

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

SIZE APPEAL OF:

Acacia7 JV,

Appellant,

Re: Multimedia Environmental  
Compliance Group JV

Appealed from  
Size Determination No. 06-2024-021  
(RMD)

SBA No. SIZ-6354

Decided: May 12, 2025

APPEARANCES

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DECISION

I. Introduction and Jurisdiction

On September 5, 2024, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area VI (Area Office) issued Size Determination No. 06-2024-021, concluding that Multimedia Environmental Compliance Group JV (MECG) is a small business for Department of the Navy Solicitation No. N62473-21-R-8929. On appeal, Acacia7 JV (Appellant), having previously protested MECG's size status and eligibility, contended that the size determination is clearly erroneous, and requested that SBA's Office of Hearings and Appeals (OHA) reverse or remand it. On January 22, 2025, OHA granted the appeal and reversed the size determination. *Size Appeal of Acacia7 JV* SBA No. SIZ-6331 (2025) (*Acacia7*). On February 19, 2025, MECG appealed the size determination to the Court of Federal Claims (COFC). On March 5, 2025, the Government filed a “Consent Motion for Voluntary Remand.” On March 7, 2025, COFC remanded this matter to OHA. For the reasons discussed *infra*, on Remand, the decision in *Acacia7* is VACATED, the appeal is GRANTED, and the Size Determination is REVERSED.

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 15 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 for decision.

## II. Background

I herewith incorporate by reference the Background discussion at Part II of *Acacia7*. I will recapitulate it here.

On June 21, 2022, the Department of the Navy/NAVFAC issued Solicitation No. N62473-21-R-8929 as an Indefinite Delivery/Indefinite Quantity contract for architect and engineering services. 5g25g2The Contracting Officer (CO) set the procurement 100% aside for small business and designated North American Industry Classification System (NAICS) code 541330, Engineering Services, with a corresponding \$22.5 million annual receipts size standard, as the appropriate code. Proposals were due on September 15, 2022. MECG submitted its proposal on September 13, 2022. On July 19, 2024, the Navy informed MECG it had been selected for award. On July 26, 2024, Appellant filed its size protest.

### A. The Size Determination

MECG is a joint venture established September 1, 2020, between Nicklaus Engineering, Inc. (NEI) and Wood Environment and Infrastructure Solutions, Inc. (WEIS). (WEIS was the concern's name as of the date for determining size.) In October 2022 this name was changed to WSP USA Environmental and Infrastructure Solutions, Inc. NEI owns **[MAJORITY PERCENTAGE]** of the joint venture, and WEIS owns **[MINORITY PERCENTAGE]**. Stacy Gutierrez is **[REDACTED PERCENTAGE]** owner, President and **[REDACTED NUMBER]** Director of NEI. Ms. Gutierrez is also Manager of MECG. This procurement would represent MECG's first contract award, thus it is in compliance with the two-year contract requirement. MECG as a stand-alone entity is within the size standard. WEIS is an other than small concern. (Size Determination, at 1-2, 5-7.)

On August 15, 2017, SBA approved a Mentor-Protégé Agreement (MPA) between NEI and AMEC Foster Wheeler (a previous name of WEIS) for the All-Small Mentor-Protégé Program. On September 29, 2022, the MPA was modified to account for another change in the Mentor's name, this time from Wood Environment and Infrastructure Solutions, Inc. to WSP USA Environmental and Infrastructure Solutions, Inc. SBA formally approved this additional change to the MPA on October 13, 2022. As of the date to determine size, August 2, 2022, the MPA was still under WEIS. The MPA has an initial term of three years, subsequently extended. As of the date MECG was established, the members had a valid MPA in place. (*Id.*, at 7-8.)

NEI has a number of other joint ventures, which were discussed in *Acacia7*. The Area Office found that none of the JV entities had exceeded the 2-year limitation requirement of 13 C.F.R. § 121.103(h). Further, of NEI's 17 active joint ventures, only six have received contract awards and reported economic activity. The Area Office included NEI's proportion of receipts

for the six active joint ventures in calculating NEI's receipts. The Area Office concluded that NEI's annual receipts were within the size standard.

The Area Office then considered whether MECG's joint venture agreement (JVA) met the requirements of the regulation at 13 C.F.R. § 125.8(b) & (c) and concluded that it did. The Area Office further found that the JVA complies with the requirements of 13 C.F.R. § 125.8(c) that MECG will perform over 70% of the work, the work to be performed by NEI will be more than merely administrative and it will perform over 40% of the work. (*Id.*, at 18-19.)

The Area Office thus concluded that MECG was an eligible small business.

### B. The Appeal

On September 19, 2024, Appellant filed the instant appeal. Appellant alleges that MECG is other than small because NEI is other than small. Appellant made allegations regarding MECG's JVs and alleged affiliates.

### C. MECG's Response

On October 7, 2024, MECG Responded to the appeal. MECG asserts it is an unpopulated joint venture between NEI and its mentor WEIS. NEI was admitted to the 8(a) program on October 4, 2015. SBA approved the mentor/protégé agreement on August 15, 2017, for a six-year term, and it expired on August 15, 2023, after the submission of proposals for this Solicitation.

MECG points to NEI's Form 355, and Ms. Gutierrez's declaration to show that as of the date to determine size, Ms. Gutierrez was NEI's **[REDACTED]** owner, officer, and director. MECG submitted with its Response a Declaration by Ms. Gutierrez. Ms. Gutierrez's declaration states she is **[REDACTED PERCENTAGE]** owner, President and **[REDACTED]** director of NEI. NEI is **[MAJORITY PERCENTAGE]** owner and managing member of MECG. MECG submitted its offer on September 13, 2022. In its protest response, NEI detailed the joint ventures of which it was a member for the period 2017-2021. NEI did not disclose joint ventures it formed after September 13, 2022, because these were not relevant to the size determination. These were the entities discussed above.

### D. Appellant's Supplemental Pleading

On October 4, 2024, Appellant filed a Supplemental Pleading. Appellant argues that MECG's JVA does not meet the regulatory requirements.

First, the JVA does not comply with 13 C.F.R. § 125.8(b)(2)(ii) designating the small business as the managing venturer responsible for controlling day-to-day management and administration. Appellant argues MECG is a general partnership, and WEIS, as a general partner, has day-to-day control over management and administration. (Appellant's Supplemental Pleading at 5.)

