

Professional Reading: Negotiating Advice from Gordon Wade Rule

Introduced by
Vernon J. Edwards

I think I can safely say that Gordon Wade Rule was the most famous and respected U.S. contracting officer in history. He retired from Government service as chief of the Navy's Procurement Control and Clearance Division in 1977 and died of cancer at the age of 75 in Washington D.C. in 1982. In an obituary, *The Washington Post* described him as "an iconoclastic Navy cost-cutter who excoriated cabinet members, admirals and senior legislators he viewed as obstructers of his relentless war on waste and unaccountability in weapons buying."

Some readers of this article may recognize Rule as the author of the classic treatise, *The Art of Negotiation*, which is available online here at *Where In Federal Contracting?* Some may have read about him in Bob Antonio's December 29, 2016 Wifcon Blog entry, "A Contracting Officer In The Midst Of A Maelstrom." Or you may have read Ralph Nash's short account of meeting him in 1976 in the March 2005 issue of *The Nash & Cibinic Report*.

Rule had a reputation as a first-class negotiator, tough but fair, as indicated by this brief quote from *U.S. v. Newport News Shipbuilding & Dry Dock Co.*, 671 F. 2d 1281 (4th Cir., 1978):

The shipyard, again dissatisfied with the Navy's negotiating tactics, filed a motion on July 13, 1976, for enforcement of the court's order to negotiate in good faith. It also sought to have its obligation to continue work suspended until the Navy complied. The Navy countered by designating as its negotiator Gordon W. Rule, an experienced civilian official in the procurement office. In view of this development, the shipyard requested the court to reserve ruling on its motion.

Recently, while reading the transcripts of some 1969 congressional hearings about weapons acquisition, I came upon the text of a lessons-learned memorandum written by Gordon Rule.¹ The memo described lessons learned during the definitization of the letter contract between the Navy and Pratt & Whitney for development and production of aircraft engines for the F-111 fighter-bomber. The company had originally estimated that the engines would cost about \$273,910 each, but as contract definitization approached they were estimating the cost at about \$700,000 each. The Department of Defense and the Navy were shocked and started scrambling for explanations.

DOD directed the Navy to conduct a cost review, which it contracted out. The contractor recommended that the engines *should* cost between \$334,000 and \$450,000 each. Pratt & Whitney and its Navy supporters reacted with shock and sought to undermine the contractor's report. An undersecretary of the Navy smelled a rat, and dismissed the Navy team. The job of definitizing the contract was then assigned to Gordon Rule.

Rule launched the first official "should cost" study (see FAR 15.407-4 and DOD PGI 215.407-4) ever conducted, assembling a crack team that would stay together for a year. Following the should cost study, Rule rejected Pratt & Whitney's proposal out of hand as "excessive and unreasonable," and opened negotiations seeking a price \$500 million lower than the contractor had proposed.

Accused of trying to tell Pratt & Whitney how to run their business, Rule wrote a letter to the company's president in which he explained:

The "should cost" method of pricing must not be construed as an attempt on the part of the government to tell a contractor how to conduct his operation. If, for example, a contractor wishes to conduct a patently inefficient operation with excess indirect employees, poor estimating, labor that consistently fails to meet standards, lack of proper competitive subcontracting, abnormal spoilage and rework, etc., that is his business. It is the government's responsibility, however, not to pay taxpayer's money for demonstrable inefficiencies in the manufacturing process of a sole source supplier, regardless of the quality of the ultimate product.

Gordon Rule's work on the should cost concept is considered pioneering, and his negotiation with Pratt & Whitney is legendary.² While THE ART OF NEGOTIATION focuses on negotiations with foreign governments, the LESSONS LEARNED memo is specifically about government contract negotiations and is a fine complement to the better-known treatise. In fact, as an acquisition practitioner, I have found it to be more useful, and I am happy to be able to present this little-known work by a master practitioner in our field to the members and readers of Wifcon.

Although Rule's negotiation with Pratt & Whitney was for a very large dollar amount and involved an extremely complex problem in cost analysis, most of his lessons learned apply to many smaller and simpler negotiations. Acquisition practitioners would do well to study Rule's memo. In the course of doing so they should ask themselves what kind of education, knowledge, and experiential preparation would be needed in order to achieve Gordon Rule's level of competence, which far exceeded what is now known as "Level III."

