

**SBA No. BDPT-728, 2026 (S.B.A.), 2026 WL 1459511**

Small Business Administration (S.B.A.)

Office of Hearings and Appeals  
[Business Development Plan]

**IN THE MATTER OF: ATI GOVERNMENT SOLUTIONS, LLC, PETITIONER**

Decision No. BDPT-728  
May 18, 2026

**ORDER REMANDING PROCEEDING**

**I. Background**

\*1 On October 21, 2025, the Suspension and Debarment Official (SDO) of the U.S. Small Business Administration (SBA/ Agency) suspended ATI Government Solutions, LLC, (ATI/Petitioner), and Firmadge Crutchfield, Scott Deutschman, and Marina Mulyayeva (the individuals) under Section 9.407 of the Federal Acquisition Regulation (FAR). The stated reason for the suspension was certain statements made by an individual referred to as ATI's Contracts Manager. The SDO wrote that these statements constituted adequate evidence for suspension under [FAR §§ 9.407-2\(a\)\(3\) & \(a\)\(10\)](#). The SDO described these statements as:

1. The Susanville Indian Rancheria tribe does not in effect control ATI and the tribe knowingly ceded control to three nondisadvantaged individuals in ATI's executive team, specifically Mr. Crutchfield, Mr. Deutschman, and Ms. Mulyayeva;
2. ATI uses its 8(a) status to act as a “pass-through” for other businesses that would otherwise be ineligible for 8(a) awards;
3. ATI routinely does not meet the limitations on subcontracting requirements on its 8(a) contracts;
4. The tribe does not proportionally benefit from ATI's 8(a) contracts. Rather the tribe receives a percentage that is smaller than its ownership interest, and the remaining benefit goes to the nondisadvantaged management team.

The SDO further stated SBA believed ATI may have made false statements to SBA and other government agencies and considers this adequate evidence for suspension under [FAR 9.407-2\(a\)\(3\)](#). The Government must be able to rely on representations made to it by its contractors. When the Government has knowledge that one representation made by a contractor is false, it has reason to question all other statements made by that contractor. Therefore, these statements also call into question ATI's 8(a) eligibility, whether ATI meets the required performance of work and distribution of profits on all 8(a) contracts, and whether ATI complies with SBA's Mentor-Protégé program.

Further, a suspension may be based on “commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor.” [FAR § 9.407-2\(a\)\(10\)](#). As a result of these statements, ATI may have falsely obtained 8(a) certification and 8(a) contract awards. These actions indicate a lack of business integrity and business honesty, are further grounds for suspension, and call into question ATI's continued participation in further Federal Government transactions and programs.

\*2 The SDO further stated that “Under the suspension and debarment regulations, [t]he fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct. [FAR § 9.407-5](#) referencing [FAR § 9.406-5\(b\)](#).” The individuals were associated with ATI during the time of the alleged actions and knew or would have had reason to know of the alleged conduct. ATI may have improperly obtained 8(a) certification and 8(a) contract awards. The SDO therefore imputed ATI's actions to, and additionally suspended all three individuals

The SDO found that immediate need existed to suspend ATI and the individuals and that it was not in the Government's best interest to do business with ATI and the individuals. The SDO informed ATI and the other suspended individuals they had 30 days to submit opposition to the suspension. (Agency Response, Exhibit 1.)

On October 23, 2025, SBA's Acting Associate Administrator of the 8(a) Business Development Program (AA/BD) suspended ATI from further participation in the 8(a) Business Development (8(a) BD) Program under [13 C.F.R. § 124.305](#). The stated reason for the suspension was the same certain statements referred to in the October 21st Suspension Letter made by the individual referred to as ATI's Contracts Manager, namely:

1. The Susanville Indian Rancheria tribe does not in effect control ATI and the tribe knowingly ceded control to three nondisadvantaged individuals in ATI's executive team, specifically Mr. Crutchfield, Mr. Deutschman, and Ms. Mulyayeva;
2. ATI uses its 8(a) status to act as a “pass-through” for other businesses that would otherwise be ineligible for 8(a) awards;
3. ATI routinely does not meet the limitations on subcontracting requirements on its 8(a) contracts;
4. The tribe does not proportionally benefit from ATI's 8(a) contracts. Rather the tribe receives a percentage that is smaller than its ownership interest, and the remaining benefit goes to the nondisadvantaged management team.

The Suspension letter then went on to make essentially the same statements as the FAR suspension letter. It also said SBA believed Petitioner may have made false statements to SBA and other Government agencies. These statements were adequate evidence for suspension under [FAR 9.407-2\(a\)\(3\)](#). The Government must be able to rely on representations made to it by its contractors. When the Government has knowledge that one representation made by a contractor is false, it has reason to question all other statements made by that contractor. Therefore, these statements also call into question ATI's 8(a) eligibility, whether ATI meets the required performance of work and distribution of profits on all 8(a) contracts, and whether ATI complies with SBA's Mentor-Protégé program. Further, a suspension may be based on “commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor.” [FAR 9.407-2\(a\)\(10\)](#). The AA/BD concluded that as a result of these statements, ATI may have falsely obtained 8(a) certification and 8(a) contract awards. These actions may indicate a lack of business integrity and business honesty, are further grounds for suspension, and call into question ATI's continued participation in further Federal Government transactions and programs. These allegations constitute an inherent risk to Federal transactions, which justified immediate action. (Appeal, Exhibit 1.)

\*3 On December 8, 2025, Petitioner filed the instant appeal appealing the determination suspending Petitioner's participation in the 8(a) Business Development (BD) program.

Petitioner argues the decision to suspend Petitioner is based solely on uncorroborated and unverified hearsay statements allegedly made, and later recanted, on a hidden camera by a former short-term employee with no personal knowledge of Petitioner's compliance with 8(a) Program requirements or the applicable terms and regulation in 8(a)) government contracts.

Petitioner asserts the individual who stated she was the Contracts Manager was in fact a former short-term employee with no actual personal knowledge of Petitioner's compliance with 8(a) program regulations. Petitioner asserts the video is selectively

edited and was obtained by deceptive means by a producer known for posting unreliable and often deceptively edited videos of undercover interactions. Petitioner requests an oral hearing pursuant to [13 C.F.R. § 124.305\(c\)](#). (Appeal at 1-5.)

Petitioner argues that given the discredited producer's involvement, his admitted use of deceptive tactics, his long history of selective editing of videos to skew facts, Ms. Richards' recanting of the statements attributed to her, and SBA's lack of evidence of authenticity and reliability, the videos should have been deemed untrustworthy on their face. Petitioner argues there is plainly insufficient evidence on which to base SBA's agency action, particularly considering that neither SBA nor 8(a) Program personnel sought any information from ATI to corroborate the allegations. (*Id.* at 6.)

Petitioner argues the decision is not supported by adequate evidence, the required standard for a suspension. The AA/BD cannot rely upon uncorroborated suspicion or accusation. (*Id.* at 7.) Petitioner asserts the individual who made the statements was not, and is not currently an ATI principal, which SBA knew. Yet, there was no inquiry whatsoever into the statements made. [FAR 9.407-1\(b\)\(1\)](#) gives guidance to the kinds of documents that should be examined as part of a suspension decision, such as contracts, inspections reports, and correspondence. SBA conducted no such investigation and instead relied on a video that does not establish the individual had any personal knowledge of the facts underlying her statements. (*Id.* at 8-9.)

Petitioner contends the suspension decision is entirely conclusory, and agencies may not rely on mere conclusory statements to support a decision. Agencies must articulate a satisfactory explanation for their actions, and there must be a rational connection between the facts found and the choices made. The Suspension Notice does not explain the facts or evidence on which it reached its conclusions or reference the specific language purportedly used to make the alleged admission, or why SBA believes the statements are credible. (*Id.* at 10-11.)

\*4 Petitioner also alleges the Suspension Decision constitutes disparate treatment, because SBA has usually investigated allegations of violations of the regulations before suspending 8(a) firms, and it has not done so here. Petitioner identifies some examples. (*Id.* at 11-13.)

On December 17, 2025, I issued a Notice and Order directing SBA to submit its Response and the Administrative Record in this matter by February 2, 2026. The Order stated:

The Response must include a refutation of all material facts and arguments that SBA believes are in dispute. Otherwise, the Judge will consider the point waived. All factual assertions must be cited to the Administrative Record. If a factual assertion is not supported by a citation, the Judge will assume it is without support. This is especially true of any facts used to support SBA's underlying determination. ...

