

HUBZONE PROGRAM: WHAT YOU NEED TO KNOW ABOUT GETTING AND STAYING CERTIFIED



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PRESENTED BY

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OVERVIEW

- ❖ **Preparing for a smooth certification process**
 - Make sure you meet the eligibility criteria
 - Understand the application process
- ❖ **Taking full advantage of the HUBZone program**
- ❖ **Maintaining eligibility/avoiding pitfalls**
 - Employee counting issues
 - Employee record issues
 - Develop a HUBZone compliance file
 - Presumed Loss Rule considerations
 - Attempt to maintain compliance
 - Monitor changes to designated areas
- ❖ **Looking ahead**
- ❖ **Q&A**



PREPARING FOR A SMOOTH CERTIFICATION PROCESS



MAKE SURE YOU MEET THE ELIGIBILITY CRITERIA!

- ❖ **Must be a SMALL business**
- ❖ **Size of a firm includes any affiliates**
 - Multiple ways that affiliation can arise
 - Key is when one firm controls or has the power to control the other, or a third party or parties control or have the power to control both, even if this control is not exercised (13 C.F.R. § 121.103)
- ❖ **Can have affiliates, but must be small combined**
 - Special affiliation concerns related to employees and principal office calculations (we will address later)
- ❖ **Special affiliation rules for Tribes and Native-owned concerns**



HUBZONE ELIGIBILITY CRITERIA

- ❖ **Must be owned and controlled at least 51% by a U.S. citizen**
 - **Firms wholly owned by one or more Tribes, Alaska Native Corporations (“ANCs”), or Community Development Corporations (“CDCs”) are also eligible to participate in the HUBZone Program**
- ❖ **“Principal office” must be located in a HUBZone**
- ❖ **At least 35% of employees must live in a HUBZone**



“PRINCIPAL OFFICE” AND “EMPLOYEE”

- ❖ **“Principal office” means the location where the greatest number of the concern’s employees at any one location perform their work (13 C.F.R. § 126.103)**
 - **However, for those concerns whose “primary industry” is service or construction, the determination of principal office excludes the concern’s employees who perform the majority of their work at job-site locations to fulfill specific contract obligations**
- ❖ **“Employee” means all individuals employed on a full-time, part-time, or other basis, so long as that individual works a minimum of 40 hours per month**
 - **Includes temporary, leased, or “co-employed” employees**
 - **Also includes owner, even if no compensation is received**



UNDERSTAND THE APPLICATION PROCESS

- ❖ **Verify eligibility**
- ❖ **Gather supporting documentation**
- ❖ **Review sample HUBZone application form**
- ❖ **Review and ask questions**
- ❖ **Access SBA's General Login System**
- ❖ **Complete and submit online HUBZone application**
- ❖ **Submit any requested supporting documentation**



READY TO APPLY? CONSIDERATIONS

- ❖ About 25% of applications are denied, a figure deemed “unacceptable” by the SBA
- ❖ Must wait 90 days after denial before being able to re-apply
- ❖ SBA statistics demonstrate that more “established” firms typically have greater success in the Program
 - Not a business development program like 8(a) Program
 - Only 30% of HUBZone-certified firms in the SBA’s portfolio have HUBZone contracts, most do not get work
 - Hard to stay compliant with all Program criteria



DOCUMENTS YOU WILL NEED

- ❖ General business information
- ❖ DUNS number
- ❖ Business and personal federal tax returns for the last three years
- ❖ Business ownership documentation – articles of incorporation, LLC, etc.
- ❖ Citizen documentation for owners
- ❖ SAM.gov profile
- ❖ Appropriate NAICS codes
- ❖ Proof of principal office location, such as lease agreement
- ❖ Official payroll records and other information showing employees residing within HUBZones (drivers licenses, HUBZone maps, etc.)
- ❖ Other information supporting HUBZone eligibility requirements



WHAT HAPPENS AFTER YOU APPLY?

- ❖ Usually takes three to six months for application to be processed
- ❖ Roughly 10% of applicants will receive a “site visit”
- ❖ SBA may have questions about submission



APPROVED OR DENIED?

- ❖ **If approved:**
 - Go on list of approved HUBZone entities
 - Check SBA's Dynamic Small Business website to ensure it reflects your status
 - Can start pursuing HUBZone projects immediately
 - Must recertify continued HUBZone eligibility every three years
 - No maximum amount of time in the Program

- ❖ **If denied:**
 - No formal appeal process
 - May submit an informal "request for reconsideration" if you believe denial was based on "clear and significant error" of procedures or significant facts relevant to your application



TAKING FULL ADVANTAGE OF THE HUBZONE PROGRAM



10% PRICE EVALUATION PREFERENCE FOR FULL AND OPEN COMPETITIONS

- ❖ Contracting Officer (“CO”) must deem price offered by a qualified HUBZone firm to be lower than the price offered by another offeror (other than another small firm) if the price offered by the qualified HUBZone firm is not more than 10% higher than the price offered by the otherwise lowest and responsive offeror
- ❖ For best value procurements, CO must apply the 10% preference to the otherwise successful offer of a large business and then determine which offeror represents best value
- ❖ Where, after considering the price evaluation adjustment, the price offered by a qualified HUBZone firm is equal to the price offered by a large business (or, in a best value procurement, the total evaluation points received by a qualified HUBZone firm is equal to the total evaluation points received by a large business), award shall be made to the qualified HUBZone firm



10% PRICE EVALUATION PREFERENCE, CONT'D – A FEW CAUTIONS

- ❖ Not the same as a HUBZone set-aside, but potential that you can still be open to protest
- ❖ Receipt of Price Evaluation Preference could be considered a “deemed certification” for purposes of presumed loss liability
- ❖ Price Evaluation Preference does not apply for subcontracting goals



MORE BENEFITS FOR PROGRAM PARTICIPATION

- ❖ Competitive and sole source opportunities
- ❖ HUBZone joint venturing
 - Participants must be qualified HUBZones, and all must be small under size standard assigned to procurement (HUBZone joint venture in aggregate may exceed size standard)
 - Aggregate of firms in HUBZone joint venture may meet applicable performance of requirements
- ❖ Contact SBA during “office hours,” Tuesdays and Thursdays from 2-3pm EST, at 1-888-858-2144



MAINTAINING HUBZONE ELIGIBILITY AND AVOIDING PITFALLS



EMPLOYEE COUNTING ISSUES

- ❖ **Job site employees must be on a contract**
 - Job site employee distinction only applicable to principal office location calculation, not the 35% HUBZone residency requirement

- ❖ **Employee “test” found in SBA Size Policy Statement No. 1**
 - Includes considerations such as paying state unemployment taxes, power to hire and fire employee, supervise employees, etc.



IMPACT OF AFFILIATES ON EMPLOYEE CALCULATIONS

- ❖ HUBZone firms allowed to have affiliates, BUT...
- ❖ If no “clear line of fracture” exists between HUBZone firm and affiliate, SBA will combine employees for principal office and 35% HUBZone residency calculations
- ❖ “Clear line of fracture” means:
 - No sharing employees
 - No sharing facilities, equipment, or other resources
 - No subcontracting
 - Engage in separate lines of work



EMPLOYEE RECORDS ISSUES

- ❖ **Vital to keep accurate and current records**
 - Employee drivers licenses – make sure not expired
 - HUBZone maps of employees' addresses

- ❖ **Don't wait until a protest is filed, because it might be too late**
 - Employees on bid date may no longer work for you on award date
 - HUBZone maps could change between bid and award, hard to duplicate older versions of HUBZone maps



DEVELOP A HUBZONE COMPLIANCE FILE

- ❖ **Make sure file is complete and accurate on both bid and award date**
 - **Must have accurate information to substantiate HUBZone status for both dates**
- ❖ **As part of your bid submission procedures' best practices, make sure compliance file is accurate and up-to-date on the date of proposal submission**
 - **Harder to predict when date of award is coming**
- ❖ **Lack of accurate records or missing information can make or break a HUBZone protest**



HUBZONE STATUS PROTESTS – BE PREPARED

- ❖ Current climate means more and more firms are being protested
- ❖ Protest process requires a firm to substantiate HUBZone status on both date of offer and date of award
- ❖ Like two snapshots in time, must provide documentation similar to application process
- ❖ Facilitates response if simply able to pull compliance files
- ❖ Cannot appeal HUBZone protests to Office of Hearings and Appeals
 - Appeals go to the Associate Administrator of Government Contracting and Business Development
 - High standard: Must be “clear and significant error in the processing of the protest,” or a complete failure “to consider a significant fact” supplied by either the protestor or HUBZone firm



DOCUMENTS REQUESTED FOR PROTEST RESPONSE

- ❖ Company payroll records for four-week period prior to both bid and award dates (substantiate that employees who are being counted worked at least 40 hours for the month)
- ❖ Explanation of officer positions as employees
- ❖ Records demonstrating HUBZone employees' residence, such as drivers licenses, and HUBZone maps for each address
- ❖ State unemployment tax filings for dates in question
- ❖ Records indicating where job site employees performed work, including a copy of the contract cover page
- ❖ Leases and deeds for all office locations
- ❖ Utility bills for principal office location
- ❖ Most recent federal corporate income tax return
- ❖ Proposal submitted in response to solicitation



ATTEMPTING TO MAINTAIN COMPLIANCE

- ❖ Only works with active HUBZone prime contracts, not subcontracts or non-HUBZone prime contracts
- ❖ Actively market company and job opportunities in HUBZone communities
 - Make sure to maintain file of newspaper ads, job fair attendance, etc.
- ❖ Unable to bid for new HUBZone work until you are back in compliance
- ❖ At certain point, may need to report to the SBA that you are out of compliance
 - Call HUBZone hotline – difference between “blip” and months
- ❖ Make sure you understand the implications of winning a contract before bidding
 - Big project might knock you out of compliance for employee counts depending on the hiring needs



MONITOR CHANGES TO DESIGNATED AREAS

- ❖ These designations are fluid and change depending on a variety of data points, not just Census data
 - For example, not just an every ten-year occurrence
- ❖ Do not be caught off guard
- ❖ If you plan ahead, you can set up a new office and shift your personnel



PRESUMED LOSS RULE CONSIDERATIONS

- ❖ In addition to compliance file, make sure you have policies and procedures in place to comply with new Presumed Loss Rule
 - Presumption of loss
 - Deemed certifications
 - Signature requirement
 - Limitation of liability
 - Annual recertification
 - Applicability to subcontractors
 - Penalties

- ❖ Inspector General (“IG”) investigations are on the rise in the HUBZone Program
 - 11 files are with the IG now



LOOKING AHEAD



CHANGES ARE COMING

- ❖ 90-day target for processing new applications
- ❖ New Standard Operating Procedures (“SOP”) by end of second quarter 2014
- ❖ Overhaul of regulations to be published in 2014
 - Submit comments on changes that impact you
 - Changes coming to the definition of “principal office”
- ❖ Site visits of about 10% per year of all HUBZone participants will continue
- ❖ Reduce full document reviews from once every three years to once every six years?
- ❖ Protest decisions made public?



Any Questions?

Thank you for joining us today.

If you would like to speak with Jon or Katie about the HUBZone Program, please contact them at:

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