Moderator: Hello and welcome to today's live SBA web conference. Please note that all participant lines will be muted for the duration of this event. You are welcome to submit written questions during the presentation, and Deborah Crumity will repeat the questions that come in for the benefit of the entire group. To send a note, please select the participants menu at the top of your screen, and opt to send note to all presenters.

If you are logged in using the web-based application, use the Notes function on the lower right-hand side of your screen and address your note to all moderators.

If you require technical assistance, please send a note to me, the ATTCES operator, or call our Help Desk at 888-796-6118.

I would now like to formally begin today's conference and turn the call over to Chris Eischen. Chris, please go ahead.

Chris: Thank you, Carla. Happy new year, everyone, and welcome to SBA's First Wednesday webinar series. Speaking of new year, I want to plot each and every one of you for taking your first step. In your New Year's Resolution, by participating in more SBA training sessions. Now don't let this be like other resolutions, that fade out over the next couple of months. As we have a great schedule plan for you throughout 2018 and we look forward to your participation. So thank you for joining us on our first event of the calendar year. If you are new to the event, this is a webinar series that focuses on getting subject matter experts on specific small business programs, in this case, the HUBZone program, and having them provide you with valuable information you can use in the performance of your job as an SBA employee, a member of the Federal acquisition community, or a PTAC employee. We periodically get emails asking if small business concerns can be invited to participate in the first Wednesday program. And the answer is no. The training that you are about to receive is focused on you, and typically is not applicable to small business vendors. SBA hopes to directly train small business concerns by using other methods.

But now for a little background on the First Wednesday program. The program was initially created for contracting staff, which is why the training series was called 1102 First Wednesday. The 1102 designated government series for contracting personnel was later dropped to be more inclusive of other GS-series, as federal agencies increase the requirements for non-1102's, to obtain DAWIA and FAC-C certifications.

Additionally, other federal buying activities, SBA staff, PTAC and SBDC personnel – who after hearing about the training, requested access, and were added to the list of participants. So that is why SBA's First Wednesday program is aimed at Federal Government employees and our resource partners, like PTAC and SBDCs.

Thank you to those who are repeat attendees and welcome to those of you who are new to the program. And one other note about today's program – we typically offer closed captioning with our programs. But today, due to technical difficulties, we will be unable to provide you with that service this month. We anticipate to have it back next month, and we apologize for any inconvenience this may have caused.

As Carla mentioned, I am Chris Eischen and I work as a procurement center representative, or PCR, with the Small Business Administration in Kansas City, Missouri. Additionally, Deborah Crumity, also a SBA PCR assigned to the Rock Island Arsenal, will be reading your questions submitted during the program for our speakers to address towards the end of today's session. And slide two contains both of our contact information. I will

Please note that all lines are on mute, however, you may submit questions any time during today's session by entering them into the Chat Box on your screen. And these questions will be addressed at the end of our speakers' presentations.

Now, if you are having technical problems and can hear my voice, but cannot log on to the AT&T Connect participation application, which is the online portion of the webinar, call the AT&T Connect Support desk number at 1-888-796-6118. If you didn't get that, the telephone numbers for the AT&T Connect Support desk are on the email invitation for today's program and on slide three of the PowerPoint that accompanied the SBA email notifying you of today's training.

Otherwise, just keep listening in and follow along with the PowerPoint presentation that accompanied the invitation for today. We will periodically announce the page numbers, so you can follow along.

For more information on SBA small-business program training will, you can visit the SBA Learning Center at www.SBA.gov. Please note that this session is being recorded. The Association of Procurement Technical Assistance Centers – or APTAC – hosts a website where they post previous First Wednesday programs. You can obtain these programs by visiting their website which is provided here on slide four.

Procurement Technical Assistance Centers, or PTACs, are a great resource. Partnering with a PTAC for an industry day, sharing a (sources sought?) RFI notice or referring small business concerns to a PTAC, are just a few reasons why

PTACs are such a useful resource for acquisition personnel. Please contact your local PTAC for additional information.

Here we have the schedule – slide five is the current program schedule for fiscal year 2018. And, today's session on the HUBZone program is the fourth topic in the series. As you will see, we have added a couple of new topics to our program list. And approved other topics, that have been presented in the past. We hope you find these topics interesting and applicable to your job.

So, on slide six, I am sure many of you are wanting to receive credit for attending today's training session. And fortunately, today's session is worth one CLP. On slide seven is the certificate you will complete with your individual name. First, you will manually fill in your name and then print the certificate from the PowerPoint to request credit for today's session. The PowerPoint was part of the SBA's invitation for today's session. SBA does not track your CLP or communicate with your training program regarding your CLP achievements.

Several of you may have received the information about today's training from a friend or colleague, but if you want to receive an email directly from us notifying you of upcoming First Wednesday webinar events, please email us at sbalearning@SBA.gov. And in the subject line, please enter the words "add to list," and we will ensure that you are added to the distribution list.

So as I mentioned earlier, slide seven is the certificate that you will receive for this month, and please note that you cannot print this off from your screen here, right now. This is a screen of mine. You will have to use the email that went out to you with the PowerPoint presentation, and insert your name here. And then just print off that single page. You can scan that and then you are able to have that for your keeping. And then send that to your training coordinator.

So, slide eight. The HUBZone program is receiving a lot of attention in the world of small business. And today's training has been assembled to address several aspects of this topic. Our speakers have graciously accepted our invitation and they will be directing me to continue on to the next slide. Please note that due to connectivity issues, some of you may experience a delay as the slide changes on your screen.

I am pleased to introduce today's speakers to you. Mariana Pardo and Mark Hagedorn. Ms. Pardo is the program manager for SBA's Office of the HUBZone program. And with her today, is Mr. Hagedorn, who is an Attorney Advisor for SBA's Office of General Counsel. We appreciate that you can meet with us today, and I will turn the program over to you, Mariana.

Mariana: Thank you, Chris. And welcome everybody. Thank you so much for investing the time in this training. Let's go to the next slide please. And what you will be seeing are references to these major authorities – the Code of Federal Regulations, part 126, and the FAR subpart 19.13.

Slide 11, for those following. This is the agenda for today. I'm going to be providing a brief overview of the program in general, talking a little bit about the program in general. And then we are going to dive then immediately and talk about the different types of contracting – set-asides, sole-source order, set-aside of orders, price evaluation preference, and the limitations on subcontracting and the non-manufacturer rule.

Slide 12. Going into the overview, it is very important for those of you who are attending today to remember that the certification, the HUBZone certification, has to be performed and determined by SBA. So, you cannot accept a firm that asserts to use a HUBZone as certified, just because they are located in a HUBZone. If their business card says it is in a HUBZone, it may be that they are just located in a HUBZone. But you do need to verify that they are HUBZone certified and you verify that in their SAM profile.

And we keep a list of HUBZone certified firms in the Dynamic Small Business Search. So the firm must apply for certification in, and the moment that we approve that firm into the program, then their profile in the Dynamic Small Business Search is refreshed to reflect that certification. And that refresh reflects into the firm's SAM profile.

So only the firms that are listed in that list – in the Dynamic Small Business Search – are eligible to receive contracting preferences and awards. It is possible for a firm to be on the list when they are submitting the offer to you, but you must check the list again when you are about to select those apparently successful for award, because it is possible that a firm might have been decertified in the time that transpired between the offer presentation, and the time that you are doing the evaluation, determining who is the winner in this solicitation.

Slide 14. These are the different types of contracts that we are going to be covering today. Sole-source, the 100% set-aside and partial set-asides – it is important to remember – the price evaluation preference that is applied only in full and open. We're going to cover that in detail. And reserves of HUBZone set-asides under multiple award contracts. We are going to cover that. And my partner here, our attorney advisor Mark Hagedorn, is going to be covering all of that.

Slide 15. It is very important that the firms must be – when they are submitting the certification, when they are submitting the offer on the solicitation – they are certifying to you as the contracting official, they are certifying to the federal government, that they are certified. And they are appearing in the SBA list. The SBA list makes reference to the Dynamic Small Business Search. And, but really, when we are talking about the SBA list, that's what we're talking about – the Dynamic Small Business Search, DSBS.

And they are also saying that there has been no material change in the circumstances that could affect their certification; that they are small. And that they will attempt to maintain their employee requirements during the performance of the HUBZone contract. And that is an important aspect because it gives us the opportunity, the SBA, to look into the case, when something is – when they are not following those rules.

Slide 16. And so that's what we have covered. The firm has to be in compliance offer at the time they submit the initial offer and subsequent, I think that also – and I'm looking at Mark right now – am I right? So they could be submitting an initial offer, and then they submit an amendment and then they submit another. So they have to be eligible at that time of that other offer that they submit afterwards. And at the time of contract award or, better yet, obviously – when you are providing all of the bidders the notification of the apparently successful for award. And they need to be proving that they are in compliance, are at that time, when you are providing that notice.

A HUBZone small business concern may joint venture with one or more other small business concerns. Or if they are under an approved mentor protégé agreement, they can also form a joint venture with their mentors. And they can submit an offer on a HUBZone solicitation when they are joint venturing with that approved mentor. This is a change that occurred a couple of years ago.

So, it is important to remember that you will receive HUBZone joint ventures and where they are joint venturing with another firm that may be small or woman owned or veteran. It is important to note that we do not initiate to certify joint ventures. So, they will not be appearing in the Dynamic Small Business Search, as a joint venture. As a HUBZone joint venture. Because we don't review that. And they will be appearing as a HUBZone joint venture in SAM. And there have been some changes in the DSBS that will allow, that now allows, without manual changes – it allows the agency to receive credit, HUBZone credit, when you are awarding a contract to a HUBZone joint venture.

