

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

SIZE APPEAL OF:

Federated Maritime, LLC,

Appellant,

Re: Schuyler Line Navigation Company,
LLC

Appealed from
Size Determination Case
Nos. 02-2025-120, 02-2025-132

SBA No. SIZ-6360

Decided: July 11, 2025

APPEARANCES

Christian B. Nagel, Esq., Amy L. Fuentes, Esq., Bradley Van Buren, Esq., Stacy B. Thomas, Esq., Ben R. Smith, Esq., Holland & Knight LLP, Tysons, Virginia, for Federated Maritime, LLC

Dion Nicely, Chief Executive Officer, Annapolis MD, for Schuyler Line Navigation Company, LLC

DECISION¹

I. Introduction and Jurisdiction

On April 24, 2025, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area II (Area Office) issued Size Determination No. 02-2025-120 and Size Determination No. 02-2025-132, which denied the respective size protests filed by Federated Maritime, LLC (Appellant) against Schuyler Line Navigation Company, LLC (Schuyler). On May 9, 2025, Appellant filed the instant appeals, which OHA consolidated on May 19th. Appellant maintains the Area Office clearly erred in its determinations, and requests that SBA's Office of Hearings and Appeals (OHA) reverse the size determinations. For the reasons

¹ This decision was originally issued under a protective order. Pursuant to 13 C.F.R. § 134.205, OHA afforded the parties an opportunity to file a request for redactions if desired. Schuyler's initial proposed redactions were excessive to the point that they often made the decision incomprehensible, in violation of 13 C.F.R. § 134.205(f). Schuyler's second set of proposed redactions were deemed acceptable, so OHA now published this redacted version of the decision for public release.

discussed *infra*, the appeals are GRANTED, and the size determinations are REMANDED to the Area Office for further review.

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 Solicitations

On January 28, 2025, the Department of the Navy (“Navy”) issued Solicitation No. N3220525R4036. On that same day, the Navy issued Solicitation No. N3220525R4042.

The first Solicitation was for a dry cargo voyage charter, while the second was for a dry cargo time charter. (Size Protests at 1). Both Solicitations were 100% set-aside for small businesses under NAICS Code 483111 - Deep Sea Freight Transportation - with a corresponding 1,050 employee size standard.

Appellant and Schuyler both submitted timely proposals for both Solicitations. On February 11, 2025, the Navy notified offerors it had awarded Schuyler the first Solicitation. On March 6, 2025, the Navy notified offerors it had awarded Schuyler the second Solicitation.

B. Size Protests

Appellant submitted separate size protests to the CO challenging the small business status of Schuyler on February 18, 2025, and March 12, 2025, respectively.

Both size protests asserted that Schuyler is not a small business under the applicable size standard because it exceeded the size standard due to its affiliation with J.P. Morgan Asset Management (“JPAM”), Bold Ocean LLC (“Bold Ocean”), NOVA Infrastructure Management, LLC (“NOVA”), and Global Transport Income Fund Master Partnership (“GTIF”). (Size Protests at 3-15.) Additionally, Appellant asserted Schuyler was affiliated with each of those entities' respective affiliates through common ownership and control, as well as the totality of the circumstances.

Appellant noted that Schuyler's website states it is based in Annapolis, Maryland, operates commercial US Flag and Foreign Flag vessels worldwide, and is in its second decade of operating in the maritime business. The website also discusses its fleet of six ships, which consist of bareboat and voyage charters, including chartering Jones Act tugs and barges. Schuyler's website also states it is “a Bold Ocean Company” and indicates that Bold Ocean, LLC (“Bold Ocean”) is Schuyler's parent company.

Appellant alleges connections between Schuyler and the alleged affiliates. Appellant notes that, particularly during the relevant period of measurement for establishing Schuyler's size, the record shows the following affiliations with Schuyler:

Bold Ocean's website indicates it is located at the same address (in different suites) as Schuyler and is the parent company of Schuyler as well as four other companies: Argent Marine Operations, Inc. ("Argent Marine"), Chesapeake Crewing ("CC"), Schuyler Technical ("ST"), and Schuyler Services ("SS"). Its website indicates that each of these companies was consolidated under the Bold Ocean label in 2018. (Size Protest at 3-4). Appellant maintains that to the extent any of these five companies shares common ownership or control with other entities, Schuyler is also affiliated with those companies. *See* 13 C.F.R. § 121.103(a).

Furthermore, Bold Ocean was owned and controlled by the infrastructure private equity firm NOVA Infrastructure from 2020 until July 31, 2024. A press release by NOVA Infrastructure definitively states that it completed its "sale of Bold Ocean" to "institutional investors advised by J.P. Morgan Global Alternatives' Global Transportation Group" on July 31, 2024. (Size Protest at 4).

Appellant argued SBA's regulations require Schuyler to calculate its size "based upon numbers of employees for each of the pay periods for the preceding completed 24 calendar months" prior to proposal submission for itself as well as its affiliates. *See* 13 C.F.R. § 121.106(b)(1), (4). Here, the relevant 24 calendar month period is February 4, 2023, to February 4, 2025. Therefore, Bold Ocean (and by extension, Schuyler) were affiliated with NOVA Infrastructure during the relevant 24-calendar-month measuring period for these procurements.

From there, on July 31, 2024, NOVA sold Bold Ocean to "institutional investors advised by J.P. Morgan Asset Management." It is clear JPAM controls Bold Ocean post-acquisition based on public statements. Therefore, Bold Ocean (and Schuyler) were affiliated with JPAM - an affiliate of the financial giant JP Morgan. Appellant contends that Schuyler may also be separately affiliated with the "institutional investors advised by" JPAM who invested in the JPAM fund during the relevant period of measurement for determining Schuyler's size. (Size Protest at 5-6).

Moreover, post-acquisition, JPAM decided to keep Bold Ocean's Chief Executive Officer ("CEO"), Dion Nicely, in his role. (*See* Ex. 3, TradeWinds Aug. 2024 Article.) Mr. Nicely confirmed the role of JPAM in its "transportation-asset focus enhancing the Bold Ocean team" post-acquisition. (*Id.*) Based on the public information about JPAM's assets in the shipping industry alone, JPAM would be considered other than small. JPAM is reported to control a portfolio of over 140 ships which means JPAM (via its affiliates) assuredly employs more than 1,050 employees. This is even before factoring in that JPAM is a controlled subsidiary of JP Morgan - the fifth largest bank globally by assets under management that has 309,926 employees globally. (See Ex. 8, JP Morgan 10-K (filed Feb. 16, 2024); Ex. 9, JP Morgan List of Subsidiaries.)

Schuyler's size is determined as of February 5, 2025, the date upon which it submitted its initial offer including price. *See* 13 C.F.R. § 121.404(a). The applicable NAICS code for the

procurements is 483111, which has a corresponding 1,050 employee size standard. (See Ex. 2, Solicitation No. N3220525R4036 at 2.)

Appellant argued publicly available information shows Schuyler is controlled by a massive financial institution - JP Morgan - and was also affiliated with many other companies during the applicable period of measurement. Therefore, it is nonsensical that such an entity is considered a small business eligible for this 100% small business set-aside procurement. SBA's regulations were not designed to allow a business controlled by a large entity to compete with legitimate small businesses. Appellant argued its size protest should accordingly be sustained, and Schuyler should be found to be other than small and ineligible for award of the subject procurements.

C. Size Determinations

On April 24, 2025, the Area Office issued Size Determinations No. 02-2025-120 and No. 02-2025-132.

The Area Office determined that since only disputed issue in the Size Protests appeared to be that of affiliation, the only issue to be addressed prior to calculation would accordingly be that of affiliation. (Size Determination at 4).

The Area Office noted Schuyler responded in a timely manner and provided requested information. In its response, Schuyler acknowledged some of the alleged affiliates and disputed others. Specifically, Schuyler acknowledged affiliation with Bold Ocean and its affiliates, but disputed affiliation with NOVA and its affiliates, as well as JPAM and/or JP Morgan more broadly. (Size Determination at 3).

The Area Office divided the alleged affiliations in the instant case into four separate categories representing the following alleged affiliate groupings (identified as "is affiliated with" for current affiliates and "was affiliated with" for former affiliates):

- 1) Is affiliated with Bold Ocean and Bold Ocean's affiliates;
- 2) Was affiliated with NOVA Infrastructure and its affiliates;
- 3) Is affiliated with JPAM and JP Morgan and Each Entities' Affiliates;
- 4) Is affiliated with JP Morgan Global Transport Income Fund and a number of "institutional investors" that own Bold Ocean through the fund or investment vehicle managed by JPAM.

