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HUBZONE PRICE EVALUATION PREFERENCE CLARIFICATION ACT OF 2021

MAY 17, 2022.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Ms. VELÁZQUEZ, from the Committee on Small Business, submitted the following

R E P O R T

[To accompany H.R. 5879]

The Committee on Small Business, to whom was referred the bill (H.R. 5879) to amend the Small Business Act to clarify the application of the price evaluation preference for qualified HUBZone small business concerns to certain contracts, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND BILL SUMMARY

The purpose of H.R. 5879, the "HUBZone Price Evaluation Preference Clarification Act of 2021", is to clarify that the HUBZone price evaluation preference does apply to orders.

II. BACKGROUND AND NEED FOR LEGISLATION

H.R. 5879 was introduced by Representatives Marie Newman (D–IL) and Maria Salazar (R–FL) on November 4, 2021.

Most federal agencies and prime contractors fall short of meeting the three percent spending goal for HUBZone firms. In fact, the HUBZone prime contracting goal has never been met government-wide. While the U.S. Small Business Administration ("SBA") and Congress have taken several steps to improve the HUBZone program, more still needs to be done to help federal agencies and prime contractors increase their spending to ensure the program accomplishes its objectives of incentivizing the development of underutilized business zones.

The HUBZone price evaluation preference helps to level the playing field for HUBZone firms in full-and-open competitions and allows federal agencies greater opportunity to devote federal spending to HUBZone firms. Currently, the HUBZone price evaluation preference is not widely used because some agencies have incorrectly interpreted that the preference does not apply to orders. As the Federal Government increasingly drives its spending through indefinite delivery, indefinite quantity (IDIQ) contracts, a significant opportunity for HUBZone spending is being lost because the HUBZone price evaluation is not being applied in the award of orders.

The price evaluation preference language in the Small Business Act is broad and does not exclude orders. It states that "in any case in which a contract is to be awarded on the basis of full and open competition, the price offered by a qualified HUBZone small business concern shall be deemed as being lower than the price offered by another offeror . . ."[1] The only exception in the Small Business Act for the application of the HUBZone price evaluation preference is for procurements of agricultural commodities.

The fact that Congress explicitly provided one exception but did not provide an exception for orders indicates Congress did not intend there to be an exception for orders. Moreover, the price evaluation preference applies to orders because orders are contracts.[2] Given the broad language in the statute, the fact that there is only one explicit exception and that orders are contracts, the HUBZone price evaluation preference should be applied as broadly as possible.

However, some agencies are not applying the price evaluation preference to orders based on FAR 19.1304, which states that "this subpart" does not apply to orders under indefinite-delivery contracts and orders under Federal Supply Schedule contracts. This interpretation is contrary to the Small Business Act. FAR 19.1304(b) and (c) state that the HUBZone provisions in FAR Subpart 19.13 do not apply to orders under indefinite-delivery contracts or Federal Supply Schedule contracts—unless those orders are set aside. If the task orders are set aside, FAR Subpart 19.13 would apply. Thus, the appropriate exception in FAR 19.1304 is from the HUBZone set-aside/eligibility components of FAR subpart 19.13, not the entirety of subpart 19.13. In other words, the intent of FAR 19.1304 is not to exempt application of the HUBZone price

[1] 15 U.S.C. § 657a(c)(3)(A) (Emphasis Added).
[2] See FAR 2.101.

evaluation preference to orders and nothing in FAR 19.1304 explicitly creates such an exception.

III. HEARINGS

On October 13, 2021, the Subcommittee on Contracting and Infrastructure held a hearing on growing the small business supplier base in government contracting. Mr. Victor P. Holt, President, V–Tech Solutions, Inc., testified at the hearing on behalf of the HUBZone Contractors National Council. Mr. Holt stated in his testimony that the HUBZone price evaluation preference helps create a more equitable system and allows federal agencies greater opportunity to devote spending to HUBZone firms. He raised concerns that federal agencies have failed to apply price evaluation preferences to task orders. He added that applying price preferences to task orders would benefit HUBZone firms and the underserved communities they serve. Mr. Holt urged Congress to pass a bill that clarifies that the price evaluation preference applies to task orders.

IV. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on May 11, 2022, and ordered H.R. 5879 favorably reported to the House of Representatives. During the markup, no amendments were offered.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The Committee voted by voice vote to favorably report H.R. 5879 to the House at 11:05 A.M.

VI. SECTION-BY-SECTION FOR H.R. 5879

Section 1. Short title

This section designates the short title as the "HUBZone Price Evaluation Preference Clarification Act of 2021".

Section 2. Application of price evaluation preference for qualified HUBZone Small Business Concerns to Certain Contracts

Subsection (a)—In General.

This subsection amends section 31(c)(3) of the Small Business Act (15 U.S.C. § 657a(c)(3)) by adding subparagraph (E), which explicitly states that the HUBZone price evaluation preference applies to unrestricted (that is, not set aside) orders under an unrestricted multiple award contract or the unrestricted portion of a contract that is partially set-aside.

Subsection (b)—Rulemaking.

This subsection requires the SBA to revise any relevant rules or guidance within 90 days of the enactment of this Act to implement the requirements of this section.

VII. Congressional Budget Cost Estimate

The Committee has requested but not received a cost estimate from the Director of the Congressional Budget Office.

VIII. New Budget Authority, Entitlement Authority, and Tax Expenditures

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority, and tax expenditures. While the Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974, the Committee does not believe that there will be any additional costs attributable to this legislation.

IX. Committee Oversight Findings and Recommendations

In accordance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in the H.R. 5879 are incorporated into the descriptive portions of this report.

X. Statement of General Performance Goals and Objectives

With respect to the requirements of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of H.R. 5879 are to eliminate any uncertainty within the contracting community and ensure the HUBZone price evaluation preference is consistently applied to orders.

XI. Duplication of Federal Programs

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, no provision of H.R. 5879 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

XII. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee finds that the bill does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI of the Rules of the House of Representatives.

XIII. Federal Mandates Statement

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairwoman of the

Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

XIV. Federal Advisory Committee Statement

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

XV. Applicability to Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XVI. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, as shown as follows: existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman:

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

SMALL BUSINESS ACT

* * * * * * *

SEC. 31. HUBZONE PROGRAM.

(a) In General.—There is established within the Administration a program (to be known as the HUBZone program) to be carried out by the Administrator to provide for Federal contracting assistance, including promoting economic development in economically distressed areas (as defined in section 7(m)(11)), to qualified HUBZone small business concerns in accordance with this section.

(b) Definitions Relating to HUBZones.—In this section:

(1) Historically underutilized business zone.—The terms "historically underutilized business zone" or "HUBZone" mean any area located within 1 or more—

(A) qualified census tracts;

(B) qualified nonmetropolitan counties;

(C) lands within the external boundaries of an Indian reservation;

(D) redesignated areas;

(E) base closure areas;

(F) qualified disaster areas; or

(G) a Governor-designated covered area.

(2) HUBZone small business concern.—The term "HUBZone small business concern" means—

(A) a small business concern that is at least 51 percent owned and controlled by United States citizens;

(B) a small business concern that is—

(i) an Alaska Native Corporation owned and controlled by Natives (as determined pursuant to section 29(e)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(1))); or

(ii) a direct or indirect subsidiary corporation, joint venture, or partnership of an Alaska Native Corporation qualifying pursuant to section 29(e)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(1)), if that subsidiary, joint venture, or partnership is owned and controlled by Natives (as determined pursuant to section 29(e)(2)) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(2)));

(C) a small business concern—

(i) that is wholly owned by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments; or

(ii) that is owned in part by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments, if all other owners are either United States citizens or small business concerns;

(D) a small business concern—

(i) that is wholly owned by one or more Native Hawaiian Organizations (as defined in section 8(a)(15)), or by a corporation that is wholly owned by one or more Native Hawaiian Organizations; or

(ii) that is owned in part by one or more Native Hawaiian Organizations, or by a corporation that is wholly owned by one or more Native Hawaiian Organizations, if all other owners are either United States citizens or small business concerns;

(E) a small business concern that is—

(i) wholly owned by a community development corporation that has received financial assistance under part 1 of subchapter A of the Community Economic Development Act of 1981 (42 U.S.C. 9805 et seq.); or

(ii) owned in part by one or more community development corporations, if all other owners are either United States citizens or small business concerns; or

(F) a small business concern that is—

(i) a small agricultural cooperative organized or incorporated in the United States;

(ii) wholly owned by 1 or more small agricultural cooperatives organized or incorporated in the United States; or

(iii) owned in part by 1 or more small agricultural cooperatives organized or incorporated in the United States, if all owners are small business concerns or United States citizens.

(3) QUALIFIED AREAS.—

(A) QUALIFIED CENSUS TRACT.—

(i) IN GENERAL.—The term "qualified census tract" means a census tract that is covered by the definition of "qualified census tract" in section 42(d)(5)(B)(ii) of the Internal Revenue Code of 1986 and that is reflected in an online tool prepared by the Administrator described under subsection (d)(7).

