

December 31, 2018

U.S. Small Business Administration
Attn: Arthur E. Collins, Jr., Deputy Director
HUBZone Program
409 Third Street, S.W., 8th Floor
Washington, DC 20416

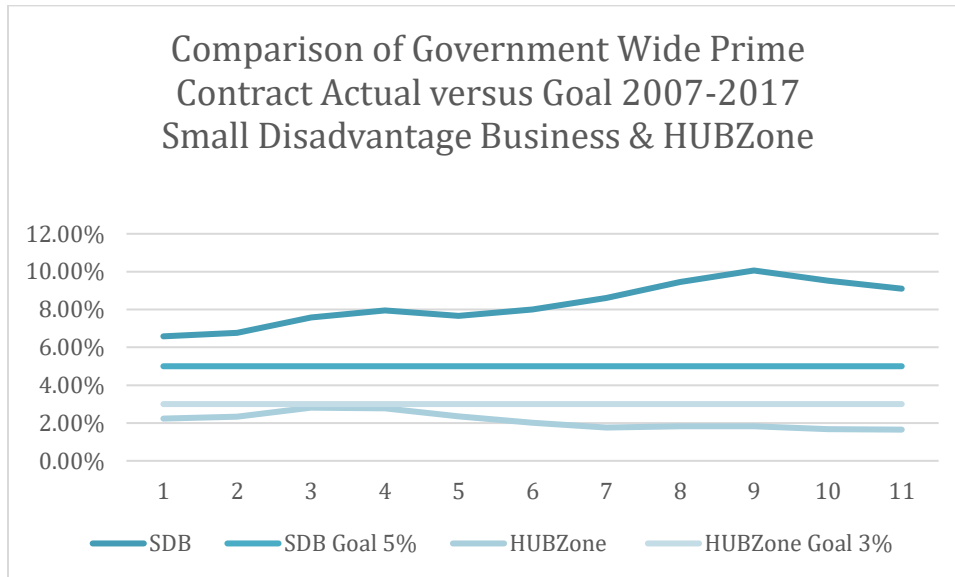
Dear Mr. Collins:

First of all, I would like to thank Robb Wong, Associate Administrator for extending the deadline for responding to RIN 3245-AG38 Small Business HUBZone Program; Government Contracting Programs. Second, I'd like to thank the Small Business Administration for reviewing the regulations in an attempt to reduce the regulatory burdens imposed on HUBZone small business concerns and government agencies and having the clear intent to make it easier for small business concerns to understand and comply with the program's requirements and make the HUBZone Program a more attractive avenue for procuring agencies. With one very small change, that was not included within the proposed regulation, the HUBZone Program can achieve its intended results – investment in communities and continued employment and achieve the stated purpose to provide for Federal contracting assistance to HUBZone small business concerns 15 U.S.C. 657a(a). The change referenced is the requirement of Justification & Approvals for sole source awards to HUBZone organizations. This is not a requirement for the Small Disadvantaged Business socioeconomic category, but it is for HUBZone. This occurs despite FAR 19.203, which states there is no order of precedence among socio-economic organizations. The data, however, reveals significant disparity.

SBA's Small Business Scorecards reflect Government-wide contract awards to 8(a) organizations for the period of 2007 through 2017 and have escalated to 9.10% or 182% of the statutory goal of 5%, whereas contract awards to HUBZone organizations over the same period average decreased to 1.65% in 2017 representing just 55% of the statutory required goal of 3%. The below table is a synopsis of Government-Wide Small Business Score Card results¹:

Small Business Government Wide Score Card - Prime											
Classification/Goal	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Small Business - 23%	22.00%	21.50%	21.89%	22.66%	21.65%	22.25%	23.39%	24.99%	25.75%	24.34%	23.88%
WOSB - 5%	3.41%	3.40%	3.68%	4.04%	3.98%	4.00%	4.32%	4.68%	5.05%	4.79%	4.71%
SDB - 5%	6.58%	6.76%	7.57%	7.95%	7.67%	8.00%	8.61%	9.46%	10.06%	9.53%	9.10%
SDVOSB - 3%	1.01%	1.49%	1.98%	2.50%	2.65%	3.03%	3.38%	3.68%	3.93%	3.98%	4.05%
HUBZone - 3%	2.24%	2.34%	2.81%	2.77%	2.35%	2.01%	1.76%	1.82%	1.82%	1.67%	1.65%

¹ sba.gov  PROVIDER RESOURCES . . . instilling integrity in healthcare



In FY2017, 3,421 firms were awarded more than \$27.1 billion in federal contracts which included \$8.0 billion in 8(a) set-aside awards and \$8.4 billion in 8(a) sole-source awards² whereas, only \$1.9 billion were awarded as HUBZone contracts with only \$65.3 million.³ This represents a minimal .77% of the value of the 8(a) sole source contract awards for that same period. The disparity can be minimized easily by making two improvements required to facilitate this change: First, remove the reference in FAR 19.1306 to the “rule of two” and second, modify the Justification & Approval (J&A) process as stated in 6.303 to align with the 8(a) program. These two slight changes will address the following concerns of the SBA, the GAO, and Congress regarding the HUBZone Program:

- Stimulate economic development in economically distressed areas;
- Reduce the regulatory burdens imposed on HUBZone small business concerns and government agencies;
- Implement changes that will benefit the small business community by making the HUBZone Program more efficient and effective;
- Make the HUBZone program a more attractive avenue for procuring agencies;⁴
- Address and resolve to eliminate the continued low use of HUBZone set-aside contracts by contracting agencies which could subsequently decrease firms’ willingness to participate in the HUBZone Program;⁵
- Lack of direct HUBZone contract awards. Awarding contracts more often to businesses with additional SBA socioeconomic contracting program designations (such as 8(a));

