

# **Contract Negotiations---**

## **Deal or No Deal?**

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Space City NCMA Chapter

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This NCMA educational program is based in significant part upon, and is introductory to, the highly interactive one-day NES seminar sponsored by NCMA that covers the skills, tools, and best practices of contract negotiations for both buyers and sellers. This program is intended for everyone involved in planning, conducting, and documenting contract negotiations, in both the public and private business sectors. The program will present an overview of the skills to be a "Master Negotiator" as envisioned by, and in, the NES seminar as well as a self-assessment quiz that allows each individual attending this NCMA program to evaluate their skills in each of the competencies categories contained within The Contract Negotiator's Competencies Model. This program includes highlights of the tools from the full NES seminar-- all designed to help each individual improve their contract negotiation skills.

The NES seminar and this program are based upon Best-Selling Author - Gregory A. Garrett's book "Contract Negotiations: Skills, Tools, and Best Practices."

The full NES seminar on "Contract Negotiation" has been offered as a post-conference seminar at the last three NCMA Congresses by Charles Rumbaugh who continues to be asked to present this NES as well as others.

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Center for Advanced Purchasing Studies (CAPS) Research Report of Cross-Industry Benchmarks (October 2008)  
[www.ism.ws](http://www.ism.ws) Institute for Supply Management

Benchmark	Cross-Industry Average	Telecomm Service Average	Aerospace and Defense Average
Purchase Spend as a Percent of Sales \$	42.94%	43.26%	47.76%
Purchase Operating Expense as a Percent of Sales Dollars	0.33%	0.14%	0.83%
Purchasing Operating Expense per Purchasing Employee	\$115,670	\$108,272	\$111,289
Percent Spend Managed by Purchasing	80.41%	72.76%	89.46%
Percent of Companies Outsourcing Some of their Purchasing Activities	27.43%	20%	39.39%
Active Suppliers Accounting for 80% of Purchase Spend	6.82%	6.09%	6.66%
Percent of Active Suppliers who are e-Procurement Enabled	19.08%	66.61%	47.59%
Percent Purchase Spend via E-Procurement	19.68%	46%	32.2%
Percent of Purchase Spend with Diversity Suppliers	8.96%		16.87%

Sources for additional research:

- National Contract Management Association.....[www.ncmahq.org](http://www.ncmahq.org)
- Institute for Supply Management.....[www.ism.ws](http://www.ism.ws)  
 Center for Advanced Purchasing Studies
- International Association for Contract and  
 Commercial Management.....[www.iaccm.com](http://www.iaccm.com)
- Various Pricing Tools, e.g.....[www.propurchaser.com](http://www.propurchaser.com)  
 Commodity-tracking website
- UCC changes..... [www.Rumbaugh.net](http://www.Rumbaugh.net) (article/speeches)  
<http://www.law.cornell.edu/ucc/2/>
- GAO opinions..... [www.GAO.gov](http://www.GAO.gov)
- Real Property court digests.....[listserv@listserv.umkc.edu](mailto:listserv@listserv.umkc.edu)
- Construction Law Reporter.....[holloway@hcgexperts.com](mailto:holloway@hcgexperts.com)
- Alternative Dispute Resolution..... [ADROffice@Rumbaugh.net](mailto:ADROffice@Rumbaugh.net)
- Contractual/Regulatory Updates..... [ADROffice@Rumbaugh.net](mailto:ADROffice@Rumbaugh.net)

## Contract Negotiation Competencies

Mark H. McCormack, best-selling author of “What They Don’t Teach You at Harvard Business School,” has stated the perfect negotiator should have:

