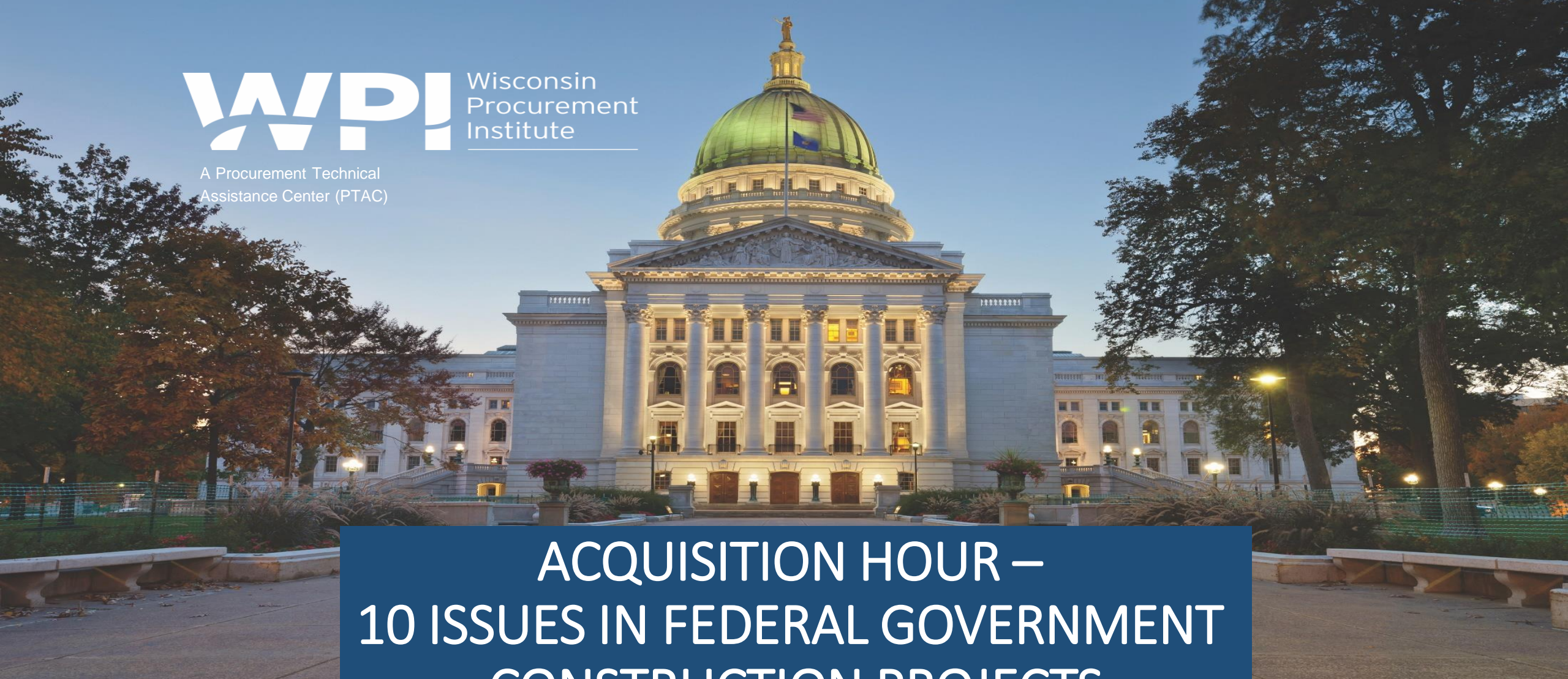


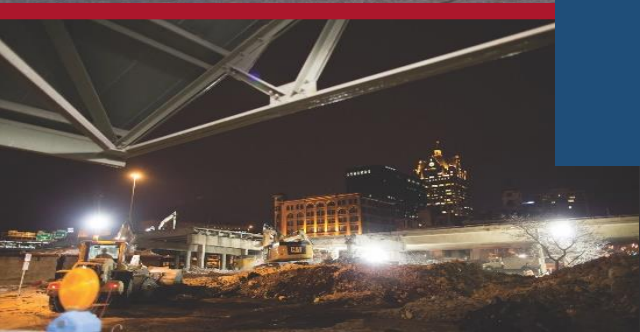


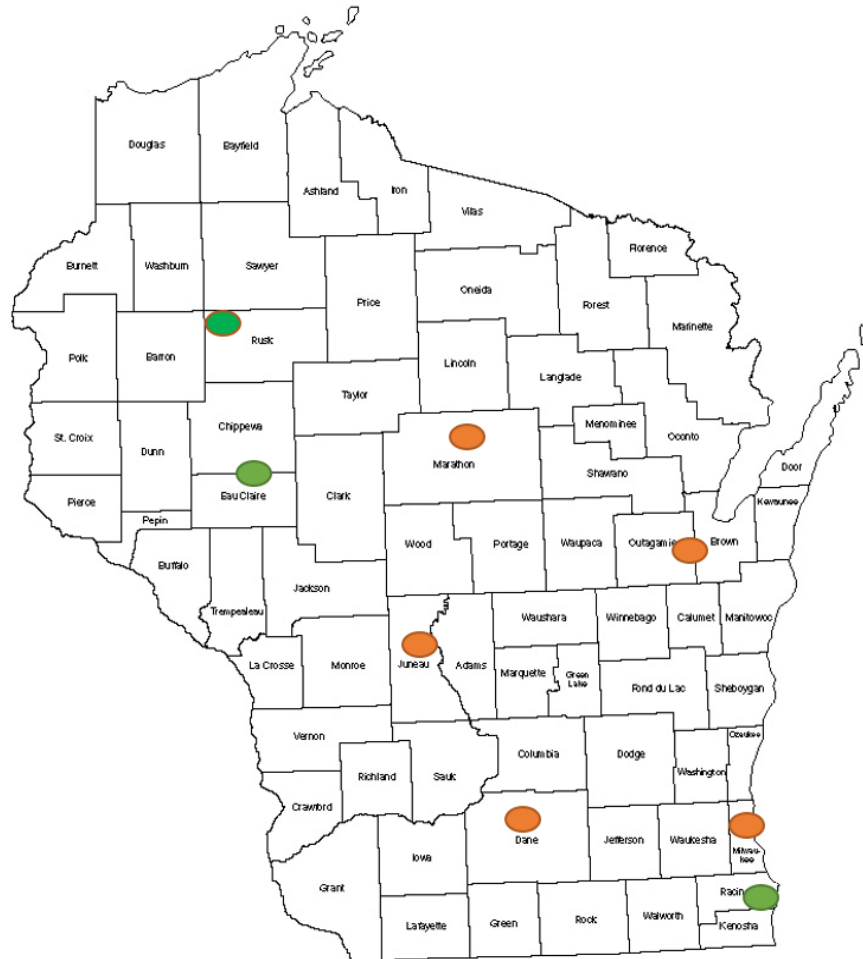
A Procurement Technical Assistance Center (PTAC)

A large, white, neoclassical building with a prominent green dome, illuminated at dusk. The building is surrounded by trees and a paved plaza. The sky is a deep blue.

ACQUISITION HOUR – 10 ISSUES IN FEDERAL GOVERNMENT CONSTRUCTION PROJECTS

December 07, 2016





LOCATIONS:

- **Primary office – Milwaukee** - Technology Innovation Center
- **Staffed Satellite offices**
 - Madison** (FEED – Food Enterprise & Economic Development / MEC – Madison Enterprise Center)
 - Camp Douglas** (Juneau County Economic Development Corporation)
 - Wausau** (Wausau Region Chamber of Commerce)
 - Appleton** (Fox Valley Technical College)
- **Active Partnerships**
 - Racine** – LaunchBox
 - Eau Claire** - Western Dairyland
 - Ladysmith** – Indianhead Community Action

MY ACCOUNT

Hello benjaminb (not benjaminb? [Sign out](#)).

