Final negotiation activity

The East Africa Tender

Background

You and your team are currently on your way to the Tanzanian city of Arusha to take part in negotiations concerning the development of a multimillion-dollar subsea cable system (your trainer will tell you which organisation you are representing). On the flight over you are interested to see the following article in today's issue of the *Pan-African Business Bulletin*. Read it and discuss any implications it may have with your team.

THE LAST CONTINENT

PLUGGING AFRICA INTO THE GLOBAL NETWORK

The proposed construction of an undersea cable network to finally connect East Africa with business centres throughout the rest of the world enters the final round of negotiations in Arusha this morning.

The project was put out to tender three months ago by the inter-governmental East Africa Community (EAC) consisting of the Republics of Kenya, Uganda, Tanzania, Rwanda and Burundi, with its headquarters in Arusha, Tanzania. Apart from Antarctica, Africa remains the last continent to enjoy full high-capacity connectivity with the World Wide Web. A spokesperson for the EAC said: 'Current satellite networks are uneconomical and impede the development of telecoms businesses in the region. This landmark development will open up new opportunities for such enterprises and give the whole economy of East Africa a considerable and much-needed boost.'

For years Africa has lagged behind in the digital race with a less than 6% share of global internet use. In some parts of Central and West Africa, fewer than 2% of the population have internet access. But demand for greater bandwidth has long outstripped supply, with the number of users increasing by over 1,000% in the last ten years. In fact, according to recent projections, the Middle East and Africa are now by far the fastest-growing regions.

In response to this, the EAC has been accepting tenders for the laying of 17,000km of fibre-optic cable along the east coast of Africa. The plan is then to link this via Egypt to a landing point in the French seaport of Marseille, thereby connecting East Africa with European and Asian networks. Completion of the project is expected to take three years and will be broken into three separate phases, each costing in the region of 200 million US dollars.

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The project is not without its challenges. Undersea cables are vulnerable to damage due to adverse weather conditions. One recent disruption to transmission left tens of millions of internet users in Egypt, Saudi Arabia and Pakistan without connections for days before traffic could be rerouted. And continuing piracy off the coast of Kenya's northern neighbour Somalia remains a constant threat to shipping in the area and could seriously delay construction of the proposed network.

Seven cable-laying companies are known to have been involved in the first round of negotiations with the EAC. Just two remain for the final round: MarCom and Subsea Cable Dynamics. Sources suggest that the overall budget and technical specifications have already been agreed. So the key deciding factors are likely to be performance guarantees, the shareholding split and, crucially, the amount of inward investment the bidders are prepared to make in local cable manufacturing plants, together with any required transfer of technology. The successful tender is expected to be announced later this month.

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The East Africa Tender

Team 1: Subsea Cable Dynamics

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In the upcoming negotiation, you and your team represent the interests of Subsea Cable Dynamics (SCD), one of the two remaining bidders for the East Africa cable network contract. SCD is a privately funded company with 15 years of accumulated expertise in submarine fibre-optic cable installation.

Here's a summary of the terms and specifications which have so far been agreed with the EAC:

1. 17,000km of subsea fibre-optic cable (capacity 1.28 terabytes/sec) to be installed over the three phases of the project at a cost of USD190m per phase (you understand this is within an acceptable 10% of the estimate the EAC obtained from an independent consultancy prior to negotiations).
2. This initial contract to cover just the first phase of the project. Phases 2 and 3 to be open to competitive tender on the understanding that, upon successful completion of Phase 1, the contractor will have 'preferred bidder status' for the remaining two phases.
3. The cable to be manufactured and materials sourced locally at fully-equipped plants in the EAC member countries; the cost of plant conversion and/or construction, staff training and retooling to be shared by SCD and the EAC (precise share of costs to be discussed).

