

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

SIZE APPEAL OF:

Rigid Constructors, LLC,

Appellant,

Appealed From
Size Determination No. 05-2022-031

SBA No. SIZ-6193

Decided: February 24, 2023

APPEARANCES

Eric B. Landry, Esq., Murphy J. Foster, III., Esq., Breazeale, Sachse & Wilson, L.L.P.,
Baton Rouge, Louisiana, for Appellant

DECISION¹

I. Introduction and Jurisdiction

On October 7, 2022, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area V (Area Office) issued Size Determination No. 05-2022-031, concluding that Rigid Constructors, LLC (Appellant) is not a small business. The Area Office found that Appellant did not produce all requested financial information, and therefore drew an adverse inference that the missing information would have shown that Appellant is not small. For the reasons discussed *infra*, 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 timely filed the instant appeal on October 24, 2022.² Accordingly, this matter is properly before OHA for decision.

¹ This decision was originally issued under the confidential treatment provision of 13 C.F.R. § 134.205. Pursuant to 13 C.F.R. § 134.205, OHA afforded Appellant an opportunity to file a request for redactions if desired. No redactions were requested, and OHA therefore now issues the entire decision for public release.

² Ordinarily, a size appeal must be filed within 15 calendar days of receipt of the size determination. 13 C.F.R. § 134.304(a). Here, Appellant received the size determination on October 7, 2022. Fifteen calendar days after October 7, 2022 was October 22, 2022. Because October 22, 2022 was a Saturday, the appeal petition was due on the next business day: Monday, October 24, 2022. 13 C.F.R. § 134.202(d)(1)(ii).

II. Background

A. The IFB

On July 22, 2022, the U.S. Army Corps of Engineers issued Invitation for Bids (IFB) No. W912EE22B0007 for bank stabilization on the Red River in Shreveport, Louisiana. (IFB at 1.) The IFB stated that the contractor will:

furnish[] all plant, labor, materials and equipment, and construct[] the bank stabilization on the Red River in Shreveport, Caddo Parish, Louisiana. Principal features of the work include mobilization and demobilization, clearing and grubbing, demolition of existing timber pile dikes, R200 Stone - longitudinal stone dike, stone bank paving, and environmental protection.

(*Id.*) The IFB contemplated the award of a single firm-fixed-price contract with an estimated value between \$1 million and \$5 million. (*Id.* at 4.) The Contracting Officer (CO) set aside the procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 237990, Other Heavy and Civil Engineering Construction, with a corresponding size standard of \$39.5 million average annual receipts. (*Id.*) Appellant and Riverside Construction Co., Inc. (Riverside) submitted timely bids.

B. Protest

Bids were opened on August 31, 2022, and the CO announced that Appellant was the apparent awardee. On the same date, Riverside filed a protest challenging Appellant's size. Riverside maintained that Appellant has been awarded “a lot” of work in recent years, and as a result, its revenue likely exceeds the threshold to be considered a small business. (Protest at 3.) Furthermore, Riverside contended, both Appellant and its owner, Mr. Cody Fortier, are under FBI investigation stemming from alleged falsification of documents. (*Id.* at 3, 6.)

Riverside alleged that Appellant is affiliated with at least 37 other concerns through common ownership, common management, and/or contractual relationships. (*Id.* at 5-6.) According to public records from the Louisiana Secretary of State, Mr. Fortier is an “Owner, Shareholder, Stakeholder, Agent, Manager, Partner, [or] Member” of these concerns. (*Id.*) Riverside also cited to *Matter of CF, LLC*, Docket No. 2:19-CV-00154, as evidence that Mr. Fortier also may exercise control over another concern, LeBlanc Marine, LLC, through contractual relationships with that firm. (*Id.* at 4-5.) Riverside urged that the Area Office should obtain the federal income tax returns for Mr. Fortier and for all alleged affiliates. (*Id.* at 6.) The CO forwarded the protest to the Area Office for review.

C. Area Office Proceedings

On September 7, 2022, the Area Office provided Appellant a copy of the size protest and listed the 38 alleged affiliates identified in Riverside's protest. (Letter from M. Fagley to C.

