

# Nile Basin Initiative (NBI) - Water Resources Planning and Management Project (WRPMP)

## PROJECT PLANNING AND MANAGEMENT

### TRAINING TOPIC 5

#### CONTRACT PREPARATION, NEGOTIATION AND STAKEHOLDERS INVOLVEMENT



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## Abbreviations & Acronyms

ADB	Asian Development Bank
AfDB	African Development Bank
CBNRM	Community-Based Natural Resource Management
CBO	Community-Based Organization
COMPASS	Community Partnerships for Sustainable Resource Management
CSA	Cost-Sharing Agreement
CURE	Commission on Urgent Relief & Equipment
EC	European Commission
EDETA	<a href="#">Edinburgh &amp; District Employers' Training Association Limited</a>
EPC	Engineering, Procurement, Construction
FIDIC	Fédération Internationale des Ingénieurs Consultants ( International Federation of Consulting Engineers )
GTZ	Gesellschaft für Technische Zusammenarbeit German Agency for Technical Cooperation
HR	Human Resources
KfW	Kreditanstalt für Wiederaufbau German Development Bank
MDB	Multi-lateral Development Bank
NGO	Non-Governmental Organization
OECD	Organisation for Economic Co-operation and Development
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
WB	World Bank

## Preface

In order to illustrate the relationships between different Training Topics, we need to go beyond the Project Planning Management framework. The following diagram schematically depicts the Strategic Planning and Management Process where each Training Topic is highlighted by its order number.

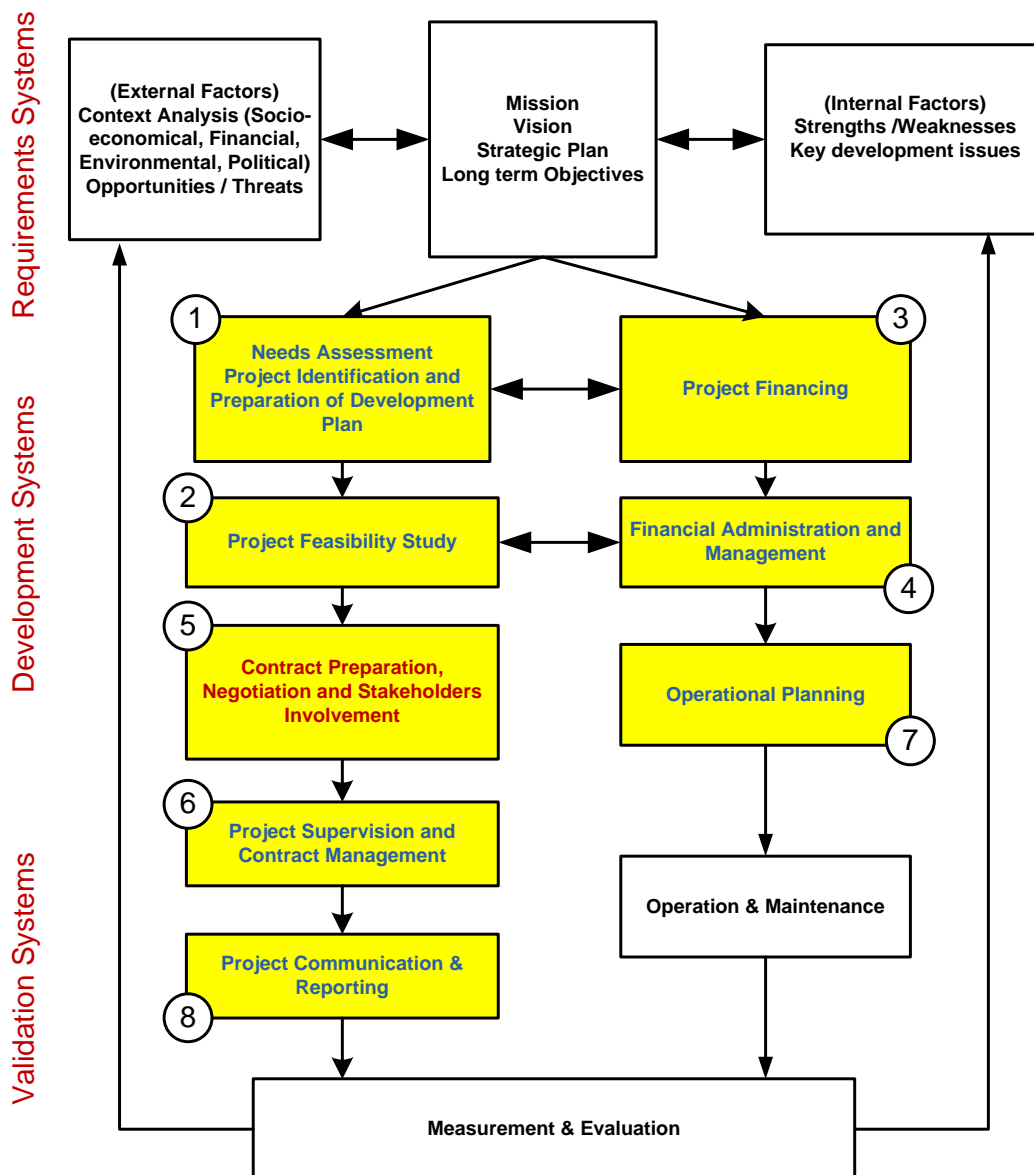
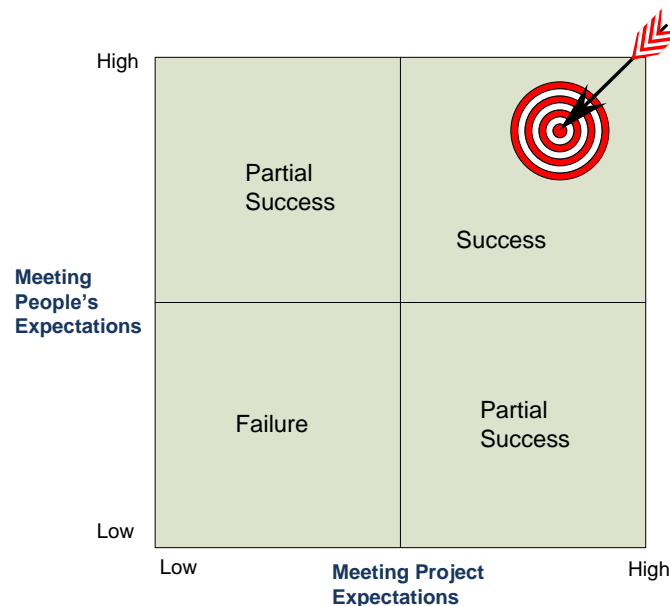


FIGURE A  
GENERAL LAYOUT OF THE TRAINING TOPICS WITHIN THE FLOW-CHART MODEL OF THE STRATEGIC PLANNING AND MANAGEMENT SYSTEM

## 1 INTRODUCTION

Over the past three decades, project organizational structures have made the transition from a top-down, autocratic structure to a team-based, values-based structure<sup>1</sup>. This shift has caused a change in how people view and execute projects. The ideal goal in project management is to “achieve results and feel good about it.”

As Figure 1 shows, project success has two dimensions of performance. First is meeting project expectations. This means that the results meet project objectives, which includes being on time, on spec, and within budget. Second is meeting people’s expectations: this means that values are respected, people feel fulfilled, and they succeed together as a team. High performance in one or the other is only partial success; true project success requires meeting both people and project expectations. Project managers lead both projects and people.



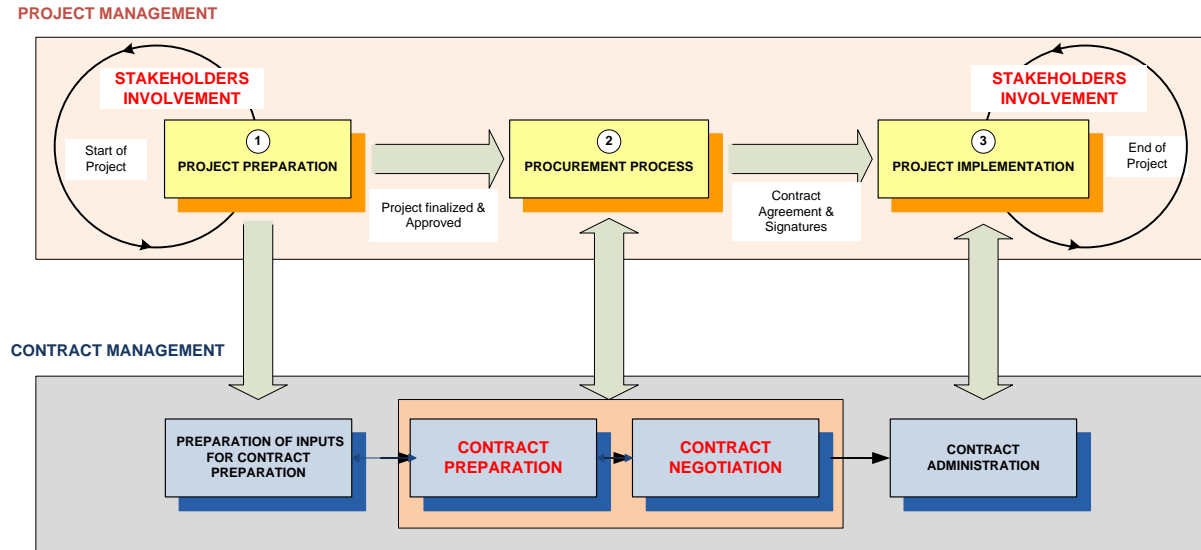
**Figure 1. Project Success**

In this perspective, the preparation of the contract, the way it should be negotiated with the selected bidder as well as how well the targeted stakeholders’ concerns are taken into account in the project preparation/implementation are among the most crucial subjects to consider.

This document is a Manual for the preparation and negotiation of a contract and the stakeholder involvement in project preparation/implementation.

The following Figure schematically depicts the positions of the two above topics within the project management framework. The contract management is included in the procurement process, but has been singled out for the purpose of demonstration.

<sup>1</sup> “Human Factors in Project Management: Concepts, Tools and Techniques” by Zackary Wong, Wiley 2007



**Figure 2. Relationships of the Manual topics within the Project Management Framework**

### *Training Objectives*

Upon completion of this seminar, the participant will be able to:

1. Understand key issues in the preparation of a contract and its review;
2. Select the right model of contract to be used for his project;
3. Understand the different stages of the contract negotiation process, its barriers and some techniques and strategies for a successful negotiation;
4. Identify key factors to consider in order to promote stakeholders involvement in the project preparation and implementation;
5. Understand the concepts and techniques related to skills development in communication, conflict resolution and contract negotiation;
6. Identify various elements of a purchase/ cost-benefit sharing agreement.

In preparing this Manual it has been impossible to cover every detail of the subject. However, the document has been sub-divided to provide fairly self-contained descriptions/guidelines of the different aspects in varying degrees of detail. This would facilitate any further development or shortening on each subject.

**Chapter 2** underlines key strategic issues and important points to consider in the preparation of a contract and its review.

**Chapter 3** covers various contract models, including FIDIC, multilateral and bilateral contract/agreement models.

**Chapter 4** describes the negotiation process and strategies, the barriers to successful negotiation and some techniques and tips for effective negotiations.

**Chapter 5** shows how the stakeholders' interests and concerns are taken into account in the project preparation and implementation process.

**Chapter 6** provides concepts and techniques related to various skills development, including interest-based negotiations, communication, mediation/arbitration and conflict resolution.

**Chapter 7** gives a brief description of a purchase/cost benefit sharing agreement, as related to trans-border projects and supplemented with practical examples/case studies.



## 2 CONTRACT PREPARATION

Contract preparation is an important part of the procurement process. Well prepared contracts allow the negotiators to rapidly create an agreement with the suppliers that works for both parties.

### 2.1 Key Strategic Issues in Procurement Approach<sup>2</sup>

Prior to the contract preparation, one needs to consider how risk will be allocated through the supply chain, who is accountable and will manage it, and how this will be incorporated in the contract.

From the chart below, one can determine whether the organization is best placed to manage contracts for outcomes, outputs or inputs<sup>3</sup>.

<i><b>Risk to potential success of project</b></i>	<i>Low</i>	<i>Medium</i>	<i>Medium</i>	<i>High</i>	<i>Particularly important for</i>		
	<b>Excellent</b>	<b>Good</b>	<b>Acceptable</b>	<b>Poor</b>	<b>Outcomes</b>	<b>Outputs</b>	<b>Inputs</b>
<b>Client Side Capability</b>							
Track record in managing major long-term outcome-based contracts					X		
Track record in managing change					X	X	
Knowledge and experience of procurement process and good practice governance arrangements					X	X	
Skills and competences in commercial awareness					X	X	
Knowledge and experience of risk identification, allocation and management					X	X	

<sup>2</sup> More details on this Chapter can be found at <http://www.ogc.gov.uk/documents/RiskAllocationModel.pdf>

<sup>3</sup> The **Goal** of an organization is its overall objective. Some organizations, and all local authorities, have more than one goal. The **Outcome** of a project is the contribution it makes towards the goal of the organization. **Outputs** are intermediary objectives that support the delivery of outcomes. **Inputs** secure Outputs.

Availability & competence(in – house or contracted) of contract management skills					X	X	
Flexibility of HR or consultancy procurement systems to recruit suitable new staff						X	X
Quality of internal management resources to manage business integration							X
IT resources to manage technical integration (for construction staff competence in brining build into use)							X
Technical IT resources for programming and interfaces (for construction staff competence in long term operation and maintenance)							X

The following flowchart may be used to determine the optimal project strategy in terms of contracting for outcomes, outputs or inputs based on appropriate risk allocation, as shown.

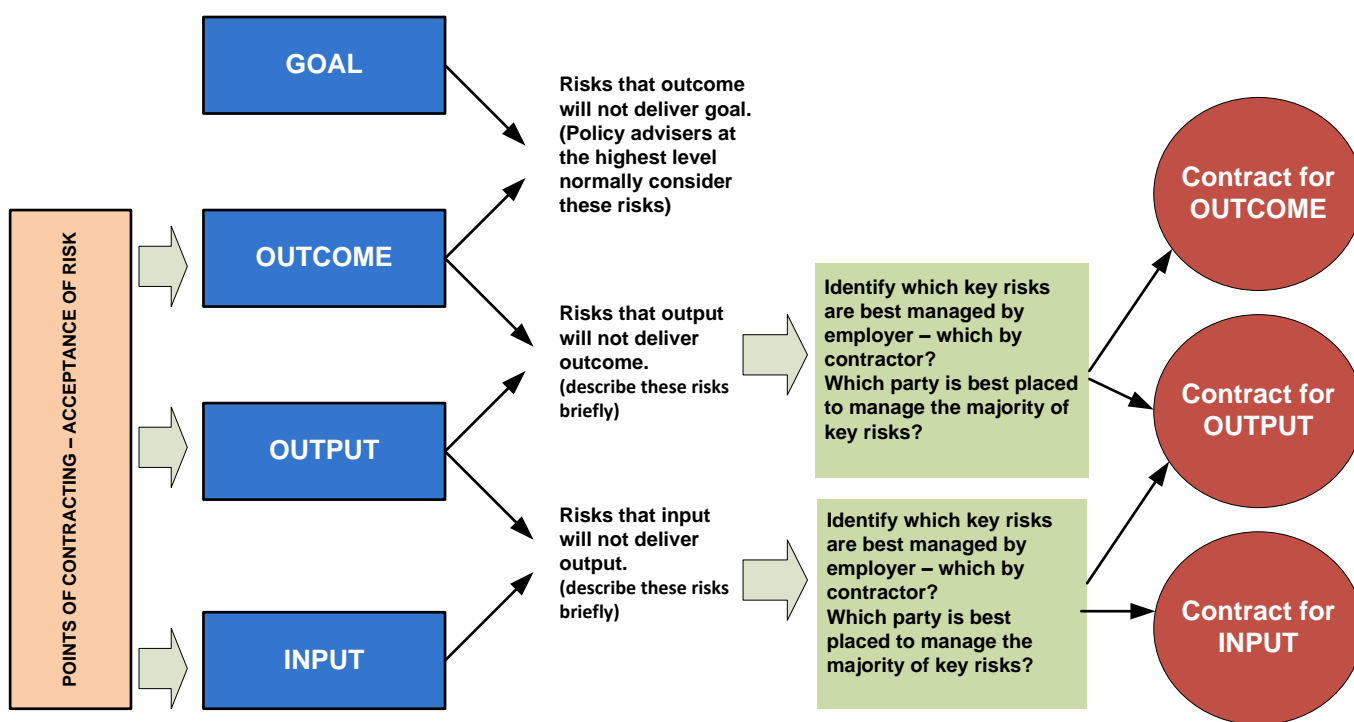


Figure 2. Project Contracting Approach

## 2.2 Points to consider in Contract Preparation

### General Features of a Contract

A good contract should set out the obligations of the parties in a way that is:

- Concise, Clear, Coherent: essential clauses, unambiguous definitions, coherent structures;
- Complete, Flexible: range covers most needs, readily adaptable to fit requirements;
- Fair, Equitable: risk allocated to party best placed to control it, bear it and deal with it;
- Third Party: drafted by specialized Engineers;
- Recognized: positive FIDIC image, world-wide acceptance, tested, established, successful.

The contract also forms the foundation for a productive relationship built on communication and trust. The foundations for contract management are laid in the stages before contract award, including the procurement process. These formal contract aspects form the framework around which a good relationship can grow. If the contract was poorly constructed, it will be much more difficult to make the relationship a success.

### Some pitfalls of contracts

A contract is not only a formalization of Individuals or organizations who have agreed to work together. It should also aim to (i) reinforce trust between the two parties – i.e. to assure each other that they will do as they say and (ii) reduce the risk of failure. In an article<sup>4</sup> published in the May 2009 issue of the Harvard Business Review, Deepak Malhotra argues that in some situations, contracts may end up destroying trust and/or increasing risk.

#### *Overly Detailed Contracts*

The first point Malhotra makes is that overly detailed contracts can reduce trust by preventing spontaneous displays of good intentions. Here's how the reasoning goes: extremely detailed contracts are a sign that the two parties do not fully trust each other (hence the need to write down every possibility that comes to mind). In such situations, the relationship between the two parties tends to be managed by contract, which acts as a disincentive to do things that aren't written down.

More generally, it is obvious that trust cannot be created by writing it into a contract. At best, contracts might help in reinforcing trust that is built up by other means, e.g.

- Through consistent actions that demonstrate good intentions.
- Through building relationships between individuals in the two parties.

Neither of these behaviours can be mandated by contract, but a detailed, hard-to-interpret contract can very easily discourage them.

#### *Rigid Contracts*

Contracts that are too rigid can be problematic. Those who draw up contracts cannot be aware of all the possibilities that might unfold as a project progresses. For this reason, contracts should be flexible enough to permit changes as new information comes to light. Ironically, many organizations view rigid contracts as a means of reducing risk. Most often this is because the parties involved tend to underestimate the uncertainties in their environment. The point here is to put off contractual decisions regarding uncertain elements of the agreement, but to put in place arrangements to deal with some of the foreseeable outcomes. As Malhotra puts it, "Wisely structured contracts postpone agreement on terms that would be more effectively handled after more information is available, and they include contingencies commensurate with the current level of uncertainty."

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<sup>4</sup> <http://hbr.org/2009/05/when-contracts-destroy-trust/ar/1>

### *Incentives*

Some contracts include incentives such as performance pay, earn-outs, and vesting schedules. Unfortunately, in some contexts such incentives can signal mistrust.

This often happens in contracts between high performing individuals and organizations, where a large portion of the individual's compensation is tied to performance. Such an arrangement can actually end up demotivating the individual. Employee performance in knowledge-related work is directly related to intrinsic motivation – i.e. the internal drive (or inclination) to do the assigned work. Further, intrinsic motivation has more to do with interesting work than with tangible rewards or incentives. It cannot be fostered or enhanced by contract. So, in cases where one is dealing with high performers, a better strategy might be to empower them to make decisions on how the work gets done or, where possible, matching assignments to professional interests and aspirations.

### *Summarizing*

Contracts are part and parcel of cross-organizational agreements. They are designed, among other things, to reinforce trust and reduce risk. If one isn't careful, however, they may do just the opposite: contracts that are overly detailed or overemphasize monetary incentives can end up reducing trust and increasing risk

## **Contract Checklist**

The contract may include as appropriate:

- ✓ a definition of what is to be provided and requirements to be met
- ✓ an agreed level of service and mechanism for payment reduction if it is not met
- ✓ means to measure performance
- ✓ pricing mechanisms including where appropriate milestone payments, incentivisation/rewards, retentions, and if the contract is for more than 2 years, price variation mechanisms.
- ✓ plan to cover implementation/transition/rollout
- ✓ acceptance strategy/test plan
- ✓ ownership of assets and intellectual property;
- ✓ escalation and alternative dispute resolution (ADR) procedures
- ✓ change control procedures
- ✓ invoicing arrangements
- ✓ communication routes, typically at three levels
  - operational (end users/technical support staff),
  - business (contract manager and relationship manager on both sides)
  - strategic (senior management/board of directors)
- ✓ contract management arrangements
- ✓ agreed exit strategy and agreed break options.
- ✓ Premises (where the goods/services will be delivered)
- ✓ Sub-contractor details
- ✓ Authorities responsibilities

Some contract management planning should be also considered during the contract preparation stage, namely:

***Be prepared to manage all aspects of the contract***

Contract management activities can be divided into three areas: service delivery management; relationship management; and contract administration

- All three areas must be actively managed
- Decide how to organise your people to manage each of the areas. You might assign a group or individual to each area or a single individual may cover two or more areas.
- Bear in mind that different areas will require different skills and knowledge

***Who will be the right people to be put in place to manage the contract?***

Contract management forms the interface between demand (the customer organization) and supply (the provider organization). The individual or team responsible for contract management must have adequate knowledge (business, contractual and technical) to understand both sides of the arrangement

- If possible involve key contract management staff in contract development. Consider developing a contract guide or commentary explaining why the contract was developed.
- Consider whether training is required for contract management staff
- The skills and experience required to manage the relationship may be different from those required to manage service delivery
- If you do not have in-house expertise to manage a contract consider training existing staff or recruiting an experienced professional contract manager

***Budget adequate resources to manage the contract***

There will be an overhead of in-house resource to manage the contract. The financial resource required to manage a major contract has been estimated at 2% of the contract value. This proportion increases for contracts of lesser value.

## **2.3 Contract Review**

The final version of the contract should be reviewed to ensure it is acceptable to the organization. The following basic questions should be asked during this review:

- Does the contract accurately represent the requirements?
- Have stakeholder requirements/views been taken into account?
- Do the potential providers have realistic solutions to meeting the requirements?
- Does the organization have the necessary skills and resources to meet its obligations under the contract, and for managing the contract?
- Have any related agreements with other parties been produced and agreed?
- Do the changing arrangements take accounts of changing levels of demand (both up and down)?

In complex procurements, one may consider producing a plain language guide describing the contract and particularly the factors influencing its development. It can be very useful in helping contract management staff understand the background to the contract and the issues that came up in negotiation and in the project implementation.

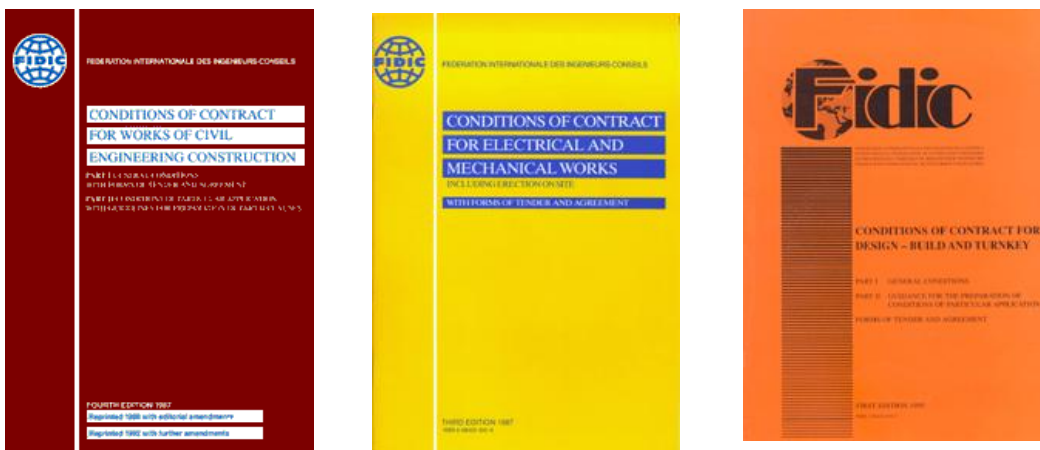
### 3 CONTRACT MODELS

#### 3.1 FIDIC<sup>5</sup>

##### The FIDIC Standard Forms of Contract

FIDIC has long been renowned for its standard forms of contract for use between employers and contractors on international construction projects, in particular:

- Conditions of Contract for Works of Civil Engineering Construction: The Red Book (1987)
- Conditions of Contract for Electrical and Mechanical Works including Erection on Site: The Yellow Book (1987)
- Conditions of Contract for Design-Build and Turnkey: The Orange Book (1995)



During its work in updating the Red and Yellow Books, FIDIC has noted that certain projects have fallen outside the scope of the existing Books. Accordingly FIDIC has not only updated the standard forms but has expanded the range, and has - in September 1999 - published a suite of four new Standard Forms of Contract which are suitable for the great majority of construction and plant installation projects around the world.

This new suite comprises four main books:

- **Conditions of Contract for Construction** for Building and Engineering Works Designed by the Employer: The Construction Contract (New Red Book)
- **Conditions of Contract for Plant and Design-Build** for Electrical and Mechanical Plant and for Building and Engineering Works Designed by the Contractor: The Plant and Design-Build Contract (New Yellow Book)
- Conditions of Contract for EPC<sup>6</sup>/Turnkey Projects: The EPC/Turnkey Contract (Silver Book)
- **Short Form of Contract:** The Short Form (Green Book)

<sup>5</sup> <http://www1.fidic.org/resources/contracts/launch/default.asp>. See also "The FIDIC Forms of Contract", 3<sup>rd</sup> Edition, by Nael Bunni, 2005, Blackwell Publishing

<sup>6</sup> Engineering-Procurement-Construction



And three complementary books for specific purposes:

- **FIDIC Contract Guide** - intended to provide general guidance to users of the first three of the four Books above (First Edition 2000).
- **Conditions of Contract for Construction** for Building and Engineering Works Designed by the Employer (MDB<sup>7</sup> Harmonised Edition) - for bank financed projects only: **The MDB Construction Contract** (Edition March 2006)
- **Dredgers Contract** (based on the Short Form of Contract): Dredgers Contract (Test Edition 2001, First Edition 2006)



Books in the new suite are all marked “First Edition 1999” (Test Editions were published in 1998, and while these remain valid for contracts, significant changes were made in some cases). The new Books are not to be regarded as direct updates of the existing Books. The existing Books will still be available as long as there is a demand, but it is expected that the new suite will supersede and expand the range of the existing Books.

These forms of contract are recommended for general use where tenders are invited. Guidance is provided in each of these books for the preparation of particular conditions.

The Silver Book has been developed to respond to market requirements for a form of contract where certainty of final price and completion date are of such importance that the client is willing to pay a premium for the certainty that the agreed final price and date will not be exceeded.

<sup>7</sup> Multilateral Development Bank



Contractors, accordingly, in terms of the Silver Book are required to assume responsibility for a wider range of risks than under contracts where the Red and Yellow Books are utilized.

The Silver Book is not suitable for use under the following circumstances:

- there is insufficient time or information for Tenderers to scrutinise and check the employer's requirements or for them to carry out their designs, risk assessment studies and estimating;
- if construction will involve substantial work underground or work in other areas which Tenderers cannot inspect;
- if the employer intends to supervise closely or control the contractor's work, or to review most of the construction drawings; or
- if the amount of each interim payment is to be determined by an official or other intermediary.

FIDIC recommends the use of the Yellow Book in the above circumstances for works designed by or on behalf of the Contractor.

#### *Purpose and Drafting Principles of the New Edition*

When drafting these new Standards Conditions, FIDIC follows the following principles:

- for engineering contracts, between 'the Employer' and 'the Contractor';
- primary for international projects (adjustment for national projects possible);
- 'manuals of good engineering practice' prepared by engineers for practical use;
- balance between legal precision and practicality, i.e. correct level of detail;
- to cover projects of all sizes and complexity;
- to be equitable to employer and contractor( any imbalance of risks to be clearly stated)
- provide flexibility for individual contracts;
- 2 parts – General Conditions and Particular Conditions.

#### *Standardization and User Friendliness*

The old Books were not standardized. The new Books should be standardized as far as possible and as user friendly as possible. The 'users' will be those preparing documents for a project, and those using them during implementation phase.

- definition and terminology are the same in all 3 Books (except for intentional differences);
- 20 Clause layout and titles are the same (except for intentional differences);
- wording identical (except for intentional differences);
- diagrams of typical sequence of events included;
- alphabetical list of definitions
- clauses included applicable to most (but not all) contracts;
- alternative clauses in Guidance for Preparation of Particular Conditions;
- clauses often interchangeable, i.e. import from another Book;
- data required by General Conditions included in DAB Agreements, etc., included;
- index of Sub-Clauses included.

But remember:

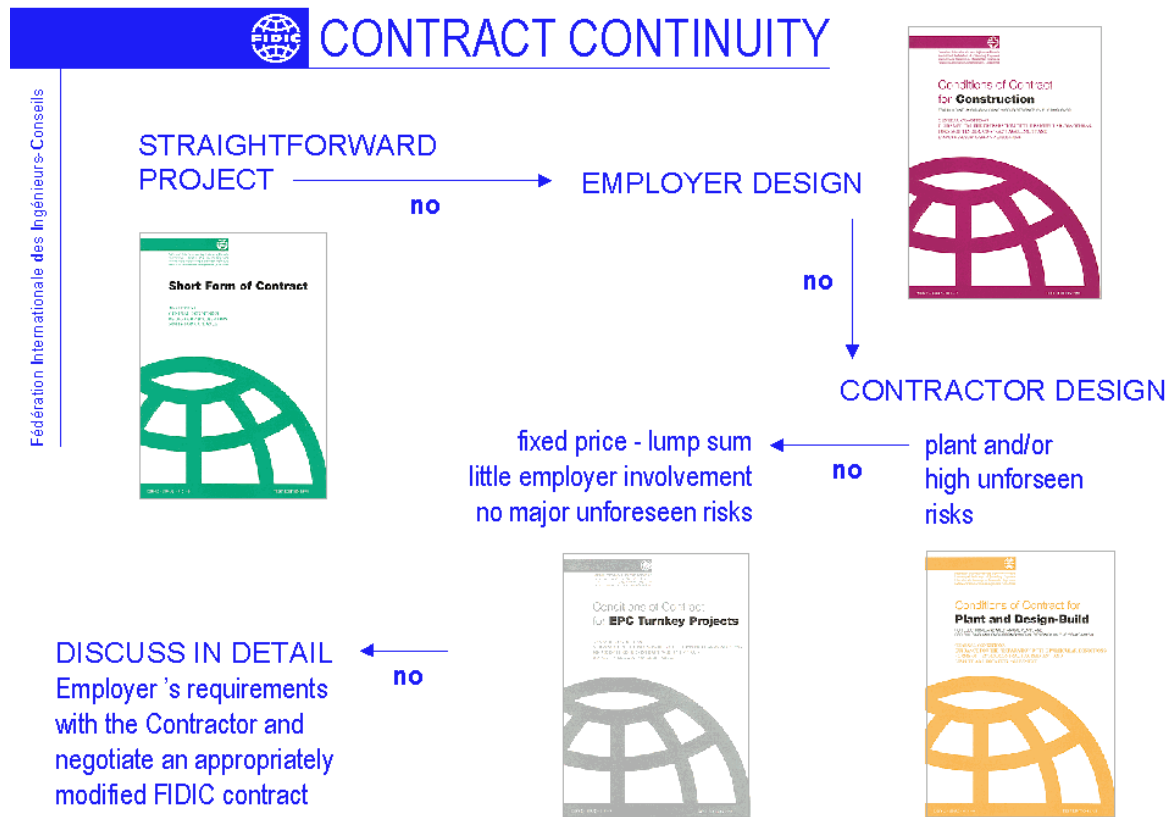
- preparation to be done by experienced personnel;



- clauses must always be checked for appropriateness and adjusted where necessary;
- adjustments/modifications to be made in Particular Conditions;
- use Guidance for preparation of Particular Conditions.

**Which FIDIC Contract should I use?**

Answers to the following questions will provide some hints as to the choice of which FIDIC contract forms to use.



**Figure 3. Tree Diagram in Choosing FIDIC Contract Models**

**A. Relatively small value, short construction time or involving simple or repetitive work**

If the price for the contract is relatively small, say under US\$ 500,000, or the construction time is short, say less than 6 months, or the work involved is relatively simple or repetitive - dredging work might be a good example- then consider using the Short Form of Contract which is a completely new FIDIC Book specially prepared for such projects.

- It does not matter whether the design is provided by the Employer (or his Engineer/Architect if he has one) or by the Contractor,
- It does not matter whether the project involves construction, electrical, mechanical, or other engineering work.

The parties to the contract are the employer and the contractor. The Short Form permits the Employer to nominate his authorized spokesman and provides no overall limit on the Contractor's liability.

Employer's liabilities provided for in the Short Contract include:

- any operation of the forces of nature affecting the site and / or works, which was not foreseeable or against which an experienced Contractor could not reasonably have been expected to take precautions;
- physical obstructions or physical conditions other than climatic conditions encountered on the site during the performance of the works, which obstructions or conditions were not reasonably foreseeable by an experienced Contractor and which the contractor immediately notified to the Employer; and
- damage which is an unavoidable result of the Contractor's obligations to execute the works and to remedy defects.

Notes for Guidance are included at the back of the Short Form of Contract.

The Short Form of Contract makes reference to an Appendix in which it is stated whether the work is to be valued and paid for on the basis of:

- Lump sum price,
- Lump sum price with schedule of rates
- Lump sum price with bill of quantities
- Re-measurement with tender bill of quantities, or
- Cost reimbursable.

Payments are made on a monthly assessment submitted by the Contractor for the Employer to pay the amount he considers due. A final account is then submitted by the Contractor to the Employer for him to ascertain the final contract value.

## B. Larger or more complex projects

### *1. Is the Employer (or the Engineer) going to do most of the design?*

As in traditional projects, e.g., infrastructure, buildings, hydropower, etc., the Employer did nearly all the design (perhaps not construction details, reinforcement, etc.) (The Red Book),

- and the Engineer administered the Contract, monitored the construction work and certified payment

- and the Employer was kept fully informed, could make variations, etc.

- and with payment according to bills of quantities or lump sums for approved work done.

If this is what is wanted - choose the Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer (The Construction Contract), which effectively updates and supersedes the existing Red Book from 1987.

In 2005, FIDIC licensed the Multilateral Development Banks (MDB) to use the MDB Harmonised Edition of the Construction Contract for projects funded by the banks. The MDB Construction Contract mainly incorporates Particular Conditions to the Red Book that was used by the World Bank in its Standard Bidding Documents before it and the other MDBs adopted the Harmonised Edition.

### *2. Is the Contractor going to do most of the design?*

As in traditional projects, e.g., electrical and mechanical works, including erection on site (The Yellow Book) the Contractor (or Supplier) did the majority of the design, e.g., the detail design of the plant or equipment, so that the plant met the outline or performance specification prepared by the Employer, and in the relatively more recent design-build and turnkey type projects the Contractor also did the majority of the design, not only of plant projects but also of various infrastructure and other types of projects, and the project was required to fulfil the “Employer’s Requirements”, i.e., an outline or performance specification prepared by the Employer (The Orange Book),

- and the Engineer (Employer’s Representative in the Orange Book) administered the Contract, monitored the manufacture and erection on site or construction work and certified payment,
- and with payment according to achieved milestones generally on a lump sum basis.

If this is what is wanted - choose the Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Plant and for Building and Engineering Works Designed by the Contractor (Plant and Design-Build Contract) which effectively updates and supersedes both the existing Yellow Book from 1987 and the Orange Book from 1995.

3. Is it a Privately Financed (or Public/Private Financed) Project of BOT or similar type where the Concessionaires take total responsibility for the financing, construction and operation of the Project?

Then the Concessionaire (the “Employer”) probably requires to have a contract with the construction Contractor, i.e., an EPC (Engineer, Procure, Construct) Contract, where the Contractor takes total responsibility for the design and construction of the infrastructure or other facility, and where there is a higher degree of certainty that the agreed contract price and time will not be exceeded,

- and the Employer does not wish to be involved in the day-to-day progress of the work, provided the end result meets the performance criteria he has specified

- and the parties concerned (e.g., sponsors, lenders and the Employer) are willing to see the Contractor paid more for the construction of the Project in return for the Contractor bearing the extra risks associated with enhanced certainty of final price and time.

If this is what is wanted - choose the Conditions of Contract for EPC/Turnkey Projects (EPC/Turnkey Contract) - a completely new FIDIC Book suitable for this purpose.

### *C. Also for the EPC/Turnkey Contract*

1. *Is it a Process Plant or a Power Plant (or a factory or similar) where the Employer - who provides the finance - wishes to implement the Project on a Fixed-Price Turnkey Basis?*

Then the Employer wishes the Contractor to take total responsibility for the design and construction of the process or power facility and hand it over ready to operate “at the turn of a key”,

- and the Employer wishes a higher degree of certainty that the agreed contract price and time will not be exceeded

- and the Employer wishes - or is used to - the Project being organised on a strictly two party approach, i.e. without an “Engineer” being involved

- and the Employer does not wish to be involved in the day-to-day progress of the construction work, provided the end result meets the performance criteria he has specified

- and the Employer is willing to pay more for the construction of his Project (than would be the

case if the Conditions of Contract for Plant and Design-Build were used) in return for the Contractor bearing the extra risks associated with enhanced certainty of final price and time.

If this is what is wanted - choose the Conditions of Contract for EPC/Turnkey Projects (EPC/Turnkey Contract).

*2. Is it an Infrastructure Project (e.g., road, rail link, bridge, water or sewage treatment plant, transmission line, even dam or hydropower plant) or similar where the Employer - who provides the finance - wishes to implement the Project on a Fixed-Price Turnkey Basis?*

Then the Employer wishes the Contractor to take total responsibility for the design and construction of the infrastructure facility,

- and the Employer wishes a higher degree of certainty that the agreed contract price and time will not be exceeded, except that if underground works in uncertain or difficult ground conditions are likely then the risk of unforeseen ground conditions should be borne by the Employer (and the provisions of the Plant and Design-Build Conditions in this respect - Sub-Clause 4.12 - would be appropriate),

- and the Employer wishes - or is used to - the Project being organised on a strictly two party approach, i.e. without an "Engineer" being involved

- and the Employer does not wish to be involved in the day-to-day progress of the construction work, provided the end result meets the performance criteria he has specified,

- and the Employer is willing to pay more for the construction of his Project (than would be the case if the Conditions of Contract for Plant and Design-Build were used) in return for the Contractor bearing the extra risks associated with enhanced certainty of final price and time.

If this is what is wanted - choose the Conditions of Contract for EPC/Turnkey Projects (EPC/Turnkey Contract).

*3. Is it a Building Project where the Employer wishes to have his building(s) constructed on a Fixed-Price Turnkey Basis generally complete with all furniture, fittings and equipment?*

As for 2 above, in the case of a building or building development Project, the Employer or his Architect may have done some or most of the design, but - with suitable modification regarding design responsibility - the Conditions of Contract for EPC/Turnkey Projects (EPC/Turnkey Contract) may be chosen.

#### ***D. Reconstruction or Refurbishment or another type of Project***

Check Questions A1, B1 and B2 above or Questions C1 - C3 if applicable, and make your choice accordingly.

## Recent Developments of FIDIC

### *The Client / Consultant Model Services Agreement (White Book)*



This document is recommended for general use for the purposes of pre-investment and feasibility studies, designs and administration of construction and project management, both for Employer-led design teams, and for Contractor-led design teams under Design and Build procurement, where proposals for such services are invited on an international basis. They are equally adaptable for domestic agreements.

This Client/Consultant Model Services Agreement represents the basic form of a Contract of Appointment between a Client and his Consultant. It is intended to cover the minimum requirements of a typical appointment contract. Additional or amended clauses may be required in the Particular Conditions to address particular project and commercial issues between the parties.

### *Conditions of Contract for Design-Build Operate (DBO) Projects (Gold Book)*

This book (Gold Book), First Edition published in 2008 is a new DBO document for long-term contract.

#### *Background*

The DBO approach to contracting combines design, construction, and long-term operation (and maintenance) of a facility into one single contract awarded to a single contractor (who will usually be a joint venture or consortium representing all the disciplines and skills called for in a DBO arrangement. Public private partnerships – PPPs - are this arrangement).



#### *DBO's advantages*

**Time:** With possibilities to overlap some design and build activities it will be possible to minimize delays and optimize the smooth flow of construction activities.

**Financial:** With cost restraints and commitments and other risks being carried by the Contractor, there is less risk of price over-runs.

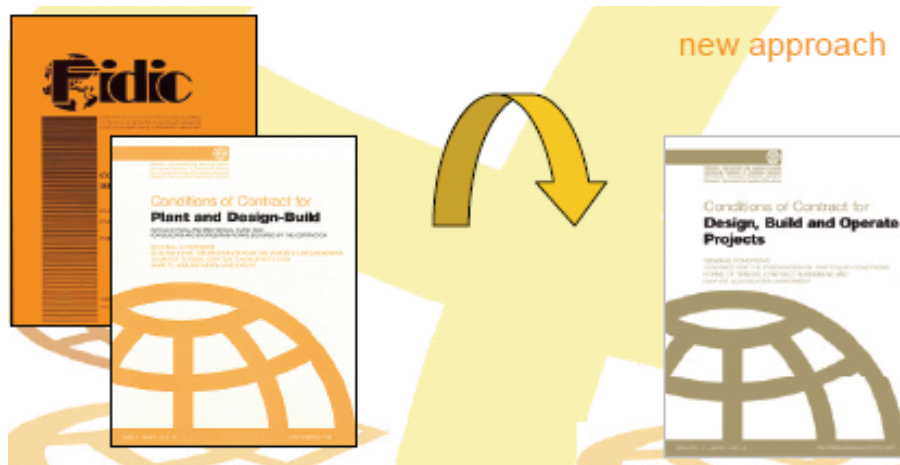
**Quality:** With the Contractor responsible for 20 years operation, he has an interest to design and build quality plant with low operation and maintenance costs. Not only will the plant be 'fit for purpose' but it will be built to last.

Basically the success of a true DBO contract depends on the commitment of the Contractor to the complete project - and the best way to do that is to cover the whole design-build and the operation elements in a single contract. That is why FIDIC chose a single long term Performance

Security with a substantial reduction in value on completion of the design-build – but with an on-going commitment by the Contract to perform and complete the operation service.

The format of a DBO arrangement can be based on either a 'green field' scenario (D-B-O), or on a 'brown field' scenario (O-D-B). Either is quite common, however the contractual requirements and procedures are quite different.

FIDIC has chosen to produce a document based on the DBO green field scenario, with a Guide (to be published at a later date) containing guidelines on the changes necessary to cover a brown field arrangement, in which FIDIC Yellow Book for the DB is the basement.



The other important factor considered in DBO document is the length of the operation period, since the conditions suitable for long-term operation are not necessarily suitable for a short-term operation. From the experience of the DBO members it was decided that the most useful period to consider was 20 years operation – again giving guidelines in the Guide if a shorter period would be required

### ***Risk control in DBO contract***

DBO can be viewed as a complete method in PPPs. This method is a long-term process including procurement, construction, operation, and transfer, in which high risk should be pay the most attention to.

About PPPs: A wide spectrum of options is available for the delivery of public infrastructure and services, ranging from direct provision by the government to outright privatization, with increasing responsibilities, risks, commitment, and rewards transferred from the government to the private sector.

For example, supply and service contracts usually have a short duration. In such contracts, the private contractor performs specified tasks (e.g., material/ equipment supplies, works construction and facilities maintenance) whereas it is not directly responsible for providing related services. In a lease-and-operate contract, the private contractor operates and maintains the facilities at its own risk against the payment of a lease fee. In a build-operate-transfer (BOT) project, the private contractor is also responsible for building and financing the project and it has to transfer project facilities in operational conditions and free of costs to the government at the end of the concession term. In divestiture, the ownership of existing assets and the responsibility for future expansion and upkeep are transferred to the private contractor, in addition to financing

and carrying out the investments required to meet the obligations specified in the contract and/or a general regulatory framework.

### *The new DBO document format*

The format of the new document follows the traditional format and layout of previous FIDIC documents, with 20 clauses, and, where appropriate, using the same terminology and definitions which are found in the other documents.

The document will have General Conditions, Particular Conditions, flow charts and sample forms – just like the other FIDIC documents, and a Guide (to be published) which will include, amongst other things, guidelines on how to change the clauses if it is required to have a document for a ‘brown field’ situation, or an operation period significantly different to the previous method adopted in other FIDIC contract.

## **3.2 Multilateral/ Bilateral Contract/Agreements Models**

By definition, a multilateral agreement/contract is an accord/contract among three or more parties, agencies, or national governments. Such agreement/contract between two such parties is called bilateral agreement.

In the same token, an international joint venture is a structured cooperation between two or more companies/entities from different countries in which the members combine some of their resources for a common undertaking while remaining economically independent.

Most Contract/Agreement forms in these categories can be found in either bilateral or multilateral financing institutions’ websites shown in the following Table.

Multilateral Development Banks	World Bank, African Development Bank, Asian Development Bank, Inter-American Development Bank, Caribbean Development Bank, European Bank for Reconstruction and Development
Other Multilateral Institutions & Funds	The European Commission (EC), Islamic Development Bank, North American Development Bank, Global Environment Facility, International Fund for Agriculture Development
Bilateral Agencies	Canadian International Development Agency, Department for International Development (UK), German Development Bank (KfW), German Agency for Technical Cooperation (GTZ), Netherlands Development Cooperation, Swedish International Development Agency, Norwegian Agency for Development Cooperation, Danish International Development Agency, Lux Development, Swiss Agency for Development & Cooperation, Agence française de développement, Japanese Official Development Assistance, Kuwait Fund for Arab Economic Development, Saudi Fund for Development.
United Nations Agencies	Over 50 entities (agencies, organizations, commissions, programs, funds, etc.)

