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Title 13: Business Credit and Assistance

PART 126—HUBZONE PROGRAM

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Subpart I—Penalties

§ 126.900 What penalties may be imposed under this part?

Authority: 15 U.S.C. 632(a), 632(j), 632(p) and 657a.

Source: 63 FR 31908, June 11, 1998, unless otherwise noted.

Editorial Note: Nomenclature changes to part 126 appear at 72 FR 50041, Aug. 30, 2007.

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Subpart A—Provisions of General Applicability

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§ 126.100 What is the purpose of the HUBZone program?

The purpose of the HUBZone program is to provide federal contracting assistance for qualified SBCs located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in such areas.

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§ 126.101 Which government departments or agencies are affected directly by the HUBZone program?

(a) The HUBZone Program applies to all federal departments or agencies that employ one or more contracting officers.

(b) The HUBZone program does not apply to contracts awarded by state and local governments. However, state and local governments may use the List of qualified HUBZone SBCs to identify qualified HUBZone SBCs for similar programs authorized under state or local law.

[63 FR 31908, June 11, 1998, as amended at 66 FR 4645, Jan. 18, 2001; 69 FR 29420, May 24, 2004]

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§ 126.102 What is the effect of the HUBZone program on the section 8(d) subcontracting program?

The HUBZone Act of 1997 amended the section 8(d) subcontracting program to include qualified HUBZone SBCs in the formal subcontracting plans described in § 125.3 of this title.

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§ 126.103 What definitions are important in the HUBZone program?

Administrator means the Administrator of the United States Small Business Administration (SBA).

AA/BD means SBA's Associate Administrator for Business Development.

AA/GC&BD means Associate Administrator, Office of Government Contracting & Business Development.

Agricultural commodity has the same meaning as in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

Alaska Native Corporation (ANC) has the same meaning as the term “Native Corporation” in section 3 of the ANCSA, 43 U.S.C. 1602.

Alaska Native Village has the same meaning as the term “Native village” in section 3 of the ANCSA, 43 U.S.C. 1602.

ANCSA means the Alaska Native Claims Settlement Act, as amended.

Attempt to maintain means making substantive and documented efforts such as written offers of employment, published advertisements seeking employees, and attendance at job fairs.

Base closure area means lands within the external boundaries of a military installation that were closed through a privatization process under the authority of:

(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of Public Law 101-510; 10 U.S.C. 2687 note);

(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100-526; 10 U.S.C. 2687 note);

(3) 10 U.S.C. 2687; or

(4) Any other provision of law authorizing or directing the Secretary of Defense or the Secretary of a military department to dispose of real property at the military installation for purposes relating to base closures of redevelopment, while retaining the authority to enter into a leaseback of all or a portion of the property for military use.

Certify means the process by which SBA determines that a HUBZone SBC is qualified for the HUBZone program and entitled to be included in SBA's "List of Qualified HUBZone SBCs."

Citizen means a person born or naturalized in the United States. SBA does not consider holders of permanent visas and resident aliens to be citizens.

Community Development Corporation (CDC) means a corporation that has received financial assistance under Part 1 of Subchapter A of the Community Economic Development Act of 1981, 42 U.S.C. 9805-9808.

Concern means a firm which satisfies the requirements in §§ 121.105(a) and (b) of this title.

Contract opportunity means a situation in which a requirement for a procurement exists, none of the exclusions from § 126.605 applies, and any applicable conditions in § 126.607 are met.

Contracting Officer (CO) has the meaning given that term in 41 U.S.C. 423(f)(5), which defines a CO as a person who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to such a contract.

County means the political subdivisions recognized as a county by a state or commonwealth or which is an equivalent political subdivision such as a parish, borough, independent city, or municipio, where such subdivisions are not subdivisions within counties.

County unemployment rate is the rate of unemployment for a county based on the most recent data available from the United States Department of Labor, Bureau of Labor Statistics. The appropriate data may be found in the DOL/BLS publication titled "Supplement 2, Unemployment in States and Local Areas." This publication is available for public inspection at the Department of Labor, Bureau of Labor Statistics, Division of Local Area Unemployment Statistics located at 2 Massachusetts Ave., NE, Room 4675, Washington DC 20212. A copy is also available at SBA, Office of D/HUB, 409 3rd Street, SW., Washington DC 20416.

DAA/GC&BD means SBA's Deputy Associate Administrator for Government Contracting and Business Development.

D/HUB means SBA's Director Office of HUBZone;

De-certify means the process by which SBA determines that a concern is no longer a qualified HUBZone SBC and removes that concern from its List.

Employee means all individuals employed on a full-time, part-time, or other basis, so long as that individual works a minimum of 40 hours per month. This includes employees obtained from a temporary employee agency, leasing concern, or through a union agreement or co-employed pursuant to a professional employer organization agreement. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes and those set forth in SBA's Size Policy Statement No. 1, in determining whether individuals are employees of a concern. Volunteers (i.e., individuals who receive deferred compensation or no compensation, including no in-kind compensation, for work performed) are not considered employees. However, if an individual has an ownership interest in and works for the HUBZone SBC a minimum of 40 hours per month, that owner is considered an employee regardless of whether or not the individual receives compensation.

HUBZone means a historically underutilized business zone, which is an area located within one or more:

(1) Qualified census tracts;

(2) Qualified non-metropolitan counties;

(3) Lands within the external boundaries of an Indian reservation;

(4) Qualified base closure area; or

(5) Redesignated area.

HUBZone small business concern (HUBZone SBC) means an SBC that is:

(1) At least 51% owned and controlled by 1 or more persons, each of whom is a United States citizen;

(2) An ANC owned and controlled by Natives (as determined pursuant to section 29(e)(1) of the ANCSA, 43 U.S.C. 1626(e)(1));

(3) A direct or indirect subsidiary corporation, joint venture, or partnership of an ANC qualifying pursuant to section 29(e)(1) of the ANCSA, 43 U.S.C. 1626(e)(1)), if that subsidiary, joint venture, or partnership is owned and controlled by Natives (as determined pursuant to section 29(e)(2) of the ANCSA, 43 U.S.C. 1626(e)(2));

(4) Wholly owned by one or more Indian Tribal Governments, or by a corporation that is wholly owned by one or more Indian Tribal Governments;

(5) An SBC that is owned in part by one or more Indian Tribal Governments or in part by a corporation that is wholly owned by one or more Indian Tribal Governments, if all other owners are either United States citizens or SBCs;

(6) An SBC that is wholly owned by a CDC or owned in part by one or more CDCs, if all other owners are either United States citizens or SBCs; or

(7) An SBC that is a small agricultural cooperative organized or incorporated in the United States, wholly owned by one or more small agricultural cooperatives organized or incorporated in the United States or owned in part by one or more small agricultural cooperatives organized or incorporated in the United States, provided that all other owners are small business concerns or United States citizens.

