



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

APR 28 2006

OFFICE OF THE ADMINISTRATOR

The Honorable John F. Kerry
Ranking Member
Committee on Small Business & Entrepreneurship
United States Senate
Washington, D.C. 20510

Dear Senator Kerry:

Thank you for your letter of March 31, 2006, expressing your concerns with the Small Business Administration's (SBA) oversight and monitoring of the 8(a) Business Development (BD) Program as well as small business contracting. Let me assure you that the SBA takes the Office of Inspector General's (OIG) findings on the 8(a) BD program and our oversight responsibilities very seriously.

As you are aware, the SBA began entering into Partnership Agreements with procuring agencies as a way to streamline the 8(a) contract award process. The Partnership Agreements have proven themselves effective in eliminating unnecessary delays in 8(a) contract awards because of duplicative 8(a) contract file reviews. Both 8(a) program participants and the various procuring agencies view the Partnership Agreements as a significant improvement to the 8(a) contract execution procedures. Notwithstanding, the findings in the OIG's report on the 8(a) BD program, the SBA is continuing to take all necessary steps to ensure that each procuring agency is fully aware of 8(a) contract-related requirements and their responsibilities under these agreements.

You have posed a number of recommendations related to the OIG's audit report. The following is in response to your inquiries:

- ***Immediately recommend that the 8(a) participant found in the report to have violated numerous regulations of the program be disbarred and, if the OIG finds grounds for a legal referral, send this case to the Department of Justice for criminal action.***

The Office of Government Contracting and Business Development (GC&BD) will coordinate with the OIG and the Office of General Counsel to determine the appropriate action that should be taken against the 8(a) program participant referred to in the audit report.

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- ***Direct the Associate Administrator of GC&BD to work with OIG to develop a comprehensive strategy for auditing existing 8(a) participants for similar violations.***

The OIG has established procedures to determine when audit reviews are warranted. In addition, GC&BD, as well as all other offices within the Agency, have assisted the OIG in identifying areas for potential audit reviews.

- ***As recommended by the OIG, direct the Associate Administrator of GC&BD to revise the current MOU with the 26 major procuring agencies to require the monitoring of 8(a) BD compliance with specific contract and Federal Acquisition Regulation requirements.***

Prior to the OIG's issuance of its audit report on the 8(a) BD program, the GC&BD began the process of revising the current Participation Agreement with procuring agencies. Further, the Offices of Field Operations and BD are working to revise applicable Standard Operating Procedures and the Quality Service Review guidelines (Quality Service Reviews are conducted on district offices to evaluate compliance with all Agency and program procedures) to ensure effective monitoring of procuring agencies and 8(a) program participants' compliance with 8(a) BD regulations.

- ***Direct the Associate Administrator of GC&BD to provide an annual report to your office, the Senate Committee on Small Business and Entrepreneurship, and the House Small Business Committee detailing the surveillance reviews conducted by the GC&BD office to ensure that agencies are performing the proper level of oversight necessary.***

The actions to revise the applicable Standard Operating Procedures, Quality Service Review guidelines, and Participation Agreements with procuring agencies responds fully to the OIG's recommendations for ensuring compliance with 8(a) regulations. Please also note that the 8(a) program surveillance reviews are conducted by our district offices. Accordingly, a special report detailing the surveillance reviews conducted by GC&BD is not necessary.

In response to your concerns of apparent award of small business set-aside contracts to companies that were found to be "other than small," it should be noted that a very limited number of large businesses have inappropriately received contracts intended for small businesses.

SBA's ongoing review of underlying data indicates that the firms identified in the studies were awarded contracts that were legitimately small businesses, but subsequently grew, or were acquired by large businesses, over the lives of the contracts.

The contracts and options continued to count as small businesses awards because those firms were small at the time the initial contracts were awarded.

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Please be advised that well before these studies were published, SBA and other Federal agencies took steps to address the problem of large businesses competing for small contracts. For example, in May 2004, SBA published a rule that requires businesses that received contracts as small businesses to novate their contracts to recertify their size. This circumstance often arises when another firm purchases a small firm. With an effective date of December 21, 2004, this rule addressed many of the issues identified in the studies.

Regarding SBA's oversight of contract bundling, please be assured that this Agency takes very seriously its responsibility to hold agencies accountable for their acquisition strategies in order to preclude unnecessary contract bundling, and its adverse impact upon small businesses. For your reference, please refer to my letter (enclosed) of August 18, 2005, on that subject.

SBA will continue to work with the OIG to take action, as appropriate, in the matter related to the 8(a) participant's violation of program rules and regulations. If you have questions, please have a member of your staff to contact our Office of Congressional and Legislative Affairs at (202) 205-6700.

Thank you for your continued efforts to support our Nation's small businesses.

Sincerely,



Hector V. Barreto
Administrator

Enclosure