

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

SIZE APPEAL OF:

Mission Analytics, LLC,

Appellant,

Re: ModTech Solutions

Appealed from
Size Determination No. 2025-167

RFQ No. HC101924R0003

SBA No. SIZ-6372

Decided: September 30, 2025

APPEARANCES

Mike Winters, President, MissionAnalytics, LLC, Falls Church, Virginia

Roy Cabibbo, Manager, and Timothy Swindall, Executive Director, ModTech Solutions,
Aiea, Hawaii

ORDER REMANDING PROCEEDING

I. Introduction and Jurisdiction

On August 6, 2025, the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) received an appeal petition in the above-captioned matter from Mission Analytics, LLC (Appellant). Appellant contends that SBA erred in dismissing the protest, and requests that SBA's Office of Hearings and Appeal (OHA) reverse or remand. For the reasons discussed *infra*, I am VACATING the instant Size Determination and REMANDING this proceeding to the SBA.

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 July 3, 2025. Accordingly, this matter is properly before OHA for decision.

A. Request for Quotations, Protest, and Corrective Action

On August 7, 2024, the Defense Information Systems Agency (“DISA” or “Agency”) released Request for Quotations (RFQ) No. HC101924R0003 to remove, procure, install, program and test equipment for two new video walls, two video processors, and miscellaneous

audio/video (A/V) equipment/materials located at DISA-PAC, Pearl Harbor, Hawaii. (RFQ at 1). The Contracting Officer (CO) set the procurement 100% aside for small business and designated North American Industry Classification System (NAICS) code 334310, Audio and Video Equipment Manufacturing, with a corresponding 750 employee size standard as the applicable code.¹ Initial offers were due on September 9, 2024, which due date was eventually extended to October 25, 2024, by Amendment 5 to the RFQ. On May 5, 2025, the Agency posted to SAM.gov that ModTech Solutions LLC (ModTech) was the prospective awardee.

On May 12, 2025, Appellant filed its size protest against ModTech, the CO referred the protest to SBA on May 15th. Appellant contended that ModTech's quotation failed to comply with the limitations on subcontracting clause, and specifically, the nonmanufacturer rule. Appellant also filed a protest with the Government Accountability Office (GAO) on June 23, 2025.

In light of these developments, the CO determined that corrective action was warranted. On July 9, 2025, DISA issued a Notice of Corrective Action and Request for Dismissal of Appellant's GAO protest. The Corrective Action would consist of amendment of the RFQ and re-evaluation of the proposals of those offerors who had not withdrawn from competition. DISA will then make a new award determination in accordance with the amended RFQ. The award to ModTech remains subject to a Stop Work Order issued in response to Appellant's GAO protest (under 31 U.S.C. § 3553 and FAR 52.233-3), until the Corrective Action is completed. DISA accordingly requested that the GAO dismiss this Protest as academic. (citing *Dyna-Air Ang'g Corp.*, B-278037, Nov. 7, 1997, 97-2 CPD ¶ 132. *See also Computer Cite*, B-412162.3 (Comp. Gen. July 15, 2016.)

Appellant responded to the proposed corrective action, alleging that it “does not provide requested relief for all of the protest issues,” and “does not address or resolve all of the protest issues.” (Resp. to Notice of Corrective Action at 1). Appellant further contended that since the “corrective action does not include cancellation of the award[,] the award will remain in place and the question of whether the corrective action will render the protest academic is only ‘conjectural.’” (*Id.*)

B. GAO and SBA Dismissals

GAO dismissed Appellant's protest on July 15, 2025. *Mission Analytics, LLC.*, B-423669, July 15, 2025. While acknowledging Appellant's objections, GAO held that, even if the proposed corrective action would not ultimately resolve each and every protest issue, it would nevertheless render the protest of the agency's prior award determination academic. Longstanding GAO precedent holds that GAO does not consider allegations where the issues presented have no practical consequences with regard to an existing federal government procurement and are of purely academic interest. *See, e.g., Ferris Optical*, B-403012.2, B-403012.3, Oct. 21, 2010, 2010 CPD ¶ 265 at 1-2.

¹ While the RFQ lists the size standard as 1,250 employees, this was an error. 13 C.F.R. § 121.201.

Also on July 15, 2025, the CO informed SBA “The contract award is being cancelled.” (email, J. Seese to H. Goza, July 15, 2025).

