

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

IN THE MATTER OF:

Corporate Portfolio Management  
Solutions,

Petitioner

SBA No. BDPT-567

Decided: February 15, 2018

ORDER OF DISMISSAL

This matter is before the Court upon a *Petition* filed by Corporate Portfolio Management Solutions (“Petitioner”) appealing a decision of the United States Small Business Administration (“SBA” or “the Agency”) to terminate Petitioner's participation in the SBA's 8(a) Business Development program (“8(a) BD program”). *See* 15 U.S.C. § 637(a); 13 C.F.R. parts 124 & 134. On October 27, 2017, the SBA gave notice that it was terminating Petitioner's participation in the 8(a) BD program pursuant to 13 C.F.R. § 124.303(a)(17) due to conduct by Petitioner indicating a lack of business integrity. Petitioner timely appealed the termination decision by filing the *Petition* on December 11, 2017. The appeal was assigned to this Court for hearing and final determination.<sup>1</sup>

On January 25, 2018, the SBA filed a *Motion for Dismissal for Lack of Jurisdiction, or, in the Alternative, for Summary Decision for Failure to State an Actionable Appeal* (“Motion to Dismiss”).<sup>2</sup> The SBA contends that the *Petition* fails to allege facts that, if proven true, would warrant reversal or modification of the SBA's termination decision. Therefore, the SBA argues that this Court should decline to accept jurisdiction over the appeal pursuant to 13 C.F.R. §

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<sup>1</sup> Pursuant to an Interagency Agreement in effect beginning October 1, 2012, Administrative Law Judges of the U.S. Department of Housing and Urban Development are authorized to hear cases brought by the SBA.

<sup>2</sup> The Court had previously set a deadline of January 25, 2018, for the SBA to respond to the appeal petition and file a copy of the Administrative Record. The filing of the *Motion to Dismiss* stayed this deadline. *See* 13 C.F.R. § 134.212(a)(4). Although the full Administrative Record has not been filed, the SBA submitted several documents in support of its *Motion to Dismiss*, including copies of the notice of suspension, notice of intent to terminate, and notice of termination it sent to Petitioner in connection with this matter; a copy of a letter received by the SBA, with attachments, alleging that Petitioner failed to pay an obligation owed to a subcontractor; and a copy of a related civil judgment entered against Petitioner in the Superior Court of the District of Columbia. In addition, Petitioner submitted several items of documentary evidence with the *Petition*.

134.405(a)(1). Alternately, the SBA argues that it is entitled to summary decision. Petitioner opposes the SBA's motion.

### APPLICABLE LAW

**8(a) BD Program.** The 8(a) Business Development program (“8(a) BD program”) was developed to help eligible small disadvantaged business concerns compete in the American economy through business development See 15 U.S.C. § 637(a); 13 C.F.R. § 124.1. Eligibility is predicated on unconditional ownership and control by one or more socially and economically disadvantaged individuals who are of good character and are citizens of the United States. 15 U.S.C. § 637(a)(4); 13 C.F.R. § 124.101.

Under normal circumstances, the SBA accepts an eligible business concern into the 8(a) BD program for a period of nine years so long as the concern maintains its program eligibility. 13 C.F.R. § 124.2. However, the SBA may terminate a business's participation in the program at any time for good cause, *See* 13 C.F.R. §§ 124.303, 124.304. Good cause for early termination may include “[c]onduct by the concern, or any of its principals, indicating a lack of business integrity. Such conduct may be demonstrated by information related to . . . a judgment or settlement in a civil case.” *Id.* § 124.303(a)(17).

**Review of 8(a) BD Termination Decisions.** Prior to terminating a business concern's participation in the 8(a) BD program, the SBA must provide the concern with notice and an opportunity for a hearing on the record in accordance with the Administrative Procedure Act 15 U.S.C. § 637(a)(9); *see* 13 C.F.R. § 124.304(e) (providing right of appeal to this Court).

The reviewing court must sustain the SBA's termination decision unless the decision is found to be arbitrary, capricious, or contrary to law. 15 U.S.C. § 637(a)(9)(C); 13 C.F.R. § 134.406(b). The reviewing court's task is to decide whether the agency reached a reasonable conclusion in light of the facts available in the administrative record. The court need not determine whether the conclusion was the best one, or even the correct one. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 42-44 (1983); *Griffis v. Delta Family-Care Disability*, 723 F.2d 822, 825 (11th Cir. 1984) (“This court's judicial role is limited to determining whether the [agency's] interpretation was made rationally and in good faith—not whether it was right”); *Ace Technical, LLC*, SBA No. SDBA-178, at 3 (2008) (“[Examination] is not a de novo review of the administrative record to decide whether the SBA's ultimate conclusions are correct”). Any reasonable conclusion must be upheld, even if it differs from the conclusion the reviewing court would have reached. *State Farm*, 463 U.S. at 42-43; *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971); 13 C.F.R. § 134.406(b).

### AGENCY DETERMINATION

The documentary evidence filed with the *Petition* and the *Motion to Dismiss* reveals the following undisputed facts underpinning the SBA's termination decision.

Petitioner is a federal government contractor specializing in data analytics, financial management information technology, cybersecurity, and human capital management. Petitioner's

business was organized in 2005 by Terry Tomlinson. The SBA certified Petitioner to participate in the 8(a) BD program in 2012.

In 2013, the General Services Administration (“GSA”) awarded Petitioner a prime 8(a) contract. Petitioner hired a subcontractor, Procon Consulting, LLC (“Procon”), to perform work under the contract. As of April 2016, Petitioner owed Procon \$68,688.53 for work performed under the contract. Petitioner failed to pay this obligation.

In August 2016, Procon initiated arbitration before the American Arbitration Association to recover the funds it was owed under the subcontract. Petitioner voluntarily participated in the arbitration. On December 15, 2016, Petitioner signed a *Consent Order and Judgment* acknowledging that it owed Procon \$68,688.53 and agreeing to pay Procon \$75,000.00 in three installments, with the final installment due on February 28, 2017.

On June 20, 2017, Procon filed a complaint in the Superior Court of the District of Columbia, Civil Division (“D.C. Superior Court”) seeking enforcement of the arbitration agreement and alleging that Petitioner had failed to make a single payment under the *Consent Order and Judgment*. On October 12, 2017, the D.C. Superior Court entered a civil judgment in favor of Procon and against Petitioner in the amount of \$75,000.00.

Meanwhile, on July 12, 2017, Procon had sent a letter to the SBA requesting assistance recovering the unpaid debt and asking the SBA to revoke Petitioner's 8(a) certification. Procon asserted that Petitioner had not yet repaid any portion of the debt and had also failed to pay its agreed share of the arbitration costs. Procon alleged that Petitioner and Mr. Tomlinson had repeatedly ignored attempts to compel payment of the debt, had engaged in a “pattern of deceit and avoidance” with respect to the debt, and had acted in bad faith.

On August 24, 2017, the SBA sent Petitioner a notice that Petitioner was being suspended from further participation in the 8(a) BD program due to its alleged lack of business integrity.<sup>3</sup> The notice also stated that the SBA had initiated proceedings to terminate Petitioner from further participation in the program.

By notice dated October 27, 2017, the SBA informed Petitioner that it had decided to terminate Petitioner's participation in the 8(a) BD program. The notice cited lack of business integrity under 13 C.F.R. § 124.303(a)(17) as grounds for the termination. The notice explained that Petitioner had failed to pay Procon for previously performed subcontracting work and had failed to comply with the arbitration agreement. The notice also cited the judgment that had been entered against Petitioner by the D.C. Superior Court.

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<sup>3</sup> As an additional ground for Petitioner's suspension, the SBA stated that Petitioner was being debarred. However, the October 27, 2017 notice of termination did not list debarment as one of the grounds for termination.

## DISCUSSION

The SBA contends that the Court should reject jurisdiction over this appeal and dismiss the *Petition* pursuant to 13 C.F.R. § 134.405(a)(1). The cited regulation mandates that this Court shall decline to accept jurisdiction over any appeal of an SBA determination if “[t]he appeal does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the determination.” 13 C.F.R. § 134.405(a)(1). Here, the SBA argues that Petitioner has conceded the factual basis of the grounds for termination — namely, that Petitioner failed to pay a subcontractor, resulting in entry of a civil judgment against Petitioner — and has failed to allege any contrary responsive facts, such as facts justifying Petitioner's withholding of payment from the subcontractor, that would warrant reversal of the termination decision.

Petitioner does not dispute that, as of April 2016, it owed Procon \$68,688.53 for work performed under the GSA contract. Petitioner argues that GSA failed to timely process an invoice for work that had been performed under the contract in 2015. As a result, Petitioner claims that it did not receive payment from GSA until April 2016. “Due to the 4-month delay,” Petitioner asserts, “[Petitioner] incurred additional employee-related costs which caused it to be unable to make timely payments to ProCon.” Petitioner does not identify or describe the “additional employee-related costs” that rendered it unable to pay the obligation. Moreover, any payment delay that may have occurred did not excuse Petitioner's continued failure to reimburse Procon even after receiving full payment from GSA. Petitioner owed a contractual obligation to compensate Procon for performing the actual work on the GSA contract, but instead diverted the funds it had received under the contract to unidentified “employee-related costs.” Such conduct demonstrates a lack of business integrity. *See DRS Services, Inc.*, 2005 WL 4048777 (SBA Aug. 4, 2005) (stating that conduct indicating a lack of business integrity includes “unethical business-related conduct”).

Petitioner does not dispute that it signed a consent order after arbitration whereby it agreed to pay Procon \$75,000.00 to satisfy the outstanding debt. Petitioner argues that it signed the consent order because it expected to soon receive income from a task order under a different contract, but the task order never materialized. Again, even if accepted as true, this argument does not justify Petitioner's failure to pay the debt in the first instance, when it received payment from GSA in April 2016.

Petitioner further argues that it attempted to contact Procon's attorney “on numerous occasions” to schedule a different payment plan. However, Petitioner documented just two attempts to communicate with Procon's attorney before Procon initiated legal process against Petitioner before the D.C. Superior Court in June 2017. Moreover, Procon was under no obligation to agree to a different payment plan, and its refusal to do so would not excuse Petitioner from repaying the obligation. The fact that the D.C. Superior Court eventually entered judgment against Petitioner demonstrates that Petitioner's unilateral decision to disregard the arbitration agreement was improper. Again, such conduct indicates a lack of business integrity. *See* 13 C.F.R. § 124.303(a)(17) (providing that information related to a civil judgment may serve as evidence of lack of business integrity).

The SBA has an affirmative responsibility under the Small Business Act to ensure that only eligible business concerns are admitted into, and remain in, the 8(a) BD program. This ensures that public funds are properly administered, and that the benefits of the 8(a) BD program are limited to those small businesses that qualify to receive such benefits. To carry out this public trust, the SBA must enforce the 8(a) BD program requirements. *JA Harris Trucking, Inc.*, 2013 WL 309058 (SBA Jan. 23, 2013).

In this case, the SBA decided to terminate Petitioner from the 8(a) BD program because it concluded that Petitioner's failure to pay Procon and failure to comply with the arbitration agreement, which resulted in entry of a civil judgment against Petitioner, amounted to conduct indicating a lack of business integrity, in violation of 13 C.F.R. § 124.303(a)(17). The scope of this Court's review is limited to determining whether the SBA's decision was arbitrary, capricious, or contrary to law; if not, the decision must be upheld. 13 C.F.R. § 134.406(b). Consistent with this standard of review, Petitioner was required to include in its appeal petition a statement of the reasons why the SBA decision was alleged to be arbitrary, capricious, or contrary to law. *Id.* § 134.402.

Petitioner has not identified any reasons to conclude that the SBA decision was arbitrary, capricious, or contrary to law, either in its *Petition* or in its response to the *Motion to Dismiss*. Instead, aside from the raising the arguments rejected by the Court above, Petitioner simply contends that the SBA should enter into a compliance agreement or take some other action short of termination, because (1) Petitioner has begun making repayments to Procon;<sup>4</sup> (2) Petitioner is a responsible contractor with a good record; and (3) Petitioner has taken corrective actions such as implementing new corporate policies. Even if accurate, these contentions do not rebut the SBA's conclusion that Petitioner engaged in conduct indicating a lack of business integrity when it failed to pay its subcontractor.

Accordingly, as Petitioner has not raised any facts that would warrant reversal or modification of the termination decision, the Court must decline jurisdiction over the appeal.<sup>5</sup> The SBA's *Motion to Dismiss* will be **GRANTED** and Petitioner's appeal is hereby **DISMISSED**.

J. JEREMIAH MAHONEY  
United States Administrative Law Judge

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<sup>4</sup> Petitioner unilaterally developed an installment plan whereby it proposes to repay its \$75,000.00 obligation to Procon by September 2018. As of February 9, 2018, Petitioner represented that it had paid \$4,000.00 to Procon pursuant to this plan.

<sup>5</sup> See *KC Consulting LLC*, 2017 WL 4737143 (SBA Oct. 11, 2017) (granting SBA's motion to dismiss a termination appeal for lack of jurisdiction); *Brighter Days & Nites, LLC*, 2013 WL 4832712 (SBA July 23, 2012) (same).