

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

SIZE APPEAL OF:

Nisou Enterprises, Inc.,

Appellant

Appealed from Size Determination
Case No. SIZ-2025-194

RFP No. FA8903-24-R-0023

SBA No. SIZ-6380

Decided: April 10, 2026

APPEARANCES

P. Sean Milani-Nia, Esq., David Timm, Esq., Burr & Forman LLP, Washington, DC, for Appellant

Shane McCall, Esq., Gregory Weber, Esq., Koprince McCall Pottroff LLC, Lawrence, Kansas, for Appellant

DECISION¹

On August 8, 2025, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area II (Area Office) issued Size Determination No. SIZ-2025-194, finding Nisou Enterprises, Inc. (Appellant) to be an other-than-small business for Solicitation No. FA8903-24-R-0023. On August 25, 2025, Appellant filed the instant appeal. Appellant contends the Area Office erred in dismissing the protest, and requests SBA's Office of Hearings and Appeal (OHA) reverse or remand Size Determination No. SIZ-2025-194. For the reasons discussed *infra*, the appeal is GRANTED, and Size Determination No. SIZ-2025-194 is 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 timely filed the instant appeal on August 25, 2025. Accordingly, this matter is properly before OHA for decision.

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 decision for public release.

Pursuant to an Interagency Agreement (IAA) in effect beginning October 1, 2025, Administrative Law Judges of the U.S. Department of Health and Human Services — Office of Medicare Hearings and Appeals have been appointed by the Administrator of SBA and are authorized to hear size appeals under 13 C.F.R. § 134.102(k). The undersigned was appointed to adjudicate this matter under the IAA.

II. Background

A. The RFP

On August 26, 2024, the United States Air Force (Air Force or Agency) issued Request for Proposal (RFP) No. FA8903-24-R-0023 for Comprehensive Construction & Engineering (C2E) for Facilities Sustainment, Restoration, and Modernization Worldwide. The Contracting Officer (CO) issued the acquisition with two pools: an unrestricted pool and a restricted small business set-aside (SBSA) pool under North American Industry Classification System (NAICS) Code 236220 — Commercial and Institutional Building Construction — which had a small business size standard of \$45 million in annual receipts at the time the RFP was issued. The final due date for all offers was November 07, 2024, which was the date Appellant submitted its offer, including price.

On June 18, 2025, offerors received the Pre-Award Notice that the Agency had selected sixteen (16) total awardees, including Appellant, for the small business set-aside portion of the competition.

B. Size Protest

On June 26, 2025, Butt Construction Company, Inc (BCC) filed a size protest contending that Appellant should not be considered a small business because it is affiliated with a large business, LGC Global, Inc., dba Lakeshore Global Corporation (LGC). (Protest at 1).

BCC contended Appellant and LGC are affiliated under the standards at 13 C.F.R. § 121.103(a)(1) and 13 C.F.R. § 121.103(f)(1). BCC contends that LGC has the power to control Appellant as evidenced by the fact that both firms are controlled by family members, with a high ranking LGC officer (Shashidhar Shastri) appearing to be the father of Appellant's President (Niharika Shashidhar Shastri). BCC noted that while Appellant is a registered in business in Kansas, Appellant's principal and physical office address is also as the residence address for Shashidhar Shastri (LGC officer) in Farmington Hills, Michigan. (Protest at 2-3).

BCC further argued that Appellant is economically dependent on LGC (deriving 70% or more of its receipts from LGC). BCC argued that from 2022 to 2024, approximately 94% of the dollars awarded to Appellant were through joint ventures with LGC and only 6% of its total award value was directly awarded. (*Id.*, citing 13 C.F.R. § 121.103(f)(2).)

Additionally, BCC contends that Appellant and LGC are not currently engaged in a mentor-protégé program per SBA's current list of approved mentor-protégé joint ventures. In the event Appellant and LGC were previously in the SBA mentor-protégé program, they would have

clearly been affiliated before they joined the SBA mentor-protégé program through family relationships, control, and identity of interests (as demonstrated above), which is prohibited by SBA regulations. (*Id.*)

BCC also alleges involvement by **[Person 1]**, who is the director of a different entity with the same address as the LGC office address, located in Detroit, Michigan and also thought to reside or be associated with the Farmington Hills, Michigan address. (*Id.*)

C. Size Determination

On August 8, 2025, the Area Office issued Size Determination No. SIZ-2025-194 which found Appellant to be affiliated with both LGC and **[Company 2]**. The Area Office found LGC to be other-than-small for the applicable size standard rendering Appellant other-than-small.

The Area Office found Niharika Shastri is Appellant's owner, **[REDACTED]**, and Shashidhar Shastri's daughter. Niharika Shastri is listed as Appellant's President, Secretary, and Treasurer. (Size Determination at 7). Public records show Appellant was incorporated on May 31, 2012, by Shashidhar Shastri, with both daughters also listed as incorporators. The 2013 Annual Report for the firm shows that Shashidhar Shastri was President, Secretary, Treasurer, and Director of Appellant, with neither daughter being listed as having any role with Appellant. On February 16, 2016, Appellant filed to change its Agent from Shashidhar Shastri to Niharika Shastri, and in 2017 she appears as President of the firm with **[Person 1, Person 2, and Person 3 as Officers]**. Niharika Shastri's LinkedIn profile also corroborates that she had no role in Appellant prior to 2016, as she was still a college student when the firm was first established. (*Id.* at 7-8).

On March 14, 2016 — just after Niharika Shastri was listed as Appellant's Agent in the state records — Appellant applied to SBA's 8(a) program using Niharika Shastri's eligibility and was admitted on July 8, 2016, with participation to end July 8, 2026.

On June 14, 2018, Appellant and LGC — a former 8(a) participant itself — were approved for participation in SBA's All-Small Mentor-Protégé Program. Niharika Shastri is the Managing Member of all five (5) of the joint ventures entered into by Appellant under its SBA-approved mentor protégé relationship with LGC. During the Appellant/LGC mentor-protégé relationship Shashidhar Shastri — Niharika Shastri's father — filled the roles of Executive Vice President of LGC (from June 2015 to September 2019) and Chief Operating Officer (COO) of LGC (from September 2019 to December 2024). (*Id.*) As part of Appellant's response to the Size Protest, Niharika Shastri stated in a formal declaration that, while she considered at one time making her sister, **[Person 1]**, a director for LGC, this ultimately did not take place, and **[Person 1]** does not work for Appellant. (*Id.*, citing Declaration of Niharika Shastri).

While not disclosed by Appellant, the Area Office also found that **[Person 1's firm, Company 2]** applied for participation in SBA's Mentor-Protégé Program with LGC — **[REDACTED INFORMATION]**. (Size Determination at 8).

[REDACTED INFORMATION RE: Company 2]

[**Company 2's**] Articles of Organization filed with the State of Michigan upon its establishment indicate that it was a staffing/consulting firm rather than a general contractor. Moreover, while a firm is not required to have federal contracting experience, SBA notes that USASpending.gov shows a substantial number of awards to Appellant whereas it has no record of any awards whatsoever to [**Company 2**]. (Size Determination at 8-9).

Nevertheless, the mentor-protégé relationship between [**Company 2**] and LGC was approved on January 30, 2025, with [REDACTED INFORMATION]. (*Id.* at 9).

At about the same time as [REDACTED INFO RE: **Person 1, Company 2**], Shashidhar Shastri submitted a formal declaration that in December 2024, his role changed from COO to Advisor, in which he gives advice based on his experience and expertise to LGC's current President, Avinash Rachmale. (SBA notes that this is further evidence of Shashidhar Shastri's influence within LGC). (*Ibid.*)

Appellant argued in its Response to the Size Protest that there is no identity of interest between Appellant and LGC because the allegedly affiliated firms must be “owned or controlled by” by the family members to be affiliated, as per 13 C.F.R. § 121.103(f)(1). In this case, however, Shashidhar Shastri does not own or control LGC, but rather [**Entity 1**] owns 100% of the voting stock of LGC. Moreover, [**Entity 1**] expressly appointed Avinash Rachmale to serve as Chairman & CEO and grants him full power and authority to conduct LGC's business. (Size Determination at 10, *citing* [**Entity 1**] documents).

Appellant also argues that it was a subcontractor to LGC before Shashidhar Shastri became COO. However, the Area Office also noted about how Appellant conspicuously did not argue that it was subcontractor prior to Niharika Shastri's father being hired by LGC to serve as the president of Lakeshore Rickman JV LLC in 2014, a joint venture located inside LGC — indeed, the “L” in LGC stands for “*Lakeshore*.”

SBA accordingly found that the exact position Shashidhar Shastri held at the time Appellant started its relationship with LGC is meaningless. He himself set the firm up in 2012, [REDACTED]. Moreover, Niharika Shastri appears to have had no role in the firm prior to 2016, which is after her father had an influential position in LGC. (Size Determination at 10).

Moreover, while SBA accepted Appellant's assertions that LGC is owned by, and [REDACTED], this in and of itself does not preclude affiliation, as the Rachmale family and Shastri family may share economic interests. Indeed, Shashidhar Shastri's [REDACTED **PERSONS AND ENTITIES**] transferred into their names and claimed under the same NAICS code as LGC, that have then been used as protégés of LGC, while their father was in a position of significant influence within LGC. They then used these firms to form numerous joint ventures, thereby allowing LGC to use their various small business statuses to access set-aside contracts, all while their father remained in a position of significant influence within LGC. (*Id.* at 10).

The regulation provides an identity of interest may occur when there are “[i] ndividuals or firms that have identical or substantially identical business or economic interests (such as

family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) . . . ” and that they “may be treated as one party with such interests aggregated.” 13 C.F.R. § 121.103(f). (emphasis added).

The Area Office found that the totality of the evidence more than justified a finding that Shashidhar Shastri had control of, and substantial business economic interest in, the firm LGC. Indeed, his transition to his current role as “advisor” reflects his ongoing ties to, and influence within, LGC rather than any ostensible severing of them. The Area Office also found it is no coincidence that [REDACTED PERSONS AND ENTITIES] operating in the same NAICS code as LGC, and that — even though neither of them had any role in previously applying for SBA certifications and program participation — they nevertheless sequentially applied to be LGC's protégés. (Size Determination at 10).

