



# Seven Secrets for Negotiating with Government

How to Deal with Local, State, National or Foreign Governments – and Come Out Ahead

by Jeswald W. Salacuse  
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## Take-Aways

- Governments have special powers based on their monopoly, privileges and immunities, special protocols, and role as defenders of the public interest.
- The public is always a represented party in a government negotiation.
- The other parties are the people trying to reach an agreement with the government, the government's representatives, and hired advocates, such as lawyers or lobbyists.
- Use “seven secrets” to prevail in a negotiation with a government entity.
- First, evaluate the government negotiators and, second, follow a goal-driven plan.
- Third, understand the government process and, fourth, know what the government official wants to achieve in the negotiation.
- Fifth, use the right persuasive tactic, from citing precedents to preparing a draft agreement that outlines what you want. Prepare alternative acceptable outcomes.
- Sixth, hire a well-connected third party advocate, unless you are well-connected, too.
- Seventh, try to avoid renegotiations if you can.
- When you negotiate with government representatives, determine just how much authority they have, praise them when you can and avoid blaming them for mistakes.

## Rating (10 is best)

Overall	Applicability	Innovation	Style
<b>9</b>	<b>10</b>	<b>9</b>	<b>8</b>

## Relevance

### What You Will Learn

In this Abstract, you will learn: 1) How to use seven secrets to negotiate with government entities; 2) How to muster the best processes and persuasive tactics; and 3) When you will need a draft agreement, a lawyer or a renegotiation.

### Recommendation

Professor Jeswald W. Salacuse does a masterful job of presenting his techniques for negotiating with government units. He breaks down the negotiation process, and explains the hidden agendas common to all types and levels of governments – national, state, local or foreign. He buttresses his suggestions with actual examples of what has worked and what has failed. Whether you're going to City Hall or Capitol Hill, *getAbstract* recommends this manual to citizens and vendors alike. Salacuse's clear presentation will prepare you to get what you want, from a government contract to buy your jet planes to a permit to build a new patio.

## Abstract

*"You may not be able to fight city hall, but you certainly can negotiate with it."*

### You Can't Always Get What You Want

All governments rely on some form of negotiation to get things done. Since governments control society's power, they define negotiations based on how they want to deal with private citizens or companies. Government officials rarely see themselves as being on an equal footing with another negotiating party. Instead, their governments "direct" and "authorize" agreements to maintain the power imbalance that gives them authority. Four parties drive government negotiations:

1. **The governmental unit's representatives** – These officials have the legislative, judicial or executive authority to act on behalf of the government. In 2005, the U.S. had 88,000 federal, state and local governmental units, employing 19 million people. Worldwide, you can negotiate with 192 sovereign governments.
2. **Individuals and groups** – People, companies and constituent groups constantly come in contact with government either to seek permission to undertake an initiative, or to reduce or eliminate some penalty. For example, when individuals negotiate with the IRS, taxes are at stake. Public colleges and hospitals interact with governments to get their operating funds.
3. **Hired third parties** – People frequently retain lobbyists, lawyers and consultants to work through government bureaucracies. When the U.S. pharmaceutical industry lobbied Congress in 2003 about Medicare prescription benefits, the industry spent \$141 million and used 950 lobbyists, including 30 former members of Congress. The industry got a law passed preventing the government from cutting the price it pays for prescription drugs.
4. **The public** – The constituency is always a party in governmental negotiations.

Negotiations happen when two or more parties communicate, formally or informally, to agree on a future course of action. Government agencies have a legislative or regulatory responsibility to deal with private parties who seek some resolution. In negotiations, government representatives often have the discretion to choose among a variety of ways to interpret relevant regulations. When you enter a negotiation, determine just how much

*"Few organizations today have the luxury or even the possibility of functioning without negotiating with some government unit in some way."*

*“A government has been defined as an institution having a monopoly over the use of force in a society.”*

*“In any negotiation with a government, always place your proposal within a frame that demonstrates that it is in the public interest.”*

*“In many... situations, you negotiate with a government not to obtain a benefit, but to avoid or reduce a burden.”*

*“Laws and regulations are made with words – words whose application requires interpretation.”*

power, authority or discretion the government’s negotiator has. He or she might have the ability to decide how to handle your deliberation, or which official to assign to your case. The flip side of discretion is corruption, which happens when a government official uses power for personal gain. Corruption can occur when an official has full discretion and is not accountable to others. While corruption is hard to measure, a 2006 study ranked the U.S. as the 20th most corrupt nation.

Commonly, officials have limited control over any individual situation, but the relevant agency’s past actions may be the best indicator of its representatives’ “real” power. When dealing with a public body, appearances are important. Avoid using the word “negotiation,” since it can imply that the institution is customizing rules and laws for your specific situation. To be more politically appropriate, refer to interactions with government officials as “discussions,” “conversations” or “requests.” To enhance your negotiating results, take back some of the power from the government representative by using the “seven secrets” of government negotiations:

### **1. Evaluate the Government Negotiators**

In terms of negotiating, governments have stricter constraints and greater powers than corporations. Learning how a government exercises its powers and responsibilities can help you devise a better negotiating strategy. Every government has four sources of special powers: its monopoly, privileges and immunities, special protocols and role as defender of the public interest. Regulations and rules that govern negotiations, political pressures, bureaucratic interests and the way governments really work combine to keep these powers in check. Breaching certain rules can be very costly. For instance, Jack Welch, then-CEO of GE, behaved too informally with European Union officials in 2001, and his *faux pas* helped kill GE’s acquisition of Honeywell in Europe.

### **2. Prepare for Success**

Successful negotiating depends on identifying your goals, and letting them dictate your strategy and tactics. When negotiating as an agent on behalf of another party, know your authority or “mandate.” An agent’s mandate empowers him or her to sign contracts, or to identify what kind of deals or outcomes to pursue. Determine what your draft agreement should look like and identify your alternatives. A draft agreement can formalize your mandate and influence subsequent discussions. Since government representatives pursue their own interests along with their agencies’ interests, have a deflecting response in mind if someone hints that you should pay a bribe or engage in unethical behavior.

### **3. Understanding Government Structures**

First, identify which government department is the conduit for meeting your goals. Then, find the right person there – someone willing and able to hear your proposal. Your reputation, resources, rights and existing relationships all affect your degree of access. As you arrange the negotiation, be aware that since government departments frequently suffer from infighting, you have to decide whether to meet with the relevant people in a group or individually. Be forewarned: ignoring one department in favor of another is a sign of disrespect that can lead to future problems. Since governments are complex, verify that your counterparty has the authority to sign contracts.

### **4. What Drives Negotiations?**

First, understand the other party’s interests. While that sounds simple, people often are reluctant to disclose the negotiating issues that matter most to them. This is especially

*“Effective deal making should focus on interests, not positions, should search for creative options for mutual gain, and should try to find a formula to accommodate competing goals.”*

*“The difference between a successful and an unsuccessful negotiation lies too often in the quality of the parties’ preparation.”*

*“Leaving an important government unit out of a negotiation is in effect a challenge to its authority – the first mortal sin of government life.”*

*“Renegotiation is one of the most important theaters in which parties to existing agreements play out the continuing struggle of life against form.”*

true when a political imperative is involved, from defending governmental authority to thwarting political opponents. To counteract such motives, you might be able to use a third party in your deliberations. Government officials thrive on receiving praise and buckle when they get blamed for mistakes. Therefore, bestow praise and accept blame to deflect it from a public official. While taking blame hurts short term, it can be very rewarding in the long run.

## 5. Persuasive Techniques

In negotiations, power derives from the ability to guide the decision making. You can steer the deliberations by using tangible resources, such as capital or technology, but this power also can stem from your intangible assets, such as well-connected relationships, strength of personality, good reputation or powerful ideas. Precedents from earlier agreements also are very useful. Cite examples of former cases to shape future accords. Precedent often has more impact on a governmental decision than on a private business deliberation. When you cite a precedent, get support by adding consultants, lobbyists or lawyers to your negotiating team. They should know who has real power and what the government has done with similar cases in the past. Refer to industry standards and other verifiable criteria to set parameters for the outcome, especially if the governmental entity you’re working with has accepted such boundaries previously.

Government representatives often present standard-form contracts to finalize agreements. But before matters get to that stage, you may be better served if you prepare your own draft agreement showing your preferred terms. The common perception is that negotiators should discuss their proposals first and then draft an agreement. But banks and diplomats often prepare prototype agreements or contracts first, and use them as the basis for discussions. A draft is a useful tool for beginning a discussion because it does three things:

1. **Define a framework** – In any negotiation, a draft agreement gives everyone a structure for expressing concerns and priorities. A car maker may involve its design, finance, operations and marketing departments in preparing a draft to pursue a joint venture with another government. This can often be a time-consuming process. In the 1980s, the U.S government spent four years drafting a prototype treaty to use with developing nations.
2. **Communicate priorities** – The draft shows one party’s main concerns to the other party. Since it contains language that both parties use, it simplifies the process.
3. **Set the agenda** – The party that writes the agreement often runs the discussion. If you want to set the agenda, prepare the draft yourself. Then be ready to talk about it as you explain the context of the discussions and your rationale for making an agreement.

Drafts matter, but they do not establish fixed positions or limit discussions. By setting a framework, drafts help you avoid the one thing government officials hate most: surprise. To eliminate any surprises, talk to the relevant officials before your formal session about what you plan to present. Tell your government counterparty about any issues that could foment public opposition and any other negatives in the proposal. Remember: The goal of any negotiation is to find common interests and give both parties a path for reaching their individual goals.

## 6. Three’s a Charm

If you have a strong personal and professional relationship with an authority figure, you do not need a third party’s help. But if you don’t have top-level access, consider using

*“Although you may think of yourself as a hard-nosed dealmaker in your negotiations with other companies, you may be more effective in negotiating with governments if you see yourself and behave as a diplomat.”*

*“If it’s true, as Edmund Burke has said, that ‘government is a contrivance of human wisdom to provide for human needs,’ it is also true that governments do not necessarily provide for your needs automatically.”*

*“While politicians come and go, as former President Gerald Ford recognized, ‘One of the enduring truths of the nation’s capital is that bureaucrats survive.’”*

additional experts who know the big players and can support your case. While this is often helpful, some governments have rules that restrict who can join negotiations.

Use third parties cleverly, as Exxon Mobil did when it wanted to build a pipeline in Chad. Because of the company’s association with the Exxon Valdez oil spill, its executives knew they would encounter significant public opposition from environmentalists and human rights groups. They realistically acknowledged that they lacked credibility in guaranteeing that the project would benefit Chad’s citizens. To overcome these objections, Exxon worked with the World Bank to manage the project’s most sensitive aspects, including allocating funds to public works.

Before injecting third parties into the process, determine how to use them best, why you need them, their costs and benefits, and how they could affect the process. Ask these questions at the onset and during the negotiations. Third parties provide expertise, legitimacy and access. Often, they can help you achieve a better outcome.

## 7. It’s Never Final

All too frequently, negotiations end in renegotiation. Changing conditions often make existing agreements ineffective, reopening the entire process. Labor, loan and natural-resource agreements sometimes change to accommodate new situations. Governments have the right to renegotiate, if necessary, to protect their constituents’ interests or to accommodate changes in their domestic political landscape. Each type of renegotiation addresses a different set of problems:

1. **“Postdeal”** – When an existing contract expires, and both parties want to renew it, renegotiations form the usual route. This covers such events as extending a short-term government authorization or license.
2. **“Intra-deal”** – When a project is underway and a significant event changes its circumstances, these negotiations provide a way for the parties to alter the contract.
3. **“Extra-deal”** – These stressful renegotiations happen when one party wants to change the terms of an existing contract, even though it does not provide for change.

Negotiations differ from renegotiations, since the involved parties already know each other and know the details of the original agreement. The original agreement may legally mandate good-faith negotiations. The parties all have a vested interest in a new agreement, since they have invested significant time in concluding the original negotiation.

Negotiations often become tense and emotional, but 18th century French diplomat, François de Callières, cautioned against using “choleric” words that could “poison the minds of those with whom negotiations are in process.” Instead, he said negotiators should show respect, patience and diligence to harmonize everyone’s interests. While many of Callières’s suggestions applied to diplomacy, they would work in any governmental negotiation today.

## About the Author

**Jeswald W. Salacuse** is a law professor and former dean at the Fletcher School of Law and Diplomacy at Tufts University, and a faculty member of the Harvard Program on Negotiation. Former dean of the Southern Methodist University School of Law, he has participated in and observed negotiations in more than 50 countries. His books include *Leading Leaders*, *The Global Negotiator*, *The Wise Advisor* and *Making Global Deals*.