

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

SIZE Appeal of:

Advanced Information Systems Group,
Inc.,

Appellant,

Re: Rouxbe Global Food Group, Inc.

Appealed from
Size Determination No. 06-2024-043

SBA No. SIZ-6344

Decided: March 18, 2025

APPEARANCES

Shane J. McCall, Esq., Nicole D. Potroff, Esq., John L. Holtz, Esq., Gregory P. Weber, Esq., Stephanie L. Ellis, Esq., Annie E. Birney, Esq., Koprince, McCall Potroff, LLC, for Appellant Advanced Information Systems Group, Inc.

Thomas K. David, Esq., Lewis P. Rhodes, Esq., Reston Law Group, LLP, for Rouxbe Global Food Group, Inc.

Emily A. Reid, Esq., PilieroMazza PLLC, for Rouxbe Global Food Group, Inc.

DECISION¹

I. Introduction and Jurisdiction

On September 18, 2024, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area VI (Area Office) issued Size Determination No. 04-2024-043 (Size Determination), finding Rouxbe Global Food Group, Inc. (Rouxbe) to be an eligible small business. On October 3, 2024, Advanced Information Systems Group, Inc. (Appellant) filed the instant appeal from that size determination. Appellant argues that the size determination is clearly erroneous, and requests that OHA reverse it, and find Rouxbe is not an eligible small business. For the reasons discussed *infra*, I DENY the appeal and AFFIRM the size determination.

¹ This decision was originally issued under a protective order. After receiving and considering one or more timely requests for redactions, OHA now issues this redacted version for public release.

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 appeal within fifteen 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. Solicitation

On May 10, 2024, the Military Sealift Command of the Department of the Navy issued Solicitation No. N3220524R4004 for Food Services and Logistics Training Services. The Contracting Officer (CO) set the procurement totally aside for small business and designated North American Industry Classification System (NAICS) code 611519, Other Technical and Trade Schools, with a corresponding \$21 million annual receipts size standard, as the applicable code. Initial offers were due June 27, 2024, with final proposal revisions due July 25, 2024.

B. Protest

On August 2, 2024, Appellant learned Rouxbe was the apparent successful offeror. On August 9, 2024, Appellant submitted a protest challenging Rouxbe's size. Appellant alleged Rouxbe is a Canadian company headquartered in Vancouver, BC, without a proper place of business in the United States. Further, Appellant alleged Rouxbe has multiple affiliates and exceeds the size standard. (Protest, at 2.)

Appellant alleged that Rouxbe's only listed address was in Vancouver, BC, and its website made no mention of any U.S. business locations. Appellant did note Rouxbe's SAM page lists three U.S. locations, in Totowah, NJ, Sammanish, WA and Vancouver, WA. The award notice lists a Spokane, WA address. Appellant asserts the Totowa location is a single-family residence, owned by **[Individuals 1 and 2]**. Rouxbe's SAM page identifies **[Individual 1]** as its CEO. (*Id.*, at 3.)

The Sammanish location is a single-family residence, owned by **[Individuals 3 and 4]**, who appear to have no connection to Rouxbe. The Vancouver, WA address is a Postal Connections location, essentially a mail drop. The Spokane location is another single-family residence, owned by **[Individuals 5 and 6]**. **[Individual 5]** is employed by Rouxbe as Controller. It is not mentioned on Rouxbe's SAM page or in any other materials. (*Id.*, at 4.)

Appellant asserted Rouxbe does not qualify as an eligible small business because it does not have a place of business located in the United States. A place of business must be more than a mail drop. A firm must offer for sale or perform the services it sells at the location, and the public must know the location is the firm's place of business. (*Id.*, at 6, citing *Size Appeal of Mexican Intermodal Equipment*, SBA No. SIZ-4182 (1996).) The factors to consider in determining whether a location is a place of business are the quantity of the firm's business performed there and its notoriety to the world as a place where the business is performed. (*Id.*, citing *Size Appeal of Com-Tech Svcs.*, SBA No. SIZ-4119 (1995).)

Appellant maintains the Vancouver, WA location is merely a mail drop, so no work is performed there. The Sammanish, WA location is owned by people with no apparent connection to Rouxbe. While the Totowa location is the CEO's residence, there is no evidence that work is performed there and Rouxbe does not hold it out as a place of business to the public. The same is true of the Spokane location. Even if work is done at these locations, the fact Rouxbe does not hold them out to the public as a place of business means it is not a place of business under the SBA's test. (*Id.*, at 6-7.) Appellant noted that in *Mexican Intermodal*, the concern advertised its Mexican location, not its American one. In *Com-Tech Svcs*, the lack of advertisement made it impossible for the public to do business with the challenged concern. Appellant asserts all of Rouxbe's social media postings hold it out as being in Vancouver, BC. Rouxbe's own website has a Canadian mailing address. Nothing Rouxbe issues lists it with a U.S. address except its own SAM registration. (*Id.*, at 7.) The remainder of the protest alleges Rouxbe is affiliated with a number of other concerns and exceeds the applicable size standard.

C. Response to Protest

On August 16, 2024, Rouxbe responded to the protest. Rouxbe's SBA Form 355 was signed by **[Individual 1]**, its CEO, and used the Totowa, NJ address. Rouxbe was incorporated July 29, 2005 in Washington state. Rouxbe's Bylaws identify it as a Washington corporation, and state that its principal office shall be located at its principal place of business or such other place as its Board of Directors may designate. (Rouxbe ByLaws, § 1.)

Rouxbe listed its subsidiaries, one of which is incorporated in Canada. Rouxbe states it is a virtual company with remote workers and the nature of its business does not mandate a “store location.” Rouxbe employs only American employees. It has employees in 11 states. Rouxbe asserts it registers and pays taxes in each state where it has a physical nexus. Rouxbe pays federal and state payroll and corporate taxes. It has been awarded other federal contracts.

Rouxbe used its Controller's home in Sammanish, WA as its corporate address. That Controller left in July and moved to the Spokane, WA address. The new registered agent is its Chief Marketing Officer, resident in Issaquah, WA. **[Individuals 3 and 4]** purchased the home and have no connection to Rouxbe. Rouxbe's CEO, **[Individual 1]**, resides in New Jersey and his home is now the corporate address. **[Individual 1]** conducts business out of his home, as do all of Rouxbe's employees. Rouxbe performs work at the locations of all of its team members. The Vancouver, Washington address is that of a Rouxbe employee and Rouxbe has never used it as a business address. (Response to Protest, Aug. 16, 2024.) In an email of September 5th, Rouxbe stated it was incorporated in Washington state, and its registered agent and Chief Marketing Officer resides in Issaquah, WA. (Email Sept. 5, 2024, **[Ind. 1]** to Area Office.)

D. The Size Determination

On September 18, 2024, the Area Office issued Size Determination No. 06-2024-043, finding Rouxbe was an eligible small business for this procurement. The Area Office noted that Rouxbe was a Washington state corporation, incorporated July 29, 2005. The Area Office reviewed Rouxbe's ownership, and found the largest block of stock is owned by **[Individuals 7, 8, 9, and 10 — three siblings and a spouse.]** The Area Office thus concluded this group

controlled Rouxbe. The Area Office identified two wholly owned subsidiaries of Rouxbe, Rouxbe Video Technology Canada, and Rouxbe Video Technology, Inc. as affiliates. The Area Office examined Rouxbe's relationships with other concerns Appellant had identified as affiliates, and concluded they were not affiliated. The Area Office reviewed Rouxbe's tax returns and financial statements and concluded that Rouxbe was an eligible small business.

E. The Appeal

On October 3, 2024, Appellant filed the instant appeal. Appellant does not address the affiliation issues and annual receipts issues it raised in its protest. Appellant argues the Area Office failed to address a major issue, whether Rouxbe met the regulatory definition of a small business, whether it truly had a place of business in the United States. (Appeal at 1.) Appellant alleges Rouxbe is a Canadian company headquartered in Vancouver, BC, and that its website made no mention of any location in the United States. Rouxbe's SAM page identifies three addresses: [REDACTED] (the "Totowa Location"); [REDACTED] (the "Sammamish Location"); and [REDACTED] (the "Vancouver, WA Location"). Further, the award notice states Rouxbe's address is [REDACTED] (the "Spokane Location"). (*Id.*, at 4.)

Appellant identified the Totowa Location as a single-family residence owned by **[Individuals 1 and 2]**. The Sammamish Location is a single-family residence owned by the Rays, who seem to have no connection to Rouxbe. The Vancouver, WA location is a Postal Connections location which seems to have no further connection to Appellant. The Spokane Location is a residence owned by **[Individual 3]** who was Rouxbe's Controller. (*Id.* at 4.)

