

BRIEFING PAPERS[®] SECOND SERIES

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PRACTICAL TIGHT-KNIT BRIEFINGS INCLUDING ACTION GUIDELINES ON GOVERNMENT CONTRACT TOPICS

SMALL BUSINESS SIZE PROTESTS & APPEALS: TRENDS & ANALYSIS

By Daniel Greenspahn

U.S. Small Business Administration regulations provide guidance on how a firm's size is determined¹ and on how to challenge a firm's small business status through a size protest and subsequent size appeal.² Commentators have synthesized these rules in past BRIEFING PAPERS³ and in other sources.⁴

This PAPER builds on those efforts in two primary ways. First, it aggregates data from several hundred size protests and appeals in recent years to provide previously unavailable information on the likely chances of success and length of time for a decision in these proceedings. Second, it distills the key points of law for which the most cited of several thousand size appeal decisions are relied on by the SBA, helping federal contractors to make more informed choices in filing or defending a size protest or appeal.⁵

In short, this BRIEFING PAPER explains (1) how a firm's size is determined, (2) the requirements, procedures, past results, and typical timelines of

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Daniel Greenspahn is an attorney with Hogan Lovells US LLP in Washington, D.C. and counsels firms of all sizes on small business regulations and size protests and appeals. Daniel is deeply appreciative of his colleagues Agnes Dover and Todd Overman for their invaluable mentorship, insight, and support on this BRIEFING PAPER and more generally.

size protests and appeals, and (3) key precedent on critical size-related issues. By comparing the SBA's regulations with the actual results of size protests and appeals, this PAPER aims to provide new insights into the standards and procedures. To further assist readers, Appendix A to this PAPER summarizes in table form data from size protests that were appealed from 2008 to 2011; Appendix B lists the most cited size appeal decisions from 1990 to 2011.

Determining Size

■ Relevance

U.S. Government agencies are currently directed by statute to award 23% of their procurement dollars to small businesses each year.⁶ As a result, federal agencies have a strong incentive to award contracts to small businesses, whether a procurement is competed only among small firms or is open to companies of all sizes. A record \$97 billion in federal contracts was awarded to small businesses in Fiscal Year 2010, the latest SBA data available, a 17% increase in three years from \$83 billion in Fiscal Year 2007.⁷

Because the Federal Government buys nearly \$100 billion of goods and services a year from small businesses, the determination that a company is "small" dramatically increases its opportunities in the federal market. As a result, the Government uses a variety of measures to ensure that firms accurately represent their size and that firms that are not "small" do not receive contracts intended for small businesses. One key mechanism that is used to advance these goals is allowing bidders in federal procurements to

challenge the supposed small business status of a firm selected for award of a contract by filing a size protest. Size protests are reviewed by SBA Area Offices across the country, and Area Office size determinations can be appealed to the SBA's Office of Hearings and Appeals in Washington, DC. If a firm is determined to be "other than small" by the SBA, the firm will be ineligible for procurements at or below the size standard at issue in the size protest.⁸

■ Basic Rules

To qualify as "small," a company must be at or below the SBA's size standard for the business' particular industry (i.e., North American Industry Classification System code) and assigned to the particular procurement.⁹ Size is generally measured by totaling average annual revenue of a company and *all of its affiliates* over the three prior completed fiscal years or their combined average number of employees for the prior 12 calendar months.¹⁰ Although there are approximately 1,140 NAICS codes, they are organized by industry sectors, such as construction, manufacturing, and wholesale, and fall within one of 45 different size standards.¹¹ Of the various industry sectors, 31 use a revenue-based standard and 8 use an employee-based standard.¹² For example, some of the most common size standards are as follows: 500 employees for most manufacturing NAICS codes, 100 employees for wholesale trade, \$33.5 million for most heavy construction NAICS codes, \$25.5 million for information technology services, \$14 million for specialty trade contractors, and \$0.75 million for most agriculture NAICS codes.¹³ By including the revenue and employees of affiliates, a firm that is small on its own may be precluded from representing itself as "small"

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or from qualifying as “small” for a particular procurement.

■ Affiliation

“Affiliation” is defined broadly under the SBA’s regulations. Companies are affiliated when one has the power to control the other or both are controlled by the same third party.¹⁴ When evaluating “control,” the SBA considers factors such as ownership, management, identity of interest, previous ties, contractual relationships, and the totality of the circumstances.¹⁵ Control may be affirmative or negative, such as the ability to block board or shareholder action or to veto an important aspect of the business operations.¹⁶

SBA regulations identify some scenarios that will result or are likely to result in affiliation.¹⁷ Businesses will be affiliated if one is a majority owner of the other or owns a block of stock in the other that is large compared to other owners.¹⁸ Firms will be affiliated if their officers or directors control the board or management of both firms.¹⁹ Likewise, if companies have substantially identical business or economic interests, such as separate firms owned by members of the same family or where one firm is economically dependent on another, they will be presumed affiliated unless they show that their interests are in fact separate.²⁰ If officers, directors, or key owners or employees of one business serve in any such role in a newly organized firm that receives contractual, financial, technical, or other support from the original business, they will be deemed affiliated absent a clear line of fracture between the two firms.²¹

Many size protests allege that the protested business is not small due to affiliation with other firms. Although the protested business on its own may have far fewer employees or revenue than the size standard at issue, including the employees and revenue of its affiliates can disqualify it from participating as a small business for particular procurements.

Size Protests

■ Filing Requirements

A size protest may be initiated in connection with a particular procurement by the Contracting Officer, any offeror not eliminated from the

competition for reasons unrelated to size, or a large business if only one firm submitted an offer.²² Unlike with a bid protest, an organization that submitted an offer can file a size protest even if it was not next in line for award.²³

A size protest must be filed with the CO handling the procurement, who will forward the protest to the SBA Area Office for the area in which the protested concern is headquartered.²⁴ The SBA’s six Area Offices decide size protests and are organized by region as follows: (1) Northeast, (2) Mid-Atlantic, (3) Southeast, (4) Midwest, (5) Central, and (6) West.²⁵

The required contents of a size protest are not extensive and no precise format is required. In short, the size protest must pertain to a particular procurement and must be sufficiently specific to provide reasonable notice as to the grounds on which the protested concern’s size is questioned.²⁶ However, a protester must do more than merely allege that the protested concern is not small and must give “some basis” for the allegations in its protest.²⁷

In contrast to the flexibility regarding the contents of a size protest, the filing deadline is quite strict. A size protest must be received by the CO within five business days of (a) the date when the protester was notified of the prospective awardee’s identity for negotiated procurements or (b) the date after bids were opened for non-negotiated procurements.²⁸ The SBA strictly enforces this filing deadline and will dismiss untimely protests.²⁹ An Area Office will also dismiss a protest as premature if it is filed before bid opening or before notice is given to offerors of the apparent successful offer.³⁰

■ Process

After the SBA receives a size protest, the Area Office will notify the CO, the protester, and the protested business that it has received the protest.³¹ The SBA will then require the protested business to provide a written response to the protest and a completed SBA Form 355, “Information for Small Business Size Determination,” along with certain information about its ownership, finances, officers, directors, and ties to potential affiliates.³² Although a protested business must generally provide this information within 3 working days, Area Offices

can and often do grant extensions.³³ Importantly, the protested firm has the burden of establishing its small business size,³⁴ and the SBA may presume that requested information the firm fails to provide would show that it is not a small business.³⁵

Although the SBA will base its size determination on information provided by the protester and the protested firm, the SBA may also make its determination on grounds not raised in the protest.³⁶ When the SBA Area Office issues its formal size determination, it notes in writing the basis for its findings and conclusions, and notifies the CO, the protester, and the protested concern of the determination.³⁷

■ Timing

The SBA's regulatory timelines for deciding size protests and appeals were revised as of March 4, 2011.³⁸ Prior to the change, an Area Office was to issue a size determination within 10 business days of receiving a size protest, if possible,³⁹ and now it must do so within 15 business days of receiving a size protest, if possible.⁴⁰

Although these timelines were revised in 2011, data from OHA decisions between 2008 and 2011 offer practical information about how long size protests generally take to decide. As the chart below illustrates, based on data compiled from published OHA decisions, only 14% of size determinations subsequently appealed were issued within 15 days of a size protest; 48% were issued within 30 days of a size protest, 77% within 60 days, and 88% within 90 days. Several size protests took 6 to 10 months before a size determination was issued.⁴¹

Time Prior to an Area Office Size Determination (2008–2011 appeal data)	
Determination Within	Area Office Size Determination (from date of protest)
15 Days	14%
1 month	48%
2 months	77%
3 months	88%
4 months	92%
5 months	95%
6 months	98%

■ Results

The SBA does not generally publish aggregate data about size protests and appeals.⁴² However, it provided a summary of size protests

filed from 2005 through 2009 when it published revisions to its size protest and appeal regulations in February 2011⁴³ and 2010 and 2011 data upon request.⁴⁴ As the table below illustrates, the SBA processed approximately 500 size protests each year from 2005 through 2009, with a notable uptick to over 700 size protests in 2010 and 2011. Overall, during this seven-year period 26% of size determinations found the protested concern “other than small,” 40% found the protested concern “small,” and 26% were dismissed on procedural grounds. In other words, during this period 26% of size protests were successful.

Area Office Size Determinations (FY 2005–FY 2011)								
	FY05	FY06	FY07	FY08	FY09	FY10	FY11	Total
Size Protests Filed	459	593	451	493	488	705	710	3,899
Area Office								
Dismissed	27%	23%	29%	21%	30%	24%	32%	26%
Other Than Small	25%	27%	26%	23%	26%	28%	25%	26%
Small	41%	37%	43%	41%	42%	37%	39%	40%
In Process / Other	7%	12%	2%	15%	1%	12%	4%	8%

OHA decisions from 2008 through 2011 offer additional data about the results of size protests. Of those size determinations that were appealed to the OHA during this period, 60% of the Area Office determinations found the protested concern “other than small,” 25% found the protested concern “small,” and 15% were dismissed (mostly for procedural defects). The notable difference in the results of *all* size protests from 2005–2011 (i.e., 40% small, 26% other than small) and *appealed* size protests from 2008–2011 (i.e., 25% small, 60% other than small) suggests that protested concerns are far more likely to appeal an adverse determination than the parties that file size protests against them. This is no surprise. For the business whose size has been challenged, not only is the pending contract at risk, but its ability to receive any future small business contracts with the same or lower size standard is also in jeopardy. Moreover, a party that files a size protest does not bear the burden of proof in its protest, but does shoulder the burden of demonstrating clear error to the OHA if it files a size appeal after losing its protest. In short, a protested firm has much to lose unless it can get an adverse size determination overturned on appeal, whereas a protester who loses at the Area Office has a significant hurdle and less to gain from an appeal.

■ Effect Of A Size Determination

A CO may award a contract to a business that has been subject to a protest after the Area Office determines that the business is “small” or has dismissed all protests against it.⁴⁵ By contrast, if an SBA Area Office finds a firm “other than small” for a procurement, the CO cannot award a contract to such a firm and must terminate the contract if it was already awarded.⁴⁶ The CO must also (1) consider suspending performance if a timely size appeal is filed until an appellate decision is rendered, (2) terminate the contract or not exercise the next option if the OHA affirms the firm’s ineligibility, and (3) update federal contractor databases to reflect the final size determination.⁴⁷ Likewise, after an adverse size determination, a firm is ineligible for any procurement that requires the same or a lower size standard, cannot self-certify as small under the same or lower size standard unless it is first recertified as small by the SBA, and must immediately inform the responsible officials for any pending procurements of the adverse size determination.⁴⁸ To seek recertification as a small business, a firm must file an application with the SBA Area Office for the area in which it is headquartered, accompanied by sufficient information to show a significant change in its ownership, management, or other factors bearing on its small size status.⁴⁹

These rules further incentivize a firm whose size has been challenged to appeal an adverse size determination. Upon the filing of an appeal, the CO is no longer required to terminate the award, but must merely consider suspending performance until an appeal decision is issued.⁵⁰ Because size appeals can take several months, as described in further detail below, a timely appeal enables the CO to let performance of the contract continue. Furthermore, the CO is not required to terminate the contract if the OHA affirms the Area Office’s size determination.

Size Appeals

All appeals of Area Office size determinations are filed with and decided by the OHA.⁵¹ In recent years, approximately 10% of Area Office

size determinations have been appealed to the OHA (i.e., 226 of 2,396 from FY 2008 through FY 2011). In deciding whether to appeal or how best to defend against an appeal, it is important to understand the filing requirements, appeal procedures,⁵² results and timing in recent years, and key precedent.

■ Filing Requirements

An appeal may be filed by any party adversely affected by a size determination, the CO, or the SBA program involved (through the SBA’s Office of General Counsel).⁵³ Although a party may represent itself or be represented by counsel,⁵⁴ counsel with experience in the SBA’s regulations and caselaw should be consulted early in the process. As with size protests, the deadline for filing a size appeal is strictly enforced. A size appeal must be filed within 15 calendar days of receiving the Area Office’s size determination, and an untimely appeal will be dismissed.⁵⁵ The OHA cannot modify the deadline for filing an appeal petition.⁵⁶

Unlike a size protest, the contents of a size appeal petition are specifically delineated. The appeal petition must include (1) a copy of the size determination being appealed, (2) the solicitation or contract number, (3) the CO’s name and specified contact information, (4) the basis of the OHA’s jurisdiction, (5) a full and specific statement as to why the size determination was in error with the applicable facts and legal arguments supporting such allegations, (6) the relief being sought, (7) the name, signature, and specified contact information of the appellant or its attorney, and (8) a certificate of service.⁵⁷ The party filing the appeal must serve its appeal petition on the SBA official who issued the size determination, the CO responsible for the affected procurement, the business whose size status is at issue, all persons who filed protests, and the SBA Office of General Counsel.⁵⁸

The contents of an appeal petition are important for a variety of reasons. First, in a size appeal, the standard of review is whether the size determination was based on clear error of fact or law, and the appellant has the burden to prove clear error by a preponderance of the evidence.⁵⁹

Second, the party filing a size appeal generally will not have another opportunity to present its views to the OHA as a reply to a response filed by any other party is not permitted unless the judge orders one.⁶⁰ Likewise, amended and supplemental pleadings are relatively limited to avoid unreasonable delay or prejudice to the other parties.⁶¹

■ Process

Shortly after an appeal petition is filed, the OHA will issue and serve a Notice and Order on all known parties, including the business whose size is at issue, the party filing the appeal, any parties that filed a related size protest, the CO, the Area Office that issued the size determination being appealed, and the SBA General Counsel's Office, informing them of the appeal and the deadline for filing and serving any responses to the appeal.⁶² Any party served with an appeal petition, any intervenor, or any person with a general interest in an issue raised by the appeal may file and serve a response supporting or opposing the appeal within the time specified in the OHA's Notice and Order.⁶³

As noted above, the opportunity to develop the record before the OHA is relatively constrained. Discovery is not permitted in size appeals,⁶⁴ and oral hearings are held only if the OHA finds "extraordinary circumstances."⁶⁵ Evidence not presented to the Area Office will only be considered on a motion showing good cause for its submission or on the judge's order.⁶⁶ Furthermore, the OHA will not decide substantive issues first raised on appeal or issues that have become moot or been abandoned.⁶⁷ However, any party may review information in the appeal record maintained by the OHA at its Washington, D.C. location so long as it is not exempt from disclosure under the Freedom of Information Act, such as confidential business information.⁶⁸

■ Timing

As noted above, a party has 15 calendar days from when it receives an adverse size determination to file an appeal with the OHA.⁶⁹ Prior to March 4, 2011, there was no deadline for the OHA's decision.⁷⁰ However, now, the record stays

open for 15 days,⁷¹ and the OHA then has 60 days to issue its decision *insofar as practicable*.⁷²

The size appeal decision must contain the OHA's findings of fact, conclusions of law, reasons for such findings and conclusions, and any relief ordered.⁷³ The OHA will serve a copy of all written decisions on each party and the SBA's General Counsel.⁷⁴ The OHA's decision becomes effective immediately upon being issued, although when it dismisses a size appeal the Area Office size determination remains in effect.⁷⁵ Within 20 days after receiving the OHA's written decision, any party may file a petition for reconsideration on a clear showing of an error of fact or law material to the decision.⁷⁶

As the table below shows, in size appeal decisions issued by the OHA from 2008 through 2011, 7% of decisions were issued within 15 days of the appeal, 34% were issued within 30 days, 75% within 60 days, and 91% within 90 days. Several size appeals were decided 6 to 9 months after being filed.⁷⁷

Time Prior to an OHA Size Appeal Decision (2008–2011)	
Decision Within	OHA Decision (from date of appeal)
15 Days	7%
1 month	34%
2 months	75%
3 months	91%
4 months	96%
5 months	99%
6 months	99%

A petition for reconsideration can also lengthen the time in which a size appeal is resolved. As noted previously, within 20 days after receiving the OHA's written decision a party may file a petition for reconsideration on a clear showing of an error of fact or law material to the decision.⁷⁸ However, from 2008 through 2011, the OHA denied 88% of petitions for reconsideration,⁷⁹ granting only two such petitions, each in unique circumstances.⁸⁰

■ Results

OHA decisions from 2008 through 2011 provide practical data about the results of size appeals. Of OHA decisions issued during this time period,

35% reversed, remanded, or vacated the size determination, 48% affirmed the size determination, and 17% dismissed the appeal. Although 35% of size determinations were reversed, remanded, or vacated by the OHA, the more specific breakdown is that 18% were reversed or vacated without a remand, 13% were reversed or vacated with a remand, and 4% were remanded. As a result, not all of these were immediate or complete “victories” for the party that filed the appeal. Area Office size determinations that a firm is “other than small” were affirmed at a somewhat higher rate than determinations that a firm is “small” (i.e., 51% versus 40%). As for dismissals, size appeals were most frequently dismissed due to untimeliness, insufficient specificity, or lack of standing. Although there was some variation from year to year, OHA’s decisions from 2008 through 2011 were relatively consistent in their overall results, as follows:

OHA Size Appeal Decisions (2008–2011)					
	2008	2009	2010	2011	Total
Total OHA Decisions	56	61	44	65	228
Dismiss	16%	29%	18%	6%	17%
Affirm	50%	48%	39%	55%	48%
Reverse, Remand, or Vacate	34%	23%	43%	39%	35%

Although the above statistics are helpful guideposts, parties considering a size appeal can increase their likelihood of success by engaging counsel early to ensure that they avoid a dismissal on procedural grounds.

Key Precedent

In addition to the applicable SBA regulations, Area Offices and the OHA are heavily guided by decisions from prior size appeals. The OHA has issued more than 2,500 size appeal decisions during the last three decades.⁸¹ Because size determinations are generally fact-specific, precedent that is factually analogous is most persuasive. In addition, certain decisions are more heavily relied on by the OHA. Since 1990, the OHA has cited only 30 of its own decisions 10 or more times.⁸² The OHA cited the majority of these decisions as recently as 2011 or 2012.⁸³ Noted below are the primary procedural and substantive points of law for which the OHA has referenced these key precedents. The frequency with which these

decisions have been cited also suggests that these issues often surface in size protests and appeals.

■ Select Procedural Matters

Many of the points of law most frequently cited by the OHA relate to procedural matters involved in size protests and appeals. Of the decisions the OHA cites most frequently, some of the most common procedural points of law are noted below.

(a) *Adverse Inference*. In a size protest, an Area Office may draw an adverse inference if a challenged firm does not provide information the Area Office requested as long as (1) the request was specific, (2) the information sought was relevant, and (3) there is a connection between the protested firm and the firm about whom the information was requested.⁸⁴

(b) *Burden of Proof/Standard of Review*. In a size appeal, the appellant must prove by a preponderance of the evidence that the Area Office’s size determination is based on a clear error of fact or law.⁸⁵ The OHA will disturb a size determination only with a definite and firm conviction that the Area Office erred in its key findings of fact or law.⁸⁶

(c) *Evidence*. In a size protest or appeal, pre-protest documents, such as contractors’ proposals, are given more weight than those created after the protest is filed.⁸⁷ The SBA will also give greater weight to specific, signed, factual evidence than to general, unsupported allegations or opinions.⁸⁸

(d) *Mootness*. A size appeal raising contract-specific issues, such as the ostensible subcontractor rule, will be dismissed as moot where the contract has been awarded because the decision would have no future application.⁸⁹

(e) *Scope of Review*. The scope of an Area Office’s size inquiry or size determination is not limited by the issues raised in the size protest.⁹⁰ By contrast, the OHA will not decide substantive issues raised for the time on appeal and will not consider evidence not previously presented to the Area Office absent a motion showing good cause.⁹¹

(f) *Reconsideration of a Decision*. In a size appeal, the OHA will grant a petition for reconsideration

of its decision only on a clear showing of an error of fact or law material to the decision, a rigorous standard and not an added chance to argue one's case.⁹²

■ Select Substantive Matters

In addition to procedural matters, many of the points of law most frequently cited by the OHA relate to substantive legal standards adjudicated in size protests and appeals. Some of the most common substantive points of law from the OHA's most cited decisions are noted below.

(1) *Identity of Interest—Family Members.* Rebutting the presumption that family members have identical interests and that any firms they individually control are affiliated requires proving a “clear fracture” by showing no business relationships or involvement between those family members.⁹³

(2) *Identity of Interest—Economic Dependence.* Firms are affiliated if one receives 70% or more of its revenue from the other as this constitutes economic dependence such that one firm is not viable without the other.⁹⁴

(3) *Mentor-Protégé Program.* Under an SBA-approved mentor-protégé agreement between an 8(a) firm and its mentor, the mentor's assistance should not lead to a finding of affiliation as such agreements are specifically exempted from the SBA's affiliation rules.⁹⁵ However, because the SBA's 8(a) regulations only apply to 8(a) procurements, it is improper for an Area Office to use 8(a) mentor-protégé rules to analyze affiliation in non-8(a) procurements.⁹⁶

(4) *Negative Control.* A firm is affiliated with a person or entity that has the power to block its ordinary corporate acts, but the ability to prevent extraordinary corporate action or control rights

designed to protect an owner's investments by themselves do not generally trigger affiliation.⁹⁷

(5) *Newly Organized Concern.* The mere passage of time does not end affiliation of a new firm spun off from another business absent a clear fracture between the two.⁹⁸

(6) *Ostensible Subcontractor—All Aspects Considered in Fact-Specific Decisions.* Area Offices should examine all aspects of the relationship between a prime contractor and its subcontractor, such as proposal terms, agreements between the firms, and the incumbency status of the subcontractor, to determine if the prime contractor is unduly reliant on the subcontractor for the contract's primary and vital requirements and thus affiliated.⁹⁹ In size protests and appeals involving the ostensible subcontractor rule, SBA precedent is unlikely to be binding as the facts involved are unique to each procurement.¹⁰⁰

(7) *Ostensible Subcontractor—Proposal Should Identify Division of Work.* A contractor that presents a team effort throughout its proposal without identifying discrete tasks for itself and for its proposed subcontractors risks affiliation under the ostensible subcontractor rule.¹⁰¹

(8) *Ownership.* A firm is affiliated with its majority owner or, if it has no majority owner, with a minority owner of a block of voting stock that is large in comparison to other blocks (i.e., a minority owner whose share is 8% or more in excess of the next largest owner's holding).¹⁰²

(9) *Totality of the Circumstances.* Relationships between firms so suggestive of dependence will make them affiliated based on the cumulative effect of such ties even absent a single factor sufficient to constitute affiliation.¹⁰³ However, the OHA prefers that size determinations be based on individual affiliation grounds rather than on the totality.¹⁰⁴

GUIDELINES

These *Guidelines* aim to assist you in understanding the standards and procedures for small business size protests and appeals. They are not a substitute for professional representation in any specific situation.

1. Given the tight deadline for filing a size protest, determine in advance if any known competitors represent themselves as small businesses and search public sources for information on their size and affiliates that might disqualify them.

2. To challenge a size determination in a pending procurement, file your size protest with the CO within five business days of when you were notified of the identity of the prospective awardee.
3. Make specific and detailed allegations in your protest that identify the particular grounds on which you are questioning the protested concern's size and the basis of each allegation.
4. Be aware that the SBA has different rules and procedures for challenging the *status* (as opposed to the size) of a small business as an 8(a) disadvantaged, woman-owned, service-disabled-veteran-owned, or HUBZone small business.
5. If your business' size is challenged in a size protest, submit all the business and financial information the SBA has requested by the specified deadline. The SBA will infer that any information you did not provide would be unfavorable.
6. In defending against a size protest, you bear the burden to prove your small business status and should respond to each allegation in the size protest and each issue raised by the SBA in its letter transmitting the protest. Consider engaging counsel early in the process.
7. Avoid unsupported opinions in responding to a size protest, and instead provide substantiated documents that pre-date the protest, such as company bylaws and board resolutions, or prepare signed declarations, if necessary. Mark any confidential information as proprietary.
8. Prepare business and communications strategies for responding to a size protest and a potentially adverse size determination to mitigate the possible loss of small business revenue and to protect relationships with key Government customers.
9. Before appealing an unfavorable size determination, determine if it contains any clear factual or legal errors and highlight those errors if you decide to appeal.
10. Carefully consider all issues that you may want to appeal to avoid unintentionally forfeiting arguments on appeal.
11. Shortly after filing a size appeal, review the appeal record maintained by the OHA to identify if any information, such as the protested firm's response to the Area Office, may help your appeal and merits trying to amend or supplement your appeal.
12. Challenge any attempt by the appealing party to appeal after the filing deadline, to raise new issues or introduce new evidence on appeal, or to otherwise run afoul of size appeal rules and restrictions.
13. Ensure you review the SBA's current regulations as its small business rules can change frequently. Likewise, on occasion the OHA revises its approach to various size issues, such as its ostensible subcontractor test, so confirm the cases you cite are still good law.
14. Manage your company's website to ensure that any details regarding ties to other entities are described accurately to avoid unnecessarily raising questions about your small business status on affiliation grounds.
15. To avoid size protests, identify ties to other businesses and determine ways to mitigate any potential affiliation risks through changes in ownership, management, contractual arrangements, and shared resources. Engage counsel to discuss structuring your company and business relationships in ways that minimize the risks of a size protest.

★ REFERENCES ★

- 1/ 13 C.F.R. §§ 121.101–108, 121.201. Briefing Papers No. 10-11 (Oct. 2010); Hewitt, Williams & Alba, "Small Business Contracting Programs—Part II," Briefing Papers No. 10-13 (Dec. 2010); Hordell & Hoffman, "Small Business Size Appeals/Edition III," Briefing Papers No. 96-9 (Aug. 1996); Hordell & Lipman, "Small Business Size Appeals/Edition II," Briefing Papers No. 92-07 (June 1992); Latham & James, "Small Business Size Appeals," Briefing Papers No. 85-8 (Aug. 1985).
- 2/ 13 C.F.R. § 121.1001–1010 (size protests), pt. 134 (size appeals).
- 3/ See Hewitt, Williams & Alba, "Small Business Contracting Programs—Part I," Briefing Papers No. 10-12 (Oct. 2010); Hordell & Hoffman, "Small Business Size Appeals/Edition III," Briefing Papers No. 96-9 (Aug. 1996); Hordell & Lipman, "Small Business Size Appeals/Edition II," Briefing Papers No. 92-07 (June 1992); Latham & James, "Small Business Size Appeals," Briefing Papers No. 85-8 (Aug. 1985).
- 4/ See Hindman, "Small Business Contracting Concerns," 2012 WL 191208, in Trends in Government Contracting: Leading Lawyers on Complying With Contractual Requirements, Managing Potential Risks,

- and Overcoming Economic Challenges (Aspatore Jan. 2012); Hibshman, "SBA Size Protests," 47 Procmt. Law. 6 (Fall 2011); Koprince, "The Ins and Outs of Filing Size Protests With the Small Business Administration," 58 Fed. Law. 40 (May 2011); Clemm, "The Small Business Administration's Affiliation Rules: A Trap for the Unwary," 57 Fed. Law. 52 (Oct. 2010).
- 5/ See, e.g., Hibshman, "SBA Size Protests," 47 Proc. Law. 6, 8 (Fall 2011) (referencing the "seemingly gradual increase in size protests" and noting that a "significant portion" of size determinations are not made within 15 days).
- 6/ 15 U.S.C.A. § 644(g).
- 7/ See Federal Procurement Data System—Next Generation, Small Business Goaling Report for Fiscal Year 2007 and for Fiscal Year 2010, available at https://www.fpds.gov/fpdsng_cms/index.php/reports.
- 8/ 13 C.F.R. § 121.1009.
- 9/ 13 C.F.R. § 121.201 (listing size standards by industry).
- 10/ 13 C.F.R. §§ 121.104 (calculating revenue), 121.106 (calculating employees).
- 11/ 13 C.F.R. § 121.201
- 12/ 13 C.F.R. § 121.201
- 13/ 13 C.F.R. § 121.201
- 14/ 13 C.F.R. § 121.103.
- 15/ 13 C.F.R. § 121.103.
- 16/ 13 C.F.R. § 121.103.
- 17/ 13 C.F.R. § 121.103.
- 18/ 13 C.F.R. § 121.103(c)(1).
- 19/ 13 C.F.R. § 121.103(e).
- 20/ 13 C.F.R. § 121.103(f).
- 21/ 13 C.F.R. § 121.103(g).
- 22/ 13 C.F.R. § 121.1001.
- 23/ Size Appeal of Ross Aviation, Inc., SBA No. SIZ-4840 (2007).
- 24/ 13 C.F.R. § 121.1003.
- 25/ See, e.g., SBA Size Specialists, http://www.mvn.usace.army.mil/pdf/ebs_sbasizespecialist.pdf.
- 26/ 13 C.F.R. § 121.1007.
- 27/ 13 C.F.R. § 121.1007.
- 28/ 13 C.F.R. § 121.1004(a).
- 29/ 13 C.F.R. § 121.1004(d).
- 30/ 13 C.F.R. § 121.1004(e).
- 31/ 13 C.F.R. § 121.1008; see also 13 C.F.R. § 121.1009 (CO may award a contract after a protest is filed upon a written determination that award must be made to protect the public interest).
- 32/ 13 C.F.R. § 121.1008.
- 33/ 13 C.F.R. § 121.1008.
- 34/ 13 C.F.R. § 121.1009.
- 35/ 13 C.F.R. § 121.1008.
- 36/ 13 C.F.R. § 121.1009.
- 37/ 13 C.F.R. § 121.1009.
- 38/ 76 Fed. Reg. 5680 (Feb. 2, 2011).
- 39/ 76 Fed. Reg. at 5682.
- 40/ 13 C.F.R. § 121.1009.
- 41/ See Size Appeal of Social Impact, Inc., SBA No. SIZ-5090 (2009) (May 14, 2008–July 20, 2009 following 2 remands); Size Appeal of Accent Serv. Co., SBA No. SIZ-5237 (2011) (Mar. 25, 2010–Feb. 11, 2011); Size Appeal of Novalar Pharm., Inc., SBA No. SIZ-4977 (2008) (Jan. 23, 2007–Sept. 20, 2007); Size Appeal of Alex-Alternative Experts, LLC, SBA No. SIZ-4974 (2008) (Oct. 12, 2007–Apr. 15, 2008).
- 42/ See, e.g., SBA Response to FOIA Request (May 8, 2012) (on file with author) (OHA "does not regularly produce statistical summaries" of its size appeals).
- 43/ See 76 Fed. Reg. at 5682.

- 44/ See SBA Response to FOIA Request (May 23, 2012) (on file with author).
- 45/ 13 C.F.R. § 121.1009.
- 46/ 13 C.F.R. § 121.1009.
- 47/ 13 C.F.R. § 121.1009.
- 48/ 13 C.F.R. § 121.1009.
- 49/ 13 C.F.R. § 121.1010.
- 50/ 13 C.F.R. § 121.1009.
- 51/ 13 C.F.R. §§ 134.102(k), 134.301–.317.
- 52/ See 13 C.F.R. §§ 134.301–.317 (rules for size appeals), 134.201–.229 (general OHA rules of procedure).
- 53/ 13 C.F.R. § 134.302.
- 54/ 13 C.F.R. § 134.208.
- 55/ 13 C.F.R. § 134.304.
- 56/ 13 C.F.R. § 134.202(d)(2).
- 57/ 13 C.F.R. §§ 134.305, 134.203(a).
- 58/ 13 C.F.R. § 134.305; see also 13 C.F.R. § 134.204 (filing and service requirements).
- 59/ 13 C.F.R. § 134.314.
- 60/ 13 C.F.R. § 134.206(e).
- 61/ 13 C.F.R. § 134.207.
- 62/ 13 C.F.R. §§ 134.203(f), 134.206(b).
- 63/ 13 C.F.R. § 134.309.
- 64/ 13 C.F.R. § 134.310.
- 65/ 13 C.F.R. § 134.311.
- 66/ 13 C.F.R. § 134.308.
- 67/ 13 C.F.R. § 134.316(c).
- 68/ 13 C.F.R. § 134.205; see 5 U.S.C.A. § 552.
- 69/ 13 C.F.R. § 134.304; see also 13 C.F.R. § 134.304 (2010 version) (15 days for appeals challenging a pending award and 30 days otherwise).
- 70/ See 76 Fed. Reg. 5680, 5682 (Feb. 2, 2011).
- 71/ 13 C.F.R. § 134.309(b) (close of record 15 days after OHA issues Notice and Order following filing of appeal).
- 72/ 13 C.F.R. § 134.316(a). See 76 Fed. Reg. at 5682.
- 73/ 13 C.F.R. § 134.316(c).
- 74/ 13 C.F.R. § 134.316(e).
- 75/ 13 C.F.R. § 134.316(d).
- 76/ 13 C.F.R. § 134.227.
- 77/ See Size Appeal of Novalar Pharm., Inc., SBA No. SIZ-4977 (2008) (Oct. 22, 2007–Aug. 4, 2008); Size Appeal of Social Impact, Inc., SBA No. SIZ-5028 (2009) (June 26, 2008–Mar. 6, 2009); Size Appeal of SES-Tech Global Solutions, SBA No. SIZ-4951 (2008) (Nov. 7, 2011–May 7, 2008).
- 78/ 13 C.F.R. § 134.227.
- 79/ See Size Appeal of White Hawk/Todd, a Joint Venture, SBA No. SIZ-4968 (2008); Size Appeal of Luke & Assocs. Inc., SBA No. SIZ-4993 (2008); Size Appeal of Global Solutions Network, Inc., SBA No. SIZ-4892 (2008); Size Appeal of TKTM Corp., SBA No. SIZ-4905 (2008); Size Appeal of Env't'l Protection Certification Co., SBA No. SIZ-4935 (2008); Size Appeal of El Poco Enters., Inc., SBA No. SIZ-5001 (2008); Size Appeal of KVA Elec., Inc., SBA No. SIZ-5057 (2009); Size Appeal of Cypress Pharm., Inc., SBA No. SIZ-5078 (2009); Size Appeal of SETA Support Servs. Alliance, LLC, SBA No. SIZ-5111 (2010); Size Appeal of Social Impact, Inc., SBA No. SIZ-5105 (2010); Size Appeal of Jupiter Corp., SBA No. SIZ-5110 (2010); Size Appeal of Jenn-Kans, Inc., SBA No. SIZ-5128 (2010); Size Appeal of Eagle Consulting Corp., SBA No. SIZ-5288 (2011); Size Appeal of Four Winds Servs., Inc., SBA No. SIZ-5293 (2011); Size Appeal of Quantum Prof'l Servs., Inc., SBA No. SIZ-5225 (2011).
- 80/ See Size Appeal of Hui O Aina, LLC, SBA No. SIZ-5262 (2011) (construing an unusual energy output size standard for utilities); Size Appeal of USA Jet Airlines, Inc., SBA No. SIZ-4969 (2008) (clarifying decision's effect on the procurement without altering determination that appellant was other than small).

- 81/ See Westlaw (search "fgc-sba" database for "pr(siz*)").
- 82/ See Appendix B.
- 83/ See Appendix B.
- 84/ Size Appeal of USA Jet Airlines, Inc., SBA No. SIZ-4919 (2008); Hawaii Int'l Movers, Inc., SBA No. SIZ-3245 (1990); see also 13 C.F.R. § 121.1008(d) (SBA may presume that information a protested concern fails to provide in response to SBA's request would have demonstrated that it is other than a small business).
- 85/ Size Appeal of Gen. Maint. Eng'g, Inc., SBA No. SIZ-4405 (2000); Size Appeal of Rebmar, Inc., SBA No. SIZ-4173 (1996); see also 13 C.F.R. § 134.314.
- 86/ Size Appeal of Taylor Consultants, Inc., SBA No. SIZ-4775 (2006).
- 87/ Size Appeal of Smart Data Solutions LLC, SBA No. SIZ-5071 (2009).
- 88/ 13 C.F.R. § 121.1009(d).
- 89/ Size Appeal of Lightcom Int'l, Inc., SBA No. SIZ-4118 (1995); Size Appeal of Keymi-see Aero-Tech, Inc., SBA No. SIZ-3642 (1992).
- 90/ Size Appeal of Geo-Marine, Inc., SBA No. SIZ-3459 (1991); 13 C.F.R. § 121.1009(b) (size determination may be based on grounds not raised in the protest or request for size determination).
- 91/ 13 C.F.R. §§ 134.316(c), 134.308.
- 92/ Size Appeal of Env't'l Protection Certification Co., Inc., SBA No. SIZ-4935 (2008).
- 93/ Size Appeal of Technical Support Servs., SBA No. SIZ-4794 (2006); Size Appeal of Osirus, Inc., SBA No. SIZ-4546 (2003); Size Appeal of Maria Elena Torano & Assocs., SBA No. SIZ-4010 (1995); see also 13 C.F.R. § 121.103(f) (affiliation based on identity of interest).
- 94/ Size Appeal of Faison Office Prods., LLC, SBA No. SIZ-4834 (2007) (revenue dependence as low as 30% or 40% could trigger affiliation depending on the facts); Size Appeal of J&R Logging, SBA No. SIZ-4426 (2001); see also 13 C.F.R. § 121.103(f) (affiliation based on identity of interest).
- 95/ Size Appeal of Technical Support Servs., SBA No. SIZ-4794 (2006).
- 96/ Size Appeal of SETA Corp., SBA No. SIZ-4477 (2002).
- 97/ Size Appeal of EA Eng'g, Science & Tech., Inc., SBA No. SIZ-4973 (2008); 13 C.F.R. § 121.103(a)(3) (addressing affiliation based on negative control).
- 98/ Size Appeal of Field Support Servs., Inc., SBA No. SIZ-4176 (1996); see also 13 C.F.R. § 121.103(g) (affiliation for newly organized concerns).
- 99/ Size Appeal of C&C Int'l Computers & Consultants Inc., SBA No. SIZ-5082 (2009) (OHA's seven-factor test is no longer used); Size Appeal of Smart Data Solutions LLC, SBA No. SIZ-5071 (2009) (undue reliance exists where only the prime contractor has experience in the primary and vital requirements); Size Appeal of Fischer Bus. Solutions LLC, SBA No. SIZ-5075 (2009) (purpose of ostensible subcontractor rule is to prevent large firms from working with small businesses to evade SBA's size regulations); Size Appeal of Microwave Monolithics, Inc., SBA No. SIZ-4820 (2006) (prime contractor that will perform 65% of the work, design and manufacture the item being procured, and manage the contract is not unduly reliant on its subcontractor); see also 13 C.F.R. § 121.103(h)(4) (affiliation with ostensible subcontractor).
- 100/ Size Appeal of Lance Bailey & Assocs., Inc., SBA No. SIZ-4817 (2006).
- 101/ Size Appeal of Sectek, Inc., SBA No. SIZ-4558 (2003); Size Appeal of Geo-Marine, Inc., SBA No. SIZ-3459 (1991) (undue reliance exists where agreement has no description of how work would be divided between the prime contractor and subcontractor).
- 102/ Size Appeal of Novalar, Pharm., Inc., SBA No. SIZ-4977 (2008); Size Appeal of H.L. Turner Group, Inc., SBA No. SIZ-4896 (2008); see also 13 C.F.R. § 121.103(c) (affiliation on the basis of stock ownership).
- 103/ Size Appeal of Field Support Servs., Inc., SBA No. SIZ-4176 (1996); Size Appeal of Bunkoff Gen. Contractors, Inc., SBA No. SIZ-3804 (1993); see also 13 C.F.R. § 121.103(a)(5) (totality of circumstances considered in determining affiliation).
- 104/ Size Appeal of Lance Bailey & Assocs., Inc., SBA No. SIZ-4817 (2006).

Appendix A: OHA Decisions 2008–2011

SBA No.	Days to Size Determination From Protest Date	AO Decision	Days to OHA Decision From Appeal Date	OHA Decision
SIZ-4877	7	Dismissed	25	Affirm
SIZ-5017	7	Dismissed	36	Affirm
SIZ-5020	28	Dismissed	38	Affirm
SIZ-5047	9	Dismissed	9	Affirm
SIZ-5073	2	Dismissed	19	Affirm
SIZ-5103	48	Dismissed	25	Affirm
SIZ-5137	14	Dismissed	15	Affirm
SIZ-5143	66	Dismissed	19	Affirm
SIZ-5145	2	Dismissed	19	Affirm
SIZ-5158	35	Dismissed	14	Affirm
SIZ-5197	28	Dismissed	9	Affirm
SIZ-5198	5	Dismissed	29	Affirm
SIZ-5199	5	Dismissed	29	Affirm
SIZ-5239	12	Dismissed	35	Affirm
SIZ-5261	35	Dismissed	34	Affirm
SIZ-5308	12	Dismissed	24	Affirm
SIZ-5311	14	Dismissed	53	Affirm
SIZ-4878	20	Not small	34	Affirm
SIZ-4885	14	Not small	34	Affirm
SIZ-4896	32	Not small	102	Affirm
SIZ-4913	46	Not small	21	Affirm
SIZ-4944	42	Not small	42	Affirm
SIZ-4972	-	Not small	36	Affirm
SIZ-4976	112	Not small	83	Affirm
SIZ-4977	240	Not small	287	Affirm
SIZ-4978	26	Not small	81	Affirm
SIZ-4980	134	Not small	69	Affirm
SIZ-4984	27	Not small	40	Affirm
SIZ-4989	62	Not small	51	Affirm
SIZ-4994	62	Not small	40	Affirm
SIZ-4997	105	Not small	36	Affirm
SIZ-4998	43	Not small	44	Affirm
SIZ-5007	40	Not small	29	Affirm
SIZ-5011	14	Not small	31	Affirm
SIZ-5016	39	Not small	60	Affirm
SIZ-5023	26	Not small	74	Affirm
SIZ-5029	27	Not small	44	Affirm
SIZ-5035	24	Not small	22	Affirm
SIZ-5036	16	Not small	17	Affirm
SIZ-5038	13	Not small	27	Affirm
SIZ-5046	35	Not small	24	Affirm
SIZ-5049	88	Not small	50	Affirm
SIZ-5050	88	Not small	58	Affirm
SIZ-5065	176	Not small	48	Affirm
SIZ-5066	31	Not small	111	Affirm
SIZ-5070	53	Not small	39	Affirm

SBA No.	Days to Size Determination From Protest Date	AO Decision	Days to OHA Decision From Appeal Date	OHA Decision
SIZ-5071	60	Not small	47	Affirm
SIZ-5074	19	Not small	23	Affirm
SIZ-5077	23	Not small	54	Affirm
SIZ-5079	23	Not small	16	Affirm
SIZ-5083	36	Not small	35	Affirm
SIZ-5085	36	Not small	84	Affirm
SIZ-5087	16	Not small	-	Affirm
SIZ-5096	21	Not small	19	Affirm
SIZ-5108	33	Not small	32	Affirm
SIZ-5114	49	Not small	95	Affirm
SIZ-5116	19	Not small	30	Affirm
SIZ-5118	35	Not small	35	Affirm
SIZ-5121	24	Not small	18	Affirm
SIZ-5122	58	Not small	37	Affirm
SIZ-5144	15	Not small	15	Affirm
SIZ-5147	71	Not small	22	Affirm
SIZ-5152	27	Not small	22	Affirm
SIZ-5161	106	Not small	42	Affirm
SIZ-5183	177	Not small	61	Affirm
SIZ-5191	79	Not small	31	Affirm
SIZ-5192	27	Not small	63	Affirm
SIZ-5194	64	Not small	93	Affirm
SIZ-5205	166	Not small	88	Affirm
SIZ-5211	53	Not small	95	Affirm
SIZ-5221	21	Not small	26	Affirm
SIZ-5234	71	Not small	47	Affirm
SIZ-5250	-	Not small	21	Affirm
SIZ-5253	71	Not small	42	Affirm
SIZ-5257	67	Not small	62	Affirm
SIZ-5267	135	Not small	50	Affirm
SIZ-5271	30	Not small	127	Affirm
SIZ-5280	29	Not small	37	Affirm
SIZ-5289	-	Not small	48	Affirm
SIZ-5297	24	Not small	94	Affirm
SIZ-5300	27	Not small	71	Affirm
SIZ-5302	32	Not small	73	Affirm
SIZ-5303	31	Not small	62	Affirm
SIZ-5304	35	Not small	54	Affirm
SIZ-5306	36	Not small	71	Affirm
SIZ-5314	19	Not small	54	Affirm
SIZ-4949	34	Small	43	Affirm
SIZ-4970	126	Small	59	Affirm
SIZ-4981	21	Small	30	Affirm
SIZ-4996	94	Small	50	Affirm
SIZ-5008	87	Small	94	Affirm
SIZ-5014	28	Small	39	Affirm
SIZ-5019	35	Small	44	Affirm
SIZ-5024	84	Small	38	Affirm

SBA No.	Days to Size Determination From Protest Date	AO Decision	Days to OHA Decision From Appeal Date	OHA Decision
SIZ-5039	26	Small	37	Affirm
SIZ-5044	40	Small	21	Affirm
SIZ-5063	18	Small	50	Affirm
SIZ-5088	39	Small	44	Affirm
SIZ-5093	54	Small	50	Affirm
SIZ-5101	48	Small	63	Affirm
SIZ-5124	23	Small	35	Affirm
SIZ-5129	13	Small	66	Affirm
SIZ-5160	20	Small	17	Affirm
SIZ-5189	23	Small	95	Affirm
SIZ-5228	-	Small	42	Affirm
SIZ-5230	45	Small	50	Affirm
SIZ-5238	24	Small	47	Affirm
SIZ-5241	23	Small	50	Affirm
SIZ-5249	23	Small	122	Affirm
SIZ-4999	32	Dismissed	31	Dismiss
SIZ-5027	4	Dismissed	15	Dismiss
SIZ-5031	6	Dismissed	15	Dismiss
SIZ-5032	51	Dismissed	13	Dismiss
SIZ-5080	3	Dismissed	25	Dismiss
SIZ-5089	14	Dismissed	45	Dismiss
SIZ-5107	42	Dismissed	25	Dismiss
SIZ-5123	83	Dismissed	21	Dismiss
SIZ-4915	134	Not small	14	Dismiss
SIZ-4986	69	Not small	33	Dismiss
SIZ-5012	14	Not small	31	Dismiss
SIZ-5053	24	Not small	84	Dismiss
SIZ-5059	-	Not small	31	Dismiss
SIZ-5076	23	Not small	16	Dismiss
SIZ-5091	-	Not small	52	Dismiss
SIZ-5095	30	Not small	77	Dismiss
SIZ-5095	30	Not small	26	Dismiss
SIZ-5102	-	Not small	26	Dismiss
SIZ-5104	-	Not small	19	Dismiss
SIZ-5117	25	Not small	18	Dismiss
SIZ-5130	-	Not small	14	Dismiss
SIZ-5182	27	Not small	34	Dismiss
SIZ-5232	35	Not small	21	Dismiss
SIZ-5299	20	Not small	46	Dismiss
SIZ-4878	69	Small	6	Dismiss
SIZ-4921	-	Small	48	Dismiss
SIZ-4930	37	Small	34	Dismiss
SIZ-4956	29	Small	19	Dismiss
SIZ-5015	-	Small	70	Dismiss
SIZ-5026	135	Small	4	Dismiss
SIZ-5051	33	Small	30	Dismiss
SIZ-5067	43	Small	42	Dismiss
SIZ-5068	-	Small	20	Dismiss

SBA No.	Days to Size Determination From Protest Date	AO Decision	Days to OHA Decision From Appeal Date	OHA Decision
SIZ-5094	20	Small	21	Dismiss
SIZ-5100	28	Small	35	Dismiss
SIZ-5113	67	Small	30	Dismiss
SIZ-5156	-	Small	27	Dismiss
SIZ-5227	21	Small	20	Dismiss
SIZ-5109	23	Small	43	Dismiss/Remand in Part
SIZ-5017	91	Not small	33	Remand
SIZ-5005	14	Small	42	Remand
SIZ-5013	-	Small	-	Remand
SIZ-5136	-	Small	64	Remand
SIZ-5142	48	Small	34	Remand
SIZ-5260	31	Small	34	Remand
SIZ-5287	33	Small	33	Remand
SIZ-4951	22	Not small	182	Reverse
SIZ-4966	40	Not small	30	Reverse
SIZ-4967	48	Not small	57	Reverse
SIZ-4971	31	Not small	83	Reverse
SIZ-4973	104	Not small	40	Reverse
SIZ-5003	37	Not small	19	Reverse
SIZ-5009	26	Not small	32	Reverse
SIZ-5022	17	Not small	88	Reverse
SIZ-5034	29	Not small	22	Reverse
SIZ-5075	57	Not small	114	Reverse
SIZ-5082	17	Not small	49	Reverse
SIZ-5112	17	Not small	70	Reverse
SIZ-5149	127	Not small	27	Reverse
SIZ-5151	30	Not small	27	Reverse
SIZ-5155	30	Not small	26	Reverse
SIZ-5186	-	Not small	35	Reverse
SIZ-5204	66	Not small	81	Reverse
SIZ-5235	32	Not small	41	Reverse
SIZ-5237	323	Not small	76	Reverse
SIZ-5244	63	Not small	43	Reverse
SIZ-5254	67	Not small	51	Reverse
SIZ-5277	45	Not small	66	Reverse
SIZ-5279	17	Not small	58	Reverse
SIZ-5305	41	Not small	69	Reverse
SIZ-5307	42	Not small	50	Reverse
SIZ-4965	41	Small	121	Reverse
SIZ-5045	14	Small	30	Reverse
SIZ-5090	432	Small	111	Reverse
SIZ-5131	60	Small	55	Reverse
SIZ-5138	70	Not small	63	Reverse/Affirm in part
SIZ-5222	50	Not small	77	Reverse/Affirm in part
SIZ-5242	4	Dismissed	17	Reverse/Remand
SIZ-4909	30	Not small	41	Reverse/Remand
SIZ-5115	75	Not small	91	Reverse/Remand

SBA No.	Days to Size Determination From Protest Date	AO Decision	Days to OHA Decision From Appeal Date	OHA Decision
SIZ-5146	78	Not small	20	Reverse/Remand
SIZ-5135	-	Dismissed	22	Vacate
SIZ-4959	31	Not small	126	Vacate
SIZ-5120	-	Not small	14	Vacate
SIZ-5127	21	Not small	19	Vacate
SIZ-5207	36	Not small	145	Vacate/Dismiss
SIZ-4888	21	Dismissed	24	Vacate/Remand
SIZ-5072	21	Dismissed	63	Vacate/Remand
SIZ-5084	7	Dismissed	19	Vacate/Remand
SIZ-5134	8	Dismissed	16	Vacate/Remand
SIZ-5215	173	Dismissed	33	Vacate/Remand
SIZ-5294	9	Dismissed	41	Vacate/Remand
SIZ-4974	186	Not small	61	Vacate/Remand
SIZ-5048	111	Not small	15	Vacate/Remand
SIZ-5069	28	Not small	32	Vacate/Remand
SIZ-5133	172	Not small	20	Vacate/Remand
SIZ-5139	-	Not small	30	Vacate/Remand
SIZ-5217	20	Not small	21	Vacate/Remand
SIZ-5223	29	Not small	21	Vacate/Remand
SIZ-5268	-	Not small	9	Vacate/Remand
SIZ-5281	-	Not small	59	Vacate/Remand
SIZ-5291	49	Not small	42	Vacate/Remand
SIZ-4987	37	Small	114	Vacate/Remand
SIZ-4990	29	Small	70	Vacate/Remand
SIZ-5028	239	Small	253	Vacate/Remand
SIZ-5040	8	Small	27	Vacate/Remand
SIZ-5125	94	Small	37	Vacate/Remand
SIZ-5216	50	Small	78	Vacate/Remand
SIZ-5231	-	Small	-	Vacate/Remand
SIZ-5284	24	Small	59	Vacate/Remand
SIZ-4906	58	Dismissed	79	Vacate/Reverse
SIZ-4943	19	Not small	-	Vacate/Reverse
SIZ-5041	22	Not small	57	Vacate/Reverse
SIZ-5098	28	Not small	48	Vacate/Reverse
SIZ-5132	-	Not small	34	Vacate/Reverse
SIZ-5177	125	Not small	122	Vacate/Reverse
SIZ-5245	25	Small	64	Vacate/Reverse

Appendix B: Most Cited OHA Decisions From 1990–2011

Name of Size Appeal	SBA No.	OHA Decision Date	Most Recent Citation
<i>B.L. Harbert Int'l LLC</i>	SIZ-4525	12/16/02	2011
<i>Bunkoff Gen. Contractors, Inc.</i>	SIZ-3804	07/19/93	1996
<i>C&C Int'l Computers & Consultants Inc.</i>	SIZ-5082	11/02/09	2011
<i>E. Huttenbauer & Son, Inc.</i>	SIZ-3865	12/14/93	1998
<i>EA Eng'g, Science & Tech., Inc.</i>	SIZ-4973	07/14/08	2008
<i>Env't Protection Certification Co.</i>	SIZ-4935	04/08/08	2011
<i>Faison Office Prods., LLC</i>	SIZ-4834	01/26/07	2012
<i>Field Support Servs., Inc.</i>	SIZ-4176	05/06/96	2001
<i>Fischer Bus. Solutions, LLC</i>	SIZ-5075	10/07/09	2012
<i>General Maint. Eng'g, Inc.</i>	SIZ-4405	06/27/00	2007
<i>Geo-Marine, Inc.</i>	SIZ-3459	04/25/91	1999
<i>Hawaii Int'l Movers, Inc.</i>	SIZ-3245	01/19/90	1991
<i>Ideal Servs. Inc.</i>	SIZ-3317	08/02/90	2000
<i>J&R Logging</i>	SIZ-4426	03/21/01	2011
<i>Keymiaee Aero-Tech, Inc.</i>	SIZ-3642	07/14/92	1995
<i>Lance Bailey & Assocs., Inc.</i>	SIZ-4799	07/13/06	2012
<i>Lance Bailey & Assocs., Inc.</i>	SIZ-4817	11/01/06	2011
<i>Lightcom Int'l, Inc.</i>	SIZ-4118	11/27/95	2000
<i>Maria Elena Torano & Assocs.</i>	SIZ-4010	04/17/95	2001
<i>Microwave Monolithics, Inc.</i>	SIZ-4820	11/16/06	2012
<i>Novalar Pharm., Inc.</i>	SIZ-4977	08/04/08	2011
<i>Osirus, Inc.</i>	SIZ-4546	04/09/03	2011
<i>Rebmar, Inc.</i>	SIZ-4173	04/29/96	2001
<i>Sectek, Inc.</i>	SIZ-4558	05/14/03	2011
<i>SETA Corp.</i>	SIZ-4477	03/01/02	2010
<i>Smart Data Solutions LLC</i>	SIZ-5071	09/28/09	2012
<i>Taylor Consultants, Inc.</i>	SIZ-4775	04/07/06	2012
<i>Technical Support Servs.</i>	SIZ-4794	06/20/06	2011
<i>H.L. Turner Group, Inc.</i>	SIZ-4896	02/12/08	2011
<i>USA Jet Airlines, Inc.</i>	SIZ-4919	04/03/08	2011

BRIEFING PAPERS