the assent of the other party. There is some level of assent implied in not contradicting. But excessive recording can become irritating to the other party. It is then all too easy for the bumph to fly thick and fast. There is again a delicate point of balance — putting the maximum in writing to the other party without overdoing it.

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Another group of traps consists of devices wrongly chosen to win merit points.

The first is one of the most common. We properly think, in our preparation, of the interest of the other side. We do our best to think of ways to satisfy their supposed needs. It is easy enough later to say something like 'It is in your interest . . .'.

Damaging. I will judge what is in my interests. That's my business, not yours. I get very annoyed when people try to put me right. Anyway, they're usually wrong.

Over-commitment in the early stages. Making ambitious claims for one's ability to perform.

False expectations have a habit of proving costly at a later stage.

The rose-strewn path. The one in which the other party is allowed to cherish its own imaginings of what can be achieved. It is tempting to let the other party keep these beliefs but again, false expectations prove costly in the long run.

Camouflaging difficulties. Despite the exception quoted as a ploy it is normally dangerous to camouflage or gloss over problems. Better as a rule to have differences brought into the open and resolved, rather than evaded under a screen of ambiguity.

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Three traps especially for buyers. First, the excessive commitment trap. Forcing a seller beyond the limit of what he can reasonably be expected to supply.

Second, the buyer who tries to place all risks on the seller. It can of course be done, but it is unlikely to be the way to share risks in the most economic way.

Third, the 'bad experience' trap. Whenever some contingency has blighted an earlier project, that bad experience keeps being resurrected. It can become a phobia, with far too much valuable negotiating time devoted to the slight risk of the highly improbable.

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And finally a couple of personal traps.

Beware the borderline between personal rapport and mutual trust. Simply because we enjoy somebody else's company does

not alone mean that we are able to trust them. They must earn that trust.

Entertainment and social relationships can be part of the same fabric. A positive help in creating climate. But it becomes a trap if carried to the lengths at which personal obligatons creep in.

Beware too the beginning of personal obligations. Most organisations have their own rules (written or unwritten) to define what is acceptable — for example, rules about receipt of Christmas gifts. The negotiator needs to stay within such acceptable limits.

Summary

This chapter has been devoted to devices used by some negotiators to win advantage over 'opponents'.

Our consistent advice through this book is that most negotiations in engineering and construction should be handled in a constructive style, and the introduction of such ploys is generally destructive. It is generally to be avoided.

The ploys do have a rare part to play — on the rare occasions when the engineer can benefit from using an aggressive style. These have been fully ventilated in chapters 12 and 15.

Otherwise, avoid introducing the ploys. If others introduce them, seek to counter and to keep matters constructive.

Always, avoid the traps.

21

Differences between cultures

People from other cultures have differing practices when it comes to negotiating. This can be frustrating and we suggest that behaviour is improved if we can learn enough of other cultures to respect them.

To respect them. Not necessarily to understand them, still less to emulate them.

This chapter will deal with

- Respect for different cultures
- Respect for different customs
- Stereotyping
- Implications.

Respect for different cultures

One of the greater problems faced by Westerners in other countries is that of time.

In Japan, negotiations take possibly three times as long as corresponding negotiations in the West. This is not because the Japanese are inefficient — far from it. They have developed the most startling growth in efficiency of any country and outmatch everybody. The time is taken because the Japanese have a basic belief in the importance of reaching group decisions. This means that negotiations take longer and that subsequent implementation has the commitment of the whole group.

In Arab countries negotiations take longer still. For Westerners, time is an essential part of efficiency. For Arabs, time is not of the same significance.

I have had a great deal of work in several Arab countries and in the beginning, many years ago, I took the trouble to study Arab culture and customs. This was very rewarding. The first time I visited any Middle East country I landed in Libya a couple of years after the revolution. At that time they had taken away all Latin signs and in fact all Latin letters, from the whole country, it seemed.

I was utterly lost. I had not been able to prepare for anything, the journey had been decided very quickly.

There I was, not being able to tell exit from entry, not being able to read as much as a street sign. I decided that I had to do something about it. So when back home again I enrolled in a beginner's course in the Arabic language. It became more and more interesting and soon I was involved in studies of Arab literature, arts, history and religion.

The ordinary Arab businessman has a more extensive cultural background than the ordinary Western businessman. His knowledge of that background is impressive too.

One example: I met with two rather ordinary Saudi businessmen in Jeddah. This was when I had just studied the early history of Arab literature and in the small talk over tea I mentioned this. One of the Arabs asked me which was my favourite among the early poets. I answered 'Imra'al Qais'. The reaction was immediate, smiles of recognition, comments on the choice. Imra'al Qais was a poet famous for his love poems and infamous for his love life. He is said to have been killed at Ankara around 560 A.D. He was well-known to both my Arab friends. They knew his reputation, they could quote his poetry. How many of your British business friends know even the name of any English poet of the sixth century?

One of those two Arabs, by the way, was a true Arab, they said. His family came from Mecca. The other's family was from Mecca too, but they were immigrants. They had come from India in the ninth century. That's keeping traditions alive! Most Westerners know their family trees no more than three or four generations back. And most of us don't really care what it's like. We live in the present and for the future. The ordinary Arab is constantly aware of the past.

The Japanese and the Arabs, for their different reasons, have different attitudes to the time factor in negotiations. They take longer than typical Westerners. In each case this is for estimable reasons buried within their different cultures.

American negotiators are typically more aggressive than Europeans. The American respect the ability to make 'a fast buck'. It is estimable behaviour to outsmart one's friends. It

is easy for Americans holding these values to look down on Europeans who do not believe in such ungentlemanly conduct. Conversely, Europeans can look down on these American values.

Mutual disdain is not a good starting point for negotiations. It is better to learn as much as possible in advance when facing negotiations with a new culture. Not then to embrace that culture but to recognise that it is precious to other people.

Respect for different customs

Behaviour varies from one country to another.

In Islam, the left hand is 'unclean'.

In South America, time does not have the significance which it has in Europe. I was recently conducting a seminar in South America and found difficulty running things with time efficiency. Later and privately, I was told by a top civil servant about a difficulty they had had in coping with me. 'You said we should start at 8.30, but of course all of us think that 8.30 means some time after that. Maybe 8.50 or 9 o'clock. You insisted that we should be there at 8.30 and this really was difficult for us.'

