United States Small Business Administration
Office of Hearings and Appeals

SIZE APPEAL OF: North Star Magnus Pacific Joint Venture Appellant, Appealed From Size Determination No. 6-2016-019	SBA No. SIZ-5715 Decided: February 17, 2016

APPEARANCES

Paul R. Hurst, Esq., Steptoe & Johnson, LLP, Washington, D.C., for Appellant

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DECISION

I. Introduction and Jurisdiction

This appeal involves a size determination of North Star Magnus Pacific Joint Venture (Appellant), a joint venture formed by North Star Construction and Engineering (North Star) and Magnus Pacific Corp. (Magnus Pacific). North Star is a participant in the U.S. Small Business Administration (SBA) 8(a) Business Development (BD) program. North Star, the protégé, and Magnus Pacific, the mentor, entered into a mentor-protégé agreement, which SBA approved on July 5, 2014. Whether the mentor-protégé agreement was in effect at the time Appellant submitted its offer for the instant procurement on July 17, 2015 is disputed and is the subject of this appeal.

On November 20, 2015, the SBA Office of Government Contracting, Area VI (Area Office) issued Size Determination No. 6-2016-019, finding that Appellant is not an eligible small business for the subject procurement. Appellant contends the size determination is clearly erroneous and should be vacated. 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, 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 May 12, 2015, the U.S. Army Corps of Engineers (Corps), Sacramento District issued Request for Proposals (RFP) No. W91238-15-R-0028 for Hamilton City Flood Risk Management and Ecosystem Restoration in Glenn County, California. The Contracting Officer (CO) set the procurement aside entirely for small businesses, and designated North American Industry Classification System (NAICS) code 237990, Other Heavy and Civil Engineering Construction, with a corresponding annual receipts size standard of $36.5 million. Offers were due July 17, 2015. On that date, Appellant submitted its proposal, self-certifying as a small business.

On July 27, 2015, the CO awarded the contract to Newland Entities, Inc. Appellant's proposal, which offered to perform the contract at the lowest price, was deemed unacceptable on one of the technical factors. The Corps therefore determined Appellant was non-responsible and requested that SBA perform a Certificate of Competency (COC) of Appellant. SBA received the request on October 19, 2015.

During the course of the COC review, information came to light that called into question Appellant's status as a small business concern. Specifically, it was unclear whether there was an SBA-approved mentor-protégé agreement in place at the time Appellant submitted its proposal. On November 3, 2015, SBA initiated a formal size determination of Appellant. 13 C.F.R. § 121.408(a).

B. Mentor-Protégé Agreement

On May 21, 2014, North Star and Magnus Pacific executed a mentor-protégé agreement, which provides:

> Terms of the Agreement. Proposed Mentor agrees to provide such assistance to the Protégé for at least one year pursuant to 13 C.F.R. § 124.520(e)(1)(iii). Continuation of the Agreement is contingent upon SBA's review of the proposed Protégé's report on the Mentor/Protégé relationship as part of the its annual review of the firm's business plan pursuant to 13 C.F.R. § 124.403. The Protégé must request continuance of the Agreement to its servicing district office, in writing, within 60 days prior to the expiration date of the Agreement.

(Agreement at ¶ 4, emphasis in original) On July 5, 2014, Mr. Robert T. Watkins, Acting Associate Administrator, Office of Business Development approved Appellant's mentor-protégé agreement. In the approval letter, Mr. Watkins stated: "This agreement shall expire after one year, unless SBA approves an extension. The protégé must request continuance of the agreement

from its servicing district office, in writing, at least 60 days prior to the expiration of the agreement." (Letter from R. Watkins to J. McClure (July 5, 2014).)

On July 6, 2015, North Star and Magnus Pacific amended the mentor-protégé agreement. The amendment states "the Parties wish to continue the Mentor/Protégé relationship for an additional 1 year between **Magnus Pacific LLC** (Mentor) and **North Star Construction and Engineering, Inc.**, (Protégé) under the U.S. Small Business Administration's ("SBA") Mentor/Protégé Program established pursuant to 13 C.F.R. § 124.520." (Amendment 1 at 1.)

C. Size Determination

On November 20, 2015, the Area Office issued the size determination finding that Appellant is not an eligible small business for the instant procurement. The Area Office determined Appellant did not qualify for the mentor-protégé exception to affiliation, 13 C.F.R. § 121.103(h)(3)(iii), because it did not have an SBA-approved mentor-protégé agreement in place as of the date it submitted its proposal. (Size Determination at 8, citing *Size Appeal of Lukos-VATC JV, LLC*, SBA No. SIZ-5532 (2014)).

The Area Office explained that, although SBA had approved a mentor-protégé agreement between North Star and Magnus Pacific on July 5, 2014, that agreement expired one year later on July 5, 2015. To support this conclusion, the Area Office observed the text of the approval letter itself, which states, "This agreement shall expire after one year, unless SBA approves an extension. The protégé must request continuance of the agreement from its servicing district office, in writing, at least 60 days prior to the expiration of the agreement." (Letter from R. Watkins to J. McClure (July 5, 2014).) Appellant, the Area Office noted, did not receive approval for an extension of the mentor-protégé agreement before it expired.

The Area Office noted further that North Star submitted Amendment 1 to the mentor-protégé agreement, which was signed by the parties on July 6, 2015, to the SBA Sacramento District Office (District Office). The Area Office did not state when North Star submitted this amendment. The record does not establish this date, either.

On October 30, 2015, the District Office responded to North Star, "[SBA] approves your request to extend the mentor-protégé agreement between [North Star] and [Magnus Pacific] for one year through July 4, 2016." (Letter from P. Tavernia to I. Basrai (Oct. 30, 2015).) The Area Office observed that this communication did not state an effective date and was therefore ambiguous. The Area Office determined the effective date was October 30, 2015, the date the District Office approved the extension. As a result, there was not an approved mentor-protégé agreement in place at the time Appellant submitted its offer.

The Area Office then calculated Appellant's size. SBA regulations provide that, unless an exception applies, parties to a joint venture are affiliates, and their receipts are aggregated. 13 C.F.R. §§ 121.103(h)(2) and 121.104(d). The Area Office observed that Magnus Pacific's receipts exceed the $36.5 million size standard. Therefore, without the protection of the mentor-protégé exception to affiliation, Appellant is not an eligible small business. (Size Determination at 9.)

The Area Office remarked that Appellant filed a federal tax return in 2014, which "reflected 40/60 ownership by North Star and Magnus Pacific rather than 51/49." (*Id.*) Such ownership, the Area Office stated was not in compliance with 13 C.F.R. § 124.513(c), and Appellant's "profits did not flow through to each partner's tax returns, which ultimately incorrectly skewed each entity's income downwards." (*Id.*)

D. Appeal Petition

On December 7, 2015, Appellant filed the instant appeal. Appellant argues the Area Office exceeded its authority by analyzing the substantive requirements of the mentor-protégé program. In doing so, the Area Office erred in determining that there was not an effective mentor-protégé agreement in place as of the date for determining size.

Appellant argues the Area Office did not have jurisdiction to determine that the mentor-protégé agreement was not in effect at the time Appellant submitted its offer. Appellant contends a firm's compliance with the 8(a) mentor-protégé program requirements lies solely within the authority of the 8(a) Office of Business Development, not the Area Office. *Size Appeal of Carntribe-Clement 8AJV #1, LLC*, SBA No. SIZ-5357 (2012); *Size Appeal of Trident[3], LLC*, SIZ-5315 (2012); *Size Appeal of White Hawk/Todd, JV*, SBA No. SIZ-4950 (2008) *recons. denied*, SBA No. SIZ-4968 (2008). Significantly, the regulation that allows district offices to renew mentor-protégé agreements does not authorize area offices to engage in renewal reviews or to make decisions regarding compliance with the Mentor-Protégé Program. *See* 13 C.F.R. § 124.520.

Appellant contends *Size Appeal of Lukos-VATC JV, LLC*, SBA No. SIZ-5532 (2014) is distinguishable because, unlike that case, the mentor-protégé agreement at issue here had already been approved. In *Lukos*, SBA had not approved the mentor-protégé agreement until two days after the challenged firm had submitted its offer. That is why OHA concluded that "if SBA has not yet approved the mentor/protégé agreement, a joint venture between proposed protégé and mentor firms is not entitled to receive the benefits of the mentor/protégé program, including the exclusion from affiliation." *Lukos-VATC JV, LLC*, at 15.

