

## § 125.26

must deliver their protests in person, by facsimile, by express delivery service, or by U.S. mail (postmarked within the applicable time period) to the contracting officer. The contracting officer or SBA must submit their written protest directly to the Associate Administrator for Government Contracting.

(d) *Timeliness.* (1) For negotiated acquisitions, an interested party must submit its protest by close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror.

(2) For sealed bid acquisitions, an interested party must submit its protest by close of business on the fifth business day after bid opening.

(3) Any protest submitted after the time limits is untimely, unless it is from SBA or the CO.

(4) Any protest received prior to bid opening or notification of intended awardee, whichever applies, is premature.

(e) *Referral to SBA.* The contracting officer must forward to SBA any non-premature protest received, notwithstanding whether he or she believes it is sufficiently specific or timely. The contracting officer must send all protests, along with a referral letter, directly to the Associate Administrator for Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416 or by fax to (202) 205-6390, marked Attn: Service-Disabled Veteran Status Protest. The CO's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including: the solicitation number; the name, address, telephone number and facsimile number of the CO; whether the contract was sole source or set-aside; whether the protester submitted an offer; whether the protested concern was the apparent successful offeror; whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when the protest was submitted to the CO; and whether a contract has been awarded.

## 13 CFR Ch. I (1-1-05 Edition)

### § 125.26 What are the grounds for filing an SDVO SBC protest?

(a) *Status.* In cases where the protest is based on a service-connected disability or veteran status, the Associate Administrator for Government Contracting will only consider a protest alleging that the owner(s) cannot provide documentation from the U.S. Department of Veterans Affairs or U.S. Department of Defense to show that they meet the definition of service-disabled veteran set forth in § 125.8; or

(b) *Ownership and control.* In cases where the protest is based on ownership and control, the Associate Administrator for Government Contracting will consider a protest only if the protestor presents credible evidence that the concern is not 51% owned and controlled by one or more service-disabled veterans. In the case of a veteran with a permanent and severe disability, the protestor must present credible evidence that the concern is not controlled by the veteran, spouse or permanent caregiver of such veteran or that the veteran does not have a permanent and severe disability.

### § 125.27 How will SBA process an SDVO protest?

(a) *Notice of receipt of protest.* Upon receipt of the protest, SBA will notify the contracting officer and the protestor of the date SBA received the protest and whether SBA will process the protest or dismiss it under paragraph (b) of this section.

(b) *Dismissal of protest.* If SBA determines that the protest is premature, untimely, nonspecific, or is based on non-protestable allegations, SBA will dismiss the protest and will send the contracting officer and the protestor a notice of dismissal, citing the reason(s) for the dismissal. The dismissal notice must also advise the protestor of his/her right to appeal the dismissal to SBA's Office of Hearings and Appeals (OHA) in accordance with part 134 of this chapter.

(c) *Notice to protested concern.* If SBA determines that the protest is timely, sufficiently specific and is based upon protestable allegations, SBA will:

(1) Notify the protested concern of the protest and of its right to submit information responding to the protest

within five business days from date of the notice; and

(2) Forward a copy of the protest to the protested concern, with a copy to the contracting officer if one has not already been made available.

(d) *Time period for determination.* SBA will determine the SDVO SBC status of the protested concern within 15 business days after receipt of the protest, or within any extension of that time which the contracting officer may grant. SBA. If SBA does not issue its determination within the 15-day period, the contracting officer may award the contract, unless the contracting officer has granted SBA an extension.

(e) *Notification of determination.* SBA will notify the contracting officer, the protestor, and the protested concern in writing of its determination.

(f) *Effect of determination.* SBA's determination is effective immediately and is final unless overturned by OHA on appeal. If SBA sustains the protest, the concern may not submit another offer as an SDVO SBC on a future SDVO SBC procurement unless it overcomes the reasons for the protest (*e.g.*, it meets the size standard under a different NAICS code or changes its ownership to satisfy the definition of an SDVO SBC set forth in § 125.8).

#### **§ 125.28 What are the procedures for appealing an SDVO status protest?**

The protested concern, the protestor, or the contracting officer may file an appeal of an SDVO status protest determination with OHA in accordance with part 134 of this chapter.

### **Subpart E—Penalties and Retention of Records**

SOURCE: 69 FR 25270, May 5, 2004, unless otherwise noted.

#### **§ 125.29 What penalties may be imposed under this part?**

(a) *Suspension or debarment.* The Agency debarring official may suspend or debar a person or concern pursuant to the procedures set forth in part 145 of this chapter. The contracting agency debarring official may debar or suspend a person or concern under the Federal Acquisition Regulation, 48 CFR Part 9, subpart 9.4.

(b) *Civil penalties.* Persons or concerns are subject to severe civil penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, and any other applicable laws.

(c) *Criminal penalties.* Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the SDVO status of a SBC in connection with procurement programs pursuant to section 16 of the Small Business Act, 15 U.S.C. 645, as amended; 18 U.S.C. 1001; and 31 U.S.C. 3729–3733. Persons or concerns also are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct “continuing representations” that are no longer true.

## **PART 126—HUBZONE PROGRAM**

### **Subpart A—Provisions of General Applicability**

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- 126.100 What is the purpose of the HUBZone program?  
 126.101 Which government departments or agencies are affected directly by the HUBZone program?  
 126.102 What is the effect of the HUBZone program on the section 8(d) subcontracting program?  
 126.103 What definitions are important in the HUBZone program?

### **Subpart B—Requirements to be a Qualified HUBZone SBC**

- 126.200 What requirements must a concern meet to receive SBA certification as a qualified HUBZone SBC?  
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