In many parts of the world it is customary to 'buy' orders. Scandalous as it may seem to many European ears, it is just the normal way of life in many countries.

Lubrication is part of the normal way of life in many of these countries.

Until recent years, India was one such country. We mentioned to our Indian partner that it would be in our joint interests if some negotiations with a third party could be delayed for a couple of months. Then indeed they were delayed. When we remarked on it, our partner replied that it was easy enough — the only problem was to locate an internal postman — the rate for 'losing' a file for a couple of months was only 30 rupees.

The presentation of business cards has customary flourishes.

In Korea, the card is ceremoniously proffered, held out with the thumb and forefinger of each hand holding the top corners.

In Indonesia, a Muslim country, it is handed over with the right hand only.

These are all trivial examples of different customs and of course they could be extended almost indefinitely.

Adult business people from each of those cultures understand and tolerate most deviations made by foreigners. It is however a matter of courtesy to become familiar with the customs of any country before going there. It is prudent to avoid requiring the other party to tolerate our unwittingly offensive behaviour.

And of course if it is a way of life that contracts must be 'bought', that way of life must be respected. Not of course by direct lubrication, but by forming partnerships or representations with local people of the quality to look after the local ways of doing business.

Stereotyping

Beware of stereotyping.

As examples it is often said that honesty is a typical Scandinavian feature whereas deviousness in business is typical for Greeks and Turks. I suppose that in general I share that view. Still, I have friends in Greece and Turkey whom I would entrust with my last penny. And I know people in Scandinavia that I don't trust any further than I could throw them.

Recently, I had a meeting in London with the development director of an international company. Everybody knows that their parent company is American. But a couple of years ago the international part of the company was acquired by British interests, and the Head Office is in London. Would the director be American or British?

Well, he had been with the American company for many years, but he was born in Ceylon (of local parents) and had gone to university in England. Obviously, he must have received influences from his Asian childhood, his English education, and his employment in an American company. All these influences probably affect his culture, behaviour and style of negotiations.

It is all too easy for negotiators to be misled by stereotypes. I have had the experience myself of representing at one time a large, well-known, financially solid company with a leading position on the market and a good reputation; at another time, a small, unknown company of doubtful financial standing and no particular reputation. There was an enormous difference in the way I was met and the way I was listened to.

I've already admitted my guilt in similar misjudgements. In chapter 9 I gave the illustration of a carpet fitter, a sub-contractor whom we thought to be crooked. We treated him aggressively, unreasonably so, because of a cultural blockage.

Beware stereotyping. At the same time, recognise that there are some general patterns. We can expect differences of behaviour as we go to different countries. We can expect different patterns of negotiating to be esteemed. And there are implications — which we shall take up shortly — for the way in which we approach negotiations.

Each culture has its own

- History
- Character
- Language
- Religion
- Behaviour
- Attitude to time
- Attitude to lubrication
- Attitude to integrity.

Despite our reservations about stereotyping, these influences do give rise to some consistent patterns of behaviour, reported by many different international negotiators. For readers wishing to go into this in more depth, we present brief notes on a number of different cultures (and some examples) in Appendix 2.

Implications

So what? If there is this great variety of different practice in different countries, what are the implications for negotiations?

1. The first is to keep the differences in perspective. When two parties find good cause to do business together, then they find ways to surmount these cultural barriers. It is easy, but not profitable, to exaggerate the significance of the barriers.
2. In the main, behave naturally. Respect the other party's culture and customs, try to avoid behaviour which can be interpreted as offensive, but do not try to ape the other party. You won't be good at it.
3. Cultural barriers do exist. They are obstacles both in the path of the negotiator and in the path of implementation of agreed deals. Those barriers are costs which need to form part of any evaluation before becoming committed to negotiations.

4. As far as possible, choose negotiating teams appropriate for the other party's culture. If negotiating with the French, for preference be represented by a fluent French speaker. If with Germans, then our negotiators should preferably be formal (appearance, presentations), able to display high qualifications, highly prepared and supported by elegant documentation, and preferably German-speaking. And so on.
5. Good agency arrangements are indispensible when dealing with different cultures.
6. For important negotiations, use a native language translator. But be careful when you select the translator. If you are an English engineer hiring a Japanese translator, insist on the same kind of qualifications as you would have required if you had been a Japanese engineer hiring an English translator.

   Knowledge of both languages is necessary but not sufficient. The ideal translator should be a sufficiently qualified engineer to be a member of your team, even without his linguistic skills.

22

Negotiating strategies

There are a number of strategic decisions to be made about a negotiation. Issues such as how deeply do we want to be involved, how anxious will we be to reach a conclusion, what sort of people to negotiate with, how to tackle negotiation.

This chapter will consider

- Factors influencing strategic decisions
- Some of the decisions needing to be taken
- How strategies can change in the course of time.

Strategic considerations

The first group of factors influencing strategic decisions is company policy. The negotiation strategy may depend on a company strategy — for example, entering or quitting a specialised business. Or on a marketing strategy, relating to particular products, regions or competition.

At a similar level, there are market place conditions.

If times are rough some people may even be driven to tender at a loss in order to keep staff together.

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Another group of strategic considerations surround the particular deal. These considerations are thoroughly discussed by P.D.V. Marsh in his *Contract Negotiation Handbook* (Gower). To summarise his points, the main considerations are

- Repeatability
- Our strength
- Other party's strength.

Repeatability. If we wish to have a whole series of deals with one party, then we want to establish durable goodwill and lasting relationships. If on the other hand we are negotiating a one-off deal, where we do not expect to work with the same party again, there is not the same pressure towards a durable relationship.

Our strength. If we are the only possible buyer or supplier, we are in a strong position. If we are in competition with many others, our position is weaker.

Other party's strength. Similar considerations. The monopolist is strong, the one of many competitors is weak.

•

There are other considerations which will affect negotiating strategies.

The importance of the deal: if it is a big one for us, we will put more negotiating effort into it.

Time scale. Depending on whether we have ample time or are short of time for negotiating, we will adopt different strategies.

And negotiating resources. Major negotiations take a great deal of time — not anybody's time, but the time of a relatively small number of highly important people. Negotiations are costly both in that valuable time and in money. Negotiating strategies may need to take account of those costs.

