

## Negotiation is the First Collaborative Act

We are often asked whether negotiating an IPD agreement takes longer than negotiating a traditional agreement, such as a construction manager at risk contract. The answer is probably “yes”, although that answer is incomplete.<sup>[1]</sup> A better answer, would be that negotiating and crafting the IPD agreement is an important step that increases the likelihood that a project will be successful. Although we have long believed this, it was recently confirmed in a superb set of [case studies](#) published by the University of Minnesota<sup>[2]</sup>. One of their “takeaways” was that “*For the teams who were heavily invested in developing the contract, the contract discussions were structured to serve as training about IPD, and the teams believed that this contract-development process formed the foundation for trust, respect, and collaboration*”. We believe this alignment function supports the common understanding necessary for collaboration. In addition, during negotiation team members first learn and demonstrate how they will work together. For these reasons, contract negotiation is often the team’s first collaborative act.

### Negotiation is the test drive

The quality and chemistry of the project team—including the owner—is critical to success. It is fairly easy to evaluate the experience and competence of team members—a good proposal and interview process should garner most of the needed information. But assessing the ephemeral qualities is more difficult. How well can the team work together? Can team members put project interests above their own? Are they transparent? Will they freely share information? Will they create the communicative environment necessary for innovation and creativity? What will the team members do when the going gets tough?

It is easy to be collaborative—or at least profess collaboration—during the interview process. The prospective team members aren’t faced with thorny problems with real consequences that can only be solved by putting the project ahead of their own interests. The rehearsed and polished presentations sparkle, but they are like a first date where everyone strives to make a good impression and carefully masks their less appealing qualities. But



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when you start to negotiate the contract, you get a glimpse of life after the honeymoon.

What you hope to see in IPD negotiation is a perceptive blend of personal and group interests. The basis for this IPD negotiation mindset was neatly modeled in the [bar scene](#) in the movie, *A Beautiful Mind*. Russell Crowe, playing Nobel Prize mathematician John Nash, had a breakthrough moment when he realized that he and his friends would have better dating success if they each did what is best for the group as well as best for themselves. The best outcome didn't come from pure competition, (every man for himself) but from collaborative negotiation. In the same way, IPD negotiation is not selfless, but it does recognize that putting the project first while considering individual interests optimizes everyone's outcome.

We often see negotiators that either understand this implicitly, or quickly have their own breakthrough moments. When faced with a negotiation problem, they try to understand the different viewpoints and interests and jointly develop a strategy that respects everyone's legitimate interests. These firms will be good participants and partners throughout the project.

Less often, we see firms that can't see beyond their own self-interest. These firms are happy to get new work but don't really understand the IPD process. They can be mistrustful and view the negotiation process strictly from their own perspective. They can't (or don't care) to understand other's legitimate concerns. When they realize that collaboration is contractual—that they will be bound to the project and to each other, they get nervous, defensive and then balk or try to skew the deal in their favor. And if this is how they act during the honeymoon, just think how they will act when the going gets hard.

Another problem exposed during negotiation is the power of the home office. We see this occurring when the local principals can't make decisions because they must get approval from a senior decision maker who is distant from the project and is not committed to collaboration. In other instances, corporate policies (that might be irrelevant in an IPD project) can't be modified. A corporate culture of home office control undermines the rapid and reliable decision making required by IPD.

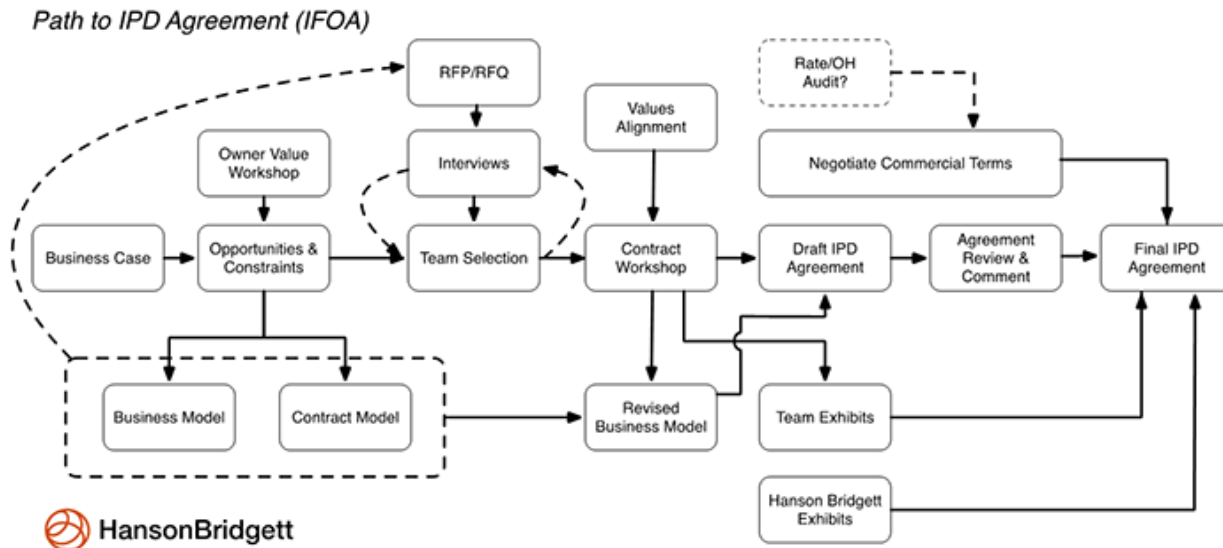
We have had several instances where the negotiation process resulted in resetting the team. As doubts arose about the suitability of a team member, the team engaged in serious discussions to determine whether the non-collaborative participant really wanted to work on the IPD project. In some cases, this resulted in an "attitude correction" and in other cases, the firm left the IPD project and was replaced. Although these weren't pleasant situations, it was far better to resolve them before the project was underway than it would have been if discovered later.

So, returning to the initial question. Does it take longer to negotiate an IPD agreement? Yes, because you are doing the real work of determining whether the team can work together. In our normal process, negotiation includes the team jointly assessing risk, opportunities, targets and distribution of responsibilities, i.e., figuring out how to work together. Contract negotiation is the test drive, where you get the opportunity to really see the team in action and to make changes before it is too late.

## **Negotiation Aligns the Team**

We explained in *Values First* the importance of understanding why a project was being done and agreeing on the key values that will guide the project. Negotiation of an IPD contract, if properly done, addresses why the project is being undertaken, how it will be done, and what the team wants to accomplish. In short, it is a critical step in team alignment. In our workflow, the contract doesn't lead this process, it follows and documents it.

The flowchart below lays out a generic approach from initiation to execution of an IPD agreement. Although it includes development of the IPD contract, it also has key workshops to develop the business and contract model, refine the model with the team, and jointly negotiate the final terms. In a 2-day contract workshop, easily one day is spent on training and alignment.



One observation from many contract workshops is that if the training/alignment is done thoroughly and well, the actual time spent negotiating the “legal” contract terms is greatly diminished. In one notable project, we held the project kickoff *prior* to the contract negotiation session because of scheduling difficulties. I withstood many frosty stares, when I announced to the lawyers who came ready to advocate for their client’s interest, (complete with binders bristling with tabs marking “major issues”) that we *might* get to contract language on the second day. But on the second day, after training and alignment, the lawyers told us that with this better understanding, they had very few comments to make. Had we started with contractual language, the legal side of the negotiation would not have gone so smoothly. Since that experience, we prefer to have training and alignment precede negotiating the IPD contract.

## Conclusion

Negotiating the IPD agreement is hard, but valuable work. If done correctly, it starts teams on their collaborative journey and helps align them to the project goals. Moreover, it gives each participant the opportunity to learn who their potential partners are while the stakes are still low. If you could skip this by just signing a form contract with others that you had just met, would you really want to?

[1] It is incomplete because we often are negotiating with multiple key trades and consultants at one time, whereas in a traditional project these would likely be independent and sequential negotiations, that can take *more* effort. But as that isn’t the key point of this article, we will not worry about this detail.

[2] Cheng, R. et al, 2016. *Motivation and Means: How and Why IPD and Lean Lead to Success*. Place of Publication: University of Minnesota. <<http://arch.design.umn.edu/directory/chengr/>>

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