

REDACTED DECISION FOR PUBLIC RELEASE

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

SIZE APPEAL OF:

Serviam Construction, LLC

Appellant

Appealed from
Size Determination No. 2-2017-111

SBA No. SIZ-5872

Decided: December 4, 2017

APPEARANCES

Isaias (“Cy”) Alba, IV, Esq., Patrick T. Rothwell, Esq., and David J. Medalia, Esq., PilieroMazza PLLC, Washington, D.C., for Appellant.

John M. Manfredonia, Esq., and Jim Petersen, Esq., Manfredonia Law Offices, LLC, Cresskill, New Jersey, for Williams Building Company.

Sam Q. Le, Esq., Office of General Counsel, U.S. Small Business Administration, Washington, D.C.

DECISION¹

I. Introduction and Jurisdiction

On September 13, 2017, the U.S. Small Business Administration (SBA) Office of Government Contracting, Area II (Area Office) issued Size Determination No. 2-2017-111, concluding that Serviam Construction, LLC (Appellant) is not a small business under the size standard associated with the subject procurement. Appellant maintains that the Area Office clearly erred in calculating the amounts of revenue derived from inter-affiliate transactions in determining Appellant’s size. For the reasons discussed *infra*, the appeal is denied and the size determination is affirmed.

¹ This decision was initially issued under a protective order. Pursuant to 13 C.F.R. § 134.205, OHA afforded counsel an opportunity to file a request for redactions. OHA received one or more requests for redactions and considered such requests in redacting the decision. OHA now publishes a redacted version of the decision for public release.

REDACTED DECISION FOR PUBLIC RELEASE

SBA's Office of Hearings and Appeals (OHA) decides size determination appeals under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. parts 121 and 134. Appellant filed the appeal within fifteen 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.

II. Background**A. Solicitation and Protest**

On May 19, 2017, the U.S. Department of Veterans Affairs (VA) issued Invitation for Bids (IFB) No. VA242-17-B-0569 for window replacement at the Syracuse VA Medical Center. The Contracting Officer (CO) set aside the procurement entirely for Service-Disabled Veteran-Owned Small Businesses, and assigned North American Industry Classification System (NAICS) code 236220, Commercial and Institutional Building Construction, with a corresponding size standard of \$36.5 million average annual receipts.

On June 20, 2017, bids were opened and the VA announced that Appellant was the apparent awardee. On June 26, 2017, Williams Building Company (WBC), an unsuccessful bidder, filed a size protest with the CO. The protest alleged that Appellant is affiliated through familial identity of interest and the totality of the circumstances with several concerns owned and controlled by the Orr family. More specifically, WBC alleged that Appellant is affiliated with J.C. Orr & Son, Inc. (JC Orr & Son); Orr Lumber and Building Supply (Orr Lumber); Union Roofing and Sheet Metal Co., Inc. (Union Roofing); and Orr Group, Inc. (Orr Group). The CO forwarded WBC's protest to the Area Office for review.

B. Area Office Proceedings

On July 6, 2017, Appellant responded to the protest, denying affiliation with the Orr family companies. On July 14, 2017, Appellant provided additional information concerning Appellant's business dealings with the Orr family companies, particularly J.C. Orr. Appellant maintained that "[Appellant's] subcontracting work with J.C. Orr has been a minimal part of [Appellant's] revenue as the company continues to grow." (Letter from A. Shuckrow to H. Goza (July 14, 2017), at 3.) On August 24 and 25, 2017, Appellant submitted copies of "intercompany invoices" that had occurred during the years 2014, 2015, and 2016. (Letter from S. Kelly to H. Goza (August 24, 2017), at 1.) Appellant also provided Excel spreadsheets listing transactions between Appellant and the Orr family companies, as well as transactions among the Orr family companies but to which Appellant was not a party. The information Appellant submitted is summarized in the following table:

Appellant's Claimed Inter-Affiliate Transactions			
Amount JC Orr Paid Appellant:		Amount JC Orr Paid Orr Group:	
2014	[\$XXXX]	2014	[\$XXXX]

REDACTED DECISION FOR PUBLIC RELEASE

2015	\$(XXXX)	2015	\$(XXXX)
2016	\$(XXXX)	2016	\$(XXXX)
Total:	\$(XXXX)	Total:	\$(XXXX)
Amount JC Orr Paid Union Roofing		Amount Appellant Paid Orr Group	
2014	\$(XXXX)	2014	\$(XXXX)
2015	\$(XXXX)	2015	\$(XXXX)
2016	\$(XXXX)	2016	\$(XXXX)
Total:	\$(XXXX)	Total:	\$(XXXX)
Amount Appellant Paid Union Roofing		Amount Appellant Paid JC Orr	
2014	\$(XXXX)	2014	\$(XXXX)
2015	\$(XXXX)	2015	\$(XXXX)
2016	\$(XXXX)	2016	\$(XXXX)
Total:	\$(XXXX)	Total:	\$(XXXX)
Amount Appellant Paid Orr Lumber		Amount Union Roofing Paid Orr Group	
2014	\$(XXXX)	2014	\$(XXXX)
2015	\$(XXXX)	2015	\$(XXXX)
2016	\$(XXXX)	2016	\$(XXXX)
Total:	\$(XXXX)	Total:	\$(XXXX)
Amount Union Roofing Paid JC Orr		Amount Union Roofing Paid Orr Lumber	
2014	\$(XXXX)	2014	\$(XXXX)
2015	\$(XXXX)	2015	\$(XXXX)
2016	\$(XXXX)	2016	\$(XXXX)
Total:	\$(XXXX)	Total:	\$(XXXX)

REDACTED DECISION FOR PUBLIC RELEASE

Amount Orr Group Paid Union Roofing		Amount Orr Group Paid JC Orr	
2014	\$[XXXX]	2014	\$[XXXX]
2015	\$[XXXX]	2015	\$[XXXX]
2016	\$[XXXX]	2016	\$[XXXX]
Total:	\$[XXXX]	Total:	\$[XXXX]
Amount Orr Group Paid Orr Lumber			
2014	\$[XXXX]		
2015	\$[XXXX]		
2016	\$[XXXX]		
Total:	\$[XXXX]		

None of Appellant's submissions to the Area Office raised the issue of the accounting methodologies used by Appellant and the Orr family companies. None of Appellant's submissions addressed whether inter-affiliate transactions should be excluded from the payor firm's receipts or the payee firm's receipts.

After concluding that Appellant is affiliated with the Orr family companies, the Area Office calculated the combined average annual receipts of Appellant and its affiliates for the years 2014, 2015, and 2016. The Area Office determined that the average annual receipts of Appellant and its affiliates prior to the exclusion of inter-affiliate transactions were \$[XXXX]. After excluding inter-affiliate transactions, the combined average annual receipts were \$[XXXX].

C. Size Determination

On September 13, 2017, the Area Office issued Size Determination No. 2-2017-111 concluding that Appellant is not a small business.

The Area Office first found that Appellant is 100% owned by Mrs. Jayme Orr Rhodes. Mrs. Rhodes and her husband, Mr. Donald Rhodes, III, each own 50% of Altoid Holdings, LLC (Altoid), a real estate holding company. Appellant therefore is affiliated with Altoid based on common ownership. (Size Determination at 2.)

REDACTED DECISION FOR PUBLIC RELEASE

The Area Office next explained that Orr Group is [XX]% owned by Mr. Joseph H. Orr, III, father of Mrs. Rhodes. JC Orr & Son is [XX]% owned by Mrs. Rhodes's father, and [XX]% owned by her grandfather, Mr. Joseph H. Orr, Jr. Mrs. Rhodes's grandfather also owns [XX]% of Union Roofing, and her father owns the remaining [XX]%. Orr Lumber is a division of JC Orr & Son. (*Id.*)

The Area Office found that Mrs. Rhodes shares an identity of interest with her father. As a result, Appellant is presumed affiliated with Orr Group, JC Orr & Son, Orr Lumber, and Union Roofing. (*Id.* at 3.) Contrary to Appellant's contentions, Appellant and JC Orr & Son have significant business dealings with one another. Specifically, the Area Office found that Appellant generated [XX]% of its income from JC Orr & Son during 2014, [XX]% in 2015, and [XX]% in 2016, the three years used to determine Appellant's size. (*Id.* at 8.) In addition, the business relationship between Appellant and JC Orr & Son apparently continued into 2017, as documentation shows that Appellant booked over \$[XXXX] in subcontract work with JC Orr & Son. (*Id.*) The Area Office concluded that no clear line of fracture exists, and Appellant is affiliated with JC Orr & Son, Orr Lumber, Union Roofing, and Orr Group.

The Area Office considered whether Appellant's claimed inter-affiliate transactions could properly be excluded under 13 C.F.R. § 121.104(a). The Area Office noted that Orr Lumber, as a division of JC Orr & Son, is not a separate legal entity from JC Orr & Son, so no inter-affiliate transactions exclusion would apply between Orr Lumber and JC Orr & Son. (*Id.* at 10.)

The Area Office noted discrepancies between Appellant's calculations and the Area Office's analysis based on the documentation provided. The Area Office determined, however, that the discrepancies did not materially affect the end result. (*Id.* at 11.) In its calculations, the Area Office excluded the following transactions:

- Payments by Appellant to Orr Group, Union Roofing, JC Orr & Son, and Orr Lumber;
- Payments by JC Orr & Son/Orr Lumber to Appellant and Orr Group;
- Payments by Union Roofing to Appellant, Orr Group, JC Orr & Son, and Orr Lumber; and
- Payments by Orr Group to Appellant, Union Roofing, JC Orr & Son, and Orr Lumber.

(*Id.* at 11-12.) The Area Office stated that inter-affiliate transactions "were excluded from the paying firm's receipts." (*Id.* at 12.)

The Area Office found that "prior to inter-affiliate exclusions, the aggregate average receipts of [Appellant] and its affiliates exceed \$40 million. After allowable inter-affiliate exclusions the aggregate average receipts of [Appellant] and its affiliates still exceed \$38 million." (*Id.*) Although the Area Office disallowed some of the inter-affiliate transactions Appellant proposed, "[Appellant's] claimed inter-affiliate transactions only differed from the

REDACTED DECISION FOR PUBLIC RELEASE

Area Office's calculations by approximately \$300,000 total" over the entire three-year period of measurement. (*Id.*) As a result, Appellant is not a small business concern under the \$36.5 million size standard.

D. Appeal

On September 28, 2017, Appellant filed the instant appeal. Appellant contends that the Area Office clearly erred in calculating the inter-affiliate transactions.

Appellant acknowledges that the combined average annual receipts of Appellant, JC Orr & Son, Orr Lumber, Orr Group, and Union Roofing for the years 2014 – 2016 exceed \$40 million, prior to the exclusion of inter-affiliate transactions. (Appeal at 6.) Appellant explains, however, that Appellant's receipts were calculated using the Contract Completion Method (CCM) of accounting, as is permitted by the Internal Revenue Code. Conversely, JC Orr & Son, Orr Group, and Union Roofing's receipts were calculated utilizing the Percentage Completion Method (PCM) of accounting. As a division of JC Orr & Son, Orr Lumber's receipts are included with those of JC Orr & Son. (*Id.* at 7-8.)

Appellant offers new calculations of inter-affiliate transactions between and among Appellant and its affiliates. Appellant asserts that in correspondence with the Area Office, it provided documentation pertaining to its completed contracts with its affiliates, including invoices for these contracts along with their percentage of completion at the time of the invoice. Significantly, CCM accounting requires that contracts that are above 95% completed are recognized as revenue for that year. (*Id.* at 9-10.) Thus, in the information provided to the Area Office, Appellant included revenues that came from transactions with affiliates on contracts that were completed according to CCM.

Next, Appellant contends that the Area Office erred by excluding inter-affiliate transactions from the paying firm's receipts. For example, receipts paid by Appellant to JC Orr & Son, Orr Group, Union Roofing, and Orr Lumber were excluded from Appellant's receipts rather than from the recipient firm's receipts. Appellant asserts that this approach "likely distorted the Area Office's calculations because . . . [Appellant's] tax returns were based on CCM accounting, while the affiliates' tax returns were based on PCM accounting." (*Id.* at 13.)

Regarding the Area Office's calculations, Appellant argues that because it uses CCM accounting for tax returns, and PCM accounting for financial statements, the Area Office erred in calculating Appellant's inter-affiliate transactions. (*Id.*) Specifically, due to CCM accounting, Appellant may defer revenues that concerns using PCM must recognize earlier. (*Id.*) Appellant's inter-affiliate transactions in 2016 under PCM, and based on its financial statements, would have been \$[XXXX]. Under CCM, and based on its tax returns, Appellant's inter-affiliate transactions for 2016 were \$[XXXX]. (*Id.* at 14-15.) Appellant contends that the "confusion between PCM and CCM accounting on the part of the Area Office" constitutes clear error. (*Id.* at 14.)

REDACTED DECISION FOR PUBLIC RELEASE

Appellant argues that under OHA precedent, the Area Office was required to calculate Appellant's receipts in accordance with the accounting method used for tax returns. (*Id.* at 16, citing *Size Appeal of Tau Corp.*, SBA No. 2792 (1987) and *Size Appeal of R.B. Gray Constr. Co.*, SBA No. 2153 (1985).) Had Appellant's receipts, including inter-affiliate transactions, been properly calculated utilizing the CCM accounting method, Appellant contends that it would be a small business under the \$36.5 million average annual receipts size standard.

Accompanying its appeal, Appellant provided an "Attachment B" outlining its new calculations in greater detail. Appellant did not file a motion to admit Attachment B as new evidence.

E. WBC's Response

On October 16, 2017, WBC timely intervened and responded to the appeal. WBC maintains that the Area Office correctly found that Appellant is not a small business concern.

WBC argues that Appellant improperly attempts to introduce new evidence on appeal. Specifically, WBC objects to Appellant's new calculations that effectively double the amount of excludable inter-affiliate transactions. (Response, at 2-3.) Appellant did not provide these calculations to the Area Office during the size review, and further, Appellant fails to provide any explanation as to how, or from what sources, these figures are derived. Because Appellant seeks to introduce new evidence which could and should have been provided to the Area Office for review, and without having filed a motion demonstrating good cause, OHA should reject the new calculations.

Next, WBC maintains that the appeal should be dismissed because Appellant raises new substantive issues for the first time on appeal. Specifically, Appellant's contention that financial transactions of affiliates, which report income on a PCM basis, should instead be analyzed under the CCM accounting method "presents an entirely new argument and calculation – based on new evidence of questionable and unclear origins", and therefore should be summarily rejected. (*Id.* at 6.) Further, the OHA cases referenced by Appellant were decided under prior regulation which required that revenue be restated according to the PCM method. By contrast, under current law, calculation of receipts is based on a concern's tax returns. In WBC's view, "[Appellant] cannot change receipts as reported by an affiliate in its tax return just because [Appellant] reported receipts differently in its tax return." (*Id.* at 7.)

WBC complains that Appellant seeks to exclude inter-affiliate transactions to which Appellant was not a party. Such transactions are not excludable, WBS maintains, as inter-affiliate transactions are limited to those between the protested concern and its affiliates. (*Id.* at 7-8, citing 13 C.F.R. § 121.104(a) and *Size Appeals of G&C Fab-Con*, SBA No. SIZ-5649 (2015).) As a result, even if Appellant's new calculations are admitted, any transactions not involving Appellant should be disregarded.

REDACTED DECISION FOR PUBLIC RELEASE

Lastly, WBC disputes Appellant's claims that the Area Office erred in deducting payments from the paying entity rather than the payee. When inter-affiliate transactions are deducted from the payee instead of the payor, the same result obtains. (*Id.* at 10-11.) WBC concludes that the appeal has failed to show any material error of fact or law in the size determination.

F. SBA's Response

On October 16, 2017, SBA timely intervened and responded to the appeal. SBA disputes Appellant's claims and urges OHA to affirm the size determination.

SBA contends that the new calculations presented in the appeal were not first provided to the Area Office, and as new facts on appeal, may not be considered by OHA. In its multiple communications with the Area Office, Appellant made no mention of CCM or PCM accounting methods. Nor has Appellant filed the requisite motion establishing good cause to admit new evidence on appeal. Therefore, Appellant's new calculations should be excluded. (SBA Response, at 2.)

With regard to the issue of inter-affiliate transactions, SBA contends that the Area Office merely adopted Appellant's own calculations, with minimal exceptions. SBA explains the Area Office utilized tax returns in calculating size, and relied on the inter-affiliate transactions as set forth in Appellant's August 25, 2017 response. (*Id.* at 3.) SBA asserts that even if the Area Office had accepted all of the inter-affiliate transactions claimed in the August 25, 2017 response, "the difference would have been an inconsequential \$66,000 being subtracted from Appellant's receipts," an amount far too small to have affected Appellant's size. (*Id.*)

Although Appellant argues on appeal that the Area Office erred by excluding inter-affiliate transactions from the paying firm's receipts, SBA contends that the Area Office followed the same organizational method utilized by Appellant. According to SBA, "[i]t would have been extremely burdensome on [the Area Office] to reorganize the thousands of claimed transactions, and Appellant did not request that [the Area Office] reorganize its transactions until it submitted its appeal." (*Id.* at 3-4.) Moreover, "[t]o argue that the Area Office somehow committed an error of law by using the Appellant's own organizational scheme is to impeach Appellant's own evidence before the Area Office." (*Id.* at 4.)

Both OHA precedent and SBA policy require that when claiming inter-affiliate transactions, a concern is responsible for submitting evidence of such transactions, and the transactions must be properly documented. (*Id.*, citing *Size Appeal of Pynergy, LLC*, SBA No. SIZ-5558 (2014) and SBA Size Policy Statement No. 3 (81 Fed. Reg. 32,635 (May 24, 2016)).) After tabulating all of Appellant's claimed inter-affiliate transactions, the Area Office rejected a total of \$[XXXX], an amount that would not have materially altered Appellant's three-year average annual receipts. (*Id.*) Thus, the Area Office correctly concluded that Appellant is not a small business under the applicable size standard.

REDACTED DECISION FOR PUBLIC RELEASE**G. Supplemental Appeal**

On October 16, 2017, the date of the close of record, Appellant moved to supplement its appeal. There is good cause to permit the supplement, Appellant argues, because Appellant did not previously have access to the Area Office record.

In its supplement, Appellant reiterates that the Area Office failed to consider the different accounting methods used by Appellant and its affiliates. (Supp. Appeal, at 1-2.) Appellant's tax returns clearly displayed the CCM accounting method, whereas the tax returns of the affiliates reflected the use of the PCM accounting method. As a result, Appellant maintains, "the revenue earned by [Appellant] from its affiliates would not necessarily be recognized in its tax returns in the same tax year, as invoices below the 95% threshold are not recognized as taxable income and thus do not count towards receipts." (*Id.* at 4.) Because "there is nothing in the Record that shows that the Area Office took the differences between PC[M] and CCM into account," the size determination is fundamentally flawed. (*Id.*)

Appellant argues that the Area Office also committed errors in calculating inter-affiliate transactions. Appellant observes that the Area Office overstated Union Roofing's 2014 cost of goods sold and annual receipts by approximately \$[XXXX]. In other instances, the Area Office did not explain the amounts shown in its calculations, so there is no valid basis for OHA to uphold the calculations. (*Id.* at 6-7.)

H. WBC's Supplemental Response

On October 19, 2017, WBC opposed Appellant's motion to supplement the appeal, and in the alternative, moved to supplement its response. WBC argues that under 13 C.F.R. § 134.207(a), the supplemental appeal should be rejected because it creates unreasonable delay in resolving this case. The notion that Appellant could not have supplemented the appeal prior to reviewing the record is meritless, WBC maintains, as the record consists largely of documents submitted by Appellant itself. (Supp. Response, at 2.)

In the event that OHA nevertheless accepts the supplemental appeal, WBC requests leave to supplement its response. Despite Appellant's claims that the Area Office disregarded the accounting methods used by Appellant and its affiliates, by regulation an area office is required to calculate a concern's revenues based on its tax returns. Here, the Area Office properly used tax returns in calculating size, and properly concluded that Appellant is not a small business. (*Id.* at 3.)

WBC disputes Appellant's claim that the Area Office, without explanation, excluded \$[XXXX] in inter-affiliate transactions from Appellant's 2015 receipts. WBC asserts that this amount is the sum of the payments made by Appellant to its affiliates during 2015, according to the data Appellant provided to the Area Office on August 25, 2017. (*Id.* at 3-4.) Appellant's contention that the Area Office misstated Union Roofing's 2014 receipts is at most a minor error and does not affect whether Appellant qualifies as a small business concern. WBC explains that the difference between the Area Office's figure and Appellant's is only \$[XXXX], an immaterial

REDACTED DECISION FOR PUBLIC RELEASE

amount when divided over the three-year period of measurement. (*Id.* at 4.)

WBC next challenges Appellant's assertions that the Area Office miscalculated the 2014 and 2015 inter-affiliate transaction amounts. The Area Office's deductions were based on the information Appellant provided in its August 25, 2017 submission, and the Area Office "deduct[ed] each category of inter-affiliate transactions from designated companies" as stated in the size determination. (*Id.* at 5.) WBC highlights that the Area Office made no adjustments to Appellant's claimed 2015 inter-affiliate transactions between JC Orr and Appellant. (*Id.* at 6-7.)

Regarding Appellant's argument that the Area Office erred in calculating the 2016 inter-affiliate transactions, WBC again disagrees. WBC maintains that Appellant conflates payments from the payor company with payments to the payee company. While Appellant attempts to sow confusion by mischaracterizing the inter-affiliate transactions, in reality "[e]xcept for minor adjustments based on [the] Area Office's diligent review of the invoices and documents provided by [Appellant], the Area Office allowed deduction of all of the inter-affiliate transactions alleged by [Appellant]." (*Id.* at 8.)

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

I find no merit to this appeal. SBA regulations make clear that, during a size review, "[t]he concern whose size is under consideration has the burden of establishing its small business size." 13 C.F.R. § 121.1009(c). As a result, on appeal, OHA will not overturn a size determination based on arguments that were never raised to the area office. It is settled law that "an area office cannot have 'erred' by failing to address information or arguments that were never presented to it in the first instance." *Size Appeal of DefTec Corp.*, SBA No. SIZ-5540, at 7 (2014); *see also Size Appeal of ASI-SUMO JV, LLC*, SBA No. SIZ-5594, at 5 (2014); *Size Appeal of EASTCO Building Svcs., Inc.*, SBA No. SIZ-5437, at 7 (2013) ("Appellant failed to inform the Area Office of such inter-affiliate transactions, or to prove their validity. Appellant may not now argue on appeal what it should have argued to the Area Office."); *Size Appeal of J.M. Waller Assocs., Inc.*, SBA No. SIZ-5108, at 4 n.1 (2010) (denying appeal because the challenged firm "seeks to charge the Area Office with error for not considering an argument [the challenged firm] never made and that was not apparent from the face of the documentation [the challenged firm] presented.").

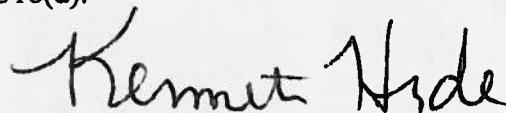
REDACTED DECISION FOR PUBLIC RELEASE

In the instant case, Appellant provided the Area Office with evidence of transactions between Appellant and the Orr family companies, as well as transactions among the Orr family companies but to which Appellant was not a party. Section II.B, *supra*. Notably, though, despite several communications with the Area Office, Appellant made no mention of CCM or PCM accounting methods, and provided no information as to how the choice of accounting method might have altered the claimed inter-affiliate transactions. *Id.* Instead, Appellant raises these arguments for the first time on appeal. Further, while it may be true, as Appellant suggests, that the Area Office could have ascertained from the tax returns which accounting treatment each concern was utilizing, the Area Office would have had no reason to focus on this issue, given that Appellant itself was silent on the question. Accordingly, Appellant has not established any valid reason to disturb the size determination. The Area Office appropriately relied upon the information submitted by Appellant in conducting the size review, and cannot be faulted for failing to address arguments that Appellant never made.

Appellant also complains that the Area Office committed errors in its calculations. As SBA and WBC emphasize in their responses to the appeal, though, the sum of all the inter-company transactions identified by Appellant for the years 2014 – 2016 was \$[XXXX] (*i.e.*, approximately \$[XXXX] annually), and the Area Office excluded nearly all of this amount as inter-affiliate transactions. Sections II.B and II.C, *supra*. Further, Appellant acknowledges in its appeal that the combined average annual receipts of Appellant and its affiliates for the years 2014 – 2016 exceed \$40 million, prior to the exclusion of inter-affiliate transactions. Section II.D, *supra*. Thus, even if the Area Office had agreed to exclude all of the claimed transactions as inter-affiliate transactions, the combined average annual receipts of Appellant and its affiliates still would have been well above the applicable \$36.5 million size standard. I conclude, therefore, that any computational errors were harmless, as they would not have affected the outcome of this case. *E.g.*, *Size Appeal of Barlovento, LLC*, SBA No. SIZ-5191 (2011), *recons. denied*, SBA No. SIZ-5210 (2011) (PFR).

IV. Conclusion

Appellant has not shown that the size determination is clearly erroneous. 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).



KENNETH M. HYDE
Administrative Judge

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2017, I served the foregoing by email upon the following:

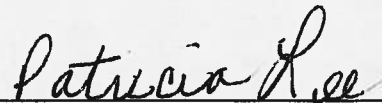
Isaias (Cy) Alba IV, Esq.
Patrick T. Rothwell, Esq.
David Medalia, Esq.
Counsel for Serviam Construction, LLC
Pilieromazza PLLC
Washington, DC
Email: ialba@pilieromazza.com
Email: prothwell@pilieromazza.com
Email: dmedalia@pilieromazza.com

John M. Manfredonia, Esq.
Jim Petersen, Esq.
Counsel for Williams Building Company
Manfredonia Law Offices, LLC
Cresskill, NJ
Email: jmm@manfredonialaw.com
Email: jp@manfredonialaw.com

Sandra L. Fisher, Contracting Officer
U.S. Dept. Of Veterans Affairs
Syracuse, NY
Email: sandra.fisher3@va.gov

Randall Johnston, Acting Area Director
Helen Goza
Office of Government Contracting, Area II
U.S. Small Business Administration
King of Prussia, PA
Email: Randall.Johnston@SBA.gov
Email: helen.goza@SBA.gov

John W. Klein, Esq.
Sam Q. Le, Esq.
Associate General Counsel for Procurement Law
U.S. Small Business Administration
Washington, DC
Email: OPLService@SBA.gov
Email: sam.le@sba.gov



Patricia Lee
Office of Hearings and Appeals