The Administrative Record must contain every document relevant to Petitioner's termination that the SBA possessed on the date of its determination, and upon which the decision-maker and those SBA officials who recommended for or against the determination relied. See [13 C.F.R. § 134.406\(c\)](#). The 8(a) BD program official must certify and authenticate that the Administrative Record, to the best of his or her knowledge, is a true and correct copy of all the documents he or she relied upon in making the determination being appealed. *Id.*

The Administrative Record shall be filed electronically. Pages must be numbered, and may be Bates stamped or separately numbered within each exhibit or individual document, as appropriate. Documents should be assembled in the order in which SBA received or sent them, with the most recent document (usually the determination letter) as Exhibit 1. A table of contents must list exhibits by tab number (or letter), with the date, author, and description of each document within the exhibit listed. Emails may be placed in one or more separate exhibit(s).

(Notice and Order at 1-2.)

On January 28, 2026, SBA filed its Response to the Appeal, with the Administrative Record. The Administrative Record consisted of one document, a copy of the October 21, 2025, letter suspending Petitioner and the individuals under FAR 9.407.

There was no certification or authentication by an 8(a) BD program official. There was no copy of the 8(a) Suspension Notice of October 23, 2025, itself.

SBA argues the 8(a) BD program regulations provide that “debarred or suspended concerns or concerns owned by debarred or suspended persons are ineligible for admission to the 8(a) BD program.” (Agency Response at 7, citing 13 C.F.R. § 124.108(a)(3).) SBA stated that “Petitioner is currently suspended pursuant to FAR 9.407-2(a)(3) and ineligible for contract awards. A FAR suspension is adequate evidence for an 8(a) BD program suspension; thus, the AA/BD's suspension of Petitioner is based on adequate evidence and is consistent with current regulations.” (Agency Response at 7.)

\*5 SBA argues that a party may obtain an oral hearing only if it is either (1) required by regulation, or (2) the Judge orders it upon concluding that there is a genuine dispute as to a material fact that cannot be resolved except by the taking of testimony and the confrontation of witnesses. (*Id.*, at 7, citing 13 C.F.R. § 134.222(a).) SBA asserts there is no regulatory requirement for a hearing and no genuine issue of material fact. Here, the issue is whether SBA established by adequate evidence that the suspension of Petitioner's participation in the 8(a) program is necessary to protect the interests of the Government. Adequate evidence means information contained in the record before the AA/BD at the time of her suspension decision and whether the conclusions drawn warranting a suspension were reasonable. (*Id.* at 7-8.) SBA concluded by requesting summary judgement as there is no dispute that Petitioner is suspended from Government contracting based on the FAR. (*Id.* at 8.)

On February 11, 2026, Petitioner filed an Objection to the Administrative Record, objecting to the absence of certain documents:

- 1.) The required certification by the 8(a) BD Program official authenticating the record.
- 2.) Any and all internal communications involving 8(a) BD Program officials exchanged following SBA's receipt of ATI's response to the 8(a) Notice of Suspension.
- 3.) ATI's November 23, 2025, written Response to the Notice of Suspension, including all exhibits.
- 4.) Any and all internal communications involving 8(a) BD Program officials exchanged following SBA's issuance of the 8(a) BD Notice of Suspension.
- 5.) The 8(a) Notice of Suspension issued by the AA/BD.
- 6.) Any and all internal communications involving 8(a) BD Program officials exchanged prior to October 23, 2025, related to Petitioner's suspension from the 8(a) BD Program.
- 7.) Any and all documents related to the original bases for suspension.
- 8.) SBA's Administrative Record for the FAR 9.407 suspension, which was previously provided to Petitioner by SBA counsel.

(Objection, at 4-5.)

Further, the Administrative Record SBA did submit failed to meet the requirements set forth in in the Notice and Order. The document was not numbered, not Bates stamped, and not assembled chronologically in respect to the Notice of Suspension. There was no table of contents, no citations to the Administrative Record in the Agency Response, and no certification from an 8(a) BD Program official regarding authentication and completeness. (*Id.* at 3.)

