



Acquisition Hour: Contract Methods and Types of Contracts

September 6 | Noon – 1:00 pm
Presented by Carol Murphy, WPI



Webinar Etiquette

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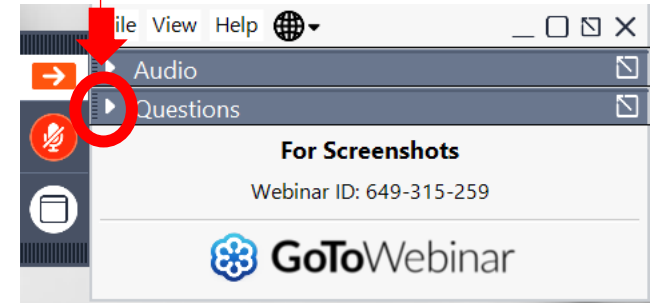
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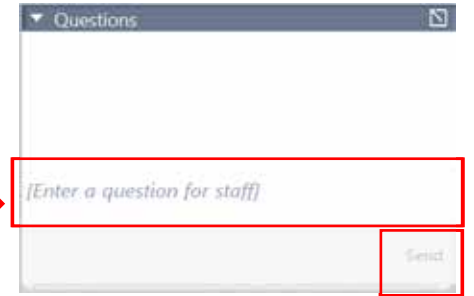
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The APEX Accelerators program, under management of the Department of Defense (DOD) Office of Small Business Programs (OSBP), plays a critical role in the Department's efforts to identify and engage with a wide range of businesses entering and participating in the defense supply-chain. The program provides the education and training that all businesses need to participate to become capable of participating in DOD and other government contracts.

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- Individual counseling at our offices, client's facility or virtually
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§ *Wisconsin Manufacturing Extension Partnership (WMEP)*

§ *Madison Area Technical College (MATC)*

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§ *Ashland Area Development Corporation*

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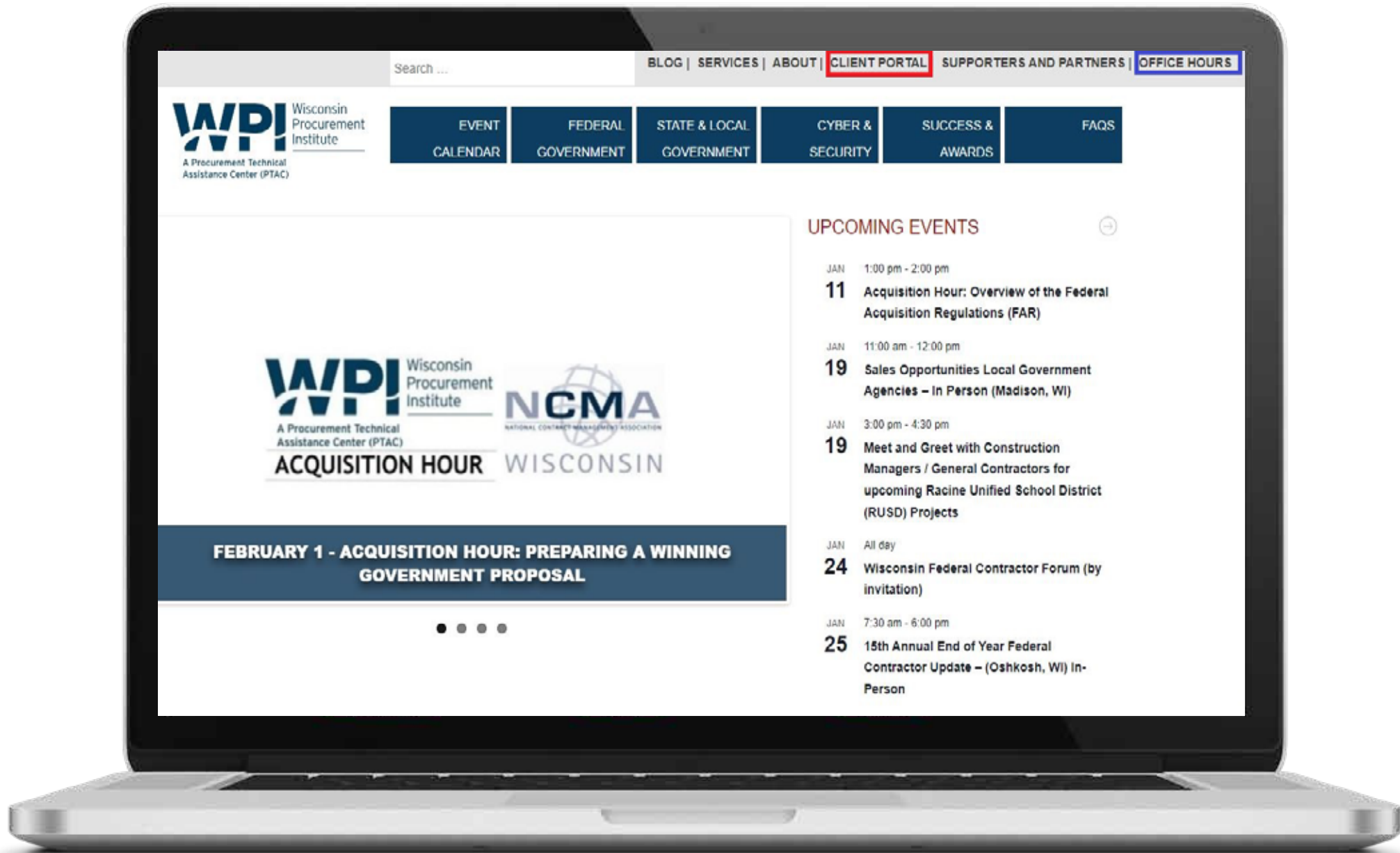
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FEBRUARY 1 - ACQUISITION HOUR: PREPARING A WINNING GOVERNMENT PROPOSAL



UPCOMING EVENTS

- JAN 1:00 pm - 2:00 pm
11 Acquisition Hour: Overview of the Federal Acquisition Regulations (FAR)
- JAN 11:00 am - 12:00 pm
19 Sales Opportunities Local Government Agencies – In Person (Madison, WI)
- JAN 3:00 pm - 4:30 pm
19 Meet and Greet with Construction Managers / General Contractors for upcoming Racine Unified School District (RUSD) Projects
- JAN All day
24 Wisconsin Federal Contractor Forum (by invitation)
- JAN 7:30 am - 6:00 pm
25 15th Annual End of Year Federal Contractor Update – (Oshkosh, WI) In-Person

WHAT WE WILL COVER TODAY

- Contract Methods
 - Sealed Bidding
 - Competitive Negotiations
 - Simplified Acquisitions
- Contract Types
 - Fixed Price Contracts
 - Cost-Reimbursement Contracts
 - Indefinite-Delivery Contracts
 - Other Types of Contracts and Agreements

CONTRACT METHODS

SEALED BIDDING – FAR PART 14

SEALED BIDDING

A method of contracting where contracts are awarded to:

- The LOWEST PRICED
- RESPONSIVE BID
- Submitted by a RESPONSIBLE BIDDER

SEALED BIDDING PROCESS

- Publication of the Invitation for Bids (IFB) Solicitation
- Submission of Bids and Public Bid Opening
- Evaluation of Bids and Contract Award

THE IFB SOLICITATION

- Solicitation / Contract form
- Bid schedule
- Descriptions / Specifications / Statement of Work
- Contract Clauses
- Attachments
- Solicitation Provisions

THE IFB SOLICITATION

- Describes all government requirements
- Specifies whether bids must be firm fixed prices (FFP) or firm-fixed-prices with economic price adjustment (FFP w/ EPA)
- May request bid guarantees or specific responsibility information

BID SUBMISSION

- Bids must be submitted
 - (1) using the designated method(s),
 - (2) to the proper place, and
 - (3) at (or prior to) the designated time
- Bid constitutes a firm offer
- Bids remain unopened and secure until the public bid opening

EVALUATING BIDS - RESPONSIVENESS

RESPONSIVE BID - a bid which explicitly offers to provide all supplies and services IAW the solicitation

- Bid completely filled out IAW with the IFB's instructions
- No exceptions taken
- Nothing changed or crossed out
- All material amendments acknowledged

RESPONSIBILITY

RESPONSIBLE BIDDER – a bidder capable of meeting all contract requirements and eligible to receive an award

- Has financial resources, and
- Has satisfactory past performance, and
- Has satisfactory integrity and business ethics, and
- Has the organization, experience, technical skills, and facilities

EVALUATING BIDS -PRICE

The Contracting Officer evaluates the price and price related factors

- Evaluates total price of base requirement and options
- Checks for unbalanced pricing
- Must determine if the pricing is reasonable

AWARD

- Award is made to the lowest priced, responsive, responsible bidder
- Award is made without discussions
- A binding contract is formed when the Contracting Officer accepts and signs the submitted bid

NEGOTIATED PROCUREMENTS – FAR PART 15

NEGOTIATED PROCUREMENTS (FAR PART 15)

- Used when sealed bids are not appropriate
- Award based upon evaluation of both price and non-price factors
- More complex and time consuming than sealed bidding

THE REQUEST FOR PROPOSAL - GENERALLY

- Solicitation / Contract form
- Item(s) to be priced
- Descriptions / Specifications / Statement of Work
- Contract Clauses
- Contract Provisions including Instructions to Offerors
- Evaluation Criteria and their relative importance

RFP – INSTRUCTIONS TO OFFERORS

- Describes what information offerors should provide in their proposals
- Often dictates format, page limits, paper size, font size, organization, and content.
- Proposals should strictly comply with these instructions and limitations

RFP – EVALUATION CRITERIA/FACTORS

- Describe what government will evaluate to determine award
- All significant factors and sub-factors will be identified
- Relative importance of each listed factor and sub-factor will be identified

RFP – BEST VALUE CONTINUUM

- Lowest Priced Technically Acceptable
- Cost / Technical Trade Off Process
- Highest Technically Rated Proposal at a Reasonable Price

COST TECHNICAL TRADE-OFF

- RFP discloses whether the non-price factors when combined are
 - (1) more important than price
 - (2) approximately equal to price or
 - (3) significantly less important than price.

RFP - DISCUSSIONS

- If RFP states the Government intends to award without discussions, make initial offer your best offer
 - √ However Government may later change its mind
- If RFP states the Government intends to award after holding discussions, then discussions will be held

RFP – COMPETITIVE RANGE

- Comprised of the highest rated proposals
- Offerors excluded from the Competitive Range will be promptly notified
- Offerors excluded can request a pre-award debriefing within 3 days after notification

RFP – FINAL PROPOSAL REVISIONS

- When all rounds of discussions are concluded, final proposal revisions will be requested
- In your final proposal revision, you should correct the identified deficiencies and weaknesses, if possible

RFP – AWARD / SOURCE SELECTION DECISION

- Award is made when the Government accepts the proposal
- Contractor's proposal becomes part of the contract
- Notice of Award is provided to unsuccessful Offerors
- Unsuccessful Offeror may request a post-award debriefing

SIMPLIFIED ACQUISITIONS

SIMPLIFIED ACQUISITION PROCEDURES

There are three major categories

- Micro-Purchases
- Standard Simplified Acquisitions
- Commercial Item Simplified Acquisition

MICRO-PURCHASES (\$10,000 OR LESS)

- Competition is not required for a micro-purchase if the price is reasonable
- To the maximum extent practicable, awards distributed equally among qualified contractors
- Generally, Government-wide Purchase Card is used

REQUESTS FOR QUOTATIONS (RFQs)

- An RFQ uses simplified acquisition procedures
- Can be used for
 - Commercial Item procurements under \$7.5 million
 - Construction and non-commercial Services and Supplies under the Simplified Acquisition Threshold (SAT), currently \$250,000 for most agencies

PUBLICIZING SIMPLIFIED ACQUISITIONS

- Actions less than \$15,000 - No publicizing requirements
- Actions between \$15,000 up to \$25,000 - Agencies “display” a synopsis or solicitation for at least 10 days
- Actions between \$25,000 - \$250,000 (non-commercial item) - Agencies normally:
 1. synopsise the requirement in SAM.gov for at least 15 days, and then
 2. post the RFQ to SAM.gov for a reasonable time
(numerous exceptions may apply)

RFQ – EVALUATION

RFQs must state the evaluation criteria to be used in determining award

- Relative Importance might not be identified
- Formal evaluation plans, discussions, and scoring of quotations are not required

QUOTATIONS

- The Vendor's response to RFQ is "Quotation" or a "Quote."
Not an "Offer"
- A Quotation cannot be just "accepted" by the government.
Instead
 1. Government makes a selection
 2. Government issues an Order to selected vendor (The order is the Government's Offer)

REQUESTS FOR QUOTATIONS

- A contract is formed when the Vendor accepts the Government's Order either
 1. in writing, or
 2. Proceeding with the work until substantial performance has occurred
- The Government can withdrawal, amend, or cancel its Order at no cost by sending written notice prior to Vendor acceptance

REQUESTS FOR QUOTATIONS

- Government can both solicit and receive new quotes any time prior to contract formation
- The Government must consider all timely submitted quotes
- The Government need not consider a quote received after an Order has been sent to a selected Vendor

COMMERCIAL ITEMS

COMMERCIAL ITEMS – DEFINITION FAR 2.101

Extreme simplification ...

Any item or service, other than real property, that is sold or offered for sale to the general public

COMMERCIAL ITEMS – DOES NOT INCLUDE

- Real Property
- Construction
- Items that have not yet been developed
- Items that were developed using government funds and are used exclusively by government
 - Note – this list may not be all inclusive

COMMERCIAL ITEMS – SIMPLIFIED

An RFQ can be used for

- Commercial Item procurements (Service and Supply) estimated to be under \$7.5 million

PUBLICIZING COMMERCIAL ITEMS OVER \$25,000 - SIMPLIFIED

For Commercial Items over \$25,000, the CO has two simplified options for publicizing contract actions

- Combined Synopsis / Solicitation
- Shortened timeframe for Synopsis and Solicitation

CONTRACT TYPES

FIXED PRICE

FIXED PRICE

Most common types of federal fixed price contracts:

- Firm Fixed Price (FFP)
- Fixed Price with an Economic Adjustment (FFP EPA)
- Fixed Price with Award Fee
- Fixed Price with Incentive Fee

FIRM FIXED PRICE

- Price is firm and fixed - Not adjustable solely based on contractor's cost
- Used when clear requirements and prices can be established at the outset
- Contractor bears the risk and liability for cost overruns
- Contractor gets the benefits of decreased costs of performance (i.e. cost underruns).

FIXED PRICE WITH AN ECONOMIC PRICE ADJUSTMENT

Prices will be adjusted upward or downward based upon:

- Cost indexes
- Published / established price of a specific item
- Actual costs of specified labor or specified material

(Note: Contract may have ceiling or cap on upward adjustment.)

Used when:

- There is doubt about stability of the market or labor conditions, and
- Contingencies can be identified and covered in the contract

FIXED PRICE WITH AWARD FEE – AN INCENTIVE TYPE CONTRACT

The Contractor receives:

- a negotiated fixed price (which includes normal profit) for satisfactory performance, and
- an award fee for performance that is better than satisfactory

The Contractor may only get a percentage of the award fee. (e.g. 50% of award fee for very good performance, 100% of award fee for outstanding performance)

FIXED PRICE INCENTIVE FEE

AN INCENTIVE TYPE CONTRACT

Government and Contractor agree upon a firm target cost, a target profit, a fixed ceiling price and a profit adjustment formula

Final price is determined after performance is completed, when the final cost is determined

- If final cost $<$ the target cost, then the final profit $>$ the target profit- i.e. the Contractor makes more profit
- If final cost $>$ target cost, then the final profit $<$ the target profit – i.e. the Contractor makes less profit

COST-REIMBURSEMENT

COST REIMBURSEMENT CONTRACTS

- Two most common types:
 - Cost Plus Fixed Fee
 - Cost Plus Award Fee
- Payment based on allowable incurred costs and profit as specified in contract
- Used when costs cannot be estimated

COST PLUS FIXED FEE (CPFF)

- Contract has a cost ceiling
- The contract price = Contractor's allowable cost plus a fixed fee.
- Used for research or preliminary studies and for development and test contracts

COST PLUS AWARD FEE

The contract price is the Contractor's allowable cost plus...

- a fixed base fee negotiated and set prior to award, and
- an award fee for performance that is better than satisfactory based upon an established Award Fee Plan
- The Contractor may only get a percentage of the award fee. (e.g. 50% of award fee for very good performance, 100% of award fee for outstanding performance)

INDEFINITE-DELIVERY CONTRACTS

DEFINITE QUANTITY DEFINITE DELIVERY CONTRACT

- The government promises to order a specified amount of services, supplies or construction
- The timing of the orders and of delivery or completion is specified in the original Contract

INDEFINITE DELIVERY CONTRACTS

- The exact time of ordering is not specified in the original Contract
- Three Types:
 - Definite Quantity/Indefinite Delivery Contracts
 - Requirements Contracts
 - Indefinite Delivery/Indefinite Quantity (IDIQ)

DEFINITE QUANTITY/INDEFINITE DELIVERY CONTRACTS

- Government promises to order a specified quantity of supplies and services during the contract period
- There is flexibility on when the Government must order – except must be during the contract period
- Delivery Order(s), issued during the contract period, may specify the time(s) of delivery or completion

REQUIREMENTS CONTRACTS

- Government Promises to order all of its requirements from Contractor during the contract period
- Contractor promises to fulfill all of the requirements ordered during the contract period
- Contract must include realistic total estimate of what will be ordered during the contract period

INDEFINITE DELIVERY/INDEFINITE QUANTITY (IDIQ)

- Flexibility in both Quantity and Delivery Schedules
- Government promises to order a guaranteed minimum during the contract period
- Contractor promises to furnish additional quantities up to a stated maximum during the contract period

OTHER TYPES OF CONTRACTS

ADDITIONAL TYPES OF CONTRACTS

- Time and Materials (T&M) – Government pays loaded labor rates for hours worked (up to the ceiling price) and pays for materials at cost
- Labor Hour Contract – Government pays loaded labor rates for hours worked (up to the ceiling price). Any needed materials are government provided
- Level of Effort Contracts – Government pays for a specific level of effort (i.e. a fixed number of hours) over a specified period of time

LETTER CONTRACTS

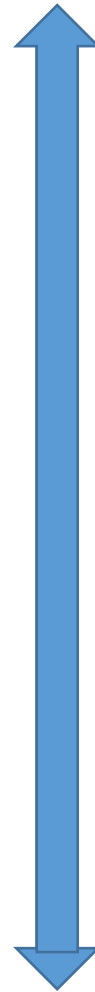
- Preliminary contractual document authorizing work to begin immediately with price and other terms to be determined at a later time
- Used Very Rarely!
- Must specify the maximum government liability which must be superseded by definitive contract IAW the “definitization schedule”

BASIC ORDERING AGREEMENT (BOA)

- Not a Contract – No binding commitment or promise
- BOA will contain
 - Terms and conditions,
 - Methods for issuing and delivering any orders,
 - Description of services and supplies that could be ordered, and
 - Methods for pricing orders
- Issued to Multiple Contractors - cannot be used to avoid competition

ALLOCATION OF COST RISK

Higher Government
Risk



Level of Effort

Time & Materials

Cost Plus Fixed Fee

Cost Plus Award Fee

Fixed Price Incentive Fee

Fixed Price with Economic Price
Adjustment

Firm Fixed Price

Higher Contractor
Risk

RESOURCES

RESOURCES

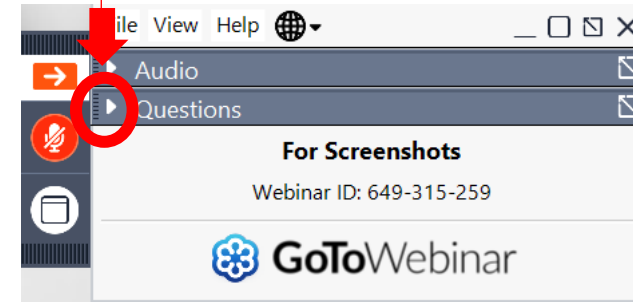
- FAR - Acquisition.gov: <https://www.acquisition.gov>
- SAM: <https://sam.gov/>
- Wisconsin Procurement Institute
Phone: 414-270-3600 www.wispro.org

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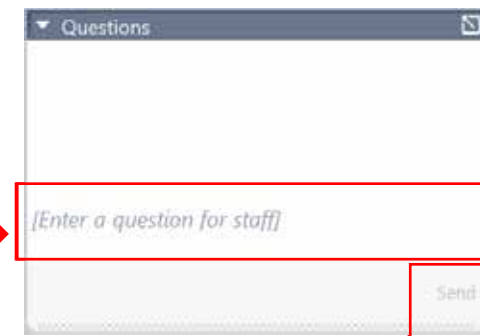
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ACQUISITION HOUR LIVE WEBINAR SERIES

- September 6
Federal Contracting – Contract Methods and Types of Contracts
- October 10
Certifications for Minority Owned Businesses
- October 11
How to Quickly Analyze Solicitations
- October 17
Preparing for One-on-One Buyer Meetings
- October 11
Certifications for Veteran Owned Businesses

...More information and registrations at wispro.org/events

CYBER FRIDAY LIVE WEBINAR SERIES

- September 8
NIST SP 800.171 – 3.1 – Access Control
- September 15
NIST SP 800.171 – 3.2 – Awareness & Training and 3.3 Audit & Accountability
- September 22
NIST SP 800.171 – 3.4 Configuration Management and 3.5 Identification & Authentication
- October 6
NIST SP 800.171 – 3.6 Incident Response
- October 20
NIST SP 800.171 – 3.7 Maintenance and 3.8 Media Protection

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