

[START OF TRANSCRIPT]

Carla: Hello and welcome to today's live SBA web conference. Please note that all participant's lines will be muted for the duration of this event. You are welcome to submit written questions during the presentation and Valerie Coleman will repeat the questions that come in for the benefit of the entire group. To send a note, please select the participant's menu at the top of your screen in order to send a note to all presenters. If you are logged in using the web-based application, use the notes function on the lower right-hand side of your screen and a director note to all moderators. If you require technical assistance, please send note to the ATTCES operator or call our help desk at 888-796-6118. I would now like to formally begin today's conference and turn the call over to Chris Isham. Chris please go ahead.

Chris: All right. Thank you, Carla. Hello everyone and welcome to SBA's first Wednesday webinar series. You all know that February is the shortest month of the year but there's just so much going on. For example, the Super Bowl is just a few days ago and the Winter Olympics start tomorrow, so it's only fitting to include SBA's first Wednesday webinar series and the discussion of big events in February. Thank you for taking this time to join us on the February addition of SBA's first Wednesday webinar. If you are new to the webinar, it is a webinar series that focuses on getting subject matter experts on specific small business programs, in this case SBA's certificate of competency program, and having them provide you with valuable information you can use in the performance of your job as an SBA employee, a member of the Federal Acquisition Community or a PTAC employee.

We periodically get emails asking if small business concerns can be invited to participate in the first ones they program, and the simple answer is no. The training you are about to receive is focused on you and it's not a pluck world to small business vendors. SBA hopes to directly train small business concerns through other methods. Now for a little background on the first Wednesday. The program was initially created for contracting stuff which is why the initial training was called 11:02 First Wednesday. The 11:02 designated government series for contract and personnel, was later dropped to be more inclusive of other GS series. As federal agencies increased the requirements for non-11:020s to obtain **[0:02:23 inaudible]** and in fact these certifications.

Additionally, other federal buying activities, SBA staff, PTAC and SPDC personnel, who after hearing about the training, requested access and were

added to the list of participants. That is why SBA's first Wednesday program is aimed at federal government employees and our resource partners like PTAC and FBDCs. Thank you to those of you who are repeat attendees and welcome to those who are new to the program.

As Carla mentioned, I'm Chris Isham and I work as a procurement center representative or PCI with a small business administration and I'm located in Kansas City Missouri. Now **[0:03:02 inaudible]**, the SBA person, PCR signed to the rock end arsenal, typically reads the questions submitted during the program for our speakers to address towards the end of today's session. However, she had a last-minute scheduling conflict, and the always reliable Miss Valerie Coleman, who is the prime contract program manager for SBA officer of government contracting, will be performing this role today. Both the organized contract information is included on slide two. Slide three, please note that all lines are on mute. However, you may submit questions any time during today's session, by entering them into the chat box on your screen, and these questions will be addressed at the end of our speaker's presentation.

Now if you are having technical problems and can hear my voice but cannot log into the AT&T connect participant application, which is the online portion of the webinar, please call the AT&T connect support desk at 1888-796-6118. Telephone number for the AT&T connect support desk is on the email invitation for today's program and on slide three on the PowerPoint slide that accompanied the SBA email notifying you of today's training. Otherwise just keep listening and follow along with the PowerPoint that accompanied the invitation for today. We will periodically announce the page number, so you can keep up and follow along. For more SBA small business program training, you can also visit the SBA learning center at www.sba.gov.

Slide four, the association of procurement technical assistant center or APTAC, host a website where they post the first Wednesday programs. Since these sessions are being recorded, you can re-listen to the program as well as previous sessions by visiting their website which is provided here on slide four. Procurement technical assistant centers or PTACs are a great resource, and partnering with your local PTAC on industry day, sharing a social side and our fine notices, or referring small business concerns to a PTAC, are just a few reasons why they are such a useful resource for acquisition personnel. Please contact your local PTAC for additional information.

Slide five, it's the current program scheduled for fiscal year 2018 in today's session on the certificate of competency program is the fifth topic in our series. As you'll see, we have added a couple of new topics to our program

list and improved on other topics that have been presented in the past. We hope you find these topics interesting and applicable to your job.

