

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

REDACTED DECISION FOR PUBLIC RELEASE

SIZE APPEAL OF:

Hendall, Inc.,

Appellant,

RE: IQS Solutions, LLC

Appealed From

Size Determination No. 2-2018-015

SBA No. SIZ-5888

Decided: February 27, 2018

APPEARANCES

John C. Smith, Executive Vice President and Chief Financial Officer, Hendall, Inc.,
Rockville, Maryland

John E. Jensen, Esq., Travis L. Mullaney, Esq., Pillsbury Winthrop Shaw Pittman, LLP,
McLean, Virginia, for IQS Solutions, LLC.

Sam Q. Le, Esq., Office of General Counsel, U.S. Small Business Administration,
Washington, D.C.

DECISION¹

I. Introduction and Jurisdiction

On December 6, 2017, the U.S. Small Business Administration (SBA) Office of Government Contracting, Area II (Area Office) issued Size Determination No. 2-2018-015, finding that IQS Solutions, LLC (IQS), is an eligible small business for the subject procurement. IQS is a joint venture between Synergy Enterprises, Inc. (SEI), and its SBA-approved mentor, IQ Solutions, Inc. (IQ), under SBA's All-Small Mentor-Protégé Program (ASMPP).

¹ This Decision was originally issued under the confidential treatment provision of 13 C.F.R. § 134.205. After reviewing the Decision, counsel for IQS Solutions, LLC, requested certain redactions. Therefore, I now issue the redacted Decision for public release.

On appeal, Hendall, Inc. (Appellant), which had previously protested IQS's size, contends that the size determination is clearly erroneous, and requests that SBA's Office of Hearings and Appeals (OHA) reverse. For the reasons discussed *infra*, the appeal is denied and the size determination is affirmed.

OHA decides size determination appeals under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. parts 121 and 134. Appellant filed the instant appeal within fifteen days of receiving the size determination, so the appeal is timely. 13 C.F.R. § 134.304(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. Solicitation and Protest

On June 20, 2017, the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) issued Request for Proposals (RFP) No. 283-17-0492A for assistance with its Public Engagement Platform (PEP). The Contracting Officer (CO) set aside the procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 561422, Telemarketing Bureaus and Other Contact Centers, with a corresponding size standard of \$15 million average annual receipts. Proposals were due July 20, 2017. Appellant and IQS submitted timely proposals.

On October 16, 2017, the CO announced that IQS was the apparent awardee. On October 20, 2017, Appellant filed a size protest with the CO challenging IQS's size. Appellant asserted that IQS is ineligible for the award on six grounds:

1. Public information shows that IQ is the incumbent contractor and a large business which, public information shows, has received over \$15 million in Federal contracts each year from 2013-2016. (Protest at 7.)
2. The size regulations indicate that a mentor and protégé in an SBA-approved mentor-protégé agreement may be found affiliated “for other reasons” (quoting 13 C.F.R. §§ 121.103(b)(6) and 125.9(d)(4)), that the mentor-protégé agreement “is not a blanket, overarching shield from affiliation”, and that exceptions to affiliation “must be narrowly-construed” (quoting *Size Appeal of Lance Bailey & Assocs., Inc.*, SBA No. SIZ-4799, at 5 (2006)). (*Id.* at 7-8.)
3. IQS does not qualify for any of the exceptions to affiliation because IQ and SEI “are undermining the integrity of the [ASMPP] by using their relationship as purely a vehicle for IQ to retain control over the PEP contract, rendering IQS' joint venture agreement noncompliant.” (*Id.* at 8.) In support, Appellant pointed to SEI's and IQ's previous offer for the PEP contract as prime-subcontractor, the timing of the ASMPP application and use of NAICS code 561422 there, and Appellant's belief that SEI and IQ had no other reason to utilize the ASMPP. (*Id.*

at 9-11.) Appellant also asserted that SEI has no prior experience in NAICS code 561422, contrary to 13 C.F.R. § 125.9(c)(1)(ii). (*Id.* at 11.)

4. The relationship between IQ and SEI “does not truly allow [SEI] to be the managing venturer”, as required by 13 C.F.R. § 125.8(b)(2)(iii), because SEI is “so unusually reliant on IQ for this contract that [SEI] could not possibly serve as the managing venturer in practice”. (*Id.* at 13-14.) Appellant contended that SEI does not have the ability to be responsible for IQS's performance. (*Id.* at 14.) Analogizing to the ostensible subcontractor rule, 13 C.F.R. § 121.103(h)(4), which Appellant acknowledged is inapplicable because there is no subcontractor, Appellant asserted that IQ will perform the primary and vital contract requirements, and that SEI is unusually reliant upon IQ because SEI has no call center operations experience. (*Id.* at 14-15.)

5. IQS does not qualify for any exceptions from joint venture affiliation because it does not meet the requirements of 13 C.F.R. § 125.8(b)(2) and (c). This is because, among other reasons, the purpose of the IQS joint venture is to circumvent the affiliation regulations. Nor does SEI possess the major equipment, facilities or resources necessary for the PEP contract. (*Id.* at 17-19.)

6. IQ and SEI are affiliated under the totality of the circumstances, 13 C.F.R. § 121.103(a)(5), even if there is no other basis for affiliation. To support this claim, Appellant asserted that: IQ is the incumbent PEP contractor; IQ chose to partner with SEI to evade SBA regulations; SEI originally did not intend to pursue the PEP contract; IQ wrote most of the IQS proposal; IQ will provide most of the facilities and staff for the PEP contract; SEI lacks relevant experience; IQ and SEI have the same legal counsel; IQ entered into a mentor-protégé agreement with SEI to evade SBA regulations; and “IQ named [IQS] after itself.” (*Id.* at 19-20.)

The CO forwarded Appellant's protest to the Area Office for review.

B. Protest Response

On November 1, 2017, IQS responded to the protest allegations, and submitted its completed SBA Form 355, its proposal, its joint venture agreement, the mentor-protégé agreement (MPA), and other required documents. SEI's Federal income tax returns for 2014, 2015, and 2016 show that SEI's average annual receipts do not exceed the applicable \$15 million size standard. IQ's receipts do exceed this size standard.

IQS explained that SEI and IQ are protégé and mentor, respectively, under the ASMPP. SEI and IQ executed the MPA on May 31, 2017, and the MPA was approved by SBA on June 22, 2017. (Protest Response, Ex. G.) The MPA stated that SEI “seeks more experience” under NAICS code 561422, and that SEI “has been unable to penetrate the larger federal market due to its size and lack of past performance in this arena.” (*Id.* at 1.) The MPA described SEI's requested areas of assistance, what IQ will do, and the measures of success. (*Id.* at 3.) Under “

“Contracting Assistance,” SEI requested “[a]ssistance in pursuing and performing [xxx] for the federal government.” (*Id.*) To address this issue, the MPA stated that SEI and IQ “will enter a joint venture to pursue a [xxx] federal contracting opportunity so that [SEI] may gain hands-on experience with the assistance of [IQ].” (*Id.*)

IQS's Joint Venture and Operating Agreement, dated July 18, 2017, stated that SEI and IQ own, respectively, 51% and 49% membership interests, and that SEI is the managing venturer. (Protest Response, Ex. F, at 1-2, 6, and 24.) As the managing venturer, SEI has “full, complete, and exclusive discretion to manage and control the business of [IQS]” and is the statutory “manager” under Maryland law. (*Id.* at 6.) IQS was formed “for the purpose of preparing and submitting a proposal in response to the [instant RFP] and performing a resulting contract.” (*Id.* at 1.) IQS will maintain separate accounting and administrative records, and SEI will retain those records. (*Id.* at 11-12.) A separate bank account will be established in IQS's name. (*Id.* at 10-11.) The agreement specified that the Project Manager/Project Director will be [xxx], an SEI employee who has served as SEI's Chief Operating Officer [xxx]. (*Id.* at 1, 8-9, 11, 25-27.) The Project Manager/Project Director is responsible for the day-to-day management and administration of the contract. (*Id.* at 14.) The agreement stated that IQS, through its members, will perform at least 50% of the work on the procurement, with at least 40% of IQS's work performed by SEI. (*Id.* at 13.) Further, SEI's work “shall be more than administrative or ministerial in nature so that [SEI] can gain substantive experience.” (*Id.* at 13-14.) SEI and IQ will receive profits from the joint venture commensurate with the work that they perform. (*Id.* at 15-16.) SEI and IQ are obligated to ensure performance of the contract and to complete performance notwithstanding the withdrawal of a venturer. (*Id.* at 14.) IQS will submit quarterly financial statements, and a project-end profit and loss statement, to SBA. (*Id.* at 11-12.) The joint venture agreement referenced IQS's proposal for more detailed descriptions of the respective responsibilities of IQ and SEI, and the anticipated major equipment, facilities, and other resources to be contributed by each party. (*Id.* at 13-14, 38-40.)

C. The Size Determination

On December 6, 2017, the Area Office issued Size Determination No. 2-2018-015 concluding that IQS is a small business. The Area Office found that IQS is a joint venture under the ASMPP between SEI and its mentor, IQ. (Size Determination at 2.) SBA approved the MPA between SEI and IQ on June 22, 2017. (*Id.*)

Turning to the protest allegations, the Area Office agreed with Appellant that a mentor and protégé may be found affiliated based on assistance or interactions beyond the scope of their mentor-protégé agreement. In this case, though, Appellant “did not indicate how [SEI and IQ] are operating outside their SBA-approved mentor-protégé relationship, and [SEI] provided documentation indicating that they are not.” (*Id.* at 4.) As a result, the Area Office rejected this portion of Appellant's protest.

Next, the Area Office addressed Appellant's contention that SEI and IQ are undermining the integrity of the ASMPP. The Area Office found Appellant's arguments on this point “purely speculative and based upon [Appellant's] supposition of [SEI's] and IQ's intent.” (*Id.*) Further, there is no requirement that firms engage in a prime contractor/subcontractor arrangement in lieu

of a mentor-protégé program or a joint venture. “Businesses generally attempt to structure their offers in the most advantageous manner, and it is logical that concerns would change their method of teaming if they discover a better way.” (*Id.*)

The Area Office found no merit to the allegation that SEI could not be the managing venturer of IQS because SEI alone would not have been a viable offeror. “If protégés were required to not need the assistance of their mentors as proof that they are truly the managing venturer, none of them would qualify.” (*Id.* at 5.) Moreover, “[t]he joint venture agreement for IQS designates [SEI] as the Managing Venturer and [SEI’s] Chief Operating Officer as the Project Manager/Director.” (*Id.*)

As Appellant acknowledged in its protest, the ostensible subcontractor rule is inapplicable because there is no subcontractor at issue. The Area Office declined to “apply [the ostensible subcontractor rule] on top of the applicable requirements.” (*Id.*)

The Area Office then explained that participants in the ASMPP may joint venture as a small business, if the protégé qualifies as small for the procurement and the joint venture meets the requirements of 13 C.F.R. § 125.8(b)(2) and (c). The Area Office reviewed the terms of IQS’s joint venture agreement, and found that:

[T]he IQS joint venture agreement satisfies each of the 12 requirements in § 125.8(b)(2): setting forth a purpose; designating a managing venturer; providing for 51% ownership by the small business; stating that profits are commensurate to work performed; establishing a special bank account; itemizing resources for a service contract in accordance with *Size Appeal of Alpine/First Preston JV II, LLC*, SBA No. SIZ-5822 (2017); specifying responsibilities of negotiation, labor, and contract performance; ensuring performance; designating where records are kept; requiring that the managing venturer retain records; submitting quarterly financial statements; and submitting a project-end profit and loss statement.

(*Id.* at 6.) The Area Office added that, under 13 C.F.R. § 125.8(c), the joint venture agreement “should at least show a division of labor or a division of responsibilities that would reasonably allow the small business partner to perform 40% of the work done by the partners in the aggregate.” (*Id.*) IQS met this requirement too, because:

Counting the letters of commitment and résumés for [SEI] enabled [the Area Office] to determine that [SEI] will be able to perform at least 40% of the work. [SEI’s] employees will include the project director, managing director, and project coordinator. Therefore, [SEI] will be performing work that is more than administrative or ministerial functions.

(*Id.* at 7.)

Lastly, the Area Office found that SEI, the protégé member of IQS, has no affiliates and is a small business under the size standard applicable to this procurement. (*Id.* at 7-8.) Therefore, IQS qualifies as a small business.

D. The Appeal

On December 18, 2017, Appellant filed the instant appeal. While the appeal was pending, the CO informed OHA that SAMHSA planned to reopen negotiations. Because this action had the potential to result in a different awardee, OHA stayed the case. On January 12, 2018, the CO notified OHA that IQS had again been selected for award. OHA then lifted the stay and directed that the appeal proceed.

In the appeal, Appellant alleges that the Area Office committed six errors in its review. (Appeal at 3.) First, “[t]he failure to assess the possibility of affiliation for reasons other than those defined in paragraph 13 C.F.R. § 121.103(h) is clear error where [Appellant] provided factual evidence supporting a finding of affiliation for reasons other than those defined in paragraph (h).” (*Id.*) Appellant highlights in particular that its protest identified “9 specific facts” that, in Appellant's view, demonstrate affiliation under the totality of the circumstances. (*Id.* at 5.) The Area Office, though, did not address whether these facts give rise to general affiliation between SEI and IQ.

Second, Appellant argues, “[t]he conclusion that IQ and [SEI] can avail themselves of the exception to affiliation under 13 C.F.R. § 121.103(h) — and that this exception is dispositive — ignores the clear affiliation stemming from events prior to IQ and [SEI's] acceptance within the ASMPP, which is clear error.” (*Id.* at 6.) Historical dealings between SEI and IQ are relevant, Appellant maintains, because SEI and IQ entered into their MPA and joint venture “for the express purpose of pursuing this contract, under IQ's control as the ineligible incumbent, for the benefit of large business IQ.” (*Id.* at 8 (emphasis Appellant's).)

Third, “[t]he size determination concludes that [Appellant's] contention that IQS was created solely to circumvent SBA's affiliation rules is speculative, which is clear error.” (*Id.*) Appellant emphasizes that IQ is the incumbent PEP contractor, and is a large business that could not have submitted its own proposal for this procurement. (*Id.* at 9.) “IQ then formed a relationship with [SEI] solely so that IQ could retain the PEP work.” (*Id.*) Contrary to the size determination, then, Appellant's allegations were grounded in fact and not speculation.

Fourth, Appellant maintains that “[t]he conclusion that [SEI] is capable of performing as the managing venture, while failing to consider whether IQ has the power to control [SEI], is clear error.” (*Id.* at 11.) According to Appellant, while [xxx] may have been named as the Project Director/Manager, “her corporate management responsibilities would prevent her from serving as anything other than a figurehead.” (*Id.* at 12.) Moreover, the Area Office failed to consider that IQ will perform the majority of the work on the contract, and that SEI must rely heavily upon IQ. (*Id.* at 13.)

Fifth, “[t]he conclusion that the IQS joint venture agreement is compliant with the requirements of 13 C.F.R. § 125.8(b)(2) and § 125.8(c) is clear error.” (*Id.* at 14.) Appellant contends that the Area Office conducted a superficial review of the joint venture agreement, “only to confirm whether each required section existed, rather than truly assessing the substance of the joint venture agreement.” (*Id.*) Further, the Area Office improperly relied upon *Size*

Appeal of Alpine/First Preston JV II, LLC, SBA No. SIZ-5822 (2017), because the contract in question there “was an [indefinite delivery/indefinite quantity contract] that had no requirements for major equipment, facilities or other resources.” (*Id.*)

Sixth, “[t]o ignore the intent of SBA's ASMPP when assessing IQS's size, when SBA has stipulated that its size protest procedures are the appropriate mechanism to protect the integrity of the program, is clear error.” (*Id.* at 15.) Appellant asserts that the Area Office disregarded the concerns raised in Appellant's protest that IQS was created in order to circumvent SBA affiliation rules. (*Id.* at 16-17.)

E. IQS's Response

On February 2, 2018, IQS responded to the appeal. IQS contends that Appellant has shown no reason to disturb the size determination, so OHA should deny the appeal.

IQS attacks each of the six arguments raised in the appeal. Appellant's first argument, that the Area Office should have considered whether IQ and SEI are affiliated for the nine “other reasons” cited in the protest, is meritless, IQS maintains. None of these nine issues could possibly result in affiliation, as each has no bearing on whether IQ controls SEI or *vice versa*. (IQS Response at 4-8.) Moreover, several of these issues are merely wild assertions supported by no evidence. (*Id.*) The Area Office did not err by failing to discuss these issues in greater detail.

