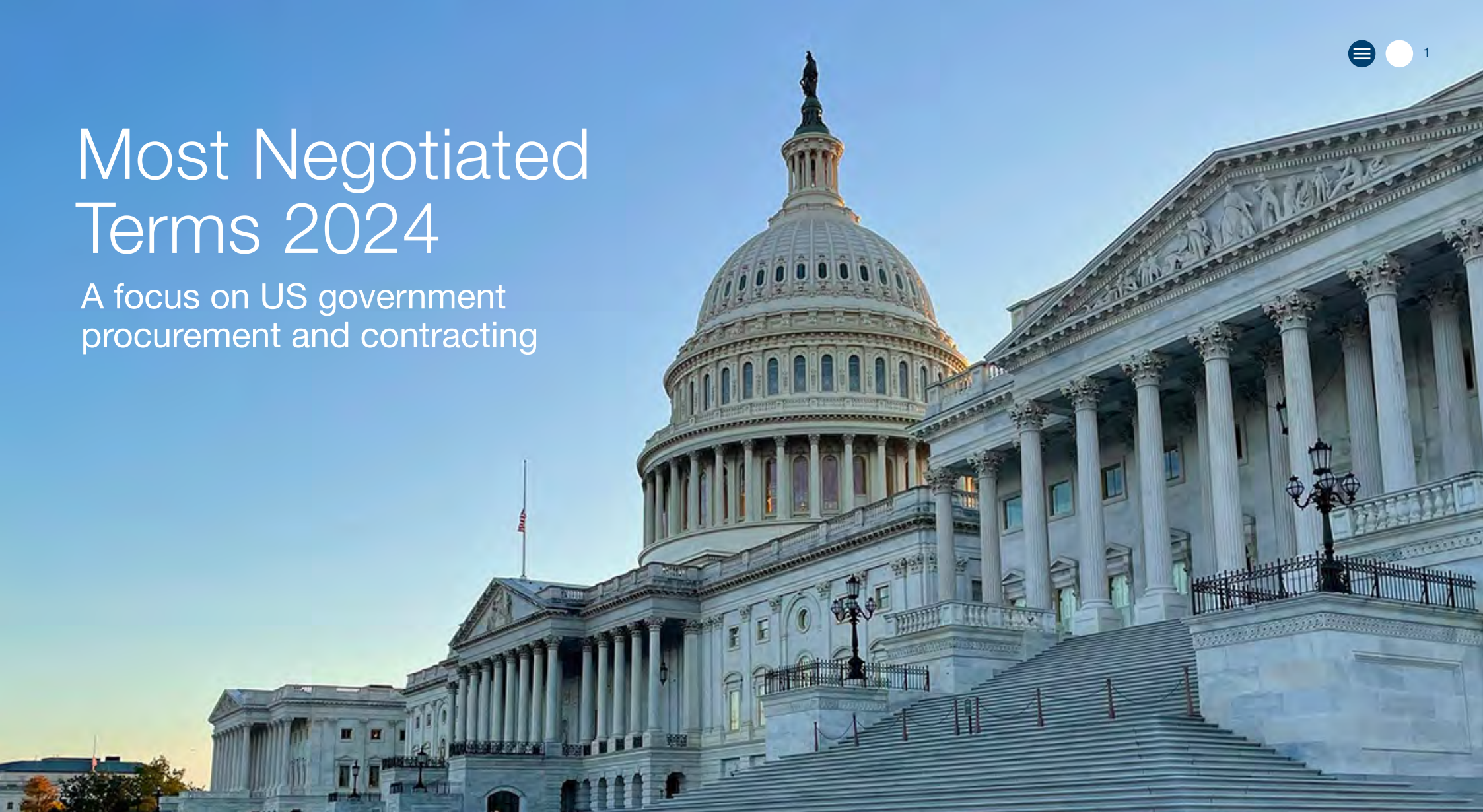


# Most Negotiated Terms 2024

A focus on US government procurement and contracting



A joint research report by



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## Executive summary

### Transforming government procurement: the \$100 billion opportunity

In today's challenging landscape, government agencies face mounting pressure to deliver more value with limited resources, making collaborative procurement practices essential.

Yet, our study reveals a concerning reality: despite broad agreement among 70% of government buyers and suppliers on the need for greater negotiation flexibility, many procurement practices remain adversarial and risk-focused, driven by process rather than outcomes.

This approach, grounded in regulatory rigidity, creates a disconnect between buyers focused on cost reduction and compliance, and suppliers prioritizing intellectual property and risk management, leading to costly disagreements and disputes, and missed opportunities.

Based on insights from over 600 contracting professionals, this analysis uncovers hidden costs and reveals a potential to modernize procurement practices, that in turn would reduce costs by as much as 13.3%, translating into \$100 billion in savings.

The path forward lies in streamlining approval processes, fostering trust-based relationships, and shifting focus from risk avoidance to collaborative value creation.

By balancing regulatory oversight with operational flexibility, agencies can reduce costs and grow the supply market, while improving existing supplier partnerships and delivering greater public value. We invite you to explore the report and uncover actionable insights to drive procurement transformation and capture this substantial opportunity for government efficiency and effectiveness.



