

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

NAICS APPEAL OF:

American West Laundry, Inc.,

Appellant,

Solicitation No. W81K00-17-R-0008

U.S. Department of the Army

Army Medical Command

Fort Sam Houston, Texas

SBA No. NAICS-5842

Decided: July 18, 2017

APPEARANCES

Johnathan M. Bailey, Esq., Kristin E. Zachman, Esq., Bailey & Bailey, P.C., San Antonio, Texas, for Appellant

Elizabeth H. Connally, Esq., Connally Law, PLLC, San Antonio, Texas, for Division Laundry & Cleaners, Inc.

Sam Q. Le, Esq., Sally M. Walton, Procurement Center Representative, for the U.S. Small Business Administration

DECISION

I. Introduction and Jurisdiction

On June 12, 2017, the U.S. Department of Army, Army Medical Command (Army) issued Request for Quotations (RFQ) No. W81K00-17-R-0008 for bulk laundry services at the San Antonio Military Medical Center (SAMMC). The RFQ contemplates the award of a single indefinite-delivery/indefinite-quantity contract. (RFQ, at 115.) The Contracting Officer (CO) set aside the procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 812331, Linen Supply, with an associated size standard of \$32.5 million average annual receipts. Quotations were due June 26, 2017.

On June 22, 2017, American West Laundry, Inc. (Appellant) filed the captioned appeal. Appellant asserts that the CO erred in selecting NAICS code 812331, and that the correct NAICS code is 812320, Drycleaning and Laundry Services (except Coin-Operated), with a corresponding size standard of \$5.5 million average annual receipts. For the reasons discussed *infra*, the appeal is granted.

The U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) decides appeals of NAICS code designations under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. parts 121 and 134. Appellant filed this appeal within ten calendar days after issuance of the RFQ, so the appeal is timely. 13 C.F.R. §§ 121.1103(b)(1) and 134.304(b). Accordingly, this matter is properly before OHA for decision.

II. Background

A. The RFQ

The Performance Work Statement (PWS) states that the contractor will be responsible for providing the necessary personnel, equipment, transportation, supplies, and supervision required to perform bulk laundry services. Specifically, the contractor will perform “all functions, tasks, and responsibilities normally inherent in a hospital laundry facility.” (PWS § 1.1.) The contractor will pick up, process, clean, dry, package, and return laundry to the SAMMC within 24 hours. (*Id.* at § 5.1.) The contractor must possess experience in providing hospital laundry services, experience gained by engaging in laundry services for health care and patient care environments. The contractor's laundry facilities must be “designed, equipped, and ventilated (a) for efficient production of hygienically cleaned textiles and (b) to minimize the potential dissemination of microbial contaminants that are external (*e.g.*, dust and dirt) and internal (*e.g.*, soiled laundry, contaminated lint) to the facility.” (*Id.* § 1.3.1.) The Army will provide the items to be laundered, and if any items are deemed to not meet the Army's standards, the contractor must re-clean, repair, or replace the item at its own expense. (*Id.* § 1.5.2.) Items to be laundered include blankets, coats, gowns, sheets, towels, and trousers. (RFQ, Tech. Exh. 1.)

Amendment 1 contained answers to questions posed by potential offerors. In response to an inquiry about the NAICS code, the CO stated:

The NAICS code 812331 which the Government is soliciting under is the correct NAICS code for this requirement. If the Government owns the items to be laundered, the appropriate NAICS [code] is 812331, Linen Supply.

(RFQ, Amendment 1, at 2.)

B. Appeal

Appellant contends that the CO erred in selecting NAICS code 812331 for the RFQ. According to Appellant, the solicitation has no supply requirement. Given that the contractor will not supply any laundry items, Appellant argues, the CO erred in the NAICS code selection. (Appeal, at 1.) Appellant contends that NAICS code 812320 is the appropriate code for the instant procurement.

C. DLC's Response

On June 30, 2017, Division Laundry & Cleaners, Inc. (DLC) responded to the appeal. DLC asserts that NAICS code 812331 is consistent with the NAICS codes assigned to previous,

similar procurements. (DLC's Response, at 2.) DLC highlights that the *NAICS Manual's* description of NAICS code 812331 includes businesses that provide laundered items, such as bed linens, towels, and hospital gowns, the items being cleaned here. (*Id.* at 3.) Because the CO did not err in selecting NAICS code 812331, OHA should deny the appeal.

D. SBA's Response

On July 3, 2017, SBA responded to the appeal. SBA agrees with Appellant that NAICS code 812331 is incorrect for this procurement. However, SBA maintains, the appropriate NAICS code for the RFQ is 812332, Industrial Launderers, with an associated size standard of \$38.5 million average annual receipts. (SBA Response, at 1.)

SBA argues that the predecessor to NAICS code 812332 was Standard Industrial Classification (SIC) code 7218, which corresponds to the requirement sought here, as the customer, the Army, owns the items to be laundered, and the contractor is responsible for replacing or repairing items deemed unserviceable. (*Id.* at 2.) Further, the PWS requires the contractor's facilities to have specific design, equipment, and ventilation that commercial laundry and dry cleaning facilities lack. Lastly, *NAICS Manual* index entries associated with NAICS code 812332 include those related to hospital laundry services. (*Id.*) As a result, NAICS code 812332 best describes this procurement.

E. Appellant's Replies

On July 3, 2017, prior to the close of record, Appellant moved to reply to DLC's response. There is good cause to permit such a reply, Appellant maintains, because DLC ignored relevant case precedent in responding to the appeal. On July 6, 2017, Appellant moved to reply to SBA's response, complaining that SBA advocates a new NAICS code that has not been addressed by the CO or Appellant.

I agree that Appellant should have an opportunity to reply to SBA's response, because a new potential NAICS code is raised for the first time in SBA's response. *E.g.*, *NAICS Appeal of Dentrust Optimized Care Solutions*, SBA No. NAICS-5761, at 5 (2016). Appellant has not, however, shown good cause to reply to DLC's response. Under applicable regulations governing NAICS code appeals, a reply to a response is generally not permitted unless OHA so directs. 13 C.F.R. § 134.309(d). No such direction occurred here. Accordingly, Appellant's motion to reply to SBA's response is GRANTED, but its motion to reply to DLC's response is DENIED. *NAICS Appeal of T3 TigerTech*, SBA No. NAICS-5674, at 2 fn.2 (2015); *NAICS Appeal of Allserv, Inc.*, SBA No. NAICS-5629, at 7 (2014).

In its reply, Appellant argues that SBA's recommended code, 812332, is improper for the RFQ. Appellant maintains that SBA relies on the description of SIC code 7218, but offers no authority to disregard the *NAICS Manual's* description of NAICS code 812332 and instead adopt an outdated SIC code definition, which was replaced some 20 years ago. (Reply at 2-3.) Appellant further argues that in *NAICS Appeal of SAC Cleaners, Inc.*, SBA No. NAICS-5468 (2013), OHA held that NAICS code 812331 is utilized only when the contractor owns the items to be laundered, which is not the case in the instant procurement. The *NAICS Manual's*

descriptions of NAICS codes 812331 and 812332 contain the same operative language, so the same reasoning would apply to NAICS code 812332. (*Id.* at 2-3.) Appellant reiterates that NAICS code 812320 best describes the services sought here because the customer will provide the items to be laundered.

F. DLC's Sur-Reply

On July 7, 2017, the date of the close of record, DLC requested leave to sur-reply to Appellant's reply to DLC's response. Because I have excluded Appellant's reply to DLC's response, DLC's request to sur-reply is moot and is DENIED.

G. NAICS Manual¹ Descriptions

The NAICS code selected by the CO, 812331, Linen Supply, comprises:

establishments primarily engaged in supplying, on a rental or contract basis, laundered items, such as table and bed linens; towels; diapers; and uniforms, gowns, or coats of the type used by doctors, nurses, barbers, beauticians, and waitresses.

NAICS Manual at 920.

The NAICS code advocated by Appellant, 812320, Drycleaning and Laundry Services (except Coin-Operated), comprises:

establishments primarily engaged in one or more of the following: (1) providing drycleaning services (except coin-operated); (2) providing laundering services (except linen and uniform supply or coin-operated); (3) providing dropoff and pickup sites for laundries and/or drycleaners; and (4) providing specialty cleaning services for specific types of garments and other textile items (except carpets and upholstery), such as fur, leather, or suede garments; wedding gowns; hats; draperies; and pillows. These establishments may provide all, a combination of, or none of the cleaning services on the premises.

Id.

The NAICS code recommended by SBA, 812332, Industrial Launderers, comprises:

establishments primarily engaged in supplying, on a rental or contract basis, laundered industrial work uniforms and related work clothing, such as protective

¹ Executive Office of the President, Office of Management and Budget (OMB), *North American Industry Classification System-United States (2012)*, available at <http://www.census.gov>. SBA has proposed to adopt the 2017 edition of the *NAICS Manual* effective October 1, 2017. 82 Fed. Reg. 18,253 (Apr. 18, 2017). At present, the 2012 edition remains in effect and thus is applicable here.

apparel (flame and heat resistant) and clean room apparel; dust control items, such as treated mops, rugs, mats, dust tool covers, cloths, and shop or wiping towels.

Id. at 921.

III. Discussion

A. Standard of Review

Appellant has the burden of proving, by a preponderance of the evidence, all elements of its appeal. Specifically, Appellant must show that the CO's NAICS code designation is based upon a clear error of fact or law. 13 C.F.R. § 134.314; *NAICS Appeal of Durodyne, Inc.*, SBA No. NAICS-4536, at 4 (2003). SBA regulations do not require the CO to select the perfect NAICS code. *NAICS Appeal of Evanhoe & Assocs., LLC*, SBA No. NAICS-5505, at 14 (2013). Rather, the CO must assign the NAICS code that best describes the principal purpose of the product or service being acquired in light of the industry descriptions in the *NAICS Manual*, the description in the solicitation, the relative value and importance of the components of the procurement making up the end item being procured, and the function of the goods or services being acquired. Federal Acquisition Regulation (FAR) 19.303(a)(2); 13 C.F.R. § 121.402(b). OHA will not reverse a NAICS code designation “merely because OHA would have selected a different code.” *NAICS Appeal of Eagle Home Med. Corp.*, SBA No. NAICS-5099, at 3 (2009).

B. Analysis

As Appellant correctly observes, the instant case is highly analogous to OHA's decision in *NAICS Appeal of SAC Cleaners, Inc.*, SBA No. NAICS-5468 (2013). In *SAC Cleaners*, OHA determined that the CO clearly erred in assigning NAICS code 812331 to a procurement, and that the correct NAICS code was 812320. OHA explained that the “critically important difference” between the two NAICS codes is whether the items to be laundered are owned by the customer (*i.e.*, the Government) or by the contractor. *SAC Cleaners*, SBA No. NAICS-5468, at 6. NAICS code 812331 is appropriate “where the Contractor owns the [laundered items] and rents them to the Government.” *Id.* Conversely, establishments under NAICS code 812320 “do not own the items they clean. Rather, they clean items owned by their customers and return those particular items to the customers.” *Id.* In the *SAC Cleaners* procurement, the items to be laundered were Government-owned property, and the contractor would “pick up the items, take them to its facility, launder them, and return them to the [Government].” *Id.* Therefore, OHA concluded, NAICS code 812331 was clearly incorrect and the appropriate NAICS code was 812320.

Similarly, the RFQ here is clear that the items to be laundered are Government-owned property. Section II.A, *supra*. The contractor is responsible for picking up the items at SAMMC, laundering them, and returning them within 24 hours. *Id.* As in *SAC Cleaners*, then, the fact that the laundered items are owned by the Government customer and not by the contractor is a crucial circumstance that strongly supports the assignment of NAICS code 812320.

In *SAC Cleaners*, OHA further rejected the notion that NAICS code 812320 does not apply to the laundering of linens. *SAC Cleaners*, SBA No. NAICS-5648, at 7. Indeed, the *NAICS Manual*'s description of NAICS code 812320 refers broadly to “laundering services,” and thus includes linens as well as other specialty items. *Id.*; Section II.G, *supra*. In the instant case, many of the items to be laundered can be construed as linens, but because NAICS code 812320 does not preclude the laundering of linens, I agree with Appellant that NAICS code 812320 reasonably describes the services sought.

Lastly, as Appellant observes, SBA's recommended NAICS code, 812332, suffers from the same defect as the NAICS code selected by the CO, 812331. Both NAICS codes apply to establishments that are engaged in “supplying, on a rental or contract basis” laundered items, meaning that it is the contractor that owns the items that are being laundered. Section II.G, *supra*. Because the items in question here are owned by the Government rather than the contractor, SBA's suggested code fails for the same reason as the code selected by the CO.

IV. Conclusion

For the above reasons, the appeal is GRANTED. The appropriate NAICS code for the RFQ is 812320, Drycleaning and Laundry Services (except Coin-Operated), with a corresponding size standard of \$5.5 million average annual receipts. Because this decision is rendered after the deadline for receipt of quotations, the decision does not apply to the instant RFQ, but may apply to future solicitations for the same supplies or services. 13 C.F.R. § 134.318(b) and FAR 19.303(c)(8).

KENNETH M. HYDE
Administrative Judge