



M-011 CONSTRUCTION NEGOTIATION

TARGET AUDIENCE & DESCRIPTION: This information is aimed at everyone involved in the construction industry from the supplier, sub-contractor, main contractor, design team, developers and advisors. It is intended to educate on the subject of negotiation.

INTRODUCTION

The construction industry is a complex and multi-faceted one. It involves designers, quantity surveyors, engineers, manufacturers, suppliers, sub-contractors, main contractors and clients all interacting to produce a product under demanding timescales and budgets. Unfortunately, in those circumstances disputes often arise between those involved in the construction process. Disputes can be expensive and destroy the relationships that the parties have worked so hard to build and maintain.

In these times with the dark cloud of the current financial crisis overhead the normal problems of construction industry are exacerbated. Disputes are on the increase, there is internal conflict within organisations and parties to contracts are unable to fulfil their obligations. How can these issues be resolved? How can they be resolved quickly and effectively to allow the construction industry to recover from the impact of the financial crisis?

NEGOTIATION

Negotiation is a useful and effective way to resolve disputes and conflict. It involves the disputants communicating with each other to arrive a solution that resolves the dispute. It can be used at any stage of a dispute and can involve the parties alone or the parties' and their legal representatives. It allows the parties to resolve the matter that they have been fighting about. It can be quick and it can be inexpensive.

Negotiation is something that we all use on a daily basis, whether it's deciding with a designer what floor finishes should be used, or something larger like selling your home – we all communicate to arrive at a desired goal. The other party will have goal, too – whether that is to get certain payment terms for the floor finishes or to buy the home that's being sold.

We use negotiation to arrive at a desired goal and we use many different techniques to do that. We may try to force the other person to give us what we want, we may ask nicely or, we may agree to use objective criteria to achieve to determine the dispute perhaps using Royal Institution of Chartered Surveyors Standard Method of Measurement 7 to measure the works rather than Principles Of Measurement International. Whatever method we choose we should have researched the subject thoroughly first and prepared for the negotiation.



There are many aspects that form a negotiation such as what is said, how we say it, our body language, the other person's reaction and our reaction to that, how much we desire or need that which is being negotiated over and, whether or not we have a Best Alternative To a Negotiated Agreement ("BATNA").

The BATNA is the alternative that is available if the negotiation fails. For example, the potential buyer cannot afford the price of the new home, so, his BATNA may be to stay where he is and save for longer or to put an offer on a less expensive home. The important point to grasp here is that there is a fall-back position.

The BATNA is a very important tool to measure the value of the offer on the table against what you may already have i.e. the BATNA. The BATNA is not to be confused with the lowest offer that you would accept or walk away point. The BATNA is the other option that you have. The lowest acceptable offer is something that you would be willing to accept when negotiating with the other person. The walk away point may be when the other person is aggressive or not listening to what you are saying it does not need to be financial.

Negotiation is a complex process and to ensure that you are in the best position to achieve you goal you must prepare, prepare and prepare. That is how to succeed. There are many methods that one can use when negotiating here is one that is used by the Harvard Negotiating Programme:

HARVARD NEGOTIATING PROGRAMME METHOD:**1. Separate the People from the Problem.**

We are all human. It is sometimes easy to forget that we are negotiating with people when corporate firms and the like are involved. People have feelings and values and come from different backgrounds. As people we are unpredictable. Quite often the people and the problem become entangled. When we separate the two we can work collectively to resolve the problem that exists. To do this we must listen to the other person's side of the story and try to understand it, see it from their point of view. Try not to blame the person for the problem. It has happened now how do WE resolve it. Understand that emotions may be expressed and allow it to happen in a constructive manner. Look for joint objectives and opportunities.

2. Focus on the Needs

By listening to what the other person has said and by asking questions you will be able to understand what the person actually needs. Like the story of the two sibling little girls quarrelling over the orange so the mother cuts it in half and gives each one half. Actually, one girl wanted the peel for baking and the other wanted the pulp for juice. So they did not get what they really needed. If the mother had asked them: what do you need the orange for then a more satisfying solution could have been reached. Try to determine what the other person needs and get your need across too. Perhaps the problem has resulted as a result of miscommunication.

3. Invent Options

During a negotiation it is possible that not every avenue or opportunity has been explored. Perhaps there is scope for new ones. Creative thinking can bring these ideas and opportunities out. Perhaps a contract final account can be settled at a lower figure and for accepting that the other party is given another contract without the need to tender so long as they use the same rates as before. There is always an alternative.

**4. Use Objective Criteria**

If a deadlock arises where you cannot agree on how to resolve the problem then it may be worth suggesting an objective criteria to resolve the dispute. This could be having a neutral third party from a professional organisation value the works or using a particular method of measurement to determine the quantities. Whatever it is before you make that suggestion review the objective criteria available and suggest one that best suits your needs. Use an objective criterion removes the people from the problem and should be objective as the name suggests.

Negotiation is an excellent, inexpensive and efficient way to resolve conflict and in these economic times one that is well worth considering.



GENERAL

No.	TITLE/DESCRIPTION	LINK/Reference
1	Articles on Negotiation	http://www.core-solutions.com/page/154-articles-on-negotiation
2	Articles on Negotiation	http://www.negotiationtraining.com.au/articles
3	Articles on Negotiation	http://www.batna.com/overview_v4.html
4	Negotiation Course and Articles on Negotiation	http://www.pon.harvard.edu/?floater=99
5	Information on Negotiation	http://en.wikipedia.org/wiki/Negotiation
6	Book on Negotiation	http://books.google.co.uk/books?id=sjH3emOkC1MC&printsec=frontcover&dq=getting+to+yes&lr=&cd=1#v=onepage&q&f=false
7	Book on Negotiation	http://books.google.co.uk/books?id=TDpWtEhje5cC&printsec=frontcover&dq=getting+to+yes&lr=&source=gs_similarbooks_s&cad=1#v=onepage&q=getting%20to%20yes&f=false
8	Book on Negotiation	http://books.google.co.uk/books?id=pe5ZY9PSbcgC&printsec=frontcover&dq=getting+to+yes&lr=&source=gs_similarbooks_s&cad=1#v=onepage&q=getting%20to%20yes&f=false