

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

NAICS APPEAL OF:

Engineering Services Network, Inc.

Appellant

Solicitation No. AHRQ-09-10027

Department of Health and Human Services
Agency for Healthcare Research and Quality
Rockville, MD

SBA No. NAICS-5064

Decided: August 28, 2009

APPEARANCES

Brain A. Darst, Esq., Odin, Feldman & Pittleman, PC, for Appellant.

Mary Haines, Contracting Officer, for the Department of Health and Human Services.

DECISION

HOLLEMAN, Administrative Judge:

I. Jurisdiction

This appeal is decided under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 121 and 134.

II. Issue

What is the appropriate NAICS code designation for a procurement for program management support.

III. BACKGROUND

A. The Solicitation

On July 9, 2009, the Agency for Healthcare Research and Quality (AHRQ) of the U.S. Department of Health and Human Services (HHS) issued a Synopsis of a pending procurement for Program Management Support. The synopsis announced an intention to set the procurement

aside for service-disabled veteran-owned small business concerns (SDVO SBCs) and to designate North American Industry Classification System (NAICS) code 541611, Administrative Management and General Management Consulting Services, with a corresponding \$7 million annual receipts size standard, as the appropriate NAICS code for the procurement.

On July 31, 2009, AHRQ issued the subject solicitation for Program Management Support. The Contracting Officer (CO) set the procurement aside 100% for SDVO SBCs. However, the solicitation did not include a NAICS code designation or size standard.

The Statement of Work (SOW) states that AHRQ accomplishes its mission by ensuring that its customers have access to information and services needed to protect and improve the nation's health. AHRQ seeks a commercial business partner to support the agency's system and application requirements.

1. Task One

Task One is Program Management Office (PMO) Support. The PMO is made up of Federal and Contractor staff and is responsible for overall coordination of all PMO-specific project activities. The PMO is to work directly with the PMO Task Manager or AHRQ's Chief Financial Officer (CFO) to ensure that all PMO requirements are being met. The PMO will deploy a team of Contractor staff to facilitate the adoption of standard project practices.

This will include the creation of a Program Management Improvement Plan (PMIP), standard templates, provision of assistance to AHRQ project managers to develop compliant project plans, and review and maintenance of project plans to ensure the plans meet AHRQ-defined standards. The PMIP should focus on improving the overall efficiency and effectiveness of the PMO into a service oriented entity striving to improve AHRQ's operations.

The Contractor will develop and maintain standard project processes and templates, all elements to be consistent with industry best practices and existing AHRQ business processes. The Contractor will be responsible for documenting all program management processes as well as recommending and implementing technologies to ensure and support their execution. The Contractor is also responsible for obtaining necessary approval from the Task Manager or CFO prior to adoption of any standard process or template.

The Contractor will act as primary liaison to AHRQ project officers for all proposed project initiatives. This will include meeting with project officers and stakeholders to gather project goals and requirements. The Contractor will assist stakeholders in preparation of a project initiation document (PID) which will identify the goals of the proposed initiative. The PID will also address all facets of the project such as business case, business and technical risks, schedule, costs, and others. The contractor will develop a PID template.

The Contractor will participate as member of Project Management teams and committees. The Contractor will monitor and report on all project initiatives, and ensure they are tracked on the database.

2. Task Two

Task Two is Information Security and Privacy Program support. The Contractor will provide general information security and privacy support to AHRQ. The Contractor will perform Federal Information Security Management Act (FISMA) data collection and reporting, system security and certification and accreditation support, policy development and maintenance, AHRQ information security and privacy program planning and communication, and the provision of technical support.

3. Task Three

Task Three is support for AHRQ's Chief Information Office (CIO). The Contractor will assist the CIO by providing Independent Verification and Validation of programs, projects and processes with the CIO Office. The Contractor will analyze and evaluate work products delivered to the CIO. The Contractor will assist in Information Technology (IT) Capital Planning and Governance, and provide administrative support to the CIO in its participation in the IT Investment Review Board. The Contractor will provide professional expertise and support in the planning, development and execution of AHRQ's Enterprise Architecture (EA), a process that facilitates alignment of IT and business functions to make effective investment decisions. The Contractor will develop and review annually an IT strategic plan.

4. Task Four

Task Four is Infrastructure Support. The Contractor will support the development of network implementation and configuration plans to include the selection of components for the system. The Contractor will maintain and operate network components including configuration changes. The Contractor will provide life cycle support for AHRQ-owned hardware, and other systems maintenance.

5. Task Five

Task Five is Internal Project Management. The Contractor will provide Transition Management for the transition from the incumbent to the new contractor. The Contractor will also provide monthly status reports and financial reports, as well as oral reports as requested. The Contractor will also perform the effective financial and technical control of the project.

6. Evaluation Factors

Proposals must describe proposed personnel and their backgrounds. Offerors must show understanding of the requirements from a managerial perspective. Offerors must demonstrate an understanding of the objectives, organizations, operation and challenges facing IT leadership, information security and privacy at AHRQ. Offerors will be evaluated based on how they propose to plan, manage, control and provide the services required. Scientific technical merit, cost, and past performance will all be evaluated, with scientific technical merit receiving paramount consideration. Offerors' proposals must address the professional qualifications of the

proposed staff, who must demonstrate appropriate levels of education and training and an understanding of the AHRQ environment.

B. The Appeal

On August 7, 2009, Engineering Services Network, Inc. (Appellant) filed the instant appeal. Appellant argues that the appropriate NAICS code for this procurement is 541512, Computer System Design Services, with a corresponding \$25 million annual receipts size standard.

Appellant asserts the subject solicitation is a follow-on contract to a contract on which it is the incumbent, and which was classified under NAICS code 541512. Appellant asserts the services required by this solicitation are essentially the same services as under the current contract.

Appellant asserts the purpose of the solicitation is to plan and design IT infrastructure and computer systems that will be used by AHRQ to provide IT leadership, direction and support to AHRQ. The services required address the needs of the AHRQ Information Technology office in regard to information security, CIO support, and IT infrastructure operations and maintenance. Appellant argues these tasks are subsets of Information Technology governance. The tasks cover several areas of IT support, including investments and strategic planning.

Appellant asserts that the Contractor will be required to support AHRQ's Office of Director, who has responsibility for IT for AHRQ. Task 2 contains subsets of IT Governance. Task 3 is to support the AHRQ CIO and requires IT systems planning and design, including IT investments and IT strategic planning.

Appellant asserts Task 4 calls for the Contractor to provide infrastructure support for the AHRQ operating environment, and to act as primary interface for the Department of Health and Human Services Information Technology Service Center.

Appellant further asserts that the evaluation factors emphasize the scientific merit of the proposal and the IT skills of the Contractor's personnel.

C. The Contracting Officer's Response

On August 25, 2009, the CO responded to the appeal. The CO asserts this solicitation does not cover predominantly computer related services. While the Contractor must perform certain computer services, they are not the type of in depth services required by NAICS code 541512. This procurement is for advice, assistance and support services for various projects within AHRQ. Tasks 1 and 5 require general administrative and advisory duties. While Task 2 involves computer-related services, they are not the equivalent to planning and designing computer systems under NAICS code 541512.

The CO asserts Task 3 is not centered on computer services, but rather capital planning and administrative support. The CO further asserts that while Task 4 requires the Contractor to

provide ongoing security operations and infrastructure support to AHRQ's operating environment, this does not amount to the planning and designing of computer systems, as required by the description of NAICS code 541512.

In reviewing the evaluation criteria of the proposal, the CO asserts what is important is that offerors will be evaluated on how they propose to plan, manage, control, and provide the support and services in the statement of work.

The CO further asserts that this procurement is not a follow-on contract, and is not seeking the same services as the 2004 contract for which Appellant is the incumbent. This solicitation is for general consulting services, most of which lack an IT component.

IV. DISCUSSION

A. Preliminary Matters

Appellant filed the instant appeal within 10 days after HHS issued the solicitation. Thus, the appeal is timely. 13 C.F.R. §§ 121.1103(b)(1); 134.304(a)(3).

Ordinarily, Appellant has the burden of proving, by a preponderance of the evidence, all elements of its appeal. Specifically, it must prove the NAICS code designation assigned to the solicitation 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. The correct NAICS code is that which best describes the principal purpose of the services being procured, in light of the industry description in the *NAICS Manual*,¹ 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).

Here, however, the CO has neglected to make a NAICS code designation in the solicitation. The designation in the synopsis is ineffective; only in a solicitation can a NAICS code designation be made, and only on the date that solicitation is issued, or in a later amendment to the solicitation. 13 C.F.R. § 121.402(a) & (b); FAR 19.303(a). Accordingly, I will give no deference to the NAICS code listed in the synopsis or advocated by the CO in her response, but make a NAICS code determination *de novo*.

B. The Merits of the Appeal

Appellant's requested NAICS code 541512, Computer Systems Design Services, covers:

[E]stablishments primarily engaged in planning and designing computer systems that integrate computer hardware, software, and communication technologies. The hardware and software components of the system may be provided by this establishment or company as part of integrated services or

¹ Executive Office of the President, Office of Management and Budget, *North American Industry Classification System-United States (2007)*, available at <http://www.census.gov>.

may be provided by third parties or vendors. These establishments often install the system and train and support users of the system.

Illustrative examples include:

- Computer systems integration design consulting services
- Local Area Network computer systems integration design services
- Information management computer systems integration design services
- Office automation computer systems integration design services

NAICS Manual, at 740.

The NAICS code designated by the CO in the Synopsis and advocated in her response, 541611, Administrative Management and General Management Consulting Services, covers:

[E]stablishments primarily engaged in providing operating advice and assistance to businesses and other organizations on administrative management issues, such as financial planning and budgeting, equity and asset management, records management, office planning, strategic and organizational planning, site selection, new business startup, and business process improvement. This industry also includes establishments of general management consultants that provide a full range of administrative; human resource; marketing; process, physical distribution, and logistics; or other management consulting services to clients.

Illustrative examples include:

- Administrative management consulting services
- Site selection consulting services
- Financial management (except investment advice) consulting services
- Strategic planning consulting services
- General management consulting services

NAICS Manual, at 743.

NAICS code 541512 thus covers procurements which deal with the planning and design of computer systems. The Contractor may be providing the hardware and software, but the central task of any procurement under this NAICS code must be computer systems planning and design. OHA has held this designation appropriate for procurements for the planning and design of multiple electronic information systems and the software to operate those systems. *NAICS Appeal of Palladian Partners, Inc.*, SBA No. NAICS-4591 (2003). Any procurement receiving this designation must be a computer procurement, seeking to procure the design of computer systems, and the hardware and software that make them run.

Conversely, NAICS code 541611 is a management NAICS code. It covers procurements for administrative management services. OHA has considered this NAICS code in a number of cases where the issue was whether this code or a computer related code was appropriate. In

these cases, the procurements all did call for some computer services. But in these cases, the computer services were incidental to, and in support of, the management services that were the principal object of the procurement. *NAICS Appeal of Master Key Resources, LLC*, SBA No. NAICS-4862 (2007); *NAICS Appeal of Information Ventures, Inc.*, SBA No. NAICS-4713 (2005); *NAICS Appeal of Spherix, Inc.*, SBA No. NAICS-4626 (2004).

The instant procurement does not appear to be primarily for computer services. The Contractor here must provide support for AHRQ's Program Management Office. The contractor will serve as a liaison with project officers, prepare the PID, and participate on teams and committees. The Contractor will perform FISMA data collection. The Contractor will support the CIO, but the work involved is not planning and designing computer systems. Rather, it is providing capital planning for IT, Independent Verification and Validation of programs, projects and processes with the CIO Office, reviewing projects for the CIO, and providing consulting services. The Contractor will also provide transition management for the contract. The evaluation factors do emphasize scientific technical merit, but Offerors will also be evaluated on how well they plan to manage the project.

In sum, while this procurement certainly includes computer services, the purpose of the procurement is not the design and planning of a computer system. Rather, it is to provide administrative services and consulting services to AHRQ. The work performed for the CIO will not be primarily to design a computer system, but to provide advice and management services for the system that is already in place. OHA has held repeatedly that the fact a procurement requires some computer services does not mean that a computer NAICS code is appropriate for that procurement. Rather, if the purpose of the procurement is to provide management or administrative services, NAICS code 541611 is the appropriate code, even if the procurement requires some IT services. *Master Key*, at 7; *Information Ventures*, at 4.

Appellant's arguments to the contrary are meritless. The evaluation factors do not emphasize computer-related skills enough to lead to a conclusion that this is an IT procurement. Appellant's argument concerning the classification of a prior procurement is meritless. OHA cannot be bound by prior NAICS code designations it has not reviewed, and in any event, that prior statement of work is not before me, to allow me to compare and see if it truly is the same procurement. *Master Key*, at 7.

Accordingly, I conclude that the appropriate NAICS code for this procurement is 541611, Administrative Management and General Management Consulting Services, with a corresponding \$7 million annual receipts size standard. The Contracting Office is herewith directed to issue an amendment to document this NAICS code designation.

V. CONCLUSION

For the above reasons, the instant appeal is DENIED. This Office designates as the correct NAICS code for this procurement, 541611, Administrative Management and General Management Consulting Services, with a corresponding \$7 million annual receipts size standard.

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

CHRISTOPHER HOLLEMAN
Administrative Judge