As previously noted, Schuyler does not dispute affiliation with Bold Ocean or its affiliates, which are: Bold Ocean, Argent Marine, Chesapeake Crewing, Schuyler Technical, and Schuyler Services. Accordingly, the Area Office included these employees in the calculation of Schuyler's size. (Size Determination at 6).

Regarding NOVA, while Schuyler agreed Bold Ocean was owned by NOVA Infrastructure, then sold to "institutional investors advised by J.P. Morgan Global Alternatives' Global Transportation Group" (which it identifies as GTIF GP) on July 31, 2024, Schuyler

disputes affiliation for the purposes of its size for the instant solicitation as it made its initial offer on the instant solicitation on February 04, 2025 - which is after July 31, 2024. (Size Determination at 7).

The Area Office also noted there were no allegations Bold Ocean retained ties to NOVA after the sale. Rather, Appellant's argument was that because there was affiliation during a portion of the period of measurement they are affiliated, which is incorrect according to the regulation. The regulation is clear that “[t]he employees of a former affiliate are not counted if affiliation ceased before the date used for determining size.” 13 CFR 121.106(b)(4)(ii). The regulation is also clear that “[t]his exclusion of employees of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.” *Id.*

In light of the six-month gap between the completion of the sale and Schuyler's offer for the subject procurements, the Area Office found that Schuyler was not affiliated with NOVA for the purposes of the instant Size Determination, and that NOVA's employees were not attributable to Schuyler. (Size Determination at 7).

With respect to JPAM, JP Morgan, and any other affiliates, Appellant's specific claim was that Bold Ocean was sold to “institutional investors advised by J.P. Morgan Global Alternatives' Global Transportation Group.” However, despite acknowledging that Bold Ocean's new owners are institutional investors advised by a JP Morgan entity, Appellant nevertheless alleged Bold Ocean's affiliation with JP Morgan and all affiliates.

In response, the Area Office noted that SBA has already reviewed this exact allegation in connection with a prior size protest. In that case, SBA concluded that a standalone investment fund that hires a large investment firm to be its manager is a customer of the large investment firm rather than an affiliate. Accordingly, the Area Office held that Schuyler is not affiliated with JM Morgan or its subsidiaries.

Finally, there is Appellant's claim that JP Morgan Global Transport Income Fund and a number of “institutional investors” that own Bold Ocean through the fund or investment vehicle managed by JPAM are affiliates. For this, Schuyler explained that:

Bold Ocean LLC (parent to SLNC) is ultimately owned by the Global Transport Income Fund Master Partnership. (“GTIF” or the “Fund”), a standalone investment fund that invests in transportation assets. GTIF GP has hired JPMorgan Asset Management (Europe) Sarl (“JPMAM”) to be the Fund manager. JPAMAM and its ultimate parent, JPMorgan Chase & Co. are not affiliated with the Fund.

(See Schuyler Response at 2.)

Schuyler also acknowledged Bold Ocean's - and consequently its own - affiliation with the other firms in GTIF's portfolio. *Id.* Accordingly, Schuyler provided information regarding their employees as initially indicated. Regarding the owners of the fund, Schuyler indicated that no investor owns [REDACTED PERCENTAGE] of the fund and that a third-party non-owner acts as general manager. (Size Determination at 9-10).

The Area Office found Appellant has a structure designed to allow for investment in a portfolio of firms similar to other investment funds. Accordingly, SBA found that Schuyler is affiliated with the other firms in the portfolio through shared ownership, but not the investors or any firms that may be owned by them outside of the investment fund. (Size Determination at 10).

The Area Office found the date for determining size is February 4, 2025, the date of Schuyler's initial offer, including price. With that date in mind, the Area Office found that the 24-month average for Schuyler, when combined with its affiliates, is below 1,050 employees. Accordingly, the Area Office determined that Schuyler is small for the applicable size standard, and therefore eligible as a small business concern for the subject procurements.

D. Appeals

On May 9, 2025, Appellant filed the instant appeals. OHA consolidated these matters on May 19, 2025, on account of both appeals involving the same challenged firm, the same protestor, and substantively identical issues.

For purposes of these appeals, Appellant dropped its allegation that Schuyler was affiliated with NOVA and NOVA's affiliates for the relevant period in determining Schuyler's size for these procurements. (Size Appeal at 4).

Furthermore, consistent with the Area Office's Size Determination, which clarified that JP Morgan Asset Management (Europe) S.a.r.l. is the specific entity involved with one of Schuyler's parent companies, Appellant updates its allegations accordingly to reflect the proper specific entity. (This entity will still be referred to as "JPAM" throughout the course of this decision.)

