Subpart 19.13 - Historically Underutilized Business Zone (HUBZone) Program

Parent topic: Part 19 - Small Business Programs

19.1301 General.

- (a) The Historically Underutilized Business Zone (*HUBZone*) Act of 1997 (<u>15 U.S.C.631</u> note) created the *HUBZone* Program.
- (b) The purpose of the *HUBZone* Program is to provide Federal *contracting* assistance for qualified small business *concerns* located in historically underutilized business zones, in an effort to increase employment opportunities, investment, and economic development in those areas.

19.1302 [Reserved].

19.1303 Status as a HUBZone small business concern.

- (a) Status as a *HUBZone* small business *concern* is determined by the Small Business Administration (SBA) in accordance with 13 CFR Part 126.
- (b) If SBA determines that a *concern* is a *HUBZone* small business, it will designate the *concern* as a *HUBZone* small business in the Dynamic Small Business Search (DSBS) at https://web.sba.gov/pro-net/search/dsp_dsbs.cfm. SBA's designation also appears in SAM. Only firms designated in DSBS and SAM as *HUBZone* small business *concerns* are eligible for *HUBZone* preferences. *HUBZone* preferences are not contingent on the place of performance.
- (c) A joint venture may be considered a HUBZone small business concern if—
- (1) The joint venture qualifies as small under 19.301-1(a)(2)(i);
- (2)At least one party to the joint venture is a *HUBZone* small business *concern*; and
- (3) The joint venture complies with 13 CFR 126.616(a) through (c).
- (d) To be eligible for a *HUBZone contract* under this section, a *HUBZone* small business *concern* must be a *HUBZone* small business *concern* at the time of its initial *offer*.

19.1304 Exclusions.

This subpart does not apply to-

- (a) Requirements that can be satisfied through award to-
- (1) Federal Prison *Industries*, Inc. (see <u>subpart 8.6</u>); or
- (2) AbilityOne participating non-profit agencies for the blind or severely disabled (see <u>subpart 8.7</u>);
- (b) Orders under indefinite-delivery contracts (see subpart 16.5). (But see 16.505(b)(2)(i)(F) for discretionary set-asides of orders);
- (c) Orders against Federal Supply Schedules (see subpart 8.4). (But see 8.405-5 for discretionary set-asides of orders);
- (d) Requirements currently being performed by an 8(a) participant or requirements SBA has accepted for performance under the authority of the 8(a) program, unless SBA has consented to release the requirements from the 8(a) program; or
- (e) Requirements for commissary or exchange resale items.

19.1305 HUBZone set-aside procedures.

- (a) The contracting officer-
- (1) *Shall* comply with <u>19.203</u> before deciding to set aside an *acquisition* under the *HUBZone* Program;
- (2) May set aside acquisitions exceeding the micro-purchase threshold for competition restricted to HUBZone small business concerns when the requirements of paragraph (b) of this section can be satisfied: and
- (3) *Shall* consider *HUBZone* set-asides before considering *HUBZone* sole-source awards (see 19.1306) or small business set-asides (see subpart 19.5).
- (b) To set aside an *acquisition* for competition restricted to *HUBZone* small business *concerns*, the *contracting officer must* have a reasonable expectation that-
- (1) Offers will be received from two or more HUBZone small business concerns; and
- (2) Award will be made at a fair market price.
- (c) If the contracting officer receives only one acceptable offer from a HUBZone small business concern in response to a set aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from HUBZone small business concerns, the HUBZone set-aside shall be withdrawn and the requirement, if still valid, set aside for small business concerns, as appropriate (see 19.203).
- (d) The procedures at 19.202-1 and, at 19.402 apply to this section.
- (1) When the SBA intends to appeal a *contracting officer*'s decision to reject a recommendation of the SBA *procurement* center representative (or, if a *procurement* center representative is not assigned, see 19.402(a)) to set aside an *acquisition* for competition restricted to *HUBZone* small

business *concerns*, the SBA *procurement* center representative *shall* notify the *contracting officer*, in *writing*, of its intent within 5 business days of receiving the *contracting officer*'s notice of rejection.

- (2) Upon receipt of notice of SBA's intent to appeal, the *contracting officer shall* suspend action on the *acquisition* 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 Government, exist.
- (3) Within 15 business days of SBA's notification to the *contracting officer*, SBA *must* file its formal appeal with the *head of the agency*, or the appeal will be deemed withdrawn. The *head of the agency shall* reply to SBA within 15 business days of receiving the appeal. The decision of the *head of the agency shall* be final.

19.1306 HUBZone sole-source awards.

- (a) A contracting officer shall consider a contract award to a HUBZone small business concern on a sole-source basis (see $\underline{6.302-5}(b)(5)$) before considering a small business set-aside (see $\underline{19.203}$ and subpart $\underline{19.5}$), provided none of the exclusions at $\underline{19.1304}$ apply; and-
- (1) The *contracting officer* does not have a reasonable expectation that *offers* would be received from two or more *HUBZone* small business *concerns*;
- (2) The anticipated price of the contract, including options, will not exceed-
- (i) \$8.5 million for a requirement within the North American *Industry* Classification System (NAICS) codes for manufacturing; or
- (ii) \$5.5 million for a requirement within all other NAICS codes;
- (3) The requirement is not currently being performed by an 8(a) participant under the provisions of <u>subpart 19.8</u> or has been accepted as a requirement by SBA under <u>subpart 19.8</u>;
- (4) The *HUBZone* small business *concern* has been determined to be a responsible contractor with respect to performance; and
- (5) Award can be made at a fair and reasonable price.
- (b) The SBA has the right to appeal the *contracting officer*'s decision not to make a *HUBZone* solesource award (see <u>13 CFR 126.610</u>).

19.1307 Price evaluation preference for HUBZone small business concerns.

- (a) The price evaluation preference for *HUBZone* small business *concerns shall* be used in *acquisitions* conducted using *full and open competition*. The preference *shall* not be used-
- (1) Where price is not a selection factor so that a price evaluation preference would not be considered (*e.g.*, Architect/Engineer *acquisitions*);

- (2) Where all fair and reasonable *offers* are accepted (*e.g.*, the award of multiple award schedule contracts); or
- (3) For the reserved portion of a *solicitation* for a *multiple-award contract* (see <u>19.503</u>).
- (b) The *contracting officer shall* give *offers* from *HUBZone* small business *concerns* a price evaluation preference by adding a factor of 10 percent to all *offers*, except-
- (1) Offers from HUBZone small business concerns that have not waived the evaluation preference; or
- (2) Otherwise successful offers from small business concerns.
- (c) The factor of 10 percent *shall* be applied on a *line item* basis or to any group of items on which award *may* be made. Other evaluation factors, such as transportation costs or rent-free use of Government property, *shall* be added to the *offer* to establish the base *offer* before adding the factor of 10 percent.
- (d) When the two highest rated *offerors* are a *HUBZone* small business *concern* and a large business, and the evaluated *offer* of the *HUBZone* small business *concern* is equal to the evaluated *offer* of the large business after considering the price evaluation preference, the *contracting officer shall* award the contract to the *HUBZone* small business *concern*.

19.1308 [Reserved].

19.1309 Contract clauses.

- (a)The contracting officer shall insert the clause 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award, in solicitations and contracts for acquisitions that are set aside or awarded on a sole-source basis to, HUBZone small business concerns under 19.1305 or 19.1306. This includes multiple-award contracts when orders may be set aside for HUBZone small business concerns as described in 8.405-5 and 16.505(b)(2)(i)(F) or when orders may be issued directly to one HUBZone small business concern in accordance with 19.504(c)(1)(ii).
- (b) The contracting officer shall insert the clause at <u>52.219-4</u>, Notice of Price Evaluation Preference for *HUBZone* Small Business *Concerns*, in *solicitations* and contracts for *acquisitions* conducted using *full and open competition*.
- (c) For use of clause 52.219-14, Limitations on Subcontracting, see the prescription at 19.507(e).
- (d) For use of clause 52.219-33, Nonmanufacturer Rule, see the prescription at 19.507(h).