The Area Office also determined that it was highly likely that the [REDACTED PERSONS] are involved with, or at least coordinating between, the firms ostensibly owned by the [REDACTED PERSONS] — Appellant and [Company 2]. (*Ibid.*)

Based on the above, the Area Office determined that Shashidhar Shastri, Niharika Shastri, and [Person 1] have demonstrated an orchestrated, [REDACTED] approach to their business endeavors demonstrating that they are individuals with identical or substantially identical business or economic interests. (Size Determination at 11). On this basis, the Area Office found Appellant to be affiliated with both LGC and [Company 2] with LGC being other-than-small for the applicable size standard. Combined with its affiliates, Appellant had a five-year average of annual receipts exceeding the \$45 million size standard. (*Id.* at 13).

D. Size Appeal

On August 25, 2025, Appellant filed the instant appeal. Appellant asserts there is no affiliation based on an identity of interest between LGC and Appellant because Shashidhar Shastri does not control LGC or Appellant, and because there is a clear line of facture between LGC and Appellant. Additionally, Appellant asserts it is not affiliated with [Company 2] and because the initial size protest never alleged affiliation with [Company 2], the Area Office never gave Appellant an opportunity to address that allegation. (Size Appeal at 2).

Appellant notes the Area Office acknowledged in its own Size Determination that the Rachmale family, not the Shastri family, owns LGC. Appellant asserts the Area Office could only speculate that the Rachmale family and Shastri family may share economic interests because there was no evidence anywhere in the record to support that assertion. (*Id.* at 3.) (emphasis supplied in Size Appeal).

Regarding the issue of control, Appellant emphasizes that Shashidhar Shastri, in his role as Advisor, merely provides his advice and expertise to the CEO — Avinash Rachmale — for his consideration. Moreover, while Shashidhar Shastri served as Chief Operating Officer (COO) of LGC from 2019 to December 2024, he was not authorized to make any significant decisions on behalf of LGC, nor does he serve on any Board, have any vote in LGC matters, and his

presence is in no way required to establish a quorum. (Size Appeal at 3-4, *citing* Declarations of Avinash Rachmale and Shashidhar Shastri).

Appellant asserts the Area Office's determination that Appellant's various submitted sworn declarations are “disingenuous” and that Shashidhar Shastri has “substantial control/influence over, and economic interest in the firm” constitutes clear error by pointing out that Area Offices are directed to assign “significant probative value” to sworn declarations that discuss determinative issues. (*See e.g., Eagle Home Medical Corp.*, SBA No. SIZ-6163 (2022)); (*see also* 13 C.F.R. § 121.1009(d) (“SBA will give greater weight to specific, signed, factual evidence than to general, unsupported allegations or opinions.”)).

Appellant asserts the Area Office's analysis concerning Shashidhar Shastri's role as COO is contrary to OHA precedent, as it is well-established that titles alone do not establish control. (*See e.g., Size Appeal of Alphaport, Inc.*, SBA No. SIZ-5799 (2016) (finding that a COO who owned 5% had no control over the firm where the shareholder agreement showed the CEO owned 75% and had exclusive control.); *See also Size Appeal of Nat'l Sec. Assocs., Inc.*, SBA No. SIZ-5907 (2018) (Holding that a COO did not control the firm where the individual had “limited . . . actual responsibilities,” had no “signature authority,” and “[did] not exercise critical or substantive control . . .”).

Appellant reinforces this argument by pointing to *Size Appeal of US Builders Group*, SBA No. SIZ-5519 (2013) involving a parent and child relationship, where OHA overturned the Area Office's determination for lack of evidence showing control. Specifically, OHA determined that there was no identity of interest because even though parents and daughter were collectively in control of one firm, they could not control the second firm, which was 51% controlled by an unrelated individual who served as President, Treasurer, Secretary, and sole director. Specifically, OHA determined that there was no identity of interest because even though parents and daughter were collectively in control of one firm, they could not control the second firm, which was 51% controlled by an unrelated individual who served as President, Treasurer, Secretary, and sole director. (Appeal at 5).

Appellant argues the Area Office's finding that Shashidhar Shastri's role as an advisor to LGC's CEO indicates his continued ties to and influence within Appellant are meritless. Appellant argues his advisor role is more akin to a consultant than a controlling member of the firm. Further, Appellant argues that whatever “influence” he has within the firm points to the Area Office's use of an incorrect standard. Specifically, Appellant argues the Area Office must demonstrate that the family member(s) “own or control” both of the allegedly affiliated entities in question, not merely have influence. (Size Appeal at 6). Appellant asserts “Control” is a defined term that does not extend to individuals who simply have influence. (*See* 13 C.F.R. § 124.106). Appellant argues that if SBA intended for “influence” to be enough to establish affiliation through identity of interest, the regulation would say so. Appellant reinforces this argument by providing an example, wherein under 13 C.F.R. § 121.103(g), SBA expressly provides that a key employee with “critical influence” in a concern may implicate the newly organized concern rule. However, SBA did not extend the “critical influence” concept to identity of interest affiliation. (Size Appeal at 5).

Appellant next argues that the Area Office's conclusion that Shashidhar Shastri orchestrated the formation of Appellant for LGC's benefit, and that he constructively controls Appellant, are clear errors. Appellant points out that the idea that Shashidhar Shastri created and controlled Appellant from 2012 until 2016 is erroneous, because Niharika Shastri has owned and controlled Appellant since 2012. Appellant points out that the record reflects Shashidhar Shastri was not involved in Appellant after assisting with entity formation in 2012, apart from serving as the registered agent, and Niharika Shastri has owned 100% of Appellant's **[REDACTED NUMBER]** shares while serving as President, Secretary, Treasurer, and 100% owner for Appellant's entire history. (Size Appeal at 6-7, *citing* Appellant Bylaws at 8, 9, 10, and 14). Appellant notes that Niharika Shastri's role took place before Shashidhar Shastri even knew of LGC or Avinash Rachmale. (Supp. Exhs. 1 and 2).

Appellant argues the Area Office was also in error in finding that Shashidhar Shastri “connected” Appellant and LGC. Appellant asserts it was Niharika Shastri that did so, as she was friends with Ruchi Rachmale in 2010, and this connection led her to Avinash Rachmale and his role as her mentor. (Supp. Exh. 3). Appellant supports this argument by arguing that in 2015, Niharika Shastri had a conversation with Avinash Rachmale about the 8(a) BD program to seek his advice, given he had successfully navigated it previously. (Supp. Exh. 1).

In sum, Appellant argues the Area Office's dogged pursuit of a ‘scheme’ caused it to rely on inconclusive evidence and overlook key documents in the record, such as Appellant's Bylaws and the various sworn determinations. Appellant argues these clear errors of fact are grounds to overturn the Size Determination.

Appellant next argues the Area Office committed factual and legal errors in finding enough business connections existed between LGC and Appellant to justify affiliation. (Size Appeal at 9). Appellant argues the Area Office failed to apply the required SBA approved Mentor-Protégé Agreement (“MPA”) shield to subcontracts and activities done between Appellant and LGC under their SBA approved MPA. Appellant points to *Sevenson Environmental Services, Inc.*, SBA No. SIZ-6087 (2021) and *Daniels Bldg. Co., Inc.*, SBA No. SIZ-6350 (2023) wherein OHA precedent held an Area Office “simply cannot go back in time and deem an SBA approved MPA null and void due to its own inaccurate assumptions of relationships between parties.”

Within the context of existing business connections, Appellant argues it provided ample support that LGC and Appellant should be treated as separate entities, as their business connections are minimal and shielded by their MPA. Appellant begins by addressing the required criteria for affiliation with a family member emphasizing that the businesses involved must be “owned or controlled” by direct family (spouses, parents, children, siblings, and parties to a civil union) and those same family members must conduct business with each other through those businesses. Appellant rightly points out that this familial presumption of affiliation can be rebutted by showing “a clear line of fracture” between the subject businesses, exhibiting that “the interests deemed to be one are in fact separate.” (*See* 13 C.F.R. § 121.103(f) and (f)(1) and Appeal at 10).

Appellant points to OHA precedent holding that a “minimal amount of business or economic activity between . . . concerns does not prevent a finding of clear fracture.” *Megen-Awa 2, LLC*, SBA No. SIZ-5845 (2017) and that subcontracting “a large portion (more than 25%) of the instant procurement” is an indication of affiliation. (*RGB Grp., Inc.*, SBA No. SIZ-5351 (2012)). Appellant provides an example of this standard being applied where two firms controlled by direct family members “were found not affiliated despite having two existing contracts, occasional use of one firm's facilities by the other, and one employee of one firm who performed some work as needed for the other” and the “minimal degree of business activity between the firms did not suggest dependence, and OHA found a clear line of fracture between the firms.” (*GPA Techs., Inc.*, SBA No. SIZ-5307 (2011)), (citing *Henderson Group Unlimited Inc.*, SBA No. SIZ-5034 (2009)).

Appellant points out that the record reflects it had an SBA approved MPA with LGC until June 18, 2024, and that assistance or working together on matters such as joint venture contracts cannot form the basis of familial affiliation. Appellant supports this argument by pointing to OHA precedent, wherein business dealings occurring after the SBA approves a mentor-protégé agreement cannot be used to demonstrate “a lack of clear fracture (and ultimately affiliation) between family members who have the power to control the concerns covered by the mentor-protégé agreement.” (*Technical Support Services*, SBA No. SIZ-4794 (2006)) (emphasis supplied in Size Appeal at 11).

As further argument, Appellant notes that OHA has also held that “an area office's finding of affiliation between a mentor and protégé based solely upon a familial relationship would have the effect of undoing every mentor-protégé relationship involving family members.” (*Size Appeal of The Orasa Group, Inc.*, SBA No. SIZ-4966 (2008)). This principle was applied in *Size Appeal of Patriot Construction, Inc.*, SBA No. SIZ-5439 (2013), where OHA identified a clear fracture despite two brothers owning separate firms that entered into an MPA. In that instance, the firms collaborated on joint ventures, and the mentor issued subcontracts to the protégé; nevertheless, OHA determined that “the existence of the mentor-protégé agreement create[d] the necessary fracture to rebut the affiliation presumption.” (*Id.*) Under 13 C.F.R. § 121.103(b)(6), affiliation between a mentor and protégé requires “assistance above and beyond such direct business assistance, such as a mentor sharing with its protégé a location and employees or a protégé selling its mentor the majority of its stock.” (*See Size Appeal of Rio Vista Management, LLC*, SBA No. SIZ-5316 (2012)), (citing *Size Appeal of Safety and Ecology Corp.*, SBA No. SIZ-5177 (2010)).

Appellant summarized by arguing that OHA has repeatedly found clear fracture between two family members and entities if the business connections are minimal, and assistance under an MPA cannot be used to establish business connections. Appellant argues it provided ample support that LGC and Appellant should be treated as separate entities, as their business connections are minimal and shielded by their MPA. Appellant specifically argues the Area Office committed legal and factual errors in determining otherwise, as exemplified by the fact that the Size Determination did not even mention clear fracture or *de minimis* business connections in its analysis. (Size Appeal at 12).

Regarding economic dependence, Appellant points out that the record reflects the only receipts Appellant has received in any way connected to LGC are through their two MPA joint ventures, of which Appellant is managing venturer and 51% owner of both. (*See* LGC JV I and JV II). Appellant argues, that as established above, those receipts do not qualify as being derived from LGC under 13 C.F.R. § 121.103(f) and they are shielded from affiliation findings due to the MPA. (*Patriot Construction, supra*). (*see also* 13 C.F.R. § 125.9(d)(4)). (“No determination of affiliation or control may be found between a protégé firm and its mentor based solely on the mentor-protégé agreement, or any assistance provided pursuant to the agreement.”). Appellant argues the Area Office cannot simply pick and choose what regulations it can follow, and SBA's regulations are clear that assistance and activity under an MPA cannot give rise to affiliation. (Size Appeal at 12-13). (emphasis supplied in Size Appeal).

Appellant argues the Area Office erred in failing to consider various points and pieces of information concerning economic dependence. For instance, the Area Office refused to consider Appellant's rebuttal on economic dependence (as well as the protestor's arguments in the same vein) because it was not the basis for the affiliation finding. Previous subcontracts between Appellant and LGC — and any information they may have provided the Area Office about affiliation, or lack thereof — were also not considered. (Size Appeal at 13).

Regarding the subcontracts, Appellant argues the same were more than six years ago and were entered into to find out if LGC and Appellant could work well together. (*See* Supp. Exhs. 7-8). Appellant points out that six years is so far out that, in fact, it exceeds the amount of time which a business must look back to determine size under SBA regulations. (*See* 13 C.F.R. § 121.104(c)) (stating size measurements only look back five years). Appellant specifically argues it was legal and factual error for the Area Office to rely on such minimal subcontracting that was quite long ago in preparation of an MPA, to try and prop up its inaccurate assumptions on affiliation. (Size Appeal at 14).

Appellant then turns to issues such as office space and financial matters, and to what extent there is — and isn't — overlap between Appellant and LGC. Appellant argues it does not lease office space from LGC, but rather, the joint venture does and points out OHA precedent holds that leasing office space in the same building or area does not give rise to affiliation. (*See A & H Contractors, Inc.*, SBA No. SIZ-5459 (2013)). (“[A] lease of office space does not demonstrate any power to control; otherwise, a concern would always be affiliated with its landlord.”) Also, historic ties in address have little to no relevance in assessing affiliation. (*Id.*, citing 13 C.F.R. § 121.1001(b)(9)).

Regarding office space, Appellant points out the record reflects it completes the vast majority of its work out of the Farmington, Michigan address and intends to close its Aspen Drive address after graduating from the 8(a) program in 2026. Appellant points out its response to the initial protest outlined that the joint venture still has this space and performs work because of ongoing contracts through 2027. (Response at 5); (*see also* 13 C.F.R. § 125.9(d)(1)(A) (explaining that regardless of any changes, joint ventures formed pursuant to an SBA approved MPA “remains obligated to continue performance on that contract.”)).

Regarding financial matters, Appellant points out the record reflects that LGC and Appellant have separate bank accounts (absent the joint venture), and Niharika Shastri is the “sole person with access and authority to cut checks or move money and the sole Beneficial Owner.” (Response at 6; *see also* Exh. C). In addition, Appellant's projects won post-JV have all been with new customers and in new locations that do not overlap with LGC or the JV between Appellant and LGC. (Supp. Exh. 1). Finally, any employees provided by LGC to assist Appellant were provided through the assistance contemplated under the MPA between Appellant and LGC. (*Id.*; *see also* Protest Resp. Exhs. B, C, E, and J). Appellant argues that any employees shared by LGC to Appellant simply assisted Appellant and were supplied under the SBA-approved MPA in accordance with joint ventures also formed under that same MPA, making such shared resources prohibited from forming the basis of an affiliation determination. (*See* 13 C.F.R. § 125.9(d)(4); *Sevenson Environmental, supra*). (Size Appeal at 15-16).

Appellant asserts error as the above-discussed office space and financial matters information was provided via sworn declarations from Appellant and under SBA regulations and case law, these factual corroborating sworn declarations must be given substantial weight. (*See* 13 C.F.R. § 121.1009(d)); (*see also Eagle Home Medical Corp.*, SBA No. SIZ-6163 (2022)). (Size Appeal at 16-17).

Regarding **[Company 2]**, Appellant asserts the Area Office committed factual and legal error when discussing **[Company 2]** without proper notice to Appellant arguing the Area Office, procedurally, was required to allow Appellant to rebut such presumption of affiliation. (Size Appeal at 17). Specifically, Appellant contends the Size Determination pulls in a wholly unrelated contractor — **[Company 2]** — simply because it is owned by **[Person 1]** and has a Joint Venture and SBA approved MPA with LGC. (Size Determination at 8). Appellant points out the Area Office admits “it has no record of any awards to **[Company 2]**” but includes **[Company 2]** as a critical part of its inaccurate assumptions of a scheme between Appellant, LGC and the Shastri family, alleging that somehow **[Company 2]** was taking the place of Appellant by having the same NAICS code as Appellant and entering into an MPA with LGC. (*Id.* at 9 and 11). Appellant argues the Area Office made a leap to conclude this minimal information means “[Appellant] is affiliated with both LGC Global and **[Company 2]**.” (*Id.* at 12).

Appellant points out that SBA regulations state that “size determination[s] will be based primarily on the information supplied by the protestor or the entity requesting the size determination and that provided by the concern whose size status is at issue.” (*Id.*, citing 13 C.F.R. § 121.1009(b).) Appellant notes that while SBA is permitted to use other information and may make requests for additional information to the protestor, OHA has held “area offices are permitted to investigate issues beyond those specifically raised by a protestor, provided that the challenged firm is afforded notice and an opportunity to respond.” (*See Size Appeal of Aerospace Eng'g Spectrum*, SBA No. SIZ-5469 (2013). (emphasis supplied in Size Appeal).

Appellant argues that here, the BCC did not raise **[Company 2]** as a possible affiliate. While, as discussed above, the Area Office is permitted to expand the scope of its Determination, the Area Office was required to raise this potential affiliate to Appellant and allow Appellant to

respond. Because the Area Office did not do this, Appellant was not even aware of this alleged affiliation until the Size Determination was released. (Size Appeal at 18).

Appellant provides its response to possible [Company 2] affiliation for first time in this proceeding, as follows: Identity of interest based on familial affiliation has two criteria: (1) the businesses have direct relatives in ownership and control; and (2) that there are business relationships between the subject businesses. (See 13 C.F.R. § 121.103(f)(1)). Despite the relationship between Niharika Shastri and [Person 1], the Area Office asserts no business connections between [Company 2] and Appellant, other than similarities in NAICS, and both companies having MPAs with LGC at some point. (See Determination at 8, 9, and 11). Beyond this, and beyond alleging links between [Company 2] and LGC (but notably, not between [Company 2] and Appellant), the Area Office provides no evidence of Appellant and [Company 2] having business connections. Accordingly, the Area Office committed factual and legal error in finding Appellant affiliated with [Company 2] under familial identity of interest affiliation. (Size Appeal at 19).

Based on the above arguments, Appellant asks that the size appeal should be granted, and the Size Determination reversed. Alternatively, based on the clear errors of fact or law addressed, Appellant seeks to have OHA (at a minimum) vacate the Area Office decision and remand the matter with further instructions.

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

The issue presented here is whether the Area Office correctly found Appellant, LGC, and [Company 2] affiliated through familial identity of interest.

SBA's "General Principles of Affiliation" provide that two or more business concerns or entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists. 13 C.F.R. § 121.103(a)(1).

SBA has specifically defined affiliation as existing through identity of interest, as follows:

Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have **identical or substantially identical business or economic interests** (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated. Where SBA determines that such interests should be aggregated, an individual or firm may rebut that determination with evidence showing that the interests deemed to be one are in fact separate. **(Emphasis added)**

13 C.F.R. § 121.103(f).

When familial relations are the catalyst for affiliation under identity of interest, SBA regulations provide:

Firms **owned or controlled** by . . . parents, children, and siblings are presumed to be affiliated with each other if they conduct business with each other, such as subcontracts or joint ventures or share or provide loans, resources, equipment, locations or employees with one another. **This presumption may be overcome by showing a clear line of fracture between the concerns. (Emphasis added)**

13 C.F.R. § 121.103(f)(1).

Accordingly, affiliation is presumed between concerns of qualifying family members when those family members have identical or substantially identical business or economic interests, and the concerns are owned or controlled by those same family members. This presumption can be overcome by showing a clear line of fracture existing between the aggregated concerns.

The Area Office found affiliation between Appellant, LGC, and **[Company 2]** through familial identity of interest. The parties do not dispute that LGC is other-than-small for the applicable size standard and affiliation with LGC would render Appellant other-than-small for the applicable size standard. Appellant argues the record does not support that Appellant's owner has a parent/child or sibling relationship with any person that owns or has control over LGC. Appellant argues that the absence of familial ownership or control of LGC precludes a finding that Appellant is affiliated with LGC under 13 C.F.R. § 121.103(f)(1).

Since the Area Office chose to base the Size Determination upon familial identity of interest, it must necessarily follow that all of the facts it cites supporting its determination are supported by the record. The lynchpin of the Area Office's determination is that Shashidhar Shastri controls LGC. The Area Office found his control of LGC through his role as "COO" from September 2019 until December of 2024 and serving as an Advisor to LGC'S CEO thereafter. Having found Shashidhar Shastri's control of LGC, the Area Office then linked LGC to concerns owned by Shashidhar Shastri's **[REDACTED]** (Appellant and **[Company 2]**). (Size Determination at 7-10).

The parties do not dispute, and the record supports that [Entity 1] owns 100% of LGC's voting stock. Accordingly, ownership of LGC cannot be the basis for determining that affiliation through familial identity of interest exists between LGC, Appellant, and [Company 2]. (Size Determination at 10 and Resp. Ex. F at 25).

Prior to the date Appellant's size is determined, [Entity 1]:

- 1) Appointed [REDACTED] to serve as Chairman and CEO of LGC;
- 2) Granted [REDACTED] voting proxy for [Entity 1]; and
- 3) Gave [REDACTED] full power and authority to [REDACTED, PERFORM VARIOUS DUTIES], and otherwise control the day-to-day and long term decision making of LGC. (Resp. Ex.'s D-F).

Shashidhar Shastri served as LGC's Chief Operating Officer (“COO”) from 2019 to December 2024. His role was limited to executing the CEO's “day-to-day and long term decision-making” for LGC. He “did not as COO, have authority to negotiate contracts, hire and fire employees, settle legal disputes, determine salaries, select projects, take out loans, sign bonds or checks on behalf of LGC, form joint ventures, direct investments, access LGC bank accounts, and otherwise control the day-to-day or long term decision making of LGC.” (Resp. Ex.'s D and E).

Shashidhar Shastri began serving as an advisor to Avinash Rachmale in December of 2024. In this role, he provides advice and expertise to Mr. Rachmale. The record does not reflect Shashidhar Shastri's role as an advisor to Mr. Rachmale grants him authority to negotiate contracts, hire and fire employees, settle legal disputes, determine salaries, select projects, take out loans, sign bonds or checks on behalf of LGC, form joint ventures, direct investments, access LGC bank accounts, and otherwise control the day-to-day or long term decision making of LGC. Shashidhar Shastri does not serve on any Board, has no vote in LGC matters, and his presence is in no way required to establish a quorum. The record reflects, that from 2019 to present, Avinash Rachmale has maintained control over LGC. (Resp. Ex. D-F).

Avinash Rachmale does not have a familial relationship with Shashidhar Shastri or Niharika Shastri. (Resp. Ex. E).

While affiliation can be established through close family relationships among individuals owning or controlling different concerns, the allegedly affiliated firms must be “*owned or controlled by*” by the family members to be affiliated. 13 C.F.R. § 121.103(f)(1) (**emphasis added**); *see also Tech. Support Servs., Appellant Vanguard Res. Corp., Appellant*, SBA No. SIZ-4794 (June 20, 2006) (“[A]ffiliation predicated upon a familial identity of interest requires the family member to have the power to control the larger concern.”); *see also US Builders Grp., Appellant*, SBA No. SIZ-5519, 2013 (Dec. 11, 2013) (“In analyzing questions of affiliation, the ultimate question is always whether one concern can control the other.”).

For this procurement, there is no dispute that the date Appellant's size is determined is November 7, 2024. The record reflects that Shashidhar Shastri served as COO of LGC prior to this date (2019 to December 2024) and that on this date he was serving as an advisor to LGC's CEO. Even in the role of COO, he was not authorized to make any significant decisions on behalf of LGC, did not serve on any LGC Board with a vote in LGC matters, and his presence was not required to establish a quorum. As it relates to Shashidhar Shastri's role in LGC as of the date Appellant's size is determined, the record contains sworn declarations reflecting his role is more akin to a consultant than a controlling member of the firm.

Area Offices are directed to assign “significant probative value” to sworn declarations that discuss determinative issues. *See e.g., Eagle Home Medical Corp.*, SBA No. SIZ-6163 (2022); *see also* 13 C.F.R. § 121.1009(d) (“SBA will give greater weight to specific, signed, factual evidence than to general, unsupported allegations or opinions.”).

Here, the Area Office determined that Appellant's various submitted sworn declarations concerning Shashidhar Shastri's role were “disingenuous” and he retained “substantial control/influence over, and economic interest” in LGC on this date. The Area Office relied upon Appellant's past ownership, corporate filings and a sense of the totality of circumstances to find Shashidhar Shastri actually controlled LGC. The Area Office's discussion of Appellant's prior circumstances is accurate but fails to give substantial weight to the sworn declarations refuting Shashidhar Shastri's control of LGC. The Area Office appears to rely on Shashidhar Shastri's former role as COO of LGC. In that regard, OHA has held that titles alone do not establish control. (*See e.g., Size Appeal of Alphaport, Inc.*, SBA No. SIZ-5799 (2016). OHA held that a COO owning 5% did not have control over the firm where the shareholder agreement showed the CEO owned 75% of the firm and had exclusive control.; *see also Size Appeal of Nat'l Sec. Assocs., Inc.*, SBA No. SIZ-5907 (2018). OHA held that a COO did not control the firm where the individual had “limited . . . actual responsibilities,” had no “signature authority,” and “[did] not exercise critical or substantive control. . . .”

Further, OHA has held that insufficient evidence exists to find identity of interest between a parent and child even though parents and daughter were collectively in control of one firm, they could not control the second firm, which was 51% controlled by an unrelated individual who served as President, Treasurer, Secretary, and sole director. *Size Appeal of US Builders Group*, SBA No. SIZ-5519 (2013)).

Here, the documentary evidence reflects Shashidhar Shastri, as COO, did not control the firm as he had limited actual responsibilities, had no signature authority, and did not exercise critical or substantive control over LGC. The Area Office's finding that Shashidhar Shastri role as an advisor with LGC indicates his continued ties to and influence within Appellant is meaningless, as he never had control of LGC. As noted above, the Size Determination was based upon a finding of familial identity of interest through control of LGC. Influence does not equate to control within SBA's regulatory framework established under 13 C.F.R. § 121.103.

Review of the Protest reflects two distinct allegations of affiliation between Appellant and LGC: 1) Familial identity of interest; and 2) Appellant's economic dependence on LGC (alleging Appellant derived 70% or more of its receipts from LGC). 13 C.F.R. § 121.103(f)(2).

The record reflects on the date Appellant's size is determined, Avinash Rachmale is the person who controls LGC. As Avinash Rachmale bears no familial relationship to the owner of Appellant, control cannot be the basis for affiliation between Appellant and LGC through familial identity of interest.

The language of the Size Determination confuses the requirements of familial identity of interest and affiliation under the totality of the circumstances. While identifying the basis for affiliation as identity of interest, the Size Determination utilizes facts, including prior financial interactions of Appellant and **[Company 2]** while under SBA approved MPAs with LGC, to create a holding that the circumstances and interactions between Appellant and LGC are so suggestive of reliance as to render the businesses affiliates. Such a finding may or may not be supported by the record under SBA's affiliation through a totality of circumstances under 13 C.F.R. § 121.103(a)(5) but those relied upon facts do not support the Size Determination's finding of control of LGC by Shashidhar Shastri and the ultimate conclusion of affiliation through familial identity of interest between Appellant, **[Company 2]**, and LGC.

The record reflects the Area Office failed to provide Appellant with any opportunity to address possible affiliation with LGC and **[Company 2]** under the totality of circumstances, an issue upon which the Size Determination was based. As the Protest was premised exclusively on familial identity of interest and Appellant's economic dependence on LGC, Appellant would not reasonably have understood that the Area Office also would be reviewing the totality of the circumstances.

Even if Appellant had been aware that Appellant could be found affiliated with LGC or **[Company 2]** under the totality of the circumstances, it is not clear that Appellant could have prepared a meaningful response to this issue, without more detailed information as to the Area Office's particular concerns. The Area Office, though, did not notify Appellant of the specific factual issues that ultimately formed the basis for the size determination. Although Appellant did provide the Area Office some information about, for example, familial relationships and ownership issues as part of Appellant's response to the familial identity of interest/economic dependence allegations, Appellant would not have known that such information might be repurposed to find Appellant affiliated with LGC or **[Company 2]** on other, unrelated grounds. I therefore cannot conclude that Appellant had proper notice of, and a fair opportunity to address, the Area Office's concerns. *See Size Appeal of C2 ALASKA, LLC*, SBA No. SIZ-6149 (2022) and *Alutiiq Int'l Solutions*, SBA No. SIZ-5069, at 4 (area office erred by “request[ing] information from [the challenged firm] without explaining why [the area office] wanted this information.”).

It is worth noting that, apart from the issue of due process, remand also is warranted here because the size determination did not fully articulate valid grounds for affiliation under the totality of the circumstances. OHA has repeatedly held that “in order to find affiliation through the totality of the circumstances, ‘an area office must find facts and explain why those facts caused it to determine one concern had the power to control the other.’” *Size Appeals of Med. Comfort Sys., Inc. et al.*, SBA No. SIZ-5640, at 15 (2015) (quoting *Size Appeal of Faison Office Prods., LLC*, SBA No. SIZ-4834, at 10 (2007)). An area office thus “cannot merely list connections between the firms, it must explain how those connections could lead one firm to

control the other.” *Size Appeal of Leumas Residential, LLC*, SBA No. SIZ-6103, at 22 (2021); *Size Appeal of Hendall, Inc.*, SBA No. SIZ-5888, at 10 (2018). Stated differently, the fact that “there are ties between [two] concerns is not sufficient to support a finding of affiliation, the ties must establish that one concern controls or has the power to control the other.” *Size Appeal of SC&A, Inc.*, SBA No. SIZ-6059, at 12 (2020); *Size Appeal of TelaForce, LLC*, SBA No. SIZ-5970, at 15-16 (2018).

In the instant case, the Area Office identified past connections between Appellant, **[Company 2]** and LGC to support the conclusion of affiliation under familial identity of interest. The Area Office did not, however, explain how these connections would enable LGC to control Appellant and/or **[Company 2]**, or *vice versa*, nor did the Area Office address the allegation Appellant derived 70% or more of its receipts from LGC under a totality of the circumstances analysis. As a result, additional review is necessary.

I therefore must conclude that the Area Office's size determination was based upon clear error of law and fact in finding control of LGC by Shashidhar Shastri and familial identity of interest between Appellant, **[Company 2]** and LGC. Accordingly, I GRANT the instant appeal, VACATE the size determination, and REMAND this matter to the Area Office for a new size determination, consistent with this opinion. Appellant may present its arguments to the Area Office upon remand.

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 Determination 02-2025-194 is VACATED, and the matter is REMANDED to the Area Office for a new size determination consistent with this decision.

BRIAN J. HARING
U.S. Administrative Law Judge