

§ 126.608

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.

or her designee, or other interested parties.

[69 FR 29425, May 24, 2004]

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§ 126.611 What is the process for such an appeal?

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

(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.

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

(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.

[69 FR 29425, May 24, 2004]

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

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must file its formal appeal with the Secretary of the department or head of the agency, or the appeal will be deemed withdrawn.

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

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

EFFECTIVE DATE NOTE: At 75 FR 62282, Oct. 7, 2010, § 126.609 was removed and reserved, effective Feb 4, 2011.

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

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

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

(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.

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

(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

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

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

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