

**Accessible Text File**  
HUBZone Mini-Primer #3  
Understanding HUBZone Protests  
US Small Business Administration  
Office of Government Contracting and Business Development  
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Slide 1 Understanding HUBZone Protests  
US Small Business Administration

This is about federal contract markets and participating in those markets as a HUBZone certified firm.

Welcome to SBA's training module, ***Understanding HUBZone Protests***. This module is the third, in a series of mini-primers about the HUBZone program.

Slide 2 Introduction

The HUBZone program is designed to help small businesses -- in certain urban, rural, BRAC, Indian reservation, and difficult development areas outside the U.S. mainland -- to gain access to federal procurement opportunities. HUBZone areas or HUBZone designations are typically areas of low median household incomes or high unemployment, or both.

Slide 3 Program Purpose

But first, and importantly, the HUBZone program has one purpose: to help small businesses in both urban and rural communities.

It provides federal contracting assistance to qualified small firms located in historically underutilized business zones -- or HUBZones -- to increase employment opportunities, stimulate capital investment in those areas, and empower communities through economic leveraging.

Slide 4 How the Program Works

The U.S. Small Business Administration regulates and implements the HUBZone program. As such, SBA determines which businesses are eligible for the program, maintains a listing of qualified HUBZone small businesses that can be used by federal agencies to fulfill procurement needs and adjudicates protests of eligibility regarding HUBZone contracts.

This training module is about understanding HUBZone protests.

Slide 5 Contents

This training presentation covers several key topic areas, including: what is a HUBZone status protest; how to file a status protest; SBA's role in responding to a protest; appealing a protest; and, specific HUBZone resources.

Slide 6 HUBZone Status Protests

Topic Divide -- HUBZone status protests.

Slide 7 What is a HUBZone Status Protest?

Simply stated, a HUBZone status protest is a challenge to the award or proposed award of a contract to a company who allegedly misrepresented itself as a certified HUBZone firm, eligible for a specific contract award.

HUBZone status protests are one of the ways in which the government ensures that only qualified HUBZone companies gain access to HUBZone contracting preferences.

Slide 8 Under What Circumstances?

If a company wins an award through any of these mechanisms, its HUBZone status may be protested: sole source awards; set-aside awards, including partial set-asides, to HUBZone firms; awards to HUBZone firms through full and open competition after a price evaluation preference is applied; awards based on a reserve for HUBZone firms in a solicitation for a Multiple Award Contract; or, orders set-aside for HUBZone firms against a Multiple Award Contract, which had been awarded in full and open competition.

It is important to note, a protest alleging that a company is not small, is considered a size protest. Such protests are not processed by the HUBZone office. The process for submitting a size protest is outlined in 13 CFR 121.1001.

Slide 9 For What Reasons?

SBA will consider processing a HUBZone status protest if: the principal office of the protested firm is not located in a designated HUBZone; at least 35 percent of the employees of the protested firm do not reside in a designated HUBZone; the protested firm is not at least 51% unconditionally and directly owned and controlled by persons who are United States citizens; and, the protested firm is not a qualified HUBZone small business as described at 13 CFR 126.103 and 13 CFR 126.200.

Again, it is important to point out, a size protest is not processed by the HUBZone office.

Slide 10 Regulatory Guidance

Regulatory guidance concerning HUBZone status protests can be found in 13 CFR Parts 126.800 through 126.805, in subpart "H" and in FAR Part 19.306.

## Slide 11 Filing a HUBZone Status Protest

Topic Divide – Filing a HUBZone status protest.

## Slide 12 Who Can File a HUBZone Status Protest?

For sole source acquisitions, the SBA or the contracting officer may protest the apparently successful offeror's HUBZone status. For all other acquisitions, the offeror who is an interested party, the contracting officer, or the SBA may protest the apparently successful offeror's HUBZone status.

## Slide 13 Where Should a Status Protest be Submitted?

An offeror must submit its protest to the contracting officer. The contracting officer and the SBA must submit protests to SBA's Director for the HUBZone Program.

Importantly, all status protests must be in writing and must state all specific grounds for the protest. An assertion that a protested firm is not a qualified HUBZone small business without setting forth specific facts or allegations, is insufficient.

## Slide 14 How Should a HUBZone Status Protest be Submitted?

Again, HUBZone status protests must be in writing and submitted by e-mail, traditional mail, or in person. Such protests must also be submitted within five business days after the bid opening or notification of the intended award.

For sealed bid acquisitions, an interested party must submit its protest by close of business on the fifth business day after bid opening, or 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.

## Slide 15 Must be Sufficiently Sufficient

In order to successfully file a protest and avoid having it dismissed by the SBA, it must be sufficiently specific and state all relevant facts.

For example, a protest is not sufficient if it simply states that a firm is not in compliance because it has not recertified (every 3 years) and submitting as evidence, only a copy of the firm's Dynamic Small Business Search profile, showing a HUBZone certification date that is more than three years old. The date given in DSBS indicates only the initial date of certification and does not reflect the date of any recertification process, which is internal to the SBA.

In another example, it is sufficiently specific to state that a firm is not in compliance with the principal office requirement because the firm's website lists numerous locations, and a photo is included showing that the stated principal office location is a boarded up building.

A protest merely asserting that a company is not a qualified HUBZone concern will be dismissed.

