

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

SIZE APPEAL OF:

Hanks-Brandon, LLC,

Appellant,

RE: Logical Innovations, Inc.

Appealed From  
Size Determination No. 05-2015-037

SBA No. SIZ-5692

Decided: November 9, 2015

APPEARANCES

James S. DelSordo, Esq., Argus Legal, LLC, Manassas, VA, for Appellant.

Ralph C. Thomas III, Esq., Barton Baker Thomas & Tolle, LLP, McLean, VA, for Logical Innovations, Inc.

DECISION

I. Procedural History and Jurisdiction

On August 25, 2015, the U.S. Small Business Administration (SBA) Office of Government Contracting, Area V (Area Office) issued Size Determination No. 05-2015-037 finding that Logical Innovations, Inc. (Logical) is an eligible small business for the procurement at issue.

Hanks-Brandan, LLC (Appellant), an unsuccessful offeror, contends the size determination is clearly erroneous, and requests that SBA's Office of Hearings and Appeals (OHA) reverse the size determination and find Appellant is an ineligible small business for the instant procurement. For the reasons discussed *infra*, I deny the appeal, and affirm the size determination.

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 and Protest

On February 13, 2015, the National Aeronautics and Space Administration (NASA), Armstrong Center Administrative and Technical Support Services (CATSS) II, issued Solicitation No. NND15520845R (RFP) seeking a contractor to provide administrative and technical support for the CATSS II. The RFP was issued as an 8(a) competitive procurement set-aside. The Contracting Officer (CO) designated North American Industry Classification System (NAICS) code 561110, Office Administrative Services, with a corresponding \$7.5 million annual receipts size standard, as the appropriate code for this procurement.

On July 22, 2015, NASA notified Appellant that Logical was the apparent awardee. On July 28, 2015, Appellant filed a size protest challenging Logical's size eligibility, alleging Logical was affiliated with Media Fusion, Inc. (MFI), the incumbent contractor. The protest further alleges Logical is affiliated with MFI under the ostensible subcontractor rule because Logical is unusually reliant upon MFI to perform the instant procurement.

The Performance Work Statement (PWS) specifies that the contractor will be providing technical and administrative services in support of NASA's Armstrong Flight Research Center. The contractor will provide administrative and technical functions regarding the development and submission of budget requirements as part of the Resources Management Office. PWS, at 7. As part of the functions of the Financial Management Office, the contractor will operate and manage the Armstrong Centralized Travel Office, which includes numerous duties relating to travel authorizations, vouchers and reservations. *Id.* at 9-11. Regarding the Acquisition Management Office, the contractor will assist and support NASA in performing administrative duties in support of contractual instruments. These include contracts, purchase orders, delivery orders, task orders, interagency purchase requests, grants, and cooperative agreements. *Id.* at 14-15. The contractor will be responsible for providing technical editing and related assistance in support of the Technical Publications Office, particularly NASA's Scientific Technical Information Program. Duties include editing, formatting, visual information planning, and office support. *Id.* at 20-23.

The remaining services the contractor will provide include Research Library Services, Reproduction Center Services, Office of Internal Controls and Management Systems, Administrative Office Support, and Business Systems Support. For the Office of Strategic Communications, the contractor will provide administrative support such as management of the office and technical files. Other duties include Media Relations and Public Affairs, Exhibits and Public Outreach, History and Archival Services, Social Media, New Hire Guide, and Staff Strategic Communication Positions. *Id.* at 31-38.

## B. Size Determination

On August 25, 2015, the Area Office issued its size determination finding Logical is a small business concern for the procurement at issue.

Logical is solely owned by Ms. Denise Navarro, who is also the majority owner in: (i) LI2RJV, Inc.; (ii) Logical-R Joint Venture, LLC; (iii) LogicJES Joint Venture; (iv) LJR Joint Venture, LLC; and (v) Logical Diverse Business Innovations Joint Venture. None of these concerns generated any revenue during the years used to determine size. Size Determination, at 2.

The Area Office determined the solicitation requires the contractor to provide administrative and technical support services to NASA. Additionally, the CO notified the Area Office that the contract's primary and vital requirements were: (i) Resource Management Office; (ii) Acquisition Management Office (AMO); (iii) Technical Publications Office; and (iv) Strategic Communications. *Id.* at 3. According to the Area Office, Logical will primarily be responsible for three out of the four primary and vital requirements, and will work together with MFI, the incumbent contractor, on all four, with Logical employees performing all aspects of the contract. The Teaming Agreement states MFI will be the subcontractor for the instant procurement while assisting in performing the elements found in the SOW. The Teaming Agreement further states the Deputy Program Manager will be an MFI employee, with the position's duties limited to oversight and company administrative management. *Id.*

Logical has proposed the following four key personnel positions: (i) Program Manager (PM); (ii) Deputy Program Manager; (iii) AMO Lead; and (iv) Historian. The proposed PM, who will report directly to Logical's President, is currently an MFI employee with a signed agreement to become a Logical employee at contract award, while the Deputy PM will remain an MFI employee. The AMO Lead is an MFI subcontractor currently who will become a Logical employee and the Historian will be hired and employed by Logical. *Id.* at 4. Logical has proposed 74 positions, with five being current MFI employees who will become Logical employees. None of the remaining positions will be filled by MFI employees and the contract will be managed by Logical.

The Teaming Agreement also states the target workshare for MFI is 45-47% of the work with a minimum guarantee of 45% and Logical responsible for the remaining 53-55%. *Id.* Of the five past performance contracts provided in its proposal, Logical was the primary on three of them. Logical also provided substantial experience in performing and managing CATSS II work.

The Area Office found Logical was primarily in charge and responsible for all aspects of proposal drafting, with MFI providing author, review, and pricing support. Regarding contract performance, the Area Office notes that Logical "will perform the more complex and costly requirements across all PWs elements, with supporting expertise from MFI." *Id.* at 5. The PM will ultimately be responsible for contract performance and management, including budgeting, resource execution, and reporting. Any agreement and delivery of products and services will also be overseen by the PM.

### C. Appeal Petition

On September 9, 2015, Appellant filed its appeal of the size determination. Appellant requests OHA reverse the size determination and find Logical affiliated with MFI.

Appellant contends the Area Office failed to determine whether Logical and MFI are affiliated under the totality of the circumstances. Specifically, Appellant states “the Area Office did not properly assess whether [Logical]'s subcontractor MFI had the ability to control the CATSS II effort in accordance with the tenets and contents of [Logical's] proposal to NASA.” Appeal, at 4. Appellant further contends the Area Office did not properly consider SBA regulations regarding the ostensible subcontractor rule and failed to assess in a proper manner Logical's proposal. Particularly, Appellant maintains the Area Office “did not consider the heightened scrutiny MFI's incumbency has on MFI's ostensible subcontractor role.” *Id.*

According to Appellant, the target workshare described in the Teaming Agreement, under a totality of the circumstances analysis, is “quite high” when the contract has a size standard of \$7.5 million and the Teaming Agreement allows for the combining of personnel that leads to affiliation. *Id.* at 5. Furthermore, Appellant alleges the Area Office did not find MFI has the ability to control the CATSS II contract, which is “crucial” in an affiliation analysis under 13 C.F.R. § 121.103(a)(i). Part of the control MFI has over the CATSS II contract is that the PM is an MFI employee who will become a Logical employee. Appellant argues the Area Office failed to consider this as suggestive of affiliation. *Id.* at 6. Appellant contends that if the PM had, as determined by the Area Office, been committed only to Logical, then the Area Office “should have considered the amount of control MFI had exerted on the PM and how much loyalty in terms of Contract Management the Logical PM will continue to have for MFI.” *Id.* at 7. The Area Office, per Appellant's contentions, also failed to fully examine its finding that Logical will be leading three of the four primary and vital contract requirements.

Appellant challenges the Area Office's determination that only five of the 74 proposed employees will come from MFI as indicia of Logical's lack of unusual reliance on MFI. According to Appellant, this fact is irrelevant to any unusual reliance on MFI on the part of Logical because the Area Office should have considered the number of incumbent MFI employees who will remain employed by MFI. *Id.* at 7-8. Appellant alleges the Area Office did not perform an in depth investigation to the level that would allow it to make a ruling that Logical is performing the primary and vital portions of the contract. Appellant argues Logical lacks the necessary background and expertise to ably perform the CATSS II contract. Specifically, Appellant asserts Logical cannot perform this contract without MFI's personnel, expertise, resources and experience. *Id.* at 8. In addition, MFI's minimum guarantee of 45% of the workshare is suggestive of affiliation, or a quasi-joint venture between Logical and MFI. Appellant also states the Area Office's determination that Logical and MFI are jointly performing all four of the primary and vital requirements shows the undue reliance Logical has on MFI. The commingling of employees supplements Appellant's conclusion that Logical and MFI are affiliated under the ostensible subcontractor rule. *Id.* at 9.

In arguing that Logical is unusually reliant on MFI, Appellant contends that Logical lacks the experience needed to perform the contract, and instead relying on MFI's personnel and

capabilities. Appellant states the solicitation requires five recent past performance doing relevant work, where evaluators will consider the size, content, and complexity of an offeror's past performance. However, Appellant alleges that publicly available information shows Logical lacks the requisite experience, while MFI has the necessary experience to perform the CATSS II. *Id.* at 10-11. Because of the scale of the CATSS II contract, Appellant determines Logical could not meet the required experience without unusual reliance on MFI. Appellant, in challenging the size determination's analysis, states if the Area Office has "appropriately assessed [Logical]'s relevancy in experience as the prime contractor (without consideration of MFI's relevancy in experience), it should have concluded that NASA would not have accepted the risk associated with [Logical]'s selection." *Id.* at 13. Appellant goes on to describe the number of risks that NASA would face if Logical did not have MFI's support.

Next, Appellant states that "none of the staff and leads/managers proposed by [Logical] are current employees of [Logical]" thus showing Logical's undue reliance upon MFI. *Id.* at 14. The Area Office failed to properly consider this in determining affiliation between Logical and MFI. Specifically, the Area Office did not account for the managerial and supervisory personnel who are MFI employees and are not covered under Executive Order 13495, Nondisplacement of Qualified Workers Under Service Contracts. The proposed Historian, a key employee, will be a new hire according to the Area Office, and Appellant argues the Area Office failed to investigate whether this employee is an incumbent employee from MFI. *Id.* at 16.

Appellant highlights the Area Office's statement that Logical will be managing the performance of the team in stating that "it appears that the [Logical] Proposal may have used prominently utilized the word 'team' in describing [Logical]'s relationship with MFI." *Id.* Appellant believes Logical received positive evaluation scores from NASA based on its use of the word team to describe its partnership with MFI and by prominently mentioning MFI's contributions. This further adds to Logical's undue reliance on MFI for contract performance. *Id.* at 17. Appellant concludes Logical could not perform this contract unless it hired MFI personnel, therefore creating an undue reliance on MFI that amounts to a violation of the ostensible subcontractor rule.

#### D. Logical's Reply

On September 25, 2015, Logical replied to the appeal. Logical requests OHA deny the appeal because Appellant failed to show any clear error of fact or law in the size determination.

Logical maintains that, contrary to Appellant's assertions, the Area Office indeed considered whether MFI had the ability to control Logical based on their role in the CATSS II effort. Logical argues hiring an MFI employee as the contract's PM does not jeopardize its control over the contract as the PM will become a Logical employee and report only to Logical's executive leadership. Reply at 6-7. Logical does not dispute that hiring a PM from the incumbent contractor may suggest unusual reliance, but this by itself does not establish unusual reliance, especially when the personnel in question remains under the control of the prime contractor. *Id.* at 7; citing *Size Appeal of J.W. Mills Management, LLC*, SBA No. SIZ-5416 (2012); *Size Appeal of InGenesis, Inc.*, SBA No. SIZ-5436 (2013). Appellant cites to *Size Appeal of InGenesis, Inc.*, yet failed to realize that this case did not find a violation of the ostensible subcontractor when, as

is the case here, the prime contractor hired the PM from the incumbent. Logical also challenges Appellant's contention MFI had a large role in the proposal preparation. Logical states the Area Office correctly reviewed the proposal and found that Logical took the lead role in proposal preparation and had a deep understanding of the CATSS II contract requirements. *Id.* at 9.

According to Appellant, Logical's Teaming Agreement with MFI shows its unusual reliance on MFI for contract performance based on the 45% minimum workshare guaranteed to MFI being too high. Appellant disputes this assertion by arguing that this claim is of no relevance because Logical will perform the more complex and costly requirements, interact exclusively with the government, wrote the proposal, and the CO evaluated Logical's past performance favorably. *Id.* at 10-11. Further, the Teaming Agreement does not propose that there will be commingling of personnel as claimed by Appellant. The Teaming Agreement delineates the duties expected of both the prime contractor and subcontractor and the subcontractor will provide support, not primarily perform, the complex and costly contract requirements.

Next, Logical argues Appellant failed to cite any authority or requirement that the PM must provide her resume to other competitors in order to show Logical is not unduly reliant on MFI or that MFI lacked "any control over the [PM] once a contract award had been made to Logical." *Id.* at 12. Similarly, Appellant fails to cite any legal authority that required the Area Office to consider how many of the 74 proposed personnel had been employed by MFI at some point. Logical cites to Executive Order 13495, Nondisplacement of Qualified Workers Under Service Contracts, to show that even if Logical hired incumbent personnel, this action does not amount to undue reliance. In addition, Appellant's argument Logical lacks the past performance experience to perform the contract without MFI's contribution is unsupported by the record. Essentially, Appellant "would have the Area Office substitute the [A]ppellant's judgment of Logical's ability to perform the contract for the judgment of the [CO]." *Id.* at 14.

Logical disputes Appellant's claim the Area Office did not properly evaluate Logical's past experience in its ostensible subcontractor analysis. However, the size determination reviewed Logical's technical proposal and found it presented relevant past performance. In Logical's view, if the Area Office had substituted its assessment of the past experience, beyond finding that it provided its own past experience and not relied on MFI, then the Area Office would have made a responsibility determination, an area the CO is solely responsible for. *Id.* at 15; citing *Size Appeal of TCE, Inc.*, SBA No. SIZ-5003 (2008).

Logical next challenges Appellant's claims Logical does not have the capability to perform the contract and is relying on non-Logical employees for performance and management. Logical states the PM, and AMO Lead have signed agreements to become Logical employees, and the Historian will be hired by Logical. Thus, three of the four key employees will be Logical employees, with the PM reporting directly to Logical's President. *Id.* at 16. Similar to the situation in *Size Appeal of InGenesis, Inc.*, hiring the Program Manager from the incumbent contractor does not create unusual reliance, and when those hires are under the control of the new prime contractor, there is no violation of the ostensible subcontractor rule. Appellant's assertion that the other key employees do not have any employment experience with Logical is irrelevant as they will be Logical employees under the control of Logical's executive leadership. *Id.* at 17.

Further, Logical asserts Appellant's allegation the proposal utilized the word "team" to sign Logical's reliance on MFI is inaccurate and against OHA precedent. Logical states that using the word team, "particularly if it does not imply that the proposed subcontractor is the dominant partner, is not indicative of undue reliance or that the subcontractor will be performing the primary and vital functions of the contract." *Id.* at 18; citing *Size Appeal of Paragon TEC, Inc.*, SBA No. SIZ-5290 (2011). Therefore, any contention Appellant makes suggesting Logical cannot have placed an offer for the solicitation without MFI's experience and employees is unsupported by the record.

### 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

Under SBA regulations, the ostensible subcontractor rule instructs that a prime contractor and its subcontractor may be treated as affiliates if the subcontractor performs the primary and vital requirements of the contract, or if the prime contractor is unusually reliant upon the subcontractor. 13 C.F.R. § 121.103(h)(4). OHA has previously stated that of utmost importance in any ostensible subcontractor rule case is whether the subcontractor is performing the primary and vital contract requirements, and which concern is responsible for contract management. *Size Appeal of Maywood Closure Company, LLC & TPMC-EnergySolutions Environmental Services 2009, LLC*, SBA No. SIZ-5499 (2013). A contract's primary and vital requirements are those closely associated with the solicitation's primary purpose. *Size Appeal of Santa Fe Protective Servs., Inc.*, SBA No. SIZ-5312, at 10 (2012). When examining the relationship between a prime and subcontractor, OHA will look into all aspects of the relationship, including any agreement between the concerns, and whether the subcontractor is the incumbent contractor. *Size Appeal of C&C Int'l Computers and Consultants Inc.*, SBA No. SIZ-5082 (2009).

Here, the CO stated that the solicitation's primary and vital requirements were: (i) Resource Management Office; (ii) Acquisition Management Office; (iii) Technical Publications Office; and (iv) Strategic Communications. *See*, Section II.B, *supra*. The contractor will be responsible for staffing all the positions needed to perform the duties of these offices. Although the Area Office is not required to solely rely on the CO's statements when analyzing the primary and vital requirements, OHA has previously stated "that where a CO provides written identification of a solicitation's primary and vital requirements, some weight must be given to the CO's statements." *Size Appeal of NEIE Medical Waste Services, LLC*, SBA No. SIZ-5547 (2014). In the case at hand, Logical's proposal shows that it will lead three of the four primary

and vital requirements, with MFI leading the remaining one. Proposal, Vol. I., at 28. Although MFI will assist in all four primary and vital requirements, the Teaming Agreement between Logical and MFI stipulates that MFI will not perform more than 47% of the work. Appellant argues that this target workshare is “quite high” and suggestive of affiliation, yet OHA has consistently found that a subcontractor performing less than 50% of the work is evidence that no dependence of the prime contractor on the subcontractor exists and therefore leads to no finding of a violation of the ostensible subcontractor rule. *Size Appeal of Lynxnet, LLC*, SBA No. SIZ-5609 (2014).

Appellant argues that the Area Office erred when it failed to properly assess whether MFI controlled the contract. I find this argument illogical. The Area Office performed a detailed analysis of the work required and whether Logical or MFI was performing the primary and vital contract requirements. Essentially, this analysis examines whether the subcontractor is performing the primary and vital requirements, therefore giving the subcontractor power to control the contract. The size determination, repeatedly and exhaustively, refers back to the proposal and Teaming Agreement in order to determine who is ultimately responsible for contract performance. I cannot find any reason to agree with Appellant's contention that “the Area Office did not properly assess whether [Logical]'s subcontractor MFI had the ability to control the CATSS II effort in accordance with the tenets and contents of [Logical's] proposal to NASA.” Appeal, at 4. It appears that Appellant has based its arguments on what Appellant believes is contained in Logical's proposal, as Appellant did not cite to the proposal in its appeal, nor did it show that it had access to the proposal. Thus, I find meritless Appellant's argument that the Area Office failed to properly assess Logical's proposal within the purview of the ostensible subcontractor rule.

Appellant further argues the Area Office erred when it determined that the majority of the 74 proposed positions will not be MFI employees. Again, a review of Logical's proposal shows that except for the key employees, the proposed workforce are the incumbent employees for all required positions. Proposal, Vol. I., at 3. As OHA precedent, and Logical's response explains, hiring incumbent employees is encouraged by Executive Order, and is not a factor in making an ostensible subcontractor determination. *Size Appeal of Four Winds Services, Inc.*, SBA No. SIZ-5260, at 7 (2011) (“This is in accordance with the policy expressed in the President's January 30, 2009, 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.” Exec. Order No. 13,495, Nondisplacement of Qualified Workers Under Service Contracts, 74 Fed. Reg. 6103 (Feb. 4, 2009). I recognize that, as a result of this Order, the hiring of incumbent employees can no longer be considered a meaningful indicia of unusual reliance.”) Consequently, Logical's proposal clearly states that the majority incumbent workforce will not be personnel that is currently employed by MFI. Further rebuking Appellant's claims, Logical's cost proposal shows that those employees under the control of MFI account for 44.75% of the total contract cost, including all options and less than 50% of the total proposed personnel. Proposal, Vol. III., Attachment 1. This reflects the Teaming Agreement's requirement that MFI's workshare will not exceed 47%. Therefore, the record shows that Logical is not unduly reliant on MFI for staffing the majority of the 74 proposed positions.

The stronger point of contention raised by Appellant are the proposed key personnel in Logical's proposal and MFI's incumbency in the predecessor solicitation. In the past, OHA has been clear that there is a higher level of scrutiny when the proposed subcontractor is the incumbent contractor, but this is not a violation of the ostensible subcontractor rule, nor does it create undue reliance *per se*. *Size Appeal of HX5, LLC*, SBA No. SIZ-5331, at 11 (2012); *Size Appeal of InGenesis, Inc.*, SBA No. SIZ-5436 at (2013) (“Thus, the mere fact that STGi is the incumbent contractor cannot establish unusual reliance.”) Here, the fact that Logical is hiring MFI employees to serve as key employees raises the level of scrutiny, but contrary to Appellant's contentions, it does not create a violation. The four key employee positions are: (i) PM; (ii) Deputy PM; (iii) AMO Lead; and (iv) Historian. Currently, the proposed PM is an MFI employee and the AMO Lead is an MFI subcontractor on the incumbent contract. The Deputy PM will be employed by MFI and Logical will hire and employ the Historian. Proposal, Vol. I., at 20-21.

Throughout its appeal, Appellant argues that hiring a current MFI employee as the PM is evidence of Logical's undue reliance upon MFI to perform the contract. I disagree. Once again, OHA has taken up similar facts in the past and has found that although it raises the level of scrutiny, the hiring of key personnel from the subcontractor, who is the incumbent contractor, does not create a violation of the ostensible subcontractor rule. It is factor which, if combined with other factors, leads to a finding of an ostensible subcontractor rule violation, but by itself it does not create the violation. If the key personnel remain under the employment, supervision, and control of the prime contractor, then no violation exists. *Size Appeal of InGenesis, Inc.*, SBA No. SIZ-5436, at 15-16 (2013) (“the use of two current [subcontractor] employees ([Deputy PM] and [Senior Recruiter]) as key personnel does not create unusual reliance.”); *Size Appeal of Maywood Closure Company, LLC & TPMC-Energy Solutions Environmental Services 2009, LLC*, SBA No. SIZ-5499 (2013) (finding that no affiliation existed when a subcontractor employee was proposed as project manager because he would become a prime contractor employee upon contract award.)

Appellant argues the Area Office erred by not considering the level of loyalty the PM owed MFI. *Supra*, Section II.B. Appellant contends that the PM's level of loyalty to MFI is a factor to consider in an ostensible subcontractor rule analysis. I find this argument meritless. Appellant's contention is unsupported by regulation or precedent. Further, neither the Area Office, nor OHA, can evaluate a subjective feeling such as loyalty owed by an individual to a business concern.

I must note that it also appears Appellant is confused as to affiliation based on the totality of the circumstances and affiliation based on the ostensible subcontractor rule. OHA has found that under the totality of the circumstances, SBA may find affiliation even though no single factor is sufficient to constitute affiliation. 13 C.F.R. § 121.103(a)(5); *Size Appeal of Faison Office Products, LLC*, SBA No. SIZ-4834 (2007) at 11; (“an area office must [first] find facts and explain why those facts caused it to determine one concern had the power to control the other.”). However, totality of the circumstances is not an applicable ground of affiliation under an ostensible subcontractor analysis. A totality of the circumstances analysis rests on whether numerous factors taken together establish that a business concern has the power to control another, not whether it can control a particular contract. Conversely, an ostensible subcontractor

analysis is contract specific and is a completely different form of determining affiliation. I therefore dismiss any attempt by Appellant to combine the two in arguing that Logical and MFI are affiliated.

In sum, although MFI is the incumbent contractor, and Logical's proposal included a current MFI employee as the PM, these circumstances are not sufficient to show that Logical is unusually reliant upon MFI. Logical is responsible for contract management and will be performing the majority of the work, including leading three of the four primary and vital requirements. Appellant's speculation regarding MFI's role is just that, speculation. Appellant at no point showed that it reviewed Logical's proposal. Instead, Appellant relied on making assumptions based on statements made by the Area Office in its size determination. Appellant also claimed the Area Office failed to consider Logical and MFI's relationship, MFI's incumbency, the Teaming Agreement between the two concerns, the performance of the primary and vital requirements, and Logical's experience. Once again, I strongly disagree. The Area Office, in a very detailed way, considered all of these factors and relied on OHA's extensive ostensible subcontractor rule precedence in making its size determination.

I agree with the Area Office and Logical that none of the issues raised by Appellant is compelling to show that Logical is unduly reliant upon MFI. The Area Office reasonably concluded that Logical will be performing the majority of the contract's primary and vital requirements. The overall management and staffing of the contract remain in the purview of Logical, the prime contractor. *Size Appeal of Lynxnet, LLC*, SBA No. SIZ-5609 (2014) (finding no violation of the ostensible subcontractor when the prime contractor is performing the majority of the work, manage the contract, and perform the primary and vital contract requirements.) Appellant failed to show the Area Office committed significant errors of fact or law in its size determination.

#### IV. Conclusion

Appellant has not demonstrated 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).

CHRISTOPHER HOLLEMAN  
Administrative Judge