

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

SIZE APPEAL OF:

Cazador Investments LLC

Appellant,

Appealed From  
Size Determination Nos. 06-2020-003 and  
06-2020-004

SBA No. SIZ-6048

Decided: February 13, 2020

APPEARANCES

Hunter C. Beaumont, President, Cazador Investments LLC, Del Mar, California

Mike Hatami, President, Mirage Yacht, Inc., Coral Gables, Florida

Brian S. Gocial, Esq., Carolyn Cody-Jones, Esq., Blank Rome LLP, Philadelphia,  
Pennsylvania for National Maritime Services, Inc.

DECISION

I. Introduction and Jurisdiction

On November 19, 2019, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area VI (Area Office) issued Size Determination Nos. 06-2020-003 and 06-2020-004 concluding that Cazador Investments LLC (Appellant) is not a small business under the size standard associated with the subject procurement. The Area Office specifically determined that Appellant is affiliated with a large business, Nielsen Beaumont Marine, Inc. (NBMI), through familial identity of interest, 13 C.F.R. § 121.103(f). On appeal, Appellant maintains that the size determinations are clearly erroneous, and requests that SBA's Office of Hearings and Appeals (OHA) reverse or remand. For the reasons discussed *infra*, the appeal is denied and the size determinations are 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 of receiving the size determinations, 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

On May 6, 2019, the U.S. Department of Justice, U.S. Marshals Service (USMS) issued Request for Quotations (RFQ) No. 15M50019QA4400004 for National Vessel Services. The Contracting Officer (CO) set aside the procurement entirely for small businesses, and initially assigned North American Industry Classification System (NAICS) code 493190, Other Warehousing and Storage. On June 3, 2019, the CO issued Amendment 0001, changing the assigned NAICS code to 713930, Marinas, with an associated size standard of \$7.5 million average annual receipts. Proposals were due June 6, 2019. (Amendment 0002 at 1.)

According to the RFQ's Statement of Work (SOW), the contractor was to perform “national and international relocation, storage, maintenance, appraisal, and disposal services” for USMS's Asset Forfeiture Division. (SOW at 1.) Work would occur at locations nationwide, but the contractor was required to provide “a storage facility (marina)” within 60 miles of USMS offices in Miami, Florida. (*Id.* at 2.) The RFQ stated that proposals would be evaluated based on three evaluation factors: (1) Technical Capability, (2) Past Performance, and (3) Price. (RFQ at 32.)

### B. Proposal

Appellant's proposal stated that Appellant planned to utilize NBMI and another company, RBex Inc. d/b/a Apple Towing Co. (RBex), as “teaming partners” to perform the contract. (Tech. Proposal at 2.) The proposal stated:

In submitting this [proposal], I, Hunter Beaumont, President of [Appellant], am leveraging my own personal experience gained while working with and acting as a consultant to NBMI and my father Don Beaumont on several previous similar contracts over the last several years. Don has been involved with over 3,000 judicial foreclosures and hundreds of government seizures since 1982, and will act as both a consultant and teaming partner (via NBMI) to [Appellant] under this contract. I have personally participated in similar national vessel seizure contracts for the U.S. Department of Treasury for vessels and aircraft nationwide as a consultant to NBMI.

(*Id.*) The proposal stated that Appellant “proposes to lease and utilize NBMI's current facility in Miami, Florida” to perform the contract, adding that “[Appellant's] teaming partner NBMI currently has over 30 other locations for vessel and aircraft storage for seized assets nationwide.” (*Id.* at 2, 3.)

The proposal noted that “Eric Anderson will be retained either as a consultant or employee of [Appellant] upon award.” (*Id.* at 4.) The attached resume of Mr. Anderson indicated that he has served as National Seized Asset Manager for NBMI since 2014. (*Id.* at 27.)

### C. Protests

On September 25, 2019, the CO announced that Appellant was the apparent awardee. Two unsuccessful offerors, Mirage Yacht, Inc. (Mirage) and National Maritime Services, Inc. (NMS), filed timely size protests challenging Appellant's size. The CO forwarded the protests to the Area Office for review.

In its protest, Mirage alleged that Appellant “is a California based real estate holding company, not a marine or transportation affiliated business.” (Mirage Protest at 1.) According to Mirage, Appellant acts as “a front company” for NBMI and/or RBex, which are not small businesses. (*Id.*) Mirage also noted that the respective owners of NBMI and Appellant are father and son. (*Id.*)

In its protest, NMS alleged that Appellant is affiliated with NBMI and RBex through identity of interest, the ostensible subcontractor rule, and the totality of the circumstances. (NMS Protest at 3-5.) With regard to identity of interest, NMS highlighted that Appellant is owned and operated by Hunter Beaumont, while his father, Don Beaumont, owns and operates NBMI. (*Id.* at 3-4.)

### D. Area Office's Investigation

On October 15, 2019, Appellant responded to the protests, and submitted its completed SBA Form 355, financial records, and other documents. In response to Mirage's protest, Appellant denied affiliation with NBMI and RBex, asserting that “[b]esides some limited consulting work from time to time over the last several years and a few real estate investments, [Appellant] and NBMI have had almost zero professional interaction, despite the familial relationship of Hunter [and] Don Beaumont.” (Response to Mirage Protest, at 2.) Appellant maintained that “[n]one of the owners of [Appellant, NBMI, and RBex] have any ownership whatsoever in any of the other respective firms,” nor do such individuals “have any decision-making ability in any of the other respective firms.” (*Id.*) Appellant does not share office space, staff, equipment, or other resources with NBMI or RBex. (*Id.*) In addition, for the instant procurement, NBMI and RBex are only “two of several subcontractors that [Appellant] will potentially utilize.” (*Id.*)

In response to NMS's protest, Appellant asserted that “NBMI is only one of several subcontractors that [Appellant] will potentially utilize” for the subject procurement, and that NBMI does not derive “anywhere near 70%” of its revenues from Appellant. (Response to NMS Protest, at 2.) Appellant stated that it has not entered into any “formal or contractual relationship” with NBMI or RBex for this procurement. (*Id.*)

On its completed SBA Form 355, Appellant responded “Yes” to question 15, which asked “Have any owners, officers, directors, key employees or supervisors of business ever been employed by or performed similar work for any of the alleged, acknowledged or possible affiliates?.” Appellant also responded “Yes” to question 16, which inquired “At the time of bid opening or request for assistance or at the present, have any services been performed by business

for any alleged, acknowledged or possible affiliate or vice versa?”. Asked to explain these answers, Appellant stated:

Part of the way I [Hunter Beaumont] was able to gain experience to start my own business and be able to bid on this USMS contract was by working for my father in various capacities over the years, including recently as a consultant. [Appellant] & Cazador Management have acted as a consultant to NBMI to a limited extent over the past few years.

(E-mail from H. Beaumont to E. Sanchez (Nov. 4, 2019).) Appellant stated that “Don Beaumont/NBMI and I [Hunter Beaumont] have almost zero financial interaction/obligation besides a loan related to a real estate investment and a few real estate investments.” (*Id.*)

The Area Office asked Appellant to clarify how much of the instant contract would be performed by Appellant and how much by subcontractors. Appellant responded that it planned to self-perform approximately 60%, while subcontracting 10% to NBMI, 15% to RBex and 15% to “[v]arious other vendors.” (E-mail from H. Beaumont to E. Sanchez (Nov. 6, 2019).) The Area Office requested that Appellant describe how these percentages were determined. With regard to the work to be performed by NBMI, Appellant stated:

NBMI will likely offer limited contracted services under the ‘Relocation’, ‘Subcontractor Storage’ and ‘Maintenance’ Categories. [Appellant] earlier anticipated them having a larger rol[e] but we have leased a facility directly from the landlord instead of subleasing from [NBMI], so it will be less than initially anticipated.

(E-mail from H. Beaumont to E. Sanchez (Nov. 8, 2019).)

The Area Office informed Appellant that, pursuant to 13 C.F.R. § 121.103(f), Appellant is presumed to be affiliated with NBMI due to the parent/child relationship between Don Beaumont and Hunter Beaumont. (E-mail from E. Sanchez to H. Beaumont (Nov. 14, 2019).) The Area Office afforded Appellant the opportunity to rebut the presumption. (*Id.*)

