

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

NAICS APPEAL OF:

Laredo Technical Services, Inc.

Appellant,

Solicitation No. FA460024Q0096

U.S. Department of the Air Force

SBA No. NAICS-6309

Decided: September 24, 2024

APPEARANCES

Joseph G. Lukowski, President, Laredo Technical Services, Inc., San Antonio, Texas

Kevin J. Lipinski, Contracting Officer, U.S. Department of the Air Force, Offutt Air Force Base, Nebraska

DECISION

I. Introduction and Jurisdiction

On August 27, 2024, the U.S. Department of the Air Force (Air Force) issued Request for Quotations (RFQ) No. FA460024Q0096, seeking a contractor to “[p]rovide data entry and administrative services” for a one-year base period and three option years. (RFQ at 1, 7-8.) The Contracting Officer (CO) set aside the procurement entirely for small businesses and assigned North American Industry Classification System (NAICS) code 561320, Temporary Help Services, with a corresponding size standard of \$34 million average annual receipts. (*Id.* at 1.)

On September 4, 2024, Laredo Technical Services, Inc. (Appellant) filed the instant appeal with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA). Appellant maintains that the CO clearly erred in selecting NAICS code 561320, and that the appropriate code for this procurement is 561110, Office Administrative Services, with an associated size standard of \$12.5 million average annual receipts. 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 RFQ, 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 RFQ

According to the RFQ's Performance Work Statement (PWS), the contractor will “provide one (1) full-time administrative personnel to perform data entry, administrative functions, and other duties related to the congressionally mandated Transition Assistance Program (TAP).” (PWS, at 2.) It is the contractor's responsibility to “recruit, screen, qualify, place, manage and retain qualified personnel” for this procurement. (*Id.*) Work will be performed on-site at Offutt Air Force Base, Nebraska. (*Id.*)

The PWS specifies that “[t]he services under this contract are non-personal services” and that “[t]he Government shall not exercise any supervision or have employer responsibilities or rights over the individual personnel performing under this contract.” (*Id.*) Furthermore, “[t]he contractor shall be responsible for managing and recording schedules, payroll records, appraisals of employees, and coordinating employee absences with the Government.” (*Id.*) The contractor “is required to be self-sufficient in meeting all performance standards.” (*Id.*)

The RFQ explains that the Air Force intends to award a single fixed-price contract to the offeror whose quotation is “most advantageous” to the Government. (RFQ at 5.) There are three evaluation factors: (1) Price; (2) Technical Capability; and (3) Past Performance. (*Id.*) Quotations will be “ranked according to their total evaluated price,” and the non-price factors “will be evaluated on an Acceptable/Unacceptable basis.” (*Id.*) Quotations originally were due September 12, 2024. (*Id.* at 2.) After the appeal was filed, the Air Force suspended the deadline for receipt of quotations pending resolution of the appeal. (RFQ, Amend. 0002 at 2.)

B. Appeal

On September 4, 2024, Appellant filed the instant appeal. Appellant alleges that the CO erred by utilizing an “objective standard,” rather than a “subjective standard,” in selecting the NAICS code for the instant procurement. (Appeal at 3-4.) More specifically, the CO incorrectly chose a NAICS code that corresponds with “*the primary business of offerors.*” (*Id.* at 3 (emphasis Appellant's).) Appellant highlights that, according to SBA regulations, the CO instead should have selected “the single NAICS code which best describes the principal purpose of the product or service being acquired.” (*Id.* at 4, quoting 13 C.F.R. § 121.402(b) (emphasis added by Appellant).)

Appellant maintains that the correct NAICS code for this RFQ is 561110, Office Administrative Support. (*Id.*) Appellant reasons that the instant procurement requires “**100% administrative services**” and that “there is no requirement for the Air Force to purchase the suppliers-of-administrative support.” (*Id.* (emphasis Appellant's).) Furthermore, the instant RFQ expressly calls for “non-personal services,” and the contractor's employee will be supervised by the contractor. (*Id.* at 5.) NAICS code 561320 is improper “because the

[contractor] (that is, the employer company), and not the Air Force, is providing direct supervision and oversight.” (Id. (emphasis Appellant's).)

Appellant posits that, if OHA were to uphold the use of an “objective standard” in selecting the NAICS code, then “all federal procurements for any and all service-related” work could be assigned NAICS code 561320. (*Id.* at 4 (emphasis Appellant's).) Such a result would be untenable because “no Government service-related procurements would ever appear for size standards smaller than \$34 million.” (*Id.*)

C. CO's Response

On September 9, 2024, the CO responded to the appeal. The CO defends his choice of NAICS code 561320 for the instant RFQ. (CO's Response at 1-2.)

The CO asserts that, because the RFQ requires the contractor to recruit, screen, qualify, place, manage, and retain the employee, NAICS code 561320 is the most accurate designation. (*Id.* at 1.) The CO concedes that the nature of the work outlined in the RFQ would fall under the NAICS code Appellant advocates, but argues that establishments under NAICS code 561110 do not directly recruit, screen, and place personnel. (*Id.* at 1-2.) Additionally, due to the temporary nature of the position, which will not exceed four years, NAICS code 561320 better reflects the limited duration of the role. (*Id.* at 2.) The CO further explains that market research conducted by the Air Force determined that the selected NAICS code would promote competition. (*Id.*)

D. NAICS Manual¹

The NAICS code chosen by the CO, 561320, Temporary Help Services, covers:

establishments primarily engaged in supplying workers to clients' businesses for limited periods of time to supplement the working force of the client. The individuals provided are employees of the temporary help services establishment. However, these establishments do not provide direct supervision of their employees at the clients' work sites.

NAICS Manual at 488. Examples of businesses in this industry include: “[t]emporary employment services,” “[t]emporary help services,” and “[t]emporary staffing services.” *Id.* at 921.

The NAICS code Appellant advocates, 561110, Office Administrative Services, is comprised of:

establishments primarily engaged in providing a range of day-to-day office administrative services, such as financial planning; billing and recordkeeping; personnel; and physical distribution and logistics, for others on a contract or fee

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>.

basis. These establishments do not provide operating staff to carry out the complete operations of a business.

NAICS Manual at 485-86. Index entries which refer to NAICS code 561110 include: “[a]dministrative management services”; “[b]usiness management services”; “[e]xecutive management services”; “[m]anagement services (except complete operation of client's business)”; “[o]ffice administration services”; and “[o]ffice management services.” *Id.* at 637, 675, 738, 809, and 832.

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 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). 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

I agree with Appellant that NAICS code 561320 is unsuitable for the instant RFQ. The *NAICS Manual* makes clear that NAICS code 561320 applies to establishments engaged in “supplying workers to clients' businesses for limited periods of time.” Section II.D, *supra*. Here, the contractor's employee will perform data entry and administrative functions for up to four years. Section II.A, *supra*. Accordingly, this contractor is not supplying workers for “limited periods of time.” *NAICS Appeal of Millennium Health & Fitness, Inc.*, SBA No. NAICS-6094, at 11 (2021); *NAICS Appeal of Katmai Simulations & Training*, SBA No. NAICS-5445, at 4 (2013) (NAICS code 561320 was appropriate for “a series of undefined, fluctuating, and temporary assignments,” which were “extremely short duration (typically 2 to 4 hours each), subject to frequent change, and incapable of being predicted more than a month in advance.”) Furthermore, as Appellant observes, the RFQ makes clear that the contractor, rather than the Air Force, will supervise the worker. Sections II.A and II.B, *supra*. Indeed, the RFQ states that the resulting contract will be for nonpersonal services. *Id.* According to the *NAICS Manual's* description of NAICS code 561320, however, such establishments “do not provide direct supervision of their employees at the clients' work sites.” Section II.D, *supra*. The instant RFQ, then, neither calls for a contractor to supply temporary workers, nor for the Air Force to supervise such personnel. As a result, the CO clearly erred in selecting NAICS code 561320. *NAICS Appeal of Laredo Tech. Servs., Inc.*, SBA No. NAICS-6216, at 5 (2023); *NAICS Appeal of Laredo Tech. Servs., Inc.*,

SBA No. NAICS-6186, at 7 (2023). The CO's policy-based argument that NAICS code 561320 would best promote competition has been repeatedly rejected by OHA since such considerations “are not part of the criteria for selecting a NAICS code.” *NAICS Appeal of Prime Physicians*, SBA No. NAICS-6185, at 8 (2023); *NAICS Appeal of Potomac Valor Healthcare 2, LLC*, SBA No. NAICS-6172, at 12 (2022); *NAICS Appeal of Pacific Shipyards Int'l, LLC*, SBA No. NAICS-5464, at 6 (2013); *NAICS Appeal of Circle Sols., Inc.*, SBA No. NAICS-5181, at 12 (2011).

Because Appellant has demonstrated that the CO erred in selecting NAICS code 561320, OHA must assign the NAICS code that best describes the principal purpose of the products or services being acquired. Section III.A, *supra*. 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).

I find that NAICS code 561110, Office Administrative Services, is the appropriate code for this RFQ. The contractor here is charged with providing one employee who will perform data entry and other administrative functions. Section II.A, *supra*. Such work falls squarely within the *NAICS Manual's* description of NAICS code 561110. Section II.D, *supra*. The CO's contention that these establishments do not recruit, screen, and place personnel is misplaced since all employers do just that when hiring employees. Accordingly, NAICS code 561110 is appropriate here because it best describes the nature of the work called for in this RFQ.

IV. Conclusion

For the above reasons, and the appeal is GRANTED. The most appropriate NAICS code for this procurement is 561110, Office Administrative Services, with a corresponding size standard of \$12.5 million average annual receipts. Accordingly, because this decision is being issued before the deadline for receipt of quotations, the CO MUST amend the RFQ to change the NAICS code designation from 561320 to 561110. 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