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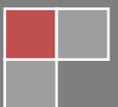
# Understanding HUBZone Protests

## HUBZone Mini-Primer #3

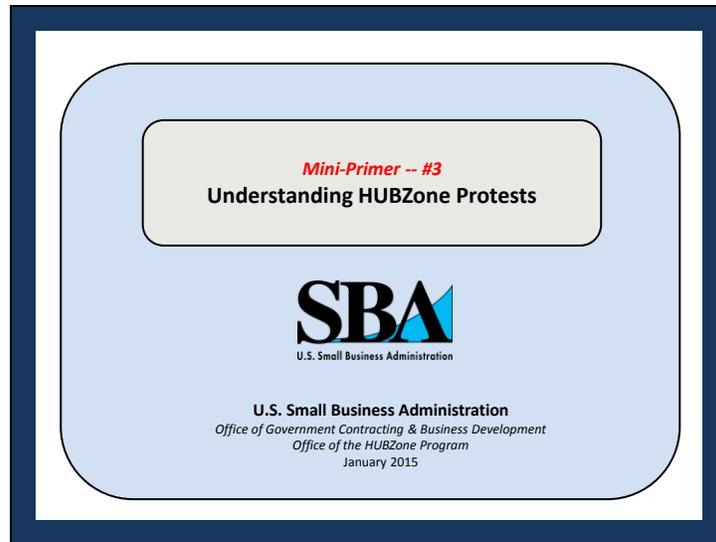
This presentation is about understanding HUBZone status protests. It is the third module in a series of Mini-Primers about the HUBZone Program.

U.S. Small Business Administration

Office of Government Contracting and Business Development



Slide 1

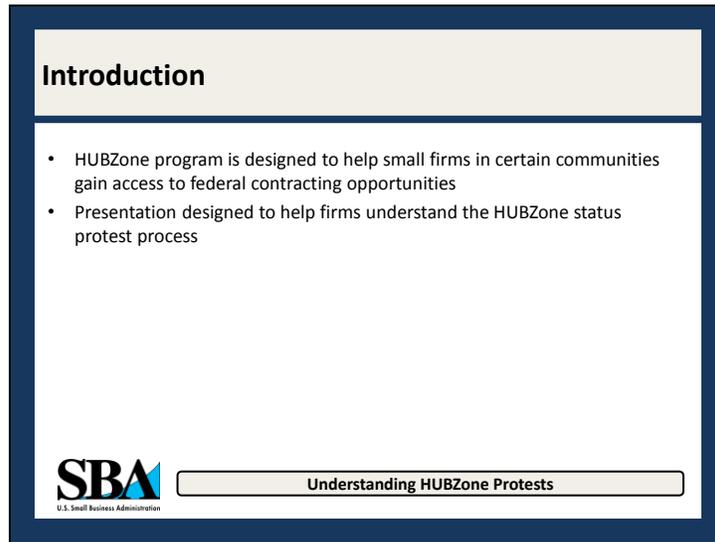


This is about federal contract markets and participating in those markets as a HUBZone certified firm.

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

**NOTE:** This supplemental workbook tracks the slides and narrative contained in the online training course, *Understanding HUBZone Protests*. The online version of the training program, with audio can be accessed at: [www.sba.gov/gclassroom](http://www.sba.gov/gclassroom). For the convenience of users, all hyperlinks contained in the copied slides are included as links at the end of the workbook.

## Slide 2



**Introduction**

- HUBZone program is designed to help small firms in certain communities gain access to federal contracting opportunities
- Presentation designed to help firms understand the HUBZone status protest process

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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**

- Provides federal contracting assistance to qualified small firms in designated HUBZones to:
  - Increase employment opportunities
  - Stimulate capital investment
  - Empower communities through economic leveraging

➔

**HUBZone**  
➤Historically  
➤Underutilized  
➤Business  
➤ZONE

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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**

- SBA regulates and implements the HUBZone program
  - Determines which businesses are eligible
  - Maintains a listing of qualified HUBZone firms to fulfill procurement opportunities
  - **Adjudicates protests of eligibility regarding HUBZone contracts**
  - Conducts program examinations

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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.

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**Contents**

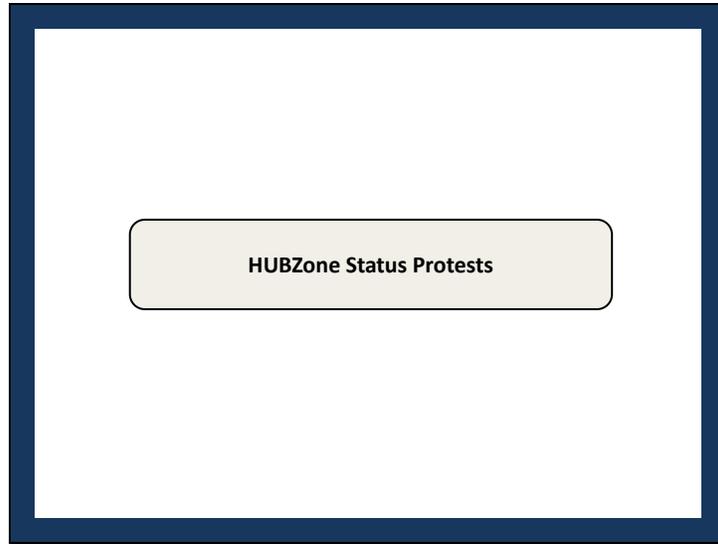
1. HUBZone Status Protests
  - ✓ What is a HUBZone Status Protest?
  - ✓ Regulatory Guidance
2. Filing a Protest
3. SBA's Role : Processing a HUBZone Status Protest
4. Appealing a Protest
5. Resources and Tools

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Understanding HUBZone Protests

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.

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HUBZone status protests.

## Slide 7

**What is a HUBZone Status Protest?**

- 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

*An offeror that is an interested party, the contracting officer, or the SBA may protest the apparently successful offeror's status as a qualified HUBZone small business concern*

FAR Part 19.306(b)(1)

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### 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.

**Under What Circumstances?**  
What is a HUBZone Status Protest?

- If a company wins or is about to win an award through any of these mechanisms, their HUBZone eligibility status may be protested:
  - ✓ sole source awards to qualified HUBZone SBCs;
  - ✓ set-aside awards, including partial set-asides, based on competition restricted to qualified HUBZone SBCs;
  - ✓ awards to qualified HUBZone SBCs through full and open competition after a price evaluation preference is applied to an other than small business in favor of qualified HUBZone SBCs;
  - ✓ awards based on a reserve for HUBZone SBCs in a solicitation for a Multiple Award Contract; or
  - ✓ orders set-aside for HUBZone SBCs against a Multiple Award Contract, which had been awarded in full and open competition

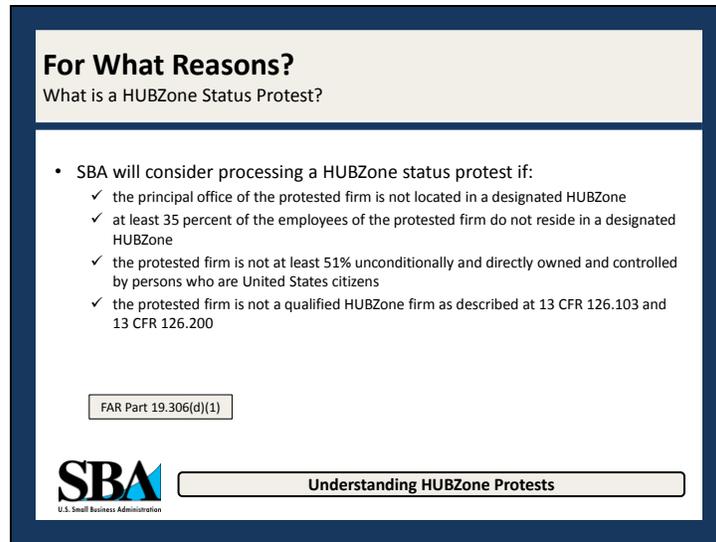
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Under what circumstances can a HUBZone status protest be levied?

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.



**For What Reasons?**  
What is a HUBZone Status Protest?

- 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
  - ✓ the protested firm is not a qualified HUBZone firm as described at 13 CFR 126.103 and 13 CFR 126.200

FAR Part 19.306(d)(1)

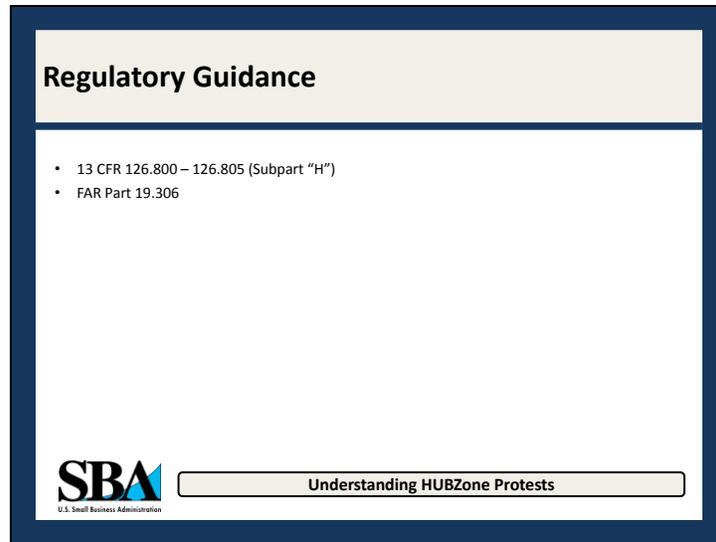
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Understanding HUBZone Protests

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.

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**Regulatory Guidance**

- 13 CFR 126.800 – 126.805 (Subpart “H”)
- FAR Part 19.306

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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.

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Filing a HUBZone status protest.

**Who Can File a HUBZone Status Protest?**  
Filing 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

**Note:** Protests relating to whether a HUBZone firm is a qualified small business are subject to procedures in FAR Part 19.3 --- Such protests may be processed by the SBA concurrently with HUBZone status protests

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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.

**Where Should a Status Protest be Submitted?**  
Filing a HUBZone Status Protest

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

FAR Part 19.306(d)

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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.

**How Should a HUBZone Protest be Submitted?**  
Filing a HUBZone Status Protest

- Must be in writing and submitted by email to [hzprotests@sba.gov](mailto:hzprotests@sba.gov), traditional mail, or in person
- Submitted within five business days after bid opening or notification of intended award

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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.

**Must be Sufficiently Specific**  
Filing a HUBZone Status Protest

- Protest must be sufficiently specific and state all relevant or alleged facts
- Merely asserting that a company is not a qualified HUBZone small business will be dismissed

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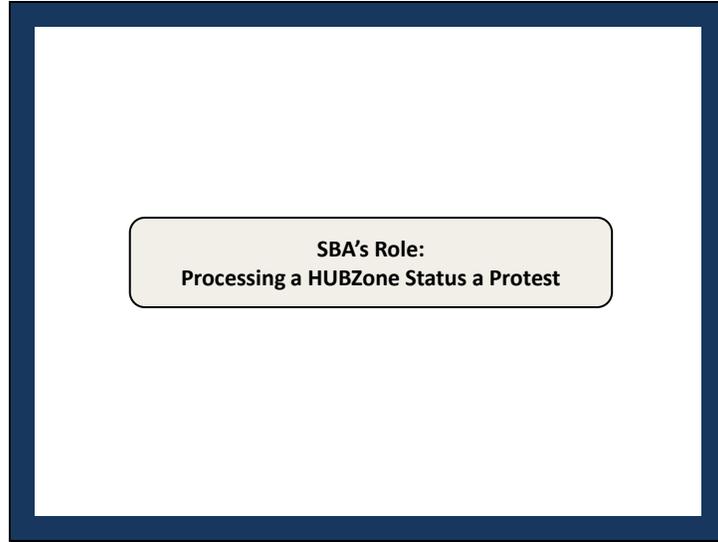
In order to successfully file a protest and avoid having it dismissed by the SBA, it must be sufficiently specific and state all relevant facts.

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.

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SBA's role, processing a HUBZone status protest.

**Processing the Protest --- Notification**  
SBA's Role: Processing a HUBZone Status Protest

- How will 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
  - ✓ SBA will immediately notify the contracting officer and the protestor of the date it received the protest and whether it will process the protest or dismiss it -- If SBA determines that the protest is timely and sufficiently specific, it will notify the protested HUBZone firm of the protest and the identity of the protestor
  - ✓ Protested HUBZone firm may submit information in response to or defending itself relative to the protest, **within five business days**

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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.

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### HUBZone Firm -- Responding to a Protest

SBA's Role: Processing a HUBZone Status Protest

- Protested firm has 5 business days to provide supporting documentation
- Firm must keep records of all documentation that proves its compliance with HUBZone eligibility requirements at the time of a contract offer and award, such as:
  - ✓ lease and utility bills for the principal office
  - ✓ payroll documents and copies of IDs for HUBZone resident employees
  - ✓ current supporting documentation submitted when the company was first approved as a HUBZone certified firm ([13 CFR 126.601 \(d\)](#))
- 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

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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.

### Additional Information and Fraud

SBA's Role: Processing a HUBZone Status Protest

- SBA may request additional documents or clarification of information
- Signed declarations bear greater weight than mere statements
- Suspected cases of fraud will be submitted to the OIG
- SBA's regulations ([13 C.F.R. § 126.900](#)) explain the penalties that may be imposed when a person or business concern provides false information to the federal government.

