



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

February 26, 2014

**Sent Via Facsimile**

[REDACTED]  
[REDACTED]  
[REDACTED]  
Arlington, VA 22205  
[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 the U.S. Small Business Administration (SBA) and your response to that protest on behalf of your client, [REDACTED] ( [REDACTED] ) I am denying the protest. I have determined that [REDACTED] met the HUBZone principal office requirement on the dates of offer and 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, Request for Information and Site Visits Conducted**

In the protest, SBA argued that [REDACTED] may not meet the HUBZone principal office requirement. Specifically, SBA argued that according to the Agency's records, [REDACTED] shares its Suite with several other HUBZone SBCs – SBA's records reveal that [REDACTED] Washington, DC 20002 is the principal office location of four (4) HUBZone program participants. Further, SBA argued that this appears to be a virtual office location administered by [REDACTED]. Additionally, [REDACTED]'s standard terms and conditions provide that office space, meeting rooms and conference services in this location can be reserved by the day, half day or hour. Information at [REDACTED] indicates that the fee for reserving "private day offices" at this location is approximately \$10-\$35 per hour. Given the nature of this virtual office, SBA argued that it was unclear how the greatest number of [REDACTED]'s employees perform the majority of their work at this location. Because SBA provided specific allegations that [REDACTED]'s principal office may not be located in a HUBZone, I determined that this protest allegation was specific.

I therefore requested that [REDACTED] provide evidence, including supporting documents, showing that it met these requirements at the time it submitted its offer (March 5, 2012) and at the date of award (September 17, 2012).<sup>1</sup>

In response to this request, on February 12, 2014, [REDACTED] provided the following: a signed affidavit by [REDACTED]; a signed affidavit by [REDACTED]; a floor plan of [REDACTED]; [REDACTED]' marketing materials; a Services Agreement dated May 16, 2011 with Terms & obligations and a Schedule of Services governing [REDACTED]'s tenancy of Office # [REDACTED]; a January 28, 2013 Amendment to the Services Agreement noting that [REDACTED] would begin occupying Offices [REDACTED] beginning February 1, 2013; a Services Agreement dated January 17, 2014 governing [REDACTED]'s tenancy in [REDACTED] at [REDACTED]; payroll records covering the periods of February 1, 2012 through March 15, 2012 and August 16, 2012 through September 30, 2012; a HUBZone map determination for [REDACTED] [REDACTED]; contract documentation indication the location at which those [REDACTED] employees who performed the majority of their work at job-site locations reported; [REDACTED]'s 2012 Federal Income Tax Return; unemployment tax records for the quarters covering the dates of offer and award; [REDACTED]'s proposal submitted in response to the instant solicitation; and a written response to the protest allegations.

According to [REDACTED]'s written response, the firm has leased physical space from [REDACTED] at [REDACTED] since June 2011. [REDACTED] contends that, in addition to leasing physical space to [REDACTED] and to other companies, [REDACTED] offers virtual offices to clients who want those services both directly and through brokers, including [REDACTED] [REDACTED] claims to have no relationship with [REDACTED] other than that they both are clients of [REDACTED].

In addition, SBA conducted a site visit at the [REDACTED] office location on February 11, 2014. The site revealed that, at the current time, [REDACTED] occupies a small suite of four offices, each of which contains at least two desks, chairs, phones and computers. The office space appeared to be occupied on a daily basis and four individuals were present at the time of the site visit. However, the documentation presented indicates that [REDACTED] occupied a much smaller office space at this location until February 1, 2013. As such, [REDACTED] occupied a single office at [REDACTED] at the times of offer and award.

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<sup>1</sup> SBA's February 5, 2014 protest notification letter contained an administrative error identifying the dates of offer and award as March 5, 2013 and September 17, 2013 respectively. This error was identified in [REDACTED]'s response to the subject protest. The Agency processed the instant determination using these updated dates of offer and award.

<sup>2</sup> I note that this HUBZone map determination was not for [REDACTED]'s stated office location at [REDACTED]. However, SBA has confirmed that the firm's correct address is located within a HUBZone Grandfathered Area.

## 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.

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. 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 541511),<sup>3</sup> 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.

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<sup>3</sup> NAICS code 541511, “Custom Computer Programming Services,” is under Sector 54, “Professional, Scientific and Technical Services,” and that sector and code is for those in the services industries. 13 C.F.R. § 121.201.

According to [REDACTED]'s provided documentation, [REDACTED] maintained one office location at the date of offer, March 5, 2012. Payroll records and a declaration signed by [REDACTED] under penalty of perjury regarding the percentage of each employee's work location indicate that on the date of offer, three employees performed the majority of work at [REDACTED]'s [REDACTED] office address and four employees performed their work at job-site locations. Because [REDACTED]'s primary industry is services (NAICS code 541511), the determination of its principal office excludes those employees who perform the majority of their work at job site locations. Thus, at the time of offer, the greatest number of the concern's employees performed their work at the [REDACTED] location, which is located in a HUBZone.

Further, according to [REDACTED]'s provided documentation, [REDACTED] maintained one office location at the date of award, September 17, 2012. Payroll records and a declaration signed by [REDACTED] under penalty of perjury regarding the percentage of each employee's work location indicate that on the date of award, three<sup>4</sup> employees performed the majority of work at [REDACTED]'s [REDACTED] office address and five employees performed their work at job-site locations. Because [REDACTED]'s primary industry is services (NAICS code 541511), the determination of its principal office excludes those employees who perform the majority of their work at job site locations. Thus, at the time of award, the greatest number of the concern's employees performed their work at the [REDACTED] location, which is located in a HUBZone.

Because [REDACTED]'s principal office was located in a HUBZone at the times initial offer and award, I am denying this protest allegation.

#### 4. Appeal Rights

[REDACTED] 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 contacting activity contracting officer and the protested concern. I have attached a copy of the appeal procedures.

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<sup>4</sup> With respect to the determination that, at the times of offer and award, [REDACTED] had three employees who performed the majority of their work in, what appears to be, an incredibly small office (# [REDACTED]), at [REDACTED], SBA notes that two of these employees worked 10 hours per week. As such, it is not inherently unlikely that three employees were able to perform the majority of their work at this location. I further note that SBA has relied on a declaration signed by [REDACTED] under penalty of perjury in making this determination. Pursuant to 13 C.F.R. § 126.900(e) submission of false information could result in suspension, debarment, civil penalties and criminal penalties.

## 5. 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 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.

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 (via facsimile):

  
Contracting Officer  