Fortier (Sept. 7, 2022), at 1-2.) The Area Office requested that Appellant respond to the protest allegations; explain its relationship with all alleged affiliates; provide a completed SBA Form 355 as of August 31, 2022, the date of bid opening; submit a list of any subcontractors that will be utilized for the instant procurement; and provide “[c]omplete financial statements and Federal income tax returns for the last five completed fiscal years for [Appellant], and all affiliates.” (*Id.* at 2-3 (emphasis Area Office's).)

The Area Office provided instructions for Appellant to electronically file the requested information and warned:

All documents **must be received by [the Area Office] within three working days after email delivery of this letter.** If you fail to submit the information within the specified time or obtain an extension, [the Area Office] will determine [Appellant] to be “other than small.”

(*Id.* at 3 (emphasis Area Office's).) On September 8, 2022, Appellant requested a 14-day extension to submit its response. (E-mail from E. Landry to M. Fagley (Sept. 8, 2022).) The Area Office denied the full extension but granted an extension until September 19, 2022. (E-mail from M. Fagley to E. Landry (Sept. 8, 2022).) On September 13, 2022, the Area Office sent an e-mail to Appellant confirming that the date to determine size is August 31, 2022, the date that bids were opened, and that fiscal years 2017 — 2021 would be utilized in assessing whether Appellant is small. (E-mail from M. Fagley to E. Landry (Sept. 13, 2022).) On September 15, 2022, the Area Office invited Appellant's counsel to contact the Area Office to ask questions. (E-mail from M. Fagley to E. Landry (Sept. 15, 2022).) On September 19, 2022, in response to an inquiry from Appellant about the methodology for calculating receipts, the Area Office replied “just send all of the tax returns and financial documents and we will do the calculations.” (E-mail from M. Fagley to E. Landry (Sept. 19, 2022).)

On September 19, 2022, Appellant responded to the protest, but in an accompanying e-mail to the Area Office, Appellant stated:

The tax returns for 2020 and 2021 with respect to certain entities and individuals have not yet been completed. We have provided annual receipts for those persons/entities for those time periods. Just want to provide that explanation regarding the absence of those tax returns.

(E-mail from E. Landry to M. Fagley (Sept. 19, 2022).) In Appellant's response to the protest, Appellant maintained that it is an eligible small business under the size standard associated with the instant procurement. (Protest Response at 1.) Appellant stated that it is a limited liability company established in the state of Louisiana on May 14, 2014. (*Id.*) Appellant currently is 50% owned by CF, LLC and 50% owned by Settoon Acquisition, LLC. CF, LLC is wholly-owned by Mr. Fortier. (*Id.*) Settoon Acquisition, LLC is wholly-owned by Settoon Capital, LLC, which in turn is wholly-owned by Mr. Russ Settoon. (*Id.*) Mr. Fortier is Appellant's Manager. (*Id.*) Appellant's Board of Directors is comprised of four individuals, including Mr. Fortier and Mr. Settoon. (*Id.*)

Appellant acknowledged that it is affiliated with many of the concerns identified by Riverside. Appellant conceded affiliation with the following 25 firms: B & C Aviation, LLC; Blue Iron Development LLC; Blue Water Group LA, LLC; CF, LLC; CKB Development, LLP; Cody Fortier Equipment, L.L.C.; Cody Fortier Farms, L.L.C.; Codyland, LLC; FCF Farms, LLC; Fortier Investments, LLC; Industrial One, LLC; Neely's Landing, LLC; One Industrial, LLC; Patriot Real Estate Holding, L.L.C.; Red Hawk Group, LLC; Red Hawk Materials, L.L.C.; Revolution Development, LLC; Revolution Marine, LLC; Rigid Aviation, LLC; Rigid Incentive, LLC; Rigid Services, LLC; Rigid Transportation, LLC; RSCF, LLC; The Southern Stone Company, LLC; and West LA AGG Materials, LLC. (Protest Response, Exh. A.)

Appellant also provided a list of 11 additional acknowledged affiliates: Settoon Acquisition, LLC; Settoon Capital, LLC; RAS Holdings, LLC; RAS Holdings, Children's Trust; Muddy Bayou, L.L.C.; Crude Carriers, LLC; Settco Management LLC; Settoon Properties, L.L.C.; Belle River Sites, Inc.; Churchill Development, LLC; and RSCF, LLC. (Protest Response, Exh. B.)

