

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

**REDACTED DECISION FOR PUBLIC RELEASE**

SIZE APPEAL OF:

Emergent, Inc.,

Appellant,

RE: Kapsuun Group, LLC

Appealed From  
Size Determination No. 06-2018-003

SBA No. SIZ-5875

Decided: December 19, 2017

APPEARANCES

Curtis A. Merriweather, Jr., President, Emergent, Inc., North Charleston, South Carolina

William K. Walker, Esq., Walker Reausaw, Washington, D.C., for Kapsuun Group, LLC.

DECISION<sup>1</sup>

I. Introduction and Jurisdiction

On October 19, 2017, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area VI (Area Office) issued Size Determination No. 06-2018-003 finding that Kapsuun Group, LLC (KG) is a small business for the subject procurement. Emergent, Inc. (Appellant), which had previously protested KG's size, maintains that the size determination is clearly erroneous and requests that the SBA Office of Hearings and Appeals (OHA) reverse. 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 this appeal within fifteen

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<sup>1</sup> This decision was originally issued under the confidential treatment provision of 13 C.F.R. § 134.205. OHA received one or more requests for redactions and considered any requests in redacting the decision. OHA now publishes a redacted version of the decision for public release.

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 30, 2016, the U.S. Department of the Air Force (Air Force) issued Request for Proposals (RFP) No. FA7037-16-R-0001 for Linguist and Analyst Support Services (LASS) in support of intelligence operations. The Contracting Officer (CO) set aside the procurement entirely for participants in the 8(a) Business Development program, and assigned North American Industry Classification System (NAICS) code 541930, Translation and Interpretation Services, with a corresponding size standard of \$7.5 million average annual receipts. Proposals were due January 5, 2017. The RFP was structured as a procurement of commercial items under Part 12 of the Federal Acquisition Regulation (FAR).

The RFP included a Performance Work Statement (PWS) outlining contractual requirements. The PWS explained that the “[t]he contractor shall perform all phases of collecting, interpreting, translating, and performing analysis of mission data. The contractor shall provide support as language mentors and trainers. The contractor shall furnish the required management, technology and personnel required to provide the requested linguist support as specified in this PWS.” (PWS § 2.1.2.) The contractor will provide linguists who can “write and speak in clear and concise grammar and pronunciation of the Specified Contract Required Language (SCRL) and conduct training of the same.” (*Id.* § 2.2.3.) In addition, the contractor will provide analysts to “provide translation services for documents [(e.g., transcripts, reports)] from the required language SCRL(s) into English” or *vice versa*, as well as “cryptologic language and global mission related training” using existing and newly-developed curricula and materials. (*Id.*, § 2.4.2.2, 2.4.2.3-2.4.2.5.) The contractor will “track student training, provide reports on student training and use on-line training materials.” (*Id.*, § 2.4.2.7.)

According to a Labor Matrix spreadsheet accompanying the RFP, the contractor will provide 188.5 Full-Time Equivalents (FTEs) for each year of contract performance, consisting of 172 Linguist/Analyst FTEs, 12.5 managerial FTEs, and 4 instructor FTEs. (RFP, Attachment 4.) Of the 172 Linguist/Analyst FTEs, 33 would specialize in Arabic, 32 in Pashto, and 25 in Russian. (*Id.*) Services would be performed at various military installations in the United States and abroad.

The PWS identified seven “Performance Objectives” and corresponding “Performance Thresholds” that the Air Force considered “critical to mission success.” (PWS § 3.1.) The seven Performance Objectives are: (1) producing online and offline transcripts; (2) producing quality analyses and reports; (3) developing training curriculum and materials; (4) removing staff determined to be not viable for full security clearance; (5) developing and providing a management plan; (6) providing competent and knowledgeable instructors and conducting instruction; and (7) promptly reporting instances and situations that are outside of normal activity. (*Id.*)

To manage the contract, the RFP instructed offerors to propose a Program Manager (PM). The PM would serve as the primary interface with the Air Force for the performance of the contract. (*Id.* § 2.5.1.1.)

The RFP stated that the Air Force intended to award a single contract to the offeror with the lowest-price technically acceptable proposal. (RFP, at 29.) There were three evaluation factors: Technical, Past Performance, and Price. (*Id.* at 16-17.) To be eligible for award, an offeror must achieve ratings of “Acceptable” for the Technical and Past Performance factors, but for the Past Performance factor, a neutral rating would also be considered “Acceptable.” (*Id.* at 29, 31, 33.) The RFP elaborated:

In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available or so sparse that no meaningful past performance rating can be reasonably assigned, the offeror may not be evaluated favorably or unfavorably on past performance (see FAR 15.305 (a) (2) (IV)). Therefore, the offeror shall be determined to have unknown (or “neutral”) past performance. In the context of acceptability/unacceptability, a neutral rating shall be considered “acceptable.”

(*Id.* at 33.)

To evaluate Past Performance, offerors were instructed to submit a minimum of 3 and a maximum of 5 references, at least one of which should be for the prime contractor, if available. The remaining references could be for subcontractors, teaming partners, and/or joint venture partners. To be considered relevant, the reference must involve “a minimum of 2 years of active performance within 5 years preceding the [RFP's] issuance date” and “must show the contractor has supported a requirement that has provided at least 80 FTEs at geographically separated units (GSU's) in the CONUS and OCONUS (combined).” (RFP, Amendment 0002, at 13-14.)

The RFP is the successor to an earlier LASS procurement for similar services. The incumbent LASS prime contractor is Premier Management Corporation (PMC). KG is a subcontractor to PMC on the incumbent contract.

### B. KG's Proposal

On January 4, 2017, KG submitted its proposal on behalf of “Team KG,” comprised of KG, PMC, and Booz Allen Hamilton (BAH). KG's proposal identified KG as the proposed prime contractor, and PMC and BAH as KG's proposed subcontractors. (Proposal, Vol. I, at 2-3; Vol. III, at 1.) According to the proposal, KG will be responsible for the overall management of the effort, and will provide 126 FTEs, 67% of the total workforce. (Vol. III, at 1; Vol. V, at 19.) PMC will provide 59 FTEs (31%) and BAH 3 FTEs (2%). (*Id.*)

The proposal explained that KG was founded in 2014 and is a wholly-owned subsidiary of Chenega Corporation (Chenega). KG currently manages 2 prime contracts: (1) a United States Navy Risk Management Information Development and Sustainment Support contract, valued at \$22 million; and (2) a Royal Saudi Air Force English Language Training contract, also valued at

\$22 million. (Vol. I, at 3; Vol. III, at 4.) In addition, KG serves as a subcontractor to PMC on the incumbent LASS contract with employees stationed at Fort Gordon, Georgia, Fort Meade, Maryland, and Offutt Air Force Base, Nebraska. (*Id.*) As a subsidiary of Chenega, KG can “leverage the contract experience of Chenega sister companies who have more than nine years of experience on the contract, as well as the people, processes, and tools of Chenega's Military, Intelligence, and Operations Support (MIOS) Strategic Business Unit (SBU) to support the mission and contract requirements on the new contract.” (Vol. I, at 3.) Through Chenega, KG also has access to a \$200 million line of credit. (*Id.* at 4.)

KG proposed [xxx] as its PM. (Vol. I, at 4.) The proposal stated that [xxx] “will have the authority and oversight for the day-to-day operations in support of this effort,” and will directly supervise the Deputy PM and mid-level managers. (Vol. II, at 24-25.) [xxx] in turn “will report directly to [xxx], [KG's] Senior Director of Operations.” (*Id.*, at 26.)

To staff the contract, KG's recruiting team “will evaluate and review our proposed personnel resumes and application documentation. Collectively, they will identify, vet, qualify and down select every candidate. Our team will subsequently review each down selected candidate, conduct final interviews, and determine which candidates to hire. The PM will make the final hiring decision.” (Vol. II, at 27.) KG's recruiting efforts will be assisted by 10 full-time Chenega recruiters. (*Id.*)

KG's only past performance reference was for PMC's work on the incumbent LASS contract. The proposal stated that KG itself did not have contracts that met the RFP's two-year minimum active performance and relevancy requirements. (Vol. III. at 4.)

More than 90% of KG's total proposed contract price was associated with Contract Line Item Number 0001, Linguist/Analyst Labor. (Vol. V, at 3-4.)

### C. Protest

On July 27, 2017, the CO announced that KG was the apparent awardee. On August 2, 2017, Appellant, a disappointed offeror, protested KG's size. The protest alleged that KG will be unusually reliant upon a sister company, Chenega Federal Systems, LLC, to perform the contract, in contravention of the ostensible subcontractor rule, 13 C.F.R. § 121.103(h)(4). (Protest at 5-10.) The CO forwarded the protest to the Area Office for review.

### D. Size Determination No. 06-2017-056

On September 8, 2017, the Area Office issued Size Determination No. 06-2017-056 concluding that KG is affiliated with PMC under the ostensible subcontractor rule. The Area Office stated that it could not discern KG's actual role on the procurement because “[t]he proposal does not delineate any discrete tasks to KG.” (Size Determination No. 06-2017-056, at 10.) KG itself was not mentioned in the technical approach portion of the proposal, nor in the management approach section, the Area Office stated. (*Id.*) Further, although the proposed PM was referenced several times in the proposal and has specific duties, he is “not an employee or an executive at KG” but is instead “an executive of a proposed subcontractor.” (*Id.* at 9.) The Area

Office concluded that KG will be unusually reliant upon PMC to perform the contract, and is not a small business.

#### E. Remand

On September 19, 2017, KG appealed Size Determination No. 06-2017-056 to OHA. On September 29, 2017, SBA moved to remand the matter for a new size determination because the Area Office “did not have the complete proposal and other necessary documents when it originally processed the size determination.” *Size Appeal of Kapsuun Group, LLC*, SBA No. SIZ-5857, at 1 (2017). On October 2, 2017, OHA granted the motion over Appellant's objection, stating that SBA “is, in effect, confessing error” and that, as a matter of judicial economy, SBA should be afforded the opportunity to reconsider its decision. *Id.* OHA vacated Size Determination No. 06-2017-056 and remanded the case to the Area Office. *Id.*

#### F. Size Determination No. 06-2018-003

On October 19, 2017, the Area Office issued Size Determination No. 06-2018-003 reversing its prior determination and concluding that KG is a small business for the subject procurement.

The Area Office first explained that KG is a wholly-owned subsidiary of Chenega, an Alaskan Native Corporation (ANC). Pursuant to 13 C.F.R. § 121.103(b)(2)(i), KG is exempt from affiliation with Chenega. (Size Determination No. 06-2018-003, at 4.) Chenega also fully owns 31 other subsidiaries, but the Area Office observed that concerns owned and controlled by an ANC may not be found affiliated with one another based on common ownership or common management. (*Id.*, citing 13 C.F.R. § 121.103(b)(2)(ii).) The Area Office found no basis to conclude that KG is affiliated with Chenega or any of Chenega's other subsidiaries.<sup>2</sup>

Turning to the ostensible subcontractor rule, the Area Office determined that KG will perform the primary and vital contract requirements and is not unusually reliant upon PMC. The Area Office highlighted the seven “Performance Objectives” discussed in the PWS and concluded that those seven objectives are the contract's primary and vital requirements. (*Id.* at 9.) The Area Office identified four classes of contract employee (linguists, analysts, instructors, and managers) that will perform the contract requirements. According to KG's proposal, PMC will provide “less than 33% of the linguists, less than 31% of the analysts, none of the managers, and 25% of the instructors.” (*Id.*) Meanwhile, BAH would provide just 2% of the contract staff, and “KG would provide the remaining 67% of the contract staff.” (*Id.* at 6.)

The Area Office determined that KG is not dependent upon PMC to manage the contract. Based on KG's proposal, the proposed PM “appears to have been self-employed,” and was not an

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<sup>2</sup> On appeal, Appellant contends only that KG is affiliated with PMC under the ostensible subcontractor rule. Because Appellant does not challenge the Area Office's findings with regard to Chenega and Chenega's subsidiaries, further discussion of these findings is unnecessary. *E.g.*, *Size Appeal of Env't'l Restoration, LLC*, SBA No. SIZ-5395, at 6-7 (2012) (when issue is not appealed, the area office's determination “remains the final decision of the SBA.”).

employee of PMC. (*Id.* at 10.) Furthermore, the proposed PM “does not have unlimited authority in operation of the contract,” as he would report to KG's Senior Director of Operations. The Area Office noted that, after proposal submission, the proposed PM declined to accept the position and has been replaced by a different individual. “This suggests that KG was not relying on the single [PM] to win the contract, and therefore the use of the proposed [PM] did not support ostensible subcontractor affiliation between KG and PMC.” (*Id.* at 10 fn. 9.)

The Area Office determined that KG also is not dependent upon PMC for past performance. Although KG's proposal made reference to nine years of experience with the procuring activity, this referred to the experience of BAH and KG's sister companies, not to PMC, which has been the incumbent LASS prime contractor for only four years. The Area Office noted that KG itself also has LASS experience as a subcontractor to PMC on the incumbent contract. (*Id.* at 11.) Further, PMC's LASS contract did not enhance KG's prospects for award, because the Air Force evaluated Past Performance on a “pass-fail” basis pursuant to the RFP. (*Id.* at 12.)

G. Appeal

On October 30, 2017, Appellant appealed Size Determination No. 06-2018-003 to OHA, contending that the Area Office made several errors in its analysis of the ostensible subcontractor rule.

Appellant first maintains that KG lacks the requisite experience to perform the primary and vital contract requirements. According to Appellant, KG has no relevant experience beyond its performance as a subcontractor on the incumbent LASS contract. Appellant focuses on the fact that KG could provide no past performance references of its own satisfying the RFP's requirements, and argues that KG's two prime contracts are not relevant to the instant procurement. “KG lacks the prime experience necessary to teach the required language and thereby [is] unqualified to produce online and offline transcripts for the required languages in accordance with the [PWS].” (Appeal, at 10.) Appellant further asserts that KG lacks sufficient experience to perform language-specific requirements such as developing training curricula and materials. In Appellant's view, KG's experience “is limited to administration, computer programming/software engineering, and English language training/instruction.” (*Id.* at 11.)

Appellant disputes the Area Office's findings with regard to the proposed PM, [xxx]. According to Appellant, [xxx] has been an executive at PMC since 2012. Specifically, [xx]. (*Id.* at 14.) Appellant further suggests that [xxx] was the PM on the incumbent LASS contract for PMC. (*Id.*, at 14-16.) As the proposed PM for the instant procurement, [xxx] will be responsible for day-to-day contract management with authority to obligate KG and its subcontractors.

Appellant argues that the Area Office erred in concluding that KG is not unusually reliant on PMC. PMC is the incumbent LASS prime contractor, and is ineligible to submit its own proposal for the instant procurement. (*Id.* at 15.) KG lacks relevant experience except for subcontracting with PMC, and “plan[s] to hire the entire workforce from its subcontractor,” in Appellant's view. (*Id.*) KG intends to retain the incumbent PM, [xxx], for managing day-to-day

operations. In addition, Appellant highlights, KG lacks relevant experience and offered only one past performance reference, specifically for PMC, and none for KG itself. Therefore, KG is unusually reliant on PMC and violates the ostensible subcontractor rule.

#### H. KG's Response

On November 14, 2017, KG responded to the appeal, insisting that the Area Office did not err in its review. KG asserts that the appeal improperly focuses on Size Determination No. 06-2017-056, which OHA vacated, rather than the instant Size Determination No. 06-2018-003. (Response at 5.) Even so, KG posits that it will perform the majority of the primary and vital contract requirements as it will perform the large majority of the overall work. KG emphasizes that PMC will perform a modest 31% of the overall work, and will not perform more than one-third of the work for any of the seven performance objectives. (*Id.*, at 8.) Further, “[t]he finding that KG's personnel will perform the bulk of [the] work in each of the seven categories is not questioned by Appellant.” (*Id.*, at 9.) KG's limited past performance record is no barrier to performing the contract, as “[o]ne does not perform a contract with experience. Rather, one performs a contract with personnel.” (*Id.*)

According to KG, the Area Office was aware when preparing the size determination that “[xxx] is/was a consultant who has provided business development support to [KG] and [KG] intended on hiring him for the PM role,” but that [xxx] declined the position due to relocation requirements. (*Id.*) KG's subsequent offer to a different individual “must be viewed as a revision to the KG proposal and thus is a proper item for consideration in making the size determination.” (*Id.*, at 10.) KG argues that OHA should disregard “the fiction that [xxx] was a current employee of PMC,” particularly as Appellant did not file the requisite motion establishing good cause to supplement the record with new evidence. (*Id.*) KG also notes that Appellant does not dispute that the RFP did not define the PM as key personnel, or that KG's subsequent substitution of a different individual as its PM shows that KG was not reliant upon [xxx].

KG also asserts that its lack of past performance references is immaterial, given the RFP's source selection methodology. KG highlights that the Air Force used the lowest-price technically acceptable method for selecting an awardee, and under such, “an offeror without sufficient past performance is rated as neutral, which is deemed technically acceptable.” (*Id.*, at 11.) “[I]t makes no sense to claim that [KG] relied on the past performance of others since it passed the test all by itself.” (*Id.*) KG points to OHA's decision in *Size Appeal of J.W. Mills Management, LLC*, SBA No. SIZ-5416 (2012), where OHA overturned a finding of unusual reliance based on past performance references because the solicitation called for a lowest-price technically acceptable evaluation method. (*Id.*) Moreover, KG maintains, KG “is not an inexperienced start-up company with no record of performance.” (*Id.*, at 12.) On the contrary, as discussed in KG's proposal, KG has two large prime contracts, each valued at \$22 million, as well as direct LASS experience through its subcontract with PMC on the incumbent contract. (*Id.*)

### 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).

The “ostensible subcontractor” rule provides that when a subcontractor is actually performing the primary and vital requirements of the contract, or when the prime contractor is unusually reliant upon the subcontractor, the two firms are affiliated for purposes of the procurement at issue. 13 C.F.R. § 121.103(h)(4). The rule “asks, in essence, whether a large subcontractor is performing or managing the contract in lieu of a small business [prime] contractor.” *Size Appeal of Colamette Constr. Co.*, SBA No. SIZ-5151, at 7 (2010). To ascertain whether the relationship between a prime contractor and a subcontractor violates the ostensible subcontractor rule, an area office must examine all aspects of the relationship, including the terms of the proposal and any agreements between the firms. *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). Generally, “[w]here 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 tasks of the contract and there is no violation of the ostensible subcontractor rule.” *Size Appeal of Paragon TEC, Inc.*, SBA No. SIZ-5290, at 13 (2011).

#### C. Analysis

Appellant has not demonstrated that the Area Office clearly erred in its analysis of the ostensible subcontractor rule. As a result, this appeal must be denied.

With regard to the primary and vital contract requirements, it is settled law that, because the primary and vital requirements stem from the contract's principal purpose, the primary and vital requirements typically “are those which account for the bulk of the effort, or of the contract dollar value.” *Size Appeal of Social Solutions Int'l, Inc.*, SBA No. SIZ-5741, at 12 (2016). Further, when a prime contractor and its subcontractors are performing the same type of work, “the firm that will perform the majority of the total contract must be deemed to be performing the ‘primary and vital’ contract requirements.” *Size Appeal of A-P-T Research, Inc.*, SBA No. SIZ-5798, at 11 (2016) (quoting *Size Appeal of Spiral Solutions and Techs., Inc.*, SBA No. SIZ-5279, at 21 (2011)). In the instant case, LASS services comprise the vast majority of this procurement, both in terms of personnel and in dollar value, and thus represent the primary and vital requirements. See Sections II.A and II.B, *supra*. In addition, the Area Office found, and Appellant does not dispute, that KG and PMC will perform the same type of work, *i.e.*, both firms will provide the Linguist/Analyst FTEs who will carry out the LASS services. Based on KG's proposal, KG will provide 126 of the 188.5 FTEs, or 67%, compared with just 59 FTEs



(31%) for PMC. *Id.* Accordingly, the record fully supports the Area Office's conclusion that KG will perform the primary and vital requirements, because KG's personnel will perform the large majority of this contract.

Appellant also argues, citing OHA's decision in *Size Appeal of DoverStaffing, Inc.*, SBA No. SIZ-5300 (2011) and the line of cases following it, that KG is unusually reliant upon PMC. These decisions have identified “four key factors” that contribute to findings of unusual reliance: (1) the proposed subcontractor is the incumbent contractor and is ineligible to compete for the procurement; (2) the prime contractor plans to hire the large majority of its workforce from the subcontractor; (3) the prime contractor's proposed management previously served with the subcontractor on the incumbent contract; and (4) the prime contractor lacks relevant experience and must rely upon its more experienced subcontractor to win the contract. *Size Appeal of Automation Precision Tech., LLC*, SBA No. SIZ-5850, at 15 (2017); *Size Appeal of Charitar Realty*, SBA No. SIZ-5806, at 13 (2017); *Size Appeal of Modus Operandi, Inc.*, SBA No. SIZ-5716, at 12 (2016); *Size Appeal of Prof'l Sec. Corp.*, SBA No. SIZ-5548, at 8 (2014); *Size Appeal of Wichita Tribal Enters., LLC*, SBA No. SIZ-5390, at 9 (2012).

Appellant is correct that PMC is the incumbent LASS prime contractor, and as a large business, was ineligible to submit its own proposal for the subject procurement. Thus, the first factor of the above test is met. The first factor, though, is not by itself sufficient to show unusual reliance. *E.g.*, *Size Appeals of Maywood Closure Co., LLC, et al.*, SBA No. SIZ-5499, at 9 (2013) (“Incumbency alone cannot establish unusual reliance.”). Beyond the first factor, there are no further similarities between the instant case and the *DoverStaffing* line of cases.

The second factor is not met because there is no indication in KG's proposal that KG intends to hire its workforce *en masse* from PMC. Section II.B, *supra*. The fact that KG is an incumbent LASS subcontractor with employees at several locations, and that KG may rely upon the resources of its ANC parent company, further undermine the notion that KG would need to rely upon PMC for personnel.

The third factor is not met because KG will not hire its managerial personnel, specifically the proposed PM, [xxx], from PMC. During the course of its review, the Area Office observed that [xxx]'s Linked-In profile stated that he was an employee of PMC. The Area Office requested clarification on this point, and KG responded:

[xxx] is an independent executive consultant. He no longer works for [PMC]. After receiving your email [xxx] was contacted and he updated his Linked-In page to accurately reflect when he departed [PMC] which was October 2015.

(Email from [xxx] to E. Sanchez (Sept. 6, 2017).) Accordingly, the record reflects that [xxx] ended his employment with PMC more than a year before the instant RFP was issued. Nor did KG's proposal suggest that [xxx] would be hired from PMC or that he would not be a KG employee. Section II.B, *supra*. On the contrary, the proposal made clear that [xxx] would remain under KG's control and that he would report to KG's Senior Director of Operations. *Id.* As a result, the record does not support the conclusion that KG is reliant upon PMC to manage this contract.

Finally, the fourth factor is not met because KG has relevant experience of its own, and did not rely on PMC to win the contract. As an incumbent LASS subcontractor, KG “has obviously demonstrated experience with the contract requirements.” *Spiral*, SBA No. SIZ-5279, at 28. Further, under the RFP's evaluation scheme, an offeror could be selected for award without any relevant past performance because proposals were evaluated on a “pass-fail” basis, with price ultimately dispositive, and the RFP specified that a lack of relevant past performance would be treated as “Acceptable.” Section II.A, *supra*. Under such circumstances, OHA has recognized that the inclusion of a more experienced proposed subcontractor “could not have materially enhanced [the offeror's] prospects for award.” *Size Appeal of J.W. Mills Mgmt., LLC*, SBA No. SIZ-5416, at 9 (2012). Based on the instant RFP, then, it is clear that KG did not rely upon PMC to win the contract. KG's proposal would still have been “Acceptable” and eligible for award even if KG had not utilized PMC's LASS prime contract as a past performance reference.

#### IV. Conclusion

Appellant has not shown that the size determination is clearly erroneous. Accordingly, the appeal is DENIED and the size determination is AFFIRMED. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

KENNETH M. HYDE  
Administrative Judge