

Small Business Administration

§ 126.700

Example: In a full and open competition, a qualified HUBZone SBC submits an offer of \$98; another small business concern submits an offer of \$100; and a large business submits an offer of \$93. The lowest, responsive, responsible offeror would be the large business. However, the contracting officer must apply the HUBZone price evaluation preference. If the qualified HUBZone SBC's offer is not more than 10 percent higher than the large business's offer, the contracting officer must deem the qualified HUBZone SBC's price as lower than the price of the large business. In this example, the qualified HUBZone SBC's price is not more than 10 percent higher than the large business's price and, consequently, the qualified HUBZone SBC displaces the large business as the lowest, responsive, and responsible offeror. If the HUBZone SBC offer were \$101, the award would go to the large business at \$93. If the HUBZone SBC will not benefit from the preference, the preference is not applied to change an offer.

§ 126.614 How does a contracting officer treat a concern that is both a qualified HUBZone SBC and an SDB in a full and open competition?

A concern that is both a qualified HUBZone SBC and an SDB must receive the benefit of both the HUBZone price evaluation preference described in § 126.614 and the SDB price evaluation preference described in 10 U.S.C. 2323 and the Federal Acquisition Streamlining Act, section 7102(a)(1)(B), Public Law 103-355, in a full and open competition.

§ 126.615 May a large business participate on a HUBZone contract?

A large business may not participate as a prime contractor on a HUBZone award but may participate as a subcontractor to an otherwise qualified HUBZone SBC, subject to the contract performance requirements set forth in § 126.700.

§ 126.616 What requirements must a joint venture satisfy to bid on a HUBZone contract?

A joint venture may bid on a HUBZone contract if the joint venture meets all of the following requirements:

(a) *HUBZone joint venture.* A qualified HUBZone SBC may enter into a joint venture with one or more other qualified HUBZone SBCs, 8(a) participants, or WOBs for the purpose of performing a specific HUBZone contract.

(b) *Size of concerns.* A joint venture of at least one qualified HUBZone SBC and an 8(a) participant or a woman-owned small business concern may submit an offer for a HUBZone contract so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract, provided:

(1) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the SIC code assigned to the contract; and

(2) For a procurement having an employee-based size standard, the procurement exceeds \$10 million.

(c) *Performance of work.* The aggregate of the qualified HUBZone SBCs to the joint venture, not each concern separately, must perform the applicable percentage of work required by § 126.700.

Subpart G—Contract Performance Requirements

§ 126.700 What are the subcontracting percentages requirements under this program?

(a) *Subcontracting percentage requirements.* A qualified HUBZone SBC prime contractor can subcontract part of a HUBZone contract provided:

(1) In the case of a contract for services (except construction), the qualified HUBZone SBC spends at least 50 percent of the cost of the contract performance incurred for personnel on the concern's employees or on the employees of other qualified HUBZone SBCs;

(2) In the case of a contract for general construction, the qualified HUBZone SBC spends at least 15 percent of the cost of contract performance incurred for personnel on the concern's employees or the employees of other qualified HUBZone SBCs;

(3) In the case of a contract for construction by special trade contractors, the qualified HUBZone SBC spends at least 25 percent of the cost of contract performance incurred for personnel on the concerns' employees or the employees of other qualified HUBZone SBCs; and

(4) In the case of a contract for procurement of supplies (other than a procurement from a regular dealer in such

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supplies) the qualified HUBZone SBC spends at least 50 percent of the manufacturing cost (excluding the cost of materials) on performing the contract in a HUBZone. One or more qualified HUBZone SBCs may combine to meet this subcontracting percentage requirement.

(b) *Definitions.* Many definitions applicable to this section can be found in § 125.6 of this title.

§ 126.701 Can these subcontracting percentages requirements change?

Yes. The Administrator may change the subcontracting percentage requirements if the Administrator determines that such action is necessary to reflect conventional industry practices.

§ 126.702 How can the subcontracting percentage requirements be changed?

Representatives of a national trade or industry group (as defined by two-digit Major Group industry codes) may request a change in subcontracting percentage requirements for that industry. Changes in subcontracting percentage requirements may be requested only for categories defined by two-digit Major Group industry codes in the Standard Industry Classification (SIC) Code system. SBA will not consider requests from anyone other than a representative of a national trade or industry group or requests for changes for four-digit SIC Code categories.

§ 126.703 What are the procedures for requesting changes in subcontracting percentages?

(a) *Format of request.* There is no prescribed format, but the requester should try to demonstrate to the Administrator that a change in percentage is necessary to reflect conventional industry practices, and should support its request with information including, but not limited to:

(1) Information relative to the economic conditions and structure of the entire national industry;

(2) Market data, technical changes in the industry and industry trends;

(3) Specific reasons and justifications for the change in the subcontracting percentage;

(4) The effect such a change would have on the federal procurement process; and

(5) Information demonstrating how the proposed change would promote the purposes of the HUBZone Program.

(b) *Notice to public.* Upon an adequate preliminary showing to SBA, SBA will publish in the FEDERAL REGISTER a notice of its receipt of a request that it consider a change in the subcontracting percentage requirements for a particular industry for HUBZone contracts. The notice will identify the group making the request, and give the public an opportunity to submit to the Administrator information and arguments in both support and opposition.

(c) *Comments.* Once SBA has published a notice in the FEDERAL REGISTER, it will afford a period of not less than 60 days for public comment.

(d) *Decision.* SBA will render its decision after the close of the comment period. If it decides against a change, it will publish notice of its decision in the FEDERAL REGISTER. Concurrent with the notice, SBA will advise the requester of its decision in writing. If it decides in favor of a change, SBA will propose an appropriate change to this part in accordance with proper rule-making procedures.

Subpart H—Protests

§ 126.800 Who may protest the status of a qualified HUBZone SBC?

(a) *For sole source procurements.* SBA or the contracting officer may protest the proposed awardee's qualified HUBZone SBC status.

(b) *For all other procurements.* Any interested party may protest the apparent successful offeror's qualified HUBZone SBC status.

§ 126.801 How does one file a HUBZone status protest?

(a) *General.* The protest procedures described in this part are separate from those governing size protests and appeals. All protests relating to whether a qualified HUBZone SBC is a "small" business for purposes of any Federal program are subject to part 121 of this title and must be filed in accordance with that part. If a protester protests both the size of the HUBZone SBC and