

19.306 Protesting a firm's status as a HUBZone small business concern.

(a) *Definition.* As used in this section-

Interested party has the meaning given in 13 CFR 126.103.

(b)

(1) For sole-source *procurements*, SBA or the *contracting officer* may protest the prospective contractor's certified *HUBZone* status; for all other *procurements*, SBA, the *contracting officer*, or any other *interested party* may protest the apparent successful *offeror's* certified *HUBZone* status (see [13 CFR 126.800](#)).

(2) The Director of SBA's Office of the *HUBZone* Program will determine whether the *concern* has certified *HUBZone* status. If SBA upholds the protest, SBA will remove the *concern's* *HUBZone* status in the Dynamic Small Business Search (DSBS). SBA's protest regulations are found in subpart H "Protests" at [13 CFR 126.800](#) through [126.805](#).

(c) Protests relating to small business size status are subject to the procedures of [19.302](#). An *interested party* seeking to protest both the small business size and *HUBZone* status of an apparent successful *offeror* shall file two separate protests. Protests relating to small business size status for the *acquisition* and the *HUBZone* eligibility requirements will be processed concurrently by SBA.

(d)

(1) All protests *must* be *in writing* and *must* state all specific grounds for the protest (*i.e.*, why the protested *concern* did not meet the eligibility requirements at [13 CFR 126.200](#) at the time of the *concern's* application to SBA for certification as a *HUBZone* small business *concern* or at the time SBA certified or last recertified the *concern* as a *HUBZone* small business *concern*). Assertions that a protested *concern* is not a *HUBZone* small business *concern*, without setting forth specific facts or allegations, will not be considered by SBA (see [13 CFR 126.801\(b\)](#)).

(2) Protests filed against a *HUBZone* joint venture *must* state one or, if applicable, both of the following:

(i) Why the *HUBZone* small business party to the joint venture did not meet the eligibility requirements at [13 CFR 126.200](#) at the time of its application to SBA for certification or at the time SBA certified or last recertified the *concern* as a *HUBZone* small business *concern*.

(ii) Why the joint venture did not meet the requirements at [13 CFR 126.616](#) at the time of submission of its *offer* for a *HUBZone* contract.

(e) *Submission of a protest.*

(1) An *interested party* shall submit its written protest to the *contracting officer*-

(i) For sealed bids-

- (A) By the close of business on the fifth business *day* after bid opening; or
- (B) By the close of business on the fifth business *day* from the date of identification of the apparent successful *offeror*, if the price evaluation preference was not applied at the time of bid opening;
- (ii) For negotiated *acquisitions*, by the close of business on the fifth business *day* after receipt of the special notification from the *contracting officer* (see [15.503\(a\)\(2\)](#)) of the apparently successful *offeror*, including—
- (A) Orders placed under *multiple-award contracts* where the *contracting officer* requested rerepresentation for the order (see [13 CFR 126.801\(d\)\(1\)](#)); and
- (B) Orders set aside for *HUBZone* small businesses under *multiple-award contracts* that are not partially or totally set-aside or reserved for *HUBZone* small business *concerns* (see [13 CFR 126.801\(d\)\(1\)](#)), except for orders and blanket purchase agreements placed under a Federal Supply Schedule contract (see [8.405](#) and [19.302\(d\)\(5\)](#)); or
- (iii) By the close of business on the fifth business *day* after receipt of notification using other communication means when written notification is not required.
- (2) Any protest received after the designated time limits is untimely, unless it is from the *contracting officer* or SBA.
- (3) SBA will consider protests for *HUBZone* set-aside or sole-source service contracts or orders, if a *HUBZone* prime contractor is unduly reliant on a small entity subcontractor that is not a similarly-situated entity as defined in [13 CFR 125.1](#), or if such subcontractor performs the primary and vital requirements of the contract. For allegations that the prime contractor is unduly reliant on an other-than-small subcontractor, see size protests at [19.302](#), and [13 CFR 121.103\(h\)\(2\)](#), which treats the pair as joint venturers for size determination purposes (the “ostensible subcontractor rule”).
- (f) The *contracting officer* shall forward all protests with a referral letter to the Director of SBA's Office of the *HUBZone* Program, by email to h2protests@sba.gov. The referral letter shall include the following—
- (1) The *solicitation* number;
- (2) The *contracting officer's* name and contact information;
- (3) The type of *HUBZone contract* (*i.e.*, sole-source, set-aside, *full and open competition* with a *HUBZone* price evaluation preference, or reserve for *HUBZone* small business *concerns* under a *multiple-award contract*);
- (4) For a *procurement* conducted using *full and open competition* with a *HUBZone* price evaluation preference, whether the protester's opportunity for award was affected by the preference;
- (5) For a *HUBZone* set-aside, whether the protester submitted an *offer*;
- (6) Whether the protested *concern* was the apparent successful *offeror*;
- (7) Whether the *procurement* was conducted using sealed bid or negotiated procedures;
- (8) The bid opening date, if applicable;
- (9) The date the protester was notified of the apparent successful *offeror*;

(10) The date the *contracting officer* received the protest;

(11) The date the protested *concern* submitted its initial *offer* or quote to the *contracting officer*; and

(12) Whether a contract has been awarded, and if so, the date of award and contract number.

(g) SBA will notify the protester and the *contracting officer* of the date SBA received the protest.

(h) Before SBA decision.

(1) After receiving a protest involving the apparent successful *offeror's* status as a *HUBZone* small business *concern*, the *contracting officer* shall either-

(i) Withhold award of the contract until SBA determines the status of the protested *concern*; or

(ii) Award the contract if—

(A) SBA does not issue its decision within 15 business days after receipt of the protest; and

(B) The *contracting officer* determines *in writing* that there is an immediate need to award the contract and that waiting for SBA's determination will be disadvantageous to the Government.

(2) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of time granted by the *contracting officer*.

(i) After SBA decision. The SBA will notify the *contracting officer*, the protester, and the protested *concern* of the SBA determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Associate Administrator, Office of Government Contracting and Business Development (AA/GC&BD).

(1) If the *contracting officer* has withheld contract award and SBA has determined that the protested *concern* is an eligible *HUBZone* or dismissed all protests against the protested *concern*, the *contracting officer* may award the contract to the protested *concern*. If the AA/GC&BD subsequently overturns the initial determination or dismissal, the *contracting officer* may apply the AA/GC&BD decision to the *procurement* in question.

(2) If the *contracting officer* has withheld award and the *HUBZone* Program Director has determined that the protested *concern* is *ineligible*, and a timely AA/GC&BD appeal has not been filed, then the *contracting officer* shall not award the contract to the protested *concern*.

(3) If the *contracting officer* has made a written determination in accordance with (h)(1)(ii)(B) of this section, awarded the contract, and the Director of SBA's Office of the *HUBZone* Program's ruling sustaining the protest is received after award—

(i) The *contracting officer* shall either—

(A) Terminate the contract; or

(B)

(1) Make a written determination that termination is not in the best interests of the Government; and

(2) Not exercise any *options* or award further task or *delivery orders* under the contract.

(ii) SBA will remove the *concern's* designation as a certified *HUBZone* small business *concern* in the Dynamic Small Business Search (DSBS). The *concern* is not permitted to submit an *offer* as a *HUBZone* small business *concern* until SBA issues a decision that the ineligibility is resolved; and

(iii) After SBA updates the *concern's* designation as a *HUBZone* small business in DSBS, the *contracting officer shall* update the Federal Procurement Data System (FPDS) to reflect the final decision of the *HUBZone* Program Director if no appeal is filed.

(4) If the *contracting officer* has made a written determination in accordance with (h)(1)(ii)(B) of this section, awarded the contract, SBA has sustained the protest and determined that the *concern* is not a *HUBZone* small business, and a timely AA/GC&BD appeal has been filed, then the *contracting officer shall* consider whether performance can be suspended until an AA/GC&BD decision is rendered.

(5) If the AA/GC&BD affirms the decision of the *HUBZone* Program Director, finding the protested *concern* is *ineligible*, and contract award has occurred—

(i) The *contracting officer shall* either—

(A) Terminate the contract; or

(B)

(1) Make a written determination that termination is not in the best interests of the Government; and

(2) Not exercise any *options* or award further task or *delivery orders* under the contract;

(ii) SBA will remove the *concern's* designation as a certified *HUBZone* small business *concern* in DSBS. The *concern* is not permitted to submit an *offer* as a *HUBZone* small business *concern* until SBA issues a decision that the ineligibility is resolved or the AA/GC&BD finds the *concern* is eligible on appeal; and

(iii) After SBA updates the *concern's* designation as a *HUBZone* small business in DSBS, the *contracting officer shall* update FPDS to reflect the AA/GC&BD decision.

(6) A *concern* found to be *ineligible* during a *HUBZone* status protest is precluded from applying for *HUBZone* certification for 90 calendar days from the date of the SBA final decision.

(j) Appeals of *HUBZone* status determinations. The protested *HUBZone* small business *concern*, the protester, or the *contracting officer may* file appeals of protest determinations with SBA's AA/GC&BD. The AA/GC&BD *must* receive the appeal no later than 5 business days after the date of receipt of the protest determination. SBA will dismiss any untimely appeal.

(k) The appeal *must* be *in writing*. The appeal *must* identify the protest determination being appealed and *must* set forth a full and specific statement as to why the decision is erroneous or what significant fact the *HUBZone* Program Director failed to consider.

(l)

(1) The party appealing the decision *must* provide notice of the appeal to-

(i) The *contracting officer*; and

(ii) The protested *HUBZone* small business *concern* or the original protester, as appropriate.

(2) SBA will not consider additional information or changed circumstances that were not disclosed at the time of the *HUBZone* Program Director's determination or that are based on disagreement with the findings and conclusions contained in the determination.

(m) The AA/GC&BD will make its decision within 5 business days of the receipt of the appeal, if practicable, and will base its decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the *contracting officer*, the protester, and the protested *HUBZone* small business *concern*. The SBA decision, if received before award, will apply to the pending *acquisition*. The AA/GC&BD's decision is the final decision.

Parent topic: Subpart 19.3 - Determination of Small Business Size and Status for Small Business Programs