

Small Business Administration

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decision to the procurement in question.

(2) A contracting officer shall not award a contract to a protested concern that the D/GC has determined is not an eligible SDVO for the procurement in question.

(i) If a contracting officer receives such a determination after contract award, and no OHA appeal has been filed, the contracting officer shall terminate the award.

(ii) If a timely OHA appeal is filed after award, the contracting officer must consider whether performance can be suspended until an appellate decision is rendered.

(iii) If OHA affirms the D/GC's determination finding the protested concern ineligible, the contracting officer shall either terminate the contract or not exercise the next option.

(3) The contracting officer must update the Federal Procurement Data System and other procurement reporting databases to reflect the final agency decision (the D/GC's decision if no appeal is filed or OHA's decision).

(4) A concern found to be ineligible may not submit an offer as an SDVO SBC on a future procurement unless it demonstrates to SBA's satisfaction that it has overcome the reasons for the protest (*e.g.*, it changes its ownership to satisfy the definition of an SDVO SBC set forth in §125.8) and SBA issues a decision to this effect.

[70 FR 14528, Mar. 23, 2005, as amended at 76 FR 5684, Feb. 2, 2011]

§125.28 What are the procedures for appealing an SDVO status protest?

The protested concern, the protester, or the contracting officer may file an appeal of an SDVO status protest determination with OHA in accordance with part 134 of this chapter.

[76 FR 5685, Feb. 2, 2011]

Subpart E—Penalties and Retention of Records

SOURCE: 69 FR 25270, May 5, 2004, unless otherwise noted.

§125.29 What are the requirements for representing SDVO SBC status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to SDVO SBCs, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a SDVO SBC willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of SDVO SBC status:

(1) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to SDVO SBCs.

(2) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a SDVO SBC.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a SDVO SBC.

(c) *Signature Requirement.* Each offer, proposal, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the SDVO SBC status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the SDVO SBC status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a) through (c) of this section may be

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determined not to apply in the case of unintentional errors, technical malfunctions, and other similar situations that demonstrate that a misrepresentation of SDVO SBC status was not affirmative, intentional, willful or actionable under the False Claims Act, 31 U.S.C. §§3729, et seq. A prime contractor acting in good faith should not be held liable for misrepresentations made by its subcontractors regarding the subcontractors' SDVO SBC status. Relevant factors to consider in making this determination may include the firm's internal management procedures governing SDVO SBC status representations or certifications, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. An individual or firm may not be held liable where government personnel have erroneously identified a concern as a SDVO SBC without any representation or certification having been made by the concern and where such identification is made without the knowledge of the individual or firm.

(e) *Penalties for Misrepresentation.*

(1) *Suspension or debarment.* The SBA suspension and debarment official or the agency suspension and debarment official may suspend or debar a person or concern for misrepresenting a firm's status as a SDVO SBC pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, and any other applicable laws.

(3) *Criminal Penalties.* Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the SDVO SBC status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended, 18 U.S.C. 1001, 18 U.S.C. 287, and any other applicable laws. Persons or concerns are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursu-

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ant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct “continuing representations” that are no longer true.

[78 FR 38819, June 28, 2013]

§ 125.30 What are the requirements for representing SDVO SBC status, and what are the penalties for misrepresentation?

(a) In order to be identified as a SDVO SBC in the System for Award Management (SAM) database (or any successor thereto), a concern must certify its SDVO SBC status in connection with specific eligibility requirements at least annually.

(b) If a firm identified as a SDVO SBC in SAM fails to certify its status within one year of a status certification, the firm will not be listed as a SDVO SBC in SAM, unless and until the firm recertifies its SDVO SBC status.

[78 FR 38820, June 28, 2013]

PART 126—HUBZONE PROGRAM

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