Negotiation Plan

|  |  |
| --- | --- |
| Contract: [Number] – [Name] | |
| Document number: [TRIM Record Number] | Date: Thursday, June 21, 2018 |

Contact details

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# Introduction

The following Negotiation Plan is will assist NSW Procurement staff when preparing for negotiations. It has been designed as a simple tool to help staff analyse issues and prepare successful negotiation strategies.

The guide will prompt staff to think through the government’s requirements and objectives prior to undertaking important negotiations as well as consideration of both sides’ needs, strengths and weaknesses in order to understand the overall context of the negotiation, leading towards an improved position.

Good preparation and planning are crucial to the achievement of successful negotiation outcomes.

Note that this document is intended to be used as a guide to the creation of a negotiation plan and that as such some of the requirements listed may not be applicable for every scenario.

Possible scenarios where this Negotiation Plan may be useful include but are not restricted to:

* RFx finalisation negotiations
* contract renewal negotiations
* contract variation negotiations
* contract management negotiations
* sole supplier situations (where appropriate).

# Negotiation plan

## Contract information and parties

|  |  |
| --- | --- |
| RFx/Contract Number |  |
| RFx/Contract Name |  |
| Organisations planned to take part in the negotiations |  |

## Participants and authority

### NSW Procurement

|  |  |  |
| --- | --- | --- |
| Name | Title | Role |
| Name | Job Title, Organisation | Chief Negotiator |
| Name | Job Title, Organisation | Secretariat |
| Name | Job Title, Organisation | Observer |

Note: A minimum of two NSW Procurement participants are required in all negotiations

### Supplier

|  |  |  |
| --- | --- | --- |
| Name | Title | Role (if known) |
| Name | Job Title, Organisation | Chief Negotiator |
| Name | Job Title, Organisation | Secretariat |
| Name | Job Title, Organisation | Observer |

Are you satisfied that the negotiators from the other side have sufficient authority to bring negotiations to a successful conclusion?

Yes

No

## Location and expected duration

Ensure the location is suitable and conducive to a positive outcome. Locations should be convenient, comfortable, allow for uninterrupted negotiations and have the capacity for teams to break out to confer and strategise.

|  |  |
| --- | --- |
| Location of negotiations |  |
| Planned negotiation start date |  |
| Planned negotiation end date |  |
| Expected number of meetings |  |

## Reason for negotiations

|  |  |
| --- | --- |
| Why are negotiations required? (provide supporting information) |  |
| Who has approved the decision to negotiate? (provide details of briefing note if appropriate) |  |
| Was the need for negotiations anticipated in the procurement strategy and were respondents advised of this in the RFx documentation? If not, seek legal advice before proceeding. |  |

# Probity information

## Probity

Are there any probity concerns with the proposed negotiation?

Yes

No

If so please outline the issues and comment on how they are being addressed.

|  |  |
| --- | --- |
| Concerns | Mitigations |
|  |  |
|  |  |
|  |  |

Have probity requirements been discussed with the negotiation team?

Yes

No

## Procurement conduct plan

The Procurement Conduct Plan must be provided to all NSW Procurement participants involved in negotiations and a signed Code of Conduct, Probity and Confidentiality Agreement included on the file.

Has each member of the negotiation team signed the Code of Conduct, Probity and Confidentiality Agreement?

Yes

No

|  |  |
| --- | --- |
| TRIM Document Number/s |  |

Are there any unresolved Conflicts of Interests for participants involved in the negotiation?

Yes

No

## Probity advisor

Is a probity advisor required?

Yes

No

If yes, please outline why a probity advisor is required.

|  |
| --- |
|  |

## Negotiation protocol

The use of a negotiation protocol should be considered where there is:

* significant contract value or amounts
* a considerable NSW government commitment
* sizeable liability or risk
* concern over the previous conduct of the other party.

Will a negotiation protocol be created and signed by both parties before the beginning of negotiations?

Yes

No

What are the areas of particular concern that warrant a negotiation protocol?

|  |
| --- |
|  |

## Government Information (Public Access) Act

Have the other parties been advised that files and papers pertaining to the negotiation may be subject to the Government Information (Public Access) Act 2009 and could potentially have to be disclosed?

Yes

No

## Reporting

Describe to whom as well as how and when the progress and results of negotiations will be reported.

|  |
| --- |
|  |

# Preparation

## Research

Is the subject matter which will form part of the negotiations fully understood by all members of the negotiation team?

Yes

No

List key areas that will need to be addressed

|  |
| --- |
|  |

Do you thoroughly understand the products/services and the supply market?

Yes

No

Have you completed the Supply Positioning tool?

Yes (include as an attachment to this plan)

No

List market issues that need to be taken into consideration.

|  |
| --- |
|  |

Have you conducted research on the company that you are negotiating with?

Yes

No

What have you discovered?

|  |
| --- |
|  |

Have you completed the Supplier Preferencing tool to better understand how they view us?

Yes (include as an attachment to this plan)

No

Have you read their financial reports?

Yes

No

What have you discovered?

|  |
| --- |
|  |

Are you aware of precedents that could assist your cause?

Yes

No

If yes what are they?

|  |
| --- |
|  |

Is an expert category and/or legal expertise required assist with the negotiations?

Category – Insert name if known

Legal – Insert name if known

No experts required

## Interests

|  |  |
| --- | --- |
| Our interests | Their interests |
|  |  |
|  |  |
|  |  |
|  |  |

## Our strengths and weaknesses

|  |  |
| --- | --- |
| Strengths | Weaknesses |
|  |  |
|  |  |
|  |  |
|  |  |

## Their anticipated strengths and weaknesses

|  |  |
| --- | --- |
| Strengths | Weaknesses |
|  |  |
|  |  |
|  |  |
|  |  |

## Risks

|  |  |
| --- | --- |
| Our risks | Their risks |
|  |  |
|  |  |
|  |  |
|  |  |

## Competitive pressure

|  |  |
| --- | --- |
| What competitive pressures does the other party face? |  |
| Can what is being offered be sourced elsewhere?  If so, how difficult would the sourcing be? |  |
| How important is this deal to them? |  |

## Alternatives to a negotiated agreement

|  |  |
| --- | --- |
| What alternatives do we have if the negotiation is lengthy and unsatisfactory or ends without agreement? |  |
| What is our best alternative to a Negotiated Agreement (BATNA)?  (Note: a strong BATNA position means a strong negotiation position) |  |
| What could improve our BATNA? Can we remove constraints and improve our BATNA position? |  |

## Their alternatives to a negotiated agreement

|  |  |
| --- | --- |
| What alternatives do we think they have if the negotiation ends without agreement? |  |
| What is their best alternative to a Negotiated Agreement (BATNA)?  (Note: a strong BATNA position means a strong negotiation position) |  |
| What could improve their BATNA? Can we remove constraints and improve our BATNA position? |  |

# Objectives and negotiation points

## Our objectives

List and describe our objectives in order of priority and preference. Consider if each objective is a must have or a nice to have.

|  |  |  |
| --- | --- | --- |
| Objective | Must | Nice |
| Objective A | X |  |
| Objective B |  | X |
|  |  |  |
|  |  |  |
|  |  |  |

## Their objectives

List and describe what you think their objectives may be, in order of priority and preference. Consider if each objective is a must have or a nice to have for them.

|  |  |  |
| --- | --- | --- |
| Objective | Must | Nice |
| Objective A | X |  |
| Objective B |  | X |
|  |  |  |
|  |  |  |
|  |  |  |

## Negotiation points

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Negotiation Point | Current Position | Revised Position | Must | Nice |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

## Concessions

|  |  |
| --- | --- |
| Concession | List the concessions that we will be prepared to consider |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

# Positions

## Our position

Clearly and systematically outline our starting position.   
[Guide Note: Consider the credibility of your targets. Are they too ambitious? Not ambitious enough? Are they realistic?]

|  |
| --- |
|  |

## Their anticipated position

Clearly and systematically outline what we think their starting position will be.

|  |
| --- |
|  |

## Best case scenario

Describe what you think our best case result would be.

|  |
| --- |
|  |

## Bottom line

What is our worst case acceptable negotiated position?

|  |
| --- |
|  |

# Approvals

This Negotiation Plan must be reviewed and approved by your director prior to proceeding with negotiations.

|  |  |  |  |
| --- | --- | --- | --- |
| Name | Name | Signature | Date |
| Prepared by |  |  |  |
| Reviewed by |  |  |  |
| Approved by |  |  |  |

# Appendix A - Qualities of an effective negotiator

An effective negotiator:

* prepares carefully, analyses and thinks the issues through
* uses every negotiation meeting to learn more and prepare further
* is confident, listens, questions and contests without aggression
* is adaptive to the prevailing atmosphere of the negotiation and can be resolved and firm when needed
* thinks before speaking, communicates clearly and creates an atmosphere of trust
* recognises position shifts and takes advantage of opportunities
* will look to pick up a benefit in return before conceding a point (i.e. If we agree to this, will you agree to that)
* considers strengths and weaknesses from both sides as well as time constraints influencing the negotiation and uses this knowledge to tactical advantage when appropriate
* understands where the obstacles are and can suggest imaginative and practical ways forward. Can produce reasoned options that can be beneficial to both sides
* works with the other side to generate a sense of ownership for solutions put forward
* focuses on interests, not on people and positions and never loses sight of objectives throughout the negotiation process
* compares the proposed solution(s) to his party’s BATNA before finalising any agreement
* consider role-plays or conducting a mock negotiation prior to the formal negotiation meeting.

# Appendix B – Negotiation roles and responsibilities

In considering the make-up of the negotiation team, take into account the relevant and complementary skills and knowledge of participants by:

* involving the manager who will be responsible for ongoing management of the contract, e.g. the category manager or client representative (if a client-specific contract)
* understanding whether the team has the required communication, problem-solving, technical and financial skills, along with an understanding of the relevant industry. The SWOT analysis tool may assist in considering the team’s strengths and weaknesses. If negotiations will include changes to the standard terms and conditions of government agreements, ensure you have sought legal advice prior to the negotiations and consider including a legal representative on the negotiation team
* using professional advisors if the negotiations are likely to be complex, where there may be difficulties reaching agreement, or if there is a need for specific expert advice
* understanding the extent and limits of your authority to negotiate terms. Clarify your delegation to act on behalf of NSW Procurement prior to the negotiation meeting
* not overloading the team! A cast of thousands may slow down negotiations and overwhelm the other party. Note that a minimum of two NSW Procurement representatives must participate in the negotiations.

|  |  |
| --- | --- |
| Role | Responsibilities |
| Chief or lead negotiator | * Final preparation of negotiation strategy * Set agenda, introduce team members * Keep “eye on the prize” – maintain overarching view of negotiation process and progress; keep discussions on track |
| Negotiation specialist/ advisor | * May be chief negotiator * Specialist advice on negotiation strategy and tactics |
| Negotiator | * Member of procurement team * Contribute to preparation of strategy * Participate in negotiations on the day |
| Technical expert | * Provide specialist technical knowledge to negotiation team * Determine if proposals during negotiation meet technical requirements |
| Legal advisor | * Provide legal advice on proposed terms and conditions * Determine if amended clauses are acceptable (subject to final sign-off by General Counsel) |
| Probity advisor | * Independent observer of negotiation process * Oversee preparations, negotiations and post-negotiation processes to ensure probity provisions are maintained |
| Observer | * Member of procurement or management team observing negotiations to ensure compliance with NSW Procurement process and procedures |
| Note / minute taker | * Administration or procurement support staff, responsible for documenting key discussions, drafting and finalising minutes, seeking concurrence from negotiation participants |

# Appendix C – Additional resources

The following resources are available to assist planning your negotiations

* Negotiation Protocol
* Negotiation Points Planning template
* Post Negotiation Review
* Supply Positioning tool
* Supplier Preferencing tool
* SWOT Analysis
* Balance of Power Tool

|  |
| --- |
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