

## Small Business Administration

## § 126.616

international food aid programs administered by the Farm Service Agency, the price evaluation preference shall be 5% on the first portion of a contract to be awarded that is not greater than 20% of the total volume being procured for each commodity in a single IFB.

(d) A contract awarded to a qualified HUBZone SBC under a preference described in paragraph (b) of this section shall not be counted toward the fulfillment of any requirement partially set aside for competition restricted to SBCs.

[69 FR 29425, May 24, 2004, as amended at 70 FR 51250, Aug. 30, 2005]

### **§ 126.614 How does a CO apply HUBZone and SDB price evaluation preferences in full and open competition?**

A CO may receive offers from both qualified HUBZone SBCs and SDB concerns, or from concerns that qualify as both, during a full and open competition. The CO must first apply the SDB price evaluation preference described in 10 U.S.C. 2323 to all appropriate offerors. The CO must then apply the HUBZone price evaluation preference as described in § 126.613 to all appropriate offerors. 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 § 126.613 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.

*Example 1:* In a full and open competition, a qualified HUBZone SBC (but not an SDB) submits an offer of \$102; an SDB (but not a qualified HUBZone SBC) submits an offer of \$107; and a large business submits an offer of \$93. The CO first applies the SDB price evaluation preference and adds 10% to the qualified HUBZone SBC's offer thereby making that offer \$112.2, and to the large business's offer thereby making that offer \$102.3. As a result, the large business is the lowest, responsive, and responsible offeror. Next, the CO applies the HUBZone preference and, since the qualified HUBZone SBC's offer is not more than 10% higher than the large business's offer, the CO must deem the price offered by the qualified HUBZone SBC to be lower than the price offered by the large business.

*Example 2:* A qualified HUBZone SBC (but not an SDB) submits an offer of \$102; a qualified HUBZone SBC that is also an SDB submits an offer of \$105; an SDB (but not a qualified HUBZone SBC) submits an offer of \$107; a small business concern (but not a qualified HUBZone SBC or an SDB) submits an offer of \$100; and a large business submits an offer of \$93. The CO must first apply the SDB price evaluation preference to establish the lowest, responsive, and responsible offeror. Thus, the qualified HUBZone SBC's offer becomes \$112.2; the qualified HUBZone SBC/SDB's offer remains \$105; the SDB's offer remains \$107; the small business concern's offer becomes \$110; and the large business's offer becomes \$102.3. As a result of the SDB price evaluation preference, the large business is the lowest, responsive, and responsible offeror. Next, the CO must apply the HUBZone price evaluation preference and if a qualified HUBZone SBC's price is not more than 10% higher than the large business's price, the CO must deem its price to be lower than the large business's price. In this example, the qualified HUBZone price of \$112.2 is not more than 10% higher than the large business's price, however, the qualified HUBZone/SDB's price of \$105 is also not more than 10% higher than the large business's price and is lower than the qualified HUBZone SBC's price. Consequently, the CO must deem the price of the qualified HUBZone/SDB as the lowest, responsive, and responsible offeror.

[69 FR 29426, May 24, 2004]

### **§ 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 submit an offer on a HUBZone contract?**

A joint venture may submit an offer 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 another qualified HUBZone SBC for the purpose of submitting an offer for a HUBZone contract. The joint venture itself need not be certified as a qualified HUBZone SBC.

(b) *Size of concerns.* (1) A joint venture of two or more qualified HUBZone

SBCs may submit an offer for a HUBZone contract so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract and the HUBZone joint venture in the aggregate may exceed the size standard provided the procurement meets the following conditions:

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

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

(2) For a procurement that does not exceed the applicable dollar amount specified in paragraph (b)(1) of this section, a joint venture of two or more qualified HUBZone SBCs may submit an offer for a HUBZone contract so long as the qualified HUBZone SBCs in the aggregate are small under the size standard corresponding to the NAICS code assigned to the contract.

(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 13 CFR 125.6.

[69 FR 29426, May 24, 2004]

**§ 126.617 Who decides contract disputes arising between a qualified HUBZone SBC and a contracting activity after the award of a HUBZone contract?**

For purposes of the Disputes Clause of a specific HUBZone contract, the contracting activity will decide disputes arising between a qualified HUBZone SBC and the contracting activity.

[69 FR 29426, May 24, 2004]

**§ 126.618 How does a HUBZone SBC's participation in a Mentor-Protégé relationship affect its participation in the HUBZone Program?**

(a) Qualified HUBZone SBCs may enter into Mentor-Protégé relationships in connection with other Federal programs, provided that such relationships do not conflict with the underlying HUBZone requirements.

(b) For purposes of determining whether an applicant to the HUBZone Program or a HUBZone SBC qualifies as small under part 121 of this chapter, SBA will not find affiliation between the applicant or qualified HUBZone SBC and the firm that is its mentor in a Federally-approved mentor-Protégé relationship (including a mentor that is other than small) on the basis of the mentor-Protégé agreement.

(c)(1) A qualified HUBZone SBC that is a prime contractor on a HUBZone contract may team with and subcontract work to its mentor.

(i) The HUBZone SBC must meet the applicable performance of work requirement set forth in §125.6(b) of this chapter.

(ii) SBA may find affiliation between a prime HUBZone contractor and its mentor subcontractor where the mentor will perform primary and vital requirements of the contract. See §121.103(f)(4) of this chapter.

(2) A qualified HUBZone SBC may not joint venture with its mentor on a HUBZone contract unless the mentor is also a qualified HUBZone SBC.

[69 FR 29427, May 24, 2004]

**Subpart G—Contract Performance Requirements**

**§ 126.700 What are the performance of work requirements for HUBZone contracts?**

(a) A prime contractor receiving an award as a qualified HUBZone SBC must meet the performance of work requirements set forth in §125.6(c) of this chapter.

(b) In addition to the requirements set forth in §125.6(c), one or more qualified HUBZone SBCs must spend at least 50% of the cost of the contract incurred for personnel on its own employees or employees of other qualified HUBZone SBCs.

(1) A qualified HUBZone SBC prime contractor receiving a HUBZone contract for general construction may meet this requirement itself by expending at least 50% of the cost of the contract incurred for personnel on its employees or it may subcontract at least 35% of the cost of the contract performance incurred for personnel to one or more qualified HUBZone SBCs. A