Note: The text that follows is as I found it in the transcript of the congressional hearings. Where appropriate I have corrected minor typos and punctuation errors. I have placed additional explanatory text added within brackets. Today's readers should understand that Rule's uses of "his", "him", "man" and "men" reflect the social realities and conventions of the late 1960s.

Vern Edwards

LESSONS LEARNED DURING THE PRATT AND WHITNEY [SHOULD COST] STUDY AND NEGOTIATION

1. Do not start something you cannot finish.
 - (a) Terms of reference.
 - (b) Selection of team members.
 - (c) Topside support.
 2. Tactics versus ethics.
 3. Know your negotiating position.
 4. Expect resistance and criticism.
 5. When such a study should be conducted and by whom.
 6. DCAA assistance.
 7. Fundamentals.
 8. Contract terms and deficiencies.
 9. The corporate mentality.
 10. Patience.
 11. Planning.
 12. Sense of humor.
 13. Regular written reporting.
 14. Firm engine prices.
 15. Orders for team members.
 16. Intellectual honesty.
- Overall lesson learned.

As Chief Negotiator and Head of the Special Negotiating Team established by the Chief of Naval Material at the direction of SECDEF, I feel a responsibility to document what I consider to be the lessons learned from this eleven month effort to definitize certain letter contracts and bring about desired and required changes in the operating and contracting practices and procedures of this important defense contractor.

Lesson No. 1. Do not start something you, cannot finish

If and when the DOD requests you to set up a team and go into one of the largest defense contractor's plants and find ways of reducing that contractor's costs and increasing his efficiency, you have a hard decision to make—if you are smart.

You have to ask yourself if you are tough minded enough and have the intestinal fortitude to make decisions that will result in considerable opposition, both from the contractor involved and from those in the DOD to whom the contractor has always been a "sacred cow." If you conclude that you are mentally equipped to take on this assignment, you must then accomplish the following if you are to give yourself any reasonable expectation of finishing what you have been asked to start:

(a) Obtain written terms of reference defining clearly what the assignment is and make absolutely sure that your authority is spelled out in no uncertain terms. If you cannot get the authority and decision making power you feel essential, you better find this out before you undertake the assignment. At that point you have a choice—if, however, you start work without this knowledge, and are pulled up short downstream, it is your own fault and you cannot then be heard to complain about lack of authority.

(b) Obtain unambiguous authority to choose the members of your negotiating/study team. If you are going to be held responsible for the success or failure of the team's efforts, you must be permitted to choose your key team members.

(c) Determine if you and your team have and will continue to have 100% support from the top officials in the organization you are representing.

The absence of either a., b., or c. above can and probably will prove fatal to your efforts. You are supposed to produce results, not merely engage in a level of effort exercise, but without a., b., or c. you will be stepping up to the plate with one or more strikes against you. Perhaps more important, however, is the fact that you will be kidding both yourself and others who believe in your ability if you permit yourself to commence the assignment without the basic tools required to make success possible. With these tools success is not assured, but without them, success is not possible. In the Pratt and Whitney study and negotiations, all three of these essentials were provided. Admiral Galantin provided perfect terms of reference, provided exactly the team personnel requested and in the later stages of the negotiations when the going really got rough—with both the contractor and certain elements in the Navy— provided 100% support for the Team. This support was complete and absolute, up to and including SECDEF. Had it not been, we could not have succeeded.

Lesson No. 2: Tactics versus Ethics

In our study and negotiations with Pratt and Whitney, it was early realized that we were engaged in an adversary proceeding. Government contract negotiations are not normally, but should not be, adversary in nature. The essence of the term "negotiation" is antithetic to the adversary proceeding concept, where, as a case in court, one party wins and the other loses.

