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

**REDACTED DECISION FOR PUBLIC RELEASE**

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| SIZE APPEAL OF:<br><br>Veterans Construction Coalition, LLC,<br><br>Appellant,<br><br>RE: Megen-AWA 2, LLC<br><br>Appealed From<br>Size Determination No. 04-2017-015 | SBA No. SIZ-5824<br><br>Decided: April 18, 2017 |

APPEARANCES

Antonio R. Franco, Esq., Patrick T. Rothwell, Esq., Meghan F. Leemon, Esq., PilieroMazza PLLC, Washington, D.C., for Appellant

Jonathan Hollingsworth, Esq., Hollingsworth & Washington, LLC, Centerville, Ohio, for Megen-AWA 2, LLC

Sam Q. Le, Esq., Office of General Counsel, U.S. Small Business Administration, Washington, D.C., for the Agency

DECISION[1]

## I. Introduction and Jurisdiction

This is a protester's appeal of a size determination pertaining to Megen-AWA 2, LLC (MA2). MA2 is a joint venture between AWA Business Corporation (AWA), a participant in SBA's 8(a) Business Development program, and Megen Construction Company, Inc. (Megen). On February 14, 2017, the U.S. Small Business Administration (SBA) Office of Government Contracting, Area IV (Area Office) issued Size Determination No. 04-2017-015 concluding that MA2 is a small business for the subject procurement. On February 17, 2017, Veterans Construction Coalition, LLC (Appellant), which had previously protested MA2's size, appealed

[1] 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.

the size determination to the SBA Office of Hearings and Appeals (OHA). Appellant maintains that the size determination is flawed and should be reversed or remanded. For the reasons discussed *infra*, the appeal is granted, and the matter is remanded to the Area Office for further review.

OHA decides appeals of size determinations 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 9, 2016, the U.S. Department of the Air Force, Air Force Materiel Command issued Request for Proposals (RFP) No. FA8601-16-R-0010 for the Simplified Acquisition of Base Engineering Requirements (SABER) procurement. The RFP would result in a single indefinite-delivery, indefinite-quantity contract for design-build and design-bid-build construction projects at Wright-Patterson Air Force Base in Ohio. (RFP § L.1.2.) The maximum value of orders issued under SABER is $76.5 million, and the guaranteed minimum value is $50,000. The Contracting Officer (CO) set aside the procurement entirely for participants in the 8(a) Business Development program, and assigned North American Industry Classification System (NAICS) code 236220, Commercial and Institutional Building Construction, with a corresponding size standard of $36.5 million average annual receipts. Offers were due July 18, 2016. (RFP, Amendment 0002.) Appellant and MA2 submitted timely proposals, self-certifying as small businesses.

On December 7, 2016, the CO announced that MA2 was the apparent awardee. On December 14, 2016, Appellant filed a timely protest of MA2's size. Appellant alleged that Megen is not a small business; that Megen and AWA are affiliated through identity of interest, common management, and the totality of the circumstances; that AWA is affiliated with S.M. Wilson; and that MA2 is unusually reliant on its subcontractor, which Appellant identified as "likely" being S.M. Wilson. (Protest at 3-8.) To support these allegations, Appellant highlighted that MA2 is the second joint venture between Megen and AWA. The owners of Megen and AWA, Messrs. Evans N. Nwankwo and Benjamin I. Nwankwo, are brothers. Benjamin Nwankwo is vice president of Megen, and the Nwankwo brothers are both involved in Nuway Foundation (Nuway), with Evans Nwankwo being its chairman and founder, and Benjamin Nwankwo being on its board of directors. (*Id.*) In addition, Appellant asserted, AWA has entered into two joint ventures with S.M. Wilson: AWA Wilson JV, LLC and AWA Wilson 2, LLC. (*Id.* at 4.) The CO forwarded Appellant's protest to the Area Office for review.

### B. Protest Response and Size Investigation

On December 27, 2016, MA2 responded to the protest. MA2 contended that the "protest is wholly without merit." (Protest Response at 2.)

MA2 addressed each of Appellant's allegations. MA2 is small under NAICS code 236220, MA2 averred, because the revenues for both of its joint venture partners do not exceed the corresponding $36.5 million size standard. (*Id.*, citing 13 C.F.R. § 121.103(h)(3).)

AWA and Megen are not generally affiliated, either. Benjamin Nwankwo, MA2 explained, is AWA's sole owner and always has been. His brother, Evans Nwankwo, is likewise the sole owner of Megen and always has been. MA2 argued that AWA and Megen are not affiliated based on familial identity of interest, common management, or the totality of the circumstances, and that there is clear fracture between them. Although Benjamin Nwankwo once worked at Megen, he has not done so since 2009. Evans Nwankwo, for his part, "has never been an employee, officer, director or agent of AWA." (*Id.* at 4.) The Nwankwo brothers thus have no ownership interest in, or control over, each other's businesses. Their formation of a joint venture in 2012 was for the narrow purpose of providing financial resources and bonding for a proposal responding to a solicitation issued by the U.S. Army Corps of Engineers. Such minimal business ties, though, do not prevent a finding of clear fracture. (*Id.* at 4-5, citing *Size Appeal of GPA Techs., Inc.*, SBA No. SIZ-5307 (2011).) The Nwankwo brothers' involvement in Nuway does not create affiliation between their respective companies, because Nuway is a non-profit entity not in the construction industry and the Nwankwo brothers are acting in their individual capacities, rather than through their respective companies. (*Id.* at 5.)

As for the ostensible subcontractor allegation, MA2 responded that it has "the necessary experience and capability to perform the contract and is not unduly reliant on a subcontractor." (*Id.*) Although MA2 and S.M. Wilson have previous collaborated on other contracts, "there is nothing in this record that indicates that MA2 proposed to use S.M. Wilson as a subcontractor pursuant to this Solicitation." (*Id.*)

On January 17, 2017, the Area Office informed MA2 that it would be "investigating a subject NOT raised by the protester: whether AWA Business Corporation is affiliated with S.M. Wilson." (E-mail from D. Gordon to B. Nwankwo (Jan. 17, 2017) (emphasis in original).) Specifically, the Area Office would consider whether AWA is economically dependent on S.M. Wilson, because it appeared that AWA derived more than 70% of its revenues from S.M. Wilson during the years 2013 — 2015. The Area Office offered MA2 the opportunity to respond.

On January 20, 2017, MA2 responded to the Area Office. MA2 explained that AWA and S.M. Wilson are parties to an SBA-approved mentor-protégé agreement, in which AWA is the protégé and S.M. Wilson the mentor. Under the mentor-protégé agreement, AWA and S.M. Wilson entered into two joint ventures, which received two contracts: one valued at $[xxxx], which was awarded September 21, 2012; the other at $[xxxx], which was awarded February 21, 2014. In addition, S.M. Wilson awarded AWA two subcontracts on September 9, 2015, in the amounts of $[xxxx] and $[xxxx]. This business activity, Appellant argued, is permissible under the 8(a) mentor-protégé program. (Letter from B. Nwankwo to D. Gordon (Jan. 20, 2017), at 2-3 (citing *Size Appeal of Rio Vista Mgmt., LLC*, SBA No. SIZ-5316 (2012)).) Further, SBA regulations specifically exempt mentors and protégés from affiliation, so the "70% rule" is inapplicable to AWA's relationship with S.M. Wilson. (*Id.* at 5.)

C. Remand

On January 25, 2017, the Area Office issued Size Determination No. 04-2017-011, finding that MA2 is a small business. Appellant subsequently appealed to OHA. On February 8, 2017, the Area Office informed OHA that portions of the case file could not be located, and therefore could not be made available for review. The next day, OHA vacated Size Determination No. 04-2017-011 and remanded it to the Area Office to reconstruct the case file. *Size Appeal of Veterans Constr. Coal., LLC*, SBA No. SIZ-5812 (2017).

D. The Instant Size Determination

On February 14, 2017, the Area Office issued Size Determination No. 04-2017-015, again finding that MA2 is a small business. Size Determination No. 04-2017-015 is substantially identical to Size Determination No. 04-2017-011.

With regard to Appellant's protest allegations that Megen and AWA are affiliated through identity of interest, common management, and the totality of the circumstances, the Area Office determined that "it is unnecessary to determine whether they are affiliated on the grounds alleged" because at the time MA2 self-certified as small, MA2 qualified for an exception to affiliation.[2] At that time, the Area Office explained, SBA regulations provided that "[a] joint venture of at least one 8(a) Participant and one or more other business concerns may submit an offer for a competitive 8(a) procurement without regard to affiliation under paragraph (h) of this section so long as the requirements of § 124.513(b)(1) of this chapter are met." (Size Determination No. 04-2017-015, at 2, quoting 13 C.F.R. § 121.103(h)(3)(ii).) Section 124.513(b)(1) provided, in pertinent part:

> A joint venture of at least one 8(a) Participant and one or more other business concerns may submit an offer as a small business for a competitive 8(a) procurement so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided:
>
> (i) The size of at least one 8(a) Participant to the joint venture is less than one half the size standard corresponding to the NAICS code assigned to the contract; and
>
> (ii)(A) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the NAICS code assigned to the contract.

(*Id.*, quoting 13 C.F.R. § 124.513(b)(1).)

[2] SBA eliminated the exception effective August 24, 2016. *See* 81 Fed. Reg. 48,558, 48,578 (July 25, 2016). Citations to the exception — codified at 13 C.F.R. §§ 121.103(h)(3)(ii) and 124.513(b)(1) — refer to version in effect on the date of self-certification.

In determining that MA2 qualified for this exception to affiliation, the Area Office explained that AWA's average annual receipts are less than half of the size standard assigned to this procurement, the size of this procurement exceeds half of the value of the size standard, and both AWA and Megen are small. According to federal tax returns, the annual receipts for Megen, AWA, their joint ventures, and their affiliates do not exceed the $36.5 million size standard. (*Id.* at 3.) The Area Office found that AWA is controlled by Benjamin Nwankwo and that he is "not a principal shareholder in any other entity and does not hold a key or executive position in any other entity. Thus, no other entities are affiliated with AWA through [Benjamin] Nwankwo personally." (*Id.* at 2.) However, "AWA owns a controlling interest in two other entities (AWA-Megen Joint Venture and AWA-Wilson Joint Venture), and its proportionate income from those joint ventures must be included in calculating size." (*Id.*) As for Megen, the Area Office found that Evans Nwankwo controls Megen, and that he also "owns a controlling interest in two other firms, CLEN, LLC, and Sure Mechanical, LLC; both entities are thus affiliated with Megen." (*Id.*)

E. Appeal

On February 17, 2017, Appellant filed its appeal with OHA. Appellant maintains that the size determination is flawed and should be reversed or remanded.

Appellant first argues that the Area Office erred in calculating AWA's receipts. To qualify for the exception to affiliation cited by the Area Office, 13 C.F.R. § 121.103(h)(3)(ii), AWA and its affiliates must have average annual receipts under $18.25 million, half the $36.5 million size standard. Although the size determination stated that the Area Office considered AWA's proportionate income from AWA-Megen Joint Venture and AWA-Wilson Joint Venture, it did not state that the Area Office included the income from AWA Wilson JV 2, LLC, which Appellant discussed in the protest. Further, the Area Office should have found AWA and S.M. Wilson to be generally affiliated because, although AWA and S.M. Wilson have an approved mentor-protégé agreement, AWA, the protégé, is providing assistance to the mentor. In addition, the Area Office should have assessed whether AWA and Nuway are affiliated, and if so, included Nuway's receipts in its calculations. To remedy these errors, OHA must remand the case for a proper analysis of AWA's size. (Appeal at 7-9.)

Appellant argues that the Area Office also erred in calculating Megen's receipts. The exception to affiliation at 13 C.F.R. § 121.103(h)(3)(ii) applies only to contract-specific affiliation, Appellant maintains, and not general affiliation. (*Id.* at 9-12.) Therefore, in determining that Megen is small, the Area Office should have considered whether AWA and Megen are generally affiliated. Further, the Area Office should have considered whether Megen and Nuway are affiliated, as Appellant alleged. (*Id.* at 12.) In addition, although the Area Office stated that it was including AWA's proportionate receipts from AWA-Megen Joint Venture, the Area Office did not state that it was including Megen's proportionate share as well. (*Id.* at 13.) Appellant argues that OHA should remand this issue, too, for a proper calculation.

Appellant maintains that the Area Office completely ignored Appellant's ostensible subcontractor allegation. By failing to address this allegation, the Area Office improperly shifted the burden of proof from MA2 to Appellant. (*Id.* at 14.)

F. Response

On February 22, 2017, MA2 responded to the appeal. MA2 contends that Appellant has not demonstrated that the size determination is clearly erroneous, so OHA should deny the appeal.

MA2 argues that the Area Office did consider Appellant's affiliation allegations, because MA2 was required to submit information refuting those allegations. The fact that the Area Office did not specifically discuss those allegations in the size determination does not mean that the Area Office did not consider them. "Indeed, the Area Office's omission of such discussion [of these allegations] is presumably due to the fact that the arguments and documents submitted by MA2 unquestionably established that Megen and AWA are not affiliated." (Response at 6, emphasis MA2's.)

Next, MA2 argues that the Area Office did not err in considering AWA's size. Appellant's complaint that the Area Office did not include AWA's proportionate share of income from AWA Wilson JV 2 LLC and MA2 is meritless, MA2 argues, because neither joint venture had any receipts during the relevant time period. Further, contrary to Appellant's suggestions, the Area Office did consider whether AWA and S.M. Wilson are affiliated. MA2 explains that it "provided detailed information regarding its mentor-protégé relationship with Wilson, the two joint ventures that were formed as part of that mentor-protégé relationship, and the fact that there was no other basis upon which it could be concluded that AWA and Wilson were affiliated." (*Id.* at 7.)

Nor did the Area Office err in assessing Megen's size. MA2 provided specific information to rebut the presumption of identity of interest between the Nwankwo brothers and demonstrating that Megen and AWA are not affiliated for any other reason. MA2 submitted affidavits from Benjamin Nwankwo and Evans Nwankwo and documentary evidence establishing that: (1) AWA and Megen are separate and distinct entities, neither of which controls the other; (2) Benjamin Nwankwo has always been the sole shareholder and owner of AWA, and Evans Nwankwo has always been the sole shareholder and owner of Megen; (3) since ending his employment with Megen in July 2009, Benjamin Nwankwo has not been an employee, officer or director of Megen; and (4) Evans Nwankwo has never been an employee, officer, director or agent of AWA. Contrary to Appellant's assertions, then, the Area Office did consider whether Megen is generally affiliated with AWA. Appellant's contention that the Area Office did not include Megen's proportionate share of income from AWA-Megen Joint Venture is also meritless. As the SBA Form 355 shows, Megen is small under the $36.5 million size standard when this income is included. (*Id.* at 9-13.)

Appellant's argument that the Area Office failed to consider the ostensible subcontractor allegation is likewise without merit. MA2 asserts that it provided the Area Office with "detailed evidence regarding its experience and capability to perform the contract work itself," and "explicitly advised the Area Office that it intended and intends to perform the contract work itself." (*Id.* at 14.)

As for the argument that the Area Office should have considered whether MA2 is affiliated with Nuway, MA2 argues that Appellant did not allege in its protest that Nuway was affiliated with AWA and/or Megen, and the Area Office, therefore, had no obligation to explore Nuway's relationships with AWA and Megen. (*Id.* at 15.) Even so, according to public filings, Nuway's receipts are so modest that including them would not render MA2 other than small. Any such error, then, is harmless. (*Id.* at 16.)

G. Appeal Supplement

On March 8, 2017, after reviewing the Area Office file under the terms of an OHA protective order, Appellant moved to supplement its appeal. OHA routinely permits parties to supplement their pleadings after viewing an area office file for the first time. *E.g., Size Appeal of First Nation Group d/b/a Jordan Reses Supply Co., LLC*, SBA No. SIZ-5807, at 7 (2017). Appellant's motion therefore is GRANTED.