² Congressional Research Service Report SBA’s “8(a) Program”: Overview, History and Current Issues, September 12, 2018

³ Congressional Research Service Report, Small Business Administration, HUBZone Program November 8, 2018

⁴ regulations.gov SBA-2018-0005-001 RIN: 3245-AG38; Federal Register Number: 2018:23285

⁵ GAO 18-666 September 2018, Small Business Contracting, Small Business Administration Could Further Strengthen HUBZone Eligibility Reviews in Puerto Rico and Program-wide

- Foster Distinct use of HUBZone contract mechanisms;
- Perception held by agencies that there is a lack of small businesses in HUBZones that can meet the agency's contract demands;
- Persuade eligible small businesses to apply for the HUBZone program.⁶

These barriers are removed as the mechanism for contracting officials to award contracts will be simplified. Therefore, additional HUBZone direct contract awards will be made using the sole source vehicle. Through the increased use of the sole source vehicle, prime Direct HUBZone contract awards will increase. As the awards increase, additional eligible small businesses will apply to the HUBZone Program. Competition will increase as more companies will be participating in the program in a wide variety of NAICS codes thereby bringing the additional capabilities contracting officers are seeking for their businesses and increased competition. There will be more small businesses participating which will have the competency levels the agencies are seeking. But, it has to start somewhere. Increased competition will be a result thereby permitting set-aside opportunities which currently do not exist. Currently, the SBA is faced with numerous challenges. Direct contract awards are minimal within the HUBZone program and statutory goals are not met. By making these two simple changes, the HUBZone program will prosper and so will many communities. The purpose of the program will be met. The specifics are as follows:

Improvement #1 – To improve and promote HUBZone sole source awards, strike FAR 19.1306 (a) (1) removing the requirement of a contracting officer to have a reasonable expectation that they would not receive two or more offers. The reference impedes sole source awards due to concern of the unknown and criticism of interpretation of the reference to “reasonable expectation.” This presents a barrier to sole source awards and creates a disparity between HUBZone and 8(a) awards, contrary to FAR 19.203. Further, the “rule of two” does not foster HUBZone awards when there are insufficient HUBZone certified small businesses to meet the competency level the contracting agency requires.⁷

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 6.302-5(b)(5)) before considering a small business set-aside (see 19.203 and subpart 19.5), provided none of the exclusions at 19.1304 apply; and—

Improvement #2 – To improve and promote HUBZone sole source awards, modify FAR 6.303 to align Justifications for the HUBZone Program with the 8(a) program thereby promoting opportunity for the underserved. Currently, justifications are required for HUBZone sole source awards and are not required for the 8(a) sole source awards for contract award values less than \$22M. FAR 6.303-1(2) requires justification to be approved by the appropriate official designated at 6.304. As the justification is required by a GS-15 or above, such justification is often required by senior officials such as the Chief Operating Officer of the Agency. Further, 6.303-1(3) requires the sole source to

⁶ HUBZone Program Evaluation Final Report, September 26, 2018

⁷ HUBZone Program Evaluation Final Report September 26, 2018

be made public (through posting on FedBizOps) in accordance with 6.305. These requirements are not necessary for 8(a) organizations when contract award values are less than \$22M. By modifying 6.303-1(b) and 6.303-2(b) to align with the 8(a) program, HUBZone sole source awards will be increased, thereby assisting Contracting Officers in increasing HUBZone awards; assisting Agencies in achieving HUBZone goals; meeting the Executive Order; reducing poverty and providing maximum practicable opportunity (FAR 19.201) for HUBZone small businesses.

This minor change to the Federal Acquisition Regulations will provide maximum practicable opportunities (FAR 19.201) to HUBZone organizations, giving greater latitude in contract award selection and decisions for Agency Contracting Officers. The end result empowers the private sector to affect changes within these HUBZone communities by providing employment opportunity and economic mobility while reducing poverty.

PRI is a former 8(a) participant and graduate of the 8(a) program. PRI chose to become HUBZone certified as an exit strategy from the 8(a) program understanding that there were to be government contracting benefits through HUBZone socioeconomic contract set-asides and awards. As a highly technical, competent organization within the 8(a) program, we were the “go to” company. What we learned was that while the certification has enabled PRI to sustain in the federal market, there was a shift from prime contracting to subcontracting. Today, approximately three years post-graduation from the 8(a) program, PRI’s revenue is approximately 34% of our revenue prior to graduation. PRI’s past performance and CPARS evaluations have escalated to excellent ratings, and yet the opportunities to compete for HUBZone business as a prime contractor are minimal. Due to our technical capabilities, we have limited competition and therefore, contracting officials are unable to identify organizations which enable them to meet the “rule of two” and yet, they are unwilling or are unable to obtain the necessary approvals required for the J&A due to the level of official (GS-15) that must sign off. Contracting officers have shared the following candid commentary:

- “I’d really like to do a HUBZone contract award, but it is nearly impossible...”
- “Can’t you go back to being 8(a)? It was so much easier...”
- “You used to be our “go-to” company...”
- “Yeah...we don’t really use the HUBZone rules...”
- “Why would we do that? It takes too much paper work and we just aren’t going to do that...”
- “You have to have two small businesses to do a HUBZone contract award”

Aligning the HUBZone program to the 8(a) program with these two minor changes will accomplish the goals the SBA seeks and fulfill the goal to “reduce the regulatory burdens imposed on HUBZone small business concerns and government agencies, implement new statutory provisions, and eliminate ambiguities in the regulations.” Further, it will eliminate the disparity between the HUBZone and 8(a) programs and in conformance with FAR 19.203. The HUBZone Program will flourish as the 8(a) program does today.