The Pratt and Whitney operation ran the complete gamut from the adversary to sincere appreciation. They did not want us in the plant, they did not cooperate during the study, they went all over DOD in attempts to impede our efforts, they stalled and withheld information, they could not believe the Government would take firm action against them, they finally saw the light and believed we meant business, they then agreed completely and without reservation to do what we required, they are now carrying out their promises and commitments and last, but by no means least, I firmly believe that Pratt and Whitney today—at the top corporate level—is sincerely appreciative of what the Team has finally succeeded in getting the company to do.

This transition was brought about by the utilization of every possible and available tactic through the study and negotiation. We were ever mindful of the line between ethics and tactics. We fully realized that we were dealing with the largest employer of labor in the State of Connecticut which could naturally produce State and Congressional "inquiries", etc.

The overall tactic was to slowly, step by step, paint the company into a corner from which they could only extricate themselves by engaging in reasonable negotiations. This was done by firm correspondence, by rejecting their proposal to definitize the letter contract as unreasonable and unsubstantiated—something of a shock to any company—by fortuitous public relations and ultimately by a Contracting Officer's Decision setting the engine prices.

To accomplish this with a company that has been dealing with the DOD for many years on their terms, not ours, is not easy and requires a very fertile imagination plus the mental toughness mentioned at the outset. Full use of all available tactics, however, must never cross the line and become unethical. To overstep this line could be labelled "arbitrary and capricious" action by the Government which is not permissible by any standard.

Thus the difference between tactics and ethics. In short, you owe it to the Government and to yourself to effectively use every single tactic at your disposal.

Lesson No. 3: Know your negotiating position

As team head, you must analyze your assignment to ascertain your negotiating position. Do you have strength or are you negotiating from weakness? In the Pratt and Whitney "should cost" exercise we were attempting to determine what jet engines should cost as distinguished from what the contractor said they would cost. Although the Team was conducting the first such in-depth study of a contractor's operations to determine this "should cost" it was realized early in our undertaking that we had no negotiating position or any strength whatsoever.

In reviewing our negotiating position, it became apparent that if our "should cost" study resulted in the conclusion that Pratt and Whitney engines should cost 500K instead of 700K, there was nothing we could do about it, because contractually we were in the position that if we did not agree to the contractor's proposed price to definitize the letter contracts he could stop work and demand a termination of the contract. In short, the letter contract definitization clause was a one way street for the contractor.

In this situation, I decided to *create* a negotiating position for the Government where none existed. An amendment to the letter contract was negotiated which permitted the Government to unilaterally set engine prices if the parties were unable to mutually agree upon reasonable prices. Under this amendment the contractor was obligated to continue work and could appeal the Contracting Officer's Decision to the Armed Services Board of Contract Appeals. With this amendment the Team was not only in business but now had a means of protecting the Government's interests.

This negotiating position which the Team created for itself was used very effectively later in the negotiations with the result that the contractor proceeded in good faith and negotiated a reasonable settlement.

The point is, you must know your negotiating position and if you have no strength, create strength, don't play a losing game just because you may have to start with nothing.

Lesson No. 4: Expect resistance and criticism

When you are engaged in a [should cost] study and negotiation even comparable to the Pratt and Whitney exercise, you should expect resistance and criticism from your efforts.

Obviously, if your assignment is in reality an adversary proceeding you should expect resistance and criticism from your opposite number—the contractor—but when it comes from people in the Government, who should be supporting your efforts, you will naturally be chagrined.

This "home front" resistance can be much more brutal than that from a contractor. we are even criticized by some of our own people for getting Pratt and Whitney to amend the letter contract to permit us to make a Contracting Officer's Unilateral Decision.

If, however, you have learned your lesson number one above, and have obtained proper terms of reference and assurance of top level support, you need not panic at the opposition to your efforts. Actually, some of these attempts to interfere with and thwart your efforts could be highly amusing if they did not come from grown men who are getting paid by the Government, and thus should think first about the Government's best interests.

If you have also learned another lesson—that of always keeping a sense of humor—you may be able to turn this sort of opposition to advantage by bringing it into the open and publicizing it. Additionally, if you are sufficiently astute you may very well connect degrees of opposition to certain of your actions, which can tell you that you are on a right track or have hit a nerve.

Lesson No. 5: When such a study should be conducted and by whom

Our "should cost" study and negotiation were conducted in connection with a particular contract, specifically, the definitization of a letter contract, and the letter contract was several months old when we started work.

If and when it is thought necessary or desirable for the Government to have a comparable study made of a sole source contractor's operation, it is suggested that the study not be made with respect to an individual contract. Such an in-depth study should be aimed at the entire sole source operation rather than one contract.

It is also suggested that this type of study, designed to determine a sole source supplier's overall efficiency, should be performed by a highly professional group of full time people attached to DOD. Objectively, improvement and innovation are not normally the result or by-products of any type of self inspection. Our Team found that part of the inefficiency existing at Pratt and Whitney was the fault of the Navy and our Final Report so stated. Teams set up by a service or an activity within a service are unlikely to criticize the activity they work for, for obvious reasons.

Lesson No. 6: DCAA Assistance

In my opinion, it is absolutely essential in any comparable study and negotiation that DCAA be persuaded to supply, as a member of the team, their most capable man.

I picked each member of the Pratt and Whitney Team except the Audit member. Acting upon advice, Mr. Petty, the Head of DCAA was asked to provide one of his very top men and this he did. In retrospect, it is fair to say that without the wisdom, experience and guidance of Mr. Kinelski from DCAA, our results would have been far more difficult of achievement.

Lesson No. 7: Fundamentals

One of the most important lessons learned or perhaps relearned was a new appreciation of the very fundamentals of DOD contracting. Basic cornerstones such as the contractor's purchasing system, his make-or-buy plans and program, his proper execution of Form DD 633, his use or nonuse of risk type contracts, his access to records policy and his accounting practices are the sort of things one can easily take a little too much for granted and what we found in these areas at Pratt and Whitney jarred us back to a new appreciation of how DOD procurement people must concentrate on these fundamentals every day of every year if they are properly doing their jobs.

Lesson No. 8: Contract terms and deficiencies

Several contract terms and omissions caused the Team unnecessary trouble and should be corrected in future DOD contracts. These are:

(a) Ceiling prices.—This term was used in the letter contract to indicate the maximum Government exposure or liability. The letter contract was to be definitized by negotiation to a fixed price incentive contract with target prices, target profit, share pattern and ceiling prices. The contractor contended that the term "ceiling price" as used in the letter contract to indicate maximum Government exposure—for the Government's benefit—also automatically became the ceiling price to be used in the FPI matrix and was not negotiable.

Future use of this term in letter contracts should be carefully circumscribed to indicate its true and restricted meaning.

(b) The use of undefined terms should be avoided. The term "multiyear FPI Successive Targets proposal" appeared in our letter contract and no two people could agree on what it meant or what was intended. No such term is used in ASPR and the use of such undefined terms should be avoided.

(c) The proper type of contract should be used. We were trying to definitize a so-called multi-year contract which is a perfectly proper contract to use when requirements are firm. Nothing could be as unfirm as jet engine requirements with the result that we encountered terminations, stretchouts, changes in delivery dates through our efforts.

(d) The existing ASPR definitization clause for use in letter contracts does not protect the Government's interests. This was the clause we found in the Pratt and Whitney letter contract which we had amended as discussed under Lesson Number Three. As a result of this Pratt and Whitney negotiation, ASPR [Armed Services Procurement Regulation] Case #67-249 was initiated by the Navy to amend the ASPR clause to permit the Contracting Officer to do, in any difficult case, what we did in the Pratt and Whitney case and without which we would never have definitized the letter contract on any reasonable basis.

(e) Omission of a "Complete Agreement" clause. We were surprised to find the contractor contending that the terms of the written letter contract were subject to oral understandings with certain Navy people. We found that the contractor was indeed right and that an oral agreement was made which was at variance to the contract.

This sort of situation is inexcusable and the Government should always incorporate a so-called "entire agreement" clause to preclude the existence of oral or unrecorded agreements.

Lesson No. 9: The corporate mentality

We became well aware of divisions of thinking, at various levels, in the P&W organization. This divergence of opinion is probably par for the course in every concern, but at P&W it was marked—in a very guarded sort of way. Some knew—and so stated—that changes must be made, others said they had been trying for years to make the company more efficient. Such differences may be of assistance in your efforts but do not rely too heavily upon them, because you cannot always believe what you hear or are told.

The real corporate mentality, which must be determined, is masked behind lawyers, accountants, engineers, vice presidents, and others who take part in contract negotiations with the Government. Each of these groups or individuals are trying hard to look good to top management of the division or corporation with the result that they ask for and insist upon contractual clauses and positions they really have no authority to demand. The Government negotiators don't know this and certainly in the P&W exercise it became all too apparent that these people were overplaying their hands, but the difficulty was to prove it and preclude it.

In addition, we finally became satisfied that our positions and objectives were not being relayed to top P&W management by their negotiators, thus what we had thought was the corporate mind and position was proven to be in error. When we made our Contracting Officer's Decision, top management immediately realized that they had not been getting our real message from their own representatives. When they did get it, the negotiation proceeded as it should, with the top management actually doing the negotiation and the previous negotiators being conspicuous by their absence.

The genuine corporate mentality must be ascertained at some point or mistakes will be made on the basis of what someone without authority puts forward as the company position.

Lesson No. 10: Patience

Although all good negotiators know the value of patience—assuming they are permitted to indulge this tool—it is doubly important in such a study and negotiation as was undertaken at P&W.

It takes time—agonizing time—to determine the good faith of the contractor and as mentioned in Lesson Number Eight, to understand the genuine corporate mentality toward the negotiation.

In the P&W exercise, I felt that we were waiting too long to make the Contracting Officer's Decision and thus escalate the entire negotiation to top corporate management. On the other hand, and in retrospect, perhaps an earlier showdown could have been labeled as precipitous. By erring on the side of patience the action ultimately taken was unassailable and it proved the time spent to be well worthwhile.

Lesson No. 11: Planning

The head of any special group such as that established to work on Pratt and Whitney, must literally spend day and night thinking, planning, anticipating and being prepared for any eventuality. This must be affirmative planning, not just planning to react.

The other members of such a team will be deeply involved in their own areas of responsibilities and cannot take the time for detailed planning. Inherent in the necessity for planning is to determine your objectives and tell the contractor in writing what they are. This requires clear and unambiguous letters which will lay a foundation to oppose any subsequent appeal by the contractor to the ASBCA.

Proper planning and the use of all legitimate tactics available will serve keep the initiative throughout the negotiation. By so doing, you build your case and make the contractor increasingly unhappy with you, but as long as you are being firm and fair you want him reasonably unhappy for some time. If he was at all times happy and content you should probably be relieved of your duties.

Lesson No. 12: A sense of humor

Although a sense of humor is essential in any successful form of human endeavor, if you attempt to carry out an important study and/or negotiation as was done at P&W without it, you might not even get off the ground.

Heartaches and headaches abound vis-a-vis both the contractor and personnel in the Government, as well as within your own team. If you don't have a sense of humor you are out of place on a team or directing a team. If you deprive yourself of a sense of humor you make your job and that of the team much more difficult. Tensions must be quickly dissipated and not permitted to smolder and grow if perspective is to be maintained and results achieved. A sense of humor is the key.

Lesson No. 13: Regular written reporting

Even though you have been entrusted with terms of reference which fully authorize you to make the decisions and obtain results, you will find it invaluable to periodically—on P&W we did once a month—write a memorandum report for the file documenting what was done the previous month and what is planned for the coming month.

By sending copies of such a document to those who need to know, you will assure their full knowledge of what you are doing and hence their continuing support and confidence.

Lesson No. 14: Firm engine prices

One of the mistakes of the TF30 engine procurement was not getting from P&W a better firm handle on what production engines were going to cost. The result was unexplained, substantial increases in engine prices from the original “estimate”.

It is certainly hoped that in future engine development programs the Navy, or any other procuring service, will be astute enough to require any engine manufacturer to submit either firm target prices or ceilings for the follow-on production engines.

If we do not take this simple, businesslike precaution, it will ill become us to later complain again about unexplained, substantial increases in engine prices.

