United States Small Business Administration
Office of Hearings and Appeals

SIZE APPEAL OF:	
LOGMET, LLC	SBA No. SIZ-5155
Appellant	Decided: October 6, 2010
Appealed from Size Determination 05-2010-078	

APPEARANCES

Christopher C. Bouquet, Esq., The Law Office of Christopher C. Bouquet, PLLC, Alexandria, Virginia, for Appellant.

Edward J. Kinberg, Esq., and R. Brent Blackburn, Esq., Kinberg & Associates, LLC, Melbourne, Florida, for Triad Logistics Services Corporation.

DECISION[12]

HOLLEMAN, Administrative Judge:

I. Introduction & Jurisdiction

On August 27, 2010, the Small Business Administration's (SBA) Office of Government Contracting, Area V (Area Office) issued Size Determination No. 05-2010-078 (Size Determination) finding LOGMET, LLC (Appellant) other than small due to its affiliation with T Square Logistics Services Corporation (T-Square). The Area Office determined Appellant's

[1] The Assistant Administrator for Hearings and Appeals (AA/OHA) originally assigned this appeal to Judge Thomas B. Pender. Judge Pender left the SBA on September 24, 2010. The AA/OHA then reassigned this appeal to me.

[2] This Decision was issued under a Protective Order to prevent the disclosure of confidential or proprietary information. On October 6, 2010, I issued an Order for Redactions directing each party to file a request for redactions by October 20, 2010, if that party desired to have any information redacted from the published Decision. On October 15, 2010, Appellant filed its requested redactions. On October 21, 2010, Appellant withdrew its request for redactions. Accordingly, OHA now publishes the Decision in its entirety.

relationship with T-Square results in an identity of interest between the firms (13 C.F.R. § 121.103(f)) and violates the ostensible subcontractor rule for purposes of the procurement at issue (13 C.F.R. § 121.103(h)(4)). For the reasons discussed below, the appeal is granted, and the Size Determination is reversed.

SBA's Office of Hearings and Appeals (OHA) decides size determination appeals under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 121 and 134. Appellant filed the instant appeal within fifteen days of receiving the Size Determination. Thus, the appeal is timely. 13 C.F.R. § 134.304(a)(1). Accordingly, this matter is properly before OHA for decision.

II. Background

A. Solicitation and Protest

On May 17, 2010, the Contracting Officer (CO) for the Department of the Air Force issued Request for Proposals No. FA4814-10-R-0018 (RFP) seeking transient aircraft maintenance services at MacDill Air Force Base. The RFP was a total service-disabled veteran-owned small business concern set-aside, and the CO designated North American Industry Classification System (NAICS) code 488119, Other Airport Operations, with a corresponding size standard of $7 million in average annual receipts.

On July 22, 2010, the CO notified unsuccessful offerors that Appellant was the apparently successful offeror. On July 28, 2010, Triad Logistics Services Corporation (Triad), the incumbent contractor, filed a protest challenging Appellant's size. Specifically, Triad argued that T-Square is Appellant's ostensible subcontractor for the instant procurement because Appellant lacks the experience to perform the contract.

B. Size Determination

On March 1, 2010, the Area Office issued its Size Determination finding Appellant other than small based on its affiliation with T-Square. The Area Office first reviewed Appellant's contracting relationship with T-Square. The Area Office explained that Appellant has received ten government contracts, five of which Appellant has performed on its own and five of which Appellant has performed in conjunction with T-Square. With regard to the five contracts Appellant performed with T-Square, Appellant has been the prime contractor and has performed just over 50% of the work while subcontracting the remainder to T-Square. The Area Office points out the instant contract would be the sixth contract on which these firms would collaborate to this degree. Additionally, during the time the Area Office was investigating and performing the size determination on Appellant, the Area Office discovered a seventh contract on which Appellant has bid and plans to hire T-Square as a subcontractor. The Area Office observes T-Square is not a small concern, but has gained access to small business set-aside contracts through Appellant, and Appellant uses T-Square as a subcontractor almost exclusively.

