

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

NAICS APPEAL OF:

STG, Inc.,

Appellant,

Solicitation No. W91RUS-18-R-DA04  
Department of the Army  
Army Contracting Command  
Fort Huachuca, Arizona

SBA No. NAICS-5936

Decided: July 3, 2018

APPEARANCES

John E. Jensen, Esq., Mary E. Buxton, Esq., Los Angeles, California, for STG, Inc.

Todd J. Liebman, Esq., Army Materiel Command Legal Center — APG, Ft. Huachuca Division, Ft. Huachuca, Arizona, for Department of the Army

DECISION

I. Introduction and Jurisdiction

On May, 18 2018, the Department of the Army, Army Contracting Command, (ACC) issued Request for Proposals (RFP) No. W91RUS-18-R-DA04 seeking a contractor to provide “Non-personal information technology (IT) services and support requirements” for the United States Army Regional Cyber Center Continental United States (USARCC-C). (RFP, at 4). The Contracting Officer (CO) set aside the procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 541513, Computer Facilities Management Services with a corresponding \$27.5 million annual receipts size standard.

On June 2, 2018, STG, Inc. (Appellant) filed the instant appeal. Appellant asserts that the correct NAICS code for this procurement is 517311, Wired Telecommunications Carriers with a corresponding 1,500 employee size standard.<sup>1</sup> For the reasons discussed *infra*, the appeal is denied.

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

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<sup>1</sup> In NAICS 2012, Wired Telecommunications Carriers was designated as 517110. Currently, under NAICS 2017, the designation is 517311.

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 Performance Work Statement

According to the Performance Work Statement (PWS), the contractor will provide “non-personal Information Technology (IT) services and support requirements” for the US Army Regional Cyber Center — Continental United States (USARCC-C). (PWS, at 1.) The PWS explains the role of the USARCC-C as:

The USARCC- C is [] under Operational Control (OPCON) of ARCYBER, Administrative Control (ADCON) of NETCOM and in Direct support of the 7th Sig Cmd, (T), and is responsible to operate, manage, and defend the Army's Unclassified But Sensitive Internet Protocol Router Network (NIPRNet) and Secure Internet Protocol Router Network (SIPRNet) CONUS portion of the Global Information Grid (GIG), and the NIPRNet and SIPRNet [Department Information Network — Army (DoDIN-A)]. The USARCC-C supports the operation and maintenance of the [Continental United States (CONUS)] Point of Presence (PoP) for the Southwest Asia (SWA) Afghanistan Mission Network (AMN) extension to CONUS-based units. This network is the Global Mission Network (GMN). The USARCC-C functions as part of a larger joint environment, responding to the Theater Combatant Commanders, the Army Cyber Command (ARCYBER) and 2nd Army, and Army Cyber Command's Army Cyberspace Operations and Integration Center (ACOIC) which operates the GIG in support of Department of Defense (DOD) operations around the world.

(*Id.* at 3-4.) During the life of the contract, the USARCC-C may support Army Network Enterprise management of Outside the Continental United States (OCONUS) Theaters. The technical requirements of the contractor in supporting the USARCC-C include: Network Services, Enterprise Services, Unified Capabilities, Computer Network Defense Services, CONUS DoDIN-A Operations, Defensive Cyberspace Operations (DCO) Support Services, Mission Support Services, Information Technology Infrastructure Library, and Administrative/Technical Tasks. (*Id.* at 1.)

Contractor personnel must possess the “management and technical knowledge, skills, expertise, and experience” necessary in order to complete the requirements of the contract. (*Id.* at 6.) Those contractor personnel supporting DCO must have expertise in one or more of the following functional categories: “Information Security analysis, cyber security analysis, incident response, systems analysis, database administration, network administration, web application development, penetration testing, computer forensics analysis with specialized experience using Information Technology (IT) cyber security tools (i.e. IPS, IDS, Nessus, Metasploit, Core Impact, Web Inspect, etc.) and operating systems (i.e. Windows 7.x/10.x, LINUX, MAC, etc.)”

(*Id.* at 6.) Key technical personnel must have an “in depth understanding of the technical requirements and the ability, knowledge, experience, certifications, and skills to perform” the requirements of the contract at the contract start date. (*Id.*) The contractor is required to ensure all personnel have completed the required training and possess the required certifications to “maintain pace with technological advances.” (*Id.* at 8.)

