

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

NAICS APPEAL OF:

Dellew Corporation,

Appellant,

Solicitation No. 832470623

Defense Information Systems Agency

SBA No. NAICS-6314

Decided: November 1, 2024

APPEARANCES

Kelsey Lewis, President, Dellew Corporation, Honolulu, Hawaii

John M. Ross, Contracting Officer, Susan M. Chagrin, Esq., Associate General Counsel,
Defense Information Systems Agency, Fort Meade, Maryland

Christopher R. Clarke, Esq., Office of General Counsel, U.S. Small Business
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DECISION

I. Introduction and Jurisdiction

On September 5, 2024, the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) received the above-captioned appeal from Dellew Corporation (Appellant). The appeal challenges the North American Industry Classification System (NAICS) code assigned to Request for Quotations (RFQ) No. 832470623. Pursuant to the RFQ, the procuring agency, the Defense Information Systems Agency (DISA), intends to award a task order through the U.S. General Services Administration (GSA) Federal Supply Schedule (FSS) contracts. (RFQ at 1.)

In the appeal, Appellant maintains that the Contracting Officer (CO) clearly erred in assigning NAICS code 561210, Facilities Support Services, to the RFQ. Appellant contends that the appropriate NAICS code for this order is 238990, All Other Specialty Trade Contractors. 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 10 calendar days after issuance of the RFQ, so the appeal is timely. 13 C.F.R. §§ 121.1103(b)(1), 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

On August 28, 2024, DISA issued RFQ No. 832470623, seeking a contractor to provide facility maintenance for a one-year base period and up to four option years. (RFQ at 1.) The CO set aside the order entirely for small businesses, and assigned NAICS code 561210, with a corresponding size standard of \$47 million average annual receipts.

According to the RFQ's Performance Work Statement (PWS), the contractor will “[p]rovide Preventative Maintenance (PM) service and repair related to heating, ventilation, air conditioning (HVAC) air handling units (AHUs), fan terminal units (FTUs), variable air volumes (VAVs), package computer room air conditioning units (PACs), roof top unit, heat pump unit, hot water boilers, exhaust fans, pumps, unit heaters (UHs), cabinet unit heaters (CUH), controls, piping, ductwork, evaporative coolers, and water treatment, uninterrupted power supply (UPS) & batteries, phone switch batteries, power distribution units (PDUs), water detection, site monitoring software, and all above mentioned equipment and associated parts of those systems.” (PWS at 1.) All work will be performed on-site at Scott Air Force Base, Illinois. (*Id.* at 10.)

The PWS further divides the procurement into subtasks, including work related to HVAC maintenance, UPS and battery maintenance, and software maintenance and monitoring. (*Id.* at 2-7.) More specifically, with regard to the UPS, batteries, and PDUs subtasks, the contractor will provide the following:

6.1.12 Subtask 12 UPS & Batteries (Facility UPS and UPS batteries, also Switch batteries)

a. Monthly PM, repairs, and inspection items:

1. Control panel check.
2. Functional testing of alarms.
3. Visually inspect all batteries.
4. Review of alarm status, history, and upgrade status.

b. Semi-annual PM, repairs, and inspection items:

1. Check UPS inverter.
2. Check UPS module rectifier.
3. Check UPS module static switch.
4. Calibration of all metering.
5. Check battery-charging system.
6. Record cell voltages.

7. Check torque on all battery connections.

6.1.13 Subtask [13] PDUs

a. Monthly PM, repairs, and inspection items:

1. Review alarm status and alarm history and report any adverse trends.
2. Visual inspection of circuit breakers and connections.

(*Id.* at 2, 5.) For the “Site Monitoring software” subtask, the contractor will “[p]erform program changes, including software upgrades, database back up, and restoration if system fails. Provide onsite and/or telephone technical support M-F from 0700-1600 if the user cannot solve the problem.” (*Id.* at 6.) The PWS outlines a schedule of monthly and annual preventative maintenance, repairs, and inspections for this subtask. (*Id.* at 2, 6.)

