

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

NAICS APPEAL OF:

Brown Point Facility Management  
Solutions, LLC,

Appellant

Task Order Solicitation No. RNB2024

U.S. Department of Homeland Security

Federal Emergency Management Agency

SBA No. NAICS-6254

Decided: November 27, 2023

APPEARANCE

Christopher P. Riendeau, Chief Executive Officer, Brown Point Facility Management Solutions, LLC, 1 Lincoln, Rhode Island

DECISION

I. Introduction and Jurisdiction

On October 23, 2023, the Federal Emergency Management Agency (FEMA) issued Task Order Solicitation No. RNB2024 under the “Building Maintenance and Operations — Small Business” (BMO SB) multiple award contract (MAC). The task order seeks a contractor to perform “custodial services,” and to provide associated “management, supervision, labor, transportation, materials, equipment, and supplies,” at the FEMA Denton Campus in Denton, Texas. (Task Order Solicitation at 2.) The Contracting Officer (CO) set aside the order entirely for small businesses and assigned North American Industry Classification System (NAICS) code 561210, Facilities Support Services, with a corresponding size standard of \$47 million average annual receipts. (*Id.* at 1, 4.)

On October 25, 2023, Brown Point Facility Management Solutions, LLC (Appellant), which holds a BMO SB prime contract, filed the instant appeal with SBA's Office of Hearings and Appeals (OHA). Appellant maintains that the correct NAICS code for this order is 561720, Janitorial Services, with an associated size standard of \$22 million average annual receipts. (Appeal at 2.) For the reasons discussed *infra*, the appeal is granted.

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 10 calendar days after issuance of the task order solicitation, 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 MAC

The BMO SB contracts contain the following provision pertaining to NAICS code assignments:

**H.6.2 Predominant Task Order NAICS Determination**

The [Ordering Contracting Officer (OCO)] has the responsibility to determine which predominant NAICS code applies to a task order solicitation, whether or not the task order is unrestricted or set-aside, including the type of socio-economic set-aside if applicable, and whether or not the solicitation is sole-source or competitive. The OCO must identify the NAICS Code Number and Title, Business Size Standard, in the task order solicitation and report the NAICS Code in the Federal Procurement Data System (FPDS). Once a NAICS Code is selected by the OCO, the OCO must provide fair opportunity to all Contractors under the corresponding BMO SB Service Grouping for solicitation purposes, unless an exception to fair opportunity has been properly executed. Ordering Procedures at FAR 16.505 apply. If the solicitation could be classified in two or more NAICS codes with different size standards, the OCO shall apply the NAICS code and corresponding size standard for the industry accounting for the greatest percentage of anticipated task order price/cost. The table below identifies all BMO SB NAICS code assignments to each service group:

<b>Operations and Maintenance, Primary NAICS 561210, Size Standard \$41.5 M</b>			
<b>Service/Service Grouping</b>	<b>NAICS Code</b>	<b>NAICS Title</b>	<b>Size Standard</b>
<b>Operations and Maintenance</b>	<b>561210</b>	<b>Facilities Support Services</b>	<b>\$41.5 M</b>
HVAC Maintenance	238220	Plumbing, Heating, and Air-Conditioning Contractors	\$16.5 M
Plumbing and Pipefitting	238220	Plumbing, Heating, and Air-Conditioning Contractors	\$16.5 M
Elevator Maintenance	238290	Other Building Equipment Contractors	\$16.5 M
Electrical Maintenance	238210	Electrical Contractors and Other Wiring Installation Contractors	\$16.5 M
Fire Alarm System Maintenance and Repair	561621	Security Systems Services (except Locksmiths)	\$22 M
Fire Suppression (Water Based) System Preventative Maintenance and Repair	238220	Plumbing, Heating, and Air-Conditioning Contractors	\$16.5 M

Roofing Services	238160	Roofing Contractors	\$16.5 M
Building Management Services	531312	Nonresidential Property Managers	\$8 M
Architectural and Framework Building Maintenance Services	236220	Commercial and Institutional Building Construction	\$39.5 M
Commissioning Services	541330	Engineering Services	\$16.5 M
Elevator Inspection Services	541350	Building Inspection Services	\$ 8 M

**Facility Support Services, Primary NAICS 561210, Size Standard \$41.5M**

<b>Service/Service Grouping</b>	<b>NAICS Code</b>	<b>NAICS Title</b>	<b>Size Standard</b>
<b>Facility Support Services</b>	<b>561210</b>	<b>Facilities Support Services</b>	<b>\$41.5 M</b>
Janitorial	561720	Janitorial Services	\$19.5 M
Landscaping/Grounds Maintenance	561730	Landscaping Services	\$8 M
Cemetery Maintenance	561730	Landscaping Services	\$8 M
Pest Control	561710	Exterminating and Pest Control Services	\$12 M
Waste Management and Recycling Services	562111	Solid Waste Collection	\$41.5 M

(BMO SB MAC, § H.6.2.)

**B. The Task Order Solicitation**

The task order solicitation explains that FEMA requires “custodial services” for the upkeep of the FEMA Denton Campus. (Task Order Solicitation at 2.) FEMA seeks “contracted custodial staff” to perform this work. (*Id.*) The solicitation describes the required work as follows:

Janitorial Services related to internal and external daily and routine building cleaning and inspection work. Services include but are not limited to sweeping, scrubbing, waxing, window washing (interior and exterior), walls washing, dusting and polishing furniture and fixtures, sanitation and stocking, trash removal, recycling, hard floor and specialty floor care, including stripping and recoating, emptying waste cans and replacement of supplies through stocking (i.e. for toilet paper, paper towels, etc.) of all federal spaces. Services shall incorporate environmentally sustainable practices (i.e., green cleaning) to the extent practicable.

(*Id.* at 1.) The solicitation specifies two required labor categories, and defines their respective responsibilities as follows:

First-Line Supervisors of Housekeeping and Janitorial Workers	Directly supervise and coordinate work activities of cleaning personnel[.]
Janitors and Cleaners, Except	Keep buildings in clean and orderly condition. Perform heavy cleaning duties, such as cleaning floors, shampooing

Maids and  
Housekeeping  
Cleaners

rugs, washing walls and glass, and removing rubbish. Duties may include tending furnace and boiler, performing routine maintenance activities, notifying management of need for repairs, and cleaning snow or debris from sidewalk.

(*Id.*)

### C. The SOW

The task order solicitation's Statement of Work (SOW) reiterates that “contracted custodial staff with custodial services are required” for the instant order. (SOW at 1.) The SOW outlines 15 tasks that the contractor will perform. Under Task 1 “Start-Up Phase/Transition Phase,” the contractor will provide seven (7) days of transition start-up service to assist transitioning between contractors. (*Id.* at 2.) Such work includes “inspecting the condition of all areas which the contractor will assume responsibility,” including any “incomplete custodial work at the time of contractor transition”; adhering to a staffing plan of at least two “custodial staff” and one supervisor; and complying with FEMA guidance to arrange for appropriate badging and personnel access to FEMA facilities. (*Id.*) Task 2 “Phase-Out Transition Period,” requires the contractor to cooperate with “the [Contracting Officer's Representative (COR)] or designee or incoming contractor for a seamless transition in operations and custodian work,” including returning “all keys and identification badges or cards.” (*Id.* at 3.) Task 3 “General and Administrative Requirements,” requires the contractor to “provide staff to ensure services are continued without disruption to the tenant”; notify FEMA of “any recognized safety hazard that might severely affect the building occupants”; maintain an on-call staff for emergency response; maintain time logs; and notify the COR of any changes in staff. (*Id.* at 4.) Task 4 “Communication Equipment,” requires the contractor to provide its “custodial personnel with portable electronic means to communicate with FEMA.” (*Id.*) Task 5 “Quality Control Program,” requires the contractor to develop and submit a Quality Control Plan (QCP) to the CO, and implement the QCP upon approval. (*Id.* at 4-5.) Task 6 “Government Quality Assurance Program,” requires the contractor to cooperate with Government inspections of the contractor's performance. (*Id.* at 5-6.) Task 7 “Performance Review Meetings” requires the contractor to meet with the COR and other Government representatives to review contract performance. (*Id.* at 6.) Task 8 “Operational Requirements” calls for the contractor to provide “building custodial services” during normal working hours and if necessary outside of normal working hours. (*Id.*) Task 9 “Tours” requires the contractor's supervisory personnel to “tour all facility buildings at set frequencies” and maintain “[o]perating logs and tour sheets.” (*Id.* at 6-7.) Task 10 “Key Control” requires the contractor to “follow the building's key control program.” (*Id.* at 7.) Task 11 “Safety and Environmental Management” mandates compliance with “all Federal, State, and local laws and regulations that relate to the custodial work, personnel safety, control of hazardous substances, certification, and record keeping.” (*Id.* at 7-8.) Under Task 12 “Custodian Work,” the contractor will “furnish all supplies, materials, and equipment” necessary for custodial services during the scheduled time and frequencies set out in the order, and be responsible for the quality standards required under the scope of the order. (*Id.* at 8-9.) The contractor must use green cleaning products and processes, and submit a green cleaning plan to the COR. (*Id.* at 10.) Task 13 “Standard Services” requires the contractor to perform “interior standard services.” (*Id.* at 11.) This includes “floor care” (cleaning base molding, grouts, walls,

baseboards, and mopping); “carpets and rugs” care (spot cleaning and vacuuming); restroom cleaning (replenish supplies and fill dispensers; empty, clean and sanitize sanitary napkin and waste receptables; wash and sanitize toilets and urinals; spot clean partitions, doors, and waste receptables; empty paper towel and waste receptables; service paper towel, hand soap, toilet paper, and sanitary napkin dispenser and used napkin receptacles; dust air vents, louvers, ledges, and stall partitions; check floor drains; and clean and sanitize fixtures and surfaces); surface care (maintain all surfaces, such as metal, brass, woodwork, and glass, to be free of dust, dirt, oil spots, smudges, streaks, watermarks, and grime); wall care; high surface cleaning; collecting and removing trash to onsite dumpsters; cleaning lobbies, corridors, and stairways; window washing semiannually; “policing” buildings to be free of papers, trash, and other discarded material; cleaning breakroom/concessions areas; and routine and enhanced cleaning “as part of the regular janitorial cleaning services.” (*Id.* at 11-17.) Under Task 14: Exterior, the contract will also perform “exterior standard services.” (*Id.* at 17.) Such work includes plate glass care near building entrances; window washing; hard surface areas (sidewalks, bricks, parking areas, platforms, driveways, ramps, lanes, fountains, etc.) cleaning; emptying and cleaning ash receptacles and trash containers; cleaning surfaces (signs, vending machines, tables, etc.), parking lots, and dock areas; removing human, avian and rodent excrement; and policing outside areas to ensure they are clear of litter or other debris. (*Id.* at 17-19.) Lastly, under Task 15 “Recycling,” the contractor will collect recycling materials for removal from the premises. (*Id.* at 19-21.)

After the appeal was filed, the CO extended the deadline for task order proposals until November 27, 2023.

#### D. Appeal

On October 25, 2023, Appellant filed an appeal, contending that the “correct” NAICS code for this task order is 561720, Janitorial Services. (Appeal at 1.) In support, Appellant raises two main arguments. First, Appellant points to a footnote in SBA's size regulations, which imposes 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.

(*Id.*, quoting 13 C.F.R. § 121.201, n.12.) Here, the instant task order calls for “100%” janitorial services. (*Id.*) “Since there are no activities outside of janitorial/custodial services, [ ] the predominant NAICS [code] for the task order is [ ] 561720[,] Janitorial [Services].” (*Id.* at 2.)

Appellant further claims that assignment of NAICS code 561210 adversely affects Appellant's "ability to fairly compete" because the higher size standard associated with that code would "expand" the field of competition to "a larger quantity of firms who are [] much larger in size" than Appellant. (*Id.*)

OHA received no responses to the appeal from the CO or other interested parties.

E. NAICS Manual<sup>1</sup>

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.

*NAICS Manual* at 486. The *NAICS Manual* adds 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.*

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.

13 C.F.R. § 121.201, n.12.

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<sup>1</sup> Executive Office of the President, Office of Management and Budget, *North American Industry Classification System-United States (2022)*, available at <http://www.census.gov>. SBA has instructed that, for purposes of SBA programs, the 2022 edition of the *NAICS Manual* is utilized effective October 1, 2022, "the beginning of the new fiscal year following the effective date of the OMB's release of the NAICS 2022 revision." *See* 87 Fed. Reg. 59,240 (Sept. 29, 2022).

The NAICS code Appellant advocates, 561720, Janitorial Services, is comprised of:

establishments primarily engaged in cleaning building interiors, interiors of transportation equipment (e.g., aircraft, rail cars, ships), and/or windows.

*NAICS Manual* at 499. Index entries which refer to NAICS code 561720 include: “[b]uilding cleaning services, interior,” “[b]uilding cleaning services, janitorial,” “[c]leaning offices,” “[c]ustodial services,” “[d]eodorant servicing of rest rooms,” “[d]eodorizing services,” “[d]isinfecting services,” “[h]ousekeeping services (i.e., cleaning services),” “[j]anitorial services,” “[o]ffice cleaning services,” “[r]est room cleaning services,” “[w]ashroom sanitation services,” and “[w]indow cleaning services.” *Id.* at 673, 692, 714, 718, 722, 781, 791, 832, 877, 946, and 951.

### 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). SBA regulations do not require the CO to select the perfect NAICS code. *NAICS Appeal of Evanhoe & Assocs., LLC*, SBA No. NAICS-5505, at 13 (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); FAR 19.102(b)(1). Generally, when a procurement calls for qualitatively different types of products or services, the appropriate NAICS code is the one which represents “the greatest percentage of contract value.” 13 C.F.R. § 121.402(b)(2); *see also* FAR 19.102(b).

#### B. Analysis

Having reviewed the record and the arguments presented, I must agree with Appellant that the CO erred in selecting NAICS code 561210, Facilities Support Services, for this task order. The *NAICS Manual* makes clear that NAICS code 561210 applies only when a contractor performs “a combination of support services” — such as “janitorial,” “maintenance,” “mail routing” and “laundry” — to support the operation of a client's facilities. Section II.E, *supra*. Similarly, SBA regulations stipulate that, for NAICS code 561210 to be utilized, work must fall within at least three different NAICS codes. 13 C.F.R. § 121.201, n.12; *see also NAICS Appeal of PrimeTech Int'l, Inc.*, SBA No. NAICS-6014, at 9 (2019) (“Without an identification of three different [NAICS] codes covered by the solicitation, a Facilities Support Services designation cannot be sustained.”). If any single NAICS code alone comprises 50% or more of the value of the procurement, “then the proper classification of the procurement is that of the specific industry, not Facilities Support Services.” 13 C.F.R. § 121.201, n.12.

Here, the task order solicitation identifies only two labor categories for this task order: “Janitors and Cleaners, Except Maids and Housekeeping Cleaners” and “First-Line Supervisors of Housekeeping and Janitorial Workers.” Section II.B, *supra*. Moreover, although the task order's SOW divides the contractor's work into 15 tasks, those tasks appear to consist entirely, or almost entirely, of janitorial/custodial services. Section II.C, *supra*. The SOW thus specifies that the contractor will perform cleaning, sweeping, scrubbing, waxing, window washing (interior and exterior), deodorizing, and sanitizing, along with associated supervisory and administrative functions. *Id.*

Accordingly, the work contemplated by this task order can plausibly be viewed as falling within only one NAICS code: 561720, Janitorial Services. There is no indication that the contractor will perform any other type(s) of facilities support services, and even assuming the contractor were to do so, janitorial/custodial services apparently constitute well over 50% of the value of the order. NAICS code 561210 thus is not, on its face, an appropriate choice for this task order.

Because Appellant has demonstrated that the CO erred in selecting NAICS code 561210, OHA must assign the NAICS code that best describes the principal purpose of the products or services being acquired. In making this decision, OHA considers, but is not limited to, the NAICS codes recommended by the parties. *E.g.*, *NAICS Appeal of Active Deployment Sys., Inc.*, SBA No. NAICS-5712 (2016) (selecting a code not advocated by any litigant).

Here, I agree with Appellant that NAICS code 561720, Janitorial Services, best describes the principal purpose of this task order. This NAICS code is an available option on the underlying BMO SB contracts, and thus may properly be assigned to an individual task order pursuant to 13 C.F.R. § 121.402(c)(2)(i). Section II.A, *supra*. Furthermore, as discussed above, NAICS code 561720 covers interior building cleaning services, janitorial services, office cleaning services, custodial services, restroom cleaning services, washroom sanitation services, disinfecting services, and window cleaning services. Section II.E, *supra*. As these are precisely the types of work the instant task order calls for, NAICS code 561720 best describes the principal purpose of the task order as a whole.

#### IV. Conclusion

For the above reasons, the appeal is GRANTED. The CO clearly erred in assigning NAICS code 561210 for this task order. The correct NAICS code for this task order is 561720, Janitorial Services, with an associated size standard of \$22 million average annual receipts. Because this decision is being issued before the deadline for receipt of proposals, the CO MUST amend the task order to change the NAICS code designation from 561210 to 561720. 13 C.F.R. § 134.318(b); FAR 19.103(a)(7); *Eagle Home Med. Corp.*, B-402387, March 29, 2010, 2010 CPD ¶ 82. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

KENNETH M. HYDE  
Administrative Judge