

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

NAICS APPEAL OF:

Taurean General Services, Inc.,

Appellant,

Solicitation No. W91QEX-21-R-0003

U.S. Army 410<sup>th</sup> Contract Support Brigade

SBA No. NAICS-6092

Decided: March 18, 2021

APPEARANCE

Jeffrey Jaime, Owner/CEO, Taurean General Services, Inc., Boerne, Texas

DECISION

I. Introduction and Jurisdiction

On February 5, 2021, the U.S. Army 410th Contract Support Brigade (Army) issued Request for Proposals (RFP) No. W91QEX-21-R-0003 seeking Security Services Support for the U.S. Southern Command (USSOUTHCOM). The Contracting Officer (CO) set aside the procurement entirely for participants in the U.S. Small Business Administration (SBA) 8(a) Business Development program, and assigned North American Industry Classification System (NAICS) code 561210, Facilities Support Services, with a corresponding size standard of \$41.5 million average annual receipts.

On February 15, 2021, Taurean General Services, Inc. (Appellant) filed the instant appeal with SBA's Office of Hearings and Appeals (OHA). Appellant maintains that a more appropriate NAICS code for this procurement is 541690, Other Scientific and Technical Consulting Services, with an associated size standard of \$16.5 million average annual receipts. For the reasons discussed *infra*, the appeal is denied.

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 the instant appeal within ten calendar days after issuance of the RFP, so the appeal is timely. 13 C.F.R. §§ 121.1103(b)(1) and 134.304(b); Federal Acquisition Regulation (FAR) 19.103(a)(1). Accordingly, this matter is properly before OHA for decision.

## II. Background

### A. The RFP

According to the RFP's Performance Work Statement (PWS), the contractor will “provide security service support operations needed to support USSOUTHCOM.” (RFP at 13.) More specifically, the contractor will provide services in support of USSOUTHCOM's collateral and Sensitive Compartmented Information (SCI) security programs, to include administrative, personnel, physical, information, and industrial security functions. (*Id.* at 13, 30.) The RFP explains that “collateral security” means “[t]he protection of classified information, programs, and facilities.” (*Id.* at 24.) “SCI security” is defined as “[t]he protection of classified information concerning or derived from intelligence sources, methods, or analytical processes.” (*Id.* at 25.) Due to the sensitive nature of the procurement, all contractor employees working on the contract must have Top Secret security clearance with SCI access. (*Id.* at 28.)

The PWS outlines five principal types of work that the contractor will perform. Under Task 1: Personnel Security, the contractor will conduct personnel security in support of USSOUTHCOM. (*Id.* at 31.) Such work includes in/out-processing of visitors; badging operations; maintaining records of persons granted access to USSOUTHCOM facilities; and processing pre/post travel forms. (*Id.* at 31-32.) Task 2: Information Security, requires the contractor to perform information security tasks, including assisting with the secure transmission or transportation of classified materials; training USSOUTHCOM personnel on proper handling of classified information; and operating and maintaining equipment to ensure that classified materials are appropriately destroyed in accordance with applicable protocols. (*Id.* at 32-34.) Task 3: Physical Security requires the contractor to conduct physical security tasks. (*Id.* at 34.) This includes assessing, maintaining, and testing physical security systems at USSOUTHCOM facilities; responding to alarms; and supporting the security of USSOUTHCOM computer systems and networks. (*Id.* at 34-36.) Task 4: Security Administration calls for the contractor to conduct various administrative tasks in support of USSOUTHCOM security programs. (*Id.* at 36-37.) Lastly, under Task 5: Conference Center Security, the contractor will provide security support for the Conference Center of the Americas, located on the grounds of USSOUTHCOM Headquarters in Doral, Florida. (*Id.* at 37-38.) The contractor must screen visitors, manage badges, conduct security walk-throughs, and perform other security tasks. (*Id.*)

To assist prospective offerors in developing their proposals, the RFP provides a table with estimated labor hours by labor category, based on historical data:

ITEM	NAME	ESTIMATED QUANTITY	
1	Personnel Security Specialist	Hour	5.760
2	Information Security Specialist	Hour	9.600
3	Administrative Security Specialist	Hour	3.840
4	Physical Security Specialist	Hour	15,360
5	Conference Center Security Assistant	Hour	5,760
6	Directorate Security Specialist	Hour	1.920
7	Physical Security Hardware Specialist	Hour	1,920
8	Information Technology/Information System Specialist	Hour	3.340
		<b>Total:</b>	48,000

### TECHNICAL EXHIBIT A

#### HISTORIAL WORKLOAD DATA

(*Id.* at 41.) Proposals are due March 26, 2021. (RFP, Amendment 0001.)

#### B. Appeal

On February 15, 2021, Appellant filed a single-page appeal, contending that the “most appropriate” NAICS code for this procurement would be 541690. (Appeal at 1.) Appellant asserts that “the preponderance of the work covers security consulting services,” and the *NAICS Manual*<sup>1</sup> indicates that “security consulting services” fall under NAICS code 541690. (*Id.*) Additionally, in Appellant's view, the RFP encompasses “an information security element,” which may be considered a form of “consulting services.” (*Id.*) Appellant allows that the NAICS code selected by the CO, 561210, includes “guard and security” services, but contends that “this is intended for jail operations.” (*Id.*)

#### C. NAICS Manual

The NAICS code chosen by the CO, 561210, Facilities Support Services, covers:

establishments 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

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<sup>1</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>.

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.

*NAICS Manual* at 490. The *NAICS Manual* states that “[e]stablishments primarily engaged in providing only one of the support services (*e.g.*, janitorial services) that establishments in this industry provide are classified in the appropriate industry according to the service provided,” rather than under NAICS code 561210. *Id.* Index entries which refer to NAICS code 561210 include: “[b]ase facilities operation support services,” “[f]acilities (except computer operation) support services,” “Government base facilities operation support services,” and “[m]ilitary base support services.” *Id.* at 675, 753, 778, and 828.

NAICS code 561210 is one of several codes within NAICS sector 56, Administrative and Support and Waste Management and Remediation Services. The *NAICS Manual* contains the following description of NAICS sector 56 as a whole:

The Administrative and Support and Waste Management and Remediation Services sector comprises establishments performing routine support activities for the day-to-day operations of other organizations. These essential activities are often undertaken in-house by establishments in many sectors of the economy. The establishments in this sector specialize in one or more of these support activities and provide these services to clients in a variety of industries and, in some cases, to households. Activities performed include: office administration, hiring and placing of personnel, document preparation and similar clerical services, solicitation, collection, security and surveillance services, cleaning, and waste disposal services.

*Id.* at 489.

A footnote in SBA's size regulations includes additional requirements for procurements assigned NAICS code 561210. The footnote states:

(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. . . .

The NAICS code Appellant advocates, 541690, Other Scientific and Technical Consulting Services, is comprised of:

establishments primarily engaged in providing advice and assistance to businesses and other organizations on scientific and technical issues (except environmental).

*NAICS Manual* at 474. Index entries which refer to NAICS code 541690 include consulting related to a variety of scientific fields, such as “[b]iological consulting services” and “[n]uclear energy consulting services,” but also “[s]afety consulting services” and “[s]ecurity consulting services.” *Id.* at 679, 840, 890, and 896.

NAICS code 541690 is one of several codes within NAICS sector 54, Professional, Scientific, and Technical Services. The *NAICS Manual* contains the following description of the sector as a whole:

The Professional, Scientific, and Technical Services sector comprises establishments that specialize in performing professional, scientific, and technical activities for others. These activities require a high degree of expertise and training. The establishments in this sector specialize according to expertise and provide these services to clients in a variety of industries and, in some cases, to households. Activities performed include: legal advice and representation; accounting, bookkeeping, and payroll services; architectural, engineering, and specialized design services; computer services; consulting services; research services; advertising services; photographic services; translation and interpretation services; veterinary services; and other professional, scientific, and technical services.

This sector excludes establishments primarily engaged in providing a range of day-to-day office administrative services, such as financial planning, billing and recordkeeping, personnel supply, and physical distribution and logistics. These establishments are classified in Sector 56, Administrative and Support and Waste Management and Remediation Services.

*Id.* at 461.

### 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 3-4 (2003). 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

Appellant has not carried its burden of proving that the CO clearly erred in selecting NAICS code 561210 for the instant RFP. Therefore, this appeal must be denied.

OHA has explained that “[m]ere 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 PrimeTech Int'l, Inc.*, SBA No. NAICS-6014, at 9 (2019) (citing *NAICS Appeal of AllSource Global Mgmt., LLC*, SBA No. NAICS-5292, at 6 (2011)). In the instant case, Appellant filed a single-page appeal petition, and makes no attempt to analyze particular portions of the RFP or the PWS. Section II.B, *supra*. Nor does Appellant even contend that the NAICS code selected by the CO, 561210, is clearly incorrect. Indeed, although Appellant asserts that NAICS code 541690 would be more “appropriate” than NAICS code 561210, Appellant acknowledges that “guard and security” services do fall within NAICS code 561210. *Id.*

The available record suggests that NAICS code 561210 is a reasonable choice for this procurement. The *NAICS Manual* makes clear that NAICS code 561210 may apply when a contractor performs “a combination of support services” — including “maintenance” and “guard and security” services — to support the operation of a client's facilities, such as a “[m]ilitary base.” Section II.C, *supra*. In addition, in order for NAICS code 561210 to be utilized, work must fall within at least three different NAICS codes, and no one NAICS code may constitute a majority of the contract value. 13 C.F.R. § 121.201, n.12. Here, the RFP states that the contractor will support the operation of USSOUTHCOM facilities by performing a variety of security-related tasks, including: in/out-processing of visitors; badging operations; maintaining records; assisting with the secure transmission and destruction of classified materials; training; maintaining physical security systems; responding to alarms; supporting the security of computer systems and networks; and performing security walk-throughs. Section II.A, *supra*. Further, the RFP identifies eight separate labor categories associated with the contractor's work, and no single labor category represents a majority of contract labor. *Id.* Accordingly, the work contemplated by the RFP can plausibly be viewed as falling within at least three different services NAICS codes, and there is no indication that any one NAICS code accounts for more than half of the value of the procurement. NAICS code 561210 thus is not, on its face, an improper choice for this RFP.

Because Appellant has not demonstrated that NAICS code 561210 is clearly incorrect for this procurement, OHA need not consider the NAICS code Appellant advocates, or other alternative codes. It is well-settled that “OHA will not assign a different NAICS code to a procurement unless the CO's choice of NAICS code is shown to be clearly erroneous.” *NAICS Appeal of Dentrust Optimized Care Solutions*, SBA No. NAICS-5761, at 7 (2016) (quoting *NAICS Appeal of Pac. Shipyards Int'l, LLC*, SBA No. NAICS-5464, at 7 (2013)); *NAICS Appeal of Ascendant Program Servs., LLC*, SBA No. NAICS-5832, at 10 (2017). It is worth noting, however, that the NAICS code Appellant advocates, 541690, appears inapposite. NAICS code 541690 applies when a contractor provides consulting or advice on scientific and/or technical matters. Section II.C, *supra*; see also *NAICS Appeal of R. Christopher*

*Goodwin & Assocs., Inc.*, SBA No. NAICS-5393, at 6 (2012). In the instant case, the contractor will perform a variety of security-related support services, but the RFP makes no mention of any “consulting” or “advice” that the contractor will provide. Section II.A, *supra*.

IV. Conclusion

Appellant has not demonstrated the CO clearly erred in selecting NAICS code 561210 for this RFP. The appeal therefore is DENIED. This is the final decision of the U.S. Small Business Administration. *See* 13 C.F.R. § 134.316(d); FAR 19.103(a)(7).

KENNETH M. HYDE  
Administrative Judge