United States Small Business Administration
Office of Hearings and Appeals

SIZE APPEAL OF: Sevenson Environmental Services, Inc., Appellant, RE: HGL-APTIM JV, LLC Appealed From Size Determination No. 2-2020-111	SBA No. SIZ-6087 Decided: January 8, 2021

APPEARANCES

Michael H. Payne, Esq., Cohen, Seglias, Pallas, Greenhall & Furman, P.C., Philadelphia, Pennsylvania, for the Appellant

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DECISION[1]

I. Introduction and Jurisdiction

On September 18, 2020, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area II (Area Office) issued Size Determination No. 2-2020-111, concluding that HGL-APTIM JV, LLC (HGL-APTIM) is an eligible small business for the subject procurement. HGL-APTIM is a joint venture between HydroGeoLogic, Inc. (HGL) and its SBA-approved mentor, APTIM Federal Services (APTIM). On appeal, Sevenson Environmental Services, Inc. (Appellant), which had previously protested HGL-APTIM'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 ins affirmed.

[1] This decision was originally issued under a protective order. After receiving and considering one or more timely requests for redactions, OHA now issues this redacted decision for public release.

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. Mentor-Protégé Agreement

On May 29, 2019, the Director of SBA's All Small Mentor-Protégé Program (ASMPP) Office approved the application for a Mentor-Protégé Agreement (MPA) between HGL and APTIM. (Letter from L. Gillen to T. Kearney (May 29, 2019), at 1.) The approved "goals and objectives" of the MPA were "Management and Technical Assistance and Business Development Assistance." (*Id.*) The Director explained that the MPA "will be monitored and reviewed annually by the SBA" and that "SBA may terminate the mentor-protégé relationship at any time if the protégé is not benefitting from the relationship or if the parties are not complying with the [MPA] or [ASMPP] requirements." (*Id.* at 2.)

The MPA states that the protégé firm, HGL, is a small business and a full-service environmental engineering firm with a primary North American Industry Classification System (NAICS) code of 562910, Environmental Remediation Services. (MPA at 1.) HGL seeks business development assistance with respect to its secondary NAICS code, 541715, Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology). (*Id.*)

According to the MPA, the mentor, APTIM, is a large business specializing in "engineering, program management, environmental services, disaster recovery, complex facility maintenance, and construction services." (*Id.* at 3.) [XXXXXXXXXXXXXXXXXXXXX]

B. The RFP

On July 22, 2019, the U.S. Army Corps of Engineers (Corps) issued Request for Proposals (RFP) No. W912DQ-19-R-3009 for environmental remediation services at the Welsbach/General Gas Mantle (GGM) Superfund Site in Camden County, New Jersey. (RFP at 1.) The Contracting Officer (CO) set aside the procurement entirely for small businesses and assigned NAICS code 562910, Environmental Remediation Services, with a corresponding size standard of 750 employees. (*Id.*) Proposals were due October 2, 2019. Appellant and HGL-APTIM submitted timely offers.

The RFP explained that the contractor must "provide all labor, materials, equipment, site management, home office support, and incidental items necessary" to perform the remedial activities, including "excavation of radiological contaminated material" at the Superfund Site. (*Id.* at 134.) The RFP contemplated the award of a single indefinite-delivery indefinite-quantity (ID/IQ) contract with cost-reimbursable task orders. (*Id.* at 28, 56-57.) The maximum potential value of the contract across all orders was $110 million. (*Id.* at 4, 56.)

C. Protest

On August 10, 2020, the CO announced that HGL-APTIM was the apparent successful offeror. On August 14, 2020, Appellant filed a timely protest challenging HGL-APTIM's size. Appellant asserted that HGL and APTIM are affiliated with one another, because their MPA is deficient and due to "other reasons" as contemplated by 13 C.F.R. § 121.103(b)(6). Appellant also argued that HGL is affiliated with other concerns and therefore is not a small business.

Appellant contended that APTIM was the incumbent for the predecessor contract to perform remediation services at the Welsbach/GGM Superfund Site. (Protest at 2.) Upon learning that the Corps planned to conduct the successor procurement as a small business set-aside, APTIM entered into a mentor-protégé arrangement with HGL, so as to enable APTIM to continue its participation on the project. (*Id.*)

Appellant urged that APTIM is "using its relationship with HGL merely as a vehicle to circumvent SBA regulations." (*Id.* at 2-3.) The mentor-protégé agreement between HGL and APTIM therefore does not comport with the underlying purposes of the ASMPP. (*Id.* at 2, citing 13 C.F.R. § 125.9(a).) Further, HGL does not require the assistance of a mentor because HGL has "equal, if not more" experience as APTIM under NAICS code 562910. (*Id.* at 3.) In fact, HGL has engaged APTIM as a subcontractor for other projects with NAICS code 562910. (*Id.*) According to Appellant, HGL could have successfully competed for the instant procurement on its own, yet chose to participate through the joint venture to "facilitate the interests of its large business, incumbent, mentor." (*Id.*)

Appellant alleged that HGL and APTIM selected NAICS code 541715 on their application for the ASMPP "to conceal the true intent of their MPA." (*Id.*) APTIM has scant experience performing federal contracts under NAICS code 541715, so there is no logical reason for HGL to seek mentorship from APTIM in this industry. (*Id.* at 3-4.)

Next, Appellant asserted that, notwithstanding the SBA-approved MPA, HGL and APTIM are affiliated with one another based upon "other factors." (*Id.* at 4, citing *Size Appeal of Tech. Support Servs.*, SBA No. SIZ-4751 (2006).) The "other factor" here is the use of the ASMPP to "primarily benefit the incumbent large business concern" while the protégé has no need of assistance. (*Id.*)

Finally, Appellant alleged that HGL has at least four additional affiliates: Spectrum Engineering & Environmental LLC (Spectrum); HGL-NWI JV, LLC; HGL-Portage JV, LLC; and GeoTrans, Inc. (*Id.* at 5.) Affiliation with these other concerns raises the possibility that HGL and its affiliates have more than 750 combined employees, and that HGL therefore is not a small business entity for the instant procurement. (*Id.* at 5.)

D. Protest Response

On August 27, 2020, HGL-APTIM responded to the protest, denying Appellant's allegations. HGL-APTIM argued, as a preliminary matter, that the Area Office should reject the protest as non-specific. (Protest Response at 4-5.) The protest focused largely on HGL and

APTIM's supposed motivations for entering into an MPA, but failed to identify any SBA size requirement that HGL and APTIM violated, or to offer evidence of any violation. In addition, Appellant's allegations did not "demonstrate that APTIM has the ability to control HGL necessary for a finding of affiliation." (*Id.* at 5.) HGL-APTIM further posited that Appellant may lack standing to protest, because the protest did not establish that Appellant was not eliminated from the competition for a procurement-related reason. (*Id.* at 6 n.2.)

Next, HGL-APTIM asserted that it meets all regulatory requirements for the instant procurement. (*Id.* at 6.) SBA approved the MPA on May 29, 2019, well before HGL-APTIM submitted its initial offer including price on October 2, 2019. (*Id.* at 7.) The protégé, HGL, and its subsidiary Spectrum, collectively had an average of only 358 employees for the 12 months preceding the initial offer. (*Id.*) This number is well below the 750-employee threshold applicable to this procurement. The joint venture agreement (JVA) meets all requirements of 13 C.F.R. § 125.8(b). Further, according to the JVA, the protégé, HGL, will perform at least 40% of the work of the joint venture. (*Id.*)

Contrary to Appellant's suggestions, there is no requirement that a joint venture only perform work under the primary NAICS code associated with the MPA. (*Id.* 7-8.) There is also no requirement that a protégé prove that it could not have performed a contract without assistance from the mentor. (*Id.* at 8.) Furthermore, there is nothing in the SBA regulations barring a large business incumbent from participating in a successor set-aside contract through a mentor-protégé joint venture. (*Id.*)

Next, HGL-APTIM contended that there are no possible grounds to invalidate the MPA. (*Id.*) Appellant's allegation that the only purpose of the MPA is to enable APTIM to compete for the instant procurement is "reckless and wholly unsupported." (*Id.* at 8-9.) Instead, the MPA was "in the developmental stage for years" and was not formed for the purpose of competing for this particular procurement. (*Id.* at 9.) HGL-APTIM provided multiple examples of how APTIM has mentored HGL since the MPA was established. (*Id.* at 10-11.) Moreover, invalidating the MPA is impermissible under SBA's size regulations and OHA case law. (*Id.* at 9, 12.)

HGL-APTIM maintained that Appellant relies upon arguments substantially similar to those that OHA rejected in *Size Appeal of Hendall, Inc.*, SBA No. SIZ-5888 (2018). (*Id.* at 12.) In *Hendall*, "OHA declined to consider whether the joint venturers' alleged improper motivations invalidated the mentor-protégé agreement, noting that '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.'" (*Id.* at 13, quoting *Hendall*, SBA No. SIZ-5888, at 11.) Rather, under 13 C.F.R. § 125.9(g), SBA's ASMPP Office is solely responsible for monitoring mentor-protégé relationships. (*Id.*) Because this mechanism is already in place, the Area Office should not "second-guess" a MPA in the context of a size protest. (*Id.* at 13-14.)

HGL-APTIM also asserted that there is no basis for a finding of affiliation between HGL and APTIM, because the Appellant did not allege or demonstrate that APTIM has the power to control HGL. (*Id.* at 14-15.) According to HGL-APTIM, Appellant misconstrues the *Tech. Support Servs*. case, because Appellant has not pointed to any of the factors that show control or affiliation under 13 C.F.R. § 121.103. (*Id.* at 15.) If anything, Appellant's allegations suggest the

opposite, because Appellant claimed that HGL does not genuinely need the assistance of APTIM and could win contracts without APTIM's support. (*Id.*) HGL-APTIM claimed that Appellant also did not support its argument that HGL is affiliated with four other concerns. (*Id.* at 16.)

Accompanying its response to the protest, HGL-APTIM submitted completed SBA Forms 355 for HGL and APTIM; the MPA approval letter; a declaration from Dr. Bruce D. Rappaport, a vice president of HGL; copies of the MPA and JVA; and other documentation.

E. Size Determination

On September 18, 2020, the Area Office issued Size Determination No. 2-2020-111, concluding that HGL-APTIM is an eligible small business for this procurement.

The Area Office first addressed Appellant's allegations of affiliation between HGL and non-APTIM concerns. The Area Office found that HGL is affiliated with Spectrum, its wholly-owned subsidiary. HGL is not affiliated with HGL-NWI JV or HGL-Portage JV, because "firms are not affiliates of [joint ventures] of which they are members." (Size Determination at 3.) The protest did not allege affiliation between HGL and the partner firms in those joint ventures. The Area Office also found that HGL is not affiliated with GeoTrans. (*Id.* at 4.) According to Dr. Rappaport's declaration, GeoTrans [XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX]. (*Id.*) There is therefore no basis to find affiliation between HGL and GeoTrans, as "historical ties between a concern and its alleged affiliate do not create identity of interest affiliation." (*Id.*, citing *Size Appeal of A&H Contractors, Inc.*, SBA No. SIZ-5459 (2013) and *Size Appeal of CJW Constr., Inc.*, SBA No. SIZ-5254 (2011).)

Next, the Area Office addressed Appellant's allegations that HGL and APTIM are affiliated under 13 C.F.R. § 121.103(h). (*Id.* at 4-6.) The Area Office agreed with HGL-APTIM that the proper way for Appellant to voice any concerns about the validity of a mentor-protégé relationship is through the ASMPP office. OHA case law does not support the conclusion that an area office can, or should, overturn a mentor-protégé agreement. (*Id.* at 6-7, citing *Size Appeal of Hendall, Inc.*, SBA No. SIZ-5888 (2018).) The Area Office found the challenge to the mentor-protégé relationship to be outside the scope of its review and accepted the validity of the mentor-protégé relationship between HGL and APTIM. (*Id.* at 7.)

Appellant also claimed in its protest that HGL and APTIM are affiliated due to "other reasons" under 13 C.F.R. § 121.103(b)(6), specifically, the fact that HGL did not need the assistance offered by the mentor-protégé program. (*Id.*) The Area Office agreed with HGL-APTIM that this provision contemplates affiliation "for other reasons ***as set forth in this section***," so the provision applies only if other grounds for affiliation exist under 13 C.F.R. § 121.103. (*Id.*, emphasis added by Area Office.) Here, Appellant did not allege that APTIM controls HGL for any of the reasons set forth under this regulation. (*Id.*) Rather, the Area Office found, Appellant's allegations were speculative and relate to the motivations of HGL and APTIM. (*Id.* at 8.)

The Area Office determined that HGL-APTIM satisfied the requirements for exemption from affiliation under the size status regulations. The protégé, HGL, qualifies as small in

accordance with 13 C.F.R. § 121.106, because the combined average number of employees for HGL and its sole affiliate, Spectrum, are below the 750-employee size standard for the instant procurement. (*Id.* at 8-9.) The Area Office also reviewed the JVA and determined that it contains all the "key provisions required by 13 CFR § 125.8(b) and (c)." (*Id.* at 9.) Therefore, HGL and APTIM are not generally affiliated, and are not affiliated for purposes of the instant procurement. (*Id.* at 9-10, citing 13 C.F.R. § 125.8.)

F. Appeal

On September 30, 2020, Appellant filed the instant appeal. Appellant renews its contentions that HGL and APTIM are affiliated both because their MPA does not comport with the small business rules, and because of "other reasons" under 13 C.F.R. § 121.103(b)(6).

Appellant complains that the Area Office declined to address the merits of the arguments set forth in the protest. (Appeal at 4-5.) Specifically, according to Appellant, the Area Office did not analyze whether "HGL and APTIM obtained approval of the MPA under false pretenses and utilized the MPA for a purpose that is contrary to the spirit, intent, and underlying policy behind the [ASMPP]." (*Id.* at 5.) Appellant asserts that the protest presented new information that may not have been known to the ASMPP office at the time it approved the MPA. Even if the Area Office believed that it did not have authority to review Appellant's allegations relating to the mentor-protégé relationship, the Area Office could, and should, have referred those allegations to the ASMPP office. (*Id.* at 6.) The notion that the Area Office is powerless to review an MPA also is contrary to SBA regulations, which permit that "SBA may terminate the [MPA] at ***any time*** if it determines that the protégé is not benefiting from the relationship." (*Id.* at 5-6, quoting 13 C.F.R. § 125.9(e)(8) (emphasis added by Appellant).)

Appellant contends that *Size Appeal of Hendall, Inc.*, SBA No. SIZ-5888 (2018), cited by the Area Office, is distinguishable from the instant case. (*Id.* at 6-7.) Unlike the protestor in *Hendall*, Appellant provided "ample evidence" to support its allegations. (*Id.* at 7.)

Appellant claims that the Area Office should have terminated the MPA on the grounds that HGL is not receiving, and does not need, the intended benefits of the ASMPP and "that this mentor-protégé relationship was established primarily as a vehicle to circumvent SBA rules that would prohibit APTIM from competing for this contract." (*Id.* at 8.) Appellant highlights that HGL does not need to be mentored for work under NAICS code 562910, as it has already earned $827.6 million doing work under this NAICS code, "which makes up nearly 91% of HGL's awarded federal contract dollars." (*Id.* at 9.) APTIM, on the other hand, "has earned $810.1 million under NAICS Code 562910, which comprises 39% of APTIM's awarded federal contract dollars." (*Id.*)

Appellant maintains that the MPA would not have been approved if it had related to NAICS code 562910. (*Id.* at 9-10.) In fact, HGL already has its own protégé under NAICS code 562910. (*Id.* at 10.) According to Appellant, "HGL and APTIM selected another NAICS code [541715] so they would be able to compete for the current Project." (*Id.*) APTIM is not in the position to enhance HGL's ability to compete for federal contracts under NAICS code 541715 because it has minimal experience working in this industry. (*Id.* at 9.) Rather, Appellant contends

that the MPA was crafted "to gain a competitive advantage from the combination of HGL's small size and APTIM's incumbent status for this specific Project." (*Id.* at 10.)

Lastly, Appellant asserts that the Area Office erred by failing to find HGL and APTIM affiliated for "other reasons" under 13 C.F.R. § 121.103(b)(6). (*Id.* at 11.) The size determination suggested that affiliation cannot be found for "other reasons" unless APTIM controls HGL. (*Id.*) In reality, though, the regulation identifies several other reasons for affiliation, including "absent a valid MPA, when a large business/small-business joint venture bids on a contract, its members are deemed affiliated for purposes of that contract, and they are therefore ineligible to receive a small business set-aside award." (*Id.* at 12.) If SBA were to terminate the MPA, then, according to Appellant, HGL and APTIM should be deemed affiliated for the instant procurement and thus, HGL-APTIM would be ineligible for the award. (*Id.*)

G. Response

On October 19, 2020, HGL-APTIM responded to the appeal, urging that OHA should dismiss or deny the appeal. HGL-APTIM contends that the appeal "relies solely on new issues," specifically the notion that the Area Office should have terminated the MPA, and that the appeal should therefore be dismissed. (Response at 2-3.) OHA will not decide issues raised for the first time on appeal. (*Id.* at 5, citing 13 C.F.R. § 134.316 and *Size Appeal of W&T Travel Servs.*, LLC, SBA No. SIZ-5721 (2016).) Moreover, the Appellant has not in any event met its burden of proving clear error of fact or law in the size determination.

HGL-APTIM asserts that the Area Office correctly concluded that there is no basis to challenge an MPA through a size protest. (*Id.* at 8-9.) The Area Office properly relied on *Size Appeal of Hendall, Inc.*, SBA No. SIZ-5888 (2018), a case with "substantially similar facts" that involved an ASMPP joint venture where the large business mentor was also the incumbent on a predecessor contract. (*Id.* at 10-12.) In *Hendall*, OHA found that "allegations that a "mentor-protégé agreement itself is improper' and that 'SBA should not have approved it in the first instance' do not constitute 'valid grounds for a size protest."' (*Id.* at 12, quoting *Hendall*, SBA No. SIZ-5888, at 8.) Further, the ASMPP Office, not an area office, performs all evaluations contemplated by 13 C.F.R. § 125.9. (*Id.* at 14.)

HGL-APTIM attacks Appellant's other claims. HGL-APTIM disputes Appellant's argument that the portion of *Hendall* cited by the Area Office is merely dictum. (*Id.* at 15.) HGL-APTIM denies Appellant's contention that the MPA utilized an improper NAICS code, and argues that "HGL stands to benefit from APTIM's [XXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXX]." (*Id.* at 17.) Moreover, APTIM [XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX] (*Id.*, citing Rappaport Decl. ¶¶ 6, 8.)

HGL-APTIM asserts that the Area Office properly relied on the ASMPP Office's determination that the assistance provided by APTIM to HGL is "substantial and will meaningfully contribute to HGL's development, and is not merely a front for APTIM to receive small business awards." (*Id.* at 10, citing 13 C.F.R. § 125.9(e)(3).) Even if the Area Office could properly terminate an MPA, this would have no bearing on the instant size determination because the MPA was in place as of the date to determine size. (*Id.* at 15, citing 13 C.F.R. §

121.404(a).) HGL-APTIM submitted its initial offer, including price, on October 2, 2019, and the MPA was in effect at that time. (*Id.*) If the MPA were now terminated, HGL-APTIM still would have been small at the time of its initial offer. (*Id.*)

HGL-APTIM supports the Area Office's determination that Appellant's protest allegations were "speculative in nature," and disputes Appellant's argument that the Area Office failed to consider the merits of the protest. (*Id.* at 13.) The Area Office found Appellant's arguments contrary to regulation and OHA case precedent, but also factually inadequate because Appellant did not provide evidence to support its claims. (*Id.*)

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 finding 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 HGL-APTIM that Appellant has not shown clear error in the size determination. This appeal therefore must be denied.

The applicable SBA regulations[2] 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 MPA has been approved by SBA, an ASMPP mentor and protégé are exempt from affiliation based on their MPA or assistance within the scope of their MPA:

> No determination of affiliation or control may be found between a protégé firm and its mentor based solely on the [MPA] 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

[2] Effective November 16, 2020, SBA introduced substantial changes to the ASMPP and size regulations. *See* 85 Fed. Reg. 66,146 (Oct. 16, 2020). These changes, however, do not apply in the instant case, because they occurred after October 2, 2019, the date HGL-APTIM self-certified as a small business. Except where otherwise indicated, citations throughout this decision refer to the version of SBA's rules in effect on October 2, 2019.

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).

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

In the instant case, the Area Office determined that APTIM and HGL are an SBA-approved mentor and protégé. Sections II.A and II.E, *supra*. The MPA was formally approved on May 29, 2019, approximately four months before HGL-APTIM submitted its proposal for the instant procurement on October 2, 2019. Sections II.A and II.B, *supra*. As a result, HGL and APTIM could properly joint venture for the instant procurement, provided that the protégé, HGL, is a small business, and so long as HGL-APTIM's JVA meets the requirements at § 125.8(b)(2) and (c). The Area Office found that the JVA does meet these conditions. Section II.E, *supra*. The Area Office further determined that, although HGL is affiliated with its wholly-owned subsidiary, Spectrum, the combined employees of HGL and Spectrum do not exceed the 750-employee size standard for the instant procurement. Therefore, HGL, the protégé, is a small business. *Id.*

On appeal, Appellant does not dispute that APTIM and HGL are an SBA-approved mentor and protégé; that HGL-APTIM's JVA meets the requirements at § 125.8(b)(2) and (c); or that HGL itself is a small business for this procurement. Section II.F, *supra*. Appellant contends, however, that the Area Office did not fully explore the merits of the protest. Specifically, Appellant alleged in its protest that HGL-APTIM should not be entitled to enjoy the exception to affiliation for mentor-protégé joint ventures, because HGL and APTIM purportedly obtained their MPA under false pretenses and for a purpose contrary to the spirit of the ASMPP. Section II.C, *supra*. According to Appellant, the true purpose of the MPA is to assist the large business incumbent mentor, APTIM, by allowing it to compete for the instant award, whereas HGL, the protégé, does not require assistance from this mentor. Section II.F, *supra*. Appellant further contends that the Area Office should have terminated or invalidated the MPA, and observes that § 125.9(e)(8) permits that "SBA may terminate [an MPA] at any time if it determines that the protégé is not benefiting from the relationship or that the parties are not complying with any term or condition of the [MPA]."

I find Appellant's arguments unpersuasive for several reasons. First, as the Area Office recognized, Appellant's arguments are premised on the alleged intentions of HGL and APTIM for entering into their mentor-protégé relationship, yet Appellant did not offer evidence to support these allegations. The Area Office therefore properly rejected the allegations as speculative. *See* 13 C.F.R. § 121.1009(d) (explaining that little weight will be afforded to a protestor's "general, unsupported allegations or opinions"). Second, Appellant's allegations amount to a charge that the ASMPP Office should not have approved the MPA in the first

instance, or that the MPA itself is improper. OHA has previously held, however, that "[s]uch allegations are not valid grounds for a size protest, as SBA regulations prohibit any finding of affiliation or control based on a [MPA]." *Size Appeal of Hendall, Inc.*, SBA No. SIZ-5888, at 11 (2018) (citing 13 C.F.R. §§ 125.9(d)(4) and 121.103(b)(6)). The Area Office thus correctly concluded that Appellant's allegations pertaining to the motives for entering into the MPA were beyond the scope of the Area Office's review. Third, Appellant's suggestions that the Area Office should have terminated or invalidated the MPA are also unavailing. While an area office does have authority to find the challenged firm to be small or not small, Appellant points to nothing in the size regulations that would permit an area office to directly terminate, or invalidate, an existing MPA. Moreover, as HGL-APTIM observes, even supposing the Area Office could have terminated or invalidated the MPA, such action would not affect HGL-APTIM's eligibility for the instant award. This is true because HGL-APTIM's size is assessed as of October 2, 2019, and HGL-APTIM still would have been an eligible mentor-protégé joint venture as of that date.[3]

Appellant also argues that, although APTIM and HGL are an SBA-approved mentor and protégé, the Area Office should have found them affiliated for "other reasons" pursuant to 13 C.F.R. § 121.103(b)(6). In Appellant's view, misuse of the ASMPP to benefit the mentor, when the protégé has no need of assistance, is an "other reason" to find affiliation. This argument fails because § 121.103(b)(6) is limited specifically to "other reasons as set forth in this section" (*i.e.*, in § 121.103). Such language is repeated at § 125.9(d)(4), which likewise states that "affiliation [between a mentor and protégé] may be found for other reasons set forth in § 121.103 of this chapter." Under these rules, then, affiliation between a mentor and protégé for "other reasons" must relate to one or more of the grounds specified in § 121.103. The Area Office correctly concluded that misuse of the ASMPP is not a reason for affiliation set forth in § 121.103. Section II.E, *supra*. Further, as discussed above, even if misuse of the ASMPP were a valid "other reason" for affiliation, Appellant did not establish that such misuse actually occurred here.

IV. Conclusion

Appellant has not shown clear error of fact or law in the size determination. 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

[3] Similarly, SBA regulations instruct that, even when an MPA is later terminated, a mentor-protégé joint venture remains "obligated to complete any previously awarded contracts." 13 C.F.R. § 125.9(e)(8).