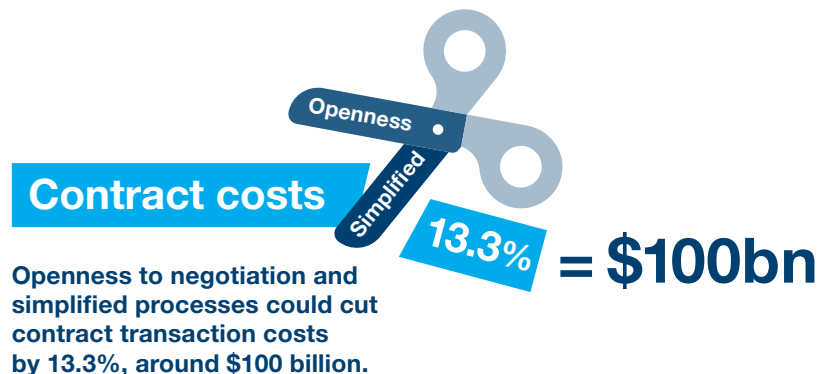
**Tim Cummins**  
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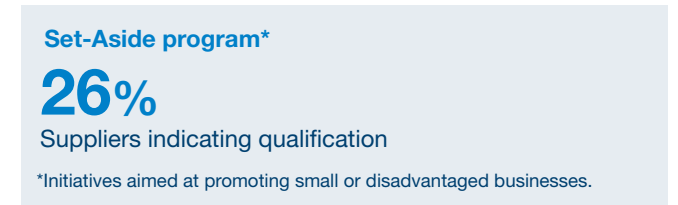
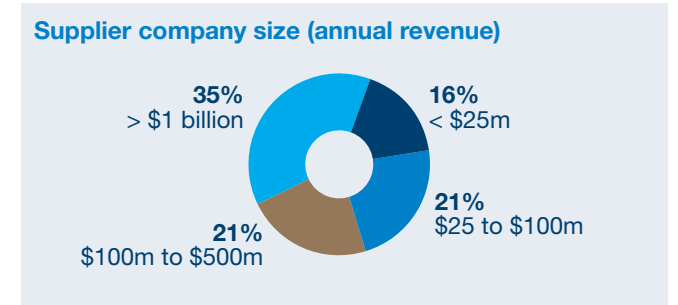
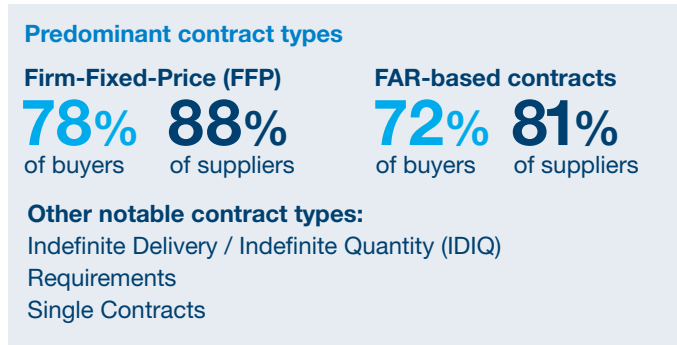
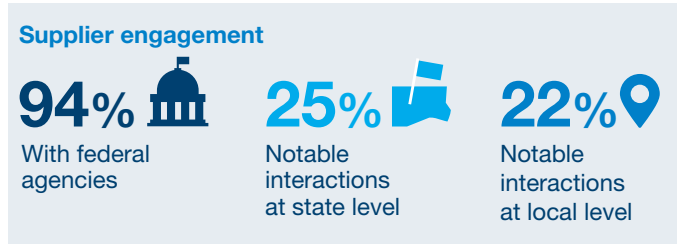
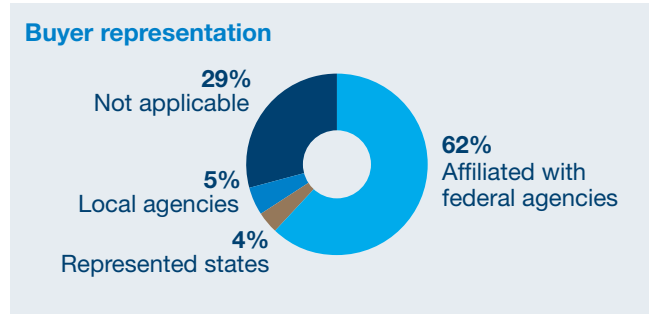
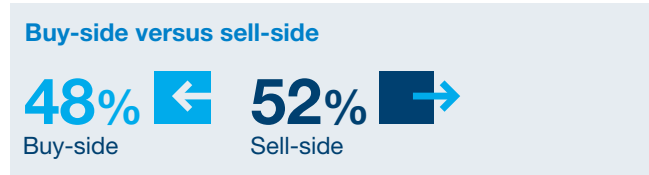
**Daniel J. Finkenstadt**  
Principal  
Wolf Stake Consulting





# Participant demographics

This report presents the findings of a comprehensive survey conducted among professionals involved in government procurement and contracting, with a primary focus on Federal Government. The survey, with input from more than 600 participants, captured insights from both buyers and suppliers, shedding light on their experiences, challenges, and practices, and the impact these have on contract outcomes.







# Why does this report matter?

A fundamental role for government is to provide high quality public services with a focus on cost and value. Government procurement is typically surrounded by detailed rules and regulations that are intended to achieve these goals and protect against any misuse or abuse of funds.

In the United States, this has resulted in relatively complicated and inflexible procedures which constrain freedom of action in the acquisition process, such as limiting negotiation and imposing costly bureaucracy.

We asked suppliers the following question: *“If government agencies were more open to negotiation and simplified their processes, what impact do you estimate this could have in reducing your overall transaction costs (pre- and post-award)?”* In response, suppliers estimate that the average impact across all contract types is 13.3% – or approximately \$100 billion, based on 2023 Federal spend.



And that, quite simply, is why this report matters. It gives insight into the current state, and provides the data needed to identify opportunities for improvement.

## Federal, State and Local: a varied experience

The experiences of suppliers engaging with Federal, versus State or Local agencies, were captured through write-in comments and exhibit notable differences across the tiers of government, see Figure 1. These comments can be broadly categorized into varying degrees of flexibility, regulatory complexity, and the extent of negotiation.

The overall results show that most suppliers find some opportunities to negotiate terms and this increases somewhat depending on the complexity of the acquisition.

