



A Procurement Technical
Assistance Center (PTAC)

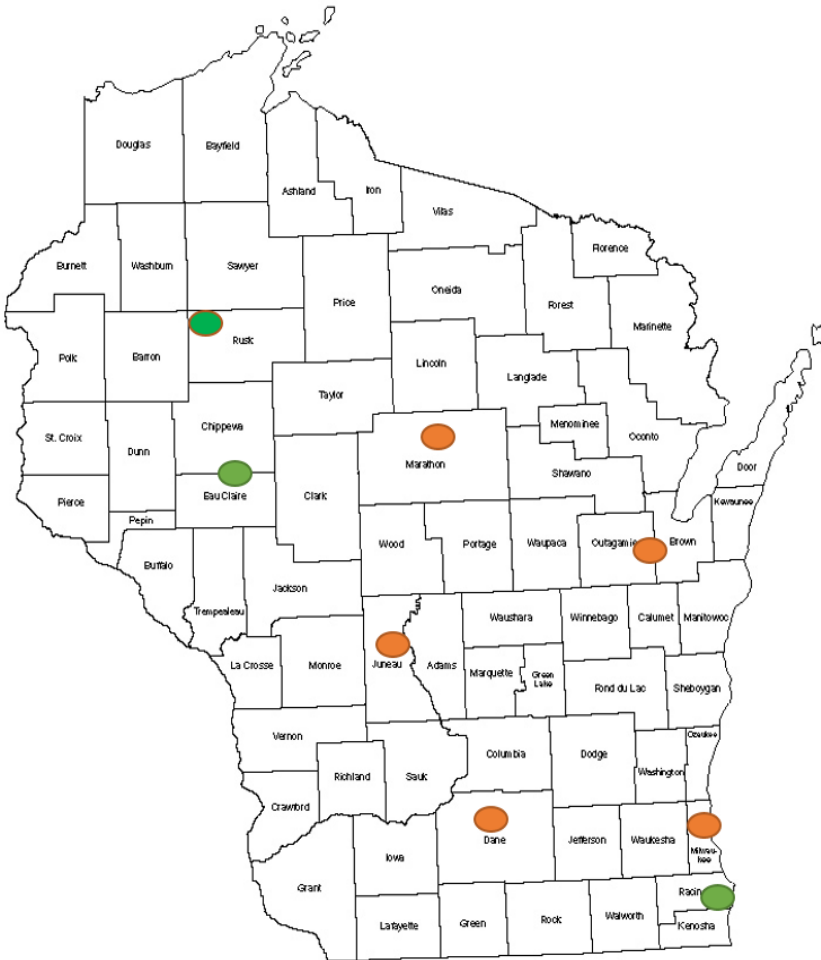


ACQUISITION HOUR – THE CONTRACTOR PURCHASING SYSTEM REVIEW SERIES PART 4 OF 4 February 28, 2017



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

Hello benjaminb (not benjaminb? [Sign out](#)).

FROM OUR EXECUTIVE DIRECTOR

EVENT PRESENTATIONS

NEWSLETTER ARCHIVE

CURRENT OPPORTUNITIES

Current Opportunities [View All](#)

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

Four-Part Crash Course for Successfully Passing a CPSR Audit

Part 4

Required Clause Flow Down and Executive Order Compliance

February 28, 2017
WPI Webinar

Client Services from Phil Bail & Associates

- **FARbyte 400.** What is it and how much does it cost.
- It is a periodic news feed using Phil Bail & Associates "FARbyte" emails identifying changes to the FAR or DFARS. 2. It also provides an explanation of new clauses or clause interpretation. It costs \$400/month on a 12-month contract or \$350/month on a 24-month contract. Under its terms I will invoice your company once each month. As an added bonus, Clients who join the FARbyte 400 can receive hourly service for other help at a reduced hourly rate of \$190/hour as long as the FARbyte 400 service is in effect.
- **CPSR Pre-Audit Services:**
- Review sole source PO files for completeness, examine purchasing manual and recommend changes so it complies with government requirements, etc. Services 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.

Overview of the Sessions

- Week One - January 24, 2017 -Introduction to the major aspects of a CPSR including discussion about required policies and procedures
- Week Two - February 14, 2017 – Overview about when and why a contractor might be scheduled for a CPSR audit; and DFARS 252.244-7001, Contractor Purchasing System Administration - discussion of the 24 criteria essential to pass a CPSR audit
- Week Three - February 21, 2017 - Source Selection and Price Reasonableness Determinations
- **Week Four** - February 28, 2017 - Required Clause Flow Down and Executive Order Compliance

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?)

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.

Questions? Comments?

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Upcoming WPI Events – Acquisition Hour Webinars

- March 1, 2017 – [Acquisition Hour – Market Research – Using the Federal Procurement Data Systems \(FPDS\)](#) – Presented by Wisconsin Procurement Institute
- March 7, 2017 – [Acquisition Hour – Update in the Hour Wage Labor Law](#) – Presented by U.S Department of Labor
- April 4, 2017 – [Acquisition Hour: Overview of the Federal Acquisition Regulations \(FAR\)](#) – Presented by Wisconsin Procurement Institute

Other Upcoming WPI Events

- **SOCIETY OF AMERICAN MILITARY ENGINEERS (SAME) MIDWEST SMALL BUSINESS EXPO** – March 29&30 – Northbrook - Il
- **WHAT IT TAKES TO WIN – WRITING AN EFFECTIVE PROPOSAL** – April 6, 2017 – Milwaukee

Federal Acquisition Regulations (FAR)

- A series of webinars on Wednesdays from 6.00pm to 7.00pm from Feb 15th to May 31st
 - This introductory session of the FAR REVIEW series is geared towards those interested in becoming CFCM certified. Sessions of this FAR REVIEW series will cover all parts of the FAR and will be beneficial to current Federal contractors and subcontractors even if not intending to participate in the NCMA certification exam.
- Schedule listed below:
 - <https://www.wispro.org/wp-content/uploads/2017/02/FAR-Training-Webinar-Schedule.pdf>



QUESTIONS?

Continuing Professional Education



CPE Certificate available, please contact:

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SURVEY



Today's Presentation was done
by

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