

# Subpart 19.3 - Determination of Small Business Size and Status for Small Business Programs

Parent topic: [Part 19 - Small Business Programs](#)

## 19.301 Representations and rerepresentations.

### 19.301-1 Representation by the offeror.

(a)

(1) To be eligible for award as a small business *concern* identified in [19.000\(a\)\(3\)](#), an *offeror* is required to represent in good faith—

(i)

(A) That it meets the small business size standard corresponding to the North American *Industry Classification System* (NAICS) code identified in the *solicitation*; or

(B) For a *multiple-award contract* where there is more than one NAICS code assigned, that it meets the small business size standard for each distinct portion or category ( *e.g.*, *line item numbers*, *Special Item Numbers* (SINs), *sectors*, *functional areas*, or the equivalent) for which it submits an *offer*. If the small business *concern* submits an *offer* for the entire *multiple-award contract*, it must meet the size standard for each distinct portion or category ( *e.g.*, *line item number*, *SIN*, *sector*, *functional area*, or equivalent); and

(ii) The Small Business Administration (SBA) has not issued a written determination stating otherwise pursuant to [13 CFR 121.1009](#).

(2)

(i) A joint venture *may* qualify as a small business *concern* if the joint venture complies with the requirements of [13 CFR 121.103\(h\)](#) and [13 CFR 125.8\(a\)](#) and (b) and if—

(A) Each party to the joint venture qualifies as small under the size standard for the *solicitation*; or

(B) The protégé is small under the size standard for the *solicitation* in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under an SBA mentor-protégé program.

(ii) A joint venture *may* qualify for an award under the socioeconomic programs as described in subparts [19.8](#), [19.13](#), [19.14](#), and [19.15](#).

(b) An *offeror* is required to represent its size and socioeconomic status *in writing* to the *contracting*

*officer* at the time of initial *offer*, (whether or not the *offer* includes price or the price is evaluated), including *offers* for—

(1) Basic ordering agreements (see [16.703](#)); and

(2) Blanket purchase agreements (BPAs) issued pursuant to [part 13](#).

(c) To be eligible for an award of an order under a basic ordering agreement or a BPA issued pursuant to [part 13](#) as a small business *concern* identified in [19.000\(a\)\(3\)](#), the *offeror* must be a small business *concern* identified in [19.000\(a\)\(3\)](#) at the time of award of the order.

(d) To be eligible for an award under the *HUBZone* Program (see [subpart 19.13](#)), a *HUBZone* small business *concern* must be a *HUBZone* small business *concern* at the time of initial *offer*.

(e) *Multiple-award contract* representations:

(1) A business that represents as a small business *concern* at the time of its initial *offer* for the contract (whether or not the *offer* includes price or the price is evaluated (see [13 CFR 121.404\(a\)\(1\)\(iv\)](#)), is considered a small business *concern* for each order issued under the contract (but see [19.301-2](#) for rerepresentations).

(2) A business that represents as a small business *concern* at the time of its initial *offer* for a distinct portion or category as set forth in paragraph (a)(1)(ii) is considered a small business *concern* for each order issued under that distinct portion or category (but see [19.301-2](#) for rerepresentations).

(f) The *contracting officer* shall accept an *offeror's* representation in a specific bid or proposal that it is a small business unless (1) another *offeror* or interested party challenges the *concern's* small business representation or (2) the *contracting officer* has a reason to question the representation. Challenges of and questions concerning a specific representation shall be referred to the SBA in accordance with [19.302](#).

(g) An *offeror's* representation that it is a small business is not binding on the SBA. If an *offeror's* small business status is challenged, the SBA will evaluate the status of the *concern* and make a determination, which will be binding on the *contracting officer*, as to whether the *offeror* is a small business. A *concern* cannot become eligible for a specific award by taking action to meet the definition of a small business *concern* after the SBA has determined that it is not a small business.

(h) If the SBA determines that the status of a *concern* as a small business, veteran-owned small business, service-disabled veteran-owned small business, *HUBZone* small business, small disadvantaged business, or women-owned small business has been misrepresented in order to obtain a set-aside contract, an 8(a) subcontract, a subcontract that is to be included as part or all of a goal contained in a subcontracting plan, or a prime or subcontract to be awarded as a result, or in furtherance of any other provision of Federal law that specifically references Section 8(d) of the Small Business Act for a definition of program eligibility, the SBA may take action as specified in Sections 16(a) or 16(d) of the Act. If the SBA declines to take action, the agency may initiate the process. The SBA's regulations on penalties for misrepresentations and false statements are contained in 13 CFR 121.108 for small business, 13 CFR 124.501 for 8(a) small business, 13 CFR 128.600 for veteran or service-disabled veteran-owned small business, 13 CFR 126.900 for *HUBZone* small business, and 13 CFR 127.700 for economically disadvantaged women-owned small business *concerns* and women-owned small business (WOSB) *concerns* eligible under the WOSB Program.

