



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

November 19, 2013

Sent Via Facsimile and Electronic Mail

[REDACTED]

Henderson, NV 89074

RE: HUBZone Protest for Solicitation No. [REDACTED]

Dear Mr. [REDACTED]:

This letter is to notify you that I am dismissing the protest of [REDACTED] ([REDACTED] concerning the HUBZone status of [REDACTED] ([REDACTED] for the above-referenced Solicitation.

The pertinent U.S. Small Business Administration (SBA) regulations provide that “[f]or sealed bid acquisitions: (i) An interested party must submit its protest by close of business on the fifth business day after bid opening, or (ii) If the price evaluation preference was not applied at the time of bid opening, by close of business on the fifth business day from the date of identification of the apparent successful offeror.” 13 C.F.R. § 126.801(d)(2). The regulations define an interested party as “any concern that submitted an offer in full and open competition and its opportunity for award will be affected by a price evaluation preference given a qualified HUBZone SBC, the contracting activity’s contracting officer, or SBA.” Id. § 126.103. Any protest submitted after the time limit is untimely, unless the protest is from the SBA or a contracting officer. Id. § 126.801(d)(3).

The U.S. Department of the Army (“Army”) issued the solicitation at issue in this protest as full and open competition with a HUBZone price evaluation preference (PEP). The contracting officer has informed SBA that [REDACTED] submitted an offer in response to the solicitation and was the low bidder displaced by [REDACTED] after application of the HUBZone PEP. Thus, [REDACTED] is an interested party.

In addition, bid opening was held on October 30, 2013. [REDACTED] submitted its protest to the contracting officer on November 6, 2013. Therefore, [REDACTED] as an interested party, submitted its protest on time because it submitted the protest within five business days after bid opening.

However, the HUBZone regulations also provide that a HUBZone protest must “state all specific grounds for the protest. A protest merely asserting that the protested concern is not a qualified HUBZone SBC, without setting forth specific facts or allegations, is insufficient.” 13 C.F.R. § 126.801(b); see also id. § 126.803(a)(2) (a HUBZone protest must be “sufficiently

specific”). If SBA determines that a protest is not specific, it will dismiss the protest. Id. § 126.804.

██████ alleges that ████████ is not a HUBZone certified entity and is therefore ineligible for award. However, SBA’s regulations provide the following with respect to HUBZone joint ventures:

A joint venture may submit an offer on a HUBZone contract if the joint venture meets all of the following requirements:

(a) *HUBZone joint venture.* A qualified HUBZone SBC may enter into a joint venture with another qualified HUBZone SBC for the purpose of submitting an offer for a HUBZone contract. **The joint venture itself need not be certified as a qualified HUBZone SBC.**

(b) *Size of concerns.* (1) A joint venture of two or more qualified HUBZone SBCs may submit an offer for a HUBZone contract so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract and the HUBZone joint venture in the aggregate may exceed the size standard provided the procurement meets the following conditions:

(i) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the NAICS code assigned to the contract; and

(ii) For a procurement having an employee-based size standard, the procurement exceeds \$10 million.

(2) For a procurement that does not exceed the applicable dollar amount specified in paragraph (b)(1) of this section, a joint venture of two or more qualified HUBZone SBCs may submit an offer for a HUBZone contract so long as the qualified HUBZone SBCs in the aggregate are small under the size standard corresponding to the NAICS code assigned to the contract.

(c) *Performance of work.* The aggregate of the qualified HUBZone SBCs to the joint venture, not each concern separately, must perform the applicable percentage of work required by 13 CFR 125.6.

13 C.F.R. § 126.616 (emphasis added). As set forth above, a qualified HUBZone joint venture need not be a HUBZone certified entity – it need only consist of two or more qualified HUBZone SBCs and meet the remaining requirements set forth in the regulations. As was confirmed by the contracting officer in the instant case, both parties to the ████████ are, in fact, certified HUBZone SBCs. As such, ████████’s allegation sets forth no specific facts which challenge ████████’s eligibility for award of the instant contract. Accordingly, I find this protest allegation insufficiently specific as to a HUBZone eligibility criterion. Therefore, I am dismissing this protest allegation.

Appeal Rights

The protester, protested concern, or the contracting officer may appeal this decision dismissing this protest allegation pursuant to 13 C.F.R. § 126.805. All appeals must be made to the Associate Deputy Administrator for Government Contracting and Business Development (ADA/GC&BD) within five business days from receipt of the letter. The appeal may be sent by facsimile, express delivery service, or U.S. mail (postmarked within the applicable period), or via hand delivery. The ADA/GC&BD may be reached at the U.S. Small Business Administration, 409 3rd Street, SW, Suite 8000, Washington, DC 20416, or by facsimile at (202) 205-5206. 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 or the protested concern, whichever applies. I have attached a copy of the appeal procedures.

Release of Decision

Please be advised that 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. Therefore, the information you provide in response to this protest may be discussed in the SBA's final decision and available for public review. In addition, the information you provide may be subject to a Freedom of Information Act (FOIA), 5 U.S.C. § 552, request. FOIA requires the government to disclose records in its possession when requested in writing by a member of the public, unless the information falls under one of the nine-enumerated exemptions, including that the information is a trade secret or is privileged or confidential 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)).¹

Consistent with FOIA and its exemptions, SBA will not publicly release in its protest determination or any appeal decision the names, home addresses, or specific work schedules of individual employees.² However, if you submit any other information that you believe should be protected from public disclosure under the FOIA exemptions, please designate that information as "Confidential" clearly and prominently in your response. If SBA receives a FOIA request for this information, we will consider your designations of confidential information and will provide you with pre-disclosure notification should we deem the information releasable. SBA will also consider these designations before publishing these decisions on its website.

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

¹ Further information on how FOIA is administered at SBA is available at <http://www.sba.gov/about-sba-services/foia>.

² However, the SBA does release in its protest decisions the total number of employees of the protested concern, the total number of employees that are HUBZone residents, as well as the number of employees that work at a business' different offices.

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]
[Redacted]
Fax: [Redacted]
[Redacted]

[Redacted]
[Redacted]
Fax: [Redacted]
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