The Defense Information Systems Agency (DISA) has responsibility for the physical management of the networks serviced by the USARCC-C. (*Id.* at 4.) The technical requirements of the PWS include “network operations, systems operations, technical support, security management, process management, and service support” for the various environments that the USARCC-C services. (*Id.* at 20). Specifically, the contractor will support the USARCC-C in the operation, monitoring, sustainment and the securing of networks that are serviced by the USARCC-C. (*Id.* at 20-24, 26-30, 33, 50.)

The contractor is to provide Tier I, II, and III support for the technical requirements otherwise specified and often be available 24 hours a day, 7 days a week in providing on-call support. (*Id.*) Tier I support involves “first call resolution” and if necessary forwarding the call to Tier II support, which involves “applying workarounds, fulfilling standardized service requests, and forwarding complex issues to Tier III support.” (*Id.*) Tier III support involves identifying the root cause for complex technical issues and proposing recommendations for service and process improvements. (*Id.*)

Network services require the contractor to manage the network and domain name services for the NIPRNet and SIPRNet for the Army. (*Id.* at 20-21.) The contractor will also be responsible for operating, monitoring, sustaining and securing the Web proxy system on the Army network and the dynamic multipoint virtual private network. (*Id.* at 22-23.)

Enterprise services include the operating, monitoring, securing, and sustaining of the Area Processing Center, which is managed by the USARCC-C and requires such support as consolidating applications for users across the theater, data warehousing, remote end-user IT services, and disaster recovery. (*Id.* at 23.) The contractor must operate, monitor, sustain, and secure the NIPRNet and SIPRNet Active Directory Enterprise forest. (*Id.* at 24.) The contractor will also set up, configure, maintain, troubleshoot, and upgrade the NIPRNet and SIPRNet Web portals. (*Id.*) This includes designing and developing web graphics, web pages, web sites, interactive web-based, data-sharing application to store and display certain documents used by the USARCC-C. (*Id.* at 25.) The contractor will also support the USARCC-C in the management of multiple networks. (*Id.* at 25- 31.)

Unified Capabilities includes the management of Voice over Internet Protocol (VoIP), video, and collaborative services over Internet Protocol, legacy analog voice and video support. Specifically the contractor would manage the Enterprise Telephony Firewall and the Enterprise Voice over Internet Protocol systems. (*Id.* at 31.)

Providing Computer Network Defense Services require[s] the contractor to develop procedures and tools to protect the systems serviced by the USARCC-C from internal and external threats. (*Id.* at 33.)

In the management of the CONUS DoDIN-A operations, the contractor will be a member of the Operations Bridge Council and be responsible for the Operations Bridge Management function and have authority over all contractor technical resources and staff. The contractor will interact with the Operations Bridge DoDIN-A Support Analyst and Watch Officer in accordance with the Operations Bridge Managers Standard Operating Procedures (SOP). (*Id.* at 34-38.)

For the DCO, the contractor will provide services for Cyberspace Security Incident Investigation and Mitigation for the NIPRNet and SIPRNet, which include Network Infrastructure Security, Network Assistance Visits, Network, System, and Web Assessments, Network Security Monitoring, Detection, and Analysis, Forensic and Malware Analysis, and Computer Network Defense Application Development. (*Id.* at 38.) The contractor will be responsible for reporting incidents to law enforcement and will also provide technology feedback and forecasting of potential network threats to the CO's Representative and the Technical Monitor. (*Id.* at 43.)

Mission Support Services require the contractor to provide support for “approximately 1050 servers and 580 workstations operating on Microsoft or Unix/Linux operating systems, within the USARCC-C.” (*Id.* at 46.) This support includes “server baseline management, hardware and software installation, configuration, troubleshooting, scanning, patching, restoration of servers and workstations that support USARCC-C operations, Support Area Network support and backup of mission-critical assets, workstations, and servers.” (*Id.*)

The contractor will provide subject matter expertise in transforming the Information Technology Infrastructure Library (ITIL). This will require the contractor to develop, improve, integrate, measure, and report on the operational processes throughout USARCC-C. (*Id.* at 52.) The contractor will also assess, develop, maintain, and update ITIL documentation. Specifically, the contractor will support the USARCC-C in its service design, service transition, service operation, and continual service improvement. (*Id.* at 52-57.)

