

Carla: Hello and welcome to today's live SBA web conference. I would now like to formally begin today's conference and turn the call over to Jan Kaiser. Jan, please go ahead.

Jan Kaiser: Thank you, Carla. Hello everyone and welcome to the February First Wednesday webinar. The SBA First Wednesday virtual learning series is aimed at providing small business program training to government personnel with an interest in procurement, both contracting and technical personnel, as well as SBA staff and our valuable resource partners like procurement technical assistance centers and small business development centers. The SBA hopes that this session provides information you can use in the performance of your job in the federal procurement process or in assistant small business concerns.

I'm Jan Kaiser. I work as a procurement center representative in Chicago Illinois and additionally as [Colin 00:01:06] mentioned earlier we'll have Debra [Crumity 00:01:07], the SBA PCR assigned to the Rock Island Arsenal, read questions [inaudible 00:01:14] for our speaker to address towards the end of today's session. Let's discuss how today's webinar works. If you are having, some of this is gonna repetitive to what Carla was mentioning earlier but we want you to not have any trouble and give you enough information that you can access today's webinar. If you're having technical problems but can hear me voice but cannot logon to the ATT online portion of the webinar, call the ATT Connect support desk at the number that Carla mentioned, which is 1-888-796-6118. If you didn't get that, that's okay, the telephone number for the ATT Connect support desk are on the email invitation for today's program and on slide three of the PowerPoint slide deck of the SGA email notifying you of today's training.

Otherwise relax. Just keep listening and follow along with the PowerPoint that accompanies the invitation for today. This is why we will periodically announce the page numbers. [inaudible 00:02:20] if you would like additional small business program training visit the SBA webpage at SBA.gov.

The Association of Procurement Technical Assistance Centers hosts a website where they host past first Wednesday programming. Their website is provided here on slide four. We've also provided a link to how [t-tax 00:02:41] partners and federal agencies so that you can learn more about how t-tax can assist you and where the closest one to you is located. See the link on this slide. Not just the lessons learned but positive stories about how t-tax have assisted multiple agencies on this site.

Also, we'd like to talk about the calendar for next month. Please not that next month we will return to a start time of 9:30 am central. Our topic for next month will be SBA's historically underutilized business phone, or [Hub Zone 00:03:22] program. This has been a hard to hit economic small business goal for most agencies so we're hoping that this topic will be something that's useful to you.

We're on slide six. We have a couple of areas that we're looking for your input on. We've been conducting this three month trial with the first Wednesday session time for December 2016 and January and February 2017 to be held from one to two pm central and this is to accommodate across the later training sessions and enable folks on the far west time zones to participate in live sessions of these webinars. As I mentioned on the previous slide we go back to the 9:30 am central start time in March. What are your thoughts? Please send us an email regarding how this affects or impacts your attendance at the [SBAliving@SBA.gov](mailto:SBAliving@SBA.gov) email address.

Assume that other people are gonna let us know what's good for them and take it upon yourself to please let us know how this is impacting you and what you think about the time. Also, it's never too early to begin brainstorming for our topics to be covered in next year's first Wednesday program. We're really interested in what you'd like to hear about, so please email us at [SBAlearning@SBA.gov](mailto:SBAlearning@SBA.gov) to suggest any small business topics we should consider for next year. This is another opportunity for you to impact our programming and get the kind of topics you'd like to hear us cover for next year.

Okay, so today's session is one CLP. This is a copy of the certificate on slide eight. This is a certificate where you will fill in your name, download this from the PowerPoint that was included in the event invitation, and once you inserted your name, request credit for the CLP through your agency's process. It's totally self-served [inaudible 00:05:45] program. SBA does not track your CLP or communicate with your training program regarding your CLP achievements.

We're on slide nine and remember, if you were with us last month we were talking about ways to impact what's in the [inaudible 00:06:06] and BOD and GSA had proposed to amend the far by making some far changes to incorporate some SBA regulation changes, which would provide government-wide policy for partial set aside then reserves, including set aside orders [inaudible 00:06:27] under max. This also would clarify agencies and small business contractor's responsibilities with respect to performance of work requirements such as limitations on subcontracting and the non-manufacturer rule. Instructions to provide comments are provided in the federal register in the link provided on the slide and are due on or before February 6th to be considered in the formation of the rule.

Now [Laura Reedily 00:06:54], a White House member dated January 20th 2016, proposed a regulations freeze. I will likely impact the date that this far case is implemented. We are awaiting further guidance from BOD and the far council on implementing the final rule however I encourage you to make your comments on the [www.regulations.gov](http://www.regulations.gov) website for consideration in the formation of this [inaudible 00:07:22].

We're gonna begin today's presentation, let's see, today's presentation with the speaker directing me to change the page and as the presentation progresses

there may be some delay as the slide changes on your screen. This is just one of those remote location webinar type of issues [inaudible 00:07:46]. David Gordon is our speaker today. He is an experienced SBA five school brand manager who manages a certificate of competency program for area four. Dave, we're really pleased to have you meet with us today.

David Gordon: Thank you. Are we all set to go ahead, Jan?

Jan Kaiser: Yes we are.

David Gordon: Okay, let's go to the first slide. I'm gonna be talking ... Actually the next slide. I'm gonna be talking about the COC program today but before I do just a couple of things I want to get out of the way before we talk about the nitty gritty of the program. The first is there will be a couple of slides at the end with contact information for the people in my position in every region, excuse me, in every area of the country. Feel free to contact any of them or feel free to contact me directly if we don't get to your question today or if a question comes up at some point in the next week or the next month. It's far easier to solve problems before they arise or to answer questions before the problems arise than it is to deal with them once they've blossomed into an actual problem. I am always happy to take calls or emails.

Second thing I'd like to call your attention to is the bottom, that little disclaimer at the bottom. Don't copy or distribute and update all citations. The reason for that is the rules change. In particular in the past year or two there have been a lot of regulatory changes. Although you will see on most slides when I make a reference to something that's contained in either the federal acquisition regulation or the code of federal regulations governing SBA, I give a citation for it so you can go to the section and see exactly what [inaudible 00:09:54] it is. That should make it a little easier for you. You don't [inaudible 00:09:59] about exactly the language I'm using.

That said, let's talk about the COC program. I'm not gonna have time to talk about everything today because it's a complex program but I'm gonna try to hit the points that I think are of most concern to procurement personnel without getting too deep into the nitty gritty of what SBA actually does when they're conducting a COC.

First thing to understand is what the program is all about. It's basically an appeal process. It's an appeal process that is available to small businesses who are in line for award and have been found by the contracting officer to be non-responsible and we'll talk about what that means in a little bit. Bottom line, if a small business has been chosen and at the same time the contracting officer has a reservation about awarding to that small business because the contracting officer has concerns about its responsibility, the CO refers the business to SBA and we contact the small business, explain generally what the COC program is, and ask them if they want to proceed or not. They are free to proceed or not

proceed, it's entirely their call, and if they do and if they apply and if at the end of the process SBA grants the COC, there's no certificate per say. We issue a letter to the contracting officer saying that SBA has issued the certificate of competency. In other words, we have found the company to be responsible. We believe that they have overcome the objections of the contracting officer and the contract should be awarded to them.

In certain cases, contracting officer has the ability to appeal that decision and in some cases the CO does not have the ability. We'll talk about that toward the end of the presentation. That, in a nutshell, is what the program is about. Jan, could I have the next slide?

COC program applies to all procurements. In other words, it is not limited to set asides. If there is an unrestricted procurement for which the apparent successful offeror is a small business and the CO has the objection that I mentioned earlier, there is a concern about some area or areas of responsibility, that small business must be referred to SBA to see whether or not they wish to proceed with applying for a COC. You can only refer one company at a time because until we know what the outcome is, in other words whether that business is gonna want to apply or not, nobody else is in line for award. The sole exception would be a multiple award contract where a number of businesses may theoretically be in line for awards. In that case and in that case only, more than one company can be referred at a time.

The last bullet point is one I want to emphasize and you're gonna see I have other slides making the identical point. The results of a COC are specific to the solicitation. A company can only be found non-responsible based on all of the provisions in the solicitation in the statement of work that apply to that procurement. There's no such thing as finding a small business non-responsible for all procurements forever. A company can be found non-responsible under the terms of a particular solicitation but if that company bids on another procurement two weeks later, six months later, a year later, it's going to be a different procurement. Even if the terms and conditions are identical, time has passed and the circumstances the small business finds itself in may very well have changed. For that reason, no matter what happens in one referral, what happened in that referral stays in Vegas. It has absolutely no bearing on a future referral. Companies I have seen over and over may be declined on one referral and approved on another. There is no way to know in advance what's gonna happen and so whatever happens it stays with that referral. It has no effect on that company for any other procurement it may ever bid on.

Okay next slide Jan.

Jan Kaiser: This is slide 14.

David Gordon: What is the COC process itself? Well, first of all, and I'll again hit this again, it's a 15 day, 15 business day process. After SBA gets a referral, we contact the

company. We ask them if they want to apply. If they decide they wish to apply, they fill out a whole bunch of paperwork and they submit it. They submit it either to an SBA industrial specialist or an SBA financial specialist or if both capacity and finance are causes for concern, to both specialists. The company has six business days to fill out its paperwork and believe me, that is not a lot of time given the amount of information SBA requests. They then send all of the application paperwork to the specialists and SBA then looks at everything, starting with the CO's objections and what the company has said in response to those objections. The burden is on the small business. It must overcome the objections made by the contracting officer. If it is able to do so in the judgment of the COC review committee, and I'll explain that in a second, then SBA will recommend issuance of the COC.

After the field specialists have reviewed what the company has to say, they will talk with the company and they will talk with anybody who they think can shed light on the questions or issues raised by the CO. They'll talk to the small business' customers, their suppliers, the contracting officers that the company has performed on for before, to their lenders, their bankers. Anybody who might have information that will help SBA understand what the issues are with the company and whether the company can successfully perform.

Contracting officers must identify an area or several areas of responsibility in order to make a determination of responsibility, which is what gets the COC started but SBA can review any area of responsibility, even if, for example, the contracting officer refers the company solely because they have concerns about the company's financial abilities. SBA can review, for example, the small business' ability to comply with the delivery schedule or we can review their quality assurance system. Anything that in the course of our review raises an issue with the field specialist that they think is worth looking into, we can look at. It is fairly unusual for us to decline to issue a COC based on an issue that the contracting officer has not identified but it has happened.

The field specialists do their review and at the end of the six days they have to do that review, they write up a detailed report and make a recommendation whether to issue the COC or not. Those reports are sent to the coordinator in whichever area office of SBA is handling the file. That person puts together a COC review committee. It has finance representative. It has a legal representative. It has an industrial specialist representative, in other words someone who can evaluate the issues relating to the capacity of the business to perform and that committee reads and reviews everything. We read the information submitted by the contracting officer in its determination of non-responsibility. We read the information that the company submitted. We read the industrial specialist's write up and recommendation and then the committee discusses it and recommends to the area director whether or not to issue the COC. The final decision lies with the area director and their the ones who make the final decision.

Okay next slide Jan. One thing I want to point out, because this comes up from time to time, I have talked to CO's over the years who have shied away from using the COC process because they believe that anytime a small business came to [inaudible 00:21:16] SBA would help them and we would just basically rubber stamp a COC application and issue a COC. I think the statistics on this slide belie that. Last fiscal year only about 58% of the companies referred to SBA even bothered to apply for the COC. There are lots of reasons for that. They may decide that the value of the procurement isn't sufficient for them to go through all the time and energy and effort it takes to fill out all the paperwork. They may say, "You know what? We've got enough in house, whether it's other government contracts or commercial work. We don't really have the time to devote to this so we're gonna skip it."

About 42% of companies just drop out at that point. Of the 58% who applied last year, SBA issued COC's, in other words approved them to go ahead and get the contract, to only about 45% of applicants. Historically the number's been a lot closer to 50% but I think that will give you a notion that this is certainly not a program that's a rubber stamp for small business. Next slide Jan.

Very basic COC program information. It's covered both in the code of federal regulations and it's covered in the far. I give you the sections right there. A company, a small business, cannot request a COC. The only thing that triggers a referral, that triggers the process, is a formal written finding by the contracting officer, not the buyer, not the contract specialist, not the small business person, by the CO that the business is non-responsible. Responsibility in general includes all of those areas. An easier way to think about is responsibility includes everything that might possibly affect a small business' ability to perform on a contract, from money to delivery schedule to technical expertise. You name it, if it's a factor in performance, it will almost certainly be a responsibility factor.

Now, having said that, it is very important to distinguish between non-responsibility and non-responsiveness. They are two very different things. COC's, or the COC program, is only available when a contracting officer finds a company non-responsible and that's because among other things when a company is found non-responsive that's the end. They are no longer considered. There is nothing they can do to get back in the game. Go ahead to the next slide Jan if you would please.

I don't want to go through this slide in particular. This is, as you can see in the bottom right, basically a quotation from far 9.104. This is the section that defines what responsibility is. The only point I want to emphasize here is what I've highlighted in green. For example, subsection A to be considered responsible, a prospective contractor must have adequate financial resources or the ability to obtain them. If they don't have enough money but they can get a line of credit from their lender, that means they have the ability to obtain them. Same thing for subsections E and F. Please note it doesn't mean that they have to have those things at the moment so long as they have the ability to obtain

them. Concerns by a contracting officer that any of these things are missing from a small business are sufficient grounds to refer a company to SBA for a certificate of competency. Go to the next slide if you would Jan.

Responsiveness [crosstalk 00:26:02] on the other hand deals with unacceptability. In the first place only bids can be non-responsive. If you've got a procurement that's an RFP or an RFQ, you can't find a proposal or a quotation to be non-responsive. In that case the technical term is it's unacceptable but it's important, it's very important, for me to emphasize the end result is the same. If a quotation or a proposal is unacceptable, it ends up in the same place that a non-responsive bid ends up. In other words, not being considered any further.

What is non-responsive? Non-responsive is when a bid fails to conform to the material terms and conditions of the solicitation and I've given you the far section there, 14.404-2. The far says, "If a bid is not responsive, it shall be dismissed." That is the end. The law is slightly different on a bid or an offer that's unacceptable. They're not dismissed but what GAO has said, and I explain that on the next slide, what GAO has said is if a bid, excuse me, if a offer or proposal is unacceptable, no award can be made. In other words there's no legal basis for making an award.

Last point here, sometimes this seemed to have been very popular for a few years and recently it seems to have declined in popularity although it still shows up from time to time. When a procuring activity evaluates a factor that is a responsibility related factor and they do so on a yes/no, pass/fail basis rather than comparatively, a grade or a decision that the company has failed is considered to be essentially a determination of non-responsibility and at that point the company has the right to be referred to SBA for a COC.

Okay Jan, the next slide please.

Jan Kaiser: 19.

David Gordon: This is the slide I was talking about a little more about responsiveness. If you'll look at the last paragraph I've given you all the detailed citations to the GAO case where GAO said that if you have an offer or proposal that is unacceptable, it may not form the basis for an award. If you're concerned about acting on that, that's the information you'll want to give to your attorneys to have them review it and tell you that what I'm saying is correct. Obviously if it's just a minor deficiency then a CO has to give the business, or a bidder, the opportunity to correct it or waive it and I've given you some examples there of what minor deficiencies are.

What's non-responsiveness? You've got a proposal or a quotation that comes in and it's late. There is nothing an offeror can do to fix a late offer and so if it's late, it's done. Another example: the solicitation requires delivery in 120 days and the proposal proposes delivery in 180 days. Unless somehow remarkably

that was a typographical error, that's non-responsive. The solicitation required a 120 day schedule and the company putting in the proposal didn't honor it. They said, "We'll do it in 180 days." They're done. You don't have to go any farther with them.

Okay Jan. Speaking of referrals to SBA. This is one of the [inaudible 00:30:56] points in the process. A referral has to be specific. You can't just check a box on a form if your agency has a form that says they're not responsible because we have concerns about their ability to perform. Why do you have concerns? What evidence do you have that they're not going to be able to do X? What evidence do you have that they don't have the proper quality assurance system in place? You can't just say they don't have enough money. You have to say, "They don't have enough money based on our review of their financial statements. Based on our review of the DMB report that we pulled." There has to be something that is forming the basis for the contracting officer to reach that conclusion and the reason is it's only fair to the small business to understand why there is an objection to their ability to perform. Why there is an objection to their responsibility and what it's based on. Simply saying, "I don't think they can do it," isn't fair to anyone, including the government. You have to give us some kind of evidence. You don't have to be completely right but you have to tell us what the reason is that you're referring the company. What the evidence is underlying the referral.

In the regard we see all kinds of referrals. We've seen referrals that are a couple of paragraphs long. We've seen referrals that go on for a dozen pages or more. There is no required format. there is no SBA approved form. You can do it. You can submit the referral in any form you wish but I would ask you to consider releasing some of that information to the small business. We often get calls from the small business. We can't give them your determination of non-responsibility. It's a protected document under law and we're prohibited from releasing it or copying it and giving it to the small business. So what we have to do is paraphrase what you've said. Explain with enough detail so that they understand what the issue is and not withstanding that we sometimes get questions saying, "Well, we need a little more information. We need to understand more specifically what the objection was." And when that happens I give a call to the contracting officer and ask if they're willing either to release some of all of the determination of non-responsibility or if they're willing to authorize me to explain in a certain additional amount of detail what the concern is.

From all the years I've done this I guess I tend to think of it as a fairness issue. The company may or may not be able to overcome the CO's objections but I can guarantee you no company is going to be able to overcome objections they don't understand. I think it's only fair to give or authorize SBA to give enough detail that the small business truly knows why your objecting to them.

It doesn't often happen that we get this request but when we do it's a very large issue for the small business, so I'm just asking you to consider constructing the referral in such a way that the small business can fully understand why they have to go through the process.

Okay Jan, next issue. Where do you send a referral? This crops up frankly more than I would've ever thought reasonable. It says exactly where to send referrals in the far. You send them to area offices. It says so. I give you the citations there and I can't tell you how many times I deal with referrals that go to the local district office or the regional office or the branch office or SBA headquarters. Please read the far. If you don't want to read the far, SBA has a website and there's a section under government contracting for contracting officers. It has a link to a document that has the contact information for the entire country. Where the referral goes. It goes to the area office, and there's only six of us, six area offices that is, that has jurisdiction over the state where the headquarters of the offeror is located. I don't care where you are. I don't care where the contract's gonna be performed. The only thing I care about is where is the company being referred located. That determines where you send it. I think this slide is pretty clear. Next slide Jan.

Jan Kaiser: [inaudible 00:36:57]

David Gordon: This slide doesn't fit in here but it doesn't really fit in anywhere, so I just want to hit it briefly and move on. This has cropped up for years. I'm not quite sure why. The law is pretty clear on it. Procurement cannot carry wholesale or retail codes if they're procurements for supplies. There's a reason for that. The reason is the government wants the largest possible pool of offeror's to get the best possible offer and that means if you're going to procure widgets, not only do you want people who manufacture widgets, you also want people who sell widgets. Lots of non-manufacturers are certainly able to sell and support widgets and lots of manufacturers are interested in directly supplying widgets. If you assign either a wholesale or a retail code, a manufacturer can't bid. However, the law is written in such a way that if you assign a manufacturing code, manufacturers can automatically bid and anyone who sells widgets but doesn't manufacture them can also bid under something called the non-manufacturer rule. It's an exception carved out specifically for the purpose of allowing companies that are wholesalers or brokers or retailers or distributors to sell widgets to the government. Keep in mind the law requires you, if you're buying widgets, to use the widget manufacturing code, not the widget wholesale code. Not the widget retail code. Okay Jan.