Appellant denied that it is currently affiliated with the following entities: Patriot Construction & Industrial, LLC; Patriot Construction and Equipment, LLC; Urban Ventures, LLC; Wolf Prairie Farms, LLC; LeBlanc Marine, LLC; Five S Group, L.L.C.; Five S Materials, LLC; Dominion Group, LLC; Patriot Marine Equipment, LLC; U.S. Industrial Holdings, LLC; and LGC. (Protest Response, Exh. A.) Appellant also denied Riverside's "unfounded and defamatory" allegations regarding a potential FBI investigation. (Protest Response at 2.)

Appellant maintained that, of its acknowledged affiliates, 23 had no revenues during fiscal years 2017-2021: B & C Aviation, LLC; Blue Iron Development, LLC; Blue Water Group LA, LLC; CF, LLC; Cody Fortier Equipment, L.L.C.; Cody Fortier Farms, L.L.C.; Codyland, LLC; FCF Farms, LLC; Fortier Investments, LLC; Industrial One, LLC; Neely's Landing, LLC; One Industrial, LLC; Patriot Real Estate Holding, L.L.C.; Red Hawk Group, LLC; Red Hawk Materials, L.L.C.; Revolution Marine, LLC; Rigid Aviation, LLC; Rigid Incentive, LLC; Rigid Services, LLC; Rigid Transportation, LLC; RSCF, LLC; The Southern Stone Company, LLC; and West LA AGG Materials, LLC. (Protest Response, Exh. A.)

Appellant asserted that, even including Appellant's acknowledged affiliates, its average annual receipts do not exceed the size standard for the instant procurement. (Protest Response, Exh. C.) Specifically, according to Appellant, its own average annual receipts for 2017-2021 were \$23,635,425. (*Id.*) Appellant stated that it based these calculations on tax returns for 2017, 2018, and 2019 as well as "audits" for 2020 and 2021. (*Id.*) With regard to affiliates, Appellant offered calculations from 2018-2021 for nine concerns: RAS Holdings, LLC; RAS Holdings, Children's Trust; Muddy Bayou, L.L.C.; Crude Carriers, LLC; Settco Management LLC; Settoon Properties, L.L.C.; Belle River Sites, Inc.; Churchill Development, LLC; and Settoon Capital, LLC. (*Id.*) Appellant claimed that the average annual receipts for these affiliates between 2017-2021 was \$2,682,257. (*Id.*)

Accompanying its response, Appellant provided a list of acknowledged affiliates; tax returns for 2019 and 2020 for CKB Development, LLP; a tax return for 2020 for CF, LLC; Appellant's Operating Agreement dated May 10, 2022; Operating Agreements for Settoon

Acquisition, L.L.C. and RSCF LLC; redacted tax returns for RAS Holdings, LLC for 2018 and 2019; combined financial statements for Appellant and CF, LLC for 2020 and 2021; redacted tax returns for Russ and Jennifer Settoon for 2017-2020; and a partially-completed SBA Form 355 dated August 31, 2021. In the SBA Form 355, Appellant did not respond to any of the questions in Parts III, IV, or V, and instead included a handwritten note stating “see supporting documents for affiliate info.” (SBA Form 355, at 5-8.)

On October 5, 2022, the Area Office inquired whether Appellant intended to produce any 2021 tax returns, as no 2021 tax returns had been submitted for Appellant or any affiliates. (E-mail from S. Cyrway to E. Landry (Oct. 5, 2022).) SBA also instructed that Appellant provide unredacted versions of all previously-submitted tax returns by October 6, 2022. (*Id.*) In response, Appellant stated that Appellant and Mr. Fortier had not completed their respective tax returns for 2021. (E-mail from E. Landry to S. Cyrway (Oct. 6, 2022).)

D. Size Determination

On October 7, 2022, the Area Office issued Size Determination No. 05-2022-031, concluding that Appellant is not a small business. As a preliminary matter, the Area Office declined to review Riverside's allegations concerning the FBI investigation, because Riverside did not explain how any such alleged investigation relates to Appellant's size. (Size Determination at 4.)