Indian reservation (1) Has the same meaning as the term "Indian country" in 18 U.S.C. 1151, except that such term does not include:

(i) Any lands that are located within a State in which a tribe did not exercise governmental jurisdiction as of December 21, 2000, unless that tribe is recognized after that date by either an Act of Congress or pursuant to regulations of the Secretary of the Interior for the administrative recognition that an Indian group exists as an Indian tribe (25 CFR part 83); and

(ii) Lands taken into trust or acquired by an Indian tribe after December 21, 2000 if such lands are not located within the external boundaries of an Indian reservation or former reservation or are not contiguous to the lands held in trust or restricted status as of December 21, 2000; and

(2) In the State of Oklahoma, means lands that:

(i) Are within the jurisdictional areas of an Oklahoma Indian tribe (as determined by the Secretary of the Interior); and

(ii) Are recognized by the Secretary of the Interior as of December 21, 2000, as eligible for trust land status under 25 CFR part 151.

Indian Tribal Government means the governing body of any Indian tribe, band, nation, pueblo, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Interested party means any concern that submits an offer for a specific HUBZone sole source or set-aside contract, any concern that submitted an offer in full and open competition and its opportunity for award will be affected by a price evaluation preference given a qualified HUBZone SBC, the contracting activity's contracting officer, or SBA.

Lands within the external boundaries of an Indian reservation include all lands within the perimeter of an Indian reservation, whether tribally owned and governed or not. For example, land that is individually

owned and located within the perimeter of an Indian reservation is “lands within the external boundaries of an Indian reservation.” By contrast, an Indian-owned parcel of land that is located outside the perimeter of an Indian reservation is not “lands within the external boundaries of an Indian reservation.”

List refers to the database of qualified HUBZone SBCs that SBA has certified.

Median household income has the meaning used by the Bureau of the Census, United States Department of Commerce, in its publication titled, “1990 Census of Population, Social and Economic Characteristics,” Report Number CP-2, pages B-14 and B-17. This publication is available for inspection at any local Federal Depository Library. For the location of a Federal Depository library, call toll-free (888) 293-6498 or contact the Bureau of the Census, Income Statistics Branch, Housing and Economic Statistics Division, Washington D.C. 20233-8500.

Metropolitan statistical area means an area as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986, (Title 26 of the United States Code).

Non-metropolitan has the meaning used by the Bureau of the Census, United States Department of Commerce, in its publication titled, “1990 Census of Population, Social and Economic Characteristics,” Report Number CP-2, page A-9. This publication is available for inspection at any local Federal Depository Library. For the location of a Federal Depository Library, call toll-free (888) 293-6498 or contact the Bureau of the Census, Population Distribution Branch, Population Division, Washington D.C. 20233-8800.

Person means a natural person.

Principal office means the location where the greatest number of the concern's employees at any one location perform their work. However, for those concerns whose “primary industry” (see 13 CFR 121.107) is service or construction (see 13 CFR 121.201), the determination of principal office excludes the concern's employees who perform the majority of their work at job-site locations to fulfill specific contract obligations.

Qualified base closure area means a base closure area for a period of 5 years either from December 8, 2004, or from the date of final base closure, whichever is later.

Qualified census tract has the meaning given that term in section 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986.

Qualified HUBZone SBC means a HUBZone SBC that SBA certifies as qualified for federal contracting assistance under the HUBZone program.

Qualified non-metropolitan county means any county that was not located in a metropolitan statistical area at the time of the most recent census taken for purposes of selecting qualified census tracts under section 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986, and in which:

(i) The median household income is less than 80% of the non-metropolitan State median household income, based on the most recent data available from the Bureau of the Census of the Department of Commerce; or

(ii) The unemployment rate is not less than 140 percent of the average unemployment rate for the United States or for the State in which such county is located, whichever is less, based on the most recent data available from the Secretary of Labor.

Redesignated area means any census tract or any non-metropolitan county that ceases to be a qualified HUBZone, except that such census tracts or non-metropolitan counties may be "redesignated areas" only until the later of:

(1) The date on which the Census Bureau publicly releases the first results from the 2010 decennial census; or

(2) Three years after the date on which the census tract or non-metropolitan county ceased to be so qualified. The date on which the census tract or non-metropolitan county ceases to be qualified is the

date that the official government data, which affects the eligibility of the HUBZone, is released to the public.

Reside means to live in a primary residence at a place for at least 180 days, or as a currently registered voter, and with intent to live there indefinitely.

Small agricultural cooperative means an association (corporate or otherwise), comprised exclusively of other small agricultural cooperatives, small business concerns, or U.S. citizens, pursuant to the provisions of the Agricultural Marketing Act, 12 U.S.C. 1141j, whose size does not exceed the applicable size standard pursuant to part 121 of this chapter. In determining such size, an agricultural cooperative is treated as a "business concern" and its member shareholders are not considered affiliated with the cooperative by virtue of their membership in the cooperative.

Small business concern (SBC) means a concern that, with its affiliates, meets the size standard for its primary industry, pursuant to part 121 of this chapter.

Small disadvantaged business (SDB) means a concern that is small pursuant to part 121 of this chapter, is owned and controlled by one or more socially and economically disadvantaged individuals, tribes, ANCs, Native Hawaiian Organizations, or CDCs and has been certified pursuant to subpart A or B, part 124 of this chapter.

Statewide average unemployment rate is the rate based on the most recent data available from the Bureau of Labor Statistics, United States Department of Labor, Division of Local Area Unemployment Statistics, 2 Massachusetts Ave., NE., Room 4675, Washington, DC 20212. A copy is also available at SBA, Office of D/HUB, 409 3rd Street, SW., Washington DC 20416.

[63 FR 31908, June 11, 1998, as amended at 66 FR 4645, Jan. 18, 2001; 69 FR 29421, May 24, 2004; 70 FR 51248, Aug. 30, 2005; 72 FR 50041, Aug. 30, 2007; 74 FR 45754, Sept. 4, 2009; 74 FR 56702, Nov. 3, 2009]

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Subpart B—Requirements to be a Qualified HUBZone SBC

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§ 126.200 What requirements must a concern meet to receive SBA certification as a qualified HUBZone SBC?

(a) Concerns owned by Indian Tribal Governments —(1) Ownership. (i) The concern must be wholly owned by one or more Indian Tribal Governments;

(ii) The concern must be wholly owned by a corporation that is wholly owned by one or more Indian Tribal Governments;

(iii) The concern must be owned in part by one or more Indian Tribal Governments and all other owners are either United States citizens or SBCs; or

(iv) The concern must be owned in part by a corporation, which is wholly owned by one or more Indian Tribal Governments, and all other owners are either United States citizens or SBCs.

(2) Size. The concern, with its affiliates, must meet the size standard corresponding to its primary industry classification as defined in part 121 of this chapter.

(3) Other Requirements. The concern must either:

(i) Maintain a principal office located in a HUBZone and ensure that at least 35% of its employees reside in a HUBZone as provided in paragraph (b)(4) of this section; or

(ii) Certify that when performing a HUBZone contract, at least 35% of its employees engaged in performing that contract will reside within any Indian reservation governed by one or more of the Indian Tribal Government owners, or reside within any HUBZone adjoining such Indian reservation. A HUBZone and Indian reservation are adjoining when the two areas are next to and in contact with each other; and

(iii) The concern will “attempt to maintain” (see § 126.103) that applicable employment percentage stated above during the performance of any HUBZone contract it receives.