Appellant contends that no evidence, case law or any other legal precedent or authority was cited by the Area Office in making its determination, and further, that the Area Office merely cited and quoted Schuyler's size protest response throughout large portions of both Size Determinations. In doing so, the Area Office made no affirmative determination on whether an individual or entity controls GTIF. Consequently, Appellant contends that the Area Office failed to substantively address many of the substantive allegations contained in the Size Protests. (Size Appeal at 8). Moreover, in a broader sense, Appellant contends that under the Area Office's reasoning, if a large investment firm uses one subsidiary to establish a standalone investment fund and then uses a separate subsidiary to manage that same investment fund, then the fund can control the small business without a finding of affiliation between the large investor and the small business. This undermines the principles of SBA's affiliation regulations. (Size Appeal at 8-9).

Appellant contends that the Area Office made three critical mistakes in its determinations. First, the Area Office failed to identify what entity or individual controls GTIF. Second, the Area Office did not accurately count the employees from all of Schuyler's affiliates. Finally, the Area Office has failed to substantively address many of Appellant's protest allegations. (*Id.* at 9).

The first argument is that the Area Office made a clear error of fact and law by not identifying any entity or individual that possesses control over GTIF. This is erroneous because it is premised upon no entity or individual controlling GTIF. Though it is undisputed that GTIF controls Bold Ocean and that Bold Ocean controls Schuyler, (*quoting* Size Determination at 12), according to the Area Office's reasoning, GTIF is where that control stops. (Size Appeal at 10). Meanwhile, SBA's regulations require that a small business must be controlled by an individual or business concern. *See* 13 C.F.R. § 121.103(c); *MPC Computers, LLC*, SBA No. SIZ-4806 at 7 (2006).

The Area Office's determination that JPAM does not control GTIF despite being the fund manager for GTIF because "a standalone investment fund that hires a large investment firm to be its manager is a customer of the large investment firm rather than an affiliate," (citing Size Determination at 12) does not appear cite any independent evidence or analysis other than Schuyler's protest response. The Area Office does not explain how JPAM's ability to control the day-to-day operations, strategy, and direction of Bold Ocean - and therefore Schuyler - does not constitute control under SBA's regulations. (Size Appeal at 10-11).

The Area Office - again without its own analysis - quotes Schuyler's response to state the limited partners do not control GTIF because "no single limited partner investor in GTIF holds more than [REDACTED PERCENTAGE] of the total interest" and [REDACTED PERCENTAGE] is required to take "controlling interest." (Size Appeal at 11) (citing Size Determination at 13). The Area Office thus concluded Schuyler is not affiliated with any investors, partners, or managers in GTIF. (*Id.*)

Appellant argues that any determination that GTIF is not controlled by the fund manager, general partner, or limited partners is a *de facto* ruling that therefore no one controls a multi-billion-dollar infrastructure private equity fund. In so doing, the Area Office appears to support a contradictory determination that both the GTIF GP - as the general partner - lacks power because a majority of limited partners can remove it from its position with a [REDACTED PERCENTAGE] vote and also that none of the limited partners control GTIF because no limited partner has more than a [REDACTED PERCENTAGE] interest in GTIF, which is well short of the [REDACTED PERCENTAGE] required to take controlling actions. Simply put - it cannot be both. (Size Appeal at 11).

Appellant also speculates that part of the reason the Area Office came to the conclusion it did was due to an apparent misunderstanding of GTIF's structure. (Size Appeal at 11-12). GTIF is a JP Morgan creation and JP Morgan managed 12 standalone investment funds. As per the entity's own SEC filings, GTIF lists both JP Morgan Asset Management (UK) Limited and JP Morgan Asset Management (Europe) S.a.r.l.s as promoters. (*See* GTIF SEC Form D). Under SEC regulations, a "promoter" is "any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer." 17 C.F.R. § 230.405. It is therefore clear that GTIF was created by JP Morgan, who now utilizes JPAM to manage the investment strategy for the fund. (Size Appeal at 12.)

