



U.S. Small Business
Administration

Office of Government Contracting and Business Development
U.S. Small Business Administration | 409 Third Street SW | Washington, DC 20416

July 15, 2019

The Honorable Michael B. Enzi
Chairman
Committee on the Budget
United States Senate
Washington, DC 20510-6100

Dear Chairman Enzi:

Acting Administrator Chris Pilkerton has asked that I respond to your letter of June 11, 2019, regarding the U.S. Small Business Administration's (SBA) efforts to ensure that the HUBZone Program fulfills its intended purpose. Permit me to respond to each of the questions that you have raised.

1. The *Post* article quotes a director from GAO who described the HUBZone program as a "blunt instrument" that lacks the precision to benefit specific geographic areas. What steps, if any, is SBA taking to improve the program's ability to target and spur economic development in the neediest communities?

Under the statute and regulations that govern the HUBZone Program, SBA does not have a role in determining which firms are awarded contracts under it. For this reason, through the program, SBA can only impact community economic development outcomes only in the aggregate. It does this through full engagement with the acquisition community to promote best practices that increase the value of contracts awarded to HUBZone certified firms.

However, it should be noted that under the National Defense Authorization Act (NDAA) of 2018 provides opportunity to extend the reach and economic impact of the HUBZone Program. Under NDAA 2018, beginning in 2020, governors will be able to identify and petition SBA for designation of *covered areas* (i.e., non-urban areas, having populations of less than 50,000, and unemployment rate of at least 120% of the average unemployment rate) as HUBZones.

Further, there is substantial geographical overlap between *HUBZone areas*, and *Opportunity Zones* authorized by the Opportunity Zone Tax Cuts and Jobs Act of 2017. The SBA is pursuing administrative measures to leverage the tax advantages of Opportunity Zones with contracting opportunities of the HUBZone Program.

2. The article quotes SBA as stating that “the HubZone [sic] office doesn't yet have access to a program that captures the geographic distribution of contracting metrics.” Please describe the current technology systems that SBA employs to administer the HUBZone program. What challenges exist, particularly in the area of data reporting, and how are they being addressed? Is SBA pursuing new technologies that can better capture the necessary data? Please explain.

The SBA does not maintain applications, programs, or software to capture Federal contracting activity under any socioeconomic procurement preference programs, including the HUBZone Program. Rather, it uses information capture by the U.S. General Services Administration's (GSA) Federal Procurement Data System-Next Generation (FPDS-NG) to analyze the accomplishments, impact, and effectiveness of small business programs – including the HUBZone Program. Well recognized examples of SBA's analytical use of FPDS-NG data are its annual Goaling Report and Procurement Score Card.

However, separate and apart from use of FPDS-NG analytical data, SBA uses the HUBZone Certification Tracking System (HCTS) to execute business processes incidental to determination of initial and continuing eligibility. The system is antiquated and requires substantial manual intervention to maintain acceptable functionality. However, I am pleased to tell you that we are undertaking a complete technological refresh of the HUBZone Program's business processes and automated systems. The replacement for HCTS will integrate with the Agency's other certification processing systems, and yield program management data and metrics as a by-product of automated execution of business processes. We expect to begin phased deployment early in 2020.

3. Please describe SBA's oversight role in the HUBZone certification and recertification processes. Does the agency take any steps to verify the information provided through these-processes?

We recognize that there is opportunity for abuse in any Federal program that provides benefits to individuals or firms. In this case risk runs to firms that self-certify, or are certified by SBA or another agency, as eligible for contract preferences. For this reason, we manage our programs to mitigate risk – at time of certification and in determining continuing eligibility. That is, we focus our attention on firms that present the greatest opportunity for loss to the government, or unjust enrichment through receipt of benefits – contract preferences – for which they are, in fact, ineligible.

With respect to initial certification of firms as *qualified HUBZone small business concerns*, our process encompasses two separate levels of review prior to issuance of an eligibility determination by the Director, Deputy Director, or designee. The first level review consists of analysis of an on-line application, documentation corroborating assertions contained in the on-line application, and independent Internet research. The second level review is a quality assurance review, to determine whether the application was processed in conformance with standard operating procedures, and that the first level review supports a recommendation to approve or decline the application. The determination of eligibility is made by the Director, Deputy Director, or designee, in consideration of the record.

With respect to determination of continuing eligibility, we concluded that the key indicator of risk to continued compliance with HUBZone Program requirements was growth in scope of operations. The premise is that growth in revenue (including Federal contract awards) generally engenders growth in employment. In turn, growth in employment increases the likelihood that firms may fall out of compliance with the requirements that at least 35% of their employees reside in a HUBZone, and that their *principal office* be located in a HUBZone.

Because growth in number of employees and growth in adjusted gross revenues are positively correlated, management concluded that award of Federal contracts (which increases adjusted gross income) increases the likelihood that through growth in employment, firms would fall out of compliance with requirements that at least 35% of their employees be HUBZone residents, and that their principal office be located in a HUBZone. (It is recognized that if firms are performing on HUBZone contracts, firms may temporarily fall out of compliance with the requirement that at least 35% of their employees reside in a HUBZone, so long as they are making substantive efforts to return to compliance. However, under these circumstances, they can neither bid on, nor be awarded, new HUBZone contracts.)

For these reasons, we decided to conduct fully documented program examinations on firms that were scheduled for triennial recertification during the fiscal year and had received at least \$1,000,000 of recent Federal contract awards. (A fully documented program examination encompasses essentially the same analytical processes as review of an initial application.) For FY 2019, we lowered the threshold to \$750,000 of contract value. Please note that for the past several years we have performed 340-380 such fully documented program examinations annually.

4. How does SBA combat fraud, waste, and abuse in the HUBZone program?

Please reference our response to question 4., above.

Further note that SBA requires firms that are certified as *qualified HUBZone small business concerns* notify the Agency of any material changes that may affect compliance with HUBZone Program eligibility criteria. Firms that are found to be non-compliant with eligibility requirements as a result of a material changes are decertified.

Additionally, the HUBZone Program has a robust protest component which yields 25 – 40 adjudications annually. Historically the protest mechanism has served as a strong self-policing tool to ensure that HUBZone contracts are awarded to firms that are in fact qualified. Firms that are found to be non-compliant with eligibility requirements through adjudication of protests are decertified.

As appropriate, the Agency may refer firms found to be non-compliant to the Office of the Inspector General for investigation, and/or propose debarment.

5. A "HUBZone" can be located in a "qualified census tract." How does SBA plan to incorporate data obtained from the upcoming 2020 Census in administering the HUBZone program?

By statute and regulation, the SBA may designate only the following areas as a HUBZone area: qualified census tracts; qualified nonmetropolitan counties; Indian reservation; base closure areas; disaster areas; and, as earlier noted, beginning in 2020, *covered areas*, at its discretion, upon governors' petition.

The SBA's designations draw upon determinations and information obtained by other agencies. Specifically, SBA must use information from the Department of Housing and Urban Development, Bureau of the Census, Bureau of Labor Statistics, Department of Interior, Bureau of Indian Affairs, Department of Homeland Security, Federal Emergency Management Administration, and Department of Defense in designating HUBZones.

We anticipate that the results of the 2020 Census will be available early in fiscal year 2021. Accordingly, we will update HUBZone maps as soon the 2020 Census data is available for publication, which we expect to be on or about January 1, 2021.

6. The article stated that "[t]he federal government has an annual goal of awarding about 3 percent of all contracts to HUBZone firms. The goal has never been met in the program's history." Why has this goal not been met, and what steps, if any, is SBA taking to reach it?

In fiscal year 2018, the HUBZone Program achieved its best contracting performance, in terms of contract value and percentage of contract value awarded, since 2009. While we have not yet attained the government-wide three percent goal, achievement was materially better in 2018 than in many years. We intend for this progress to continue, and to this end, we have focused our efforts identifying on what has worked and disseminating these learnings.

To foster agencies success, in FY 2017, we studied contracting performance in FY 2016 vis a vis the HUBZone goal and assessed factors that contributed to certain agencies' success in meeting the goal. Based on this assessment, we published and broadly distributed *BLUEPRINTS FOR SUCCESS: Achieving the HUBZone 3 Percent Goal*.

During FY 2018, we sponsored a HUBZone Program Evaluation to, among other things, identify potential barriers to agencies' achievement of the 3% goal. The findings of that study suggest the following barriers to accomplishment: firms' difficulty in maintaining compliance with certification requirements, especially the 35% employee HUBZone residency requirement; perception that there are insufficient HUBZone certified firms to meet the product and/or service demands; low response rate to HUBZone solicitations; and insufficient agency strategic and tactical planning to set aside requirement for successful HUBZone competition.

We have contracted for a follow-on study to more deeply explore factors leading to failure, and more importantly success, in achieving the HUBZone statutory goal. We expect to release its conclusions later this year.

We recently proposed changes to HUBZone Program regulations will make it easier for small businesses to understand, and comply with, initial and continuing eligibility requirements; and for acquisition agencies to award contracts to HUBZone-certified firms.

The first change is to freeze the HUBZone maps until 2020, and then update them every 5 years. This will allow a HUBZone-certified company to rely on having a compliant business location until after 2020. Then the maps will be updated every 5 years thereafter. The regulations will also allow HUBZone-certified companies up to three additional years to move to a new HUBZone location if the Census Tract/HUBZone in which they are located loses its designation. Effectively, HUBZone-certified firms have until 2023, or later, to enjoy HUBZone certification without having to move.

The second change is to amend "35% rule" regarding mixture of HUBZone/Non-HUBZone employees. Under the change, an employee must reside in a qualified HUBZone for a specific and uninterrupted period of time and be hired by a HUBZone firm before the employee will count towards the 35% mix of HUBZone/Non-HUBZone employees. After that period of continuous residence in a qualified HUBZone, the employee will always count as a HUBZone employee for that HUBZone firm as long as he/she remains employed by the HUBZone firm, even if the employee moves to a non-HUBZone area or the employee's residence loses its HUBZone status. This will address an unintended consequence of the current rules, which may incentivize HUBZone-certified firms to fire employees because they move to a non-HUBZone location, or their residence loses its HUBZone status.

The third change simplifies the eligibility requirement for contract awards. SBA proposes to change the existing requirement that a HUBZone company must be compliant at the time of bid and also at the time of award. The government can take months if not years to award a contract. A firm cannot possibly know when the government will award a contract, and therefore cannot know whether it will be compliant at the time of award. The proposed changes require that a company only needs to be certified/recertified once a year and will not need to prove compliance at the date of bid or at the time of award. This will allow a company to bid and win as much business as they can during a given year. More importantly – it gives contracting officers greater confidence that if take the time and effort to compete a requirement under HUBZone authority, they will be able to successfully award them.

We appreciate your interest in, and continued support of, the programs and services of the SBA and the Wyoming small business community. Should you or your staff have additional questions in this matter, please contact the SBA's Office of Congressional and Legislative Affairs at 202-205-6700.

Sincerely,



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