Appellant assigns as error the Area Office's failure to address the issue of whether Rouxbe meets the regulatory definition of a small business, that is, does it have a place of business in the United States. The Area Office failed to address an entire ground of the protest. (*Id.*, at 5.)

Appellant argues the addresses associated with Rouxbe in its SAM listings do not appear to be places of business and may not even be affiliated with Rouxbe. Appellant argues that to be a small business, a concern must be organized for profit, have a place of business in the United States, and make significant contribution to the U.S. economy. (*Id.*, at 6, citing 13 C.F.R. § 121.105(a)(1).) Appellant argued that a business's place of business in the United States must offer for sale or perform the services it sells at the location, and the public must know the location is the firm's place of business. (*Id.*, at 7, citing *Size Appeal of Mexican Intermodal Equipment*, SBA No. SIZ-4182 (1996).) The factors to consider in determining whether a location is a place of business are the quantity of the firm's business performed there and its notoriety to the world as a place where the business is performed. (*Id.*, citing *Size Appeal of Com-Tech Svcs.*, SBA No. SIZ-4119 (1995).)

Appellant argues the Sammamish location is merely a residence, and the Vancouver, WA location merely a mail drop so no work is performed there. The Sammamish, WA location is owned by people with no apparent connection to Rouxbe. While the Totowa location is the CEO's residence, there is no evidence that work is performed there and Rouxbe does not hold it out as a place of business to the public. The same is true of the Spokane location. Appellant

argues Rouxbe does not hold them out to the public as a place of business. (*Id.*, at 7-8.) In contrast, all of Rouxbe's social media posting hold it out as being in Vancouver, BC.

Appellant argues the Area Office failed to analyze the evidence it presented to determine whether Rouxbe had a place of business in the U.S. and thus whether it was an eligible small business. Appellant maintains that it is not, that none of the locations which are connected to Rouxbe are places of business. (*Id.*, at 9-11.)

On October 16, 2024, Appellant requested this action be stayed pending corrective action being taken by the Navy. On October 18, 2024, OHA granted the stay. On February 11, 2025, OHA lifted the stay, after the Navy reaffirmed its award to Rouxbe.

F. Supplemental Appeal

On March 5, 2025, Appellant filed a Motion to supplement its appeal, together with its Supplemental Appeal. Appellant argues that Rouxbe made admissions in its submissions to the Area Office which establish that it does not have a place of business in the United States. Rouxbe admits that its business is completely virtual, relying on its employees' addresses, rather than an actual place of business in the U.S. (Supplemental Appeal, at 3.)

Appellant points to the regulation at 13 C.F.R. § 121.105(a)(1) and asserts that all the elements of the definition must be met if a firm is to be considered a small business, the regulation using the term “and” not “or” between the requirements of the test. Appellant asserts it is clear that “place of business” in the context of this definition means that a concern's place of business in the United States must be where it “either offer[s] for sale or perform[s] the services it sells at the location, and the public must know the location as that firm's place of business.” (*Id.*, at 4, citing *Mexican Intermodal*.) Appellant argues that Rouxbe's statement that it is a virtual organization the nature of whose business does not mandate a store location is an admission it does not have a place of business in the U.S. Rouxbe admits it registers in each state where it has a nexus. Rouxbe admits that many of the addresses linked to it were those of its former Controller. (*Id.*, at 5.)

Appellant notes that Rouxbe's comment on Totowa address is that of its CEO, and that the CEO conducts business out of his home, as do all Rouxbe employees. Rouxbe admitted the Sammamish address was that of its registered agent and Controller, as is the Spokane address. (*Id.*, at 6.)

Appellant asserts the Area Office had a duty to analyze the facts in the light of the applicable regulations and precedents, resolve conflicts in the evidence, evaluate the parties' arguments, and correctly apply the applicable law and regulations. The Area Office failed to do so here. (*Id.*, at 7-8, citing *Size Appeal of TRC Computer Svcs., Inc.*, SBA No. SIZ-4458 (2001); *Size Appeal of Mid-Continent Testing Labs, Inc.*, SBA No. SIZ-4773 (2006); *Size Appeal of ACCESS Systems, Inc.*, SBA No. SIZ-4843 (2007).)

Appellant argues “Rouxbe's entire company location is made up of spread-out work from home offices in bedrooms and offices of residences in multiple states. This ‘virtual’ company

does not meet the clear requirements for ‘place of business’ articulated by SBA. None of these addresses ‘offer for sale or perform the services it sells at the location’ nor are any of these addresses where the public would think of as Rouxbe's place of business.” (*Id.*, at 7-8.) This virtual company does not meet SBA's clear requirements for a place of business. While work from home is growing in popularity this does not excuse Rouxbe from having a legitimate place of business. If SBA were to adopt a definition of “place of business” as not requiring a physical place of business or clear headquarters, a business from anywhere in the world could simply hire a work-from-home employee, register the company to that employee's residence, pay taxes to that employee's state, and claim it has a “place of business.” Appellant maintains this would be contrary to SBA regulations and policy and open a wide door to potential abuses. (*Id.*, at 9-10.)

G. Rouxbe's Response

On March 5, 2025, Rouxbe responded to the appeal. Rouxbe asserts Appellant was either unaware of Rouxbe's business presence in the United States or willing to disregard the realities of a “place of business” in the current environment where home offices and the provision of virtual services are widespread and common. Rouxbe has established a footprint in the United States. (Response at 2.)

Rouxbe argues that *Mexican Intermodal* is inapposite, because the challenged concern there was a manufacturing company, and all of its manufacturing was performed in Mexico. It had a Mexican address and telephone number, and its advertising pointed to a Mexican location. The case did establish that a place of business must be more than a mail drop, and Appellant argues it has established it has much more than that. (*Id.*, at 3.)

Rouxbe asserts it has [a particular number] of fulltime employees who live and work in the United States. Its business is virtual culinary instruction and online cooking classes, not manufacturing. The services required by the contract can be delivered via workstations, laptops and other information technology products. In the post-COVID environment many contractors have cut back on expensive brick and mortar buildings. (*Id.*)

Rouxbe points to *Size Appeal of Torgreen, Inc.*, SBA No. SIZ-4213 (1996), where a newly established business had not yet established its own independent office location.

The Presiding Judge believes the regulatory requirement is not intended to exclude from participation, based on size criteria, start-up firms which have not achieved a modicum of success, either because they have not yet established an independent office location or actually contribute to the U.S. economy *Torgreen*, at 3.

Rouxbe asserts its employees perform services through its Washington state business address which is known to the public and thus meets the regulatory requirement. (*Id.*, at 4.)

Rouxbe asserts its public website provides a link for potential customers to contact the company, with a Washington state address and toll-free U.S. telephone number. Rouxbe seeks to submit new evidence in the form of screenshots and asserting that the U.S. Department of Labor has approved it as a Sponsor in its Apprenticeship program. (*Id.*, at 4-6.)

Rouxbe further asserts its Washington state office address is noted in public databases such as SAM and the Washington state Corporation Commission. (*Id.*, at 6-8.)

III. Discussion

A. Standard of Review and New Evidence

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).) Rouxbe attempted to submit new evidence without moving to do so, and I therefore EXCLUDE it from the record. 13 C.F.R. § 134.308(a)(2). Appellant's Motion to submit a Supplemental Appeal is GRANTED, because it was filed before the close of record.

B. Analysis

Appellant does not raise on appeal its allegations that Rouxbe is affiliated with a number of firms with which the Area Office found it was not affiliated, nor does it raise the issue that Rouxbe's receipts exceed the applicable size standard. Issues which an appellant has raised in its protest but fail to raise in its appeal are abandoned and need not be considered in the adjudication of the size appeal. *Size Appeal of SC & A, Inc.*, SBA No. SIZ-6059, at 9 (2020).

The one issue Appellant raises is its allegation that Rouxbe fails to meet one of the elements of the regulatory definition of a small business.

Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.

13 C.F.R. § 121.105(a)(1).

Appellant does not allege Rouxbe is not organized for profit or that it operates primarily within the United States or makes a significant contribution to the U.S. economy. Appellant's only contention is that Rouxbe does not have a place of business located in the United States. Appellant argues this means Rouxbe fails to meet the regulatory test because it lacks one of the elements of the definition.

Appellant argues the Area Office failed to address the issue in the size determination and that a remand is in order. While the Area Office's finding that Rouxbe was a Washington state corporation may have been conclusory, it is clearly based upon Rouxbe's submissions in the

record and is thus reviewable here. I therefore will not remand the case, but review the finding under the clear error standard.

OHA has considered the issue of “place of business” before. In *Size Appeal of Com-Tech Svcs., Inc.*, SBA No. SIZ-4119 (1995) a firm owned by U.S. citizens resident in Italy, which performed all of its work outside of the U.S., which kept its payroll records in Italy, and had as its only U.S. address the office of its attorney, where it had no bills for rental of an office nor had a sign on the building or office, but was merely a place where some files were stored and its attorney performed legal and administrative work, was found not to have a place of business in the U.S. OHA defined a place of business as “where the firm either offers for sale or performs the services which it sells, and which the public knows as that firm's place of business.”

In *Size Appeal of Mexican Intermodal Equipment*, SBA No. SIZ-4182 (1996) a Mexican corporation, owned by a U.S. corporation which was owned by a U.S. citizen, and listed as its U.S. place of business an office of the U.S. corporation, but which was a manufacturing business and performed all of its manufacturing in Mexico and used a Mexican address and telephone number in its advertising was found not to have a place of business in the United States. OHA reaffirmed the *Com-Tech* definition and held a place of business must be more than a mail drop.

In *Size Appeal of Torgreen, Inc.*, SBA No. SIZ-4213 (1996) the challenged concern was a newly established firm in the services field whose only place of business was an office it shared with an affiliate concern where its name was neither in the office directory nor on the door. OHA considered the reasoning behind the regulation in making its decision, and relied upon a holding of the then General Accounting Office interpreting the regulation:

The benefits of the act were intended by Congress to extend only to those small business concerns which contribute to the maintenance and strengthening of the nation's overall economy and security. As a result, SBA size regulations exclude from the classification of small business concerns those alien concerns whose plants are located in foreign countries because such alien concerns do not contribute to the national economy, do not provide employment for American nationals, purchase little or no American products, materials or services and do not pay federal or state taxes. . . . SBA regulations exclude such alien concerns. . . .

Torgreen, at 3, citing No. B-154756, 44 Comp. Gen. 253, 255 (November 2, 1964).

OHA then went on to note that cases interpreting the regulation applied “place of business” and the significant contribution criteria to determine whether the firms in question, in addition to their foreign places of business, actually had places of business in the U.S. OHA concluded the regulatory requirement is intended to prevent foreignbased firms, which do not contribute to the U.S. economy, from taking advantage of the U.S. government's small business assistance programs. It also is clear that Congress intended small business set asides to benefit U.S. small businesses, but it was not intended to exclude start-up firms which had not yet established their own office. *Torgreen*, at 3.

OHA thus concluded that Torgreen did qualify as having a place of business in the United States, taking account of its being only recently organized, and being in business in the United States, and not being a foreign concern.

Here, Rouxbe is a U.S. corporation which does business in the United States, is owned by American citizens, and employs American citizens. Rouxbe operates as a virtual company. It advertises online, and those who seek to do business with it must do so through online communication. It delivers the services it provides online. Its employees work from their residences, providing the online classes which are Rouxbe's product. Rouxbe's CEO resides in the United States, and a CEO's residence is often a place where work is performed, and business is conducted. Rouxbe does not carry out its business at any fixed location, it operates from the homes of its officers and employees. Rouxbe is thus a small business concern which contributes to the maintenance and strengthening of the nation's overall economy and security and is thus among those concerns which it was Congress's intention to assist in passing the Small Business Act. Rouxbe offers for sale and performs the services it sells online, operating out a number of U.S. locations. The public knows that its place of business is online and can go online to do business with it.

Just as in *Torgreen* OHA modified the definition of “place of business” to account for a new business that not yet established itself in its own offices, I here modify it to take account of concerns that in the contemporary business world have a virtual presence and do not do their business in a physical location but do business online and deliver the services they sell online. In such a case, the question must be is the business owned by Americans, does it employ Americans and are the physical locations from which the online services are delivered (in this case, the homes of the employees) in the United States. Here the answer to those questions is yes, and so I must conclude that Rouxbe does have a place of business in the United States and meets the regulatory definition of a small business.

IV. Conclusion

Appellant has failed to establish that the size determination is based upon a clear error of fact and law. Accordingly, I DENY the instant appeal, and I AFFIRM the size determination. Appellant is an eligible small business for the instant procurement. This is the final decision of the Small Business Administration. See 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN
Administrative Judge