Additional commentary regarding RIN: 3245-AG38 is as follows: NOTE that commentary is provided only to matters which appear to be substantive to a HUBZone Program participant.

PROPOSED RULE: *SBA proposes to amend the definition of "attempt to maintain" to clarify what happens if a HUBZone small business concern's HUBZone residency percentage drops too low. The Small Business Act provides that a HUBZone small business concern must "attempt to maintain" compliance with the 35% employee HUBZone residency requirement during the performance of a HUBZone contract. 15 U.S.C.632(p)(5)(A)(i)(II). This statutory requirement seeks to ensure that funds from HUBZone contracts flow to HUBZone areas and the residents of those areas, while at the same time recognizing that a HUBZone small business may need to hire additional employees in order to fully meet the terms of a contract. Under the "attempt to maintain" requirement, when hiring additional employees to perform on a HUBZone contract, the HUBZone small business must make efforts to hire HUBZone residents in order to try to maintain compliance with the 35% HUBZone residency requirement. The current regulation provides that "attempt to maintain" means "making substantive and documented efforts such as written offers of employment, published advertisements seeking employees, and attendance at job fairs." 13 CFR 126.103. SBA believes it is necessary to clarify that if the HUBZone residency percentage drops too low, then SBA will find that the HUBZone small business has not made its best efforts to "attempt to maintain" compliance with this requirement.*

Therefore, SBA is proposing to amend this definition to add that falling below 20% HUBZone residency during the performance of a HUBZone contract will be deemed a failure to attempt to maintain compliance with the statutory 35% HUBZone residency requirement. In such a case, SBA would propose that the concern be decertified from the HUBZone program. The concern would then have the opportunity to demonstrate that it in fact continues to have at least 20% HUBZone employees and that it continues to attempt to hire additional HUBZone residents in order to reach 35%. SBA does not intend to require that employees be hired in any particular order (i.e., in an order that ensures that at any moment in time, at least 20% of its total employees reside in a HUBZone), but merely that it always have at least 20% HUBZone employees once the hiring for contract performance is complete (and continues to attempt to hire more HUBZone employees).

PRI RESPONSE: PRI currently maintains the 35% statutory HUBZone residency requirement. PRI acknowledges the challenges the SBA purports and agrees with the regulatory change.

PROPOSED RULE: *SBA proposes to amend the definition of "decertify" to clarify that the decertification procedures described in part 126 are applicable to firms which voluntarily withdraw from the HUBZone program. If a certified HUBZone small business concern is unable to recertify its HUBZone eligibility at the time of its annual recertification, or if it acquires, is acquired by, or merges with another concern and no longer meets the HUBZone eligibility requirements, it should submit a request to SBA to voluntarily withdraw. Upon receipt of such request, SBA will remove the firm as a certified HUBZone small business concern from the Dynamic Small Business Search (DSBS) system.*

PRI RESPONSE: PRI supports and agrees with the regulatory change.

PROPOSED RULE: *SBA proposes to amend the definition of the term "employee." This term is key to the HUBZone program since the basic HUBZone eligibility requirements for a small business are to have at least 35% of its employees residing in a HUBZone and to have a principal office located in a HUBZone. SBA believes that a clarification is necessary because the existing definition's language -"a minimum of 40 hours per month"-is ambiguous. The proposed rule would explain that an individual is an employee if he or she works at least 40 hours during the four-week period immediately prior to the relevant date- either the date the concern submits its HUBZone application to SBA or the date of recertification. SBA will review a firm's payroll records for the most recently completed pay periods that account for the four-week period immediately prior to the date of application or date of recertification in order to determine which individuals meet this definition. If the firm has weekly pay periods, then SBA will review the payroll records for the most recently completed last four pay periods. If the firm has two-week pay periods, then SBA will review the payroll records for the last two most recently completed pay periods. If the payroll records demonstrate that an individual worked forty or more hours during that four-week period, he or she would be considered an employee of the concern.*

PRI RESPONSE: PRI supports and agrees with the proposed regulatory change.

PROPOSED RULE: *Additionally, SBA is considering revising the requirement from 40 hours per month to 20 hours per week, due to concerns that the 40 hours per month requirement is not sufficient to stimulate employment in HUBZones. Considering the purpose of the HUBZone program to stimulate meaningful employment in communities with high unemployment, SBA specifically requests comments on the number of hours SBA should require in order to count an individual as an employee of the firm for HUBZone eligibility purposes.*

PRI RESPONSE: PRI opposes the SBA's change in the requirement from 40 hours per month to 20 hours per week. The change of this definition/requirement will have an adverse effect on the HUBZone program and the intent of the entire program to foster economic growth within communities and increase employment. To implement this change, currently certified HUBZone small business concerns would be negatively impacted financially. As proposed, the HUBZone small business concern would need the same number of employees but could potentially have to double the number of hours for the HUBZone residing employees. This has the potential to create a significant hardship for the small business due to the increased payroll. The financial drain may be significant enough that numerous HUBZone small business concerns would withdraw from the program, particularly when factoring in the lack of HUBZone contract awards. The cost may far exceed the benefit. Should a HUBZone small business concern decide to remain in the program, they will need to make significant changes to their business. As an example, the HUBZone small business concern may lay off HUBZone residing employees as employers attempt to find more highly skilled employees located in other HUBZone areas where education/skills are higher to compensate for the change in the requirement. Further, employees who are not HUBZone residents may also be at risk as the employer attempts to maintain the 20 to 35% employment

requirement as the work would need to shift from a non-HUBZone resident employee to a HUBZone resident employee who may lack the necessary skills to perform the duties of the position. To accommodate such a shift, the employer may elect to hire HUBZone resident employees in another area versus the community in which their business currently conducts business. This action provides an economic loss for the community in which the principal office resides due to the lack of employment within that specific community. Such changes can also pose a risk for contract performance as they may require organizational changes. Changes of this magnitude pose a significant financial drain for the HUBZone business and incur increased risk for the concern, their respective employees, and their communities.

While the SBA's concern for impacting the lives of those residing in the HUBZone area are admirable, the change in this requirement places risk to the entire program and the purpose of the regulation. Please keep in mind that many HUBZone employees may lack the required skills/education to assume a full-time position or part-time position. Further, due to a potential loss of benefits obtained through the states or community programs, HUBZone residing employees are unable to work 20 hours a week or full-time as they lack the skill level/training required and are at risk for losing support services such as healthcare, transportation, childcare, community programs such as English as a second language and others. This places further risk on the community and also the HUBZone business concern as they may be unable to fulfill the required positions – even at the minimum level of 20% as proposed within RIN 3245-AG38. Employment is the number one factor in addressing the social determinants of health and yet, many HUBZone residents may be adversely affected should this change be implemented. PRI applauds the SBA for its concern with implementation of this requirement.

PROPOSED RULE: *The proposed definition of "employee" continues to specify that employees include temporary and leased employees, individuals obtained through a union agreement, and those co-employed through a professional employer organization (PEO) agreement. To further respond to the number of hours an individual must work in order to be considered an employee of the firm, SBA also requests comments on whether SBA should count only full-time employees or full-time equivalents.*

PRI RESPONSE: PRI recommends that the definition remain at 40 hours per month in calculation of the number of employees.

PROPOSED RULE: *The proposed definition clarifies that all owners of a HUBZone applicant or HUBZone small business who work at least 40 hours per month will be considered employees, regardless of whether they receive compensation. This current interpretation responds to situations where the counting of one individual (i.e., a non-HUBZone resident owner who works at the firm but does not collect a direct salary and claims not to be an employee) would render the firm ineligible for HUBZone participation. SBA believes that any time an owner works at least 40 hours per month for the concern, he or she should be counted as an employee. In addition, the proposed definition adds that if the sole owner of a firm works less than 40 hours during the four-week period*

immediately prior to the relevant date of review, but has not hired another individual to direct the actions of the concern's employees, then that owner will be considered an employee as well.

*The proposed definition clarifies that individuals who do not receive compensation and those who receive deferred compensation are generally not considered employees. The proposed definition further clarifies that individuals who receive in-kind compensation commensurate with the work performed will be considered employees. This means that an individual who works at least 40 hours per month and receives in-kind compensation equaling the value of 10 working hours would generally not be considered an employee. SBA believes these clarifications are needed because there has been confusion about whether someone who receives in-kind compensation should be considered an employee, about what SBA considers in-kind compensation, and about what deferred compensation means. In general, in-kind compensation is non-monetary compensation, or anything other than cash, wages, salary or other monetary benefit received in exchange for work performed. An example of in-kind compensation is housing received in exchange for work performed. SBA generally treats individuals receiving in-kind compensation as employees because they are receiving an economic benefit from working for the firm, which is consistent with the purposes of the HUBZone program. In a previous proposed rule amending the definition of "employee" to address in-kind compensation, SBA explained: "SBA intended the term compensation to be read broadly and to encompass more than wages. Thus, a person who receives food, housing, or other non-monetary compensation in exchange for work performed would not be considered a volunteer under that proposed regulation. SBA believes that allowing volunteers to be counted as employees would not fulfill the purpose of the HUBZone Act-job creation and economic growth in underutilized communities." 67 FR 3826 Oan. 28, 2002). SBA requests comments on whether it is reasonable to continue treating in-kind compensation this way, and on how to measure whether in-kind compensation is commensurate with work performed. There has also been some confusion surrounding SBA's treatment of deferred compensation. In general, deferred compensation means compensation that is not received at the time it is earned, but is received sometime in the future. SBA does not treat individuals receiving deferred compensation as employees for HUBZone purposes because such individuals are not receiving a present economic benefit from working for the firm, which is not consistent with the purpose of the HUBZone program. The Court of Federal Claims has found this policy to be reasonable. In *Aeolus Systems, U.Cv. United States*, 79 Fed. Cl. 1, 9 (2007), the Court held that: "(1) the concept of deferred compensation is contrary to the program's goal of increasing gainful employment in HUBZones, and (2) the identification of non-owner individuals who work for deferred compensation as 'employees' would open up the HUBZone program to potential abuse."*

The proposed definition also clarifies that independent contractors who receive compensation through Internal Revenue Service (IRS) Form 1099 generally are not considered employees, as long as such individuals are not considered to be employees for size purposes under SBA's Size Policy Statement No. 1. SBA believes that it would not make sense to find an individual to be an employee of a firm when determining the concern's size, but to then not consider that same individual to be an employee when determining compliance with HUBZone eligibility rules. If an

independent contractor meets the employee test under SBA Size Policy Statement No. 1, such individual should also be considered an employee for HUBZone eligibility purposes. If someone is truly acting as an independent contractor, that individual is acting as a subcontractor, not an employee. Such an individual does not receive the same benefits as an employee, but is also not under the same control as an employee. The proposed rule also clarifies that subcontractors are not considered employees when determining compliance with the HUBZone eligibility rules.