Since most of the models developed by the above institutions and agencies are inspired from or similar to FIDIC Models, already discussed in the previous section, we will not further elaborate on this section.

Study cases and various contract forms under this heading will be nevertheless presented in due course and discussed with the participants during the seminars.



## 4 EFFECTIVE NEGOTIATIONS

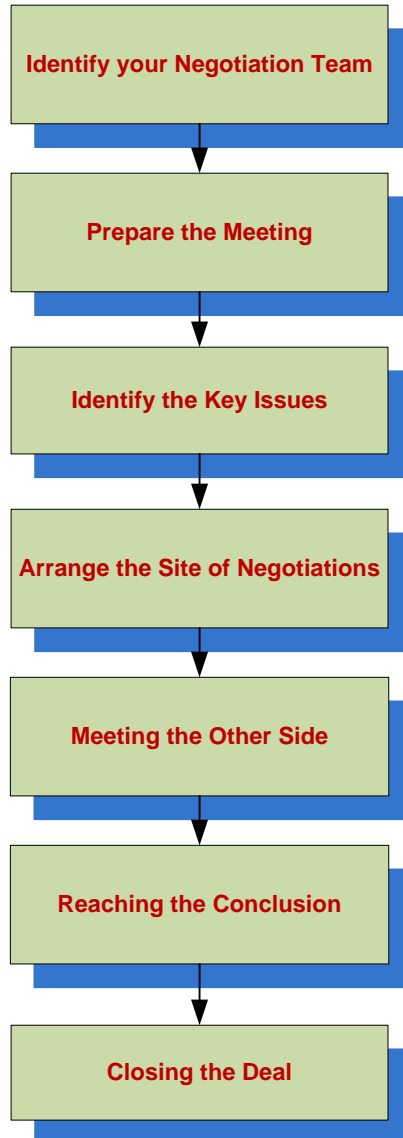
For complex procurements, contract negotiations could be time-consuming and intensive but are keys to the success of the project in achieving the right deal with the right supplier. Planning is essential to ensure they stay on track. Identify the order in which parts of the contract are to be tackled, the review points, and who is involved in developing and reviewing them. Identify specialist resources, legal, financial, technical etc and ensure they are available when required.

There will be a lot of documents exchanged with suppliers, so ensure there is a configuration management plan in place to cover version control, routing, storage etc, and resources to implement and manage it.

### 4.1 Overview of the Negotiation Process

By definition, negotiating is the process by which two or more parties with different needs and goals work to find a mutually acceptable solution to an issue.

Because negotiating is an inter-personal process, each negotiating situation is different, and influenced by each party's skills, attitudes and style. We often look at negotiating as unpleasant, because it implies conflict, but negotiating need not be characterized by bad feelings, or angry behaviour. Understanding more about the negotiation process allows us to manage our negotiations with confidence and increases the chance that the outcomes will be positive for both parties.



**Figure 4. The Negotiation Process**

The negotiation process would encompass the following:

***Identify your Negotiation Team***

Before the first negotiation session, it is important to identify all of the individuals that may be necessary or helpful in creating a completed agreement. Attorneys, accountants, owners, managers and, sometimes, employees can all have a role to play in a successful negotiation. While the role of attorneys and accountants is somewhat obvious, less obvious may be the use of managers and employees. However, these individuals may have information about products, services or operations that could be of significance in the final contract. Because of this, some concern should be given to creating a negotiation team.

### *Prepare the Meeting*

All the members of a negotiation team should spend a significant amount of time preparing prior to the first meeting between the prospective parties. Any proposed contracts should be reviewed by all of the team members. Additional information about the other side may be gleaned from financial statements, court filings, and interviews with other customers or vendors. I have also found that the Internet can be a rich source of background information.

While this initial preparation need not be overly exhaustive, information may be uncovered that alerts you to potential problems before the negotiations begin. This could result in terminating the negotiations before they have commenced, saving you significant time and money.

A meeting or meetings between all of the team members will help keep the team on track and should avoid duplication of efforts. It should be the team's goal during this preparation phase to create a list of key issues.

### *Identify the Key Issues*

The careful identification of the key issues will play a vital role in the ultimate success or failure in reaching an agreement with the other party. Because the issues will vary from situation to situation, there is no boilerplate "list" which covers all the key issues that might arise in a given transaction. That is why it is imperative that each team member play an active role in identifying those issues that will be vital to the successful completion of the negotiation process.

Once the issues have been identified, some thought should be given to the order in which the issues should be raised with the other party and any negotiation strategies that may be employed. In developing strategies it is often helpful to role-play and put yourself and your team members in the other side's shoes.

### *Meeting the Other Side*

While completed agreements are rarely reached at the first negotiation session, the tone set at the first meeting can be crucial in the ultimate success or failure of the process. Because of the importance of the first meeting, several "rules" should be followed.

First, the parties' respective negotiating teams should all be present. If the transaction is large enough, the parties may wish to meet informally the night before the actual negotiations begin. Because the principal negotiators do not always hold the keys to success, an informal dinner may allow the respective team members to form bonds, which will help smooth out the negotiation process.

The first meeting should be limited to the key issues already identified by the team members. The other side should be advised that your goal in approaching this first meeting is to determine whether further discussion of any "minor" issues is warranted. Neither side is served by undergoing a lengthy and difficult negotiation process only to see it eventually fail because a key issue was not raised early in the proceedings.

During the meeting, attempts to anticipate and discuss the needs of the other party and propose ways to address those needs and concerns while simultaneously meeting your own needs should be made. This will let the other side know that you recognize their issues and that you hope to be able to work toward a mutually beneficial conclusion.

Finally, the parties should take the time and effort to reach at least a conceptual agreement on the main issues before concluding the first meeting. In order to meet this goal, each of the team members should make sure that they have cleared their calendars in order to allow them to be present for the entire meeting. If the meeting is out of town, travel and accommodations should

be arranged so that no one feels pressured because of flight departures or lodging restrictions.

#### *Arrange the Site of the Negotiations*

Prior to the first negotiation session, it is imperative that one party or the other takes responsibility for arranging appropriate facilities. While some negotiators may push to have the negotiations take place on a "home field" this should not be a major concern. Of concern should be the respective size of the negotiating teams and their representatives (attorneys, accountants etc.) and whether the facility is large enough to handle the members. Similarly, some principal players may not be able to travel or their schedules may be so busy that a location close to their office may allow them to be present for more of the negotiating session. Some concern should be made regarding meals and lodging if the negotiations may be lengthy. Will lunch be catered? Are there restaurants nearby?

#### *Reaching a Conclusion*

In addition to an adequate and thorough preparation, a successful result is more likely if all the participants keep in mind that the resulting contract between the parties will create an ongoing relationship. Because the relationship will be ongoing, the parties should, throughout the negotiation process, work to achieve clear and realistic expectations of what the other side will bring to and derive from the relationship.

#### *Closing the Deal*

Negotiations of major importance appropriately take a considerable amount of time. After the initial meeting, there may be several phone calls, letters, conversations and, hopefully, the discussion of proposed contracts. At some point, however, it will become important for one side or the other (or both) to either execute a final agreement or terminate the deal. Often times there may be two or three major issues left unresolved. To reach a resolution of these issues it is often wise to arrange another face to face meeting between all the team members. This time, however, the ground rules will be more strict in that each side should commit to remain together until (1) all of the remaining issues are resolved and the agreement is finalized for execution or (2) it is determined that an agreement cannot be reached and the negotiations should then be terminated.

#### *Conclusion*

While it may feel like it, a final contract is not a conclusion. A contract merely marks the beginning of a formal relationship that may last for many years. By following the suggestions of this article, the relationship should begin in an open, honest and mutually beneficial way.

## **4.2 Negotiation Strategies<sup>8</sup>**

Most of the negotiation literature focuses on two strategies: interest-based (or integrative, or cooperative) bargaining, while the other is positional (or distributive or competitive) bargaining. In their best-selling book on negotiation, *Getting to Yes*, Roger Fisher and William Ury argue that there are three approaches: hard, soft, and what they call "principled negotiation." Hard is essentially extremely competitive bargaining, soft extremely integrative bargaining (so integrative that one gives up one's own interests in the hopes of meeting the other person's interests) and

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<sup>8</sup> Spangler, Brad. "Integrative or Interest-Based Bargaining." *Beyond Intractability*. Eds. Guy Burgess and Heidi Burgess. Conflict Research Consortium, University of Colorado, Boulder. Posted: June 2003 <[http://www.beyondintractability.org/essay/interest-based\\_bargaining/](http://www.beyondintractability.org/essay/interest-based_bargaining/)>.

principled negotiation is supposed to be somewhere in between, but closer to soft, certainly, than hard. All of these topics are discussed in this section.

## Positional Bargaining

### *What is Positional Bargaining?*

Positional bargaining is a negotiation strategy that involves holding on to a fixed idea, or position, of what you want and arguing for it and it alone, regardless of any underlying interests. The classic example of positional bargaining is the haggling that takes place between proprietor and customer over the price of an item. The customer has a maximum amount she will pay and the proprietor will only sell something over a certain minimum amount. Each side starts with an extreme position, which in this case is a monetary value, and proceed from there to negotiate and make concessions. Eventually a compromise may be reached. For example, a man offers a vendor at the flea market \$10 for a rug he has for sale. The vendor asks for \$30, so the customer offers \$15. The merchant then says he will accept \$25, but the customer says the highest he will go is \$20. The vendor agrees that \$20 is acceptable and the sale is made at \$20. So the customer pays \$10 more than he originally wanted and the vendor receives \$10 less.

### *Why is Positional Bargaining Important?*

Positional bargaining tends to be the first strategy people adopt when entering a negotiation. This is often problematic, because as the negotiation advances, the negotiators become more and more committed to their positions, continually restating and defending them. A strong commitment to defending a position usually leads to a lack of attention to both parties' underlying interests. Therefore, any agreement that is reached will "probably reflect a mechanical splitting of the difference between final positions rather than a solution carefully crafted to meet the legitimate interests of the parties."<sup>9</sup>

Therefore, positional bargaining is often considered a less constructive and less efficient strategy for negotiation than integrative negotiation. Positional bargaining is less likely to result in a win-win outcome and may also result in bad feelings between the parties, possibly arising out of the adversarial, "you vs me" approach or simply a result of one side not being truly satisfied with their end of the outcome. Positional bargaining is inefficient in terms of the number of decisions that must be made. The example above demonstrates the back-and-forth nature of positional bargaining. The more extreme the opening positions are, the longer it will take to reach a compromise.

### *Can Positional Bargaining Be Good?*

Despite criticism of positional bargaining, supporters of this negotiation strategy do exist.

It has been argued that consideration of all underlying interests in a negotiation process is unnecessary. In fact it may sometimes be counterproductive. This is because of the distinction and relationship between issues and interests. Issues are universal; they are shared between each party in a conflict. Interests, on the other hand, are specific to each party: what the buyer of the rug in the market wants is a bargain, what the seller wants is profit. This relationship is quite simple. The problem arises when the issue at hand stirs up dramatically opposing interests

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<sup>9</sup> Fisher and Ury outline the basics of this argument in Chapter 1 of *Getting to Yes*. Roger Fisher and William Ury, *Getting to Yes: Negotiating Agreement Without Giving In*. (New York: Penguin Books, 1981), 5

between the parties, a situation in which it would be very difficult to bring them into agreement. If this is the case, it may sometimes be better to negotiate in terms of positions and go for a compromise.

For example, two nations are in a dispute over water rights. However, they also differ on many other issues, including trade, immigration, religion, and politics. Broadening the debate to include these underlying interests will only polarize the sides further. In this case it may be much easier to reach agreement if the two sides focus on the smaller issue of water, and set aside their other concerns. This involves negotiating in terms of positions. This may help the sides reach a compromise without creating any larger, interest-based conflicts. So, for issues that involve extremely conflicting underlying interests, it may be best to just focus on positions and aim for compromise<sup>10</sup>.

## Interest-Based Negotiation/ Bargaining

### *What is Integrative or Interest-Based Bargaining?*

Integrative bargaining (also called "interest-based bargaining," "win-win bargaining") is a negotiation strategy in which parties collaborate to find a "win-win" solution to their dispute. This strategy focuses on developing mutually beneficial agreements based on the interests of the disputants. Interests include the needs, desires, concerns, and fears important to each side. They are the underlying reasons why people become involved in a conflict.

"Integrative refers to the potential for the parties' interests to be [combined] in ways that create joint value or enlarge the pie." Potential for integration only exists when there are multiple issues involved in the negotiation. This is because the parties must be able to make trade-offs across issues in order for both sides to be satisfied with the outcome.

The foremost difference between interest-based and traditional approaches to negotiations is the underlying assumption each party brings to the process. Interest-based bargaining is rooted in the idea that the fundamental interests (or concerns) typically complement one another. This differs sharply from the traditional view which assumes that the parties' fundamental interests conflict with one another despite their ability to find some common ground.

### *Why is Integrative Bargaining Important?*

Integrative bargaining is important because it usually produces more satisfactory outcomes for the parties involved than does positional bargaining. Positional bargaining is based on fixed, opposing viewpoints (positions) and tends to result in compromise or no agreement at all. Oftentimes, compromises do not efficiently satisfy the true interests of the disputants. Instead, compromises simply split the difference between the two positions, giving each side half of what they want. Creative, integrative solutions, on the other hand, can potentially give everyone all of what they want.

There are often many interests behind any one position. If parties focus on identifying those interests, they will increase their ability to develop win-win solutions. The classic example of interest-based bargaining and creating joint value is that of a dispute between two little girls over an orange. Both girls take the position that they want the whole orange. Their mother serves as

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<sup>10</sup> David A. Lax and James K. Sebenius, "Interests: The Measure of Negotiation." In *Negotiation Theory and Practice*, eds. J. William Breslin and Jeffrey Z. Rubin, (Cambridge: The Program on Negotiation at Harvard Law School, 1991), 165.

the moderator of the dispute and based on their positions, cuts the orange in half and gives each girl one half. This outcome represents a compromise. However, if the mother had asked each of the girls why she wanted the orange -- what her interests were -- there could have been a different, win-win outcome. This is because one girl wanted to eat the meat of the orange, but the other just wanted the peel to use in baking some cookies. If their mother had known their interests, they could have both gotten all of what they wanted, rather than just half.

Integrative solutions are generally more gratifying for all involved in negotiation, as the true needs and concerns of both sides will be met to some degree. It is a collaborative process and therefore the parties actually end up helping each other. This prevents ongoing ill will after the negotiation concludes. Instead, interest-based bargaining facilitates constructive, positive relationships between previous adversaries.

### *Approach to Integrative Bargaining*

#### *Identifying Interests*

The first step in integrative bargaining is identifying each side's interests. This will take some work by the negotiating parties, as interests are often less tangible than positions and are often not publicly revealed. A key approach to determining interests is asking "Why?" Why do you want that? Why do you need that? What are your concerns? Fears? Hopes? If you cannot ask these questions directly, get an intermediary to ask them.

The bottom line is you need to figure out *why* people feel the way they do, *why* they are demanding what they are demanding. Be sure to make it clear that you are asking these questions so you can understand their interests (needs, hopes, fears, or desires) better, not because you are challenging them or trying to figure out how to beat them.

