



October 7, 2024

Isabel Casillas Guzman
Administrator
U.S. Small Business Administration
409 Third St. SW
Washington, DC 20416

RE: Docket No. SBA-2024-0007-0002, HUBZone Program Updates and Clarifications, and Clarifications to Other Small Business Programs

Dear Administrator Guzman:

Associated Builders and Contractors hereby submits the following comments to the U.S. Small Business Administration in response to the above-referenced notice of proposed rulemaking published in the Federal Register on August 23, 2024, at 89 Federal Register 68274.

About Associated Builders and Contractors

ABC is a national construction industry trade association representing more than 23,000 member companies. ABC and its 67 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work.

ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of general contractors and subcontractors that perform work in the industrial and commercial sectors for government and private sector customers.¹

The vast majority of ABC's contractor members are also small businesses. This is consistent with the U.S. Census Bureau and U.S. Small Business Administration's Office of Advocacy's findings that the construction industry has one of the highest concentrations of small businesses (82% of all construction firms have fewer than 10 employees)² and industry workforce employment (nearly 81% of the construction industry is employed by small businesses).³ In fact, construction companies that employ

¹ For example, see ABC's 34nd Excellence in Construction Awards program from 2024: https://www.abc.org/Portals/1/2024/EIC/34th%20EIC%20program.pdf?ver=mzYgfDwm9eScx_LNSAZXAQ%3d%3d.

² U.S. Census Bureau 2021 County Business Patterns: <https://data.census.gov/table?q=CBP2021.CB2100CBP&tid=CBP2021.CB2100CBP&hidePreview=true> and <https://www.census.gov/programs-surveys/cbp/data/tables.html>.

³ 2023 Small Business Profile, U.S. Small Business Administration Office of Advocacy (2023), at page 4, <https://advocacy.sba.gov/wp-content/uploads/2023/11/2023-Small-Business-Economic-Profile-US.pdf>.

fewer than 100 construction professionals comprise 99% of construction firms in the United States and account for 69% of all construction industry employment.⁴

In addition to small business member contractors that build private and public works projects, ABC also has large member general contractors and subcontractors that perform construction services for private sector customers and federal, state and local governments procuring construction contracts subject to respective government acquisition policies and regulations concerning small business utilization.

ABC's diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. The philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value.

ABC's Comments in Response to the Notice of Proposed Rulemaking

ABC understands the need for the SBA to clarify and modernize regulations implementing the Historically Underutilized Business Zone Program and other programs. However, ABC is concerned that certain aspects of the proposal, as outlined below, may be counterproductive to the SBA's goals of promoting small business participation in federal contracting opportunities.

I. The SBA Should Avoid Regulations That Will Discourage Small and Disadvantaged Businesses Bidding on Federal Construction Projects.

Before discussing specific aspects of the proposed rule that are of concern, ABC broadly urges the SBA to avoid altering regulations in a way that would unintentionally contravene Congress's repeatedly expressed intent to promote and encourage federal procurement opportunities for small businesses.⁵

As stated previously, the majority of ABC's contractor members are classified as small businesses. The companies represent the backbone of the construction industry. Unfortunately, in recent years, burdensome federal procurement policies have reduced small business participation in federal construction contracting. For example, according to SBA data, the number of small business federal contractors awarded a federal construction contract has declined by 60% from 2010 to 2020.⁶

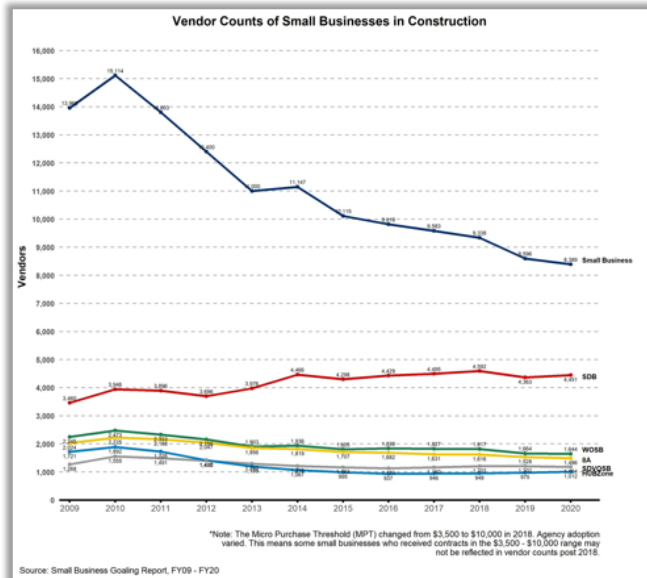
⁴ U.S. Census County Business Patterns by Legal Form of Organization and Employment Size Class for the U.S., States and Selected Geographies: 2021, available at <https://data.census.gov/table/CBP2021.CB2100CBP?q=CBP2021.CB2100CBP&hidePreview=true>.

⁵ See discussion in [An Overview of Small Business Contracting](#), Congressional Research Service, updated July 29, 2022.

⁶ Chart available at: <https://thetruthaboutplas.com/wp-content/uploads/2022/09/60-percent-decline-of-small-businesses-awarded-federal-construction-contracts-2010-to-2020.png>. The data was prepared by an SBA economist who said, "The charts represent data on vendors who have received obligations. The definition of 'small' comes from the contracting officer's



Number of Construction Industry Small Businesses Awarded Federal Contracts Declined 60% From 2010-2020



Vendor Counts of Small Businesses in Construction

FY	Small Business	SDB	SDVOSB	HUBZone	WOSB	8A	SBGR
2009	13960	3460	1268	1721	2245	2024	16186
2010	15114	3946	1555	1892	2473	2225	17644
2011	13803	3896	1491	1726	2333	2168	16335
2012	12400	3696	1400	1416	2156	2047	14510
2013	11000	3976	1292	1199	1903	1856	12690
2014	11147	4466	1216	1067	1936	1819	12706
2015	10115	4298	1163	995	1805	1707	11724
2016	9818	4429	1133	937	1838	1682	12465
2017	9583	4495	1160	946	1827	1631	12146
2018	9338	4592	1202	948	1817	1616	11424
2019	8596	4363	1202	975	1664	1528	10504
2020	8389	4451	1184	1012	1644	1486	10191

The decline in small business participation in federal contracts directly correlates with increased federal regulatory burdens. Small business contractors are likely to choose to pursue private sector and state or local government contracts instead of federal contracting opportunities because of increased regulatory clarity and lower regulatory burdens. These factors reduce risk and decrease costs related to the need for expertise from attorneys and compliance professionals, which ultimately makes small businesses more competitive in the private sector and state or local government marketplaces.

ABC urges the SBA to avoid implementing changes to the HUBZone program and other SBA programs that will unnecessarily exacerbate the difficulties that small businesses face when pursuing federal procurement contracting opportunities.

II. The Proposed Rule Would Reduce Participation in the HUBZone Program by Increasing the Employee Hour Requirement.

ABC appreciates the proposal's revisions to require HUBZone firms to be eligible to receive HUBZone contracts at the time of offer. ABC also appreciates the proposal's change to the recertification process from an annual basis to recertification every three years. Both changes are likely to benefit program stakeholders by reducing red tape and providing certainty for contractor business development strategies.

determination when the contract was awarded. The COs follow the NAICS size standards." Data is from the FPDS that can be publicly accessed through SAM.gov:

<https://sam.gov/reports/awards/standard>.

However, the SBA has proposed changes to the central HUBZone eligibility criteria that may be problematic. Specifically, the SBA is recommending new rules that would require HUBZone firms to certify its attempt to maintain the 35% HUBZone residency requirement during its application for HUBZone certification, at the time recertification is complete and at the time of offer for any HUBZone contract.

The SBA also proposes a requirement that firms produce additional evidence for conducting work at the principal office by providing a lease that commenced at least 30 days prior to the date of the SBA's review and ends at least 60 days after the date of the SBA's review. This essentially requires a firm to provide an active lease to satisfy the principal office requirement. Some ABC members have expressed concerns that the SBA proposal's burdensome requirements could lead to some small businesses accidentally and unintentionally falling out of compliance, which undermines the spirit and intent of the program.

ABC is particularly concerned by the SBA's proposed modification to the 35% HUBZone residency requirement's definition of an "employee" that raises the minimum hour requirement from 40 hours to 80 hours during the four-week period immediately prior to the relevant date of review.⁷ Some ABC members have expressed concerns that, because of the nature of the construction industry's workflow, project locations, limited and competitive contracting opportunities, possible part-time employees and other factors, it is possible for deserving firms to now be ineligible under this proposed change.

The practical implication of this proposed change would be to make it more difficult for firms to obtain and retain HUBZone certification. This would be counterproductive at a time when the federal government continues to miss its statutory goal of awarding 3% of federal contracts to HUBZone firms,⁸ a goal that the government has failed to meet since the inception of the program in 1997.⁹

The SBA would be better served in pursuing its stated goal of preventing fraudulent usage of the HUBZone program¹⁰ by investigating and punishing firms engaged in misconduct, instead of making access to the program more difficult for all legitimate small businesses. As an alternative, a pilot study or phased-in approach might inform SBA of the least disruptive and most effective approach, on balance.

⁷ <https://www.federalregister.gov/d/2024-18325/p-389>.

⁸ See SBA's FY 2025 Congressional Budget Justification FY 2023 Annual Performance Report, <https://www.sba.gov/sites/default/files/2024-03/FY%202025%20SBA%20CBJ%20Final%20Updated-508.pdf>, page 76.

⁹ <https://www.federaltimes.com/govcon/contracting/2022/07/18/hubzone-awards-keep-missing-federal-contract-goals-a-quarter-century-after-creation/>.

¹⁰ <https://www.federalregister.gov/d/2024-18325/p-92>.

III. The SBA Should Avoid Imposing Excessive Recertification Requirements on Small Businesses.

ABC appreciates the SBA's response to the concerns of the small business community that improvements are needed to make its socioeconomic contracting programs more uniform, in order to relieve burdens associated with compliance with multiple programs.

The proposed rule would make several improvements to create uniformity among the programs, including deleting the program specific recertification requirements contained separately in SBA's size, 8(a) Business Development, HUBZone, Women-Owned Small Business and Veteran Small Business Certification programs and moving them to a new section that would cover all size and status recertification requirements.

ABC urges the SBA to be generally cautious in the proposed rule's various changes to implement uniform recertification requirements so such changes do not accidentally disqualify firms with active contracts and eligible task orders. In addition, ABC urges the SBA's reforms to balance the agency's valid interest in ensuring that firms accessing these programs meet the appropriate statutory requirements against the potential for unintentionally discouraging small business participation by imposing excessive recertification requirements.

Conclusion

ABC appreciates the SBA's ongoing efforts to ensure that small business construction firms have the opportunity to compete for federal contracting opportunities. We urge the SBA to avoid imposing unnecessarily burdensome and stringent certification requirements on SBA programs. Doing so may discourage these companies from applying for these programs and receiving the benefits that Congress intended.

Thank you for the opportunity to submit comments on this matter.

Respectfully submitted,



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