

§ 126.802

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.

13 CFR Ch. I (1-1-12 Edition)

§ 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 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 either that the protested concern is an eligible HUBZone or has dismissed all protests