Slide 17. This is a screenshot of the Dynamic Small Business. This is where we are required by statute, to maintain the list of certified concerns and let's go to the next slide. I would like to show certain aspects of it.

Slide 18. And we are going to be looking at each screenshot. Basically, what you are going to be looking at is the area where the certification is displayed. So, there are going to be three different slides that we are going to be looking at as examples. One, we're going to show you what it looks like when a firm is certified. The other one is going to show you when the firm is not currently certified. And the other one is going to show you that it was never certified.

It is very important that – the Note there – the two bullets under Note, is that in the date displayed, that is when the firm was initially certified. You don't have to request proof that the firm has been recertified. If it shows that the firm was certified, you do not need any evidence from the firm or from SBA showing that recertification. And firms need to recertify every three years, that is an internal process, here, for SBA. It is not a requirement for you, at all.

The other thing is – do not rely on any type of documentation that the firm provides to you in terms of the screenshot of the approval notice or the recertification notice, basically saying that the firm has been recertified or welcomed to the program – your firm was approved. Those documents are great for marketing purposes for the firm, but they are not evidence for your needs. You need to follow the rules that basically said that you must check in the Dynamic Small Business Search for the certification.

Slide 19. And so, this is basically the area, kind of midway, in a profile where you would see that, that is basically the way that it would show. And that it was certified, and it shows you the initial certification. Don't worry about the recertification. You see that, you find the contracting officer, contracting specialist. I see that – I have evidence that the company is certified.

Slide 20. This one tells me that the firm was certified at one point. So, this for example – the contracting specialist, when I checked, when the company gave me their offer – it was on the other slide that I just showed. Now, so I said, okay, fine. Now I am getting ready to select an apparently successful offeror and I go back, and I see this. When I see this, it tells me the company is no longer certified. And it will show me that it was certified from one day to another. So that tells me, it says no, and it gives me a date range. So I cannot award this work to this firm because it is no longer a HUBZone firm.

Slide 21 and this is the last slide of the illustrations, here. And this one tells me that the firm was never HUBZone. The difference between the previous one that we were looking at and this one is that basically I am not going to have any date range, there. It's going to say no, but it is going to tell me not applicable. And that tells me that the firm was never certified. So, if I am presented with a business card that says HUBZone firm, and I go there, and I see not applicable – my counsel to the firm is – listen, why don't you approach SBA for applying for the certification because you are not certified.

Slide 22. Here, I'm going to let Mark, now, tackle it from here. Talking about all the different programs.

Mark: Thank you, Mariana. And I'm just going to talk a little bit more about some of the technical elements of contracting with a qualified HUBZone small business concern. And today we are going to start with talking about the relationship among SBA small business programs. In addition to our size standard program, we also have four socioeconomic set aside programs. And those include our flagship 8(a) program for socio-economic disadvantaged individuals. The HUBZone program for opportunity and development in economic distressed areas. Service-Disabled Veteran-Owned Small Business program or SDVO program, and our Women-Owned Small Business program, also known as the WOSB program.

We just want to emphasize that there is no order of precedence among these programs. Or, in other words, there is parity amongst these programs. And we just want to say that because several years ago, the HUBZone provisions of the Small Business Act were previously written in a way that suggested that HUBZone took priority over the other socioeconomic programs. That language has since been revised, and it is now clear that there is parity among those four socioeconomic set-aside programs. So, if an acquisition is appropriate for some sort of small business set-aside, HUBZone is certainly an option, and we encourage it. But it is not a requirement.

In determining which socioeconomic program an agency should use, we always encourage looking at the results of market research, as well as an agency's progress in fulfilling its small business goals.

Slide 23. So, continuing on the idea of the HUBZone program in parity, and specifically how contract value impacts small business considerations, for acquisitions that are valued at – between a micro purchase threshold, and the simplified acquisition threshold, which is currently between $3500 and $150,000 – these acquisitions are automatically reserved for small business. And in such cases, an agency may award as a small business set-aside, and 8(a) set-aside, a

HUBZone set aside, an SDVO set-aside, or a WOSB set aside. And there is no preference between these programs.

For acquisitions that are valued above the simplified acquisition threshold – that acquisition must be set aside for small business. However, before awarding as a small business set-aside, the agency must first consider a socioeconomic set aside or a sole-source award. Again, there is no preference between them. So, just for example, an agency must consider a HUBZone set aside and a HUBZone sole-source award before an agency considers a small business set-aside.

There is one exception. And that is endearingly known as the once 8(a) always 8(a) rule. And that is basically codified in our regulations and it states that once an acquisition has been accepted into the 8(a) program, any follow-up to that contract has to stay in the 8(a) program, unless it is released by SBA and specifically the Associate Administrator for Business Development.

