

Subpart B—Eligibility, Certification, and Protests Relating to Federal Small Disadvantaged Business Programs

SOURCE: 63 FR 35772, June 30, 1998, unless otherwise noted.

§ 124.1001 General applicability.

(a) This subpart defines a Small Disadvantaged Business (SDB). It also sets forth procedures by which a firm can apply to be recognized as an SDB, including procedures to be used by private sector entities approved by SBA for determining whether a particular concern is owned and controlled by one or more disadvantaged individuals or Alaska Native Corporations (ANCs), Community Development Corporations (CDCs), Indian tribes (tribes) or Native Hawaiian Organizations (NHOs). Finally, this subpart establishes procedures by which SBA determines whether a particular concern qualifies as an SDB in response to a protest challenging the concern's status as disadvantaged. Unless specifically stated otherwise, the phrase "socially and economically disadvantaged individuals" in this subpart includes tribes, ANCs, CDCs, and NHOs.

(b) Only small firms that are owned and controlled by socially and economically disadvantaged individuals are eligible to participate in Federal SDB price evaluation adjustment, evaluation factor or subfactor, monetary subcontracting incentive, or set-aside programs, or SBA's section 8(d) subcontracting program.

(c) In order for a concern to represent that it is an SDB as a prime contractor for purposes of a Federal Government procurement, it must have:

(1) Received a certification from SBA that it qualifies as an SDB; or

(2) Submitted an application for SDB certification to SBA or a Private Certifier, and must not have received a negative determination regarding that application from SBA or the Private Certifier.

(d) A firm cannot represent itself to be an SDB concern in order to receive a preference as an SDB for any Federal subcontracting program if it is not on

the SBA-maintained list of qualified SDBs.

§ 124.1002 What is a Small Disadvantaged Business (SDB)?

(a) *Reliance on 8(a) criteria.* In determining whether a firm qualifies as an SDB, the criteria of social and economic disadvantage and other eligibility requirements established in subpart A of this part apply, including the requirements of ownership and control and disadvantaged status, unless otherwise provided in this subpart. Qualified Private Certifiers must use the 8(a) criteria applicable to ownership and control in determining whether a particular firm is actually owned and controlled by one or more individuals claiming disadvantaged status.

(b) *SDB eligibility criteria.* A small disadvantaged business (SDB) is a concern:

(1) Which qualifies as small under part 121 of this title for the size standard corresponding to the applicable four digit Standard Industrial Classification (SIC) code.

(i) For purposes of SDB certification, the applicable SIC code is that which relates to the primary business activity of the concern;

(ii) For purposes related to a specific Federal Government contract, the applicable SIC code is that assigned by the contracting officer to the procurement at issue;

(2) Which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals as set forth in § 124.105. For the requirements relating to tribes and ANCs, NHOs, or CDCs, see §§ 124.109, 124.110, and 124.111, respectively.

(3) Except for tribes, ANCs, NHOs, and CDCs, whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals. For the requirements relating to tribes and ANCs, NHOs, or CDCs, see §§ 124.109, 124.110, and 124.111, respectively.

(4) Which, for purposes of SDB procurement mechanisms authorized by 10 U.S.C. 2323 (such as price evaluation adjustments, evaluation factors or subfactors, monetary subcontracting incentives, or SDB set-asides) relating to the Department of Defense, NASA and