

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

NAICS APPEAL OF:

Rollout Systems, LLC,

Appellant,

Solicitation No. N00421-17-R-0040

Naval Air Warfare Center Aircraft Division
Patuxent River, Maryland

SBA No. NAICS-5901

Decided: April 30, 2018

APPEARANCES

Jeffrey S. Cox, President, Rollout Systems, LLC, California, Maryland

Edward J. Tolchin, Esq., Offit Kurman, Bethesda, Maryland, for Resource Management Concepts, Inc.

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Lakeeta J. Young-Hill, Contracting Officer, Naval Air Warfare Center — Aircraft Division, Patuxent River, Maryland

DECISION

I. Introduction and Jurisdiction

On March 27, 2018, the Naval Air Systems Command, Naval Air Warfare Center Aircraft Division (NAWCAD) issued Request for Proposals (RFP) No. N00421-17-R-0040 seeking a contractor to provide “full spectrum information technology (IT) engineering and management support services” for the Research, Development, Test and Evaluation (RDT&E) Infrastructure Division of NAWCAD's Integrated Battlespace Simulation and Test Department. (RFP at 8.) The Contracting Officer (CO) set aside the procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 541715, Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology). NAICS code 541715 ordinarily is associated with a size standard of 1,000 employees, but the RFP indicated that the procurement fit within the exception for Aircraft, Aircraft Engine and Engine Parts, which utilizes a 1,500-employee size standard.

On April 4, 2018, Rollout Systems, LLC (Appellant) filed the instant appeal. Appellant asserts that the correct NAICS code for this procurement is 541330, Engineering Services. NAICS code 541330 normally corresponds with a size standard of \$15 million average annual receipts, although there are three exceptions which instead utilize a size standard of \$38.5 million. For the reasons discussed *infra*, the appeal is granted in part.

The U.S. Small Business Administration (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

According to the RFP, the contractor will provide “full spectrum information technology (IT) engineering and management support services” for the RDT&E Infrastructure Division. (RFP at 8.) Specifically, the scope of the contract includes support in the following areas:

- a) Network engineering, architecture, design and implementation.
- b) Cyber engineering and T&E facility development.
- c) Aircraft test data solutions.
- d) Network maintenance and operations.
- e) Network circuits.
- f) Network security/Firewall controls.
- g) System administration.
- h) Cyber Security.
- i) High Performance Computing (HPC).

(*Id.*) The RFP explains that the RDT&E Infrastructure Division “develops, operates, and maintains secure, reliable communications and computing infrastructure to RDT&E labs, enabling these labs to develop and test new and innovative weapon systems.” (*Id.*) In addition, “[t]he Division provides the engineering development, management, and oversight of the architecture, security, processes and procedures used by the RDT&E community for data communications.” (*Id.*) The computer infrastructure to be supported by the contractor includes “an estimated 500 switches, over 20 routers, and estimated 7500+ connected devices at all locations.” (*Id.*)

The RFP indicates that NAWCAD plans to award a single indefinite-delivery/indefinite-quantity (ID/IQ) contract. (*Id.* at 81.) Specific projects will be defined in task orders issued after award of the base contract. (*Id.* at 6-7, 52-53.) The RFP divides the required work into 12 task areas: (1) Network Engineering & Installation; (2) Lab Embedded System Administration / Information Compliance Assistance; (3) High Performance Computing; (4) Connectivity Services; (5) System Administration; (6) Engineering Application Hosting; (7) Engineering

Hardware & Software Services; (8) Network Operations and Security Center Operations; (9) Joint Mission Environment Test Capability System Control Team; (10) Protected Distribution System; (11) Acquisition Support; and (12) Studies, Analysis, Assessments, Recommendations, Planning, System Design and Acquisition. (*Id.* at 15-21.) Approximately 80% of the work will be performed at Government sites and the remaining 20% at Contractor sites. (*Id.* at 10, 80.) NAWCAD “will provide required access to Corporate Computer Systems/networks, including web servers and applicable databases or applications, and authorizations, account numbers and passwords as necessary to carry out assigned tasks.” (*Id.* at 10.)

The RFP specifies 14 labor categories that will be used during contract performance, and provides estimated hours for each of the 14 labor categories for each year of the contract. (*Id.* at 78-80.) The 14 labor categories are: (1) Information Security Analyst, Junior; (2) Administrator, Journeyman; (3) Systems Engineer, Journeyman; (4) Systems Engineer, Senior; (5) Computer Specialist, Journeyman; (6) System Administrator, Journeyman; (7) System Administrator, Senior; (8) Systems Analyst, Junior; (9) Systems Analyst, Journeyman; (10) Systems Analyst, Senior; (11) Manager, Senior; (12) Network Engineer, Journeyman; (13) Network Engineer, Senior; and (14) Business Systems Analyst, Journeyman. (*Id.* at 22-25.) The RFP explains that a Junior level employee will have less than three years' experience and a Bachelor's degree. (*Id.* at 22.) A Journeyman employee will have three to ten years' experience and a Bachelor's degree. (*Id.*) A Senior employee will have more than ten years' experience and a Master's degree. (*Id.*)

The RFP includes descriptions of the work to be performed by employees in each of the labor categories. The descriptions of the three Systems Analyst labor categories (*i.e.*, Junior, Journeyman, and Senior) state:

Computer Systems Analyst - Analyze science, engineering, business, and other data processing problems to implement and improve computer systems. Analyze user requirements, procedures, and problems to automate or improve existing systems and review computer system capabilities, workflow, and scheduling limitations. May analyze or recommend commercially available software.

(*Id.* at 24.) The descriptions of the two System Administrator labor categories (Journeyman and Senior) state:

Network and Computer Systems Administrators - Install, configure, and support an organization's local area network (LAN), wide area network (WAN), and Internet systems or a segment of a network system. Monitor network to ensure network availability to all system users and may perform necessary maintenance to support network availability. May monitor and test Web site performance to ensure Web sites operate correctly and without interruption. May assist in network modeling, analysis, planning, and coordination between network and data communications hardware and software. May supervise computer user support specialists and computer network support specialists. May administer network security measures.

(*Id.* at 23-24.) The descriptions of the two Network Engineer labor categories (Journeyman and Senior) state:

Network and Computer Systems Administrators - Install, configure, and maintain an organization's local area network (LAN), data communications network, operating systems, and physical and virtual servers. Perform System monitoring and verify the integrity and availability of hardware, network, and server resources and systems. Review System and application logs and verify completion of scheduled jobs, including system backups. Analyze network and server resource consumption and control user access. Install and upgrade software and maintain software licenses. May assist in network modeling, analysis, planning, and coordination between network and data communications hardware and software.

(*Id.* at 25.) The descriptions of the two Systems Engineer labor categories (Journeyman and Senior) state:

Computer Hardware Engineers - Research, design, develop, or test computer or computer-related equipment for commercial, industrial, military, or scientific use. May supervise the manufacturing and installation of computer or computer-related equipment and components.

(*Id.* at 23.)

The RFP includes two sample tasks that offerors are instructed to address in their proposals. For the first sample task, offerors will “propose a secure method of transmitting [aircraft and weapon systems] data to various labs and facilities at NAWCAD”, along with “a long-term data storage, archival, index and retrieval solution”. (*Id.* at 71-72.) For the second sample task, offerors will “propose a solution discussing the types of communications networks, cyber security considerations, and data storage systems that would be required” to support a “high fidelity multi-ship battlespace simulation”. (*Id.* at 72.)

According to the RFP, proposals will be evaluated based on three evaluation factors: (1) Technical; (2) Past Performance; and (3) Cost/Price. (*Id.* at 84.) The Technical factor is comprised of three subfactors: (1) Understanding of the Work; (2) Workforce; and (3) Management & Transition Plan. (*Id.*) Proposals are due May 1, 2018. (RFP, Amendment 0002.)

B. The Appeal

On April 4, 2018, Appellant filed the instant appeal. Appellant contends that NAICS code 541715 is improper for this procurement because the RFP does not call for research and development. Appellant urges OHA to assign NAICS code 541330, Engineering Services, which, Appellant asserts, was the NAICS code identified in a pre-solicitation Sources Sought notice, and which also was assigned to a predecessor contract for similar work. (Appeal at 1.)

Appellant reviews the task areas described in the RFP, and concludes that “there is no R&D work identified to be performed for this effort.” (*Id.* at 2.) Further, “[n]one of the labor categories have R&D attributes specified in their descriptions or have responsibilities and education requirements that support R&D.” (*Id.*) Instead, Appellant maintains, the contractor will perform information technology support services, specifically “the operation and maintenance of the RDT&E network (i.e. operation and maintenance of [NAWCAD's] IT systems.” (*Id.* at 4.) Although this procurement is “in support of an RDT&E organization”, the contractor will not itself be engaged in research and development. (*Id.* at 2.) Therefore, the CO clearly erred in selecting NAICS code 541715.

To support its appeal, Appellant highlights that, in the Sources Sought notice, the CO stated that the appropriate Product Service Code (PSC) for the procurement was D316. (*Id.* at 1.) PSC D316 includes network engineering and operational support, but not research and development. (*Id.* at 2-3.)

C. RMC's Response

On April 20, 2018, Resource Management Concepts, Inc. (RMC), another potential offeror, intervened and responded to the appeal. RMC agrees with Appellant that the CO clearly erred in selecting NAICS code 541715. According to RMC, the most appropriate NAICS code is 541330 with the Military and Aerospace Equipment and Military Weapons (MAE&MW) exception, which has a size standard of \$38.5 average annual receipts.

RMC observes that the Sources Sought notice referenced NAICS code 541330 with the MAE&MW exception, as well as PSC D316. (RMC Response at 4.) The change to NAICS code 541715 and PSC AC15 is “inconsistent with Navy practice” for IT service and infrastructure support procurements, which is to use either “NAICS 541330 or the NAICS 5415x series”. (*Id.*) RMC lists several of these other Navy contracts. (*Id.* at 4-5.)

RMC describes the RFP as requiring “day-to-day information technology and information management support services, operations, systems, computer programming, and data processing, using engineering personnel and Commercial Off the Shelf (‘COTS’) hardware and software.” (*Id.* at 6.) Under OHA case law, though, a research and development NAICS code such as 541715 is suitable only when the procurement involves the creation of new products or processes. (*Id.* at 10.) Indeed, OHA has opined that “[t]he development of a new or improved product is the predicate of a research and development contract.” (*Id.* at 11, quoting *NAICS Appeal of Evanhoe & Associates, LLC*, SBA No. NAICS-5505, at 14 (2013).)

RMC maintains that “[t]here is no original research and experimental development” being conducted by the contractor in this RFP, nor is the contractor's work an integral part of NAWCAD's research and development efforts. (*Id.* at 14.) Further, the RFP does require the contractor to engage in operations support, computer programming, and data processing, tasks which are excluded from the definition of research and development under 13 C.F.R. § 121.201, n.11. (*Id.* at 14-15.) Thus, the CO's selection of NAICS code 541715 is incorrect. (*Id.* at 15.)

RMC argues that, because NAWCAD is seeking “engineering services for numerous COTS software and hardware products to support the operations and maintenance of a network infrastructure for the test and evaluation of NAVAIR aircraft, avionics, and weapons systems”, the most appropriate NAICS code is 541330 with the MAE&MW exception. (*Id.* at 15.) Alternatively, NAICS code 541512, Computer Systems Design Services, or another “NAICS code[] in the 5415x series”, could apply. (*Id.* at 15 and 5 n.2.)

D. MIL's Response

On April 20, 2018, The MIL Corporation (MIL), another potential offeror and the incumbent prime contractor, intervened and responded to the appeal. MIL supports the CO's choice of NAICS code 541715 and urges OHA to deny the appeal. (MIL Response at 1-2.)

MIL disputes Appellant's characterization of the RFP as requiring no true research and development work. (*Id.* at 2.) Rather, MIL maintains, “the IT engineering and management support services to be provided [here] are an integral part of the research and development activities performed by the RDT&[E] Infrastructure Division.” (*Id.*) According to MIL, the computing infrastructure “is not only essential for the conduct of the Division's research, but the contract will also require the contractor to research, develop, and produce new technology infrastructure in support of that ongoing research.” (*Id.*)

MIL argues that the services required by the RFP “include research and development efforts to be undertaken by the contractor beyond merely ‘full spectrum IT support’”. (*Id.* at 4.) In support, MIL points to language in the RFP for task area 3.3.1, Network Engineering & Installation, and task area 3.3.12, Studies, Analysis, Assessments, Recommendations, Planning, System Design and Acquisition. Under Network Engineering & Installation, the contractor may perform:

3.3.1.1 Engineering *design*, manufacturing, fabrication, *development*, installation, integration, *testing, upgrade, analysis*, and maintenance/expansion of the RDT&E network environment.

3.3.1.2 Manufacturing requirements ranging from *complete system construction, conceptual planning, research, and development efforts* to customization of existing configurations.

(*Id.* at 4-5, quoting RFP at 15, emphases MIL's.) And, as part of Studies, Analysis, Assessments, Recommendations, Planning, System Design and Acquisition, the contractor may perform:

c) *Development* and assessment of solutions and alternatives.

(*Id.* at 5, quoting RFP at 21, emphasis MIL's.) MIL also observes that the descriptions of the two System Engineer labor categories state:

Computer Hardware Engineers - Research, design, develop, or test computer or computer-related equipment for commercial, industrial, military, or scientific

use. May supervise the manufacturing and installation of computer or computer-related equipment and components.

(*Id.* at 5, quoting RFP at 23, italics MIL's.)

As for Appellant's reliance on the Sources Sought notice and the predecessor contract, MIL maintains both are irrelevant to this appeal, citing OHA precedent. (*Id.* at 5-6.) This RFP contains different work than the predecessor contract, MIL argues, including “an almost threefold increase in the overall level and scope of effort . . . [,] new responsibilities for cybersecurity, and most importantly, the increased emphasis on developmental work on the technology infrastructure noted above.” (*Id.* at 6.)

MIL contends that OHA case law supports MIL's position that a research and development NAICS code is appropriate so long as the contractor's work is “an integral part of an agency's research, and essential for the conduct of the research . . . [e]ven if the contractor will not perform any research itself. . . .” (*Id.* at 7, quoting *NAICS Appeal of LJR Solutions, LLC*, SBA No. NAICS-5790, at 7 (2016).) The services required here “are ‘**an integral part of [NAVAIR's] research, and essential for the conduct of the research,**’ because the research cannot be performed without the computing infrastructure.” (*Id.* at 10, emphasis MIL's.) In MIL's view, “the IT infrastructure that the RDT&E Infrastructure Division supports is in many ways interwoven into the research and development itself.” (*Id.*)

MIL acknowledges that, based on OHA decisions, a procurement assigned a research and development NAICS code must be for research and development, including the creation of new or improved processes or products. (*Id.* at 8, citing *NAICS Appeal of Evanhoe & Associates*, SBA No. NAICS-5505 (2013).) Here, MIL points to the two sample tasks, which according to MIL “require the contractor to research and develop solutions using a combination of existing and newly created components, tools, techniques, and processes that will work hand-in-hand with the Government research being performed.” (*Id.* at 12.)

E. CO's Response

Also on April 20, 2018, the CO responded to the appeal. The CO explains that “the original intent for this requirement was to compete it under the SeaPort-e Multiple Award Contract (MAC).” (CO's Response at 1.) NAICS code 541330 was selected because “all SeaPort-e MACs and subsequent task orders were awarded using a single NAICS [code], 541330; and other NAICS [codes] were not to be referenced in SeaPort-e solicitations or task orders.” (*Id.*)

Once it was decided that the requirement would not be competed through the SeaPort-e MAC, the CO reexamined the assigned NAICS code and concluded that NAICS code 541715 would be most appropriate. (*Id.* at 1.) The CO observes that, according to the *NAICS Manual*,¹ NAICS code 541715 includes “research and experimental development in . . . **computers**”. (*Id.* at 2, quoting *NAICS Manual* at 476, emphasis CO's.) The CO continues:

¹ Executive Office of the President, Office of Management and Budget, *North American Industry Classification System-United States* (2017), available at <http://www.census.gov>.

The effort described in [the RFP] is full spectrum information technology engineering and management support services for [NAWCAD's] Integrated Battlespace Simulation and Test (IBST) Department, ***Research, Development, Test and Evaluation Division*** in support of NAVAIR aircraft, avionics, and weapons systems. The statement of work includes multiple references to research, design and development functions, as do the labor category functional descriptions. In my assessment, NAICS code 541715 is appropriate for the “computer” industry while also highlighting the unique/research and development related nature of the services being acquired.

(*Id.*, emphasis CO's.)

F. RMC's Reply

Also on April 20, 2018, RMC filed what it characterizes as a “supplemental response in support of appeal” but which is actually in the nature of a reply to MIL's response. Under applicable regulations governing NAICS code appeals, a reply to a response is not permitted unless OHA so directs. 13 C.F.R. § 134.309(d). No such direction occurred here. Accordingly, RMC's reply is excluded from the record and has not been considered for purposes of this decision. *NAICS Appeal of T3 TigerTech*, SBA No. NAICS-5674, at 2 n.2 (2015); *NAICS Appeal of Allserv, Inc.*, SBA No. NAICS-5629, at 6 (2014).

