

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

NAICS APPEAL OF:

Cynergy Professional Systems, LLC,

Appellant,

Appealed From  
Solicitation No. 36C24524Q0378

U.S. Department of Veterans Affairs

SBA No. NAICS-6286

Decided: May 23, 2024

APPEARANCES

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J. Bradley Reaves, Esq., Paul Hawkins, Esq., Jacob D. Noe, Esq., ReavesColey PLLC, Chesapeake, Virginia, for SCDATACOM, LLC

Tracy M. Dotson, Contracting Officer, U.S. Department of Veterans Affairs, Martinsburg, West Virginia

DECISION

I. Introduction and Jurisdiction

On April 25, 2024, the U.S. Department of Veterans Affairs (VA) issued Request for Quotations (RFQ) No. 36C24524Q0378, seeking a contractor provide “weapons detection system services” to VA medical centers within Veterans Integrated Service Network (VISN) 5. (RFQ at 1.) 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 561621, Security Systems Services (except Locksmiths), with a corresponding size standard of \$25 million average annual receipts.

On May 6, 2024, Cynergy Professional Systems, 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 561621, because the procurement is predominately for products rather than services. Appellant urges that

the proper code is either 334517, Irradiation Apparatus Manufacturing, with a corresponding size standard of 1,200 employees, or 334511, Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing, with a corresponding size standard of 1,350 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 on May 6, 2024.<sup>1</sup> Accordingly, this matter is properly before OHA for decision.

## II. Background

### A. The RFQ

The RFQ explains that VA “wishes to establish a 5-year contract for all VISN 5 medical centers to obtain the Evolv[] Weapons Detection System.” (RFQ at 7.) The Evolv systems “will be placed by the entrance” of each medical center to screen “staff, patients and visitors coming into the facility.” (*Id.*) The RFQ offers the following description of the Evolv system:

The Evolv Express is a frictionless, high-throughput walkthrough personnel screener designed to detect concealed firearms and fully configured improvised explosive devices (IEDs) whether on their person or in a carried bag. Visitors are not required to divest any of their personal items or stop and pose in any manner. Evolv Express supports multiple integrated cameras to positively match screening results with visitors and to seamlessly provide information to security operations centers. The Express can screen an average 3600 visitors per hour. This software will provide [VA] Police Service the ability to screen high numbers of employees entering the building while mitigating congestions and long queue lines for random searches. It is imperative to the security of the medical center that this screening system be procured and implemented immediately. Without this software and equipment, the potential exists for an insider threat/active shooter-based attack within VISN 5's medical centers.

(*Id.*) According to the RFQ, the Evolv system “use[s] Artificial Intelligence (AI) and advanced algorithms to differentiate between threats (guns, Improvised Explosives Devices etc.) and non-threat (phones, keys, belt buckles etc.) items.” (*Id.* at 8.)

The RFQ states that the contractor will be responsible for “[i]nsta[l]l[a]tion, within 60 days upon award” and “[t]raining, within 60 days upon award.” (*Id.* at 7.) Thereafter the systems will be operated by VA's own “security screeners and administrators.” (*Id.* at 7-8.) Additionally, the contractor must furnish a “Subscription” from Motorola Solutions, Inc., the manufacturer of the

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<sup>1</sup> Ordinarily, a NAICS code appeal must be filed within 10 calendar days after issuance of the solicitation. 13 C.F.R. §§ 121.1103(b)(1) and 134.304(b); Federal Acquisition Regulation (FAR) 19.103(a)(1). Here, the RFQ was issued on April 25, 2024. Ten calendar days after April 25, 2024 was May 5, 2024. Because May 5, 2024 was Sunday, the appeal petition was due on the next business day: Monday, May 6, 2024. 13 C.F.R. § 134.202(d)(1)(ii).

systems. The “Subscription” includes: “[o]ngoing use of the Evolv system to screen individuals and bags”; “[r]egular software upgrades that may include improvements such as faster processing, additional detection sensitivities, improvements to detection and nuisance alarm rates”; “[a]ccess to 24 x 7 support line to engage Evolv Customer Service team”; and “[s]ervice, maintenance, part replacement, periodic system monitoring, troubleshooting, remote and onsite issue resolution and support.” (*Id.*)

The RFQ explains that VA intends to award a single, indefinite-delivery/indefinite quantity (ID/IQ) contract with a five-year period of performance. (*Id.* at 1, 6, 22.) The awardee will be “the lowest price responsible offeror whose offer conforms to the requirement of the solicitation.” (*Id.* at 45, 51.) The RFQ is structured as a procurement of “commercial products and commercial services” pursuant to FAR Part 12. (*Id.* at 1, 41-44.)

The RFQ specifies six Contact Line Item Numbers (CLINs) for each year of contract performance. (*Id.* at 10-15.) For the base year, the six CLINs are: 1001, “Motorola Solutions Concealed Weapons Detection Platform”; 1002, “Operational Test Kit”; 1003, “Outdoor Battery”; 1004, “Outdoor Replacement Battery”; 1005, “Convergent Technician Labor”; and 1006, “1 Year software subscription for Motorola Solutions Concealed Weapon Detection platform.” (*Id.* at 10-11.) The RFQ identifies “Motorola Solutions, Inc.” as the manufacturer for CLINs 1001, 1004, and 1006. (*Id.*)

Quotations are due May 24, 2024. (RFQ, Amendment 0001.)

## B. Appeal

On May 6, 2024, Appellant filed the instant appeal. Appellant maintains that the RFQ seeks a contractor to provide “a very specific weapon detection scanner” and “does not require the contractor to monitor or otherwise maintain these systems.” (Appeal at 3-4.) The CO's chosen NAICS code, 561621, “is service heavy” and thus “inappropriate for a solicitation that largely requires a contractor to provide a product.” (*Id.* at 4.)

More specifically, NAICS code 561621 applies when a contractor is engaged in (1) selling security systems, such as burglar or fire alarms, along with installation, repair, or monitoring services; or (2) remote monitoring of electronic security alarm systems. (*Id.*, citing *NAICS Manual*<sup>2</sup> at 498.) NAICS code 561621 falls within NAICS Subsector 561, Administrative and Support Services, and “[g]iven its inclusion under Subsector 561, it is not surprising that service code 561621 references day-to-day activities, including the repair and monitoring of security systems.” (*Id.*)

Appellant allows that the instant RFQ “does require the contractor to provide *and* install the Evolv product.” (*Id.* at 5 (emphasis Appellant's).) Nevertheless, the principal purpose of the procurement is “providing the Evolv weapons detection system to detect threats,” not installation, which is a “one-time event.” (*Id.*) The RFQ's deliverables and pricing structure

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<sup>2</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>.

confirm “the *de minimis* nature of the installation requirement.” (*Id.*) Furthermore, in Appellant's view, the Evolv system “is not comparable” to an ordinary security alarm system. (*Id.* at 5-6.) “Unlike passive fire and burglar alarm systems, the Evolve weapons detection scanners cannot fulfill their purpose without a screener and/or administrator actively and directly interfacing with the system.” (*Id.* at 6.) The contractor here, though, is not charged with repairing, monitoring, or operating the Evolv systems. In short, this procurement does not call for the contractor to perform significant services. (*Id.*)

Appellant reiterates that the contractor will not be responsible for “interfacing with [or] monitoring the detection systems.” (*Id.* at 4.) Instead, the RFQ “makes clear that VA's security screeners and administrators” will assume these responsibilities. (*Id.*) Similarly, it will be the Evolv system's subscription platform, again not the contractor, that will perform “all matters related to service, maintenance, part replacement, system monitoring, troubleshooting, and remote and onsite issue resolution and support.” (*Id.*)

Appellant contends that either of two NAICS codes, 334517 and 334511, fit the RFQ “much better” than 561621. (*Id.* at 6.) Both codes fall within NAICS Subsector 334, Computer and Electronic Product Manufacturing, which generally consists of “product manufacturers who specialize in providing computer and/or electronic products.” (*Id.*) The Evolv weapons detection system is “highly specialized technology” because it is “a frictionless, high-throughput walkthrough personnel screener” that “supports multiple integrated cameras to positively match screening results with visitors and to seamlessly provide information to security operations centers.” (*Id.* at 7, quoting RFQ at 7.) The system utilizes AI and advanced algorithms, as well as “ultra-low frequency electromagnetic fields and a variety of advanced sensors,” to identify threats, such as concealed weapons and improvised explosive devices. (*Id.*) NAICS code 334517, a “products-based” NAICS code, is in line with the “actual functionality and purpose of the Evolv weapons detection systems.” (*Id.*) Alternatively, NAICS code 334511 “captures the production of detection systems,” such as radar and sonar systems, and thus corresponds with the Evolv system's use of “low-frequency, electromagnetic waves to detect objects (*i.e.*, weapons threats).” (*Id.* at 7-8.)

### C. CO's Response

On May 10, 2024, the CO responded to the appeal. The CO defends her choice of NAICS code 561621 for this procurement. (CO's Response at 1.) The RFQ does not merely call for delivery of the Evolv systems, but also includes “installation and yearly subscriptions.” (*Id.*) According to the CO, “installation is labor intensive and of service nature,” and the subscription consists of “multiple service components.” (*Id.* at 1-2.) Furthermore, the RFQ also includes “training on the use of the system.” (*Id.* at 1.) According to the Independent Government Cost Estimate (IGCE), the services aspects of the procurement together are “substantially more than 10%” of the total contract value. (*Id.*) In the CO's view, “this dispels the allegation of a primarily product requirement.” (*Id.*)

The CO agrees that monitoring the Evolv systems “is not a solicitation requirement.” (*Id.*) However, the *NAICS Manual's* definition of NAICS code 561621 indicates that the code is appropriate for “[s]ecurity alarm systems sales combined with installation, repair, **or monitoring**

**services.”** (*Id.* at 2, emphasis CO's.) Thus, “[m]onitoring services are only one example of the additional services cited in the” *NAICS Manual*. (*Id.*) “[B]ased on the training required in the solicitation, plus the multiple service components of the subscription described above,” NAICS code 561621 best encompasses the product and services aspects of the RFQ. (*Id.*)

#### D. SDC's Response

On May 21, 2024, SCDATACOM, LLC (SDC), a prospective offeror, responded to the appeal. SDC contends that the CO did not err in selecting NAICS code 561621, because the procurement involves “both the sale *and installation*” of a security system. (SDC Response at 2, emphasis SDC's.) SDC asserts that, in addition to delivering the Evolv system, the contractor will “[i]nstall” and provide “[t]raining” on the Evolv system within 60 days of award. (*Id.*) OHA has recognized that where “the contractor will not just simply ‘supply [products] on a pallet at the front gate,’ but instead provide the necessary, specialized *services* to install and train on such equipment,” a services-based NAICS code is appropriate. (*Id.* at 3-4, quoting *NAICS Appeal of KVA Elec., Inc.*, SBA No. NAICS-5030, at 5 (2009).) The procurement at issue here similarly combines supplies and installation services. SDC, thus, urges that a “services NAICS code that necessarily includes installation as a component of the procurement is proper.” (*Id.* at 3.)

SDC further asserts that “the key words” in the *NAICS Manual's* description of NAICS code 561621 are “‘selling’ and ‘installation’D”, which correspond “precisely” with the work contemplated in the instant RFQ. (*Id.* at 4.) SDC highlights that “all” of the 29 deliverables split across the six CLINs reference the same Product Service Code, “N063 — Installation of equipment — Alarm, Signal, and Security Detection Systems.” (*Id.*, citing RFQ at 10-15.) In SDC's view, this confirms that installation “is an integral purpose of the procurement.” (*Id.*) Another “key service” identified in the RFQ is “[t] raining,” which Appellant fails to address in its appeal. (*Id.*, citing RFQ at 7.)

SDC insists that “the fact that this procurement does not include ongoing monitoring services is irrelevant” because the *NAICS Manual's* description of 561621 “lists related services in the *disjunctive* (i.e., installation, repair, *or* monitoring services).” (*Id.* (emphasis SDC's).) SDC also disputes Appellant's claim that the Evolv system is unlike ordinary fire or burglar alarms encompassed in NAICS code 561621. (*Id.* at 5.) In SDC's view, the types of security systems listed in the *NAICS Manual* are merely “illustrative.” (*Id.*) Furthermore, although “other security systems are passive and require a trigger,” the Evolv system also requires a trigger — “the detection of a concealed firearm or explosive.” (*Id.*) While the Evolv system includes “many technological advancements to increase its screening capacity and ability to discern threats through use of [AI], it is still at its core a security monitoring system.” (*Id.*) Lastly, SDC asserts that the NAICS codes Appellant advocates, 334517 and 334511, would be “incredibly poor” fits for the instant procurement. (*Id.* at 5-6.)

#### E. Motion to Reply

On May 22, 2024, the date of the close of record, Appellant requested leave to reply to the CO's and SDC's Responses. Appellant complains that both Responses inaccurately “overemphasize product installation (a very simple process) and training.” (Motion at 1.)

Furthermore, the CO's Response does not attempt to refute the two NAICS codes Appellant proposed in its appeal, and instead takes issue with four other NAICS codes which had been “informally suggested by [Appellant] before the appeal.” (*Id.* at 1-2.)

Under OHA's regulations governing NAICS code appeals, a reply to a response generally is not permitted unless OHA so directs. 13 C.F.R. §§ 134.206(e) and 134.309(d). No such direction occurred here. Furthermore, although OHA has, in rare instances, permitted a reply in order to address new substantive issues raised for the first time in an opposing party's response, Appellant has not shown that comparable circumstances exist here. Accordingly, Appellant's motion for leave to reply is DENIED and the proposed Reply is EXCLUDED from the record. *E.g., NAICS Appeal of Elevated Techs., Inc.*, SBA No. NAICS-6264, at 3 (2024) (rejecting a proposed reply which “merely elaborates upon arguments that Appellant raised, or could have raised, in its original appeal”); *NAICS Appeal of PrimeTech Int'l, Inc.*, SBA No. NAICS-6014, at 6 (2019); *NAICS Appeal of T3 TigerTech*, SBA No. NAICS-5674, at 2, fn. 2 (2015).

#### F. NAICS Manual

The NAICS code chosen by the CO, 561621, Security Systems Services (except Locksmiths), consists of:

establishments primarily engaged in (1) selling security alarm systems, such as burglar and fire alarms, along with installation, repair, or monitoring services or (2) remote monitoring of electronic security alarm systems.

*NAICS Manual* at 498. Index entries which refer to NAICS code 561621 include “[a]larm system monitoring services”; “[a]larm systems sales combined with installation, repair, or monitoring services”; “[b]urglar alarm monitoring services”; “[b]urglar alarm sales combined with installation, repair, or monitoring services”; “[f]ire alarm monitoring services”; “[f]ire alarm sales combined with installation, repair, or monitoring services”; “[s]ecurity alarm systems sales combined with installation, repair, or monitoring services”; and “[s]ecurity system monitoring services.” *Id.* at 641, 674, 745, and 888.

One of the NAICS codes advocated by Appellant, 334517, Irradiation Apparatus Manufacturing, is comprised of:

establishments primarily engaged in manufacturing irradiation apparatus and tubes for applications, such as medical diagnostic, medical therapeutic, industrial, research, and scientific evaluation. Irradiation can take the form of beta-rays, gamma-rays, X-rays, or other ionizing radiation.

*NAICS Manual* at 270. Index entries which refer to NAICS code 334517 include “[b]eta-ray irradiation equipment manufacturing”; “[c]omputerized axial tomography (CT/CAT) scanners manufacturing”; “[f]luoroscopes manufacturing”; “[f]luoroscopic X-ray apparatus and tubes manufacturing”; “[g]amma-ray irradiation equipment manufacturing”; “[g]enerators, X-ray, manufacturing”; “[i]rradiation apparatus and tubes (e.g., industrial, medical diagnostic, medical therapeutic, research, scientific), manufacturing”; “[i]rradiation equipment manufacturing”;

“[l]amps, X-ray, manufacturing”; “[m]edical radiation therapy equipment manufacturing”; “[n]uclear irradiation equipment manufacturing”; “[t]herapeutic X-ray apparatus and tubes (e.g., medical, industrial, research) manufacturing”; “[t]ubes, X-ray, manufacturing”; “X-ray apparatus and tubes (e.g., control, industrial, medical, research) manufacturing”; “X-ray generators manufacturing”; “X-ray irradiation equipment manufacturing”; and “X-ray tubes manufacturing.” *Id.* at 661, 701, 750, 759, 762, 790, 797, 814, 830, 924, 935, and 954.

The second NAICS code advocated by Appellant, 334511, Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing, is comprised of:

establishments primarily engaged in manufacturing search, detection, navigation, guidance, aeronautical, and nautical systems and instruments. Examples of products made by these establishments are aircraft instruments (except engine), flight recorders, navigational instruments and systems, radar systems and equipment, and sonar systems and equipment.

*NAICS Manual* at 268. Index entries which refer to NAICS code 334511 include “[g]yroscopes manufacturing”; “[l]ight reconnaissance and surveillance systems and equipment manufacturing”; “[n]avigational instruments manufacturing”; “[p]osition indicators (e.g., for landing gear, stabilizers), airframe equipment, manufacturing”; “[p]roximity warning (i.e., collision avoidance) equipment manufacturing”; “[r]adar detectors manufacturing”; “[r]adar systems and equipment manufacturing”; “[s]earch and detection systems and instruments manufacturing”; and “[s]onar systems and equipment manufacturing.” *Id.* at 770, 801, 826, 856, 864, 868, 887, and 901.

NAICS code 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.

### 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 RFQ confirms that the instant procurement is, fundamentally, for the supply of a manufactured product, the Evolv weapons detection system. Indeed, the RFQ specifically states that the purpose of the procurement is “to obtain the Evolv[] Weapons Detection System” at all VISN 5 medical centers. Section II.A, *supra*. Furthermore, nearly all of the CLINs and deliverables are for manufactured products. *Id.* 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 held that, if the principal purpose of a procurement is the supply of goods, a manufacturing NAICS code is utilized. *E.g.*, *NAICS Appeal of Noble Supply & Logistics*, SBA No. NAICS-5886 (2018); *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 RFQ — 561621, Security Systems Services (except Locksmiths) — is a services NAICS code, not a manufacturing or supply NAICS code. Sections II.B and II.F, *supra*. I therefore agree with Appellant that NAICS code 561621 is clearly improper for this RFQ.

In response to the appeal, the CO asserts that, according to VA's estimate, the services aspects of the procurement collectively represent “substantially more than 10%” of the total contract dollar value. Section II.C, *supra*. The text of the RFQ, though, does not support the conclusion that the contractor will perform significant services. The CO observes that the RFQ calls for the contractor to furnish a “subscription,” which in turn encompasses “multiple service components.” *Id.* While this is true, the contractor itself will not perform any work associated with the “subscription.” Rather, the contractor is merely instructed to purchase a “1 Year software subscription” from the manufacturer of the Evolv systems, Motorola Solutions, Inc. Section II.A, *supra*. Apart from the “subscription,” the RFQ indicates that the contractor will be



responsible for “[i]nsta[ll]a[t]ion, within 60 days upon award” and “[t] raining, within 60 days upon award.” *Id.* There is, however, no further mention of these “services” in the entire solicitation. *Id.* Notably, the RFQ does not require the contractor to have any experience or expertise with installation or training, suggesting that VA does not view these services as complex or significant. *Id.* Nor does the RFQ indicate that VA will conduct any evaluation of an offeror's staffing or personnel. *Id.* The plain language of the RFQ, then, reflects that the “services” aspects of this procurement are *de minimis*, particularly when considering only those services that will be performed by the contractor itself (*i.e.*, excluding work to be performed by Motorola via the “subscription”).

Even accepting, *arguendo*, the CO's assertion that services do constitute 10% of contract dollar value, it follows that the overwhelming majority of the procurement (the remaining 90%) is for products, rather than services. As discussed above, by regulation, a procurement must be classified according to the “principal purpose” of the acquisition, which typically may be determined by the component which represents the greatest percentage of contract value. Section III.A, *supra*. Here, the Evolv systems themselves evidently constitute the vast majority of contract dollar value. Section II.C, *supra*. Furthermore, the RFQ repeatedly emphasizes the crucial importance to VA obtaining of obtaining the Evolv “software and equipment,” with scarcely any mention of services. Section II.A, *supra*. Accordingly, the principal purpose of this procurement is for the supply of a manufactured product. Insofar as the RFQ also can be said to seek “services,” such as installation of the Evolv systems, these are ancillary to, and in support of, the primary goal of the procurement: to obtain the Evolv systems. 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.” *Noble Supply*, SBA No. NAICS-5886, at 9.

In response to the appeal, SDC observes that, pursuant to the *NAICS Manual*, NAICS code 561621 is appropriate when a contractor will be engaged “selling security alarm systems, such as burglar and fire alarms, along with installation, repair, or monitoring services.” Sections II.D and II.F, *supra*. Although it is undisputed that the contractor here will not “repair” or “monitor” the Evolv systems, the RFQ does indicate that the contractor will be responsible for “[i]nsta[ll]a[t]ion.” Section II.A, *supra*. Thus, in SDC's view, the CO's choice of NAICS code 561621 is reasonable. This argument fails because it is inconsistent with applicable regulations. As discussed above, SBA regulations require that procurements must be assigned the NAICS code that corresponds with the “principal purpose” of the acquisition, and further require that “[a]cquisitions for supplies must be classified under the appropriate manufacturing or supply NAICS code.” Section III.A, *supra*. In the instant case, then, the mere fact that RFQ briefly alludes to “[i]nsta[ll]a[t]ion” does not convert this procurement into primarily an acquisition of services.

SDC also points to OHA's decision in *NAICS Appeal of KVA Elec., Inc.*, SBA No. NAICS-5030 (2009), for the proposition that, when a procurement calls for installation of manufactured products, a services-based NAICS code may be appropriate. Section II.D, *supra*. In *KVA*, though, OHA found that the solicitation sought the services of “experienced high voltage electricians” who would “expertly install, test, and document the installation” of the manufactured products, “in accordance with applicable codes and standards.” *KVA*, SBA No.

NAICS-5030, at 5. Conversely, in the instant case, there is no indication in the RFQ that installation will represent even a significant portion of the procurement, or that any specialized skills or expertise are necessary to perform such work. Section II.A, *supra*. KVA is thus inapposite here.

Because Appellant has established that the CO erred in selecting NAICS code 561621, 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 RFQ, and the definitions in the *NAICS Manual*, I find that NAICS code 334290, Other Communications Equipment Manufacturing, best describes the principal purpose of this procurement. NAICS code 334290 specifically includes “[a]larm systems and equipment manufacturing,” as well as the manufacturing of other security devices and equipment, including “[m]otion detectors,” “[g]lass breakage detection and signaling devices,” “[s]irens,” and “[p]ortable intrusion detection and signaling devices.” Section II.F, *supra*. Such equipment and devices are analogous to the Evolv system, which utilizes a variety of sensors to detect weapons and other potential threats.

The two NAICS codes advocated by Appellant, 334517 and 334511, are less suitable for this procurement than 334290. While it may be true, as Appellant argues, that the Evolv system utilizes, among other technologies, “ultra-low frequency electromagnetic fields,” the purpose of the system is not primarily to function as an irradiation apparatus. NAICS code 334517 is therefore less applicable than 334290. Section II.F, *supra*. Likewise, although it may be argued that the Evolv system, in a broad sense, is used for “detection” like a radar or sonar system in NAICS code 334511, NAICS code 334290 is a better match for this procurement, because it pertains more specifically to the manufacturing of security detectors, alarms, and equipment. *Id.*

#### IV. Conclusion

Appellant has shown that the CO clearly erred in assigning NAICS code 561621 to this procurement, and the appeal is GRANTED to that extent. The correct NAICS code for this RFQ is 334290, Other Communications Equipment Manufacturing, with an associated size standard of 800 employees. 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 561621 to 334290. 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