Appellant argues MECG's JVA is governed by California law (JVA § 21), and that under California law it is a general partnership. The Area Office never considered WEIS's status as a general partner.

Appellant argues WEIS's status as a member of the Executive Committee gives it negative control over MECG. The Area Office failed to consider whether WEIS as a member of the Executive Committee has negative control over MECG. (*Id.* at 9.)

Appellant further contends the JVA does not obligate both parties to complete performance of a contract set aside for small business despite withdrawal of any member as required by 13 C.F.R. § 125.8(b)(2)(viii). (Appellant's Supplemental pleading at 10, JVA § 14.b.) Appellant's Supplemental Pleading then recapitulated the contentions made in its Appeal Petition. (*Id.*, at 11-16.)

#### E. MECG's Response to Appellant's Supplemental Pleading

On October 15, 2024, MECG responded to Appellant's Supplemental Pleading. MECG maintains its JVA complies with the regulation. The regulation provides that a joint venture may in the form of be a formal or informal partnership or a separate legal entity. (MECG Response to Appellant's Supplemental at 3, citing 13 C.F.R. § 121.103(h)(1).) SBA has said joint ventures may be in the form of a new legal entity or “may be informal arrangements so long as the agreement between the business concerns explains that it is a joint venture and meets the regulation's definition of joint venture.” (*Id.* at 3, citing 69 Fed. Reg. 29,192, 29,195 (May 21, 2004).) MECG's status as an informal partnership is confirmed by the JVA, which provides nothing in the JVA is intended to create or confirm a general partnership. The Whereas clauses expressly state this JV is formed to pursue the instant Solicitation. (*Id.* at 4, JVA, § 29.)

MECG looks to California law to say a joint venture has no corporate or partnership designation but is an undertaking by two or more persons to jointly carry out a single business enterprise for profit, and members of a joint venture may delegate control. (*Id.* at 4, citing *Nelson v. Abraham*, 29 Cal.2d, 931, 933 (1947); *Cochrum v. Costa Victoria Healthcare, LLC*, 25 Cal. App. 5<sup>th</sup> 1034, 1053 (2018). A joint venture can have unequal control of operations. (*Stilwell v. Trutanich*, 178 Cal. Spp. 2d 614, 619 (1960).) MECG maintains it is a joint venture and an informal partnership, and the JVA determines control of the concern.

MECG asserts NEI is the Managing Venturer and has ultimate responsibility for contract performance. The JVA designates NEI as Managing Party and Ms. Gutierrez as Responsible Manager with ultimate responsibility for contract performance. She will administer ordinary day-to-day business of MECG. (*Id.*, at 5, JVA §§ 5a, 5d.) NEI, as Managing Party is responsible for conducting MECG's business affairs, and so is in compliance with the regulation. (*Id.*, *VSBC Protest of Systematic Innovations, LLC*, SBA No. VSBC-367-P (2024).)

MECG disputes Appellant's contention WEIS has negative control over it through the Executive Committee. While NEI and MS, Gutierrez manage the concern, partner venturers may participate in corporate governance activities and decisions as is commercially customary. Partner venturers may participate in decisions and corporate governance activities as is

commercially customary and that do not interfere with day-to-day management and contract performance. (*Id.* at 6, citing 13 C.F.R. § 125.8(b)(2)(ii)(A); *Strategic Alliance Solutions, LLC*, SBA No. VET-278 (2023).) The Executive Committee is not concerned with day-to-day management and contract performance, and thus does not give WEIS impermissible negative control. (JVA, §§ 4(e)(i), 5., *Strategic Alliance Solutions, LLC*, SBA No. VET-277 (2022).)

MECG points out the JVA does say that “each Party will use reasonable efforts to provide time and resources to ensure the performance of the Contract and each Task Order.” (*Id.*, at 8 citing JVA § 3(a).) The JVA provides that if either party defaults in performance of a contract or task order, the non-defaulting party will complete performance. A default would essentially be a withdrawal, and thus the JVA does comply with the regulation. (*Id.*, citing JVA, § 15(g).)

#### F. Appellant's Reply to Supplemental Pleading

On October 18, 2024, Appellant moved to reopen the record, to file an additional supplemental pleading, together with that pleading. On October 28, 2024, MECG filed an Opposition to the Motion and a Surreply. I concluded Appellant merely restated arguments already presented. Accordingly, I DENIED its Motion to Reply to MECG's Response to Appellant's Supplemental Pleading.

#### G. The MECG Joint Venture Agreement

The MECG Joint Venture Agreement sets forth as the purpose of the joint venture submitting a proposal for the NAVFAC procurement. (JVA, § 2.) NEI will have a **[MAJORITY PERCENTAGE]** interest in MECG, and WEIS shall have **[MINORITY PERCENTAGE]**. (JVA, § 3(d).) Each RFP and proposal will be reviewed by the Responsible Manager, an NEI employee, and the Program Manager, a WEIS employee. (JVA, § 3(a).) NEI's President, Stacy Guterrez, will serve as the Responsible Manager. (JVA, § 5(a).) Each of the parties will use “reasonable efforts” to place at MECG's disposal as requested by “the Responsible Manager and the Program Manager” the benefit of all its experience, technical knowledge and skill. (JVA § 3(d).)

To handle “certain designated matters” an Executive Committee is formed with one member from each venturer. The members shall be NEI's **[REDACTED TITLE]** and WEIS's **[REDACTED TITLE]**. The alternate members, to serve when the members are absent or unable to serve, will be **[REDACTED TITLE]** for NEI and WEIS's **[REDACTED TITLE]**. (JVA, § 4(a).) The Committee will meet quarterly or on ten days' notice as requested by any member. (JVA § 4(b).) Each member shall have one vote. The Committee's decisions are to be unanimous. (JVA, § 4(c).) Every decision of the Committee on matters within its mandate shall be binding on the parties. (JVA, § 4(d).)

The Executive Committee shall have power and authority:

- (i) To make decisions on general policy matters related to the Joint Venture which are not specifically delegated to the Managing Party or the Responsible Manager or the Program Manager, as defined in Subsection 6, hereof;
- (ii) To approve any extraordinary extension to the Scope of Services;
- (iii) To receive and review reports on the progress of the Services. The Responsible Manager and/or Program Manager shall meet with the Executive Committee when requested by said Committee;
- (iv) To determine the amount of any reserves required for any warranty period or with respect to any unsettled claims, demands or other contingencies of the Joint Venture which relate to the Services;
- (v) To approve all expenditures of the Joint Venture not billable to NAVFAC;
- (vi) To provide other services as set forth elsewhere in this Agreement;
- (vii) To submit a claim to arbitration, confess any judgment against the Joint Venture, or settle any lawsuit or claim;
- (viii) To issue any public release or advertisement regarding this Agreement or the Contract such approved public release or advertisement shall mention both Parties; and
- (ix) To dissolve the Joint Venture

(JVA, § 4(e).)

NEI is designated Managing Party and Ms. Gutierrez as Responsible Manager with ultimate responsibility for contract performance and will supervise the Task Order Managers who will report to her. She will administer the ordinary day-to-day business of the Joint Venture. (JVA, § 5(a).) A WEIS employee will be Program Manager. (JVA, § 3(a).)

The Responsible Manager and Program Manager will jointly lead contract negotiations. (JVA, § 5(b).) The Managing Party will not consent to any extraordinary extension of the scope of services or extraordinary material change in the services to be performed under the contract without the approval of the Executive Committee. The Managing Party is responsible for conducting the Joint Venture's business affairs. (JVA, § 5(d).)

Management of the Project will be performed by the Responsible Manager and the Program Manager. The Responsible Manager and the Program Manager shall be delegated responsibility for practical execution of their portion of the services to be performed under the contract and shall have such specific powers as the Executive Committee may, from time-to-time delegate. (JVA, § 6(a).) Each party to the joint venture shall make available to the Responsible

Manager and Program Manager such of its supervisory managerial and other labor as is required to perform the contract. (JVA, § 6(b).)

The JVA states that if either Party defaults of its obligations under the contract, the Continuing Party may if it elects complete performance of the contract. (JVA, § 15(b).) The JVA also states that if either Party defaults of its obligations under the contract, the Continuing Party will complete performance of the Contract, upon approval of NAVFAC and the SBA. (JVA § 15(g).)

Any dispute between the parties, is to be resolved by the Executive Committee or good faith negotiations between the Executive Officers of each party. If this does not resolve the matter, the dispute is to be submitted to arbitration by a professional arbitrator. (JVA, § 17.)

#### H. *Acacia*<sup>7</sup>

On January 22, 2025, OHA issued *Acacia*<sup>7</sup>. First, OHA ruled that a number of the NEI joint ventures Appellant identified were not in existence as of September 13, 2022, the date for determining size, (the date of MECG's initial offer, including price) and therefore could not be considered in determining MECG's size. 13 C.F.R. § 121.404(a); *Size Appeal of Global Dynamics, LLC*, SBA No. SIZ-6012, at 17-18 (2019). Further, NEI is not affiliated with these joint ventures, because a concern is not an affiliate of a joint venture of which it is a member. *Size Appeal of Zin Technologies, Inc.*, SBA No. SIZ-6305 (2024) “It is well established that business concerns are not affiliates of joint ventures of which they are members for size purposes.” 87 Fed. Reg. 380, 381 (Jan. 5, 2022). Further, Appellant's allegations of NEI's affiliation with [REDACTED] are unsupported by the record. OHA found that the Area Office's calculation of NEI's size was correct.

OHA further found that Appellant's reliance upon California partnership law was misplaced, and that the issue here was whether MECG's JVA met the regulatory requirements. The Area Office had reviewed the JVA as to its compliance with each section of the regulation and found that it was in compliance with each one. OHA, however, identified two sections of the regulation with which it was not in compliance.

First, OHA found MECG's JVA was not in compliance with 13 C.F.R. § 125.8(b)(2)(ii). This regulation requires that the JVA designate the small business as the managing venturer, designate a named employee of that small business as the Responsible Manager, with ultimate responsibility for performance of the contract. OHA found the JVA gave MECG's Executive Committee control over the concern, and WEIS had negative control over the Executive Committee. OHA has held that when the minority partner has negative control of a joint venture's management committee, the joint venture does not meet the regulatory requirements. *Size Appeal of LS3, LLC*, SBA No. SIZ-6239, at 5 (2023); *Size Appeal of Syscom, Inc.*, SBA No. SIZ-6195, at 14 (2023). Accordingly, OHA found MECG did not meet the requirements of the regulation at 13 C.F.R. § 125.8(b)(2)(ii), and therefore the Area Office erred in finding it compliant.

Further, OHA found MECG's JVA does not comply with 13 C.F.R. § 125.8(b)(2)(viii) which requires the JVA to have a provision obligating all parties to ensure performance of the contract and to complete performance despite withdrawal of a member. In the event of a default by one party to the joint venture, MECG's JVA gives a nondefaulting party the right to elect to complete the contract, not an obligation. This does not comply with regulation, which requires that the parties be obligated to complete the contract.

OHA therefore found the Area Office erred in finding that MECG's joint venture agreement complied with the regulation, and therefore MECG is not eligible to use the exception to a finding of affiliation at 13 C.F.R. § 121.103(h)(2)(ii). Accordingly, MECG is not an eligible small business for this procurement.

### I. MECG's Complaint

On February 19, 2025, MECG filed a Complaint at COFC. MECG argues that *Acacia7* is arbitrary, capricious and contrary to law. First, MECG argues OHA incorrectly applied 13 C.F.R. § 125.8(b)(2)(ii). *Acacia7* found that the JVA gave negative control over MECG to WEIS. MECG asserts OHA should have reviewed the JVA to confirm that NEI controls the day-to-day management and administration of contract performance. MECG asserts the JVA designates NEI as the managing party and Ms. Guterrez Responsible Manager with ultimate responsibility for contract performance, supervising Task Order Managers and administering MECG's day-to-day business. The Executive Committee's role is limited to corporate governance activities as is commercially customary and extraordinary circumstances, as permissible under the regulation. (MECG Complaint, at 10-11.)

MECG argues OHA should have performed a holistic assessment of the JVA and given effect to all of its terms. OHA erred in finding MECG's Executive Committee had considerable control over the concern and ignored that the Executive Committee only has power and authority to make decisions on general policy matters “which are not specifically delegated to the Managing Party or the Responsible Manager or the Program Manager . . .” (*Id.*, at 12, citing JVA § 4(e)(i).) The Executive Committee only meets quarterly. (*Id.*, citing JVA, § 4(b).)

While *Acacia7* refers to the “position unknown to the regulation of Program Manager” held by a WEIS employee it ignored that Ms. Gutierrez as Responsible Manager would administer MECG and have ultimate responsibility for contract performance. (*Id.*, at 13, citing JVA § 5(a).) MECG notes the regulations recognize that joint venture managers need not be employees of the protégé if those managers report to and are supervised by the responsible manager. (*Id.*, at 13, citing 13 C.F.R. § 125.8(b)(2)(ii)(C).) MECG maintains the JVA is clear that as NEI and Ms. Gutierrez have ultimate responsibility for contract performance supervision of Task Order Managers and administer MECG's day-to-day business they will supervise and manage the Program Manager and thus WEIS has no impermissible control through its Program Manager position. (*Id.*)

MECG assigns error to *Acacia7*'s finding that the JVA is silent as to which manager has final authority, because JVA § 5(a) gives that authority to NEI and Ms. Gutierrez. Contrary to OHA's finding there was no mechanism for resolving disputes, JVA § 17 provides one. (*Id.*)



OHA also erred in finding that the JVA did not obligate a non-defaulting party to complete a contract as JVA §§ 15(b)(ii); 15(g) do so. (*Id.*, at 13-14.) MECG argues OHA further erred in relying upon *Size Appeal of LS3, LLC*, SBA No. SIZ-6239 (2023) and *Size Appeal of SysCom, Inc.*, SBA No. SIZ-6195 (2023) because in those cases the agreements did explicitly give negative control to the minority venturer. (*Id.*, at 14-15.)

MECG further argues OHA failed to consider the underlying intent of the regulation and did not consider the JVA as a whole. OHA did not find NEI would not perform meaningful portions of the contract or that it was a “front” for WEIS. The absence of such findings rendered OHA's decision arbitrary because it means OHA decided the JVA met the regulatory requirements without finding the provisions at issue prevented the satisfaction of the regulatory intent. (*Id.*, at 17.)

On March 7, 2025, COFC issued a remand order in *Multimedia Environmental Compliance Group JV v. United States v. Acacia7 JV*, COFC No. 25-290. This Order remanded OHA's decision in *Size Appeal of Acacia7 JV*, SBA No. SIZ-6331 (2025) to OHA. On March 11, 2025, I issued a Notice and Order directing the parties to file Supplemental Pleadings. On March 14, 2025, SBA moved to intervene in this proceeding, and I granted that motion on the same day.

#### J. MECG's Supplemental Pleading

On March 26, 2025, MECG filed a Supplemental Pleading. MECG argues the JVA meets the requirements of 13 C.F.R. § 125.8(b)(2)(ii). MECG maintains 13 C.F.R. § 125.8(b)(2)(ii)'s plain language states that a joint venture agreement must contain a provision “[d]esignating a small business as the managing venturer of the joint venture and designating a named employee of the small business managing venturer as the manager with ultimate responsible for performance of the contract.” The partners to the joint venture “may participate in all corporate governance activities and decisions of the joint venture as is commercially customary.” (MECG Supplemental Pleading, at 2-3, citing 13 C.F.R. § 125.8(b)(2)(ii)(A).) MECG argues the question is not whether WEIS has control of MECG through the Executive Committee, but whether such control impermissibly interferes with the day-to-day management of the contract. (*Id.*, at 3, citing *Matter of Strategic Alliance Solutions, LLC*, SBA No. VET-278 (2023).)

MECG argues that because the regulation provides that joint venture partners may participate in all corporate governance activities as is commercially customary, the issue here is whether NEI controls MECG's day-to-day management and contract performance. The JVA designates NEI as Managing Party and **[MAJORITY PERCENTAGE]** owner and Ms. Gutierrez, NEI President, as Responsible Manager with ultimate, that is, final responsibility for contract performance, supervision of Task Order Managers, and administering MECG's day-to-day business. (*Id.*, citing JVA § 5(a).)

Further, the Executive Committee's authority is limited to corporate governance activities as is commercially customary as well as extraordinary circumstances, which MECG argues is permissible under 13 C.F.R. § 125.8(b)(2)(ii). This authority is limited because under JVA § 4(b) the Committee only meets quarterly. MECG enumerated the Committee's powers. (*Id.*)

First, it has authority to ‘make decisions on general policy matters related to the Joint Venture which are not specifically delegated to the Managing Party or the Responsible Manager or the Program Manager, as defined in Subsection 6.’ (*Id.*, citing JVA § 4(e)(i).) The Committee only has authority over those matters not specifically delegated to NEI, the Responsible Manager, or the Program Manager, meaning it has no authority where the Responsible Manager has authority. The Responsible Manager has ultimate responsibility for contract performance, supervision of Task Order Managers, who report to her, and administration of MECG's day-to-day business, under JVA § 5(a). The Responsible Manager has authority to make final decisions in the management and administration of the contract. The Executive Committee is unable to make such decisions, because it has no authority over any matter delegated to the Responsible Manager. It is commercially customary, and therefore permissible under the regulation, for the joint venture's partner member to have some discretionary powers over the joint venture, so long as it does not interfere with those of the Responsible Manager. (*Id.*, at 3-4)

The Executive Committee may approve any extraordinary extension to the Scope of Services (JVA § 4(e)(ii)). The power to approve extraordinary actions is meant to protect minority investors and does not constitute negative control. (*Id.*, at 4, citing *Size Appeal of Carntribe-Clement 8AJV#1, LLC* SBA No. SIZ-5357 (2012).) SBA has noted that since all joint venture parties will be jointly and severally liable for the contracts awarded to the concern, all parties should have a say in the opportunities the concern pursues. (*Id.*, citing 88 Fed. Reg. 26,164, 26,167 (Apr. 27, 2023).) It is commercially customary for WEIS to have this right and it does not interfere with the Responsible Manager's day-to-day control.

The Executive Committee has the authority to receive and review reports on the progress of the contracts, and the Responsible Manager and Program Manager will meet with the Committee when requested. (JVA § 4(e)(iii).) This is merely the authority to receive reports and call meetings and does not interfere with the Responsible Manager's day-to-day control. (*Id.*, at 4.)