Additionally, the proposed definition states that employees of affiliates may be counted as employees of a HUBZone applicant or certified HUBZone small business concern, if the totality of circumstances demonstrates that there is no clear line of fracture between the concerns. This has always been SBA's policy and this amendment is intended to eliminate ambiguities in the regulation. When looking at the totality of circumstances to determine whether individuals are employees of a concern, SBA will review all information, including criteria used by the Internal Revenue Service (IRS) for Federal income tax purposes and those set forth in SBA's Size Policy Statement No. 1.

This means that SBA will consider the employees of an affiliate firm as employees of the HUBZone small business if there is no clear line of fracture between the business concerns in question, the employees are in fact shared, or there is evidence of intentional subterfuge. When determining whether there is a clear line of fracture, SBA will review, among other criteria, whether the firms: Operate in the same or similar line of business; operate in the same geographic location; share office space or equipment; share any employees; share payroll or other administrative or support services; share or have similar websites or email addresses; share telephone lines or facsimile machines; have entered into agreements together (e.g., subcontracting, teaming, joint venture, or leasing agreements) or otherwise use each other's services; share customers; have similar names; have key employees participating in each other's business decisions; or have hired each other's former employees.

For example, if John Smith owns 100% of Company A and 51% of Company B, the two companies are affiliated under SBA's size regulations based on common ownership. Thus, SBA would look at the totality of circumstances to determine whether it would be reasonable to treat the employees of Company B as employees of Company A for HUBZone program purposes. If both companies do construction work and share office space and equipment, then SBA would find that there is not a clear line of fracture between the firms, and would treat the employees of Company B as employees of Company A for HUBZone program purposes. This means that the employees of Company B would be counted in determining Company A's compliance with the 35% HUBZone residency requirement and the principal office requirement.

Conversely, SBA would not treat the employees of one company as employees of another for HUBZone program purposes if the two firms would not be considered affiliates for size purposes. SBA will look at the totality of circumstances to determine whether it would be reasonable to treat the employees of one concern as employees of another for HUBZone program purposes only where SBA first determines that the two firms should be considered affiliates for size purposes.

SBA specifically requests comments on these proposed changes to the definition of "employee." SBA also requests comments on how SBA should treat individuals who are employed through an agreement with a third-party business that specializes in providing HUBZone resident employees to prospective HUBZone small business concerns for the specific purpose of achieving and maintaining HUBZone eligibility. For example, one individual could work 10 hours per month for four separate businesses and be counted as a HUBZone resident employee for each of those businesses. SBA has seen this arrangement several times in recent years and requests public input on whether such an arrangement is consistent with the purposes of the HUBZone program and/or how such arrangements should be structured in order to be consistent with such purposes.

PRI RESPONSE: PRI concurs with the SBA's proposed change to the definition of "employee." With regard to the treatment of individuals who are employed through an agreement with a third-party business that specializes in providing HUBZone resident employees to prospective HUBZone small business concerns for the specific purpose of achieving and maintaining eligibility, the practice should be acceptable. NOTE that PRI does not use this arrangement in any manner, but the arrangement does support the purpose of the HUBZone Program. It provides for the employment of individuals who reside within the HUBZone thereby increasing employment within the community in which they reside. The HUBZone business concern is aided in identification of qualified personnel to meet their employment requirement of 35%. Both of these situations foster goodwill and meet the intent of the program thereby reducing poverty, promoting opportunity, and providing economic upward mobility.

PROPOSED RULE: *In addition, SBA proposes to implement section 1701(i) of the NOAA 2018 in the amended definition of "HUBZone small business concern." The NOAA 2018 was enacted on December 12, 2017. Section 1701 of the act makes a number of amendments to sections 3(p) and 31 of the Small Business Act, 15 U.S.C. 632(p), 657a, which govern the HUBZone program. Most of these changes are not effective until January 1, 2020, with the exception of the provision contained in section 1701(i). In enacting section 1701(i), Congress intended for small businesses located in re-designated areas that are set to expire to retain their HUBZone eligibility until the date on which SBA updates the HUBZone maps in accordance with the broader changes described in section 1701. In other words, firms that were certified HUBZone small business concerns as of the date of enactment (December 12, 2017), and that had principal offices located in re-designated areas set to expire prior to January 1, 2020, shall remain certified HUBZone small business concerns until SBA updates the HUBZone maps after the 2020 decennial census, so long as all other HUBZone eligibility requirements described in § 126.200 are met. This means that in order to continue to be considered a certified HUBZone small business concern, the firm must: Continue to meet the HUBZone ownership and control requirements; continue to meet the 35% HUBZone residency requirement; and maintain its principal office in the re-designated area or another qualified HUBZone. SBA notes that to implement this change, SBA will "freeze" the HUBZone maps with respect to qualified census tracts, qualified non-metropolitan counties, and re-designated areas. As a result, for all re-designated areas in existence on December 12, 2017, the expiration of their HUBZone treatment has been extended until December 31, 2021. SBA selected this date*

because SBA estimates that the HUBZone maps will have been updated to incorporate the results of the 2020 census and to reflect the broad changes mandated by section 1701 by that time, and selecting a specific date provides stability to program participants. With respect to the 35% residency requirement, SBA notes that an employee of a certified HUBZone small business concern who resided in a re-designated area as of December 12, 2017, will continue to be treated as a HUBZone resident through December 31, 2021.

PRI RESPONSE: This approach further fosters the intent of the HUBZone Program and lessens the burden for some HUBZone Certified business concerns. PRI supports the SBA's approach.

PROPOSED RULE: *SBA proposes to amend the definition of "principal office" to eliminate ambiguities in the regulation. SBA proposes to clarify that when determining whether a concern's principal office is located in a HUBZone. SBA counts all employees of the concern, other than those employees who work at jobsites. This includes both HUBZone residents and non-HUBZone residents. SBA is proposing this clarification because some applicants have been under the mistaken impression that only HUBZone resident employees are counted for purposes of determining a firm's principal office, but this is not and has never been SBA's intent. In addition, SBA proposes to add that in order for a location to be considered a concern's principal office, the concern must demonstrate that it conducts business at this location. SBA has included this clarification to address situations such as when firms are only able to provide a lease document but not utility bills. SBA believes that evidence that business is being conducted at the location is necessary to ensure the purposes of the HUBZone Program are being fulfilled.*

Finally, SBA proposes to add examples to the definition of principal office, to illustrate how the agency treats situations in which employees work at multiple locations. The first example provides that if an employee spends more than 50% of his or her time at one location, the employee is deemed to work at that location. If the employee does not spend more than 50% of his or her time at any one location, then generally the employee will be deemed to work at a non-HUBZone location (assuming all locations are not in HUBZones). SBA specifically requests comments on these proposed changes.

PRI RESPONSE: PRI concurs with the SBA's definition of the "principal office" to mean the location where the largest number of employees both those residing within a HUBZone and those who reside outside a HUBZone to be included within the definition. Further, PRI concurs with the SBA's intent that the HUBZone small business concern be required to conduct business at the location.

However, PRI disagrees with the SBA's assertion that utility bills are required for documentation purposes. The HUBZone small business concern may have a gross lease which would specify that the landlord pays the utilities versus the lessee.

PROPOSED RULE: *The proposed rule would also amend the definition of "reside." This term is used when analyzing whether an employee should be considered a HUBZone resident for purposes*

of determining a firm's compliance with the 35% HUBZone residency requirement. SBA proposes to remove the reference to primary residence, to eliminate the requirement that an individual demonstrate the intent to live somewhere indefinitely, and to provide clarifying examples. SBA proposes to remove the reference to primary residence because many individuals do not have primary residences as the term is traditionally defined. SBA proposes to remove the requirement to prove intent to live somewhere indefinitely because SBA does not have a reasonably reliable method of enforcing this requirement. In the alternative, SBA proposes that "reside" means to live at a location full-time and for at least 180 days immediately prior to the date of application or date of recertification, as applicable. SBA believes that this is consistent with the purposes of the HUBZone program, while taking into account the realities of the unique living arrangements that may be utilized by certain small business' workforces. The definition also makes clear that to determine an individual's residence, SBA will first look to an individual's address as identified on his or her driver's license or voter's registration card, which is SBA's current and long-standing policy. Where such documentation is not available, SBA will require other specific proof of residency, such as deeds or leases, or utility bills. Additionally, this rule also proposes examples to add clarity to these revisions. SBA specifically requests comments on these proposed changes.

PRI RESPONSE: Currently, the program accepts a DMV ID which does not appear to meet the requirement within the aforementioned. Further, as the SBA states, there are unique living arrangements which are used by many of the small business workforce. Many individuals live within the same household and are not listed on a lease and will not have supporting documentation for residency. Therefore, retaining alternative methods as currently described on the SBA website are appropriate and required.

"My employee does not have, and cannot obtain, a driver's license or voter's registration card corroborating her residency in a HUBZone. What evidence can I submit to prove that she resides in a HUBZone?"

The employee must submit a statement declaring HUBZone residency and explaining why documentation corroborating residency in a HUBZone, such as a current driver's license or voter registration card bearing the employee's address in that HUBZone is unavailable. The statement must cover the date of your firm's electronic verification.

Sample Statement:

This statement serves in lieu of a driver's license and/or voter's registration card as one cannot be obtained due to the following circumstances: [Explain circumstances here]. I am an employee of [name of firm]. I, [person's name], live at [home address] and have lived there since [dd/mm/yyyy]. I do consider it my permanent home. I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge.

[signature and date]

The purpose of the HUBZone Program and residency requirement is to foster employment and economic growth. Many HUBZone residing individuals do not have a driver's license or voter's registration card; therefore, the attestation process currently accepted must stay in force to meet the intent of the entire program thereby reducing poverty and empowering economic development through employment. The changes in the attestation requirement as the SBA proposes is burdensome and will limit hiring of HUBZone-residing employees which is a challenge currently as stated by the SBA through consideration of a reduction of employment from 35% to 20%.

Further, *"SBA proposes that 'reside' means to live at a location full-time and for at least 180 days immediately prior to the date of application or date of recertification, as applicable. SBA believes that this is consistent with the purposes of the HUBZone program."*

PRI disagrees with this aspect of the proposed rule as it undermines sound strategies to attract employees. Many HUBZone residents live a transient lifestyle. If they cannot be counted as HUBZone employees 180 days prior to recertification, the opportunity for employment would be minimal as the potential employee, even though qualified in all other ways to complete the work required by the company, would perhaps not be hired as the employee would not qualify towards the 35%/20% requirement. Further, this rule as proposed would disqualify potential employees who have recently moved into a HUBZone. Requiring 180 days of residency before certification punishes HUBZone firms seeking to attract talented labor to a HUBZone area. Companies such as PRI that are willing to recruit employees and potentially locate them within the HUBZone would no longer engage in such activity. PRI offers employees bonuses to reside in HUBZone areas. Combined with relocation packages, these bonuses allow PRI and other HUBZone small business concerns to bring new, well-paid employees into a HUBZone's tax base and economy. That activity strengthens the community and increases economic mobility which as stated previously, is part of the purpose of the HUBZone Program.

Perhaps a solution is that the HUBZone employee show a 180-day commitment such as signing a 6-month lease, purchase of a home, and/or register to vote or other acceptable means such as a drivers' license or state issued ID in that HUBZone location.

PROPOSED RULE: *In addition, SBA notes that more small businesses are performing contracts overseas and are faced with the problem of how to treat those employees who reside in a HUBZone when in the United States or its territories, but are temporarily residing overseas to perform a contract. SBA proposes that it will consider the residence located in the United States as that employee's residence, if the employee is working overseas for the period of a contract. SBA believes that as long as that employee can provide documents showing he or she is paying rent or owns a home in a HUBZone, then the employee should be counted as a HUBZone resident in determining whether the small business meets the 35% HUBZone residency requirement. Because*

of the proposed change, discussed below (which treats an individual as a HUBZone resident if that individual resided in a HUBZone at the time his or her employer was certified into the HUBZone program or at the time he or she first worked for the certified HUBZone small business concern (i.e., the individual was hired after the firm was certified into the HUBZone program), so long as he or she continues to work for that same firm, even if the area where the individual lives no longer qualifies as a HUBZone or the individual has moved to a non- HUBZone area) this provision would have meaning only with respect to firms that have employees performing overseas contracts and are applying to the HUBZone program for the first time.

An individual who already qualified as a HUBZone resident for a certified HUBZone small business would continue to be treated as a resident of a HUBZone for HUBZone program eligibility purposes as long as he or she continued to work for the same certified HUBZone small business. SBA believes that this proposal strikes the right balance between acknowledging the increased prevalence of overseas contracting by small businesses and the need to ensure that the program benefits HUBZone areas. However, SBA requests comments on this issue.

PRI RESPONSE: PRI supports the inclusion of an employee who owns and/or continues to rent a residence in a HUBZone while working overseas for a period of a contract. PRI supports the inclusion of an employee who originally resided within a HUBZone at the time a HUBZone organization was originally certified or re-certified and who has moved to a non-HUBZone area. However, this provision should be applicable to ALL HUBZone certified small business concerns and not to be applied only to HUBZone small business concerns with employees performing duties on overseas contracts. The challenges for the HUBZone small business concerns for continued compliance are applicable to firms with contracts overseas and those who do not have contracts overseas. As the SBA stated, employees want to better themselves; and through relocation, employees are supporting the intent of the entire program – to be empowered and obtain economic mobility. Application of this provision to only firms having overseas contracts is discriminatory.

PROPOSED RULE: *In order to provide stability and certainty for program participants, SBA is also proposing that an employee that resides in a HUBZone at the time of a HUBZone small business concern's certification or recertification shall continue to count as a HUBZone employee as long as the individual remains an employee of the firm, even if the employee moves to a location that is not in a qualified HUBZone area or the area where the employee's residence is located is re-designated and no longer qualifies as a HUBZone. SBA understands that a few HUBZone concerns have become ineligible for further HUBZone contracts merely because one or two of their employees have moved their residences from a HUBZone to non-HUBZone area. This has placed such businesses in the unenviable position of firing those individuals and replacing them with other individuals currently living in a HUBZone, or allowing the individuals to remain on the payroll and either becoming ineligible for the HUBZone program or having to hire additional HUBZone individuals that might cause a substantial hardship on very small businesses by increasing costs and reducing profits of those businesses.*

One of the purposes of the program is to promote job creation for individuals living in HUBZones, enabling them to better their lives and their communities. Someone who is hired by a HUBZone small business concern and who is then able to better the lives of his or her family by moving to a different location outside a HUBZone area (due to that newly created job) should not face losing his or her job because the HUBZone small business concern cannot maintain its HUBZone eligibility with that individual on the payroll.

Under this proposed change, a certified HUBZone small business concern would have to maintain records of the employee's original HUBZone address, as well as records of the individual's continued and uninterrupted employment by the HUBZone small business concern, for the duration of the firm's participation in the HUBZone program.

PRI RESPONSE: PRI supports this provision in entirety and agrees with the SBA that it supports the purpose of the HUBZone Program.

PROPOSED RULE: *Maintaining HUBZone Status*

SBA proposes to amend § 126.500 to require HUBZone small business concerns to recertify annually to SBA that they continue to meet all of the HUBZone eligibility requirements, instead of requiring them to undergo a recertification by SBA every three years. The proposed rule also provides that when a concern fails to submit its annual recertification to SBA, SBA will start proceedings to decertify the concern.

*SBA proposes to amend § 126.501 to clarify that once certified, a HUBZone small business concern will remain eligible for HUBZone contract awards for one year from the date of certification, provided that the concern qualifies as small for the size standard corresponding to the **NAICS** code assigned to the contract. On the one- year anniversary of the certification, the firm would be required to recertify that it continues to meet the HUBZone eligibility requirements or voluntarily withdraw from the HUBZone program. Although requiring annual recertification instead of every three years may appear to impose additional burdens on a HUBZone small business concern, the annual recertification burden would be easily offset by the elimination of the requirement that a firm must demonstrate that it continues to be an eligible HUBZone small business concern both at the time of offer and time of award for any HUBZone contract. As set forth in proposed § 126.501(a), once SBA certifies a concern as eligible to participate in the HUBZone program, the concern would be treated as an eligible HUBZone small business for all HUBZone contracts for which the concern qualifies as small for a period of one year from the date of its initial certification or its annual recertification. Thus, any certification that the firm makes representing that it qualifies as a HUBZone small business concern relates back to the initial certification or annual recertification. The HUBZone concern would not have to review and demonstrate its continued compliance with all HUBZone eligibility requirements throughout the year for each new HUBZone contract that it seeks.*

