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APPENDIX I

Teaching notes

Scenario: the case illustrates the troubles of gatherings with the Brazilian government civil engineering works negotiation case, targeting further developing the arrangement abilities of government mediators, researchers, decision-makers, and professionals through a two-party, multiple-issue, Type II negotiation (Dias, 2020).

Mechanics: parties should take 45 min to 50 min to peruse the case and get ready to arrange. Exchange organized planning is firmly supported—30 min to 1 hour of arrangement in addition to 30 min to a one-hour questioning meeting. Altogether, one hour to two hours is suitable for the exercise.

Significant Lessons: the parties should put their best efforts into reaching deals through joint fact-findings and cooperative behavior.

Objective: this role-play was designed to discuss the role of the parties in an integrative, Type II negotiation involving two parties and several issues negotiated.

MAIN FEATURES	
Time required	1 hour – 2 hours
Number of participants	Two parties, Military Commander and a 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 (O.M.), 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 O.M.

The Regional Construction Commissions (CRO) are Military Organizations (O.M.) of the Brazilian Army (E.B.) responsible for the execution of its infrastructure works (barracks). Thus, a certain Works Commission was entrusted with bidding for the construction of the registered building of an Operational Unit, which would require the execution of the following works, at least: (i) Pavilion 1 (Command); (ii) Hall 2 (Refectory); (iii) Pavilion 3 (Garage); (iv) Pavilion 4 (Command and Support Company - CCAp); (v) Pavilion 5 (Operations Center - COp); (vi) Pavilion 6 (Guard Corps); (vii) Complementary infrastructure (water, sanitary, electricity, paving, etc.).

After the preparation and approval of the corresponding engineering projects and aiming at the gain of scale, the head of the mentioned CRO began the necessary bidding processes, in which it decided to contract the works through 2 (two) public competitions, one encompassing the Pavilion of the Guard Corps (Bidding 1) and the second (Bidding 2) encompassing all other remaining improvements. 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).

As a result, the same company, ROCHA Engenharia Ltda, won the following two (2) bids, with the following values, presented in Table 1, as follows:

Table 1
Result of the bidding process

Description	Objects	Bid amount (R\$)	Discount %	Winning
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			granted by the company	company
Bidding 1	Pavilions 1, 2, 3, 4, 5 and complementary infrastructure	3.000.000,00	12,0	ROCHA Eng ^a Ltda
Bidding 2	Pavilion 6	200.000,00	15,0	

Thus, considering the financial resources available at the time of the conclusion of the bids, the contract for Bidding 1 was signed, and the works started at the beginning of the year. Moreover, due to financial difficulties faced by the construction company during the execution of the contract, the works were paralyzed in the middle of this year, with an average percentage of execution of the object of only 30%.

After meetings held between CRO and the Board of Directors of the executing company during the 2nd half of this year, we tried to implement a new pace to the works from the beginning of next year, with great expectation regarding the resumption of work.

However, despite the effort of the construction company and due to a series of labor lawsuits, there was a new stoppage, still next year, this time definitively. Soon, there would be a need for a new contract, which required the prior termination of the stalled contracts. Moreover, as a result of the current legislation and the possible need for a new bid, a large period of time would be consumed. In parallel to the processes of recontracting the works related to Bidding 1, already mentioned, special attention was paid to the hiring of the construction works of the Pavilion of the Guard Corps (Bidding 2), which had not yet been contracted.

Analyzing the bidding corresponding to the construction of the Guard Corps, it was verified that the winning company - ROCHA Eng^a Ltda - was the same as the paralyzed contract, which would contraindicate its hiring. The 2nd place in the same bid (ABC Construções Ltda), had already executed with great success other works in charge of that CRO. 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.

A meeting was then held with ABC Construções Ltda to verify if there would be interest in assuming the object of Bidding 2 and signing the corresponding contract.

Two lines of action were available. If the previous bid were used for the contracting of the company classified in 2nd place, the prices would be corrected, from the contract of four years ago, applying the indexes for the period elapsed until that year. The value of the work proposed by the winning company (at the time), and to be assumed by the 2nd place, was R\$ 500,000.00, with reference prices from four years ago. Considering the adjustment rates accumulated so far, and to be applied on those original prices, the total percentage was 15%, resulting in a new value of R\$ 575,000.00.

In a second line of action, a new bid was carried out, the quotation based on the reference table for works of the Federal Public Administration (SINAPI) should be obeyed. In this case, the total budget considering reference prices for the following year would be R\$ 600,000.00.

The average discount obtained in CRO bids in the last two years, that is, the difference between the estimated and the effectively contracted values, was 10%. Thus, if a new bid were made in the following year, it was expected that a value of around R\$ 540,000.00 would be offered for the same work, even if any amount offered to the lower than that contained in the terms of reference was legally and accepted by the control bodies.

Then, in order to minimize the value of the work, it was proposed to the owner of abc Construções Ltda to grant a supplementary discount on the amount provided for in the adjusted contract (R\$ 575,000.00), so that the final value of its contracting was lower than that of a new bid, even if the average discount historically obtained by CRO (10 %).

After the analysis of the claim submitted by CRO, the representative of ABC Construções Ltda reported that the price proposed in the bidding by the winning company was already at a very considerable discount and, if a supplementary discount was granted, there would be a great risk of damage to the work.

You believe that a discount of R \$ 50,000.00 is of good size to close the new agreement, but R \$ 30,000.00 are enough for both parties, in view of the losses to the Public Administration to conduct a new bidding bid. So:

ZOPA: R\$ 30.000,00 a R\$ 50.000,00

Option - accept a lower value; allow more time for the contracted company

Alternative: make new bidding.

His justification was in the sense that, once already installed on the site of the works, with the work team mobilized and considering a gain of scale, would be in better condition to participate in the upcoming bids, the other pavilions and make a profit in the whole work. Get ready to negotiate with the representative of the ABC company.



PART 2

◆◆ ABC COMPANY REPRESENTATIVE ◆◆

CONFIDENTIAL INFORMATION

You are the representative of the company ABC, responsible for negotiating with the Commander of the Military Organization (O.M.) on the acquisition execution of its infrastructure works (barracks) for O.M.

The Regional Construction Commissions (CRO) are Military Organizations (O.M.) of the Brazilian Army (E.B.) responsible for the execution of its infrastructure works (barracks). Thus, a certain Works Commission was entrusted with bidding for the construction of the registered building of an Operational Unit, which would require the execution of the following works, at least: (i) Pavilion 1 (Command); (ii) Hall 2 (Refectory); (iii) Pavilion 3 (Garage); (iv) Pavilion 4 (Command and Support Company - CCAP); (v) Pavilion 5 (Operations Center - COp); (vi) Pavilion 6 (Guard Corps); (vii) Complementary infrastructure (water, sanitary, electricity, paving, etc.).

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After meetings held between CRO and the Board of Directors of the executing company during the 2nd half of this year, we tried to implement a new pace to the works from the beginning of next year, with great expectation regarding the resumption of work.

However, despite the effort of the construction company and due to a series of labor lawsuits, there was a new stoppage, still next year, this time definitively. Soon, there would be a need for a new contract, which required the prior termination of the stalled contracts. Moreover, as a result of the current legislation and the possible need for a new bid, a large period of time would be consumed. In parallel to the processes of recontracting the works related to Bidding 1, already mentioned, special attention was paid to the hiring of the construction works of the Pavilion of the Guard Corps (Bidding 2), which had not yet been contracted.

Analyzing the bidding corresponding to the construction of the Guard Corps, it was verified that the winning company - ROCHA Eng^a Ltda - was the same as the paralyzed contract, which would contraindicate its hiring. The 2nd place in the same bid (ABC Construções Ltda), had already executed with great success other works in charge of that CRO. For the judging criteria, Articles 33 and 34 of Law 14.133/21, as shown in Table 2, should be observed below:

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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.

A meeting was then held with the Commander of the O.M. to verify whether there would be interest in assuming the object of Bidding 2 and signing the corresponding contract.

Two lines of action were available. If the previous bid were used for the contracting of the company classified in 2nd place, the prices would be corrected, from the contract of four years ago, applying the indexes for the period elapsed until that year. The value of the work proposed by the winning company (at the time), and to be assumed by the 2nd place, was R\$ 500,000.00, with reference prices from four years ago. Considering the adjustment rates accumulated

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Then, in order to minimize the value of the work, it was proposed to the owner of abc Construções Ltda to grant a supplementary discount on the amount provided for in the adjusted contract (R\$ 575,000.00), so that the final value of its contract was lower than that of a new bid, even if the average discount historically obtained by CRO (10 %).

After the analysis of the claim submitted by CRO, the representative of ABC Construções Ltda reported that the price proposed in the bidding by the winning company was already at a very considerable discount and, if a supplementary discount was granted, there would be a great risk of damage to the work.

You believe that a discount of R \$ 20,000.00 is of good size to close the new agreement, but R \$ 40,000.00 is sufficient for both parties, in view of the losses to the Public Administration to conduct a new bidding bid. So:

ZOPA: R\$ 20.000,00 a R\$ 40.000,00

Option - accept a lower value; allow more time for the contracted company

Alternative: make new bidding.

His justification was in the sense that, once already installed on the site of the works, with the work team mobilized and considering a gain of scale, would be in better condition to participate in the upcoming bids, the other pavilions and make a profit in the whole work. Prepare to negotiate with the Commander of the O.M.