The last thing I do want to note, that there have been some statutory changes to the thresholds that I discussed earlier. The 2018 NDAA – National Defense Authorization Act – increased the micro-purchase threshold to $10,000 and the simplified acquisition threshold to $250,000. These changes have not been implemented in SBA regulations, and I do not believe that they made it into the FAR yet, since they just happened. But please look out for those changes relatively soon.

Slide 25. So now we are going to talk specifically about HUBZone set-asides and sole-source awards. Under SBA regulations, and the FAR, just kind of like we were talking about in the previous slide, if an acquisition is valued below the simplified acquisition threshold, the agency may award a HUBZone set aside, but it may also go to a small business set-aside, an 8(a) set-aside, WOSB, or SDVO set-aside. If the acquisition, including options, is valued above the simplified acquisition threshold. The agency must first consider both a HUBZone set aside and a sole-source award before the agency can solicit that requirement as a total small business set-aside.

We just want to note here that to award a HUBZone set-aside, and actually to award a small business set-aside, in general, the acquisition has to satisfy what is generally known as the Rule of Two. And that provides that the contracting officer must reasonably expect that two or more offers will be received from small businesses. If it's a HUBZone set aside, that means that offers must reasonably be expected from two or more HUBZone small businesses. And the last prong of that is that an award can be made at a fair market price.

Slide 26. So let's say an agency has conducted market research, looked at its goaling, and has determined that a HUBZone set aside would be appropriate for a particular acquisition. The FAR states that if you view it as a HUBZone set aside and you only receive one acceptable offer from a HUBZone small business concern, then an award is made to that concern. If you do not receive any acceptable offers from HUBZone SBCs, then the FAR states that the agency should withdraw the solicitation and resolicit it as a small business set-aside, as appropriate. And again, we would encourage agencies to use the results of market research, as well as progress in meeting small business goaling.

Slide 27. So now we are going to specifically segue into HUBZone sole-source awards. So there is statutory authority, regulatory authority, and FAR authority for making an award to a HUBZone on a sole-source basis. There are certain findings and considerations that must first be met.

And so we are just going to quickly walk through them. So, a contracting officer may award a contract to a HUBZone on a sole-source basis before considering it as a small business set-aside. But after considering it as a HUBZone total set-aside, if several conditions are met. The first one is that the Rule of Two cannot be met. So if the Rule of Two is met and the CO expects offers from two or more HUBZone concerns, then it is more appropriately solicited as a HUBZone set-aside.

But for a sole-source award, it would be that the CO cannot expect more than one HUBZone concern to submit an offer. Or, that one HUBZone concern can reasonably do the work. In addition, the value of the contract, including options, must be greater than the simplified acquisition threshold, but less than the sole-source ceiling. Currently, SBA regulations, and the FAR, that is $7 million for contracts that are assigned to manufacturing NAICS codes and $4 million for all other requirements, including services contracts.

As we already mentioned, the once 8(a), always 8(a) also applies to HUBZone sole-source awards. So if the requirement has been accepted into the 8(a) program, any follow-on requirement could not be issued as a HUBZone sole-source award. Unless that acquisition is released from the 8(a) program.

And the last two prongs are actually findings that have to be made in any contract award. The sole-source awardee has to be determined to be a responsible contractor and an award must be able to be made at a fair and reasonable price.

We include down at the bottom, just a quick note that the Administrator, the SBA Administrator, does have the right to appeal an agency's decision to not make a

HUBZone sole source award. That's just kind of an FYI. That authority is rarely exercised. But, just know that it is there.

Slide 29. Now we are going to be talking about set-asides of orders and contracts that were awarded in full and open competition, specifically. So again, we are highlighting orders. Specifically, because recent statutory and regulatory authority, and I am using that term fairly loosely, because this occurred in 2013 – it gives agencies the authority to set aside orders placed against it, a multiple award contract that was awarded in full and open competition without justification.

And it is important to note that this is a discretionary authority. It is not mandatory, but we're just bringing it up because in our practice, we found that this is a great way for agencies to get closer to meeting that 3% goal figure. Analogous authority also allows agencies to do a partial set-aside of a multiple-award contract. And this would be appropriate where a particular acquisition could not be broken up into smaller pieces or discrete portions – I'm sorry, where it could be. Usually by (?) number, or something like that, or a special item number.

Or where the Rule of Two is not met for the entire acquisition, but it could be met on some of the smaller discrete portions. In addition, that same authority also allows contracting officers to reserve one or more contract awards for HUBZone concerns under full and open competition. This would probably be a situation where a full set aside is not appropriate because the Rule of Two is not met. And a partial set-aside is not appropriate because discrete portions can't be broken up or the requirements aren't easily identified. But an agency can issue a solicitation as a small business reserve and then compete (?) against those small businesses, including HUBZone firms.

