118TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
118–381

TO AMEND THE SMALL BUSINESS ACT TO MODIFY THE APPLICATION OF PRICE EVALUATION PREFERENCE FOR QUALIFIED HUBZONE SMALL BUSINESS CONCERNS TO CERTAIN CONTRACTS, AND FOR OTHER PURPOSES

FEBRUARY 13, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

---

Mr. WILLIAMS of Texas, from the Committee on Small Business, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 5450]

The Committee on Small Business, to whom was referred the bill (H.R. 5450) to amend the Small Business Act to modify the application of price evaluation preference for qualified HUBZone small business concerns to certain contracts, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

49–006

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. APPLICATION OF PRICE EVALUATION PREFERENCE FOR QUALIFIED HUBZONE SMALL BUSINESS CONCERNS TO CERTAIN CONTRACTS.

(a) IN GENERAL.—Section 31(c)(3) of the Small Business Act (15 U.S.C. 657a(c)(3)) is amended by adding at the end the following new subparagraph:

"(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.".

(b) RULEMAKING.—Not later than 90 days after the date of the enactment of this section, the Administrator of the Small Business Administration shall revise any rules or guidance to implement the requirements of this section.

(c) COMPLIANCE WITH CUTGO.—No additional amounts are authorized to be appropriated to carry out this Act or the amendments made by this Act.

I. PURPOSE AND BILL SUMMARY

On September 13, 2023, Rep. Scholten, along with Rep. Salazar, introduced H.R. 5450. The purpose of H.R. 5450, the "Enhancing Competition in Contracting Orders Act," is to amend the Small Business Act to clarify when the Historically Underutilized Business Zone (HUBZone) price evaluation preference tool is required to be used.

Firms in the HUBZone program receive a price preference when their bid is within 10 percent of a non-HUBZone firm. Under this legislation, the HUBZone firm's bid will be considered lower than a non-HUBZone firm if the cost proposal is within 10 percent of the other firm.

II. NEED FOR LEGISLATION

The HUBZone price preference is already standard procedure for other contracts. However, statutory interpretation by the Executive Branch has led to the price preference not being used with task orders.

III. HEARINGS

In the 118th Congress, the Committee held one hearing examining the issues covered in H.R. 5450. On May 11, 2023, the Committee held a hearing titled "Leveling the Playing Field: The State of Small Business Contracting." Witnesses described the challenges associated with participating in federal contracting programs like the HUBZone program.

IV. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on January 31, 2024, and ordered H.R. 5450 reported favorably to the House of Representatives. During the markup an amendment in the nature of a substitute was offered and adopted by voice vote.

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 to favorably report H.R. 5450, as amended, to the House of Representatives at 10:04 a.m. by voice vote.

VI. SECTION-BY-SECTION OF H.R. 5450

Section 1—Application of price evaluation preference for qualified HUBZone Small Business Concerns to certain contracts

This section amends the Small Business Act to allow the HUBZone price preferences to be used in unrestricted orders under unrestricted multiple award contracts or the unrestricted portion of a partially set aside contract.

It also requires the Administrator of the SBA to revise the relevant rules and regulations within 90 days.

VII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. The Committee has requested but not received from the Director of the Congressional Budget Office a cost estimate for the Committee's provisions. Once available, the cost estimate will be published in the Congressional Record.

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)(I) 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. H.R. 5450 does not direct new spending, but instead reallocates funding independently authorized and appropriated.

IX. OVERSIGHT FINDINGS & 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. 5450 are incorporated into the descriptive portions of this report.

X. PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, there are no additional performance goals and objectives required by H.R. 5450.

XI. Statement of 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. 5450 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

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

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. Statement of Constitutional Authority

Pursuant to clause 7 of rule XII of the Rules of the House of Representatives, the Committee finds that the authority for this legislation in Art. I, § 8, cl.1 of the Constitution of the United States.

XVII. 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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, 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 whol-

ly 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 Ad-

ministrator 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 business 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.

* * * * * * *

XVIII. MINORITY VIEWS

The Small Business Administration's (SBA) Historically Underutilized Business Zone (HUBZone) program is one of four small business federal contracting programs, and the only one that assists small businesses based on their geographic location. When the government invests in small businesses, small businesses invest in their communities. They create local jobs and buy local products. That is a driving force behind the HUBZone program.

The program works to "promote job growth, capital investment, and economic development to historically underutilized business zones . . . to small businesses located in these economically distressed communities." [1]

To level the playing field for small business competing in the federal market, Congress has established an annual 3% goal for contract dollars to HUBZone small businesses. Unfortunately, most federal agencies fall short of meeting the HUBZone goals. In FY 22, the federal government sent 2.6% of spend to HUBZone small businesses, and saw a reduction in the number of HUBZone smalls participating in the federal market.[2] The HUBZone prime contracting goal has never been met government-wide.

There are three contracting authorities that federal agencies can use on certified HUBZone small businesses: (a) set aside the contract exclusively for HUBZone competition; (b) sole source the contract directly to a qualified HUBZone when certain conditions are met; and (c) provide a price preference to HUBZone firms who have bid on work in full-and-open competitions. The preference is applied when a qualified HUBZone small business bids on a contract. The firms bid is then "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% higher than the price offered by the otherwise lowest, responsive, and responsible offeror."

This bill will provide additional clarification to federal agencies on how and when to apply the preference. Currently, the HUBZone price evaluation preference is not widely used because some agencies have incorrectly interpreted that the preference does not apply to orders, only standalone contracts.

As the Federal Government increasingly drives its spending through these vehicles, significant opportunities for HUBZone small businesses are being lost because the HUBZone price evalua-

[1] Small Business Administration, Office of the HUBZone Program: https://www.sba.gov/about-sba/sba-locations/headquarters-offices/office-hubzone-program.

[2] FY2022 Small Business Procurement Scorecard: https://www.sba.gov/agency-scorecards/scorecard.html?agency=GW&year=2022.

tion is not being applied in the award of task orders—as Congress originally intended.

Sincerely,

NYDIA M. VELÁZQUEZ,
Ranking Member.

○