Based on the information provided by Appellant in response to the protest, the Area Office found that Settoon Capital, LLC and CF, LLC own and control Appellant. (*Id.* at 7-8.) Furthermore, Appellant “admitted affiliation” with more than 20 of the concerns identified in the protest, as well as at least 11 additional concerns. (*Id.* at 7.) Appellant claimed that several of these acknowledged affiliates had no revenues during the past five years. (*Id.* at 7-8.) However, “[n]o tax returns were submitted for the above entities and no explanation was provided for the absence of the forms.” (*Id.* at 8.) For one of its acknowledged affiliates, RAS Holdings, LLC, Appellant submitted only tax returns that were “heavily redacted” and which therefore could not be meaningfully reviewed. (*Id.*) In addition, information Appellant submitted concerning another admitted affiliate, Patriot Real Estate Holding, LLC, contradicted Appellant's claim that the affiliate generated no revenues during the five-year period under review. (*Id.*) Appellant also maintained that, as of September 2022, “certain entities had not yet completed 2020 and 2021 federal tax returns,” but “[n]o information was provided as to why.” (*Id.* at 7, n.3.) In fact, Appellant never produced tax returns for 2021 for Appellant itself or for any affiliate. (*Id.* at 11.) The Area Office found that “[b]ecause of the lack of response from [Appellant], [the Area Office] cannot determine the size of [Appellant's] affiliates.” (*Id.*)

Using the information provided by Appellant, the Area Office performed an annual receipts calculation. (*Id.* at 11.) The Area Office found that, although the five-year average annual receipts for Appellant alone apparently do not exceed the size standard, the Area Office could not ascertain whether Appellant is small without the financial information for all of Appellant's affiliates. (*Id.*)

Having determined that Appellant did not submit all necessary information, the Area Office applied 13 C.F.R. § 121.1008(d) which provides:

If a concern whose size status is at issue fails to submit a completed SBA Form 355, responses to the allegations of the protest, or other requested information within the time allowed by SBA, or if it submits incomplete information, SBA may presume that disclosure of the information required by the form or other missing information would demonstrate that the concern is other than a small business. A concern whose size status is at issue must furnish information about its alleged affiliates to SBA, despite any third-party claims of privacy or confidentiality, because SBA will not disclose information obtained in the course of a size determination except as permitted by Federal law.

(*Id.* at 12.) OHA has utilized a three-factor test to determine whether an adverse inference is appropriate: (1) the information sought by the Area Office is relevant to an issue in the size determination, (2) there is a level of connection between the entity being protested and the entity the Area Office is seeking information from, and (3) the Area Office's request for information was specific. (*Id.* at 12, citing *Size Appeal of D & B Homecare, Inc.*, SBA No. SIZ-5096, at 2 (2009).)

In the instant case, all three elements of the adverse inference test are met. Appellant acknowledged affiliation with dozens of other concerns, the information in question “was necessary for [the Area Office] to perform the annual receipts calculation required by 13 C.F.R. § 121.104,” and the Area Office sent numerous “clearly articulated” requests to Appellant. (*Id.* at 13.) Accordingly, the Area Office found that Appellant is not a small business, due to Appellant's failure to furnish the requested federal tax returns of Appellant and all of Appellant's affiliates necessary for SBA to calculate size. (*Id.*)

E. Appeal

On October 24, 2022, Appellant filed the instant appeal. Appellant asserts that the Area Office erred by finding Appellant other than small.

Appellant contends, first, that when combined with its affiliates, Appellant's average annual receipts are below the \$39.5 million size standard. (Appeal at 6.) The Area Office itself agreed that Appellant, alone, is small, based on the information Appellant provided. (*Id.*) Although the Area Office faulted Appellant for not producing financial information for its affiliates, the Area Office overlooked that “[f]or many of the affiliates in question, there are no separate and complete financial statements and/or no completed tax returns.” (*Id.*) Because the requested “information and documentation do not exist,” the Area Office improperly drew an adverse inference. (*Id.*)

Next, Appellant maintains that the Area Office erred in its application of 13 C.F.R. § 121.104(a), which states in pertinent part:

(1) The Federal income tax return and any amendments filed with the IRS on or before the date of self-certification must be used to determine the size status of a concern. SBA will not use tax returns or amendments filed with the IRS after the initiation of a size determination.

(2) When a concern has not filed a Federal income tax return with the IRS for a fiscal year which must be included in the period of measurement, SBA will calculate the concern's annual receipts for that year using any other available information, such as the concern's regular books of account, audited financial statements, or information contained in an affidavit by a person with personal knowledge of the facts.

(*Id.* at 6-7.) In the instant case, as of the date of bid opening, the 2021 tax returns for Appellant and its owner, Mr. Fortier, were not filed. Although the 2021 tax returns have now been filed, SBA “regulations do not permit such returns to be used.” (*Id.* at 7.) Appellant also contends that income generated from its affiliates is captured on Schedule E of “Mr. Fortier's personal tax return or Mr. Settoon's personal tax return.” (*Id.*) Many of the affiliates are LLCs that are taxed as partnerships or disregarded entities and, consequently, may not be required to file their own separate tax returns. (*Id.* at 7-8.)

Appellant also addresses the Area Office's concern that Appellant provided only heavily-redacted tax returns for RAS Holdings, LLC and the Settoons. Appellant offers unredacted versions of these tax returns as new evidence on appeal. (*Id.* at 8.)

F. OHA's Request for Comments

On November 17, 2022, the CO informed OHA that the IFB had been “convert[ed] to a [Request for Proposals] for the purpose of entering into negotiations.” (E-mail from R. Screws (Nov. 16, 2022).) Furthermore, Appellant was excluded from such negotiations because Appellant “was previously determined to be ‘Other than a Small Business’ and is not eligible for award under this small business set-aside.” (*Id.*)

On November 17, 2022, OHA invited Appellant and other interested parties to submit comments as to whether the appeal had become moot, either in whole or in part. OHA explained that, under OHA precedent, “fundamental changes in a procurement may render a size appeal moot if the issues presented in the case are contract-specific.” (Request for Comments at 1, citing *Size Appeal of HAL-PE Assocs. Eng'g Servs., Inc.*, SBA No. SIZ-5374, at n.1 (2012) and *Size Appeal of Gallagher Transfer & Storage Co., Inc.*, SBA No. SIZ-4295, at 5 (1998).) Neither Appellant nor any other party responded to OHA's Request for Comments.

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 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 no merit to this appeal. As the Area Office correctly observed in the size determination, the proper period for computing Appellant's receipts is from 2017 through 2021, the “most recently completed 5 fiscal years” preceding August 31, 2022, the date of bid opening. 13 C.F.R. § 121.104(c)(1). OHA caselaw instructs that the “unavailability of a tax return for one or more years under review does not alter the period of measurement, but instead requires consideration of ‘other available information’ pursuant to 13 C.F.R. § 121.104(a)(2).” *Size Appeal of The Onyx-Urban Collaborative Joint Venture*, SBA No. SIZ-6157, at 5 (2022) (citing *Size Appeal of Teracore, Inc.*, SBA No. SIZ-5830, at 3 (2017); *Size Appeal of Williams Adley & Company — DC, LLP*, SBA No. SIZ-5341, at 4-6 (2012); and *Size Appeal of Educational Servs., Inc.*, SBA No. SIZ-4782, at 3 (2006)). Such “other available information” may include “the concern's regular books of account, audited financial statements, or information contained in an affidavit by a person with personal knowledge of the facts.” 13 C.F.R. § 121.104(a)(2). Accordingly, although Appellant maintained that Appellant and certain affiliates had not yet filed tax returns for 2020 or 2021 as of the time the size review was conducted in September 2022, this would not excuse Appellant's failure to produce other relevant information. In the absence of tax returns, the Area Office could have examined other available financial information for Appellant and its affiliates to determine average annual receipts.

In the instant case, the Area Office requested “[c]omplete financial statements and Federal income tax returns for the last five completed fiscal years for [Appellant], and all affiliates.” Section II.C, *supra*. The record reflects, however, that Appellant did not produce Federal income tax returns or sufficient “other available information,” like complete financial statements, for the Area Office to calculate the average annual receipts for all of Appellant's affiliates. *Id.* Instead, Appellant performed its own calculations of the receipts of some — but not all — of its acknowledged affiliates, and offered virtually no supporting financial information, like regular books of account, audited financial statements, or affidavits. *Id.*

In response to the protest, Appellant acknowledged affiliation with at least 35 other concerns. Section II.C, *supra*. Of these admitted affiliates, Appellant asserted that 23 had no revenues during fiscal years 2017-2021. *Id.* Appellant, though, did not provide evidence to substantiate this claim. *Id.* The Area Office found that, contrary to Appellant's contentions, at least one acknowledged affiliate, Patriot Real Estate Holdings, LLC, did generate revenue, as the personal tax returns for Appellant's owner, Mr. Fortier, revealed that he had received income from that affiliate during the timeframe in question. Section II.D, *supra*. Appellant provided some tax returns for another admitted affiliate, RAS Holdings, LLC, but those returns were heavily redacted and thus could not be meaningfully reviewed. *Id.* On October 5, 2022, the Area Office requested that Appellant submit unredacted tax returns in place of previously submitted redacted tax returns, and asked Appellant to explain why Appellant did not produce 2021 tax

returns for any entity. Section II.C, *supra*. Appellant failed to provide the requested documents to the Area Office. *Id.*

In sum, because the Area Office repeatedly, and properly, requested that Appellant produce unredacted tax returns or other financial information for Appellant and all affiliates, and Appellant failed to comply with these requests, the Area Office appropriately drew an adverse inference that the missing information would have shown that Appellant is not small. Sections II.C and II.D, *supra*. As the Area Office correctly recognized, all three elements of the adverse inference test are met here: (1) the requested information was relevant to the size determination, as it was essential for assessing Appellant's size; (2) the information was Appellant's own financial information or the financial information of Appellant's acknowledged affiliates; and (3) the Area Office clearly communicated to Appellant what specific information was required. Under these circumstances, I must find that there is no basis to disturb the adverse inference. OHA has held that “an adverse inference is justified when a concern, regardless of its subjective intentions, ‘submits incomplete information’ or ‘fail[s] to furnish requested information’”. *Onyx-Urban*, SBA No. SIZ-6157, at 5 (quoting *Size Appeal of Juliet Constr., LLC*, SBA No. SIZ-5974, at 8 (2018)).

On appeal, Appellant offers unredacted versions of tax returns for RAS Holdings, LLC and the Settoons, but this new evidence must be excluded from the record. Section II.E, *supra*. Appellant did not file a motion to introduce new evidence, as required by 13 C.F.R. § 134.308(a), and in any event, there is no good cause to admit the new evidence because unredacted versions of the tax returns could have been, but were not, provided to the Area Office during the size review. *E.g.*, *Size Appeal of TelaForce, LLC*, SBA No. SIZ-5970, at 11 (2018) (citing *Size Appeal of Fuel Cell Energy, Inc.*, SBA No. SIZ-5330 (2012) and *Size Appeal of Melton Sales & Service, Inc.*, SBA No. SIZ-5893 (2012)). The Area Office granted an extension for Appellant to provide financial information and tax returns and subsequently afforded Appellant additional time to produce unredacted versions of tax returns, but Appellant failed to provide the requested information to the Area Office. Section II.C, *supra*. Further, Appellant's claim that many of the admitted affiliates are limited liability companies and are not required to file separate tax returns is meritless. Section II.E, *supra*. As discussed above, an area office may consider “other available information” in the absence of a tax return. Accordingly, the purported lack of federal tax returns for certain entities was no excuse for Appellant to fail to produce financial information for all of Appellant's affiliates.

Lastly, it is worth noting that, apart from Appellant's failure to produce the requested tax returns or other financial records, Appellant also did not submit a completed SBA Form 355. Section II.C, *supra*. Specifically, Appellant did not respond to any of the questions in Parts III, IV, or V, as would have been necessary for the Area Office to have undertaken a comprehensive review of Appellant's size. *Id.* A complete SBA Form 355 was needed, for example, to determine whether Appellant has additional affiliates beyond those expressly acknowledged. The applicable regulations instruct that an adverse inference is warranted “[i]f a concern whose size status is at issue fails to submit a completed SBA Form 355.” 13 C.F.R. § 121.1008(d). Accordingly, Appellant's incomplete SBA Form 355 is a separate and independent ground upon which the Area Office might reasonably have drawn an adverse inference.

IV. Conclusion

Appellant has not shown clear error of fact or law in the size determination. The appeal therefore 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