(ii) EXCEPTION.—For any metropolitan statistical area in the Commonwealth of Puerto Rico, the term "qualified census tract" has the meaning given that term in section 42(d)(5)(B)(ii) of the Internal Revenue Code of 1986 as applied without regard to subclause (II) of such section and that is reflected in the online tool described under clause (i), except that this clause shall only apply—

(I) 10 years after the date that the Administrator implements this clause, or

(II) the date on which the Financial Oversight and Management Board for the Commonwealth of Puerto Rico created by the Puerto Rico Oversight, Management, and Economic Stability Act ceases to exist,

whichever event occurs first.

(B) QUALIFIED NONMETROPOLITAN COUNTY.—The term "qualified nonmetropolitan county" means any county that is reflected in the online tool described under subparagraph (A)(i) and—

(i) that was not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986) at the time of the most recent census taken for purposes of selecting qualified census tracts under section 42(d)(5)(B)(ii) of the Internal Revenue Code of 1986; and

(ii) in which—

(I) the median household income is less than 80 percent of the State median household income, based on a 5-year average of the available data from the Bureau of the Census of the Department of Commerce;

(II) the unemployment rate is not less than 140 percent of the average unemployment rate for the United States or for the State in which such county is located, whichever is less, based on a 5-year average of the available data from the Secretary of Labor; or

(III) there is located a difficult development area, as designated by the Secretary of Housing and Urban Development in accordance with section 42(d)(5)(B)(iii) of the Internal Revenue Code of 1986, within Alaska, Hawaii, or any territory or possession of the United States outside the 48 contiguous States.

(C) REDESIGNATED AREA.—The term "redesignated area" means any census tract that ceases to be qualified under subparagraph (A) and any nonmetropolitan county that ceases to be qualified under subparagraph (B) for a period

of 3 years after the date on which the census tract or nonmetropolitan county ceased to be so qualified.

(D) BASE CLOSURE AREA.—

(i) IN GENERAL.—Subject to clause (ii), the term "base closure area" means—

(I) lands within the external boundaries of a military installation that were closed through a privatization process under the authority of—

(aa) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of Public Law 101–510; 10 U.S.C. 2687 note);

(bb) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note);

(cc) section 2687 of title 10, United States Code; or

(dd) any other provision of law authorizing or directing the Secretary of Defense or the Secretary of a military department to dispose of real property at the military installation for purposes relating to base closures of redevelopment, while retaining the authority to enter into a leaseback of all or a portion of the property for military use;

(II) the census tract or nonmetropolitan county in which the lands described in subclause (I) are wholly contained;

(III) a census tract or nonmetropolitan county the boundaries of which intersect the area described in subclause (I); and

(IV) a census tract or nonmetropolitan county the boundaries of which are contiguous to the area described in subclause (II) or subclause (III).

(ii) LIMITATION.—A census tract or nonmetropolitan county described in clause (i) shall be considered to be a base closure area for a period beginning on the date on which the Administrator designates such census tract or nonmetropolitan county as a base closure area and ending on the date on which the base closure area ceases to be a qualified census tract under subparagraph (A) or a qualified nonmetropolitan county under subparagraph (B) in accordance with the online tool prepared by the Administrator described under subsection (d)(7), except that such period may not be less than 8 years.

(iii) DEFINITIONS.—In this subparagraph:

(I) CENSUS TRACT.—The term "census tract" means a census tract delineated by the United States Bureau of the Census in the most recent decennial census that is not located in a nonmetropolitan county and does not otherwise qualify as a qualified census tract.

(II) NONMETROPOLITAN COUNTY.—The term "nonmetropolitan county" means a county that was not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986) at the time of the most recent census taken for purposes of selecting qualified census tracts and does not otherwise qualify as a qualified nonmetropolitan county.

(E) QUALIFIED DISASTER AREA.—

(i) IN GENERAL.—Subject to clause (ii), the term "qualified disaster area" means any census tract or nonmetropolitan county located in an area where a major disaster has occurred or an area in which a catastrophic incident has occurred if such census tract or nonmetropolitan county ceased to be qualified under subparagraph (A) or (B), as applicable, during the period beginning 5 years before the date on which the President declared the major disaster or the catastrophic incident occurred.