With respect to administrative and technical tasks, the contractor will create and modify statistical reports, draft, maintain and test the Continuity of Operations Plan (COOP), and build and sustain all devices, systems, peripherals, and applications in accordance with the Department of Defense directives. (*Id.* at 57.) The contractor will also participate in project management actions and develop tactics, techniques, and procedures and SOP. (*Id.* at 58.)

## B. Evaluation Factors

The CO utilized 1) technical capability/risk, 2) past performance, and 3) price/cost as the evaluation factors for this procurement. The subfactors for technical capability/risk are a) Staffing, b) Performance Management, and c) Quality Control. The CO states, “[w]ith regard to importance of the above sub-factors, Staffing is more important than Performance Management or Quality Control. Performance Management is more important than Quality Control.” (RFP, at 89.) For Staffing, “the Government will evaluate the Offeror's capability to provide a technical approach resulting in qualified technical personnel with the skills, practical experience, capability, experience, training, and technical and functional certifications and security

clearances to perform the work requirements identified in the PWS.” (*Id.* at 90.) The Government will evaluate the offeror's approach to effectively manage contract performance and the offeror's ability to meet the acceptable quality levels specified by the performance metrics. (*Id.* at 91.)

### C. Determination and Findings

In August 2017, the CO issued his Determination and Findings (D & F) regarding the decision to designate the instant procurement under NAICS code 541513. In the D & F, the CO asserts the U.S. Army Contracting Command conducted a scope of work analysis to determine which NAICS code best described work required by the instant procurement, and concluded that NAICS code 541513 “appeared to best describe the principal purpose of the services that will be acquired under the new contract.” (D&F, at 1.) In reaching this conclusion, the CO had taken into consideration feedback from Industry, reviewed the history of the procurement, coordinated with the Requiring Activity/G4 for technical input, received guidance from the in-house Small Business Professional, and the SBA Procurement Center Representative.

The CO's market research found the technical expertise required for the instant procurement is available under NAICS code 541513. Further, the D&F provides examples of similar procurements designated with the 54151\* series issued by the Army to establish that the use of NAICS code 541513 for “similar scope, type and magnitude of services is not without precedent.” (*Id.* at 2.)

The CO rejects Appellant's reliance on *NAICS Appeal of AOC Connect, LLC*, SBA No. NAICS-5165 (2010) and *NAICS Appeal of RCF Information Systems, Inc.*, SBA No. NAICS-5652, in its response to the ACC's August 2017 notification of a possible change in the NAICS code for the instant procurement, because the requirements in those cases “were providing a broader range and greater magnitude of operations of an Agency's nationwide telecommunications network that involved engineering and design, and other support of the hardware components of the network itself, that was directly applicable to NAICS code [517311] and therefore went well beyond the Operation, Management and Defense (OM&D) support services work” for the instant procurement. (*Id.* at 4.) The CO found the work completed under NAICS code 517110/517311 is more aligned with services already provided by the Defense Information System Agency (DISA), which has responsibility for physical management of the DoD Network. DISA is a Combat Support Agency which “provides, operates, and assures command and control, information and sharing capabilities, and globally accessible enterprise information infrastructure. . . .” (*Id.*)

The CO highlights that the *NAICS Manual's*<sup>2</sup> illustrative examples of work covered by NAICS 517110/517311 are not consistent with the USARCC-C IT Support Services requirements. These examples include Broadband internet service providers, local telephone carriers, and wired telecommunications carriers. In contrast, the illustrative examples of work under NAICS code 541513 are more similar to the USARCC-C work requirements. These

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<sup>2</sup> Executive Office of the President, Office of Management and Budget, *North American Industry Classification System-United States* (2017), also available at <https://www.census.gov>

include software installation services, custom computer programming services, and computer systems integration design services. The CO points out that “[a]lthough not specifically stated in the NAICS code definition, computer systems and data processing facilities include the networking infrastructure needed to support them.” (*Id.* at 4-5).

The CO refers to the *NAICS Manual's* description of NAICS subsector 541: “The distinguishing feature of the Professional, Scientific, and Technical Services subsector is the fact that most of the industries grouped in it have production processes that are almost wholly dependent on worker skills. . . . Thus the establishments classified in this subsector sell expertise.” (*Id.* at 5, citing *NAICS Manual* at 461.) The D&F found “[t]he key resource provided by the eventual contract awardee under this proposed solicitation is human capital. The technology required to perform the respective missions is handled through other acquisition channels, and the processes and procedures for execution are usually defined by regional requirements and expectations.” (*Id.* at 8.)

The CO describes the functions and service areas of the USARCC-C as: Communication Services, Computing Services, LandWarNet Operations, and Internal Services. The CO classifies Communication Services as “basic computer network services.” These include Computer Network Operations; Domain Name Service; reverse Web Proxy and Public Key Infrastructure device registration. Computing Services are automation-oriented enterprise level services. (*Id.* at 9) LandWarNet operations are “primarily composed of external facing activities” which include sensor operations; event analysis and response; computer network common relevant operational picture; and service desk.” (*Id.*) The USARCC-C's help desk also receives phone calls globally concerning the computer network or one of the applications. Internal Services are the services required to sustain the organization, which includes “running the internal computer networks and work stations, providing internal physical and computer network security, managing contracts, performing financial management, and applying best [Information Technology Infrastructure Library (ITIL)] practices.” (*Id.* at 10.)

The CO analyzed each section of the PWS to determine the most applicable NAICS code for each technical requirement and found that “multiple information technology efforts that constitute this solicitation can reasonably be grouped under NAICS code 541513, and thus constitute the bulk of the anticipated work. The majority of the USARCC-C requirements are services that are provided by and used by computers on the network.” (*Id.* at 15.) The CO concluded the report stating that, “[t]his requirement focuses on supplying contractor manpower (human capital) that is separate from the technology. The principal input being acquired is subject matter expertise.” (*Id.* at 16.)

#### D. The Appeal

On June 2, 2018, Appellant filed the instant appeal. Appellant is the incumbent contractor for the instant contract, which was previously classified under NAICS code 517110 (now NAICS code 517311) and argues against the CO's statement that the services to be performed under the contract have been “transformed,” as the requirements in the previous and upcoming contracts are “substantively identical.” (Appeal, at 2). Appellant contends that NAICS code 541513 is improper for this procurement because the designation is “too narrow to capture the purpose of

or array of services to be provided under the Solicitation.” Appellant argues that while there are changes to the scope of work from that of the predecessor contract, these changes do not warrant a change to the NAICS code designation. (*Id.*)

Appellant argues that the CO committed clear error in designating the solicitation under NAICS code 541513 because it “fails to describe the principal purpose of the USARCC-C IT Support Services Contract and does not reflect the relative value and importance of the components of the procurement or the function of the services being purchased.” (*Id.* at 7.) Appellant describes the work to be performed under the solicitation as “the complete operation, sustainment, and assured availability of a multifaceted Army telecommunication network system, not simply the management of computer systems or data processing facilities,” and noting that the terms “network” and “telecommunication” do not appear in the description of NAICS code 541513 but are included throughout the solicitation. (Appellant does not identify the points in the PWS where these terms are used.) (*Id.* at 7-8.)

Appellant argues *NAICS Appeal of RCF Information Systems, Inc.*, SBA No. NAICS-5653 (2015), is “directly on point” with the instant appeal because OHA held that NAICS code 517110 (now 517311), and not NAICS code 541513 was the appropriate designation for the solicitation in question. (*Id.* at 8, citing to *NAICS Appeal of RCF Information Systems, Inc.*, SBA No. NAICS-5653, at 5 (2015)). In *RCF Information Systems, Inc.*, OHA determined that the solicitation required the contractor to provide a “broad range of operations in support of a telecommunication network” as opposed to being responsible for the management of computer facilities, and affirming a designation of NAICS code 517110 for that procurement. (*Id.*)

Appellant also points to *NAICS Appeal of AOC Connect, LLC*, SBA No. NAICS-5165 (2010). OHA there affirmed a NAICS code designation of 517110 for a procurement for support of an Air Force mission requiring voice, data, and video communications, along with information services and solutions. There, OHA adopted the definition of telecommunications in the Department of Defense Dictionary of Military and Associated Terms: “Any transmission, emission, or reception of signs, signals, writings, images, sounds or information of any nature by wire, radio visual, or other electromagnetic systems.” (*Id.* at 9, citing *AOC Connect* at 6.) The fact that the contractor was required to “install, operate, and maintain this system, as well as design it” supported a 517110 NAICS code designation. (*Id.* at 10, citing *AOC Connect* at 15.)

Appellant also relies on *NAICS Appeal of Computer Cite*, SBA No. NAICS-5010 (2008). There, the contracting officer's analysis showed 28 of the key requirements in the performance work statement were covered by NAICS code 517110, where the other code under consideration satisfied only 8. OHA affirmed the designation. (*Id.* at 10, citing *Computer Cite* at 3.) Appellant contends the instant appeal is analogous because “the preponderance of services provided within the scope of the requirements align with the use of NAICS code 517110 [517311] and not NAICS code 541513. (*Id.*) Appellant asserts that an IT and computer-related NAICS code should not be used in the designation of a solicitation simply because such services are an important part of the procurement. (*Id.* at 11, citing to *NAICS Appeal of Spherix*, SBA No. NAICS-4626 (2004) (finding that an IT-related NAICS code was inappropriate when the procurement's focus was on the establishment of the agency's electronic reservation system).)

Appellant argues that NAICS Code 517311 best describes the principal purpose of the services sought by the ACC. Appellant emphasizes this code has been used by the agency on the predecessor contract for more than a decade. The code includes industries focusing on transmission of voice, data, text, sound and video using wired telecommunications networks. The code focuses on telecommunications and networks, and not computers or computer management. (*Id.* at 12.) The instant procurement requires the contractor to provide “a wide array of services in support of the Army's multidimensional telecommunications network, ensuring its complete operation, sustainment, and assured availability” and “falls squarely” within the services provided under NAICS code 517311. (*Id.*)

Appellant further asserts the overwhelming majority of PWS sections are directly related to work covered by NAICS code 517311. The contractor will be providing a variety of telecommunication and networking functions, including, network services, enterprise services and defensive cyberspace operations support services, while also maintaining the USARCC-C networks. (*Id.* at 13, citing PWS at §§ 2.3 & 5.0.) The instant procurement's primary requirement is operating and sustaining the Army's Global Mission Network infrastructure. This type of requirement goes far beyond the management of computer systems and data processing at client facilities under NAICS code 541513. (*Id.*, citing *RCF Information Systems.*) Rather, this solicitation calls for the complete operation, sustaining and assured availability of a highly dynamic and complex telecommunications network. (*Id.*)

Appellant also points out the USARCC-C “is not a computer systems facility or a data processing facility according to the United States Army. It is a network operations center falling under the control of the United States Army Network Command.” (*Id.* at 13-14, referring to the United States Army Network Enterprise Technology Command website, which lists its mission as “U.S. Army NETCOM leads global operations for the Army's portion of the DODIN, ensuring freedom of action in cyberspace while denying the same to our adversaries.”)

Appellant also identified sections of the PWS that “are directly related to telecommunications and networking functions under 517311 and not related to the management of computer systems and data processing at client facilities under 541513.” (*Id.* at 14.) Appellant contends that many related USARCC-C contracts show a “heavy reliance” on NAICS code 517311. (*Id.* at 15.)

Lastly, Appellant argues that there have been “minimal scope changes” between the PWS upon which it currently operates and the PWS included in the instant Solicitation. (*Id.* at 15-17.) In summarizing the comparison analysis of the two PWSs, Appellant determines that the “scope of the core requirements from the current contract to this Solicitation has not changed.” (*Id.* at 18.) Thus, Appellant requests OHA to designate NAICS code 517311 as the appropriate designation for the Solicitation.

#### E. Synaptex's Response

On June 13, 2018, Synaptex Corporation (Synaptex), a potential offeror, intervened and responded to the appeal. Synaptex agrees with the CO's designation of NAICS code 541513 for the instant procurement. Synaptex previously responded to the CO's request for information



stating that the “[u]se of the NAICS code [517311] for this contract is inconsistent with the NAICS purpose in both service scope and service location (i.e. work would be performed at Government facilities not ‘using their own facilities.’”) (Synaptek Response, at 1). Further, NAICS code 541513 “offers additional breadth to accommodate the array of initiatives.” (*Id.* at 2.)

#### F. ProSync's Response

On June 13, 2018, Prosync Technology Group (Prosync), a potential offeror intervened and submitted a response to the appeal that was noncommittal on the main issues of this case.

#### G. The CO's Response

On June 13, 2018, the CO responded to the appeal. The CO argues the decision to designate the instant procurement under NAICS code 541513 was the result of an exhaustive and transparent process. (CO's Response, at 1.) The Army is seeking to acquire IT services and not telecommunication services. (*Id.* at 4.) At no point does the PWS reference or identify telecommunications services. Rather, the work required is supporting IT and computer facilities management. (*Id.* at 3.) The CO maintains that the plain language of the NAICS code descriptions support his designation. The extensive infrastructure work associated with NAICS code 517311 is absent from this solicitation. Further, the illustrative examples in the *NAICS Manual* for NAICS code 541513 describe the requirements for the instant procurement, while those for NAICS code 517311 do not. (*Id.* at 4-5.) Appellant's statement that the terms “network” and “telecommunications” do not appear in the description of NAICS code 541513 but are “predominant” in the PWS is materially false. The word “telecommunications” is not once referenced in the PWS. (*Id.* at 5.) NAICS code 517311 applies only to telecommunications networks, and this solicitation is not seeking the operation of a telecommunications network. (*Id.* at 6.)

The CO points to the D & F in describing the market research conducted in order to reach the decision to designate the instant procurement under NAICS code 541513. This research produced an “overwhelming response” by industry that small businesses can perform this work. (*Id.* at 6.) The CO refutes Appellant's reliance on *NAICS Appeal of RCF Information Systems, Inc.*, SBA No. NAICS-5653 (2015) and *NAICS Appeal of AOC Connect, LLC*, SBA No. NAICS-5165 (2010), as the requirements in those cases “involved a broader range and magnitude of services, including support for a telecommunications network, that is not present in the instant solicitation.” (*Id.* at 7.)

The CO argues *NAICS Appeal of Rollout Systems, Inc.*, SBA No. NAICS-5901 (2018) is directly on point in support of NAICS code 541513 being the appropriate designation. (*Id.* at 8.) The procurement in *Rollout* emphasized providing personnel, not systems, similar to the instant procurement. (*Id.*) Further, the requirements in *Rollout* are “virtually identical” to the requirements in this case. Those requirements led OHA to conclude NAICS code 541513 was the appropriate designation for that procurement. (*Id.* at 9.) Therefore, the CO argues the holding in *Rollout* mandates a denial of the instant appeal, because telecommunications are no more a feature of the instant procurement than it was in *Rollout*. (*Id.*)

The CO further argues *AOC Connect* is not on point because the scope of the contract there was broader than in the instant procurement. There, the procurement required the design of IT systems, and their installation and the provision of infrastructure, modifying buildings to perform the task. The instant procurement is merely for IT support services managing computer systems. Further, that procurement required the development of infrastructure, which is not required here, but is performed by DISA. (*Id.* at 9-10, citing *AOC Connect*.)

The CO also distinguishes *RCF Information Systems*, because that procurement required more infrastructure intensive work than the instant procurement. Further, that case upheld a CO's designation, and the burden of proof is on the Appellant to demonstrate clear error by the CO. (*Id.* at 10-11.)

#### H. Appellant's Reply

The record closed on June 13, 2018. On June 15, 2018, Appellant submitted a Motion to Reopen the Record and a Reply in response to the CO's Response. On June 15, 2018, the CO filed an Objection to Appellant's Motion to Reopen the Record and Reply. The CO argued that Appellant's reply "presents nothing new, and simply acts as an inappropriate reply brief to the Army's submission." (CO's Objection, at 1.)

#### I. NAICS Manual Descriptions

The NAICS code designated by the CO, 541513, Computer Facilities Management Services, covers:

[E]stablishments 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.

*NAICS Manual* 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

Facilities (i.e., clients' facilities) support services, computer systems or data processing.

*NAICS Manual*, at 716, 730, 753.

This code is part of Sector 54-Professional, Scientific, and Technical Services. “These establishments make available the knowledge and skills of their employees, . . . The distinguishing feature of the Professional, Scientific, and Technical Services subsector is the fact that most of the industries grouped in it have production processes that are almost wholly dependent on worker skills. . . . Thus the establishments classified in this subsector sell expertise.” *Id.* at 461.

The NAICS code Appellant advocates, 517311, Wired Telecommunications Carriers, covers:

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

*NAICS Manual* at 422.

