

**§ 126.703 What are the procedures for requesting changes in subcontracting percentages?**

(a) *Format of request.* There is no prescribed format, but the requester should try to demonstrate to the Administrator that a change in percentage is necessary to reflect conventional industry practices, and should support its request with information including, but not limited to:

(1) Information relative to the economic conditions and structure of the entire national industry;

(2) Market data, technical changes in the industry and industry trends;

(3) Specific reasons and justifications for the change in the subcontracting percentage;

(4) The effect such a change would have on the federal procurement process; and

(5) Information demonstrating how the proposed change would promote the purposes of the HUBZone Program.

(b) *Notice to public.* Upon an adequate preliminary showing to SBA, SBA will publish in the FEDERAL REGISTER a notice of its receipt of a request that it consider a change in the subcontracting percentage requirements for a particular industry for HUBZone contracts. The notice will identify the group making the request, and give the public an opportunity to submit to the Administrator information and arguments in both support and opposition.

(c) *Comments.* Once SBA has published a notice in the FEDERAL REGISTER, it will afford a period of not less than 60 days for public comment.

(d) *Decision.* SBA will render its decision after the close of the comment period. If it decides against a change, it will publish notice of its decision in the FEDERAL REGISTER. Concurrent with the notice, SBA will advise the requester of its decision in writing. If it decides in favor of a change, SBA will propose an appropriate change to this part in accordance with proper rule-making procedures.

### Subpart H—Protests

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

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

the proposed awardee's qualified HUBZone SBC status.

(b) *For all other procurements.* Any interested party may protest the apparent successful offeror's qualified HUBZone SBC status.

**§ 126.801 How does one file a HUBZone status protest?**

(a) *General.* The protest procedures described in this part are separate from those governing size protests and appeals. All protests relating to whether a qualified HUBZone SBC is a "small" business for purposes of any Federal program are subject to part 121 of this title and must be filed in accordance with that part. If a protester protests both the size of the HUBZone SBC and whether the concern meets the HUBZone qualifying requirements set forth in § 126.200, SBA will process each protest concurrently, under the procedures set forth in part 121 of this title and this part.

(b) *Format.* Protests must be in writing and state all specific grounds for the protest. A protest merely asserting that the protested concern is not a qualified HUBZone SBC, without setting forth specific facts or allegations, is insufficient.

(c) *Filing.* (1) An interested party other than a contracting officer or SBA must submit its written protest to the contracting officer.

(2) A contracting officer and SBA must submit their protest to the AA/HUB.

(3) Protestors may deliver their protests in person, by facsimile, by express delivery service, or by U.S. mail (post-marked within the applicable time period).

(d) *Timeliness.* (1) An interested party must submit its protest by close of business on the fifth business day after bid opening (in sealed bid acquisitions) or by close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror (in negotiated acquisitions).

(2) Any protest received after the time limits is untimely.

(3) Any protest received prior to bid opening or notification of intended award, whichever applies, is premature.

(e) *Referral to SBA.* The contracting officer 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 protests to AA/HUB, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

**§ 126.802 Who decides a HUBZone status protest?**

The AA/HUB or designee will determine whether the concern has qualified HUBZone status.

**§ 126.803 How will SBA process a HUBZone status protest?**

(a) *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 HUBZone SBC of the protest and the identity of the protestor. The protested HUBZone SBC may submit information responsive to the protest within 5 business days.

(b) *Time period for determination.* (1) SBA will determine the HUBZone status of the protested HUBZone SBC within 15 business days after receipt of a protest.

(2) If SBA does not contact the contracting officer within 15 business days, the contracting officer may award the contract, unless the contracting officer has granted SBA an extension.

(3) The contracting officer may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest.

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

(d) *Effect of determination.* The determination is effective immediately and is final unless overturned on appeal by the ADA/GC&8(a)BD, pursuant to § 126.805. If SBA upholds the protest, SBA will de-certify the concern as a qualified HUBZone SBC. If SBA denies the protest, after considering the mer-

its of the protest, SBA will amend the date of certification on the List to reflect the date of protest decision.

**§ 126.804 Will SBA decide all HUBZone status protests?**

SBA will decide all protests not dismissed as premature, untimely or non-specific.

**§ 126.805 What are the procedures for appeals of HUBZone status determinations?**

(a) *Who may appeal.* The protested HUBZone SBC, the protestor, or the contracting officer may file appeals of protest determinations with SBA's ADA/GC&8(a)BD.

(b) *Timeliness of appeal.* SBA's ADA/GC&8(a)BD must receive the appeal no later than 5 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 AA/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 AA/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 AA/HUB failed to consider.