



U.S. Small Business
Administration



**SBA's
Certificate of Competency
(COC) Program –
What, How, When...
(and even a little why)**

Hosts

**Christopher Eischen, Procurement Center Representative
SBA Office of Government Contracting, Area IV,
Kansas City, MO**

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SBA Office of Government Contracting, Area IV,
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Welcome to “SBA Virtual Learning 2019”

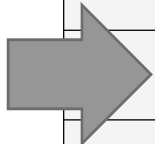
1. Questions answered during the final 10 minutes.
2. Technical problems: *Contact the moderator with a note in the chat box* or call the AT&T Support Desk at 1-888-796-6118.
3. Page numbers stated for those working off hard copies of the program.
4. We cover the “**SBA Quick Reference**” as time allows.
5. For more SBA training visit the SBA Learning Center website <https://www.sba.gov/tools/sba-learning-center/search/training>

FIRST WEDNESDAY VIRTUAL LEARNING SERIES

2019 SCHEDULE

1:00 to 2:00 Central Time

FY 2019	Date	Topic
1	October 3, 2018	Understanding the Non-Manufacturer Rule
2	November 7, 2018	Size and Affiliation
3	December 5, 2018	*National Day of Mourning*
4	January 9, 2019	*Government Shutdown*
5	February 13, 2019	Certificate of Competency (COC) Program
6	March 6, 2019	Joint Ventures
7	April 3, 2019	Market Research
8	May 1, 2019	8(a) Program
9	June 5, 2019	Service Disabled Veteran Owned (SDVOSB) Program
10	July 10, 2019	Regulation Updates
11	August 7, 2019	All Small Mentor Protégé Program



The program schedule is for information only and is subject to change.

One Continuous Learning Point

- Self-service: Using the PowerPoint that was sent with your invitation for this training event, fill in your name on the certificate slide and save. Download the certificate and print for your records. You submit your request for training credit IAW your agency policy, i.e. FAITAS.
- Phoning in only: If you listen in groups and you want all attendees to be included on the future mailing list, send email addresses of participants in an excel document to sbalearning@sba.gov.

Today's Speaker

David Gordon
COC Coordinator– Area IV
Office of Government Contracting
U.S. Small Business Administration

What is the (COC) Program?

- Offers a **small business** that is an **apparent successful offeror** to “appeal” a Contracting Officer’s finding that it is “non-responsible” (i.e., that it can’t perform successfully).
- A COC applicant must overcome the CO’s objections; if it does, SBA will certify that it is responsible and the CO must award the contract (or appeal SBA’s decision).
- If COC granted, SBA issues letter stating that the small business is responsible for the purposes of performing **this** contract only.

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COCs apply to all procurements... ...but are only specific to one

- The COC Program applies to all Government acquisitions, including unrestricted procurements.
- “A Contracting Officer ***shall***, upon determining an apparent successful small business offeror to be non-responsible, refer that small business to the SBA for a possible COC....” The law requires a referral to SBA.
FAR §19.601(c) and 13 C.F.R. §125.5(a)(1) and (2)
- Only one referral at a time (unless MAC).
- The results of a COC are specific to the solicitation. They are never “transferable” to any other procurement.

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Program not a “rubber stamp”

For FY2013-FY2018, nationally:

- Only 55% of companies referred to SBA actually applied for a COC. Likely to be many different reasons for the decision not to apply for a COC.
- SBA issued COCs to about 52% of applicants (historically, the number has been closer to 50%). Although a CO may, in some circumstances, appeal SBA’s decision to SBA HQ, a small business has no right of appeal.

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Basic COC information

- Governing regulations: 13 C.F.R. §125.5 and FAR subpart 19.6.
- The CO's determination that a small business is "non-responsible" is the **only** thing that can begin the COC process.
- A firm's choice not to file for a COC is not a black mark. There may be many good reasons for not applying. If a firm chooses to apply, the burden of proof lies with the company to overcome the CO's objections.
- SBA may also decline to issue a COC for reasons not cited in the CO's determination.
- Respons**ibility** and respons**iveness** are different legal concepts. COCs can **only** arise on a finding of non-respons**ibility**.

