

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

NAICS APPEAL OF:

MissionAnalytics, LLC,

Appellant,

Solicitation No. 36C25624R0116

U.S. Department of Veterans Affairs

SBA No. NAICS-6320

Decided: November 25, 2024

APPEARANCES

Mike Winters, President, MissionAnalytics, LLC, Falls Church, Virginia

Devrie Weliver, President, Pointer Construction Group LLC, Fort Lauderdale, Florida

DECISION

I. Introduction and Jurisdiction

On October 15, 2024, the U.S. Department of Veterans Affairs (VA) issued Request for Proposals (RFP) No. 36C25624R0116 for exterior security cameras at the New Orleans VA Medical Center in New Orleans, Louisiana. The Contracting Officer (CO) set aside the procurement entirely for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), and assigned North American Industry Classification System (NAICS) code 236220, Commercial and Institutional Building Construction, with a corresponding size standard of \$45 million average annual receipts.

On October 25, 2024, MissionAnalytics, LLC (Appellant) appealed the NAICS code designation to the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA). Appellant maintains that the CO clearly erred in selecting NAICS code 236220 because the procurement is predominately for manufactured products rather than construction. Appellant urges that the proper code is either 334290, Other Communications Equipment Manufacturing, with a corresponding size standard of 800 employees, or the Information Technology Value Added Resellers (ITVAR) exception to NAICS code 541519, Other Computer Related Services, with a corresponding size standard of 150 employees. For the reasons discussed *infra*, the appeal is granted in part.

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 timely filed the instant

appeal within 10 calendar days after issuance of the RFP. 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 RFP

The RFP's Scope of Work (SOW) explains that VA seeks a contractor to install 34 new security cameras, replace 50 old security cameras with new models, and perform a “platform upgrade” of the existing video management system. (RFP, SOW at 1.) More specifically:

The intent of this project is to provide the Southeast Louisiana Veterans Healthcare System (SLVHCS) with [] fully functional closed-circuit television (CCTV) surveillance cameras that meet all the requirements of intended use, are installed to the highest of standards, and meet[] the requirements of the contract document. A fully complete and usable system is defined as one that meets the aesthetic, technical, and functional properties required by the [SOW], Project Description, and Requirements. All services and supplies shall meet or exceed what is required by the SOW and shall be executed in a professional manner resulting in a finished product of the highest quality. The contractor shall provide project management, all materials, equipment, and other products used in the installation. All work shall be maintained in a clean condition and shall be true to line and grade and [] shall comply with stated installation requirements. The work shall be properly secured, consistent in quality, and fit. The contractor shall provide all labor, equipment, materials, testing, transportation, lifts, and any other materials or services necessary to provide and install CCTV surveillance cameras. All cameras that are to be installed must be installed, tested, and viewable from the server(s) and workstation clients.

(*Id.*)

The cameras are to be “installed on approved mounting surfaces structured for weight, wind load, and extreme weather conditions.” (*Id.* at 2.) It is the contractor's responsibility to “X-ray all wall and slab penetrations prior to drilling and provide digital documentation for each hole drilled.” (*Id.* at 1-2.) The new cameras will be “located on various buildings and light poles throughout the campus.” (*Id.* at 1.) The contractor also will upgrade the existing NiceVision Video System to the latest version of the QOGNIFY Video Management System (QVMS), and provide “[o]ne (1) year of software support for the existing video management system (required during migration) and new QVMS.” (*Id.*) The contractor must “provide project management, purchase requested cameras, cabling, conduit, camera mounts, and other necessary hardware outlined in the SOW, install new security cameras, patch new cameras to network switches and servers, and program the cameras into the existing system.” (*Id.*)

The SOW stipulates that the contractor shall complete the project within 180 calendar days after award. (*Id.* at 4.) The contractor may perform work during the SLVHCS's normal

operating hours, and “can be allowed to work on weekends and/or after hours with special permission.” (*Id.*)

The RFP explains that VA intends to award a single, firm-fixed-price contract to the offeror that represents the best value to the Government. (RFP at 10, 19.) There are three evaluation factors: (1) Professional Qualifications & Specialized Experience; (2) Past Performance; and (3) Price. (*Id.* at 12-17.) The non-Price factors are equal in importance, and combined are approximately equal in importance to Price. (*Id.* at 10.)

The CO suspended the deadline for receipt of proposals pending resolution of this appeal. (RFP, Amendment 002.)

B. Appeal

On October 25, 2024, Appellant filed the instant appeal. Appellant maintains that the RFP does not seek construction services but rather is primarily a procurement of products. (Appeal at 1.) Accordingly, Appellant contends, the RFP should have been assigned a manufacturing or supplies NAICS code, such that the nonmanufacturer rule would apply. (*Id.*) Appellant argues that the proper designation is either NAICS code 334290, or the ITVAR exception to NAICS code 541519. (*Id.*)

Appellant references e-mail correspondence between Appellant and the CO discussing Appellant's concerns with the NAICS code designation. In this correspondence, Appellant first raised its concerns that NAICS code 236220 does not capture the principal purpose of the procurement. (*Id.*) After reviewing the RFP's SOW, Appellant asserted that the principal purpose of the procurement is to acquire and install a video security system. (*Id.*) Appellant asserted that other similar procurements have used manufacturing or supplies NAICS codes, such as the codes advocated by Appellant, and not construction codes. (*Id.*)

C. PCG's Response

On November 12, 2024, Pointer Construction Group LLC (PCG), a prospective offeror, responded to the appeal. PCG contends that the CO did not err in selecting NAICS code 236220, because the procurement has “the potential to affect Life Safety, integrity of the Building Envelope, and Structural integrity.” (PCG Response at 1.)

PCG, first, maintains that the RFP contemplates “numerous penetrations through fire and smoke rated walls, floors, and potentially roof assemblies that will require the installation of certified, professional, firesafing assemblies.” (*Id.*) The project further requires breaking through exterior building envelopes to install and connect the cameras. (*Id.*) The contractor also will need to penetrate load-bearing walls and structural slabs, potentially requiring the use of “ground penetrating radar.” (*Id.*) Lastly, the procurement calls for certain restorations in the event of damages, to include painting, landscaping, and the replacement of ceiling tiles. (*Id.*)

D. *NAICS Manual*¹

The NAICS code chosen by the CO, 236220, Commercial and Institutional Building Construction, comprises:

establishments primarily responsible for the construction (including new work, additions, alterations, maintenance, and repairs) of commercial and institutional buildings and related structures, such as stadiums, grain elevators, and indoor swimming facilities. This industry includes establishments responsible for the on-site assembly of modular or prefabricated commercial and institutional buildings. Included in this industry are commercial and institutional building general contractors, commercial and institutional building for-sale builders, commercial and institutional building design-build firms, and commercial and institutional building project construction management firms.

NAICS Manual at 122-23. Illustrative examples of work that fall within NAICS code 236220 include: “[o]ffice building construction”; “[p]rison construction”; “[f]ire station construction”; “[r]estaurant construction”; “[h]ospital construction”; and “[s]hopping mall construction.” *Id.* at 123. NAICS code 236220 is one of several industries within subsector 236, “Construction of Buildings.” The *NAICS Manual* indicates that “subsector [236] comprises establishments primarily responsible for the construction of buildings.” *Id.* at 119.

One of the NAICS codes advocated by Appellant, 334290, Other Communications Equipment Manufacturing, is comprised of:

establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, radio and television broadcast equipment, and wireless communications equipment).

NAICS Manual at 264. Index entries which refer to NAICS code 334290 include “[a]larm systems and equipment manufacturing”; “[a]larm system central monitoring equipment manufacturing”; “[a]utomotive theft alarm systems manufacturing”; “[b]urglar alarm systems and equipment manufacturing”; “[c]arbon monoxide detectors manufacturing”; “[f]ire detection and alarm systems manufacturing”; “[g]lass breakage detection and signaling devices”; “[m]otion detectors, security system, manufacturing”; “[p]ortable intrusion detection and signaling devices manufacturing”; “[s]irens (e.g., air raid, industrial, marine, vehicle) manufacturing”; and “[s]moke detectors manufacturing.” *Id.* at 641, 653, 674, 681, 745, 763, 822, 855, 896, and 898.

The second NAICS code advocated by Appellant, 541519, Other Computer Related Services, is comprised of:

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>.

establishments primarily engaged in providing computer related services (except custom programming, systems integration design, and facilities management services). Establishments providing computer disaster recovery services or software installation services are included in this industry.

NAICS Manual at 465. A footnote in SBA's size regulations includes an ITVAR exception to this NAICS code. The footnote states:

NAICS code 541519—An Information Technology Value Added Reseller (ITVAR) provides a total solution to information technology acquisitions by providing multi-vendor hardware and software along with significant value added services. Significant value added services consist of, but are not limited to, configuration consulting and design, systems integration, installation of multi-vendor computer equipment, customization of hardware or software, training, product technical support, maintenance, and end user support. For purposes of Government procurement, an information technology procurement classified under this exception and 150-employee size standard must consist of at least 15% and not more than 50% of value added services, as measured by the total contract price. In addition, the offeror must comply with the manufacturing performance requirements, or comply with the non-manufacturer rule by supplying the products of small business concerns, unless SBA has issued a class or contract specific waiver of the non-manufacturer rule. If the contract consists of less than 15% of value added services, then it must be classified under a NAICS manufacturing industry. If the contract consists of more than 50% of value added services, then it must be classified under the NAICS industry that best describes the predominate service of the procurement.

13 C.F.R. § 121.201, n.18.

NAICS code 334220, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, is comprised of:

establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.

NAICS Manual at 264. Index entries that refer to NAICS code 334220 include “[c]losed-circuit television equipment manufacturing.” *Id.* at 692.

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. 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). Furthermore, “[a]cquisitions for supplies must be classified under the appropriate manufacturing or supply NAICS code, not under a Wholesale Trade or Retail Trade NAICS code.” 13 C.F.R. § 121.402(b)(2).

B. Analysis

A review of the RFP confirms that the instant procurement is, fundamentally, for manufactured products, specifically 84 exterior closed-circuit television (CCTV) cameras. The RFP thus explains that the contractor will “purchase [the] requested cameras, cabling, conduit, camera mounts, and other necessary hardware outlined in the SOW, install new security cameras, patch new cameras to network switches and servers, and program the cameras into the existing [video management] system.” Section II.A, *supra*. Accordingly, the CCTV cameras themselves constitute the principal purpose of this procurement, and such equipment apparently also represents the bulk of contract dollar value. *Id.* Notably, the RFP identifies no specific construction-related work that the contractor will perform. *Id.* Insofar as the RFP may be said to seek “construction,” then, this is ancillary to, and in support of, VA's stated goal of the procurement: to obtain the CCTV cameras.

OHA has long held that “the mere fact that a procurement calls for incidental or ancillary services does not justify classifying the procurement based upon the ancillary services even if those services are necessary to the procurement.” *NAICS Appeal of Noble Supply & Logistics*, SBA No. NAICS-5886, at 9 (2018). Moreover, SBA regulations require that “[a]cquisitions for supplies must be classified under the appropriate manufacturing or supply NAICS code.” Section III.A, *supra*. Similarly, OHA has recognized that, if the principal purpose of a procurement is the supply of goods, a manufacturing NAICS code is utilized. *E.g.*, *NAICS Appeal of Cynergy Profl Sys., LLC*, SBA No. NAICS-6286 (2024); *Noble Supply*, SBA No. NAICS-5886, at 9-10; *NAICS Appeal of U.S. Small Bus. Admin.*, SBA No. NAICS-5526 (2014). As Appellant emphasizes in its appeal, the NAICS code selected by the CO for the RFP — 236220, Commercial and Institutional Building Construction — is a construction NAICS code, not a manufacturing or

supply NAICS code. Sections II.B and II.D, *supra*. I therefore agree with Appellant that NAICS code 236220 is clearly improper for this RFP.

In response to the appeal, PCG suggests that NAICS code 236220 may be proper because the instant contract has “the potential to affect Life Safety, integrity of the Building Envelope, and Structural integrity.” Section II.C, *supra*. Again, though, the text of the RFP does not support the conclusion that the contractor will perform any significant construction. Section II.A, *supra*. Even supposing, then, that the contract may have “the potential” to involve some construction, such work appears to constitute, at most, a small aspect of this procurement. As discussed above, by regulation, a procurement must be classified according to the “principal purpose” of the acquisition, which often may be ascertained by the component which represents the greatest percentage of contract dollar value. Section III.A, *supra*. An additional issue is that, under OHA precedent, NAICS code 236220 refers to construction of “the buildings themselves” and thus encompasses the construction of entire buildings, or the major renovation or alteration of buildings, but does not apply to other nearby construction, such as “roadways, parking lots, fences and gates.” *NAICS Appeal of Arrowhead Cont., Inc.*, SBA No. NAICS-5725, at 7 (2016). By contrast, any “construction” here does not appear to primarily involve the buildings themselves, as the cameras in question are exterior in nature, and the RFP specifies that the cameras may be affixed to “light poles” and are not necessarily even attached to buildings. Section II.A, *supra*.

Because Appellant has established that the CO erred in selecting NAICS code 236220, 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 will consider, 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).

Having reviewed the arguments of the parties, the RFP, and the definitions in the *NAICS Manual*, I find that NAICS code 334220, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, best describes the principal purpose of this procurement. NAICS code 334220 specifically encompasses “[c]losed circuit television equipment.” Section II.D, *supra*. The CCTV cameras requested here thus fall squarely within NAICS code 334220.

The two NAICS codes advocated by Appellant, 334290 and 541519, are less suitable for this procurement than 334220. The *NAICS Manual*'s description of NAICS code 334290 specifically excludes television equipment. Section II.D, *supra*. As a result, while it may be true, as Appellant argues, that the principal purpose of the procurement could reasonably be described as either 334220 or 334290, the explicit index entry noted above dictates designation under 334220. Meanwhile, NAICS code 541519 is utilized when a contractor will perform “computer related services (except custom programming, systems integration design, and facilities management services).” *Id.* Here, in addition to procuring and installing the CCTV cameras, the contractor also will upgrade VA's existing video management system, “patch new cameras to network switches and servers, and program the cameras into the existing system.” Section II.A, *supra*. Nevertheless, as Appellant itself recognizes, this procurement predominantly calls

for manufactured products (*i.e.*, the CCTV cameras), which are not a type of computer equipment. NAICS code 541519 is thus less appropriate for this RFP than NAICS code 334220.

IV. Conclusion

Appellant has shown that the CO clearly erred in assigning NAICS code 236220 to this procurement, and the appeal is GRANTED to that extent. The RFP does not call for the construction of entire buildings or other comparable construction-related tasks. The correct NAICS code for this RFP is 334220, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, with an associated size standard of 1,250 employees. Because this decision is being issued before the deadline for receipt of proposals, the CO MUST amend the RFP to change the NAICS code designation from 236220 to 334220. 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