

SBA

SOP 80 06

HUBZone Program

Office of HUBZone
U.S. Small Business Administration



**SMALL BUSINESS ADMINISTRATION
STANDARD OPERATING PROCEDURE**

National

SUBJECT: HUBZone Program Standard Operating Procedure	S.O.P.		REV
	SECTION	NO. 205-7092	

The included document outlines and defines the following procedural guidelines for the effective and efficient operation of the SBA HUBZone Program:

- Overview, Application and Certification Processes
- Certification
- Protests
- Program Examinations
- Decertification
- Recertification
- Appendices

This document has been reviewed and cleared by all SBA program areas.

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Chapter 1.

The HUBZone Program

1. What Is the Purpose of the HUBZone Program?

The purpose of the Historically Underutilized Business Zone (HUBZone) Program is to increase employment opportunities, investment, and economic development in distressed urban and rural communities – historically underutilized business zones - by providing Federal contracting opportunities to qualified HUBZone small business concerns (SBCs).

2. What Is SBA Responsible for Under the HUBZone Program?

The SBA is responsible for certifying eligible firms as qualified HUBZone small business concerns; publication of a listing of HUBZone-certified firms for use by acquisition agencies and other interested parties; conducting program examinations on certified firms; adjudication of eligibility status protests, and appeals; decertifying firms no longer meeting eligibility requirements; conducting marketing and outreach to acquisition, economic development, and small business communities; and reporting of program activity and achievement.

3. What Are the Responsibilities of Acquisition Agencies?

Acquisition Agencies are responsible for achievement of annual procurement preference goals for the HUBZone Program through award of sufficient contracts to certified firms.

4. What Are the Benefits of the HUBZone Program?

By statute, Federal Agencies are required to award 3 percent of their prime contracts to qualified HUBZone small business concerns. Firms that are HUBZone-certified by the SBA are eligible for the following Federal procurement preferences:

- a. Application of a 10 percent price evaluation preference in full and open competition, for requirements above the simplified acquisition threshold. In such cases, the price offered by a HUBZone firm will be deemed lower than the price offered by the lowest, responsive large business offeror, as long as the HUBZone firm's price is not more than 10 percent higher than the price offered by that offeror.
- b. Award of contracts set-aside for competition among HUBZone-certified firms.
- c. Negotiation of sole source contracts if the contracting officer determines that: only one HUBZone-certified firm can satisfy the requirement; the anticipated award price of the contract is not more than \$5.5 million for manufacturing requirements, and not more than \$3.5 million for all other requirements; the vendor is responsible with respect to performance; and the award can be made at a fair and reasonable price.
- d. While there is no specific goal for award of subcontracts to HUBZone-certified firms, construction contracts exceeding \$1 million, and all other prime contracts exceeding \$550,000, must include, to the extent practicable, subcontracting plans that provide opportunities for HUBZone-certified firms.
See 13 CFR 126 Subpart F for additional Contractual Assistance information.

5. What Are the Roles and Responsibilities of the HUBZone Program Staff?

- a. The Director for HUBZone Program (D/HUBZone) is responsible for:
 - (1) Developing, and implementing program policies and procedures consistent with the Agency's strategic plans, goals, and objectives.
 - (2) Managing program activities including certification, de-certification, program examination, adjudication of eligibility status protests and appeals thereof.
 - (3) Managing program outreach and marketing to acquisition, economic development, and small business communities.
 - (4) Managing national-level relationships with external entities, and other Agency components including, but not limited to, the Offices of Chief Operating Officer, General Counsel, Inspector General, Field Operations, Chief Information Officer, and Chief Financial Officer.
 - (5) Monitoring, evaluating, and reporting program performance, and ensuring program compliance.
 - (6) Managing program financial, contractual, and human resources.
 - (7) Making final eligibility determinations, including certification, de-certification, and adjudication of program status protests.

- b. The Senior Program Analyst is responsible for:
 - (1) Providing senior level support in developing policies and procedures relevant to initial certification, recertification, and adjudication of protests.
 - (2) Providing guidance to, and monitoring performance, of the Program Analysts.
 - (3) Reviewing Program Analyst's recommendations and making senior level recommendations on applications for program certification and recertification; eligibility status protests, and de-certification actions.
 - (4) Reviewing program examination results, and recommending proposed actions.

- c. The Program Analyst is responsible for:
 - (1) Performing policy analyses including preparing assigned recurrent and ad hoc reports, studies and evaluations of program impact and effectiveness.
 - (2) Processing assigned applications for program certification through the HUBZone System.
 - (3) Initiating assigned de-certification proceedings.
 - (4) Processing assigned status protests.
 - (5) Preparing and processing assigned controlled correspondence.
 - (6) Participating in assigned marketing and outreach activities.

- d. The HUBZone Director is responsible for:
 - (1) Providing senior level of support in developing policies and procedures relevant to continuing eligibility to include recertification, decertification, program examinations, and specialized program initiatives.

- (2) Coordinating and monitoring all program activities in assigned geographical area, including the conduct of program examinations and program marketing and outreach at the state and local level in assigned geographical areas.
- (3) Managing relationships with assigned field offices and their staffs, in collaboration with the Office of Field Operations.
- (4) Coordinating, monitoring, and reporting activities of HUBZone Program Office Liaisons.
- (5) Providing contracting officials of assigned acquisition agencies guidance in use of the program.

6. What Are the Roles and Responsibilities of Other Small Business Administration Offices?

a. Administrator

- (1) The Administrator appeals contracting officers' decisions not to make requirements available for award as a HUBZone sole source or HUBZone set-aside contract. (See 13 CFR 126.610).
- (2) The Administrator changes the subcontracting percentage required of HUBZone SBC prime contractors, as appropriate. (See 13 CFR 125.5 (d)).

b. The Associate Administrator for Government Contracting and Business Development (AA/GC&BD) adjudicates appeals of HUBZone Program eligibility status protests.

c. The Associate Administrator for 8(a) Business Development (AA/8(a) BD) authorizes the release of 8(a) requirements for award under the HUBZone Program, as appropriate. (See 13 CFR 126.606.)

d. The District Director, through efforts of HUBZone Program Office Liaisons and assignment of other staff as necessary, is responsible for accomplishment of relevant district office HUBZone Program goals and objectives, and reporting and evaluation of such accomplishment.

e. The District HUBZone Program Office Liaison is responsible for:

- (1) Conducting HUBZone program examinations, including site visits, as necessary.
- (2) Conducting program marketing and outreach to state and local acquisition, economic development, and small business communities.
- (2) Serving as program expert at the District Office level and responding to general program inquiries.

f. The General Counsel is responsible for:

- (1) Reviewing proposed certification and de-certification actions for legal sufficiency, as necessary.
- (2) Providing legal support in adjudication of eligibility status protests and appeals and in other administrative matters.
- (3) Providing legal guidance on interpretation of pertinent statutes and regulations as they affect the HUBZone Program.

- g. The Director for Field Operations is responsible for collaborating with the Office of HUBZone Program regarding the coordination of HUBZone Program activities at the district office level.
- h. The Director for Government Contracting is responsible for providing assistance to the HUBZone Program by ensuring that formal size determinations are conducted, as needed; advocating use of the program by acquisition agencies at national and local levels; and providing outreach, training and technical assistance to interested parties, including acquisition and small business communities.

7. How Is HUBZone Program Information Provided?

The HUBZone Web-site (<http://www.sba.gov/hubzone/>) is the primary source of program information for applicants, certified firms, Federal procurement and contracting officials, and other interested parties. From time to time, the HUBZone Program develops and disseminates CDs, brochures, fact sheets, briefing materials, and other marketing and outreach tools. It also conducts program presentations and provides training to Federal agencies, small businesses, economic development entities, and other interested parties.

8. Who Addresses HUBZone Program Policy Issues and Questions?

- a. Eligibility and Certification - The HUBZone Program staff is responsible for answering eligibility and certification questions that cannot be resolved by District Program Office Liaisons. It should be noted that the D/HUBZone or designee is the final arbitrator for all eligibility and certification issues. The HUBZone Web-site (<http://www.sba.gov/hubzone>) lists the HUBZone Program staff points of contact.
- b. Contractual Assistance and Contract Performance Requirements- Federal Agencies' contracting officers are responsible for answering all questions relating to specific HUBZone Program contracts, awards, and related issues. Performance requirements and protests of a contract awards also are the responsibility of contracting officers. The HUBZone Program staff will address questions regarding eligibility status protests and appeals.

9. What Laws and Regulations Govern the HUBZone Program?

The following laws and regulations govern the HUBZone Program:

- a. Pub.L. No. 105-135 (Dec. 2, 1997)
- b. Pub.L. No. 106-554 (Dec. 21, 2000)
- c. Pub.L. No. 108-447 (Dec. 8, 2004)
- d. Pub. L. No. 109-59 (Aug. 10, 2005)
- e. 15 U.S.C. § 632(p)
- f. 15 U.S.C. §657a
- g. 13 C.F.R. part 121
- h. 13 C.F.R. part 125
- i. 13 C.F.R. part 126
- j. 48 C.F.R. § 19.13 (Federal Acquisition Regulations)

Chapter 2.

HUBZone Certification

1. What Are the Eligibility Requirements for the HUBZone Program?

To qualify for the HUBZone Program a firm must:

- a. Maintain a principal office located in a HUBZone and ensure that at least 35% of its employees reside in a HUBZone as provided in paragraph (b) (4) of this section; certify that when performing a HUBZone contract, at least 35% of its employees engaged in performing that contract will reside within any Indian reservation (if applicable) governed by one or more of the Indian Tribal Government owners, or reside within any HUBZone adjoining such Indian reservation. A HUBZone and Indian reservation are adjoining when the two areas are next to and in contact with each other; and
- b. The concern must “attempt to maintain” (see §126.103) that applicable employment percentage stated above during the performance of any HUBZone contract it receives.
 - (a) *Concerns owned by Indian Tribal Governments*—(1) *Ownership*. (i) The concern must be wholly owned by one or more Indian Tribal Governments;(ii) The concern must be wholly owned by a corporation that is wholly owned by one or more Indian Tribal Governments;(iii) The concern must be owned in part by one or more Indian Tribal Governments and all other owners are either United States citizens or SBCs; or (iv) The concern must be owned in part by a corporation, which is wholly owned by one or more Indian Tribal Governments, and all other owners are either United States citizens or SBCs.
 - (2) The concern must either: (i) Maintain a principal office located in a HUBZone and ensure that at least 35% of its employees reside in a HUBZone as provided in paragraph (b)(4) of this section; or (ii) Certify that when performing a HUBZone contract, at least 35% of its employees engaged in performing that contract will reside within any Indian reservation governed by one or more of the Indian Tribal Government owners, or reside within any HUBZone adjoining such Indian reservation. A HUBZone and Indian reservation are adjoining when the two areas are next to and in contact with each other; and (iii) The concern will “attempt to maintain” (see §126.103) that applicable employment percentage stated above during the performance of any HUBZone contract it receives.
 - (b) *Concerns owned by U.S. citizens, ANCs or CDCs*—(1) *Ownership*. (i) The concern must be at least 51% unconditionally and directly owned and controlled by persons who are United States citizens; (ii) The concern must be an ANC owned and controlled by Natives (determined pursuant to section 29(e)(1) of the ANCSA); or a direct or indirect subsidiary corporation, joint venture, or partnership of an ANC qualifying pursuant to section 29(e)(1) of ANCSA, if that subsidiary, joint venture, or partnership is owned and controlled by Natives (determined pursuant to section 29(e)(2)) of the ANCSA); or (iii) The concern must be wholly owned by a CDC, or owned in part by one or more CDCs, if all other owners are either United States citizens or SBCs;
 - 2) *Principal office*. The concern's principal office must be located in a HUBZone.
 - (3) *Employees*. At least 35% of the concern's employees must reside in a HUBZone.
 - (c) *Concerns owned by small agricultural cooperatives*—(1) *Ownership*. (i) A small

agricultural cooperative organized or incorporated in the United States; (ii) a small business concern wholly owned by one or more small agricultural cooperatives organized or incorporated in the United States; or (iii) A small business concern owned in part by one or more small agricultural cooperatives organized or incorporated in the United States, provided that all other owners are small business concerns or United States citizens.

(2) *Principal office.* The cooperative's principal office must be located in a HUBZone.

(3) *Employees.* At least 35% of the cooperative's employees must reside in a HUBZone.

(d) *Contract Performance.* Except for (a) (2) (ii) above, the concern must represent, as provided in the application, that it will “attempt to maintain” (*see* §126.103) having 35% of its employees reside in a HUBZone during the performance of any HUBZone contract it receives.

(e) *Subcontracting.* The concern must represent, as provided in the application, that it will ensure that it will comply with certain contract performance requirements in connection with contracts awarded to it as a qualified HUBZone SBC, as set forth in §126.700.

(f) *Size.* The concern, with its affiliates, must meet the size standard corresponding to its primary industry classification as defined in part 121 of this chapter. However, with respect to an agricultural cooperative, it is treated as a “business concern” and its member shareholders are not considered affiliated with the cooperative by virtue of their membership in the cooperative.

2. Where Are HUBZone Program Applications Available?

Applications are available on the HUBZone web-site (<http://www.sba.gov/hubzone/>). Applicants complete and submit electronic applications through the site. To ensure that applicants understand the application process an on-line application guide is available at the website.

3. What Is Required for Submitting a HUBZone Program Application?

HUBZone Program applicants must submit an electronic application. After the application is logged into the system, the applicant must complete an electronic verification to validate and authorize the processing of the application. Electronic verification can be accomplished at the time of application submission, or after the applicant receives an e-mail advising of the necessity to validate and authorize processing of the application.

- a. If an electronic verification is not accomplished within 10 calendar days of logging by the system, the system will automatically withdraw the application.
- b. If the verification is received within the prescribed time frame, the application will move from ‘logged’ to ‘received’ status.

While additional supporting documents for electronic applications are normally not required, in order to clarify information contained in an application, Program Analysts may request and consider such information and/or documentation, as necessary.

4. What Information Will SBA Consider In Processing HUBZone Program Applications?

The SBA will consider information contained in the verified electronic application, and any information submitted in response to requests for information or clarification. No other information will be considered from the applicant.

5. Does the HUBZone Program Give Present Effect to Future Conditions in Processing Applications for Program Certification?

A concern may apply to SBA and submit the required information whenever it can represent that it meets the eligibility requirements, subject to §126.309. All representations and supporting information contained in the application must be complete and accurate as of the date of submission. The application must be signed by an officer of the concern who is authorized to represent the concern.

6. How Many Days Does SBA Have To Process A HUBZone Program Application?

There is a regulatory requirement that an application must be processed within 30 calendar days from the receipt of a complete application, as practicable. An application is deemed complete if all required application information has been provided allowing the D/HUBZone to make a final determination. (13 CFR 126.306). The full process is presented in detailed form in the HUBZone Application User's Manual Internal Technical Guide.

7. What Does the Program Analyst Do Upon Receipt of an Application?

The Program Analyst should:

- a. Download the application from the tracking system. (Program Analysts can only download applications that are in the "received" status).
- b. Review the application and ensure that all of the required fields are complete.
- c. Request any clarification and/or supplemental documents necessary for the D/HUBZone to make a final eligibility determination. (See the following paragraph if the application is incomplete.)

8. What Does the Program Analyst Do If He/She Receives an Incomplete Application?

The Program Analyst must:

- a. Note the missing or incomplete information from the application.
- b. Contact the applicant (by e-mail or facsimile) and request additional information or clarification. The Program Analyst will advise that the requested information is required before the application can be processed and must be received within 5 business days.

(1) If the additional information is not received within 5 business days of the request date, the Program Analyst must withdraw the application; send an e-mail or facsimile to applicant stating the reason for the withdrawal; and inform the applicant that a new HUBZone Program application must be submitted.

(2) If the additional information is received within the prescribed time frame, the Program Analyst will complete his/her review, make an appropriate recommendation, and forward the application to the Senior Analyst. (See SOP Chapter 2 paragraph 7.)