Slide six. I'm sure many of you want to receive credit for attending today's training session. So fortunately, today's session is worth one CLP. On the next slide it's a certificate you will complete with your name. First you will manually fill in your name and then print the certificate from the PowerPoint to request credit for today's session. The PowerPoint was part of the SBA email request that you received for today's sessions, and it's in the invite that you received. SBA does not track your CLPs, so please do not ask us to verify your attendance and we will not communicate with your training program regarding your CLP achievements.

Several of you may have received the information for this training from a friend of a colleague, but if you want to receive an email directly from us, notifying you of upcoming first Wednesday webinar events. Just email us at spalearning@spa.gov, that's spalearning@spa.gov. In the subject line, please enter the words 'add to list' and we'll ensure you are added to the distribution list or upcoming sessions.

As I mentioned, this is the certificate on slide seven of your PowerPoint presentation. This is the forms you'll need to fill out. The screen you are viewing right now is mine, so you cannot print it out on here. You need to go back to the original email that was sent with the PowerPoint presentation, go to slide seven, insert your name here, print it out and scan it to the appropriate personnel.

Now slide eight. The certificate of competency program is receiving a lot of attention in the world of small business. Today's training has been assembled to address several aspects of this topic. Our speakers have graciously accepted our invitation and they will be directing me to continue on to the next slide. Please note that due to connectivity issues, some viewers may experience a delay as the slide changes on your screen.

I'm pleased to introduce today's speakers to you. Marina Livery and Erin Porter. Miss. Livery is the CFS coordinator and commercial market representative in area six. With her today is Mr. Porter who is currently a procurement center representative in area six as well. We appreciate that you could meet with us today and I'll turn the program over to you Marina. Thank you.

Marina:

Thank you Chris. I'd like to welcome everyone today. Thank you so much for joining us. Erin and I are very pleased to be able to share our knowledge of the certificate of competency program. We'll be calling the COC today for our short hand. Today we'll be covering what a certificate of competency is. The difference between responsibility and responsiveness, COCs and

limitations on subcontracting rule. The COC referral, the COC profit, denial and issuance of the COC, and the appeal option.

What is a COC? It's basically a small business's second chance... Oh I'm sorry.

Erin:

Next slide.

Marina:

Yeah, next slide. We are on number ten now. It's a small business's second chance at winning a contract. The small business must first be in line for award of contract. It must be the appearance successful offer. Only one firm can be in line for an award at a time. We can only accept referrals for contracts that are not yet been awarded. That's very important. We get calls all the time from contracting officers saying that it's got a task order or they want a COC for an option near and we cannot accept that because this has already been awarded. The same must be found to be non-responsible. The contracting officer for some good, they are found to be the successful offer, and then the contracting officer generally does their due diligence to ensure that the firm is responsible to perform on the contract.

There is a difference between responsiveness and responsibility and we'll talk about that and a little bit further along. The reasons that a contracting officer can refer a small business for... the different reasons for a COC are credit capacity, credit and capacity, tenacity, perseverance and integrity. Sometimes it can be just for one of those issues, sometimes for multiple issues.

Next slide please, number 11. The small business must be referred to the SBA for a COC by the contracting officer. We often get called from small businesses asking if they can have a certificate of competency, and we explain to them it does not work that way, they must be referred by the contracting officer. They must have been found to be non-responsible. The small business must be apply for the COC. As soon as we receive a referral, we call them and let them know that we've received the referral. We send them out an application packet, and then they must apply for it. Only about half of the forms that receive the application package have actually applied for the COC.

SBA performance requirement, dependent analysis is the small business's responsibility. We look at a lot of different issues and we'll cover that later. If SBA agrees with the contracting officer's assessment of the firm, a COC will not be issued and the contracting officer can move forward with procurement.

Next slide please, number 12. If SBA's analysis finds the firm to be responsible, then we will issue a COC to the contracting officer and the contracting office usually must award the contract to the small business.

Now there are some exceptions. What we do is we call the contracting officer as soon as we've made a determination that we will issue. The contracting officer at that time can let us know if they have any new information that may change our decision on the COC. That's the only exception. Each COC is specific to the contract for which it was referred. That's another thing. We get a lot of small businesses asking us for a COC because they think it's a blanket COC. There is no such thing as a blanket COC. I've even had some contracting officers ask me if they can get a blanket COC on a firm they wanted to be working with, and that cannot happen. It's very specific to that one contract.