(b) Concerns owned by U.S. citizens, ANCs or CDCs —(1) Ownership. (i) The concern must be at least 51% unconditionally and directly owned and controlled by persons who are United States citizens;

Example: A concern that is a partnership owned 50% by an individual who is a United States citizen and 50% by someone who is not, is not an eligible concern because it is not at least 51% owned by United States citizens.

(ii) The concern must be an ANC owned and controlled by Natives (determined pursuant to section 29(e)(1) of the ANCSA); or a direct or indirect subsidiary corporation, joint venture, or partnership of an ANC qualifying pursuant to section 29(e)(1) of ANCSA, if that subsidiary, joint venture, or partnership is owned and controlled by Natives (determined pursuant to section 29(e)(2)) of the ANCSA); or

(iii) The concern must be wholly owned by a CDC, or owned in part by one or more CDCs, if all other owners are either United States citizens or SBCs;

(2) Size. The concern, together with its affiliates, must qualify as a small business under the size standard corresponding to its primary industry classification as defined in part 121 of this chapter.

(3) Principal office. The concern's principal office must be located in a HUBZone.

(4) Employees. At least 35% of the concern's employees must reside in a HUBZone. When determining the percentage of employees that reside in a HUBZone, if the percentage results in a fraction, round up to the nearest whole number;

Example 1: A concern has 25 employees, 35% or 8.75 employees must reside in a HUBZone. Thus, 9 employees must reside in a HUBZone.

Example 2: A concern has 95 employees, 35% or 33.25 employees must reside in a HUBZone. Thus, 34 employees must reside in a HUBZone.

(5) Contract Performance. The concern must represent, as provided in the application, that it will “attempt to maintain” (see § 126.103) having 35% of its employees reside in a HUBZone during the performance of any HUBZone contract it receives.

(6) Subcontracting. The concern must represent, as provided in the application, that it will ensure that it will comply with certain contract performance requirements in connection with contracts awarded to it as a qualified HUBZone SBC, as set forth in § 126.700.

(c) Concerns owned by small agricultural cooperatives —(1) Ownership. (i) A small agricultural cooperative organized or incorporated in the United States;

(ii) A small business concern wholly owned by one or more small agricultural cooperatives organized or incorporated in the United States; or

(iii) A small business concern owned in part by one or more small agricultural cooperatives organized or incorporated in the United States, provided that all other owners are small business concerns or United States citizens.

(2) Size. The small agricultural cooperative must meet the size standard corresponding to its primary industry classification as defined in part 121 of this chapter. However, in determining such size, an agricultural cooperative is treated as a “business concern” and its member shareholders are not considered affiliated with the cooperative by virtue of their membership in the cooperative.

(3) Principal office. The cooperative's principal office must be located in a HUBZone.

(4) Employees. At least 35% of the cooperative's employees must reside in a HUBZone. When determining the percentage of employees that reside in a HUBZone, if the percentage results in a fraction, round up to the nearest whole number.

(5) Contract Performance. The concern must represent, as provided in the application, that it will "attempt to maintain" (see § 126.103) having 35% of its employees reside in a HUBZone during the performance of any HUBZone contract it receives.

(d) Subcontracting. The concern must represent, as provided in the application, that it will ensure that it will comply with certain contract performance requirements in connection with contracts awarded to it as a qualified HUBZone SBC, as set forth in § 126.700.

[69 FR 29422, May 24, 2004, as amended at 70 FR 51249, Aug. 30, 2005]

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§ 126.201 Who does SBA consider to own a HUBZone SBC?

An owner of a SBC seeking HUBZone certification or a qualified HUBZone SBC is a person who owns any legal or equitable interest in such SBC. If an Employee Stock Ownership Plan owns all or part of the concern, SBA considers each stock trustee and plan member to be an owner. If a trust owns all or part of the concern, SBA considers each trustee and trust beneficiary to be an owner. In addition:

(a) Corporations. SBA considers any person who owns stock, whether voting or non-voting, to be an owner. SBA considers options to purchase stock and the right to convert debentures into voting stock to have been exercised.

Example: U.S. citizens own all of the stock of a corporation. A corporate officer, a non-U.S. citizen, owns no stock in the corporation but owns options to purchase stock in the corporation. SBA will consider the options exercised and the individual to be an owner. Therefore, if that corporate officer has options to purchase 50% or more of the corporate stock, pursuant to § 126.200, the corporation would not be eligible to be a qualified HUBZone SBC because it is not at least 51% owned and controlled by persons who are U.S. citizens.

(b) Partnerships. SBA considers all partners, whether general or limited, to be owners in a partnership.

(c) Sole proprietorships. The proprietor is the owner.

(d) Limited liability companies. SBA considers each member to be an owner of a limited liability company.

[69 FR 29422, May 24, 2004, as amended at 70 FR 51249, Aug. 30, 2005; 71 FR 69183, Nov. 30, 2006]

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§ 126.202 Who does SBA consider to control a HUBZone SBC?

Control means both the day-to-day management and long-term decision-making authority for the HUBZone SBC. Many persons share control of a concern, including each of those occupying the following positions: officer, director, general partner, managing partner, managing member and manager. In addition, key employees who possess expertise or responsibilities related to the concern's primary economic activity may share significant control of the concern. SBA will consider the control potential of such key employees on a case by case basis.

[69 FR 29422, May 24, 2004]

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§ 126.203 What size standards apply to HUBZone SBCs?

(a) At time of application for certification. A HUBZone SBC must meet SBA's size standards for its primary industry classification as defined in § 121.201 of this title. If SBA is unable to verify that a concern is small, SBA may deny the concern status as a qualified HUBZone SBC, or SBA may request a formal size determination from the responsible Government Contracting Area Director or designee.

(b) At time of initial contract offer. A HUBZone SBC must be small for the size standard corresponding to the NAICS code assigned to the contract.

[63 FR 31908, June 11, 1998, as amended at 69 FR 29422, May 24, 2004]

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§ 126.204 May a qualified HUBZone SBC have affiliates?

A concern may have affiliates provided that the aggregate size of the concern and all of its affiliates is small as defined in part 121 of this title, except as otherwise provided for small agricultural cooperatives in § 126.103.

[70 FR 51249, Aug. 30, 2005]

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§ 126.205 May participants in other SBA programs be certified as qualified HUBZone SBCs?

Participants in other SBA programs may be certified as qualified HUBZone SBCs if they meet all of the requirements set forth in this part. Participation in other SBA Programs is not a requirement for participation in the HUBZone Program.

[69 FR 29422, May 24, 2004]

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§ 126.206 May non-manufacturers be certified as qualified HUBZone SBCs?

