

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

SIZE APPEAL OF:

Woodlawn Manufacturing, LTD,

Appellant,

Appealed From
Size Determination No. 05-2017-038

SBA No. SIZ-5861

Decided: October 25, 2017

APPEARANCE

Carla Ponder, Chief Financial Officer, Woodlawn Manufacturing, LTD, Marshall, Texas

DECISION

I. Introduction and Jurisdiction

On August 18, 2017, the U.S. Small Business Administration (SBA) Office of Government Contracting, Area V (Area Office) issued Size Determination No. 05-2017-038, concluding that Woodlawn Manufacturing, LTD (Appellant) is not a small business under the size standard associated with the subject procurement. Appellant maintains that the size determination is clearly erroneous and requests that SBA's Office of Hearings and Appeals (OHA) reverse. 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. Appellant filed the instant appeal within fifteen days after 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 April 15, 2016, the U.S. Army Contracting Command—New Jersey issued Request for Proposals (RFP) No. W15QKN-16-R-0016 for Canister Metal Parts Assembly and Canister Base Assembly for 155mm Illuminating Projectiles. The Contracting Officer (CO) set aside the procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 332999, All Other Miscellaneous Fabricated Metal Product Manufacturing, with a corresponding size standard of 750 employees. Offers were due May 31, 2016.

On July 10, 2017, the CO notified unsuccessful offerors, including Capco, LLC (Capco), that Appellant was the apparent awardee. On July 12, 2017, Capco filed a size protest with the CO challenging Appellant's size. Capco alleged that Appellant is affiliated with Lone Star Investment Advisors (Lone Star), a large business. More specifically, Capco claimed that Lone Star acquired Appellant in 2008 and that Appellant would be utilizing two business concerns associated with Lone Star — Trinity Forge, Inc. (Trinity Forge) and Concrete Related Products (CRP) — to perform important aspects of the contract. The CO forwarded Capco's protest to the Area Office for review.

B. Size Determination

On August 18, 2017, the Area Office issued Size Determination No. 05-2017-038 concluding that Appellant is not a small business.

The Area Office found that Appellant is organized as a Limited Partnership (LP), with the general partner and limited partner being Lone Star CRA Fund, LP (Lone Star CRA). Lone Star is a private equity firm with several LPs, including Lone Star CRA, Lone Star Opportunities Fund V, LP (Lone Star Opportunities) and Lone Star New Markets LP (Lone Star New Markets). Lone Star is 100% owned by Mr. Arthur Hollingsworth. (Size Determination, at 2.)

The general partner of Lone Star CRA is LSCR, LLC (LSCR), which owns a 2% general partnership interest. The remaining 98% is held by numerous investors. Lone Star CRA also holds ownership interests in Green Energy Oilfield Services, LLC (Green Energy); Continental Electronics Corporation (Continental Electronics); Alsay, Inc. (Alsay); Frac Tank Rentals, LLC; and State Services. Mr. Hollingsworth wholly owns LSCR and LSOF, LLC (LSOF), the general partner of Lone Star Opportunities. The Area Office was unable to obtain information on Lone Star New Markets. (*Id.*)

The Area Office determined that Lone Star CRA has the power to control Appellant, so Appellant and Lone Star CRA are affiliated. (*Id.* at 3.) Lone Star CRA holds also majority ownership interests in Green Energy, Continental Electronics, and Alsay. Therefore, Appellant is affiliated with these concerns. (*Id.*)

