



## Attitudes to Contracting

### Executive Summary

An increasing number of executives are questioning the purpose of contracts and to what extent a good contracting process contributes to business results and outcomes. This report offers valuable insights, for example, according to the experts surveyed for this report, weaknesses in contract terms and negotiation have a major impact:

63% report that they are frequently a cause of cost overruns

59% report that they are frequently a cause of project delay

28% report that they are frequently a cause of reduced future business opportunities

So what should you be doing differently? This '**Attitudes to Contracting**' study provides a useful contribution in answering this question, as well as indicating what purpose contracts should be serving.

- It confirms that the quality of contracting – both process and document – has a material impact on project outcomes.
- It highlights the practices today that frequently contribute to avoidable project failures and under-performance.
- It offers insight to the areas and approaches that, if improved, would generate better business results.

The study is unusual in that it combines views from a variety of functions, industries and geographies, offering perhaps the most objective view of the role of contracting yet undertaken.

There are clear messages for industry and public sector bodies, especially with regard to project contracting.

- 1) Failure to establish and / or communicate clear objectives is a major issue in subsequent contract negotiation and contract management.
- 2) This issue, together with late engagement of commercial resources or the imposition of industry standards, frequently contributes to use of risk-averse contract terms that distract from establishing key performance criteria and processes.
- 3) Problems with defining project scope cause subsequent disputes and disagreements over change management, charges and payment.
- 4) The use of traditional, legally-driven forms and documents renders most contracts of little practical use to delivery teams and project managers, thereby undermining their primary value as instruments of communication and understanding.
- 5) Few organizations appear to make effective use of past contracts as a source of learning. Procurement contracting is especially weak in this regard.
- 6) Only 16% of respondents feel that their contracting process 'always' achieves a positive impact on the relationship between the parties – suggesting there is major opportunity for improvement.

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## Summary: Attitudes to Contracting

Respondents to this survey were asked a series of questions on the role of contracts in delivering projects. The questions sought to better understand the significance of contracts to project outcomes and in particular those aspects of contracting that have greatest influence. For example, it covered ways in which contracts underpin constructive working relationships, the main constraints in negotiating successful contracts, the primary contribution to achieving business benefits, use of contracts to encourage ways of working, common causes of contract disputes, and the consequence of weaknesses in contracting (terms, negotiation, application and management).

The results highlighted the importance of ensuring mutual understanding and establishing mutually agreed performance measures. While respondents indicate that good contracting *should* generate these attributes, in reality the process frequently does not. This confirms other research by IACCM, which suggests that many standard agreements or negotiations divert attention from these key issues to focus instead on 'negative' areas of risk allocation.

Based on the experience of respondents, 'Clear mutually understood objectives' and 'enshrined performance measures' were considered among the most important ways in which contracting can underpin constructive working relationships. The most frequently experienced business benefit from contracts was that they 'result in a realistic understanding for all parties of what is desired', emphasising the value that a disciplined approach and structured documentation can bring to the project – or the potential handicap if these areas of mutual understanding are missing.

Appropriate risk allocation is another important issue. It had the second highest proportion of respondents considering it 'important', and 'seeking of inappropriate risk transfer' was the second most frequent 'main constraint' to good outcomes. Clearly many projects suffer from the attempts of one or both parties to battle over where risk sits – and in so doing, they substantially increase the risk of bad things happening.

Another problematic element of contracting was around the 'scope' of projects. This is clearly tied to the wider area 'mutually understood objectives', mentioned above. But even when objectives are clear – for example to the project sponsors – this does not automatically translate to adequate definition or allocation of scope. This means that scope uncertainty turns out to be the most common constraint to performance, and scope or goal change was the most common source of dispute.

## Detailed Findings

- Contract negotiation can be used to underpin constructive working relationships. All of the potential ways that respondents were asked to rate were considered ‘important’ by the majority of respondents.
- The vast majority of respondents (99%) considered ‘defining clear mutually understood objectives’ to be an important way contracts underpin constructive working relationships.
- ‘Appropriate risk allocation based on common understanding of risks/opportunities’ and ‘enshrining common performance measurement’ were also considered important to constructive working relationships by a large majority of respondents (95% and 88% respectively)
- Contracting contributes to achieving business benefits. For each of the three benefits in question (‘It results in a realistic understanding for all parties of what is desired’ ‘It results in the selection of the right supplier’ ‘The contract and its negotiation contribute positively to the relationship between the parties’), a majority of respondents reported contracts frequently (i.e. often or always) contributed to the achievement of the business benefit. ‘It results in a realistic understanding for all parties of what is desired’ was the benefit most commonly experienced by respondents (75%; 51% often and 24% always)
- Contracting and negotiation can also undermine efforts to generate successful results. Although only a minority of respondents report this occurring frequently (22%; 18% often and 4% always), the majority (60%) reported this occurring occasionally. Again, this supports IACCM research suggesting that around 30 – 35% of all contracts under-perform.
- Contracts are regularly used to encourage various desired behaviours/arrangements. The most frequently encouraged behaviours/arrangements were around ‘performance measures’, ‘communication’, ‘joint working’ and ‘mutual objectives’. Less frequently, contracts are used to encourage attitudes such as ‘trust’ and ‘no blame culture’.
- The biggest constraint to negotiating successful contracts is ‘scope uncertainty’, which the majority of respondents (61%) identified as a main constraint to successful results, followed by ‘seeking inappropriate risk transfer’.
- Changes to projects such as ‘scope or goal change’ and ‘price changes’ were amongst the most frequent causes of disputes, along with disagreements over the ‘responsibilities of the parties’. Problems around unsatisfactory performance, such as service levels and warranties, are less frequent sources of dispute, though they do of course generate claims and may create an environment in which an eventual dispute is more likely.
- Cost overruns and project delays are frequently (i.e. often or always) experienced as a result of weaknesses in the contract terms and negotiations (cost overruns 63%; 51% often and 12% always)
- Even though a majority of respondents (72%) report that their organisation has a mechanism in place to learn from approaches to contracting and working relationships that have contributed to successful outcomes or failures, only 29% believe it works well.

## Public versus Private Sector Variations

Only a small number of questions showed significant differences between sectors:

- (Q8) A smaller proportion of those in the public sector considered ‘Seeking inappropriate risk transfer’ (public sector 28%, sample average 38%) and ‘Failure to consider commercial issues early enough’ (public sector 28% sample average 35%) to be a main constraint to negotiating successful contracts. This is interesting, in that many in the private sector would point to these issues being endemic problems in their dealings with the public sector.
- (Q8) A larger proportion of respondents employed in the public sector consider ‘Lack of commercial awareness, skills and/or staff continuity in Buyer / Client’ as a main constraint (public sector 38% sample average 33%)
- (Q10) A smaller proportion of those in the public sector had experienced ‘losses from claims/disputes/liquidated damages’ compared to the sample average (19% in public sector compared to 28% sample average)
- (Q12) A smaller proportion of those in the public sector had experienced ‘invoice/late payments’ as a frequent source of disputes (public sector 17% compared to sample average 36%)

## Regional Variations

Seven questions showed significant differences between regions.

- (Q6) Respondents based in North America were less likely to have a mechanism in place to learn from past success/failures in contracting, 40% answered 'No' compared to the sample average of 29%
- (Q6) Asia and North America were more likely to consider 'failure to adopt a whole team approach' as a main constraint to successful contract negotiations (Asia 42%, North America 45% and sample average 36%)
- (Q9) Respondents based in Asia were more likely to have experienced contracts having either extreme positive or negative effect – either contributing to business benefits, or undermining successful results.
- (Q10) Respondents in North America were less likely to attribute adverse outcomes to weaknesses in contract terms and negotiation, with the exception of 'early termination of contract' and 'Litigation, arbitration, mediation or another third party dispute resolution option'.
- (Q11) Respondents based in Asia were more likely to have experienced contracts that encourage desired behaviours/arrangements, including 'trust' and 'no blame culture', which were relatively rarely experienced elsewhere.
- (Q12) Respondents based in Asia were also more likely to have frequently experienced all of various sources of disputes compared to the sample average.

## Variations of view based on job role

Comparing responses between job roles identified significant differences for several questions:

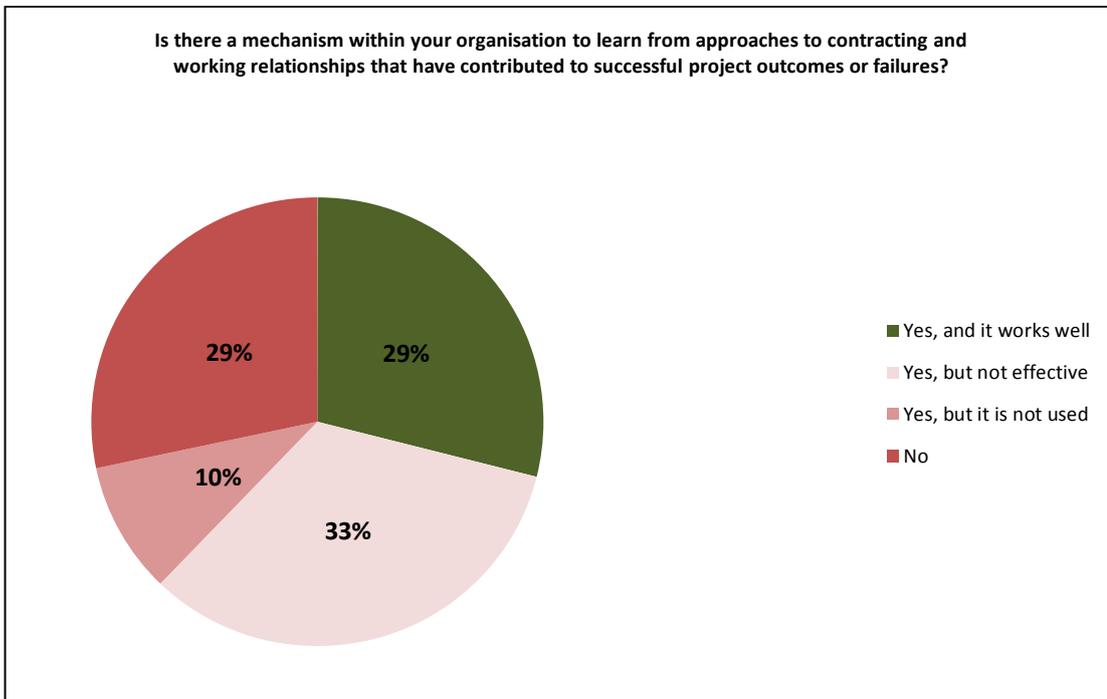
- (Q6) The proportion of respondents that reported that their organisation did not have a mechanism in place to learn from past contract success /failures varied by role. A higher proportion of those working in procurement reported 'No' (40%) than the sample average (29%). This probably reflects the fact that procurement often has limited role or visibility in post-award performance.
- (Q8) The proportion of respondents selecting 'Failure to consider commercial issues early enough' as a 'main constraint' varied according to role. A higher proportion of those working in contract/commercial management selected this as a constraint compared to the sample average (44% compared to 36%), while a lower than average proportion of those working in delivery of services (23%) reported this as a 'main constraint'. This is not a surprising result, in that contract / commercial staff are very aware of the impact of the timing of their involvement, whereas delivery teams are accustomed to later engagement.
- (Q8) The proportion of respondents selecting 'scope uncertainty' as a 'main constraint' to successful contract negotiations varied by role. A higher than average proportion of those working in project management selected 'scope uncertainty' as a 'main constraint' (73% compared to sample average of 63%). Again, the project management community are those who will be first to encounter problems in this area.
- (Q9) The business benefits of improved understanding, better results and better supplier selection were more likely to have been experienced by those working in contract/commercial management than the sample average, and less likely to have been experienced by those working in delivery of service. This may reflect the fact that many in service delivery make limited use of the contract and see it primarily as a legal instrument, not an operational tool.
- (Q11) The same differences occur when comparing the behaviours/arrangements encouraged by contracting. 'Trust', 'No-blame culture', 'Joint working', 'Communication', 'Problem solving', 'Dispute resolution in a non-confrontational manner' and 'continuous improvement' were more likely to have been encouraged in the experience of those working in contract/commercial management compared to the sample as a whole, and less likely to have been encouraged in the experience of those working in delivery of service. It seems likely that this is once more due to the lack of engagement by delivery staff in the contracting process and the fact that even if such provisions are included in the agreement, they may not be communicated effectively to the delivery team.

- (Q12) Disputes around scope or goal change are more likely to have been experienced by those working in project management compared to the sample average (83% compared to 77%). Disputes around performance guarantees and service levels and warranties are more likely to be experienced by those working in procurement compared to the sample average (Performance guarantees 44% of those in procurement compared to 32% sample average, Service levels and warranties 47% of those in procurement compared to the sample average of 31%).

## Results

### Question 6: Learning from experience

“Is there a mechanism within your organisation to learn from approaches to contracting and working relationships that have contributed to successful project outcomes or failures?”



The majority of respondents confirm that their organisations (**72%**)<sup>1</sup> have a mechanism in place to learn from previous approaches. However, less than a third (**29%**) of respondents thought that their organisation’s mechanism worked well. Approximately a third (**33%**) thought their organisation’s mechanism was not effective, while **10%** of respondents report that their organisation has a mechanism that is not used. Over a quarter (**29%**) of respondents reported that their organisation did not have a mechanism in place at all.

#### Q6 by sector

There were no significant differences between sectors.

#### Q6 by region

There were significant differences between regions in the proportion of respondents that selected ‘no’ and ‘yes but not effective’ options. Respondents based in North America were more likely to not have a mechanism in place (i.e. selected ‘No’).

#### Q6 by role

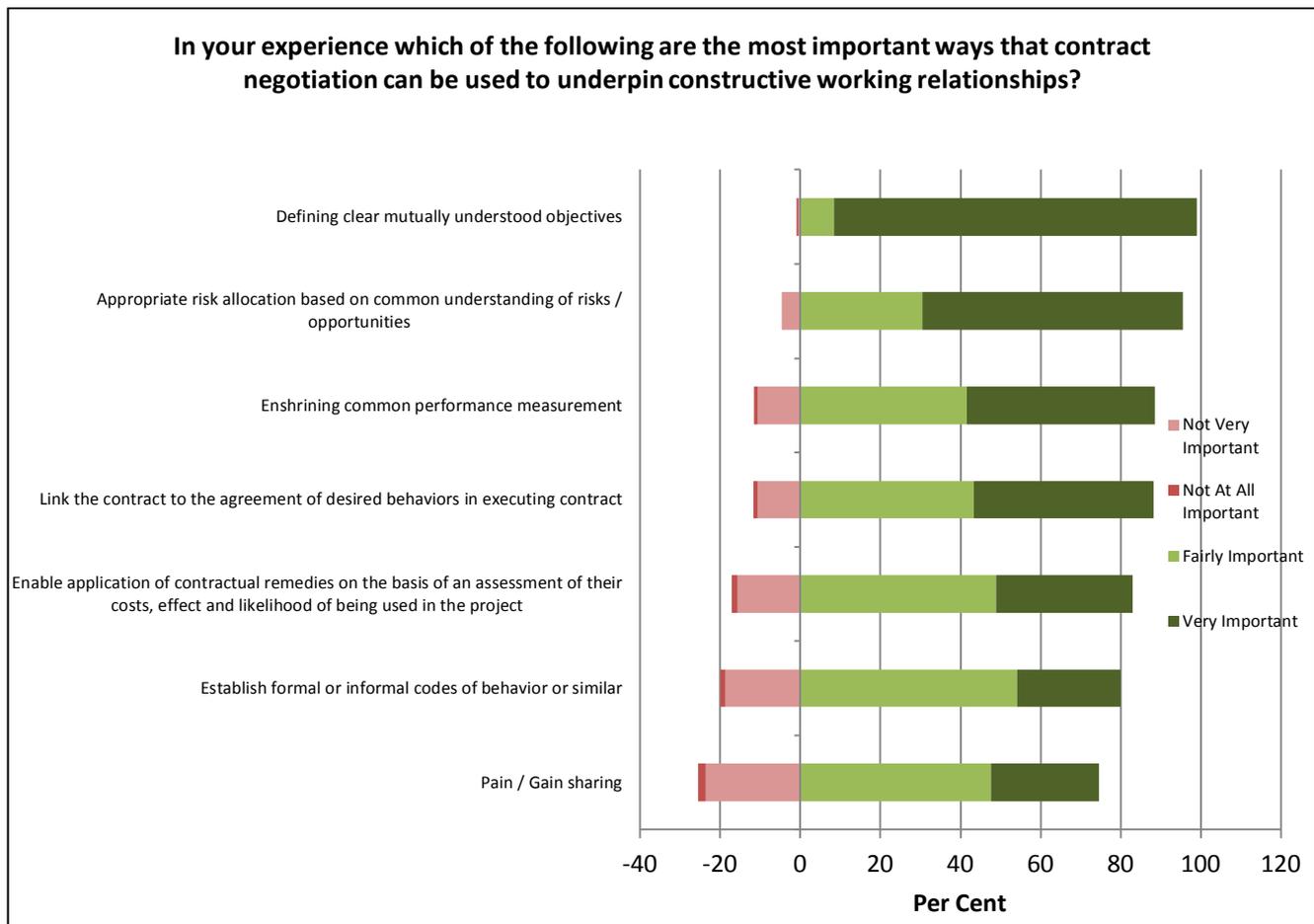
There was a significant difference in the proportion of respondents that selected ‘No’. Those working in procurement were more likely to not have a mechanism in place (i.e. selected ‘No’).

<sup>1</sup> Sum of ‘yes’ categories is 72.1% but as this question allowed multiple responses some respondents will have been double counted. The proportion of respondents who did not select no is 71.5%.

## Question 7 Underpinning constructive working relationships (question 7)

*“In your experience which of the following are the most important ways that contract negotiation can be used to underpin constructive working relationships?”*

- All of the outcomes that respondents were asked to rate were considered important by a majority of respondents.
- The outcome that was considered important by the most respondents was ‘defining clear mutually understood objectives’ which was considered important by 99%, with 91% of respondents considering it ‘very important’ and 8% considering it ‘fairly important’.
- The ‘appropriate risk allocation based on common understanding of risks/opportunity’ was considered the second most important objective, with a large majority (95%) considering it important (65% ‘very important’ and 30% ‘fairly important’).
- The ‘appropriate risk allocation based on common understanding of risks/opportunity’ was considered the second most important objective, with a large majority (95%) considering it important (65% ‘very important’ and 30% ‘fairly important’).
- The outcome that was considered important by the smallest proportion<sup>2</sup> of respondents was ‘pain/gain sharing’ but was still considered important by three quarters of respondents (75%, 27% very important and 48% fairly important’).
- No specific variation by region, sector, role.



<sup>2</sup> Pain gain sharing also low in ‘encourage’ question

## Question 8 Constraints

Respondents were asked to select the main constraints to negotiating successful contracts.

- The only issue that was considered a main constraint by the majority of respondents was ‘scope uncertainty’ - that was selected by 61% of respondents.
- Over a third selected ‘seeking inappropriate risk transfer’ (38%), ‘Failure to adopt a whole team approach to negotiation’ (36%), ‘failure to consider commercial issues early enough’ (35%).
- ‘Lack of Commercial awareness, skills and/or staff continuity’ in the client’s organisation was considered a bigger constraint by buyers than in the contractor’s organisation (33% or respondents compared to 11%).

### Q8 by sector

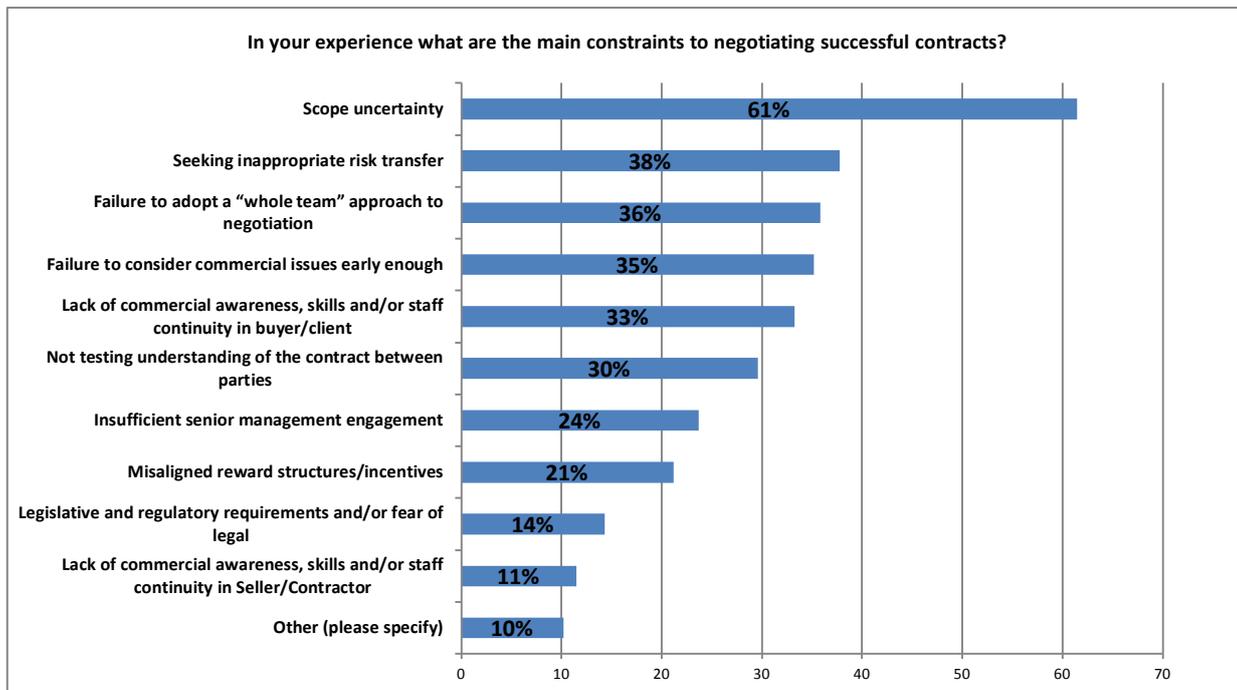
- ‘Seeking inappropriate risk transfer’ & ‘failure to consider commercial issues early enough’ were less likely to have been selected as a ‘main constraint’ by those in the public sector compared to those in the private sector and the sample as a whole.
- But those in the public sector were more likely to have selected ‘lack of commercial awareness, skills and/or staff continuity in buyer/client’ compared to those in the private sector and the sample as whole.

### Q8 by region

- Only one constraint had a significant difference between regions. ‘Failure to adopt a “whole team” approach to negotiation’ was more likely to have been considered a ‘main constraint’ by respondents based in North America and Asia compared to those in Europe or the sample as a whole.

### Q8 by Role

- Two constraints had significant differences between role of respondent. ‘Failure to consider commercial issues early enough’ was considered a ‘main constraint’ by a higher proportion of those in contract/commercial management, and a lower proportion of those in delivery of services compared to the sample as a whole. ‘Scope uncertainty’ was considered a ‘main constraint’ by a higher proportion of those in project management compared to the sample as a whole.



## Question 9: Impact of contracting on delivering project

- A majority of respondents reported that contracting had contributed to benefits frequently (i.e. ‘often’ or ‘always’) for all of the three potential benefits listed below. It was rare for respondents to have ‘never’ experienced contracting contributing to a business benefit (3% of respondents reporting contracting had ‘never’ contributed towards ‘selection of the right supplier’ was the highest instance and therefore perhaps says more about those respondents than about the potential)
- ‘It results in a realistic understanding for all parties of what is desired’ was the most commonly experienced benefit, with three quarters (75%) of respondents reporting contracting frequently contributed to this outcome (51% ‘often’ and 24% ‘always’)
- Almost two thirds of respondents (63%) felt that contracting had contributed positively ‘to the relationship between the parties’ (47% ‘often’ and 16% ‘always’). However, this suggests that there are many occasions when the approach to contracting is having negative impact.
- Almost two thirds (62%) of respondents reported that the contracting process frequently contributed to the selection of the right supplier (54% ‘often’ and 8% ‘always’) – but again implying there are significant opportunities for improvement.
- It was comparatively rare for respondents to report that contracts and their negotiations had frequently ‘undermined efforts to generate successful results’, with just over a fifth (22%) of respondents having experienced this frequently (18% ‘often’ and 4% ‘always’). However the majority of respondents (60%) had experienced this negative experience ‘occasionally’. This finding does not of course include the impacts of weakness in post-award contract management; it considers only the pre-award effect.

### Q9 by Sector

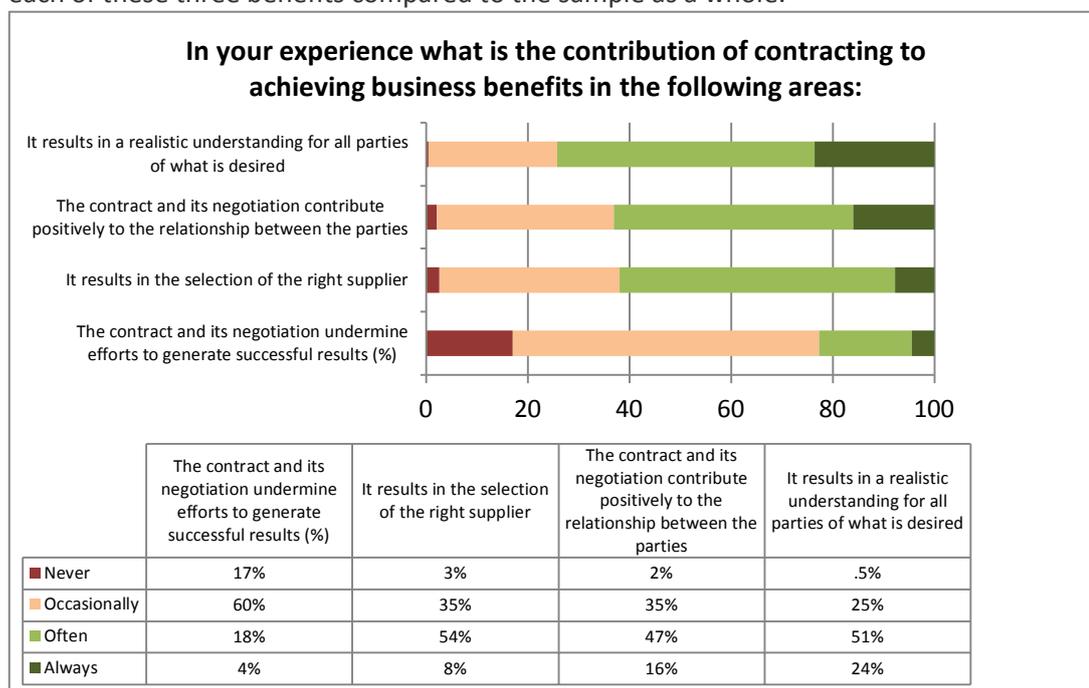
The response was broadly consistent between sectors; the differences were not significant.

### Q9 by Region

The responses varied according to respondent’s region. The differences were significant for each of the three benefits, with respondents based in Asia more likely to report having experienced each of the business benefits compared to the sample as a whole.

### Q9 by Role

The responses varied according to the respondent’s profession. The differences were significant for the three benefits, with respondents working in contract/commercial management more likely to report having experienced each of these three benefits compared to the sample as a whole.

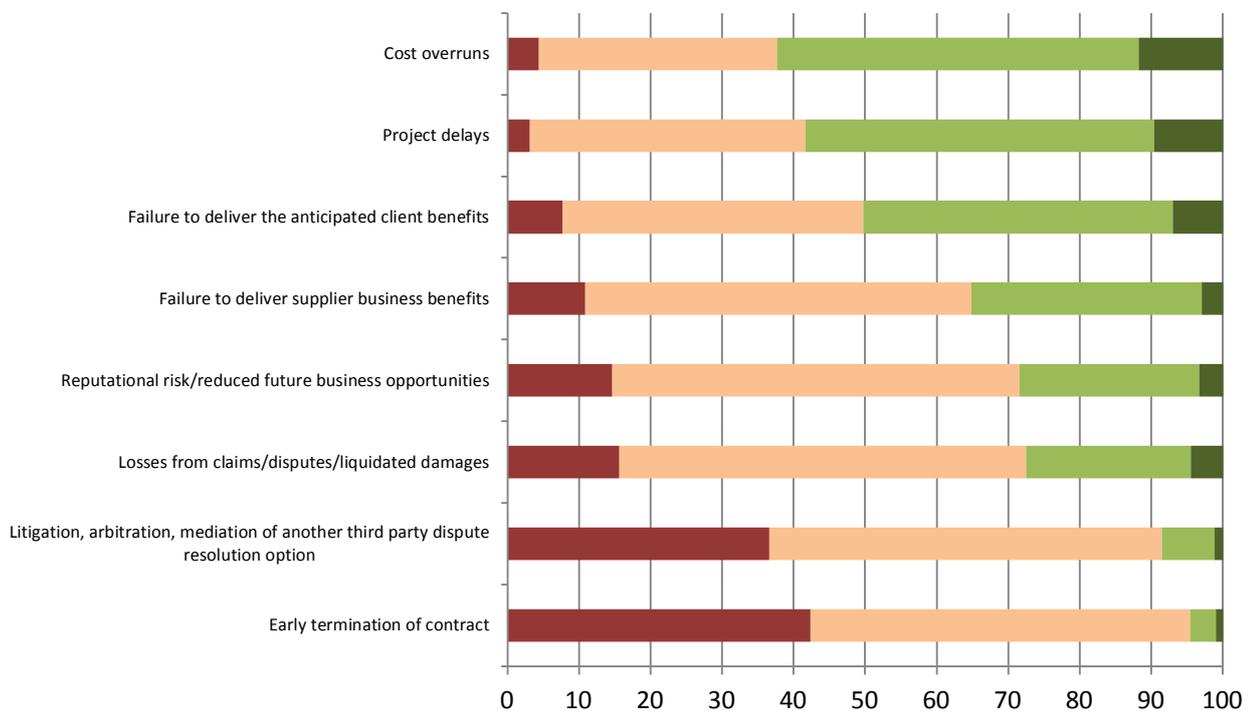


## Question 10: Consequences of weaknesses in contract terms and negotiation

Respondents were asked how often weaknesses in contract terms and negotiation have led to various negative consequences. The most commonly experienced consequences are failure to deliver at agreed cost, on-time, or to achieve anticipated client benefits. Consequences that represent more serious breakdowns between client and supplier were less commonly experienced, but all of the consequences that respondents were asked to consider had been by experienced by the majority at least 'occasionally'.

- Nearly two thirds of respondents (63%) frequently encountered cost overruns as a result of weaknesses in contract terms and negotiation (51% often and 12% always)
- Over half of respondents (59%) frequently encountered project delays as a result of weaknesses in contract terms and negotiation (49% often and 10% always)
- Half of respondents (50%) frequently encountered a failure to deliver client business benefits (43% often and 10% always).
- More serious breakdowns between client and supplier resulting in losses were less commonly experienced. Early termination of a contract had never been experienced by 42% of respondents, and a need for litigation or third party dispute resolution had never been experienced by 37% of respondents.
- It is interesting to note that there is more regular shortfall in achieving expected client benefits (50% often or always) than in achieving supplier benefits (35%).

**Thinking specifically about contract terms and negotiation, in your experience, how often have weaknesses resulted in**



	Early termination of contract	Litigation, arbitration, mediation of another third party dispute resolution option	Losses from claims/disputes/liquidated damages	Reputational risk/reduced future business opportunities	Failure to deliver supplier business benefits	Failure to deliver the anticipated client benefits	Project delays	Cost overruns
■ Never	42%	37%	16%	15%	11%	8%	3%	4%
■ Occasionally	53%	55%	57%	57%	54%	42%	39%	33%
■ Often	4%	7%	23%	25%	32%	43%	49%	51%
■ Always	1%	1%	4%	3%	3%	7%	10%	12%

## **Q10 by Sector**

The only significant difference between sectors was ‘losses from claims/disputes/liquidated damages’ which was less likely to have been experienced by those in the public sector compared to those in the private sector and the sample as a whole. However, since this is primarily a question directed at suppliers, this result is not surprising.

## **Q10 by Region**

The differences between regions were significant for five of the adverse outcomes. Respondents based in Asia were more likely to have experienced each adverse outcome, while those in North America were less likely to have experienced each outcome (with the exception of ‘early termination of contract; and ‘litigation...’ which North American respondents were more likely to have experienced compared to the sample as a whole<sup>3</sup>). The differences were significant for ‘cost overruns’, ‘losses from claims/disputes/liquidated damages’, ‘reputational risk/reduced future business opportunities’, ‘early termination of contract’ and ‘litigation, arbitration, mediation or another third party dispute resolution option’.

## **Q10 by role**

The differences between roles were significant for ‘early termination of contract’. Those employed in procurement were more likely to have experienced this, while those employed in project management were less likely to have experienced this, compared to the sample as a whole.

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<sup>3</sup> N America appears less likely to experience problems in general, but when they do they are more serious, in terms of loss, litigation

## Question 11: Encouraged ways of working

Respondents were asked whether contracts regularly include ways to encourage a range of desired methods of working or governance procedures. The question was based on research that identified the importance of the listed techniques. The majority of respondents had experienced contracts encouraging each of these techniques at least occasionally.

- Performance measurements and communication were the only two elements to have been incorporated within the contract frequently (i.e. ‘often’ or ‘always’) by the majority of respondents.
- Nearly three quarters of respondents (73%) reported contracts to have encouraged ‘performance measurements’ (47% ‘often’ and 26% ‘always’)
- Nearly two thirds of respondents (63%) reported contracts to have frequently encouraged ‘communication’
- Half of respondents reported contracts to have frequently encouraged joint working (50%; 41% often and 9% always) and Mutual objectives (49%; 37% often and 12% always)
- The more attitudinal outcomes such as ‘trust’ and ‘no blame culture’ were less frequently encouraged. Over a third of respondents (37%) reported contracts ‘never’ encourage no blame culture, and a quarter of respondents (25%) said that ways to encourage trust are ‘never’ included in contracts.

### Q11 by Sector

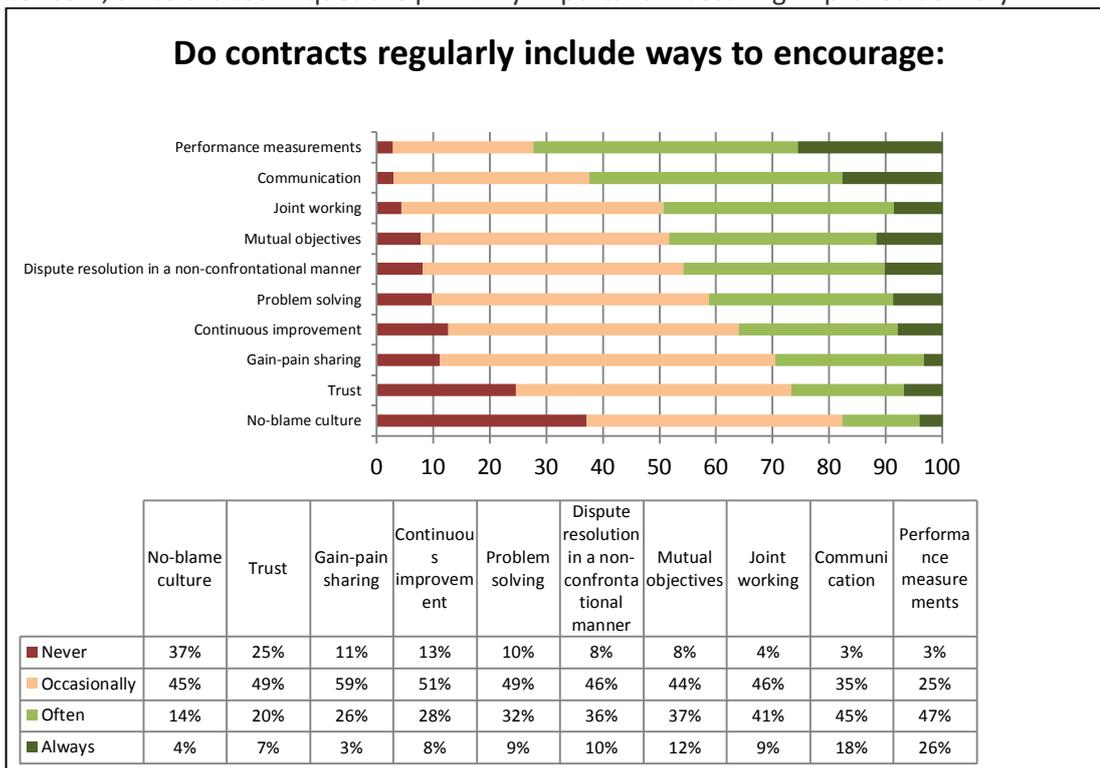
Responses were broadly consistent between sectors, any differences were not significant.

### Q11 by Region

Respondents based in Asia were more likely to have experienced each of these techniques compared to Europe, North America and the sample as a whole. The differences were significant for ‘Trust’ and ‘No-blame culture’ (both of which were comparatively rarely experienced in other regions), ‘problem solving’ and ‘continuous improvement’. Perhaps this is indicative of the ‘relational culture’ in Asia.

### Q11 by Role

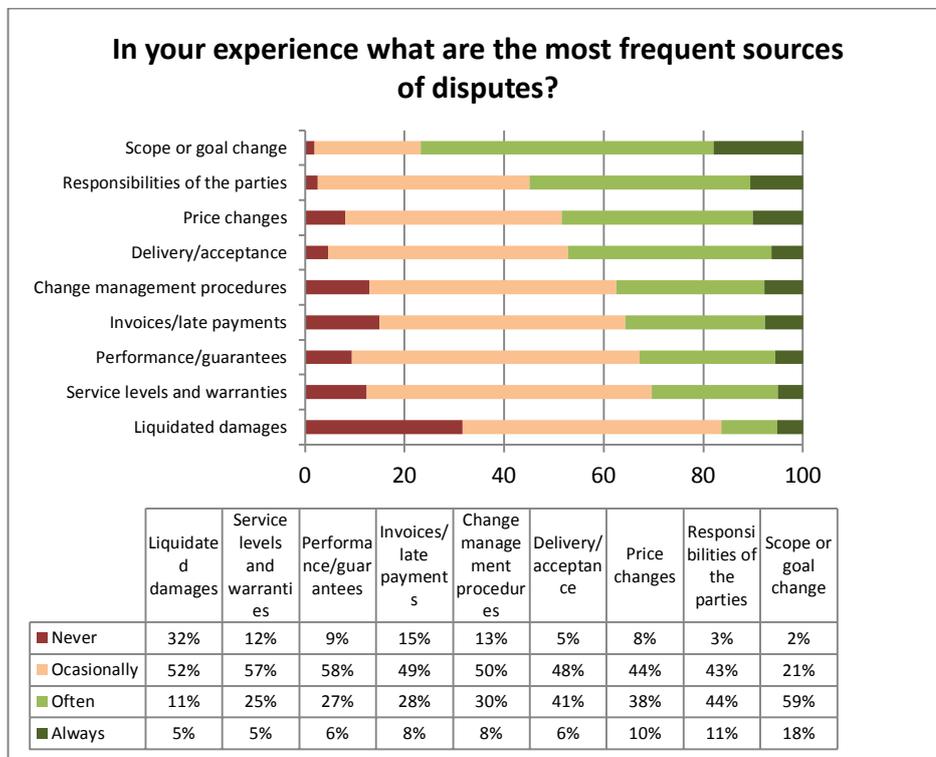
Respondents working in ‘contract/commercial management’ were more likely to have experienced each of these desired techniques compared to the sample as a whole, while those employed in ‘delivery of services’ were less likely to have experienced each of these desired techniques compared to the sample as a whole. This should be a source of concern, since the techniques are primarily important in securing improved delivery.



## Question 12 Cause of disputes.

The most common source of disputes is around lack of mutual understanding; of the scope, responsibilities, price and delivery. Disputes based on dissatisfaction with the service delivered are less common, though of course service failures are more frequent in overall occurrence.

- Over three quarters of respondents (77%) report scope or goal change as a frequent source of dispute (59% often and 18% always)
- Over half of respondents (55%) report ‘responsibilities of the parties’ as frequently being a source of dispute (44% often and 11% always)
- Just under half of respondents (48%) report price changes as a frequent source of dispute (38% often and 10% always)
- Disputes over satisfaction with the service provided or its remediation - i.e. performance/guarantees, service levels and warranties, and liquidated damages - were the least common with 33%, 30% and 16% of respondents reporting these as frequent (‘often’ or ‘always’). Key here is the term ‘dispute’ since issues clearly arise often, but are handled via a claims procedure.



### Q12 by sector

The only significant difference by sector was ‘invoice/late payment’ which was less likely to have been experienced as a frequent source of disputes by those in the public sector compared to those in the private sector and the sample as a whole.

### Q12 by region

Respondents based in Asia were more likely to have experienced each of the sources of dispute compared to North America, Europe and the sample as a whole. The differences were significant for ‘performance/guarantees’ ‘service levels and warranties’ and ‘liquidate damages’ (these three were comparatively rare in the sample as a whole).

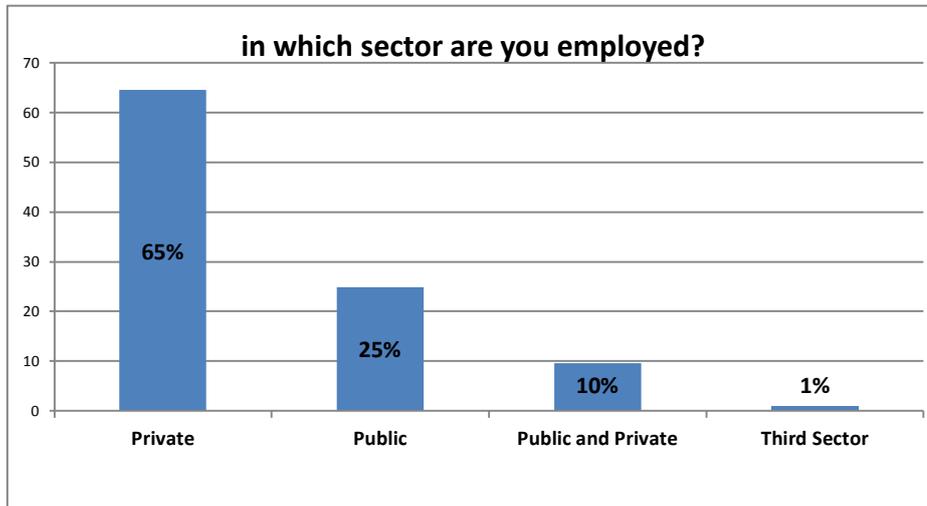
### Q12 by role

There were significant differences between professions for three sources of dispute. Scope or goal change was more likely to have been reported by those employed in project management compared to the sample as a whole. Performance guarantees, and service levels and warranties were both more likely to have been experienced by those employed in procurement compared to the sample as a whole.

**Appendices**

## Appendix 1: Sample Characteristics

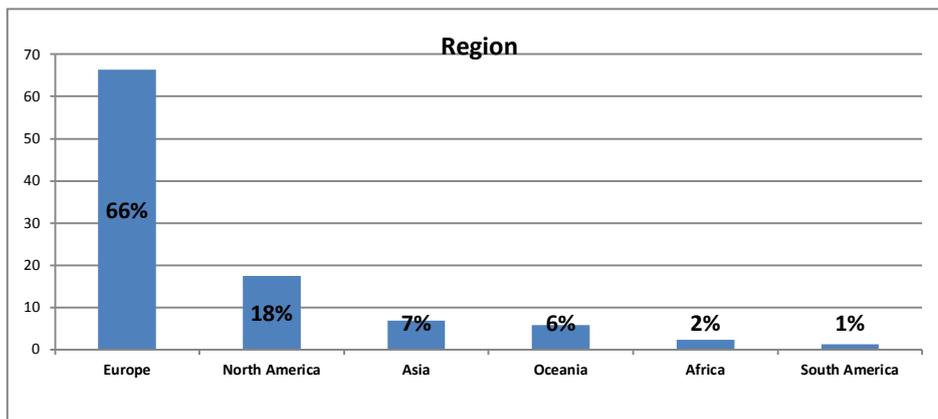
### Sector



Sector	Count	Percent
Private	404	65
Public	156	25
Public and Private	60	10
Third Sector	6	1
<b>Total</b>	<b>626</b>	<b>100</b>

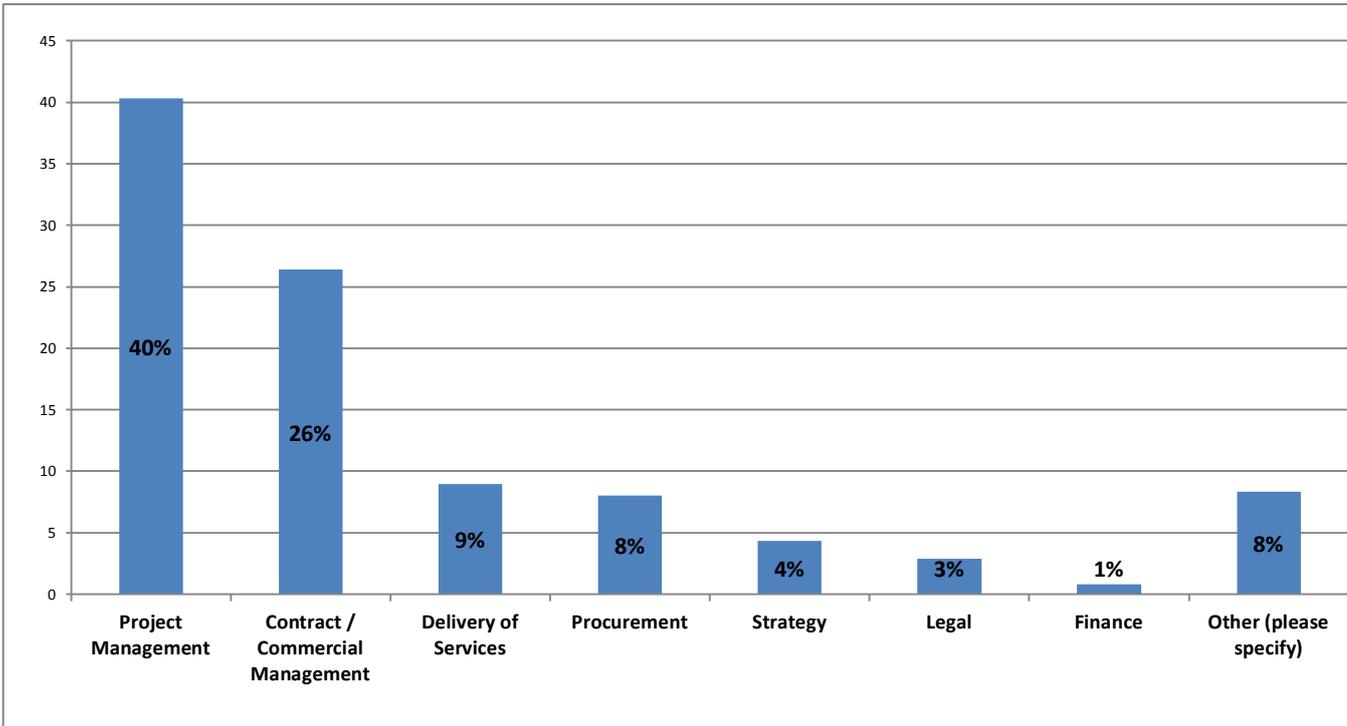
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### Region



	Count	Percent
Europe	417	66
North America	110	18
Asia	43	7
Oceania	36	6
Africa	14	2
South America	8	1
<b>Total</b>	<b>628</b>	<b>100</b>

## Role



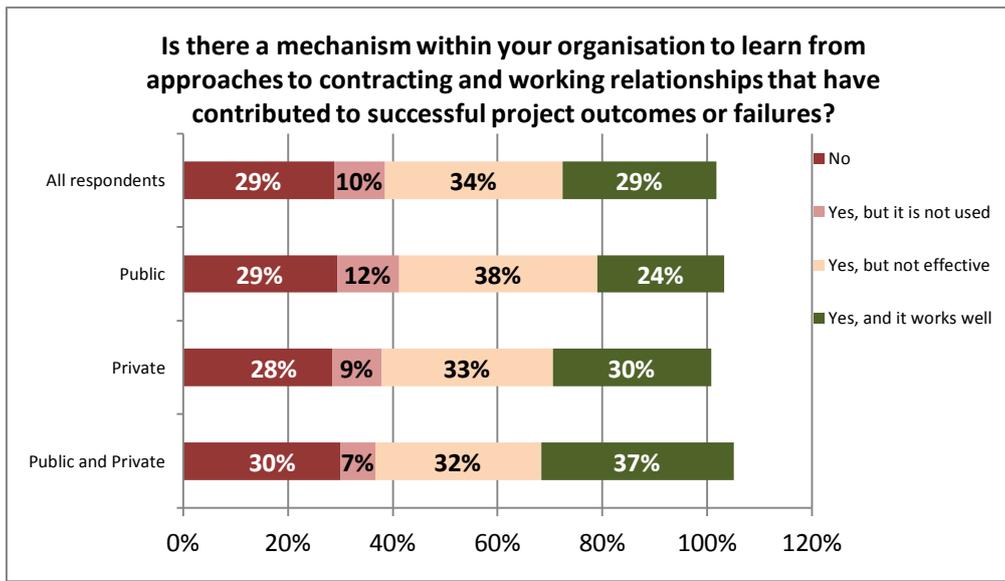
Role	Count	Percent
Project Management	252	40
Contract/Commercial Management	165	26
Delivery of Services	56	9
Procurement	50	8
Strategy	27	4
Legal	18	3
Finance	5	1
Other (please specify)	52	8
<b>Total</b>	<b>625</b>	<b>100</b>

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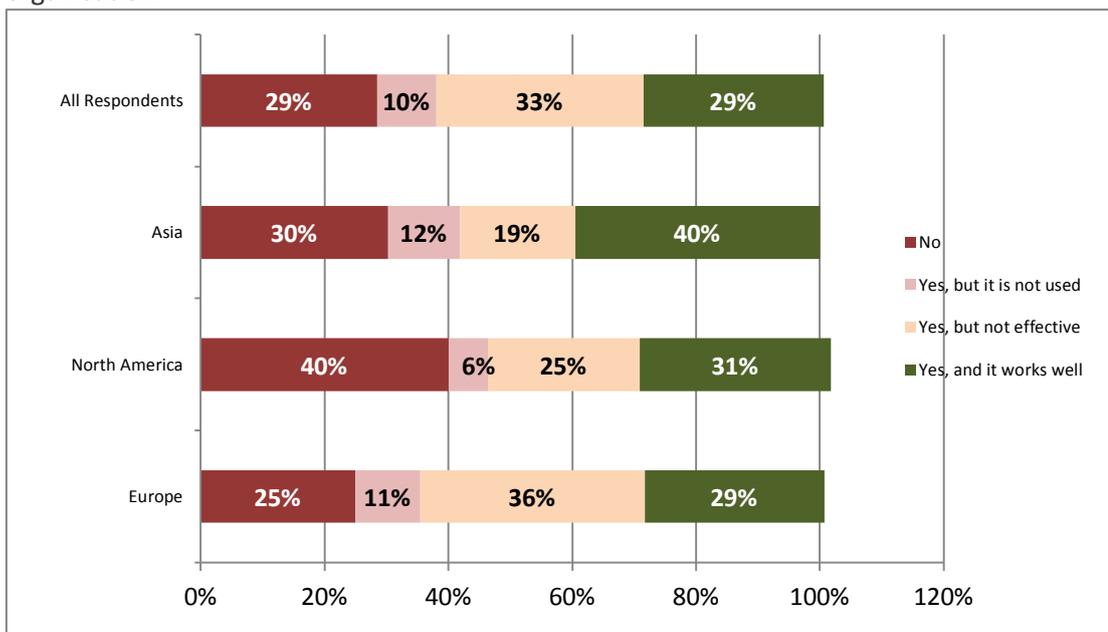
## Appendix 2 Sector, Region and Role comparisons

### Q6. Is there a mechanism within your organisation to learn from approaches to contracting and working relationships that have contributed to successful project outcomes or failures?

Comparing responses by sector<sup>4</sup> shows there are slight differences in the proportion of respondents selecting each option. However the differences were not significant<sup>5</sup>.



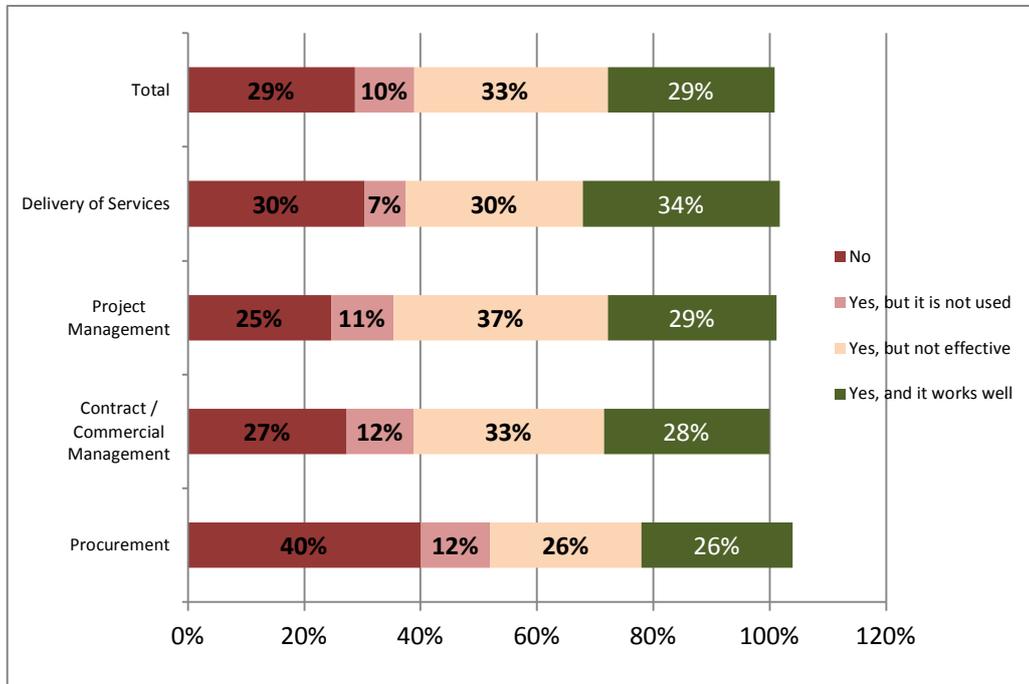
Comparing responses by region shows that there are differences in the proportion of respondents that have selected each option. However the differences are only significant when comparing the 'No' and 'Yes, but not effective' options. Respondents based in North America were more likely to not have a mechanism in place in their organisation.



<sup>4</sup> Third Sector was included in the analysis but is not shown due to the small number of respondents employed in this sector. This applies to every comparison by sector.

<sup>5</sup> Chi-Square significance tests were performed for all comparisons by sector, region, and role. Some of the group sizes for comparisons by sector and region were too small for the Chi-Square test assumptions to be met so caution should be used when reporting these results as 'statistically significant'.

Comparing responses by role<sup>6</sup> shows there are differences between the proportions of respondents selecting each option. However, the difference is only statistically significant for the ‘No’ option. The difference is most pronounced when comparing respondents who work in procurement against the sample average, respondents working in procurement are less likely to have a mechanism in place in their organisation as 40% selected ‘No’ compared to the all respondent average of 29%.

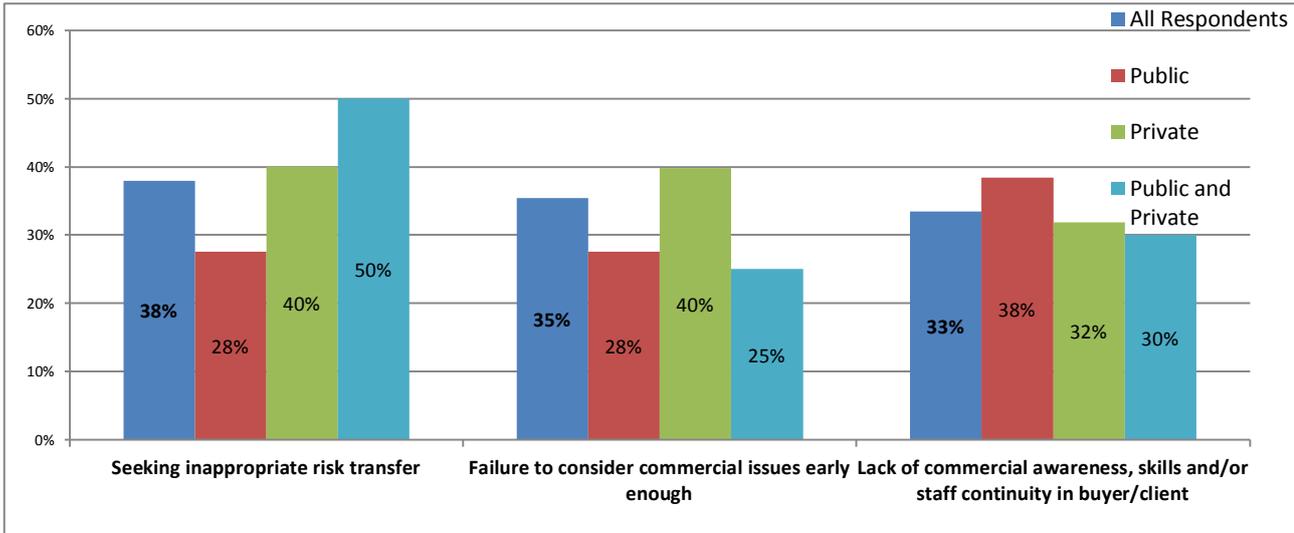


**Q7 – no significant differences between sector, region or role.**

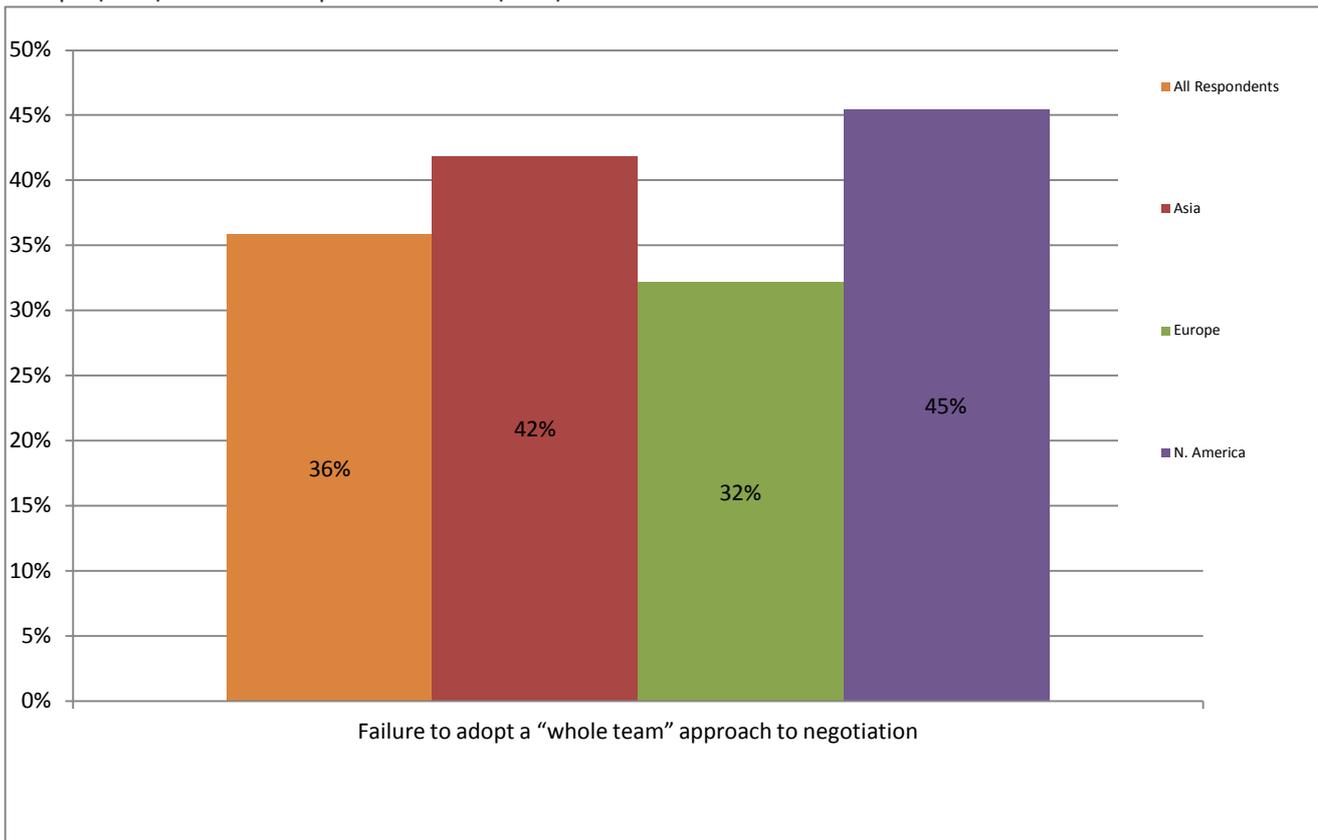
**Q8. In your experience what are the main constraints to negotiating successful contracts? Highlight your top 3.**

When comparing responses by sector, three constraints had significant differences. The public sector respondents were less likely to consider ‘seeking inappropriate risk transfer’ and ‘failure to consider commercial issues early enough’ as a main constraint compared to the private sector and sample as a whole, but were more likely to consider ‘lack of commercial awareness, skills and or staff continuity in buyer/client’ as a main constraint.

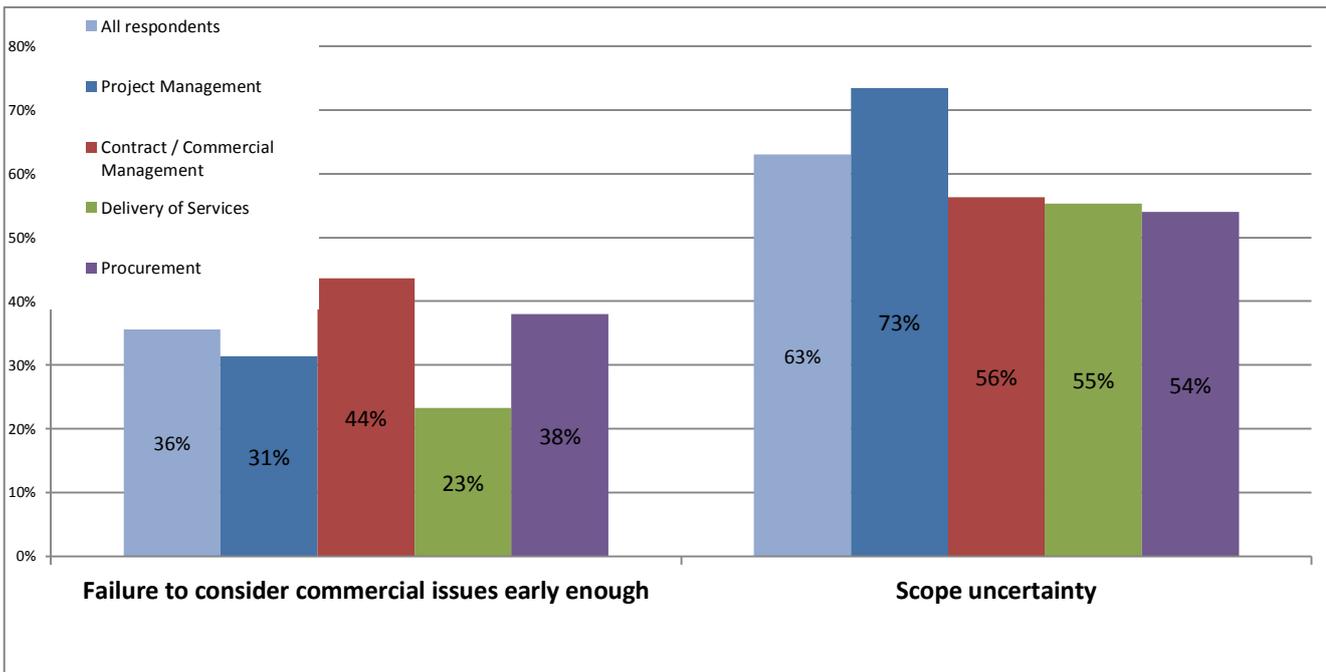
<sup>6</sup> Due to the small number of respondents that worked in finance this category was merged with ‘other’. As ‘other’ contained numerous job role it was not a meaningful category for comparison so was excluded from the analysis. Therefore the ‘all respondent’ percentages may differ from the equivalent sector and region comparisons.



When comparing the results by region the difference between regions was only significant for ‘failure to adopt a “whole team” approach to negotiation’. Respondents based in Asia and North America were more likely to have selected this option (with 42% and 45% selecting this as a main constrain respectively) compared to those based in Europe (32%) and the sample as a whole (36%).



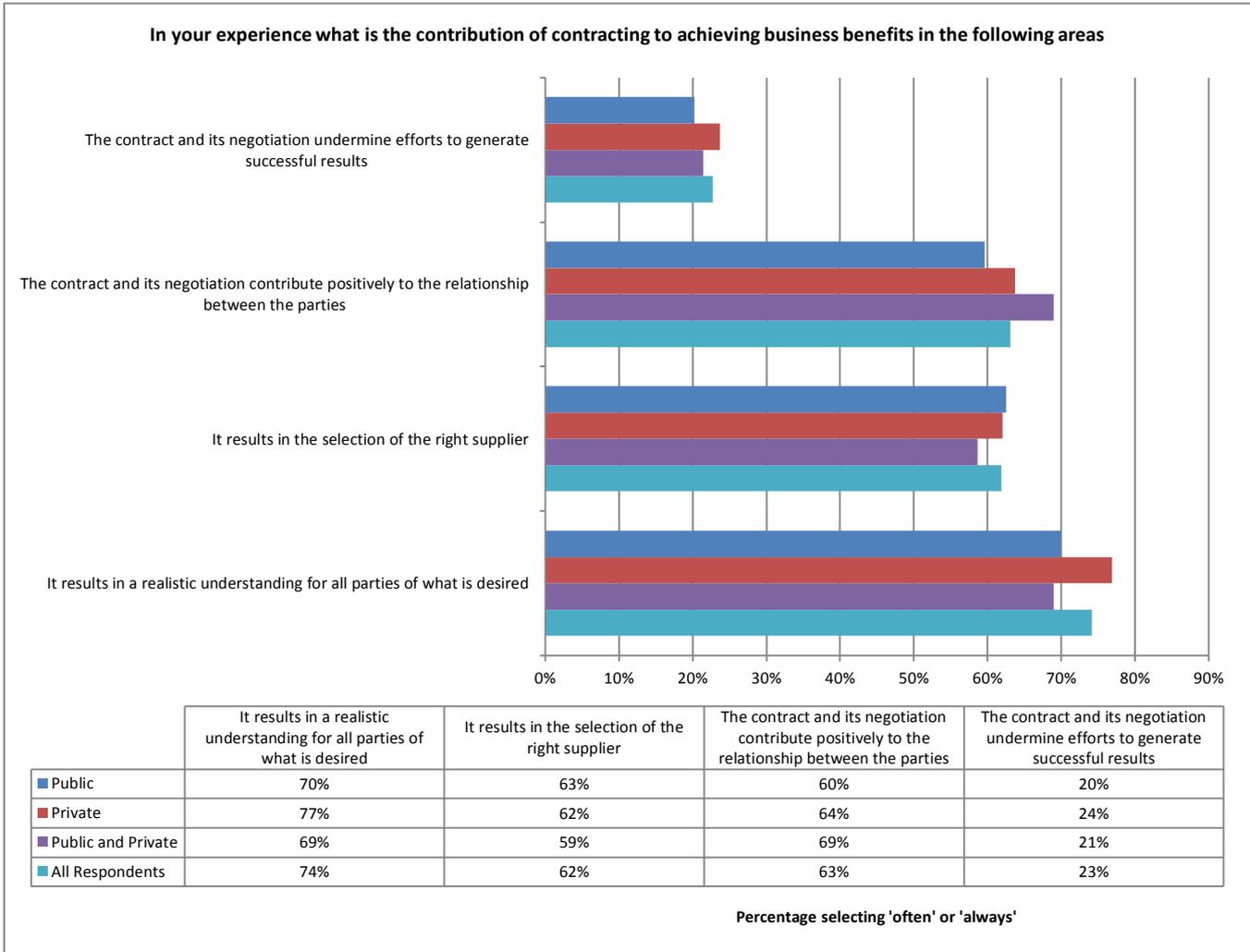
When comparing responses by job role the differences were only statistically significant for two of the constraints. ‘Failure to consider commercial issues early enough’ was considered a main constraint by a higher proportion of respondents working in ‘contact/commercial management’ than the sample as a whole. While ‘scope uncertainty’ was considered a main constraint by a higher proportion of respondents working in project management (73%) compared to the sample as a whole (63%)



**Q9. In your experience what is the contribution of contracting to achieving business benefits in the following areas:**

Comparing the proportion of respondents that reported an outcome occurring frequently (i.e ‘often’ or ‘always’) by their sector of employment<sup>7</sup>, shows that the experience of respondents is broadly similar regardless sector. The differences that do exist between sectors are not significant.

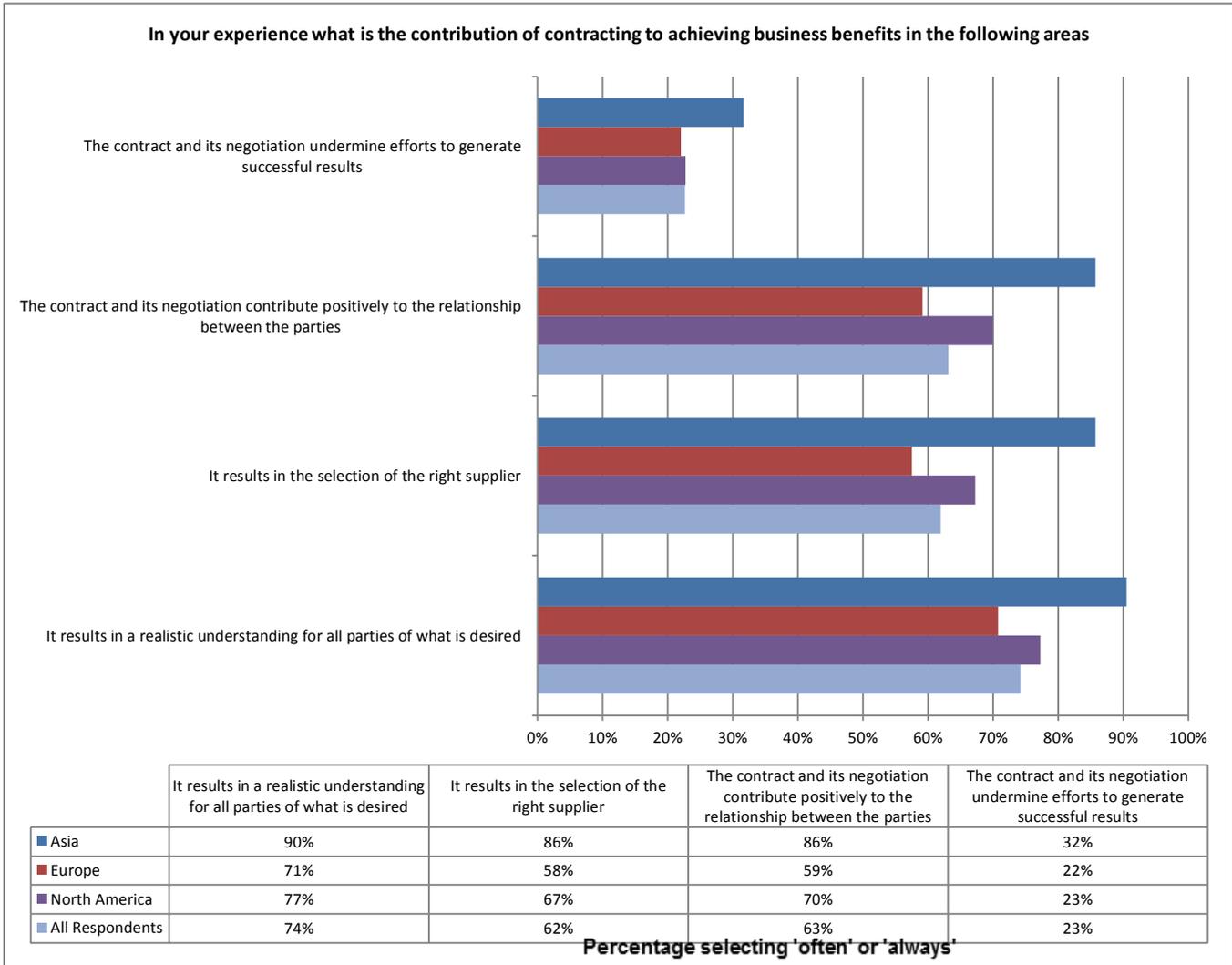
<sup>7</sup> ‘Third Sector’ only received less than 40 responses (6 in total) and therefore is not shown separately on the chart but was included in the ‘all respondents’ category.



Comparing the proportion of respondents that reported an outcome occurring frequently (i.e. 'often' or 'always') by the region they are based in shows that experience varies by location. Respondents based in Asia were more likely to have reported experiencing each of the four outcomes compared to the 'all respondents' average.

The differences between regions are statistically significant for:

- 'It results in a realistic understanding for all parties of what is desired' (Asia 90% sample average 74%)
- 'It results in the selection of the right supplier' (Asia 86% sample average 62%)
- 'The contract and its negotiation contribute positively to the relationship between the parties' (Asia 86% sample average 63%)

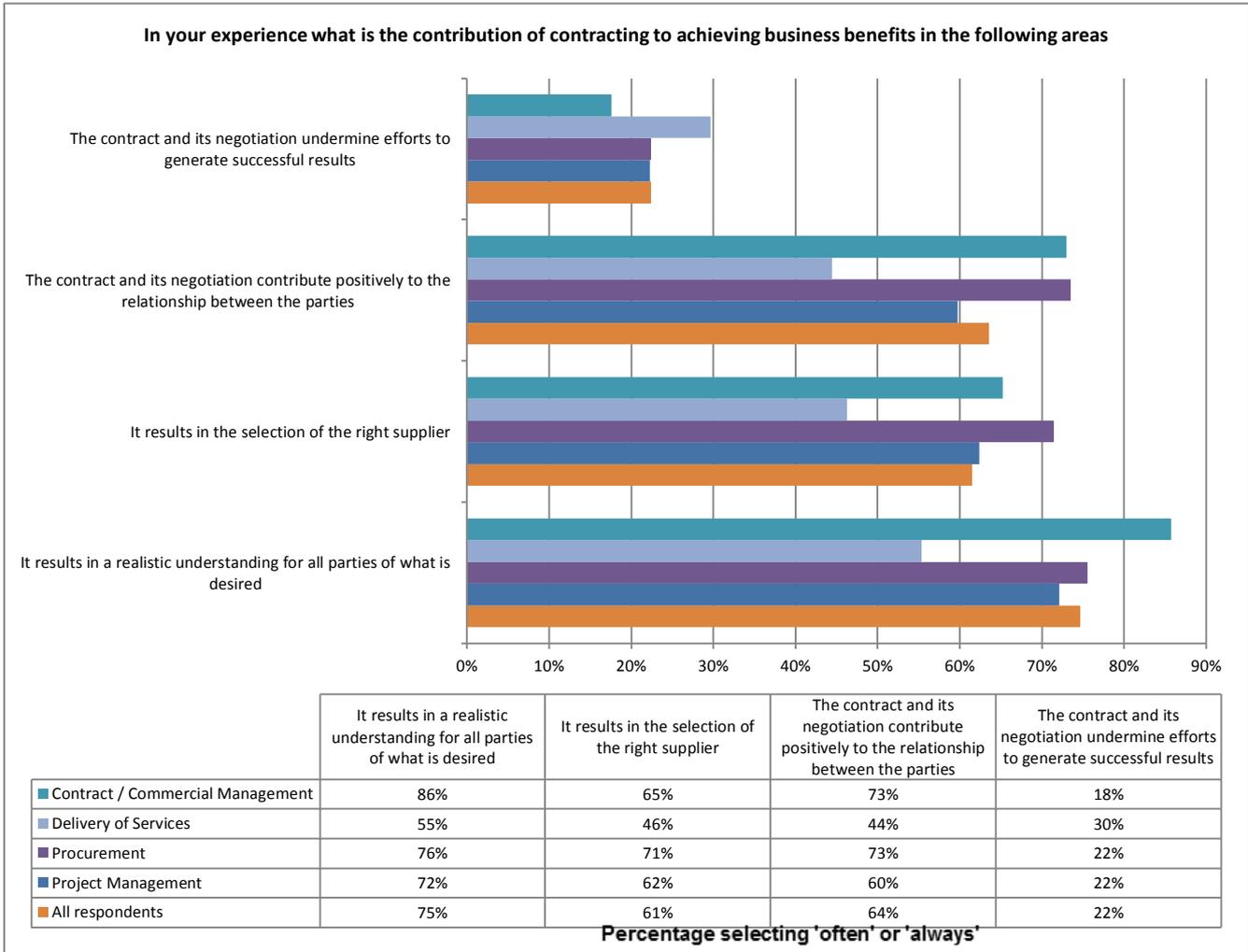


Other regions that contained less than 40 respondents are not shown on the chart but were included in the analysis.

Comparing the proportion of respondents that reported an outcome occurring frequently (i.e. 'often' or 'always') by role shows there are differences between roles. The differences are statistically significant for the following three outcomes:

- It results in a realistic understanding for all parties of what is desired'
- 'It results in the selection of the right supplier'
- 'The contract and its negotiation contribute positively to the relationship between the parties'

Respondents that work in procurement or contract/commercial management were more likely to have frequently experienced each of these three benefits compared to the sample average. Respondents working in 'delivery of service' had a lower than average proportion reporting that they frequently had experienced these three benefits.

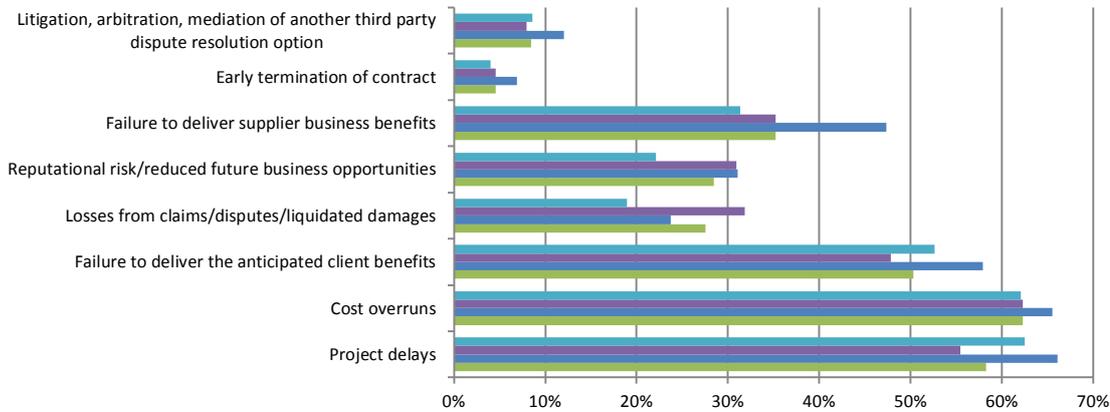


## Q10. Thinking specifically about contract terms and negotiation, in your experience, how often have weaknesses resulted in?

Comparing the proportion of respondents that had experienced each adverse outcome frequently (i.e. 'often' or 'always') by sector shows there is some variation between sector. Respondents that worked in both the 'public and private' sector were more likely to have frequently experienced each of the adverse outcomes compared to the sample as a whole (with the exception of 'losses from claims/disputes/liquidated damages').

- The only adverse outcome where differences between sector were statistically significant was 'losses from claims/disputes/liquidated damages'. Just under a fifth of respondents from the public sector (19%) reported having experienced this frequently compared to almost a third of those in the private sector (32%) and 28% of the sample as a whole

## Thinking specifically about contract terms and negotiation, in your experience, how often have weaknesses resulted in



	Project delays	Cost overruns	Failure to deliver the anticipated client benefits	Losses from claims/disputes/liquidated damages	Reputational risk/reduced future business opportunities	Failure to deliver supplier business benefits	Early termination of contract	Litigation, arbitration, mediation of another third party dispute resolution option
Public	63%	62%	53%	19%	22%	31%	4%	9%
Private	55%	62%	48%	32%	31%	35%	5%	8%
Public and Private	66%	66%	58%	24%	31%	47%	7%	12%
All Respondents	58%	62%	50%	28%	28%	35%	5%	8%

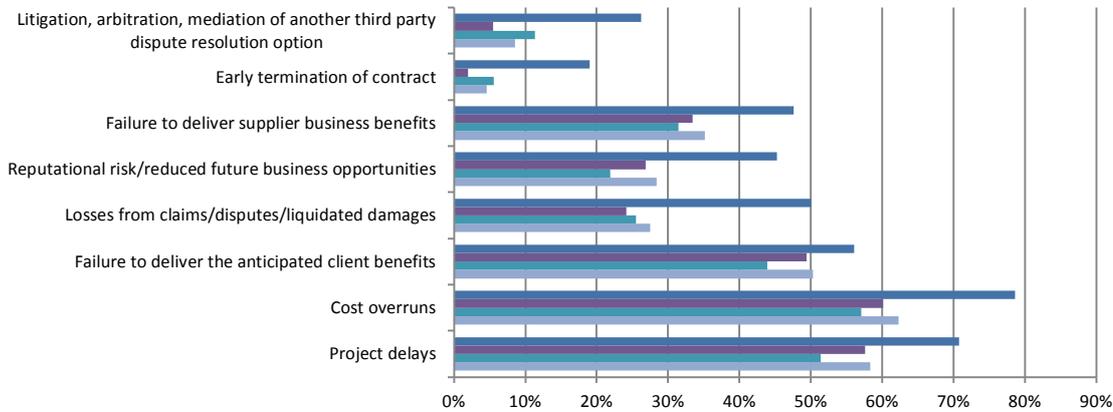
Percentage selecting 'often' or 'always'

Comparing the proportion of respondents that had experienced each adverse outcome frequently (i.e. 'often' or 'always') by region shows there is some variation between region. Respondents based in Asia were more likely to have frequently experienced each of the adverse outcome compared to Europe, North America and the sample as a whole. Respondents based in North America were less likely to have frequently experienced each of the adverse outcomes compared to the sample as a whole with the exceptions of 'Early termination of contract' and 'litigation, arbitration, mediation of another third party dispute resolution'.

The differences between regions were statistically significant for the following adverse outcomes:

- Cost overruns
- Losses from claims/disputes/liquidated damages
- Reputational risk/reduced future business opportunities
- Early termination of contract
- Litigation, arbitration, mediation of another third party dispute resolution option

## Thinking specifically about contract terms and negotiation, in your experience, how often have weaknesses resulted in

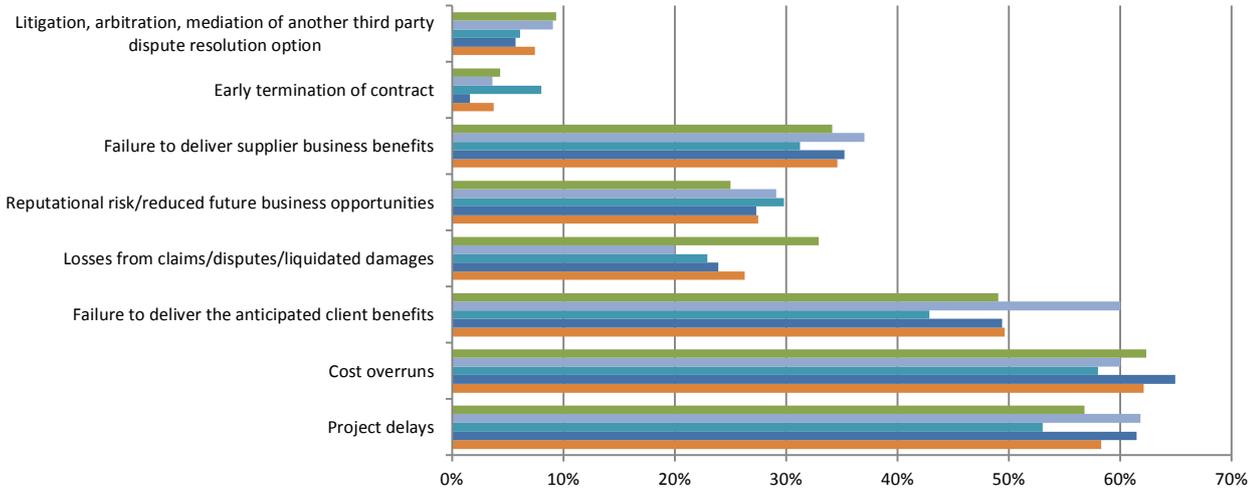


	Project delays	Cost overruns	Failure to deliver the anticipated client benefits	Losses from claims/disputes/liquidated damages	Reputational risk/reduced future business opportunities	Failure to deliver supplier business benefits	Early termination of contract	Litigation, arbitration, mediation of another third party dispute resolution option
■ Asia	71%	79%	56%	50%	45%	48%	19%	26%
■ Europe	58%	60%	49%	24%	27%	33%	2%	5%
■ North America	51%	57%	44%	25%	22%	31%	6%	11%
■ All Respondents	58%	62%	50%	28%	28%	35%	5%	9%

Percentage selecting 'often' or 'always'

Comparing the proportion of respondents that had experienced each adverse outcome frequently (i.e. 'often' or 'always') by role shows there is some variation between role. However the only significant difference is for 'early termination of contract'. Those working in procurement were more likely to have experienced the early termination of a contract than the sample average (8% compared to 4%), while those working in project management were less likely to have experienced this than the sample average (2% compared to 4%).

## Thinking specifically about contract terms and negotiation, in your experience, how often have weaknesses resulted in

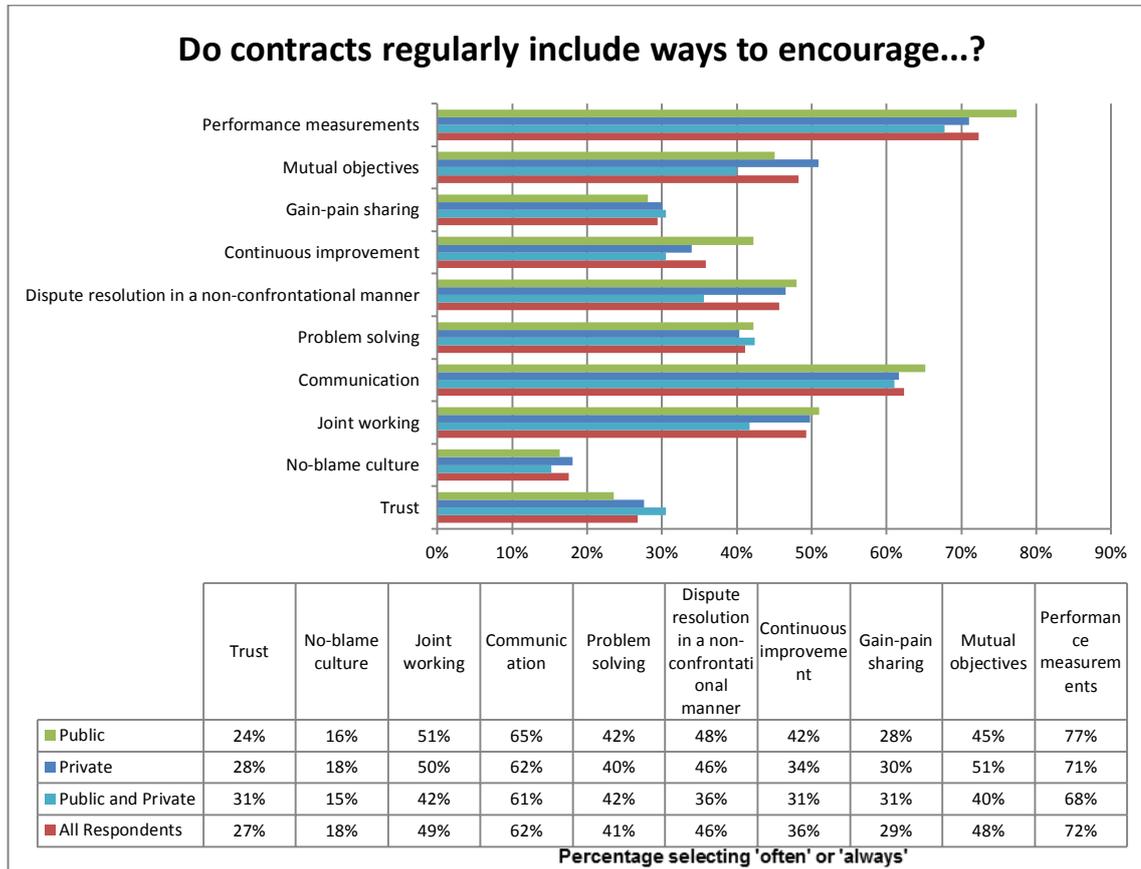


	Project delays	Cost overruns	Failure to deliver the anticipated client benefits	Losses from claims/disputes/liquidated damages	Reputational risk/reduced future business opportunities	Failure to deliver supplier business benefits	Early termination of contract	Litigation, arbitration, mediation of another third party dispute resolution option
■ Contract / Commercial Management	57%	62%	49%	33%	25%	34%	4%	9%
■ Delivery of Services	62%	60%	60%	20%	29%	37%	4%	9%
■ Procurement	53%	58%	43%	23%	30%	31%	8%	6%
■ Project Management	61%	65%	49%	24%	27%	35%	2%	6%
■ All Respondents	58%	62%	50%	26%	27%	35%	4%	7%

Percentage selecting 'often' or 'always'

## Q11. Do contracts regularly include ways to encourage...?

Comparing the proportion of respondents that had experienced each outcome frequently (i.e. ‘often’ or ‘always’) by sector shows responses were broadly consistent between sector. None of the differences between sectors were statistically significant.

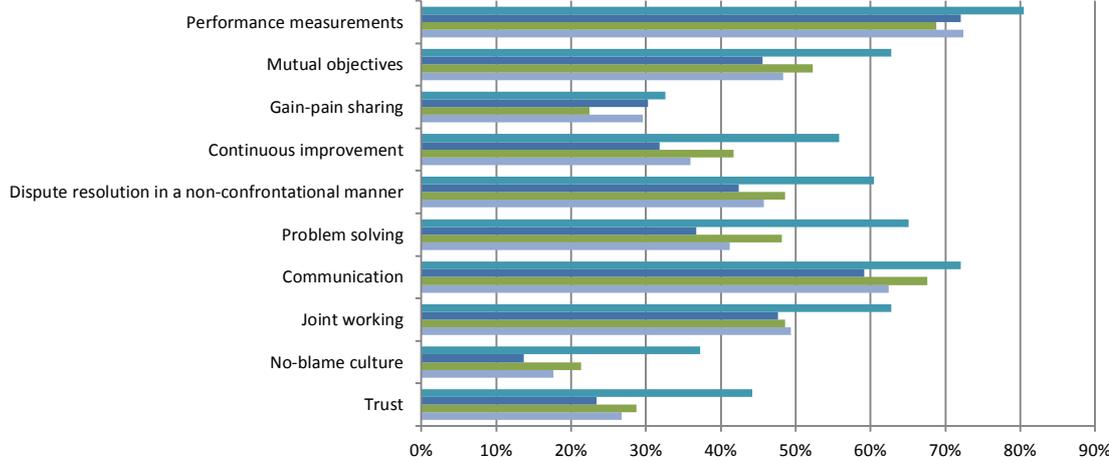


Comparing the proportion of respondents that had experienced each adverse outcome frequently (i.e. ‘often’ or ‘always’) by region shows there is some variation between region. Respondents based in Asia were more likely to have experienced each of these desired outcomes compared to respondents in Europe, North America and the sample average.

The differences between regions were statistically significant for the following five outcomes:

- Trust (Asia 44% sample average 27%)
- No-blame culture (Asia 37% sample average 18%)
- Problem solving (Asia 65% sample average 41%)
- Continuous improvement (Asia 56% sample average 36%)

## Do contracts regularly include ways to encourage...?



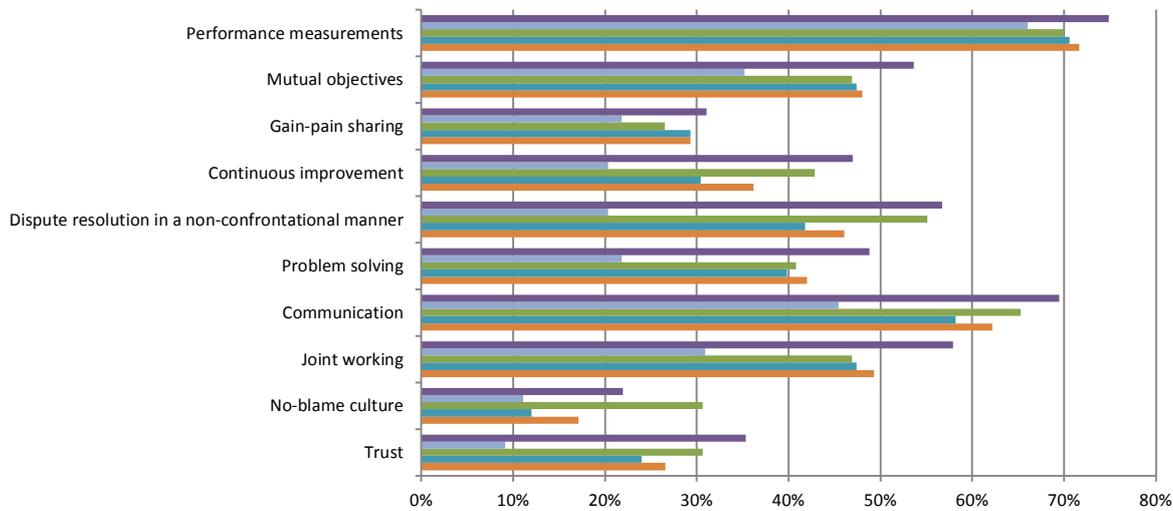
	Trust	No-blame culture	Joint working	Communication	Problem solving	Dispute resolution in a non-confrontational manner	Continuous improvement	Gain-pain sharing	Mutual objectives	Performance measurements
■ Asia	44%	37%	63%	72%	65%	60%	56%	33%	63%	80%
■ Europe	23%	14%	48%	59%	37%	42%	32%	30%	46%	72%
■ North America	29%	21%	49%	68%	48%	49%	42%	22%	52%	69%
■ All Respondents	27%	18%	49%	62%	41%	46%	36%	30%	48%	72%

The proportion of respondents that reported having frequently experienced each of these outcomes varies by role. Those working in 'contract/commercial management' are more likely to have frequently (i.e. 'often' or 'always') experienced each of these desired outcomes compared to the sample average, while those working in 'delivery of services' were less likely to have frequently (i.e. 'often' or 'always') experienced each of these desired outcomes compared to the sample average.

The differences between role were statistically significant for the following seven outcomes:

- Trust
- No-blame culture
- Joint working
- Communication
- Problem solving
- Dispute resolution in a non-confrontational manner
- Continuous improvement

## Do contracts regularly include ways to encourage...?



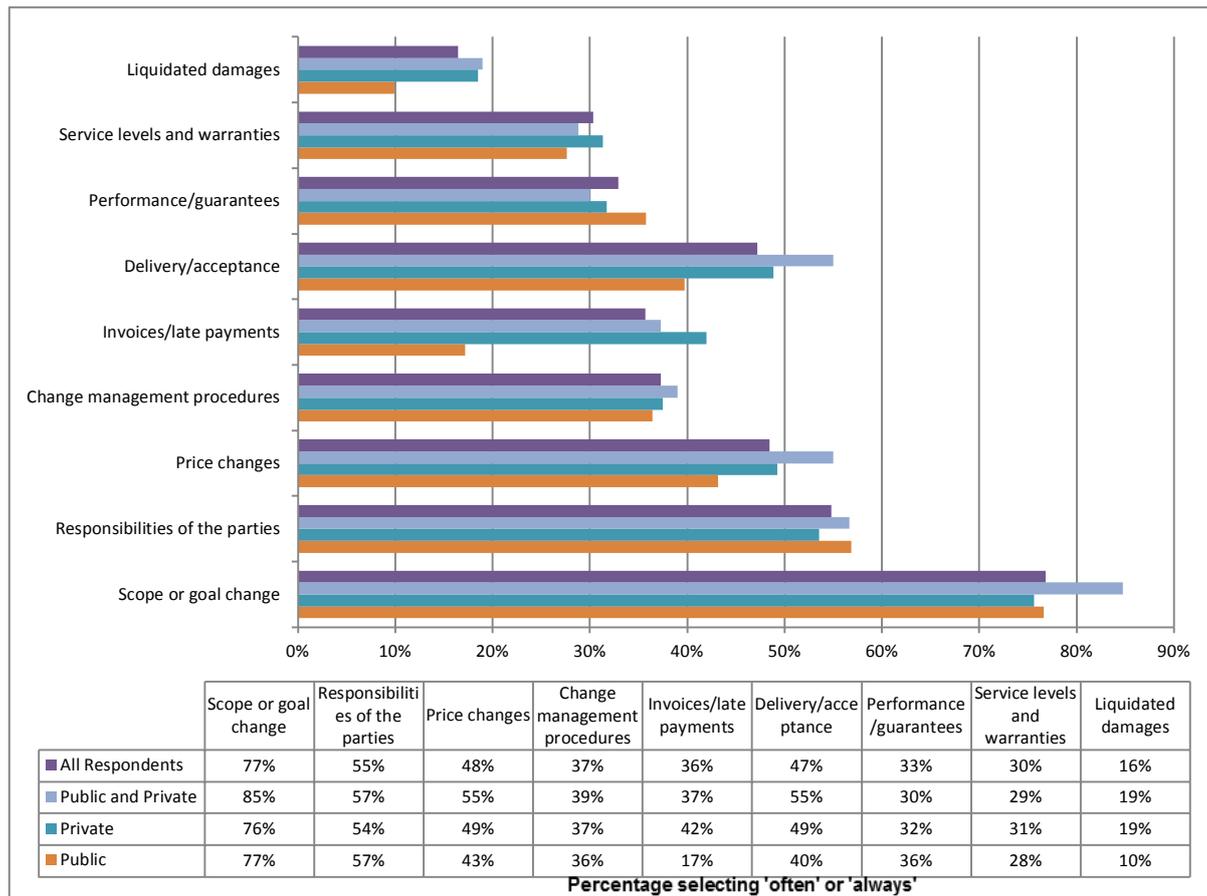
	Trust	No-blame culture	Joint working	Communication	Problem solving	Dispute resolution in a non-confrontational manner	Continuous improvement	Gain-pain sharing	Mutual objectives	Performance measurements
Contract / Commercial Management	35%	22%	58%	70%	49%	57%	47%	31%	54%	75%
Delivery of Services	9%	11%	31%	45%	22%	20%	20%	22%	35%	66%
Procurement	31%	31%	47%	65%	41%	55%	43%	27%	47%	70%
Project Management	24%	12%	47%	58%	40%	42%	30%	29%	47%	71%
All Respondents	27%	17%	49%	62%	42%	46%	36%	29%	48%	72%

Percentage selecting 'often' or 'always'

## Q12. In your experience what are the most frequent sources of disputes?

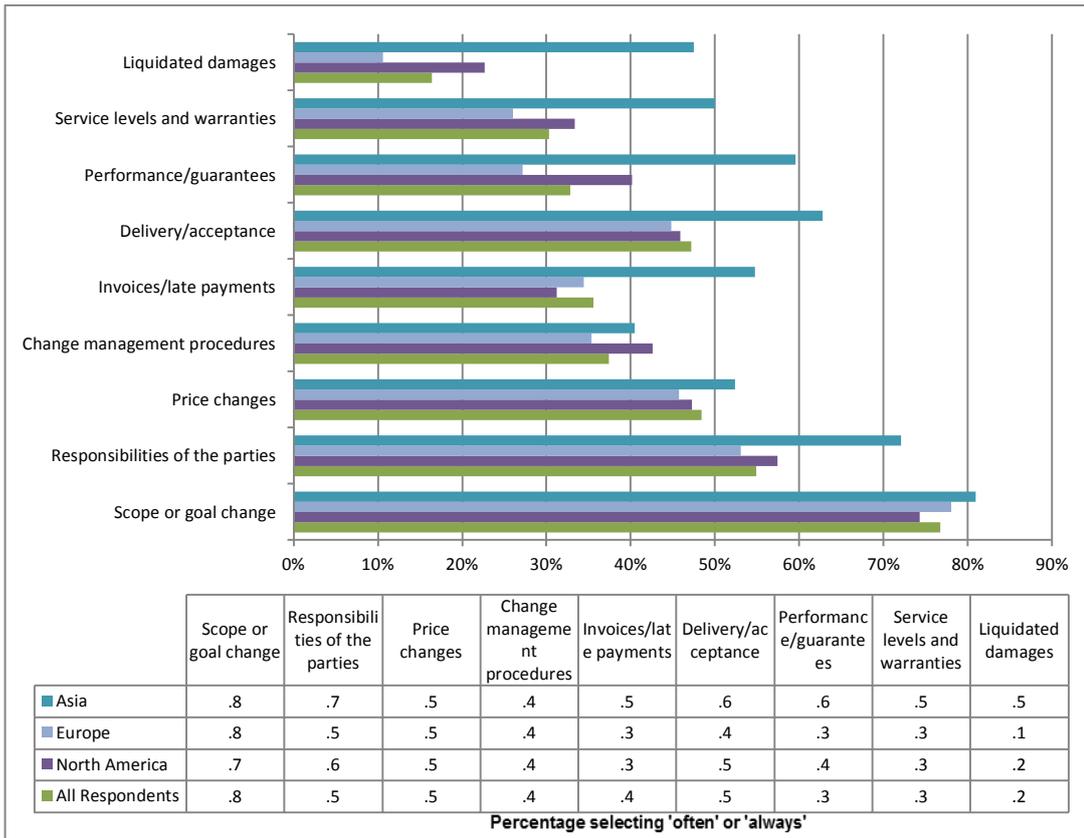
Comparing the proportion of respondents that had experienced each source of dispute frequently (i.e. ‘often’ or ‘always’) by sector shows there is some variation between sector. The difference was only statistically significant for ‘invoice/late payments’.

- ‘Invoice/late payments’ were less likely to have been experienced in the public sector (17% compared to 36% sample average)



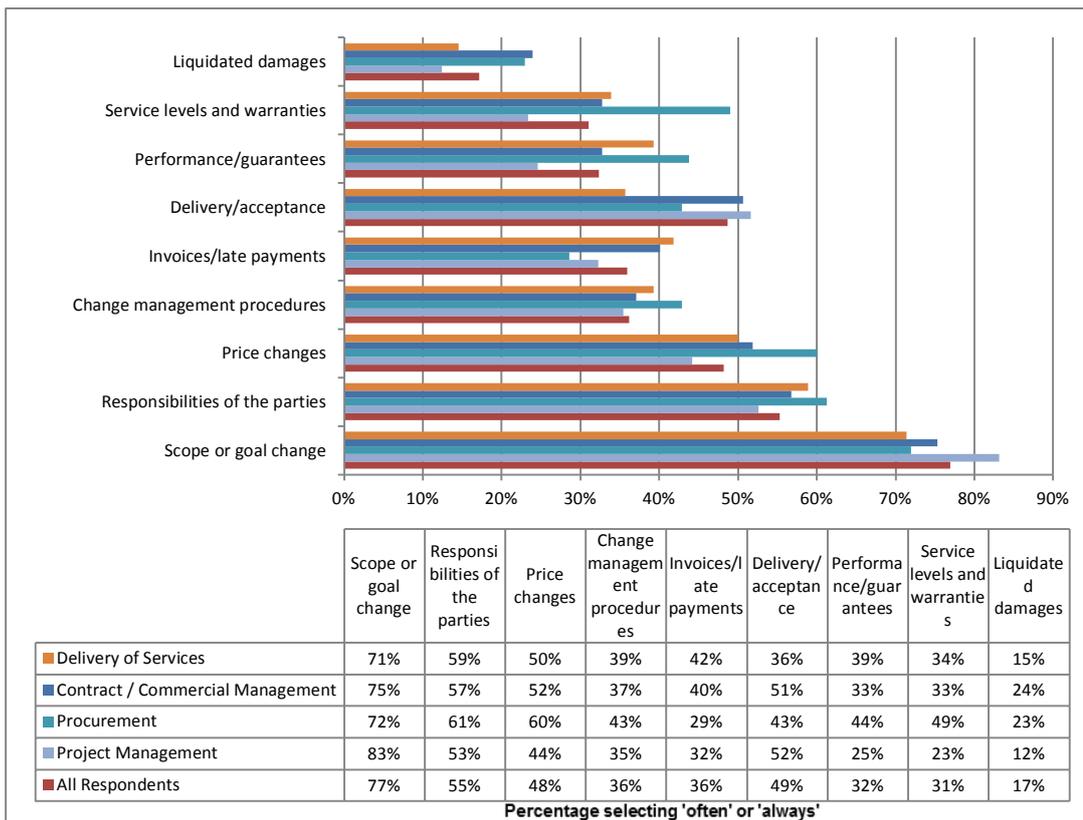
Comparing the proportion of respondents that had experienced each source of dispute frequently (i.e. ‘often’ or ‘always’) by region shows there is some variation between region. Respondents based in Asia are more likely to have experienced each of the sources of disputes compared to North America, Europe and the sample as a whole. The differences were significant for three of the sources of disputes:

- Performance/guarantees
- Service levels and warranties
- Liquidated damages



Comparing the proportion of respondents that had experienced each source of dispute frequently (i.e. 'often' or 'always') by role shows there is some variation between role. The differences were statistically significant for:

- Scope (project management 83% compared to sample average of 77%)
- Performance guarantees (procurement 44% sample average 32%)
- Service levels and warranties (procurement 48% sample average 31%)



## Sample characteristics

### Sector

Sector	Count	Percent
Private	404	65
Public	156	25
Public and Private	60	10
Third Sector	6	1
<b>Total</b>	<b>626</b>	<b>100</b>

Respondents that had selected 'other' were categorised into one of the four categories

### Region

	Count	Percent
Europe	417	66
North America	110	18
Asia	43	7
Oceania	36	6
Africa	14	2
South America	8	1
<b>Total</b>	<b>628</b>	<b>100</b>

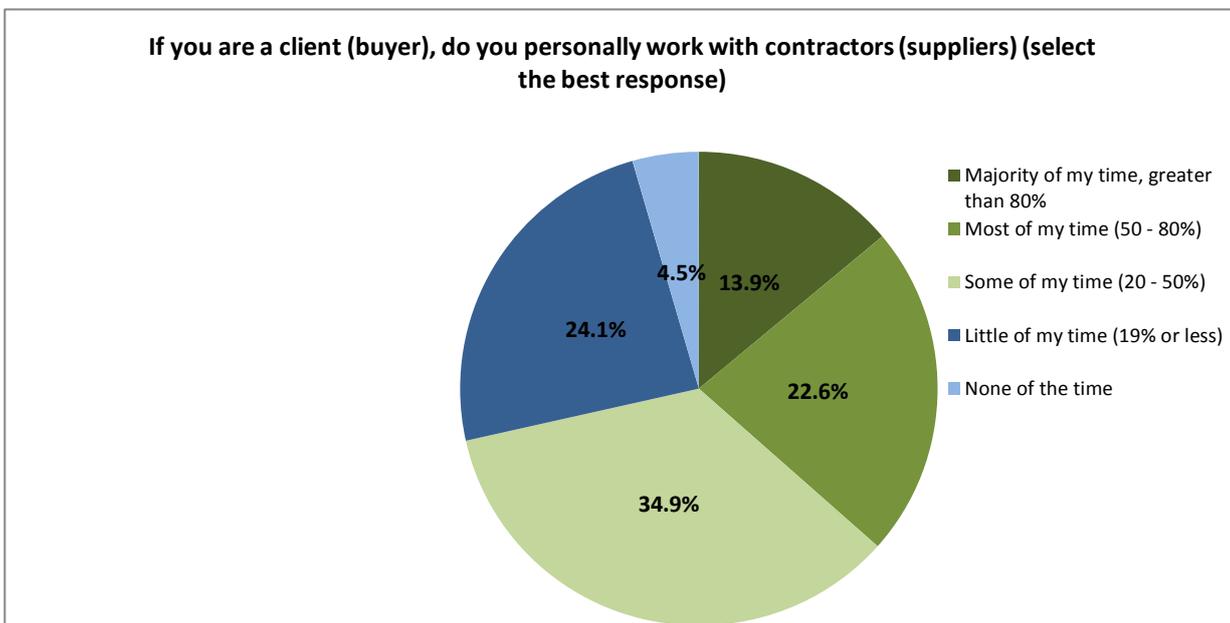
### Role

Role	Count	Percent
Project Management	252	40
Contract / Commercial Management	165	26
Delivery of Services	56	9
Procurement	50	8
Strategy	27	4
Legal	18	3
Finance	5	1
Other (please specify)	52	8
<b>Total</b>	<b>625</b>	<b>100</b>

### If you are a client (buyer), do you personally work with contractors (suppliers)? (select the best response)

If you are a client (buyer), do you personally work with contractors (suppliers) (select the best response)	Count	Per cent
Majority of my time, greater than 80%	59	14
Most of my time (50 - 80%)	96	23
Some of my time (20 - 50%)	148	35
Little of my time (19% or less)	102	24
None of the time	19	4
<b>Total</b>	<b>424</b>	<b>100</b>

<b>If you are a contractor (supplier), do you work with clients (buyers) (select the best response)</b>	<b>Count</b>	<b>Per cent</b>
None of my time	9	3
Very little of my time, 1-20%	29	8
Some of my time, 20-50%	112	32
Most of my time, 50-80%	106	30
Majority of my time, greater than 80%	94	27
<b>Total</b>	<b>350</b>	<b>100</b>



## Appendix 3: Freeform Responses

- There is often a disconnect between the negotiated contract and those delivering the service who just do "what we always do" which can cause contractual difficulties.
- BTW this is from the colonies - no USA shown
- Never is too absolute a term RARELY would be better. Where I checked Never I really mean RARELY.
- Most are due to lack of accountability on the part of the contractor and the project manager.
- The only contracts I have terminated were due to client non-payment per their contract terms..
- How is this different from #10
- most problems caused by changes in staff allocated to the contractors team after the contract is awarded
- a team delivering a contract / project that has not been engaged in the contract is at a serious disadvantage.
- Weaknesses in project scope can cause cost overruns, termination is seldom a result of a weak contract, it is generally a result of weak or poor planning but not the contract
- Most public sector contracts function at a reasonable level for a supplier who is doing well financially from the contract. The public sector tend to be doing less well on price particularly as the contract matures.
- vague-ish question - weaknesses in the contract or weaknesses in the supplier delivering the output? If second it suggests that weakness is due to supplier selection process however much of our work is necessarily in single source environment and pressure on price may have unforeseen longer term consequences.
- most of the problems are internal and/or on the front end with client
- Lack of sufficiently qualified and experienced Clients cause challenges
- Clients are reluctant to terminate contracts and only use this as a last resort when it is too late
- Contracts themselves are generally sound (see 11) - it is their interpretation and implementation which is flawed.
- As 10 above
- My experience is within an Intra-Group environment and would be dealt with locally before litigation or arbitration.
- If the objectives are clear and actions (team building) are taken to create alignment of objectives then a contractor will do their best to deliver what the client wants.
- 80+% of risk is apportioned when the contract is signed. Post-signing activity (unless either party is simply performing badly) is rarely difficult to turn around.
- Very important to have competent advisors and commercially-aware lawyers to work with both suppliers and the client.
- Not sure that client/business benefits are related to contract T's & C's - it should be "project objectives
- Early termination and litigation are both occurrences but very rare
- one of the secrets is the phrasing and methodology of drawing up the contract - keep the format and clauses as simple as possible, in plain English - if this were to happen, the project's off to a great start!
- early detection of problems and their careful assessment/improvement leads to permanent success.
- I have frequently encountered the scenarios listed but not usually as a result of the contract administration