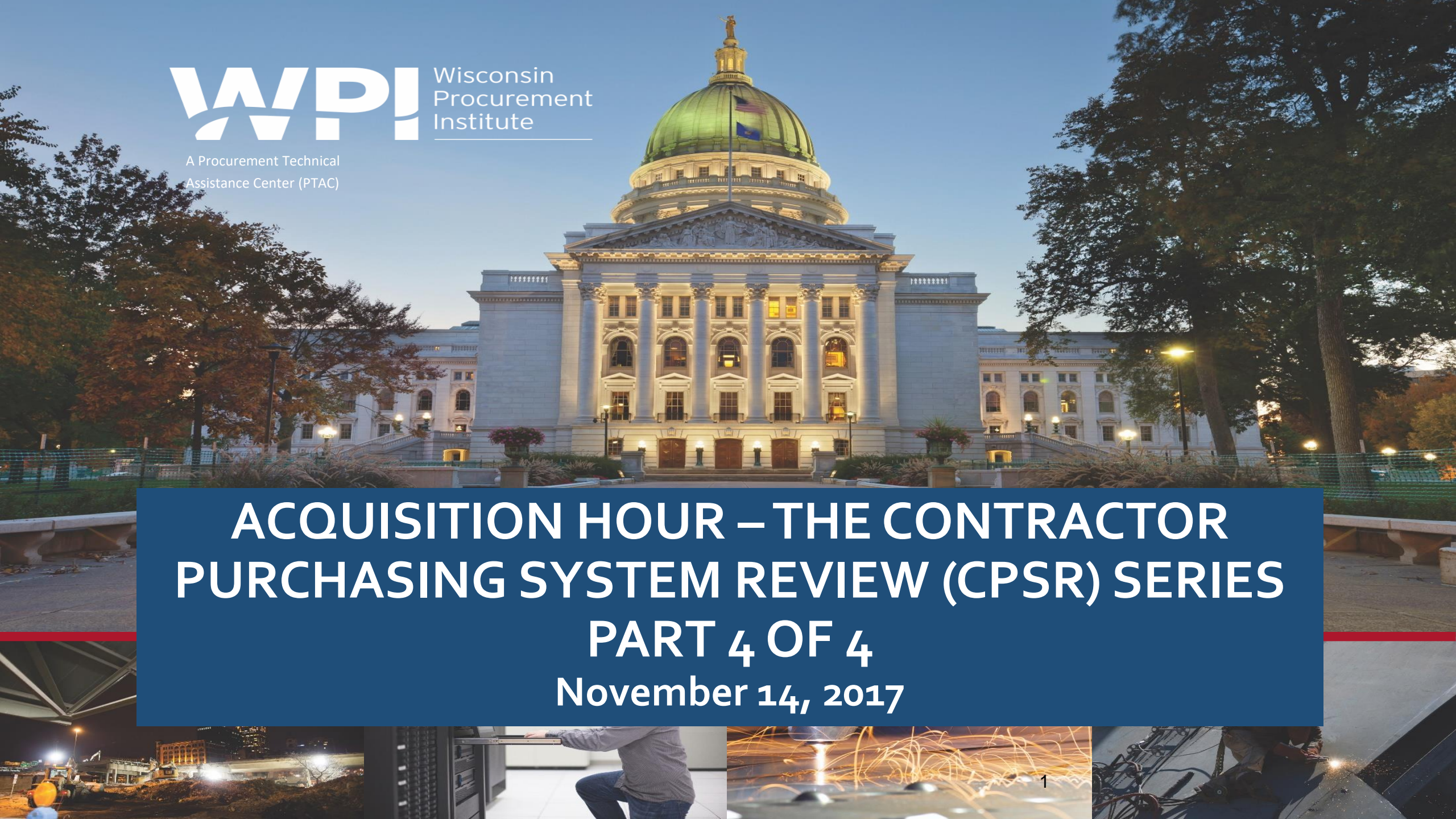




A Procurement Technical
Assistance Center (PTAC)

The background of the slide is 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. A blue banner with white text is overlaid on the bottom half of the image.

ACQUISITION HOUR – THE CONTRACTOR PURCHASING SYSTEM REVIEW (CPSR) SERIES PART 4 OF 4 November 14, 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!

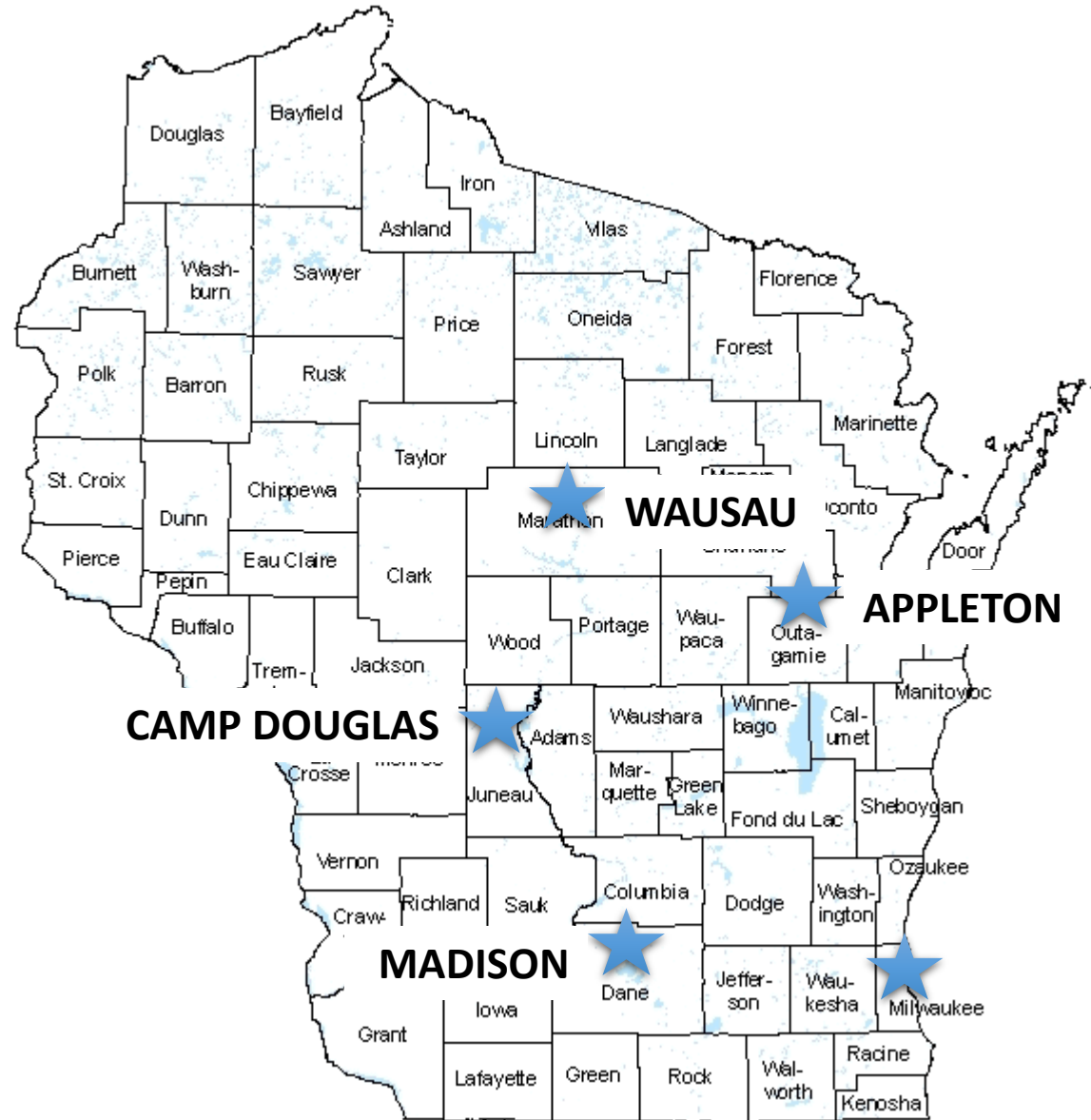
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Assist businesses in creating,
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revenue and jobs through Federal, state
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WPI OFFICE LOCATIONS

