

APTAC Body of Knowledge Competency Guide

E. Government vs. Private Sector Procurement

E.1 Government vs. Uniform Commercial Code (UCC)

DESCRIPTION

Effective counseling and training of companies new to the government market requires a solid understanding of how contracting with buyers in the private sector differs from entering into a contract with the government or a prime contractor to the government. This is not to be confused with selling commercial products and services to government entities addressed in APTAC Body of Knowledge (BOK), Section C.7 Commercial Items Acquisition.

One important path to understanding the differences between public and private sector contracting is to compare the regulatory provisions of the Federal Acquisition Regulations (FAR) with the Uniform Commercial Code (UCC)

The following highlights some key differences between the FAR and the UCC which can be researched in greater depth through the list of references cited at the end of this document.

1. The UCC is a set of laws relating to commercial transactions that have been adopted, at least partially, by many states to further uniformity and fair dealing in business and commercial transactions.
2. The FAR is described in the BOK Section C.1 as the principal set of rules in the Federal Acquisition Regulation System. This system consists of sets of regulations issued by agencies of the federal government of the United States to govern the acquisition process.
3. The UCC is “party-neutral,” whereas the FAR favors the government and the taxpayer.
4. The UCC contains contractual “presumptions” applicable to commercial transactions that are generally negotiable, whereas the FAR contains many non-negotiable terms and conditions between the contractor and the government. FAR Part 15 does specify provisions for negotiating government contracts, but these provisions contain more rigidity and limitations than private sector practices. An example of this is the duty to perform. Under the federal procurement rules, the “Changes” clause (FAR 52.243) expresses a duty to perform once awarded a contract even if the contractor feels that the Statement of Work has been changed and must seek relief by requesting an equitable adjustment versus stopping performance and negotiating a resolution.
5. While the UCC aims at establishing a balance between buyers and sellers, the FAR emphasizes and generally favors the best interests of the government.

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6. The FAR strongly emphasizes “*full and open competition*”. The UCC does not require competitive procurements.
7. Standard express and implied commercial product and service warranties work well in the private sector. FAR provisions can allow the government to mandate more elaborate and restrictive warranties.

In summary, before a business enterprise pursues federal government work it is important to understand the differences that exists, as discussed above, between public and private sector contracting. Successful commercial market companies who have used the UCC as their primary framework for conducting business should be able to adapt to and meet the requirements of the FAR without making significant changes to their current business practices.

While the focus here is on federal government procurement regulations (FAR), many state and local governments adopt regulations and practices that mirror the federal government to one degree or another. So it is important that PTAC counselors also understand specific state and local regulations and practices as much as possible.

REFERENCES

<http://www.acquisition.gov/far/>

<http://legal-dictionary.thefreedictionary.com/Uniform+Commercial+Code>

<http://www.law.cornell.edu/ucc/ucc.table.html>