Slide 30. It is important to note that if an agency is going to use the authority that we just talked about on the last slide, and that is to issue a set-aside of an order that was placed against a multiple-award contract in full and open competition, FAR, part 19 applies. And what that means for our purposes is that all of the HUBZone rules apply, and that includes the HUBZone joint venture requirements, the HUBZone limitations on subcontracting, as well as the HUBZone non-manufacturer rule requirements.

Slide 31. So next, we are going to talk about the HUBZone price evaluation preference – this is something that is unique to the HUBZone program. And I just wanted to let you know, right up here, it is not hard to apply, and we are here just to dispel any myths to the contrary. So, we are going to talk quickly just about it, in general, and then move into some examples that we can walk through together.

Slide 32. So, the first rule that governs the price evaluation preference is that it is only applied in acquisitions that are conducted using full and open competition.

The HUBZone price evaluation preference shall be used in acquisitions conducted using full and open competition, which includes any non-reserve or non-set-aside portions of the contract that was awarded in full and open competition. However, the preference is not used where price is not a selection factor – and this is more seen on architectural or engineering acquisitions – as well as where all fair and reasonable offers are accepted. And the most common example of this, are schedule contracts of the GSA schedules.

Slide 33. The second big rule that covers the price evaluation preference is that it is only applied when the apparent successful offeror is a large business. It does not benefit a HUBZone concern if the apparent successful offeror is – I guess you could say – another small business, another HUBZone concern. It is only when the apparent successful offeror, or the lowest responsive offeror is a large business.

So, when both of those conditions are met, that it is in full and open competition, and the apparent successful offeror is a large business – the price evaluation preference is applied by adding a factor of 10%. And which is going to go through – because it is a little tricky on who we add it to, because in some cases it could be waived. So, we would apply it to the apparent successful offeror, which is a large business. We would also apply it to any HUBZone small business offeror that has waived the price evaluation preference.

And you might be thinking, why would a HUBZone concern waive this preference? And the most common response that we see from firms is if they are not able to meet the limitations on subcontracting, or the non-manufacturer rule, or, I guess, in some cases, the HUBZone joint venturing requirements. And the last folks that we would apply the 10% of price evaluation preference to, is other small business concerns that are not the apparent successful offeror.

So, this is generally pretty straightforward when we have LPTA procurements. If you have a best-in-value procurement, our regulations dictate that you apply the price evaluation preference first and then do the best value analysis, after that.

Slide 34. So now we're just going to go through some price evaluation preference examples. I'm going to read them aloud just in case you don't have access to the screen or are looking at the slides.

So, in the first example, we have three offerors under the contract. We have a large business which offered at $100. A small business that offered at $103. And we have a HUBZone small business concern that offered at $113.

So, before the price evaluation preference is applied, the apparent successful offeror is a large business. So, the first prong is met – this is full and open competition. The second prong is met – the apparent successful offeror is a large business. So, we do apply the price evaluation preference. In this case, we applied the 10% price evaluation factor to both the large offeror and the small offeror. And in this case, the large offeror – that bid is still lower than the HUBZone offeror. So in this case, the price evaluation preference does not benefit the HUBZone small business offeror.

And, just a quick note at the bottom, if after applying the price evaluation preference. The HUBZone firm is tied with the – what would have been the apparent successful large offeror – the tie goes to the HUBZone small business concern.

So, next slide, and our second example. In this case, the apparent successful offeror is a large business which came in at $95. The small offered at $97. And the HUBZone bid is $100. So, again, this is full and open competition. And again, the apparent successful offeror is a large business. So in this case, we do apply the price evaluation preference. After applying the preference, the large offeror is at $104.5. The small goes to $106.7. And the HUBZone is at the lowest offer – $100. And so, in this case, the application of the price evaluation preference does in fact benefit the HUBZone small business concern.

Next slide, and our final example. So in this case, again, it is full and open competition. The large offeror offered at $97. The small offeror offered at $95. And the HUBZone firm offered at $100. In this case, because the apparent successful offeror is not a large business, the price evaluation preference is not applied. So the price evaluation preference does not benefit a HUBZone firm where the apparent successful offeror is a small business. So in this case, the small would be the awardee.

Okay, that's all of the examples. So, we're going to move on to the next slide, and discuss limitations on subcontracting and the HUBZone non-manufacturer rule.

Slide 38. So if you have been watching the statutory and regulatory changes, you might have seen this limitation on subcontracting rule recently changed. And that was the summer of 2016. The new rule shifts what was previously a prime contractor's performance of work requirements to limitations on the amount that a prime contractor can subcontract out to a non-similarly situated entity.

