



# Federal Acquisition & Subcontract Management Group ISM NEWSLETTER



*Serving members involved in Supply Management as well as procurement related to government agencies.*

Volume 1, Issue 1

September 2005

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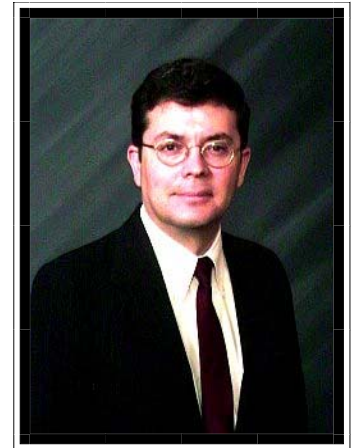
## WELCOME TO THE FASMG!

Welcome to the Federal Acquisition and Subcontract Management Group's (FASMG) first newsletter for this program year. As this year's FASMG Chair, I extend my congratulations to you for joining this Group and taking advantage of the networking and professional development opportunities that this Group offers.

The federal government is the largest purchaser in the world, procuring billions of dollars of supplies and services every year. We all know that federal acquisition is a unique field involving one of the most structured and regulated acquisition and contracting processes and some of the most complex and critical technologies that exist today. Just as the supply management profession continues to evolve, the federal acquisition sector is also changing to reflect the dynamics of the government's procurement transformation. As the federal acquisition system continues to transform with innovative acquisition processes such as evolutionary acquisition, modular contracting, award term contracts, and performance-based contracting, federal acquisition managers and our industry partners will continue to need training and education in these areas.

The FASMG is a unique organization providing a forum for networking and professional development of those ISM members involved in acquisition and contract management at the federal agency, prime contractor, or subcontractor level. I encourage all FASMG members to seek out networking and professional development opportunities with each other. Many FASMG members have extensive years of experience and expertise in federal acquisition management, either on the government or industry side, or both. These members can be an excellent source of knowledge, mentoring, and informal consulting to other members that are just starting in federal acquisition management.

Finally, I also encourage all members to take an active role in the FASMG—this is your Group! If there is something specific that you would like to see the Group do in terms of networking and professional development, let



us know. Of course—we are always looking for volunteers to help us identify and take advantage of any available opportunities. The mission of ISM is to “Lead Supply Management”—As I see it, the mission of the FASMG is to “lead the networking and professional development of ISM members involved in federal acquisition and subcontract management.” As Chair of the FASMG and a member of the leadership team, I welcome any comments or suggestions that you may have to offer.

**FASMG Chair**

Dr. Rene G. Rendon, CPCM, C.P.M., PMP  
Naval Postgraduate School  
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Join the next FASMG Teleconference on October 28, 2005 at 12:00 Pacific Time, 3:00 Eastern Time. The topic will be Current Trends in Defense Acquisition including: Education and Training; Acquisition Certification; General Workforce Issues. The

call will be open to the first 25 members of FASMG. Questions on any of these issues can be submitted in advance by e-mail to one of the current officers listed on the website. The call in number is 866-581-6534 Passcode: 507778

## RESULTS OF THE FASMG MEMBER SURVEY

In July 2005, FASMG sent out a survey to members and requested responses to six questions. We received a total of 32 responses and we would like to share these responses. Thank you to all who participated. This will help us to develop a plan to better serve our members.

