

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

IN THE MATTER OF:

MillenniumSoft, Inc.,

Petitioner

SBA No. BDPT-503

Decided: August 27, 2013

APPEARANCES

William L. Gery, United States Small Business Administration, 409 Third Street, S.W. Washington, D.C. 20416, for the Small Business Administration

Sailaja Mashetty, MillenniumSoft, Inc., 8301 Arlington Blvd. Suite 104, Fairfax, VA 22301, for the Petitioner

FINAL DECISION AND ORDER

I. Introduction and Jurisdiction

On May 4, 2013, MillenniumSoft, Inc. (Petitioner) appealed a determination by the Small Business Administration (SBA) to terminate Petitioner's participation in the 8(a) Business Development (BD) program. *See* 13 C.F.R. Parts 124 and 134. On May 8, 2013, the matter was transferred to this Court pursuant to 13 C.F.R. § 134.218(a) for adjudication. On June 18, 2013, SBA filed an Answer claiming its decision to terminate Petitioner from the 8(a) BD program was reasonable and not arbitrary, capricious, or contrary to law. SBA claims Petitioner “engaged in a pattern of failure to make required submissions to SBA in [a] timely manner.” SBA Answer pg. 1.

This proceeding arises under the authority of Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a)(9), and is governed by the Rules of Procedure Governing Cases Before the Office of Hearings and Appeals, 13 C.F.R. Part 134. The Office of Hearings and Appeals (OHA) has authority to conduct proceedings on appeals following an 8(a) program determination of termination. *See* 15 U.S.C. § 637(a)(9)(B)(ii); 13 C.F.R. § 134.102(j)(1). Petitioner's letter dated May 2, 2013 asserted Petitioner submitted its update materials by Federal Express on August 8, 2012, but Petitioner did not have a FedEx tracking number nor did Petitioner provide any further response. The Court has jurisdiction over the appeal of SBA's termination of Petitioner's participation in the 8(a) BD business development program pursuant to 13 C.F.R. §§ 124.303 and 124.304. *See* 13 C.F.R. § 134.405. For the reasons stated in this Final Decision, SBA's decision terminating Petitioner from the 8(a) BD Program is reasonable and made in accordance with applicable law and regulations. Accordingly, Petitioner's appeal is **DENIED**.

## II. Statement of the Case

On June 27, 2012, SBA requested Petitioner submit an annual update consisting of SBA Form 1450 with associated forms and supporting documentation. The annual submission ensures compliance with 13 C.F.R. Part 124. Petitioner's response was due to SBA by July 28, 2012. SBA did not receive a response to this letter from Petitioner. SBA sent a second notice to Petitioner on August 9, 2012 requesting the information be submitted by August 20, 2012 and specifically warning Petitioner that failure to provide the required documentation may result in termination from the 8(a) BD program. *See* 13 C.F.R. § 124.303. On August 27, 2012, SBA received an incomplete 8(a) Annual Update from Petitioner. The submission was missing Petitioner's business plan update, corporate and individual tax returns, and the most recent year-end business financial statement.

On September 7, 2012, the SBA Delaware District Office, notified Petitioner of its intent to propose termination of Petitioner's participation in the 8(a) BD program on the following grounds: 1) failing to maintain eligibility for program participation; 2) a pattern of failing to make required submissions in a timely manner; and 3) material breach of the terms of the Participation Agreement. Administrative Record (AR) Ex. 5.<sup>1</sup> The Letter of Intent to Terminate cited Petitioner's failure to submit all of the annual review update information requested by the Washington District Office Staff in the letters of June 28, 2012 and August 9, 2012.

SBA did not receive the required information and on December 12, 2012 initiated a recommendation to terminate. AR Ex. 3. On March 28, 2013 SBA issued a letter to Petitioner (Termination Letter), notifying MillenniumSoft, Inc. that termination from the 8(a) BD program would be effective 45 days from the receipt of the notice unless MillenniumSoft, Inc. filed an appeal in accordance with 13 C.F.R. § 124.304. AR Ex. 2. The March 28, 2013 termination letter also notified Petitioner that as of that date, SBA had not received the required information. Id.

Petitioner submitted a letter dated May 2, 2013 acknowledging receipt of the March 28, 2013 termination letter and alleging 8(a) BD annual review documents were submitted by FedEx. Petitioner indicated they were unable to find a FedEx tracking number but would send it shortly. Petitioner also asked SBA to advise whether a copy of the annual review documents should be resubmitted. Petitioner has made no other additional submissions. Petitioner did not file an objection to the Administrative Record and the Administrative Record is deemed complete. *See* 13 C.F.R. §§ 134.406 (c)(2) and (3).

## III. Issues

SBA contends its decision to terminate Petitioner from the 8(a) BD program was reasonable and in accordance with law because of Petitioner's failure to provide required information. Petitioner's appeal letter claimed to have sent information to SBA on or about August 8, 2012. The issue in the instant matter is:

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<sup>1</sup> The certified Administrative Record submitted by SBA contains ten (10) Exhibits (Ex.).

Whether SBA's decision to terminate Petitioner from the 8(a) BD program was arbitrary, capricious, or contrary to law?

IV. Findings of Fact

The following findings of fact are proved by a preponderance of the evidence.

1. Petitioner participated in the 8(a) BD program. (AR Ex. 6 and 10).
2. On June 27, 2012, SBA requested Petitioner provide documentation required for annual review by July 28, 2012 and included notice that failure to provide the information would result in a recommendation for termination from the program. (AR Ex. 10).
3. SBA did not receive a response to its June 27, 2012 letter to Petitioner. (AR Ex. 8).
4. SBA sent a second letter on August 9, 2012, advising Petitioner that SBA had yet to receive Petitioner's annual review information and again including notice that failure to provide the information would result in a recommendation for termination from the program. (AR Ex. 6 pg 5; Ex. 8).
5. On August 27, 2012, SBA received an incomplete 8(a) BD Annual Update from Petitioner. The August 27, 2012 submission did not include Petitioner's business plan update, or its most recent corporate and individual tax returns, or Petitioner's most recent year-end business financial statement. (AR Ex. 6).
6. On September 7, 2012, SBA sent a letter notifying Petitioner that SBA intended to terminate Petitioner from the 8(a) BD program. The September 7, 2012 letter was returned to SBA due to an incorrect address. (AR Ex. 3, 5).
7. The SBA September 7, 2012 letter was resent to Petitioner and received by Petitioner on October 2, 2012. (AR Ex. 3, 4 and 5).
8. SBA did not receive a response to the SBA letter sent to Petitioner on October 2, 2012. (AR Ex. 2, 3).
9. SBA had no record of receiving a FedEx package from Petitioner on or about August 9, 2012. (AR Ex. 2, 3).
10. SBA did have a record of an incomplete submission from Petitioner dated August 9, 2011 for the 2011 Annual Update. (AR Ex. 1).
11. On March 28, 2013, SBA notified Petitioner of its termination from the 8(a) BD program. (AR Ex. 2).
12. The Administrative Record does not contain any evidence of other information or submission by Petitioner in 2012 or 2013. (AR Ex. 1-10).

## V. Principles of Law

In addition to the requirements of 13 C.F.R. § 134.203, an appeal petition is required to state with specific reference to the determination and the record, the reasons why Petitioner contends the determination is alleged to be arbitrary, capricious or contrary to law. *See* 13 C.F.R. § 134.402.

SBA has the authority to terminate a business from the 8(a) BD program prior to the expiration of the business' Program Term for good cause. *See* 13 C.F.R. § 124.303.

## VI. Standard of Review

SBA's determination must be sustained unless a review of the administrative record demonstrates the termination decision was arbitrary, capricious, or contrary to law. *See* 5 U.S.C. § 706(2)(A); 13 C.F.R. § 134.406(b).

Pursuant to 13 C.F.R. § 134.406(a) this proceeding “shall be decided solely on a review of the Administrative Record.” “As long as the Agency's determination is reasonable, the Administrative Law Judge must uphold it on appeal.” 13 C.F.R. § 134.406(b). A decision by an Administrative Law Judge (ALJ) is the final Agency decision in the matter and is binding on the parties. *See* 13 C.F.R. § 134.409,

## VII. Analysis

As a matter of jurisdiction, Petitioner's appeal letter must be sufficient to meet the requirements of 13 C.F.R. § 134.203. The Court's review of the Administrative Record is to determine whether SBA's decision to terminate Petitioner from the 8(a) BD program is reasonable. *See* 13 C.F.R. § 134.406. Although Petitioner's letter failed to meet all requirements of the regulations contained in 13 C.F.R. § 134.203 and 13 C.F.R. § 134.402, Petitioner is proceeding *pro se* and the Court considers the appeal letter minimally sufficient to address the matter on the merits of the Administrative Record.

### A. SBA's Grounds to Terminate Petitioner from the 8(a) BD Program

SBA's notice of termination asserted three grounds for termination: 1) failure to maintain its eligibility for program participation (13 C.F.R. § 124.303(a)(2)); 2) a pattern of failing to make required submissions or responses to SBA in a timely manner (13 C.F.R. § 124.303(a)(7)); and 3) material breach of terms and conditions of the 8(a) BD Program Participation Agreement (13 C.F.R. § 124.303(a)(19)).

#### 1. Failure to maintain its eligibility for program participation.

Petitioner is required to submit an annual review of documents in order to maintain 8(a) BD program eligibility. *See* 13 C.F.R. § 124.112(b). On June 27, 2012, SBA requested Petitioner to submit an annual update by July 28, 2012. Petitioner did not provide the required documents

to SBA. SBA sent a second request for the annual update documents to Petitioner on August 9, 2012, requesting the annual update documents be provided by August 20, 2012. After receiving an incomplete submission on or about August 27, 2012, SBA informed Petitioner that the missing documentation was required and that failure to comply may result in termination. *See* AR Ex. 3 and 4. There is no record of a response by Petitioner to the SBA September 7, 2012 notice of intent to terminate that was served on Petitioner on October 2, 2012. Only after receipt of the March 28, 2013 SBA termination letter did Petitioner provide any response. In its May 2, 2013 letter, Petitioner contended that MillenniumSoft, Inc. provided its documentation by FedEx on August 8, 2012. SBA argued Petitioner never provided all of the requested information required for the Annual Update. SBA asserts Petitioner's only submission was on August 27, 2012, but that submission was incomplete since it is missing Petitioner's business plan update, corporate and individual tax returns, and most recent year-end business financial statement. SBA also indicated the only other record it had for Petitioner was an Annual Update from August 2011, which was also incomplete.

Failure to provide required information to SBA is grounds for termination. *See* 13 C.F.R. §§ 124.303(a)(2) and (a)(7). The Administrative Record shows SBA requested documentation from Petitioner but Petitioner has not provided required Annual Update documentation. There is no evidence of compliance by Petitioner in the Administrative Record. Petitioner did not submit a reply to SBA's June 18, 2013 Answer to Petitioner's Appeal and did not object to the Administrative Record. The Court is constrained by the applicable law and regulations to review this matter based only on the Administrative Record. Based on a review of the Administrative Record SBA's determination that Petitioner did not submit required documentation to maintain eligibility for the 8(a) BD program is reasonable.

2. Pattern of failure to make required submissions or responses to SBA in a timely manner.

Failure to submit all of the required annual review documents required by the 8(a) BD program, followed by subsequent failures to respond to requests for such documents, constitutes a pattern of failure under 13 C.F.R. § 124.303(a)(7) and is good cause for termination. *See JA Harris Trucking, Inc.*, SBA No. BDPT-463 (2013); *Tavcom Bus. Solutions, Inc.*, SBA No. BDP-228 (2006).

The Administrative Record shows Petitioner received two separate letters requesting annual review documents by mail dated June 27, 2012 and August 9, 2012. AR Ex. 7 and 9. Those letters included notice to Petitioner that failure to provide the required documentation may result in termination and also included a checklist of what was required. AR Ex. 8 and 10. Petitioner did not respond to the June 27, 2012 letter. The second notice dated August 9, 2012 requested a response by August 20, 2012. SBA received an incomplete response on or about August 27, 2012. SBA reviewed Petitioner's materials, determined they were incomplete and sent a letter of intent to terminate Petitioner's participation in the 8(a) BD program because of the missing information. AR Ex. 5 and 6. Petitioner received the letter on October 2, 2012. AR Ex. 3, 4, and 5. There was no response to that letter. SBA then issued its notice of termination on March 28, 2013. After August of 2012, the only response to SBA contained in the record is Petitioner's May 2, 2013 letter of appeal. The record shows SBA provided several opportunities

for Petitioner to submit the required update information and Petitioner did not comply. Based on a review of the Administrative Record, SBA's determination that Petitioner's failure to submit all of the annual review documents and failure to respond to SBA's requests, constitutes a pattern of failing to make required submissions or responses to SBA in violation of 13 C.F.R. § 124.303(a)(7) is reasonable.

### 3. Material breach of terms and conditions of the 8(a) BD Program Participation Agreement.

As stated above, the Court's review is limited to Administrative Record. 13 C.F.R. § 134.406(a). The certified Administrative Record dated June 18, 2013 does not contain a copy of Petitioner's Participation Agreement. Failure to comply with the terms of an agreement is a valid basis to terminate a participant. *See* 13 C.F.R. § 124.303(a)(19). However, because the Participation Agreement is not included in the Administrative Record there is insufficient information in the record to determine if Petitioner breached its terms in violation of 13 C.F.R. § 124.303(a)(19). Therefore, there is insufficient evidence to affirm SBA's determination that Petitioner breached the terms of the agreement.

### B. SBA's Decision to terminate Petitioner was Reasonable and not Arbitrary, Capricious or Contrary to Law.

SBA's decision to terminate a concern's participation in the 8(a) BD program can only be overturned if the reviewing court concludes the determination was arbitrary, capricious, or contrary to law. *See* 5 U.S.C. § 706(2)(A); 13 C.F.R. §§ 134.402 and 134.406(b). Pursuant to 13 C.F.R. § 134.406(a), this proceeding "shall be decided solely on a review of the Administrative Record." "As long as the Agency's determination is reasonable, the Administrative Law Judge must uphold it on appeal." *See* 13 C.F.R. § 134.406(b). A decision by an Administrative Law Judge is the final Agency decision in the matter and is binding on the parties. *See* 13 C.F.R. § 134.409.

SBA made its determination on multiple grounds. Although only two of three grounds are supported by the Administrative Record, the determination may be upheld based on any one of the grounds. *E.g.* Title 13 C.F.R. § 134.408(b) allows summary decision on fewer than all grounds offered by SBA. In *Blind Detective Agency*, SBA No. BDP-163 (2001), SBA's decision based on multiple grounds is upheld if one of their grounds is found to be not arbitrary, capricious, or contrary to law.

Petitioner's failure to comply with the requirements to maintain eligibility for program participation (13 C.F.R. § 124.303(a)(2)) and pattern of failure to make required submissions or responses to SBA in a timely manner (13 C.F.R. § 124.303(a)(7)) are sufficient to support SBA's decision to terminate.

## VIII. Conclusion

The Administrative Record shows SBA's decision to terminate Petitioner from the 8(a) BD program was not arbitrary, capricious, or contrary to law. Petitioner's Appeal is **DENIED**

and SBA's determination is **AFFIRMED**.

WHEREFORE,

ORDER

**IT IS HEREBY ORDERED** that Petitioner's Appeal is **DENIED** and SBA's decision to terminate MillennumSoft, Inc. from the 8(a) BD program is **AFFIRMED**.

**THE PARTIES ARE HEREBY NOTIFIED** that subject to 13 C.F.R. § 134, 409(c) (reconsideration), 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).

Done and dated August 27, 2013 Baltimore, MD.  
MICHAEL J. DEVINE  
Administrative Law Judge