

# ACQUISITION HOUR WEBINAR

## Setting Up a FAR-Compliant Purchasing System

April 22, 2015



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Providing expert technical  
assistance to  
**FEDERAL, STATE and LOCAL  
GOVERNMENT  
Contractors  
And Subcontractors**

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**A Procurement Technical  
Assistance Center (PTAC)  
Serving the Wisconsin Business  
Community**

**WPI Offices located at:**

**Milwaukee County Research Park**

10437 Innovation Drive, Suite 320

Milwaukee, WI 53226

414-270-3600 FAX: 414-270-3610

**Juneau County Economic Development Corp.**

122 Main St - Camp Douglas, WI 54618

608-427-2455 FAX: 608-427-2086

**Western Dairyland EOC, Inc.**

418 Wisconsin St. - Eau Claire WI 54703

608-427-2455 FAX: 608-427-2086

**Fox Valley Technical College – DJ Bordini Center**

5 Systems Drive – Appleton WI 54912

920-840-3771 FAX: 414-270-3610

**Racine County Economic Development Corporation –  
Launch Box**

141 Main Street, Suite 2, Racine, WI 53403

414-270-3600 FAX: 414-270-3610

**Madison Enterprise Center**

100 S. Baldwin St., Madison, WI 53703

608-444-0047 FAX: 414-270-3610

**Food Enterprise & Economic Development (FEED)**

1219 N. Sherman Ave., Madison, WI 53704

608-444-0047 FAX: 414-270-3610

**Wausau Region Chamber of Commerce**

200 Washington Street, Wausau, WI 54403

920-456-9990 FAX: 414-270-3610



### UPCOMING EVENTS



02/26/2015  
FEDERAL PRIME CONTRACTOR GROUP MEETING  
ST. FRANCIS (MILWAUKEE) »

03/03/2015  
SMALL BUSINESS GOVERNMENT CONTRACTING  
SERIES: SELLING TO THE DEPARTMENT OF VETERANS  
AFFAIRS  
WAUWATOSA »

03/04/2015  
ACQUISITION HOUR: LEARNING ABOUT WAWF - IRAPT  
WEBINAR »

03/09/2015  
ENTERING THE GOVERNMENT MARKET - A PRIMER  
RACINE »

03/11/2015  
ACQUISITION HOUR: PREPARING FOR CSPR AUDIT  
WEBINAR »

### CURRENT OPPORTUNITIES (7)



#### 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

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## SERVICES OFFERED BY WPI

- FREE Bid Matching Services
- Individual Counseling and Assistance
- Locating Local, State and Federal Opportunities
- Government Market Strategy Development
- Training in use of Government websites and tools
- Assistance with System for Award Management (SAM) Registration
- 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
- Assist with Pre and Post Award Functions
- Assistance with Agency Specific Contracting Requirements
- 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 and Assistance, 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

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# Setting Up a FAR-Compliant Purchasing System

Wisconsin Procurement Institute (WPI)  
Sponsored Webinar  
April 22, 2015

# Setting Up a FAR-Compliant Purchasing System

- Similarities
- Differences
- Supply Chain Transformation To FAR Compliance
- Source Material
- DFARS Clause (post-webinar self-study material)

# Supply Chain Similarities

- Purchasing Department with Buyers
- General Policy Document
  - Adherence to certain ethical standards e.g., treating all vendors equally and not accepting gratuities
  - Authority of Buyers
  - Individual Buyer Purchasing Responsibilities e.g., commodity-based or \$ level-based
  - Expectations of Management e.g., buying quality products and services at reasonable prices, identifying vendors
  - Gearing RFQ's to product or service being bought
  - Flowing appropriate terms and conditions to vendors
  - Generally meeting certain federal mandates like affirmative action and equal employment
  - Interfacing with vendors via the Uniform Commercial Code (UCC)

# Supply Chain Differences

- **Policy Document with 60+ mandatory topics (DCMA requirement)**
- Specific ethical standards and conflicts of interest concerns, kickbacks, use of debarred vendors (FAR Part 3 and FAR Part 9)
- Thresholds
- Socioeconomic Programs (FAR Part 19)
- Detailed source selection criteria and price reasonableness documentation (FAR Part 15)
- Flow-down of Government prime contract clauses and various Public Law and Executive Orders to vendors e.g., counterfeit parts, conflict minerals, cybersecurity reporting requirements

# Government Mandated Purchasing Manual

## “Topics”

- Purchasing’s Role as the Sole Authority to Make Commitments
- Supply Chain Management
- Intra / Inter Company Transactions
- Best Value
- Certifications / Representations Packages
- Commercial Acquisitions
- Competition
- ACO Advance Notification and Consent
- ACO Notification when awarding to CAS Covered Subcontractors
- PL 100-679 Cost Accounting Standards (Disclosure Statement and Flowdown Clauses)
- Consent Considerations, not otherwise addressed in procurement manual
- Cost Accounting Standard 414
- Credit Cards
- Debarred, suspended, ineligible vendor certification
- Defense Priority and Allocation Requirements
- Processing Requisitions
- Processing Requests for Quotation
- Progress Payments to Vendors/Subcontractors
- Selection of Subcontract Type
- Teaming Agreements / Anti-trust
- Discounts for Prompt Payment
- GSA Sources
- Letter Subcontracts
- Make or Buy
- Micro-Purchases
- Price/Cost Realism/Price Analysis
- Public Law 87-653, Truth in Negotiations
- Vendor Rating, Including Financial Stability
- Electronic Purchases
- Single/Sole Source Procurements and Justification
- Equal Opportunity
  - Affirmative Action
  - Pre-Award EEO
- Restrictions on Lobbying (over \$100,000) (anti-lobbying)

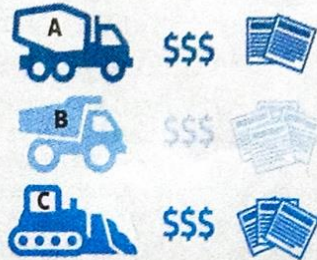
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# Improper Business Practices and Personal Conflicts of Interest (FAR Part 3)

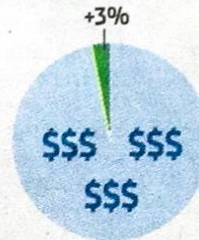
## “Kickbacks” / “Independent Pricing”

### How a Corruption Scheme at Petrobras Allegedly Worked

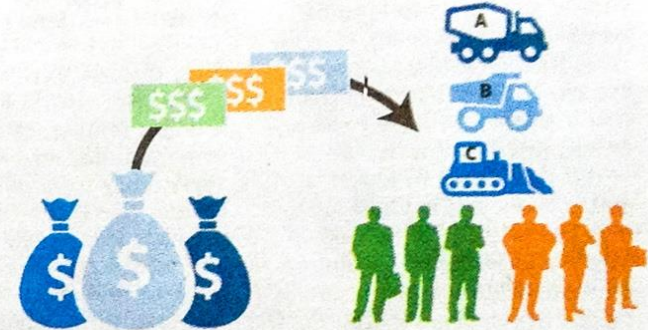


1 A small group of **Petrobras executives** gave a green light to large projects such as refineries and agreed to do business only with a **group of construction companies** that had formed a cartel to bid.

2 The **construction companies** agreed on how much to bid for Petrobras contracts and decided which company was going to win each one.



3 The Petrobras executives signed contracts overcharging construction firms an agreed-upon amount, then **pocketed around 3% of the value of the contracts**.



4 The construction firms hired shell companies associated with money launderers, which they used to make kickback payments in Brazil and abroad.

5 The kickback money was shared between **Petrobras executives, construction industry executives** and **politicians**.

Source: Brazilian federal prosecutors

THE WALL STREET JOURNAL.

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# Thresholds

- < \$3,000 (micro-purchase)
- >\$3,000 to \$150,000 (standard acquisition threshold (SAT))
  - More detailed PO File
    - Price Negotiation Memorandum (PNM)
    - Justification for single/sole source
- >\$150,000
  - Use of Small Businesses (FAR 52.219-8, Utilization of Small Business Concerns)
- >\$650,000
  - Small Business Subcontracting Plans (FAR 52219-9, Small Business Subcontracting Plans)
- >\$700,000
  - Cost Accounting Standards (CAS)
  - Truth in Negotiation Act (TINA)

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# Socioeconomic Program

- Segregation of vendors by business size based on NAICS codes (number of employees for products, revenue for services)
- Vendor outreach – all contractors (large and small) must provide small businesses an opportunity to compete for company business.
- If company is a large business
  - development of a Small Business Program including outreach to disadvantaged, women-owned small, HUBZone; and veteran (both “veteran” and “service disabled veteran” small businesses as potential vendors
  - Writing of Small Business Subcontracting Plan and semi-annual reporting of goal achievement

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# Single/Sole Source Reasons

Supplier Agreements	Engineering Cost	Only Source compatible with existing equipment
Proprietary Items	Engineering Directed	Support Services for existing vendor equipment – no known 3 <sup>rd</sup> party source
Unique Capabilities/Special Techniques	Tooling Costs	Continuation of Rental/Lease Agreement – no known 3 <sup>rd</sup> party source
Customer Directed	Configuration Test Costs	Proprietary Item (e.g. Original Equipment Manufacturer, no drawings available)
Only Qualified Supplier	Standardization	Only Source that can meet delivery requirements (more than a single source initially)
QA/Life Cycle Cost Impact	Limited Requirements (doesn't justify additional market research)	National Security
Only Source meeting technical requirements – no other alternatives	Only Known Source	Qualification Test Cost

# Price Reasonableness Requirements

- Competition – establishes prices reasonableness
- Single/Sole Source
  - Price Analysis
  - Cost Analysis
    - >\$700,000 non-commercial item sole source requires certified cost or pricing data

# Differences

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# Clause Flow-Down

- 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).
      - 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)

# Supply Chain Transformation to FAR Compliance

- Become familiar with government requirements
- Compare current company Purchasing Department policy against the government requirements
- Enhance current procedures to government level of compliance and documentation
- Result: A Purchasing Department that adds better value to the company bottom line.

# Source Material

- DFARS 252.244-7001, Contractor Purchasing System Administration
- Guide to FAR Contract Clauses, Wolters Kluwer
- Guide to DFARS Contract Clauses, Wolters Kluwer
- A Study of the Applicability of FAR Clauses to Subcontract, National Defense Industrial Association (NDIA)

## Follow-Up

- Contact Phil Bail & Associates for a cost effective unbiased review of your purchasing system.
  - [www.philbail.com](http://www.philbail.com)
  - 262.573.3396
  - phil@philbail.com

# Post Webinar Self-Study Material

- DODFARS 252.244-7001, Contractor Purchasing System Administration

# The Contractor's purchasing system shall

- (1) Have an adequate system description including policies, procedures, and purchasing practices that comply with the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS);
- (2) Ensure that all applicable purchase orders and subcontracts contain all flowdown clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;
- (3) Maintain an organization plan that establishes clear lines of authority and responsibility;
- (4) Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the subcontract/purchase order files which are subject to Government review;
- (5) Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid;

# The Contractor's purchasing system shall

- (6) Apply a consistent make-or-buy policy that is in the best interest of the Government;
- (7) Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;
- (8) Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices;
- (9) Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award;
- (10) Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices;
- (11) Document negotiations in accordance with FAR 15.406-3;
- (12) Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts;

# The Contractor's purchasing system shall

- (13) Ensure proper type of contract selection and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts;
- (14) Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;
- (15) Document and justify reasons for subcontract changes that affect cost or price;
- (16) Notify the Government of the award of all subcontracts that contain the FAR and DFARS flowdown clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts;
- (17) Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of 41 U.S.C. chapter 87, Kickbacks;

# The Contractor's purchasing system shall

- (18) Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;
- (19) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract;
- (20) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources;
- (21) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements;

# The Contractor's purchasing system shall

- (22) Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions;
- (23) Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort; and
- (24) *“Excessive Pass-Through”* **NOTE:** refer to FAR 52.215-22 and -23 - Establish and maintain procedures to timely notify the Contracting Officer, in writing, if—
  - (i) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or
  - (ii) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).



# QUESTIONS???????

# Upcoming WPI Events

- ***Small Business Government Contracting Series continues the first and third Tuesday of each month through June, 2015 – Milwaukee, WI***
- ***Acquisition Hour (Weekly Webinar) through June, 2015***
- ***Cost and Pricing for Department of Defense Contractors and Subcontractors – April 29, 2015 - Pewaukee, WI***
- ***12<sup>th</sup> Annual Women’s Business Conference – April 30, 2015 – Eau Claire, WI***
- ***3<sup>rd</sup> Annual Department of Veterans Affairs Business Conference – May 12, 2015 – Milwaukee, WI***
- ***Doing Business with the National Park Service – June 23, 2015 – Ashland, WI***
- ***9<sup>th</sup> Annual Volk Field Small Business Conference – July 29 – 30, 2015 – Camp Douglas, WI***
- ***Marketplace 2015 – October 29-30, 2015 – Milwaukee, WI***