

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

NAICS APPEAL OF:

Hendall, Inc.,

Appellant,

Solicitation No. 283-17-0492

U.S. Dept of Health and Human Services  
Substance Abuse and Mental Health  
Services Administration  
Rockville, MD

SBA No. NAICS-5762

Decided: July 14, 2016

APPEARANCES

John C. Smith, Executive Vice President and CFO, Hendall, Inc.

John E. Jensen, Esq., Selena M. Brady, Esq., Pillsbury Winthrop Shaw Pittman, LLP,  
for Intervenor IQ Solutions, Inc.

DECISION

I. Introduction and Jurisdiction

On June 20, 2016, the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services issued Request for Proposals (RFP) No. 283-17-0492 for support for its Public Engagement Platform (PEP) project as a total small business set aside. The Contracting Officer (CO) designated North American Industry Classification System (NAICS) code 511199, All Other Publishers, with a corresponding 500 employee size standard, as the appropriate code for the procurement. Offers are due July 20, 2016.

On June 28, 2016, Hendall, Inc. (Appellant) filed the instant NAICS code appeal. Appellant argues the appropriate NAICS code is 561422, Telemarketing Bureaus and Other Contact Centers, with a corresponding \$15 million annual receipts size standard.

The SBA Office of Hearings and Appeals (OHA) decides NAICS code appeals under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. parts 121 and 134. Appellant filed the instant appeal within ten calendar days after issuance of the RFP, so the appeal is

timely. Federal Acquisition Regulation (FAR) 19.303(c)(1); 13 C.F.R. §§ 121.1103(b)(1), 134.304(b). Accordingly, this matter is properly before OHA for decision.

## II. Background

### A. The RFP

SAMHSA was created to effectively target substance abuse and mental health services to the people most in need and to translate the research in these areas more effectively into the general health care system. SAMHSA's mission is to reduce the impact of substance abuse and mental illness on America's communities. (Statement of Work (SOW), at 1.)

The PEP contract will provide the public and the Federal Government with one-stop, quick access to mental health, substance abuse prevention and treatment information, materials, and services. It will serve as a single interaction point for the public for communications products, services and messages developed by SAMHSA, through a large scale dissemination program. This will be accomplished through the management of SAMHSA's Contact Center and fulfillment/distribution center, which handles over 600,000 calls a year, maintains over 1,000 titles of the latest behavioral health publications, and disseminates over 13 million products annually. The contract will require the development of new and the maintenance of existing data sources to increase the transparency of SAMHSA data and information, along with integrating features for collaboration and participation in SAMHSA web content and services. (RFP, at 2; SOW, at 3.) Unless otherwise specified, no printing is authorized under this contract. (RFP, at 40.)

The SOW has seven tasks. The first is Planning, Management and Reporting. This covers the normal planning for a contract, its management, and the reporting to SAMHSA. Task Two is the SAMHSA Contact Center. The Contact Center responds to inquiries through telephone, email, fax, and postal mail by providing high quality evidence-based behavioral health information. The Contact Center is a key component of SAMHSA's public communications infrastructure. (SOW at 25.) It will build on the successes of previous information clearinghouses. The contractor will be responsible for hiring and training staff for all Contact Center related activities. (*Id.* at 32.) The contractor is to develop and implement a plan to consolidate Contact Center communication entry points, so there is a single point of entry for all communication channels. (*Id.* at 26.) Until the plan is implemented, the contractor will service the Center's ten toll-free telephone numbers. (*Id.* at 27.) The contractor will prepare a report which details key metrics and data on the Contact Center's call volume. (*Id.* at 23.) The contractor is required to provide a well-trained, motivated workforce which understands the SAMHSA and Contact Center's mission. (*Id.* at 28.) The workforce must have a comprehensive understanding of substance abuse and mental health. The management team is responsible for providing a motivated workforce, and must be able to support situational management and long range planning. (*Id.*) The Information Specialists who handle the calls must provide requesters with appropriate substance abuse and mental health information, including the ordering of SAMHSA publications. (*Id.* at 29.) The contractor is to provide the required local exchange carrier and Internet access services to meet task requirements. (*Id.* at 34.)