In light of the GAO dismissal, the pending corrective action and the CO's email, SBA dismissed Appellant's protest on July 18, 2025. (Size Determination at 1). SBA's regulation requires that where a GAO decision results in corrective action:

If the decision results in a cancellation of the award or change of the apparent successful offeror, SBA will dismiss the size protest as moot.

13 CFR § 121.1009(a)(2)(ii).

Since the CO confirmed cancellation of the award, Appellant's protest to SBA was accordingly also dismissed as moot. This determination was delivered to Appellant on July 21, 2025.

C. Appeal

On August 5, 2025, Appellant filed the instant appeal. The appeal was filed within 15 calendar days after receipt of the formal size determination, so therefore it was timely. 13 CFR § 134.304(a).

Appellant first argues that the circumstances here do not match those described in the cited regulation — 13 CFR § 121.1009(a)(2)(ii) — it therefore does not provide either proper rationale or authority for dismissal. (Appeal at 1).

The GAO decision which prompted SBA's dismissal, *Mission Analytics, LLC.*, B-423669, does not direct or otherwise result in a cancellation of the award. By contrast, it expressly allows the award to stay in place in the exact manner requested by the agency. (Appeal at 1). The conditions for corrective action and subsequent award cancellation described in the GAO Decision, however, actually do align with a different clause of 13 C.F.R. § 121.1009. 13 C.F.R. § 121.1009(a)(2)(iii) requires:

If the decision requires re-evaluation of offers or other corrective action but the award is not cancelled, SBA will continue to suspend processing the protest.

13 C.F.R. § 121.1009(a)(2)(iii)(B) further requires:

If after re-evaluation or other corrective action occurs a different apparent successful offeror is identified, SBA will dismiss the size protest as moot. Interested parties may file a timely size protest with respect to the newly identified apparent successful offeror after the notification of award.

Accordingly, Appellant argues a dismissal under § 121.1009(a)(2)(ii) is not warranted as the GAO decision did not result in award cancellation. This also means that the rationale provided for dismissal of the size protest is in error of fact and error of law. (Appeal at 2).

Appellant also argues that the subject size determination was not issued by the proper authority to issue a size determination, as a size determination can only be made by an Area Director or designee. 13 C.F.R. § 121.1002 requires “[t]he responsible Government Contracting Area Director or designee makes all formal size determinations in response to either a size protest or a request for a formal size determination.”

The SBA website identifies Directors for Areas I-V but does not do so for Area VI. This absence of information led the CO to submit to the email address sizeprotest@sba.gov rather than to the proper entity, an Area Director or a designee.

Appellant contends that neither the content of the Size Determination nor the signature block indicate issuance from or on behalf of an Area Director, Acting Area Director, or individual otherwise designated by the Area Director. Therefore, the Size Determination appears to be issued without proper authority. (Appeal at 2).

Finally, per DISA's own stated corrective action: “[t]he Agency will re-evaluate proposals of offerors who have not withdrawn from competition and make a new award determination in accordance with the amended RFQ.” (Notice of Corrective Action at 2). Therefore, by definition, the prior awardee remains in competition for the award.

And per FAR 52.219-6(c)(1): “Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.”

Thus, there remains a controversy for this procurement that is relevant to a size determination, as ModTech can only remain in competition for the award if they are considered by the agency to be a small business for the purposes of this procurement. (Appeal at 2-3).

For the above listed reasons, this appeal should be granted.

D. Protest Response

The initial deadline for ModTech to respond to this appeal was August 21, 2025. However, ModTech did not file its Response until August 28, 2025. On September 2, 2025, Counsel for Appellant filed a Motion for Leave to file a Reply. Appellant conferred with ModTech via telephone on the same date regarding this motion, and ModTech did not object.

On September 3, 2025, I re-opened the record and admitted ModTech's filing, as well as granting Appellant's Motion for Leave to file a Reply.

ModTech filed both a Response and a Motion to Dismiss. ModTech argues there is no live controversy, as the CO confirmed on the record that the prior award “has been

canceled/terminated for convenience” and that the Agency “will amend the solicitation and re-evaluate before making a new award determination.” (Response at 1, citing Notice of Corrective Action). (emphasis supplied in Response).

ModTech argues that when an award being protested is cancelled, the protest is moot. (*Id.*, citing 13 C.F.R. § 121.1009(a)(2)(ii).) The proper course once corrective action with re-evaluation is underway is to suspend or dismiss the original protest and permit a new, timely size protest if a different apparent successful offeror is later identified. Even Appellant itself framed 13 C.F.R. § 121.1009(a)(2)(iii)(B) as the post-re-evaluation pathway for any new protest — which underscores that the prior protest cannot be resurrected to continue litigating over a procurement matter that no longer exists. Whatever Appellant's contrary interpretation of GAO decision would appear to reflect, the dispositive fact stated plainly in the CO's Memorandum is that the award has been canceled/terminated. (Response at 1-2). (emphasis supplied in Response).

Moreover, the appeal is non-justiciable because it presents no evidence that ModTech exceeds the applicable size standard. (*Id.* at 2). The designated NAICS code for the (cancelled) subject procurement is NAICS 334310 — Audio and Video Equipment Manufacturing — with a corresponding 750-employee size standard. Appellant's filing consists of procedural assertions about § 121.1009 and corrective action; however, it supplies no payroll records, headcount summaries, affiliate analyses, or other substantiated data addressing ModTech's 24-month average number of employees under 13 C.F.R. § 121.106. Because the appeal lacks both a live controversy and an evidentiary basis, OHA should dismiss. (Response at 2).

ModTech maintains the appeal still fails even if it is adjudicated on the merits. The burden rests with the Protestor/Appellant to present specific, credible information establishing that the challenged concern is “other than small.” See 13 C.F.R. § 121.1009; FAR 19.302. Appellant submitted no such evidence. (Response at 2). Similarly, the operative record fact for this matter is that the subject procurement was canceled/terminated, with amendment and re-evaluation ordered by the agency — that circumstance moots the prior size protest. The regulation at 13 C.F.R. § 121.1009(a)(2)(ii) plainly does not require OHA to maintain jurisdiction over a protest tied to an award the agency has already canceled.

Finally, as a policy matter, repetitive filings such as these are burdensome to the SBA, the procuring Agency, the taxpayers, and undermines the overall mission of the subject procurement. Such activities should accordingly be discouraged. (Response at 3).

ModTech maintains that for the above-listed reasons, the protest should be dismissed.

E. Appellant's Reply

On September 17, 2025, Appellant replied to ModTech's Response and Motion to Dismiss. In response to ModTech's argument that there is no live controversy, Appellant contends that there are actually two live controversies at hand in this matter. In fact, cancelling an award is just the initial action of an adverse size decision, as cancellation of an award prior to a decision would not erase the requirements outlined in 13 C.F.R. § 121.1009(g), which include:

- “A contracting officer shall not award a contract to a protested concern that the Area Office has determined is not an eligible small business for the procurement in question.” See 13 C.F.R. § 121.1009(g)(2)
- “If a contracting officer receives such a determination after contract award, and no OHA appeal has been filed, the contracting officer shall terminate the award.” 13 C.F.R. § 121.1009(g)(2)(i). (emphasis supplied in Reply).
- “If OHA affirms the size determination finding the protested concern ineligible, the contracting officer shall either terminate the contract or not exercise the next option.” 13 C.F.R. § 121.1009(g)(2)(iii). (emphasis supplied in Reply).
- “The contracting officer must update the Federal Procurement Data System and other procurement reporting databases to reflect the final agency size decision (the formal size determination if no appeal is filed or the appellate decision).” 13 CFR § 121.1009(g)(3). (emphasis supplied in Reply).
- “Once SBA has determined that a concern is other than small for purposes of a particular procurement, the concern cannot later become eligible for the procurement by reducing its size.” 13 C.F.R. § 121.1009(g)(4). (emphasis supplied in Reply).
- “A concern determined to be other than small under a particular size standard is ineligible for any procurement or any assistance authorized by the Small Business Act or the Small Business Investment Act of 1958 which requires the same or a lower size standard, unless SBA recertifies the concern to be small pursuant to § 121.1010 or OHA reverses the adverse size determination. After an adverse size determination, a concern cannot self-certify as small under the same or lower size standard unless it is first recertified as small by SBA. 13 C.F.R. § 121.1009(g)(5). (emphasis supplied in Reply).

(Reply at 1-2).

Because of the above-listed requirements, there is still a live controversy.

