

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

SIZE APPEAL OF:

Olgoonik Diversified Services, LLC,

Appellant,

Appealed From
Size Determination No. 3-2017-010

SBA No. SIZ-5825

Decided: April 21, 2017

APPEARANCES

William K. Walker, Esq., Walker Reausaw, Washington, DC, for Appellant

Thomas M. Brownell, Esq., Gregory R. Hallmark, Esq., Holland & Knight LLP,
Tysons Corner, VA, for CCE Specialties, LLC

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DECISION

I. Introduction and Jurisdiction

On February 24, 2017, the U.S. Small Business Administration (SBA) Office of Government Contracting, Area VI (Area Office) issued Size Determination No. 06-2017-017 finding Olgoonik Diversified Services, LLC (Appellant) is not a small business concern.

Appellant contends the size determination is erroneous, and requests that the size determination be reversed. For the reasons discussed *infra*, the appeal is GRANTED, and the size determination is REVERSED.

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

II. Background

A. RFP and Protest

On June 5, 2016, the Department of State, Bureau of Overseas Buildings (DoS) issued Request for Proposal No. SAQMMA-16-R-0261 (RFP) seeking a contractor to provide Design-Build Construction Services for the construction of a Baghdad Embassy Compound Security Upgrades in Baghdad, Iraq. The solicitation was set aside for small businesses, under North American Industry Classification System (NAICS) code 236220, Commercial and Institutional Building Construction, with a corresponding \$36.5 million annual receipts size standard. The solicitation was issued under a two-phase process, with Phase I used to determine prequalified offerors, who would then receive the formal RFP and be invited to provide technical and pricing proposals in Phase II. The RFP included a provision stating:

Organizations that wish to use the experience or financial resources of any other legally dependent organization or individual, including parent companies, subsidiaries, or other related firms, must do so by way of a joint venture. A prospective offeror may be an individual organization or firm, a formal joint venture (where the arrangement among the co-venturers has been reduced to writing) or “de facto” joint venture (where no formal agreement has been reached, but the offering entity relies upon the experience of a related U.S. person firm that guarantees performance). To be considered a “qualified United States joint venture person,” every joint venture must have at least one firm or organization that itself meets all the requirements of a U.S. person listed in Section 402.

RFP, at 3.

The RFP included a form, “Certifications Relevant to Public Law 99-399.”¹ The form includes a definition of the term “joint venture” as “a formal or *de facto* arrangement by and through which two or more persons or entities associate for the purpose of carrying out the prospective contract. . . . [T]he U.S. person co-venturer must agree that it is individually and severally liable for the full performance of and resolution of any and all respects of the contract.”

Proposals, under Phase II, were due on September 22, 2016.

Appellant's proposal included a certification stating that it was a *de facto* joint venture, and that O.E.S., Inc. (OES) and Olgoonik Specialty Contractors, LLC (OSC) were its “U.S. person participants”. (Proposal, Certification No. 8, at 9.) Appellant's past performance submission described contracts performed by OES and OSC, as well as Appellant. (Proposal, at 16-22.) Appellant's proposed personnel included 22 OSC employees, who were to be transferred to Appellant upon award. (*Id.* at 25-68.) The Proposal states that Appellant “is not a Joint Venture.” (*Id.* at 70.)

¹ Omnibus Diplomatic Security and Antiterrorism Act (Diplomatic Security Act or the Act), Public Law 99-399, 22 U.S.C. §§ 4801, *et seq.*

On October 3, 2016, DoS notified CCE Specialties, LLC (CCE), an unsuccessful offeror, that Appellant was the apparent awardee. On October 11, 2016, CCE filed a size protest against Appellant. CCE alleged Appellant did not have the capability to perform the work and was relying on one or more other than small affiliates, in violation of the ostensible subcontractor rule, or the limitations on the exception to affiliation coverage for Alaska Native Corporations (ANCs). CCE also claimed Appellant did not meet the prequalification requirements that offerors are to be U.S. Persons, and meet certain monetary thresholds for its past performances.²

B. Size Determination

On February 24, 2017, the Area Office issued Size Determination No. 03-2017-010, finding that Appellant is affiliated with OES and OSC, and thus exceeds the size standard associated with the instant procurement.

The Area Office found that Appellant was established as a Limited Liability Company (LLC) on March 25, 2011. Appellant's sole owner is Olgoonik Development, LLC (OD), a holding company. OD is a wholly owned subsidiary of Olgoonik Corporation (OC), an ANC. (Size Determination, at 2.) Two of Appellant's officers, Mr. Martin C. Miksch and Mr. Hugh Patkotak, are also officers of OD. In turn, OD has 11 other subsidiaries besides Appellant, referred to as "sister companies". These include OES and OSC, which are wholly owned subsidiaries of OD. Under Appellant's LLC Articles of Amendment OD is its sole Member and will manage Appellant. Therefore, OD is found to control Appellant through its ownership and management. (*Id.*) The Area Office determined that Appellant was not affiliated with OD, or any of its other holding companies, because OD is a subsidiary of OC, an ANC. (*Id.* at 3, citing 13 C.F.R. § 121.103(b)(2).) Therefore, no affiliation based on ownership and common management exists between Appellant and OD or OC. (*Id.*)

The Area Office notes that Appellant relied upon OES's and OSC's past performance in its proposal, relying on their past experience in performing work similar to that sought by the instant procurement. In its response to the Area Office, Appellant explained that administrative support services were provided by OD in preparing the proposal, but that Appellant's personnel were responsible for final proposal authorization and any subsequent negotiations. (*Id.* at 3-4.) Once again, the Area Office found that Appellant was not affiliated with OD based on common administrative services, due to the exception found at 13 C.F.R. § 121.103(b)(2). (*Id.* at 4.)

Next, the Area Office found that the solicitation's prequalification provisions referred to above required that 'organizations that wish to use the experience or financial resources of any other legally dependent organization or individual, including parent companies, subsidiaries, or other related firms, *must do so by way of a joint venture.*' (*Id.* at 5.) (emphasis original.) Further, the prequalification notice stated that if a concern relied on the experience of another concern to guarantee performance, and no formal agreement existed between the concerns, the concerns will

² CCE also filed a protest with the Government Accountability Office (GAO) on October 12, 2017. GAO denied the protest on January 18, 2017. *CCE Specialties, LLC*, B-413998.1, January 18, 2017.

be considered a *de facto* joint venture. (*Id.*) The Area Office thus determined that Appellant is in a *de facto* joint venture with OES and OSC because Appellant certified as such in its Pre-Qualification Proposal. Further, the proposal states that: Appellant will expand its employee numbers after award by utilizing employees from its sister companies; Appellant's sister companies will provide financial and technical assistance; the sister companies will be involved meaningfully in performing the required work; Appellant will obtain employees from its sister companies, specifically that managers currently at OSC will transfer to Appellant upon contract award; and lastly that the key management personnel are all current OSC employees who will transfer to Appellant upon contract award. (*Id.* at 6.)

The Area Office noted that without its reliance on its sister companies, Appellant would not have moved on to qualify for Phase II of the instant procurement. The Area Office then found Appellant's Phase II proposal contradicts statements made by Appellant in its Pre-Qualification Proposal. The Area Office found that Appellant contradicted itself by stating it is not in a joint venture with its sister companies and that Appellant is capable of performing the tasks required by the Statement of Work (SOW), without having to enter into a joint venture agreement. (*Id.*) In responding to the size protest, Appellant explained that the sister companies would not be participating in contract performance, because there is no requirement for them to do so. The sister companies would simply guarantee contract performance. The arrangements between Appellant and its sister companies were made in order to meet the minimum requirements of the Diplomatic Security Act. (*Id.* at 7.)

