

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

NAICS APPEAL OF:

Aldevra, LLC,

Appellant,

Solicitation No. 36C26123Q1249

U.S. Department of Veterans Affairs

SBA No. NAICS-6245

Decided: September 25, 2023

APPEARANCE

Rodney Marshall, President, Aldevra, LLC, Kalamazoo, MI

DECISION

I. Introduction and Jurisdiction

On September 11, 2023, the Department of Veterans Affairs, Network Contracting Office (VA), issued the subject Request for Quotations (RFQ) for a contractor to supply and deliver kitchen equipment to a VA medical facility in Honolulu, Hawaii. (SOW, at 1.) The Contracting Officer (CO) set the procurement 100% aside for small businesses and designated North American Industry Classification System (NAICS) code 335220, Major Household Appliance Manufacturing, with a corresponding 1,500 employee size standard, as the appropriate code for the procurement. (RFQ, at 1.) On September 14, 2023, Aldevra, LLC (Appellant) filed the instant appeal, arguing that NAICS code 333415, Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing, with a corresponding 1,250 employee size standard, was in fact the appropriate code. For the reasons discussed *infra*, the appeal is GRANTED.

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 the solicitation, so the appeal is timely. Federal Acquisition Regulation (FAR) 19.103(a)(1); 13 C.F.R. §§ 121.1103(b)(1), 134.304(b). Accordingly, this matter is properly before OHA for decision.

equipment for a new community living center kitchen” and not “household appliances for home use.” (*Id.*) Thus, Appellant concludes NAICS code 333415 is the more appropriate code.

Appellant also mentions its reliance on the 2005 U.S. Small Business Administration class waiver for commercial refrigerator equipment. (*Id.*) Appellant asserts it is “harmed where, as here, a solicitation for a freezer has the wrong NAICS code.” (*Id.*) Appellant concludes the CO erred in fact or law and request that OHA find NAICS code 333415 as the appropriate code for the subject RFQ. (*Id.*)

C. The NAICS Codes

The NAICS code designated by the CO, 335220, Major Household Appliance Manufacturing, covers:

This industry comprises establishments primarily engaged in manufacturing household-type cooking appliances, household-type laundry equipment, household-type refrigerators, upright and chest freezers, and other electrical and nonelectrical major household-type appliances, such as dishwashers, water heaters, and garbage disposal units.

Cross-References. Establishments primarily engaged in—

- Manufacturing small electric appliances and electric housewares, such as hot plates, griddles, toasters, and electric irons—are classified in Industry 335210, Small Electrical Appliance Manufacturing;
- Manufacturing commercial and industrial refrigerators and freezers—are classified in U.S. Industry 333415, Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing;
- Manufacturing commercial-type cooking equipment and commercial-type laundry, drycleaning, and pressing equipment—are classified in Industry 333310, Commercial and Service Industry Machinery Manufacturing; and
- Manufacturing household-type sewing machines—are classified in U.S. Industry 333248, All Other Industrial Machinery Manufacturing.

NAICS Manual,¹ at 275.

¹ Executive Office of the President, Office of Management and Budget, *North American Industry Classification System-United States* (2022), available at <http://www.census.gov/naics>. SBA has adopted this version of the *NAICS Manual* effective October 1, 2022. 87 Fed. Reg. 59240 (Sept. 29, 2022).

The NAICS code advocated by the Appellant, 333415, Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing, covers:

This U.S. industry comprises establishments primarily engaged in (1) manufacturing air-conditioning (except motor vehicle) and warm air furnace equipment and/or (2) manufacturing commercial and industrial refrigeration and freezer equipment.

Illustrative Examples:

Air-conditioning and warm air heating combination units manufacturing
Air-conditioning compressors (except motor vehicle) manufacturing
Air-conditioning condensers and condensing units manufacturing
Dehumidifiers (except portable electric) manufacturing
Heat pumps manufacturing
Humidifying equipment (except portable) manufacturing
Refrigerated counter and display cases manufacturing
Refrigerated drinking fountains manufacturing
Snow making machinery manufacturing
Soda fountain cooling and dispensing equipment manufacturing

NAICS Manual, at 251.

The cross references in the *NAICS Manual* further note that “[manufacturing household-type refrigerators and freezers-are classified in Industry 335220, Major household Appliance Manufacturing.” (*Id.*)

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

After reviewing the RFQ and the arguments presented, I conclude the CO's designation of NAICS code 335220, Major Household Appliance Manufacturing, is unsuitable for the instant solicitation. The *NAICS Manual* clearly expresses that NAICS code 335220 applies to establishments that primarily manufacture “household-type cooking appliances, household-type laundry equipment, household-type refrigerators, upright and chest freezers, and other electrical and nonelectrical major household-type appliances. . . .” Section II.C, *supra*. As a cross reference, the *NAICS Manual* further states “[manufacturing commercial and industrial refrigerators and freezers—are classified in U.S. Industry 333415, Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.” *Id.* Accordingly, NAICS code 335220 primarily applies to household appliances, not commercial or industrial appliances. *Id.*

Considering the width requirements for the items being procured, Appellant appropriately asserts that NAICS code 333415, which covers “commercial and industrial refrigeration and freezer equipment” best describes the principal purpose of this procurement. Section II.B, *supra*. The procurement seeks kitchen equipment for a VA medical facility. Section II.A, *supra*. The equipment is to serve an institutional kitchen and it is much larger than the equipment which would serve in a household kitchen. *Id.* One item, the chef base, is sold as equipment for commercial and institutional kitchens, and is advertised as such. *Id.* The CO's selected NAICS code, 335220, covers the manufacture of appliances which would be used in an individual household. *Id.* However, as Appellant observes, the type of appliances sought here are large, commercial and industrial refrigerators and freezers, and the type of equipment used by professional chefs in restaurants and institutional settings. *Id.* Section II.C, *supra*. They would not be appropriate for use in an individual household. These are the types of equipment which are covered by NAICS code 333415, used in institutional settings such as the VA medical facility which this procurement will service. Accordingly, I conclude that the appropriate NAICS code is not 335220, but NAICS code 333415.

IV. Conclusion

Appellant has shown that the Contracting Officer clearly erred in selecting NAICS code 335220 for the instant procurement, and I GRANT the instant appeal. NAICS code 333415, Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing, with a corresponding 1,250 employee size standard is the appropriate code for this procurement. Accordingly, because this decision is being issued before the close of the solicitation, the Contracting Officer MUST amend the solicitation to change the NAICS code designation from 335220, Major Household Appliance Manufacturing, with a corresponding 1,500 employee size standard, to NAICS code 333415, Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing, with a corresponding 1,250 employee size standard. FAR 19.303(c)(8); *Eagle Home Med. Corp.*, B-402397, March 29, 2010, 2010 CPD ¶ 82.

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

CHRISTOPHER HOLLEMAN
Administrative Judge