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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.

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March 2010

SPECIAL REPORT:

Court Issues Ruling Favoring HUBZone Priority Opinion Upholds GAO Interpretation of Legislation



The Court of Federal Claims (CFC) recently released its opinion in the case of [Mission Critical Solutions v. the United States \(09-864C\)](#). In a bid protest that questioned the priority of the HUBZone Program over the Small Disadvantaged Business/8(a) Program, the Court sided with the plaintiff, Mission Critical Solutions (MCS), and supported the priority of the HUBZone

Program.

Existing HUBZone legislation ([15 U.S.C. 657a](#)) states "a contract opportunity 'shall' be awarded ... to any qualified HUBZone small business concern" if certain criteria are met. Legislation regarding the 8(a) Program indicates that contracts 'may' be awarded to program participants. In its opinion, the Court ruled that 'shall' trumps 'may' in the existing legislation, which means that the HUBZone Program should have priority.

BACKGROUND

In January 2009, MCS protested a contract award made by the U.S. Army as an 8(a) set-aside and argued that existing legislation required the Army to first compete the contract among HUBZone small businesses. At the Government Accountability Office's (GAO) request, the Small Business Administration (SBA) responded to the issue raised in the protest. The Army filed two motions to dismiss the protest, both of which GAO denied. [GAO sustained MCS's protest in May 2009](#) and [denied the SBA's request for reconsideration in July 2009](#).

In July 2009, the [Office of Management & Budget \(OMB\) issued a memorandum](#) directing executive branch agencies to disregard the GAO ruling, as well as another similar ruling (issued in a case involving International Program Group in September 2008), pending legal review.

The [Office of Legal Counsel \(OLC\) of the Department of Justice issued a memorandum opinion](#) in August 2009 that disagreed with GAO's analysis and stated that the GAO opinion was not binding on the executive branch of the government. As a result of the OLC memorandum, the Army informed GAO that it would not be implementing GAO's recommendations.

MCS filed a complaint with the Court of Federal Claims in December 2009, which resulted in the Court's opinion in March 2010.

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New HUBZone Council Members

Ashby Services
San Antonio, Texas

Barry Lawson Associates
Peacham, Vermont

Global Commerce & Services
New Orleans, Louisiana

Gold Coast Chemical Products
Hallandale, Florida

J.A. Farrington Janitorial Services
Durham, North Carolina

Kesser International
N Little Rock, Arkansas

R&D Training & Technical Services
Virginia Beach, Virginia

Toltec
N Little Rock, Arkansas

Viper Safety
Mauston, Wisconsin

DECISION

The decision states, "The case presents a primarily legal, rather than factual, question: whether statutory language provides for the prioritization of the Historically Underutilized Business Zone (HUBZone) Program over the 8(a) Business Development Program (and over the Service-Disabled Veteran-Owned Business Concern Program, although not an issue in this case) or provides for parity between the programs."

In the Court's opinion, existing statutes indicate that the HUBZone Program has priority over other federal set-aside programs. HUBZone firms may wish to remind contracting officers about the ruling when competing for contracts.

WHAT TO EXPECT

In light of the Court's decision, the General Counsel of the Senate Armed Forces Committee indicated that he expects legislation to settle parity among the set-aside programs in this session of Congress. In 2009, the Congress failed to approve an amendment to the National Defense Authorization Act that would have set all three small business set-aside programs on an equal footing.

HUBZone Council Legal Counsel David Taylor expects a renewed legislative push to change the existing 'shall' in the HUBZone statute to 'may,' which would allow contracting officers wide discretion in determining which set-aside program(s) to favor when soliciting and awarding contracts.

For more information:

<http://www.uscfc.uscourts.gov/mission-critical-solutions-v-united-states-09864c>

CALL TO ACTION: 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/528/10%20hubz%20improvement%20act%20draft.pdf>

[Contact Your Senators](#)

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

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Quick Links

[SBA HUBZone Program](#)

Women-Owned Small Business Rule Proposed

Would Expand Access to Federal Contracting Opportunities



The U.S. Small Business Administration (SBA) recently released a [proposed rule](#) aimed at expanding federal contracting opportunities for women-owned small businesses (WOSBs).

The creation of a rule to increase opportunities for WOSBs was authorized by Congress in 2000. Since then, SBA has taken a number of steps to analyze the market, including participation by women-owned small businesses across all industries.

The proposed rule identified 83 industries in which WOSBs are under-represented in the federal contracting marketplace. The rule would provide greater opportunities for WOSBs in these industries and help to achieve the existing statutory goal that 5% of federal contracting dollars go to WOSBs. In Fiscal 2008, WOSBs received 3.4% of federal contracting dollars.

It is unclear how much this rule would impact the amount of contract dollars going to HUBZone firms since many HUBZone firms also participate in other set-aside programs, such as Small Disadvantaged Business/8(a) and Service-Disabled Veteran-Owned (SDVO), and will qualify to participate as WOSBs if the rule is enacted. The federal spending goal of the HUBZone Program is 3%; in 2008, 2.34% of federal contracting dollars went to HUBZone firms.

HUBZone Council Chair Ron Newlan expressed support for WOSBs but is concerned that the new rule could negatively impact the amount of contract dollars going to HUBZone firms. "We need to strengthen all small business programs, including SDB/8(a), SDVO, WOSB, and HUBZones, without adversely impacting any of them by significantly expanding the federal contracting dollars awarded to all small businesses." Only SDB/8 (a) has met its goals in recent years.

The public is invited to make comments about the proposed rule until May 3. Comments may be registered at [Regulations.gov](#) or by mailing them to Dean Koppel, Assistant Director, Office of Policy & Research, SBA, 409 3rd St, SW, Washington, DC 20416. Reference RIN 3245-AG06 when submitting comments.

For more information:

<http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480ab485a>

SBA Recovery Lending Programs Extended

New Funding Will Support about \$1.8 Billion in Loans

President Obama recently signed legislation extending until March 28 the U.S. Small Business Administration's (SBA) ability to provide small business loans that are enhanced with special provisions of the American Recovery & Reinvestment Act, including a higher guarantee of SBA-backed loans and a waiver of loan fees normally paid by borrowers.

SBA estimates the additional funding will support about \$1.8 billion in small business lending. Loan applications from borrowers in SBA's Recovery Loan Queue will be funded first, followed by new loan applications.

As part of the Recovery Act, SBA received \$730 million, which included \$375 million to increase the SBA guarantee on 7(a) loans to 90% and to waive borrower fees on most 7(a) and 504 loans. The funds for these programs were exhausted in November and an additional \$125 million was provided in December. Those funds were exhausted in February.

[Federal Business Opportunities](#)

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

[HUBZone Council](#)

For more information:

http://www.sba.gov/idc/groups/public/documents/sba_homepage/news_release_10-06.pdf



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