

**ACCEPTANCE OF VBP GROUP INTO THE 8(A)  
PROGRAM AND SUBSEQUENT CONTRACT  
AWARD BY SBA**

*Report Number: 8-16  
Date Issued: July 18, 2008*

**Prepared by the  
Office of Inspector General  
U. S. Small Business Administration**



U.S. Small Business Administration  
Office Inspector General

# Memorandum

To: Jovita Carranza  
Acting Administrator  
/s/ **Original Signed**

Date: July 18, 2008

From: Debra S. Ritt  
Assistant Inspector General for Auditing

Subject: Report on Acceptance of VBP Group into the 8(a) Program and Subsequent Contract Award by the Small Business Administration (SBA)

This report presents the results of our review of VBP Group's acceptance into the 8(a) program and SBA's contract award to VBP for training services. We conducted the review in response to former Administrator Steven Preston's February 8, 2008, request for an investigation into the certification of VBP as an 8(a) company when it had not been in business for the required 2 years, and the subsequent award of a \$1.2 million sole-source contract to VBP to run an SBA national training program for entrepreneurs. His request was based on concerns raised by the Chairwoman of the House Committee on Small Business about the speed with which SBA processed the certification and contract for VBP, which is owned by a former (b) (6) of the U.S. Department of Agriculture (USDA). A copy of Mr. Preston's request is provided in Appendix I.

To address the concerns raised, our review determined: (1) whether VBP met all of SBA's requirements for acceptance into the 8(a) program; (2) the basis for SBA's decision to sole-source the training contract to VBP; and (3) whether SBA followed Federal regulations and Agency procedures in awarding the contract.

To determine whether the 8(a) application for VBP was processed in accordance with SBA guidance, we reviewed VBP's 8(a) application file from SBA's Arizona District Office. We examined VBP's initial 8(a) application, SBA's initial rejection, VBP's reconsideration request, and documentation supporting SBA's approval of VBP's application. In addition, we interviewed SBA personnel involved in the approval of the 8(a) application. We examined VBP's reported contract income revenue from the U.S. Department of Agriculture (USDA), confirmed the owner's (b) (6) employment status at the time of his firm's application to the 8(a) program, and reviewed (b) (6) bank statements to determine the origin of deposits that were represented as contract income.

We met with representatives of VBP and interviewed SBA officials involved in the decision to sole-source the training services contract to VBP to determine the Agency's reasons for sole-sourcing the award and for selecting VBP. To determine whether the contract awarded to VBP was completed in accordance with Federal regulations and SBA procedures, we evaluated SBA's request for proposal and documentation supporting the contract award for compliance with relevant provisions of the Federal Acquisition Regulation, Code of Federal Regulations, and Agency guidance. We also interviewed SBA personnel involved with the contract award process. The review was conducted between February 11, 2008 and June 2, 2008. A more detailed discussion of our review scope and methodology is provided in Appendix II.

## **BACKGROUND**

The purpose of the 8(a) Business Development program is to assist eligible small disadvantaged businesses in competing in the American economy through business development. Generally, a business meets the basic requirements for admission to the 8(a) program if it is a small business that is unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of the United States. The business must also possess reasonable prospects for success in competing in the private sector if admitted to the 8(a) program.

To demonstrate the potential to succeed, an applicant must be in business in its primary industry for at least 2 full years immediately prior to the date of application and have access to credit and capital to maintain its business operations. Under 13 CFR 124.107(b)(1), SBA may waive the 2-year requirement if the applicant has:

- Substantial business management experience;
- Technical experience to carry out the company's business plan with a substantial likelihood for success;
- Adequate capital to sustain the company's operations and carry out its business plan;
- A record of performance on contracts in a primary industry category; and
- The ability to timely obtain the resources needed to perform contracts.

SBA approves applicants for the industry code that best describes the primary business activity of the firm. Applicants must submit evidence of their business experience and record of contract performance in that primary industry.

VBP initially applied to the 8(a) program on February 17, 2006, only 11 days after it had established itself as a business. On April 20, 2006, SBA's San Francisco Division of Program Certification and Eligibility rejected VBP's application. The application was rejected because it: (1) did not have adequate capital, a record of performance, and the ability to obtain resources needed to waive the 2-year requirement; and (2) had not yet generated any revenue to demonstrate a sufficient record of performance to meet the "potential for success" requirements of the 8(a) program. SBA informed VBP that the application could be reconsidered if it provided sufficient evidence addressing SBA's concerns. SBA received additional documents for reconsideration on May 30, 2006, and accepted VBP into the program on June 8, 2006, or about 1.5 months after initially rejecting the firm.

Once admitted to the 8(a) program, SBA can award participants contracts under other industry codes, as long as they are qualified to perform the required services and meet the size standard for that code. SBA can also award contracts to participants on a sole-source basis. Generally, sole-source contracts must be valued under \$5.5 million for manufacturing, or under \$3.5 million for all other supplies and services. Any subcontracts made under the sole-source award must comply with limitations on how much work can be subcontracted,<sup>1</sup> and must be specifically approved by a Contracting Officer. SBA's Division of Procurement and Grant Management (Procurement Office) is responsible for ensuring that 8(a) awards for SBA procurements comply with Agency regulations.

On September 26, 2007, SBA awarded a \$1.2 million sole-source contract to VBP to manage a national training program for entrepreneurs. The industry code used for the award was "Professional and Management Development Training," an approved secondary industry code for VBP. Under the terms of the contract, VBP was to perform at least 50 percent of the contract work with its own employees, measured by the participant's direct labor costs and associated overhead, plus a portion of its general and administrative expenses. As of April 22, 2008, VBP had billed SBA \$484,000 on the contract.

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<sup>1</sup> 13 CFR 125.6.

## RESULTS IN BRIEF

SBA granted VBP 8(a) certification without ensuring that the company met all of the Agency's requirements for acceptance into the 8(a) program. Generally, applicants must be in business for at least 2 full years immediately prior to the date of application; but, as described in the background section of the report, a waiver can be granted if the applicant meets all five conditions for acceptance. SBA granted VBP a waiver from the 2-year requirement even though the firm had not established a record of successful performance in its primary industry, which is one of the five conditions for obtaining the waiver and establishing the potential for success. VBP's only completed contract at the time of its application for reconsideration was just 11 days in duration and was outside the primary industry for which it was approved. Although SBA has admitted firms that have been in business for less than 2 years, VBP, with approximately 4 months of business experience, had the least amount of experience of any of the firms accepted into the 8(a) program since 2006. The average length of business experience of firms receiving 2-year waivers over that time was 16 months.

SBA's approval was also based on documents submitted by VBP that were false or of questionable authenticity. In making its decision to accept VBP into the 8(a) program, SBA relied heavily on contracts that VBP claimed to have with USDA. SBA did not verify the existence of these contracts or the related income, and instead relied exclusively on letters of reference from USDA officials, which stated that VBP had completed "assignments" for USDA. However, when asked by the OIG to produce proof of the contracts, (b) (6) produced a letter that had been altered to show that VBP had completed "contracts" for USDA where "assignments" had been used in the original letter sent by USDA.

A more thorough validation would have revealed that VBP did not have USDA contracts and the related income. No contracts were entered into the Federal Procurement Data System nor could they be produced by USDA. Also, VBP submitted "invoices" that did not match bank record deposits. The deposits represented one-third of the contract income reported by VBP.

In submitting the application for program admission, (b) (6) falsely certified that he was not a Federal employee. According to USDA personnel records, (b) (6) was employed as the (b) (6) at USDA when he initially applied to the 8(a) program. According to the SBA officials who processed VBP's application, the applicant would not have been able to demonstrate the potential for success due to the FAR provision prohibiting contract awards to Government employees. Further, we found that VBP submitted bank records of deposits to evidence its contract with USDA and to demonstrate VBP's contract income, which had certain information blacked out. Upon

questioning, (b) (6) admitted that he blacked out sensitive personal information (social security and bank account numbers) which included “Fed Salary” describing each deposit. Under SBA regulations, (b) (6) misrepresentation of contract income and his employment status at the time of application are grounds for VBP’s termination from the 8(a) program.

VBP’s acceptance into the 8(a) program was also highly unusual and constituted a deviation from SBA’s normal approval process. For example, the Business Opportunity Specialist (BOS), who recommended approval of VBP’s application, did so on a Sunday, within 19 minutes of receiving VBP’s electronic request for reconsideration. A review of the Sunday, June 4, 2006, event log for SBA’s electronic approval system also showed that not only were the login accounts of the BOS and his supervisor accessed on that Sunday, but their login/logout entries were so closely timed, it appeared that the same person was acting as reviewer and authorizing official. The BOS and his supervisor both confirmed that the BOS, as well as other coworkers, had the supervisor’s password. Therefore, it is plausible that the BOS gave both the initial recommendation for, and supervisory approval of, VBP’s application. Finally, in recommending approval of VBP’s reconsideration request, the BOS claimed that he reviewed supplemental documentation that VBP had submitted 5 days earlier. However, Agency records showed that the BOS was on leave for that entire week.

Just over 1 year after its entry into the 8(a) program and with a limited record of performance, VBP received a sole-source contract from SBA to provide training services, which had previously been delivered by another contractor through various subcontractors. SBA’s Office of Management and Technical Assistance (Program Office) intended to compete the contract.<sup>2</sup> However, SBA’s Procurement Office did not timely process the procurement, and required that the contract be awarded on a sole-source basis, citing the lack of time as the factor in its decision. According to the Contracting Officer’s Technical Representative (COTR), the Procurement Office’s late action led the Program Office to pursue the services of the prior subcontractors. To accomplish this, the Program Office attempted to identify another 8(a) firm who would retain the previous subcontractors. Consequently, VBP was awarded the contract after proposing to use the previous contractor’s personnel, and is currently fulfilling the contract through the former program manager and several of the previous trainers.

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<sup>2</sup> 13 CFR 124.506(a) states that procurements below the competitive threshold can only be awarded competitively if there is a waiver by the Director, Office Business Development. In the VBP procurement, the Director of the Office of Business Development appeared to have favored such a waiver since he directed that the VBP procurement, which was under the competitive threshold, be awarded as an “8(a) competitive award.”

Finally, in its haste to make the award, the Procurement Office did not assess VBP's intentions to meet the limitations on subcontracting, as required under Agency regulations.<sup>3</sup> SBA should have questioned VBP's ability to abide by these subcontracting limitations as, at the time of contract award, VBP only had two employees and was planning to heavily rely on subcontractors who provided training under the former contractor.

Because VBP misrepresented its contract income and the owner's employment status in its application for the 8(a) program, we recommended that SBA immediately suspend VBP from the 8(a) program, and initiate termination proceedings. We also recommended that SBA initiate debarment proceedings and suspend VBP if an immediate need is identified. Further, SBA should initiate termination of the training services contract as soon as practicable, and take the necessary steps to strengthen guidance and controls over waiver of the 2-year in business rule and to prevent the sharing of supervisory passwords with subordinates.

## **RESULTS**

### **SBA Inappropriately Granted VBP 8(a) Certification**

SBA granted VBP 8(a) certification despite: (1) an insufficient record of successful performance in the firm's primary industry—a key condition for obtaining a waiver for SBA's 2-year requirement and for establishing the potential for success; and (2) documents establishing the existence of contracts that were false, of questionable authenticity, and which did not represent the primary industry for which VBP was approved. Although VBP's certification was approved by three higher-level officials, including SBA's then-Associate Administrator for Business Development, SBA's review process did not identify these issues.

In reviewing VBP's complete submission, we found that it had not established a sufficient record of performance in its primary industry. To establish a record of performance, VBP submitted six contracts and two other agreements covering a 3-month period. However, only one of the contracts, which lasted just 11 days, had been completed as of May 22, 2006, when VBP submitted its application for reconsideration. VBP was unable to establish a more extensive record of performance because the firm had only been in business for approximately 4 months as of June 8, 2006—the date VBP was admitted to the 8(a) program.

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<sup>3</sup> 13 CFR 125.6(a)(1) and 13 CFR 124.510(b).

Also, VBP had the least amount of experience of any of the firms accepted to the 8(a) program during Fiscal Years 2006 and 2007 and was one of only four firms with less than 6 months in business at the time of acceptance. According to SBA records, 157 firms received 2-year waivers during that time. The average time in business for these 157 companies at the time of acceptance was 16 months, and 42 were in business for less than 1 year.

SBA's review process did not identify these issues primarily because the Agency's guidelines do not define what an adequate record of performance is or specify a minimum amount of time in business that an applicant must demonstrate to obtain a waiver from SBA's 2-year rule. SBA's internal operating procedures<sup>4</sup> provide no guidance on when the 2-year rule should be waived, or what type of documentation the Agency should obtain to justify a waiver from SBA's 2-year rule.

Further, in making its decision to accept VBP into the 8(a) program, SBA relied heavily on "contracts" that VBP reported having with USDA, where (b) (6) had been previously employed. However, SBA did not verify the existence of these contracts or the related income, and instead relied exclusively on letters of reference from USDA officials, fraudulent invoices for services rendered to USDA, and electronic deposit records that were altered to hide information identifying the deposits as Federal salary. One of the key letters provided with VBP's reconsideration request, which was written by a senior USDA official, stated that VBP had completed "assignments" for USDA. The letter was accepted by SBA as proof of USDA's contracts with VBP. However, had SBA attempted to confirm the existence of the USDA contracts, it would have found that the contracts were never entered into the Federal Procurement Data System nor could they be produced by USDA.

(b) (6) was also unable to provide the OIG with the actual contract documents. As proof of his contracts with USDA, he provided the OIG a similar letter of reference that he submitted with his application for reconsideration. The letter provided to OIG during the audit was an altered version of the original letter. The letter provided to the OIG stated that VBP had completed "contracts" for USDA. The letterhead as well as the signature on the copy provided to the OIG also differed from that appearing on the original document contained in the 8(a) file. Upon our request for all existing copies of letters on VBP's behalf, USDA was unable to locate or provide a copy that matched the letter that (b) (6) had presented to the OIG, which stated that VBP had completed "contracts" for USDA.

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<sup>4</sup> Standard Operating Procedure 80 05, Chapter 2D, Paragraph 10.



VBP also submitted altered bank records showing deposits that it claimed were contract payments from USDA, which SBA did not verify. Upon further analysis, these payments, which represented one-third of the contract income reported by VBP, constituted (b) (6) Federal salary. According to personnel and payroll records obtained from USDA, (b) (6) was an employee of USDA until September 1, 2006. Although appointed to a “consultant” position on March 19, 2006, he was still considered to be an employee and was receiving health and life insurance benefits from the Federal government until his departure in September 2006. In VBP’s February 2006 application (prior to (b) (6) appointment to a consultant position), he certified that he was not a Federal employee at that time. However, USDA personnel records show that (b) (6) was employed as the (b) (6) at the time of his application for 8(a) certification. According to SBA officials who processed VBP’s application, VBP would have been declined if they had known about the owner’s status as a Federal employee.<sup>5</sup>

A review of USDA payroll records and (b) (6) bank statements confirmed that the bank deposit records submitted by VBP to SBA to evidence VBP’s contract with USDA constituted (b) (6) Federal salary payments for the months of February, March, and April, 2006. These payments were identified as Federal salary on (b) (6) bank statements. However, (b) (6) redacted information that identified it as Federal salary on the deposit records provided to SBA with his application. Thus, (b) (6) misrepresented Federal salary payments from USDA as contract income earned by his company in order to establish VBP’s record of performance.

Further, (b) (6) created VBP invoices that matched his Federal salary payments in order to claim those payments as contract income. We identified the following discrepancies between February, March and April, 2006 invoices used to document VBP’s income from USDA contracts and bank records submitted in VBP’s application that raised questions regarding the authenticity of the invoices:

- The February 2006 invoice indicated services had been provided to USDA beginning on February 1, 2006—6 days before VBP had been established as a business.
- VBP submitted two sets of invoices with differing amounts for services provided in March and April, 2006—first in April to support its initial application and later in May to support its application for reconsideration.

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<sup>5</sup> According to these officials, VBP would have been declined for two reasons: (1) failure to meet the requirement that an applicant must devote full-time to the business found at 13 CFR 124.106(a)(3); and (2) because FAR 3.601 prohibits contracting officers from awarding contracts to a business owned by a Government employee, the applicant would fail to meet SBA’s “potential for success” requirement.

The invoices for work performed in March increased by \$414 between the April and May submissions, while the invoices for work in April decreased by \$2,441 between the first and second submissions. The changes in the invoice amounts resulted in a match of (b) (6) Federal salary deposits for those months.

- None of the three invoices (February, March, and April 2006) matched corresponding bank deposits. The February invoice was for \$7,583, but the corresponding deposit was for \$7,583.40. The March invoice was for \$7,014, but the corresponding deposit was for \$7,014.65. Finally, the April invoice was for \$4,559, but the corresponding deposit was for \$4,559.39. The discrepancies between the invoices and deposits were not explained.

Interviews with several USDA officials confirmed that (b) (6) never submitted the invoices to USDA for payment. When asked about the authenticity of the invoices, (b) (6) admitted that the invoices he submitted to SBA were not actual invoices used to bill USDA. In a June 2, 2008, letter to the OIG, (b) (6) stated that the invoices submitted with his application were "... never submitted to USDA for payment, and the only reason they were part of my application in the first place is that SBA told me that they needed detailed documentation of the work I had performed on the USDA contract." (b) (6) also indicated that he had conversations with SBA officials, who knew that the invoices were only a "record of work" and not actual invoices, but had told him to submit them.

Additionally, information submitted to support contracts with VBP's other clients contained additional discrepancies that SBA should have questioned. Table 1 below summarizes our concerns with the documents submitted by VBP.

**Table 1.**  
**Discrepancies in Documents Provided to Establish VBP's Record of Performance**

Client	Documents Provided	Concerns
Client A (USDA)	2 letters of reference 3 invoices 6 electronic deposit records Conference itinerary	<ul style="list-style-type: none"> <li>• No contract was provided.</li> <li>• Dates and amounts on invoices were altered between the first and second time they were submitted to SBA.</li> <li>• 1 invoice indicated that work was performed prior to the existence of the company.</li> <li>• Payments were deposited into the owner's personal bank account, not VBP's bank account.</li> </ul>
Client B	Seminar itinerary 2 invoices Copies of 2 checks	<ul style="list-style-type: none"> <li>• No contract was provided.</li> <li>• No proof was provided that checks were deposited and cancelled.</li> <li>• Checks were in non-sequential order.</li> </ul>
Client C	1 completed contract 1 ongoing contract 2 invoices Copies of 2 checks Letter of reference	<ul style="list-style-type: none"> <li>• VBP's only completed contract was 11 days in duration.</li> <li>• No proof was provided that checks were deposited and cancelled.</li> <li>• One check did not correspond to invoice amount or contract terms.</li> <li>• Letter of reference identified performance dates that were inconsistent with the contract terms.</li> </ul>
Client D	1 ongoing contract 2 invoices Copy of 1 check Letter of reference	<ul style="list-style-type: none"> <li>• No proof was provided that check was deposited and cancelled</li> <li>• 1 invoice was dated prior to the contract signing date or start of the contract term.</li> </ul>
Client E	1 ongoing contract 3 invoices Copies of 2 checks	<ul style="list-style-type: none"> <li>• No proof was provided that checks were deposited and cancelled.</li> </ul>
Client F	1 ongoing contract 3 invoices Emails with company officials	<ul style="list-style-type: none"> <li>• No evidence was provided of performance.</li> <li>• 1 invoice was dated prior to the start of the contract term.</li> <li>• VBP was registered to the same address as the client.</li> </ul>
Client G	1 ongoing contract 3 invoices	<ul style="list-style-type: none"> <li>• No evidence was provided of performance.</li> <li>• 1 invoice had conflicting date and invoice numbers.</li> </ul>

Source: SBA 8(a) application file

Finally, contracts submitted by the firm did not represent the primary industry for which VBP was approved. SBA procedures and regulations<sup>6</sup> require that a record of successful performance be established in the applicant's primary industry category. VBP's primary industry code covered "human resources and executive search consulting services," which was unsupported by the contracts submitted

<sup>6</sup>SOP 80 05 3 and 13 CFR 124.107(b)(1)(iv).

with the firm's application. For example, VBP's only completed contract related to media and political consultation services in a gubernatorial primary campaign. Despite the BOS's questioning of VBP's primary industry code in the rejection of the initial application, the issue was never resolved upon reconsideration. SBA approved a different primary industry code for "offices of lawyers," also unsupported by the submitted contracts, as part of VBP's business plan shortly after it entered the 8(a) program.

SBA regulations provide that submission of false information in an application for admission to the 8(a) program is a basis for program termination.<sup>7</sup> At the time of application, (b) (6) signed a certification acknowledging that any false statements made to influence SBA's decision could result in termination from the 8(a) program, as well as suspension and debarment, among other remedies. Based on the misleading claims and misrepresentations made by (b) (6), we believe that SBA should immediately initiate proceedings to terminate VBP from the 8(a) program and suspend VBP's participation. SBA should also initiate debarment proceedings.

### **The Circumstances Surrounding VBP's Approval Were Highly Unusual**

SBA's acceptance of VBP into the 8(a) program was highly unusual and constituted a deviation from the Agency's normal approval process. The BOS in SBA's San Francisco Division of Program Certification and Eligibility recommended approval of VBP's electronic request for reconsideration on a Sunday, within 19 minutes of receiving VBP's electronic application. The BOS, who claimed no specific recall of VBP's application, speculated that he contacted the applicant on Sunday to get him to place his application in the electronic reconsideration queue in order to process the application. However, based on system records from that Sunday, the applicant did not initiate the reconsideration request action. The applicant also told us that he had not been contacted by the BOS to move his application to the reconsideration queue.

A review of the Sunday, June 4, 2006, event log for SBA's electronic approval system, the *8(a) and SDB Certification System*, raised additional concerns. The log revealed that not only were the login accounts of the BOS and his supervisor both accessed on that Sunday, but their login/logout entries were closely timed, giving the appearance that the same person was acting as reviewer and authorizing official. As shown in Table 2., we discovered a pattern where when one individual logged-off, the other logged-in.

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<sup>7</sup> 13 CFR 124.303(a).

**Table 2.**  
**June 4, 2006, Login and Logout Times on**  
**SBA's 8(a) and SDB Certification System**  
**by SBA Officials Approving VBP's Application**

<b>User ID</b>	<b>Login Time</b>	<b>Logout Time</b>
BOS	2:22	3:05
BOS Supervisor	3:05	3:11
BOS	3:12	3:47
BOS Supervisor	4:22	4:27
BOS	4:29	4:37
BOS Supervisor	4:38	4:50
BOS	4:50	4:53

When interviewed, the BOS and his supervisor both confirmed that the BOS, as well as other coworkers, had the supervisor's password and frequently logged into the system as the supervisor to process 8(a) applications. Therefore, it is plausible that the BOS gave both the initial recommendation for, and supervisory approval of, VBP's application. By sharing her password with her subordinates, the supervisor circumvented an important internal control that was designed to ensure that no one individual could grant certification to the 8(a) program. Because the same individual could recommend and approve an applicant for the 8(a) program, the Agency is susceptible to potential employee acceptance of bribes and kickbacks in return for 8(a) certification.

Finally, in recommending approval of VBP's reconsideration request, the BOS also claimed that he reviewed supplemental documentation VBP had submitted 5 days earlier. However, Agency records show that the BOS was on leave for that entire week. When questioned about this, the BOS stated that he had no specific recall, but he frequently worked while he was on leave and probably went to the office to review the documents before recommending approval.

The unusual circumstances surrounding VBP's certification merit management attention given that a significant internal control was breached when the supervisor shared her password with subordinates. Consequently, SBA will need to reinforce the importance of adhering to the Agency's policy on maintaining password integrity. Also because password sharing among individuals in the San Francisco Office left the Agency vulnerable to improper certification decisions, SBA will need to review a sample of approvals that were made by each BOS since June 2006, with a focus on those that involved a waiver of the 2-year in business rule, to ensure that certifications were properly granted.

## **SBA Selected VBP to Retain the Program Manager and Trainers from the Previous Contractor**

VBP was awarded a sole-source contract by SBA on September 26, 2007. At the time SBA negotiated the sole source award with VBP, the contract was being performed by another 8(a) contractor through an 8(a) competitively-awarded, firm-fixed price contract in its second option year of performance. Although SBA was pleased with the training services provided under the contract—primarily through subcontractors—it was not satisfied with the incumbent’s administration of the contract. As a result, SBA’s Program Office did not exercise the third of three option years, and sought to award a new contract through an 8(a) competition.

On July 6, 2007, the Program Office submitted a request to the SBA Procurement Office to compete the contract. While the procurement was under the competitive threshold and should have been sole-sourced, the Director of the Office of Business Development had given his approval for the procurement to be treated as an “8(a) competitive award.” Although this request was a timely submission, the Procurement Office did not process it until August. It then informed the Program Office that it did not have sufficient time to award the contract competitively before the end of the fiscal year.

The Program Office’s primary concerns in finding a new contractor were to ensure continuity of training services and to avoid the delay of finding new trainers. Although, according to the COTR, SBA was aware that the previous contractor’s substantial reliance on subcontractors precluded them from performing the required amount of work, SBA still sought to secure the services of the original subcontractors under the new award using a similar arrangement. The project manager on the previous contract—a former associate of (b) (6) from USDA—approached VBP and proposed that VBP submit a proposal, using the incumbent instructors (all subcontractors) and inform SBA of VBP’s interest and capability.

The former project manager subsequently was designated by VBP as its Senior Vice President for Training. VBP informed SBA that it had established relationships, through the efforts of the former project manager and VBP, with several of the subcontractors who provided training services under the former contractor. Among these subcontractors was a former 8(a) participant who had provided training for SBA, first as a program participant and later as a subcontractor since 2003. Program Office officials cited VBP’s plans to work with these subcontractors as the deciding factor in recommending VBP for the contract.

## **In Awarding the Contract, SBA Did Not Ensure that VBP Could Adhere to Limitations on Subcontracting and that the Contract Price Was Reasonable**

SBA awarded the contract to VBP without assessing the firm's intentions to meet the limitations on subcontracting, as required by the Agency's own regulations.<sup>8</sup> SBA regulations require that 8(a) contractors on service contracts perform at least 50 percent of the work with their own employees. Contractors are required to certify in their offers that they will meet the applicable percentage of work requirement. The percentages and requirements relating to them are also the same for small business set aside contractors.<sup>9</sup> The regulation also requires SBA to determine whether the firm will be in compliance as of the date of contract award.

Despite this requirement in SBA's own regulations, the Agency did not assess VBP's ability to comply at the time of the award. SBA should have questioned VBP's ability to comply with the subcontracting limitations as VBP had only two employees at the time of the award and had informed the Program Office that it planned to rely heavily on the subcontractors who were providing training under the incumbent contract.

In addition, VBP's cost proposals did not provide—and SBA did not insist on obtaining—contract labor cost detail, as was required by the Request for Proposal. Instead, VBP submitted prices for each class, without indicating who would be conducting them, the labor hours involved, or the hourly rate.<sup>10</sup> This impaired SBA's ability to evaluate the reasonableness of proposed prices as well as the amount of labor proposed to be performed by VBP employees versus its subcontractors. As a result, SBA did not have an adequate basis for evaluating the reasonableness of the contract price or for making the award to VBP.

Since the contract was awarded, VBP has added subcontractors who performed as contract trainers. For example, VBP's Senior Vice President for Training advised the OIG that 76 of the planned 100 classes would be performed by these subcontractors. Each of the subcontractors should have been approved by SBA before they conducted training under the contract. However, we found no evidence in SBA's contract files that VBP sought or that SBA provided its consent to these subcontracts as required regulations and the terms of SBA's contract with VBP.

To ensure that the Agency adheres to its own regulations on subcontracting limitations, SBA will need to reinforce the requirement that the ability of

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<sup>8</sup> 13 CFR 125.6(a)(1), 13 CFR 124.510(a).

<sup>9</sup> 13 CFR 125.6.

<sup>10</sup> The percentage of work performed is determined based on direct labor costs and associated overhead, plus a portion of the contractor's general and administrative expenses (13 CFR 125.6(e)(2)).

contractors to comply with these limitations be assessed at the time of contract award, and that sufficient labor cost detail be obtained to properly evaluate continued compliance.

## RECOMMENDATIONS

We recommend that you direct the appropriate staff to:

1. Immediately suspend VBP from the 8(a) program and immediately initiate termination proceedings.
2. Initiate debarment proceedings for VBP under either SBA's nonprocurement debarment and suspension procedures or the FAR. If immediate action is necessary to protect the Government's interest, impose suspension under those rules.
3. Initiate termination proceedings on the VBP training contract as soon as practicable.
4. Establish additional guidelines on when it is appropriate to waive the 2-year-in-business rule, and strengthen controls for ensuring that applicant firms granted 8(a) certification have adequate records of performance to succeed in the program.
5. Take appropriate action to address the breach of access controls over the *8(a) and SDB Certification System* committed by the San Francisco Division of Program Certification and Eligibility, and reinforce the importance of adhering to the Agency's policy on maintaining password integrity.
6. Review a sample of other 8(a) certifications made by the San Francisco Division of Program Certification and Eligibility since June 2006, with a focus on those that involved a waiver of the 2-year in business rule, to ensure that they were properly made.
7. Require an assessment of contractor ability to comply with subcontracting limitations at time of contract award, and require sufficient labor cost detail be obtained to properly evaluate continued compliance.



## AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

On June, 17, 2008, we provided the Acting Administrator the draft report for review and comment. On July 15, 2008, we received formal written comments from the Associate Administrator for Government Contracting and Business Development and the Associate Administrator for Management and Administration. The full text of management's comments can be found in Appendix III to this report.

Management concurred with all of the report recommendations and stated that on July 3, 2008, it initiated actions to suspend and terminate the VBP Group from the 8(a) program. Management also indicated it would work with SBA's Office of General Counsel to initiate debarment of VBP, and agreed to take steps to further ensure that only eligible individuals receive 8(a) certification through proper procedures, training and enforcement actions against those firms that misrepresent their status. Finally, management responded that it took immediate action to address the breach of access controls over the 8(a) and *SDB Certification System*.

Management concurred with the overall findings of the report, but stated that it was unable to substantiate that the Business Opportunity Specialist (BOS) processed and approved the VBP firm, as inferred by the report. Management stated that its own review revealed that the supervisor's password was used by the BOS to administratively move the case from the decline status to the reconsideration status so that he could process the firm's request for reconsideration. The approval was made by the supervisor on the following day, and not within the time frames outlined in the report.

Management's comments are responsive to the report recommendations, and we commend the Agency for promptly addressing the security breach and other issues identified in the report. However, we do not believe the Agency has properly characterized our findings relative to the electronic approval of VBP's reconsideration request. Contrary to what management suggests, the report does not conclude that the BOS both recommended for approval and approved VBP's request, nor does it state that the final approval occurred the same day that it was submitted for reconsideration. We merely reported that the BOS had his supervisor's password; and therefore, had the capability to both process and approve the application. As a result, SBA has no way of determining who made the electronic approval, which was logged under the supervisor's password. Further the report states that the request was "recommended for approval" on the same day that the reconsideration request was electronically submitted. This recommendation would have to be accepted by the supervisor to constitute SBA's "final approval." This approval was made the following day, and as indicated on

page 3 of the report, VBP was formally accepted into the program on June 8, 2006.

We appreciate the courtesies and cooperation of the Small Business Administration during this audit. If you have any questions concerning this report, please call me at (202) 205-[FOIA Ex. 2], or Heidi Leinneweber, Director, Business Development Programs Group.

# APPENDIX I. ADMINISTRATOR'S REQUEST



OFFICE OF THE ADMINISTRATOR

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

APPENDIX I

February 8, 2008

Honorable Eric Thorsen  
Inspector General  
US Small Business Administration  
409 Third Street, SW  
Washington, DC 20416

Mr. Thorsen:

Yesterday, during the Committee on Small Business public hearing on SBA's FY2009 budget request, Chairwoman Velazquez expressed concern over a specific issue regarding an SBA 8(a) contractor providing 7(j) services.

We have received the following information from the committee staff immediately after the hearing:

- The firm, VBP Group, LLC, is owned by a former employee at the US Department of Agriculture, (b) (6). It was founded in February of 2006, shortly after (b) (6) left USDA.
- VBP Group applied for 8(a) certification that same month, and was approved in June of 2006. This is far shorter than the usual requisite two year business operation, and even than the occasional waiver sometimes provided.
- The firm received a number of contracts both prior to and subsequent to its 8(a) certification. VBP Group is now also the largest provider of SBA 7(j) counseling services.

My concerns about this matter mirror the Chairwoman's concerns. I respectfully request that your office immediately investigate this 8(a) application and the contracts surrounding this application. I have directed SBA staff to actively assist in your performance of the investigation.

Should your staff have any questions please contact Frank Borchert in the Office of General Counsel or Molly Wilkinson, SBA Chief of Staff.

Sincerely,

[FOIA Ex 6]

Steven C. Preston  
Administrator

## APPENDIX II. OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of the review were to determine: (1) whether VBP met all of SBA's requirements for acceptance into the program; (2) the basis for SBA's decision to sole-source the training contract to VBP; and (3) whether SBA followed Federal regulations and Agency procedures in awarding an 8(a) sole-source contract to VBP.