→ **Fraud:** any false representation about a material fact or any intentional deception designed to deprive the United States unlawfully of something of value or to secure from the United States a benefit, privilege, allowance, or consideration to which an individual or business is not entitled



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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.

**When SBA Makes a Protest Decision...**

- SBA 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 offer and/or award, **SBA sustains the protest** and the company:
  - ✓ may be decertified immediately;
  - ✓ cannot be awarded the contract in question; and,
  - ✓ may apply for new HUBZone certification after 90 days from the date of decertification

➔ [Protest Case Highlights](#)

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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.

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Appealing a protest decision.

**How are Appeals Filed?**

- Protested HUBZone firm, the protestor, or the contracting officer may submit an appeal to the SBA
  - ✓ Submit to: Associate Administrator of the SBA Office of Government Contracting and Business Development, Washington, DC
- Must be in writing and submitted by mail, or in person
- Submitted within five business days after receiving the notice of the protest decision
- All parties eligible or potentially impacted by the appeal must be notified

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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.

**Contents of an Appeal**

- Must be clear and fact-worthy – explaining why SBA's initial protest decision resulted in a significant error
- 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

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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.

**SBA's Appeal Decision is Final**

- SBA will make a decision within five business days of receipt of an appeal, if practicable
- Agency will provide a copy of the decision to the contracting officer, protestor, and the protested HUBZone firm
  - ✓ 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
- Decision is the **final** agency decision

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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.

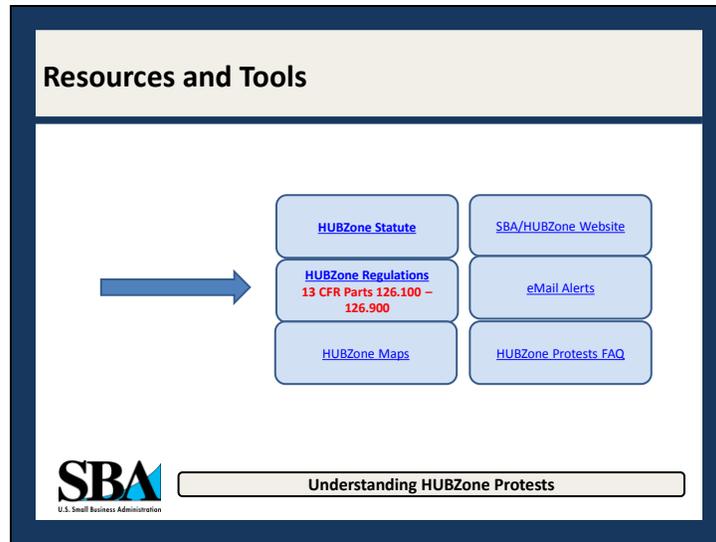
If the protest decision is overturned by appeal, the consequences are the same as if the initial decision was made in that way. That is, if a sustained protest is overturned on appeal, the protested company is now eligible to receive the contract in question. Conversely, if a denied protest is overturned, 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.



The slide features a title bar at the top with the text "Resources and Tools". Below this, a blue arrow points to a grid of six resource buttons. The buttons are arranged in two columns and three rows. The first column contains "HUBZone Statute", "HUBZone Regulations 13 CFR Parts 126.100 - 126.900", and "HUBZone Maps". The second column contains "SBA/HUBZone Website", "eMail Alerts", and "HUBZone Protests FAQ". At the bottom left is the SBA logo with the text "U.S. Small Business Administration". At the bottom right is a light-colored box containing the text "Understanding HUBZone Protests".

Resources and Tools	
<a href="#">HUBZone Statute</a>	<a href="#">SBA/HUBZone Website</a>
<a href="#">HUBZone Regulations 13 CFR Parts 126.100 - 126.900</a>	<a href="#">eMail Alerts</a>
<a href="#">HUBZone Maps</a>	<a href="#">HUBZone Protests FAQ</a>

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Understanding HUBZone Protests

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.

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**Contact Us...**

- Thank you for taking the time to learn about HUBZone program
- Please contact us with any questions you may have

HUBZone Help Desk  
[HUBZone@sba.gov](mailto:HUBZone@sba.gov)

U.S. Small Business Administration  
Office of Government Contracting and Business Development  
Office of the HUBZone Program



Understanding HUBZone Protections

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 Workbook

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 Regulations [http://www.ecfr.gov/cgi-bin/text-](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)

[idx?c=ecfr;sid=7f10b57ab16b755f85493361636352c1;rgn=div5;view=text;node=13:1.0.1.1.21;idno=13;c=ecfr](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)

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

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/gclassroom](http://www.sba.gov/gclassroom)

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>

GCBD|joconnor|January|2015