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Responsibility

“To be considered responsible, a prospective contractor must:

- (a) Have adequate **financial** resources...or the ability to obtain them...;
- (b) Be able to comply with the required or proposed delivery or performance **schedule**, taking into consideration all existing...business commitments;
- (c) Have a satisfactory **performance record** ...
- (d) Have a satisfactory record of **integrity** and business ethics;
- (e) Have the necessary **organization, experience, accounting and operational controls, and technical skills**, or the ability to obtain them...;
- (f) Have the necessary **production, construction, and technical equipment and facilities**, or the ability to obtain them... ; and
- (g) Be otherwise qualified and eligible to receive an award....”

FAR §9.104-1

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Responsiveness, page 1

- Only bids can be non-responsive. Offers and proposals on RFPs and RFQs can be deemed “unacceptable.” End result the same.
- If it fails to conform to material terms and conditions of solicitation:
 - a **BID** is considered non-responsive and shall be dismissed (i.e., not considered) (FAR §14.404-2)
 - an **OFFER** or **PROPOSAL** is considered unacceptable and per GAO (next slide) no award can be made to that offeror.
- When a procuring activity evaluates a responsibility-related factor on a pass/fail basis (rather than comparatively), a “fail” is considered a determination of non-responsibility and the company must be referred to SBA for a COC.

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Responsiveness, page 2

Examples of *non-responsive bids*: it's late; doesn't include a required bond; the bid amount is unclear; bidder doesn't have required licenses or QA system; offers a different delivery schedule, etc.

FAR §14.301

A Contracting Officer must give bidders a chance to cure a minor deficiency or must waive it. (E.g., wrong number of copies of the bid; failing to sign the bid; forgetting to attach a required item (financial statements, certificates, licenses...))

FAR §14.405

Offers/proposals cannot be “non-responsive” but “...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.*” MT & Associates, LLC, B-410066, Oct. 17, 2014, at page 6.

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Referring COCs to SBA

- The Determination of Non-Responsibility is key. It is what the entire case is about.
- Do not simply cite a FAR provision or check a box. A valid referral **must include specific evidence to support the finding**. Always include a recent PAS, if available, or other evidence being relied upon (FAPIIS, D&B, PPIRS, etc.)
- Consider sharing as much of the DNR with the firm as possible; SBA notification cannot/does not include DNR, just a summary.

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Integrity Referrals

True integrity referrals are—and should be—quite rare. A referral for integrity “generally involves circumstances where a business or its principals were **convicted or indicted** for **criminal** offenses or are under investigation for such offenses.”

Actions which “indicate unethical or dishonest behavior, such as violation of Federal labor laws or Federal or State laws against environmental pollution” might also suffice.

No integrity case can proceed without the submission of “**substantial evidence**” from the CO.

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ALL referrals go to an SBA **Area** Office

The Contracting Officer “must refer the matter in writing to the SBA Government Contracting Area Office serving the area [i.e., state] in which the headquarters of the offeror is located.”

13 C.F.R. §125.5(c)(1) and FAR §19.602-1(a)(2)

PLEASE

Do not send COC referrals to your local SBA District Office or to SBA Headquarters. Doing so guarantees a delay in processing.

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Application materials

Applying for a COC involves substantial time and effort.

- SBA Form 1531 (Application for COC);
- SBA Form 355 (Application for Size Determination);
- Extensive questions covering all aspects of performance;
- Cash flow projections both with and without the contract plus tax returns plus financial statements (if relevant);
- Other information depending upon referral plus any additional information the applicant believes will demonstrate its ability to perform successfully.

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How long does a COC take?

