

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

SIZE APPEAL OF:

Knight Networking & Web Design, Inc.,

Appellant,

Appealed From  
Size Determination No. 01-SD-2014-25

SBA No. SIZ-5561

Decided: May 22, 2014

APPEARANCES

Antonio R. Franco, Esq., Patrick T. Rothwell, Esq., Megan C. Connor, Esq.,  
PilieroMazza PLLC, Washington D.C., for Appellant.

DECISION<sup>1</sup>

I. Introduction and Jurisdiction

On March 28, 2014, the U.S. Small Business Administration (SBA) Office of Government Contracting, Area I (Area Office) issued Size Determination No. 01-SD-2014-25, finding that Knight Networking & Web Design, Inc. (Appellant) is not an eligible small business for the subject procurement due to affiliation with nine other concerns. Appellant maintains that the size determination is clearly erroneous, and requests that SBA's Office of Hearings and Appeals (OHA) reverse the size determination and find that Appellant is a small business. For the reasons discussed *infra*, the appeal is denied, and the size determination is affirmed.

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. The record reflects that Appellant received the size determination on April 7, 2014, and filed the instant appeal within fifteen days thereafter, so the appeal is timely. 13 C.F.R. § 134.304(a). Accordingly, this matter is properly before OHA for decision.

---

<sup>1</sup> This decision was initially issued under a protective order. Pursuant to 13 C.F.R. § 134.205, I afforded counsel an opportunity to file a request for redactions if desired. OHA received one or more timely requests for redactions and considered any requests in redacting the decision. OHA now publishes a redacted version of the decision for public release.

## II. Background

### A. Solicitation and Protest

On May 10, 2013, the U.S. Department of the Navy (Navy), Space and Naval War Systems Center Pacific, issued Request for Proposals (RFP) No. N66001-12-R-0059 for ship and shore satellite communications support services. The Contracting Officer (CO) set aside the procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 541330, Engineering Services, with an associated size standard of \$35.5 million in average annual receipts. The solicitation indicated that the Navy planned to award multiple indefinite-delivery indefinite-quantity contracts. On June 13, 2013, Appellant submitted its proposal, self-certifying as a small business.

On March 3, 2014, the CO announced that Appellant was one of several successful offerors. On March 10, 2014, Trandes Corporation (Trandes), a disappointed offeror, protested Appellant's size, alleging that the owners of Appellant and “the Centurum-entities” are related and therefore have identical business interests. (Protest at 1.) In addition, Trandes alleged, Appellant is in violation of the ostensible subcontractor rule because Appellant will be unduly reliant on its Centurum-entity subcontractor to perform the contract. (*Id.* at 2.)

### B. Size Determination

On March 28, 2014, the Area Office issued its size determination finding that Appellant is affiliated with nine companies based on the familial relationship between Appellant's owner, Mr. Adrian Matteucci, and his father, Mr. Robert Matteucci.

The Area Office determined that Adrian Matteucci owns 100% of Appellant, and therefore has the ability to control Appellant. (Size Determination at 3.) Adrian Matteucci also holds controlling interests in four other concerns: AJ Realty Group; AJ Realty Group—Jupiter; Knight Networking, Inc.; and Transglobal Systems, Inc. (*Id.* at 5.) As a result, the Area Office concluded, Appellant is affiliated with these four concerns through common ownership and common management.<sup>2</sup>

The Area Office explained that Robert Matteucci owns 92.94% of the voting stock for Centurum, Inc., Centurum Technical Systems, Inc. (CTS), Centurum Information Operations, Inc. (CIO), and Centurum Information Technology, Inc. (CITI). (*Id.* at 2.) Due to this majority ownership, Robert Matteucci has the ability to control these four companies (collectively, “Centurum”). Robert Matteucci is also the majority owner of Transglobal Technologies, Inc. (TTI), an inactive company with no employees or revenues. (*Id.* at 3.) His sons, Adrian and Jason Matteucci, own the remainder of TTI.

The Area Office found that Appellant is affiliated with Centurum based on familial identity of interest. The Area Office stated that, because the Matteuccis are father and son, there

---

<sup>2</sup> Appellant does not challenge these findings of affiliation on appeal, so further discussion of them is not necessary.

is a rebuttable presumption that they share an identity of interest under 13 C.F.R. § 121.103(f). To rebut the presumption, Appellant must demonstrate a clear line of fracture with its alleged affiliate. (*Id.* at 4.) Here, the Area Office determined that there was no clear fracture because Appellant and Centurum have contracted significantly with one another. Specifically, subcontracts from Centurum to Appellant represented 100% of Appellant's 2010 revenue, 76% of Appellant's 2011 revenue, and 34% of Appellant's 2012 revenue. (*Id.*) Moreover, in each of these years, contracts with Centurum comprised the majority of Appellant's contracts. The Area Office found that “more than 75% of [Appellant's] contracts came from [[] Centurum, and at least 87% of [Appellant's] projects involve working with Centurum either as a prime contractor or as a subcontractor.” (*Id.* at 5.)

The Area Office then concluded that Appellant also is affiliated with TTI. To support this conclusion, the Area Office repeated its findings that Adrian Matteucci controls Appellant, Robert Matteucci controls TTI, and Adrian and Robert Matteucci have an identity of interest.

The Area Office found that Appellant is not in violation of the ostensible subcontractor rule. During the size investigation, Appellant explained that CITI is the prime contractor on the incumbent contract and Appellant is one of CITI's subcontractors. Through its work on the incumbent contract, Appellant gained sufficient experience to submit a proposal for the instant procurement. In its proposal, Appellant represented that CITI would be a subcontractor to Appellant and would perform 16% of the work. [XXXXXXXXXXXXXXXXXXXX] Because Appellant would self-perform [XXXXXXXXXXXXXXXXXXXX], the Area Office determined that Appellant was not unduly reliant on CITI. (*Id.* at 3.)

The Area Office explained that Appellant had acknowledged during the size investigation that at least two of the Centurum companies are large businesses under the size standard associated with this procurement. (*Id.* at 5.) Appellant's average annual receipts, when combined with those of its affiliates, exceed the size standard, so Appellant is not a small business.

### C. Appeal Petition

On April 22, 2014, Appellant filed its appeal of the size determination with OHA. Appellant maintains that the size determination contains several clear material errors, so OHA should overturn it.

Appellant argues that the Area Office erroneously based its findings on Appellant's past dealings with Centurum over the years 2010-2012. Appellant stresses that affiliation normally is determined as of the date a firm initially self-certifies as small. 13 C.F.R. § 121.404(a); *Size Appeal of OBXtek, Inc.*, SBA No. SIZ-5451 (2013). In this case, the applicable date is June 13, 2013. At that time, Appellant asserts, it “was performing only five subcontracts for Centurum, and had dramatically decreased the revenues received from Centurum.” (Appeal at 7.) Specifically, by 2013, only 22.67% of Appellant's revenues came from Centurum. (*Id.* at 3.) Under this state of affairs, Appellant argues, the business ties between Appellant and Centurum were “sufficiently minimal to undermine any presumption that they act as a single company.” (*Id.* at 8.)

Appellant argues the Area Office's application of the identity of interest rule was “erroneously mechanical.” (*Id.*) Appellant emphasizes that the linchpin of any affiliation finding is the ability for one concern to control another or for a third party to control both. 13 C.F.R. § 121.103(a)(1). Appellant also observes that the identity of interest rule contains permissive, not obligatory, language: “Affiliation *may arise* among two or more persons with an identity of interest,” and concerns “*may be treated* as one party with such interests aggregated.” (Appeal at 8, quoting 13 C.F.R. § 121.103(f) (emphasis added by Appellant).) Appellant argues this permissive language is the reason that a familial relationship does not automatically create affiliation, but instead merely gives rise to a rebuttable presumption.

Appellant notes that the “clear line of fracture” language is absent from the identity of interest regulation, although present in an adjoining provision relating to newly organized concern affiliation. (*Id.* at 9-10.) Only through OHA precedent has this requirement made its way into the identity of interest analysis. *E.g.*, *Size Appeal of McLendon Acres, Inc.*, SBA No. SIZ-5222 (2011). Nevertheless, Appellant argues, the absence of this language in one rule and presence in another indicates that the rules should have different standards for overcoming a presumption of affiliation, with the identity of interest standard being less rigorous. The test for rebutting affiliation based on identity of interest, Appellant asserts, should be “whether the level of interaction between the companies rises to such a level that one firm can control the other to such a degree that they act in concert.” (Appeal at 10.) Appellant argues the Area Office should have assessed the totality of the circumstances to determine whether such control exists. (*Id.* at 12.) Appellant highlights that Appellant does not share ownership, management, facilities, or equipment with Centurum. Further, all agreements between Appellant and Centurum “were negotiated at arms-length and are set at market rates.” (*Id.*)

Appellant then turns to the finding that Appellant is affiliated with TTI. This finding is entirely without support, Appellant reasons, because the Area Office performed “no analysis of any kind” as to whether Appellant had rebutted the presumption of affiliation based on identity of interest. (*Id.* at 11.) In particular, the Area Office did not consider whether the firms share offices or management, are in the same line of business, or receive revenue from each other. (*Id.* at 13.)

### III. Discussion

#### A. Standard of Review

Appellant has the burden of proving, by a preponderance of the evidence, all elements of the appeal. Specifically, Appellant 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. Analysis

The Area Office in this case found that Appellant is affiliated with Centurum and TTI based on an identity of interest between family members. Specifically, the Area Office reasoned that, because Robert and Adrian Matteucci are father and son, they are presumed to share an identity of interest under 13 C.F.R. § 121.103(f). The applicable regulation states:

Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that 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) may be treated as one party with such interests aggregated. Where SBA determines that such interests should be aggregated, an individual or firm may rebut that determination by showing that the interests deemed to be one are in fact separate.

13 C.F.R. § 121.103(f).

OHA's well-established case precedent interprets this regulation as creating a rebuttable presumption that family members have identical interests and must be treated as one person. *See, e.g., Size Appeal of McLendon Acres, Inc.*, SBA No. SIZ-5222, at 6 (2011); *Size Appeal of Golden Bear Arborists, Inc.*, SBA No. SIZ-1899, at 7 (1984). A challenged firm may rebut the presumption of identity of interest if it is able to show a clear line of fracture among the family members. *Size Appeal of Tech. Support Servs.*, SBA No. SIZ-4794, at 17 (2006). A clear line of fracture exists if the family members have no business relationship or involvement with each other's business concerns, or the family members are estranged. *Size Appeal of Hal Hays Constr., Inc.*, SBA No. SIZ-5217, at 6 (2011). OHA has recognized, however, that "a minimal amount of economic or business activity between two concerns does not prevent a finding of clear fracture." *Size Appeal of GPA Techs., Inc.*, SBA No. SIZ-5307, at 6 (2011) (finding no affiliation between two sibling-owned firms when the only ties between them were a handful of non-managerial employees, and one subcontract representing less than 5% of the challenged firm's revenues, and less than 1% of the alleged affiliate's revenues).

In this case, the Area Office determined there was no clear fracture between Adrian and Robert Matteucci because they jointly hold ownership interests in TTI, and because Robert Matteucci's Centurum firms provided his son's company, Appellant, with subcontracts and orders that accounted for a large portion of Appellant's revenues over the years 2010-2012. It is true, as Appellant emphasizes, that the Area Office focused its analysis on historical dealings between Appellant and Centurum. Nevertheless, Appellant acknowledges that Appellant still derived 22.67% of revenues from Centurum, through at least five subcontracts, as of June 13, 2013, the date of Appellant's self-certification. *See* Section II.C, *supra*. On this record, then, the Area Office could reasonably find that a clear line of fracture had not been established, as there was substantial and long-standing involvement by Adrian and Robert Matteucci in one another's business affairs, which continued to exist through the date to determine size. I conclude, therefore, that the Area Office properly determined that the presumption of affiliation through family relationships was not rebutted.

Appellant's plan to subcontract 16% of the subject procurement to CITI further undermines any finding of clear fracture. In *Size Appeal of RGB Group, Inc.*, SBA No. SIZ-5351 (2012), the challenged firm and its alleged affiliate were owned by spouses, and the challenged firm intended to subcontract 25% of the protested procurement to the alleged affiliate. Citing prior case law, OHA opined that this fact alone was “by itself, arguably sufficient to find no clear line of fracture,” even if no other business ties had been shown. *RGB*, SBA No. SIZ-5351, at 7. In the instant case, Appellant planned to subcontract a lesser percentage of the protested procurement than was seen in *RGB*, but the overall business ties between Appellant and Centurum remain quite extensive. Appellant not only derived substantial revenues from Centurum in past years (and still did so as of the date to determine size), but also apparently planned to continue business dealings with Centurum.

Appellant also maintains that the Area Office should have applied a looser standard for determining whether affiliation through identity of interest has been established. Specifically, Appellant urges that the inquiry should focus on whether one company exercises such control over another that they will act in concert. *See* Section II.C, *supra*. I find this argument unavailing, as OHA has rejected similar contentions in past decisions. In particular, OHA has explained that, in the case of firms owned by family members, the familial relationship itself gives rise to a presumption that the family members will act in concert, such that the firms should be treated as one firm. *E.g.*, *Size Appeal of SP Techs., LLC*, SBA No. SIZ-5319, at 5 (2012) (presumption of affiliation arises “not from the degree of family members' involvement in each other's business affairs, but from the family relationship itself.”). Contrary to Appellant's arguments, then, it is not necessary to conclude that one concern exercises near-total control over another in order to find affiliation through family relationships. Rather, concerns owned by close family members are presumed affiliated, and the burden then shifts to the challenged firm to rebut that presumption.

#### IV. Conclusion

Appellant has not demonstrated that the size determination is clearly erroneous. Accordingly, the appeal is DENIED, and the size determination is AFFIRMED. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

KENNETH M. HYDE  
Administrative Judge