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And here are the points you need to negotiate in your meeting in Arusha:

1 **Term of the contract**
Knowing that the EAC is keen to promote foreign direct investment (FDI) in the region, you agreed to set up new cable plants and/or upgrade existing plants and manufacture locally using a combination of local labour and support staff and, initially, expatriate managers. You estimate, however, that this will incur costs of at least USD75m and you could not hope to recoup your share of this investment from the revenue for just Phase 1 of the project. You would, therefore, appreciate a more formal commitment in writing from the EAC that your contract will be extended into Phases 2 and 3. In addition, if you lost out to another bidder at the end of Phase 1 and were forced to sell your interests in the manufacturing plants on to them, you would not be in a very strong position to get a good price for them. So, simply having 'preferred bidder status' on Phases 2 and 3 is not sufficient. Ideally, you'd like the contract to be extended to at least Phase 2, if not all three phases. This is a top priority for you, but exercise caution, as the EAC are under the impression that the term of the contract has already been agreed.

2 **Funding of the manufacturing facility**
You would expect the EAC to contribute at least a third of the funding for plant conversion (or construction) and staff training (approx. USD25m). The less they are prepared to finance this, the more vulnerable you are to heavy financial losses if you lose the contract after Phase 1. Of course, if the contract was longer and your revenue stream more assured, you might be prepared to cover more of the manufacturing costs.

3 **Ownership of the manufacturing plants and intellectual property rights (IPRs)**
You would, of course, share ownership of the manufacturing plants with the EAC. But whatever your financial stake in their development, you would insist on a majority share in the ownership. Manufacturing and sourcing locally inevitably involve some transfer of technology on your part to your African business partners. But, in the event that you were not contracted for Phases 2 and 3, you could not let your patented technologies and procedures fall into the hands of your competitors. So you must retain control here.

4 **Insurance costs**
Normally, you would insure yourself against production and installation hold-ups, but the risks with this contract are substantially higher because of the ever-present threat of piracy in the region. Similar projects have suffered months of delay when cable-laying vessels were hijacked and ransoms demanded. It's a delicate issue, but you would require the EAC to agree to cover the extra cost of insuring against such disasters (subject to approving the quote for this).

5 **Warranty period**
The lifespan of a cable network is around 20 to 30 years. Capital outlay can normally be recovered in four to six years. So this represents a very good return on investment (ROI) for the EAC. You are prepared to offer an industry-standard warranty of two years. But you would like to exclude from the warranty any break in transmission due to environmental causes, faulty work by sub-contractors or power supply failures which are outside your control. You have an excellent reliability record (30% better than MarCom's) and are, in fact, the patent-holders of PlowSafe™, a new cable-laying technology which has been found to be 60% more effective in cable protection. The PlowSafe™ system, however, was not part of your original bid to the EAC as it would have increased the overall cost by 10% (USD57m).

Procedure

1 Allocate roles amongst your negotiating team, e.g. chief negotiator, facilitator, decision-maker, number-cruncher, ideas-generator, observer. How can you maximise your strengths?

2 From the information you have, prioritise your objectives. Draw up a H.I.T. list, if you like, of your 'have to gets', 'intend to gets' and 'tradeables'. And try to predict what the other team's priorities might be.

3 Once you've established your target points for each of the main variables, agree on what your opening and reservation points are.

4 When you're ready, join the other team. Your negotiation should follow the following stages:
   - ☐ build rapport (remember you have met the other team once before)
   - ☐ establish a procedure (who will speak first, what's on the agenda?)
   - ☐ set out your proposals and listen carefully to those of the other team
   - ☐ probe with questions, clarify any misunderstandings and explore underlying interests
   - ☐ bargain and exchange trade-offs on the main issues
   - ☐ handle any breakdowns (you can each call a time-out if you need to rethink your strategy)
   - ☐ close the deal, writing down any terms agreed or points to discuss in further meetings.

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The East Africa Tender

Team 2: The East Africa Community Delegation

Photo credit: © Anton Vengo / Superstock

In the upcoming negotiation, you and your team represent the interests of the East Africa Community delegation. You are currently deciding between two tenders for the cable network construction contract: one from MarCom and one from Subsea Cable Dynamics (SCD). You have already held a second meeting with the MarCom team and are now about to meet again with SCD.

The independent consultancy you hired prior to these negotiations estimated the cost of the project to be USD550m. MarCom's quote was USD556 and SCD's USD570. Both quotes fall well within an acceptable 10% margin of your original estimate, but clearly there is a small but significant price differential. On balance, you prefer SDC's initial proposal, mostly because they are prepared to invest in manufacturing and materials sourcing locally, whereas MarCom are only prepared to assemble imported components locally. You were also a little more impressed with SCD's technical presentation and feel you can learn a lot from them when it comes to technology transfer. However, there are other factors to consider and at the end of your meeting with SCD, you will have to decide whether to (a) offer SCD the contract, (b) offer MarCom the contract, (c) schedule another meeting with one or both of your two bidders or (d) put the contract out to further tender.

Here's a summary of the terms and specifications which were agreed with SCD during the first round of negotiations:

1. 17,000km of subsea fibre-optic cable (capacity 1.28 terabytes/sec) to be installed over the three phases of the project at a cost of USD190m per phase (USD570 in total).
2. This initial contract to cover just the first phase of the project. Phases 2 and 3 to be open to competitive tender on the understanding that, upon successful completion of Phase 1, the contractor will have 'preferred bidder status' for the remaining two phases. In practice, the preferred bidder almost always wins subsequent phases of the contract, but the uncertainty keeps them focused!
3. The cable to be manufactured and materials sourced locally at fully-equipped plants in the EAC member countries; the cost of plant conversion and/or construction, staff training and retooling to be shared by SCD and the EAC (precise share of costs to be discussed).

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And here are the points you need to negotiate in your meeting in Arusha:

1. **Funding of the manufacturing facility**
You would expect SCD to contribute 90% of the funding for plant conversion (or construction) and staff training. In normal circumstances they would cover all the costs here, but as a token of your appreciation of their agreeing to manufacture and source locally, you are prepared to make a small contribution to plant costs (10%). Of course, as an inter-governmental organisation, you might be able to reduce the time taken to get the necessary permits and planning permission and to keep costs as low as possible by, for example, allocating state-owned land. You should also make SCD aware that investing locally is one of the main factors in their favour as a bidder. Foreign direct investment (FDI) in sub-Saharan Africa has historically been rather scarce and you are under pressure to create jobs both during and on completion of this project.

2. **Ownership of the manufacturing plants**
Even though you expect SCD to fund most of the plant construction and/or conversion, as a government body, you are required to be a majority shareholder in any joint ventures with foreign enterprises. So the minimum share split of the manufacturing venture would have to be 51:49 in your favour. Ideally, you'd like a 70:30 split, but realise this might alarm SCD, who will be investing a lot of capital (including intellectual capital) in this part of the project. MarCom, although only agreeing to have local assembly plants, did accept a 60:40 split.

3. **Warranty period**
You are very concerned about the reliability of the network. Any prolonged breaks in transmissions would be acutely embarrassing for the governments of your member states and could seriously harm international trade and commerce. The lifespan of a cable network is around 20 to 30 years. Capital outlay can normally be recovered in four to six years. So this represents a pretty good return on investment (ROI) for you. But the industry-standard warranty is just two years, which leaves a two-year period of vulnerability. So you want to push for a four-year warranty with SCD if you can. After applying considerable pressure to MarCom, whose reliability record is not as good as SCD's, you got them to agree to a three-year warranty. Having a secure and reliable system is a top priority for you. With weather conditions becoming more extreme and increased shipping traffic, you need to protect your investment.

Procedure

1. Allocate roles amongst your negotiating team, e.g. chief negotiator, facilitator, decision-maker, number-cruncher, ideas-generator, observer. How can you maximise your strengths?
2. From the information you have, prioritise your objectives. Draw up a H.I.T. list, if you like, of your 'have to gets', 'intend to gets' and 'tradeables'. And try to predict what the other team's priorities might be.
3. Once you've established your target points for each of the main variables, agree on what your opening and reservation points are.
4. When you're ready, join the other team. Your negotiation should follow the following stages:
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