G. NAICS Manual Descriptions

The NAICS code designated by the CO, 541715, Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology), covers:

establishments primarily engaged in conducting research and experimental development (except nanotechnology and biotechnology research and experimental development) in the physical, engineering, and life sciences, such as agriculture, electronics, environmental, biology, botany, computers, chemistry, food, fisheries, forests, geology, health, mathematics, medicine, oceanography, pharmacy, physics, veterinary and other allied subjects.

NAICS Manual at 476. The *NAICS Manual* defines “research” as “original investigation undertaken on a systematic basis to gain new knowledge”, and “experimental development” as “the application of research findings or other scientific knowledge for the creation of new or significantly improved products or processes”. *Id.* at 475.

For NAICS code 541715, a footnote in the Size Standards table states that:

“Research and Development” means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

13 C.F.R. § 121.201, n.11(a).

The NAICS code Appellant and RMC advocate, 541330, Engineering Services, covers:

establishments primarily engaged in applying physical laws and principles of engineering in the design, development, and utilization of machines, materials, instruments, structures, processes, and systems. The assignments undertaken by these establishments may involve any of the following activities: provision of advice, preparation of feasibility studies, preparation of preliminary and final plans and designs, provision of technical services during the construction or installation phase, inspection and evaluation of engineering projects, and related services.

NAICS Manual at 465. Examples of work included under this NAICS code are “[c]ivil engineering services”, “[e]nvironmental engineering services”, “[c]onstruction engineering services”, “[m]echanical engineering services”, and “[e]ngineers' offices”. *Id.*

NAICS code 541513, Computer Facilities Management Services, covers:

establishments primarily engaged in providing on-site management and operation of clients' computer systems and/or data processing facilities. Establishments providing computer systems or data processing facilities support services are included in this industry.

Id. at 470. Index entries which refer to this NAICS code are: “Computer systems facilities (*i.e.*, clients' facilities) management and operation services”; “Data processing facilities (*i.e.*, clients' facilities) management and operation services”; “Facilities (*i.e.*, clients' facilities) management and operation services, computer systems or data processing”; and “Facilities (*i.e.*, clients' facilities) support services, computer systems or data processing”. *Id.* at 716, 730, 753.

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

Having reviewed the RFP, the descriptions in the *NAICS Manual*, OHA's prior decisions, and the arguments of the parties, I must agree with Appellant and RMC that the instant procurement does not call for research and development. As a result, the CO clearly erred in selecting NAICS code 541715.

As discussed above, the *NAICS Manual* states that NAICS code 541715 is appropriate for procurements that involve “research and experimental development . . . in the physical, engineering, and life sciences. . . .” Section II.G, *supra*. The *NAICS Manual* defines “research” as “original investigation undertaken on a systematic basis to gain new knowledge”, and “experimental development” as “the application of research findings or other scientific knowledge for the creation of new or significantly improved products or processes”. *Id.* Applying these provisions, OHA has long held that procurements classified under a research and development NAICS code “must be for research and development, and thus must look to creating new processes or products.” *NAICS Appeal of Dayton T. Brown, Inc.*, SBA No. NAICS-5164, at 5-6 (2010) (emphasis in original). OHA will overturn the assignment of a research and development NAICS code if the procurement does not call for both research and experimental development. *NAICS Appeal of Delphi Research, Inc.*, SBA No. NAICS-5377 (2012), *aff'd sub nom. Arcata Associates, Inc. v. United States*, 110 Fed. Cl. 290 (2013).

In the instant case, the RFP indicates that the contractor will perform “full spectrum information technology (IT) engineering and management support services” for the RDT&E Infrastructure Division. Section II.A, *supra*. Most of the tasks the contractor will perform are best described as network administration functions, including “[n]etwork maintenance and operations”, “[n]etwork security/[f]irewall controls”, “[s]ystem administration”, “[n]etwork circuits”, and “[n]etwork engineering, architecture, design and implementation”. *Id.* In addition, the contractor will be responsible for “[c]yber [s]ecurity”, “[c]yber engineering and T&E facility development”, “[a]ircraft test data solutions”, and “High Performance Computing”. *Id.* Thus, the principal services required by this RFP are network administration; cyber security; data storage; and other information technology and computer-related technical support. The networks and computer systems to be supported by the contractor are already in existence, and therefore will not be invented or created by the contractor. *Id.* Accordingly, because the contractor will be engaged neither in original investigations to gain new knowledge, nor in the creation of new products or processes, a research and development NAICS code is improper for this procurement. This conclusion is bolstered by the labor categories described in the RFP, which consist overwhelmingly of network and computer specialists, without advanced research or educational requirements as would be expected for a research and development effort. *Id.*

In her response to the appeal, the CO highlights that, according to the *NAICS Manual*, NAICS code 541715 includes “research and experimental development in . . . computers”. Section II.E, *supra*. This language, though, merely indicates that NAICS code 541715 may apply

when the procurement is for research and development and computers are the subject matter of that research and development. Thus, the *NAICS Manual* lists “computers” as one among many scientific fields — such as “chemistry” or “medicine” — that potentially may be the subject of research and development. Section II.G, *supra*. The instant RFP does not call for research and experimental development in any field, so NAICS code 541715 is improper for this solicitation.

As RMC observes, SBA regulations at 13 C.F.R. § 121.201 n.11(a) further establish that a research and development NAICS code is unsuitable for this procurement. This is true because the regulation restricts “research and development” to mean only “laboratory or other physical research and development”, and expressly excludes “computer programming”, “data processing”, and “engineering, operations, systems, or other nonphysical research”. Section II.G, *supra*. Based on this regulation, OHA has recognized that “information technology functions . . . are excluded” from the definition of research and development. *NAICS Appeal of Info. Ventures, Inc.*, SBA No. NAICS-5544, at 6 (2014). Here, the contractor will perform a variety of IT support, computer programming, and data processing, activities which cannot be considered “research and development” pursuant to 13 C.F.R. § 121.201 n.11(a). Furthermore, the contractor will perform no laboratory or experimental work. Thus, the regulatory restrictions on the scope of “research and development” reinforce the notion that NAICS code 541715 is inappropriate for the instant RFP. *NAICS Appeal of Advanced Sys. Tech., Inc.*, SBA No. NAICS-4774, at 16 (2006) (“[the] exclusion of operations research, systems research, and other nonphysical research, as well as computer programming and data processing, excludes the work required under this solicitation from being classified as research and development.”).

MIL defends the choice of NAICS code 541715 by arguing that the contractor will perform work that is “an integral part of the research and development activities performed by the RDT&[E] Infrastructure Division.” Section II.D, *supra*. MIL points to OHA's decision in *NAICS Appeal of LJR Solutions, LLC*, SBA No. NAICS-5790 (2016), where OHA affirmed the use of a research and development NAICS code for a research support procurement.

MIL's argument is unpersuasive for two reasons. First, unlike the procurement in *LJR Solutions*, which was directly in support of a research laboratory, it is not evident here that the RDT&E Infrastructure Division does itself conduct research and development. According to the RFP, the RDT&E Infrastructure Division “develops, operates, and maintains secure, reliable communications and computing infrastructure to RDT&E labs, enabling these labs to develop and test new and innovative weapon systems.” Section II.A, *supra*. In addition, “[t]he Division provides the engineering development, management, and oversight of the architecture, security, processes and procedures used by the RDT&E community for data communications.” *Id.* Based on the RFP, then, the RDT&E Infrastructure Division provides the computer and communications infrastructure to support research and development conducted by the “RDT&E labs” and “the RDT&E community”, but does not itself engage in research and development work. Inasmuch as the RDT&E Infrastructure Division is not a research organization, services in support of that Division likewise would not be considered research and development.

Second, even assuming that the RDT&E Infrastructure Division does in fact conduct research and development, OHA has repeatedly held that the mere fact that the contractor will provide assistance or support to a research organization is not sufficient to justify classifying the

procurement as research and development. *E.g.*, *Info. Ventures*, SBA No. NAICS-5544, at 5-6; *Delphi Research*, SBA No. NAICS-5377, at 9; *NAICS Appeal of Bevilacqua Research Corp.*, SBA No. NAICS-5243 (2011) (administrative support services for Corps of Engineers research and development center could not be classified as research and development); *NAICS Appeal of Info. Ventures, Inc.*, SBA No. NAICS-4953, at 6-7 (2008) (when a contractor would “not be conducting physical research of any kind” nor “performing any of the preparatory work for research, of the type found to be an integral part of research,” it was clear error to designate a research and development NAICS code to the procurement). Rather, such a NAICS code is proper only if the contractor will directly perform work that is an integral part of the research and development. Thus, in *LJR Solutions*, OHA concluded that a research and development NAICS code was appropriate because “the contractor will be deeply involved in the research process.” *LJR Solutions*, SBA No. NAICS-5790, at 7. OHA explained that “contractor personnel will be taking active part in the research, by administering injections, collecting samples, and overseeing the studies to be sure the proper protocols are followed”. *Id.* at 8.

In the instant case, the contractor will not assist with, nor substantively participate in, any research and development work. The contractor itself will not conduct research and development into aircraft, avionics, or weapons systems, and the RFP does not require that the contractor have expertise in such matters. Section II.A, *supra*. Further, the RFP does not delegate a significant portion of the research and development process for the contractor to perform independently. Instead, the contractor will perform IT support services to ensure reliable and secure networks and computer systems. *Id.* As the contractor here will not perform work that is integral to research and development, *LJR Solutions* is inapposite, and a research and development NAICS code is improper for this procurement.

Because Appellant has demonstrated that the CO erred in selecting NAICS code 541715, OHA must assign the NAICS code that best describes the principal purpose of the products or services being acquired. Section III.A, *supra*. In making this decision, OHA will consider, but is not limited to, the NAICS codes recommended by the parties. *E.g.*, *NAICS Appeal of Active Deployment Sys., Inc.*, SBA No. NAICS-5712 (2016) (selecting a code not advocated by any litigant).

Appellant and RMC contend that NAICS code 541330, Engineering Services, is most appropriate for this procurement, noting that this NAICS code was identified in a pre-solicitation Sources Sought notice. The CO, however, explains that NAICS code 541330 was initially selected not because it best described the required work, but because it was the only NAICS code available if the procurement were to be conducted under the SeaPort-e MAC. Section II.E, *supra*. Moreover, of the 14 labor categories specified in the RFP, only four have a title of “Engineer” (*i.e.*, two “Network Engineers” and two “Systems Engineers”), and the descriptions of these labor categories make clear that the positions are in the nature of network and computer hardware specialists, not engineers performing a traditional engineering discipline. Section II.A,

supra. I therefore cannot conclude that this RFP predominantly seeks engineering services.²

Rather, the most appropriate NAICS code for this RFP is 541513, Computer Facilities Management Services. According to the *NAICS Manual*, NAICS code 541513 covers:

establishments primarily engaged in providing on-site management and operation of clients' computer systems and/or data processing facilities. Establishments providing computer systems or data processing facilities support services are included in this industry.

Section II.G, *supra*. Here, the contractor will perform information technology support services, particularly the operation and maintenance of the RDT&E network and other computer systems. Section II.A, *supra*. These network and computer systems are owned by the client (*i.e.*, the Government), not by the contractor, and the RFP states that approximately 80% the work will be performed on-site at Government facilities. *Id.* Further, OHA has previously found NAICS code 541513 appropriate for a procurement, such as found here, that calls for the on-site management and operation of Government computer systems. *Delphi Research*, SBA No. NAICS-5377, at 8-10. Accordingly, NAICS code 541513 covers the majority of the work to be performed by the contractor on this procurement, and is the most appropriate NAICS code for this RFP.

IV. Conclusion

Appellant has shown that the CO clearly erred in selecting NAICS code 541715, and the appeal is GRANTED to that extent. The most appropriate NAICS code for this procurement is 541513, Computer Facilities Management Services, with a size standard of \$27.5 million average annual receipts. Accordingly, because this decision is being issued before the close of the solicitation, the CO MUST amend the RFP to change the NAICS code designation from 541715 to 541513. FAR 19.303(c)(8); *Eagle Home Med. Corp.*, B-402387, March 29, 2010, 2010 CPD ¶ 82.

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

KENNETH M. HYDE
Administrative Judge

² Appellant also raises arguments based on the U.S. General Services Administration's *Product and Service Codes Manual*. The *Product and Service Codes Manual*, though, has no bearing in a NAICS code appeal. *See generally* Section III.A, *supra*. Accordingly, it is unnecessary to address this portion of Appellant's arguments in detail. SBA No. NAICS-5901, 2018 (S.B.A.), 2018 WL 2