



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

November 15, 2013

[REDACTED]

Johnston, IA 50131 -2228

Email: [REDACTED]

Fax: [REDACTED]

RE: HUBZone Protest for Solicitation No. [REDACTED]

Dear Mr. [REDACTED]

This letter is to notify you that based on the information provided to me in a protest filed by [REDACTED] and your response to that protest on behalf of [REDACTED] I am denying the protest. I have determined that [REDACTED] met the HUBZone principal office and 35% residency requirements on the date it submitted its offer and at the time of award. This determination will be effective immediately and is final unless overturned on appeal. The following sets forth the bases for my decision.

1. Protest Allegations and Request for Information

In its protest, [REDACTED] argued that [REDACTED] has two employees, one of which does not reside in a HUBZone. As a result, [REDACTED] challenged [REDACTED]'s ability to meet the HUBZone 35 % residency requirement. [REDACTED] also argued that [REDACTED]'s principal office is not located in a HUBZone. Specifically, [REDACTED] argued that [REDACTED]'s principal office is located at [REDACTED], Johnston, Iowa 50131 (Johnston, Iowa address), which is not in a designated HUBZone. [REDACTED] argued the awardee information for the instant procurement displayed on fbo.gov includes the Johnston, Iowa address. [REDACTED] also contended that this is the address displayed on [REDACTED]'s South Dakota contractor's license. Finally, [REDACTED] alleged that Mr. [REDACTED] conducts his work at his home and because Mr. [REDACTED] is one of two employees, the greatest number of [REDACTED]'s employees cannot perform their work at a HUBZone location.

Because [REDACTED] provided specific allegations that [REDACTED] may not meet the HUBZone principal office and the 35% residency requirements, I found each protest allegation to be specific.

I therefore requested, via letter dated November 1, 2013, that [REDACTED] provide evidence, including supporting documents, showing that it met the HUBZone principal office at the time it submitted its offer (September 3, 2013) and at the time of award (September 30, 2013).

In response to this request, on November 8, 2013, [REDACTED] provided the following: payroll records showing all employees and the numbers of hours worked at the time of offer and at the time of award; a list of employees that worked less than 40 hours during the week of offer and at the time of award; a statement explaining the number of hours worked and duties performed by the one independent contractor who performed work for [REDACTED] in the time prior to offer and award; a statement explaining that all officers of [REDACTED] are shown as employees on the company's payroll with the exception of the firm's owner; a statement that all employees of [REDACTED] are shown as employees on the firm's payroll; unexpired drivers licenses and maps for each HUBZone employee; 3rd quarter state unemployment and Federal tax filings; copies of lease agreements for the former principal office, [REDACTED], Colfax IA and the present principal office location, [REDACTED], Des Moines, IA; copies of [REDACTED]'s corporate tax filings for 2010, 2011 and 2012; a copy of [REDACTED]'s present SAM profile; a copy of a 10/1/2013 email to EPA notifying the contracting officer that [REDACTED] effectively moved into its new location; a copy of a 9/13/2013 email to SBA informing the agency that [REDACTED] would be moving from [REDACTED], Colfax IA to [REDACTED], Des Moines, IA on 10/1/2013; copies of contracts that [REDACTED] is presently performing; executed copy of solicitation [REDACTED]; a copy of [REDACTED]'s offer to solicitation [REDACTED]; a copy of [REDACTED]'s Groundwater Professional certificate; and a written response to the protest.

According to [REDACTED]'s written response, over 35% of [REDACTED]'s employees reside in a HUBZone. Likewise, [REDACTED] asserts that the firm's principal office is located in a HUBZone. According to [REDACTED] the address cited by Lawson as being used on the firm's solicitation and SAM profile is [REDACTED] mailing address. [REDACTED] maintains that the firm's physical office, and principal office location, is in a HUBZone. [REDACTED] also asserts that the address on the South Dakota Petroleum Release Remediation Certificate provided by Lawson is a home address because the certificate was issued to [REDACTED]'s owner as an individual. [REDACTED] further explained that, due to the pending redesignation of the area's HUBZone status, [REDACTED] moved its office from [REDACTED], Colfax, IA to [REDACTED], Des Moines, IA ([REDACTED]) on October 1, 2013. [REDACTED] wrote to EPA's contracting officer to inform him of the move. Additionally, on September 13, 2013, [REDACTED] informed SBA's HUBZone office of its upcoming move to the new location, [REDACTED]. As noted above, [REDACTED] provided copies of the email notifications that were sent to both agencies.