- MILWAUKEE – *Technology Innovation Center*
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AUGUST 16 2017

ACQUISITION HOUR: CYBER SECURITY FOR CURRENT AND PROSPECTIVE DOD CONTRACTORS AND SUBCONTRACTORS

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SEPTEMBER 19 2017

ACQUISITION HOUR: SELLING TO THE STATE OF WISCONSIN AND LOCAL GOVERNMENTS

SEPTEMBER 20 2017

ACQUISITION HOUR: OVERVIEW OF THE FEDERAL ACQUISITION REGULATIONS (FAR)

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ACQUISITION HOUR: ESRS INDIVIDUAL SUBCONTRACTOR REPORTING (ISR) BASICS

CURRENT OPPORTUNITIES (5)

SERVICES OFFERED BY WPI

- FREE Bid Matching Services
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- Government Market Strategy Development
- Training in use of Government websites and tools
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- Assisting in Market Research Process
- Development of Market Profile
- Small Business Subcontracting Plans Development, Outreach and Reporting
- Small Group Training
- Outreach and training with Local, State and Federal agencies
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- Assistance with Contracting Regulations and Requirements, including FAR, DFAR, CFR
- Assistance with GSA Schedule Preparation and Administration
- Assistance with Local, State and Federal Certifications, including:
 - Service Disabled & Veteran Owned Small Business, HUBZone, Woman Owned Small Business, 8(a) Business Development Program
 - State
 - Local
 - DBE
- Bid review and Submission Assistance
- Proposal review and Submission Assistance
- Capabilities Statement and Related Government Marketing Material Development
- Assistance in Locating and Developing Teaming Partners and Subcontractors
- Updated Government Market Information

Successfully Passing a CPSR Audit Can Add Profit to your Bottom Line

Part 4

Required Clause Flow Down and Sample CPSR Report Findings

November 14, 2017
WPI Webinar

Mandatory FAR and DFARS Flow-down Requirements/Terms and Conditions

- **Given:** Government contracts contain clauses that require prime contractors to flow-down certain terms and conditions to subcontractors.
- Auditors oftentimes look for sets of flow-downs for each prime government contract (s).
- **Discussion:** Lets look at this more closely...

Prime contracts require prime contractors to flow-down certain terms and conditions to subcontractors.

- How do we identify which clauses we should flow-down to subcontractors?
 - Review the clauses in the prime contract to see what you, as the prime contractor, are agreeing to.
 - First, determine if anything you are agreeing to should be flowed to your subcontractors to protect “you”, e.g. in-plant inspection by government, inspection levels, etc.?
 - Secondly, identify those clauses that **MUST** be flowed to your vendors
- How should you do this?

FAR 52.215-2 Audit and Records – Negotiation (OCT 2010) - **example**

- Read each clause and look for any statement in the clause that requires flowing it to your subcontractors.
- FAR 52.215-2, for example. In this clause, paragraph (g) requires *“...the prime contractor to include the clause in all subcontracts that exceed the SAT and that: are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type subcontracts; require certified cost or pricing data; or require the subcontractor to furnish cost, funding, or performance reports.”*

Clause Flow-Down “Arrangements”

- Varies – depending on whether item or service is a commercial item
 - Commercial Item (refer to FAR 52.212-5 for guidance)
 - **> \$3,000**
 - 52.222-54, Employment Eligibility Verification (Jul 2012)
 - **>\$10,000**
 - 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).
 - **>\$15,000**
 - 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793)
 - **>\$25,000**
 - 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (Mar 2009) (Pub. L. 110-247).
 - **>\$30,000**
 - 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (Jul 2013)
 - **>\$100,000**
 - 52.222-35, Equal Opportunity for Veterans (Sep 2010) (38 U.S.C. 4212).
 - 52.222-37 Employment Reports on Veterans (Sep 2010)
 - Non-Commercial Item
 - As required by prime government contract (look for FAR 52.244-2, Subcontracts)

The clauses we will discuss today.

- Clauses that require written confirmation or acceptance from subcontractors
- Other clauses identified in Week 1 as being part of purchasing manual

Clauses that require written confirmation or acceptance from subcontractors

- FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions
- FAR 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards
- FAR 52.209-6, Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment
- FAR 52.211-14, Notice of Priority Rating for National Defense Use, Emergency Preparedness, and Energy Use Program

FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions

- FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions
 - Subparagraph (g) (3) requires the prime contractor to incorporate the substance of this clause in all subcontracts exceeding \$150,000
 - Subparagraph (g) (1) requires the contractor to obtain a declaration from the subcontractor, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. **There is no mandatory flow down of 52.203-11**

FAR 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards

- FAR 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards
 - No flow-down required; but clause requires the Contractor to obtain executive compensation information from first-tier subcontractors in certain situations; and requires the contractor to input subcontract information >\$30,000 into <http://www.fsrs.gov>.
 - **Recommendation:** Read the clause and its prescription at FAR 4.1403 (a) to fully understand the information the Supply Chain buyer must receive from applicable subcontractors

FAR 52.209-6, Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment

- FAR 52.209-6, Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment
 - Do buyers understand they should not do business with debarred bidders?
 - Are they familiar with FAR 52.209-6?
 - Do buyers get a disclosure from appropriate vendors for each PO >\$35,000 attesting that the vendor is not debarred? What type of purchase is exempt from this requirement?
- What does the clause say?

FAR 52.209-6, Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment

- What does the clause say?
- *(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed \$35,000, other than a subcontractor providing a commercially available off-the-shelf item (COTS), to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government*
- If a potential subcontractor IS debarred or suspended, the clause requires you to get permission from the Contracting Officer before making an award to such a firm.
- **Recommendation:** Look at FAR 52.209-5, Certification Regarding Responsibility Matters, for wording to use for the FAR 52.209-6 written certification.

FAR 52.211-14, Notice of Priority Rating for National Defense Use, Emergency Preparedness, and Energy Use Program

- FAR 52.211-14 **is not** a mandatory flow down clause. However, if a prime contract has a Defense Priorities and Allocations System (DPAS) rating on it, all POs/subcontracts issued in support of the rated contract must also include the assigned DPAS rating.
- The Government uses the requirements of 15 CFR part 700 to require all DPAS rated POs/subcontracts to
 - Include the statement *“This is a rated order certified for national defense, emergency preparedness, and energy program use, and the Contractor shall follow the requirements of the Defense Priorities and Allocations System regulation (15 CFR part 700).”*
 - 15 CFR part 700 also requires written acceptance of the DPAS rating within 10 days of receipt of PO for a DX rated order and within 15 days of receipt of PO for a DO rated order. **Note:** Also review FAR 52.211-15 Defense Priority and Allocation Requirements for possible flow-down.

Clauses that require written confirmation or acceptance from subcontractors

- Think about how your company is going to get the confirmations required by these clauses for EACH PO
- FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions >\$150,000
- FAR 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards >\$150,000
- FAR 52.209-6, Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment >\$35,000
- FAR 52.211-14, Notice of Priority Rating for National Defense Use, Emergency Preparedness, and Energy Use Program > ½ of SAT (currently \$75,000)

Clauses identified in Week 1 that should be discussed in your purchasing manual that are “special interest” to Government auditors

- DFARS 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System (Applies only to prime contractors subject to the cost accounting standards)
 - Flow down counterfeit detection and avoidance requirements, including applicable system criteria to subcontractors at all levels in the supply chain that are responsible for buying or selling electronic parts or assemblies containing electronic parts, or for performing authentication testing
- DFARS 252.246-7008, Sources of Electronic Parts
 - I recommend flowing this clause to Subcontractors because of the traceability requirements for electronic parts

Clauses identified in Week 1 that should be discussed in your purchasing manual that are “special interest” to Government auditors

- FAR 52.215-22, Limitations on Pass-through Charges – Identification of Subcontract Effort; and, FAR 52.215-23, Limitations on Pass-through Charges
 - Definition: Excessive pass-through charges are indirect costs or profit/fee on work performed by a contractor or subcontractor that adds no or negligible value to a contract or subcontract.
 - FAR 52.215-22 requires the prime contractor to identify in its proposal the total cost of the work to be performed by the prime contractor, and the total cost of the work to be performed by each subcontractor.
 - Contractors must report changes to the amount of subcontract effort after award if it exceeds 70% of the total cost of work to be performed under the contract.
 - Both clauses must be flowed to subcontractors.

Clauses identified in Week 1 that should be discussed in your purchasing manual that are “special interest” to Government auditors

- DFARS 252.225-7008, Restriction on Acquisition of Specialty Metals; DFARS 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals; and (10 USC Sect 2553a)
 - These clauses require that any specialty metals incorporated in items delivered under subcontracts shall be melted or produced in the United States, its outlying areas, or a qualifying country.
 - Paragraph (e) of DFARS 252.225-7009, requires the clause be flowed down for Subcontracts that are for items containing *specialty metals*, to the extent necessary to ensure compliance of the *end products* the Contractor will deliver to the Government.

Clauses identified in Week 1 that should be discussed in your purchasing manual that are “special interest” to Government auditors

- FAR 52.222-50, Combating Trafficking in Persons and Human Trafficking
 - Paragraph (f) requires the prime contractor to include the substance of this clause, including the flowdown requirement, in all subcontracts.
 - Auditors expect to see guidance on combating trafficking in persons and human trafficking in policies and procedures or purchasing manual

Clauses identified in Week 1 that should be discussed in your purchasing manual that are “special interest” to Government auditors

- DFARS 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting
 - Clause requires Contractors to implement, at a minimum, certain information security protections
- Flow the clause, including paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial items, without alteration, except to identify the parties.

Standard Company Terms and Conditions

- Look at your Standard Company Terms and Conditions
 - Do your “standard” terms and conditions limit or in any way restrict the rights of the Government in regard to data, tooling, or designs it owns or has a right to use
 - Do your “standard” terms and conditions improperly purport to give a subcontractor the right to pursue a claim directly against the Government (versus indirectly, as as appealing in the name of the prime contractor with the prime contractor’s permission?)

Sample Comments in Government CPSR Reports

- **Auditor Comment:** The MRP system and demand report used by the buyer in the purchase order process does not supply any specific contract information because it is designed to bundle gross requirements (both government & commercial) by P/N or service being acquired. Therefore, the buyer doesn't know when certified cost or pricing data is required. This policy is inadequate and must be changed to ensure that associated clauses are flowed down, the TINA certification is obtained prior to award/issuance of a PO; and, the costs from the subcontractor are collected and analyzed. (ORACLE system)
- **Auditor comment:** Contractor's policy to comply with Public Law 95-507 is inadequate because it fails to name the responsible party for receipt of a subcontractor's small business subcontracting plan nor does the policy detail a time frame to accomplish actions indicating a lack of structure and accountability in the process.

Sample Comments in Government CPSR Reports

- **Auditors Comment:** Company policy regarding sole source determinations does not allow the buyer the opportunity to challenge a sole source determination prepared by someone outside the Supply Chain. The policy also does not comply with the three set requirements of DFARS 252.244-7001 (c) (9): obtain management level validation, ensure adequate cost or price analysis; and provide a justification for the sole source.
- **Auditors Comment:** The contractor's training program was the subject of buyer interviews which showed the buyers lacked sufficient knowledge of Public Laws, such as TINA and CAS, and of FAR and DFARS requirements, including documentation, negotiation, excessive pass-through, cost analysis, price analysis, competition, and DPAS.

Take-a-Ways

- Identify in your policies and procedures who reviews prime contract clauses and updates the FAR and agency-specific clauses that you flow to your subcontractors
- Establish a process for identifying special requirements in prime contracts affecting subcontractors that is tied to purchase requisitions (PRs) so your buyers know when unique requirements must be included.
- Make sure any FAR 52.244-2, Subcontracts, special “consent” requirements are flowed to your buyers
- Look at your Standard Company Terms and Conditions to make sure they don’t limit the rights of the Government.

Client Services from Phil Bail & Associates

- **CPSR FARbyte 50.** What is it and how much does it cost.
- It is last minute CPSR Preparation consisting of 50 emails – each email focusing on one of the DFARS criteria in DFARS 252.244-7001 or a topic that Supply Chain buyers must understand in order for your company to successfully pass a CPSR audit.. Its cost is \$2,500
- **CPSR Pre-Audit Services:**
- Review sole source PO files for completeness, examine purchasing manual and recommend changes so it complies with government requirements. Service is performed on an hourly basis.
- **Small Business Program Implementation or Review**
- Implementation or Review of the program, including calculation of vendor spend by business size.

Questions? Comments?

**Phil Bail & Associates
A Veteran-Owned Small Business**

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ACQUISITION HOUR LIVE WEBINAR SERIES

- November 15, 2017 – **Compliance with NEW DOD Regulations on Safeguarding Covered Defense Information – a Legal Perspective** – [CLICK HERE](#) for additional information – presented by Husch Blackwell LLP
- November 28, 2017 – **The HUBZone Program – Certification Benefits and New Regulations** – [CLICK HERE](#) for additional information – presented by Shane Mahaffy, Lead Business Opportunity Specialist, US Small Business Administration (SBA)
- November 29, 2017 – **Overview of CPARS** – [CLICK HERE](#) for additional information – presented by Carol Murphy – Wisconsin Procurement Institute (WPI)
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- December 5, 2017 – **The SBA 8(a) Certification Program** – [CLICK HERE](#) for additional information – presented by Shane Mahaffy, Lead Business Opportunity Specialist, US Small Business Administration (SBA)
- December 6, 2017 – **Cyber Security for Current and Prospective DOD Contractors and Subcontractors** – [CLICK HERE](#) for additional information – presented by Marc Violante – Wisconsin Procurement Institute (WPI)
- December 12, 2017 – **Intellectual Property for Government Contractors and Subcontractors** – [CLICK HERE](#) for additional information – presented by Laura J. Grebe, Attorney, Husch Blackwell LLP

UPCOMING EVENTS

[Learning New Roles Additive Manufacturing is Impacting the Aerospace Sector –](#)

November 15, 2017 - Appleton, WI

National Contract Management Association, Wisconsin Chapter: [End of Year Federal Contractor Update](#)

January 17, 2018 - Milwaukee, WI

UPCOMING EVENTS

Pre-Marketplace Series: Money, Markets and Margins (M3) – Increasing Your Profitability, Networks and Net Worth

November 16, 2017 – Ashland, WI

November 30, 2017 – Wauwatosa, WI

December 6, 2017 – Green Bay, WI

UPCOMING EVENTS



MARKETPLACE 2017 – Governor’s Conference on Minority Business Development – December 13 – 14, 2017 – Milwaukee, WI



QUESTIONS?

SURVEY



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CPE Certificate available, please contact:

Benjamin Blanc

benjaminb@wispro.org

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