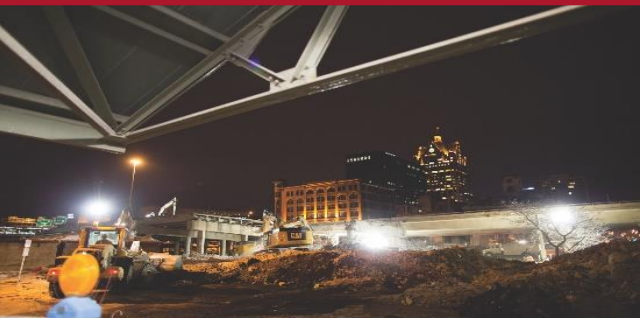




**Focus on the First Principles of Federal Contract Management
During Unsettled Times**
ACQUISITION HOUR WEBINAR

April 7, 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!

ABOUT WPI SUPPORTING THE MISSION

**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
- **SMALL GROUP TRAINING** – Workshops and webinars
- **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



Search ...

BLOG SERVICES ABOUT **CLIENT PORTAL** SPONSORSHIP CONTACT



- EVENT CALENDAR
- FEDERAL GOVERNMENT
- STATE & LOCAL GOVERNMENT
- GRANTS
- SUCCESS & AWARDS
- FAQS

CURRENT EDITION OF THE WPI NEWSLETTER

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)

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](#)

Focus on the first principles of Federal contract management during unsettled times

Marc N. Violante

April 7, 2020

Primary concerns/issues

- Federal Contractor -
 - Costs
 - Schedule
- Short/Long term customer relations
- Not as visible – security/cyber/export controls

First Principles

- Maintain contact – communications
- Document – email is better than phone calls
 - Document all/every call – consistency & format; date and time
- Identify critical path/supplies
- Manage the “Performance Chain”
 - This is not – **order and forget**
 - New terms? – communication/notifications/other
- Identify customer reporting requirements
- Contract terms and conditions
- Regulations
- Resources – changing – tracking

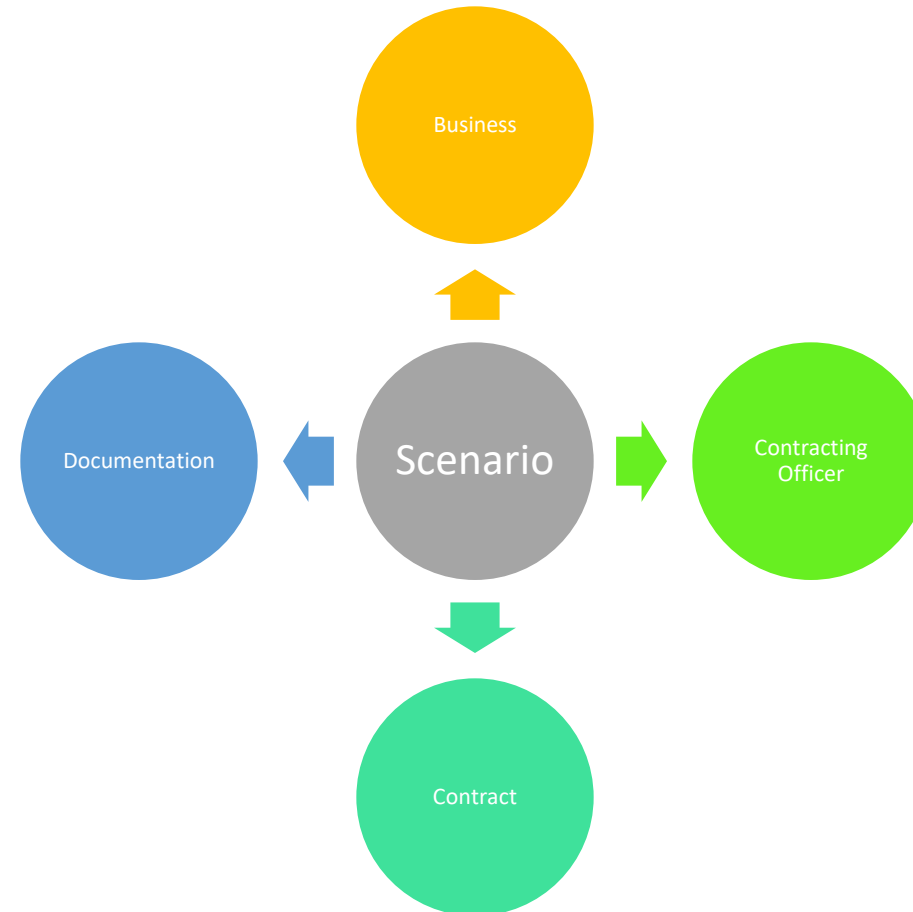
Develop Scenarios

- Include all variables that will/might impact performance
 - Business
 - Equipment
 - Employees
 - Outside resources – legal/financial/technical/other professional
 - Downstream – DPAS/DPA
 - Downstream – supply chain, general
 - Upstream – Businesses that take output
 - Government employees – contracting officer/DCMA-QAR

Possible scenarios

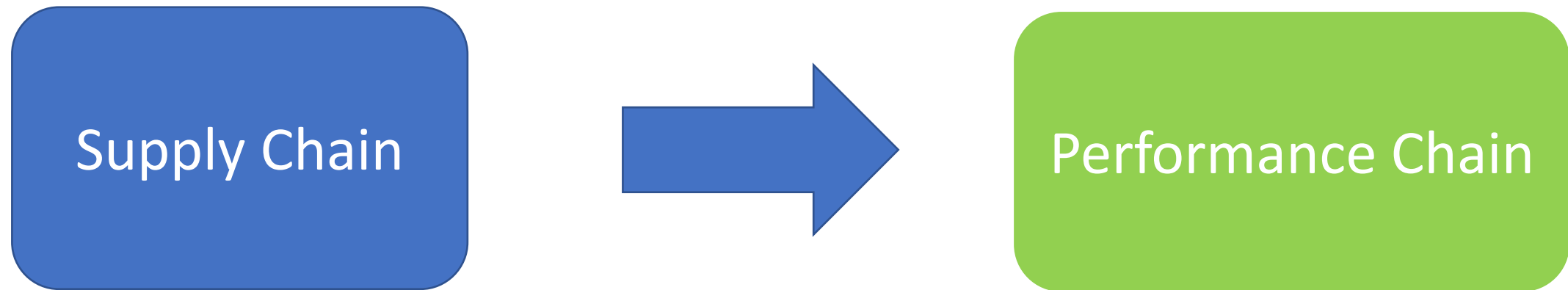
- **Scenario – 1:** An employee or employees are identified with the virus.
- **Scenario – 2:** A supplier contacts the business to inform them that they will not be able to make the next several deliveries.
- **Scenario – 2a:** The packaging house used emails an alert that due to employees being identified with the virus, they will not be able to honor their normal turn-around times. Additionally, there will be new safety measures put in place when receiving shipments.
- **Scenario – 3:** Company leadership fall ill with the virus.
- **Scenario – 4:** A company impacted on several levels, there is near-total business disruption and little ability to perform on contracts.
- **Scenario – 5:** DCMA emails companies that due to the virus and safety concerns for staff, that there will be new procedures put into place.
- **Scenario – 6:** Customer emails arrive stating that contracts with an Origin inspection point will be have a modification executed change the inspection point to Destination.

Develop Documentation to support Scenarios



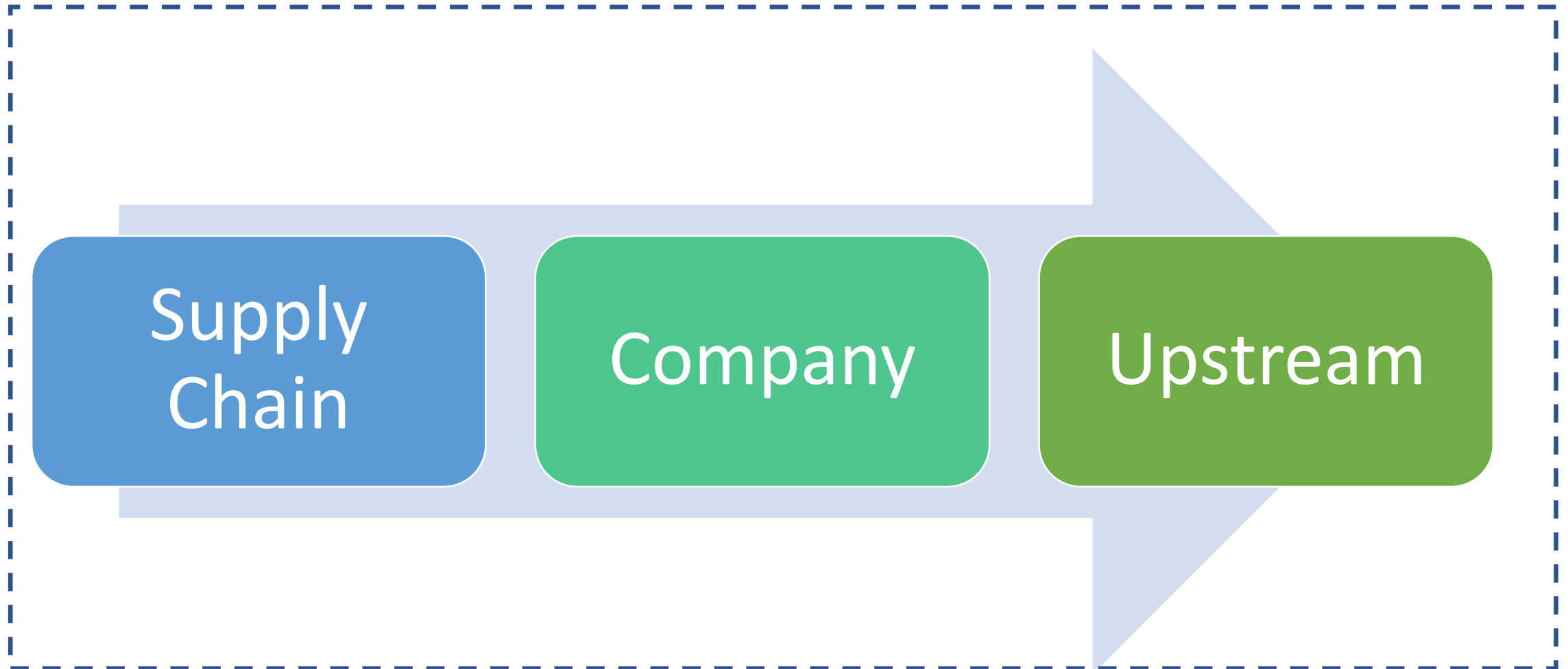
4/7/2020

Changing Perspective

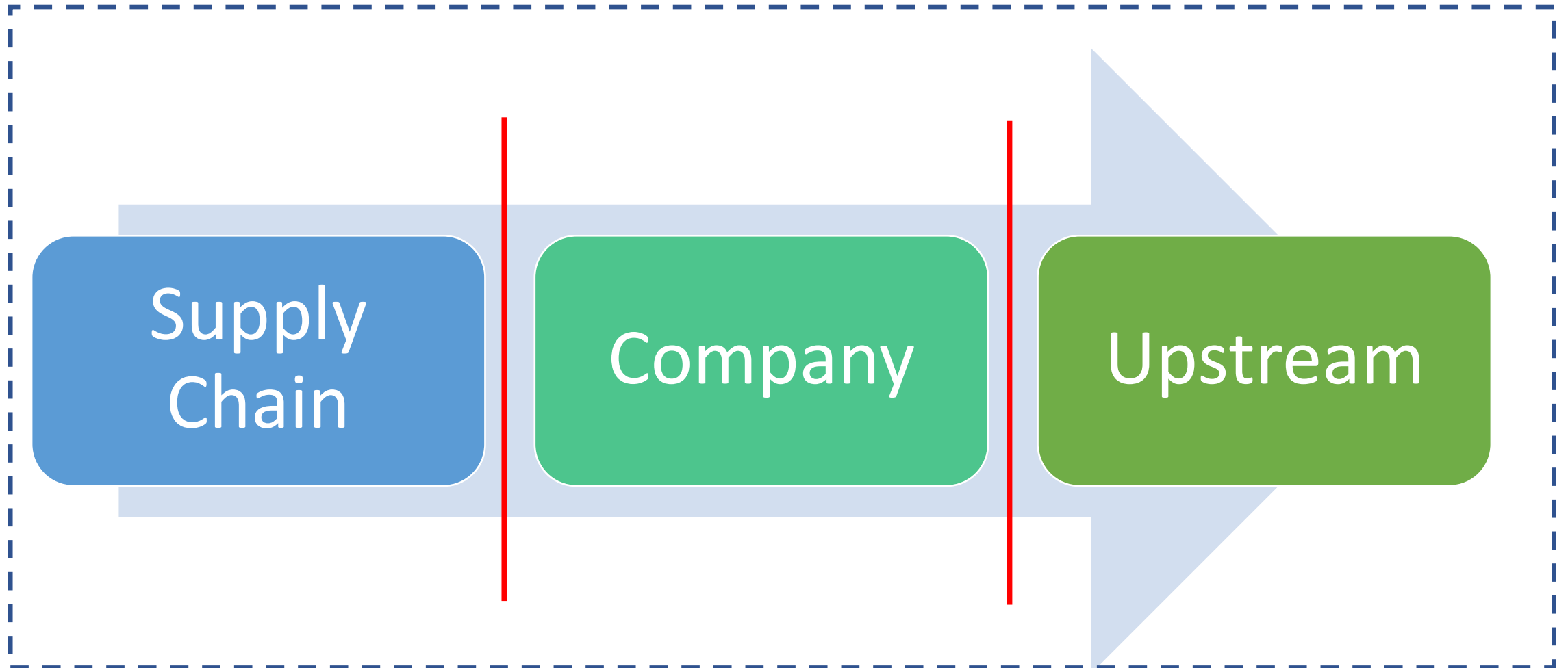


4/7/2020

Identify/Define the Performance Chain



Issue = Disruption to the Performance Chain



Identify Potential Impacts

- Staff – immediate
- Staff – secondary impacts
- Schedule – disruption,
 - Short term – production/inspections/audits
 - Long term
 - Worse case – wide-spread
- Costs – increases/delays/new cost/HR & Leadership time focus
- Finances
- Customer relations
- Government relations – reporting, monitoring, etc.

Real-life scenario

1 Manufacturing shop staff

X X X X X X X

2

X X X X X X X

Family member –
tests positive

3

Initial steps

- Family member – quarantined
- Staff member – quarantined after returning to work

Next steps - business

- Contact tracing to determine other affected employees
 - Quarantine
- Mandatory reporting
- Phone calls – internal - hours

4

X X X X X X X

4/7/2020

Impact

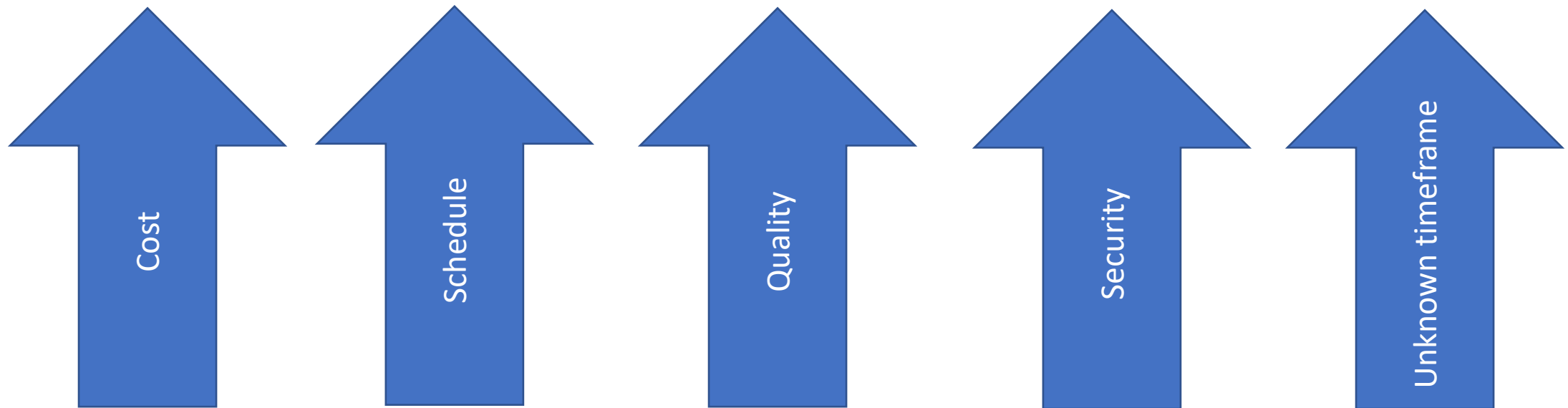
Manufacturing shop staff pre-exposure



Manufacturing shop staff post-exposure



Possible impacts – among others



Think like the opponent – Key Idea

- Chess
- Checkers
- Football – Basketball – Hockey - ...
- Business
 - Competitors
- How does a Contracting Officer think?
- Why does a Contracting Officer think as they do?
- What guides their decision?

What general principles
guides procurement
decisions?

We can guess that –

- Someone who is thirsty will seek something to drink.
- Someone who is hungry will search out something to eat.
- Someone who is tired will rest.

In general – something drives behavior

Documentation (mirror the contracting officer)

4.801 General.

(a) The head of each office performing contracting, contract administration, or paying functions shall establish files containing the records of all contractual actions.

(b) The documentation in the files (see [4.803](#)) shall be sufficient to **constitute a complete history of the transaction** for the purpose of-

(1) **Providing a complete background as a basis** for informed decisions at each step in the acquisition process;

(2) **Supporting actions taken;**

(3) **Providing information for reviews and investigations;** and

(4) Furnishing essential facts in the event of litigation or congressional inquiries.

