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Lax, D.A., & Sebenius, J.K. (1986). *The Manager as Negotiator: Bargaining for Cooperation and Competitive Gain*.

Moore, C.W. (2003). *The Mediation Process: Practical Strategies for Resolving Conflict*. San Francisco (California) and London: Jossey-Bass.

Pruitt, D.G. & Rubin, J.Z. (1986). *Social conflict: Escalation, Stalemate, and Settlement*. New York: McGraw-Hill.

Pruitt, D.G. (1981). *Negotiation Behavior*. New York: Academic press.

Raiffa, Howard. (1982). *The Art and the Science of Negotiation: How to Resolve Conflicts and get the Best out of Bargaining*. Cambridge, MA: Harvard University Press.

Rinehart, L. and Page, T. (1992) The Development and Test of a Model of Transaction Negotiation. *Journal of Marketing*, 56(4), 18-32.

Rubin, K. H., & Brown, I. D. (1975). A life-span look at person perception and its relationship to communicative interaction. *Journal of Gerontology*, 30(4), 461-468.

Salacuse, J. (2008). *Seven Secrets for Negotiating with Government: How to Deal with Local, State, National, Or Foreign Governments – And Come Out Ahead*. New York: Amacom.

Sebenius, J. (1992). Negotiation Analysis: A Characterization and Review. *Management Science*, 38(1), 18-38.

Susskind, L. and P. Field (1996), *Dealing with an Angry Public: The Mutual Gains Approach to Resolving Disputes*. New York: Free Press.

Susskind, Lawrence; Cruikshank, Jeffrey (2006) *Breaking Roberts Rules: The New Way to Run Your Meeting, Build Consensus, and Get Results*. New York: Oxford Press.

Susskind, Lawrence; Cruikshank, Jeffrey. (1987). *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes*. New York, NY: Basic Books.

Ury, W. (2015). *Getting to Yes with Yourself and Other Worthy Opponents*. MA: Harper Collins.

Yin, R. (1988) *Case Study Research: Design and Methods*. Newbury Park, CA: Sage Publications.

## APPENDIX I

### Teaching notes

**Scenario:** the case illustrates the troubles looked by the gatherings with the Brazilian government bidding process negotiation case, targeting further developing the arrangement abilities of government mediators, researchers, decision-makers and professionals through a two-party, one-issue, Type I (Dias, 2020) reenactment. For different nations, various laws and specific issues, for example, unique arrangement measures, ought to be thought of.

**Mechanics:** parties should take 30 min to 45 min to read the case and to prepare themselves to negotiate. Negotiation mapping is strongly encouraged to be used additionally to help planning the negotiation—30 min to 1 hour of negotiation plus 30 min to one-hour debriefing session. In total, one hour to two hours' total time for the present case.

**Major Lessons:** to move from distributive into integrative negotiations; to map and focus on underlying interests; to rehearse sympathy towards one another; to better skills in creating mutual value to be distributed. To find solutions through cooperative behavior; to reach agreements through joint fact findings.

**Objective:** this role-play was designed to discuss the role of the parties in a distributive, Type I negotiation, involving two parties and one issue.

MAIN FEATURES	
Time required	1 hour – 2 hours
Number of participants	2 parties, commander and company representative
Groups involved	No

<b>Agent present</b>	No
<b>Third part present</b>	No

**APPENDIX II**

**PART 1**

**◆◆ COMMANDER OF THE MILITARY ORGANIZATION ◆◆**

**CONFIDENTIAL INFORMATION**

You are the Commander of your Military Organization (OM), responsible for negotiating with the Yankee Company Representative on the acquisition of the improvement service responsible for the supply of electricity in the military residences and administrative buildings of your OM.

Due to the precariousness of the Force Substation, the Military Organization required the realization of a Bidding Process to replace and build a new substation.

The negotiations therefore governed by the Bidding Law 14.133/21, excluding the hypothesis of Direct Contracting (Art. 72) provided by law for special cases, that is, by non-enforceability (Art. 74) or by exemption from bidding (Art. 75).

It is a benefactor with more than 50 (fifty) years of use whose equipment and systems do not support any maintenance. As a result, the old Substation was constantly affected by power shutdowns that interfered with the activities of the entire OM campus, whether the residences and administrative buildings, thus causing not only disturbances to residents but mainly directly impacting all projects of national interest.

Thus, the beginning of a bidding process was sought in order to affect a new Force Substation. For this purpose, an (I) Basic Project and one (ii) Reference Term were elaborated for the beginning of the event, the value of which was in the order of R\$17,000,000.00 (seventeen million reais), in order to effect the acquisition of the object transparently and advantageously for the Public Administration. Concluding the trial and qualification phase and resources of the proposals (Art. 71), the object of this event was homologous to the winning company, named X-Ray. Therefore, the companies participating in the bidding process are presented in Table 1, as follows:

Table 1  
*Result of the bidding process*

Representative Company	Value (R\$)
X-Ray	15.000.000,00
Yankee	15.500.000,00

Whisky	16.000.000,00
Zulu	17.000.000,00

The x-ray company's proposal was approved as the winner. However, it is essential to highlight that, due to the date of the actual commitment at the end of December, the total amount passed to the account of Remains payable (PR), with the beginning of the work for the beginning of the following year. In February, however, after several notifications to the company without due response, it was found after due diligence that the X-Ray company had gone bankrupt, which is why the company's headquarters were closed, its representatives disappeared, and its employees were absent.

Then, all legal procedures were carried out, aiming at the incapacity of the X-Ray company and, and the beginning of the negotiation with Yankee company (see Table 1), so that it would accept the execution of the work under the same conditions as the X-Ray company, according to the legal forecast. To do so, the Yankee company should reduce its price to R\$ 15,000,000.00 (fifteen million reais), that is, lower its price by R\$ 500,000.00 (five hundred thousand reais), therefore, a distributive negotiation of Type I (two parts, one issue negotiated). At the same time, the Administration essentially resented this work, not having the time to make another bid, given, as already mentioned, the precarious state in which the improvement was about to succumb. Therefore, for the judging criteria, Articles 33 and 34 of Law 14.133/21, as shown in Table 2, should be observed as follows:

Table 2  
*Criteria for the judgment of Law 14.133/21*

Device	Content
Art. 33	I - Lowest price; II - higher discount; III - best technique or artistic content; IV - technique and price; V - higher bid, in the case of auction; VI - higher economic return.
Art. 34	The judgment for lower price or higher discount and, when it fits, by technique and price will consider the lowest expenditure for the Administration, meeting the minimum quality parameters defined in the tender notice.

Alternatively, in case of refusal of the Yankee company, would be called the companies Whisky or Zulu, and the only one of the three companies that you have good references is the Yankee company, for more than 50 years in the market. Theoretically, any company could meet the claim since their proposals coincide with the proposed term of reference. At the same time, it is a discretionary act to accept the price of the second representative, the Yankee company, as there is the benefit to the Public Administration (provided that well-founded and justified the choice). Therefore, any amount between R\$ 15 million (lower price) and R\$ 17 million (higher price), contained in the reference term can be accepted by the Public Administration, since there is an advantage for it, as it is better than performing another bidding process. In summary, your options, alternatives, and ZOPA for negotiation are, respectively:

**ZOPA:** R\$ 15.000.000,00 a R\$ 17.000.000,00

**Option 1** - Close the contract between R\$ 15,000,000.00 and R\$ 15,500,000.00 with Yankee

**Alternatives:** (i) negotiate with Yankee, Whisky or Zulu companies; (ii) conduct a new bid.

Prepare to negotiate with the Yankee Company Representative.



## **PART 2**

### **◆◆ YANKEE COMPANY'S REPRESENTATIVE ◆◆**

#### **CONFIDENTIAL INFORMATION**

You are the Representative of the Yankee Electric Power company, responsible for negotiating with the Commander of the Military Organization (OM) acquiring the improvement service responsible for the supply of electricity in military residences and administrative buildings for OM.

Due to the precariousness of the Force Substation, the Military Organization required the realization of a Bidding Process to replace and build a new substation.

The negotiation is, therefore, governed by the Bidding Law 14.133/21, excluding the hypothesis of Direct Contracting (Art. 72) provided by law for special cases, that is, by non-enforceability (Art. 74) or by exemption from bidding (Art. 75).

It is a benefactor with more than 50 (fifty) years of use whose equipment and systems do not support any maintenance. The old Substation was constantly affected by power outages that interfered with the activities of the entire OM campus, whether the residences and administrative buildings, thus causing inconvenience to residents and, mainly, directly impacting all projects of national interest.

The (i) Basic Project for the construction of the Substation and (ii) The Term of Reference for the beginning of the event, whose value was around R\$17,000,000.00 (seventeen million reais).

Concluding the trial and qualification phase and resources of the proposals (Art. 71), this event's object was granted to the winning company, named X-Ray. Yankee arrived in second. The companies participating in the bidding process are presented in Table 1, as follows:

Table 1  
*Result of the bidding process*

Representative Company	Value (R\$)
X-Ray	15.000.000,00
Yankee	15.500.000,00
Whisky	16.000.000,00
Zulu	17.000.000,00

The x-ray company's proposal was approved as the winner. It is important to highlight that, due to the date of the actual commitment to have occurred at the end of December, the total amount passed to the account of Restos a pagar (PR), with the beginning of the work for the beginning of the following year.

However, after several notifications to the company without due response, it was found, after due diligence, that the X-Ray company had gone bankrupt, which is why the company's headquarters were closed, its representatives disappeared, and its employees were absent.

Then, all legal proceedings were carried out, aimed at the incapacity of x-ray and, and the beginning of negotiation with his company (Yankee), a company with half a century of successful operations, without, however, having never provided in all its history, any service to the Armed Forces. Therefore, this contract for you has great importance as a milestone of achievement, in addition to the direct interest of the president of your company. It may be the lost opportunity for your promotion to the Commercial Manager of the area.

However, you know that there are still two other companies that can be called for the fulfillment of the contract: (i) Whisky and (ii) Zulu, which had their values budgeted within the Terms of Reference (see Table 1).

It is, therefore, a Type I distributive negotiation (two parts, one issue negotiated). You know, too, that OM badly needs a new substation, since there are severe risks of serious accidents, with injury to the Public Administration, if nothing is done, as soon as possible. The improvement was about to succumb.

For the judging criteria, Articles 33 and 34 of Law 14.133/21, as shown in Table 2, should be observed below:

Table 2  
*Criteria for the judgment of Law 14.133/21*

Device	Content
Art. 33	I - Lowest price; II - higher discount; III - best technique or artistic content; IV - technique and price; V - higher bid, in the case of auction; VI - higher economic return.
Art. 34	The judgment for lower price or higher discount and, when it fits, by technique and price will consider the lowest expenditure for the Administration, meeting the minimum quality parameters defined in the tender notice.

Therefore, in case of your refusal, OM would call the competing companies Whisky or Zulu, and you represent the only one of the three companies that have good market references, by tradition and competence. Theoretically, any companies could meet the claim since their proposals coincide with the proposed term of reference. When analyzing the case, you notice a great professional and personal opportunity of internal recognition for victory. The president of your company authorized you to close for R\$ 15 million.

However, you think you can persuade the Commander of the OM to close for R \$ 15,250,000.00, dividing the difference that is R \$ 500,000.00. Thus, everyone would be satisfied, in your opinion. However, you also know that it is better to close for R \$ 15 million and avoid the loss of business. On the other hand, you know that the company Whisky will hardly accept reducing R \$ 1 million in its proposal to reach R \$ 15 million. In summary, your options, alternatives, and ZOPA for the negotiation are, respectively:

**ZOPA:** R\$ 15.250.000,00 a R\$ 15.000.000,00

**Option 1** - Close the contract between R\$ 15,000,000.00 and R\$ 15,250,000.00.

**Alternatives:** (i) participate in new bidding; (ii) sell the project to a third party.

Prepare to negotiate with the Commander of the OM.

