

**United States Small Business Administration
Office of Hearings and Appeals**

DECISION FOR PUBLIC RELEASE

SIZE APPEAL OF:

Quadrant Training Solutions, LLC,

Appellant,

RE: Field Training Support Services Joint
Venture

RFP No. N61340-15-R-0052

U.S. Department of the Navy

Naval Air Warfare Center Training
Systems Division

SBA No. SIZ-5811

Decided: February 6, 2017

APPEARANCES

Alfred M. Wurglitz, Esq., Daniel S. Koch, Esq., Stephen P. Ramaley, Esq., Miles & Stockbridge P.C., Rockville, Maryland, for Appellant

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DECISION¹

I. Introduction

This dispute arises from a remand of the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) decision in *Size Appeal of Quadrant Training Solutions, LLC*, SBA No. SIZ-5768 (2016) (“*Quadrant I*”). In that decision, OHA granted an appeal filed

¹ This decision was originally issued under a protective order. Pursuant to 13 C.F.R. § 134.205, OHA afforded counsel an opportunity to file a request for redactions if desired. Counsel indicated that they did not wish to propose redactions to the decision. OHA now publishes the decision in full.

by Quadrant Training Solutions, LLC (Appellant), which had previously protested the size of Field Training Support Services Joint Venture (FTSS). FTSS is a joint venture between Dae Sung, LLC (Dae Sung), a participant in SBA's 8(a) Business Development program, and LB&B Associates, Inc. (LB&B), a large business.

Appellant's protest led to Size Determination No. 4-2016-038, in which the SBA Office of Government Contracting, Area IV (Area Office) determined that Dae Sung and LB&B had an approved mentor/protégé agreement in place as of the date FTSS self-certified as small for the captioned Navy procurement. FTSS therefore was eligible for the mentor/protégé exception to affiliation.² As a result, although LB&B is a large business, because Dae Sung is small, FTSS was eligible for the subject procurement.

On appeal, OHA concluded that the record did not support the Area Office's finding that Dae Sung and LB&B had an approved mentor/protégé agreement in place as of the self-certification date. OHA therefore reversed the size determination.

FTSS challenged *Quadrant I* at the U.S. Court of Federal Claims (Court), and on December 13, 2016, the Court remanded the matter to OHA for further review. This decision responds to the Court's remand order.

II. Background

In addition to FTSS, Dae Sung and LB&B have formed other joint ventures.³ One such joint venture is WISS Joint Venture (WISS), which was the subject of an adverse size determination that was subsequently upheld at OHA. *Size Appeal of WISS Joint Venture*, SBA No. SIZ-5729 (2016), *recons. denied*, SBA No. SIZ-5755 (2016) (PFR). *WISS Joint Venture* involved the same Area Office and the same issue presented in *Quadrant I*, i.e., whether there was an SBA-approved mentor/protégé agreement between Dae Sung and LB&B for the period from August 2014 — August 2015. Because OHA applied much of the reasoning from *WISS Joint Venture* to the decision in *Quadrant I*, discussion of *WISS Joint Venture* is appropriate.

A. WISS Joint Venture

On January 12, 2016, the Area Office issued Size Determination No. 4-2016-018 finding that WISS was not eligible for an Air Force procurement, for which WISS self-certified as small on April 15, 2015. The Area Office explained that under SBA regulations, joint venturers are

² Compliance with the mentor/protégé exception is determined as of the date the concern self-certifies as small. *Size Appeal of North Star Magnus Pac. Joint Venture*, SBA No. SIZ-5715, at 9-10 (2016).

³ SBA regulations provide that a joint venture may only be awarded three contracts in any two-year period without the parties to the joint venture being considered affiliated. 13 C.F.R. § 121.103(h). However, the regulation permits parties to form multiple joint ventures with each joint venture being awarded up to three contracts. *Id.*