Non-manufacturers (referred to in the HUBZone Act of 1997 as “regular dealers”) may be certified as qualified HUBZone SBCs if they meet all of the requirements set forth in § 126.200. For purposes of this part, a “non-manufacturer” is defined in § 121.406(b)(1)(i) and (ii) of this title.

[66 FR 4645, Jan. 18, 2001]

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§ 126.207 May a qualified HUBZone SBC have offices or facilities in another HUBZone or outside a HUBZone?

A qualified HUBZone SBC may have offices or facilities in another HUBZone or even outside a HUBZone and still be a qualified HUBZone SBC. However, in order to be certified as a qualified HUBZone SBC and if required by § 126.200, the concern's principal office must be located in a HUBZone.

[69 FR 29423, May 24, 2004]

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Subpart C—Certification

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§ 126.300 How may a concern be certified as a qualified HUBZone SBC and what information will SBA consider?

A concern must apply to SBA for certification. SBA will consider the information provided by the concern in order to determine whether the concern qualifies. SBA, in its discretion, may rely solely upon the information submitted to establish eligibility, may request additional information, or may verify the information before making a determination. SBA may draw an adverse inference and deny the certification where a concern fails to cooperate with SBA or submit information requested by SBA. If SBA determines that the concern is a qualified HUBZone SBC, it will issue a certification to that effect and add the concern to the List.

[69 FR 29423, May 24, 2004]

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§ 126.301 Is there any other way for a concern to obtain certification?

No. SBA certification is the only way to qualify for HUBZone program status.

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§ 126.302 When may a concern apply for certification?

A concern may apply to SBA and submit the required information whenever it can represent that it meets the eligibility requirements, subject to § 126.309. All representations and supporting information contained in the application must be complete and accurate as of the date of submission. The application must be signed by an officer of the concern who is authorized to represent the concern.

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§ 126.303 Where must a concern submit its application and certification?

A concern seeking certification as a HUBZone SBC must submit either an electronic application to SBA via <https://eweb1.sba.gov/hubzone/internet/> or a written application to the D/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. Certification pages must be validated electronically or signed by a person authorized to represent the concern.

[69 FR 29423, May 24, 2004]

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§ 126.304 What must a concern submit to SBA?

(a) To be certified by SBA as a qualified HUBZone SBC, a concern must submit a completed application and represent to SBA that it meets the requirements set forth in § 126.200. After submitting the application, applicants must notify SBA of any material changes that could affect its eligibility. The concern must also submit any additional information required by SBA.

(b) Concerns applying for HUBZone status based on a location within the external boundaries of an Indian reservation must use SBA's maps (located at <https://eweb1.sba.gov/hubzone/internet/>) to verify that the location is within the external boundaries of an Indian reservation. If, however, SBA's maps indicate that the location is not within the external boundaries of an Indian reservation and the concern disagrees, then the concern must submit official documentation from the appropriate Bureau of Indian Affairs (BIA) Land Titles and Records Office with jurisdiction over the concern's area, confirming that it is located within the external boundaries of an Indian reservation. BIA lists the Land Titles and Records Offices and their jurisdiction in 25 CFR 150.4 and 150.5.

(c) Concerns applying for HUBZone status based on a location within a qualified base closure area must use SBA's List of Qualified Base Closure Areas (located at <http://www.sba.gov/hubzone>) to verify that the location is within a qualified base closure area. If a concern disagrees with the failure of SBA's List of Qualified Base Closure Areas to include a particular area as a qualified base closure area, then the concern must submit relevant documentation from the Department of Defense, Office of Economic Adjustment, or the military department responsible for closing that installation.

(d) If the concern was decertified for failure to notify SBA of a material change affecting its eligibility pursuant to § 126.501, it must include with its application for certification a full explanation of why it failed to notify SBA of the material change. If SBA is not satisfied with the explanation provided, SBA may decline to certify the concern.

[69 FR 29423, May 24, 2004, as amended at 70 FR 51249, Aug. 30, 2005]

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§ 126.305 What format must the certification to SBA take?

A concern must submit the required information in either a written or electronic application form provided by SBA. An electronic application must be sufficiently authenticated for enforcement purposes.

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§ 126.306 How will SBA process the certification?

(a) The D/HUB or designee is authorized to approve or decline certifications. SBA will receive and review all certifications, but SBA will not process incomplete packages. SBA will make its determination within 30 calendar days after receipt of a complete package whenever practicable. The decision of the D/HUB or designee is the final agency decision.

(b) SBA may request additional information or clarification of information contained in an application submission at any time.

(c) If SBA approves the application, SBA will send a written notice to the concern and automatically enter it on the List described in § 126.307.

(d) A decision to deny eligibility must be in writing and state the specific reasons for denial.

[63 FR 31908, June 11, 1998, as amended at 69 FR 29423, May 24, 2004; 70 FR 58974, Oct. 11, 2005]

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§ 126.307 Where will SBA maintain the List of qualified HUBZone SBCs?

Qualified HUBZone SBCs are identified by running a search on CCR/DSBS (http://dsbs.sba.gov/dsbs/dsp_dsbs.cfm) and are listed on the HUBZone Web page at <https://eweb1.sba.gov/hubzone/internet/general/approved-firms.cfm>. In addition, requesters may obtain a copy of the List by writing to the D/HUB at U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416 or at hubzone@sba.gov.

[69 FR 29423, May 24, 2004]

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§ 126.308 What happens if SBA inadvertently omits a qualified HUBZone SBC from the List?

A HUBZone SBC that has received SBA's notice of certification, but is not on the List within 10 business days thereafter, should immediately notify the D/HUB in writing at U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416 or via e-mail at hubzone@sba.gov. The concern must appear on the List to be eligible for HUBZone contracts.

[69 FR 29423, May 24, 2004]

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§ 126.309 May a declined or decertified concern seek certification at a later date?

A concern that SBA has declined or decertified may seek certification after ninety (90) calendar days from the date of decline or decertification if it believes that it has overcome all reasons for decline or decertification through changed circumstances and is currently eligible. A concern found to be ineligible during a HUBZone status protest is precluded from applying for HUBZone certification for ninety (90) calendar days from the date of the final agency decision (the D/HUB's decision if no appeal is filed or the decision of the AA/GCBD) pursuant to 13 CFR 126.803(d)(5).

[76 FR 43574, July 21, 2011]

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Subpart D—Program Examinations

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§ 126.400 Who will conduct program examinations?

SBA field staff or others designated by the D/HUB will conduct program examinations.

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§ 126.401 What is a program examination and what will SBA examine?

(a) General. A program examination is an investigation by SBA officials, which verifies the accuracy of any certification made or information provided as part of the HUBZone application process or in connection with a HUBZone contract. Thus, examiners may verify that the concern currently meets the program's eligibility requirements, and that it met such requirements at the time of its application for certification, its most recent recertification, or its certification in connection with a HUBZone contract.

(b) Scope of review. Examiners may conduct the review, or parts of the review, at one or all of the concern's offices. SBA will determine the location of the examination. Examiners may review any information related to the concern's eligibility requirements including, but not limited to, documentation related to the location and ownership of the concern, the employee percentage requirements, and the concern's "attempt to maintain" (see § 126.103) this percentage. The concern must document each employee's residence address through employment records. The examiner also may review property tax, public utility or postal records, and other relevant documents. The concern must retain documentation demonstrating satisfaction of the employee residence and other qualifying requirements for 6 years from date of submission of the application and any recertifications issued to SBA.

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§ 126.402 When may SBA conduct program examinations?

SBA may conduct a program examination at any time after the concern submits its application, during the processing of the application, and at any time while the concern is certified as a qualified HUBZone SBC.

[69 FR 29423, May 24, 2004]

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§ 126.403 May SBA require additional information from a HUBZone SBC?

(a) At the discretion of the D/HUB, SBA has the right to require that a HUBZone SBC submit additional information as part of the certification process, or at any time thereafter. SBA may draw an adverse inference from the failure of a HUBZone SBC to cooperate with a program examination or provide requested information.

(b) In order to gauge the success of the program, SBA requires that a HUBZone SBC submit updated financial information and information relating to the number of its employees.

[69 FR 29424, May 24, 2004]

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Subpart E—Maintaining HUBZone Status

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§ 126.500 How does a qualified HUBZone SBC maintain HUBZone certification?

Any qualified HUBZone SBC seeking to remain on the List must recertify every three years to SBA that it remains a qualified HUBZone SBC (See § 126.501 for ongoing obligations). Concerns wishing to remain in the program without any interruption must recertify their continued eligibility to SBA within 30 calendar days after the third anniversary of their date of certification and each subsequent three-year

period. Failure to do so will result in SBA initiating decertification proceedings. Once decertified, the concern then would have to submit a new application for certification pursuant to § 126.309. The recertification to SBA must be in writing and must represent that the circumstances relative to eligibility that existed on the date of certification showing on the List have not materially changed and that the concern meets any new eligibility requirements.

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§ 126.501 What are a qualified HUBZone SBC's ongoing obligations to SBA?

A qualified HUBZone SBC must immediately notify SBA of any material change that could affect its eligibility. Material change includes, but is not limited to, a change in the ownership, business structure, or principal office of the concern, or a failure to meet the 35% HUBZone residency requirement (See § 126.200 for certain eligibility requirements). The notification must be in writing, and must be sent or delivered to the D/HUB to comply with this requirement. Failure of a qualified HUBZone SBC to notify SBA of such a material change may result in decertification and removal from the List pursuant to § 126.504. In addition, SBA may seek the imposition of penalties under § 126.900. If the concern later becomes eligible for the program, it must apply for certification pursuant to §§ 126.300 through 126.306.

[69 FR 29424, May 24, 2004]

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§ 126.502 Is there a limit to the length of time a qualified HUBZone SBC may be on the List?

There is no limit to the length of time a qualified HUBZone SBC may remain on the List so long as it continues to follow the provisions of §§ 126.200, 126.500, and 126.501.

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§ 126.503 What happens if SBA is unable to verify a qualified HUBZone SBC's eligibility or determines that the concern is no longer eligible for the program?

If SBA is unable to verify a qualified HUBZone SBC's eligibility or determines it is not eligible for the program, SBA may propose decertification of the concern.

(a) Proposing Decertification. Except as set forth in paragraph (c) of this section, the Deputy D/HUB or designee will first notify the qualified HUBZone SBC in writing that SBA is proposing to decertify it, the reasons for the proposed de-certification, and that the SBC must rebut each of the reasons SBA sets forth. The qualified HUBZone SBC will have 30 calendar days from the date that it receives SBA's notification to respond, in writing, to the D/HUB or designee.

(b) SBA's Decision. The D/HUB or designee will consider the reasons for proposed decertification and the qualified HUBZone SBC's response before making a written decision whether to decertify. The D/HUB may draw an adverse inference where a qualified HUBZone SBC fails to cooperate with SBA or provide the information requested. The D/HUB's decision is the final agency decision.

(c) Decertifying Pursuant to a Protest. SBA will decertify a qualified HUBZone SBC and remove its name from the List without first proposing it for decertification if the D/HUB upholds a protest pursuant to § 126.803 and the D/HUB's decision is not overturned pursuant to § 126.805.

[69 FR 29424, May 24, 2004, as amended at 70 FR 51250, Aug. 30, 2005]

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§ 126.504 When is a concern removed from the List?

If SBA determines at any time that a HUBZone SBC is not qualified, SBA may de-certify the HUBZone SBC, remove the concern from the List, and seek imposition of penalties pursuant to § 126.900. An adverse finding in the resolution of a protest also may result in de-certification and removal from the List, and the imposition of penalties pursuant to § 126.900. Failure to notify SBA of a material change which could affect a concern's eligibility will result in immediate de-certification, removal from the List, and SBA may seek the imposition of penalties under § 126.900.

[63 FR 31908, June 11, 1998. Redesignated at 69 FR 29424, May 24, 2004]

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Subpart F—Contractual Assistance

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§ 126.600 What are HUBZone contracts?

HUBZone contracts are contracts awarded to a qualified HUBZone SBC through any of the following procurement methods:

(a) Sole source awards to qualified HUBZone SBCs;

(b) Set-aside awards based on competition restricted to qualified HUBZone SBCs; or

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

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

(a) The Federal Acquisition Regulatory Council (FAR Council) has the responsibility of adjusting each acquisition-related dollar threshold on October 1 of each year that is evenly divisible by five. Acquisition-related dollar thresholds are defined as dollar thresholds that are specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency as determined by the FAR Council. 41 U.S.C. 431a(c). Part 126, Subpart F, Contract Assistance, contains acquisition-related dollar thresholds subject to inflationary adjustments. The FAR Council shall publish a notice of the adjusted dollar

thresholds in the Federal Register. The adjusted dollar thresholds shall take effect on the date of publication.

(b) In order to submit an offer on a specific HUBZone contract, the qualified HUBZone SBC, together with its affiliates, must be small under the size standard corresponding to the NAICS code assigned to the contract.

(c) A firm must be a qualified HUBZone SBC both at the time of its initial offer and at the time of award in order to be eligible for a HUBZone contract.

(d) At the time a qualified HUBZone SBC submits its initial offer, and where applicable its final offer, on a specific HUBZone contract, it must certify to the CO that:

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

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

(3) It is small under the NAICS code assigned to the procurement; and

(4) If the qualified HUBZone SBC was certified pursuant to § 126.200(b), it must represent that it will "attempt to maintain" (See § 126.103) the required percentage of employees who are HUBZone residents during the performance of a HUBZone contract. If the qualified HUBZone SBC was certified pursuant to § 126.200(a), then it must represent that at least 35% of its employees engaged in performing the HUBZone contract reside within any Indian reservation governed by one or more of its Indian Tribal Government owners or reside within any HUBZone adjoining any such Indian reservation.

(e) If submitting an offer as a joint venture, each qualified HUBZone SBC must make the certifications in paragraph (c) of this section separately under its own name.

(f) A qualified HUBZone SBC may submit an offer on a HUBZone contract for supplies as a nonmanufacturer if it meets the requirements of the nonmanufacturer rule set forth at § 121.406(b)(1) of this chapter, and if the small manufacturer providing the end item for the contract is also a qualified HUBZone SBC.

(1) There are no waivers to the nonmanufacturer rule for HUBZone contracts.

(i) SBA will not issue contract-specific waivers as it does for small business set-aside and 8(a) contracts under § 121.406(b)(3)(i) of this chapter.

(ii) Class waivers issued under § 121.406(b)(3)(ii) of this chapter do not apply to HUBZone contracts.

(2) 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, so long as the product acquired is manufactured or produced in the United States.

[69 FR 29424, May 24, 2004, as amended at 74 FR 46887, Sept. 14, 2009]

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

Qualified HUBZone SBCs eligible for the program pursuant to § 126.200(b) must “attempt to maintain” (See § 126.103) the required percentage of employees who reside in a HUBZone during the performance of any contract awarded to the concern on the basis of its HUBZone status. Qualified HUBZone SBCs eligible for the program pursuant to § 126.200(a) must have at least 35% of its employees engaged in performing a HUBZone contract residing within any Indian reservation governed by one or more of the concern's Indian Tribal Government owners, or residing within any HUBZone adjoining any such Indian reservation. To monitor compliance, SBA will conduct program examinations, pursuant to §§ 126.400 through 126.403, where appropriate.

[69 FR 29425, May 24, 2004]

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§ 126.603 Does HUBZone certification guarantee receipt of HUBZone contracts?

HUBZone certification does not guarantee that a qualified HUBZone SBC will receive HUBZone contracts. Qualified HUBZone SBCs should market their capabilities to appropriate contracting activities in order to increase the prospect that the contracting activity will adopt an acquisition strategy that includes HUBZone contract opportunities.

[69 FR 29425, May 24, 2004]

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

The contracting officer for the contracting activity makes this decision.

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§ 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 the requirement through the 8(a)BD program or SBA has accepted the requirement for award through the 8(a)BD program, unless SBA has consented to release the requirement from the 8(a)BD program.

[63 FR 31908, June 11, 1998, as amended at 69 FR 29425, May 24, 2004]

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§ 126.606 May a CO request that SBA release a requirement from the 8(a)BD program for award as a HUBZone contract?

A CO may request that SBA release an 8(a) requirement for award as a HUBZone contract. However, SBA will grant its consent only where neither the incumbent nor any other 8(a) participant can perform the requirement. The request must be made to the AA/BD, who will make a determination after consulting with the D/HUB.

[69 FR 29425, May 24, 2004, as amended at 74 FR 45754, Sept. 4, 2009]

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§ 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) Contracting Among Small Business Programs.

(1) Acquisitions Valued At or Below the Simplified Acquisition Threshold. The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Micro-purchase Threshold but not exceeding the Simplified Acquisition Threshold (defined in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair

market prices. This requirement does not preclude a contracting officer from making an award to a small business under the 8(a) BD, HUBZone, SDVO SBC or WOSB Programs.

(2) Acquisitions Valued Above the Simplified Acquisition Threshold. (i) The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Simplified Acquisition Threshold (defined in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. However, after conducting market research, the contracting officer shall first consider a set-aside or sole source award (if the sole source award is permitted by statute or regulation) under the 8(a) BD, HUBZone, SDVO SBC or WOSB programs before setting aside the requirement as a small business set-aside. There is no order of precedence among the 8(a) BD, HUBZone, SDVO SBC or WOSB programs. The contracting officer must document the contract file with the rationale used to support the specific set-aside, including the type and extent of market research conducted. In addition, the contracting officer must document the contract file showing that the apparent successful offeror's ORCA certifications and associated representations were reviewed.

(ii) SBA believes that Progress in fulfilling the various small business goals, as well as other factors such as the results of market research, programmatic needs specific to the procuring agency, anticipated award price, and the acquisition history, will be considered in making a decision as to which program to use for the acquisition.

(c) If the contracting officer decides to set aside the requirement for competition restricted to qualified HUBZone SBCs, the contracting officer must:

(1) Have 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) Determine that award can be made at fair market price.

[63 FR 31908, June 11, 1998, as amended at 70 FR 51250, Aug. 30, 2005; 75 FR 62281, Oct. 7, 2010; 77 FR 1860, Jan. 12, 2012]

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§ 126.608 Are there HUBZone contract opportunities at or below the simplified acquisition threshold or micropurchase threshold?

A CO may make a requirement available as a HUBZone set-aside if it is at or below the simplified acquisition threshold. In addition, a CO may award a requirement as a HUBZone contract to a qualified HUBZone SBC at or below the micropurchase threshold.

[69 FR 29425, May 24, 2004]

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§ 126.609 [Reserved]

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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?

(a) The Administrator may appeal a CO's decision not to make a particular requirement available for award as a HUBZone contract to the Secretary of the department or head of the agency.

(b) An appeal is initiated by SBA's Procurement Center Representative to the CO, and may be in response to information supplied by the D/HUB, his or her designee, or other interested parties.

[69 FR 29425, May 24, 2004]

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§ 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 CO, SBA must file its formal appeal with the Secretary of the department or head of the agency, or the appeal will be deemed withdrawn.

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

[63 FR 31908, June 11, 1998, as amended at 69 FR 29425, May 24, 2004]

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§ 126.612 When may a CO award sole source contracts to qualified HUBZone SBCs?

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;

(b) The anticipated award price of the contract, including options, will not exceed:

(1) \$5,500,000 for a requirement within the NAICS codes for manufacturing; or

(2) \$3,500,000 for a requirement within all other NAICS codes;

(c) Two or more qualified HUBZone SBCs are not likely to submit offers;

(d) A qualified HUBZone SBC is a responsible contractor able to perform the contract; and

(e) In the estimation of the CO, contract award can be made at a fair and reasonable price.

[63 FR 31908, June 11, 1998, as amended at 69 FR 29425, May 24, 2004; 74 FR 46887, Sept. 14, 2009]

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§ 126.613 How does a price evaluation preference affect the bid of a qualified HUBZone SBC in full and open competition?

(a)(1) Where a CO will award a contract on the basis of full and open competition, the CO must deem the price offered by a qualified HUBZone SBC to be lower than the price offered by another offeror (other than another SBC) if the price offered by the qualified HUBZone SBC is not more than 10% higher than the price offered by the otherwise lowest, responsive, and responsible offeror. For a best value procurement, the CO must apply the 10% preference to the otherwise successful offer of a large business and then determine which offeror represents the best value to the Government, in accordance with the terms of the solicitation.

(2) Where, after considering the price evaluation adjustment, the price offered by a qualified HUBZone SBC is equal to the price offered by a large business (or, in a best value procurement, the total evaluation points received by a qualified HUBZone SBC is equal to the total evaluation points received by a large business), award shall be made to the qualified HUBZone SBC.

