

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

SIZE APPEAL OF:

DoverStaffing, Inc.,

Appellant,

Appealed From  
Size Determination No. 3-2011-113

SBA No. SIZ-5300

Decided: December 14, 2011

APPEARANCES

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Ralph R. Polachek, Chantilly, Virginia, For Odyssey-TCI JV, LLC

DECISION<sup>1</sup>

This is an appeal of a size determination in which the Area Office concluded that Dover Staffing, Inc., is not an eligible small business and that its Proposal violates the ostensible subcontractor rule. For the reasons discussed below, I affirm the Area Office and deny the appeal.

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<sup>1</sup> This decision was initially issued on November 10, 2011. Pursuant to 13 C.F.R. § 134.205, I afforded each party an opportunity to file a request for redactions if that party desired to have any information redacted from the published decision. OHA received one or more timely requests for redactions and considered any requests in redacting the decision. OHA now publishes a redacted version of the decision for public release.

## I. Jurisdiction

This appeal is decided under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 121 and 134.

## II. Issue

Whether the size determination finding Appellant affiliated with its subcontractor due to a violation of the ostensible subcontractor rule was based on clear error of fact or law. *See* 13 C.F.R. § 134.314.

## III. Background

### A. Solicitation and Protest

On June 10, 2011, the Department of the Army, Mission and Installation Contracting Command, Fort Bragg, North Carolina (Army), issued Solicitation No. W91247-11-R-0024 for Child Youth School Services. The Contracting Officer (CO) set the contract totally aside for small business, and designated North American Industry Classification System (NAICS) code 624110, Child and Youth Services, with a corresponding \$7 million annual receipts size standard, as the applicable code for the procurement. Initial offers were due on June 27, 2011, later extended to June 30, 2011 by Amendment 2.

On August 24, 2011, the CO issued a preaward notice that DoverStaffing, Inc. (Appellant) was the apparent successful offeror. On August 26, 2011, Odyssey-TCI JV, LLC filed a protest alleging that Appellant was other than small. On August 31, 2011, the Small Business Administration (SBA) Office of Government Contracting - Area III (Area Office), received the protest. On that same day, the Area Office informed Appellant of the protest, and request it submit a response, together with a completed SBA Form 355 and certain other information. On September 13, 2011, Appellant responded to the protest.

### B. The Performance Work Statement

The Performance Work Statement (PWS) calls for the contractor to provide all personnel, equipment, supplies, facilities, transportation, tools, materials, supervision, and other items and services necessary to support the Army Reserve Child Youth School Services (CYSS) Program, to include child care, youth activities, youth development, enrichment camps, and teen panels. PWS, ¶ 1.1.

The contractor will provide as key personnel a Project Manager, a Youth Services Program Manager and a School Services Program Manager. PWS, ¶¶ 1.2, 1.2.2, 1.2.3. These managers will be responsible for performance of the work under the contract. These managers will supervise other key personnel, the Youth Services Program Specialists and School Services Program Specialists. PWS, ¶¶ 1.2.3, 1.2.4. The contractor will provide services Army-wide at various locations inside and outside the United States. PWS, ¶ 1.6.

The specific tasks the contractor will provide include Army Reserve CYSS Project Management Support. PWS, ¶ 5.1. The contractor will establish, manage and assess the necessary child and youth services to support soldiers and their families. The contractor will obtain access to child and youth services including Operation Military Child Care, Operation Military Kids, Military Child Care/School Age Programs/Youth Programs in Your Neighborhood. PWS, ¶ 5.1.3. The contractor will also provide Army Reserve Child Care Referral Support Services, PWS, ¶ 5.2. This requires the contractor to support special events such as Family Days, mobilization and reunion briefings, Army Reserve Family Readiness Education for Deployment Trainings, and Commanders' Conferences. PWS, ¶ 5.2.2. The contractor will provide Army Reserve School Support Services, providing guidance to Army Reserve parents of school-age children on educational matters. PWS, ¶ 5.3.2. The contractor will provide Army Reserve Support for Operation Military Kids. PWS, ¶ 5.4. The contractor will develop a comprehensive communication and marketing plan for CYSS programs. PWS, ¶ 5.5.1. The contractor will also develop a plan to identify and access nationally accredited camps in order to provide Army Reserve CYSS Enrichment Camps for weekends, summer, and school breaks, as well as Youth Training events, Youth Leadership Education and Development Conferences, and Army Reserve Teen Panel meetings. PWS, ¶ 5.6.

The Solicitation requires offerors to discuss past performance for all team members. Offerors were to submit a list of three to five contracts similar in size, scope and complexity to the requirements of the solicitation.

### C. The Dover Staffing Proposal

Appellant proposes to retain 100% of the existing key and non-key personnel for this procurement. Proposal, Vol. 1 at 12, 26. [Subcontractor One], Appellant's subcontractor, is the incumbent prime contractor on this requirement, and currently employs all of the staff and has the ability to ensure continuity of service. Proposal, Vol. 1, at 26. This includes all the incumbent key personnel, the Project Manager and Alternate Project Manager (Proposal, Vol. 1 at 6, 27.) Youth Services Program Manager, and School Services Program Manager (Proposal, Vol. 1 at 5, 27.)

Appellant has executed teaming agreements with [Subcontractor One] and [Subcontractor Two] to form a strategic alliance to submit a response to this solicitation. The agreements provide that Appellant will perform 51% of the work on this contract; [Subcontractor One] will perform 40% of the work on this contract, and [Subcontractor Two] 9%. [Subcontractor One] is to provide equal assistance with program oversight.

Appellant has prepared tables, indicating the positions and locations of the incumbent employees. Appellant intends to hire 41 employees, [Subcontractor One] will retain 32 employees, and [Subcontractor Two] will provide 7 employees. All six proposed key employees are currently [Subcontractor One] employees.

Appellant submitted three contracts for past performance. The first was a contract Appellant performed for survivor outreach services, with [Subcontractor Two] as subcontractor.

This contract was to provide enhanced services to the families of deceased soldiers. The second contract was [Subcontractor One]'s performance as the incumbent on the instant requirement for Army Reserve CYSS and was discussed at length. The third was [Subcontractor Two]'s contract for Family Support Services for the Army Reserve. [Subcontractor One] was a subcontractor on this requirement, performing the CYSS portion.

#### D. The Size Determination

On September 22, 2011, the Area Office issued Size Determination No. 3-2011-113 (Size Determination), concluding that Appellant is other than small for this procurement.

The Area Office first found that Ms. Sanquinetta Dover was Appellant's President, Secretary, sole board member and sole shareholder. The Area Office then found Appellant affiliated with DoverSolutions and Dover Training Institute based upon common ownership and economic dependence. The Area Office found that Appellant, when aggregated with its affiliates, is within the applicable size standard.

Turning to Appellant's proposal, the Area Office found [Subcontractor One] would perform 40% of the contract, and [Subcontractor Two] would perform 9%. Further, [Subcontractor One] is other than small, the incumbent on the existing contract, and ineligible for award.

Under the teaming agreements, Appellant and its subcontractors agreed to form a project team to develop and submit a proposal on this procurement. The Area Office noted that the proposal refers to Team Dover. The team members agreed that all extensions of the contract beyond the base year and all public announcements require written approval of the team members. The Area Office noted the solicitation required submission of three to five projects performed by team members over the last three years. The Area Office found that Appellant submitted three projects, and all three demonstrate a prime/subcontractor relationship with at least two of the team members.

The Area Office further found the proposal states it will capitalize on the knowledge of the incumbent contractor's staff. Appellant proposes eighty employees for this contract, and seventy are currently [Subcontractor One] employees. All onsite key employees of Appellant identified in the proposal are currently [Subcontractor One] employees. While Appellant will supply 51% of the staffing, seventy-five percent of that will be former [Subcontractor One] employees. All six key employees in the proposal (project manager, two program managers and three other key staff members) are current [Subcontractor One] employees. The proposal states that the program manager, program support manager, youth services program manager, and school services program manager will become Appellant's employees. The Area Office found that all [Subcontractor One]'s current employees will remain in their current positions and current locations. Of these employees, 31 will become Appellant's employees, 25 will continue as [Subcontractor One] employees and 3 will become [Subcontractor Two] employees.

The Area Office concluded that [Subcontractor One], through its current employees, would be performing the primary and vital requirements of the solicitation, bringing its expertise

and management skills to the contract through its current and soon-to-be former employees. The Area Office concluded that over 85% of the primary and vital work of the contract will be performed by current or former [Subcontractor One] employees. The Area Office thus concluded Appellant and [Subcontractor One] are affiliated under the ostensible subcontractor rule, and Appellant is therefore other than small.

#### E. The Appeal

On September 23, 2001, Appellant received the Size Determination, and on October 4, 2011, Appellant filed its appeal with SBA's Office of Hearings and Appeals (OHA).

On October 20, 2011, Odyssey filed its Response to the Appeal.

##### 1. Appellant's Argument

Appellant asserts its proposal clearly identified it as the prime contractor, who would be present, oversee, and support the CYSS programs and activities. Appellant asserts the proposal emphasizes Appellant's extensive experience in the work required, including 15 years experience in providing workforce solutions to government, corporations and institutions, as well as its experience as the prime contractor to the U.S. Army Reserve Survivor Outreach Services program. Ms. Dover will manage and oversee all of the work under the contract, and Appellant will manage all the entities as one integrated team. Appellant asserts that while it is proposing to employ incumbent personnel, it is ultimately responsible for hiring, and is interviewing candidates now. Appellant asserts that it will provide the majority of labor, performing 51% of the work. However, Appellant does not dispute the Area Office's finding that it is proposing [Subcontractor One]'s employees to perform the contract, nor does it dispute the Area Office's calculations as to the numbers of employees assigned to each firm.

Appellant argues that the Area Office erred in concluding that [Subcontractor One] would be performing the primary and vital functions of the contract upon Appellant's proposed hiring of [Subcontractor One]'s incumbent personnel. Appellant argues that OHA has rejected basing an ostensible subcontractor finding upon the prime contractor's hiring of incumbent personnel, relying upon Executive Order No. 13,495. *Size Appeal of Spiral Solutions and Technologies, Inc.*, SBA No. SIZ-5279 (2011).

Appellant further argues that the Area Office erred in concluding that over 85% of the primary and vital work of the contract would be supplied by current or former [Subcontractor One] employees. Appellant argues that when the small business prime contractor and the large business subcontractor are performing the same type of work, the firm that performs the majority of the work is performing the primary and vital requirements of the contract, citing *Size Appeal of Assessment & Training Solutions Corp.*, SBA No. SIZ-5228 (2011); *Size Appeal of Alutiiq Int'l Solutions, LLC*, SBA No. SIZ-5098 (2009); and *Size Appeal of LOGMET, LLC*, SBA No. SIZ-5155 (2010).

Appellant further argues the Area Office failed to consider the principal purpose of the contract, and whether Appellant could perform those tasks, because the determinative issue is

whether the prime contractor can perform the services. Appellant asserts its proposal demonstrates it has the ability to perform the primary and vital services required by the contract. In support, Appellant cites specific portions of its proposal discussing its prior, similar work in the Army Reserve Survivor Outreach Services Program, its experience with over 200 employees, and its experience in after school and summer programs and summer camps for middle school students.

Appellant further argues that the Area Office failed to consider all aspects of the relationship between Appellant and its subcontractor, as required by the regulation. Appellant asserts the Area Office examined only Appellant's proposed hiring of [Subcontractor One]'s employees. Appellant argues the Area Office failed to consider the Teaming Agreements which provided that Appellant would be prime contractor and retain control over prime proposal activities, manage the contract, and interface with the Government. Further, that Appellant would rely upon its own tested procedures for workforce management to manage the contract. In addition, the Area Office failed to consider that each concern is responsible for bearing its own costs of performance, and that Appellant would perform 51% of the work and [Subcontractor One] 40%. The Area Office also failed to consider Appellant's own experience in related programs for military service members, and Appellant's different methods for recruitment than [Subcontractor One].

Appellant argues that while the Area Office included a few additional facts in the Size Determination, they do not appear to be a factor in the analysis that concluded [Subcontractor One] is an ostensible subcontractor.

As relief, Appellant seeks reversal of the Size Determination.

## 2. Odyssey's Response to the Appeal

On October 20, 2011, Odyssey responded to the appeal. Odyssey argues the Size Determination should be upheld, first, because it is based upon undisputed facts. [Subcontractor One] is a large business and current incumbent contractor ineligible to bid on this procurement. Appellant's proposal stresses the team approach. The solicitation required from three to five projects as evidence of past performance. Appellant limited itself to three projects, only one of which involved Appellant. Odyssey further notes that Appellant proposed all of [Subcontractor One]'s 70 current employees working on the contract, including all the key employees, to work in their current positions and locations. None of Appellant's proposed employees currently works for Appellant. Thus, Appellant brings very little to this contract effort.

Further, Appellant's reliance on Executive Order (E.O.) 13,495 is misplaced. First, that Executive Order is not yet effective because it was not self-implementing, and the regulations required to implement it have not been issued. The Department of Labor has published its final rule; however, a provision in that rule delays effectiveness until an effective date is published in the Federal Register after the Federal Acquisition Regulatory Council (FARC) issues its regulations. 76 Fed. Reg. 53720 (Aug. 29, 2010). The FARC, in turn, has not issued its regulations, and has not set the effective date for the regulations. Therefore, Odyssey argues, the provisions of the Executive Order are not in effect, and Appellant was not legally obligated to

hire [Subcontractor One]'s incumbent employees.

Because the mandates of E.O. 13,495 are not yet legally effective, Odyssey argues that OHA's decision in *Size Appeal of Spiral Solutions and Technologies, Inc.*, SBA No. SIZ-5279 (2011) was premature and should not be applied here. Instead, Odyssey argues that OHA should apply its precedents holding that a proposal to staff a contract with all the incumbent personnel, most of whom will be hired directly by the offeror, violates the ostensible subcontractor rule.

Even if OHA applies E.O. 13,495 here, Odyssey argues that Appellant's proposal still violates the ostensible subcontractor rule, because E.O. 13,495 applies only to non-management and non-supervisory personnel. Therefore, Appellant's use of [Subcontractor One]'s incumbent managers and supervisors remains an indicator of undue reliance upon [Subcontractor One]. Odyssey asserts Appellant brings nothing to this procurement but its small business status, even considering E.O. 13,495.

Odyssey argues that in ostensible subcontractor analysis, SBA cannot assume that the offeror will be able to hire an employee at a later date. In this proposal, none of the key employees is Appellant's current employee and there is no evidence in the proposal of any commitment letter or other contractual agreement from these individuals. At the time of proposal submission, all of the members of Appellant's project management staff were [Subcontractor One] employees. The Area Office thus reasonably determined that [Subcontractor One] could exercise control over the contract and that Appellant was unduly reliant upon [Subcontractor One]. Odyssey argues Appellant's plans to hire its management team from [Subcontractor One] after date of award supported a finding of unusual reliance upon [Subcontractor One] under the ostensible subcontractor rule.

Odyssey also asserts Appellant's reliance upon [Subcontractor One] to perform 40% of the work means that Appellant is reliant upon [Subcontractor One] for primary and vital tasks of the contract. Odyssey further asserts that Appellant's heavy reliance upon [Subcontractor One] for past performance indicates unusual reliance. Odyssey further asserts the Area Office properly considered [Subcontractor One]'s role as the incumbent contractor. Finally, Odyssey argues that the Area Office properly took into consideration that Appellant's proposal emphasized a team approach, in finding Appellant unusually reliant upon [Subcontractor One].

#### IV. Discussion

##### A. Timeliness and Standard of Review

Appellant filed its appeal within fifteen days of receiving the Size Determination. Thus, the appeal is timely. 13 C.F.R. § 134.304(a).

Appellant has the burden of proving, by a preponderance of the evidence, all elements of its appeal. Specifically, Appellant must prove the Size Determination is based on a clear error of fact or law. 13 C.F.R. § 134.314; *Size Appeal of Procedyne Corp.*, SBA No. SIZ-4354, at 4-5 (1999). OHA will disturb the Size Determination only if the Judge, after reviewing the record

and pleadings, has a definite and firm conviction 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. The Merits of the Appeal

Under SBA's "ostensible subcontractor" rule, 13 C.F.R. § 121.103(h)(4), a prime contractor and its subcontractor may be treated as affiliates if the subcontractor either performs the primary and vital requirements of the contract, or if the prime contractor is unusually reliant upon the subcontractor. To apply the ostensible subcontractor rule, the Area Office must consider all aspects of the relationship between the prime and subcontractor, including the terms of the proposal, agreements between the firms (such as teaming agreements, bonding or financial assistance), and whether the subcontractor is the incumbent on the predecessor contract. *Size Appeal of C&C Int'l Computers and Consultants Inc.*, SBA No. SIZ-5082 (2009); *Size Appeal of Microwave Monolithics, Inc.*, SBA No. SIZ-4820 (2006). The purpose of the rule is to "prevent other than small firms from forming relationships with small firms to evade SBA's size requirements." *Size Appeal of Fischer Business Solutions, LLC*, SBA No. SIZ-5075, at 4 (2009).

Here, the heart of the Size Determination is that Appellant is reliant upon [Subcontractor One] to perform the primary and vital requirements of the contract. The critical point, which Appellant does not dispute, is that not only will Appellant be subcontracting to [Subcontractor One] for 40% of the work on this contract, but Appellant will be hiring the [Subcontractor One]'s incumbent employees *en masse* to perform Appellant's 51% of the work. None of Appellant's proposed personnel is currently employed by Appellant. All of the proposed key personnel on this contract, the Project Manager, the Project Support Manager, Youth Services Project Manager, School Services Project Manager, Project Analyst, and Web Specialist, are currently [Subcontractor One] employees based in East Point, Georgia. Proposal, Vol. 1, at 20, Dover Staffing Contract Labor Breakdown Sept. 14, 2011. While Appellant proposes to hire four of these employees, Appellant is proposing as its entire project management individuals who are currently employed by [Subcontractor One]. While Appellant's proposal mentions the potential of hiring other employees, they are not proposed here, and an ostensible subcontractor case must be analyzed on the basis of the solicitation and proposal at hand. *Size Appeal of Four Winds Services, Inc.*, SBA No. SIZ-5260, at 6 (2011).

Appellant mentions only one of its current employees as involved with the performance and management of this contract, Sanquinetta Dover, its President and CEO. Proposal, Vol. 1 at 1. But the proposal does not assign a major role to the President beyond interface with the Army, and it is the Project Manager who will be providing oversight over the project, including staffing and training, establishing policies, and generally administering the project, including serving as liaison to the Army. Proposal, Vol. 1, at 22. Further, Appellant's Teaming Agreement with [Subcontractor One] provides for equal program oversight between the two concerns. Teaming Agreement, Exh. A. Accordingly, I must conclude that the Area Office was correct in its analysis that Appellant is reliant upon [Subcontractor One] not only for the 40% of the contract work assigned to it by the proposal, but for nearly all of Appellant's own staff for this contract and for all of the key employees performing the contract management.

In analyzing whether a concern is unusually reliant upon its subcontractor, OHA has held

that where the prime contractor proposes to hire a substantial number of the incumbent's employees, this constitutes strong indicia of affiliation, because the prime is relying upon the qualifications of the incumbent subcontractor to perform the primary and vital requirements of the contract. *See, e.g. Size Appeal of The Analysis Group, LLC*, SBA No. SIZ-4814, at 6 (2006). However, in 2009, the President issued an Executive Order which announced that “[t]he Federal Government's procurement interests in economy and efficiency are served when the successor contractor hires the predecessor's employees.” E.O. 13,495, Nondisplacement of Qualified Workers Under Service Contracts, 74 Fed. Reg. 6103 (Feb. 4, 2009). In response to the policy enunciated in this Order, OHA has since held that the mere hiring of incumbent non-management personnel is no longer indicative of unusual reliance under the ostensible subcontractor rule. *Size Appeal of Spiral Solutions and Technologies, Inc.*, SBA No. SIZ-5279, at 28 (2011).<sup>2</sup>

Nonetheless, Appellant here intends to hire not merely some of its staff from [Subcontractor One], but nearly all of them, and all of its key employees are current [Subcontractor One] employees. The Executive Order specifically excludes managerial and supervisory employees from its coverage, and *Spiral* also limited its holding to the hiring of non-management incumbent employees. 74 Fed. Reg. at 6103; *Spiral*, at 28. Further, OHA specifically found in *Spiral* that the proposal at issue was not simply an *en masse* transfer of employees from one contractor to another, as is the case here. *Spiral*, at 29.

Here, I conclude that the more applicable precedent is *Size Appeal of Four Winds Services, Inc.*, SBA No. SIZ-5260 (2011). There, while noting Executive Order 13,495, OHA held that where none of the proposed key employees was the prime's current employee, and the prime proposed not one of its current employees to perform, the prime was bringing nothing to the contract but its small business status. OHA thus held that that prime was unusually reliant upon, and thus affiliated with, its subcontractor. *Four Winds*, at 7-8.

Appellant here proposes none of its own current employees to perform on this contract, and further intends to hire its key employees for managerial and supervisory duties from [Subcontractor One]. Among the main considerations in ostensible subcontractor analysis are which concern will be managing the contract, and which concern will be providing the key employees. *Size Appeal of Paragon TEC, Inc.*, SBA No. SIZ-5290 (2011). Thus, the Area Office properly considered the fact that Appellant will be hiring its key employees from [Subcontractor One] as a strong indicia that Appellant was unusually reliant upon [Subcontractor One] for performance of this contract.

Further, contrary to Appellant's contention, this hiring pattern was not the only factor the

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<sup>2</sup> Odyssey's argument that *Spiral* is premature because the implementing regulations for Executive Order 13,495 are not yet in place is inapposite. *Spiral* is not based upon a legal requirement that challenged concerns hire the incumbent employees, but rather holds that, given the clear change in policy expressed in the Executive Order and the industry practice in doing so, the mere hiring of non-management incumbent employees should no longer be used as an indicia of unusual reliance under the ostensible subcontractor rule.

Area Office considered in its determination. The Area Office noted that all aspects of the relationship between the prime and subcontractor must be considered. Size Determination, at 4. The Area Office specifically considered the fact that [Subcontractor One] is the incumbent contractor and ineligible to submit an offer. The regulation requires that this factor be considered, and combined with other factors, supports a finding that Appellant will be unusually reliant upon, and thus affiliated with, [Subcontractor One] under the ostensible subcontractor rule. 13 C.F.R. § 121.103(h)(4); *Size Appeal of EarthCare Solutions, Inc.*, SBA No. SIZ-5183, at 10 (2011); *Analysis Group*, at 6.<sup>3</sup>

Further, the Area Office also considered past performance, and that is another factor which supports the Size Determination.<sup>4</sup> Of the three instances of past performance Appellant submits, only one contract was performed by Appellant, and two include [Subcontractor One] as either a prime or subcontractor. One of the latter cases is the existing contract for CYSS services, and the other is a contract for Army Reserve Family Program Readiness Staffing, where [Subcontractor Two] was the prime contractor, and [Subcontractor One] served as the subcontractor performing CYSS services. Proposal, Vol. II, at 2-8. Appellant submitted only one contract, and it was not a contract for CYSS services, but for counseling and other services to the survivors of deceased soldiers. Proposal, Vol. II, at 1-2.

Appellant thus presented no evidence that it had CYSS experience relevant to the performance of CYSS services, while it presented two contracts for [Subcontractor One] documenting [Subcontractor One]'s extensive experience in this area. Appellant is thus almost entirely reliant upon [Subcontractor One] for the past performance portion of its proposal. It is appropriate to consider a prime contractor's experience as part of an ostensible subcontractor analysis because this experience is relevant to whether the prime contractor can perform independently from the subcontractor. *Size Appeal of Smart Data Solutions LLC*, SBA No. SIZ-5071 (2009). OHA has found unusual reliance upon an ostensible subcontractor where the prime contractor's past performance showed no experience in performing the primary and vital work required by the solicitation, but the subcontractor's performance did. *Size Appeal of EarthCare Solutions, Inc.*, SBA No. SIZ-5183, at 10 (2011); *Size Appeal of Smart Data Solutions LLC*, SBA

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<sup>3</sup> One factor which the Area Office appeared to consider does not in fact indicate unusual reliance, or that [Subcontractor One] will perform the contract's primary and vital functions. That is Appellant's use of the term "Team Dover" throughout its proposal. OHA has held that the use of "team" language, particularly if it does not imply that the proposed subcontractor is the dominant partner, is not indicative of unusual reliance or that any subcontractor will be performing the primary and vital functions of the contract. In doing so, OHA has recognized that offerors commonly emphasize a "team" in their proposals to make themselves as attractive as possible to the procuring agency, and the combined talents of multiple firms are often more impressive than a single firm alone. *Size Appeal of Paragon TEC, Inc.*, SBA No. SIZ-5290, at 11 (2011).

<sup>4</sup> The Area Office appears to have erred in finding that all three contracts demonstrate a prime/sub relationship with [Subcontractor One] and [Subcontractor Two], but that is harmless error. The important fact is Appellant's reliance upon [Subcontractor One] for past performance.

No. SIZ-5071, at 21-22 (2009). When a prime contractor relies almost totally upon the experience of other firms to establish its relevant experience, that is probative evidence it is unusually reliant upon its subcontractor to perform the contract in question. *See Size Appeal of Alutiiq Education & Training, LLC*, SBA No. SIZ-5192, at 9 (2011). This precedent all supports a finding of Appellant's unusual reliance upon [Subcontractor One] based upon its past performance submission, which relies almost entirely upon [Subcontractor One] for the directly relevant experience for this contract.

The Teaming Agreements upon which Appellant relies contain nothing which would offset the findings discussed above. Indeed, its agreement with [Subcontractor One] undercuts Appellant, because it provides that [Subcontractor One] will have an equal participation in managing the contract. Appellant's other arguments cannot outweigh the clear grounds for affiliation already discussed.

I therefore conclude that Appellant has failed to establish the Size Determination was based upon clear error. Appellant is unusually reliant upon its ostensible subcontractor [Subcontractor One], the incumbent contractor which is ineligible to bid on this procurement. Appellant proposes not a single one of its own employees to perform this contract. Appellant proposes to hire [Subcontractor One]'s incumbent staff *en masse*, including all of its key management and supervisory employees, and thus will be entirely reliant for performance and management of the contract upon individuals who are currently [Subcontractor One]'s employees. Further, Appellant is largely reliant upon [Subcontractor One] for its past performance. Appellant is thus affiliated with [Subcontractor One], its ostensible subcontractor. I therefore affirm the Area Office's Size Determination, and deny this appeal.

#### V. Conclusion

The record on appeal supports the Area Office's conclusion that Appellant is unusually reliant upon its ostensible subcontractor [Subcontractor One] for performance of the instant contract. The Size Determination is AFFIRMED and the Appeal is DENIED.

This is the final decision of the Small Business Administration. 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN  
Administrative Judge