



## CM 401 Approach to Negotiating Redlines

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This approach is scalable; meaning that it is appropriate for a few vendor objections as well as complex negotiations that could include hundreds of objections.

### 1. Understand the vendor's concern

- Ask for supporting arguments for each and every change. Please do not assume you understand the vendor's arguments. If you don't understand it, it is likely that the stakeholder will not understand it either.

### 2. Do a Stakeholder Analysis

- Who at the Agency will make the decision (accept or in part or reject all in part) on the objection? Are you empowered to make the decision? If so, you might want to jump to the next step.
- If an Agency stakeholder will make the decision consider completing a **CM 102 Stakeholder Analysis**.
  - In very complex issues, it is possible that many stakeholders will be involved in the discussions, but only one person can accept the vendor's objections. In that situation, complete a **CM 102 Influence Matrix** to ensure that the final decision maker is fully informed throughout the entire negotiation process.

### 3. Develop an Agency position

This is the heart of the process where you will use your *professional judgment* to shape the agency position to the vendor's objection.

- Understand the Agency's Position
  - First and foremost, understand your organization's considerations for the underlying paragraph that is being redlined by the vendor. This point must be underscored—*please go beyond "policy" arguments when communicating the Agency's position to a vendor objection.*
- Evaluate the Objections
  - Next, you will need to determine the amount of deviation your Agency can tolerate to still have the same level of intent supporting the underlying contract provision. By level of deviation, I am speaking of the range between no deviation at all to a complete re-write using a vendor's suggested language.
  - In other words, will the vendor's objection limit the agency's rights or is the objection simply clarifying language in the agreement? You will be hampered in this part of the analysis if you don't have a clear understanding of the underlying reasoning for the provision.
- Choose One of Three Courses of Actions
  - **Reject.** The Agency could reject the vendor's objections, all or in part. Can you make this decision and communicate it to the vendor? If so, do so. Be sure to include your



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Agency's reasoning. If it is not your decision, then you would communicate a suggestion to the stakeholder to reject the vendor's objection. Again, be sure to include your reasoning.

- **Accept.** The Agency could accept the vendor's objections, all or in part. Can you make this decision and communicate it to the vendor? If so, do so. Be sure to include your Agency's reasoning. If it is not your decision, then you would communicate a suggestion to the stakeholder to accept the vendor's objection. Again, be sure to include your reasoning.
- **Include the Stakeholder(s).** If you cannot make a suggestion based on the information you have gathered so far in the process, you will need to include the stakeholder(s) to aid in formulating a proposal to the vendor's objections. Again, the stakeholders may want a proposal from you to help shape their thinking on the issue.

### 4. Develop a tracking sheet

- ❑ The next step is to start tracking changes using the **CM 401 Negotiation Action Tracking Spreadsheet**. As the process continues, please update the tracking sheet. Track both the vendor's concerns and the Agency's concerns until a complete resolution on that issue.

### 5. Communicate with the Agency stakeholder

- ❑ Finally, it is time to communicate the objection, agency position as you understand it and your suggestion (if you have one) to the Agency stakeholder. The suggestions you offer is where contract professionals can add value, especially to non-legal stakeholders who are asked to approve contract language changes.
- ❑ Once you have a decision on the vendor's objection, the Contract Practitioner will communicate the decision to the vendor. Anything less than full acceptance of the objection will begin the back and forth communication called negotiations about that particular objection.



Schedule meetings between the vendor and Agency stakeholders regarding contract language sparingly. Many vendors will want to bypass contract professionals to talk directly with the Agency stakeholders. Agency policy and the solicitation statutes may restrict the vendor's ability to talk to Agency stakeholders. If Agency stakeholders are included in redline discussions, they will want to be fully prepared for those meetings to avoid feeling ambushed by the vendor.

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