## **19.301-2 Rerepresentation by a contractor that represented itself as a small business concern.**

(a) *Definition.* As used in this subsection-

*Long-term contract* means a contract of more than five years in duration, including *options*. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, *Option to Extend Services*, or other appropriate authority.

(b) A contractor that represented itself as any of the small business *concerns* identified in 19.000(a)(3) before contract award is required to rerepresent its size and socioeconomic status—

(1) For the NAICS code(s) in the contract-

(i) Within 30 days after execution of a *novation agreement* or within 30 days after modification of the contract to include the clause at 52.219-28, Post-Award Small Business Program Rerepresentation, if the *novation agreement* was executed prior to inclusion of this clause in the contract;

(ii) Within 30 days after a merger or *acquisition* (whether the contractor acquires or is acquired by another company) of the contractor that does not require novation or within 30 days after modification of the contract to include the clause at 52.219-28, Post-Award Small Business Program Rerepresentation, if the merger or *acquisition* occurred prior to inclusion of this clause in the contract;

(iii) For long-term contracts-

(A) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(B) Within 60 to 120 days prior to the date specified in the contract for exercising any *option* thereafter; or

(2) For the NAICS code assigned to an order under a *multiple-award contract*, if the *contracting officer* requires contractors to rerepresent their size and socioeconomic status for that order.

(c) A contractor is required to rerepresent its size status in accordance with the size standard in effect at the time of its rerepresentation that corresponds to the NAICS code that was initially assigned to the contract. For *multiple-award contracts* where there is more than one NAICS code assigned, the contractor is required to rerepresent its size status for each NAICS code assigned to the contract.

(d)

(1) *Contract rerepresentation.* After a contractor rerepresents for a contract that it no longer qualifies as a small business *concern* identified in 19.000(a)(3) in accordance with 52.219-28, the agency *may* no longer include the value of *options* exercised, modifications issued, orders issued, or purchases made under BPAs on that contract in its small business prime *contracting* goal achievements. When a contractor's rerepresentation for a contract qualifies it as a different small business *concern* identified in 19.000(a)(3) than what it represented for award, the agency *may* include the value of *options* exercised, modifications issued, orders issued, or purchases made under BPAs on that contract in its small business prime *contracting* goal achievements, consistent with the

rerepresentation. Agencies *should* issue a modification to the contract capturing the rerepresentation and report it to FPDS within 30 days after notification of the rerepresentation.

(2) *Rerepresentation for a task or delivery order.*

(i) When a contractor rerepresents for an order that it no longer qualifies as a small business *concern* identified in [19.000\(a\)\(3\)](#), the agency cannot include the value of the order in its small business prime *contracting* goal achievements. When a contractor's rerepresentation for an order qualifies it as a different small business *concern* identified in [19.000\(a\)\(3\)](#) than what it represented for contract award, the agency can include the value of the order in its small business prime *contracting* goal achievement, consistent with the rerepresentation.

(ii) A rerepresentation for an order does not change the size or socioeconomic status representation for the contract.

(e) A change in size status does not change the terms and conditions of the contract. However, the *contracting officer* may require a subcontracting plan for a contract containing [52.219-9](#), Small Business Subcontracting Plan, if a prime contractor's size status changes from small to other than small as a result of a size rerepresentation (see [19.705-2\(b\)\(3\)](#)).

### **19.301-3 Rerepresentation by a contractor that represented itself as other than a small business concern.**

A contractor that represented itself as other than small before contract award *may*, but is not required to, rerepresent its size status when-

(a) The conditions in [19.301-2\(b\)](#) apply; and

(b) The contractor qualifies as a small business *concern* under the applicable size standard in effect at the time of its rerepresentation.

### **19.302 Protesting a small business representation or rerepresentation.**

(a)

(1) The SBA regulations on small business size and size protests are found at [13 CFR part 121](#).

(2) An *offeror*, the *contracting officer*, SBA, or another interested party *may* protest the small business representation of an *offeror* in a specific *offer* for a contract. However, for competitive 8(a) contracts, the filing of a protest is limited to an *offeror*, the *contracting officer*, or SBA. See [13 CFR 121.1001\(a\)](#).

(b) Any time after *offers* are received by the *contracting officer*, or in the case of bids, opened, the *contracting officer* may question the small business representation of any *offeror* in a specific *offer* by filing a *contracting officer's* protest (see paragraph (c) of this section).

(c)

(1) Any *contracting officer* who receives a protest, whether timely or not, or who, as the *contracting officer*, wishes to protest the small business representation of an *offeror*, or rerepresentation of a contractor, shall promptly forward the protest to the SBA Government Contracting Area Director at the Government Contracting Area Office serving the area in which the headquarters of the *offeror* is located.

(2) The protest, or confirmation if the protest was initiated orally, shall be in writing and shall contain the basis for the protest with specific, detailed evidence to support the allegation that the *offeror* is not small. The SBA will dismiss any protest that does not contain specific grounds for the protest.

(3) 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 SBA to determine timeliness and standing:

(i) The protest and any accompanying materials.

(ii) A copy of the size self-certification.

(iii) Identification of the applicable size standard.

(iv) A copy or an electronic link to the *solicitation* and any amendments.

(v) The name, address, telephone number, email address, and fax number of the *contracting officer*.

(vi) Identification of the bid opening date or the date of notification provided to unsuccessful *offerors*.

(vii) The date the *contracting officer* received the protest.

(viii) A complete address and point of contact for the protested *concern*.

(d) In order to affect a specific *solicitation*, a protest must be timely. SBA's regulations on timeliness are contained in [13 CFR 121.1004](#). SBA's regulations on timeliness related to protests of disadvantaged status are contained in [13 CFR part 124, subpart B](#).

(1) To be timely, a protest by any *concern* or other interested party must be received by the *contracting officer* by the close of business of the fifth business day after-

(i) Bid opening for sealed bid *acquisitions*; or

(ii) 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) Partial set-asides and reserves of *multiple-award contracts*;

(B) Orders that are set-aside under an unrestricted *multiple-award contract* (except for orders and blanket purchase agreements placed under a Federal Supply Schedule contract (see 8.405 and paragraph (d)(5) of this section)); and

(C) Orders placed under *multiple-award contracts* where the *contracting officer* requested rerepresentation for the order; or

(iii) Receipt of notification using other communication means when written notification is not required.

(2) A protest *may* be made orally if it is confirmed *in writing* and received by the *contracting officer* within the 5-day period or by letter postmarked no later than 1 business *day* after the oral protest.

(3) A protest *may* be made *in writing* if it is delivered to the *contracting officer* by hand, mail, facsimile, email, express or overnight delivery service.

(4) Except as provided in paragraph (d)(6) of this section, a protest filed by the *contracting officer* or SBA is always considered timely whether filed before or after award.

(5) A protest under a Multiple Award Schedule will be timely if received by SBA at any time prior to the expiration of the contract period, including renewals.

(6) A protest filed before bid opening, or notification to *offerors* of the selection of the apparent successful *offeror*, will be dismissed as premature by SBA.

(e) Upon receipt of a protest from or forwarded by the *Contracting Office*, the SBA will-

(1) Notify the *contracting officer* and the protester of the date it was received, and that the size of the *concern* being challenged is under consideration by the SBA; and

(2) Furnish to the *concern* whose representation is being protested a copy of the protest and a blank SBA Form 355, Application for Small Business Determination, by certified mail, return receipt requested.

(f)

(1) Within 15 business days after receipt of a protest or request for a formal size determination or within any extension of time granted by the *contracting officer* the SBA Area Office will determine the size status of the challenged *concern*. The SBA Area Office will notify the *contracting officer*, the protester, and the challenged *concern* of its decision by a verifiable means, which *may* include facsimile, electronic mail, or overnight delivery service.

(2) Award *may* be made to a protested *concern* after the SBA Area Office has determined that either the protested *concern* is an eligible small business or has dismissed all protests against it.

(3) If SBA's Office of Hearings and Appeals (OHA) subsequently overturns the Area Office's determination of eligibility or dismissal, and contract award has not been made, the *contracting officer may* apply the OHA decision to the *procurement* in question.

(g)

(1) After receiving a protest involving an *offeror* being considered for award, the *contracting officer shall* not award the contract until the SBA has made a size determination or 15 business days have expired since SBA's receipt of a protest, whichever occurs first; however, award *shall* not be withheld when the *contracting officer* determines *in writing* that an award *must* be made to protect the public interest.

(2) If SBA has not made a determination within 15 business days, or within any extension of time granted by the *contracting officer*, the *contracting officer may* award the contract after determining

*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.

(3) SBA *may*, at its sole discretion, reopen a formal size determination to correct an error or mistake, if it is within the appeal period and no appeal has been filed with OHA or, a final decision has not been rendered by the SBA Area Office or OHA.

