Contract negotiation melds science and art. You can apply standard techniques and responses to various approaches used by vendors’ sales teams when you’re acquiring products or services — that’s science. You employ these standard techniques and responses in ways appropriate to your personality to create the most beneficial outcome for your institution — that’s art. The approaches and considerations discussed in this article can work for any size institution and for any manager acquiring products from desktop computers to large Unix/NT servers, networking equipment to phone switches, individual or multi-station software licenses to campus-wide software licenses, or various vendor services.

An important premise underlies successful negotiations: vendor sales teams are neither your best friends nor your worst enemies. Through the sale of a product or service, they can help you achieve your goals. On the other hand, the initial offers typically suggest they aren’t looking out for your best interests. You need to adjust your perceptions of the sales force’s motivations and focus on what you’re trying to accomplish — the best product or service for the best price.

The sometimes elaborate dance involved in acquiring products or services doesn’t have to be onerous or distasteful. You can consider many options and practical “can-do’s” when negotiating for goods and services within the information technology spectrum. Much of our experience derives from successful negotiations with both hardware and software vendors on behalf of the University of California at Davis. Knowing what’s possible and good techniques for handling the sales force can lead to the outcomes you wish.

The Mechanics of a Negotiation

Negotiations begin with the mechanics. Which components are negotiable and which aren’t? What expectations can you reasonably have and successfully complete a negotiating session? For example, many of us think the acquisition process ends with the selection of a vendor from a Request for Proposal (RFP) released by our institution. Practically, this is when the negotiating process actually begins. Now you can affect the final purchase price, ongoing support costs, and associated terms and conditions that define your institution’s relationship with that vendor. In Table 1, “level of criticality” designates which items to actively negotiate and where to hold firm to your objectives. It highlights items important to you versus those you could give up in exchange for acceptance of your terms on the highly critical components.

Table 1

<table>
<thead>
<tr>
<th>Component</th>
<th>Level of Criticality</th>
<th>Outcome Desired</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial discounts</td>
<td>High</td>
<td>Go for 30–90 percent off list price</td>
</tr>
<tr>
<td>Annual support costs</td>
<td>High</td>
<td>Aim for 15–20% of net cost with 5–8 percent cap on increases per year</td>
</tr>
<tr>
<td>Future discounts</td>
<td>High</td>
<td>Apply to all products available under agreement for 3–5 years</td>
</tr>
<tr>
<td>Warranties</td>
<td>Medium</td>
<td>Specify performance measures and remedies</td>
</tr>
<tr>
<td>Training and consulting</td>
<td>Medium/Low</td>
<td>Discount off normal training offered by vendor; on site and off site</td>
</tr>
</tbody>
</table>

Deep Discounts

One major consideration when negotiating an acquisition or contract with a vendor is your budget. Nothing is more disappointing than to find you underestimated what a product would cost or what sort of educational discounts a vendor might offer you. A fundamental if sometimes frustrating fact is that the more money you have to spend, the greater the influence you have on the size of the discount the vendor will accept. Sales teams don’t just look at the net revenue you provide; they have an easier time convincing their executive management to approve additional concessions if the deal has a high pre-discount list price.

Not surprisingly, the discount possible also depends on how much margin exists relative to the product you’re acquiring and the degree of competition in that industry. In hardware, for example, you can expect to see discounts ranging from 20 percent for desktop systems (depending on volume) to 60 percent for servers. We’ve often seen discounts as high as 30 percent off list price regardless of how much you spend. Good discipline in negotiating the price can land you discounts of 60 to 90 percent. Foresight can help you extend these discounts to multiple years.
Typically, small independent or private educational institutions rely more on tuition, fees, and various endowments to support their educational missions. These schools may also have applied for various federal or state grants to fund many strategic objectives. Given this environment, where funding is a constant question with regard to technological investments, it is realistic to assume that the techniques and approaches laid out in this article still apply. We believe that this article faces many challenges when it comes to acquiring products and services, and these techniques and approaches can be leveraged with other extension strategies to achieve a satisfactory outcome. Extension strategies can include a number of possible vendor or consortium collaborations to work a deal. (See the sidebar “What does the Future Hold?”)

**Vendor Approach:** How much do you have to spend? This is probably the most common question asked at the beginning of any negotiations. Basicall...
A well-structured negoti-
ating team has several roles. An institution can concentrate on these roles into one person or delegate them to as many people as desired. Different institutions also have different arrangements when it comes to the role of the purchasing department, which generally tries to get the best price for the institution. We’ve found that a good understanding (if not ongoing relationship) between purchasing and IT is essential to working out a good deal. Many times purchasing has a predefined template of institu-
tional terms and conditions (such as indemnity clauses) that protect the institution. On the other hand, IT profes-
sionals or the lead business unit staff usually have a better feel for the product composi-
tion, margins, and negotiable versus non-negotiable ele-
ments. Paramount is having only one voice or stance be-
tween the institution and the vendor. Arguments in front of the vendor can hurt your cause, and the vendor will exploit the situation by siding with whichever side will gain them the best price. Prior to going into a negoti-
ating session, each person must understand his or her respective role and not undermine or contradict the lead nego-
tiator in front of the vendor.

Lead negotiator: This per-
son channels the needs and desires of everyone else into a single cohesive negotiating strategy. Some people like to collect all of the issues and present a single reason-able stance to the vendor. Others like to parse out the issues to the vendor over sev-
eral days with a standard “oh, by the way.” Each method depends on the personalities involved, but typically the vendor reps would prefer to know all the issues up-front rather than having to go back to manage every two days with what they see as small demands. Also, in favor of the single approach, you can toss a few red herrings into the larger mix of issues. By these we mean items that you would be willing to negotiate down or out in exchange for concessions elsewhere. This tacts from Henry Krisinger’s proposed strategy of “linkage diplomacy.”

Secondary negotiator: Sometime it begins by having a tag-team approach to nego-
tiating. You could consider doing a good guy/bad guy routine, where the first nego-
tiator hits the vendor hard with the requirements and the second negotiator sav-es any hurt egos. Having some-one who’s reasonable by the vendor helps ensure that hard stances don’t drive the vendor away from the deal completely. Another approach might be to have the first person intro-
duced to the vendor as the negotiator and, if they’re not up and the vendor wants to go over that negotiator’s head, introduce the “second negotiator” (who has been in- vested the whole thing) into the process.

Researcher: This person does in-depth research re-
other institutions. We’ve found it valuable sometimes to discuss with other institu-
tions what sort of results they’ve gotten with negoti-
ating similar deals across the country. It helps to know if what you’ve negotiated is rea-
sonable relative to similar deals. This person can also look up similar products and the vendor’s current stock prices, fiscal quarter periods, fiscal year-end period, and organizational structure. It can also help to actually read contracts. If you’re not negotiated, and this person can get copies gathered and dis-
tributed to the negoti-
ting team. This person can also act as a conduit with management during the actual negotiating process.

Budget analyst: It’s always important to have someone running the numbers. Is the proposed offer within the allotted budget? Sometimes the vendor will run several scenarios by you. It helps to know the total cost of owner-
ship relative to each of those scenarios.

Vendor Approach: Who is your deci-
sion maker?

You need to understand the objec-
tive behind this question. There’s nothing more important to the vendor during negotiations than knowledge of your internal operations. Working out-
side your negotiating process, the ven-
dor has a better chance of achieving the goals of maximizing profits and minimizing risks.

Your Action: Limit the vendor’s access to your organiza-
tion, keep your senior management informed of the sta-
 tus of the negotiations, and stick to your objectives.

Recognize that you and the vendor reps aren’t friends at this point; you’re not enemies, either. You also need to understand that you and they have different objec-
tive. Your objectives are clear — you don’t want them to maxi-

mize profits and assume little risk in this endeavor. On the other hand, you want to minimize your costs and ensure that you have warranties pro-
vided through the vendor contract that are minim-
izing risk. In a good negotiation, neither of you will achieve the extremes of these conflicting goals. Instead, you’ll find a compromise between them that satis-
ifies both sides.

Additionally, you should make sure you know who’s making the decisions for the vendor. Some of the most frus-
trating negotiating sessions result when the vendor sends someone without authority to negotiate. This quickly becomes apparent when that person has to keep going back to management. If you have a tight timeframe, let the vendor know that the next negotiating session must include someone who can make on-the-spot decisions for the vendor. On the other hand, if you have a situation where the vendor wants something from you that you aren’t prepared to provide, you can employ the same tactic by saying, “I need to check with management.”

A good negotiating team should be allowed as little as one week and as much as a month to pin down the details of a solid contract.

Vendor Approach: Try this product for 45 days free! The vendor hopes to capitalize on your busy schedule or hook you so that you must have the product right now, thus reducing your leverage in negotiations. If you’ve ever signed an agreement to get 10 free CDs for the price of one, you know the end result of accepting this type of offer — you get the free CDs, but end up paying for additional CDs that you didn’t want.

Your Action: Don’t accept a trial offer that limits your reviewing time before you must make a purchase.

If possible, complete your negotia-
tions without a trial offer. Alterna-
atively, require the vendor to take responsibility for returning the prod-
uct before the trial period ends.

Vendor Approach: This is absolutely our best price.

The vendor hopes you’ll accept this as true and complete the negotia-
tions because it simply isn’t necessary to keep going. Your Action: Don’t believe it! Ask them to prove it to you.

Ask the vendor reps to put it in writ-
ening or add a “most favored nation clause,” which basically assures that you receive discounts or other contract advantages negotiated by other cus-
tomers. If you’re still uncomfortable, not knowing for sure that you got the best deal for an extended period of time, you’ll accept the audit clause. This works best if you and the vendor agree on a reputable third party to perform the audit. Finally, don’t accept this price until you hear a firm “No” for anything lower, and don’t be afraid to walk away if the price kills the deal for you.

Vendor Approach: We will give this price to you, we’ll have to pass it on to our other clients.

The vendor reps don’t want to set a precedent that might force them to offer this price to other clients.

Your Action: Focus on the issues that make this deal different from the stan-
dard contract.

If this doesn’t work, ask the vendor reps for a list of precedents granted other customers. If they truly do keep track of this information, they should be able to provide it. If they cannot produce a list, then question their logic. If all of the above fail, you may need to take a temporary break from negotiations to do your own fact-finding. You should have a list of what other companies are paying for their products. You’ll be surprised at how much information you can obtain through this process that can help you in negotiating a good price. Also, this will definitely get the vendor sales team out of their comfort zone. The last thing they want is for you to walk away while they’re still interested.

Vendor Approach: We can’t give you anything better than the federal

Obviously, the sooner the vendor can make a sale, the sooner the sales

team can move on to a new customer. Don’t let this common ploy rush you through your decision-making process. Many times purchasing has a predefined template of institu-
tional terms and conditions (such as indemnity clauses) that protect the institution. On the other hand, IT profes-
sionals or the lead business unit staff usually have a better feel for the product composi-
tion, margins, and negotiable versus non-negotiable ele-
ments. Paramount is having only a single voice or stance be-
tween the institution and the vendor. Arguments in front of the vendor can hurt your cause, and the vendor will exploit the situation by

Your Action: Stay with your game plan and nego-
tiation process.

Most campuses think this stage is fast and easy because they assume the price is quoted is probably the best price for the best product. Not so obvious is that dur-
ing this process a good negotiating team could in fact leverage the institutional funds to stretch out longer periods or to get even better conditions. This won’t happen if you must negotiate the deal in just a couple of days. A good negotiating team should be allowed as little as one week and as much as a month to pin down the details of a solid contract. In a multicampus deal, you should allot even more time for each campus to work through the local requirements. Even in those cases, however, there should be one lead negotiator (see the sidebar “Composition of the Negotiating Team”).

Vendor Approach: It’s the end of the year, and we’re willing to make you a great deal.

The vendor knows your year-end date and tries to leverage this in proposing an offer that you just can’t refuse. Again, you’ll likely get a good deal in one area while sacrificing in others.

Your Action: Find out their year-end and quarterly reporting dates.

Don’t feel pressured when the sales team tells you they must have a signed agreement by a certain date or the entire proposal is off the table. Stay with your own game plan and try to schedule negotia-
tions close to their key dates to take advantage of quota milestones. We made the best deals for our institution when the vendor was trying to make quarterly or year-end quotas.

Vendor Approach: Your decision will only make a

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government contract (GSA pricing — General Services Administration, the federal government’s purchasing agent).

The vendor wants you to think that all contracts negotiated must have terms less favorable than those under the federal contract. Hmm, this seems to come up only if you negotiate for less than the federal government contract. The vendor reps are really saying that they have a corporate policy, which they’re using as an excuse not to “go one better” unless it’s financially lucrative. In other words, they won’t give better terms than GSA on small deals, but will consider better terms on deals that offer what they would consider serious revenue.

Your Action: All contracts are different. Unless your contract is exactly the same as the federal government contract, the GSA price is irrelevant. Ask for a copy of the federal government contract if they insist that the two are the same.

Being aware of vendor approaches before beginning negotiations takes you halfway to a fair playing field with the vendor. So, continue to learn about various vendor approaches as much as possible, as you can be assured that vendor negotiators undergo constant training. You may not hit a home run every time, but you will definitely increase your batting average with this knowledge.

After Negotiations End

We’ve discussed a number of tactics and mechanics to help you complete a successful negotiation. Now, what do you do after you’ve signed the agreement? Many of us simply put the agreement aside and go on with our business, often forgetting to revisit the terms to ensure that the vendor successfully meets all of our negotiated concessions. This isn’t a good idea. First, set up a system to manage the contract and the deliverables. This will ensure compliance with your vendor and your users. At this point, you should have already addressed who will manage the contract and the personnel involved in the management process. The personnel involved should not be chosen based on the dollar amount of the contract, but on the complexity and skills needed to carry out the necessary tasks. Next, set up routine reviews of the contract and take immediate action if any discrepancies show up. You should have performance measures and vendor contacts established to address problems. By doing this, you’ll reveal problem areas before they become true problems.

Many commonsense techniques can be used to work a deal. It all comes down to some fundamental truths. First, if it’s not written into the deal, it’s not part of the deal. We’ve been hurt by salespeople who disappear after concluding the deal, making all the verbal assurances null and void. Get it in writing if you want it to mean anything.

For example, one of our campus projects aimed to improve the ability to share information through a distributed file system. The university had an existing contract for a software package to provide this capability and contacted the vendor to find out if the changes proposed would affect our contract. The vendor essentially wrote a new contract and established new pricing. Their new quote would have increased our licensing fees by $80,000 and our annual support by an additional $20,000 per year. This shocked the project team. They brought in departmental staff responsible for negotiations in their unit. After a detailed review and many discussions with the vendor, we pointed to details in the written contract that meant we wouldn’t have to pay additional charges for this project.

This negotiation highlights several techniques discussed in this article. Namely, if it’s not in writing, it’s not in the contract. Rewriting after the fact isn’t an option. Additionally, this vendor tried to stampede us into accepting the new quote or face a price increase by using the “you must take action by this date” technique. Neither tactic worked. Throughout the negotiation we felt confident that if we kept the lines of communication open and worked with the vendor, we would both come to an agreement that would satisfy everyone. In the end we did. It’s all about attitude. You need to adopt an attitude that fits your personality, yet effectively persuades the vendor to go the extra mile.

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