

§ 124.1014

13 CFR Ch. I (1–1–11 Edition)

(2) Notwithstanding paragraph (b)(1) of this section, the contracting officer may award a contract after the receipt of an SDB protest where he or she determines in writing that an award must be made to protect the public interest.

(c) *Withdrawal of protest.* If a protest is withdrawn, SBA will not complete a new disadvantaged status determination, and a previous SDB certification will stand.

(d) *Basis for determination.* (1) Except with respect to a concern which is a current Participant in SBA's 8(a) BD program and is authorized under § 124.1022(b)(3) to submit an affidavit concerning its disadvantaged status, the disadvantaged status determination will be based on the protest record, including reasonable inferences therefrom, as supplied by the protestor, protested concern, SBA or others.

(2) SBA may in its discretion make a part of the protest record information already in its files, and information submitted by the protestor, the protested concern, the contracting officer, or other persons contacted for additional specific information.

(e) *Disadvantaged status.* In evaluating the social and economic disadvantage of individuals claiming disadvantaged status, SBA will consider the same information and factors set forth in §§ 124.103 and 124.104. As provided in § 124.1002(c), individuals claiming disadvantaged status must have a net worth that is less than \$750,000, after taking into account the exclusions set forth in § 124.104(c)(2).

(f) *Disadvantaged status determination.* SBA will render a written determination including the basis for its findings and conclusions.

(g) *Notification of determination.* After making its disadvantaged status determination, the SBA will immediately notify the contracting officer, the protestor, and the protested concern of its determination. SBA will promptly provide by certified mail, return receipt requested, a copy of its written determination to the same entities, consistent with law.

(h) *Results of an SBA disadvantaged status determination.* A disadvantaged

status determination becomes effective immediately.

(1) If the concern is found not to be disadvantaged, the determination remains in full force and effect unless reversed upon appeal by SBA's DAA/GC&BD, or designee, pursuant to § 124.1024, or the concern is certified to be an SDB under § 124.1008. The concern is precluded from applying for SDB certification for 12 months from the date of the final agency decision (whether by the DC/SDBCE, or designee, without an appeal, or by the DAA/GC&BD, or designee, on appeal).

(2) If the concern is found to be disadvantaged, the determination remains in full force and effect unless and until reversed upon appeal by SBA's DAA/GC&BD, or designee, pursuant to § 124.1024. A final Agency decision (whether by the DC/SDBCE, or designee, without an appeal, or by the DAA/GC&BD, or designee, on appeal) finding the protested concern to be an SDB remains in effect for three years from the date of the decision under the same conditions as if the concern had been granted SDB certification under § 124.1008.

[63 FR 35772, June 30, 1998. Redesignated at 73 FR 57495, Oct. 3, 2008, as amended at 74 FR 45754, Sept. 4, 2009]

§ 124.1014 Appeals of disadvantaged status determinations.

(a) *Who may appeal.* Appeals of protest determinations may be filed with the SBA's AA/GC&BD by the protested concern, the protestor, or the contracting officer.

(b) *Timeliness of appeal.* An appeal must be in writing and must be received by the AA/GC&BD no later than 5 working days after the date of receipt of the protest determination. SBA will dismiss any appeal received after the five-day time period.

(c) *Notice of appeal.* Notice of the appeal must be provided by the party bringing an appeal to the procuring activity contracting officer and either the protested concern or original protestor, as appropriate.

(d) *Grounds for appeal.* SBA will reexamine a protest determination only if there was a clear and significant error in the processing of the protest, or if the DC/SDBCE, or designee, failed to

consider a significant material fact contained within the information supplied by the protestor or the protested concern. SBA will not consider protest determination appeals based on additional information or changed circumstances which were not disclosed at the time of the decision of the DC/SDBCE or designee, or which are based on disagreement with the findings and conclusions contained in the determination.

(e) *Contents of appeal.* No specific format is required for the appeal. However, the appeal must identify the protest determination which is appealed, and set forth a full and specific statement as to why the determination is erroneous under paragraph (c) of this section.

(f) *Completion of appeal after award.* An appeal may proceed to completion even though an award of the SDB acquisition or other procurement requirement which prompted the protest has been made, if so desired by the protested concern, or where SBA determines that a decision on appeal would have a material impact on contracting decisions, such as where the contracting officer agrees:

(1) In the case where an award is made to a concern other than the protested concern, to terminate the contract and award to the protested concern if the appeal finds that the protested concern is disadvantaged; or

(2) In the case where an award is made to the protested concern, to terminate the contract if the appeal finds that the protested concern is not disadvantaged.

(g) The appeal will be decided by the AA/GC&BD, within 5 working days of its receipt, if practicable.

(h) The appeal decision will be based 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 protestor, and the protested concern, consistent with law.

(i) The decision of the AA/GC&BD, is the final decision of the SBA, and cannot be further appealed to OHA.

[63 FR 35772, June 30, 1998. Redesignated at 73 FR 57495, Oct. 3, 2008]

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