Task Three is Open Data and Information Sources Platform Development, Web Services Support, and Information Technology Operations. The contractor must apply creative, innovative, and cost-effective approaches to leverage the Internet, information technology and information resources to meet this requirement. Printing of materials is not included in the contract. Warehousing, inventory management and distribution of material is part of this task, as is providing an Internet-based public platform for the use and sharing of SAMHSA's content, information and data. (*Id.* at 37-8.)

Task Four is Fulfillment and Distribution Center Services. It is no longer economically feasible for SAMHSA to continue to operate its warehousing and distribution programs using its traditional methods. SAMHSA's goal is to reduce the size of its warehouse by 50% over the life of the contract. The contractor shall provide storage of current and future inventory of publications for public distribution. (*Id.* at 45-6.)

Task Five is Health Communications and Public Awareness Partnership Support. The Contractor will work with Federal, state and national groups and professional organizations to establish collaborative ventures for knowledge dissemination, and will establish and maintain a behavioral health communications network of providers, consumers, state and other audiences to disseminate health information. (*Id.* at 52.) This task includes Optional Sub-Task 5.C, Content Development, Graphics, and Editorial Support. The contractor will provide cover and logo designs, PowerPoint presentations, bulletins, pamphlets, etc., as required by the CO's representative. (*Id.* at 55)

Task Six is Mobile Applications. The contractor will develop, disseminate and maintain one mobile app per year under the direction of the CO's Representative and with guidance from SAMHSA subject matter experts. (*Id.* at 56-7.)

Task Seven is Transfer of Activities. The contractor will coordinate an orderly transition from the previous contractor during the time between the award of this contract and the expiration of the previous contract on October 31, 2016. The contractor will also conduct an orderly transition at the conclusion of this contract. (*Id.* at 57-9.)

The RFP does include general Publication Clearance Requirements, which provide that the contractor will not expend funds on developing any communications product until SAMHSA has approved it, and that any such products will be developed and reviewed by a writer/editor. (RFP at 29.) However, the SOW itself does not include any requirement to actually produce any communications products.

The award will be based on an evaluation of proposals against four factors: Technical, Section 508 Compliance, Past Performance and Cost. (RFP, at 66.) In evaluating the Technical factor, offerors will first be evaluated on Understanding the Problem. The offeror must demonstrate understanding of the scope and complexity of public health and knowledge dissemination challenges posed by mental illness and substance abuse, as viewed primarily from the perspective of consumers and the families, policymakers and mental health care providers. (*Id.*) Also, the offeror must demonstrate understanding of the information needs and communication preferences of the consumers of this information, and of the opportunities and

challenges to the integration of emerging technologies into the contract. (*Id.*) The offeror must also demonstrate experience in remaining current on the latest research on mental health and substance abuse. (*Id.* at 67.)

SAMHSA will examine each offeror's Technical Approach. The proposal should demonstrate the offeror's ability to present SAMHSA's services and resources to relevant audiences in a holistic and integrated fashion. The proposal should present an innovative and forward looking technical approach, utilizing a participative and collaborative approach to disseminating SAMHSA's content and information. The proposal should ensure accessibility for all audiences, employ Web 2.0 technologies that create opportunities for use of SAMHSA content by partners and collaborators, and include a Strategic Plan that describes specific task requirements and proposed inter-relationships among tasks and organizations. (*Id.* at 67-8.)

The offeror's proposed personnel must be knowledgeable in health communications as they relate to mental health and substance abuse, as well as call center operations, database management, materials development and editorial support, working with states and communities, web development and performance management. The Project Director and the Deputy Project Director must demonstrate expertise in managing projects of similar size and scope, and have a proven background in project leadership, in mental health, substance abuse prevention and mental health communication. (*Id.* at 68.) The proposed warehouse manager must have experience in warehouse automation. (*Id.*)

Finally, SAMHSA will evaluate the offeror's demonstrated capacity to implement and manage all aspects of the PEP, including experience with similar projects, in collaborating on mental health and substance abuse issues with other agencies and organizations, and in providing information technology capabilities. SAMHSA will also evaluate the offeror's demonstrated ability to work with different constituency groups, and its facilities and equipment. (*Id.* at 69.)

## B. The Appeal

Appellant argues the appropriate NAICS code designation is 561422, Telemarketing Bureaus and Other Contact Centers, with a corresponding \$15 million annual receipts size standard. Appellant asserts that the sources sought notice SAMHSA issued March 9, 2016 used this NAICS code. Appellant alleges SAMHSA modified the notice on March 10<sup>th</sup> to include a designation of NAICS code 511199, without explanation. On March 14<sup>th</sup>, Appellant contacted the CO to argue 561422 was the appropriate code. Appellant alleges SAMHSA changed the code to 561422 on March 18<sup>th</sup>, and then back to 511199 on March 22<sup>nd</sup>, again without explanation. (Appeal at 2.)

Appellant addresses the background of PEP, which is to provide the public and the Federal Government with one stop access to mental health and substance abuse prevention and treatment information. This goal is to be accomplished through the management of SAMHSA's Contact Center and fulfillment/distribution center. (*Id.* at 3.) Appellant argues NAICS code 511199 applies to publishing. Publishing refers to the reporting, writing, editing and processes

required to create a publication, citing the *NAICS Manual*,<sup>1</sup> at 659. (*Id.*) The PEP contract does not cover these activities. (*Id.*) It is only after the publishing process is completed in other SAMHSA programs, that a publication is referred to PEP for distribution. (*Id.*) The SOW provides the Government will provide the materials to be mailed or the sources where the materials may be obtained. (*Id.*; citing SOW at 47.) The SOW requires the contractor to coordinate closely with SAMHSA's Prevention and Early Intervention Materials Development and Public Awareness Support contract, where the primary responsibility for message, content, and materials development will occur. (*Id.*; citing SOW at 52.) Appellant points out that printing of publications materials is not included in the PEP contract. (*Id.*; citing SOW at 37.)

Appellant further asserts that none of the illustrative examples for NAICS code 511199 in the *NAICS Manual* include work covered by this RFP. The evaluation factors for award make no mention of publishing as a requirement for technical evaluation, even though they lay out detailed requirements for offerors to demonstrate their understanding of the problem. The requirements for personnel place virtually no weight on publishing expertise. (*Id.* at 4.)

Appellant argues that where no single NAICS code applies to the full range of services being acquired under a contract, the designated code should be that which accounts for the greatest percentage of contract value. (*Id.*; citing 13 C.F.R. § 121.402(b); FAR 19.102(d); *NAICS Appeal of Nelson Eng'g Co.*, SBA No. SIZ-5166 (2010).) This contract requires a variety of services and thus requires an analysis of which code is most appropriate. (*Id.*)

Appellant asserts there are only two portions of the RFP which could be considered publishing. First, the solicitation requirements include several references to content development, printing and other quasi publishing activities, (*Id.*; citing Solicitation at 29 and 40, and SOW at 13.) However, Appellant asserts these are general clauses in all SAMHSA contracts and are not specific to the PEP SOW. Second, there is Optional Subtask 5.C, Content Development, Graphics & Editorial Support. This task does require publishing. Nevertheless, it is an optional activity, not a core requirement, it requires the development of products ancillary to the PEP, such as posters, and it assumes development of only 10 products a year. This is negligible in comparison to the other required tasks. (*Id.*; citing SOW at 55.)

Appellant asserts SAMHSA has defined the purpose of this procurement in its 2017 Budget Request. It admits that materials made available through PEP are produced by SAMHSA's other offices thus reinforcing that publishing takes place outside of PEP. SAMHSA states PEP provides a customer-oriented fulfillment system, including an online store, call-in Contact Center, warehouses and email updates. (*Id.* at 5) The two output measures specific to the PEP contract are to increase the number of individuals referred to behavioral health treatment resources, and to increase the total number of interactions through telephone inquiries, e-blasts, dissemination of SAMHSA publications, and total website hits. (*Id.*)

Appellant argues these output measures are SAMHSA's own assessment of the most important functions of the PEP contract. The focus is on promoting SAMHSA's products and

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<sup>1</sup> Executive Office of the President, Office of Management and Budget, *North American Industry Classification System-United States (2012)*, available at <http://www.census.gov>.

services, taking orders for publications, and providing information on SAMHSA products and services. This aligns closely with NAICS code 561422. (*Id.*)

Appellant argues that under OHA precedent, NAICS code 511199 is appropriate only when publishing is the principal purpose of the procurement. Appellant points to *NAICS Appeal of JBS Int'l.*, SBA No. NAICS-5021 (2008), where there was a clear and unambiguous requirement for publishing in the solicitation. Here, other SAMHSA programs will publish and print materials the PEP will disseminate. Publishing was clearly the principal purpose of that procurement, despite the fact other requirements were included. (*Id.*)

Similarly, Appellant argues OHA precedent provides that procurements for health-focused information clearinghouses, which do not have publishing as their principal purpose, should not be designated under NAICS code 511199. (*Id.* at 6; citing *NAICS Appeal of Eagle Design and Mgm't, Inc.*, SBA No. NAICS-4521 (2002).) Appellant argues this case is similar to the instant procurement, where there are requirements for multi-channel inquiry response, information dissemination, publication storage and distribution, and website design, development and maintenance, and yet publishing is not the principal activity. (*Id.*)

Appellant argues that while predecessor procurements were designated under NAICS codes 511199 and 541990 (All Other Professional, Scientific and Technical Services) this is not dispositive here, because a NAICS code designation must be based upon the procurement at issue, not other procurements. (*Id.*; citing *NAICS Appeal of Downrange Operations and Training, LLC*, SBA No. NAICS-5647 (2015).)

Appellant further argues SAMHSA's selection of a 500-employee size standard suggests the PEP contract is a manufacturing or other capital intensive activity, which it is not. Appellant refers to SBA's publication *Size Standard Methodology*, April, 2009. ([http://www.sba.gov/sites/default/files/size\\_standards\\_methodology.pdf](http://www.sba.gov/sites/default/files/size_standards_methodology.pdf), hereinafter, *Methodology*.) Appellant asserts this document states the 500 employee size standard is for manufacturing industries, while receipts based size standards are for nonmanufacturing industries. (*Id.* at 6-7; citing *Methodology*, at 4, 7, and 8.) Further, employee-based size standards are for capital intensive industries, where the value of output is derived from fixed assets. (*Id.*; citing *Methodology* at 9.) The services provided under the PEP contract do not meet this definition. (*Id.* at 7.) Receipts based size standards are appropriate in labor-intensive industries where the same value of output can be achieved by varying levels of labor and capital inputs, differing levels of outsourcing, and differing employment practices. (*Id.*; citing *Methodology* at 9.) These factors are true for the PEP contract.

Finally, Appellant maintains that NAICS code 561422 is the appropriate NAICS code. The purpose of the contract is to provide information and communication services to constituents, partners and the public. (*Id.*; citing *SOW* at 37.) This aligns with the description of NAICS code 561422. The most visible aspect of PEP's information and communication services is the SAMHSA Contact Center, which is staffed by information specialists. Appellant maintains the role of these specialists is to provide requesters with appropriate substance abuse and mental health information and resources, information about SAMHSA's programs and placing orders for SAMHSA's publications. (*Id.* at 7-8; citing *SOW* at 29.) Offerors must have appropriate facilities

and equipment, such as telecommunications, copiers, fax machines, computer hardware and software and meeting capability. Appellant argues these requirements align with NAICS 561422. Appellant further asserts the examples for NAICS code 561422 include customer service call centers, order taking for clients over the Internet, and telephone callers, all describing the principal purpose of the PEP contract. Appellant points out that after subject matter knowledge of behavioral health, the SOW's first task specific requirement is knowledge of call center operations. (*Id.* at 8; citing RFP at 68.)

### C. IQS's Response

On July 12, 2016, IQ Solutions, Inc. (IQS), incumbent contractor and prospective offeror, filed its oppositions to the appeal. IQS argues the CO correctly chose NAICS code 511199 for the instant solicitation.

IQS contends the seven tasks identified by the SOW “demonstrate that the principal purpose of the services being procured is for the acquisition of publishing services.” (IQS Response, at 2.) IQS maintains Appellant has failed to meet the strict burden of demonstrating the CO committed clear error in selecting NAICS code 511199. IQS explains the CO is not required to choose the perfect code; instead they must simply select the code that best describes the solicitation's principal purpose. (*Id.* at 4; citing *NAICS Appeal of Global Precision Sys., LLC*, SBA No. NAICS-5150, at 3 (2010).)

According to IQS, the CO's chosen code is the best fit for the instant solicitation because NAICS codes beginning with 5111 concern business engaged in publishing information created by them, or others, and distributed via print, CD-ROM, or electronic networks. IQS argues the SOW describes the solicitation's principal purpose as publishing because the contractor will be responsible for managing “25 million customer touch points' through publishing services. (*Id.* at 5.) Specifically, Appellant argues that of the seven task areas, Tasks 1, 3, 4, 5 and 6 require publishing services; the evaluation criteria includes aspects regarding a contractor's capabilities in publishing services; and as the incumbent Contractor, IQS's work includes significant publishing services. (*Id.* at 5-6.) IQS argues the Contractor will be responsible for disseminating content provided by SAMHSA and also created by the Contractor, in numerous platforms, as well as branding all the publications as SAMHSA publications. In addition, the SOW requires the production of a content development and management plan that includes different methods for the distribution of publications.

Next, IQS contends the evaluation criteria shows the CO's code is the correct one as each Technical Factor considers an offeror's capability with publishing services. This includes an offeror's “ability to present SAMHSA's services and resources, to collaboratively disseminate SAMHSA content and information, and to employ new strategies and methods, including the innovative use of technical platforms.” (*Id.* at 8; citing Solicitation at 67, § M.2.II.) The fact that offerors are evaluated on the qualifications of their personnel with developing materials and editorial support, as well as their capability to deliver information to the intended audience and having the facilities to provide telecommunications, copying, faxing, mailing, computer hardware and software capability shows that the “evaluation criteria support SAMHSA's conclusion that publishing services are the principal purpose of the PEP procurement.” (*Id.* at 9.)

IQS's role as the incumbent contractor puts it in a credible position in arguing that the SOW's requirements, which are “essentially the same” as IQS's current SOW, support the CO's conclusion that the work sought is primarily for publishing services. (*Id.*) IQS submitted the SOW for the incumbent contract, as well as a declaration by Ileana Quintas, IQS's CEO and President, that the work sought by the instant procurement is the same as IQS's current contract, IQS has firsthand knowledge that publishing services are the solicitation's primary purpose. (*Id.* at 9-10.)

IQS further argues Appellant misapplied the *NAICS Manual's* definition of code 511199, as the code contemplates the dissemination of third-party created content and publishing in electronic form. Appellant's argument that the NAICS Manual fails to list the Solicitation's publishing services is also misplaced as the examples listed in the *NAICS Manual* are not exhaustive. (*Id.* at 11.) Regarding Appellant's argument that Task 2, the Contact Center, is the Solicitation's principal purpose, IQS argues that suggestion is misguided. IQS maintains the Contact Center only accounts for a small percentage of the SOW's estimated 25 million customer touch points. Next, Appellant's reliance on SAMHSA's fiscal year 2017 Budget Request in arguing the Contact Center is the principal purpose of the Solicitation is also misplaced. The Budget Request fails to state a principal purpose; the language of the SOW is a better tool for finding the Solicitation's principal purpose, and the Budget Request accounts for all SAMHSA content, regardless of who developed it. (*Id.* at 12.) Given that IQS, under the incumbent contract, developed, tested, launched, and promoted the mobile application, Appellant's assertion there is no development of content by outside sources is incorrect.

Appellant's reliance on *NAICS Appeal of Eagle Design and Management, Inc.*, SBA No. NAICS-4521 (2002) is also misplaced. In *Eagle Design*, the contractor was required to operate and manage three National Institutes of Health clearinghouses, where any publishing services were ancillary to running the clearinghouses. (*Id.* at 13.) Here, the Contact Center accounts for only one of the seven Task Areas and for a small percentage of the anticipated customer touch points. Conversely, *NAICS Appeal of Circle Solutions, Inc.*, SBA No. NAICS-5181 (2011) involved the operation of clearinghouse as one of the task areas. However, OHA found that NAICS code 511199 was the correct code because publishing services were identified in many of the 17 required tasks, similar to the case at hand. (*Id.* at 14.)

IQS adds that the services sought here do not reflect the *NAICS Manual* definition for code 561422, as “Task Area 1, 3, 4, 5, and 6 require services for fully integrated digital publishing and engagement procurement.” (*Id.* at 15.) The SOW further fails to match the services considered by codes beginning with 561, as the work here goes beyond ‘general management, personnel administration, clerical activities, [or] cleaning activities.’ (*Id.*; citing *NAICS Manual*, at 429.) Appellant fails to give weight to the other Task Areas is arguing that the Contact Center is the primary purpose of the solicitation. Further, the Contact Center does not sell a product or solicit contributions, which are described in the definition of code 561422. This generalization of the of the services sought by the Solicitation demonstrates Appellant failed to properly justify the CO committed clear error in designating NAICS code 511199.

D. NAICS Manual Descriptions

The NAICS code designated by the CO, 511199, all Other Publishers, comprises:

[E]stablishments generally known as publishers (except newspaper, magazine, book, directory, database, music, and greeting card publishers). These establishments may publish works in print or electronic form.

Illustrative Examples:

Art print publishers (except exclusive Internet publishing) Calendar publishers (except exclusive Internet publishing)

*NAICS Manual* at 665.

The code is included in NAICS Sector 51, Information, which comprises establishments engaged in (a) producing and distributing information and cultural products, (b) providing the means to transmit and distribute these products, and (c) processing data. (*Id.* at 657.) Subsector 511, Publishing Industries (Except Internet), covers establishments engaged in publishing periodicals, books, directories and software. These establishments issues copies of works, in a number of formats. Publishing is the reporting, writing, editing and processes required to produce a product. (*Id.* at 659.)

The NAICS code advanced by Appellant, 561422, Telemarketing Bureaus and Other Contact Centers, comprises:

[E]stablishments primarily engaged in operating call centers that initiate or receive communications for others via telephone, facsimile, email, or other communication modes for purposes such as: (1) promoting clients' products or services, (2) taking orders for clients, (3) soliciting contributions for a client; and (4) providing information or assistance regarding a client's products or services. These establishments do not own the product or provide the services they are representing on behalf of clients.

(*Id.* at 788.)

This code is part of Sector 56, Administrative and Support and Waste Management and Remediation Services. These establishments provide routine support services for day-to-day operations of other organizations. (*Id.* at 779.) Activities include office administration, hiring and placing of personnel, document preparation and similar clerical services. (*Id.*)

### III. Discussion

#### A. Standard of Review

Appellant has the burden of proving, by a preponderance of the evidence, all elements of its appeal. Specifically, Appellant must show that the CO's NAICS code designation is based upon a clear error of fact or law. 13 C.F.R. § 134.314; *NAICS Appeal of Durodyne, Inc.*, SBA No. NAICS-4536, at 4 (2003). SBA regulations do not require the CO to select the perfect NAICS code. *NAICS Appeal of Evanhoe & Assocs., LLC*, SBA No. NAICS-5505, at 14 (2013). Rather, the CO must assign the NAICS code that best describes the principal purpose of the product or service being acquired in light of the industry descriptions in the *NAICS Manual*, the description in the solicitation, the relative value and importance of the components of the procurement making up the end item being procured, and the function of the goods or services being acquired. FAR 19.303(a)(2); 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. Analysis

After reviewing the record, I conclude the CO's designation of NAICS code 511199 is clear error. This NAICS code covers publishing, which is defined as the reporting, writing and editing required to produce a finished publication. *NAICS Manual*, at 659. OHA has held NAICS code 511199 is an appropriate code when the procurement required the writing, editing and publishing of materials to support the procuring agency's mission. In *NAICS Appeal of Circle Solutions, Inc.*, SBA No. NAICS-5181 (2011), the procurement required the contractor to “write, edit and publish a great deal of material in printed, graphic and electronic form”, and so we held NAICS code 511199 appropriate. *NAICS Appeal of JBS Int'l, Inc.*, SBA No. NAICS-5021 (2008) found that “Publishing, both in print and on the Internet, and dissemination of information is the purpose of his procurement” and held NAICS code 511199 appropriate.

Conversely, the fact that the procurement is for an information clearinghouse does not mandate a publishing NAICS code. In *NAICS Appeal of Edcount, Inc.*, SBA No. NAICS-5396 (2012), the appropriate code was 611710, Educational Support Services, because the clearinghouse in question was providing support for an agency which was supporting state educational programs for limited English proficient learners. In *Eagle Design and Management, Inc.*, SBA No. NAICS-4510 (2002), a clearinghouse on health information was classified under NAICS code 561110, Office Administrative Services, because there the contractor was largely performing administrative functions.

Here, however, the Contractor will not be writing, editing or in any other way producing publications for SAMHSA. Rather, the RFP requires the distribution of publications already produced by other branches of the agency. This Contractor will not be engaged in the activities which constitute publishing. Therefore, the CO's designation of a publishing NAICS code for this procurement is clear error.

Conversely, the operation of the Contact Center appears to be the major part of this procurement. SAMHSA's aim in this procurement is to disseminate information about mental health and substance abuse. The Contact Center responds to inquiries by telephone, email, fax and postal mail. The Contact Center serves a wide variety of customers, including agencies of state and local government, organizations interested in health issues, and individuals. The Contact Center is a key part of SAMHSA's communications infrastructure. The emphasis placed on its operations in the SOW makes clear the operation of the Contact Center is the most important single part of this procurement.

There are currently ten toll-free telephone numbers, but the Contractor is to develop and implement a plan to change this to a single point of entry, and to provide the personnel to staff the Contact Center. The personnel must be knowledgeable about health communications as they relate to mental health and substance abuse, call center operations, database management, working with states and communities, and web development. These are not publishing tasks. The managers must be versed in Contract Center management, but there are no requirements for them to be experienced in writing, editing or in any other publishing tasks.

While the Contact Center is the most important part of this procurement, there are numerous other tasks required, which include leveraging the Internet to share SAMHSA's content, running the Distribution Center, forming partnerships, with Federal, state and nongovernmental groups, and developing mobile applications. However, no other one task stands out as the principal purpose of the procurement as does the operation of the Contract Center. As noted above, a NAICS code designation need not be a "perfect fit", as long as it describes the principal purpose of the solicitation. *NAICS Appeal of JBS Int'l, Inc.*, SBA No. NAICS-5021 (2008). Here the principal purpose of the solicitation is Task Two, operation of the Contract Center. The requirements of Task Two fit the *NAICS Manual* description for NAICS code 561422. The Contractor will be promoting SAMHSA's products and services, it will be taking orders for SAMHSA's publications, and it will provide information and assistance regarding SAMHSA's products and services. Accordingly, I conclude that the NAICS code which best describes the principal purpose of the instant procurement is 561422, Telemarketing Bureaus and Other Contact Centers, with a corresponding \$15 million annual receipts size standard.

IQS's argument that the significant majority of the services required here are publishing is not supported by the record. I disagree with IQS's characterization of the required tasks as publishing related. IQS's assertion that Task 1 is publishing is simply not true. Task 1 covers the reports that Contractor will be making to SAMHSA itself as part of contract administration, not the publication of materials for the public on substance abuse or mental health. Task 3 explicitly excludes the printing of materials from the requirement. It also includes the warehousing of materials, not a publishing task. Finally, Task 3 is to provide an Internet-based platform for the use of content other branches of SMAHSA have produced. However, Task 3 does not require the Contractor to write, edit, or produce any published material itself.

Task 4 is Fulfillment and Distribution Center Services. Again, the Contractor will be handling the inventory of materials SAMHSA itself has produced. The task does not require the contractor to publish any materials itself. IQS characterizes Task 5 as requiring "robust publishing strategies". The task requires the contractor to reach out to Federal, state, national and

professional organizations to set up a health communication network and to disseminate health information. Again, the Contractor will not have to write, edit, and publish materials itself, except under Optional Task 5.C, which is only one optional task, and is not sufficient to characterize the task as a whole.

Task 6 requires the Contractor to develop, disseminate and maintain one mobile app per year. While IQS characterizes this as publishing, the SOW does not. Further, the Contractor will merely make suggestions on app branding, content structure, data storage and database integration. The final decisions on these issues will rest with SAMHSA. Again, the Contractor will not be publishing material, but providing a platform for SAMHSA's material.

I therefore find that IQS's characterization of Tasks 1, 3, 4, 5, and 6 as publishing is not supported by the SOW. Further, the provisions IQS points to which require the Contractor to brand all publications as SAMHSA publications, and to submit a plan for the distribution of publications, do not qualify the instant procurement as a publishing procurement, as again, none of these requirements deal with the reporting, writing, editing or production of the published materials itself.

IQS's assertion the evaluation criteria incorporate publishing expertise again is not supported by the SOW. These provisions do not seek writers and editors. Rather, they seek professionals knowledgeable in mental health and in call center operations. Further, IQS's assertion that the predecessor contract required publishing services is based solely on Ms. Quintas's declaration, which does not match tasks performed to the tasks in the SOW, is based upon the predecessor contract, not the solicitation at issue here, and does not refer to reporting, writing and editing publications.

IQS's argument that the Contact Center is only a small portion of the work required by this procurement is belied by the RFP. The SOW gives primacy to the Contact Center as its method of disseminating information. It provides that PEP will service as a single interaction point for the public for communications developed by SAMHSA, through a large scale dissemination program which manages over 25 million touch points. "This will be accomplished through the management of the Agency's contact center and fulfillment/distribution center, which handles over 600,000 calls per year and maintains over 13,000,000 products annually; ..." (SOW, at 3.) The SOW then discusses the other methods to be used to disseminate SAMHSA's information. However, SOW has the Contact Center listed as the first task after administration, and "is a key component of SAMHSA's communications infrastructure." (*Id.* at 25.)

Conversely, the *NAICS Manual* has clearly defined publishing as the reporting, writing, and editing required to produce a product. (*NAICS Manual*, at 659.) The Task Areas in the SOW do not include these tasks. The Contractor here will be distributing publications SAMHSA has produced, but not publishing itself. The Contractor will be operating the Contact Center, a key part of this PEP procurement. Accordingly, I conclude IQS's arguments that this is a publishing procurement are not supported by the RFP.

Appellant has met its burden of establishing that the CO's designation of NAICS code 511199 for this procurement was based on clear error, and that the most appropriate code is 561422.

IV. Conclusion

For the above reasons, I GRANT the appeal and the CO's NAICS code designation is REVERSED. NAICS code 561422, Telemarketing Bureaus and Other Contact Centers, with a corresponding \$15 million annual receipts size standard, is the appropriate NAICS code for the requirements of the solicitation.

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 511199 to 561422. 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