



ACQUISITION HOUR: PROTEST IN FEDERAL PROCUREMENT – AN OVERVIEW

March 15, 2016

*Presented by the Wisconsin Procurement
Institute*



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

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

Wisconsin Procurement Institute

WPI Offices located at:

Milwaukee County Research Park

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Juneau County Economic Development Corp.

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Western Dairyland EOC, Inc.

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

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Madison Enterprise Center

100 S. Baldwin St., Madison, WI 53703

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

Food Enterprise & Economic Development (FEED)

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Wausau Region Chamber of Commerce

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8 WAYS A SHUTDOWN WOULD DAMAGE HOMELAND SECURITY

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.

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SIGN-UP FOR OUR NEWSLETTER

Stay up-to-date with the latest WPI news.

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HAVE A QUESTION? WE'RE HERE TO HELP.

One of our staff of experts is available to answer your questions.

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GET HELP

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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PROTESTS IN FEDERAL PROCUREMENT – AN OVERVIEW

Presented by:

Attorney Bill Hughes
Attorney Emily Constantine

March 15, 2016



Whyte Hirschboeck Dudek S.C.

Bid Protest Statistics for Fiscal Years 2011-2015

	FY2015	FY2014	FY 2013	FY 2012	FY 2011
Cases Filed ¹	2,639 (up 3%) ²	2,561 (up 5%)	2,429 (down 2%)	2,475 (up 5%)	2,353 (up 2%)
Cases Closed ³	2,647	2,458	2,538	2,495	2,292
Merit (Sustain + Deny) Decisions	587	556	509	570	417
Number of Sustains	68	72	87	106	67
Sustain Rate	12%	13%	17%	18.6%	16%
Effectiveness Rate ⁴	45%	43%	43%	42%	42%
ADR ⁵ (cases used)	103	96	145	106	140
ADR Success Rate ⁶	70%	83	86%	80%	82%
Hearings ⁷	3.10% (31 cases)	4.70% (42 cases)	3.36% (31 cases)	6.17% (56 cases)	8% (46 cases)

FAR Part 33

- ▶ Part 33. Protests, Disputes, and Appeals
 - Subpart 33.1 – Protests
 - Timeliness
 - Protest requirements
 - Form of protests
 - Subpart 33.2 – Disputes and Appeals
 - Dispute
 - Claim
 - Requirements
 - Contracting Officer Final Decision
 - Appeal: Board of Contract Appeals or Court of Federal Claims



PROTESTS

- To Protest or Not to Protest
 - Business considerations
 - Incumbent or not
 - Future business
 - Relationship with procuring agency
 - Ability to “stay” the award
 - Grounds for Protest
 - Investment: Time and Cost



PROTESTS

- To Protest or Not to Protest (cont.)
 - Legal considerations
 - Grounds for protest
 - Likelihood of success (What constitutes success?)
 - In line for award



PROTESTS

- Grounds for Protest
 - Solicitation defects
 - Failure to obtain competition (restrictive specifications)
 - Failure to comply with law, rule or regulation
 - Failure to follow evaluation criteria
 - Improper past performance evaluation (uneven consideration of past performance information)



PROTESTS

- Grounds for Protest (cont.)
 - Failure to perform price/technical trade-off
 - Unbalanced bids/price reasonableness
 - Knowledge of noncompliance of competitor's product
 - Improper responsibility determination
 - Failure to hold discussions with all offerors
 - Bait and switch



PROTESTS

- Grounds for Protest (cont.)
 - Inadequate market research regarding basis for a set-aside
 - Lack of competition for IDIQ contract holders
 - Failing to provide material information to all offerors
 - Flawed technical evaluation
 - Unequal treatment



PROTESTS

- Assessing Likelihood of Success
 - Notice of Award
 - Comparison of price with awardee's
 - Debriefing
 - FOIA



PROTESTS

- Timing of Protest

- Automatic Stay

- Within 10 days of award (Agency must receive notice)
 - Within 5 days of debriefing

- Protest Timeliness

- Solicitation defects – Prior to bid/proposal due date
 - Other than solicitation defects: Within 10 days of when offeror knew or should have known
 - Post award – Generally within 10 days of award or debriefing



PROTESTS

- Protest Pitfalls
 - Timeliness
 - Basis for Protest
 - Copy to Contracting Officer
 - Failure to demonstrate eligibility for award
 - Late response to Agency Report
 - Grounds for Supplemental Protest
 - Request for fees/costs



PROTESTS

- Filing the Protest
 - Content
 - GAO
 - Copy to CO
- Protest Process
 - Protest
 - Agency Report
 - Comments on Agency Report
 - Supplemental Protest
- GAO Decision



QUESTIONS



Upcoming WPI Events

- ***Acquisition Hour Live Webinar Series - Tuesdays and Wednesdays including:***

Intellectual Property and Government Contracts – March 29, 2016

Update in the Hour Wage Labor Law: March 30, 2016

Technology Funding for small business: April 12, 2016

- ***Virtual FAR Training Webinar Series – Wednesday evenings – 6pm-7pm until May 25, 2016***

- ***Government Contracting Opportunities for Small Business – March 24, 2016 – Ladysmith, WI***

Upcoming WPI Events

- *Ft McCoy Acquisition Open House Forum #1 – April 5, 2016 – Fort McCoy, WI*
- *4th Annual US Department of Veterans Affairs Business Conference – May 12, 2016 – Brown Deer, WI*
- *10th Annual Volk Field Small Business Conference – June 15-16, 2016 – Camp Douglas, WI*



QUESTIONS???

Continuing Professional Education



CPE Certificate available, please contact:

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