affiliated with one another for purposes of a given contract, unless an exception applies. (Size Determination No. 4-2016-018, at 2, citing 13 C.F.R. § 121.103(h)(2).) The Area Office considered whether WISS qualified for the mentor/protégé exception to affiliation, noting that Dae Sung and LB&B were parties to a mentor/protégé agreement, which was approved by SBA's Associate Administrator for Business Development (AA/BD) on August 25, 2009. (*Id.* at 3.) The mentor/protégé agreement was in effect for one year and was renewed in subsequent years, but “neither the Illinois District Office nor Dae Sung have been able to provide any evidence that SBA issued any approval for August 2014 — August 2015”, the time period during which WISS self-certified for the procurement. (*Id.*) The Area Office found that the files of the Illinois District Office contained “formal written approval letters for each renewal for the five years from 2010 through 2014 as well as for 2016” but that “[t]here is no evidence [that] approval was given for 2014 — 2015.” (*Id.*) In addition, in a memorandum to the Area Office dated January 6, 2016, the Illinois District Office stated that it could not locate any extension of the mentor/protégé agreement for the period August 2014 — August 2015, although “there is no reason why [the Illinois District Office] would not have agreed” to an extension. (*Id.*, n.5, quoting Memorandum from R. Putman to D. Gordon (Jan. 6, 2016).) Because WISS could not establish that the mentor/protégé agreement was still in effect at the time of self-certification, the Area Office determined that WISS did not qualify for the exception to affiliation for mentor/protégé joint ventures, and Dae Sung and LB&B were affiliated for the subject procurement. (*Id.* at 3-4.)

In reaching its decision in Size Determination No. 4-2016-018, the Area Office rejected WISS's contentions that Dae Sung and LB&B had timely requested renewal of the mentor/protégé agreement for 2014 — 2015, and that they had reasonably assumed that the renewal would be processed without incident. The Area Office observed that, according to SBA policy at the time WISS self-certified as a small business, the outcome of a mentor/protégé agreement renewal request would be provided in writing. (*Id.* at 3, citing Standard Operating Procedure (SOP) 80 05 3, Ch. 9 ¶18(c).) Further, for every year other than 2014 — 2015, the Illinois District Office did send “a formal written notification to [Dae Sung] that its request had been approved.” (*Id.*)

On February 1, 2016, WISS appealed Size Determination No. 4-2016-018 to OHA. WISS highlighted that the Illinois District Office annually reviewed Dae Sung's ongoing participation in the 8(a) program. During its June 2014 annual review, Dae Sung disclosed that it continued to be in a mentor/protégé relationship with LB&B, and submitted a mentor/protégé worksheet, which, WISS asserted, was “designed to fulfill the requirements of [13 C.F.R. § 124.520(g)] and to assist the SBA in evaluating the mentor/protégé relationship.” (WISS Appeal at 9.) Therefore, WISS reasoned, through Dae Sung's annual review, WISS also met the requirement of 13 C.F.R. § 124.520(e)(4)⁴ that SBA annually review the mentor/protégé relationship. (*Id.* at 7.)

WISS added that, in a meeting between a Business Development Specialist (BDS) of the Illinois District Office and three Dae Sung representatives on June 2, 2014, the BDS reviewed Dae Sung's materials for its 8(a) program annual review and did not voice any concerns regarding the mentor/protégé agreement. (*Id.* at 10-11.) Subsequent email communication

⁴ Unless indicated otherwise, all citations to SBA regulations refer to the regulations in place during 2015, when WISS and FTSS self-certified for their respective procurements.

between the BDS and Dae Sung showed that the mentor/protégé relationship was discussed, and that the BDS was aware of the benefits Dae Sung had enjoyed through it. The Illinois District Office therefore had all of the information it needed to complete the review contemplated by 13 C.F.R. § 124.520(e)(4). (*Id.* at 11-12.)

WISS pointed out that Dae Sung and LB&B also engaged in another joint venture, DL LSS Joint Venture (DL), which was awarded Order No. W52P1J-13-G-0020 in October 2014. For such an award to have been proper, WISS asserted, Dae Sung and LB&B must have had an SBA-approved mentor/protégé agreement as of October 2014, the same timeframe at issue in *WISS Joint Venture*. (*Id.* at 13.)

