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Government Contracts Update

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Key Changes in SBA's Proposed Rule: HUBZone Program

Key Notes:

- SBA's Proposed Rule amends HUBZone program requirements to ensure that concerns remain compliant throughout participation in the program.
- SBA emphasizes the importance of amending regulations to align with the HUBZone program's original purpose.

The U.S. Small Business Administration (SBA) recently published a proposed rule, "HUBZone Program Updates and Clarifications, and Clarifications to Other Small Business Programs" (Proposed Rule), which will substantially alter how small business federal contractors navigate participation in SBA's set-aside contracting programs. In this second installment in our series of client alerts examining the Proposed Rule, we focus on *key* proposed changes affecting the Historically Underutilized Business Zone (HUBZone) program. Below we discuss updates and clarifications to the regulations governing HUBZone eligibility, recertification, and additional compliance requirements.

Contract Eligibility

Currently, SBA regulations require concerns to recertify their HUBZone status annually. 13 C.F.R. 126.500. Once a concern successfully recertifies its status, it can submit offers for HUBZone contracts for up to one year without necessarily complying with the 35% HUBZone residency and principal office requirements at the time the offer is submitted. SBA explains that the rule currently allows a concern to circumvent compliance with program requirements until its annual recertification date approaches. To prevent this, SBA proposes amending 13 C.F.R. 126.601(a) to require a concern to be a certified HUBZone entity that continues to meet program requirements as of the date of its offer for a HUBZone contract. Thus, a concern must maintain its HUBZone status after certification to continue submitting offers for contracts.

SBA also proposes to clarify that, unlike the Women-Owned Small Business program, a concern cannot submit offers for HUBZone contracts until its program application is approved and it is deemed a certified HUBZone entity. Offer submissions while an application is pending are not permissible.

Status Recertification

Given that the Proposed Rule would require a concern to be HUBZone certified at the time an offer is submitted for a HUBZone contract (as discussed above), SBA plans to amend the frequency of the recertification process. Under 13 C.F.R. 126.500, concerns are currently required to recertify their HUBZone status annually. The Proposed Rule amends the regulation to instead require recertification every three years, reasoning that the annual recertification process would be too burdensome, considering the proposed change to require eligibility at the time an offer is submitted for a HUBZone contract.

Attempt to Maintain 35% HUBZone Residency Requirement

SBA proposes to clarify the "attempt to maintain" requirement under 13 C.F.R. 126.200(e). The Proposed Rule would make clear that a HUBZone concern must certify that it is attempting to comply with the 35% HUBZone residency requirement at the following three stages:

- At the time the concern applies for HUBZone certification
- At the time of recertification
- At the time of an offer submission for any HUBZone contract

SBA also proposes amendments to the implementation of the "attempt to maintain" requirement. Currently, the regulations permit a HUBZone concern to employ less than 35% HUBZone residents during its recertification process so long as it can show that it is attempting to maintain the requirement. Under the current approach, SBA has found that a HUBZone concern technically never has to establish that it is meeting the 35% HUBZone residency requirement. To change this, SBA proposes a 12-month "grace period" after contract award that would allow a concern time to hire enough employees who reside in HUBZone areas to ensure compliance with the residency requirement. Should its recertification fall within the grace period, the concern would only be required to represent that it is attempting to maintain compliance with the residency requirement. Once the grace period ends, a concern would have to demonstrate 35% HUBZone residency at any following recertification.

HUBZone Employee Hours

According to 13 C.F.R. 126.103, an individual is considered an employee for HUBZone purposes if they work at least 40 hours during a four-week period. The Proposed Rule would amend this requirement by increasing the number of hours to 80. SBA reasons that the current requirement does not align with the HUBZone program's purpose. SBA further explains that the current hours requirement could be diminishing the legitimate presence of concerns in HUBZone areas because employees could work 40 hours in one week and not return for three weeks. SBA recognizes that doubling the hours threshold may not be suitable for all workers and is considering an exception to the requirement for a limited number of individuals who will still be required to work at least 40 hours per month.

FOR MORE INFORMATION

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