<p><b>How familiar are you with the FASMG, including its activities and programs?</b></p> <table style="width: 100%; border-collapse: collapse;"> <tr><td>Not</td><td style="text-align: right;">4</td></tr> <tr><td>Generally Not</td><td style="text-align: right;">5</td></tr> <tr><td>Don't Know</td><td style="text-align: right;">1</td></tr> <tr><td>Somewhat</td><td style="text-align: right;">18</td></tr> <tr><td>Very</td><td style="text-align: right;">4</td></tr> <tr><td colspan="2">Total Responses = 32</td></tr> <tr><td colspan="2">Average = 3.41</td></tr> </table>	Not	4	Generally Not	5	Don't Know	1	Somewhat	18	Very	4	Total Responses = 32		Average = 3.41		<p>tive (in terms of conferences and educational sessions) compared to other similar professional associations (NCMA)</p> <hr/> <p><b>How familiar are you with the FASMG Web site?</b></p> <table style="width: 100%; border-collapse: collapse;"> <tr><td>Not</td><td style="text-align: right;">6</td></tr> <tr><td>Generally Not</td><td style="text-align: right;">8</td></tr> <tr><td>Don't Know</td><td style="text-align: right;">5</td></tr> <tr><td>Somewhat</td><td style="text-align: right;">11</td></tr> <tr><td>Very</td><td style="text-align: right;">2</td></tr> <tr><td colspan="2">Total Responses = 32</td></tr> <tr><td colspan="2">Average = 2.84</td></tr> </table> <hr/> <p><b>If familiar, do you use it?</b></p> <table style="width: 100%; border-collapse: collapse;"> <tr><td>No</td><td style="text-align: right;">8</td></tr> <tr><td>Yes</td><td style="text-align: right;">11</td></tr> <tr><td colspan="2">Total Responses = 19</td></tr> </table> <hr/> <p><b>If you use the site, how do you use it?</b></p> <table style="width: 100%; border-collapse: collapse;"> <tr><td>Other</td><td style="text-align: right;">1</td></tr> <tr><td>Read about procurement</td><td style="text-align: right;">9</td></tr> <tr><td>Maintain general information on FASMG</td><td style="text-align: right;">3</td></tr> <tr><td>Keep current on FASMG</td><td style="text-align: right;">3</td></tr> <tr><td>Find contact information</td><td style="text-align: right;">5</td></tr> <tr><td colspan="2">Total Responses = 21</td></tr> </table> <hr/> <p><b>If other, please list specifics:</b></p> <ul style="list-style-type: none"> <li>-You might want to do e-blasts to let everyone know about your website.</li> <li>-As a municipality we don't purchase from federal funds often but reading about the trends and laws is important to keep us up to date. I don't use the site often but when I do it is for this purpose.</li> <li>-My knowledge of FASMG is solely based on the newsletters, etc. that I have been receiving from Charles Rambaugh, Esq., former President of the organization. I hope these updates on Government regulations remains in effect. I don't use the Website, because I have no time to explore it. This is a lame excuse, but I will try to improve over the coming year.</li> </ul>	Not	6	Generally Not	8	Don't Know	5	Somewhat	11	Very	2	Total Responses = 32		Average = 2.84		No	8	Yes	11	Total Responses = 19		Other	1	Read about procurement	9	Maintain general information on FASMG	3	Keep current on FASMG	3	Find contact information	5	Total Responses = 21		<p><b>If you do not use the site, why?</b></p> <table style="width: 100%; border-collapse: collapse;"> <tr><td>Other</td><td style="text-align: right;">9</td></tr> <tr><td>Website too difficult to navigate</td><td style="text-align: right;">0</td></tr> <tr><td>It does not have links to current and useful websites...</td><td style="text-align: right;">0</td></tr> <tr><td>It does not contain current info.</td><td style="text-align: right;">0</td></tr> <tr><td>Don't find it useful...</td><td style="text-align: right;">4</td></tr> <tr><td colspan="2">Total Responses = 13</td></tr> </table> <hr/> <p><b>If other, please list specifics:</b></p> <ul style="list-style-type: none"> <li>-New to the group, and had not heard that it existed.</li> <li>-see previous comment</li> <li>-Not sure if I have the website.</li> <li>-I like the weekly or monthly reminders sent to me on email that link to the site. I travel so many sites in my current position, that I need reminders. I recommend this approach to stimulate interest.</li> <li>-See above.</li> <li>-Don't know much about it at this point.</li> <li>-Not aware of the site</li> <li>-Not aware of it</li> <li>-Not sure--haven't looked at it in awhile.</li> <li>-wasn't aware of its existence -- probably my own fault.</li> </ul> <hr/> <p><b>What do you value most from membership in the FASMG?</b></p> <table style="width: 100%; border-collapse: collapse;"> <tr><td>Other</td><td style="text-align: right;">2</td></tr> <tr><td>Source of training ...</td><td style="text-align: right;">18</td></tr> <tr><td>Opportunity to network</td><td style="text-align: right;">13</td></tr> <tr><td>Comparison of practices..</td><td style="text-align: right;">15</td></tr> <tr><td>Alternative or complementary source to NCMA...</td><td style="text-align: right;">7</td></tr> <tr><td colspan="2">Total Responses = 55</td></tr> </table> <hr/> <p><b>If other, please list specifics:</b></p> <ul style="list-style-type: none"> <li>-My primary challenge in the small and diverse supplier program. There seems little FASMG focus on this. With my company only occasionally involved in other aspects of federal contracting (far below 1% of our total sales) much of FASMG detail is not relevant to my assignment.</li> <li>-I value FASMG solely as a net-</li> </ul>	Other	9	Website too difficult to navigate	0	It does not have links to current and useful websites...	0	It does not contain current info.	0	Don't find it useful...	4	Total Responses = 13		Other	2	Source of training ...	18	Opportunity to network	13	Comparison of practices..	15	Alternative or complementary source to NCMA...	7	Total Responses = 55	
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## International Contracting/Procurement: The UNCISG Applies, Not the UCC