Example 1: In a full and open competition, a qualified HUBZone SBC submits an offer of \$98, a non-HUBZone SBC submits an offer of \$95, and a large business submits an offer of \$93. The lowest, responsive, responsible offeror would be the large business. However, the CO must apply the HUBZone price evaluation preference. In this example, the qualified HUBZone SBC's offer is not more than 10% higher than the large business' offer and, consequently, the qualified HUBZone SBC displaces the large business as the lowest, responsive, and responsible offeror.

Example 2: In a full and open competition, a qualified HUBZone SBC submits an offer of \$103, a non-HUBZone SBC submits an offer of \$100, and a large business submits an offer of \$93. The lowest, responsive, responsible offeror would be from the large business. The CO must then apply the HUBZone price evaluation preference. In this example, the qualified HUBZone SBC's offer is more than 10% higher than the large business' offer and, consequently, the qualified HUBZone SBC does not displace the large business as the lowest, responsive, and responsible offeror. In addition, the non-HUBZone SBC's offer at \$100 does not displace the large business' offer because a price evaluation preference is not applied to change an offer and benefit a non-HUBZone SBC.

Example 3: In a full and open competition, a qualified HUBZone SBC submits an offer of \$98 and a non-HUBZone SBC submits an offer of \$93. The CO would not apply the price evaluation preference in this procurement because the lowest, responsive, responsible offeror is a SBC.

(b)(1) For purchases by the Secretary of Agriculture of agricultural commodities, the price evaluation preferences shall be:

(i) 10%, for the portion of a contract to be awarded that is not greater than 25% of the total volume being procured for each commodity in a single invitation for bids (IFB);

(ii) 5%, for the portion of a contract to be awarded that is greater than 25%, but not greater than 40%, of the total volume being procured for each commodity in a single IFB; and

(iii) Zero, for the portion of a contract to be awarded that is greater than 40% of the total volume being procured for each commodity in a single IFB.

(2) The 10% and 5% price evaluation preferences for agricultural commodities apply to all offers from qualified HUBZone SBCs up to the 25% and 40% volume limits specified in paragraph (b)(1) of this section. As such, more than one qualified HUBZone SBC may receive a price evaluation preference for any given commodity in a single IFB.

Example: There is an IFB for 100,000 pounds of wheat. Bid 1 (from a large business) is \$1/pound for 100,000 pounds of wheat. Bid 2 (from a HUBZone SBC) is \$1.05/pound for 20,000 pounds of wheat. Bid 3 (from a HUBZone SBC) is \$1.04/pound for 20,000 pounds. Bid 3 receives a 10% price evaluation adjustment for 20,000 pounds, since 20,000 is less than 25% of 100,000 pounds. With the 10% price evaluation adjustment, Bid 1 changes from \$20,000 for the first 20,000 pounds to \$22,000. Bid 3's price of \$20,800 ($\$1.04 \times 20,000$) is now lower than any other bid for 20,000 pounds. Thus, Bid 3 will be accepted for the full 20,000 pounds. Bid 2 receives a 10% price evaluation adjustment for that amount of its bid when added to the volume in Bid 3 that does not exceed 25% of the total volume being procured. Since 25,000 pounds is 25% of the total volume of wheat under the IFB, and Bid 3 totaled 20,000 pounds, a 10% price evaluation adjustment will be applied to the first 5,000 pounds of Bid 2. With the price evaluation adjustment, the price for Bid 1, as measured against Bid 2, for 5,000 pounds changes from \$5,000 to \$5,500. Bid 2's price of \$5,250 ($\$1.05 \times 5,000$) is lower than Bid 1 for 5,000 pounds. Bid 2 will then receive a 5% price evaluation adjustment for the remaining 15,000 pounds, since the total volume of Bids 3 and 2 receiving an adjustment does not exceed 40% of the total volume of wheat under the IFB (i.e. , 40,000 pounds). With the 5% price evaluation adjustment, Bid 1's price for the next 15,000 pounds changes from \$15,000 to \$15,750. Bid 2's price for that 15,000 pounds is also \$15,750 ($\$1.05 \times 15,000$). Because the evaluation price for Bid 2 is not more than 10% higher than the price offered by Bid 1, Bid 2's price is deemed to be lower than the price offered by Bid 1. Since the evaluation price for both the first 5,000 pounds (receiving a 10% price evaluation adjustment) and the remaining 15,000 pounds (receiving a 5% price evaluation adjustment) is less than Bid 1, Bid 2 will be accepted for the full 20,000 pounds.

(c) For purchases by the Secretary of Agriculture of agricultural commodities for export operations through 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]

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§ 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]

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§ 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.

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§ 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]

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§ 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]

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§ 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]

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Subpart G—Contract Performance Requirements

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§ 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 qualified HUBZone SBC prime contractor may not, however, subcontract more than 50% of the cost of the contract incurred for personnel to non-qualified HUBZone SBCs.

(2) A qualified HUBZone SBC prime contractor receiving a HUBZone contract for specialty 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 25% of the cost of the contract performance incurred for personnel to one or more qualified HUBZone SBCs. A qualified HUBZone SBC prime contractor may not, however, subcontract more than 50% of the cost of the contract incurred for personnel to non-qualified HUBZone SBCs.

(c) A contracting officer may waive the 50% requirement set forth in paragraph (b) of this section for a particular procurement after determining that at least two qualified HUBZone SBCs cannot meet the requirement. Where a waiver is granted, the qualified HUBZone SBC prime contractor must still meet the performance of work requirements set forth in § 125.6(c) of this chapter.

[70 FR 51250, Aug. 30, 2005]

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§ 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.

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§ 126.702 How can the subcontracting percentage requirements be changed?

SBA may change the required subcontracting percentage for a specific industry if the Administrator determines that such action is necessary to reflect conventional industry practices among SBCs that are below the numerical size standard for businesses in that industry group. The procedures for requesting changes in subcontracting percentages are set forth in § 125.6 of this chapter.

[69 FR 29427, May 24, 2004]

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Subpart H—Protests

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§ 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. SBA, the CO, or any other interested party may protest the apparent successful offeror's qualified HUBZone SBC status.

[63 FR 31908, June 11, 1998, as amended at 69 FR 29427, May 24, 2004]

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§ 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 other than small for purposes of any Federal program are subject to part 121 of this chapter and must be filed in accordance with that part. If a protester protests both the size of the HUBZone SBC and whether the concern meets the HUBZone qualifying requirements set forth in § 126.200, SBA will process protests concurrently, under the procedures set forth in part 121 of this chapter and this part. SBA does not review issues concerning the administration of a HUBZone contract.

(b) Format. Protests must be in writing and state all specific grounds for the protest. A protest merely asserting that the protested concern is not a qualified HUBZone SBC, without setting forth specific facts or allegations, is insufficient.

(c) Filing. (1) An interested party other than a contracting officer or SBA must submit its written protest to the contracting officer.

(2) A contracting officer and SBA must submit their protest to the D/HUB.

(3) Protestors may deliver their protests in person, by facsimile, by express delivery service, or by U.S. mail (postmarked within the applicable time period).

(d) Timeliness. (1) For negotiated acquisitions, an interested party must submit its protest by close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror.

(2) For sealed bid acquisitions:

(i) An interested party must submit its protest by close of business on the fifth business day after bid opening, or

(ii) If the price evaluation preference was not applied at the time of bid opening, by close of business on the fifth business day from the date of identification of the apparent successful offeror.

(3) Any protest submitted after the time limits is untimely, unless it is from SBA or the CO.

(4) Any protest received prior to bid opening or notification of intended award, whichever applies, is premature.

(e) Referral to SBA. The CO must forward to SBA any non-premature protest received, notwithstanding whether he or she believes it is sufficiently specific or timely. The CO must send the protests, along with a referral letter, to D/HUB, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416. The CO's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including: the solicitation number; the name, address, telephone number and facsimile number of the CO; the type of HUBZone contract at issue; if the procurement was conducted using full and open competition with a HUBZone price evaluation preference, and whether the protester's opportunity for award was affected by the preference; if the procurement was a HUBZone set-aside, whether the protester submitted an offer; whether the protested concern was the apparent successful offeror; whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when the protest was submitted to the CO; and whether a contract has been awarded.

[63 FR 31908, June 11, 1998, as amended at 69 FR 29427, May 24, 2004]

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§ 126.802 Who decides a HUBZone status protest?

The D/HUB or designee will determine whether the concern has qualified HUBZone status.

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§ 126.803 How will SBA process a HUBZone status protest?

(a) Notice of receipt of protest. (1) SBA immediately will notify the contracting officer and the protestor of the date SBA receives a protest and whether SBA will process the protest or dismiss it in accordance with § 126.804.

(2) If SBA determines the protest is timely and sufficiently specific, SBA will notify the protested HUBZone SBC of the protest and the identity of the protestor. The protested HUBZone SBC may submit information responsive to the protest within 5 business days.

(b) Time period for determination. (1) SBA will determine the HUBZone status of the protested HUBZone SBC within 15 business days after receipt of a protest.

(2) The contracting officer may award a contract after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest. Notwithstanding such a determination, the provisions of paragraph (d) of this section apply to the procurement in question.

(3) If SBA does not issue its determination within 15 business days (or request an extension that is granted), the contracting officer may award the contract if he or she determines in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government. Notwithstanding such a determination, the provisions of paragraph (d) of this section apply to the procurement in question.

(c) Notice of determination. SBA will notify the contracting officer, the protestor, and the protested concern of its determination.

(d)(1) Effect of determination. The determination is effective immediately and is final unless overturned on appeal by the AA/GC&BD, or designee, pursuant to § 126.805. If SBA upholds the protest, SBA will decertify the concern.

(2) A contracting officer may award a contract to a protested concern after the D/HUB has determined either that the protested concern is an eligible HUBZone or has dismissed all protests against it. If the AA/GC&BD subsequently overturns the initial determination or dismissal, the contracting officer may apply the appeal decision to the procurement in question.

(3) A contracting officer shall not award a contract to a protested concern that the D/HUB has determined is not an eligible HUBZone for the procurement in question.

(i) If a contracting officer receives such a determination after contract award, and no appeal has been filed, the contracting officer shall terminate the award.

(ii) If a timely appeal is filed after contract award, the contracting officer must consider whether performance can be suspended until an appellate decision is rendered.

(iii) If the AA/GCBD affirms the initial determination finding the protested concern ineligible, the contracting officer shall either terminate the contract or not exercise the next option.

(4) The contracting officer must update the Federal Procurement Data System and other procurement reporting databases to reflect the final agency HUBZone decision (the D/HUB's decision if no appeal is filed or the decision of the AA/GCBD).

(5) A concern found to be ineligible is precluded from applying for HUBZone certification for ninety (90) calendar days from the date of the final agency decision (the D/HUB's decision if no appeal is filed or the decision of the AA/GCBD).

[63 FR 31908, June 11, 1998, as amended at 69 FR 29427, May 24, 2004; 74 FR 45754, Sept. 4, 2009; 76 FR 5685, Feb. 2, 2011; 76 FR 43574, July 21, 2011]

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§ 126.804 Will SBA decide all HUBZone status protests?

SBA will decide all protests not dismissed as premature, untimely or non-specific.

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§ 126.805 What are the procedures for appeals of HUBZone status determinations?

(a) Who may appeal. The protested HUBZone SBC, the protestor, or the CO may file appeals of protest determinations with the AA/GC&BD, or designee.

(b) Timeliness of appeal. The AA/GC&BD, or designee must receive the appeal no later than five business days after the date of receipt of the protest determination. SBA will dismiss any appeal received after the five-day period.

(c) Method of Submission. The party appealing the decision may deliver its appeal in person, by facsimile, by express delivery service, or by U.S. mail (postmarked within the applicable time period).

(d) Notice of appeal. The party bringing an appeal must provide notice of the appeal to the contracting activity contracting officer and either the protested HUBZone SBC or original protestor, as appropriate.

(e) Grounds for appeal. (1) SBA will re-examine a protest determination only if there was a clear and significant error in the processing of the protest or if the D/HUB failed completely to consider a significant fact contained within the information supplied by the protestor or the protested HUBZone SBC.

(2) SBA will not consider additional information or changed circumstances that were not disclosed at the time of the D/HUB's decision or that are based on disagreement with the findings and conclusions contained in the determination.

(f) Contents of appeal. The appeal must be in writing. The appeal must identify the protest determination being appealed and set forth a full and specific statement as to why the decision is erroneous or what significant fact the D/HUB failed to consider.

(g) Decision. The AA/GC&BD, or designee will make a decision within five business days of receipt of the appeal, if practicable, and will base his or her decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the CO, the protestor, and the protested HUBZone SBC, consistent with law. The ADA/GC&BD's decision is the final agency decision.

[63 FR 31908, June 11, 1998, as amended at 69 FR 29427, May 24, 2004; 74 FR 45754, Sept. 4, 2009; 76 FR 5685, Feb. 2, 2011]

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Subpart I—Penalties

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§ 126.900 What penalties may be imposed under this part?

(a) Suspension or debarment. The Agency debarring official may suspend or debar a person or concern pursuant to the procedures set forth in part 145 of this title. The contracting agency debarring official may debar or suspend a person or concern under the Federal Acquisition Regulation, 48 CFR Part 9, subpart 9.4.

(b) Civil penalties. Persons or concerns are subject to civil penalties under the False Claims Act, 31 U.S.C. 3729-3733, and under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801-3812, and any other applicable laws.

(c) Criminal penalties. Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the HUBZone status of a small business concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended; 18 U.S.C. 1001; and 31 U.S.C. 3729-3733. Persons or concerns also are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct “continuing representations” that are no longer true.

[63 FR 31908, June 11, 1998, as amended at 69 FR 29428, May 24, 2004]

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