§ 126.801 How does one file a HUBZone status protest?

(a) *General.* The protest procedures described in this part are separate from those governing size protests and appeals. All protests relating to whether a qualified HUBZone SBC is other than small for purposes of any Federal program are subject to part 121 of this chapter and must be filed in accordance with that part. If a protester protests both the size of the HUBZone SBC and whether the concern meets the HUBZone qualifying requirements set forth in § 126.200, SBA will process protests concurrently, under the procedures set forth in part 121 of this chapter and this part. SBA does not review issues concerning the administration of a HUBZone contract.

(b) *Format.* Protests must be in writing and state all specific grounds for the protest. A protest merely asserting that the protested concern is not a qualified HUBZone SBC, without setting forth specific facts or allegations, is insufficient.

(c) *Filing.* (1) An interested party other than a contracting officer or SBA must submit its written protest to the contracting officer.

(2) A contracting officer and SBA must submit their protest to the D/HUB.

(3) Protestors may deliver their protests in person, by facsimile, by express delivery service, or by U.S. mail (postmarked within the applicable time period).

(d) *Timeliness.* (1) For negotiated acquisitions, an interested party must submit its protest by close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror.

(2) For sealed bid acquisitions:

(i) An interested party must submit its protest by close of business on the fifth business day after bid opening, or

(ii) If the price evaluation preference was not applied at the time of bid opening, by close of business on the fifth business day from the date of identification of the apparent successful offeror.

(3) Any protest submitted after the time limits is untimely, unless it is from SBA or the CO.

(4) Any protest received prior to bid opening or notification of intended award, whichever applies, is premature.

(e) *Referral to SBA.* The CO must forward to SBA any non-premature protest received, notwithstanding whether he or she believes it is sufficiently specific or timely. The CO must send the protests, along with a referral letter, to D/HUB, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416. The CO's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including: the solicitation number; the name, address, telephone number and facsimile number of the CO; the type of HUBZone contract at issue; if the procurement was conducted using full and open competition with a HUBZone price evaluation preference, and whether the protester's opportunity for award was affected by the preference; if the procurement was a HUBZone set-aside, whether the protester submitted an offer; whether the protested concern was the apparent successful offeror; whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when the protest was submitted to the CO; and whether a contract has been awarded.

[63 FR 31908, June 11, 1998, as amended at 69 FR 29427, May 24, 2004]

§ 126.802 Who decides a HUBZone status protest?

The D/HUB or designee will determine whether the concern has qualified HUBZone status.

§ 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.