Next slide please, number 13. Basic information on a COC, you can find the regulations at 13 CFR 125.5 and for that part 19.6. The COC program is applicable to all government acquisitions. The COC program is triggered by a contracting officer's determination that a business is non-responsible. Here we get into the difference between responsibility and responsiveness. They are not the same thing.

Next slide please, number 14. Responsibility. This slide is directed from the source. These are all the issues that the contracting officer will look at to see if the firm is responsible. Do they have adequate financial resources or the ability to obtain them? Are they able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments? Do they have a satisfactory performance record? That's where our top performance keepers and all of that comes into play. Do they have the necessary organization, experience, accounting, operation and controls et cetera? This is what we take a good look at during our analysis. Do they have the necessary production, construction and technical equipment and facilities or the ability to obtain them, and the otherwise qualified and eligible to receive an award under applicable laws and regulation?

Next slide please, number 15. Now responsiveness is different of course as we keep saying from responsibility. In order to be considered responsive, a bid must conform to the specifications, terms and conditions that forced in the invitation for bids, and be the most advantageous bid considering only price and other price related factors. Then it should be given a chance to cure any deficiencies resulting from minor informality or irregularity. Those are things like they forgotten to sign the bid, the failed to acknowledge receipt of an amendment, the wrong number of copies for the bid. They have attachments that are missing. It really is that, the contracting officer should give them the second chance. Call them and tell them and tell them, "Look, please submit this information then we can move on." You do not need to refer them to the SBA or a COC for these types of issues.

Next slide please, number 16. We included information on COCs and on limitations on subcontracting. The last training that, the first training that they did on COCs, they received on a lot of questions on this issue as have we from contracting officers from small businesses. We decided to especially from [0:15:51 inaudible] a large change and the regulations in 2016. It's an acquisition with a value of greater than \$150,000 set aside or reserved. A small business offer must agree to comply with applicable limitations on subcontracting requirements. That's if it's reserved for any type of a small business subcategory, women on business, service disabled own businesses, 8A, all of those. Agreeing to comply with the limitations on subcontracting requirements is a matter of proposal acceptability and an important requirement for COC eligibility. Being able to comply with the limitation on subcontracting requirements is a matter of responsibility and is thus an issue that may be addressed for the certificate of competency. If you have a firm that has bid on a set aside and you are wondering, you have big questions about whether they are complying with the limitation around subcontracting regulations and the contract is greater than \$150,000 value then you really should refer them to the SBA for a COC and we will do an analysis on whether they are meeting the terms of the limitation and subcontracting clause. There is an important distinction between agreeing to comply and being able to comply with the limitation on subcontracting requirements. This distinction has been made to the COC program so that's what we examine.

Next slide please, number 17. On solicitation issue prior to June 30th, 2016 the old LOS rules apply. This is prior to the new rule going into effect. For supplies and services contract the offer is required to perform 50% of the cost of the contract incurred for personnel with its own personnel. For construction services offers must perform at least 15% of the cost of contracting per for personnel with its own personnel. For STV or SV contracts, offer must perform 15% of the cost of contract incurred for personnel with its own personnel, or the personnel of another STV or SV.

Next slide please, number 18. Since June 30th, any solicitation issued after June 30th, 2016 the new LOS rules apply and that's a 13 CFR 125.6. The offer cannot spend more than 50% of the total cost of contract on subcontract. Now, for services the offer will not pay more than 50% of the amount paid by the government to firms that are not similarly situated.

This is the big change in the regulation and what they mean by similarly situated is the contract was set aside for let's say eight days then a similarly situated subcontractor would be another eight-day firm so they have to be the same type of firm. Any work that is singularly situated subcontractor, further subcontract will count towards the 50% subcontract that cannot be exceeded. That's very important to remember that.

