

(3) It is small under the SIC code assigned to the procurement.

(c) If bidding as a joint venture, each qualified HUBZone SBC must make the certifications in paragraphs (b)(1), (2), and (3) of this section separately under its own name.

(d) A qualified HUBZone SBC which is a non-manufacturer may submit an offer on a contract for supplies if it meets the requirements under the non-manufacturer rule as defined in § 121.406(b) of this title and if the small manufacturer is also a qualified HUBZone SBC.

**§ 126.602 Must a qualified HUBZone SBC maintain the employee residency percentage during contract performance?**

The qualified HUBZone SBC must attempt to maintain the required percentage of employees who reside in a HUBZone during the performance of any contract awarded to the concern on the basis of HUBZone status. "Attempt to maintain" means making substantive and documented efforts to maintain that percentage such as written offers of employment, published advertisements seeking employees, and attendance at job fairs. HUBZone contracts are described more fully in § 126.600. Enforcement of this paragraph will be the responsibility of SBA, which will monitor the requirement in accordance with §§ 126.400 through 126.405.

**§ 126.603 Does HUBZone certification guarantee receipt of HUBZone contracts?**

No. Qualified HUBZone SBCs should market their capabilities to appropriate procuring agencies in order to increase their prospects of having a requirement set aside for HUBZone contract award.

**§ 126.604 Who decides if a contract opportunity for HUBZone set-aside competition exists?**

The contracting officer for the contracting activity makes this decision.

**§ 126.605 What requirements are not available for HUBZone contracts?**

A contracting activity may not make a requirement available for a HUBZone contract if:

(a) The contracting activity otherwise would fulfill that requirement through award to Federal Prison Industries, Inc. under 18 U.S.C. 4124 or 4125, or to Javits-Wagner-O'Day Act participating non-profit agencies for the blind and severely disabled, under 41 U.S.C. 46 *et seq.*, as amended; or

(b) An 8(a) participant currently is performing that requirement or SBA has accepted that requirement for performance under the authority of the section 8(a) program, unless SBA has consented to release of the requirement from the section 8(a) program; or

(c) The requirement is at or below the micropurchase threshold.

**§ 126.606 May a contracting officer request that SBA release an 8(a) requirement for award as a HUBZone contract?**

Yes. However, SBA will grant its consent only where neither the incumbent nor any other 8(a) participant(s) can perform the requirement, and where the section 8(a) program will not be adversely affected. The SBA official authorized to grant such consent is the AA/8(a)BD.

**§ 126.607 When must a contracting officer set aside a requirement for qualified HUBZone SBCs?**

(a) The contracting officer first must review a requirement to determine whether it is excluded from HUBZone contracting pursuant to § 126.605.

(b) The contracting officer must identify qualified HUBZone 8(a) concerns and other 8(a) concerns. The contracting officer must give first priority to qualified HUBZone 8(a) concerns.

(c) After determining that neither paragraph (a) or (b) of this section apply, the contracting officer must set aside the requirement for competition restricted to qualified HUBZone SBCs if the contracting officer:

(1) Has a reasonable expectation, after reviewing SBA's list of qualified HUBZone SBCs that at least two responsible qualified HUBZone SBCs will submit offers; and

(2) Determines that award can be made at fair market price.