

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

NAICS APPEAL OF:

Brian Scott

Appellant

Solicitation No. W911RZ-10-R-0050  
US Army Contracting Command  
Fort Carson, Colorado

SBA No. NAICS-5150

Decided: August 18, 2010

APPEARANCE

Brian Scott, Sole Proprietor, for Appellant.

DECISION

I. Jurisdiction

This appeal is decided under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 121 and 134.

II. Issue

Whether the appropriate North American Industry Classification System (NAICS) code for a procurement for Forestry Services is 113310, Logging, or 561730, Landscaping Services.

III. Background

A. The Solicitation

On August 9, 2010, the Fort Carson Directorate of Contracting, U.S. Army Contracting Command (Army), issued the subject solicitation for forestry services as a total small business set aside. The Contracting Officer (CO) designated North American Industry Classification System (NAICS) code 113310, Logging, with a corresponding 500 employee size standard, as the appropriate NAICS code for the procurement. The original solicitation set the due date for offers as September 18, 2010. On August 16, 2010, the CO issued Amendment 2, which

corrected the due date to August 18, 2010.<sup>1</sup>

### B. The Appeal

On August 11, 2010, Brian X. Scott, a sole proprietorship (Appellant), filed the instant appeal. Appellant asserts the appropriate NAICS code for this procurement is 561730, Landscaping Services, with a corresponding \$7 million annual receipts size standard.

Appellant asserts that NAICS code 113310 is focused on harvesting wood products, and NAICS code 561730 is focused on the condition of the landscape after the services are rendered. Appellant argues that the purpose of this procurement is to manage the landscape, not to harvest wood products. Appellant asserts the Army is concerned almost exclusively with the condition of the landscape after the services are rendered, most especially in the prevention of fire and plant diseases. Appellant further asserts that the harvesting of wood products, limited to stems over 4 inches in diameter, is a small portion of this contract. Thus, Appellant concludes that this procurement is properly classified as a landscaping procurement.

### C. The Performance Work Statement

The forests around Fort Carson are suffering from insect infestations, overcrowding, and plant disease. The purpose of this procurement is to alleviate these problems.

The contractor must create a defensible space for fire protection by removing trees from certain areas. Some areas will be clear cut, some will only be thinned. Wood and slash shall be chipped on site and spread to a depth of not more than three inches.

The contractor will thin certain stands of trees to 20 to 40 trees per acre. The contractor will favor older, healthier, and straighter trees. The contractor will also favor less common species such as ponderosa pine and Rocky Mountain juniper. The contractor is to leave occasional clumps of trees, allow occasional larger open spaces, and avoid steeper slopes, gullies, and rocky areas altogether. In general the trees are 6 inches or less in diameter, but there are some as large as 24 inches. Cut trees shall be chipped and scattered to a depth of no more than 3 inches. Trees that cannot be masticated are to be left on the ground as wildlife habitat.

The contractor will remove young juniper trees from grasslands, in order to maintain grasslands for mechanized training. The contractor will use some kind of rotating drum masticating equipment, and scatter the resulting wood chips in place at a depth not to exceed 3 inches.

### IV. Discussion

Appellant filed the instant appeal within 10 days after the CO issued the solicitation. Thus, the appeal is timely. 13 C.F.R. §§ 121.1103(b)(1); 134.304(a)(3).

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<sup>1</sup> Because of the change in the due date for offers, this decision is being issued prior to the original date set for the close of record. *See* FAR 19.303(c)(5).

Appellant has the burden of proving, by a preponderance of the evidence, all elements of its appeal. Specifically, it must prove the CO's NAICS code designation is based on a clear error of fact or law. *NAICS Appeal of Durodyne, Inc.*, SBA No. NAICS-4536, at 4 (2003); 13 C.F.R. § 134.314. The correct NAICS code is that which best describes the principal purpose of the services being procured, in light of the industry description in the *NAICS Manual*<sup>2</sup>, the description in the solicitation, and the relative weight of each element in the solicitation. *Durodyne*, SBA No. NAICS-4536, at 4; 13 C.F.R. § 121.402(b).

The NAICS code designated by the CO, 113310, Logging, covers:

[E]stablishments primarily engaged in one or more of the following: (1) cutting timber; (2) cutting and transporting timber; and (3) producing wood chips in the field.

*NAICS Manual*, at 135.

This code is part of the Agriculture, Forestry, Fishing and Hunting Sector 11, covering establishments engaged in such activities as growing crops, raising animals or harvesting timber from farms or natural habitats. *NAICS Manual*, at 109. The sector excludes establishments engaged in administering programs for regulating and conserving land. *NAICS Manual*, at 109. This code is also part of the Forestry and Logging Subsector 113, covering the harvesting of timber. *NAICS Manual*, at 134.

Appellant's requested NAICS code, 561730, Landscaping Services, covers:

(1) [E]stablishments primarily engaged in providing landscape care and maintenance services and/or installing trees, shrubs, plants, lawns, or gardens and  
(2) establishments primarily engaged in providing these services along with the design of landscape plans and/or the construction (i.e., installation) of walkways, retaining walls, decks, fences, ponds, and similar structures.

*NAICS Manual*, at 785-786.

This code is part of the Administrative and Support and Waste Management and Remediation Services Sector 56, and Subsector 561 Administrative and Support Services, providing routine support services of operations of other organizations. *NAICS Manual*, at 765-766.

Here, the Army seeks to procure forestry services for the wooded areas around Fort Carson. The trees are to be cut down, and unless too large for the contractor's equipment, turned into wood chips on the spot and left there. Areas the Army wants to keep open are to be cleared of trees. The purpose is to keep the forest healthy. However, the procurement calls for nothing more than the cutting down and chipping of trees, both specifically included in NAICS code 113310.

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<sup>2</sup> Executive Office of the President, Office of Management and Budget, *North American Industry Classification System-United States* (2007), available at <http://www.census.gov>.

There is no mention of designing landscape plans, gardening, planting of trees and shrubs, mowing, or continuing maintenance of the areas after the cutting of trees. Nor is building of any kind contemplated by the solicitation. All of these activities are part of Landscaping Services, but they are not required by this solicitation. This contractor will have to cut down trees in their natural habitat and masticate them into chips, but not engage in any aesthetically pleasing alteration of the landscape. Nor will the contractor be responsible for any continuing maintenance of the landscape. The solicitation simply does not call for the type of services required by Landscaping Services. Rather, this contractor will perform exactly the type of logging services covered by the Logging NAICS code.

Accordingly, I find that the Appellant has failed to meet his burden here of establishing clear error in the CO's NAICS code designation, and that the appropriate NAICS code for this procurement is 113310, Logging, with a corresponding 500 employee size standard.<sup>3</sup>

#### V. Conclusion

For the above reasons, the instant appeal is DENIED, and the CO's NAICS code designation is AFFIRMED. The correct NAICS code designation for this procurement is 113310, Logging.

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

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CHRISTOPHER HOLLEMAN  
Administrative Judge

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<sup>3</sup> Appellant also takes exception to the CO's NAICS code designation because he asserts businesses with 500 employees include some large firms. This is irrelevant. If the firm meets the applicable size standard for a particular procurement, the firm is small for that procurement.