United States Small Business Administration  
Office of Hearings and Appeals

NAICS APPEAL OF:

SAC Cleaners, Inc.,  
Appellant,  
SBA No. NAICS-5468  
Decided: May 15, 2013

Solicitation No. FA3016-13-T-0010  
Department of the Air Force  
502 CONUS CL  
JBSA Ft. Sam Houston, Texas

APPEARANCES

Kristin Zachman, Esq., Bailey & Bailey, P.C., San Antonio, Texas, for Appellant

Chantel Smith, Contracting Officer, for the Air Force

DECISION

I. Jurisdiction


II. Issue

Whether the appropriate North American Industry Classification System (NAICS) code for a procurement for laundry is 812331, Linen Supply, or 812320, Drycleaning and Laundry Services (except Coin-Operated).

III. Background

A. Solicitation

laundry services. The Contracting Officer (CO) set the procurement aside for small business and assigned to it NAICS code 812331, Linen Supply, with a corresponding $30 million annual receipts size standard. Quotations originally were due on May 7, 2013.

On May 3, 2013, after the instant NAICS code appeal was filed, the CO issued Amendment 2, extending the due date for offers to May 17, 2013. Amendment 2 contains a complete copy of OHA’s Notice and Order, including the May 10, 2013 filing deadline for responses to the instant appeal. The CO posted Amendment 2 to the FedBizOpps (FBO) website on May 3, 2013.

B. Performance Work Statement

The Performance Work Statement (PWS) states that this procurement is for laundry services at Joint Base San Antonio, Fort Sam Houston. The Contractor shall provide the facility, labor, supervision, materials, equipment, vehicles for transport of laundry to and from the Contractor's facility and transportation necessary to perform full laundry service at the Contractor's facility. The Contractor shall process all laundry items within three workdays after receipt of soiled linen/items, and also shall manage and operate the laundry pickup and delivery service points located at Building 2640. Solicitation at 93.

The Contractor is to receive, temporarily store, transport and issue authorized unit linen/items in such a manner as to maintain strict item accountability, and lot integrity of all laundry items using commercially accepted laundry practices. The contractor shall coordinate pickup and delivery schedules with the mission partners: 32d Army Medical Department Center and School (AMEDD), San Antonio Medical Center (SAMC), 502 Mission Support Group (MSG), Navy Medical Training Center (NMTC), Air Force, HHD 470th, and their subordinate units. Solicitation at 94.

The Contractor shall be liable for return of the number and kind of articles furnished for service under this contract; and shall indemnify the Government for any loss or damage to such articles. Solicitation at 95.

Appendix 4 sets out the anticipated annual workload of 531,033 items, broken out into Categories A-D as follows:

<table>
<thead>
<tr>
<th>Category A Items</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bag, Barracks</td>
<td>3,737</td>
</tr>
<tr>
<td>Bag, Laundry</td>
<td>3,356</td>
</tr>
<tr>
<td>Blanket, Cotton (Twin)</td>
<td>80,387</td>
</tr>
<tr>
<td>Blanket, Wool</td>
<td>81,678</td>
</tr>
<tr>
<td>Case, Pillow (Standard)</td>
<td>80,662</td>
</tr>
<tr>
<td>Cover, Mattress (Twin)</td>
<td>434</td>
</tr>
<tr>
<td>Coveralls</td>
<td>238</td>
</tr>
<tr>
<td>Napkin (Standard)</td>
<td>137</td>
</tr>
</tbody>
</table>
Pad, Mattress (Twin)  3,988
Pants, Scrub  2,512
Sheet, Fitted (Twin)  1,459
Sheet, Flat (Twin)  90,018
Shirt, Battle Dress  129
Uniform
Shirt, Scrub  1,689
Smock, Food Handler  2,007
Spread, Bed (Twin)  3,598
Towel, Bath (Standard)  4,332
Towel, Hand (Standard)  4,242
Wrappers  500
Total Category A Items  365,103

Category B Items
Bag, Duffel  7,947
Belt, Pistol  15,436
Case, Ammo  15,925
Case, First Aid  15,759
Cover, Bivy  590
Cover, Canteen  13,357
Cover, Helmet  12,062
Jacket, MOPP Suit (Chemical)  1,291
Liner, Coat  269
Liner, Poncho  331
Pack, Alice  431
Pack, Field  10,519
Parka  1,452
Straps  3,055
Suspender  12,106
Trousers  830
Trousers, MOPP Suit (Chemical)  1,869
Vest, Ind Tactical Load Bearing  2,774
Webbing  2,350
Total Category B Items  118,953

Category C Items
Bag, Sleeping  29,385
Drapes or Curtains  75
Dress, Pressed (White)  12
Pillow, Synthetic (Fiber filled)  9,985
Table Skirt (Mixed)  74
Solicitation at 103-05.

Amendment 1 contains questions and answers. Questions 1-4 are as follows:

**QUESTION (1):** Why is the NAICS code 812331 for linen service used when at least 50% or more of the items to be cleaned are laundry items listed in Appendix 4?

**GOVERNMENT RESPONSE (1):** Upon review and comparison of the two (2) NAICS code definitions, it was concluded that 812331 includes linens, towels, and uniforms. NAICS code 812320 specifically excludes linen and uniforms which are applicable to this requirement. Furthermore, 812320 specifies drycleaning services which are not applicable. The Contracting Officer has determined 812331 to be the most suitable NAICS code for this requirement.

**QUESTION (2):** Why wasn't the NAICS code 812320 used for this RFP? **GOVERNMENT RESPONSE (2):** See response to question #1.

**QUESTION (3):** Can you categorize the items on Appendix 4 into either linen or laundry since there are many odd items?

**GOVERNMENT RESPONSE (3):** NAICS Code 812320 excludes linen and uniforms so all items are categorized as laundry.

**QUESTION (4):** How was the technical determination made that this RFP should be categorized with the NAICS code 812331? **GOVERNMENT RESPONSE (4):** See response to question #1.

Amendment 1, page 2.

C. The Appeal

On May 1, 2013, SAC Cleaners, Inc. (Appellant) filed its appeal of the CO's NAICS code designation. Appellant asserts the correct NAICS code is 812320, Drycleaning and Laundry Services, with a corresponding $5 million annual receipts size standard. Appellant argues it is clear that the principal purpose is to pick up the Government-owned items to be laundered, launder those items, and deliver those items back to the Government. Appeal at 2.

The CO's NAICS code is only for procurements where the contractor is actually
supplying the linens or uniforms being laundered unlike here. Appeal at 5.

On May 3, 2013, Appellant moved to supplement the evidence with the two amendments to the solicitation and additional argument. Appellant argues that Questions and Answers included in Amendment 1 demonstrate that the Air Force misunderstood the description of NAICS code 812320, which excludes linen and uniform supply services, not linen laundering, as the Air Force argues.

D. Agency Response

On May 8, 2013, the Air Force responded to the appeal. The CO asserts she concluded that NAICS code 812331 included linens, towels and uniforms, and that NAICS code 812320 specifically excluded linens and uniforms. Therefore, the CO concluded 812331 was a more suitable NAICS code for this procurement.

The Air Force also maintains Appellant has no standing to pursue this appeal, because it would be small under either NAICS code at issue, and thus is not adversely affected by the NAICS code designation. Further the CO maintains that NAICS code 812331, having a larger size standard, maximizes small business participation.

E. Appellant's Reply

On May 10, 2013, Appellant filed a motion to submit additional evidence and Reply to the Agency Response.

Appellant asserts it has standing to file its appeal because, should the CO's designation stand, Appellant will be forced compete against much larger firms under the NAICS code with the larger size standard.

Appellant reiterates its argument that the Air Force has misread the description of NAICS code 812320, which specifically excludes linen and uniform supply, and not the laundering of linen and uniforms.

In response to the CO's assertion that the larger sized standard would maximize small business participation, Appellant submits a list of concerns showing vendors within NAICS code 812320 in the San Antonio area.

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1 I need not rule on this motion. The amendments to the solicitation are already part of the record. Appellant's arguments filed prior to the close of record are part of the record.

2 On May 13, 2013, after the close of record in this appeal, Division Laundry & Cleaners, Inc. (Division), filed a request to intervene and a response to the appeal. As reason for the late submission, Division notes it had “not received” OHA's Notice and Order in the instant matter until May 7, 2013, “and then only by chance, since [it] was continuing to review the FBO website for modifications.” However, the Notice and Order was included in Amendment 2 and posted on the FBO website, and Division thus had notice of it. I find Division's reason does not
IV. Discussion

A. Timeliness, Standing, Standard of Review

Appellant filed the instant appeal within 10 days after the Air Force issued the solicitation. Thus, the appeal is timely. 13 C.F.R. § 134.304(b).

I GRANT Appellant's motion to Reply to the Agency Response, because the Agency Response raised the issue of standing, which the Appellant had not had the opportunity to address.

This Office 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 SVL Analytical, Inc., SBA No. NAICS-4721, at 5 (2005). Accordingly, Appellant has standing to file this appeal.

Appellant has the burden of proving, by a preponderance of the evidence, all elements of its appeal. Specifically, it must prove the CO's NAICS code designation is based on a clear error of fact or law. NAICS Appeal of Durodyne, Inc., SBA No. NAICS-4536, at 4 (2003); 13 C.F.R. § 134.314. SBA regulations do not require the CO to designate the perfect NAICS code. Rather, the CO must designate the NAICS code that best describes the principal purpose of the product or service being acquired in light of the industry description in the NAICS Manual, the description in the solicitation, and the relative weight of each element in the solicitation. Durodyne, SBA No. NAICS-4536, at 4; 13 C.F.R. § 121.402(b). 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. NAICS Manual Descriptions

The NAICS code designated by the CO, 812331 Linen Supply, covers:

[E]stablishments primarily engaged in supplying, on a rental or contract basis, laundered items, such as table and bed linens; towels; diapers; and uniforms, gowns, or coats of the type used by doctors, nurses, barbers, beauticians, and waitresses.

constitute good cause for the late submission. I therefore EXCLUDE Division's response from the record. See 13 C.F.R. § 134.309(b).

Cross-References

- Establishments primarily engaged in supplying, on a rental or contract basis, laundered industrial work uniforms and related work clothing are classified in U.S. Industry 812332, Industrial Launderers.

Corresponding Index Entries are:

- Apron supply services
- Bed linen supply services
- Coat (e.g., barber's, beautician's, doctor's, nurse's) supply services
- Cooperative hospital laundries (i.e., linen supply services)
- Diaper supply services
- Gown (e.g., doctors, nurses, hospital, beauticians) supply services
- Laundries, linen and uniform supply
- Laundry services, linen supply
- Linen supply services
- Table linen supply services
- Towel (except shop, wiping) supply services
- Uniform (except industrial) supply services


Appellant seeks NAICS code 812320, Drycleaning and Laundry Services (except Coin-Operated). This code covers:

- Establishments primarily engaged in one or more of the following: (1) providing drycleaning services (except coin-operated); (2) providing laundering services (except linen and uniform supply or coin-operated); (3) providing dropoff and pickup sites for laundries and/or drycleaners; and (4) providing specialty cleaning services for specific types of garments and other textile items (except carpets and upholstery), such as fur, leather, or suede garments; wedding gowns; hats; draperies; and pillows. These establishments may provide all, a combination of, or none of the cleaning services on the premises.

Cross-References. Establishments primarily engaged in—

- Supplying laundered linens and uniforms on a rental or contract basis—are classified in Industry 81233, Linen and Uniform Supply;
- Operating coin-operated or similar self-service laundry or drycleaning facilities—are classified in Industry 812310, Coin-Operated Laundries and Drycleaners; and
- Cleaning used carpets and upholstery—are classified in Industry 561740, Carpet and Upholstery Cleaning Services.

Corresponding Index Entries are:
Agents, laundry and drycleaning
Apparel pressing services
Bobtailers, laundry and drycleaning
Cleaners, drycleaning and laundry service (except coin-operated)
Cleaning and dyeing plants (except rug cleaning plants)
Collecting and distributing agents, laundry and drycleaning
Curtain cleaning services
Drapery cleaning services
Drop-off and pick-up sites for laundries and drycleaners
Drycleaner drop-off and pick-up sites
Drycleaners (except coin-operated)
Drycleaning plants (except rug cleaning plants)
Drycleaning services (except coin-operated)
Fur garment cleaning services
Garment cleaning (e.g., fur, leather, suede) services
Hand laundries
Hat cleaning services
Laundries (except coin-operated, linen supply, uniform supply)
Laundry and drycleaning agents
Laundry drop-off and pick-up sites
Laundry services (except coin-operated, linen supply, uniform supply)
Leather garment cleaning services
Pickup and drop-off sites for drycleaners and laundries
Pillow cleaning services
Power laundries, family
Suede garment cleaning services

NAICS Manual, at 920.

C. The Appropriate Code

This procurement requires the Contractor to provide laundry services. The Contractor will pick up the items, take them to its facility, launder them, and return them to the base. The items to be laundered are Air Force-owned property, and the Contractor is responsible for them. The Contractor must indemnify the Air Force if it loses or damages any of the items delivered to it for laundering. The Contractor is only performing the services of pickup, laundering, and delivery. None of the items to be laundered are to be provided by the Contractor. The Air Force will already own these items, which it provides to its personnel to enable them to carry out their missions.

However, the establishments covered by NAICS code 812331 themselves own the items they supply to their customers. These establishments provide the freshly laundered items to their customers, taking away soiled items and replacing them with freshly laundered ones, and repeating this process periodically. The establishments, not the customers, own these items. This is a critically important difference. The Air Force here is merely seeking the services of

NAICS-5468
laundering items the Air Force itself owns. The Air Force expects to receive back the same items it sends to the Contractor, or the Contractor is liable for their replacement. Under NAICS code 812331, the Contractor would periodically supply freshly laundered linen items which it owns to its customer, and they would not necessarily be the same items each time. That is not what this Solicitation calls for.

Further, many of the items from Categories B and D this procurement requires to be laundered are military equipment such as pistol belts, canteen covers, web gear, and MOPP (Mission Oriented Protective Posture) suits. These items are not commonly understood to be “linens”, as the term is usually defined. The NAICS Manual definition includes table and bed linens, towels, and diapers. It also includes uniforms and gowns of the type used by doctors, nurses, barbers, beauticians and waitresses. These uniforms are usually simple cotton coats or gowns, and not the kind of specialized equipment for which the Air Force seeks laundering services here.

Conversely, NAICS code 812320 covers establishments which provide laundry and dry cleaning services, including specialty cleaning. These establishments do not own the items they clean. Rather, they clean items owned by their customers and return those particular items to the customers. The cross-reference for this code identifies supplying laundered linens and uniforms on a rental or contract basis as under NAICS code 812331, and the industry description specifically excludes linen and uniform supply. Nevertheless, contrary to the Air Force's contention, the description for 812320 does not exclude the laundering of linens, but rather it excludes linen supply, where the Contractor owns the linens and rents them to the Government. Since this service is not what Air Force seeks to procure here, its exclusion from the description does not eliminate NAICS code 812320 as the appropriate code for this procurement.

The list of services included under the description for NAICS code 812320 identifies a number of specialty cleaning services, which clean items beyond those simply identified as linens. The items listed include drapes and curtains, which are included in the solicitation's list of items to be cleaned. The code also covers the cleaning of leather and fur items. Therefore, this code covers the cleaning of items other than those described as linens, and this solicitation requires the Contractor to clean items other than linens. NAICS code 812320 thus more accurately describes the services the Air Force seeks to procure.

Therefore, I conclude that Appellant has met its burden of establishing clear error in the CO's designation. NAICS code 812331 is not the proper NAICS code for this procurement. That code covers establishments which provide laundered linen items owned by those establishments to their customers on a rental or contract basis. This procurement requires the Contractor to launder a large variety of Air Force owned items, including a number of items which could not be categorized as linens. NAICS code 812320 covers the laundering of items owned by the customer, and includes the cleaning of specialty items, not merely linens, and thus covers the laundering of the military items required by this solicitation. NAICS code 812320 is the appropriate code for this procurement.
V. Conclusion

For the above reasons, the instant appeal is GRANTED, and the CO's NAICS code designation is REVERSED. The correct NAICS code for this procurement is NAICS code 812320, Drycleaning and Laundry Services (except Coin-Operated), with a corresponding $5 million annual receipts size standard.

Accordingly, because this decision is being issued before the close of the solicitation, the CO MUST amend the solicitation to change the NAICS code designation from 812331 to 812320. FAR § 19.303(c)(5); 13 C.F.R. § 134.318(b); Matter of Eagle Home Med. Corp., Comp. Gen. B-402387, March 29, 2010, available at http://www.gao.gov/decisions/bidpro/402387.pdf.

This is the final decision of the Small Business Administration. 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN
Administrative Judge