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LEGAL STATUS

Federal Acquisition Regulation: Update of Historically Underutilized Business Zone Program

A Rule by the [Defense Department](#), the [General Services Administration](#), and the [National Aeronautics and Space Administration](#) on [09/23/2022](#)

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FAC 2022-08

FAR Case 2019-007

Item III

Docket No. FAR-2019-0007, Sequence No. 1

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ENHANCED CONTENT**Docket Number:**FAR-2019-0007 (<https://www.regulations.gov/docket/FAR-2019-0007>)**Docket Name:**

Federal Acquisition Regulation: Update of Historically Underutilized Business Zone Program (FAR Case 2019-007)

Docket RIN9000-AN90 (<https://www.federalregister.gov/regulations/9000-AN90/federal-acquisition-regulation-far-far-case-2019-007-update-of-historically-underutilized-business-z>)**Supporting/Related Materials:**Federal Acquisition Regulation: Update of Historically... (<https://www.regulations.gov/document?D=FAR-2019-0007-0004>)Federal Acquisition Regulation: Update of Historically... (<https://www.regulations.gov/document?D=FAR-2019-0007-0001>)

ENHANCED CONTENT

PUBLISHED DOCUMENT**AGENCY:**

Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION:

Final rule.

SUMMARY:

DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement changes to the Small Business Administration's regulations for the Historically Underutilized Business Zone Program to reflect current policies, eliminate ambiguities, and reduce burdens on small businesses and procuring agencies.

DATES:

Effective October 28, 2022.

FOR FURTHER INFORMATION CONTACT:

Ms. Malissa Jones, Procurement Analyst, at 703-605-2815 or by email at *Malissa.Jones@gsa.gov* (*mailto:Malissa.Jones@gsa.gov*) for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or *GSARegSec@gsa.gov* (*mailto:GSARegSec@gsa.gov*). Please cite FAC 2022-08, FAR Case 2019-007.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 86 FR 31468 (/citation/86-FR-31468) on June 14, 2021, to implement regulatory changes made by the Small Business Administration (SBA) to the Historically Underutilized Business Zone (HUBZone) Program. Following a review of its HUBZone program regulations, SBA issued a final rule on November 26, 2019, at 84 FR 65222 (/citation/84-FR-65222), to update its regulations to reflect current policies, eliminate ambiguities, and reduce burdens on small businesses and procuring agencies. For details see the proposed rule and Section IV below.

Two respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule; however, no changes were made as a result of the public comments received. A discussion

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of the comments received is provided as follows:

A. Summary of Significant Changes From The Proposed Rule

There are no significant changes from the proposed rule.

B. Analysis of Public Comments

1. SUPPORT FOR THE RULE

Comment: One respondent expressed support for the rule.

Response: The Councils acknowledge the respondent's support for the rule.

2. CLARIFICATIONS

Comment: One respondent questioned the need for a checkbox for HUBZone “self-certification” in the representations at FAR 52.212-3(c)(10)(i) and 52.219-1(c)(8)(i) if a firm's HUBZone status is determined by the Small Business Administration (SBA).

Response: This rule implements SBA's final rule published November 26, 2019, at 84 FR 65222 (/citation/84-FR-65222), which modified the HUBZone certification process to reduce the burden on HUBZone small business concerns. As a result, HUBZone entities are certified by SBA annually, which will allow entities to remain eligible for future HUBZone contracts for the entire year, rather than having to represent its status with each offer. However, the checkbox in the representations is still necessary, as a HUBZone entity must represent whether it is or is not a HUBZone small business concern certified by SBA in the Dynamic Small Business Search (DSBS) and represent that it will attempt to maintain an employment rate of HUBZone residents of 35 percent of its employees during performance of a HUBZone contract in accordance with 13 CFR 126.200(e)(1) ([https://www.ecfr.gov/current/title-13/section-126.200#p-126.200\(e\)\(1\)\)](https://www.ecfr.gov/current/title-13/section-126.200#p-126.200(e)(1)))).

3. OUTSIDE THE SCOPE OF THE RULE

Comment: One respondent recommended increasing the number of HUBZone small business set-asides.

Response: This is outside the scope of this rule.

C. Other Changes

This rule makes minor editorial changes from the proposed rule in FAR parts 2 and 19, in the provisions at FAR 52.212-3, Offeror Representations and Certifications—Commercial Products and Commercial Services, and 52.219-1, Small Business Program Representations, and in the clauses at 52.219-8, Utilization of Small

Business Concerns, and 52.219-9, Small Business Subcontracting Plan.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items, or for Commercial Services

This rule amends the provision and clauses at FAR 52.212-3, 52.212-5, 52.213-4, 52.219-1, 52.219-3, 52.219-4, 52.219-8, 52.219-9, and 52.244-6. The provisions and clauses associated with implementation of the HUBZone program continue to apply to acquisitions for commercial products, including COTS items, or for commercial services. As explained below, this rule also applies all HUBZone program provisions and clauses to acquisitions at or below the SAT.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 (<https://www.govinfo.gov/link/uscode/41/1905>) governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the Federal Acquisition Regulatory Council (FAR Council) makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law. The FAR Council has made a determination to apply this statute to acquisitions at or below the SAT.

B. Determination

The HUBZone Act of 1997, including 15 U.S.C. 657a (<https://www.govinfo.gov/link/uscode/15/657a>), tasks SBA with administering a program to assist participating small businesses located in areas with low income levels, high poverty and high unemployment rates, Indian reservations, closed military bases, or disaster

areas with contracting opportunities in the form of set-asides, sole-source awards, and price-evaluation preferences. Its primary objectives are job creation and increased capital investment in distressed communities.

The law is silent on the applicability of these requirements to acquisitions at or below the SAT and does not independently provide for criminal or civil penalties; nor does it include terms making express reference to 41 U.S.C. 1905 (<https://www.govinfo.gov/link/uscode/41/1905>) and its application to acquisitions at or below the SAT. Therefore, it does not apply to acquisitions at or below the SAT unless the FAR Council makes a written determination as provided at 41 U.S.C. 1905 (<https://www.govinfo.gov/link/uscode/41/1905>).

The FAR Council implemented the SBA's HUBZone program, which implemented the HUBZone Act, through an interim rule published on December 18, 1998 and effective on January 4, 1999 (63 FR 70265 (/citation/63-FR-70265)). A final rule was published on September 24, 1999 (64 FR 51830 (/citation/64-FR-51830)). The FAR rule added the HUBZone Act to the list of laws inapplicable to contracts and subcontracts at or below the SAT at FAR 13.005. This final rule removes the HUBZone Act from the list of laws inapplicable to contracts and subcontracts at or below the SAT at FAR 13.005 and makes other conforming changes.

Applying the rule to acquisitions at or below the SAT furthers the longstanding policy expressed in FAR 19.201 of promoting “maximum practicable opportunities” to HUBZone contractors in Government contracting and the Administration's express commitment, reflected in E.O. 13985 (/executive-order/13985), Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, to advance equity for underserved communities. According to the Federal Procurement Data System, an average of 108,233 contracts per year resulted from FAR part 19 set-asides and sole-source awards at or below the SAT during fiscal years 2019 through 2021. Failure to apply the HUBZone Act to the significant number of acquisitions that are conducted each year at or below the SAT would prevent agencies from using

the authorities of this program to maximize opportunities for HUBZone small businesses in the Federal marketplace. The Federal Government has a policy of promoting HUBZone participation in Government contracting. The Small Business Act (Section 15(g)(1), 15 U.S.C. 644(g)(1) (<https://www.govinfo.gov/link/uscode/15/644>)) includes a 3% annual HUBZone contracting goal for all prime contracts and subcontract awards each fiscal year. Historically, the Federal Government has not achieved the HUBZone goal. Application of the HUBZone Act to procurements at or below the SAT will aid Federal agencies in achieving the HUBZone contracting goal.

For these reasons, it is in the best interest of the Federal Government to apply the requirements of the rule to acquisitions at or below the SAT.

IV. Expected Impact of the Rule

This final rule will impact the operations of the Government and HUBZone entities as described in this section. This rule specifies that SBA ☐ now certifies firms as HUBZone small business concerns in DSBS. As a result, HUBZone entities are certified by SBA annually, which will allow HUBZone entities to remain eligible for HUBZone contracts for the entire year rather than being required to represent their status for each offer. HUBZone small business certification data contained in DSBS is also available in the System for Award Management (SAM); therefore, contracting officers may use DSBS or SAM to identify certified HUBZone small business concerns.

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Contracting officers may award HUBZone set-aside and sole-source contracts at or below the simplified acquisition threshold. This change will increase the benefits from HUBZone set-aside and sole-source contracts and increase HUBZone small businesses' opportunities in the Federal marketplace.

Additionally, minor changes are made to the processing of HUBZone status protests.

This final rule is not expected to result in any costs to contractors or offerors.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 (/executive-order/13563) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808 (<https://www.govinfo.gov/link/uscode/5/801>)) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the “Submission of Federal Rules Under the Congressional Review Act” form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a major rule under 5 U.S.C. 804 (<https://www.govinfo.gov/link/uscode/5/804>).

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601-612 (<https://www.govinfo.gov/link/uscode/5/601>). The FRFA is summarized as follows:

DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement revisions the Small Business Administration (SBA) made in its regulations for the Historically Underutilized Business Zone (HUBZone) Program. Following a review of its HUBZone program regulations, SBA issued a final rule on November 26, 2019, at 84 FR 65222 (/citation/84-FR-65222), to update its

regulations to reflect current policies, eliminate ambiguities, and reduce burdens on small businesses and procuring agencies. This final FAR rule updates terminology and processes to correspond with SBA's changes, such as updating the definition of HUBZone small business concern and procedures for filing and processing HUBZone protests. This rule also removes the restriction against applying the HUBZone Act of 1997 (15 U.S.C. 657a (<https://www.govinfo.gov/link/uscode/15/657a>)) to contracts and subcontracts at or below the simplified acquisition threshold (SAT).

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

This rule may have a positive economic impact on small entities that qualify for the HUBZone program and that are interested in participating in Federal procurement. By reducing the burden on firms interested in becoming HUBZone small business concerns, more firms may participate in and benefit from the program. SBA's Dynamic Small Business Search database includes 6,417 small business concerns with active HUBZone certifications. In fiscal years 2019, 2020, and 2021, the Federal Government made approximately 177,166 awards to SBA certified HUBZone small business concerns. Approximately 9,104 of these were awarded to 2,416 unique entities through a HUBZone set-aside under the HUBZone program; 584 were awarded to 408 unique entities on a sole-source basis under the HUBZone program; and 54 were awarded to 47 unique entities using the HUBZone price evaluation preference. Approximately 58,750 were awarded to HUBZone small businesses in open competition with other firms. According to the Federal Procurement Data System, an average of 108,233 contracts per year resulted from FAR part 19 set-asides and sole-source awards at or below the SAT during fiscal years 2019, 2020, and 2021. Contracting officers will now be able to award HUBZone set-aside and sole-source contracts at or below the simplified acquisition threshold. Application of the HUBZone Act of 1997, 15 U.S.C. 657a (<https://www.govinfo.gov/link/uscode/15/657a>), to acquisitions at or below the SAT will increase the benefits from HUBZone set-aside and sole-source contracts and increase HUBZone small businesses' opportunities in the Federal marketplace.

This final rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities.

There are no known significant alternative approaches to the final rule.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501-3521 (<https://www.govinfo.gov/link/uscode/44/3501>)) applies to the information collection described in this rule; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 9000-0136, Commercial Acquisitions and 9000-0007, Subcontracting Plans.

List of Subjects in 48 CFR Parts 2 (<https://www.ecfr.gov/current/title-48/part-2>), 5 (<https://www.ecfr.gov/current/title-48/part-5>), 6 (<https://www.ecfr.gov/current/title-48/part-6>), 13 (<https://www.ecfr.gov/current/title-48/part-13>), 19 (<https://www.ecfr.gov/current/title-48/part-19>), and 52 (<https://www.ecfr.gov/current/title-48/part-52>)

- Government procurement

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2 (<https://www.ecfr.gov/current/title-48/part-2>), 5 (<https://www.ecfr.gov/current/title-48/part-5>), 6 (<https://www.ecfr.gov/current/title-48/part-6>), 13 (<https://www.ecfr.gov/current/title-48/part-13>), 19 (<https://www.ecfr.gov/current/title-48/part-19>), and 52 (<https://www.ecfr.gov/current/title-48/part-52>) as set forth below:

1. The authority citation for 48 CFR parts 2 (<https://www.ecfr.gov/current/title-48/part-2>), 5 (<https://www.ecfr.gov/current/title-48/part-5>), 6 (<https://www.ecfr.gov/current/title-48/part-6>), 13 (<https://www.ecfr.gov/current/title-48/part-13>), 19 (<https://www.ecfr.gov/current/title-48/part-19>), and 52 (<https://www.ecfr.gov/current/title-48/part-52>) continues to read as follows:

Authority: 40 U.S.C. 121(c) (<https://www.govinfo.gov/link/uscode/40/121>); 10 U.S.C. chapter 137; and 51 U.S.C. 20113 (<https://www.govinfo.gov/link/uscode/51/20113>).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 in paragraph (b)(2) by—

- a. In the definition “HUBZone” removing the phrase “or redesignated areas,” and adding the phrase “redesignated areas, governor-designated covered areas, or qualified disaster areas,” in its place;
- b. In the definition “HUBZone contract” removing from paragraph (1) the phrase “sole source” and adding the phrase “sole-source” in its place; and
- c. Revising the definition “HUBZone small business concern”.

The revision reads as follows:

2.101 Definitions.

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(b) * * *

(2) * * *

HUBZone small business concern means a small business concern that meets the requirements described in 13 CFR 126.200 (<https://www.ecfr.gov/current/title-13/section-126.200>), is certified by the Small Business Administration (SBA) and designated by SBA as a HUBZone small business concern in the Dynamic Small Business Search (DSBS) (13 CFR 126.103 (<https://www.ecfr.gov/current/title-13/section-126.103>)). SBA's designation also appears in SAM.

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PART 5—PUBLICIZING CONTRACT ACTIONS

5.206 [Amended]

3. Amend section 5.206 in paragraph (a) introductory text, by removing the word “qualified”.

PART 6—COMPETITION REQUIREMENTS

4. Amend section 6.205 by revising paragraph (a) and removing from paragraph (b) the word “qualified”.

The revision reads as follows:

6.205 Set-asides for HUBZone small business concerns.

(a) To fulfill the statutory requirements relating to the HUBZone Act of 1997 (15 U.S.C. 631 note (<https://www.govinfo.gov/link/uscode/15/631>)), contracting officers may set aside solicitations to allow only HUBZone small business concerns to compete (see 19.1305).

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PART 13—SIMPLIFIED ACQUISITION PROCEDURES**13.003 [Amended]**

5. Amend section 13.003 in paragraph (b)(2)(ii) by removing the phrase “and 19.1306(a)(4)”.

13.005 [Amended]

6. Amend section 13.005 by removing paragraph (a)(5), and redesignating paragraphs (a)(6) through (8) as paragraphs (a)(5) through (7), respectively.

PART 19—SMALL BUSINESS PROGRAMS**19.301-1 [Amended]**

7. Amend section 19.301-1 in paragraph (d) by removing the phrase “concern both at the time of initial offer and at the time of contract award” and adding the phrase “concern at the time of initial offer” in its place.

