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THESIS



UNDERSTANDING AND AVOIDING
THE CONTRACT NEGOTIATION IMPASSE

by

Arno J. Sist

June 1994

Thesis Advisor:

David V. Lamm

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Understanding and Avoiding
the Contract Negotiation Impasse

by

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Submitted in partial fulfillment
of the requirements for the degree of

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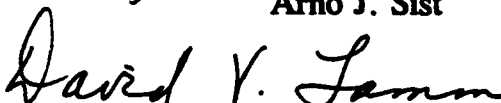
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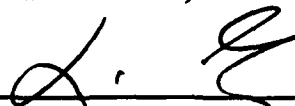
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ABSTRACT

Negotiation is an integral part of everyday life. It is a process whereby parties come together and attempt to reach an agreement that is of mutual benefit and that sets the framework for future dealings. While the goal of any contract negotiation is to reach an agreement, there are instances when, for various reasons, negotiations reach an impasse. The consequences can be serious for both DOD and industry. If a negotiation associated with developing and/or fielding a major weapon system breaks down, DOD's ability to meet mission goals is adversely affected. Likewise, the impasse can threaten the financial health of the prospective prime contractor and associated subcontractors, weakening the defense industrial base.

This thesis developed an understanding of the factors which contribute to the occurrence of a contract negotiations impasse, and how a knowledge of these factors may be utilized to avoid the impasse and improve the negotiation process. The research focused on DOD and defense industry practicing contract negotiators.

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I. INTRODUCTION

A. PURPOSE OF THE RESEARCH

Negotiations are a fundamental part of everyday existence. Parents negotiate with children, and husbands with wives. Law enforcement officials negotiate with terrorists. The President negotiates with Congress. In recent years, negotiation has come to be seen as an integral part of management existence.

In Fiscal Year (FY) 1992, the Department of Defense (DOD) procured goods and services valued at \$113.3 billion. Of this amount, only \$7.2 billion used the sealed bid method, meaning that potentially \$106.1 billion worth of contracts were negotiated. Nearly one-third, or \$34.7 billion, were sole-source procurements [Ref. 1:p. 83].

While the goal of any contract negotiation is to reach an agreement, there are instances when, for various reasons, negotiations reach an impasse. The consequences can be serious for both DOD and industry. If a negotiation associated with developing and/or fielding a major weapon system breaks down, DOD's ability to "meet the threat" is adversely affected. Likewise, the impasse can threaten the financial health of the prospective prime contractor and associated subcontractors, weakening the defense industrial base.

There are circumstances where reaching an impasse may be rational, such as when the parties have better alternatives available to them [Ref. 2:p. 110]. However, empirical research has demonstrated that negotiators often make decisions irrationally, and consequently fail to reach mutually beneficial agreements.

The purpose of this thesis is to develop an understanding of the factors which contribute to the occurrence of a contract negotiations impasse, and how a knowledge of these factors may be utilized to avoid the impasse and improve the negotiation process. While literally thousands of books and lesser works have been devoted to various aspects of the negotiation process, relatively few have focused primarily on the impasse, and even less have examined the contract negotiations impasse. As far as this researcher was able to determine, none of the existing research has focused on the contract negotiations impasse from the perspective of practicing contract negotiators. This is perplexing, given the sizeable role of contract negotiations in both Government and business. Thus, this thesis seeks to fill this gap in the existing negotiations literature.

B. GENERAL DESCRIPTION OF THE RESEARCH

The primary research data gathering method was a questionnaire which was sent to both DOD and defense industry negotiators after having been refined based on a field test.

The questionnaire was designed to be answered anonymously if desired, although the questionnaire did include a query as to whether the respondent would be willing to be interviewed concerning his responses. Many respondents answered in the affirmative, and so a number of interviews were conducted with negotiators in order to clarify responses and elicit additional information. An additional data gathering method; examining video tapes of negotiations conducted between third quarter students in the Acquisition and Contract Management curriculum at the Naval Postgraduate School; did not provide any information as none of these negotiations ended in an impasse.

C. OBJECTIVES

The objective of entering into contract negotiations is to reach a mutually advantageous agreement, not an impasse. A negotiation which ends in impasse wastes two valuable resources: time and money. The relationship between the individuals and organizations involved may become strained. As indicated earlier, DOD's mission capability and the contractor's financial stability may be jeopardized.

The primary objective of this research is to ascertain how the impasse scenario develops, and, knowing this, determine appropriate actions which could be taken by contract negotiators to avoid an impasse and thereby improve the negotiation process.

A second objective is to compare and contrast DOD and industry negotiators' perspectives of the impasse. Identification of any differences between these negotiators may provide valuable insight on how to improve the negotiation process between DOD and industry negotiators.

D. RESEARCH QUESTION

Primary Research Question:

- What are the principal factors and characteristics that lead to a contract negotiation impasse and how might the knowledge of these factors and characteristics be utilized to improve the negotiation process and avoid an impasse?

Subsidiary Research Questions:

- What are the key characteristics of a contract negotiation impasse?
- What are the typical situations and scenarios which lead to a contract negotiation impasse?
- What are the actions or steps which could be taken by contract negotiators to avoid an impasse?

E. SCOPE AND LIMITATIONS OF RESEARCH

While the realm of negotiations is very broad, this research will be limited in scope to that of contract negotiation impasses experienced by practicing DOD and defense industry contract negotiators. The research will be limited to identifying the events and circumstances which lead to the impasse, and how they may be avoided. The research will not seek to determine what actions should be taken after an

impasse is reached. Several issues proved limiting in terms of research, but none proved to be an insurmountable obstacle. One limitation was that an impasse could not be artificially induced during a real-world contract negotiation. A second limitation was that a researcher is typically not allowed to conduct research in an actual negotiation setting, because few contractors are willing to bare themselves when money and proprietary issues are at stake. Thirdly, there was no way to obtain or "pair up" questionnaires from both parties involved in a particular contract negotiation which ended in impasse due to the anonymous nature of the questionnaire. Consequently, some bias is likely to be present in some of the responses. However, the honesty and comprehensiveness of the answers given as a direct result of the anonymous nature of the questionnaire should reduce the amount of bias present. Further, the negotiators' perceptions are of relevance to this research effort in and of themselves. What a particular negotiator perceives is, in essence, his or her "reality."

F. LITERATURE REVIEW AND METHODOLOGY

While very little research has been devoted exclusively to the impasse, one area of research which was especially helpful was that devoted to negotiator cognition and rationality. The works of Margaret Neale and Max Bazerman of Northwestern University are particularly noteworthy. In *Cognition and Rationality in Negotiation*, Neale and Bazerman introduce a new

area of research in which the negotiation process is viewed as a multiparty decision-making activity, where the individual cognitions of each party and the interactive dynamics of multiple parties are seen as critical elements [Ref. 3:p. 1]. The central argument of their book is that to negotiate most effectively negotiators need to make more rational decisions. Making such decisions requires that negotiators understand and reduce the cognitive errors that pervade their decision processes [Ref. 3:p. 1]. The importance of this research to the study of the impasse is the premise that irrational decision-making reduces the quality of negotiated agreements, and increases the probability of an impasse.

Howard Raiffa discusses the concept of the bargaining "zone of agreement" and the "best alternative to a negotiated agreement," or BATNA [Ref. 4:pp. 44-45]. Both are useful concepts when examining the impasse. If a positive zone of agreement does not exist; that is, the buyer's maximum price exceeds the minimum price the seller will accept, then no agreement is possible. In determining a maximum or minimum price, the buyer/seller should consider his BATNA, or what will happen if no agreement is reached [Ref. 4:pp. 44-45]. A rational negotiator should accept any agreement which is superior to his BATNA. However, empirical research by Neale, Bazerman and many others demonstrate that negotiators do not always make rational decisions, and that an impasse may result even when there is a positive zone of agreement.

Another relevant area of research when studying the impasse is the framing of issues, and the dilemma between the distributive and integrative aspects of negotiating. Dean Pruitt, William Bottom and Amy Studt, and Neale and Bazerman have performed valuable research in this area. A purely distributive approach is associated with a "Win-Lose" mentality in which one party's gain is at the direct expense of the other party. An integrative, or "Win-Win" approach involves examining the relative preferences or interests of the parties and "trading off" lower priority items for higher priority items. In general, integrative agreements can produce more joint gain than purely distributive agreements. In the context of the impasse, a pair of negatively framed negotiators will fail to reach agreement more often than a pair of positively framed negotiators [Ref. 5:p. 471].

Many other research efforts have provided valuable background for the instant research. Chester Karrass, Wayne Barlow and Glenn Eisen have explored the use of impasse as a negotiation tactic [Ref. 6:pp. 195-196] [Ref. 7:p. 159]. Roy Lewicki has examined the issue of lying and deception in negotiations [Ref. 8:pp. 68-88]. W. Clay Hamner investigated the effects of bargaining strategy and pressure to reach agreement in a stalemated negotiation [Ref. 9:pp. 458-466]. Neale and Bazerman, Roderick Kramer, Elizabeth Newton and Pamela Pommerenke have studied the impact of negotiator

overconfidence on the negotiation process [Ref. 10:pp. 34-47]
[Ref. 11:pp. 110-129].

This research was designed to determine how an impasse scenario develops in the course of real-world contract negotiations. Three hundred thirty five questionnaires were sent to Department of Defense (DOD) and defense industry negotiators. Of the 335, 212 were returned, for a response rate of 63%. Of these, 104 respondents (62 DOD and 42 industry negotiators) indicated that they had experienced an impasse. The questionnaire contained 33 yes-no, scaled, and open-ended questions. Average time to complete the questionnaire was estimated at 20 to 25 minutes. Respondents were given the option to remain anonymous, although they were encouraged to provide their names and phone numbers for follow-on questioning as necessary. In addition to asking questions concerning the impasse and related factors, respondents were asked to indicate how long they had been a negotiator; whether they negotiated on behalf of the Government or industry; and whether they were the buyer or the seller.

As the data were accumulated, statistical analyses were performed, comparing the means and standard deviations of the various questions. The principal comparison was between DOD and industry negotiators.

G. DEFINITIONS

A contract negotiations impasse is defined as a case where two negotiators ultimately fail to reach an agreement. This is not the same as a stalemate, which is a temporary "stalling" point. A negotiation which reaches an impasse may include periods of stalemate, but not necessarily so. This is not to say that the two organizations will never reach an agreement. It is possible that two different negotiators negotiating on behalf of the same organizations (e.g., Naval Air Systems Command and Lockheed Corporation) will subsequently reach an agreement. The impasse is defined at the individual negotiator level vice the organizational level, and it is a terminal event. Two individual negotiators going head to head are unable to ever reach an agreement.

H. ORGANIZATION OF THE STUDY

Chapter I introduces the purpose and general direction of the research. It also addresses the objectives of the research. The research question, scope and limitations made in the research are described, with a brief literature review and the research methodology outlined to conclude the chapter.

Chapter II presents the theoretical framework within which the research was conducted and analyzed. Chapters III, IV and V present and analyze the data. Chapter III focuses on demographic data, negotiator definitions of the contract

negotiations impasse, and impasse-relevant facets of the contract pre-negotiation phase of negotiations. Chapter IV concentrates on the active negotiation phase and Chapter V on its conclusion: the impasse. Finally, Chapter VI will present the conclusions and recommendations of the research.

II. THEORETICAL FRAMEWORK

A. INTRODUCTION

This chapter is designed to present the theoretical framework within which the research was conducted and analyzed. It is organized into 13 sections, excluding the introduction and summary. The first section will discuss the findings of a thesis written by Robert Bennett which studied simulated negotiations and their effectiveness on negotiated outcome. Subsequent sections will discuss zones of agreement and best alternative to a negotiated agreement (BATNA); the use of impasse as a negotiation tactic; distributive and integrative approaches to negotiation; balance of negotiator power; trust and deception; negotiator overconfidence and aspiration level; reactive devaluation of concessions; perspective-taking ability (PTA); personality conflicts; pressure to reach agreement; non-rational escalation of conflict; and anchoring and adjustment. Each of these are important to an analysis of the impasse because they have been identified through previous research as key factors which increase the likelihood of a negotiations impasse, although not necessarily a contract negotiations impasse.

B. SIMULATED NEGOTIATIONS AND THE IMPASSE SCENARIO

Robert Bennett's thesis studied simulated negotiations and their effectiveness on negotiated outcome [Ref. 12:pp. 136-143]. Of the 139 negotiations conducted, nineteen resulted in an impasse. Of the nineteen, Bennett was only able to obtain data from seven of the negotiations. Both the buyer and seller were asked to complete a questionnaire which sought to ascertain the reasons for the impasse. Because of the limited responses, Bennett was unable to draw any definitive conclusions to account for the impasse in general. However, he noticed several patterns which he considered possible explanations for the impasse scenario. These factors were, (1) a general unwillingness to negotiate, (2) unrealistically high or low initial offers, (3) a proclivity toward a particularly high or low price, (4) lack of an overlap between the buyer's maximum price and the seller's minimum price (a negative zone of agreement), (5) a breakdown in communication, and (6) personality conflicts. [Ref. 12:pp. 136-143]

Bennett's limited study of the impasse scenario provided the impetus and starting point for the instant research effort.

C. ZONE OF AGREEMENT AND BATNA

The concepts of a "best alternative to a negotiated agreement" (BATNA) and a "zone of agreement" have important implications for a study of the contract negotiations impasse.

To illustrate, consider the following buyer-seller scenario developed by Raiffa (1982) [Ref. 4:pp. 44-45]: One negotiator wants the value to be high--the higher the better--whereas the other wants the value to be low--the lower the better. Each negotiator will determine as best he can the decision problem he or she faces if no contract is made, that is, his BATNA. The seller has a reservation price, s , that represents the very minimum he will settle for; any final-contract value that is less than this price represents a situation for the seller which is worse than no agreement. The buyer also has a reservation price, b , that represents the very maximum he will settle for; any final-contract price that is greater than b represents a situation for the buyer that is worse than no agreement. If $s < b$, then the positive zone of agreement is the interval from s to b . However, if $b < s$, that is, if the maximum price the buyer will pay is lower than the minimum price the seller will settle for, there is a negative zone of agreement [Ref. 4:pp. 44-45]. Thus, as Bennett's thesis indicates, one very basic reason a contract negotiation impasse may occur is because a positive zone of agreement does not exist.

Pinkley, Neale and Bennett examined how differential power among negotiators (in the form of BATNAs) influences the parameters, the process, and the outcome of the negotiation. Their experiment involved first-year M.B.A. students. Participants were randomly assigned to one of two role

conditions--recruiter or candidate--and to one of three BATNA conditions--high, low, or no BATNA. They hypothesized that the highest rate of impasse would occur in negotiations where both parties had high BATNAs and the lowest rate of impasse in negotiations where both parties had no BATNAs. Surprisingly, there was no discernable impact of BATNA on impasse rate. It must be noted, however, that the study did not involve practicing contract negotiators nor contract negotiations. [Ref. 13:p. 114]

D. USE OF IMPASSE AS A NEGOTIATION TACTIC

Karrass states that impasse is one of the most powerful tactics in negotiation, and that there is almost nothing that so tests the strength and resolve of an opponent [Ref. 6:pp.195-196]. Impasse is frustrating. People who reached an impasse in Karrass' experiments were frustrated. They were angry: angry at each other, angry at Karrass, angry at their teammates and angry at the time limits imposed on them. They were unhappy. In the real world, impasse is worse. It leads to a sense of failure [Ref. 6:pp.195-196]. Similarly, Barlow and Eisen declare that properly handled, the threat of impasse can be a powerful tool in the hands of an astute negotiator. However, the risk is great, because the threat creates hostility that must be defused immediately, and the negotiator who threatens the impasse must be able to live with the

consequences if the tactic fails and an actual walkout takes place [Ref. 7:p.159].