9. How Does the Program Analyst Process a HUBZone Program Application?

- a. General Application Processing Guideline: The Program Analyst should conduct an initial review of all of the information and answers under each application section. This will help him/her understand the complexity of the application and highlight potential eligibility issues.
- b. Determine Principal Office Location: With certain exceptions for small businesses owned either by Indian tribal governments or corporations owned by Indian tribal governments, a firm's 'principal office' must be located in a HUBZone for it to be eligible for the HUBZone Program. The 'principal office' location will already be identified in the electronic application. This location must be the place where the greatest number of the concern's employees at any one location performs their work.
 - (1) For applicants in service or construction industries, 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.
 - (2) If no single location has the greatest number of employees (i.e., two or more locations are tied for having the greatest number of employees), no 'principal office' can be determined, and the firm will be found ineligible for certification.
- c. As circumstances dictate, it may be necessary for the Program Analyst to request and review documentation of occupancy of an address identified as a 'principal office.' Such documentation may include, but is not limited to, lease or rental agreements, and letters from municipal authorities certifying that an address is located in a specific census tract, county, or otherwise eligible geographical area.
- d. To establish appropriateness of identification of an address as a 'principal office,' it may be necessary for the Program Analyst to request and review employment information and documentation, including, but not limited to, employment and or payroll records and summaries, representations in the applicant's marketing materials (e.g., brochures and websites), and records in government-wide vendor databases (i.e., Central Contractor Registration, and/or its successors, if any).
- e. Check for affiliation with other businesses. The Program Analyst should consider subsidiaries of the applicant firm, ownership of other firms by the applicant's owner(s), contractual relationships with other firms, etc.
- f. Determine business size.
 - (1) A firm must be 'small' based on its primary North American Industry Classification System (NAICS) code to be eligible for the program.

- (2) Evaluate all of the size standards information and determine the applicant's size status. (See 13 CFR §§ 121.101, 103, 104, 106.)
 - a1.) If the Program Analyst cannot conclusively determine the firm's size, he/she should request that the Office of Government Contracting conduct a size determination. The request should include the application and any other information that may prove useful in making a determination, and should be addressed to the government contracting area office serving the area in which the principal office of the concern is located.
 - a2.) If a size standard determination has been requested, the Program Analyst should so notify the applicant, advise that the Area Office may request additional information, and provide the name and address of the Area Office that is conducting the size determination.
- g. Determine Ownership and Control by U.S. Citizens – Except for firms that are owned in whole or in part by community development corporations (CDCs), Alaska Native Corporations (ANCs), Indian Tribes, and small agricultural cooperatives, a firm must be at least 51% owned and controlled by persons who are U.S. citizens to be eligible for the program. (Note that corporations and other legal entities are not considered citizens for this purpose.) This is a two step process: determining the persons who own and control the business, and determining the citizenship of these persons. (See 13 CFR 121.101, 103 and 13 CFR 126.201 – 202.). To make this determination, it may be necessary to request and examine evidence of citizenship, including, but not limited to birth certificates, certificates of citizenship, passports, etc.
- h. Determine Residency of Employees - At least 35% of a business's employees must reside in a HUBZone. (See 13 CFR 126.103 and 200.) To make this determination, it may be necessary to request and examine evidence of HUBZone residency, including driver's licenses, voter registration cards, residential lease agreements, residential deeds, etc.
- i. Forward analysis and recommendation to the Senior Program Analyst for review.

10. What Must the Senior Program Analyst Do?

- a. Carefully review the Program Analyst's comments and recommendation contained in the HUBZone System, and corroborative documentation, as necessary, to establish that the Program Analyst's recommendation and rationale are appropriate.
- b. Using the HUBZone mapping system, confirm that the applicant's principal office is located in a qualified HUBZone.
- c. Confirm through copies of birth certificates, licenses, etc., that at least 51% of owners are U.S. citizens, a community development corporation, an Indian tribal government, an Alaska Native Corporation, or a small agricultural cooperation.
- d. Confirm through review of employee addresses that at least 35 percent of the employees are HUBZone residents.
- e. Forward to the Office of General counsel any applications that may need a legal analysis or interpretation.

- f. Forward the case, electronically to the D/HUBZone for final determination, or return it to the analyst for further processing or clarification.

11. How Is the Final Decision for HUBZone Program Certification Made?

The D/HUBZone reviews the application and the analysis and recommendations of the Program Analyst and the Senior Analyst in making an eligibility determination. The D/HUBZone renders the Agency's final decision on applications for program certification. The HUBZone System automatically issues decision letters and updates the HUBZone Tracking System, and publishes certification information in government-wide databases used by acquisition agencies.

An SBC that has been declined or de-certified may seek certification no sooner than one year from the date of decline or de-certification.

12. Can the D/HUBZone Reverse the Decision Not to Certify a Firm?

Except where the D/HUBZONE makes an incorrect determination based upon information contained in the application and/or submitted in response to request for clarification, or failed to consider such information in making a determination, the D/HUBZone will not reverse a decision to decline an application.

13. Does the HUBZone Program Have a Reconsideration or Appeal Process for Declined Applications?

No. There is no provision for reconsideration or appeal of the D/HUBZone's decision to decline an application. (See Title 13 CFR Sec. 126.306 (a). However, the D/HUBZONE may re-visit a case if it is demonstrated that the SBA made an error, or completely failed to consider significant facts contained in the application record. For these purposes, the application record consists of information contained in the electronic file at time of certification and any information responsive to the Agency's requests for clarification or for such information.

14. How Is the Status of HUBZone Program Applications Tracked?

The HUBZone Tracking System provides automated tracking of all application functions for certification into the HUBZone Program. The HUBZone electronic application automatically enters certain information into the HUBZone Tracking System.

15. How Is Certification of a 'Qualified HUBZone Small Business Concern' Published?

The HUBZone Tracking System will automatically transfer approval information to the HUBZone web page (<http://sba.gov/hubzone>), and to the firm's record in the Small Business Source System (accessed via the Dynamic Small Business Search function of the Central Contractor Registration (CCR)). (See SOP Chapter 3.)

16. What Happens If SBA Makes an Error in Certifying an Applicant, or Declining an Application for Certification?

If SBA makes an error in its determination of initial eligibility, as soon as the error becomes known to the Agency, the D/HUBZone will correct the error through the Reverse Decision Function of the HUBZone System. For instance, if a firm was denied certification for an administrative error on the part of SBA, the D/HUBZone will reverse that decision to allow the firm participation in the HUBZone Program. In this event, the effective date of the correction will be the same as the date of the erroneous decision.

Chapter 3.

HUBZone Status Protests

1. Who May Protest the Status of Qualified HUBZone Small Business Concerns (SBCs)?

SBA, contracting officers or any interested party may protest a proposed or apparent awardee's status as a qualified HUBZone SBC. (See 13 CFR 126.800.)

2. Who Is Considered an Interested Party?

Interested parties include the contracting activity's contracting officer, SBA, any concern that submits an offer for a specific HUBZone sole source or set-aside contract and any concern that submits an offer in full and open competition and its opportunity for award will be affected by a price evaluation preference given a qualified HUBZone SBC. (See 13 CFR 126.103.)

3. When Must a Protest be Submitted?

A protest must be submitted to the contracting officer:

- a. Within 5 business days after bid opening for sealed bids, if the price evaluation preference was not applied at the time of bid opening;
- b. By close of business on the fifth business day from the date of identification of the apparent successful procurement; and
- c. Five business days after notification of the successful offeror in a negotiated procurement.

4. What Is Required for Submitting a HUBZone Status Protest?

For protests to be accepted by SBA for processing, they must be:

- a. In writing (see 13 CFR 126.801 (b));
- b. Specific (see 13 CFR 126.801 (b));
- c. Timely (see 13 CFR 126.801 (d)); and
- d. Filed by an interested party (See 13 CFR 126.800).

There is no specific format for the protest. Contracting Officers and SBA must submit the protest directly to the D/HUBZone. Other interested parties must submit the protest to the Contracting Officer. The Contracting Officer will forward the protest to D/HUBZone. (See 13 CFR 126.801)

Protests concerning the size of the HUBZone SBC should be filed and are processed per 13 CFR 121. (See 13 CFR 126.801(a).)

5. How Many Days Does the Program Analyst Have To Process a HUBZone Status Protest?

A HUBZone SBC status protest must be processed within 15 business days after its receipt, unless the Contracting Officer has granted SBA an extension. (See 13 CFR 126.803(b).)

6. What Must the Program Analyst Do When a HUBZone Status Protest is Received?

Log the HUBZone Protest into the protest database/tracking system, and assign a case Number. Pull the HUBZone file folder and print a copy of the Protested HUBZone SBC's record from the HUBZone Tracking System and include it with the protest file. E-mail or fax a copy of the protest follow-up questionnaire (See Appendix E) to the Contracting Officer so that SBA has all necessary information to make the initial determination to proceed or dismiss.

- a. Determining Timeliness and Specificity
 - (1) Check to ensure that the protestor has submitted its protest on time. Also check to ensure that the protest is not premature (i.e., submitted before bid opening or notification of the intended award). The Contracting Officer must forward all protests that are not premature to the SBA. (See 13 CFR 126.801(d) and (e).)
 - (2) Check to ensure that the protest states specific grounds or allegations. If the HUBZone SBC is also being protested for size, contact the Contracting Officer and ensure that the information is forwarded to the appropriate Office of Government Contracting Area Office. (See 13 CFR 126.801 (a).)
 - (3) Prepare a follow-up questionnaire and review the protest ensuring that the information is complete. Forward the protest file folder to the Office of General Counsel (OGC) for review. The OGC will prepare a draft of the D/HUBZone's letter recommending that the Agency either dismiss or proceed with the protest.

- b. Notifying Protestor, Contracting Officer, and Protested HUBZone SBC
 - (1) Review the protest and the letter drafted by OGC. The letter should notify (by facsimile) the protested concern, Contracting Officer and the protestor of the date that the protest was received by SBA, and whether the protest will be dismissed (for being untimely, non-specific and/or for lack of standing) or processed.
 - (2) If the protest is dismissed, ensure that the letter states that the protest is dismissed because it is untimely, and/or not specific, and/or for lack of standing and whichever is appropriate. The D/HUBZone signs the letter (Appendix A) and the letter and a copy of the appeal procedures are faxed to the protestor and a copy to the Contracting Officer.
Enter the reason the protest is dismissed and the date that the dismissal letter is faxed into the protest database or HUBZone Tracking System.
 - (3) If the HUBZone protest is timely and specific and the protestor is an interested party, then review the notification letter (Appendix B) to the protested concern. The letter should include the identity of the protestor and the information required (see below) by SBA in order to determine the firm's eligibility regarding the specific issue(s) raised in the protest. The letter must be faxed to the CO, the protester and the protested concern. Attach a copy of the protest letter. The protested concern has five (5) business days to respond to the protest allegations and provide the requested information.

The notification letter should request information regarding one or more of the following items outlined below. The letter should include a statement that failure to cooperate may result in an adverse inference.

7. What Happens Once the Information Is Received From the Protested Concern in Response to the Protest Allegation(s)?

The information along with the protest file folder is taken to OGC for review and preparation of the draft determination letter. Once OGC completes its review, it returns the file and the draft determination letter to the HUBZone Office.

8. How Does the Program Analyst Determine Compliance with the Thirty-Five Percent (35%) Rule?

Determining compliance with the thirty-five percent rule may include reviewing at a minimum:

- a. Payroll records showing the number of employees and number of hours worked per week at the time offers/bids were submitted and at the time of the protest decision;
- b. HUBZone maps with the name and address of all HUBZone resident employees at the time offers/bids were submitted and at the time of the protest decision;
- c. Driver's license and/or voter's registration card (or signed statements from the employee if they do not have either a voter registration card or driver's license) for all HUBZone resident employees at the time offers/bids were submitted and at the time of the protest;
- d. A statement as to whether the employees listed are permanent employees, leased, temporary or independent contractors;
- e. The agreements evidencing that such employees are leased, temporary or independent contractors;
- f. Copies of state unemployment tax filings for the most recent quarter.

9. How Does the Program Analyst Determine the Principal Office?

Determining the principal office may include reviewing:

- a. Payroll records showing the number of employees and number of hours worked per week at the time offers/bids were submitted and at the time of the protest decision;
- b. Records indicating the location at which each employee performed his/her work at the time offers/bids were submitted at the time of the protest decision;
- c. Lease/rental agreement or property tax records for the principal office;
- d. For Service/Construction industry - records indicating those employees who were performing the majority of their work at job-site locations to fulfill specific contract obligations at the time offers were submitted (identify the job-site location at which each employee performed his or her work and the contract number for that job-site location);
- e. A statement as to whether the employees listed are permanent employees, leased, temporary or independent contractors;
- f. The agreements evidencing that such employees are leased, temporary or independent contractors;
- g. Copies of utility bills, (electricity, water, gas) etc. for principal office;
- h. Copies of state unemployment tax filings for the most recent quarter.

10. How Does the Program Analyst Evaluate a HUBZone Status Protest?

- a. General HUBZone Status Protest Evaluation Guidelines

The objective of the HUBZone status protest evaluation is to determine if the protested HUBZone SBC was in fact qualified for the HUBZone program at the time it submitted its offer/bid and at the time of award.

 - (1) Review only the eligibility issues raised in the protest letter. If during the review, an eligibility issue not raised in the protest is discovered, this should be discussed with the AA/HUB.
 - (2) If the response from the protested firm is incomplete, request further information from the protested concern until sufficient information is provided to make a determination of program eligibility.

- b. Determine Ownership and Control and U.S. Citizenship
 - (1) Evaluate all of the ownership and control information and determine the applicant's ownership and control status. (See 13 CFR 121.101, 103 and 13 CFR 126.200 – 202.)
 - (2) Review the proof of citizenship for all of the persons that you determine own and control the HUBZone SBC.

- c. Determine compliance with HUBZone Residency Requirements
 - (1) Review the total number of full-time/full-time equivalent employees.
 - (2) Review the proof of residency for the full-time/full-time equivalent employees designated as residing in a HUBZone.
 - (3) Review the total number of full-time/full-time equivalent employees designated as residing in a HUBZone.
 - (4) Calculate the percentage of full-time/full-time equivalent employees that reside in a HUBZone.

- d. Determine Principal Office
 - (1) Determine whether the principal office address is located in a HUBZone by running the address using the HUBZone mapping software.
 - (2) Review the payroll records to determine the total number of employees.
 - (3) Review the list of employees to determine the location where the greatest number of employees perform their work.
 - (4) Review the lease and other supporting documents, i.e., utility bills, to determine if address is same as claimed principal office address.

- e. Determine Protest
 - (1) Review the letter prepared by OGC and ensure that the file supports the facts contained in the letter.
 - (2) Review draft decision letter
 - (a.) If the protested firm is found to be eligible, the letter should be addressed to the protested concern denying the protest.
 - (b) If the protested firm is found to be ineligible, the letter should be

addressed to the protested firm sustaining the protest. The letter should outline the reasons why they were found to be ineligible at the time of bid/offer and at the time of the protest decision.

11. Who Makes the Final Decision for a HUBZone Status Protest?

The final decision for a HUBZone Status Protest is made by the D/HUBZone. After the D/HUBZone signs the decision letter, send the HUBZone status protest decision letter (see Appendix C) to the protestor, protested SBC, and the Contracting Officer along with a copy of the appeal rights and procedures.

12. Who May Appeal a Status Protest Determination?

The protested SBC, the protestor, or the Contracting Officer may appeal a status protest determination. (See 13 CFR 126.805.)

13. When Must an Appeal be Submitted?

An appeal must be submitted within 5 business days from the date the D/HUBZone decision is received.

14. What Is Required for Submitting an Appeal to a HUBZone Status Protest Determination?

For appeals protests to be accepted by SBA for processing, they must:

- a. Be timely (see 13 CFR 126.805 (b));
- b. Address clear and significant processing errors or a failure to consider one or more significant facts contained within the information supplied by the protestor or protested concern.
- c. Be in writing (see 13 CFR 126.805 (f)).

There is no specific format for the appeal. However, the appeal must specifically state why the determination was erroneous or what specific facts the D/HUBZone failed to consider. The appeal must be sent (in person, by facsimile, by express mail delivery, or by email) directly to the AA/GC&BD.

15. How Many Days Are Required To Process an Appeal to a HUBZone Status Protest Determination?

A HUBZone SBC status appeal determination must be processed within 5 business days after its receipt, if practicable.

Chapter 4

Program Examinations

1. Why Are Program Examinations Conducted?

The 1997 law creating the HUBZone Program (PL 105-135) calls on the SBA to establish procedures for verifying eligibility and states that the procedures “may provide for program examinations (including random program examinations).”

2. What Steps is Necessary for Executing a Program Examination?

There are five steps to executing the program examination process, and all are accomplished using the Program Examination System (PES).

- a. Selection of the Certified Firms for examination.
- b. Notification to the Selected Firms of pending examination.
- c. Notification to HUBZone Liaison of pending examination and need for review.
- d. Conduct of program examination by HUBZone Liaison.
- e. Review and decision by Headquarters of completed examination.
- f. Issuance of the decision notification to all concerned parties.

3. What Constitutes the Program Examination System (PES)?

- a. The Program Examination System (PES) is one section of the online HUBZone Program Examination Tracking System (PETS). The only information used in the examination process that is not electronic is the proof documents that are provided by the examined firm. The receipt and acceptability of the proof documents is electronically recorded. There are two elements to the PES:
 - (1) Program Examination Tracking System (PETS), and
 - (2) Program Examination Form (PEF).
- b. The Program Examination Tracking System (PETS) supports the selection of the small business concerns (SBCs) chosen for examination, management of the actual examinations, and process tracking of examinations from point of initial selection through final disposition. This system is used by both the HUBZone Headquarters Staff and District Office HUBZone Liaisons. PETS will keep track of the following:
 - (1) Small Business Concern Information
 - (2) Status Information
 - (3) Certification Information
- c. The Program Examination Form (PEF) is an electronic form completed and submitted by the SBC to respond to the required examination information.

4. How Are HUBZone Certified Firms Selected for a Program Examination?

The basis for authorizing these examinations could be the result of any of the following conditions:

- a. Random selection;
- b. Response to a notice of material change in eligibility submitted by a certified HUBZone concern; and
- c. Response to ‘credible evidence’ being made available to the Agency calling into question the HUBZone status of a small business concern.

5. Who Conducts Program Examinations?

The HUBZone Liaison within each SBA field office has the responsibility for conducting data collection and initial review of material collected in connection with program examinations, among other tasks. These examinations are executed in cooperation with and at the direction of HUBZone staff in Headquarters. The HUBZone Program is responsible for annually training all personnel in the proper execution of program examinations. Reporting responsibilities and performance reviews of District Office HUBZone liaison staff will be coordinated as needed by the D/HUBZone with the cooperation of the SBA Office of Field Operations.

6. How Are HUBZone SBCs Notified that They Will Be Examined?

- a. Using the PES, the HUBZone Liaison will notify the SBC of a pending program examination via e-mail (facsimile or regular mail are only to be used as alternatives when e-mail proves inoperable). Confirmation of receipt of this e-mail or similar communication also is the responsibility of the HUBZone liaison charged with conducting the program examination.
- b. The full process is presented in detail form in the HUBZone Program Examination User’s Manual (located in “Share”). The program examination e-mail is the opening communication that will introduce the SBC to an online process that allows the concern to acknowledge the pending program examination, to understand the requirements for responding (including required documentation), and to establish the timelines necessary for successful completion. (See Users Manual in “share”).
- c. The HUBZone SBC must acknowledge receipt of the initial program examination e-mail notification within ten calendar days and complete the online examination form within 20 calendar days. Failure to do so may result in the HUBZone SBC being proposed for decertification from the HUBZone program.
- d. The PES will record all electronic transactions for each individual program examination entered into the system.

7. What Is Required for a Program Examination?

The HUBZone SBC must provide the HUBZone Liaison with information and/or documents that support its claim of continuing eligibility to remain in the HUBZone Program. The Program Examination Form (PEF) will help identify all the documentation necessary

and stipulate in what form that information should be presented. A portion can be entered on-screen in the fields provided, but some (as indicated) must be submitted in hard copy format directly to the HUBZone Liaison.

The requested documents will be:

- a. An organization chart showing the names and locations of facilities and divisions, and the number of employees in each division. This is to identify/verify the HUBZone Principal Office (the location where the greatest number of the concern's employees at any one location perform their work).
- b. Documentation for any changes in name, organizational structure, and affiliation, documentation of any debarment action, if any.
- c. Lists of: owners, which may include officers, directors, general partners, managing partners, and managers.
- d. Proof of U.S. citizenship of at least 51% unconditionally and directly owned and controlled.
- e. Lease, rental agreement or property tax records for the HUBZone Principal Office as determined in Item 'a' of this examination.
- f. Payroll records, which will then be used to evaluate compliance with the HUBZone 35 percent employment requirement and the principal office requirement, except in those cases of tribally-owned concerns that choose to enter the program with the intent of complying with the 35% contract specific component of the HUBZone law available only to tribal concerns. These tribal concerns will need to demonstrate 35% HUBZone residency compliance if they declare they have received a HUBZone contract (*see 'h' below*) and the 35% HUBZone residency will then be specific to that contract.
- g. Three most recent Internal Revenue Service Federal tax returns.
- h. List of HUBZone contracts identifying procuring agency, date of bid submission, date of contract award, total dollar amount and HUBZone methodology used in awarding the contract (sole source, set-aside, or price evaluation preference in full and open competition).
- i. For partnerships, documentation establishing the business relationship as partners.
- j. For corporations, Articles of Incorporation with all restatements and amendments, Current By-Laws with all amendments, and corporate stock ledgers.
- k. For limited liability companies (LLC's), LLC agreements.
- l. For Sole Proprietorship, documentation for business structure.
- m. If the concern purports to be owned and controlled by an Alaska Regional or Village Corporation organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601), documentation evidencing such ownership and control to include any business structure mentioned previously in Items 'i' through 'l.'
- n. If the concern purports to be owned and controlled by a federally recognized Indian Tribal Government or tribal corporation wholly owned by one of more Indian Tribal Governments, documentation evidencing such ownership and control to include any business structure mentioned previously in Items 'i' through 'l.'
- o. If partially owned by one or more Indian Tribal Governments and remaining ownership rests with individuals, documentation evidencing such ownership and control to include any business structure mentioned previously in Items i through l. and providing that the other owners are U.S. citizens.

- p. If partially owned by one or more Indian Tribal Governments or a corporation which is wholly owned by one or more Indian tribal governments, and remaining ownership rests with small business concern(s), then each small business concern(s) must supply the following on a case by case basis:
- (1) Primary North American Industrial Classification System (NAICS) code,
 - (2) Average Annual Revenue for the past three (3) years, if applicable to primary NAICS to determine size;
 - (3) Average number of employees for the past 30 days, if applicable to primary NAICS to determine size.
- q. If the concern purports to be owned and controlled by a Community Development Corporation (a CDC that has received financial assistance pursuant to 42 U.S.C. §§ 9805-9808), documents evidencing such ownership and control to include any business structure mentioned previously in Items 'i' through 'l'.
- r. If partially owned by one or more CDCs and remaining ownership rests with individuals, then individual owners must demonstrate U.S. citizenship with proofs as detailed in Item 'd'.
- s. Proof of receipt of financial assistance pursuant to 42 USC §§ 9805-9808.
- t. If partially owned by one or more CDC and remaining ownership rests with small business concern(s), then each small business concern(s) must supply the following:
- (1) Primary NAICS code,
 - (2) Average Annual Revenue for the past three (3) years, if applicable to determine size;
 - (3) Average Number of Employees for the past 30 days, if applicable to determine size.
- u. If the concern purports to be owned and controlled by an agricultural cooperative, documents evidencing such ownership and control to include any business structure mentioned previously in Items 'I' through 'l'.
- v. If partially owned by one or more agricultural cooperatives and remaining ownership rests with individuals, then individual owners must demonstrate U.S. citizenship with proofs as detailed in Item 'd'.
- w. If partially owned by one or more agricultural cooperatives and remaining ownership rests with small business concern(s), then each small business concern(s) must supply the following on a case by case basis:
1. Primary NAICS code,
 2. Average Annual Revenue for the past three (3) years, on a case by case basis;
 3. Average Number of Employees for the past 30 days, on a case by case basis to determine size.

If the outcome of the examination is to recommend continuation, the HUBZone Liaison will return the original hard copy submission once the HUBZone director has taken final action to ratify the recommendation. If the outcome of the examination is to recommend decertification, the HUBZone liaison will retain in his/her possession the documentation submitted in connection with the program examination. The documentation may be retained in its original hard copy format on an electronically scanned facsimile for a six-year period.

8. How Many Days Does the HUBZone Liaison Have to Conduct a Program Examination?

Once a senior official from the HUBZone certified firm has acknowledged the initial e-mail notification on a pending program examination, the SBC will be given 20 calendar days to complete the response via the PEF and provide full documentation either online or using hard-copy submission as directed. The amount of time allocated to the HUBZone Liaison for each individual status varies and will be set in the PETS by HUBZone Headquarters, depending on district priorities and individual workload.

9. What Must the HUBZone Liaison Do If the Firm is Not Ready for the Program Examination?

A HUBZone SBC will be proposed for decertification if it:

- a. Does not acknowledge the receipt of notification of the program examination and any subsequent HUBZone Office communication issued in connection with the program examination;
- b. Does not agree to the conditions for completing the online program examination form;
- c. Fails to complete the Program Examination Form (PEF) and/or provide all necessary workload documentation.

10. How Does the HUBZone Liaison Conduct a Program Examination?

The objective of a program examination is to validate a HUBZone SBC's qualification by comparing the information submitted in the HUBZone application or most recent communication on recertification to physical evidence, interviews, and, when called for at the discretion of the D/HUBZone. The HUBZone SBC should comply with the requirements detailed in the PEF. The HUBZone Liaison should:

- a. Review the HUBZone SBC's electronic PEF, which allows for an on-screen comparison between the documentation resident in the HUBZone database and the more recent update provided by the firm participating in the review.
- b. Ensure that you are in receipt of all required documentation and that it is presented in the proper format.
- c. Determine eligibility areas that may require close scrutiny. Although the program examination will review all HUBZone eligibility areas, information from the HUBZone SBC or alternate sources may indicate that certain areas require a closer look than others.
- d. Become familiar with the company and its products and services. This includes checking any sources that may provide background information. For example, local Chamber of Commerce, marketing material, business plan (if an 8(a) firm), and company Web-site.
- e. Be familiar with the name, position and contact information for the company point of contact should additional material be required.
- f. Determine if any interviews are required with company personnel to clarify firm's response and, if they are required, forward the names and/or positions of the interviewees to the HUBZone SBC point of contact.

Reviewing the On-screen Program Examination Form (PEF)

- a. Once all information has been collected in proper format, access the SBC's electronic program examination file using the PETS.
- b. Determine whether the system's logic function has detected any reasons for decertification (e.g. – Located in an area other than a HUBZone, inappropriate ratio of HUBZone to non-HUBZone employees). Beyond this, compare the information submitted in the HUBZone application or recertification communication to the updated information submitted online using the PEF. This includes a review of materials such as:
 - (1) Company documents requested in the program examination notification.
 - (2) Interviews conducted with owners, officers, partners, managers, key personnel, or other employees.
 - (3) If called for, observations made at the work site.
- c. Your company document reviews, interviews, and observations should attempt to answers some of these questions:
 - (1) Is there anything that indicates that the principal place of business claimed by The business is inaccurate.?
 - (2) Does it appear that the HUBZone SBC is owned or controlled by persons not listed in the HUBZone application?
 - (3) How did the HUBZone SBC determine the citizenship of person(s) who own the business?
 - (4) Does the HUBZone SBC have business relationships with any other firms?
 - (5) Does the HUBZone SBC have accurate personnel records of all employees?
 - (6) How did the HUBZone SBC determine the residency for its employees?
- d. Completing the Program Examination
 - (1) Finish the program examination as directed in the PETS, including your personal recommendation based on your review of the appropriate material.
 - (2) Submit the completed review to the HUBZone senior analyst via the PETS.

11. How Is the Final Decision for the Program Examination Made?

The D/HUBZONE (or designee) makes the final decision for a HUBZone SBC to maintain its HUBZone status.

After the D/HUBZONE reviews the online file and initiates the proper course of action, the system generates appropriate electronic text and routes it to the subject firm, noting this disposition in the PETS file. All HUBZone liaisons will have access to this information so you can keep abreast of real-time developments as they occur.

The SBC's profile that is maintained in the Central Contractor Registration's (CCR's) Small Business Source System will be updated as needed to reflect the most current finding on HUBZone continuing eligibility. This profile can be accessed via the web using CCR's Dynamic Small Business Search function.

12. What Must the HUBZone Liaison Do If He/She Receives a Response from a HUBZone SBC Refuting the Program Examination Results?

A HUBZone SBC has 30 calendar days to respond to a proposed decertification decision and the proper submission route is directly to the D/HUBZone in Washington, DC. If a response is not received, the initial decision to decertify will be executed. If a response is inappropriately received by the HUBZone liaison, that provider will immediately forward that material to the D/HUBZONE in Headquarters.

13. How Is the Approved HUBZone List Updated After A Program Examination Is Completed?

The HUBZone PES will automatically transfer updated status indicators to the database serving the CCR's Small Business Source System, as well as corrected dates to the database supporting the display that appears on the HUBZone web site at <http://www.sba.gov/hubzone> . The HUBZone PES will also automatically transfer decertification information to these same databases, changing the concern's profile to reflect the loss of HUBZone status.

Chapter 5.

Decertification

1. How Does a Firm Exit the HUBZone Program?

A firm may exit the HUBZone Program of its own volition, through voluntary de-certification. Or, it may exit the Program through a de-certification process.

2. Why Is a Firm Decertified from the HUBZone Program?

A firm is Decertified from the HUBZone Program for failure to comply with statutory or regulatory eligibility requirements, or because it no longer wishes to be certified under the Program.

3. How Is a Firm Decertified from the HUBZone Program?

A firm may be decertified from the HUBZone Program in the following ways:

- a. Through voluntary decertification;
- b. Through failure to rebut a proposed decertification;
- c. As a result of the D/HUBZone sustaining a HUBZone status protest.
- d. Through adverse inference arising from non-responsiveness.

The full process is presented in detailed form in the HUBZone Decertification User's Manual, a Technical Guide that is available in "Share".

The HUBZone Deputy Director, or Lead /Senior Program Analyst acting in his/her behalf, proposes decertification through the Decertification Module of the HUBZone System.

4. How Is a Voluntary Decertification Processed?

If a firm initiates a voluntary decertification of its own volition, or pursuant to a proposed decertification, and submits it to the Agency:

- a. Electronically via the Internet, the Decertification Module of the HUBZone System will post the information to the Small Business Source System (SBSS) and to the government-wide vendor database, the Central Contractor Registration (CCR), or its successor, and issue a decertification letter, with no manual intervention.
- b. In hard copy, the HUBZone Director, or Deputy Director acting in his/her behalf, will manually execute the voluntary de-certification agreement, and process the de-certification through the HUBZone System. In turn, the system will automatically post the decertification action to the SBSS and CCR, and issue a de-certification letter.

5. How Is a Decertification Action Processed?

- a. Proposal of decertification is the first step in process of removal of a firm from the HUBZone Program. In this step, a firm is formally advised that it is believed to be non-compliant with program requirements, given the facts that have led to this conclusion, and provided a period time – thirty calendar days from the date of service – to rebut the proposed action.
- b. A proposed decertification may be based on credible information from a variety of sources, including, but not limited to, Agency staff at Headquarters and Field Offices, Office of the Inspector General, acquisition agencies, and other interested parties in the general public.
- c. Credible information challenging a firm’s eligibility will be assessed by the HUBZone Program Liaison in the servicing District Office or the Office of HUBZone Program, as appropriate. The information indicating possible ineligibility should be compared with information contained in the electronic record of the HUBZone System, and information contained in the HUBZone Program Office case file.
- d. Based on initial assessment, the analyst may propose that a program examination be conducted or that the firm be decertified. In the event of the former, the action will be processed through the Program Examination Module of the HUBZone System. In the event of the latter, the analyst will forward the recommendation to the Lead/Senior Program Analyst, with a justification for proposing decertification. The justification should be prepared in electronic format and should be detailed but succinct. This justification will become the basis for a proposed de-certification letter, if such is issued.
- e. Based on the analysis and recommendation, if warranted, the Deputy Director, or Lead /Senior Program Analyst acting in his/her behalf, will propose decertification through the Decertification Module of the HUBZone System. The system will issue a proposed decertification letter for delivery to the firm via e-mail. The letter also will be sent via certified mail and faxed to the firm.
- f. Decertification is the second step in the process. A final determination by the HUBZone Director, or the Deputy Director acting in his/her behalf, to remove a firm from the HUBZone Program for failure to comply with its requirements. A firm is decertified if it fails to rebut a proposed decertification with information that conclusively addresses the apparent non-compliance in a timely manner. If a firm fails to respond to a proposed decertification, the Agency will draw an adverse inference that the firm is non-compliant, and will process the final decertification action which will automatically post the decertification action to the SBSS and CCR, and issue a de-certification letter.
- g. If a firm submits information rebutting the proposed decertification, the Lead/Senior Program analyst will review the information for timeliness and responsiveness.
 - (1) If the rebuttal proves that the HUBZone small business concern meets the eligibility requirements of the program, the Lead/Senior Analyst will recommend that the firm not be de-certified. In this event, the Director, or Deputy Director acting in his/her behalf will reverse the decision in the Decertification Module of the HUBZone System, and an advisory letter will be issued to the firm electronically.
 - (2) If the rebuttal does not prove that the HUBZone small business concern meets the eligibility requirements of the program, the Lead/Senior Analyst will recommend that the firm be decertified. In this event, the Director, or Deputy Director acting in his/her behalf will process the action through the Decertification Module of the HUBZone System. In turn, the system will

automatically post the de-certification action to the SBSS and CCR, and issue a de-certification letter for delivery via e-mail.

6. What Information Will SBA Consider in Making a Decision to Decertify a Firm or Continue Eligibility?

The SBA will consider information provided in response to a proposed de-certification and any other information or clarification requested bearing on compliance with eligibility requirements. If additional information appears to be needed, at any point in the de-certification process, the Office of HUBZone Program may request/conduct a program examination. Further, at any point in the de-certification process, the Office of HUBZone Program may request review or comments from the Office of General Counsel, the Office of Size Standards, or other SBA offices, as necessary.

7. What Is the Timeframe for Processing Decertification Actions?

- a. If a firm is to be Decertified through voluntary decertification, the action should be processed within 10 calendar days (unless this is not reasonably possible) of receipt of such notice from the firm.
- b. If a firm is to be decertified for non-responsiveness to a proposed de-certification, the action should be processed upon determination of non-responsiveness.
- c. If a firm is to be decertified based upon failure to adequately rebut a proposed decertification, the action should be processed upon completion of the analysis of submitted information.

8. What Happens If SBA Makes an Error in Proposing Decertification of a Firm?

If SBA makes an error in proposing decertification of a firm, as soon as the error becomes known to the SBA, the DD/HUBZone will correct it through the Reverse Decision Function of the HUBZone System. The effective date of the correction will indicate a decision that the firm is qualified.

Chapter 6

Recertification

1. How Often Does SBA Recertify Firms as “Qualified HUBZone Small Business Concern?”

The SBA recertifies firms as ‘qualified HUBZone small business concerns’ every three years. Firms that have not been previously decertified must be recertified within 30 calendar days after the third anniversary of certification, or most recent recertification.

2. What Does SBA Consider in Making a Determination of Continuing Eligibility?

The SBA will consider information provided by the firm through the recertification update process, and any other information or clarification it may request during the recertification process bearing on compliance with program eligibility requirements.

3. How Are Firms Recertified in the HUBZone Program?

Firms are recertified for the HUBZone Program through the Recertification Module of the HUBZone System. The Recertification Module generates all required documentation and tracks all processing actions.

- a. Prior to the third anniversary of the firm’s certification or most recent recertification, the system will initiate the process by issuing electronic notification to the firm. This notification advises the firm to supply updated information relevant to determination of continued eligibility. The SBA will consider the information provided by the firm through the update process, and any other information or clarification it may request during the re-certification process bearing on compliance with program eligibility requirements.
- b. The firm will provide updated information to the HUBZone System via the Internet.

4. Who Processes Recertification Actions?

- a. The assigned program analyst will review the updated information and request any additional or clarifying information. The Recertification Module will provide for side-by-side comparison of updated information with application, program examination, and prior recertification information. However, additional information or clarification may be requested and received or reviewed via e-mail, fax, telephone, or in person. In this event, the information should be included in the application file. Based on analysis of available information, the program analyst will recommend recertification or de-certification to the lead/senior program analyst.
- b. The lead analyst reviews the analysis and recommendations of the program analyst and supporting information, and recommends recertification or decertification to the D/HUBZone or DD/HUBZone. At any point in the recertification process, the Office of HUBZone Program may request review or comment from the Office of General Counsel, Office of Size Standards or other SBA offices, as necessary

- c. The D/HUBZone will review the analysis, and make a final determination to recertify or propose the firm for decertification. The HUBZone System will post the decision to the Small Business Source System (SBSS) and the Central Contractor Registration (CCR), or its successor, and issue a recertification letter or proposed de-certification letter for issuance via e-mail.
- f. If the Office of HUBZone Program deems it necessary when considering whether to recertify a firm, it can initiate a program examination. In this event, the action will be processed through the Program Examination Module of the HUBZone System.

5. What Information Will SBA Consider in Making a Decision to Recertify a Firm?

- a. The SBA will consider information provided in the update process and any other information or clarification it requests during the recertification process.
- b. If additional information appears to be needed, at any point in the recertification process, the Office of HUBZone Program may request the information or conduct a program examination. In this event, the action will be processed through the Program Examination Module of the HUBZone System.
- c. If necessary, at any point in the recertification process, the Office of HUBZone Program may request review or comments from the Office of General Counsel, the Office of Size Standards, or other SBA component.

6. What Happens If a Firm Fails to Provide Updated Information Pursuant to a Recertification Action?

If a firm fails to provide updated information pursuant to a re-certification action, SBA will draw an adverse inference from such non-responsiveness and propose de-certification. In this event the action will be processed through the De-certification Module of the HUBZone System.

7. What Happens If SBA Recertifies a Firm?

If the D/HUBZone or DD/HUBZone acting in his/her behalf, re-certifies a firm, the HUBZone system will automatically issue a letter to that effect, bearing the date of re-certification, the application number, and SBA identification number. The system will also post recertification information to the SBA's Small Business Source System (SBSS), and to the government-wide vendor database Central Contractor Registration (CCR) or its successor.

8. What Happens if SBA Receives Information Advising of a Material Change Affecting Program Eligibility?

If SBA receives information regarding a material change affecting a firm's eligibility, the Office of HUBZone Program will assess the information, and determine whether to conduct a program examination or to propose de-certification. In the event of the former, the action will be processed through the Program Examination Module of the HUBZone System. In the event of the latter, the action will be processed through the De-certification Module of the HUBZone System.

9. What Happens If SBA Makes an Error in Recertifying a Firm?

If SBA makes an error in recertifying a firm, as soon as the error becomes known to the Agency, the D/HUBZone or DD/HUBZone acting in his/her behalf, will correct it through the Reverse Decision Function of the HUBZone System. In this event, the effective date of the corrections will be the same as the date of the erroneous decision.

APPENDICES

Appendix A. Sample Protest Dismissal Letter
(Chapter 3 para. 6. b. (2))

Sent Via Facsimile

Re: HUBZone Protest by _____ Under Solicitation No. _____
HUBZone Customers and Services Providers

Dear M . _____:

This is to inform you that your recent protest challenging the status of _Protested Firm_____, Inc. as a HUBZone Small Business Concern (“SBC”) for the referenced solicitation, has been dismissed because _____ under governing HUBZone regulations.

Current HUBZone regulations require that a protest must “_____”.

In your protest, dated _____, you allege _____ contrary to the requirements of 13 C.F.R. § 126.801(b), you provide no specific facts or allegations to support your claim.

In the absence of specific facts that _____, I must dismiss your protest pursuant to 13 C.F.R. § 126.804, for lack of _____.

(Enter Specific Facts regarding the protest), the contracting officer, or Name protestor may appeal this decision to Associate Administrator for Government Contracting and 8(a) Business Development (“AA/GC&BD”), 409 3rd Street, SW, Washington, DC 20416, facsimile (202) 205-5206. The appeal must be received within five business days after receipt of this letter. The appeal may be filed by facsimile, express delivery service, U.S. mail (postmarked within the applicable time period), or hand delivery. SBA will dismiss any appeal received after the five-day period. Pursuant to 13 C.F.R. § 126.805(d), the party bringing the appeal must provide a notice of the appeal to the contracting officer and either the protestor or the protested concern, as appropriate.

On appeal, SBA will re-examine a protest determination only if there was a clear and significant error in the processing of the protest or if I failed completely to consider a significant fact contained within the information supplied by the protestor or the protested HUBZone SBC. SBA will not consider additional information or changed circumstances that were not disclosed at the time of my decision or that are based on a disagreement with the findings and conclusions contained in this determination.

All appeals must be in writing, identify the protest determination being appealed, and set forth a full and specific statement as to why the decision is erroneous or what significant fact I failed to consider.

If there is a timely appeal, SBA will make its decision within five business days of receiving the appeal, if practicable, and will base its decision only on the information and documentation in the protest record as supplemented by the appeal. The AA/GC&BD’s decision is the final agency decision. An appeal may proceed to completion even after award of the contract that prompted the protest, if so desired by the protested HUBZone SBC, or where SBA determines that the decision on appeal will be meaningful. SBA will provide a copy of its appeal decision to the CO, the protestor, and the protested concern.

