**U.S. SMALL BUSINESS ADMINISTRATION**
**OFFICE OF INSPECTOR GENERAL**
WASHINGTON, D.C. 20416

DATE: November 13, 2012

TO: Darryl K. Hairston
Associate Administrator
Office of Business Development

FROM: Daniel J. O'Rourke
Assistant Inspector General
For Investigations

SUBJECT: Advisory Memorandum Regarding Section 8(a) Annual Review (Report #13-06-I)

Special agents of the U.S. Small Business Administration (SBA) Office of Inspector General (OIG) have observed practices in the Section 8(a) Business Development Program that may inadvertently make the program vulnerable to participation by ineligible firms. Accordingly, we believe that the Office of Business Development can enhance program integrity and effectiveness by implementing changes that allow 8(a) staff adequate time and flexibility for evaluating whether participating firms are still eligible for the program.

## BACKGROUND

The 8(a) program's overall goal is to graduate small disadvantaged firms that will eventually thrive in a competitive business environment. A major benefit for 8(a) firms is that they can receive sole source, as well as competitive, federal contracts.

Each year 8(a) firms must provide information to SBA so that the Agency can conduct a complete participant review consisting of both a financial and an annual (programmatic) review. This memorandum focuses on the annual review.

According to the 8(a) program's Standard Operating Procedure (SOP), 8(a) firms are required to submit updated information for the annual review within 30 days after the close of each program year. Firms that fail to do so are subject to termination from the program.[1]

[1] SOP 80 05 3B, chapter 10, paragraph 16., page 197.

Within 30 calendar days of receiving all requested information from a participating 8(a) firm, an SBA Business Development Specialist (BDS) must complete the annual review. The exception to the 30-day limit occurs when information obtained during or outside of the normal review process triggers an eligibility review.[2] In most situations, however, the BDS must decide within the 30 days whether to *retain* the 8(a) firm in the program or *terminate* its participation.

## CONSTRAINTS ON THE ANNUAL REVIEW

A BDS's performance appraisal partly depends on meeting the 30-day limit for determining an 8(a) firm's continued eligibility. However, 30 days may not be enough time if a firm's situation is complex or if a BDS is handling a particularly heavy workload. Because taking additional time to evaluate a firm could result in a lower performance appraisal, a BDS may feel compelled to risk retaining a potentially ineligible firm in order to meet deadline pressure. The result can be incorrect eligibility decisions.

In addition to the time constraint, a BDS has little flexibility when there is uncertainty about a firm's continued eligibility in the 8(a) program. The BDS can only decide between retaining and terminating a firm. There is no "pending" or "holding" category for the firm in situations where additional analysis is needed.

A final constraint, according to some SBA staff, is the Agency's culture of retaining as many 8(a) firms as possible. Although the reasons for this are unclear, the contrasting action of terminating an 8(a) firm is unattractive because it involves major effort, takes time away from reviewing other firms, and may result in a negative programmatic image. Nonetheless, unless an 8(a) firm is also suspended in conjunction with a termination *proceeding*, that firm will continue to receive program support until it is *actually* terminated,[3] thus reinforcing the appearance of potentially ineligible 8(a) firms having an advantage over other firms.

## UNINTENDED CONSEQUENCES OF THE CURRENT PROCESS

Deadline pressures, inflexible decision choices when further analysis is needed, and an apparent Agency predisposition toward retaining 8(a) firms can create a climate in which undeserving 8(a) firms may unintentionally be rewarded with continued program eligibility. Because a BDS must sometimes make a hurried decision, the most expedient solution is to retain a potentially ineligible firm. The result is a greater likelihood that ineligible firms remain in the 8(a) program, while deserving firms are deprived of the opportunity to develop their abilities, particularly through preferential government contracts. If enough undeserving firms remain eligible by default, the 8(a) program's effectiveness will be diminished.

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[2] SOP 80 05 3A, chapter 5, paragraphs 1.through 2.a., page 138; and paragraphs 10.a. and 10.b., page 145.
[3] SOP 80 05 3B, chapter 10, paragraph 24.a., page 202.

## CONCLUSION

Due to inflexible time constraints, SBA employees trying to protect taxpayer and legitimate small business interests should not be inadvertently penalized for exercising reasonable due diligence, particularly when facing complex situations or heavy workloads. They should have sufficient time and flexibility to correctly evaluate 8(a) firms' continued eligibility when warranted. By implementing two procedural changes, SBA has the opportunity to strengthen the effectiveness of the 8(a) program.

## RECOMMENDATIONS

The OIG recommends that the Associate Administrator for Business Development place into clearance the following changes to SOP 80 05 3:

1. When extra time is deemed necessary for the annual review, a BDS may take up to an additional 30 days to determine whether to retain or terminate a firm from the 8(a) program. Failure to provide additional information needed by the BDS during this period will make the firm subject to a termination action as outlined elsewhere in the SOP.

2. A BDS may place an 8(a) firm in a "decision pending" category during this additional period.

## MANAGEMENT COMMENTS

We provided you with a draft report. You advised that your office agrees with our analysis of the constraints and the conclusions reached regarding the 8(a) annual review process. In addition, you advised that your office will fully consider our recommendations when working with the Office of Field Operations to develop Fiscal Year 2013 field office employee performance expectations and when finalizing a revision of SOP 80 05 3.

## OIG ANALYSIS OF MANAGEMENT'S COMMENTS

Your comments appear to be responsive to our recommendations. We appreciate the cooperation of your office during this effort. If you have any questions, please feel free to contact me on (202) 205-6648.