United States Small Business Administration
Office of Hearings and Appeals

SIZE APPEAL OF:	
Barlovento, LLC	SBA No. SIZ-5191
Appellant	Decided: February 3, 2011
Appealed from Size Determination No. 3-2011-06	

APPEARANCES

Hal J. Perloff, Esq., Husch Blackwell LLP, Washington, D.C., for Appellant.

DECISION[1]

I. Introduction & Jurisdiction

On December 17, 2010, the U.S. Small Business Administration's (SBA) Office of Government Contracting, Area III (Area Office) issued Size Determination No. 3-2011-06 finding that the average annual receipts of Barlovento, LLC (Appellant) exceed the size standard applicable to the procurement at issue. For the reasons discussed below, the appeal is denied, and the size determination is affirmed.

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), and this matter is properly before OHA for decision.

II. Background

A. Solicitation and Protests

On July 29, 2010, the Contracting Officer (CO) for the U.S. Department of the Air Force, 325th Contracting Squadron (325 CONS/LGCCA) issued Solicitation No. FA4819-10-R-0009 (RFP) seeking to award an indefinite delivery/indefinite quantity (ID/IQ) contract for the repair and construction of base pavements at Tyndall Air Force Base in Florida. The RFP was a HUBZone set-aside, and the CO designated North American Industry Classification System

[1] This decision was originally issued under a protective order. On February 3, 2011, I issued an order for redactions directing each party to file a request for redactions if that party desired any information redacted from the published decision. No party requested any redactions. Thus, OHA now publishes the decision in its entirety.

(NAICS) code 237310, Highway, Street, and Bridge Construction, with a corresponding size standard of $33.5 million in average annual receipts. Appellant submitted its offer on July 21, 2010.

On September 22, 2010, the CO notified unsuccessful offerors that Appellant was the apparent successful offeror. On September 29, 2010, Enola Contracting Services, Inc. (Enola) filed a protest challenging Appellant's size. Enola alleged Appellant is affiliated with a number of other entities with which Appellant has formed joint ventures, and Appellant's average annual receipts exceed the applicable size standard.

B. Size Determination

On December 17, 2010, the Area Office issued its size determination finding Appellant to be other than a small firm under the applicable size standard. The Area Office first explained that Appellant is affiliated with JSN, a management company, through stock ownership because Appellant's president owns a majority interest in both firms. 13 C.F.R. § 121.103(c).

The Area Office then examined the various joint ventures to which Appellant is or has been a party: (1) Barlovento LLC/Carters Contracting, JV (Barlovento/Carter JV), (2) Hollon Barlovento Joint Venture (Hollon/Barlovento JV), (3) Barlovento-RCG JV, (4) Carter's Contracting Services, Inc. and Barlovento, LLC Joint Venture (Carter/Barlovento JV), and (5) CCSI Barlovento JV. The Area Office noted that Appellant receives 51% of the revenue from Barlovento/Carter JV, and explained that revenue from the joint venture must be included in Appellant's receipts.[2] The Area Office also noted that Appellant will receive 50% of the revenue from Hollon/Barlovento JV, but because Hollon/Barlovento JV was formed in 2009, "any revenues produced to date will not be reported by [Appellant] until their tax returns for 2010 are completed." (Size Determination 4.) The Area Office determined that none of these joint ventures has operated outside the regulation governing affiliation based upon joint ventures, 13 C.F.R. § 121.103(h), and Appellant is not affiliated with any of its joint venture partners or the joint ventures themselves.

Finally, the Area Office calculated Appellant's average annual receipts based upon its federal tax returns from the three most recently completed fiscal years: 2009, 2008, and 2007. 13 C.F.R. § 121.104(c)(1). "Since none of the Joint Ventures have been established for more than a three year period, the average annual revenues from the Federal Tax returns provided by [Appellant] for the Joint Ventures were computed using the formula set forth in 13 C.F.R. § 121.104(c)(1)." The Area Office concluded that Appellant's average annual receipts, including its revenues from the Barlovento/Carter JV and the Carter/Barlovento JV, exceed the $35.5 million size standard applicable to the procurement at issue.

[2] The Area Office did not explicitly provide in the size determination that Appellant receives 49% of Carter/Barlovento JV's revenues, but the record reflects the Area Office did include those revenues in its calculation of Appellant's average annual receipts.

C. Appeal Petition

On January 3, 2011, Appellant filed the instant appeal. On January 6, 2011, after receiving the Area Office's specific calculations of Appellant's average annual receipts, Appellant filed an amended appeal.[3] Appellant contends the Area Office erred in calculating its average annual receipts. First, Appellant asserts the Area Office improperly included capital gains in Appellant's receipts when such amounts should have been excluded. 13 C.F.R. § 121.104(a); *Size Appeal of Military Constr. Corp.*, SBA No. SIZ- 4456 (2001).

Next, Appellant argues the Area Office erred in separately calculating the receipts for each joint venture and then aggregating those receipts with Appellant's receipts. 13 C.F.R. § 121.103(h)(5) mandates that Appellant include in its receipts its proportionate share of joint venture receipts. Thus, according to Appellant, the Area Office should have included Appellant's share of each joint venture's receipts directly in Appellant's receipts (and taken the three year average of that total) rather than separately calculating the average annual receipts of each joint venture (or Appellant's proportionate share thereof) and then adding them to Appellant's receipts.

Appellant then claims the Area Office inappropriately included in Appellant's receipts revenue from Barlovento/Carter JV's and Carter/Barlovento JV's 2009 tax returns despite the fact that those receipts had not yet been reported to Appellant (because Appellant's fiscal year ended on September 30, 2009). Appellant contends the Area Office properly excluded Hollon/Barlovento JV's 2009 receipts for this reason, but inexplicably included the 2009 receipts from the other joint ventures.

Finally, Appellant contends that even if the 2009 receipts of Barlovento/Carter JV and Carter/Barlovento JV are properly included in Appellant's receipts, the Area Office double counted some receipts. Appellant acknowledges that its proportionate share of joint venture receipts should be added to its own receipts, but asserts 13 C.F.R. § 121.104(a) serves to exclude income received from the joint venture pursuant to that provision's exclusion of transactions among affiliates. *Size Appeal of Alpha Protective Servs.*, SBA No. SIZ-5035 (2009) (citing *Size Appeal of Crown Moving & Storage Co. d/b/a Crown Worldwide Moving and Storage*, SBA No. SIZ-4872 (2007)). Appellant explains:

> By including 2009 joint venture receipts for Barlovento/Carter JV and Carter/Barlovento JV, the Area Office did not make the required deduction for joint venture income received by [Appellant]. This is the case because the 2009 joint venture income reported to [Appellant], as reflected in the 2009 K-1s included in Barlovento/Carter JV and Carter/Barlovento JV's respective calendar year 2009 tax returns, was not included in [Appellant's] fiscal year 2009 tax returns because the joint ventures' 2009 fiscal years were only beginning their 4th

[3] Appellant filed a Motion to File Amended Appeal Petition pursuant to 13 C.F.R. § 134.207(a). Because the amended appeal did not improperly expand the issues or result in undue delay or prejudice to any party, Appellant's motion is GRANTED, and I reviewed the amended appeal petition in deciding this matter.

> quarter as [Appellant's] fiscal year ended on September 30, 2009. The Area Office's apparent failure to deduct this income causes these inter-affiliate transactions to be double counted.

(Appeal Petition 11.) Appellant argues that if its average annual receipts are properly calculated, as demonstrated in tables included in the appeal petition, it is a small business under the applicable size standard.

D. Enola's Response

On January 13, 2010, Enola filed its response to the appeal. Enola contends Appellant has contractual relationships with each of its joint venture partners and is therefore affiliated with each of these entities. Accordingly, Enola asserts the receipts of each of these entities must be included in the calculation of Appellant's average annual receipts. 13 C.F.R. § 121.104(d). Enola also claims Appellant failed to disclose its affiliation with another entity, J&J Government Contractors. Appellant argues that after the aggregation of the receipts of Appellant and its affiliates, Appellant is not a small business under the applicable size standard.

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. It is Appellant's burden to prove, by a preponderance of the evidence, that the Area Office committed an error. 13 C.F.R. § 134.314. Consequently, OHA may not disturb the Area Office's size determination unless the administrative judge has 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. Analysis

Upon consideration of each of the size determination, Appellant's arguments, and the record, I find Appellant has identified several errors in the Area Office's calculation of its average annual receipts. Nonetheless, I affirm the size determination because I find correcting the errors would not bring Appellant's receipts within the applicable size standard. First, Appellant is correct that capital gains should be excluded from average annual receipts. The regulation governing the calculation of a firm's average annual receipts specifically provides that "[r]eceipts do not include net capital gains or losses." 13 C.F.R. § 121.104(a). It is not clear that Appellant reported any capital gains on its tax returns.[4] Nevertheless, I will not examine this

[4] Appellant asserts its capital gains are listed on its IRS Form 1065 on line 2, which represents "net gain (loss) from Form 4797, Part II, line 17." However, Form 4797, Part II specifically calculates "ordinary" gains and losses, not "capital" gains and losses.

issue in detail because even subtracting the amounts Appellant alleges represent its capital gains, Appellant's receipts remain over the applicable size standard.

Next, I also agree with Appellant's argument that the Area Office was required to include Appellant's proportionate share of joint venture receipts directly into Appellant's receipts (and then average them) rather than calculating each joint venture's average receipts separately and adding them to Appellant's own average annual receipts. Appellant's argument is based upon the language of 13 C.F.R. § 121.103(h)(5), which provides: "For size purposes, a concern must include in its receipts its proportionate share of joint venture receipts." As Appellant argues, it appears the Area Office treated Appellant's joint ventures as Appellant's affiliates pursuant to 13 C.F.R. § 121.104(d)(1), which provides: "The average annual receipts size of a business concern with affiliates is calculated by adding the average annual receipts of the business concern with the average annual receipts of each affiliate." The Area Office, apparently pursuant to this section, averaged the receipts of each joint venture separately and then added them to Appellant's receipts. However, Appellant is correct that its joint ventures are not its affiliates. Thus, the language of 13 C.F.R. § 121.103(h)(5), which specifically applies to joint ventures, must be applied in lieu of the language of 13 C.F.R. § 121.104(d)(1), which specifically applies to affiliates. I agree with Appellant that the plain language of 13 C.F.R. § 121.103(h)(5) indicates that Appellant's joint venture receipts should have been included in Appellant's receipts rather than averaged separately and then aggregated with Appellant's receipts. Again, however, this error is harmless because even calculating Appellant's receipts in this manner does not bring Appellant's receipts within the size standard.

Appellant's third argument is more problematic. Appellant contends the Area Office should not have included Barlovento/Carter JV's and Carter/Barlovento JV's 2009 receipts in Appellant's receipts because those receipts had not yet been reported to Appellant as of the date to determine size. Appellant also claims the Area Office excluded Hollon/Barlovento JV's 2009 receipts for this very reason. The size determination provides: "according to [Appellant], since the Hollon Barlovento Joint Venture was only formed in 2009, any revenues produced to date will not be reported by [Appellant] until their tax returns for 2010 are completed." (Size Determination 4.) Appellant asserts the Area Office failed to explain its apparently inconsistent treatment of Appellant's joint ventures.

From this language, it does seem as though the Area Office treated the joint venture receipts in an inconsistent manner. Nonetheless, I find this too was a harmless error because the record reflects that Hollon/Barlovento JV did not have any 2009 receipts. In an email sent November 2, 2010, an SBA representative inquired of Ms. Jane Solomon: "Please provide a copy of the Hollon Barlovento Joint Venture Agreement. Has this JV produced any income to date?" In an email of the same date, Ms. Solomon responded "No and will not until after Jan. 2011." The SBA apparently accepted Ms. Solomon's representations that this joint venture has not produced any revenue because the record reflects no further inquires into the matter. There is absolutely no indication in the record that the Area Office decided not to include the Hollon/Barlovento JV 2009 receipts in Appellant's receipts because those revenues had not yet been reported to Appellant. Instead, the record simply reflects that there were no 2009 receipts for Hollon/Barlovento JV. Thus, although it is unclear why the Area Office made this statement in the size determination, there was no actual inconsistent treatment of joint venture receipts, and

therefore no material error. The Area Office included the 2009 receipts of the joint ventures that had such receipts and (obviously) did not include the 2009 receipts of the joint ventures that did not have such receipts.

Appellant also attaches to its appeal petition a calculation worksheet from a previous size determination performed on Appellant in May, 2010. There, the same Area Office calculated Appellant's receipts based upon Appellant's tax returns for fiscal years 2007, 2008, and 2009[5]—the same years used to perform the instant size determination. Appellant contends the Area Office excluded Barlovento/Carter JV's and Carter/Barlovento JV's 2009 receipts from its calculation of Appellant's receipts in relation to that previous size determination.

In fact, it appears from the calculation sheet in the record that the Area Office did include Carter/Barlovento JV's 2009 receipts,[6] but did not include the receipts of Barlovento/Carter JV.[7] The record does not reflect why the Barlovento/Carter JV 2009 receipts were not included in Appellant's receipts in the first size determination. Perhaps the Area Office did not have Barlovento/Carter JV 2009 tax return before it at that time, or perhaps the Area Office has an explanation for this that does not appear in the current record. Whatever the reason, the Area Office was not required to follow this inconsistent treatment (especially in the absence of some clear explanation) in its calculation of Appellant's receipts in relation to the current size

[5] The calculation worksheet lists the years as fiscal years 2006, 2007, and 2008. However, Appellant points out that the tax returns used were for the fiscal years ending September 30, 2007, September 30, 2008, and September 30, 2009. The receipts listed on the calculation worksheet for the previous size determination match those used in the calculation for the current size determination.

[6] The calculation sheet in the record provides: "From JV tax return 1,928,922 + 294,574 = 2,223,496 then divide by 3 = 741,165 x 49% = 363,171 Then subtract 3 months of revenue 65,000 = 298,171." From this, it appears the Area Office calculated Carter/Barlovento JV's 2009 receipts, divided them by three (as an aside- it is not clear why this figure was divide by three when it represented only one year), took 49% of that figure, then subtracted 3 months of revenue to calculate Appellant's proportionate share of Carter/Barlovento JV's 2009 receipts.

The Area Office then added $298,171 to Appellant's 2009 receipts before calculating Appellant's average annual receipts. Admittedly, the numbers in this calculation do not exactly line up with Carter/Barlovento JV's 2009 tax returns. The cost of goods sold on the tax return is $1,828,922 not $1,928,922 and the total income on the tax returns is $298,286 not $294,574, though the ordinary income on the tax returns is $294,974. Given how close these numbers are, and given the Area Office calculated 49% as Appellant's proportionate share of these receipts (Appellant's ownership percentage in Carter/Barlovento JV), it is reasonable to assume these are typographical errors and the Area Office did include Carter/Barlovento JV's 2009 receipts (or at least nine months thereof) in its calculation of Appellant's average annual receipts relating to the previous size determination.

[7] I note the calculation sheet attached to the appeal petition is not the same as the calculation sheet in the Area Office record. The calculation sheet attached to the appeal petition omits the joint venture receipts calculation set forth above in footnote 5.

determination. Rather, it was the Area Office's responsibility to calculate Appellant's receipts based on the information before it at that time, regardless of how the receipts had been calculated in the past. Accordingly, the previous size determination calculations hold little weight here.

As Appellant emphasizes, 13 C.F.R. § 121.103(h)(5) provides that "a concern must include in its receipts its proportionate share of joint venture receipts." This regulation does not indicate that a concern is required to include its proportionate share of joint venture receipts in its receipts only after those receipts have been reported to it. The regulation does not mention that a firm's joint venture receipts should only be included up to the end of the firm's own fiscal year. The regulation in no way indicates that the calculation of the firm's share of joint venture receipts is somehow tied to the calculation of the firm's own receipts. Rather, it states the firm must include "its proportionate share of joint venture receipts." I submit the most reasonable interpretation of this language is to simply calculate the joint venture's own annual receipts, calculate the firm's proportionate share thereof, and add that share to the firm's annual receipts, regardless of whether each entity uses a different fiscal year. Thus, if a joint venture earns revenue in its own fiscal year, the challenged firm's proportionate share of the joint venture receipts for the joint venture's fiscal year should be added to the calculation of the firm's annual receipts for the firm's fiscal year, regardless of whether the firm itself uses a different fiscal year than the joint venture. Accordingly, the 2009 receipts of the joint ventures at issue must be calculated separately from Appellant's own 2009 receipts, and Appellant's share of the 2009 joint venture receipts must be added to Appellant's own 2009 annual receipts, even though the separate receipts calculations are based on different fiscal years.

The regulation concerning the calculation of a firm's receipts supports this interpretation. One subsection of that regulation provides: "If the business concern or an affiliate has been in business for a period of less than three years, the receipts for the fiscal year with less than a 12 month period are annualized in accordance with paragraph (c)(2) of this section. *Receipts are determined for the concern and its affiliates in accordance with paragraph (c) of this section even though this may result in using a different period of measurement to calculate an affiliate's annual receipts.*" 13 C.F.R. § 121.104(d)(3) (emphasis added). Although I concluded above that the language in 13 C.F.R. § 121.103(h)(5), which specifically applies to joint ventures, must be applied here in lieu of the language of 13 C.F.R. § 121.104(d)(1), which applies to affiliates, I find this regulation nonetheless provides insight into the SBA's intentions with regard to calculation of a firm's receipts. It is evident from this regulation that the SBA intended an entity's receipts to be calculated based upon that entity's own fiscal year. I conclude based on the language of 13 C.F.R. § 121.103(h)(5) itself as well as the guidance found in 13 C.F.R. § 121.104(d)(3) on the calculation issue that a firm must include in its own fiscal year receipts its proportionate share of joint venture receipts for the joint venture's fiscal year, even if this results is using a different period of measurement to calculate each set of receipts. Thus, Appellant must include Barlovento/Carter JV's and Carter/Barlovento JV's 2009 calendar year receipts in the calculation of its own 2009 fiscal year receipts.

Finally, I find Appellant's final argument is meritless (or at least poorly explained). Appellant claims that if the 2009 joint venture receipts are properly includable in Appellant's receipts, the Area Office erroneously double counted the joint venture receipts. Appellant bases its argument on language found in 13 C.F.R. § 121.104(a), which provides that "proceeds from

transactions between a concern and its domestic or foreign affiliates" should be excluded from the calculation of a firm's average annual receipts. Appellant cites *Size Appeal of Crown Moving & Storage Company d/b/a Crown Worldwide Moving and Storage*, SBA No. SIZ-4872 (2007), for support. In *Crown Moving*, OHA excluded rental income paid from the challenged firm to its affiliate, accepting the reasoning that to count such interaffiliate transfers would be to count such amounts twice. Accordingly, OHA determined the affiliate's rental receipts should be excluded from Appellant's receipts. Appellant claims, based on these authorities, that by including the 2009 joint venture receipts in its calculation of Appellant's receipts, the Area Office failed to make the required deduction for joint venture income because the 2009 calendar year joint venture income was not included on Appellant's 2009 fiscal year tax returns.

I conclude that neither the interaffiliate exclusion nor the *Crown Moving* case has any applicability here. First, as noted above, Appellant is not affiliated with its joint ventures, and any transactions between the firms are not considered interaffiliate transactions. In challenging the Area Office's separate annualization of each joint venture's receipts, Appellant itself argued that it is not affiliated with its joint ventures and that the rule governing the aggregation of affiliate receipts could not apply to it. Appellant cannot now argue that it is affiliated with its joint ventures in order to claim the interaffiliate exclusion.

Moreover, I fail to see how the Area Office double counted any joint venture receipts. In the *Crown Moving* case, OHA excluded the affiliate's rental receipts because otherwise those same receipts would have been included in both the challenged firm's receipts and the affiliate's receipts, which would result in double counting to the challenged firm. That is not the case here. Receipts reported by the joint ventures should not be included in Appellant's own receipts. Rather, Appellant reported on its tax returns only its *income* from the joint ventures, and the Area Office excluded from its calculations all the joint venture income reported on Appellant's tax returns specifically to avoid any double counting.[8] The Area Office then added its own annualizations of each joint venture's receipts to Appellant's receipts. Although I have found this was not the correct method of calculation, it certainly does not result in double counting.

The appeal petition includes a calculation of Appellant's average annual receipts including Barlovento/Carter JV's and Carter/Barlovento JV's 2009 receipts. These calculations match my calculations with one exception. On the basis of this double counting/interaffiliate transaction argument, Appellant asserts its joint venture income, as reflected on the Barlovento/Carter JV and Carter/Barlovento JV 2009 Schedule K-1s (a total of $196,070), should be excluded from its receipts. I simply fail to grasp this assertion. If, as Appellant has argued, the 2009 joint venture income was not reported to Appellant when Appellant filed its own 2009 tax returns,[9] I do not understand how such income could have been included on

[8] If anything, the Area Office's approach was more generous to Appellant than it should have been. The Area Office removed all of Appellant's reported joint venture income from its calculation of Appellant's receipts without confirming that such income came only from the joint ventures at issue. If any of this income came from other joint ventures, it should not have been excluded because those ventures' receipts are not being added back in.

[9] Appellant's tax returns for the fiscal year ending September 30, 2009, were filed on

Appellant's 2009 tax returns or why it should be excluded therefrom. Appellant simply asserts that this amount should be excluded without any sufficient explanation. It was Appellant's burden to prove the Area Office erred by failing to exclude this amount and to provide a satisfactory justification for its reasoning. Appellant failed to do so.

Accordingly, I calculated Appellant's own annual receipts based upon its federal tax returns for its fiscal years ending September 30, 2007, September 30, 2008, and September 30, 2009. For each of these years, I added the cost of goods sold to the total income and subtracted joint venture income (as reported on Appellant's IRS Form 1065) and the amount Appellant asserts represent its capital gains. I calculated Appellant's share of Barlovento/Carter JV's receipts based upon that entity's tax returns for the 2008 and 2009 calendar years. Specifically, I added the cost of goods sold to the total income and calculated 51% of each year's receipts to reach Appellant's share for each year. I then added those joint venture receipts to Appellant's own receipts for each respective year. I calculated Appellant's share of Carter/Barlovento JV's receipts based upon that entity's tax returns for the 2009 calendar year. Specifically, I added the cost of goods sold to the total income and calculated 49% of the joint venture's 2009 receipts to reach Appellant's share for 2009. I then added those receipts to Appellant's own receipts for 2009. Next, I added Appellant's own 2007 receipts, Appellants total 2008 receipts (which include Barlovento/Carter JV's 2008 receipts), and Appellant's total 2009 receipts (which include Barlovento/Carter JV's 2009 receipts and Carter/Barlovento JV's 2009 receipts). Finally, I divided this number by three to reach Appellant's average annual receipts over the past three years. This number exceeds the applicable $33.5 million size standard, so Appellant is other than small for any procurement utilizing this size standard.

Finally, with regard to Enola's response to the appeal, I reiterate that Appellant is not affiliated with its joint ventures or its joint venture partners, and only Appellant's proportionate share of each joint venture's receipts (not all of each joint venture's receipts) must be included in the calculation of Appellant's average annual receipts. Enola also claims Appellant failed to disclose its affiliation with another entity, J&J Government Contractors. If Enola wanted the Area Office to investigate whether Appellant is affiliated with a specific entity, Appellant should have raised its concern at the protest level. It was Enola's responsibility to present all relevant evidence to the Area Office. *See* 13 C.F.R. § 121.1009(b); *Size Appeal of Mgmt. Support Tech., Inc.*, SBA No. SIZ-4976, at 3 (2008). OHA may not consider substantive arguments raised for the first time on appeal. 13 C.F.R. § 134.316(a); *see also Size Appeal of C&C Int'l Computers and Consultants, Inc.*, SBA No. SIZ-4970, at 6, 8 (2008) (dismissing multiple issues because they were raised for the first time on appeal).

IV. Conclusion

The burden was on Appellant to prove its size at the protest level, and Appellant failed to do so. Appellant further failed to prove on appeal that the Area Office committed any clear, material error of fact or law based upon the record before it. Accordingly, this appeal is DENIED, and the size determination is AFFIRMED.

January 6, 2010. Barlovento/Carter JV's 2009 tax returns were filed on March 3, 2010. Carter/Barlovento JV's 2009 tax returns were filed on March 5, 2010.

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

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CHRISTOPHER HOLLEMAN
Administrative Judge