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United States Senate

COMMITTEE ON SMALL BUSINESS
WASHINGTON, DC 20510-6350

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February 16, 1999

Ms. Laurie Duarte
General Services Administration
FAR Secretariat (MVR)
1800 F Street NW, Room 4035
Washington, DC 20405

Dear Ms. Duarte:

As Chairman of the Senate Committee on Small Business and the author of the HUBZone legislation that ultimately was enacted as Title VI of the Small Business Reauthorization Act of 1997 (Public Law 105-135), I was pleased to see the rules to implement this important new program in the Federal Acquisition Regulation (FAR). Small businesses are on the front lines in the battle to reclaim economically distressed areas, and the HUBZone Program is an exciting opportunity to deliver Federal Government contracts, through the marketplace, to assist them.

I commend the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration for their decision to issue the rule as an interim rule effective January 4, 1999 (hereafter referred to as "the interim rule"). Not only will this help speed relief to the nation's most poverty-stricken areas, it will help the Government meet the statutory Fiscal 1999 goal of 1% of Government prime contract dollars in the HUBZone Program. The rulemaking invites comments for consideration in composing a final rule, and I am pleased to submit the following comments toward that end.

The HUBZone Act allows contracting officers to award sole source contracts (if he or she does not have a reasonable expectation of receiving offers from two or more HUBZone small businesses), to set aside contracts for competition exclusively among HUBZone small businesses (if the contracting officer has a reasonable expectation of receiving offers from two or more HUBZone small businesses), and finally to award a price evaluation preference in cases of full and open competition. Under the interim rule, authority to set-aside contracts exclusively for HUBZone small businesses is implemented by a new FAR § 6.205, adding those HUBZone set-asides to the list of exceptions to the general requirement for full and open competition.

However, it appears that a conforming change was not made to the general policy statement in § 6.201, which incorporates the list of exceptions by reference to the relevant sections. That list currently includes §§ 6.202 and 6.203, but was not amended to include a reference to the HUBZone exception in § 6.205. (It also does not include § 6.204, relating to

8(a)). The list in § 6.201 should be amended to include a reference to §§ 6.204 and 6.205--or should otherwise be amended to explain how §§ 6.204 and 6.205 relate to the policy statement in § 6.201.

The interim rule implements the HUBZone sole source authority by amendment to § 6.302-5. It does so by adding the HUBZone sole source authority to a list of statutory exceptions to full and open competition, as a new § 6.302-5 (b)(6). However, a conforming change to subsection (c) was not made. Subsection (c)(2)(i) exempts from the requirement for a written justification and approval the sole source authority for 8(a), as provided in subsection (b)(4); it seems to me that the same logic applies to sole source authority for HUBZone contracting. Otherwise, the paperwork requirements will disproportionately discourage use of the HUBZone sole source authority and undermine the Congressional intent in adopting the program. Second, I would note that, in implementing the HUBZone set-aside authority discussed previously, the interim rule exempts that set-aside authority from separate justification requirements through §6.205(b). I believe the failure similarly to exempt the sole source authority is an oversight, and I recommend that § 6.302-5(c)(2)(i) be amended to include a reference to § 6.302-5(b)(6).

I was glad to see that the authors of the interim rule provided in §§ 13.003 and 13.005 for at least the optional use of HUBZone set-asides for contracts below the simplified acquisition threshold, and did not simply render the entire law inapplicable for such contracts as authorized by the Federal Acquisition Streamlining Act. The economically distressed areas of the nation can benefit from every additional contract dollar provided to a HUBZone small business. Completely exempting actions below the simplified acquisition threshold from the HUBZone Program could have done real harm to the effort to revitalize these areas.

For the same reason, I have concerns about the exemption of the Federal Supply Schedules from the HUBZone Program, as provided in the interim FAR § 8.404. The General Services Administration (GSA), which manages the Federal Supply Schedules, is expressly included as a covered agency in § 602(b)(2)(I) of the HUBZone Act. I do not see why it is necessary or appropriate to exempt the entire Federal Supply Schedules from the HUBZone Program. Users of the Federal Supply Schedules should at least have the option of comparing prices and procuring a particular item only from HUBZone small businesses. It would not be overly burdensome to include a notation in GSA's "GSA Advantage!" online shopping mall identifying whether the contractor is a HUBZone small business. A conforming change would also need to be made in § 19.1304(c).

Sections 19.1305 and 19.1306 discuss HUBZone set-aside procedures and HUBZone sole source awards. In both sections, I urge including additional language to clarify a point of confusion I have heard from potential HUBZone applicants: some contracting officers believe mistakenly that, to qualify under the HUBZone Program, the work to be performed under a

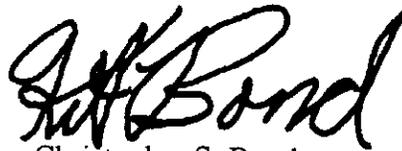
Ms. Laurie Duarte
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contract must be performed within a HUBZone. The HUBZone Act does not include such a requirement. Instead, the HUBZone Act requires that a HUBZone small business concern be controlled by U.S. citizens and have its principal office in a HUBZone. I believe it would be worthwhile to include express language to clarify this issue so that contracting officers do not mistakenly exclude HUBZone small businesses by focusing on place of performance rather than location of principal office.

Finally, I would note a few typographical and grammatical errors. In the interim FAR § 19.306(c), the sentence "Assertions. . .is insufficient." should undoubtedly read "Assertions. . .are insufficient." Also, in the interim § 19.502-1 (a)(1), the phrase "Nations full productive capacity" should be "Nation's full productive capacity."

These are my principal recommendations and comments concerning the interim rules. I look forward to publication of final rules that clarify these issues. If you have questions about these comments, please contact Cordell Smith of the Senate Small Business Committee staff on (202)224- . Thank you for the work you are doing to carry out the language and intent of the HUBZone Act and to assist our nation's distressed inner cities, rural counties, and Indian reservations through this program.

Sincerely,



Christopher S. Bond
Chairman

cc: Michael McHale, Small Business Administration

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