

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

NAICS APPEAL OF:

PrimeTech International, Inc.,

Appellant,

Solicitation No. M6700419R0004  
U.S. Marine Corps Logistics Command  
Albany, GA

SBA No. NAICS-6014

Decided: June 25, 2019

APPEARANCES

David Fletcher, Esq., Perkins Coie LLP, Washington, District of Columbia, for Appellant

Daniel Beaulieu, Contracting Officer, Marine Corps Logistics Command, Albany, GA,  
for United States Marine Corps

AMENDED DECISION<sup>1</sup>

I. Introduction and Jurisdiction

On May 29, 2019, the United States Marine Corps Logistics Command issued Solicitation No. M6700419R0004, a Request for Proposals (RFP) for Third Party Logistics Management and Operational Services for the Marine Corps Logistics Command Consolidated Storage Program (CSP) as an unrestricted solicitation. (Solicitation, at 1.) The Contracting Officer (CO) designated North American Industrial Classification Service (NAICS) Code 541614, Process, Physical Distribution, and Logistics, with a corresponding \$15 million annual receipts size standard as the appropriate code. Offers are due June 29, 2019.

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<sup>1</sup> On June 25, 2019 I issued the decision in this matter. The Amended Decision was issued to correct a typographical error in Section IV, Conclusion. This decision was originally issued under a protective order. After reviewing the Decision, counsel for Appellant informed OHA that Appellant had no requested redactions. Therefore, I now issue the entire Decision for public release.

This decision was originally issued under a protective order. After reviewing the Decision, counsel for Appellant informed OHA that Appellant had no requested redactions. Therefore, I now issue the entire Decision for public release.

On June 10, 2019, PrimeTech International, Inc. (Appellant) filed a NAICS Appeal with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA), arguing the CO designated an inappropriate NAICS code for the instant solicitation. Appellant argues the appropriate NAICS code is 561210, Facilities Support Services, with a corresponding \$38.5 million annual receipts size standard. OHA decides NAICS code 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 timely filed the appeal with OHA. Federal Acquisition Regulation (FAR) 19.303(c)(1); 13 C.F.R. §§ 121.1103(b)(1), 134.304(b). Accordingly, this matter is properly before OHA for decision.

## II. Background

### A. Solicitation

The solicitation's performance work statement (PWS) states “[t]he purpose of the contract is to provide for the Management and Operational services for the Marine Corps' CSP worldwide network facilities and to maintain total asset visibility.” (Solicitation, at 18.) The scope of the contract requires the Contractor to “provide logistics services to manage, support, and operate the Marine Corps CSP network.” (*Id.*, at 19.)

The mission of the CSP is “to provide USMC personnel and authorized customers with exceptional service through facilities from which to efficiently acquire and/or turn in clean and serviceable items of equipment.” (*Id.*) The mission stated “[t]he contractor services include but are not limited to: item management, accountability, Total Asset Visibility (TAV), warehousing, laundry and repair, inventory management and lifecycle management of equipment. . . .” (*Id.*, at 18.) Generally, the contractor will “provide qualified personnel, equipment, supplies, regional transportation, tools, material handling equipment (MHE), materials, supervision, training, integrated logistics support, technical and analytical support, and supply chain and program management necessary to perform management and operations services for the CSP.” (*Id.*, at 19.)

The PWS scope states the contractor “shall provide logistics services to manage, support, and operate the Marine Corps CSP network.” (*Id.*) The efforts include “overall coordination, streamlining, and supervision of operations.” (*Id.*) The scope is further described as “integrated and performance-based logistics services.” (*Id.*) The Contractor is also required to ensure that inventory is audit ready. (*Id.*) The solicitation requires key personnel including a Program Manager (PM) and Regional Project Managers (RPM's). (*Id.*, at 27.) The essential personnel are Site Managers (SM). (*Id.*) The solicitation sets forth the minimum educational requirements for the key and essential personnel, including required degrees, particularly Master's Degrees in Supply Chain Management., Logistics, or Business Management for the Program Manager, and Regional Program Manager (or a Bachelor's degree with at least 12 years of experience), and Bachelor's degrees for the SM's. (*Id.*, at 28.)

The PWS requires the contractor to develop Customer Service Standards to delineate processes to support and improve customer services. (*Id.*, at 32.) The contractor will forecast,

plan and execute transfers of inventory, to meet the Government's objective of "Right Thing, at the Right Place, and at the Right Time." (*Id.*, at 35.)