Petitioner argues SBA now takes the position for the first time that the basis for the 8(a) Suspension was the FAR Suspension of October 21st. Petitioner further argues that because SBA has changed its position, the Administrative Record must contain all documents dated after the suspension which led to SBA's decision to modify its basis for the suspension. (*Id.*) Petitioner maintains that supplementation of the administrative record is appropriate when SBA has provided an insufficient record. (*Id.*

at 6-7, citing *Matter of Strategyen Co.*, SBA No. BDPE-460 (2012); *Matter of The Corvus Group, Inc.*, SBA No. BDPE-180 (2002.)

\*6 On February 11, 2026, Petitioner filed a Motion for Leave to File a Consolidated Reply to the Agency Response, Motion for a Hearing, Opposition to the Agency's Motion for Summary Judgment, and Request for Summary Reversal of SBA's Decision, together with the Consolidated Motions. Petitioner argues good cause exists to permit it to file a Reply because SBA's Response states a different basis for the Suspension than the Suspension letter itself. Petitioner reported that SBA's Agency Representative has informed Petitioner's counsel it did not oppose the Motion.

The Reply first asserts SBA failed to comply with its obligation to submit a compliant Administrative Record. The record must contain all documents relative to the determination on appeal which the decision maker relied upon. (Motion at 8, citing 13 C.F.R. § 134.406(c)(1).) Petitioner points to the requirements of the Notice and Order, that the Agency Response must contain a refutation of all facts in dispute, or the matters will be considered waived. Further, SBA failed to produce a complete Administrative Record. It did not number, assemble, or provide a table of contents for the record. The Response fails to cite to pages of the Administrative Record. Failure to produce a compliant Administrative Record means every factual assertion SBA relies upon is without support. (Reply at 1-3.)

As noted above, Petitioner argues the position SBA takes now is materially different from the original stated basis for a suspension. Petitioner notes the AA/BD may suspend a Participant when they find suspension is needed to protect the Government's interest. (*Id.*, at 3-4, citing 13 C.F.R. § 124.305.) SBA must issue a Notice of Suspension which must include the grounds of the suspension. (13 C.F.R. § 124.305(b)(1).) Petitioner argues that any appeal from that Notice must relate to that Notice and its specific contents, not new grounds developed or identified by the Agency after an appeal is filed. A reviewing court considers only the rationale the agency gives for its actions at the time they occur and not *post hoc* rationalizations by agency counsel. (*Id.* at 4, citing *Friedler v. GSA*, 271 F. Supp 3d 40 (D.D.C. 2017).)

In *Friedler*, an individual successfully challenged his debarment because GSA relied upon two new grounds in the final debarment action not previously raised, and so the individual had no opportunity to contest them. That rendered the debarment arbitrary and capricious as a matter of law. (*Id.*)

Here, SBA's original Notice of Suspension stated it was based upon statements made by Petitioner's Contracts Manager. There is no mention of the Suspension based on FAR 9.407 suspending Petitioner from Government contracting as a whole. Yet, on appeal, SBA changes its position and relies on the earlier Suspension. This is arbitrary and capricious. (*Id.* at 5-6.)

\*7 Petitioner argues that, by not defending its original grounds for suspension, SBA has waived or otherwise implicitly conceded it cannot support them. Petitioner maintains its original Petition addressed and refuted the bases for the Suspension raised in the original Notice of Suspension. SBA fails to respond to any of these refutations, and thus, under the Notice and Order, these points must be considered waived. (*Id.* at 7.)

Petitioner further states that SBA's stated basis for suspension is legally incorrect. Petitioner points to no regulation or OHA precedent which requires suspension based upon a FAR suspension. Its expansive interpretation of 13 C.F.R. § 124.108 is at odds with precedent. The regulation says that a concern under FAR debarment may not be admitted to the program, it does not say that once admitted, a firm may be suspended for that reason. (*Id.* at 7-8.)

Petitioner asserts it is entitled to summary judgment. Petitioner bases this on SBA's failure to (1) submit the Administrative Record, (2) factually support any of the bases for suspension it relied upon in the original Notice of Suspension, (3) shifting bases for suspension midstream. There is no evidence supporting SBA's suspension except the FAR suspension, which was not included in the Notice of Suspension and therefore cannot be the basis for a suspension. Petitioner also disputes the allegations underlying the FAR Suspension and contends it was unwarranted, unsupported and improper. (*Id.* at 8-9.)

Petitioner points to *Matter of Tropical Contracting, LLC*, SBA No. BDPS-553 (2015), where OHA overturned a suspension when SBA failed to submit any of the supporting documentation. Further while the Notice of Suspension had a list of Petitioner's purported activities, SBA provided no factual support and no evidence to suggest it reasonably believed any of the purported activities actually occurred, as required by 13 C.F.R. § 124.305(d)(2). SBA is not permitted to rely upon another person's "uncorroborated suspicion or accusation". (*Id.* at 10-11, citing *Matter of Alliance Steel Construction*, SBA No. BDP-186 (2002).)

Petitioner argues it is entitled to an oral hearing. The applicable regulation contemplates that in most suspension cases a hearing will be granted. Petitioner argues there should be an oral hearing because (1) It has requested one; (2) Petitioner should be given the opportunity to examine SBA officials under oath to determine what investigation, if any, SBA conducted and requests that the SDO be ordered to testify; (3) Petitioner should be permitted to determine where the directive to suspend originated, the basis for that directive, whether any SBA officials opposed the directive, the basis for that opposition, and the ultimate decision-making process. (*Id.* at 11-12, citing 13 C.F.R. § 124.205.)

**\*8** On February 17, 2026, SBA filed an Objection to the Submission of New Information. SBA objects to the submission of information beyond the record before SBA at the time of the decision to suspend. This suspension was based upon the suspension of Petitioner from all Government contracting. SBA regulations specifically identify a FAR suspension as disqualifying a concern from receiving all Government contracts, including 8(a) contracts. (Objection at 2, citing 13 C.F.R. § 124.305(j).)

SBA rejects Petitioner's claim that FAR is a new basis for suspension. The Federal Acquisition Regulations System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The System consists of FAR and the agency acquisition regulations which supplement it. (*Id.*, citing FAR 1.101.) SBA asserts the decision to suspend as stated in the suspension letter is based upon FAR 9.407 on suspension. (*Id.*) SBA maintains that calling FAR a "new" basis for suspension is a misrepresentation of the facts. The documents Petitioner submits with its Response are from Petitioner's response to the suspension notification. These were not before SBA at the time of the suspension decision and should not be part of the record. Thus, they were not evidence the Agency relied upon because it did not have it. (*Id.* at 3.)

SBA argues that in suspension actions OHA is limited to review whether the decision was based on adequate evidence. SBA argues that Petitioner does not challenge the adequacy of the evidence. SBA further argues that OHA may not admit evidence beyond the written administrative record nor permit any form of discovery unless it first determines that Petitioner, upon written submission, has made a substantial showing based upon credible evidence and not mere allegation that the Agency determination in question resulted from bad faith or improper conduct. Petitioner fails to argue or establish either here. (*Id.* at 3-4.) SBA asserts Petitioner was suspended from 8(a) BD program assistance because it was suspended from all Federal Government contracting, and the motion to provide evidence beyond the record must be denied.

On March 5, 2026, Petitioner moved to strike SBA's Objection. Petitioner asserts the Objection is not permitted by the applicable regulations, it is intended as a surreply filed without leave and designed to give SBA the last word when the regulations do not permit such procedural jockeying, and it contains material misstatements of fact which strip Petitioner of its right to due process. Petitioner asserts SBA stated it would not oppose the Motion but file a response to all motions as permitted by OHA's procedural regulations. (Petitioner's Motion to Strike, at 1.)

**\*9** Petitioner's motion then largely recapitulated its earlier arguments, that the Suspension letter was not included in the administrative record, that SBA now states a different reason for the suspension than it did in that letter, and the administrative record fails to include all documents relevant to the determination on appeal. (*Id.* at 1-4.)

Petitioner argues SBA's Objection should be stricken for three reasons. First, it is procedurally improper. The Administrative Record must contain all documents upon which SBA relied in making the suspension determination. (*Id.* at 4, citing 13 C.F.R. § 134.406(c)(1).) A Petitioner may object to the absence of any document previously submitted to or sent by SBA which it believes was erroneously admitted from the administrative record. The regulations do not contemplate a response to such an

objection. (*Id.* citing 13 C.F.R. § 134.406(c)(2).) Further, the Agency made no effort to contact Petitioner and ascertain whether it opposed the Objection as required by the regulation. (*Id.* at 5, citing 13 C.F.R. § 134.211(b).)

Second, the Agency's Objection serves as an impermissible surreply, filed without leave, to give SBA the last word. Such replies may not be filed without judicial approval. (*Id.* at 5-6, citing 13 C.F.R. § 134.206(e).) The Objection fails to address Petitioner's objection to the Administrative Record under 13 C.F.R. § 134.406. (*Id.*)

Third, Petitioner asserts the Agency's Objection should be stricken because it is made in bad faith, advances positions directly contrary to the interests of justice and strips Petitioner of due process by making material misrepresentations of the facts and the record. First, it is false that Petitioner was suspended from the 8(a) BD Program because it was suspended from all Government contracting. Rather the actual Notice of Suspension gave very different reasons for the suspension, as noted above. Petitioner asserts the Administrative Record must include all the documents which led to the suspension decision. Further, it should include those documents which led to the decision to state a different reason for the suspension on appeal. Petitioner asserts SBA is attempting to limit the record to selectively restrict OHA's review of Agency action which was arbitrary and capricious. Petitioner states SBA has taken its positions in bad faith and means to strip Petitioner of its fundamental right to due process, specifically the right to a full and adequate notice and the opportunity to be heard on that record. (*Id.* at 6-9.)

\*10 On March 10, 2026, Petitioner moved for leave to take discovery depositions of the SDO and AA/BD. Petitioner asserts it contacted SBA and SBA stated that it would not oppose the motion but would file a response. (Motion for Leave to Take Depositions, at 1.)

Petitioner asserts the complete lack of evidence in the record, accompanied by the lack of a certificate of authenticity and completeness, deprives Petitioner of due process. Petitioner argues SBA exempted suspension appeals from the bad faith standard in seeking discovery, but that discovery is permitted upon a showing of "good cause". (*Id.* at 6, citing 13 C.F.R. §§ 134.213(a); 134.407(a).) Petitioner maintains "good cause" is a "low bar and not a high standard". It is "any ground which is put forward ... in good faith and which is not arbitrary, irrational, unreasonable or irrelevant" or, put broadly, any "legally sufficient reason ...." (*Id.* at 7, citing *Walmart, Inc. v. Chief Admin. Law Judge of Off. of Chief Admin. Hrg. Officer*, 144 F.4th 1315, 1324 (11th Cir. 2025), citing in turn Black's Law Dictionary, 4<sup>th</sup>ed. 1951 and 12<sup>th</sup>ed., 2024.)

Petitioner asserts the Administrative Record here is threadbare, consisting of one document, which SBA has failed to certify as authentic and complete. Petitioner asserts it requires the AA/BD's testimony and the SDO's testimony to complete the record. (*Id.* at 8-10.)

## II. DISCUSSION

I GRANT Petitioner's Motion for Leave to File a Reply to the Agency Response, because the Agency raised new grounds for the Suspension in its Response, to which Petitioner was entitled to reply. I DENY Petitioner's Motion to Strike the Agency's Objection to Petitioner's Submission of New Information, in the interest of a complete record. However, I DENY the Agency's Objection, for the same reason.

I must also GRANT Petitioner's Objection to the Administrative Record. The regulation requires that: The administrative record must contain all documents that are relevant to the determination on appeal before the Administrative Law Judge and upon which the SBA decision-maker, and those SBA officials that recommended either for or against the decision, relied.

13 C.F.R. § 134.406(c).

The Notice and Order instructed the Agency to submit such a complete record of all documents relevant to the determination on appeal, with pages numbered and Bates stamped. Further, the Notice and Order required an 8(a) BD program official to certify and authenticate that the Administrative Record was a true and correct copy of all documents they relied upon in making the determination being appealed.

Based upon the record before me, I must conclude that the Agency's proffered Administrative Record here met none of the requirements for submission of an Administrative Record. There was no certification and authentication by a program official, no index, no Bates stamping. Further, there was no submission of the Suspension Letter itself. If there is any document that must be in the Administrative Record, it must be a copy of the decision itself which is at issue in the case before OHA. The Administrative Record consists merely of one document, the October 21st letter from the SDO suspending Petitioner under FAR. SBA argues that this letter is the reason for Petitioner's suspension from the 8(a) BD program, and that this letter constitutes adequate evidence to suspend Petitioner.

**\*11** The problem with the Agency's position is that the FAR suspension is not the reason for Petitioner's suspension here. I make this finding because Petitioner submitted the letter suspending it as Exhibit 1 to its appeal. SBA argues that I cannot consider evidence submitted by the Petitioner absent a substantial showing based upon credible evidence that the Agency determination may have resulted from bad faith or improper behavior. 13 C.F.R. § 134.407(a). Leaving aside the question of whether the Agency's submission of this inadequate and non-compliant Administrative Record constitutes bad faith, this restriction does not apply in suspension appeals, where the Administrative Judge is not precluded from considering evidence beyond the written administrative record. 13 C.F.R. §§ 134.406(a), 134.407(a), *Matter of Sheela, Inc.*, SBA No. BDP-410 (2011). The administrative record must include all documents relevant to the determination on appeal and upon which the SBA decision-maker and those SBA officials who recommended either for or against the decision, relied. 13 C.F.R. § 134.406(c)(1). Here "SBA's failure to identify and submit the relevant information leaves the Court guessing as to what documents the AA/BD relied upon, if any. Accordingly, the Court finds the SBA has not met its burden in this case." *Matter of Tropical Contracting, LLC*, SBA No. BDPS-553 (2015). (SBA failure to submit documents the AA/BD relied upon resulted in granting the appeal and lifting the suspension).

The Suspension at issue does not mention the October 21st FAR suspension at all, let alone rely upon it as the reason for the Suspension. The Suspension states clearly that the reason for the Suspension is the statements made by Petitioner's employee. However, the Agency Response here does not mention these statements and makes no effort whatever to substantiate them or to rely upon them as reasons for the Suspension. The Agency has thus stated on appeal a completely different justification for its action than that given at the time it was issued.

Agency counsel is thus engaged in offering a *post hoc* rationalization for Agency actions. It is settled law that such a reason for Agency action cannot be relied upon on appeal or considered by the Judge. *Matter of R.A. Quarshie & Assoc., Inc.*, SBA No. BDPE-605 fn. 2 (2022). Such a rationale is an inadequate basis for review. *Matter of Universal Semiconductor, Inc.*, SBA No. 345 (1990), citing *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 28 L.Ed.2d 136, 91 S.Ct. 814 (1971). An agency action must be upheld, if at all, on the basis articulated by the agency itself. *Matter of Kirk/Marsland Advertising, Inc.*, SBA No. 354, at 9 (1990), citing *Motor Vehicles Manufacturers Association of the United States, Inc., et al. v. State Farm Mutual Automobile Insurance Company, et al.*, 463 U.S. 29, 77 L.Ed.2d 443, 103 S.Ct. 2856 (1983).

**\*12** [The reviewer is] required to base [his/her] decision on the record in the case, see 5 U.S.C. § 706 (1970), not on the unstated considerations of [[the Agency] or on reasoning or argument advanced for the first time on review. The Supreme Court has made clear that where, as here, there was a contemporaneous explanation given for agency action, the validity of that action must "stand or fall on the propriety of that finding, judged, of course, by the appropriate standard of review. If that finding is not sustainable on the administrative record made, then the matter [must be] remanded ... for further consideration." *Camp v. Pitts*, 411 U.S. 138, 143, 93 S.Ct. 1241, 36 L.Ed.2d 106 (1973). See *Burlington Truck Lines, Inc. v. United States*, *supra*, 371 U.S. at 168-169, 83 S.Ct. 239; *SEC v. Chenery Corp.*, 318 U.S. 80, 63 S.Ct. 454, 87 L.Ed. 626 (1943).

*Kirk/Marsland*, at 9, citing *U.S. Lines v. Federal Maritime Commission*, 584 F.2d 519 (D.C.Cir.1978).

It is thus apparent that the Administrative Record here lacks the evidence that SBA decision-makers relied upon when making their determination and is therefore insufficiently complete to allow me to decide whether SBA's determination was arbitrary, capricious, or contrary to law. The reasons for the suspension are absent from the Administrative Record as presented by the Agency here. Therefore, I must REMAND this case to SBA for a new submission providing a new, sufficiently complete administrative record to conduct a meaningful review. 13 C.F.R. § 134.406(e)(1); *Matter of Sheila, Inc.* SBA No. BDP-419 (2011).

I therefore REMAND this matter to SBA, directing the Agency to submit a new and accurate administrative record which complies with the regulations. The record will include first the actual suspension action of October 23<sup>rd</sup>. It must then include every document relevant to Petitioner's Suspension that SBA possessed on October 23, 2025, and upon which the AA/BD and those SBA officials who recommended either for or against the determination to suspend Petitioner relied. If this includes videos, the videos must be included in the electronic submission of the Administrative Record. The AA/BD must certify and authenticate that the Administrative Record is, to the best of her knowledge, a true and correct copy of all the documents she relied upon in making the determination on October 23, 2025, to suspend Petitioner. The Administrative Record must be assembled as instructed in the Notice and Order of December 17, 2025. SBA must submit the Administrative Record by **June 12, 2026**. SBA may file an Amended Response at that time. Petitioner must file any objections to the record by **June 22, 2026**. Petitioner must file any Reply to the Amended Response by **June 29, 2026**.

\*13 The Agency must bear in mind that it has the burden of showing that its decision to suspend Petitioner must have been based upon adequate evidence that protection of the Government's interest requires suspension. 13 C.F.R. § 124.305(d). Adequate evidence means that information in the record before the AA/BD at the time of the suspension decision is sufficient to support the reasonable belief that the Government interest needs to be protected. 13 C.F.R. § 124.305(d)(1). SBA need not demonstrate that an act or omission actually occurred, in order to uphold a suspension. SBA's burden is limited to demonstrating a reasonable belief that a particular act or omission occurred, and that the act or omission requires suspension to protect the Government's interest. 13 C.F.R. § 124.305(d)(2).

Adequate evidence is information sufficient to support a reasonable belief that a particular act or omission has occurred. *Matter of RAPA, Inc.*, SBA No. MSB-596 (1997). It requires more than uncorroborated suspicion or accusation. *Matter of Tropical Contracting, LLC*, SBA No. BDPS-553 (2015).

An "adequate evidence" showing is less than both the "proof beyond a reasonable doubt" standard needed at a criminal trial and the "proof by a preponderance of the evidence" standard needed at a formal debarment. *Matter of RAPA, Inc.*, MSB-596 at 12 (1997). Adequate evidence is similar to the "probable cause" showing necessary for an arrest, a search warrant, or a preliminary hearing. *Id.* Although it is less than what must be shown at a criminal trial and less than the "preponderance of the evidence" standard generally required in a hearing under 13 C.F.R. part 134, adequate evidence is more than uncorroborated suspicion or accusation.

Suspicion alone, without adequate evidence, is insufficient to carry the SBA's burden to establish suspension is necessary to protect the interests of the Government. Evidence may raise a red flag and arouse suspicions; but that is only the first, not the last, step in the search for evidence to support a reasonable belief that statements are false and suspension is warranted. Though suspicion may warrant investigation, it does not warrant suspension. Suspension is appropriate only if the suspicion is corroborated.

*Matter of Environmental Affairs and Mgmt., Inc.*, SBA No. MSB-621, at 6 (1999).

Conclusory statements by a firm's principal which raise suspicions do not amount to adequate evidence. *Matter of Alliance Steel Construction, Inc.*, SBA No. BDP-186 (2002).

\*14 This matter is REMANDED to the Agency for the preparation and submission of an Administrative Record that is accurate and compliant with the regulation. As stated above, that action must be completed by **June 12, 2026**. SBA may file an Amended Response at that time. Petitioner must file any objections to the record by **June 22, 2026**. Petitioner must file any Reply to the Amended Response by **June 29, 2026**. I am retaining jurisdiction of this appeal. All Motions not ruled upon remain pending. [13 C.F.R. § 134.229](#).

Christopher Holleman  
Administrative Judge

**SBA No. BDPT-728, 2026 (S.B.A.), 2026 WL 1459511**

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