Cite as: *NAICS Appeal of Creative Information Technology, Inc.*, SBA No. NAICS-5828 (2017)

United States Small Business Administration
Office of Hearings and Appeals

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NAICS APPEAL OF:	
Creative Information Technology, Inc.	SBA No. NAICS-5828
Appellant,	Decided: May 4, 2017
Solicitation No. SAQMMA-17-R-0175 U.S. Department of State Bureau of Population Refugee Processing Center Arlington, Virginia	

APPEARANCES

Katherine S. Nucci, Esq., Thompson Coburn, LLP, Washington, D.C., for Appellant

Andrew Lloyd, Contracting Officer, Morgan L. Cosby, Esq., U.S. Department of State

Laurel Hockey, Esq., Cohen Mohr LLP, Washington, D.C., for ValidaTek, Inc.

DECISION[1]

I. Introduction and Jurisdiction

On March 23, 2017, the U.S. Department of State (DOS), Bureau of Population, Refugees, and Migration (PRM), issued Request for Proposals No. SAQMMA-17-R-0175 (RFP) seeking a contractor to provide complete range of support in managing and operating the Refugee Processing Center (RPC). The work will also require processing overseas and domestic refugees, IT infrastructure and network support, while also providing maintenance and enhancement to the Worldwide Refugee Admissions Processing System (WRAPS) application. The contractor must further provide development, delivery, and deployment of WRAPS 2. (RFP, Performance Work Statement (PWS) § C.1.) The Contracting Officer (CO) set aside the

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[1] I originally issued this decision only to Government parties because it contained confidential information. After receiving and considering the CO's timely request for redactions, I now issue this redacted Decision.

procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 541512, Computer Systems Design Services, with a corresponding $27.5 million annual receipts size standard. Under Amendment 1, issued on April 25, 2017, proposals are due May 15, 2017.

On April 3, 2017, Creative Information Technology, Inc. (Appellant), filed the instant appeal. Appellant contends that the CO clearly erred in selecting NAICS code 541512. Instead, Appellant asserts, the CO should have assigned NAICS code 518210, Data Processing, Hosting, and Related Services, with a corresponding $32.5 million annual receipts size standard. For the reasons discussed *infra*, the appeal is denied.

The U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) decides appeals of NAICS codes under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. parts 121 and 134. Appellant timely filed the instant appeal on April 3, 2017.[2] Accordingly, this matter is properly before OHA for decision.

II. Background

A. The RFP

The RFP states that the contractor will need to employ industry best practices in project management, rapid software and application development and deployment, along with system security, including risk mitigation. (PWS § C.2.) Regarding WRAPS 2, the contractor is required "to develop WRAPS 2 roadmap and implement the development of WRAPS 2 into a modern Web system while, in parallel, supporting and maintaining the existing WRAPS operations system." (*Id.*) The contractor is required to quickly develop new WRAPS functionality or auxiliary applications. (*Id.*) While operating and maintaining WRAPS, the contractor will need to support the production, development, testing, and deployment of WRAPS in a secure and dependable system computing environment. WRAPS allows information and communication to flow through two functional subsystems via common infrastructure, based on secure internet technologies. (*Id.* § C.3.1.1.) Currently, the RPC is rebuilding WRAPS into WRAPS 2, which will be a more modern "web-based case management system that delivers workflow and reporting capabilities to a wide range of users." (*Id.*) WRAPS 2 will also provide for electronic transfer of data between users and systems partners.

The PWS lists the specific tasks associated with the RFP, as follows: (i) Program Management; (ii) Reporting Requirements; (iii) RPC Operations; (iv) WRAPS Software Development, System Operation and Maintenance; (v) Maintain RPC Site; (vi) Emergency and Other Tasks; and (vii) Transition Periods. (*Id.* § C.4.)

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[2] Ordinarily, a NAICS code appeal must be filed within 10 calendar days after issuance of the solicitation. FAR 19.303(c)(1); 13 C.F.R. §§ 121.1103(b)(1) and 134.304(b). In this case, 10 calendar days after March 23, 2017 was April 2, 2017. However, because April 2, 2017 was a Sunday, the appeal was due the next business day: April 3, 2017. 13 C.F.R. § 134.202(d)(1)(ii).

