

## FOR IMMEDIATE RELEASE

**CONTACT:**

Ron Newlan  
121 Congressional Lane Suite 302  
Rockville, MD 20852  
(301)881-7012  
[HUBZonecouncil@aol.com](mailto:HUBZonecouncil@aol.com)



### GAO Gives HUBZone Program Priority over Service Disabled Veteran Owned Firms

November 6, 2008, Washington, DC- Recently, the GAO made a very important decision to give priority to HUBZone Program set-asides over any other small business set-aside program. Elizabeth Jauer, legal analyst of International Program Group Inc. protested to the GAO challenging the US Marine Corps' (USMC) decision to acquire services through the Service Disabled Veteran Owned (SDVO) set-aside program and that the USMC failed to give reasonable consideration for a HUBZone small- businesses set-aside procurement. The GAO upheld the protest.

The SBA and USMC filed motions for reconsideration and vigorously argued for overruling the earlier GAO decision, arguing primarily that implementation of the HUBZone statute is for SBA, not GAO, to decide. The GAO denied the motions for reconsiderations in a decision which upholds the interpretation of the "HUBZone Rule of Two" and materially strengthens the argument that HUBZone set-asides have priority over any other set-aside program and must be followed when there are two or more qualified HUBZone bidders. GAO used a standard statutory interpretation analysis and said there was no deference required to the agency charged with implementing a statute where the statute is unambiguous on its face. These two decisions are a great victory for the HUBZone Program and for the "HUBZone Rule of Two".

The GAO stated, with regards to the HUBZone Program, a contract opportunity shall be awarded on the basis of competition restricted to HUBZone small business concerns if the contracting officer has a reasonable expectation that is not less than 2 qualified HUBZone small business concerns will submit offers and that the award can be made at a fair market price.

In its decision, GAO concluded that a HUBZone set-aside is mandatory! If the specified HUBZone conditions are met, then the discretion granted to the contracting officer under the SDVO set-aside program does not supersede the mandatory nature of the HUBZone set-aside program. To interpret the statutes otherwise, would create parity between the programs, and would fail to give effect to the clear language of the HUBZone statute, which uses the mandatory term "shall" while the SDVO set-aside statute uses the discretionary term "may."

HUBZone is a reference to a US Small Business Administration (SBA) program for small companies that operate and employ people in Historically Underutilized Business Zones (HUBZones). The HUBZone program was created in response to the HUBZone Empowerment Act created by the US Congress in 1998. With this GAO ruling, it will be much easier for Federal Agencies to begin to empower America's poverty ridden communities by using the HUBZone

Program to create good paying jobs where America needs them the most!

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### **About HUBZone Contractors National Council**

Formed in February 2000, the HUBZone National Council Inc. is a District of Columbia Nonprofit Corporation that was formed in order to further the HUBZone Empowerment Program created by the HUBZone of 1997. The concept of the organization is to work to ensure the best possible implementation and development of the HUBZone empowering program. The council conducts trainings, monitors compliances with legislation and provides all of the support required by the members. For more information visit [www.hubzonecouncil.org](http://www.hubzonecouncil.org), or call (301)881-7012