
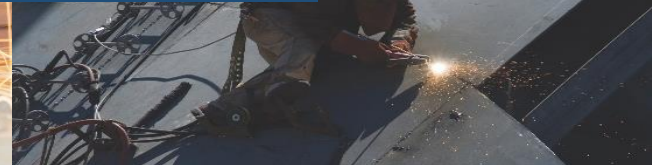




A Procurement Technical  
Assistance Center (PTAC)

A large 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.

# FLOW-DOWN CLAUSES - MANAGEMENT AND RESPONSIBILITIES FOR FEDERAL CONTRACTORS ACQUISITION HOUR WEBINAR June 6, 2018



# WEBINAR ETIQUETTE

## PLEASE

- Log into the GoToMeeting session with the name that you registered with online
- Place your phone or computer on MUTE
- Use the CHAT option to ask your question(s). We will share the questions with our guest speaker who will respond to the group

## THANK YOU!

# ABOUT WPI SUPPORTING THE MISSION

SERVING WISCONSIN  
COMPANIES FOR 30 YEARS!

Assist businesses in creating,  
development and growing their  
sales, revenue and jobs through  
Federal, state and local government  
contracts.

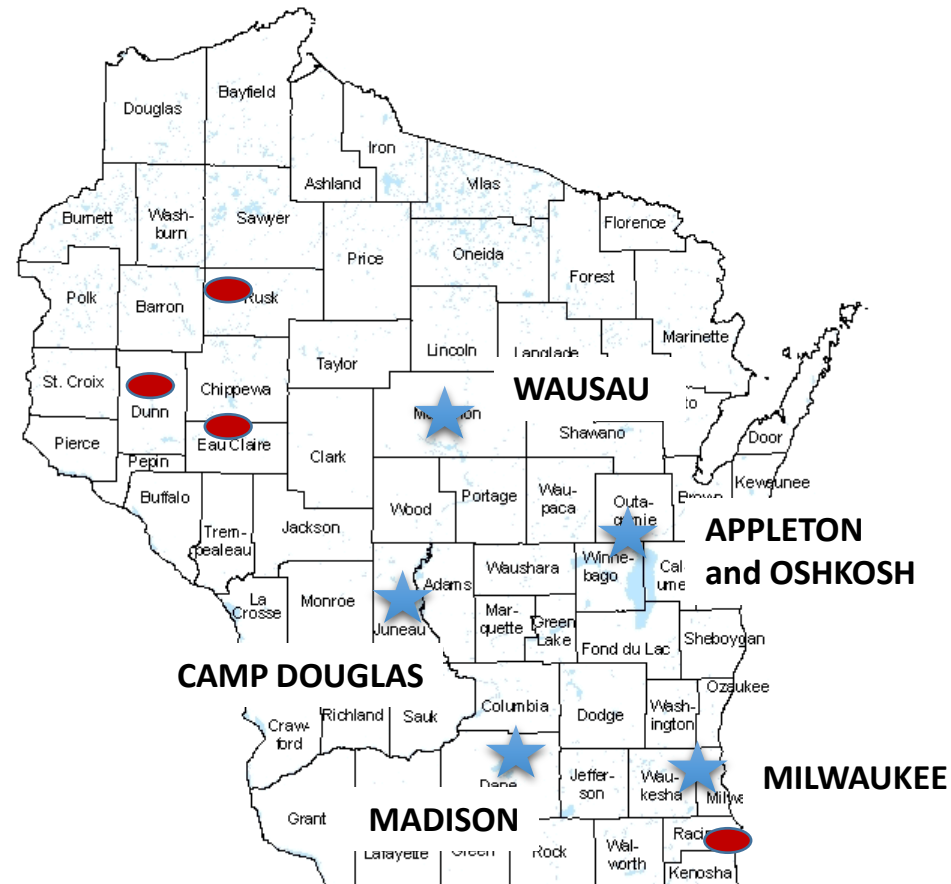
*WPI is a Procurement Technical Assistance Center (PTAC) funded in part by  
the Defense Logistics Agency (DLA), WEDC and other funding sources.*

## WPI OFFICE LOCATIONS

- MILWAUKEE – *Technology Innovation Center*
- MADISON –
  - *Madison Enterprise Center*
  - *FEED Kitchens*
- CAMP DOUGLAS – *Juneau County Economic Development Corporation (JCEDC)*
- WAUSAU – *Wausau Region Chamber of Commerce*
- APPLETON / OSHKOSH – *Fox Valley Technical College*

## WPI partner co-locations

- Eau Claire – *Western Dairyland*
- Ladysmith – *Indianhead Community Action Agency*
- Menomonie – *Dunn County EDC*
- Racine - *Launchbox*



Search ...

BLOG

SERVICES

ABOUT

MY ACCOUNT

DONATE

CONTACT



EVENT  
CALENDAR

FEDERAL  
GOVERNMENT

STATE & LOCAL  
GOVERNMENT

OTHER  
GOVERNMENT &  
GRANTS

SUCCESS &  
AWARDS

FAQS

**12TH ANNUAL VOLK FIELD –  
FORT MCCOY SMALL  
BUSINESS CONFERENCE,  
JUNE 19TH & 20TH.  
REGISTRATION CLOSES JUNE  
5TH**

**www.wispro.org**

## UPCOMING EVENTS

JUNE 5 2018  
ACQUISITION HOUR: INVOICING THE DEPARTMENT OF  
DEFENSE USING WAWF/IRAPT

JUNE 6 2018  
ACQUISITION HOUR: FLOW-DOWN CLAUSES –  
MANAGEMENT AND RESPONSIBILITIES FOR FEDERAL  
CONTRACTORS

JUNE 6 2018  
DOING BUSINESS WITH THE US FOREST SERVICE  
RHINELANDER, WI »

JUNE 7 2018  
DOING BUSINESS WITH THE NATIONAL PARK SERVICE  
HOUGHTON, MI »

JUNE 12 2018  
ACQUISITION HOUR: CODE OF BUSINESS ETHICS AND  
CONDUCT IN GOVERNMENT CONTRACTING

## CURRENT OPPORTUNITIES (5)



## 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 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

# WHAT WE WILL COVER TODAY

- What are Flow Down Clauses
- How to Determine if a Clause Flows Down
- Method to Track Clauses
- Commercial Item Requirements
- Sample Subcontract Language

# WHAT ARE FLOW DOWN CLAUSES

# WHAT ARE FLOW DOWN CLAUSES?

FAR clauses included in Government contracts that prime contractors are required to flow down to their subcontractors in their subcontracts.

Agency supplemental regulations also include clauses with flow down requirements.

Flow Down Clauses can significantly impact the obligations and risk of performing a subcontract.

# WHAT IS A SUBCONTRACT?

FAR 44.101

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract, including POs, and changes and mods to POs.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

# HOW TO DETERMINE IF A CLAUSE FLOWS DOWN

# HOW DO YOU KNOW WHAT CLAUSES FLOW DOWN

- The FAR clause itself usually states if the clause flows down.
- Flow down can be mandatory, non-mandatory (suggested), or to be consider.
- May need to flow down the entire clause or the substance of the clause.

# WHY DO FLOW DOWNS MATTER?

## For Prime Contractors:

- Responsible for the actions of their subcontractors.  
Prime Contractor is responsible for the entire contract.
- Manage/allocate performance uncertainties and risk

# WHY DO FLOW DOWNS MATTER?

## For Subcontractors:

- Need to know how FAR requirements will impact their costs.
- May need to flow down FAR clauses as well to their subcontractors/suppliers.
- Minimize exposure to prime contractor risks.
- Ensure company can meet compliance obligations.

# FLOW DOWN REQUIREMENTS

- Flow down requirements depend on subcontract type and dollar value.
- The entire prime contract should not be flowed down to the subcontractor.

# DRAFTING FLOW DOWNS

- Some clauses must be flowed down verbatim
  - “Contractor shall include this clause”
  - “Contractor shall include the terms of this clause”
- Some clauses may be modified
  - “Contractor shall include the requirements of this clause”
  - “Contractor shall include the substance of this clause”

# NON-MANDATORY FLOW DOWNS TO INCLUDE

- **Termination for Convenience Clause** (FAR 52.249-x) – Allows prime to terminate subcontract should the Government terminate the prime contract. If prime has no right to terminate subcontract could result in costly breach of contract.
- **Changes Clause** (FAR 52.243-x) – Allows prime to flow Government changes to the subcontractor. Prime must be able to modify subcontract unilaterally to match the scope of the Government change.
- **Disputes Clause** (FAR 52.233-1) – Puts subcontractor on notice of disputes process and requires subcontractor to keep working pending a dispute.

# FAR CLAUSE DATES

- The Prime Contractor needs to flow down the version of the clause that is in their contract.
- If the FAR is updated between the award of the prime contract and the signing of subcontracts, the original contract clause is flowed down.

# METHOD TO TRACK CLAUSES

# STEPS AFTER RECEIPT OF CONTRACT AWARD

- Generate a file, either paper or electronic of the full text of all clauses listed in the contract.
- Look up each clause to determine if it flows down to the subcontractor. Note if any thresholds apply.
- Prepare contracts with subcontractors including all flow-down clauses.

# STEPS AFTER RECEIPT OF CONTRACT AWARD

- Use Excel to set up a list of all clauses, include effective date of the clause and if an alternate was included.
- Indicate if reports are required.
- If you have multiple government contracts, maintain a master list of all clauses.

CLAUSE #	TITLE	THRESHOLD	CLAUSE/ PROVISION	REFERENCE/ FULL TEXT	FLOW DOWN	WHEN TO USE								
52.202-1	Definitions (NOV 2013)	over SAT	C	R	C									
52.203-3	Gratuities (APR 1984)	over SAT	C	R	C									
52.203-5	Covenant Against Contingent Fees (MAY 2014)	over SAT	C	R	C									
52.203-6	Restrictions on Subcontractor Sales to the Government (SEPT 2006)	over SAT	C	R	M	commercial items over the SAT								
52.203-7	Anti-Kickback Procedures (MAY 2014)	over SAT	C	R	M	Over SAT								
52.203-8	Cancellation, Rescission and Recovery of Funds for Illegal or Improper Act	over SAT	C	R	None									
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity (MAY 2014)	over SAT	C	R	None									
52.203-12	Limitation on Payments to Influence Certain Federal Transactions (OCT 201	over \$150K	C	R	M	Over SAT								
52.203-13	Contractor Code of Business Ethics and Conduct (OCT 2015)	over \$5 M	C	R	M	Over \$5M	period of performance 120 days or more							
52.203-14	Display of Hotline Poster(s) (OCT 2015)	over \$5 M	C	R	M	Over \$5M	CO fill in							
52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (J		C	R	M	All	when funded in whole or in part with Recove							
52.203-16	Preventing Personal Conflicts of Interest (DEC 2011)	over SAT	C	R	M	Over SAT	sol. includ self-employed individual if acquisitic							
52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Emp	all over SAT	C	R	M	Over SAT								
52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (M	over SAT	C	R	None									
52.204-7	System for Award Management (OCT 2016)	ALL	P	R	M	All								
52.204-8	Annual Representations and Certifications (JAN 2018)	all over SAT	P	F	None									
52.204-9	Personal Identity Verification of Contractor Personnel (JAN 2011)	All	C	R	M	Access to	when routine access to a federally-controlled							
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards (OC	over \$25K	C	R	None									
52.204-13	System for Award Management Maintenance (OCT 2016)	All	C	R	M	All	When 52.204-7 is included							
52.204-14	Service Contract Reporting Requirements (OCT 2016)		C	R	M	All	Over thresholds outlined in FAR 4.1703(a)(2)							
52.204-15	Service Contract Reporting Requirements for Indefinite-Delivery Contracts (OCT 2016)		C	R	M	All	Over thresholds outlined in FAR 4.1703(a)(2)							
52.204-16	Commercial and Government Entity Code Reporting (JUL 2016) [all sollicita	All	P	R	None									
52.204-17	Ownership or Control of Offeror (JUL 2016)	All	P	R	None									
52.204-18	Commercial and Government Entity Code Maintenance (JUL 2016)		C	R	None		when 52.204-16 is included							
52.204-19	Incorporation by Reference of Representations and Certifications (DEC 201	All	C	R	None									
52.209-5	Representation by Corporations Regarding an Unpaid Tax Liability or a Felc	Over SAT	P	F	None									

# COMMERCIAL ITEM REQUIREMENTS

# COMMERCIAL ITEM REQUIREMENTS

***FAR 52.244-6 Subcontracts for Commercial Items* states the contractor shall insert the following 18 clauses in contracts for commercial items.**

- 52.203-13 Contractor Code of Business Ethics and Conduct
- 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009

# COMMERCIAL ITEM REQUIREMENTS

- 52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements
- 52.204-21 Basic Safeguarding of Covered Contractor Information Systems
- 52.219-8 Utilization of Small Business Concerns
- 52.222-21 Prohibition of Segregated Facilities
- 52.222-26 Equal Opportunity
- 52.222-35 Equal Opportunity for Veterans

# COMMERCIAL ITEM REQUIREMENTS

- 52.222-36 Equal Opportunity for Workers with Disabilities
- 52.222-37 Employment Reports on Veterans
- 52.222-40 Notification of Employee Rights Under the National Labor Relations Act
- 52.222-50 Combating Trafficking in Persons
- 52.222-55 Minimum Wages under Executive Order

# COMMERCIAL ITEM REQUIREMENTS

- 52.222-62 Paid Sick Leave Under Executive Order 13706
- 52.224-3 Privacy Training
- 52.225-26 Contractors Performing Private Security Functions Outside the United States
- 52.232-40 Providing Accelerated Payments to Small Business Subcontractors
- 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels

# SAMPLE SUBCONTRACT LANGUAGE

# SAMPLE SUBCONTRACT LANGUAGE

## INCORPORATION OF FAR CLAUSES.

The Federal Acquisition Regulation (FAR) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, during the performance of this Contract. If the date or substance of any of the clauses listed below is different than the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead.

# SAMPLE SUBCONTRACT LANGUAGE

## GOVERNMENT SUBCONTRACT.

This Contract is entered into by the Parties in support of a U.S. Government Contract.

Definitions as used in the FAR clauses referenced below and otherwise in this Contract:

1. "CONTRACTOR" means the SELLER, as defined in the definitions of this document, acting as the immediate (first-tier) subcontractor to ABC COMPANY.
2. "Prime Contract" means the contract between ABC COMPANY and the U.S. Government or between ABC COMPANY and its higher-tier contractor who has a contract with the U.S. Government.

# SAMPLE SUBCONTRACT LANGUAGE

3. "Contract" means this Contract.
4. "Subcontract" means any contract placed by the CONTRACTOR or lower-tier subcontractors under this Contract.

## NOTES.

1. Substitute "ABC COMPANY" for "Government" or "United States" as applicable throughout this clause.
2. Substitute "ABC COMPANY Procurement Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.

# SAMPLE SUBCONTRACT LANGUAGE

3. Insert “and ABC COMPANY” after “Government” or “Contracting Officer”, as appropriate, throughout this clause.
4. Insert “or ABC COMPANY” after “Government” throughout this clause.
5. Communication/notification required under this clause from/to the CONTRACTOR to/from the Contracting Officer shall be through ABC COMPANY.
6. “Contracting Officer” shall mean the U.S. Government Contracting Officer for ABC COMPANY’s government prime contract under which this Contract is entered.

# SAMPLE SUBCONTRACT LANGUAGE

## AMENDMENTS REQUIRED BY PRIME CONTRACT.

CONTRACTOR agrees that upon the request of ABC COMPANY it will negotiate in good faith with ABC COMPANY relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as ABC COMPANY may reasonably deem necessary in order to comply with the provisions of the applicable prime contract or with the provisions of amendments to such prime contract. If any such amendment to this Contract causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made pursuant to the “Changes” clause of this Contract.

# SAMPLE SUBCONTRACT LANGUAGE

FAR FLOWDOWN CLAUSES.

REFERENCE TITLE

1. The following FAR clauses apply to this Contract :
2. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$10,000:
3. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$25,000:
4. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$150,000:

# SAMPLE SUBCONTRACT LANGUAGE

- 52.225-9 BUY AMERICAN ACT – CONSTRUCTION MATERIALS (MAY 2014)
- 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUNE 2008) (In paragraph (a), see Notes 5 and 6.)
- 52.234-1 INDUSTRIAL RESOURCES DEVELOPED UNDER TITLE III, DEFENSE PRODUCTION ACT (SEPT 2016) (See Note 2.)
- 52.242-13 BANKRUPTCY (JUL 1995) (See Note 2.)
- 52.242-15 STOP-WORK ORDER (AUG 1989) (See Notes 1 and 2.)

# SUBSTANCE OF FAR CLAUSE INCLUDED

## GRATUITIES/KICKBACKS

(a) No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by SELLER, to any employee of ABC COMPANY with a view toward securing favorable treatment as a supplier.

(b) By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

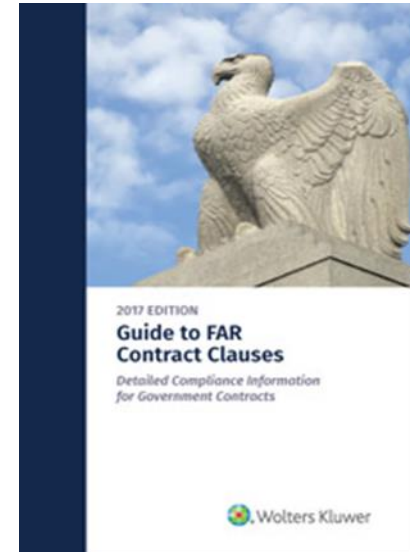
# RESOURCES

# AVAILABLE REFERENCE BOOK

## Guide to FAR Contract Clauses: Detailed Compliance Information for Government Contracts, 2017 Edition

By Wolters Kluwer Law & Business

Current cost \$279.00 (Amazon)



<https://lrus.wolterskluwer.com/store/product/guide-to-far-contract-clauses-detailed-compliance-information-for-government-contracts-2019-edition/?statusCode=404>

2019 Edition available for preorders - \$289.00

# RESOURCES:

- FAR: <https://www.acquisition.gov/?q=browsefar>
- Air Force FAR: <http://farsite.hill.af.mil/>
- Acquisition.gov is: <https://www.acquisition.gov/>
- Wisconsin Procurement Institute  
Phone: 414-270-3600 [www.wispro.org](http://www.wispro.org)

# UPCOMING TRAINING - EVENTS

## WHAT IS WPI'S CURRENT WEBINAR SCHEDULE?

June 13, 2018 – **Update on the Fair Labor Standards Act** – [CLICK HERE](#) for additional information – presented by Corey Walton, Community Outreach and Resource Planning Specialist, U.S. Department of Labor/Wage & Hour Division

June 26, 2018 – **Export Controls – ITAR and Associated Requirements** – [CLICK HERE](#) for additional information – presented by Marc Violante, Wisconsin Procurement Institute (WPI)

July 11, 2018 – **The End of the Fiscal Year is Here – What is Hot and What is Not** – [CLICK HERE](#) for additional information – presented by Marc Violante, Wisconsin Procurement Institute (WPI)

July 17, 2018 – **Export Compliance and Small Business** – [CLICK HERE](#) for additional information – presented by Emily A. Constantine – Attorney – Husch Blackwell LLP

<https://www.wispro.org/faqs/what-is-wpis-webinar-schedule/>

# 12TH ANNUAL VOLK FIELD – FORT MCCOY SMALL BUSINESS CONFERENCE

JUNE 19, 2018 FORT MCCOY, WI

Start Date	June 19, 2018
End Date	June 20, 2018
Facility	Ft. McCoy Building 905
Address	Ft. McCoy Building 905 11th Avenue Fort McCoy, WI
Contact Info	Dave Olson davido@wispro.org (608) 338-8018
Details	<a href="#">Read More Information</a>
Agenda	<a href="#">View The Agenda</a>
Register Online	<a href="#">Register for Event</a>

Previously known as the Annual Volk Field Small Business Conference – this year, the conference will be held at Ft. McCoy.



[REGISTER](#)

Fort McCoy

Volk Field Air National Guard Base

Juneau County Economic Development Corporation

American Indian Chamber of Commerce (AICCW) – First American Capital Corp. (FACC)

Center for Economic and Entrepreneur Development (CEED)

Small Business Administration (SBA)

UW-Stout Manufacturing Outreach Center (UW-Stout MOC)

Western Dairyland

<https://www.wispro.org/events/12th-annual-volk-fieldfort-mccoy-small-business-conference/>



WISCONSIN ECONOMIC  
DEVELOPMENT CORPORATION

Governor's Conference on Minority Business Development  
Welcoming minority, woman and veteran-owned businesses

December 13 - 14, 2017

[About](#) [Awards](#) [Sponsors](#) [Exhibitors](#) [Event Details](#) [Buyer Meetings](#) [Register](#) [FREE Workshops](#) [Hotel](#) [Contact Us](#)

SAVE THE DATES  
**2018 MARKETPLACE**  
December 12-13, 2018

LOCATION:  
Potawatomi Conference Center  
Milwaukee, Wisconsin

**THANK YOU**

**2017**



# QUESTIONS?

# SURVEY



# CONTINUING PROFESSIONAL EDUCATION

---



CPE Certificate available, please contact:

**Benjamin Blanc**

[benjaminb@wispro.org](mailto:benjaminb@wispro.org)

# PRESENTED BY

Wisconsin Procurement Institute (WPI)

[www.wispro.org](http://www.wispro.org)

Carol Murphy | Business Development Specialist

Wisconsin Procurement Institute

[carolm@wispro.org](mailto:carolm@wispro.org) 414-270-3600

Benjamin Blanc | Government Contract Specialist

Wisconsin Procurement Institute

[benjaminb@wispro.org](mailto:benjaminb@wispro.org) 414-270-3600

10437 Innovation Drive, Suite 320

Milwaukee, WI 53226