Lesson No. 15: [Military] Orders for team members

The P&W Special Negotiating Team was established and the team members appointed by the Chief of Naval Material. Some of the team members were from activities other than the Naval Material Command Headquarters. In retrospect it is clear that individuals designated to work full time on a special mission of some duration should be given TAD [Temporary Additional Duty] orders to the new assignment. By so doing the fitness or efficiency reports for the team members become the responsibility of the person assigning them to the team, rather than the activity from when they came. This can be very important if the work of the special team affects the activity supplying members to the team.

Lesson No. 16: Intellectual honesty

(a) *Preparing for and conduct of [should cost] study.*—When a special team is established to study any or all aspects of a contractor's operations, two separate phases are involved, first, the preparation for the on-site study and secondly, the conduct of the actual study itself. It is essential that during the first phase you not allow yourself or the team to embrace preconceived or prejudicial positions or convictions. Your objective will normally be to determine facts and despite your knowledge of the contractor's reputation and history you must approach and conduct the study with an open mind. In the P&W exercise I made it clear to the team that if the facts showed the engines should cost what the company said they would cost, we would so report; there would be no distortion of facts because of preconceived feelings or positions.

(b) *Reporting the facts and making recommendations.*—During the conduct of any fact finding study both favorable and unfavorable facts will be developed. It is incumbent upon you to report fairly both categories of facts and give due weight to the favorable ones in your overall evaluations and recommendations concerning the contractor. Thus we found, and so stated in our report, that P&W produced a high quality product, on time, and that the company had advised the Navy in writing that engine costs would increase substantially because of a greatly expanded program of subcontracting if the Navy wanted them to undertake production of the 2,053 TF30 engines over a four year period. These and other favorable facts were given proper weight in our overall conclusions and recommendations.

The same intellectual honesty must be displayed vis-a-vis the particular activity of DOD involved. Facts favorable and unfavorable to any activity must be reported accurately and honestly. Adverse comment and constructive criticism is not a one-way street. Failure of any activity of the DOD to properly carry out their responsibilities must not be covered up or minimized.

Overall Lesson Learned

There is one paramount lesson to be learned from the P&W exercise. It is a very simple lesson but one which should never be lost sight of by Government representatives. This lesson is that despite all manner

of obstacles, despite an adversary climate during much of the study and negotiation, if you are fair and firm throughout your operation, success can be yours, along with respect and even later appreciation from the contractor, for what you have done for both the Government and the contractor.

The most important element of being fair and firm is not to take advantage of the contractor when you reach the point, as we did, where we were firmly in the driver's seat as a result of the Contracting Officer's Decision. The temptation is great indeed to bear down on the contractor at this point to compensate for all your earlier frustrations, delays and lack of cooperation. Do not make this mistake.

When you have the contractor in this position, you must then proceed to secure what you have previously determined to be reasonable positions for both your short term objectives and your long term objectives. If you get all of your long range requirements you may temper your short term ones accordingly. What you want is overall reasonableness, and you do not achieve this by driving too hard a bargain.

Do not concern yourself regarding the in-house noses out of joint at your efforts. Your job is to represent the Government to industry in a firm and fair manner and if you have done so successfully, forget the rest.

GORDON W. RULE

¹ See *Economics of Military Procurement, Hearings before the Subcommittee on Economy in Government of the Joint Economic Committee, 90th Cong., 2d Session, Part 1, 234-40*, available at [https://www.jec.senate.gov/reports/90th%20Congress/Economics%20of%20Military%20Procurement%20Part%20I%20\(431\).pdf](https://www.jec.senate.gov/reports/90th%20Congress/Economics%20of%20Military%20Procurement%20Part%20I%20(431).pdf).

² For more about Gordon Rule, negotiations, the Pratt & Whitney should cost project, and the TF30 contract definitization, see Fox, *ARMING AMERICA: HOW THE U.S. BUYS WEAPONS* (Harvard 1974), 349-50, 357; Haight, *The Applicability of Should Cost to the Procurement Process* (Naval Postgraduate School, 1974), available at <https://apps.dtic.mil/dtic/tr/fulltext/u2/777867.pdf>; and Williams, *A Review of the Should Cost Process and Management Issues of the Process* (Naval Post Graduate School, 1985), available at <https://apps.dtic.mil/dtic/tr/fulltext/u2/a164979.pdf>.