Current Opportunities [View All](#)

- 1. Olbrich Botanical Gardens Education Center and Production Greenhouse Construction - September 21, 2016** Architectural Consulting Services for Olbrich Botanical Gardens Education Center and Production Greenhouse
- 2. Milwaukee County Zoo planning \$44.6 million in exhibit upgrades - September 1, 2016** The Milwaukee County Zoo plans to spend about \$44.6 million on exhibit upgrades and construction projects over the next five years, according to an economic impact study completed this summer by a University of Wisconsin-Milwaukee economics professor. The study does not say how the projects will be paid for.

The study, which was commissioned by the zoo to measure its annual economic impact on the four-county Milwaukee metropolitan area, includes a rough outline of planned construction projects through 2021.
- 3. Milwaukee County - Acquisition and Development of a Commercial/Building - August 15, 2016**
Milwaukee County
Request for Proposals
Acquisition and Development of a Commercial/Industrial Building at 9150 Watertown Plank Road, Wauwatosa, WI 53226
(Taxkey # 3729999017)
RFP # 7131
Issue Date: August 4, 2016

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WPI Acquisition Alert
September 6th 2016

Latest Presentations [View All](#)

A Winning Approach to Contract Award:
Preparation, Lead Generation, Follow-Up and
Closing The Deal

December 8, 2016

FROM OUR EXECUTIVE DIRECTOR

EVENT PRESENTATIONS

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CURRENT OPPORTUNITIES

10 ISSUES AFFECTING FEDERAL CONSTRUCTION PROJECTS



INTRODUCTION

- Today we will discuss a number of issues affecting federal construction projects. Some issues are government related (internal and external) and some are contractor and subcontractor related.

What We Will Discuss

- Government Internal Problems
- Government Issues With Prime Contractors
- What Prime Contractors Are Saying
- What the Lawyers Are Saying
- DOL Issues with Contractors

WHAT THE GOVERNMENT IS SAYING



Government Internal Issues That Could Affect Projects

- Manning Issues may affect quality of specifications and drawings
- Sub-Par Requirements Packages Lead to Contract Modifications Which Results in Additional Funding and Possible Delays
- Regulations or Management Decisions (Because of Funding Issues) Tie the Contracting Officer's Hands on Award Decisions (Sometime They Are Unable to Make the True Best Value Decision)

Government Issues With Prime Contractors

- Some Prime Contractors Take advantage of Poorly Written Specs by Not Questioning Them During Pre-Award and Requesting Change Orders After Award
- Not reading the requirements carefully
- Primes Subcontracting Out the Majority of Work
- Primes Not Managing their Subcontractors Properly and Losing Control

Government Issues With Prime Contractors (Continued)

- DoD Projects: Not Understanding the Nature of the Installation (DVs Visit and Work May Be Stopped Until the Event is Over)
- Frustration Over Work on a Military Installation Which is Much Different Than a Commercial Project
- Submittal of Poorly Written Technical Narratives
- Failure to Submit Reports and Payroll in a Timely Manner

Government Issues With Prime Contractors (Continued)

- Confusion on What Determines Contract Completion
- SAM Registration- Not Keeping It Up to Date
 - Electronic POC Leaves Company Could Lead to Payment Delays With DoD
- Adhering to Buy American Act Requirements

Government Issues With Prime Contractors (continued)

- Some Prime Contractors Take advantage of Poorly Written Specs by Not Questioning Them During Pre-Award and Requesting Change Orders After Award
 - May Result in Disputes and Claims
 - Delays Possible
 - Poor Performance Reports
- Not Reading the Requirements Carefully
 - Could Result in Underbidding the Project
 - Possible Delays

Government Issues With Prime Contractors (continued)

- Primes Subcontracting Out the Majority of Work
 - HubZone Set-Aside Requirements
 - SDVOSB Set-Aside Requirements
 - EDWOSB & WOSB Set-Aside Requirements
 - Limitations on Subcontracting

Government Issues With Prime Contractors (continued)

- **52.219-3 – Notice of HUBZone Set-Aside or Sole Source Award (Nov 2011)**
 - For General Construction
 - 15% Cost of Contract Performed by HubZone Prime Contractor Personnel (Excluding material & supplies)
 - 50% Cost of Contract by HubZone Prime Contractor or HubZone Subcontractor Personnel
 - For Specialty Construction
 - 25% of Cost of Contract Performed by HubZone Prime Contractor Personnel (Excluding material & supplies)
 - 50% Cost of Contract by HubZone Prime Contractor or HubZone Subcontractor Personnel (Excluding material & supplies)

Government Issues With Prime Contractors (continued)

- **52.219-3 – Notice of HUBZone Set-Aside or Sole Source Award Alternate 1 (Nov 2011)**
- Alternate I (*Nov 2011*). As prescribed in [19.1309](#)(a)(1), substitute the following paragraphs (d)(3) and (d)(4) for paragraphs (d)(3) and (d)(4) of the basic clause:
 - (d)
 - **(3) General construction, at least 15 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees; or**

Government Issues With Prime Contractors (continued)

- **(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees.**

Government Issues With Prime Contractors (continued)

- **52.219-27—Notice of Service-Disabled Veteran Owned Small Business Set-Aside (Nov 2011)**
 - General Construction
 - **15% Cost of Contract Performed by SDVOSB Prime Contractor Personnel or Personnel of Other SDVOSBs (Excluding material & supplies)**
 - Specialty Construction
 - **25% Cost of Contract Performed by SDVOSB Prime Contractor Personnel or Personnel of Other SDVOSBs (Excluding material & supplies)**
- **Note:** VA & FAA Require Certification With VetBiz.Gov. Other Agencies Require Self-Certification in SAM.gov. CO May Require Proof.

Government Issues With Prime Contractors (continued)

- **52.219-29—Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015)**
- **52.219-30--Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Dec 2015)**
- EDWOSB & WOSB Requirements Are the Same

Government Issues With Prime Contractors (continued)

- General Construction
 - **15% Cost of Contract Performed by EDWOSB Prime Contractor Personnel or WOSB Prime Contractor Personnel (Excluding material & supplies)**
- Specialty Construction
 - **25% Cost of Contract Performed by EDWOSB Prime Contractor Personnel or WOSB Prime Contractor Personnel (Excluding material & supplies)**

Government Issues With Prime Contractors (continued)

- **52.219-14—Limitations on Subcontracting (Nov 2011)**
- Note: Only Applies to Contracts Set-Aside For Small Business Concerns or 8(a) Concerns
 - General Construction
 - **15% By The Concern With It's Own Employees (Excluding material & supplies)**
 - Specialty Construction
 - **25% By The Concern With It's Own Employees (Excluding material & supplies)**
- SBA Issues Final Rule Effective June 2016-Not in FAR

Government Issues With Prime Contractors (continued)

- **Limitations on Subcontracting Final Rule 30 June 2016**

- Prime Contractors Take Credit For Work Performed By “Similarly Situated” Subcontractors
- Second Tier Subcontractor Work Will Count As Subcontracts Performed By Non-Similarly Situated Concerns
- Small Businesses Prime Contractors Are Excluded From “Similarly Situated” Subcontractors
- Small Business Set-Aside Contracts \$150,000 And Under Are Exempt From Limitations On Subcontracting

Government Issues With Prime Contractors (continued)

- Subcontractor/Prime Contractor Relationship
 - Not Monitoring First and Second Tier Subcontractors
 - Submission of Weekly Payroll
 - Subcontractors Questioning Inspector or Contract Specialist
 - Submission of Standard Form 1413s
 - Meeting Davis Bacon Requirements
 - Submission of Submittals
 - Subcontractor's Contract Is Not With the Government

Government Issues With Contractors (continued)

DoD Projects: Not Understanding the Nature of the Installation
(DVs Visit and Work May Be Stopped Until the Event is Over)

Frustration Over Work on a Military Installation Which is Much
Different Than a Commercial Project (Rules, Regulations,
Procedures)

Government Issues With Prime Contractor (continued)

- Submittal of Poorly Written Technical Narratives
 - Not Conforming To Requirements
 - Missing Key Information
- Failure to Submit Reports and Payroll in a Timely Manner
 - Weekly Payroll
 - Progress Schedule
 - Progress Reports
 - Submittals

Government Issues With Prime Contractor (continued)

- Failure to Pay Subcontractors in a Timely Manner
- Certification Required With Submittal of Proper Invoice

PROGRESS PAYMENT CERTIFICATION STATEMENT

- Certification Statement

I hereby certify, to the best of my knowledge and belief, that --

- (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
- (2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;
- (3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and
- (4) This certification is not to be construed as final acceptance of a subcontractor's performance.

(Name)

What Prime Contractors Are Saying

- The Government Believes That They Are Always Right (Doesn't Apply to All Agencies)
- Protect Yourself --Document, Document, Document
 - (Who, What, Why, Where, When)

WHAT THE LAW FIRMS ARE SAYING

- Presidential Executive Orders Pertaining to Government Contracting Resulted in Several New Regulations
- Effect: Significantly Increase Cost of Doing Business With Government
- Estimated Almost One Third Every Contract Dollar is Spent on Compliance With Unique Regulations
- Government Enforcement At All Time High
- Suspension and Debarments Increased 300% from 2009 to 2015 (from 1,836 to 5,179)

AREAS MOST SUSCEPTIBLE TO INVESTIGATION & ENFORCEMENT

- **BUILDING CONSTRUCTION INDUSTRY**
 - Government Pursuing Alleged Violation of SBA Regulations
 - DOT's DBE Program
 - Mentor Protégé Program
 - Buy American Act
 - Davis-Bacon Act
 - False Claims

DOL ISSUES WITH CONTRACTORS

- Misrepresentation and False Certification of Wages
- Misclassification of Employees

DOL Issues With Contractors (continued)

- Misrepresentation and False Certification of Wages
 - Wages
 - Not Paying Prevailing Wages
 - Not Paying Overtime
 - Not Classifying Employees Properly
 - Fringe Benefits
 - Must pay base pay and Fringes (Cash or to a Plan, or Combination of both)

DOL Issues With Contractors (continued)

- Misclassification of Employees
 - Laborer vs Carpenter
 - Laborer vs Cement Finisher
 - Apprentices Without Valid Program
- Request a Conformance When Necessary

Conclusion

- Managing a Federal Construction Contract and Subcontract is Challenging
- Written and Verbal Communication is the Key
- Do It the Right Way and It Can Be Rewarding

ANY
QUESTIONS
?

Upcoming WPI Events – Acquisition Hour Webinars

- December 8, 2016 – [The New Small Mentor Protégé Program – A Lawyer’s Perspective](#) - Presented by Emily A. Constantine, Attorney, Husch Blackwell LLP
- January 24, 2017 – [Acquisition Hour – The Contractor Purchasing System Review Series part 1 of 4](#) - Presented by Phil Bail, Phil Bail & Associates
- January 25, 2017 – [Acquisition Hour – The SBA 8\(a\) certification program](#) - Presented by U.S SBA
- February 7, 2017 – [Acquisition Hour: The HUBZone Program – Certification Benefits and New Regulations](#) - Presented by U.S SBA

Other Upcoming WPI Events

- [Opportunities for Wisconsin Manufacturers – Working as a Federal Government Subcontractor](#) – January 11, 2017 - Manitowoc
- [End of Year Federal Contractor Update](#) – January 17, 2017 - Milwaukee
- [What it Takes to Win – Selling to State and Local Governments](#) – February, 15, 2017 - Milwaukee

Other Upcoming Events



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QUESTIONS?

Continuing Professional Education



CPE Certificate available, please contact:

Benjamin Blanc

benjaminb@wispro.org

SURVEY



Today's Presentation was done by

Dave Olson

Wisconsin Procurement Institute

For additional assistance, please contact Dave at

608-338-8018

davido@wispro.org

For Assistance or Additional Information contact

Wisconsin Procurement Institute (WPI)
Benjamin Blanc

10437 Innovation Drive, Suite 320
Milwaukee, WI 53226
414-270-3600 or
benjaminb@wispro.org