

Small Business Administration

§ 124.1007

status if the firm does not meet the requirements of §124.1001(b).

(2) A representation of SDB status on a subcontract to a federal prime contract will be deemed a misrepresentation of SDB status if the firm does not have a good faith belief that it is owned and controlled by one or more socially and economically disadvantaged individuals. Any certification by a firm that SBA found not to qualify as an SDB in connection with an SDB protest or otherwise will be deemed a misrepresentation of SDB status if the firm has not overcome the reason(s) for the negative determination.

(3) Any representation of SDB status by a firm that SBA has found not to qualify as an SDB in connection with a protest or SBA-initiated SDB determination will be deemed a misrepresentation of SDB status if the firm has not overcome the reason(s) set forth in SBA's written decision.

[73 FR 57494, Oct. 3, 2008]

§ 124.1005 How long does an SDB certification last?

(a) A firm that is certified to be an SDB will generally be certified for a period of three years from the date of the certification.

(b) A firm's SDB certification will extend beyond three years where SBA finds the firm to be an SDB:

(1) In connection with a protest challenging the firm's SDB status (*see* §124.1013(h)(2));

(2) In connection with an SBA-initiated SDB determination (*see* §124.1006); or

(3) As part of an 8(a) BD annual review.

(c) A firm that completes its nine-year program term in the 8(a) BD program will continue to be deemed a certified SDB firm for a period of three years from the date of its last 8(a) annual review.

[73 FR 57494, Oct. 3, 2008]

§ 124.1006 Can SBA initiate a review of the SDB status of a firm claiming to be an SDB?

SBA may initiate an SDB determination on any firm that has been certified to be an SDB by a procuring agency or that has represented itself to be an

SDB on a subcontract to a federal prime contract whenever it receives credible information calling into question the SDB status of the firm. Upon its completion of an SDB determination, SBA will issue a written decision regarding the SDB status of the questioned firm. If SBA finds that the firm continues to qualify as an SDB, the determination remains in effect for three years from the date of the decision.

[73 FR 57494, Oct. 3, 2008]

§ 124.1007 Who may protest the disadvantaged status of a concern?

(a) In connection with a requirement for which the apparent successful offeror has invoked an SDB evaluation adjustment or an SDB set-aside, the following entities may protest the disadvantaged status of the apparent successful offeror:

(1) Any other concern which submitted an offer for that requirement, unless the contracting officer has found the concern to be non-responsive or outside the competitive range, or SBA has previously found the protesting concern to be ineligible for the requirement at issue;

(2) The procuring activity contracting officer; or

(3) SBA.

(b) In connection with an 8(d) subcontract, or a requirement for which the apparent successful offeror received an evaluation adjustment for proposing one or more SDB subcontractors, the procuring activity contracting officer or SBA may protest the disadvantaged status of a proposed subcontractor. Other interested parties may submit information to the contracting officer or SBA in an effort to persuade the contracting officer or SBA to initiate a protest.

(c) An interested party seeking to protest both the disadvantaged status and size of an apparent successful SDB offeror must submit two separate protests, one as to disadvantaged status pursuant to this subpart, and one as to size pursuant to part 121 of this title. An interested party seeking to protest only size of an apparent successful SDB offeror must submit a size protest to