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Up to 40% of HUBZone Concerns May Lose Program Eligibility Beginning In October 2011 As Many Qualified HUBZone Areas Are Set to Expire

On October 1, 2011, the Census Bureau is expected to release data from the 2010 Decennial Census that will immediately impact the HUBZone eligibility for many small business concerns. If you are a qualified HUBZone concern, or intend to partner with a HUBZone concern for upcoming proposal efforts, it is imperative that you closely monitor the Small Business Administration's ("SBA") website for updates to the HUBZone maps and determine whether your concern's program eligibility is at risk.

"Redesignated" HUBZones Set to Expire Soon: To qualify for the HUBZone program, SBA regulations require that (1) a small business concern have its principal office located in a HUBZone, and (2) that at least 35% of its employees reside in a HUBZone. See 13 C.F.R. §§ 126.103, 126.200(b). HUBZones consist of qualified census tracts, qualified non-metropolitan counties, lands within the external boundaries of an Indian reservation, qualified base closure areas, and "redesignated" areas. See 13 C.F.R. 126.103. Designation of these areas as qualified HUBZone tracts, and the determination of tract boundaries, is dependent upon data collected from different agencies, including Housing and Urban Development, the Department of Labor, and the Census Bureau, and are continually subject to change as new data is collected and released.

In 2000, Congress amended the Small Business Act to add "redesignated" areas as a new category of qualifying HUBZone areas. Redesignated areas consist of qualified census tracts and qualified non-metropolitan counties that cease to be qualified due to changes in economic data. Originally, redesignated areas maintained their HUBZone status for a period of three years. In 2004, however, the Small Business Act was amended again to permit redesignated areas to remain HUBZones until the later of:

- (i) the date on which the Census Bureau publicly releases the first results from the 2010 decennial census; or
- (ii) 3 years after the date on which the census tract or nonmetropolitan county ceased to be so qualified.

15 U.S.C. § 632(p)(4)(C). As a result, many HUBZones that obtained "redesignated" status more than three years ago will immediately lose their HUBZone status upon release of the "first results" of the 2010 Census, which is expected on October 1, 2011.

Up to 40% of HUBZone Concerns May Be Decertified: If your principal office is located in one of these redesignated areas, then your HUBZone eligibility will expire as soon as the Census data is released. The SBA estimates that, in the coming weeks, 40% of existing HUBZone firms will lose eligibility based on the location of their principal office alone. See 76 FR 43473. The SBA has also announced that it will promptly propose for decertification any HUBZone concerns whose principal office is located in one of these affected areas. See *id.*

Additionally, you must immediately assess whether and to what extent the elimination of certain redesignated areas will affect your compliance with the 35% residency requirement. The SBA estimates that many additional HUBZone concerns will lose their program eligibility when the redesignated areas expire because fewer than 35% of their employees will reside in a HUBZone.

Keep in mind that under 13 C.F.R. § 126.501, a HUBZone concern must notify the SBA of "any material change that could affect its eligibility," including a change in the principal office location or failure to meet the 35% residency requirement. Although contractors performing under HUBZone contracts must "attempt to maintain" the 35% residency requirement during performance of the contract (13 C.F.R. § 126.200(b)(5)), failure to meet the residency requirement at the time of the initial offer and award of a HUBZone contract will disqualify a concern for the contract. See 13 C.F.R. § 126.601(c).

Decertified HUBZone Concerns May Reapply After 90 Days: Historically, any concern that lost its HUBZone status had to wait one year from the date of program decertification before reapplying for HUBZone status. However, in recognition that a significant number of HUBZone concerns will soon lose their eligibility, the SBA issued an interim final rule (effective July 21, 2011) reducing the period to only 90

days. See 76 FR 43571-43574; 13 C.F.R. § 126.309 (as amended). This reduced period will allow concerns to relocate their principal office, and/or hire enough additional employees residing in qualified HUBZones, to quickly re-qualify for the HUBZone program.

Practitioner's Tips: The SBA intends to update the HUBZone maps as soon as the Census data is released. It is imperative that you determine whether your concern is still eligible for the HUBZone program and, if not, that you notify the SBA, as well as the Contracting Officer on any pending proposals. See FAR 52.219-3(f).

- Check the SBA website to determine whether your principal office address, and the addresses of your employees, are in redesignated HUBZone areas that will expire next week. [Click here](#) for more information regarding the expiring HUBZones.
- Even if you were an eligible HUBZone concern at the time of your initial offer for a HUBZone contract (including contracts subject to the HUBZone price evaluation preference, FAR 52.219-4), you will not be eligible for award (or the price preference) if the redesignated HUBZones expire prior to award and you lose eligibility.
- Contractors identifying HUBZone concerns in their proposals or subcontracting plans should verify that their intended HUBZone partners remain eligible following the Census data release.
- The likelihood of significant disqualifications from the HUBZone program will provide opportunities to protest the eligibility of awardees of HUBZone contracts. Any such protests must be filed within five business days of notification of the apparent successful offeror. See 13 C.F.R. § 126.801(d).

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