

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

SIZE APPEAL OF:

AHNTECH, Inc.,

Appellant

RE: Tiya Support Services, LLC

Appealed From  
Size Determination No. 05-2024-029

SBA No. SIZ-6319

Decided: November 15, 2024

APPEARANCES

Ryan Osborne, Vice President, Ahntech, Inc., Los Altos, California

Jerome S. Gabig, Esq., Government Procurement Lawyer, LLC, Guntersville, Alabama,  
for Tiya Support Services, LLC

DECISION

I. Introduction and Jurisdiction

On September 11, 2024, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area V (Area Office) issued Size Determination No. 05-2024-029, dismissing a size protest filed by AHNTECH, Inc. (Appellant) against Tiya Support Services, LLC (Tiya Support). On appeal, Appellant maintains that the size determination is clearly erroneous, and requests that SBA's Office of Hearings and Appeals (OHA) reverse or remand. For the reasons discussed *infra*, the appeal is granted in part and denied in part.

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 15 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. The RFP

On March 28, 2024, the U.S. Army Corps of Engineers (USACE) issued Request for Proposals (RFP) No. W9123624R4005 for preventative and on-demand maintenance of Department of Defense Education Activity schools at Fort Campbell, Kentucky. (RFP at 12.)

The Contracting Officer (CO) set aside the procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 238220, Plumbing, Heating, and Air-Conditioning Contractors, with a corresponding size standard of \$19 million average annual receipts. (RFP, SF 1449.)

Initial offers were due April 15, 2024, and final proposal revisions were due August 9, 2024. (RFP, Amendment 0005.) Tiya Support submitted its final proposal on August 5, 2024. On August 26, 2024, the CO announced that Tiya Support was the apparent awardee.

### B. Protest

On August 30, 2024, Appellant, an unsuccessful offeror, timely filed a protest with the CO challenging Tiya Support's size. The protest alleged that Tiya Support is affiliated with Tiya Services, LLC (Tiya Services) and other concerns on multiple grounds. (Protest at 1.) The CO forwarded Appellant's protest to the Area Office for review.

Appellant first alleged that Tiya Support is affiliated with Tiya Services through common management and control. (*Id.* at 2.) Appellant explained that Tiya Support is a subsidiary of Keta Group, LLC (Keta). (*Id.*) Keta is a holding company owned by the Chitimacha Tribe of Louisiana. (*Id.*) Based on Keta's website, Appellant identified eight wholly-owned Keta subsidiaries: Tiya Support; Tiya Services; Tiya Solutions, LLC; Colorado Professional Resources, LLC; Keta Environmental and Infrastructure; Keta International, LLC; Keta Hospitality, LLC; and Keta Solutions, LLC. (*Id.*) Furthermore, based on information found on the System of Award Management (SAM), Appellant identified seven more potential affiliates: Tiya Vantage JV, LLC; Keta Sevan JV, LLC; Keta Environmental Services, LLC; Keta Technologies, LLC; Keta Logistics, LLC; Keta Transport LLC; and Keta Construction Company, Inc. (*Id.*) Appellant additionally noted three common managerial personnel of Tiya Support and Tiya Services. (*Id.* at 3.) Ben Hu and Erin O'Malley are listed as primary points-of-contact for both companies, and Colonel Michael Resty previously served as Vice President and Project Manager for Tiya Support and now works for Tiya Services. (*Id.*) Appellant alleged that Tiya Support and Tiya Services also share office space and personnel. (*Id.* at 5.) Accordingly, Appellant contended, the two companies are affiliated through common management. (*Id.*)

Appellant asserted that “[a]ffiliation may also arise when companies have identical or substantially identical business interests, particularly when operating in the same or related industries.” (*Id.*) In support, Appellant observed that many of Keta's subsidiaries share similar NAICS codes. (*Id.*) Next, Appellant argued that affiliation should be found based on the newly-organized concern rule due to Colonel Resty's positions at Tiya Support and Tiya Services. (*Id.* at 7-8.) Appellant also alleged that affiliation exists “based on Joint Ventures-Dependence on the Tribe and Sister Company.” (*Id.* at 8.) Because Tiya Support has no revenue and only one employee, and has not independently performed any contract within the last five years, Appellant alleged that Tiya Support likely must rely upon a subcontractor to perform the contract, in contravention of the ostensible subcontractor rule. (*Id.*) Appellant urged that USACE should “provide the [Area Office] with any relevant proposal submission information to assist in evaluating potential affiliation as an ostensible subcontractor.” (*Id.*) Lastly, Appellant contended that, under the totality of circumstances, affiliation should be found. (*Id.* at 8-9.)

### C. Size Determination

On September 11, 2024, the Area Office issued Size Determination No. 05-2024-029, dismissing Appellant's protest as nonspecific. The Area Office found that, according to Appellant's protest, Tiya Support ultimately is owned and controlled by an Indian tribe, the Chitimacha Tribe of Louisiana, and Tiya Support, by itself, is small. (Size Determination at 1-2.) SBA regulations at 13 C.F.R. § 121.103(b)(2)(ii) authorize exceptions to affiliation for concerns owned and controlled by Indian tribes, so Tiya Support cannot be considered affiliated with Keta, Tiya Services, or any of Keta's other subsidiaries. (*Id.* at 2.)

### D. Appeal

On September 17, 2024, Appellant timely appealed Size Determination No. 05-2024-029 to OHA. Appellant's appeal largely mirrors its size protest, claiming that the Area Office failed to adequately investigate its allegations. (Appeal at 1-3.) Appellant renews its contentions that Tiya Support is affiliated with Keta, Tiya Services, and other Keta subsidiaries through common management, identity of interest, the newly-organized concern rule, “Dependency on the Tribe and Sister Companies,” and/or the totality of circumstances. (*Id.*)

### E. Tiya Support's Response

On September 30, 2024, Tiya Support responded to the appeal. Tiya Support disputes each of Appellant's grounds for appeal and requests that OHA affirm the size determination. (Response at 1, 11.)

First, because Tiya Support is wholly-owned by an Indian tribe, Appellant's common management allegations must fail. (*Id.* at 2, citing 13 C.F.R. § 121.103(b)(2)(ii).) Likewise, in line with *Size Appeal of Roundhouse PBN, LLC*, SBA No. SIZ-5383 (2012), Appellant's identity of interest allegations are meritless as any economic ties would relate to the common management exempted from affiliation under 13 C.F.R. § 121.103(b)(2)(ii). (*Id.* at 3.) The newly-organized concern rule also recognizes an exception to affiliation for tribally-owned entities. (*Id.* at 6, citing 13 C.F.R. § 121.103(g).) Regardless, Tiya Support argues, the newly-organized concern rule has no bearing here because Tiya Support has been in operation since 2007, and none of the factors of the newly-organized concern test are present. (*Id.* at 4, 8.)

As for Appellant's “Dependency on the Tribe and Sister Companies” contention, Tiya Support claims that this allegation was not raised in the initial protest. (*Id.* at 8.) As such, this argument is not properly before OHA and should be dismissed. (*Id.*, citing *Size Appeal of Osprey-QGS, JV, LLC*, SBA No. SIZ-5636 (2015).) Furthermore, the only regulation Appellant references for this allegation is 13 C.F.R. § 121.103(h), which pertains to joint ventures. (*Id.*) Tiya Support, though, did not submit its proposal as a joint venture. (*Id.* at 8-9.)

Lastly, Tiya Support argues that there can be no affiliation based on the totality of circumstances. (*Id.* at 9.) Appellant's support for a totality of circumstances finding relies entirely on its other arguments, which are completely meritless. (*Id.* at 10.) Moreover, in *Roundhouse*

*PBN*, OHA rejected a totality of circumstances argument even though the companies “conduct[ed] themselves as if they are interchangeable,” since there was no other evidence, beyond that excluded by 13 C.F.R. § 121.103(b)(2)(ii), showing control. (*Id.*) Accordingly, OHA should deny the appeal. (*Id.* at 11.)

### 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 agree with Tiya Support that the Area Office correctly dismissed the bulk of Appellant's protest allegations as nonspecific. As the Area Office recognized, concerns that are owned and controlled by an Indian tribe are broadly excepted from affiliation with the tribe, and with any parent and sister companies. The regulations thus state:

(i) Business concerns owned and controlled by Indian Tribes, Alaska Native Corporations (ANCs) organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), Native Hawaiian Organizations (NHOs), Community Development Corporations (CDCs) authorized by 42 U.S.C. 9805, or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs are not considered affiliates of such entities.

(ii) Business concerns owned and controlled by Indian Tribes, ANCs, NHOs, CDCs, or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs, are not considered to be affiliated with other concerns owned by these entities because of their common ownership or common management. In addition, affiliation will not be found based upon the performance of common administrative services so long as adequate payment is provided for those services. Affiliation may be found for other reasons.

13 C.F.R. § 121.103(b)(2). OHA has distilled these provisions to mean that “a concern owned by an Indian tribe is not considered an affiliate of that tribe, and is not affiliated with other business entities owned by the tribe because of common ownership, common management, or the performance of common administrative services (as long as the services are paid for).” *Size Appeal of Cherokee Nation Healthcare Servs., Inc.*, SBA No. SIZ-5343, at 3 (2012).

In the instant case, Appellant's protest alleged that Tiya Support is affiliated with its parent company, Keta, and with sister companies, particularly Tiya Services, based on common

management, identity of interest, the newly-organized concern rule, the ostensible subcontractor rule, and/or the totality of circumstances. Section II.B, *supra*. There is no dispute, however, that Tiya Support, Keta, and Tiya Services are ultimately owned by the Chitimacha Tribe of Louisiana. Sections II.B-II.D, *supra*. Based on 13 C.F.R. § 121.103(b)(2)(i), then, Tiya Support cannot be affiliated with the Chitimacha Tribe of Louisiana, or with Keta, which is owned by the tribe. Similarly, under 13 C.F.R. § 121.103(b)(2)(ii), Tiya Support is not affiliated with Tiya Services or other sister companies through common management or common ownership. As such, the Area Office properly dismissed the portion of Appellant's protest concerning common management.

Although the Area Office did not elaborate as to its rationale for dismissing Appellant's allegations pertaining to the newly-organized concern rule and the identity of interest rule, the Area Office's decision nevertheless appears reasonable based on the record before it. Section II.C, *supra*. Tiya Support has been in operation since 2007 and thus is plainly not “newly-organized.” *Size Appeal of Coastal Mgmt. Sols., Inc.*, SBA No. SIZ-5281, at 6 (2011) (rejecting application of the newly-organized concern rule where the concern had been in active operation for more than six years). Moreover, Appellant failed to offer specific evidence or facts in support of this allegation. Section II.B, *supra*. The mere fact that Colonel Resty may previously have worked for Tiya Support before joining Tiya Services does not suggest that Tiya Support is a spin-off of Tiya Services, or *vice versa*. As for identity of interest, Appellant correctly observed that “[a]ffiliation may also arise when companies have identical or substantially identical business interests.” *Id.* In support, though, Appellant simply asserted that Tiya Support and its sister companies operate under the same or similar NAICS codes. *Id.* While this may be so, similarity of NAICS codes does not suggest that concerns' interests are substantially aligned. Accordingly, the Area Office properly dismissed these portions of Appellant's protest.

Nevertheless, although the Area Office did not err in concluding that most of Appellant's protest allegations were meritless, the protest also alleged, with supporting evidence, that Tiya Support will rely heavily on a subcontractor to perform the instant contract, in contravention of the ostensible subcontractor rule, 13 C.F.R. § 121.103(h)(3). Section II.B, *supra*. In this regard, Appellant alleged that, according to public information, Tiya Support has no revenue, only one employee, and has not independently performed any contract within the last five years. *Id.* Appellant asserted that Tiya Support will be dependent upon “an ostensible subcontractor,” and referenced “joint venture” affiliation.<sup>1</sup> In prior decisions, OHA has recognized that violation of the ostensible subcontractor rule may exist when the prime contractor is a concern owned and controlled by an Indian tribe, even if the alleged ostensible subcontractor also is owned and controlled by the same Indian tribe. *See, e.g., Size Appeal of C2 Alaska, LLC*, SBA No. SIZ-6149 (2022); *Cherokee Nation Healthcare Servs.*, SBA No. SIZ-5343, at 3-4.

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<sup>1</sup> Under SBA regulations, violation of the ostensible subcontractor rule results in the concerns being “treated as joint venturers for size determination purposes.” 13 C.F.R. § 121.103(h)(3).

As such, because Appellant set forth specific, factual grounds for why Tiya Support may be in violation of the ostensible subcontractor rule, the Area Office should have investigated whether Tiya Support will self-perform the primary and vital requirements of this contract, and whether Tiya Support will be unduly reliant upon a subcontractor. “OHA will remand a case for further review when an area office does not fully explore allegations raised in the underlying protest.” *Size Appeal of HealthVerity, Inc.*, SBA No. SIZ-6266, at 16 (2024) (quoting *Size Appeal of PDS Consultants, Inc.*, SBA No. SIZ-6107, at 5 (2021)); *see also Size Appeal of TelaForce, LLC*, SBA No. SIZ-5970, at 12 (2018); *Size Appeal of Veterans Constr. Coal., LLC*, SBA No. SIZ-5824, at 10 (2017). Such is the case here, as the Area Office did not adequately investigate Appellant's claim that Tiya Support may be affiliated with a subcontractor under the ostensible subcontractor rule, an allegation that was specifically raised in Appellant's protest. Remand therefore is appropriate.

#### IV. Conclusion

For the above reasons, the appeal is GRANTED with respect to whether Tiya Support may be affiliated with another concern under the ostensible subcontractor rule, and this question is REMANDED to the Area Office for further review. Appellant has not otherwise shown clear error in the size determination. I therefore DENY the appeal and AFFIRM the size determination with regard to all other findings.

KENNETH M. HYDE  
Administrative Judge