United States Small Business Administration
Office of Hearings and Appeals

SIZE APPEAL OF: GPA Technologies, Inc., Appellant, Appealed From Size Determination No. 6-2011-129	SBA NO. SIZ-5307 Decided: December 7, 2011

APPEARANCES

J. Scott Hommer, III, Esq., Rebecca E. Pearson, Esq., and Melanie Jones Totman, Esq., Venable LLP, for Appellant

DECISION

I. Introduction & Jurisdiction

The U.S. Small Business Administration (SBA) 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 filed the instant appeal within fifteen days of receiving the size determination. Thus, the appeal is timely, 13 C.F.R. § 134.304(a), and this matter is properly before OHA.

II. Background

A. The Request for a Size Determination

On November 24, 2008, the Naval Facilities Engineering Command Specialty Center Acquisitions Office in Port Hueneme, California (NAVFAC) issued Solicitation No. N62583-08-R-0064 for ocean engineering services in support of projects involving ocean cable systems, ocean work systems, waterfront facilities, hyperbaric facilities, offshore structures, moorings, and ocean construction equipment. The Contracting Officer (CO) set the procurement aside for small businesses and designated North American Industry Classification System (NAICS) code 541330 Engineering Services, with a corresponding size standard of $27 million in annual receipts. The solicitation contemplated the award of five multiple award, indefinite-quantity, indefinite-delivery contracts. Responses originally were due on January 12, 2009. On December 16, 2008, the CO issued Amendment 5, which extended the closing date to January 30, 2009. One of the awardees was GPA Technologies, Inc. (Appellant).

On March 18, 2011, Sound and Sea Technology, one of the other awardees, wrote to NAVFAC alleging Appellant is not eligible for future task orders. On August 22, 2011, the SBA Government Contracting Area VI Director requested that a size determination be performed on Appellant.[1] On September 12, 2011, the SBA Office of Government Contracting Area VI (Area Office) notified Appellant that its size was in question and requested that it submit a completed SBA Form 355, along with certain other information.

B. Size Determination

On October 3, 2011, the Area Office issued a size determination concluding Appellant is other than small. The Area Office first noted that it had previously found Appellant to be affiliated with Santa Barbara Applied Research, Inc. (SBAR) in a 2007 size determination performed on SBAR. That size determination found SBAR small under a $32.5 million annual receipts size standard for NAICS code 561210, Facilities Support Services. OHA affirmed this size determination in *Size Appeal of Hallmark-Phoenix, Joint Venture*, SBA No. SIZ-4870 (2007), although Appellant's affiliation with SBAR was not at issue on appeal.

The Area Office found that Appellant had self-certified for the subject procurement on January 30, 2009, and that it would thus determine Appellant's size as of that date. 13 C.F.R. § 121.404(a). The Area Office explained that Appellant was established on February 18, 1999. Michael I. Vaswani (Mr. Vaswani) is sole shareholder, president, secretary, and chief financial officer. Mr. Vaswani is also 50% owner and managing member of Hanabata Holding, LLC (Hanabata). Hanabata's other 50% member is his wife, Melanie Vaswani. The Area Office determined Appellant is affiliated with Hanabata.

The Area Office then explained that Grace Vaswani, the majority owner, president, and chief executive officer of SBAR, is Mr. Vaswani's sister (Ms. Vaswani). SBAR is other than small under the applicable size standard. The Area Office considered whether Mr. Vaswani and Ms. Vaswani should be considered to have an identity of interest due to their family relationship as brother and sister. 13 C.F.R. § 121.103(f). By January 2009, Appellant and SBAR were located in separate facilities in separate buildings, and the firms engaged in different lines of business with different customers. By January 2009, approximately 90% of Appellant's business was performed under NAICS code 541330, and it concentrates on support services for engineering contracts for the U.S. Department of the Navy (Navy). SBAR's work falls into scientific analysis, logistics support, and launch facilities maintenance for the U.S. Department of the Air Force (Air Force) and the National Aeronautics and Space Administration (NASA). Most of SBAR's work is performed under NAICS code 561210, Facilities Support Services.

The Area Office found that, for 2008 and 2009, Appellant had subcontracted a small portion of its work to SBAR. This work represented 4.5% of Appellant's 2008 revenue, and 4% of its 2009 revenue. This work represented less than 1% of SBAR's revenue for each year. Appellant asserted that it terminated this subcontract in February, 2011.

[1] The request for a size determination was not untimely because it came from the Area Director. 13 C.F.R. § 121.1004(b).

Appellant asserted it shared no employees with SBAR. Appellant did state that SBAR has separately hired employees who also worked for Appellant. According to Appellant, two of the five employees referenced in the 2007 size determination as shared employees were terminated in 2009. Nonetheless, some employees of Appellant and SBAR have overlapped. One employee worked full time for Appellant from 2004 to present as program manager. That employee also performed market research for SBAR on short projects for 169 hours in 2007, 15 hours in 2008, and 4 hours in 2009; he has been performing these projects for SBAR since 1998. A second employee has been employed by Appellant since 2002 and has performed for SBAR as a technical specialist for 681 hours in 2007, 653 hours in 2008, and 216 hours in 2009. Additionally, a third employee is a full time electrical technician for SBAR, but also has performed the same duties for Appellant for 326 hours in 2007, 1010 hours in 2008, and 247 hours in 2009. The Area Office further found that there was a consulting agreement under which SBAR provided contracts administration services to Appellant. This was a four-year contract, with a value of $144,000, under which an SBAR employee would provide 10 to 20 hours of work each month, under Mr. Vaswani's direction.

The Area Office next determined that Appellant and SBAR have no common ownership or management. The Area Office noted that both Mr. Vaswani and Ms. Vaswani submitted declarations in which they confirmed that, although they are not estranged, they are not involved in each other's business affairs.

The Area Office recognized that there was some evidence supporting a finding of a clear fracture between Mr. Vaswani and Ms. Vaswani, specifically that Appellant and SBAR operate in separate facilities, have different customers, and operate in different industries. Nevertheless, the Area Office concluded that continuous transactions between the firms could not support a finding of clear fracture. The firms had a history of subcontracting with each other until February 2011, had a consulting agreement until December 2010, and have had up to six common employees over the past five years. The Area Office inferred that there must be some coordination between Appellant and SBAR to enable a number of their employees to alternate work between the two firms. Furthermore, although the amount of subcontracting is not a large percentage of total revenues, the dollar amount is not immaterial, and it is an indicia of affiliation between the two firms.

The Area Office concluded that the consulting agreement, a history of subcontracting, and the use of “a large number” of common employees meant there is no clear fracture between the interests of Mr. Vaswani and Ms. Vaswani. Consequently, the Area Office found Appellant shares an identity of interest with SBAR, and Appellant is affiliated with SBAR. The Area Office noted that the combined average annual receipts of Appellant and Hanabata for the years 2006, 2007, and 2008 fall within the applicable size standard. However, when those receipts were aggregated with the receipts of SBAR, the Area Office determined that Appellant is other than small.

C. Appeal Petition

On October 18, 2011, Appellant filed the instant appeal. Appellant asserts the Area Office erred in not finding a clear fracture between Mr. Vaswani and Ms. Vaswani. Appellant

emphasizes that the Area Office found that Appellant and SBAR operate in separate facilities, have different customers, operate in different industries, have always had separate management, officers, and directors, and neither has ever received financial assistance from the other.

Appellant argues that the fact that it and SBAR have different facilities, different lines of business, and minimal common transactions illustrates that a clear fracture has taken place. Appellant emphasizes the differences between the two firms, in particular that Appellant's principal customer is the Navy, whereas SBAR's primary customers are the Air Force and NASA. Appellant asserts it and SBAR have intentionally removed the financial incentives to operate in unison that might exist should they contract in the same industry with the same customers.

Appellant stresses that it gave a firm negative response to the Area Office's inquiry as to whether either firm had ever received financial, technical, or bid bond assistance from the other. Appellant asserts the amount of subcontracting work between the two is not of the substantial amount that has led to findings of identity of interest in the past. *See Size Appeal of Jenn-Kans, Inc.*, SBA No. SIZ-5114 (2010).

Appellant further contends the Area Office erred in emphasizing the dollar value of the subcontracts between Appellant and SBAR, rather than small percentage of each firm's revenue those contracts represented. Appellant argues that OHA case law requires examination not of dollar value of contracts between firms, but of the percentage value of these contracts to the firms in question. *See Size Appeal of Bob Jones Realty Co.*, SBA No. SIZ-4059 (1995). Business entities whose shared subcontracts are a minor percentage of their overall revenues are not logically likely to act in concert. Appellant claims that the subcontracts between it and SBAR are so small a percentage of each firm's revenues that the contracts do not offer a basis on which to conclude that the two firms will act in unison.

Appellant also argues that the Area Office inaccurately assumed that Appellant and SBAR have coordinated to enable “a large number” of employees to alternate work between the two firms. Appellant asserts the Area Office mischaracterizes the number of employees. In the 2007 size determination, the Area Office found that five of Appellant's full time employees performed occasional part time work for SBAR, and one full time SBAR employee performed part time work for Appellant. At the time, Appellant had 66 employees, and SBAR had 502 employees. By January 30, 2009, SBAR had terminated two of Appellant's employees from their part time work. As of the date size is determined, only three of Appellant's employees performed some part time work for SBAR, and one of SBAR's employees performed some part time work for Appellant.

Appellant contends that the number of employees is actually not large, the amount of work performed is not significant, and none of the employees served in management roles. The hiring of part time specialized labor to perform limited hours of discrete work is common for service contractors. Appellant points out that OHA has determined that an employee of one firm performing specialized work for another does not prevent a finding of clear fracture. *See Size Appeal of Henderson Group Unlimited, Inc.*, SBA No. SIZ-5034 (2009). According to Appellant, the handful of overlapping employees does not create a dependence of one firm upon another

here, nor does it give one firm the power to control the other.

Appellant next argues the Area Office's finding that the consulting agreement represents proof of continuing contracting between the firms is contradicted by the record. Appellant denies that there is continuing contracting between the two firms. Appellant asserts that as of January 30, 2009, the SBAR employee spent only 10 to 20 hours a month providing contracts administration services to Appellant, and that work was performed under Mr. Vaswani's supervision. The SBAR employee had no ability to make business decisions, and this contract was terminated in December, 2010.

Appellant concludes by arguing that the Area Office's determination renders the clear fracture rule obsolete and renders meaningless the idea that a clear fracture can occur even though some relationship between family members and firms still exist. Neither firm here has the power to control the other, and they should not be found affiliated. Appellant requests that OHA reverse the size determination.

III. Discussion

A. Standard of Review

Appellant has the burden of proving, by a preponderance of the evidence, all elements of its appeal. Specifically, Appellant must prove the size determination is based on a clear error of fact or law. 13 C.F.R. § 134.314; *Size Appeal of Procedyne Corp.*, SBA No. SIZ-4354, at 4-5 (1999). OHA will disturb the size determination only if the administrative judge, after reviewing the record and pleadings, has a definite and firm conviction 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. Identity of Interest

SBA's regulations provide that concerns are affiliated when one controls or has the power to control the other. 13 C.F.R. § 121.103(a). “Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests ... such as family members ... may be treated as one party with such interests aggregated.” 13 C.F.R. § 121.103(f).

OHA's long-standing case precedent interprets this regulation as creating a rebuttable presumption that family members have identical interests and must be treated a one person. *See, e.g., Size Appeal of McLendon Acres, Inc.*, SBA No. SIZ-5222, at 6 (2011); *Size Appeal of Golden Bear Arborists, Inc.*, SBA No. SIZ-1899, at 7 (1984). The presumption arises, not from the degree of family members' involvement in each others' business affairs, but from the family relationship itself. *Size Appeal of Allied Safety and Envtl. Distributing, Inc.*, SBA No. SIZ-5209, at 4 (2011); *Size Appeal of Gallagher Transfer & Storage Co., Inc.*, SBA No. SIZ-4295, at 6 (1998). The concept is that the persons will, because of the commonality of their interests, act in concert or as one. *Size Appeal of DooleyMack Govt. Contracting, LLC*, SBA No. SIZ-5085, at 6 (2009); *Size Appeal of Bob Jones Realty Co.*, SBA No. SIZ-4059, at 5 (1995).

The presumption of affiliation may be rebutted with evidence showing that the interests deemed to be one are in fact separate. 13 C.F.R. § 121.103(f); *Bob Jones*, SIZ-4059, at 5. In order to rebut the presumption, the family members may show that they do not have an identity of interests, that they are estranged or not otherwise involved with each other's business affairs, and that there has been a clear line of fracture between them. *Size Appeal of Hal Hays Constr., Inc.*, SBA No. SIZ-5217, at 6 (2011).

The question then arises: how much separation between the businesses of family members constitutes a clear fracture? In *Size Appeal of Speegle Construction, Inc.*, SBA No. SIZ-5147 (2010), OHA held that there must be no business relationship or involvement between family members for a protested concern to prove clear fracture. *Speegle*, SIZ-5147, at 8 (citing *Size Appeal of Osirus, Inc.*, SBA No. SIZ-4546 (2003)). This has been followed in more recent OHA decisions. *See, e.g. Allied Safety and Envtl. Distributing*, SIZ-5209, at 4.

However, OHA has not always required that there be complete estrangement between the family members or no business relationship whatever between the firms to find a clear fracture. In the past, OHA has held that there can be a clear fracture even when there is still some relationship between family members or their firms. *Size Appeal of B.L. Harbert Int'l, LLC*, SBA No. SIZ-4525, at 10 (2002) ("The Administrative Judge rejects Appellant's position that rebuttal of the identity of interest presumption requires complete fracture from every single firm with which any family member has a connection."). In *Bob Jones*, the owner of the challenged firm had a 2.5% interest in and was the director of a bank of which his father was president and a director. OHA found that directors can and do act in opposition to each other and noted the two firms' different lines of business, different locations, and minimal transactions in finding a clear line of fracture between the firms. *Bob Jones*, SIZ-4059, at 5-6. In *Henderson Group*, concerns owned by half-brothers were found not affiliated despite having two existing contracts, occasional use of one firm's facilities by the other, and one employee of one firm who performed some work as needed for the other. This minimal degree of business activity between the firms did not suggest dependence, and OHA found a clear line of fracture between the firms. *Henderson Group*, SBA No. SIZ-5034, at 5-6.

A further examination reveals that *Osirus* does not stand for the principle that there must be no business contacts between the firms for there to be a clear fracture, as *Speegle* stated. Rather, in *Osirus* OHA held that family members could establish clear fracture by establishing that they were not involved in each other's business affairs. *Osirus*, SIZ-4546, at 5. In *Osirus*, the two family members were in identical lines of business and frequently contracted with each other. OHA found that in such a case, no clear line of fracture existed. *Id.* The case thus does not stand for the principle that there must be absolutely no business relationship between the family members and firms for there to be finding of clear fracture. This is consistent with the holdings in *Bob Jones, B.L. Harbert*, and *Henderson Group*.

I therefore conclude that *Speegle* was in error in holding that there must be no economic or business relationship whatever between the family members or their firms to establish a clear line of fracture. Instead, consistent with other OHA case law, I find that a minimal amount of economic or business activity between two concerns does not prevent a finding of clear fracture. As Appellant argues, a small amount of economic activity is not sufficient to create a

commonality of interests to make the firms act in concert or as one. This is in line with the principle laid down in *Golden Bear*, that the presumption of affiliation may be rebutted "[w]ith factors which would render the application of the regulation unjust or inequitable under the circumstances." *Golden Bear*, at 7.

Factors that have supported a finding of clear fracture include the firms having different facilities, having different locations, and being in different lines of business. *B.L. Harbert*, SIZ-4525, at 8 (citing *Bob Jones*, SIZ-4059; *Size Appeal of Maria Elena Torano & Assocs.*, SBA No. SIZ-4010 (1995)). Here, the size determination itself noted the factors that point to a clear fracture between Appellant and SBAR. The two firms "[o]perate in separate facilities, have different customers, and operate in different industries." (Size Determination 4.) The analysis in the size determination itself points strongly to a clear fracture. This analysis is supported by the record.

Mr. Vaswani has never had any ownership interest or any officer or director position in SBAR. Similarly, Ms. Vaswani has never had any ownership interest or any officer or director position in Appellant. The two firms have never shared officers or directors. The two firms are located in different facilities. Appellant has focused its work on support services for engineering contracts for the Navy. (Declaration of Michael Vaswani 3-4.) SBAR has focused its work on providing scientific analysis, logistics support, and launch facilities maintenance for the Air Force and NASA. (Declaration of Grace Vaswani 2-3.) Moreover, neither firm has ever given or received any financial, technical, or bid bond assistance from the other.

The Area Office nevertheless concluded there was no clear fracture because of "[c]ontinuous subcontracting, a history of consulting agreements, and the use of similar employees." (Size Determination 5.) The Area Office points to one subcontract for a small portion of the work on a contract to provide technical manuals and documentation. That subcontract represented 4 to 4.5% of Appellant's 2008-09 revenue,[2] and 1% of SBAR's revenue for the same period. The Area Office, however, focused instead on the dollar amount of the subcontract, which was over $400,000. The Area Office concluded the relatively small percentage of each firm's revenue did not prevent it from being an indicia of affiliation between the firms.

I disagree. The key concept of affiliation is whether one firm controls or has the power to control the other. 13 C.F.R. § 121.103(a)(1); *see also Size Appeal of LGS Mgmt., Inc.*, SBA No. SIZ-5160, at 3 (2010) ("[C]ontrol is always the principal question when addressing affiliation."). The concept behind affiliation based upon identity of interest is that the persons or entities in question will act in concert or as one because of their commonality of interests. *Bob Jones*, SIZ-4059, at 5. If the subcontracting between the concerns in question amounts to a small percentage of each firm's revenue, it provides little incentive for the firms to act in concert or as one, and it

[2] I note that both the Area Office and Appellant discussed aspects of Appellant's business subsequent to the date to determine size. Because the Area Office based its calculation of Appellant's size on the appropriate years (2006-2008), and because I am reversing the size determination, I need not consider whether this was erroneous.

offers no basis on which to conclude that one firm can control the other. *See Size Appeal of Manroy USA, LLC*, SBA No. SIZ-5244, at 3, 5 (2011) (finding no identity of interest where a common investment generated only a small portion of each party's revenues and noting "there is simply no evidence that [the challenged firm and its alleged affiliate] can control one another or that a third party can control both entities"); *Size Appeal of EA Eng'g, Science, and Tech., Inc.*, SBA No. SIZ-4973, at 10 (2008) (finding no identity of interest where the challenged firm derived less than 2% of its revenue from its alleged affiliate).

Accordingly, I conclude that a subcontracting relationship that represents only a small portion of each firm's business does not preclude a finding of clear fracture. This is especially so in the face of evidence that there is no common ownership or common management between the firms, that they have different facilities, and that they operate in different lines of business with different customers. This is consistent with the precedent in *Bob Jones* and *Henderson*, which found clear fracture between the firms at issue despite some minimal business involvement.

The same principle applies in analyzing the consulting agreement between Appellant and SBAR under which SBAR provided contract administration services to Appellant. SBAR provided Appellant with one employee for 10 to 20 hours a month. Mr. Vaswani supervised this employee and made all business decisions. (Declaration of Michael Vaswani 6-7.) Under this agreement, SBAR billed Appellant $24,000 a year (except for 2007, when it billed at $48,000). Again, this consulting agreement and the revenue produced by it are both sufficiently minor that it provides no incentive for the firms or the siblings to act in unison. This agreement does not represent a tie that would preclude a finding of clear fracture under the circumstances of this case and, again, is consistent with the precedent in *Bob Jones* and *Henderson*.

Finally, there is the question of the common employees. OHA has long recognized that shared employees can constitute evidence of affiliation. *See, e.g., Size Appeal of JRR Constr. Co.*, SBA No. SIZ-2024, at 5 (1984) (listing the "sharing of employees" as indicia of affiliation). However, in most cases where OHA has found shared employees to be indicative of affiliation, the common employees held important or key positions in both companies. *See Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-5049, at 7-9 (2009) (finding affiliation based upon the totality of the circumstances and an identity of interest in part because the challenged firm's owner was also a principal employee of the alleged affiliate); *Size Appeal of TTI/STL, Inc.*, SBA No. SIZ-3985, at 4 (1995) (finding an identity of interest where the challenged firm's founder was employed by the alleged affiliate and where the same person served as vice president of the challenged firm and vice president of the alleged affiliate); *Size Appeal of Barbara B.H. Skelton*, SBA No. SIZ-2534, at 4-5 (1986) (finding no identity of interest where the challenged firm's owner provided voluntary secretarial services to her husband's business). OHA has also explicitly noted that "the mere sharing of one or two employees does not create affiliation" especially "where the employees themselves have not been officers or directors of either company." *Size Appeal of The Emmes Corp.*, SBA No. SIZ-3730, at 13 (1993) (finding affiliation between a university and a firm owned by university faculty where that firm performed research consulting services similar to those performed by the university).

Here, in its responses to questions from the Area Office, Appellant provided a chart showing six individuals who worked as employees at both Appellant and SBAR in the years

preceding certification. Four of Appellant's full-time employees performed some part time work for SBAR. Only one of these employees performed more than 300 hours work for SBAR in any year, and two were no longer working for SBAR at the date of certification. One full-time SBAR employee performed part time work for Appellant, and one individual worked part time for both firms. Two of Appellant's employees are program managers. None of the other employees hold managerial or supervisory positions. Rather, the employees were in such fields as electrical technician, engineer, customer liaison, and market research. Appellant reports itself as having fifty-five employees on its SBA Form 355.

I conclude that the Area Office erred in describing this group as a "large number" of employees. Six (or four as of the date for determining size) is not a large number of people by any measure and cannot be said to represent a large number of employees for a size determination, unless the total number of the challenged firm's employees is itself very small. That is not the case here. Further, the work performed by these employees was not of a type that would lead to them having any control of the operations of their second employer. The Area Office's assumption that there must have been a large degree of coordination between Appellant and SBAR in scheduling the work of these employees is not supported by the record.

I further conclude that the facts that there are a few of Appellant's employees who perform part-time work for SBAR, one SBAR employee who works part-time for Appellant, and one who works part-time for both, do not indicate that Appellant, SBAR and the Vaswanis are acting in concert or as one in their business dealings. Rather, these ties are no more than the type of minimal business involvement that OHA concluded in *Bob Jones* and *Henderson* does not constitute an impediment to finding a clear fracture between family members and firms.

I therefore conclude that the Area Office erred in finding that the subcontracting and the consulting agreement between Appellant and SBAR, together with the few employees who performed part-time work at one firm while also working either full-time or part-time for the other, constituted enough evidence of a lack of a clear fracture between Appellant and SBAR to find them affiliated based upon an identity of interest.

Rather, I find that Mr. Vaswani and Ms. Vaswani have kept the interests of Appellant and SBAR separate. The two firms have never had common ownership or common management. Mr. Vaswani has never served as an officer or director of SBAR, and Ms. Vaswani has never served as an officer or director of Appellant. Appellant and SBAR are in different lines of business and have different customers. The two firms are located in different facilities. Neither firm has ever given or received financial or bid bond assistance to or from the other. The only business contacts between them are a small subcontract, a small consulting agreement for contract administrative services, and the fact that a few employees perform some work for both firms. Neither the consulting agreement nor the duties of the common employees involves any work that would rise to the level of one concern exercising control over the other. There is no evidence that the Vaswanis arranged their business affairs to act in unison. I therefore conclude that Appellant has successfully rebutted the presumption of affiliation with SBAR based upon an identity of interest between Mr. Vaswani and Ms. Vaswani, that a clear fracture is thus

established between the two concerns, and that Appellant and SBAR are therefore not affiliated.[3]

Turning to the issue of Appellant's size, a review of Appellant's tax returns for 2006, 2007, and 2008, together with the information on Appellant's affiliate, Hanabata, establishes that the combined receipts of these firms are within the size standard. Consequently, Appellant is a small business under that standard.

IV. Conclusion

The record does not support the conclusion that Appellant GPA Technologies Inc. is affiliated with Santa Barbara Applied Research, Inc. Accordingly, I find the Area Office erred in concluding that Appellant is other than small. Thus, the appeal is GRANTED, and the size determination is REVERSED. Appellant is an eligible small business for this procurement.

This is the final decision of the Small Business Administration. 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN
Administrative Judge

[3] *Size Appeal of Hallmark-Phoenix, Joint Venture*, SBA No. SIZ-4870 (2007), which affirmed an earlier size determination finding Appellant and SBAR affiliated, is not apposite here. That case was decided before the date on which size is determined here, and the issue of affiliation between the firms based upon an identity of interest between Mr. Vaswani and Ms. Vaswani was not at issue in that case.