

**SUBPART 219.3—DETERMINATION OF STATUS AS A SMALL BUSINESS CONCERN**

**219.301 Representation by the offeror.**

(a) A concern must qualify as a small disadvantaged business (SDB) on the date of submission of its initial offer including price to be eligible for—

- (i) Award under a small disadvantaged business set-aside;
- (ii) Preferential consideration as an SDB under a partial set-aside; or
- (iii) An evaluation preference for SDBs.

(b) The contracting officer shall protest an offeror's representation that it is a small disadvantaged business concern when—

- (i) There is conflicting evidence;
- (ii) The offeror represents that the Small Business Administration previously determined the concern to be non-disadvantaged; or
- (iii) The offeror represents its ownership as other than Black American, Hispanic American, Native American (including Indian tribes and Native Hawaiian organizations), Asian Pacific American, or Subcontinent Asian American; unless the offeror represents that—

(A) It currently is in the Section 8(a) program; or

(B) Within the 6 months preceding submission of its offer, the offeror was determined by the Small Business Administration to be socially and economically disadvantaged, and no circumstances have changed to vary that determination.

**219.302 Protesting a small business representation.**

**219.302-70 Protesting a small disadvantaged business representation.**

This section applies to protests of a small business concern's status as socially and economically disadvantaged. Protests of a concern's size are processed under FAR 19.302. Any offeror, the contracting officer, or the Small Business Administration (SBA) may protest a concern's representation of disadvantaged status.

(a) An offeror may protest a concern's representation of disadvantaged status by filing a protest with the contracting officer. The protest—

- (1) Must be filed within the times specified in FAR 19.302(d)(1); and
- (2) Must contain specific detailed evidence supporting the basis of protest.

(b) The contracting officer or the SBA may protest a concern's representation of disadvantaged status at any time.

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(1) If a contracting officer's protest is based on information brought to his/her attention by a party ineligible to protest directly or ineligible to protest under the timeliness standard, the contracting officer must be persuaded by the evidence presented before adopting the grounds for protest as his or her own.

(2) The SBA protests a concern's representation of disadvantaged status by filing directly with its Office of Program Eligibility and notifying the contracting officer.

(c) The contracting officer shall return untimely protests to the protestor. This includes protests filed before bid opening or notification of apparent successful offeror.

(d) Upon receipt of a timely protest, the contracting officer shall withhold award and forward the protest to the SBA Office of Program Eligibility, Office of Minority Small Business and Capitol Ownership Development, 409 3rd Street, SW., Washington, DC 20416. Send SBA—

(1) The protest;

(2) The date the protest was received and a determination of timeliness; and

(3) The date of bid opening or date on which notification of apparent successful offeror was sent to unsuccessful offerors.

(e) Do not withhold award when—

(1) The contracting officer makes a written determination that award must be made to protect the public interest; or

(2) The offeror represents that, within the 6 months preceding submission of its offer, the SBA has determined the concern to be socially and economically disadvantaged, and no circumstances have changed to vary that determination.

(f) The SBA Director, Office of Program Eligibility, will determine the disadvantaged status of the challenged offeror and notify the contracting officer, the challenged offeror, and the protestor. Award may be made on the basis of that determination. The determination is final for purposes of the instant acquisition, unless—

(1) It is appealed; and

(2) The contracting officer receives the appeal decision before award.

(g) If the contracting officer does not receive an SBA determination within 15 working days after the SBA's receipt of the protest, the contracting officer shall presume that the challenged offeror is socially and economically disadvantaged. Do not use the presumption as a basis for award without first inquiring as to when a determination can be expected and waiting for the determination, unless further delay in award would be disadvantageous to the Government.

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- (h) An SBA determination may be appealed by—
- (1) The interested party whose protest has been denied;
  - (2) The concern whose status was protested; or
  - (3) The contracting officer.

The appeal must be filed with the SBA's Associate Administrator for Minority Small Business and Capital Ownership Development within five working days after receipt of the determination. If the contracting officer receives the SBA's decision on the appeal before award, the decision shall apply to the instant acquisition. If the decision is received after award, it will apply to future acquisitions.

#### **219.304 Solicitation provisions.**

(b) Use the provision at 252.219-7000, Small Disadvantaged Business Concern Representation (DoD Contracts) instead of the provision at FAR 52.219-2, Small Disadvantaged Business Concern Representation.