Secondly, Appellant notes it initially protested to DISA in May. Appellant then alleges DISA failed to comply with FAR 52.219-6(c)(1), which mandates that offers only be solicited from small business concerns, that any offers submitted by non-qualifying entities be rejected. DISA refused to evaluate this protest on the merits, turning a protest of improper agency action into an extension of the existing size protest. OHA should make a decision on this issue or otherwise make it clear in the decision that such a decision is not within their jurisdiction. (Reply at 2-3).

Appellant also contends that there is an issue regarding the non-manufacturer rule (NMR) that is itself a live controversy and needs to be properly adjudicated. (*Id.* at 3)

Finally, with respect to ModTech's arguments regarding absence of evidence — Appellant argues ModTech misunderstands that the instant matter is not the Size Protest, but rather the Appeal of the Size Determination, and more specifically the grounds for its dismissal. Any evidence regarding the contention that ModTech did not meet the size standard for nonmanufacturers Appellant presented in the Size Protest submitted to the CO on May 12, 2025. (*Id.*)

Appellant argues ModTech has only provided evidence that it meets the manufacturer size standard of 750 employees — which is inapplicable to the present context, as Appellant contends, they are clearly a nonmanufacturer, and nothing in their filing indicates that they are compliant with the NMR. (*Id.*)

ModTech's argument that the CO's cancellation mandates dismissal of the size protest. However, the GAO decision only mentions cancellation as a follow-on to a new award decision. Since there has been no new award decision, amendment to the RFQ, or re-evaluation as described by the GAO, it is impossible for a cancellation to have taken place in accordance with that decision.

Appellant argues the cancellation by the CO was done for no clear reason, and the fact that it was contemporaneous with the GAO decision does not in any way make it a 'result' of the GAO decision. (Reply at 3-4). Regarding this matter, Appellant requests that — should OHA concur with this point — that the award modification of July 15, 2025, which canceled the award, be made part of the record to determine the formal reason for the cancellation, and whether that reason was to correct any of the bases of protest raised by Appellant. (*Id.* at 4).

In conclusion, Appellant argues nothing presented to date effectively contradicts any of the allegations in Appellant's initial Size Appeal, nor has any filing established SBA made a proper decision. As such, ModTech's motion to dismiss should be denied, and the appeal should be granted. OHA should either issue a new size determination or direct SBA to correct any errors and issue a new one.

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 that the size determination is based upon a clear error of fact or law. 13 C.F.R. § 134.314. OHA will disturb a 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

The record is inconsistent as to the action DISA has in fact taken. The CO informed SBA that the award to ModTech was cancelled on July 15th. However, this email is not consistent with the corrective action DISA informed GAO it has taken. DISA informed GAO it is amending the RFQ, reevaluating the proposals and will make a new award once that reevaluation is concluded. DISA has thus informed GAO it will be reevaluating both Appellant and ModTech's proposals and has excluded neither one from the eventual award.

SBA's action in dismissing the appeal was correct based upon the information it received from the CO. 13 C.F.R. § 121.1009(a)(2)(ii). However, the corrective action described to GAO would call for suspension of the protest. 13 C.F.R. § 121.1009(a)(2)(iii). The record here is unclear.

Accordingly, I must REMAND this matter to SBA to determine whether the award to ModTech was in fact cancelled, in which case dismissal of the protest is proper, or award is merely subject to a stop work order pending the reevaluation of proposals, in which case the protest is to be suspended, pending the outcome of the corrective action. If the award was in fact cancelled, dismissal of the protest is the proper action. 13 C.F.R. § 121.1009(a)(2)(ii). If there is a stop work order pending the reevaluation of proposals, the protest must be suspended, not dismissed. 13 C.F.R. § 121.1009(a)(2)(iii). If ModTech were to be eventually selected, then SBA must conduct a size determination. 13 C.F.R. § 121.1009(a)(2)(iii)(A). If ModTech is not eventually selected, the protest must be dismissed. 13 C.F.R. § 121.1009(a)(2)(iii)(B).

Appellant's argument the size determination is not signed by the proper official is meritless. The size determination is clearly signed by the Acting Area Director, who has the authority to act. 13 C.F.R. § 121.1002. Appellant's arguments as to the merits are not under consideration. If the protest is moot, they may not be considered. If ModTech is eventually reselected, they may be considered at that time.

CONCLUSION

I herewith VACATE the instant Size Determination and REMAND this matter to SBA for a new Size Determination, consistent with this decision.

CHRISTOPHER HOLLEMAN
Administrative Judge