

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

**REDACTED DECISION FOR PUBLIC RELEASE**

SIZE APPEAL OF:

Synaptek Corporation

Appellant,

RE: Open SAN Consulting, LLC d/b/a  
OSC Edge

Appealed From  
Size Determination No. 3-2018-018

SBA No. SIZ-5954

Decided: August 24, 2018

APPEARANCES

Jerry A. Miles, Esq., Lan Jin, Esq., Deale Services, LLC, Rockville, Maryland, for the Appellant

Steven J. Koprince, Esq., Matthew P. Moriarty, Esq., Matthew T. Schoonover, Esq., Ian P. Patterson, Esq., Candace M. Shields, Esq.,<sup>1</sup> Koprince Law LLC, Lawrence, Kansas, for Open SAN Consulting, LLC d/b/a OSC Edge

Cathy Kelly, Contract Negotiator, U.S. Department of the Navy, Philadelphia, Pennsylvania, for the Procuring Agency

Constance M. Kobayashi, Esq., Office of Procurement Law, U.S. Small Business Administration, San Francisco, California, for the U.S. Small Business Administration

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<sup>1</sup> On February 22, 2018, counsel for OSC Edge informed OHA that Candace M. Shields, Esq. had accepted a position at Navy and would no longer represent OSC Edge through Koprince Law LLC.

## DECISION<sup>2</sup>

### I. Introduction and Jurisdiction

On December 8, 2017, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area III (Area Office) issued Size Determination No. 3-2018-018, finding Open SAN Consulting, LLC d/b/a OSC Edge (OSC Edge) was in compliance with the ostensible subcontractor rule and is small for the instant procurement. (Size Determination, at 9.) The original protestor, Synaptex Corporation (Appellant), maintains the Area Office clearly erred in concluding OSC Edge is not unusually reliant on two large subcontractors and, thereby, did not violate the ostensible subcontractor rule. 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 after receiving the size determination, so the appeal is timely. 13 C.F.R. § 134.304(a). Accordingly, this matter is properly before OHA.

### II. Background

#### A. Solicitation

On May 12, 2017, the U.S. Department of the Navy issued Request for Proposals (RFP) No. N00189-17-Z023, seeking a full range of [information technology (IT)] support services to the National Defense University (NDU). (RFP, at 6.) The Contracting Officer (CO) set aside the entire procurement for small business concerns and assigned North American Industry Classification System (NAICS) code 518210, Data Processing, Hosting, and Related Services, with a corresponding \$32.5 million annual receipts size standard. (RFP, at 1.) The original due date for proposals was June 13, 2017. (*Id.*)

Section 3.0 of the Performance Work Statement (PWS) states NDU “requires innovation and the use of the industry best practices to lead its [IT] infrastructure into a new service paradigm while maximizing the use of available and emerging technologies to meet the dynamic needs and challenges faced by NDU's students, faculty, and stakeholders.” (*Id.*, at 5.) The RFP continues, stating:

Recent experience and the emergence of cloud computing, remote classrooms[,] and changing technologies have prompted a widening of the scope of support to a technology development vehicle. Information Technology [(IT)] support represents the majority of the effort, but the capabilities of this contract are not limited exclusively to network administration, help desk, cyber security[,]

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<sup>2</sup> This decision was initially issued under a protective order. Pursuant to 13 C.F.R. § 134.205, OHA afforded counsel an opportunity to file a request for redactions if desired. OHA received one or more requests for redactions and considered such requests in redacting the decision. OHA now publishes a redacted version of the decision for public release.

and support necessary to accomplish full enterprise network support . . . [T]he Contractor is expected . . . to successfully execute the complete spectrum of roles associated with development, preparedness, and support of the global NDU enterprise network.

(*Id.*, at 6.)

The PWS states “the Contractor shall provide the requisite operational support necessary to manage all aspects of the NDU enterprise network and advance (i.e., improve and expand) the role of information technology within the educational construct in an ever-evolving environment.” (*Id.*, at 6.) The PWS continues, requiring the contractor to:

- Maximize IT system availability and connectivity;
- Ensure all IT systems are secure and maintained;
- Ensure end user connectivity and support needs are met;
- Improve the NDU infrastructure exploiting legacy systems and exploring new technologies and innovative solutions which may reduce total cost or improve operational performance; [and]
- Responsive to NDU's dynamic IT needs.

(*Id.*, at § 3.0.)

According to the PWS, “[t]his performance-based [IT] Enterprise support contract includes the full spectrum of IT operations support tasks required in end to end management of a modern enterprise IT wide area network.” (*Id.*, at § 4.0) The PWS states the required work under this contract will specifically use task orders, each of which will support the following functional areas: program management; IT service management; IT managed services; applications development; cyber security support; technology planning and modernization; IT end user training; and special projects and initiative work. (*Id.*, at §§ 4.0, 7.1, 7.1.1.) “These functional areas comprise the integral parts of the support required by NDU in the execution of the NDU mission.” (*Id.*, at § 4.0.) The PWS also states the specific tasks include:

network availability[;] e-mail service; cellular administration; Cyber Security service; event response; integrated help desk; server administration and maintenance; systems engineering; network architecture planning; emerging technology research and implementation; network operation and management; SharePoint development and administration; video teleconferencing and audio/visual support; configuration and change management; end user training; and infrastructure upgrades.

(*Id.*, at § 4.0.)

Regarding personnel, the PWS states “[t]he Contractor is responsible for selection, training, management[,] and performance of the workforce provide to accomplish the tasks within this contract.” (*Id.*, at § 12.0.) The PWS requires the contractor to identify a Program Manager (PM) “to serve as the Government's major point-of-contact and to provide overall leadership and guidance to all contractor personnel.” The PM “shall have organizational authority to execute the requirements” and “shall have ultimate authority to commit the contractor's organization and make decisions for the contractor's organization in response to Government issues, concerns, or problems.” (*Id.*, at § 12.2.3.) The PM's tasks include: “organizing[, directing[, and managing] contract operation support functions”; “managing] teams of contract support personnel at multiple locations”; “maintaining] and managing] the client interface at the senior levels of the client organization”; and “meet[ing] with customer and contractor personnel to formulate and review task plans and deliverable[s].” (*Id.*, at 29.)

The PWS specifies “[t]he work required . . . will be accomplished at the NDU campus in Fort McNair[, Washington, DC[, and Joint Forces Staff College in Norfolk, VA; remote support may be required at other locations.” (*Id.*, at § 6.4.1.) The PWS continues, “[b]ased on the requirements of the specific task order, the Contractor shall be responsible for establishing [IT] architecture to provide capabilities for a seamless and responsive remote task order support.” (*Id.*)

According to the PWS, the procuring agency “intends to award a single Firm Fixed Price, Indefinite Delivery, Indefinite Quantity (IDIQ) type contract” to the offeror representing the best value. (*Id.*, at 76.) The PWS states “[t]he evaluation of proposals will consider the offeror's Non-price proposal more important than the offeror's price proposal”, and lists the following non-price factors in descending order of importance: Management Approach; Performance Approach; and Past Performance. (*Id.*, at 76.) Management approach encompasses the program management and cyber security support services, while performance approach focuses on program management, cyber security support services, and technology planning and modernization.

The RFP states:

The offer shall provide in detail a management approach that will successfully accomplish the requirements of the solicitation, including the PWS, with a focus on Program Management and Cyber Security Support.

(*Id.*, at 73.) The RFP further specifies:

For Cyber Security Support . . . the contractor shall:

- a. Ensure that the NDU Enterprise Network and its management systems are in compliance with all Information Assurance Vulnerability Alerts (IAVA).
- b. Track and report IAVA compliance at the Enterprise level as well as site compliance to COR and CIO.

c. Create and submit security-related reports, such as required by IAVA: intrusion, viruses, infection incidents, FISMA and others as requested by the Government.

d. Create POA&M for identified vulnerabilities.

(*Id.*, at § 5.5.)

For the Performance Approach, the RFP states:

The offeror shall provide in detail a performance approach that will successfully accomplish the requirements of the solicitation, including the PWS, with a focus on Program Management and Cyber Security Support, and Technology Planning and Modernization.

As part of the Performance Approach, the offeror shall address transition by providing a Transition-In Plan. A smooth and orderly transition between the Contractor and the predecessor Contractor is necessary to assure minimum disruption to vital Contractor services and Government activities.

(*Id.*, at 73.)

For Past Performance, the RFP requires:

Relevant past performance is performance under contractor or efforts within the past five years that is the same as, or similar to, the scope, magnitude, and complexity of the work described by this solicitation. . . . To demonstrate its past performance, the offeror shall identify up to three of its most relevant contracts or efforts within the past five (5) years, and provide any other information the offeror considers relevant to the requirements of the solicitation.

(*Id.*, at 76.) The RFP permits offerors to submit subcontractor past performance references, and states:

if subcontractor past performance is provided as part of the three of its most relevant contracts or efforts, the subcontractor past performance will be given weight relative to the scope, magnitude, and complexity of the aspects of the work under the solicitation the subcontractor is proposed to perform.

(*Id.*, at 74.) The RFP continues, stating “[t]herefore, the offeror's proposal should detail clearly the aspects of work in the solicitation that the subcontractor is proposed to perform.” (*Id.*)

## B. Proposal

On June 22, 2017, OSC Edge submitted its proposal for the subject procurement. In its proposal, OSC Edge represents itself as:

a leading small business Information Technology (IT) professional services firm that offers customers hands-on, in-house IT technicians, engineers, and cyber specialists with expertise in systems engineering, operations, cyber security, cost analysis, asset management, and program management.

(Proposal, Vol. I, at 1.) OSC Edge continues, stating it “specializes in engineering, technology insertion, and providing stability to operational IT environments.” (*Id.*) For this contract, the proposal states, OSC Edge has teamed with: [Subcontractor 1]; [Subcontractor 2]; [Subcontractor 3]; and [Subcontractor 4]. (*Id.*, at 2-3.) OSC Edge's proposal refers to it and its four subcontractors as “Team OSC”.

Under “Relevant Capabilities and Experience”, the proposal states OSC Edge, a Minority-Owned (MOSB) and Economically-Disadvantaged Women-Owned Small Business (EDWOSB) concern, is an “Industry-award winning (for [Department of Defense (DOD)] work) Systems Integrator”, has “Virtualized and consolidated [the] largest Network Enterprise Center”, and “designed and performed all technical work on “the first [team] to fully virtualize in line with the Army Data Center Consolidation Plan.” (*Id.*, at 3.) The proposal states [Subcontractor 1] is a “[l]eading provider of enterprise services” that “[p]rovides analysis, design, development, implementation, evaluation, and life-cycle management of [xxx] training using Instructional System Design.” (*Id.*, at 3.) The proposal goes on to state that [Subcontractor 2], a Veteran-Owned Small Business (VOSB) concern, is “a full-service information technology and IT Cybersecurity consulting and professional services firm” with “[xxx] year of experience supporting [xxx], [xxx], and other federal agencies.” (*Id.*) The proposal states [Subcontractor 3], a VOSB and Service-Disabled Veteran-Owned Small Business (SDVOSB) concern, provides cyber security services, knowledge management, engineering, analytical support, and network operations and lists several federal agency as clients. (*Id.*)

The proposal states under “Corporate Infrastructure” that OSC Edge “operates a Program Management Office (PMO) in its corporate headquarters that provides flexible and responsive services to the Team OSC PM and employees who may be called on to perform on NDU [task orders].” (*Id.*, at 15.) “The OSC facility has the robust technical infrastructure needed for supporting the NDU Program Team . . . [with] high-speed Ethernet LAN supporting Internet access, video-teleconferencing capability, and data services.” (*Id.*)

The proposal incorporates three past performance references. The first reference describes OSC Edge's performance as a prime contractor in [xxx] through [xxx] to “support application-level assessments to prepare for virtualization and movement of data to consolidated hosting facilities/platforms.” (*Id.*, at 53.) Broadly, the proposal suggests, OSC Edge performed work in IT program management, IT service management, IT managed services support, application development, cybersecurity support, technology planning and modernization, IT end user training, as well as special projects and initiatives. (*Id.*) OSC Edge “provided all PM

activities for the contract” including services for over [xxx] sites and “assessed storage arrays, server environments (virtual and physical), backups, disaster recovery capabilities, patch compliance, security compliance, and backup compliance.” (*Id.*) The contract revenue was approximately \$[xxx] in [xxx], \$[xxx] in [xxx], and \$[xxx] in [xxx]. (*Id.*)

The second reference describes [Subcontractor 2]'s on-going performance as a prime contractor on a contract work similar to the instant solicitation. [Subcontractor 2] “provides critical operational support for the [procuring organization], which provides enterprise infrastructure and support services enabling [the organization] to deliver timely, reliable, and secure access to information to joint warfighters and coalition partners in classified and unclassified networks.” (*Id.*, at 55.) According to the citation, [Subcontractor 2] performs relevant work in IT service management, IT managed services support, enterprise service desk support, cybersecurity support, technology planning and modernization support, as well as special projects and initiatives. (*Id.*, at 55-57.) The contract was for approximately \$[xxx] in [xxx] and \$[xxx] in [xxx], and will continue until [xxx]. (*Id.*, at 56.)

The third reference describes [Subcontractor 1]'s performance as a prime contractor on a contract from [xxx] to [xxx], under which [Subcontractor 1] provided “incident and event management services for our network and server team monitors” and maintained “service infrastructure availability across each sub-function to include backup [time] and network management tool functionality.” (*Id.*, at 58.) [Subcontractor 1] also provided “system administration, LAN/WAN, network management, infrastructure, planning, integration, and disaster recovery support” as well as monitoring and assessing system performance concerning bandwidth utilization, hardware failure trends, and latency spikes. (*Id.*, at 59.) According to the citation, [Subcontractor 1] performed relevant work in IT service management, IT managed services support, application development, cybersecurity support, technology planning and modernization support, IT end user training support, as well as special projects and initiatives. (*Id.*, at 58-60.) Notably, [Subcontractor 1] “transformed the service desk from a poorly documented, disjointed implementation lacking a ticketing system to a high-performing help desk.” (*Id.*, at 60.) The contract value was \$[xxx] in [xxx], [xxx], [xxx], and [xxx], and was \$[xxx] in [xxx]. (*Id.*, at 58.)

The price-related portion of OSC Edge's proposal specifies that performance of the contract will cost approximately \$[xxx]. (Proposal, Volume II — Price Proposal, at 12.) According to the proposal, the division of that value for each subcontract is as follows: \$[xxx] for [Subcontractor 1]; \$[xxx] for [Subcontractor 2]; \$[xxx] for [Subcontractor 3]; and \$[xxx] for [Subcontractor 4]. (*Id.*, at 12, 13.) Recalculated as a percentage of the total contract value, the division of value is as follows: 15% for [Subcontractor 1]; 17.5% for [Subcontractor 2]; 6.9% for [Subcontractor 3]; and 4.2% for [Subcontractor 4]. (*See id.*)

On November 7, 2017, the procuring agency notified unsuccessful offerors, including Appellant, that OSC Edge was the apparent successful awardee for the subject procurement. (*E.g.*, Letter from M. Dickens to S. Andahazy (Nov. 7, 2017).)

### C. Protest

On November 14, 2017, Appellant filed a size protest against OSC Edge with the CO, alleging OSC Edge is not small for the subject procurement. The Area Office received the size protest from the CO on November 17, 2018. In its protest, Appellant asserted OSC Edge is affiliated with one or more subcontractors based on the ostensible subcontractor rule because OSC Edge has “little to no experience in Information Technology [(IT)] operation support, few employees, and [no] office locations in any of the place of performance locations.” (Protest, at 1.) Appellant contended OSC Edge is “bringing nothing more to this procurement than its small business status.” (*Id.*, at 9.)

Appellant suggested that, based on publicly available information and the RFP, OSC Edge does not have the requisite experience and capability to perform the contract. (*Id.*, at 4.) Appellant pointed to *Size Appeal of Wichita Tribal Enterprises, LLC*, SBA No. SIZ-5390 to suggest the Area Office may consider a prime contractor's experience to determine whether it can perform the contract independently. (*Id.*, citing *Wichita Tribal*, SBA No. SIZ-5390, at 13.) Here, Appellant argued, OSC Edge must be unusually reliant on an ostensible subcontractor to perform the contract because it does not have experience with contracts of similar in size, scope, or complexity to the instant solicitation. (*Id.*, at 5, 7.) Appellant suggested OSC Edge's most recent contract involved irrelevant “Document Preparation Services” with action obligation of \$[xxx], and its largest previous award amount is \$[xxx] for Computer Systems Design Services. (*Id.*, at 7.) Appellant stressed OSC has no experience as an incumbent under the NAICS code assigned to the instant procurement. (*Id.*) Therefore, Appellant asserted, OSC Edge must rely heavily on the past performance of an ostensible subcontractor to establish relevant experience for the subject procurement. (*Id.*, at 10.)

According to Appellant, OSC Edge is an IT service firm with only [xxx] employees and approximately \$[xxx] in annual receipts. (*Id.*) Appellant also suggested OSC Edge has a high risk of delinquency and severe financial stress, suggesting OSC Edge required the stability of an ostensible subcontractor. (*Id.*) Appellant contended that, “[w]ith limited resources and personnel, it is unquestionable that OSC Edge could not have participated in this competition without assistance from an ostensible subcontractor.” (*Id.*, at 6.) In Appellant's view, “OSC Edge would necessarily need to utilize the ostensible subcontract's resources and technology in addition to the subcontractor's personnel” and rely on the subcontractor to prepare the proposal. (*Id.*, at 8.)

Appellant continued, further asserting OSC Edge must rely on its ostensible subcontractor for personnel. Appellant argued “OSC Edge's incapability to furnish the adequate staffing for performance of the contract” would require unusual reliance on the subcontractor and require hiring a significant number of employees, potentially *en masse*, from the subcontractor. (*Id.*, at 8-9.) Appellant also asserted OSC Edge does not have adequate staff in the DC area to satisfy the RFP's locational requirements and cannot provide “seamless and prompt actions when time is of the essence.” (*Id.*)

Appellant also contended OSC Edge is incapable of performing the primary and vital requirements of the subject procurement, particularly as “OSC Edge simply does not have a proper understanding of the requirements of the contract to be able to propose a sufficient



technical proposal.” In particular, Appellant suggested OSC Edge cannot propose a technical approach to the same standard as Appellant's, in part, because Appellant has teamed with the incumbent prime contractor to “provide proven and successful management and technical performance.” (*Id.*, at 10.) In Appellant's view, OSC Edge must be unusually reliant upon an ostensible subcontractor to perform all or a substantial part of the primary and vital requirements, including program management, cybersecurity support, as well as technology planning and modernization. (*Id.*, at 11.) At most, Appellant posited, OSC Edge contributes contract management to the overall effort. (*Id.*)

Last, Appellant asserted OSC Edge is affiliated with other concerns based on a totality of the circumstances. According to Appellant, OSC Edge's CEO, Ms. Bailey, is an investor in [xxx], an [xxx] startup. Appellant suggested Ms. Bailey may retain an equity interest in Mayvenn, have a board or director position, and/or have the power to control both Mayvenn and OSC Edge. (*Id.*, at 17.) Appellant also suggested OSC Edge may be economically dependent on an unnamed concern based on Ms. Bailey's statement that OSC Edge's business grew [xxx]% in the first fiscal year. (*Id.*, at 18.) Appellant suggested “OSC Edge likely has sourced 70% or more of their revenue to another company, which creates economic dependence that should constitute affiliation.” (*Id.*)

In addition, Appellant suggested OSC Edge violates the limitations on subcontracting “because it has to give more than 50% of the labor revenue to the ostensible subcontractor.” (*Id.*, at 9.)

#### D. Size Determination

The Area Office, first, determined that OSC Edge is 55% owned by Tiffany Bailey, its President and Chief Executive Officer (CEO), with her husband, Lee Hendrickson, its Chief Technology Officer (CTO), owning the remaining 45% interest. (Size Determination, at 4.) Therefore, the Area Office concluded, Ms. Bailey controls or has the power to control OSC Edge based on ownership. (*Id.*) The Area Office further concluded Ms. Bailey and Mr. Hendrickson share an identity of interest [xxx]. (*Id.*) In fact, the Area Office notes, Ms. Bailey relies on Mr. Hendrickson's performance as CTO for the instant proposal. (*Id.*) In addition, the Area Office found Mr. Hendrickson is the sole owner of 340 Music, LLC and, therefore, is affiliated with OSC Edge through common management and ownership. (*Id.*, at 5.)

The Area Office also found OSC Edge, an 8(a) firm, holds an SBA-approved mentor-protégé agreement with [Subcontractor 1] as well as a second mentor-protégé agreement. (*Id.*) However, the Area Office determined, neither joint venture has been awarded any contracts. (*Id.*)

Upon examining the relationship between OSC Edge and its four proposed subcontractors under the ostensible subcontractor rule, the Area Office concluded there is no violation of the rule. (*Id.*, at 7, 9.) According to the Area Office, the primary and vital requirement of the subject procurement is “to support the provision of information technology (IT) services with a key focus on project management and cyber security support.” (*Id.*, at 7.) The Area Office determined that two of the four subcontractors are similarly-situated entities (SSEs), while the remaining two subcontractors are large businesses.

The Area Office determined OSC Edge and the two large subcontractors do not violate the ostensible subcontractor rule because OSC Edge is providing the majority of the employees, project and program managers, and is performing the primary and vital requirements of the contract. (*Id.*, at 9.) The Area Office found the first subcontractor is a “recruitment agency” that will assist OSC Edge in securing high quality candidates for performing the instant contract. (*Id.*, at 7.) Notably, the Human Resources Manager, the Area Office specified, is to be an OSC Edge employee. (*Id.*) The Area Office found the second large subcontractor has “expertise in IT services and including infrastructure management and application services” based on its past performance referenced in the proposal. (*Id.*, at 8.) Neither large subcontractor, the Area Office concluded, is performing the primary and vital requirements of the contract. (*Id.*, at 7, 8.) In addition, the Area Office stated, the second large subcontractor is not to perform more than 17.5% of the overall work. (*Id.*, at 8.)

The Area Office also determined OSC Edge and the two small subcontractors do not violate the ostensible subcontractor rule because both small subcontractors are similarly-situated entities, exempted from the ostensible subcontractor rule under SBA's regulations. (*Id.*, at 8.) The first small subcontractor has experience in both IT program management and cybersecurity support services, the Area Office found, based on one of the three past performance references provided with the proposal. (*Id.*, at 8.) The second small subcontractor did not provide a past performance reference for the proposal, but the Area Office found it focuses on cybersecurity and networking. (*Id.*, at 8.) The Area Office concluded both small subcontractors perform some primary and vital requirements of the instant procurement, but determined both are SSEs exempt from the ostensible subcontractor rule. (*Id.*) Therefore, OSC Edge is not unusually reliant on any of its four subcontractors for performing the primary and vital requirements. (*Id.*, at 9.)

Upon review of OSC Edge and its one affiliate, 340 Music, LLC, the Area Office determined OSC Edge is small for the instant procurement. (*Id.*, at 9.)

#### E. Appeal

On December 22, 2017, Synaptex Corporation (Appellant) filed the instant appeal with the SBA Office of Hearings and Appeals (OHA). In its appeal, Appellant asserts the Area Office clearly erred in determining that OSC Edge was in compliance with the ostensible subcontractor rule. (Appeal, at 1, 5.) Appellant asserts the Area Office erred in finding two of OSC Edge's four subcontractors are similarly situated entities, because the Area Office failed to analyze either subcontractor under the size standard assigned to each subcontract by the prime contractor. (*Id.*, at 4, 10.)

Appellant, first, asserts OSC Edge is incapable of performing the subject procurement for several reasons, including its lacking past performance record. Appellant suggests OSC Edge has not performed a contract of similar size, type, scope, and dollar value to the instant contract award, referencing two recent contracts; one for “Document Preparation Services” and one for only \$[xxx]. (*Id.*, at 5-6.) In Appellant's view, OSC Edge would have not been considered for award without the past performance references of its subcontractors. (*Id.*, at 6.) Appellant further suggests OSC Edge provides “data visualizations, migrations, storage management[,] and service

desk operations,” but cannot provide the requisite advanced services such as cybersecurity, network architecture planning, systems engineering, and others. (*Id.*, at 6.) Appellant stresses that OSC Edge has not completed a Cyber Command Readiness Inspection (CCRI), a cyber assessment program to evaluate an organization's compliance with government standards. That absence, according to Appellant, demonstrates OSC Edge's “lack of maturity to run a program of the size and complexity” required by the procuring agency. (*Id.*, at 6.) Appellant reiterates OSC Edge must, therefore, be unusually reliant upon its subcontractors for performance, particularly a large and a small subcontractor who both provide IT program management, cybersecurity support, and application services. (*Id.*, at 6-7.)

Appellant also contends OSC Edge plans to hire personnel *en masse* from its subcontractors. (*Id.*, at 7.) Appellant suggests “OSC Edge admits that it does not intend to comply with the Executive Order [No. 13,495] as they are not hiring any incumbent employees.” Appellant further suggests OSC Edge would not need to employ a recruiting agency to solicit new personnel if it intended to hire incumbent employees. (*Id.*, at 8.) However, according to Appellant, “OSC Edge has no employees and inevitably a shell or pass through for the subcontractors' costs.” (*Id.*, at 9.) Appellant argues OSC Edge will be “unable to successfully accomplish the management, performance[,] and personnel requirements requiring experience” without incumbent employees. (*Id.*, at 8.) In addition, Appellant asserts the solicitation requires the contractor to have a local presence near Fort McNair in Washington, D.C. and OSC Edge, regardless of Mr. Hendrickson's occasional presence in D.C., must rely on its subcontractors for such local presence. (*Id.*)

Appellant argues the Area Office also clearly erred by exempting the two small subcontractors from consideration as ostensible subcontractors because they were SSEs. Appellant contends the Area Office misapplied the exemption for SSEs under the ostensible subcontractor rule, focusing solely on the two small subcontractors' size and status. (*Id.*, 9-10.) Appellant argues the Area Office must also consider whether the two subcontractors are “small for the NAICS code that the prime contractor assigned to the subcontract.” (*Id.*, at 10, citing 13 C.F.R. § 125.1.) According to Appellant, the Area Office erred by not considering this second criterion, but also based its conclusions on an incomplete record that lacked the NAICS codes assigned to the subcontracts. (*Id.*, at 10.) Appellant argues that, if the Area Office had properly considered the two subcontractors, the Area Office would have concluded the two subcontractors, alone, would perform the majority of the primary and vital requirements. (*Id.*) Moreover, Appellant argues, the Area Office would have concluded OSC Edge is performing merely 10% of the required work, when also considering the large subcontractor performing 17.5% of the work. (*Id.*, at 10.)

Appellant also argues the Area Office failed to consider whether there could still be a violation of the ostensible subcontractor rule even if the two small subcontractors are SSEs. (*Id.*, at 11.) According to Appellant, the Area Office should have also considered whether the purported SSEs perform the subcontracted work with their own employees, or if the two SSEs intend to subcontract their own subcontracted work. (*Id.*, at 11, 12.) Appellant stresses SBA regulations contemplate such situations and deems such work ineligible for the SSE exemption under the ostensible subcontractor rule. (*Id.*, at 11-12, citing 13 C.F.R. § 125.6(c).) In fact, Appellant suggests, the SBA “intend[ed] to deter potential fraud, waste, and abuse of the prime

contractor's ability to exclude SSE work” by disqualifying second-tier subcontracted work. (*Id.*, at 12, citing 81 Fed. Reg. 34243, 34247 (2016).)

In Appellant's view, it is clear OSC Edge has no meaningful role in performing the primary and vital requirements, particularly when considering the work performed by the four subcontractors. (*Id.*, at 12.) Appellant maintains the instant case is analogous to *Size Appeal of Competitive Innovations, LLC*, SBA No. SIZ-5369 (2012), in which OHA found the prime contractor was unusually reliant on its four subcontractors because the prime contractor had no meaningful role in performing the contract. (*Id.*, at 12-13, citing *Competitive Innovations, LLC*, SBA No. SIZ-5369, at 17.) Here, Appellant argues, OSC Edge must rely on its four subcontractors to perform the contract and compensate for its own lacking capabilities and experience. (*Id.*, at 13.) Appellant suggests OSC Edge assigns almost all primary and vital requirements of the contract to the large mentor subcontractor and two subcontractors, as each would perform cybersecurity and IT services. (*Id.*, at 13.) Appellant also suggests OSC Edge similarly has no role in recruitment and must rely entirely on the large recruitment agency. (*Id.*)

More particularly, Appellant calculates OSC Edge would perform IT services and “non-primary and vital” tasks accounting for merely 22.5% of the total work, while the large mentor subcontractor would perform an equal share in IT services (*i.e.*, 17.5%). (*Id.*, at 14.) Appellant continues, suggesting the two small subcontractors would perform cybersecurity services accounting for 25% of the total work along with IT services accounting for 35% of the total work. (*Id.*) In sum, the two small subcontractors would perform approximately 60% of the total work and the large mentor subcontractor would perform 17.5%, meaning these subcontractors would perform approximately 77.5% while OSC Edge performs only 22.5%. (*Id.*, at 14.) Appellant notes it based the percentage of work required for cybersecurity on the solicitation's emphasis on cybersecurity. (*Id.*, at n. 2.)

#### F. Request for Comments

On January 8, 2018, OHA issued an order requesting comments from SBA's Office of General Counsel (OGC) regarding the application of the ostensible subcontractor rule's exemption for SSEs in situations involving multiple proposed subcontractors of mixed status. (OHA's Order Requesting Comments, at 2.) OHA stated the instant appeal presents a case of first impression, given the exemption was not implemented until June 30, 2016. (*Id.*, at 1.) OHA stated it had applied the exemption in *Size Appeal of The Frontline Group*, SBA No. SIZ-5835 (2017) and *Size Appeal of The Frontline Group*, SBA No. SIZ-5860 (2017), each of which involved one proposed subcontractor. (*Id.*, at 2.) But, OHA stated it had not yet applied the exemption in a case involving multiple proposed subcontractors of mixed status. (*Id.*)

In its order, OHA provided an example as a basis for comments. (*Id.*) OHA stated:

For example, if the Area Office determines each of four proposed subcontractors performs 20% of the primary and vital requirements and concludes two of the four subcontractors are similarly situated entities, should the Area Office compare the two remaining subcontractors' 40% of the work with the

prime contractor's own 20% or with the aggregated 60% performed by the prime contractor and the similarly situated entities?

(*Id.*) OHA requested SBA's comments no later than January 16, 2018, and permitted the parties to respond to SBA's comments no later than January 23, 2018.

#### G. SBA's Comments

On January 19, 2018, following an extension of time granted by OHA, SBA OGC submitted comments concerning the ostensible subcontractor rule's exemption for SSEs. SBA OGC contends the work of the prime contractor and any SSEs should be aggregated when comparing the division of work to that of any large subcontractors. (*Id.*) SBA OGC points to SBA's limitation on subcontracting that stipulates a small business awardee will not pay more than 50% of the amount paid for such services by the government will be paid to firms that are not similarly situated. (*Id.*, citing 13 C.F.R. § 125.6.) SBA OGC suggests compliance with this limitation is determined by aggregating the SSE's contract dollars with those of the prime contractor and then comparing the aggregate to any non-SSE subcontractor's payment. (*Id.*)

According to SBA OGC, “[s]ubcontracts to [SSEs] are excluded because it does not further the goals of SBA's government contracting and business development programs to penalize small business prime contract recipients that benefit the same small business program participants through subcontract awards.” (*Id.*, at 4, internal quotes omitted.) “[The] work performed by [SSEs] is considered the equivalent of work performed by the prime,” SBA suggests, as “contracting dollars are flowing to small businesses”. (*Id.*)

SBA OGC asserts the ostensible subcontractor rule specifically excludes SSEs from the definition of an ostensible subcontractor, which can be either a subcontractor performing the primary and vital requirements of a contract or a subcontractor upon which the prime is unusually reliant. (*Id.*, at 4.) SBA OGC argues the work of any SSEs impacts consideration of both scenarios. According to SBA OGC, it is more difficult to find a large subcontractor is performing the primary and vital requirements when a SSE may be performing primary and vital requirements, and it is less likely the prime contractor is unusually reliant on a large subcontractor “because the [SSE] will bear some of the burden of the contract performance.” (*Id.*) SBA OGC notes there is no requirement that a prime contractor perform the entirety of the primary and vital requirements, and no requirement of self-performance within SBA's limitation on subcontracting referenced *supra*. In fact, SBA OGC suggests “[a] prime contractor that relies on a [SSE] could theoretically satisfy both rules without any self-performance at all.” (*Id.*)

SBA OGC argues that, when considering multiple subcontractors of mixed status, the work of the prime contractor and any SSEs should be aggregated to determine whether the collective is “performing a significant portion of the primary and vital requirements as compared to one of the large subcontractors. (*Id.*, at 4.) SBA OGC asserts the work of a large subcontractor would be compared individually to the aggregated work of the prime contractor and any SSEs, absent separate grounds for affiliation between the two large subcontractors. (*Id.*, at 3.) In response to OHA's hypothetical, SBA suggests each large subcontractor's 20% share of the work would be compared to the 60% share of the work performed by the prime contractor and the two

SSEs. (*Id.*) Based on this allocation, SBA OGC suggests the hypothetical large subcontractor would not be an ostensible subcontractor and the hypothetical prime would be a small concern eligible for award. (*Id.*)

In addition, SBA OGC responded to Appellant's contention the Area Office erred by failing to consider whether the small subcontractors are small under the NAICS code assigned by OSC Edge to each subcontract. (*Id.*, at 5.) SBA OGC suggests that, because the Area Office concluded the two small subcontractors will be performing the primary and vital requirements of the contract, it is obvious the NAICS code assigned to the subcontracts would be the same as that assigned to the prime contract. (*Id.*)

#### H. Motion to Dismiss

On January 23, 2018, OSC Edge moved to dismiss the instant appeal for lack of standing to protest OSC Edge's contract award. (Motion, at 1, 4-5.) Based upon a recent bid protest filed by Appellant with the U.S. Government Accountability Office (GAO), OSC Edge asserted Appellant was eliminated from consideration for the subject procurement for reasons unrelated to size, specifically unreasonable price and being outside the competitive range. (*Id.*, at 1, 4.) OSC Edge suggested Appellant admitted such when stating “[Appellant's] pricing should have been found as price reasonable and in the competitive range” and “[the Agency] failed to consider that [Appellant's] technical superiority (reflecting incumbent know-how and experience) justifies the payment of a [REDACTED] — albeit unreasonable price.” (*Id.*, at 4-5.) OSC Edge, therefore, requested the instant appeal be dismissed, and the size determination vacated, for Appellant's lack of standing.

Also on January 23, 2018, OHA issued an order directing Appellant to respond to OSC Edge's Motion to Dismiss. In the order, OHA stated that Appellant will have consented to the request sought if it fails to respond to motion no later than February 7, 2018. (OHA's Order, at 1, citing 13 C.F.R. § 134.211.) OHA also stayed the deadline for OSC Edge's response, for any supplemental appeal, and any responses to SBA's comments. (*Id.*)

On January 31, 2018, Appellant responded to OSC Edge's motion to dismiss, arguing OSC Edge mischaracterized Appellant's GAO bid protest. Appellant argued OSC's mischaracterization was based upon Appellant's counsel's inaccurate drafting of its GAO protest. (Response to Motion to Dismiss, at 2.) Appellant maintained that it has standing to protest OSC Edge's size because it “has no reason whatsoever to believe that it was not included in the competitive range, nor does it have any reason to believe that its price was determined to be unreasonable.” (*Id.*, at 3.) Appellant stressed that it had not yet had a debriefing with the contracting agency for the subject procurement, and had no knowledge of the competitive range used by the contracting agency. (*Id.*) Appellant noted it had only received the Notice of Award letter, which indicated Appellant was “one of the highest rated offerors.” (*Id.*) Moreover, Appellant suggested the GAO protest contained several references to its price being reasonable, and even so, the statements cited by OSC Edge were argumentative or declarative rather than “descriptive of what the Agency did or did not do.” (*Id.*)

On February 7, 2018, OHA denied OSC Edge's motion to dismiss. OHA stated that SBA regulations clearly dictate that an offeror eliminated from consideration for reasons unrelated to size (*e.g.*, unreasonable price; outside the competitive range; technical unacceptability) lacks standing to file a size protest. (OHA's Order, at 2, citing 13 C.F.R. § 121.1001(a)(1)(i)). OHA further stressed that it has consistently dismissed size appeals for lack of standing based on concrete evidence. (*Id.*, at 2-3, citing *e.g.*, *Size Appeal of Straughan Env't'l, Inc.*, SBA No. SIZ-5767, at 2 (2016); *c.f.*, *Size Appeal of LSINC Corp.*, SBA No. SIZ-5856, at 14 (2017).)

However, OHA held the statements from Appellant's GAO protest upon which OSC Edge relied did not clearly establish that Appellant was eliminated from consideration. (*Id.*, at 2-3.) OHA concluded that when considered with the entire GAO bid protest, these statements appeared to be merely argumentative statements and not declarations of fact. (*Id.*) OHA also noted the Notice of Award letter did not suggest that Appellant was eliminated from consideration, and Appellant itself did not have any information regarding its treatment by the CO prior to its pending debriefing. (*Id.*) Therefore, without more specific information clearly establishing Appellant was eliminated from consideration, OHA held dismissal was unwarranted and would require impermissible speculation. (*Id.*, citing *Size Appeal of First Financial Associates, Inc.*, SBA No. SIZ-5869 (2017) and *Size Appeal of Synergy Solutions, Inc.*, SBA No. SIZ-5843 (2017).)

With its order, OHA directed OSC Edge to file any response to the appeal and Appellant to file any supplemental appeal no later than February 15, 2018, and also permitted the parties to respond to SBA's comments by that date.

### I. OSC Edge's Response to SBA's Comments

On February 15, 2018, OSC Edge responded to SBA comments. In its response, OSC Edge echoes SBA OGC's position that the work of large subcontractors should not be aggregated for purposes of evaluating firms under the ostensible subcontractor rule. (OSC Edge's Response to SBA Comments, at 1.) OSC Edge also agrees that the work of the prime contractor and any SSEs, however, should be aggregated in determining whether a violation has occurred. (*Id.*, at 1-2.) In OSC Edge's view, the workload of the prime contractor and any SSEs should be aggregated "to fully exclude [SSEs] from the ostensible subcontractor analysis and further the policy of encouraging small business participation in set-aside contractors and preventing firms from avoiding size requirements." (*Id.*, at 3.)

OSC Edge asserts the instant case is far different from OHA's hypothetical case, particularly as OSC Edge performs the majority of the work regardless of the two SSEs. (*Id.*, at 2.) OSC Edge maintains the workshare for each team member in the instant case would be: OSC Edge (56.4%); [Subcontractor 2] (17.5%); [Subcontractor 1] (15%); [Subcontractor 3] (6.9%) and [Subcontractor 4] (4.2%). (*Id.*, at 2, citing Proposal, Vol. II, at 4, 12.) OSC Edge stresses [Subcontractor 4] is performing recruiting services for OSC Edge, not the primary and vital requirements of the contract, and should be excluded when analyzing the division of the primary and vital requirements. (*Id.*) Without [Subcontractor 4], OSC Edge recalculates the division would be OSC Edge (58.84%); [Subcontractor 2] (18.26%); [Subcontractor 1] (15.65%); and [Subcontractor 3] (7.25%). (*Id.*, at 2-3.) (*Id.*) Therefore, unlike OHA's hypothetical, OSC Edge

contends there is no violation of the ostensible subcontractor rule because OSC Edge alone performs the majority of the work. (*Id.*, at 2.) But, when aggregating OSC Edge with the SSEs, [Subcontractor 2] and [Subcontractor 3], OSC Edge maintains the total workload is 84.35%, by far the majority of the primary and vital requirements. (*Id.*, at 3.)

OSC Edge also argues Appellant's arguments concerning the NAICS code assigned to [Subcontractor 2]'s and [Subcontractor 3]'s subcontracts are misguided. OSC Edge suggests these small subcontractors “will be working on the same category of services as OSC Edge, which falls under NAICS code 518210,” and stresses Appellant did not challenge the NAICS code designation. (*Id.*, at 6.) OSC Edge argues, citing *Size Appeal of The Frontline Group*, SBA No. SIZ-5860 (2017), that OHA has rejected similar arguments where the prime contractor and subcontractors “will be performing the same type of work on this procurement, and no party contends that the subcontract would be governed by a different NAICS code or size standard than the prime contract.” (*Id.*, at 8.) In OSC Edge's view, Appellant's arguments that [Subcontractor 2] and [Subcontractor 3] are performing the same primary and vital requirements as OSC Edge undercut its own assertions that a different NAICS code may be properly assigned to the subcontracts. (*Id.*) Moreover, contrary to Appellant's other remarks, OSC Edge suggests, each entity provided SBA with a copy of its SBA Form 355 and was certified as small on the System for Award Management (SAM). (*Id.*)

#### J. Appellant's Reply

On February 15, 2018, Appellant moved to file a reply to OSC Edge's response. In its motion, Appellant argues good cause exists to permit a reply to address OSC Edge's allegation that Appellant's appeal is outside OHA's jurisdiction and to clarify conflicting statements in OSC Edge's response. (Appellant's Motion to Reply, at 1.)

In its reply, Appellant maintains its discussion of SBA's limitation on subcontracting was meant to illustrate the intent behind the exemption for SSEs and not challenge OSC Edge's compliance with such limitation. (*Id.*, at 1.) Appellant reasserts its appeal concerns the ostensible subcontractor rule and is within OHA's jurisdiction. (*Id.*) Appellant also maintains its contentions are not speculative, but, rather, based on public information and reasonable inferences pending access to the case file. (*Id.*)

Appellant asserts OSC Edge contradicts its own statements regarding the division of work, pointing to OSC Edge's suggestions that [Subcontractor 1] would perform 15% of the work while [Subcontractor 1]'s teaming agreement and the Declaration of Ms. Bailey both state [Subcontractor 1] would perform 17.5%. (*Id.*) Further, Appellant suggests OSC Edge fails to provide any rationale for excluding [Subcontractor 4]'s share of the work (*i.e.*, 4.2%) from consideration. (*Id.*, at 2.) Appellant reiterates [Subcontractor 4] may have control over OSC Edge if it cannot secure personnel. (*Id.*) In addition, Appellant disputes OSC Edge's statements relating to *DoverStaffing*, saying incumbency is merely one of the four factors to be considered. (*Id.*)



### K. Appellant's Response to SBA Comment's

On February 15, 2018, Appellant responded to SBA's comments on the ostensible subcontractor rule's exemption for SSEs, disagreeing with SBA and OSC Edge. In its response, Appellant asserts that, in cases of multiple subcontractors, the percentage of work intended for any large subcontractors should be aggregated. (Appellant's Response to SBA's Comments, at 1.) According to Appellant, OHA precedent clearly indicates that the percentage of work to be performed by large subcontractors should be aggregated to determine whether the prime contractor has any meaningful role in performing the contract. (*Id.*, at 2-3, citing *Size Appeal of Competitive Innovations, Inc.*, SBA No. SIZ-5369 (2012) and *Size Appeal of EarthCare Solutions, Inc.*, SBA No. SIZ-5183 (2011).) Appellant suggests OHA has held a prime contractor is affiliated with multiple subcontractors “where the prime is performing little to no primary and vital requirements” based on such aggregation of the large subcontractors' work. (*Id.*, at 3.) Appellant also argues the SBA' focus on the ostensible subcontractor rule's use of the singular form (*i.e.*, subcontractor) is “unreasonable and arbitrary.” (*Id.*)

Appellant asserts that, rather, the analysis should “focus on the primary and vital work done by the small prime contractor and the primary and vital work done by its large subcontractors.” (*Id.*, at 4.) In Appellant's view, the work of any SSEs should not be aggregated when compared to a large subcontractor's work and not be considered under the ostensible subcontractor analysis. (*Id.*, at 4, citing 13 C.F.R. § 125.6(c).) However, if considering SSEs' work, Appellant contends SBA must “first determin[e] whether the two SSE[s] were actually affiliated with other businesses” before proceeding to the ostensible subcontractor analysis. (*Id.*, at 4.) Appellant also notes that, contrary to SBA's comments, it is more likely that a prime contractor is subject to the control of a large subcontractor when performance by multiple subcontractors leaves the prime contractor with no meaningful role. (*Id.*, at 5.)

### L. Supplemental Appeal

Also on February 15, 2018, Appellant moved to supplement its appeal, stating good cause exists to permit a supplemental appeal because Appellant discovered new, relevant information upon review of the Area Office file.

In its supplemental appeal, Appellant reiterates that OSC Edge does not have the necessary personnel to perform the contract. (*Id.*, at 6.) In Appellant's view, [Subcontractor 4] “has the power to exert control over program management” because [Subcontractor 4], a recruiting agency, is guaranteed at least three positions under the contract and will have significant influence over decision making. (*Id.*) Separately, Appellant suggests OSC Edge and [Subcontractor 4] are affiliated under common management because [Subcontractor 4]'s three guaranteed positions could include the Program Manager and Deputy Program Manager. (*Id.*, at 6-7.) In addition, Appellant highlights that OSC Edge intends to hire three independent contractors for key contract positions that are employed by other companies, reinforcing OSC Edge's lack of adequate personnel. (*Id.*, at 7.)

Appellant argues the existence of a mentor-protégé relationship between OSC Edge and its large subcontractor, [Subcontractor 1], does not remove the possibility of a violation of the

ostensible subcontractor rule. (*Id.*, at 4, citing *Size Appeal of InGenesis, Inc.*, SBA No. SIZ-5436 (2013).) Appellant recognizes the SBA must approve joint ventures through the 8(a) program, and such ventures may be exempt from affiliation. (*Id.*, citing 13 C.F.R. §§ 124.513(c), 124.520(d)(1)(ii).) However, according to Appellant, OSC Edge and [Subcontractor 1] did not form a formal joint venture in accordance with SBA regulations, and, even so, did not form a joint venture for the subject procurement. (*Id.*, at 4, n. 1.) In Appellant's view, OSC Edge must “receive an unreasonably significant amount [of] technical, program management, and financial assistance from [Subcontractor 1] alone,” and possibly from the three remaining subcontractors. (*Id.*)

Appellant notes that, according to OSC Edge's proposal, the division of total work would be as follows: (1) [Subcontractor 2] at 17.5%; [Subcontractor 1] at 15%; [Subcontractor 3] at 6.9%; and [Subcontractor 4] at 4.2%. (*Id.* at 5, citing Proposal, Volume II, at 12.) Appellant reiterates [Subcontractor 1], [Subcontractor 2], and [Subcontractor 3] are responsible for the IT services and cybersecurity support services comprising the primary and vital requirements, while [Subcontractor 4] is responsible for recruiting personnel. (*Id.*, at 5.) Based on this, Appellant asserts, “OSC Edge is only performing the administrative and insignificant management work, while its subcontractors are responsible for the more complex and primary technical work.” (*Id.*) Appellant asserts OHA should find [Subcontractor 1], [Subcontractor 2], and [Subcontractor 3] are, therefore, performing the majority of the primary and vital requirements. (*Id.*) Moreover, Appellant asserts, these subcontractors would be performing the majority of the primary and vital requirements, which account for approximately 43.6% of the total contract work. Thus, Appellant argues, OHA should find a violation of the ostensible subcontractor rule. (*Id.*, at 8, citing *Size Appeal of Alutiiq Education & Training, LLC*, SBA No. SIZ-5192 (2011).)

Appellant further asserts OSC Edge is unusually reliant on its four subcontractors' experience to perform the contract based on the proposal's past performance references. (*Id.*, at 5.) Appellant stresses that only one of three past performance references is from OSC Edge, and that reference describes OSC Edge's past performance relating to data migration and operation backup support, neither of which is primary or vital to the instant contract. (*Id.*, citing Proposal, Vol. I, at 53.) [Subcontractor 2]'s past performance reference, Appellant highlights in comparison, provides an “in-depth description of its experience and technical know-how across IT service Management, Engineering Support, and Cyber Security Support.” (*Id.*, citing Proposal, Vol. I, at 56.) Appellant also notes the third past performance reference described [Subcontractor 1]'s “comprehensive knowledge in Program Management and IT Management services.” (*Id.*, citing Proposal Vol. I, at 60.)

When considering whether [Subcontractor 2] is an SSE, Appellant argues the Area Office erred by failing to consider [Subcontractor 2]'s affiliation with two other firms based on common ownership. (*Id.*, at 6.) Appellant suggests [Subcontractor 2]'s CEO and owner, [xxx], holds a 100% ownership interest in [xxx] and a 60% majority interest in [xxx], which is a joint venture with four other companies. (*Id.*, at 6, n. 2.) According to Appellant, [Subcontractor 2] is affiliated with [xxx] and [xxx] based on Mr. [xxx]'s majority interests in each and, when aggregated, is not a small concern or SSE for the instant procurement. (*Id.*) Moreover, Appellant argues that, as a non-SSE, [Subcontractor 2]'s performance of primary and vital requirements suggests OSC Edge violates the ostensible subcontractor rule. (*Id.*)

Last, Appellant highlights several facts that, in its view, suggest affiliation based on a totality of the circumstances. (*Id.*, at 7.) According to Appellant, each of OSC Edge's subcontractors was responsible for writing proposal sections describing the substantive technical aspects of the work. (*Id.*, at 7.) Such participation indicates affiliation, in Appellant's view. (*Id.*, at 8.) Appellant also suggests OSC Edge's references to "Team OSC" further indicate OSC Edge's reliance on the subcontractors for relevant experience and expertise. (*Id.*)

#### M. OSC Edge's Response to Supplemental Appeal

On March 2, 2018, OSC Edge responded to Appellant's supplemental appeal, asserting Appellant concedes several points concerning OSC Edge and its four subcontractors. According to OSC Edge, Appellant admits that OSC Edge is performing the majority of the total work required when stating without retort that OSC Edge would perform 56.4% of the total contract work. (OSC Edge's Response to Supplemental Appeal, at 2, citing Supplemental Appeal, at 4-5.) OSC Edge asserts that Appellant must, therefore, demonstrate the primary and vital requirements of the contract are performed solely in the remaining 43.6% or OSC Edge is unusually reliant on its subcontractors for performing its 56.4% of the work. (*Id.*, at 2, 3.)

OSC Edges also asserts Appellant has provided multiple interpretations of the solicitation's primary and vital requirements. OSC Edge notes the Area Office identified the primary and vital requirements as "support [for] the provision of information technology (IT) services with a key focus on program management and cyber security support," and stresses Appellant did not assert this conclusion was erroneous. (*Id.*, at 3.) However, OSC Edge suggests, Appellant argues the four subcontractors would perform the majority of the primary and vital requirements, with OSC Edge performing "ten percent or less". (*Id.*) OSC Edge maintains that, as Appellant does not dispute IT services and cybersecurity are the primary and vital requirements, then Appellant's assertion that OSC Edge would not perform more than 10% is a "factual inaccuracy." (*Id.*) Citing the supplemental appeal, OSC Edge suggests Appellant subsequently defines the primary and vital requirements are "core technical IT services and cyber security performance". (*Id.*, at 4.) But, OSC Edge stresses Appellant leaves these "core IT services" opaquely defined. (*Id.*)

OSC Edge disputes Appellant's reliance on the subcontractors' past performance references incorporated in the proposal. OSC Edge argues Appellant mistakenly suggests "the use of subcontractor experience as part of the past performance factor indicates what primary and vital work is not being done by [OSC Edge]." (*Id.*, at 4.)

Similarly, OSC Edge disputes Appellant's reliance on *Alutiiq*. (*Id.*) According to OSC Edge, *Alutiiq* involved a solicitation that required performance of several discrete tasks, with each tasks assigned a particular point value. (*Id.*, citing *Alutiiq*, SBA No. SIZ-5192 (2011).) OSC Edge suggests OHA held the prime contractor had violated the ostensible subcontractor rule because a subcontractor was performing the two most highly valued tasks, which OHA had determined constituted the primary and vital requirements of that procurement. (*Id.*) OSC Edge stresses that 23% of the work was enough in *Alutiiq* because the two tasks amounting to 23% were clearly the primary and vital requirements. (*Id.*)

OSC Edge argues the work required by the procurement at issue in this appeal is more generalized, and there are no ostensible subcontractors because OSC Edge is performing the majority of the work, providing the majority of personnel, and receiving the majority of the financial benefit. (*Id.*, at 4-5.) Moreover, OSC Edge reiterates that, even without applying exemptions for SSEs and mentor-protégé agreements, it performs the majority of the work. But, when recognizing the two SSEs, OSC Edge stresses it performs 80.8% of the work. (*Id.*)

OSC Edge contends that OHA should dismiss Appellant's supplemental arguments concerning OSC Edge's unusual reliance on [Subcontractor 1] and on its subcontractors' past performance references. (*Id.*, at 5-6.) OSC Edge argues Appellant merely rehashes its arguments from its original protest and its initial appeal petition without providing any new foundation except OSC Edge's teaming agreement with [Subcontractor 1]. (*Id.*) OSC Edge stresses Appellant merely reiterates its original contention that OSC Edge has little to no relevant experience and must rely on its subcontractors for experience. (*Id.*, at 6.) Even so, OSC Edge asserts that its inclusion of past performance references from its subcontractors is permissible under the solicitation, and reiterates that, unlike those in *Size Appeal of Dover Staffing*, OSC Edge's own past performance reference is relevant to the primary and vital requirements. (*Id.*)

OSC Edge also disputes Appellant's contention that the Area Office failed to consider whether [Subcontractor 2] has affiliates, particularly because Appellant's supplemental arguments are based on [Subcontractor 2]'s submissions to the SBA at the time of the initial protest. (*Id.*, at 7.) OSC Edge argues Appellant merely speculates as to [Subcontractor 2]'s affiliations and size because Appellant provides no evidence to support its contention. (*Id.*, at 7.)

OSC Edge urges OHA to reject Appellant's assertion that [Subcontractor 4] may employ the Program Manager and Deputy Program Manager and, thereby, control OSC Edge through common management. (*Id.*, at 8.) OSC Edge argues Appellant speculated that [Subcontractor 4]'s three guaranteed positions may include two key positions (*i.e.* Program Manager and Deputy Program Manager), but, notably, Appellant failed to explain how these two key positions fit within only 4.2% of the contracted work assigned to [Subcontractor 4]. (*Id.*) OSC Edge further argues that, even if [Subcontractor 4] had control of the two key positions and thereby the contract, having control or the power to control the contract does not give [Subcontractor 4] control or the power to control OSC Edge. (*Id.*, at 8-9.)

On personnel, OSC Edge suggests its three independent contractors, contrary to Appellant's allegation of *en masse* hiring, demonstrate that it is not unusually reliant on its subcontractors for qualified personnel and further shows it intends to provide all the contract personnel. (*Id.*, at 9.)

Lastly, OSC Edge argues Appellant's contention under the totality of the circumstances must fail, in part, because Appellant does not assert the Area Office erred or failed to even consider affiliation under totality of the circumstances. (*Id.*) OSC Edge asserts, there is little evidence, other than [Subcontractor 1]'s subcontract to OSC Edge concurrent with a mentor-protégé agreement, to support Appellant's contention. (*Id.*, at 10.) In addition, OSC Edge maintains that, while the subcontractors provided portions of the proposal directly related to their

subcontracted work, it retained ultimate authority over the proposal. OSC Edge, in sum, suggests affiliation based on a totality of the circumstances is appropriate when significant indicators of control are present, and no such indicators are present in the instant appeal. (*Id.*, at 11.)

#### N. Corrective Action

On March 8, 2018, counsel for OSC Edge informed OHA that Navy “ha[d] elected to take corrective action in relation to a [U.S. Government Accountability Office (GAO)] protest regarding this procurement . . . [that] may result in a new award decision.” (OHA’s Order Staying Appeal, at 1, citing E-mail from M. Moriarty to OHAFilings@SBA.gov (Mar. 8, 2018).) The CO subsequently confirmed the Navy’s intention to take corrective action in response to two GAO protests, and stated its reevaluation of one or more proposals would likely be completed within a few months. (*Id.*, at 1, citing E-mail from C. Kelly to D. Kane (Mar. 9, 2018).)

On March 13, 2018, OHA stayed the instant appeal pending the outcome of Navy’s voluntary corrective action. (*Id.*, at 1.) OHA stated it had previously stayed size appeal proceedings pending the outcome of corrective action when such action has “the potential to alter the outcome of the source selection.” (*Id.*, citing, *e.g.*, *Size Appeals of Real Estate Res. Servs., Inc. et al.*, SBA No. SIZ-5522, at 2 (2013).). OHA held Navy’s corrective action had such potential to alter its award decision to OSC Edge, and, thereby, render the instant appeal moot. Therefore, OHA stayed the instant appeal and directed the parties to notify OHA upon Navy’s completion of its corrective action. (*Id.*)

On June 20, 2018, the CO notified OHA that Navy had completed its corrective action and had again selected OSC Edge for award. (E-mail from C. Kelly to D. Kane (June 20, 2018).) Accordingly, on June 21, 2018, OHA lifted the stay of the instant appeal and reopened the record to permit the parties to submit additional filings concerning “new issues arising from the corrective action”. (OHA’s Order Lifting Stay and Reopening Record, at 1.)

#### O. New Evidence

On June 28, 2018, Appellant moved to admit new evidence, namely a written debriefing from the procuring agency regarding Appellant’s proposal and a summary of Appellant’s appeal and supplemental appeal. Appellant asserts good cause exists to admit both the debriefing and the summary because “six months has passed since [Appellant’s] first appeal of the contract award, and the agency had conducted a corrective action resulting in a new award.” (Appellant’s June 28 Motion to Admit New Evidence, at 1.) Appellant suggests “[n]othing has changed during the corrective action, including OSC Edge’s proposal,” and the new evidence further clarifies OSC Edge’s violation of the ostensible subcontractor rule. (*Id.*, at 1.)

On July 13, 2018, OSC Edge submitted its opposition to Appellant’s June 28 motion. In opposing the motion, OSC Edge asserts Appellant’s debriefing “has no bearing on the issues that impact this appeal” and “does [not] offer any insight into OSC Edge’s proposal or otherwise provide any information that might support [Appellant’s] (incorrect) assertions. (OSC Edge’s Opposition to June 28 Motion, at 1, 2-3.) OSC Edge notes that the debriefing mentions OSC Edge’s proposal received an overall non-price rating of “[xxx]”. (*Id.*, at 1-2.) Nonetheless, in

OSC Edge's view, inclusion of the debriefing needlessly expands the scope of the appeal without providing any further clarity. (*Id.*, at 2.)

### III. Discussion

#### A. Threshold Matters

OHA's review is based upon the evidence in the record at the time the Area Office made its determination. As a result, evidence that was not first presented to the Area Office is generally not admissible and will not be considered by OHA. *E.g.*, *Size Appeal of Maximum Demolition, Inc.*, SBA No. SIZ-5073, at 2 (2009) (“I cannot find error with the Area Office based on documents that Area Office was unable to review.”). New evidence may be admitted on appeal at the discretion of the administrative judge if “[a] motion is filed and served establishing good cause for submission of such evidence.” 13 C.F.R. § 134.308(a). The proponent must demonstrate, however, that “the new evidence is relevant to the issues on appeal, does not unduly enlarge the issues, and clarifies the facts on appeal.” *Size Appeal of Vista Eng'g Techs., LLC*, SBA No. SIZ-5041, at 4 (2009). OHA “will not accept new evidence when the proponent unjustifiably fails to submit the material to the Area Office during the size review.” *Size Appeal of Project Enhancement Corp.*, SBA No. SIZ-5604, at 9 (2014).

In this case, Appellant has not established good cause to admit the procuring agency's debriefing on Appellant's own proposal. Not only is Appellant's proposal not at issue in this appeal, Appellant fails to identify the probative value or clarification provided by the debriefing. Therefore, Appellant's motion to admit the debriefing is DENIED and the debriefing EXCLUDED.

Appellant equally fails to establish good cause for admitting a summary of its arguments on appeal. Appellant suggests such summary is necessary because six months has passed since the first appeal and corrective action had occurred. But, as Appellant states, nothing has changed during the corrective action. Appellant's appeal, supplemental appeal, and the various responses have not changed, either. Given this and the extensive record in this matter, I find Appellant's summary of its arguments unwarranted. Therefore, Appellant's motion to admit a summary of its arguments is DENIED and the summary EXCLUDED.

In addition, a summary of arguments is a supplemental pleading, not new evidence. Under 13 C.F.R. § 134.207(b), a party may move to file a supplemental pleading “setting forth relevant transactions or occurrences that have taken place since the filing of the original pleading.” 13 C.F.R. § 134.207(b); *see id.*, at § 134.211. The proposed supplemental pleading must be filed and served with the motion, and only the administrative judge may permit such pleadings. *Id.* Here, Appellant filed the summary of its arguments with a motion, albeit misdirected as new evidence. However, again, Appellant concedes nothing has changed during the corrective action. Accordingly, I DENY Appellant's motion to file a summary of its arguments.

## B. 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 is intended 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). 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). Ostensible subcontractor inquiries are “intensely fact-specific given that they are based upon the specific solicitation and specific proposal at issue.” *Size Appeals of CWU, Inc., et al.*, SBA No. SIZ-5118, at 12 (2010).

## C. Analysis

Appellant is correct that the Area Office cannot consider a subcontractor an SSE under the ostensible subcontractor rule without, first, examining the subcontractor's size and status in SBA programs. *See* Section II.K, *supra*. In *Frontline II*, OHA stated it would be erroneous for an area office to not review a proposed subcontractor's size and possible affiliations when considering the SSE exemption, and, in fact, had remanded the matter back to the area office to consider, in part, whether the prime contractor and subcontractor were similarly-situated. *Frontline II*, SBA No. SIZ-5860, at 6 (2017) (stating that “[d]etermining whether a concern is a small business necessarily involves consideration of whether that concern is ‘independently owned and operated’ and thus affiliated with other concerns” and citing 15 U.S.C. § 632(a)); *see Frontline I*, SBA No. SIZ-5835 (2017). However, absent specific allegations or clear evidence against the subcontractor, the Area Office need not look farther than the subcontractor's sworn SBA Form 355 and other statements. *See id.* In *Frontline II*, OHA held the Area Office properly relied on the subcontractor's sworn SBA Form 355 in the absence of any specific allegations or identification of affiliates by that appellant, even after its counsel reviewed the administrative record. *Frontline II*, SBA No. SIZ-5860, at 6 (2017).

Here, the Area Office reviewed the SBA Form 355s and SAM profiles for [Subcontractor 2] and [Subcontractor 3] when considering whether each is a SSE. *See* Section II.D, *supra*. In its determination, the Area Office stated, in regards to both [Subcontractor 2] and [Subcontractor 3], that “the subcontractor is a small business because the entity provided SBA with a SBA Form 355 which was review by [the Area Office], and certified as a small business on its [SAM]

profile.” *See* Section II.D, *supra*. Stated more aptly, the Area Office determined the subcontractors are small businesses *based* on each entity's SBA Form 355 and SAM profiles.

Upon review, [Subcontractor 2]'s Form 355 indicates that [Subcontractor 2] is a small business primarily engaged in business under NAICS code 541512, and is 100% owned by Mr. [xxx]. ([Subcontractor 2]'s SBA Form 355, at 2.) [Subcontractor 2]'s form further indicates Mr. [xxx] has a 100% interest in [xxx] and a 60% in [xxx]. (*Id.*) [Subcontractor 2] lists both [xxx] and [xxx] as potential affiliates, as Mr. [xxx] holds the majority share in both concerns and is the “Managing Member” of [xxx]. (*Id.*) However, neither [xxx] nor [xxx] have any employees or annual receipts. (*Id.*) While Appellant asserts that [Subcontractor 2] is affiliated with [xxx] and [xxx] is confirmed by the SBA Form 355, Appellant provides no evidence suggesting that, to the contrary, [xxx] and [xxx] have any employees or receipts. *See* Sections II.E, II.J, II.L, *supra*. Nor does Appellant suggest [Subcontractor 2] has any additional affiliates unnamed on its SBA Form 355. *Id.* According to its SBA Form 355, [Subcontractor 2] has well below \$32.5 million annual receipts, as required under the size standard applicable to the instant solicitation. ([Subcontractor 2]'s SBA Form 355, at 2.) Therefore, the Area Office did not err in concluding [Subcontractor 2] is a SSE for the instant procurement.

Similarly, the Area Office did not err in concluding [Subcontractor 3] is a SSE based on its sworn SBA Form 355 and SAM profile. *See* Section II.D, *supra*. [Subcontractor 3]'s SBA Form 355 indicates [xxx] and [xxx] hold 51% and 49% interests in the company, respectively, and [Subcontractor 3] has no potential affiliates. ([Subcontractor 3]'s SBA Form 355, at 3-4.) [Subcontractor 3]'s form also indicates it primarily conducts business under NAICS code 541690, which has a size standard of \$15 million. (*Id.*, at 2.) According to [Subcontractor 3]'s SBA Form 355, [Subcontractor 3] has well below \$15 million annual receipts, and well below the \$32.5 million size standard for NAICS code 518210. (*Id.*) Appellant does not allege [Subcontractor 3] is affiliated with any other concerns, nor does it allege [Subcontractor 3] has greater than \$32.5 million, or even \$15 million, annual receipts. *See* Sections II.E, II.J, II.L, *supra*. Therefore, the Area Office did not err in concluding [Subcontractor 3] is also a SSE for the instant procurement.

OHA has explained that the Area Office does not need to conduct further analysis under the ostensible subcontractor rule when the subcontractor is determined to be a SSE. *See Frontline II*, SBA No. SIZ-5860, at 7. However, where an area office cannot exempt all subcontractors from the ostensible subcontractor analysis as SSEs, the area office must still determine whether the other non-SSE subcontractors violate the ostensible subcontractor rule. In these instances of multiple subcontractors with mixed status, the initial step in an ostensible subcontractor analysis remains “to determine whether the prime contractor will self-perform the contract's primary and vital requirements,” with one caveat. *See Size Appeal of Innovate Int'l Intelligence & Integration, LLC*, SBA No. SIZ-5882, at 6 (2018). Rather, in these instances, the area office must determine whether the prime contractor and any SSEs will perform the contract's primary and vital requirements.

This approach, advocated by OSC Edge and SBA OGC, is supported by the regulatory language and the policy underpinning the ostensible subcontractor rule. *See* Sections II.G, II.I, *supra*. SBA regulations state “[a]n ostensible subcontractor is a subcontractor that is not a



[SSE]”, exempting SSEs from violating the rule. 13 C.F.R. § 121.103(h)(4). However, the regulation does not state SSEs should be removed from the ostensible subcontractor rule analysis entirely. To the contrary, the regulation states:

**[a]ll aspects of the relationship between the prime and subcontractor are considered**, including, but not limited to, the terms of the proposal (such as contract management, technical responsibilities, and the percentage of subcontracted work), agreements between the prime and subcontractor (such as bonding assistance or teaming agreement), and whether the subcontractor is the incumbent contractor and is ineligible to submit a proposal because it exceeds the applicable size standard for that solicitation.

*Id.* (emphasis added). In cases of multiple subcontractors, OHA has refrained from considering individual subcontractors in a vacuum apart from one another, but, rather, has considered all aspects of the relationship between the prime and its multiple subcontractors. *See e.g., Size Appeal of Equity Mortgage Solutions, LLC*, SBA No. SIZ-5867 (2017); *Size Appeal of Synergy Solutions, Inc.*, SBA No. SIZ-5843 (2017); *Size Appeal of Paragon TEC, Inc.*, SBA No. SIZ-5290, at 12 (2011).

As stated *supra*, the purpose of the ostensible subcontractor rule is to prevent an other-than-small firm from evading SBA's regulations (*e.g.* size or status restrictions) and, thereby, usurp federal contracting opportunities from small contractors. I find persuasive SBA OGC's argument that allowing SSEs (*e.g.*, small business subcontractors) to team with a small prime contractor furthers SBA's government contracting and business development goals. *See* Section II.G, *supra*. SBA OGC points to the preamble to the limitations on subcontracting regulation (13 C.F.R. § 125.6) that excludes subcontracts to SSEs from those limitations because it would not further the goals of SBA's programs to penalize small business prime contractors that benefit other small businesses through subcontract awards. *See* Section II.G, *supra*; *see also* 81 Fed. Reg. 34243, 34245-46 (May 31, 2016.) In other words, work performed by SSEs is considered the equivalent of work performed by the prime contractor. *See id.* The ostensible subcontractor rule, similarly to the limitation on subcontracting, excludes SSEs from the definition of an ostensible subcontractor. I therefore conclude that role of SSEs in analysis of the ostensible subcontractor rule is similar to that of the limitations on subcontracting rule, and work performed by the SSEs must be considered the equivalent of work performed by the prime contractor. Moreover, there are similar policy considerations, in ensuring that the benefits of the program flow to eligible small businesses, and not to other than small firms attempting to evade SBA's regulations.

Here, it is clear that the primary and vital requirements are general IT services, with particular focus on program management and cyber security support. According to the proposal, OSC Edge alone would perform a majority of contracted work, and intends to manage each subcontractor's performance. *See* Section II.B, *supra*. Even so, when aggregating the collective performance of OSC Edge and its SSEs (*i.e.*, [Subcontractor 2] and [Subcontractor 3]), the prime contractor will perform approximately 80% of the required work, particularly in IT services. It is wholly apparent that OSC Edge, with its SSEs, will perform the majority of the contract's primary and vital requirements. Further, regardless of any mentor-protégé agreement, OSC

Edge's share of the primary and vital requirements far exceeds that of [Subcontractor 1]'s 15%. *See* Section II.B, *supra*. [Subcontractor 4], also, does not perform any of the primary and vital requirements. Unlike instances where the procurement-at-issue is for recruitment of personnel, here, the recruitment of personnel for OSC Edge is merely tangential to the primary and vital requirements and supports OSC Edge's performance of those requirements. *C.f.*, *Size Appeal of Social Solutions Int'l, Inc.*, SBA No. SIZ-5741 (2016) (affirming the area office's conclusion that the primary and vital requirements were "to recruit, hire, [and] maintain contracted technical, professional, operational, and support staff that supply support services to [the procuring agency]"). Thus, it is clear OSC Edge intends to perform the majority of the contract's primary and vital requirements.

Moreover, I find OSC Edge is not unusually reliant on its subcontractors. OHA has identified four key factors that contribute to a finding 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 focuses solely on the last factor, alleging OSC Edge is unusually reliant on its subcontractors for its past performance. *See* Section II.E, II.L, *supra*. However, OHA has repeated that past performance is "only one among other factors in the ostensible subcontractor analysis" and one that will not suffice absent other strong indicia of a violation. *Size Appeal of Innovate Int'l Intelligence & Integration*, SBA No. SIZ-5882, at 7-8 (2018); *see Size Appeal of Residential Enhancements, Inc.*, SBA No. SIZ-5931, at 14 (2018); *c.f.*, *Size Appeal of Equity Mortgage Solutions, LLC*, SBA No. SIZ-5867 (2017). Here, OSC Edge does not intend to subcontract with the incumbent contractor, nor does OSC Edge intend to hire the majority of its workforce or its contract management from its subcontractors. *See* Section II.B, *supra*. Two of the three past performance references cited in OSC Edge's proposal are from its subcontractors; one from [Subcontractor 2] and one from [Subcontractor 1]. *Id.* But, this alone is not sufficient to demonstrate OSC Edge is unusually reliant on its subcontractors. Even so, with these two references, OSC Edge provides a reference describing its own past performance on a contract, showing its own relevant experience in IT services. *See* Section II.B, *supra*. Therefore, only one of the four factors is present here, and even on that one factor, OSC Edge is not entirely reliant upon its subcontractors. Accordingly, I find that the Area Office did not err in finding OSC Edge is not unusually reliant on its subcontractors.

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 U.S. Small Business Administration. *See* 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN  
Administrative Judge