(4) If a protest is received that challenges the small business status of an *offeror* not being considered for award, the *contracting officer* is not required to suspend contract action. The *contracting officer shall* forward the protest to the SBA (see paragraph (c)(1) of this section) with a notation that the *concern* is not being considered for award, and *shall* notify the protester of this action.

(h) An appeal from an SBA size determination *may* be filed by any *concern* or other interested party whose protest of the small business representation of another *concern* has been denied by an SBA Government *Contracting* Area Director, any *concern* or other interested party that has been adversely affected by an SBA Government *Contracting* Area Director's decision, or the SBA Associate Administrator for the SBA program involved. The appeal *must* be filed with the Office of Hearings and Appeals, Small Business Administration, Suite 5900, 409 3 rd Street, SW., Washington, DC 20416, within the time limits and in strict accordance with the procedures contained in Subpart C of 13 CFR 134. It is within the discretion of the SBA Judge whether to accept an appeal from a size determination. If a post-award appeal is submitted to OHA within the time limits specified in Subpart C of 13 CFR 134, the *contracting officer shall* consider suspending contract performance until an SBA Judge decides the appeal. SBA will inform the *contracting officer* of its ruling on the appeal. SBA's decision, if received before award, will apply to the pending *acquisition*. If the *contracting officer* has made a written determination in accordance with (g)(1) or (2) of this section, the contract has been awarded, the SBA rulings is received after award, and OHA finds the protested *concern* to be *ineligible* for award, the *contracting officer shall* terminate the contract unless termination is not in the best interests of the Government, in keeping with the circumstances described in the written determination. However, the *contracting officer shall* not exercise any *options* or award further task or *delivery orders*.

(i) SBA will dismiss untimely protests. A protest that is not timely, even though received before award, *shall* be forwarded to the SBA Government *Contracting* Area Office (see paragraph (c)(1) of this section), with a notation on it that the protest is not timely. A protest received by a *contracting officer* after award of a contract *shall* be forwarded to the SBA Government *Contracting* Area Office with a notation that award has been made.

(j) When a *concern* is found to be other than small under a protest concerning a size status rerepresentation made in accordance with the clause at 52.219-28, Post-Award Small Business Program Rerepresentation, a *contracting officer may* permit contract performance to continue, issue orders, or exercise *option(s)*, because the contract remains a valid contract.

## **19.303 [Reserved].**

## **19.304 Small disadvantaged business status.**

(a) The *contracting officer may* accept an *offeror's* representation that it is a *small disadvantaged business concern* (SDB) *concern*.

(b) The provision at [52.219-1](#), Small Business Program Representations, or [52.212-3\(c\)\(5\)](#), *Offeror Representations and Certifications-Commercial Products and Commercial Services*, is used to collect SDB data.

(c) A representation of SDB status on a Federal prime contract will be deemed a misrepresentation of SDB status if the firm does not meet the requirements of 13 CFR 124.1001.

(d) Any person or entity that misrepresents a firm's status as an SDB *concern* in order to obtain a *contracting* opportunity in accordance with section 8(d) of the Small Business Act, ( [15 U.S.C. 637\(d\)](#)) will be subject to the penalties imposed by section 16(d) of the Small Business Act, ([15 U.S.C. 645\(d\)](#)), as well as any other penalty authorized by law.

## **19.305 Reviews of SDB status.**

This section applies to reviews of a small business *concern's* SDB status as a prime contractor or subcontractor.

(a) SBA *may* initiate the review of SDB status on any firm that has represented itself to be an SDB on a prime contract or subcontract to a Federal prime contract whenever it receives credible information calling into question the SDB status of the firm.

(b) Requests for an SBA review of SDB status *may* be forwarded to the Small Business Administration, Associate Administrator for Business Development (AA/BD), 409 Third Street, SW, Washington, DC 20416.

(c) An SBA review of a subcontractor's SDB status differs from a formal protest. Protests of a *concern's* size as a prime contractor are processed under [19.302](#). Protests of a *concern's* size as a subcontractor are processed under [19.703\(b\)](#).

## **19.306 Protesting a firm's status as a HUBZone small business concern.**

(a) *Definition*. As used in this section-

*Interested party* has the meaning given in 13 CFR 126.103.

(b)

(1) For sole-source *procurements*, SBA or the *contracting officer* *may* protest the prospective contractor's certified *HUBZone* status; for all other *procurements*, SBA, the *contracting officer*, or any other *interested party* *may* protest the apparent successful *offeror's* certified *HUBZone* status (see [13 CFR 126.800](#)).

(2) The Director of SBA's Office of the *HUBZone* Program will determine whether the *concern* has certified *HUBZone* status. If SBA upholds the protest, SBA will remove the *concern's* *HUBZone* status in the Dynamic Small Business Search (DSBS). SBA's protest regulations are found in subpart H "Protests" at [13 CFR 126.800](#) through [126.805](#).



(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 *HUBZone* status of an apparent successful *offeror* shall file two separate protests. Protests relating to small business size status for the *acquisition* and the *HUBZone* eligibility requirements will be processed concurrently by SBA.

(d)

(1) All protests *must be in writing* and *must* state all specific grounds for the protest ( *i.e.*, why the protested *concern* did not meet the eligibility requirements at 13 CFR 126.200 at the time of the *concern's* application to SBA for certification as a *HUBZone* small business *concern* or at the time SBA certified or last recertified the *concern* as a *HUBZone* small business *concern*). Assertions that a protested *concern* is not a *HUBZone* small business *concern*, without setting forth specific facts or allegations, will not be considered by SBA (see 13 CFR 126.801(b)).

(2) Protests filed against a *HUBZone* joint venture *must* state one or, if applicable, both of the following:

(i) Why the *HUBZone* small business party to the joint venture did not meet the eligibility requirements at 13 CFR 126.200 at the time of its application to SBA for certification or at the time SBA certified or last recertified the *concern* as a *HUBZone* small business *concern*.

(ii) Why the joint venture did not meet the requirements at 13 CFR 126.616 at the time of submission of its *offer* for a *HUBZone contract*.

(e) *Submission of a protest.*

(1) An *interested party* shall submit its written protest to the *contracting officer*-

(i) For sealed bids-

(A) By the close of business on the fifth business *day* after bid opening; or

(B) By the close of business on the fifth business *day* from the date of identification of the apparent successful *offeror*, if the price evaluation preference was not applied at the time of bid opening;

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

(A) Orders placed under *multiple-award contracts* where the *contracting officer* requested rerepresentation for the order (see 13 CFR 126.801(d)(1)); and

(B) Orders set aside for *HUBZone* small businesses under *multiple-award contracts* that are not partially or totally set-aside or reserved for *HUBZone* small business *concerns* (see 13 CFR 126.801(d)(1)), except for orders and blanket purchase agreements placed under a Federal Supply Schedule contract (see 8.405 and 19.302(d)(5)); or

(iii) 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, unless it is from the *contracting officer* or SBA.

(3) SBA will consider protests for *HUBZone* set-aside or sole-source service contracts or orders, if a *HUBZone* prime contractor is unduly reliant on a small entity subcontractor that is not a similarly-situated entity as defined in [13 CFR 125.1](#), or if such subcontractor performs 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”).

(f) The *contracting officer* shall forward all protests with a referral letter to the Director of SBA's Office of the *HUBZone* Program, by email to [hzprotests@sba.gov](mailto:hzprotests@sba.gov). The referral letter shall include the following—

- (1) The *solicitation* number;
- (2) The *contracting officer's* name and contact information;
- (3) The type of *HUBZone* contract ( *i.e.*, sole-source, set-aside, *full and open competition* with a *HUBZone* price evaluation preference, or reserve for *HUBZone* small business concerns under a *multiple-award contract*);
- (4) For a *procurement* conducted using *full and open competition* with a *HUBZone* price evaluation preference, whether the protester's opportunity for award was affected by the preference;
- (5) For a *HUBZone* set-aside, whether the protester submitted an *offer*;
- (6) Whether the protested *concern* was the apparent successful *offeror*;
- (7) Whether the *procurement* was conducted using sealed bid or negotiated procedures;
- (8) The bid opening date, if applicable;
- (9) The date the protester was notified of the apparent successful *offeror*;
- (10) The date the *contracting officer* received the protest;
- (11) The date the protested *concern* submitted its initial *offer* or quote to the *contracting officer*; and
- (12) Whether a contract has been awarded, and if so, the date of award and contract number.

(g) SBA will notify the protester and the *contracting officer* of the date SBA received the protest.

(h) Before SBA decision.

(1) After receiving a protest involving the apparent successful *offeror's* status as a *HUBZone* small business concern, the *contracting officer* shall either-

(i) Withhold award of the contract until SBA determines the status of the protested *concern*; or

(ii) Award the contract if—

(A) SBA does not issue its decision within 15 business days after receipt of the protest; and

(B) The *contracting officer* determines *in writing* that there is an immediate need to award the contract and that waiting for SBA's determination will be disadvantageous to the Government.

(2) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of time granted by the *contracting officer*.

(i) After SBA decision. The SBA will notify the *contracting officer*, the protester, and the protested *concern* of the SBA determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Associate Administrator, Office of Government *Contracting* and Business Development (AA/GC&BD).

(1) If the *contracting officer* has withheld contract award and SBA has determined that the protested *concern* is an eligible *HUBZone* or dismissed all protests against the protested *concern*, the *contracting officer* may award the contract to the protested *concern*. If the AA/GC&BD subsequently overturns the initial determination or dismissal, the *contracting officer* may apply the AA/GC&BD decision to the *procurement* in question.

(2) If the *contracting officer* has withheld award and the *HUBZone* Program Director has determined that the protested *concern* is *ineligible*, and a timely AA/GC&BD appeal has not been filed, 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 (h)(1)(ii)(B) of this section, awarded the contract, and the Director of SBA's Office of the *HUBZone* Program's ruling sustaining the protest is received after award—

(i) The *contracting officer* shall either—

(A) Terminate the contract; or

(B)

(1) Make a written determination that termination is not in the best interests of the Government; and

(2) Not exercise any *options* or award further task or *delivery orders* under the contract.

(ii) SBA will remove the *concern's* designation as a certified *HUBZone* small business *concern* in the Dynamic Small Business Search (DSBS). The *concern* is not permitted to submit an *offer* as a *HUBZone* small business *concern* until SBA issues a decision that the ineligibility is resolved; and

(iii) After SBA updates the *concern's* designation as a *HUBZone* small business in DSBS, the *contracting officer* shall update the Federal *Procurement* Data System (FPDS) to reflect the final decision of the *HUBZone* Program Director if no appeal is filed.

(4) If the *contracting officer* has made a written determination in accordance with (h)(1)(ii)(B) of this section, awarded the contract, SBA has sustained the protest and determined that the *concern* is not a *HUBZone* small business, and a timely AA/GC&BD appeal has been filed, then the *contracting officer* shall consider whether performance can be suspended until an AA/GC&BD decision is rendered.

(5) If the AA/GC&BD affirms the decision of the *HUBZone* Program Director, finding the protested *concern* is *ineligible*, and contract award has occurred—

(i) The *contracting officer* shall either—

(A) Terminate the contract; or

(B)

(1) Make a written determination that termination is not in the best interests of the Government; and

(2) Not exercise any *options* or award further task or *delivery orders* under the contract;

(ii) SBA will remove the *concern's* designation as a certified *HUBZone* small business *concern* in DSBS. The *concern* is not permitted to submit an *offer* as a *HUBZone* small business *concern* until SBA issues a decision that the ineligibility is resolved or the AA/GC&BD finds the *concern* is eligible on appeal; and

(iii) After SBA updates the *concern's* designation as a *HUBZone* small business in DSBS, the *contracting officer shall* update FPDS to reflect the AA/GC&BD decision.

(6) A *concern* found to be *ineligible* during a *HUBZone* status protest is precluded from applying for *HUBZone* certification for 90 calendar days from the date of the SBA final decision.

(j) Appeals of *HUBZone* status determinations. The protested *HUBZone* small business *concern*, the protester, or the *contracting officer may* file appeals of protest determinations with SBA's AA/GC&BD. The AA/GC&BD *must* receive the appeal no later than 5 business days after the date of receipt of the protest determination. SBA will dismiss any untimely appeal.

(k) The appeal *must* be *in writing*. The appeal *must* identify the protest determination being appealed and *must* set forth a full and specific statement as to why the decision is erroneous or what significant fact the *HUBZone* Program Director failed to consider.

(l)

(1) The party appealing the decision *must* provide notice of the appeal to-

(i) The *contracting officer*; and

(ii) The protested *HUBZone* small business *concern* or the original protester, as appropriate.

(2) SBA will not consider additional information or changed circumstances that were not disclosed at the time of the *HUBZone* Program Director's determination or that are based on disagreement with the findings and conclusions contained in the determination.

(m) The AA/GC&BD will make its decision within 5 business days of the receipt of the appeal, if practicable, and will base its decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the *contracting officer*, the protester, and the protested *HUBZone* small business *concern*. The SBA decision, if received before award, will apply to the pending *acquisition*. The AA/GC&BD's decision is the final decision.

## **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 protester, 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 protester, 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>.

## **19.308 Protesting a firm's status as an economically disadvantaged women-owned small business concern or women-owned small business concern eligible under the Women-Owned Small Business Program.**

(a) *Definition*. Interested party, as used in this section, has the meaning given in 13 CFR 127.102.

(b)

(1) For *sole source acquisitions*, the *contracting officer* or SBA may protest the *offeror's* status as an *economically disadvantaged women-owned small business (EDWOSB) concern* or as a WOSB *concern* eligible under the WOSB Program. For all other *acquisitions*, an interested party (see 13 CFR 127.102) may protest the apparent successful *offeror's* EDWOSB or WOSB status.

(2) SBA's protest regulations are found in subpart F "Protests" at 13 CFR 127.600 through 127.605.

(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 WOSB or EDWOSB status of an apparent successful *offeror shall* file two separate protests.

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

(1) SBA will consider protests challenging the status of a *concern* if-

(i) The protest presents evidence that the *concern* is not at least 51 percent owned and controlled by one or more women who are *United States* citizens;

(ii) The protest presents evidence that the *concern* is not at least 51 percent owned and controlled by one or more economically disadvantaged women who are *United States* citizens, when it is in connection with an EDWOSB contract; or

(iii) For WOSB or EDWOSB set-aside or sole-source service contracts or orders, the protest presents evidence that the prime contractor is unduly reliant on a small entity subcontractor that is not a similarly-situated entity as defined in 13 CFR 125.1, or a protest alleging that such subcontractor is performing the primary and vital requirements of a set-aside or sole-source WOSB or EDWOSB



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”).

(2) Assertions that a protested *concern* is not an EDWOSB or WOSB *concern* eligible under the WOSB Program, without setting forth specific facts or allegations, will not be considered by SBA (see 13 CFR 127.603(a)).

(e) *Protest by an interested party.*

(1) An *offeror shall* submit its protest to the *contracting officer*—

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

(ii) To be received by the close of business by 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 127.603(c)(1)); and

(B) Orders set aside for EDWOSB or WOSB *concerns* under *multiple-award contracts* that are not partially or totally set aside or reserved for EDWOSB or WOSB *concerns* (see 13 CFR 127.603(c)(1)), except for orders and blanket purchase agreements placed under a Federal Supply Schedule contract (see 8.405 and 19.302(d)(5)); or

(iii) 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 limit is untimely, unless it is from the *contracting officer* or SBA.

(f)

(1) The *contracting officer shall* forward all protests to SBA. The protests are to be submitted to SBA's Director for Government *Contracting* by email at [wosbprotest@sba.gov](mailto:wosbprotest@sba.gov) .

(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 SBA to determine timeliness and standing:

(i) The *solicitation* number or electronic link to or a paper copy of the *solicitation*.

(ii) The name, address, telephone number, email address, and facsimile number of the *contracting officer*.

(iii) Whether the protestor submitted an *offer*.

(iv) Whether the protested *concern* was the apparent successful *offeror*.

(v) When the protested *concern* submitted its *offer*.

- (vi) Whether the *acquisition* was conducted using sealed bid or negotiated procedures.
  - (vii) The bid opening date, if applicable.
  - (viii) The date the *contracting officer* received the protest.
  - (ix) The date the protestor received notification about the apparent successful *offeror*, if applicable.
  - (x) Whether a contract has been awarded.
- (g) SBA will notify the protester and the *contracting officer* of the date SBA received the protest.
- (h) *Before SBA decision.*
- (1) After receiving a protest involving the apparent successful *offeror's* status as an EDWOSB or WOSB *concern* eligible under the WOSB Program, the *contracting officer shall* either-
- (i) Withhold award of the contract until SBA determines the status of the protested *concern*; or
  - (ii) Award the contract after receipt of the protest but before SBA issues its decision if the *contracting officer* determines *in writing* that an award *must* be made to protect the public interest.
- (2) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of that time granted by the *contracting officer*.
- (3) If SBA does not issue its determination within 15 business days, or within any extension of time granted, the *contracting officer may* award the contract after determining *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. This determination *shall* be provided to the SBA Director for Government *Contracting* and a copy *shall* be included in the contract file.
- (i) *After SBA decision.* SBA will notify the *contracting officer*, the protester, and the protested *concern* of its determination. The determination is effective immediately and is final unless overturned on appeal by OHA pursuant to 13 CFR part 134.
- (1) If the *contracting officer* has withheld contract award and SBA has denied or dismissed the protest, the *contracting officer may* award the contract to the protested *concern*. If OHA subsequently overturns the SBA Director for Government *Contracting's* determination or dismissal, the *contracting officer may* apply the OHA decision to the *procurement* in question.
- (2) If the *contracting officer* has withheld contract award, SBA has sustained the protest and determined that the *concern* is not eligible under the WOSB Program, and no OHA appeal has been filed, 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 (h)(1)(ii) or (h)(3) of this section, awarded the contract, and SBA's ruling is received after award, and no OHA appeal has been filed, then-
- (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 the FPDS to reflect the final SBA decision; and

(iii) SBA will remove the *concern's* designation in the Dynamic Small Business Search (DSBS) as an EDWOSB or WOSB *concern* eligible under the WOSB Program. The *concern shall* not submit an *offer* as an EDWOSB *concern* or WOSB *concern* eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved.

