

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

NAICS APPEAL OF:

AOC Connect, LLC

Appellant

Solicitation No. FA8771-09-R-0019

Department of the Air Force

Headquarters 754<sup>th</sup> Electronic Systems Group

Maxwell AFB-Gunter Annex, AL

SBA No. NAICS-5165

Decided: November 16, 2010

APPEARANCES

David B. Dempsey, Esq., and Megan Mocho Jeschke, Esq., Holland & Knight LLP, McLean, Virginia, for Appellant AOC Connect, LLC.

Lt. Col. Raymond M. Barben, Contracting Officer, and Judith A. Sokol, Esq., for the Department of the Air Force.

Laurel A. Hockey, Esq., and David S. Cohen, Esq., Cohen Mohr LLP, Washington, D.C., for Indus Corporation.

Leslie H. Lepow, Esq., Eric R. Haren, Esq., and Damien C. Specht, Esq., Jenner & Block LLP, Washington, D.C., for STG, Inc.

Joseph G. Billings, Esq., Miles & Stockbridge PC, Baltimore, Maryland, for American Systems Corporation.

Richard L. Moorhouse, Esq., and William M. Jack, Esq., Greenberg Traurig LLP, McLean, Virginia, for Tribalco, LLC.

Robert E. Gregg, Esq., and Karen R. Harbaugh, Esq., Squire, Sanders & Dempsey LLP, Tysons Corner, Virginia, for Pragmatics, Inc.

Dan A. Dufresne, Esq., General Counsel, San Diego, California, for Epsilon Systems Solutions, Inc.

W. Bruce Shirk, Esq., Jonathan S. Aronie, Esq., and Christopher R. Noon, Esq., Sheppard, Mullin, Richter & Hampton LLP, Washington, D.C., for Smartronix, Inc.

Dennis J. Yee, President, and Donald M. Sherwin, Esq., General Counsel, Chevy Chase, Maryland, for Abacus Technology Corporation.

## 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

Whether the appropriate North American Industry Classification System (NAICS) code for this procurement for Network Operations (NetOps) and Infrastructure Solutions is 517110, Wired Telecommunications Carriers, or 541512, Computer Systems Design Services.

### III. Background

#### A. Introduction

On September 28, 2010, the Department of the Air Force, Maxwell Air Force Base-Gunter Annex, Alabama (Air Force) issued (after several drafts) final Solicitation No. FA8771-09-R-0019 (NetOps RFP) seeking NetOps, infrastructure, and service-oriented architecture (SOA) implementation and transformation services and solutions. The Contracting Officer (CO) set the contract totally aside for small business and designated NAICS code 517110, Wired Telecommunications Carriers, with a corresponding size standard of 1,500 employees, as the applicable code for this procurement.

The NetOps RFP is one of seven indefinite delivery/indefinite quantity contract categories included in a larger effort known as the Network-Centric Solutions-2 (NETCENTS-2) program. The goal of the overall NETCENTS-2 program is to support missions that require voice, data, and video communications, and information services, solutions, and products to deliver the right information, in the right format, to the right place at the right time. The program is designed to enable the Air Force to meet its information technology (IT) transformation goals for innovation. NETCENTS-2 contracts will provide a wide range of IT network-centric and telephony products, services, and solutions covering the full spectrum of netcentric operations. The contracts will provide network-centric IT, networking, security, communications, system solutions, and services to satisfy the combat support, command and control, and intelligence surveillance and reconnaissance (ISR) requirements for the Air Force and Department of Defense (DoD).

On October 6, 2010, AOC Connect, LLC (Appellant) filed an appeal asserting the appropriate NAICS code for this procurement is 541512, Computer Systems Design Services, with a corresponding size standard of \$25 million in average annual receipts.

## B. The Performance Work Statement (PWS)

The purpose of this contract is to provide NetOps, infrastructure, and SOA implementation and transformation services and solutions to the Air Force and DoD at locations within and without the United States and in war zones. These services and solutions will address the development, acquisition, integration, test, deployment, and sustainment of Air Force infrastructure and network operations, production, research and development, command and control, communication, computers, and ISR mission capabilities.

This contract supports the global information grid (GIG) architecture, defense information infrastructure, intelligence community (IC) information sharing environments, and Air Force and defense communications systems infrastructure for computer and telecommunications network mission areas. The contract is to provide a full range of innovative world class IT services and solutions to support the full spectrum of netcentric operations and missions.

The contract will provide users the capabilities to find, access, collaborate, manage, and store information on the DoD and GIG IC information sharing environment. Other services will include, but not be limited to: wireless devices/capabilities, personal data assistants (PDAs) and information-intensive data applications such as video teleconferencing. This contract will support the transformation of Air Force global-level command and control and administration of IT resources from base-level centers to regionally consolidated area processing capabilities, enterprise service units, and enterprise service desks.

Through this contract, the Air Force can acquire network infrastructure systems solutions, operations, and maintenance, as well as systems management, configuration management, and NetOps core IT services (e-mail, storage, and directory services). This contract will provide NetOps services and solutions support to establish, operate, and maintain the network and SOA required to provide netcentric capabilities and traditional network operations.

The contractor will provide services and solutions to realize a singularly managed infrastructure that brings together at the middleware layer disparate networks and communications capabilities into a consistent Air Force-wide IT capability.

The contractor will provide core enterprise services (CES) which will include infrastructure capabilities to execute and manage content delivery services that deliver information to the end users. CES will include storage management, messaging, transaction management, workflow management, search and discovery, directory services, and server capability for control and management of multiple services. CES will also encompass monitoring for quality of service. The contractor will provide services and solutions to identify a logical portioning of the network and its information assets into capabilities-based enclaves. The contractor will also facilitate federation, that is, interaction between the enclaves.

The contractor will help generate and manage metadata and metadata environments. Metadata are characteristics or attributes of information assets, describing the type of information assets that assist users in using the information contained therein. The contractor

will develop and support a metadata registry and metadata catalog, as well as a service registry. The contractor will provide infrastructure services to support the metadata environments. The contractor will also develop and support an automated metadata population service to create the metadata for an information asset or services. The contractor will provide tools and services that deliver indexing capabilities to support discovery and management of information assets.

The contractor will also provide an information assurance architecture that permeates all components and operations and provides for the confidentiality and integrity of the systems.

The contractor will provide all tools, installation materials, and test equipment required to perform any product installation and maintenance. The contractor will also provide operations and maintenance including such services as meteorological and navigational aids, radar, air traffic control and landing systems, video teleconferencing, satellite communications, and antennas. The contractor will support all software provided under this contract and provide worldwide maintenance capability for all solutions provided under this contract.

The PWS includes a sample task order for which offerors must provide a solution. The task order calls for an integration plan to establish a NetOps capability at an Air Force base. The Air Force base must be provided with integrated high bandwidth and information transport capability. The information includes classified and unclassified data, voice, video, sensor, and imagery traffic. The contractor will integrate commercial off the shelf products to ensure cost effectiveness. The contractor is to survey all existing facilities, develop a plan to set up the IT systems, install the systems, furnish the necessary equipment, test the equipment, train the Air Force personnel, and provide support for the system when finished.

In evaluating the past performance of an offeror, the government will assess its performance in generating and managing metadata and metadata environments; in network management and network defense, that is managing the GIG and providing security for it; in network management and enterprise services; in information management transport systems, that is engineering, installation and maintenance of a high bandwidth/high performance fiber optic “backbone” which can handle data, voice, video, sensor, and imagery traffic; and in contract management and contract cost.

### C. The Appeal

Appellant contends the NAICS code chosen by the CO applies only when an offeror will provide access to facilities or infrastructure that the firm owns or leases and does not apply when the government owns or leases the facilities or infrastructure. Appellant also asserts the code does not properly describe the principal nature of the services to be provided under the RFP. Instead, Appellant argues NAICS code 541512, Computer Systems Design Services, is more appropriate.

Appellant explains that before the final RFP was issued, numerous draft RFPs and PWSs were posted to the Federal Business Opportunities website (<https://www.fbo.gov>). Appellant indicates that on April 20, 2009, five draft PWSs were circulated for various work categories under the RFP, and the NAICS codes assigned to the work being solicited under small business

set-aside procedures were 541511 and 541512, which both have corresponding size standards of \$25 million in average annual receipts. On April 21, 2009, Appellant asserts the CO changed the NAICS code for the small business work to 517110 without explanation. Ultimately, the CO designated this NAICS code in the final RFP.

Appellant argues the type of work described in the PWS is not provided by the wireless telecommunication carriers encompassed in NAICS code 517110 for two reasons. First, the successful contractors will provide information-technology services for facilities equipment and infrastructure that is owned by the Department of Defense. Appellant emphasizes that the *NAICS Manual*<sup>1</sup> indicates NAICS code 517110 is comprised of establishments that “operate transmission facilities and infrastructure that they own and/or lease.” *NAICS Manual*; see also *NAICS Appeal of Computer Cite*, SBA No. NAICS-4979 (2008). Appellant claims the RFP requires updating and maintenance of an existing government-owned telecommunications system, and offerors are not expected to use their own facilities to provide the design and maintenance services required by the RFP.

Second, Appellant contends less than 15% of the RFP requirements are covered by NAICS code 517110. Appellant argues the RFP contains twenty major scope elements, not one of which relates solely to telephony—the use of equipment to connect telephones which, Appellant seems to argue, is the main function encompassed by NAICS code 517110. Appellant claims a reading of the PWS reveals that telephony is only a very small component of the RFP requirements. Appellant contends the removal from the draft RFPs of the separate telephony products and services category supports its argument. Appellant also points out that none of the evaluation factors listed in the RFP relate solely to telephony services, and the definition of relevant past contract experience reflects that very little telephony experience is required. Further, Appellant indicates none of the sample task orders accompanying the RFP involve telephony requirements. Appellant argues that if telephony were truly the primary service to be provided, the RFP would require an assessment of an offeror’s network capabilities or would call for past experience in the field or would include a sample task order requiring those services.

Finally, Appellant requests that OHA change the NAICS code for this procurement to 541512, Computer Systems Design. Appellant claims this code more accurately reflects the services for government-owned facilities equipment and infrastructure that the RFP requires. Appellant argues the PWS, the evaluation factors, and the standards by which the contractors must abide in performance of the work all support the conclusion that the RFP primarily requires computer system design services.

#### D. The CO’s Response to the Appeal

On October 26, 2010, the CO filed his response to the appeal, as well as a memorandum of law. The CO explained that on May 14, 2001, the procurement contracting officer (PCO) completed her Determination & Findings on the basis for the selection of NAICS code 517110.

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<sup>1</sup> Executive Office of the President, Office of Management and Budget, *North American Industry Classification System* (2007), available at <http://www.census.gov/eos/www/naics/> (hereinafter *NAICS Manual*).

The CO indicates he reviewed the findings and fully concurs that NAICS code 517110 best describes the principal purposes of the RFP. The CO explains that four potential NAICS codes were analyzed (including the code proposed by Appellant, 541512), none of which are “a perfect fit,” and NAICS code 517110 includes more elements required by the RFP than the other codes. The CO claims NAICS code 541512 covers only the design aspect of the RFP, which represents less than 5% of the services required. The CO also explains that SBA regulations, industry comments, and previous OHA decisions were also taken into account when choosing the NAICS code. Ultimately, the PCO chose NAICS code 517110, and the coordinating small business specialist concurred with the designation.

The CO next addresses Appellant’s arguments. The CO contends that, according to the Dictionary of Military and Associated Terms, “telecommunications” has a broader scope than merely telephony. Telecommunications is defined as any transmission, emission, or reception of signs, signals, writings, images, sounds or information of any nature by wire, radio, visual or other electromagnetic systems. U.S. Department of Defense, Dictionary of Military and Associated Terms (2005).

The CO explains the majority of the work required involves the constant operation of networks and creating solutions involving equipment, hardware, and software, and the primary requirement areas (enterprise level security of the network, network operations, network command and control, network infrastructure support, dynamic test environment, and operations and maintenance support) are included in NAICS code 517110. The CO also addresses Appellant’s argument that NAICS code 517110 cannot apply to services involving government-owned equipment. The CO argues that although the telecommunications infrastructure at issue is government-owned, the contractor will operate it as though it is leasing the system for the benefit of the Air Force. The CO also claims the language in the *NAICS Manual* referred to by Appellant does not preclude the use of NAICS code 517110 for solicitations involving government-owned equipment, as long as the code best describes the purpose of the procurement. The CO asserts the Air Force thoroughly researched the proper NAICS code for the RFP and requests that OHA affirm the NAICS code designation.

The memorandum of law submitted with the CO’s response echoes the CO’s arguments. The memorandum emphasizes that the CO need not select a perfect NAICS code, and OHA may only modify a NAICS code designation if it is based upon a clear error. *NAICS Appeal of Am. Sys. and Servs., LLC*, SBA No. NAICS-5119 (2010); *Computer Cite*, SBA No. NAICS-4979. The memorandum submits that the CO met the standard set forth at 13 C.F.R. § 121.402(b) because NAICS code 517110 best describes the principal purpose of the RFP in light of the description in the *NAICS Manual*, the description in the solicitation, and the relative weight of each element in the solicitation. The memorandum indicates Appellant has failed to meet its burden of proof and argues the CO’s NAICS code designation should be affirmed.

### E. Intervenor Briefs

Between October 22, 2010, and October 28, 2010,<sup>2</sup> OHA received briefs from eight intervening potential offerors. Each of the intervenors supports the CO's designation of NAICS code 517110. In the interest of efficiency, I will summarize only briefly the arguments of each intervenor, and I will minimize the restatement of duplicative arguments.<sup>3</sup>

American Systems Corporation simply indicates that it agrees with the response submitted by the CO.

Epsilon Systems Solutions, Inc. (Epsilon) contends NAICS code 517110 is the best code for this procurement given the breadth of services required by the RFP. Epsilon claims the code does not always require an offeror to operate its own facilities and infrastructure, but can apply when, as here, the contractor will ensure constant operation of the system. *See NAICS Appeal of Computer Cite*, SBA No. NAICS-5010 (2008). Epsilon also believes the Air Force's lengthy draft RFP process deserves some deference.

Pragmatics, Inc. (Pragmatics) asserts NAICS code 517110 best represents the principal nature of the procurement—to support network-centric voice, data, and video communications—whereas the code Appellant proposes does not encompass the network configuration and operation skills necessary to perform the work required by the RFP. Pragmatics also claims NAICS code 517110 is appropriate here because the RFP requires global network support services, not merely support services for computer systems.

Tribalco, LLC (Tribalco) argues ownership of the telecommunications system at hand is effectively an irrelevant consideration under *Computer Cite*, SBA No. NAICS-5010. Tribalco also claims the NAICS code proposed by Appellant is too limited in scope to include the operation and support of a large government communications system called for by the RFP. Tribalco further submits that nothing in the *NAICS Manual* limits the term “telecommunications” to “telephony services,” as Appellant seems to argue.

Smartronix, Inc. (Smartronix) claims NAICS code 517110 properly reflects the principal purpose of the RFP because the code encompasses and the RFP primarily requires the transportation of information. Smartronix also alleges that SBA representatives confirmed the

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<sup>2</sup> Two of these briefs were technically untimely. The briefs of STG, Inc. and Abacus Technology Corporation were not received at OHA until October 28, 2010, one day after the record closed. Nevertheless, I find it will not prejudice any party to admit these briefs into the record. Further, it appears both intervenors made good faith attempts to file their briefs in a timely manner. The brief of STG, Inc. was delivered to the SBA on October 27, 2010, but was not delivered to OHA until October 28, 2010. The brief of Abacus Technology Corporation was timely served on all parties, but inadvertently not filed with OHA.

<sup>3</sup> Several intervenors argued that Appellant lacks standing to challenge the CO's NAICS code designation. I have summarized the standing argument in the context of the CO's surreply, and I will address the issue below.

designation of NAICS code 517110 to this procurement, and the Air Force relied on the guidance of those SBA representatives. Smartronix also contends Appellant's arguments in support of NAICS code 541512 are misleading.

Indus Corporation (Indus) argues Appellant is legally incorrect in its contention that the applicability of NAICS code 517110 turns on the degree of telephony required by the RFP. Instead, Indus explains, the applicability of NAICS code 517110 turns on the degree of telecommunications work required. According to Indus, telecommunications abounds in this solicitation because the principal purpose is the operation of the Air Force's worldwide telecommunications network for the benefit of the government, and NAICS code 541512 cannot capture the principal purpose of the RFP because it deals only with the hardware and software that makes a specific computer system run. Additionally, Indus explains that of the seven solicitations that comprise the NETCENTS-2 program, three of them apply NAICS code 541512. Thus, Indus asserts the Air Force judiciously divided its requirements so that each is best aligned with the appropriate size standard, and the burden on Appellant is particularly high because it must convince OHA that the Air Force committed clear error by failing to apply NAICS code 541512 to a fourth solicitation.

STG, Inc. (STG) recommends that OHA focus on the plain meaning of "telecommunications services," which will clarify that Appellant's argument is based upon a mere technicality. To this end, STG directs OHA to the umbrella language describing the telecommunications sector, the specific language describing NAICS code 517110, and the relevant language in the General Services Administration's Federal Standard 1037C. Based upon a comparison of these sources to the PWS, STG concludes the RFP is unquestionably soliciting telecommunications services. STG challenges Appellant's assumptions regarding ownership of infrastructure by arguing that a variety of services required by the RFP relate to systems not owned by the government (*e.g.*, services related to Blackberries using outside transmission facilities) and that the services required by the RFP will likely evolve toward "cloud computing," meaning more and more data will be stored in a central location that may not be government-owned, and government clients will access that data remotely. STG also asserts similar past procurements have utilized NAICS code 517110, and Appellant has provided an insufficient basis on which to conclude NAICS code 541512 applies to this RFP.

Abacus Technology Corporation (Abacus) claims changing the NAICS code will have an adverse impact on the Air Force's ability to meet its objectives. Abacus contends NAICS code 517110 most closely represents the preponderance of the work to be performed under the PWS, and the FAR and OHA precedent support the exercise of the CO's discretion in choosing a reasonable NAICS code. *See FAR 19.102; Computer Cite*, SBA No. NAICS-5010; *Computer Cite*, SBA No. NAICS-4979. Abacus also attaches an internal discussion paper that supports the CO's designation and raises performance concerns—*i.e.*, performance of the RFP will require extensive corporate resources, and it is questionable whether companies eligible under NAICS code 541512 would have both the financial resources and the technical capabilities to perform adequately.



## F. Appellant's Reply

On November 2, 2010, Appellant filed its reply to the CO's response. Appellant contends operating the existing Air Force telecommunications system is not the focus of the RFP. Instead, Appellant claims the focus of the RFP is the design and implementation of integration services to connect existing systems to each other as well as to newly developed systems. Appellant maintains these types of integration services are properly encompassed by NAICS code 541512 and refutes the argument that this code covers only design of IT systems.

Appellant first asserts that the RFP at issue is dissimilar to the solicitation OHA considered in *Computer Cite*, SBA No. NAICS-5010, because the instant RFP does not require constant operation of the government's network. Instead, Appellant claims the RFP requires the contractor to provide IT services to enable the *government's* operations, and not the *contractor's* operations, as was the case in *Computer Cite*, SBA No. NAICS-5010. In other words, the successful contractor here will not operate the government's network as a de facto owner/lessee, as OHA held was required by the solicitation in *Computer Cite*, SBA No. NAICS-5010.

Appellant next addresses the PCO's Determination & Findings reflecting the basis for the decision to designate NAICS code 517110. Appellant explains the Air Force wavered between NAICS code 517110 and NAICS code 541512, and the small business community expressed concern that code 517110 only applies to firms operating their own infrastructure. Appellant asserts five of six NETCENTS team members agreed (based upon their own analysis and industry comments) that code 541512 best fit the NetOps solicitation. Nevertheless, the team chose to designate code 517110 based upon concern about the reaction from larger businesses that would be ineligible under code 541512.

Appellant then challenges the CO's assertion that the primary requirement of the RFP is constant operation of the government's network. Appellant addresses each of the primary requirement areas set forth by the CO to show that they all require a broad range of IT integration services rather than operation of the existing system.

First, Appellant explains the enterprise level security requirement included in the RFP. Appellant indicates that the combined infrastructure of multiple network locations is known as the "enterprise network," and enterprise level security refers to the hardware and software necessary to protect the entire network. Appellant asserts enterprise level security is an ongoing process. Appellant contends this type of security function is recognized as an IT service, not a service provided by a telecommunications operator. Further, this function does not require an offeror to operate its own network. Thus, Appellant argues this requirement falls under NAICS code 541512, not NAICS code 517110. Moreover, because the CO emphasized "operation" of the network, Appellant notes that only one section of the PWS related to enterprise level security uses the term "operation," and that section refers not to operation of a network, but configuration of a connection between two systems.

Second, Appellant deals with network operations. The CO listed the services covered by this requirement as: messaging and directory services, service management, information management, network management/defense, content management, and network operations

enabling capabilities. Again, Appellant asserts these are IT-related services that fall under NAICS code 541512, not services that would be provided by a telecommunications carrier. Appellant also contends the PWS sections related to network operations that use the term “operations” relate primarily to the operation of IT functions.

Third, Appellant addresses network command and control, which Appellant defines as the act of designing and installing the software and hardware necessary to monitor and control network systems. Appellant contends that although telecommunications providers may provide these services, a firm need not be a telecommunications carrier to perform this work. Appellant argues this service is covered 100% by NAICS code 541512, and no relevant PWS section refers to “operations.”

Fourth, Appellant discusses network infrastructure support. Appellant challenges the CO’s claim that messaging, site preparation, and systems engineering—functions essential to this requirement—are not included in NAICS code 541512. Rather, Appellant argues site preparation and engineering are crucial elements of design, which the CO readily admits falls under NAICS code 541512. Appellant contends that because messaging systems are rapidly evolving, it is necessary to design and integrate new technologies on a regular basis. This process requires primarily integration services, which necessarily include system testing, site surveys, and system installation. Thus, Appellant concludes this requirement fits entirely within NAICS code 541512.

Fifth, Appellant takes up the dynamic test environment requirement. Appellant contends, contrary to the CO’s assertion that this requirement falls under NAICS code 517110 because testing network solutions prior to operations is part of telecommunications networks, that testing is in fact encompassed by NAICS code 541512. Appellant claims any provider of integration services and solutions would use a dynamic test environment because testing is an integral part of the design, engineering, and implementation of any system. Additionally, Appellant points out that the word “test” does not appear in the definition of either NAICS code 517110 or NAICS code 541512, so it is only fair to assume that both telecommunications providers and integrators test their solutions prior to deployment. Further, the term “operation” appears only once in the PWS sections related to this category.

Sixth, the last requirement Appellant addresses is operations and maintenance. Appellant acknowledges that this requirement is primarily telecommunications-based, but asserts that operational tasks can still fit within NAICS code 541512 because it includes “support.” Appellant contends neither code is a perfect fit for this element, but also argues this element does not represent the primary purpose of the RFP. Rather, it represents only a small portion of the work to be performed and should not be the basis for designating NAICS code 517110 to this procurement.

Finally, Appellant argues the evaluation factors are indicative of the RFP’s primary purpose. Appellant claims the factors do not focus on the owning and operating of telecommunications services, but rather upon an offeror’s approach to providing IT services. Appellant asserts the sample task orders all deal with designing, installing, and supporting network operations, and the subfactors all relate to developing solutions to enable network

operations. Appellant argues if telecommunications are not reviewed in the proposal evaluation process, the designation of NAICS code 517110 must be a clear error.

G. The CO's Surreply

On November 8, 2010, the CO filed his surreply. The first part of the CO's surreply is dedicated to the argument that Appellant lacks standing to file this appeal. Echoing the arguments made by a number of intervenors, the CO contends that at the time the appeal was filed, Appellant's CCR and ORCA entries indicated it is other than a small firm under the proposed NAICS code. Accordingly, the CO contends Appellant is not an interested party, and OHA should dismiss this appeal.

Alternatively, the CO argues his NAICS designation should be affirmed. The CO contends Appellant's reply demonstrates a fundamental lack of understanding of the NETCENTS-2 program. The CO explains that the RFP at issue is only for the NetOps category within the NETCENTS-2 program. Thus, "[m]uch of the IT systems development and integration tasks, referred to by [Appellant] as being encompassed by NAICS Code 541512, are covered in the scope of other NETCENTS-2 contracts . . . and not by NetOps." (Surreply 5.) Accordingly, the CO challenges Appellant's classification of the work required by the NetOps RFP as design and integration services. Instead, the CO explains the NETCENTS-2 program is comprised of "separate ID/IQ contract categories for the infrastructure and application layers in order to avoid building stovepipe systems." (Surreply 6.) The CO emphasizes that the development, maintenance, and integration services required by the NETCENTS-2 program are covered by other contract categories—application services, enterprise integration and service management, and IT professional support and engineering services, the latter two of which employ NAICS code 541512. In other words, the NetOps category deals with infrastructure, while the other NETCENTS-2 contract categories deal with design and integration.

The CO next explains that Appellant misrepresents the goal of the entire NETCENTS-2 program as the primary purpose of the NetOps RFP. The specific purpose of the NetOps contract, as provided in the PWS is as follows: "The services and solutions provided will address the development, acquisition, integration, test, deployment, and sustainment of Air Force infrastructure and network operations." Thus, according to the CO, the only integration under the NetOps RFP is very focused integration of networking and infrastructure components, and not the integration of capabilities or legacy systems, as alleged by Appellant. Instead, the integration services to which Appellant refers actually fall under the other NETCENTS-2 program contract categories.

The CO next addresses Appellant's treatment of the Air Force Determination & Findings underlying the designation of NAICS code 517110. The CO contends that in contemplating the applicability of NAICS code 541512 for the NetOps RFP, the PCO conducted market research and solicited industry comments. The CO recounts that the industry comments overwhelmingly favored NAICS code 517110 over NAICS code 541512, and the PCO considered these responses in exercising her due diligence in designating a NAICS code.

Finally, the CO responds to Appellant's contentions in relation to the primary requirement areas of the PWS identified in the CO's initial response. With regard to enterprise level security, the CO again contends Appellant's classification of this requirement reflects a fundamental misunderstanding of the work required. The CO asserts this requirement consists of services and solutions to detect and exploit vulnerabilities in the network, work that is part of operating and managing a wired telecommunications network, consistent with commercial and Department of Defense existing practices. The CO also asserts that, contrary to Appellant's assumptions, Air Force network operators must be able to provide network security.

Regarding network operations, the CO disputes Appellant's characterization of one of the components of this requirement: content management. Whereas Appellant indicated content management includes services such as website design and database management, the CO explains these services are covered by the Application Services contract category of the NETCENTS-2 program, not by the NetOps RFP. Rather, the content management services falling under NetOps relate to the ability to store and access information across the Air Force network. The CO contends these services fall within managing and operating the network.

The CO next argues Appellant's description of the network command and control requirement as designing and installing software is seriously flawed. Instead, the CO indicates the NetOps RFP requires only supporting the operations of the command and control network. That is, NetOps covers only network operations used in command and control (*i.e.*, consolidation of network situational awareness solutions, identification of and response to anomalous network activity, trend analysis of network incidents such as viruses and outages, implementation of security countermeasures, reallocation of bandwidth in response to warfighter requirements), not all command and control requirements. The contractor will provide capabilities that support the essential command and control tasks.

With regard to the dynamic test environment requirement, the CO notes the definition of NAICS code 541512 does not include testing. The CO also asserts the testing required by the NetOps RFP is the testing of pieces of network infrastructure prior to deployment, which is different than functional testing of an application for compatibility with the network.

Lastly, in reference to operations and maintenance support, the CO disputes Appellant's argument that this element constitutes only a small portion of the work required by the NetOps RFP. Instead, the CO contends the vast majority of the work falls under operations and maintenance, and NAICS code 517110 is clearly the correct code for this large portion of work. The CO again requests that OHA affirm the NAICS code designation.

#### IV. Discussion

##### A. Timeliness and Standing

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

The CO and numerous intervenors allege that Appellant lacks standing to file this appeal. I disagree. Any person or firm adversely affected by a NAICS code designation may file a NAICS appeal. 13 C.F.R. § 134.302(b). In the appeal petition, Appellant asserts that it is small under both the NAICS code designated by the CO and the NAICS code Appellant proposes. Appellant explains it is adversely affected by the CO's designation because the size standard applicable to that NAICS code improperly expands competition to include larger companies. This reasoning has sufficed to afford a concern standing in many previous NAICS appeals. *See, e.g., NAICS Appeal of Information Ventures, Inc.*, SBA No. NAICS-4953 (2008); *NAICS Appeal of SVL Analytical, Inc.*, SBA No. NAICS-4721 (2005).

The CO explains that at the time Appellant filed its appeal, the firm's CCR and ORCA entries indicated it is other than a small firm under the proposed NAICS code. Appellant contends it has at all times been small under the proposed NAICS code, and a mathematical error caused the erroneous entries. Appellant corrected the alleged errors, and its CCR and ORCA entries currently reflect that it is a small firm under the proposed NAICS code.

Although I appreciate the CO's concern regarding this matter, this is not an appropriate forum for determining Appellant's size. The only way to determine whether or not Appellant is in fact small under the proposed NAICS code is to fully investigate the circumstances underlying the CCR and ORCA entries in question. This office has no authority to perform such an investigation. Rather, only an SBA Area Office can perform an official size determination. 13 C.F.R. § 121.1002.

Firms are required to explain why they are adversely affected by a CO's NAICS code to achieve standing to file a NAICS appeal. *See* 13 C.F.R. §§ 134.302(b), .305(a)(3); *see also NAICS Appeal of Information Ventures, Inc.*, SBA No. NAICS-4763, at 3 (2006). Here, Appellant explained in its appeal petition that it is small under the proposed NAICS code and protested competition under a code with a larger size standard. If there were no dispute that Appellant is other than small under both codes, I could find that Appellant lacks standing. *See, e.g., NAICS Appeal of Spendida Property Systems, LLC*, SBA No. NAICS- 4576 (2003). But given the factual dispute over the circumstances surrounding Appellant's CCR and ORCA entries, I am left only with allegations that Appellant is other than small under the proposed NAICS code. Allegations are not a sufficient basis to find that Appellant lacks standing, and it is simply not the role of this office to resolve such allegations. If Appellant is awarded this contract, the CO or any unsuccessful offeror may protest Appellant's size at that time.

## B. Analysis

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. 13 C.F.R. § 134.314; *NAICS Appeal of Durodyne, Inc.*, SBA No. NAICS-4536, at 4 (2003). The CO should designate the NAICS code that best describes the principal purpose of the services being procured, 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. 13 C.F.R. § 121.402(b); *Durodyne*, SBA No. NAICS-4536, at 4.

The *NAICS Manual* description of the NAICS code designated by the CO, 517110, Wired Telecommunications Carriers, provides that this industry comprises:

[E]stablishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.

Illustrative examples include: Broadband Internet service providers, wired; Local telephone carriers, wired; telecommunications carriers, wired; Long-distance telephone carriers, wired.

*NAICS Manual*, at 671.

The *NAICS Manual* description of Appellant's requested NAICS code, 541512, Computer Systems Design Services, provides that this industry comprises:

[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 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; and Office automation computer systems integration design services.

*NAICS Manual*, at 740.

NAICS code 541512 covers the design of computer systems. However, the contractor here must do far more than design a system. The contractor here must not only design IT systems, but also must install these systems, modifying the buildings at individual bases to do so, and provide the infrastructure. Further, the contractor is responsible for the continuing operation of the systems. The contractor must also test the systems, support the systems and software, train the personnel, ensure each system's security, and provide continuing maintenance. These systems will provide communications not merely of data, but of voice and video.

The broad definition of telecommunications from the DoD dictionary clearly encompasses all the types of communications required here. This is consistent with the *NAICS Manual*'s definition of telecommunications as including transmission of voice, data, text, sound, and video. *NAICS Manual*, at 670. Appellant's attempt to argue that telecommunications applies only to telephonic communications simply ignores the broad compass of telecommunications.

Conversely, Appellant's attempts to find all the tasks required within 541512 are misplaced. While Appellant attempts to narrow the scope of telecommunications, it attempts to broaden computer design to encompass all aspects of operation and maintenance of the computer systems involved in the NetOps RFP. That is not supported by the *NAICS Manual* definition of computer systems design services. As noted above, the contractor here must do more than simply design a system. The wide range of its responsibilities far exceeds those covered by merely designing the system.

Moreover, the evaluation criteria for the procurement (NetOps RFP Section J, Attachment 13) do not indicate that the Air Force will evaluate the design of a computer system. Rather, they emphasize the management of the system once established. The management of the metadata environments, the network management, and the defense of the network security are not part of system design. Rather, they are consistent with the management of the system, and thus support a 517110 classification.

As the CO points out, Appellant appears to confuse the goal of the entire NETCENTS-2 program with this particular procurement. This procurement calls for not merely the development, but also the integration, testing, deployment, and most importantly, the sustainment of Air Force infrastructure and network operations. These tasks are more appropriately covered by NAICS code 517110, calling for the operation of telecommunications systems.

OHA has previously held the 517110 code covers procurements where the contractor provided a wide range of telecommunications and IT services, sold equipment to the government, and operated and maintained the system, even though the system was government-owned. *Computer Cite*, SBA No. NAICS-5010. That case is squarely on point here. Even though this system will be government-owned, the contractor must perform an even wider range of services than was the case in *Computer Cite*. The fact that this contractor will install, operate, and maintain this system, as well as design it, puts this procurement in the 517110 designation, as supported by the definition in the *NAICS Manual* and the *Computer Cite* precedent. Appellant has failed to meet its burden of proof, and the CO's designation is AFFIRMED.

V. Conclusion

For the above reasons, the instant appeal is DENIED, and the CO's NAICS code designation is AFFIRMED. The CO's designation of NAICS code 517110, Wired Telecommunications Carriers, for this procurement was reasonable.

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

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CHRISTOPHER HOLLEMAN  
Administrative Judge