

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

IN THE MATTER OF:

The Edge Connection,

Petitioner

SBA No. WBC-103

Decided: February 11, 2021

DECISION

I. Introduction and Jurisdiction

On December 2, 2020, The Edge Connection (Petitioner), appealed the U.S. Small Business Administration's (SBA) suspension of a Women's Business Center (WBC) award to Petitioner. For the reasons discussed *infra*, I REMAND this matter to the Office of the Associate Administrator for Entrepreneurial Development for further review.

SBA's Office of Hearings and Appeals (OHA) has jurisdiction to “conduct proceedings in . . . [t]he suspension, termination, or non-renewal of cooperative agreements with Women's Business Centers and Small Business Development Centers under the Act[.]” 13 C.F.R. § 134.102(o). Accordingly, this matter is properly before OHA for decision.

II. Background

In December 2019, Petitioner and the Office of Women's Business Ownership (OWBO) entered into a cooperative agreement under the 2019-2020 Notice of Award.

On July 1, 2020, the Assistant Administrator (Acting) for the Office of Women's Business Ownership (AA/OWBO) informed Petitioner that SBA was “suspending the Women's Business Center (WBC) award to The Edge Connection (Cooperative Agreement No. SBAHQ-18W-0029) as of the date of this letter.” (Admin. Record, Ex. 1.) The AA/OWBO cited to “[c]onduct reflecting a lack of business integrity or honesty on the part of the Recipient Organization, the WBC Director, or other key employee(s)” as grounds for this decision in the Notice of Suspension. (*Id.*) Petitioner was informed that this suspension was “in effect for six months and pending an ongoing investigation of alleged misconduct on the grantee's part by the Office of Inspector General.” (*Id.*) Additionally, the Notice of Suspension stated that this action was intended to “protect the interests of the government.” (*Id.*) Furthermore, the Notice of Suspension states that Petitioner may request an administrative review of the suspension, which must be received by the Associate Administrator of for the Office of Entrepreneurial Development (OED) within 30 days of the letter pursuant to 13 C.F.R. § 131.630(c)(2). (*Id.*)

On July 30, 2020, Petitioner submitted a letter to OED requesting administrative review pursuant to the regulations. On August 31, 2020, Petitioner anticipated that OED would notify the parties of a hearing, direct the parties to submit further arguments and evidence, or otherwise notify the parties that the matter was closed. Petitioner did not receive any such notification. On September 25, 2020, Petitioner, through counsel, sent a letter to OED requesting a substantive response to Petitioner's request for administrative review. On September 30, 2020, Mr. Alan Gutierrez, Associate Administrator of OED, responded to Petitioner's counsel advising that OED was in the process of reviewing the case and OED would get back Petitioner as soon as possible. As of December 2, 2020, Petitioner had not received a response regarding administrative review. Petitioner therefore filed the instant appeal with OHA seeking reversal of the AA/OWBO's suspension determination on December 2, 2020.

III. Petitioner's Appeal

Petitioner believes that the delay and lack of communication are violations of 13 C.F.R. § 131.630(g) and Appendix B § 4(e) of the 2019-2020 Notice of Award. Under the applicable Notice of Award Revised Terms and Conditions provisions and regulations, OED had an obligation to notify Petitioner and the OWBO of a hearing, direct them to submit further arguments and evidence, or declare the record closed by August 31, 2020. (Appeal, at 3.) However, on that date and in the following three months, OED has not issued a decision. (*Id.*) Additionally, Petitioner argues OED's violations have caused it financial hardship. More specifically, Petitioner argues it has not been able to plan its budget or otherwise operate as it did prior to the suspension, without any explanation or evidence as to why. (*Id.*) As such, Petitioner asks that OHA reverse the suspension, reinstate the cooperative agreement retroactively effective July 1, 2020, award Petitioner payments owed since July 2020 as well as any other payments owed under its cooperative agreement, and for any other relief OHA deems fair. (*Id.*)

IV. SBA Response

On January 19, 2021, SBA filed a response to the instant appeal. In its response, SBA states that the Assistant Administrator (Acting) for the Office of Women's Business Ownership (AA/OWBO)'s decision to suspend Petitioner from participating in the WBC program came after a string of indications that Petitioner had been conducting itself and its WBC project in a matter that caused SBA to question the business integrity and honesty of the organization. (Response, at 3.)

More specifically SBA outlines three reasons for questioning Petitioner's business integrity and honesty. First, an unannounced site visit by the AA/OWBO to Petitioner's address of record revealed that the address Petitioner had been claiming as the location for its WBC was actually a co-working site. (Response, at 3; citing Admin. Record, Ex. 9.) Second, a special investigator with SBA's Office of Inspector General (OIG) informed the AA/OWBO that he had uncovered evidence that Petitioner's executive director had falsified records relating to its WBC project. (*Id.*; citing Admin. Record, Ex. 8.) Third, the AA/OWBO subsequently learned from the OIG that the matter had been referred to the Department of Justice for further investigation and potential prosecution. (*Id.*; citing Admin. Record, Ex. 3.)

Accordingly, SBA believes that the AA/OWBO's determination that Petitioner demonstrated a lack of business integrity or honesty is more likely true than not true based on the evidence in the record. As such, SBA argues that the decision to suspend Petitioner's participation in the WBC program pending the results of the OIG investigation to protect the interests of the government should be affirmed. (*Id.*, at 3-4.)

V. The Administrative Record

On January 29, 2021, Petitioner filed a timely objection to the Administrative Record (AR). More specifically, Petitioner objects on the grounds that three documents, which were omitted from the AR, should be included in the AR. (Objections to AR, at 1.) On February 1, 2021, SBA responded to the Petitioner's objections and asked OHA to affirm the AR. (Response to Objections, at 1-4.)

VI. Discussion

The AA/OWBO may suspend a cooperative agreement for cause for numerous reasons outlined under 13 C.F.R. § 131.630(b). The reason for suspending the instant cooperative agreement in the Notice of Suspension is for “[c]onduct reflecting a lack of business integrity or honesty on the part of the Recipient Organization, the WBC director, or other key employee(s).” (Admin. Record, Ex. 1.) The language in the Notice of Suspension notably omits language specifically included in Notice of Award Revised Terms and Conditions (NOA T&C) and the applicable regulation. According to the NOA T&Cs and the regulations, the AA/OWBO may suspend a cooperative agreement for cause for “[c]onduct reflecting a lack of business integrity or honesty on the part of the Recipient Organization, the WBC director, or other key employee(s), *which has not been properly addressed.*” 13 C.F.R. § 131.630(b)(5); Notice of Award Revised Terms and Conditions, at 45 (emphasis added).

The regulation provides that any recipient that has had its cooperative agreement suspended, terminated or non-renewed has the right to request an administrative review of the AA/OWBO's enforcement action. 13 C.F.R. § 131.630(d). The AA/OED is to conduct this administrative review. (*Id.*) The NOA T&C has the same provision. NOA T&C, Apdx. B, § 4. The request for an administrative review must be filed within 30 days of the date of the notice of suspension. 13 C.F.R. § 131.630(e)(i), NOA T&C, Apdx. B, § 4(c). Petitioner filed its request for a review on July 30, 2020 after receiving the Notice of Suspension on July 1, 2020. Petitioner thus timely filed its request for an administrative review, but received no response until September 30, 2021, which was merely an acknowledgment of the request.

The regulations and NOA T&Cs outline a specific administrative review process. Nothing in the Administrative Record indicates that such process has taken place. The AA/OED is required to perform an administrative review of the decision to suspend Petitioner and has not done so. The regulation specifically gives Petitioner that procedural right, and SBA has failed and refused to provide it to Petitioner.

Further, the regulation requires that each notice of suspension will set forth the specific facts and reasons for the decision and will include reference to the appropriate legal authority. 13

C.F.R. § 131.630(c)(2). The NOA T&Cs includes the same requirement. NOA T&C, App. B § 3(b). Upon review it is clear that the July 1, 2020 Notice of Suspension did not include the specific facts and reasons supporting the conclusion that Petitioner's "business integrity" was in question.

Accordingly, I find that SBA has failed to comply with the requirements of the regulations and the conditions of the NOA T&C. I therefore REMAND this matter to the Office of the Associate Administrator for Entrepreneurial Development with the ORDER that he perform within 40 days the administrative review Petitioner requested in accordance with the requirements of 13 C.F.R, § 131.630(g) and that his final decision set forth the specific facts and reasons for the decision and will include reference to the appropriate legal authority.

VII. Conclusion

For the above reasons, the appeal is REMANDED to the Office of the Associate Administrator for Entrepreneurial Development for the administrative review required by the regulation.

CHRISTOPHER HOLLEMAN
Administrative Judge