

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

NAICS APPEAL OF:

Noble Supply & Logistics, LLC,

Appellant,

Solicitation No. 47QSCC22R0021

General Services Administration

SBA No. NAICS-6145

Decided: April 11, 2022

APPEARANCES

Gary J. Campbell, Esq., Miles A. McCann, Esq., Lidiya Kurin, Esq., Womble Bond Dickinson (US) LLP, Washington, D.C., for Appellant

James C. Braswell, Esq., Office of General Counsel, U.S. General Services Administration, Washington, D.C.

DECISION<sup>1</sup>

I. Introduction and Jurisdiction

On March 1, 2022, the General Services Administration (GSA) issued Solicitation No. 47QSCC22R0021, a Request for Proposal (RFP) for logistics support services for Alaska. (Solicitation, at 1.) The Contracting Officer (CO) set the procurement entirely aside for small businesses and designated North American Industry Classification System (NAICS) code 493190, Other Warehousing and Storage, with a corresponding \$30 million annual receipts size standard, as the applicable code. (*Id.*, at 6.)

On March 11, 2022, Noble Supply & Logistics, LLC (Appellant) filed a NAICS Appeal with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA), arguing that the CO designated an inappropriate NAICS code for the instant solicitation. Appellant argues that the appropriate NAICS code is 339999, All Other Miscellaneous

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<sup>1</sup> This decision was originally issued under a protective order. Pursuant to 13 C.F.R. § 134.205, OHA afforded counsel an opportunity to file a request for redactions if desired. OHA received no requests for redactions. Therefore, I now issue the entire decision for public release.

Manufacturing, with a corresponding 500 employee size standard. For the reasons discussed *infra*, the appeal is denied.

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 the solicitation, so the appeal is timely. 13 C.F.R. §§ 121.1103(b)(1), 134.304(b). Accordingly, this matter is properly before OHA for decision.

## II. Background

### A. Solicitation

According to the solicitation's performance work statement (PWS), the contractor will provide Logistics Operations Solutions Support in and around Alaska. (Solicitation, Attach. 2, at 1.) The contractor is responsible for “a total supply chain solution” including “sourcing, procurement, warehousing, transporting or arranging for transportation, and delivery” for various supplies and products; predominantly “office supplies, janitorial and sanitation supplies, and industrial products.” (*Id.*, at 1, 37.) The purpose of the procurement is “to support overseas customers by utilizing a more expeditious solution to supply items to the customer.” (*Id.*, at 1.)

Attachment 3 of the solicitation provides a list of the supplies and the number of items ordered during the calendar year 2020. (*Id.*, at 57.) The contractor must source all products under Attachment 3, including other supplies or products that may be added during the life of the contract. (*Id.*, at 3.) The products in Attachment 3 are required by law to be obtained from mandatory sources of supply, particularly the AbilityOne program and Federal Prison Industries, Inc. The solicitation stipulates that, if a mandatory source of supply is identified in Attachment 3, “the contractor must procure those items from” the mandatory source. (*Id.*) The contractor also must ensure suppliers are compliant with domestic sourcing restrictions, such as the Trade Agreements Act. (*Id.*)

The PWS further outlines specific requirements the contractor must perform as follows:

- Procuring — The contractor is responsible for procuring supplies and products identified in Attachment 3, and other supplies and products subsequently added. (*Id.*)
- Warehousing — The contractor must own, or have access to, at least one warehouse in the State of Alaska. (*Id.*, at 4.)
- Transportation or Delivery — The contractor must (1) deliver supplies and products to the destinations specified in each delivery order, (2) ship all supplies on US flag vessels, (3) create and supply “shipping documentation, shipping labels, and package markings,” and (4) adhere to storage and shipping standards or regulations regarding shipping, handling, and storing dangerous goods or hazardous items. (*Id.*)
- Vendor E-Portal and EDI Requirements — The contractor must provide GSA and its customers access to an e-portal system that allows “the government to view current, up to date information

on all shipments, including the requisition numbers, purchase order number and delivery status.” (*Id.*, at 5.)

The solicitation states that GSA plans to award a single indefinite delivery/indefinite quantity (ID/IQ) contract. (Solicitation, at 35.) Proposals initially will be evaluated based on four evaluation factors: Technical Excellence; Operational Quality Assurance; Experience; and Past Performance. (*Id.*, at 21-25.) For the Technical Excellence factor, offerors are instructed to “discuss the distribution equipment and resources planned to execute the requirement,” and to provide documentation that it “has/will have warehouse(s) upon contract award in Alaska.” (*Id.*, at 22.) For the Operational Quality Assurance factor, offerors must provide a “written explanation of qualifications of the technical staff . . . identify the location of technical staff . . . also identify key personnel responsible for ensuring quality controls . . . resumes for key personnel . . . [who will] lead or are in charge of sourcing the items in Attachment 3; warehouse facility(s); delivery, and [electronic data interface] compliance.” (*Id.*, at 23.) For the Experience factor, “[t]he proposal must demonstrate the contractor's experience in regards to delivering to Alaska.” (*Id.*, at 24.) For the Past Performance factor, the contractor must provide information regarding “up to three (3) projects that are similar in size, scope, and complexity.” (*Id.*, at 25.)

Offerors whose proposals are rated as at least “Acceptable” will be invited to participate in a “Phase II Live Test Demonstration” of the e-portal system. (*Id.*, at 25-26.) GSA will select the winning offeror on a best value basis, considering the above evaluation factors as well as price. (*Id.*, at 20-21.) Technical Excellence is the most important non-price factor, and the non-price factors collectively are significantly more important than price. (*Id.*, at 27.) Additionally, “Technical Excellence is more important than Operational Quality Assurance. Operational Quality Assurance is more important than Experience. Experience is more important than Past Performance. Past Performance is more important than the Live Test Demonstration.” (*Id.*)

The solicitation states that proposals would be due by April 20, 2022, but the CO has stayed the deadline pending resolution of this NAICS code appeal. (Solicitation, Amendment 00001, at 2.)

### B. The Appeal

On March 11, 2022, Appellant filed the instant appeal. (Appeal, at 1.) Appellant argues the CO committed an error of law or fact because it failed to designate the optimal NAICS code. (*Id.*, at 5-6.) Appellant maintains that the proper NAICS code under the manufacturing sector is based on items that “constitutes a plurality of the anticipated items to be purchased,” (*Id.* at 6, citing NAICS Appeal of Noble Supply & Logistics, SBA No. NAICS-5748, at 8 (2016).) According to Appellant, manufacturing NAICS Code 339999, All Other Miscellaneous Manufacturing, is the preferred NAICS code because the plurality of the requested supplies in the instant solicitation is a variety of miscellaneous products. (*Id.*) Appellant concludes that the CO erred by designating a service related NAICS code. (*Id.*)

Appellant further contends the CO erred in selecting NAICS code 493190 for this procurement because procuring a supply of goods is the primary purpose of the solicitation, while warehousing and storage is “merely incidental.” (*Id.*, at 10.) Appellant specifically cites to

the solicitation, finding that the purpose is to “support overseas customers by utilizing a more expeditious solution to supply items to the customer.” (*Id.*) A contract for supplies must be classified under the appropriate manufacturing or supply NAICS code. (*Id.*, at 8 citing 13 C.F.R. § 121.402(b)(2); NAICS Appeal of Global Precision Systems, LLC. SBA No. NAICS-5681 (2015).) In Global, the services component was the minimal administrative work any contractor providing goods would have to perform. (*Id.*)

Here, the purpose of the contract is not to operate a warehouse, but to support overseas customers by utilizing a more expeditious solution to supply items to the customer. (*Id.*, at 10, citing PWS at 1.) Appellant further asserts that the value of the supplies procured as part of this procurement will be at least the 75% share of equipment versus services OHA relied upon in NAICS Appeal of U.S. Small Bus. Admin., SBA No. NAICS-5526, at 8 (2014). The services portion of procurements of this type usually accounts for less than 20% of total contract value. (*Id.*) Appellant supports this argument with OHA precedent; specifically, Small Bus. Admin., where OHA found that a procurement, where 75% of the dollar value goes towards equipment, was primarily a contract for supplies. (*Id.*, citing NAICS Appeal of U.S. Small Bus. Admin., SBA No. NAICS-5526, at 8 (2014).) Therefore, in Appellant's view, the CO must assign a proper manufacturing NAICS code, rather than a services NAICS code, because the procurement is primarily for supplies than warehousing and storage. (*Id.*)

Appellant also argues that while the solicitation calls for mandatory sources of supply listed under Attachment 3, “none of the products are identified as having mandatory sources.” (*Id.*, at 11.) Appellant further contends that possible mandatory sources do not affect a procurement when the contractor is not acting as a “pass-through” or “conduit” to deliver supplies. (*Id.*, citing NAICS Appeal of Noble Sales Co., Inc. d/b/a Noble Supply & Logistics, SBA No. NAICS-6067, at 7 (2020).) In support, Appellant asserts that the solicitation allows a contractor to place its own purchase order from a vendor regardless of whether it stems from a mandatory source and without a government issued task order because the solicitation relies on “projections[,] historical data and pre-position stock.” (*Id.*, at 11-12.) Appellant further asserts that contractors are responsible for supply demands or overstock without selling the items directly to the government for a warehousing fee or service and cannot wait for Government order to place its own purchase order. (*Id.*, at 12.) Appellant concludes that based on the solicitation, mandatory sources are not obligatory. (*Id.*)

Further, in Noble Sales, the awarded was to be selected based upon its warehousing, transportation and other services. Here, Evaluation Factor 3, Experience, requires offerors to submit a narrative describing their experience, capabilities and efforts to identify and develop the sources necessary to complete this requirement. (*Id.*, at 12.)

Further, Appellant cites to factors in the solicitation; specifically, experience delivering to Alaska and experience with technical capabilities; and argues that the solicitation highlights “delivering a compliant product, and, other than being compliant, not on how the contractor will perform the warehousing, transportation and customized e-portal system.” (*Id.*, at 13.) Appellant concludes, “the emphasis in this procurement is not on the incidental warehousing and logistics services, but, rather, on sourcing and delivering products.” (*Id.*)

### C. GSA's Response

On March 29, 2022, GSA responded to the appeal. GSA contends that the CO did not err in selecting NAICS code 493190 for a procurement that involves logistics services and distribution of goods. (GSA Response, at 3.) GSA points out the PWS identifies the purpose of the procurement as “support [for] overseas customers by utilizing a more expeditious solution to supply items to the customer.” (*Id.*, at 1, citing PWS at 1, § A.1) Specifically, OHA has determined that NAICS Code 493190 is “appropriate where a procurement call[s] for a contractor to perform supply chain management functions such as forecasting orders, warehouse management and operations, disposal, distribution, packaging, and shipment.” (*Id.* at 3, citing *NAICS Appeal of PrimeTech Int'l, Inc.*, SBA No. NAICS-6014, at 11 (2019).) GSA highlights the instant solicitation's supply chain management functions, including “forecasting orders, warehouse management and operations, product distribution, packing, shipment, and customer support; and information and data capabilities.” (*Id.*, at 3.) GSA concludes that despite involving distribution of goods, the primary purpose of this solicitation is “the provision of logistics and supply chain management services related to the distribution of those goods.” (*Id.*, at 4.) GSA points to *NAICS Appeal of SupplyCore, Inc.*, SBA No. NAICS-5866 (2017), *aff'd sub nom. SupplyCore, Inc. v. U.S.*, 137 Fed. Cl. 753 (2018); *PrimeTech Int'l, Inc.*, SBA No. NAICS-6014; *Noble Sales Co., Inc. d/b/a Noble Supply & Logistics*, SBA No. NAICS-6067. (*Id.*) According to GSA, the procurements at issue in *SupplyCore*, *Noble Sales*, and *PrimeTech* involved nearly the same logistics and supply chain management services as the instant solicitation. (*Id.*)

GSA further contends that the NAICS cases Appellant relied on in its appeal differ from this instant procurement because “they clearly concerned procurements for provision of supplies, whereas the primary purpose of this procurement is the provision of a range of logistics services related to the distribution of goods.” (*Id.*, at 4-5.) Further, “none of the decisions referenced by [Appellant] actually analyze NAICS Code 493190.” (*Id.*)

GSA asserts that Appellant's mandatory sources argument does not counter the practically “identical language” used in *Noble Sales*. (*Id.*, at 6.) GSA emphasizes the decision in *Noble Sales* and notes the similarities between the procurement analyzed there and the instant solicitation. (*Id.*, at 5.) Specifically, both solicitations have a similar purpose, scope, requirements for the contractor to manage a warehouse and other logistics services, and requirements for a contractor to provide personnel. Both solicitations required a total supply chain solution including warehousing, transportation, a customized e-portal system, and other related services. (*Id.*) GSA notes that in the decision in *Noble Sales*, OHA determined that “when the supplies in question must be obtained from mandatory sources, and when the contractor also will perform warehouse management and other logistical services, NAICS code 493190 is appropriate.” (*Id.*, citing *Noble Sales Co., Inc. d/b/a Noble Supply & Logistics*, SBA No. NAICS-6067, at 7.) GSA challenges Appellant's argument that there is a distinction between the solicitation in *Noble Sales* and in this instant appeal. (*Id.*) Specifically, GSA argues that Appellant failed to provide any legal precedent to support its argument that this instant solicitation is not a “pass through” or “conduit” due to pricing. (*Id.*) GSA concludes that OHA's decision here should follow *Noble Sales*, because the solicitations in both *Noble Sales* and the instant appeal, among other similarities, require mandatory source supplies from the same distributors. (*Id.*)

GSA also argues that Appellant highlights sections of the solicitation, such as experience and technical capability factors; however, the terminology used in both *Noble Sales* and the instant procurement is almost “identical.” (*Id.*, at 6.) Further, technical excellence, the most important factor, mandates contractors to complete requirements in the PWS, which include logistics services and distribution of goods. (*Id.*) GSA concludes that “the CO reasonably relied on recent OHA precedent that establishes NAICS Code 493190 as appropriate for procurements whose principal purpose is the performance of logistics and supply chain management services related to the distribution of goods.” (*Id.*, at 7.)

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

The NAICS code designated by the CO, 493190, Other Warehousing and Storage, provides the following:

This industry comprises establishments primarily engaged in operating warehousing and storage facilities (except general merchandise, refrigerated, and farm product warehousing and storage).

NAICS Manual at 406. NAICS code 493190 is part of Subsector 493, Warehousing and Storage. NAICS Subsector 493 covers the following:

Industries in the Warehousing and Storage subsector are primarily engaged in operating warehousing and storage facilities for general merchandise, refrigerated goods, and other warehouse products. These establishments provide facilities to store goods. They do not sell the goods they handle. These establishments take responsibility for storing the goods and keeping them secure. They may also provide a range of services, often referred to as logistics services, related to the distribution of goods. Logistics services can include labeling, breaking bulk, inventory control and management, light assembly, order entry and fulfillment, packaging, pick and pack, price marking and ticketing, and transportation arrangement. However, establishments in this industry group always provide warehousing or storage services in addition to any logistic services. Furthermore, the warehousing or storage of goods must be more than incidental to the performance of services, such as price marking.

*Id.*, at 405 (emphasis added).

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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>. SBA is using the 2017 edition of the NAICS Manual until October when it will have had the opportunity to update its small business size standards. See Guidance on Using NAICS 2022 for Procurement, available at <https://www.sba.gov/article/2022/feb/01/guidance-using-naics-2022-procurement>.

The NAICS code advocated by Appellant, 339999, All Other Miscellaneous Manufacturing, provides the following:

This U.S. industry comprises establishments primarily engaged in miscellaneous manufacturing (except medical equipment and supplies, jewelry and flatware, sporting and athletic goods, dolls, toys, games, office supplies (except paper), musical instruments, fasteners, buttons, needles, pins, brooms, brushes, mops, and burial caskets)

*Id.*, at 310.

### 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). A procurement is usually classified according to the component that accounts for the greatest percentage of contract value. (*Id.*) 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 reviewed the solicitation, the NAICS Manual, OHA's prior decisions, and arguments of the parties, I find Appellant failed to demonstrate that the CO's NAICS code designation is based upon clear error of fact or law, and I therefore must deny the appeal.

As discussed, *supra*, the NAICS Manual stated that NAICS code 493190 is appropriate for procurements that involve “operating warehouse and storage facilities.” Section II.D, *supra*. This code is part of the broader NAICS Subsector 493 — Warehousing and Storage — which description explains that establishments providing warehousing and storage may also provide logistics services, including inventory control and management as well as order and entry fulfillment. *Id.* This procurement calls for the contractor to be responsible for warehousing various supplies and products. Section II.A, *supra*. The contractor's significant other responsibilities are logistics services. *Id.* NAICS code Subsector 493 defines logistics as “labeling, breaking bulk, inventory control and management, light assembly, order entry and fulfillment, packaging, pick and pack, price marking and ticketing, and transportation arrangement.” Section II.D, *supra*. The PWS makes it clear that a contractor is required to

provide such logistics services that include shipment and delivery of supplies using shipping documents, labels and other packaging as well as providing GSA with current shipment information on a e-portal system. Section II.A, supra. I find it clear that NAICS code 493190 is appropriate for this procurement.

Appellant cites to past OHA rulings and argues that the primary purpose of this solicitation is to procure supplies. Section II.B, supra. Appellant's reliance on past OHA rulings is misplaced. It is true that OHA has held that, if the principal purpose of a procurement is the supply of goods, a manufacturing NAICS code should be utilized. *E.g.*, *NAICS Appeal of Noble Supply & Logistics*, SBA No. NAICS-5886 (2018); *NAICS Appeal of U.S. Small Bus. Admin.*, SBA No. NAICS-5526 (2014). OHA has also ruled that where a contract for supplies includes a requirement the contractor must “keep track of the items delivered, their usage, and see that its personnel comply with base security policy,” it is merely requiring administrative work of the type any contract for goods would require, and the procurement “must be categorized under a manufacturing or supply code.” *NAICS Appeal of: Global Precision Systems, LLC*, SBA No. NAICS-5681, at 3 (2015). However, the logistics services required here are more than merely incidental. The contractor must provide “a total supply chain solution.” Section II.A, supra. The importance the solicitation attaches to the contractor's personnel establishes the importance of the services required by the PWS.

Appellant fails to show how the instant appeal differs from OHA precedent that NAICS code 493190, a warehousing and storage code including logistics services, is appropriate for a procurement with a “range of logistics services, related to the distribution of goods.” See, e.g., *NAICS Appeal of SupplyCore, Inc.*, SBA No. NAICS-5866 (2017), *aff'd sub nom. SupplyCore, Inc. v. U.S.*, 137 Fed. Cl. 753 (2018); *NAICS Appeal of Noble Sales Co., Inc. d/b/a Noble Supply & Logistics*, SBA No. NAICS-6067 (2020); *NAICS Appeal of PrimeTech Int'l, Inc.*, SBA No. NAICS-6014 (2019). I find that Appellant has failed to distinguish the *SupplyCore* and *PrimeTech* decisions, and the CO appropriately classified this instant procurement under the NAICS code 493190.

It is worth noting that the instant appeal differs from *Global Precision* and *Small Business Administration* where the CO stipulated in the solicitation that a substantial portion of the procurement would be allocated to supplies, whereas here, the CO did not suggest any such allocation. See *Global Precision Systems, LLC*, SBA No. NAICS-5681; *U.S. Small Bus. Admin.*, SBA No. NAICS-5526. Further, Appellant fails to effectively distinguish whether a majority or minority of the supplies require mandatory sources of supply. *Noble Sales Co., Inc. d/b/a Noble Supply & Logistics*, SBA No. NAICS-6067, at 7. I find Appellant's assumption that the value of supplies in this instant procurement substantially outweighs services to be mere speculation with no factual basis.

Further, OHA has established precedent that NAICS code 493190 is appropriate when a contractor performs logistical services like supply chain management. *SupplyCore, Inc.*, SBA No. NAICS-5866, at 11-12. In *SupplyCore*, a large majority of the contract dollar value was associated to supplies, specifically the procurement of tires. *Id.*, at 3. The contractor was required to purchase those tires, though only from particular vendors designated by the procuring agency. *Id.*, at 2. In addition, the contractor would perform a variety of “supply chain management”



functions, including warehouse management, inventory control, and transportation. *Id.* On these facts, OHA found that NAICS code 493190 was properly assigned to the procurement. *Id.* at 10-11. OHA noted that NAICS code 493190 encompasses not only warehouse operations, but also “a range of services, often referred to as logistics services, related to the distribution of goods.” *Id.* at 8, quoting NAICS Manual. This instant procurement, like the procurement in *SupplyCore*, requires the contractor to warehouse and provide services for distribution of goods and supplies, i.e., warehousing, sourcing, and delivering various products to and around Alaska to both federal civilian and Department of Defense (DoD) consumers. Section II.A, *supra*. This form of supply chain management encompasses the type of the logistics services detailed under the NAICS Subsector 493. Section II.D, *supra*. Further, these requirements are not incidental, as Appellant suggests, but rather essential functions to the success of this contract.

OHA has further determined that NAICS code 493190 is appropriate when a contractor is required to obtain supplies from mandatory sources because “the contractor acts essentially as a pass-through agent with regard to the supplies;” and so “greater importance is attached to the services aspects of the acquisition.” *Noble Sales Co., Inc. d/b/a Noble Supply & Logistics*, SBA No. NAICS-6067, at 7. Appellant's attempt to distinguish this instant appeal from *Noble Sales* is unpersuasive, as both procurements are essentially identical. Section II.B and II.D, *supra*. Appellant argues that a contractor would not constitute a pass-through or conduit because requirements in the solicitation create autonomy for the contractor to purchase items without a task order, review inventory, and adjust for supply demands. Section II. B, *supra*. This argument is countered by the terms and requirements in the solicitation. Specifically, this instant procurement, like *Noble Sales*, attaches greater importance to the services aspect of the acquisition. Section II. D, *supra*. The PWS makes it clear that the contractor must demonstrate its ability to procure, warehouse, transport, deliver, provide an e-portal system, and complete other service-related activities. *Id.*

I find that because Appellant has not established that NAICS code 493190 is clearly incorrect for the instant procurement, it is unnecessary to 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).

#### IV. Conclusion

For the above reasons, the appeal is DENIED and the CO's designation of NAICS code 493190 is AFFIRMED. This is the final decision of the U.S. Small Business Administration. See 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN  
Administrative Judge