



Ten Keys to Successful Negotiations

By Ward Kever, CTG HealthCare Solutions Executive Director of Executive Services

Whenever I have a chance to review a CIO position description, I often notice that one of the most important CIO job skills has been overlooked or mentioned only as an afterthought: the ability to negotiate a favorable contract for software, hardware, or consulting services. While some CIOs may engage a consultant to help with contract negotiations, most CIOs and other C-suite individuals, many of whom have had considerable exposure to such negotiations, choose not to do so.

Like most of us, CIOs generally have little actual, formal training in contract negotiation and instead acquire on-the-job experience with each negotiation. The process is time-consuming and often involves the feeling that you're buying a used car. In over thirty years of experience in negotiating with vendors, I've identified a few important points you may want to keep in mind the next time you undertake a contract negotiation.

- 1. Negotiation is a three-act play.** It's important to understand the overall shape of the negotiation process, which is just like a three-act play. Act one features oratorical fireworks, with both parties outlining unachievable expectations. Act two introduces the realistic resistance points, while Act three seeks resolution in the form of compromise and bargaining on the issues to mutual satisfaction. One of the biggest mistakes a CIO can make is to start with the vendor's contract and jump prematurely to act three to seek immediate agreement.
- 2. Timing is everything.** Always plan negotiations to end in the last week of a quarter or fiscal year. Much better deals can be obtained when the sale is necessary to reach quarter-end forecast.
- 3. Plan your strategy before you negotiate.** The beginning of a successful negotiation should always start with an internal planning session to define your strategy and approach. Never initiate deliberations or negotiations by working from the vendor's contract. Instead, identify all the issues that you want to include in a contract. Make a list of those items and decide what you would like to see as the outcome. The list could include the following:
 - Costs (initial purchase, training classes, maintenance, etc.)
 - Payment terms
 - Difference between warranty and maintenance period
 - Right to upgrade hardware without additional software costs
 - Right to future software (versions, additional modules, and new products)
 - Acceptance testing procedures and conditions if software fails
 - Transaction response times (not just averages) on recommended hardware
 - Assignment of qualified vendor staff and rights to discharge
 - Contractual restrictions that may incur additional expenses if exceeded

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The above list is by no means all-inclusive. Rather, it's just the beginning of what needs to be addressed. In fact, it may be worthwhile to have an experienced contract negotiator work with your staff to advise on such important negotiation points. The support of someone with experience in the vendor's products from an implementation and service perspective, as well as expertise in negotiations, can significantly speed up the process and improve the result. For software applications, it's also important to include someone who knows where the contractual restrictions reside within a specific vendor's software contract. This is especially true if you are considering one of the 'factory build' options now offered by some software vendors.

- 4. Always negotiate on your own turf.** Let the vendor worry about how negotiations are going versus the schedule to catch a plane. In fact, find out when the vendor representatives have to leave to catch the plane since this will dictate when they become more interested in yielding on tough issues. The home-court advantage allows you to be rested and gives you access to all your resources.
- 5. Set your initial expectations high.** The greater the expectation, the better the end result will be. Make certain the vendor representative has the authority to negotiate all aspects of the contract and that his/her income will not be significantly impacted by the final price. It's a big mistake to negotiate with a local salesperson who can discuss only some of the costs ("...but maintenance fees are outside my jurisdiction"), and whose income will be positively affected by keeping the price as high as possible. The senior VP of sales, or even the CEO, has more discretion in negotiating all the costs.
- 6. Avoid naming a 'vendor of choice'.** The normal selection process that leads up to contract negotiations consists of conducting an evaluation, making a selection, and then informing a vendor it is now the 'vendor of choice'. Then the contract negotiations begin. But what incentive does a 'vendor of choice' have to negotiate aggressive prices and terms? If at all possible, never announce a vendor of choice. Instead, tell the vendor that it's one of two finalists: "We're down to you and vendor B. Both choices are acceptable to my constituents. We'll start with you and try to conduct a successful negotiation, but if we fail, I'm prepared to move on to vendor B—in which case, we won't come back." Alternatively, you can represent the choice as "staying with the current situation for another year or two".
- 7. Employ the 'parking lot' concept.** Rather than negotiating each point of contention as it's identified and discussed in the negotiation process, take advantage of the 'parking lot' concept. Each time you're unable to come to agreement on a specific point of negotiation, allocate it to the 'parking lot': a list of open items. Then, after identifying all of the points of disagreement, begin to address the parking lot items. This approach lets you define the extent of disagreement before the 'real' compromises begin.
- 8. Negotiation is a two-way street.** Never grant a concession without obtaining a concession in return. That's a key reason for the parking lot. A good contract is a win-win for both parties. If the negotiation is extremely lopsided, the party on the short end will invariably feel abused and disgruntled in the long run. Over time, those feelings can become a real obstacle to maintaining a vendor's interest and best standards of service. Both parties must feel respected and valued.



In closing, let me remind you that contract negotiations are the beginning of a relationship—not the end of one. It's important to conduct them in a positive spirit rather than attempting to take undue advantage of a vendor or wring out every last possible dime.

- 9. Keep an eye on the clock.** Allocate enough time in the overall schedule to allow 'time-outs' where you can meet internally with your team. Allow enough time to negotiate efficiently and effectively with your prepared list. Long, drawn-out negotiations are the frequent result of inadequate planning, and tired negotiators are not optimally effective. Sensitivity to the clock also enables you to plan on negotiating the tough items as the vendor's departure time is becoming critical: the vendor team is likely to become much more agreeable as that time approaches.
- 10. Don't overlook the small things.** Once you have a deal and have agreed to move forward, consider addressing a few 'nibbles'. These are small negotiating points that will be of value to you and are unlikely to be major concerns for the vendor. The vendor may be willing to agree to let you send your staff to a training class at a reduced rate or on a 'space-available' basis, for example.

In closing, let me remind you that contract negotiations are the beginning of a relationship—not the end of one. It's important to conduct them in a positive spirit rather than attempting to take undue advantage of a vendor or wring out every last possible dime. Both parties should be able to feel good about the negotiation and the future success of the project. Vendor/client relationships must be nourished and tended by both parties to attain ultimate satisfaction and achievement. After all, it's in everyone's best interest to achieve a successful endeavor that you can share with others. In today's world, multi-million dollar deals can make or break your success—on either side of the bargaining table.

I hope these thoughts have been of some value to you. My CTGHS associates and I will gladly assist you in preparing for any upcoming deliberations, if you find you need assistance. Good luck!

Serving CTGHS as Executive Director for the Executive Services Team, Ward Kever has a strong background in developing and implementing strategic and tactical IT systems in large hospital settings and specific solutions for applications within the healthcare industry, with emphasis on strategic planning. Formerly VP and CIO of the University of Pennsylvania Health System and Senior VP and CIO of the Medical Center of Delaware (now Christiana Care), he is a founding trustee of the College of Healthcare Information Management Executives (CHIME), a co-founder of the Healthcare Information Systems Executive Association (HISEA), and a former HIMSS John E. Gall CIO of the Year Award winner. For further information, please contact him at ward.keever@ctghs.com