- “Contract award must be withheld by the contracting officer for a period of 15 working days (or longer if agreed...) following receipt...of a complete referral which includes all required documentation.”
13 CFR §125.5(c)(2)
- We **cannot** expedite referrals; the law prescribes a minimum period and other cases are already pending.
- Extensions are frequently requested by the applicant company (and sometimes by SBA). Please consider whether you can agree.
- If a business declines to apply, SBA closes the case and notifies the CO who can make award to the next firm in line.

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Issuance or Decline

- SBA can issue a COC or decline to issue a COC.
- If SBA declines to issue a COC, the Contracting Officer is free to move to the next apparent successful offeror—which could be the subject of a separate COC referral.
- The small business has no right to appeal a decline.
- If SBA declines to issue a COC, a Contracting Officer **may still award** to the company referred (i.e., direct award) if the CO makes a formal finding that the company is, in fact, responsible.

13 CFR §125.5(n) and FAR §19.602-4(a)

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What if SBA proposes to issue COC?

When SBA notifies a Contracting Officer that it proposes to issue a COC, the CO can either:

- accept the COC and award the contract

or

- ask the SBA Area Director to suspend the case.

The CO must then *either*:

- i. ask to review a detailed written rationale for SBA's decision;
- ii. ask to meet to review all documentation in the file;
- iii. submit information the CO believes SBA did not consider; or
- iv. appeal the proposed COC issuance to SBA headquarters.

13 C.F.R. §125.5(h) and (i) and FAR §19.602-3

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Appeal options

Contracts valued at less than \$100,000:

The decision of the SBA Area Office is final. The CO cannot appeal SBA's decision.

Contracts valued between \$100,000 and \$25 million:

The CO can appeal decision to issue COC to SBA HQ.

Contracts exceeding \$25 million:

An Area Office may decline a COC on its own authority. If it proposes to issue a COC, it must refer the case to SBA HQ which will make the final decision.

13 C.F.R. §125.5(g) and FAR §19.602-2(f)

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COC decisions set *no precedent*

Failure to receive a COC is not and should never be considered a “black mark” against a business. It is never a basis for a decline in any other referral. No past COC decision, either positive or negative, has any effect on any other referral.

Every case is considered separately because a COC is valid only for the specific contract at issue; a company (in)capable of performing successfully on one contract may or may not be qualified to perform on another contract.

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...other highly relevant stuff

This presentation is not complete: we haven't discussed a number of important topics or how SBA investigates and evaluates a firm that has applied for a COC.

Those topics are covered in 13 C.F.R. §125.5 and in SOP 60 04. The SOP is in the final stages of being completely revised and SBA is also publishing proposed changes to our regulations affecting different aspects of the COC program, including referrals.

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Where to send COC referrals

If the HQ of the offeror is located in:

AREA I

CT, ME, MA, NH, NJ, NY, RI, VT

AREA II

DE, DC, MD, PA, VA, WV

AREA III

AL, FL, GA, KY, MS, NC, SC, TN

AREA IV

IL, IN, IA, KS, MI, MN, MO, NE,
OH, WI

AREA V

AR, CO, LA, MT, ND, NM, OK, SD,
TX, UT, WY

AREA VI

AK, AZ, CA, HI, ID, NV, OR, WA

the COC must be sent to:

Carolyn Clark, Admin. Specialist
U.S. Small Business Administration
Office of Government Contracting, Area I
26 Federal Plaza, Room 3100
New York, NY 10278

carolyn.clark@sba.gov
(212) 264-3231

Adrian Groth, COC Specialist
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

adrian.groth@sba.gov
(202) 205-6840

Gary Heard, COC Coordinator
U.S. Small Business Administration
Building 5303, Room 3135
Redstone Arsenal, AL 35898

gary.heard@sba.gov
(256) 842-6240

David Gordon, COC Coordinator
U.S. Small Business Administration
500 West Madison Street, Suite 1150
Chicago, IL 60661

david.gordon@sba.gov
(312) 353-7674

Mia Fagley, Industrial Specialist
U.S. Small Business Administration
721 19th Street, Suite 426
Denver, CO 80202-2517

mia.fagley@sba.gov
(303) 927-3247

Marina Laverdy, COC Coordinator
U.S. Small Business Administration
330 N. Brand Blvd., Suite 1200
Glendale, CA 91203

marina.laverdy@sba.gov
(818) 552-3306

Status/eligibility protest contacts

HUBZone

Arthur Collins, Director
U.S. Small Business Administration
409 Third Street, S.W., 8th floor
Washington, D.C. 20416
(202) 205-6285
arthur.collins@sba.gov

SDVOSB (VA solicitations only)
Department of Veterans Affairs
VA Center for Veterans Enterprises
810 Vermont Avenue, N.W.
Washington, D.C. 20420
(202) 303-3301

8(a)

Robert Watkins, Deputy Assoc. Admin.
U.S. Small Business Administration
409 Third Street, S.W., 8th floor
Washington, D.C. 20416
(202) 619-1732
robert.watkins@sba.gov

SDVOSB (all others)

Ajoy Sinha, Deputy Director
U.S. Small Business Administration
409 Third Street S.W., 8th floor
Washington, D.C. 20416
(202) 205-1904
ajoy.sinha@sba.gov

Size protest contacts

If HQ of the protested concern is in:

Please contact the following:

AREA I

CT, ME, MA, NH, NJ, NY, RI, VT

Janette Fasano, Area Director
SBA Office of Government Contracting
10 Causeway Street, Room 416
Boston, MA 02222-1093

janette.fasano@sba.gov
(617) 565-5622
Fax: (617) 565-8186

AREA II

DE, DC, MD, PA, VA, WV

Helen Goza, Size Program Specialist
SBA Office of Government Contracting
1150 First Ave, Suite 1001
King of Prussia, PA 19406

helen.goza@sba.gov
(610) 382-3190
Fax: (202) 481-0301

AREA III

AL, FL, GA, KY, MS, NC, SC, TN

Ivette Mesa Bascumbe, Size Coordinator
SBA Office of Government Contracting
51 SW 1st Avenue, Suite 201
Miami, FL 33130

ivette.bascumbe.mesa@sba.gov
(305) 536-5749
Fax: (202) 481-2273

AREA IV

**IL, IN, IA, KS, MI, MN, MO, NE,
OH, WI**

David Gordon, Size Program Manager
SBA Office of Government Contracting
500 West Madison Street, Suite 1150
Chicago, IL 60661

david.gordon@sba.gov
(312) 353-7674
Fax: (202) 481-1842

AREA V

**AR, CO, LA, MT, ND, NM, OK, SD,
TX, UT, WY**

Stephanie Lewis, Size Specialist
SBA Office of Government Contracting
4300 Amon Carter Boulevard
Fort Worth, TX 76115

stephanie.lewis
(817) 684-5303
Fax: (202) 481-5641

AREA VI

AK, AZ, CA, HI, ID, NV, OR, WA

Esmeralda Sanchez, Size Specialist
SBA Office of Government Contracting
455 Market Street, Suite 600
San Francisco, CA 94105

esmeralda.sanchez@sba.gov
(415) 744-4242
Fax: (202) 481-1607

Questions





“SBA Quick Reference”

Summary of CFR Regulations

SBA Size Regulations	13 CFR Part 121
HUBZone Regulations	13 CFR 126.616
SBA Certificate of Competency	13 CFR 125.5
Service-Disabled Veteran	13 CFR 125.15(b)
8(a) and SDB Regulations	13 CFR 124.513
Small Disadvantaged Business	13 CFR 124.1002(f)
WOSB Program	13 CFR 127
SBA Prime Contracting	13 CFR 125.2
SBA Subcontracting	13 CFR 125.3

Types of SBA Contacts and Offices

- A. SBA Government Contracting Area Offices
 - 1. SBA Procurement Center Representatives (PCRs)
 - 2. SBA Commercial Market Representatives (CMRs)

- B. SBA District Offices
 - 1. Business Opportunity Specialists (BOS)

- C. SBA Regional Offices

- D. SBA Headquarters