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## INDUSTRY ADVISORY: May 2010



## HUBZone Priority Reconfirmed: New GAO Decision Supports Federal Court Opinion

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## New GAO Decision Favors HUBZone Priority Ruling Confirms That GAO Will Support Protests

A recent Government Accountability Office (GAO) decision ([B-402494, DGR Associates, May 14, 2010](#)) has confirmed that GAO will sustain protests regarding HUBZone set-aside denials when the required statutory conditions are met.

The decision supports the findings of the [Court of Federal Claims \(CFC\) ruling](#) regarding Mission Critical Solutions that was issued earlier this year.

In the wake of the CFC opinion, the stated Obama Administration's policy has been to consider the HUBZone Program as having parity with the other major set-aside programs, [i.e., the 8(a) and Service-Disabled Veteran-Owned programs], even though the CFC and GAO have indicated that current statutes provide the HUBZone program with priority.

The GAO decision says: "We have clearly stated our view on the proper interpretation of the HUBZone statute, and we recognize that the Executive Branch

has resolved to apply its own, contrary interpretation of the HUBZone statute. Accordingly, absent some change in the statutory scheme, Executive Branch policy, or a contrary decision by the United States Court of Appeals for the Federal Circuit in connection with the Justice Department's appeal of the decision in *Mission Critical Solutions v. United States, supra*, we will decide future protests raising the issue here in an expedited and summary manner, in the interest of reducing the costs associated with filing and pursuing such protests."

According to HUBZone Council Legal Counsel David Taylor, "The decision is clear that a HUBZone set-aside should be applied if the statutory conditions are met (two or more HUBZone firms able to submit proposals). This means that any firm that challenges a HUBZone set-aside denial, when the required conditions exist, can file a pre-award protest -- and the GAO will sustain the protest."

For more information, contact your legal counsel or David Taylor.

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