**Figure 1: Supplier engagement with Federal, versus State or Local agencies**

	 <b>Federal level</b>	 <b>State and Local levels</b>
<b>Regulatory framework and flexibility</b>	Procurement is governed by the Federal Acquisition Regulation (FAR), a process that is viewed by suppliers as standardized and rigid, with limited negotiation flexibility.	While still regulated, these levels are viewed as offering more flexibility, with procurement practices varying significantly by location.
<b>Negotiation practices</b>	Tend to adhere strictly to established terms and regulations, resulting in less room for negotiation.	Generally more open to negotiating terms and conditions, though this varies widely.
<b>Regulatory complexity</b>	Involve extensive regulation, including adherence to FAR and DFARS (Defense Federal Acquisition Regulation Supplement).	May have fewer regulations but can still be complex, with variations based on local laws and state-specific requirements.
<b>Contracting officer engagement</b>	Often perceived as more difficult to engage with and less open to negotiation.	Generally more accessible and willing to negotiate, though this depends on the specific agency and its processes.
<b>Procurement processes</b>	Processes are more structured and uniform.	Processes can be diverse and less standardized, leading to significant variation in how contracts are negotiated and administered.
<b>Experience and resources</b>	Typically have larger legal and procurement teams with extensive experience, making them less likely to adjust standard terms.	Often have smaller teams and may be more open to negotiating terms if presented clearly.
<b>Healthcare contracts</b>	Quasi-Governmental Entities and State Medicaid Programs tend to have more stringent regulations, which can be more time-consuming compared to local government contracts.	Local governments may have more tailored requirements for healthcare services.

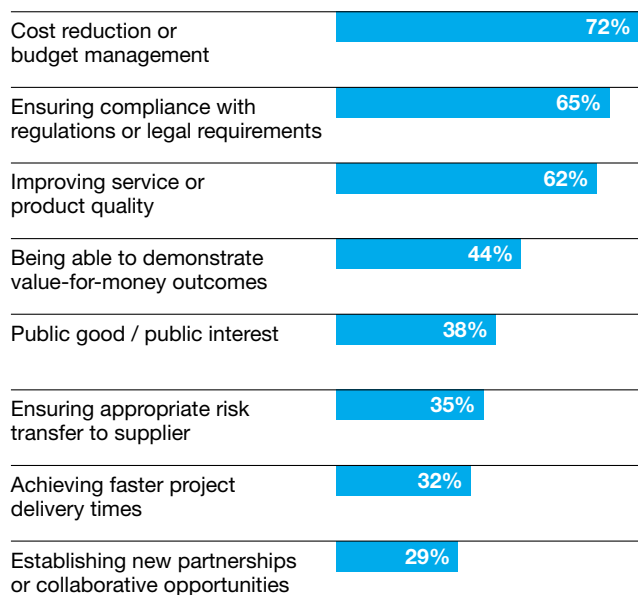


# Buyer objectives

The survey asked government buyers to identify their primary objectives when they negotiate and award a contract.

As shown in Figure 2, financial and compliance issues come top of the list, significantly above the objective of delivering public good. This illustrates the tension that often exists between the political outcomes that are being sought and the motivations and measurements placed on the procurement teams charged with making the award.

**Figure 2: Government buyers' primary objectives when negotiating and awarding a contract**



# Negotiation or discussion?

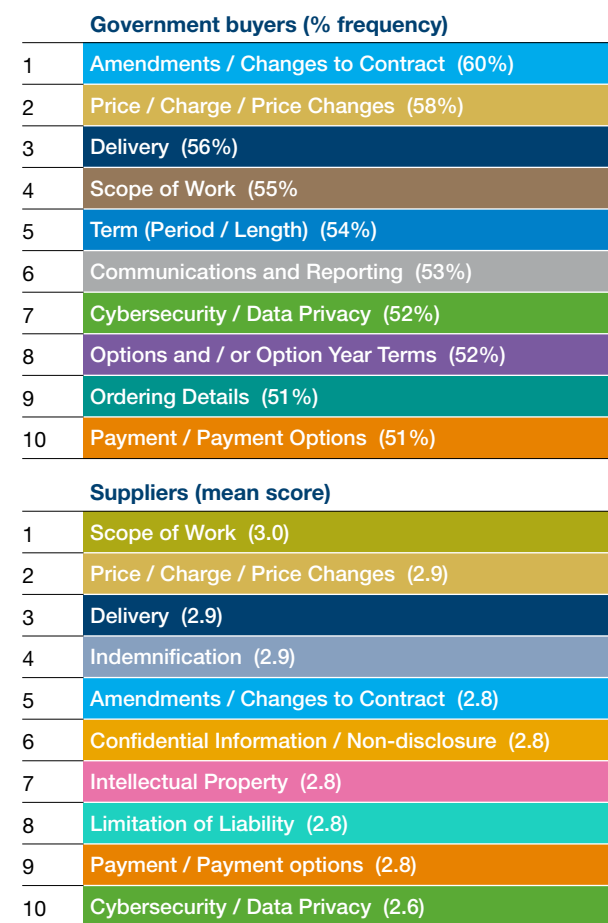
Participants were asked to identify how frequently they enter into 'discussions' on terms and conditions.

We used this term because many participants may feel that they do not formally 'negotiate' and we wanted to understand the primary areas that generate conversations between the parties. The list shown in Figure 3 differs significantly from commercial sector results (business-to-business), where terms such as Limitation of Liability, Indemnities, Intellectual Property Rights and Data Security tend to be dominant.

The list reflecting supplier views is similar, yet it contains interesting (and currently unexplained) variations. For example, Indemnification is in 4th place, compared to 14th place according to government buyers.