And for compliance purposes, a similarly situated entity is defined as a firm that qualifies for the same small business program status as the prime contractor. So, just as a quick example – if it is a HUBZone contract, then a similarly situated entity would be any other firm that has SBA certification for the HUBZone program. And if a 8(a) contract – than a similarly situated entity would be another 8(a) firm.

So the limitations on subcontracting rule – what it was designed to do, was to expand small business participation without penalizing firms who were in essence, keeping it in the family. Or subcontracting out to a firm that has the same qualifications as it had.

So, in the boxes – you will see that the limitations on subcontracting are a little bit different, depending on what kind of acquisition it is. You will see that for supplies and services contracts, the prime contractor can subcontract no more than 50% of the value of the prime contract to entities that are not similarly situated. For general construction and specialty trade construction, those figures are 85% and 75% of the contract value, respectively.

Slide 39. And now we are going to talk about the new HUBZone non-manufacturer rule. This rule actually became effective at the same time as the limitations on subcontracting rule did, in the summer of 2016. And now the new rule treats the non-manufacturer rule for HUBZone purposes, consistently with the other socioeconomic set aside programs that you will see here.

So, formerly, if a HUBZone firm wanted to qualify as a non-manufacturer, it had to ultimately supply the end item of another HUBZone small business concern. That requirement has been eliminated, so now a HUBZone owned small business concern can submit an offer for supplies as a non-manufacturer, if it meets the requirements of CFR 121.406(b) – and those are generally that the non-manufacturer cannot exceed 500 employees, it has to be primarily engaged in wholesale or retail, it has to take possession of the goods in accordance with industry (?), and it has to supply the end item of a small business manufacturer. If all four of those are met, a HUBZone firm can qualify as a HUBZone non-manufacturer on a HUBZone contract.

In addition, the new HUBZone non-manufacturer rule now allows for waivers of the non-manufacturer rule in cases where a small business cannot feasibly provide the item that is going to be ultimately procured. So under the former rule, the non-manufacturer rule did not permit waivers for HUBZone contracts. But now those class and specific waivers do apply to HUBZone contracts.

And the quick note at the bottom – for HUBZone contracts specifically, if the acquisition is valued at or below $25,000, a HUBZone firm can supply the end item of any domestic manufacturer, regardless of whether it is a large or a small manufacturer.

Next slide – 40. And lastly, we're just going to finish by talking about compliance with the limitations on subcontracting and the non-manufacturer's rule. Basically, as we already discussed, FAR part 19 applies to any HUBZone contract, and that includes a HUBZone set-aside contract, a HUBZone sole-source contract, a partial set-aside, a HUBZone reserve, orders that are set aside for HUBZone small business concerns against a multiple-award contract that was awarded in full and open competition, and awards that are made in full and open competition where a price evaluation preference was applied, and the HUBZone was ultimately awarded the contract.

So, the limitations on subcontracting and the non-manufacturer rule apply in all of those circumstances. For purposes of determining compliance, SBA regulations state that for set-asides, both full and partial, the compliance period is the base for performance and each subsequent option period. However, the agency always has the discretion to require compliance with the limitation on subcontracting, or non-manufacturer rule. For each order that is issued. If it is an order issued under an order that was awarded in full and open competition, again, some kind of multiple-award contract, the period of compliance is the term of the order.

And so that is all that I have.

Chris: We are now going to open the session up to questions from Deborah. Whenever you are ready, Deborah, we can start with those questions from the participants.

Deborah: Thank you, Chris. We had quite a few questions. So, I'm going to try and tackle them in no particular order. But I will start out with the vendor's certification and validation in the database. The question is – *I thought that vendor's self-certified their status in SAM.gov. Does the SBA verify the declarations about being 8(a) or HUBZone certified?*

Mariana: Let me address that. This is Mariana. For the HUBZone certification, they are not self-certifying their status as a HUBZone firm. The SAM profile is actually a transmission between two databases. When SBA certifies a firm as a HUBZone firm, the moment that – and this relates to another question as to how soon the databases are refreshed. I think there is another question about how soon after the recent change in the status to and from being a HUBZone, is the webpage updated.

So, for example, if today we approve a firm into the program. The DSBS will display it fairly soon. The moment that database is refreshed. So, depending on how often this databases are refreshed by this technology internally here, it could be really within the next 30 minutes, an hour. It is pretty quick. And then, that refreshed on the DSBS… (*indiscernible*)… And, again, it is done pretty quick, and it is working fairly well, actually.

If you ever encounter an issue where you have a question about you are almost sure that this company is – if it is a question about the certification, please do not hesitate in contacting me. I believe my contact information is there. But basically, it is my name with a dot between first name and last name@SBA.gov. And I will double check.

So they are automated and they go pretty quickly. The only time where there is a self-certification with a HUBZone is when it pertains to a joint venture. So with a joint venture, because we are not reviewing joint ventures, here or certifying the joint ventures – it will be a self-certification that it is indeed a HUBZone joint venture. And it meets all the requirements of a HUBZone joint venture in part 126 of the Code of Federal Regulations.

