

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

SIZE APPEALS OF:

Real Estate Resource Services, Inc. and
OneSource REO, LLC,

Appellants,

RE: BLB Resources, Inc.

Appealed From
Size Determination Nos. 6-2013-074, -075,
-076, -077, -078, -079, and -080

SBA No. SIZ-5522

Decided: December 23, 2013

APPEARANCES

Janine S. Benton, Esq., Kathy C. Potter, Esq., John M. Murdock, Esq., Roseanne E. Stafiej, Esq., Benton, Potter, and Murdock, PC, Falls Church, Virginia, for Real Estate Resource Services, Inc. and OneSource REO, LLC.

Jerome S. Gabig, Esq., Andrew D. Dill, Esq., Wilmer & Lee, PA, Huntsville, Alabama for Asset Management Real Estate, LLC.

Michael R. Charness, Esq., Kathleen C. Little, Esq., Jenny J. Yang, Esq., Vinson & Elkins LLP, Washington, D.C., for La Rosa Realty.

David S. Cohen, Esq., Laurel A. Hockey, Esq., Cohen Mohr LLP. Washington, D.C.,

William J. Bainbridge, Esq., Perkins Coie LLP, Washington D.C., for BLB Resources, Inc.

DECISION¹

I. Introduction and Jurisdiction

These appeals arise from a size determination concluding that BLB Resources, Inc. (BLB) is a small business under the \$7 million size standard associated with Request for Proposals (RFP) No. R-ATL-02006. The Appellants, which had previously protested BLB's size, maintain that the size determination is flawed, and request that it be reversed or remanded. For the reasons discussed *infra*, the appeals are denied, and the size determination is affirmed.

The U.S. Small Business Administration (SBA) 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. Appellants filed the instant appeals within fifteen days of receiving the size determination, so the appeals are timely. 13 C.F.R. § 134.304(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. Procedural History

On November 2, 2011, the U.S. Department of Housing and Urban Development (HUD) issued RFP No. R-ATL-02006 for management and marketing of HUD-owned real estate properties throughout the United States. HUD divided the required services into six geographic areas, and stated that HUD planned to make a single contract award covering each area. The procurement was set-aside entirely for small businesses. On November 29, 2011, the Contracting Officer (CO) issued Amendment 0001 to the RFP, responding to questions and clarifying certain issues. As part of Amendment 0001, the CO assigned North American Industry Classification System (NAICS) code 541611, Administrative Management and General Management Consulting Services, with a corresponding size standard of \$7 million average annual receipts.² Proposals were due December 9, 2011.

HUD evaluated initial proposals and established a competitive range of the most highly rated offerors. BLB, which had been excluded from the competitive range, filed a bid protest at the U.S. Government Accountability Office (GAO) challenging the competitive range

¹ This decision was originally issued under a protective order. Pursuant to 13 C.F.R. § 134.205, OHA afforded counsel an opportunity to request redactions to the published decision. No redactions were requested, and OHA now publishes the decision in its entirety.

² Effective March 12, 2012, SBA increased the size standard for NAICS code 541611 to \$14 million. 77 Fed. Reg. 7,490, 7,514 (Feb. 10, 2012). However, SBA regulations provide that “the size standard in effect on the date the solicitation is issued” is controlling, unless the CO formally amends the solicitation to adopt the new size standard. 13 C.F.R. § 121.402(a). No such solicitation amendment occurred here, so the applicable size standard remained at \$7 million average annual receipts.

determination. In response to BLB's protest, HUD included BLB in the competitive range, and the protest was withdrawn. By letter of December 11, 2012, the CO instructed that final proposal revisions be submitted by December 18, 2012. The CO's letter stated that the final proposal revision "shall be submitted as a full 'red-lined' copy of the original proposal, clearly delineating any changes or revisions made from the original proposal." (BLB Protest Response, Ex. 1.)

On May 21, 2013, HUD announced that BLB was the apparent awardee for three geographic areas. Between May 23 and May 29, 2013, the CO received seven size protests from unsuccessful offerors disputing whether BLB qualified as a small business. The protests were lodged by Real Estate Resource Services, Inc. (RERS); OneSource REO, LLC (OneSource); Asset Management Real Estate, LLC (AMRE); La Rosa Realty (La Rosa); and three other concerns that are not participating in this litigation. The protesters alleged that BLB's revenues exceed the applicable size standard; that BLB is affiliated with other concerns, including Realty Executives International (REI) and American Realty Services (ARS); that BLB's size should be determined from the date of final proposal revisions, not the date of initial proposals; and that Mr. Rod Gaston, husband of BLB's owner, may have earned more than \$17 million from 2008 to 2010 as a "HUD Local Listing Broker Coordinator" for Michaelson, Connor, and Boul, Inc. (MCB). The CO forwarded the size protests to SBA's Office of Government Contracting, Area VI (Area Office) for review.

On June 25, 2013, the Area Office issued Size Determination Nos. 6-2013-074, -075, -076, -077, -078, -079, and -080, denying the size protests.³ On July 10, 2013, RERS and OneSource (Appellants) filed the instant appeals with OHA. AMRE, La Rosa, and BLB subsequently intervened.

While the appeals were pending, HUD notified OHA that HUD would undertake corrective action on the procurement in response to additional bid protests filed at GAO. Because the corrective action had the potential to alter the outcome of the source selection, OHA temporarily stayed the proceedings and directed the parties to notify OHA once the corrective action was completed. On October 1, 2013, HUD advised OHA that BLB was again selected as an apparent awardee. OHA lifted the stay and established a new close of record of October 29, 2013.

B. Size Determination

On June 25, 2013, the Area Office issued Size Determination Nos. 6-2013-074, -075, -076, -077, -078, -079, and -080 concluding that BLB is a small business under the \$7 million size standard applicable to the RFP.

The Area Office found that BLB is wholly-owned by Mrs. Susie Gaston. Mrs. Gaston also serves as BLB's Chairwoman and sole member of the board of directors, and as BLB's President and Secretary. (Size Determination Nos. 6-2013-074, -075, -076, -077, -078, -079, and -080, at 1-2.) Her husband, Mr. Gaston, is BLB's Chief Executive Officer. In response to the size protests, BLB acknowledged affiliation with West Coast Systems, Inc. (West Coast), LLB

³ The Area Office issued a single document addressing all seven protests.

Resources, Inc. (LLB), and REO Outsourcing, LLC (REO). LLB and REO are defunct entities which never conducted any business or filed any tax returns. (*Id.* at 2, 4.)

The Area Office next explained that both Mrs. and Mr. Gaston previously worked as independent contractors for REI. Specifically, Mrs. Gaston worked for REI from 1981 to 2004, and Mr. Gaston from 1983 to 2004. The Area Office noted that the Gastons were not employees of REI, and held no ownership interest in REI. The Area Office also found that both Mrs. and Mr. Gaston previously worked at ARS from 2004 until July 2010. The Area Office stated neither Gaston “ever had an ownership interest in ARS, nor did they hold any management position at the firm.” (*Id.* at 2.) ARS is wholly-owned by an individual who is not associated with BLB. (*Id.*) The Area Office concluded that Mrs. Gaston has the power to control BLB. (*Id.* at 3.) However, neither of the Gastons ever owned, managed, or had the power to control REI or ARS and, similarly, no individual or entity in control of REI or ARS has the power to control BLB. As a result, BLB is not affiliated with REI or ARS. (*Id.*)

The Area Office explained that, pursuant to 13 C.F.R. § 121.404(a), SBA determines size as of the date a business certifies that it is small as part of its initial offer which includes price. Here, BLB submitted its initial offer on December 9, 2011, so size would be determined as of that date. (*Id.*) The Area Office obtained income tax returns for BLB and West Coast for the years 2008, 2009, and 2010, and determined that the firms' combined average annual receipts do not exceed \$7 million. Therefore, BLB is a small business for this procurement.

C. The Appeals

On July 10, 2013, Appellants jointly filed an appeal of the size determination with OHA. Appellants maintain that the size determination is flawed and should be reversed or remanded.

Appellants contend that the Area Office should have found affiliation between BLB and ARS. Appellants emphasize that the Area Office determined that both Mrs. and Mr. Gaston worked as independent contractors for ARS from 2004 to July 2010. (Appeals at 3.) Further, according to Appellants, “OHA has found that an independent contractor is considered to be the same as a sole proprietorship, and independent contracts/sole proprietorships operated by an owner of a small business may be found affiliated with the small business.” (*Id.*, citing *Size Appeal of Atlantis Defense Systems*, SBA No. SIZ-4944 (2008)). Appellants argue that, although the Area Office examined BLB's corporate tax returns for 2008, 2009, and 2010, the Area Office failed to consider that the Gastons might have earned income directly from ARS during those years which would be reflected on their personal income tax returns. Thus, the Area Office erred in not requesting, and reviewing, the Gastons' personal tax returns. (*Id.* at 9-10).

Appellants also argue that the Area Office should have considered whether the Gastons were affiliated with ARS through economic dependence. Appellants state that such affiliation could exist if the Gastons were reliant upon ARS for significant income. (*Id.* at 11).

Appellants contend the Area Office failed to explore Mr. Gaston's role as HUD Local Listing Broker Coordinator for MCB, an issue specifically raised in the size protests. Further, Appellants assert, if the Area Office had conducted a proper analysis of the totality of the

circumstances, the Area Office would have found BLB affiliated with ARS and/or MCB. (*Id.* 12-13.)

D. AMRE's Response

On July 18, 2013, AMRE filed a response to the appeals. AMRE agrees with Appellants that the Gastons' income as independent contractors should have been included in assessing BLB's size. AMRE reasons that “[t]he Gastons were independent contractors while working for ARS and, therefore, each should have been considered to have had a sole proprietorship.” (AMRE Response at 2.) The Gastons had the power to control these sole proprietorships as well as BLB, so the concerns are affiliated. (*Id.*) AMRE further contends that the Area Office failed to analyze affiliation between the Gastons, as independent contractors, and BLB under the totality of the circumstances. Accordingly, AMRE states, the Area Office erred in not including the Gastons' receipts from the sole proprietorships in the size determination for BLB.

E. BLB's Response

On July 26, 2013, the date of the initial close of record, BLB filed its response to the appeals. BLB asserts that the Area Office did not err and urges that the size determination should be upheld.

BLB first addresses Appellants' contention that the Area Office failed to examine the protest allegation that Mr. Gaston earned significant revenues from MCB. BLB explains that, in response to the protests, BLB notified the Area Office that the receipts from commercial companies, including MCB, are reported on BLB's tax returns. (BLB Response at 3.) BLB asserts that the Area Office properly calculated BLB's average annual receipts, including receipts from commercial companies, using BLB's tax returns and found BLB to be small for the size standard. Thus, BLB argues, the Appellants' argument that the Area Office did not address this issue is meritless.

Next, BLB states that Appellants' suggestion that BLB is economically dependent upon, or affiliated with, MCB is a new issue raised for the first time on appeal and should not be considered. (*Id.* at 3-4 citing *Size Appeal of American Constr. Co., Inc.*, SBA No. SIZ-5420 (2012) and *Size Appeal of Fuel Cell Energy, Inc.*, SBA No. SIZ-5330 at 5 (2012).) BLB argues that, even if this issue had been raised in the protests, MCB's receipts would have been excluded as a former affiliate because Mr. Gaston's work for MCB ended in October 2010, more than a year before the date to determine size. (*Id.* at 5-7 citing *Size Appeal of OBXtek, Inc.*, SBA No. SIZ-5451 (2013) and *Size Appeal of C2G Ltd. Co.*, SBA No. SIZ-5186 (2011).)

BLB counters Appellants' suggestion that the Area Office erred by not requesting the Gastons' personal tax returns. BLB explains that it informed the Area Office of the limited nature of the relationships between the Gastons and ARS at the size protest level through sworn declarations from Mrs. and Mr. Gaston, as well as through letters from ARS officials. BLB states the information submitted was more than sufficient to allow the Area Office to determine BLB and the Gastons are not affiliated with ARS. Specifically, BLB indicates that Mrs. Gaston maintained ties with ARS to keep an active real estate license in Arizona, but that she never

earned any sales commissions or other income from ARS. (*Id.* at 9-10.) Mr. Gaston likewise maintained his relationship with ARS to keep an active real estate license in Arizona, and earned only one small referral commission from ARS in 2008. (*Id.* at 10.)

BLB asserts that Appellants' arguments that BLB is affiliated with ARS are unfounded. BLB reiterates the Gastons' relationship with ARS ended in July 2010, well before the date to determine size. Further, the Gastons were not employees of ARS, had no ownership interests in ARS, and received negligible income from ARS. On these facts, BLB argues, the Area Office correctly found no affiliation between the Gastons and ARS. BLB notes even if the Area Office had found the Gastons affiliated with ARS, which BLB strongly disputes, ARS would have been a former affiliate by December 2011, and the Area Office would have had to exclude the receipts from ARS for the entire period of measurement. (*Id.* at 12-13, citing 13 C.F.R. § 121.104 (d)(4).)

BLB insists the Area Office had no reason to review the Gastons' personal tax returns to determine BLB's size, given that ARS and MCB were, at most, former affiliates of BLB. However, in the event that OHA nevertheless concludes that the Area Office should have considered the Gastons' personal returns, BLB moves to introduce those returns for 2008, 2009, and 2010 into the record. BLB cites *Size Appeal of LBM, Inc.*, SBA No. SIZ-4703 (2005) to support inclusion of the personal tax returns to address an affiliation issue which surfaced for the first time in the size determination. BLB asserts good cause exist to admit the tax returns to confirm the Gastons' personal returns show no income from MCB and negligible income from ARS.

Lastly, BLB asserts that Appellants allege affiliation under the totality of the circumstances for the first time on appeal, because the protests made only a brief reference that the totality of circumstances should be considered. BLB notes that, while the Area Office did not expressly address the totality of the circumstances in the size determination, the Area Office did make numerous factual findings which established that BLB is not affiliated with MCB or ARS. BLB states the Area Office was not required to separately find no affiliation under the totality of the circumstances. (*Id.* at 18, citing *Size Appeal of AudioEye, Inc.*, SBA No. SIZ-5477, at 7-8 (2013), *recons. denied*, SBA No. SIZ-5493 (2013) (PFR).)

F. La Rosa Response

On July 26, 2013, La Rosa filed its response to the appeals. La Rosa agrees with the contentions set forth in the appeals and offers additional arguments.

La Rosa concurs with Appellants and AMRE that the Area Office erred in not considering whether BLB was affiliated with ARS and/or MCB through the Gastons' work as independent contractors. La Rosa asserts that, because the Gastons performed services as independent contractors, their gross income from their independent contractor operations should have been included in BLB's gross receipts. (La Rosa Response at 4-5.) La Rosa argues that the Area Office improperly disregarded any income the Gastons earned as independent contractors merely because neither Gaston ever held an ownership or management interest in ARS. La Rosa asserts that the Gastons are "[f]or all practical purposes" BLB, so the Gastons' work for ARS and MCB should be reflected in BLB's size. (*Id.* at 6.) La Rosa also reiterates Appellants' concern

that the Area Office did not address the protest allegation that Mr. Gaston received more than \$17 million of income from his work for MCB. (*Id.* at 7-8.) According to La Rosa, “[t]he SBA Area Office’s complete failure to consider this [issue] is a ‘clear error’ that warrants remand here.” (*Id.* at 7.)

La Rosa argues that the Area Office erred in failing to request or review the Gastons’ personal income tax returns. Further, La Rosa suggests, the Area Office should have drawn an adverse inference because BLB did not volunteer this information. (*Id.* at 9-10.)

La Rosa also asserts that the Area Office utilized the wrong date to determine size. La Rosa asserts that offerors in the competitive range were required to submit final proposal revisions by December 18, 2012 and that is the proper date for determining size under 13 C.F.R. § 121.404(a), not the date initial proposals were due on December 9, 2011. La Rosa argues that HUD made a drastic change to the procurement by re-opening the competitive range, such that recertification of size should have been required. (*Id.* at 12, citing 75 Fed. Reg. 9,129, 9,130 (Mar. 1, 2010).) In addition, the final proposal revisions may constitute an “other formal response to a solicitation” requiring recertification under 13 C.F.R. § 121.404(a). (*Id.* at 12-13.)

G. Motion to Strike and Response

On July 29, 2013, BLB moved to strike the portion of La Rosa’s response pertaining to the date to determine size. BLB contends that Appellants made similar arguments in their protests, which the Area Office rejected, and Appellants did not appeal this finding. As a result, the issue has been abandoned. BLB maintains that La Rosa chose not to file its own appeal and cannot revive Appellants’ abandoned argument.

On July 30, 2013, La Rosa requested leave to respond to BLB’s motion to strike and BLB’s motion to introduce new evidence. By order dated August 2, 2013, OHA granted leave to respond to BLB’s motions, pursuant to 13 C.F.R. § 134.211(c). Shortly thereafter, proceedings were stayed while HUD undertook corrective action.

On October 29, 2013, after the stay in the case was lifted, La Rosa responded to BLB’s motions. La Rosa indicates that it does not oppose submission of the Gastons’ personal tax returns, but asserts that the relevant years are 2009, 2010, and 2011, rather than 2008, 2009, and 2010. La Rosa argues that BLB’s motion to strike is improper because the motion was filed after the close of record and without leave from OHA. La Rosa further asserts that BLB’s motion to strike is, in essence, an impermissible reply brief because BLB attempts to refute substantive legal arguments raised by La Rosa. La Rosa urges OHA to deny the motion to strike.

III. Discussion

A. Standard of Review

Appellants have the burden of proving, by a preponderance of the evidence, all elements of the appeals. Specifically, Appellants must prove the size determination is based upon a clear error of fact or law. 13 C.F.R. § 134.314. OHA will disturb an area office’s size determination

only if, after reviewing the record, the administrative judge has a definite and firm conviction that the area office erred in making its key findings of fact or law. *Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 11 (2006).

B. New Evidence

New evidence may be admitted on appeal at the discretion of the administrative judge if “[a] motion is filed and served establishing good cause for the submission of such evidence.” 13 C.F.R. § 134.308(a). The proponent must demonstrate, however, that “the new evidence is relevant to the issues on appeal, does not unduly enlarge the issues, and clarifies the facts on the issues on appeal.” *Size Appeal of Vista Eng'g Techs., LLC*, SBA No. SIZ-5041, at 4 (2009).

Here, as discussed below, I agree with BLB that the Area Office need not have obtained, or reviewed, the Gastons' personal income tax returns. As a result, those returns are not relevant here and may not be accepted into the record. *Size Appeal of Eagle Consulting Corp., Inc.*, SBA No. SIZ-5267, at 4 (2011), *recons. denied*, SBA No. SIZ-5288 (2011) (PFR) (finding evidence to be inadmissible when it was probative only of issues that OHA did not reach).

C. Analysis

The instant case presents two principal issues: (1) whether the Area Office correctly determined that BLB is not affiliated with ARS; and (2) whether the Area Office adequately investigated the protest allegations pertaining to MCB. As discussed *infra*, Appellants and interveners AMRE and La Rosa have not established clear error in the size determination with respect to either issue. As a result, the appeals are denied and the size determination is affirmed.

1. Affiliation with ARS

Appellants contend that the Area Office erred in concluding that BLB is not affiliated with ARS. Appellants emphasize that both Gastons worked as independent contractors for ARS from 2004 to July 2010. Under OHA case precedent, an independent contractor may be considered to have formed a separate sole proprietorship. *E.g.*, *Size Appeal of Atlantis Defense Systems*, SBA No. SIZ-4944 (2008). The Gastons controlled BLB and the constructive sole proprietorships, so those concerns are affiliated. Moreover, Appellants assert, the sole proprietorships may have derived significant revenues from ARS, thereby potentially creating affiliation between ARS and the proprietorships through economic dependence or the totality of circumstances.

A substantial flaw in this argument is that, according to the size determination, the Gastons ended their association with ARS in July 2010, more than a year before BLB self-certified for the instant procurement. Accordingly, even assuming there were valid grounds to conclude that the proprietorships/BLB previously were affiliated with ARS, this historical affiliation ended in July 2010. Pursuant to SBA regulations, a concern's former affiliates are excluded from the size determination “if affiliation ceased before the date used for determining size.” See 13 C.F.R. §§ 121.104(d)(4) and 121.106(b)(4)(ii). Similarly, OHA has repeatedly held that historic ties between a challenged firm and an alleged affiliate do not establish current

affiliation when the historic ties no longer exist as of the date to determine size. *Size Appeal of OBXtek, Inc.*, SBA No. SIZ-5451, at 12 (2013) (“So long as affiliation ceases before the date for determining size, the firms are former affiliates and their receipts will not be aggregated.”); *see also Size Appeal of Washington Patriot Construction, LLC*, SBA No. SIZ-5491 (2013); *Size Appeal of A & H Contractors, Inc.*, SBA No. SIZ-5459 (2013); *Size Appeal of Chu & Gassman, Inc.*, SBA No. SIZ-5291 (2011).

Here, the Area Office found, and Appellants have not disputed, that the Gastons ended their relationship with ARS more than a year before the date to determine size. *See* Section II.B, *supra*. Further, the Area Office determined that the Gastons did not hold any ownership or management interest in ARS, nor does ARS hold any such interest in BLB. *Id.* At most, then, BLB and ARS would be former affiliates as of December 2011. I therefore conclude that the Area Office did not err in finding that BLB and ARS are not affiliated.

For similar reasons, it was unnecessary for the Area Office to request or review the Gastons' personal tax returns. Those personal returns would be relevant, if at all, only to establish the income earned by the Gastons as independent contractors to ARS. According to 13 C.F.R. § 121.104(d)(4), though, the receipts of a former affiliate are excluded for the entire period of measurement, not merely the time period after which affiliation ceased. Thus, even assuming that the Gastons did earn substantial revenues from ARS, such that BLB and ARS historically were affiliated, this affiliation ended in July 2010. Consequently, it was not necessary for the Area Office to review the Gastons' personal returns.

2. MCB Protest Allegations

Appellants' second main contention is that the Area Office inadequately investigated the protest allegations pertaining to MCB. In particular, Appellants maintain that the Area Office ignored the protest allegation that Mr. Gaston may have earned more than \$17 million as “HUD Local Listing Broker Coordinator” for MCB.

This argument too lacks merit. Appellants' protests did not allege affiliation with MCB, but rather asserted that income earned from MCB should be included in calculating BLB's average annual receipts. Specifically, the protests asserted:

BLB would have received approximately \$17,286,980 from MCB from these sales. In the event that Mr. Gaston oversaw the listings under one of his other companies, it does not change the fact that BLB's annual receipts must include these dollars.

(Protests at 7.) Because affiliation with MCB was not raised in the protests, the Area Office had no obligation to investigate whether BLB and MCB were affiliates. *E.g.*, *Size Appeal of Perry Management, Inc.*, SBA No. SIZ-5100, at 3-4 (2009) (“Contrary to [the protester's] assertion, it was not the responsibility of the Area Office to investigate all of [the challenged firm's] possible affiliations. It was the Area Office's responsibility to investigate those allegations presented to it by [the] protest.”). Further, in its response to the protests, BLB acknowledged performing work as a subcontractor to MCB until October 2010, but notified the Area Office that revenues earned

from such work were already reflected on BLB's tax returns. (BLB Protest Response, n. 10.) Thus, the Area Office could reasonably conclude that no additional investigation, beyond a review of BLB's tax returns, was necessary to resolve the protest allegation. The mere fact that the Area Office did not specifically comment on the protest allegation does not establish that the Area Office committed any error. *Cf., Size Appeal of iGov Technologies, Inc.*, SBA No. SIZ-5359, at 13-14 (2012) (area office's failure to comprehensively discuss all available documents did not constitute reversible error).

3. Date to Determine Size

La Rosa also argues that the Area Office erroneously selected the date of initial proposals, rather than the date of final proposals, as the point in time to determine BLB's size. As BLB correctly observes, however, it is questionable whether this issue is properly before OHA in this case, because Appellants did not raise it in their underlying appeals. *Size Appeal of Environmental Restoration, LLC*, SBA No. SIZ-5395, at 6-7 (2012) (when an issue was not appealed, area office's determination on that issue "remains the final decision of the SBA"). Further, OHA addressed the date to determine size for the instant procurement in a companion case, *Size Appeals of BA Urban Solutions, LLC, et al.*, SBA No. SIZ-5521 (2013), and found no error in the use of the date of initial proposals as the date to determine size. Accordingly, La Rosa has not established error in this aspect of the size determination.

IV. Conclusion

Appellants and interveners AMRE and La Rosa have not demonstrated that the size determination is clearly erroneous. Accordingly, the appeals are DENIED, the size determination is AFFIRMED. This is the final decision of the Small Business Administration. 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge