

October

2014

HUBZone Eligibility Requirements

Principal Office - Employees – Residency

HUBZONE Mini-Primer #2

This presentation is about HUBZone eligibility requirements, specifically principal office, employee and residency requirements. It is the second module in a series of Mini-Primers about the HUBZone Program.

U.S. Small Business Administration

Office of Government Contracting and Business Development



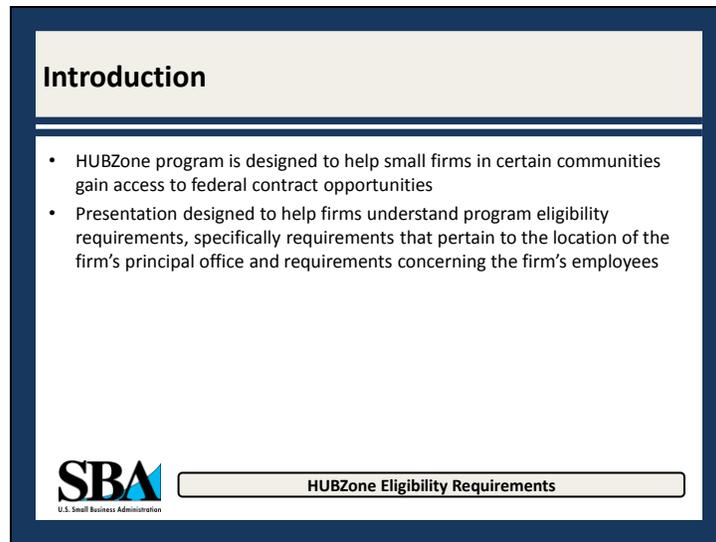
Slide 1



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

Welcome to SBA's training module, ***HUBZone Eligibility Requirements -- Principal Office, Employees and Residency***. This module is the second, 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, **HUBZone Eligibility Requirements: Principal Office –Employees – Residency**. The online version of the training program, with audio can be accessed at: www.sba.gov/gcclassroom. For the convenience of users, all hyperlinks contained in the copied slides are included as links at the end of the workbook.*



Introduction

- HUBZone program is designed to help small firms in certain communities gain access to federal contract opportunities
- Presentation designed to help firms understand program eligibility requirements, specifically requirements that pertain to the location of the firm's principal office and requirements concerning the firm's employees

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.

This mini-primer is designed to help firms to better understand HUBZone eligibility requirements, specifically, requirements that pertain to the location of the firm's principal office and requirements concerning the firm's employees.

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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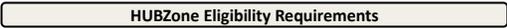
HUBZone Eligibility Requirements

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.

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 status protests of eligibility regarding HUBZone contracts

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.

Status protests are those that deal with compliance of the principal office, 35% employee HUBZone residency and/or ownership and control requirements. Size protests are handled by another SBA office.

Eligibility Requirements

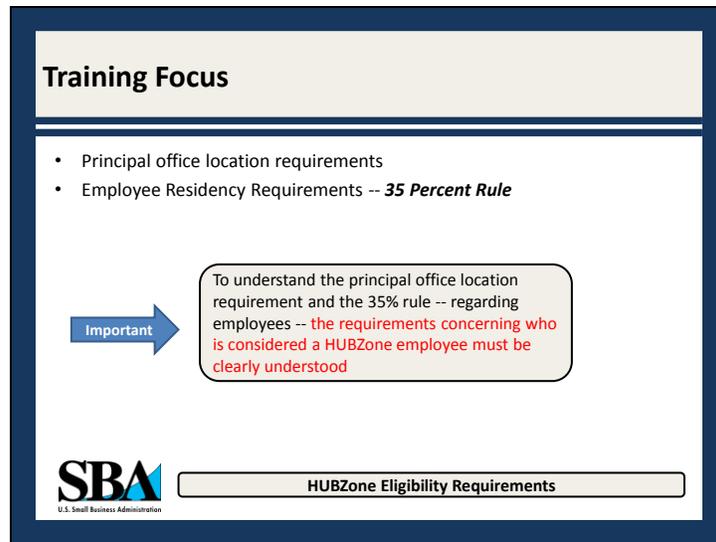
- Together with affiliates, must be a small business by SBA standards
- Owned and controlled by at least 51% U.S. citizens or a community development corporation, an agricultural cooperative, or an Indian tribe
- Principal office must be located within a designated HUBZone
- At least 35% of its employees must reside in a HUBZone

