



Testimony for the Record

On Behalf of

HUBZone Contractors National Council

House Committee on Small Business Subcommittee on
Contracting and Infrastructure Hearing

“Leveling the Playing Field: The State of Small Business
Contracting”

May 11, 2023

The HUBZone Contractors National Council submits the following testimony for the record on the important topic of this hearing – small business federal contracting.

The HUBZone Council is a non-profit trade association providing information and support for companies and professionals participating in the Small Business Administration's (SBA) Historically Underutilized Business Zones (HUBZone) program. The Council strives to promote economic development in underutilized rural and urban communities, as well as maximize success for companies participating in the HUBZone program. The Council's membership includes HUBZone-certified small businesses, other small businesses, large businesses, and organizations interested in the HUBZone Program.

The HUBZone program is designed to provide economic assistance to underserved areas by awarding federal contracts to small businesses that operate and employ workers in those areas. The underlying principle behind the HUBZone program, established 25 years ago, remains the same today – to decrease unemployment and revitalize low-income communities by encouraging businesses to locate in these HUBZone areas. Congress, in its creation of the program, stated that the creation of new jobs in economically distressed areas presented a challenge to all levels of government. The HUBZone program was designed to incentivize businesses to locate in these areas, creating wealth creation through much needed jobs.

We thank the Committee for its continued commitment to support small businesses doing business with the federal government. It is because of this Committee's strong commitment to improving the HUBZone program that a substantial modernization effort was signed into law in 2018. However, substantial challenges and barriers continue to impact HUBZone companies. Since the program's inception, the Federal Government has never met its goal to obligate 3% of eligible prime contract dollars to HUBZone small businesses. This represents over 25 years of missed opportunities and unawarded dollars for companies that operate and employ workers in HUBZones. To date, the HUBZone program is the only SBA contracting program where the government continually fails in meeting its established goal.

Therefore, we recommend the following actions to increase awards to HUBZone companies and the communities they serve:

Remove the 20% Cap on Metropolitan Census Tracts: Effective July 1st, thousands of census tracts will lose their HUBZone eligibility due to the 20% cap on metropolitan statistical areas. While some of these areas may have improved and no longer qualify for the program, not all fall under this category. The statute limits the qualification of metropolitan statistical areas to no more than 20%, regardless of their current economic state. The council believes this limit should be lifted, and areas meeting the statutory criteria should qualify for the program. This criteria states an area should have “50 percent or more of the households with an income less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent.”

Apply the HUBZone Price Evaluation Preference to Task Orders: The HUBZone price evaluation preference helps level the playing field for HUBZone firms in full-and-open competition, as well as affords federal agencies greater opportunity to devote federal spending to HUBZone firms. Regrettably, federal agencies have interpreted FAR 19.1304 as prohibiting the

price evaluation preference to task orders when, in fact, it only prohibits commodities. We urge Congress to direct federal agencies to amend their interpretation to follow the law as Congress intended. As the federal government increasingly drives its spending through IDIQ contracts, such as the “Best in Class” (BIC) contracts, a significant opportunity for HUBZone spending is being lost because the HUBZone price evaluation is not being applied in the award of task orders. Included in the House-passed version of the *FY2021 National Defense Authorization Act* (NDAA), applying the price preference would significantly benefit the SBA, federal agencies, HUBZone firms and the communities they serve.

Amend the Criteria for Maintaining HUBZone Status: The HUBZone program provides flexibility for the requirement that 35% of its employees must be located in a HUBZone if a company holds a HUBZone contract awarded through the set-aside program. As employees and contracts change, a company may temporarily fall below the 35% threshold. The Council believes this flexibility should be applied to all HUBZone firms, regardless of whether they hold a prime contract awarded through the HUBZone set-aside program. If “attempt to maintain” is redefined to include all contracts, the program will significantly benefit by providing HUBZone companies more stability.

Redefining the Workspace in the Age of Telework. In the last three years, we have seen how crucial it is for government programs to adapt to changing realities, and the HUBZone program should be no exception. Therefore, flexibility should be established around the principal office requirement in the program. To account for the large percentage of contractor employees teleworking due to the COVID-19 pandemic, the Council recommends embracing telework by allowing employees to count toward the principal office requirement if they are teleworking in a HUBZone and report to the principal office. One of the objectives of the principal office requirement is to build wealth in HUBZone communities by having HUBZone employees spend money locally. Modifying the requirement to embrace telework satisfies this intention.

Change Reporting Requirements to Accurately Reflect Contract Set-Asides. Each year, SBA issues a procurement scorecard, which indicates how agencies performed in meeting their small business goals. The governmentwide goal of contracting with HUBZones is 3%. Despite this small number, the federal government has never met its goal – in FY2021, only 2.53% of prime contract dollars went to HUBZone certified businesses. The Council believes that even fewer contracts have gone to HUBZone businesses due to inaccurate reporting. Agencies often count the same dollar value towards multiple socioeconomic program goals, even though the contract was not explicitly a set-aside for more than one program. For example, if a contract is set-aside for the WOSB program, and the winning company is also a certified HUBZone and SDVOSB, those contract dollars count toward the agency’s goals in each of the 3 programs. This practice ultimately inflates the data reported on small business contracting awards. The Council recommends agencies report progress toward small business based on how the contract was solicited. In other words, if an agency set a contract aside for the HUBZone program, then the dollars should only count as a HUBZone award.

Expand Sole Source Contract Opportunities for HUBZone Companies. As government buying continues to trend toward buying through large contracting vehicles and moving away from direct contracts, the ability for small companies to win sole source awards is more crucial than

ever. The Council supports eliminating option years for sole source contracts to allow for \$4.5/\$7 million each year, instead of over the life of the contract—as changed in House-passed H.R. 190 during the 116th Congress. The Council also believes that creating parity among SBA socioeconomic contracting programs, as it relates to sole source contracts, would incentivize agencies to increase their awards. A current impediment to awarding sole source contracts is the requirement that a contracting officer must show that they do not have a reasonable expectation that offers would be received from two or more HUBZone small business concerns. There is confusion around the language “reasonable expectation,” which leaves this interpretation up to each contracting officer. This presents a barrier to awarding a sole source contract to a HUBZone company, as this could open the door to a protest – an action contracting officers seek to avoid. Eliminating this requirement for the HUBZone, WOSB/EDWOSB and SDVOSB programs would increase these awards to small businesses. Additionally, SBA’s Office of Government Contracting and Business Development (GCBD) should develop guidance to clarify how the acquisition workforce can award sole source contracts to small businesses.

Increase Utilization of Small Businesses to Counteract the Impact of Category Management. The Council continues to work to minimize negative impacts of category management on small businesses. These efforts resulted in a requirement in the FY2020 NDAA of annual reporting of small business participation on BIC vehicles, and governmentwide reforms issues by the Administration in December 2021. The Council remains dedicated to finding opportunities that ensure maximum participation of HUBZone businesses, as the government has never met its 3% goal. While we were encouraged by the guidance issued by the Office of Management and Budget (OMB) directing agencies to consider the effect of category management and contract consolidation on small businesses, it is unclear if any of the Administration’s reforms have been adopted. We encourage OMB to issue an update on the implementation of these reforms.

Align the Rulemaking Processes of SBA and the FAR Council. Pervading inconsistencies exist in government contracting due to discrepancies between final rules issued by the SBA and the Federal Acquisition Regulatory (FAR) Council. This causes confusion for both companies and federal agencies on which guidance they should ultimately follow. Many in the acquisition workforce do not follow changes in small business rules unless it is in the FAR, despite that final rulemaking by SBA is sufficient. In addition, the time lapse between FAR Council action and final rules promulgated by the SBA can span many years. To remedy this problem, the Council suggests adding the SBA to the FAR Council, and requiring the FAR Council issue its rulemaking simultaneously with SBA.

Expand Highway Trust Fund to include HUBZone Small Businesses. Presently, HUBZone small businesses are excluded from competing for opportunities funded under the Department of Transportation (DOT) Trust Fund, which is approximately \$2.3 billion dollars annually. Allowing HUBZone firms to compete would invest many of these dollars back into underutilized communities.

Adopting these changes will benefit both HUBZone businesses and the federal government. Increased opportunities for HUBZone businesses create greater opportunities for utilization of SBA programs and a more efficient procurement system, all which build resiliency of the industrial base. The HUBZone contractor community is optimistic that the Congressional actions providing more certainty, flexibility, and fair requirements for the program will help companies across the country meet the program's mission. Our member companies and all HUBZone certified firms are ready to compete on federal contracts to bring jobs, innovation, training, and economic empowerment to HUBZones. We appreciate the Committee's leadership on issues related to small business federal contracting and look forward to working with Congress to advocate for procurement policies that benefit HUBZone and other small business federal contractors.