WISS concluded that it proceeded as if the mentor/protégé agreement had been renewed for 2014 — 2015 because it received no notification to the contrary, and because the award to DL suggested that the Illinois District Office had renewed the mentor/protégé agreement between Dae Sung and LB&B. (*Id.* at 14-15.) Accompanying its appeal, WISS offered sworn declarations from three Dae Sung employees: Jeff Hockman, Betty Barnes, and Mary Walgrave. Mr. Hockman and Ms. Barnes attested that, following their meeting with the BDS on June 2, 2014, they “understood that [the BDS] had approved the continuation of the mentor/protégé relationship between Dae Sung and LB&B, including for the period of August 2014 to August 2015.” (Hockman Decl. ¶ 9; Barnes Decl. ¶ 9.)

OHA received two responses to the appeal, one from the protester and one from SBA. The protester argued that the lack of a written approval as required by 13 C.F.R. § 124.520(e)(4) was fatal to WISS's appeal. SBA highlighted that the record contained letters “explicitly approving continuation of the mentor/protégé agreement in 2009, 2010, 2011, 2012, 2013 and 2015.” (SBA Response at 2.) However, neither Dae Sung nor the Illinois District Office could produce any such approval letter for the period covering August 2014 — August 2015. Therefore, SBA argued, the Area Office correctly concluded that WISS was not eligible for the exception to affiliation for mentor/protégé joint ventures. (*Id.* at 3.)

On April 18, 2016, OHA denied WISS's appeal. OHA explained that it had recently decided a similar case in *Size Appeal of North Star Magnus Pacific Joint Venture*, SBA No. SIZ-5715 (2016), where the challenged firm was a joint venture between an 8(a) protégé and its mentor. The two firms had executed a mentor/protégé agreement, which was approved by the AA/BD on July 5, 2014, and which expired one year after approval unless the servicing district office approved an extension. *North Star*, SBA No. SIZ-5715, at 2-3. The mentor/protégé agreement was not extended prior to the one-year anniversary, and the joint venture submitted its proposal on July 17, 2015, after the mentor/protégé agreement had lapsed. On these facts, OHA found that the joint venture could not avail itself of the mentor/protégé exception to affiliation, 13 C.F.R. § 121.103(h)(3)(iii), because the joint venture did not have an SBA-approved mentor/protégé agreement in place as of the date to determine size (*i.e.*, the date of proposal submission). *Id.* at 8. “On the date [the joint venture] submitted its offer, SBA had not yet approved the [mentor/protégé] agreement for another year, as required by [13 C.F.R. § 124.520(e)(4)]. This regulation provides, *contra* [the joint venture's] argument, that SBA's approval of the agreement expires after one year, unless renewed.” *Id.* at 9.

In reaching its *North Star* decision, OHA was unmoved by the fact that the servicing district office eventually did approve an extension of the mentor/protégé agreement. This extension was irrelevant, OHA found, because it did not occur until October 30, 2015, well after the proposal was submitted. *Id.* at 8-9. OHA also rejected the joint venture's contention that the mentor/protégé agreement had, in effect, been extended when the district office conducted its annual review of the protégé's continuing participation in the 8(a) program. *Id.*

Similar to the facts in *North Star*, OHA explained, WISS is a joint venture between an 8(a) participant and its mentor. WISS submitted its proposal for the procurement on April 15, 2015, but neither WISS nor the Illinois District Office could come forward with documentation that the mentor/protégé agreement had been renewed as of that date. Rather, pursuant to 13 C.F.R. § 124.520(e)(4), it appeared that the mentor/protégé agreement had expired at the time WISS submitted its proposal. Without a proper mentor/protégé agreement in place, WISS could not utilize the exception to affiliation for mentor/protégé joint ventures at 13 C.F.R. § 121.103(h)(3)(iii). *WISS Joint Venture*, SBA No. SIZ-5729, at 6 (citing *North Star*, SBA No. SIZ-5715, at 9 and *Size Appeal of DCS Night Vision JV, LLC*, SBA No. SIZ-4997, at 8 (2008)). Accordingly, OHA determined, the Area Office did not err in concluding that Dae Sung and LB&B were affiliated for purposes of the subject contract under 13 C.F.R. § 121.103(h)(2).

OHA also found no merit to WISS's suggestion that the Illinois District Office essentially approved an extension of the mentor/protégé agreement when it conducted Dae Sung's annual 8(a) program review, noting that OHA had rejected substantially similar arguments in *North Star*. Further, OHA opined, "the mere fact that the Illinois District Office had all of the information it needed to authorize an extension of the mentor/protégé agreement under 13 C.F.R. § 124.520(e)(4) does not establish that such an extension actually occurred." *Id.* at 7. The award of Order No. W52P1J-13-G-0020 to DL did not compel a contrary conclusion, for two reasons: (1) the issue was raised for the first time on appeal, so there was no evidence in the record to support it, and (2) the award to DL was not clearly relevant, because it was not evident that DL would have been required to self-certify as small for that order between August 2014 — August 2015. *Id.*

On May 9, 2016, WISS timely filed a Petition for Reconsideration (PFR) of OHA's decision in *WISS Joint Venture*. OHA denied the PFR because WISS merely repeated arguments that were considered and rejected in *WISS Joint Venture*, and because WISS did not show error in OHA's decision, as is required to prevail on a PFR. *Size Appeal of WISS Joint Venture*, SBA No. SIZ-5755, at 4 (2016) (PFR).

B. The Instant Size Determination

On June 9, 2016, the Area Office issued Size Determination No. 4-2016-038 finding that FTSS is an eligible small business for the captioned Navy procurement, for which FTSS self-certified as small on August 4, 2015.

Contravening its position in Size Determination No. 4-2016-018, the Area Office found that the mentor/protégé agreement between Dae Sung and LB&B was in effect during August 2014 — August 2015. In reaching this conclusion, the Area Office stated that although SBA

district offices have made a practice of re-approving mentor/protégé agreements on the anniversary date of the initial approval, this approach is not required by SBA regulations or policy. (Size Determination No. 4-2016-038, at 3-4 n.7.) “A participant’s next Annual Review following the initial approval of the mentor/protégé agreement necessarily includes a consideration of the mentor/protégé relationship,” the Area Office continued, so “a separate review devoted solely to that agreement and relationship is unnecessary.” (*Id.* at 4.) The Area Office found that “[t]he [Illinois] District Office files make clear that mentor/protégé related issues were specifically considered in each Annual Review [of Dae Sung].” (*Id.* at 4-5.) Dae Sung and LB&B’s mentor/protégé agreement, then, was in effect as of August 4, 2015. As a result, Dae Sung and LB&B are not affiliated for purposes of the instant procurement. Because Dae Sung’s annual receipts do not exceed the size standard for the procurement, the Area Office considered FTSS to be a small business.

C. Quadrant I

Appellant appealed Size Determination No. 4-2016-038 to OHA, arguing that the Area Office improperly departed from Size Determination No. 4-2016-018 and OHA’s decision in *WISS Joint Venture*. Appellant emphasized that *WISS Joint Venture* “involve[d] the same parties to the same mentor/protégé agreement, submitting a proposal during the same period.” (Quadrant Appeal at 3, emphasis Appellant’s). In response, FTSS stated that it did not take the position that “a mentor/protégé relationship and agreement do not need to be reviewed and continued by SBA on an annual basis”, and that FTSS did “not contend[] that absent review and continuance of the mentor/protégé agreement, the agreement nevertheless remains in effect.” (FTSS Response at 9.) FTSS maintained, however, that the Area Office could reasonably reach a different conclusion than in Size Determination No. 4-2016-018, because FTSS submitted new evidence to the Area Office establishing that there was an approved mentor/protégé agreement in place as of the date FTSS submitted its offer for the subject procurement. The new evidence consisted, *inter alia*, of a letter dated July 11, 2014, with a subject line reading “Mentor/Protégé Agreement Renewal”. In the letter, Dae Sung’s President informed the BDS that Dae Sung and LB&B had decided to renew their mentor/protégé agreement for the period August 19, 2014 to August 20, 2015.