8. Amend section 19.306 by—

a. Revising paragraph (b);

b. In paragraph (c) removing the phrase “HUBZone qualifying” and adding the phrase “HUBZone eligibility” in its place;

c. Revising paragraph (d);

d. In paragraph (e)—

i. Revising the heading;

ii. Removing from paragraph (e)(1) introductory text the word “protest” and adding the words “written protest” in its place;

e. Revising paragraphs (f) and (h)(1)(ii);

f. Removing paragraph (h)(3);

g. In paragraph (i)—

i. Removing from the introductory text “The HUBZone Program Director” and “(AA/GCBD)” and adding “SBA” and “(AA/GC&BD)” in their places, respectively;

ii. Revising the second sentence of paragraph (i)(1);

iii. Removing from paragraph (i)(2) “AA/GCBD” and adding “AA/GC&BD” in its place;

iv. Revising paragraph (i)(3);

v. Removing from paragraph (i)(4) “(h)(1)(ii) or (h)(3)” and in two places removing “(AA/GCBD)” and adding “(h)(1)(ii)(B)”, and “(AA/GC&BD)” in their places, respectively; and

vi. Revising paragraph (i)(5).

h. In paragraph (l)—

i. Adding to the end of paragraph (l)(1)(i) the word “and”;

ii. Removing paragraph (l)(1)(ii) and redesignating paragraph (l)(1)(iii) as paragraph (l)(1)(ii); and

iii. Removing from paragraph (l)(2) “Director/HUB's decision” and adding “HUBZone Program Director's determination” in its place; and

i. Removing from paragraph (m) “AA/GCBD” and adding “AA/GC&BD” in its place and removing “AA/GCBD's” and adding “AA/GC&BD's” in its place.

The revisions read as follows:

19.306 Protesting a firm's status as a HUBZone small business concern.

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(b)(1) For sole-source procurements, SBA or the contracting officer may protest the prospective contractor's certified HUBZone status; for all other procurements, SBA, the contracting officer, or any other interested party may protest the apparent successful offeror's certified HUBZone status (see 13 CFR 126.800 (<https://www.ecfr.gov/current/title-13/section-126.800>)).

(2) The Director of SBA's Office of the HUBZone Program will determine whether the concern has certified HUBZone status. If SBA upholds the protest, SBA will remove the concern's HUBZone status in the Dynamic Small Business Search (DSBS). SBA's protest regulations are found in subpart H “Protests” at 13 CFR 126.800 (<https://www.ecfr.gov/current/title-13/section-126.800>) through 126.805 (<https://www.ecfr.gov/current/title-13/section-126.805>).

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(d)(1) All protests must be in writing and must state all specific grounds for the protest (*i.e.*, why the protested concern did not meet the eligibility requirements at 13 CFR 126.200 (<https://www.ecfr.gov/current/title-13/section-126.200>) at the time of the concern's application to SBA for certification as a HUBZone small business concern or at the time SBA certified or last recertified the concern as a HUBZone small business concern). Assertions that a protested concern is not a HUBZone small business concern, without setting forth specific facts or allegations, will not be considered by SBA (see 13 CFR 126.801(b) ([https://www.ecfr.gov/current/title-13/section-126.801#p-126.801\(b\)](https://www.ecfr.gov/current/title-13/section-126.801#p-126.801(b)))).

(2) Protests filed against a HUBZone joint venture must state one or, if applicable, both of the following:

(i) Why the HUBZone small business party to the joint venture did not meet the eligibility requirements at 13 CFR 126.200 (<https://www.ecfr.gov/current/title-13/section-126.200>) at the time of its application to SBA for certification or at the time SBA certified or last recertified the concern as a HUBZone small business concern.

(ii) Why the joint venture did not meet the requirements at 13 CFR 126.616 (<https://www.ecfr.gov/current/title-13/section-126.616>) at the time of submission of its offer for a HUBZone contract.

(e) *Submission of a protest.* * * *

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(f) The contracting officer shall forward all protests with a referral letter to the Director of SBA's Office of the HUBZone Program, by email to hzprotests@sba.gov (*mailto:hzprotests@sba.gov*). The referral letter shall include the following—

- (1) The solicitation number;
- (2) The contracting officer's name and contact information;
- (3) The type of HUBZone contract (*i.e.*, sole-source, set-aside, full and open competition with a HUBZone price evaluation preference, or reserve for HUBZone small business concerns under a multiple-award contract);
- (4) For a procurement conducted using full and open competition with a HUBZone price evaluation preference, whether the protester's opportunity for award was affected by the preference;
- (5) For a HUBZone set-aside, whether the protester submitted an offer;
- (6) Whether the protested concern was the apparent successful offeror;
- (7) Whether the procurement was conducted using sealed bid or negotiated procedures;
- (8) The bid opening date, if applicable;
- (9) The date the protester was notified of the apparent successful offeror;
- (10) The date the contracting officer received the protest;

(11) The date the protested concern submitted its initial offer or quote to the contracting officer;
and

(12) Whether a contract has been awarded, and if so, the date of award and contract number.

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(h) * * *

(1) * * *

(ii) Award the contract if—

(A) SBA does not issue its decision within 15 business days after receipt of the protest; and

(B) The contracting officer determines in writing that there is an immediate need to award the contract and that ☐ waiting for SBA's determination will be disadvantageous to the Government.

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(i) * * *

(1) * * *. If the AA/GC&BD subsequently overturns the initial determination or dismissal, the contracting officer may apply the AA/GC&BD decision to the procurement in question.

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(3) If the contracting officer has made a written determination in accordance with (h)(1)(ii)(B) of this section, awarded the contract, and the Director of SBA's Office of the HUBZone Program's ruling sustaining the protest is received after award—

(i) The contracting officer shall either—

(A) Terminate the contract; or

(B)(1) Make a written determination that termination is not in the best interests of the Government; and

(2) Not exercise any options or award further task or delivery orders under the contract.

(ii) SBA will remove the concern's designation as a certified HUBZone small business concern in the Dynamic Small Business Search (DSBS). The concern is not permitted to submit an offer as a HUBZone small business concern until SBA issues a decision that the ineligibility is resolved; and

(iii) After SBA updates the concern's designation as a HUBZone small business in DSBS, the contracting officer shall update the Federal Procurement Data System (FPDS) to reflect the final decision of the HUBZone Program Director if no appeal is filed.

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(5) If the AA/GC&BD affirms the decision of the HUBZone Program Director, finding the protested concern is ineligible, and contract award has occurred—

(i) The contracting officer shall either—

(A) Terminate the contract; or

(B)(1) Make a written determination that termination is not in the best interests of the Government; and

(2) Not exercise any options or award further task or delivery orders under the contract;

(ii) SBA will remove the concern's designation as a certified HUBZone small business concern in DSBS. The concern is not permitted to submit an offer as a HUBZone small business concern until SBA issues a decision that the ineligibility is resolved or the AA/GC&BD finds the concern is eligible on appeal; and

(iii) After SBA updates the concern's designation as a HUBZone small business in DSBS, the contracting officer shall update FPDS to reflect the AA/GC&BD decision.

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19.1302 [Removed and Reserved]

9. Remove and reserve section 19.1302.

10. Amend section 19.1303 by revising paragraphs (b) and (d) to read as follows:

19.1303 Status as a HUBZone small business concern.

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(b) If SBA determines that a concern is a HUBZone small business, it will designate the concern as a HUBZone small business in the Dynamic Small Business Search (DSBS) at https://web.sba.gov/pro-net/search/dsp_dsbs.cfm (https://web.sba.gov/pro-net/search/dsp_dsbs.cfm). SBA's designation also appears in SAM. Only firms designated in DSBS and SAM as HUBZone small business concerns are eligible for HUBZone preferences. HUBZone preferences are not contingent on the place of performance.

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(d) To be eligible for a HUBZone contract under this section, a HUBZone small business concern must be a HUBZone small business concern at the time of its initial offer.

19.1304 [Amended]

11. Amend section 19.1304 by—

- a.** Adding to the end of paragraph (d) the word “or”;
- b.** Removing paragraph (e); and
- c.** Redesignating paragraph (f) as paragraph (e).

19.1305 [Amended]

12. Amend section 19.1305 by—

- a.** Removing from paragraph (a)(3) the phrase “sole source” and adding the phrase “sole-source” in its place;
- b.** Removing from paragraph (c) the word “qualified”;
- c.** In paragraph (d)—
 - i.** Removing from the introductory text the phrase “, except for acquisitions not exceeding the simplified acquisition threshold,”; and
 - ii.** Removing from paragraph (d)(2) the word “acquisition” and adding the phrase “acquisition until the head of the contracting activity issues a written decision on the appeal,” in its place.

13.Amend section 19.1306 by—

- a.** Revising the section heading;
- b.** In paragraph (a)—
 - i.** Removing from the introductory text the phrase “sole source” and adding the phrase “sole-source” in its place;
 - ii.** Removing paragraph (a)(4);
 - iii.** Redesignating paragraphs (a)(5) and (6) as paragraphs (a)(4) and (5); and
- c.** Removing from paragraph (b) the phrase “sole source award” and adding the phrase “sole-source award (see 13 CFR 126.610 (<https://www.ecfr.gov/current/title-13/section-126.610>))” in its place.

The revision reads as follows:

19.1306

HUBZone sole-source awards.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14.Amend section 52.212-3 by revising the date of the provision and paragraph (c)(10)(i) to read as follows:

52.212-3

Offeror Representations and Certifications—Commercial Products and Services.

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Offeror Representations and Certifications—Commercial Products and Services (Oct 2022)

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(c) * * *

(10) * * *

(i) It ☐ is, ☐ is not a HUBZone small business concern listed, on the date of this representation, as having been certified by SBA as a HUBZone small business concern in the Dynamic Small Business Search and SAM, and will attempt to maintain an employment rate of HUBZone residents of 35 percent of its employees during performance of a HUBZone contract (see 13 CFR 126.200(e)(1) ([https://www.ecfr.gov/current/title-13/section-126.200#p-126.200\(e\)\(1\)\)\)](https://www.ecfr.gov/current/title-13/section-126.200#p-126.200(e)(1))))); and

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15. Amend section 52.212-5 by—

- a.** Revising the date of the clause;
- b.** Removing from paragraph (b)(11) the date “(SEP 2021)” and adding the date “(OCT 2022)” in its place;
- c.** Removing from paragraph (b)(12) the date “(SEP 2021)” and adding the date “(OCT 2022)” in its place;
- d.** Removing from paragraph (b)(16) the date “(OCT 2018)” and adding the date “(OCT 2022)” in its place;
- e.** Removing from paragraph (b)(17)(i) the date “(NOV 2021)” and adding the date “(OCT 2022)” in its place;

- f.** In paragraph (e)(1)—

i. Removing from the introductory text the phrase “(e)(1) of this paragraph” and adding the phrase “(e)(1),” in its place; and

ii. Removing from paragraph (e)(1)(v) the date “(OCT 2018)” and adding the date “(OCT 2022)” in its place;
- g.** In Alternate II—

i. Revising the date; and

ii. In paragraph (e)(1)(ii)(E) removing the date “(OCT 2018)” and adding the date “(OCT 2022)” in its place.

The revisions read as follows:

52.212-5

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

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Page 58237

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (OCT 2022)

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Alternate II (OCT 2022). * * *

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16.Amend section 52.213-4 by revising the date of the clause and removing from paragraph (a)(2)(viii) the date “(JAN 2022)” and adding the date “ (OCT 2022) ” in its place.

The revision reads as follows:

52.213-4 **Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).**

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Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (Oct 2022)

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17.Amend section 52.219-1 by revising the date of the provision and paragraph (c)(8)(i) to read as follows:

52.219-1 **Small Business Program Representations.**

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Small Business Program Representations (Oct 2022)

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(c) * * *

(8) * * *

(i) It is, is not a HUBZone small business concern listed, on the date of this representation, as having been certified by SBA as a HUBZone small business concern in the Dynamic Small Business Search and SAM, and will attempt to maintain an employment rate of HUBZone residents of 35

percent of its employees during performance of a HUBZone contract (see 13 CFR 126.200(e)(1) (

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18. Amend section 52.219-3 by—

- a.** Revising the date of the clause;
- b.** Revising paragraph (d) and (e); and
- c.** Removing paragraph (f).

The revisions read as follows:

52.219-3 Notice of HUBZone Set-Aside or Sole-Source Award.

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Notice of HUBZone Set-Aside or Sole-Source Award (Oct 2022)

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(d) *Joint venture.* A joint venture may be considered a HUBZone concern if—

- (1) At least one party to the joint venture is a HUBZone small business concern and complies with 13 CFR 126.616(c) (
- (2) Each party to the joint venture qualifies as small under the size standard for the solicitation, or the protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under the SBA mentor-protégé

program.

(e) A HUBZone joint venture agrees that, in the performance of the contract, at least 40 percent of the aggregate work performed by the joint venture shall be completed by the HUBZone small business parties to the joint venture. Work performed by the HUBZone small business party or parties to the joint venture must be more than administrative functions.

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19.Amend section 52.219-4 by—

- a.** Revising the date of the clause;
- b.** Revising paragraph (c); and
- c.** Removing paragraph (d).

The revisions read as follows:

52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.

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**Notice of Price Evaluation Preference for HUBZone Small Business Concerns
(OCT 2022)**

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(c) *Joint venture.* A HUBZone joint venture agrees that, in the performance of the contract, at least 40 percent of the aggregate work performed by the joint venture shall be completed by the HUBZone small business parties to the joint venture. Work performed by the HUBZone small

business parties to the joint venture must be more than administrative functions.

20.Amend section 52.219-8 by—

- a. Revising the date of the clause;
- b. In paragraph (a), revising the definition “HUBZone small business concern”; and
- c. Revising paragraph (e)(5).

The revisions read as follows:

52.219-8 Utilization of Small Business Concerns.

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Utilization of Small Business Concerns (OCT 2022)

(a) * * *

HUBZone small business concern means a small business concern that meets the requirements described in 13 CFR 126.200 (<https://www.ecfr.gov/current/title-13/section-126.200>), certified by the Small Business Administration (SBA) and designated by SBA as a HUBZone small business concern in the Dynamic Small Business Search (DSBS) and SAM.

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(e) * * *

(5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing SAM or by accessing DSBS at *https://web.sba.gov/pro-net/search/dsp_dsbs.cfm* (*https://web.sba.gov/pro-net/search/dsp_dsbs.cfm*). If the subcontractor is a joint venture, the Contractor shall confirm that at least one party to the joint venture is certified by SBA as a HUBZone small business concern. The Contractor may confirm the representation by accessing SAM.

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21.Amend section 52.219-9 by revising the date of the clause and paragraph (e)(4) to read as follows:

52.219-9 Small Business Subcontracting Plan.

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Small Business Subcontracting Plan (OCT 2022)

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(e) * * *

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing SAM or by accessing the Dynamic Small Business Search (DSBS) at *https://web.sba.gov/pro-net/search/dsp_dsbs.cfm* (*https://web.sba.gov/pro-net/search/dsp_dsbs.cfm*).

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22.Amend section 52.244-6 by—

- a.** Revising the date of the clause; and

b. Removing from paragraph (c)(1)(vii) the date “(Oct 2018)” and adding the date “(OCT 2022)” in its place.

The revision reads as follows:

52.244-6 Subcontracts for Commercial Products and Commercial Services.

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Subcontracts for Commercial Products and Commercial Services (OCT 2022)

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