This code is part of the 517 Telecommunications section, in a group which is comprised of establishments that operate transmission facilities and infrastructure that they own and/or lease, and provide telecommunications services using those facilities. *Id.* at 421.

Examples of work included under this NAICS code are:

Broadband internet service providers, wired (e.g., cable, DSL)

Cable television distribution services

Closed-circuit television (CCTV) services

Direct-to-home satellite system (DTH) services

Local telephone carriers, wired

Long-distance telephone carriers, wired

Multichannel multipoint distribution services (MMDS)

Satellite television distribution systems

Telecommunications carriers

Wired VoIP service providers, and using own operated wired telecommunications infrastructure.” *Id.*

Index entries which refer to this NAICS Code are:

Cable program distribution operators

Cable television distribution services

Cable TV providers (except networks)

Closed-circuit television (CCTV) services Direct broadcast satellite (DBS) services

Direct-to-home satellite system (DTH) services

Internet service providers, using own operated wired telecommunications infrastructure (e.g., cable, DSL)

Local telephone carriers, wired

Long-distance telephone carriers, wired

Multichannel multipoint distribution services (MMDS)

Music program distribution, cable or satellite

On-line access service providers, using own operated wired telecommunications infrastructure

Satellite master antenna television service (SMATV)

Satellite television distribution systems

Telecommunications carriers, wired

Television operations, closed-circuit

VoIP service providers, using own operated wired telecommunications infrastructure.

*NAICS Manual*, at 693, 708, 736, 781, 801, 816, 817, 834, 835, 844, 891, 926, 927, 950.

### III. Discussion

#### A. Appellant's Reply

On June 15, 2018, Appellant submitted a Motion to Reopen the Record and a Reply to the CO's Response to Appellant's Appeal. The CO objected to Appellant's Motion and Reply. Such a reply by Appellant is only permissible after receiving such direction from OHA. *See* 13 C.F.R. § 134.309(d). Appellant received no such direction. Accordingly, Appellant's Motion to Reopen the Record and Reply is DENIED and will not be considered for purposes of this decision. *NAICS Appeal of Allserv, Inc.*, SBA No. NAICS-5629, at 6 (2014).

#### B. 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).

#### C. Analysis

Having examined the PWS, the descriptions in the *NAICS Manual*, and Appellant's appeal, I find the CO did not commit clear error of fact or law in designating NAICS code 541513 for the instant procurement.

Here, Appellant argues that the CO's designation of the instant procurement under NAICS code 541513 is erroneous because the predecessor contract, upon which Appellant was the awardee, was designated under NAICS code 517311. However, OHA never reviewed or affirmed the NAICS code designation for the prior procurement, and therefore it is not probative of the correct designation for this procurement, nor is it binding for this proceeding. *See NAICS Appeal of Arrowhead Contracting, Inc.*, SBA No. NAICS-5725 (2016).

The instant procurement requires the contractor to provide IT support services to the USARCC-C in its role of operating, managing, and defending the Army's global information network infrastructure, which includes wired and wireless devices. In doing so, the contractor will be responsible for supporting the USARCC-C by providing its expertise in the management of the multitude of computer networks serviced by the USARCC-C. This includes the operating, monitoring, securing, and sustaining of multiple information networks, and advising the USARCC-C on ways to improve its policies and procedures in its operations of these networks.

Appellant argues that telecommunications services are described throughout the PWS. However, as the CO correctly points out, the word “telecommunications” does not appear a single time in the PWS.<sup>3</sup> Furthermore, the services required under NAICS code 517311 are not as broad as Appellant argues they are. It is clear that designations pertaining to telecommunications under 517311 are only for wired services, as the description of services provided for under the NAICS code and the index entries in the *NAICS Manual* consistently contain the term “wired.” See Section II.H., *supra*. The inclusion of NAICS Code 571312, Wireless Telecommunications Carriers, reinforces the argument that the services provided under 517311 are only for wired telecommunications, which limits the scope of services provided under the NAICS code.

The work described in the PWS includes both wired and wireless forms of telecommunications, along with many other forms of information technology. Furthermore, the PWS is not requiring a contractor to provide any of the wired telecommunications described in the *NAICS Manual*, as the PWS makes it clear that the contractor will be supporting the USARCC-C in managing and operating a network that is already in place. Therefore, NAICS code 517311 is not an appropriate code designation for the instant procurement.

