

ACQUISITION HOUR :
4 CRITICAL ISSUES AFFECTING FEDERAL
CONSTRUCTION PROJECTS
May 30, 2017



Webinar Etiquette



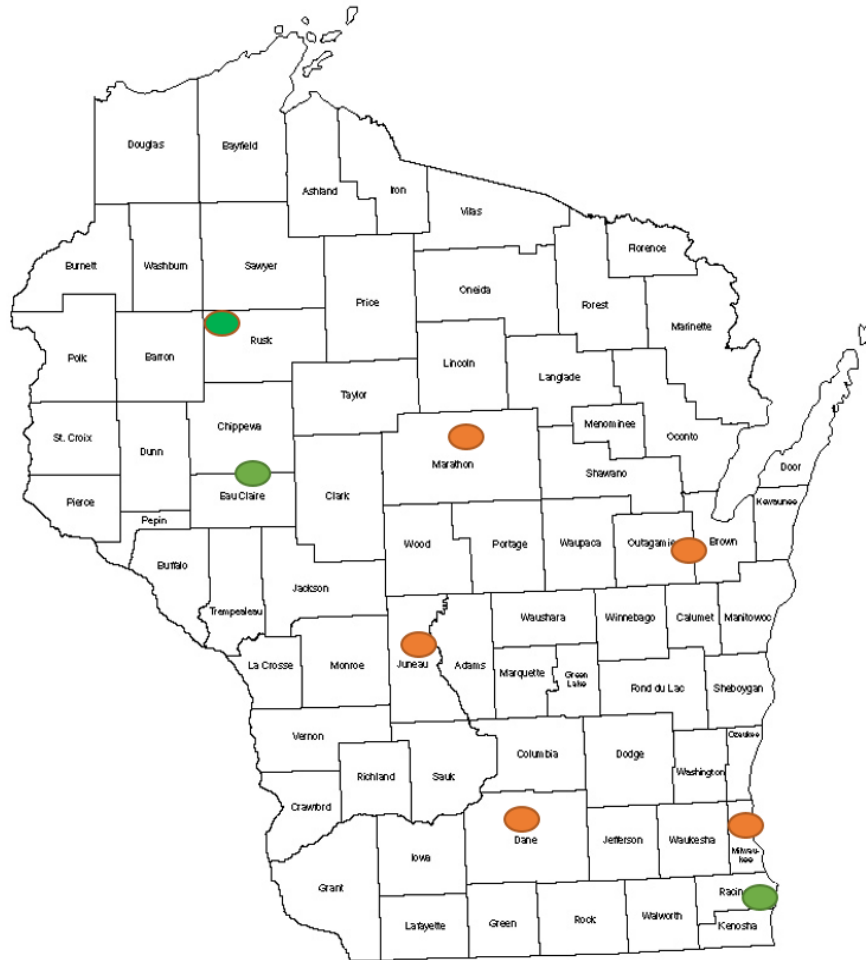
- Please
 - When logging into go-to-meeting, enter the name that you have registered with
 - Put your phone or computer on mute
 - Use the Chat option to ask your question(s): We will read them and our guest speaker will provide an answer to the group
- Thank you!



ABOUT WPI

Supporting the Mission

Assist businesses in creating, development and growing their sales, revenue and jobs through Federal, state and local government contracts.



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

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1. [SBA Seeks Funding Proposals from Non-Profits and Local Institutions to Provide Entrepreneurship Training for Service Members, Military Spouses and Veterans - January 18, 2017](#)

WASHINGTON – The U.S. Small Business Administration (SBA) is inviting funding proposals from non-profit organizations, state, local and tribal government agencies, and institutions of higher learning to provide “Boots to Business” entrepreneurship training to service members, military spouses, and veterans.

2. [Chicago Secures \\$1 Billion in Federal Grant Funding for Rail Upgrades - January 10, 2017](#)

Chicago’s Transit Authority will receive nearly \$1.1 billion in federal grant funding to help pay for upgrades meant to expand rail capacity on the north side of the city, officials said Monday.

The money will go toward roughly \$2.1 billion of planned work on the city’s Red and Purple “L” lines. This will include improvements to track, stations, power and signal systems, and the purchase of 32 new railcars, according to the Federal Transit Administration.

3. [Secure That Smart Toaster and Win \\$3,000- January 4, 2017](#)

The Federal Trade Commission is offering up to \$25,000 in prize money for applications or tools that help people protect their smart home devices from hackers, according to a Federal Register notice.

The competition, which will announce winners in July, comes as the internet is creeping into more and more household devices ranging from baby monitors to toasters.

These internet-of-things devices are often less secure than traditional internet-connected devices such as laptops and smartphones. It’s also often more difficult to update the software in these devices to patch vulnerabilities, making

4 ISSUES AFFECTING FEDERAL CONSTRUCTION PROJECTS



INTRODUCTION

- Today we will discuss four issues affecting federal construction projects. The issues are contractor and subcontractor related.

What We Will Discuss

- Contractor Failure to Read Solicitation Documents Completely and Then Execute an Awarded Contract
- Subcontracting Issues
- Contract Completion Issues
- Certified Payroll Issues

Contractor Failure to Read Solicitation Documents Completely and Then Execute an Awarded Contract

Failure to Read Solicitation Properly & Execute Contract (continued)

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

Failure to Read Solicitation Docs (cont)

- 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

The Vicious Cycle of Failing to Read Documents Thoroughly



SUBCONTRACTING ISSUES

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

SUBCONTRACTING ISSUES (Cont.)

- **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)

SUBCONTRACTING ISSUES (Cont.)

- **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**

SUBCONTRACTING ISSUES (Cont.)

- **(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.**

SUBCONTRACTING ISSUES (Cont.)

- **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.

SUBCONTRACTING ISSUES (Cont.)

- **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

Subcontracting Issues (cont.)

- 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 (Jan 2017)**
- 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)**

Subcontracting Issues (cont.)

- **Limitations on Subcontracting Final Rule 30 June 2016 (Incorporated in the FAR Jan 2017)**
 - 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

Percentage of Required Contract Completion by Prime Contractor

	HubZone	SDVOSB	EDWOSB & WOSB	8(a)	SB
General Construct.	15% Prime	15% Prime & Sub SDVOSB	15% Prime	15% Prime	15% Prime
	50% Prime & Sub HubZ				
Specialty Construct.	25% Prime	25% Prime & Sub SDVOSB	25% Prime	25% Prime	25% Prime
	50% Prime & Sub HubZ				

Subcontracting Issues (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

Subcontracting Issues (continued)

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

CONTRACT COMPLETION ISSUES

Contract Completion Issues (Continued)

- Withholding Funds
 - How much to withhold
- Punch List Items
 - Timeline for Completion
- Final Payment
- Warranty Period
 - Equipment
 - Subcontractors
 - Landscaping

Contract Completion Issues (Continued)

- Warranty (continued)
 - Recommendation
 - Prime – Subcontractor agreement
 - Begin warranty at final contract completion not when the subcontractor has completed their work

CERTIFIED PAYROLL ISSUES

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)

Certified Payroll Issues (Continued)

- Misrepresentation and False Certification of Wages
- Misclassification of Employees

Certified Payroll Issues (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)

Certified Payroll Issues (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
?

Acquisition Hour Webinars

- June 13, 2017 – [Acquisition Hour: Maximizing FBO in your Market Strategies](#) – Presented by WPI
- June 14, 2017 – [Acquisition Hour: Understanding the Differences Between Federal Solicitation Types](#) – Presented by WPI
- June 21, 2017 – Acquisition Hour: Learning about Surety Bond Guarantee from the US.SBA – Presented by US.SBA
- July 5, 2017 – Acquisition Hour: Invoicing the Department of Defense using WAWF/iRAPT – Presented by WPI
- July 19, 2017 – [Acquisition Hour: Market Research – Using the Federal Procurement Data Systems \(FPDS\)](#) – Presented by WPI

Upcoming WPI Events

- DOING BUSINESS WITH THE NATIONAL PARK SERVICE – June 14, 2017 – Ashland, WI
- 11TH ANNUAL VOLK FIELD SMALL BUSINESS CONFERENCE – June 27 – 28, 2017 – Camp Douglas, WI



QUESTIONS?

Continuing Professional Education



CPE Certificate available, please contact:

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SURVEY



Today's Topic was presented by

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