Subpart 19.6 - Certificates of Competency and Determinations of Responsibility

Parent topic: Part 19 - Small Business Programs

19.601 General.

(a) A Certificate of Competency (COC) is the certificate issued by the Small Business Administration (SBA) stating that the holder is responsible (with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, tenacity, and limitations on subcontracting) for the purpose of receiving and performing a specific Government contract.

(b) The COC program empowers the SBA to certify to Government *contracting officers* as to all elements of responsibility of any small business *concern* to receive and perform a specific Government contract. The COC program does not extend to questions concerning regulatory requirements imposed and enforced by other *Federal agencies*.

(c) The COC program is applicable to all Government *acquisitions* except for 8(a) sole-source awards. A *contracting officer shall*, upon determining an apparent successful small business *offeror* to be nonresponsible, refer that small business to the SBA for a possible COC, even if the next acceptable *offer* is from a small business.

(d) When a *solicitation* requires a small business to adhere to the limitations on subcontracting, a *contracting officer*'s finding that a small business cannot comply with the limitation *shall* be treated as an element of responsibility and *shall* be subject to the COC process. When a *solicitation* requires a small business to adhere to the definition of a nonmanufacturer, a *contracting officer*'s determination that the small business does not comply *shall* be processed in accordance with subpart 19.3.

(e) *Contracting officers*, including those located overseas, are required to comply with this subpart for U.S. small business *concerns*.

(f) For the purpose of receiving a COC on an unrestricted *acquisition*, a small business nonmanufacturer *may* furnish any end item produced or manufactured in the *United States* or its *outlying areas*.

19.602 Procedures.

19.602-1 Referral.

(a) Upon determining and documenting that an apparent successful small business *offeror* lacks certain elements of responsibility (including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, tenacity, and limitations on subcontracting, but for *sureties* see 28.101-3(f) and 28.203-1(e)), the *contracting officer shall*-

(1) Withhold contract award (see 19.602-3); and

(2) Refer the matter to the cognizant SBA Government *Contracting* Area Office (Area Office) serving the area in which the headquarters of the *offeror* is located, in accordance with agency procedures, except that referral is not necessary if the small business *concern*-

(i) Is determined to be unqualified and *ineligible* because it does not meet the standard in 9.104-1(g), provided, that the determination is approved by the chief of the *contracting office*; or

(ii) Is suspended or debarred under Executive Order 11246 or subpart 9.4.

(b) If a partial set-aside is involved, the *contracting officer shall* refer to the SBA the entire quantity to which the *concern may* be entitled, if responsible.

(c) The referral *shall* include-

(1) A notice that a small business *concern* has been determined to be nonresponsible, specifying the elements of responsibility the *contracting officer* found lacking; and

(2) If applicable, a copy of the following:

(i) *Solicitation*.

(ii) Final *offer* submitted by the *concern* whose responsibility is at issue for the *procurement*.

(iii) Abstract of bids or the *contracting officer*'s price negotiation memorandum.

(iv) *Preaward survey*.

(v) *Technical data* package (including drawings, specifications and statement of work).

(vi) Any other justification and documentation used to arrive at the nonresponsibility determination.

(d) For any single *acquisition*, the *contracting officer shall* make only one referral at a time regarding a determination of nonresponsibility.

(e) Contract award *shall* be withheld by the *contracting officer* for a period of 15 business days (or longer if agreed to by the SBA and the *contracting officer*) following receipt by the appropriate SBA Area Office of a referral that includes all required documentation.

19.602-2 Issuing or denying a Certificate of Competency (COC).

Within 15 business days (or a longer period agreed to by the SBA and the *contracting* agency) after receiving a notice that a small business *concern* lacks certain elements of responsibility, the SBA Area Office will take the following actions:

(a) Inform the small business *concern* of the *contracting officer*'s determination and *offer* it an opportunity to apply to the SBA for a COC. (A *concern* wishing to apply for a COC *should* notify the SBA Area Office serving the geographical area in which the headquarters of the *offeror* is located.)

(b) Upon timely receipt of a complete and acceptable application, elect to visit the applicant's facility to review its responsibility.

(1) The COC review process is not limited to the areas of nonresponsibility cited by the *contracting officer*.

(2) The SBA *may*, at its discretion, independently evaluate the COC applicant for all elements of responsibility, but *may* presume responsibility exists as to elements other than those cited as deficient.

(c) Consider denying a COC for reasons of nonresponsibility not originally cited by the *contracting officer*.

(d) When the Area Director determines that a COC is warranted (for contracts valued at $25,000,000 or less), notify the *contracting officer* and provide the following *options*:

(1) Accept the Area Director's decision to issue a COC and award the contract to the *concern*. The COC issuance letter will then be sent, including as an attachment a detailed rationale for the decision; or

(2) Ask the Area Director to suspend the case for one or more of the following purposes:

(i) To permit the SBA to forward a detailed rationale for the decision to the *contracting officer* for review within a specified period of time.

(ii) To afford the *contracting officer* the opportunity to meet with the Area Office to review all documentation contained in the case file and to attempt to resolve any issues.

(iii) To submit any information to the SBA Area Office that the *contracting officer* believes the SBA did not consider (at which time, the SBA Area Office will establish a new suspense date mutually agreeable to the *contracting officer* and the SBA).

(iv) To permit resolution of an appeal by the *contracting* agency to SBA Headquarters under 19.602-3. However, there is no *contracting officer*'s appeal when the Area Office proposes to issue a COC valued at $100,000 or less.

(e) At the completion of the process, notify the *concern* and the *contracting officer* that the COC is denied or is being issued.

(f) Refer recommendations for issuing a COC on contracts greater than $25,000,000 to SBA Headquarters.

19.602-3 Resolving differences between the agency and the Small Business Administration.

(a) COCs valued between $100,000 and $25,000,000.

(1) When disagreements arise about a *concern*'s ability to perform, the *contracting officer* and the SBA *shall* make every effort to reach a resolution before the SBA takes final action on a COC. This *shall* be done through the complete exchange of information and in accordance with agency procedures. If agreement cannot be reached between the *contracting officer* and the SBA Area Office, the *contracting officer shall* request that the Area Office suspend action and refer the matter to SBA Headquarters for review. The SBA Area Office *shall* honor the request for a review if the

contracting officer agrees to withhold award until the review process is concluded. Without an agreement to withhold award, the SBA Area Office will issue the COC in accordance with applicable SBA regulations.

(2) SBA Headquarters will furnish written notice to the procuring agency's Director of the, *Office of Small and Disadvantaged Business Utilization* (OSDBU) or, for the Department of Defense, the Director of the Office of Small Business Programs, or other designated official (with a copy to the *contracting officer*) that the case file has been received and that an appeal decision *may* be requested by an authorized official.

(3) If the *contracting* agency decides to file an appeal, it *must* notify SBA Headquarters through its procuring agency's Director, OSDBU, or other designated official, within 10 business days (or a time period agreed upon by both agencies) that it intends to appeal the issuance of the COC.

(4) The appeal and any supporting documentation *shall* be filed by the procuring agency's Director, OSDBU, or other designated official, within 10 business days (or a period agreed upon by both agencies) after SBA Headquarters receives the agency's notification in accordance with paragraph (a)(3) of this subsection.

(5) The SBA Associate Administrator for Government *Contracting* will make a final determination, *in writing*, to issue or to deny the COC.

(b) SBA Headquarters' decisions on COCs valued over $25,000,000.

(1) Prior to taking final action, SBA Headquarters will contact the *contracting* agency and *offer* it the following *options*:

(i) To request that the SBA suspend case processing to allow the agency to meet with SBA Headquarters personnel and review all documentation contained in the case file; or

(ii) To submit to SBA Headquarters for evaluation any information that the *contracting* agency believes has not been considered.

(2) After reviewing all available information, the SBA will make a final decision to either issue or deny the COC.

(c) Reconsideration of a COC after issuance.

(1) The SBA reserves the right to reconsider its issuance of a COC, prior to contract award, if-

(i) The COC applicant submitted false information or omitted materially adverse information; or

(ii) The COC has been issued for more than 60 days (in which case the SBA *may* investigate the firm's current circumstances).

(2) When the SBA reconsiders and reaffirms the COC, the procedures in subsection 19.602-2 do not apply.

(3) Denial of a COC by the SBA does not preclude a *contracting officer* from awarding a contract to the referred *concern*, nor does it prevent the *concern* from making an *offer* on any other *procurement*.

19.602-4 Awarding the contract.

(a) If new information causes the *contracting officer* to determine that the *concern* referred to the SBA is actually responsible to perform the contract, and award has not already been made under paragraph (c) of this subsection, the *contracting officer shall* reverse the determination of nonresponsibility, notify the SBA of this action, withdraw the referral, and proceed to award the contract.

(b) The *contracting officer shall* award the contract to the *concern* in question if the SBA issues a COC after receiving the referral. An SBA-certified *concern shall* not be required to meet any other requirements of responsibility. SBA COC's are conclusive with respect to all elements of responsibility of prospective small business contractors. Where SBA issues a COC, the *contracting officer may* decide not to award to that *offeror* for reasons unrelated to responsibility.

(c) The *contracting officer shall* proceed with the *acquisition* and award the contract to another appropriately selected and responsible *offeror* if the SBA has not issued a COC within 15 business days (or a longer period of time agreed to with the SBA) after receiving the referral.