SBA Procedural Notice

TO:	District Directors (DDs), Deputy District Directors (DDDs), Area Directors (ADs), Procurement Center Representatives (PCRs), Assistant District Directors (ADDs) for Business Development (BD), and Business Opportunity Specialists (BOS)	CONTROL NO.:	8000-553
SUBJECT:	Clarification of the Interaction between HUBZone and 8(a) Programs	EFFECTIVE:	10-10-2001

We are issuing this notice to clarify the interaction between the HUBZone and 8(a) programs. This guidance should help the procurement and small business communities understand how both programs can be used to fulfill procurement requirements.

At the request of the Ranking Member of the Senate Small Business and Entrepreneurship Committee, the Office of General Counsel (OGC) issued a legal opinion on the relationship between the programs, the need to change SBA regulations based on the provisions of the Small Business Act (the Act), and the Federal Acquisition Regulation. The major findings in the legal opinion are summarized below:

Relationship Between the Programs:

- OGC determined that the phrase "notwithstanding any other provision of law," contained in § 31 of the Act, is best interpreted as requiring the disregard of provisions of law outside of the Act and not other provisions contained within the Act, such as § 8(a).

- Thus, OGC attempted to harmonize the 8(a) and HUBZone provisions and fully implement both.

- OGC determined that SBA regulations do not establish an order of precedence between an award under the 8(a) Program and an award under the HUBZone Program. Any interpretation that requires contracting officers (CO) to use the 8(a) Program before considering the HUBZone Program is beyond the statutory authority of the Act.

- Although SBA regulations require a CO to identify HUBZone 8(a) and other 8(a) concerns before deciding whether to use either program, the CO is not required to offer the requirement to the 8(a) Program after identifying eligible 8(a) participants. In determining which program to use, however, the CO should consider the procuring activity's progress towards meeting its HUBZone and 8(a) goals, as well as other pertinent factors.

- Thus, SBA regulations provide for parity between the HUBZone and 8(a) Programs.

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Priority for Qualified HUBZone 8(a) Concerns:

- SBA regulations seem to imply the existence of a priority for all qualified HUBZone 8(a) concerns. However, there is no statutory authority to create a set-aside program reserved exclusively for HUBZone 8(a) concerns, or to provide any evaluation preference for such concerns.

- The Act and SBA implementing regulations can reasonably be interpreted to provide a preference for HUBZone 8(a) concerns in one limited circumstance:

  - With respect to an open requirement in the 8(a) Program (i.e., a sole source 8(a) requirement in which the procuring activity does not nominate a particular concern for performance, but, rather, offers the requirement to the program generally), SBA may nominate a qualified HUBZone 8(a) concern over another 8(a) participant.

    - With Construction Requirements: 1) Look to HUBZone 8(a) concerns within the geographical boundaries served by the SBA district office where the work is to be performed; 2) then look to HUBZone 8(a) concerns within the geographical boundaries served by another SBA district office within the same state; if none, 3) look to 8(a) concerns that are not HUBZone concerns (in the same order as above).

    - With Non-Construction Requirements: 1) Look to HUBZone 8(a) concerns nationally; if none, 2) then look to 8(a) concerns that are not HUBZone concerns.

Proposed Changes to SBA's Regulations:

- SBA plans to propose the amendment of SBA's HUBZone and 8(a) regulations to:

  - Provide for "parity" between the two programs by clarifying that the CO has the discretion to use either program, depending on the procuring activity's achievement of their goals and other pertinent factors;
  - Delete the reference to a priority for qualified HUBZone/8(a) concerns; and
  - Retain the requirement that HUBZone set-asides take priority over small business set-asides.

- SBA will also request conforming changes to the FAR.

This notice is effective immediately. The information contained herein should be followed until regulatory changes are completed. Any questions pertaining to the notice may be addressed to Linda G. Williams, Associate Administrator for Policy, Planning and Liaison on (202) 401-8150.

Fred C. Armendariz
Associate Deputy Administrator
for Government Contracting and
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Expires: 10-01-2002

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