The Area Office relates that Appellant explained it hires T-Square to improve its competitive position because T-Square is an experienced contractor with relevant past

performance references. Appellant acknowledges it is a relatively new company (formed in 2005) with only three transient aircraft services past performance references, whereas these types of contracts typically seek five references. Because Appellant's initial collaboration with T-Square was successful, Appellant continued to subcontract to T-Square. On the basis of this contracting relationship, the Area Office concluded Appellant and T-Square have substantially identical business or economic interests because they unite frequently to bid and perform on contracts, and Appellant subcontracts significant portions of its contracts to T-Square. 13 C.F.R. § 121.103(f).

The Area Office went on to investigate Triad's allegations of an ostensible subcontractor relationship between Appellant and T-Square in relation to the instant procurement. The Area Office analyzed Appellant's proposal and its teaming agreement with T-Square to conclude Appellant is not unduly reliant upon T-Square because Appellant is capable of performing the instant procurement. Nevertheless, the Area Office also concluded T-Square is performing the primary and vital elements of the contract because it will perform nearly half the work required under the contract. The Area Office came to this conclusion primarily because T-Square will perform the work required on the evening "swing shift." Appellant indicated to the Area Office that its own employees would work the day shift, and T-Square employees would work the night swing shift. Appellant's project manager would be on call to address any problems arising during the swing shift.

> Thus, during this shift, T-Square will be performing the 'primary and vital requirements of the contract.' The main purpose of the procurement is the five core aircraft transient services called out in the solicitation. T-Square's role is not limited to one of the services, or a component of one of the services, but the completion of all the services, during the evening shift hours.

(Size Determination 6.) The Area Office also points out that the teaming agreement (created before the proposal) indicates that T-Square will perform 49% of the contract. The Area Office finds this early agreement to cooperate on the contract to such a degree to be indicative of a joint venture. *See Size Appeal of Crown Support Servs., Inc.*, SBA No. SIZ-3294 (1990) (finding an ostensible subcontractor relationship where the prime contractor and subcontractor were performing nearly equal portions of the work and great emphasis was placed upon the subcontractor's experience). The Area Office thus concludes T-Square is Appellant's ostensible subcontractor for this procurement. 13 C.F.R. § 121.103(h)(4). Accordingly, Appellant is affiliated with T-Square both generally, based on an identity of interest, and for this specific contract. When T-Square's receipts are aggregated with Appellant's, Appellant is other than a small concern for the applicable $7 million size standard.

C. Appeal Petition

On September 10, 2010, Appellant filed the instant appeal claiming the Size Determination is based upon clear errors of fact and law. Appellant first challenges the Area Office's finding of an identity of interest between Appellant and T-Square. Appellant relies upon the *Size Appeal of Diverse Construction Group*, LLC, SBA No. 5112 (2010), to argue that there is insufficient dependency between it and T-Square to find an identity of interest. In *Diverse Construction*, OHA reversed the Area Office's finding of an identity of interest between

firms based upon their contractual relationships. Instead, the Area Office concluded the award of subcontracts from the alleged affiliate to the challenged firm amounting to 9.5% of the challenged firm's revenue, combined with the award of two subcontracts from the challenged firm to the alleged affiliate, was insufficient to constitute an identity of interest. Appellant argues the crux of the Area Office's finding in this matter, as in *Diverse Construction*, was Appellant's pattern of granting subcontracts *to* its alleged affiliate. Based upon OHA's reasoning in *Diverse Construction,* Appellant claims it cannot be dependent upon T-Square for a contract awarded directly to Appellant by the government. Appellant explains it has never received a subcontract *from* T-Square, so it cannot be economically dependent upon T-Square.

Appellant next argues the Area Office erred in determining that T-Square will perform the primary and vital requirements of the contract. Appellant disputes the Area Office's reliance on *Size Appeal of Crown Support Servs., Inc.*, SBA No. SIZ-3294 (1990). Appellant argues it was clear error to rely on *Crown* because, in that case, the Area Office applied the now-defunct seven factors test. *See Size Appeal of C&C Int'l Computers and Consultants, Inc.,* SBA No. SIZ-5083 (2009). Appellant also claims this matter is dissimilar to the *Crown* case in several important ways: (1) Appellant will provide the most costly, complex, and high level activities under the contract; (2) T-Square would not interface directly with the government; and (3) Appellant possesses the skills and experience necessary to perform the work.

Appellant contends that, under the all aspects test, it is clear that Appellant will perform the primary and vital contract requirements. In addition to the factors listed above, Appellant emphasizes that Appellant will provide the majority of the work, Appellant will provide project management (including project management for the swing shift), all T-Square communications pertaining to the contract must be made through Appellant, and T-Square is not the incumbent contractor. Appellant asserts that under the rationale applied in *Size Appeal of Alutiiq International Solutions, LLC*, SBA No. SIZ-5098 (2009), Appellant is providing the primary and vital contract requirements because it would perform the majority of the work and the most high-level services. Appellant concludes T-Square is not its ostensible subcontractor and urges OHA to reverse the Size Determination.

D. Triad's Opposition and Motion to Supplement Record

On September 28, 2010, Triad filed its Response and its Motion to Supplement the Record. Triad claims Appellant's appeal lacks merit and asserts: "While the Area Office did not specifically state that its finding of affiliation was based on the totality of the facts as well as identity of interest, reading the decision as a whole clearly establishes that was the basis for the decision." (Opposition 6.) Triad acknowledges that Appellant challenges the Area Office's finding that Appellant is affiliated with T-Square based on an identity of interest, but contends Appellant failed to address the Area Office's examination of the totality of the circumstances under 13 C.F.R. § 121.103(a)(5). In disputing Appellant's reliance on the *Diverse Construction* case, Triad declares: "it would appear [the totality of the circumstances] test must always be applied regardless of whether any of the specific 'types' of affiliation listed in the Code of Federal Regulations is present." (Opposition 7.)

Triad goes on to argue the record in this case clearly establishes a dependency between Appellant and T-Square. To support this, Triad emphasizes: Appellant has bid on two previous transient aircraft service contracts with T-Square (and 49% of the work on each contract has been allocated to T-Square); T-Square would not perform discrete tasks on the instant contract, but the full range of services required by the contract, particularly on the swing shift; Appellant and T-Square have the same teaming agreement on three proposals; the teaming agreement requires T-Square to provide and maintain all vehicles required by the contract; and the CO identified T-Square as the subcontractor in the letter notifying unsuccessful offerors that Appellant is the apparent successful offeror on this procurement, which, according to Triad, indicates that the CO thought T-Square's participation in the contract was critical.

Triad next contends these facts also support a finding of affiliation based on the totality of the circumstances. Triad argues Appellant cannot perform the contract on its own because it does not possess the requisite staff or equipment, specifically the vehicles to be provided by T-Square pursuant to the teaming agreement. Triad claims that because T-Square is to provide the vehicles, T-Square is undoubtedly playing a substantially broader role than that of a customary subcontractor. Triad explains that if T-Square is providing the vehicles without charge in addition to performing services on the swing shift, T-Square has control over the contract because it could prevent Appellant from performing at any time by withholding the vehicles. Alternatively, Triad argues, if T-Square is leasing the vehicles to Appellant in addition to performing the swing shift services, it is likely that T-Square will receive more than 49% of the contract revenues. "In summary, given the totality of the circumstances, there is no doubt that T-Square meets the definition of an affiliate for the purposes of a size determination in that [Appellant] is dependent on T-Square to provide 100% of the vehicles along with their maintenance and insurance as well as staff the swing shift." (Opposition 8.)

With regard to the ostensible subcontractor issue, Triad first notes that the Area Office did not apply the seven factors test utilized in the *Crown* case. Instead, Triad explains, the Area Office only cited *Crown* as a previous ruling based upon similar facts. "Overall, the Area Office is saying that there is no particular need for [Appellant] to contract with T-Square other than to use T-Square's past performance ratings and that there is no particular need for T-Square to subcontract with [Appellant]." (Opposition 9.) In other words, according to Triad, the only reason T-Square is Appellant's subcontractor is to allow T-Square to perform work that it would not otherwise be eligible to perform because it does not meet the applicable size standard.

Triad next disputes Appellant's contention that the primary and vital contract requirements are the administrative project management tasks. Triad asserts that the primary and vital tasks are managing aircraft that are landing or taking off. Triad claims T-Square will be performing the primary and vital contract requirements and will be doing so without Appellant's supervision on the swing shift. Triad concludes:

> [Appellant] and T-Square have embarked on a joint venture in which [Appellant] will bid contracts for which T-Square is ineligible due to size, [Appellant] will use T-Square's past performance to improve its ability to win contracts it would not be able to win without T Square's support and T-Square will independently provide a complete scope of work on 49% of the contract and provide all of the vehicles and equipment required to perform the contract.

(Opposition 10.) On the basis of the foregoing, Triad contends the Size Determination is not based upon clear error and should be affirmed.

In its Motion to Supplement the Record, Triad requests that OHA consider four items not presently in the record: (1) a statement as to why the CO listed T-Square as Appellant's subcontractor in the letter notifying offerors that Appellant is the apparently successful offeror; (2) the Statement of Work from the RFP; (3) the subcontract agreement between Appellant and T-Square; and (4) an affidavit from Mr. Timothy Tuggle, Triad's President. Also attached to the Appeal Petition is a photograph of vehicles used to perform this contract, which relates to Mr. Tuggle's affidavit.

E. Appellant's Motion for Leave to File Reply to Opposition

On October 1, 2010, Appellant filed its: (1) Response in Opposition to Triad's Motion to Supplement the Record; (2) Motion for Leave to file Reply to Triad's Opposition; and (3) Reply to Triad's Opposition. Appellant opposes Triad's Motion to Supplement the Record and alleges Triad's Opposition contains inaccuracies.

III. Discussion

A. Standard of Review

The standard of review for this appeal is whether the Area Office based the Size Determination upon clear error of fact or law. 13 C.F.R. § 134.314. In evaluating whether there is a clear error of fact or law, OHA does not consider Appellant's size *de novo*. Rather, OHA reviews the Record to determine whether the Area Office made a patent error of fact or law based on the Record before it. Consequently, I may not disturb an area office's size determination unless I have a definite and firm conviction that the area office made key findings of law or fact that are mistaken. *Size Appeal of Taylor Consulting, Inc.*, SBA No. SIZ-4775, at 10-11 (2006).

B. Motions

Triad requests that OHA include four items in the record: (1) a statement as to why the CO listed T-Square as the subcontractor in the letter notifying offerors that Appellant is the apparently successful offeror; (2) the Statement of Work from the RFP; (3) the subcontract agreement between Appellant and T-Square; and (4) an affidavit from Mr. Timothy Tuggle, Triad's President (along with an accompanying photograph). Evidence not previously presented to the Area Office will not be considered unless the Judge orders its submission or a motion is filed and served establishing good cause for its submission. 13 C.F.R. § 134.308.

Although Triad filed the necessary motion, it has failed to establish good cause. Its first request appears to be in the nature of a request for discovery from the CO, as no such statement currently exists. Discovery is not permitted in size appeals. 13 C.F.R. § 134.310. As to Triad's second request, the Statement of Work is already part of the record, and indeed should be in the possession of all parties, as they all received the solicitation and submitted offers. No further

submission of copies of the Statement of Work is necessary. As to Triad's third request, the subcontract does not yet exist because the contract has not yet been awarded. Further, it was not seen and relied upon by the Area Office, and so is not relevant here. Finally, Mr. Tuggle's affidavit is irrelevant here, as the information was not before the Area Office, and thus was not the basis for the Area Office determination. Accordingly, Triad's Motion to Supplement the Record is DENIED.

Appellant filed three documents on October 1, 2010: a Motion for Leave to Reply, a Reply, and an Opposition to Triad's Motion. No reply in response to an opposition is permitted unless directed by the administrative judge. 13 C.F.R. § 134.309. Additionally, no additional evidence or argument is accepted after the close of record, which, in this case, was September 28, 2010. 13 C.F.R. § 134.225(b). Accordingly, Appellant's Motion is DENIED and these documents are EXCLUDED from the record.

C. Analysis

1. Identity of Interest

The regulations governing affiliation provide that two firms sharing an identity of interest are affiliated and that their interests should be aggregated. 13 C.F.R. § 121.103(f). An identity of interest arises when firms "have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships)." *Id.* The Area Office determined that Appellant and T-Square share an identity of interest based upon their contractual relationships, specifically because the firms unite frequently to bid and perform on contracts and Appellant subcontracts significant portions of its contracts to T-Square. Appellant contends there is insufficient economic dependency between it and T-Square to find an identity of interest.

I agree with Appellant. The phrase in the regulation most pertinent to this matter is: "firms that are economically dependent through contractual or other relationships." The Area Office determined that Appellant shares an identity of interest with T-Square based upon the contractual relationship between the firms. Specifically, the Area Office based its finding upon the frequency and the magnitude of the subcontracts Appellant has issued to T-Square. The regulation plainly allows for finding an identity of interest based upon contractual relationships. However, it appears the Area Office failed to consider the preceding phrase in the regulation; that is, an identity of interest arises when firms are "economically dependent" based upon their contractual relationships.

As Appellant points out, the cases in which OHA has found an identity of interest based upon contractual relationships have generally involved situations where the challenged firm is reliant upon revenue or subcontracts *from* its alleged affiliate. *See, e.g.*, *Size Appeal of Incisive Tech. Inc.*, SBA No. SIZ-5122 (2010); *Size Appeal of Faison Office Prods., LLC*, SBA No. SIZ-4812 (2006); *Size Appeal of J & R Logging*, SBA No. SIZ-4426 (2001). In *Size Appeal of Diverse Construction Group*, LLC, SBA No. 5112 (2010), upon which Appellant relies, the challenged firm had awarded its alleged affiliate two subcontracts for 48.1% and 37.4% of the total work under each respective contract. The challenged firm had also received two

subcontracts from its alleged affiliate. OHA determined this relationship was insufficient to create an identity of interest.

Here, Appellant has subcontracted approximately 49% of five separate contracts to T-Square. This contract would be the sixth contract on which Appellant has collaborated with T-Square to this degree, and there is a seventh such contract pending. Triad goes to great lengths to argue these past contracts and the record in this case present ample evidence of economic dependence. Triad focuses on the fact that Section 4.13 of the teaming agreement between the firms indicates that T-Square would provide the vehicles necessary to perform this procurement.

Nevertheless, there is no evidence that Appellant is economically dependent upon T-Square because there is no evidence Appellant relies upon T-Square for its revenue. That T-Square will provide some equipment necessary to perform the contract does not establish economic dependence any more than it would establish unusual reliance. T-Square's provision of these vehicles is part of its duties as subcontractor, and there is no evidence that this assistance is not included in the 49% portion of the contract work it will receive. That Appellant has obtained this equipment from T-Square, instead of another source, is not sufficient to demonstrate economic dependence.

Furthermore, the Area Office specifically found that Appellant is capable of performing this contract based upon its own relevant past performance experience. The fact that T-Square will provide the vehicles to perform this procurement does not prove that Appellant could not provide the vehicles on its own. As OHA observed in *Diverse Construction,* "Appellant cannot be dependent upon [its alleged affiliate] for a contract awarded directly to Appellant by the Government, even if [its alleged affiliate] has received a subcontract for a portion of the work on that contract." *Diverse Construction*, SBA No. 5112, at 6.

I do not hold here that an identity of interest can never be found on the basis of contracts awarded from a challenged firm to an alleged affiliate. It is possible that such contracts could rise to the level of economic dependency. Rather, I hold that under the facts and circumstances of this case, the subcontracts issued from Appellant to T-Square are an insufficient basis on which to conclude that Appellant is economically dependent upon T-Square.

2. Ostensible Subcontractor

The regulation governing ostensible subcontractor relationships provides that a prime contractor is affiliated with its subcontractor on a particular procurement if the prime contractor is unusually reliant upon the subcontractor or if the subcontractor would perform the primary and vital requirements of the contract. 13 C.F.R. § 121.103(h)(4). To determine whether firms have violated the ostensible subcontractor rule, all aspects of the relationship between the firms must be considered. *Id.* Here, contrary to Triad's assertions, the Area Office specifically determined Appellant is not unusually reliant upon T-Square because Appellant is capable of performing the contract. However, the Area Office also found T-Square would be performing the primary and vital contract requirements because its employees will perform the work required on the swing shift. Appellant argues it will provide the primary and vital contract requirements because it will perform the majority of the work and the most high-level services.

Again, I agree with Appellant. Generally, a finding that an ostensible subcontractor will perform the primary and vital contract tasks is based upon a determination that the prime contractor prime lacks the ability to perform those tasks. *See, e.g., Size Appeal of Smart Data Solutions LLC*, SBA No. SIZ-5071, at 21-22 (2009). Here, although the Area Office correctly observed that T-Square will perform all the services during the evening swing shift, the Area Office also concluded that Appellant is not unusually reliant upon T-Square and is capable of performing this contract. Appellant has three relevant past performance references, which was the number of references required by the RFP. RFP, at 17 ("Provide a list of no less than three (3) no more than five (5), of the most relevant contracts performed for Federal Agencies and commercial customers within the last 3 years."). Thus, although Appellant may have used T-Square's past experience to bolster its competitive standing, it did not rely upon T-Square's experience to be eligible for the contract. The Area Office also noted Appellant controlled the proposal process and will control the management and technical aspects of the contract.

The implication of the Area Office's conclusion that Appellant is capable of performing this contract is that Appellant had an equal ability to perform the swing shift with T-Square, but allocated that work to T-Square for its own management reasons. In other words, Appellant has the ability to perform the primary and vital contract tasks and is merely apportioning the work to T-Square. Additionally, as Appellant argues, the contract requires only one contract line item—transient aircraft maintenance. Thus, because Appellant is capable of providing this service, will provide the majority of the work, and will perform the project management services under the contract, I find Appellant is performing the primary and vital contract requirements. *See Size Appeal of Alutiiq Int'l Solutions, LLC,* SBA No. SIZ-5098, at 6 (2009).

Finally, the Area Office's reliance on *Size Appeal of Crown Support Servs., Inc.*, SBA No. SIZ-3294 (1990), is misplaced.[3] In addition to *Crown's* age, there are important differences between the two cases. In *Crown*, the evidence failed to establish that the challenged firm could perform the contract, whereas here Appellant is fully able to perform. In *Crown*, the ostensible subcontractor would directly interface with the government, whereas here Appellant is the government's primary contact and controlled the whole proposal process. Finally, although Appellant included T-Square's experience in its proposal, there is no evidence that it placed greater emphasis on T-Square's experience than its own. Instead, in its proposal, Appellant lists its own three relevant contract experiences first, and then lists two of T-Square's relevant contracts.

In summary, the record does not support a finding that T-Square would perform the primary requirements of the contract or that Appellant was unusually reliant on T-Square. Appellant has the ability to perform the contract, but has designated a certain portion of it, namely night operations, to T-Square. T-Square is thus handling a discrete portion of the contract—night "swing shift" operations. Appellant and T-Square are performing the same tasks, dividing them by the hour of the day they are performed. It therefore cannot be said that

[3] I note that although the Area Office relied too heavily on the *Crown* case, Appellant is incorrect in arguing the Area Office could not rely upon this case because it applied the seven factors test. The Area Office may still cite cases utilizing the seven factors test, so long as it does not itself apply the seven factors test, and the Area Office did not do so here.

T-Square's tasks are more vital than those Appellant will perform on its own. Appellant will also interface with the government. Therefore, Appellant is clearly in control of the contract and cannot be said to be subordinate to its subcontractor in any way. The Area Office clearly erred in finding that T-Square would perform the primary and vital contract tasks and thus also erred in concluding that T-Square is Appellant's ostensible subcontractor.

3. Totality of the Circumstances

Contrary to Triad's contentions, the Area Office did not make a finding based upon the totality of the circumstances and was not required to do so. It is true that the Area Office must consider the totality of the circumstances surrounding the relationship between the firms in examining the issue of affiliation. However, the totality of the circumstances should only be the basis for a finding of affiliation if no other specific ground is sufficient. In other words, the Area Office should find affiliation based upon the totality of the circumstances only when it is unable establish affiliation under any of the other specific affiliation rules, yet the relationship between the parties taken as a whole is indicative of affiliation. 13 C.F.R. § 121.103(a)(5).

Here, the Area Office properly considered the totality of the circumstances surrounding the relationship between Appellant and T-Square and subsequently found affiliation on the basis of violations of two separate and specific affiliation rules: the identity of interest rule and the ostensible subcontractor rule. Thus, the Area Office had no need to make a finding of affiliation based upon the totality of the circumstances. Although I conclude the Area Office erred in its findings with regard to both the identity of interest rule and the ostensible subcontractor rule, I also find that the totality of the circumstances surrounding the relationship between Appellant and T-Square is not indicative of affiliation.

IV. Conclusion

Appellant met its burden of proving that the Area Office committed clear errors of law based upon the record before it. Accordingly, this appeal is GRANTED, and the Size Determination is REVERSED.

This is the final decision of the Small Business Administration. 13 C.F.R. § 134.316(b).

CHRISTOPHER HOLLEMAN
Administrative Judge