The PWS also notes the contractor will be responsible for "Inventory Forecasting," maintain stocking levels, monitoring and recommending inventory levels and recommending replenishment requirements, along with maintaining physical inventory, and preparing for audits. (*Id.*, at 35.) The Contractor is required to remove unserviceable equipment and compile reports for the warranty program, along with managing shelf life information. (*Id.*, at 37.) The Contractor is also required to launder, clean, repair, and track returned equipment, and perform preventive and corrective maintenance on equipment. (*Id.*, at 38.)<sup>2</sup> When equipment is returned, "[t]he contractor shall launder, clean repair, track, and document returned equipment to a serviceable condition." (*Id.*, at 38.)

The contractor must issue equipment to individuals on scheduled and unscheduled basis based on the individual's mission or deployment needs. (*Id.*, at 31.) Contractors must also receive equipment from vendors, test facilities, repair facilities, and personnel returning equipment. (*Id.*, at 34.) Along with the issuance and acceptance of the gear, the contractor will rotate stock, receive stock, recover equipment, and dispose of certain equipment. (*Id.*, at 31.) The contractor will acquire material handling equipment (MHE) such as trucks, forklifts, and pallet jacks, and handle materials. (*Id.*, at 32.) The PWS notes "[t]he contractor shall manage the storage (including stock rotation) of all equipment and shall protect against equipment deterioration and/or loss." (*Id.*, at 34.)

The Contractor is expected to develop a Quality Control plan to ensure services are performed in accordance with the PWS. The Quality Control plan will include a Continuous Process Improvement (CPI) program to improve processes. CPI is an integrated system of improvement that focuses on doing the right things more efficiently. The focus is on enhancing and improving customer service and customer satisfaction by improving the processes used to develop and deliver the support services called for in the instant solicitation. The CPI will address the handling of inventory, customer service, process quality, reliability, and wait times. The contractor's CPI will include quantifiable goals, and metrics to achieve them. (*Id.*, at 47.)

The solicitation includes FAR Clause 52.219-9, Small Business Subcontracting Plan. (*Id.*, at 70.) Large business offerors are instructed to submit a small business participation plan and must propose the level of participation of small business relative to the minimum requirement set forth in FAR 52.202-2. (*Id.*, at 125.) The procurement also enumerates the Minimum Quantitative Requirements for specific small business socio-economic categories. (*Id.*)

The Evaluation Factors include Technical, Past Performance, Small Business, and Price. Small Business would be evaluated on an acceptable/unacceptable basis. Proposals will be evaluated to ensure a Small Business Subcontracting Plan is included and meets the requirement of FAR 52.219-9 and DFARS 252.219-7003. (*Id.*, at 119.) This evaluation will be based on offerors' total effort to be performed by small business concerns, efforts to develop opportunities

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<sup>2</sup> The contractor is required to outsource laundry to a specific company in three regions and is permitted to outsource laundry at several other locations.

for small business concerns, and the extent to which the offeror identifies and commits to small business concerns. (*Id.*, at 130.)

Technical, Past Performance, and Price will be evaluated with a “Trade-Off Approach.” Technical and Past Performance combined are significantly more important than price. (*Id.*, at 126.) For technical evaluation, the Marine Corps will evaluate the Management and Staffing Approach, the Quality Control Approach, and the Mission Support Approach. (*Id.*) The Quality Control approach requires an offeror to demonstrate their quality control plan and CPI method. (*Id.*, at 127.) The Technical Factor will also be evaluated based on the offeror's demonstrated ability to: repair, replace, and purchase equipment; manage personnel costs; manage equipment down time; and resolve mission support requirements. (*Id.*, at 127.)

### B. Appeal

Appellant describes itself as “an experienced small business logistics contractor that provides warehouse management, maintenance, transportation, and other similar logistics services for government customers, including the Marine Corps Logistics Command.” (Appeal, at 2.) Appellant stated it performed under the predecessor contract. (*Id.*) Appellant argues NAICS Code 541614, Process, Physical Distribution and Logistics Consulting Services, is not the code which best describes the principal purpose of the product or service being acquired, as required by 13 C.F.R. § 121.402(b). (*Id.*) Appellant insists NAICS Code 541614 is more appropriate for consulting and advisory services and has little relationship to the operation, management, and support services described in the instant solicitation. (*Id.*) Appellant contends the awardee on the contract will do more than offer operating advice and consulting but will perform services required to manage day-to-day operations at 57 facilities around the world. (*Id.*, at 3.) NAICS code 561210, Facilities Support Services, is the appropriate code, Appellant asserts, because NAICS code 561210's summary in the *NAICS Manual* more closely describes “combination of support services,” the purpose of the contract to be awarded. (*Id.*)

Appellant insists it has standing to appeal because it is adversely affected by the NAICS code selection. (*Id.*) Appellant exceeds the \$15 million size standard for NAICS Code 541614, but Appellant's annual receipts fall below the threshold for NAICS Code 561210, which has a \$38.5 million size standard. (*Id.*) Appellant requests OHA grant the appeal and conclude NAICS code 561210 applies to the solicitation. (*Id.*, at 4.)

### C. Intervenors

On June 18, 2019, before the close of record, LVI filed a letter in support of Appellant's NAICS appeal. LVI asserts it is a prospective offeror and interested party, and as a large business it could be impacted by the designated NAICS code because the solicitation has a minimum requirement for subcontracting to small businesses. LVI insists the NAICS code being changed to 561210, Facilities Support Services, will increase the pool of responsible small businesses with whom it could subcontract for the solicitation. (Intervention, at 1-2.)

LVI argues 541614 applies to certain consulting and advisory services, but not the solicitation's work. (*Id.*, at 1.) LVI contends offerors are being asked not to provide advice and consulting, but to perform all services to operate and manage 57 facilities around the world. (*Id.*)

On June 19, 2019, Gryphon Technologies (Gryphon) filed a letter in support of the CO's NAICS code designation. (Gryphon Intervention, at 1.) Gryphon stated it intends to submit a proposal as a prime contractor and supports the assigned NAICS code because it gives Gryphon the opportunity to team with smaller business under the \$15 million size standard. (*Id.*) Gryphon argues there are many potential subcontractors who can provide support under NAICS Code 541614. (*Id.*) Gryphon asserts the functions listed under the NAICS Code 541614 “appear to be exactly in line with the intended objectives” for the solicitation. (*Id.*)

#### D. CO's Response

The procuring agency, through the CO, submitted a response to the appeal. The CO stated the CSP Operations Support provides the United States Marine Corps with “operational management and equipment readiness for Marines going to or from combat areas or training exercises.” (Response, at 1.) The CO explained “the primary objective of the CSP is to distribute equipment to Marines worldwide, and to be a single access point for serviceable equipment to meet mission requirements, and through its CSP Program Management, to be provided recommendations by the contractor on inventory stock levels and improvements to CSP operations to better serve our Marines.” (*Id.*, at 1-2.) The CO noted “[t]he services in this requirement encompass equipment distribution at Individual Issue Facilities (IIF) and Unit Issue Facilities (UIF), as well as recover, storage, requisitioning, maintenance and repair, and management, to include visibility, accountability, automated shelf-life management, and forecasting for military equipment.” (*Id.*, at 2.)

The CO pointed out the program has been “conducted for years” with the same NAICS code, 541614. The CO also emphasized the Appellant was awarded a CSP Operations Support contract in 2017 with the same NAICS Code. This is the first challenge of the NAICS code for this CSP program. (*Id.*)

The CO received a prior request from Appellant requesting the NAICS code be changed to 493110, General Warehousing and Storage, which the CO found to be inappropriate for the procurement. (*Id.*) The CO insisted the primary purpose of the instant procurement is “interacting with Marines as they enter the facilities, distributing military equipment to and from Marines, maintaining total asset visibility using government IT systems, conducting inventories, providing inventory stock level replenishment recommendations and quality control . . . to the Agency, as well as forecasting, planning and executing transfers of inventory and recommending Continuous Process Improvement (CPI) to the Agency. . . .” For these reasons, the CO denied the Appellant's initial request to change the NAICS code to 493110. (*Id.*)

The CO argues NAICS Code 541614 most closely applies to the Agency's primary purpose for this solicitation. (*Id.*, at 3.) The CO once again noted the tasks include distributing equipment to and receiving equipment from Marines, maintaining total asset visibility,

conducting inventory, providing advice on inventory stock level replenishment, quality control, as well as forecasting, planning and advising the agency on transfers of inventory. (*Id.*)

The CO emphasized he need not select the perfect NAICS code. (*Id.*, citing *NAICS Appeal of Evanhoe & Assocs., LLC*, SBA No. NAICS 5505, at 14 (2013).) The CO categorizes Appellant's appeal as a simple disagreement with the CO's "reasonable determination on the primary purpose on this procurement as identified by the tasks in the PWS" and has not shown a clear error of fact or law in the NAICS code designation. (*Id.*)

The CO argues the Appellant has not pointed out any janitorial, trash disposal, guard and security, nor mail routing tasks in the PWS, which are the tasks covered by Appellant's proffered NAICS code 561210, Facilities Support Services. (*Id.*) The CO also asserts Appellant has not given full analysis, explanation, nor specific statements citing to the PWS as to why the NAICS code designation is in error or why the proposed Code is more appropriate. (*Id.*) The CO insists the PWS calls for consulting on inventory stock level replenishment and CPI recommendations to the agency, which would fall under NAICS Code 541614. (*Id.*)

The CO further argues a change in NAICS code would not allow for an increase in small business participation, and states the Appellant is appealing because it would be excluded from consideration as a subcontractor for a large business offeror and could only compete as a primary contractor. The CO also argues the Appellant is appealing because it would be the only source to continue performing on a bridge contract. (*Id.*)

The CO contends the Appellant is mistaken in its argument that NAICS 541614 is improper and has failed to meet the standard required to show the designated NAICS code is in error, nor has the Appellant shown why their proffered NAICS code is more appropriate. (*Id.*) The CO reiterates NAICS code 541614 closely responds to the Agency's purpose for the procurement, because the PWS requires consulting on inventory stock level and CPI to better serve the Marine Corps. (*Id.*)

#### E. Appellant's Motion for Leave to Reply to CO's Response and Reply to CO's Response

On June 21, 2019, Appellant filed a Motion for Leave to Reply to the Contracting Officer's Response. Appellant states the CO's response "contains errors of fact, internally inconsistent statements about the RFP's principal purpose, and a misstatement of an applicable legal standard, all of which [Appellant] wishes to address for the benefit of [OHA] in resolving this case." (Motion, at 1.) Appellant insists its proposed reply, which it included with the filing, is succinct and will not enlarge the issues. (*Id.*) Appellant contends it did not receive the CO's Response until June 20, after the close of record, and that for this reason the motion should be allowed although it was filed after the close of record. (*Id.*, at 2.)

Appellant attempts to expand its arguments in the reply and does not address any new issues. Under the regulations governing NAICS code appeal, a reply to a response is generally not permitted unless OHA otherwise directs. 13 C.F.R. § 134.309(d). OHA did not direct a reply here, and Appellant's attempts to expand its arguments by way of the reply will not be permitted as OHA does not consider arguments filed after the close of record. 13 C.F.R. § 134.225(b).

Appellant's motion to reply to the CO's response is DENIED and the proposed reply is EXCLUDED from the record. *NAICS Appeal of Oak Grove Tech., LLC*, SBA No. NAICS-5998 (2019); *NAICS Appeal of T3 TigerTech*, SBA No. NAICS-5674, at 2, fn. 2 (2015).

F. NAICS Manual<sup>3</sup> Descriptions

The CO's designated code, NAICS Code 541614, Process Physical Distribution and Logistics Consulting Services, as comprises:

[E]stablishments primarily engaged in providing operating advice and assistance to business and other organizations in: (1) manufacturing operations improvement; (2) productivity improvement; (3) production planning and control; (4) quality assurance and quality control; (5) inventory management; (6) distribution networks; (7) warehouse use, operations, and utilization; (8) transportation and shipment of goods and materials; and (9) materials management and handling.

*NAICS Manual*, at 473.

The *NAICS Manual* lists the following illustrative examples for 541614: freight rate or tariff rate consulting services; productivity improvement consulting services; transportation management consulting services; inventory planning and control management consulting services; and manufacturing management consulting services. (*Id.*)

Appellant's preferred NAICS code, 561210, Facilities Support Services, comprises:

[E]stablishments primarily engaged in providing operating staff to perform a combination of support services within a client's facilities. Establishments in this industry typically provide a combination of services, such as janitorial, maintenance, trash disposal, guard and security, mail routing, reception, laundry, and related services to support operations within facilities. These establishments provide operating staff to carry out these support activities, but are not involved with or responsible for the core business or activities of the client. Establishments providing facilities (except computer and/or data processing) operation support services and establishments providing private jail services or operating correctional facilities (i.e., jails) on a contract or fee basis are included in this industry.