(4) If the *contracting officer* has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, contract award has occurred, SBA has sustained the protest and determined that the *concern* is not eligible under the WOSB Program, and a timely OHA appeal has been filed, then the *contracting officer shall* consider whether performance can be suspended until an OHA decision is rendered.

(5) If OHA affirms the SBA Director for Government *Contracting's* determination finding the protested *concern* is *ineligible*, then-

(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 the FPDS to reflect OHA's decision; and

(iii) SBA will remove the *concern's* designation in DSBS as an EDWOSB or WOSB *concern* eligible under the WOSB Program. The *concern shall* not submit an *offer* as an EDWOSB *concern* or WOSB *concern* eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved or OHA finds the *concern* is eligible on appeal.

(j) Appeals of EDWOSB or WOSB *concerns* eligible under the WOSB Program status determinations.

(1) The protested EDWOSB *concern* or WOSB *concern* eligible under the WOSB program, the protester, or the *contracting officer may* file an appeal of a WOSB or EDWOSB status protest determination with OHA.

(2) OHA *must* receive the appeal no later than 10 business days after the date of receipt of the protest determination. SBA will dismiss an untimely appeal.

(3) See subpart G "Rules of Practice for Appeals From *Women-Owned Small Business Concerns* (WOSB) and Economically Disadvantaged WOSB *Concern* (EDWOSB) Protests" at 13 CFR 134.701 through 134.715 for SBA's appeals regulations.

(k) *The appeal must be in writing.* The appeal *must* identify the protest determination being appealed and *must* set forth a full and specific statement as to why the EDWOSB *concern* or WOSB *concern* eligible under the WOSB program protest determination is alleged to be based on a clear error of fact or law, together with an argument supporting such allegation.

(l) The party appealing the decision *must* provide notice of the appeal to-

(1) The *contracting officer*;

(2) Director, Office of Government *Contracting*, U.S. Small Business Administration, by email at [wosbprotest@sba.gov](mailto:wosbprotest@sba.gov) ;

(3) The protested EDWOSB *concern* or WOSB *concern* eligible under the WOSB program, or the original protester, as appropriate; and

(4) SBA's Office of General Counsel, Associate General Counsel for *Procurement* Law, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, or e-mail at [OPLService@sba.gov](mailto:OPLService@sba.gov).

(m) OHA will make its decision within 15 business days of the receipt of the appeal, if practicable. SBA will provide a copy of the decision to the *contracting officer*, the protester, and the protested EDWOSB *concern* or WOSB *concern* eligible under the WOSB program. The OHA decision is the final agency decision and is binding on the parties.

## **19.309 Solicitation provisions and contract clauses.**

(a)

(1) Insert the provision at [52.219-1](#), Small Business Program Representations, in *solicitations* exceeding the *micro-purchase threshold* when the contract is for *supplies* to be delivered or services to be performed in the *United States* or its *outlying areas*, or when the *contracting officer* has applied this part in accordance with [19.000\(b\)\(1\)\(ii\)](#).

(2) Use the provision with its *Alternate I* in *solicitations* issued by DoD, NASA, or the Coast Guard.

(3) Use the provision with its *Alternate II* in *solicitations* that will result in a *multiple-award contract* with more than one NAICS code assigned. This is authorized for *solicitations* issued after October 1, 2028 (see [19.102\(b\)](#)).

(b) When *contracting* by sealed bidding, insert the provision at [52.219-2](#), Equal Low Bids, in *solicitations* when the contract is for *supplies* to be delivered or services to be performed in the *United States* or its *outlying areas*, or when the *contracting officer* has applied this part in accordance with [19.000\(b\)\(1\)\(ii\)](#).

(c)

(1) Insert the clause at [52.219-28](#), Post-Award Small Business Program Rerepresentation, in *solicitations* and contracts exceeding the *micro-purchase threshold* when the contract is for *supplies* to be delivered or services to be performed in the *United States* or its *outlying areas*, or when the *contracting officer* has applied this part in accordance with [19.000\(b\)\(1\)\(ii\)](#).

(2) Use the clause with its *Alternate I* in *solicitations* and the resulting *multiple-award contracts* with more than one NAICS code. This is authorized for *solicitations* issued after October 1, 2028 (see [19.102\(b\)](#)).