The Executive Committee has the authority to “determine the amount of any reserves required for any warranty period or with respect to any unsettled claims, demands or other contingencies of the Joint Venture which relate to the Services.” (JVA § 4(e)(iv)). This power is meant to protect WEIS's investment and is outside of day-to-day management and administration of contract performance. (*Id.*, at 5, citing *Strategic Alliance Solutions* and *Carntribe Clement, supra.*)

The Executive Committee has authority to approve all expenditures of the JV not billable to the procuring agency. (*Id.*, citing JVA 4(e)(5).) This refers to expenditures unrelated to the contract and contract administration. This is commercially necessary to protect WEIS's investment.

The Executive Committee has the authority to “provide other services as set forth elsewhere” in the JVA. This simply authorizes the Executive Committee to perform the tasks assigned within its listed powers, which is commercially customary. Because the Responsible Manager has ultimate responsibility for contract performance, “other services” cannot conflict with her responsibility. This power is thus permissible. (*Id.*, JVA §§ 4(e)(vi), 5(a).)

The Executive Committee has the authority to “submit a claim to arbitration, confess any judgement against MECG or settle any lawsuit or claim.” (JVA § 4(e)(ii).) This is an extraordinary circumstance and is thus not impermissible negative control. (*Id.*, citing 13 C.F.R. § 125.8(b)(2)(ii)(A), *strategic Alliance Solutions*, *supra*.)

The Executive Committee has the authority to issue press releases or advertisements, which shall mention both parties. (JVA § 4(e)(viii).) These are not part of contract performance, but corporate governance where both parties can participate.

The Executive Committee has the power to dissolve MECG, which is well-settled as an extraordinary circumstance. (*Id.*, citing *Carntripe-Clement*, JVA § 4(e)(ix).)

MECG argues the JVA is also complaint with 13 C.F.R. § 125.8(b)(2)(viii), which obliges all parties to ensure performance of a contract set aside for small business and to complete performance despite the withdrawal of a member. While JVA § 15(b) gives a nondefaulting party the right to elect to complete a contract, § 15(g) provides that the non defaulting party will complete performance of a contract or task order.

#### K. Acacia7's Supplemental Pleading

On March 26, 2025, Acacia7 filed a Supplemental Pleading. Acacia7 notes MECG's Executive Committee is established by the JVA, giving each party one vote and requiring that all decisions be unanimous, thus giving WEIS veto power. (Supplemental Pleading at 3, JVA § 4(c).) Acacia7 notes the JVA describes NEI as the “Managing Party” but provides no definition of the powers that role has. In contrast the Executive Committee is given explicit powers, including the power to make decisions on general policy matters which are not specially specifically delegated to the Managing Party, or the Responsible Manager or the Program Manager; to approve all expenditures not billable to the Government and perform “other services as set forth elsewhere” in the JV. (*Id.*, at 4, JVA § 4(e).)

Nowhere in the JVA are the Managing Party, or the Responsible Manager or the Program Manager actually delegated any power an authority to make decisions over any general policy matters. Acacia 7 argues that the only power actually defined in the JVA belongs to the Executive Committee. The JVA vests MECG's general management authority in the Executive Committee, not the small business venturer as required by the regulation. (*Id.*)

While the JVA § 5(a) designates NEI as the Managing Party and NEI's President, Ms. Gutierrez, as the Responsible Manager, with ultimate responsibility over contract performance, it fails to vest her with the exclusive control over contract performance required by the regulation. Later provisions of the JVA dilute her authority. (*Id.*, at 5-6.)

The JVA states:

- each of the parties will use “reasonable efforts” to place at MCEG's disposal as requested by “the Responsible Manager and the Program Manager” the benefit of its all experience, technical knowledge and skill. (*Id.*, at 6, JVA, § 3(d).)
- “The Responsible Manager and the Program Manager” shall meet with the Executive Committee when the Committee requests. (*Id.*, JVA, § 4(e).)
- “The Responsible Manager and the Program Manager” shall jointly lead negotiations for the Contract and all subsequent Task Orders. (§ *Id.*, JVA, § 5(b).)
- “The Responsible Manager and the Program Manager” will manage the Project. (*Id.*, JVA, § 6(a).)

These provisions are not isolated. Taken together, they establish joint operational control between Ms. Gutierrez and WEIS's Program Manager, directly undermining any claim that NEI and its Responsible Manager have exclusive control over the day-to-day management and administration of the contract. (*Id.*, at 7.)

Further, the Responsible Manager and the Program Manager “have such specific powers as the Executive Committee may from time-to-time delegate.” (JVA, § 6(a).) Thus, even the Responsible Manager's shared powers are subject to the approval of the Executive Committee, where WEIS has an equal vote and veto. (*Id.*)

Acacia7 argues the JVA never grants the Responsible Manager any specific unilateral power or responsibility aside from general language in § 5(a), which is directly contradicted by § 6(a). The JVA must be read as a whole. The provision stating the Responsible Manager has “ultimate responsibility” for contract performance must be viewed with all the JVA provisions making the Responsible Manager and Program Manager equals. This includes JVA § 6(a), which states “[m]anagement of the Project shall be performed by the Responsible Manager and the Program Manager.” Any authority of the Responsible Manager is shared with the Program Manager, a WEIS employee, and is subordinate to the Executive Committee where WEIS has negative control. (*Id.*)

This does not satisfy the regulatory requirement that the small business managing venturer control day-to-day management and administration of the joint venture's contract performance. Rather, the Responsible Manager and Program Manager jointly manage MCEG's contract performance. (*Id.* at 7-8.)

Acacia7 disputes MCEG's argument OHA applied the wrong legal standard in *Acacia7* by allegedly only evaluating whether the JVA gives considerable control to WEIS instead of determining whether WEIS's control impermissibly interferes with Ms. Gutierrez's day-to-day management of the contract. Acacia7 argues OHA correctly determined that WEIS has control over day-to-day management of the contract, the inquiry required by the regulation.

(*Id.* at 8.) The regulation requires the JVA have more than intent, it requires the JVA have specific enforceable provisions. (*Id.*, at 9, citing 13 C.F.R. § 125.9.)

The parties did not give NEI authority to manage and control the business but structured the JVA to vest authority in the Executive Committee, where WEIS has negative control. This is inconsistent with the requirements of the regulation. (*Id.*)

Acacia7 also disputes that OHA failed to review the JVA holistically. OHA cited the provisions that provided the Executive Committee may only make decisions on general policy not delegated to the Managing Party, Responsible Manager or Program Manager. But OHA also noted that the JVA does not specifically delegate decision-making power over any general policy matter to the Managing Party, Responsible Manager or Program Manager, meaning that by default these rest with the Executive Committee. Also, that the Executive Committee meets quarterly does not diminish its powers, especially since it may convene at other times if it chooses. (*Id.*, at 10-11, JVA § 4(b).) OHA also weighed the provisions giving the Responsible Manager authority against those empowering the Executive Committee and the Project Manager. OHA did conduct a holistic analysis.

Acacia7 also disputes MCEG's argument that JVA § 17 provides for the resolution of disputes between the Responsible Manager and the Program Manager. The section provides for the resolution of disputes between the joint venturers. Further, disputes are to be resolved by the Executive Committee, where WEIS has negative control, and supports OHA's finding the Executive Committee sits above the Responsible Manager. If the Committee does not resolve the dispute, it goes to arbitration. WEIS can thus force a management dispute into arbitration, which supports the finding the JVA does not comply with the regulation. (*Id.*, at 12.)

Acacia7 renews its argument that MCEG is a general partnership under California law, and that the JVA does not contain strong enough provisions empowering NEI to overcome the provisions of California law that general partners have equal management rights. (*Id.* at 12-14.)

Acacia7 further argues the JVA does not comply with 13 C.F.R. § 125.8(b)(2)(viii), which requires a provision of the JVA “[o]bligating all parties to the joint venture to ensure performance of a contract set aside or reserved for small business and to complete performance despite the withdrawal of any member.” The JVA is silent on what happens if a member withdraws. The only remotely related provision - § 15(b) — deals with default, and only grants the nondefaulting party the option, not the obligation, to complete performance. Acacia 7 argues OHA properly interpreted the language as permissive, not mandatory. Further § 15 is triggered upon default, not withdrawal, the event contemplated by the regulation. (*Id.*, at 14-16.)

Acacia 7 argues that JVA § 15(g), which provides that a non-defaulting party will complete performance of a contract or task order, concerns default, not withdrawal, and thus is not compliant with the regulation. (*Id.*, at 16-17.)

### L. SBA OGC's Comment

On March 26, 2025, SBA's Office of General Counsel filed comments on the appeal. SBA OGC concurs with the decision in *Acacia*<sup>7</sup> that the JVA fails to comply with 13 C.F.R. § 125.8(b)(2)(ii).

SBA notes the regulations require a manager from the small business concern of the joint venture have day-to-day control and ultimate responsibility over the joint venture. (SBA OGC Comment (Comment) at 4, citing 13 C.F.R. §§ 125.8(b)(2)(ii) and 125.8(b)(2)(ii)(A).) SBA's intent was to require the managing joint venture partner independently control all aspects of day-to-day management and administration of contract performance. (*Id.*, emphasis in original, citing 88 Fed. Reg. 26,164, 26,167 (Apr. 27, 2023).) When the minority partner has negative control of a joint venture's management committee, the joint venture does not meet the regulatory requirements. (*Id.*, citing *Size Appeal of Syscom, Inc.*, SBA No. SIZ-6195, at 14 (2023); *Size Appeal of LS3, LLC*, SBA No. SIZ-6239, at 5 (2023).)

SBA notes the JVA provides for a Responsible Manager and a Program Manager who will review all additional RFPs and proposals issued under the contract, and who will “jointly lead negotiations for the Contract and all subsequent Task Orders.” (Comment at 3, JVA, §§ 3(a), 5(a).) The JVA provides “Management of the Project shall be performed by the Responsible Manager and the Program Manager” who “shall have such specific powers as the Executive Committee may, from time to time, delegate.” (JVA, § 6(a).) SBA further notes the JVA's creation of the Executive Committee, and its powers. (Comment, at 3-4.)

SBA asserts the JVA gives considerable control to WEIS, the non-managing venturer, through the Program Manager. SBA further argues the JVA is vague regarding the division of roles and responsibilities between the two venturers. The decisions regarding division of responsibility are either intentionally left unresolved or left for the Executive Committee to decide in the future. This is contrary to SBA's intent and requirement that ultimate responsibility for contract performance with the Responsible Manager and by extension the small business protégé. (*Id.* at 5, citing 88 Fed. Reg. 26,164, 26,167 (Apr. 27, 2023).) SBA regulations require the roles and responsibilities of each party be clearly articulated in the JVA to limit and assist in managing conflicts that can arise. The roles and responsibilities of the Responsible Manager should not be decided after entering into the JVA. (Comment at 5.)

The JVA does not make clear what the roles and responsibilities of the Responsible Manager are, versus those of the Project Manager. The two are to review solicitations together, jointly lead negotiations, and together manage the project. Whether roles overlap or conflict is not in the JVA. Both shall have such specific powers as the Executive Committee may delegate. The roles and responsibilities are undefined, left open to interpretation after the joint venture is formed, which creates the opportunity for conflict. The JVA is silent as to which manager has final and ultimate authority to make decisions, which is contrary to § 125.8(b)(2)(ii) which requires the small business managing venturer have ultimate responsibility for contract performance. (*Id.*, at 5-6, JVA §§ 5(b), 6(a).)

SBA argues the intent of the joint venture regulations is to protect small businesses and reduce potential conflict by requiring specific details be contained in the JVA itself. This JVA appears to exist in order to create future conflicts. (Comment at 6, citing 85 Fed. Reg. 66,146, 66,146-66,147 (Oct. 16, 2020), recognizing intent of Small Business Jobs Act of 2010, Pub. L. 111-240, was designed to protect the interest of small business.)

SBA further notes the JVA creates an Executive Committee responsible for delegating specific powers to the Responsible Manager and Program Manager and making decisions on general policy matter that have not been specifically delegated. (Comment at 6, JVA, §§ 4(a), 4(c), 4(e)(i) & 6(a).)

SBA argues the JVA makes the Responsible Manager subject to the Executive Committee, which dictates her powers. (JVA, § 6(a).) The Responsible Manager is not independent from the Executive Committee and negative control exists. The JVA does not demonstrate the Responsible Manager will have ultimate responsibility for management of the contract and contract performance, as required by the regulation. The Executive Committee appears to have this power. Further, if the Committee cannot reach unanimous agreement, the issue will be resolved by good faith negotiations. (JVA, § 4(c).) However, good faith negotiations, which can lead to litigation, is not what SBA requires. SBA's regulations require a clear delineation of how the joint venture will operate in practice. (Comment at 7.)

As a matter of policy SBA requires a large business cede control to its small business partner in a joint venture. SBA wants to ensure that small businesses get the benefit and experience of learning how to perform and complete complex projects. (89 Fed. Reg. 102,448, 102,462 (Dec. 17, 2024).) In order to avail itself of the exception to a finding of affiliation, the large business must cede control and allow the small business to have ultimate responsibility. SBA concludes WEIS seems to want that benefit without ceding control. The regulation does not permit this. (Comment, at 7-8.)

SBA OGC does conclude the JVA complies with 13 C.F.R. § 125.8(b)(2)(viii). SBA argues the language of JVA § 15(g), which requires that in the event of a default by either party the non-defaulting party will complete the performance of the Contract and Task Order, meets the requirement of the regulation that all parties to the joint venture must be obligated to complete performance of a contract despite the withdrawal of any member. (*Id.*, at 8-9.)

### III. Discussion

#### A. Burden of Proof

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 finding of fact or law. *Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 11 (2006).

## B. Analysis

Two firms which are approved by SBA to be a mentor and protégé under 13 C.F.R. § 125.9 may joint venture for any Federal small business contract so long as the protégé qualifies as small for the procurement and the joint venture meets the requirements of 13 C.F.R. § 125.8(b) & (c). 13 C.F.R. § 121.103(h)(2)(ii). The regulation at 13 C.F.R. § 125.8(b)(2) sets out the requirements for a joint venture agreement between a mentor and a protégé. If a joint venture agreement does not contain the level of detail required by the regulation, then it cannot avail itself of the exception to a finding of affiliation. *Size Appeal of Focus Revision Partners*, SBA No. SIZ-6188, at 20 (2023).

After reviewing the record, I find that the decision in *Acacia7* was clearly on sound ground in finding that NEI was a small concern and that MECG's JVA complied with the regulation with all the requirements save the two identified in the original decision and that MECG raised in its action at COFC and in its Supplemental Pleading here. I therefore reaffirm the holding in *Acacia7* as to those matters.

I do find that *Acacia7* was in error in finding the MECG JVA failed to comply with 13 C.F.R. § 125.8(b)(2)(viii) which mandates that the JVA include a provision requiring the parties to complete performance of the contract despite the withdrawal of any member. The JVA, at § 15(g) does contain such a provision, and thus is compliant with the regulations on that issue.

As to the remaining issue, the regulation requires that a joint venture agreement include a provision:

Designating a small business as the managing venturer of the joint venture, and designating a named employee of the small business managing venturer as the manager with ultimate responsibility for performance of the contract (the “Responsible Manager”).

(A) The managing venturer is responsible for controlling the day-to-day management and administration of the contractual performance of the joint venture, but other partners to the joint venture may participate in all corporate governance activities and decisions of the joint venture as is commercially customary. The joint venture agreement may not give to a non-managing venturer negative control over activities of the joint venture, unless those provisions would otherwise be commercially customary for a joint venture agreement for a government contract outside of SBA's programs. A non-managing venturer's approval may be required in, among other things, determining what contract opportunities the joint venture should seek and initiating litigation on behalf of the joint venture.

(B) The individual identified as the Responsible Manager of the joint venture need not be an employee of the small business at the time the joint venture submits an offer, but, if he or she is not, there must be a signed letter of intent that the individual commits to be employed by the small business if the joint venture is the successful offeror. The individual identified as the Responsible Manager cannot be employed



by the mentor and become an employee of the small business for purposes of performance under the joint venture.

(C) Although the joint venture managers responsible for orders issued under an IDIQ contract need not be employees of the protégé, those managers must report to and be supervised by the joint venture's Responsible Manager. . . .

13 C.F.R. § 125.8(b)(2)(ii).

The regulation thus requires that the small business venturer be the Managing Venturer of the joint venture, and that an employee of that concern be the Responsible Manager. “[T]he managing venturer must control all aspects of the day-to-day management and administration of the contractual performance of the joint venture, and that other partners to the joint venture may participate in all corporate governance activities and decisions of the joint venture as is commercially customary. . . . [T]he managing joint venture partner must independently control all aspects of the day-to-day management and administration of the contractual performance of the joint venture.” 88 Fed. Reg. 26,164, 26,167 (Apr. 27, 2024).

SBA's regulatory scheme thus requires that in a joint venture between a small business and its large mentor firm the small business must be in control of the day-to-day management and administration of the joint venture, and of the performance of the contract the two firms have joined together to seek and perform. The joint venture is to have one person in charge, the Responsible Manager, who is to be an employee of the small business and is to have ultimate responsibility for contract performance. *Size Appeal of Decisionpoint-Agile Defense, LLC*, SBA No. SIZ-6336, at 7 (2025). It is the Responsible Manager who, on behalf of their employer, the Managing Venturer, is to have control over the day-to-day operations of the joint venture, and the performance of the contract. As SBA noted in the preamble quoted above, the Managing Venturer must have control over all aspects of day-to-day management and administration of contract performance.

The regulation does not permit the minority concern to have negative control over the operations of the joint venture. OHA has characterized a number of actions as essential to the daily operation of the company, and therefore granting a minority owner the power over such actions does in fact constitute negative control. A minority member who has control over the budget, has the power to hire and fire officers, and sets employee compensation, has control over the daily operations of a concern. *Matter of Strategic Alliance Solutions, LLC*, SBA No. VET-277, at 11 (2022); *Size Appeal of EA Eng'g., Sci. and Tech., Inc.*, SBA No. SIZ-4973, at 8-9 (2008); *Size Appeal of Carntribe-Clement 8AJV # 1, LLC*, SBA No. SIZ-5357 (2012).

The regulation does permit the minority member to participate in corporate governance as is commercially customary, and to have negative control over certain decisions if those would be commercially customary for a joint venture agreement for a government contract outside of SBA's programs. The regulation specifically identifies decisions regarding instituting litigation and which contract opportunities the joint venture should pursue as those for which the minority member's approval may be required. These are not the only such decisions for which a minority member's approval may be required. OHA has held that a concern giving minority owners the

ability to block certain extraordinary actions of the concern has not provided negative control to the minority members, if those supermajority provisions are crafted to protect the investment of the minority shareholders, and not to impede the majority's ability to control the concern's operations or to conduct the concern's business as it chooses.

Dissolving the concern has been found to be an extraordinary action. *Size Appeal of Carntribe-Clement 8AJV #, LLC*, SBA No. SIZ-5357, at 15 (2012). A minority member's power to approve the addition of any new members or the withdrawal of any old members, to increase or decrease the size of the Board, to increase or decrease the number of authorized interests, or to reclassify interests is designed to protect a minority owner's investment and does not establish negative control. *Size Appeal of DHS Systems, LLC*, SBA No. SIZ-5211 (2011). Also, selling or otherwise disposing of the firm's assets, admitting new members, amending the JVA in any manner that materially alters the rights of existing members, or filing for bankruptcy all constitute extraordinary actions that may require the minority shareholder's input, but do not create negative control. *Matter of Strategic Alliance Solutions, LLC*, SBA No. VET-277, at 11 (2022); *Size Appeal of Dooleymack Government Contracting, LLC*, SBA No. SIZ-5086 (2009).

Here, MECG's JVA does create the position of Responsible Manager, and the position is to be held by Ms. Gutierrez, NEI's President. The JVA provides that the Responsible Manager is to administer the ordinary day-to-day business of the Joint Venture. JVA, § 5(a). However, MECG's JVA also creates another position, unknown to the regulation, of Program Manager. The Program Manager and Responsible Manager will review all RFPs and proposals. JVA, § 3(a). The JVA provides that management of the project will be performed by the Responsible Manager and the Program Manager, together. JVA, § 6(a). The Responsible Manager and the Program Manager shall be delegated responsibility for practical execution of their portion of the services to be performed under the contract and shall have such specific powers as the Executive Committee may, from time to time delegate. *Id.* The Program Manager will jointly lead contract negotiations with the Responsible Manager. JVA, § 5(b). Management of the Project will be performed by the Responsible Manager and the Program Manager. The Responsible Manager and the Program Manager shall be delegated responsibility for practical execution of their portion of the services to be performed under the contract and shall have such specific powers as the Executive Committee may, from time to time delegate. JVA, § 6(a). Each party to the joint venture shall make available to the Responsible Manager and Program Manager such of its supervisory, managerial and other labor as is required to perform the contract. JVA, § 6(b).

Except for § 3(a)'s *pro forma* granting to the Responsible Manager of “day-to-day” management of MECG, the language of the JVA puts NEI's Responsible Manager on equal footing with WEIS's Program Manager. In all the responsibilities the JVA grants the Responsible Manager, the Program Manager is there, playing the Sundance Kid to the Responsible Manager's Butch Cassidy, with apparently equal authority. Rather than have independent control of all aspects of the joint venture, as required by the regulation, NEI's Responsible Manager is accompanied by the Program Manager, with apparently equal authority.

The JVA should be a straightforward document which lays out who has authority to manage the joint venture. Instead, it has created an organization which provides ambiguity where it should provide clarity. The Responsible Manager and Program Manager are to review

solicitations together, jointly lead negotiations, and manage the project together. Who is to make the final decisions as they work together? The JVA does not include a clear distinction as to the roles of the Responsible Manager as opposed to the Project Manager. The JVA creates opportunity for conflict rather than the opportunity for NEI to have the experience of managing a contract on its own, as contemplated by the mentor/protégé program.

The JVA also creates another management body unknown to the regulation, the Executive Committee, with one member from each venturer, each with one vote. Therefore, it is clear that WEIS has negative control over the Executive Committee. A concern with managing directors from each member, each having equal authority, does not meet the requirement of being controlled by the small business concern. *VSBC Protest of New Directions Technologies, Inc.*, SBA No. VSBC-299-P, at 9 (2023). Rather than be subordinate to the Responsible Manager, the Executive Committee is responsible for delegating specific powers to the Responsible Manager and the Program Manager. The JVA provides Responsible Manager's role will be defined by the Executive Committee, rather than be the manager in charge of contract administration.

Further, the JVA creates the opportunity for conflict between the parties, rather than leave NEI in control, with some protections for WEIS's interests. The JVA's mechanism for dealing with conflict (§ 17) is “good faith negotiation” or resolution by the Executive Committee, where WEIS has negative control. If this does not resolve matters the JVA provides the matter is to be submitted to a professional arbitrator. Thus, if the ambiguity in the JVA leads to any conflict between the Responsible Manager (NEI) and the Project Manager (WEIS), NEI cannot depend upon being able to assert its authority to control MECG's day-to-day operations. Rather, it must go first to the Executive Committee, where WEIS has a veto, and then take its chances on arbitration. This process is, at best, drawn out in a way that would not be conducive to effective contract administration. At worst, NEI will lose the control of the joint venture the regulation requires it to have.

SBA requires that an other than small mentor business cede control to the small business partner in a joint venture. The Agency wants to ensure that small businesses get the benefit and experience of learning how to perform and complete complex projects. 89 Fed. Reg. 102,448, 102,462 (Dec. 17, 2024). The regulation thus requires that the joint venture be controlled by the small business, and that an employee of the small business, often its principal and President, be the Responsible Manager, who is to control the day-to-day management and administration of the contract and have ultimate responsibility for contract performance. Here, WEIS has failed to make the cession of control required by the regulation. The Responsible Manager must share authority with a Program Manager, and both are subordinate to the Executive Committee. The unclear lines of authority will, in the event of dispute, go to a professional arbitrator for clarification. This is not permitted by the regulation.

I thus conclude that MECG's JVA fails to comply with the regulation at 13 C.F.R. § 125.8(b)(2)(ii). Therefore, MECG fails to meet the regulatory requirements to make it eligible under 13 C.F.R. § 121.103(h)(2)(ii) to joint venture as a small business, and the concern is thus other than small for the subject procurement.

III. Conclusion

I conclude that Appellant Acacia7 JV has met its burden of establishing that the Size Determination is based upon an error of fact or law. Accordingly, I GRANT the instant appeal and REVERSE the Size Determination. MECG is not an eligible small business for this procurement. This is the final decision of the Small Business Administration. 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN  
Administrative Judge