Next you might ask yourself how the other side perceives your demands. What is standing in the way of them agreeing with you? Do they know your underlying interests? Do you know what your own underlying interests are? If you can figure out their interests as well as your own, you will be much more likely to find a solution that benefits both sides.

You must also analyze the potential consequences of an agreement you are advocating, as the other side would see them. This is essentially the process of weighing pros and cons, but you attempt to do it from the perspective of the other side. Carrying out an empathetic analysis will help you understand your adversary's interests. Then you will be better equipped to negotiate an agreement that will be acceptable to both of you.

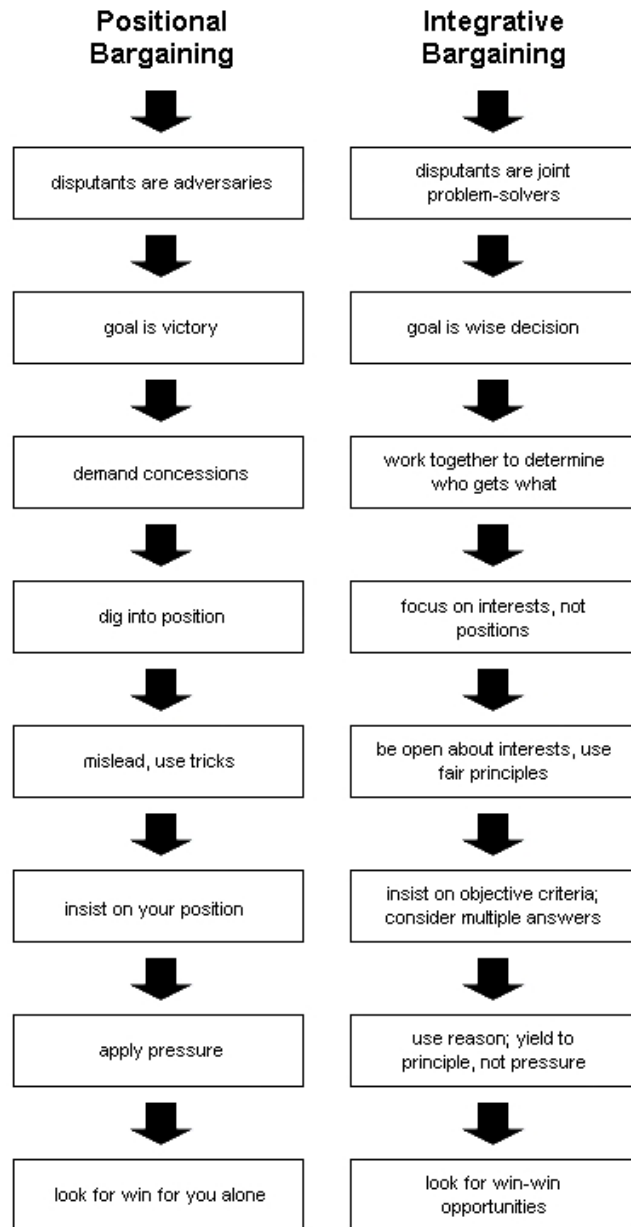
There are a few other points to remember about identifying interests. First, you must realize that each side will probably have multiple interests it is trying to satisfy. Not only will a single person have multiple interests, but if you are negotiating with a group, you must remember that each individual in the group may have differing interests. Also important is the fact that the most powerful interests are basic human needs - security, economic well being, a sense of belonging, recognition, and control over one's life. If you can take care of the basic needs of both sides, then agreement will be easier. You should make a list of each side's interests as they become apparent. This way you will be able to remember them and also to evaluate their relative importance.

#### *Creating Options*

After interests are identified, the parties need to work together cooperatively to try to figure out the best ways to meet those interests. Often by "brainstorming" -- listing all the options anyone can think of without criticizing or dismissing anything initially, parties can come up with creative new ideas for meeting interests and needs that had not occurred to anyone before. The goal is a

win-win outcome, giving each side as much of their interests as possible, and enough, at a minimum that they see the outcome as a win, rather than a loss.

*Using Integrative and Distributive Bargaining Together*



**Figure 5. Comparative approach flow-chart between positional and integrative bargaining<sup>11</sup>**

<sup>11</sup> This chart was derived from a more complex chart in Fisher, Roger, William Ury, and Bruce Patton. (1991) *Getting to Yes: Negotiating Agreement Without Giving In*, Second Edition. New York: Penguin Books. p. 13.



Although distributive bargaining is frequently seen as the opposite of integrative bargaining, the two are not mutually exclusive. Distributive bargaining plays a role in integrative bargaining, because ultimately "the pie" has to be split up.

Integrative bargaining is a good way to make the pie (joint value) as large as it possibly can be, but ultimately the parties must distribute the value that was created through negotiation. They must agree on who gets what. The idea behind integrative bargaining is that this last step will not be difficult once the parties reach that stage. This is because the interest-based approach is supposed to help create a cooperative working relationship. Theoretically, the parties should know who wants what by the time they split the pie.

Interest-based bargaining goes by a host of names such as "consensus bargaining," "problem-solving negotiations," "win-win," "mutual gains," "collaborative bargaining," "principled negotiations," and others.

There are five main characteristics of interest-based negotiations:

- Bargaining over positions is avoided;
- People are separated from the problem;
- Focus is placed on interests, not positions;
- Options for mutual gain are invented; and
- Objective criteria are used to select the appropriate resolution to an issue.

Essential to understanding interest-based processes is a thorough grasp of the distinction between a position and an interest. In short, a position, or proposal, is a party's chosen solution to a particular problem, or goal; it may be one of many alternatives that meet a party's needs. An interest is the basic need or concern that is addressed by the proposal.

### *How does interest-based bargaining work?*

Some interest-based bargaining techniques are familiar to experienced negotiators. Traditionally, after proposals are presented, the negotiators request the other party to justify their position. Good negotiators who carefully listen to this justification can respond to the stated interest of the other party in a manner which also achieves his/her own interest. Often, this is the method by which many issues are resolved.

The identification of interests, mentioned earlier, is also at the center of formal interest-based processes. However, rather than starting from proposals and seeking justification, the interest-based process starts from the justification (the identification of interests) and leads to the joint development of proposals. Once alternative proposals are identified, the parties, often using objective ranking criteria, select the alternative that ranks highest. By identifying interests and jointly developing proposals that satisfy those interests, the parties were able to "invent" a mutual gains option.

Usually, parties undertaking interest-based bargaining use a facilitator to assist them throughout the process. Bargaining is often preceded by substantial joint training. Bargaining representatives usually receive training at the outset of their process. Subsequently, mediators from an independent agency serve as facilitators.

Generally, the parties were trained in group problem-solving, consensus decision-making, and communication skills. Together they learned the concepts of interest-based bargaining and participated in exercises designed to promote discussion and understanding of how mutual interests are identified and satisfied in the process.

The structured process integral to interest-based bargaining is rarely followed rigorously. The parties may find that developing and applying objective ranking criteria is unnecessary. They then adopt three general criteria that have lasted through four rounds of bargaining:

- Is the alternative legal?
- Is the alternative ratifiable?
- Is the alternative cost-effective?

Facilitators help get the parties back on track. Even so, the parties are using the facilitators less frequently as they gain more confidence and familiarity with interest-based bargaining techniques.

Among the most visible distinctions between interest-based and traditional bargaining is the bargaining structure itself. Traditionally, collective bargaining discussions are channeled through chief negotiators who speak for each party. Information, and any internal differences of opinion, are concealed from the other party. Each party maintains a united front.

In an interest-based process, information is freely exchanged between the parties and, often, joint subgroups are established to gather information and develop tentative agreements. Communications are open and all participants speak. Internal differences are not concealed because the process requires a consensus decision to which all parties can agree.

Of course, in any negotiation some issues are easier to resolve than others. Often, when parties cannot resolve such difficult issues, they agree to defer the issue for future discussion, or they negotiate a contingent agreement. Because parties negotiate to produce something better than what could be obtained without negotiating, final offers should be measured against the best alternative to an agreement, not against a pre-selected resistance point.

Typically, as in traditional bargaining, interest-based bargainers set aside seemingly irresolvable issues until all others are settled. At that time, each party can clearly see the disagreement in the context of a full package. If issues remain unresolved, the parties resort to the tradeoffs associated with traditional negotiations. However, it is considered a breach of the interest-based "ethic" for a party to use power, such as a strike or lockout, to resolve issues. Interest arbitration is compatible with an interest-based approach.

### *Who should use interest-based bargaining?*

Interest-based bargaining is not for everyone. Traditional bargaining has, for the most part, worked well in both the public and private sectors. The perceived and actual risks associated with a transition to an interest-based approach may simply be too great in many situations. The interest-based process should be viewed as an effective option when used in the right places, at the right times.

To determine if an interest-based process is appropriate, labor-management parties must honestly assess their relationship and the environment in which they operate. Factors to be considered include:

- Does each party have the authority to bargain or will negotiated agreements be subject to further review by the executive branch?
- Legislative review of economic terms is often unavoidable.
- Do the parties have the ability to clearly and effectively communicate? Good communication is essential to the effectiveness of an interest-based process.

- Is training and facilitation available? Knowledge of the process and third party assistance are necessary for success.
- Are both parties willing participants in the process? Each party must be motivated to assume the behavior changes and risks associated with interest-based bargaining.
- Are the parties' expectations reasonable? Parties should not expect interest-based bargaining to result in an agreement superior to one that would be obtained through traditional bargaining.
- Does sufficient trust exist between the parties? Although trust is not essential to the process, it is hard to imagine the process working in the absence of a mature relationship where the parties can rely on each others' word.
- Is the environment right for cooperation? An interest-based process cannot work if party leaders are openly hostile to the other parties' interests or in an unstable political environment.
- Is there internal consensus within management to engage in interest-based bargaining? Not everyone will agree that interest-based bargaining is appropriate. If there is substantial opposition to interest-based bargaining on either side, the process may be undermined. Similarly, if either party's decision makers are experiencing significant challenges to their leadership, the process is not likely to work

## Principled Negotiation

Principled negotiation is the name given to the interest-based approach to negotiation set out in the best-known conflict resolution book, *Getting to Yes*, first published in 1981 by Roger Fisher and William Ury<sup>12</sup>. The book advocates four fundamental principles of negotiation:

### 1. *Separate the people from the problem*

Separating the people from the problem means separating relationship issues (or "people problems") from substantive issues, and dealing with them independently. People problems, Fisher, Ury and Patton observe, tend to involve problems of perception, emotion, and communication. (1991, p. 22) Perceptions are important because they define the problem and the solution. While there is an "objective reality," that reality is interpreted differently by different people in different situations. When different parties have different understandings of their dispute effective negotiation may be very difficult to achieve.

People problems also often involve difficult emotions — fear, anger, distrust and anxiety for example. These emotions get intertwined with the substantive issues in the dispute and make both harder to deal with.

Fisher, Ury and Patton consider communication problems to be "people problems" as well. They list three types of communication problems. First, disputants may not be talking to each other. While their comments are formally addressed to the opponent, they are actually addressing some outside audience. They are grandstanding, or playing to the crowd. A second communication problem arises when parties are not listening to each other. Rather than listening attentively to the opponent, parties may instead be planning their own response, or listening to their own

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<sup>12</sup> Fisher, Roger, William Ury, and Bruce Patton. (1991) *Getting to Yes: Negotiating Agreement Without Giving In*, Second Edition. New York: Penguin Books.

constituency. Finally, even when parties are both listening and talking to each other, misunderstandings and misinterpretations may occur (see also Section 6.1 on Communication).

## ***2. Focus on interests, not positions***

Negotiating about interests means negotiating about things that people really want and need, not what they say that want or need. Often, these are not the same. People tend to take extreme positions that are designed to counter their opponents' positions. If asked why they are taking that position, it often turns out that the underlying reasons--their true interests and needs--are actually compatible, not mutually exclusive.

## ***3. Invent options for mutual gain***

By focusing on interests, disputing parties can more easily fulfill the third principle--invent options for mutual gain. This means negotiators should look for new solutions to the problem that will allow both sides to win, not just fight over the original positions which assume that for one side to win, the other side must lose.

## ***4. Insist on objective criteria.***

The fourth rule is to insist on objective criteria for decisions. While not always available, if some outside, objective criteria for fairness can be found, this can greatly simplify the negotiation process. If union and management are struggling over a contract, they can look to see what other similar companies have agreed to use as an outside objective criteria. If people are negotiating over the price of a car or a house, they can look at what similar houses or cars have sold for. This gives both sides more guidance as to what is "fair," and makes it hard to oppose offers in this range.

Lastly, Fisher, Ury, and Patton counsel negotiators to know what their alternatives are. If you don't know what your alternatives to a negotiated agreement are, you might accept an agreement that is far worse than the one you might have gotten, or reject one that is far better than you might otherwise achieve. For this reason, Fisher, Ury, and Patton stress the importance of knowing and improving your BATNA before you conclude negotiations. (Click here for more information on BATNAs.)

In *Getting to Yes*, Fisher, Ury, and Patton argue that almost all disputes can be resolved with principled negotiation. They reject the notion that some conflicts are inherently win-lose or that positional bargaining is ever a superior approach. Other theorists, however, disagree--as do we. Principled negotiation is an excellent tool to use in many disputes, but we have found that it needs to be supplemented with other approaches in the case of intractable conflicts. It also is more attuned to U.S. and Western European cultures which emphasize rational cost-benefit analysis, and de-emphasize the importance of relationships and emotions. Cultures which see relationship issues as central aspects of the conflict may find principled negotiation less useful. (Click here to read about the limits to principled or interest-based negotiation.)

## **4.3 Barriers to Successful Negotiation**

### ***Viewing Negotiation As Confrontational***

Negotiation need not be confrontational. In fact effective negotiation is characterized by the parties working together to find a solution, rather than each party trying to WIN the contest of wills. Keep in mind that the attitude that you take in negotiation (eg. hostile, cooperative) will set the tone for the interaction. If you are confrontational, you will have a fight on your hands.

### *Trying To Win At All Costs*

If you "win" there must be a loser, and that can create more difficulty down the road. The best perspective in negotiation is to try to find a solution where both parties "win". Try not to view negotiation as a contest that must be won.

### *Becoming Emotional*

It's normal to become emotional during negotiation that is important. However, as we get more emotional, we are less able to channel our negotiating behaviour in constructive ways. It is important to maintain control.

### *Not Trying To Understand The Other Person*

Since we are trying to find a solution acceptable to both parties, we need to understand the other person's needs, and wants with respect to the issue. If we don't know what the person needs or wants, we will be unable to negotiate properly. Often, when we take the time to find out about the other person, we discover that there is no significant disagreement.

### *Focusing On Personalities, Not Issues*

Particularly with people we don't like much, we have a tendency to get off track by focusing on how difficult or obnoxious the person seems. Once this happens, effective negotiation is impossible. It is important to stick to the issues, and put aside our degree of like or dislike for the individual.

### *Blaming The Other Person*

In any conflict or negotiation, each party contributes, for better or worse. If you blame the other person for the difficulty you will create an angry situation. If you take responsibility for the problem, you will create a spirit of cooperation.

## **4.4 Negotiation Techniques and Tips<sup>13</sup>**

The following general principles must be remembered and applied to negotiations for any site, service, or supplier. By following these simple guidelines, a meeting manager can utilize the methods and lessons of meeting management in a more efficient manner.

