

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

NAICS APPEAL OF:

Innovative Support Solutions, Inc.

Appellant,

Solicitation No. 36C26120Q0099  
Department of Veterans Affairs

SBA No. NAICS-6045

Decided: January 10, 2020

APPEARANCES

Peter B. Ford, Esq., Meghan F. Leeman, Esq., PilieroMazza PLLC, for Appellant  
Innovative Support Solutions, Inc.

DECISION

I. Introduction and Jurisdiction

On December 20, 2019, the Department of Veterans Affairs (VA) issued Request for Quotations (RFQ) No. 36C26120Q0099 requesting Building Inspection Services for the San Francisco Veterans Affairs Health Care System. The Contracting Officer (CO) set aside the procurement entirely for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), and designated North American Industry Classification System (NAICS) code 541350, Building Inspection Services, with a corresponding \$8 million annual receipts size standard, as the appropriate code for the solicitation.

On December 30, 2019, (Appellant) filed the instant appeal challenging the NAICS code designation. Appellant asserts that the correct NAICS code for this procurement is 541330, Engineering Services, with a corresponding \$16.5 million annual receipts size standard. For the reasons discussed *infra*, the appeal is denied.

The U.S. Small Business Administration (SBA) Office of Hearings and Appeals (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 filed the instant appeal within ten calendar days after issuance of Amendment 0002, so the appeal is timely. 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. The Performance Work Statement

The VA seeks a contractor to provide professional safety surveys at approximately 79 Community Nursing Homes, Health Care for Homeless Veterans Facilities, Adult Day Health Care Facilities, Grant and Per Diem Facilities, and Vet Centers located throughout Northern California. (Solicitation, at 7.)

The Contractor must be a licensed/registered Fire Protection Engineer and be a member of the National Fire Protection Association (NFPA) Safety to Life Committee. The Contractor shall demonstrate knowledge of the VA community veteran care program criteria for these types of facilities, and have at least 5 years experience in interpreting the Life Safety Code (LSC) as it pertains to various types of residential occupancies, day care occupancies, and business occupancies. The surveys will be based on compliance with the applicable chapter and edition of the LSC, including other NFPA standards as referenced by the LSC. (*Id.*, at 8.)

The Contractor will verify records of all fire protection system testing and fire drills conducted. Additional site visits may be required such as follow-up surveys and surveys of new facilities. The Contractor shall complete the inspection of a new facility within 21 days after receiving notification from VA. Existing facilities will be inspected annually, within 30 days of the anniversary of the last inspection. The Contractor will complete inspections and report to VA within 14 business days after inspections are completed. (*Id.*)

The Contractor is to notify a Facility Director at least five business days prior to surveying the facility. The Contractor will provide the VA with a list of findings that include the location, applicable reference, NFPA occupancy classification, and recommended correction actions along with a cover letter transmitting the survey results. The Contractor will develop a written report with a detailed list of each Safety Code deficiency, and keep a running spreadsheet of each facility inspected, its address, square footage, and point of contact at the facility. An updated spreadsheet will be submitted to the VA each quarter. (*Id.*, at 9.) The surveys must be performed by a licensed, registered Fire Protection Engineer with expertise in the LSC, NFPA, and VA community veteran care program criteria. (*Id.*, at 38.)

Offers will be evaluated using three factors, Technical Capability, Past Performance, and Price. (*Id.*, at 39.) The Technical Capability response will be evaluated to determine the vendors' capability to provide Building Safety Inspection Services in the timeframe described in the Solicitation. Vendors with key personnel who have experience with performing life safety inspections on nursing homes will be evaluated more favorably than those vendors who do not have this experience. Key personnel who have more years of experience will be evaluated more favorably than those with less years of experience. (*Id.*, at 40.) The VA will also consider an offeror's past performance, whether it has performed contracts which are similar in scope, magnitude of effort, and complexity to the instant requirement. (*Id.*)

## B. The Appeal

On December 30, 2019, Appellant filed the instant appeal. Appellant argues that the CO's designation of NAICS code 541350, Building Inspection Services is incorrect and that NAICS code 541330, Engineering Services, with a corresponding \$16.5 annual receipts size standard, more appropriately describes the principal purpose of the solicitation, which is the provision of safety-related engineering tasks. (Appeal, at 1.) Appellant maintains that NAICS code 541350 is clearly erroneous because the primary purpose of this solicitation is not the evaluation of all aspects of a building's structure or component systems, generally for buyers involved in real estate transactions, but to provide professional safety surveys at nearly 80 locations by a licensed/registered Fire Protection Engineer. The solicitation does not seek evaluation of the physical condition of the properties, but rather safety-related engineering tasks. Accordingly, NAICS code 541330 is the best fit for this project. (*Id.*, at 1-2.)

Appellant argues that this procurement is what is referred to in the industry as a statement of conditions project. The Contractor is required to survey the building to determine compliance with the LSC. No inspection of the building's physical condition is contemplated under this solicitation. (*Id.*, at 3.) Rather, this solicitation seeks professional safety surveys for the limited purpose of determining whether the buildings are in compliance with the applicable LSC, including the NFPA standards referenced in the LSC. The work must be performed by a licensed/registered Fire Protection Engineer with expertise in the LSC. (*Id.*, at 5.)

Appellant asserts that Fire Protection Engineers are typically employed by engineering firms, not building inspection firms. Further, building inspectors are typically not equipped to determine whether a given space is correctly identified as a Health Care Occupancy, an Ambulatory Care Occupancy, or a Business Occupancy providing health care services, each of which has different LSC requirements.<sup>1</sup> The RFQ does not simply seek a building inspector. It seeks a contractor with knowledge of the VA community and one with at least five years experience in interpreting the LSC. This is more technical and specific than merely providing building inspection services. (*Id.*, at 5.)

NAICS code 541350 is used for reports on the physical conditions of buildings. The NAICS Manual describes this code as covering establishments which typically evaluate all aspects of the building structure, and prepare a report on the property's physical condition, generally for buyers in a real estate transaction. (*Id.*, at 5, citing *NAICS Manual*, at 466.) Appellant maintains that this code is thus inapplicable to this solicitation because its principal purpose is not evaluating the physical condition of buildings, and definitely not involving real estate transactions. Rather, its purpose is to procure safety-related engineering tasks. (*Id.*, at 6.)

Appellant argues that because NAICS code 541330 covers the application of engineering principles to the design and development of structures, including the provision of advice and the inspection and evaluation of engineering projects, it is the appropriate code for this procurement, where the primary purpose is the performance of professional safety surveys based on compliance with the LSC. (*Id.*, at 6, citing *NAICS Manual*, at 465.) Appellant relies on *NAICS*

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<sup>1</sup> Appellant offers no documentation or evidence to support these assertions.

*Appeal of Millennium Engineering and Integration Co.*, SBA No. NAICS-5309 (2011), where OHA upheld a NAICS code 541330 designation for a contract where the predominant contract tasks were the performance of highly technical safety-related analyses, assessments, and investigations, and the provision of safety-related advice and expertise. (*Id.*, at 6-7.) Similarly, this solicitation seeks a Fire Protection Engineer to perform safety surveys, and NAICS code 541330 is the appropriate code.

The CO did not respond to the instant appeal.

D. NAICS Manual<sup>2</sup> Descriptions

The CO's designated code, NAICS Code 541350, Building Inspection Services, comprises:

[E]stablishments primarily engaged in providing building inspection services. These establishments typically evaluate all aspects of the building structure and component systems and prepare a report on the physical condition of the property, generally for buyers or others involved in real estate transactions. Building inspection bureaus and establishments providing home inspection services are included in this industry.

*NAICS Manual*, at 466.

Index entries which refer to this NAICS Code are:

Building inspection bureaus;  
Building inspection services;  
Energy efficiency inspection services;  
Home inspection services;  
Inspection bureaus, building;  
Inspection services, building or home; and  
Repurchase home inspection services

*Id.*, at 689, 748, 790, 799, 868.

Appellant's preferred code, NAICS Code 541330, Engineering Services, comprises:

[E]stablishments primarily engaged in applying physical laws and principles of engineering in the design, development, and utilization of machines, materials, instruments, structures, processes, and systems. The assignments undertaken by these establishments may involve any of the following activities: provision of advice, preparation of feasibility studies, preparation of preliminary and final plans and designs, provision of technical services during the construction or

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<sup>2</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>.

installation phase, inspection and evaluation of engineering projects, and related services.

Illustrative Examples:

Civil engineering services;  
Environmental engineering services;  
Construction engineering services;  
\*4 Mechanical engineering services; and  
\*4 Engineers' offices

*Id.*, at 465.

Index entries which refer to this NAICS Code are:

Acoustical engineering consulting services;  
Acoustical system engineering design services;  
Boat engineering design services;  
Chemical engineering services;  
Civil engineering services;  
Combustion engineering consulting services;  
Construction engineering services;  
Consulting engineers' offices;  
Consulting engineers' private practices;  
Electrical Engineering Services;  
Engineering consulting services;  
Engineering design services;  
Engineering services;  
Engineers' offices;  
Engineers' private practices;  
Environmental engineering services;  
Erosion control engineering services;  
Geological engineering services;  
Geophysical engineering services;  
Heating engineering consulting services;  
Industrial engineering services;  
Logging engineering services;  
Maritime technology engineering services;  
Mechanical engineering services;  
Mining engineering services;  
Petroleum engineering services; and  
Traffic engineering consulting services

*Id.* at 654, 682, 703, 706, 713, 718, 719, 745, 749, 750, 775, 787, 797, 816, 822, 824, 829, 856, 936.

### 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. 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

Having examined the SOW, the descriptions in the *NAICS Manual*, and Appellant's appeal, I find the CO did not commit clear error of fact or law in designating NAICS code 541350 for the instant procurement. I find that NAICS code 541350 best describes the principal purpose of the services sought under the solicitation.

The VA here seeks to procure professional safety surveys, or inspections, at 79 of its facilities in Northern California. The inspection must be performed by a licensed Fire Protection Engineer. The inspector will examine the conditions at all of these buildings, determine whether there are safety deficiencies, and file reports with the VA. While the inspection will not examine all aspects of the buildings' structure, but concentrate on fire safety, it will still be an inspection of the building. Further, it will require the Contractor to identify those deficiencies in the buildings which do not meet the LSC and recommend corrective action. While the procurement does not require the inspection of the entire building, a NAICS code designation need not be perfect. Here, the solicitation requires the Contractor to survey the buildings for safety violations, and it therefore appears to meet the category of building inspection.

Appellant argues that NAICS code 541330 is the appropriate code. OHA has reviewed NAICS code 541330 in the past. OHA has found its predecessor, Standard Industrial Classification code 8711, Engineering Services, covered procurements for engineering services for radar systems; engineering and computer services of the testing and evaluation of prototypes; engineering services for an electronic systems centers; and engineering in support of military equipment. *NAICS Appeal of Rhinocorps, Ltd.*, SBA No. NAICS-4736, at 7 (2005), and cases cited therein. Similarly, NAICS code 541330, Engineering Services, covers services involving the design and utilization of machines, materials, and systems. *Id.*, at 5. OHA has found NAICS code 541330 appropriate for procurements calling for highly technical analyses. *NAICS Appeal of Millennium Engineering and Integration Co.*, SBA No. NAICS-5309, at 8 (2011) (finding that the SOW called specifically for safety engineering, which required offerors to provide “technical

responses to realistic safety-related scenarios.”) OHA has held NAICS code 541330 describes an industry where the establishments provide engineering services, including providing advice, feasibility studies, preparing preliminary and final plans, and inspecting and evaluating engineering projects. *NAICS Appeal of Inklings Media Co.*, SBA No. NAICS-5054, at 10 (2009).

This procurement does not meet these criteria. This Contractor will not be evaluating engineering projects, preparing feasibility studies, or inspecting and evaluating engineering projects, but merely identifying safety violations in the subject buildings and recommending corrective action. It does not require sophisticated engineering analysis.

Appellant's reliance on *NAICS Appeal of Millennium Engineering and Integration Co.*, SBA No. NAICS-5309 (2011) is misplaced. That procurement required its contractor to perform a “variety of safety-related engineering tasks, including risk assessments, inspections, investigations, analyses, independent assessments of technical issues, evaluations of work performed by other contractors, and maintenance of applications/databases” for NASA. *Id.*, at 2. Most of the labor categories were for engineers. *Id.*, at 3. That procurement was clearly a sophisticated engineering procurement, requiring an engineering NAICS code. Here, the safety inspections are not explicitly engineering tasks. Appellant offers the mere assertion that fire inspectors are employed by engineering and not building inspection firms, but fails to support this claim. I therefore cannot rely upon Appellant's arguments to establish any clear error in the CO's designation.

I therefore conclude that Appellant has failed to meet its burden of establishing a clear error of fact or law in the CO's NAICS code designation, and find the CO's designation of NAICS code 541350, Building Inspection Services, is correct.

#### IV. Conclusion

Appellant has the burden of proving that the CO committed a clear error of fact or law in designating NAICS code 541350 for this procurement and has failed to meet its burden. For that reason, I AFFIRM the CO's NAICS code designation and find the appropriate NAICS code for this procurement is 541350, Building Inspection Services, with a corresponding \$8 million annual receipts size standard, and DENY the instant appeal.

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

CHRISTOPHER HOLLEMAN  
Administrative Judge