The Area Office found that Mr. Hollingsworth controls Lone Star CRA because he owns LSCR, the general partner of Lone Star CRA. The Area Office reviewed the terms of Lone Star CRA's limited partnership agreement, and determined that it bestows control upon the general partner. The Area Office noted that Mr. Hollingsworth argued that Lone Star CRA is instead controlled by an advisory board. (*Id.* at 4.) This argument rested on the notion that the limited partners could remove the general partner under certain circumstances. The Area Office found, however, that such circumstances are remote, such as “breach of material obligations, willful misconduct or gross negligence, conviction of fraud or felony or permanently being disabled.” (*Id.*) LSOF, also wholly owned by Mr. Hollingsworth, is Lone Star Opportunities' general partner, but Lone Star Opportunities' partnership agreement was not submitted to the Area Office for review, so the Area Office was unable to determine who controls Lone Star Opportunities. Mr. Hollingsworth is also Lone Star New Markets' general partner, but Lone Star New Markets'

partnership agreement was not provided to the Area Office. The Area Office found that Lone Star is 100% owned by Mr. Hollingsworth, and that Lone Star is affiliated with all entities controlled or owned by Mr. Hollingsworth, including Appellant. (*Id.*)

The Area Office rejected Appellant's claim that Lone Star qualifies as a Small Business Investment Company (SBIC) licensed under the Small Business Investment Act of 1958. The Area Office asked Appellant to produce documentation to support this claim. When no documentation was forthcoming, the Area Office asked SBA's SBIC program office about Appellant and Lone Star, and learned that “[n]either company was identified on the listing of licensed investment companies.” (*Id.* at 5.)

Lone Star provided documentation showing that several of its LPs are certified Community Development Entities (CDEs). The Area Office found, however, no exception to affiliation for CDEs. An affiliation exception is provided for Community Development Corporations (CDCs) pursuant to 13 C.F.R. § 121.103(b)(2). When asked whether the Lone Star funds are CDCs, though, Mr. Hollingsworth stated that they are not. Thus, no exception to affiliation was found for any of the Lone Star entities. (*Id.* at 5-6.)

Next, the Area Office addressed Capco's protest allegation that Appellant would be reliant upon Trinity Forge and CRP to produce the required items. Appellant responded that neither firm will be performing work on the instant procurement. The Area Office confirmed this claim after review of Appellant's proposal. (*Id.* at 6.)

Lastly, the Area Office stated that, on numerous occasions, it had requested information from Appellant “regarding any and all concerns in which [Mr.] Hollingsworth is involved either as an owner, member, officer etc.” (*Id.*) In particular, the Area Office sought information about Lone Star Opportunities and its general partner, LSOF. Other information requests included: (i) partnership agreements; (ii) ownership percentage of the general partners; (iii) identification of any and all entities owned in the majority by the LPs; and (iv) employee counts of each of the concerns. (*Id.*) The Area Office explained that this information was necessary in order to determine what concerns are controlled by Mr. Hollingsworth. Due to Appellant's failure to produce the requested information, the Area Office drew an adverse inference that the missing information would have shown that Appellant is not a small business. (*Id.* at 7.)

C. Appeal Petition

On August 29, 2017, Appellant filed the instant appeal, asserting that the Area Office erred in its determination. Appellant also requests that OHA reconsider the NAICS code assigned to the RFP.

Appellant maintains that it has only 70 full and part-time employees, well below the size standard associated with the procurement. Appellant states that it is owned by “an investment firm that owns other businesses and those other businesses could be considered ‘affiliated’ with [Appellant] solely based on their collective ownership.” (Appeal, at 2.) However, Appellant contends, “similar ownership is not the sole test for determining affiliation.” (*Id.*)

Appellant observes that OHA has found affiliation when one firm is economically dependent upon another. (*Id.*, citing *Size Appeal of Eagle Consulting Corp.*, SBA No. SIZ-5267 (2011), *recons. denied*, SBA No. SIZ-5288 (2011) (PFR).) In Appellant's view, this demonstrates that affiliation exists when firms conduct substantial business together. Appellant urges that “the proper analysis regarding businesses that share similar ownership is (1) whether those business conduct business together and (2) if so, whether they are economically dependent on one another.” (*Id.* at 3.) Here, Appellant concludes, “while [Appellant] shares similar ownership with other entities, it is not affiliated with such other businesses because it is economically and operationally independent from them.” (*Id.*)

Appellant disputes Capco's protest allegation that Trinity Forge and CRP will perform important tasks on the instant contract. Appellant insists that it will not use Trinity Forge or CRP on the procurement, and that Appellant is not, in any event, economically or operationally dependent upon these concerns. (*Id.*)

Lastly, Appellant contends that a recent procurement for similar manufactured items utilized NAICS code 332993, Ammunition (except Small Arms) Manufacturing, with a corresponding size standard of 1,500 employees. Appellant requests that OHA assign NAICS code 332993 and the 1,500 employee size standard to this RFP. (*Id.*)

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

Appellant does not dispute the Area Office's key factual findings that Appellant is controlled by Lone Star CRA, which in turn is controlled by Lone Star and Mr. Arthur Hollingsworth. Indeed, Appellant acknowledges in its appeal that, based on its organizational structure, Appellant likely is affiliated with Lone Star, Lone Star CRA, and other concerns owned and controlled by Mr. Hollingsworth. Section II.C, *supra*. Nor does Appellant contend that the Area Office improperly applied an adverse inference based on Appellant's failure to produce complete information about Mr. Hollingsworth's business interests. *Id.* Instead, Appellant's principal argument on appeal is that Appellant should not be found affiliated with concerns owned and controlled by Mr. Hollingsworth, because Appellant is not economically dependent upon those concerns. *Id.*

Appellant's argument reflects a misunderstanding of the concept of affiliation. The central question in an affiliation analysis is whether “one [concern] controls or has the power to

control the other, or a third party or parties controls or has the power to control both.” 13 C.F.R. § 121.103(a)(1). Such power to control may arise through various means, any one of which is sufficient to find affiliation. For example, common ownership, discussed at § 121.103(c), is a separate and independent basis for affiliation from economic dependence, discussed at § 121.103(f)(2). Contrary to Appellant's suggestions, then, it was not necessary for the Area Office to find economic dependence in order to conclude that Appellant is affiliated with concerns owned and controlled by Mr. Hollingsworth. Rather, the Area Office properly focused on whether Lone Star and Mr. Hollingsworth have the power to control Appellant through Appellant's parent company, Lone Star CRA. Section II.B, *supra*.

As noted above, an additional problem for Appellant here is that Appellant does not challenge the Area Office's decision to draw an adverse inference against Appellant. Pursuant to 13 C.F.R. §§ 121.1008(d) and 121.1009(d), when the challenged firm fails to produce information requested by an area office, the area office may assume that the missing information would have shown that the challenged firm is not a small business. Further, the requested information need not relate to the challenged firm itself, as it is well-settled that an adverse inference “may properly be applied when an area office requests information about affiliates of the challenged firm.” *Size Appeal of AudioEye, Inc.*, SBA No. SIZ-5477, at 10 (2013), *recons. denied*, SBA No. SIZ-5493 (2013) (PFR). Here, Appellant does not contend that the adverse inference was improper, and does not dispute that it failed to produce complete information about Mr. Hollingsworth's business interests. Accordingly, even if OHA were to agree with Appellant on the question of economic dependence, the appeal must still be denied because Appellant has advanced no basis to disturb the adverse inference.

Appellant also argues that it is not affiliated with Trinity Forge and CRP because neither company will perform work on the instant procurement. The Area Office, though, already determined that Trinity Forge and CRP will not participate in this procurement. Section II.B, *supra*. Thus, the fact that Trinity Forge and CRP are not involved in this procurement does not establish that the Area Office committed any error in its review.

Lastly, I must reject Appellant's request that OHA designate a new NAICS code for the RFP. A size appeal is not the proper forum for challenging an assigned NAICS code. Instead, by regulation, Appellant was required to have filed any NAICS code appeal within 10 calendar days after issuance of the RFP. 13 C.F.R. § 134.304(b). Further, unless a timely NAICS code appeal is filed, the CO's choice of NAICS code becomes final. 13 C.F.R. § 121.1103(b); 48 C.F.R. § 19.303(c). Here, no party challenged the NAICS code assigned to this RFP, and it is far too late to do so at this stage of the procurement.

IV. Conclusion

Appellant has shown no error of fact or law in the size determination. 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