

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

SIZE APPEAL OF:

Ma-Chis Lower Creek Indian Tribe
Enterprises, Inc.,

Appellant,

Appealed From
Size Determination No. 3-2012-017

SBA No. SIZ-5333

Decided: March 22, 2012

ORDER DISMISSING APPEAL¹

I. Background

This appeal arises from size determination number 3-2012-017 issued on December 13, 2011 to Larry Grant Construction (LGC) in conjunction with LGC's application for 8(a) Business Development (BD) certification. In the size determination, the Small Business Administration (SBA) Office of Government Contracting, Area III (Area Office) found that LGC was not a small business under the \$33.5 million size standard applicable to LGC's primary North American Industry Classification System (NAICS) code. The Area Office determined that, during the years under review, LGC derived a large portion of its revenues from Ma-Chis Lower Creek Indian Tribe Enterprises, Inc. (Appellant). As a result, LGC was found to be economically dependent upon, and affiliated with, Appellant. Upon aggregating LGC's average annual receipts with those of Appellant and other LGC affiliates, the Area Office concluded that LGC exceeds the applicable size standard. The Area Office stated that, in light of its determination, LGC "may not self-certify as a small business under the size standard of \$33.5 million or less, unless [LGC] is recertified by an appropriate SBA office or is determined to be small by the SBA Office of Hearings and Appeals." (Size Determination at 6.) The Area Office further instructed LGC to update information in the Central Contractor Registration (CCR) and Online Representations and Certifications Application (ORCA) computer systems.

On December 23, 2011, Appellant filed the instant appeal. While recognizing that the size determination was not issued to Appellant but rather to LGC, Appellant maintains that it has standing to pursue the appeal because it is adversely affected by the determination. (Appeal at 1.) Appellant complains of language in the size determination suggesting that Appellant's own receipts exceed the \$33.5 million size standard. Appellant further claims that a finding that LGC and Appellant are affiliated "adversely affects [Appellant] as well as affecting LGC." (*Id.*)

¹ This appeal is decided under the Small Business Act of 1958, 15 U.S.C. § 631, *et seq.*, and 13 C.F.R. parts 121 and 134.

II. Discussion

SBA regulations stipulate that an appeal may be brought by a person or entity that is “adversely affected by a size determination.” 13 C.F.R. § 134.302(a). Similarly, OHA has held that, in order to have standing to appeal, a concern must demonstrate “a direct stake in the outcome of the case.” *Size Appeal of Nuclear Fuel Services Inc.*, SBA No. SIZ-5324, at 6 (2012) (citing *Size Appeal of Control Systems Research, Inc.*, SBA No. SIZ-5012 (2008)).

Appellant here has not shown that it is “adversely affected” by the size determination so as to confer standing to appeal. As discussed above, it was LGC — not Appellant — that was the subject of the size determination. Thus, the size determination does not find Appellant to be other than small, and does not indicate that Appellant may not represent itself as a small business. Nor does the size determination require that Appellant update its profiles in CCR and ORCA. In short, Appellant lacks standing to pursue this appeal because the size determination has no apparent impact or consequence to Appellant. *Size Appeals of Sabre88, LLC, et al.*, SBA No. SIZ-5113, at 2 (2010) (alleged affiliate has no standing to appeal when the alleged affiliate “itself has not been found other than small and has not been ‘adversely affected.’”).

Appellant expresses concern over language in the size determination suggesting that Appellant's own revenues exceed the \$33.5 million size standard, and by the finding that Appellant and LGC are affiliated. Appellant insists that the size determination is incorrect on these points. It is well-settled, however, that a prior size determination is not binding in any subsequent review. *E.g.*, *Size Appeal of Coastal Management Solutions, Inc.*, SBA No. SIZ-5281, at 5 (2011) (citing *Size Appeal of Miltope Corp.*, SBA No. SIZ-5066, at 7 (2009)). Accordingly, insofar as Appellant may itself become the subject of a future size review, Appellant would have an opportunity to address allegations of affiliation and to demonstrate that it is a small business.

III. Conclusion

For the reasons discussed *supra*, the instant appeal is DISMISSED. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge