



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

June 6, 2014

**Sent Via Facsimile and Email**

[REDACTED]

Dothan, AL 36303

Fax: [REDACTED]

RE: HUBZone Protest for Solicitation No. [REDACTED]

Dear Mrs. [REDACTED]

This letter is to notify you that based on the information provided to me in a protest filed by [REDACTED] ( [REDACTED] and [REDACTED] 's [REDACTED] response to that protest, I am denying the protest. I have determined that [REDACTED] met the principal office and 35 percent HUBZone residency requirements on the date it submitted its offer and the date the award was made. 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 and principal office requirements. Specifically, [REDACTED] alleged that [REDACTED] is affiliated with "at least 7 companies" which share common ownership. [REDACTED] argued that [REDACTED] appears to have 2 employees, 1 of which does not appear to live in a HUBZone. [REDACTED] further alleged that [REDACTED] 's affiliates' employees must be attributed to [REDACTED] Accordingly, [REDACTED] challenged [REDACTED] 's ability to comply with 35 percent HUBZone residency requirement. Further, [REDACTED] argued that the mailing address identified on [REDACTED] 's SAM.gov profile indicates that [REDACTED] 's owner works from her private home, which is not located in a qualified HUBZone. [REDACTED] further alleged that the majority of [REDACTED] 's work between 2007 and present has been performed in Florida. Because [REDACTED] provided specific allegations that [REDACTED] may not meet the principal office and 35 percent HUBZone residency requirements, I found these protest allegations specific.

I therefore requested, via letter dated May 15, 2014, that [REDACTED] provide evidence, including supporting documents, showing that at least [REDACTED] met the principal office and 35 percent residency requirements at the time it submitted its offer (March 26, 2014) and at the time of

award (May 5, 2014).

In response to SBA's requests, on March 20, 2014, [REDACTED] provided the following: a statement explaining that [REDACTED] does not have payroll records because the sole employee of the company, Ms. [REDACTED] receives compensation through draws in lieu of regular paychecks; a statement expanding that the firm has no employees who work less than 40 hours per month; a statement explaining that Ms. [REDACTED] is [REDACTED]'s sole officer; a statement explaining that [REDACTED] did not have any independent contractors at the times of offer and award; a statement explaining that no individuals obtained through temporary agencies, leasing concerns, union agreements, co-employment agreements or Professional Employee Organizations performed work for [REDACTED] at the times of offer and award; a copy of [REDACTED]'s lease agreement; a statement explaining that [REDACTED]'s utilities are included in the firm's rent; a copy of Ms. [REDACTED]'s driver's license and a HUBZone map for Ms. [REDACTED]'s home address; Ms. [REDACTED]'s 2012 Federal Income Tax Return; a copy of the proposal [REDACTED] submitted in response to the instant solicitation; and a written response to the allegations set forth in this protest. After a follow-up phone conversation with [REDACTED] the following documents were submitted on May 30, 2014: the correct lease agreement; a clear statement about the possible affiliations; and LAMCO, LLC's 2007 Final Federal Income Tax Return.

[REDACTED]'s written response asserts that the company does not have any affiliations with any other companies – [REDACTED] asserts that the firm does not share common ownership with any other entities. The protest allegations included a list of several companies that appeared to be affiliated with [REDACTED]. Statements from [REDACTED] assert that of the list alleged affiliates, only two are actually connected to [REDACTED]. According to [REDACTED], [REDACTED] was a joint venture that was formed in 2010 for the purposes of submitting a proposal on a specific roofing contract – the joint venture never submitted a proposal and the joint venture did not have any further activity. [REDACTED] was dissolved in 2007 and never did any work, held any assets or employed any employees. Supporting tax records confirm [REDACTED]'s assertions regarding [REDACTED]'s activity. The other alleged affiliates are not connected to [REDACTED] – they are owned by a different woman with the same name as [REDACTED]'s owner. Based on the foregoing, I find no cause to aggregate [REDACTED] with any of the alleged affiliate companies. Neither [REDACTED] nor [REDACTED] are currently active firms and neither have any employees. As such, only [REDACTED]'s employee will be considered in my evaluation of [REDACTED]'s compliance with the principal office and 35 percent residency requirements.

With respect to the other protest allegations, [REDACTED]'s written response also asserts that the firm's sole employee resides in a qualified HUBZone. [REDACTED] maintains that the mailing address on the firm's SAM.gov profile is outdated, but the correct address is listed on SBA's Dynamic Small Business Search database. Finally, [REDACTED] claims that the firm has performed work in Alabama, Mississippi and Florida because, "like other contractors including HUBZone, [REDACTED] works] in areas where work is available."

SBA also conducted an unannounced site visit to [REDACTED], Dothan, AL 36303 on May 15, 2014. According to SBA's representative, the [REDACTED]'s office space has no signage or office door. SBA's representative observed one desk with a computer, phone and adjacent file cabinets. At the time of SBA's site visit, Ms. [REDACTED] was not in the office. An individual working for the company from which [REDACTED] leases office space reported that one [REDACTED] employee performs work at the location.

On June 2, 2014 SBA requested that [REDACTED] provide clarification of several issues. On June 3, 2014, [REDACTED] provided a written response to SBA's questions. According to [REDACTED]'s response, [REDACTED] has had only one employee for approximately 8 months. According to [REDACTED] an alternate contact address provided in [REDACTED]'s proposal was established for an individual that has sub-contracted to assist in Project Management on some previous projects. [REDACTED] maintains that the firm has maintained this email address and uses it as an alternate email address in the event that something happens to Ms. [REDACTED]'s email address account. [REDACTED]'s response asserts that at the time of SBA's site visit, Ms. [REDACTED] was looking at a job site for an upcoming project that [REDACTED] was considering submitting a proposal on. [REDACTED]'s response also indicated that Ms. [REDACTED] spends the majority of her time working at the [REDACTED], Dothan, AL 36303 location. [REDACTED]'s response clarified how [REDACTED] will complete performance of the instant contract. Finally, [REDACTED]'s response indicated that [REDACTED] does not share any employees, facilities, equipment or other contractual relationships with the company from which [REDACTED] leases office space.

#### 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. *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.

Because [REDACTED]'s primary industry is services (NAICS 236200), the determination of its principal office would exclude those employees who perform the majority of their work at job site

locations to fulfill specific contract obligations. However, [REDACTED] did not have any jobsites at the time of offer or of award.

[REDACTED]'s written statement and other supporting documentation, indicate that on the date of offer, March 26, 2014, [REDACTED] had one employee who performed the majority of her work at [REDACTED], Dothan, AL 36303.

In addition at the time of award, May 5, 2014, [REDACTED]'s written statement and other supporting documentation, indicate that one employee performed the majority of her work at [REDACTED], Dothan, AL 36303.

In sum, I find [REDACTED], Dothan, AL 36303, which was located within a designated HUBZone on the relevant dates, 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.

#### 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 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 statements and other documents provided covering the date of offer, March 26, 2014, [REDACTED] had one employee who worked at least 40 hours in the month leading up to the date

of offer. At least 1 of [REDACTED]'s employees must have resided in a qualified HUBZone (1 \* 35% = 0.35, rounded up to 1<sup>1</sup>) to meet the 35 percent HUBZone residency requirement. According to documentation provided, 1 employee resided in a qualified HUBZone. Therefore, [REDACTED] met the 35 percent residency requirement at the time of offer.

According to statements and other documents provided covering the date of award, May 5, 2014, [REDACTED] had one employee who worked at least 40 hours in the month leading up to the date of award. At least 1 of [REDACTED]'s employees must have resided in a qualified HUBZone (1 \* 35% = 0.35, rounded up to 1) to meet the 35 percent HUBZone residency requirement. According to documentation provided, 1 employee resides in a qualified HUBZone. Therefore, [REDACTED] met the 35 percent residency requirement at the time of award.

In sum, I find that [REDACTED] was in compliance with the 35 percent HUBZone residency requirement at the time of offer and at the present time. Consequently, 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](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

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<sup>1</sup> "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).

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

[REDACTED]

[REDACTED]