



U.S. Small Business
Administration



Certificate of Competency (COC) Program

First Wednesday Virtual Learning Series 2020

Hosts

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Kansas City, MO**

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Welcome to “SBA Virtual Learning 2020”

1. Questions answered during the final 10 minutes.
2. Technical problems: Contact the moderator with a note or call AT&T Support Desk at 301-250-7202.
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>

Association of Procurement Technical Assistance Centers (APTAC)

Procurement Technical Assistance Centers are a vital resource partner.

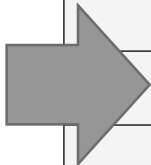
- APTAC posts past “First Wednesday” programming at this link: <http://www.aptac-us.org/for-contracting-officers-sba-webinar-library/>
- Contracting officer resources: “How PTACs partner with federal agencies”: <http://www.aptac-us.org/federal-partners/>
- Find your nearest Procurement Technical Assistance Center at <http://www.aptac-us.org>

FIRST WEDNESDAY VIRTUAL LEARNING SERIES

FY 2020 SCHEDULE

1:00 to 2:00 PM Central Time

FY 2020	Date	Topic
1	October 2, 2019	Size & Affiliation
2	November 6, 2019	Understanding the Non-Manufacturer Rule
3	December 4, 2019	Subcontracting Plans
4	January 8, 2020	Surveillance Reviews
5	February 5, 2020	Historically Underutilized Business Zone (HUBZone) Program
6	March 4, 2020	Certificate of Competency (COC)
7	April 1, 2020	Subcontracting Reform and Enforcement
8	May 6, 2020	Procurement Center Representative (PCR) functions
9	June 3, 2020	Regulation Updates
10	July 1, 2020	Woman Owned Small Business (WOSB) Program
11	August 5, 2020	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.

“SBA 1st Wednesday Virtual Learning 2020”

This Certificate is awarded to

Insert Your Name Here

For completion of

Certificate of Competency (COC) Program

This training seminar may be credited towards “Continuous Learning Points” as described in OFPP Policy Letter 05-01. Recommendation of One CLP.



Pamela J. Beavers
Director, Area IV
SBA Office of Government Contracting

03/04/2020

DATE

Today's Speaker

Mia Fagley
Industrial Specialist, Area V
U.S. Small Business Administration



SBA's Certificate of Competency (COC) Program – What, How, When...

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 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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CO Referral Package

Complete COC referral packages must be single sided, unstapled, and include the following information:

- A letter of referral from the contracting agency which should include:
 - The firm name, address and DUNS number;
 - Name of a firm official, title, phone number and email address;
 - Area(s) of non-responsibility (Capacity, Credit, Integrity, Tenacity, or Perseverance);
 - The firm's bid price (base period of the contract);
 - Solicitation number and the name of the item or service being procured;
 - The NAICS code assigned to the solicitation;
 - Indicate whether the solicitation has been set aside for small business or is a full and open competition; and
 - Contracting Officer's address, phone number, and email address.

 - A copy of the full solicitation, IFB or RFP (can be on a disc or flash drive);
 - All amendments to the solicitation;
 - Offer submitted by the concern whose responsibility is at issue for the procurement (its best and final offer for a negotiated procurement);
 - Abstract of Bids, where applicable, or the Contracting Officer's price negotiation memorandum;
 - Pre-award Survey (most recent, no older than 180 days);
 - Contracting Officer's written determination and finding of non-responsibility (must be a separate document from the referral letter);
 - Technical data package (including drawings, specifications, and Statement of Work); and
- Any other justification and documentation used to arrive at the non-responsibility determination.

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 any SBA or to SBA Headquarters without contacting the COC specialist for that area. Doing so may cause 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.
- An instruction sheet is provided to all applicants with 20 items that must be submitted or addressed

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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

Contract base valued at less than SAT:

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

Contract base valued between \$100,000 and \$25 million:

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

Contracts base 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

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Questions?

