



Testimony of

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On Behalf of
HUBZone Contractors National Council

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Chairman Rubio, Ranking Member Cardin, and Members of the Committee, I would like to thank you for the opportunity to testify today. My name is Delali Dzirasa and I, like many of you, believe deeply in the power of human potential, regardless of where on the U.S. map you call home. However, I also believe that to unlock this potential, support is needed. Support may be in the form of resources, more efficient government programs, or in some cases, mere encouragement combined with opportunity and timing that creates an environment for success.

It is with that belief that I founded Fearless in 2009, a certified HUBZone and 8(a) digital services firm located in Baltimore, Maryland. Our mission is to build software with a soul and to help create a world where good software powers things that matter. At Fearless, we devote ourselves to building the same cutting edge software seen in the commercial space for our government customers. Self-driving cars are no longer a thing of the future, yet depending on what part of the country you live in, you still may not be able to pay your water bill online. Fearless exists to help bridge that gap and to make government services and technology work better for all. My company currently powers: SBA.gov, the digital face of the Small Business Administration (SBA), Search.gov, the federal government's search engine, and Login.gov, the service that will become the single entry point for residents who need to access federal resources. We are also responsible for supporting the build out of Blue Button 2.0, a Centers for Medicare and Medicaid Services (CMS) initiative that allows millions of Medicare beneficiaries across the country to easily and securely share their medical claims data. We have also been honored to support software for the Department of Defense's (DoD) Mentor Protégé program, which allows larger mentor firms to support the growth of small businesses in the DoD supply chain. This

contract is particularly meaningful to us, as a former DoD Protégé company. Fearless has had many opportunities in our capacity as a certified 8(a) and HUBZone company, which is why I am testifying today on behalf of the HUBZone Contractors National Council. The HUBZone Council is a non-profit trade association providing information and support for companies and professionals interested in the Small Business Administration's (SBA) HUBZone program. We would like to thank the Committee for their commitment to small businesses and for advancing small businesses work in the federal marketplace.

Fearless has a unique history with the HUBZone program, which dates back to 2010. In 2010, less than 1 year after founding Fearless on paper, I attended an SBA course detailing the certification programs offered by the agency. It was during this course that I first heard about the HUBZone program. The program's mission is to help provide economic development and investment in distressed communities, which nurtured my belief that human potential, with the right amount of support, can encourage unlimited success. I was sold and applied for the certification. Later that year we received our HUBZone certification and with our new found excitement, it became my mission to highlight the benefits of the program to contracting officers and other acquisition personnel across the government.

Time and time again I would hear what a great program it was, and how the mission was compelling, however, I also kept hearing about the challenges of contracting to HUBZone companies. Therefore, I began looking at all of the information and programs designed to support the HUBZone program. As I looked at the data, I realized that something about the program was not working well. The federal government has never met its goal of

awarding 3 percent of all prime dollars to HUBZone firms— hovering around 1.9-2 percent each fiscal year. This percentage equates to well over \$7-8 billion in spending that was not making it into communities most in need. This is an obvious missed opportunity for both the government and underserved communities. Each day as I walked to work, I saw people going hungry or in survival mode due to the lack of opportunity in these low income and high unemployment communities— the very ones the HUBZone program was designed to help. The need of our community overcame us, and it became a labor of love for Fearless to try to figure out how to solve this problem. We came to understand that the underutilization of the program had a lot to do with the technology that was being used, and with our tech background, we felt we were most equipped to help.

The SBA HUBZone map at that time was slow, dated, and in dire need of modernization. It was also reporting bad data. In fact, our company move from Baltimore County to Baltimore City was driven by an error in the map that showed our location was an expiring HUBZone. In actuality, two census tracts were merging, and the map was reporting data for the wrong tract. Fearless ended up scraping the SBA data on the map and building our own version. We developed this into a tool called HUBFinder, which is a compliance system that affords the opportunity for companies to grow and scale in the HUBZone program. It turned from an internal tool, to one other certified HUBZone firms wanted to use, with finally a subsequent national release. Shortly thereafter, SBA discovered and awarded us a contract to help modernize the HUBZone map and technology nationwide. However, the technology is not the only reason the HUBZone program is not being utilized.

Simply put, not enough of the contracts have been set-aside for HUBZone certified firms. Contracting officers often voice that they are unable to find enough qualified HUBZone firms to set-aside contracts. However, HUBZone companies also complain they have a hard time finding contracts. One of the reasons for this issue is the expectation that if a firm wants to compete, they should respond to market research to get the work set-aside. However, HUBZone firms have a median size of 4 employees¹ and with the thousands of RFI's and Sources Sought released each year, a firm of that size just does not have the bandwidth to adequately respond to all of those requests. This results in a stalemate where the market research is laborious for both sides, and HUBZone firms in economically distressed communities continue to lose out.

The HUBZone Program spending has been in decline for the last 10 years, and most federal agencies fall well short of meeting the 3 percent spending goal for HUBZone firms. Recently, the U.S. Small Business Administration and Congress have taken several positive steps to improve the HUBZone program and help federal agencies and prime contractors increase their HUBZone spending. The HUBZone Program is needed now more than ever, as the number of HUBZone locations around the country have roughly doubled since Congress first created the program more than 20 years ago. The HUBZone contractor community is optimistic that the Congressional actions to provide more certainty, flexibility, and fair requirements for the program will help it fulfill its promise for more federal agencies, prime contractors, and HUBZone communities across the country. The Council has identified the following changes that would increase the

¹ U.S. Gov't Accountability Off., GAO-15-234, *Opportunities Exist to Further Improve HUBZone Oversight* 56 (2014).

utilization of the HUBZone program, which in turn would greater achieve its mission of making a positive impact within underserved communities.

I. Applying the HUBZone Price Evaluation Preference to Task Orders²

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 used as widely as it could be because of the interpretation that the HUBZone price evaluation preference does not apply to task orders. With the federal government increasingly driving its spending through IDIQ contracts, such as the “Best in Class” contracts, a significant opportunity for HUBZone spending is being lost because the HUBZone price evaluation is not being applied in the award of task orders.

The price evaluation preference language in the Small Business Act is very 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” U.S.C. § 657a(b)(3)(A). The only statutory exception for the application of the HUBZone price evaluation preference is for procurements of commodities. The fact that Congress expressly provided for one exception, but did not provide an exception for task orders, indicates Congress did not intend there to be an exception for task orders.

² EXISTING STATUTORY AND REGULATORY PROVISIONS SUPPORT APPLICATION OF THE HUBZONE PRICE EVALUATION PREFERENCE TO TASK ORDER, PiliroMazza PLLC. (Jon Williams and Tim Valley, 2019).

Moreover, the statute says that the price evaluation preference applies “in any case.” Given this very broad phrase, and the fact that there is only one explicit exception (for commodities), the HUBZone price evaluation preference should be applied as broadly as possible.

The Small Business Act states that the price evaluation preference applies when “a contract” is awarded. SBA has previously taken the position that, when the Small Business Act uses the term “contract,” this includes task orders. This is also consistent with the Supreme Court’s ruling in *Kingdomware* and FAR 2.101, which defines contract broadly and explicitly includes orders. Additionally, placement of orders under indefinite-delivery contracts falls under the statutory language “awarded on the basis of full and open competition” because the placement of the order (which is a contract) qualifies as a procurement where all responsible sources are able to submit bids, which fully satisfies the definition of full and open competition under the statute; or, in the alternative, task orders are a part of contract performance, and if the master contract was awarded under full and open competition, then this flows down to the ordering stage. Either way, the HUBZone price evaluation preference applies. Regarding orders placed under the Federal Supply Schedules, the FAR explicitly provides that “orders placed against a [Multiple Award Schedule], using the procedures in this subpart, are considered to be issued using full and open competition” 48 C.F.R. § 8.404(a).

The counter-argument to these interpretations is in FAR 19.1304, which states that “this subpart” does not apply to orders under indefinite-delivery contracts and orders under FSS contracts. Insofar as FAR 19.1304 is interpreted to create an exception from the

HUBZone price evaluation for task orders, we believe this exception is contrary to the Small Business Act, for the reasons stated above.

While we believe the law is clear, we urge Congress to make its intent clear, as procuring agencies are not following this interpretation due to a conflicting interpretation of FAR 19.1304. There would be significant benefit that application of the HUBZone price evaluation preference would have for SBA, agencies, and HUBZone firms to increase HUBZone spending and positively impact the communities these companies serve.

II. Clarifying Attempt to Maintain for the Contracting Workforce

The HUBZone program has a requirement that 35 percent of all of employees must reside in a HUBZone area. While this residency requirement is critical to the mission of the program, sometimes employees move or find different employment, thus leaving the HUBZone company out of compliance. If a company has been awarded a contract, it must “attempt to maintain” this residency requirement level. If the business falls below the 35 percent threshold, it does not automatically lose its contract, but must make a good faith effort to return to compliance. However, when a company has fallen below the 35 percent requirement, the company is not allowed to submit proposals for new contracts until it is back in compliance. This can be problematic for the acquisition workforce during market research, as it is not possible to see if a company is claiming attempt to maintain. Therefore, the Council recommends that SBA add a field to the Dynamic Small Business Search (DSBS) to clearly identify those companies claiming attempt to maintain. This change would provide clarity to the acquisition workforce that these parties are not currently eligible for an award, as well as mitigate protests.

III. Streamlining Award Eligibility for HUBZone Firms

For several years, the Council has suggested a change to the current requirement that a HUBZone company must verify eligibility at both the time of bid and award of a federal contract. Given the length of time that a federal procurement can take from bid to award, this verification requirement creates an undue and complicated compliance burden on small businesses in the HUBZone program. A change to an annual recertification would give contracting officers greater assurance that HUBZone contractors will still be eligible for award, even if the award occurs after the company was no longer eligible at the time of recertification. Furthermore, this change gives HUBZone companies a more efficient path toward compliance.

IV. Locating Contracts in Designated HUBZone Areas

The HUBZone program's mission is to provide opportunity to underserved communities by giving small businesses incentives to locate and hire in areas that otherwise might not attract their companies. In order to further fulfill the mission of the program, the Council believes that federal agencies should consider awarding HUBZone set asides for contracts that can be performed at the contractor's facility. These opportunities would give greater opportunities to these communities and the workforce that supports these companies. Additionally, limiting or discouraging the use of performance radius requirements from contracts would also encourage increased utilization of HUBZone companies. Many contracting opportunities still include language which requires the contractor's site to be

within 50 miles of the procuring agency, which acts as a deterrent for small businesses to relocate or employ individuals from these underserved communities.

While the Council believes the above changes to the HUBZone program will allow for greater opportunity, it also recognizes that there are larger issues in small business contracting that include other socioeconomic programs. As the government shifts its acquisition strategy, small business contracting needs to evolve as well.

V. Expanding Sole Source Contract Opportunities for HUBZone Companies

The Council is dedicated to fighting for government acquisition practices that maximize small business ability to compete. However, the governmentwide push to increase the use of category management leaves businesses small shut out of opportunities to contract across the government. As government buying continues to trend toward buying through large vehicles and moving away from direct contracts, the ability for small companies to win sole source awards is more crucial than ever. The Council supports eliminating option years for sole source contracts in the House-passed legislation, H.R. 190, “Expanding Contracting Opportunities for Small Businesses Act of 2019.” While this bill is a step in the right direction, it is not parity.

Increasing the award amounts for sole source contracts is extremely beneficial to the small business contracting community, however, it is equally as important to streamline and simplify rules for awarding these contracts. Our members have been told over and over again by the federal workforce that awarding a sole source to a HUBZone certified

company is too complicated. The Council believes that creating parity among SBA socioeconomic contracting programs, as it relates to sole source contracts, would incentivize agencies to increase their awards to all programs. A current hinderance to the awarding sole source contracts is the requirement that a contracting officer must show that she/he does not have a reasonable expectation that offers would be received from two or more HUBZone small business concerns. There is confusion around the language “reasonable expectation,” which leaves this interpretation up to each contracting officer. This presents a barrier to awarding a sole source contract to a HUBZone company, as this could open the door to a protest – an action contracting officers seek to avoid. Eliminating this requirement for the HUBZone, WOSB/EDWOSB and SDVOSB programs would increase these awards to small businesses.