(*Id.*, at 490.)

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<sup>3</sup> Executive Office of the President, Office of Management and Budget, *North American Industry Classification System-United States (2017)*, available at <http://www.census.gov>.

12: SBA's size regulations include additional requirements for NAICS code 561210 at note

a) If one or more activities of Facilities Support Services as defined in paragraph (b) (below in this footnote) can be identified with a specific industry and that industry accounts for 50% or more of the value of an entire procurement, then the proper classification of the procurement is that of the specific industry, not Facilities Support Services.

(b) "Facilities Support Services" requires the performance of three or more separate activities in the areas of services or specialty trade contractors industries. If services are performed, these service activities must each be in a separate NAICS industry. If the procurement requires the use of specialty trade contractors (plumbing, painting, plastering, carpentry, etc.), all such specialty trade contractors activities are considered a single activity and classified as "Building and Property Specialty Trade Services." Since "Building and Property Specialty Trade Services" is only one activity, two additional activities of separate NAICS industries are required for a procurement to be classified as "Facilities Support Services."

13 C.F.R. § 121.201, n.12.

### 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. 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

##### 1. Appellant's Standing

Although the procurement at issue is unrestricted, the Appellant has standing to appeal the NAICS code designation. SBA regulations allow "[a]ny interested party adversely affected by a NAICS code designation" to appeal a designation to OHA. 13 C.F.R. § 121.1103(a)(1). An

interested party under the regulation “would include a business concern seeking to challenge the NAICS code designation in order to be considered a small business for the challenged procurement, regardless of whether the procurement is reserved for small business or unrestricted.” (*Id.*) Because Appellant would qualify as a small business prime offeror under the NAICS code for which it advocates rather than the CO's designation, Appellant has standing as an interested party. *NAICS Appeal of Supplycore, Inc.*, SBA No. NAICS-5866, at 10 (2017); *NAICS Appeal of National Electric Coil*, SBA No. NAICS-5666 (2015).

## 2. Discussion

Having reviewed the solicitation, the description in the *NAICS Manual*, OHA's prior decision, and the arguments, I find the CO erred in selecting NAICS Code 541614 for this procurement. As a result, the appeal is granted.

NAICS Code 541614 is inappropriate for the instant procurement. As outlined in the Manual, NAICS Code 541614 focuses heavily on providing “operating advice” to organizations in certain fields. The illustrative examples listed for 541614 are all consulting services. *NAICS Manual*, at 473. The 54 sector as a whole excludes “establishments primarily engaged in providing a range of day-to-day” services such as “physical distribution and logistics.” *Id.*, at 461. The subsector 5416 is described as Management, Scientific, and Technical Consulting Services, and the *NAICS Manual* notes this “group comprises establishments primarily engaged in providing advice and assistance to business and other organizations on management, environmental, scientific and technical issues.” *Id.*, at 471. Therefore, NAICS code 541614 covers establishments providing advice and consulting services.

Logistics and the distribution of materials are explicitly excluded from the services covered by NAICS code 541614. However, the principal purpose of this procurement is the distribution of equipment to individual Marines. The CO's own response states the primary objective of the procurement is “to distribute equipment to Marines worldwide, and to be a single access point for serviceable equipment . . . and through its CSP Program Management, to be provided recommendations by the contractor on inventory stock levels and improvements to CSP operations.” CO's Response at 1-2. The CO further stated the contractor will be interacting with and distributing equipment to Marines and providing inventory stock level replenishment recommendations. These tasks go beyond consulting services. The procurement seeks services for the warehousing of equipment and its actual distribution to individual Marines.

While the contractor is required to perform CPI and quality control plans, those tasks are not the heart of the procurement. The focus on the PWS is on logistics and warehousing, and supply chain management, rather than advising. The contractor is expected to perform the actual distribution, storage, and maintenance of equipment on a regular basis, rather than just advise the procuring agency on the task. The day-to-day tasks of physical distribution and logistics are the bulk of the contract. The developing of the Quality Control plan and the CPI are merely ancillary tasks.

Accordingly, I find that the CO's designation of NAICS code 541614 was a clear error, because the code covers consulting services, and the tasks required by the instant solicitation are primarily the warehousing and distribution of equipment to individual Marines.

Nevertheless, I cannot substitute Appellant's preferred designation of NAICS code 561210. NAICS code 561210 covers establishments which provide a combination of support services but are not involved with the client's core business. *NAICS Appeal of CWU, Inc.*, SBA No. NAICS-5226 (2011). Contracts covered by the code are usually for an agency's ancillary support services, such as maintenance, janitorial and clerical services. *NAICS Appeal of Alon, Inc.*, SBA No. NAICS-5148 (2010). Services which are central to the procuring agency's mission cannot be classified under NAICS code 561210. *NAICS Appeal of JBS International, Inc.*, SBA No. NAICS-5021 (2008).

As noted *supra*, the size regulation for NAICS Code 561210 requires that the work in a procurement designated under NAICS code 561210 include services from three different NAICS codes, and no one code may account for 50% or more of the value of the procurement. 13 C.F.R. § 121.201, n.12. If any single NAICS code does account for the majority of the procurement's value, the proper classification for the procurement is that code, not 561210. *Id.*, *NAICS Appeal of Active Deployment Systems, Inc.*, SBA No. NAICS-5712, at 16 (2016).

Appellant has failed to establish NAICS Code 561210 applies to the instant procurement. First, Appellant did not demonstrate that the work required under the solicitation included services from three different NAICS codes. Appellant gave a cursory description of its proffered NAICS Code, without demonstrating which requirements under the PWS would fall under different NAICS codes. Mere assertions concerning the work required for the procurement without specific reference to those portions of the solicitation describing the work, and analysis of the various tasks as compared to the *NAICS Manual* descriptions do not establish clear error in a CO's NAICS code designation. *NAICS Appeal of Allsource Global Management, LLC*, SBA No. NAICS-5292, at 6 (2011). Appellant simply stated the awardee will perform services required to manage day-to-day operations, rather than cite to tasks outlined in the PWS and how those tasks relate to Appellant's proposed NAICS code. Appellant has completely failed to identify the three different NAICS codes whose services the solicitation must require if a designation of NAICS code 561210 is to be sustained. Without an identification of three different codes covered by the solicitation, a Facilities Support Services designation cannot be sustained.

Further, Appellant's proffered NAICS code, 561210, covers establishments which provide a combination of support services that are not involved with the core business of the client. *NAICS Appeal of CWU, Inc.*, SBA No. NAICS-5226 (2011); *NAICS Appeal of JBS Int'l, Inc.*, SBA No. NAICS-5021 (2008). The core purpose of the CSP program, which the instant procurement will support, is "to provide USMC personnel and authorized customers with exceptional service through facilities from which to efficiently acquire and/or turn in clean and serviceable items of equipment." Solicitation, at 19. The PWS requires the contractor to manage inventory and issue equipment to Marines, among other tasks. This is essential to the mission of providing equipment to Marine Corps personnel. Where a contract is for the "administration of an important program," as it is here rather than ancillary services or specialty trade contractors,

NAICS code 561210 is inappropriate. *NAICS Appeal of Alon, Inc.*, SBA No. NAICS-5148, at 9 (2010).

Further, OHA has held that NAICS Code 561210 is not an appropriate designation for a procurement that requires professionals with advanced degrees in designated fields, as opposed to specialty trade contractors. *NAICS Appeal of Nelson Engineering Co.*, SBA No. NAICS-5166, at 4 (2010). The instant procurement requires key personnel and essential personnel to possess advanced degrees and hold significant leadership experience in the fields of Supply Chain Management, Logistics, or Business Management. Solicitation, at 28. This further supports a conclusion that NAICS Code 561210 is not appropriate for the instant procurement.

LVI's reliance on the laundry task to argue the applicability NAICS Code 561210 is unpersuasive. The description in the NAICS Manual for 561210 mentions services such as janitorial, maintenance, security, trash disposal, guard and security, mail routing, reception, and laundry falling under the auspices of that code. Although laundry is a task included in the PWS, it is an ancillary task related to the providing and maintaining equipment to be issued to personnel. If ancillary tasks alone were the main requirements of the contract, 561210 could be appropriate. OHA has held that while personnel performing contracts perform different functions in different situations, if those functions come under the ambit of the services they are providing to the procuring agency, that will not justify a different NAICS code for each function, as required to support the designation of NAICS Code 561210. *NAICS Appeal of CWU, Inc.*, SBA No. NAICS-5226, at 4 (2011). Moreover, laundry is a task the PWS anticipates will be outsourced to subcontractors.

I agree the CO erred in selected NAICS Code 541614 but disagree that NAICS Code 561210 is appropriate for the solicitation, so now I must assign the NAICS code that best describes the principal purpose of the products or services being acquired. *NAICS Appeal of Integrity Consulting Engineering and Security Solutions, LLC*, SBA No. NAICS-5941, at 7 (2018). When assigning a NAICS code OHA must consider, but is not bound by or limited to, the NAICS Codes recommended by the parties, and may conclude that a different code from the ones designated by a Contracting Officer or advocated by an appellant is the most appropriate code. *NAICS Appeal of Active Deployment Sys., Inc.*, SBA No. NAICS-5712 (2016); *NAICS Appeal of BLB Resources, Inc.*, SBA No. NAICS-5855, at 6 (2017).

Here, the principal purpose of the instant procurement, based on the solicitation, is maintaining and issuing equipment to Marine Corps personnel. This equipment is stored in a warehouse facility. The contractor is required to perform inventory management, maintenance of gear, disposal of expired or damaged items, some assembly of items, and issuance or acceptance and storage of equipment. For this reason, I find NAICS Code 493190, Other Warehousing and Storage, best describes the purpose of the solicitation.

The NAICS Code subsector 493 is described as encompassing industries “primarily engaged in operating warehousing and storage facilities. . . .” (NAICS Manual, at 405.) This subsector covers establishments that do not sell goods, but “take responsibility for storing the goods and keeping them secure.” (*Id.*) “They may also provide a range of services, often referred to as logistics services, related to the distribution of goods.” The Manual describes logistics

services as “labeling, breaking bulk, inventory control and management, light assembly, order entry and fulfillment.” (*Id.*) More specifically, NAICS Code 493190, Other Warehousing and Storage, “comprises establishments primarily engaged in operating warehousing and storage facilities.” (*Id.*, at 406.)

OHA has previously held NAICS Code 493190 was appropriate where a procurement called for a contractor to perform supply chain management functions such as forecasting orders, warehouse management and operations, disposal, distribution, packaging, and shipment. *NAICS Appeal of SupplyCore, Inc.* SBA No. NAICS-5866, at 11 (2017). This code is appropriate when an establishment is to provide a range of logistics services related to the distribution of goods. (*Id.*) Here, the evaluation of a proposal will include an offeror's ability to “repair, replace, and purchase equipment.”

The instant procurement, like the procurement in *SupplyCore*, requires the contractor to warehouse equipment and provide the services necessary for the distribution of goods, i.e., the necessary equipment to individual Marines, as well as forecasting the Marine Corps' inventory needs. The contractor in *SupplyCore* was providing tires to activities which required them, this contractor will be servicing the equipment needs of the Marines. While NAICS code 493190 has not been assigned to predecessor procurements for this requirement, OHA attaches little weight to the NAICS codes assigned to other procurements that were not appealed to OHA. *NAICS Appeal of Arrowhead Contracting, Inc.*, SBA No. NAICS-5725, at 8 (2016).

I conclude that the appropriate NAICS code for the instant solicitation is 493190, Other Warehousing and Storage, with a corresponding \$27.5 million annual receipts size standard because the solicitation requires the contractor to provide logistics services related to the distribution of goods.

#### IV. Conclusion

For the above reasons, the appeal is GRANTED. The CO clearly erred in assigning NAICS Code 541614 to this procurement. The appropriate NAICS Code is 493190, Other Warehousing and Storage, with a corresponding \$27.5 million annual receipts size standard.

Consequently, because OHA is issuing this decision before the bid proposals are due, the CO MUST amend the RFP to change the NAICS code from 541614 to 493190. FAR § 19.303(c)(5); 13 C.F.R. § 134.318(b); *see e.g.*, *NAICS Appeal of Noble Supply & Logistics*, SBA No. NAICS-5886 (2018).

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

CHRISTOPHER HOLLEMAN  
Administrative Judge