§ 124.1008 Size pursuant to part 121 of this title. An interested party seeking to protest only size of an apparent successful SDB offeror must submit a size protest to the contracting officer pursuant to part 121.


§ 124.1008 When will SBA not decide an SDB protest?

(a) SBA will not decide a protest as to disadvantaged status of any concern other than the apparent successful offeror.

(b) SBA will not normally consider a post award protest. SBA may consider a post award protest in its discretion where it determines that a protest decision after award would have a practical effect (e.g., where the contracting officer agrees to terminate the contract if the protest is sustained).

(c) SBA will not decide an untimely protest (see §124.1020(c)).

(d) SBA will not decide a non-specific protest or one that does not present credible evidence that the protested concern’s circumstances have materially changed since SBA certified it as an SDB, or that the protested concern’s SDB application contained false or misleading information (see §124.1021).

(e) An interested party may appeal SBA’s dismissal of a protest for lack of specificity, timeliness, or a basis upon which SBA will consider a protest to Associate Administrator for Government Contracting and Business Development (AA/GC&BD) pursuant to §124.1024.


§ 124.1009 Who decides disadvantaged status protests?

In response to a protest challenging the disadvantaged status of a concern, the SBA’s DC/SDBCE will determine whether the concern is disadvantaged.


§ 124.1010 What procedures apply to disadvantaged status protests?

(a) General. The protest procedures described in this section are separate and distinct from those governing size protests and appeals. All protests relating to whether a concern is a “small” business for purposes of any Federal program, including SDB set-asides and SDB evaluation adjustments, must be filed and processed pursuant to part 121 of this title.

(b) Filing. (1) All protests challenging the disadvantaged status of a concern with respect to a particular Federal procurement requirement must be submitted in writing to the procuring activity contracting officer, except in cases where the contracting officer or SBA initiates a protest.

(2) Any contracting officer who initiates a protest must submit the protest in writing to SBA in accord with paragraph (c) of this section.

(3) In cases where SBA initiates a protest, the protest must be submitted in writing to the DC/SDBCE and notification provided in accord with §124.1022(a).

(c) Timeliness of protest.—(1) SDB evaluation adjustment and set-aside protests—(i) General. In order for a protest to be timely, it must be received by the contracting officer prior to the close of business on the fifth day, exclusive of Saturdays, Sundays and legal holidays, after the bid opening date for sealed bids, or after the receipt from the contracting officer of notification of the identity of the prospective awardee in negotiated acquisitions.

(ii) Oral protests. An oral protest relating to an SDB set-aside or SDB evaluation adjustment made to the contracting officer within the allotted 5-day period will be considered a timely protest only if the contracting officer receives a confirming letter postmarked, FAXed, or delivered no later than one calendar day after the date of such oral protest.

(iii) Protests of contracting officers or SBA. The time limitations in paragraph (c)(1)(i) of this section do not apply to contracting officers or SBA, and they may file protests before or after awards, except to the extent set forth in paragraph (c)(3) of this section.