Further, Appellant argues, the Area Office erred in determining that the mentor-protégé agreement was not in effect as of the date for determining size. Appellant asserts "nothing in Part 124 of the SBA regulations suggests that a previously approved Mentor-Protégé Agreement automatically expires exactly one year after the SBA's approval of the written agreement." (Appeal at 11.) Instead, Appellant argues, an SBA-approved mentor-protégé agreement is effective until the 8(a) firm's next annual program review. (*Id.*, citing 13 C.F.R. § 124.520(g)(4) ("the mentor-protégé relationship will be reviewed annually "as part of its annual review of the firm's business plan pursuant to § 124.403.").)

Appellant argues this reading of the regulation is confirmed in the regulatory history, SBA's Standard Operating Procedure (SOP), and the mentor-protégé agreement itself. In 2011, SBA revised the regulations at § 124.520 to "specifically require that assistance to be provided through a mentor/protégé relationship be ***tied to the protégé firm's SBA-approved business***

plan." 76 Fed. Reg. 8,222, 8,244 (Feb. 11, 2011) (emphasis Appellant's). This requirement, SBA stated, was "implicit in the current regulations." *Id.* The SOP provides that the mentor-protégé relationship is reviewed in "the annual review of the Protégé's business plan to determine whether the relationship should continue for another year." *See* SBA SOP 80 05 3, Ch. 9, ¶ 15.a (effective July 24, 2004). Appellant's mentor-protégé agreement further confirms this understanding because its term is tied to North Star's annual program review. It provides that its term would last "***at least one year*** pursuant to 13 C.F.R. § 124.520(e)(1)(iii)" and that its "[c]ontinuation" depends on the "SBA's review of the proposed Protégé's report on the Mentor/Protégé relationship as part of its annual review of the firm's business plan pursuant to 13 C.F.R. § 124.403." (Agreement at ¶ 4, emphasis Appellant's.) Appellant explains that the District Office conducts the annual review of its business plan based on Appellant's anniversary date of August 24. *See* SBA SOP 80 05 3, Ch. 9, ¶ 15.b ("This review will be made at the first annual review after the Agreement has been approved and at every annual review while the agreement remains in effect.")

Appellant points out that North Star notified the District Office on April 2, 2015, that it intended to continue the mentor-protégé agreement. On September 23, 2015, North Star submitted its 8(a) Annual Review and its updated business plan. The 8(a) Annual Review addressed North Star's mentor-protégé relationship with Magnus Pacific and provided a "Mentor-Protégé Worksheet." *See*, *e.g.*, 13 C.F.R. § 124.520(g); SBA Form 1450, 8(a) Annual Update, ¶ 14; SBA SOP 80 05 3, Ch. 5, ¶ 12.h. The District Office approved North Star's updated annual business plan on September 28, 2015, which Appellant argues, included consideration of the mentor-protégé agreement. By approving North Star's business plan, the District Office effectively approved the mentor-protégé agreement. "Therefore, this record establishes that [Appellant's] Mentor-Protégé agreement never expired and remained in effect through and after the SBA's annual review of North Star." (Appeal at 17.)

In determining the mentor-protégé agreement was not in effect at the time Appellant submitted its proposal, Appellant argues that the Area Office relied "almost exclusively" on one sentence in the approval letter, which states, "This Agreement shall expire after one year, unless SBA approves an extension." (Appeal at 12, citing Approval Letter.) Appellant argues this sentence does not provide for a specific expiration date, and it must be read in light of SBA's regulations at 13 C.F.R. §§ 124.520(e)(1)(iii), (g)(4), and (e)(4). "The Area Office simply assumed that the 'expiration date' must refer to the anniversary date of [the] approval." (*Id.* at 15.) Those terms, however, are not defined in the approval letter, the mentor-protégé agreement, or SBA's regulations.

Appellant contends the Area Office relied on the approval letter to change the terms of the mentor-protégé agreement. Such a practice, Appellant argues, is inconsistent with the mentor-protégé agreement's integration clause and is therefore impermissible. *Grey v. Am. Mgmt. Servs.*, 139 Cal. Rptr. 3d 210, 213 (Cal. App. 2012) (relying on integration clause to find contract as "the final expression of the parties' agreement" and excluding extrinsic evidence).

Appellant points out that the mentor-protégé program requires SBA to take affirmative steps before terminating an approved mentor-protégé agreement. For example, SBA may terminate the agreement "***if it finds*** that the Mentor has not provided the assistance set forth in

the Agreement or that the assistance has not resulted in any 'material benefit' or 'developmental gains' to the Protégé." (Appeal at 12-13, quoting Agreement at ¶ 7(iii).) Before exercising certain termination rights, the Agreement and SBA regulations provide that the SBA will notify the mentor of a proposed termination and afford the mentor an opportunity to respond. *E.g.*, 13 C.F.R. §§ 124.520(g)(4) and (h).

Appellant argues the approval letter is not ambiguous with respect to the end-date, because SBA approved the agreement on July 5, 2014, and had not taken steps to terminate it. The October 30, 2015 letter "unequivocally confirmed that the Agreement was continuing for a year-long period of July 5, 2015 to July 4, 2016." (Appeal at 18). The Area Office's statements that "North Star did not receive approval of the [mentor-protégé agreement] until October 30, 2015" and that "[t]here is no provision in the regulations to retroactively approve the [mentor-protégé agreement]" mischaracterize the issue. SBA had already approved the mentor-protégé agreement, and the approval extended for at least one year until North Star's next review. Appellant reiterates that Part 124 of SBA's regulations do not provide for an affirmative decision to continue the mentor-protégé relationship, but provide for a decision against continuation of the mentor-protégé agreement. *See* 13 C.F.R. § 124.520(g)(4).

Next, Appellant argues the Area Office misconstrues Appellant's 2014 tax return. The Area Office determined the tax return was not in compliance with 13 CFR § 124.513(c) because it "reflected 40/60 ownership by North Star and Magnus Pacific rather than 51/49." *See* Section II.C., *supra*. Appellant argues this statement "oversimplifies very complex IRS rules on partnership allocations (which are applied to JVs for taxes) and [the Area Office] lacks the expertise to opine on [Appellant's] reporting of partnership allocations to the IRS." (Appeal at 19.)

E. SBA Response

On December 23, 2015, SBA responded to the appeal. SBA argues the Area Office correctly determined that the mentor-protégé joint venture exception to affiliation does not apply, so OHA should uphold the size determination.

SBA argues the Area Office did not exceed its jurisdiction, because it has the authority to determine whether the exception to affiliation for an 8(a) mentor-protégé joint venture applies. *Size Appeal of DCS Night Vision JV, LLC*, SBA No. SIZ-4997 (2008).

The Area Office also correctly determined that there was not an approved mentor-protégé agreement in place when Appellant submitted its proposal. The mentor-protégé agreement the District Office approved expired after one year and was not reapproved until well after Appellant submitted its proposal. SBA stresses the October 30, 2015 letter is irrelevant because it was issued after July 17, 2015, the date Appellant submitted its proposal, which is the date for determining size. *See id*. at 8 ("the only relevant evidence that could cause a tribunal to declare the Mentor-Protégé Agreement was in effect would have to be dated before . . . the date when Appellant submitted its offer, including price."); *Size Appeal of Dep't of the Navy and Sabreliner Corp*., SBA No. SIZ-3443, at 7 (1991) ("What actually occurs after that date with regard to the applicant's size is not relevant to the size determination and cannot be considered."). Moreover, a

mentor-protégé approval that takes place after a joint venture's offer submission is not effective to qualify the joint venture for the mentor-protégé affiliation exception. *Size Appeal of Lukos-VATC JV, LLC*, SBA No. SIZ-5532 (2014).

SBA contends the Area Office reasonably concluded that the mentor-protégé agreement between North Star and Magnus Pacific expired on July 5, 2015. According to SBA regulations, "SBA will review the mentor/protégé relationship annually to determine whether to approve its continuation for another year." 13 C.F.R. § 124.520(e)(4). The District Office, however, did not approve North Star's agreement for "another year." The approval of Appellant's mentor-protégé agreement therefore expired on its one-year anniversary, July 5, 2015. The terms of the letter itself make clear that the approval would expire on July 5, 2015. It states, "This agreement shall expire after one year, unless SBA approves an extension." As a result, SBA argues, "The only reasonable reading of the approval letter is that approval expired on July 5, 2015." (SBA Response at 4.) By stating that the approval expires "after one year," the Associate Administrator set the expiration date at one year from the date of the approval, not a later unnamed date. If the Associate Administrator had intended to set a later date, SBA contends, the letter would have provided for a later date. (*Id.* at 5.)

SBA challenges Appellant's contention that the size determination conflicts with the mentor-protégé agreement, SBA regulations, and the SOP. Appellant's contention, SBA argues, overlooks 13 C.F.R. § 124.520(e)(4), which provides that SBA must affirmatively approve the continuation of a mentor-protégé agreement for "another year." SBA argues further that there is no regulation that permits SBA's approval to extend beyond one year without SBA's affirmative approval of an extension. Appellant's argument, then, that the mentor-protégé agreement was approved from July 2014 to September 2015 is not supported by SBA regulations. (*Id.* at 4.)

III. Discussion

A. Standard of Review

Appellant has the burden of proving, by a preponderance of the evidence, all elements of its 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 the 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

I find the Area Office did not err in determining Appellant was not an eligible small business for the instant procurement. The appeal is therefore denied.

Generally, two firms that form a joint venture to perform a contract will be considered affiliates for purposes of that contract. 13 C.F.R. § 121.103(h); *see also Size Appeal of Safety and Ecology Corp.*, SBA No. SIZ-5177, at 26 (2010) ("A finding of affiliation based upon § 121.103(h) is usually contract-specific."); *Size Appeal of Med. and Occupational Servs. Alliance*,

SBA No. SIZ-4989, at 4 (2008) ("The general rule is that firms submitting offers on a particular procurement as joint venturers are affiliates with regard to that contract, and they will be aggregated for the purpose of determining size for that procurement."). However, the regulations recognize several exceptions to the general rule. One such exception is afforded to joint ventures formed by 8(a) BD Program mentor and protégé firms:

> Two firms approved by SBA to be a mentor and protégé under § 124.520 of these regulations may joint venture as a small business for any Federal government prime contract or subcontract, provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement and, for purposes of 8(a) sole source requirements, has not reached the dollar limit set forth in § 124.519 of these regulations. If the procurement is to be awarded through the 8(a) BD program, SBA must approve the joint venture pursuant to § 124.513.

13 C.F.R. § 121.103(h)(3)(iii). Therefore, to qualify for this exception, joint venturers must be approved as mentor and protégé firms under 13 C.F.R. § 124.520. This approval process requires the participating firms to enter into a written mentor-protégé agreement "setting forth an assessment of the protégé's needs and providing a detailed description and timeline for the delivery of the assistance the mentor commits to provide to address those needs." *Id.* § 124.520(e)(1). The regulations are clear that "SBA must approve the mentor/protégé agreement before the two firms may submit an offer as a joint venture on a particular government prime contract or subcontract in order for the joint venture to receive the exclusion from affiliation." *Id.* § 124.520(d)(i). Further, "SBA will review the mentor/protégé relationship annually to determine whether to approve its continuation for another year." 13 C.F.R. § 124.520(e)(4).

In this case, Appellant has not proved that the Area Office clearly erred in determining that an approved mentor-protégé agreement was not in place as of the date Appellant submitted its proposal for the instant procurement. The approval letter states: "This agreement shall expire after one year, unless SBA approves an extension. The protégé must request continuance of the agreement from its servicing district office, in writing, at least 60 days prior to the expiration of the agreement." (Approval Letter at 1.) The Area Office interpreted this language to mean that the approval of the mentor-protégé agreement would expire on July 5, 2015. This interpretation is reasonable and does not constitute clear error. Indeed, as SBA notes, had the Acting Associate Administrator intended to set a later date, such as the date of Appellant's annual review, the letter would have explicitly stated as much. Without such a provision, I cannot find fault in the Area Office's determination that the approval expired one year from its approval date. Further, it is noteworthy that North Star and Magnus executed Amendment 1 on July 6, 2015, exactly one year after their mentor-protégé agreement was approved. This indicates that North Star and Magnus themselves were under the impression that the approval of the mentor-protégé agreement would lapse on July 5, 2015, one year after its approval.

Appellant's arguments with respect to the District Office's October 30, 2015 communication are unavailing. Size is determined as of the date the concern submits its initial offer including price. 13 C.F.R. § 121.404(a). In keeping with this rule, OHA has declared that

"the only relevant evidence that could cause [it] to declare a mentor-protégé agreement was in effect would have to be dated before . . . the date [the joint venture] submitted its offer including price." *Size Appeal of DCS Night Vision JV, LLC*, SBA No. SIZ-4997, at 8 (2008). In this case, Appellant submitted its proposal on July 17, 2015. Accordingly, actions from the District Office subsequent to this date are not relevant to whether there was an approved mentor-protégé agreement in place as of the date Appellant submitted its proposal.

Appellant argues unpersuasively that the Area Office erred by reviewing Appellant's compliance with the substantive requirements of the 8(a) BD program, which is beyond its jurisdiction. *Size Appeal of Carntribe-Clement 8AJV #1,LLC*, SBA No. SIZ-5357 (2012). The Area Office did not review the mentor-protégé agreement for compliance with the 8(a) BD regulations. Rather, the Area Office merely determined whether the agreement was in effect as of the date for determining Appellant's size. This is well within the Area Office's competence. *Size Appeal of Lukos-VATC JV, LLC*, SBA No. SIZ-5532 (2014).

Appellant argues the Area Office lacked jurisdiction to determine the mentor-protégé agreement was not in effect at the time Appellant submitted its offer. However, OHA has directly rejected this argument. As OHA has explained: "The exception created by 13 C.F.R. § 121.103(h)(3)(iii) presupposes the existence of a mentor-protégé agreement approved by the SBA." *DCS Night Vision JV*, at 7. Therefore, "area offices have a duty to examine the record to determine if there actually is an approved mentor-protégé agreement at the time a joint venture submits its offer, including price." *Id.* at 8.

Appellant's argument the mentor-protégé program requires SBA to take affirmative steps to terminate an approved mentor-protégé agreement is inapposite. SBA did not terminate the agreement. Rather, the one year term set in SBA's July 5, 2014 approval letter expired, in a fashion similar to the agreement in *DCS Night Vision JV*. On the date Appellant submitted its offer, SBA had not yet approved the agreement for another year, as required by the regulation. 13 C.F.R. § 124.520(e)(4). This regulation provides, *contra* Appellant's argument, that SBA's approval of the agreement expires after one year, unless renewed. Accordingly, the argument that the Area Office's determination is varying the terms of the agreement contrary to its integration clause is meritless. It is SBA's approval of the agreement which expired, and the Area Office made no finding which altered the terms of the agreement.

Appellant's argument the District Office's annual approval of its business plan in effect renewed its approval of the mentor-protégé agreement is also meritless. Appellant does not point to any language in the approval that approves the agreement. Had the District Office done so, there would have been no need for the October 30, 2015 approval letter. Further, the District Office approved the business plan on September 28, 2015. Therefore, even if this action is taken as renewal of SBA's approval of the agreement, it would not have been in effect when Appellant submitted its offer on July 17, 2015, so there was no approved mentor-protégé agreement in place.

The Area Office's comment regarding Appellant's 2014 tax return is immaterial to the determination that the mentor-protégé exception to affiliation does not apply and Appellant is therefore not a small business. Accordingly, even if the Area Office was mistaken on this point,

it would not be reason to overturn the size determination. *E.g., Size Appeals of Med. Comfort Sys., Inc., et al*., SBA No. SIZ-5640, at 16 (2015); *Size Appeal of WG Pitts Co*., SBA No. SIZ-5575, at 7, n.4 (2014) (finding an area office's mistake immaterial to the decision and therefore harmless error).

IV. Conclusion

The Area Office found that Appellant is not a small business, and Appellant has shown no error in the determination. I therefore DENY this appeal and AFFIRM the size determination. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN
Administrative Judge