

## **19.307 Protesting a firm's status as a service-disabled veteran-owned small business concern.**

(a) *Definition.*

*Interested party*, as used in this section, has the meaning given in 13 CFR 134.1002(b).

(b)

(1) *General.* For *sole source acquisitions*, the *contracting officer*, the Department of Veterans Affairs (VA), or SBA may protest the apparently successful *offeror's* service-disabled veteran-owned small business (SDVOSB) status. For all other *acquisitions*, any *interested party* may protest the apparently successful *offeror's* service-disabled veteran-owned small business status.

(2) SBA's protest regulations are found in 13 CFR 128.500 and 13 CFR part 134.

(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 service-disabled veteran-owned small business status of an apparent successful *offeror shall* file two separate protests.

(d) All protests *must be in writing* and *must* state all specific grounds for the protest.

(1) OHA will consider protests challenging the SDVOSB status or the ownership and control of a *concern* if—

(i) For status protests, the protester presents evidence supporting the contention that the owner(s) cannot provide documentation from the VA to show that they meet the definition of “service-disabled veteran” or “service-disabled veteran with a permanent and severe disability” as set forth in 13 CFR 128.102; or

(ii) For ownership and control protests, the protester presents evidence that the *concern* is not 51 percent owned and controlled by one or more service-disabled veterans. In the case of a veteran with a permanent and severe disability, the protester presents evidence that the *concern* is not controlled by the veteran, spouse, or permanent caregiver of such veteran; or

(iii) For set-aside or sole-source service contract or order ostensible subcontractor protests, the protester presents credible evidence of the alleged undue reliance on a small entity subcontractor that is not a similarly-situated entity as defined in [13 CFR 125.1](#), or credible evidence that the small *non-similarly situated entity* is performing 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”); or

(iv) For joint venture protests, the protester presents evidence that the managing SDVOSB joint venture partner does not meet the requirements at 13 CFR 128.402.

(2) Assertions that a protested *concern* is not a service-disabled veteran-owned small business *concern*, without setting forth specific facts or allegations, will not be considered by OHA (see 13 CFR 134.1005).

(e) *Protest by an interested party.*

(1) An *interested party* (except *contracting officers* should see paragraph (f)(1) of this section) shall submit its protest to the *contracting officer*—

(i) To be received by close of business on the fifth business *day* after bid opening for sealed bid *acquisitions*;

(ii) To be received by close of business on the fifth business *day* after receipt of the special notification from the *contracting officer* (see 15.503(a)(2)) that identifies the apparently successful *offeror* for negotiated *acquisitions*, including—

(A) Orders placed under *multiple-award contracts* where the *contracting officer* requested rerepresentation for the order (see 13 CFR 134.1004(a)(3)(ii)); and

(B) Orders set aside for service-disabled veteran-owned small businesses under *multiple-award contracts* that are not partially or totally set aside or reserved for service-disabled veteran-owned small business *concerns* (see 13 CFR 134.1004(a)(3)(i)), except for orders and blanket purchase agreements placed under a Federal Supply Schedule contract (see 8.405 and 19.302(d)(5));

(iii) To be received by close of business on the fifth business *day* after notification by the *contracting officer* of the intended awardee for an order that is set aside for SDVOSBs under a *multiple-award contract* that was not totally or partially set aside or reserved for SDVOSB *concerns*. This paragraph (e)(1)(iii) does not apply to an order issued under a Federal Supply Schedule (FSS) contract;

(iv) To be received by the close of the fifth business *day* after notification by the *contracting officer* of the intended awardee for a blanket purchase agreement that is set aside for SDVOSBs under a *multiple-award contract* that was not totally or partially set aside or reserved for SDVOSB *concerns*. This paragraph (e)(1)(iv) does not apply to a blanket purchase agreement issued under a FSS contract; or

(v) To be received 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, except—

(i) The VA or SBA may file an SDVOSB status protest at any time; and

(ii) The *contracting officer*, SBA, or VA may file an SDVOSB status protest at any time after the apparent awardee has been identified or after bid opening, whichever applies.

(f) *Forwarding protests to SBA.*

(1) The *contracting officer* shall forward all protests to the U.S. Small Business Administration, Office of Hearings and Appeals, 409 Third Street, SW, Washington, DC 20416, or by email at [OHAfilings@sba.gov](mailto:OHAfilings@sba.gov), marked "Attn: SDVOSB Status Protest".

(2) The protest shall include a referral letter written by the *contracting officer* with information

pertaining to the *solicitation*. The referral letter *must* include the following information to allow OHA to determine timeliness and standing:

- (i) The *solicitation* number (or an electronic link to or a paper copy of the *solicitation*).
  - (ii) The name, address, telephone number, and email address of the *contracting officer*.
  - (iii) Whether the contract was sole-source or set-aside.
  - (iv) Whether the protestor submitted an *offer*.
  - (v) Whether the protested *concern* was the apparent successful *offeror*.
  - (vi) When the protested *concern* submitted its initial *offer* that included price.
  - (vii) Whether the *acquisition* was conducted using sealed bid or negotiated procedures.
  - (viii) The bid opening date, if applicable.
  - (ix) The date the *contracting officer* received the protest.
  - (x) The date the protestor received notification about the apparent successful *offeror*, if applicable.
  - (xi) Whether a contract has been awarded.
- (g) *Notification by OHA*. OHA will notify the protestor, the protested *concern*, SBA's Director of Government Contracting (D/GC), SBA Counsel, and the *contracting officer* of the date OHA received the protest.
- (h) *Before OHA decision*.
- (1) After receiving a protest involving the apparent successful *offeror's* status as an SDVOSB *concern*, the *contracting officer shall* either-
    - (i) Withhold award of the contract until OHA determines the status of the protested *concern*; or
    - (ii) Award the contract after receipt of the protest but before OHA issues its decision if the *contracting officer* determines *in writing* that an award *must* be made to protect the public interest. The *contracting officer shall* notify OHA and SBA D/GC *in writing* of the determination and a copy *shall* be included in the contract file.
  - (2) OHA will determine the merits of the status protest.
  - (3) OHA does not have a standard timeline for issuing decisions.
- (i) *After OHA decision*. OHA will notify the *contracting officer*, the protestor, and the protested *concern* of its decision. The decision is effective immediately and is final.
- (1) If the *contracting officer* has withheld contract award and OHA has determined that the protested *concern* is an eligible SDVOSB or dismissed all protests against the protested *concern*, then the *contracting officer may* award the contract to the protested *concern*.
  - (2) If the *contracting officer* has withheld contract award, and OHA has sustained the protest and

determined that the *concern* is not an SDVOSB, 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 paragraph (h)(1)(ii) of this section, the contract has been awarded, and the OHA decision to sustain the protest is received after award-

(i) The *contracting officer shall* terminate the contract, unless the *contracting officer* has made a written determination that termination is not in the best interests of the Government. However, the *contracting officer shall* not exercise any *options* or award further task or *delivery orders*;

(ii) The *contracting officer shall* update FPDS to reflect the final OHA decision; and

(iii) The *concern must* remove its designation in the *System for Award Management (SAM)* as an SDVOSB *concern* within 2 days of the OHA decision. SBA will update the *concern's* SDVOSB status in SAM if the *concern* fails to do so. The *concern shall* not submit an *offer* as a SDVOSB *concern* or an SDVOSB *concern* eligible under the SDVOSB Program, until the *concern* is designated as an SDVOSB by SBA in the SBA Veteran Small Business Certification Program database at <https://veterans.certify.sba.gov>.

(4) A *concern* found to be *ineligible* may not submit future *offers* as an SDVOSB *concern* until the *concern* is designated as an SDVOSB by SBA in the SBA Veteran Small Business Certification Program database at <https://veterans.certify.sba.gov>.

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