Overall, participants scored almost 50 terms, and the overall results reveal that both buyers and suppliers frequently discuss terms such as Amendments, Price Changes, Delivery Dates, and Scope of Work. Beyond these, the divergence of terms discussed highlights differing priorities, with buyers focusing on ensuring product or service quality and compliance, whereas suppliers are concerned with protecting proprietary information and ensuring clarity of scope and obligations.

**Figure 3: Top 10 terms discussed**





# Do buyers want to negotiate?

Approximately 70% of government buyers say that they would welcome greater freedom to negotiate and this is relatively consistent across all contract types.

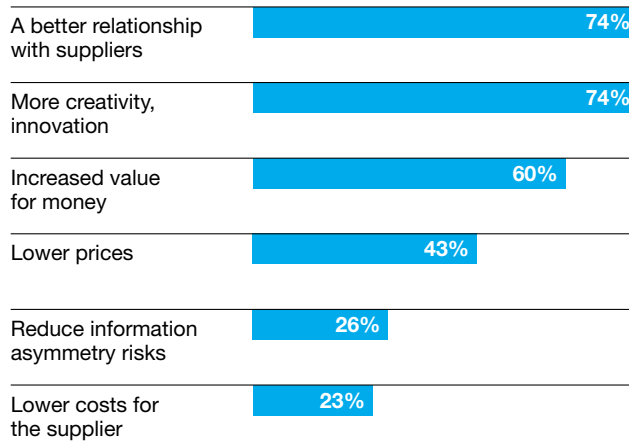
On average, 18% do not want increased negotiability and 12% say 'it depends'.<sup>1</sup> The hesitation is summed up by the following comment:

*“While greater freedom to negotiate could lead to better outcomes or tailored solutions, having rigid FAR requirements does, in a sense, move a number of different issues off the table, such that both I and the contractor know that certain areas are not up for negotiation. This standardization streamlines the process.”*

Once again, we see the tension between a desire for greater speed, versus achieving an improved outcome.

Those who support increased negotiation have clear ideas about the benefits it could bring, with improved relationships and greater creativity topping the list, as shown in Figure 4.

**Figure 4: What government buyers are looking for**



1. Public-Private Partnerships is an exception, in that 71% say there should be negotiation and the remainder say 'it depends'.



# Impact of the type of contract

Government buyers acknowledge that contract negotiations are impacted by the contract type, due to the influence this has on allocation of risks, responsibilities, and incentives between the parties. While suppliers also acknowledge many of these points, they have different perspectives and concerns, with the contrasting views summarized in Figure 5.

**Figure 5:**  
Contract type impacts



**Government buyers**



**Suppliers**

**Risk allocation**

Different contract types distribute risks differently. For instance, in a Firm-Fixed-Price (FFP) contract, the contractor assumes the majority of the cost risk, which may lead to negotiations focusing on higher pricing to mitigate potential losses. Conversely, in Cost-Reimbursement contracts, the government bears more risk, prompting discussions on cost control and oversight mechanisms.

Suppliers emphasize the importance of indemnification clauses, especially in T&M contracts, to mitigate potential liabilities. Buyers, conversely, focus on clauses that ensure supplier accountability and performance.

**Incentive structures**

Contracts can include various incentives to promote desired performance outcomes. Incentive contracts, such as Fixed-Price Incentive contracts, tie profit to performance metrics, leading to negotiations centered on defining clear performance criteria and corresponding rewards or penalties.

Suppliers express heightened concern over FFP contracts due to the increased risk they bear, necessitating meticulous negotiation of terms like scope and pricing. Buyers may prefer FFP contracts for cost predictability but must ensure detailed specifications to avoid scope creep.

**Flexibility and scope changes**

Contracts like Time & Materials (T&M) or Labor-Hour agreements offer flexibility to accommodate changes in scope. Negotiations for these contracts often involve detailed discussions on hourly rates, labor categories, and mechanisms for managing scope changes to prevent cost overruns.

Suppliers stress the need for precise Statements of Work (SOW) in FFP contracts to prevent ambiguities that could lead to unforeseen costs. Buyers also value clear SOWs but may prioritize flexibility to accommodate evolving project needs.

**Compliance and oversight**

Cost-reimbursement contracts require stringent oversight and compliance measures due to the government's assumption of cost risk. Negotiations may focus on audit rights, reporting requirements, and cost allowability to ensure transparency and accountability.

Suppliers are attentive to payment structures, particularly in T&M contracts, to ensure timely compensation for services rendered. Buyers focus on payment terms that align with budgetary constraints and project milestones.

**Duration and termination clauses**

Long-term contracts necessitate detailed negotiations on duration, renewal options, and termination clauses to address potential changes in circumstances over time. These discussions aim to balance commitment with flexibility to adapt to future needs.

Suppliers highlight the challenges of adhering to various regulations, especially when dealing with government contracts, and seek terms that address these complexities. Buyers prioritize compliance to mitigate legal risks and ensure ethical standards.

**Understanding the implications of each contract type enables negotiators to better anticipate and plan more effectively. In a less constrained environment, the contrasting views we have identified create room for negotiated trade-offs, allowing both parties to achieve their objectives.**



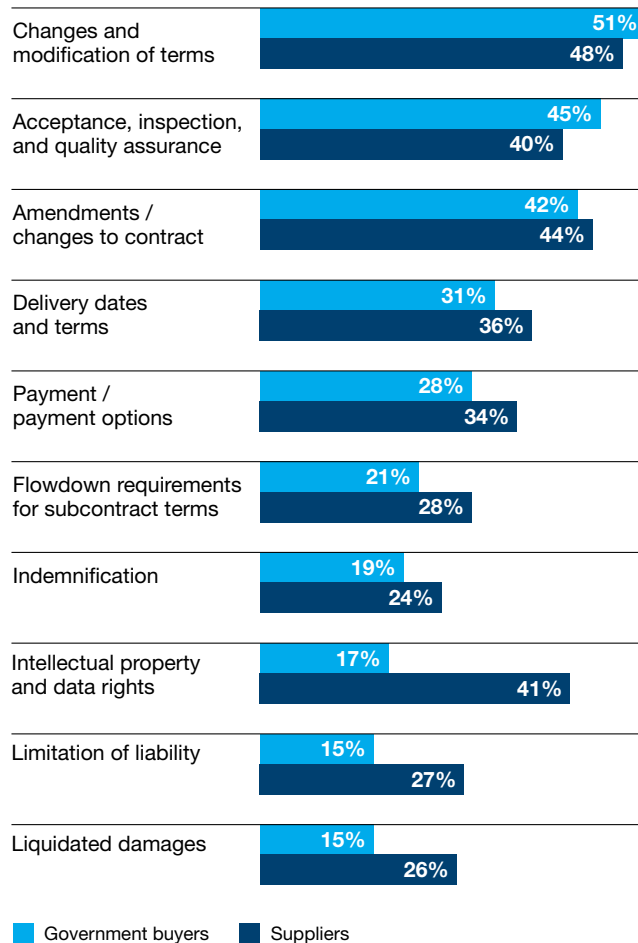
# Disagreements and disputes

Buyers and suppliers are in agreement that approximately a quarter of contract negotiations experience one or more significant disagreements or disputes during performance.

As shown in Figure 6, analysis of the input regarding the sources of these disagreements reveals a mixed and sometimes surprising discrepancy of views. For instance, Changes and modification of terms are viewed by both parties as a common source of contention.

However, Intellectual property and Data rights show a significant disparity, with 17% of government buyers and 41% of suppliers saying that they generate disagreements during performance.

**Figure 6: Sources of disagreements**







# Most Important Terms

We asked participants to indicate which terms they consider most important. Many people assume that there will be a close correlation between this list and the list of Most Negotiated Terms – but there is not.

As Figure 7 shows, the items considered Most Important are far more closely aligned with those Most Disputed. This indicates that contract managers are well aware of the things that are most likely to go wrong, but are driven by policies, templates and rules that cause them to focus elsewhere.

Suppliers have similar, but not entirely consistent, views of the terms that matter most.

The differences in priorities between buyers and suppliers highlight their distinct roles and objectives. Buyers emphasize contract terms like Acceptance, Inspection, and Quality Assurance and Scope of Work to ensure product quality and adherence to specifications. Suppliers focus on Limitation of Liability and Intellectual Property and Data Rights to protect their interests and manage risks. Recognizing these differing priorities is again important and represents an opportunity for effective negotiations or discussions that support mutual understanding and potentially establish more balanced agreements that satisfy both parties' needs.

**Figure 7: Most Important Terms**

	As a buyer of goods or services (% citing)	As a supplier of goods or services (% citing)
1	Acceptance, Inspection and Quality Assurance (58%)	Scope of Work (52%)
2	Scope of Work (51%)	Acceptance, Inspection and Quality Assurance (48%)
3	Contract Type (45%)	Contract Type (44%)
4	Changes and Modification Terms (38%)	Delivery Dates and Terms (44%)
5	Delivery Dates and Terms (34%)	Changes and Modification Terms (42%)
6	Price / Charge / Price Changes (32%)	Intellectual Property and Data Rights (41%)
7	Amendments / Changes to Contract (31%)	Payment / Payment Options (39%)
8	Contractor Qualifications (26%)	Price / Charge / Price Changes (38%)
9	CLIN Structure (Line Items on Contract) (26%)	Amendments / Changes to Contract (31%)
10	Payment / Payment Options (25%)	Limitation of Liability (25%)



# Challenges negotiating contracts

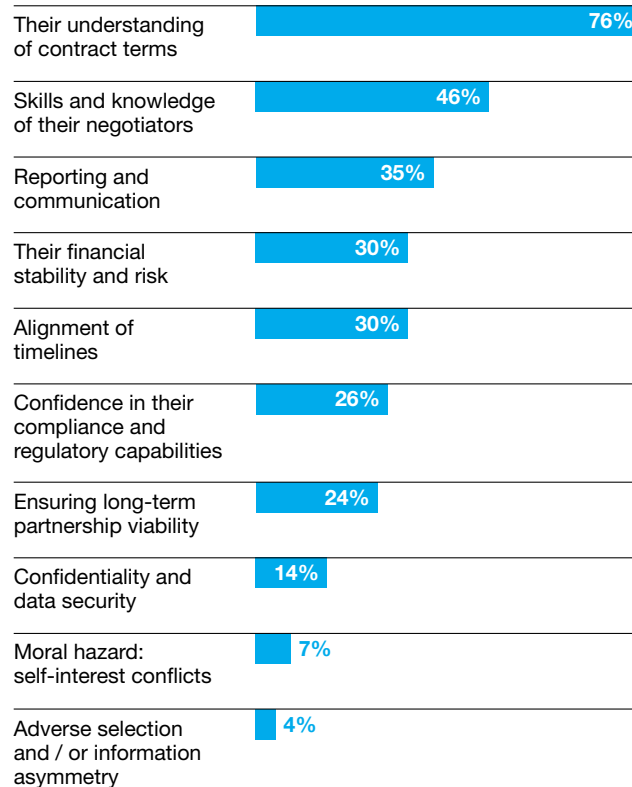
## Buyer perspective

Government personnel work with a wide variety of suppliers and in consequence encounter different levels of sophistication. This is reflected in the two challenges that top their list, both of which relate to knowledge and skills. See Figure 8.

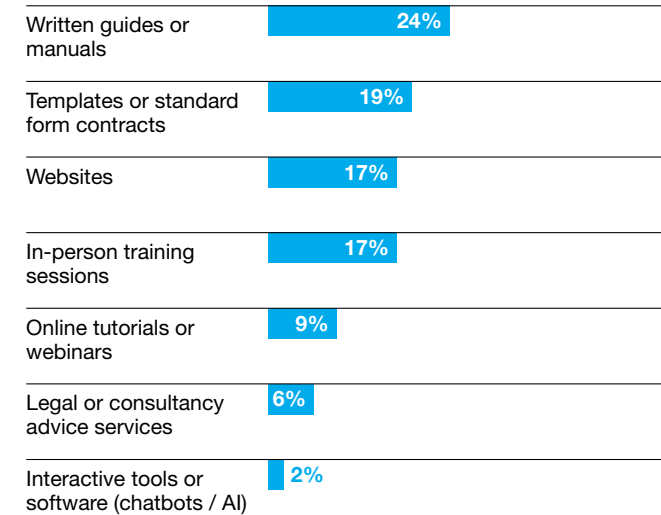
Many of the challenges are directly linked to government policies that seek to support supplier engagement, in particular for smaller businesses. Based on this, guidance around the way to engage and the nature of negotiability could be helpful, but only 35% of government participants appear to provide tools or resources to help suppliers understand or negotiate contract terms. Figure 9 shows the form these take and their relative frequency.

*Continued next page*

**Figure 8: Challenges encountered by government personnel**



**Figure 9: Tools or resources provided by government participants to help suppliers**





## Challenges negotiating contracts *(continued)*

### Supplier perspective

In the pre-award phase, suppliers report that they face regulatory, procedural, and bureaucratic challenges that apply across most contract types. The complex regulations and strict adherence to government frameworks increase costs and time, particularly with FAR-based, IDIQ, and Other Transaction Agreement (OTA) contracts. They also feel that Contracting Officers and Representatives often lack the experience or empowerment needed to facilitate flexible, business-oriented negotiations, which reinforces a rigid, rules-based process. Additionally, suppliers note significant financial risk from the costs associated with pre-award efforts due to delays or cancellations of government awards.

Specific issues arise with Cooperative Research and Grants, where the certification process poses hurdles for small businesses. In International Agreements, rigid contract terms and fixed-price preferences limit flexibility. Ordering Agreements are marked by inflexible terms like non-negotiable indemnity clauses.

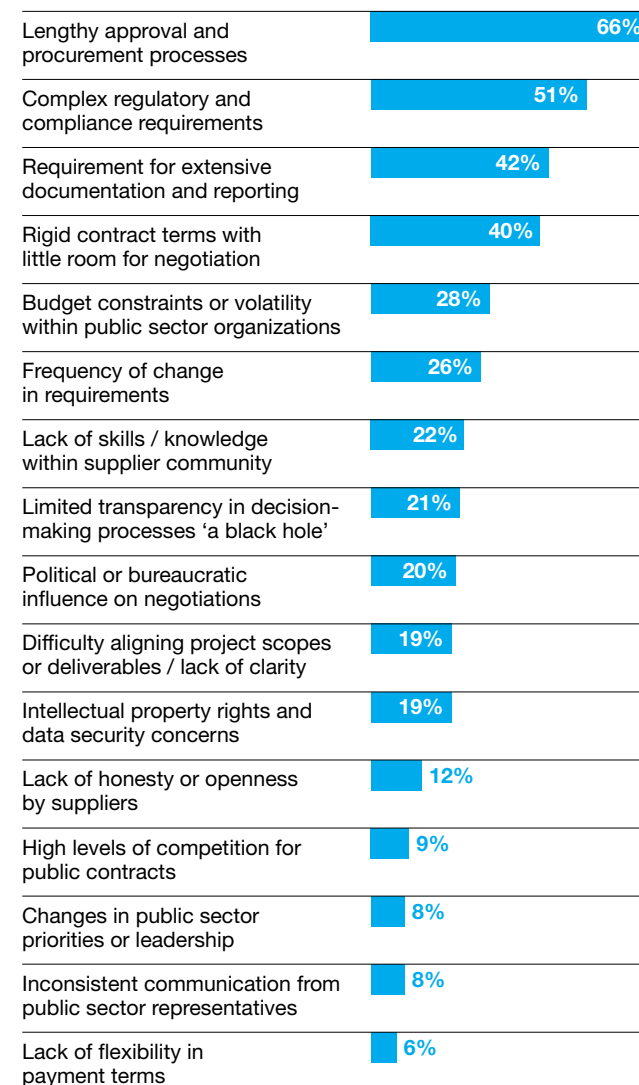
In the post-award phase, suppliers again report consistent challenges across contract types, including navigating complex regulations, dealing with the administrative burden of contract terms, and facing the inexperience or limited authority of Contracting Officers in handling performance issues or responding to change requests. These issues lead to inflexibility and strict compliance requirements, especially in contracts such as IDIQ, FFP, and FAR-based agreements.

Contract-specific difficulties include unique certification processes for Cooperative Research and Grants and intricate risk-sharing concerns in Public Private Partnerships, especially at public institutions. International Agreements pose challenges with inflexible terms and extensive fixed-price use, while OTA contracts feature communication breakdowns and varied priorities across entities.

### Buyer perspective on challenges

Government employees recognize that there are areas for improvement, where costs and cycle times could be reduced and outcomes improved. Most – but not all – of these relate to areas under Government control. See Figure 10.

**Figure 10: Areas for improvement recognized by government employees**





# Impact on supplier costs

In the introduction to this report, we identified a potential cost reduction of 13.3%.

Figure 11 is based on answers to the following question: *“When working with government agencies, the combination of non-negotiable terms and relatively complex contracting processes increases your risks and costs as a business. If government agencies were more open to negotiation and simplified their processes, what impact do you estimate this could have in reducing your overall transaction costs (pre- and post-award)?”*

The responses have been evaluated by type of contract and the methodology is explained below. For each contract type, the average percentage savings were calculated by:

### 1. Assigning mid-point values

For each savings range, the mid-point percentage was used (e.g., 0-5% range was assigned a value of 2.5%).

### 2. Weighting by response percentage

Each mid-point value was multiplied by the corresponding percentage of respondents who selected that range.

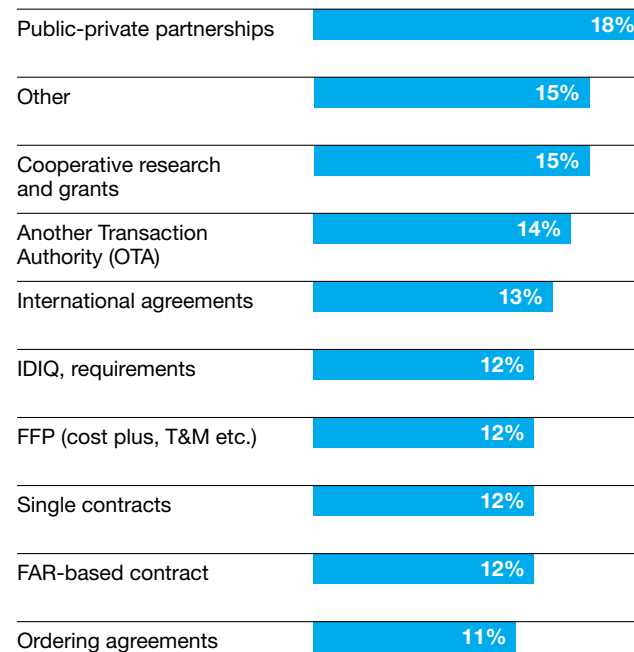
### 3. Summing weighted values

The weighted values were summed to obtain the average percentage savings for each contract type.

### 4. Excluding ‘not applicable’ responses

The ‘Not applicable / I don’t know’ category was excluded from the calculations.

**Figure 11: Supplier cost savings from simplified government processes**



## Sources of Saving

Negotiation would deliver some savings, potentially through efficiencies achieved from greater alignment, increased collaboration and more flexibility in the processes imposed on suppliers. There would also be opportunities from innovation, for example in the use of automation to streamline reporting and increase the level of proactive problem-solving and risk avoidance. Suppliers identified the following areas for significant cost savings:

### 1. Lengthy approval and procurement processes

This is a significant challenge across all contract types, with the highest concern in Ordering Agreements (73.7%) and FFP (67.9%).

### 2. Rigid contract terms with limited negotiation room

Suppliers find this particularly challenging in Other (83.3%) and Cooperative Research and Grants (71.4%).

### 3. Complex regulatory and compliance requirements

Notably problematic in International Agreements (51.7%) and Cooperative Research & Grants (50.0%).

### 4. Requirement for extensive documentation and reporting

A major issue in International (48.3%) and Ordering Agreements (50.9%).

### 5. Intellectual property rights and data security concerns

Prominent in Cooperative Research and Grants (57.1%) and Public-Private Partnerships (57.1%).

These insights highlight the need for streamlined processes, flexible contract terms, simplified compliance requirements, reduced documentation requirements, and clear, balanced guidelines on intellectual property and data security.

