

Voluntary Suspension for 8(a) Businesses: Pros and Cons

Small businesses have been hit especially hard during the COVID-19 pandemic. Fortunately, many small businesses have been able to tap into incredible sources of relief - from Economic Injury Disaster Loans (EDIL) and the Paycheck Protection Program (PPP) - to specific forms of contractual relief for government contractors. One additional consideration for participants in the SBA's 8(a) Business Development Program is whether or not to voluntarily suspend its 8(a) status in lieu of the COVID-19 disaster declaration. Though a suspension could provide certain benefits to an 8(a) contractor, the decision should not be taken lightly, and an 8(a) Business owner should carefully weigh all of the relevant considerations.

The SBA's rules provide at 13 C.F.R. § 124.305(h)(1)(iii) that an 8(a) Business that "has a principal place of business located in a federally declared disaster area" can "elect[] to suspend its participation in the 8(a) BD program for a period of up to one year from the date of the disaster declaration." The rule further states that the 8(a) Business may lift the suspension prior to its originally requested end-date.

So, why would an 8(a) Business choose to do this? For one, it may be beneficial for the business simply to use the time to focus its resources elsewhere. Also, from a longer-term perspective, the time of the suspension will be added back to the 8(a) term after the firm is reinstated thus extending its time in the program. However, during the suspension, the 8(a) Business gives up the business development benefits of the 8(a) Program. Most notably, the 8(a) Business would generally be unable to be awarded *new* 8(a) set-aside and sole source awards. The suspension, though, should not affect ongoing 8(a) work including task orders under set-aside IDIQ contracts.

Essentially, the decision to take advantage of voluntary suspension really comes down to whether the 8(a) Business wants to forego near term 8(a) contract prospects for the advantages that come with suspending program participation. While suspension may not make sense for all 8(a) contractors, it is something certainly worth considering as one more tool to help navigate this uncertain time.

This article is for informational purposes only and does not constitute legal advice. For specific legal advice on any of the issues discussed above, please consider contacting ReavesColey government contracts attorneys Brad Reaves at brad.reaves@reavescoley.com and Paul Hawkins at paul.hawkins@reavescoley.com.