

Column: Big Changes in the HUBZone Program Coming in 2019

By Megan C. Connor, partner, PilieroMazza PLLC

The Small Business Administration published its long-awaited proposed rule overhauling the Historically Underutilized Business Zone (HUBZone) Program on Oct. 31.

Comments to the proposed rule are due Dec. 31, making it likely a final rule will be published in 2019.

This rulemaking represents the first comprehensive revision of the HUBZone program, explicitly intended to make program compliance easier for small businesses and make the program more attractive for procuring agencies to use.

Indeed, the federal government fell short of its 3% HUBZone spending goal in fiscal year 2017, leaving billions of dollars on the table. SBA's proposed changes, discussed below, could open the doors for more HUBZone contracts.

New Annual Certification

SBA recognizes it is difficult for small businesses to maintain HUBZone compliance after contract award.

Therefore, SBA proposes eliminating the requirement that HUBZone firms be eligible at both the time of offer and the time of award of a HUBZone contract.

Instead, a firm will be certified once and then recertified annually thereafter. A HUBZone firm will remain eligible for HUBZone contract awards for one year from the date of certification or recertification, provided the concern qualifies as small for the contract.

During the one-year period, the HUBZone firm's eligibility will relate back to its date of certification or recertification—not the date of offer or award.

Importantly, SBA proposes that an employee residing in a HUBZone at the time of a concern's certification or recertification shall continue to count as a HUBZone employee as long as the individual remains an employee, even if the employee moves out of a qualified HUBZone area or the employee's residence is redesignated.

Definition of "Employee"

SBA also proposes altering the definition of "employee" from an individual working "a minimum of 40 hours per month" to "a minimum of 40 hours during the four-week period immediately prior to the relevant date of review," which would be the date of initial application or recertification.

Beyond this proposed change, SBA is seeking comments on how "employee" should be defined. Specifically, SBA wants the public to weigh in on whether an employee should be required to work 20 hours per week rather than 40 hours per month (or four-week pay period), whether only full-time employees should count, whether seasonal employees should count, and whether HUBZone-resident employees shared among multiple HUBZone firms should be counted toward the eligibility of each firm.

Clarifying the 35% Residency Requirement

SBA also proposes to clarify the requirement that 35% of the concern's employees reside in a HUBZone.

First, SBA states in the proposed rule that it has always been SBA's intent to determine the 35% residency requirement for HUBZone concerns based on all employees, and not just those working in the principal office.

Second, SBA proposes to define "reside," for purposes of HUBZone employees, to mean living at a location full-time and for at least 180 days immediately prior to the date of application or recertification.

For firms with employees performing contracts overseas, SBA will consider the employee's residence to be located in the United States if the employee can demonstrate he or she is paying rent or owns a home in a HUBZone.

Third, SBA endeavors to clarify what the requirement to "attempt to maintain" the 35% residency require-

ment means.

Specifically, SBA suggests adding language stating that falling below 20% HUBZone residency during performance of a HUBZone contract will be deemed a failure to "attempt to maintain" the residency requirement.

Should a concern drop below 20%, SBA would propose to decertify the concern, and the concern would have an opportunity to demonstrate that it continues to have at least 20% HUBZone employees and to hire additional HUBZone residents.

Freezing HUBZone Maps

Lastly, SBA proposes that all redesignated areas will retain HUBZone treatment until December 31, 2021. SBA's hope is to provide enough time to incorporate the results of the 2020 census.

Comments to the Proposed Rule

Comments to SBA's rulemaking are due Dec. 31.

If you are a HUBZone firm or interested in participating in the program, you should consider submitting comments to the proposed rule, as this will be your only opportunity to help shape the program for the future. If you would like help preparing comments or if you have questions about the proposed rules, please contact Megan Connor at mconnor@pilieromazza.com.

Megan Connor is a partner with PilieroMazza PLLC. For over 25 years, PilieroMazza has helped businesses successfully navigate a diverse array of legal matters, including government contracting, SBA's procurement programs, litigation, labor and employment and corporate law. Visit www.pilieromazza.com.