Appellant's second argument, that the Area Office should have considered events prior to IQ and SEI's entry into the ASMPP, was not raised in Appellant's protest and thus cannot be adjudicated by OHA. (*Id.* at 8.) Even if this issue were properly before OHA, though, it would afford no basis to find affiliation. IQ and SEI had no relationship prior to the procurement in question. (*Id.*) Further, “the Area Office did trace the history of the relationship between IQ and [SEI] and found no regulatory restriction preventing the business arrangement.” (*Id.* at 11.)

Appellant's third argument, that IQS was created to circumvent affiliation rules, was correctly rejected by the Area Office. Appellant offered no proof to support this allegation, and the subjective intentions of a mentor and protégé are not relevant to affiliation in any event. (*Id.* at 8-9.)

Appellant's fourth argument, that SEI is incapable of performing as the managing venturer of IQS, is false, IQS maintains. Contrary to Appellant's contentions, the Area Office found that SEI presented evidence that SEI is capable of serving as the managing venturer, and SEI submitted examples of prior experience under NAICS code 561422 as part of the mentor-protégé application. (*Id.* at 9.) IQS adds that the Area Office properly did not attempt to analyze IQS under the ostensible subcontractor rule. “There is no basis for applying the elements of the ostensible subcontractor rule under an approved mentor-protégé joint venture.” (*Id.* at 10.)

Appellant's fifth argument, that the Area Office performed only a superficial review of the joint venture agreement, is supported by no evidence or explanation. The size determination reflects that the Area Office did review the joint venture agreement, as well as IQS's proposal, in detail. (*Id.*)

Finally, Appellant's sixth argument, that IQ and SEI are undermining the integrity of the ASMPP, is also meritless. IQS highlights that “[Appellant] has not shown, and the Area Office did not find, any way in which IQ or [SEI] have operated outside the bounds of the program or contrary to SBA regulations.” (*Id.* at 11.)

F. SBA's Response

On February 2, 2018, SBA responded to the appeal. SBA maintains that the Area Office correctly concluded that IQS is a small business for this procurement. Therefore, OHA should deny the appeal.

SBA disputes Appellant's notion that the Area Office should have considered whether SEI and IQ applied for the ASMPP with improper intent. In SBA's view, Appellant attempts to second-guess SBA's approval of the MPA, and “[t]he approval of a mentor and protégé into the ASMPP cannot be challenged by a third party through a size protest.” (SBA Response at 8.) This is the same rule OHA applies to the 8(a) mentor-protégé program, which serves as a model for the ASMPP. (*Id.* at 8-9, citing *Size Appeal of Rio Vista Mgmt., LLC*, SBA No. SIZ-5316 (2012) and *Size Appeal of White Hawk/Todd, A Joint Venture*, SBA No. SIZ-4950 (2008), *recons. denied*, SBA No. SIZ-4968 (2008) (PFR).)

Appellant's argument also is flawed, SBA continues, because “SBA is not able to ascertain the intent of firms that apply to the ASMPP.” (*Id.* at 8.) The applicable regulations instruct ASMPP applicants to enter into a written MPA assessing the protégé's needs and committing the mentor to addressing those needs. However, “SBA does not further explore the intent of the parties and certainly does not—as Appellant urges OHA to do—investigate how the parties would organize their relationship absent acceptance into the ASMPP.” (*Id.* at 9.) As a result, the Area Office would have had no basis to consider whether SEI and IQ applied for the ASMPP with malicious intent.

SBA argues that Appellant misunderstands the role of a size protest in ensuring the integrity of the ASMPP. According to SBA, “[t]he benefits of the ASMPP are that a joint venture between a mentor and protégé does not lead to affiliation between the parties in that joint venture, and the mentor and protégé are not affiliated generally based on assistance provided under the [MPA].” (*Id.* at 11.) A third-party protester, such as Appellant, “cannot attack these benefits through a size protest.” (*Id.*) Rather, “[t]he regulatory mechanism for withholding the ASMPP benefits is for SBA to terminate the agreement on its own initiative.” (*Id.*)

SBA contends that Appellant confuses contract-specific affiliation under the ostensible subcontractor rule with control under the general grounds for affiliation, such as ownership, management, or identity of interest. “Appellant does not allege any common ownership, common management, or general identity of interest between IQ and [SEI].” (*Id.* at 12.) The Area Office properly concluded, therefore, that SEI and IQ are not generally affiliated.

Lastly, SBA argues that the Area Office correctly determined that IQS's joint venture agreement meets the requirements of 13 C.F.R. § 125.8(b)(2) and (c). The instant procurement

requires no major equipment, facilities, or other resources, and OHA has recognized that “routine office space and equipment” need not be itemized in the joint venture agreement. (*Id.* at 14, quoting *Size Appeal of Alpine/First Preston JV II, LLC*, SBA No. SIZ-5822, at 11 (2017).) In addition, the Area Office properly found that SEI, the protégé member of IQS, will perform at least 40% of the work of IQS.

III. Discussion

A. Standard of Review

Appellant has the burden of proving, by a preponderance of the evidence, all elements of the appeal. Specifically, Appellant must prove the size determination is based upon a clear error of fact or law. 13 C.F.R. § 134.314. OHA will disturb an area office's size determination only if, after reviewing the record, the administrative judge has a definite and firm conviction that the area office erred in making its key findings of fact or law. *Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 11 (2006).

B. Analysis

Having reviewed the record and the arguments of the parties, I agree with SBA and IQS that Appellant has shown no error in the Area Office's decision. As a result, this appeal must be denied.

The Area Office determined, and no party disputes, that SEI and IQ are an SBA-approved mentor and protégé under the ASMPP. Section II.C, *supra*. The applicable SBA regulations make clear that an ASMPP mentor is encouraged to provide business development assistance to its protégé, which may include “assistance in performing prime contracts with the Government through joint venture arrangements”. 13 C.F.R. § 125.9(a). Once the mentor-protégé agreement has been approved by SBA, an ASMPP mentor and protégé are exempt from affiliation based on their mentor-protégé agreement or assistance within the scope of their mentor-protégé agreement:

No determination of affiliation or control may be found between a protégé firm and its mentor based solely on the mentor-protégé agreement or any assistance provided pursuant to the agreement. However, affiliation may be found for other reasons set forth in § 121.103 of this chapter.

Id. § 125.9(d)(4); *see also* § 121.103(b)(6). Further, although joint venturers normally are affiliated with one another for any contract performed by the joint venture, SBA regulations authorize an exception for ASMPP joint ventures:

A protégé and mentor may joint venture as a small business for any government prime contract or subcontract, provided the protégé qualifies as small for the procurement. Such a joint venture may seek any type of small business contract (*i.e.*, small business set-aside, 8(a), HUBZone, SDVO, or WOSB) for which the

protégé firm qualifies (e.g., a protégé firm that qualifies as a WOSB could seek a WOSB set-aside as a joint venture with its SBA-approved mentor).

§ 125.9(d)(1); *see also* § 121.103(h)(3)(ii). To qualify for this exception, the terms of the joint venture agreement must comply with § 125.8(b)(2) and (c). *Id.* § 125.9(d)(1)(ii).

In the instant case, the Area Office found that SBA approved the mentor-protégé agreement between SEI and IQ on June 22, 2017, roughly a month before IQS submitted its proposal for the PEP procurement. Section II.C, *supra*. Although it is possible for an ASMPP mentor and protégé to be affiliated based on assistance or interactions beyond the scope of their mentor-protégé agreement, the Area Office found that Appellant here did not identify any valid reason to find SEI and IQ generally affiliated. *Id.* As a result, SEI and IQ could joint venture for the PEP procurement, so long as the protégé, SEI, is a small business, and IQS's joint venture agreement meets the requirements at 13 C.F.R. § 125.8(b)(2) and (c). The Area Office determined that these conditions were met, so IQS is a small business. *Id.*

On appeal, Appellant maintains that the Area Office should have found SEI and IQ generally affiliated under the totality of the circumstances. As IQS correctly observes in its response to the appeal, though, the problem for Appellant is that totality of the circumstances affiliation requires a showing that one concern controls another, or that a third party can control both. 13 C.F.R. § 121.103(a)(1). Thus, OHA has repeatedly explained that merely listing connections between concerns does not suffice to show that they are affiliated under the totality of the circumstances. *Size Appeals of Med. Comfort Sys., Inc., et al.*, SBA No. SIZ-5640, at 15 (2015); *Size Appeal of Carwell Prods., Inc.*, SBA No. SIZ-5507, at 10 (“A connection between two concerns does not necessarily cause affiliation. There must be an element of control present.”); *Size Appeal of Global, A 1st Flagship Company*, SBA No. SIZ-5462, at 14 (2013).

Here, although Appellant identified various connections between IQ and SEI in its protest, none of these connections demonstrate that IQ controls SEI or *vice versa*. Some of Appellant's allegations, such as that IQ and SEI share the same legal counsel or that IQ named IQS after itself, have no relevance at all to the question of control. Other allegations — that IQ wrote most of the IQS proposal for the PEP contract; that IQ will provide most of the facilities and staff for the PEP contract; that SEI lacks relevant experience for the PEP contract; that SEI originally did not intend to pursue the PEP contract; and that IQ is the incumbent PEP contractor — at most suggest that SEI will rely upon IQ for assistance in performing the PEP contract. Given, however, that SEI and IQ are an SBA-approved mentor and protégé, and given further that SBA regulations permit, and in fact encourage, assistance in performing contracts under a mentor-protégé arrangement, it is not improper for SEI to accept such assistance from IQ.

To support its totality of the circumstances allegations, Appellant also contended that IQ and SEI entered into their mentor-protégé agreement for the purpose of circumventing SBA rules. Appellant offered no evidence to support this charge, though, and SBA regulations stipulate that little weight will be afforded to a protester's “general, unsupported allegations or opinions”. 13 C.F.R. § 121.1009(d). Moreover, even if true, Appellant's allegation still would not demonstrate that IQ controls SEI or *vice versa*. Rather, the gravamen of Appellant's complaint is that the mentor-protégé agreement itself is improper, because SBA should not have approved it

in the first instance. Such allegations are not valid grounds for a size protest, as SBA regulations prohibit any finding of affiliation or control based on a mentor-protégé agreement. 13 C.F.R. §§ 125.9(d)(4) and 121.103(b)(6). Accordingly, because Appellant did not allege any valid grounds to conclude that IQ controls SEI or *vice versa*, the Area Office appropriately concluded that IQ and SEI are not generally affiliated. *Size Appeal of SGS, LLC*, SBA No. SIZ-5859, at 9-10 (2017) (affirming determination that ASMPP mentor and protégé were not generally affiliated).

The remaining question presented here is whether IQ and SEI are affiliated as joint venturers pursuant to 13 C.F.R. § 121.103(h)(2). As discussed above, SBA regulations impose three conditions in order for ASMPP participants to avoid joint venture affiliation. First, the mentor-protégé agreement must have been approved before proposal submission. Second, the protégé must qualify as a small business under the size standard corresponding to the NAICS code assigned to the procurement. Third, the joint venture agreement must meet the requirements at 13 C.F.R. § 125.8(b)(2) and (c).

In the instant case, Appellant does not dispute that SBA approved the mentor-protégé agreement between SEI and IQ before IQS submitted its proposal for the PEP procurement, and does not dispute that SEI is a small business. The only issue, then, is whether IQS's joint venture agreement meets SBA requirements. In this regard, although Appellant contends on appeal that the Area Office conducted a superficial review, Appellant has not pointed to any specific provisions in the joint venture agreement that are deficient, nor offered any explanation as to how particular provisions fail to meet the regulatory requirements. Indeed, Appellant has not even reviewed the actual text of the joint venture agreement, notwithstanding that OHA procedures permit a protester, through counsel, to examine the record under an OHA protective order. 13 C.F.R. § 134.205(e). Accordingly, Appellant has not carried its burden of proving clear error of fact or law in the Area Office's decision. *Id.* § 134.314. It is well-settled that “[m]ere unsupported assertions are not sufficient to refute, or establish error, in a size determination.” *Size Appeal of Saint George Industries, LLC*, SBA No. SIZ-5474, at 7 (2013); *see also Size Appeal of Star Poly Bag, Inc.*, SBA No. SIZ-5584, at 4 (2014).

IV. Conclusion

Appellant has not demonstrated that the size determination is clearly erroneous. Accordingly, the appeal is DENIED and the size determination is AFFIRMED. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge