

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

SIZE APPEAL OF:

Mission Critical Technologies, Inc.,

Appellant,

RE: ASRC Research and Technology
Solutions, LLC

Appealed From
Size Determination No. 2-2013-99

SBA No. SIZ-5494

Decided: August 22, 2013

APPEARANCES

Carol L. O'Riordan, Esq., Anthony J. Marchese, Esq., The O'Riordan Bethel Law Firm, Washington, D.C., for Appellant

Ronald Fouse, Esq., Vice President and General Counsel, ASRC Research and Technology Solutions, LLC, Greenbelt, Maryland

Laura M. Foster, Esq., Office of General Counsel, U.S. Small Business Administration, Washington, D.C.

DECISION¹

I. Introduction and Jurisdiction

On June 20, 2013, the U.S. Small Business Administration (SBA) Office of Government Contracting, Area II (Area Office) issued Size Determination No. 2-2013-99 concluding that ASRC Research and Technology Solutions, LLC (ARTS) is a small business under the size standard associated with the subject procurement. The Area Office determined that ARTS's own revenues do not exceed the size standard, and that ARTS is not affiliated with its proposed

¹ Pursuant to 13 C.F.R. § 134.205, I afforded the protested concern, ASRC Research and Technology Solutions, LLC (ARTS), an opportunity to file a request for redactions if it desired to have any information withheld from the published decision. ARTS responded that it did not wish to propose redactions, and OHA now publishes the decision in its entirety.

subcontractor, Dell Services Federal Government, Inc. (Dell), under the ostensible subcontractor rule, 13 C.F.R. § 121.103(h)(4).

Mission Critical Technologies, Inc. (Appellant), which had originally protested ARTS's size, maintains that the size determination is clearly erroneous, and requests that SBA's Office of Hearings and Appeals (OHA) reverse or remand. For the reasons discussed *infra*, the appeal is denied and the size determination is affirmed.

OHA decides size determination appeals under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. parts 121 and 134. Appellant filed the instant appeal within fifteen days of receiving the size determination, so the appeal is timely. 13 C.F.R. § 134.304(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. Solicitation

On November 23, 2010, the National Aeronautics and Space Administration (NASA) issued Request for Proposals (RFP) No. NNA1031939R for the Ames Consolidated Information Technology Services 3 (ACITS 3) procurement. The Contracting Officer (CO) set aside the procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 541512, Computer Systems Design Services, with a corresponding size standard of \$25 million average annual receipts.² Proposals were due December 23, 2010. On May 17, 2013, NASA announced that ARTS was the apparent awardee.

B. Protest

On May 24, 2013, Appellant, an unsuccessful offeror, filed a size protest with the CO. Based on data from USASpending.gov and other websites, Appellant asserted that ARTS's average annual receipts over the three years prior to its size certification exceeded the \$25 million size standard. (Protest, at 2-3.) Appellant further alleged that ARTS is affiliated with Dell, the incumbent on the predecessor contract, under the ostensible subcontractor rule. (*Id.* at 4-5.) Appellant contended that ARTS will be unduly reliant upon Dell for contract performance, and that Dell will “perform key position[s] and roles” under ACITS 3. (*Id.*) Appellant asserted that Dell has the power of negative control over ARTS “[b]ecause ARTS is largely dependent upon Dell.” (*Id.*)

² Effective March 12, 2012, SBA increased the size standard for NAICS code 541512 to \$25.5 million. 77 Fed. Reg. 7,490, 7,514 (Feb. 10, 2012). However, SBA regulations provide that “the size standard in effect on the date the solicitation is issued” is controlling unless the CO formally amends the solicitation to adopt the new size standard. 13 C.F.R. § 121.402(a). No such solicitation amendment occurred here, so the applicable size standard remains at \$25 million average annual receipts.

C. Statement of Work

The RFP's Statement of Work (SOW) indicates that ACITS 3 is the successor to ACITS 2, a predecessor contract for similar services. (SOW at 2.) The contractor will perform a wide range of information technology support services - except for support for end users, which NASA obtains through a separate contract - at the Ames Research Center, California. ACITS 3 “functions include but are not limited to computing support services (including system administration, hardware and software maintenance, and development of new software applications or modification of existing software to change or add to its functionality) for systems that either uniquely configured or highly specialized in function and that do not provide office automation services for end users.” (*Id.*)

The RFP states that ACITS 3 will be a single-award indefinite delivery indefinite quantity (ID/IQ) contract with a guaranteed minimum of \$100,000 and a maximum ceiling of \$403,400,000. (RFP §§ B.4 and L.4.) Specific requirements will be defined in individual task orders issued after award of the base contract. (SOW at 3.) The contract will have a two-year base period and three one-year option periods. (RFP § F.2.) The ACITS 3 contractor is responsible for providing “all personnel, training, facilities, and specialized equipment not provided by the Government.” (SOW at 3.)

The SOW divides the ACITS 3 services into the following categories:

- IT Systems & Governance Support
- IT Security Support
- Network and Communication Systems & Support
- Application Management & Support
- Scientific Computing Systems & Support
- Innovation and Emerging Technologies
- Outreach/Informational Systems & Support
- Management and Administration

(*Id.* at 2-3.)

Under “IT Systems & Governance Support,” the contractor may be called upon for project management, system administration, data center management, facility support, hardware/software maintenance, data storage retrieval and archiving, IT governance and policy analysis, technical planning and analysis, and records management. (*Id.* at 4-6.)

“IT Security” may involve patch management and deployment, vulnerability scanning systems, intrusion detection and prevention, incident response, security forensics, certification and accreditation consulting and auditing support, perimeter firewall systems, antivirus services, host-based intrusion detection and prevention, content monitoring and filtering, full packet capture and flow monitoring, event log collection and correlation, network access control, penetration testing, computer security official (CSO) support, classified security collaboration, participation on NASA boards, remote access services, IT security consulting and engineering,

security programming, and certifications. (*Id.* at 6-11.)

For “Network and Communication Systems & Support,” the ACITS 3 contractor may perform network maintenance and support, network and communications infrastructure, support for distributed systems, support of audio, video, and voice communication systems, and radio frequency and emergency communication systems support. (*Id.* at 11-13.) “Application Management & Support” may involve IT support for financial and business systems, IT support to human resources, personnel security and logistics, web development, application management, data management and analysis, and application testing. (*Id.* at 13-15.)

Under “Scientific Computing Systems & Support,” the contractor may provide scientific applications support, data acquisition and analysis, and modeling and tool development. (*Id.* at 15-16.) “Innovation and Emerging Technologies” may involve IT security innovation, cloud computing, and evaluation of new and emerging IT security tools and technology. (*Id.* at 16-18.) “Outreach/Informational Systems & Support” may involve support for the distribution of information to external customers. (*Id.* at 19.) Lastly, under “Management and Administration” the contractor will efficiently manage and support ACITS 3 task orders awarded by NASA. (*Id.* at 20-21.)

According to the RFP, proposals would be evaluated on the basis of three evaluation factors: Mission Suitability, Past Performance, and Price/Cost. (RFP § M.2.) The Mission Suitability factor consisted of three subfactors: Technical Understanding, Management Approach, and Safety & Health Plan. (*Id.*) Section L.9 of the RFP advised offerors that, in proposing subcontracting or teaming arrangements, they must comply with SBA's ostensible subcontractor rule, 13 C.F.R. § 121.103(h)(4). Offerors were instructed to identify any “major subcontractors,” defined as any subcontractor performing work valued at 10% or more of the resulting contract, and to provide information to enable NASA to determine “that the prime contractor making the offer will be performing the primary and vital requirements for the contract.” (*Id.* § L.9.) Compliance with the ostensible subcontractor rule would be evaluated by NASA under the Management Approach subfactor. (*Id.* § M.2.c.2.)

D. ARTS's Proposal

ARTS proposed itself as the prime contractor and Dell as its principal subcontractor. (Proposal, Vol. I.A, at 1.) With regard to compliance with the ostensible subcontractor rule, the proposal states that “ARTS performs 60% of labor dollars; Dell Services is proposed at 40%.” (*Id.*, Vol. I, Sec. B, at 46.) ARTS alone will manage the ACITS 3 contract, and has previously demonstrated its ability to manage contracts of similar size, scope, and complexity. (*Id.*) ARTS “marketed and pursued this award”, and led the proposal management, technical writing, pricing, and overall strategy development. (*Id.*) Responsibilities are clearly divided between ARTS and Dell based on functional area. The proposed Program Manager (PM), Mr. Dan Cox, is an ARTS employee, and will be the sole point of contact with NASA. (*Id.* at 45-46.) Mr. Cox reports directly to ARTS's President, who himself has extensive experience with NASA. (*Id.*) Subcontractor managers are subordinate to the ARTS PM. (*Id.* at 47.) Mr. Cox is dedicated exclusively to the ACITS 3 contract, and has been delegated “complete signature authority over all ACITS 3 contractual matters.” (*Id.*)

The proposal states that Dell will be primarily responsible for leading performance of the IT Security Support, Network and Communication Systems, and Innovation Governance Office. (*Id.* at 49.) The remaining functional areas are led by ARTS personnel. (*Id.* at 45.) The proposal acknowledges that Dell is the incumbent on the predecessor ACITS 2 contract, and indicates that ARTS will attempt to recruit and retain the incumbent personnel. (*Id.*, Total Compensation Plan, at 5.)

E. Size Determination

On June 20, 2013, the Area Office issued Size Determination No. 2-2013-99, finding that ARTS's average annual receipts do not exceed the \$25 million size standard, and that ARTS is not affiliated with Dell under the ostensible subcontractor rule.

The Area Office explained that ARTS is 100% owned by ASRC Federal Holding Company, LLC (ASRC), which in turn is 100% owned by Arctic Slope Regional Corporation (ASR Corp.), an Alaska Native Corporation (ANC). (Size Determination at 1.) Under SBA regulations, business concerns owned and controlled by ANCs or wholly-owned entities of ANCs are not considered affiliates of such entities. (*Id.* at 2.) As a result, the Area Office determined that ARTS is not affiliated with ASRC or ASR Corp. (*Id.*)

Turning to the ostensible subcontractor rule, the Area Office reviewed ARTS's teaming agreement with Dell, and determined that Dell provided ARTS with “proposal support for the IT Security and Network and Communications area — the functional areas Dell was assigned” for the ACITS 3 procurement. (*Id.* at 2.) The Area Office found that ARTS itself led “proposal management, volume management, technical writing, pricing, and overall strategy development.” (*Id.*)

Next, the Area Office examined ARTS's proposal. The Area Office determined that “ARTS will perform the majority of the contract including 60% of the personnel, 60% of the labor hours and 62% of the labor cost.” (*Id.*) The proposal reflects a reasonable division of responsibilities between ARTS and Dell, and ARTS alone is responsible for several functional areas of ACITS 3, including IT Systems and Governance, Applications Management, and Scientific Computing. (*Id.* at 3.) Program Management will also be performed solely by ARTS, led by an ARTS employee who will serve as the Program Manager. (*Id.*) In all, ARTS will provide three of the five key personnel for the contract. (*Id.*) The Area Office observed that, in the past performance portion of its proposal, ARTS identified several prior contracts that ARTS had successfully performed as the prime contractor, none of which involved Dell. (*Id.*)

The Area Office recognized that Dell is the incumbent on the predecessor ACITS 2 contract, and that “ARTS's proposal characterizes Dell as a 'major subcontractor' on the project.” (*Id.*) Nevertheless, the Area Office found that ARTS will perform the primary and vital requirements of the contract, and that ARTS is not unusually reliant upon Dell for contract performance. (*Id.*) As a result, there is no violation of the ostensible subcontractor rule.

The Area Office found that ARTS submitted its initial proposal including price on

December 23, 2010, and there were no subsequent proposal revisions. Therefore, size is determined as of December 23, 2010. (*Id.*) The Area Office calculated ARTS's average annual receipts for ARTS's three most recently completed fiscal years (2007, 2008, and 2009) using ARTS's Federal income tax returns for those years. (*Id.* at 4.) Based on these calculations, the Area Office determined that ARTS did not exceed the \$25 million size standard. (*Id.*)

F. Appeal

On July 1, 2013, Appellant filed the instant appeal. Appellant argues that the Area Office erred in concluding that ARTS is a small business.

Appellant maintains that the Area Office failed to consider all relevant facts, and instead “rel[ie]d only upon the ARTS proposal and additional information provided by the company.” (Appeal at 2.) According to Appellant, the fact that Dell is the incumbent contractor, unable to compete directly for this procurement, creates a “strong implication that the incumbent is an ostensible subcontractor.” (*Id.* at 5.) Appellant asserts that the Area Office did not “consider or reference that Dell was the incumbent and no longer eligible for award due to its size.” (*Id.*) Appellant further emphasizes that ARTS characterized Dell as its “major subcontractor”, and that ARTS acknowledges that Dell will perform a large portion of the ACITS 3 contract. Appellant argues that the Area Office ignored the possible existence of negative control due to Dell's role in contract performance and Dell's “specific technical expertise as the incumbent contractor.” (*Id.* at 6.) Appellant further argues that the Area Office should have investigated whether ARTS's three key employees were previously employed by Dell. (*Id.*) In addition, Appellant contends that the Area Office may have improperly considered information outside of ARTS's proposal, because the Area Office remarked that “ARTS currently has fourteen prime contracts...and between 100 and 400 employees.” (*Id.*, quoting Size Determination at 3.)

Next, Appellant asserts that the Area Office improperly considered only ARTS's tax returns in calculating average annual receipts, because the Area Office ignored other reliable evidence which casts doubt upon the accuracy of those tax returns. (*Id.* at 7.) Appellant states that the information Appellant provided in support of its protest, primarily from the USASpending.gov website, indicates that ARTS received Federal contracts for the applicable years of 2007, 2008, and 2009 in excess of the size standard. (*Id.*) Appellant theorizes that ARTS might have excluded some portion of its revenues from its tax returns, and if so, “the Area Office was required to consider whether those exclusions were permissible.” (*Id.* at 7-8.) Appellant concludes that the Area Office's disregard of the evidence submitted by Appellant at the protest stage, and reliance solely upon ARTS's tax returns, constitutes error by the Area Office that warrants reversal or remand of the size determination. (*Id.* at 8.)

G. ARTS's Response

On July 17, 2013, ARTS responded to the appeal. ARTS maintains that the size determination is correct and should be affirmed.

ARTS asserts that the Area Office properly considered ARTS's tax returns for fiscal years 2007, 2008, and 2009, the three most recent fiscal years prior to the date of proposal submission.

ARTS adds that it also provided the Area Office “excerpts from the audited financial statements for the applicable years confirming the information contained in the tax returns.” (ARTS Response, at 1.) ARTS maintains Appellant erroneously relies on information contained in the USASpending.gov website in an effort to dispute ARTS's tax returns. ARTS argues that Appellant misunderstands, or mischaracterizes, the information found on that site, because USASpending.gov reports obligations or amounts awarded by the Government, not revenues earned by contractors. (*Id.* at 2.) According to ARTS, Appellant incorrectly assumes that the data from USASpending.gov reflects ARTS's yearly revenues for 2007, 2008, and 2009.

ARTS states that SBA regulations and OHA case precedent make clear that Federal income tax returns must be used to determine size. (*Id.*) There is particularly no justification here for the Area Office to have disregarded ARTS's tax returns, given that those returns are “supported by audited financial statements for the relevant years provided by ARTS, and by the completed SBA Form 355, certified by ARTS' President with significant penalties for falsification.” (*Id.*)

Next, ARTS argues that the size determination properly concluded that Dell is not its ostensible subcontractor. ARTS states the Area Office properly considered “ARTS' proposal, a completed SBA Form 355, and the teaming agreement between ARTS and Dell for the procurement”, and failed to find any violation of the ostensible subcontractor rule. (*Id.*) ARTS maintains that Appellant's claims that the size determination should be reversed because Dell is the incumbent contractor on ACITS 2 is meritless, because participation by the incumbent contractor does not automatically violate the ostensible subcontractor rule. (*Id.* at 4.) ARTS argues that OHA precedent establishes that the Area Office is not required to address every protest allegation, particularly if those allegations are factually unfounded or irrelevant. (*Id.* citing *Size Appeal of Assessment & Training Solutions Consulting Corp.*, SBA No. SIZ-5228 (2011).) ARTS maintains that the size determination evinces the Area Office's proper and through examination of the record in making their determination.

ARTS next contends that the size determination properly ignored Appellant's ““negative control” allegation because it is inapplicable to the situation here. ARTS asserts that OHA has explained in the past that negative control is an issue involving a minority shareholder's power to interfere with ordinary business of a company, and is not an issue arising from contractual relationships. (*Id.*)

Lastly, ARTS asserts that Appellant's claim that the Area Office relied on current information outside ARTS's proposal is baseless. (*Id.* at 5.) ARTS asserts that the information Appellant quotes concerning ARTS “current” prime contract awards actually refers to the number found in ARTS's proposal. (*Id.*) Thus, “[a]t worst, the Area Office simply failed to cite the source of its finding from the record.” (*Id.*) ARTS concludes that Appellant has not demonstrated any legal or factual error in the size determination.

H. SBA's Response

On July 17, 2013, SBA timely intervened³ and filed a response to the appeal. SBA maintains the Area Office correctly determined that ARTS is a small business for the procurement at issue.

SBA argues the Area Office properly calculated ARTS's average annual receipts in accordance with 13 C.F.R. § 121.104(a)(1), which requires the use of Federal income tax returns for determining size. (SBA Response at 2.) SBA further adds that OHA has made it clear that an area office is under no obligation to consider evidence apart from a concern's tax returns when determining size. (*Id.* at 4.) SBA states the Area Office did not err in determining size from ARTS's tax returns for 2007, 2008, and 2009. On the contrary, the Area Office “would have committed error in *not* relying on these documents.” (*Id.*, emphasis in original.)

With regard to the ostensible subcontractor rule, SBA asserts that the Area Office thoroughly reviewed “solicitation documents; excerpts from [ASR Corp.'s] 2007, 2008, and 2009 Consolidated Financial Statements and Schedules; a Teaming Agreement between ARTS and [Dell]; ARTS's proposal submitted in response to the instant solicitation; a completed SBA Form 355; and ARTS's corporate documents” in determining whether ARTS and Dell were affiliated. (*Id.* at 5.) Thus, Appellant's suggestion that the Area Office failed to consider all aspects of the relationship between ARTS and Dell has no merit. SBA argues that the record clearly shows that ARTS will perform the primary and vital contract requirements and is not unduly reliant on Dell. (*Id.* at 6.) SBA further maintains that the Area Office was not required to have addressed whether Dell has negative control over ARTS, because Dell has no ownership or managerial interest in ARTS and therefore is not in a position to exercise negative control. (*Id.*) SBA concludes that the Area Office could not have erred in failing to address issues that are irrelevant to the size determination. SBA urges OHA to affirm the size determination and deny the appeal.

III. Discussion

A. Standard of Review

Appellant has the burden of proving, by a preponderance of the evidence, all elements of the appeal. Specifically, Appellant must prove the size determination is based upon a clear error of fact or law. 13 C.F.R. § 134.314. OHA will disturb an area office's size determination only if, after reviewing the record, the administrative judge has a definite and firm conviction that the area office erred in making its key findings of fact or law. *Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 11 (2006).

B. Analysis

Appellant contends that the Area Office erred in considering only ARTS's tax returns,

³ . “SBA may intervene as of right at any time in any case until 15 days after the close of record, or the issuance of a decision, whichever comes first.” 13 C.F.R. § 134.210(a).

rather than other publicly available information, in calculating ARTS's average annual receipts. Appellant further maintains that the Area Office failed to consider all aspects of the relationship between ARTS and Dell in assessing whether there was a violation of the ostensible subcontractor rule. As discussed below, neither of Appellant's arguments is meritorious. As a result, the appeal must be denied.

1. Tax Returns

SBA regulations require that “the Federal income tax returns and any amendments filed with the IRS on or before the date of self-certification must be used to determine the size status of a concern.” 13 C.F.R. § 121.104(a)(1). Indeed, “there is no authority for an area office to consider any evidence apart from tax returns (when they have been filed) when calculating a firm's average annual receipts.” *Size Appeal of Thomas Computer Solutions, LLC*, SBA No. SIZ-4841, at 8 (2007). Because tax returns must be used to calculate size unless those returns are unavailable, revenue data from other non-tax sources “cannot be used to determine size or to question the results reached by the Area Office's examination of the Federal tax returns.” *Size Appeal of Native Energy and Technology, Inc.*, SBA No. SIZ-5249, at 10 (2011).

In the instant case, the Area Office relied upon ARTS's tax returns for the years in question (2007, 2008, and 2009) to calculate ARTS's average annual receipts. *See* Section II.E, *supra*. Although Appellant maintains that ARTS's tax returns are not consistent with data in USASpending.gov and other publicly-available sources, any such inconsistency is immaterial because the tax returns are controlling. Nor is it clear that there is inconsistency between ARTS's tax returns and other data sources. As ARTS observes in its response to the appeal, USASpending.gov tracks awards made by the Government, not revenues earned by contractors. Frequently, Government contracts are performed — and contractors paid — over the course of several years, so the fact that an award was made in a particular fiscal year does not establish when (if at all) the contractor actually earned those funds. In sum, Appellant has not established any error in the Area Office's calculation of ARTS's size. The Area Office properly based its decision on ARTS's tax returns, and was not required to explore whether those returns may be inconsistent with other data sources.

2. Ostensible Subcontractor

Appellant also contends that the Area Office did not consider “all aspects” of the relationship between ARTS and Dell, as required by 13 C.F.R. § 121.103(h)(4), in concluding that ARTS's proposal does not violate the ostensible subcontractor rule. Appellant points in particular to the fact that ARTS described Dell as its “major subcontractor” for ACITS 3, and to the fact that Dell is the incumbent on the predecessor ACITS 2 contract.

Appellant's arguments fail for two reasons. First, contrary to Appellant's allegation, the record establishes that the Area Office did consider these issues in reaching its decision. The size determination states that “ARTS's proposal characterizes Dell as a 'major subcontractor' on the project,” and further indicates that “the incumbent, Dell” will be responsible for various aspects of contract performance. (Size Determination at 2, 3.) Thus, while it may be true that the Area Office attached little significance to these issues, I cannot conclude that the Area Office

overlooked or failed to consider them.

Second, Appellant has not persuasively shown, or explained, how greater consideration of these issues could have altered the outcome of the case. The term “major subcontractor” was defined by NASA in the RFP as any subcontractor performing work valued at 10% or more of the resulting contract. *See* Section II.C, *supra*. Thus, ARTS's use of that terminology does not reflect ARTS's judgment that Dell would play a crucial role in contract performance. Similarly, engaging the incumbent as a subcontractor leads to heightened scrutiny of the arrangement, but is not a *per se* violation of the ostensible subcontractor rule. *E.g.*, *Size Appeal of HX5, LLC*, SBA No. SIZ-5331, at 11 (2012). Thus, the factors identified by Appellant do not suffice to show that Dell is ARTS's ostensible subcontractor. On the other hand, based upon its review of ARTS's proposal, the Area Office found that “ARTS will perform the majority of the contract including 60% of the personnel, 60% of the labor hours and 62% of the labor cost.” (Size Determination at 2.) ARTS will be solely responsible for managing the contract; will supply the majority of the key personnel, including the Program Manager; and is a proven concern which has successfully performed other contracts of comparable magnitude without any involvement by Dell. (*Id.* at 2-3.) Further, there is no indication that Dell will provide technical or financial assistance to ARTS, and ARTS's proposal clearly delineated the respective responsibilities of the two firms. On these facts, the Area Office reasonably and correctly concluded that ARTS's proposal is compliant with the ostensible subcontractor rule. *E.g.*, *Size Appeal of CymSTAR Servs., LLC*, SBA No. SIZ-5329, at 13 (2012) (“Where a concern has the ability to perform the contract, will perform the majority of the work, and will manage the contract, the concern is performing the primary and vital functions of the contract, and there is no violation of the ostensible subcontractor rule.”).

Appellant also complains that the Area Office did not address Appellant's protest allegation that Dell can exercise negative control over ARTS. Under OHA precedent, however, “[n]egative control exists if a minority owner can block ordinary actions essential to operating the company.” *E.g.*, *Size Appeal of Carntribe-Clement 8AJV #1, LLC*, SBA No. SIZ-5357, at 13 (2012). Here, Dell has no ownership or managerial interest in ARTS, such that Dell might be in a position to disrupt ARTS's ordinary business operations. On the contrary, the Area Office specifically determined that ARTS is 100% owned by ASRC, which in turn is 100% owned by ASR Corp., an Alaska Native Corporation. Section II.E, *supra*. Moreover, the mere fact that two firms are jointly involved in performing a contract does not establish that either firm has the power to control the other. *Size Appeal of Accent Service Company, Inc.*, SBA No. SIZ-5237, at 7 (2011). Thus, Appellant did not advance any plausible grounds whereby the Area Office might have concluded that Dell has the power to negatively control ARTS.

IV. Conclusion

For the above reasons, I AFFIRM the Area Office's size determination and DENY the instant appeal. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge