



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

December 4, 2013

Sent Via Facsimile

[REDACTED]

Albuquerque NM 87108

FAX: [REDACTED]

RE: HUBZone Protests for Solicitation [REDACTED]

Dear Mr. [REDACTED]:

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

Protest Allegations and Request for Information

In its protest, [REDACTED] alleged that [REDACTED] may not meet the HUBZone program's 35 percent residency requirement. Specifically, [REDACTED] alleges that [REDACTED] has been awarded recent contracts that require performance in areas that are not near HUBZones, and therefore it is unlikely that 35% of [REDACTED]'s employees currently reside at HUBZone locations. Because [REDACTED] has provided specific allegations that less than 35% of [REDACTED]'s employees reside in a HUBZone, I found these protest allegations specific.

I therefore requested, via letter dated November 19, 2013, that [REDACTED] provide evidence, including supporting documents, showing that at least 35 percent of [REDACTED]'s employees resided in a HUBZone on the date it submitted its offer (July 18, 2013) and at the present time.

In response to SBA's request, on November 25, 2013, [REDACTED] provided the following: a copy of a letter notifying [REDACTED] that the firm continued to meet the HUBZone eligibility requirements based on the results of HUBZone' Program Exam (dated May 10, 2012); a copy of SBA Size Determination No. [REDACTED] finding [REDACTED] to be an eligible small business concern (dated November 12, 2013); copies of [REDACTED] payroll covering the date of offer and

present date; copies of drivers' licenses and HUBZone map determinations showing the home address of each HUBZone resident employee of [REDACTED] at the time of offer and present time; a copy of [REDACTED]'s state unemployment filing for the third quarter of 2013; a copy of [REDACTED]'s 2012 Federal Corporate Income Tax returns; a copy of the offer submitted to the solicitation at issue; and a written response to the protest allegations.

35% HUBZone Residency Requirement

The HUBZone Act and the implementing regulations require that at least 35 percent 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 work 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 (emphasis added).

According to the documents provided, including payroll records, unexpired drivers' licenses and HUBZone map determination for the pay period covering the date of offer, July 18, 2013, [REDACTED] had 37 employees who worked at least 40 hours during the 30 day period leading up to and including the date of offer. At least 13 of [REDACTED]'s employees must have resided in a HUBZone ($37 * 35\% = 12.95$, rounded up to 13)¹ to meet the 35 percent HUBZone residency requirement. Of these 37 employees, supporting documents provided, including unexpired drivers' licenses, evidence that 13 [REDACTED] employees resided in a qualified HUBZone on the date of offer. Therefore, at least 35 percent of [REDACTED]'s employees resided in a HUBZone at the date of offer. As such, [REDACTED] satisfied the HUBZone residency requirement at the time it submitted its offer.

¹ The SBA 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).

Further, according to [REDACTED]'s payroll records and other documents provided, [REDACTED] had 40 employees who worked at least 40 hours during the 30 day period leading up to present date. At least 14 of [REDACTED]'s employees must have resided in a HUBZone (40 * 35% = 14) to meet the 35 percent HUBZone residency requirement at present date. Of those 40 employees, supporting documents provided, including unexpired drivers' licenses, evidence that 15 [REDACTED] employees resided in a qualified HUBZone at present date. Therefore, at least 35 percent of [REDACTED]'s employees resided in a HUBZone at present date. As such, [REDACTED] satisfied the residency requirement at the time it submitted its offer.

In sum, after reviewing all of the payroll records and supporting residency documents, I must conclude that [REDACTED] was in compliance with the 35 percent HUBZone residency requirement on the dates of offer and award. For this reason, I am denying this protest allegation.

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.

Release of Decision

The 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 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, the total number of employees that are HUBZone residents, as well as the number of employees that work at a business' different offices.

The SBA has reviewed this decision letter and believes that no redactions to this document are

necessary. However, each party to the protest shall refrain from releasing the decision until the end of the fifth business day following receipt of the decision by all parties. This permits parties to identify anything that they believe should have been redacted.

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

Attachment

cc (via facsimile w/o attachment):

[REDACTED], Contracting Officer

Fax: [REDACTED]

[REDACTED]

Fax: [REDACTED]