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### 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) Until September 30, 2000, the HUBZone program applies only to procurements by the following departments and agencies:

- (1) Department of Agriculture;
  - (2) Department of Defense;
  - (3) Department of Energy;
  - (4) Department of Health and Human Services;
  - (5) Department of Housing and Urban Development;
  - (6) Department of Transportation;
  - (7) Department of Veterans Affairs;
  - (8) Environmental Protection Agency;
  - (9) General Services Administration;
- and
- (10) National Aeronautics and Space Administration.

(b) After September 30, 2000, the HUBZone program will apply to all federal departments and agencies which employ one or more contracting officers as defined by 41 U.S.C. 423(f)(5).

#### § 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/8(a)BD* means SBA's Associate Administrator for 8(a) Business Development.

*AA/HUB* means SBA's Associate Administrator for the HUBZone Program.

*ADA/GC&8(a)BD* means SBA's Associate Deputy Administrator for Government Contracting and 8(a) Business Development.

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

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

*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.

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

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

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

*Employee* means a person (or persons) employed by a HUBZone SBC on a full-time (or full-time equivalent), permanent basis. Full-time equivalent includes employees who work 30 hours per week or more. Full-time equivalent also includes the aggregate of employees who work less than 30 hours a week, where the work hours of such employees add up to at least a 40 hour

work week. The totality of the circumstances, including factors relevant for tax purposes, will determine whether persons are employees of a concern. Temporary employees, independent contractors or leased employees are not employees for these purposes.

*Example 1:* 4 employees each work 20 hours per week; SBA will regard that circumstance as 2 full-time equivalent employees.

*Example 2:* 1 employee works 20 hours per week and 1 employee works 15 hours per week; SBA will regard that circumstance as not a full-time equivalent.

*Example 3:* 1 employee works 15 hours per week, 1 employee works 10 hours per week, and 1 employee works 20 hours per week; SBA will regard that circumstance as 1 full-time equivalent employee.

*Example 4:* 1 employee works 30 hours per week and 2 employees each work 15 hours per week; SBA will regard that circumstance as 1 full-time equivalent employee.

*HUBZone* means a historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified non-metropolitan counties, or lands within the external boundaries of an Indian reservation. See other definitions in this section for further details.

*HUBZone small business concern (HUBZone SBC)* means a concern that is small as defined by §126.203, is exclusively owned and controlled by persons who are United States citizens, and has its principal office located in a HUBZone.

*HUBZone 8(a) concern* means a concern that is certified as an 8(a) program participant and which is also a qualified HUBZone SBC.

*Indian reservation* has the meaning used by the Bureau of Indian Affairs in 25 CFR 151.2(f). This definition refers generally to land over which a "tribe" has jurisdiction, and "tribe" includes Alaska Native entities under 25 CFR 81.1(w).

*Interested party* means any concern that submits an offer for a specific HUBZone sole source or set-aside contract, any concern that submitted an offer in full and open competition and

its opportunity for award will be affected by a price evaluation preference given a qualified HUBZone SBC, the contracting activity's contracting officer, or SBA.

*Lands within the external boundaries of an Indian reservation* includes all lands within the outside perimeter of an Indian reservation, whether tribally owned and governed or not. For example, land that is individually owned and located within the outside perimeter of an Indian reservation is "lands within the external boundaries of an Indian reservation." By contrast, an Indian-owned parcel of land that is located outside the perimeter of an Indian reservation is not "lands within the external boundaries of an Indian reservation."

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

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

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

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

*Person* means a natural person. Pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1626(e), Alaska

Native Corporations and any direct or indirect subsidiary corporations, joint ventures, and partnerships of a Native Corporation are deemed to be owned and controlled by Natives, and are thus persons.

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

*Qualified census tract* has the meaning given that term in section 42(d)(5)(C)(ii)(I) of the Internal Revenue Code (Title 26 of the United States Code).

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

*Qualified non-metropolitan county* means any county that:

(1) Based on the most recent data available from the Bureau of the Census of the Department of Commerce—

(i) Is not located in a metropolitan statistical area; and

(ii) In which the median household income is less than 80 percent of the non-metropolitan State median household income; or

(2) Based on the most recent data available from the Secretary of Labor, has an unemployment rate that is not less than 140 percent of the statewide average unemployment rate for the State in which the county is located.

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

*Small disadvantaged business* (SDB) means a concern that is small pursuant to part 121 of this title, and is owned and controlled by socially and economically disadvantaged individuals, tribes, Alaska Native Corporations, Native Hawaiian Organizations, or Community Development Corporations.

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

*Women-owned business* (WOB) means a concern that is small pursuant to part 121 of this title, and is at least 51 percent owned and controlled by women.

### Subpart B—Requirements to be a Qualified HUBZone SBC

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

(a) The concern must be a HUBZone SBC as defined in § 126.103; and

(b) At least 35 percent of the concern's employees must reside in a HUBZone, and the HUBZone SBC must certify that it will attempt to maintain this percentage during the performance of any HUBZone contract it receives. When determining the percentage of employees that reside in a HUBZone, if the percentage results in a fraction round up to the nearest whole number,

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

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

and

(c) The HUBZone SBC must certify that it will ensure that it will comply with certain contract performance requirements in connection with contracts awarded to it as a qualified HUBZone SBC, as set forth in § 126.700.

#### § 126.201 For this purpose, who does SBA consider to own a HUBZone SBC?

An owner of a HUBZone SBC is a person who owns any legal or equitable interest in such HUBZone SBC. More specifically:

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

(b) *Partnerships.* SBA will consider a partner, whether general or limited, to

be an owner if that partner owns an equitable interest in the partnership.

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

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

*Example 1:* All stock of a corporation is owned by U.S. citizens. The president of the corporation, a non-U.S. citizen, owns no stock in the corporation, but owns options to purchase stock in the corporation. SBA will consider the option exercised, and the corporation is not eligible to be a qualified HUBZone SBC.

*Example 2:* A partnership is owned 99.9 percent by persons who are U.S. citizens, and 0.1 percent by someone who is not. The partnership is not eligible because it is not 100 percent owned by U.S. citizens.

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

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

#### § 126.203 What size standards apply to HUBZone SBCs?

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

(b) *At time of contract offer.* A HUBZone SBC must be small within the size standard corresponding to the SIC code assigned to the contract.