So, does the SBA check on that? Usually as a result of a protest, we would look into it. If you receive a protest, alleging that they have some firm in the joint venture that is not in compliance, we will look at not only the HUBZone firm in the joint venture, but we also look at the joint venture agreement to make sure that it meets the requirements under the regulation.

Deborah: Moving on to the next question – it was mentioned in the briefing about parity about small business socioeconomic programs and included 8(a), HUBZone, SDVO, and WOSB. So, a question was asked regarding that. Particularly where SDB falls in the order of precedence – but there is no order of precedence, there's parity. But would you like to elaborate further?

Mark: Yes, we just want to emphasize that because several years ago, the provisions of the Small Business Act that governed the HUBZone program suggested that there was some priority for HUBZone firms. And really, there is parity among our four socioeconomic set-asides. So, when a set aside for socioeconomic program would be appropriate, the agency has the discretion to set it aside for 8(a), HUBZone, SDVO, or WOSB. No priority among those four.

Deborah: On slide 23, there was mention about an exception rule. Can you clarify slide 23, please, regarding the 8(a) – the question is – *If an offer was accepted but not awarded, can an agency withdraw the 8(a) offer at the district level if the agency wished to seek HUBZone because it is not meeting its HUBZone goal and other* *reasons given? Note: the contract value has been determined to be greater than the sole source threshold.*

Mark: So, if I understand the question correctly, the offer has already been accepted into the 8(a) by SBA, and then it is being solicited, and then it is withdrawn. Under those facts, because it had already been accepted into the program by the 8(a)-program office, it would have to be released before it is resolicited under some other socioeconomic programs set aside.

So if it is accepted into the 8(a) program, and this is done by offer accepted, there will be an offer letter and then SBA will accept it through an acceptance letter. If that acceptance does occur, then it is going to be in the 8(a) programs through any follow-on requirements, unless the program is going to be released by the Associate Administrator for Business Development.

Deborah: … (*indiscernible*)…NDAA 2018, there was mention of micro and SAT threshold increases. The new micro… (*indiscernible*) of 10,000+ applies. Is that for… (*indiscernible*)… only, and has the threshold for services and construction increased as well? This may not… (*indiscernible*)… via email… (*indiscernible*) look into this question and provide a response, if necessary.

Mark: I don't want to give misinformation. This was in the recent NDAA that was signed on December 12, and I believe it is government wide. I think that is our office's understanding. But we can certainly clarify that in a follow-up to this webinar. But I believe it is government wide. And I believe that it corresponds to all procurements.

Deborah: The next question is on slide 32 – *What if an 8(a) previously received an award under a previously competed SB set aside solicitation – when that same procurement is being re-solicited due to the previous contract expiring, is the re-solicitation required to be 8(a) set aside due to the "once 8(a), always 8(a) " requirement?* I think we answered this question previously. So we can disregard that one, I apologize.

Slide 34 – *Please confirm the accuracy of slides 34 and 35. Should the 10% be applied to Small Business as well? I thought the 10% adjustment was ONLY applied to Large Businesses?*

Mark: So that's a good question. It is applied to small businesses. And maybe Mariana can jump in here. I think it is a matter of math. If it is applied, the large is always going to be the apparent successful offeror. So, when you apply it to the small, it is going to be higher than the large anyway. So, in any circumstance, I think it is kind of a moot issue. If you applied to the small, or not. Because it is going to be higher than the large and you would only benefit the HUBZone concern if the HUBZone concern's offer, after applying the price evaluation preference, is lower than what would have been the large successful offeror. So, the short answer is yes, you do apply it, but in a matter of practice, it's largely kind of a moot issue.

Mariana: Right. Because it took me a while, and Mark had to explain it to me to understand it. Because first you have to meet – well, there are two prongs, right? One is it full and open – yes. Second – is the large, the lowest. And so, if that is yes, if both are yes, then you go and apply it to the large. And for the sake of simplicity and math, it makes sense to apply it to all, including the small business. So that, you don't get confused.

Mark: And I think we do that. Because, as I mentioned on one of the slides on the price evaluation preference, there are situations where another HUBZone offeror would waive the price evaluation preference. So, you can imagine, maybe, a situation where the HUBZone firm that is waving the preference comes in lower than the HUBZone firm that wants to apply the preference. And in that case, you would just do it, across the board. That's how you would apply it, right? And then, the firm that applied it, would actually benefit from it. So, does that make sense? Are there any follow-up questions on that?

Deborah: That was the only one question. Another individual asked – *Why will offers from a HUBZone firm waive the PEP?*

Mark: So if the price evaluation preference is applied in full and open competition, and it benefits a HUBZone, a small business concern, then that acquisition actually becomes a HUBZone contract. So, what previously was, not a HUBZone contract becomes a HUBZone contract, by application of the price evaluation preference.

And in all of the contracts, the HUBZone limitations on subcontracting, the HUBZone joint venturing requirements, and the HUBZone non-manufacturer rule applies. So, if a HUBZone offeror – if a HUBZone is making an offer in full and open competition, and it is pricing its bid in a way that it will be able to meet the limitations of subcontracting, or the non-manufacturer rule or for whatever reason it won't be able to meet the joint venturing requirement, then that would be a situation where it would not want the price evaluation preference to apply. Because it would be in compliance with those requirements. It's rare. I don't think that it happens very often. But it could happen.

Deborah: Okay, thank you. *If an agency were to receive a HUBZone status protest, where can they send the protest?*

Mariana: That is specified in 13 CFR. But, basically, the agency would be sending it – the fastest way is to email it to hz – for HUBZone – hzprotests@sba.gov. That is the fastest way, by attaching the protest letter, and we will review it. Most of the protests that we receive are somewhat incomplete, so we issue a questionnaire for the agency to fill in so that we have all of the elements that we need to evaluate the protest. And most of our protests are processed within the regulatory requirement of 15 days. And we will reach out to the agency. If the protested concern is requesting an extension and we think that by granting that extension, it is going to extend the 15 days – we will reach out to the agency to make sure that we get your approval.

Deborah: There is another question about – *there is an understanding of the recent change in the census tract redesignated to 7 years. Can you explain the reason?*

Mariana: Actually, the redesignation has not been extended to seven years. It has remained in the NDAA 2018, as being, three years. What has changed is that the NDAA 2018 – there are a lot of changes there for HUBZone. And we are still evaluating most of them. But there is one that is effective this month. It is for us to basically (?) the maps, as it pertains to the redesignated areas.

So there are a certain number of areas around the country. It involves census tracts that are currently redesignated, that are expiring this month, some of them. Some of them are expiring in July or later this year. Same thing in 2019. And there are some rural, non-metro areas that are also redesignated areas that are expiring in 2018 and 2019.

So what NDAA 2018 said, basically, it requires SBA to not remove these areas. So these areas will remain as HUBZones in the redesignated status, meaning that a company will still be a HUBZone. The company can still apply. If they are in a redesignated area. Let's say they are in a redesignated area that expires – that says redesignated until January 2018. I can still apply this month and obtain my certification in July. Because it will remain a HUBZone until – the NDAA basically says until January 2020.

Now, they will not be redesignated again. Past 2020. We will look at new data, etc. but that is basically what has transpired. So redesignation still is three years. But the only change is that right now the maps are frozen as it pertains to this new geography census tract and non-metro areas that are HUBZone.

Deborah: The next question is regarding the joint venture. *In a joint venture for a HUBZone set-aside for specialty trade construction, for the 25% personnel requirement the HUBZone prime must meet, does the joint venture's personnel count towards that 25% even if the joint venture is not a HUBZone?*

Mark: So SBA rules now, which recently changed in the last year and a half, do not permit populated joint ventures, anymore. So any HUBZone joint venture that is submitting an offer on a specialty trade acquisition must be unpopulated. And it could be its own entity, legal entity, in SAM.gov, and that might be the prime contractor on the award. But they will not be any JV personnel.

And so, the limitations on subcontracting would apply to the joint venture as the prime government contractor. And then our regulations state that the HUBZone members to that joint venture – and that could be one – or that could be the collective members of the joint venture, must perform at least 40% of the work that the joint venture performs. So, 40% of that 25% must be done by the HUBZone members to the joint venture.

But I just want to reiterate that except in rare circumstances where there is some kind of facilities clearance required, the joint venture is not permitted to have its own employees. And the concern there was just that SBA wasn't able to track who is doing the actual work within the joint venture if it had its own employees.

Deborah: I believe this concludes – there was a question about receiving the PowerPoint slides. And Chris was… (*indiscernible*)… we mentioned in the beginning of the presentation, but Chris, I think that covers all of the questions, unless I am missing something.

Chris: Okay, and if for some reason, we missed any, or there is any additional questions after, please send an email to the SBA learning inbox, which is sbalearning@SBA.gov. That email address is also included in the slides, and in order for you to receive the slides, the email would have been sent to you with the invite for our meeting today. So that's where you will locate that. Also, if you want to view this program again, or previous ones, you can go to the APTAC website, which is also identified in the earlier slides as well.

Once again, Mark and Mariana, thank you so much for all of your time and the great information that you provided here today. I believe that everybody got some great information out of it. So thank you so much for that. And thanks to everyone who participated, and we look forward to your future participation. Thank you.

Moderator: Thank you for joining today's conference. This session has now concluded. And you may disconnect.

[End of Recording]