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THE ZONE REPORT



Official Newsletter of the HUBZone Contractors National Council, a non-profit, non-partisan trade association representing companies certified as HUBZone firms by the U.S. Small Business Administration.

[Get more information.](#)

April 2010

Volume 10, Number 4

This is the non-member edition of The Zone Report. Our records indicate that your company is not a member of the HUBZone Council. [Become a member today](#) to receive exclusive members-only information about the HUBZone Program and how to improve your contracting success.

Your membership helps the Council protect and improve the HUBZone Program while encouraging the advancement of the nation's economically challenged areas, combatting unemployment, and reducing homelessness.

REGULATORY ADVISORY:

'Employee' Definition Changes on May 3

New HUBZone Regulations Will Impact All HUBZone Firms

The Small Business Administration (SBA) has released a significant change in the HUBZone program regulations (13 CFR Part 126) that will impact many HUBZone firms. The definition of the term 'employee' has been clarified and altered. The revised regulations go into effect on May 3, 2010.

The major change is that an 'employee' will be one who works 40 or more hours in a month, rather than the current 30 or more hours per week. The new definition also clarifies a number of other issues relating to who is considered an employee.

This definition is important to HUBZone-certified firms because at least 35% of their employees must reside in HUBZones to obtain and maintain HUBZone certification.

CURRENT DEFINITION - expires May 3, 2010:

"Employee means a person (or persons) employed by a HUBZone SBC on a full-time (or full-time equivalent), permanent basis. Full-time equivalent includes employees who work 30 hours per week or more. Full-time equivalent also includes the aggregate of employees who work less than 30 hours a week, where the work hours of such employees add up to at least a 40-hour work week. The totality of the circumstances, including factors relevant for tax purposes, will determine whether persons are employees of a concern. Temporary employees, independent contractors or leased employees are not employees for these purposes."

NEW DEFINITION - effective May 3, 2010:

"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 employees obtained from a temporary agency,

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New HUBZone Council Members

Bluegrass Support Services
San Antonio, Texas

Coastal Environmental Group
Central Islip, New York

CORE Engineering & Construction
Winter Park, Florida

CWS
Washington, DC

Decision Support

leasing concern, or through a union agreement or co-employed pursuant to a professional employer organization agreement. 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.

Volunteers

(i.e., individuals who receive deferred compensation or no compensation, including no in-kind compensation, for work performed) are not considered employees. However, if an individual has an ownership interest in and works

for the HUBZone SBC a minimum of 40 hours per month, that owner is considered an employee regardless of whether or not the individual receives compensation."

Contact the HUBZone Help Desk at SBA with questions: phone 202-205-8885 or hubzone@sba.gov.

CALL TO ACTION: Support the HUBZone Improvement Act



The HUBZone Improvement Act of 2010 (S. 3020) was recently introduced in the U.S. Senate. The Act would mandate several improvements in the HUBZone Program; but, in order to have the best chance at passage, the Act needs additional sponsors.

Please contact your Senators today and ask them to sponsor and/or support the HUBZone Improvement Act of 2010.

[Background Information](#)

<http://www.hubzonecouncil.org/clubportal/images/clubimages/528/pr-100226-hubzone-impr-act.pdf>

[Proposed Bill](#)

<http://www.hubzonecouncil.org/clubportal/images/clubimages/528/1002%20s3020%20hubzone%20improvement%20act.pdf>

[Contact Your Senators](#)

http://www.senate.gov/reference/common/faq/How_to_contact_senators.htm

20th Annual OSDBU Procurement Conference

April 21, 2010

Dulles Expo Center - Chantilly, Virginia

If you are attending this conference, please visit the HUBZone Council at booth 626.

[More Information](#)

<http://www.osdbu.gov>



Services
Front Royal, Virginia

EXB Solutions
Wayzata, Minnesota

G2C
St. Louis, Missouri

Production Air Services
Tulsa, Oklahoma

Regency Construction
Slidell, Louisiana

Schatz Publishing Group
Blackwell, Oklahoma

Timber Frame Business Council
Gettysburg, Pennsylvania

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New Federal Compliance Database

Greater Oversight Impacts Contractors & Grant Recipients

On March 23, 2010, the Obama Administration issued a final rule regarding the Federal Awardee Performance and Integrity Information System (FAPIIS), a new compliance database that will result in an unprecedented level of oversight over contractors and grant recipients.

The new database is a clearinghouse that will assist contracting officers in their analysis of the compliance (or non-compliance) status of contractors and grantees. The Administration hopes that FAPIIS will improve the Government's ability to evaluate the business ethics and expected performance quality of prospective contractors and protect the Government from awarding contracts to contractors that are not responsible sources.

Purpose

The FAPIIS database provides one-stop access to two existing federal databases: (1) the Excluded Parties List System (EPLS) and (2) the Past Performance Information Retrieval System (PPIRS). Furthermore, FAPIIS will include contracting officers' non-responsibility determinations, contract terminations for default or cause, agency defective pricing determinations, administrative agreements entered into by suspension and debarment officials to resolve a suspension or debarment, and contractor self-reporting of criminal convictions, civil liability, and adverse administrative actions.

Scope

Pursuant to the final rule, as part of responsibility determination, contracting officers must review information in FAPIIS in connection with contracts over the simplified acquisition threshold (currently \$100,000), document the contract file to explain how the information in FAPIIS was considered, and notify, prior to proceeding with an award, the agency official responsible for initiating debarment or suspension (if information is identified in FAPIIS that appears appropriate for that official's consideration). Under certain circumstances, contractors and grantees may have an opportunity to demonstrate responsibility prior to a contracting officer's non-responsibility determination.

FAPIIS also contemplates self-reporting. Specifically, contractors who submit a proposal for a federal contract over \$500,000 who have over \$10 million in active contracts and grants must report in FAPIIS information pertaining to criminal, civil, and administrative proceedings through which a requisite determination of fault was made. A contractor must update the information in FAPIIS on a semi-annual basis for the life of the contract.

Future Action Related to FAPIIS

Contractors should note that a future version of FAPIIS will collect information in connection with the award or performance of a contract or grant with a state government. In addition, future proposed rules will recommend lowering the threshold for covered actions that trigger FAPIIS reporting from \$500,000 to the simplified acquisition threshold, and expanding a contractor's reporting obligations to include other violations of laws, as opposed to violations only in the context of federal contracts and grants.

For more information, contact HUBZone Council Legal Counsel David Taylor, Esq. at david.taylor@bipc.com.



**HUBZone Council:
Your Voice in
Washington**



**CONGRATULATIONS
to the following
HUBZone Council
Members
for recently earning
federal contracts:**

Cooley Constructors
Oklahoma City, Oklahoma

Embassy Lawn &
Landscaping
Kansas City, Missouri

Kesser International
North Little Rock, Arkansas

Kimrick Performance
Group
Houston, Texas

R&D Training &
Technical Services
Virginia Beach, Virginia

RAS Enterprises
Gulfport, Mississippi

S&K Construction
Company
Tobyhanna, Pennsylvania

Tropical Contracting
San Antonio, Texas

V. Pavkov Contracting
Company
Sumter, South Carolina

11th Annual U.S. Department of Energy Small Business Conference & Expo

May 10-12, 2010
Atlanta

[More Information](#)

Changes in Rules Governing Contract Officers, DCAA Auditors & DCMA Administrators

May Have Serious Impact on Government Contractors

Recent developments in the federal government contracts field have significantly changed the landscape for contractors and may well result in more contentious relationships between and among contractors, contracting officers, and auditors, with more litigation in sight for issues that used to be amicably resolved. Now is the time to seek guidance from experienced government contracts practitioners to understand these changes, help head off issues before or as they arise, or, ultimately, assist in litigating the issues if they prove to be as intractable as some predict.

Many are aware that the Defense Contract Audit Agency (DCAA) has been under fire recently. The Government Accountability Office (GAO) has issued reports and Congress has held hearings in which the objectivity and ability of DCAA auditors were questioned. The head of DCAA was reassigned and overseers issued new (and much harsher) guidance memoranda on how auditors could interact with contractors and contracting officers, and what they could access, ask for, and examine.

The result is a new climate in which the auditors of allowable costs under government contracts -- who are advisors to and assistants of the holders of ultimate authority, contracting officers and Defense Contract Management Agency (DCMA) administrators -- are now 'presumptively correct' and contracting officers may be unlikely to disagree with them for fear of having their agencies' inspector generals come knocking on their doors or having the DCAA auditor appeal to their superiors, particularly if the contract involves the Department of Defense.

These and other recent changes in the rules of the game are new, important, and somewhat arcane; but their importance in the way contractors interact with their government, combined with the new mandatory compliance program, make it essential that all companies with a government contracts understand these new rules.

The major concern, among government contractors, is that the changes could negatively impact the decision-making process, creating problems that are likely to result in an increase in litigation by contractors.

Consult your legal advisor for more information. HUBZone Council members may wish to use their complimentary consultation benefit with the [Council's legal team](#) to determine how these rule changes will impact their businesses.



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[HUBZone Regulations
\(13CFR126\)](#)

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September 15-17, 2010
The Dupont Hotel - Washington, DC



Meet with federal contracting officers from a variety of agencies.
Learn how to win more contracts.
Discover how to effectively protest bids and contract awards.

[Details & Registration Information](#)

**Become a
Council
Member
Today!**

If you own or work at a HUBZone-certified company, or are just interested in federal contracting, and aren't already a member, please consider joining the HUBZone Council.

Your membership provides access to the latest federal contracting and HUBZone-related news and developments, maximizes your success in earning federal contracts, and supports on-going representation on Capitol Hill to improve the HUBZone program and help rebuild America's economically-challenged communities.

Company memberships start at just \$95 per year. [Get more information.](#)



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