

after the completion of the period of performance for the prime contractor's contract with the Government. The subcontractor may notify the contracting officer in the event that the prime contractor does not comply with its responsibility to submit a timely rating.

(3) *Joint ventures that performed as first-tier subcontractors.* A small business member of a joint venture may request a past performance rating under paragraph (c)(1) of this section, where a joint venture performed as a first-tier subcontractor. The joint venture member may then submit the subcontractor past performance rating to a procuring agency in accordance with paragraph (b) of this section.

(4) *Evaluation.* When evaluating the past performance of a small business concern that elected to use a rating for its offer on a prime contract, a contracting officer shall consider the concern's experience and rating of past performance as a first-tier subcontractor. This includes where the small business concern lacks a past performance rating as a prime contractor in the Contractor Performance Assessment Reporting System (CPARS), or successor system used by the Federal Government to monitor or rate contractor past performance.

[87 FR 43739, July 22, 2022]

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AUTHORITY: 15 U.S.C. 632(a), 632(j), 632(p), 644 and 657a; Pub. L. 111-240, 124 Stat. 2504.

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.

Subpart A—Provisions of General Applicability

§ 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.

§ 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 certified HUBZone small business concerns to identify certified HUBZone small business concerns 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; 84 FR 65239, Nov. 26, 2019]

§ 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.

§ 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 Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1602.

Attempt to maintain means making substantive and documented efforts, such as written offers of employment, published advertisements seeking employees, and attendance at job fairs and applies only to concerns during the performance of any HUBZone contract. A certified HUBZone small business concern that has less than 20% of its total employees residing in a HUBZone during the performance of a HUBZone

contract has failed to attempt to maintain the HUBZone residency requirement.

Base closure area means:

(1) Lands within the external boundaries of a military installation that were closed through a privatization process under the authority of:

(i) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of Pub. L. 101–510; 10 U.S.C. 2687 note);

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

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

(iv) 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;

(2) The census tract or nonmetropolitan county (excluding any qualified census tract and any qualified nonmetropolitan county) in which the lands described in paragraph (1) of this definition are wholly contained;

(3) A census tract or nonmetropolitan county (excluding any qualified census tract and any qualified nonmetropolitan county) the boundaries of which intersect the area described in paragraph (1) of this definition; and

(4) A census tract or nonmetropolitan county (excluding any qualified census tract and any qualified nonmetropolitan county) the boundaries of which are contiguous to the area described in paragraph (2) or paragraph (3) of this definition.

Certify means the process by which SBA determines that a concern is qualified for the HUBZone program and eligible to be designated by SBA as a certified HUBZone small business concern in the Dynamic Small Business Search (DSBS) system (or successor system).

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.

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

D/HUB means the Director of SBA's Office of HUBZone.

Decertify means the process by which SBA determines that a concern no longer qualifies as a HUBZone small business concern and removes that concern as a certified HUBZone small business concern from DSBS (or successor system), or the process by which SBA removes a concern as a certified HUBZone small business concern from DSBS (or successor system) after receiving a request to voluntarily withdraw from the HUBZone program.

Dynamic Small Business Search (DSBS) means the database that government agencies use to find small business contractors for upcoming contracts. The information a business provides when registering in the System for Award Management (SAM) is used to populate DSBS. For HUBZone Program purposes, a concern's DSBS profile will indicate whether it is a certified

HUBZone small business concern, and if so, the date it was certified or recertified.

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 during the four-week period immediately prior to the relevant date of review, which is either the date the concern submits its HUBZone application to SBA or the date of recertification. SBA will review a concern's payroll records for the most recently completed pay periods that account for the four-week period immediately prior to the date of application or date of recertification in order to determine which individuals meet this definition. To determine if an individual is an employee, SBA reviews the totality of circumstances, including criteria used by the Internal Revenue Service (IRS) for Federal income tax purposes and the factors set forth in SBA's Size Policy Statement No. 1 (51 FR 6099, February 20, 1986).

(1) In general, the following are considered employees:

(i) Individuals obtained from a temporary employee agency, leasing concern, or through a union agreement, or co-employed pursuant to a professional employer organization agreement;

(ii) An individual who has an ownership interest in the concern and who works for the concern a minimum of 40 hours during the four-week period immediately prior to the relevant date of review, whether or not the individual receives compensation;

(iii) The sole owner of a concern who works less than 40 hours during the four-week period immediately prior to the relevant date of review, but who has not hired another individual to direct the actions of the concern's employees;

(iv) Individuals who receive in-kind compensation commensurate with work performed. Such compensation must provide a demonstrable financial value to the individual and must be compliant with all relevant federal and state laws.

(2) In general, the following are not considered employees:

(i) Individuals who are not owners and receive no compensation (including

no in-kind compensation) for work performed;

(ii) Individuals who receive deferred compensation for work performed;

(iii) Independent contractors that receive payment via IRS Form 1099 and are not considered employees under SBA's Size Policy Statement No. 1; and

(iv) Subcontractors.

(3) Employees of an affiliate may be considered employees, if the totality of the circumstances shows that there is no clear line of fracture between the HUBZone applicant (or certified HUBZone small business concern) and its affiliate(s) (see § 126.204).

Governor-designated covered area means an area that the Administrator has designated as a HUBZone by approving a Governor-generated petition as described in § 126.104.

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) Redesignated areas;
- (5) Qualified base closure areas;
- (6) Qualified disaster areas; or
- (7) Governor-designated covered areas.

HUBZone small business concern or certified HUBZone small business concern means a small business concern that meets the requirements described in § 126.200 and that SBA has certified as eligible for federal contracting assistance under the HUBZone program. A concern that was a certified HUBZone small business concern as of December 12, 2017, and that had its principal office located in a redesignated area set to expire prior to January 1, 2020, shall remain a certified HUBZone small business concern until June 30, 2023, so long as all other HUBZone eligibility requirements are met.

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 set-aside contract (including Multiple Award Contracts) or order, 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 small business concern, any concern that submitted an offer in a full and open competition and its opportunity for award will be affected by a reserve of an award given to a qualified HUBZone small business concern, 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.”

Native Hawaiian Organization (NHO) means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

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.

Primary industry classification or primary industry means the six-digit North American Industry Classification System (NAICS) code designation which best describes the primary business activity of the HUBZone applicant or certified HUBZone small business concern. SBA utilizes § 121.107 of this chapter in determining a concern’s primary industry classification.

Principal office means the location where the greatest number of the concern’s employees at any one location perform their work.

(1) If an employee works at multiple locations, then the employee will be deemed to work at the location where the employee spends more than 50% of his or her time. If an employee does not spend more than 50% of his or her time at any one location and at least one of those locations is a non-HUBZone location, then the employee will be deemed to work at a non-HUBZone location.

(2) In order for a location to be considered the principal office, the concern must conduct business at this location.

(3) For those concerns whose “primary industry classification” is services or construction (see § 121.201 of this chapter), the determination of prin-

cipal office excludes the concern’s employees who perform more than 50% of their work at job-site locations to fulfill specific contract obligations. If all of a concern’s employees perform more than 50% of their work at job sites, the concern does not comply with the principal office requirement.

(i) *Example 1:* A business concern whose primary industry is construction has a total of 78 employees, including the owners. The business concern has one office (Office A), which is located in a HUBZone, with 3 employees working at that location. The business concern also has a job-site for a current contract, where 75 employees perform more than 50% of their work. The 75 job-site employees are excluded for purposes of determining principal office. Since the remaining 3 employees all work at Office A, Office A is the concern’s principal office. Since Office A is in a HUBZone, the business concern complies with the principal office requirement.

(ii) *Example 2:* A business concern whose primary industry is services has a total of 4 employees, including the owner. The business concern has one office located in a HUBZone (Office A), where 2 employees perform more than 50% of their work, and a second office not located in a HUBZone (Office B), where 2 employees perform more than 50% of their work. Since there is not one location where the greatest number of the concern’s employees at any one location perform their work, the business concern would not have a principal office in a HUBZone.

(iii) *Example 3:* A business concern whose primary industry is services has a total of 6 employees, including the owner. Five of the employees perform all of their work at job-sites fulfilling specific contract obligations. The business concern’s owner performs 45% of her work at job-sites, and 55% of her work at an office located in a HUBZone (Office A) conducting tasks such as writing proposals, generating payroll, and responding to emails. Office A would be considered the principal office of the concern since it is the only location where any employees of the concern work that is not a job site and the 1 individual working there spends more than 50% of her time at Office A. Since

Office A is located in a HUBZone, the small business concern would meet the principal office requirement.

Qualified base closure area means a base closure area that is treated by SBA as a HUBZone for a period of at least 8 years, beginning on the date on which the Administrator designates the base closure area as a HUBZone and ending on the date on which the base closure area ceases to be a qualified census tract or a qualified non-metropolitan county in accordance with the online tool prepared by the Administrator.

Qualified census tract. (1) Qualified census tract means a census tract which is designated by the Secretary of Housing and Urban Development, and for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. *See* 26 U.S.C. 42(d)(5)(B)(ii)(I).

(2) The portion of a metropolitan statistical area (as defined by the Bureau of the Census, United States Department of Commerce, in its publications on the Census of Population, Social and Economic Characteristics) which may be designated as “qualified census tracts” shall not exceed an area having 20 percent of the population of such metropolitan statistical area. *See* 26 U.S.C. 42(d)(5)(B)(ii)(II). This paragraph does not apply to any metropolitan statistical area in the Commonwealth of Puerto Rico until December 22, 2027, or the date on which the Financial Oversight and Management Board for the Commonwealth of Puerto Rico created by the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) (Pub. L. 114–187, June 30, 2016) ceases to exist, whichever event occurs first.

(3) Qualified census tracts are reflected in a publicly accessible online tool that depicts HUBZones and will be updated every 5 years.

Qualified disaster area. (1) Qualified disaster area means any census tract or nonmetropolitan county located in an area where a major disaster declared by the President under section

401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) has occurred or an area in which a catastrophic incident has occurred if such census tract or non-metropolitan county ceased to be a qualified census tract or qualified non-metropolitan county during the period beginning 5 years before the date on which the President declared the major disaster or the catastrophic incident occurred.

(2) A census tract or nonmetropolitan county shall be considered to be a qualified disaster area only for the period of time ending on the date the area ceases to be a qualified census tract or a qualified nonmetropolitan county, in accordance with the publicly accessible online tool that depicts HUBZones, and beginning—

(i) In the case of a major disaster, on the date on which the President declared the major disaster for the area in which the census tract or nonmetropolitan county, as applicable, is located; or

(ii) In the case of a catastrophic incident, on the date on which the catastrophic incident occurred in the area in which the census tract or nonmetropolitan county, as applicable, is located.

Qualified non-metropolitan county means any county that was not located in a metropolitan statistical area (as defined by the Bureau of the Census, United States Department of Commerce, in its publications on the Census of Population, Social and Economic Characteristics) at the time of the most recent census taken for purposes of selecting qualified census tracts under section 26 U.S.C. 42(d)(5)(B)(ii), and in which:

(1) The median household income is less than 80% of the State median household income, based on a 5-year average of the available data from the Bureau of the Census of the Department of Commerce;

(2) The unemployment rate is not less than 140% of the average unemployment rate for the United States or for the State in which such county is located, whichever is less, based on a 5-year average of the data available from

the Local Area Unemployment Statistics report, produced by the Department of Labor's Bureau of Labor Statistics; or

(3) There is located a Difficult Development Area within Alaska, Hawaii, or any territory or possession of the United States outside the 48 contiguous States. A Difficult Development Area (DDA) is an area designated by the Secretary of the Department of Housing and Urban Development, in accordance with section 26 U.S.C. 42(d)(5)(B)(iii), with high construction, land, and utility costs relative to its area median gross income.

(4) Qualified non-metropolitan counties are reflected in a publicly accessible online tool that depicts HUBZones and will be updated every 5 years.

Redesignated area means any census tract that ceases to be a "qualified census tract" or any non-metropolitan county that ceases to be a "qualified non-metropolitan county." A redesignated area generally shall be treated as a HUBZone for a period of three years, starting from the date on which the area ceased to be a qualified census tract or a qualified non-metropolitan county. The date on which the census tract or non-metropolitan county ceases to be qualified is the date on which the official government data affecting the eligibility of the HUBZone is released to the public. However, an area that was a redesignated area on or after December 12, 2017 shall remain a redesignated area until June 30, 2023.

Reside means to live at a location full-time and for at least 180 days immediately prior to the date of application (or date of recertification where the individual is being treated as a HUBZone resident for the first time).

(1) To determine residence, SBA will first look to an individual's address identified on his or her driver's license or voter's registration card. Where such documentation is not available, SBA will require other specific proof of residency, such as deeds, leases, or utility bills. Where the documentation pro-

vided does not demonstrate 180 days of residency, SBA will require a signed statement attesting to an individual's dates of residency.

(2) For HUBZone purposes, SBA will consider individuals temporarily residing overseas in connection with the performance of a contract to reside at their U.S. residence.

(i) *Example 1:* A person possesses the deed to a residential property and pays utilities and property taxes for that property. However, the person does not live at this property, but instead rents out this property to another individual. For HUBZone purposes, the person does not reside at the address listed on the deed.

(ii) *Example 2:* A person moves into an apartment under a month-to-month lease and lives in that apartment full-time. SBA would consider the person to reside at the address listed on the lease if the person can show that he or she has lived at that address for at least 180 days immediately prior to the date of application or date of recertification.

(iii) *Example 3:* A person is working overseas on a contract for the small business and is therefore temporarily living abroad. The employee can provide documents showing he is paying rent for an apartment located in a HUBZone. That person is deemed to reside in a HUBZone.

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

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the size standard for its primary industry, pursuant to part 121 of this chapter.

[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; 78 FR 61144, Oct. 2, 2013; 81 FR 51313, Aug. 4, 2016; 82 FR 48904, Oct. 23, 2017; 84 FR 62449, Nov. 15, 2019; 84 FR 65239, Nov. 26, 2019; 86 FR 23864, May 5, 2021]

§ 126.104 How can a Governor petition for the designation of a Governor-designated covered area?

(a) For a specific covered area to receive a designation as a Governor-designated covered area, the Governor of the State in which the identified covered area is wholly contained shall include such area in a petition to the Administrator requesting such a designation. In reviewing a request for designation included in such a petition, the Administrator may consider—

(1) The potential for job creation and investment in the covered area;

(2) The demonstrated interest of small business concerns in the covered area to be designated as a Governor-designated covered area;

(3) How State and local government officials have incorporated the covered area into an economic development strategy; and

(4) If the covered area was a HUBZone before becoming the subject of the petition, the impact on the covered area if the Administrator did not approve the petition.

(b) Each calendar year, a Governor may submit not more than 1 petition described in this section. Such petition shall include all covered areas in a State for which the Governor seeks designation as a Governor-designated covered area, except that the total number of covered areas included in such petition may not exceed 10 percent of the total number of covered areas in the State.

(c) If the Administrator grants a petition described in this section, the Governor of the Governor-designated covered area shall, not less frequently than annually, submit data to the Administrator certifying that each Governor-designated covered area continues to meet the requirements of paragraph (d)(1) of this section.

(d) In this section:

(1) The term “covered area” means an area in a State—

(i) That is located outside of an urbanized area, as determined by the Bureau of the Census;

(ii) With a population of not more than 50,000; and

(iii) For which the average unemployment rate is not less than 120 percent of the average unemployment rate of the United States or of the State in which the covered area is located, whichever is less, based on the most recent data available from the American Community Survey conducted by the Bureau of the Census.

(2) The term “Governor” means the chief executive of a State.

(3) The term “State” means each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

[84 FR 62449, Nov. 15, 2019]

Subpart B—Requirements To Be a Certified HUBZone Small Business Concern

§ 126.200 What requirements must a concern meet to be eligible as a certified HUBZone small business concern?

(a) *Ownership.* In order to be eligible for HUBZone certification and to remain certified, a small business concern must be owned in accordance with this paragraph. The concern must be:

(1) At least 51% owned and controlled by one or more individuals who are United States citizens;

(2) An ANC or at least 51% owned by an ANC or a wholly-owned business entity of an ANC;

(3) At least 51% owned by one or more Indian Tribal Governments, or by a corporation that is wholly owned by one or more Indian Tribal Governments;

(4) At least 51% owned by one or more CDCs;

(5) A small agricultural cooperative organized or incorporated in the United States, or at least 51% owned by one or more small agricultural cooperatives

organized or incorporated in the United States; or

(6) At least 51% owned by one or more NHOs, or by a corporation that is wholly owned by one or more NHOs.

(b) *Size.* (1) An applicant concern, together with its affiliates, must qualify as a small business concern under the size standard corresponding to its primary industry classification as defined in part 121 of this chapter.

(2) In order to remain eligible as a certified HUBZone small business concern, a concern must qualify as small under the size standard corresponding to one or more NAICS codes in which it does business.

(3) If the concern is a small agricultural cooperative, in determining size, the small 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.

(c) *Principal office.* In order to be eligible for HUBZone certification, a concern’s principal office must be located in a HUBZone, except for concerns owned in whole or in part by one or more Indian Tribal Governments.

(1) A concern that owns or makes a long-term investment (*i.e.*, a lease of at least 10 years) in a principal office in an area that qualifies as a HUBZone at the time of its initial certification will be deemed to have its principal office located in a HUBZone for at least 10 years from the date of that certification as long as the firm maintains the long-term lease or continues to own the property upon which the principal office designation was made. This does not apply to leases of office space that are shared with one or more other concerns or individuals.

(2) A concern that is owned in whole or in part by one or more Indian Tribal Governments (or by a corporation that is wholly owned by Indian Tribal Governments) 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 (d)(1) 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 adjacent to such Indian reservation.

(d) *Employees.* (1) In order to be eligible for HUBZone certification, at least 35% of a 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, SBA rounds to the nearest whole number.

(i) *Example 1 to paragraph (d)(1):* A concern has 25 employees; 35% of 25, or 8.75, employees must reside in a HUBZone. The number 8.75 rounded to the nearest whole number is 9. Thus, 9 employees must reside in a HUBZone.

(ii) *Example 2 to paragraph (d)(1):* A concern has 95 employees; 35% of 95, or 33.25, employees must reside in a HUBZone. The number 33.25 rounded to the nearest whole number is 33. Thus, 33 employees must reside in a HUBZone.

(2) If the concern is owned in whole or in part by one or more Indian Tribal Governments (or by a corporation that is wholly owned by one or more Indian Tribal Governments), *see* paragraph (c)(2) of this section.

(3) An employee who resides in a HUBZone at the time of certification (or time of recertification where the individual is being treated as a HUBZone resident for the first time) shall continue to count as a HUBZone resident employee if the individual continues to live in the HUBZone for at least 180 days immediately after certification (or recertification) and remains an employee of the concern, even if the employee subsequently moves to a location that is not in a HUBZone or the area in which the employee’s residence is located no longer qualifies as a HUBZone. The certified HUBZone small business concern must maintain records of the employee’s original HUBZone address, as well as records of the individual’s continued and uninterrupted employment by the HUBZone small business concern, for the duration of the concern’s participation in the HUBZone program.