On August 3, 2016, OHA granted the appeal and reversed Size Determination No. 4-2016-038. OHA found that the record did not support the conclusion that approval of the mentor/protégé agreement for the period of August 19, 2014 to August 20, 2015 occurred during Dae Sung’s annual review in June 2014. This conclusion was flawed, OHA stated, for several reasons. “First,” as OHA had previously explained, “it does not follow that, because the Illinois District Office specifically considered the mentor/protégé relationship, the Illinois District Office must have approved the mentor/protégé agreement for another year.” *Quadrant I*, SBA No. SIZ-5768, at 6 (citing *WISS Joint Venture*, SBA No. SIZ-5729, at 7) (internal quotations omitted). Second, neither the Area Office nor FTSS addressed the Area Office’s previous factual finding in Size Determination No. 4-2016-018 that the Illinois District Office’s files contained renewal letters for each of the years from 2010 through 2014 as well as for 2016, but not for 2014 — 2015. *Id.* (citing Size Determination No. 4-2016-018). OHA took the absence of a formal notification letter for 2014 — 2015 as “strong evidence that the mentor/protégé agreement was not in fact renewed for that year, particularly given that such notifications do exist for all other

years, both before and after 2014 — 2015.” *Id.* Third, OHA addressed the letter dated July 11, 2014, which was not part of the record in *WISS Joint Venture*. “This letter,” OHA reasoned, “does not support the conclusion that the Illinois District Office had already re-approved the mentor/protégé agreement during the annual review,” but rather “suggests that no such approval had taken place because Dae Sung and LB&B themselves did not agree to extend the mentor/protégé agreement until after Dae Sung's annual review.” *Id.*

D. Recent Regulatory and Policy Changes

On March 15, 2016, more than seven months after FTSS self-certified as small for the captioned Navy procurement, the SBA Office of Business Development issued a memorandum entitled “Amendment to [Mentor/Protégé] Approval Letter (effectively immediately)”. The memorandum stated that mentor/protégé agreements will be amended by deleting language that the mentor/protégé agreement “shall expire after one year from the approval date”, and by substituting language that “unless rescinded in writing” the mentor/protégé agreement “will automatically renew without additional written notice of continuation or extension to remain in good standing.” (SBA Memorandum, at 1 (March 15, 2016).)⁵

SBA subsequently updated its SOP and regulations to account for this policy change. The regulations now provide, in pertinent part, that “SBA will review the mentor/protégé relationship annually during the protégé firm's annual review to determine whether to approve its continuation for another year. Unless rescinded in writing at that time, the mentor/protégé relationship will automatically renew without additional written notice of continuation or extension to the protégé firm.” 13 C.F.R. § 124.520(e)(5) (2016). The effective date of the regulatory amendments is August 24, 2016. 81 Fed. Reg. 48,558, 48,585 (July 25, 2016). The effective date of SOP 80 05 5, which canceled and replaced SOP 80 05 3, is September 23, 2016.

III. Remand and Comments

On December 13, 2016, the Court remanded the dispute to OHA for further review. In the remand order, the Court explained that the record contains “a document that was not addressed by the parties or OHA, but may be relevant to the issue of whether continuation of the mentor/protégé agreement had been approved for the relevant time period.” (Order at 2.) This document, entitled “8(a) Annual Review Requirements List” (hereafter “the Requirements List”), is dated July 24, 2015, and was approved by the Illinois District Director on August 18, 2015. In light of this document, the Court instructed OHA to “reconsider whether FTSS was an approved mentor/protégé entity at the time it submitted its proposal for the subject procurement.” (*Id.* at 3.)

On December 14, 2016, OHA invited interested parties to comment on whether the Requirements List provides evidence that Dae Sung and LB&B had an approved mentor/protégé agreement in place as of the date FTSS submitted its proposal. OHA received comments from FTSS and Appellant. In addition, because two pages of the Requirements List were omitted from the Area Office file, SBA moved to supplement the record with the complete document.

⁵ On June 20, 2016, the Office of Business Development issued a follow-up memorandum clarifying certain aspects of its March 15, 2016 memorandum.

A. FTSS's Comments

On January 4, 2017, FTSS submitted its comments. FTSS observes that the Requirements List contains 24 items. According to FTSS, items 10, 12, and 22 “speak directly to the mentor/protégé relationship between Dae Sung and LB&B” and “make clear that as of July 24, 2015, SBA had reviewed and approved the [mentor/protégé] [a]greement such that FTSS is an eligible small business.” (FTSS Comments at 3.)

