§ 124.1005 How long does an SDB certification last?

(a) A firm that is certified to be an SDB will generally be certified for a period of three years from the date of the certification.

(b) A firm’s SDB certification will extend beyond three years where SBA finds the firm to be an SDB:

1. In connection with a protest challenging the firm’s SDB status (see §124.1013(b)(2));

2. In connection with an SBA-initiated SDB determination (see §124.1006); or

3. As part of an 8(a) BD annual review.

(c) A firm that completes its nine-year program term in the 8(a) BD program will continue to be deemed a certified SDB firm for a period of three years from the date of its last 8(a) annual review.

§ 124.1006 Can SBA initiate a review of the SDB status of a firm claiming to be an SDB?

SBA may initiate an SDB determination on any firm that has been certified to be an SDB by a procuring agency or that has represented itself to be an SDB on a subcontract to a federal prime contract whenever it receives credible information calling into question the SDB status of the firm. Upon its completion of an SDB determination, SBA will issue a written decision regarding the SDB status of the questioned firm. If SBA finds that the firm continues to qualify as an SDB, the determination remains in effect for three years from the date of the decision.

§ 124.1007 Who may protest the disadvantaged status of a concern?

(a) In connection with a requirement for which the apparent successful offeror has invoked an SDB evaluation adjustment or an SDB set-aside, the following entities may protest the disadvantaged status of the apparent successful offeror:

1. Any other concern which submitted an offer for that requirement, unless the contracting officer has found the concern to be non-responsive or outside the competitive range, or SBA has previously found the protesting concern to be ineligible for the requirement at issue;

2. The procuring activity contracting officer; or

3. SBA.

(b) In connection with an 8(d) subcontract, or a requirement for which the apparent successful offeror received an evaluation adjustment for proposing one or more SDB subcontractors, the procuring activity contracting officer or SBA may protest the disadvantaged status of a proposed subcontractor. Other interested parties may submit information to the contracting officer or SBA in an effort to persuade the contracting officer or SBA to initiate a protest.

(c) An interested party seeking to protest both the disadvantaged status and size of an apparent successful SDB offeror must submit two separate protests, one as to disadvantaged status and 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...
§ 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/SDBCCE 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.

(iv) Untimely protests. A protest received after the time limits set forth in this paragraph (c)(1) will be dismissed by SBA.

(2) Section 8(d) protests. In connection with an 8(d) subcontract, the contracting officer or SBA must submit a protest to the DC/SDBCCE prior to the completion of performance by the intended 8(d) subcontractor.

(3) Premature protests. A protest in connection with any procurement which is submitted by any person, including the contracting officer, before bid opening or notification of intended award, whichever applies, will be considered premature, and will be returned to the protestor without action. A contracting officer that receives a premature protest must return it to the protestor without submitting it to the SBA.

(d) Referral to SBA. (1) Any contracting officer who receives a protest that is not premature must promptly forward it to the SBA’s DC/SDBCCE, 409 3rd Street, SW, Washington, DC 20416.

(2) A contracting officer’s referral of a protest to SBA must contain the following:

(i) The written protest and any accompanying materials;

(ii) The date on which the protest was received by the contracting officer;