Sincerely,

Director
HUBZone Program

Attachments

cc: Contracting Officer

Appendix B. Sample Protest Notification Letter
(Chapter 3 Para. 6. b. (3))

Re: HUBZone Protest of (Protestor's Company name) under Solicitation No. _____

Dear M _____:

This office is in receipt of (Protestor's Company name) (date of protest) protest concerning the HUBZone status of (Name of Protested Firm). I have attached a copy of the protest letter.

The U.S. Small Business Administration's (SBA's) regulations define an interested party as "any concern that submits an offer for a specific HUBZone sole source or set-aside contract. . . ." 13 C.F.R. § 126.103.

(d) *Timeliness.*

(1) For negotiated acquisitions, an interested party must submit its protest by close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror.

(2) For sealed bid acquisitions:

(i) An interested party must submit its protest by close of business on the fifth business day after bid opening, or

(ii) If the price evaluation preference was not applied at the time of bid opening, by close of business on the fifth business day from the date of identification of the apparent successful offeror.

(3) Any protest submitted after the time limits are untimely, unless it is from SBA or the CO.

(4) Any protest received prior to bid opening or notification of intended award, whichever applies, is premature.

(e) *Referral to SBA.* The CO must forward to SBA any non-premature protest received, notwithstanding whether he or she believes it is sufficiently specific or timely. The CO must send the protests, along with a referral letter, to D/HUB, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416. The CO's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including: the solicitation number; the name, address, telephone number and facsimile number of the CO; the type of HUBZone contract at issue; if the procurement was conducted using full and open competition with a HUBZone price evaluation preference, and whether the protester's opportunity for award was affected by the preference; if the procurement was a HUBZone set-aside, whether the protester submitted an offer; whether the protested concern was the apparent successful offeror; whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when the protest was submitted to the CO; and whether a contract has been awarded.

[63 FR 31908, June 11, 1998, as amended at 69 FR 29427, May 24, 2004]

The solicitation at issue, No. _____, issued by the _ (Contracting Agency) ___, was a HUBZone set-aside. Because _____ submitted an offer in response to this solicitation, it

is an interested party. _____ received notification from the contracting officer on _____ that the _____ was going to award the contract to _____. Thus, _____ submitted its protest on time.

Insert protest allegations here:

The protest has been determined to have been submitted on time and I find that it is specific.

Accordingly, _____ has five business days from receipt of this letter to submit information in response to _____'s protest allegation(s) that _____ does not meet the HUBZone _____ requirement(s). Thus, _____ must provide supporting documents evidencing that its principal office was located in a HUBZone at the time it submitted its (bid or offer) (date of bid or offer here) for the above-referenced solicitation. The supporting documents should include, but are not limited to the following:

(List of documents/information needed for review – See Appendix L)

Please note that failure to provide sufficient information or supporting documents to establish _____'s HUBZone eligibility may result in an adverse inference.

_____’s response must be sent to Director for the HUBZone Program, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416, facsimile (202) 205-7167. Pursuant to 13 C.F.R. § 126.803(a) (2), SBA must receive _____’s response no later than the close of business on _ (5 days from when letter expected to be faxed).

SBA will determine the HUBZone status of the protested HUBZone SBC within fifteen business days after receipt of a protest. 13 C.F.R. § 126.803(b). SBA will notify _____, the protestor, and the CO of its determination. That determination will be effective immediately and will be final, unless overturned on appeal.

Thank you for your cooperation with this matter. If you have any questions, please contact _____ at (202) _____.

Sincerely,

Director
HUBZone Program

cc (via facsimile): Contracting Officer Protestor

Appendix C. Sample Protest Decision Letter
(Chapter 3 Para. 12)

Sent Via Facsimile

RE: HUBZone Protest by _____ under _____

Dear Mr.

This is to notify you that based on the information provided to me in a HUBZone protest filed by _____ Protestor _____ and your response to that protest, I am denying _____ Protestor _____ protest. This determination is effective immediately and is final unless overturned on appeal. The following sets forth the bases for my decision.

_____ Protestor _____ has made the following allegations in its protest:

In response to the protest, you provided _____. Based on the records you provided _____, the CO or _____ may appeal this decision to _____ AA/GC&BD. The appeal must be received within five business days after receipt of this letter. The appeal may be filed by facsimile, express delivery service, U.S. mail (postmarked within the applicable time period), or hand delivery. The AA/GC&BD may be reached at the U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416, and facsimile (202) 205-5206. SBA will dismiss any appeal received after the five-day period. Pursuant to 13 C.F.R. § 126.805(d), the party bringing the appeal must provide a notice of the appeal to the CO and either the protestor or the protested concern, as appropriate. On appeal, SBA will re-examine a protest determination only if there was a clear and significant error in the processing of the protest or if I failed completely to consider a significant fact contained within the information supplied by the protestor or the protested HUBZone SBC. SBA will not consider additional information or changed circumstances that were not disclosed at the time of my decision or that are based on a disagreement with the findings and conclusions contained in this determination. All appeals must be in writing, identify the protest determination being appealed, and set forth a full and specific statement as to why the decision is erroneous or what significant fact I failed to consider. If there is a timely appeal, SBA will make its decision within five business days of receipt of the appeal, if practicable, and will base its decision only on the information and documentation in the protest record. The AA/GC&BD's decision is the final agency decision. An appeal may proceed to completion even after award of the contract that prompted the protest, if so desired by the protested HUBZone SBC, or where SBA determines that the decision on appeal will be meaningful. SBA will provide a copy of its appeal decision to the CO, the protestor, and the protested concern. We have attached a copy of the regulations governing such appeals.

Thank you for your cooperation with this matter.

Sincerely,

Director
HUBZone Program

Enclosure

cc: Contracting Officer

Appendix D. Sample Protest Appeal Decision Letter
(Chapter 3 Para 15)

Sent Via Facsimile

Re: Appeal of HUBZone Protest under Solicitation No.

Dear M

This is in response to your timely ____ (DATE) _____ appeal of the denial of your HUBZone protest in connection with the referenced solicitation. On _____ SBA received from the (NAME of Contracting Agency) your protest against (NAME of Protested Firm).

SBA's Director for the HUBZone Contracting Program (D/HUBZONE), issued his decision on your protest on (DATE OF D/HUBZone's Decision). The decision dismissed your protest as being _____ under the applicable regulations.

SBA will reexamine a HUBZone protest determination only if there was a clear and significant error in the processing of the protest or if the D/HUBZONE failed completely to consider a significant fact contained within the information supplied by the protestor. 13 C.F.R. § 126.805(e). SBA will not consider additional information or changed circumstances that were not disclosed at the time of the D/HUBZone's decision or that are based on disagreement with the findings and conclusions contained in the determination.

For the reasons stated below, I _____ the _____ of your protest.

(Include information from file after reviewing the appeal)

Accordingly, I find that there was clear/no clear and significant error in the D/HUBZone's dismissal of your protest and I am therefore _____. Pursuant to 13 C.F.R. § 126.805(h), this is the final agency decision on your protest.

Sincerely,

Associate Administrator
Government Contracting and
Business Development

cc: Contracting Officer

Appendix E. Sample Protest Follow-up Questionnaire
(Chapter 3 para.6)

This is to confirm receipt of the HUBZone protest of _____ by _____ for the subject solicitation. Before we can begin the review of the protest we must have the following information:

1. What type of HUBZone contract (HUBZone set aside, HUBZone sole source, full and open with HUBZone Price Evaluation Preference (PEP) is at issue?
2. If it was full and open competition with a HUBZone PEP, is the protestor's opportunity for award affected by the PEP (e.g., was the protestor in the competitive range)?
3. If it was a HUBZone set-aside, did the protestor submit an offer?
4. Is the protested concern the apparent successful offeror?
5. Was it a sealed bid or negotiated procurement?
6. Date initial offers or bids (Solicitation Closing Date) were due to the procuring activity. If date was extended, indicate the amendment number and extension date.
7. Date protested firm submitted its initial bid or offer to the contracting activity?
8. What was the bid opening or letter of intent to award date?
9. When was the protestor notified of the apparent successful offeror?
10. When was the protest submitted to the CO?
11. Has a contract been awarded?
12. What is the solicitation and, if applicable, contract number?
13. Provide the name of the contracting officer, phone and fax numbers.
14. The name of the procuring agency and contracting activity, if not the same organization.

If you have any questions regarding the above, call or e-mail me at (202) 205-8885. Thank you.