VI. Changing Reporting Requirements to Accurately Reflect Contract Set-Asides

Each year, the Small Business Administration issues a procurement scorecard, which indicates how agencies performed in meeting their small business goals. The governmentwide goal of contracting with HUBZones is 3 percent. Despite this small number, the federal government has never met its goal. In FY2018, 1.7% of prime contract dollars went to HUBZone businesses.³

Despite this small number, the Council believes that even less contracts have gone to HUBZone businesses, due to inaccurate reporting. Agencies often count the same dollar

³ *Fed. Gov't Achieves Small Business Contracting Goal For Fifth Consecutive Year with Record Breaking \$105 Billion to Small Businesses*, Press Release, U.S. Small Business Admin. (May 22, 2018), available at <https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/federal-government-achieves-small-business-contracting-goal-fifth-consecutive-year-record-breaking>.

value towards multiple socioeconomic program goals, even though the contract was not explicitly a set-aside for more than one program. For example, if a contract is set-aside for the WOSB program, if the winning company is also a certified HUBZone and SDVOSB, those contract dollars count toward the agency meeting all of those goals. This practice ultimately inflates the data reported on small business contracting awards. The Council recommends agencies report progress toward small business based on how the contract was solicited, instead being able to count the same dollar value towards multiple goals. In other words, if an agency set a contract aside for the HUBZone program, then the dollars should only count as a HUBZone award.

VII. Adding the Small Business Administration (SBA) to the FAR Council

The Federal Acquisition Regulatory (FAR) Council was established to assist in the direction and coordination of government-wide procurement policy and government-wide procurement regulatory activities in the Federal Government. Current Council Members include the Administrator for Federal Procurement Policy, the Secretary of Defense, the Administrator of National Aeronautics and Space and the Administrator of General Services. While these individuals have deep knowledge of federal acquisition, a voice of the industrial base is missing. The Council supports adding the appropriate representative from the Small Business Administration.

By adding the SBA to the FAR Council, we believe that delays impacting small businesses could be further mitigated. For example, there has been a discrepancy for more than two years between the FAR and an SBA's updated limitations on subcontracting rule that use

different formulas to determine compliance. While the SBA rule allows the use of similarly situated entities on small business set-asides and 8(a) contracts, the FAR does not. This has created significant issues for both small businesses and the contracting community who have been confused on which rule to follow. Additionally, this conflict has led to legal protests on interpretations – which are timely and costly for both the government and small businesses. Adding SBA to the FAR Council could help accelerate solutions to discrepancies between the agency and interpretations of the FAR.

VIII. Ensuring Subcontracting Plan Compliance

Subcontracting is a way for small businesses to enter the federal marketplace and build past performance. With larger contracts being utilized by the federal government, subcontracting is more important than ever. It is critical that we look for ways to reward prime contractors that adhere to subcontracting plans and penalize those that do not. Presently, there is little to no recourse for prime contractors that fail to meet their small business subcontracting goals. The Council encourages the Committee to look at incentives that would spur subcontracting plan compliance.

IX. Timely Implementation of the Runway Extension Act

In December 2018, the “Small Business Runway Extension Act” was signed into law, requiring SBA to allow companies to use a five-year lookback for the purpose of size determination, instead of the current three years. This bill gives companies a little more runway and flexibility when growing out of their small size status. However, SBA has

failed to implement the law, which is causing confusion for small and midsize companies. To clarify the law for SBA, the HUBZone Council supports swift passage of H.R. 2345, the “Clarifying the Small Business Runway Extension Act of 2019.” This bill, introduced by the House, requires SBA to issue final regulations implementing the Small Business Runway Extension Act by Dec. 17, 2019 and creates a transition period allowing for small businesses to use a 3-year size standard rather than the 5-year standard –whichever keeps them small - for up to 6 months after SBA issues final regulations implementing the law. Small businesses cannot afford continued uncertainty around the implementation of this law.

X. Increasing Government Contracting Opportunities with Universities

Historically, federal contracts with universities result in a higher percentage of dollars that stay within the community. The Council recommends that Congress create exceptions for performance requirements for universities or allow them to qualify as similarly situated entities. This would encourage small business subcontracting with universities and create job placement for students, which would stimulate the economy within these communities. Additionally, it would be beneficial to allow universities to hold facility clearances and let students apply for security clearances while they are still in school.

Conclusion

The underlying principle behind the HUBZone program, established 20 years ago, remains relevant today— to decrease unemployment, and revitalize low-income

communities by encouraging businesses to locate in these HUBZone areas. Changes to SBA's contracting programs will not only benefit small businesses, but, create much needed jobs through wealth creation in distressed areas. It is crucial that SBA allocates adequate resources to implement these changes. As the government prioritizes buying through category management, the contracting programs at SBA are of critical importance for small businesses to access and succeed in the federal marketplace.

Thank you for the opportunity to testify today and I am happy to answer any questions.