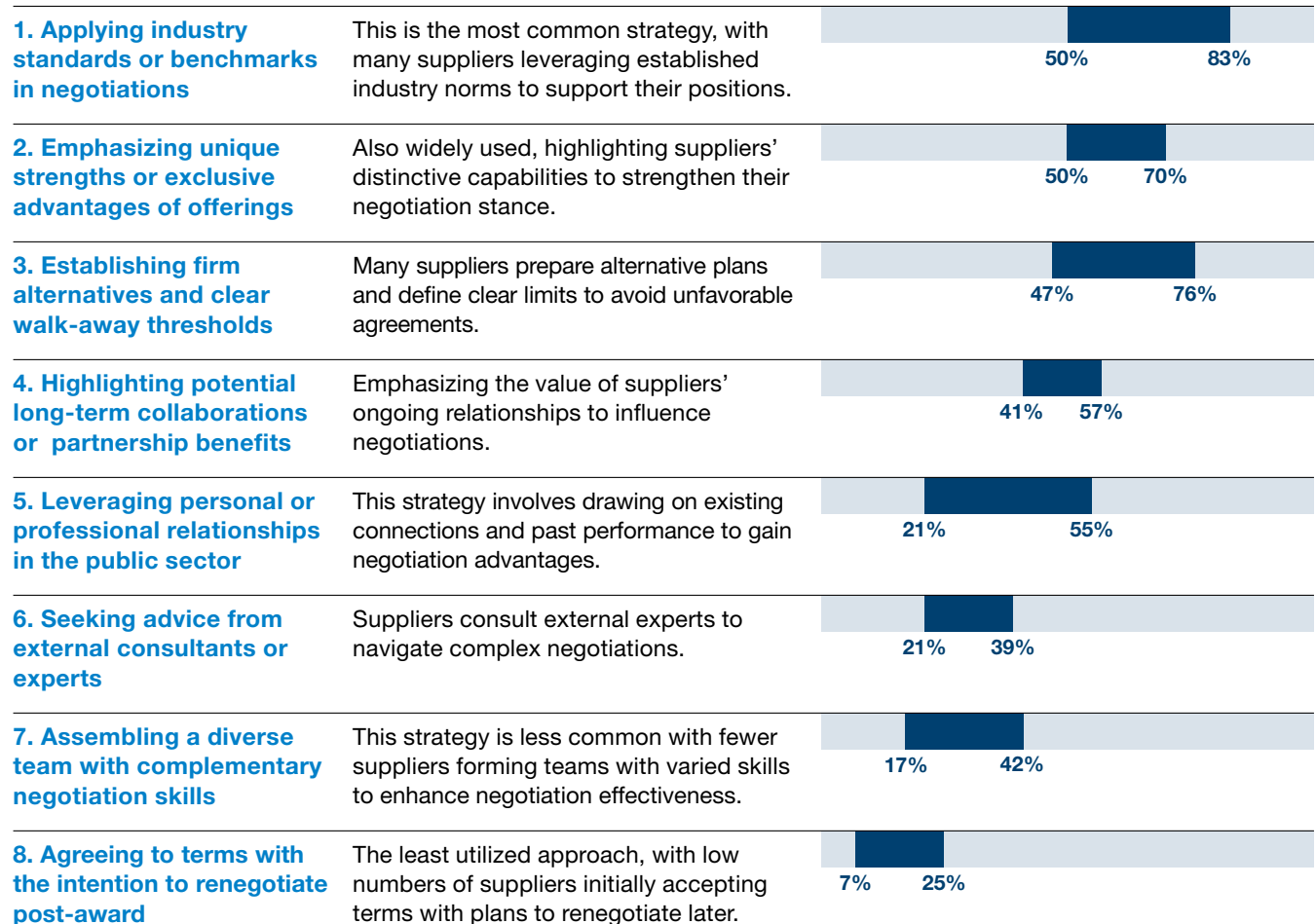


# Handling power imbalances

Often, when there is a power imbalance, it is believed that suppliers hope to recover lost margin through changes after award, but that doesn't appear to be the case.

Supplier input (see Figure 12) reveals the strategies they use to approach the negotiation and management of contracts. The extent to which each strategy is employed varies by the type of contract under which the award will occur – the chart shows the range between lowest frequency use and highest frequency use.

**Figure 12: Supplier negotiation strategies (frequency of use of contract type, lowest to highest)**







# Conclusion

We operate in a fast-changing world, where the ability to adapt to altered needs and capabilities is critical. In this environment, rigid policies and regulations undermine required outcomes.

This report has highlighted the constraints imposed on Federal employees and the impact on suppliers. It underscores the opportunity to update government procurement and contracting policies and practices, making them ‘fit for purpose’ in our digital age.

By capturing the perspective of both buyers and suppliers, the report highlights how regulations, negotiation practices, and contract types significantly shape experiences and outcomes.

Today’s rules cause government buyers to prioritize compliance, cost management, and risk allocation, while suppliers seek clarity, fair risk distribution, and flexibility. The resulting tensions lead to inefficiencies, disputes, and cost overruns. Increased openness to negotiation and streamlined processes would reduce costs by as much as 13.3%, potentially translating into savings of approximately \$100 billion. This emphasizes the compelling need for a more balanced approach that accommodates the priorities of both parties while ensuring appropriate controls in the delivery of public value.

**Today’s rules cause government buyers to prioritize different aspects of contract management from suppliers with resulting inefficiencies, disputes, and cost overruns.**



**Government priorities**

- Compliance
- Cost management
- Risk allocation



**Suppliers priorities**

- Clarity
- Fair risk distribution
- Flexibility



# Call to action

This report has identified exciting opportunities for fresh thinking and approaches, investing in the future of government procurement and elevating the procurement and contract management professions to new heights.

The potential \$100 billion in savings highlighted in this report underscores the urgency of achieving this transformation in government procurement practices. Much of this will depend on investment in professional development, equipping the workforce to think and act differently.

NCMA and WorldCC provide structured pathways to develop essential skills through programs like the Commercial and Contract Management (CCM), Certified Professional Contract Manager (CPCM) and Certified Federal Contract Manager (CFCM) certifications, and continued research-supported resources from WorldCC and the NCMA Contract Management Institute, providing professionals with the knowledge required to navigate today's complex contracting environment.

Leadership commitment is essential in this transformation. Leaders must champion professional growth by dedicating resources to continuous learning, encouraging participation in certifications, and prioritizing procurement excellence as a strategic objective. This shift will signal the importance of a balanced, collaborative approach to contracting that goes beyond mere compliance to foster innovation and public value. At its heart, buyers and suppliers need to increase mutual understanding and focus on common approaches to delivering value-for-money outcomes.

Moreover, as we will soon show in upcoming research reports, emerging technologies like Artificial Intelligence offer new ways to analyze contracts and predict risks – these tools can enhance the capabilities of procurement teams, allowing them to focus on more strategic aspects of negotiation and relationship management. By investing in the professional development of procurement teams and integrating supportive technologies, we can create a procurement culture that emphasizes value, partnership, and efficiency.

*Now is the time to act decisively, empowering procurement professionals to build the exciting and rewarding future of government procurement.*

**In a world of big numbers, it's easy to pass over our much mentioned potential saving of \$100 billion, but look at it this way:**

## \$100bn =



**The combined state budgets of Louisiana, Arizona, Nevada, Kansas and New Mexico, or;**



**The salaries of one-third of all Federal civilian employees, or;**



**The cost of running almost 20,000 US secondary schools (with 20m students).**



### World Commerce & Contracting

World Commerce & Contracting is a not-for-profit association dedicated to helping its global members achieve high performing and trusted trading relationships. With 75,000 members from over 20,000 companies across 180 countries worldwide, the association welcomes everyone with an interest in better contracting: business leaders, practitioners, experts and newcomers. It is independent, provocative and disciplined existing for its members, the contracting community and society at large.

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### NCMA Contract Management Institute

The Contract Management Institute (CMI) is a leading professional organization dedicated to advancing the field of contract management. With a mission to drive innovation, promote excellence, and enhance the role of the contracting professional, CMI provides valuable resources including collaboration and partnership opportunities for individuals and organizations involved in contract management across government, industry, and academia. The Institute serves as a catalyst for the study of the profession to elevate engagement, standards, and professional development.

The CMI mission and vision are aligned with its parent, NCMA. CMI is a 501(c)(3) charitable organization.

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