HUBZone status protests would also relate back to the date of initial certification or most recent annual recertification (except for protests against HUBZone joint ventures). Thus, the protest would

have to demonstrate that the information relied on by SBA in certifying or recertifying the concern as an eligible HUBZone small business concern was incorrect, not that there may have been changed circumstances since that certification that would render the concern ineligible. For HUBZone status protests filed against a HUBZone joint venture in connection with a HUBZone contract, a protester could challenge both the HUBZone status of the HUBZone member(s) of the joint venture and the joint venture's compliance with the requirements governing HUBZone joint ventures, including the contents of the joint venture agreement. If a protester challenged the HUBZone status of the HUBZone member(s) of the joint venture, the protest would relate back to the date of that firm's initial certification or annual recertification (whichever was more recent) and the firm's HUBZone status would be determined as of that date. If the protester challenged the joint venture's compliance with the HUBZone joint venture requirements set forth in § 126.616, the protest would relate to the date on which the joint venture submitted its initial offer including price and the joint venture's compliance with §126.616 would be determined as of that date. SBA will also utilize the program examination mechanism to review the status of selected firms on the date of initial certification or recertification

PRI RESPONSE: As a former 8(a) participant, PRI understands the opportunities associated with annual certification/re-certification. While not stated, it ensures the SBA, the GAO, and the OIG of the SBA's appropriate oversight and administration of the HUBZone Program. This potential change will aid to ensuring participants are, in fact, eligible; and this change in the regulation is a Program Integrity measure. Should the SBA modify the regulations stated for the "rule of two" and remove the J&A provision to align the program to that of 8(a) to effectively reduce the regulatory burdens which will result in increased contract awards and additional small businesses being willing to enter into the HUBZone Program, increased Program Integrity efforts such as the annual certification are necessary to ensure effectiveness of the program and minimize any opportunity for fraud, waste and abuse in the program. Further, annual certification/re-certification will assist the SBA in applying all eligibility criteria consistently.⁸

NOTE that PRI does not agree with the SBA's assertion that *"the annual recertification burden would be easily offset by the elimination of the requirement that a firm must demonstrate that it continues to be an eligible HUBZone small business concern both at the time of offer and time of award for any HUBZone contract."* Preparation of the annual certification/recertification process will create additional effort on behalf of the HUBZone small business concern. Further, as the HUBZone small business concern is required to continually maintain a 35% or 20% employment number for employees residing within a HUBZone, the HUBZone small business concern must continually review and demonstrate compliance throughout the year. Further, the increased annual cost will increase a HUBZone small business concern's general and administrative (G&A) cost which may have a negative impact when competing as a prime contractor or as a subcontractor due to the government's continued and enhanced preference of awarding for lowest cost. The 10% preferential price variance for HUBZone small business concerns may or may not be sufficient to

⁸ GAO 18-666 September 2018, Small Business Contracting, Small Business Administration Could Further Strengthen HUBZone Eligibility Reviews in Puerto Rico and Program-wide

absorb this additional cost in the competitive environment. However, small businesses will choose to participate in the HUBZone Program with the benefit of increased opportunities when the SBA aligns the program to that of the 8(a) Program resulting in increased contract awards.

PRI does agree that should a PROTEST be filed on a HUBZone contract award, the administrative function for both the HUBZone certified small business concern and the SBA would be minimized in addressing the merits of the protest. This is a benefit to all stakeholders and this nation's taxpayers.

PROPOSED RULE: *Contractual Assistance*

SBA proposes to revise § 126.601 to remove the discussion of the acquisition-related dollar thresholds in paragraph (a) because this does not relate to additional requirements a certified HUBZone small business concern must meet to submit an offer on a HUBZone contract. In addition, SBA proposes to move the discussion of compliance with the limitations on subcontracting for multiple award contracts currently in paragraph § 126.601(g) to proposed § 126.700, which specifically addresses the limitations on subcontracting requirements for HUBZone contracts. Finally, SBA proposes to move the discussion of recertification currently in paragraph § 126.601(h) to proposed new §126.619.

SBA proposes to amend § 126.602 to be consistent with the proposed change requiring certified HUBZone small businesses to demonstrate their eligibility at the time of initial certification and annual certification only. Under this proposed regulation, certified HUBZone small business concerns would no longer be required to meet the 35% HUBZone residency requirement at all times while certified in the program. This means that they no longer would have to meet this requirement at the time of offer and time of award for a HUBZone contract.

HUBZone small businesses would continue to have to "attempt to maintain" compliance with this requirement during the performance of a HUBZone contract. With respect to HUBZone status for the underlying contract, the agency will get credit if the firm was in the HUBZone program at the time of offer, and that status will continue unless and until recertification for the contract is required.

PRI RESPONSE: PRI has no opposition to the aforementioned as stated within the proposed rule.⁹ In addition PRI seeks the SBA to make two improvements which would transform the HUBZone program ensuring its ability to achieve its intended results – investment in communities, continued employment, and achieve the stated purpose to provide for Federal contracting assistance to HUBZone small business concerns 15 U.S.C. 657a(a). The first is to remove the reference in FAR 19.1306 to the “rule of two” and the second is to modify the Justification & Approval (J&A) process as stated in 6.303 to align with the 8(a) program.

⁹ regulations.gov SBA-2018-0005-001 RIN: 3245-AG38; Federal Register Number: 2018:23285

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PRI leadership appreciates the HUBZone program as it has ensured sustainability post-graduation from the 8a program. While PRI has experienced a dramatic reduction in staffing and contracting due to a shift from a prime contractor to a subcontractor, PRI has achieved sustainability and is very dependent upon the HUBZone program and the recommended changes. Your consideration is greatly appreciated.

Sincerely,

Shawn Keough-Hartz

Shawn Keough-Hartz
CEO/President

