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The Small Business Administration (SBA) “8(a)” **program** helps socially and economically disadvantaged small businesses gain access to federal contracts, thereby promoting economic and social mobility; the program also promotes the development of small businesses, which helps prevent the formation of monopolies that would stifle innovation and restrict consumers’ ability to negotiate lower prices through competition.

Those are the public policy benefits. To the businesses that are allowed to enter the program, the primary benefit is that certain contracts are “set aside” for certified 8(a) contractors to bid on exclusively. In other words, competition is restricted only to 8(a) firms. This creates a niche of opportunity, where small businesses are protected from the competitive advantages of larger, more experienced firms. There are other benefits, but that’s the main one.

In order to enter the 8(a) program, a small business must meet certain criteria. The qualification criteria are:

- Be a small business

- Not have already have participated in the 8(a) program

- Be at least 51 percent owned and controlled by U.S. citizens who are economically and socially disadvantaged

- Be owned by someone whose personal net worth is $250,000 or less

- Be owned by someone whose average adjusted gross income for three years is $250,000 or less

- Be owned by someone with $4 million or less in assets

- Have the owner manage day-to-day operations and also make long-term decisions

- Have all its principals demonstrate good character

- Show potential for success and be able to perform successfully on contracts

But being a certified 8(a) small business contractor is not a forever thing. Sooner or later, 8(a) businesses “graduate” from the program because they no longer meet the qualification criteria. And even if they continue to meet the qualification criteria, they are only permitted to be in the program for nine years. Nine years and out.

Once out, the company is out forever – see the second criterion above. The company is removed from its protective niche and now has to compete with the larger government contractors.

That’s where the real challenges begin.

As this “ **blog** ” from the SBA (authored by Caron Beesley) states—

Hundreds of small businesses enter the SBA's 8(a) business development program each year, but when those companies graduate, continued success and favor isn't a given. The playground is a lot flatter, your sole-source advantage is gone and the competition is fierce.

Ms. Beesley's "blog" offers advice to 8(a) firms regarding planning for program graduation. Those tips are good, and we recommend you read them. She recommends (among other things) narrowing the marketing focus, hiring strong talent, and managing business cash flow. Nothing wrong with those tips! But the fundamental point is that companies who are in the 8(a) program need to have a plan for how to navigate graduation, because once they depart their protected safe harbor, things tend to get a lot harder—and many companies do not survive the change in competitive environment.

There are certain 8(a) graduation plans that probably don't seem as cunning, in retrospect, as they may have seemed when they were being created.

For example, let's talk about Vigil Contracting.

According to its **website** , the company is "an 8(a) woman-owned and operated general construction company" located in Crofton, Maryland. It claims to be the 2009 "USDA Small Disadvantaged Business Contractor of the Year." Shannon Vigil is listed as President, and J.J. Vigil is listed as Operations Manager. The 8(a) program certification date is listed as being September 26, 2002.

Wait a second. If the company entered the 8(a) program in 2002 and a company can only be in the 8(a) program for nine years, then how can the company continue to be an 8(a) program participant in 2019—17 years after entry?

You're right. That doesn't make any sense. The company would have to have graduated from the 8(a) program in 2011.

Also, Manta.com reports that Vigil Contracting's annual revenues are between $10 and $20 million. Zoominfo.com says $6.2 million. Given the 8(a) financial qualification criteria listed above, it's tough to see how Vigil Contracting continues to qualify for 8(a) status, regardless of which annual revenue number you believe to be correct.

Something seems *off* about Vigil Contracting, Inc., doesn't it?

Now let's talk about VMJ Construction, LLC.

According to its company **profile** on Bloomberg.com, VMJ Construction is located at the exact same address as is shown for Vigil Contracting. There's not much detail, but Bloomberg reports that the company provides "homebuilding services." There's also a VMJ Construction, LLC located in Thornton, Colorado. An **entry** on Opengovus.com suggests that the two companies may be one and the same, because the Maryland company is registered with the Colorado Department of State (though its current status is "delinquent.") **This entry** at governmentcontractswon.com states that VMJ Construction was awarded nearly $10 million in government contracts from the Department of Defense during the period 2012 – 2014 (three years).

Not too shabby for a "homebuilding services" contractor!

Also puzzling is that the Bloomberg entry (and entries at some other sites) state that VMJ Construction's annual revenues have been $600,000. We are not sure how $10 million in contract awards squares with $600K in reported annual revenue. Somewhere, somehow, nearly $9.5 million in revenue seems to have vanished from the VMJ Construction LLC books.

Could the missing revenue have ended-up at Vigil Contracting, Inc.?

The Department of Justice seems to think so.

According to this **press release** —

VMJ Construction, LLC ("VMJ") and its owner, Colorado resident Michael T. Vigil, as well as Maryland-based Vigil Contracting, Inc. ("Vigil Contracting") and its Operations Manager, John J. Vigil, have agreed to pay the United States $3.6 million to resolve allegations that they defrauded the Small Business Administration ("SBA") 8(a) Business Development Program. …

VMJ was accepted into the 8(a) Program in 2011. Michael T. Vigil, who is Hispanic, was the 91% owner of VMJ, and was the socially and economically disadvantaged individual upon which VMJ based its application to the 8(a) program. John J. Vigil was a 9% owner of VMJ. John J. Vigil was also the Operations Manager of Vigil Contracting. Vigil Contracting is a 2011 graduate of the 8(a) Program. Since 2011, Vigil Contracting has not been eligible to bid for contracts reserved for 8(a) Program participants.

The United States contends that VMJ made false statements to the SBA regarding its eligibility to participate in the 8(a) Program. Specifically, VMJ relied almost exclusively upon Vigil Contracting to bid on and complete the work awarded to VMJ under the 8(a) Program. VMJ used Vigil Contracting's bonding, office space, employees, contractors, software, computers, and vehicles. Vigil Contracting employees and contractors, including John J. Vigil, made the high-level business decisions of VMJ and managed the day-to-day operations of VMJ. Michael T. Vigil did not control VMJ, did not set the long-term policy, nor manage the day-to-day management of the business. VMJ knowingly misrepresented these facts to SBA, in both VMJ's initial application to participate in the 8(a) Program and in an annual update to SBA. As a result of the deception, the United States Army, the United States Navy, and the United States Department of Agriculture awarded VMJ several federal government contracts set aside for 8(a) Program participants.

Based on the DOJ press release, it seems that Vigil Contracting did graduate the 8(a) program in 2011 (despite what its website continues to assert) and it developed a plan for what to do after graduation. Apparently, its plan was to create another "front" 8(a) company to continue to receive set-aside contract awards.

Eventually, the scheme was discovered and a settlement agreement was crafted.

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