❖ **Note:** Different rules apply for Tribal Governments, Alaska Native Corporations, Community Development Corporations and small agricultural cooperatives. These are delineated in [Title 13 of the Code of Federal Regulations, Part 126](#)



To be eligible for the HUBZone program a business must meet specific criteria.

That is: it must be a small business by SBA standards and, if applicable, together with affiliates it must also be a small business; it must be directly owned and controlled by at least 51% U.S. citizens or a community development corporation, an agricultural cooperative, or an Indian tribe; its principal office must be located within a designated HUBZone, which includes lands considered “Indian country” and military facilities closed by the Base Realignment and Closure Act; and, at least 35% of its employees must reside in a HUBZone.



Training Focus

- Principal office location requirements
- Employee Residency Requirements -- **35 Percent Rule**

Important → To understand the principal office location requirement and the 35% rule -- regarding employees -- **the requirements concerning who is considered a HUBZone employee must be clearly understood**

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The focus of this training is to review principal office location requirements and requirements surrounding the “35 percent rule.” These requirements are often misunderstood. In fact, some 85 percent of the firms initially declined for HUBZone certification, or decertified after being approved were declined or decertified because of a misunderstanding or misinterpretation of the principal office location and/or employee residency requirements.

To understand these two important eligibility tenets, the requirements concerning who is considered a HUBZone employee must be clearly understood.

Slide 7



Requirements concerning employees.

Who are Considered HUBZone Firm Employees?

- Employee means all individuals employed on a full-time, part-time, or other basis, so long as that individual works a minimum of 40 hours per month
 - Includes employees:
 - obtained from a temporary employee agency, leasing concern, or through a union agreement
 - co-employed pursuant to a professional employer organization agreement
 - Volunteers are not considered employees.
 - If an individual has an ownership interest in and works for the HUBZone firm a minimum of 40 hours per month, that owner is considered an employee regardless of whether or not the individual receives compensation

[13 CFR 126.103](#)
[HUBZone FAQs](#)

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HUBZone Eligibility Requirements

Who are considered HUBZone firm employees?

Under HUBZone regulatory guidelines, the term “employee” means all individuals employed on a full-time, part-time, or other basis, so long as that individual works a minimum of 40 hours per month. This includes temporary employees and co-employed employees working under a professional employer organization agreement.

Volunteers are not considered employees. However, the following individuals are not volunteers and need to be counted as employees: those who have a deferred compensation agreement or receive in-kind compensation; and, those who have an ownership interest in and work for the HUBZone firm a minimum of 40 hours per month, even if they do not receive any compensation.

So, if an owner receives compensation but only works 20 hours per month, that owner will not be considered as an employee, even if the owner gets paid for the work. SBA has developed a series of Frequently Asked Questions – referenced in the noted hyperlink – that answer questions such as: How should I count an employee who is on leave at the time my firm is being reviewed for HUBZone compliance? Or, how do I count seasonal employees? Many other questions are also considered.

This FAQ resource, as well as the regulatory reference, can be very helpful.

Employee / Independent Contractor

- SBA considers the totality of the circumstances in determining whether individuals are employees of a concern
 - ❖ Factors from [SBA's Size Policy Statement No. 1](#):
 - Hiring
 - Payment and benefits
 - Power to dismiss
 - Supervision and performance evaluation
 - Previous employment by the firm
 - Type of work
 - Circumstances of the procurement of the contractors
 - Connection of contractor's employment to government contract
 - ❖ Factors from [IRS](#):
 - [Behavioral](#): right to control what the worker does and how the worker does his or her job
 - [Financial](#): right to control how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.
 - [Type of Relationship](#): existence of written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.); permanence and significance of relationship



HUBZone Eligibility Requirements

When is an independent contractor considered an employee?

SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes and those set forth in SBA's Size Policy Statement No. 1, in determining whether individuals are employees of a concern.

Regardless of whether your firm labels an individual an independent contractor, you must still determine if that individual should be treated as an employee for the purpose of determining the firm's HUBZone eligibility. There is no "magic" or set number of factors that "makes" the worker an employee or an independent contractor. No one factor stands alone in making this determination. Factors which are relevant in one situation may not be relevant in another.

The IRS website has good resources to help you evaluate if the individual should be considered as an employee. Use the referenced hyperlinks at your convenience.

Here is an important rule of thumb: When in doubt as to whether to count an individual as an employee . . . Count that person toward the total employee count.

Employee -- Example 1

- ABC, Inc. engages Betty Jones on a 1099 basis from March 2013 through August 2013. Ms. Jones performed:
 - contracts management: reviewed contracts for contractor teaming arrangements, subcontractors and vendors
 - bid and proposal support: acted as the point of contact for bid and proposal activities conducted by ABC Inc.
 - program management: responsible for coordinating task orders with ABC, Inc. customers, including understanding customer needs and developing the appropriate technical solution, and acting as a liaison with ABC Inc. agency customers to ensure the smooth delivery of products and services
- Additional facts:
 - Ms. Jones did not have a signed contracting/consulting agreement with ABC Inc.
 - Ms. Jones performed work on behalf of ABC Inc. from her home in Anchorage, AK
 - Ms. Jones did not have any other clients
 - at the end of each month, Ms. Jones would log her hours into ABC Inc.'s system
 - ABC, Inc. issued a business card to Ms. Jones
 - ABC, Inc. issued Ms. Jones an ABC Inc. e-mail address

 **HUBZone Eligibility Requirements**

Let's consider an example. Example 1.

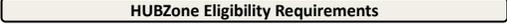
ABC, Inc. engages Betty Jones on a 1099 basis from March 2013 through August 2013.

Ms. Jones performed many duties: including contracts management; bid and proposal support; was responsible for coordinating task orders with ABC, Inc. customers, including understanding customer needs and developing the appropriate technical solution, and acting as a liaison with ABC customers to ensure the smooth delivery of products and services.

Betty did not have a signed consulting agreement with the ABC company and performed much of her responsibilities from home. She did not have any other clients and she logged her work hours into ABC's payroll system. Further, among other things, Ms. Jones had an email address issued from ABC, Inc.

Is Betty an Employee ?-- Answer Example 1

- Behavioral
 - Ms. Jones performed work on behalf of ABC Inc. from her home in Anchorage, AK → contractor
- Financial
 - Reported and kept track of her hours on ABC Inc.'s timekeeping system, and thus was paid an hourly wage → employee
 - Ms. Jones did not have any other clients → employee
- Type of relationship
 - Ms. Jones did not have a signed consulting/contracting agreement with ABC Inc. → employee
 - contract and vendor management is not something normally handled by subcontractors → employee
 - Ms. Jones was given an email account by the firm from which to conduct business on behalf of ABC Inc. → employee

Is Betty Jones an employee? The answer is yes.

Considering the totality of the circumstances, she would be considered an employee.

Employee -- Example 2

- ABC, Inc. engages Steve Smith on a 1099 basis to perform bookkeeping services:
 - Mr. Smith has a signed contract with ABC, Inc. that specifies the work to be performed, cost and delivery schedule
 - performs his work from his home in Providence, RI
 - has three other clients besides ABC, Inc.
 - at the end of each month, Mr. Smith issues his monthly invoice for the services performed
 - has his own business cards and his own e-mail address

 **HUBZone Eligibility Requirements**

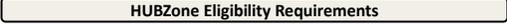
Example 2.

ABC, Inc. engages Steve Smith on a 1099 basis to perform bookkeeping services. Mr. Smith has a signed contract with ABC that specifies the work to be performed, cost and delivery schedule for deliverables. He performs his work from his home in Providence, RI, has three other clients besides ABC, and at the end of each month, Mr. Smith issues his monthly invoice for the services performed to ABC.

He also has his own business cards and e-mail address.

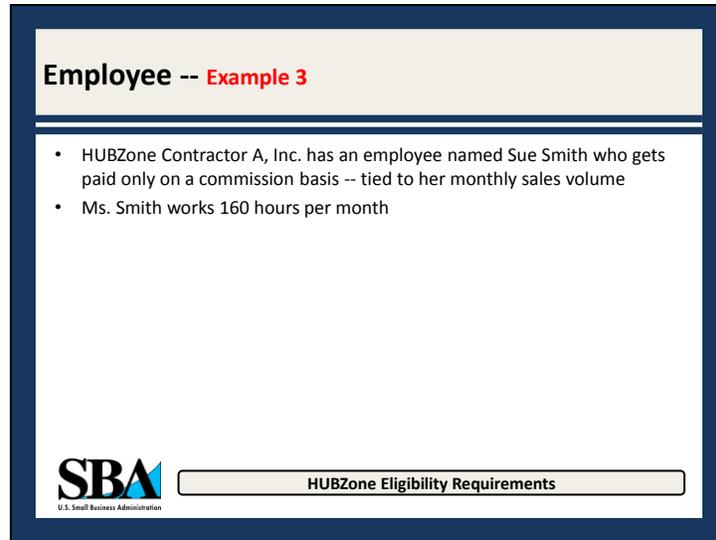
Is Steve an Employee ?-- Answer Example 2

- Behavioral
 - Mr. Smith performs his work from his home in Providence, RI → contractor
- Financial
 - Monthly invoices are sent. → contractor
 - Mr. Smith has other clients besides ABC ,Inc. → contractor
- Type of relationship
 - Signed contract with ABC ,Inc. delineating the work, price, and delivery schedule. → contractor
 - Work performed (i.e., bookkeeping) is normally performed by employees of a firm → employee
 - Mr. Smith has his own business cards and email address. → contractor

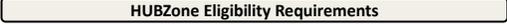
Is Steve Smith an employee? The answer is no.

Considering the totality of the circumstances, he would not be considered an employee.



Employee -- Example 3

- HUBZone Contractor A, Inc. has an employee named Sue Smith who gets paid only on a commission basis -- tied to her monthly sales volume
- Ms. Smith works 160 hours per month

Example 3.

HUBZone Contractor A, Inc. has an employee named Sue Smith who gets paid only on a commission basis. How much she gets paid is tied to her monthly sales volume. Sue works about 160 hours per month.

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Is Sue an Employee?-- Answer Example 3

- Sue Smith is considered an employee because she is expecting to receive compensation

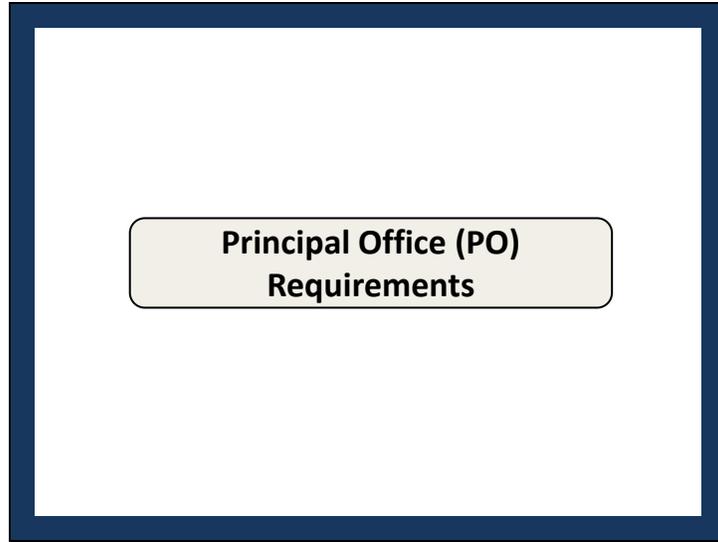
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HUBZone Eligibility Requirements