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So much for generalisations about considerations affecting decisions on negotiating strategies. There will always be a host of specifics which also mould such decisions. But in what directions should the strategies move?

Negotiating strategies

Issue number one is: With whom should we negotiate? And with how many parties?

If we are the monopolists negotiating with competitive other parties, then we have the choice of how many to negotiate with. The field of possible contenders may be large — it may seem almost infinite — but there is a limited number whose offers can be compared, evaluated and negotiated. In practice, the field can generally be narrowed to half a dozen through preliminary discussions, followed by pre-qualification or similar processes, and by technical discussions.

On the basis then of offers or tenders, it is timely to narrow the field to a few with whom detailed negotiations may proceed. The number for this stage needs to be restricted to two or three.

Which other parties? At all times, they will be being chosen either on a points system or on its equivalent mental arithmetic. A 'points system' taking account of expertise, reputation, and offers in the time/quality/money panorama. A particular consideration is that of affinity. There *are* people with whom one can work better than others. There *are* organisations whose styles match our own. There *are* negotiators whose particular brands of integrity and openness and reliability match our own. They are worth a few bonus points in the evaluations of which party to choose.

•

The next strategic decision may be related to *time*. Marsh (cited above) discusses two strategies. One is a Quick Deal — going into the negotiating room, making a quick deal, and getting out again. This needs a strategy of opening the bidding close to our minimum requirement. Alternatively, there is the Hold Back strategy. This strategy offers more prospect of exploration and creativity. It may allow bidding to be opened at a more optimistic level and a deal to be sorted out to better advantage.

There is a view that the Quick Deal approach takes less time than the Hold Back approach. It is not always true. The Quick Deal method can lead quickly into difficult and protracted bargaining. The Hold Back approach certainly takes more time in the exploration stage, but can be more than compensated both by better deals and by time saved in the bargaining phase.

Marsh recommends

- If we are the stronger party ('Dominant'), we should choose the 'Quick Deal'.
- If we are the weaker ('Subordinate'), we should choose either Quick Deal or Hold Back, dependent on the strategy assumed to have been selected by the other party.
- If there is no clear pattern of Dominance/Subordination, we should Hold Back.

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Negotiating style. In what style should we aim to negotiate? In fact, we should be prepared to modify the style at different

stages of negotiation: more on this in a moment. But what of the general style in which we negotiate? Should we for example be constructive or aggressive?

The issue has been examined repeatedly through this book, and as a rule, it is seen to be in the interest of both buyer and seller to negotiate constructively.

To the extent that there may be choice amongst possible negotiators, it is desirable that the choice be influenced by the nature of the other party. If we are about to negotiate with tough and ruthless people, it is no use sending meek and mild emissaries. If we are to negotiate with Arab countries, there is no point in considering our lady engineers. In Northern Europe, silence is a virtue. The negotiator who would earn respect there is different from the one for more voluble countries such as Italy.

Changing strategies

There is need to review negotiating strategy over the course of time.

We have advocated a constructive style of negotiating, especially during negotiations Before a contract. We also advocate that the constructive aura be sustained but in fact, negotiations During and After a project increasingly are divisive. The form of negotiation is then to split the apportionment of claims or — occasionally — of rewards.

This often becomes aggressive negotiation as discussed in chapters 12 and 15. Each sub-negotiation then needs to be conducted for the benefit of our party — it is no longer to our interest normally to have regard to the interest of the other.

Nevertheless, progress is made by people who have a constructive relationship, who can respect one another's points of view, and who can arrive at mature solutions. Fighting is not a mature way of doing business.

Summary

1. Negotiating strategies depend in part on related company strategy.
2. They should be influenced by repeatability of the deal, our strength, other party's strength.
3. Also by the importance of the deal, the time-scale, and the availability of negotiating resources.

23

A framework of negotiating skills

The objective of this chapter is to put the skills we have been discussing into a simple framework and then to draw together some of the key recommendations which have been made.

The plan for the chapter is first to offer a framework, second to offer a slightly more theoretical overview, and finally to come to a summary of key practice.

Framework

The process of negotiating is highly complex. Messages are being sent, both consciously and unconsciously. Interpretations, both conscious and subconscious, are being made. Hopes and suspicions and doubts and advantages are all part of a confusing mêlée.

The writer's task is to simplify that mêlée to a sufficiently simple picture to be discussable, and for useful practices to emerge which will sustain the Engineer in the hot seat at a negotiating table.

Here is a simple black and white picture discernible through the many shades of grey.

As part of the framework, there is the *subject matter* of a negotiation. At one stage, that subject matter may be the negotiation of a contract to supply a transformer or a steel structure, or to build a road (or an airport, or a building or a port or . . .). During a contract, the subject matter may be negotiating responsibility for coping with some unforeseen technical or commercial hazard. After the contract, the subject matter may be the settlement of claims and counter-claims relating to performance or to deficiencies in the final product.

These are all examples of what is meant (at different times) by the *'subject matter'* (Figure 23.1).

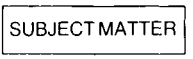

Figure 23.1 The subject matter . . .

The ability to handle that subject matter depends on a series of foundations.

At one level, there is the foundation of planning and control. Of defining agendas and of ensuring that negotiations proceed both efficiently and effectively. To describe this level of foundation, we used the word *'procedure'* (Figure 23.2).

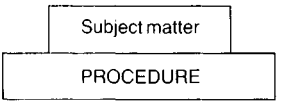

Figure 23.2 . . . on foundations of procedure . . .

At another level there is the human element. The negotiation is influenced by the interaction between the people. Both because of individual personalities and because of the chemistry between those personalities, they influence the conduct of a negotiation. For this level of foundation, we have used the word *'climate'* (Figure 23.3).

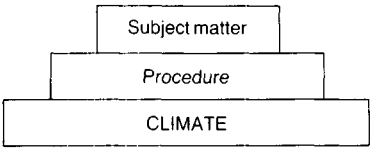

Figure 23.3 . . . and climate . . .

Any negotiation meeting takes place at some point in time. The effectiveness of that meeting hinges on the way in which each party has prepared, and on the way in which each follows up subsequently. This adds another level of foundation: *'preparation'* before and *'follow-up'* afterwards (Figure 23.4).