(i) *Example to paragraph (d)(3):* As part of its application for HUBZone

certification, a concern provides documentation showing that 35% of its employees have lived in a HUBZone for more than 180 days. SBA certifies the concern as a certified HUBZone small business concern. Within 180 after being certified, an individual critical to the concern's meeting the 35% residency requirement moves out of the HUBZone area. That individual will continue to be treated as a HUBZone resident during the first year after the concern's certification; however, at the time of the firm's recertification, that individual will not be counted as a resident of a HUBZone.

(ii) [Reserved]

(e) *Attempt to maintain.* (1) At the time of application, a concern must certify that it will “attempt to maintain” (see §126.103) having at least 35% of its employees reside in a HUBZone during the performance of any HUBZone contract it receives.

(2) If the concern is owned in whole or in part by one or more Indian Tribal Governments (or by a corporation that is wholly owned by one or more Indian Tribal Governments), the concern must certify that it will “attempt to maintain” (see §126.103) the applicable employment percentage described in paragraph (c)(2) of this section during the performance of any HUBZone contract it receives.

(f) *Subcontracting.* At the time of application, an applicant concern must certify that it will comply with the applicable limitations on subcontracting requirements in connection with any procurement that it receives as a certified HUBZone small business concern (see §§ 125.6 and 126.700).

(g) *Suspension and Debarment.* In order to be eligible for HUBZone certification and to remain certified, the concern and any of its owners must not have an active exclusion in the System for Award Management, available at www.SAM.gov, at the time of application.

[84 FR 65242, Nov. 26, 2019, as amended at 86 FR 61673, Nov. 8, 2021]

§ 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]

§ 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 may 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

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consider the control potential of such key employees on a case by case basis.

[69 FR 29422, May 24, 2004, as amended at 84 FR 65243, Nov. 26, 2019]

§ 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 certified HUBZone small business concern, 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; 84 FR 65243, Nov. 26, 2019]

§ 126.204 May a HUBZone small business concern have affiliates?

(a) A HUBZone small business concern may have affiliates, provided that the aggregate size of the concern together with 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.

(b) Employees of affiliates are not automatically considered employees of a HUBZone applicant or HUBZone small business concern solely on the basis of affiliation.

(c) The employees of an affiliate may be counted as employees of a HUBZone applicant or HUBZone small business concern for purposes of determining compliance with the HUBZone program's principal office and 35% residency requirements in certain circumstances. In determining whether individuals should be counted as employees of a HUBZone applicant or HUBZone small business concern, SBA will consider all information, including criteria used by the IRS for Federal income tax purposes and those set forth in SBA's Size Policy Statement No. 1. Employees of the concern's affiliate will not be counted as the concern's employees if there is a clear line of

fracture between the concern and its affiliate.

(1) SBA generally will find that there is a clear line of fracture where the concern demonstrates that it does not share employees, facilities, or equipment with the affiliate; has different customers or lines of business (or is distinctly segregated geographically); and does not receive significant contracts or financial assistance from the affiliate.

(2) The use of common administrative services between parent and/or sister concerns by itself will not result in an affiliate's employees being counted as employees of the HUBZone applicant or HUBZone small business concern.

(3) Minimal business activity between the concern and its affiliate will not result in an affiliate's employees being counted as employees of the HUBZone applicant or HUBZone small business concern.

(i) *Example to paragraph (c):* X owns 100% of Company A and 51% of Company B. Based on X's common ownership of A and B, the two companies are affiliated under SBA's size regulations. SBA will look at the totality of circumstances to determine whether it would be reasonable to treat the employees of B as employees of A for HUBZone program purposes. If both companies do construction work and share office space and equipment, then SBA would find that there is not a clear line of fracture between the two concerns and would treat the employees of B as employees of A for HUBZone program purposes. In order to be eligible for the HUBZone program, at least 35% of the combined employees of A and B must reside in a HUBZone.

(ii) [Reserved]

[84 FR 65243, Nov. 26, 2019]

§ 126.205 May participants in other SBA programs be certified as HUBZone small business concerns?

Participants in other SBA programs may be certified as HUBZone small business concerns if they meet all of the requirements set forth in this part.

[84 FR 65243, Nov. 26, 2019]

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§ 126.206 May nonmanufacturers be certified as HUBZone small business concerns?

Nonmanufacturers (referred to in the HUBZone Act of 1997 as “regular dealers”) may be certified as HUBZone small business concerns if they meet all of the requirements set forth in § 126.200. For purposes of this part, a “nonmanufacturer” is defined in § 121.406(b) of this chapter.

[84 FR 65243, Nov. 26, 2019]

§ 126.207 Do all of the offices or facilities of a certified HUBZone small business concern have to be located in a HUBZone?

A HUBZone small business concern may have offices or facilities in multiple HUBZones or even outside a HUBZone. However, in order to be certified as a HUBZone small business concern, the concern’s principal office must be located in a HUBZone (except *see* § 126.200(c)(2) for concerns owned by Indian Tribal Governments).

[84 FR 65243, Nov. 26, 2019]

Subpart C—Certification

§ 126.300 How may a concern be certified as a HUBZone small business concern?

(a) A concern must apply to SBA for HUBZone certification. SBA will consider the information provided by the concern in order to determine whether the concern qualifies.

(b) SBA, at its discretion, may rely solely upon the information submitted, may request additional information, may conduct independent research, or may verify the information before making an eligibility determination.

(c) If SBA determines that a concern meets the eligibility requirements of a HUBZone small business concern, it will notify the concern and designate the concern as a certified HUBZone small business concern in DSBS (or successor system).

[84 FR 65243, Nov. 26, 2019]

§ 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.

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

A concern seeking certification as a HUBZone small business concern must submit an electronic application to SBA’s HUBZone Program Office via SBA’s web page at *www.SBA.gov*. The application and any supporting documentation must be submitted by a person authorized to represent the concern.

[84 FR 65243, Nov. 26, 2019]

§ 126.304 What must a concern submit to SBA in order to be certified as a HUBZone small business concern?

(a) *General.* To be certified by SBA as a HUBZone small business concern, a concern must submit a completed application and all documents requested by SBA. The concern must also represent to SBA that it meets the requirements set forth in § 126.200 and that all of the information provided as of the date of the application (and any subsequent information provided) is complete, true and accurate. The representation must be signed by an owner or officer of the applicant.

(b) *Supporting documents.* (1) SBA may request documents to verify that the applicant meets the HUBZone program’s eligibility requirements. The documents must show that the concern meets the program’s requirements at the time it submits its application to SBA.

(2) The concern must document compliance with the requirements listed in § 126.200, including but not limited to employment records and documentation showing the address of each HUBZone resident employee. Records sufficient to demonstrate HUBZone

residency include copies of driver's licenses and voter registration cards; only where such documentation is unavailable will SBA accept alternative documentation (such as copies of leases, deeds, and/or utility bills) accompanied by signed statements explaining why the alternative documentation is being provided.

(c) *Changes after submission of application.* After submitting an application, a concern applying for HUBZone certification must immediately notify SBA of any changes that could affect its eligibility and provide information and documents to verify the changes. If the changed information indicates that the concern is not eligible, the applicant will be given the option to withdraw its application, or SBA will decline certification and the concern must wait 90 days to reapply.

(d) *HUBZone areas.* Concerns applying for HUBZone status must use SBA's website (*e.g.*, maps or other tools showing qualified HUBZones) to verify that the location of the concern's principal office and the residences of at least 35% of the concern's employees are within HUBZones. If SBA's website indicates that a particular location is not within a HUBZone and the applicant disagrees, then the applicant must note this on the application and submit relevant documents showing why the applicant believes the area meets the statutory criteria of a HUBZone. SBA will determine whether the location is within a HUBZone using available methods (*e.g.*, by contacting Bureau of Indian Affairs for Indian reservations or Department of Defense for BRACs).

(e) *Record maintenance.* HUBZone small business concerns must retain documentation demonstrating satisfaction of all qualifying requirements for 6 years from date of submission of all initial and continuing eligibility actions as required by this part. In addition, HUBZone small business concerns must retain documentation as required in § 126.200(d)(3).

[84 FR 65244, Nov. 26, 2019]

§ 126.305 [Reserved]

§ 126.306 How will SBA process an application for HUBZone certification?

(a) The D/HUB or designee is authorized to approve or decline applications for HUBZone certification. SBA will receive and review all applications and request supporting documents. SBA must receive all required information, supporting documents, and a completed HUBZone representation before it will begin processing a concern's application. SBA will not process incomplete packages. SBA will make its determination within 60 calendar days after receipt of a complete package.

(b) The burden of proof to demonstrate eligibility is on the applicant concern. If a concern does not provide requested information within the allotted time provided by SBA, or if it submits incomplete information, SBA may draw an adverse inference and presume that the information that the applicant failed to provide would demonstrate ineligibility and deny certification on this basis.

(c) SBA's decision will be based on the facts set forth in the application, any information received in response to SBA's request for clarification, any independent research conducted by SBA, and any changed circumstances.

(d) In order to be certified into the program, the applicant must be eligible as of the date it submitted its application and at the time the D/HUB issues a decision. An applicant must inform SBA of any changes to its circumstances that occur after its application and before its certification that may affect its eligibility. SBA will consider such changed circumstances in determining whether to certify the concern.

(e) If SBA approves the application, it will send a written notice to the concern and designate the concern as a certified HUBZone small business concern in DSBS (or successor system) as described in § 126.307.

(f) If SBA denies the application, it will send a written notice to the concern and state the specific reasons for denial.

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(g) SBA will presume that notice of its decision was provided to an applicant if SBA sends a communication to the concern at a mailing address, email address, or fax number provided in the concern's profile in the System for Award Management (or successor system).

[84 FR 65244, Nov. 26, 2019]

§ 126.307 Where is there a list of certified HUBZone small business concerns?

SBA designates concerns as certified HUBZone small business concerns in DSBS (or successor system).