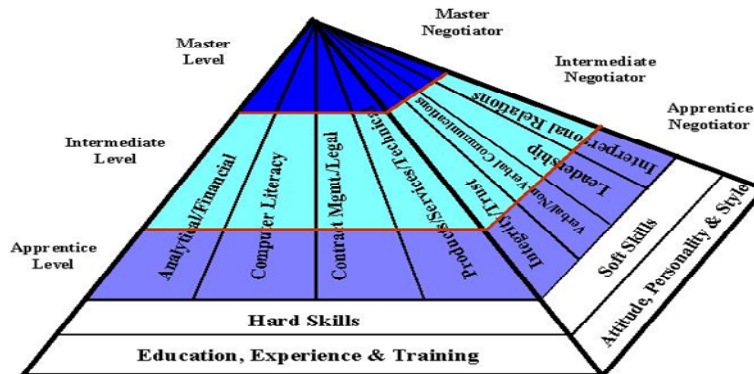
- Faultless people sense
- A strong competitive streak
- A view of the big picture
- An eye for the crucial detail
- Unimpeachable integrity



Reference Text: Contract Negotiations, by Gregory A. Garrett, CCH, Inc. (2005), pg. 13.

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## The Contract Negotiator’s Competencies Model



Reference Text: Contract Negotiations, by Gregory A. Garrett, CCH, Inc. (2005), pg. 14.

**The Skills to Win: Self-Assessment Survey**

1. I am a person of high integrity.  
1 2 3 4 5
2. I always act as a true business professional, especially in contract negotiations.  
1 2 3 4 5
3. I ensure all of my business partners and team members act honestly, ethically, and legally, especially when involved in contract negotiations and contract formation.  
1 2 3 4 5
4. I verbally communicate clearly and concisely.  
1 2 3 4 5
5. I am an effective and persuasive contract negotiator.  
1 2 3 4 5



Reference Text: Contract Negotiations, by Gregory A. Garrett, CCH, Inc. (2005), pg. 16.

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**The Skills to Win: Self-Assessment Survey cont.**

6. My written communications are professional, timely, and appropriate.  
1 2 3 4 5
7. I am an excellent team leader.  
1 2 3 4 5
8. I consistently build high performance teams, which meet or exceed contract requirements.  
1 2 3 4 5
9. I am willing to compromise when necessary to solve problems.  
1 2 3 4 5
10. I confront the issues, not the person, in a problem-solving environment.  
1 2 3 4 5



Reference Text: Contract Negotiations, by Gregory A. Garrett, CCH, Inc. (2005), pg. 16.

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**The Skills to Win: Self-Assessment Survey cont.**

- 11. I recognize the power of strategies, tactics, and countertactics and use them frequently in contract negotiations.  
1    2    3    4    5
- 12. I am able to achieve my desired financial results in contract negotiations.  
1    2    3    4    5
- 13. I understand various cost estimating techniques, numerous pricing models, and how to apply each when negotiating financial arrangements.  
1    2    3    4    5
- 14. I understand generally accepted accounting practices and how to apply them when negotiating deals.  
1    2    3    4    5
- 15. I am highly computer literate, especially with electronic sales tools, and/or electronic procurement tools.  
1    2    3    4    5



Reference Text: Contract Negotiations, by Gregory A. Garrett, CCH, Inc. (2005), pgs. 16-17.

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**The Skills to Win: Self-Assessment Survey cont.**

- 16. I am knowledgeable of e-marketplaces, vertical and horizontal trade exchanges, e-auctions, and how to use them to buy or sell products/services.  
1    2    3    4    5
- 17. I understand the contract management process and have extensive education, experience, and professional training in contract management.  
1    2    3    4    5
- 18. I have extensive education, experience, and training in contract law.  
1    2    3    4    5
- 19. I have extensive education, experience, and training in our organization's products and services.  
1    2    3    4    5
- 20. I am considered a technical expert in one or more areas.  
1    2    3    4    5



Reference Text: Contract Negotiations, by Gregory A. Garrett, CCH, Inc. (2005), pg. 17.

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**The Skills to Win: Self-Assessment Survey cont.**

<b>Skills to Win - Self-Assessment Survey Worksheet</b>	
Questions #	Self-Assessment Score (1-5)
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
15.	
16.	
17.	
18.	
19.	
20.	
<b>Grand Total Score:</b>	

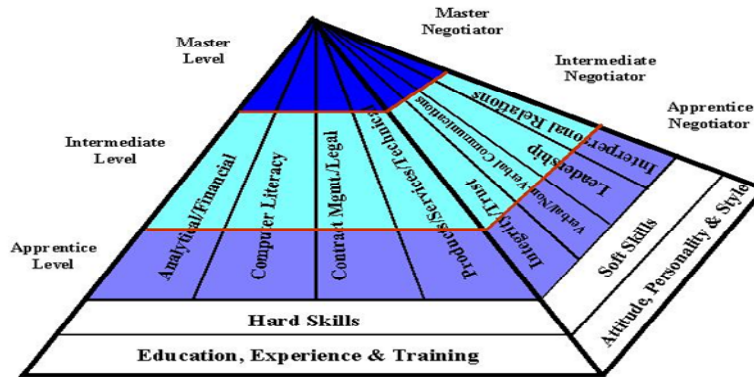


Reference Text: Contract Negotiations, by Gregory A. Garrett, CCH, Inc. (2005), pg. 17.

**Skills to Win  
Self-Assessment Survey  
Scoring**

90+:	You have the knowledge and skills of a master contract negotiator.
80 - 90:	You have the potential to become a master contract negotiator, after reviewing the specialized skill areas and determining in which areas you need to improve your skills. You are an intermediate contract negotiator.
65 - 79:	You have basic understanding of successful contract negotiation skills. You need to improve numerous skills to reach a higher level of mastery of contract negotiations. You are an apprentice contract negotiator.
0 - 64:	You have taken the first step to becoming a master contract negotiator. You have a lot of specialized skills areas you need to improve. With time, dedication, and support (education, experience, and training) you can become a master contract negotiator.

**The Contract Negotiator's Competencies Model**



Reference Text: Contract Negotiations, by Gregory A. Garrett, CCH, Inc. (2005), pg. 14.

<b>Checklist</b> <b>10 Critical Analytical &amp; Financial</b> <b>Knowledge &amp; Skills Areas (KSAs)</b>	
<input type="checkbox"/>	Understand the concepts of opportunity costs, sunk costs, fixed costs, variable costs, direct costs, indirect costs, etc.
<input type="checkbox"/>	Able to execute basic mathematical processes (Addition, Subtraction, Multiplication, Division, and Percentages)
<input type="checkbox"/>	Understand the elements of cost, profit, and price
<input type="checkbox"/>	Understand various pricing methods, including <ul style="list-style-type: none"> <li><input type="checkbox"/> Cost-Based Pricing (CBP)</li> <li><input type="checkbox"/> Activity-Based Pricing (ABP)</li> <li><input type="checkbox"/> Value-Based Pricing (VBP)</li> </ul>
<input type="checkbox"/>	Able to evaluate cost proposals
<input type="checkbox"/>	Understand Cost Estimating Relationships (CERs)
<input type="checkbox"/>	Able to quantify the total value or best value of an offer in comparison to other offers
<input type="checkbox"/>	Understand the following terms, methods, and techniques: <ul style="list-style-type: none"> <li><input type="checkbox"/> Life Cycle Costing (LCC)</li> <li><input type="checkbox"/> Economic Order Quantity (EOQ)</li> <li><input type="checkbox"/> Expected Monetary Value (EMV)</li> <li><input type="checkbox"/> Net Present Value (NPV)</li> <li><input type="checkbox"/> Return on Inventory (ROI)</li> <li><input type="checkbox"/> Accounts Receivable (AR)</li> <li><input type="checkbox"/> Return on Assets (ROA)</li> <li><input type="checkbox"/> Earned Value (EV)</li> <li><input type="checkbox"/> Days of Sales Outstanding (DSO)</li> <li><input type="checkbox"/> Lump-sum Agreement (LSA)</li> </ul>
<input type="checkbox"/>	Able to apply generally accepted accounting principles and practices
<input type="checkbox"/>	Able to achieve desired financial results in contract negotiation