Item 10 provides:

Yes 10. **MENTOR/PROTEGE & OTHER AGREEMENTS:** Has agreement(s) been approved and current status provided? Yes

(*Id.* at 4, quoting Requirements List at 2.)

FTSS argues that by writing “Yes”, the Illinois District Office affirmed that it had approved the mentor/protégé agreement and thereby “acknowledged an ongoing, approved mentor/protégé relationship between Dae Sung and LB&B.” (*Id.*) FTSS notes that the record contains a similar document from 2014, which also asked whether the mentor/protégé agreement had “been approved and current status provided”. (*Id.* at n.3, quoting 8(a) Annual Review Requirements List (June 23, 2014) at 2.) The Illinois District Office responded affirmatively to this question, too. “Taken together,” FTSS argues, “these two documents show that at all relevant times, the [mentor/protégé] [a]greement remained current and in effect, including on August 4, 2015.” (*Id.*) Further, by stating that the current status was provided, the Illinois District Office confirmed that Dae Sung had submitted the requisite information during the annual review.

Item 10 is designed to ascertain the current status of a mentor/protégé agreement and whether it has been approved for continuation, FTSS argues. Support for this assertion can be found in SBA regulations, which provide that “SBA will review the protégé's report on the mentor/protégé relationship **as part of its annual review of the firm's business plan pursuant to § 124.403.**” (*Id.* at 5, quoting 13 C.F.R. § 124.520(g)(4) (emphasis FTSS's).) Further, “SBA may decide not to **approve continuation of the agreement** if it finds that the mentor has not provided the assistance set forth in the mentor/protégé agreement or that the assistance has not resulted in any material benefits or developmental gains to the protégé.” (*Id.*, quoting 13 C.F.R. § 124.520(g)(4) (emphasis FTSS's).) Item 10, then, ensures that SBA performs the required review and reaches a decision on whether to continue the mentor/protégé relationship for another year. (*Id.*)

FTSS argues that Item 10 inquires whether the mentor/protégé agreement has been extended, rather than having once been approved. FTSS argues that if SBA intended to ask whether there had ever been an approved mentor/protégé agreement, Item 10 would be phrased as such. Moreover, it would not make sense “to include in an *annual* checklist an item designed to determine whether a mentor/protégé relationship had ever existed, even if now expired or no longer in effect.” (*Id.* at 6 (emphasis FTSS's).) FTSS points out, too, that SBA regulations use the

word “approve” rather than “extend” when discussing the continuation of a mentor/protégé agreement for another year. (*Id.* at 7, citing 13 C.F.R. §§ 124.520(e)(4) and (g)(4).)

Items 12 and 22 state:

Yes. 12. **BUSINESS DEVELOPMENT ASSISTANCE**: Firm has rec'd assistance from the holding company, Mandaree Corp'. The firm does attend SBA events in Illinois and tribal events around the country. **Firm also receives help from their Mentor LB&B. . . .**

...

22. **BDS COMMENTS ON MANAGEMENT, MARKETING, FINANCIAL & RECOMMENDATIONS FOR BUSINESS DEVELOPMENT ASSISTANCE**: Company is a tribally owned firm that has done very well in pursuing contracts. Their holding company Mandaree Enterprises and mentor (**LB&B**) continue to provide the firm with the assistance needed to be successful in pursuit of private & public sector contracts The firm is still performing on 8(a) and other federal contracts presently **B[D]S is encouraging the firm to pursue more federal projects without the need to [joint venture] with their mentor. . . .**

(*Id.*, quoting Requirements List at 3, 5 (emphasis FTSS's).) FTSS observes that the Illinois District Office used the present tense in referring to the mentor/protégé relationship between Dae Sung and LB&B. If the mentor/protégé agreement had lapsed in August 2014, the “district office most certainly would not be describing an ongoing mentor/protégé relationship between Dae Sung and LB&B, as well as continued procurement activity by the joint ventures formed by Dae Sung and LB&B, in [the Requirements List] pertaining to this time period.” (*Id.* at 7-8.)

FTSS goes on to argue that there was no need for a formal letter stating that the mentor/protégé agreement was extended for the period of August 2014 — August 2015, for two reasons. First, the regulations do not require it. Second, “the lack of such a letter should not outweigh the specific evidence provided by the [Requirements] List that the [mentor/protégé] [a]greement was actually approved and continued for the period covering August 4, 2015.” (*Id.* at 8.)

FTSS contends that overturning *Quadrant I* would not be inconsistent with *North Star* and *WISS Joint Venture* because, unlike in those cases, there is specific language of approval in this case, as evidenced by the Requirements List dated just days prior to FTSS's self-certification as a small business. (*Id.* at 9-10.)

B. Appellant's Comments

On January 4, 2017, Appellant submitted its comments. Appellant contends that the Requirements List “is of such slight importance that even though it was of record at OHA, FTSS did not see fit to bring it to [the] attention of OHA during the pendency of [Appellant's] appeal.

Nor did FTSS see fit to include it among its 19 exhibits to its complaint before the Court.” (Appellant's Comments at 2.) Appellant highlights that “OHA is now considering for the *fourth* time whether an approved mentor/protégé agreement between the two FTSS venturers had been in place as of the date it submitted its proposal,” and as FTSS has acknowledged, “OHA has rejected these arguments on the merits on all three previous occasions.” (*Id.*, citing FTSS Response to Defendant's Motion to Dismiss or in the Alternative, Motion for Remand, No. 16-1023 (U.S. Fed. C1., filed Sept. 27, 2016), at 8 n.1. (emphasis Appellant's).)

Appellant contends that the Requirements List cannot be construed as an extension or renewal of the mentor/protégé agreement. Appellant argues that the language in Item 10 merely indicates that SBA previously approved the mentor-protégé agreement, and that the mentor/protégé agreement “was discussed, on some level, at Dae Sung's Annual Review meeting.” (*Id.* at 5.) There is no dispute that the mentor/protégé agreement between Dae Sung and LB&B was approved by the AA/BD in 2009, so the parties did not mention the Requirements List during the prior OHA proceedings. Besides, Appellant argues, there could have been no extension during Dae Sung's annual review because that is not the appropriate forum for renewing a mentor/protégé agreement. In addition, the Requirements List cannot support FTSS's assertion that the mentor/protégé approval was implicitly extended during the annual review because, as demonstrated by OHA's decisions in *North Star* and *WISS Joint Venture*, mentor/protégé agreements “required annual explicit, written extension or renewal of the agreement.” (*Id.* at 6-7.)

Appellant then addresses Item 22. This item, Appellant argues, “arises in context of the recommendation to retain Dae Sung in the 8(a) Program for another year, and in no way constitutes explicit extension or renewal of the mentor/protégé agreement.” (*Id.*, at 6 n.2.)

Appellant posits that Dae Sung intentionally refrained from seeking renewal of its mentor/protégé agreement for August 2014 — August 2015. During this time, Appellant asserts, LB&B was the subject of a false claims lawsuit alleging misconduct in previous mentor/protégé agreements. The lawsuit was not settled until July 2015. As a result, had Dae Sung sought an extension of the mentor/protégé agreement during this time, the Illinois District Office likely would have considered LB&B unfit to continue as a mentor. (*Id.* at 8, citing 13 C.F.R. § 124.520(b).)

C. Motion to Supplement

On December 22, 2016, SBA moved to introduce a complete copy of the Requirements List. SBA noted that the copy of the Requirements List in the Area Office file contained only pages 1, 2, and 5. “Consideration of the full five-page document would serve the purpose of providing full context to the three pages in the existing record,” SBA maintained. (Motion at 1.) No party opposed SBA's motion. For good cause shown, SBA's motion is GRANTED and the full Requirements List is ADMITTED.

IV. Analysis

The issue presented here is whether the Requirements List constitutes evidence that the Illinois District Office authorized an extension of the mentor-protégé agreement between Dae Sung and LB&B for the time period August 2014 — August 2015. As discussed below, I find that the Requirements List does not support the conclusion that the Illinois District Office granted such an extension. As a result, the Requirements List does not provide a basis to disturb OHA's decision in *Quadrant I*.

The purpose of the Requirements List is not to consider mentor/protégé issues but rather to assess whether to retain an 8(a) participant (*i.e.*, Dae Sung) in the 8(a) program. Thus, the Requirements List ends with recommendations from the BDS and supervisory business opportunity specialist and a final decision from the district director as to whether the 8(a) participant should be retained, graduated, or terminated from the 8(a) program. (Requirements List at 5.) SBA regulations at 13 C.F.R. § 124.520(g) identify criteria that must be considered in deciding whether to extend a mentor/protégé agreement, but the Requirements List did not address these issues or ask the district office to confirm that it had previously determined that an extension was appropriate. Further, as Appellant observes, although Item 10 of the Requirements List inquired whether a mentor/protégé agreement “has . . . been approved and current status provided”, the Requirements List did not instruct the district office to verify that any such mentor/protégé agreement had been renewed or continued within the past year. (Requirements List at 2.) Nor did the Requirements List ask the district office to specify any time period to which an approval may have pertained. These omissions appear significant because it is undisputed that a mentor/protégé agreement would lapse unless annually extended, and because SBA regulations do utilize the term “continuation” when discussing the annual renewal or extension of a mentor/protégé agreement. *See* 13 C.F.R. §§ 124.520(e)(4) and (g)(4). Thus, the purpose and phrasing of the Requirements List, and the lack of specific detail solicited, support Appellant's view that the Requirements List merely inquired as to whether the 8(a) participant was ever party to a mentor/protégé agreement.⁶

The notion that the Requirements List is evidence that the Illinois District Office previously granted an extension of the mentor/protégé agreement for August 2014 — August 2015 is also undermined by other evidence in the record. First, according to Size Determination No. 4-2016-018, the Illinois District Office stated in a memorandum to the Area Office that the Illinois District Office had no record of any extension of the mentor/protégé agreement for the August 2014 — August 2015 time period. *See* Section II.A, *supra*. Thus, the same office that prepared the Requirements List evidently did not view this document as signifying that an extension was granted.

⁶ It is worth noting that the Requirements List was not signed by the Illinois District Director until August 18, 2015, some two weeks after FTSS submitted its proposal for the instant procurement. (Requirements List at 5.) Thus, even if OHA were to find that the Requirements List itself represented an extension of the mentor/protégé agreement, such an extension would not have been in effect at the time of proposal submission. As a result, FTSS could not avail itself of the mentor/protégé exception to affiliation.

Additionally, the Requirements List in question here is dated July 24, 2015, but the Area Office file also contains a similar document from the preceding year, dated June 23, 2014, and there is no dispute that the Illinois District Office issued a formal letter, signed by the Illinois District Director, granting an extension of the mentor/protégé agreement for the prior year. It therefore would seem that the Requirements List was not intended to substitute for a formal extension letter. As discussed in *Quadrant I* and *WISS Joint Venture*, then, the fact that the Illinois District Office issued formal extension letters for all years other than August 2014 - August 2015 remains compelling evidence that no such extension was ever granted for August 2014 - August 2015. Stated differently, finding the Requirements List to be evidence of an earlier extension would require OHA to conclude that, for 2014 - 2015 only, the Illinois District Office departed from its long-standing practice and granted an extension orally rather than in writing, without documenting that decision in its files, and then returned the following year to its prior practice of issuing a formal letter signed by the Illinois District Director. I see no basis in the record to conclude that the Illinois District Office followed such an approach.

In sum, the Requirements List, and the record as a whole, do not support the conclusion that the Illinois District Office extended the mentor-protégé agreement between Dae Sung and LB&B for August 2014 - August 2015. It is instead more plausible to conclude that, while the Illinois District Office may have had the information necessary to grant an extension, it neglected to actually do so. Absent an extension, the mentor/protégé agreement lapsed, and FTSS could not utilize the exception to affiliation for mentor/protégé joint ventures.

Lastly, I note that recent changes in SBA regulations and policy do not affect the outcome of this case. Section II.D, *supra*. These regulatory and policy changes began in March 2016, and therefore have no bearing on whether there was a valid mentor/protégé agreement in effect as of August 4, 2015, when FTSS submitted its proposal for the instant procurement.

V. Conclusion

For the reasons discussed *supra*, the Requirements List does not contain information that warrants reversal of *Quadrant I*. The decision in *Quadrant I* is therefore affirmed. This is the final decision of the Small Business Administration. See 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge