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[START OF TRANSCRIPT]

Carla: Ladies and gentlemen, welcome and thank you for joining today's live SBA web conference. Please note that all participant lines will be muted for the duration of the event. You are welcome to submit written questions during the presentation and these will be addressed during Q&A. To submit a written question, use the chat panel on the right hand side of your screen. Choose all panelists from the send to drop down menu. If you require technical assistance, please send a private note to the event producer. I would now like to formally begin today's call and introduced Chris Eischen. Chris, please go ahead.

Chris: Thank you Carla. Hello everyone and welcome to SBA's first Wednesday webinar series, which is actually taking place on the second Wednesday in February. So, about that, due to the recent government shutdown, we had to push a program back a week. In addition, we didn't want to forego another month without this valuable training. I guess you could consider it early Valentine's Day present. We also want you to know that we appreciate your patience and understanding and want to thank you for joining today's training.

Onto slide two. For today's session we will be focusing on SBA certificate of competency program, and by the end of the program you should have a better understanding of this topic as well as the resources available to you. If you're new to our event, this is a webinar series that focuses on getting subject matter experts on specific small business programs. In this case, the certificate of competency program and having them provide you with the 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 appreciate you taking the time to participate in the FY19 program and we hope you benefit from today's session.

Now, for a little background on the first Wednesday program. The program was initially created for contracting staff, which is why the training was called 1102 first Wednesday. The 1102 designated government series for contracting personnel was later dropped to be become more inclusive of other GS series. As federal agencies increase their requirements for non 1102's to obtain diarrhea and vaccine certifications.

Additionally, other federal buying activities, SBA staff PTAC an SBDC personnel who after hearing about the training requested access and were added to the list of participants, so that is why SBA first Wednesday program is aimed at federal government employees and our resource partners like PTACs and SBDCs. Thank you to those of you who are repeat attendees and welcome to those of you who are new to the program.

Slide three. As Carla mentioned, I'm Chris Eischen, and I work as a procurement center representative or otherwise known as a PCR and I'm located in Kansas City, Missouri. Additionally, Ms. Gwen Davis who is the PCR located in Minneapolis, Minnesota, will be reading your questions submitted during the program for our speaker to address at the end of today's session. We both work in government contracting area IV and slide three includes our information.

Slide four. Please note that all lines are on mute. However, you may submit questions or technical issues in the chat box on your screen. Your questions may be submitted any time during today's session by entering them into the chat box and these questions will be addressed at the end of our speaker's presentation. As most of you know, we have transitioned to the WebEx application and I've been informed that some users may experience issues such as a block website or other air messages when attempting to access the conference login from their computers. If you are affected by this issue, please make sure to dial in and follow along with the slides provided in this email. We will ensure the page numbers are clearly stated so you can follow along. We are hopeful this issue will be resolved and we apologize for any inconvenience. Now, if you are having any other technical issues, please call the AT&T support desk at the following number 1-888-796-6118 and this telephone number is also included in the email invitation for today's program and on slide four of the PowerPoint presentation. Otherwise, just keep listening and follow along with the PowerPoint that accompanied the invitation for today's session. We will continually announce the page numbers so you can follow along. For more SBA small business program training, please visit the SBA learning center@www.sba.gov

Now slide five is a calendar of the training sessions, and it includes a program schedule for fiscal year 2019, and today's session on the certificate of competency program, which is the fifth topic in the series. Unfortunately, topics three and four were canceled due to the national day of mourning as well as the recent government shutdown. However, we have added a couple new topics to our program list and then other areas that have been presented in the past. The participation continues to grow each month and the positive word of mouth is greatly appreciated. Did you know that the Association of Procurement Technical Assistance Centers or APTAC hosts a website where they post the first Wednesday programs?

Since these sessions are recorded, you can re-listen to this program as well as the previous sessions by visiting their website at www.aptac-us.org and then clicking on the heading APTAC partners and then selecting partnering with federal agencies from their drop down menu. Additionally, Procurement Technical Assistance Centers or PTACs are a great resource and partnering with your local PTAC for an industry day, sharing RFI notices or so sought announcement or referring small business concerns/PTAC are just a few reasons why they are such a useful resource for acquisition personnel. Please contact your local PTAC for additional information.

On slide six. I'm sure many of you will want to receive credit for today's training, so you'd be glad to know that today's session is worth one CLP and on the following slide, which is slide seven, you'll find the training certificate. First, you'll manually fill in your name and then print the certificate from the PowerPoint that to request credit from today's session. The PowerPoint presentation was part of the SBA email invitation that you received for today's session. SBA does not track your CLPs or communicate with your training program regarding your CLP achievements. Now, several of you may have received this information for the training from a friend or colleague, but if you want to receive an email directly from us notifying you of upcoming first Wednesday webinar events, just email us at SBA L-E-A-R-N-I-N-G@sba.gov, so that's sbalearning@sba.gov and the subject line please enter the words, 'add to list' and we'll ensure you're added to the distribution list.

Now on slide seven, you'll see the certificate. First, you will need to access the PowerPoint presentation that was emailed to you. Then, you'll manually fill in your name where it states insert your name here. Next, within the print settings, you will select print current slide, which will allow for only the certificate to be printed. Another reminder, SBA does not track your CLPs, so communicate with your training program regarding your CLP achievements.

Today's training has been assembled to address SBA certificate of competency program as well as provide you with the resources available for your use. Our speaker has graciously accepted our invitation and he will be directing me to continue onto the next slide. As mentioned earlier, if you're unable to access the WebEx application, please follow along with a PowerPoint presentation that was included in the email for today's training. We will identify the page number so you can follow along. Also, please note that due to connectivity issues, some viewers may experience a delay as the slide changes on your screen. Now, I am pleased to introduce today's speaker to you, Mr. David Gordon, who's the area IV COC coordinator for SBA's office of government contracting. Dave, we appreciate that you could meet with us today and I'll turn the program over to you now.

Dave: Thanks Chris. Before we actually start on the slides themselves, I just had two comments I wanted to make. Since this training is primarily addressed to procurement personnel, I don't spend much time talking about SBA's process once SBA receives a referral. In other words, I don't go into any detail talking about what SBA does, how they do it, who they talked to, any of our internal procedures because there's plenty of information out there about it as well as you're more likely as procurement personnel to be interested in how you interact with the program. What we need from you, and what we give back to you, and how we try to work with you in the course of the entire process.

The only other comment I wanted to make before we start was, there is a slide toward the end with all the COC contacts with the various SBA area offices. I know, I speak for me obviously, and I think I speak for all of them in saying, please don't hesitate to call us if you have questions. It's far easier to address a question, and deal with an issue before it becomes a problem, then to try to resolve the problem after somebody has already made a mistake or made an incorrect assumption. We would all far rather answer your questions in advance, and if the thing doesn't come to pass it, that's what we're here for, to work with you, to help you out, to answer those questions, so please don't hesitate to use the email address, is to use the phone numbers and to talk to us. With that said, Chris, could we move on to the first slide?

The COC program is basically an appeal process. It offers a small business an opportunity to appeal a CO's finding that it's not responsible. In other words, the CO has identified that firm as in-line for award, or as an apparent successful offer, or it would otherwise receive the contract, but for the fact that the CO has found that it lacks one or more elements of responsibility. It can't perform successfully on the contract. Congress has provided that when that happens and when the business that's been so identified as a small business, that it has the option and that's what it is, it's not a requirement, it's an option to appeal that determination to the small business administration. Doesn't apply to any large business, although it could apply to a small business in an unrestricted procurement.

The burden or the burden of proof if you want to think of it that way, is on the small business. The CO is required to give us his or her reasons for finding the firm non-responsible and the COC applicant in order to be successful and to get a certificate of competency has to overcome those objections. They have to convince the SBA that the CO is wrong and if they do so, SBA will issue a certificate of competency, and I suppose I should point out that there is no such thing as an actual certificate. What we do is we notify both the firm and the contracting officer of our intent to issue a certificate to the small business. All that means is we intend to certify that the small business is competent to perform on the contract.

The COC if issued applies to the procurement for which it was referred only. It's not a charter or a license to perform on all contracts that it might receive in the future. COCs and I'm going to hit this point over and over in the course of the program. COCs are limited to the procurement for which the company has been referred. They are not determinative for any future procurement, even if it's the same contracting officer, even if it's the same installation, if it's a different solicitation. Chris, can we move to the next slide please?

As I mentioned a minute ago, the program is open to small businesses who were found non-responsible, so it's not limited to set aside procurements. If a small business is the apparent successful offeror, or on an unrestricted, or full and open competition, and the CO finds them non-responsible, the certificate of competency program is available even in an unrestricted procurement. Keep in mind as well that the referral to SBA is not optional. The second bullet point there is a quote from the FAR, and I've also given you the CFR, which are SBA's regulations. A contracting officer shall, which is legal lees for must. It's not for the contracting officer to say, "Well they can't perform this and I don't want to wait for three weeks that a COC takes, so I'm not going to bother to refer them".

That's more likely to generate a lawsuit at GAO than anything else I can think of. They are entitled to be referred whether they apply or not is a different question, but the law requires that if the business is a small business and it is in-line for an award and has been found non-responsible for one or more reasons, the CO must refer that company to SBA. Only one company can be referred at a time, so if you've got to list, let's say it's an invitation for bid and it's strictly by price. You've got the lowest bidder, the second lowest, the third lowest, you can only refer the lowest bidder. You can't refer the second and the third in case the first one doesn't qualify in order to save time. SBA can only and will only take one referral at a time. The sole exception are multiple award contracts.

If the contract provides more than one contract can be awarded under that solicitation or under that procurement, and several different companies are in line, and those companies happen to be small, and they happen to be in line for an award, and they happen to all have responsibility issues, they can be referred simultaneously. That's the only exception. Then the bullet point, the last bullet, what I mentioned to you a moment ago, the results of the COC are specific to the solicitation. They cannot be transferred to a later procurement, no matter whether they're positive or negative and they're not evidence for a future procurement. You can't say, "Well, we've referred this company three times in the past two years and each time they've been declined, therefore we're referring them again".

The results of a certificate of competency proceeding are unique to that procurement. Just because we determined that a company may not be able or responsible to perform on a particular procurement says nothing about how we're going to decide whether they're able to perform on a different procurement. As you know, things happen every day and issues that caused problems for a firm may very easily be resolved in the course of a week or a month or a year. Likewise, if a firm is perfectly competent and has having no trouble, it may run into a run of bad luck or bad problems and suddenly not be able to perform.

In addition, every solicitation is calling upon the successful offeror to perform specific services, or to sell certain products. Every procurement is different from every other procurement. The decision that SBA reaches at a particular time with regard to a particular procurement is unique to that procurement and cannot be grounds for a future referral, cannot be grounds for deciding that you're not going to bother with the future referral. Next, Chris.

Chris: This is slide 11.

Dave: Yes. A comment I've often heard at conferences from procurement personnel is that they don't like wasting their time with the COC program cause it's basically a rubber stamp. After all, this is the SBA. We're advocates for small businesses and so in essence, we can't be trusted to turn a company down for a COC. It is true that SBA as an agency is an advocate for small businesses. However, that advocacy does not occur in the context of a certificate of competency proceeding. If it did, it would diminish the integrity of the program. Our word is worthless if all we're going to do is rubber stamp these. I'm not guaranteeing that our answer is always going to be correct. We will make mistakes. We're only human, but we try our very best to make sure that we're as fair as possible to the government and the contracting officer and his or her agency, and to the firm. We try our best to make sure that we reached the right decision in the end.

As evidence of the fact that the program's not a rubber stamp, I've been keeping statistics on the program for a long time and just for the past six years, 2013 through 2018 only about 55% of companies that are referred even bothered to go through the application process. It's a pretty arduous process. It's very time constrained, it's a lot of work, it's a lot of effort and a lot of companies don't have the time, or are busy with commercial projects or other government projects, and so 45% of them nearly half decide they're not even going to apply. What that means as a practical matter is as soon as we know, we notify the CO and the CO is free to move on to whoever's next in line for an award. It doesn't take the full 15 days in those cases.

Of the companies that we do review are companies that have applied. Historically between 50 and 52% get COCs, meaning it's almost an even chance whether in a particular case a company is going to get a certificate of competency or not. That's hardly qualifies I think as our rubber stamp process. Next slide please Chris, number 12.

There are two regulations governing the program. Procurement personnel are governed by the FAR. SBA personnel are governed by SBA's regulations. SBA's regulations are all the 13 CFR citations. You'll see in the course of these slides. I've also tried as much as possible to indicate the FAR citation as well. That way you can just take a slide and see exactly where I'm relying on the regulations for a point I make. One thing I should know, the FAR and the CFR are not identical. There are not a lot of differences, but there are some, and every year when SBA changes its regs, the FAR may be behind. It takes a while for changes to catch up to the FAR. Sometimes our regulations are going to be different from your regulations and in those cases we follow SBA regulations, not the FAR.

The COC process can only begin one place and that one place is the contracting officer. A company cannot come in and apply for a COC. They cannot say that a contracting officer treated them unfairly and they want to get a COC. SBA cannot intervene in a procurement and say this company needs to get a COC. The only thing that can start the process is a formal referral from the contracting officer to the SBA. As the last slide showed, a lot of companies don't apply. There are all kinds of reasons. I've heard, I can't even count the number of different reasons. Some good, some questionable over the years, but the decision to apply for a COC or not is entirely up to the firm. We do not try to encourage them to apply. We don't try to discourage them.

There are lots of factors that go into their decision and whatever their decision is, we honor it, but it should not be held against them just as past COC decisions shouldn't be held against them. Neither should their decision not to apply or even to apply. I have had companies that call me very concerned about whether applying or in some cases not applying is going to offend the contracting officer. Those calls are very real and of very serious concern to small businesses out there. The least I can do is point out that there are lots of reasons why a company may decide to do whatever it chooses and those reasons shouldn't be held against them.

SBA upon receiving a referral from a contracting officer and contacting the company, we'll certainly examine the reasons that the contracting officer cited for referring the company, the reasons that were laid out in the determination and non-responsibility, but SBA is not limited to looking at those. SBA can examine all of the pertinent regulations, all of the elements of responsibility and end up making its decision on other grounds then for which the contracting officer referred the company. For example, we have had an area for referrals for something like past performance where we ended up declining the COC based on limitations on subcontracting, and because our mandate is so broad, because we can look at all aspects of a company's performance, that's an additional guarantee to you that SBA within reasonable limits has got your back and as looking at the company as fully as possible in the very short time that's allotted.

Then, the next thing that I want to talk about that leads into the next topic really is, responsibility and responsiveness. I've spoken so far only of responsibility. A company cannot be referred to SBA for a COC unless that company has been found to be non-responsible for one or more reasons. There is a different legal concept called responsiveness. They are completely separate concepts and COCs can only be, or companies may only be referred to SBA for determination of non-responsibility, not non-responsiveness, because that's such a key subject, I want to dig into it a little bit more, so can we have slide 13 Chris.

Responsibility is defined in the FAR, you'll notice this, the definition I've cited at the bottom right corner of the slide. This entire slide is a direct quote, the entire slide. You've noticed, I've used a couple different colors here. The red is simply to call out to you what each section is about. Responsibility as it's defined in the FAR is a very broad concept and its intended basically to cover all aspects that go into a company's successful performance on a contract. Pretty much everything you can imagine that would affect whether or not a small business is able to perform successfully on a contract is comprised by one of these seven subsections, so financial, delivery or performance schedule, past performance, record integrity, and then all these other elements are here.

It is sufficient to create a referral on a company for a CO to find that a company lacked any one of these elements, but there's no bar in the sense that the CO may find that they lacked two or three or even more of the elements. It all depends on the CO's analysis and review of the company prior to making a ward. There has to be at least one reason, one basis of responsibility. In that regard, I want to point out the three elements of responsibility where I've highlighted language in green, or the ability to obtain them. It's a very important phrase. It doesn't apply in all of these cases for a reason. For example, we'll take the simplest one. This is the very first one, have adequate financial resources or the ability to obtain them. That means as of the date you award the contract, they don't necessarily have to have the money in the bank, so long as they can go into the bank and get a line of credit.

The point is that it's not simply the company has to have every single one of its ducks in a row on a date certain. In certain cases, the FAR acknowledges that the company has to have the ability to obtain resources, but not necessarily have them in place at a certain point. So long as the company can show that they're going to be able to get the financial resources, or that they're going to be able to get the appropriate technical skills in the workforce, or the appropriate technical equipment. They may not own it. Small businesses often don't own huge, very expensive pieces of equipment, that doesn't matter. So long as they're able to go out in the marketplace and lease that equipment from somebody else, or get that equipment for enough time to perform successfully on the contract, or the ability to obtain them is a very important phrase. Chris, let's move on to the next slide please.

Responsiveness. Responsiveness, as I said a moment ago, is very different from responsibility. In the first place, as a technical matter, responsiveness only applies to invitations for bid. If a proposal or a quote in an RFP or an RFQ comes in and it's what would be non-responsive, if it were a bid, it's simply called unacceptable, but the result's going to be the same and I'll explain that in a minute. What does responsiveness mean or more precisely, what does non-responsiveness mean? It's the first line of the second bullet point there. A bid that fails to conform to material terms and conditions of a solicitation. If for example, the solicitation says the delivery schedule is 180 days, period. You must be able to deliver the goods in 180 days and the bid says, yes, we'll have everything to you in 240 days. That is a non-responsive bid. The 180 days is clearly a material term or a material condition of the contract, and the company's clear inability or refusal to comply with that term means that its bid is non-responsive, and it shall be dismissed. In other words, it does not need to be considered any further. It's not a matter of non-responsibility. You don't have to go through the COC process. If the bid is non-responsive, it's dismissed from further consideration and the company is no longer considered.

The same concept applies to RFPs and RFQs. In that case, it's called unacceptable, and it gets a little more difficult here, because the FAR explicitly provides that a non-responsive bid shall be dismissed. The FAR does not explicitly provide that an unacceptable offer or proposal shall be dismissed. However, and I'll talk about this on the next slide, the Government Accountability Office in recent litigation before them has basically said that the same thing happens. One other very important point, and it comes up from time to time. As a matter of fact, I had a discussion with someone just this morning about this point.

One procuring activity evaluates a responsibility related factor on a pass fail basis as opposed to say ABCD, or comparatively. In that case, a company that gets a fail is essentially getting a determination of non-responsibility and the company is entitled to a COC option or invitation, if you will to see if they can overcome that. It has to be a responsibility related reason. Pass fail on other things doesn't matter, but if it's pass fail on a responsibility related element and the company gets a fail, that company is entitled to a COC to see if they can overcome the fail. That company has to be referred to SBA in order for them to have the option of applying for a COC for that purpose. Chris, slide 15 please.

I've had a lot of questions over the years about what exactly a non-responsive bid is, so I've stuck this slide in to help. Examples, the bid is late or it doesn't include a bond that was required by the solicitation. The amount of the bid is actually unclear or the solicitation requires them to have require us particular licenses or particular kind of quality assurance system. Any of those things cannot be fixed. A late bid is too late. There's nothing anybody can do to fix a late bid. Likewise, all those other things you'll notice what's a common bond. A common bond between them is the fact that they're all required to solicitation, required x and the company did not comply. They don't have the license. That is a non-responsive bid, and that is the end of the companies being considered.

The FAR, not SBA, the FAR also provides that a CO has to give bidders a chance to cure a minor deficiency or they have to waive it. For example, the solicitation says send three copies and they sent two, or everything was fine with the bid but they forgot to sign it. Those are considered by the FAR to be minor deficiencies and the FAR requires the CO to give the bidder a chance to cure that deficiency. This last paragraph here is the one I mentioned a moment ago on the previous slide. The FAR is very clear that a non-responsive bid is basically a dead bid. It's dismissed. It doesn't say that about our RFQs and our RFPs, but there have been several cases in the past several years and I'm citing just one to you. There are others and this is language from the GAO decision.

A proposal that fails to conform to a material term or condition of the solicitation is unacceptable and may not form the basis for an award, which is essentially saying. If the proposal or the offer is not responsive, or use the right language is unacceptable, it may not form the basis for an award in other words dismiss it. Move on. Chris, move onto the next slide please. Slide 16.

The determination on non-responsibility, as I said before is what starts the case. That's why only the CO can do it. We have to have a determination of non-responsibility in order to start the case because it tells us what the case is about. It tells us specifically what the contracting officer has found lacking in a company that is otherwise in-line for an award, but you have to have some kind of evidence. You can't just say in the determination, they have poor past performance. They don't have the technical expertise. They don't call in the equipment. There has to be some evidence, specific evidence to support the finding. Don't check a box on a form.

Some way, we deal with every agency in the government, and I think every agency and the government does it just a little bit differently. Some agencies have forms, some agencies have letters. Everybody does it differently and it doesn't matter how you do it, there's no template for it. There's no suggested form that SBA offers. You can do it however you want, but you have to make clear, what the element of responsibility is that's missing and on what you've based your conclusion that it's missing. Is it data from papers? Is it articles in trade journals? There has to be something that forms the basis of how you reached that conclusion.

The other thing is we do not share the determination non-responsibility with the company. You created the document; the document belongs to you and the freedom of information act prohibits us from sharing that. You are free to share it with the company if you wish. I have had COs that did not object to our sharing it. I have had COs that got apoplectic when I suggested sharing it, but keep in mind one thing. The only way the company can fairly respond to your objections is to know what those objections are. We paraphrase, we say they have concerns about your financial resources. They have concerns about your past performance.

Unless it's a very specific reason, unless it needs to be spelled out in some detail, we don't go into much detail. We go into enough detail that we believe is sufficient for them to understand what the objection is and know how to respond to it. Often the company will know what the issue is. Sometimes they won't and sometimes they'll ask us to share the determination with them. If that happens, we have to call you, because your document, your decision. I would just say in the interest of fairness, if not making the process the best they can be. Consider sharing as much of the form with the company as you can without compromising the integrity of the procurement. The more the company knows, the better their response, and the better the whole process. Next slide. Chris.

This is a new slide. This time I didn't, I have not used this slide for years and years and years, because integrity referrals are extreme, used to be extremely rare. One a year was a lot. We've gotten more more recently and the fact of the matter is they are and should be rare. A referral for integrity is not a referral, because you don't like their business practices. A referral for integrity is not because you're not sure that they're skating too close to the edge or not, that you have concerns about what's going on at the company. I've given you a quote here. Referral for integrity generally involve circumstances where a business or its principles were convicted or indicted for criminal offenses or are under investigation for such offenses. Please note at the bottom the third paragraph there.

An integrity case requires the submission of substantial evidence. When I get an integrity referral, the very first thing I do with it is give it to counsel, to this office to determine whether it is legally sufficient. There is a very high bar for an integrity referral. There are certainly valid ones and I've seen them over the years, but as a general rule it's not simply you have concerns. You have to in an integrity referral give us evidence that shows unethical or dishonest behavior or evidence of an actual indictment or a federal investigation. It is a very high bar. Slide 18 Chris.

This is a minor point, but a very important one. All referrals go to an SBA area office. We're a little agency, but we're complex. We have district offices, we have branch offices, we have regional offices and we have area offices. Area offices are called Area Office for government contracting. That's all we deal with. Government contracting and the FAR specifically says, that the matter has to be referred to the area office, serving the area where the headquarters of the offeror is located, not where you are, not where the contract's going to be performed, where the headquarters of the offeror is located.

Please don't send your referrals to your local SBA. They won't know what to do with it. I have had cases where it's sat in an office, because nobody in the district knew what to do with it. That's SBA's fault certainly, but it would have been much easier if whoever sent the package in the first place simply read the FAR. Please send your packages to the SBA area office. On that note, the next slide please. Chris.

I'm not really going to go through these. This is just a list of the application materials and it's partly here so you know what it is and it's partly here so you can see that it is substantial amount of work.

A business has stays, that's it. Six business days to fill out all these forms, answer lots and lots of questions and get back to SBA. Next slide please. Chris.

Chris: Slide 20.

Dave: Yeah, please. COC takes 15 business days. 15 business days is three weeks. Assuming there are no federal holidays and assuming that the company or SBA don't ask for an extension. Over the years I've been doing this, request for extension have become more numerous. There are good reasons for it and bad reasons for it, but we frequently get requests for extension from the company. In my case, I forward the email from the company. I asked them, tell me how much time you want and why you want it, but because it's your procurement only you can decide. SBA cannot grant an extension. SBA cannot decline a request for extension, your procurement, your decision only. You know how critical performance is and whether or not you can afford a little extra time.

On the other hand, please don't ask us to expedite for referral. Number one. It is almost a guarantee that there are numerous COCs pending it in an office at any time. In addition to which, the law provides a certain timeline. There is no way we can legally complete the process before the time has elapsed. The only exception would be where a company says, I'm not going to reply, and then the process is over. In that case, we close it, notify the CO, and they can move on to the next company. Slide 21, Chris.

We can issue a COC or we can decline a COC, that's it. There's no middle ground. Small businesses never have the right to an appeal, and depending on the value of the procurement, the CO's writes very. I think slide 22, Chris.

We'll address what those options are. Yeah. When SBA notifies the CO that we propose to issue a COC, the contracting officer can accept it and award the contract. That's what happens in about 98% or 99% of the cases, or they can ask the area director to suspend the case and then do one of the things that I've listed in that slide, items one through four there. The next slide, Chris, please.

This is in a nutshell what those options are. Less than $100,000, SBA's word is final, nobody can appeal it. Between 100,000 and 25 million, the CO can appeal the area office decision and any contract exceeding $25 million where the area office declines it, our word is final, but if we propose to issue it, SBA headquarters has to review it and make the final decision. Slide 24 please, Chris.

I've hit this pretty hard. Actually, before I forget, I think I skipped it on an earlier slide, and that is, one question that has come up frequently from COs around the country, electronic submission. Talk to your area office contact. SBA has authorized area offices to accept COC referrals in paper, hard copy only. It's a lot of work for us to print things out if it's submitted electronically. Different offices address the question of electronic submission in different ways, but the long and short of it is the best advice I can possibly give you on electronic submission is talk to your area office contact. There are usually work around for some documents that some area offices are willing to make, but as a general rule, paper copies only, hard copy only on the referral. It's a long and complicated issue, and I'm not spending enough time on it, but as I say, talk to the local contact. That's the best advice. As I've said several times, COC decisions, positive or negative, do not and should not be considered to set a precedent ever under any circumstances. It doesn't matter. Every case is separate, because every COC relates to a different procurement. Next slide please, Chris.

That's obvious, there are a lot of things we haven't talked about. I've gone pretty quickly and still, we don't have a lot of time for questions, but the last couple of slides are contacts for COCs, for size protests, and for what are called status or eligibility protests. Please feel free to make use of all of those contacts and I'll stop talking and let Gwen ask questions of me.

Gwen: Thank you, Dave. The first question that I'm going to ask you has come in from several different people. How does the SBA determine that a firm can obtain the financial resources and what is considered to make that determination?

Dave: The SBA has two kinds of people that investigate COC referrals or what it's called an industrial specialist who looks at everything that's not financial and a financial specialist who is going to examine the company's financial resources, period. That person talks to a lot of people, most specifically including talking to their bankers. Small businesses often have at least one and frequently more than one lender. They will sit down and talk to them about the company's banking relationship, how it's done historically, and the likelihood of getting a line of credit if it doesn't have one, or growing the line of credit if it already has one, but is drawn on the line that exists. They'll also talk to other customers. They'll talk to references. They talked to a lot of people. They examine all of their financial statements and their tax returns. Those are documents that are required to submit, so they will look very carefully into what the company's options for getting additional financing are as part of the review process.

Gwen: That kind of answers several of the financial questions, but I'll go through them and make sure that the answer is given. What if the small business is denied a line of credit?

Dave: It all depends on whether SBA concludes that line of credit is necessary for them to perform or not. As I've said, they submit a lot of financial documentation, not only tax returns but complete financial statements including cash flow projections to show how they would perform on this contract and how they finance it. At the end of the day, the decision is up to the financial specialist and I suppose I should spend about 30 seconds in process.

Six days is what's allotted to the financial and the industrial specialist to investigate the allegations made by the contracting officer. At the end of six days, the specialist write up a report and make a recommendation. That recommendation comes to the area office. The area office convenes a COC review. The function of that committee is to review the reports, look at the recommendations, look at the entire file, discuss everything and decide what to do based on what it sees in the report and the recommendation and in all the documentation that it's got from the procuring activity and from the firm. At that point, the committee votes and makes a recommendation to the area director for government contracting, who's the final word. There's a number of different people who are looking at all the documents before a final decision is actually rendered by SBA.

Gwen: Next question. What does SBA consider a reasonable time frame for a small business firm to obtain financial resources?

Dave: Again, that's going to be judged on a case by case basis. It depends partly on how much they need. It depends partly on how soon they can get it. It depends partly on how soon they'll we need it. It's possible that companies can finance the contract by themselves for the first six months and don't need financing in place until the seventh month. It such a case specific question that it's hard to answer more specifically than that.

Gwen: How does someone prove that they can get a loan or line of credit?

Dave: That's easy. The banks will issue letters of commitment, signed letters of commitment, basically, stating that they are willing to lend the money.

Gwen: Here's the question that I'm not exactly sure what time frame they're talking about. If that time frame cannot be met in time for performance to begin, and I'm not sure. I think that might be that 15 days that they have to set aside for the COC. Can the COs still use that as justification for determining non-responsibility?

Dave: I'm honestly not sure I follow the question. Go ahead.

Gwen: The time frame to obtain resources.

Dave: I'm sorry, I'm having trouble following the question. If SBA concludes at the end of the process that the company can't get the financing they need within a reasonable time period in order to make them successful on the contract, will decline to issue a COC.

Gwen: I think that answers that question. Someone asked if we were talking about a formal contracting officer's determination and finding of non-responsibility. I'm assuming that they're wondering if they send that to us, which I think you covered.

Dave: Yes, absolutely. That is, if there was one document in the package that I had to have in preference to any other, that would be it. That tells me what the referrals about.

Gwen: Then also, there is a question regarding a formal referral and they're wondering if that's to the SBA or to the firm, which we went over that and it does go to the SBA area office. What is the format for the formal referral? Is there a form?

Dave: There is no form. We have a checklist and we'll send that out to any CO who wants it. I should add that SBA has been working very hard the past couple of years on redoing its standard operating procedure, its SOP, governing internal procedures for the COC program. We've been operating under a 20-year old one for a long time. That SOP is in the final stages so I'm told, of approvals in Washington. One of the benefits of is, that there will be a fairly standardized checklist that goes not only to the contracting officers, but also that goes to the businesses once they get referred, so that the same checklist will work for any area office in the country, but there is a checklist of documents that we have to have. None of them have a template. There is no specific set form for a determination and non-responsibility so long as it has what I said back when I was discussing that, specific evidence, how did you reach the conclusion? You say they don't have X, why do you say that. We need evidence that you relied on to reach that conclusion.

Gwen: Somebody is asking what are reasons for requesting COC, why would that be reviewed by headquarters?

Dave: It would only be reviewed by headquarters if the procurement is over $25 million. The reason for it is that's what the law says. If we decline, if an area office declines to issue a COC in that case, that's the end of it. It's only in cases where the procurement is valued at over 25 million, and the area office proposes to issue a COC. I guess they figure we're not sophisticated enough out here in the flyover country to issue it on our own and be correct. Anytime the procurement's over 25 million and we propose to issue, we have to send it to Washington and this is not a long drawn out process. For them basically to look at everything and say, yes, you're right and issue it, or say, no, you're wrong, we're not issuing it.

Gwen: The last one I have is, the referencing slide 14, it's an offer does not have enough experience and it's a trade-off acquisition, what if they would not require a COC, but what if it's a low price, technically acceptable.

Dave: I don't know where to trade-off acquisition is.

Gwen: That's it for the source selection. If it's there are going through, if experience Trump's low price, that type of acquisition.

Dave: I'm sorry to do this to you. Can you repeat the question now that I understand the-?

Gwen: If it's an offer is, does not have enough experience and it's a trade-off, would they be referred for a COC? I'm assuming that they mean, if it's low price, technically acceptable, they would require a COC.

Dave: Yes. It sounds. Based on what I'm understanding of the question and I apologize, the answer is yes. I should add, again, as I said at the very top, feel free to give me a call with questions if we didn't get to your question, or if you didn't understand my answer, or something else occurs to you after we all hang up.

Gwen: That was my last question, Dave. Thank you.

Chris: Dave, thank you again for all the great information you provided today and we appreciate you being available after the training to address any additional questions that the attendees may have. As far as the attendees go, we are glad that you were able to finally join us again this month on today's call and we look forward to your continued participation. Thank you very much and have a great day.

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

[END OF TRANSCRIPT]