2. HUBZone Principal Office Requirement

The Small Business Act and implementing regulations require that, with the exception of certain specified entities, qualified HUBZone small business concerns have a principal office located in a HUBZone. 15 U.S.C § 632(p)(5){A}(i)(I)(aa); 13 C.F.R. § 126.103. The statute and regulations define a HUBZone to mean an area located within one or more qualified census tracts, qualified non-metropolitan counties, lands within the external boundaries of an Indian reservation, redesignated areas, or base closure areas. *Id.* § 632(p){1}; 13 C.F.R § 126.103.

Several years ago, SBA amended its definition of ‘principal office’ to address those small business concerns engaged in construction or service industries. SBA found that concerns engaged in these industries had difficulty maintaining compliance with the original definition of ‘principal office’ because, by definition, their ‘principal office’ is subject to change from contract to contract. Thus, SBA’s present regulations define the term ‘principal office’ as follows:

Principal office means the location where the greatest number of the concern’s employees at any one location performs their work. However, for those concerns whose ‘primary industry’ (see 13 C.F.R. 121.201) is service or construction (13 C.F.R 121.201), the determination of principal office excludes the concern’s employees who perform the majority of their work at job site locations to fulfill specific contract obligations.

13 C.F.R. § 126.103.

Because [REDACTED]’s primary industry is Remediation Services (NAICS 562910), the determination of its principal office excludes those employees who perform the majority of their work at job site locations to fulfill specific contract obligations. I note that with respect to the definition of principal office, the SBA recognizes in its regulations that qualified HUBZone small business concerns may have more than one office, including offices or facilities in another HUBZone or even outside a HUBZone and still be a qualified HUBZone small business concern. *Id.* § 126:207. However, in order to qualify for the program, the concern’s principal office must be located in a HUBZone.

[REDACTED]’s written statement and other supporting documentation, including payroll records, confirmed that on the date of offer, September 3, 2013, [REDACTED] had one employee who performed the majority of their work at the [REDACTED], Colfax, IA location and one employee that performed the greatest amount of their work at a job site location.

In addition at the time of award, September 30, 2013, [REDACTED]’s written statement and other supporting documentation, including payroll records, evidence that one employee

performed the majority of their work at the [REDACTED], Colfax, IA location and one employee performed the greatest amount of their work at a job site location.

In sum, I find [REDACTED], Colfax, IA, which was located within a designated HUBZone on the relevant dates¹, to be [REDACTED]'s principal office location at the time of offer and at the time of award. Consequently, I am denying this protest allegation.

3. 35% HUBZone Residency Requirement

The HUBZone Act and the implementing regulations require that at least 35% of the HUBZone small business concern's (SBC's) employees reside in a HUBZone. 15 U.S.C. § 632(p)(5)(A)(i)(I)(aa); 13 C.F.R. § 126.200(b). SBA's HUBZone regulations define the term employee as follows:

Employee means all individuals employed on a full-time, part-time, or other basis, so long as that individual works a minimum of 40 hours per month. This includes employees obtained from a temporary employee agency, leasing concern, or through a union agreement or co-employed pursuant to a professional employer organization agreement. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes and those set forth in SBA's Size Policy Statement No. 1, in determining whether individuals are employees of a concern. Volunteers (i.e., individuals who receive deferred compensation or no compensation, including no in-kind compensation, for work performed) are not considered employees. However, if an individual has an ownership interest in and works for the HUBZone SBC a minimum of 40 hours per month, that owner is considered an employee regardless of whether or not the individual receives compensation.

13 C.F.R. § 126.103.

According to [REDACTED]'s payroll records and other documents provided for the pay period covering the date of the offer (September 3, 2013), [REDACTED] had two (2) employees who were working on the date of offer and that worked at least 40 hours during the month leading up to and including the date of offer. At least one (1) of [REDACTED]'s employees must have resided in a

¹ At the time of offer and award the [REDACTED], Colfax, IA 50054 was located in a qualified HUBZone location. Specifically, Jasper County was a qualified non-metropolitan county and was HUBZone qualified by either unemployment rate or household incomes. Effective October 1, 2013, Jasper County was redesignated and is no longer a qualified non-metropolitan county.

HUBZone ($2 * 35\% = 0.7$, rounded up to 1)² to meet the 35% HUBZone residency requirement. According to documentation provided, one (1) of [REDACTED]'s two employees resided in a qualified HUBZone. Therefore, [REDACTED] did satisfy the 35% residency requirement at time of offer.

In addition, according to [REDACTED]'s payroll records and other documents provided, [REDACTED] has two (2) employees who were working at the time of award (September 30, 2013) and that worked at least 40 hours during the month leading up to and including the time of award. At least one (1) of [REDACTED]'s employees must have resided in a HUBZone ($2 * 35\% = 0.7$, rounded up to 1) to meet the 35% HUBZone residency requirement. According to documentation provided, one (1) of [REDACTED]'s two employees resided in a qualified HUBZone. Therefore, [REDACTED] did satisfy the 35% residency requirement at the time of award.

In sum, after reviewing all of the documents, payroll records, and supporting residency documents, I must conclude that [REDACTED] did meet the 35% HUBZone residency requirement at the date of offer and the time of award. Consequently, I am denying this protest allegation.

4. Appeal Rights

[REDACTED] the protester, or the contracting officer may appeal this decision pursuant to 13 C.F.R. § 126.805. All appeals must be made to the Associate Administrator for Government Contracting and Business Development (AA/GC&BD) within five business days from receipt of this letter. The appeal may be sent by facsimile, express delivery service, or U.S. mail (postmarked within the applicable time period), or via hand delivery. The AA/GC&BD may be reached at the U.S. Small Business Administration, 409 3rd Street, SW, Suite 8000, Washington, DC 20416, by facsimile at (202) 205-5206, or by e-mail at hzappeals@sba.gov. SBA will dismiss any appeal received after the five-day period. Pursuant to 13 C.F.R. § 126.805(d), the party bringing the appeal must provide a notice of the appeal to the contracting activity contracting officer and the protested concern. I have attached a copy of the appeal procedures.

5. Release of Decision

SBA intends to make its HUBZone status protest and appeal decisions available to the public by posting them on its website at www.sba.gov/hubzone. As we noted in our initial letter, the Freedom of Information Act (FOIA), 5 U.S.C. § 552, requires the government to disclose records in its possession unless the information falls under one of the nine-enumerated exemptions, including that the information is a trade secret or is privileged or confidential

² The SBA's regulations provide that: "When determining the percentage of employees that reside in a HUBZone, if the percentage results in a fraction, round up to the nearest whole number." 13 C.F.R. § 126.200(b)(4).

commercial or financial information, 5 U.S.C. § 552(b)(4), or that the disclosure of the information would constitute an unwarranted invasion of individual privacy, 5 U.S.C. § 552(b)(6). We also explained in our initial letter that we will release in the protest decision the total number of employees of the protested concern, as well as the number of employees that work at a business' different offices.

SBA has reviewed this decision letter and does not believe any redactions to this document are necessary and therefore may release the decision to the public and post it online. The decision does not release or otherwise disclose the names, home addresses, or specific work schedules of individual employees. However, each party to the protest shall refrain from releasing the documents until the end of the fifth business day following receipt of the documents by all parties. This permits parties to identify anything that they believe should have been redacted.

6. Small Business Regulatory Enforcement Fairness Act

If you believe your small business has been the subject of excessive or unfair regulatory enforcement or compliance actions as a result of this decision, you have the right under the Small Business Regulatory Enforcement Fairness Act to file a complaint or comment with SBA's National Ombudsman at:

Office of the National Ombudsman
U.S. Small Business Administration
409 Third St. SW Washington, DC 20416
PH: 1-888-734-3247
FX: 1-202-481-5719
EM: ombudsman@sba.gov

The right to file a complaint or comment with SBA's National Ombudsman is independent of any other rights you may have to contest this decision. The National Ombudsman may not change, stop, or delay a Federal agency's enforcement action or impede any administrative or criminal process.

Thank you for your cooperation with this matter. If you have any questions, please contact me at hzprotests@sba.gov.

Sincerely,

Mariana Pardo
Director
HUBZone Program

cc:

[REDACTED]

Contracting Officer

Fax: [REDACTED]

[REDACTED]

[REDACTED]

Fax: [REDACTED]

[REDACTED]