The Area Office found that neither the Act nor the prequalification notice contained a definition of *de facto* joint venture. The Area Office looked to a legal dictionary definition: ‘A voluntary contract between two or more competent persons to place their money, effects, labor, and skill, or some or all of them, in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them’. (*Id.*)

Appellant explained in its response that the prequalification questionnaire provided that a *de facto* joint venture is one where no formal agreement exists, but one that allows an offeror to rely on the experience of a concern and rely upon that concern for guaranteeing performance. (*Id.* at 8-9.) The Area Office found the instructions included in the prequalification questionnaire allowed for reliance on the experience of a sister concern but with “the condition that the offeror perform the contract as a joint venture with those sister companies.” (*Id.* at 9.) The Area Office reiterates that Appellant's proposal relied on the past experience of OES and OSC by providing three examples from OES and one from OSC, which allowed Appellant to qualify for Phase II of the solicitation. The past performance of OES and OSC allowed Appellant to meet the solicitation's requirements that offerors have similar past performance on contracts exceeding \$9 million. (*Id.*)

The Area Office further found Appellant's proposal states that all six key employees listed in the ‘Major Components of the Team’ are OSC employees, including the Program General Manager who is responsible for the overall management of the project. However, the Area Office notes that Mr. Rob Hawthorne, Appellant's General Manager, had stated that he would be in charge of day-to-day oversight of the contract. (*Id.* at 12.) The Area Office found this is a direct contradiction to Appellant's proposal, which the Area Office must rely on.

Therefore, finding that all six key employees are OSC employees, the Area Office determined that OSC will be in charge of contract management. (*Id.*)

Lastly, the Area Office notes that OD is providing bonding assistance to Appellant and that Appellant identified OD as a *de facto* joint venturer in its Phase I Pre-Qualification Certification. (*Id.* at 13.) Based on OD providing financial assistance to Appellant, along with the reliance on OES and OSC, the Area Office determined that Appellant is in violation of the ostensible subcontractor rule and thus exceeds the applicable size standard.

C. Appeal

On March 10, 2017, Appellant filed the instant appeal. Appellant argues that the Area Office erred in finding Appellant other than small, and requests that OHA reverse the decision.

Appellant contends the Area Office erroneously found that the *de facto* joint venture between Appellant, OES and OSC created by the Act leads to a formal joint venture under the size regulations. Appellant explains that the arrangement it has with its sister companies, OES and OSC, is not a joint venture because they do not perform jointly on a contract, share resources, nor share in any profits. (Appeal, at 5.) Under SBA rules, a joint venture requires that any agreement between business concerns allow for the shared contribution of resources, management, profits, and contract performance. In contrast, a joint venture under the Act simply requires that the other party besides the prospective offeror accept liability for contract performance, while the prospective offeror can also rely on the experience of the additional business concern. Because there is no formal joint venture between Appellant and its sister companies, there is no SBA approval requirement based solely on the existence of the *de facto* joint venture. (*Id.*)

Here, there is no arrangement between Appellant and its sister companies beyond their commitment that the sister companies will guarantee performance of the contract but will not participate in it. Appellant argues that its definition of the *de facto* joint venture under the Act comes from the RFP's Prequalification Questionnaire, which clearly defines the arrangement. (*Id.* at 6.) Appellant concludes that because neither of its sister companies are subcontractors for the instant procurement, the *de facto* joint venture under the Act does not lead to a finding of a joint venture based on SBA regulations. (*Id.* at 6-7.)

D. The Department of State's Response

On March 28, 2017, DoS filed its response to the appeal. DoS maintains that the Area Office erred in its analysis of the solicitation's requirement of a *de facto* joint venture.

DoS contends that the Act defines a “qualified United States joint venture person” as “a joint venture in which a United States person or persons owns at least 51 percent of the assets of the joint venture.” (DoS Response, at 1; citing 28 U.S.C. § 4852(c)(3).) DoS adds that it has used *de facto* joint ventures for prequalification purposes since the Act's 1986 enactment. Thus, the Area Office erred in relying on an inapplicable definition of joint venture in finding Appellant is not a small business concern for the instant procurement. Under the Act, DoS

reasons, "the *only* obligation of a non-performing *de facto* joint venturer is to provide a written guarantee of performance to ensure that the project is successfully completed should the performing *de facto* joint venturer fail." (*Id.* at 2; citing FAR 652.236-72.) (emphasis original) Longstanding DoS practice is to treat *de facto* joint ventures as a category distinct from formal joint ventures. What differentiates a *de facto* joint venture is that the venturers do not share in performance of the work, nor do they share in day-to-day resources. Instead, the *de facto* joint venture allows a concern who might not meet the requirements of a "U.S. person" under the Act to have access to prequalification by relying on the financial and technical resources of the non-performing *de facto* joint venture. (*Id.* at 2-3.)

The non-performing *de facto* joint venturer is not an offeror and does not receive a contract, and instead serves as a guarantor, liable for contract performance. DoS asserts its establishment of "*de facto* joint ventures" as a term of art in its implementation of the Act, and is entitled to deference under *Chevron, U.S.A. v. Natural Resources Def. Council, Inc.*, 467 U.S. 837, 843 (1984). (*Id.* at 3.) DoS further argues that applying the SBA's joint venture rules to the *de facto* joint venture created by the Act, whose primary jurisdiction is with DoS, would impose "barriers on [DoS]'s ability to attract robust, viable competition for diplomatic construction projects." (*Id.*)

E. CCE's Response

On March 28, 2017, CCE responded to the appeal. CCE requests that OHA deny the appeal because the record establishes that Appellant is in a joint venture with OES and OSC.

CCE argues Appellant seeks to avoid the affiliation consequences of the fact it has admittedly entered into a *de facto* joint venture with its sister companies. CCE argues there is no basis for Appellant's argument that this is a term of art for Act procurements, and that its relationship with its sister companies is not a joint venture under SBA regulations. (CCE Response, at 1.) Appellant had to enter into a joint venture to obtain evaluation credit for the experience of its sister companies. It represented to DoS that its sister companies would provide resources to the joint venture, and DoS relied on these representations to allow Appellant to compete for and win the contract. (*Id.* at 2.)

CCE contends that a *de facto* joint venture, as defined in the prequalification questionnaire, meets the applicable definition of a joint venture found in SBA regulations. CCE explains that the prequalification questionnaire allows an offeror to use the resources and experience of another concern but only if it does so via a joint venture. (*Id.* at 2-3.) Any argument attempting to distinguish a *de facto* joint venture from a joint venture under SBA regulations is meritless, as the prequalification questionnaire was not developed for small business set asides. Therefore, DoS's definition of *de facto* joint venture cannot be assumed to be in compliance with SBA's rules for joint ventures. (*Id.* at 3, fn. 1.)

Appellant clearly stated that it is in a joint venture with OES and OSC in its prequalification questionnaire, in which they add that their *de facto* arrangement was conceived for the purpose of performing the instant solicitation. (*Id.* at 4.) Given that it was OES' past experience which allowed Appellant to qualify for the prequalification's definition of a 'U.S.

person', that OD would provide the financial guarantee, that ODS will supplement its personnel by using employees provided by its sister companies, that OES and OSC will provide financial and technical resources, and that OES, OSC, and OD will provide the necessary support to perform the contract, CCE maintains that the record shows Appellant is in a joint venture with OD, OES and OSC. (*Id.* at 4-5.)

F. SBA's Response

On April 12, 2017, SBA responded to the appeal and DoS's response. SBA requests that OHA deny the appeal, as the Area Office did not commit any errors of law or fact.

SBA states that Appellant, on its own, would not have been considered for the solicitation's Phase II. Thus, by forming a *de facto* joint venture with its sister companies, and relying on their performance history, Appellant was allowed to proceed to Phase II. (SBA Response, at 2.) SBA notes that Appellant's proposal states it would add employees from its sister companies in order to perform the contract, while also listing all six key management personnel as existing OSC employees who will transfer to Appellant once the award is made. (*Id.* at 3.) Appellant also relied on OD and its sister companies for technical and financial resources, including OD's bonding capacity. Therefore, SBA argues, Appellant's proposal shows that Appellant and its sister companies are engaged in a joint venture.

Contemplating DoS's argument that the *de facto* joint venture clause found in the Act simply requires the non-performing *de facto* joint venturer to guarantee performance, SBA argues that the clause relied on by DoS does not simply require this guarantee of performance. According to SBA, the Act's definition of joint venture does not make a distinction between joint ventures as *de facto* or formal, it states that both are associated with each other in order to carry out the prospective solicitation. (*Id.* at 5.) Further, SBA adds that DoS's practice "may be to simply require a guarantee by *de facto* joint venture partners and not expect the partners to actively participate in the contract, but that does not contradict the definition of joint venture set forth in the Regulation." (*Id.*)

SBA further disputes DoS's reliance on *Caddell Constr. Co., Inc.*, B-298949.2, Jun. 15, 2007, 2007 CPD ¶ 119 to support its contention that a *de facto* joint venturer's only obligation is to guarantee performance. Whether the joint venturer is treated as an offeror or guarantor is irrelevant, as the definition of a joint venture in DoS's regulations is still controlling. (*Id.* at 6.) In addition, the promise of guaranteeing performance is a substantial promise made by OES and OSC, which in turn "creates an obligation resulting in affiliation based on contractual relationships." (*Id.*)

Lastly, SBA argues that even if OHA fails to find Appellant and its sister companies as joint venture partners, OHA should still affirm the size determination because in Appellant's proposal, it certified that its sister companies will participate meaningfully in contract performance, while also sharing technical, financial, and personnel resources. (*Id.* at 6-7.)

III. Discussion

A. Standard of Review

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

B. Analysis

This procurement is conducted under the Diplomatic Security Act. Section 402 of the Act requires, with certain exceptions, that only “United States persons” and “qualified United States joint venture persons” may bid on diplomatic construction or design projects which exceed \$5 million or which involve physical or technical security. 22 U.S.C. § 4852(a). A “United States person” is defined at length, but essentially it is a business concern organized in the United States. 22 U.S.C. § 4852(c)(2). A “qualified United States joint venture person” is a joint venture in which a United States person or persons owns at least 51% of the joint venture's assets. 22 U.S.C. § 4852(c)(3). DoS's prequalification statement, included in the RFP and quoted above, defines a *de facto* joint venture as an arrangement between two firms “where no formal agreement has been reached, but the offering entity relies upon the experience of a related U.S. person firm that guarantees performance.” DoS has explained that its longstanding practice is that *de facto* joint ventures under the Act are not entities where both firms share in the performance of work, but merely an arrangement where one firm guarantees the performance of another. This nonperforming venturer is not an offeror and does not receive a contract.

Under SBA's regulations, the parties to a joint venture are affiliated for the performance of the contract for which they have submitted an offer, absent certain exceptions. 13 C.F.R. § 121.103(h)(2).³ SBA's regulations define a joint venture as: “an association of individuals and/or concerns with interest in any degree or proportion consorting to engage in and carry out no more than three specific or limited-purpose business ventures for joint profit over a two year period for which purpose they combine their efforts, property, money, skill, or knowledge, but not a continuing permanent basis for conducting business generally.” 13 C.F.R. § 121.103(h). However this definition is not consistent with DoS practice under the Diplomatic Security Act, nor with Appellant's proposal. After reviewing the record, I conclude that a *de facto* joint venture, under the Act, is merely an arrangement where one firm guarantees another's performance. The same words have different meanings in the context of their use in different statutes and regulations. Therefore, Appellant is not a party to a joint venture under SBA's

³ The regulation was amended twice in 2016 (81 Fed. Reg. 34243 (May 31, 2016) and 81 Fed. Reg. 48558 (July 25, 2016)) but because these amendments became effective after DoS's issuance of the solicitation, they are not applicable here. *Size Appeal of GASL, Inc.*, SBA No. SIZ-4191 (1996).

regulations, because Appellant, OES and OSC are not an association of concerns that have combined to perform business ventures while combining their efforts, property, money, skill or knowledge to perform this contract. Appellant and OES and OSC are sister companies under OD, an ANC. Further, OES and OSC are not parties to Appellant's proposal, and the proposal does not designate them as performing any portion of the contract. Appellant's proposal states that it is not a joint venture, and further, lists no subcontracts or subcontractors. The Area Office relied upon the term "joint venture" in Appellant's proposal, without appreciating its use in the context of seeking a procurement under the Act, as opposed to the use of the term in SBA's regulations, and where the same term had a different meaning than under SBA's regulations. Consequently, the Area Office erred as a matter of law in finding Appellant was in a joint venture with, and thus affiliated with, OES and OSC, for the purposes of Appellant's determining size.

The Area Office also found Appellant affiliated with OES and OSC under the ostensible subcontractor rule, 13 C.F.R. § 121.103(h)(4). The Area Office made this finding based upon Appellant's reliance upon OES and OSC for past performance, for personnel to perform the contract, and on OD for bonding. However, OES, OSC and OD are not subcontractors for this procurement. Further, Appellant is a business concern owned and controlled by an ANC, and is not considered affiliated with other concerns owned by that ANC because of common ownership, common management, or performance of common administrative services. 13 C.F.R. § 121.103(b)(2)(ii).

OHA considered a similar case in *Size Appeal of Roundhouse PBN, LLC*, SBA No. SIZ-5383 (2012) (*Roundhouse*). In that case an appellant which was a subsidiary of an ANC was found affiliated with its sister companies because it was unduly reliant upon them for bonding, past performance and experience. That appellant referred to the sister companies as its "toolbox," implying that these subsidiaries were at that appellant's disposal for contract performance. (*Roundhouse*, at 6.) OHA found that the ostensible subcontractor rule did not apply because none of the alleged affiliates were subcontractors to the challenged concern. (*Id.* at 15-16.) The record in *Roundhouse* included no subcontracts at all and the proposal did not identify any portion of the contract that would be performed by the alleged affiliates. In addition, there was no finding that the challenged concern would rely upon the alleged affiliates for contract performance. (*Id.*) OHA concluded the challenged concern's reliance upon its parent company by shifting personnel among its various subsidiaries was an aspect of the concerns' common ownership and common management, and thus exempt from a finding of affiliation. (*Id.* at 17.) Therefore, the appellant in *Roundhouse* was found not to be affiliated with its sister companies under the ostensible subcontractor rule.

I find that *Roundhouse* is on all fours with the instant case. First, the firms with which the Area Office found Appellant affiliated are not its subcontractors. Indeed, there is no record of any subcontracting in Appellant's proposal. OHA has consistently held that in order for the ostensible subcontractor rule to apply, the alleged affiliate must actually be a subcontractor of the challenged concern. *Size Appeal of Active Deployment Systems, Inc.*, SBA No. SIZ-5230 (2011); *Size Appeal of Alutiiq Intl. Solutions, LLC*, SBA No. SIZ-5098 (2009); and *Size Appeal of Tiger Enterprises, Inc.*, SBA No. SIZ-4547 (2004). If there is no contractor/subcontractor relationship between the challenged concern and its alleged affiliate, the alleged affiliate cannot

be found to be an ostensible subcontractor. (*Id.*) Therefore, the Area Office erred in finding the rule applicable here.

Further, as in *Roundhouse*, Appellant here is relying upon its sister companies for past performance, and intends to rely upon transfer employees from its sister companies to perform the contract. The Area Office stated that Appellant's reliance on their sister companies' personnel for contract management were indicative of determining that a joint venture existed between Appellant and its sister companies. The problem with this reasoning is that, under *Roundhouse*, an ANC transfers personnel among its sister companies as part of the common management of its concerns, and an ANC's exercise of common management is a clear exception to a finding of affiliation. It thus would be illogical to find an ANC affiliated with its sister companies under the ostensible subcontractor rule based on common management, when that is a stated exception to affiliation under 13 C.F.R. § 121.103(b)(2). In addition, relying on its parent company for financial assistance in justifying a finding of affiliation based on a joint venture or ostensible subcontractor is equally illogical. ANC's are excepted from affiliation based on common ownership, thus it would be reasonable for a subsidiary to rely on its parent company's financial resources, and for bonding, as in *Roundhouse*, which would fall under the common ownership exception of § 121.103(b)(2). Hence, following *Roundhouse*, I find the actions the Area Office relied upon in finding Appellant affiliated with OES and OSC under the ostensible subcontractor rule are incidents of OD's common ownership and common management of the concerns, and thus cannot be the basis for a finding of affiliation between Appellant and its sister companies.

I therefore find that the Area Office's size determination was based upon clear error, and thus I must reverse it.

IV. Conclusion

For the above reasons, the appeal is GRANTED, and subject size determination is REVERSED. Appellant is an eligible small business for the subject procurement.

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

CHRISTOPHER HOLLEMAN
Administrative Judge