

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

SIZE APPEAL OF:

NMC/Wollard, Inc.,

Appellant,

RE: International Automated Systems, Inc.

Appealed From

Size Determination No. 04-2014-046

SBA No. SIZ-5632

Decided: January 9, 2015

APPEARANCES

David S. Black, Esq., Elizabeth N. Jochum, Esq., Holland & Knight LLP, Tysons, Virginia, for Appellant

E. Sanderson Hoe, Esq., John W. Sorrenti, Esq., McKenna Long & Aldridge LLP, Washington, D.C., for International Automated Systems, Inc.

DECISION<sup>1</sup>

I. Introduction and Jurisdiction

On September 10, 2014, the U.S. Small Business Administration (SBA) Office of Government Contracting, Area IV (Area Office) issued Size Determination No. 04-2014-046 finding that International Automated Systems, Inc. (IAS) is a small business for the subject procurement of Aviation Light Utility Mobile Maintenance Carts (ALUMMCs). On appeal, NMC/Wollard, Inc. (Appellant), the protester, maintains that the Area Office did not properly analyze whether IAS is the manufacturer of the end items. Specifically, Appellant asserts that the Area Office committed clear errors when it concluded that IAS is the manufacturer of the ALUMMCs, because the record reveals that IAS is merely reselling the product of a large business, John Deere & Company (John Deere), with minor modifications. Additionally, Appellant argues, IAS failed to demonstrate that it has the facilities and equipment necessary to

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<sup>1</sup> This decision was initially issued under a protective order. Pursuant to 13 C.F.R. § 134.205, OHA 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.

perform the contract. For the reasons discussed *infra*, the appeal is granted and the matter is remanded to the Area Office for further review.

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, so the appeal is timely. 13 C.F.R. § 134.304(a). Accordingly, this matter is properly before OHA for decision.

## II. Background

### A. Solicitation and Protest

On June 6, 2013, the U.S. Department of the Army (Army) issued Request for Proposals (RFP) No. W58RGZ-13-R-0023 seeking a contractor to deliver a minimum of 51 and a maximum of 2,000 ALUMMCs. The Contracting Officer (CO) set aside the procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 333924, Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing, with a corresponding size standard of 750 employees.

On July 30, 2014, the CO announced that IAS was the apparent awardee. On August 6, 2014, Appellant filed a size protest challenging the award to IAS. Appellant alleged that IAS will resell the John Deere [XXXXXXX] as an ALUMMC, and that IAS cannot qualify under the nonmanufacturer rule “because it is not proposing to supply the end item of a small business manufacturer and because it does not normally sell the type of item being supplied.” (Protest at 2.) Appellant contended that “IAS is not engaged in the business of manufacturing or selling vehicles of any type, including aviation maintenance carts.” (*Id.* at 5.) In addition, Appellant attached photographs of IAS's proposed ALUMMC, noting the John Deere logo on the front grille. (*Id.* at 7-8.) The CO forwarded the protest to the Area Office.

### B. IAS's Proposal and Protest Response

On August 27, 2014, IAS responded to the protest. IAS asserted that it qualifies as a small business “manufacturer of the end item it will provide in response to the RFP” and “is fully eligible for award.” (Protest Response at 1.) IAS further maintained that “a class waiver applies to the NAICS code [[333924], which waives the requirement that a nonmanufacturer small business must supply the end item of a small business manufacturer.” (*Id.* at 3 (citing 13 C.F.R. § 121.406(b)(1)(iv), (b)(5)).)

With regard to the costs of producing the ALUMMCs, IAS stated:

[XXX  
 XX  
 XX  
 XX  
 XX]

XX  
XXXXX]

(*Id.* at 8.) IAS did not submit a copy of its cost/price proposal, or other supporting cost/price information, to substantiate these figures.

IAS's revised technical proposal for the procurement explained that John Deere produces a [XXXXXXXXXXXXXXXXXXXX] that are [XXXXXXXXXXXXXXXXXXXXXXXXXXXX]. (Revised Technical Proposal at 7.) For this procurement, IAS proposed that [XXXXXXX] would serve as “the base platform for the ALUMMC” and that the vehicles would be “shipped to IAS for final configuration/modification.” (*Id.* at 8.) IAS continued:

Deere and IAS have identified and estimated the cost of the more than 40 modification steps (non[e] of which affects drive train or basic performance of the [XXXXXXX]) that must be applied to the standard [XXXXXXX] in order to conform it to all of the specialty requirements for the ALUMMC. These 40+ steps are identified in the Technical Comparison Data Spreadsheet submitted herewith. We estimate [XXXXXXX] total crew hours per vehicle will be required to accomplish those steps.

(*Id.*) A note at the top of the “Technical Comparison Data Spreadsheet” stated that:

Proposed ALUMMC is based upon [XXXXXXXXXXXXXXXXXXXX  
XX  
XX]. Other minor modifications as indicated herein are included to comply with special requirements/specs of ALUMMC.

(Technical Comparison Data Spreadsheet, at 1.)

### C. Size Determination

On September 10, 2014, the Area Office issued Size Determination No. 04-2014-046 concluding that IAS is a small business.

The Area Office found that Mr. William Britz owns a majority interest in IAS and, accordingly, has the power to control IAS pursuant to 13 C.F.R. § 121.103(c)(1). (Size Determination at 2.) The Area Office noted that Mr. Britz also owns a majority interest in three other companies: Federal Program Management, Inc.; Winchester Federal, LLC; and Hackwood Farm, LLC. The Area Office indicated that Mr. Britz is a principal shareholder in two other entities, Pipe-It Plumber, LLC, and Hackwood Equine, Inc., and the Area Office presumed Mr. Britz controlled these businesses for purpose of the size determination. No other affiliates were identified.

Turning to the protest allegations, the Area Office stated that a class waiver for NAICS code 333924 and Product Service Code 2320 applies to this procurement. (*Id.* at 2 fn. 2.)

Because of the waiver, the Area Office explained, IAS could qualify as a nonmanufacturer without supplying the end item of a small domestic manufacturer.

The Area Office stated that Appellant's protest was based largely on the external resemblance between IAS's product and the John Deere [XXXXXXXX]. Although recognizing that the vehicles “do appear to be identical,” the Area Office found Appellant's allegation “nonsensical” because the ALUMMCs being procured are “so complex that the Army's Product Item Description covers nine single-spaced pages addressing everything from power source to drive train, from ignition operation to electromagnetic environment (and much more).” (*Id.* at 3.) Moreover, the Area Office found, “IAS is purchasing a *partially completed* vehicle from John Deere” and then “completing the manufacturing process by making dozens of significant modifications.” (*Id.* (emphasis in original).) The Area Office observed that, under OHA precedent, a firm which assembles parts and components into a new product can be the manufacturer of the end item. (*Id.* (citing *Size Appeal of M1 Support Services, LP*, SBA No. SIZ-5297 (2011).)

The Area Office noted that, pursuant to 13 C.F.R. § 121.406(b)(2)(i), SBA considers three factors in determining whether a concern is the manufacturer: (1) the proportion of total value in the end item added by the concern; (2) the importance of the elements added by the concern to the function of the end item; and (3) the concern's technical capabilities. (*Id.* at 3-4.)

In this case, the Area Office found all three factors satisfied. Using the data provided by IAS in response to the protest, the Area Office stated that it costs IAS \$[XXXXXXX] to modify the vehicle purchased from John Deere for \$[XXXXXXX]. Thus, IAS's modifications represent “[XX]% of the cost of the basic item.” (*Id.* at 4.) Assuming IAS's rates of overhead and profit are the same as those of John Deere, “IAS's modifications add over [XX]% to the cost of the item.” (*Id.* at 4 fn. 9.) IAS estimated that more than [XXXX] labor hours per unit are required to complete the modifications, which the Area Office considered “substantial by any measure.” (*Id.* at 4.) As to the second factor, the Area Office noted that IAS is making more than 40 distinct modifications, many of which are not available on the commercial market, and that IAS's modifications “are indispensable to making the Deere vehicle into one which meets the specifications of this procurement.” (*Id.*) IAS's proposal included “a ten-page single-spaced Technical Comparison Data Spreadsheet” outlining how the ALUMMCs will meet or exceed contract specifications. (*Id.*) Lastly, with respect to the third factor, the Area Office stated that IAS's proposal convinced the Army that IAS has sufficient technical capability, as well as adequate facilities and equipment. The Area Office concluded that IAS is the manufacturer of the ALUMMCs.

After combining IAS's employees with those of its affiliates, the Area Office determined that IAS does not exceed the 750-employee size standard applicable to this procurement.

#### D. Appeal

On October 1, 2014, Appellant filed this appeal. Appellant argues that the Area Office made clear errors of law and fact in concluding that IAS is the manufacturer of the ALUMMCs.

Appellant asserts that the Area Office improperly analyzed the three factors set forth at 13 C.F.R. § 121.406(b)(2)(i). Appellant states that the Area Office erred with respect to the first factor because the Area Office did not examine the relative contributions of IAS and John Deere to the total value of the ALUMMCs. Appellant argues that the record does not support the conclusion that IAS's modifications contributed a substantial proportion of the total value. Moreover, this is no evidence that the Area Office analyzed IAS's cost proposal or had access to any breakdown of parts and labor at each stage of the manufacturing process. Absent such information, Appellant argues, the Area Office could not possibly perform a proper evaluation the proportion of the total value contributed by IAS in the end item. (Appeal at 12 (citing *Size Appeal of DynaLantic Corp.*, SBA No. SIZ-5125 (2010).) Appellant argues that the Area Office made the summary conclusion that the figures are “substantial” and that IAS is the manufacturer.

Appellant also alleges error with respect to the second factor. Appellant argues the Area Office erred because the John Deere [XXXXXXX] already satisfied nearly all of the functionality required by the RFP without any modifications by IAS. (*Id.* at 13-14.) Appellant asserts that the Area Office incorrectly focused on the quantity of modifications performed by IAS, but did not examine the importance or function of those modifications. (*Id.*) Appellant contends that IAS is making only minor modifications to the John Deere vehicle and therefore the Area Office could not reasonably conclude that IAS is the manufacturer of the ALUMMCs. As a nonmanufacturer, Appellant argues, IAS should have been found ineligible for this set-aside procurement.

Appellant also argues that the Area Office erred in suggesting that the procurement is subject to a class waiver. According to Appellant, the Area Office utilized the wrong Product Service Code. Appellant maintains that the RFP falls under Product Service Code 1740 for Airfield Specialized Trucks and Trailers, whereas the class waiver is for four-wheel drive utility trucks under Product Service Code 2320. (*Id.* at 16-18.) Appellant argues that, because the procurement is not subject to the waiver, the nonmanufacturer rule applies and it is clear that IAS does not meet the requirements of the rule. Appellant highlights that John Deere is a large business and that IAS does not normally sell aviation maintenance carts, the type of item being supplied in this procurement. (*Id.* at 19.)

#### E. IAS's Response

On November 7, 2014, IAS responded to the appeal. IAS asserts that Appellant's appeal is largely speculative and provides no basis for overturning the Area Office's size determination. IAS states that the size determination appropriately sets forth the reasons for the determination that IAS is the manufacturer of the ALUMMCs.

IAS asserts that it has over 25 years of experience in the design, engineering, furnishing, and installation of mechanized and flight-line support equipment, and has a long history of supplying military grade, heavy-duty systems, components, and products for aircraft and airfield flight-line support. (Response at 1-2.)

IAS argues the Area Office fully evaluated the factual information in the record against the applicable law and regulations and reached a reasoned decision. IAS states that the Area

Office applied the three-factor test established at 13 C.F.R. § 121.406(b)(2)(i) to determine that IAS is the manufacturer of the ALUMMCs. With respect to the first factor, IAS argues that the Area Office considered the value in the ALUMMCs added by IAS's modifications. (*Id.* at 7-8.) IAS maintains that, contrary to Appellant's claims that the Area Office lacked information to support its findings, the Area Office's findings are supported by IAS's response to the protest and by a May 28, 2014 proposal revision which “explained the number of hours and effort IAS will expend modifying each [XXXXXXX] to produce the ALUMMC.” (*Id.* at 8.)

IAS states that with respect to the second part of the manufacturer test, functionality, the Area Office reasonably determined that IAS's modifications are essential to the function of the ALUMMC the Army sought to procure. IAS asserts Appellant's suggestion that the unmodified John Deere [XXXXXXX] vehicle would satisfy the most important functional requirements “ignores a number of additional specifications the ALUMMC is required to meet.” (*Id.*) IAS states that the record includes the Technical Data Comparison Spreadsheet that IAS submitted with its proposal, which described “the modifications IAS made to the John Deere [XXXXXX] to transform it into the ALUMMC.” (*Id.*) Such modifications include [XXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX]. (*Id.*) IAS maintains that the unmodified [XXXXXXX] could not meet all of the Army's specifications; thus, “but for IAS's modifications, the [XXXXXXX] would have been deemed technically unacceptable.” (*Id.* at 9.) According to IAS, the Area Office properly found that IAS's modifications were indispensable and the record supports the Area Office's conclusions.

Similarly, IAS asserts that the Area Office's findings with respect to IAS's capabilities, the third part of the manufacturer test, are correct and fully supported by the record. IAS indicates that it will manufacture the ALUMMCs in [XXXXXXXXXXXXXXXXXXXXXXXXXXXXX]. Furthermore, IAS regularly performs warranty and long-term maintenance for its mechanized systems and will do so for the ALUMMC. (*Id.* at 10.)

Finally, IAS argues that Appellant's claims regarding the nonmanufacturer rule are untimely and should be dismissed. IAS states that NAICS code 333924 and classification code 23 were identified in the synopsis posted on the FedBizOpps website on February 7, 2013. Thus, all offerors knew or should have known that the waiver associated with NAICS code 333924 and Product Services Code 2320 would apply to this procurement. (*Id.*) IAS argues that the “NAICS and Product Services Code combination triggered the waiver and in part affected eligibility for award”, so Appellant was required to challenge this combination of NAICS and Product Services Code within 10 days of publication. (*Id.*) Because Appellant failed to do so, its arguments should be dismissed.

#### F. Supplemental Appeal

On November 12, 2014, after reviewing the Area Office file under the terms of a protective order, Appellant moved to supplement its appeal.

Appellant argues that the Area Office record is extremely sparse, and contends that the lack of information “likely explains why the Area Office was unable to perform a proper analysis and why key factual findings lack adequate support.” (Supp. Appeal at 1.) Appellant highlights

in particular that IAS did not submit its cost/price proposal as requested by the Area Office. Appellant asserts that the only information about IAS's cost/price is provided in IAS's protest response in the form of an unsupported, unsworn, and uncertified letter. (*Id.* at 2.) In Appellant's view, the Area Office did not have sufficient information to properly assess the relative value contributed by IAS and John Deere to the ALUMMCs. (*Id.* at 3-4.)

Appellant asserts that, even if the Area Office could properly rely upon the unsupported data in IAS's protest response, the record demonstrates the Area Office made mathematical errors regarding the value of IAS's contribution to the ALUMMCs. Appellant maintains that the Area Office credited IAS with [XXXXXXXXXXXXXXXXXXXXXXXXXXXXX]. (*Id.* at 5.) Moreover, Appellant explains, the Area Office should have considered IAS's contributions relative to the cost of the finished end item, not compared to the original cost of the John Deere vehicle. According to Appellant, had the Area Office properly analyzed the information, it would have found that John Deere accounts for at least [XX]% of the total value of the ALUMMCs, with IAS's work representing no more than [XX]%. (*Id.* at 4-7.) Under such circumstances, it is highly doubtful that IAS is truly the “manufacturer” of the ALUMMCs. Appellant contends that “OHA has never held that a small business contributing as little as [XX]% of the total value of the end item is making a significant contribution for purposes of determining whether it is the manufacturer.” (*Id.* at 7-8, discussing *Size Appeal of Virtual Media Integration*, SBA No. SIZ-4447 (2001), *Size Appeal of Graham Brake and Diesel Co.*, SBA No. SIZ-3327 (1990), and *Size Appeal of D.K. Dixon and Co., Inc.*, SBA No. SIZ-4047 (1995).) Moreover, “[t]he [XX]% could be much lower because there is no evidence in the case file” to substantiate the figures provided in IAS's protest response. (*Id.* at 6.)

Appellant argues that the record also demonstrates the Area Office erred in its review of the functional importance of IAS's contributions. Appellant states that the Area Office parroted language from IAS's protest response touting the significance of IAS's contributions, but ignored the fact that IAS's proposal stated that only “minor” modifications would occur. (*Id.* at 8-9.) In addition, Appellant continues, IAS's proposal repeatedly indicates that the John Deere [XXXXXXXXXX] vehicle already meets the large majority of the contract specifications without any IAS modifications. (*Id.* at 9-11.) Appellant summarizes the modifications IAS will perform and contends that they are more superficial than functional. (*Id.* at 12-15.) “[XXXXXXXXXXXXX XX] may be required to meet the specifications of the RFP, but they are not nearly as important from a *functional* perspective as the elements manufactured by John Deere.” (*Id.* at 15, emphasis in original.) Finally, Appellant asserts that there is no credible evidence in the record to support the Area Office's findings regarding IAS's facilities, equipment, and processes; instead, the Area Office again relied upon unsupported assertions by IAS. Appellant reiterates its arguments that the procurement is not subject to a class waiver of the nonmanufacturer rule, and asserts the Area Office simply accepted IAS's claim that a waiver applied without any independent analysis or review.

### 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

When a manufacturing or supply contract is set aside for small businesses, the prime contractor either must be the manufacturer or producer of the end item being acquired, or must fall within certain “non-manufacturer” exceptions. 15 U.S.C. § 637(a)(17); 48 C.F.R. § 19.102(f); 13 C.F.R. § 121.406; *Size Appeal of Sea Box, Inc.*, SBA No. SIZ-5613 (2014). In this case, the Area Office determined that IAS would manufacture of the end items in question, the ALUMMCs, but the available record does not support this conclusion. Accordingly, the appeal must be granted and the matter remanded for further review and investigation.

As the Area Office recognized, SBA regulations identify three criteria for determining whether a concern is the “manufacturer” of an end item: (1) the proportion of total value in the end item added by the concern, excluding costs of overhead, testing, quality control, and profit; (2) the importance of the elements added by the concern to the function of the end item; and (3) the concern's technical capabilities, such as plant, facilities and equipment. 13 C.F.R. § 121.406(b)(2). For size purposes, there can be only one manufacturer of an end item. *Id.* In addition, a concern that performs only “minimal operations” upon the end item does not qualify as the manufacturer. *Id.*

With regard to the first element of the test, the proportion of total value in the end item added by the concern, the size determination is flawed because the Area Office relied upon the unsupported data in IAS's protest response, and made assumptions about IAS's rates of overhead and profit, without verifying the accuracy and validity of this data through IAS's cost/price proposal or other contemporaneous cost/pricing information. OHA has held, however, that an area office must review the challenged firm's cost/price proposal in order to properly assess the proportion of the total value in the end item contributed by the challenged firm. *See Size Appeal of DynaLantic Corp.*, SBA No. SIZ-5125, at 11 (2010) (remanding case after concluding that “the only way to appropriately assess the proportion of the total value in the end item added by [the challenged firm] is by evaluating [the challenged firm's] cost proposal, which is not in the Record.”). Furthermore, insofar as there could be inconsistencies between the protest response and the cost/price proposal, it is well-settled that documents created in response to a protest may not be used to contradict an offeror's actual proposal. *E.g.*, *Size Appeal of M1 Support Services, LP*, SBA No. SIZ-5297, at 11 (2011); *Size Appeals of CWU, Inc., et al.*, SBA No. SIZ-5118, at 16 (2010); *Size Appeal of Smart Data Solutions, LLC*, SBA No. SIZ-5071, at 20 (2009); *Size Appeal of Fernandez Enterprises, LLC*, SBA No. SIZ-4863, at 7 (2007). Thus, before resorting



to assumptions or an unsupported cost/price summary produced in response to the protest, the Area Office should have conducted further inquiry to determine why IAS's cost/price proposal, or other formal cost/price breakdown preceding the protest, could not be provided. It is notable in this respect that detailed cost information appears to have existed at the time of the protest, as IAS remarked in its technical proposal that "Deere and IAS have identified and estimated the cost of the more than 40 modification steps" that would be performed in producing the ALUMMCs. Section II.B, *supra*.

With regard to the second part of the manufacturer test - the importance of the elements added by the concern to the function of the end item - the Area Office's analysis also appears to have been faulty, or at least incomplete. The Area Office noted the quantity of modifications that IAS would perform and highlighted that IAS submitted "a ten-page single-spaced Technical Comparison Data Spreadsheet" outlining how the ALUMMCs will meet or exceed contract specifications. *See* Section II.C, *supra*. These facts, though, do not directly bear upon the central question presented: the importance of IAS's modifications to the functionality of the ALUMMCs. As Appellant correctly observes, IAS's spreadsheet seemingly indicates that many of the specifications would already be met by the standard John Deere [XXXXXX] vehicle, or by [XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX]. IAS's technical proposal similarly emphasized the rugged nature of the John Deere [XXXXXX], noting that the vehicle is built to comply with military requirements, and commenting that none of IAS's modifications would "affect [the] drive train or basic performance of the [XXXXXX] vehicle." Section II.B, *supra*. In addition, several of the modifications listed on the spreadsheet are plainly superficial in nature, such as [XXXXXXXXXXXXXXXXXXXX], and the spreadsheet itself characterized these modifications as "minor." *Id*. It therefore is not evident from the record that IAS's modifications are important to the function of the end item, as 13 C.F.R. § 121.406(b)(2)(i)(B) contemplates for a small business to be considered the manufacturer. As a result, a more thorough review is needed to determine what modifications will be performed by IAS, and the extent to which these modifications are important to the functionality of the ALUMMCs.

A more detailed analysis of IAS's role also would shed light on the third element of the test, *i.e.* whether IAS has the appropriate facilities, equipment, and processes to accomplish its work. The size determination offers little supporting information to explain how IAS meets this portion of the test.

Lastly, I reject Appellant's request to reverse the size determination altogether, rather than remanding the matter to the Area Office. As discussed above, the Area Office did not obtain, or have access to, IAS's cost/price proposal or other contemporaneous cost/price information. In this situation, OHA typically will remand for further investigation. *E.g., DynaLantic*, SBA No. SIZ-5125, at 11-12. Moreover, even assuming, as Appellant urges, that IAS is not the manufacturer of the ALUMMCs, IAS might nevertheless qualify under the nonmanufacturer rule. The parties vigorously dispute whether or not a waiver of the nonmanufacturer rule is applicable to this procurement, but the Area Office did not explore this issue - or other aspects of the nonmanufacturer rule - in detail, because it determined that IAS was the manufacturer of the ALUMMCs.

### C. Remand

On remand, the Area Office should obtain IAS's cost/price proposal and, if necessary, other contemporaneous cost/price information, to accurately evaluate the proportion of the total value in the ALUMMCs added by IAS, and should examine the importance of the modifications performed by IAS to the function of the ALUMMCs. IAS and Appellant may submit comments to the Area Office to facilitate this review. *Size Appeal of Patriot Constr., Inc.*, SBA No. SIZ-5439, at 5 (2013) (recognizing that the proponent “may submit [new] information to the Area Office for consideration as part of the remand process”). If the Area Office determines that IAS is not the manufacturer of the ALUMMCs, the Area office should consider whether IAS qualifies under the nonmanufacturer rule.

### IV. Conclusion

The Area Office did not properly analyze whether IAS is the manufacturer of the ALUMMCs under 13 C.F.R. § 121.406(b)(2)(i). Accordingly, the appeal is GRANTED, the size determination is VACATED, and the matter is REMANDED to the Area Office for further review and investigation consistent with this decision.

KENNETH M. HYDE  
Administrative Judge