The RFQ states that DISA intends to award a single fixed-price task order to the lowest-price technically-acceptable offeror. (RFQ at 1, 3.) There are two evaluation factors: (1) Technical/Management Approach and (2) Price. (*Id.* at 3-4.) To be considered “Acceptable” for the Technical/Management Approach factor, an offeror must “demonstrate[] the technical knowledge and ability to maintain commercial grade HVAC equipment, and the facility Uninterrupted Power Supply (UPS).” (*Id.* at 3.) Quotations originally were due September 18, 2024, but the CO stayed the deadline for quotations pending the outcome of this appeal, pursuant to 13 C.F.R. § 121.1103(c)(1)(i). (RFQ, Amendment 01 at 1-2.)

B. Appeal

On September 5, 2024, Appellant filed the instant appeal. Appellant contends that the CO selected an inappropriate NAICS code and should have designated the RFQ under NAICS code 238990, All Other Specialty Trade Contractors. (Appeal at 1-2.)

Appellant first highlights a footnote in 13 C.F.R. § 121.201 pertaining to NAICS code 561210. (*Id.* at 1.) The footnote explains that NAICS code 561210 may be used only when a solicitation requires “three or more separate activities in the areas of services or specialty trade contractors industries.” (*Id.*, quoting 13 C.F.R. § 121.201, n.12.) The footnote further provides that if any single NAICS code accounts for 50% or more of the contract value, the procurement should instead be designated under that NAICS code. (*Id.*) Appellant also observes a footnote for NAICS code 238990, which states that “[i]f a procurement requires the use of multiple specialty trade contractors (*i.e.*, plumbing, painting, plastering, carpentry, etc.), and no specialty trade accounts for 50 percent or more of the value of the procurement, all such specialty trade contractors activities are considered a single activity and classified as Building and Property Specialty Trade Services.” (*Id.*, quoting 13 C.F.R. § 121.201, n.13.)

Here, Appellant reasons, three NAICS codes could potentially apply to the RFQ: 238220, Plumbing, Heating, and Air Conditioning Contractors; 238290, Other Building Equipment Contractors; and 238990, All Other Specialty Trade Contractors. (*Id.*) Based on the PWS, though, the scope of work only meets the requirements for NAICS code 238990. (*Id.* at 2.)

Alternatively, Appellant maintains that, under 13 C.F.R. § 121.201 footnote 13, the RFQ still should be assigned NAICS code 238990. (*Id.*)

C. DISA's Response

On September 19, 2024, DISA responded to the appeal. DISA maintains that the CO correctly selected NAICS code 561210 for this task order.

DISA first argues that Appellant lacks standing to bring the instant appeal. (DISA Response at 4.) In DISA's view, Appellant is not adversely affected by the NAICS designation, because Appellant qualifies as small under either NAICS code 561210 or NAICS code 238990. (*Id.*)

In any event, DISA continues, NAICS code 561210 captures the principal purpose of the RFQ. (*Id.* at 6.) DISA argues that the appeal fails to show that NAICS code 561210 is improper. (*Id.*) Rather, Appellant merely expresses disagreement with the CO's choice. (*Id.*) Furthermore, NAICS 561210 is an appropriate designation because the services requested are “ancillary support services,” not central to DISA's mission, and are within the types of services contemplated for this NAICS code, such as maintenance and janitorial tasks. (*Id.* at 6-7.)

Additionally, the NAICS code Appellant advocates, 238990, is not included in the underlying FSS contract, so DISA could not have selected that code for this task order. (*Id.* at 7.) In effect, DISA contends, Appellant challenges DISA's acquisition strategy for this procurement. (*Id.*) Appellant's position is inconsistent with public policy, which generally favors the use of government-wide acquisition vehicles. (*Id.*) DISA also observes that, in *NAICS Appeal of Dellew Corp.*, SBA No. NAICS-5358 (2012), OHA previously rejected a similar appeal filed by Appellant, finding that NAICS code 561210 was proper in lieu of NAICS code 238220. (*Id.*)

D. OHA's Requests for Comment

On September 6, 2024, OHA issued an order requesting comments on the appeal. OHA explained that, because the RFQ calls for award of a task order under a multiple-award contract (MAC), applicable regulations instruct that the CO only may select a NAICS code and size standard included in the underlying MAC. (Order at 1, citing FAR 19.102(b)(3), 13 C.F.R. § 121.402(c)(2)(i), and *NAICS Appeal of Laredo Tech. Servs., Inc.*, SBA No. NAICS-6238 (2023).) Since it was unclear from the parties' submissions whether 238990, the NAICS code advocated by Appellant, was an available NAICS code in the underlying MAC, OHA requested that Appellant and DISA file comments as to this issue. (*Id.*)

On September 13, 2024, the CO informed OHA that NAICS code 238990 is not included in the underlying MAC. (E-mail from J. Ross (Sept. 13, 2024).) On September 13, 2024, Appellant responded, asserting that DISA should not be permitted to utilize the underlying MAC for this task order. (Appellant's Reply at 2.) According to 13 C.F.R. § 121.402(c)(2)(i), “[i]f the NAICS code corresponding to the principal purpose of the order is not contained in the underlying [MAC], the contracting officer may not use the [MAC] to issue that order.” (*Id.* at 1-

2.) As Appellant maintained in its appeal that NAICS code 561210 is improper for the RFQ, the CO cannot use the MAC as a contract vehicle for this procurement. (*Id.* at 2.)

On September 16, 2024, OHA issued a second order inviting the parties, and SBA, to submit further comments on the appeal. OHA specifically requested comments as to whether DISA could properly utilize the MAC for a task order, if the NAICS code corresponding to the principal purpose of the order is not included in the MAC. (Order at 1.)

E. SBA Comments

On September 30, 2024, SBA filed comments in response to OHA's request. SBA, first, agrees with Appellant that if the requirements set forth in 13 C.F.R. § 121.201 footnote 12 are not met, the CO may not designate the procurement under NAICS code 561210. (SBA Comments at 1-2.) SBA expresses the view that, although not recommended by either party, NAICS code 238220 “may be pertinent for many of the services described in the PWS.” (*Id.* at 1, fn. 1.)

SBA also agrees with Appellant that the CO cannot utilize the underlying MAC for this order, if the principal purpose of the order is not one of the available NAICS codes under the MAC. (*Id.* at 2.) When promulgating 13 C.F.R. § 121.402(c)(2)(i), SBA's intent was clear that a CO cannot use the MAC in these situations. (*Id.* at 3-4, citing 85 Fed. Reg. 66,146, 66,150 (Oct. 16, 2020).) SBA believed that it would be better that the MAC not be utilized than for an inappropriate NAICS code to be assigned to an order. (*Id.* at 4, citing 84 Fed. Reg. 60,846, 60,848-49 (Nov. 8, 2019).)

F. Appellant's Comments

On September 30, 2024, Appellant submitted a Reply to DISA's Response. Appellant insists that it does have standing to bring the instant appeal, because it is harmed by the larger size standard associated with NAICS code 561210. (Reply at 1.) NAICS code 561210 has a size standard of \$47 million whereas NAICS code 238990, advocated by Appellant, has a size standard of \$19 million. (*Id.* at 1-2.) Appellant argues that it is prejudiced by the choice of NAICS code 561210, because Appellant may then be forced to compete for the order against larger firms. (*Id.* at 2.)

Appellant reiterates its argument that NAICS code 561210 does not describe the principal purpose of the procurement. (*Id.* at 6.) Although Appellant originally took the position that NAICS code 238990 should have been assigned to the RFQ, Appellant now believes that “what best describes this order is the narrower and more focused specialty trade work that is set forth in [NAICS code] 238220 relating to plumbing, heating, and air conditioning maintenance and repair.” (*Id.* at 7.) Appellant asserts that the RFQ does not call for a combination of support services and instead predominantly seeks “plumbing, heating, and air conditioning work.” (*Id.*) NAICS code 561210 cannot be used for the order because more than 50% of the work falls within a single industry. (*Id.*) Furthermore, in Appellant's view, the RFQ does not identify work that could fit within three or more separate services or specialty trade NAICS codes. (*Id.*)

Appellant disputes DISA's policy-based argument favoring government-wide MACs, if doing so would contravene SBA regulations. (*Id.* at 8.)

On October 7, 2024, Appellant submitted comments in response to OHA's request. Appellant supports SBA's suggestion that NAICS code 238220 may be most applicable to the RFQ. (Appellant's Comments at 1.) Appellant also agrees with SBA that, under 13 C.F.R. § 121.402(c)(2)(i), a CO may not issue an order under a MAC if the NAICS code describing the principal purpose of the order is not included in the MAC. (*Id.* at 1-2.)

G. DISA's Comments

On October 7, 2024, DISA submitted comments in response to OHA's request. DISA maintains that the CO designated the appropriate NAICS code, and that Appellant is not prejudiced by that designation. (DISA's Comments at 1.) DISA emphasizes that, according to GSA, NAICS code 561210 is utilized for maintenance and repair work at federal facilities. (*Id.*)

DISA contends that any NAICS code within NAICS sector 23, Construction, is inappropriate for this order because no construction is requested or will be performed. (*Id.* at 2.) DISA rejects SBA's suggestion that NAICS code 238220 may be most suitable since the RFQ does not call for any specialty construction work and only for maintenance. (*Id.*) DISA reiterates that public policy encourages COs to utilize MACs when possible. (*Id.*)

H. NAICS Manual¹

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.* 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 658, 739, 765, and 817.

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>.

A footnote in SBA's size regulations includes additional instructions 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. If the procurement requires the use of specialty trade contractors (plumbing, painting, plastering, carpentry, etc.), all such specialty trade contractors activities are considered a single activity and classified as "Building and Property Specialty Trade Services." Since "Building and Property Specialty Trade Services" is only one activity, two additional activities of separate NAICS industries are required for a procurement to be classified as "Facilities Support Services."

13 C.F.R. § 121.201, n.12.

The NAICS code Appellant advocated in its appeal, 238990, All Other Specialty Trade Contractors, is comprised of:

establishments primarily engaged in specialized trades (except foundation, structure, and building exterior contractors; building equipment contractors; building finishing contractors; and site preparation contractors). The specialty trade work performed includes new work, additions, alterations, maintenance, and repairs.

NAICS Manual at 138. The *NAICS Manual* offers the following illustrative examples of such establishments: "[b]illboard erection," "[o]utdoor swimming pool construction," "[p]aver, brick (e.g., driveway, patio, sidewalk), installation," "[c]rane rental with operator," "[p]aving, residential and commercial driveway and parking lot," "[s]andblasting building exteriors," "[f]ence installation," "[s]caffolding erecting and dismantling," "[i]nterlocking brick and block installation," "[s]teplejack work," "[m]anufactured (mobile) home set up and tie-down work," and "[d]riveway paving or sealing." *Id.*

A footnote in SBA's size regulations contains additional instructions for procurements assigned NAICS code 238990. The footnote states:

NAICS code 238990—Building and Property Specialty Trade Services: If a procurement requires the use of multiple specialty trade contractors (*i.e.*, plumbing, painting, plastering, carpentry, etc.), and no specialty trade accounts for 50 percent or more of the value of the procurement, all such specialty trade contractors

activities are considered a single activity and classified as Building and Property Specialty Trade Services.

13 C.F.R. § 121.201, n.13.

The NAICS code suggested in SBA's Comments, 238220, Plumbing, Heating, and Air-Conditioning Contractors, consists of:

establishments primarily engaged in installing and servicing plumbing, heating, and air conditioning equipment. Contractors in this industry may provide both parts and labor when performing work. The work performed may include new work, additions, alterations, maintenance, and repairs.

NAICS Manual at 133. Index entries which refer to NAICS code 238220 include: “[a]ir system balancing and testing,” “[a]ir vent installation,” “air-conditioning system (except window) installation,” “[b]athroom plumbing fixture and sanitary ware installation,” “[b]oiler chipping, cleaning, and scaling,” “[d]rain, waste and vent system installation,” “[d]uct work (e.g., cooling, dust collection, exhaust, heating, ventilation) installation,” “[g]as line installation, individual hookup, contractors,” “[h]eating, ventilation and air-conditioning (HVAC) contractors,” “[h]ot water heating system installation,” “[m]echanical contractors,” “[p]ipe fitting contractors,” “[p]lumbers,” “[p]lumbing and heating contractors,” “[p]umping system, water, installation,” “[s]ewer hookup and connection, building,” “[v]entilating contractors,” and “[w]ater system balancing and testing contractors.” *Id.* at 639, 640, 659, 667, 725, 729, 760, 775, 780, 813, 849, 852, 853, 866, 890, 942, and 947.

NAICS code, 811210, Electronic and Precision Equipment Repair and Maintenance, is comprised of:

establishments primarily engaged in repairing and maintaining one or more of the following: (1) consumer electronic equipment; (2) computers; (3) office machines; (4) communication equipment; and (5) other electronic and precision equipment and instruments, without retailing these products as new. Establishments in this industry repair items, such as microscopes, radar and sonar equipment, televisions, stereos, video recorders, computers, fax machines, photocopying machines, two-way radios, cellular telephones, and other communications equipment, scientific instruments, and medical equipment.

NAICS Manual at 569. Index entries which refer to NAICS code 811210 include “[b]roadcast equipment repair and maintenance services,” “[c]ommunication equipment repair and maintenance services,” “[c]omputer peripheral equipment repair and maintenance, without retailing new computer peripheral equipment,” “[c]omputer repair and maintenance services, without retailing new computers,” “[d]iagnostic imaging equipment repair and maintenance services,” “[e]lectrical measuring instrument repair and maintenance services,” “[l]aboratory instrument repair and maintenance services,” “[l]aptop repair and maintenance services, without retailing new laptops,” “[m]easuring instrument repair and maintenance services,” “[m]edical and surgical equipment repair and maintenance services,” “[m]eteorological instrument repair

and maintenance services,” “[n]avigational instruments (e.g., radar, sonar) repair and maintenance services,” “[o]ptical instrument repair and maintenance services (e.g., microscopes, telescopes),” “[p]recision equipment calibration,” “[r]adar and sonar equipment repair and maintenance services,” “[s]urgical instrument repair and maintenance services,” and “[w]eighing equipment (e.g., balance, scales) repair and maintenance services.” *Id.* at 672, 699, 701, 719, 732, 796, 797, 812, 813, 816, 826, 835, 859, 868, 914, and 949.

NAICS code 541513, Computer Facilities Management Services, encompasses:

establishments primarily engaged in providing on-site management and operation of clients' computer systems and/or data processing facilities. Establishments providing computer systems or data processing facilities support services are included in this industry.

NAICS Manual at 465. Index entries which refer to this NAICS code are: “[c] omputer systems facilities (*i.e.*, clients' facilities) management and operation services”; “[d]ata processing facilities (*i.e.*, clients' facilities) management and operation services”; “[f]acilities (*i.e.*, clients' facilities) management and operation services, computer systems or data processing”; and “[f]acilities (*i.e.*, clients' facilities) support services, computer systems or data processing.” *Id.* at 701, 716, and 739.

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

As an initial matter, I find no merit to DISA's claim that Appellant lacks standing to bring this appeal. OHA has “consistently held that a concern which is small under the size standard challenged in a NAICS code appeal has standing to file an appeal advocating a lower size standard, because it is adversely affected by having to compete with larger firms.” *NAICS Appeal of eScience & Tech. Sols., Inc.*, SBA No. NAICS-5586, at 8 (2014) (quoting *NAICS Appeal of SAC Cleaners, Inc.*, SBA No. NAICS-5468, at 4 (2013)). In this case, although Appellant

qualifies as a small business under both NAICS code 238990 and NAICS code 561210, Appellant asserts that the use of NAICS code 561210 disadvantages Appellant because Appellant will be obliged to compete for the task order with firms substantially larger than itself. Section II.F, *supra*. Accordingly, Appellant has standing to challenge the selection of NAICS code 561210.

Nevertheless, Appellant has not carried its burden of proving that NAICS code 561210 is clearly incorrect for the instant RFQ. This appeal must therefore be denied.

The available record reflects that NAICS code 561210 is a reasonable choice for this procurement. The *NAICS Manual* makes clear that NAICS code 561210 applies when a contractor performs “a combination of support services” — including “maintenance” — to support the operation of a client's facilities, such as a “[m]ilitary base.” Section II.H, *supra*. In addition, in order for NAICS code 561210 to be appropriate, work must fall within at least three different NAICS industries, and no single NAICS code may constitute a majority of the contract value. 13 C.F.R. § 121.201 n.12. Here, the RFQ explains that the contractor will support the operation of Scott Air Force Base facilities by performing a variety of support tasks, including HVAC system maintenance, maintenance of “uninterrupted power supply (UPS) & batteries, phone switch batteries, [and] power distribution units (PDUs),” and management and maintenance of certain “site monitoring software.” Section II.A, *supra*. As SBA observes in its comments, maintenance of HVAC systems falls squarely within the definition of NAICS code 238220. Sections II.E and II.H, *supra*. At least two other NAICS codes, though, also appear to be applicable to portions of the work. Maintenance of batteries and emergency power systems fits into NAICS code 811210, since these devices are types of “computer peripheral” or “consumer electronic” equipment. Section II.H, *supra*. Managing and maintaining the site monitoring software falls under the definition of NAICS code 541513. *Id.* Accordingly, the work contemplated by this RFQ can properly be viewed as falling within several unrelated NAICS codes, such as 238220, 811210, and 541513.

Nor is there clear evidence that any single NAICS code accounts for 50% or more of the value of the procurement. During the course of these proceedings, Appellant asserted that the bulk of the order will pertain to HVAC system maintenance, and that NAICS code 238220 therefore should have been utilized in lieu of NAICS code 561210. Section II.F, *supra*. While it is true that HVAC maintenance tasks do appear to comprise a significant portion of the work, Appellant has not established that they represent a majority. Notably, Appellant's argument in this regard is undermined by its own appeal petition, in which Appellant claimed that NAICS code 238990 should apply, because (according to Appellant) the RFQ calls for multiple specialty trade contractors, no one of which constitutes a preponderance of the work. Section II.B, *supra*. Given Appellant's contradictory arguments on appeal, then, and its apparent admission in the appeal petition that this RFQ does not primarily involve HVAC maintenance work within the scope of NAICS code 238220, Appellant has not persuasively shown that NAICS code 238220 or any other single NAICS code should apply instead of NAICS code 561210.

Because Appellant has not proven that NAICS code 561210 is clearly incorrect for this procurement, OHA need not examine whether other alternative codes could potentially apply. 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 Sols.*, 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).

The parties also debate whether, notwithstanding the language of FAR 19.102(b), SBA regulations at 13 C.F.R. § 121.402(c)(2)(i) mandate cancellation of a task order solicitation, if OHA concludes that the NAICS code associated with the underlying MAC is inappropriate for that task order. Sections II.E — II.G, *supra*; *see also NAICS Appeal of Laredo Tech. Servs., Inc.*, SBA No. NAICS-6238, at 9 (2023). I find it unnecessary to resolve that question here, because Appellant has not established that NAICS code 561210 is clearly erroneous for the instant RFQ.

III. Conclusion

Appellant bears the burden of proof in this proceeding, and has not demonstrated the CO clearly erred in selecting NAICS code 561210 for this RFQ. 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