### *Tackle Difficult and Sensitive Issues*

Difficult and sensitive issues should be raised and discussed throughout the negotiation process. This will enable all the parties to form realistic expectations about how the proposed relationship will work. Unrealistic expectations often result in unsatisfactory relationships. Unsatisfactory relationships often result in disappointment and legal disputes.

### *Avoid Premature Position Taking*

Before taking a particular position, it is often better to discuss each side's respective needs and interests. By adopting a discussion mindset as opposed to a position mindset the parties will become joint problem solvers rather than entrenched advisories. It is especially important to avoid ultimatums. Ultimatums such as, "Unless you concede on that issue, we will terminate negotiations immediately" should be avoided. If an ultimatum is to be given, it should only be done so after all team members have had an opportunity to review and discuss it. Furthermore, the team must be prepared to back up its ultimatum.

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<sup>13</sup> <http://www.wsba.org/media/publications/denovo/archives/mayjun-00-tips.htm>

### *Remain Flexible*

Creativity will overcome many obstacles to reaching a successful conclusion. Remember that all the parties involved in the negotiation process have devoted much time, energy, effort and money in the hopes of reaching a satisfactory conclusion. Hopefully all of the parties will work together in an attempt to understand each side's respective concerns and reach solutions to those concerns. Rigid and inflexible positions will hinder discussion and squelch creativity.

### *Maintain Composure*

Negotiations are often complex and frustrating. It is not uncommon for parties to have "highs" and "lows" during the negotiation process. It is important for all team members to recognize this fact and to remain composed, unemotional and in control at all times. Sarcastic or offhand remarks, sometimes made during tense periods, can slip out and do considerable harm to the negotiation process. Similarly, personal attacks or remarks about character should also be avoided. In addition to disrupting, and perhaps even sabotaging the negotiations, sarcastic comments and personal attacks can resurface even after successful negotiations and taint the ongoing relationship.

### *Remember Your Strength*

Entering into negotiations does not bind two parties together. Either party can, theoretically, walk away at any time. While this "negotiation leverage" is held by both parties, it is important to not give it away at any time during the negotiation process. Be especially wary of offhand remarks that may alert the other side to a vulnerability or weakness relationship or business in your position.

### *Solicit The Other's Perspective*

In a negotiating situation use questions to find out what the other person's concerns and needs might be. You might try:

*What do you need from me on this?*

*What are your concerns about what I am suggesting / asking?*

When you hear the other person express their needs or concerns, use listening responses to make sure you heard correctly.

For example: So, you are saying that you are worried that you will get lost in the shuffle and we will forget about you...Is that right?

If I have this right, you want to make sure that the phones are covered over lunch?

### *State Your Needs*

The other person needs to know what you need. It is important to state not only what you need but why you need it. Often disagreement may exist regarding the method for solving an issue, but not about the overall goal.

For example:

I would like an hour on Tuesday to go to the doctor. I want to make sure I am healthy so I can contribute better to the organization.

### *Prepare Options Beforehand*

Before entering into a negotiating session, prepare some options that you can suggest if your preferred solution is not acceptable. Anticipate why the other person may resist your suggestion, and be prepared to counter with an alternative.

### *Don't Argue*

Negotiating is about finding solutions...Arguing is about trying to prove the other person wrong. We know that when negotiating turns into each party trying to prove the other one wrong, no progress gets made. Don't waste time arguing. If you disagree with something state your disagreement in a gentle but assertive way. Don't demean the other person or get into a power struggle.

#### *Consider Timing*

There are good times to negotiate and bad times. Bad times to avoid include those situations where there is:

- a high degree of anger on either side
- preoccupation with something else
- a high level of stress
- tiredness on one side or the other

If they arise during negotiations a time-out/rest period is in order, or perhaps rescheduling to a better time.

#### *Conclusion*

Negotiating is a complex process but one worth mastering. If you keep in mind that you are responsible for the success or failure of negotiation, and if you follow the tips above, you will find the process easier.

## 5 STAKEHOLDER INVOLVEMENT

Today, project development is a complex process: the designer continuously needs to consider new demands from different stakeholders and analyse how these demands can be fulfilled. Gathering and sharing stakeholder information is important, but is only beneficial if the information is used effectively. This is not a straightforward task. Information must be shared across design functions, and all involved need to develop a common understanding of the evolving design and the importance of particular stakeholders. This process relies to a large extent on the individual designer's intuition since there is lack of effective formal tools to support this.

In the context of NBI, finding mechanisms and tools to consolidate involvement and partnerships of - national and trans-border- stakeholders is an important prerequisite for effective implementation of interstate arrangements. A variety of stakeholders include water users, actors concerned with maintaining environment quality or ecosystem services, those involved in floods risk reduction as well as other groups potentially affected by water management interventions. Their inputs are needed to deliberate, to discuss and sometimes negotiate alternative land- and water-use plans, allocation policies, and infrastructure projects in a shared river basin. Their every-day participation and collaboration is often required to effectively implement water management policies.

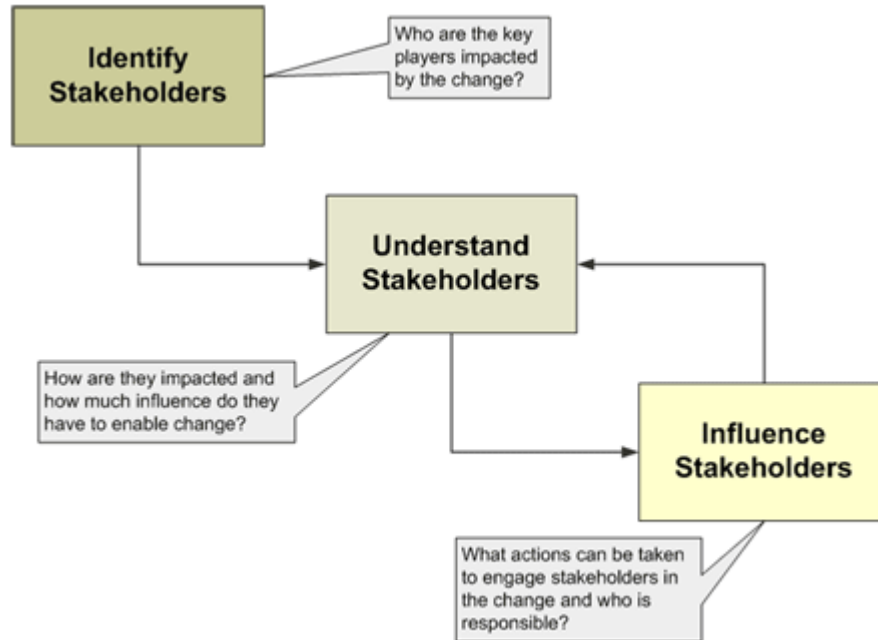
### 5.1 Stakeholder Analysis<sup>14</sup>

Stakeholder analysis is a powerful technique to ensure that the key players are engaged and contributing to the success of an initiative or a project. Identifying and segmenting stakeholders into groups according to how they will be impacted is the first action taken to manage change. The follow-on action is to engage groups to build a sense of ownership for the transformation's outcome.

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<sup>14</sup> [http://www.army.mil/ArmyBTKC/enablers/cm/toolkit\\_05.htm](http://www.army.mil/ArmyBTKC/enablers/cm/toolkit_05.htm)





**Figure 6. Stakeholder Analysis**

The graphic depicts a process chart for identifying stakeholders, understanding the impact of the transformation on various stakeholder groups and finally mapping strategies and actions customized towards influencing the different stakeholder groups identified.

The stakeholder analysis is particularly helpful and important at the outset of a project. It is an iterative process, and is revisited throughout a project to:

- Identify key players
- Understand how these players are impacted by the change and their level of influence to enable change
- Develop strategies and interventions to influence stakeholders

## 5.2 Level of Stakeholder Participation or Involvement<sup>15</sup>

Not all participation is alike. Different levels of stakeholder participation or involvement are offered by different techniques. One approach may simply transmit information to a passive stakeholder audience. At the other end of the scale, a technique may significantly empower stakeholders within the decision-making process. The following table describes how to choose a given level of involvement according to the situation or to the objectives sought.

<sup>15</sup> Stakeholder Involvement Techniques- Short Guide and Annotated Bibliography by OECD 2004, NEA No. 5418  
<http://www.oecdnea.org/html/rwm/reports/2004/nea5418-stakeholder.pdf>

Table 1. A public involvement continuum

Low level of public involvement or influence		Mid level	High level of public involvement or influence	
Inform, educate, share or disseminate information	Gather information, views	Discuss through two-way dialogue	Fully engage on complex issues	Partner in the Implementation of solutions

Planners should be aware that stakeholders may desire, expect or be entitled to a particular level of involvement. Preliminary discussion, contact with or observation of target stakeholder groups, as well as review of statutory requirements, will help determine the appropriate level. How much involvement the organisation can – or wishes to – offer must be clearly defined. This should then be clearly communicated to potential stakeholder participants, at the outset of the programme.

### 5.3 Potential Effects of Stakeholders Involvement Programs

Bottom-up, inclusive approaches for information gathering and deliberation are likely to enhance the credibility of the decision-making processes. This is not the only type of positive effect that may be expected from a well-run stakeholder involvement initiative.

Three classes of effects may result from the application of consultation and deliberation techniques.

*Substantive* effects include: better, more acceptable choices from the environmental, economic, and technical points of view.

*Procedural* effects include: Better use of information; better conflict management; increased legitimacy of the decision making process.

*Contextual* effects include: Better information to stakeholders and/or the public; improvement of strategic capacity of decision makers; reinforcement of democratic practices; increased confidence in institutional players. These potential positive effects of stakeholder participation may also be quoted as justifications for involving stakeholders in policy decisions.

### 5.4 Strategy & Techniques for Program Selection, Implementation and Evaluation

#### Setting criteria for technique selection and evaluation

The technique that will be suitable for a particular situation will depend on the stakeholders to be engaged, and the aims and objectives of the consultation. Those considering stakeholder involvement will need to consider these aspects of the involvement and decide on the most appropriate technique to use. To achieve this, the organization must develop *selection criteria*. The same criteria may serve later to evaluate the involvement program. As mentioned above, the appropriate level of involvement is a fundamental criterion. It should be carefully set and communicated to potential participants.

A list should be made of desired effects and goals, as well as constraints. These will all form criteria for choosing a technique. Members of the organization who will implement stakeholder involvement should discuss this list and the ranking of criteria. The criteria should be ranked by order of importance.

It is observed that involvement techniques are not best used for an isolated, “one-off” or “add-on” initiative. In fact, appropriate involvement of relevant stakeholders is advisable throughout a management or decision-making process. Specific techniques will give best results, for participants and for the institutions that organize dialogue, if they support a logical step in well-defined process of management or of decision.

This overall process justifies the use of a specific instrument at a given time, in order to obtain a needed output. Within this process, different issues or problems take centre stage at different times. They will frame the choice of techniques, in order to elucidate, for example: national or local considerations, or predominantly societal or technical choices.

### Choosing a technique

Most publications state that the actual choice of a technique is an art, and not a science. Stakeholder involvement techniques usually can be applied to a broad range of issues. As discussed above, the criteria developed in response to a specific context, constraints, desired goals and effects, will certainly differ between organizations.

For these reasons, no “one size fits all” list of criteria can be offered a priori. A definitive matrix matching techniques to criteria therefore does not exist. However, the handbooks and manuals do describe different techniques in terms of *generic* criteria (such as level of involvement, scale of consultation – intensive vs. extensive, representative character, inclusiveness, deliberative qualities...).

Experience shows that the success of a particular technique will depend also on external factors: the phase of decision, the political and cultural context.

When the organization’s ranked list of criteria is settled (or when a preliminary list has been developed), the planner should review existing techniques to form an idea of which might fit best. This short guide highlights the most attractive manuals offering a “quick entry” or rapid review of involvement techniques. When a set of potentially suitable techniques has been identified, more detailed sources may be consulted.

It will be of great value for the planner to contact and discuss experience with persons who have conducted involvement initiatives. In some cases the planner will consult and/or retain the services of a professional to set up and conduct the initiative, but the planner should perform the preparatory steps to identify the right family of techniques before “buying”.

### Looking towards implementation

Decisions implied by actual implementation are beyond the scope of this Manual. However, comments may be made in regard to preparing and publicizing programs.

The organizational goal of *informing or educating* implies developing appropriate public information materials. Information materials will be useful only if they can be understood and interpreted by their intended audience.

Preparing adequate information material, like preparing an adequate survey questionnaire, is a skilled professional task. Each should be adapted to the “starting position” of the stakeholder population. For both information material and survey questionnaire development, it can be beneficial to perform in-depth, reduced-scale preparatory studies exploring the starting positions or “mental models” of the various stakeholders including experts.

Higher levels of involvement usually imply that participants will have the opportunity to communicate their views and judgments in detail, as well as learn from other stakeholders. Still,

the planner may find preparatory small scale studies or consultations useful for e.g., scoping the issues or identifying target stakeholder groups.

Planners of stakeholder involvement in technical areas will probably benefit from advice on communicating about risks, translating complex information into a readily accessible form, and interacting with a range of stakeholders who may not have technical training. Finally, a planner may wish to make a broad announcement of stakeholder initiatives, or publicize their outcomes using the mass media.

## 6 SKILLS DEVELOPMENT: CONCEPTS AND TECHNIQUES

In the past decade, the focus on strategies and processes has significantly shifted to team behaviours and project execution. It has been recognized that successful execution requires a stronger emphasis on people skills such as leadership, communication and collaboration, and team behaviours around negotiation, decision making, problem solving, and conflict resolution. Managers seek not just to get results but to get results the right way, meaning that people walk away feeling good about the project and themselves, including their relationships with others and their contributions to the team. Feelings and relationships are the motivating human factors that carry over into future projects. These motivating factors generate human energy and discretionary performance and produce sustained success.

This Chapter will describe the concepts and techniques of some contract and project-related skills to develop among co-workers, including Employer/Contractor team members, in order to achieve success in a project, namely communication, mediation/arbitration, and conflict resolution.

### 6.1 Communication

Many of the problems that occur in an organization are the direct result of people failing to communicate. Faulty communication causes the most problems. It leads to confusion and can cause a good plan to fail. Communication is the exchange and flow of information and ideas from one person to another. It involves a sender transmitting an idea to a receiver. Effective communication occurs only if the receiver understands the exact information or idea that the sender intended to transmit.

#### The Communication Process

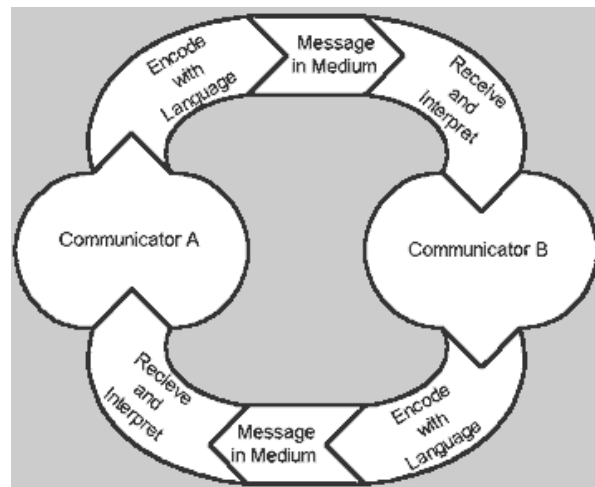


Figure 7. A Communication Transactional Model<sup>16</sup>

<sup>16</sup> Figure from "Models of the Communication Process" by Davis Foulger  
<http://davis.foulger.info/research/unifiedModelOfCommunication.htm>

**Thought:** First, information exists in the mind of the sender (Communicator A). This can be a concept, idea, information, or feelings.