Ernest G. Gabbard, JD, C.P.M., CPCPM

When contracting with foreign parties, the supply chain manager must understand that the Uniform Commercial Code (UCC) and the respective state commercial codes do NOT apply. Therefore, they should be conversant with the United Nations Convention for International Sale of Goods (UNCISG), which may provide the default rules governing their contract.

**What is the UNCISG?** As the title implies, this is a “convention” or agreement between countries, which establishes a set of rules under which they will conduct international sales. It is NOT a body of law or an international code. There are currently 62 countries that have adopted the convention, which includes the United States and most of its primary trading partners. In fact, almost two-thirds of goods moving in international trade are covered by UNCISG. Interestingly, Japan and the United Kingdom have not yet adopted UNCISG, so contracts with these countries will not be covered, unless the contracting parties agree to adopt UNCISG as the governing rules.

**When does it apply?** The UNCISG, otherwise referred to as CISG, applies to only the sale of goods which are between ratifying countries. It will not apply if one of the contracting parties is from a ratifying nation, and the other is not. Even if the parties are from ratifying countries, the parties can agree to “opt out” of application of CISG to their transaction(s). If the parties agree to opt out of CISG application, they must ensure that contract language is clear on this point, and carefully select/agree on what law will apply to their transaction(s).

A few other points on application:

1. It also does not apply to consumer goods, only to commercial transactions.
2. It does not apply to services; however, it can be applied by agreement to a contract for mixed goods and services.

**Comparison to UCC** – Since most SCM are familiar with UCC, it would be valuable to compare some of the more significant provisions of CISG with their counterparts in the UCC.

First let’s look at some of the more substantial similarities:

**Applies only to goods** – As noted, CISG, like UCC, applies to commercial sales of goods, and not to purchase/sale of services. Contracting parties will therefore need to establish alternate governing rules or law for such transactions, just as they do with UCC/State Codes.

**Warranties** – The UCC “warranties” sections provide clear coverage for the SCM. The CISG Article 35, entitled “Conformity of Goods” provides the same comprehensive coverage. This includes the familiar implied warranties of merchantability and fitness for a particular purpose.

**Remedies** – Although the wording is different, the UCC and CISG both provide similar remedies to purchaser and seller for breach of contract. The right to “cover” with purchase of alternate goods is a valuable remedy that is therefore available for both the domestic and international purchase/sale.

**Contract Interpretation** – When a contract is unclear or ambiguous, the parties and courts must interpret the contract. Under UCC, the parties and courts will review such things as course of dealing between the parties, the course of performance of this contract, as well as custom and usage of trade terms. The CISG also provides for review of such items for interpreting contract language.

There are also some significant differences from the familiar UCC provisions, which could affect the SCM in the international environment, including:

**Requirement for a “writing”** – The UCC requires a “writing” for any purchase/sale over \$500. This amount varies by state, and is being revised by most states to \$5,000. However, CISG has no such “writing” requirement. In fact, CISG states that “no writing is required” to form a contract. The SCM must therefore be aware that oral contractual commitments may be enforceable for international transactions.

**Requirement for offer & acceptance** – The UCC provides that a contract may be formed even though the offer and acceptance do not agree, as long as there is agreement on essential elements, and there is a way to establish a remedy for the parties in the event of a breach of contract. CISG requires that the offer and acceptance of buyer and seller must be a mirror image of each other in order to establish a contract. This creates the pre-UCC “battle-of-the-forms” where buyer and seller exchange communications to create the contract, but during which exchange there is no enforceable contract. SCM must be aware of such provisions and be sensitive to the need for clarity of agreements for international transactions.