The RFP requires the contractor to coordinate its operations with a number of governmental, non-governmental, and international organizations, while ensuring current and future continuity of services. Through Program Management, the contractor will provide briefings frequently to numerous stakeholders with a summary of all program objectives. As part of Program Management, the contractor is responsible for Quality Assurance, Configuration Management, and Work Breakdown Structure. (*Id.* § C.4.1.) The contractor must also relay any new technological advancements that could affect WRAPS, and provide a Program Management Plan that includes the contractor's technical approach and resources it plans on implementing in order to perform all contract requirements. The Program Management Plan must include:

a) Program scope
b) Program organization and responsibility assignment matrix
c) Risk management
d) Quality assurance
e) Configuration management
f) Software Development Life Cycle management
g) System Security h) Training
i) Work-breakdown structure
j) A detailed integrated management schedule providing sufficient insight into tasking, resources and progress, interdependencies and critical path to project milestones, using an industry standard tool like MS Project or MS Project Server.
k) Project metrics to measure operational, technical and contractual compliance
l) References

(*Id.* § C.4.1.1.)

Under Reporting Requirements, the contractor will provide weekly status meetings, executive meetings, monthly status and performance reports, and a compliance matrix. (*Id.* § C.4.2.) The duties for RPC Operations include generating reports and conducting statistical and predictive analyses, operating the WRAPS help desk (which includes using software to track all help desk work), support overseas refugee case processing and domestic refugee case processing system. The contractor must also provide monitoring support to PRM's reception and placement program, and develop and deliver training for WRAPS users. (*Id.* § C.4.3.)

The WRAPS Software Development, System Operation and Maintenance requirement states that the contractor must "maintain, manage, enhance and deliver the WRAPS application software including fixing defects and maintaining tools and databases." (*Id.* § C.4.4.) Additionally, the contractor will submit a WRAPS 2 roadmap that will include recommendations on how to finish the WRAPS 2 application. Once approved, the contractor will be required to implement its roadmap of WRAPS 2, while also providing WRAPS maintenance fixes and delivering software releases, which may include new functions. (*Id.* § C.4.4.2.) Standard Operating Procedures (SOP) will need to be delivered as they relate to RPC, Resettlement Support Centers (RSC), and PRM operations. Maintaining the WRAPS informational website and internal WRAPS web portal is also required, as well as implementing the WRAPS deployment plan, implementing a WRAPS configuration process approach, and creating, updating, delivering, and maintaining any documentation as it relates to WRAPS. (*Id.* § C.4.4.3-

8.) Further WRAPS-related duties include system and acceptance testing, maintaining a WRAPS and RPC library, RPC and WRAPS system operations and maintenance, operating and maintaining communication equipment, systems administration, network administration, and system security and accreditation and authorization. (*Id.* § C.4.4.9-15.) The contractor must also maintain RPC's interface with the RSCs, which involves a Virtual Private Network (VPN) over the internet, maintain RPC's interface with its PRM partners, end user support, WRAPS database management, hardware and software management, and provide a warranty of services and deliverables. (*Id.* § C.4.4.16-21.)

Regarding the requirement to Maintain RPC Site, the contractor must "provide and maintain the facilities for all RPC contract related services, administrative and management functions, hardware, software, and communication systems necessary to interface effectively and efficiently with DOS." (*Id.* § C.4.5.1). The contractor is also responsible for RPC office operations, which includes maintaining the reception area, providing supplies, mail, and fax services, maintaining paper records/filings and release of information from files, physical RPC office maintenance, and office security. (*Id.* § C.4.5.2-7.) Under Emergency and Other Tasks, the contractor must have the capacity to handle a change in the quantity of work, but not its nature. (*Id.* § C.4.6.) Lastly, under Transition Periods, the contractor's duties are to execute a phase-in plan that includes working with the incumbent contractor during the transition period, and to have a phase-out plan, which will have a proactive plan for the phasing-out of performance. (*Id.* § C.4.7.)

B. Appeal

On April 3, 2017, Appellant, the incumbent subcontractor, filed its appeal, arguing that the CO erred in selecting NAICS code 541512 because the PWS "requirement related to software development of a WRAPS 2 application software solution does not account for the greatest percentage of the contract value nor does it represent the central task of this procurement." (Appeal at 2.) Most of the contractor's work will be data processing of refugee application and movement information and related services. These duties will be performed by contractor personnel working at RPC while using WRAPS. (*Id.*)

Appellant contends the PWS does not involve the planning and designing of computer systems that integrate with other hardware, software and communications technologies. (*Id.* at 4.) The PWS calls for refugee admissions processing, and only Section C.4.4 of the PWS anticipates planning and designing of computer systems. Developing the WRAPS 2 software application is a process that began five years ago, thus the new contractor will not be beginning this work on its own, but continuing the work already in place. Therefore, Appellant estimates, the work that would fall under WRAPS 2 software development and implementation would be less than 10% of the contract effort and value. (*Id.* at 4-5.)

Citing *NAICS Appeal of Engineering Services Network, Inc.*, SBA No. NAICS-5064 (2009), Appellant argues that contracts under code 541512 must encompass planning and designing computer systems, which only a small portion of the instant procurement calls for. Contrarily, code 518210 "is most appropriate because complete data processing of refugee application and movement information is the central task of this procurement." (*Id.* at 7.) Lastly,

the contract's largest percentage of work will be focused on the refugee data processing tasks of the PWS.

C. CO's Response

On April 19, 2017, the CO responded to the appeal. The CO argues the chosen NAICS code is the correct code for the instant solicitation.

The CO explains that the greatest percentage of the contract value and the central task of the procurement is the continued support of WRAPS and the development of the WRAPS 2 software. The CO concedes that Appellant is correct in that part of the RFP requires using the WRAPS system for data processing, but "the vast majority of the work is related to the continued development of the existing WRAPS system and the conceptualization, development, deployment and then continued support/development of a WRAPS 2 system." (CO's Response at 2.) Thus, the majority of the work sought falls under computer systems design services.

In discussing WRAPS, the CO explains that the system is a custom case management software application that has been developed with the goal of managing the U.S. Refugee Admissions Program. The RFP specifies seven objectives for the work contemplated, and six of those are directly related to software application, development, deployment, network design, and maintenance. (*Id.* at 4.) The CO notes that the incumbent work was issued under the same NAICS code, and given that the RFP will continue and expand on the work already performed, the CO argues that the chosen NAICS code is the correct code. Further, the RFP will once again require that [XXX]% of the staff will be supporting the WRAPS application though requirements gathering, design, development, testing, training, security, and production support, which relates to code 541512. (*Id.* at 5.) [XXX]% of the staff will be actually using the system for refugee data processing effort. (*Id.*) Regarding WRAPS 2, the CO notes that by end of Option Year 2, the contractor will be required to provide a Minimum Viable Product (MVP) for WRAPS 2, while also providing a redesign of the WRAPs network, including integrating computer hardware. (*Id.* at 5-6.)

The CO also states that the RFP requires the contractor to complete a "Discovery Task" to develop a roadmap and implement the development of WRAPS 2, duties that are essential to the work sought, and which clearly fall under code 541512. (*Id.* at 6, citing PWS § C.2 & C.4.4.1.) The RFP further requires the contractor to provide: implementation and continued functionality of WRAPS/WRAPS 2, maintenance of the RSC interface, LAN integration, design and administration, database management, hardware and software management, training and support of users of the system, and end user support and systems administration. All of these functions are closely associated with the CO's chosen NAICS code, further supporting the CO's NAICS code choice. (*Id.* at 7-10.) In addition, the RFP's deliverables are related to the functions that fall under the work considered by code 541512, thus reinforcing the CO's choice. (*Id.* at 9-12.)

Next, the CO states that the RFP contains 42 labor categories, and with the exception of data entry clerk, and data standardization specialist, the labor functions are related to code 541512. (*Id.* at 12-13.) The key personnel identified in the RFP also show that only one out of

eight key personnel will be performing data processing functions associated with the Appellant's NAICS code choice. The other key personnel positions will have functions that directly correspond to the design, development, support, and evolution of WRAPS and WRAPS 2. *(Id.)* The evaluation factors associated with the RFP also indicate that the CO's code choice more directly reflects the RFP's work sought. The evaluation factors focus on the approach and performance of tasks that an offeror proposes to take regarding systems design and implementation, which fall under code 541512. *(Id.* at 14.) According to the CO, the expected labor costs associated with the instant RFP also skew towards costs associated with code 541512. Out of the seven labor categories, only one is not related to computer systems design and development, with [XXX]% of total costs associated with labor falling under functions considered by code 541512. *(Id.* at 16.) Software development itself is, by dollar volume, the largest single category. *(Id.)* Given that a CO has the prerogative to select a code that accounts for a larger percentage of contract value when no NAICS code fully encapsulates the services sought, the CO argues that he reasonably chose code 541512. *(Id*, citing *NAICS Appeal of Nelson Eng'g Co.*, SB A No. SIZ-5166 (2010).)

Lastly, the MVP for WRAPS 2 is tied directly to the RFP's incentive scheme. Thus, the RFP makes clear that WRAPS 2 planning and design work is a central task of the procurement, further justifying the CO's chosen NAICS code. The CO concludes that by looking at the RFP's objectives, the PWS, CLINS, deliverables, labor categories, key personnel, evaluation scheme, projected contract costs, and incentive scheme, it is clear that the principal purpose of the RFP is to seek functions associated with NAICS code 541512.

D. ValidaTek's Response

On April 19, 2017, ValidaTek, Inc. (VT), an interested party, filed a response to the appeal. VT argues the CO chose the correct NAICS code and requests that OHA deny the appeal.

VT contends the contract's principal purpose is to develop, deliver, and develop a new computer system, WRAPS 2. This new system will be designed during the initial six-month period called "Discovery Task", and then migrate WRAPS into WRAPS 2. (VT Response at 1-2.) Here, the code chosen by the CO falls under NAICS subsector 541, which contemplates businesses whose major input is human capital and utilizes their employees' knowledge and skills. Given that one of the RFP's main tasks is to provide WRAPS development, operation and maintenance, VT maintains that the CO correctly chose code 541512. *(Id.* at 8.) This task is also the contract's largest CLIN, while the CLIN associated with data processing has only two subtasks that are related to data processing. The functions that fall under code 518210 do not account for the largest percentage of contract value, nor is it representative of the solicitation's principal purpose. *(Id.* at 9-10.)

VT further contends that all key personnel, except for one, associated with the RFP are all positions involving software design, development, and IT engineering. These positions require degrees in Computer Science and Information Technology, with further technical experience required, thus further confirming the CO chose the most appropriate NAICS code. *(Id.* at 10-12.) VT notes that during an on-site visit with vendors, DOS stated that roughly 70%

of the staff would be IT positions. VT adds that DOS confirmed that the non-IT positions will be reduced once the new system is operational. (*Id.* at 12.)

Next, VT argues the Appellant's preferred code 518210 is not applicable because that code calls for the contractor to provide the infrastructure for hosting and data processing services. According to VT, the RFP fails to indicate that infrastructure or equipment is to be provided by the contractor. However, the RFP does state that DOS will provide equipment and infrastructure, highlighted by the fact that 80-100 employees will be working at the RPC. (*Id.* at 13, citing Appeal at 2.) VT argues that similar to *NAICS Appeal of Information Ventures, Inc.*, SBA No. NAICS-4767 (2006), the RFP does not require the contractor to provide "infrastructure, internet hosting, or any other task congruent with NAICS 518210." (*Id.* at 15.) Here, the RFP further notes that one of the evaluation factors will be a contractor's Technical Proficiency and Approach. However, in describing the tasks that are associated with this factor, VT maintains that none of them include provisions for contractor-provided infrastructure or equipment. (*Id.* at 15, citing RFP at 162, 141-142.)

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. *NAICS Manual*[3] Descriptions

The NAICS code selected by the CO, 541512, Computer Design Software Services:

> comprises establishments 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.

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[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.

NAICS Manual at 753-54.

The *NAICS Manual* provides illustrative examples of establishments included in NAICS code 541512. The examples are computer systems integration design consulting services, local area network (LAN) computer systems integration design services, information management computer systems integration design services, and office automation computer systems integration design services. (*Id.* at 754.)

The NAICS code advocated by Appellant, 518210, Data Processing, Hosting, and Related Services:

> comprises establishments primarily engaged in providing infrastructure for hosting or data processing services. These establishments may provide specialized hosting activities, such as web hosting, streaming services or application hosting; provide application service provisioning; or may provide general time-share mainframe facilities to clients. Data processing establishments provide complete processing and specialized reports from data supplied by clients or provide automated data processing and data entry services.

Id. at 684.

The *NAICS Manual* also provides illustrative examples of establishments included in NAICS code 518210. The examples are application hosting, optical scanning services, application service providers, web hosting, computer data storage services, video and audio streaming services, computer input preparation services, microfilm imaging services, and computer time rental. (*Id.* at 684.)

C. Analysis

I conclude that I must deny this appeal because Appellant has not established that the CO clearly erred in selecting NAICS code 541512 for this procurement. Given that Appellant has not established that NAICS code 541512 is improper for this RFP, OHA need not consider any alternate code or size standard. It is settled law that "OHA will not assign a different NAICS code to a procurement unless the CO's choice of NAICS code is shown to be clearly erroneous." *NAICS Appeal of Pac. Shipyards Int'l, LLC*, SB A No. NAICS-5464, at 7 (2013); *NAICS Appeal of Env't. Int'l Ltd.*, SBA No. NAICS-5628, at 7 (2014); *NAICS Appeal of National Electric Coil*, SBA No. NAICS-5666, at 8 (2015). However, as explained below, there are numerous reasons why the CO's code more appropriately fits the RFP's requirements.

Appellant argues that NAICS code 518210 is the appropriate code for this procurement. Nevertheless, the *NAICS Manual* clearly describes code 518210 as covering the provision of infrastructure for hosting or data processing services. OHA has held that this code applies only to procurements which provide infrastructure for the hosting of data processing or web based services. *NAICS Appeal of Information Ventures, Inc.*, SBA No. NAICS-4767 (2006); *NAICS Appeal of Panacea Consulting, Inc.*, SBA No. NAICS-4582 (2003). As VT points out, This

procurement does not meet code 518210's call for the provision of infrastructure or hosting services, which, along with the equipment needed to provide the services, are to be provided by the contractor. *NAICS Appeal of 1st American Systems and Services, LLC*, SBA No. NAICS-5119 (2010) (finding that code 518210 requires the concern accomplishing the data processing to do it using contactor infrastructure and equipment.)

The procurement calls for the further development, management and maintenance of the WRAPS system. The contractor will also have to operate the WRAPS helpdesk, and provide training of WRAPS to new users. Further critical duties include maintaining, managing, enhancing and delivering the WRAPS application software, including fixing defects and maintaining tools and databases. After implementing the WRAPS 2 roadmap, the contractor must still provide WRAPS maintenance fixes and deliver software releases, which may include new functions. Other WRAPS-related work include WRAPS system operations and maintenance, operating and maintaining communication equipment, systems administration, network administration, and system security and accreditation and authorization. RFP § C.4. These tasks fall within the area of software development covered by NAICS code 541512.

Here, Appellant bases its appeal primarily upon the RFP's requirement that contractor personnel will perform data processing of refugee application and movement information out of the RPC. *See* Section II.B, *supra*. Further, Appellant estimates the WRAPS 2 software development work represents less than 10% of contract effort and value, and therefore AICs code 541512 is inappropriate. Appellant, however, provides no support for this estimate, nor does Appellant offer detailed calculations of the percentage of work allocable to each of the seven primary tasks listed in the PWS. Appellant's assertions are thus unconvincing. Conversely, as the CO and VT both point out the vast majority of the work is related to further WRAPS development, and the contract's largest CLIN is X001D, WRAPS Software Development System Operation and Maintenance.

Appellant also claims that because WRAPS 2 has been in development for five years, and the new contractor will not start from scratch, the CO's code choice is erroneous. Countering Appellants' claims, DOS reasonably argues that the continued support of WRAPS and the development and implementation of WRAPS 2 are the RFP's primary tasks. *See* Section II.C, *supra*. The RFP is clear in that beyond program management duties, the work sought falls more closely with code 541512 than those with code 518210. The RFP expects that the contractor will provide users of WRAPS with system maintenance, support and training. While the CO's code choice may not fully encapsulate all of the RFP's requirements, it more closely follows the RFP's primary contractor responsibilities. *NAICS Appeal of Nelson Eng'g Co.*, SBA No. NAICS-5166, at 6 (2010) (recognizing that "no one NAICS code covers all the services required by the instant RFP" and selecting the code which represents a plurality of the work.).

By contrast, the CO's designated code 541512 explicitly covers Computer Systems Design Services. The RFP calls for software development, and, as VT points out WRAPS development, operation and maintenance is the contract largest CLIN. Further, software development is by far the largest single category of labor in the Government estimate, according to the information provided by the CO. The CO's code also considers that contractors will "often

install the system and train and support users of the system." *NAICS Manual* at 753. These are all duties explicitly considered by the RFP.

The CO's code choice is further supported by the RFP's evaluation factors. A contractor's technical proficiency and approach will be evaluated by how the contractor performs the "Discovery Task", completes the MVP for WRAPS, successfully releases software, and maintains and enhances the case management solutions used by DOS. (RFP § L.13.2.1) Again, these are all duties that more appropriately fall under code 541512 and not 518210. Accordingly, I find that Appellant's proposed code is plainly inappropriate here.

In sum, the foregoing facts clearly show that Appellant has failed to meet its burden of showing the CO's NAICS code choice is clearly erroneous. The CO correctly determined that code 541512 is the most appropriate code for the work sought here, and I therefore deny the appeal.

IV. Conclusion

For the above reasons, the appeal is DENIED. The CO correctly selected NAICS code 541512 for this procurement. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN
Administrative Judge