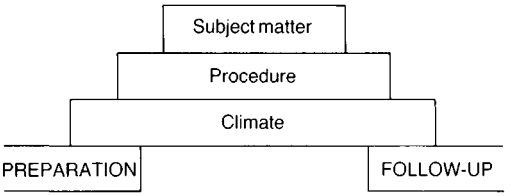

Figure 23.4 . . . all depending on preparation and follow-up

There are elements of skill and technique in the manner in which each of those foundations is handled.

And at each stage of a negotiation different forms of skill are needed to handle the subject-matter.

We therefore break up the subject matter into four distinguishable stages (EBBS) (Figure 23.5)

- Exploration
- Bidding
- Bargaining
- Settling.

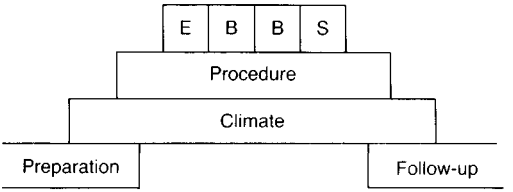

Figure 23.5 Subject matter divided into phases and resting on foundations

To summarise points made in this book for negotiators.

Preparation was considered in chapter 4. In addition to technical preparation the negotiator needs to have his mind clear to operate at the 3 levels.

- The key messages he wants to send (his presentation)
- The key information he wants to receive (as listener)
- And his thoughts on procedure (purpose, plan, pace).

We suggested that for each of those activities, thinking should be sharpened in advance to the simplicity of four key words which would later be powerful at the back of the mind in the heat of negotiations.

Climate was discussed in the context of constructive negotiation in chapter 2 with key words including Cordial, Co-operative, Confident, and Trusting; the different climate for aggressive negotiation in chapter 8.

The *procedure* foundation includes planning and control (chapter 3). At the outset, agreeing with the other party the purpose, plan, and pace for negotiations. Subsequently controlling by occasional checks on progress, concentrating on the essential not the trivial, and checking time effectiveness.

Dealing with the subject matter, in the *Exploration* phase sending and receiving information, increasing mutual understanding of the negotiating ground (chapter 3). The need for negotiators to act not only as transmitters but also as receivers, and the possibilities for them to be creative.

Bidding was discussed in chapter 5 and bargaining in chapters 6–8. Related practice is to get the issues clear, to identify snags and priorities, and to get indications of quantities. Then to trade concessions, move at a measured pace, protect pride and save face.

Follow-up is treated in the book only incidentally. There is repeated emphasis on the need to keep records of all negotiations, and obviously it is necessary to follow up with action honouring the negotiations which have taken place.

An overview

There are four main concepts underlying this framework.

First, the concept of *overload*. No one mind can grapple with all that is taking place during a negotiation. It cannot be both presenter of ideas and at the same time fully operational as a receiver. Another dimension of thought is needed for control. There is no energy left consciously to evaluate all the messages being received or to link them to the wealth of engineering knowledge stored in the brain. Half a dozen different people at a negotiation will see half a dozen different aspects to that negotiation — and another half a dozen people could find another half dozen. It means that every negotiator has to operate under conditions of *overload*.

Second, the concept of *ambiguity*. Greyness. Uncertainty. The human mind is very good at dealing with problems it can recognise (the Engineer's mind, exceptionally good) but it

becomes confused and frustrated when it feels muddled and uncertain. That is bound to happen when one wonders why the other party is making an enormous meal out of an apparently trivial matter. It becomes worse if one wonders why the item is being discussed at all, or what is coming up next. *Ambiguity* confuses negotiations.

Expectations are another important part of the overview. Expectations of the probable outcome, expectations of what the other party should offer, expectations of how they will behave. And the way we create their expectations. Their expectations of our credibility, competence, trustworthiness, the sort of dodges and ploys they expect us to adopt or avoid. Some *expectations* need to be curbed, others to be created and nourished.

And *trust*. The extent to which we earn the benefit of inevitable doubt about our trustworthiness. Our perceived readiness to be open and honest, including our readiness to face up to unpleasant truths. ('When we say it will take 9 months, that is a fact. It cannot be done in less.')

There is a wealth of psychological and mathematical theory about negotiation. Four main streams of the theory relate to overload, ambiguity, expectations and trust.

Practical implications

What are the practical implications?

We cannot get rid of overload. We can, however, reduce it.

There are two main contributors. One is to have the back of the mind so prepared that it remains sharp in the mêlée of a negotiation.

For each meeting prepare the mind for its three functions

- Presenter
- Listener
- Controller.

For each function help the mind by carrying thinking to the sharp simplicity of four key words.

The other main contributor is to develop routines. Practices which become automatic. Practices which the negotiator follows, without having to think about it, at key moments in negotiations. Such drills as

- Greetings and ice-breaking to an established pattern

- Regular practice to bridge from ice-breaking towards business (we suggested agreeing on procedure)
- Separating presentation of information from listening, and recognising the third element of exploration — interactive thinking and creative dialogue
- Holding the subject matter, as far as possible, within such nice clean compartments as Exploration, Bidding, Bargaining and Settling
- Developing habits — good habits! — for handling each of those compartments
- Developing a discipline of checking progress periodically.

Ambiguity, uncertainty, are bound to be part of negotiations. They become increasingly hazardous as parties believe that they are being bluffed, and set up their counter-bluffs. Ambiguity is reduced when negotiators display uncompromising integrity and when they share an understanding of the paths along which their negotiations will develop. It is a factor which may be kept in bounds by attention to the climate and to the procedure.

Expectations are seen nowadays as key forces of motivation. The practical implications are to set appropriate levels of expectation. Appropriately optimistic expectation of what sort of deal can be negotiated — optimistic but not over-optimistic. Appropriate commitments for progress during a project. It is always a difficult balancing act — to give the other party hope but not hope beyond reason.

And trust. Based on previous performance and on displayed openness, honesty and integrity.

•

There is no more demanding field for the application of these negotiating skills than that of engineering and construction.

Appendix 1

Negotiating tactics

The following is a longer list of the tactics discussed in chapter 8.

Tactical recesses
Pleading lack of authority
Pleading legal limits
Delaying tactics
Summarising
Straw issues (mountains out of molehills)
Making very high demands
'All I've got is 60% of the price'
Starting with the easy issues
Poker-faced
Bribery
'What if . . .' tactics
Starting with the tough issues
Changing the shape of the deal
Getting upstairs (to other guy's boss)
'This is our final offer'
Convert his objection to a 'yes-able' (i.e. when other party is saying 'no', find questions which he can only answer 'yes')
'That was an understanding, not an agreement'
Inexhaustible patience
Setting deadlines

'Take it or leave it'
Piece-by-piece agreements
Get our boss to say 'No'
Work on their easy-to-attack issues
Probing during ice-breaking
'Why?'
Leading towards compromise
Tiring the other party
Acting hard-to-get
Splitting the difference
Clarification
'This is not negotiable'
Creating warm climate
Rounding off the digits
Deliberate errors
Playing at home
Going out to 'the Golf Club'
Using experts
Appointing new team-leader
Walking out
Going off the record
Pleading ignorance
'Yes — but . . .' technique
Good guy/bad guy tactics
Arguing over the agenda
Listening more than talking
Being slow, indecisive and slightly irrational
Personal criticism
Flattery
Gamesmanship
Setting up a study group
Acting emotional — e.g. angry
Heckling

Pulling pig's tail (so he'll go the other way)
Sex
Feeding him well
Lifemanship
Yelling
Humour
Saying sadly, 'I've been asleep'
Bugging
Always smiling and never answering the question asked.

Appendix 2

Some cultural distinctions

There are a number of characteristics reported regularly by negotiators returning from other countries.

Here is a summary of them.

Northern European

Starting at the top of Europe; the Scandinavian character is open and honest, stubborn when thwarted. These characteristics make for a high degree of creativity: they are naturally constructive negotiators.

Socially, they are northern, reserved, cool. They do not enter into social relationships easily — they do not have the habit of striking up casual conversations and are tolerant to silences which southerners find embarrassing.

The North Germans have strengths rarely found in their neighbours — vast strengths in their ability to organise their thinking in advance of their negotiation. Their preparation is naturally much in advance of the rest of us. This leads to their coming to negotiations with their positions and presentations well prepared, and to their having often thought through the requirements of the other party, even better than the other party has thought through their own position. The content of the presentation is highly convincing.

Another North German characteristic is formality. Formality of behaviour, formality of address, formality of qualifications, and formality of presentations.

The systematically conceived content is thus presented with highly formal technique, by people with impressive qualifications.

Presentations are impressive in content and in method. They impress as being on a superior plane to the thinking of a different culture.

It behoves people from other cultures, hoping to do business in Germany, to stand comparison in such a frame of reference. Highly prepared, formally presented, highly qualified.

The dangers of this approach are that when one prepares too deeply, one becomes blinkered. One's plans take control. One becomes inflexible.

Another German characteristic is respect for the established hierarchy. The top boss is the Top Boss. He has to approve the plans — may even conduct the main negotiations himself. There are instances of subordinates finding it awesome — even impossible — to advise the Top Boss when all is not going according to plan.

By comparison, the British are seen by other countries as amateurs. Often quite professionally amateur. There is a tradition of gentlemanly behaviour, often understood, rarely articulated. It covers a range from the way people dress to the way they define their positions in negotiations. For example, I do not usually bother to take a suit into Scandinavia, but I would never dare dress other than in a suit for an important British negotiation.

The British are thought to be reluctant to give bad news, to the extent that they can be positively misleading.

> Consider two different responses by suppliers under pressure to reduce a delivery period from 16 weeks to 12 weeks.
>
> The Scandinavian might respond: 'The best we can possibly manage would be 15 weeks' — meaning it.
>
> The British, reluctant to convey bad news, would be more likely to use such words, as 'We'll do the best we can'. Meaning that he would do his best to get down to 15 weeks but being heard by the other party as committed to nearer 10 or 12 weeks.

The British are seen as being honest people, but by character they are not as open as the Scandinavians. They do not prepare as deeply as the Germans.

Another reputed British negotiating characteristic is our attachment to the business lunch. It causes concern to people from overseas who are used to taking the lightest of snacks at their desks, and no alcohol during the working day.

France is an important market in Western Europe. Geographically it is between Germany and England and also between Scandinavia and Spain. That position could almost serve as an accurate description of a typically French negotiation culture.

The French have a reputation for being patriotic to the limit of chauvinism or beyond. That reputation is essentially unfair. The French government is probably the most nationalistic government in the West. It considers it to be important to support French business interests abroad. That is fair enough, particularly for the French business interests.

French private companies and French individuals are not more patriotic than the average European. Frenchmen often insist that foreigners negotiate with them in French. That is a trouble, of course, to foreigners who don't speak French and it normally puts the native French speaker at an advantage. But most Englishmen insist that foreigners negotiate with them in English and most Germans prefer the German language if they can choose.

Southern European

Different patterns emerge in the Mediterranean countries — Italy, Spain, Greece, for example. Here there is great animation in social contacts. People talk volubly with massive gestures, even insistently. There is a need for outsiders to adjust to this different pattern of social behaviour.

We find great differences between East and West. The typical Spanish negotiator makes you think of a nobleman. The typical Italian is less gentlemanlike. When you get to Greece and Turkey you can feel the influence of the tradition of trading in the streets and the influence of their neighbours, Phoenicians, Jews and Armenians.

You may put all European negotiating cultures on two different scales. One North–South scale of honesty and one West–East scale of gentlemanlike behaviour. This may be an over-simplification, but it suffices as a rule of thumb anyway.

The further South the setting, the larger is the probability that you will come up against the need to lubricate and to protect. To oil palms both official and unofficial. To ensure cast-iron contracts.

Eastern Europe

The typical negotiating culture of Eastern Europe is a reflection of the political system. One feature is the unwillingness of most people to take any responsibility. Often, in important negotiations, this is coupled to a marked willingness by the top person to assume responsibility.

East European negotiating teams always have one leader. It is not always obvious to the outsider who that leader is. A strong leader will bend any rule or create new rules. Weaker persons will go by the book or follow written directives from superior authorities.

The East Europeans are normally good negotiators. They tend to prefer an aggressive style, probably because that is easier if you don't want to get too much involved personally. You used to get the feeling, when negotiating initially with East Europeans, that they didn't dare to get to know you on a personal level.

With the present *Perestroika* that attitude will probably change. I base that prediction on the experience that the typical East European is a naturally co-operative person. When you have the opportunity to know him better you find that he easily becomes a good and true friend. Thus, the ordinary negotiating style of Eastern Europe is likely to become more co-operative. This will undoubtedly mean better contracts, i.e. contracts that are better for all parties.

America

The American culture is important both in its own right and because American negotiation has dominated the world for half a century.

Most of us have experience of negotiating with the Americans and have been influenced by their strength.

More than that, the Americans have had much influence on other peoples' practices in negotiations. They have been leaders in writing, teaching and training, convincing conveyors of methods particularly suited to American talents.

The first feature of the American negotiating culture is social warmth. A visitor is made to feel at home. He is greeted warmly. His personal comfort is a matter of genuine concern. He is introduced to the wife and kids and taken off on social expeditions. It is all warm, natural, spontaneous and gratifying.

Behaviour in the negotiating room is different. Now there is an objective of winning the best possible deal. It is estimable behaviour to get something at the other person's expense, to win a fast buck from him. (Note how this differs from the European cultures, and particularly from behaviour esteemed in Britain).

The American has a great respect for acquired wealth and status. He has ability to wheel and deal. And so his strength in negotiations is particularly in the bargaining phase. He prepares heavily for that phase, concentrating on objectives, strategies, tactics and concessions required. All with a heavy financial element. This may prevent him dwelling for long in the exploration phases. It is said to be an American characteristic, for example, to seek for packages rather than products or processes, and then to bargain hard on the packages.

He is helped in developing these strengths by a wealth of literature on bargaining and on tactics; and he is also supported by a multitude of lawyers. The number of lawyers as a percentage of total employees is higher in the States than elsewhere.

The American negotiator is, in other words, the epitome of a good competitive negotiator.

> I worked on a problem that an American company had. They were contractors for supply and erection of the steel structure of the New York City Convention Centre, an enormous steel and glass structure on the Hudson River shore of Manhattan.
>
> The contractual structure was enormous too. It was a typical American project. The buyer was a city authority. They had hired a whole bunch of consultants of all conceivable specialties and some that I had never even thought of. They had also hired a construction management company. For the construction there were more than 200 different specialist contractors and suppliers.
>
> All the construction contracts had a provision saying that the contractor understood the complex nature of the project and that the construction manager, the architect and the owner could not be held responsible for any delays of the project. Each contractor had waived the right to sue any of those for any delay whatsoever. If some other contractor had caused a delay or additional cost he should be sued directly instead.
>
> My client was among the first contractors in the time schedule, putting up the steel structure. If they delayed the work, they stood the risk of being sued by 200 other contractors who would have their contracts delayed.

The problem was connected with the fact that this was an architectural landmark. The steel structure was a space frame of dimensions unparalleled in the world. The architect had designed the space frame to look good. That meant that the structual designer had to prescribe steel qualities of extreme strength.

The space frame consists of round bars of high tensile steel 10–15 ft long and connected to hubs in both ends by threads. The hubs are football-size balls also of extreme strength, and they soon became a problem.

The root of the problem was that the buyer got cold feet. The project was extreme in many respects, not least architecturally. The space frame had been designed by the architect and was very complex. Most complex space trusses are very stable structures. If one bar fails, the loads and forces are automatically redistributed among the remaining bars. Normally the rule is: the more bars, the better the security. In this case the computer analysis showed that the truss was unstable. It was a very big analysis which could only be made on a very big computer. The truss was unstable in the sense that if certain bars or hubs should break, then the forces on certain other bars and hubs would be too big so that they too would break, and there would be a progressive failure.

This is not dangerous in itself. All bars and hubs were designed with great care, of course, to support the forces that could be expected to fall on them. The concern was that the steel quality was extreme, the design stresses were extreme and the additional security that a complex truss normally means was not available.

The reaction from the buyer was a kind of 'nuclear power plant syndrome'. They began to check the materials and the details in a manner that became absurd. As soon as one test was passed, another test was invented. When I came into the picture I got the immediate impression that the real problem was that nobody dared to approve the materials.

In the end, the hubs were subject to visual inspection (of course), X-ray tests, sonic tests, eddy current tests (something electrical), and load tests. The load tests showed that the hubs were incredibly strong. Even those hubs which had been rejected by other tests for having cracks could take much more load than required. The material was thought to be brittle so the load tests were extended to include a fatigue test. It was then found that even the hubs with unacceptable cracks could take the required load after fatigue testing corresponding to 50,000 years of use in the structure.

The project was of public interest and the delays were criticized in the press. The buyer and the architect chose to put the official blame on the hubs that were reported to have cracks. Every reader

of the newspapers understood, of course, that if the hubs had cracks they had to be replaced. What was not mentioned was that the 'cracks' discovered by electrical testing of the surface were really the result of imperfect grinding. An approved way of repairing the cracks was rubbing with a rubbing compound and polishing. The publicity was unwanted by the seller, of course. It could cause later contractors to sue for damages. The general climate was very aggressive between all parties. Everybody sent letters to everybody, covering their backs.

How did it end?

The project was delayed for more than three years, which is not bad for a fast track project that should have been completed in 18 months. You would not have been surprised if everybody had been at each other's throats.

I expected a couple of hundred law suits, and we made serious preparations for suing the owner, the architect and the construction manager, in spite of the waivers in the contract.

Oddly enough, we were able to avoid the courts completely. This was because we succeeded in applying a mixed strategy.

With respect to the contract, we acted very aggressively.

We made it quite clear to everybody concerned that we were preparing for battle. The lawyers sent letters to all parties involved. Everybody understood that we were collecting evidence. The other parties did the same. It was a very aggressive climate.

On the other hand, in the technical field we co-operated very well. Apart from occasional excursions into the ridiculous, the technical problems were very interesting. Very unusual problems and very challenging. Material research institutes from half the world were involved. Professors gave the parties learned lectures on problems that we didn't even know existed. I learnt a lot about stress corrosion, for instance.

Between the technical experts of the parties, and the top men, a strong co-operative climate developed. It may have been that the technical problems were felt to be common and requiring a joint solution. The personalities involved were important too. They managed to keep a co-operative, cordial, even friendly climate while they let their lawyers prepare for war against each other.

