



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

June 30, 2014

Sent Via Facsimile and Email

[REDACTED]
Phoenix, AZ 85034

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 [REDACTED] ([REDACTED] and [REDACTED]'s ([REDACTED] response to that protest, I am denying the protest. I have determined that [REDACTED] met the 35% HUBZone residency requirement at the time of offer and at the 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] argued that [REDACTED] has multiple projects "located throughout non-HUBZone classified localities." As such, [REDACTED] questioned [REDACTED]'s ability to maintain the minimum percentage of HUBZone resident employees. Because [REDACTED] provided this specific allegation that [REDACTED] may not meet the 35 percent HUBZone residency requirement, I found this protest allegation specific.

I therefore requested, via letter dated June 4, 2014, that [REDACTED] provide evidence, including supporting documents, showing that [REDACTED] met the 35 percent residency requirement at the time it submitted its offer (April 4, 2014) and at the present time.

In response to SBA's requests, on June 9, 2014, [REDACTED] provided the following: a statement explaining that all [REDACTED] officers appear on the firm's payroll; a statement attesting that all individual who work for [REDACTED] appear as employees on the company's payroll; payroll check registers for the four weeks leading up to April 4, 2014; payroll check registers records for the four weeks leading up to May 24, 2014; copies of an invoice, business card and proof of email address for [REDACTED]'s sole independent contractor; employee statements and driver's license and/or voter's registration records showing HUBZone employees' home addresses; HUBZone maps for each HUBZone employee; [REDACTED]'s 1st quarterly state unemployment tax filing; [REDACTED]'s Federal

Income Tax Returns; a copy of the firm's offer submitted in response to the instant solicitation; a written response to the protest allegations; and a written response from [REDACTED]'s attorney requesting that SBA dismiss the protest on the basis that the protest was not sufficiently specific¹.

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 the payroll records and other documents provided covering the date of offer, April 4, 2014, [REDACTED] had 100 employees who worked at least 40 hours in the month leading up to the date of offer. At least 35 of [REDACTED]'s employees must have resided in a qualified HUBZone ($100 * 35\% = 35$) to meet the 35 percent HUBZone residency requirement. According to the documentation provided, 39 employees resided in a qualified HUBZone. Therefore, [REDACTED] met the 35 percent residency requirement at the time of offer.

According to payroll records and other documents provided covering the present time, [REDACTED] has 101 employees who worked at least 40 hours in the month leading up to the present date. At least 36 of [REDACTED]'s employees must have resided in a qualified HUBZone ($101 * 35\% = 33.35$, rounded up to 36²) to meet the 35 percent HUBZone residency requirement. According to the documentation provided, 36 employees reside in a qualified HUBZone. Therefore, [REDACTED] met

¹ SBA's policies and regulations do not require that a protester provide evidence to support its claims in the context of a HUBZone protest. SBA's regulations provide that a protest setting forth specific facts or allegations will be found sufficient. 13 C.F.R. § 126.801(b). As noted above and in my June 4, 2014 protest notification letter, this office has found that the protest allegations set forth by [REDACTED] are sufficiently specific.

² "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 35 percent residency requirement at the present time.

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. 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

cc:

[REDACTED]
Contracting Officer

Fax: [REDACTED]

[REDACTED]

[REDACTED]