



## ROLE-PLAY SIMULATION ON SOFTWARE CONTRACT NEGOTIATION

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### ABSTRACT

*This article addressed a contract software negotiation case in Brazil, aiming to improve the negotiation skills of business negotiators, scholars, and practitioners through a two-party, multiple-issue role-play simulation. The case involved a state-owned company and a private software manufacturer, one month before the two-year contract ends. Key findings pointed out the necessity of improving integrative strategies, such as understanding the other party's underlying interests, value creation to achieve mutual benefit agreements. Further implications suggest the case replication to other business scenarios, with an asymmetry of power. Discussion and future research recommendations compile this research.*

**Keywords:** Negotiation, Software Contract, Asymmetry of Power, Teaching materials

### INTRODUCTION: -

This article addressed the one single case on the software negotiation contract between a state-owned company, hereafter SOE, and a private software manufacturer company, hereafter SMC, as the unit of analysis (Yin, 1988).

The Negotiation took place at Brasília, Federal District (DF), center-west Brazil. The names of the companies were altered for compliance issues, including the names of the participants, omitted to preserve the case confidentiality. However, the case is real, and the Negotiation ended in late 2019. In real life, the contract is governed by the Law 8.666, from 8 June 1993 (Brasil, 1993), ruling governmental acquisitions.

This case also explored the asymmetry of power from a single manufacturer regarding the SOE. The actual SOE is a Federal data processing company, and the SMC is a software manufacturer that designed exclusive Software to attend, for two years, the SOE requirements. The point where the Negotiation starts exactly one month of the contract termination. The Negotiation was held between the department manager of the SOE and the sales representative of the SMC.

The article comprises a full set of teaching notes and instructions (see Appendixes II and II ). We aimed at providing a full set of teaching materials on software contract negotiation, supportive to teachers, scholars, lawyers, professors, instructors, mediators, decision-makers, and practitioners.

Role play simulations have attracted scholar attention recently (Dias, Lopes, Teles, Pereira and Castro, 2020; Dias, 2020, 2019; Dias & Lopes, 2019; Dias & Teles, 2018; Dias & Duzert, 2017; Dias & Navarro, 2017).

In this article, negotiation is defined as “a process of potentially opportunistic interaction by which two or more parties, with some apparent conflict, seek to do better through jointly decided action than they could otherwise” (Lax and Sebenius, 1986, p.11). Also, Negotiation is a “process of communication by which two or more parties seek to advance their interests or those of the persons they represent through an agreement on the desired future action” (Salacuse, 2003, p. 11).

Finally, we followed the Four-Type negotiation matrix (Dias, 2020). In sum, this is a seller-buyer negotiation between two-parties and multiple issues, or Type II negotiation, as illustrated in the following Figure 1:

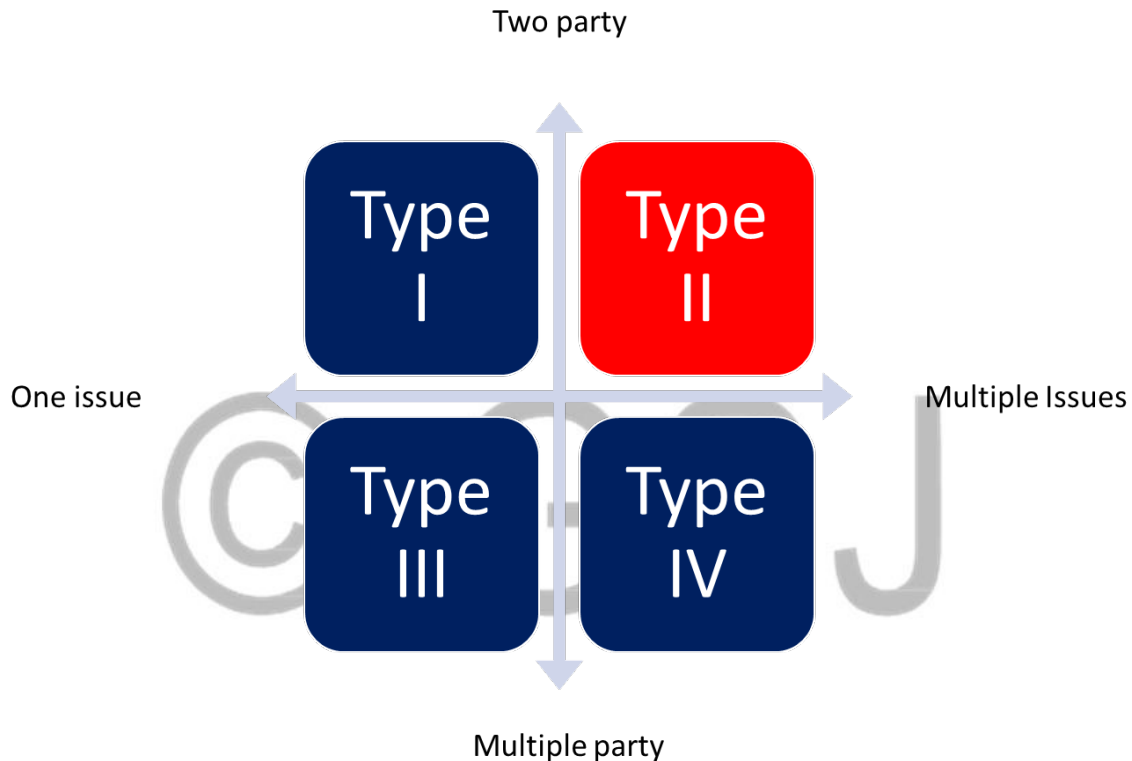


Figure 1: The Four-Type Negotiation Matrix. Source: Dias, 2020. Reprinted under permission.

The Four-Type negotiation matrix provides a sound model for negotiation classification, encompassing past body of research on the subject (Dias, 2020; Raiffa, 1982; Fisher Ury and Patton, 1981; Sebenius, 1992; Ury, 2015; Susskind & Field, 1996; Salacuse, 2008; Rinehart & Page, 1992; Pruitt & Rubin, 1986). In the next section, we present the methods and case limitations. Observe in Figure 1, the red quadrant to highlight the Type II negotiation case.

#### **METHODS AND RESEARCH LIMITATIONS: -**

This study is a buyer-seller contract negotiation case between a Brazilian state-owned company, and a software manufacturer company, as the unit of analysis (Yin, 1988). We followed the inductive rationale and interpretivistic approach. The present research is limited to the Brazilian government acquisition legislation, namely Law 8.666/93, Art. 25, item II (Brasil, 1993). Art. 25, item II issues the non-enforceability of the bidding process, as follows:

II - for contracting technical services listed in art. ... 25, of Law 8,666, of 1993, provides that bidding is unenforceable when specialized technical services of a singular nature are contracted.

Other countries and laws should be investigated separately. This case is also limited and supported by Goffman's dramaturgical theory (1959, 1961) and Karpman's drama triangle (Karpman, 1968).

### **ROLE PLAY SIMULATION: SOFTWARE CONTRACT NEGOTIATION: -**

The role-play simulation starts with the manager of the SOE, which is a data processing company. Two years ago, the SOE signed a contract with the supplier AP Software, for non-enforceability of bidding (Art. 25, inc. II of the Bidding Law - Law 8666/93), because it is the only supplier of Software indispensable to the performance of the provision of services performed by the company XSP. The original contract expires in a month. Therefore, both parties need to renegotiate the terms of the contract.

The original contract provided for the supply of 20 tools with technical support, totaling BRL 15 million. It turns out that the SOE manager became aware of the diligence of the TCU<sup>1</sup> that the SOE used only half of these tools, this fact generated a negative repercussion for the SMC, when TCU highlighted the underuse. The SOE Board of Directors has instituted an internal inquiry to determine the responsibility for hiring all these unused tools. The SOE always paid their dues on time, according to the deliverables stipulated in the contract.

The manager of the SMC, on the other hand, maintained a good relationship with the SOE manager during the contract, always cooperative and efficient. The SOE manager's mission is to renew the contract of 10 tools (those currently used), paying up to BRL 7.5 million for them (the BRL 15 million would be for twenty tools). Both parties have to deal with the fact that the SMC is the only software manufacturer in Brazil that attends the SOE's requirements (reason foreseen in the Art. 25, item II of Law 8.66/93 (Brasil, 1993). At this point, confidential information for both parties is disclosed (See Appendix II).

### **DISCUSSION: -**

This case is a particular case of buyer-seller Negotiation, designed for face-to-face classroom interactions or executive training sessions. Due to the COVID-19 pandemic, it can be adapted to virtual classes too, in which parties should engage remotely in the Negotiation.

The present role-play simulation has implications in the following fields of study: (a) Non-governmental organizations (Paradela,; Dias, M. O.; Assis; Oliveira, J.; Fonseca, R. (2019); (b) carmaker industry (Dias, M. O., Navarro and Valle, 2013, Dias, M. O., et al., 2014; Dias, M. O., et al., 2013); (c) aircraft manufacturer industry (Dias, M., Teles, and Duzert, 2018; Dias, M.O. and Duzert, 2018); (iii) public agents (Dias, M. O., 2018); (d) copier manufacturer industry (Dias, M.O., 2012); (e) non-market forces (Dias & Navarro, 2018); (f) retail business (Dias, M. O., et al., 2015; Dias, M. O. et al., 2015, 2014); (g) Craft beer industries (Dias, M.O. and Falconi, 2018; Dias, M. O., 2018); (h) social mediation (Dias, M. O. & Teles, 2018); (i) governmental business relations (Dias, M. O. & Navarro, 2017); (j) generational interactions (Aylmer & Dias, M. O., 2018); (k) e-business negotiation (Dias & Duzert, 2017); (l) streaming video industry, such as Netflix (Dias, M. O., & Navarro, 2018); (m) mining industry (Dias, M. O., & Davila, 2018); (n) civil construction (Dias, M.O., 2016), finally (o) debt collection negotiations (Dias, M.O., 2019, 2019b; Dias, M.O. and Albergarias, 2019).

One of the case limitations regards the simulated classroom scenario, in which parties tend to be more cooperative than in real-life scenarios. Therefore, the facilitator should consider such environments, connecting the simulation to the actual circumstance, on the briefing and debriefing sessions.

Finally, even with a Brazilian scenario, other countries may have different legislation on government acquisitions. Therefore, the legal framework should be adapted for each country.

### **FUTURE RESEARCH AND CASE LIMITATIONS**

This teaching material investigated a software contract negotiation between two parties in the Brazilian scenario. Other scenarios, cultures, and countries are encouraged to be investigated in future studies. Finally, strategies to better the

<sup>1</sup> Equivalent to the European Union's Court of Auditors

agreement regarding the Four-Types negotiation matrix should also be investigated in future research.

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## APPENDIX I

### Teaching notes

**Scenario:** the case illustrates the difficulties faced by the parties to avoid a loss of software contract. For other countries, different laws and particular issues, such as different negotiation processes, should be considered.

**Mechanics:** parties should take 30 min to 1 hour 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 to one-hour debriefing session. In total, one hour and a half to three hours' total time for this exercise.

**Major Lessons:** to migrate from distributive into integrative negotiations; to map and focus on underlying interests; to practice empathy towards each other; to develop promptness in creating mutual value to be later distributed.

**Objectives:** this exercise intends to discuss the role of lawyers in a distributive, Type I negotiation. That negotiation should be seen not as an intrusion devoted to promoting disruption, but one aid to promote consensus between two different parties. One crucial objective is related to process control.

MAIN FEATURES	
Time required	1 hour - 2 hours
Number of participants	2 parties, buyer and seller
Groups involved	No
Agent present	No
Third part present	No



## APPENDIX II - PARTIES' ROLES

### PART 1

#### ◆◆ MANAGER OF THE STATE-OWNED COMPANY◆◆

#### GENERAL INFORMATION

You are the manager of the XSP company, which is a state-owned data processing company. Two years ago, he signed a contract with the supplier AP Software, for non-enforceability of bidding (Art. 25, inc. II of the Bidding Law - Law 8666/93), because it is the only supplier of software indispensable to the performance of the provision of services performed by the company XSP. The original contract expires in a month. You need to renegotiate the terms of the contract to decide whether to renew it or not.

The original contract provided for the supply of 20 tools with technical support, totaling BRL 15 million. It turns out that you became aware, after a diligence of the TCU, that your company used only half of these tools. This fact generated a negative repercussion for your company, when the underuse came to light. The Company's Board of Directors has instituted an internal inquiry to determine the responsibility for hiring all these unused tools. The COMPANY XLP always paid on time the deliveries stipulated in the contract.

The manager of the company AP Software, during the contract, has always maintained good relationship with you, always helpful and efficient. You were taken by surprise to learn that the software tools were delivered to half of the contractor, because at the time of signing the contract, you were in another management.

#### CONFIDENTIAL INFORMATION

Thus, its mission is to renew the contract of only 10 tools (those currently used), paying up to BRL 7.5 million for them (the BRL 15 million would be for 20 tools). You also know that your company is going through a time of expense contingency, with the CEO of the company limited the budget of said contract to BRL 9 million, its reserve price. If the supplier does not accept this limit price, the Board's order is to open a bid for other suppliers, even if the tools available in the market do not have the same quality as those provided by ap software (its alternative).

You know that bidding for another supplier's choice, in addition to being slower, will leave the company short during the bidding process without the software, which could seriously harm XLP's service delivery. In addition, there should be a restructuring of the physical space to receive other software, which would also generate additional expenses. Accordingly, you should review all of these factors together to decide whether it is worth bidding rather than renewing the contract with AP Software.

Get ready to negotiate with the ap software manager.

## **PART 2**

### **◆◆ MANAGER OF THE SOFTWARE MANUFACTURER COMPANY◆◆**

#### **GENERAL INFORMATION**

You are the manager of the company AP Software, which provides services to a state-owned in data processing, the company XSP. Two years ago, it entered into a contract with XSP, for non-enforceability of bidding (Art. 25, Inc. II of the Bidding Law - Law 8666/93), for being the only one to provide the software indispensable to the performance of the provision of services performed by the company XSP. The original contract expires in a month. You need to renegotiate the terms of the contract to decide whether to renew it or not.

The original contract provided for the supply of 20 tools with technical support, totaling BRL 15 million. It turns out that the customer only asked for 10 tools during the execution of the contract, paying there\$ 20 million. Voice became aware, after a diligence of the TCU, that his company provided only 10 tools, half of those provided for in the contract. This fact generated a negative repercussion for your company before the TCU, when the underuse came to light. subtilizes. You have been informed that the XSP Company's Board of Directors has instituted an internal inquiry to determine the responsibility for hiring all these unused tools.

You, during the contract, always maintained good relationship with the asp manager, who took the post during the execution of the contract. His team has always been praised for being helpful and efficient. The company XSP always paid on time the deliveries stipulated in the contract.

#### **CONFIDENTIAL INFORMATION**

You know you are the only developer of the software provided to the XSP company on the market. Pertains renew the contract of the 20 tools with price adjustment, out of contract after two years. He intends to ask for BRL 17 million for the 20 tools. You know that the XSP company has a technological dependence on the software you provide.

Its CEO was incisive in stating that you could not renew the contract for less than BRL 10 million (your reserve price).

Your company will not be able to offer less value, because if you do, you can open a loophole for other customers, who may require the same value, which would imply a drastic reduction in your company's profit margin, putting the situation of your company at risk.

You know that bidding for another supplier's choice, in addition to being slower, will leave XSP short during the bidding process without the software, which could seriously impair X XSP's service delivery.

You also know that the XSP company is the best company in your client portfolio. After he signed a contract with XSP, several new customers sought him out to close a deal. You are afraid that not renewing the contract may cause other customers not to renew with your company either.

You also have the option to offer the use of the Software for a transition period of up to three months, while the new contract is not signed, for a value of BRL 1.8 million, provisionally.

Prepare to negotiate with the XSP manager for contract renewal, or a new contract.