In the end they found that there was a balance of terror and they knew that they could agree on technical matters, so they were able to make a satisfactory agreement even commercially.

Among the morals of the story, there are three which are often found in America

1. The great American scale. The scale of the building, the number of contracts, the scale of specialist participation.

2. The basically aggressive pattern of negotiation.
3. The influence of lawyers.

There are three other morals worthy of mention in a book on negotiating skills

4. The bonding effect on the professionals — united in their interest in the technical problems.
5. The co-operative relations which then developed.
6. The curious blend of aggressive and constructive negotiation in the later stages.

Middle East

The differences of negotiating culture between Western countries pale into insignificance in comparison with the variety elsewhere.

The foreigner in the Middle East will experience an interesting mixture of traditional customs and morals, and of modern influence mainly from America.

The Middle East has been at the crossroads of the world since civilisation began. Trading is traditional in the Middle East.

The peoples of the Middle East were probably qualified negotiators who already arranged complicated deals at a time when the inhabitants of Northern Europe used the stone axe as their best argument.

During the last 1400 years the religious influence of Islam on all aspects of life in the Middle East has been enormous. The ignorant Westerner cannot easily understand the importance of this influence. Any Westerner who intends to negotiate with counterparts from the Middle East is well advised to study the culture of that area in detail.

As a negotiator, the typical Arab is extremely skilful and very aggressive. It is difficult to get him into a constructive mode. It takes a long time, but it will be worth it if you can make it. If you fail — and particularly if you find a technology gap at the same time — you are in for trouble.

A Middle East country was to host an important International Conference. A prestigious new conference centre was to be built with an adjacent residential complex fit for Kings and Presidents. Tenders were invited and turn-key contracts signed. The time schedule was very tight, and the construction was carried out in parallel with the design.

Relationships between buyer and seller were constantly strained. Examples:

1. Part of the foundation was on pre-cast concrete piles. Normal practice is to make the pile a little longer than required and, after it has been driven, to cut it by jack-hammer so that it will be properly cast into the foundations. But the drawing (section) shows a neat cut at a fixed level. So the inspectors forced the builder to use a large diamond saw to make an absolutely even, absolutely horizontal cut at the exact level shown on the drawing.
2. When one of the big pile cap foundations was concreted, it was a pour of 80 m^3 taking several hours to complete. After a third had been poured, one of the workers lost the rubber heel of his shoe and one of the inspectors watching the work saw it fall into the foundation. The work was stopped, the concrete had to be taken out of the form and disposed of. The heavy reinforcement and the formwork had to be cleaned, at enormous expense. Of course, the concrete is not supposed to contain rubber heels. But any realistic inspector would have disregarded one rubber heel in 30 or 40 lorry loads of concrete.
3. The structural designers had similar difficulties. For example, a column passes through a concrete slab and they are cast together. Then, in theory the slab can also be regarded as a column. If you regard the whole slab as a column it seems harmless, because the section is so enormously large and the length so extremely short. But there are rules of minimum reinforcement in columns. And the 'specialists' insisted that the slabs should be reinforced as if they were columns, with vertical bars and horizontal stirrups.
4. After a while, the seller's chief designer would not attend meetings alone with the buyers. He needed a witness so that his colleagues would believe him when he told them what changes were required. After the first meetings they had thought that he was joking or had gone crazy.

In the middle of such dealings, progress can become impossible. But at a distance, it is possible to analyse the situation objectively.

The seller's staff were experienced people, many of them having recently finished a similar project in Eastern Europe. On that assignment, they had been dealing with buyer's representatives who were elderly, highly qualified East European technicians. They had been duly impressed by the seller's western technology and experienced enough to make fair judgements of how to get the most out of it.

The seller thought, in the Middle East project, that they had sold a project as specified in the contract.

But the buyer's staff thought they had bought a project which would be tailor-made to fit what the buyer considered appropriate for Kings and Presidents. Seller expected to deliver a project with a lot of luxury, marble floors, gold water taps, that kind of thing. Buyer considered nothing on the market to be fit for Kings and Presidents.

The buyer decided not to use independent consultants, but to set up their own project staff. The man to head it was Dr B, a senior official from the Ministry of Planning. He had staff of the highest possible qualification, including university professors and bright recent graduates, but experience was not a criterion for their selection. To be qualified as inspector of reinforcement, a doctorate in metallurgy was required. But the reinforcement inspector had never put her foot on a construction site before.

The project was seen as of enormous prestige. The President personally told Dr B that the nation's glory was at stake.

This too was further complicated by a minor revolution, hardly noticed outside the country, but serious for those involved. The Minister of Planning, who was the project's sponsor, was removed from office and shortly afterwards convicted in a trial and executed. Dr B must have felt the earth tremble. It had become almost a matter of life and death to ensure a pristine conference centre and residence.

So there was a lot of divergence between the parties

- Different views on the nature of the project
- National pride
- Personal emotional involvement
- Different levels of experience.

As incident piled upon incident, the seller reacted and began insisting on his rights. Gradually, after a year, the project ground to a halt.

Culturally, the buyer had behaved in a typically aggressive style and the seller became counter-aggressive. There was a culture clash accentuated by the differing levels of experience.

In chapter 21, we asserted that the ordinary Arab businessman has a more extensive cultural background than the ordinary Western businessman, and that his knowledge of that background is impressive. We concluded that most Westerners live in the present and for the future. The ordinary Arab is constantly aware of the past.

Through the Middle East, the attitude to time is quite different to the Western attitude. In the West, time is an essential measure

of efficiency. In the East, it's not. In the West a promise to do something implies that it will be done. In the East, a good intention is praiseworthy but as to whether it is put into practice — Innsha'allah — it is the will of God.

Gestures have their own meanings. Thumbs up in England is a happy buoyant gesture. In Iran, it's utterly derogatory. The corresponding gesture there is middle finger up — a gesture which English people find just as offensive as the Iranians find the thumb up.

Even language itself becomes a cultural barrier. In the Arab languages it is normal to be highly assertive, even exaggerated in speech. Thus a direct translation from say English into Arabic gives the listener an understated message. Equally, translation from Arabic to English produces statements received as over-assertions.

Far East

Japan is an extremely important country to negotiate with. A highly advanced industrial society with an astonishing growth rate.

With its own distinctive way of doing things. I'm assured by experts on Japan that the one thing they and I can be certain of is that we will never understand the Japanese.

A first important distinction in Japanese negotiation is the time dimension.

Negotiations inevitably take about three times as long as in Western society.

This is not because of any inefficiency amongst the Japanese — quite the opposite. Their record of efficiency speaks for itself. But there is a style of working, a corporate style, which requires wide involvement in decision-making. It is this consultation and involvement which is so time-consuming.

The Japanese character is not readily understood by Westerners. There is so much which is apparently contradictory — superb miniature gardens screened behind flagrant hoardings; puritanism in relation to graffiti, yet extremism in erotic shows; commitment for life to the company. Three major religions — Buddhism, Confucianism, Shintoism — each with its own distinct mores, yet it is perfectly possible for a Japanese to practice all three religions at the same time. To a Westerner, there are

gulfs between the Buddhist sensitivity, the Confucian emphasis on status and hierarchy, and the veneration of nature in Shintoism. A Japanese has no problems in identifying with all three at the same time.

The Japanese language is different. There is no word for 'no'. It is said that the word 'yes' can be spoken with twenty-seven different inflections, the practiced ear recognising different meanings from differences of sound imperceptible to a Westerner.

Speed of speaking is another characteristic of language/culture. A Japanese will have a period between identifying a thought and articulating it, much longer than an American. This leads to apparent gaps or pauses all too easily misinterpreted by the Westerner as lack of enthusiasm.

In negotiating characteristics, the Japanese have high credibility. They see negotiating as a difficult art and they disbelieve in bluff. 'Life is difficult enough without trying to pull the wool over the eyes of the other party. Why make life more difficult?'

In the Japanese system of hierarchy the buyer takes higher status than the seller. The Japanese salesman visiting a Western country thus has no difficulty in showing deference to his prospective customers. The Western — particularly the American — salesman does not naturally show the same deference to Japanese buyers.

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In many other Eastern countries — Singapore is a notable exception — it is customary to 'buy' invitations to bid and contracts. Many Westerners have difficulty in adapting to these customs. Indeed, bribery is illegal in many Western Countries. (It is also nominally illegal in some countries in which it is common practice.) Westerners are unskilled at this form of lubrication. They lack the skill, they lack the morality, and they are prohibited by law. Yet if they are to do business, they must respect the customs of the culture to which they aspire. The solution is of course to retain local agents who will oil the wheels of progress.

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Throughout the Far East, there is a great variety of cultures. The flight from Japan to Korea may be small in terms of time, but it is large in terms of cultural difference. Korea was under

Japanese occupation up to 1945, a point which is still remembered there. Korea is rapidly industrialising, and the normal pattern of negotiation is highly aggressive. Several experienced negotiators find that Koreans are unreliable. It is not always so.

It is not often that you have the chance to compare the ways of working of different people under near-identical conditions. And even to compare the consequences. In the following illustration we have a European and an Asian contractor working on near-identical contracts in the Middle East.

In a Middle East country, the Ministry of Health built two hospitals at the same time. Both were tendered at the same time, with the same drawings and specifications, but they were in different parts of the country. One was awarded to a French contractor, the other to a Korean. By coincidence, both main contractors awarded a sub-contract for mechanical work to the same sub-contractor, a company that I represented.

Both contracts were on a sort of turn-key basis. The contractors had to take responsibility for design, and the designs had to be approved by the Ministry.

The Korean contractor appointed a British hospital architect to redesign the hospital and to secure ministry approval of the design. In the process the scope grew. The sub-contractor filed claims — justifiable claims — with the Korean contractor for an increase of about 60% of the original value.

The Korean contractor rejected the claims and was extremely upset. He considered it to be an outrageous act to make a claim against the buyer.

Inevitably, the Korean contract had to be settled by arbitration.

The French contractor, on the other hand, used his in-house architects, and his own project manager to get the design approved by the Ministry. The sub-contractors were responsible for getting their own designs approved by the Ministry. Contractor and sub-contractor worked together to keep costs in bounds, and the increase was 'only' about 30%. Both parties had worked closely with the Ministry. It would be exaggerating to say that the claims were settled easily, but at least they were settled amicably.

The difference between these two projects, that originally were identical, is striking. The Korean project is filled with conflict at several levels. The Ministry has forced solutions on the contractor. The contractor has in turn forced solutions on the sub-contractors.

The French project was completed in relative harmony. In this project the involved parties found their respective natural roles and

acted in those roles. The action included an instant readiness for conflict at any time, although the basic attitude was co-operative.

In the Korean project the parties never could act in their natural roles, possibly because of cultural differences.

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In India, bargaining is an enjoyable and essential ritual.

I have an Indian friend who purchases annually to the value of $60 million. 'If the world price for a commodity is $60, then naturally I offer $55. No doubt the salesman will ask for f$65. The essence of the negotiation is in the way in which we carry on from there'. My friend was dumbfounded when I told him that it would never occur to a Scandinavian to talk of any price other than $60.

China, with its tremendous pride and history, does not easily reach out to Western cultures. The open policy has been changing the isolation of China, but the Chinese negotiate for every scrap of advantage — and every detail of technology — which they can acquire. This book goes to press in the immediate aftermath of the events in Tiananmen Square, events which are bound to have their influence on negotiating patterns.

Africa

The overriding feature in African culture is tribalism. It does not conform to boundaries drawn by 19th century colonisers. To do business it is important to have connections at the right level with the dominant tribe.

It is also essential to have agency arrangements which will ensure that the wheels of progress are properly lubricated.

Time is another dimension of negotiating. It is my experience that most African negotiators work a shorter day than their European counterparts, and are disorientated by a European day of 8–12 hours.

South America

Once again, the European dedication to time is not reflected in the South American culture. An appointment for a certain time does not really mean that time . . . it means sometime later . . .

There is a great deal of regionalism in South America. There is also a history of political instability, with new government —

probably from a new region — coming to power every four or five years. It is then normal practice for the new power group to cast aside the plans of its predecessors.

> The chairman of one major engineering company regularly quizzed his South American representatives, 'Who will be the next party in power? Which region will they come from? What projects have we in preparation for that region?'

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And so, after this brief summary of some points from different cultures, may we again advise more detailed study before venturing into heavy negotiations with an unfamiliar culture.