The Appellant must prove that the CO erred in designating this procurement under NAICS code 541513. Therefore, the Appellant must prove that that the code designation is clearly incorrect and not that another code is correct. The types of services provided under NAICS code 541513, Computer Facilities Management Services, are aligned with the work required by the instant procurement. As exemplified throughout the PWS, in providing IT support services, the contractor will be responsible for the on-site management and operations of the computer systems that are serviced by the USARCC-C. In supporting the USARCC-C, the contractor will be responsible for managing, monitoring, and sustaining multiple information system platforms. That is to say, the contractor will be “engaged in providing on-site management and operation of [the Army's] computer system”, precisely the type of work covered by NAICS code 541513.

It is also clear the central focus of this procurement is targeted at gaining quality contractor personnel who understand the technology that will be managed. For example, the evaluation factors listed in the RFP explicitly place staffing and the offeror's “capability to provide a technical approach resulting in qualified technical personnel with the skills, practical experience, capability, experience, training, and technical and functional certifications and security clearances to perform the work requirements identified in the PWS” as the primary factor in determining the successful offeror. See Section II.B., *supra*, see also Section II.A. (describing the requisite skill set contractor personnel must possess to complete the requirements of the contract.) Further, as a NAICS code that falls under Sector 54-Professional, Scientific, and Technical Services, the work performed under NAICS code 541513 requires “a high degree of expertise and training.” *NAICS Manual*, at 461. This is consistent with this procurement's reliance upon the skills of the personnel employed by the contractor to complete the

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<sup>3</sup> After conducting an electronic search of the PWS, there were zero results for the search term “telecommunications.”

requirements. See Section II.H., *supra*. Thus, the Army's principal concern will be the quality of the personnel the offeror proposes to provide. This supports the conclusion that IT services as covered by NAICS code 541513 are the subject of the instant procurement, not the provision of a wired telecommunications network, as covered by NAICS code 517311.

Appellant's reliance upon *NAICS Appeal of RCF Information Systems, Inc.*, SBA No. NAICS-5653 (2015) is misplaced. That procurement called for a “complex and wide range of responsibilities” which went “beyond the management and operation of facilities” to “support a nationwide telecommunication network.” *Id.* at 5. Accordingly, the appropriate code was 517311, because the procurement required duties beyond IT services in support of a telecommunications network. Here, the management and operation of facilities is what the PWS requires of the contractor. Further, as noted above, the word “telecommunications” does not appear in the PWS. Accordingly, *RCF Information Systems* is inapposite.

Also inapposite is *NAICS Appeal of AOC Connect, LLC*, SBA No. NAICS-5165 (2010). That procurement required the contractor to design and install IT systems, modifying buildings to do so, and provide the necessary infrastructure. The instant procurement emphasizes the management and operation of IT systems, and so *AOC Connect* is not an applicable precedent. Neither is *NAICS Appeal of Computer Cite*, SBA No. NAICS-5010 (2008) which held NAICS code 517110 “describes an industry where the concerns operate and/or provide access to transmission facilities and infrastructure they own and/or lease for transmissions using wired telecommunications networks” *Computer Cite*, at 5. That description is not applicable to this procurement.

Rather, the instant procurement seeks IT support services, and is more in line with procurements where OHA has held that 541513 is the appropriate code. *NAICS Appeal of Rollout Systems, LLC*, SBA No. NAICS-5901 (2018) (information technology support services, particularly operation and maintenance of computer systems); *NAICS Appeal of Delphi Research, Inc.*, SBA No. NAICS-5377 (2012) (multiple IT efforts could reasonably be grouped under NAICS 541513, management and operation of computer systems represented largest portion of contract).

Accordingly, I conclude Appellant has failed to meet its burden of establishing that the CO's designation of NAICS code 541513 for the instant procurement was clear error.

#### IV. Conclusion

Appellant has the burden of proving that the CO committed a clear error of fact or law in designating NAICS code 541513 for this procurement and has failed to meet its burden. For that reason, I AFFIRM the CO's NAICS code designation and find the appropriate NAICS code for this procurement is 541513, Computer Facilities Management Services, and DENY the instant appeal.

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

CHRISTOPHER HOLLEMAN  
Administrative Judge