Slide 16 SBA's Role: Processing a HUBZone Status Protest

Topic Divide – SBA's role: processing a HUBZone status protest.

Slide 17 Processing the Protest -- Notification

So, how does SBA process a HUBZone status protest?

First, SBA will determine whether a specific protest is both timely and sufficiently specific. If it is, SBA will process it. If it is not, SBA will dismiss it. In some cases where SBA determines that a protest is not timely, it may protest the award itself based on the facts in the dismissed protest.

In addition, SBA will notify the contracting officer and the protestor of the date it received the protest and whether it will process it or dismiss it. SBA will also notify the protested HUBZone firm of the protest and the identity of the protestor.

The firm being protested may submit information to SBA in response to or defending itself relative to the protest, within five business days. It is also important to note, SBA will determine the status of a protested company within 15 business days of receiving the protest, unless the contracting officer grants an extension.

Slide 18 HUBZone Firm – Responding to a Protest

If SBA decides to process a protest, the protested firm, as previously noted, has five business days to provide documentation showing that it was in compliance with HUBZone eligibility requirements at the time of the contract offer and award.

Therefore, good record keeping is essential. A HUBZone firm should maintain records that document its HUBZone certification -- for at least 6 years -- from the date of its initial application and/or recertification.

Slide 19 Additional Information and Fraud

After reviewing the documents requested and received, SBA may have further requests for additional documents or clarification of information provided by the firm. Further, signed declarations bear

greater weight than mere statements. In addition, the SBA's regulations explain the penalties that may be imposed when a person or business concern provides false information to the federal government.

SBA will submit suspected cases of fraud to the Office of Inspector General.

Slide 20 When SBA Makes a Protest Decision

What happens when SBA makes a HUBZone protest decision?

When SBA makes a decision, it notifies the contracting officer, protestor, and the protested concern of its determination. If the company is found to be compliant, SBA denies the protest, and the company may be awarded the contract in question.

If the company is found to be ineligible at either time of the offer and/or award, SBA sustains the protest and the company, may be decertified immediately; cannot be awarded the contract in question; and, may only apply for new HUBZone certification after 90 days from the date of decertification.

A protest decision may be dismissed by the SBA because it was untimely, not submitted by an interested party, or not specific enough. In some such cases, SBA may file its own protest, if the information was specific.

SBA's protest decisions are posted on its website.

Slide 21 Appealing a Protest Decision

Topic Divide – Appealing a protest decision.

Slide 22 How Are Appeals Filed?

Sometimes SBA's status protest decisions are questioned. In such circumstances, SBA may consider an appeal.

Only the protested HUBZone firm, the protestor, or the contracting officer may submit an appeal to the SBA. The appeal must be in writing and submitted by mail, or in person. It must also be submitted to the SBA within five business days after receiving the notice of the protest decision.

Also, the individual or firm filing the protest must notify all parties eligible or potentially impacted by the appeal.

Slide 23 Contents of an Appeal

What should be included in an appeal request?

The appeal must be clear and fact-worthy. It should include specific information explaining why SBA's initial protest decision resulted in a significant error or failed to consider important facts that were contained in the information supplied.

Importantly, SBA will not consider additional information or changed circumstances that were not disclosed at the time of its initial decision or that are based on a disagreement with the findings and conclusions contained in the determination.

#### Slide 24 SBA's Appeal Decision is Final

Once an appeal is received, SBA will make a decision within five business days of receipt of the appeal, if practicable. The agency will provide a copy of the appeal decision to the contracting officer, protestor, and the protested HUBZone company.

If the protest decision is overturned by appeal, the consequences are the same as if the initial decision was made in that way. That is, if a sustained protest is overturned on appeal, the protested company is now eligible to receive the contract in question. Conversely, if a denied protest is overturned, the protested company is immediately decertified and will not receive the contract.

Importantly, once a protest decision is rendered by the agency, that is SBA's final decision. In some very rare cases, involving unique circumstances, a decision may be reconsidered by the SBA.

#### Slide 25 Resources and Tools

Topic Divide – Resources and tools.

#### Slide 26 – Resources and Tools

There are some very powerful resources and tools available to assist you to better understand the HUBZone program. Use these resources and others to learn, discover and expand your understanding.

#### Slide 27 Contact Us...

Thank you for taking the time to learn about HUBZone program. Please contact us if you have any additional questions.

Thank you.

## Hyperlinks Contained in the Course

Small Business Act – HUBZone Statute

[http://www.sba.gov/sites/default/files/Small%20Business%20Act\\_0.pdf](http://www.sba.gov/sites/default/files/Small%20Business%20Act_0.pdf)

HUBZone Maps Page <http://map.sba.gov/hubzone/maps>

HUBZone Regulations <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr;sid=7f10b57ab16b755f85493361636352c1;rgn=div5;view=text;node=13:1.0.1.1.21;idno=13;c=ecfr>

eMail Alerts [https://public.govdelivery.com/accounts/USSBA/subscriber/new?topic\\_id=USSBA\\_14](https://public.govdelivery.com/accounts/USSBA/subscriber/new?topic_id=USSBA_14)

SBA/HUBZone Website <http://www.sba.gov/hubzone>

GC Classroom [www.sba.gov/gcclassroom](http://www.sba.gov/gcclassroom)

Code of Federal Regulation (13CFR)

<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

Protest Case Highlights <http://www.sba.gov/content/protest-case-highlights>

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