



SESSION 3: TOP TIPS FOR NEGOTIATIONS

WIN In-House Counsel Day Canberra 2017

Friday, 24 February 2017

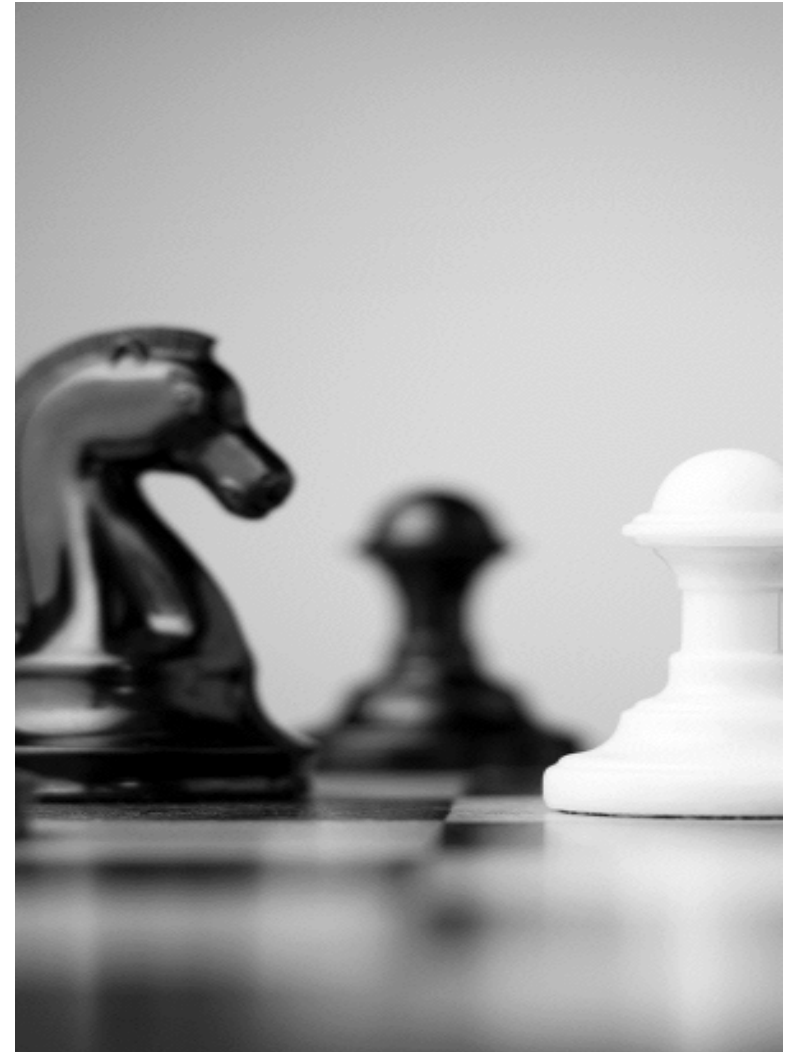
Top Tip: Every negotiation is different

- Rules and tips appropriate in some circumstances may not be in others.
- Negotiation strategies and styles need to be tailored to the unique circumstances at hand.



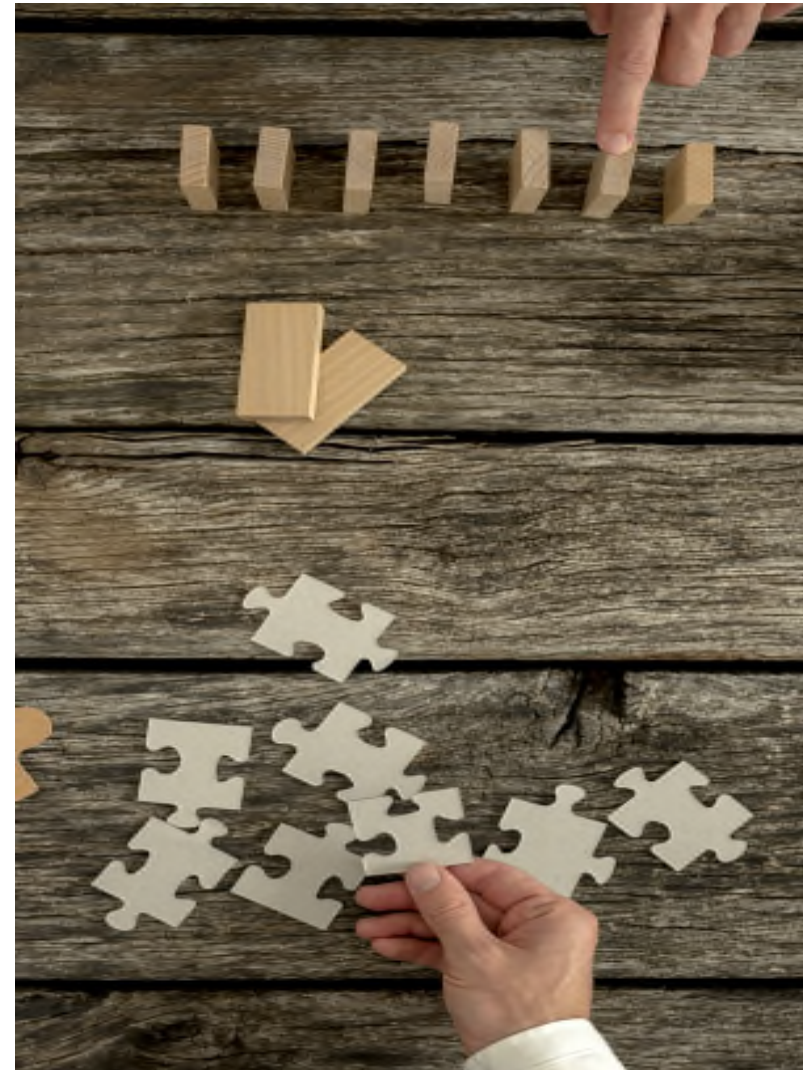
Top Tip: Everything is a negotiation

- Negotiations start from the first communication.
- Be careful of the messages you give.
- Everything you do and say can affect the outcome you want.
- Once you lose, control, you lose the ability to determine the outcome.



Top Tip: Plan, plan, plan.

- Planning prevents poor performance.
- Understand the goals.
- Understand the issues.
- Understand the roles.



Contract Negotiation Directive

- Key document for conducting the negotiation.
- Describes the issues to be negotiated and positions.
- Describes the negotiation authority of team members.
- Describes the administrative and other details.
- Do not disclose to the other side!

IACCM Survey

	The terms that are negotiated with greatest frequency	Terms which would be more productive in supporting successful relationships
1	Limitation of Liability	Scope and Goals
2	Indemnification	Entirety of Agreement
3	Price / Charge / Price Changes	Responsibilities of the Parties
4	Scope and Goals	Change Management
5	Liquidated Damages	Communications and Reporting
6	Payment	Price/ Charge/Price Changes
7	Data Protection/Security	Delivery / Acceptance
8	Intellectual Property	Performance/Guarantees/Undertakings
9	Service Levels/Warranties	Limitation of Liability
10	Warranty	Indemnification

Top Tip: Establish the rules

- What is the agenda / format / procedure for the negotiations?
- What is the scope of the negotiations?
- Are the negotiations confidential?
- Are the negotiations held on a without prejudice basis?
- Who are the parties attending?

Top Tip: Get the logistics right

- Pick an appropriate date(s) to negotiate.
- Pick the right location.
- Ensure that the resources required are available – and work!
- Be adaptable - if it's not working, change it.



Top Tip: Track your progress

- Keep good records
- Track progress of the issues.
- Maintain hygienic version control.



Top Tip: Take a break!

- Take regular and appropriately timed breaks.
- Don't rush into decisions which are not adequately considered.
- Check the progress against your goals – maintain perspective.
- Allow time to implement actions.



Top Tip: Act the part

- Establish a rapport.
- Less is more – listen!
- Look them in the eye.
- Act and dress appropriately.
- Avoid large amounts of paperwork / clean desk policy.



Top Tip: Address the concerns not the positions

- The winning negotiating strategy.
- Ascertain / explain the concern which the position addresses and the reasons for the concern.
- Explore / understand the real concern.
- Keep an open mind as to how the concern can be accommodated.
- Promote / consider alternative positions which meet the real concerns.





Ciparotti

"Page two, paragraph six: The moral high ground—we're prepared to yield totally on that point."

Top Tip: Don't feed the wolves

- It's all about leverage.
- Leverage = the ability to influence
- Always get something in return.
- Pick when to give / when to ask.
- The result of a successful negotiation is not one party “winning” at the expense of the other.



The Key Tactics

- The key tactics are:
 - don't bid against yourself
 - don't under-estimate the other side
 - be disciplined, persistent and patient
 - be positive
 - focus on the winning strategy / arguments
 - address difficulties as they arise

Top Tip: Dealing with manipulative tactics

- High opening bids
 - Aggression / anger
 - “Take it or leave it”
 - Threats
 - Sarcasm
 - Refusal to provide information
 - Diversionary tactics – e.g. wrong name
 - Personal abuse / bullying behaviour.
- Other tactics include:
 - limited authority
 - “this is all I’ve got”
 - deadlines
 - splitting the difference

Top Tip: Dealing with manipulative tactics

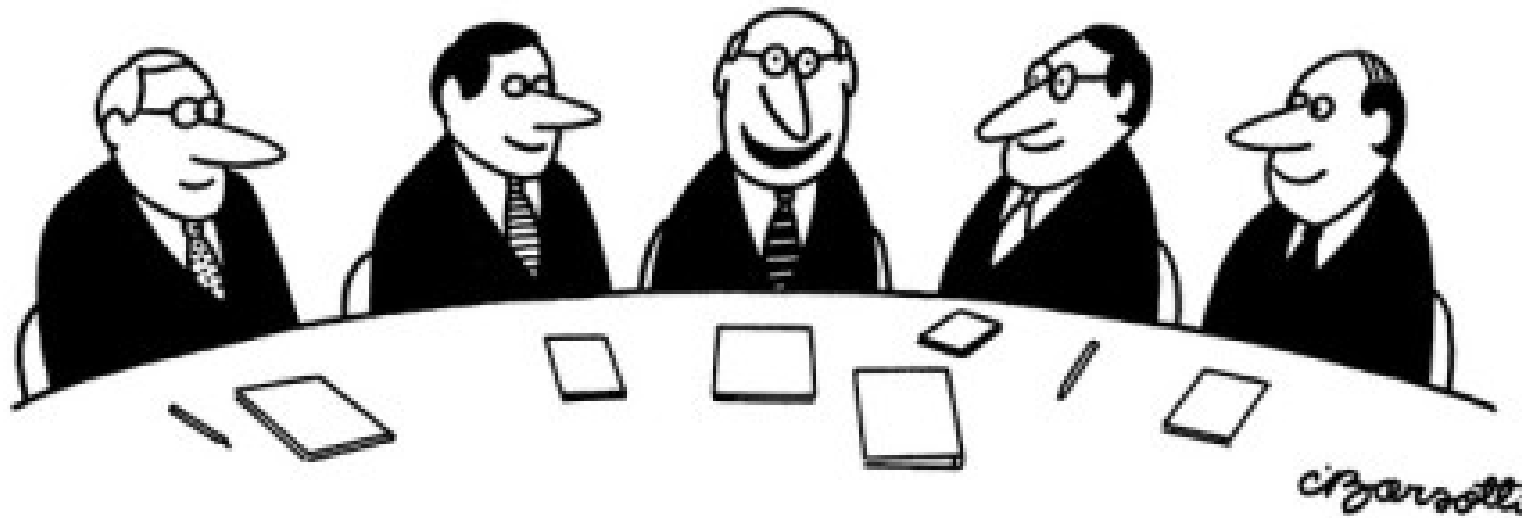
- Address manipulative/aggressive tactics as follows:
 - recognise the tactic
 - register your own feelings
 - remain calm
 - stay focused
 - explore the real interests
 - respond
 - escalate if necessary



Case Study: Dealing with difficult negotiations

- Issues included:
 - schedule pressure
 - poor preparation
 - unwilling participant / recalcitrant behaviour
 - documents not appropriate to be shared.

- Positive outcomes achieved:
 - acceptance of revised documents
 - improvements from the original RFT response
 - better payment mechanisms and profile
 - better rights for the agency.



"Good, we're all agreed. I like it when we're all agreed."