

# PMI-MUMBAI SESSION

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## Management of Proposals and Contracts

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# AGENDA

- Contract Fundamentals
- Reviewing of RFPs / Tenders
- Structuring Contracts
- Negotiation Styles

# Contracts Shape our Company

- Our business is defined by the types of contracts we make
- How well we develop and negotiate our contracts determines the financial health of our company
- How well we manage our scope of services (the solution), responsibilities, actions, growth, renewals and escalations are vital to success.

# So what is Contract Management?

- Contract Management is about the application of skills and techniques across the entire range of management, business, commercial and future growth of contract with a client
- The contract manager is a key player in the provision of solutions to day-to-day account concerns
- Assists with the development of long-term strategies concerning organization's contract structure and contractual obligations
- All operated under the governance of principles and a defined operating model.

# Contract Management Discipline



# Contract Management Responsibilities

- Provide proactive contractual advice, guidance and support to the project delivery teams and business units
- Use contractual creativity to identify opportunities for revenue growth and mitigation of business risks
- Negotiate changes
- Interpret contract clauses, answer questions
- Provide advice and guidance on contract issues, requirements and options
- Identify and report on potential contract issues and risk areas
- Oversee contractual performance issues and help resolve contractual disputes

# Dangerous Words

## ■ **Imply Perfection**

- *Unique*
- *Any, All, Every, None*
- *Always, Never*
- *Uniquely Qualified*

## ■ **Superlative**

- *Optimum, Minimum, Maximum, Best*
- *Lowest, Greatest, Earliest, Latest*

## ■ **Open ended or vague**

- *Best Estimate*
- *But not limited to*
- *Included*
- *For example, e.g., etc.*

## ■ **Imply guarantees or warranty**

- *Complete*
- *Insure, Ensure, Assure*
- *Meet "Future" Business Needs*
- *Increase Competitiveness*

## ■ **Legal implications**

- *Best Efforts*
- *Partner, Partnership, Alliance*
- *Work products*
- *Outputs, inputs*
- *Guarantee*

# Dangerous Words

- Words which imply perfection, promise "absolute" commitments
- Common conversational usage but which have specific legal meanings
- To avoid some of the worst excesses of sales or technical "enthusiasm"
- Poor choice of words can lead high risk
- Words permissible under one geography may mean differently in a another country.



# IPR & Ownership of Materials

- Indemnification Provisions
  - Lay down conditions
  - Press for defending, rather direct indemnification
  - Provide Remedial Measures
  - Include the Exclusions
  - Residual Clauses
- Limit the Liabilities
  - Loss or damage of data
  - Loss of profit, business, revenue

# Termination

- Termination for Convenience
  - Paid Services till the date of termination
  - Termination Charges
- Termination for Cause
  - Provision for remedy
  - Subject to dispute resolution
  - Charges for delivered items

# Preparing for a Negotiation

- Proper preparation enables a team to accomplish five things:
  - To take the initiative
  - Narrow the issues
  - Improve your capability to react quickly
  - Create attractive options
  - Better evaluate trade offers
- Negotiation process is most effective when both sides are well prepared

# Important elements

- **Goals**, both ours and theirs
- **Issues** that must be resolved by negotiation before the goals can be reached
- The **bargaining zone** across which we will be negotiating
- **Personnel** who the other side and our side will be at the table
- Possible **trades and concessions** that could be made
- **Arguments** both sides might use to support their positions
- **Evidence** that can support those arguments, as well as possible disconfirming evidence
- And **expected responses** to the arguments presented

# The bargaining zone

- The **target**
  - It is the upper limit, the best deal you believe you could negotiate on each issue. Should be realistically possible to achieve.
- The **settling point**,
  - is a realistic estimate of where you will end up, it should be based on similar negotiations and whatever you may know about the Customer.
- The **BATNA** (Best Alternative to a Negotiated Agreement)
  - On non monetary issues as terms and conditions, we need to know what is the least we are willing to accept

# Trades

- Trading should be thought as a process which allows both sides to come up with creative options whose differential values end up making both sides better off.
- You should list the trades you are willing to make, have a clear understanding of their costs, and how they will be received by the other side.
- Identify a range of options for trading on each issue. Ideal to have at least five options for each issue that is being negotiated.
- Trade are not concessions. If you believe that what you are offering is justifiable and of value to the other side, then, ask something back in return.

# Negotiations Tips

- Prepare thoroughly
- Ask for more than you need
- One voice
- If you haven't said no, you're not negotiating
- Don't make the first major concession
- Listen first, talk second
- Don't answer what hasn't been asked
- Learn the three magic words: "I don't understand."
- Control the drafting
- Always allow the other side to save face
- Use as much of their language as possible

# Final advice.....

## Think Strategically



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