

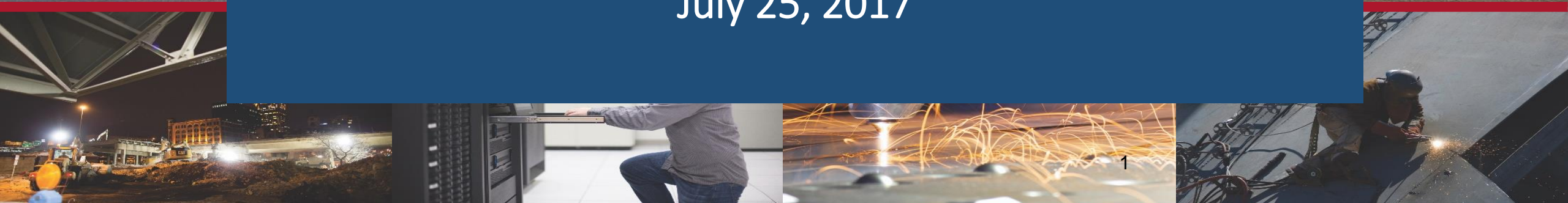


A Procurement Technical
Assistance Center (PTAC)

A photograph of the Wisconsin State Capitol building at dusk. The building is illuminated with warm lights, and its green dome is a prominent feature. The sky is a deep blue, and trees with autumn foliage are visible in the foreground.

ACQUISITION HOUR: BUY AMERICAN – THE MANY RULES

July 25, 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!

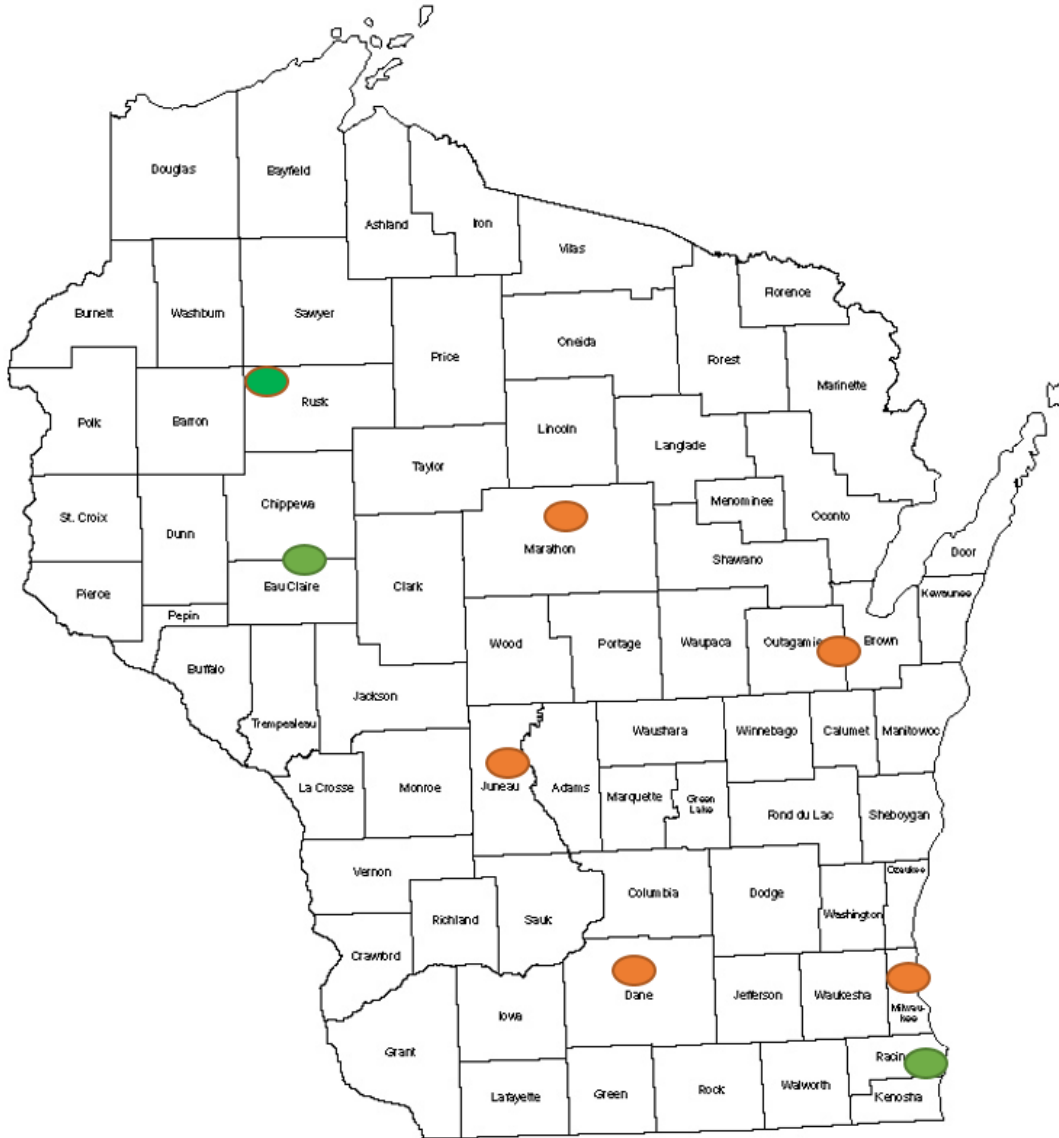
ABOUT WPI

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 Regional Chamber of Commerce)
 - Appleton (Fox Valley Technical College)
- *Active Partnerships*
 - Racine – LaunchBox
 - Eau Claire - Western Dairyland
 - Ladysmith – Indianhead Community Action