In its supplement, Appellant argues that the Area Office did not address key indicia of affiliation between Megen and AWA. According to affidavits submitted by MA2 in response to the protest, Benjamin Nwankwo used to be vice president of Megen, and AWA performs subcontract work for Megen. AWA and Megen are also in the same line of business. These facts prevent a finding of clear fracture between family members. (App. Supp. at 2-3, citing *Size Appeal of CTSI-FM, LLC*, SBA No. SIZ-5809 (2017).) As a result of the familial identity of interest between the Nwankwo brothers, AWA and Megen are affiliated and "the exception to affiliation in 13 C.F.R. § 121.103(h)(3)(ii) does not apply, contrary to the Area Office's finding." (*Id.* at 4, emphasis Appellant's.)

Next, Appellant argues that the Area Office overlooked key affiliates of Megen and AWA. According to the amended SBA Form 355, Evans Nwankwo owns 49% of BAMKO LLC and is its vice president. Megen and BAMKO LLC, then, should have been found affiliated based on Evans Nwankwo's common management. (*Id.* at 4-5, citing *Size Appeal of DMI Educ. Training LLC*, SBA No. SIZ-5275 (2011).) Further, BAMKO LLC is affiliated with JC Battle & Sons Funeral Home, based on common ownership and management. Therefore, through BAMKO LLC, Megen is also affiliated with JC Battle & Sons Funeral Home. (*Id.* at 6 n.6.) The Area Office also should have observed that Sure Mechanical, LLC apparently has two affiliates — TP Innovations LLC and TP Mechanical Contractors — based on common officers/owners. (*Id.* at 5-6.)

Appellant then argues that the SBA Form 355s are incomplete. MA2 did not provide information on Nuway, which Appellant had alleged to be an affiliate, or Megen-Skanska, LLC, which, Appellant argues, is a joint venture in which Megen owns a minority interest. Submission of inadequate information "calls into question the evidence upon which the size determination was based and requires a remand to the Area Office for a new review." (*Id.* at 8, quoting *Size Appeal of Dawson Bldg. Contractors, Inc.*, SBA No. SIZ-4501, at 3 (2002).)

## H. Response to Appeal Supplement

On March 22, 2017, MA2 responded to the appeal supplement. The arguments in the supplement, MA2 contends, are "unpersuasive" and "misguided," so OHA should still deny the appeal. (Supp. Response at 1.)

MA2 repeats that the Area Office was well aware of the fraternal relationship between Benjamin and Evans Nwankwo, and that MA2 provided information to rebut the presumption of affiliation based on an identity of interest. MA2 also repeats that there is clear fracture between AWA and Megen for the reasons stated in the response to the appeal. Moreover, the fact that Megen and AWA formed a joint venture in 2012 does not mean the firms are affiliated. (*Id.* at 3-5.)

MA2 argues that the Area Office properly calculated MA2's size. Appellant did not allege in its protest that Megen is affiliated with BAMKO LLC, TP Innovations LLC, or TP Mechanical Contractors. As a result, the Area Office was not required to investigate these relationships, and it is procedurally improper to raise these allegations for the first time on appeal. Regardless, Megen is not affiliated with these entities. It is not affiliated with BAMKO LLC because Evans Nwankwo does not hold a controlling interest in BAMKO LLC. Further, any such affiliation would be inconsequential because these receipts would not cause Megen to exceed the size standard. (*Id.* at 7.) Megen is not affiliated with TP Innovations LLC and TP Mechanical Contractors because they do not share common ownership or management. The allegation is also flawed because, absent common control, OHA case law does not support finding a firm automatically affiliated with the affiliates of its affiliates. (*Id.* at 8, citing *Size Appeal of BryMak & Assocs., Inc.*, SBA No. SIZ-5777 (2016), *recons. denied*, SBA No. SIZ-5789 (2016) (PFR).)

MA2 then addresses Appellant's contention that the Area Office should have determined that Nuway is an affiliate. Appellant did not allege in the protest that Nuway was affiliated with AWA or Megen, so the Area Office was under no obligation to investigate this relationship. Even so, Nuway's receipts are insubstantial. Appellant's argument that the record is incomplete is meritless, too, because MA2 provided additional information to the Area Office after MA2 submitted its initial response to the protest. (*Id.* at 10-12.)

## I. SBA Comments and Responses Thereto

On March 23, 2017, OHA requested that SBA submit comments on the scope of the exception to affiliation found in 13 C.F.R. § 121.103(h)(3)(ii) and offered Appellant and MA2 the opportunity to respond to those comments. OHA asked SBA whether the exception applied only to contract-specific findings of affiliation based on a joint venture, or whether the exception was broader and applied to general findings of affiliation.

On March 30, 2017, SBA responded to the request for comments. SBA observes that the exception referred to "affiliation under paragraph (h)," and thus "created an exception to affiliation on the basis of participation in a joint venture." (SBA Comments at 3.) Therefore, "[b]ecause the § 121.103(h)(3)(ii) exception applied only to 'affiliation under paragraph (h),' the

exception did not reach general affiliation. That is, firms exempted from joint venture affiliation under § 121.103(h)(3)(ii) still could be found to be affiliates for reasons other than those set forth in § 121.103(h)." (*Id.*)

On April 6, 2017, Appellant and MA2 responded to SBA's comments. Appellant concurs with SBA's comments and argues that "[b]ecause the exception does not apply to affiliation generally, the Area Office should have conducted a size determination that took into account the substantial business relations and connections between Megen and AWA, which are owned by brothers." (Appellant's Response at 3.) Had it done so, the Area Office would have found Megen and AWA affiliated given the presumption of affiliation due to the familial relationship and the lack of any clear fracture between them. As a result of that affiliation, MA2 will be ineligible for the subject procurement. Appellant argues that there is sufficient information in the record to find that AWA is affiliated with Megen and Megen's affiliates, but that "at a minimum, based on the Area Office's clear error of law, this matter needs to be remanded to the Area Office to perform a full investigation and consideration of AWA's extensive relationship with Megen and Megen's affiliates." (*Id.*)

MA2 argues that SBA's comments should have "no impact on the outcome of this Size Determination." (MA2's Response at 2.) In MA2's view, "the record in this case clearly establishes that there is no affiliation between AWA and Megen," and that "[t]he Area Office did not simply turn a blind eye to the evidence MA2 put before it." (*Id.* at 6-7, emphasis MA2's.) Any failure to consider affiliation issues is ultimately harmless, MA2 maintains, because the record confirms that Megan and AWA are not affiliated. (*Id.* at 7-9.)

## 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

I find it appropriate to remand this matter for further investigation. The size determination makes plain that the Area Office did not consider whether Megen and AWA are generally affiliated, because the Area Office interpreted 13 C.F.R. § 121.103(h)(3)(ii) as providing a broad exemption to any such affiliation. Section II.D, *supra*. As SBA and Appellant explain, however, this determination is clearly erroneous. The exemption at § 121.103(h)(3)(ii) applied to "affiliation under paragraph (h)", which is affiliation based on joint ventures. Logically, then, the exception was confined to contract-specific affiliation based on joint ventures and did not extend to issues of general affiliation, such as the grounds Appellant alleged in its protest.

Because the Area Office expressly declined to consider whether Megen and MA2 are affiliated for the reasons Appellant alleged in its protest, there are no findings on these issues for OHA to review. "OHA is an appellate body and cannot make initial size determinations", so it would be improper for OHA make a determination on these issues in the first instance. *Size Appeal of Triple P Servs., Inc.*, SBA No. SIZ-4480, at 5 (2002). As SBA regulations and OHA case law make clear, "[o]nly the Area Office . . . can review the evidence and make the initial size determination." *Id.*; 13 C.F.R. §§ 121.1002 and 121.1101. I therefore remand the size determination for an investigation as to whether Megen and AWA are affiliated for the reasons Appellant alleged in the protest. On remand, the Area Office must consider all evidence in the record and may request additional information as it deems it appropriate.

## IV. Conclusion

For the above reasons, the appeal is **GRANTED**, and Size Determination No. 04-2017-015 is **VACATED** and **REMANDED** to the Area Office for further review consistent with this decision.

KENNETH M. HYDE
Administrative Judge