Appellant further emphasizes that under this structure, JPAM is more than an “arms-length advisor” and exercises considerable control over GTIF. A concern's control is not only dictated by its ownership in the entity, but it can also be established through management. 13 C.F.R. § 121.103(a), (e). (Size Appeal at 12-13.) Moreover, even if JPAM's services to GTIF are akin to a client-customer relationship, it is clear that JPAM can control Schuyler as an asset of GTIF as part of JPAM's function as fund manager, as seen in its decision to keep Dion Nicely in his role as CEO after the Bold Ocean acquisition. (Size Protest, Ex. 5; 13 C.F.R. § 121.103(a)(1) (“It does not matter whether control is exercised, so long as the power to control exists.”), (a)(3) (“Control may be affirmative or negative.”).)

Furthermore, even to the extent that JPAM's role is merely advisory, SBA regulations still require that some entity or individuals must control GTIF. While typically it is a general partner in a standalone investment fund that possesses this decision-making power, a group of minority shareholders can be deemed to control a concern if the minority holdings are approximately the same size, and the aggregate of these holdings is large compared with other stock holdings. *See* 13 C.F.R. § 121.103(c)(2).

Finally, the SBA regulations require that if a “concern's voting stock is widely held and no single block of stock is large as compared with all other stock holdings, the concern's Board of Directors and CEO or President will be deemed to have the power to control the concern in the absence of evidence to the contrary.” *See* 13 C.F.R. § 121.103(c). OHA has previously interpreted this last requirement to mean management generally, not just individuals or entities that serve in those specific roles. *See MPC Computers, LLC*, SBA No. SIZ-4806 at 7 (2006) (“The most notable aspect about the language in 13 C.F.R. § 121.103(c)(3) is that it is mandatory. That is, under certain conditions, management “will be deemed” to control a concern absent evidence to the contrary.”). (Size Appeal at 13-14).

Appellant's second argument is that the Area Office erred by incorrectly calculating the total number of Employees for Schuyler. (Size Appeal at 14-15). Based on publicly available information, it appears the GTIF's portfolio companies alone would exceed the size standard for the instant procurements. Based on publicly available information, GTIF is the owner (directly or indirectly) of at least 140 ocean going vessels operating worldwide. With a crew of approximately 20 mariners per vessel, GTIF employs at least 2,800 people through its vessel investments alone. Additionally, it appears that GTIF also control InStar Group, a railcar leasing company which operates over 7,000 railcars in the United States; and UES Container, one of the largest lessors of shipping containers in the world. (*citing* Size Protest at 14.) Additionally, more employees will need to be factored in once a determination is made as to which entity or entities control(s) GTIF. (Size Appeal at 15).

Finally, the Area Office failed to substantively address many of Federated Maritime's allegations in the Size Determination. As such, OHA should remand the case because the Area Office did not address all allegations in Federated Maritime's size protest. *See, e.g., Dawson Building Contractors, Inc.*, SBA No. SIZ-4501, at 6 (2002) (remanding the case to the Area Office after finding that “the Area Office failed to consider all the grounds of affiliation [the protester] raised in its protest. [The protester] asserted [the challenged firm] was affiliated with the 11 named firms due to four grounds, and the Area Office considered only the first ground.”).

E. Supplemental Appeal

On May 30, 2025, Appellant filed a Motion for Leave to file a Supplemental Appeal. Appellant did so on the grounds that it discovered information in the Case File that was relevant to its appeal. OHA routinely permits parties to file a supplemental appeal on these grounds. *See, e.g., Size Appeal of Inquiries, Inc.*, SBA No. SIZ-6008 at 13 (2019) (“OHA routinely permits a party to supplement its pleadings after its attorney has viewed file material for the first time under an OHA protective order.”); *see also, e.g., Size Appeal of Harbor Servs., Inc.*, SBA No. SIZ-5576 (2014).

Additionally, granting leave to Appellant to file the attached supplemental appeal would not prejudice any non-moving party. Pursuant to 13 C.F.R. § 134.207(b), OHA may provide for terms needed to avoid any prejudice to any non-moving party, including, if necessary, a reasonable opportunity to file a response to Appellant's supplemental appeal. This was especially true considering that Schuyler had not filed any response at all as of the May 30 deadline, so this would give Schuyler an opportunity to respond to both pleadings. Accordingly, I GRANTED this motion and ADMITTED the Supplemental Pleading.

Schuyler did not file any response by the June 18 deadline.

The core of Appellant's Supplemental Appeal is that “SBA regulations endow the Area Office with the responsibility to investigate the protest allegations and establish a record.” *Size Appeal of Jacob's Eye, LLC*, SBA No. SIZ-5895 (2018) at 16; *see also, e.g., Size Appeal of Precision Standard, Inc.*, SBA No. SIZ-4858, at 6 (2007) (finding an area office's failure to further develop and address clear contradictions in the record constitutes clear error). The Area Office is required to “give greater weight to specific, signed, factual evidence than to general, unsupported allegations or opinions.” 13 C.F.R. § 121.1009(d).

For these matters, the Size Determinations definitively find GTIF and Schuyler to be affiliated. The Case File confirms, however, this is where the Area Office's analysis unreasonably stopped. (Supp. Appeal at 4). Rather, it shows the Area Office failed to determine who - or what - actually controls GTIF, which represents clear error of fact and law. Furthermore, it also shows the Area Office relied on conclusory statements by counsel, failed to independently analyze Appellant's allegations, and erred in accepting documentation that was heavily redacted so as to “hide the ball” on who actually controls Schuyler. (*Id.*)

The documents in the Case File help clarify GTIF's overall structure, which is depicted in an organizational chart (the “GTIF Organizational Chart”). (*See Record, Folder 4, GTIF Org. Chart.*) The Case File shows that GTIF (GP) S.a.r.l. (“GTIF GP”) has the ability to exercise control over GTIF, which renders GTIF GP an affiliate of Schuyler. (Supp. Appeal at 6). Counsel for Schuyler admitted as much in a letter contained in the Case File, and the Organizational Chart similarly confirms this. Furthermore, the GTIF Limited Partnership Agreement (LPA) confirms that GTIF GP controls GTIF. (Supp. Appeal at 7). Despite these numerous pieces of evidence, the Area Office in the Size Determination quoted that same letter from Schuyler's counsel and stated that “the investors in the fund are in turn authorized to

terminate GTIF (GP) S.a.r.l.'s role as the general partner, again leaving ultimate control for the SBA's purposes in the hands of the collective limited partner investors." (Size Det. No. 02-2025-120 at 10; Size Det. No. 02-2025-132 at 8.)

Appellant contends that because GTIF GP has the power to control GTIF's operations, it is critical to understand who or what controls GTIF GP. Appellant states that further investigation is required by the Area Office in order to properly make this determination, and would need to include a wide variety of other documents not presently included in the Case File (such as a copy of GTIF GP's Operating Agreement, to cite one example). (Supp. Appeal 8-9).

Appellant then contends that a group of GTIF's Limited Partners may exercise control over GTIF, contrary to the Area Office's determination. The Area Office again came to this conclusion without doing any independent analysis, again merely quoting from the letter from Schuyler's counsel. In doing so, the Area Office failed to consider whether individual partner investors have common ownership, control, and management such that either a block of voting stock which is large compared to other outstanding blocks of voting stock exists pursuant to 13 C.F.R. § 121.103(c)(1), or the minority shareholder rule exists pursuant to 13 C.F.R. § 121.103(c)(2). (Supp Appeal at 9).

The GTIF Organization Chart indicates that [REDACTED PERCENTAGE] of the equity ownership of GTIF is owned by the limited partners. Accordingly, the limited partners may take controlling actions if [REDACTED PERCENTAGE] of the outstanding limited partnership interest agree to take action. Under the minority shareholder rule at 13 C.F.R. § 121.103, if two or more shareholders hold equal, or approximately equal, minority interests, and those interests together are large as compared with any other stock holding, then each minority owner is presumed to control the concern based on their minority interests. *Size Appeal of Tenax Aerospace, LLC*, SBA No. SIZ-5701, at 13-15 (2015) (three 33.33% owners each had the power to control). Thus, a group of limited partners could be deemed to control GTIF if their interests taken together are large compared with any other stock ownership holding.

It is therefore unclear whether a group of limited partners controls GTIF and is, thus, affiliated with Schuyler. Therefore, the Area Office erred by determining otherwise. (Supp. Appeal at 10).

The Area Office also held that the entity JPAM does not control GTIF because "a standalone investment fund that hires a large investment firm to be its manager is a customer of the large investment firm rather than an affiliate." (Size Det. No. 02-2025-120 at 9, Size Det. No. 02-2025-132 at 7.) This is again contrary to the information contained in the in the GTIF Limited Partnership Agreement, as well as standard industry practice. (Supp. Appeal at 11).

Appellant outlines an argument that, based on the LPA and the industry practice, it is likely that JPAM exercises control over GTIF. However, despite this high likelihood, a definitive determination cannot be reached until a review of the Alternative Investment Fund Managers (AIFM) Agreement is completed. Accordingly, the Area Office clearly erred by finding that JPAM does not exercise control over GTIF. Only upon review of the AIFM Agreement can the

Area Office truly understand the full extent of JPAM's role as it pertains to GTIF. (Supp. Appeal at 12).

Appellant further argues the Area Office failed to properly investigate and explore every allegation raised in Appellant's initial protests, and by virtue of not doing so, committed clear error. (Supp. Appeal at 13). The Case File clearly demonstrates that the Area Office simply accepted many of Schuyler's conclusory explanations regarding control of GTIF without doing any independent analysis of its own. More specifically, it shows that the Area Office 1.) did not review the provided documentation in such a way to allow meaningful analysis of Appellant's size protest allegations, and 2.) did not require Schuyler to provide adequate documentation to properly determine its size. (*Id.* at 14-15).

To start, the Area Office erroneously accepted a heavily redacted copy of GTIF's LPA. (*See generally* GTIF LPA.) In fact, 97 pages of the 135 total pages of the GTIF LPA are completely redacted (and only 15 pages contain no redactions). Appellant contends that the Area Office's failure to investigate the content of the redacted portions of the GTIF LPA, or draw adverse inferences, is a clear error. *Size Appeal of Woodlaw Mfg. Ltd.*, SBA No. SIZ-5861 (2017) (holding that an Area Office may draw an adverse inference whenever a challenged firm fails to produce information about its affiliates).

Second, despite an express finding by the Area Office that GTIF and Schuyler are affiliated - and therefore that Schuyler and GTIF's other portfolio companies are affiliated - the Case File fails to identify the identities of GTIF's limited partners (i.e., the "institutional investors" referenced in the size protests). (Supp. Appeal at 16). The Area Office, once again, took Schuyler at its word, despite there being limited ways to verify that information due to the inadequate Case File documentation and extensive redactions thereof.

Third, the Case File shows that Schuyler did not provide sufficient information or documentation to identify GTIF's portfolio companies. While Schuyler did produce a list of companies with which it acknowledged affiliation (*see* SBA Protest Response SLNC at 2), nothing in the Case File indicates which companies constitute the GTIF portfolio companies. Appellant contends that this point is particularly concerning because the Area Office did make a determination that Schuyler is affiliated with GTIF's portfolio companies. (*See* Size Det. No. 02-2025-120 at 9, Size Det. No. 02-2025-132 at 7). (Supp. Appeal at 18-19).

Finally, the Area Office also failed to fully investigate Appellant's claims that JPAM and/or JP Morgan controls the entity (or entities) that own or control Schuyler. (Supp. Appeal at 19.) Appellant cited to numerous news articles that contained JPAM statements asserting control over Bold Ocean to bolster this claim. Despite this clear and specific allegation, however, the agreement between GTIF and JPAM - the Alternative Investment Fund Management (the "AIFM") Agreement - is not included in the Case File. This means, by definition, that the Area Office never considered this key document. This is a clear error.

For the above reasons, Appellant requests OHA vacate the Area Office's Size Determination and remand this matter to conduct a complete investigation into Schuyler's size

status. Alternatively, Appellant requests that OHA reverse the Area Office's size determination or provide any other such relief as OHA determines appropriate.

III. Discussion

A. Standard of Review

Appellant has the burden of proving, by a preponderance of the evidence, all elements of the appeal. Specifically, Appellant must prove that the size determination is based upon a clear error of fact or law. 13 C.F.R. § 134.314. OHA will disturb a 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 finding of fact or law. *Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 11 (2006).

B. Analysis

I agree with Appellant that the Area Office erred in fact and law when it determined Schuyler is an eligible as a small business concern for the subject procurements, as it failed to consider - or even properly receive - several key portions of the Case File. Sections II.D and II.E, *supra*. As such, it is appropriate to remand this matter for further review.

Appellant contends that the Area Office cited no evidence, case law or any other legal precedent or authority in making either of its Size Determinations. Appellant also contends that the Area Office merely cited and quoted Schuyler's size protest response throughout large chunks of its determination - in essence, merely taking many of Schuyler's claims at face value without further investigation. Upon review of both documents, this characterization is accurate. (*See generally* Size Determinations).

The Area Office also failed to consider all the allegations raised in Appellant's initial Size Protests. This appears to be, in no small part, due to serious absences of and failure to properly review many documents within the Case Files of both Size Protests - which, by definition, would render the Area Office incapable of properly considering the entire Case File.

