



ROLE-PLAY SIMULATION ON CONTRACT BIDDING NEGOTIATION

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ABSTRACT

This article addressed a Brazilian government contract bidding negotiation between a governmental institution and a private company. The objective was to deploy a new electrical substation through a two-party, one-issue role-play simulation. The teaching material is helpful to scholars, decision-makers, and practitioners. Key findings pointed out the necessity of improving negotiating skills when dealing with the bidders in cases of Force Majeure—also, designing solutions to complex issues to achieve mutual benefit agreements; (iii) understanding the other party's underlying interests avoid a new bidding process. Further implications suggest the case replication to other scenarios such as private, buyer-seller negotiations—a complete set of instructions complete the present study.

Keywords: Teaching materials, bidding process, distributive, Negotiation

INTRODUCTION: -

Government acquisition has been a sensitive topic in Brazil since the issuance of the new bidding law 14.133, from 1 April 2021 (Brasil, 2021), because the new Bidding Law replaced (i) the Bidding Law 8.666/93, (ii) the Auction Law 10.520/02, and (iii) the Differentiated Contracting Regime Law 12.462/11.

This article addressed a two-party, one-issue bidding contract negotiation between a governmental institution and a private company over the construction of the customized high-voltage substation. The bidding process involved four

bidders, with one winner. However, the winning company went bankrupt, and the government agencies should negotiate the contract with the remaining bidders.

This article investigated a Type I negotiation (Dias, 2020), including a two-party, single-issue, role-play simulation. A complete set of instructions is enclosed (see the Annexes). The real names were omitted for compliance issues and to preserve the identities confidentiality of all parties involved. This article addressed a single case study involving the Military Organization commander (MO) and the Private Energy Company (PEC) representative as the unit of analysis (Yin, 1988). Moreover, the case is foreseen by the Federal Constitution, of 5 October 1988 - Art. 37, item XXI, which "disciplines the contracting of works, services, purchases and disposals by the direct and indirect public administration of any of the Powers of the Union, States, Federal District, and Municipalities." (Brasil, 1988).

We aimed at providing teaching material on governmental acquisition negotiation, helpful to teachers, scholars, lawyers, professors, instructors, mediators, decision-makers, and practitioners. The topic has attracted scholar attention (Dias, Lopes, Teles, Pereira, and Castro, 2020; Dias & Lopes, 2019; Dias & Teles, 2018; Dias & Duzert, 2017; Dias & Navarro, 2017; Dias, M.; Andrade, S.; Silva, M. R.; Teles, G.; Mello, B.; Moura, R.; Salazar, A.; Sotoriva, L.M.; Mariotti, A; Filho, C., 2021; Dias, 2020, 2019). Additionally, a set of teaching notes is enclosed (see the Appendixes).

Negotiation is a Latin word meaning "to deny leisure" (*nego* = deny, and *otium* = leisure), and is defined as "a process in which individuals work together to formulate agreements about the issues in dispute. This process assumes that the parties involved are willing to communicate and to generate offers, counteroffers, or both." (Rubin and Brown, 1975, p.461). Ultimately, Negotiation is a "form of decision making in which two or more parties talk with one another in an effort to resolve their opposing interests." (Pruitt, 1981, p. xi)

Other negotiation aspects have been studied, such as buyer-seller negotiations (Dias, 2020, 2020b, 2019; Raiffa, 1982; Ury, 2015; Cohen, 1980; Sebenius, 1992; Moore, 2003; Fisher Ury and Patton, 1981; Salacuse, 2008; Duzert and Zerunyan, 2015; Susskind and Field, 1996; Susskind & Cruikshank, 1987). Therefore, we adopted the Four-Type Negotiation Matrix taxonomy to classify the negotiation approach (Dias 2020). Figure 1 depicts the conceptual



framework:

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

The teaching case addressed a Type I negotiation, where the two parties, the (i) military organization commander and (ii) the private company director, negotiate over (iii) one issue, the bidding contract acceptance terms. Next, research limitations and methods are discussed.

RESEARCH LIMITATIONS AND METHODS: -

We adopted a multiple methods approach to investigate the single case study. The government acquisition of an electrical substation is the unit of analysis (Yin, 1988). We combined an inductive rationale with an interpretive approach. The methods included (i) direct participation, (ii) direct observation, and (iii) case study. Finally, this case is supported by Goffman's dramaturgical theory (1959, 1961). This study is limited to the Brazilian Federal Constitution Art. 37, item XXI (Brasil, 1988), and the Bidding Law 14.133/21 (Brasil, 2021). Other countries and respective legislation in force are not investigated in the present research. The criteria employed to select the winning company are limited to Articles 33 and 34 of Law 14.133/21, as shown in Table 1, as follows:

Table 1
Criteria for the proposition's judgment - Law 14.133/21

Legal Device	Description
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.

BIDDING CONTRACT NEGOTIATION: -

Due to the precariousness of the Electrical Substation, the Military Organization required the realization of a Bidding Process to replace and build a new substation. Therefore, the negotiations were governed by the Bidding Law 14.133/21, excluding the hypothesis of Direct Contracting (Art. 72), provided by Law for exceptional cases: (i) by non-enforceability (Art. 74) or (ii) exemption from bidding (Art. 75). In sum, Articles 72, 74, and 75 could not be applied to the case under investigation. The old Electrical Substation had more than 50 years of use and whose equipment and systems no longer support any maintenance. Therefore, the old substation was constantly being affected by power shutdowns that interfered with the activities of the entire MO campus. Constant shutdowns caused disturbances to residents and mainly directly impacting all projects of national interest.

For this purpose, two documents were issued: (i) Basic Project and (ii) Reference Term, totaling R\$17,000,000.00 (approximately \$3 million). Concluding the trial and qualification phase and resources of the proposals (Art. 71), the object of this event was granted to the winning company, named hereafter X-Ray, for compliance issues. Therefore, the companies and the respective proposals participating in the bidding process (which names were altered for the same reasons aforementioned), are illustrated in Table 2, as follows:

Table 2
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 declared the winner of the bidding process. The event took place in December. However, in February next year, after several notifications without due response, due diligence found that X-Ray company had gone bankrupt, the company's headquarters 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 the second place, in order, the Yankee company (see Table 1), seeking for the acceptance of 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 (approximately \$2,583,000), that is, lower its price by R\$ 500,000.00 (approximately \$83,000), from its original proposition.

In sum, a Type I negotiation (two parts, one issue negotiated). Yet, 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.

Alternatively, in case of refusal of the Yankee company, the government agent would do the same proceeding with the remaining companies, Whisky, and Zulu in sequence, once all companies reached the term of reference (maximum for the Public Administration to pay, i.e., the government's agent reservation price).

The Yankee company has a strong reputation, with more than 50 years' operations. 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. The Yankee company accepted the government agent's proposition to lower Yankee's bidding offer, winning the bidding process.

DISCUSSION: -

The bidding process to address a Type I negotiation (Dias, 2020). The case was likewise intended for vis-à-vis classroom teachings or instructional courses. Notwithstanding, it very well may be utilized in far-off virtual meetings due to the Covid social portability limitations.

The present role-play simulation has implications in the following fields of study, not limited to (i) governmental business negotiations (Dias, M. & Navarro, 2017); (ii) e-business negotiations (Dias, M. & Duzert, 2017); (iii) Non-governmental organizations dealing with governments (Paradela, V.; Dias, M.; Assis; Oliveira, J.; Fonseca, R. (2019); (iv) negotiations with government agents (Dias & Navarro, 2018); (v) buyer-seller, retail business (Dias, M. et al., 2015; Dias, M. et al., 2015, 2014, 2012); (vi) carmaker industry (Dias, M., Navarro and Valle, 2013, Dias, M. , et al., 2014; Dias, M. , et al., 2013); (vii) craft beer industry (Dias, M. and Falconi, 2018; Dias, M., 2018); (viii) streaming video industry negotiating with the government (Dias, M., & Navarro, 2018); (ix) public agents (Dias, M., 2018); (x) generational interactions negotiations (Aylmer & Dias, M., 2018); (xi) aircraft manufacturer industry (Dias, M., Teles, and Duzert, 2018; Dias, M. and Duzert, 2018); (xii) two-party debt collection negotiations (Dias, M., 2019, 2019b; Dias, M. and Albergarias, 2019); (xiii) succession issues on mining industry (Dias, M., & Davila, 2018); (xiv) civil construction versus public projects (Dias, M., 2016), among others.

The role-play simulation is limited to the Brazilian normative regarding Government Acquisitions in force. Other countries should abide by the local normative. Finally, the case is limited to a Type I negotiation. Negotiations Types II, III, and IV are not the scope of the present research.

FUTURE RESEARCH

For future research, we encourage the investigation of negotiations Types II, III, and IV. We also recommend studying the impact of the current Bidding Law 14.133/21 in the overall Government Acquisition process to investigate the efficacy of the Law in force.

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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

Agent present	No
Third part present	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.