Is Sue Smith an employee? The answer is yes.

Sue is considered an employee because she is expecting to receive compensation.

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Principal office requirements.

Principal Office (PO) -- *Defined*

- Principal office definition: location where the greatest number of the business's **employees** - at any one location - perform their work

- ❖ **Note:** For businesses where the primary industry is in service or construction, the determination of principal office excludes the concern's **employees** who perform the majority of their work at job-site locations to fulfill specific contract obligations

[13 CFR 126.103](#)



HUBZone Eligibility Requirements

Ok.... So, regarding the principal office, we know from earlier in this presentation that the principal office must be located in a designated HUBZone. However, and this is important, it must also be the location where the greatest number of the firm's employees - at any one location - perform their work.

When determining if a firm meets the principal office requirement, it must be clearly demonstrated that the largest number of employees – meeting the definition of an employee – perform their work at the location deemed as the principal office. In this accounting, employees who may come to the principal office to pick up their work orders but then they go to work in job sites, would not be counted as employees who work in the principal office.

Again, and importantly, in determining where the greatest number of employees who work at any one location perform their work -- *the definition of the term employee*, -- as discussed previously, must be considered and appropriately applied.

More Clarity – *Principal Office*

- HUBZone *firm's headquarters does not have to be its "principal office"*
- Firm can have multiple locations that it leases or owns and still meet the principal office requirement if the office that is located in a HUBZone has the greatest number of its employees performing their work there

[13 CFR 126.103](#)

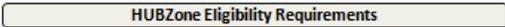
The firm's headquarters does not have to be its "principal office". This is an important distinction.

A firm can have multiple locations that it leases or owns and still meet the principal office requirement if the office that is located in a HUBZone has the greatest number of its employees performing their work there.

Are PO Requirements Satisfied? -- Example 1

Company B, Inc. is a small IT services company:

- its headquarters is located in an urban area that is not a designated HUBZone
- two owners and an administrative support person spend the majority of their work hours at the firm's headquarters
- across the street, in a qualified census tract, is a government facility where 6 engineers perform contract specific work for Company B
- owners and the administration team all live in a HUBZone a few miles away
- six employees work at the government site -- one of them is part time and works only 20 hours every week
- only one of the six employees who works at the government site lives in a HUBZone

Let's consider our first example. Does Company B, Inc. meet the principal office requirement?

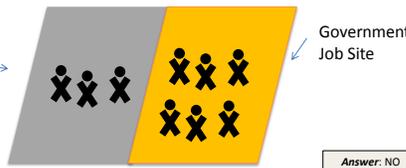
Company B, Inc. is a small IT services company. It's headquarters is located in an urban area that is not a designated HUBZone, according to the map. The two owners and an administrative support person spend the majority of their work hours at the headquarters location.

Across the street, in a qualified census tract, there is a government facility where 6 engineers, employed by Company B, perform contract specific work.

Further, the owners and the administration team all live in a HUBZone a few miles away. Of the six employees at the government site, one of them is part time and works only 20 hours every week. Further, only one of the six employees who works at the government site lives in a HUBZone.

Company B – Answer Example 1

Important → When dealing with the evaluation of the principal office, *where employees live should not be considered*
- - What matters is where the greatest number of employees - at any one location - perform their work

Company B, Inc. →  Government Job Site

Answer: NO

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HUBZone Eligibility Requirements

Company B, Inc. does not meet the principal office requirement. This is why...

When evaluating the principal office requirement, where employees live, is not relevant. What matters is where the greatest number of employees - at any one location - perform their work. In this example, most of Company B's employees work at the government site. The government site is considered a job site and as such the employees who work there cannot be counted towards the principal office calculation.

So, that leaves 3 employees who work in the firm's only office, which is not in a HUBZone. Remember, when analyzing the principal office, the 35% rule is not applicable.

Are PO Requirements Met? -- Example 2

- XYZ, Inc. executed a 6 month contract for office use in a building that is in a HUBZone
- The office use agreement provides:
 - management of mail, faxes and couriers
 - receptionist to answer calls in the company name and transfer to its office, mobile, etc.
 - 40 hours per month complimentary use of a private office for one person
- XYZ, Inc. has 2 employees (owner and administrative assistant)
- Owner works 160 hours per month from home, which is not in a HUBZone & administrative assistant works 40 hours per month from the firm's office
- XYZ, Inc. does not have any job sites

 **HUBZone Eligibility Requirements**

Example 2. Does XYZ, Inc. meet the principal office requirement?

The XYZ company executed a 6 month contract to obtain: management of mail, faxes and couriers; a receptionist to answer calls in the company name; and, 40 hours per month of complimentary use of a private office for one person. XYZ, Inc. has two employees, the owner and an administrative assistant. In addition, the owner works 160 hours per month from home, which is not in a HUBZone and the administrative assistant works 40 hours per month from the firm's office.

The XYZ company does not have any job sites.

XYZ, Inc. – Answer Example 2

- XYZ, Inc.'s virtual office does not meet the principal office requirement because it is not the place where the greatest number of the employees work from
- XYZ, Inc. is considered to have 2 offices:
 - where the administrative assistant works from
 - where the owner works from

The answer is no.

XYZ, Inc. has 2 offices, one in a HUBZone where the administrative assistant works and the other office is the owner's home. As such there is no greater number of employees working at the HUBZone location.

It is important to note, that the agreement for the office use was for 40 hours per month for one person. So, even if the owner was to decide to no longer work from home and move her work to the new office space, the agreement would need to be amended to properly reflect the increase of monthly hours and the number of people working from that location.

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HUBZone residency requirement, the 35% rule.

HUBZone Residency Requirement

- At least 35% of the firm's employees must reside in a HUBZone
- *Reside* means to live in a primary residence at a place for at least 180 days, or as a currently registered voter, and with intent to live there indefinitely

Important → *HUBZone Residency Requirement* – At least 35% of the firm's employees must reside in a HUBZone

[13 CFR 126.200](#)

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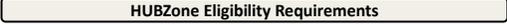
Ok, so we have talked about employees and principal office requirements.

Now, let's take a closer look at the HUBZone residency requirement that at least 35% of the firm's employees must reside in a HUBZone.

HUBZone 35% Rule – Example 1

Company J, Inc. is a small IT services company where:

- its headquarters is located in an urban area that is not a HUBZone
- two owners and an administrative support person spend the majority of their work hours there
- across the street, in a qualified census tract, is a government facility where 6 engineers perform contract specific work
- owners and the administration support person all live in a HUBZone a few miles away
- six employees work at the government site - one of them is part time and works only 20 hours every week
- only one of the six employees who works at the government site lives in a HUBZone

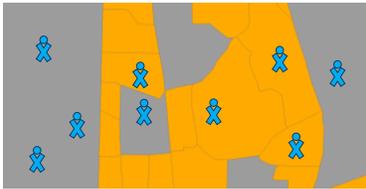
 

Does Company J, Inc. meet the 35% requirement?

Company J is a small IT services company where: its headquarters is located in an urban area that is not a HUBZone; two owners and an administrative support person spend the majority of their work hours at headquarters; across the street, in a qualified census tract, is a government facility where 6 engineers perform contract specific work for the company; owners and the administration support person all live in a HUBZone a few miles away; six employees work at the government site - one of them is part time and works only 20 hours every week; and, only one of the six employees who works at the government site lives in a HUBZone.

Answer HUBZone 35% Rule – Example 1

Important → When evaluating the 35% employee HUBZone residency requirement, you must not consider where employees work – only where they live



Legend
■ Non HZ
■ HZ

Answer: YES

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HUBZone Eligibility Requirements

The diagram shows a map with a central yellow area labeled 'HZ' (HUBZone) and surrounding grey areas labeled 'Non HZ'. There are 10 blue stick-figure icons representing employees. Five of these icons are located within the yellow HZ area, and five are located within the grey Non HZ area. A text box with an arrow pointing to the map states: 'When evaluating the 35% employee HUBZone residency requirement, you must not consider where employees work – only where they live'. A legend indicates that grey represents 'Non HZ' and yellow represents 'HZ'. Below the map, a box says 'Answer: YES'. At the bottom left is the SBA logo, and at the bottom center is a box containing the text 'HUBZone Eligibility Requirements'.

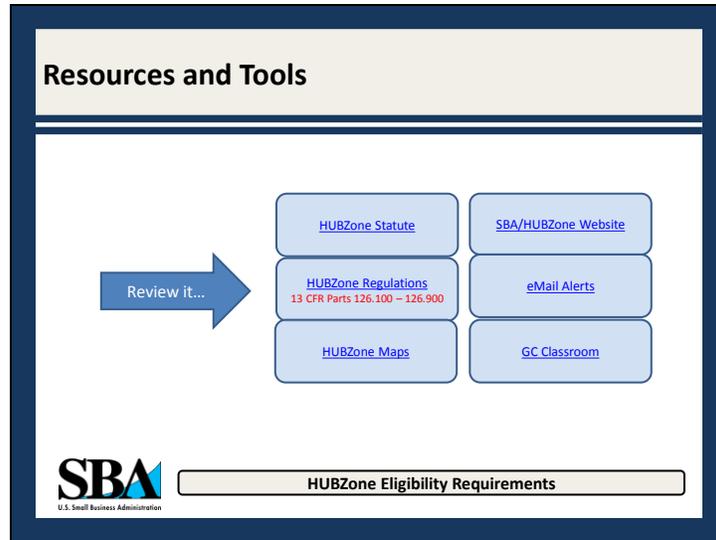
Does Company J meet the 35% requirement? **YES.**

Remember, when determining if a firm meets the 35% employee HUBZone residency requirement, where employees work – does not need be considered.

Slide 27



Resources and tools.



The diagram is titled "Resources and Tools" and is enclosed in a dark blue border. It features a central grid of six blue rounded rectangular buttons. A blue arrow labeled "Review it..." points from the left towards the grid. The buttons are arranged in two columns and three rows. The top row contains "HUBZone Statute" and "SBA/HUBZone Website". The middle row contains "HUBZone Regulations" (with "13 CFR Parts 126.100 – 126.900" in red text below it) and "eMail Alerts". The bottom row contains "HUBZone Maps" and "GC Classroom". At the bottom left is the SBA logo (U.S. Small Business Administration). At the bottom center is a white rectangular box with the text "HUBZone Eligibility Requirements".

| Resources and Tools | |
|---|-------------------------------------|
| HUBZone Statute | SBA/HUBZone Website |
| HUBZone Regulations 13 CFR Parts 126.100 – 126.900 | eMail Alerts |
| HUBZone Maps | GC Classroom |

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HUBZone Eligibility Requirements

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.

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

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

 **HUBZone Eligibility Requirements**

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

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

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

GC Classroom www.sba.gov/gclassroom

SBA's Size Policy Statement #1 <http://www.sba.gov/sites/default/files/files/SizePolicyStatementNo1.pdf>