

STRATEGIC INFRASTRUCTURE PROCUREMENT

ACC SC Chapter Winter Meeting

William F. Gibbs | February 20, 2026

**HAYNSWORTH
SINKLER BOYD**

AGENDA AND ROADMAP

- 01** The Backdrop & Balancing Act
- 02** Contract Lifecycle
- 03** Business Speed & Legal Risk
- 04** Negotiation Best Practices
- 05** Critical Provisions & Business Position
- 06** Governance & Accountability

THE BALANCING ACT: BUSINESS, OPERATIONS, FINANCIAL & LEGAL

Speed and Execution

Accelerate deal closure and contract execution to meet market demands.

Enable rapid vendor onboarding without sacrificing quality.

Maintain agility to capitalize on emerging opportunities.

Cost and Innovation

Control costs and ensure budget predictability through strategic sourcing.

Align pricing models with business outcomes for performance incentives.

Operational Continuity

Ensure uninterrupted operations during vendor transitions or upgrades.

Hold vendors accountable for performance and service levels.

Support scalability to accommodate business growth without renegotiation.

Adhere to evolving regulatory requirements across jurisdictions.

Mitigate risks through enforceable contract terms and remedies.

Protect against liability with clear exit rights and indemnities.

Draft unambiguous terms to reduce disputes and litigation exposure.

Ensure terms are scalable to avoid frequent renegotiations.

Establish performance accountability mechanisms within contracts.

Maintain operational continuity through robust contract governance.

Monitor compliance and performance throughout contract lifecycle.

Balance legal caution with business enablement to facilitate growth.

LIFECYCLE OVERVIEW

Creation and Drafting

- Develop initial contract terms aligned with business objectives and legal requirements.
- Engage relevant stakeholders to gather inputs and define scope.
- Playbook
- Default Positions and fall-back Positions
- Money & Escalation

Negotiation

- Collaborate with vendors to refine contract terms and address concerns.
- Track changes carefully and manage version control.
- Balance business speed with legal risk mitigation.

Approval and Execution

- Obtain necessary internal approvals from legal, finance, and business units.
- Finalize contract signatures and formalize agreements.
- Ensure all executed documents are properly stored and accessible.

Performance Monitoring

- Track vendor performance against Service Level Agreements (SLAs) and contractual obligations.
- Monitor compliance with regulatory and contractual requirements.
- Proactively address issues to avoid operational disruptions.

Renewal or Termination

- Review contract performance and risks prior to renewal decisions.
- Plan negotiations well in advance to maintain leverage.
- Manage orderly contract termination or renewal to ensure operational continuity.

PROCUREMENT RISK DOMAINS

Financial Risks

Include unclear pricing structures, hidden costs, and payment disputes that can lead to budget overruns.

Unmanaged financial risks jeopardize cost containment and forecasting accuracy.

Mitigation requires transparent pricing terms and clear payment schedules.

Compliance Risks

Arise from regulatory gaps, outdated contract clauses, or conflicts with jurisdictional laws.

Potential penalties, legal action, and reputational damage.

Regular legal reviews ensure contracts meet evolving regulatory requirements.

Performance Risks

Stem from vague service level agreements (SLAs), unmet vendor obligations, and service disruptions.

These risks threaten operational continuity and business outcomes.

Enforceable SLAs with clear metrics and remedies are essential for accountability.

Legal Risks

Result from ambiguous contract language, missing critical clauses, or enforceability issues.

Legal risks expose organizations to lawsuits, penalties, and enforcement actions.

Require expert legal review and inclusion of protective provisions.

Operational Risks

Include integration failures, resource constraints, and workflow disruptions impacting business processes.

Often overlooked, operational risks can cause project delays and increased costs.

Mitigation involves thorough planning, vendor coordination, and contingency measures.

MANAGING SCALE

Challenges and Solutions for SaaS Contract Volume

- Organizations with 500-1,000 employees typically manage 300-400 SaaS applications, creating an overwhelming contract review volume that exceeds individual capacity.
- Traditional manual contract review by general counsel is no longer feasible due to sheer scale and complexity.
- Implementing scalable contract management systems, including playbooks and automated workflows, is essential to maintain efficiency and control.
- Delegating routine contract reviews to business units with standardized guidance and escalation procedures helps distribute workload while managing risk.
- Trusted outside counsel must possess an understanding of both legal and business contexts to effectively support high-volume procurement.

MULTI-VENDOR INFRASTRUCTURE

Systems Thinking for Vendor Coordination

- Manage multiple vendor contracts as components of a unified infrastructure ecosystem rather than isolated agreements.
- Ensure vendor solutions are compatible and interoperable to minimize integration risks and technical conflicts.
- Adopt a holistic view to identify overlapping or conflicting contract terms, such as data rights and security standards.
- Facilitate cross-vendor collaboration to streamline workflows and operational continuity across services.
- Reduce the complexity of vendor management by aligning contract terms and performance expectations enterprise-wide.

Key Considerations for Legal Teams

- Avoid siloed contract reviews that miss interdependencies between vendors and services.
- Coordinate default positions on terms like liability, exit rights, and service levels to ensure consistency and prevent gaps.
- Understand how vendors interact within the broader technology stack to anticipate operational risks.
- Develop governance frameworks that holistically oversee collective vendor performance and compliance.
- Deploy tools and processes to monitor multi-vendor relationships as a single integrated contract portfolio.

THE MYTHICAL CONFLICT BETWEEN BUSINESS SPEED & LEGAL CAUTION

Business Demands Speed

- Pressure to close deals quickly to capitalize on market opportunities and maintain competitive advantage
- Cost savings driven by faster procurement cycles and reduced negotiation friction
- Innovation enablement requires agile contracting to onboard new technologies rapidly
- Internal stakeholders expect rapid responsiveness to support business initiatives
- Delays in procurement can stall projects, impacting revenue and growth

Legal Demands Risk Prevention

- Ensuring compliance with evolving regulations and contractual obligations to mitigate liability
- Protecting the organization from legal disputes through enforceable contract terms
- Managing operational, financial, and reputational risks associated with vendor relationships
- Careful review to prevent ambiguous clauses and gaps that expose the business
- Balancing protection with flexibility to avoid unnecessary deal delays

LEGAL RISK VS. CONTRACTUAL RISK

	Contract Risk	Legal Risk
Definition	<p>Uncertainty arising from ambiguous contract terms or ineffective contract management processes.</p> <p>Issues such as missed deadlines, poor version control, and unclear clauses increase exposure.</p> <p>Often stems from how contracts are created, executed, and administered.</p>	<p>Exposure to lawsuits, regulatory penalties, and enforcement actions due to non-compliance.</p> <p>Includes risks from ambiguous or missing critical legal clauses and jurisdictional conflicts.</p> <p>Arises from substantive legal issues requiring expert interpretation.</p>
Character	<p>Primarily process-driven and frequently preventable through improved management.</p> <p>Can be systematically reduced by implementing workflows, playbooks, and monitoring tools.</p> <p>Focuses on avoiding operational disruptions and ensuring contract clarity.</p>	<p>Requires specialized legal expertise to identify and manage.</p> <p>Involves high-stakes consequences such as litigation, fines, and reputational damage.</p> <p>Cannot be fully eliminated but must be carefully assessed and controlled.</p>
Mitigation	<p>Standardize contract drafting and approval workflows to minimize errors.</p> <p>Use contract lifecycle management software to track obligations and deadlines.</p> <p>Train teams on contract terms and establish accountability for compliance.</p>	<p>Engage legal counsel early in contract formation for high-risk issues.</p> <p>Perform thorough legal reviews focusing on compliance and enforceability.</p> <p>Develop risk-based escalation protocols for critical legal concerns.</p>

ALIGNING LEGAL PROTECTION & BUSINESS ENABLEMENT

Key Strategies for Legal-Business Alignment

- Legal teams should harmonize compliance and risk mitigation with business objectives to promote growth and innovation.
- Process improvements like contract playbooks, standardized workflows, and governance systems reduce contract risk and accelerate approvals.
- Legal risk mitigation should focus on high-stakes issues while routine risks are managed through scalable processes.
- Building systems that empower saying "yes" more often requires balancing legal caution with business agility.
- In-house legal experience shows businesses need smarter "yes" decisions, not more "no" responses, to maintain momentum.

Effective legal services do more than block risks—they strategically advance business goals by integrating legal safeguards with operational realities. By focusing on reducing contract risk through streamlined processes and reserving legal risk mitigation for critical issues, organizations can empower faster decision-making and foster innovation without compromising protection.

DEVELOP & DEPLOY TERMS TO ADVANCE BUSINESS OBJECTIVES

Flexible Scaling Provisions

- Allow adjustments in service volume or user counts without the need for renegotiation or penalties.
- Include clear thresholds and pricing models that accommodate fluctuating usage.
- Prevent vendor lock-in by maintaining optionality during expansion or contraction phases.

Performance-Based Pricing

- Align vendor compensation with measurable outcomes and service levels.
- Incentivize vendors to meet or exceed agreed-upon performance metrics.
- Reduce fixed costs by linking payments to actual results rather than flat fees.
- Encourage continuous improvement and accountability through transparent pricing triggers.

Clear Exit Rights

- Define unambiguous conditions under which either party can terminate the agreement.
 - Include rights to exit without excessive penalties in cases of performance failure or business changes.
 - Ensure data return, deletion, or transition support obligations are clearly outlined.
 - Preserve organizational flexibility to pivot vendor relationships as strategic needs evolve.
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NEGOTIATION TIMING AND LEVERAGE

Starting contract negotiations at least 60 days before expiration yields 39% greater savings by preserving negotiation leverage and allowing thorough risk assessment. Building renewal calendars that trigger negotiations 90 to 120 days in advance empowers procurement teams to avoid rushed decisions and secure better terms.

Analysis and Recommendations

- Early negotiation preserves leverage by providing time to explore competitive alternatives and avoid last-minute concessions.
- Starting negotiations 60 days before contract expiry results in significantly higher cost savings compared to later starts at 30 days.
- Building renewal calendars that initiate negotiations 90-120 days before expiration creates disciplined timelines and reduces decision pressure.
- Rushed negotiations close deals faster but increase the risks of unfavorable terms and missed cost-saving opportunities.
- Procurement teams should prioritize early engagement to maximize value capture and minimize contract risk exposure.

COMMON NEGOTIATION MISSTEPS

Overemphasis on Price

Negotiating only on price while ignoring important non-pricing terms weakens contract value.

Critical provisions, such as service-level agreements (SLAs), data rights, and termination clauses, impact long-term outcomes.

Ignoring these areas can lead to service disruptions, compliance issues, and costly disputes.

Auto-Renewal & Notice Periods

Accepting auto-renewal clauses without clear advance notice of cancellation requirements creates lock-in risks.

Many contracts require cancellation months ahead, which can be easily missed without proper tracking.

Failure to manage renewal terms results in unwanted extensions and lost negotiation leverage.

Delayed Renewal Negotiations

Starting renewal discussions too close to expiration reduces negotiating power and leads to rushed decisions.

Last-minute negotiations often force acceptance of unfavorable terms due to time pressure.

Early engagement enables a thorough risk assessment and exploration of competitive alternatives.

SAAS FREQUENT FLYER ISSUES

Common SaaS Contract Pitfalls

- Vague terms such as "industry-standard support" or "reasonable efforts" lack clear definitions, creating ambiguity in service levels and vendor obligations.
- Auto-renewal clauses often require a cancellation notice months in advance, which can be easily overlooked and result in unwanted contract extensions.
- Missing uptime guarantees without defined liability expose organizations to service interruptions without recourse or compensation.
- Lack of flexibility in scaling provisions locks organizations into fixed terms, hindering growth or adjustment to changing business needs.
- Many organizations do not push back on these provisions, even though vendors expect negotiation and built-in flexibility.

Many SaaS contracts include vague or one-sided terms that expose organizations to vendor lock-in, service disruptions, and unfavorable economics. These pitfalls are negotiable, and proactive contract management can prevent costly entanglements and ensure flexibility for growth and change.

EFFECTIVE SERVICE LEVEL AGREEMENTS

Key Components of Enforceable SLAs

- SLAs should specify measurable performance metrics such as uptime percentages, response times, and resolution deadlines to provide objective standards for service delivery.
- Clear definitions of service availability, support response times, and escalation procedures ensure all parties have aligned expectations and understand the consequences of failures.
- Remedies and penalties for non-compliance, including service credits or financial penalties, create real incentives for vendors to maintain performance levels.
- Structured escalation paths enable timely issue resolution and reinforce accountability throughout the contract lifecycle.
- Enforceable SLAs protect organizations from repeated performance failures and ensure stakeholders can rely on vendor commitments.

MULTI-VENDOR NEGOTIATIONS

Siloed Negotiation

- Inconsistent data rights across different vendors create legal and operational complications.
- Conflicting security standards increase the risk of breaches and compliance failures.
- Integration requirements may conflict, causing technical incompatibilities and service disruptions.
- Liability coverage gaps expose the organization to unmanaged risks and potential losses.
- Siloed negotiations hinder a holistic view, leading to missed risks and inefficient contract management.

Coordinated Negotiation

- Ensures compatibility and interoperability across vendor agreements, reducing integration risks.
- Establishes consistent security and data protection standards enterprise-wide.
- Facilitates unified liability and risk allocation strategies, minimizing exposure.
- Enables systems thinking to manage infrastructure as a cohesive ecosystem rather than isolated contracts.
- Improves vendor accountability through coordinated performance monitoring and governance.

DATA SECURITY: ESSENTIAL REQUIREMENTS

Expanded Data Ownership and Access Rights

Contracts must explicitly confirm data ownership remains with the client organization.

Include provisions for data access and export rights in standardized, interoperable formats.

Ensure vendors provide timely access to data during and after contract termination.

Data Residency and Location Requirements

Specify data storage locations to comply with GDPR, CCPA, and other regional regulations.

Address cross-border data transfer restrictions and necessary contractual safeguards.

Ensure compliance with local data sovereignty laws through enforceable contract clauses.

Mandatory Security Certifications

Require vendors to maintain recognized certifications such as ISO 27001 and SOC 2.

Certifications demonstrate adherence to industry-standard security controls.

Regular certification audits and updates must be contractually enforced.

Restrictions on Vendor Data Usage

Prohibit vendor use of client data for AI training or competitive analysis without explicit consent.

Limit vendor rights to use data strictly to agreed-upon service delivery purposes.

Include clauses mandating data destruction or return upon contract termination.

2026 PRIVACY REGULATORY LANDSCAPE

Fragmented Multi-State Privacy Laws

- 19 U.S. states enforce comprehensive privacy laws as of 2026, creating a patchwork regulatory environment.
- Colorado and California have expanded sensitive data definitions to include neural and biological data, increasing compliance scope.
- Oregon has strengthened protections for children's personal data and banned the sale of precise geolocation data.
- Other states continue to evolve their statutes, adding unique consent, data handling, and breach notification requirements.
- Uniform privacy clauses no longer suffice; contracts must reflect state-specific nuances and legal obligations.

Implications for Contract Clauses

- Contracts must explicitly address diverse state-specific data definitions and consent requirements to avoid non-compliance.
- Incorporate flexible data protection provisions that can adapt to evolving regulations across jurisdictions.
- Include tailored breach notification timelines and obligations to meet differing state mandates.
- Ensure data residency and transfer clauses comply with localized regulatory demands and cross-border restrictions.
- Legal teams should develop modular contract templates enabling quick customization for multi-state compliance.

VENDOR ACCOUNTABILITY

Key Elements of Managing Vendor Performance

- Vague or weak performance provisions lead to repeated service failures without recourse, causing operational disruptions and business impact.
- Effective SLAs must include measurable performance metrics, defined response times, and specific remedies or penalties for non-compliance to hold vendors accountable.
- Stakeholders should rely on enforceable commitments to ensure consistent support and timely issue resolution from vendors.
- Incentives tied to performance encourage vendors to meet or exceed contractual obligations, aligning their interests with business outcomes.
- Performance provisions should be regularly reviewed and enforced throughout the contract lifecycle to prevent drift and maintain accountability.

POST-SIGNATURE GOVERNANCE GAP

Risks and Solutions in Post-Signature Governance

- Underinvestment in post-signature governance leads to unmonitored contract performance, risking service failures and compliance breaches.
- Auto-renewals without review can lock organizations into unfavorable terms or outdated agreements.
- Vendor relationships may drift without clear accountability, reducing responsiveness and increasing operational disruptions.
- Scalable governance systems integrate centralized contract repositories, automated renewal alerts, and performance KPIs to maintain control.
- Cross-functional ownership and clear escalation procedures ensure timely issue resolution and continuous vendor management beyond contract signing.

Many organizations heavily focus on contract negotiation and execution but neglect post-signature governance, leading to unchecked risks and lost value. Implementing scalable governance systems—such as automated renewal alerts, performance tracking, and cross-functional vendor accountability—closes this gap, ensuring contracts deliver sustained business outcomes and reduce operational, financial, and compliance risks.

FOR QUESTIONS AND FOLLOW UP



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