To determine whether the 8(a) application for VBP was processed in accordance with SBA guidance, we reviewed VBP's 8(a) application file maintained by SBA's Arizona District Office. We specifically examined the initial submission of the 8(a) application, SBA's rejection letter, VBP's reconsideration request, and documentation supporting SBA's approval of VBP's application. In addition, we interviewed SBA district and headquarters personnel involved in the approval of the 8(a) application. We verified VBP's reported contract income from the U.S. Department of Agriculture (USDA), and confirmed the owner's (b) (6) employment status at the time of his firm's application to the 8(a) program. In addition, we conducted interviews with SBA's:

- Business Opportunity Specialist (BOS) in the San Francisco District Office, who was assigned to review VBP's 8(a) application and reconsideration package;
- Assistant Administrator, Department of Program Certification and Eligibility, Division of Program Certification and Eligibility (DPCE), who reviewed the BOS' work;
- Assistant Administrator, Certification and Eligibility, who electronically signed off on the application;
- Acting Associate Director for Business Development, who electronically signed off on the application;
- BOS from the Arizona District Office, who provided counseling and guidance on the 8(a) application process to VBP and is currently responsible for providing business development assistance to VBP; and
- Associate District Director, Business Development, for the Arizona District Office, who sent the letter congratulating VBP on being accepted into the 8(a) program, and notified VBP of its BOS assignment and additional items that need to be completed.

To determine whether the contract awarded to VBP was completed in accordance with Federal regulations and SBA procedures, we reviewed SBA's request for proposal and documentation supporting the contract award for compliance with relevant provisions of the Federal Acquisition Regulations (FAR), Title 13 of the Code of Federal Regulations, and Agency guidance. The supporting documents included the contract's request for proposal, technical proposal, cost proposal, technical evaluation, and the contract award. We also interviewed SBA personnel involved with the contract award process, including the:

- Former Contracting Officer Technical Representative, who provided administration and technical oversight of the prior contract and suggested VBP for the current contract;
- Contract Specialist, SBA Office of Management and Administration, who prepared the statement of work and request for proposal, arranged for a technical evaluation, obtained a legal review of the contract, and wrote the pre-offer letter;
- Contracting Officer, Director, Division of Procurement and Grant Management, who signed the contract and monitored VBP's performance; and
- Contracting Officer Technical Representative, who provided administration and technical oversight of the contract.

We also met with representatives of VBP, including (b) (6) and VBP's Senior Vice President for Training, and interviewed SBA officials involved in the decision to sole-source the training services contract to VBP to determine the Agency's reasons for sole-sourcing the award and selecting VBP. We conducted our review between February 11, 2008 and June 2, 2008.

### APPENDIX III. AGENCY COMMENTS

Date: July 15, 2008

To: Debra S. Ritt  
Assistant Inspector General for Auditing

Thru: /s/  
Jovita Carranza  
Acting Administrator

From: /s/  
Fay E. Ott  
Associate Administrator for Government Contracting  
and Business Development

Robert F. Danbeck  
Associate Administrator for Management and Administration

Subject: Response to Final Draft VBP Group Project Report  
No. 8004

cc: Calvin Jenkins, Deputy Associate Administrator  
for Government Contracting and Business  
Development

Joseph P. Loddio, Director for 8(a) Business Development

Thank you for your memorandum dated June 17, 2008, regarding the notification of acceptance of VBP Group into the 8(a) Business Development Program (BD) and the subsequent award of an 8(a) contract to provide management and technical assistance services to the 7(j) eligible business community.

The Office of Business Development is pleased to provide a response to the final draft audit report entitled, "VBP Group's Acceptance into the 8(a) Program and Contract with SBA for Training Services."

We concur with some of the overall findings of the Inspector General's (IG) report and are taking a number of steps to further ensure that only eligible individuals receive certification into the 8(a) BD program through proper procedures, training and enforcement for those firms that misrepresent their status. We also want to clarify procedures in place in order to provide additional clarification of our current process. On page 12 of the report it is inferred that the Business Opportunity Specialist (BOS) processed and approved the VBP firm. We are unable to substantiate that this in fact occurred. Our review revealed that the supervisor's password was used by the BOS to administratively move the case from the decline status to the reconsideration status so

that he could process the firm's request for reconsideration. At that time, the electronic application system only allowed the supervisor, clerical support staff, and the firm to move a case from the decline status to the reconsideration status. A modification of the electronic application system has since occurred and now a BOS assigned to a particular case can move cases from the decline status to the reconsideration status for processing. In this case the approval was made by the supervisor on the following day not within the timeframes outline in the report.

### **Recommendation Number 1:**

Immediately suspend VBP from the 8(a) program and immediately initiate termination proceedings.

### **SBA's Response:**

The Office of Business Development will initiate immediate action to simultaneously suspend and terminate the 8(a) Program Participation of the VBP Group. Termination and suspension action is for good cause based upon the following regulatory violations:

- 1) Submission of false information in the concern's 8(a) BD application, regardless of whether correct information would have caused the concern to be denied admission to the program, and regardless of whether correct information was given to SBA in accompanying documents or by other means. (See Title 13 CFR § 124.303(a)(1));
- 2) Failure by the concern for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, full-time day-to-day management, and control by disadvantaged individuals. (See Title 13 CFR § 124.303(a)(3));
- 3) Failure by the concern to obtain prior written approval from SBA for any changes in ownership or business structure, management or control pursuant to (See Title 13 CFR § 124.105 and 124.106 and § 124.303(a)(4));
- 4) Submission by or on behalf of a Participant of false information to SBA, including false certification of compliance with non-8(a) business activity targets in accordance with Title 13 CFR § 124.507 or failure to report changes that adversely affect the Program eligibility of an applicant or program participant under § 124.204 and § 124.112, where responsible officials of the 8(a) BD Participant knew or should have known the submission to be false. (See Title 13 CFR § 124.303(a)(15));

- 5) Conduct by the concern, or any of its principals, indicating a lack of business integrity. Such conduct may be demonstrated by information related to a criminal indictment or guilty plea, a criminal conviction, or a judgment or settlement in a civil case. (See Title 13 CFR § 124.303(a)(17); and

**Note:** Suspension and termination proceedings were initiated on July 3, 2008.

#### **Recommendation Number 2:**

Initiate debarment proceedings for VBP under either SBA's nonprocurement debarment and suspension procedures or the FAR. If immediate action is necessary to protect the Government's interest, impose suspension under those rules.

#### **SBA's Response:**

The Office of Business Development issued a suspension letter to VBP on July 3, 2008. The Office of Business Development will work closely with the Office of General Counsel (OGC) and will also initiate the debarment VBP.

#### **Recommendation Number 3:**

Initiate termination proceedings on the VBP training contract as soon as practicable.

#### **SBA's Response:**

On July 8, 2008, SBA prepared a Form 2 which was signed by the Director for Business Development, requesting termination of the 7(j) training contract. The effective date of the termination is July 14, 2008.

#### **Recommendation Number 4:**

Establish guidelines on when it is appropriate to waive the 2-year-in-business rule, and strengthen controls for ensuring that applicant firms granted 8(a) certification have adequate records of performance to succeed in the program.

#### **SBA's Response:**

BD will review existing controls and processes outlined in Chapter 2 (d) Section 10 of SOP 80 05 3 to ensure that adequate checks and balances are in place. SBA will also reinforce and clarify Agency procedures for granting waivers with the Division of Certification and Eligibility (DPCE) Central Office Duty stations (CODs) and field office staff during the training on "Issues Related to Initial and Continuing 8(a) Program Eligibility" which will take place July 15-17, 2008, in Dallas, TX.



We believe the two year waiver is applicable for companies that meet the criteria established in Chapter 2(d) Section 10 of SOP 80 05. The “two year in business” rule has been a positive factor in the overall delivery of the 8(a) BD Program and success of 8(a) Participants. In fact, we have had 8(a) firms such as [FOIA Ex. 6], RS Information Systems, that were admitted to the 8(a) Program as a result of having met the criteria the for a waiver of the two year-in-business rule, that are success stories. [FOIA Ex. 6] has since graduated from the 8(a) Program.

#### **Recommendation Number 5:**

Take appropriate action to address the breach of access controls over the *8(a) and SDB Certification System* committed by the San Francisco Division of Program Certification and Eligibility, and reinforce the importance of adhering to the Agency’s policy on maintaining password integrity.

#### **SBA’s Response:**

- BD has immediately required that the San Francisco Central Office Duty Station (CODS) to change passwords for BDMIS. In addition, written delegations of authority will be drafted, signed and distributed to staff detailing access and approval authority when the supervisor is out of the office.
- BD has met with the Offices of the Chief Information Officer and Human Capital Management to review Agency requirements regarding password security and develop a strategy for ensuring that CODS and field staff are adequately trained. A written delegation of authority for system access and approval when the supervisor is out of the office will be utilized.
- BD and the Office of Field Operations, working closely with OCIO, have made certain SBA's Computer Awareness Training is completed by appropriate SBA staff and contractor employees.
- BD will also emphasize the importance of protecting passwords during the training in Dallas, Texas on July 15, 16 and 17<sup>th</sup>.
- The Deputy Associate Administrator for Government Contracting and Business Development and the Chief of Human Capital Management review the internal control procedures at the San Francisco Certification and Eligibility Center. The review included personal face to face interview with management and the staff at the Center on July 10, 2008.
- SBA will also reinforce Agency procedures for granting waivers with the Division of Certification and Eligibility (DPCE) Central Office Duty stations (CODs) and field office staff during the training on “Issues Related to Initial and Continuing 8(a) Program Eligibility” which will take place July 15-17, 2008, in Dallas, TX.

#### **Recommendation Number 6:**

Review other 8(a) certifications made by each BOS in the San Francisco Division of Program Certification and Eligibility to ensure that they were properly made.

**SBA's Response:**

The Deputy AA for GCBD performed an onsite review of the San Francisco certification and eligibility on July 10, 2008. A test plan outlining a methodology for the review is also being developed to pursue an in-depth review of the 8a certification files generated in San Francisco.

**Recommendation Number 7:**

Require an assessment of contractor ability to comply with subcontracting limitations at time of contract award, and require sufficient labor cost detail be obtained to properly evaluate continued compliance.

**SBA's Response:**

We concur with the Inspector General's recommendation to require an assessment of contractor ability to comply with subcontracting limitations at time of contract award, and require sufficient labor cost detail be obtained to properly evaluate continued compliance. The Division of Procurement and Grants (DPGM) now has the necessary procedures in place to ensure compliance with this recommendation for both pre and post award reviews. In accordance with Title 13 CFR §125.6(a)(1) Prime Contractor Performance Requirement read in part: In the case of contract for services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees. DPGM will ensure that this requirement is being fulfilled by taking the following steps:

1. For all new awards, small businesses are required to certify in their offer, that it will meet the applicable percentage of work requirements;
2. Require that a prime contractor identify the task, percentage of work and the total dollar amount for all prime and subcontractor work, including all applicable cost;
3. Provide a description of the types of supplies and/or services; and
4. Submit invoices segregating all costs by the prime and subcontractors.