<b>Checklist</b> <b>10 Critical Product/Services/Technical Knowledge &amp; Skills Areas (KSAs)</b>	
<input type="checkbox"/>	Understand the marketplace in which you are buying or selling products (Hardware, & Software) services, and solutions
<input type="checkbox"/>	Be able to conduct market research regarding products, services, and technical features
<input type="checkbox"/>	Be able to conduct cost/technical trade-off analysis for specific products, services, or solutions
<input type="checkbox"/>	Be able to develop performance-based requirements, with appropriate performance-based metrics
<input type="checkbox"/>	Be able to create appropriate products, services, or solutions acceptance criteria
<input type="checkbox"/>	Understand and be able to evaluate the extent of product or service maturity and related technical risk factors
<input type="checkbox"/>	Understand the level of integration required for the products, services, or solutions to be able to fully operate, including: all hardware and software interfaces
<input type="checkbox"/>	Understand the level of operational support required for products and solutions
<input type="checkbox"/>	Understand the extent of both annual and life-time maintenance required for products and solutions
<input type="checkbox"/>	Understand the expected period of performance of the products and services, including when they will be discontinued/no longer supported.

<b>Checklist</b> <b>10 Integrity/Trust Critical Knowledge &amp; Skills Areas (KSAs)</b>	
<input type="checkbox"/>	Listen to the customer
<input type="checkbox"/>	Understand the customer's needs vs. desires
<input type="checkbox"/>	Return phone calls, vmails, and emails in a timely manner
<input type="checkbox"/>	Provide regular communication on contract, program, and partnership status
<input type="checkbox"/>	Develop a project plan for every deal (scope of work, integrated schedule, work breakdown structure, responsibility assignment matrix, and acceptance criteria)
<input type="checkbox"/>	Develop a risk management plan
<input type="checkbox"/>	Disclose problems early and mitigate negative impacts
<input type="checkbox"/>	Back up all verbal agreements and conversations with written documentation
<input type="checkbox"/>	Be prepared to deliver both good and bad news at multiple levels, both internally and with customers
<input type="checkbox"/>	Demonstrate passion in honoring commitments

<b>Checklist</b> <b>10 Critical Verbal/Nonverbal</b> <b>Communications Knowledge &amp; Skills Areas (KSAs)</b>	
<input type="checkbox"/>	Be able to apply the 12 best practices of communications
<input type="checkbox"/>	Be comfortable when communicating to others
<input type="checkbox"/>	Understand the language of nonverbal communication
<input type="checkbox"/>	Know the five categories of the body, for purposes of identifying and grouping gestures to determine meanings
<input type="checkbox"/>	Be able to orally deliver clear, concise, and compelling communications
<input type="checkbox"/>	Be able to prepare effective written proposals
<input type="checkbox"/>	Be able to effectively ask questions during contract negotiations to gain information
<input type="checkbox"/>	Be able to effectively use audio and visual aides to support your oral and written presentations
<input type="checkbox"/>	Practice active listening
<input type="checkbox"/>	Look the part - dress for success

<b>Checklist</b> <b>10 Critical Leadership Skills</b> <b>Knowledge &amp; Skills Areas (KSAs)</b>	
Unlike self-proclaimed leader "wannabes," real leaders	
<input type="checkbox"/>	Have ideas, values, energy, passion, and focus
<input type="checkbox"/>	Lead the team through the tough times
<input type="checkbox"/>	Hold people accountable
<input type="checkbox"/>	Get results
<input type="checkbox"/>	Make decisions
<input type="checkbox"/>	Clearly communicate ideas
<input type="checkbox"/>	Live by a set of values
<input type="checkbox"/>	Build high-performance teams
<input type="checkbox"/>	Accept blame for team failures and give credit and recognition to others for team successes
<input type="checkbox"/>	Take the time to teach others to be leaders

<b>Checklist</b> <b>10 Critical Interpersonal</b> <b>Knowledge &amp; Skills Areas (KSAs)</b>
--

- |   |
|---|
| <input type="checkbox"/> Able to work well with others                            |
| <input type="checkbox"/> Be honest  |
| <input type="checkbox"/> Able to deal with untrustworthy individuals              |
| <input type="checkbox"/> Able to build strong professional business relationships |
| <input type="checkbox"/> Use joint problem solving                                |
| <input type="checkbox"/> Practice active listening                                |
| <input type="checkbox"/> Be respectful to everyone                                |
| <input type="checkbox"/> Practice Patience  |
| <input type="checkbox"/> Honor your commitments                                   |
| <input type="checkbox"/> Hold people accountable                                  |

<b>10 Critical Computer Literacy</b> <b>Knowledge &amp; Skills Areas (KSAs)</b>
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**10 Critical Contract Management/Legal - KSAs**

<b>Checklist</b> <b>10 Critical Contract Management/Legal</b> <b>Knowledge &amp; Skills Areas (KSAs)</b>
<ul style="list-style-type: none"> <li><input type="checkbox"/> Understand the entire contract management process (Preaward, Award, and Postaward Phases)</li> <li><input type="checkbox"/> Understand and be able to execute the six-steps required of both buyers and sellers throughout the entire contract management process</li> <li><input type="checkbox"/> Understand and be able to appropriately tailor the following terms and conditions for a specific deal:                             <ul style="list-style-type: none"> <li><input type="checkbox"/> Acceptance criteria</li> <li><input type="checkbox"/> Changes Management</li> <li><input type="checkbox"/> Delivery</li> <li><input type="checkbox"/> Dispute resolution method</li> <li><input type="checkbox"/> Force majeure</li> <li><input type="checkbox"/> Indemnification</li> <li><input type="checkbox"/> Intellectual Property rights</li> <li><input type="checkbox"/> Invoicing and payments</li> <li><input type="checkbox"/> Pricing and discounts</li> <li><input type="checkbox"/> Taxes</li> <li><input type="checkbox"/> Terminations</li> <li><input type="checkbox"/> Warranties</li> </ul> </li> </ul>



Reference Text: Contract Negotiations, by Gregory A. Garrett, CCH, Inc. (2005), pg. 34.

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**10 Critical Contract Management/Legal - KSAs**

<b>Checklist</b> <b>10 Critical Contract Management/Legal</b> <b>Knowledge &amp; Skills Areas (KSAs) cont'd.</b>
<ul style="list-style-type: none"> <li><input type="checkbox"/> Understand the essential elements to form a legal and binding contract</li> <li><input type="checkbox"/> Be able to draft a legal &amp; binding contract with all appropriate terms and conditions.</li> <li><input type="checkbox"/> Understand who you need to contact, and when to get the appropriate support, to form a successful performance-based contract (technical, financial, and legal support.)</li> <li><input type="checkbox"/> Understand the choice of law, and all applicable Federal, State, and/or Local Laws, Regulations, and policies which you must adhere to/comply with</li> <li><input type="checkbox"/> Understand the penalties for violations of any or all Laws, Regulations, or policies.</li> <li><input type="checkbox"/> Be able to effectively resolve any contractual dispute</li> <li><input type="checkbox"/> Obtain professional certification in contract management and/or Law degree</li> </ul>



Reference Text: Contract Negotiations, by Gregory A. Garrett, CCH, Inc. (2005), pg. 34.

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## Putting the International Business Deal Together— The Latest Benchmarking In International Contracting

**Background:** Since the UN Convention on Contracts for the International Sale of Goods (CISG) was promulgated over 68 countries (including the United States), as of the most recent report, have executed this treaty which generally applies to, and controls, the international sale/purchase of “goods,” as defined, between entities operating in those countries that have signed the CISG—countries that account for over two-thirds of the world trade! For additional CISG information including text, guidance, Q/A, cases, etc. go to <http://www.cisg.law.pace.edu/>

**Latest Benchmarking Trend on Terms of the Deal, i.e. International Norms.** IACCM (International Association of Contract and Commercial Managers) and ISM (Institute for Supply Management), “Benchmarking Standard Contract Terms and Conditions Project” participated in an important 2004 Benchmarking Survey. Survey reports are available at ISM website:

Administrative Terms <http://www.ism.ws/Files/tools/AdministrativeTerms.pdf>

Business Terms <http://www.ism.ws/Files/tools/BusinessTerms.pdf>

Financial Terms <http://www.ism.ws/files/Tools/FinancialTerms.pdf>

Intellectual Property / Data Production Terms <http://www.ism.ws/Files/tools/IPTerms.pdf>

Legal Terms <http://www.ism.ws/Files/tools/LegalTerms.pdf>

36 topics or clauses!

Highlights from some of those topics/clauses include...

Acceptance:

Payment Provisions:

Warranties/(Performance Issues):

Delivery:

Indemnification:

Insurance/Limitation of Liability:

Termination:

Delays/Force Majeure:

Dispute Resolution:

Applicable Law/Jurisdiction:

The Top Ten Most Negotiated Terms in 2007 [www.iaccm.com](http://www.iaccm.com)

	Top 30 Terms in 2007 ▲ Up or ▼ Down --change from 2006 Rankings	▲▼	2006	2005	2004	2003	2002
1	Limitation of Liability	-	1	1	1	1	1
2	Indemnification	-	2	2	4	10	3
3	Price / Charge / Price Changes	▲	4	6	3	5	7
4	Intellectual Property	▼	3	3	5	3	2
5	Termination (cause / convenience)	-	5	7	7	7	5
6	Warranty	-	6	5	2	2	6
7	Service Levels	▲	11	10	13	-	-
8	Payment	▲	9	4	6	4	11
9	Delivery / Acceptance	▼	8	9	8	12	13
10	Confidential Information / Data Protection	▼	7	8	10	14	15
11	Liquidated Damages	▼	10	12	9	13	19
12	Insurance	-	12	15	11		
13	Applicable law / Jurisdiction	▲	14	14	12		
14	Invoices / Late Payment	▲	19	-	-		
15	Performance Bonds / Guarantees / Undertakings	▼	13	13	23		
16	Dispute Resolution	▲	17	-	-		
17	Audits / Benchmarking	▲	18	17	18		
18	Rights of Use	▼	15	-	16		
19	Assignment / Transfer	▼	16	16	17		
20	Most Favored Client	-	20	18	-		
21	Freight / Shipping	-	21	22	19		
22	Force Majeure	▲	27	20	24		
23	Entirety of Agreement	-	23	21			
24	Business Continuity / Disaster Recovery	▼	22	19			
25	Security	▼	24	24			
26	Enterprise Definition / Future Acquisitions / Divestiture	▼	25	11			
27	Non-Solicitation of Employees	▼	26	-			
28	Export / Import Regulations	-	28	23			
29	Product Substitution	-	29	25			
30	Escrow	-	30	-			

## Comparison: Buyer's vs. Seller's

Buyer's Terms	
1	Indemnification
2	Limitation of Liability
3	Price / Charge / Price Changes
4	Termination (cause / convenience)
5	Service Levels
6	Intellectual Property
7	Payment
8	Warranty
9	Confidential Information / Data Protection
10	Delivery / Acceptance
11	Insurance
12	Applicable law / Jurisdiction
13	Liquidated Damages
14	Dispute Resolution
15	Invoices / Late Payment
16	Assignment / Transfer
17	Audits / Benchmarking
18	Rights of Use
19	Performance Bonds / Guarantees / Undertakings
20	Freight Shipping
21	Force Majeure
22	Entirety of Agreement
23	Business Continuity / Disaster Recovery
24	Most Favored Client
25	Security
26	Enterprise Definition / Future Acquisitions / Divestiture
27	Non-Solicitation of Employees
28	Product Substitution
29	Export / Import Regulations
30	Escrow

Seller's Terms	
1	Limitation of Liability
2	Indemnification
3	Intellectual Property
4	Price / Charge / Price Changes
5	Warranty
6	Termination (cause / convenience)
7	Delivery / Acceptance
8	Payment
9	Service Levels
10	Confidential Information / Data Protection
11	Liquidated Damages
12	Applicable law / Jurisdiction
13	Insurance
14	Performance Bonds / Guarantees / Undertakings
15	Audits / Benchmarking
16	Invoices / Late Payment
17	Rights of Use
18	Dispute Resolution
19	Assignment / Transfer
20	Most Favored Client
21	Business Continuity / Disaster Recovery
22	Force Majeure
23	Entirety of Agreement
24	Enterprise Definition / Future Acquisitions / Divestiture
25	Security
26	Freight / Shipping
27	Export / Import Regulations
28	Non-Solicitation of Employees
29	Product Substitution
30	Escrow

## Contract Negotiation Process

Plan the Negotiation	Conduct the Negotiation	Document the Negotiation and Form the Contract
<ol style="list-style-type: none"> <li>1. Prepare yourself and your team</li> <li>2. Know the other party</li> <li>3. Know the big picture</li> <li>4. Identify objectives</li> <li>5. Prioritize objectives</li> <li>6. Create options</li> <li>7. Select fair standards</li> <li>8. Examine alternatives</li> <li>9. Select your strategy, tactics, and countertactics</li> <li>10. Develop a solid and approved team negotiation plan</li> </ol>	<ol style="list-style-type: none"> <li>11. Determine who has authority</li> <li>12. Prepare the facility</li> <li>13. Use an agenda</li> <li>14. Introduce the team</li> <li>15. Set the right tone</li> <li>16. Exchange information</li> <li>17. Focus on objectives</li> <li>18. Use strategy, tactics, and countertactics</li> <li>19. Make counteroffers</li> <li>20. Document the agreement or know when to walk away</li> </ol>	<ol style="list-style-type: none"> <li>21. Prepare the negotiation memorandum</li> <li>22. Send the memorandum to the other party</li> <li>23. Offer to write the contract</li> <li>24. Prepare the contract</li> <li>25. Prepare negotiation results summary</li> <li>26. Obtain required reviews and approvals</li> <li>27. Send the contracts to the other party for signature</li> <li>28. Provide copies of the contract to affected organizations</li> <li>29. Document lessons learned</li> <li>30. Prepare the contract administration plan</li> </ol>

## Contract Negotiation Strategies

<b>Checklist</b> <b>10 Contract Negotiation Successful Strategies</b>
<input type="checkbox"/> Plan the contract negotiation
<input type="checkbox"/> Adopt a win/win approach
<input type="checkbox"/> Maintain high aspirations
<input type="checkbox"/> Use language that is simple and accessible
<input type="checkbox"/> Ask lots of questions, then listen with your eyes and ears
<input type="checkbox"/> Build solid business relationships
<input type="checkbox"/> Maintain personal integrity
<input type="checkbox"/> Conserve concessions
<input type="checkbox"/> Make patience an obsession
<input type="checkbox"/> Be culturally literate and adapt contract negotiating strategies to the host country environment

Adapted from: How to Negotiate Anything with Anyone Anywhere Around the World, by Frank L. Acuff, 1997

## Sample Negotiation Planning Summary

1. Price	<div style="text-align: center;"> <p>Worst Case <span style="float: right;">Best Case</span></p> <p style="margin-top: 10px;">\$10.5M <span style="margin-left: 200px;">\$12.0M</span> <span style="margin-left: 100px;">\$12.5M</span></p> </div>
2. Payments	<div style="text-align: center;"> <p>Worst Case <span style="float: right;">Best Case</span></p> <p style="margin-top: 10px;">After Delivery <span style="margin-left: 100px;">Progress payments</span> <span style="margin-left: 100px;">Advance payments</span></p> </div>
3. Warranty period	<div style="text-align: center;"> <p>Worst Case <span style="float: right;">Best Case</span></p> <p style="margin-top: 10px;">36 months <span style="margin-left: 150px;">18 months</span> <span style="margin-left: 50px;">12 months</span></p> <p style="margin-top: 10px;">Industry average</p> </div>
4.	<div style="text-align: center;"> <p>Worst Case <span style="float: right;">Best Case</span></p> </div>

## **“How Baseball is a Big Player in (Most) Negotiations Or How ‘Baseball Arbitration’ is a Valuable Tool for Contract Professionals”**

### **How can you close the deal with “critical” Sole Source Suppliers?**

Can you negotiate with sole source suppliers?

*Should* Sellers issue/accept letter contracts/subcontracts for production items when the price is open?

### **Discussion of various ADR Methods—The Spectrum of ADR Methods...**

#### Negotiation

Integrative or Distributive Negotiation Method

What is Win-Win Negotiations?

#### Mediation

What is Mediation?

When should Mediation be used as an ADR method?

#### Arbitration

What is binding and non-binding Arbitration?

What is **Baseball Arbitration** OR How do you have the parties “dance-the-negotiation-dance” and get through Impasse?

### **"Baseball Arbitration"--**

"The parties shall exchange with each other and submit to the Arbitrator their last best offer(s) to the other. The Arbitrator shall select one or the other of such two offers and shall award such selection."

### ***WHY DOES IT WORK? THE POWER OF “BATNA!”***

### **Open Pricing Issues--**

How do you arrive at "fair and reasonable prices" for commercial items with Sole Source Suppliers? Power to obtain (prior/current) product and pricing information.

How do you arrive at "fair and reasonable prices" for production items where you have to use letter contract/subcontract to achieve schedule because price was not finalized?

### **Other Contract Formation and Performance Issues--**

"Precontract/Purchase Order/Letter Contract" Issues?

Negotiating prices for changes to Commercial Item contracts?

Utilized to assist in finalizing open items?

Strategic Alliance Agreements?

Letters of Credit Payment/Performance Issues in International/Commercial Contracting?

Acceptance Criteria Achieved?

**Charles E. Rumbaugh, JD, CPCM, Fellow**



Charles E. Rumbaugh is an attorney practicing in commercial/international/government contract law with an emphasis in the private dispute/negotiation related arena as an educator/trainer, professional speaker, arbitrator/mediator, private judge, and ADR Consultant. He is a frequent writer/publisher and speaker on substantive topics including Business/International Trade, Government contracting/acquisition, advanced/basic Negotiation, Mediation, and Arbitration skills training seminars/workshops in Latin America, Canada, Far East, and throughout the United States. He has published/ the widely recognized “Contractual/Regulatory Update” and “ADR Tips” for over 10 years.

Previously, Mr. Rumbaugh was Corporate Director of Contracts & Pricing for Lear Astronics Corporation where he had corporate responsibility for the contracts, pricing, and business management functions. Earlier he was Assistant to Corporate Vice President, Contracts policy and legal counsel at a major business unit for Hughes Aircraft Company (Hughes Electronics). Before joining Hughes he was Corporations Counsel for the California Department of Corporations.

Mr. Rumbaugh received his Bachelor of Science degree in engineering from UCLA and was employed as an engineer with Westinghouse Electric Corporation prior to attending California Western School of Law where he received a Juris Doctor degree. He also has an ADR Mediation Certificate from Harvard University, Pepperdine University and Center for Conflict Resolution, and an Advanced Management Program Certificate from the USC Graduate School of Business.

He has been adjunct professor/lecturer at several universities for their commercial/business, contract & procurement, international law and ADR/Negotiation programs including the Naval Postgraduate School and an advisor to the California State University Contracts and Supply Management Certification Program. He is currently on Advisory Boards to the McGraw-Hill Contemporary Learning Series and Editorial Board of the Franchising Business & Law Alert. Charles was also elected a Senior Member of the Institute of Electrical and Electronic Engineers.

His current/past membership on arbitration and mediation panels includes the Large, Complex Case Panel of the American Arbitration Association as well as the following:

- Center for Conflict Resolution panel of Arbitrators/Mediators
- State of California Department of Insurance Qualified Mediator
- State of California Public Works Contract Arbitrator
- EEOC Qualified Mediator
- Los Angeles Superior Court Judge Pro Tem
- Former Federal Administrative Law Judge, EEOC
- Numerous Federal/State Courts and Administrative Boards and Arbitrator/Mediator panels

Charles Rumbaugh is an active member of NCMA, past co-chair of its ADR committee, CPCM, Fellow, member of the NCMA Executive Advisory Council (Board of Advisors), and former member of the Editorial Board for the NCMA Journal. He also is immediate past Chair of the Federal Acquisition & Subcontract Management Group of the Institute for Supply Management. Mr. Rumbaugh is an active member of the American Bar Association (ABA) including past Chair to several committees including the Arbitration Committee of the ABA Litigation Section. He was also Chair of the California State Bar ADR Committee of its Litigation Section. He is also a member of the Procurement Committee of National Defense Industrial Association and has represented it on joint industry/Air Force ADR IPTs.

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