One of the key documents contained within the Case File - the GTIF Limited Partnership Agreement (LPA) - was so heavily redacted so as to render the document practically useless. A total of 97 out of the overall 135 pages of the GTIF LPA were completely redacted, with only 15 pages containing no redactions whatsoever. This is an inadequate basis for a size determination, especially when considering that Area Office failed to properly investigate, determine, or verify the underlying content of these extensive - indeed, excessive - redactions.

The Area Office's failure to fully investigate Appellant's claims that JPAM and/or JP Morgan controls the entity (or entities) that own or control Schuyler is also highly troubling. (*See* Supp. Appeal at 19.) Appellant cited to numerous news articles that contained JPAM statements asserting control over Bold Ocean to bolster this claim. Sections II.D and II.E, *supra*. Despite clear and specific pieces of evidence to bolster this allegation, the agreement between GTIF and

JPAM - the Alternative Investment Fund Management (the “AIFM”) Agreement - was not included in the Case File. Section II.E, *supra*.

The record contains multiple news articles and press releases from industry organizations and publications, including quotes from the acquiring entity JPAM itself, announcing the acquisition which is central to many of Appellant's claims contained throughout both Size Protests. And yet, if the AIFM Agreement was not included in the Case File, then the Area Office never took the necessary steps to verify the information vital to one of Appellant's central claims. This is clear error on the part of the Area Office.

The broad-based picture is this: Appellant filed its initial Size Protests challenging Schuyler's small business eligibility for the subject procurements. Appellant did so primarily on the claim that Schuyler is controlled by, or affiliated with, JP Morgan, one of the largest financial institutions in the world. Appellant bolstered its claims through evidence that appeared credible, from trade publications and press releases containing quotes from the supposed controlling entity itself. If what Appellant alleges is true, then one of the largest financial institutions in the world is using one subsidiary to establish a standalone investment fund which will use a separate subsidiary to manage that same investment fund. The Area Office's Size Determination would imply that this fund can control the small business without a finding of affiliation between the large investor and the small business. This contradicts a core principle of SBA's size regulations, that affiliation is based upon control or the power to control. 13 C.F.R. § 121.103(a)(1).

To find there was no affiliation here, the Area Office would have to find evidence contradicting Appellant's allegations, with a clear finding that JP Morgan and its subsidiaries were not exercising any impermissible management or control over the protested concern. Instead, the Area Office appears to have merely relied upon - and often directly quoting from - Schuyler's response to the protest, rather than thoroughly reviewing the underlying facts.

OHA has clearly held: “SBA regulations endow the Area Office with the responsibility to investigate the protest allegations and establish a record.” *Size Appeal of Jacob's Eye, LLC*, SBA No. SIZ-5895 (2018) at 16; *see also, e.g.*, *Size Appeal of Precision Standard, Inc.*, SBA No. SIZ-4858, at 6 (2007) (finding an area office's failure to further develop and address clear contradictions in the record constitutes clear error). The Area Office is required to “give greater weight to specific, signed, factual evidence than to general, unsupported allegations or opinions.” 13 C.F.R. § 121.1009(d).

OHA precedent also holds that, “in the face of a curiously incomplete record . . . [when the] Area Office also accepted all too readily [a protested concern's] bald assertion[s] . . . [when the] Area Office failed to consider all the grounds [upon which] Appellant raised [its] protest . . . [i]t therefore failed to address issues of decisional significance, which also requires a remand to the Area Office.” *Size Appeal of Dawson Bldg. Contractors, Inc.*, SBA No. SIZ-4501, at 4-5 (2002); *citing Size Appeal of L.W Looney & Son, Inc.*, SBA No. SIZ-3898, at 7 (1994).

Accordingly, on this basis, I must remand this case to the Area Office for further review. The Area Office must obtain complete unredacted copies of all relevant documents. The exemptions from disclosure of confidential information will protect any information Schuyler

submits. Any information Schuyler declines to submit will justify the Area Office's drawing an adverse inference against Schuyler. 13 C.F.R. § 121.1008(d).

IV. Conclusion

For the reasons discussed above, Appellant has demonstrated clear error of fact or law in the Area Office's size determination. Therefore, I GRANT the appeal, Size Determinations 02-2025-120 and 02-2025-132 are VACATED, and the matters are REMANDED to the Area Office for further review consistent with this decision.

CHRISTOPHER HOLLEMAN
Administrative Judge