

**United States Small Business Administration  
Office of Hearings and Appeals**

IN THE MATTER OF:

American Building Cleaning, LLC

Petitioner

SBA No. BDP-342

Decided: February 23, 2010

**ORDER GRANTING MOTION FOR SUMMARY DECISION<sup>1</sup>**

On November 12, 2009, the U.S. Small Business Administration (SBA) terminated American Building Cleaning, LLC (Petitioner) from the 8(a) Business Development (BD) program because Petitioner: failed to maintain its eligibility for 8(a) BD program participation; failed to make required submissions to SBA in a timely manner; and materially breached the terms of its participation agreement.

Petitioner appealed the termination on December 15, 2009. Petitioner apologizes that the information SBA requested to maintain participation in the 8(a) BD program was not submitted. Petitioner explains SBA's requests were not directed to the proper individual due to changes in executive assistants. Petitioner asserts it would like to continue in the 8(a) BD program.

Because there is no genuine issue of a material fact relevant to my decision, I may decide this case summarily.

I conclude the SBA's decision terminating Petitioner from the 8(a) BD program is supported in the record, reasonable, and not arbitrary, capricious, or contrary to law.

**I. SBA's Motion to Dismiss or for Summary Decision**

On January 28, 2010, the SBA moved to dismiss for lack of jurisdiction or, in the alternative, for summary decision.

SBA argues Petitioner's appeal does not state any facts that refute SBA's grounds for termination and fails to assert any evidence that SBA's determination was arbitrary, capricious, or contrary to law. SBA states it sent Petitioner certified letters requesting Petitioner's annual review information on September 5, 2008 and November 18, 2008. SBA provides copies of signed certified receipts demonstrating successful delivery to Petitioner. SBA notes Petitioner's

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<sup>1</sup> This appeal petition is decided under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 124 and 134.

President personally signed for the first letter. SBA asserts an SBA Business Development Specialist also discussed submission of the annual review documentation with Petitioner's President by telephone. SBA states Petitioner did not respond to SBA requests and, accordingly, on September 24, 2009, SBA notified Petitioner of its intent to terminate Petitioner from the 8(a) BD program by certified mail. SBA asserts it acted reasonably in terminating Petitioner from the 8(a) BD program, given Petitioner's repeated and persistent failure to submit required documentation. SBA argues the appeal should be dismissed or that SBA is entitled to judgment as a matter of law.

Petitioner did not respond to SBA's motion to dismiss or for summary decision.

## II. Discussion

To prevail on a motion for summary decision, the SBA must establish both the absence of a genuine issue of any material fact and the SBA's entitlement to a decision in its favor as a matter of law. 13 C.F.R. §§ 134.212(a), 134.408(a). I find the SBA has met these requirements and is entitled to a decision in its favor as a matter of law.

SBA regulations permit the SBA to terminate a participant from the 8(a) BD program for good cause. 13 C.F.R. § 124.303(a). Good cause includes: a failure to maintain eligibility for 8(a) BD program participation, 13 C.F.R. § 124.303(a)(2); a pattern of failure to make required submissions to SBA in a timely manner, 13 C.F.R. § 124.303(a)(7); and materially breaching the terms of the participation agreement, 13 C.F.R. § 124.303(a)(19).

The SBA has an affirmative responsibility to enforce the regulations governing the 8(a) BD program. These regulations are designed to ensure that only eligible business concerns are admitted into and remain in the 8(a) BD program. This ensures that public funds are administered as intended by the Small Business Act, that is, only small businesses owned, controlled, and managed by socially and economically disadvantaged individuals receive the benefits of the 8(a) BD program. This requires the SBA to rigorously and reasonably enforce 8(a) BD program requirements. Failure to do so would be a breach of the public trust.

Recipients of the benefits of the 8(a) BD program bear responsibility for timely complying with the SBA's regulations. This is necessary so the SBA can carry out its responsibility to protect the public's interest.

The record evidences multiple informal and formal requests for Petitioner to satisfy its 8(a) BD program submission requirements. Yet Petitioner failed to timely respond to these requests.

Petitioner blames its failure to file SBA's required documents on internal changes in executive assistants. However, regardless of whether Petitioner's executive assistant did not direct SBA's correspondence to the proper individual, and I note that Petitioner's President signed the certified mail receipt for one of the letters sent by SBA, Petitioner is still responsible for meeting 8(a) BD program requirements.

The SBA could not determine whether Petitioner remained eligible for the 8(a) BD program because of Petitioner's failure to respond to the SBA's requests. In order for an 8(a) BD program participant to remain in the 8(a) BD program, it must continue to meet all 8(a) eligibility requirements, 13 C.F.R. § 124.112(a), and annually submit certain documents to the SBA, 13 C.F.R. §§ 124.112(b), 124.403. The repeated failures to respond in this case amount to a pattern of failure to make required submissions or responses to the SBA in a timely manner, which is a ground for termination. 13 C.F.R. § 124.303(a)(7).

Petitioner's assertion that its failure to file SBA's required documents was the result of internal misdirection due to a change in executive assistants does not raise a defense to the grounds for termination. Accordingly, no genuine issue of material fact exists because Petitioner acknowledges it failed to file required documents. Thus, the SBA is entitled to judgment in its favor as a matter of law.

### III. Conclusion

Accordingly, the SBA's motion for summary decision is GRANTED, and the appeal is DISMISSED.

Subject to 13 C.F.R. § 134.409(c), this is the final decision of the Small Business Administration. *See* 15 U.S.C. § 637(a)(9)(D); 13 C.F.R. § 134.409(a).

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BRENDA P. MURRAY  
Administrative Law Judge