[84 FR 65244, Nov. 26, 2019]

§ 126.308 What happens if a HUBZone small business concern receives notice of its certification but it does not appear in DSBS as a certified HUBZone small business concern?

(a) A certified HUBZone small business concern that has received SBA's notice of certification, but does not appear in DSBS (or successor system) as a certified HUBZone small business concern within 10 business days, should immediately notify the D/HUB via email at hubzone@sba.gov.

(b) A certified HUBZone small business concern that has received SBA's notice of certification must appear as a certified HUBZone small business concern in DSBS (or successor system) in order to be eligible for HUBZone contracts (*i.e.*, it cannot "opt out" of a public display in the System for Award Management (*SAM.gov*) or DSBS (or successor systems)).

[84 FR 65244, Nov. 26, 2019]

§ 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

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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]

Subpart D—Program Examinations

§ 126.400 Who will conduct program examinations?

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

§ 126.401 What is a program examination?

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 or recertification process. Examiners may verify that the concern met the program's eligibility requirements at the time of its certification or, if applicable, at the time of its most recent recertification.

[84 FR 65244, Nov. 26, 2019]

§ 126.402 When will SBA conduct program examinations?

(a) 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 a certified HUBZone small business concern.

(b) SBA will conduct program examinations periodically as part of the recertification process set forth in § 126.500.

(c) Upon receipt of specific and credible information alleging that a certified HUBZone small business concern no longer meets the eligibility requirements for continued program eligibility, SBA will examine the concern's eligibility for continued participation in the program.

[84 FR 65245, Nov. 26, 2019]

§ 126.403 What will SBA review during a program examination?

(a) SBA may conduct a program examination, or parts of an examination, at one or more of the concern's offices. SBA will determine the location and

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scope of the examination and may review any information related to the concern's HUBZone eligibility including, but not limited to, documentation related to the location and ownership of the concern, compliance with the 35% HUBZone residency requirement, and the concern's "attempt to maintain" (see § 126.103) this percentage.

(b) SBA may require that a HUBZone small business concern (or applicant) submit additional information as part of the program examination. If SBA requests additional information, SBA will presume that written notice of the request was provided when SBA sends such request to the concern at a mailing address, email address or fax number provided in the concern's profile in the Dynamic Small Business Search (DSBS) or the System for Award Management (SAM) (or successor systems). SBA may draw an adverse inference from a concern's failure to cooperate with a program examination or provide requested information and assume that the information that the HUBZone small business concern (or applicant) failed to provide would demonstrate ineligibility, and decertify (or deny certification) on this basis.

(c) The concern must retain documentation provided in the course of a program examination for 6 years from the date of submission.

[84 FR 65245, Nov. 26, 2019]

§ 126.404 What are the possible outcomes of a program examination and when will SBA make its determination?

(a) *Timing.* SBA will make its determination within 90 calendar days after SBA receives all requested information, when practicable.

(b) *Program examinations on certified HUBZone small business concerns.* If the program examination was conducted on a certified HUBZone small business concern—

(1) And the D/HUB (or designee) determines that the concern is eligible, SBA will send a written notice to the HUBZone small business concern and continue to designate the concern as a certified HUBZone small business concern in DSBS (or successor system).

(2) And the D/HUB (or designee) determines that the concern is not eligi-

ble, the concern will have 30 days to submit documentation showing that it is eligible. During the 30-day period, such concern may not compete for or be awarded a HUBZone contract. If such concern fails to demonstrate its eligibility by the last day of the 30-day period, the concern will be decertified.

(c) *Program examinations on applicants.* If the program examination was conducted on an applicant to the HUBZone program—

(1) And the D/HUB (or designee) determines that the concern is eligible, SBA will send a written certification notice to the concern and designate the concern as a certified HUBZone small business concern in DSBS (or successor system).

(2) And the D/HUB (or designee) determines that the concern is ineligible, SBA will send a written decline notice to the concern.

[84 FR 65245, Nov. 26, 2019]

Subpart E—Maintaining HUBZone Status

§ 126.500 How does a concern maintain HUBZone certification?

(a) Any concern seeking to remain a certified HUBZone small business concern in DSBS (or successor system) must annually represent to SBA that it continues to meet all HUBZone eligibility criteria (see § 126.200).

(1) If at the time of its recertification the certified HUBZone small business concern is not currently performing a HUBZone contract, its representation means that at least 35% of its employees continue to reside in a HUBZone and the principal office of the concern continues to be located in a HUBZone.

(2) If at the time of its recertification the certified HUBZone small business concern is currently performing a HUBZone contract, its representation means that at least 20% of its employees continue to reside in a HUBZone and the principal office of the concern continues to be located in a HUBZone.

(3) Except as provided in paragraph (b) of this section, unless SBA has reason to question the concern's representation of its continued eligibility, SBA will accept the representation without requiring the certified HUBZone small

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business concern to submit any supporting information or documentation.

(4) The concern's recertification must be submitted within 30 days of the anniversary date of its original HUBZone certification. The date of HUBZone certification is the date specified in the concern's certification letter. If the business fails to recertify, SBA may propose the concern for decertification pursuant to § 126.503.

(b) SBA will conduct a program examination of each certified HUBZone small business concern pursuant to § 126.403 at least once every three years to ensure continued program eligibility. Specifically, SBA will conduct a program examination as part of the recertification process three years after the concern's initial HUBZone certification or three years after the date of the concern's last program examination, whichever date is later.

(1) *Example:* Concern A is certified by SBA to be eligible for the HUBZone program on September 27, 2020. During that year, Concern A does not receive a HUBZone contract. Concern A must recertify its eligibility to SBA between August 27, 2021 and September 26, 2021. Concern A must represent that at least 35% of its employees continue to reside in a HUBZone and that its principal office continues to be located in a HUBZone. Concern A will continue to be a certified HUBZone small business concern that is eligible to receive HUBZone contracts (as long as it is small for the size standard corresponding to the NAICS code assigned to the contract) through September 26, 2022. On June 28, 2022, Concern A is awarded a HUBZone contract. Concern A must recertify its eligibility to SBA between August 27, 2022 and September 26, 2022. Because Concern A is performing a HUBZone contract, Concern A must represent that at least 20% of its employees continue to reside in a HUBZone and that its principal office continues to be located in a HUBZone. Concern A will continue to be a certified HUBZone small business concern that is eligible to receive HUBZone contracts (as long as it is small for the size standard corresponding to the NAICS code assigned to the contract) through September 26, 2023. Concern A must recertify its eligibility to SBA

between August 27, 2023 and September 26, 2023. Because three years have elapsed since its application and original certification, SBA will conduct a program examination of Concern A at that time. In addition to its representation that it continues to be eligible as a certified HUBZone small business concern, Concern A must provide additional information as requested by SBA to demonstrate that it continues to meet all the eligibility requirements of the HUBZone Program.

(2) [Reserved]

[84 FR 65245, Nov. 26, 2019, as amended at 85 FR 66197, Oct. 16, 2020]

§ 126.501 How long does HUBZone certification last?

(a) *One-year certification.* Once SBA certifies a concern as eligible to participate in the HUBZone program, the concern will be treated as a certified HUBZone small business concern eligible for all HUBZone contracts for which the concern qualifies as small, for a period of one year from the date of its initial certification or recertification, unless the concern acquires, is acquired by, or merges with another firm during that one-year period, or the concern is performing a HUBZone contract and fails to attempt to maintain the minimum employee HUBZone residency requirement (*see* § 126.103).

(1) A certified HUBZone small business concern that acquires, is acquired by, or merges with another business entity must notify SBA within 30 days of the transaction becoming final. The concern must then demonstrate to SBA that it continues to meet the HUBZone eligibility requirements in order for it to remain eligible as a certified HUBZone small business concern.

(2) A certified HUBZone small business concern that is performing a HUBZone contract and fails to attempt to maintain the minimum employee HUBZone residency requirement (*see* § 126.103) must notify SBA within 30 days of such occurrence. A concern that cannot meet the requirement may voluntarily withdraw from the program, or it will be removed by SBA pursuant to program decertification procedures.

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(b) *Annual recertification.* On the annual anniversary of a concern's certification or recertification, the concern must recertify that it is fully compliant with all HUBZone eligibility requirements (see §126.200), or it can request to voluntarily withdraw from the HUBZone program.

(c) *Review of recertification.* SBA may review the concern's recertification through the program examination process when deemed appropriate and will do so every three years pursuant to §126.500.

(1) If SBA determines that the concern is no longer eligible at the time of its recertification, SBA will propose the HUBZone small business concern for decertification pursuant to §126.503.

(2) If SBA determines that the concern continues to be eligible, SBA will notify the concern of this determination. In such case, the concern will:

(i) Continue to be designated as a certified HUBZone small business concern in DSBS (or successor system); and

(ii) Be treated as an eligible HUBZone small business concern for all HUBZone contracts for which the concern qualifies as small for a period of one year from the date of the recertification.

(d) *Voluntary withdrawal.* A HUBZone small business concern may request to voluntarily withdraw from the HUBZone program at any time. Once SBA concurs, SBA will decertify the concern and no longer designate it as a certified HUBZone small business concern in DSBS (or successor system). The concern may apply again for certification at any point ninety (90) calendar days after the date of decertification. At that point, the concern would have to demonstrate that it meets all HUBZone eligibility requirements.

[84 FR 65246, Nov. 26, 2019]

§ 126.502 Is there a limit to the length of time a concern may be a certified HUBZone small business concern?

There is no limit to the length of time a concern may remain designated as a certified HUBZone small business concern in DSBS (or successor system) so long as it continues to comply with

the provisions of §§126.200, 126.500, and 126.501.

