



The 6 Top Reasons Buy-Sell Negotiations Break Down

By Betsi Bixby



So you've just received or given a great Letter of Intent.

The hard part seems over — you've passed the worst hurdle and actually agreed on that troublesome topic of price. In your mind, compared to what you've just been through, it should be smooth sailing to the closing. Then you get your first wake-up call, and realize that post LOI is where the real trouble begins. Frankly, many negotiations without the aid of an independent third party arbitrator break down post LOI to the point where the transaction grinds to a halt and one or both parties walk away from the deal. **All of that hard work, time, expense, and you could still walk away with nothing!**

With over 25+ years of helping Petro buyers and sellers match up successfully, and smoothing the turbulence between LOI to closing, here are the **TOP 6 REASONS BUY-SELL NEGOTIATIONS BREAK DOWN**, so you can avoid them!

1

The Problem Attorney.

It could be yours, theirs, or (God forbid!) both. While there are terrific attorneys I recommend, I have endured two very problematic types of attorneys I want to warn you about. First is the attorney without Petro experience. These well-meaning individuals can muddy up a transaction to the point of no-return through knee-jerk reaction to typical Petro situations such as ongoing remediation.

Solution: Hire an experienced Petro attorney to take the lead on your transaction and who will work cooperatively with your local attorney. You need the local counsel because each state and locality has rules only they will know. But hiring a great Petro attorney speeds you to close and also usually saves you lots of money as well, since they've done so many Petro transactions and have the "boilerplate."

Second is an overbearing, rigid, in your face, non-negotiating personality style who we at Meridian simply call "The Jerk." We've heard of attorneys presumptuous enough to make decisions for a marketer without even consulting them, or take such a firm stand, zero give and take, that the other party just blows up and walks away.

Solution: When you hire an attorney, let them know you will make all decisions. You will take their recommendations into consideration, but you are the final decision-maker. I also strongly suggest you negotiate a "capped" or "not-to-exceed" fee structure. It's amazing how quickly things start to happen when The Jerk is not being paid hourly!

2

The "Me" Syndrome

It can happen with either the buyer or seller or both, but all of sudden after price is agreed upon and LOI signed, it becomes all about me. In short, the perspective and concern that was shown to the other party pre-LOI disappears into thin air. Whether it is downright rudeness during due diligence, a superior or demanding attitude, or just a business-like coldness that sets in after all that warm pre-LOI dating, it can literally shock the other party to the point of deal cancelation.

Solution: With EVERY step, consider the other party and work aggressively towards win-win. Think of the time from LOI to close as a delicate courtship. If you were the other party, what would you want? Work for win-win with every step. Never take the other party for granted, even when there is escrow money deposited.

3

Environmental Surprises

If there is one place that petro transactions can come to halt, it is from unexpected contamination issues. This usually occurs when the seller thinks everything is squeaky clean and then a Phase II shows otherwise.

Solution: Talk environmental "what-ifs" way up front, ideally pre-LOI. If too late for that, then ASAP. Agree in advance what is an acceptable course of action for both parties. As a seller, you will be forced to take corrective action, but the buyer may not be willing to wait while you do. Conversely, the buyer may be just fine proceeding while you clean up, or would be willing to delay the close. By discussing this up front, where you both stand, you will have diffused the potential bomb.

4

Contract Problems

Whether it's a lack of contracts, missing copies of contracts, assignability issues, notification clauses, or even first rights of refusal, all can be deal killers.

Buyer Solution: Make contract review first on your due diligence agenda. For instance, we recently handled a retail transaction where several franchise contracts were involved. Each franchisor had rules that had to be followed, including required certification with extensive classes only offered quarterly. As a buyer, find out all the hoops you will need to jump through to take over all contracts.

Seller Solution: Gather up all contracts and have copies waiting for your buyer as soon as you sign off on LOI. Don't forget the little stuff – equipment maintenance contracts, personnel contracts, etc. And if you are reading this and just thinking of selling down the road, start negotiating onerous language out of your contracts now. That will pay off later!

5

Assuming They Use Your Financial Methods.

Lack of understanding of the other party's financial methods can cause unnecessary red flags and tension during due diligence. To illustrate this point let me share one common problem area –gross profit. You would think that with something as basic and critically important as gross profit, everyone would be on the same page. But not true! Right now you have a certain way you calculate gross profit. It could be the right way, or it could be the wrong way and you don't know it, or it's simply a different way than the other company. It might be how delivery costs, or discounts, or hedging, or who knows what else is accounted for.

Solution: First, know how you calculate gross profit and other key accounting line items. Ask the other party exactly what goes into theirs without being judgmental. Calmly discuss the reasons and merits of the different methods so you can work out the best way for the two companies to go forward.

6

Deciding Who Stays And Who Goes.

In most transactions, viewpoints differ on the value of certain personnel. The most ticklish can be owners and their family members, followed by strong sales personnel and duplicate positions. While key personnel can be written into the Purchase Agreement, nothing can be worse for a company than retaining someone who doesn't want to be there, unless its having to retain a virtually useless family member.

Solution: Mutually exchange org charts followed by frank, delicately honest (and CEO-level only) discussions about key personnel. Explore alternative paths for employees no longer needed post closing. Design incentive programs for the keepers. In some instances, consider providing a bonus at closing (or a designated time post-closing) to keep vitally needed due diligence or transition personnel. If you show compassion and concern through the process, you will stay on track.

NOW WHAT?

If you are planning to buy or sell a business, don't let these factors become a deal breaker in your negotiations!

The devil can be in the details during negotiations, because there are LOTS of the details in the process.

However, you can avoid potential pitfalls and enjoy the experience with the right guide.

Meridian has 25+ years of experience helping Petro companies navigate throughout entire buying and selling process. Give us a call directly at 800-728-9005, or visit us at AskMeridian.com to get more info on how we can help your buying and selling plans end in complete success.