§ 126.803 How will SBA process a HUBZone status protest?

(a) Notice of receipt of protest. (1) SBA immediately will notify the contracting officer and the protestor of the date SBA receives a protest and whether SBA will process the protest or dismiss it in accordance with §126.804.

(2) If SBA determines the protest is timely and sufficiently specific, SBA will notify the protested HUBZone SBC of the protest and the identity of the protestor. The protested HUBZone SBC may submit information responsive to the protest within 5 business days.

(b) Time period for determination. (1) SBA will determine the HUBZone status of the protested HUBZone SBC within 15 business days after receipt of a protest.

(2) The contracting officer may award a contract after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest. Notwithstanding such a determination, the provisions of paragraph (d) of this
§ 126.804 Will SBA decide all HUBZone status protests?

SBA will decide all protests not dismissed as premature, untimely or nonspecific.

§ 126.805 What are the procedures for appeals of HUBZone status determinations?

(a) Who may appeal. The protested HUBZone SBC, the protestor, or the CO may file appeals of protest determinations with the AA/GC&BD, or designee.

(b) Timeliness of appeal. The AA/GC&BD, or designee must receive the appeal no later than five business days after the date of receipt of the protest determination. SBA will dismiss any appeal received after the five-day period.

(c) Method of Submission. The party appealing the decision may deliver its appeal in person, by facsimile, by express delivery service, or by U.S. mail (postmarked within the applicable time period).

(d) Notice of appeal. The party bringing an appeal must provide notice of the appeal to the contracting activity contracting officer and either the protested HUBZone SBC or original protestor, as appropriate.

(e) Grounds for appeal. (1) SBA will reexamine a protest determination only if there was a clear and significant error in the processing of the protest or if the D/HUB failed completely to consider a significant fact contained within the information supplied by the protestor or the protested HUBZone SBC.

§ 126.804 Section apply to the procurement in question.

(3) If SBA does not issue its determination within 15 business days (or request an extension that is granted), the contracting officer may award the contract if he or she determines in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government. Notwithstanding such a determination, the provisions of paragraph (d) of this section apply to the procurement in question.

(c) Notice of determination. SBA will notify the contracting officer, the protestor, and the protested concern of its determination.

(d)(1) Effect of determination. The determination is effective immediately and is final unless overturned on appeal by the AA/GC&BD, or designee, pursuant to §126.805. If SBA upholds the protest, SBA will decertify the concern.

(2) A contracting officer may award a contract to a protested concern after the D/HUB has determined that the protested concern is an eligible HUBZone or has dismissed all protests against it. If the AA/GC&BD subsequently overturns the initial determination or dismissal, the contracting officer may apply the appeal decision to the procurement in question.

(3) A contracting officer shall not award a contract to a protested concern that the D/HUB has determined is not an eligible HUBZone for the procurement in question.

(i) If a contracting officer receives such a determination after contract award, and no appeal has been filed, the contracting officer shall terminate the award.

(ii) If a timely appeal is filed after contract award, the contracting officer must consider whether performance can be suspended until an appellate decision is rendered.

(iii) If the AA/GC&BD affirms the initial determination finding the protested concern ineligible, the contracting officer shall either terminate the contract or not exercise the next option.

(4) The contracting officer must update the Federal Procurement Data System and other procurement reporting databases to reflect the final agency HUBZone decision (the D/HUB’s decision if no appeal is filed or the decision of the AA/GC&BD).

(5) A concern found to be ineligible is precluded from applying for HUBZone certification for ninety (90) calendar days from the date of the final agency decision (the D/HUB’s decision if no appeal is filed or the decision of the AA/GC&BD).