The next slide I'm not really gonna spend any time on. This is just to give you a notion of how much paperwork is involved. I said earlier the small business has six days in order to complete it's application. This is an awful lot of paperwork for them to do that and get it back within six business days. Next slide Jan.

How long does the COC take? Generally 15 working days. That's what the law provides. It is not uncommon for small businesses to contact us, us meaning SBA, and say, "Can we have more time?" They give every reason under the sun. Some of those reasons are good, some of those reasons aren't so good but SBA does not have the legal authority to make a decision on a request for extension because it's your procurement, the decision lies with you. Actually it lies with the CO, not with the contract specialist. Not with the buyer. If a company asks for additional time what the practice is in my office is to ask them to send me a short email saying how much time they want and why they want it. I generally then forward it to the contracting officer and ask for a decision and sometimes the CO needs to run it up a flagpole and get approval depending on how urgent the procurement is. The point is only you know how urgent your procurement is. I have dealt with CO's who have said no extensions ever on this no matter what and I've deal with CO's who have said hey they can take an extra month if they need it but I have no way of knowing that and I have no way of knowing how you will assess the reason the small business offers.

Obviously I'd like to think that if it's a plausible reason and if the procurement can wait those few extra days or that extra week, that you'll give them the time. Again, I think it's a fairness issue but at the end of the day the call is yours and it doesn't matter what SBA thinks. Another issue on timing. We often get referrals or inquiries part way through the process saying, "This is absolutely urgent. You have to expedite it." We can't expedite it. There is nothing we can do to expedite a COC referral. The timelines are written into law. You can extend them but you cannot shorten them and the odds are no matter which area office you're dealing with, there are other COC's pending and just as you don't want somebody else to jump your COC, we're very reluctant to do anything that's going to change the order.

When your COC comes in it's automatically docketed. It's given the various due-dates that apply to the various steps of the process and, assuming that there's no request for an extension or no extension given, I can tell you at the very beginning when the due date is and when you'll hear from us. If we refer, excuse me, if a CO refers a company and SBA contacts them and they say, for whatever reason, "You know what, we don't want to apply," we will notify the CO as soon as we're certain that that's their answer. That way you don't have to wait the full 15 days. Often we get small businesses that for one reason or another simply don't apply but they don't notify us. In that case we will contact them after their due date has passed to say, "You forget something or did you intentionally not apply?" And if they intentionally chose not to apply, we will contact you immediately and say, "You can proceed with the procurement, you don't need to wait any longer."

Okay next slide Jan. Issue answer decline. There's only two things that can happen with a COC: either SBA issues it or SBA declines to issue it. There's no middle ground. "Well, maybe we're gonna issue it. We're not sure." If we decline to issue the COC, the CO is free to move to whoever's next in line. Now,

whoever's next in line might also be the subject of a referral depending on whether or not the CO identifies any issues regarding responsibility but otherwise whoever's next in line is up. There are no circumstances in which a small business can appeal a decline, period. If we declined to issue a COC, a contracting officer still has the right to award to the company. They have to go back and make a formal finding that the company is responsible, contrary to the initial finding, but I can't tell you the number of times I've gotten phone calls after SBA has declined to issue and a CO said, "How could you decline? We expected you to issue." Well if you expected me to issue, why did you refer the company? Don't refer a company that shouldn't be referred. If you're happy with the company's ability to perform, don't cover your butts by referring it to SBA and asking us to make the decision and then complaining when we decline a company you wanted to award to.

I wish I didn't even have to say this because it always astounds me when it happens but sadly it does happen. Next slide Jan. What if SBA proposes to issue a COC? When we do, we notify the CO that we're gonna do that. The CO has basically two options. CO can say, "Okay," and make the award or, depending on the value of the contract which is the next slide, ask SBA to suspend the case and have headquarters review it. I'm not gonna go through the long process here. In the 12 years that I've been running the COC program, there have been three appeals. [inaudible 00:46:27] procuring activity won one. SBA won one and I think the third was withdrawn. I am not trying to discourage you from filing an appeal if you believe an appeal is necessary. I'm just saying by virtue of the fact that there have been three appeals in 12 years, I think you get a sense of how often it happens. We're not always right. We have made mistakes. We have awarded COC's to companies that subsequently failed to perform but based on hearsay that I've had with talking to CO's around the country at every agency imaginable, by and large I think we do a pretty good job.

Next slide Jan. Again I don't want to take the time to go through the details here but you can basically see anything under \$100,000 SBA area office is final, period. Even the CO can't appeal. Then between \$100,000 and 25 million you can appeal to headquarters and on anything over 25 million only SBA headquarters can issue a COC although the area office can decline to issue a COC.

Okay next slide, this is one I hit before. I want to hit it again. Whoops, sorry. I thought I had a different slide coming up. This basically says what I just told you with a little more added detail. Now the next slide Jan, I'm sorry. This is the point I did hit earlier. From time to time I get calls from CO's saying, "Hey, company X was referred last year for a COC and you guys didn't give it to them. Can we just move past them?" No, never, period. If the company is inline for award and if you have concerns about their ability to perform, they must be referred for a COC. That's period, paragraph, end of discussion. Every case, every procurement, is considered distinct because every procurement is distinct. Things in solicitations change. Facts on the ground with the companies

change and it's not fair to anybody, either the small business or the government, to just assume that nothing changed since the last time the company was [inaudible 00:49:12].

A COC is issued for a contract. It's not issued so much for the company as it's issued for the company for that specific contract. Okay Jan. Next slide I think says basically that this presentation was an overview. I know I talk fast but as you can see I've pretty much had to because we just landed at the end of the presentation with time reserved for questions. The last couple of slides, Jan, you can just cycle through them, are where to send your COC referrals. In other words, the next slide contains the list, whoops. You went past it Jan. That one, stay right there. That tells you which area office to go to depending on which state the small business is located in. I've given you the name, the email address, the phone number, the street address. Everything you need to know to know who will be in charge of your referral. Then, the next slide is status or eligibility protest. If you don't have a COC referral but you have concerns about the company's eligibility or it's status as a currently approved 8A or Hub Zone, that's where the protests go and then the very last slide is all of the contact information at SBA for size protests. Something we haven't talked about. We'll talk about that in June but this is all the contact information for that kind of protest.

I'm done. Go ahead Jan.

Jan Kaiser: Okay well Debra, I believe we've had numerous questions come in from folks this afternoon. Would you like to start off with one?

David Gordon: [crosstalk 00:51:16] Sure, go ahead Debra.

Debra: I'm having problems some I'm gonna have Carla read the questions because I cannot view them all.

Carla: All right and Jan just exited the conference but I will read the questions. The first one is, "We have a multiple award ID IQ for construction, all small business. If one awardee has not been performing well, can we use that current within IDIQ performance when not selecting them for task order award without having to seek a COC at the task order level?"

David Gordon: Actually that goes on into the next question. The same person continued, that is, "Do we have to do a COC at the task order level when we've gotten poor performance ..." wait a minute. I just lost it there. "... Poor performance from one of our multiple awardees?" COC is only a pre-award determination so unless I'm misunderstanding the question, once performance has started, COC's are not available. COC can only be awarded when there's a concern about responsibility prior to the award. Of course if performance is an issue and they bid on a new contract, then of course you can use that performance for a new referral but you can't refer a company once performance has begun.

Carla: Okay he said he's talking about a task order award.

David Gordon: Yeah but a task order ... Is the question whether a COC is available on a task order, the answer is yes.

Carla: And then he says, "Task orders are awarded individually under the umbrella I," I'm not sure.

David Gordon: IDIG.

Carla: Okay. And he does have another question. I don't know if you saw this one, Dave. "How likely is it that a COC at the task order level will be denied so that we can go to the next low offeror and how long-"

David Gordon: It's, yeah, I'm sorry I see the question now. The basic question is how likely is it that it'll be denied and the answer that is absolutely impossible to predict. It's a very fact specific question. There is no way to know whether a COC is likely to be granted or denied.

Carla: Okay and then he says again, "415.101-2B1, if the contracting officer determines that a small business' past performance is not acceptable, the matter shall be referred to the small business administration for a certificate of competency determination."

David Gordon: Yes, I see that. I don't hear a question in that. COC's are available for task ordered awards. I'm not quite sure what to add to that. What I would say is if I haven't answered the question please contact me after we get off the phone so maybe we can talk about it in detail.

Carla: All right so another question is, "What are your definitions of bid versus offer versus proposal and what are the differences?"

David Gordon: That goes to how solicitations are put together. Solicitations are issued either as an invitation for bid, a request for proposal, or a request for quotation. That's basic contract law and I'm not sufficiently expert to explain which one is chosen when and what the circumstances are. That's something you should discuss within your own agency.

Carla: Okay and then another question. "What does PAS stand for [inaudible 00:55:23] in regards to submission of documentation to SBA for COC?"

David Gordon: Pre-award survey. A lot of agencies use them. If you have them, please submit them. If you don't have them then there's nothing to submit.

Carla: Okay and, "Is the anticipation that an SD may violate the limitation of subcontracting clause under a set aside an acceptable reason for the CO to request a COC?"

David Gordon: The short answer to that is maybe. The somewhat more complicated answer is you have to have reason to believe that they won't meet the limitations on subcontracting. If they say that they can meet them absent evidence that they cannot, you can't refer them. In other words you can't just assume that a company is not gonna be able to meet the limitations on subcontracting clause. Generally, again, depending on the form of the procurement and what the company has submitted, you may be able to tell from the information they've submitted that their numbers don't add up. That they proposed to subcontract more than they're supposed to. In that case, by all means refer it for a COC.

Carla: Okay and could you please provide sample of responsibility related factor on a pass/fail where fail is a determination of non-responsibility?

David Gordon: I'm not certain I understand the question. That's entirely up to the contracting officer or, more precisely, to the language in the solicitation dealing with evaluation factors. If it says that something is gonna be graded on pass/fail basis and something can be anything, that depends on how the CO has determined that the offers are gonna be evaluated. If something is a responsibility factor and it's graded on a pass/fail basis, then as I said, any small business that gets a fail is entitled to a COC. It's a good reason for not using pass/fail. It's a good reason for using comparative judgements.

Carla: Okay. Let's see, the next one: "When award of a contract is based on combined factors that are more important than price, for example technical capability, past performance, delivery schedule, must we still refer to SBA for COC if a vendor is determined to be a non-responsible and even if it was found to be responsible, a contract would still not be awarded to that contractor because a proposal by another contractor has been evaluated as being far and above the best value and is more advantageous to the government?"

David Gordon: That's a complicated question. When award is based on combined factors that are more important than price, must we still refer ... First of all, the referral only deals with the company that's in line for award. That being said, if the company that is inline for award is found in the judgment of the CO to be non-responsible on some factor, then that company has to be referred. I'm not certain I'm answering the question but I think the answer seems to be you only consider and worry about whether to refer for a COC or not when you're confronting the company that's inline for award. It's a requirement in our regulations that the company being referred is the apparent, successful offeror. In other words, if they're found to be responsible, they will get the contract. They have satisfied all other requirements. The only way they're gonna be referred is if they have bested the rest of the competition, regardless of individual grades on technical evaluation factors.

Jan Kaiser: Carla, how are we on time?

Carla: Actually we are out of time. I will give you a copy of all these questions Jan and then I suppose you all can address them.

Debra: Yes we will address the questions that we didn't answer today to everyone on the call.

David Gordon: And again as I said at the top, feel free to contact me directly.

Jan Kaiser: You know, it's really difficult to address these questions for everyone on the call as much as we'd like to. I suggest you contact your PCR and follow up with some of these questions or give one of us a call or additionally the [SBAlearning.gov](mailto:SBAlearning.gov) email address is also a place to follow up. Carla, thanks very much for facilitating this again.

Carla: You're very welcome Jan and thank you all for joining today's conference. The session has now concluded and you may disconnect.