

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

NAICS APPEAL OF:

IMPAQ International, LLC,

Appellant,

Solicitation No. DOL121RP20511
U.S. Department of Labor
Office of Contract Management/ETA
Washington, D.C.

SBA No. NAICS-5415

Decided: November 2, 2012

APPEARANCES

Avi Benus, Vice President, Operations, for Appellant

Marissa G. de la Cerna, Contracting Officer, for the U.S. Department of Labor

DECISION

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 NAICS code for a procurement for support for the Job Corps Data Integrity, Program Evaluation and Statistical Support Program functions is 541611, Administrative Management and General Management Consulting Services, or 541720, Research and Development in the Social Sciences and Humanities.

III. Background

A. The Solicitation

On October 2, 2012, the U.S. Department of Labor, Office of Contract Management, in Washington, D.C. (DOL), issued the subject Request for Proposal (RFP) for support for the Job Corps Data Integrity, Program Evaluation and Statistical Support Program functions as a total

small business set-aside.¹ The Contracting Officer (CO) designated North American Industry Classification System (NAICS) code 541611, Administrative Management and General Management Consulting Services, with a corresponding \$14 million annual receipts size standard, as the NAICS code for the procurement. The deadline for offers is November 6, 2012.

B. The Appeal

On October 12, 2012, IMPAQ International, LLC (Appellant), filed the instant appeal. Appellant asserts the appropriate NAICS code for this procurement is 541720, Research and Development in the Social Sciences and Humanities, with a corresponding \$19 million annual receipts size standard.

Appellant asserts the primary purpose of the solicitation not the provision of management consulting services, but to support Job Corps research, development and analysis functions. Appellant points to the “Objectives” section of the solicitation, which characterizes the services to be provided as: (1) performing data integrity audit functions and technical assistance support to assure Job Corps program requirements and data are valid and reliable; (2) research, evaluation and technical assistance to support program initiatives and continuous improvement efforts; and (3) technical expertise in support of Job Corps Performance Management System and Job Corps performance data reporting. Appeal at 5, citing solicitation at § D.2.

Appellant argues the “Objectives” section demonstrates that the principal purpose of this solicitation is Research and Development in the Social Sciences and Humanities. The contractor must support Job Corps research, development and analysis functions. The research and development to be conducted here are in the social sciences and humanities, including economic analysis. Appellant argues the emphasis of NAICS code 541611 is not research and development, but the provision of consulting services with respect to administrative and general management. Therefore, Appellant asserts, because the principal purpose of this procurement is research, development and analysis, NAICS code 541611 is not the appropriate code for this procurement, and 541720 is the better code.

Appellant further asserts that the fact that the previous iteration of this requirement (Solicitation No. DOL079RQ20382) was designated under NAICS code 541611 is irrelevant. Appellant argues that the regulation has been changed and no longer contains language permitting an agency to consider the NAICS designations for similar procurements in making NAICS code designations.

C. The Performance Work Statement

The Performance Work Statement (PWS) provides:

D.2 Objectives

¹ The solicitation was issued after October 1, 2012. Therefore, NAICS 2012 applies to this procurement and to this appeal. 77 Fed. Reg. 49991, 50005 (Aug. 20, 2012).

To fulfill program training and performance objectives, the U. S. Department of Labor is seeking a qualified contractor that will successfully perform the following services: (1) Perform data integrity audit functions and provide technical assistance (TA) support to assure Job Corps program requirements and data are valid and reliable; (2) Provide research, evaluation, and technical assistance support to program initiatives as well as other continuous improvement efforts; and (3) Provide technical expertise in support of Job Corps' Performance Management System and Job Corps performance data reporting.

This solicitation outlines the requirements of the work and further establishes that the selected contractor shall be required to provide research and evaluation services for numerous program initiatives and projects as well as expertise in data systems, statistics, and analysis to adapt performance measurement and reporting systems. The specific services to be performed are specified in Section D.3 Scope of work.

Solicitation, at 19.

D.3 Scope of Work

The scope of work consists of major tasks in three critical areas as follow:

(1) Perform data integrity audit functions and provide technical assistance (TA) support to assure Job Corps program requirements and data are valid and reliable; (2) Provide research, evaluation, and technical assistance support to program initiatives as well as other continuous improvement efforts; and (3) Provide technical expertise in support of Job Corps Performance Management System and Job Corps performance data reporting.

Id.

The Solicitation listed the tasks to performed under the three major tasks:

AREA I. DATA INTEGRITY and continuous improvement

This area encompasses five major functions: 1) Conducting data integrity audits; 2) Providing data integrity related technical assistance to the National and Regional Offices and developing tools to strengthen data integrity; 3) Providing technical assistance and workgroup support to workgroups related to data integrity issues; 4) Providing predictive analyses to identify areas of potential concern; and 5) Reviewing the Student Satisfaction Survey process.

Task 1.1. Conduct data integrity audits and provide statistical and analytical expertise to support data integrity issues and concerns ...

Task 1.2. Provide data integrity related technical assistance to the National and Regional Offices and develop tools to strengthen data integrity ...

Task 1.3. Provide technical assistance and workgroup support to workgroups related to data integrity issues ...

Task 1.4. Provide predictive analyses to identify areas of potential concern ...

Task 1.5. Review the Student Satisfaction Survey (SSS) process ...

AREA II. Program research and evaluation

This area encompasses one major function.

Task 2.1. Provide research, evaluation and technical assistance support to programs, pilots, initiatives as well as other continuous improvement efforts..

AREA III. DATA SYSTEMS, STATISTICAL AND ANALYTICAL SUPPORT

This area encompasses four major functions: 1) Providing expertise in statistical analysis in support of the annual Outcome Measurement System (OMS); 2) Providing expertise in statistical analysis, budget analysis and performance-based service contracting; 3) Providing expert statistical and analytical support for Government Performance and Results Act (GPRA) and Common Measures (CM) performance reporting; and 4) Providing technical support for the Student Satisfaction Survey (SSS) process.

Task 3.1. Provide expertise in statistical analysis in support of development of the annual Outcome Measurement System (OMS) ...

Task 3.2. Provide expertise in statistical analysis, budget analysis and performance-based service contracting (PBSC) ...

Task 3.3. Provide expert statistical and analytical support for GPRA and Common Measures (CM) performance reporting ...

Task 3.4. Provide technical support for the Student Satisfaction Survey (SSS) process ...

Id., at 20-23.

D. Agency Response

On October 18, 2012, the CO filed a “Fax-Back” Memo, describing the purpose of the RFP as the Job Corps Integrity, Program Evaluation and Statistical Support Project. The CO stated the contractor must have the capacity to perform the following tasks: “(1) Data integrity audit functions and technical assistance support to assure Job Corps program requirements and data are valid and reliable; (2) Research, evaluation and technical assistance support to program initiatives as well as other continuous improvement efforts; and (3) Technical expertise in support of Job Corps' Performance Management System and Job Corps performance data reporting.”

On October 25, 2012, the CO filed a response to the appeal. The CO states the RFP requires contractors to demonstrate their ability to perform data integrity audits and provide technical assistance to assure Job Corps program requirements and data are valid and reliable. The contractor must also demonstrate their ability to provide research, evaluation and technical

support of program initiative and other continuous improvement efforts; and to provide technical expertise in support of performance management system and performance data reporting.

The CO describes the capability areas for the RFP as: (1) Experience in conducting data integrity audits; (2) Experience in preparing predictive analysis; (3) Experience in research, evaluation and technical assistance for youth programs similar to the Job Corps Program; and (4) experience with providing statistical support for complex measurement and data reporting systems.

The CO asserts that research is only one subset of tasks under this requirement. She determined that NAICS code 541611 is more inclusive and covers three major task areas through its inclusion of administrative management, records management, and strategic and organizational planning. The CO states this requirement is broader and more far-reaching than Appellant's characterization of it as research, development and analysis. The principal purpose is to support the Job Corps' data integrity, program evaluation and statistical analyses program. This is not a research and development procurement. The principal services here are administrative, management and data collection.

The CO further asserts she did not simply assign the NAICS code from the previous procurement, but performed its own evaluation of the services to be performed before making her NAICS code determination.²

IV. Discussion

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

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. 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*,³ 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).

The NAICS code designated by the CO, 541611 Administrative Management and General Management Consulting Services, covers:

² On October 26, 2012, Decision Information Resources, Inc., filed an untimely response, which I will not consider here.

³ Executive Office of the President, Office of Management and Budget, *North American Industry Classification System-United States (2012)*, available at <http://www.census.gov>.

[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:

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 756-57.

Appellant's requested NAICS code, 541720, Research and Development in the Social Sciences and Humanities, covers:

[E]stablishments primarily engaged in conducting research and analyses in cognitive development, sociology, psychology, language, behavior, economic, and other social science and humanities research.

NAICS Manual, at 764.

Here, DOL seeks to procure support for the Job Corps data integrity, program evaluation and statistical analyses program. I conclude that the CO is correct that the research required is only one of three areas of the procurement, and not the most important. The PWS emphasizes the importance of the data integrity portion of the procurement, and second to that, providing expertise in statistical analysis and analytical support for the Job Corps.

NAICS code 541611 covers a broad range of administrative services. *NAICS Appeal of Master Key Resources, LLC*, SBA No. NAICS-4862 (2007). OHA has held that this code covers procurements requiring a wide range of management services, including management support, data analysis and data integrity. *NAICS Appeal of Alon, Inc.*, SBA No. NAICS-5148 (2010). NAICS code 541611 has also covered procurements for the management and administration of programs for the Job Corps. *NAICS Appeal of CHP International, Inc.*, SBA No. NAICS-5367 (2012).

By contrast, NAICS code 541720 covers research and development in the social sciences and humanities. Here, as noted above, that is only one part of this procurement. The Solicitation places far greater emphasis on the data integrity and statistical analysis support portions of the contract. These functions are not research and development, but more properly come under administrative management, providing administrative assistance to the procuring agency, and in

line with the description in the *NAICS Manual* and OHA precedent, is properly covered under NAICS code 541611.

Accordingly, I find that the Appellant has failed to meet his burden here of establishing clear error in the CO's NAICS code designation, and that the appropriate NAICS code for this procurement is 541611, with a corresponding \$14 million annual receipts size standard.

V. Conclusion

For the above reasons, the instant appeal is DENIED, and the CO's NAICS code designation is AFFIRMED. The correct NAICS code designation for this procurement is 541611, Administrative Management and General Management Consulting Services.

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

CHRISTOPHER HOLLEMAN
Administrative Judge