

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

SIZE APPEAL OF:

Stripes Global, Inc.,

Appellant,

Re: RGC of North Carolina

Appealed from Size Determination Case  
No. SIZ-2025-156

SBA No. SIZ-6375

Decided: January 30, 2026

APPEARANCES

Shane J. McCall, Esq., Nicole D. Pottroff, Esq., John L. Holtz, Esq., Gregory P. Weber, Esq., Stephanie L. Ellis, Esq., Annie E. Birney, Esq., KoPrince McCall Pottroff LLC, Lawrence, KS, for Stripes Global, Inc.

Alan Grayson, Esq., Grayson Law, Indialantic, FL, for RCG of North Carolina, LLC

DECISION

I. Introduction and Jurisdiction

On July 9, 2025, the U.S. Small Business Administration (SBA), Office of Government Contracting Area Director (Area Office) issued Size Determination No. SIZ-2025-156, concluding that RCG of North Carolina (RCG) was a “small business concern” having met the qualifications as a nonmanufacturer. On appeal, Stripes Global, Inc. (Appellant) maintains that the size determination is clearly erroneous, and requests that SBA's Office of Hearings and Appeals (OHA) reverse.

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 after 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.

For the reasons discussed *infra*, RCG is a service-disabled veteran-owned small business (SDVOSB) assigned North American Industry Classification System (NAICS) code 325120, Industrial Gas Manufacturing, with less than 500 employees that qualifies as a nonmanufacturer. Accordingly, the appeal is DENIED, and the size determination is AFFIRMED.

## II. Background

### A. The Request for Quotes

On January 7, 2025, the Department of Veterans Affairs, Network Contracting Office 22, VHA Regional Procurement Office, Gilbert, Arizona (VA) issued Solicitation No. 36C26225Q0314, as a Request for Quotes (RFQ), seeking a contractor to provide scheduled delivery of various medical gases for the VA Medical Center Greater Los Angeles. (RFQ at 5.) The Contracting Officer (CO) set aside the procurement entirely for SDVOSBs and designated NAICS code 325120, Industrial Gas Manufacturing, with a corresponding 1,200 employee size standard as the appropriate code. (*Id.* at 1.)

The RFQ's Statement of Work reflects the contractor will provide several different medical gases including argon, carbon dioxide, helium, nitrogen, nitrous oxide, and oxygen. The RFQ states the VA intended to award a single indefinite-delivery indefinite-quantity contract for one year with four option years and quotes were to be evaluated strictly by price. Proposals under the RFQ were due on January 20, 2025. (*Id.* at 1, 6, 7 and 19.)

RCG and Appellant submitted timely offers. The RFQ closed on March 7, 2025, and award to RCG was made on March 28, 2025, under Solicitation No. 36C26225C0164.

### B. Protest

On April 4, 2025, Appellant, a disappointed offeror, filed a timely protest (Protest) with the CO challenging RCG's size and SDVOSB status. The CO forwarded the SDVOSB status portion of the protest to OHA for separate review. OHA denied Appellant's protest of RCG's SDVOSB status. (Size Decision at 1 and *VSBC Appeal of Stripes Global, Inc.*, SBA No. VSBC-434-A (2025) (*Stripes Global I*); affirmed on reconsideration *VSBC Appeal of Stripes Global, Inc.*, SBA No. VSBC-438-A (2025) (*Stripes Global II*).)

The Protest alleged RCG lacked the necessary licensing to perform the contract without ceding control of the contract to Airgas, manufacturer of medical gases with more than 20,000 employees. Appellant argued that Airgas's possession of a necessary license gave it control over RCG and resulted in affiliation between the two concerns. The aggregate number of RCG's and Airgas's employees exceeds the RFQ's size standard of 1,200 employees and the Nonmanufacturer Rule's (NMR) 500 employee size standard. Further, Appellant alleged RCG's lack of licensure precluded it from owning or possessing the medical gases resulting in RCG not meeting the requirements of a nonmanufacturer under the Nonmanufacturer Rule.

The CO forwarded Appellant's protest to the Area Office for review. On June 3, 2025, the Office of Contract Assistance and Size Protest division wrote RCG requesting a response to the protest's affiliation allegation along with any supporting evidence, a completed SBA Form 355, and certain other information on the concern. SBA also requested copies of any agreements and subcontracts. The letter required documents be provided to SBA within three working days. RCG requested an extension, which SBA granted and RCG timely provided the requested documents.

### C. Size Determination

On July 9, 2025, the Area Office issued Size Determination No. SIZ-2025-156 finding RCG was an eligible small business concern that met both the size standards for the RFQ (1,200-employees) and the Nonmanufacturer Rule (500-employees), met the qualifications as a nonmanufacturer and was eligible for award. (Size Determination at 1-7.)

The Area Office reviewed RCG's SBA Form 355 and found: 1) RCG was 100% owned by Robert Guillot who also serves as RCG's President; 2) Mr. Guillot is the managing member of 205 North Carolina Ave, LLC; 3) Mr. Guillot owns 50% of 205 North Carolina Ave, LLC; 4) Mr. Guillot has no other majority interest in any other companies (including Airgas and Air Liquide); 5) RCG is not affiliated with any other entity; 6) Mr. Guillot is not affiliated with any other entity; and 7) RCG has fewer than 500 employees. (*Id.* at 3-4).

The Area Office found the RFQ was an SDVOSB set-aside to provide manufactured products and thus not subject to the Ostensible Subcontractor Rule. (*Id.* at 4-5).

The Area Office noted that while RCG did not exceed the 1,200-employee size standard for the RFQ, to qualify as small for the instant procurement, RCG had to either be the manufacturer of the medical gases or demonstrate it was a qualified nonmanufacturer under the Nonmanufacturer Rule (NMR). The Area Office found RCG demonstrated qualification as a nonmanufacturer under the NMR. (*Id.*, at 5-6).

### D. Appeal

On April 4, 2025, Appellant filed the instant appeal challenging RCG's size and SDVOSB status. The CO forwarded the SDVOSB status portion of the protest to OHA for separate review.

Appellant argues the Area Office's Size Determination contains legal and factual errors by failing to consider: 1) The Solicitation's licensing requirement; 2) Appellant's arguments regarding Airgas' control of RCG and the subsequent affiliation of the two concerns; and 3) RCG's failure to meet the requirements of the NMR. In other words, Appellant argues the Size Determination “*fundamentally ignores both of Stripes' primary arguments as well as the foundational factual basis for each of them.*”

Appellant argues that while the Solicitation allows Airgas (the manufacturer) to have the “critical license,” California law (state of performance) requires RCG to possess licensing in order to “take legal possession” of the medical gases. Appellant argues RCG's lack of such licensing places RCG outside of compliance with California law and precludes RCG from satisfying the third prong for the NMR. Appellant further argues the Size Determination ignores that RCG's inability to legally own or take possession of the medical gases precludes a finding RCG is a nonmanufacturer and is ineligible for award.

Appellant argues that “RCG's reliance on Airgas' licensure allows Airgas the power to control RCG, making RCG an affiliate of Airgas.” In support of this argument, Appellant relies upon 13 C.F.R. § 128.203(h)(4) which provides “no non-qualifying veteran<sup>1</sup> may: . . . [p]rovide critical financial or bonding support or a critical license to the concern, which directly or indirectly allows the non-qualifying veteran to significantly influence business decisions of the qualifying veteran.” Appellant argues the Size Determination failed to consider the control Airgas could exert on RCG given Airgas was the sole entity in possession of the licensing required by the RFQ. Appellant argues this affiliation renders RCG other than small when including Airgas' more than 10,000 employees. Further, Appellant argues this affiliation precludes a finding that RCG meets the first prong of the NMR and is ineligible for award.

#### E. Motion to Dismiss

On July 27, 2025, RCG filed a Motion to Dismiss the Appeal. RCG argues that OHA's rulings in *Stripes Global I* and *Stripes Global II* are controlling here. RCG argues OHA has already ruled on the issue here, whether the fact Airgas holds the licenses for the sale of the medical gases here gives them control over RCG and renders RCG ineligible for this procurement. RCG argues the appeal is precluded by the law of the case and collateral estoppel. (Motion to Dismiss at 4-6, citing *Size Appeal of Birdon America, Inc.*, SBA No. SIZ-6243 (2023); *Size Appeal of Chu & Gassman*, SBA No. SIZ-5344 (2012); *Size Appeal of Superior Optical Labs, Inc.*, SBA No. SIZ-6158 (2022)) RCG further argues the matter is moot.

#### F. Appellant's Response

On August 11, 2025, Appellant responded to RCG's Motion to Dismiss. Appellant argues the law of the case doctrine does not apply here. In the earlier cases the issue was RCG's status as an SDVOSB, here the issue is RCG's size. The law of the case doctrine provides that an issue once decided will not be relitigated in the same case. This is a separate matter from the earlier VSBC cases. RCG's citations are to cases involving appeals of the same protest. There is a separate body of law for sized cases as from SDVOSB cases. Appellant also asserts OHA did not address all the issues in the earlier SDVOSB cases. Appellant further argues the case is not moot because the course of the procurement could still be affected.

On August 14, 2025, OHA denied the Motion to Dismiss.

#### G. RCG's Response

On August 29, 2025, RCG responded to the appeal. In its Response, RCG states this RFQ is for an SDVOSB eligible concern, as determined by OHA in *VSBC Appeal of Stripes Global, Inc.*, SBA No. VSBC-438-A (2025). RCG argues that it has provided specific factual evidence to support the Area Office's size decision that it complies with the express terms of the Nonmanufacturer Rule and is not otherwise affiliated with Airgas. (Response, at 1).

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<sup>1</sup> Appellant misquotes this as “venturer.”

RCG argues the sole issue here is whether the Area Office somehow clearly erred in rejecting Appellant's argument that RCG is affiliated with and controlled by Airgas, its supplier, solely because Airgas possesses wholesale distribution licenses and RCG does not. RCG rejects this argument. (*Id.*)

RCG notes this matter began with Appellant filing the same protest letter for its size and status protests against RCG, violating FAR 19.307(c), which requires two separate protests. RCG further notes that OHA held in the VSBC Appeals that RCG has shown that a license is not required for this procurement. (*Id.*, at 2-3.)

RCG argues there are eight reasons why Appellant's licensing argument fails.

- This government contract, like every government contract, requires that the contractor obtain only required licenses, not extra ones;
- As noted above, the VA's Executive Director for Acquisition has ruled on multiple occasions that there is no state licensing requirement for sale to VA hospitals;
- The VA's Executive Director for Acquisition also has ruled that when there are such requirements, they can be met by the licensing of any subcontractor that the prime contractor chooses;
- Federal regulations explicitly preempt state licensing, under 21 C.F.R. Part 205;
- The relevant VA facility is in California, and Stripes itself doesn't have a California license;
- If RCG needed such a license, it could obtain one simply by asking for it;
- Every major supplier of medical gases, not only Airgas, has such licenses.
- As OHA already has ruled, based on the status protest record, RCG has “ultimate managerial and supervisory control over” Airgas. 13 C.F.R. § 128.203(b). (*Id.*, at 3.)

As it relates to the question of licensing, RCG notes the statute cited by Appellant, Cal. Penal Code § 381b, criminalizes the possession of nitrous oxide for non-medical purposes within the state the RFQ requires distribution. RCG points out that federal statute 21 U.S.C. § 353(e) generally requires licensing for the wholesale distribution of drugs in the state where the drug is to be distributed for the wholesale distribution of drugs. 21 U.S.C. § 353(e)(1)(A)(i)(I). RCG then points out that this same statute specifically provides the distribution of a drug to a hospital and the distribution of medical gases are not considered ‘wholesale distribution’ under the statute. 21 U.S.C. § 353(e)(4)(B) and (Q). Accordingly, RCG argues, statutorily, it is not required to possess a California license to perform this procurement. (*Id.* at 9).

### 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

Appellant argues the Area Office erroneously found RCG qualified for award under the limitations on subcontracting, failure to meet both the ostensible subcontractor rule and nonmanufacturer rule and the absence of necessary licensing.

The instant procurement is for medical gases under NAICS code 325120, Industrial Gas Manufacturing, and is therefore a procurement for manufactured products classified under a manufacturing NAICS code. As noted in *Stripes Global I* and *Stripes Global II*, the ostensible subcontractor rule is therefore not applicable in the instant case. OHA has repeatedly held that the ostensible subcontractor rule does not apply to procurements for manufactured products. *Size Appeal of Invisio Communications, Inc.*, SBA No. SIZ-6084 (2020). Similarly, SBA has explained in the *Federal Register* that a determination that the prime contractor meets the requirements of the nonmanufacturer rule resolves the question of whether the prime contractor is compliant with the ostensible subcontractor rule:

In classifying the procurement as a manufacturing/supply procurement, the procuring agency must have determined that the “principal nature” of the procurement was supplies. As a result, any work done by a subcontractor on the services portion of the contract cannot rise to the level of being “primary and vital” requirements of the procurement, and therefore cannot be the basis of [f] affiliation as an ostensible subcontractor.

76 Fed. Reg. 8222, 8225 (Feb. 11, 2011).

The Limitations on Subcontracting Rule provides that when a contract is for supplies from a nonmanufacturer, the nonmanufacturer must supply the product from a domestic small business manufacturer, unless SBA has granted a waiver of a nonmanufacturer rule under 13 C.F.R. § 121.406(b)(5). 13 C.F.R. § 125.6(a)(2)(ii). On April 27, 2006, SBA issued a nonmanufacturer class waiver for NAICS code 325120 pursuant to 13 C.F.R. § 121.406(b)(5)(ii). 71 Fed. Reg. 24889 (April 27, 2006). This waiver is applicable to the instant RFQ, it remains in effect and was in effect on the date of for determining size and thus RCG has met the Limitations on Subcontracting Rule.

Appellant has failed to challenge these findings and failed to present any evidence to refute them. Accordingly, no basis exists to disturb the Area Office's findings on this question. *Size Appeal of Eenvt'l Restoration, LLC*, SBA No. SIZ-5395, at 6-7 (2012) (when issue is not appealed, the area office's determination "remains the final decision of the SBA.").

In order to qualify as a small business concern for an SDVOSB OR VOSB set-aside or sole source contract, an offeror must either:

- 1) Be the manufacturer or producer of the end item being procured (and the end item must be manufactured or produced in the United States); or
- 2) Comply with the requirements of paragraph (b), (c) or (d) of this section as a nonmanufacturer, a kit assembler or a supplier under Simplified Acquisition Procedures.

13 C.F.R. § 121.406(a)(1-2).

A nonmanufacturer may qualify as a small business concern for a requirement to provide manufactured products or other supply items as a nonmanufacturer if it:

- (i) Does not exceed 500 employees (or 150 employees for the Information Technology Value Added Reseller exception to NAICS Code 541519, which is found at § 121.201, footnote 18);
- (ii) Is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied;
- (iii) Takes ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice; and
- (iv) Will supply the end item of a small business manufacturer, processor or producer made in the United States or obtains a waiver of such requirement pursuant to paragraph (b)(5) of this section.

13 C.F.R. § 121.406(a)(2)(b)(1)(i-iv).

The rule applies only to procurements that have been assigned a manufacturing or supply NAICS code, or the Information Technology Value Added Resellers (ITVAR) exception to NAICS code 541519. 13 C.F.R. § 121.406(b)(3).

The first prong of the rule requires a determination of whether RCG exceeds the 500-employee size limitation. The Area Office calculated RCG's average number of employees over the 24 months prior to the closing of the RFQ. Based on the information provided by RCG, The Area Office found RCG's average employee count was less than 500 employees. RCG thus meets the first prong.

However, Appellant alleges “RCG relies on Airgas to meet the RFQ's licensing requirement” and this reliance “allows Airgas the power to control RCG, making RCG an affiliate of Airgas.” Appellant argues that through “RCG's affiliation with Airgas (the company that through Air Liquide has approximately 20,000 employees)” RCG cannot comply with the nonmanufacturer rule's 500 employee first prong.

Appellant argues RCG is an affiliate of Airgas, because RCG does not possess control of the contract due to RCG's lack of licensing in the State of California for the wholesale distribution of drugs, as required by Cal. Penal Code § 381b. Generally speaking, a license in the state of distribution is required for the wholesale distribution of drugs. 21 U.S.C. § 353(e)(1)(A)(i)(I). However, the distribution of medical gases and the distributing a drug to a hospital are not considered “wholesale distribution.” 21 U.S.C. § 353(e)(4)(Q) and 21 U.S.C. § 353(e)(4)(B). Therefore, these statutes are not applicable here. *Stripes Global II*. As found in *Stripes Global I*, RCG has persuasively shown that a license is not even required for this procurement. As further noted in *Stripes Global I*, licensing issues are generally responsibility determinations for the contracting officer, rather than valid grounds for protest, and are outside size-determination jurisdiction. *Size Appeal of Advant-Edge Solutions*, SBA No. SIZ-6194 (2023). Further, the fact that RCG is an authorized dealer in Airgas's products is not grounds for finding control of RCG by Airgas. *Stripes Global II*; *Size Appeal of Bukkehave, Inc.*, SBA No. SIZ-5981, at 8 (2019). RCG can replace Airgas as a supplier if it chooses. The relationship between the concerns is not one indicative of economic dependence by RCG upon Airgas. Accordingly, Appellant's argument that RCG is affiliated with Airgas is meritless, and RCG is in compliance with the first prong of the nonmanufacturer rule.

The second prong of the rule requires a determination of whether RCG is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied under the RFQ. The Area Office found RCG is primarily engaged in the retail and wholesale trade of both service and supply items for medical gases and RCG sells these items in the ordinary course of business. The Area Office noted RCG has very extensive past performance in trading these items and delivering these items successfully. RCG has successfully sold and delivered on multiple federal contracts for medical and industrial gases. Regarding the specific item solicited in the RFQ, the Area Office noted RCG has been a regular provider of medical cylinder gases to VA medical centers since 2018. The Area Office held RCG met the second prong of the rule. Appellant has failed to challenge these findings and failed to present any evidence to refute them. Accordingly, no basis exists to disturb the Area Office's findings on this question. *Size Appeal of Emt'l Restoration, LLC*, SBA No. SIZ-5395, at 6-7 (2012).

The third prong of the rule requires a determination of whether RCG takes ownership or possession of the items with its personnel, equipment or facilities in a manner consistent with industry practice. OHA precedent holds the third prong is “disjunctive” in nature and can be satisfied by the nonmanufacturer demonstrating it either took ownership or had possession of the manufactured product. Further, OHA precedent holds that ownership is a question of law, and one need not take physical possession to take ownership of an item, if title to the item has passed under a contract. *Size Appeal of Wear Mark, Inc., D/B/A All Seasons Apparel*, SBA No. SIZ-5402 (2012).

The Area Office found RCG has a supply agreement with the manufacturer (Airgas) that was a standard industry agreement and conformed to standard industry practice. **[Redacted as Confidential, Commercial, and Proprietary Information]** The Area Office notes this process is known as “drop shipment” and is a widely accepted practice in the medical gas industry. The Area Office concluded RCG satisfied the third prong.

Appellant argues that in the absence of a California wholesale license, RCG cannot legally take ownership of the medical gases within California and perform under the solicitation. Specifically, Appellant alleges “RCG relies on Airgas to meet the RFQ's licensing requirement” and this reliance “allows Airgas the power to control RCG, making RCG an affiliate of Airgas.” Appellant further argues that through “RCG's affiliation with Airgas (the company that through Air Liquide has approximately 20,000 employees)” RCG cannot comply with the licensing requirement in the RFQ, as RCG lacks a license to be a wholesaler within the State of California.

As noted *supra*, on the issue of RCG's lack of California license, generally speaking, a license in the state of distribution is required for the wholesale distribution of drugs. 21 U.S.C. § 353(e)(1)(A)(i)(I). However, the distribution of medical gases and the distributing a drug to a hospital are not considered “wholesale distribution”. 21 U.S.C. § 353(e)(4)(Q) and 21 U.S.C. § 353(e)(4)(B). This procurement calls for the distribution of medical gases to a hospital. Based on the federal statute, a license is not required for this procurement as RCG has shown. *Stripes Global I & II*.

**[Redacted as Confidential, Commercial, and Proprietary Information]**

RCG is not required to obtain a California license in order to perform under the solicitation and any argument concerning Airgas having or potentially having control over RCG due to a lack of licensure is without merit. RCG has satisfied the third prong of the rule and the Size Determination was not in error.

The fourth prong of the rule requires a determination of whether RCG will supply the end item of a small business manufacturer, processor or producer made in the United States OR whether RCG obtained a waiver to supply the end item of a small business manufacturer, processor or producer made in the United States. As noted *supra*, SBA has issued a nonmanufacturer class waiver for NAICS code 325120 (Industrial Gas Manufacturing). 71 Fed. Reg. 24889 (April 27, 2006). The class waiver remains in effect and was in effect on the date of size is determined.<sup>2</sup> Thus, the fourth prong of the rule is satisfied.

As to the question of licensing, as noted in *Stripes Global I & II*, and in the discussion of the nonmanufacturer rule *supra*, licensing issues are generally responsibility determinations for the contracting officer, rather than valid grounds for protest, and are outside size-determination jurisdiction. *Size Appeal of Advant-Edge Solutions*, SBA No. SIZ-6194. Appellant's argument that Airgas controls Appellant because it holds licenses is meritless.

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<sup>2</sup> <https://www.sba.gov/sites/default/files/2022-10/NMRCClassWaiverList-versionJune2022.pdf>

The Area Office's size determination is not based upon any error of fact or law.

IV. Conclusion

Appellant has failed to show the Area Office's size determination of Appellant's protest was based upon any error of fact or law. Accordingly, the appeal 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).

CHRISTOPHER HOLLEMAN  
Administrative Judge