Next slide, number 19 please. Our supplies and products other than from a none manufacturer that supplies, the offer will not pay more than 50% of the amount paid by the government to firms that are not similarly situated. So in that situation, it's the [0:19:56 inaudible] and the other small business, if the other business is just a regular small business, not [0:20:03 inaudible] they are not similarly situated. The cost of materials are excluded and not considered to be subcontracted. Now for general construction, the offer will not pay more than 85% of the amount paid by the government to firms that are not similarly situated. The cost of materials are excluded and not considered to be subcontracted. For special trade contractors no more than 75% of the amount paid by the government to the prime maybe paid to firms that are not similarly situated. The cost of materials are excluded and not considered to be subcontracted.

Next slide please, and that concludes my portion of the... my part of the training and now Erin will talk to you about what the referral must include.

Erin:

This is Erin Porter. I'm the PCR in Southern California. I've been covering Los Angeles and San Diego regions for some time now. If you are in those regions, it's likely that we've worked together. I'm going to talk a little bit about what goes into the actual COC referral and how we process. We get a lot of COC's in our office and we've been trying to find ways to streamline things.

That's why we included some of these requirements that it needs to be hard copy, single sided and such so that we can ensure that once we receive the referral that we really can turn it around on the same day. It's really our goal to process it the same day and notify the contractor that we are in receipt of their referral and we're, now obviously if it doesn't comply with all of the requirements then we'll still accept it. There might just be a little bit of a delay. One of the things that we did take a firm stance on is hard copy for whatever reason, our IP security blocks a lot of attachment.

It leads to a lot of back and forth. We don't have access system of the secured drop boxes that branches of the military use. We try and we just can't get into them so it leads to a lot of unnecessary back and forth whereas if we receive a hard copy we can open the box and immediately begin working on it. Ultimately, it's just a smoother process for everybody involved. Some of the important things we need are the name of the firm, address and Dan's number, it seems funny to say but it happened where we don't have some of that information. Name of a firm official, title, phone number, email address, somebody to reach out to, reason for referral whether its capacity, credit, so on and so forth. Those are the two big ones, capacity and credit or a combination of both. The firm's paid price, solicitation number and name of item being procured.

Next slide please, 21. The next clause assigned to the solicitation is important and indication whether the solicitation has been set aside for small business or if it's still in open and a point of contact for the contracting officer and contracting specialist is applicable. We also need a copy of the whole solicitation and any amendments, the offer submitted by the concern whose responsibility is that issue for the procurement.

Next slide please, 22. We need the abstract of bids where applicable, where the contracting officers price negotiation memorandum, a pre-award survey if applicable as well. Usually we get a DCMA pre-award survey, note, most recent not older than a hundred and eighty days. The flat board is particularly important, we need the contracting officers written, determination and finding of non-responsibility. It must be a separate document from the referral letter and it must be signed by one, the subcontracting officer.

Next slide please, 23. The DN act really is the core of the COC case which should include as much information as possible as to why that firm non-responsible. Any additional details would be important, SBA does share this with the offer. We share that so that they have the opportunity to revert those findings, which is really important so what we're doing here is giving the firm a second opportunity to either mitigate those concerns or successfully revert them. We do ask for a technical beta package if that's included in the solicitation. Normally this document can be really large, so we will accept it on a disk and any other justification documentation used to arrive at the non-responsibility determination for example, a [0:24:59 inaudible] printout or any other pertinent bit of information that you used to arrive at this conclusion.

Next slide please, 24. Contract awards must be withheld by the contracting officer for a period of 15 working days or longer if we agreed. If we need more than 15 business days, let me back up. Once we accept the COC referral we will always send an email on, or I should say, a letter on letter head to the contracting officer letting the contracting officer know that we've accepted the COC and what the due date is, going 15 days out.

If we need more time than 15 working days, we have to ask the contracting officer for approval. We will never just take it upon ourselves to expand the timeline. We have to ask, and the contracting officer has to agree. I can speak for area six when we say that we do our best to get them out in 15 days. If we need one or two additional days that's normally all we ever asked for, particularly around holidays, especially the big holidays we go ask for a couple more days.

Once we get a complete referral, which includes all the documentation, the applicant, the small business concern has given six working days to submit its application to us. The SBA specialist for scientific case, has six working days to complete their survey and reports and make a recommendation that goes to a COC review committee comprised of somebody from our legal team, a financial expert and then a COC chairman that can do another overall review of the recommendation and from there they draft an independent recommendation that goes to the area director that have the final authority. Nothing is done in a vacuum. At any point, any of the parties can disagree, ultimately the decision rests with the area director after taking into account all of the [0:27:11 information] and recommendation. If the business declines to apply the referral is closed after those six working days, unless they let us know right away that they are not going to apply then the referral is closed. The contracting officer can make the award through the next firm in line. Extensions are within the contracting officer's full discretion as I said.

Next slide please, 24. Oh 25, I'm sorry, we're on slide 25 now. A complete referral is received logged in and a small business concern is contacted. Files are sent to an industrial specialist to scientific case. That industrial specialist will be named in the letter to the contracting officer and a financial specialist, if required, will also be assigned to the case and particularly if it's one of the reasons for referral is credit. Each specialist receives a company's application materials. The specialist surveys the applicant's business and its ability to perform in light of the contracting officer's objection and this can be anything from the credit ratings to technical expertise whether or not they have the ability to manufacture a certain widget, maybe they haven't done it before so on and so forth. Maybe they have a lot of past few deliveries, so we look at all different aspects of it. Each specialist then writes a report and issue the recommendation for the COC review committee and as I said they can either agree or disagree with the specialist and it goes to the area office to the area director.

Next slide please 26. This is all that we ask from a COC small business applicants. They have to fill out an application for the COC which has a lot of general information about their business and how they plan to perform. They have to submit an application for status determination. We do this because in certain instances we found that firms are very close to the size standard and so in those instances we perform an official size determination to determine whether or not they are even applicable for the COC because this only applies to small businesses and it's happened before where we were determining firms to be other than small and then we can no longer proceed with the COC and the contracting officer can move forward with the next in line. We ask for monthly cash flow projections if applicable and any

other financial documentation necessary particularly if it's a credit COC. We take credit but really and in terms these is all financial aspects of it and we ask them for any additional information that the applicant believes will demonstrate its ability to perform on the subject procurement. Maybe since they as applied for the contract they've obtained a new line of credit or they gave up their assets, they can feel free to submit anything that they feel will mitigate the findings and we will take into consideration.

Next slide please, 27. Denial of a COC. If SBA does not issue a COC, the contracting officer may still award to the company referred make it direct award. I've had this happen once before where I believe it was a requirement to move cryogenic machinery from the **[0:31:10 A source]** to the mainland United States and the firm was found non-responsible but the firm was the one that originally installed the equipment and so I believe that they still received a direct award because they had unique expertise.

That can happen. Small businesses do not have any right to appeal our COC finance. Firms cannot apply for a COC on their own initiative as we discussed. SBA may review areas of responsibility not decided by the contracting officer for example if it was referred for capacity but in our due diligence we found that the firm is not, how should I say, not financially capable. Perhaps, they are insolvent, or they had a bankruptcy or they've defaulted on a SBA loan which has happened, we will take a look at that as well. Results for the COC specific and solicitation at that point in time. We have instances where a firm gets more, where we get more than one referral for one firm on the same day and we issue on one and deny the other based on the dollar value of the procurement or the complexity of the procurement. It has happened, so very specific to that solicitation to that point in time. If we deny, it's not a black mark on the record.

Next slide, 28. If SBA does issue a COC the contracting officer may except the COC and award the contract or ask the SBA area director to suspend the case and ask for detailed written rationale for the decision, they can ask to meet in person if that's something available if **[0:33:06 inaudible]** doesn't commit a, how should I say, restrict that and review the documentation.

They can submit any new information that they believe SBA did not consider or they can appeal the proposed COC to SBA headquarters but before we issue we always reach out to the contracting officer and ask will you accept the decision and in that case, you really, the contracting officer can say, "No wait, there is either new information or I want to know what the real thing is," so on and so forth. Contracts valued at less than a hundred thousand dollars the decision of the SBA area office, area director is final. A contracting officer cannot appeal but that doesn't mean that we will not take into account new information. Contracts valued between a hundred

thousand and 25 million, the contracting officer can appeal to the area office but the area office's decision to SBA headquarters and contracts exceeding 25 million, the area office must refer the case to SBA headquarters which convenes its own review committee to make a final decision. The contracting agency may meet with SBA headquarters prior to that final decision.

Again, we are always looking to take into account particularly any new information because it doesn't do anybody any good for SBA to issue a COC that might go bad. If the firm gets terminated for the fault we obviously didn't do them any favors, we didn't do any favors to the branch looking to make the procurement and we have our own reputation to protect as well.

Slide 30 please, next slide. This is a list of all of the COC coordinators across the different area offices. You can see it's broken down by state and that is the area office and point of contact. If you have any questions I encourage you before you send a COC to reach out to the SBA coordinator and direct any concerns or even just a simple heads-up can go a long way.

Next side please, 31. This is our contract info, please feel free to contact any one of us for questions regarding the COC process, and especially if the firm is located in our area. Next slide please. Questions at this point we'll be happy to take any questions.

Valerie: Okay, we have several of them and so the first one is on slide 16, is the dollar amount now 250,000?

Marina: We'll have to get back to you on that. We'll definitely have to get back to you on that. When we looked it up it was still this amount though.

Valerie: I think the NDAA 2018 it hasn't been attached yet, was raising it but...

Erin: Oh, okay.

Marina: Yeah, but it hasn't come through yet.

Valerie: Right, okay the next one, has the new limitations on subcontracting been incorporated into the firm yet, if not how is this enforceable?

Erin: It is not being incorporated into the firm, but it has been incorporated into the CFR and those are the regulations that we primarily work off with.

Erin: Those are SBAs regulations, but we know that most DOD are agencies only do in far. So...

Erin: We're aware that there is a conflict.

- Marina:** There is a conflict there and the [0:37:21 inaudible] has not caught up yet with the CFR.
- Valerie:** Okay, how do you determine the breakdown between labor cost and material cost for products purchased?
- Erin:** Sorry can you repeat that please?
- Valerie:** Yes, how do you determine the breakdown between labor cost and material cost for products purchased?
- Marina:** The firm shows us anonymous COC application. They let us know what they're spending on those key different areas. We never really have to figure that out ourselves.
- Erin:** Yeah, we do rely on their assertion. That's a good question though.
- Valerie:** Okay, next question. On slide 16 the question came in, I was led to believe a contracting officer can remove an offer from further consideration if the contracting officer can determine the proposal on its phase will not meet the limitations of subcontracting clause requirement. If the contracting officer is not sure then it goes to SBA for COC consideration. I believe there was a GAO case on this.
- Erin:** I have to look at the GAO case but it's my understanding that the contracting officer cannot remove a firm that's in line for award without going to the SBA for a certificate of competency. Again, I'm not aware of that GAO case though, so if anybody does have that we will be happy to take a look at it.
- Valerie:** Okay.
- Marina:** It is SBA is the only entity in the federal government that can decide a small businesses responsibility.
- Erin:** Right.
- Valerie:** All right, you stated earlier that the small business must request the COC do they submit the hard copy of the package?
- Marina:** They don't request the COC. They apply for the COC once they've been referred to for a COC, but they cannot request a COC.
- Erin:** Right, so the way it works if the contracting officer submits a referral package, we send an application package to the firm and they have to provide that to us the SBA and we that's what we take a look at when we come to our recommendation.

- Valerie:** Okay, how long is the appeals process. How long is the appeal's process at the area officer SBA headquarters level?
- Marina:** I don't think there is any real limitation [0:40:19 crosstalk].
- Erin:** No, not particularly no. However, it takes to come to an agreement for example, there is one that we've been working on where the contracting agency wanted additional documentation and that's been ongoing until we reach kind of a satisfactory agreement. I'm not aware of any timeline for SBA headquarters either, although I will say I'm not aware, I've never dealt with an appeal through SBA headquarters.
- Marina:** Yeah, it's very rare. Here on the tenders I've been doing this, I don't think this has ever happened.
- Erin:** Right, I don't think we've ever had one.
- Valerie:** Okay, is the SBA required to first complete a size determination before a COC can be processed?
- Marina:** Now, only what triggered that is when in their application package, the form 355 which is the size determination form, if something in that, one of the answers in that form it looks like they are going to be very close or it looks like they have many affiliates and maybe other than small that will trigger a size determination. At that point we put the COC case this is the stand and we do a size determination, which takes an additional 15 working days so that's another thing that contracting officers have to keep in mind if there is any doubt that this might be, may not be a small business, you have to figure in those extra 15 days into the mix.
- Erin:** Hey Val, give me a second before the next question.
- Valerie:** Okay.
- Marina:** Now, there are cases when the contracting officer will submit a size protest with a COC referral because they already suspect that the entity is or even small. In that case we immediately as soon as we see the referral we do the size determination first and decide whether they are actually able to go through the COC process if they're a small business.
- Valerie:** Okay, next question. Does the contractor have any recourse if the contracting officer does not accept the SBA's decision to issue a COC?
- Erin:** No, the contractor does not have any recourse if we deny them or if the contracting officer does not accept the decision. Now, in order for the contractor to not accept the decision and move forward though they do have to file an official appeal with headquarters, and depending on how that

goes, they might stand by our decision in which case the contracting officer really will have to award the contract.

Valerie: Okay, next question. Did you provide some examples of acceptable and non-acceptable limitations on subcontracting scenarios? Now, if you want on some of these answers is going to be lengthy, Mat we can go ahead and send this to you in writing and you can respond if you prefer to do it that way.

Marina: That would be better.

Erin: Yeah, I think that would be better for this one.

Marina: This would be pretty lengthy.

Valerie: Okay, if SBA determines a firm none responsible for a specific procurement, is the contracted officer required to file a report and say this?

Chris: No. like we said, the COCs are for one specific contract, and one specific point in time and one of the benefits is that this does not go on any sort of permanent record of any sort and a firm will have an opportunity to apply for future contracts. A negative finding and [0:44:32 inaudible] might prevent them from doing that.

Marina: Although I gave to urge you that I am hearing from some of this contracting officers that they are adding into phases, and they are almost doing it gleefully when it's a firm they don't want to work with. I don't know what recourse we have. We don't have anything to do with [0:44:56 inaudible]

Chris: Failure to receive a COC is not a reason for referring them for a COC in the future. The contracting officer can refer a firm because they were turned down for a COC in the past. That one in itself is not a reason for referral.

Marina: And would not accept a COC for mistakes sent after the briefing.

Valerie: Okay, we have a scenario. The lowest priced offer submitted a proposal with a price that was higher than the government estimate and the contracting officer determined the price not to be fair and reasonable. In addition, the contracting officer was concerned this small business wouldn't be able to comply with limitations on subcontracting. Should the COC referral be submitted to SBA?

Erin: Yes, if the price isn't fair and reasonable then you could argue that the firm is not in line for award. That would be enough to move forward at that point. If the price was determined to be not fair and reasonable. To get to the COC the firm really has to already have gone through that, already be in line for award, the next step is to award the contract but there is a

responsibility issue and the fair, you know whether the reasonableness of their price in compliance with the independent government estimate does not get taken to consideration.

Valerie: We just have one comment that we needed to share it's concerning Slide 18 and again it's going to the CFR and the limitations of subcontracting approach and the fact that the far it's not yet changed, and the comment wasn't until the LOS clause is changed then the far wouldn't contracting officers be hesitant to recommend that 13 CFR approach until there was a far clause to support it. In the far right now we believe that only had some services **[0:47:01 inaudible]** that can use similarly situated entities permitting the LOS percentage and the question is wouldn't a contracting officer be using the 13 CFR approach at their own risk?

Erin: I suppose that depends on the agency. It's hard for us to answer that because we go off ...

Marina: Yeah, this is the internal question that we ask all the time because this is usually what happens when the rigs get changed, the CFR gets changed immediately and those there are regulations, those are the SBA's regulation. But the far council process takes much longer and so this is often a case. I know the DOD they traditionally only follow what is in the **[0:47:55 inaudible]** they don't follow what's in the CFR. A lot of other agencies follow that too so this is our quandary.

Erin: Yeah, so if there is ... if the LOS is the reason for referral I really encourage the contracting officers to talk to us before hand and discuss the referral with us or with whoever the appropriate COC coordinator is.

Marina: We'll bring in our legal counsel too.

Erin: Absolutely.

Marina: Ensure that we are doing the right thing.

Valerie: Okay, next question. Can you clarify if the COC program applies only to open market procurements versus task orders against GUX and GSA schedule contracts since offers had already been determined responsible at the GUX or GSA scheduled contract level?

Chris: Yeah, so at the task orders are cannot be refereed for a COC even after GUX ... what I'm I trying to say, GSA schedule level so we never look at task orders or auctioneers or we don't look at any source contracts either because those are at the discretion of the contracting officers, so we really do only look at open market.

Valerie: Okay, and at this point that is all the questions I have.

Marina: Can we, I wanted to add something Valery at this point. For those especially contracting officers out there sending as much information as possible with your referral. We often get referrals they are two or three pages long. I had referrals where I didn't even have a contact, phone number or an email to the contracting officer that was referring.

We need, this is actually a legal document. This becomes a legal case. Sometimes we end up in court on these. We have to have as much information for us to be able to do a good job on the analysis and to give the small businesses a fair shake at this. We need to have as much information as possible. Anything you can provide us is appreciated. I know it takes more time to make the copies and all that, but we get a better referral package that way. I think that's it.

Chris: Yeah, okay great.

Valerie: Chris, for just a second. I've been getting a lot of emails from people asking for the slides which I've been sending out, but they are asking for the certificate also. Could you go over one more time the certificate process, for getting the COC?

Chris: Absolutely Val, so we refer to when you have PowerPoint presentation in front of you, so that's on slide seven of today's packet and that was emailed to you. If you are on the distribution list you'd received an email with the PowerPoint and within the instructions in there as well but dial in. that information is provide as an attachment in there, so you go to slide seven and you will insert your name. Simply words, insert name here, you delete that and write your name.

it's as simple as printing just that one slide so when you go to the print screen, you're going to want to print that single otherwise you're going to get 50 sum pages. You only want to print out that one page and what you'll do you'll scan that into yourself and whatever training coordinator or whoever you send your trainer request to you'll scan that in and submit that information. For SBA it doesn't have any additional guidance or regulation on approving or denying the continuous learning points.

That's typically... so if you have not received this like I mentioned earlier if a friend or colleague had emailed you or you are on the call with them right now and you didn't receive it, please send an email to that SBA learning website, or that email address and we will get you on the distribution list and try getting you the presentations out as well and if you would like to listen to this presentation again, the Aptech website which also, the information, I believe its slide four provides that information as well and you'd be able to view the **[0:52:31 inaudible]** again. If there... Val have you received any additional questions?

Valerie: No, most of the stuff I've been getting is to rather be added to the mailing list or a copy of the PowerPoint. I think we are good. I have not received any more. I do want to thank the person who said they will send the GAO case to us for us to look at, so thank you.

Chris: Actually, there is one other comment on here about the... I received the email but not the PowerPoint, the only way that would have been possible was that someone forward that to you because all the emails that we send out from the SBA learning email had the attachment included in there. Maybe you go back to the source or like I said earlier, just feel free to email us and we can get that information to you as well. We do have one request here, so I will go forward at one slide quick here. There's a list of individuals that want to view the dynamics small business search, DSBS here.

Basically, this is a great research tool, market research. As PCR representative I like to see this information with the contract and also contract specialist performed as far as market research. It's not the end all to everything. It's just a part of the market research that should be included. As you'll see there is on the radio button up top, there's DSPS as well as the quick market search, so either one of those options are good. The quick market research will just give you an abbreviated result from your search. This DSPS allows you to identify potential small businesses and you can narrow it down by social economic categories, location, you can search individual contractors as well. As I mentioned earlier, this is a valuable resource and the market research, and it should just be a portion of the market research that you do, and it just adds to the your write up as well. With that today...

Valerie: Chris, I got one more quick question, can we go ahead and respond to that.

Chris: Absolutely.

Valerie: Okay, the question came in regarding slide 19 and the new limitations on subcontracting requirement. Does cost of materials include equipment?

Erin: Hold on one second. Yeah, sorry we were muted. Yeah, we do believe it does, right?

Marina: Yeah, that's my understanding.

Erin: Yeah, that's our understanding.

Valerie: Okay, thank you all.

Chris: Great, Marina and Erin I want to thank each of you for taking this time and providing us with this valuable information on COC program and thank you to all who have tuned in today and we appreciate all the feedback and

comments that you guys have provided. Again, thank you and have a great day.

Valerie: Thank you all for joining today's conference. The session has now concluded and you may disconnect.

[END OF TRANSCRIPT]