

## Small Business Administration

## § 126.606

(c) Awards to qualified HUBZone SBCs through full and open competition after a price evaluation preference in favor of qualified HUBZone SBCs.

### **§ 126.601 What additional requirements must a qualified HUBZone SBC meet to bid on a contract?**

(a) In order to submit an offer on a specific HUBZone contract, a concern must be small under the size standard corresponding to the SIC code assigned to the contract.

(b) At the time a qualified HUBZone SBC submits its offer on a specific contract, it must certify to the contracting officer that

(1) It is a qualified HUBZone SBC which appears on SBA's List;

(2) There has been no material change in its circumstances since the date of certification shown on the List which could affect its HUBZone eligibility; and

(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 HUBZone contract for supplies if it meets the requirements of the non-manufacturer rule set forth at § 121.406(b)(1)(i) and (ii) of this title, and if the small manufacturer providing the end item for the contract is also a qualified HUBZone SBC. However, for HUBZone contracts at or below \$25,000 in total value, a qualified HUBZone SBC may supply the end item of any manufacturer, including a large business.

[63 FR 31908, June 11, 1998, as amended at 66 FR 4645, Jan. 18, 2001]

### **§ 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

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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.

### **§ 126.608 Are there HUBZone contracting opportunities below the simplified acquisition threshold?**

Yes. If the requirement is below the simplified acquisition threshold, the contracting officer should set-aside the requirement for consideration among qualified HUBZone SBCs using simplified acquisition procedures.

### **§ 126.609 What must the contracting officer do if a contracting opportunity does not exist for competition among qualified HUBZone SBCs?**

If a contract opportunity for competition among qualified SBCs does not exist under the provisions of §126.607, the contracting officer must first consider the possibility of making an award to a qualified HUBZone SBC on a sole source basis, and then to a small business under small business set-aside procedures, in that order of precedence. If the criteria are not met for any of these special contracting authorities, then the contracting officer may solicit the procurement through another appropriate contracting method.

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### **§ 126.610 May SBA appeal a contracting officer's decision not to reserve a procurement for award as a HUBZone contract?**

The Administrator may appeal a contracting officer's decision not to make a particular requirement available for award as a HUBZone sole source or a HUBZone set-aside contract.

### **§ 126.611 What is the process for such an appeal?**

(a) *Notice of appeal.* When the contracting officer rejects a recommendation by SBA's Procurement Center Representative to make a requirement available for award as a HUBZone contract, he or she must notify the Procurement Center Representative as soon as practicable. If the Administrator intends to appeal the decision, SBA must notify the contracting officer no later than five business days after receiving notice of the contracting officer's decision.

(b) *Suspension of action.* Upon receipt of notice of SBA's intent to appeal, the contracting officer must suspend further action regarding the procurement until the head of the contracting activity issues a written decision on the appeal, unless the head of the contracting activity makes a written determination that urgent and compelling circumstances which significantly affect the interests of the United States compel award of the contract.

(c) *Deadline for appeal.* Within 15 business days of SBA's notification to the contracting officer, SBA must file its formal appeal with the head of the contracting activity or that agency may consider the appeal withdrawn.

(d) *Decision.* The contracting activity must specify in writing the reasons for a denial of an appeal brought under this section.

### **§ 126.612 When may a contracting officer award sole source contracts to a qualified HUBZone SBC?**

A contracting officer may award a sole source contract to a qualified HUBZone SBC only when the contracting officer determines that:

(a) None of the provisions of §§ 126.605 or 126.607 apply;