

## Small Business Administration

## § 126.700

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 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.

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(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]

### **§ 126.701 Can these subcontracting percentages requirements change?**

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

### **§ 126.702 How can the subcontracting percentage requirements be changed?**

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]

## **Subpart H—Protests**

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

(a) *For sole source procurements.* SBA or the contracting officer may protest

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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]

### **§ 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