11TH ANNUAL VOLK FIELD SMALL BUSINESS CONFERENCE: THE FUTURE OF THINGS IN GOVERNMENT, INDUSTRY AND ECONOMY, JUNE 27TH AND 28TH

www.wispro.org

UPCOMING EVENTS 

- JUNE 8 2017
14TH ANNUAL WOMEN'S BUSINESS CONFERENCE
EAU CLAIRE »
- JUNE 13 2017
ACQUISITION HOUR: MAXIMIZING FBO IN YOUR MARKET STRATEGIES
- JUNE 13 2017
GOVERNMENT CONTRACTING OPPORTUNITIES FOR SMALL BUSINESSES - SUPERIOR
SUPERIOR, WI »
- JUNE 14 2017
ACQUISITION HOUR: UNDERSTANDING THE DIFFERENCES BETWEEN FEDERAL SOLICITATION TYPES
- JUNE 14 2017
DOING BUSINESS WITH THE NATIONAL PARK SERVICE
ASHLAND, WI »

CURRENT OPPORTUNITIES (2) 

GET STARTED WITH THE BASICS
Questions & answers on how to get started.

GET STARTED

SIGN-UP FOR OUR NEWSLETTER
Stay up-to-date with the latest WPI news.

SIGN UP

HAVE A QUESTION? WE'RE HERE TO HELP.
One of our staff of experts is available to answer your questions.

GET HELP

Buy American—The Many Rules

Emily Constantine

Husch Blackwell LLP

July 18, 2017

Presidential Executive Order on Buy American and Hire American

- April 18, 2017
- Strict enforcement of Buy American laws
 - Potential revisions of Buy American laws – more strict on “buying American” only
- Minimization of waivers
- “Declares that the policy of our government is to aggressively promote and use American-made goods and to ensure that American labor is hired to do the job”

BAA Overview

- Procurements above the micro-purchase threshold up to the TAA threshold
- Note, the BAA is generally waived for contracts above the TAA threshold – the President can waive the applicability of the BAA for countries who have signed a Free Trade Agreement with the U.S. or who are least developed countries
- BAA vs. “Buy America”
 - Which restrictions are in your contract?
- Applies a price evaluation preference advantage to contractors proposing competing offers of domestic end products
 - Preference vs. Restriction/Prohibition
- Restriction on procurement of supplies

Generally - BAA

- The preference is implemented by adding, for evaluation purposes, a specified percentage premium to the price of foreign end products if there is an offer of a domestic end product that is not otherwise lowest price
 - For civilian agency procurements, the price adjustment is either 6 or 12 percent,
 - The price of the foreign offer, inclusive of duty, is increased by 6 percent if the lowest domestic offer is from a large business concern, and by 12 percent if the lowest domestic offer is from a small business concern.
 - For DOD procurements the price adjustment is 50 percent. DFARS 225.105
- Certification requirements

Exceptions to the BAA

- Unreasonable cost
 - An offer containing domestic end products has an “unreasonable cost” as compared to an offer containing foreign end products
- Information technology that is a commercial item
 - Commercial IT is often sold through:
 - Multiple Award Schedule (MAS) contract programs administered by the General Services Administration
 - Other large, indefinite-delivery/indefinite quantity (ID/IQ) contracts

Exceptions to the BAA

- Qualifying country end products in Department of Defense (DoD) procurements
 - Qualifying countries are those who have a reciprocal defense procurement with the U.S. where both parties agree to remove barriers to purchases of supplies produced in the other
 - Qualifying end products are treated as domestic end products for purposes of the BAA
- Public interest
- Non-availability
 - FAR 25.104(a)

BAA Tests

- If the BAA applies, there are two tests to determine whether items qualify as **domestic end products**:
 - Test for non-manufactured products
 - Must be mined or produced in the U.S.
 - Test of manufactured products
 - Must be manufactured in the U.S.; and
 - The cost of its components mined, produced, or manufactured in the U.S. exceeds 50% of the cost of all its components
 - Commercially available off the shelf (COTS) items
 - For DoD, cost of domestic or “qualifying country” components must exceed 50%

BAA Definitions

- Manufactured vs. non-manufactured
 - “Manufactured”—not defined
 - “if the operations performed on the foreign item create a basically new material or result in a substantial change in physical character, the items becomes a component manufactured in the United States”
 - Mechanical operation performed on a foreign product
 - Assembly of separate items
 - Greater complexity than packaging operations

BAA Definitions

- A “component” is an article, material, or supply incorporated directly into an end product or construction
- “Cost of components” includes the contractor’s cost of manufacturing (labor, material, including purchase price of foreign raw material and subassemblies) but no profit or G&A and excluding costs to manufacture the end product.

Trade Agreements Act

- The TAA can be viewed as an “exemption” to the BAA
- In general, the TAA restricts agencies from acquiring products or services that are not produced or “substantially transformed” in the United States or designated countries
- TAA typically applies to contracts for goods or services over \$191,000 (can be adjusted upwards or downwards)
 - For GSA Schedules, dollar value is based on the value of the entire Schedule contract
- In DoD procurements, items must also be listed at DFARS 225.401-70 to be covered by TAA
- Certification requirements

BAA vs TAA

- Applicability to goods vs. services
- Country of Origin Test
 - TAA “Substantial Transformation” Test
 - BAA Cost of Components Test
- Prohibition vs. Price Preference

DoD Requirements

- Berry Amendment
 - Funds used by the Department of Defense (DoD) may not be used for certain items that are not grown, reprocessed, reused, or produced in the U.S. (regardless of whether they are purchased as end items, components, or materials)
- Specialty metals (10 USC 2533b)
- DFARS 252.7002
- DoD Balance of Payments Program (DFARS Subpart 225.75)

ACQUISITION HOUR LIVE WEBINAR SERIES

- August 2, 2017 – **Government Property Management for Federal Contractors and Subcontractors** – [CLICK HERE](#) for additional information – presented by Benjamin Blanc – Wisconsin Procurement Institute (WPI)
- August 16, 2017 – **Cyber Security for DoD Contractors and Prospective Contractors** – [CLICK HERE](#) for additional information – presented by Marc Violante – Wisconsin Procurement Institute (WPI)

HOW TO DO BUSINESS WITH THE DEPARTMENT OF VETERANS AFFAIRS

AUGUST 2, 2017 IRON MOUNTAIN, MI

Start Date	August 2, 2017
End Date	August 2, 2017
Time	1:00pm - 5:00pm
Facility	Oscar G. Johnson VA Medical Center, Outpatient Clinic, Second Floor, Rooms 2376 & 2378
Address	325 East H Street Iron Mountain, MI
Contact Info	Don Makowski 906-789-0558, ext 244
Details	Read More Information
Register Online	Register for Event

The Department of Veterans Affairs spends over \$23 billion annually purchasing a broad range of products and services with almost 30% awarded to small businesses. Join us to learn the ins and outs of doing business with the VA.



[REGISTER](#)

Department of Veterans Affairs

Northwest Michigan PTAC

US Small Business Administration (SBA)

Wisconsin Procurement Institute (WPI)

[HTTPS://WWW.WISPRO.ORG/EVENTS/HOW-TO-DO-BUSINESS-WITH-THE-DEPARTMENT-OF-VETERANS-AFFAIRS-5/](https://www.wispro.org/events/how-to-do-business-with-the-department-of-veterans-affairs-5/)

HOW TO DO BUSINESS WITH THE DEPARTMENT OF VETERANS AFFAIRS

AUGUST 3, 2017 APPLETON, WI

Start Date	August 3, 2017
End Date	August 3, 2017
Time	1:00pm - 5:00pm
Facility	Fox Valley Technical College, Bordini Center, Room BC 142 A
Address	5 Systems Drive Appleton WI 54914
Contact Info	Carol Murphy carolm@wispro.org 414-270-3600
Details	Read More Information
Register Online	Register for Event

The Department of Veterans Affairs spends over \$23 billion annually purchasing a broad range of goods and services with almost 30% awarded to small businesses. The VA purchases these goods and services on a national, regional, and local level. No matter how large or small your business is, VA is a potential customer.



[REGISTER](#)

Department of Veterans Affairs

Fox Valley Technical College

Northwest Michigan PTAC

US Small Business Administration (SBA)

Wisconsin Procurement Institute (WPI)

[HTTPS://WWW.WISPRO.ORG/EVENTS/HOW-TO-DO-BUSINESS-WITH-THE-DEPARTMENT-OF-VETERANS-AFFAIRS-6/](https://www.wispro.org/events/how-to-do-business-with-the-department-of-veterans-affairs-6/)



QUESTIONS?

SURVEY



CONTINUING PROFESSIONAL EDUCATION



CPE Certificate available, please contact:

Benjamin Blanc

benjaminb@wispro.org

PRESENTED BY

Wisconsin Procurement Institute (WPI)

www.wispro.org

Emily A. Constantine | Attorney
Husch Blackwell LLP

Emily.Constantine@huschblackwell.com

414.978.5434

Benjamin Blanc, CFCM, CPPS | Government Contract Specialist

Benjaminb@wispro.org 414-270-3600

10437 Innovation Drive, Suite 320
Milwaukee, WI 53226