



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

December 31, 2013

**Sent Via Facsimile and Electronic Mail**

[REDACTED]

Washington, DC 2006

Fax: [REDACTED]

[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] ([REDACTED] your response on behalf of [REDACTED] ([REDACTED] and the result of site visits conducted, I am sustaining the protest. I have determined that [REDACTED] did not meet the HUBZone principal office requirement at the time it submitted its offer and does not meet the requirement at the present time. As such, [REDACTED] did not satisfy all of the HUBZone eligibility requirements at the time of offer and at the present time. [REDACTED] is therefore ineligible for this award, ineligible for the HUBZone program, and will be decertified immediately. This determination will be effective immediately and is final unless overturned on appeal. The following sets out the bases for my decision.

Protest Allegations, Request for Information and Site Visits Conducted

In its protest, [REDACTED] argued that [REDACTED] may not meet the principal office requirement. Specifically, [REDACTED] alleged that [REDACTED]'s principal office is the firm's 'corporate office' located in Hayden, ID. According to [REDACTED] this location is not within a qualified HUBZone and appears to have more activity than [REDACTED]'s stated principal office in Orofino, ID. Because [REDACTED] provided this specific argument that [REDACTED] may not meet the principal office requirement, I found this protest allegation specific .

I therefore requested that [REDACTED] provide evidence, including supporting documents, showing that it met the requirements at the time it submitted its offer (August 18, 2013) and at

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<sup>1</sup> [REDACTED] also made allegations that [REDACTED] did not meet the 35% requirement, however no specific examples were cited. SBA dismissed that portion of the protest.

the present date<sup>2</sup>. SBA's protest notification letter stated that signed declarations bear greater weight than mere statements. In addition, SBA's regulations explain the penalties that may be imposed when a person or business concern provides false information to the Federal government. 13 C.F.R. § 126.900.

In response to this protest, on December 18, 2013, [REDACTED] provided the following: a letter responding to the protest allegations; a declaration from [REDACTED] explaining the employee lists and payroll summaries provided; an employee list for the months of July, August and November; monthly payroll summaries for the months of July, August, and November; contract excerpts for various jobsite locations; and a copy of the proposal [REDACTED] submitted to the Department of Homeland Security.

According to [REDACTED]'s written response, the Orofino, ID location "is approximately 400 square feet and contains desks and office equipment." [REDACTED]'s written response further maintains that "[REDACTED] also has a mechanical yard a short distance away that contains equipment, tools, and materials used by [REDACTED]'s equipment division." [REDACTED]'s response also alleges that, during the relevant time periods, between 44 and 46 of [REDACTED]'s 115 to 125 employees worked out of the Orofino, ID location. Of these 44 to 46 employees, [REDACTED]'s submission indicates that around half work at the office location and the remainder work at the mechanical yard a short distance away.

In addition, SBA requested that its local Spokane, WA office conduct a site visit of both the Orofino, ID and Hayden, ID locations. SBA representatives visited the Orofino, ID location [REDACTED], Orofino, ID) on December 20, 2013. The SBA representatives found that the office was well organized and small. There were two people in the office that day, and they stated that during the winter months there are few construction projects in the area, thus staffing levels are low. The SBA representatives also visited the Hayden, ID location ([REDACTED], Hayden, ID) on December 20, 2013. There they found a fairly large office, with office suites on two floors. The SBA representatives observed that six people and a Regional Operations Manager were present at this location<sup>3</sup>.

### 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.

The regulations define the term "principal office." *See* 13 C.F.R. § 126.103. When SBA set forth its initial proposed definition of "principal office" for purposes of the HUBZone program, it defined the term to mean "the location where the greatest number of the concern's employees at any one location perform their work." 63 Fed. Reg. 16157 (April 2, 1998). SBA received several comments on this definition of "principal office," noting that "the term 'principal office' is generally understood to mean the central headquarters or center of operations of the business, not where most of the businesses' employees are located." 63 Fed.

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<sup>2</sup> SBA informed [REDACTED] that they did not need to provide documents that had already been provided to SBA on another matter.

<sup>3</sup> SBA also conducted a site visit to a Saint Robert, MO location. The SBA representative found the location empty, with a For Rent sign out front. [REDACTED] confirmed that this location was closed some time ago.

Reg. 31897 (June 11, 1998). Respondents had suggested alternatives to SBA's definition, including "where the company performs its general and administrative business functions," 'central headquarters or center of operations,' and 'where the greatest proportion of the concern's labor cost is incurred.'" *Id.* at 31898. In response, SBA stated that it "crafted the definition to fulfill the statutory purpose of hiring residents in HUBZones by encouraging businesses to move to or expand their business operations in a HUBZone (as opposed to just their headquarters, which may be where only a few employees work)." *Id.*

A few years ago, SBA amended its definition of "principal office" to address those small business concerns engaged in construction or services industries. SBA found that concerns engaged in these industries had difficulty maintaining compliance with the definition of "principal office" because, by definition, their "principal office" is subject to change from contract to contract. Thus, SBA's current 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 perform their work. However, for those concerns whose 'primary industry' (see 13 CFR 121.201) is service or construction (13 CFR 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 ██████'s primary industry is services (NAICS 236220 – Commercial and Institutional Building Construction), 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. While ██████ does have several jobsites, it has two office locations (Orofino, ID and Hayden, ID) where employees perform their work.

I have reviewed all of the documents and information submitted. In its initial notification letter, SBA made clear that ██████ must submit official company payroll records that show employee's names, number of hours worked for that pay period, wages and pay period beginning and end dates. SBA's notification letter explicitly stated that SBA does not accept payroll summaries. ██████ submitted payroll summaries for the months of July, August, and November, despite having weekly pay periods. The initial notification letter also stated that failure to provide sufficient information or supporting documents to establish ██████'s HUBZone eligibility may result in an adverse inference.

Further, as noted above, ██████'s submissions indicate that 17 to 20 individuals worked out of the 400 square feet of office space available at ██████' Orofino, ID office location during the relevant time periods. While this is inherently unlikely, SBA's site visit indicated that, of these approximately 20 alleged office employees, only 2 were present at the time of the site visit. At the time of the site visit, ██████'s employees did not indicate that this low percentage was an anomaly, instead they relayed that this is normal for the time of year.

Given the insufficient payroll submissions and the results of SBA's site visits, I cannot conclude that the majority of ██████'s employees perform work at the Orofino, ID location. As such, I cannot conclude that ██████'s principal office is located within a qualified HUBZone. Therefore, I am sustaining this protest allegation.

## Appeal Rights

██████████ 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](mailto: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](http://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](mailto: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](mailto:hzprotests@sba.gov).

Sincerely,

Mariana Pardo  
Director  
HUBZone Program

cc:

[Redacted]  
Contracting Officer  
Fax: [Redacted]  
[Redacted]

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