

small disadvantaged business concern after the SBA has issued its determination.

(d) If the SBA determines that the status of a concern as a "small business", a "small disadvantaged business" or a "women-owned small business" has been misrepresented in order to obtain a set-aside contract, an 8(a) subcontract, a subcontract that is to be included as part of all of a goal contained in a subcontracting plan, or a prime or subcontract to be awarded as a result, or in furtherance of any other provision of Federal law that specifically references section 8(d) of the Small Business Act for a definition of program eligibility, the SBA may take action as specified in section 16(d) of the Act. * * *

33. Section 19.302 is redesignated as 19.302-1; in paragraphs (d)(1), introductory text, (f), (g)(1), and (h)(1)(ii) of newly designated 19.302-1, remove the words "business day" or "business days" and insert "workday" or "workdays" in their place; and new 19.302 heading and 19.302-2 are added to read as follows:

19.302 Protesting a small or small disadvantaged business representation.

19.302-1 Protesting a small business representation.

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19.302-2 Protesting a small disadvantaged business representation.

Any offeror, the contracting officer, the Small Business Administration (SBA), or other interested party may protest a concern's representation of disadvantaged status.

(a) An offeror may protest a concern's representation status by filing a protest with the contracting officer. The protest must be filed within the times specified in (FAR) 48 CFR 19.302-1(d)(1) and must contain specific detailed evidence supporting the basis of protest.

(b) The contracting officer or the SBA may protest a concern's representation of disadvantaged status at any time. If a contracting officer's protest is based on information provided by a party ineligible to protest directly or ineligible to protest under the timeliness standards, the contracting officer must be persuaded by the evidence presented before adopting the grounds for protest as his or her own. The SBA protests a concern's representation of disadvantaged status by filing directly with its Office of Program Eligibility and notifying the contracting officer.

(c) The contracting officer shall return untimely protests to the protester. This includes protests filed before bid

opening or notification of apparent successful offeror.

(d) Upon receipt of a timely protest, the contracting officer shall withhold award and forward the protest to the SBA Office of Program Eligibility, Office of Minority Small Business and Capitol Ownership Development, 409 3rd Street, SW., Washington, DC 20416. Send SBA

(1) The protest;

(2) The date the protest was received and a determination of timeliness;—

(3) A copy of the protested concern's self-certification of disadvantaged status; and—

(4) The date of bid opening or date on which notification of apparent successful offeror was sent to unsuccessful offerors.—

(e) Do not withhold award when the contracting officer makes a written determination that award must be made to protect the public interest.

(f) The SBA Director, Office of Program Eligibility, will determine the disadvantaged status of the challenged offeror and notify the contracting officer, the challenged offeror, and the protester. Award may be made on the basis of that determination. The determination is final for purposes of the instant acquisition, unless (1) it is appealed and (2) the contracting officer receives the appeal decision before award.—

(g) If the contracting officer does not receive an SBA determination within 15 working days after the SBA's receipt of the protest, the contracting officer shall presume that the challenged offeror is socially and economically disadvantaged. Do not use the presumption as a basis for award without first inquiring as to when a determination can be expected and waiting for the determination, unless further delay in award would be disadvantageous to the Government.—

(h) An SBA determination may be appealed by (1) The interested party whose protest has been denied; (2) The concern whose status was protested; or (3) The contracting officer. The appeal must be filed with the SBA's Associate Administrator for Minority Small Business and Capital Ownership Development within five working days after receipt of the determination. If the contracting officer receives the SBA's decision of the appeal before award, the decision shall apply to the instant acquisition. If the decision is received after award, it will apply to future acquisitions.—

34. Section 19.303 is amended by revising paragraph (a) to read as follows:

19.303 Determining product or service classifications.—

(a) The contracting officer shall determine the appropriate standard industrial classification code and related small business size standard and include them in solicitations above the micro-purchase threshold in (FAR) 48 CFR 13.106.

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35. Section 19.304 is revised to read as follows:

19.304 Solicitation provisions and clause.—

(a) The contracting officer shall insert the provision at 52.219-1, Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(b) The contracting officer shall insert the clause at 52.219-01, Priority for Labor Surplus Area Concerns, in solicitations and contracts that exceed the simplified acquisition threshold in part 13 when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

19.401 [Amended]—

36. Section 19.401 is amended in paragraph (a) by removing the phrase "and small disadvantaged business".—

37. Section 19.402 is amended by revising paragraph (c)(1)(ii) to read as follows:

19.402 Small Business Administration procurement center representatives.

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(c) * * *

(1) * * *

(ii) new qualified small, small disadvantaged and women-owned small business sources, and

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38. Subpart 19.5 is revised to read as follows:

Subpart 19.5—Set-Asides for Small and Small Disadvantaged Businesses

- Sec.
- 19.501 General.
- 19.502 Set-aside program order of precedence.
- 19.503 Setting aside acquisitions.
- 19.503-1 Requirements for setting aside acquisitions.
- 19.503-2 Total Small Disadvantaged Business (SDB) set-asides.
- 19.503-3 Total small business set-asides.
- 19.503-4 Partial small business set-asides.
- 19.503-5 Methods of conducting set-asides.