E. DISTRIBUTIVE AND INTEGRATIVE APPROACHES TO NEGOTIATIONS

All contract negotiations involve the distribution of outcomes. Negotiations with only a single issue are purely distributive in character. The total amount of resources to be divided is fixed; one party's gain is at the direct expense of the other party. This approach is commonly referred to as Win-Lose. [Ref. 3:pp. 20-21]

If a negotiation involves more than one issue, then a search for ways to increase the amount of total gain available to the parties becomes feasible by exploiting the differences in the parties' preferences. Each party trades lower priority issues for higher priority issues. This is the integrative approach to negotiation. The degree of integration achieved by an agreement can be defined as a measure of the relative efficiency of the negotiated agreement in allocating the available resources. Integrative agreements occur through the creative search for ways to increase the size of the total pie available for distribution to both parties. This approach is commonly referred to as Win-Win. [Ref. 3:pp. 23-24]

The two approaches are quite different. Probably the biggest difference is the flow of information between the parties. A negotiator employing a Win-Lose approach often does not trust the other side and seeks to minimize the

release of any information which may reduce his advantage in the distributive dimension. Unfortunately, this is the opposite approach to achieving integrative agreements. Each party must make its preferences known to the other so that issues of lesser value can be traded for those of greater value. [Ref. 3:p. 29]

Whether the negotiation is seen in a distributive or an integrative light may be affected as much by the experience level of the negotiator as the nature of the bargaining situation itself. Inexperienced negotiators often assume a fixed-pie perspective on negotiations and act as if all negotiations are distributive. Expert negotiators are much more likely to see the integrative potential of a particular negotiation. [Ref. 3:p. 92]

Pruitt states that negotiators who have a Win-Lose orientation often employ contentious behavior designed to elicit concessions from the other party. Contentious behavior is assumed to militate against the formation of integrative agreements, and there are four reasons why this should be true [Ref. 14:p. 47]:

- Contentious behavior ordinarily involves standing firm on a particular proposal that one seeks to force upon the other party. This is incompatible with the flexibility required for fashioning integrative agreements.
- Contentious behavior encourages hostility towards the other party by a principle of psychological consistency. This diminishes one's willingness to contribute to the

other's welfare and hence one's willingness to devise or accept jointly beneficial alternatives.

- Contentious behavior encourages the other party to feel hostile and engage in contentious behavior in return.
- Contentious behavior calls into question the possibility of achieving a jointly beneficial agreement. That is, it tends to reduce the integrative potential perceived by the other party.

The implications seem clear: A Win-Lose orientation engenders contentious behavior, which can elicit contentious behavior in return. It seems logical that adopting a purely distributive approach to negotiations carries with it a greater risk of impasse.

Bottom and Studt studied the framing of negotiations (positive or negative), and its effect on the distributive aspect of integrative bargaining [Ref. 5:p. 459]. The significance of framing on negotiations arises in classifying an alternative as a potential gain or a loss. Negotiators behave in a more risk-averse manner when evaluating potential gains (positive frame), and in a more risk-seeking fashion when evaluating potential losses (negative frame). In negotiation, the risk-averse course of action is to accept an offered settlement; the risk-seeking course is to hold out for future, potential concessions [Ref. 3:p.44]. In their study involving 68 M.B.A. candidates, Bottom and Studt found that contrary to the view taken in earlier framing studies, negatively framed negotiators generally did better than their

positively framed counterparts in most situations. However, negatively framed negotiators experienced a higher rate of impasse [Ref. 5:p.459].

F. BALANCE OF NEGOTIATOR POWER

The balance of negotiator power affects overall negotiation strategy and the tactics employed against an opponent. In *Purchasing Negotiations*, Barlow and Eisen detail several sources of purchasing negotiator power, including: [Ref. 7:pp. 143-148]

- Knowledge. The more knowledge a negotiator has and can project, the more power he can bring to bear against an opponent.
- Buyer's reputation. A history of fair dealing, knowledge, and concern for people translates into power.
- Economic factors. The size of the contract and its significance to the seller are reflected in the perception of power by both parties.
- Power rests in the relative proficiency of parties to negotiate.
- Position or rank within the organization. The higher the rank, the more power a negotiator possesses.
- Competition. The competitive forces in the marketplace significantly affect the balance of power to the buyer and seller. A buyer who has attractive alternative sources (a high BATNA) has more power than if the supplier is the sole source of an item.

In *Give and Take*, Karrass asserts that sellers can gain a measure of power at the buyer's expense because buyers are

usually restricted in their ability to use competitive sources for the following reasons [Ref. 15:p. 155]:

- Some sources are located too far away.
- Some sources have bad track records.
- Sources have differing abilities and capacities to produce.
- Sources have preferences of production or engineering personnel.
- Specifications which limited sources.

The concept of negotiator power has implications in the study of the impasse. McAlister et al. (1986) developed a laboratory simulation of a market in which they varied supply and demand in order to manipulate buyers' and sellers' power [Ref. 16:pp. 278-279]. Buyers and sellers had either equal power or unequal power. Consistent with their hypotheses, they found that high power negotiators received a greater share of the profits than did low power negotiators and that joint profit was higher in the equal power than in the unequal power conditions. However, in the markets in which buyers and sellers had equal power, five of 218 negotiations ended with no agreement; in the markets in which power was unequal, 50 of 198 negotiations ended in impasse. So, while high power negotiators typically get a bigger piece of the pie vis'-a-vis' a low power negotiator if an agreement is reached, they are much more likely to fail in reaching an agreement. [Ref. 16:pp. 278-279]

G. TRUST AND DECEPTION

The process of achieving an agreement is based on "information dependence." At the outset of negotiation, each party knows only his or her own preferences. Advantage in negotiation is obtained by independent but related processes: successful determination of the opponent's preferences and priorities, while disguising one's own preferences and priorities [Ref. 14:p. 69-70]. On the one hand, concerns for trust, honesty and integrity are essential to a successful negotiating relationship; on the other hand, deception and disguise of one's true position are essential to maximizing profit. A negotiator's principal motivation to deceive is to increase his power over his opponent, primarily through the manipulation of information. Naturally, one party's perception of deception or attempted deception on the part of his opponent will make achieving an agreement more difficult, therefore, negotiations involving parties who distrust each other seem more likely to end in impasse than those where a certain amount of trust is present. [Ref. 14: p. 69-70]

H. NEGOTIATOR OVERCONFIDENCE AND ASPIRATION LEVEL

Another reason negotiators may reach an impasse despite the objective existence of a zone of agreement concerns the overconfidence with which negotiators evaluate their judgment and its effect on their aspiration levels. In Karrass' experiments, negotiators with high aspirations deadlocked more

than those with lower aspirations [Ref. 6:p. 196]. Barlow and Eisen caution against giving any concession without being fully aware of its tactical and economic impact, because concessions affect the balance of power due to their impact on the aspiration levels of the parties [Ref. 7:p. 149].

Neale and Bazerman demonstrated that negotiators typically overestimate by 15 percent the probability that, under final-offer-by-package arbitration, their final offer will be accepted by the arbitrator [Ref. 10:p. 38]. That is, while only 50 percent of all final offers submitted to the arbitrator can be accepted, the average subject estimated that there was a much higher probability that his or her own offer would be accepted. Thus, overconfidence may inhibit a variety of settlements, even when reaching an agreement is in the parties' best interests, because negotiators may avoid accepting agreements falling short of their aspirations [Ref. 10:p. 38]. Although this argument was developed relative to an industrial relations perspective, it can be legitimately generalized to suggest that any joint venture may fail to occur as each side is overconfident that the other side will eventually give in to one's own "superior" position/argument.

I. REACTIVE DEVALUATION OF CONCESSIONS

Concessions are instrumental in reaching agreements. Unless both negotiators' initial stated positions are identical, one or both negotiators have to offer concessions

in order to strike a deal, otherwise an impasse results. In the process of exchanging concessions, one concept is that of reactive devaluation.

Reactive devaluation is the inclination for opposing parties to devalue each other's concessions simply because it is the opponent who offered the concession. A number of explanations have been offered to explain reactive devaluation, including [Ref. 3:pp.75-77]:

- One party may deduce that the opponent places less value on what is being given up than on what can be gained in exchange.
- The specific concession increases the negotiator's aspirations.
- The concession may be discounted for psychological consistency based on balance theory. That is, the concession is worth less because it was declared by a negative source--the opponent.
- Interpretations about the basis for the concession, omissions, or uncertainties are apt to be interpreted malevolently.
- The mythical fixed-pie syndrome: "what is good for the opponent is bad for us."

It is probable that reactive devaluation is specifically pertinent to negotiations with negotiators perceived as "the enemy." Loewenstein, Thompson and Bazerman (1989) found that individuals who perceived themselves to be in negative bargaining relationships assigned positive utility to outcomes in which the other side received comparatively less. This was true whether the focal negotiator's outcomes were positive or

negative. However, this effect was nonexistent in positive bargaining relationships. These findings imply that reactive devaluation is a direct reaction to the opponent gaining something that it said it wanted. [Ref. 3:pp.75 - 77]

Reactive devaluation of concessions may increase the likelihood of impasse because opposing negotiators downplay the magnitude of each other's concessions. A major concession made by one negotiator is evaluated as a minor concession by his opponent, who holds out for even bigger concessions, and vice-versa.

J. PERSPECTIVE-TAKING ABILITY (PTA)

Experience and empirical evidence indicate that there are some negotiators who are more accurate in their interpersonal judgments and better able to objectively assess an opposing negotiator's position [Ref. 17:p. 50]. These individual differences may be related to the ability of a negotiator to take the perspective of his or her opponent. In the bargaining context, it is expected that individuals with high PTA would be better able to adopt the perspective of their opponents. This added information from perspective-taking should increase one's ability to predict accurately the opponent's goals and expectations. This is extremely important in devising negotiating strategy and facilitating compromise. Neale and Bazerman found that perspective-taking ability positively affects the concessionary tendencies of

negotiators and the likelihood that an agreement will be reached [Ref. 17:p. 50]. Conversely, a negotiator possessing relatively little PTA should have more difficulty in accurately determining his opponent's negotiating position, and consequently be more prone to reaching an impasse.

K. PERSONALITY CONFLICTS

Siegel and Fouraker (1960) observed that negotiations often collapse when one party becomes angry with the other and attempts to "maximize his opponent's displeasure rather than his own satisfaction" [Ref. 3:p. 161]. Loewenstein et al. (1989) devised an experiment which manipulated the emotion that one party felt toward the other party at three levels: positive, neutral, and negative [Ref. 3:p. 163]. When a relationship shifted from positive to negative, the parties shifted towards selfishness: they became more concerned with their own payoffs and were more accepting of advantageous inequity, or the "big piece of the pie" [Ref. 3:p. 163]. In Bennett's experiments, several negotiators who failed to reach agreement acknowledged that personality conflicts played a significant role in reaching an impasse [Ref. 12:p. 143].

L. PRESSURE TO REACH AGREEMENT

Hammer conducted an experiment involving undergraduate business students designed to determine the effectiveness of various bargaining strategies under stalemate conditions [Ref.

9:pp. 458-466]. He found that when subjects were faced with high pressures to reach agreement, they took fewer trials to reach agreement, had a higher concession rate, and reached agreement more often than subjects who faced low pressure to reach agreement [Ref. 9:p. 458]. Thus, a negotiator under little or no pressure to reach an agreement may be more apt to adopt a relatively "tough" bargaining style under stalemate conditions. While the tougher bargainer has the potential of making a higher profit than his opponent, he runs the risk of extinguishing his opponent's conciliatory behavior and not reaching an agreement.

M. NON-RATIONAL ESCALATION OF CONFLICT

While this phenomenon is well-known in the collective bargaining arena, it has implications for contract negotiations as well. Staw (1976) provided the initial evidence of the escalation effect [Ref. 17:p. 48]. He constructed an experiment involving subjects designated as either high-responsibility or low-responsibility decision-makers. The subjects were given a scenario in which they had to allocate funds to one of two corporate divisions. They were then told that, after a period of three years, the investment had either proved profitable or unprofitable, and that they faced another funds allocation decision concerning the division to which they had earlier given funds. When the result of the previous decision was poor, high-responsibility

subjects gave significantly more funds to the original division than the low-responsibility subjects. Based on this escalation phenomenon, negotiators can be expected to stand pat on their opening proposals through the course of ensuing negotiations. [Ref. 17:p. 48]

Bazerman(1990) states that non-rational escalation occurs for several reasons [Ref. 3:p. 69]:

- Once negotiators make an initial commitment, they are more likely to notice information that supports their initial evaluation.
- A negotiator's judgment of any new information will be biased to construe it in a way that rationalizes the existing position.
- Negotiators often make subsequent decisions to justify earlier decisions to themselves and others.
- The competitive context adds to the likelihood of escalation. It is easier for a negotiator to escalate commitment to a position and leave the future uncertain than accept a sure loss by conceding.

The negotiation process aggravates the nonrational escalation of commitment. This process often leads both parties to make extreme opening demands. The escalation literature predicts that if negotiators become bound to these initial public statements, they will nonrationally take a nonconcessionary stance [Ref. 3:pp. 69-70]. Consequently, the phenomenon of escalation can contribute to a negotiation ending in impasse.

N. ANCHORING AND ADJUSTMENT

Studies have found that people estimate values for unknown objects or events by starting from an initial anchor value and adjusting from there to yield a final answer. These anchors are typically based upon whatever information, relevant or irrelevant, is available [Ref. 3:p. 48].

Anchoring can affect the negotiation process in several ways. First, it can partially explain the importance of initial offers. Rubin and Brown (1975) note that early moves are critical in shaping the negotiation [Ref. 3:p. 49]. Research has shown that final agreements are shaped more by initial offers than by subsequent concessions (Leibert, Smith, Hill, and Keiffer, 1968; Yukl, 1974). [Ref. 3:p. 49]

Second, it can explain one of the causes of impasse when a positive zone of agreement exists: Negotiators may often confuse their objective, or target positions with their minimum positions. A negotiator should prefer any agreement that is marginally better than his minimum position. However, if negotiators only assess their target positions, then, once set, this target can become an anchor from which the negotiator is unable or unwilling to sufficiently adjust. [Ref. 3:p. 49]

O. SUMMARY

This chapter has addressed the myriad of factors which may contribute to an impasse. While most of the existing

negotiation research has not addressed contract negotiations specifically, all of the factors discussed appear relevant to the contract negotiations setting. The purpose of the instant research is to determine if, and to what extent, these factors are perceived by practicing contract negotiators to be relevant to contract negotiations. Chapter III will present and analyze the demographic data and negotiator definitions of the contract negotiations impasse, as well as explore several impasse-relevant aspects of the contract pre-negotiation phase of negotiations. Chapter IV will concentrate on the active negotiation phase and Chapter V on its conclusion: the contract negotiations impasse. Finally, Chapter VI will present the conclusions and recommendations of the research.

III. PRE-NEGOTIATION

A. INTRODUCTION

The purpose of this chapter is to present and analyze the demographic data and negotiator definitions of the contract negotiations impasse, as well as explore several impasse-relevant aspects of the contract pre-negotiation phase of negotiations. Although the pre-negotiation phase will be the primary focus, discussion and analysis will not be strictly limited to this phase.

In addition to demographics and the definition of an impasse, topics for presentation and analysis include perception of seller's risk, trust and deception, negotiator power, and tactics and strategy. Because the examination and comparison of how DOD and defense industry negotiators view each of these areas is a critical aspect of this research, the data will be categorized into those two groups. Each section will present the relevant questions; the purpose of the questions; data presentation; and individual and comparative analyses of DOD and industry negotiator responses.

The data will not be presented in numerical order, but rather by topic area. For those questions requiring a short answer, a sampling of the most common responses will be provided, starting with those most often cited. For those

questions requiring an assignment of numerical value, a statistical analysis will be provided, citing the Mean, Standard Deviation, Range, and Mode. Mystat statistical software package was used to compute the statistical values. As stated earlier, these data will be presented under the two major headings of DOD and industry negotiators.

This study is based upon the responses of sixty-two DOD and forty-two industry contract negotiators who had experienced an impasse. While the overall quality of the responses received was fairly good, not all questionnaires were filled out with 100% accuracy. When possible the individual respondents were contacted for purposes of clarification, however this was not always possible due to the anonymous nature of the questionnaire. Thus, in the data presentation and analysis to follow, the total number of responses received to a particular question will usually be somewhat less than the total number of questionnaires received from DOD and industry negotiators. For example, question #3 elicited only 57 responses (vice 62) from DOD negotiators; and only 40 responses (vice 42) from industry negotiators.

B. DEMOGRAPHICS

1. Introduction

There were only a limited amount of demographic data collected. The questions included in this section provide the

means to breakdown this study into the two main groups of interest: DOD and Defense industry negotiators.

2. Questions

There are two questions included in this section. Only the data received from respondents who indicated that they had experienced an impasse are included:

QUESTION #3. How long have you been a negotiator (in years)?

Purpose: The purpose of this question was to determine the experience level of contract negotiators who had experienced an impasse.

QUESTION #4. Do you negotiate contracts on behalf of the Government or industry?

Purpose: The purpose of this question was to provide information necessary to segregate questionnaires into the two major groups of this study: DOD and defense industry negotiators.

3. Results

a. Question #3

	<u>DOD</u>	<u>Industry</u>
0-3 yrs	<u>6</u>	<u>0</u>
4-6 yrs	<u>7</u>	<u>5</u>
7-10 yrs	<u>14</u>	<u>8</u>
11-15 yrs	<u>17</u>	<u>9</u>
16+ yrs	<u>13</u>	<u>18</u>

b. Question #4

DOD Negotiator: 62

Defense industry negotiator: 42

4. Analysis

a. DOD

As expected, most negotiators who had encountered an impasse were relatively experienced. Only 10.5% of the negotiators having experienced an impasse were considered "inexperienced;" with inexperienced being defined as a negotiator possessing three years or less of negotiation experience.

Two hundred fourteen questionnaires were sent to DOD activities. Out of one hundred forty nine responses received, sixty-two negotiators, or 41.6% indicated that they had experienced an impasse. It is very difficult to place a meaningful confidence interval around this percentage, although it is probably less. That is because, based on personal experience, the majority of the sixty-five negotiators who did not return the questionnaires probably did so because they had not experienced an impasse and thus believed their responses would be of no use to the researcher.

b. Industry

Not surprisingly, contract negotiators who indicated they had experienced an impasse were relatively experienced. Of the negotiators stating they had experienced

an impasse, 42.9% had 16 years or more negotiating experience. Zero inexperienced negotiators had encountered an impasse.

One hundred twenty one questionnaires were sent to defense industry activities. Out of sixty-three responses received, forty-two negotiators, or 66.7% indicated that they had experienced an impasse. As with DOD negotiators, the actual percentage is probably less. Also, about 15% of the questionnaires were sent to negotiators known in advance to have experienced an impasse.

5. Comparative Analysis

Industry negotiators who had experienced an impasse were relatively more experienced than DOD negotiators. This is of no consequence to the findings and recommendations of this study.

The actual percentage of DOD-defense industry negotiations which end in impasse would be interesting to know, however it is impossible to determine based on the analysis presented in subsection 4 above.

C. DEFINITION OF A CONTRACT NEGOTIATION IMPASSE

1. Introduction

This section will present, analyze and compare responses from DOD and industry negotiators concerning the definition of the contract negotiations impasse.

2. Questions

There is one question included in this section.

QUESTION #2. How do you define a contract negotiation impasse?

Purpose: The purpose of this question was to determine how DOD and industry negotiators define an impasse, and provide the basis for a comparison between the two.

3. Results

a. Question #2

DOD negotiators defined a contract negotiations impasse as follows:

- Inability to reach agreement.
- A difficult negotiation with no way out.
- Neither party willing or able to make concessions so as to reach agreement.
- Agreement could not be reached by negotiators; escalated to management level.
- Deadlock.
- No meeting of the minds.
- A negotiation stalled over a period of three months.
- Inability to reach agreement absent coercion (termination for default or claim) or threat to cancel the requirement.
- Making or restating offer three times with no movement from the other side.
- Either a deadlocked negotiation, or one which takes an inordinate amount of time and effort to complete.

Defense industry negotiators defined a contract negotiations impasse as follows:

- The parties are unable to reach a mutually acceptable position.
- A negotiation wherein the original negotiators cannot resolve differences and the deal must be elevated to a higher level for resolution.
- Where either of the "chief negotiators" cannot settle the negotiation and another negotiator is brought in to break the impasse.
- A deadlock; a negotiation in which there appears to be no way in which to reach an agreement between the parties.
- Neither party will concede based upon company policies, FAR regulations or DAR regulations.
- When parties reach incompatible positions which cannot be reconciled.
- Both parties refuse to move from last position.
- When the two sides become stalled and the direct parties have to resort to alternative courses of action.
- Positions held by both negotiators that cannot be compromised.
- An irrevocable obstacle to doing business resulting in the cancellation of an opportunity.
- Parties not having a meeting of the minds, and thus no way of agreeing to an agreement which would be a valid contract.

4. Analysis

a. DOD

As expected, the central theme of the vast majority of definitions of a contract negotiation impasse was the failure to reach agreement. The first six responses were the most common. Responses seven through ten are provided to show the range of definitions provided. Most DOD negotiators defined the contract negotiations impasse as it has been defined for the purposes of this study: two negotiators ultimately fail to reach an agreement.

b. Industry

Not suprisingly, the most common elements of the industry-provided definitions were the failure to reach an agreement, and escalation of negotiations to a higher level. Most industry negotiators defined the contract negotiations impasse as it has been for the purposes of this study: two negotiators ultimately fail to reach an agreement.

5. Comparative Analysis

Industry negotiators' definitions tended to be more homogeneous than the DOD negotiators' definitions. Still, the vast majority of both groups defined the impasse essentially as this study has; this means that the data provided by the negotiators are based on a common definition of the contract negotiations impasse.

D. PERCEPTION OF SELLER'S RISK

1. Introduction

The negotiator's perception of the seller's risk and the type of contract being discussed have definite implications for the study of the contract negotiations impasse. It seems reasonable to surmise that the greater the buyer and seller's perceptions of the seller's risk differ, the farther apart their initial positions will be. The type of contract being discussed is also germane, because of its risk-allocating properties.

2. Questions.

Questions #9, #10, and #13 are included in this section.

QUESTION #9. Were you the buyer or the seller?

Purpose: This question was included to allow the responses to be segregated into those of buyers and sellers.

QUESTION #10. What type of contract was being discussed: Fixed-Price or Cost-Reimbursement?

Purpose: The purpose of this question was to determine if one of these basic contract types is more liable to be involved in an impasse. Fixed-price contracts allocate more risk to the seller than do cost-reimbursement contracts. It seems logical that negotiations surrounding fixed priced contracts, especially firm-fixed-price, would be more prone to an impasse because of the seller's reluctance to make

significant concessions on price because they increase his risk.

QUESTION #13. How would you characterize the seller's (regardless of whether you were the seller or not) risk in terms of the performance of this contract?

Purpose: The amount of risk the seller is accepting, or perceives he is accepting, should reflect in the seller's contract price objective. The buyer's perception of the seller's risk likewise influences his contract price objective. It is likely that the buyer and seller will differ in their estimations of the seller's risk, with the buyer estimating the seller's risk to be less than what the seller estimates his own risk to be. Thus, the buyer and seller may have a difficult time agreeing on price. Of course they may not be able to reach an agreement at all, in which case an impasse results. This question was scaled 1 to 5, with 1 representing low risk, and 5 representing high risk.

3. Results

a. Question #9.

	<u>DOD</u>	<u>Industry</u>
Buyers	<u>61</u>	<u>02</u>
Sellers	<u>0</u>	<u>40</u>

b. Question #10.

	<u>DOD</u>	<u>Industry</u>
Fixed Price Contracts:	<u>53</u>	<u>37</u>
Cost Reimbursement Contracts:	<u>05</u>	<u>04</u>

c. Question #13.

<u>DOD</u>			
<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
2.910	1.237	1 to 5	3
<u>Industry</u>			
<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
3.702	1.143	1 to 5	4

4. Analysis

a. DOD

Not surprisingly, every DOD contract negotiator was a buyer.

Ninety-one percent of the contracts involved in a contract negotiation impasse were fixed-price. The percentage of negotiated contracts which were fixed-price within DOD in 1992 was approximately seventy-five percent [Ref. 1:p. 83]. The difference is significant; therefore, negotiations which contemplate the use of a fixed-price contractual instrument are more likely to end in an impasse than if a cost-type contract is being discussed. As stated previously, this is because of the price ceiling feature of a fixed-price contract. Since the seller is bearing 100% of the performance

risk, he will be very reluctant to make price concessions which increase the odds that he may exceed the ceiling. Unlike a cost reimbursement contract, where the worst that can happen to the seller is that his fee will be zero (under an incentive or possibly an Award fee arrangement), a cost overrun in a fixed-priced environment will be borne solely by the seller, and may be disastrous depending upon its magnitude.

DOD negotiators viewed the seller's performance risk as medium. By itself, it does not mean much. However, when compared with the seller's self-assessment of risk, it will prove to be significant.

b. Industry

As expected, nearly all of the defense industry negotiators were sellers. Although no data were collected regarding who the sellers' customers were, it is obvious from examining the questionnaires that nearly all were DOD buyers.

Ninety percent of the negotiations ending in an impasse involved fixed-price contracts. As mentioned above, this is most likely because fixed-priced contract negotiations are usually more contentious than cost-reimbursement negotiations. In a cost-reimbursement environment, the seller's main concern is the size of the fee, because he knows that all his allowable and allocable costs will be reimbursed. This is not true of a fixed-price contract; every dollar of cost and profit is crucial from the seller's perspective.

Because fixed-price contracts allocate 100% of the performance risk to the seller, the seller is more apt to strongly resist making concessions beyond a point where he feels fairly confident that he can perform the contract at a reasonable profit. As indicated by the responses to question #13, the seller generally believed that he was assuming a significant amount of risk, further stiffening his resistance to making significant price concessions.

5. Comparative Analysis

The fact that all DOD negotiators were buyers, and nearly all defense industry negotiators were selling to DOD allows for a direct comparison between the two groups on how each views the negotiation process, the contract negotiation impasse and each other.

Negotiations ending in impasse were more likely to have involved a fixed-price contract than a cost-reimbursement contract. This is because a fixed-price contract is far riskier to the seller than a cost-reimbursement contract. Also, in analyzing the results to question #13, it is apparent that sellers (industry) perceive their own risk as being significantly higher than the buyer's (DOD) perception of the seller's risk. This is a fundamental catalyst of the impasse scenario. The amount of risk that the seller assumes under a contract is one of the basic determinants of how much profit or fee the seller merits. The seller's mean response to

question #13 was 27% greater than that of the buyer, indicating a rather large difference in the perceived risk to the seller. The larger this difference is, the farther apart the negotiators' positions will be at the onset, and the greater the chance that the compromise necessary to achieve an agreement will fall short of the mark.

That differences in perception of the seller's risk exist between buyer and seller were not at all surprising. Contract negotiations, and negotiations in general, are fertile ground for biases to take root. The buyer generally believes the seller's risk to be less than what the seller believes it to be, because to do so favors his position. The same rationale holds true for the seller: he believes his risks are greater than what the buyer gives him credit for because it favors his position. The contract negotiation process, and negotiations in general, are subject to the foibles of human nature. The biased perceptions of the seller's risk is a good example of this.

E. TRUST AND DECEPTION

1. Introduction

This section will examine the concepts of trust and deception within a contract negotiations context. As Lewicki (1983) pointed out in his article *Lying and Deception*, concerns for trust, honesty and integrity are essential to a successful negotiating relationship. However, deception and

disguise of one's true position are essential to maximizing one's "benefit of the bargain." A negotiator's principal motivation to deceive is to increase his power over his opponent, primarily through the manipulation of information [Ref. 14: p. 69-70]. One would naturally assume that a negotiation based on trust would reduce the probability of an impasse as opposed to negotiations involving negotiators who do not trust each other.

2. Questions

Included in this section are questions #8, #14 and #26.

QUESTION #8. To what extent have the impasses you've experienced involved, in whole or in part, some measure of deception or attempted deception on the part of your opponent?

Purpose: Deception, or attempted deception, breeds distrust. Negotiations involving parties who distrust each other seem more likely to end in impasse than those where a certain amount of trust is present [Ref. 14: p. 69-70]. The question was scaled 1 to 5, with 1 representing little deception, and 5 representing a great amount of deception.

QUESTION #14. Had you negotiated previous contracts with the opposing negotiator?

Purpose: The purpose of this question was to determine if and how previous negotiations with the same negotiator affected negotiator's perceptions of deception and

level of trust regarding their opponent. A pair of negotiators who have never negotiated a contract with each other enter the negotiation with less preconceived notions of each other's trustworthiness than a pair of negotiators who have met at the negotiating table previously.

QUESTION #26. To what degree did you trust the opposing negotiator?

Purpose. As stated in question #14, negotiations involving parties who distrust each other seem more likely to end in impasse than those where a certain amount of trust is present [Ref. 14: p. 69-70]. The question was scaled 1 to 5, with 1 representing little trust, and 5 representing a great amount of trust.

3. Results

a. Question #8

<u>DOD</u>			
<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
3.097	1.197	1 to 5	3

<u>Industry</u>			
<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
2.690	1.220	1 to 5	2,4

b. Question #14

	<u>DOD</u>	<u>Industry</u>
Yes	<u>32</u>	<u>23</u>
No	<u>29</u>	<u>19</u>

c. Question #26

DOD

<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
2.795	0.997	1 to 5	3

Industry

<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
2.798	0.994	1 to 5	2,3

4. Analysis

a. DOD

DOD negotiators believed that a medium amount of deception was present in the impasse negotiations which they had experienced. So, while they felt that some deception existed, they did not feel that it was ubiquitous.

The results of question #26 indicate that a medium level of trust between opposing negotiators is normally present. So, while negotiators generally do not feel that their opponents are consistently lying through their teeth, neither do they completely trust them.

To determine the influence, if any, that previous negotiations had on a negotiator's level of trust of his opponent, the responses to question #26 were broken down by "yes" and "no" responses to question #14. While the mean response to question #26 of negotiators who had previous negotiations with their opponent was 11% higher than the mean response of two negotiators who had never faced each other

before, the difference was not statistically significant. This indicates that previous dealings with one's opponent does not significantly build trust. That the mean responses were not significantly different was not completely unexpected, because negotiators' previous dealings with their opponents may just as well have been negative experiences as positive. The resulting negative and positive responses to question #26 would then cancel each other out, leaving the mean nearly unchanged. What was surprising is that this turned out not to be the case. The standard deviation of the responses to question #26 of negotiators who had previous dealings with their opponent was actually smaller than those who had no previous dealings with their opponent. It seems that previous dealings with one's opponent did little to alter the level of trust placed with the opponent, positive or negative. This suggests that negotiators base their level of trust of the opponent more on the instant negotiation than on previous dealings with that opponent. Perhaps this is because negotiators believe that it makes good business sense to not blindly trust the opponent based on previous positive dealings, nor patently distrust based on previous negative dealings with that opponent. As was stated before, DOD and industry negotiators seem to realize that there must be some level of mutual trust between two negotiators in order to fashion an agreement, but that placing too much trust in one's opponent can be dangerous.

b. Industry

Industry negotiators believed that a medium amount of deception was present in impasse negotiations which they had experienced. So, while negotiators felt that some deception was present, they did not feel that it was all-pervasive.

Almost 55% of negotiators answered "yes" to question #14, meaning they had previous dealings with their opponent. While this fact is not important in and of itself, it does permit a comparative analysis of question #26 between those negotiators who had previous dealings with their opponent versus those who had not.

The responses to question #26 indicate that negotiators place a medium level of trust in their opponent. As stated earlier, this reinforces the maxim that negotiators realize they have to trust each other to a certain degree in order to strike an agreement, but are wary of placing their complete trust in their opponent.

Surprisingly, there was no significant relationship between previous negotiations with an opponent and the level of trust placed in the opponent. Negotiators evidently base their trust on their opponent's actions in the instant contract negotiation, discounting the outcomes of previous dealings.

F. Comparative Analysis

A comparison of responses to question #8 reveals a small but statistically significant difference between DOD and industry negotiators in the perceived measure of deception involved in impasse negotiations. DOD negotiators' responses were on average 15% greater than those of industry negotiators. This difference may be due not so much to the DOD vs. industry aspect of the negotiation as it may be due to the buyer vs. seller aspect. It seems that the buyer is naturally more wary of the seller than vice-versa. The old phrase "caveat emptor," or, "let the buyer beware," reinforces this notion.

The difference may also be due in part to cultural differences between DOD and industry. It may be that DOD and industry negotiators' perceptions differ as to what deception is, and what types and amounts of deception are within acceptable bounds in a contract negotiation.

DOD and industry mean responses to question #26 were nearly identical. This was surprising in light of their responses to question #8. Because DOD negotiators felt that deception was more prevalent in impasse negotiations, one would have thought that their responses to question #26 regarding trust would have been lower than industry's responses, but such was not the case.

Overall, the findings in this section do not have any meaningful implications for the contract negotiations impasse.

The results were pretty much as expected: negotiators take "middle of the road" positions on issues of trust and deception in contract negotiations.

G. NEGOTIATOR POWER

1. Introduction

The concept of negotiator power is relevant to the study of the impasse. McAlister, et al., developed a simulation of a market in which they varied supply and demand in order to manipulate buyers' and sellers' power. They found that while negotiators possessing more power generally fared better than their opponents, they also had more negotiations end in an impasse [Ref 16:pp. 278-279]. Thus, one would expect the majority of impasse negotiations to involve negotiators possessing unequal power. The questions in this section are designed to determine the perceived balance of power between buyer (DOD) and seller (industry).

2. Questions

Questions #11, #16, and #21 - 24 are included in this section.

QUESTION #11. Was this a sole or single source situation?

Purpose: The purpose of this question was twofold: One purpose was to help determine the balance of negotiator power. A competitive environment would favor the buyer, while a sole or single source environment would favor the seller.

The second purpose was to determine if one environment, competitive or sole/single source, was more prone to end in an impasse than the other. It seems reasonable to expect that they would be equally prone to an impasse, because the presence of competition favors the buyer, and the absence of competition favors the seller. This was a yes/no question.

QUESTION #16. Do you believe that your aspirations were at such a high level that it led to the impasse?

Purpose: In Karrass' experiments, negotiators with high aspirations deadlocked more than those with lower aspirations [Ref. 6:p. 196]. The purpose of this question is to ascertain whether or not negotiators felt that their aspiration level may have been a contributing factor to the impasse. The question was scaled 1 to 5, with 1 representing strong disagreement and 5 representing strong agreement.

QUESTION #21. How much pressure did you feel under from your organization to reach an agreement? If your answer was "4" or "5," please briefly describe the cause of this pressure.

Purpose: Empirical evidence has demonstrated that the amount of pressure a negotiator perceives he is under to reach an agreement will have a bearing on whether or not an agreement is struck. Hamner found that when subjects were faced with high pressures to reach agreement, they took fewer trials to reach agreement, had a higher concession rate, and reached agreement more often than subjects who faced low

pressure to reach agreement [Ref. 9:p. 458]. Thus, one would expect that a negotiation which ended in an impasse would involve negotiators under relatively little pressure to settle. In effect, the greater the pressure placed upon the negotiator to settle, the less negotiation power he actually possesses. The first part of the question was scaled 1 to 5, with 1 representing low pressure and 5 representing high pressure. The second part of the question was open-ended.

QUESTION #22. How did you perceive the balance of negotiator power prior to negotiations?

Purpose: McAlister, et. al., (1986) found that while high power negotiators typically get a bigger piece of the pie vis'-a-vis' a low power negotiator if an agreement is reached, they are much more likely to fail in reaching an agreement [Ref. 16:pp. 278-279]. Thus, one would expect that most negotiations ending in an impasse would involve negotiators possessing unequal power. The question was scaled 1 to 5, with 1 representing negotiator power favoring the opponent, and 5 favoring the respondent.

QUESTION #23. During negotiations, did your perception of your own negotiation power change? If yes, in what direction?

QUESTION #24. During negotiations, did your perception of your opponent's negotiation power change? If yes, in what direction?

Purpose: The purpose of these two questions was to gain insight into the power dynamics inherent in a negotiation

headed for an impasse. One would expect a negotiator's perception of the balance of power to move in favor of his opponent if he perceived the balance of power to be in his favor prior to negotiations, and to move in his favor if he perceived the balance of power to be in his opponent's favor prior to negotiations. This is based on the supposition that a negotiator who thinks he has the upper hand prior to negotiations will feel his power diminish as the negotiations drag on and his opponent refuses to "cave in" to his "superior" position. Likewise, a negotiator who feels that his opponent has the upper hand prior to negotiations may realize after negotiations begin that his opponent is not as powerful as previously thought, and feel his perceived power increase.

3. Results

a. Question #11

	<u>DOD</u>	<u>Industry</u>
Yes	<u>54</u>	<u>38</u>
No	<u>07</u>	<u>03</u>

b. Question #16

	<u>DOD</u>		
<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
2.306	1.125	1 to 5	2

Industry

<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
2.143	1.002	1 to 4	2

c. Question #21

DOD

<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
3.557	1.162	1 to 5	3

Causes of Organizational Pressure (DOD)

- Contract had to be awarded to meet project goals.
- Impending expiration of funding.
- Necessity to replenish inventory.
- Procurement was in support of a program with substantial Congressional interest.
- Maintain reasonable procurement administration lead time (PALT).
- Management wanted to avoid criticism/pressure from project office.
- Management's belief that an impasse was counterproductive and the seller's position must be reasonable.
- Contractor had a strong track record of success with the Armed Services Board of Appeals (ASBCA).

Industry

<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
3.452	1.268	1 to 5	3

Causes of Organizational Pressure (Industry)

- Economic: settle or see yourself unemployed!
- Internal division politics. Marketing, sales and production departments wanted the job at any risk/cost to the company.
- Division was experiencing cash-flow strain.
- Lay off people - no jobs - no booking - no revenue - no company!
- Company had commenced work on this contract under their own "risk" money because they were certain the Government would put them under contract. There was great pressure within the company to get under a definitized contract.
- Progress payments were limited due to undefinitized status of the letter contract.
- Need to retain or obtain business in a declining market.
- Booking/billing objectives.
- The product had already been delivered to the Government. Company had been unable to bill any of the costs on the order.
- Unrealistic targets or goals.
- Negotiator helped set the minimum position; feels "stupid" when he can't reach his objective.
- Concern that the prolonged negotiations might endanger other negotiations; pressure to settle for reasons not directly connected with the issues being negotiated.
- Until the proposal was negotiated, the changes could not be made to hardware, holding up production. Lots of pressure from company's program management to reach agreement, but had to be above the bottom line dollar figure.

d. Question #22

DOD

<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
3.016	1.162	1 to 5	3

Industry

<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
3.107	1.045	1 to 5	3

e. Questions #23 and 24

	<u>DOD</u>	<u>Industry</u>
Power shift in own favor	<u>12</u>	<u>07</u>
Power shift in opponent's favor	<u>09</u>	<u>08</u>
No relative power shift	<u>36</u>	<u>23</u>

4. Analysis

a. DOD

Surprisingly, nearly 90% of the negotiations involved a seller who was a sole or single source. This percentage is significantly higher than the 38% of negotiated contracts which were sole or single source within DOD in 1992 [Ref. 1:p. 83]. A possible explanation is that the sole or single-source power of the seller is offset in many cases by the monopsony power of the Government: the Government is the sole customer for many military-unique products and weapon systems. This could explain the mean value of the responses to question #22, which indicated that negotiator power was perceived to be nearly dead-even, despite the fact that ninety

percent of the time the DOD negotiator faced a sole/single source seller.

The responses to question #16 indicate that DOD negotiators generally did not believe that their aspirations were at such a high level that it led to the impasse. While this is admittedly a somewhat "loaded" question, the results tend to be validated by the mean response to question #22, which indicated that DOD negotiators felt the balance of power to be equal. It doesn't appear that negotiator overconfidence was a major factor in reaching an impasse.

Although the responses to question #21 were unexpectedly high, another question designed to measure the amount of organizational pressure to reach agreement in general would have permitted a useful comparison with question #21. It may be that DOD negotiators felt relatively less pressure to reach agreement in the instances where they reached an impasse. However, the responses to the open-ended portion of question #21 tend to refute this: it is hard to imagine a more intense source of pressure to reach agreement than one which several negotiators stated: congressional interest in the program.

The causes of the pressures to reach agreement were largely as expected: the most common pressures cited were the necessity to support project/program goals in a timely fashion, expiration of funding, and Congressional interest. Interestingly, several negotiators described a

"between a rock and a hard place" scenario, in which upper management applied considerable pressure upon the negotiator to reach agreement on highly visible programs, then criticized the negotiator for "caving in" in order to reach an agreement during the post-negotiation review process. The negotiator felt he was in a "no-win" situation. This could be another reason why negotiators reached an impasse despite the presence of considerable organizational pressure to reach an agreement. They saw the prospect of being criticized for not reaching an agreement as a "lesser of two evils" vis'-a-vis' being criticized for reaching an unfavorable agreement.

The responses to question #22 indicate that a majority of negotiators, 62%, perceived that there was an unequal balance of negotiator power prior to the commencement of negotiations. An examination of questions #23 and #24 in conjunction with question #22 revealed that 65% of negotiators perceived that there was an unequal balance of power during negotiations. These findings appear to weakly confirm the research of McAlister, although it would have been useful to have included a question concerning the perceived balance of negotiator power of a negotiation which ended in an agreement for comparison purposes.

Question #22's mean response of 3.016 was unexpectedly low. DOD negotiators do not seem to be guilty of overconfidence, as they judged the balance of negotiator power to be essentially equal overall.

Approximately forty percent of the DOD negotiators perceived a shift in negotiator power during contract negotiations. Comparing the mean responses to questions #21 and #22 between those who perceived a positive power shift and those who perceived a negative power shift revealed a significant difference. Negotiators who perceived their power to decrease during negotiations felt more pressure to reach agreement than those who felt that their power increased during negotiations. It appears that negotiators under greater pressure to reach agreement felt their power ebbing away once it became clear that reaching an agreement would be difficult. The fact that an impasse occurred despite this perceived loss of power may be attributable to the phenomenon cited earlier: the negotiator may choose to accept criticism for not reaching an agreement rather than be criticized for striking a relatively disadvantageous agreement.

Unexpectedly, the mean response to question #22 was higher for negotiators who felt the negotiator power shift in their favor than for those who felt the power shift in their opponent's favor. That is, relatively powerful negotiators felt negotiator power shift even more in their favor despite the fact that they were ultimately unable to reach an agreement. This may be due to how DOD negotiators define "negotiator power." Maybe the negotiators felt that the facts brought out during the course of negotiations strengthened their position and hence their power, even though

the strength of their position was not enough to cause their opponent to capitulate. They did not feel that their power decreased merely because they were unable to reach an agreement.

b. Industry

The percentage of negotiations involving a sole or single source was almost 93%, which was much higher than expected. The likely reason for this is that the monopsony power of the Government is an effective counterbalance in many instances. This would explain the fact that industry negotiators felt the balance of negotiator power prior to negotiations was essentially equivalent, despite the fact that they were a sole/single source.

The responses to question #16 show that industry negotiators generally did not believe that their aspiration level contributed to the impasse. This result is bolstered by the mean response to question #22, which indicated that negotiators felt the balance of power to be nearly dead even. If the mean response would have been higher, say 3.5 or greater, then the mean response to question #16 would be subject to question since higher negotiator power normally equates to higher aspiration levels. As far as can be discerned from the data, negotiator overconfidence was not a major ingredient of the impasse scenario.

As was the case with DOD negotiators, the responses to question #21 were unexpectedly high, considering

Hamner's research [Ref. 9:pp. 458-466]. While it would have been useful to collect and compare data on the degree of organizational pressure industry negotiators feel under in general with the responses to question #21, the comments provided concerning the cause of the pressures indicate that the negotiators were indeed under extraordinary pressure in many instances.

The causes of the pressures to reach agreement were largely as expected. Although articulated in many different ways, the number one pressure was economic: the contractor needed business in order to maintain sufficient cash-flow, avoid layoffs and maintain a viable organization. So why did these negotiations end in impasse despite the great pressures to reach agreement? The probable answer, as in the case of the DOD negotiators, is that negotiators frequently felt "trapped" by the pressure not only to reach an agreement, but to reach a favorable agreement. The negotiator, forced to "choose his poison," chose no agreement over a poor agreement, leaving the task of settling to his superiors. This is an important point: many of these contract negotiation impasses were ultimately settled at a higher level in the organization. Several of these negotiations involved major weapon systems worth millions if not billions of dollars: the stakes were of sufficient size for both DOD and the defense industry activities that an agreement was going to be reached at some level within the organizations.

As predicted, the responses to question #22 reveal that 60% of negotiators felt that there was an unequal balance of power prior to negotiations. An examination of questions #23 and #24 shows that nearly the same percentage, 58%, believed that there was an unequal balance of power during negotiations. These findings appear to support the research of McAlister, although not very strongly.

The mean response to question #22 reveals that negotiators were not overconfident of their relative negotiator power; perceiving it to be nearly dead-even.

Comparing the responses to questions #21 and #22 of negotiators who felt the balance of power shift in their favor versus those who felt it shift in their opponent's favor, did not reveal a statistically significant difference.

5. Comparative Analysis

A comparison of responses to these questions reveals a startling similarity between DOD and industry negotiator responses including:

- A preponderance of sole/single source contract negotiations.
- General disagreement that their aspiration levels were at such a level that it led to the impasse.
- Significant organizational pressure to reach agreement.
- Perceived negotiator power to be nearly perfectly balanced between buyer and seller.

It appears that negotiations involving sole/single sources are much more prone to an impasse than in a competitive environment. Although a sole source procurement enhances the negotiator power of the seller, the overall balance of power was adjudged by both DOD and industry negotiators as being equal. As stated earlier, this is probably because the sole or single-source power of the seller is offset in many cases by the monopsony power of the Government: the Government is the sole customer for many military-unique products and weapon systems. While this reasoning may seem to contradict McAlister's findings which indicated that negotiations involving parties with unequal negotiator power are more prone to an impasse, this isn't necessarily so. In fact, while the mean responses to question #22 may have indicated equal negotiator power overall, the majority of individual contract negotiations involved negotiators possessing unequal negotiator power.

While DOD and industry negotiators perceived nearly equal levels of organizational pressure to reach agreement, the causes of the pressure were different, although predictable. The most common pressures placed upon DOD negotiators were mission related, such as the urgency to field a weapon system or replenish inventory; workload related, such as reducing backlogged procurements; or oversight related, such as program office and congressional interest. In contrast, the industry's chief pressures centered on economic

issues, such as cash-flow, avoiding layoffs, and ensuring the viability of the corporation.

Many DOD and industry negotiators felt that they were in a "no win" situation, in that not only were they under considerable pressure to reach an agreement, but a favorable agreement. As the negotiations progressed and it became obvious that a favorable agreement was not forthcoming, the negotiators opted for an impasse, rather than agree to a deal falling short of management's aspirations. It seems that conflicting pressures from management in both DOD and industry contribute to an impasse negotiation.

Probably the most striking similarity involves the mean responses concerning balance of negotiator power. Ideally, the sum of the mean responses of DOD and industry negotiators to question #22 would equal 6.000. For example, if the DOD negotiators' mean response was 3.5, then ideally the industry negotiators' mean response would be 2.5. This would mean that both groups were in full agreement regarding the relative balance of power, since from the DOD negotiator perspective the industry negotiators' power equals $6 - 3.5 = 2.5$, which equals the industry negotiators' perception of their own power. The same logic would hold true from the industry negotiators' perspective.

In the instant research, the sum of the mean responses is 6.113, which differs from the ideal sum of 6.000 by less than two percent. Therefore, both DOD and industry

negotiators were very objective in their assessment of negotiator power.

H. TACTICS AND STRATEGY

1. Introduction

The purpose of this section is to explore the roles that negotiation tactics and strategy play in the impasse scenario. One negotiation tactic in particular will be examined, which is the threat of deadlock. The threat of deadlock is a double-edged sword in that it can be a powerful tool in the hands of an astute negotiator, but it has the potential to backfire with potentially serious consequences, the most serious of which is an impasse.

The way in which a negotiator views the contract negotiation process has implications for the study of the contract negotiations impasse. Negotiators who have an integrative, or Win-Win perspective of negotiations actively employ creative problem-solving techniques in order to expand the size of the total "pie" available for distribution to both parties [Ref. 3:pp. 23-24]. In contrast, negotiators who have a purely distributive, or Win-Lose, orientation often employ contentious behavior designed to elicit concessions from the other party [Ref. 14:p. 47]. The implication seems clear: A Win-Lose orientation employs contentious behavior, which can elicit contentious behavior in return. It seems logical that negotiations involving negotiators with a Win-Lose orientation

would be more prone to reaching a contract negotiations impasse than a negotiation involving two negotiators with a Win-Win orientation.

2. Questions

This section will examine the responses to questions #17, #19 and #20.

QUESTION #17. Did you or your opponent use the threat of deadlock as a negotiation tactic?

Purpose: The purpose of this question is to ascertain how prevalent the use of this contentious tactic is in negotiations which ultimately end in an impasse. It is logical to surmise that a significant number of impasses will have involved the use of this tactic. Further, one would predict that negotiators would indicate that their opponent used this tactic far more often than they used it themselves.

QUESTION #19. How would you characterize your negotiation strategy with respect to your objectives/goals, and the negotiation process itself (i.e. Win-Win, Win-Lose)?

QUESTION #20. How would you characterize your opponent's bargaining strategy with respect to his objectives/goals, and the negotiation process itself (i.e., Win-Win, Win-Lose)?

Purpose: A negotiator who views the negotiation process as a Win-Win opportunity brings to the negotiating table a more integrative, problem-solving approach than one

who focuses solely on the distributive aspects of the negotiation. A Win-Lose orientation engenders contentious behavior, which can elicit contentious behavior in return. It seems logical that adopting a purely distributive approach to negotiations carries with it an increased risk of impasse. The questions were open-ended.

3. Results

a. Question #17

	<u>DOD</u>	<u>Industry</u>
You	<u>06</u>	<u>04</u>
Your opponent	<u>20</u>	<u>18</u>
Both you and opponent	<u>05</u>	<u>03</u>
Neither	<u>31</u>	<u>16</u>

b. Questions #19 and #20.

<u>Own Strategy</u>	<u>Opponent's Strategy</u>	<u>DOD</u>	<u>Industry</u>
Win-Win	Win-Win	<u>18</u>	<u>11</u>
Win-Win	Win-Lose	<u>38</u>	<u>23</u>
Win-Lose	Win-Win	<u>01</u>	<u>00</u>
Win-Lose	Win-Lose	<u>02</u>	<u>03</u>

4. Analysis

a. DOD

As expected, negotiators felt that the threat of deadlock had been employed by one or both parties in half of the negotiations. Not surprisingly, negotiators felt that their opponents used this tactic more than twice as often as

they did themselves. Recognizing that the threat of deadlock is perceived to be a contentious tactic, negotiators generally felt that their opponents were much more likely to "start trouble" than they were themselves.

The responses to questions #19 and #20 were not surprising. Ninety-five percent of DOD negotiators said that their strategy was Win-Win. In contrast, fully two-thirds of the negotiators felt that their opponents were employing a Win-Lose strategy. Thus, a significant majority of the negotiators felt that while they were attempting to craft an integrative agreement which would benefit both parties, their opponent was only "looking out for number one."

It would have been useful to have collected data with respect to DOD negotiators' perspective of their opponents' negotiation strategies *in general*. However, there is no denying that a vast majority of DOD negotiators perceived that they were the "good guys" and that their opponents were the "bad guys." This perception seems to be a major factor in the contract negotiations impasse scenario.

b. Industry

The responses to question #17 indicate that industry negotiators felt that their opponents used the threat of deadlock three times as often as they used it themselves. This was expected, since use of the threat of deadlock is generally recognized as a contentious tactic and a potential "negotiation-ender."

Industry negotiators stated that this tactic was used by one or both negotiators in over 60% of negotiations. Since the threat of deadlock was used in a majority of negotiations which ended in an impasse, it should be regarded as a significant contributing factor to the occurrence of an impasse.

Over 90% of industry negotiators said that they employed an integrative Win-Win strategy. Sixty-two percent of industry negotiators believed that while they employed a Win-Win strategy, their opponents employed a Win-Lose strategy. These results are not surprising: one would have expected, based on an understanding of human nature, that a negotiator would view himself as the "good guy" and his opponent as the "bad guy," if there was one. The majority of negotiators believed that their opponents were most responsible for the negotiations ending in an impasse.

5. Comparative Analysis

Both DOD and industry negotiators believed that their opponents employed the threat of deadlock far more than they did themselves. Of course, both sides cannot be correct. For instance, DOD negotiators indicated that they used the threat of deadlock in 18% of negotiations, while industry said DOD negotiators employed it in 50% of negotiations. Likewise, industry negotiators indicated that they used the threat of

deadlock in 17% of negotiations, while DOD believed industry used this threat far more often: 40%.

Why is this so? Most likely, this is due to inadequate communication between the parties. One negotiator said something not intending it to be a threat, however his opponent interpreted it as a threat. Whether or not it was a threat is not relevant, since it is the perceptions of the negotiators which really matter. If a negotiator believes he is being threatened, he will usually respond in kind. Thus, an often "innocent" statement by a negotiator may promote an unintended escalation of conflict, and ultimately cause an impasse. Therefore, negotiators should be very careful about what they say and how they say it. Further, they should verify that what they have said has been understood by their opponents. Lastly, they must be good listeners. They need to ensure that they clearly understand what their opponent has told them; asking questions if there are any ambiguities on what has been said. Without clear communication of information between the parties, the odds of an impasse become significantly greater.

The same holds true for negotiation strategy. DOD and industry negotiators generally believe that they are the "good guys;" the ones working to establish an integrative framework and maximize the total possible gains available to both parties. Most negotiators also feel that their opponents are the "bad guys," whose sole mission is to maximize their

outcomes. Obviously, they both cannot be right. While this scenario is undoubtedly accurate in some instances, most of the time it is probably due to the negotiators' perceptions of their opponents' actions. Again, negotiators must seek to eliminate their natural biases and objectively evaluate the actions of their opponents so as to avoid misunderstandings which may ultimately cause a contract negotiation impasse.

I. Summary

This chapter presented demographic data, various negotiator definitions of what a contract negotiation impasse is, and explored several impasse-relevant aspects of contract negotiations. The demographic data provided limited general information on both groups of negotiators, including which group the negotiator represented (DOD or industry) and experience level.

While most of the aspects of negotiations discussed and analyzed in this chapter pertained to the realm of pre-negotiations, they were not strictly limited to this one phase of the negotiation process. For instance, some elements of trust and deception, negotiator power, and tactics and strategy are relevant to other phases of the negotiation process.

The factors which appear to be relevant to the contract negotiation impasse scenario include:

- Fixed-price contract negotiations.

- Disagreement between DOD and industry negotiators over the level of seller's risk.
- Sole/single source contract negotiations.
- Organizational pressure to avoid an impasse, and reach a favorable agreement.
- Frequent actual or perceived use of the threat of deadlock as a negotiation tactic.
- Common perception that one's opponent has a Win-Lose negotiation strategy.

Chapter IV will present and analyze data collected in response to questions designed to explore impasse-related facets of the active negotiation phase.

IV. NEGOTIATIONS

A. INTRODUCTION

The purpose of this chapter is to present and analyze the data collected in response to questions devised to explore several impasse-relevant aspects of the active contract negotiation phase of the negotiation process. Although the active negotiation phase will be the primary focus, discussion and analysis will not be strictly limited to this phase.

The topics for presentation and analysis include conflict, concessionary behavior, and difficulty in reaching agreement. Because the examination and comparison of how DOD and defense industry negotiators view each of these areas is a crucial aspect of this research, the data will be categorized into those two groups. Each section will present the relevant questions, the purpose of the questions, data presentation, and individual and comparative analyses of DOD and industry negotiator responses. The data will not be presented in numerical order, but rather by topic area. For those questions requiring an assignment of numerical value other than the number of "yes" and "no" responses, a statistical analysis will be provided, citing the Mean, Standard Deviation, Range, and Mode. Mystat statistical software package was used to compute the statistical values. T h i s

study is based upon the responses of sixty-two DOD and forty-two industry contract negotiators who had experienced an impasse. Not all questionnaires were filled out with 100% accuracy or completeness. When possible the individual respondents were contacted for purposes of clarification, however this was not always possible due to the anonymous nature of the questionnaire. Thus, in the data presentation and analysis to follow, the total number of responses received to a particular question will usually be somewhat less than the total number of questionnaires received from DOD and industry negotiators. For instance, question #12 elicited only 61 responses (vice 62) from DOD negotiators; and only 40 responses (vice 42) from industry negotiators.

As stated earlier, these data will be presented under the two major headings of DOD and industry negotiators.

B. CONFLICT

1. Introduction

The objective of a contract negotiation is to reach a mutually satisfactory agreement. Unless the opposing negotiators possess identical positions entering into the negotiations, which is extremely unlikely, there will necessarily be sources of conflict which will need to be addressed and resolved if an agreement is to be reached. This conflict may not concern just the contractual elements, but

personality conflicts or clashes between the opposing negotiators.

2. Questions

Questions #5 and 6 are included in this section.

QUESTION #5. Do you believe that impasses frequently are attributable to personality conflicts or clashes?

Purpose: Siegel and Fouraker (1960) observed that negotiations often collapse when one party becomes angry with the other and attempts to "maximize his opponent's displeasure rather than his own satisfaction" [Ref. 3:p. 161]. This question was designed to elicit the applicability of Siegel and Fouraker's findings to contract negotiations involving practicing contract negotiators. This question was scaled 1 to 5, with 1 representing strong disagreement, and 5 representing strong agreement.

QUESTION #6. Do you believe that most of the impasse negotiations that you have experienced involved a high amount of conflict as opposed to a low amount?

Purpose: It seems likely that most negotiations ending in an impasse would involve more conflict as opposed to less conflict. That is, the greater the number of contentious issues, the greater the odds that one or more of these contentious issues will remain unresolved, resulting in an impasse. The question was scaled 1 to 5, with 1 representing

a low amount of conflict, and 5 representing a high level of conflict.

3. Results

a. Question #5.

DOD

<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
2.758	1.019	1 to 5	2

Industry

<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
2.714	1.154	1 to 5	2

b. Question #6.

DOD

<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
3.290	1.122	1 to 5	4

Industry

<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
3.738	1.083	1 to 5	4

4. Analysis

a. DOD

Surprisingly, DOD contract negotiators did not feel that impasses were frequently attributable to personality conflicts or clashes. Several negotiators stated that, while personality conflicts can be a factor in a negotiation ending in an impasse, it is usually not the sole factor, or even the most significant factor. Most contract negotiators appear to

feel that, as professionals, they should not and must not let personalities get in the way of achieving mutually beneficial agreements.

The researcher predicted that most negotiations ending in an impasse would involve a relatively high amount of conflict, however, the findings indicate that DOD contract negotiators generally believed that most impasse negotiations involved a medium level of conflict. A possible explanation is that the question was ambiguous as to the intended meaning of the word "conflict." Perhaps the fact that this question directly followed a question (question #5) concerning personality conflict caused some negotiators to link "conflict" with "personality conflict". A more concise wording of the question would be, "Do you believe that most of the impasse negotiations that you have experienced involved a large number of contentious issues as opposed to a small amount?"

b. Industry

The mean response to question #5 indicates that industry negotiators do not strongly feel that impasses are often attributable to personality conflicts or clashes. While it can be a contributing event within the impasse scenario, it does not seem to be a major determinant of whether or not an impasse will occur. Evidently, industry negotiators are generally able to maintain a professional business relationship and ignore or minimize the damaging

consequences of allowing personality clashes to interfere with achieving a mutually beneficial agreement.

As expected, industry negotiators felt that contract negotiation impasses involve a medium to high amount of conflict as opposed to a low amount. Since reaching an agreement necessarily involves resolving conflict, it seems likely that a negotiation involving more conflict is more likely to reach an impasse.

5. Comparative Analysis

DOD and industry negotiators' mean responses to question #5 were nearly identical, meaning contract negotiators in general do not believe that impasses are frequently attributable to personality clashes or conflicts. It appears that a "business is business" perspective of contract negotiations is commonly held amongst negotiators.

Industry negotiators believed that impasse negotiations involved a greater amount of conflict than did DOD negotiators. The most likely explanation for this is that the vagueness of question #6 prevented DOD and industry negotiators from possessing a common understanding of what the question was attempting to communicate. Of course, lacking this common understanding, a comparison of DOD and industry mean responses is meaningless. Question #6 would have been much more effective in conveying its intent if it had been phrased as indicated in the preceding DOD analysis.

C. CONCESSIONARY BEHAVIOR

1. Introduction

Concessions are instrumental in reaching agreements. Unless both negotiators have identical positions entering negotiations, one or both negotiators have to make concessions in order to strike a deal, otherwise an impasse will result. The concept of "reactive devaluation" embraces the inclination of opposing parties to devalue each other's concessions merely because it is the opponent who offered the concession. The questions in this section were designed to determine negotiators' perceptions concerning the presence or absence of concessionary behavior in a negotiation which ultimately ended in an impasse.

2. Questions

Questions #12 and 18 are included in this section.

QUESTION #12. Regardless of whether you are a Government negotiator or not, do you believe that Government internal reports or audits influenced the Government negotiator's position such that he/she was unwilling to move from that position?

Purpose: This question was added to the questionnaire at the suggestion of a defense industry negotiator who believed that Government audits or reports often "anchored" DOD negotiators to positions from which they were unwilling to

make concessions necessary to achieving an agreement. This was a yes/no question.

QUESTION #18. Who do you believe made the first major concession?

Purpose. Concession-making and compromise are an integral part of negotiations. The purpose of this question was to determine if concessionary behavior, or a lack thereof, played a part in the negotiations ending in impasse. The possible responses were "You," "Your opponent," and "N/A."

3. Results

a. Question #12

	<u>DOD</u>	<u>Industry</u>
Yes	<u>20</u>	<u>35</u>
No	<u>41</u>	<u>05</u>

b. Question #18

	<u>DOD</u>	<u>Industry</u>
You	<u>32</u>	<u>22</u>
Your opponent	<u>13</u>	<u>10</u>
N/A	<u>15</u>	<u>09</u>

4. Analysis

a. DOD

While the "no's" outnumbered the "yes'" in response to question #12 by a two-to-one margin, the number of DOD negotiators who stated that Government internal reports or audits influenced their positions and inhibited concessionary

behavior was surprisingly high given the wording of the question, particularly the use of the phrase, "unwilling to move." The most likely explanation for this unwillingness to move is negotiator risk-aversion: they are reluctant to take the risk of moving from a position advocated by a Government internal report or audit because of the possible consequences should their actions later be found to have been imprudent. This has serious implications for the impasse scenario, because a negotiation involving a negotiator who is unwilling to make concessions stands a significantly greater chance of ending in an impasse. The willingness to compromise is a necessary ingredient to reaching an agreement.

The reactive devaluation of concessions concept asserts that negotiators will often devalue an opponent's concessions for any of several reasons [Ref. 3:pp. 75-77]. The responses to question #18 support this concept: DOD negotiators believed that they had made the first concession nearly two-and-a-half times as often as their opponents. As was the case with the use of the threat of deadlock and the perception of negotiator strategy, negotiators usually viewed themselves as "good guys" and their opponents as "bad guys." This perception seems to be a major factor in the contract negotiations impasse scenario.

b. Industry

Not surprisingly, the responses to question #12 indicate that the vast majority, nearly 90%, of industry

negotiators surmise that internal Government reports or audits influenced the DOD negotiator's position such that he was unwilling to move from that position. They are of a mind that Government reports and audits strongly inhibit DOD negotiators from making concessions necessary to move towards an agreement. The strength of the industry negotiators' responses to this question marks it as a potentially significant factor in the impasse scenario.

The responses to question #18 were likewise predictable: industry negotiators believed that they had made the first major concession more than twice as often as did their opponents. These results mirror the results of questions 17, 19 and 20 concerning the use of the threat of deadlock and negotiator strategy. A familiar scenario has developed where the industry negotiator generally views his own actions as rational and reasonable, and his opponent's actions as often being irrational, unreasonable, and detrimental to the negotiation process. This scenario is not unexpected, given the shortcomings of human nature.

5. Comparative Analysis

The responses to question #12 indicate that Government reports and audits have a strong impact on the concessionary behavior of DOD negotiators. To the extent that a report or audit presents a "fair and reasonable" position, their influence on the negotiator's position is not detrimental to

the negotiation process since the Government's objective is to pay a fair and reasonable price for the product or service being procured. However, to the extent that an inaccurate report or audit inhibits a negotiator from making a sound business decision, they are detrimental to the process. Of course, the negotiator is to blame if he strongly suspects that a report or audit is inaccurate but fails to challenge it. As stated above, the probable reason why most negotiators are unwilling to challenge Government internal reports or audits is risk-aversion: they are reluctant to take the risk of moving from a position advanced by a Government internal report or audit because of the possible consequences should their actions later be found to have been unwise. They evidently would rather risk not reaching an agreement than reaching an agreement which may be second-guessed by management or oversight activities.

A comparison of responses to question #18 revealed a sharp difference of opinion concerning concessionary behavior. While both DOD and industry negotiators thought that neither had made a concession in about one-fourth of the negotiations, each believed that they made the first major concession far more than their opponents did. While this was expected, it is obvious that both parties cannot be correct. This is not unlike the results of questions 17, 19 and 20 concerning the use of the threat of deadlock and negotiator strategy. The responses to these questions, as with the

responses to question #18, tended to portray the respondent as a rational and reasonable individual, and his opponent as just the opposite. It seems that reactive devaluation of concessions is prevalent in contract negotiations, and is a key factor in the unfolding of an impasse.

D. Difficulty in Reaching Agreement

1. Introduction

The purpose of the questions in this section is to investigate the degree to which negotiators discerned that the negotiations at hand would be difficult, and at what point in the negotiations they realized that an impasse was a distinct possibility. This is important to the study of the impasse because the data collected may provide insight into the ability of negotiators to objectively assess their opponent's positions, and the degree to which they feel confident (or overconfident) in reaching an agreement.

2. Questions.

This section will examine the responses to questions #15, 25 and 27.

QUESTION #15. Upon entering negotiations, did you believe that there was a positive zone of agreement? A positive zone of agreement is that area where the minimum that the seller will accept and the maximum that the buyer will pay overlap.

Purpose: The purpose of this question is to determine the proportion of contract negotiators who, prior to entering into negotiations, believed that there was a possibility of reaching an agreement. A negotiator who believed that such a zone did not exist would necessarily expect the negotiations to end in an impasse. This was a yes/no question.

QUESTION #25. Prior to negotiations, what was your expectation regarding the potential difficulty of reaching an agreement?

Purpose: Given that the negotiation ended in an impasse, the purpose of this question was to determine to what extent the negotiator recognized the difficulties which lay ahead in the negotiations. It is reasonable to presume that most negotiators would have expected a rather difficult negotiation, especially those who answered "no" to question #15. The question was scaled 1 to 5, with 1 representing "not difficult," and 5 representing "difficult."

QUESTION #27. At what point during negotiations did you become aware of the possibility of reaching an impasse?

Purpose: The purpose of this question was to determine how early or late in the negotiation process contract negotiators perceived that an impasse was a distinct possibility. Ideally, a negotiator would recognize a potential impasse relatively early on, which would provide him adequate time to adjust his negotiation strategy and objectives accordingly. A negotiator who does not recognize

an impasse until relatively late may be a victim of his own overconfidence in his position and/or negotiating ability; believing that the opposing party will "come to his senses" sooner or later. The question was scaled 1 to 5, with 1 representing early in negotiations, and 5 representing late in negotiations.

3. Results

a. Question #15

	<u>DOD</u>	<u>Industry</u>
Yes	<u>47</u>	<u>31</u>
No	<u>14</u>	<u>11</u>

b. Question #25

<u>DOD</u>			
<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
3.574	0.991	1 to 5	4
<u>Industry</u>			
<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
3.321	1.287	1 to 5	4

c. Question #27

<u>DOD</u>			
<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
2.623	1.319	1 to 5	2

<u>Industry</u>			
<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
2.845	1.281	1 to 5	2

4. Analysis

a. DOD

The data from question #15 indicate that over three-quarters of the negotiators (77%), believed that a positive zone of agreement did exist prior to negotiations, despite the fact that every negotiation ultimately ended in an impasse. This may be so for a couple of reasons: (1) irrational negotiator behavior, such as negotiator overconfidence, reactive devaluation of concessions, or non-rational escalation of conflict, prevented an agreement even though a positive zone of agreement existed; (2) inadequate, incomplete, or an otherwise flawed assessment of the opposing negotiator's best alternative to a negotiated agreement (BATNA), possibly due to poor perspective-taking ability, caused the negotiator to believe that a positive zone existed when in fact one did not.

As one would expect in a study involving negotiations which ended in impasse, the responses to question #25 indicate that negotiators generally anticipated that the impending negotiations would be somewhat difficult. So, while most negotiators believed that a positive zone of

agreement existed, they also realized that reaching an agreement would not be easy.

The responses to question #27 indicate that negotiators saw the possibility of an impasse approximately halfway through the negotiation process. In a negotiation, the earlier the opposing parties detect the possibility of an impasse, the more opportunity they have to modify their negotiation objectives and strategy. These results indicate that while the possibility of an impasse was not detected extremely early in the process, there generally was some time available to modify negotiation objectives and strategies to facilitate an agreement. If so, why did these negotiations all end in an impasse? There may be many different reasons. Some were discussed earlier in this chapter and in Chapter III. Others will be discussed in Chapter V.

b. Industry

The responses to question #15 indicate that nearly three-quarters of the negotiators (74%), believed that a positive zone of agreement did exist prior to negotiations, despite the fact that every negotiation concluded with an impasse. As in the case of DOD negotiators, this may be so for a couple of reasons: (1) irrational negotiator behavior, such as negotiator overconfidence, reactive devaluation of concessions, or non-rational escalation of conflict, prevented an agreement even though a positive zone of agreement existed; (2) inadequate, incomplete, or an

otherwise flawed assessment of the opposing negotiator's best alternative to a negotiated agreement (BATNA), possibly due to poor perspective-taking ability, caused the negotiator to believe that a positive zone existed when in fact one did not.

As one would expect in a study involving negotiations which ended in impasse, the responses to question #25 indicate that negotiators generally predicted that the upcoming negotiations would be somewhat demanding. So, while most negotiators believed that a positive zone of agreement existed, they also realized that reaching an agreement would not be uncomplicated.

The responses to question #27 indicate that negotiators perceived the prospect of an impasse roughly midway through the negotiation process. Clearly, the earlier the opposing negotiators notice the probability of a dead-end negotiation, the more opportunity they have to modify their negotiation objectives and strategy. These results indicate that while the possibility of an impasse was not detected very early in the process, there generally was some time available to revise negotiation objectives and strategy to promote an accord. If so, why did these negotiations all end in an impasse? Again, there may be many different reasons: some which have already been put forth, and some which will be advanced in the next chapter.

5. Comparative Analysis

A comparison of the responses of DOD and industry negotiators to questions #15, 25 and 27 did not reveal any statistically significant differences between the two groups. This was not surprising, since none of these questions placed negotiators in the position of having to make "good guy/bad guy" judgments, as in the case of the preceding section on concessionary behavior.

Sizeable majorities of both groups of negotiators believed that a positive zone of agreement existed prior to entering negotiations which would ultimately end in an impasse. As pointed out earlier this may be due to: (1) irrational negotiator behavior, such as negotiator overconfidence, reactive devaluation of concessions, or non-rational escalation of conflict, prevented an agreement even though a positive zone of agreement existed; (2) inadequate, incomplete, or an otherwise flawed assessment of the opposing negotiator's best alternative to a negotiated agreement (BATNA), possibly due to poor perspective-taking ability, causing the negotiator to believe that the positive zone of agreement was larger than it really was; or that a positive zone of agreement existed when in fact one did not.

As expected, both DOD and industry negotiators correctly anticipated that negotiations would be a difficult challenge. Of course, they were right.

The responses to question #27 indicate that both groups of negotiators foresaw the possibility of an impasse while there was still time to modify their negotiation strategies and objectives accordingly. However, for whatever reasons the negotiations ultimately failed to reach an agreement. Some of these reasons have already been advanced and discussed, such as the reactive devaluation of concessions, disagreement over the level of the seller's risk, and the use of the threat of deadlock as a negotiation tactic. Others will be discussed in the next chapter, which will further examine the causes of an impasse, as well as how one may be avoided.

E. Summary

This chapter explored several impasse-relevant aspects of the active negotiation phase, including the presence and effects of conflict, negotiator perceptions of concessionary behavior, and the degree to which negotiators foresaw their difficulties in reaching an agreement.

While most of the facets of negotiations discussed and analyzed in this chapter pertained to the domain of the active negotiation phase of the negotiation process, they were not strictly limited to this phase of the negotiation process. The sections which discussed conflict and the difficulty in reaching agreement both included elements which were relevant to other phases of the negotiation process.

The following factors which appear to be relevant to the contract negotiation impasse include:

- Frequent unwillingness of DOD negotiators to move from positions advocated by internal Government reports or audits.
- Reactive devaluation of concessions.
- Inadequate, incomplete or otherwise flawed assessments of the opposing negotiator's BATNA, possibly due to inadequate perspective-taking ability.

Chapter V will present and analyze data collected in response to mostly open-ended questions fashioned to explore the causes of the impasse, and elicit suggestions on how a contract negotiations impasse may have been avoided.

V. THE IMPASSE

A. INTRODUCTION

The purpose of this chapter is to examine DOD and industry negotiator responses to questions regarding the warning signals and cues of a contract negotiations impasse, and how an impasse may be avoided.

Because a comparison of how DOD and defense industry negotiators perceive each of these areas is an important objective of this study, the data will be arranged into those two groups. Each section will present the relevant questions, the purpose of the questions, data presentation, and individual and comparative analyses of DOD and industry negotiator responses. This chapter will examine the negotiators' responses to five questions, four of which were open-ended. In the case of the open-ended questions, the most common responses will be provided, as well a sampling of the less typical responses. For the lone question requiring an assignment of numerical values, a statistical analysis will be provided, citing the Mean, Standard Deviation, Range, and Mode. Mystat statistical software package was used to compute the statistical values.

B. CAUSES OF THE IMPASSE

1. Introduction

The purpose of this section is to present and analyze DOD and defense industry negotiators' responses to two open-ended questions concerning the warning signals and causes of the impasse. These questions required the negotiators to state in specific terms their views on why the negotiations ended in an impasse.

2. Questions

Questions #28 and #29 are included in this section.

QUESTION #28. Please identify the number one signal or cue (verbal and/or nonverbal) that alerted you to the possibility of an impasse, and describe how that signal or cue surfaced. Add any additional signals and cues if appropriate.

Purpose: This was one of the major objectives of this study: to gain an awareness of the warning signs that an impasse may be in the offing. The question was open-ended.

QUESTION #29. Briefly describe the factors which contributed to the negotiations ending in an impasse.

Purpose: To require contract negotiators to explicitly state their perceptions regarding the primary causes of an impasse.

3. Results

a. Question #28

DOD

Answers received from DOD respondents, both verbal and non-verbal, are cited below.

Verbal

- "Nickel and diming." Very small moves or counter offers in relation to the proposal value.
- "Take it or leave it" offers or counter offers.
- Opponent verbally threatened to walk out of negotiations.
- Opponent stated: "Sorry, my company won't let me negotiate that overhead."
- "Opponent's constant need to 'call back' to establish a new position. It indicated the level of authority of the negotiator."
- "Opponent would not move from his position. Kept repeating the same argument."
- "Opponent did not want to continue negotiating individual issues because, presumably, he believed that he wouldn't reach his negotiation goal. Thus, my opponent wanted to deal only with 'global' numbers."
- Opponent refused to provide any back-up for his cost or method of arrival at price.
- "Persistent use of words like 'unable' and 'can't'."
- Opponent stated that he intended to involve his counsel and prepare claims for litigation if not satisfied.

- Tone of voice of opponent indicated extreme frustration.

Non-Verbal

- Not returning phone calls.
- Proposal far exceeded forward pricing rate agreement (FPRA). DCAA also presented particular rates that conflicted with the opponent's proposal.
- Silence (phone conversation).
- Increased tension in the room.
- Loss of eye contact, frustrated facial expressions.
- Closing of books/papers.
- "The fact that an issue which had surfaced in prior years but was mutually held in abeyance was now being vigorously pursued by my opponent."
- "The documentation the contractor provided supported the Government's position - not the contractor's, and when the contractor refused to make any significant movement in their position, it was clear that an agreement would not be reached."
- Opponent submitted multiple cost breakdowns with conflicting data.
- "Presence of a new legal person on the opponent's negotiation team."
- Numerous breaks to consult with home office.
- Opponent filed a legal claim against the Government before negotiations had even started.

INDUSTRY

Answers received from industry respondents, both

verbal and non-verbal, are cited below.

Verbal

- Opponent's extreme and rigid position.
- Opponent refused to question the validity of a Government-internal assist audit.
- "Opponent began sentences with words like 'I can't,' and 'I won't'."
- Opponent's "take it or leave it" position.
- Opponent stated that his position would not change regardless of the amount of additional information the seller could/would provide.
- Opponent stated, "A deviation might be necessary to incorporate what you ask, which would delay this contract a minimum of three weeks."
- Opponent stated that he would be endangering his career if he did not "go along" with the Government-internal audit position.
- "Opponent threatened to issue a unilateral change order to set the price."
- Opponent's extremely "low-ball" initial and first counter offer on fee.
- "Opponent began the negotiation by criticizing our cost estimating system."
- Opponent stated that his negotiation limits were approved at a high level.
- Opponent made accusations of defective pricing.
- Opponent disclosed the dollar funding value of the purchase request.
- Opponent's frustrated tone of voice.
- Opponent's willingness to involve supervisory personnel in the negotiation.

Non-Verbal

- "A negotiation which should have taken only a few hours stretched into three non-stop days."
- Opponent's frequent caucuses.
- Opponent's sharp, antagonistic attitude.
- Opponent's arrogance.
- Opponent did not return telephone calls.
- "Opponent's shift from friendly, congenial and reasonable, to hard-nosed, curt, and abrupt."
- Receipt of a unilateral change order.
- Silence. Folded arms.
- Opponent showed less and less interest to remain open to additional information.
- Parties became tense; lack of eye contact.
- Opponent walked out of the room.

b. Question #29

DOD

Answers received from DOD respondents are cited below.

- Opponent became inflexible relative to his pricing position.
- "Opponent's limited authority to commit his company, and his lack of standing within his organization to expand that authority."
- "Opponent not willing to discuss issues with an open mind."
- Differing perspectives of the risk of the work to be accomplished.
- Opponent's lack of evidence in supporting his position.

- "Neither side was willing to reach a compromise since the difference between our positions was so large, and clearly much ground had to be given by both sides. It was apparent that higher level approval was needed to revise negotiation positions."
- Parties had poor listening skills.
- DCAA recommended position strongly disagreed with the contractor's proposal.
- "Ongoing feud between the contractor and the Government. Neither side was willing to relent."
- Absolute refusal by opponent to even discuss the issues other than to insist upon concessions.
- Customer's lack of adequate funding.
- "Contractor wanted to 'gold-plate' a change order."
- "Contractor's position was extremely unreasonable. He basically wanted to turn a fixed-price contract into a cost-reimbursable contract."
- "Corporate policy overriding reason and logic."
- "The major factor was rates; actuals over a period of time indicating a trend, and the contractor's refusal to project according to the trend."
- "The contractor was in a cash crunch and was trying to 'get well' on this contract."
- Contractor thought Government would eventually "cave in" because of how important the project was.
- "Poor position technically. The engineers for the Government were unfamiliar with environmental engineering."

INDUSTRY

Answers received from industry respondents are cited below.

- Opponent's price expectations were unrealistic.
- Seller's acceptance of a letter contract took leverage away from the seller.
- The fact that the product had already been delivered.
- Basic disagreement over the difficulty of the proposed task.
- Failure of both parties to communicate objectives clearly.
- Opponent's hardening of position which seemed to be based on emotion rather than reason.
- Upper management limited the negotiators' abilities to settle.
- Unrealistic goals. Targets did not change when additional facts were known.
- "Opponent's concessions were consistently smaller than my own."
- "Opponent could have taken the effort to understand, and then discount, the DCAA audit's position."
- "Opponent appeared to be unable to deviate from DCAA's evaluation of our proposal."
- Poor Request for Quotation (RFQ) instructions.
- Different interpretation of FAR weighted guidelines analysis.
- Government budget constraints versus seller's level of risk.

- "Opponent had much less historical data to support his position and felt that the large amount of data we were providing was being used to confuse or 'snowball' him."

4. Analysis

a. DOD

The responses to question #28 were largely as expected. Many of the verbal and non-verbal signals identified support the earlier findings of this study, such as negotiators' differing perceptions of the seller's risk; the use of the threat of deadlock; the influence of Government-internal audits and/or reports; poor communication between the parties; and the reactive devaluation of concessions.

There were, however, additional impasse-related factors or signals which have not been previously discussed. One of the most frequently mentioned factors was the threat of litigation. The threat was communicated both verbally, as well as non-verbally by the presence of legal counsel during the negotiations. For obvious reasons, DOD negotiators considered the threat of litigation to be a clear signal that an impasse was plausible.

Another frequently mentioned signal was the perception that one's opponent lacked sufficient authority to make essential business decisions. A lack of negotiator authority was evidenced not only verbally during negotiations, but non-verbally by the number of phone calls a negotiator had to make to his supervisors for guidance and approval. DOD

negotiators believed that negotiating with opponents possessing limited authority was a waste of time because of the likelihood that a potential agreement would be negated by the opponent's upper management, meaning that the negotiations would revert back to "square one."

Delays in the negotiation process were also construed by DOD negotiators as a sign of trouble. The most frequently mentioned holdup was unreturned or lengthy delays in responding to phone calls or other correspondence. DOD negotiators took this to be a sign that the opposing negotiator was either: (1) was generally unhappy with the state of the negotiations; or (2) was attempting to use the passage of time to their tactical advantage in the case of urgently required supplies or services needed by the Government; or (3) lacked sufficient authority to settle.

Many negotiators stated that their opponents' inability or unwillingness to provide adequate justification of their positions was a major catalyst of the impasse. The two most often cited instances of this sort were of an opponent who refused to provide any backup data for his position, and submissions containing conflicting or erroneous data. Successful negotiations necessarily entail a sufficient exchange of information between the two parties. To the extent that one or both parties are unwilling or unable to effectively communicate their positions, the chances of an impasse are heightened.

Several negotiators said that their opponent's tone of voice was also a cue that the negotiation may be headed for an impasse. A tone of voice expressing frustration and/or anger was most often cited. Additional, non-verbal, indicators included silence, loss of eye contact, and the closing of books and papers.

Not surprisingly, many of the responses to question #29 were similar to those of question #28. Responses common to both questions included the perception of insufficient concessionary behavior and other manifestations of the opponent's intransigence; limited negotiator authority; differing perceptions of the seller's risk; the influence of internal Government audits and reports; and poor communication, particularly listening skills. Nonetheless, there were additional reasons provided for the occurrence of an impasse, such as the existence of an extremely large difference between the negotiators' initial positions. This indicates that there was probably a negative zone of agreement, and that any possible deal was doomed from the start.

Another reason cited for the negotiation ending in an impasse was personality clashes. While personality clashes were not a pervasive problem as indicated by the responses to question #5, they have the potential of being "show-stoppers."