Appellant responded by letter dated November 19, 2019. Appellant maintained that “[t]here is a clear line of fracture between [Appellant] and NBMI, which rebuts the affiliation presumption that emanates from Hunter and Don Beaumont's child-parent relationship.” (Letter from K. Mullen to E. Sanchez (Nov. 19, 2019), at 3.) In support, Appellant emphasized that Appellant and NBMI “do not share officers, employees, facilities, equipment, or anything else relating to the operation of their businesses”; “[w]hile the two concerns are in similar lines of business, they have different customers”; “[n]either NBMI nor Don Beaumont is providing any financial assistance to [Appellant]”; “[n]either NBMI nor Don Beaumont has any ownership in or control over [Appellant]”; and “[Appellant] and NBMI have had minimal professional interaction, limited to some consulting work from time to time over the last few years and two small real estate investments.” (*Id.*) Appellant commented that the first of these investments, in April 2018, “involved NBMI providing a loan to [Appellant] for the real estate deal.” (*Id.*) Appellant acknowledged that it planned to subcontract a portion of the instant contract to NBMI,

but contended that “a mere 10% of the National Vessel Services contract's value offers no basis for a finding of identity of interest or affiliation.” (*Id.*)

#### E. Size Determinations

On November 19, 2019, the Area Office issued Size Determination Nos. 06-2020-003 and 06-2020-004 concluding that Appellant is not a small business.<sup>1</sup>

The Area Office first explained that Hunter Beaumont founded Appellant as a sole proprietorship in 2013. (Size Determination No. 06-2020-003, at 4.) In May 2017, Appellant was reorganized as a limited liability company (LLC) with a primary industry of “Real Estate Asset Management.” (*Id.*) Hunter Beaumont owns 100% of Appellant, and serves as its Managing Member. (*Id.*) The Area Office found that Hunter Beaumont has the power to control Appellant by virtue of his ownership interest. (*Id.*)

Next, the Area Office found that, according to Appellant's proposal, Appellant planned to team with NBMI and RBex to perform the instant procurement. (*Id.*) NBMI is a large business specializing in “boat repairs and services, marina operations, and custodial services for seized vessels and aircrafts.” (*Id.* at 4-5.) NBMI is 50% owned by Don Beaumont, the father of Hunter Beaumont, and 50% owned by Thomas Nielsen, who is unrelated to the Beaumonts. (*Id.* at 4.) The Area Office found that Don Beaumont and Thomas Nielsen each have the power to control NBMI. (*Id.* at 4-5.)

The Area Office found that Hunter Beaumont and Appellant hold ownership and/or managerial interests in several other concerns: Cazador Management LLC (CM); Cazador S Coast Hwy LLC (CSCH); Cazador 60th Street LLC (C60th); Cazador Harney Street LLC (CHS); Cazador Los Angeles Drive LLC (CLA); Cazador Fir Street LLC (CFS); and Cazador Old Town LLC (COT). (*Id.* at 5-8.) Appellant is affiliated with these entities through common control by Hunter Beaumont.<sup>2</sup>

The Area Office noted that Hunter Beaumont and Don Beaumont each own 50% of Cazador GP LLC (CGP), which in turn controls Cazador Troy Street LLC (CTS). (*Id.* at 8-9.) Appellant's size, however, is assessed as of June 4, 2019, the date of Appellant's self-certification for the instant procurement. (*Id.* at 1, 9.) CGP and CTS were established after this date, so the Area Office did not find Appellant affiliated with CGP or CTS. (*Id.* at 9.)

---

<sup>1</sup> The Area Office issued two formal size determinations, which are substantively identical. Size Determination No. 06-2020-003 addressed the protest filed by Mirage, and Size Determination No. 06-2020-004 addressed the NMS protest. For convenience, citations herein are to Size Determination No. 06-2020-003.

<sup>2</sup> On appeal, Appellant does not dispute that it is affiliated with CM, CSCH, C60th, CHS, CLA, CFS, and COT, so further discussion of these affiliates is unnecessary. *E.g., Size Appeal of Env't'l Restoration, LLC*, SBA No. SIZ-5395, at 6 (2012) (when issue is not appealed, the area office's determination “remains the final decision of the SBA.”).

The Area Office turned to the question of identity of interest through familial relationships. (*Id.* at 9-13.) The Area Office observed that Don Beaumont and Hunter Beaumont are father and son and that they are co-owners of CGP. (*Id.* at 10.) Don Beaumont controls NBMI, which Appellant proposed as a subcontractor for the instant procurement. (*Id.*)

The Area Office found that, since 2013, NBMI has “furnished [Appellant] and CM with contracts” and has “allowed Hunter [Beaumont] numerous opportunities for professional development.” (*Id.*) Appellant represented that it has not worked on any contracts with NBMI since 2017, although the instant procurement would constitute “an exception.” (*Id.*)

Applying 13 C.F.R. § 121.103(f), the Area Office presumed that Appellant is affiliated with NBMI due to the parent/child relationship between Don Beaumont and Hunter Beaumont. (*Id.*) The Area Office then considered whether Appellant had established a clear line of fracture between itself and NBMI. (*Id.* at 10-11.) The Area Office reviewed the information presented in Appellant's November 19, 2019 letter. (*Id.* at 11.) In addition, Appellant highlighted that Hunter Beaumont was not an employee, officer, principal, manager, or key employee of NBMI; that Hunter Beaumont has never held an ownership interest in NBMI; and that, between the years 2013 and 2016, Hunter Beaumont worked as an independent contractor to NBMI on various projects for little, if any, compensation, so as to obtain experience in the industries in which NBMI operates. (*Id.*)

The Area Office found that Appellant did not show a clear line of fracture. Hunter Beaumont and Don Beaumont are “not estranged,” as evidenced by their common investment in CGP; Appellant's proposal of NBMI as a subcontractor for the instant procurement; and the fact that Hunter Beaumont “has performed on contracts with his father (and for NBMI) for several years, even before the formal establishment of [Appellant] as an LLC.” (*Id.* at 12.) Although Appellant contended that Appellant and NBMI have different customers, the Area Office found this argument “unconvincing,” as the two companies would be performing the instant contract for “the same customer, USMS.” (*Id.*)

The Area Office noted that, although Appellant claimed that it received no financial assistance from NBMI, Appellant's letter of November 19, 2019 disclosed that “in April 2018, less than a year after [Appellant] was formally established as an LLC, NBMI provided [Appellant] with a loan.” (*Id.*) The Area Office considered financial assistance through loans “an indication that the two entities lack a clear line of fracture.” (*Id.*)

The Area Office rejected Appellant's assertions that it does not share employees or facilities with NBMI. (*Id.*) Appellant's proposal stated that, upon award of the contract, Mr. Anderson, a current NBMI employee with the title “National Seized Asset Manager,” would be retained by Appellant, either as a consultant or as an employee of Appellant. (*Id.*) Appellant's proposal also referred to the use of NBMI's facilities. (*Id.*)

The Area Office concluded that, under 13 C.F.R. § 121.103(f), the two Beaumonts, as parent/child, are presumed to act in unison, for their mutual benefit. (*Id.* at 13.) Appellant did not rebut the presumption of identity of interest, as Hunter Beaumont and Don Beaumont “have an established, on-going relationship and the two family members are involved with each other's

business affairs.” (*Id.*) Hunter Beaumont and Don Beaumont together have the power to control both Appellant and NBMI, and therefore, Appellant and NBMI are affiliated. (*Id.*)

The Area Office considered whether Appellant is affiliated with NBMI under the newly-organized concern rule, 13 C.F.R. § 121.103(g). (*Id.* at 13-15.) The Area Office found that several elements of the rule are met, as Appellant is a relatively new company, Appellant and NBMI “are in related lines of business,” and Don Beaumont/NBMI provided Hunter Beaumont/Appellant “contracts and/or technical assistance.” (*Id.* at 14.) However, because Hunter Beaumont is not a current or former officer, director, owner, managing member, or key employee of NBMI, the newly-organized concern rule does not apply. (*Id.* at 15.)

The Area Office agreed with the protesters that there is “strong evidence” that Appellant is affiliated with NBMI through the ostensible subcontractor rule, 13 C.F.R. § 121.103(h)(4). (*Id.*) The Area Office declined to further explore this issue, however, because it had already determined that Appellant is affiliated with NBMI through identity of interest. (*Id.*)

The Area Office found that Appellant's own receipts do not exceed the size standard. (*Id.* at 16.) Once Appellant's receipts are combined with those of its affiliates (CM, CSCH, C60th, CHS, CLA, CFS, COT, and NBMI), though, Appellant is not a small business. (*Id.*)

#### F. Appeal

On December 4, 2019, Appellant filed the instant appeal. Appellant argues that the Area Office “did not understand the solicitation and the awarded contract.” (Appeal at 2.) Although the Area Office “treated the analysis of a subcontractor as a directed or approved source by the agency,” the RFQ did not require that USMS approve subcontractors. (*Id.*) Further, Appellant “is not using any subcontractors to perform the contract.” (*Id.*)

Appellant insists that it “has the right under the solicitation and contract to use any subcontractor to perform the contract.” (*Id.*) There is a clear line of fracture between Appellant and NBMI “because [Appellant] is not obligated to subcontract with NBMI.” (*Id.*) Indeed, “[Appellant] has decided not to use NBMI as a subcontractor on this contract or any other contract during this period.” (*Id.*)

Appellant argues that the Area Office “based [its] decision on the fact that NBMI would be needed as a subcontractor or that [Appellant and NBMI] were doing work together on this contract.” (*Id.* at 3.) There is, however, nothing in the RFQ that required Appellant to partner with NBMI, nor any formal subcontract. (*Id.* at 2.) As of June 4, 2019, the date to determine size, “[n]o legal connection existed between [Appellant] and NBMI.” (*Id.*) Appellant reiterates that it “has decided to perform one hundred percent of the contract without NBMI or any other subcontractors.” (*Id.* at 3.)

Appellant contends that there is a clear line of fracture between Appellant and NBMI. Under OHA precedent, a clear line of fracture may be found when there is only a “minimal amount of economic or business activity between two concerns.” (*Id.*, quoting *Size Appeal of RGB Group, Inc.*, SBA No. SIZ-5351, at 7 (2012).) Here, “NBMI will not be a subcontractor on

the contract for the National Vessel Services contract. [Appellant] will solely be performing the prime contract on its own. [Appellant] will not subcontract the remaining work to other vendors.” (*Id.*)

Appellant also contends that it could not be found affiliated with NBMI through economic dependence. The Area Office made no findings to suggest that Appellant derives the large majority of its revenues from NBMI. (*Id.* at 5-6.)

Appellant concludes that the size determinations are erroneous because there is “no actual subcontract or written agreement between [Appellant] and NBMI.” (*Id.* at 6.) Contrary to the size determinations, Appellant does not need NBMI to perform the instant contract, and Appellant has “made a clear fracture of the relationship by not using NBMI as a subcontractor.” (*Id.*)

#### G. NMS's Response

On December 20, 2019, NMS responded to the appeal. NMS contends that the Area Office correctly found that Appellant is affiliated with NBMI through identity of interest. Therefore, the appeal should be denied.

NMS reviewed the facts as discussed in the size determinations. (NMS Response at 2-3.) The Area Office found that “NBMI has furnished [Appellant] and other entities controlled by Hunter Beaumont with contracts and ‘numerous opportunities for professional development.’” (*Id.* at 2, quoting Size Determinations at 10.) NBMI loaned money to Appellant during 2018, and Hunter Beaumont and Don Beaumont jointly invest in CGP. (*Id.* at 3.) For the instant procurement, Appellant proposed to use NBMI as a subcontractor or teaming partner, and proposed to retain NBMI's National Seized Asset Manager as a consultant or employee. (*Id.*) Further, “[Appellant's] proposal also stated that it would utilize NBMI's vessel storage facility to meet contract requirements.” (*Id.*)

Given these facts, the Area Office properly concluded that Appellant did not demonstrate a clear line of fracture to rebut the presumption of affiliation based on the parent/child relationship. (*Id.* at 4.) Hunter Beaumont and Don Beaumont plainly are not estranged, and there have been significant business connections between the Beaumonts and their respective companies, much of which either is still ongoing or was ongoing as of the date of the determine size. (*Id.*) “Thus, far from being estranged, the facts discovered by the Area Office conclusively demonstrate that Hunter and Don Beaumont have been and continue to be intimately involved with each other's businesses.” (*Id.* at 5.)

Lastly, Appellant's argument that it no longer plans to utilize NBMI as a subcontractor for the instant contract is irrelevant, because SBA determines the size status of a concern, including its affiliates, as of the date the concern submits its written self-certification that it is small as part of its initial offer which includes price. (*Id.*, citing 13 C.F.R. § 121.404(a).) Here, Appellant submitted its proposal on June 4, 2019, and SBA must assess Appellant's size as of this date. (*Id.*) As of June 4, 2019, Appellant “did in fact propose to utilize NBMI as a team member or subcontractor in its proposal,” and Appellant likewise “also proposed to use NBMI's facilities and NBMI's National Seized Asset Manager to perform the contract.” (*Id.*) Appellant



cannot now escape from the representations it made in its proposal by disclaiming any involvement by NBMI in contract performance. (*Id.*) Moreover, even if it were true that NBMI will not be involved in the instant procurement, Appellant still could not establish a clear line of fracture, because the Area Office demonstrated an extensive business relationship between Hunter Beaumont and Don Beaumont that has been continuous since 2013 and is ongoing. (*Id.*)

#### H. Mirage's Response

On December 20, 2019, Mirage responded to the appeal. Mirage opposes the appeal and contends that Appellant is “nothing more than a straw company” used by NBMI to submit a bid for instant procurement. (Mirage Response at 1.) Mirage contends that Appellant's proposal “reads more like a resume for Mr. Don Beaumont and NBMI than it does for [Appellant].” (*Id.* at 2.) Mirage questions whether Hunter Beaumont and Appellant have adequate experience to perform the contract. (*Id.*)

Mirage attacks Appellant's claim that there is no subcontract, joint venture, or teaming agreement between Appellant and NBMI as “patently false and nonsensical.” (*Id.* at 2-3.) According to Mirage, Appellant relies upon “NBMI facilities, employees, equipment, trucks, [] and contractors” for the instant procurement. (*Id.* at 3.) Further, Appellant itself “does not own any trucks, trailers, lifts, cranes, cradles, jacks, stands, tools or even a *broom* to service the [USMS] contract.” (*Id.*, emphasis Mirage's.)

Mirage argues that Appellant's contention of a clear line of fracture between Appellant and NBMI is contradicted by NBMI's involvement on the instant procurement. (*Id.* at 3-4.) Mirage reiterates its view that Appellant is “using the NBMI facility, NBMI equipment, NBMI trucks, NBMI trailers, NBMI boat stands, NBMI offices, NBMI employees, NBMI sub contractors, etc.,” so there clearly is no clear line of fracture. (*Id.* at 4.)

### 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 that the size determinations are based upon a clear error of fact or law. 13 C.F.R. § 134.314. OHA will disturb an area office's size determination only if, after reviewing the record, the administrative judge has a definite and firm conviction that the area office erred in making its key findings of fact or law. *Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 11 (2006).

#### B. Analysis

The issue presented here is whether the Area Office correctly found Appellant and NBMI affiliated through familial identity of interest. SBA regulations provide that:

Firms owned or controlled by married couples, parties to a civil union, parents, children, and siblings are presumed to be affiliated with each other if they

conduct business with each other, such as subcontracts or joint ventures or share or provide loans, resources, equipment, locations or employees with one another. This presumption may be overcome by showing a clear line of fracture between the concerns.

13 C.F.R. § 121.103(f)(1).

In determining whether a clear line of fracture has been established, OHA has explained that “[a] clear line of fracture exists if the family members have no business relationship or involvement with each other’s business concerns, or the family members are estranged.” *Size Appeal of RGB Group, Inc.*, SBA No. SIZ-5351, at 7 (2012); *Size Appeal of Hal Hays Constr., Inc.*, SBA No. SIZ-5217, at 6 (2011). However, a minimal amount of business or economic activity between two concerns does not prevent a finding of clear fracture. *Size Appeal of GPA Techs., Inc.*, SBA No. SIZ-5307, at 6 (2011). Factors that may be relevant in examining clear line of fracture include “whether the firms share officers, employees, facilities, or equipment; whether the firms have different customers and lines of business; whether there is financial assistance, loans, or significant subcontracting between the firms; and whether the family members participate in multiple businesses together.” *Size Appeal of Trailboss Enterprises, Inc.*, SBA No. SIZ-5442, at 5 (2013), *recons. denied*, SBA No. SIZ-5450 (2013) (PFR). In addition, “it is pertinent to a clear fracture analysis if the firms in question continue to subcontract with each other and one proposes the other as a subcontractor on the subject contract.” *Size Appeal of ProSol Assocs., LLC*, SBA No. SIZ-5813, at 7 (2017). OHA has recognized that, when the concerns in question “propose to continue to work together on the contract at issue,” this “almost mandates the finding of no clear fracture.” *Size Appeal of Megen-AWA 2, LLC*, SBA No. SIZ-5845, at 9 (2017), *recons. denied*, SBA No. SIZ-5852 (2017) (PFR).

In the instant case, the Area Office found that Don Beaumont and Hunter Beaumont are father and son, and that Hunter Beaumont controls Appellant while Don Beaumont controls NBMI. Section II.E, *supra*. The Area Office further identified business connections between the two Beaumonts and their respective firms. *Id.* As a result, the Area Office presumed that Appellant is affiliated with NBMI under 13 C.F.R. § 121.103(f)(1). The Area Office offered Appellant an opportunity to rebut this presumption, and the burden shifted to Appellant to demonstrate a clear line of fracture.

Based on the information Appellant provided, the Area Office reasonably determined that Appellant did not show a clear line of fracture. The record before the Area Office established that Appellant proposed to use NBMI as a subcontractor or teaming partner for the instant procurement; that Appellant proposed to lease and utilize NBMI’s vessel storage facility to meet contract requirements; that Appellant proposed to retain NBMI’s National Seized Asset Manager, Mr. Anderson, as a consultant or employee for the contract; that Hunter Beaumont and Don Beaumont jointly invest and participate in CGP; that NBMI loaned money to Appellant during 2018; and that, over the course of several years, NBMI furnished Appellant and other entities controlled by Hunter Beaumont with contracts and numerous opportunities for professional development. Sections II.B and II.D, *supra*. Thus, the Area Office could properly conclude that Hunter Beaumont and Don Beaumont are not estranged, and that the business dealings between the Beaumonts, Appellant, and NBMI are more than *de minimis*. It is worth noting that, pursuant

to the OHA precedent discussed above, Appellant's proposed use of NBMI as a subcontractor or teaming partner for the instant procurement is, by itself, a strong indication that there is no clear line of fracture.

In seeking to overturn the size determinations, Appellant contends that it has now decided not to use NBMI as a subcontractor on this contract. Section II.F, *supra*. This argument fails because, under 13 C.F.R. § 121.404(a), SBA determines the size status of a concern, including its affiliates, as of the date the concern submits a written self-certification that it is small as part of its initial offer including price. Applying this rule, OHA has repeatedly held that events occurring after the date to determine size are not relevant in a size determination. *E.g.*, *Size Appeal of Precision Asset Mgmt. Corp., et al.*, SBA No. SIZ-5781, at 7 (2016), *recons. denied*, SBA No. SIZ-5801 (2017) (PFR); *Size Appeal of Tactical Micro, Inc.*, SBA No. SIZ-5646, at 11 (2015); *Size Appeal of Brown & Pipkins LLC*, SBA No. SIZ-5621, at 7 (2014). Here, Appellant submitted its proposal self-certifying as small on June 4, 2019, and the Area Office examined Appellant's size as of this date. Section II.E, *supra*. As of June 4, 2019, Appellant's proposal made clear that Appellant did intend to utilize NBMI as a subcontractor or teaming partner for the subject procurement. Section II.B, *supra*. Similarly, in its communications with the Area Office during the size review, Appellant represented that it planned to subcontract a substantial portion of the instant procurement to NBMI. Section II.D, *supra*. While it may be true that Appellant no longer intends to utilize NBMI as a subcontractor, this change of approach occurred after June 4, 2019 and thus does not affect whether Appellant qualified as a small business as of June 4, 2019.

Appellant also argues, citing *GPA Techs.*, that its business ties with Don Beaumont and NBMI have been minimal. This contention, though, is not supported by the record. Appellant's proposal for the instant procurement, for example, not only identified NBMI as one of Appellant's two "teaming partners," but also expressly proposed that Appellant would "lease and utilize NBMI's current facility," and stated that Appellant would involve Don Beaumont as "both a consultant and teaming partner (via NBMI)." Section II.B, *supra*.

Lastly, Appellant maintains that the Area Office made no factual findings to suggest that Appellant is affiliated with NBMI through economic dependence. While Appellant is correct that economic dependence was not discussed in the size determinations, economic dependence and familial relationships are separate grounds to find affiliation through identity of interest, and it is not necessary that both of these circumstances be present in any given case. *Compare* 13 C.F.R. § 121.103(f)(1) and (f)(2). Here, the protesters did not allege affiliation through economic dependence, and the Area Office likewise did not explore this issue in the size determinations. Rather, the Area Office focused on the parent/child relationship between Hunter Beaumont and Don Beaumont, and whether Appellant had established a clear line of fracture.

IV. Conclusion

Appellant has not shown clear error in the size determinations. The appeal therefore is DENIED and the size determinations are AFFIRMED. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

KENNETH M. HYDE  
Administrative Judge