

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

SIZE APPEAL OF:

C4CJV, LLC,

Appellant,

Re: PCG-SMX JV, LLC

Appealed from  
Size Determination No. SIZ-2025-140

SBA No. SIZ-6362

Decided: July 28, 2025

APPEARANCES

Edward J. Tolchin, Esq., Offit Kurman, Bethesda, MD, for C4CJV, LLC

Jonathan T. Williams, Esq., Meghan F. Leemon, Esq., Emily A. Reid, Esq., PilieroMazza PLLC, Washington, D.C., for PCG-SMX JV, LLC.

DECISION

I. Introduction and Jurisdiction

On April 14, 2025, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area II (Area Office) issued Size Determination No. SIZ-2025-140, dismissing a size protest filed by C4CJV, LLC (Appellant) against PCG-SMX JV, LLC (PCG-SMX). The Area Office found that the protest was nonspecific as required by regulations at 13 C.F.R. § 121.1007. On April 24, 2025, Appellant filed an instant appeal. Appellant contends that the Area Office erred in dismissing the protest, and requests that SBA's Office of Hearings and Appeal (OHA) reverse or remand. 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 timely filed the instant appeal on April 24, 2025. Accordingly, this matter is properly before OHA for decision.

## II. Background

### A. Solicitation

On March 14, 2024, the U.S. Department of Navy (U.S. Navy), NAWCAD Procurement Group (NAWCAD) issued Request for Proposals (RFP) No. N0042124R0009 for assistance with enterprise-wide applications, server, storage, data protection/recovery, data transport, and data environment engineering, operations, and hosting support services—Information Technology (IT) Enterprise Engineering, Operations, and Hosting Support Services (EEOHSS). The Contracting Officer (CO) set aside the procurement entirely for small businesses and designated North American Industry Classification System (NAICS) code 518210, Computing Infrastructure Providers, Data Processing, Web Hosting, and Related Services, with a corresponding \$40 million annual receipts size standard (CO's Memorandum). Appellant and PCG-SMX submitted timely offers.

### B. Protest

On March 25, 2025, the CO informed Protestor (Appellant) that the contract had been awarded to PCG-SMX (Letter from A. Hensler III to M. Vodzak (March 25, 2025), at 1.) On April 1, 2025, Appellant filed a timely protest with the CO. The CO forwarded Appellant's protest to the Area Office for review.

In its protest, Appellant contended that PCG-SMX does not satisfy the criteria required to be an eligible small business under the appropriate NAICS Code given the mentor-protégé joint venture formed between Perrygo Consulting Group, LLC (Perrygo) and Smartronix, LLC (Smartronix). (Protest at 2.) Appellant claimed that both Perrygo and Smartronix are affiliated outside of the mentor-protégé relationship. *Id.* Appellant stated that Perrygo received about \$14,266,387 from the NAWCAD prime contract over FY23, FY24, and FY25, but that upon information and belief, “passed through a significant portion of this revenue to Smartronix as Perrygo's principal subcontractor.” *Id.*

Appellant alleged that prior to the award of this task order to Perrygo, nearly all of Perrygo's revenue was derived from subcontracts, primarily from Smartronix. *Id.* Appellant alleged that 100% of Perrygo's subcontract awards were from Smartronix in 2019. *Id.* Appellant further asserted six of eight of Perrygo's 2020 subcontract awards were from Smartronix. *Id.* In 2021, 100% of Perrygo's subcontract awards were from Smartronix. *Id.* In 2022, three of five of Perrygo's subcontract awards were from Smartronix. *Id.* Appellant believes that while the precise amount of revenue from these subcontracts is unavailable, on information and belief, they exceed 70% of Perrygo's revenue. *Id.* Appellant further asserts Perrygo received 32 subcontracts over the last 10 years, twenty-three of which were from Smartronix. *Id.* Moreover, Appellant cited to a LinkedIn page to state that Perrygo's Chief Operating Officer (COO), Mr. John Kuchta, “came to Perrygo in 2022, after resigning as Smartronix's Vice President of Business Development after a ~20 career as an officer of Smartronix.” (*Id.* at 2-3.) Appellant observed that Mr. Kuchta directs the activities of PCG-SMX on behalf of his current and immediate past employers. (*Id.* at 3.) In addition to Mr. Kuchta directing Perrygo's operations as the firm's COO, Appellant asserted Perrygo also employs a number of former SMX employees, including personnel in other

leadership positions within Perrygo. *Id.* Furthermore, Appellant maintained Perrygo cannot do the work for this procurement. *Id.* Perrygo's experience is limited primarily to low level system administration, maintenance/inspection, and related project management. *Id.* Perrygo does not demonstrate or offer the depth of qualified staff or the capabilities to perform this highly sophisticated seven-year IT contract. *Id.* Additionally, Smartronix will subcontract from PCG-SMX the critical aspects of this work, as they are the only party within the joint venture that demonstrates the necessary technical acumen, capabilities, and resource depth. *Id.*

Next, Appellant argued Perrygo is economically dependent through contractual or other relationships upon Smartronix, as demonstrated by the totality of circumstances. (*Id.* at 4.) Appellant believed the lengthy history between Perrygo and Smartronix suggests such a long-standing relationship, and therefore a finding of general affiliation is more than appropriate. *Id.* Appellant further claimed it is apparent that 70% or more of Perrygo's receipts prior to the 2024 Mentor Protégé agreement were derived from Smartronix. *Id.* Appellant noted the SBA form applying for approval of a mentor/protégé relationship required a representation that the prospective protégé had not received more than 70% of its receipts from the prospective mentor. Appellant speculated PCG-SMX made a false representation in response to this question. *Id.* This false representation underlying the mentor/protégé relationship delegitimizes Smartronix as Perrygo's mentor. *Id.* Furthermore, Appellant argued Perrygo is managed by and employs several Smartronix personnel who move between the companies with some alacrity. *Id.* Lastly, Appellant contended that while PCG-SMX is the contractor here and will subcontract to Smartronix, which is permissible, the work being subcontracted will be the primary and vital requirements of this program given that Perrygo has scant, if any, experience in these matters. *Id.*

### C. Size Determination

On April 14, 2025, the Area Office issued Size Determination No. SIZ-2025-140, dismissing the protest as nonspecific. (Size Determination at 1.) The Area Office found that there is no evidence or supporting documentation to support Appellant's allegations that the members of the joint venture are affiliated. (*Id.* at 2.) The Area Office found that because the solicitation was issued on March 14, 2024, and proposals were due May 6, 2024, a size determination would use the time period 2021-2023 to calculate whether there was affiliation due to identity of interest based upon economic dependence. *Id.* The Area Office noted that Appellant's protest does not include supporting documentation pertaining to Perrygo's subcontract awards for the entire period of 2021-2023. *Id.* Also, the revenues provided in the protest at Exhibit 2 are from 2019-2022 and do not include 2023, which is part of the measurement period. *Id.* The Area Office observed that Exhibit 3 shows the value of prime contracts but does not include the amount Perrygo received as the subcontractor. *Id.* Thus, the evidence does not support the allegation that Perrygo received 70% or more of its receipts from Smartronix from 2021 to 2023. *Id.*

Next, the Area Office found Appellant's protest alleges ostensible subcontracting between Perrygo and Smartronix, although Perrygo is not the protested concern, but rather PCG-SMX as a joint venture. *Id.* The Area Office noted that Perrygo and Smartronix are members of the joint venture and as such their workshare would be considered part of the prime contractor's workshare. (*Id.* at 2-3.) Furthermore, as there is no prime-subcontractor relationship between

Perrygo and Smartronix for the instant procurement, the allegation is moot. (*Id.* at 3.) Moreover, the Area Office found that the LinkedIn biography for Mr. Kutcha cannot be accessed without signing in to the LinkedIn platform; consequently, data about his employment to support the allegation that the COO of Perrygo is a former Smartronix Vice President is not available for review by the Area Office. *Id.*

The Area Office concluded none of the supporting documentation provided shows evidence that Perrygo is controlled by Smartronix or that Smartronix is controlled by Perrygo. *Id.* Additionally, the evidence provided in Exhibits 1-3 does not provide support that during 2021-2023, Perrygo may have received 70% or more of its revenues from Smartronix. *Id.* Furthermore, the Area Office found that Perrygo and Smartronix are members of the joint venture at issue and thus their workshares are considered part of the prime contractor workshare rather than subcontracted work, therefore the allegation regarding ostensible subcontracting between Perrygo and Smartronix is not applicable to the instant procurement. *Id.* The Area Office maintains the LinkedIn profile link provided is not accessible without a LinkedIn profile and therefore Appellant failed to submit evidence that the current Perrygo COO is a former Smartronix Vice President or may have power and control over either Perrygo or Smartronix. *Id.* The Area Office decided that Appellant's allegations regarding the validity of the mentor-protégé agreement on the basis of control, are not valid grounds for a size protest, and are beyond the scope of the Area Office's review under a size protest. *Id.* Consequently, as there is no supporting basis provided for the remaining allegations, the protest is dismissed as not specific. (*Id.*, citing *Size Appeal of Wilson Walton Int'l, Inc.*, SBA No. SIZ-6031 (2019).)

#### D. Appeal

On April 24, 2025, Appellant filed an instant appeal. In Appellant's view, the Area Office erred in dismissing Appellant's protest and concluding that PCG-SMX is a small business and therefore eligible for award, by ignoring controlling law and the facts.

Appellant first argues that Smartronix and Perrygo were affiliated at the time of the mentor-protégé application. (Appeal at 7.) Appellant highlights that the Smartronix/Perrygo mentor-protégé agreement was executed in 2023, and that the three prior fiscal years were 2020, 2021, and 2022. *Id.* In 2020, six out of eight of Perrygo's subcontract awards were from Smartronix. *Id.* In 2021, 77% of Perrygo's subcontract awards were from Smartronix. *Id.* In 2022, three out of five of Perrygo's subcontract awards were from Smartronix, which equates to 74% of their revenue. *Id.* Additionally, 100% of Perrygo's subcontract awards were from Smartronix in 2019, and according to Appellant, these awards would have generated receipts for Perrygo in 2020 and beyond. *Id.* In Appellant's view, it is plain that revenue from Smartronix exceeded 70% of Perrygo's total revenue at the time of the mentor protégé agreement. *Id.* The Area Office refused to consider this matter, and its position is incorrect; the protest here is not a protest claiming affiliation or control based on a mentor-protégé agreement. (*Id.* at 7-8.) Rather, Appellant is contending that the joint venture, PCG-SMX, submitting the offer is large, not small. (*Id.* at 8.) PCG-SMX is large because the mentor-protégé agreement does not confer small business status given that the protégé firm was not small at the time of the 2023 mentor protégé agreement. *Id.* That is because “the Administrator is authorized to establish a mentor-protégé program for all small business concerns.” *Id.* Also, the definition of a protégé is a “small

business” while the definition of a mentor is an entity that “commits to assisting” a protégé. *Id.* Appellant argues that Perrygo, “is and was not a small business, by affiliation, and cannot participate in the mentor-protégé program, and Smartronix cannot be a mentor to a large business.” *Id.* Simply put, the mentor protégé agreement here is objectively void *ab initio* because there cannot be a legitimate mentor protégé approval in place under this circumstance. *Id.* Appellant states that it is not challenging the SBA approval of the mentor-protégé agreement between Perrygo and Smartronix, but rather that it is challenging Perrygo's size which makes it ineligible as a protégé. *Id.*

Appellant contends Perrygo not only received over 70% of its revenue from Smartronix prior to the mentor-protégé agreement, it has been economically dependent through contractual or other relationships with Smartronix, as demonstrated by the totality of circumstances. (*Id.* at 10.) The lengthy history between Perrygo and Smartronix, including the fact Perrygo is managed by and employs several Smartronix personnel who move between the companies with some alacrity, suggests such a long-standing relationship, and therefore a finding of general affiliation is more than appropriate. *Id.* Moreover, Appellant contends the Area Office's other reasons for dismissing the appeal without investigation are erroneous. *Id.* Appellant notes that it is important to distinguish specificity from accuracy, because ‘there is no requirement that a protest be accurate.’ *Id.* Accurate protests are not required because much of the information necessary to prove a size protest is not publicly available. *Id.* Appellant believes that not only did it provide reasonable notice of the grounds for its protest to the Area Office, publicly available data in government-based resources which C4CJV provided to the Area Office evidenced the accuracy of the grounds. (*Id.* at 11.) The Area Office should have considered the matter and requested all relevant information from Perrygo. *Id.* Furthermore, Appellant observes that “hotlinks to LinkedIn or other websites are considered by SBA.” *Id.* The Area Office itself in its dismissal hotlinked OHA's rules and understood how to use hotlinks. *Id.* Additionally, the reference to the LinkedIn website and explaining its contents is sufficient in and of itself to warrant an Area Office investigation, even if the website is not accessed by the Area Office. *Id.*

Appellant submits a number of exhibits as new evidence on appeal.

#### E. PCG-SMX's Response

On May 12, 2025, PCG-SMX responded to the appeal.

PCG-SMX first contends Appellant abandoned its affiliation allegations under the ostensible subcontractor and totality of the circumstances rules. (Response at 7.) PCG-SMX observes that in its appeal, Appellant attempts to rehash allegations from the Protest and expand on them with new exhibits it could have submitted to the Area Office. *Id.* In doing so, Appellant appears to misunderstand the standard of review on appeal. *Id.* PCG-SMX further observes that the Appeal does not allege clear error in or otherwise address the Area Office's dismissal of the ostensible subcontractor and totality of the circumstance's allegations in the Protest. *Id.* Even if Appellant had not abandoned its ostensible subcontractor and totality of the circumstances allegations on appeal, there would be no basis for OHA to find a clear error in the Area Office's decision to dismiss these aspects of the Size Protest. *Id.* The Area Office was correct to dismiss Appellant's invalid protest allegations under the ostensible subcontractor and totality of the

circumstances rules, and Appellant presumably understood this when it decided not to contest these aspects of the Area Office's decision in the Appeal. (*Id.* at 8.)

Next, PCG-SMX argues the only one of the three size protest affiliation allegations Appellant addressed in the Appeal is the allegation of economic dependence at the time SBA approved the MPA between Perrygo and Smartronix. *Id.* However, Appellant fell well short of meeting its burden to prove the Area Office made a clear error in dismissing this economic dependence allegation. *Id.* There is no question Appellant's economic dependence allegation challenges SBA's approval of the MPA. *Id.* Appellant made this plain when it titled its first argument "Smartronix and Perrygo Were Affiliated at the Time of the Mentor/Protégé Application." *Id.* Appellant removed any doubt when it claimed that "[i]t is plain that revenue from Smartronix exceeded 70 percent of Perrygo's total revenue at the time of the mentor protégé agreement." *Id.* To further drive home the focus of this argument, Appellant later asserted that PCG-SMX is "large because the mentor-protégé agreement does not confer small business status given that the protégé firm was not small at the time of the 2023 mentor protégé agreement." (*Id.* at 8-9.) PCG-SMX believes that the Area Office rightly dismissed this economic dependence argument, because challenging SBA's approval of an MPA is not a valid basis for a size protest. (*Id.* at 9.) Furthermore, on appeal, Appellant did not specifically allege that the Area Office made a clear error, but it took issue with the Area Office's dismissal by mischaracterizing OHA's rulings, and by attempting to recast its economic dependence argument. *Id.* In PCG-SMX's view, all of Appellant's attempts to conjure error in the Area Office's decision fail. *Id.* PCG-SMX observes that "perhaps recognizing the insurmountable problem it faced under the foregoing case law, Appellant changed gears in the Appeal and claimed that it is 'not challenging the SBA approval of the mentor protégé agreement between Perrygo and Smartronix. We are challenging Perrygo's size which makes it ineligible as a protégé.'" (*Id.* at 10.) PCG-SMX believes this new argument is nonsensical. *Id.* Appellant does not explain for what purpose it would contest Perrygo's eligibility as a protégé if not as a challenge to SBA's approval or validity of the MPA. *Id.* And, even if there was a meaningful distinction between Appellant's protest allegation about economic dependence at the time SBA approved the MPA and its argument that economic dependence impacted Perrygo's eligibility as a protégé (which there is not), SBA's rules do not permit Appellant to file a size protest challenging a protégé's eligibility as a protégé. *Id.*

PCG-SMX believes Appellant only had the right to file the protest challenging PCG-SMX small business status as of the relevant date to measure size for the Solicitation, i.e., the date of initial offer including price. (*Id.* at 11.) Neither protest nor the appeal claimed with sufficient specificity that Perrygo and Smartronix were affiliated based on economic dependence as of the relevant date to measure size for the Solicitation. *Id.* Rather it is clear from the Appeal that Appellant is arguing that economic dependence affiliation existed at the time SBA approved the MPA and allegedly prevented Perrygo from being an eligible protégé. *Id.* Regardless of how Appellant now attempts to spin this argument, it is challenging SBA's approval of the MPA. *Id.* And because that is not a valid basis for a size protest, Appellant cannot meet its burden to show a clear error in the Area Office's decision to dismiss this allegation. *Id.* Indeed, far from making an error, the Area Office correctly determined that Appellant's economic dependence argument is beyond the scope of its review under a size protest. *Id.*

PCG-SMX further contends Appellant failed to meet its burden to prove the Area Office committed any other errors. *Id.* PCG-SMX states Appellant's brief second argument addressing "other reasons" the Area Office dismissed "the Appeal" does not carry Appellant's burden to prove the Area Office made a clear error of fact or law in dismissing the protest. *Id.* PCG-SMX argues Appellant failed to make a coherent argument the Area Office made a clear error in dismissing the size protest as non-specific. *Id.* Appellant simply made the general assertion that it provided "reasonable notice" of the protest grounds along with "publicly available data," such that the Area Office should have investigated further. (*Id.* at 12.) PCG-SMX believes that the fatal flaw in Appellant's position is that a request to investigate is not sufficient to deem a protest specific. *Id.* Moreover, in regard to Appellant's argument about the LinkedIn link, PCG-SMX argues that there cannot be an error by the Area Office when Appellant is required to provide available support for its allegations and it merely provided a link to the LinkedIn profile that the Area Office could not use. (*Id.* at 13.)

Finally, PCG-SMX opines that even if the Area Office made an error in failing to figure out how to use the link that Appellant provided (which it did not), this would be a harmless error. *Id.* PCG-SMX observes that the link is to a LinkedIn profile for one individual, and that Appellant does not explain why this lone individual's background in his LinkedIn profile could have even theoretically established general affiliation between Perrygo and Smartronix such that the Area Office's inability to consider the profile had a material impact on its decision to dismiss the Size Protest. (*Id.* at 14.) Again, Appellant is simply (and improperly) asking SBA to investigate. *Id.*

Additionally, Appellant has now abandoned its protest allegations under the ostensible subcontractor and totality of the circumstance's rules. *Id.* For these reasons, any possible error by the Area Office in not being able to access the LinkedIn profile for one individual would not have altered the Area Office's correct decision to dismiss the protest or the outcome in this Appeal. *Id.*

#### F. New Evidence

On May 6, 2025, Appellant filed a Motion to Reply with OHA. In its motion, Appellant states that Exhibits 3-13 are not "new evidence," does not enlarge any issues, and is "new evidence" only to the extent that it is the same information presented in a different format. (Motion to Reply at 1-2.)

Also on May 6, 2025, PCG-SMX filed a response to Appellant's Motion to Reply with OHA. In its response, PCG-SMX argues that Appellant has not and cannot establish good cause to admit any of the 13 exhibits included with its Motion, because all of these documents either do not need to be added to the record (Exhibits 1-2) or could and should have been provided to the Area Office with the Size Protest (Exhibits 3-13). (Response to Motion to Reply at 4.) As such, OHA should deny the Motion in its entirety. *Id.*

New evidence may be admitted on appeal at the discretion of the administrative judge if "[a] motion is filed and served establishing good cause for the submission of such evidence." 13 C.F.R. § 134.308(a). The proponent must demonstrate that the new evidence is relevant to the

issues on appeal, does not unduly enlarge the issues, and clarifies the facts on the issues on appeal. *Size Appeal of Vista Eng'g Techs, LLC*, SBA No. SIZ-5041, at 4 (2009). “[E]vidence not previously presented to the Area Office which issued the size determination being appealed will not be considered by a Judge unless: (1) The Judge, on his or her own initiative, orders the submission of such evidence; or (2) A motion is filed and served establishing good cause for the submission of such evidence.” 13 C.F.R. § 134.308(a). Evidence that was not previously presented to the Area Office is generally not admissible and OHA will not consider it. Further, OHA will not consider new evidence where the proponent unjustifiably fails to submit the evidence during the size review. *Size Appeal of Zin Technologies, Inc.*, SBA No. SIZ-6305 (2024) (citing *Size Appeal of Rocky Mountain Medical Equipment, LLC*, SBA No. SIZ-6129 at 12 (2021)).

In the instant case, I agree with PCG-SMX that Appellant has not established good cause to introduce the new evidence provided with Appellant's first motion to supplement the record. The issue here is whether Appellant's protest was sufficiently specific and was the Area Office in error to dismiss it. New evidence will not address that issue. Appellant's submissions on appeal are irrelevant here. An insufficiently specific protest cannot be cured on appeal by the submission of new evidence. *Size Appeal of AMETEK SCP, Inc.*, SBA No. SIZ-5518 (2013). In its motion, Appellant states that its evidence is not “new” despite the evidence being presented to OHA for the first time on appeal. Appellant further states that this new evidence is “the same information presented in a different format.” However, if that is the case, then Appellant should have presented the evidence with its protest. Evidence that was not previously presented to the Area Office generally is not admissible and will not be considered by OHA. *E.g.*, *Size Appeal of Maximum Demolition, Inc.*, SBA No. SIZ-5073, at 2 (2009) (“I cannot find error with the Area Office based on documents the Area Office was unable to review.”). Thus, Appellant fails to meet its burden in explaining why this new evidence should be admitted.

Accordingly, Appellant's attempt to submit new evidence on appeal and its Motion to Reply are DENIED.

### 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

Appellant has not shown that the Area Office erred in dismissing Appellant's protest. I must therefore deny the appeal.



A protest must be sufficiently specific to provide reasonable notice as to the grounds upon which the protested concern's size is questioned. 13 C.F.R. § 121.1007. Some basis for the belief or allegation stated in the protest must be given. *Id.* A protest merely alleging that the protested concern is not small or is affiliated with unnamed other concerns does not specify adequate grounds for the protest. *Id.* Protests which do not contain sufficient specificity will be dismissed by the area office. *Id.* In reviewing non-specific protests, SBA will consider whether (1) the protest was sufficiently specific to provide notice of the grounds upon which the protestor was contesting the challenged firm's size; and (2) whether the protest included factual allegations as a basis for these grounds. *Size Appeal of Carriage Abstract, Inc.*, SBA No. SIZ-4430, at 6 (2001); *Size Appeal of Alutiiq International Solutions, LLC*, SBA No. SIZ-5069, at 4 (2009); *Size Appeal of NuGate Group, LLC*, SBA No. SIZ-5821, at 2 (2017).

It is thus clear that to be compliant with the regulations, a size protest must not merely assert that the protested concern is small [sic--other than small], but must also include specific supporting facts which, if true, would render the concern other than small. If the allegation raised in the protest would not, even if true, be the basis for challenging the protested concern's size, the Area Office must dismiss the protest as insufficiently specific. *Size Appeal of Mission Analytics, LLC*, SBA No. SIZ-6325 (2024); *Size Appeal of BahFed Corp.* SBA No. SIZ-6327 (2024). A protest must present specific credible facts demonstrating a size violation. *Size Appeal of Magnolia Contracted Services*, SBA No. SIZ-6296 (2024); *Size Appeal of BahFed Corp.* SBA No. SIZ-6327 (2024).

Here, Appellant's protest alleged that Perrygo was affiliated with Smartronix based upon identity of interest due to economic dependence under 13 C.F.R. § 121.103(f)(2). This requires a showing that the challenged concern derived 70% or more of its receipts from another concern over the previous three fiscal years. However, Appellant cited to the wrong fiscal years in its protest. PCG-SMX's size is determined as of the date of initial offer, including price. 13 C.F.R. § 121.404(a), which was May 6, 2024. The previous three fiscal years to consider are thus 2021, 2022 and 2023. However, Appellant's protest submitted information from 2019-2022. This was the wrong time period. Thus, the information, even if true, would not constitute a basis for challenging Perrygo's size and thus were not specific credible facts demonstrating a size violation.

Further, Appellant appears to be challenging SBA's approval of the mentor-protégé agreement bet[ween] Perrygo and Smartronix. However, whether SBA should have approved a mentor-protégé arrangement in the first instance, or whether an approved MPA was proper, are not valid grounds for a size protest, because SBA regulations prohibit any finding of affiliation or control based on an MPA. *Size Appeal of Daniels Bldg. Co., Inc.*, SBA No. SIZ-6250, at 5 (2023); *Size Appeal of Severson Environmental Svcs., Inc.*, SBA No. SIZ-6087, at 10 (2021).

Appellant's protest did not raise specific, credible evidence that PCG-SMX was other than small on the basis of identity of interest. While Appellant's protest raised allegations of violation of the ostensible subcontractor rule and the totality of the circumstances, the appeal did not raise these issues. They are thus abandoned and will not be considered here. *Size Appeal of Apex Group, Inc.*, SBA No. SIZ-4300 (1998).

The Area Office's dismissal of Appellant's protest was based upon no error of fact or law.

IV. Conclusion

Appellant has not shown that the Area Office's dismissal of Appellant's protest was based upon any error of fact or law. 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).

CHRISTOPHER HOLLEMAN  
Administrative Judge