Several DOD negotiators stated that the requiring activity's lack of adequate funding, combined with the inability or unwillingness to de-scope the statement of work to fit the dollars available, resulted in an impasse. This is a situation where the price was determined to be fair and reasonable, but the buyer simply did not have adequate funding to procure the good or service. In essence, it is a "negative zone of agreement" scenario.

A couple of negotiators ascribed the impasse to the Government's lack of technical expertise and resultant inability to comprehend the seller's position. However, reaching an impasse is not the only risk associated with an ill-prepared negotiation team. There is also the danger that the negotiator will acquiesce to a relatively poor agreement. Hence, the importance of a well-prepared and staffed negotiation team cannot be over-emphasized.

Some negotiators' responses indicated that a lack of trust of their opponents was responsible for the impasse. One negotiator referred to his opponent's attempt to "gold-plate" a change order, and another stated that the contractor was trying to "get well" due to cash flow problems. Given the environment of mistrust surrounding these negotiations, founded or unfounded, it is not surprising that they ended without an agreement.

Other, singular responses attributed the impasse to an unreasonable corporate policy (which was not elaborated

on in the questionnaire), and the opponent's belief that his superior negotiator power would force the Government to capitulate. These responses will not be examined because in the former case the "unreasonable" corporate policy was not delineated, and the implications of the latter have been previously discussed.

b. Industry

The responses to questions #28 and #2 affirm several impasse-related signals and factors identified earlier in this study. These signals and factors include the lack of concessionary behavior; use of the threat of deadlock; personality clashes; differing perceptions of the seller's risk; the influence of Government-internal reports or audits; inadequate communication between the parties; "low-ball" offers or counter-offers; insufficient negotiator authority; low levels of trust between the negotiators; frustration and anger manifested through "body language" (staring, folded arms, avoiding eye contact) and silence; and delays in the negotiation process. However, there were several groupings of responses which merit discussion.

Several negotiators indicated that their opponents' willingness to involve supervisory management personnel in the negotiations was a signal that an impasse may ensue. Their rationale was that a negotiator who undertakes such action either lacks sufficient authority to reach an

agreement, or lacks the skill, motivation and commitment to work with his counterpart towards reaching an agreement.

Industry negotiators also identified their opponents' use of the threat of issuing unilateral change orders as a warning sign of an impasse. The use of threats, whether they involve litigation, deadlock or change orders, are regarded as contentious acts. As discussed earlier, contentious acts invite retaliation, and thus heighten the risk of an impasse.

Two negotiators blamed the impasse on the fact that contract performance had already been completed or substantially completed. In these instances, DOD had issued letter contracts to permit the contractor to commence work prior to contract definitization negotiations. These negotiators felt that their negotiator power was substantially weakened by the fact that they could not use the passage of time to their advantage. That is, since the contract had already been completed or substantially completed, the pressure of "time" had been practically eliminated. Consequently, the DOD negotiators were not impelled to "cave in" to the contractor's demands.

Both DOD and industry upper management's limitations on negotiator authority contributed to the impasse scenario. By limiting authority, the negotiators involved were denied the latitude and decision-making capability necessary to effectively bargain. As a result, the

negotiations were quickly escalated to upper management for resolution. Although limiting negotiator authority is often appropriate, it should not be so restrictive that the negotiator is unable to effectively perform his duties.

One negotiator attributed the impasse to a poorly written Request for Quotation (RFQ). This is not surprising, because a poorly written RFQ is more vulnerable to misinterpretation, and hence more likely to initiate a disagreement or impasse.

5. Comparative Analysis

The responses of DOD and industry negotiators were generally similar, and supported previous findings of this study. Both groups of negotiators distinguished the following impasse-related warning signs and factors: differing perceptions of the seller's risk; the use of deadlock as a negotiation tactic; the influence of Government internal audits and reports on DOD negotiators; reactive devaluation of concessions; inadequate negotiator authority; delays in the negotiation process; frustration and anger manifested through "body language" (staring, folded arms, avoiding eye contact), and silence; poor communication between the parties; lack of trust of one's opponent; and personality conflicts. Obviously, there are many impasse-related warning signs and factors which are universally recognized among negotiators.

While there were some warning signals and factors which were not identified by both groups of negotiators, it was probably due more to the nature of the questions than any fundamental difference between the two groups. Question #28 asked for the **number one** signal or cue, and question #29 asked for a very brief explanation of why the negotiation ended in impasse. Thus, while many different factors likely contributed to any one impasse, only the most significant of those were reported by each individual negotiator. It is likely that most, if not all, signals and factors were experienced by both groups; it's just that their relative importance differed to some degree.

Of more significance was the identification and analysis of several impasse-related signals and factors not previously discussed in chapters three and four. They included:

- Use of the threat of litigation.
- Inadequate negotiator authority.
- Delays in the negotiation process.
- Lack of adequate funding.
- Lack of trust of one's opponent.
- Opponent's willingness to involve supervisory management in the negotiation process.
- DOD negotiators employing the threat of unilateral change orders.
- Poorly written solicitations/RFPs/RFQs.

- Frustration and anger manifested through "body language" (staring, folded arms, avoiding eye contact), and silence.
- Poorly prepared/staffed negotiation team.

C. AVOIDING THE IMPASSE

1. Introduction

The purpose of this section is to present and analyze DOD and defense industry negotiators' responses to three questions principally concerning measures which may have avoided an impasse, two of which were open-ended. These questions required the negotiators to state in specific terms any actions and strategies which they or their opponents may have employed in order to avoid an impasse.

2. Questions

Questions #7, #30 and #31 are included in this section.

QUESTION #7. To what extent do you believe that one party's ability to objectively evaluate the other party's position is important to avoiding an impasse?

Purpose: To ascertain how important negotiators feel perspective-taking ability is to avoiding an impasse. Empirical evidence indicates that there are some negotiators who are more accurate in their interpersonal judgments and better able to objectively assess an opposing negotiator's position [Ref. 17:p. 50]. This perspective-taking ability (PTA) positively affects the concessionary tendencies of

negotiators and the likelihood that an agreement will be reached. This question was scaled 1 to 5, with 1 representing "of low importance" and 5 representing "high importance."

QUESTION # 30. Briefly describe any actions or steps you and/or your opponent might have taken which could have avoided an impasse.

Purpose. This was one of the principal purposes of this study: to gain an awareness of how a contract negotiations impasse may be avoided. The question was open-ended.

QUESTION #31. If you had strong indications that an impasse may result, what changes would you have made to your bargaining strategy that would have facilitated an agreement?

Purpose: Closely related to question #30, this question asks the negotiator to focus specifically on changes to his strategy which may have fostered an agreement. The question was open-ended.

3. Results

a. Question #7.

DOD

<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
4.306	0.737	2 to 5	5

Industry

<u>Mean</u>	<u>Standard Deviation</u>	<u>Range</u>	<u>Mode</u>
4.524	0.740	2 to 5	5

b. Question #30.

DOD

Answers received from DOD respondents are cited below.

- "Eliminate upper management meddling to the maximum extent possible."
- "A wider latitude for compromise should have been granted by upper management."
- "Recognized different, and perhaps incompatible interests, motives and obligations, and made some effort to assist the other party."
- "Assisted my opponent in obtaining a better understanding of the requirements and actual work involved."
- "Used more face-to-face negotiations; a majority of the negotiation took place over the phone."
- "My opponent could have been more open with information instead of trying to conceal information."
- "Ensured negotiation team members were better educated/prepared for the negotiations."
- "Specifications could have been written less restrictively."
- "I should have not made major concessions early in negotiations because it shifted the negotiation middle ground in the contractor's mind."

INDUSTRY

Answers received from industry respondents are cited below.

- "Both parties should have concentrated more on the issues."
- "Kept personalities out of the negotiations."

- "Really listen to what the other party was saying, and not be so skeptical of what was said."
- "Better, faster communication. I would have brought all pertinent parties together sooner."
- "Buyer should have alerted seller of funding limitations and not just try and get the job done for an unrealistic price."
- "More intensive fact-finding prior to negotiations."
- "Brainstormed creative solutions."
- "Substantiated our proposals differently/better to allow customer to be able to move to a higher number."
- "Brought in more help (experts)."
- "I would have readjusted my targets - reset minimum acceptable figures based on new facts."
- "PCO should have retained the flexibility to settle."
- "Avoided our upper management."

c. *Question #31.*

DOD

Answers received from DOD respondents are cited below.

- "Allowed each party to characterize the 'agreement' on individual issues in his own way but identify larger areas where the parties must agree on price."
- "Brought in more technical assistance."
- "Decreased the number of supposed 'players' at the negotiation table."
- Used a less restrictive, but still sound, specification.

- "Spent more time in fact-finding to more clearly understand his position."
- "Required appropriate level of contractor management to be present for all negotiation sessions."
- "Strategies wouldn't have helped in this situation; we were too far apart."
- "Since I suspected the contractor was submitting fraudulent data, I would not change my overall strategy in bargaining. Strictly 'hardball'."

INDUSTRY

Answers received from industry respondents are cited below.

- "More listening, less talking."
- "Should have requested a more realistic target from upper management."
- "Would have had more communication between offers and before counteroffers. We could have slowed natural tendency to 'rush' counteroffers."
- "I probably would have been more upfront. It would have been better to avoid a unilateral or litigated resolution. I would keep lawyers out of discussions as long as possible."
- "Modified the proposal - cut hours and dollars to fit the buyer's budget constraints."
- "I would have sat down and discussed fee philosophy/FAR more fully."
- "None. My best alternative to a negotiated agreement was to walk away."
- "Not have accepted the letter contract."

- "I would have attempted to gain leverage through timing by waiting until the schedule dictated that the buyer act."

4. Analysis

a. DOD

The overall response to question #7 was hardly surprising: DOD negotiators overwhelmingly agreed that a negotiator's perspective-taking ability is an important factor in avoiding an impasse. A negotiator who has a well-developed ability to view the negotiation from his opponent's position is far more likely not only to reach an agreement, but to reach a favorable agreement.

DOD negotiators' responses to question #30 provided several actions which could have been taken to help avoid an impasse. Several negotiators believed that an impasse may have been avoided had upper management not interfered, and granted the negotiator sufficient latitude to reach an agreement. This is not surprising, as these same negotiators identified upper management as the number one cause of the negotiations impasse. While upper management must set limits on the actual authority of its negotiators, they also must allow the negotiator sufficient latitude to reach an agreement; otherwise, they may as well conduct the negotiations themselves.

As indicated by the responses to question #7, negotiators recognized the value of perspective-taking

ability in avoiding an impasse. Negotiators who are able to "place themselves in their opponent's shoes" possess a better understanding of their opponent's motives and needs, and can more effectively strive towards an integrative agreement.

Numerous negotiators stated that actions taken to improve the communication between the parties could have avoided an impasse. Negotiators must effectively communicate relevant information to their opponents in order to facilitate integrative agreements, which involves creatively searching for ways to expand the size of the total "pie" available for apportionment to both parties. As discussed in chapter three, without clear and adequate communication of pertinent information between the parties, the odds of an impasse become significantly greater.

Some negotiators believed that a better prepared negotiation team would have facilitated an agreement. A poorly prepared negotiation team is incapable of adequately understanding not only the opponent's position, but likely their own as well. Further, perspective-taking ability is necessarily low, and the flow of communication between the parties is much less effective when one or both parties are unprepared and overwhelmed by the complexity of the negotiation. Adequate preparation is unquestionably one of the most important elements, if not the most important, of negotiating. Insufficient preparation is harmful not only

because the negotiator "may not know a good deal when he sees one," but because he may agree to a poor deal.

A couple of negotiators stated that easing the specification requirements would have facilitated an agreement. In retrospect, they realized that overly restrictive specifications increased the risk to the contractor, who naturally demanded a proportionately higher price to accept the risk. As discussed earlier, differing perceptions of the seller's risk is a major impasse-related factor. Therefore, it is important for those who write specifications, or statements of work, to specify the minimum criteria necessary to meet the Government's requirements. Perhaps, an even better solution would be to utilize performance specifications whenever possible, because they are less restrictive in nature.

One negotiator asserted that his early, major concessions led to the impasse because it raised the aspiration level of his opponent. As indicated in chapter two, concession-making is a double-edged sword. While necessary in reaching agreements, it may also elevate the negotiation objective of one's opponent. Another related factor, one must assume, is that this negotiator's opponent did not make adequate concessions in return, which is a major impasse-related factor in and of itself.

Several responses to question #31 echoed those of question #30, including the importance of adequate

negotiation preparation and of loosening over-restrictive specifications. However, there were many responses which differed, which will now be discussed.

One negotiator stated that he would have altered his strategy to allow both parties to characterize the agreement in their own terms, so long as required "bottom line" considerations, such as total price, were equivalent. For example, say two negotiators agree on a firm-fixed price contract for \$1,380,000. The seller would be free to break down the \$1,380,000 price into cost and profit as necessary to gain the approval of upper management. If the seller's upper management wanted 20% profit, then he can report cost and profit figures of \$1,150,000 and \$230,000 respectively. If the buyer's upper management's objective was 15% profit, then he has the flexibility to report the costs as \$1,200,000 and the profit as \$180,000. This flexibility enhances the ability to reach an agreement, because both parties can claim that they met their objectives.

A few negotiators discussed bargaining strategy with respect to their negotiation teams. As discussed earlier, some stated that they should have brought in more technical assistance. Others stated in effect that they should have acted to eliminate some of the non-players who were present at the negotiations. This is an important point, because a bigger team does not necessarily mean a better team. In fact, the larger the negotiation team, the tougher

it is for the negotiation team leader to coordinate and control the actions of its members. It is just as important not to have too many team members, as it is not to have too few. The trick is in determining the personnel "mix" which will maximize the negotiation team's effectiveness, and then staff accordingly.

Other negotiators stated that they should have required the contractor's upper management to be present at the negotiations because their opponents did not have sufficient latitude to negotiate agreements. However, upper management involvement in the negotiation process has been identified by negotiators as an impasse-related factor. So, while one negotiator may believe that involving the opponent's upper management in the negotiations may help avoid an impasse, the opposing negotiator may believe that involving upper management in the negotiations increases the odds of an impasse. In fact, they both may be correct, depending on how one defines an impasse. Involving an opponent's upper management in the negotiations may increase the probability of reaching an agreement, because upper management has greater negotiator authority. On the other hand, a negotiation which is unable to achieve an agreement without being elevated to the upper management level constitutes an impasse as previously defined, because the "original" negotiators themselves were unable to achieve an agreement.

Some negotiators indicated that changing their strategy would not have facilitated an agreement, while others stated that they would not have changed their strategy. In the first instance, the most common reason was that the parties' positions were extremely far apart. This suggests that there was not a positive zone of agreement, meaning the negotiators' best alternatives to a negotiated agreement (BATNA) were to walk away from the table. If this is in fact the case, then it is better to walk away from the table than to reach an agreement which is worse than no agreement at all. Reaching an agreement is irrational if it leaves a party worse off than they were without an agreement. The message is, an impasse is only "bad" when two parties who would have each benefitted from an agreement are unable to reach an agreement.

Negotiators who stated that they would not have changed their strategy invariably justified their positions by blaming their opponents' irrational, deceitful or otherwise contentious behavior. As discussed earlier, each of these are major impasse-related factors. Evidently, these negotiations were doomed from the beginning.

b. Industry

The general response to question #7 was fully expected: Industry negotiators widely agreed that a negotiator's perspective-taking ability is a crucial factor in

achieving an agreement. A negotiator who has a finely-honed ability to view the negotiation from his opponent's position is more apt not only to reach an agreement, but to reach an advantageous agreement.

In response to question #30, several negotiators believed that if both sides would have focused on the relevant issues and avoided allowing counterproductive activities such as personality conflicts to influence the negotiations, that an impasse may have been avoided. Contract negotiations are often a difficult and complex process, therefore both parties must attempt to avoid counterproductive activities which only complicate matters further.

Some negotiators stated that both they and their opponents should have taken steps to improve their degree and quality of listening and communication. As discussed previously, communication is an integral element of negotiations, and listening is an integral element of communication. Improved communication will doubtlessly increase the likelihood of achieving an agreement.

Several negotiators believed that more intensive fact-finding would have facilitated an agreement. They concluded that because the buyer did not spend sufficient time fact-finding, they were unable to fully understand and appreciate the seller's position. Preparation is arguably the most important element of negotiating. As mentioned previously, insufficient preparation is harmful not only

because a negotiator "may not know a good deal when he sees one," but because he may agree to a poor deal.

A few negotiators concluded that "brainstorming" creative solutions would have facilitated an agreement. This is understandable, because searching for creative solutions is a central ingredient to achieving integrative agreements, and forms the basis for the Win-Win approach to negotiating.

A number of negotiators suggested that they could have avoided an impasse by providing better justification of their proposals, thus enabling the seller to rationalize moving to a higher price. The seller's proposal is a key source of information to the buyer. The more complete and well-justified a proposal is, the more likely it is that the buyer will be convinced to move to a higher price, and therefore the more likely it is that a favorable agreement will be reached.

One negotiator stated that he should have readjusted his negotiation objective based on information provided by his opponent. This is a key point, because for the exchange of information between negotiators to be meaningful, the parties must be willing and capable of objectively evaluating the information provided. This also suggests that negotiators must at least moderately trust each other, for objectivity is impossible without it.

Other industry negotiator responses mentioned actions which have already been discussed, including

negotiator authority, upper management interference, and the expertise of the negotiation team.

Many responses to question #31 regarding bargaining strategy have been discussed previously, and will not be examined further. However, there were four groups of responses which merit discussion.

One group of responses dealt with the problem of inadequate negotiator authority. The solution was simple: ask upper management for more authority, or request permission to move to a more realistic negotiation objective. The significance of this response is that negotiators should bring these matters to the attention of upper management, and upper management should not rebuke those who do. A negotiator's effectiveness is determined in large part by the support, or lack thereof, of upper management.

Another group of responses discussed the process of making offers and counteroffers. These respondents stated that they should have resisted the natural tendency to "rush" counteroffers. This is noteworthy, because it suggests that "rushing" a counteroffer may not allow sufficient time to thoroughly consider the opponent's counteroffer, and instead may allow emotion to influence the response. So, while earlier findings of this study indicate that significant delays can jeopardize the negotiation process, so can hastily prepared counteroffers.

A third group of respondents indicated that they could have modified the proposal to accommodate the budgetary constraints of the buyer. This may or may not be a viable option, depending on the nature of the work. In negotiations where it is a viable alternative, the seller should raise the issue with the buyer; it may provide a means of salvaging an otherwise "doomed" negotiation.

The fourth group of responses related to the use of leverage, or negotiator power. These respondents concluded that they did not fully exploit their negotiation power, and essentially let the Government "off the hook." They believed that if they had properly exercised their superior power, they would have forced the Government to reach an agreement. However, as McAlister's experiments demonstrated (weakly corroborated in the instant research), negotiations involving negotiators possessing unequal power are more likely to end in an impasse, than those involving negotiators possessing equal power [Ref. 16:pp. 278-279]. Thus, the effectiveness of this particular strategy is unclear; it depends on the individual circumstances.

5. Comparative Analysis

This subsection will compare the responses of DOD and industry negotiators to question #7, but will not compare the responses to questions #30 and #31. Although there are

similarities and differences between the two groups' responses to questions #30 and #31, an analysis of why they are similar or different is of no consequence. Instead, the responses will be broken down into three groups: DOD-applicable, industry-applicable, and generally applicable.

A comparison of DOD and industry negotiator responses to question #7 indicates that both groups overwhelmingly agreed that a negotiator's perspective-taking ability is an important factor in avoiding an impasse. A negotiator who has a well-developed ability to look at the negotiation from his opponent's position is far more likely not only to reach an agreement, but to reach a favorable agreement.

The responses to questions #30 and #31 provided valuable insight into how a contract negotiations impasse may be avoided. As mentioned above, the suggestions are broken down into three groupings: (1) DOD-applicable; (2) industry-applicable; and, (3) generally applicable.

DOD-Applicable

- Loosen overly-restrictive specifications.
- Conduct more intensive fact-finding prior to negotiations.

Industry-Applicable

- De-scope statement of work to accommodate buyer's budgetary limitations.

Generally Applicable

- Improve communication between the parties.

- Improve the performance of the negotiation team.
- Allow negotiators to characterize the agreement in their own terms whenever possible.
- Focus on the relevant issues.
- Avoid personality conflicts.
- "Brainstorm" for potential solutions.
- Objectively consider information provided by opponent.
- Request appropriate negotiation authority from upper management as required.
- Avoid needlessly "rushing" counteroffers.

D. SUMMARY

This chapter examined DOD and industry negotiator responses to questions regarding the warning signals or cues of a contract negotiations impasse, and how an impasse may be avoided. The following is a summary of the significant findings of this chapter:

CAUSES OF AN IMPASSE:

- Use of the threat of litigation.
- Inadequate negotiator authority.
- Delays in the negotiation process.
- Lack of adequate funding.
- Lack of trust of one's opponent.
- Opponent's willingness to involve supervisory management in the negotiation process.

- DOD negotiators employing the threat of unilateral change orders.
- Poorly written solicitations/RFPs/RFQs.

AVOIDING AN IMPASSE:

- Loosen specifications which are overly-restrictive.(DOD)
- Conduct more intensive fact-finding prior to negotiations.(DOD)
- De-scope statement of work to accommodate buyer's budgetary limitations.(Industry)
- Improve communication between the parties.
- Improve the level of preparedness of the negotiation team.
- Allow each negotiator to characterize the agreement in their own terms whenever possible.
- Focus on the relevant issues.
- Avoid personality conflicts.
- "Brainstorm" potential solutions.
- Objectively consider information provided by opponent.
- Request additional negotiation authority from upper management when required.
- Avoid needlessly expediting counteroffers.

Chapter VI will present the conclusions and recommendations stemming from this research, answer the primary and subsidiary research questions, and suggest areas of further research.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. INTRODUCTION

The purpose of this chapter is to present the conclusions and recommendations derived from the research, answer the primary and subsidiary research questions, and suggest areas of further research.

B. CONCLUSIONS

The conclusions are a sequence of analytically drawn opinions based on the research conducted into the contract negotiations impasse scenario. The conclusion will be cited first, followed by a justification of that conclusion.

1. DOD and industry negotiators similarly define a contract negotiation impasse.

While industry negotiators' definitions tended to be more homogeneous than DOD negotiators' definitions, both groups generally defined an impasse as a circumstance where two specific negotiators ultimately fail to reach an agreement. Another commonly mentioned characteristic was the escalation of the negotiation process to higher levels within the respective organizations. In essence, the defining characteristics of a contract negotiation impasse are finality and the "ordered pair" relationship of the negotiators.

2. Fixed-Price contract negotiations are more prone to end in an impasse than cost-reimbursable contract negotiations.

Ninety-one percent of the contracts involved in a contract negotiation impasse were fixed-price. The percentage of negotiated contracts which were fixed-price within DOD in 1992 was approximately seventy-five percent [Ref. 1:p. 83]. The difference is significant; therefore, negotiations which contemplate the use of fixed-price contracts are more likely to end in an impasse than if a cost-type contract is being discussed. This is because a fixed-price contract is far riskier to the seller than a cost-reimbursement contract, and because the buyer and seller generally hold differing perceptions of the level of the seller's risk.

3. A sole/single source contract negotiation is significantly more likely to end in an impasse than negotiations in a competitive environment.

Nearly 90% of the negotiations included in this study involved a seller who was a sole or single source. This percentage is significantly higher than the 38% of negotiated contracts which were sole or single source within DOD in 1992 [Ref. 1:p. 83]. A reasonable explanation is that the sole or single-source power of the seller is offset in many cases by the monopsony power of the Government: the U.S. Government is the sole customer for most military-unique products and weapon systems. This may explain why that the balance of negotiator

power was perceived to be nearly equal despite the fact that in nearly all negotiations the DOD negotiator faced a sole/single source seller.

4. Negotiators generally have a biased view of the negotiation process.

Contract negotiations are fraught with the shortcomings of human nature, most prevalent of which is the tendency for negotiators to frame the negotiation in terms which support their positions. Therefore, it is not surprising that contract negotiators generally perceive their actions to be rational and reasonable, and their opponents' actions as just the opposite. This biased viewpoint is evident from the responses to the questions pertaining to concessionary behavior, the use of the threat of deadlock, negotiation strategy (Win-Win, Win-Lose), as well as the open-ended responses concerning the causes of the impasse. Generally, negotiators believed it was the "other guy's fault" that the negotiation ended in an impasse.

5. DOD and industry contract negotiators hold similar views of the impasse scenario.

Excluding those questions to which the negotiators' responses were predictably prejudiced, the responses of DOD and industry negotiators were remarkably alike. In fact, there was only case (question #8 concerning deception) where there was a statistical difference between the mean responses of the two groups which could not be explained by negotiator

bias, and it was only marginally significant. In all other instances, the differences in their responses were either statistically insignificant, or if significant, could be readily attributed to negotiator bias.

6. Government-internal audits and reports significantly influence DOD contract negotiators' concessionary behavior.

A significant minority of DOD negotiators, 30%, and the vast majority, nearly 90%, of industry negotiators indicated that internal Government reports or audits influenced the DOD negotiator's position, such that he was unwilling to move from that position. To the extent that a report or audit represents a "fair and reasonable" position, their influence on the negotiator's position is not detrimental to the negotiation process; however, to the extent that an inaccurate report or audit inhibits a negotiator from making reasonable concessions, they are detrimental to the negotiation process, and increase the likelihood of an impasse.

7. Upper management's actions and/or policies often contribute to an impasse.

A significant number of DOD and industry negotiators identified upper management pressure, overly-restrictive policies regarding negotiator authority, and general "meddling" in the negotiation process as major impasse-related factors.

8. Negotiator overconfidence and aspiration levels were not major impasse-related factors.

Surprisingly, DOD and industry negotiators' assessments of the balance of negotiator power were nearly perfectly complementary, suggesting that, in general, neither group was overconfident of the strength of their bargaining positions. This conclusion supports the negotiators' general contention that their aspiration levels were not at such a high level that they led to an impasse.

C. RECOMMENDATIONS

The following recommendations are pertinent not only to the instant research, but to the negotiation process as a whole. Included are several recommended changes to the questionnaire.

1. Negotiator education and training should emphasize an integrative approach towards contract negotiations.

It was evident that most negotiations included in this study were adversarial in nature. This adversarial relationship may be improved by providing contract negotiators with training designed to engender a more rational, integrative approach to negotiations. Integrative bargaining dictates that the negotiators creatively search for ways to increase the size of the total "pie" available for distribution to both parties. Fashioning integrative agreements requires negotiator objectivity, a free-flow of

information between the parties, and abstention from the use of contentious tactics or actions: three of the most significant impasse-related factors derived from this research.

2. Negotiators should thoroughly prepare for negotiations.

Several negotiators attributed the impasse to poorly prepared negotiators and negotiator teams. This was evidenced by inadequate fact-finding, inexperienced and poorly trained team members, and an obvious lack of understanding of the particular issues at hand.

In negotiations, knowledge is power. Adequate preparation is unquestionably one of the most important elements, if not the most important, of the negotiation process. As the team leader, it is the lead negotiator's responsibility to ensure that his team is well-prepared for the task at hand.

3. Upper management should focus more on the needs of contract negotiators.

Many contract negotiators indicated that upper managements' actions and policies were largely responsible for their negotiations ending in an impasse. The most often cited instances included not granting negotiators adequate authority to effectively conduct negotiations, and pressuring negotiators not just to avoid an impasse, but to reach a favorable agreement.

Upper management needs to ensure that their contract negotiators have the requisite tools to be successful, namely adequate authority to negotiate, training, and skilled staff personnel (e.g., technical and cost experts). Contract negotiators cannot be successful without the backing of upper management.

4. DOD and industry negotiators should take steps to increase the level of mutual cooperation and trust.

Many of the negotiations involved in this research were adversarial in nature. Increased interaction between DOD and industry negotiators would expand the level of mutual cooperation and trust. To this end, DOD and industry negotiators should seek out forums where they have the opportunity to increase the level of understanding of each other's environment, such as the National Contract Management Association (NCMA), Government/Industry study groups, and joint membership on boards and committees. Greater understanding between DOD and industry negotiators can only improve the contract negotiation process.

5. The following questionnaire changes should be made:

a. Revise question #6.

Question #6 was unclear as to its intent. Revise the question to read: "Do you believe that most of the impasse negotiations you have experienced involved a large number of contentious issues as opposed to a small amount?" Scale the

question 1 to 5, with 1 representing "small" and 5 representing "large."

b. Add the following questions to complement questions #21 and #22.

Add the following question to complement question #21 regarding organizational pressure to reach an agreement: "In your experience, is the level of organizational pressure to reach an agreement generally greater or less in negotiations ending in an impasse versus negotiations in which an agreement was reached?" Scale the question 1 to 5, with 1 representing "significantly less" and 5 representing "significantly greater."

Add the following question to complement question #22 regarding the balance of negotiator power: "In general, do you perceive the balance of negotiator power to be significantly greater or less in your favor in negotiations ending in an impasse versus negotiations which end in agreement?" Scale the question 1 to 5, with 1 representing "significantly less" and 5 representing "significantly greater."

c. Add the following questions:

1. "Was an agreement ultimately reached at some level in the organization? If so, please briefly indicate the respective levels in the buyer and seller's organizations at which the agreement was reached, and the length of time that

expired between the original impasse and the subsequent agreement."

2. "What percentage of the contract negotiations you have been involved with ended in an impasse?"

3. "Of the contract negotiation impasses you have been involved in, what was the largest dollar amount being discussed? What was the smallest amount?"

D. ANSWERS TO THE RESEARCH QUESTIONS

1. Primary Research Question

What are the principal factors and characteristics that lead to a contract negotiation impasse and how might the knowledge of these characteristics and factors be utilized to improve the negotiation process and avoid an impasse?

The principal impasse-related factors include: (1) a negative zone of agreement; (2) employment of contentious tactics and other actions; (3) poor communication between the parties; (4) poorly prepared negotiation teams; (5) upper management interference and/or lack of support; and (6) negotiators' biased views of the negotiation. One or more of these factors were present in every negotiation impasse involved in this study.

An awareness of these factors would enable negotiators to better avoid these "negotiation hazards," thereby improving the negotiation process and reducing the percentage of negotiations ending in an impasse.

2. Subsidiary Research Questions

What are the key characteristics of a contract negotiation impasse?

Both contract negotiators and the literature similarly defined the contract negotiation impasse as an ultimate failure of two particular negotiators to reach an agreement. This differs from a stalemate, which is a temporary stalling point in the negotiations. Negotiations which end in an impasse may, or may not, encounter stalemates along the way. The objective of a negotiation which ended in an impasse may ultimately be achieved by means of a subsequent negotiation, usually via escalation to higher levels within the respective organizations. However, the defining characteristics of a contract negotiation impasse are finality and the "ordered pair" relationship of the negotiators.

What are the typical situations and scenarios which lead to a contract negotiation impasse?

The following situations and scenarios typically lead to a contract negotiation impasse:

- A negative zone of agreement.
- Fixed price/sole source contract negotiations.
- Differing perceptions of the seller's risk.
- The perception of contentious tactics and other actions (verbal and non-verbal).
- Poorly prepared/trained/staffed negotiators and/or negotiation teams.

- Upper management pressure/interference.
- Inadequate negotiator authority.
- Unnecessary and lengthy delays in the negotiation process.
- Poor communication between the parties.
- The presence of Government internal audits or reports which significantly differ with the offeror's proposal.
- Reactive devaluation of concessions.

What are the actions or steps which could be taken by contract negotiators to avoid an impasse?

Contract negotiators could take the following actions:

- Carefully consider the seller's risk when selecting the contract type.
- Seek competition; improve own "best alternative to a negotiated agreement" (BATNA).
- Improve communication: listen objectively, ask questions, facilitate understanding, avoid lengthy/unnecessary delays.
- Strive to improve "perspective-taking ability." Seek to minimize natural biases.
- "Brainstorm" possible solutions; take integrative approach to negotiations.
- Avoid use of contentious tactics/actions.
- Ensure thorough preparation of self and team for negotiations.
- If negotiation authority is inadequate, request additional authority.
- Question internal Government audits or reports suspected of being erroneous. (DOD negotiators)
- Be open-minded and flexible: don't be afraid to make a good business decision.

E. SUGGESTIONS FOR FURTHER RESEARCH

Negotiations involving poorly prepared contract negotiators increase the likelihood of an impasse. Education and training are significant determinants of negotiator preparedness. The Defense Acquisition Workforce Improvement Act (DAWIA) underscores the importance with which DOD and Congress view the education and training of DOD acquisition professionals, including contract negotiators. Research into the perceived adequacy of negotiator education and training in both Government and industry, including recommendations for improvement would be both interesting and useful.

The rapid downsizing of the defense budget is leading many defense contractors to focus more attention to overseas arms markets, such as the Middle East. Many, if not most, of these markets' cultures and customs are very different from our own. Research into the difficulties inherent in international contract negotiations, and recommendations of how to improve the negotiation process would also be very fascinating and beneficial.

Contract negotiations ending in an impasse often end up in lengthy and costly litigation. Research into the applicability, usage and effectiveness of alternative dispute resolution (ADR) processes in Government and industry would also be an area of great interest.

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