**Encoding:** Next, a message is sent to a receiver (Communicator B) in words or other symbols.

**Transmitting:** During the transmitting of the message, two elements will be received: content and context.

*Content* is the actual words or symbols of the message which is known as language - the spoken and written words combined into phrases that make grammatical and semantic sense.

*Context or Medium* in the above Figure is the way the message is delivered and is known as paralanguage - it is the non verbal elements in speech such as the tone of voice, the look in the sender's eyes, body language, hand gestures, and state of emotions (anger, fear, uncertainty, confidence, etc.) that can be detected. Although paralanguage or context often cause messages to be misunderstood as we believe what we see more than what we hear; they are powerful communicators that help us to understand each other. Indeed, we often trust the accuracy of nonverbal behaviours more than verbal behaviours.

**Decoding:** Lastly, the receiver translates the words or symbols into a concept or information that he or she can interpret and understand. We all use and interpret the meanings of words differently, so even simple messages can be misunderstood. And many words have different meanings to confuse the issue even more.

A message has NOT been communicated unless it is understood by the receiver (decoded). How do you know it has been properly received? By two-way communication or feedback (see further explanation below). This feedback, Communicator B to Communicator A, tells the sender that the receiver understood the message, its level of importance, and what must be done with it. Communication is an exchange, not just a give, as all parties must participate to complete the information exchange.

## Barriers to Communication

Anything that prevents understanding of the message is a barrier to communication. Many physical and psychological barriers exist:

**Culture, background, and bias** - We allow our past experiences to change the meaning of the message. Our culture, background, and bias can be good as they allow us to use our past experiences to understand something new, it is when they change the meaning of the message that they interfere with the communication process.

**Noise** - Equipment or environmental noise impedes clear communication. The sender and the receiver must both be able to concentrate on the messages being sent to each other.

**Ourselves** - Focusing on ourselves, rather than the other person can lead to confusion and conflict. The "Me Generation" is out when it comes to effective communication. Some of the factors that cause this are defensiveness (we feel someone is attacking us), superiority (we feel we know more than the other), and ego (we feel we are the center of the activity).

**Perception** - If we feel the person is talking too fast, not fluently, does not articulate clearly, etc., we may dismiss the person. Also our preconceived attitudes affect our ability to listen. We listen uncritically to persons of high status and dismiss those of low status.

**Message** - Distractions happen when we focus on the facts rather than the idea. Our educational institutions reinforce this with tests and questions. Semantic distractions occur when a word is used differently than you prefer. For example, the word chairman instead of chairperson, may cause you to focus on the word and not the message.

**Environmental** - Bright lights, an attractive person, unusual sights, or any other stimulus provides a potential distraction.

**Smothering** - We take it for granted that the impulse to send useful information is automatic. Not true! Too often we believe that certain information has no value to others or they are already aware of the facts.

**Stress** - People do not see things the same way when under stress. What we see and believe at a given moment is influenced by our psychological frames of references - our beliefs, values, knowledge, experiences, and goals.

These barriers can be thought of as filters, that is, the message leaves the sender, goes through the above filters, and is then heard by the receiver. These filters muffle the message. And the way to overcome filters is through active listening and feedback.

## Active Listening

Hearing and listening are not the same thing. Hearing is the act of perceiving sound. It is involuntary and simply refers to the reception of aural stimuli. Listening is a selective activity which involves the reception and the interpretation of aural stimuli. It involves decoding the sound into meaning.

Listening is divided into two main categories: passive and active. Passive listening is little more than hearing. It occurs when the receiver of the message has little motivation to listen carefully, such as when listening to music, storytelling, television, or when being polite.

People speak at 100 to 175 words per minute (WPM), but they can listen intelligently at 600 to 800 WPM. Since only a part of our mind is paying attention, it is easy to go into mind drift - thinking about other things while listening to someone. The cure for this is active listening - which involves listening with a purpose. It may be to gain information, obtain directions, understand others, solve problems, share interest, see how another person feels, show support, etc. It requires that the listener attends to the words and the feelings of the sender for understanding. It takes the same amount or more energy than speaking. It requires the receiver to hear the various messages, understand the meaning, and then verify the meaning by offering feedback. The following are a few traits of active listeners:

- Spend more time listening than talking.
- Do not finish the sentences of others.
- Do not answer questions with questions.
- Are aware of biases. We all have them. We need to control them.
- Never daydreams or become preoccupied with their own thoughts when others talk.
- Let the other speakers talk. Do not dominate the conversations.
- Plan responses after the others have finished speaking, NOT while they are speaking.
- Provide feedback, but do not interrupt incessantly.
- Analyze by looking at all the relevant factors and asking open-ended questions. Walk others through by summarizing.
- Keep conversations on what others say, NOT on what interests them.
- Take brief notes. This forces them to concentrate on what is being said.

## Feedback

The purpose of feedback is to alter messages so the intention of the original communicator is understood by the second communicator. It includes verbal and nonverbal responses to another person's message.

Providing feedback is accomplished by paraphrasing the words of the sender. Restate the sender's feelings or ideas in your own words, rather than repeating their words. Your words should be saying, "This is what I understand your feelings to be, am I correct?" It not only includes verbal responses, but also nonverbal ones. Nodding your head or squeezing their hand to show agreement, dipping your eyebrows shows you don't quite understand the meaning of their last phrase, or sucking air in deeply and blowing it hard shows that you are also exasperated with the situation.

There are five main categories of feedback. They are listed in the order in which they occur most frequently in daily conversations. Notice that we make judgments more often than we try to understand:

**Evaluative:** Making a judgment about the worth, goodness, or appropriateness of the other person's statement.

**Interpretive:** Paraphrasing - attempting to explain what the other person's statement means.

**Supportive:** Attempting to assist or bolster the other communicator.

**Probing:** Attempting to gain additional information, continue the discussion, or clarify a point.

**Understanding:** Attempting to discover completely what the other communicator means by her statements.

Imagine how much better daily communications would be if listeners tried to understand first, before they tried to evaluate what someone is saying.

## Nonverbal Behaviors of Communication

To deliver the full impact of a message, use nonverbal behaviors to raise the channel of interpersonal communication:

**Eye contact:** This helps to regulate the flow of communication. It signals interest in others and increases the speaker's credibility. People who make eye contact open the flow of communication and convey interest, concern, warmth, and credibility.

**Facial Expressions:** Smiling is a powerful cue that transmits happiness, friendliness, warmth, and liking. So, if you smile frequently you will be perceived as more likable, friendly, warm and approachable. Smiling is often contagious and people will react favorably. They will be more comfortable around you and will want to listen more.

**Gestures:** If you fail to gesture while speaking you may be perceived as boring and stiff. A lively speaking style captures the listener's attention, makes the conversation more interesting, and facilitates understanding.

**Posture and body orientation:** You communicate numerous messages by the way you talk and move. Standing erect and leaning forward communicates to listeners that you are approachable, receptive and friendly. Interpersonal closeness results when you and the listener face each other. Speaking with your back turned or looking at the floor or ceiling should be avoided as it communicates disinterest.

**Proximity:** Cultural norms dictate a comfortable distance for interaction with others. You should look for signals of discomfort caused by invading the other person's space. Some of these are: rocking, leg swinging, tapping, and gaze aversion.

**Vocal:** Speaking can signal nonverbal communication when you include such vocal elements as: tone, pitch, rhythm, timbre, loudness, and inflection. For maximum teaching effectiveness, learn to vary these six elements of your voice. One of the major criticisms of many speakers is that they speak in a monotone voice. Listeners perceive this type of speaker as boring and dull.



## Speaking Hints

When speaking or trying to explain something, ask the listeners if they are following you.

- Ensure the receiver has a chance to comment or ask questions.
- Try to put yourself in the other person's shoes - consider the feelings of the receiver.
- Be clear about what you say.
- Look at the receiver.
- Make sure your words match your tone and body language (Nonverbal Behaviors).
- Vary your tone and pace.
- Do not be vague, but on the other hand, do not complicate what you are saying with too much detail.
- Do not ignore signs of confusion.

## 6.2 Mediation / Arbitration<sup>17</sup>

### Contractual Disputes

Contractual disputes are time consuming, expensive and unpleasant. They can destroy client / supplier relationships painstakingly built up over a period of time and can impact the supply chain. They can add substantially to the cost of the contract, as well as nullifying some or all of its benefits or advantages. They can also impact on the achievement of value for money. It is in everyone's interest to work at avoiding disputes in the first place. Emphasis should be put on improving relationships between the client and supplier through teamwork and partnering. Inevitably, however, they do occur and when they do the importance of a fast, efficient and cost effective dispute resolution procedure cannot be overstated.

Dispute resolution techniques include:

**Negotiation** - the most common form of dispute resolution where the parties themselves attempt to resolve the dispute.

**Mediation** - a private and structured form of negotiation assisted by a third party that is initially non-binding. If settlement is reached it can become a legally binding contract.

**Conciliation** - as mediation, but a conciliator can propose a solution.

**Neutral evaluation** - a private and non-binding technique whereby a third party, usually legally qualified, gives an opinion on the likely outcome at trial as a basis for settlement discussions.

**Expert determination** - a private process involving an independent expert with inquisitorial powers who gives a binding decision.

**Adjudication** - an expert is instructed to rule on a technical issue – primarily used in construction disputes as set out in the Housing Grants, Construction and Regeneration Act 1996 where awards are binding on the parties at least on an interim basis - i.e. until a further process is invoked.

**Arbitration** - a formal, private and binding process where the dispute is resolved by the decision of a nominated third party, the arbitrator or arbitrators.

**Litigation** - the formal process whereby claims are taken through the civil courts and conducted in public. The judgments are binding on parties subject to rights of appeal.

Only mediation and arbitration will be discussed in the following.

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<sup>17</sup> This Chapter contains excerpts from "Dispute Resolution Guidance" by Office of Government Commerce. Website [www.ogc.gov.uk](http://www.ogc.gov.uk)

### Mediation vs. Arbitration.

**Mediation.** Mediation is a non-binding form of dispute resolution that works well for minor disputes. The mediator engages in shuttle diplomacy to formulate a solution that is acceptable to both sides. It has one major disadvantage. If the mediator fails to find a common ground, the dispute moves back to the litigation track. As a result, it works well for minor disputes. It doesn't work as well with intractable disputes or unreasonable parties.

**Arbitration.** Arbitration is a binding form of dispute resolution. It permits parties to submit their dispute to an independent third party who functions much like a judge. The arbitrator listens to the facts and then renders a judgment. It has one drawback; the arbitration is conducted much like a trial, and isn't as conducive reaching a reasonable business compromise to a business dispute.

**Binding Mediation.** This is a melding of mediation and arbitration. It starts out with non-binding mediation. If the parties are unable to reach a mutually satisfactory compromise, it converts to binding arbitration. The mediator can continue on as the arbitrator... one who has been educated on the true needs and wants of the parties, as well as who is being reasonable and who is not. The prospect of this escalation encourages reasonableness at the mediation stage. The background information permits the mediator/arbitrator to better construct fair and reasonable remedies, taking into account practical business realities.

### Mediation - Conciliation

Mediation is negotiation with the assistance of a neutral third party. It is often referred to as "structured negotiation". It has all the advantages of conventional negotiation as set out above but the involvement of the neutral can make the negotiation more effective. It should be seen as the preferred dispute resolution route in most disputes when conventional negotiation has failed or is making slow progress. Mediation is now being used extensively for commercial cases (including cases involving government departments), frequently for multi-party and high value disputes. Over 75% of commercial mediations result in a settlement either at the time of the mediation or within a short time thereafter.

**Format** - mediation is essentially a flexible process with no fixed procedures, but the format tends to be along the following lines. At an opening joint meeting each party briefly sets out its position. This is followed by a series of private confidential meetings between the mediator and each of the teams present at the mediation. This may lead to joint meetings between some or all members of each of the teams. If a settlement is reached, its terms should be written down and signed.

**Timing** - most commercial mediations last one day, with very few running for more than three days. A considerable number take place within a month of being initiated and this period can be shortened to days where necessary.

**The mediator** - the mediator's role is to facilitate the negotiations. The mediator will not express views on any party's position, although he/she may question the parties on their positions to ensure they are being as objective as possible about the strengths and weaknesses of their own and the other party(ies) legal and commercial stances. The mediator will try to get the parties to focus on looking to the future and their commercial needs rather than analyzing past events and trying to establish their legal rights. It is essential that the mediator has mediation training; it is not essential that the mediator has experience, or even knowledge, of the subject matter of the dispute. The most obvious method of identifying an appropriate mediator is to use the resources of an specialized organisation.

**Participants** - the team attending the mediation should be kept as small as possible but must include somebody ("the lead negotiator"), preferably a senior executive or official within the organisation with full authority to settle on the day without reverting to others not involved in the mediation. The lead negotiator should ideally not have been closely involved in the events relating to the dispute.

Where it really is not possible for the lead negotiator to have full authority to settle, the person attending must be of sufficient seniority that their recommendation on settlement is likely to be followed by whatever person or body makes the final decision. The fact that a binding settlement agreement cannot be reached on the day of the mediation and the reason for this should be made clear to the other parties in good time before the mediation.

Most mediation teams include a lawyer but a large legal representation on the team is rarely useful or necessary.

**Preparation** - each party usually prepares a brief summary of its position (not just its legal case) for the mediator and the other party, with the key supporting documents. These are exchanged between the parties, and sent to the mediator, at least a week before the mediation. The parties should enter into a mediation agreement once the details of the mediation (eg place, time, name of mediator) have been agreed.

**Approach** - most mediations go through a stage where it seems unlikely that there will be any useful outcome yet the majority settle, so optimism and determination to solve the problem is essential.

Neutral organizations - in many cases it is sensible to involve a neutral organization to assist in setting up a mediation and helping the parties to select a mediator. The advantages of their neutrality and of utilising their experience and advice, and the saving of the parties' own time in dealing with the administration, will usually outweigh the cost.

## Arbitration

Arbitration is governed by statute, e.g. the Arbitration Act 1996 in the UK. It is a process for resolving disputes in which both sides agree to be bound by the decision of a third party, the arbitrator. If court proceedings are begun by one party they will normally be stayed on the application of the other party relying on the arbitration clause. The agreement to arbitrate should be in writing. It can take the form of a clause within the original contract or can be made after a dispute has arisen. It is possible, as long as all parties agree, to amend an arbitration agreement at any stage so that it serves the needs of the parties better. The Arbitration Act gives the widest discretion to the parties to decide between themselves how their dispute is to be resolved but provides a fallback position if agreement cannot be reached. Like litigation and adjudication arbitration is an adversarial process. The grounds for appeal are limited.

Advantages:

- some control of process - parties/arbitrator can tailor procedures
- possible cost saving over litigation
- confidentiality
- parties can choose an arbitrator who is an expert in the relevant field
- resolution is guaranteed
- decisions are legally binding and enforceable

### 6.3 Conflict Resolution<sup>18</sup>

In many cases, conflict in the workplace just seems to be a fact of life. We've all seen situations where different people with different goals and needs have come into conflict. And we've all seen the often-intense personal animosity that can result.

The fact that conflict exists, however, is not necessarily a bad thing: As long as it is resolved effectively, it can lead to personal and professional growth. In many cases, effective conflict resolution skills can make the difference between positive and negative outcomes.

The good news is that by resolving conflict successfully, you can solve many of the problems that it has brought to the surface, as well as getting benefits that you might not at first expect:

**Increased understanding:** The discussion needed to resolve conflict expands people's awareness of the situation, giving them an insight into how they can achieve their own goals without undermining those of other people;

**Increased group cohesion:** When conflict is resolved effectively, team members can develop stronger mutual respect, and a renewed faith in their ability to work together; and

**Improved self-knowledge:** Conflict pushes individuals to examine their goals in close detail, helping them understand the things that are most important to them, sharpening their focus, and enhancing their effectiveness.

However, if conflict is not handled effectively, the results can be damaging. Conflicting goals can quickly turn into personal dislike. Teamwork breaks down. Talent is wasted as people disengage from their work. And it's easy to end up in a vicious downward spiral of negativity and recrimination.

If you're to keep your team or organization working effectively, you need to stop this downward spiral as soon as you can. To do this, it helps to understand the following two of the theories that lie behind effective conflict resolution techniques.

#### Understanding the Theory: Conflict Styles

There are five main styles of dealing with conflict that vary in their degrees of cooperativeness and assertiveness. People typically have a preferred conflict resolution style. However they also noted that different styles were most useful in different situations. The five conflict styles are:

**Competitive:** People who tend towards a competitive style take a firm stand, and know what they want. They usually operate from a position of power, drawn from things like position, rank, expertise, or persuasive ability. This style can be useful when there is an emergency and a decision needs to be made fast; when the decision is unpopular; or when defending against someone who is trying to exploit the situation selfishly. However it can leave people feeling bruised, unsatisfied and resentful when used in less urgent situations.

**Collaborative:** People tending towards a collaborative style try to meet the needs of all people involved. These people can be highly assertive but unlike the competitor, they cooperate effectively and acknowledge that everyone is important. This style is useful when one needs to bring together a variety of viewpoints to get the best solution; when there have been previous conflicts in the group; or when the situation is too important for a simple trade-off.

**Compromising:** People who prefer a compromising style try to find a solution that will at least partially satisfy everyone. Everyone is expected to give up something and the compromiser him-

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<sup>18</sup> [http://www.mindtools.com/pages/article/newLDR\\_81.htm](http://www.mindtools.com/pages/article/newLDR_81.htm)

or herself also expects to relinquish something. Compromise is useful when the cost of conflict is higher than the cost of losing ground, when equal strength opponents are at a standstill and when there is a deadline looming.

**Accommodating:** This style indicates a willingness to meet the needs of others at the expense of the person's own needs. The accommodator often knows when to give in to others, but can be persuaded to surrender a position even when it is not warranted. This person is not assertive but is highly cooperative. Accommodation is appropriate when the issues matter more to the other party, when peace is more valuable than winning, or when you want to be in a position to collect on this "favour" you gave. However people may not return favours, and overall this approach is unlikely to give the best outcomes.

**Avoiding:** People tending towards this style seek to evade the conflict entirely. This style is typified by delegating controversial decisions, accepting default decisions, and not wanting to hurt anyone's feelings. It can be appropriate when victory is impossible, when the controversy is trivial, or when someone else is in a better position to solve the problem. However in many situations this is a weak and ineffective approach to take.

Once you understand the different styles, you can use them to think about the most appropriate approach (or mixture of approaches) for the situation you're in. You can also think about your own instinctive approach, and learn how you need to change this if necessary.

Ideally you can adopt an approach that meets the situation, resolves the problem, respects people's legitimate interests, and mends damaged working relationships.

### Understanding the Theory: the "Interest-Based Negotiation Approach"

The second theory is commonly referred to as the "Interest-Based Negotiation/Bargaining Approach (IBN)" (see also Section 4.2 Negotiation Strategies above). This conflict resolution strategy, as discussed earlier, respects individual differences while helping people avoid becoming too entrenched in a fixed position.

In resolving conflict using this approach, you follow these rules:

**Make sure that good relationships are the first priority:** As far as possible, make sure that you treat the other calmly and that you try to build mutual respect. Do your best to be courteous to one-another and remain constructive under pressure;

**Keep people and problems separate:** Recognize that in many cases the other person is not just "being difficult" – real and valid differences can lie behind conflictive positions. By separating the problem from the person, real issues can be debated without damaging working relationships;

**Pay attention to the interests that are being presented:** By listening carefully you'll most-likely understand why the person is adopting his or her position;

**Listen first; talk second:** To solve a problem effectively you have to understand where the other person is coming from before defending your own position;

**Set out the "Facts":** Agree and establish the objective, observable elements that will have an impact on the decision; and

**Explore options together:** Be open to the idea that a third position may exist, and that you can get to this idea jointly.

By following these rules, you can often keep contentious discussions positive and constructive. This helps to prevent the antagonism and dislike which so-often causes conflict to spin out of control.

## The Conflict Resolution Process

Based on these approaches, a starting point for dealing with conflict is to identify the overriding conflict style employed by yourself, your team or your organization.

Over time, people's conflict management styles tend to mesh, and a “right” way to solve conflict emerges. It's good to recognize when this style can be used effectively, however make sure that people understand that different styles may suit different situations.

Look at the circumstances, and think about the style that may be appropriate. Then use the process below to resolve the conflict:

### *Step One: Set the Scene*

If appropriate to the situation, agree the rules of the IBN Approach (or at least consider using the approach yourself). Make sure that people understand that the conflict may be a mutual problem, which may be best resolved through discussion and negotiation rather than through raw aggression.

If you are involved in the conflict, emphasize the fact that you are presenting your perception of the problem. Use active listening skills (see Section 6.2 above) to ensure you hear and understand other's positions and perceptions.

- Restate
- Paraphrase
- Summarize

And make sure that when you talk, you're using an adult, assertive approach rather than a submissive or aggressive style.

### *Step Two: Gather Information*

Here you are trying to get to the underlying interests, needs, and concerns. Ask for the other person's viewpoint and confirm that you respect his or her opinion and need his or her cooperation to solve the problem. Try to understand his or her motivations and goals, and see how your actions may be affecting these. Also, try to understand the conflict in objective terms: Is it affecting work performance? damaging the delivery to the client? disrupting team work? hampering decision-making? or so on. Be sure to focus on work issues and leave personalities out of the discussion.

- Listen with empathy and see the conflict from the other person's point of view
- Identify issues clearly and concisely
- Use “I” statements
- Remain flexible
- Clarify feelings

### *Step Three: Agree the Problem*

This sounds like an obvious step, but often different underlying needs, interests and goals can cause people to perceive problems very differently. You'll need to agree the problems that you are trying to solve before you'll find a mutually acceptable solution.

Sometimes different people will see different but interlocking problems - if you can't reach a common perception of the problem, then at the very least, you need to understand what the other person sees as the problem.

***Step Four: Brainstorm Possible Solutions***

If everyone is going to feel satisfied with the resolution, it will help if everyone has had fair input in generating solutions. Brainstorm possible solutions, and be open to all ideas, including ones you never considered before.

***Step Five: Negotiate a Solution***

By this stage, the conflict may be resolved: Both sides may better understand the position of the other, and a mutually satisfactory solution may be clear to all.

However you may also have uncovered real differences between your positions. This is where a technique like win-win negotiation can be useful to find a solution that, at least to some extent, satisfies everyone.

There are three guiding principles here: Be Calm, Be Patient, Have Respect...

**Key Points**

Conflict in the workplace can be incredibly destructive to good teamwork. Managed in the wrong way, real and legitimate differences between people can quickly spiral out of control, resulting in situations where co-operation breaks down and the team's mission is threatened. This is particularly the case where the wrong approaches to conflict resolution are used.

To calm these situations down, it helps to take a positive approach to conflict resolution, where discussion is courteous and non-confrontational, and the focus is on issues rather than on individuals. If this is done, then, as long as people listen carefully and explore facts, issues and possible solutions properly, conflict can often be resolved effectively.

## 7 REVIEW OF SOME PURCHASE/COST-BENEFIT SHARING AGREEMENTS

### 7.1 Definition

Introduced in 1995, a cost-sharing agreement, or CSA, is a contractual agreement between companies/entities in the same multinational group which allows the companies /entities to share the costs and risks of developing, producing, or obtaining assets that will be separately exploited by each of the participants. Typically, companies with R & D or technology-related assets, such as pharmaceutical or software companies, have entered into this type of agreement.

In a CSA, each party to the agreement should 1) derive a mutual benefit, 2) have a defined interest in the project, and 3) share the benefits using an allocation method reflecting the costs incurred. Therefore, CSA name can be sometime referred to as cost-benefit sharing or purchase/cost-benefit sharing agreement.

### 7.2 Elements of a Cost-Benefit Sharing (CBS) Agreement

#### General Principles

An agreement between two or more parties/entities begins from the premise that it is made by two or more parties/entities equal in law and all with the powers to enter the contract for their own and mutual benefit. The agreement must address the fundamental issues of:

- What will be delivered?
- Who will do what for whom?
- When will it be done?
- How much will it cost, and
- How will cost- benefit be shared among participants?

The agreement should be clear, specific and flexible.

#### Elements of the Contract/ Agreement

Styles of legal drafting with a heavy emphasis on enforcement in situations of default (e.g.: those traditionally used in mortgages and commercial leases) are not appropriate for cost-sharing agreements. The inter-government agreement is a document to be used first and foremost by the governments' party to the agreement.

#### *Why of an agreement*

- Vision, identified benefit, unity and framework for negotiations
- Outline of the issues to be addressed by the agreement

#### *What of an agreement*

- Identification of the beneficiaries and definition of the service/product to be provided
- Budgeting
  - Inflation costs
  - Shares
  - Funding



- Distribution of funds
- Basis for service/product purchase/benefit-cost sharing formula
- Liability - Acquisition of capital
- Veto and/or approval - Principles the agreement is based on
- Ex. the “Whereas” clauses of the agreement
- Split out the capital and operational costs
- Monitoring of Activities

#### *Who will be doing it?*

- Identification of staff resources

#### *How will it be done?*

- Identify Governance and leadership
- Roles and responsibilities
- Governance structure
  - Fair representation for decision-making
  - Different decisions may require a different decision-making structured processes to determine balance between large and small partners
- Service-Product/benefit-cost-sharing equity
- Decision-making process
- Review, Continuation and Termination clauses
- Division of assets
- Dispute resolution mechanism
- Reporting mechanism/communication

#### *When will it be done?*

- Establish delivery timelines /schedule

### **7.3 Case Studies**

The following case studies will be discussed during the seminar presentation:

- ◆ USAID/COMPASS<sup>19</sup> teamed up with UNDP to fund a workshop on Principles and Approaches to CBNRM. COMPASS paid for guest’s accommodation and incidentals while UNDP covered other related costs.
- ◆ Government staff offering technical services such as training and technical advice to some COMPASS grantees. An example of this is the Matindi Youth Group that received funding from COMPASS to raise fruit tree nurseries. Blantyre ADD Horticulture staff offered training and technical advice.
- ◆ COMPASS sharing costs with partners during exchange visits e.g. an NGO or CBO partner meeting costs of accommodation and meals for the visiting group and COMPASS paying

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<sup>19</sup> Source: Moyo, Nobel, Cost-Sharing principles and guidelines for CBNRM activities, Community Partnerships for Sustainable Resource Management in Malawi, COMPASS September 2000

for transport hiring charges. The types of costs shared are negotiated on a case by case basis.

- ◆ There is a proposed cost sharing between COMPASS and Portland cement (private sector) for making cement-building blocks. COMPASS will buy the molding machine while Portland cement will provide free cement for molding cement blocks with the arrangement that government contractors will use (buy) the cement blocks for the construction of district referral hospitals under EU's funding.
- ◆ EDETA and POET offer business training and all their participants pay for their own travel, accommodation, and meals and participation fee. EDETA and POET organize and provide the training. Lending institutions for business ventures advise clients to undergo business training by POET or EDETA before they could be considered for loans.
- ◆ Mulanje Mountain Conservation Trust developed a Conservation Management Plan by involving several stakeholders and is now negotiating with government to co-fund the launching of the Management Plan.
- ◆ CURE, for example, in its training programs provides resource persons, training materials and other logistical arrangements whilst collaborating NGOs meet their staff costs of participation such as allowances, accommodation and transport.
- ◆ Donors like UNDP, World Bank and USAID sometimes fund workshops jointly to cover costs like local consultants, international consultants, allowances and other related costs.
- ◆ **African Water Facility Special Fund<sup>20</sup>**
  - ◆ Financing and Cost Sharing
    - ◆ *Ceilings for Grants The floor of EUR 50,000 and a ceiling of about EUR 5,000,000 should be considered for accommodating the financing of various categories of activities during the period of validity of these Procedures defined in paragraph 1.1.4.*
    - ◆ *Cost Sharing In financing its operational activities, the AWF will give preference to activities for which the ownership by the beneficiaries and their participation can be clearly demonstrated and established. The nature and timing of beneficiary contributions will vary and depending on the specific circumstances it could be in cash or in kind such as labour and/or materials. The nature of beneficiary contribution shall be negotiated during project appraisal. The Facility will base its decisions on the need for harmonization and alignment with established practice in the country. Therefore, cost-sharing arrangements shall be in accordance with the practice agreed upon between the country and the stakeholders and partners. In countries where such mechanisms do not exist, a minimum beneficiary contribution shall be 10% for capital investments.*

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[http://www.afdb.org/awf/en/www.afdb.org/pls/portal/docs/PAGE/AWF\\_ADMIN/AWFDOCUMENTS/AWF\\_OPERATIONAL\\_PROCEDURES\\_EN.PDF](http://www.afdb.org/awf/en/www.afdb.org/pls/portal/docs/PAGE/AWF_ADMIN/AWFDOCUMENTS/AWF_OPERATIONAL_PROCEDURES_EN.PDF)

Source: African Water Facility, Operational procedures, African Development Bank, November 2005

## Appendix A

### LIST OF DOCUMENTS WHICH MAKE UP THE FIDIC RAINBOW

1. Conditions of Contract for Works of Civil Engineering Construction - Red Book (Fourth edition; 1987)  
Part 1 - General Conditions with forms of tender and agreement  
Part 11 - Conditions of particular application with guidelines for preparation of Part 11  
Clauses; Reprinted 1988 with editorial amendments; Reprinted 1992 with further  
amendments.
2. Conditions of Contract for Electrical and Mechanical Works including erection on site - Yellow  
Book; with forms of tender and agreement (Third edition;1987).  
Part I - General Conditions  
Part II - Special Conditions
3. Conditions of Contract for Design-Build and Turnkey - Orange Book (First edition; 1995)  
Part I - General Conditions  
Part 11 - Guidance for the preparation of conditions of particular application; Forms of Tender  
and agreement
4. Conditions of Sub-contract for Works of Civil Engineering Construction (First edition; 1994)  
Part 1 - General Conditions  
Part II - Guidance for the preparation of conditions of particular application  
Forms of offer and agreement
5. Tendering Procedure (Second edition; 1994)
6. Client/Consultant - Model Services Agreement - White Book (Second edition; 1991)  
Part 1 - Standard Conditions  
Part II - Conditions of particular application  
(Note - this document replaces the previous three documents IGRA 1979 D and S, IGRA 1979  
P I and IGRA 1980 PM)
7. Joint Venture (Consortium) - Agreement (First edition; 1992)
8. Sub-consultancy Agreement (First edition; 1992)

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◆ FIDIC 1998 (published July 1998). For information, contact the International Federation of Consulting Engineers, BP 86, CH-1000 Lausanne 12 (tel. +41 21 654 44 11; fax: +41 21 653 54 32; [fidic@pobox.com](mailto:fidic@pobox.com))