(c) The files to be established include-

(1) A file for cancelled solicitations;

(2) A file for each contract; and

(3) A file such as a contractor general file, containing documents relating, for example-to-

Elements to consider



4/7/2020

Red-tape considerations

- Agencies may not spend, or commit themselves to spend, in advance of or in excess of appropriations. 31 U.S.C. § 1341 (Antideficiency Act).
- Appropriations may be used only for their intended purposes. 31 U.S.C. § 1301(a) (“purpose statute”).
- Appropriations made for a definite period of time may be used only for expenses properly incurred during that time. 31 U.S.C. § 1502(a) (“bona fide needs” statute).
- Unless authorized by law, an agency may not keep money it receives from sources other than congressional appropriations, but must deposit the money in the Treasury. 31 U.S.C. § 3302(b) (“miscellaneous receipts” statute)

Bona Fide Needs Rule

- Over a century ago, the Comptroller of the Treasury stated, “An appropriation should not be used for the purchase of an article not necessary for the use of a fiscal year in which ordered merely in order to use up such an appropriation.” 8 Comp. Dec. 346, 348 (1901).
- The bona fide needs rule is one of the fundamental principles of appropriations law:
 - A fiscal year appropriation may be obligated only to meet a legitimate, or bona fide, need arising in, or in some cases arising prior to but continuing to exist in, the fiscal year for which the appropriation was made.

Congressional appropriations - required

- Regardless of the nature of the payment—salaries, payments promised under a contract, payments ordered by a court, whatever—a federal agency may not make a payment from the United States Treasury unless Congress has made the funds available. As the Supreme Court stated well over a century more than 150 years ago:
 - “However much money may be in the Treasury at any one time, not a dollar of it can be used in the payment of any thing not... previously sanctioned [by a congressional appropriation].”

Antideficiency Act

- “(a)(1) An officer or employee of the United States Government or of the District of Columbia government may not—
 - “(A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; or
 - “(B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.”

Contracts

- Agreement – offer/acceptance
- **Consideration – that exchanged or bargained for**
- Legality – lawful purpose
- Capacity – adults and sound mind

- Understand – Uniform Commercial Code (UCC)
 - Every state has adopted at least part of the UCC to govern commercial transactions within that state
 - Article 2 governs the sale of goods ~ anything moveable except
 - Money, securities, and certain legal right

Customer's view

Budget – loosely put (A preauthorized spending plan)

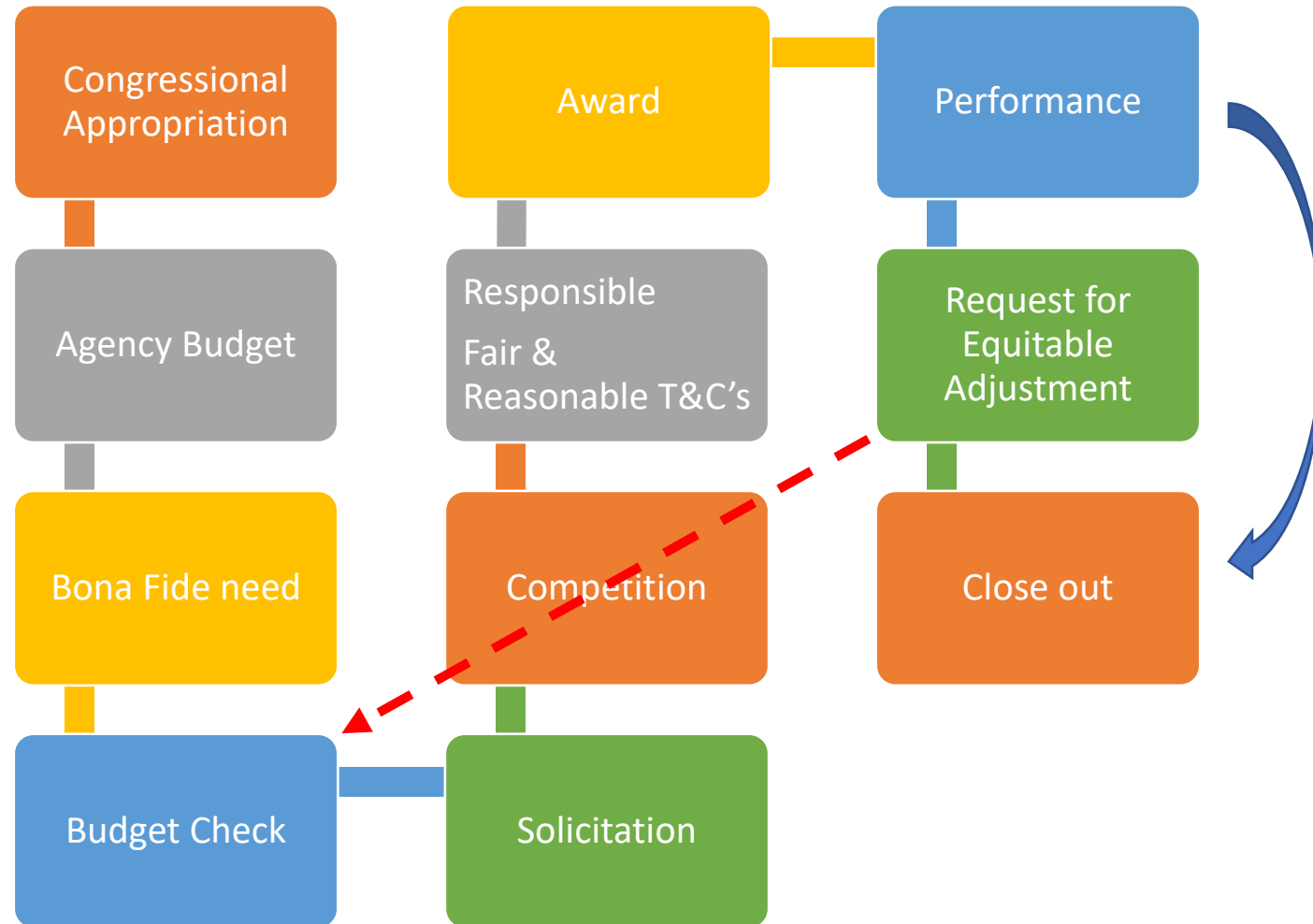
Budget -- X X X X X X X



Perfect budget

- Salaries – X
- Benefits – X
- Pubs & Dues – X
- Travel trip A – X
- Travel trip B – X
- Contract 1 – X
- Contract 2 - X

Process Matters



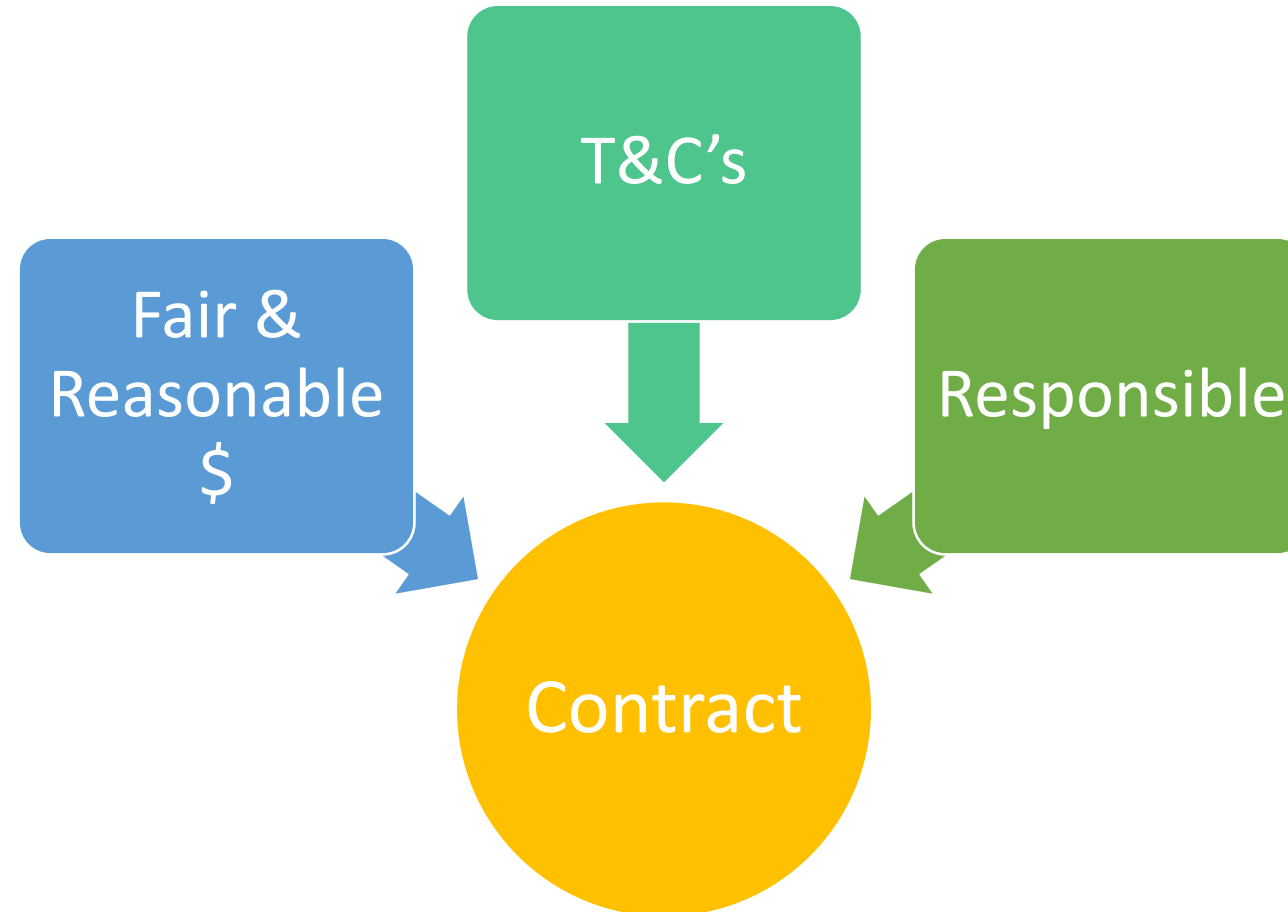
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Be aware of indexes used for price

- (1) The Government shall be entitled to a price decrease in any particular adjustment period if the adjusting index is less than the base index. There shall be _____ price adjustments per contract year.
- (2) Example of adjustment calculation:
 - Base Index =109.88*
 - Adjusting index =112.72*
 - Less base index =109.88
 - Change to index =2.84
 - Divide change to index by base index = $2.84 / 109.88 = .02585$ (2.585%)**
 - Multiply by the base unit price = $\$50.00 \times .02585 = \1.29 ***
= Unit Price Adjustment
 - Adjusted unit price = $\$51.29$ *

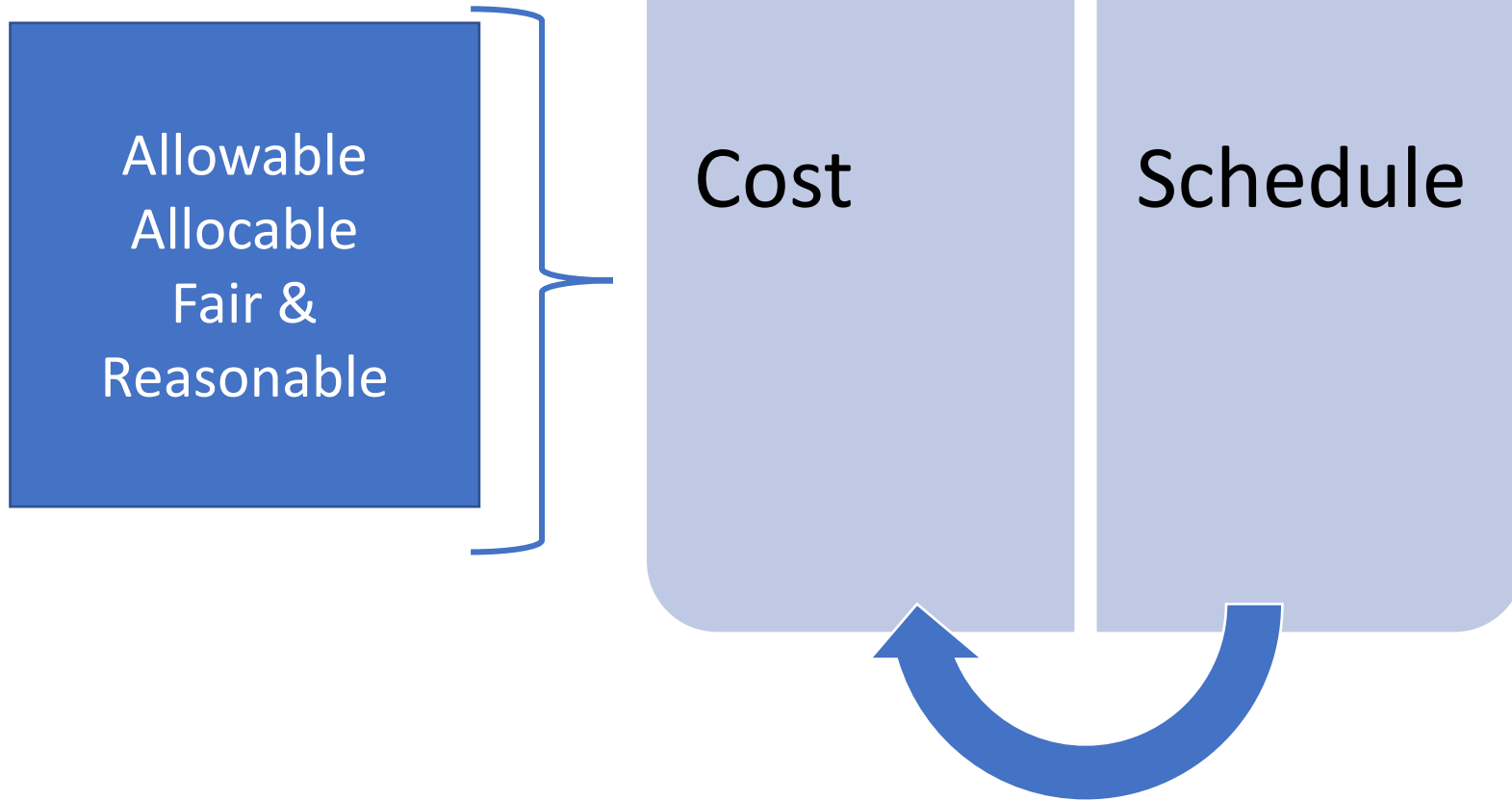
In computing the base and adjusting indexes, the resulting figure shall be rounded to the second decimal place.** This figure shall be rounded to the fifth decimal place.*** All dollar figures shall be rounded to the nearest cent

Contracting Triangle



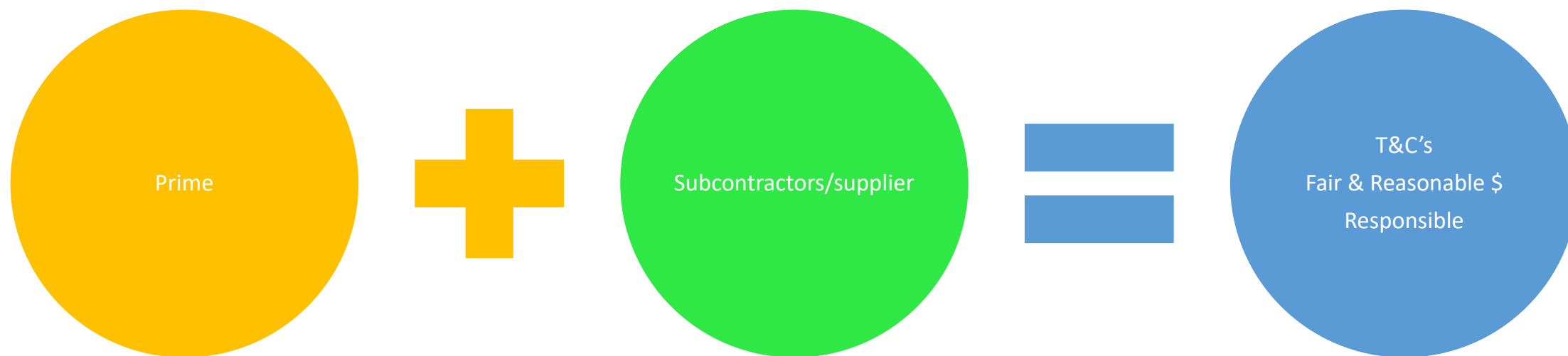
4/7/2020

Specific issues



4/7/2020

Contracting Equation



4/7/2020

Pick an approach for success!

Who is in your Performance Chain? Primary and more importantly Alternates/Substitutes? Selection/vetting process.



Know/communicate with your supply chain

- Define issues and vetting topics/procedures
 - Cyber
 - Export Controls
 - DPA/DPAS ability
 - Surge/Sustainment
 - Quality
 - Cost/pricing
 - Reporting requirements

Security – Cyber/Export Controlled/Other

- Identify programs and their requirements
- Determine communications channels
 - Email
 - In-person
 - On-line meeting platforms
- Identify risks
 - Encryption
 - Server location
 - Eligibility
 - Compliance (FAR 52.204-21 / DFARS 252.204-7012)
- Establish vetting procedures
- Document

Risks



Schedule – Delivery Date

- Unlikely to be arbitrary
 - Driven by need
 - Unit availability
 - Resource availability
 - Replenishment
 - Air resupply
 - Underway replenishment
 - Port visit
- Location
 - In-port
 - Overseas
 - Deployed

Schedule – Delay - info

- What
- When
- Level of Confidence
 - How do you know
- Details
- Suggestion
 - Don't guess
 - Don't be overly optimistic
 - Be factual, provide best information available and updates

Identify Responsibilities and Resources

Your contracts - before

- Costs
- Performance
- Communication
- Vetting

Your contracts - future

- Costs
 - New T&C's
 - Documentation requirements
- Scenario planning/continuity of operations
 - Contingency
- Communications –
 - Reporting
- Vetting
- Other

Surge and Sustainment (S&S) Requirements – 43 Instructions to Offerors (FEB 2017)

(1) Each offeror must describe in its proposal its ability to meet the S&S accelerated delivery specified for items critical to support the Department of Defense in conducting contingency operations. These S&S items are identified in Section C with quantities expressed as a Monthly Wartime Rate (MWR) or in a D1-D6 schedule. The S&S quantity and delivery requirements are in addition to peacetime quantities. S&S requirements may be met through access to production capability as well as contractor-owned or contractor-managed inventory or safety stocks.

(2) Each offeror must include in its basic proposal a brief description of how it will ramp up to meet accelerated delivery and increased quantities (i.e., surge) and sustain an increased production and delivery pace throughout the contingency (i.e., sustainment). Additionally, each offeror must provide a separate capability assessment plan (CAP) to document its detailed technical approach for covering S&S requirements.

(3) If the CAP recommends some type of Government investment, offerors must include their plan for refreshing or replacing S&S material consumed to ensure a continued surge capability. The CAP must include an exit strategy that describes the transition and ramp-down of S&S assets and any remaining Government investment not consumed before contract expiration.

(4) Offerors must provide pricing within the electronic CAP submission for S&S requirements based on the schedule for delivering items in the offeror's CAP . When S&S pricing exceeds peacetime pricing, the offeror's proposal must include sufficient description to explain the rationale for the additional costs associated and provide a breakdown of costs to substantiate the pricing. This paragraph (4) does not apply to DLA Troop Support Subsistence.

Customer Guidance -DLA

- **REPORTING CORONAVIRUS COVID-19 IMPACTS TO THE DEFENSE LOGISTICS AGENCY**

The Defense Logistics Agency (DLA) remains committed to partnering with our suppliers during this period of National Emergency.

PRE-AWARD

- In the event pre-award concerns arise, please continue to work with the point of contact annotated on the solicitation or other opportunity notice (e.g. beta.SAM.gov announcements).
- Email communication is highly encouraged.

- **POST-AWARD**

- For post award matters, DLA requests submission of a Post Award Request (PAR) when possible.
- The PAR submission link is available on the main DIBBS Homepage (<https://www.dibbs.bsm.dla.mil>) under the Awards Block.
- **DLA has created a new PAR reason code -- VR 14 COVID-19 -- to highlight any contracts where problems may exist due to coronavirus impacts.**
- PAR reason code VR 14 shall only be used if performance is directly impacted/delayed based on an employee's or employees' confirmed case(s) of COVID-19 and/or local, state, or federal government imposed restrictions.
- Supporting documentation should be submitted with the PAR so an excusable delay determination can be made by a DLA contract administrator.
- The supporting documentation should be as thorough as possible to support an excusable delay, and should include mitigation efforts to overcome disruptions in the supplier's supply chain.
- If a PAR is not possible, email your contract administrator to discuss any concerns.

DLA has also created a Request for Information (RFI) located at <https://www.research.net/r/DLACOV19RFI> that we are encouraging suppliers to answer. This will keep DLA informed of potential impacts to the welfare and safety of your workforce and/or overall contract performance. DLA will also use RFI responses to help assess the current status of the supplier base.

When contacting DLA, please provide your phone number and email so we have two means in which to respond.

Thank you for your support in helping DLA continue to supply the nation's warfighters and whole of government during this critical time.

4/7/2020

Provide input to DLA



Request for Information (RFI): COVID-19 Impact on DLA Suppliers

Introduction

DLA Contractors,

Thank you for your continued support of the DLA mission. This Request for Information (RFI) has been issued to facilitate communication with DLA contractors that may be impacted by the novel Coronavirus, also known as COVID-19. The purpose of the RFI is to inform DLA of potential impacts that COVID-19 may have on your organization in support of the Warfighter. There are no more than 9 brief questions depending on your sequence of responses. The RFI will ask you to enter your organization's unique Commercial and Government Entity

4/7/2020

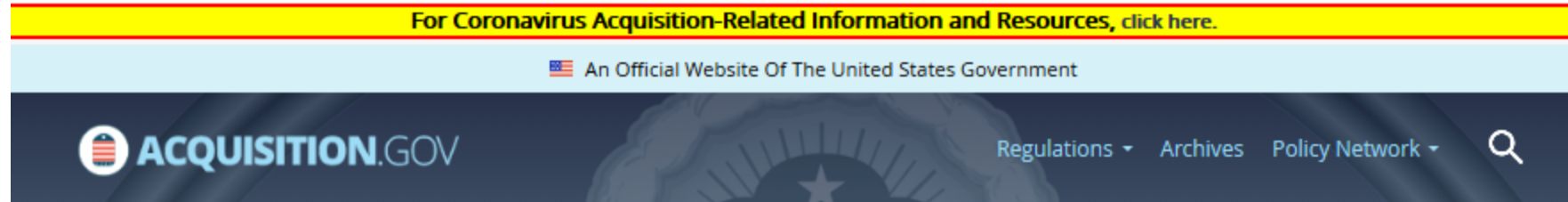
DOD INDUSTRIAL BASE COVID-19 RESOURCES

- The following link is to the DoD Industrial Policy website. It contains several links to resources in response to COVID-19:

<https://www.businessdefense.gov/coronavirus/>

- Posted: 03-31-2020

Acquisition Resources



Home>>Coronavirus Acquisition-Related Information and Resources

Coronavirus Acquisition-Related Information and Resources

OMB Guidance and Memorandums

- OMB Memo M-20-18, [Memo Managing Federal Contract Performance Issues Associated with the Novel Coronavirus \(COVID-19\)](#), (Issued March 20, 2020)
- OMB Memo M-20-19, [Harnessing Technology to Support Mission Continuity](#), (Issued March 22, 2020)
- OMB Memo M-20-17, [Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus \(COVID-19\) due to Loss of Operations](#), (Issued March 19, 2020)

Additional Information

Department of Defense (DOD)

- [COVID-19 Guidance and Memorandums](#)

Communication

- Maintained
- Timely
- Documentation
- All parties
- Consistency/standardized

Review active contracts

- Identify relevant clauses
- Review FAR

Contract Modifications

- **43.102 Policy.**
- (a) Only contracting officers acting within the scope of their authority are empowered to execute contract modifications on behalf of the Government. Other Government personnel shall not-
 - (1) Execute contract modifications;
 - (2) Act in such a manner as to cause the contractor to believe that they have authority to bind the Government; or
 - (3) Direct or encourage the contractor to perform work that should be the subject of a contract modification.
- (b) Contract modifications, including changes that could be issued unilaterally, shall be priced before their execution if this can be done without adversely affecting the interest of the Government. If a significant cost increase could result from a contract modification and time does not permit negotiation of a price, at least a ceiling price shall be negotiated unless impractical.

Change Orders

- **43.201 General.**
- (a) Generally, Government contracts contain a changes clause that permits the contracting officer to make unilateral changes, in designated areas, within the general scope of the contract. These are accomplished by issuing written change orders on [Standard Form 30](#), Amendment of Solicitation/Modification of Contract ([SF 30](#)), unless otherwise provided (see [43.301](#)).
- (b) The contractor must continue performance of the contract as changed, except that in cost-reimbursement or incrementally funded contracts the contractor is not obligated to continue performance or incur costs beyond the limits established in the Limitation of Cost or Limitation of Funds clause (see [32.706-2](#)).
- (c) The contracting officer may issue a change order by electronic means without a [SF 30](#) under unusual or urgent circumstances, *provided* that the message contains substantially the information required by the [SF 30](#) and immediate action is taken to issue the [SF 30](#).

43.203 Change order accounting procedures

- (a) Contractors' accounting systems are seldom designed to segregate the costs of performing changed work. Therefore, before prospective contractors submit offers, the contracting officer should advise them of the possible need to revise their accounting procedures to comply with the cost segregation requirements of the Change Order Accounting clause at [52.243-6](#).
- (b) The following categories of direct costs normally are segregable and accountable under the terms of the Change Order Accounting clause:
 - (1) Nonrecurring costs (*e.g.*, engineering costs and costs of obsolete or reperformed work).
 - (2) Costs of added distinct work caused by the change order (*e.g.*, new subcontract work, new prototypes, or new retrofit or backfit kits).
 - (3) Costs of recurring work (*e.g.*, labor and material costs).

43.204 Administration (Change Orders)

- (a) *Change order documentation.* When change orders are not forward priced, they require two documents: the change order and a supplemental agreement reflecting the resulting equitable adjustment in contract terms. If an equitable adjustment in the contract price or delivery terms or both can be agreed upon in advance, only a supplemental agreement need be issued, but administrative changes and changes issued pursuant to a clause giving the Government a unilateral right to make a change (e.g., an option clause) initially require only one document.
- (b) Definitization.
- (1) Contracting officers shall negotiate equitable adjustments resulting from change orders in the shortest practicable time.
- (2) Administrative contracting officers negotiating equitable adjustments by delegation under [42.302\(b\)\(1\)](#), shall obtain the contracting officer's concurrence before adjusting the contract delivery schedule.

Business Continuity Plan

- Evaluate (S, W, O, T)
- Identify critical functions
 - Redundancy
 - Training
 - Current information
 - Appropriate/acceptable authorization in place
- Succession planning
 - Planning for loss of top leadership
 - Continuing without key staff
- Identify critical vendors

Key Documents – information, ready access

Partial list

- Diagrams – perspective, context, understanding
- Critical Asset, Data and Services list
- Business Continuity Plan
- Incident Response Plan
- Data and Info disclosure Procedures
- Physical access Requirements
- On call/contracted resource
- Disaster Notification Guidance
- Actions Taken log

Alan White and Ben Clark, BTFM – Blue Team Field Manual, 2017, 9

UPCOMING TRAINING - EVENTS

ACQUISITION HOUR LIVE WEBINARS SERIES

■ April 8, 2020

Understanding and Protecting DOD Supply Chain

[CLICK HERE](#) for additional information

Presented by Marc Violante, Wisconsin Procurement Institute (WPI)

■ April 15, 2020

Focus on the 1st Principles of Fed Contract Mgmt During Unsettled Times

[CLICK HERE](#) for additional information

Presented by Marc Violante, Wisconsin Procurement Institute (WPI)

■ April 17, 2020

Intro to CMMC Level 1

[CLICK HERE](#) for additional information

Presented by Marc Violante, Wisconsin Procurement Institute (WPI)

■ April 21, 2020

How to Quickly Analyze Solicitations

[CLICK HERE](#) for additional information

Presented by Helen Henningsen, Wisconsin Procurement Institute (WPI)

ACQUISITION HOUR LIVE WEBINARS SERIES

■ April 24, 2020

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

[CLICK HERE](#) for additional information

Presented by Marc Violante, Wisconsin Procurement Institute (WPI)

■ April 29, 2020

Economic Espionage – Awareness of Threats & Resources for Gov't Contractors

[CLICK HERE](#) for additional information

Presented by Marc Violante, Wisconsin Procurement Institute (WPI)

■ May 5, 2020

Learning About the Surety Bond Guarantee from the US SBA

[CLICK HERE](#) for additional information

Presented by the US Small Business Administration

■ May 19, 2020

Pieces of the Proposal Puzzle

[CLICK HERE](#) for additional information

Presented by Helen Heningsen, Wisconsin Procurement Institute (WPI)

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](#)



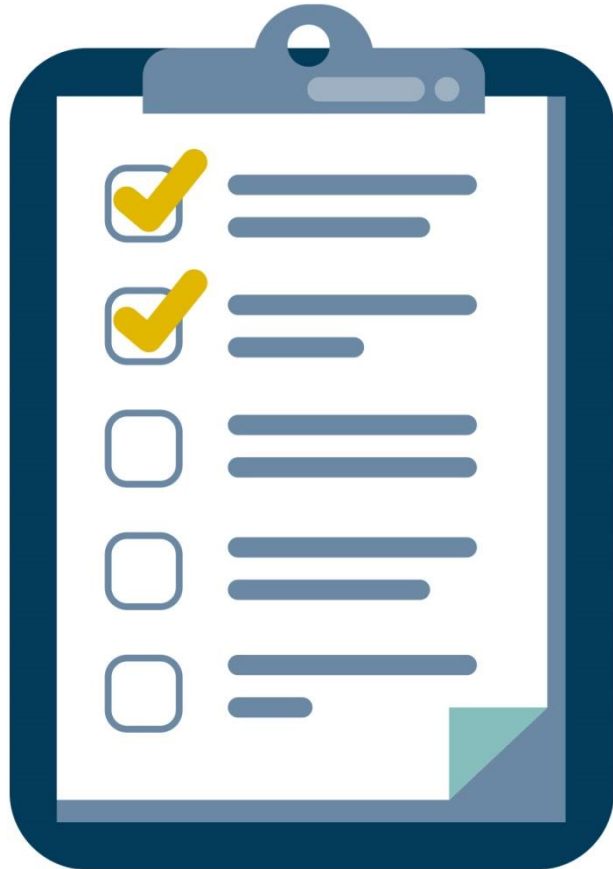
A CRITICAL NOTICE FROM WPI

- 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 or 920-456-9990*

QUESTIONS?



SURVEY



CONTINUING PROFESSIONAL EDUCATION



CPE Certificate available, please contact:

Benjamin Blanc

benjaminb@wispro.org

PRESENTED BY

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