

§ 124.304

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§ 124.304 What are the procedures for early graduation and termination?

(a) *General.* The same procedures apply to both early graduation and termination of Participants from the 8(a) BD program.

(b) *Letter of Intent to Terminate or Graduate Early.* When SBA believes that a Participant should be terminated or graduated prior to the expiration of its program term, SBA will notify the concern in writing. The Letter of Intent to Terminate or Graduate Early will set forth the specific facts and reasons for SBA's findings, and will notify the concern that it has 30 days from the date of service (as defined in § 134.204 of this title) of the letter to submit a written response to SBA explaining why the proposed ground(s) should not justify termination or early graduation. Service is defined in § 134.204.

(c) *Recommendation and decision.* Following the 30-day response period, the Assistant Administrator for DPCE (AA/DPCE) or designee will consider the proposed early graduation or termination and any information submitted in response by the concern. Upon determining that early graduation or termination is not warranted, the AA/DPCE or designee will notify the Participant in writing. If early graduation or termination appears warranted, the AA/DPCE will make such a recommendation to the AA/8(a)BD, who will then make a decision whether to early graduate or terminate the concern. SBA will act in a timely manner in processing early graduation and termination actions.

(d) *Notice requirements.* Upon deciding that early graduation or termination is warranted, the AA/8(a)BD will issue a Notice of Early Graduation or Termination. The Notice will set forth the specific facts and reasons for the decision, and will advise the concern that it may appeal the decision in accordance with the provisions of part 134 of this title.

(e) *Appeal to OHA.* Procedures governing appeals of early graduation or termination to SBA's OHA are set forth in part 134. If a Participant does not appeal a Notification of Early Graduation or Termination within 45 days of the date of service (as defined

in § 134.204), the decision of the AA/8(a)BD is the final agency decision effective on the date the appeal right expired.

(f) *Effect of early graduation or termination.* After the effective date of early graduation or termination, a Participant is no longer eligible to receive any 8(a) BD program assistance. However, such concern is obligated to complete previously awarded 8(a) contracts, including any priced options which may be exercised.

§ 124.305 What is suspension and how is a Participant suspended from the 8(a) BD program?

(a) At any time after SBA issues a Letter of Intent to Terminate pursuant to § 124.304, the AA/8(a)BD may suspend 8(a) contract support and all other forms of 8(a) BD program assistance to that concern until the issue of the concern's termination from the program is finally decided. The AA/8(a)BD may suspend a Participant when he or she determines that suspension is needed to protect the interests of the Federal Government, such as where information showing a clear lack of program eligibility or conduct indicating a lack of business integrity exists, including where the concern or one of its principals submitted false statements to the Federal Government. SBA will suspend a Participant where SBA determines that the Participant submitted false information in its 8(a) BD application.

(b) SBA will issue a Notice of Suspension to the Participant's last known address by certified mail, return receipt requested. Suspension is effective as of the date of the issuance of the Notice. The Notice will provide the following information:

- (1) The basis for the suspension;
- (2) A statement that the suspension will continue pending the completion of further investigation, a final program termination determination, or some other specified period of time;
- (3) A statement that awards of competitive and non-competitive 8(a) contracts, including those which have been "self-marketed" by a Participant, will not be made during the pendency of the suspension unless it is determined by the head of the relevant procuring

agency or an authorized representative to be in the best interest of the Government to do so, and SBA adopts that determination;

(4) A statement that the concern is obligated to complete previously awarded section 8(a) contracts;

(5) A statement that the suspension is effective nationally throughout SBA;

(6) A statement that a request for a hearing on the suspension will be considered by an Administrative Law Judge at OHA, and granted or denied as a matter of discretion.

(7) A statement that the firm's participation in the program is suspended effective on the date the Notice is served, and that the program term will resume only if the suspension is lifted or the firm is not terminated.

(c) The applicant concern may appeal a Notice of Suspension by filing a petition in accordance with part 134 of this title with OHA within 45 days of the date of service (as defined in §134.204) of a Notice of Suspension pursuant to paragraph (b) of this section. It is contemplated that in most cases a hearing on the issue of the suspension will be afforded if the Participant requests one, but authority to grant a hearing is within the discretion of the Administrative Law Judge in OHA. A suspension remains in effect pending the result of its appeal.

(d) SBA has the burden of showing that adequate evidence exists that protection of the Federal Government's interest requires suspension before OHA or the AA/8(a)BD makes a final determination regarding the termination action.

(1) The term "adequate evidence" means information contained in the record before the AA/8(a)BD at the time of his or her suspension decision that is sufficient to support the reasonable belief that the Government's interests need to be protected.

(2) SBA need not demonstrate that an act or omission actually occurred in order for OHA to uphold a suspension. SBA's burden in a suspension proceeding is limited to demonstrating that it had a reasonable belief that a particular act or omission occurred, and that that act or omission requires suspension to protect the interests of the Government.

(3) Unless the Administrative Law Judge consolidates the suspension and termination proceedings, OHA's review is limited to determining whether the Government's interests need to be protected, and will not consider the merits of the termination action.

(e) If there is a timely appeal, the decision of the Administrative Law Judge is the final SBA decision. If there is not a timely appeal, the decision of the AA/8(a)BD is the final Agency decision.

(f) Upon the request of SBA, OHA may consolidate suspension and termination proceedings when the issues presented are identical.

(g) Any program suspension which occurs under this section is effective until such time as SBA lifts the suspension or the Participant's participation in the program is fully terminated. If the concern is ultimately not terminated from the 8(a) BD program, the suspension will be lifted and the length of the suspension will be added to the concern's program term.

(h) SBA may suspend a Participant from program benefits where a change of ownership or business structure has been requested if ownership or control of the participant changed prior to SBA's approval pending resolution of the request to change its ownership or control. If the change of ownership is approved, the length of the suspension will be added to the firm's program term where the change in ownership results from the death or incapacity of a disadvantaged individual or where the firm requested prior approval and waited 60 days for SBA approval before making the change. The suspension will be commenced by the issuance of a notice similar to that required for termination-related suspensions under paragraph (b) of this section, except that a change of ownership suspension is not appealable.

(i) SBA does not recognize the concept of de facto suspension. Adding time to the end of a Participant's program term equal to the length of a suspension will occur only where a concern's program participation has been formally suspended in accordance with the procedures set forth in this section.

(j) A suspension from 8(a) BD participation under this section has no effect on a concern's eligibility for non-8(a)

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Federal Government contracts. However, a debarment or suspension under the Federal Acquisition Regulation (48 CFR, chapter 1) will disqualify a concern from receiving all Federal Government contracts, including 8(a) contracts.

BUSINESS DEVELOPMENT

§ 124.401 Which SBA field office services a Participant?

The SBA district office which serves the geographical territory where a Participant's principal place of business is located normally will service the concern during its participation in the 8(a) BD program.

§ 124.402 How does a Participant develop a business plan?

(a) *General.* In order to assist the SBA servicing office in determining the business development needs of its portfolio Participants, each Participant must develop a comprehensive business plan setting forth its business targets, objectives, and goals.

(b) *Submission of initial business plan.* Each Participant must submit a business plan to its SBA servicing office as soon as possible after program admission. The Participant will not be eligible for 8(a) BD program benefits, including 8(a) contracts, until SBA approves its business plan.

(c) *Contents of business plan.* The business plan must contain at least the following:

(1) A detailed description of any products currently being produced and any services currently being performed by the concern, as well as any future plans to enter into one or more new markets;

(2) The applicant's designation of its primary industry classification, as defined in § 124.3;

(3) An analysis of market potential, competitive environment, and the concern's prospects for profitable operations during and after its participation in the 8(a) BD program;

(4) An analysis of the concern's strengths and weaknesses, with particular attention on ways to correct any financial, managerial, technical, or work force conditions which could

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impede the concern from receiving and performing non-8(a) contracts;

(5) Specific targets, objectives, and goals for the business development of the concern during the next two years;

(6) Estimates of both 8(a) and non-8(a) contract awards that will be needed to meet its targets, objectives and goals; and

(7) Such other information as SBA may require.

§ 124.403 How is a business plan updated and modified?

(a) *Annual review.* Each Participant must annually review its business plan with its assigned Business Opportunity Specialist (BOS), and modify the plan as appropriate. The Participant must submit a modified plan and updated information to its BOS within thirty (30) days after the close of each program year. It also must submit a capability statement describing its current contract performance capabilities as part of its updated business plan.

(b) *Contract forecast.* As part of the annual review of its business plan, each Participant must annually forecast in writing its needs for contract awards for the next program year. The forecast must include:

(1) The aggregate dollar value of 8(a) contracts to be sought, broken down by sole source and competitive opportunities where possible;

(2) The aggregate dollar value of non-8(a) contracts to be sought;

(3) The types of contract opportunities to be sought, identified by product or service; and

(4) Such other information as SBA may request to aid in providing effective business development assistance to the Participant.

(c) *Transition management strategy.* Beginning in the first year of the transitional stage of program participation, each Participant must annually submit a transition management strategy to be incorporated into its business plan. The transition management strategy must describe:

(1) How the Participant intends to meet the applicable non-8(a) business activity target imposed by § 124.507 during the transitional stage of participation; and