

## Small Business Administration

## § 126.607

(a) The contracting activity otherwise would fulfill that requirement through award to Federal Prison Industries, Inc. under 18 U.S.C. 4124 or 4125, or to Javits-Wagner-O'Day Act participating non-profit agencies for the blind and severely disabled, under 41 U.S.C. 46 *et seq.*, as amended; or

(b) An 8(a) participant currently is performing the requirement through the 8(a)BD program or SBA has accepted the requirement for award through the 8(a)BD program, unless SBA has consented to release the requirement from the 8(a)BD program.

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

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

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

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

### **§ 126.607 When must a contracting officer set aside a requirement for qualified HUBZone SBCs?**

(a) The contracting officer first must review a requirement to determine whether it is excluded from HUBZone contracting pursuant to § 126.605.

(b) *Contracting Among Small Business Programs—(1) Acquisitions Valued At or Below the Simplified Acquisition Threshold.* The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Micro-purchase Threshold but not exceeding the Simplified Acquisition Threshold (defined in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. This requirement does not preclude a contracting officer from making an award to a small business under

the 8(a) BD, HUBZone, SDVO SBC or WOSB Programs.

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

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

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

(1) Have a reasonable expectation after reviewing SBA's list of qualified HUBZone SBCs that at least two responsible qualified HUBZone SBCs will submit offers; and