

Small Business Administration

§ 121.1008

Sundays, and legal holidays, after the contracting officer has notified the protestor of the identity of the prospective awardee.

(3) *Multiple award schedule.* On a multiple award schedule procurement set aside for small business, protests will be considered timely if received by SBA at any time prior to the expiration of the contract period (including renewals).

(b) *Protests by contracting officers or SBA.* The time limitations in paragraph (a) of this section do not apply to contracting officers or SBA, and they may file protests before or after awards, except to the extent set forth in paragraph (e) of this section.

(c) *Effect of contract award.* A timely filed protest applies to the procurement in question even though a contracting officer awarded the contract prior to receipt of the protest.

(d) *Untimely protests.* A protest received after the allotted time limits must still be forwarded to SBA. SBA will dismiss untimely protests.

(e) *Premature protests.* A protest filed by any party, including the contracting officer, before bid opening or notification to offerors of the selection of the apparent successful offer will be dismissed as premature.

§ 121.1005 How must a protest be filed with the contracting officer?

A protest must be delivered to the contracting officer by hand, telegram, mail, FAX, or telephone. If a protest is made by telephone, the contracting officer must later receive a confirming letter either within the 5-day period in §121.1004(a)(1) or postmarked no later than one day after the date of the telephone protest.

§ 121.1006 When will a size protest be referred to an SBA Government Contracting Area Office?

(a) A contracting officer who receives a protest (other than from SBA) must forward the protest promptly to the SBA Government Contracting Area Office serving the area in which the headquarters of the offeror is located.

(b) A contracting officer's referral must contain the following information:

(1) The protest and any accompanying materials;

(2) A copy of the self-certification as to size;

(3) Identification of the applicable size standard;

(4) A copy of the solicitation;

(5) Identification of the date of bid opening or notification provided to unsuccessful offerors;

(6) The date on which the protest was received; and

(7) A complete address and point of contact for the protested concern.

§ 121.1007 Must a protest of size status relate to a particular procurement and be specific?

(a) *Particular procurement.* A protest challenging the size of a concern which does not pertain to a particular procurement or sale will not be acted on by SBA.

(b) *A protest must include specific facts.* A protest must be sufficiently specific to provide reasonable notice as to the grounds upon which the protested concern's size is questioned. Some basis for the belief or allegation stated in the protest must be given. A protest merely alleging that the protested concern is not small or is affiliated with unnamed other concerns does not specify adequate grounds for the protest. No particular form is prescribed for a protest. Where materials supporting the protest are available, they should be submitted with the protest.

(c) *Non-specific protests will be dismissed.* Protests which do not contain sufficient specificity will be dismissed by SBA.

§ 121.1008 What happens after SBA receives a size protest or a request for a formal size determination?

(a) When a size protest is received, the SBA Government Contracting Area Director, or designee, will promptly notify the contracting officer, the protested concern, and the protestor that a protest has been received. In the event the size protest pertains to a requirement involving SBA's HUBZone Program, the Government Contracting Area Director will advise the AA/HUB of receipt of the protest. In the event the size protest pertains to a requirement involving SBA's SBIR Program,

the Government Contracting Area Director will advise the Assistant Administrator for Technology of the receipt of the protest. SBA will provide a copy of the protest to the protested concern along with a blank SBA Application for Small Business Size Determination (SBA Form 355) by certified mail, return receipt requested, or by any overnight delivery service that provides proof of receipt. SBA will ask the protested concern to respond to the allegations of the protestor.

(b) When SBA receives a request for a formal size determination in accord with §121.1001(b), SBA will provide a blank copy of SBA Form 355 to the concern whose size is at issue.

(c) The protested concern or concern whose size is at issue must return the completed SBA Form 355 and all other requested information to SBA within 3 working days from the date of receipt of the blank form from SBA. SBA has discretion to grant an extension of time to file the form. The firm must attach to the completed SBA Form 355 its answers to the allegations contained in the protest, where applicable, together with any supporting material.

(d) If a concern does not submit a completed SBA Form 355, answers to the protest allegations, or other requested information within the allotted time provided by SBA, or if it submits incomplete information, SBA may presume that disclosure of the form, any information missing from it, or other missing information would show or tend to show that the concern is other than a small business.

[61 FR 3286, Jan. 31, 1996, as amended at 63 FR 31908, June 11, 1998]

§ 121.1009 What are the procedures for making the size determination?

(a) *Time frame for making size determination.* After receipt of a protest or a request for a formal size determination, SBA will make a formal size determination within 10 working days, if possible.

(b) *Basis for determination.* The size determination will be based primarily on information supplied by the protestor or the entity requesting the size determination and the subject concern. The determination, however, may also be based on other grounds not

raised in the protest or request for size determination. SBA may utilize other information in its files and may make inquiries including requests to the protestor, the protested concern and any alleged affiliates, or other persons for additional specific information.

(c) *Burden of persuasion.* The concern whose size is under consideration has the burden of establishing its small business size.

(d) *Weight of evidence.* SBA will give greater weight to specific, signed, factual evidence than to general, unsupported allegations or opinions. In the case of refusal or failure to furnish requested information within a required time period, SBA may assume that disclosure would be contrary to the interests of the party failing to make disclosure.

(e) *Formal size determination.* The SBA will base its formal size determination upon the record, including reasonable inferences from the record, and will state in writing the basis for its findings and conclusions.

(f) *Notification of determination.* SBA will promptly notify the contracting officer, the protestor, and the protested offeror, as well as each affiliate or alleged affiliate, of the size determination. The notification will be by certified mail, return receipt requested, or by any overnight delivery service that provides proof of receipt.

(g) *Results of an SBA size determination.* (1) A formal size determination becomes effective immediately and remains in full force and effect unless and until reversed by OHA.

(2) Once SBA has determined that a concern is other than small for purposes of a particular procurement, the concern cannot later become eligible for the procurement by reducing its size.

(3) A concern determined to be other than small for a particular size standard is ineligible for any procurement or assistance authorized by the Small Business Act or the Small Business Investment Act of 1958, requiring the same or a lower size standard, unless recertified as small pursuant to §121.1010. Following an adverse size determination, a concern cannot again self-certify as small within the same or