[84 FR 65246, Nov. 26, 2019]

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

(a) *Proposed decertification—(1) General.* If SBA is unable to verify a certified HUBZone small business concern's eligibility or has information indicating that a concern was not eligible for the program at the time of certification or recertification, SBA may propose decertification of the concern. In addition, if during the one-year period of time after certification or recertification SBA believes that a HUBZone small business concern that is performing one or more HUBZone contracts no longer has at least 20% of its employees living in a HUBZone, SBA will propose the concern for decertification based on the concern's failure to attempt to maintain compliance with the HUBZone residency requirement.

(i) *Notice of proposed decertification.* SBA will notify the HUBZone small business concern in writing that SBA is proposing to decertify it and state the reasons for the proposed decertification. The notice of proposed decertification will notify the concern that it has 30 days from the date it receives the letter to submit a written response to SBA explaining why the proposed ground(s) should not justify decertification. SBA will consider that written notice was provided if SBA sends the notice of proposed decertification to the concern at a mailing address, email address, or fax number provided in the concern's profile in the System for Award Management (*SAM.gov*) or the Dynamic Small Business Search (DSBS) (or successor systems).

(ii) *Response to notice of proposed decertification.* The HUBZone small business concern must submit a written response to the notice of proposed decertification within the timeframe specified in the notice. In this response, the HUBZone small business concern must rebut each of the reasons set forth by

SBA in the notice of proposed decertification, and where appropriate, the rebuttal must include documents showing that the concern is eligible for the HUBZone program as of the date specified in the notice.

(iii) *Adverse inference.* If a HUBZone small business concern fails to cooperate with SBA or fails to provide the information requested, the D/HUB may draw an adverse inference and assume that the information that the concern failed to provide would demonstrate ineligibility.

(2) *SBA's decision.* SBA will determine whether the HUBZone small business concern remains eligible for the program within 90 calendar days after receiving all requested information, when practicable. The D/HUB will provide written notice to the concern stating the basis for the determination. If SBA finds that the concern is not eligible, the D/HUB will decertify the concern and remove its designation as a certified HUBZone small business concern in DSBS (or successor system). If SBA finds that the concern is eligible, the concern will continue to be designated as a certified HUBZone small business concern in DSBS (or successor system).

(b) *Decertification pursuant to a protest.* The procedures described in paragraph (a) of this section do not apply to HUBZone status protests. If the D/HUB sustains a protest pursuant to § 126.803, SBA will decertify the HUBZone small business concern immediately and change the concern's status in DSBS (or successor system) to reflect that it no longer qualifies as a certified HUBZone small business concern without first proposing it for decertification.

[84 FR 65246, Nov. 26, 2019]

§ 126.504 When will SBA remove the designation of a concern in DSBS (or successor system) as a certified HUBZone small business concern?

(a) SBA will remove the designation of a concern in DSBS (or successor system) as a certified HUBZone small business concern if the concern has:

(1) Been decertified as a result of a HUBZone status protest pursuant to § 126.803;

(2) Been decertified as a result of the procedures set forth in § 126.503; or

(3) Voluntarily withdrawn from the HUBZone program pursuant to § 126.501(b).

(b) SBA will remove the designation of a concern in DSBS (or successor system) as a certified HUBZone small business concern as soon as the D/HUB issues a decision decertifying the concern from the program.

(c) After a concern has been removed as a certified HUBZone small business concern in DSBS (or successor system), it is ineligible for the HUBZone program and may not submit an offer for a HUBZone contract.

(1) As long as the concern was eligible at the time of its offer (and eligibility relates back to the date of its certification or recertification), it could be awarded a HUBZone contract even if it no longer appears as a certified HUBZone small business concern on DSBS on the date of award.

(2) If SBA determines that the concern's recertification was invalid (*i.e.*, based on a protest or program examination SBA determines that the concern did not qualify as a HUBZone small business concern on the date of its recertification), the concern will be ineligible for the award of any HUBZone contract for which it previously certified its HUBZone status.

[84 FR 65247, Nov. 26, 2019]

Subpart F—Contracting With Certified HUBZone Small Business Concerns

§ 126.600 What are HUBZone contracts?

HUBZone contracts are contracts awarded to a certified HUBZone small business concern, regardless of the place of performance, through any of the following procurement methods:

(a) Sole source awards to certified HUBZone small business concerns;

(b) Set-aside awards, including partial set-asides, based on competition restricted to certified HUBZone small business concerns;

(c) Awards to certified HUBZone small business concerns through full and open competition after a price evaluation preference is applied to an

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other than small business in favor of certified HUBZone small business concerns;

(d) Awards based on a reserve for certified HUBZone small business concerns in a solicitation for a Multiple Award Contract (*see* § 125.1); or

(e) Orders set-aside for certified HUBZone small business concerns under a Multiple Award Contract that was awarded in full and open competition.

[78 FR 61144, Oct. 2, 2013, as amended at 81 FR 48591, July 25, 2016; 84 FR 65247, Nov. 26, 2019]

§ 126.601 What additional requirements must a certified HUBZone small business concern meet to submit an offer on a HUBZone contract?

(a) Only certified HUBZone small business concerns are eligible to submit offers for a HUBZone contract or to receive a price evaluation preference under § 126.613.

(b) At the time a certified HUBZone small business concern submits its initial offer (including price) on a specific HUBZone contract, it must certify to the contracting officer that it:

(1) Is a certified HUBZone small business concern in DSBS (or successor system);

(2) Is small, together with its affiliates, at the time of its offer under the size standard corresponding to the NAICS code assigned to the procurement;

(3) Will “attempt to maintain” having at least 35% of its employees residing in a HUBZone during the performance of the contract, as set forth in § 126.200(e); and

(4) Will comply with the applicable limitations on subcontracting during performance of the contract, as set forth in § 125.6 of this chapter and §§ 126.200(f) and 126.700.

(c) A certified HUBZone small business concern 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 of this chapter.

(d) Where a subcontractor that is not similarly situated performs primary and vital requirements of a set-aside service contract, or where a prime con-

tractor is unduly reliant on a small business that is not similarly situated to perform the set-aside service contract, the prime contractor is not eligible for award of a HUBZone contract.

(1) When the subcontractor is small for the size standard assigned to the procurement, this issue may be grounds for a HUBZone status protest, as described in subpart H of this part. When the subcontractor is alleged to be other than small for the size standard assigned to the procurement, this issue may be grounds for a size protest under the ostensible subcontractor rule, as described at § 121.103(h)(4) of this chapter.

(2) SBA will find that a prime HUBZone contractor is performing the primary and vital requirements of a contract or order and is not unduly reliant on one or more non-similarly situated subcontracts where the prime contractor can demonstrate that it, together with any similarly situated entity, will meet the limitations on subcontracting provisions set forth in § 125.6.

[84 FR 65247, Nov. 26, 2019, as amended at 84 FR 65664, Nov. 29, 2019; 85 FR 5304, Jan. 30, 2020]

§ 126.602 Must a certified HUBZone small business concern maintain the employee residency percentage during contract performance?

(a) A certified HUBZone small business concern that has not received a HUBZone contract must have at least 35% of its employees residing within a HUBZone at the time of certification and annual recertification. Such a concern need not meet the 35% HUBZone residency requirement at all times while certified in the program. A certified HUBZone small business concern that has received a HUBZone contract must “attempt to maintain” (*see* § 126.103) having 35% of its employees residing in a HUBZone during the performance of any HUBZone contract awarded to the concern on the basis of its HUBZone status. Such a concern must have at least 20% of its employees residing within a HUBZone at the time of its annual recertification.

(b) For orders under indefinite delivery, indefinite quantity contracts, including orders under multiple award

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contracts, a certified HUBZone small business concern must “attempt to maintain” the HUBZone residency requirement during the performance of each order that is set aside for HUBZone small business concerns.

(c) A certified HUBZone small business concern eligible for the program pursuant to § 126.200(c)(2)(ii) 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.

(d) A certified HUBZone small business concern that has less than 20% of its total employees residing in a HUBZone during the performance of a HUBZone contract has failed to attempt to maintain the HUBZone residency requirement. Such failure will result in proposed decertification pursuant to § 126.503.

[84 FR 65247, Nov. 26, 2019, as amended at 85 FR 66197, Oct. 16, 2020]

§ 126.603 Does HUBZone certification guarantee receipt of HUBZone contracts?

HUBZone certification does not guarantee that a certified HUBZone small business concern will receive HUBZone contracts. Certified HUBZone small business concerns 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, as amended at 84 FR 65247, Nov. 26, 2019]

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

The contracting officer for the contracting activity makes this decision.

§ 126.605 What requirements are not available for HUBZone contracts?

A contracting activity may not make a requirement available for a HUBZone contract if:

(a) The contracting activity otherwise would fulfill that requirement through award to Federal Prison Indus-

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tries, 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]

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

A procuring activity may request that SBA release an 8(a) requirement for award as a HUBZone contract under the procedures set forth in § 124.504(d).

[85 FR 66197, Oct. 16, 2020]

§ 126.607 When must a contracting officer set aside a requirement for certified HUBZone small business concerns?

(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

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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 certifications in the System for Award Management (SAM) (or any successor system) 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 certified HUBZone small business concerns, the contracting officer must:

(1) Have a reasonable expectation after reviewing the list of certified HUBZone small business concerns contained in DSBS (or successor system) 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; 78 FR 61146, Oct. 2, 2013; 84 FR 65247, Nov. 26, 2019]

§ 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 or sole source award if it is at or below the simplified acquisition threshold. In addition, a CO may award a requirement as a HUBZone contract to a certified HUBZone small business concern at or below the micropurchase threshold.

[69 FR 29425, May 24, 2004, as amended at 84 FR 65248, Nov. 26, 2019]

§ 126.609 [Reserved]

§ 126.610 May SBA appeal a contracting officer's decision not to make a procurement available 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]

§ 126.611 What is the process for an appeal of a contracting officer's decision not to issue a procurement as a HUBZone contract?

(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; 84 FR 65248, Nov. 26, 2019]

§ 126.612 When may a CO award sole source contracts to HUBZone small business concerns?

A contracting officer may award a sole source contract to a HUBZone small business concern 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) \$7,000,000 for a contract assigned a manufacturing NAICS code, or

(2) \$4,500,000 for all other contracts.

(c) Two or more HUBZone small business concerns are not likely to submit offers;

(d) A HUBZone small business concern 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; 83 FR 12852, Mar. 26, 2018; 84 FR 65248, Nov. 26, 2019; 86 FR 61673, Nov. 8, 2021]

§ 126.613 How does a price evaluation preference affect the bid of a certified HUBZone small business concern 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 certified HUBZone small business concern to be lower than the price offered by another offeror (other than another small business concern) if

the price offered by the certified HUBZone small business concern 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. This does not apply if the certified HUBZone small business concern will receive the contract as part of a reserve for certified HUBZone small business concerns.

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

(i) *Example 1:*

In a full and open competition, a certified HUBZone small business concern submits an offer of \$98, a non-HUBZone small business concern 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 certified HUBZone small business concern's offer is not more than 10% higher than the large business' offer and, consequently, the certified HUBZone small business concern displaces the large business as the lowest, responsive, and responsible offeror.

(ii) *Example 2:*

In a full and open competition, a certified HUBZone small business concern submits an offer of \$103, a non-HUBZone small business concern 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 certified HUBZone small business concern's offer is more than 10% higher

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than the large business' offer and, consequently, the certified HUBZone small business concern does not displace the large business as the lowest, responsive, and responsible offeror. In addition, the non-HUBZone small business concern'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 small business concern.

(iii) *Example 3:*

In a full and open competition, a certified HUBZone small business concern submits an offer of \$98 and a non-HUBZone small business concern 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.

(iv) *Example 4:*

In a full and open competition, a certified HUBZone small business concern submits an offer of \$98 and a large business submits an offer of \$93. The contracting officer has stated in the solicitation that one contract will be reserved for a certified HUBZone small business concern. The contracting officer would not apply the price evaluation preference when determining which HUBZone small business concern would receive the contract reserved for HUBZone small business concerns, but would apply the price evaluation preference when determining the awardees for the non-reserved portion.

(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 commod-

ities apply to all offers from certified HUBZone small business concerns up to the 25% and 40% volume limits specified in paragraph (b)(1) of this section. As such, more than one certified HUBZone small business concern may receive a price evaluation preference for any given commodity in a single IFB.

(i) *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 small business concern) is \$1.05/pound for 20,000 pounds of wheat. Bid 3 (from a HUBZone small business concern) 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

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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.

(ii) [Reserved]

(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 certified HUBZone small business concern 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 small business concerns.

[69 FR 29425, May 24, 2004, as amended at 70 FR 51250, Aug. 30, 2005; 78 FR 61146, Oct. 2, 2013; 84 FR 65248, Nov. 26, 2019]

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

Except as provided in § 126.618, 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.

[81 FR 48591, July 25, 2016, as amended at 81 FR 71983, Oct. 19, 2016]

§ 126.616 What requirements must a joint venture satisfy to submit an offer and be eligible to perform on a HUBZone contract?

(a) *General.* A certified HUBZone small business concern may enter into a joint venture agreement with one or more other small business concerns, or with an approved mentor authorized by § 125.9 of this chapter, for the purpose of submitting an offer for a HUBZone contract. The joint venture itself need not be a certified HUBZone small business concern.

(b) *Size.* (1) A joint venture of at least one certified HUBZone small business

concern and one or more other business concerns may submit an offer as a small business for a HUBZone procurement or sale so long as each concern is small under the size standard corresponding to the NAICS code assigned to the procurement or sale.

(2) A joint venture between a protégé firm and its SBA-approved mentor (*see* § 125.9 of this chapter) will be deemed small provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the HUBZone procurement or sale.

(c) *Contents of joint venture agreement.* Every joint venture agreement to perform a HUBZone contract, including those between a protégé firm that is a certified HUBZone small business concern and its SBA-approved mentor authorized by § 124.520 or § 125.9 of this chapter, must contain a provision:

(1) Setting forth the purpose of the joint venture;

(2) Designating a certified HUBZone small business concern as the managing venturer of the joint venture, and designating a named employee of the certified HUBZone small business managing venturer as the manager with ultimate responsibility for performance of the contract (the “Responsible Manager”).

(i) The managing venturer is responsible for controlling the day-to-day management and administration of the contractual performance of the joint venture, but other partners to the joint venture may participate in all corporate governance activities and decisions of the joint venture as is commercially customary.

(ii) The individual identified as the Responsible Manager of the joint venture need not be an employee of the certified HUBZone small business concern at the time the joint venture submits an offer, but, if he or she is not, there must be a signed letter of intent that the individual commits to be employed by the certified HUBZone small business concern if the joint venture is the successful offeror. The individual identified as the Responsible Manager cannot be employed by the mentor and become an employee of the certified HUBZone small business concern for purposes of performance under the joint venture.

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(iii) Although the joint venture managers responsible for orders issued under an IDIQ contract need not be employees of the protégé, those managers must report to and be supervised by the joint venture's Responsible Manager.

(3) Stating that with respect to a separate legal entity joint venture, the certified HUBZone small business concern must own at least 51% of the joint venture entity;

(4) Stating that the certified HUBZone small business concern must receive profits from the joint venture commensurate with the work performed by the certified HUBZone small business concern, or a percentage agreed to by the parties to the joint venture whereby the certified HUBZone small business concern receives profits from the joint venture that exceed the percentage commensurate with the work performed by the certified HUBZone small business concern;

(5) Providing for the establishment and administration of a special bank account in the name of the joint venture. This account must require the signature or consent of all parties to the joint venture for any payments made by the joint venture to its members for services performed. All payments due the joint venture for performance on a HUBZone contract will be deposited in the special account; all expenses incurred under the contract will be paid from the account as well;

(6) Itemizing all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated major equipment, facilities, and other resources to be furnished by each party to the joint venture, without a detailed schedule of cost or value of each, or in the alternative, specify how the parties to the joint venture will furnish such resources to the joint venture once a definite scope of work is made publicly available;

(7) Specifying the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, including ways that the parties to the joint venture will ensure that the joint venture and the HUBZone partner(s) to the joint venture will meet the limitations on subcontracting requirements set forth in paragraph (d) of this section, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, not including the ways that the parties to the joint venture will ensure that the joint venture and the HUBZone partner(s) to the joint venture will meet the limitations on subcontracting requirements set forth in paragraph (d) of this section, or in the alternative, specify how the parties to the joint venture will define such responsibilities once a definite scope of work is made publicly available;

(8) Obligating all parties to the joint venture to ensure performance of the HUBZone contract and to complete performance despite the withdrawal of any member;

(9) Designating that accounting and other administrative records relating to the joint venture be kept in the office of the certified HUBZone small business concern managing venturer, unless approval to keep them elsewhere is granted by the District Director or his/her designee upon written request;

(10) Requiring that the final original records be retained by the certified HUBZone small business concern managing venturer upon completion of the HUBZone contract performed by the joint venture;

(11) Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the joint venture; and

(12) Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA no later than 90 days after completion of the contract.

(d) *Limitations on subcontracting.* (1) For any HUBZone contract to be performed by a joint venture between a certified HUBZone small business concern and another certified HUBZone small business concern, the aggregate of the certified HUBZone small business concerns to the joint venture, not each concern separately, must perform the applicable percentage of work required by § 125.6 of this chapter.

(2) For any HUBZone contract to be performed by a joint venture between a certified HUBZone small business concern and a small business concern or its SBA-approved mentor authorized by § 125.9 or § 124.520 of this chapter, the joint venture must perform the applicable percentage of work required by § 125.6 of this chapter, and the certified HUBZone small business concern partner to the joint venture must perform at least 40% of the work performed by the joint venture.

(i) The work performed by the certified HUBZone small business concern partner to a joint venture must be more than administrative or ministerial functions so that it gains substantive experience.

(ii) The amount of work done by the partners will be aggregated and the work done by the certified HUBZone small business concern partner must be at least 40% of the total done by the partners. In determining the amount of work done by a mentor participating in a joint venture with a HUBZone qualified protégé, all work done by the mentor and any of its affiliates at any subcontracting tier will be counted.

(e) *Certification of compliance*—(1) *At time of offer.* If submitting an offer as a joint venture for a HUBZone contract, at the time of initial offer (and if applicable, final offer), each certified HUBZone small business concern joint venture partner must make the following certifications to the contracting officer separately under its own name:

(i) It is a certified HUBZone small business concern that appears in DSBS (or successor system) as a certified

HUBZone small business concern and it met the eligibility requirements in § 126.200 at the time of its initial certification or, if applicable, at the time of its most recent recertification;

(ii) It, together with its affiliates, is small under the size standard corresponding to the NAICS code assigned to the procurement;

(iii) It will “attempt to maintain” having at least 35% of its employees residing in a HUBZone during performance of the contract; and

(iv) It will comply with the applicable limitations on subcontracting during performance of the contract, as set forth in § 125.6 of this chapter and §§ 126.200(f) and 126.700.

(2) *Prior to performance.* Prior to the performance of any HUBZone contract as a joint venture, the HUBZone small business concern partner to the joint venture must submit a written certification to the contracting officer and SBA, signed by an authorized official of each partner to the joint venture, stating the following:

(i) The parties have entered into a joint venture agreement that fully complies with paragraph (c) of this section; and

(ii) The parties will perform the contract in compliance with the joint venture agreement.

(f) *Capabilities, past performance, and experience.* When evaluating the capabilities, past performance, experience, business systems, and certifications of an entity submitting an offer for a HUBZone contract as a joint venture established pursuant to this section, a procuring activity must consider work done and qualifications held individually by each partner to the joint venture as well as any work done by the joint venture itself previously. A procuring activity may not require the HUBZone small business concern to individually meet the same evaluation or responsibility criteria as that required of other offerors generally. The partners to the joint venture in the aggregate must demonstrate the past performance, experience, business systems, and certifications necessary to perform the contract.

(g) *Contract execution.* The procuring activity will execute a HUBZone contract in the name of the joint venture

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entity or the certified HUBZone small business concern, but in either case will identify the award as one to a HUBZone joint venture or a HUBZone mentor-protégé joint venture, as appropriate.

(h) *Inspection of records.* The joint venture partners must allow SBA's authorized representatives, including representatives authorized by the SBA Inspector General, during normal business hours, access to its files to inspect and copy all records and documents relating to the joint venture.

(i) *Limitations on subcontracting reports.* The certified HUBZone small business concern partner to a joint venture must describe how it is meeting or has met the applicable limitations on subcontracting requirements for each HUBZone contract it performs as a joint venture.

(1) The certified HUBZone small business concern partner to the joint venture must annually submit a report to the relevant contracting officer and to the SBA, signed by an authorized official of each partner to the joint venture, explaining how the limitations on subcontracting requirements are being met for each HUBZone contract performed during the year.

(2) At the completion of every HUBZone contract awarded to a joint venture, the certified HUBZone small business concern partner to the joint venture must submit a report to the relevant contracting officer and to the SBA, signed by an authorized official of each partner to the joint venture, explaining how and certifying that the limitations on subcontracting requirements were met for the contract, and further certifying that the contract was performed in accordance with the provisions of the joint venture agreement that are required under paragraph (c) of this section.

(j) *Basis for suspension or debarment.* The Government may consider the following as a ground for suspension or debarment as a willful violation of a regulatory provision or requirement applicable to a public agreement or transaction:

(1) Failure to enter a joint venture agreement that complies with paragraph (c) of this section;

(2) Failure to perform a contract in accordance with the joint venture agreement or limitations on subcontracting requirements in paragraph (d) of this section; or

(3) Failure to submit the certification required by paragraph (e) of this section or comply with paragraph (h) of this section.

(k) Any person with information concerning a joint venture's compliance with the limitations on subcontracting requirements may report that information to SBA and/or the SBA Office of Inspector General.

[81 FR 48591, July 25, 2016, as amended at 81 FR 94942, Dec. 27, 2016; 83 FR 12852, Mar. 26, 2018; 84 FR 65248, Nov. 29, 2019; 85 FR 66197, Oct. 16, 2020; 86 FR 2959, Jan. 14, 2021]

§ 126.617 Who decides contract disputes arising between a certified HUBZone small business concern 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 certified HUBZone small business concern and the contracting activity.

[69 FR 29426, May 24, 2004, as amended at 84 FR 65249, Nov. 26, 2019]

§ 126.618 How does a certified HUBZone small business concern's participation in a Mentor-Protégé relationship affect its participation in the HUBZone Program?

(a) A certified HUBZone small business concern may enter into a mentor-protégé relationship under §125.9 of this chapter or in connection with a mentor-protégé program of another agency, provided that such relationships do not conflict with the HUBZone requirements described in §126.200.

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

or the assistance provided to the protégé firm under the agreement. SBA will not consider the employees of the mentor in determining whether the applicant or certified HUBZone small business concern meets (or continues to meet) the 35% HUBZone residency requirement or the principal office requirement, or in determining the size of the applicant or certified HUBZone small business concern for any employee-based size standard.

(c) A certified HUBZone small business concern that is a prime contractor on a HUBZone contract may subcontract work to its mentor.

(1) The certified HUBZone small business concern must meet the applicable limitations on subcontracting requirements set forth in §125.6(c) of this chapter.

(2) 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(h)(4) of this chapter.

[81 FR 48593, July 25, 2016, as amended at 84 FR 65249, Nov. 26, 2019; 85 FR 66197, Oct. 16, 2020]

§ 126.619 When must a certified HUBZone small business concern recertify its status for a HUBZone contract?

(a) A concern that is a certified HUBZone small business concern at the time of initial offer (including a Multiple Award Contract) is generally considered a HUBZone small business concern throughout the life of that contract.

(1) If a concern is a certified HUBZone small business concern at the time of initial offer for a HUBZone Multiple Award Contract, then it will be considered a certified HUBZone small business concern for each order issued against the contract, unless a contracting officer requests a new HUBZone certification in connection with a specific order (see paragraph (b)(4) of this section).

(2) Except for orders under Federal Supply Schedule contracts, where the underlying Multiple Award Contract is not a HUBZone contract and a procuring agency is setting aside an order for the HUBZone program, a concern

must be a certified HUBZone small business concern and appear in DSBS (or successor system) as a certified HUBZone small business concern at the time it submits its offer for the order.

(3) Where a contract is novated to another business concern, the concern that will continue performance on the contract must certify its status as a certified HUBZone small business concern to the procuring agency, or inform the procuring agency that it is not a certified HUBZone small business concern, within 30 days of the novation approval. If the concern is not a certified HUBZone small business concern, the agency can no longer count any work performed under the contract, including any options or orders issued pursuant to the contract, from that point forward towards its HUBZone goals.

(4) Where a concern that is performing a contract acquires, is acquired by, or merges with another concern and contract novation is not required, the concern must, within 30 days of the transaction becoming final, recertify its status as a certified HUBZone small business concern to the procuring agency, or inform the procuring agency that it no longer qualifies as a HUBZone small business concern. If the contractor is unable to recertify its status as a HUBZone small business concern, the agency can no longer count the options or orders issued pursuant to the contract, from that point forward, towards its HUBZone goals. The agency must immediately revise all applicable Federal contract databases to reflect the new status.

(5) Where a concern is decertified after the award of a HUBZone contract, the procuring agency may exercise options and still count the award as an award to a HUBZone small business concern, except where recertification is required or requested under this section, or where the concern has been found to be ineligible for award pursuant to a HUBZone status protest pursuant to §126.803.

(b) For the purposes of contracts (including Multiple Award Contracts) with durations of more than five years (including options), a contracting officer must request that a business concern recertify its status as a HUBZone

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small business concern no more than 120 days prior to the end of the fifth year of the contract, and no more than 120 days prior to exercising any option. If the business is unable to recertify its HUBZone status, the procuring agency may no longer be able to count the options or orders issued pursuant to the contract, from that point forward, towards its HUBZone goals.

(1) If the concern cannot recertify that it qualifies as a HUBZone small business concern, the agency can no longer count the options or orders issued pursuant to the contract, from that point forward, towards its HUBZone goals. This means that if the concern either no longer meets the HUBZone eligibility requirements or no longer qualifies as small for the size standard corresponding to NAICS code assigned to the contract, the agency can no longer count the options or orders issued pursuant to the contract, from that point forward, towards its HUBZone goals.

(2) A concern that did not certify itself as a HUBZone small business concern, either initially or prior to an option being exercised, may recertify itself as a HUBZone small business concern for a subsequent option period if it meets the eligibility requirements at that time.

(3) Recertification does not change the terms and conditions of the contract. The limitations on subcontracting, nonmanufacturer and subcontracting plan requirements in effect at the time of contract award remain in effect throughout the life of the contract.

(4) Where the contracting officer explicitly requires concerns to recertify their status in response to a solicitation for an order, SBA will determine eligibility as of the date of the concern's initial certification or, if applicable, its most recent recertification.

(c) Except for Blanket Purchase Agreements under Federal Supply Schedule contracts, a concern's status will be determined at the time of submission of its initial response to a solicitation for an Agreement (including Blanket Purchase Agreements (BPAs), Basic Agreements, Basic Ordering Agreements, or any other Agreement that a contracting officer sets aside or

reserves awards for certified HUBZone small business concerns) and each order issued pursuant to the Agreement.

[84 FR 65249, Nov. 26, 2019, as amended at 85 FR 5304, Jan. 30, 2020; 85 FR 27660, May 11, 2020]

Subpart G—Contract Performance Requirements

§ 126.700 What are the limitations on subcontracting requirements for HUBZone contracts?

(a) *Other than Multiple Award Contracts.* For other than a Multiple Award Contract, a prime contractor receiving an award as a certified HUBZone small business concern must meet the limitations on subcontracting requirements set forth in § 125.6 of this chapter.

(b) *Multiple Award Contracts—(1) Total Set-Aside Contracts.* For a Multiple Award Contract that is totally set aside for certified HUBZone small business concerns, a certified HUBZone small business concern must comply with the applicable limitations on subcontracting (*see* § 125.6), or if applicable, the nonmanufacturer rule (*see* § 121.406 of this chapter), during the base term and during each subsequent option period. However, the contracting officer, at his or her discretion, may also require the concern to comply with the limitations on subcontracting or the nonmanufacturer rule for each individual order awarded under the Multiple Award Contract.

(2) *Partial Set-Aside Contracts.* For Multiple Award Contracts that are partially set aside for certified HUBZone small business concerns, paragraph (b)(1) of this section applies to the set-aside portion of the contract. For orders awarded under the non-set-aside portion of a Multiple Award Contract, a certified HUBZone small business concern need not comply with any limitations on subcontracting or nonmanufacturer rule requirements.

(3) *Orders Set Aside for certified HUBZone small business concerns.* For each individual order that is set aside for certified HUBZone small business

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concerns under a Multiple Award Contract that is not itself set aside for certified HUBZone small business concerns, a certified HUBZone small business concern must comply with the applicable limitations on subcontracting (see § 125.6 of this chapter), or if applicable, the nonmanufacturer rule (see § 121.406 of this chapter), in the performance of such order.

