



# WORLD CLASS CONTRACTING

5th Edition

Garrett A. Gantt  
MANAGING



WILEY

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5th Edition

Gregory A. Garrett



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## PREFACE

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Today, what every company wants in both the public and private business sectors is a fast, effective, and seamless integration between itself, each customer, and its supply partners using the power of the Internet. Building successful business partnerships via outsourcing is a must for survival!

Buyers worldwide are becoming more informed and demanding as they require sellers to assume greater business risks to win the buyer's valued business; mergers, acquisitions, and longstanding partnerships of former competitors are increasing; and the integration of products, services, and solutions is growing at an exponential rate in business transactions. Thus, contracts are becoming more complicated to plan, negotiate, create, and administer.

Make no mistake – outsourcing is here to stay! Globally, companies and government organizations have increased their contracting for goods and services with the specific intent of focusing more on their core business and allowing suppliers or sellers to do the “other work.” Competition is growing, speed to market is critical, and costs must be reduced, but only those with a solid understanding of contract management will achieve ultimate success.

There is power in contract management – today and tomorrow. All business professionals, especially executives, must realize the power of the expectations that have been created by their organizations' contract management actions. The business deals an organization made several years ago and how it manages the resulting contracts and projects dramatically affect its success and reputation today. Likewise, the contracts an organization negotiates today and performs tomorrow will significantly affect its profitability and reputation in the marketplace of the future. Professional contract management is vital to ensure that both buyers and sellers perform as expected and get what they have mutually agreed to in their contracts.

## DEDICATION

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To my wife Carolyn, sons Christopher and Scott, and daughter Jennifer for their love and support.

To my parents for their love and confidence in my success.

# ACKNOWLEDGMENTS

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Creation of this fifth edition of World-Class Contracting is at the request of numerous colleges and universities worldwide who have selected this book for their undergraduate and graduate business programs.

I would especially like to thank the following individuals for their support in making this 5<sup>th</sup> edition possible.

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Barbara Barnes

In Memory of my long-time friend and mentor Mr. W. Gregor Macfarlan, Gentleman, Scholar, and Educator a true giant in the field of contract management.

## ABOUT THE AUTHOR

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Gregory A. Garrett is the Managing Director and leader of the Government Contractor Services practice of Navigant Consulting, Inc. He is a best-selling and award-winning, author, dynamic speaker, and industry leader who has provided services to world-class corporations and government organizations on six continents in more than 40 countries. He has successfully led more than \$30 Billion of complex high technology contracts and projects worldwide. Formerly, he has served as the Chief Operating Officer of Acquisition Solutions Inc., and the Chief Compliance Officer, U.S. Federal Government Programs, Lucent Technologies, Inc. He also is President and Chief Executive Officer, Garrett Consulting Services.

Mr. Garrett previously served as Executive Director of Global Business for ESI International. He has led numerous global teams of business professionals in planning, developing, and implementing a wide range of high technology products, services, and customized solutions for multinational organizations, including: ABB, AT&T, BellSouth, Inter-American Development Bank, IBM Corporation, Lucent Technologies, Inc., Motorola, Inc., NCR Corporation, Nippon Telephone and Telegraph, Panama Canal Commission, TASC, Inc., the United Nations, U.S. Department of Defense, and the U.S. Trade and Development Agency.

Mr. Garrett has served as a Lecturer for The George Washington University Law School and the School of Business and Public Management. Previously, he served as a highly decorated military officer in the United States Air Force, where he led the contract management of more than \$15 billion in high technology satellite communication, advanced aircraft, and electronic programs. He has personally taught or consulted with more than 25,000 business professionals in both public and private business.

Mr. Garrett is a Certified Professional Contracts Manager, a fellow and a member of the Executive Advisory Council of the National Contract Management Association. He has received four national awards from NCMA: the National Achievement Award, the Charles J. Delaney Memorial Award for the most outstanding article in the Contract Management Magazine, the Blanche Witte Memorial Award for outstanding service to the contracting profession and the National Education Award for work in contract management

education. He is a Certified Project Management Professional, of the Project Management Institute and he has earned two international business awards from PMI: The Eric Jenett Project Management Excellence Award and the David I. Cleland Project Management Literature Award. He has authored 19 books and more than 100 published articles on a wide range of business topics including: capture management, contract management, cost estimating, contract pricing, contract negotiations, managing subcontracts, government contract cost accounting, contract administration, project management, and leadership topics.



# INTRODUCTION

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## **WHY THIS BOOK IS FOR YOU**

This book goes beyond the hype to the business partnerships, people, processes, tools, and best practices needed to be successful.

## **BEST PRACTICES OF WINNING COMPANIES**

Winning companies, like ABB, Exxon-Mobile, Home Depot, IBM, Lockheed-Martin, Microsoft, Hewlett-Packard, and Wal-Mart, just to mention a few of those cited by the *World Trade Magazine* as among the top 100 best companies, all realize the strategic value of building successful partnerships.

While all companies experience periods of highs, lows, and transitions in their respective performance and in stock prices, truly successful companies build lasting partnerships that sustain and provide long-term value to all partners, employees, and shareholders. This book contains more than 100 best practices of winning companies.

## **HOW THE BOOK IS ORGANIZED**

*World-Class Contracting* is organized in a simple, easy-to-follow format, focusing on business partnerships, people, processes, tools, and best practices. Chapters 1 and 2 discuss what actions winning companies are taking to build successful partnerships, manage expectations, and build trust between organizations. Chapters 3 through 6 describe the contract management process, roles and responsibilities of team members, contracts and legal issues, e-procurement, and a variety of contracting methods. Chapters 7 through 10 discuss in detail the three phases of the contract management process and contract pricing arrangements. Chapters 11 and 12 provide a discussion of common contracting misconceptions, key best practices of contract management, and the value of the program management discipline to deliver the results agreed to in the contract. Chapters 13 and 14 provide two very unique tools to help organizations improve their buying and/or selling performance, namely the Contract Management Maturity Model

and the Contract Management Risk and Opportunity Assessment Tool. Chapter 15 provides a valuable discussion of the need for enterprise contract management process and a fair, balanced, and independent review of six of the leading contract management software systems/tools/applications and how they can help you improve performance. Chapters 16 and 17 focus on U.S. federal government contracts, namely how to build contractor teaming arrangements in the federal marketplace and how to successfully manage government subcontracts.

A special feature is the discussion of more than 100 best practices from leading global companies involved in contracting for a wide range of goods and services. The best practices are discussed in each phase of the contract management process. Additional features include:

- More than 25 sample forms that can be used in everyday contract management situations (Appendix A)
- United Nations Convention on Contracts for the International Sale of Goods (Appendix B)
- The Uniform Commercial Code
- Glossary of contract management terminology
- Extensive bibliography of resource materials

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# CHAPTER



# BUILDING SUCCESSFUL PARTNERSHIPS IN THE E-BUSINESS AGE

Today, the goals of most winning companies include, but are not limited to, the following: exceeding customer expectations, capturing ever-increasing global market share, beating the competition to the market, reducing cost of revenue, reducing business risks, and securing long-term mutually profitable partnerships. While all of these goals are important, securing long-term mutually profitable (buyer-seller) partnerships is clearly the most important strategic goal.

So, how do winning companies build successful partnerships in the e-business age?

Winning companies are taking four common actions to build successful partnerships:

- Unleashing corporate buying and selling power
- Changing buying and selling processes
- Developing an integrated supply chain
- Learning and applying the best practices and e-tools from industry leaders

## **UNLEASHING CORPORATE BUYING AND SELLING POWER**

Never before has anyone seen anything like this. What is occurring is a rapid revolution of how companies buy and sell products, services, and solutions. Nearly everything is or can be done electronically via intranets, local area networks, wide area networks, extranets, or the Internet.

Incredibly, large amounts of data can be sent at the speed of light nearly anywhere in the world via broadband networks, composed of state-of-the-art fiber optic and/or wireless technology.

The communication technologies revolution has fueled the e-business age and the explosive growth of the e-procurement market. The older generation of client/server procurement systems, designed to help individual organizations purchase off-the-shelf goods and services more effectively from many suppliers, has all but been replaced by rapid migration to Web-based solutions and Internet marketplaces. The new Internet marketplaces quickly bring many buyers together with many sellers to help all parties get the best deal in the shortest amount of time.

Speed is the mantra of the e-business or digital age. The need for speed is driving e-procurement to become a much larger and more diversified pursuit, going well beyond self-service purchasing from electronic catalogs of off-the-shelf products to procurement of integrated complex products, services, and solutions.

Business Web sites that contain dynamic pricing features—such as e-auctions and reverse auctions, where the price goes down as the bidding progresses—are becoming very popular. In some markets, the e-auction's price competition is supported by companies offering a wide variety of professional services to assist with providing or sourcing related goods and services.

As communication technologies continue to allow more data to be transmitted faster, and in a more secure manner, e-procurement grows. Likewise, the e-procurement business environment requires a smaller but more skilled procurement workforce.

Most companies that extensively use e-procurement have been able to reduce both their acquisition cycle time and their personnel expenses, because fewer sales managers, contract managers, lawyers, and purchasing agents are required. As a result of the e-procurement revolution, the roles of sales managers, buyers, contract managers, or purchasing agents have all evolved to require more broadly skilled business managers.

The evolution of the role of the buying and selling professional in today's e-business age is helping to unleash tremendous corporate buying and selling power, which is contributing to the continued growth of our global economy. The new breed of buying and selling business professionals is developing highly innovative ways for companies to form business relationships and outsource both goods and services on a massive scale. These include strategic sourcing agreements, back-sourcing arrangements, joint-equity partnerships, preferred supplier agreements, and most favored customer agreements, just to mention a few.

Clearly, the new communication technologies have unleashed tremendous corporate buying and selling power of both people and information systems. However, the full potential of buying and selling power can only be realized if we change the underlying processes that control or limit results.

## CHANGING BUYING AND SELLING PROCESSES

Winning companies are all focused on speed to market, cost reduction, and customer satisfaction—whether buying or selling goods, services, and solutions. Today, many leading companies are changing their selling processes and tools, including the following actions:

- Expanding self-service sales via Web-based sales catalogs of products and related services available to buyers
- Creating customized electronic interfaces between themselves and their strategic customers to facilitate rapid order receipt and order processing. Typically, sellers provide their most favored customers/buyers with preferred pricing/large discounts.
- Offering multinational companies global pricing policies for products and services with economic-related adjustments, i.e., variations due to labor rates in specific countries or regions, inflation/deflation, value-added taxes, etc.
- Developing standard statements of work (SOW), Performance Work Statements (PWS), acceptance criteria, and standards intervals for consistent on-time delivery worldwide
- Understanding the buyer's business needs and budget in order to develop customized solutions priced to fit the buyer's desired business case
- Providing financing to buyers to help them purchase products when required
- Offering extended payment terms to customers, well beyond the usual net-15 days or net-30 days to net-90 days or net-180 days
- Developing Web portals to facilitate rapid and direct communications between sellers and their strategic partners
- Providing countertrade, offsets, or counterpurchases in order to secure large purchases

These actions are just a few of the many innovative process changes, tools, or unique business arrangements that sellers are using to build successful partnerships with their best buyers and to improve their quote-to-cash process.

Likewise, many winning companies are changing their procurement processes and tools to take maximum advantage of the marketplace. The following diagram illustrates the typical request-to-



remit process used by many companies today. The request-to-remit process contains four key elements, each of which provides opportunities to reduce the cost of the products or services purchased and the cost associated with the purchasing process itself.

Form 1-1 Typical Purchasing Process	
Request	
Requirement	
Buy	
Supply	
Remit	

More and more companies are expanding their use of e-procurement to reduce their purchasing lead-time and purchasing process costs. However, e-procurement applications cannot produce maximum results unless companies also change their procurement processes as shown below.

Table 1-1 Maximizing e-Procurement Success		
	Procurement Today: Managed per Transaction	e-Procurement: Managed by Exception
Online product selection	Search large catalogs	Personalized views; named shopping carts
Requisition approval	One to 12 levels of manual approval	Transactions automatically approved based on rules
P.O. transmission	Fax, e-mail, EDI direct to supplier; supplier retypes the order	Order is sent through a supplier clearinghouse
Payment authorization	Dependent on three-way match of P.O. with invoice and receipts	Immediate; based on shipment notice
Analysis	Sporadic; not linked to supplier performance	Continuous; integrated in real time; drives optimization of process

In addition to changing their internal purchasing processes and tools, many winning companies are choosing to outsource some or nearly all of their procurement function to companies that specialize in providing professional procurement services using an integrated supply chain.