

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

IN THE MATTER OF:

Hazzard's Excavating and Trucking Co.

Petitioner

SBA No. BDP-345

Decided: March 29, 2010

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

On October 30, 2009, the U.S. Small Business Administration (SBA) terminated Hazzard's Excavating and Trucking Co. (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 24, 2009. Petitioner asked not to be terminated and asserted it submitted Form 4506. Petitioner stated it updated its Central Contractor Registration, but was not aware it was required to submit documentation. Petitioner indicated tax returns were submitted and would accompany its appeal. Petitioner also asserted it would attach a copy of its stock ledger to the appeal. Petitioner explained that it had faced challenges due to employees' sicknesses, auto accidents, and hospitalizations. Petitioner requested an extension and asserted it would submit all the other required documentation. Finally, Petitioner noted the lack of support it has received from the SBA office in Clarksburg, West Virginia.

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 February 12, 2010, the SBA moved to dismiss for lack of jurisdiction or, in the alternative, for summary decision.

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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.

SBA asserts Petitioner 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 argues Petitioner concedes it failed to make required submissions to SBA.

Moreover, SBA argues Petitioner's appeal does not dispute any material fact at issue in SBA's decision to terminate Petitioner from the 8(a) BD program. SBA states Petitioner cites administrative and medical reasons for Petitioner's failure to submit required documents and that Petitioner does not assert any evidence that Petitioner's termination was arbitrary, capricious, or contrary to law.

SBA argues the appeal should be dismissed or that SBA is entitled to judgment as a matter of law. SBA asserts it acted reasonably in determining it had good cause to terminate Petitioner from the 8(a) BD program based on Petitioner's repeated failure to submit required documentation.

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 SBA provided multiple opportunities for Petitioner to satisfy its submission requirements. Yet Petitioner failed to timely respond to these requests.

Petitioner blames its failure to file SBA's required documents on lack of knowledge, employees' sicknesses, auto accidents, and hospitalizations, and dismal SBA support. The record demonstrates SBA sent Petitioner certified letters requiring Petitioner to provide all annual review update information including the business plan update, personal financial statements, corporate and individual tax returns, and certifications relating to eligibility. Petitioner had nearly a year from SBA's November 19, 2008 certified letter requesting the required information until SBA terminated Petitioner on October 30, 2009 to submit the required documentation and Petitioner did not provide the information. I note Petitioner's appeal stated required documentation, tax returns and a stock ledger, would accompany Petitioner's appeal, but the documents were not included. Although Petitioner's employees' health issues are unfortunate, 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) BD 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 appeal 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