(4) *Reserves.* For an order that is set aside for certified HUBZone small business concerns against a Multiple Award Contract with a HUBZone reserve, a certified HUBZone small business concern must comply with the applicable limitations on subcontracting (see § 125.6 of this chapter), or if applicable, the nonmanufacturer rule (see § 121.406 of this chapter), in the performance of such order. However, the certified HUBZone small business concern does not have to comply with the limitations on subcontracting or the nonmanufacturer rule for any order issued against the Multiple Award Contract if the order is competed amongst certified HUBZone small business concerns and one or more other-than-small business concerns.

[84 FR 65249, Nov. 26, 2019, as amended at 86 FR 61673, Nov. 8, 2021]

§ 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]

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Subpart H—Protests

§ 126.800 Who may protest the status of a certified HUBZone small business concern?

(a) *For sole source procurements.* SBA or the contracting officer may protest the proposed awardee's status as a certified HUBZone small business concern.

(b) *For all other procurements, including Multiple Award Contracts (see § 125.1 of this chapter).* SBA, the contracting officer, or any other interested party may protest the apparent successful offeror's status as a certified HUBZone small business concern.

[84 FR 65250, Nov. 26, 2019]

§ 126.801 How does an interested party file a HUBZone status protest?

(a) *General.* (1) A HUBZone status protest is the process by which an interested party may challenge the HUBZone status of an apparent successful offeror on a HUBZone contract, including a HUBZone joint venture submitting an offer under § 126.616. SBA will also consider a protest challenging whether a HUBZone prime contractor is unduly reliant on a small, non-similarly situated entity subcontractor or if such subcontractor performs the primary and vital requirements of the contract.

(2) The protest procedures described in this part are separate from those governing size protests and appeals. All protests relating to whether a certified HUBZone small business concern 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 small business concern and whether the concern meets the HUBZone eligibility requirements set forth in § 126.200, SBA will process the protests concurrently, under the procedures set forth in part 121 of this chapter and this part.

(3) SBA does not review issues concerning the administration of a HUBZone contract.

(b) *Format and specificity.* (1) Protests must be in writing and must state all specific grounds for why the protested concern did not meet the HUBZone eligibility requirements set forth in

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§ 126.200 at the time the concern applied for certification or at the time SBA last recertified the concern as a HUBZone small business concern. A protest merely asserting that the protested concern did not qualify as a HUBZone small business concern at the time of certification or recertification, without setting forth specific facts or allegations, is insufficient. A protest asserting that a concern was not in compliance with the HUBZone eligibility requirements at the time of offer or award will be dismissed.

(2) For a protest filed against a HUBZone joint venture, the protest must state all specific grounds for why—

(i) The HUBZone small business concern partner to the joint venture did not meet the HUBZone eligibility requirements set forth in § 126.200 at the time the concern applied for certification or at the time SBA last recertified the concern as a HUBZone small business concern; and/or

(ii) The protested HUBZone joint venture did not meet the requirements set forth in § 126.616 at the time the joint venture submitted an offer for a HUBZone contract.

(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 submit their protests by email to hzprotests@sba.gov.

(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. Except for an order or Blanket Purchase Agreement issued under any Federal Supply Schedule contract, in connection with an order or an Agreement that is set-aside for a certified HUBZone small business concern under a Multiple Award Contract that is not itself set aside for certified HUBZone small business concerns or have a reserve for certified HUBZone small business concerns, (or any HUBZone set-aside order where the contracting officer has requested recertification of such status),

an interested party must submit its protest challenging the HUBZone status of a concern for the order or Agreement by close of business on the fifth business day after notification by the contracting officer of the intended awardee of the order or Agreement.

(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 contracting officer must send the protest, along with a referral letter, to the D/HUB by email to hzprotests@sba.gov. The contracting officer's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including the following:

(1) The solicitation number;

(2) The name, address, telephone number, email address, and facsimile number of the contracting officer;

(3) The type of HUBZone contract at issue (*i.e.*, HUBZone set-aside; HUBZone sole source; full and open competition with a HUBZone price evaluation preference applied; reserve for HUBZone small business concerns under a Multiple Award Contract; or order set-aside for HUBZone small business concerns against a Multiple Award Contract);

(4) If the procurement was conducted using full and open competition with a HUBZone price evaluation preference, whether the protester's opportunity for award was affected by the preference;

(5) If the procurement was a HUBZone set-aside, whether the protester submitted an offer;

(6) Whether the protested concern was the apparent successful offeror;

(7) Whether the procurement was conducted using sealed bid or negotiated procedures;

(8) The bid opening date, if applicable;

(9) The date the protester was notified of the apparent successful offeror;

(10) The date the protest was submitted to the contracting officer;

(11) The date the protested concern submitted its initial offer or bid to the contracting activity; and

(12) Whether a contract has been awarded, and if applicable, the date of contract award and contract number.

[63 FR 31908, June 11, 1998, as amended at 69 FR 29427, May 24, 2004, 84 FR 65250, Nov. 26, 2019; 84 FR 65665, Nov. 29, 2019; 85 FR 66197, Oct. 16, 2020]

§ 126.802 Who decides a HUBZone status protest?

The D/HUB or designee will determine whether the concern qualifies as a certified HUBZone small business concern.

[63 FR 31908, June 11, 1998, as amended at 84 FR 65250, Nov. 26, 2019]

§ 126.803 How will SBA process a HUBZone status protest and what are the possible outcomes?

(a) *Date at which eligibility determined.* SBA will determine the eligibility of a concern subject to a HUBZone status protest as of the date of its initial certification or, if applicable, its most recent recertification.

(b) *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 concern of the protest and the identity of the protestor. The protested concern must submit information responsive to the protest within 5 business days of the date of receipt of the protest.

(c) *Time period for determination.* (1) SBA will determine the HUBZone status of the protested concern within 15

business days after receipt of a complete protest referral.

(2) 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 (e) of this section apply to the procurement in question.

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

(e) *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.

(1) *Protest sustained.* If the D/HUB finds the protested concern ineligible and sustains the protest, SBA will decertify the concern and remove its designation as a certified HUBZone small business concern in DSBS (or successor system). A contracting officer shall not award a contract to a protested concern that the D/HUB has determined is not an eligible HUBZone small business concern for the procurement in question.

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

(ii) *Appeal filed.* (A) 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.

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

(iii) *Update FPDS-NG.* Where the contract was awarded to a concern that is found not to qualify as a HUBZone small business concern, the contracting officer must update the Federal Procurement Data System-Next

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Generation (FPDS-NG) and other procurement reporting databases to reflect the final agency HUBZone decision (*i.e.*, the D/HUB's decision if no appeal is filed, or the decision of the AA/GCBD if the protest is appealed).

(2) *Protest dismissed or denied.* If the D/HUB denies or dismisses the protest, the contracting officer may award the contract to the protested concern.

(i) *No appeal filed.* If a contracting officer receives a determination dismissing or denying a protest and no appeal has been filed, the contracting officer may:

(A) Award the contract to the protested concern if it has not yet been awarded; or

(B) Authorize contract performance to proceed if the contract has been awarded.

(ii) *Appeal filed.* If the AA/GCBD overturns the initial determination or dismissal, the contracting officer may apply the appeal decision to the procurement in question.

(3) 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 if the protest is appealed).

[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; 84 FR 65250, Nov. 26, 2019]

§ 126.804 Will SBA decide all HUBZone status protests?

SBA will decide all protests not dismissed on the basis that they are premature, untimely, non-specific, moot, or not filed by an interested party.

[84 FR 65251, Nov. 26, 2019]

§ 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]

Subpart I—Penalties

§ 126.900 What are the requirements for representing HUBZone status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to HUBZone SBCs, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a HUBZone SBC willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of HUBZone SBC status:

(1) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to HUBZone SBCs.

(2) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a HUBZone SBC.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a HUBZone SBC.

(c) *Signature Requirement.* Each offer, proposal, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the HUBZone SBC status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the

HUBZone status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a)–(c) of this section may be determined not to apply in the case of unintentional errors, technical malfunctions, and other similar situations that demonstrate that a misrepresentation of HUBZone status was not affirmative, intentional, willful or actionable under the False Claims Act, 31 U.S.C. §§ 3729, et seq. A prime contractor acting in good faith should not be held liable for misrepresentations made by its subcontractors regarding the subcontractors' HUBZone status. Relevant factors to consider in making this determination may include the firm's internal management procedures governing HUBZone status representations or certifications, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. An individual or firm may not be held liable where government personnel have erroneously identified a concern as a HUBZone SBC without any representation or certification having been made by the concern and where such identification is made without the knowledge of the individual or firm.

(e) *Penalties for Misrepresentation.* (1) *Suspension or debarment.* The SBA suspension and debarment official or the agency suspension and debarment official may suspend or debar a person or concern for misrepresenting a firm's status as a HUBZone SBC pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, and any other applicable laws or regulations, including 13 CFR part 142.

(3) *Criminal Penalties.* Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the HUBZone status of a 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, 18 U.S.C. 287, and any other applicable

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laws. Persons or concerns 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.

[78 FR 38820, June 28, 2013, as amended at 81 FR 31492, May 19, 2016]

PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

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127.352 What is the process for becoming a third-party certifier?

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127.354 What requirements must a third-party certifier follow to demonstrate capability to certify concerns?

127.355 How will SBA ensure that approved third-party certifiers are meeting the requirements?

127.356 How does a concern obtain certification from an approved certifier?

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127.400 How does a concern maintain its WOSB or EDWOSB certification?

127.401 What are a WOSB's and EDWOSB's ongoing obligations to SBA?

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127.405 What happens if SBA determines that the concern is no longer eligible for the program?

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127.501 How will SBA determine the industries that are eligible for EDWOSB or WOSB requirements?

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