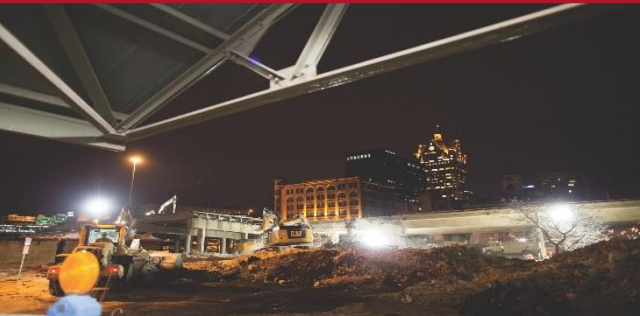


# ACQUISITION HOUR: UPDATE ON THE HOUR WAGE LABOR LAW ACQUISITION HOUR WEBINAR

March 11, 2020



# 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!

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**Celebrating 32 Years of  
serving Wisconsin Business!**



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

- **INDIVIDUAL CONSELING** – At our offices, at clients facility or via telephone/GoToMeeting
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- **CONFERENCES** to include one on one or roundtable sessions

**Last year WPI provided training at over 100 events and provided service to over 1,200 companies**

# WPI OFFICE LOCATIONS

## ▪ MILWAUKEE

- *Technology Innovation Center*

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- *Dane County Latino Chamber of Commerce*
- *Wisconsin Manufacturing Extension Partnership (WMEP)*
- *Madison Area Technical College (MATC)*

## ▪ CAMP DOUGLAS

- *Juneau County Economic Development Corporation (JCEDC)*

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## ▪ EAU CLAIRE

- *Western Dairyland*

## ▪ MENOMONIE

- *Dunn County Economic Development Corporation*

## ▪ LADYSMITH

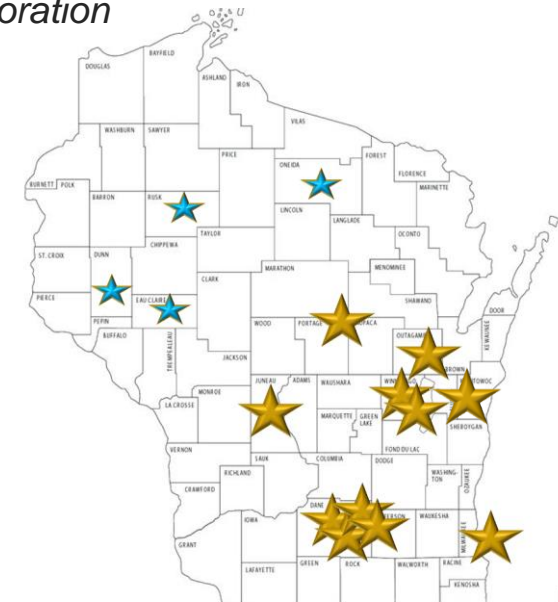
- *Indianhead Community Action Agency*

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**CURRENT EDITION OF THE WPI NEWSLETTER**

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

**UPCOMING EVENTS**

- WED 21** Acquisition Hour: Government Property Management for Federal Contractors and Subcontractors  
August 21 @ 12:00 pm - 1:00 pm
- THU 22** Advancing Cybersecurity in the Industry, Energy, Water Nexus – Oshkosh, WI  
August 22 @ 9:00 am - 3:00 pm  
Oshkosh WI
- THU 22** NDIA Great Lakes Chapter 10th Anniversary – Milwaukee, WI  
August 22 @ 12:30 pm - 7:30 pm  
Brookfield Wisconsin
- SEP 11** Acquisition Hour: The End of the Fiscal Year is Here – What is Hot and What is Not  
September 11 @ 12:00 pm - 1:00 pm

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**CURRENT OPPORTUNITIES (1)**

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2018

# PREVAILLING WAGE SEMINARS



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR



# **DBA/DBRA Compliance Principles**

# DBA/DBRA Compliance Principles

- Laborers and mechanics
- Site of the work
- Classification of Work
- Fringe Benefits
- Deductions
- Certified Payrolls

# Laborers and Mechanics

- Workers whose duties are manual or physical in nature;
- Includes apprentices, trainees and helpers; and
- For CWHSSA, includes guards and watchmen.

# Laborers and Mechanics

- Does not include:
  - Timekeepers, inspectors, architects, engineers; or
  - Bona fide executive, administrative, and professional employees as defined under FLSA.
- Working foremen are generally non-exempt:
  - must be paid the Davis Bacon (DB) rate for the classification of work performed if not 541 exempt.

# Site of the Work

- Davis-Bacon applies only to laborers and mechanics employed “directly on the site of the work.”
- A three-part definition applies to determine the scope of the term “site of the work.”

# Site of the Work Definition ¶1

- DBA applies only to workers “directly on the site of the work:”
  - The physical place or places where the construction called for in the contract will remain after work has been completed; and
  - Any other site where a **significant** portion of the building or work is constructed, *provided that* such site is established specifically for the contract.

# Site of the Work Definition ¶2

- “Site of the work” also includes job headquarters, tool yards, batch plants, borrow pits, etc., *provided* they are:
  - Located adjacent or virtually adjacent to the “site of the work” described in paragraph 1; and
  - Dedicated exclusively or nearly so to the performance of the contract or project.
  - Except if they are excluded – see next slide

# Site of the Work Definition ¶3

- “Site of the work” does not include a contractor’s or subcontractor’s:
  - permanent home office, branch locations, fabrication plants, tool yards, etc.;
  - whose location and continuance in operation are determined without regard to a particular covered project.

# Definition ¶3 (Cont'd.)

- Also not included in the “site of the work” are:
  - Fabrication plants, batch plants, job headquarters, tool yards, etc., of a commercial supplier established by a supplier of materials:
    - Before the opening of bids for a project; and
    - Not located on the actual site of the work.
  - Such permanent, previously established facilities, are not part of the “site of the work,” even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

# Truck Drivers

- Truck drivers of the contractor or subcontractor are covered by Davis-Bacon for time:
  - Spent working on the “site of the work;” and/or
  - Spent loading or unloading materials and supplies on the “site of the work,” if such time is more than *de minimis*.

(Slides coming up discuss material suppliers.)

# Truck Drivers

- Truck drivers are also covered when:
  - Transporting materials and supplies between a facility that is part of the “site of the work” and the actual construction site; or
  - Transporting portions of a building or work between a site where a significant portion of the project is being constructed and the physical place where the building or work will remain.

# Truck Drivers Owner-Operators

- DOL has an enforcement position with respect to *bona fide* owner-operators of trucks who are independent contractors (an owner-operator is a person who owns and drives a truck). Certified payrolls including the names of such owner-operators do not need to show the hours worked or the rates paid, only the notation “owner-operator.”
- This position does not apply to owner-operators of other equipment such as bulldozers, cranes, etc.

# Material Suppliers

- The manufacture and delivery to the work site of supply items such as sand, gravel, and ready-mixed concrete by bona fide material suppliers, are activities not covered by DBA/DBRA requirements (even though the materials are delivered directly into a contractor's work site mixing facilities).
- Bona fide material suppliers (including truck drivers) whose only contractual obligations for on-site work are to deliver materials and/or pick up materials are not considered contractors under the DBA/DBRA. Thus, their employees are not subject to the Davis-Bacon labor standards.

# Material Suppliers (cont'd.)

- However, laborers and mechanics employed at the site of the work by a material supplier, manufacturer, or carrier that undertakes to perform a part of a construction contract as a subcontractor:
  - Would be subject to Davis-Bacon labor standards in the same manner as those employed by any other contractor or subcontractor.
  - For enforcement purposes, if such a worker spends more than an incidental amount (20%) of his/her time in a workweek engaged in construction work on the site, he/she is covered for all time spent on the site during workweek.

# Wages & Fringe Benefits

- All laborers and mechanics employed or working upon the site of work must be paid at least the applicable prevailing wage rate for the classification of work performed, without regard to skill.

# Wages & Fringe Benefits

- Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed.” 29 CFR 5.5(a)(1)

# Wages & Fringe Benefits

- DBA: the terms “wages” and “prevailing wages” include:
  - The basic hourly rate (BHR);
  - Contractor contributions *irrevocably* made to a trustee or third party pursuant to a bona fide fringe benefit (FB) fund, plan, or program; and/or
  - The rate of costs the contractor reasonably anticipates in providing bona fide FB’s where certain conditions are met.

# Wage & Fringe Benefits

- Under DBA, FB's are a component of the DBA "prevailing wage."
- The prevailing wage obligation may be satisfied by:
  - Paying the BHR and FB in cash (including negotiable instruments payable on demand);
  - Contributing payments to a bona fide plan; or
  - Any combination of the two.

# Wages & Fringe Benefits

- Must be paid weekly for all hours worked:
  - Unless the fringe benefits are paid into a bona fide FB plan and then contributions must be paid no less often than quarterly.
- Cash wages paid in excess of BHR may count to offset or satisfy the FB obligation (unlike under SCA).

# Prevailing Wage Example

- **BHR** **\$14.00**
- **FB** **\$ 1.00**
- **Total prevailing wage** **\$15.00**
  
- **The contractor may comply by paying:**
  - **\$15.00 in cash wages**
  - **\$14.00 in cash wages plus \$1.00 for FB**
  - **\$12.00 in cash wages plus \$3.00 for FB**

# Prevailing Wage Example

- An employee spent 32 hours working as an electrician, with a BHR of \$22.00 and an FBR of \$3.00, and 8 hours working as a laborer, with a BHR of \$14.00 and a FBR of \$1.00.
- The employee is due \$800.00 for his electrician work (32 hours X (\$22.00 + \$3.00)) and \$120.00 for his laborer work (8 hours X (\$14.00 + \$1.00)), for a total of \$920.00.
- The \$920.00 can be paid in any combination of cash wages and fringe benefit contributions.

# Deductions

- 29 CFR 3.5 lists deductions that an employer can make from the prevailing wage rate without the approval of the Secretary of Labor.
- Examples include Social Security and federal or state taxes, certain court-ordered payments, bona fide pre-payments of wages, certain payments of union dues, and voluntary charitable donations.

# Deductions

- 29 CFR 3.6 generally provides that the Secretary may approve other deductions whenever all of the following conditions are met:
  - The contractor does not profit directly or indirectly from the deduction
  - The deduction is not otherwise prohibited by law
  - Either the employee voluntarily consented to the deduction in writing in advance of the time that the work was performed or the deduction is under the terms of a collective bargaining agreement
  - The deduction serves the convenience and interest of the employee

# Payroll and Basic Records

- Payrolls and related basic records shall be maintained by the contractor during the course of the work and for three years thereafter for all laborers and mechanics working at the site of the work.
- Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. 29 CFR 5.5(a)(3)

# Certified Payrolls

Regulatory Provisions at 29 C.F.R. Part 3; &  
29 C.F.R. § 5.5(a)(3), (5), and (8), reiterated at  
FAR 48 C.F.R. §§ 52.222-8, 52.222-10 and 52.222-13

- **Davis-Bacon contract clause provisions:**

- “*Payrolls and basic records*”: 29 C.F.R. § 5.5(a)(3)
- Applicability of 29 C.F.R. Part 3: 29 C.F.R. §§ 5.5(a)(5) & (8).

- **Provisions in 29 C.F.R. Part 3:**

- **29 C.F.R. § 3.3** – “Weekly statement with respect to payment of wages”
- **29 C.F.R. § 3.4** – “Submission of weekly statements and the preservation and inspection of weekly payroll records.”

# Certified Payrolls

- Two separate contract clause requirements apply to “certified payrolls” for a project:
  - The contractor shall submit weekly for any week in which any contract work is performed a copy of all payrolls. 29 C.F.R. § 5.5(a)(3)(ii)(A).
  - Each weekly payroll submitted must be accompanied by a “Statement of Compliance.”  
29 C.F.R. § 5.5(a)(3)(ii)(B).

# Certified Payrolls

- Weekly payrolls must include specific information as required by 29 C.F.R. § 5.5(a)(3).
- Weekly payroll information may be submitted in any form desired.
  - Optional Form WH-347 is available for this purpose
  - The WH-347 form, with instructions, is at:

*<http://www.dol.gov/whd/forms/wh347instr.htm>.*

# WHD Internet Sites

- Wage Determinations – <http://www.wdol.gov>
- Wage and Hour Division - <http://www.dol.gov/whd/index.htm>
- Resource Book - <http://www.dol.gov/whd/recovery/pwrb/toc.htm>
- Office of the Administrative Law Judges Law Library - <http://www.oalj.dol.gov>
- Administrative Review Board - <http://www.dol.gov/arb>

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2018

# PREVAILLING WAGE SEMINARS



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

# SCA Compliance Principles

- Payment of wages
- Payment of fringe benefits
- Vacation Fringe Benefits
- Holiday Fringe Benefits
- Deductions
- Recordkeeping
- Notice to employees

# Payment of Wages

- The SCA requires contractors and subcontractors performing services on prime contracts in excess of \$2,500 to pay service employees in various classes no less than the wage rates and fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement.
- For contracts equal to or less than \$2,500, contractors are required to pay the federal minimum wage as provided in Section 6(a)(1) of the Fair Labor Standards Act.

# Payment of Wages (29 C.F.R. § 4.165)

- Wages established by wage determination, otherwise FLSA minimum wage (29 C.F.R. § 4.165(c))
- Monetary wages to be paid when promptly due (29 C.F.R. § 4.165(a)(1))
- No distinction between Full and Part Time Employees(29 C.F.R. § 4.165(a)(2))
- Calculated on fixed and regularly recurring workweek of 7 consecutive 24-hour workday periods (29 C.F.R. § 4.165(b))
  - Payroll records kept on this basis
  - Bi-weekly or semi-monthly pay periods if advance notice

# Finding the Correct Wage Rate

- Workers must be paid the wage rate set forth in the wage determination for the classification of work they perform.
- To prevent misclassification, it is very important that a contractor fully utilize the applicable wage determination and the Directory of Occupations to find the classification that most closely matches the workers' duties.

# Finding the Correct Wage Rate - Example

- Contractor X has been awarded a contract to provide refrigerated warehouse services. Contractor X is trying to determine the correct classification for the employees who receive goods to be stored, verify the goods against the incoming bills of lading, and record and route them for appropriate storage. When goods need to be shipped, the employee also verifies the goods against the incoming order and prepares the outgoing bills of lading.
- Contractor X begins to read through the applicable wage determination and decides that [Order Clerk](#) is the best [classification](#).
- However, a further reading of the [wage determination](#) and [Directory of Occupations](#) indicates otherwise.



# Directory of Occupations – Order Clerk

- 01190 ORDER CLERK (Occupational Base)
- The Order Clerk receives written or verbal purchase orders. Work typically involves some combination of the following duties: quoting prices, determining availability of ordered items and suggesting substitutes when necessary, advising expected delivery date and method of delivery, recording order and customer information on order sheets. The Order Clerk is responsible for checking order sheets for accuracy and adequacy of information; ascertaining credit rating of customer; furnishing customer with confirmation of receipt of order; order follow up, or informing customer of a delay in delivery. The Order Clerk maintains order files and verifies shipping invoices against original orders.
- [01191 ORDER CLERK I](#)
- This position handles orders involving items that have readily identified uses and applications. The Order Clerk I may refer to a catalog, manufacturer's manual or similar document to insure that the proper item is supplied or to verify the price of order.

# WD Sample – Shipping/Receiving Clerk

- 21000 - Materials Handling And Packing Occupations

\*\*\*\*\*

- 21020 - Forklift Operator 13.53
- 21030 - Material Coordinator 19.21
- 21040 - Material Expediter 19.21
- 21050 - Material Handling Laborer 11.22
- 21071 - Order Filler 11.98
- 21080 - Production Line Worker (Food Processing) 13.53
- 21110 - Shipping Packer 12.87
- 21130 - Shipping/Receiving Clerk 12.87

# Directory – Shipping/Receiving Clerk

- [21130 SHIPPING/RECEIVING CLERK](#)
- The Shipping/Receiving Clerk performs clerical and physical tasks in connection with shipping goods of the establishment in which employed and receiving incoming shipments. In performing day-to-day, routine tasks, this worker follows established guidelines. In handling unusual non-routine problems, this worker receives specific guidance from supervisor or other officials. This incumbent may direct and coordinate the activities of other workers engaged in handling goods to be shipped or being received. Shipping duties typically involve the following: verifying that orders are accurately filled by comparing items and quantities of goods gathered for shipment against documents; insuring that shipments are properly packaged, identified with shipping information, and loaded into transporting vehicles, and preparing and keeping records of goods shipped, e.g., manifests, bills of lading. Receiving duties typically involve the following: verifying the correctness of incoming shipments by comparing items and quantities unloaded against bills of lading, invoices, manifests, storage receipts, or other records, checking for damaged goods, insuring that goods are appropriately identified for routing to departments within the establishment, and preparing and keeping records of goods received.

# Wage Payments for Work Subject to Different Rates

- Employee must be paid:
  - Highest rate for all hours worked; unless
  - Employer's payroll records or other affirmative proof show periods spent in each class of work.
- Applies when employee works part of workweek on SCA-covered and non-SCA-covered work.

## Tipped Employees – 29 CFR 4.6(q) and 4.167

- Employers may use a “tip credit” to meet their SCA prevailing wage obligation if:
  - The employees work in an occupation in which they customarily and regularly receive over \$30 a month in tips
  - The employer informs the employees of the tip credit before using it
  - The employees are allowed to keep all tips individually or through a valid tip pooling arrangement
  - The employer can show that the employees actually received the required SCA wage through a combination of direct wages and tips

## Tipped Employees – 29 CFR 4.6(q) and 4.167

- If all the necessary requirements are met, employers may claim a tip credit to the extent permitted by section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR part 531.
- Currently, Section 3(m) of the FLSA and 29 CFR 531 permit a maximum tip credit of \$5.12 per hour (the difference between the minimum required cash wage of \$2.13 hour and the current federal minimum wage of \$7.25).
- In no event shall the tip credit claimed exceed the amount of tips actually received by the employee.

# Computation of Hours Worked

(29 C.F.R. §§ 4.178-4.179 & Part 785)

- Determined under the FLSA pursuant to 29 C.F.R. Part 785.
- Includes all periods in which employee is “suffered or permitted” to work.
- Hours worked that are subject to the SCA are those performed on covered (SCA) contracts.
- Contractor must keep affirmative proof of the time spent on covered and non-covered work in a workweek.

# Payment of Fringe Benefits

- Cash payments in lieu of fringe benefits (FBs) must be paid on regular pay date (29 C.F.R. § 4.165(a)).
- Payments into *bona fide* FB plans must be made no less often than quarterly (29 C.F.R. § 4.175(d)).
- FB costs may not be credited toward wage requirements (29 C.F.R. § 4.167).

# Discharging Minimum Wage & Fringe Benefit Obligations

Under the SCA, the contractor may not credit excess wage payments against the FB obligation:

Wage Determination:		Employee Paid:	
Wage	\$10.25	Wage	\$12.61
FB	\$ 4.41	FB	\$ 2.05
<hr/>		<hr/>	
Total	\$14.66	Total	\$14.66

# Vacation Fringe Benefits (29 C.F.R. § 4.173(c)(1))

- Are vested and become due after the employee's **anniversary date**.
- Need not be paid immediately after the anniversary date, but must be discharged before (whichever occurs first):
  - The next anniversary date;
  - The completion of the contract; or
  - The employee terminates employment

## Notification of Length of Service – 29 CFR 4(l)(2)

- Not less than 10 days prior to completion of the contract, the incumbent prime contractor shall furnish to the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance.
- Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee.
- The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract.

# Holiday Fringe Benefits

(29 C.F.R. § 4.174)

- An employee is entitled to holiday pay if he/she works in the holiday workweek.
- An employee is not entitled to holiday pay if the holiday not named in the WD (*i.e.*, government closed by proclamation).
- Paid holidays can be traded for another day off if communicated to employees.

## Deductions from Wages – 29 CFR 4.168

- “The wage requirements of the Act will not be met where unauthorized deductions, rebates, or refunds reduce the wage payment made to the employee below the minimum amounts required under the provisions of the Act and the regulations thereunder, or where the employee fails to receive such amounts free and clear because he “kicks back” directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to him.”

# Deductions from Wages – 29 CFR 4.168

- Authorized deductions are limited to:
  - deductions required by law, such as taxes or court-ordered garnishments
  - deductions for the reasonable cost of board, lodging, or other facilities as set forth in 29 CFR 4.167
  - deductions authorized to be paid to third persons for the worker's benefit pursuant to his voluntary assignment or order or a bona fide collective bargaining agreement
- Deductions which cut into the wages required under the SCA may not be made if they are contrary to law, the contractor, sub-contractor or any affiliated person profits by them directly or indirectly, or the deductions are being made to a third party and the worker did not authorize them

# Recordkeeping – 29 CFR 4.6(g)

- Contractors shall make and maintain for 3 years from the completion of the work records containing the following information:
  - Name and address and social security number of each employee
  - The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee
  - The number of daily and weekly hours so worked by each employee

# Recordkeeping – 29 CFR 4.6(g)

- Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee
- A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been conformed
- Any list of the predecessor contractor's employees which had been furnished to the contractor pursuant to §4.6(l)(2).

# Notice to Employees – 29 CFR 4.183 and 29 CFR 4.184

- Contractors must notify each employee commencing work on a SCA contract of the wage rates and fringe benefits required to be paid for work performed on the contract. A notice form (WH Publication 1313 and any applicable wage determination) provided by the Wage and Hour Division is to be used for this purpose. It may be delivered to the employee or posted as stated in §4.184.
- Posting of the notice provided by the Wage and Hour Division shall be in a prominent and accessible place at the worksite.

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# UPCOMING TRAINING - EVENTS

# ACQUISITION HOUR LIVE WEBINARS SERIES

▪ March 11, 2020

## **Updated on the Hour Wage Labor Law**

[CLICK HERE](#) for additional information

Presented by Corey Walton, U.S. Dept of Labor/Wage & Hour Division

▪ March 17, 2020

## **Market Segmentation for Enhanced Business Development**

[CLICK HERE](#) for additional information

Presented by Marc Violante, Wisconsin Procurement Institute (WPI)

▪ March 18, 2020

## **Creating Advanced Queries with the Federal Procurement Data System (FPDS)**

[CLICK HERE](#) for additional information

Presented by Marc Violante, Wisconsin Procurement Institute (WPI)

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■ April 24, 2020

## **How the CyberSecurity Maturity Model Certification (CMMC) Will Impact Your Business**

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Presented by Marc Violante, Wisconsin Procurement Institute (WPI)

# A CRITICAL NOTICE FROM WPI

- If you are a current **FEDERAL / DOD CONTRACTOR** or **SUBCONTRACTOR** – you may have **CYBER – DATA SECURITY REQUIREMENTS** in your contract.
- If you are responding to any **CURRENT FEDERAL SOLICITATIONS** - be aware of your obligations:
  - Key clauses are 52.204-21, 252.204-7008 and 252.204-7012
  - Review for other possible requirements
- If you are a **DOD CONTRACTOR** or **SUBCONTRACTOR** – you will have new **CYBER COMPLIANCE – CERTIFICATION REQUIREMENTS** that may impact your business as early as the end of this calendar year.
  - See: <https://www.acq.osd.mil/cmmc> and <https://www.cmmcab.org> for more up to date information.
  - *Contact Marc Violante at WPI - [marcv@wispro.org](mailto:marcv@wispro.org) or 920-456-9990*

# 14TH ANNUAL WISCONSIN GOVERNMENT BUSINESS OPPORTUNITIES CONFERENCE (GOBC)

June 24 - June 25

## Details

Start:  
June 24

End:  
June 25

Event Categories:  
Conference, WPI Events

## Organizer

Hilary DeBlois

Phone:  
(414) 688-3882

Email:  
hilaryd@wispro.org

Save the Date for the 14th Annual Wisconsin Government Business Opportunities Conference (GOBC) in partnership with Volk Field ANG and Fort McCoy, June 24 and 25th, 2020.

## Venue

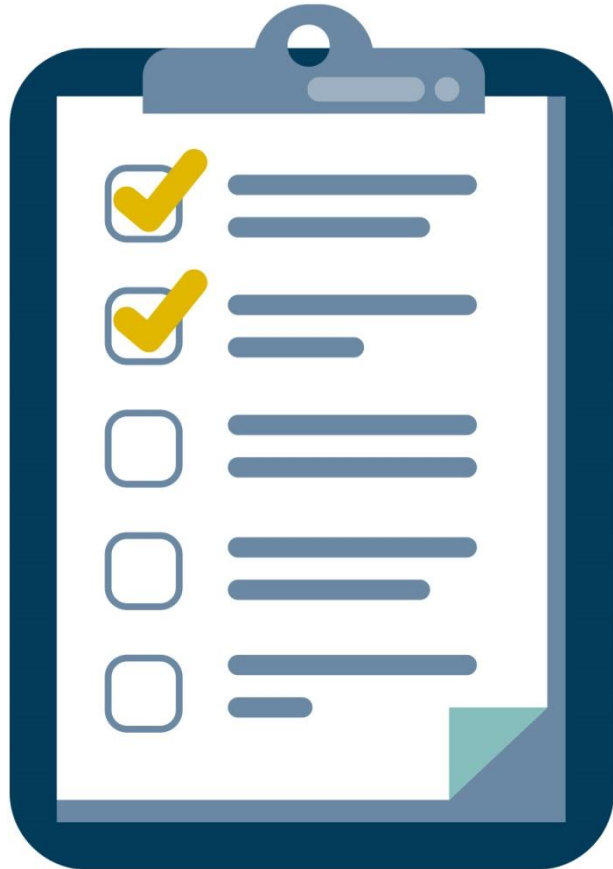
Volk Field Air National Guard Base  
100 Independence Drive, Building 475  
Camp Douglas, WI 54618 United States + [Google Map](#)



# QUESTIONS?



# SURVEY



# CONTINUING PROFESSIONAL EDUCATION



CPE Certificate available, please contact:

**Benjamin Blanc**

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

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