**Delivery terms** – The UCC contains certain provisions regarding title and risk of loss for goods in transit from seller to buyer. CISG does not contain any such terms, and parties to international transactions generally utilize the International Contracting Terms (INCOTERMS) for determining these issues. INCOTERMS are very comprehensive and must be a part of the SCM library. They are published by International Chamber of Commerce (ICC) and are available through their website at <http://www.iccwbo.org/>. To illustrate the significance of this difference, consider the SCM who normally utilizes the term “FOB Destination” on their domestic Purchase Order. If that term is used for the international contract it will have a completely different mean-

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We're on the Web!  
[www.fasmg.org](http://www.fasmg.org)

**The FASMG Group whose diverse membership base is actively involved** at various stages including prime/subcontract level of contracting for goods, software, and/or services for ultimate use by federal, state, or local governments. Procurement that involves domestic materials as well as in the international market including those involving various federal governmental regulations, e.g. FAR and DFARS. Finally, the all important impact where “commercial terms and conditions and processes” sometimes find their “genesis” by being involved where hundreds of billions of dollars are committed each year by the federal government.

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ing, and will have an entirely different result for the SCM.

Price not settled – If the buyer and seller fail to agree on the price for the goods covered by an otherwise valid contract, the UCC indicates that a contract is still formed, and that a commercially-reasonable price will be implied into the contract. CISG provides the opposite result, and the lack of agreement on price will actually prevent formation of a contract in the first place.

#### Electronic Contracting

A particularly relevant and potentially problematic aspect of CISG is its current failure to address the subject of electronic contracting. As readers may know, most states in the U.S. have adopted a version of the Uniform Electronic Transactions Act (UETA), which revises state commercial codes to enable parties to enter into contracts by electronic medium. The CISG has not yet addressed that specific issue; however, CISG Article 11 provides that “a contract of sale need not be concluded in or evidenced by writing . . .”. The logical conclusion would therefore

be that contracts may be formed electronically, since there is not the same requirement for a “writing” in the CISG as there is in the UCC. However, a court could conclude otherwise, so it may be prudent for contracting parties to have an overriding agreement to conduct transactions electronically, until the CISG is modified to specifically provide for electronic contracting.

**NOTE: I could provide a sample of an Electronic Commerce Agreement, but it is 2 pages**

#### CONCLUSIONS

As the reader may conclude, the international contracting environment is considerably different than the domestic U.S. environment. Understanding the similarities and the key differences between the UCC and UNCISG is an important step to enable the SCM to function effectively outside the U.S.

*Ernest Gabbard, JD, C.P.M., CPCM, is Director of Corporate Strategic Sourcing for Allegheny Technologies Inc. at their corporate headquarters in Pittsburgh, PA. He is a member of the Pittsburgh affiliate of ISM.*

(Continued from page 2) Results of the FASMG Survey Continued

working forum within ISM. I don't expect to get "latest and greatest" education or training on federal acquisition issues from FASMG--that is not its forte. For education and training on federal acquisition issues I look to NCMA. For federal acquisition networking and collaborating opportunities within ISM, I look to FASMG.

#### **What would you change, if anything, about the FASMG?**

- I never really receive anything from FASMG. I would like to know about seminars, training, etc.
- Add a weekly or monthly email to members with an item of interest to the membership.
- Improve information sharing and increase training related opportunities.
- nothing at this time.
- Don't really know, but if there are a significant number like myself, you may want to recognize , more, the time constraints that our jobs provide as it relates to the organization.
- Yes - As to name - something more meaningful
- Addition of a newsletter with information on items of interest over the country.
- Have individuals such as myself fairly new to FASMG welcomed without feeling pressured to take an active role at first, i.e., let us find our feet by just listening in for awhile.
- Simplify, without becoming invasive, the method of communication exchange among members. Not every question has merit for all members. Questions and issues have to be screened by an organizational content wizard.
- FASMG should, at most, have some "federal acquisition" related presentations at ISM conferences and seminars, as well as networking opportunities. At the least, FASMG should support networking opportunities at ISM conferences.

**Special points of interest:**

FASMG Membership now totals 362