(ii) DURATION.—A census tract or nonmetropolitan county shall be considered to be a qualified disaster area under clause (i) only for the period of time ending on the date the area ceases to be a qualified census tract under subparagraph (A) or a qualified nonmetropolitan county under subparagraph (B), in accordance with the online tool prepared by the Administrator described under subsection (d)(7) and beginning—

(I) in the case of a major disaster, on the date on which the President declared the major disaster for the area in which the census tract or nonmetropolitan county, as applicable, is located; or

(II) in the case of a catastrophic incident, on the date on which the catastrophic incident occurred in the area in which the census tract or nonmetropolitan county, as applicable, is located.

(iii) DEFINITIONS.—In this subparagraph:

(I) MAJOR DISASTER.—The term "major disaster" means a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

(II) OTHER DEFINITIONS.—The terms "census tract" and "nonmetropolitan county" have the meanings given such terms in subparagraph (D)(iii).

(F) GOVERNOR-DESIGNATED COVERED AREA.—

(i) IN GENERAL.—A "Governor-designated covered area" means a covered area that the Administrator has designated by approving a petition described under clause (ii).

(ii) PETITION.—For a covered area to receive a designation as a Governor-designated covered area, the Governor of the State in which the covered area is wholly contained shall include such covered area in a

petition to the Administrator requesting such a designation. In reviewing a request for designation included in such a petition, the Administrator may consider—

(I) the potential for job creation and investment in the covered area;

(II) the demonstrated interest of small business concerns in the covered area to be designated as a Governor-designated covered area;

(III) how State and local government officials have incorporated the covered area into an economic development strategy; and

(IV) if the covered area was a HUBZone before becoming the subject of the petition, the impact on the covered area if the Administrator did not approve the petition.

(iii) LIMITATIONS.—Each calendar year, a Governor may submit not more than 1 petition described under clause (ii). Such petition shall include all covered areas in a State for which the Governor seeks designation as a Governor-designated covered area, except that the total number of covered areas included in such petition may not exceed 10 percent of the total number of covered areas in the State.

(iv) CERTIFICATION.—If the Administrator grants a petition described under clause (ii), the Governor of the Governor-designated covered area shall, not less frequently than annually, submit data to the Administrator certifying that each Governor-designated covered area continues to meet the requirements of clause (v)(I).

(v) DEFINITIONS.—In this subparagraph:

(I) COVERED AREA.—The term "covered area" means an area in a State—

(aa) that is located outside of an urbanized area, as determined by the Bureau of the Census;

(bb) with a population of not more than 50,000; and

(cc) for which the average unemployment rate is not less than 120 percent of the average unemployment rate of the United States or of the State in which the covered area is located, whichever is less, based on the most recent data available from the American Community Survey conducted by the Bureau of the Census.

(II) GOVERNOR.—The term "Governor" means the chief executive of a State.

(III) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

(4) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—The term "qualified HUBZone small business concern" means a HUBZone small business concern that has been certified by the Administrator in accordance with the procedures described in this section.

(5) NATIVE AMERICAN SMALL BUSINESS CONCERNS.—

(A) ALASKA NATIVE CORPORATION.—The term "Alaska Native Corporation" has the same meaning as the term "Native Corporation" in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(B) ALASKA NATIVE VILLAGE.—The term "Alaska Native Village" has the same meaning as the term "Native village" in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(C) INDIAN RESERVATION.—The term "Indian reservation"—

(i) has the same meaning as the term "Indian country" in section 1151 of title 18, United States Code, except that such term does not include—

(I) any lands that are located within a State in which a tribe did not exercise governmental jurisdiction on the date of the enactment of this paragraph, unless that tribe is recognized after that date of the enactment by either an Act of Congress or pursuant to regulations of the Secretary of the Interior for the administrative recognition that an Indian group exists as an Indian tribe (part 83 of title 25, Code of Federal Regulations); and

(II) lands taken into trust or acquired by an Indian tribe after the date of the enactment of this paragraph if such lands are not located within the external boundaries of an Indian reservation or former reservation or are not contiguous to the lands held in trust or restricted status on that date of the enactment; and

(ii) in the State of Oklahoma, means lands that—

(I) are within the jurisdictional areas of an Oklahoma Indian tribe (as determined by the Secretary of the Interior); and

(II) are recognized by the Secretary of the Interior as eligible for trust land status under part 151 of title 25, Code of Federal Regulations (as in effect on the date of the enactment of this paragraph).

(6) AGRICULTURAL COMMODITY.—The term "agricultural commodity" has the same meaning as in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

(c) ELIGIBLE CONTRACTS.—

(1) DEFINITIONS.—In this subsection—

(A) the term "contracting officer" has the meaning given that term in section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5)); and

(B) the term "full and open competition" has the meaning given that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(2) AUTHORITY OF CONTRACTING OFFICER.—

(A) SOLE SOURCE CONTRACTS.—A contracting officer may award sole source contracts under this section to any qualified HUBZone small business concern, if—

(i) the qualified HUBZone small business concern is determined to be a responsible contractor with respect to performance of such contract opportunity, and the contracting officer does not have a reasonable expectation that 2 or more qualified HUBZone small business concerns will submit offers for the contracting opportunity;

(ii) the anticipated award price of the contract (including options) will not exceed—

(I) $7,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(II) $3,000,000, in the case of all other contract opportunities; and

(iii) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

(B) RESTRICTED COMPETITION.—A contract opportunity may be awarded pursuant to this section on the basis of competition restricted to qualified HUBZone small business concerns if the contracting officer has a reasonable expectation that not less than 2 qualified HUBZone small business concerns will submit offers and that the award can be made at a fair market price.

(C) APPEALS.—Not later than 5 days from the date the Administration is notified of a procurement officer's decision not to award a contract opportunity under this section to a qualified HUBZone small business concern, the Administrator may notify the contracting officer of the intent to appeal the contracting officer's decision, and within 15 days of such date the Administrator may file a written request for reconsideration of the contracting officer's decision with the Secretary of the department or agency head.

(3) PRICE EVALUATION PREFERENCE IN FULL AND OPEN COMPETITIONS.—

(A) IN GENERAL.—Subject to subparagraph (B), in any case in which a contract is to be awarded on the basis of full and open competition, the price offered by a qualified HUBZone small business concern shall be deemed as being lower than the price offered by another offeror (other than another small business concern), if the price offered by the qualified HUBZone small business concern is not more than 10 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror.

(B) PROCUREMENT OF COMMODITIES.—For purchases by the Secretary of Agriculture of agricultural commodities, the price evaluation preference shall be—

(i) 10 percent, for the portion of a contract to be awarded that is not greater than 25 percent of the total volume being procured for each commodity in a single invitation;

(ii) 5 percent, for the portion of a contract to be awarded that is greater than 25 percent, but not greater than 40 percent, of the total volume being procured for each commodity in a single invitation; and

(iii) zero, for the portion of a contract to be awarded that is greater than 40 percent of the total volume being procured for each commodity in a single invitation.

(C) PROCUREMENT OF COMMODITIES FOR INTERNATIONAL FOOD AID EXPORT OPERATIONS.—The price evaluation preference for purchases of agricultural commodities by the Secretary of Agriculture for export operations through international food aid programs administered by the Farm Service Agency shall be 5 percent on the first portion of a contract to be awarded that is not greater than 20 percent of the total volume of each commodity being procured in a single invitation.

(D) TREATMENT OF PREFERENCE.—A contract awarded to a HUBZone small business concern under a preference described in subparagraph (B) shall not be counted toward the fulfillment of any requirement partially set aside for competition restricted to small business concerns.

(E) APPLICATION TO CERTAIN CONTRACTS.—The requirements of subparagraph (A) shall apply to an unrestricted order issued under an unrestricted multiple award contract or the unrestricted portion of a contract that is partially set aside for competition restricted to small business concerns.

(4) RELATIONSHIP TO OTHER CONTRACTING PREFERENCES.—A procurement may not be made from a source on the basis of a preference provided in paragraph (2) or (3), if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18, United States Code, or the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).

(d) ELIGIBILITY REQUIREMENTS; ENFORCEMENT.—

(1) CERTIFICATION.—In order to be eligible for certification by the Administrator as a qualified HUBZone small business concern, a HUBZone small business concern shall submit documentation to the Administrator stating that—

(A) at the time of certification and at each examination conducted pursuant to paragraph (4), the principal office of the concern is located in a HUBZone and not fewer than 35 percent of its employees reside in a HUBZone;

(B) the concern will attempt to maintain the applicable employment percentage under subparagraph (A) during the performance of any contract awarded to such concern on the basis of a preference provided under subsection (c); and

(C) the concern will ensure that the requirements of section 46 are satisfied with respect to any subcontract entered into by such concern pursuant to a contract awarded under this section.

(2) VERIFICATION.—In carrying out this section, the Administrator shall establish procedures relating to—

(A) the filing, investigation, and disposition by the Administration of any challenge to the eligibility of a HUBZone small business concern to receive assistance under this section (including a challenge, filed by an interested party, relating to the veracity of documentation provided to the Administration by such a concern under paragraph (1)); and

(B) verification by the Administrator of the accuracy of any documentation provided by a HUBZone small business concern under paragraph (1).

(3) TIMING.—The Administrator shall verify the eligibility of a HUBZone small business concern using the procedures described in paragraph (2) within a reasonable time and not later than 60 days after the date on which the Administrator receives sufficient and complete documentation from a HUBZone small business concern under paragraph (1).

(4) RECERTIFICATION.—Not later than 3 years after the date that such HUBZone small business concern was certified as a qualified HUBZone small business concern, and every 3 years thereafter, the Administrator shall verify the accuracy of any documentation provided by a HUBZone small business concern under paragraph (1) to determine if such HUBZone small business concern remains a qualified HUBZone small business concern.

(5) EXAMINATIONS.—The Administrator shall conduct program examinations of qualified HUBZone small business concerns, using a risk-based analysis to select which concerns are examined, to ensure that any concern examined meets the requirements of paragraph (1).

(6) LOSS OF CERTIFICATION.—A HUBZone small business concern that, based on the results of an examination conducted pursuant to paragraph (5) no longer meets the requirements of paragraph (1), shall have 30 days to submit documentation to the Administrator to be eligible to be certified as a qualified HUBZone small business concern. During the 30-day period, such concern may not compete for or be awarded a contract under this section. If such concern fails to meet the requirements of paragraph (1) by the last day of the 30-day period, the Administrator shall not certify such concern as a qualified HUBZone small business concern.

(7) HUBZONE ONLINE TOOL.—

(A) IN GENERAL.—The Administrator shall develop a publicly accessible online tool that depicts HUBZones. Such online tool shall be updated—

(i) with respect to HUBZones described under subparagraphs (A) and (B) of subsection (b)(3), beginning on January 1, 2020, and every 5 years thereafter;

(ii) with respect to a HUBZone described under subsection (b)(3)(C), immediately after the area becomes, or ceases to be, a redesignated area; and

(iii) with respect to HUBZones described under subparagraphs (D), (E), and (F) of subsection (b)(3), immediately after an area is designated as a base closure

area, qualified disaster area, or Governor-designated covered area, respectively.

(B) DATA.—The online tool required under subparagraph (A) shall clearly and conspicuously provide access to the data used by the Administrator to determine whether or not an area is a HUBZone in the year in which the online tool was prepared.

(C) NOTIFICATION OF UPDATE.—The Administrator shall include in the online tool a notification of the date on which the online tool, and the data used to create the online tool, will be updated.

(8) LIST OF QUALIFIED HUBZONE SMALL BUSINESS CONCERNS.—The Administrator shall establish and publicly maintain on the internet a list of qualified HUBZone small business concerns that shall—

(A) to the extent practicable, include the name, address, and type of business with respect to such concern;

(B) be updated by the Administrator not less than annually; and

(C) be provided upon request to any Federal agency or other entity.

(9) PROVISION OF DATA.—Upon the request of the Administrator, the Secretary of Labor, the Administrator of the Federal Emergency Management Agency, the Secretary of Housing and Urban Development, and the Secretary of the Interior (or the Assistant Secretary for Indian Affairs), shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this subsection.

(10) PENALTIES.—In addition to the penalties described in section 16(d), any small business concern that is determined by the Administrator to have misrepresented the status of that concern as a "qualified HUBZone small business concern" for purposes of this section shall be subject to liability for fraud, including section 1001 of title 18, United States Code, and sections 3729 through 3733 of title 31, United States Code.

(e) PERFORMANCE METRICS.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this subsection, the Administrator shall publish performance metrics designed to measure the success of the HUBZone program established under this section in meeting the program's objective of promoting economic development in economically distressed areas (as defined in section 7(m)(11)).

(2) COLLECTING AND MANAGING HUBZONE DATA.—The Administrator shall develop processes to incentivize each regional office of the Administration to collect and manage data on HUBZones within the geographic area served by such regional office.

(3) REPORT.—Not later than 90 days after the last day of each fiscal year, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report analyzing the data from the performance metrics established under this subsection and including—

(A) the number of HUBZone small business concerns that lost certification as a qualified HUBZone small busi-

ness concern because of the results of an examination performed under subsection (d)(5); and

(B) the number of those concerns that did not submit documentation to be recertified under subsection (d)(6).

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the program established by this section $10,000,000 for each of fiscal years 2020 through 2025.

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