

**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

In re:)	
)	
Blue Moon Solutions, Inc.)	DNS-RUS Docket 06-0001
)	
and)	
)	
Marty Hale, Principal)	<u>Amended Decision and Order</u> ¹

Preliminary Statement

This Decision and Order is issued pursuant to 7 C.F.R. § 3017.765, in disposition of the appeal by Blue Moon Solutions, Inc. and Marty Hale, its principal, of their suspension by the Rural Utilities Service (“RUS”), an agency of the United States Department of Agriculture, from participation in Federal government programs. Blue Moon and Mr. Hale were initially suspended by RUS by letters dated November 9, 2005. The appeal of these suspensions resulted in a hearing on December 14, 2005, that was presided over by the Administrator of RUS who was assisted by a fact-finder. The Administrator upheld the suspensions. On April 7, 2006, Blue Moon and Mr. Hale filed this appeal of the Administrator’s determination to the Office of Administrative Law Judges and, pursuant to 7 C.F.R. § 3017.765, it has been assigned to me for decision within 90 days after the filing of the appeal. Mr. Hale joins in the reasons advanced on behalf of Blue Moon Solutions, Inc. that go to the merits of the suspension, and has not challenged his inclusion as a subject of the suspension. Under the governing regulation, my decision must be based solely on the administrative record (7 C.F.R. § 3017.765 (b)).

¹ The original Decision and Order is amended by deleting the last sentence of the Order.

For that reason, the request by Blue Moon and Mr. Hale that I hold a hearing is herewith denied. Moreover, I may vacate the decision of the suspending official only if I determine that the decision is:

- (1) Not in accordance with law;
- (2) Not based on the applicable standard of evidence; or
- (3) Arbitrary and capricious and an abuse of discretion.

7 C.F.R. § 3017.765 (a). For the reasons that follow, after a full and careful review of the administrative record, the suspension decision by the Administrator of RUS is upheld and shall become effective as set forth in the accompanying order.

Findings

1. The Grants

In 2003, RUS awarded Blue Moon Solutions, Inc. (Blue Moon) seven Community-Oriented Connectivity Grants for projects to deploy broadband transmission services in seven rural communities in Texas. The grants totaled approximately \$2.7 million.

The availability of the grants had been announced by RUS through its publication of a Notice in the Federal Register on July 8, 2002 (67 Fed. Reg. 45079-45083). The Notice advised that the grants were to be given to applicants who would undertake feasible and sustainable projects to deploy broadband transmission services to small, rural communities via their schools, libraries, education centers, health care providers, law enforcement agencies and public safety organizations; and the services were to be made available as well to residents and businesses (67 Fed. Reg. 45079). Under the Notice, Blue Moon, a for profit, incorporated company, was as eligible to receive a grant as was a public body; an Indian tribe; a cooperative, nonprofit, limited dividend or mutual

association; or a municipality (67 Fed. Reg. 45081). Under “Eligible Grant Purposes”, the Notice specified that:

Grant funds may be used to finance:

- (a) The construction, acquisition, or lease of facilities, including spectrum, to deploy broadband transmission services to all critical community facilities and to offer such service to all residential and business customers located within the proposed service area;
- (b) The improvement, expansion, construction, or acquisition of a community center that furnishes free access to broadband Internet service, provided that the community center is open and accessible to area residents before and after normal working hours and on Saturday and Sunday. Grant funds provided for such costs shall not exceed the greater of 5 percent of the grant amount requested or \$100,000;
- (c) End-user equipment needed to carry out the project;
- (d) Operating expenses incurred in providing broadband transmission service to critical community facilities for the first 2 years of operations and to provide training and instruction. Salary and administrative expenses will be subject to review, and may be limited, by RUS for reasonableness in relation to the scope of the project; and
- (e) The purchase of land, buildings, or building construction needed to carry out the project.

Grant funds may not be used to finance the duplication of any existing broadband transmission services provided by other entities.

Facilities financed with grant funds cannot be utilized, in any way, to provide local exchange telecommunications service to any person or entity already receiving such services.

67 Fed. Reg., at 45081. A successful applicant was also required to make a matching contribution equal to 15 percent of the grant amount requested and, as part of its application, to state the scope of the work it intended to perform that would include:

....A budget for all capital and administrative expenditures reflecting the line items costs for eligible purposes for the grant funds, the matching contributions, and other sources of funds necessary to complete the project.

67 Fed. Reg., at 45082. The notice further required an applicant to provide evidence of compliance with other Federal statutes and regulations that included 7 CFR part 3015-Uniform Federal Assistance Regulations (67 Fed. Reg., at 45082).

Blue Moon responded to this Notice by filing applications for grants that stated the scope of work to be performed and included project budgets (NAD Agency Record, at pages 543-555). On May 16, 2003, May 19, 2003 and September 24, 2003, RUS notified Blue Moon of seven Community-Oriented awards, totaling approximately \$2.7 million (NAD Agency Record, at pages 285, 378, 471, 564, 662, 800 and 922). Attached to documents to be executed by Blue Moon to obtain the grants, were instructions with a sample Form 270 (the form that must be submitted to obtain grant funds) advising Blue Moon that:

each Form 270 must be supported by paid or unpaid invoices, timesheets, lease agreements or other supporting documentation with a detailed description for eligible purposes for both grant and matching funds.

(NAD Agency Record, at pages 269, 364, 455, 537, 654, 792 and 895). This advice was in implementation of 7 C.F.R. § 3015.61 (g) that requires:

(g) *Source documentation.* Accounting records shall be supported by source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract and subgrant award documents.

Grant agreements were thereafter executed by Blue Moon as “the grantee” in which it agreed:

Along with the Form 270, the grantee agrees to submit paid or unpaid invoices, employee timesheets, lease agreements or other supporting documentation that adequately supports approved expenditures for allowable grant purposes.

NAD Agency Record, at pages 247, 342, 431, 515, 636, 774, and 873.

2. Drawing on the Grant Funds

On January 22, 2004, Blue Moon started to draw on Grant funds by submitting Form 270 submissions. The submitted Form 270s were signed by Christonya Hill, COO,

as authorized certifying official for Blue Moon. Her signatures were adjacent to this certification:

I certify to the best of my knowledge and belief the data on the reverse are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested.

NAD Agency Record, at page 200. Upon receipt of the Form 270s, RUS advanced Grant funds to Blue Moon in accordance with its requests, and advised it:

We have enclosed a copy of the approved Form 270 and supporting documentation. Please retain this material (along with the original invoices) for audit purposes. These documents must be retained on file for at least 3 years after grant closing, except that the records must be retained beyond the 3-year period if audit findings have not been resolved. Please pay special attention to the requirement regarding the use of RUS grant funds for the approved purposes as specified in the Grant Agreement. Auditors may check, among other things, that (1) grant funds were disbursed only for approved purposes, (2) the disbursements are in the proper amounts, and (3) the disbursements are supported by proper documentation....

NAD Agency Record, at pages 179, 288, 381, 486, 572, 688 and 830.

3. OIG Investigation Report

On October 19, 2004, the United States Department of Agriculture's Office of Inspector General (OIG) issued an investigation report of RUS Grant practices in which it stated that among other concerns, there was a risk of fraud or misuse of the broadband Grant funding to Blue Moon due to Grant funds not being utilized as intended (NAD Agency Record, at pages 4567-4571).

4. Grant Review Compliance Audit by RUS

RUS visited Blue Moon between November 15 through 19, 2004 to address the concerns expressed by OIG and to begin a Grant review compliance audit. There followed various telephone conferences and additional visits to Blue Moon. The Field Activities Report (NAD Agency Record, at pages 4193-4212) shows field visits to Blue

Moon on 11/15-19/04, 11/29-12/3/04, 12/13-17/04, 1/10-14/05 and 3/14-18/05 by either an individual RUS Field Accountant, or a team of two RUS Field Accountants.

The RUS accountants found that the disbursed Grant funds to Blue Moon were based on requests that included unacceptable markups, inflated hourly labor rates, and that supplied invoices had been created by Blue Moon rather than being invoices that had actually been paid. Moreover, funds were being requested sometimes two to three years in advance of the money being required and grant monies and company funds were being commingled. They concluded that Blue Moon's accounting records were of questionable accuracy and its controls over grant disbursements were inadequate.

At the conclusion of the Compliance Audit, Blue Moon was notified to return \$910,829.79 in Grant disbursements because they had been requested and advanced considerably before they were required and because a number of construction fund disbursements could not be supported with actual cost documentation (NAD Agency Record, at pages 4143-4163).

5. Independent CPA Audit

Each grantee is required to submit an independent CPA audit of the grantee's financial statements under the Grant Agreement and under 7 C.F.R. § 1773.3. Although Blue Moon filed its audit report four months later than otherwise required, its filing on August 30, 2005 was acceptable under an extension of time it received from RUS (Hearing Transcript, attachment 7, Exhibits B, at pages 77-78). Prior to this audit, Blue Moon engaged a forensic accounting firm, Beakley & Associates, to recreate its accounting records and financial statements. The actual CPA audit was performed by the firm of Bolinger, Segars, Gilbert & Moss. In its Independent Auditors' Report, dated

August 19, 2005, the Bolinger firm reported that it was "... unable to obtain support for labor capitalized to plant, property and equipment in 2004 and 2003 in the amount of \$190,916 and \$155,073, respectively" (NAD Agency Record, at page 3992). The report also contained these comments:

...regarding Blue Moon Solutions, Inc.'s internal control over financial reporting and its operation that we consider to be a material weakness as previously defined with respect to:

- * the accounting procedures and records;
There are no established procedures to identify and record vested stock option benefits, depreciation expense, federal and state income tax accrued liabilities, prepaid expenses, and other current and accrued liabilities;
- * the process for accumulating and recording labor, material, and overhead costs, and the distribution of these costs to construction, retirement, and maintenance or other expense accounts;
The procedures over reporting and recording labor do not allow for recording labor costs according to the function work performed;
There are no established procedures to identify and record indirect cost associated with self constructed assets; continuing property records need to be established; and
- * the materials control.
There are no material accounts maintained by the company.

NAD Agency Record, at page 4016.

6. Suspension of the Grants

By letter of September 30, 2005, the Acting Administrator of RUS suspended the Grants to Blue Moon on the basis of "serious discrepancies between the purposes for which grant funds were requisitioned and their actual expenditure by Blue Moon" (NAD Agency Record, at page 3976). Thereafter, on November 9, 2005, RUS terminated the Grants and notified Blue Moon in writing of the termination with a demand for repayment in the amount of \$910,829.79. Simultaneously, RUS notified Blue Moon and

Marty Hale of their suspensions from further federal contracting under 7 C.F.R. § 3017.700 (NAD Agency Record, at pages 1-14; Hearing Transcript, attachments 1 and 2).

7. The Administrator's Determination Upholding the Suspensions

In response to a written request made on behalf of Blue Moon and Mr. Hale by their attorney, a hearing to allow them to contest their suspensions was held on December 14, 2005, in Washington D.C. (Hearing Transcript, attachment 7, Exhibit B, at pages 1-172). It was conducted by the Administrator of RUS, assisted by the Assistant Program Advisor to the Policy Analysis and Risk Management division of RUS, who the Administrator named to be his fact-finder as authorized by 7 C.F.R. § 3017.750 (b). On January 26, 2006, the fact-finder submitted a report to the Administrator ("fact-finder's report", NAD Agency Record, at pages 5318-5329; and Hearing Transcript, attachment 7, Exhibit D). On March 10, 2006, "the Administrator's Determination" was issued that upheld the suspensions (Hearing Transcript, attachment 7). This appeal is taken from that determination.

The Administrator stated that his determination to sustain the suspensions of Blue Moon and Mr. Hale was based, in accordance with 7 C.F.R. § 3017.750, on all the evidence in the record, including evidence presented by Blue Moon at the Suspension Hearing, the Contest of Suspension, the fact-finder's report and the records of RUS relating to Blue Moon and the Grants (Hearing Record, attachment 7, at page 2). He further stated that the suspensions were based on 7 C.F.R. § 3017.700(b) and (c) that authorize suspension upon a determination that:

- (b) There exists adequate evidence to suspect any other cause for debarment listed under § 3017.800(b) through (d); and
- (c) Immediate action is necessary to protect the public interest.

In his opinion, there was adequate evidence to suspect a cause for debarment pursuant to 7 C.F.R. § 3017.800(b)(2) for:

Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—

* * * *

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions....

The Administrator concluded that the determination to suspend Blue Moon and Mr. Hale was needed because of consistent irregularities and failures in Blue Moon's compliance with provisions in the Grant Agreements. He specified ten findings set forth at pages 2-5 of the Suspension Letters, as the basis for the suspensions. (Hearing Transcript, attachment 7, at page 3).

8. This Appeal of the Administrator's Determination

Blue Moon and Mr. Hale in their appeal of the Administrator's Determination, state that their government-wide suspension is based on erroneous conclusions that overlook, dismiss or minimize significant accounting conclusions and data submitted on Blue Moon's behalf by a forensic accounting firm and by a CPA auditing firm recommended to it by RUS. Blue Moon and Mr. Hale argue that:

Volumes and volumes of detailed accounting data, financial reports from independent accountants and numerous representations from Blue Moon have been simply overlooked as evidence in this matter.

Appeal of Suspension, at page 7. The Appeal further argues that RUS has treated Blue Moon in a prejudicial manner in abuse of its discretion through a campaign to misinform communities about the suspension by stating that Blue Moon had been debarred, and its refusal to share the OIG report with Blue Moon prior to the hearing. Blue Moon also points out that one of the ten findings given for the suspension was the

failure to file an audit report on time when in fact Blue Moon did file the report within the time given it through an extension of the deadline by a RUS official.

Earlier, in the Contest of Suspension filed at the hearing on December 14, 2005, the argument was made that all ten findings upon which the suspensions are based involve nothing more than bookkeeping errors that were rectified and fall short of an actionable or willful misdeed with no indication of fraud or willful wrongdoing (Hearing Transcript, attachment 6, at page 5).

Conclusions

1. Blue Moon was not prejudiced By Late Receipt of the OIG Report

Blue Moon's argument that it was prejudiced by not being given a copy of the OIG report prior to the hearing is baseless. The fact-finder specified that:

The issue of the OIG report is not considered applicable to the finding of fact and was, accordingly, not further considered. Furthermore, that part of the OIG report specifically cited by Blue Moon (footnote on page 10 of the CS(Contest of Suspension), pertains to a tracking system for site visits performed by RUS General Field Representatives under the Broadband Loan and Grant Program and is not directly applicable to this suspension.

Hearing Transcript, Attachment 7, Exhibit D, at page 8. Inasmuch as, the OIG report was not a basis for the finding that Blue Moon sought to refute, it was not prejudiced by the late receipt.

2. Review of the Record Shows Two Assertions By RUS Were Unfounded

Review of the record does show that RUS made two assertions that were unfounded.

The suspension notice and the fact-finder's report stated that Blue Moon failed to timely file the requisite annual independent auditor's report. However, RUS had extended

the time for the filing of this report, and hence there was no failure of a legal duty by Blue Moon in this respect.

Secondly, RUS mistakenly advised communities dealing with Blue Moon that debarment rather than suspension proceedings were pending against it.

Neither mistaken assertion, however, rises to a level requiring the Administrator's Determination to be vacated. I find no evidence in the record to support the inference that RUS was deliberately picking on Blue Moon, or, in any other sense acting in an arbitrary and capricious manner in abuse of its discretion.

3. The Administrator's Determination and the Suspensions should be Upheld and Not Vacated

When the record as a whole is reviewed, the Administrator's Determination is shown by a preponderance of evidence to be in accordance with law and based on "adequate evidence that ... (Blue Moon) committed irregularities which seriously reflect on the propriety of further Federal Government dealings with ... (Blue Moon)." 7 C.F.R. § 3017.715 (3).

Though a suspension need not be based on an indictment or conviction (the two other grounds for its initiation), nonetheless, in the words of 7 C.F.R. § 3017.700, "(s)uspension is a serious action." When reviewing a similar regulation governing suspensions by another agency, the District of Columbia Circuit stated:

There must be a real need for immediate action to protect the public interest in order to justify a suspension.

Sloan v. Dept. of Housing & Urban Development, 231 F.3d 10, 17 (D.C. Cir. 2000). The record upon which these suspensions are based, shows such a real need.

a. Review of the record demonstrates the Administrator's Determination is based on adequate evidence

The suspension letters listed ten sets of reasons as findings demonstrating Blue Moon's unsatisfactory performance of the seven Grants. One finding, the failure to timely submit an annual independent auditor's report, I have previously found and concluded to be erroneous.

The other nine allege five kinds of alleged unsatisfactory performance by Blue Moon under the Grants:

1. Failing to submit invoices; or conversely, submitting invoices for advances or reimbursements that were not actual invoices but had been created with added mark-ups and inaccurate and inflated charges. Under the latter practice, an internal Blue Moon profit of \$410,555.84 was added to equipment costs and \$34,681.99 of profit was added to the costs of university courses made available on internet sites.
2. Failures to maintain adequate timesheets; inadequate time reporting for employees; and claiming costs far in excess of actual costs incurred.
3. Seeking the full budgeted amount of costs for "Backhaul" and "Web Design" costs causing \$215,044 to be advanced for Backhaul when there was documentary support for only \$78,751.67 and causing \$217,350 to be advanced for Web Design when there was documentary support for only \$8,974.97.
4. Having inadequate books, records and financial records that used arbitrary allocations of costs based on unsupported assumptions, and that did not support the requests for advances under the Grants.

5. Lack of support for labor capitalized to plant, property and equipment as shown by the independent CPA audit that was unable to find such support in 2004 and 2003 in the amounts of \$190,916 and \$155,073, respectively.

As to the first alleged kind of unsatisfactory performance, the fact-finder agreed with Blue Moon that third-party invoices are not explicitly required and that third-party invoices had been turned over to the RUS Field Accountants though not submitted with Blue Moon's submissions of Form 270 (Hearing Transcript, Attachment 7, Exhibit D, at page 4). However, in respect to Blue Moon's argument that there could not have been "additional markups for internal profit" because the independent CPA audit showed Blue Moon had a loss, the fact-finder found that its profit or loss from operations does not relate directly to the over billing. Moreover, he noted that the independent CPA audit showed \$345,989 in non-supported costs of equipment which closely compares to the \$410,556 overcharge claimed by RUS (*Ibid*, at pages 4 and 5).

The fact-finder then addressed the second alleged kind of unsatisfactory performance consisting of inadequate time sheets and time reporting, and applying for labor costs that exceeded what Blue Moon actually paid for labor. He found that Blue Moon did produce its timesheets, but that its submissions to RUS for payment were based upon the labor costs set forth in its grant application and approved project budget; and that the grant monies Blue Moon received for labor did not correspond to what it actually paid for labor. In fact, Blue Moon's actual labor costs were less than what was "invoiced" to RUS. In respect to time reporting, he found that Blue Moon's accounting for allocation

of labor was deficient in that it did not clearly allocate work by projects (*Ibid*, at pages 5 and 6).

The fact-finder concluded that the amounts Blue Moon improperly sought in advance for Backhaul and Web Design costs is still undetermined. Some of the advances may eventually be supported and the amount that would remain unsupported could be less than the \$344,667 aggregate amount expressed by RUS in the Suspension letters, perhaps as low as the \$254,310 identified in the independent CPA audit as “unearned USDA grant funds” (*Ibid*, at pages 5, 7 and 8).

The fact-finder also addressed the inadequacy of Blue Moon’s books, records and financial records that used arbitrary allocations of costs based on arbitrary assumptions, and did not support the requests Blue Moon made for advances under the Grants. He first noted that although the time for filing an independent CPA audit was extended, the report was dependent on the work of the forensic accountant, Beakley, who had to first produce compiled financial records for the audit to be completed.

...Blue Moon’s assertion that the issue of financial statements has become moot ignores that part of this RUS finding asserting that Blue Moon did not have adequate records as required by the grant agreement.

As to the “arbitrary allocations” based upon unsupported assumptions recounted in this RUS finding, Blue Moon relied upon the Beakley letter. As previously noted..., this Beakley letter is dated November 28, 2005 (after the suspension letters of November 9, 2005), and sets forward in detail the basis used for the allocation of certain direct and indirect labor costs/expenses which allocations apparently formed the basis for the Bolinger audited financial statements. It is worth noting that: (i) Beakley was engaged by Blue Moon and does not represent RUS; and (ii) in its audit reports, Bolinger was “... unable to obtain support for labor capitalized to plant, property and equipment in 2004 and 2003 in the amount of \$190,916 and \$155,073, respectively.”

Ibid, at pages 8-9. Finally, the fact-finder addressed the fact that the independent CPA audit was unable to find support for labor capitalized to plant, property and

equipment in 2004 and 2003 in the amounts of \$190,916 and \$155,073, respectively. He does so in the context of whether the aggregate amount of \$910,829.78 that RUS initially disallowed as unsupported advances received by Blue Moon could be lowered to perhaps \$600,299 or \$530,664.42, upon review of worksheets prepared by Beakley that have not as yet been furnished to RUS. The point being that without adequate documentation, Blue Moon induced a gross overpayment and the amount it is actually owed is still unclear since its failure to furnish needed documentation has not been rectified.

b. The record shows a real need for immediate action to protect the public interest

Neither the Notice announcing the availability of Grants, nor the seven Grant awards to Blue Moon contained any provision for Blue Moon to profit on the work it was to perform to deploy broadband transmission services to community facilities.

Additionally, USDA's Uniform Federal Assistance Regulations (7 C.F.R. part 3015) that were expressly made part of each Grant award, sets forth principles and provisions to assure that disbursements of grant funds are limited to allowable costs. These regulations are expressly applicable to grants awarded to for profit organizations (7 C.F.R. § 3015.1) and they contain no provision for adding on markups for profit.

The fact-finder found that requests by Blue Moon for labor costs that exceeded actual costs happened to be consistent with the budgets Blue Moon had submitted. Apparently, the submitted budgets either contained built-in markups for profit, or Blue Moon's actual costs were less than those its budgets anticipated. In any event, unlike procurement contracts for services or equipment, the RUS Grants awards are limited to reimbursing allowable costs that are not inflated to yield profits to Grantee. This is the essential interpretation that underlies the Administrator's Determination and it is an

interpretation that is consistent with the Grant awards themselves and the Uniform Federal Assistance Regulations that apply to the Grant awards.

Those regulations make it clear, for example, that a grantee's "acquisition cost" of an item of purchased equipment means the net invoice price of the equipment.(Appendix A to Part 3015-Definitions, Section II). Although this definition does not preclude some charge to be included for ancillary or carrying costs, a markup for profit may not be added (*Ibid*, and Hearing Transcript, Exhibit B, at page 87).

The interpretation is also consistent with the objectives of the Notice that made the grants available to cooperatives and other nonprofits, Indian tribes, public bodies municipalities as well as to for profit corporations. Obviously, the nonprofit groups would not build in a profit on the work they would perform to carry out the purposes of the grant. Their compensation would consist of the satisfaction they would receive from making an improvement to a rural community that otherwise would be without broadband transmission services.

This does not mean that Blue Moon applied for the grants without any expectation of obtaining an eventual profit on its services. Mr. Hale understood that under the terms of the Grant awards, Blue Moon, as a for profit corporation, needed to earn its profits by:

...selling services to the residents and businesses to make enough revenue/profit to be able to provide free services (at the community centers).

Hearing Transcript, attachment 7, Exhibit B, at page 88. In fact, he specifically denied that markups on equipment purchased for the projects were to enhance Blue Moon's profit margin, but were instead to compensate for the fact that:

...each piece of equipment has to be configured, burned in....

Hearing Transcript, attachment 7, Exhibit B, at page 90. But as the various investigators and the fact-finder have pointed out, nothing to substantiate such added costs was ever provided by Blue Moon. To the contrary, its COO told the investigators that the added markups were to obtain a profit on the projects.

Under these circumstances, Blue Moon's failure to provide needed invoices, timesheets and other documents to support its claim that the amounts it obtained for labor and equipment from RUS were for allowable costs only, is not properly characterized as mere carelessness or negligent bookkeeping errors. Blue Moon filed false and unsubstantiated requests for grant funds to obtain more money than it was entitled to receive under the Grant awards. Not only did it regularly request funds in excess of the amounts it had actually incurred; its requests for others, such as the \$532,394 it obtained for Web Design and Backhaul, were made before Blue Moon had been invoiced anywhere near the amounts claimed. The record indicates that when all the invoices are in, the overcharges by Blue Moon for Web Design and Backhaul will be between \$254,310 and \$344,667.

Moreover, these practices were persistent. Field visits to Blue Moon were made by RUS investigators on November 15-19, 2004, November 29-December 3, 2004, December 13-17, 2004, January 10-14, 2005 and on March 14-18, 2005. The record shows that the need for documents to support the costs for which Blue Moon had obtained Grant funds was reiterated at the time of each visit, but was largely unsuccessful. Blue Moon's unsatisfactory performance of seven grants demonstrates, as stated in 7 C.F.R. § 3017.800(b)(2), "... (a) history of... unsatisfactory performance of one or more public agreements or transactions".

The persistence of these violations coupled with the large sums of money that Blue Moon improperly obtained through its Grant requests shows its violations to be serious. The existence of a real need to protect the public interest by taking immediate action to suspend Blue Moon and Marty Hale finds additional support in the fact that Blue Moon was attempting to enter into, or be the recipient of funds as a subcontractor on contracts for agency-financed grant projects. (RUS suspension letter of November 9, 2005, NAD Agency Record, at page 5073).

Accordingly, the following Order is hereby entered.

ORDER

It is this 7th day of June, 2006, ORDERED that the Administrator's Determination of March 10, 2006, suspending Blue Moon Solution's Inc. and Marty Hale from participating in Federal government programs, including Federal financial and non-financial assistance and benefits, is hereby upheld.

Victor W. Palmer
Administrative Law Judge

June 20, 2006