

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

NAICS APPEAL OF:

Paradigm Engineers and Constructors,  
PLLC

Appellant,

Solicitation No. 36C24920R0003

Department of Veterans Affairs  
Network Contracting Office 9  
Murfreesboro, TN 37129

SBA No. NAICS-6040

Decided: December 17, 2019

APPEARANCES

Holly Clark, Esq. of Frost Brown Todd, LLC, Dallas, Texas, for Paradigm Engineers and Constructors, PLLC

Shawn Hendricks, Contracting Officer, Network Contracting Office 9, U.S. Department of Veterans Affairs

DECISION

I. Introduction and Jurisdiction

On October 2, 2019, the Department of Veterans Affairs (VA) issued Solicitation No. 36C24920R0003 requesting Architectural and Engineering (A/E) Design Firms' SF330s for the renovation of Building 27 Domiciliary, Project 596-19-101, located at Lexington VA Medical Center, Souseley Campus in Lexington, Kentucky. The Contracting Officer (CO) set aside the procurement entirely for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), and listed North American Industry Classification System (NAICS) code 541310, Architectural Services, with a corresponding \$8 million annual receipts size standard and NAICS code 541330, Engineering Services, with a corresponding \$16.5 million annual receipts size standard, in the solicitation. On October 7, 2019, the VA issued an Amendment to clarify that the designated NAICS code for the instant procurement is 541330, Engineering Services. The Form SF330s were originally due on November 4, 2019. On November 1, 2019, the CO issued Amendment 0002 to the solicitation changing the NAICS code to 541310, Architectural

Services.<sup>1</sup> On that same day, the CO also issued Amendment 0003 extending the deadline for submission of the Form SF330s to November 8, 2019.

On November 8, 2019, Paradigm Engineers and Constructors, PLLC (Appellant) filed the instant appeal challenging the NAICS code designation. Appellant asserts that the correct NAICS code for this procurement is 541330, Engineering Services, with a corresponding \$16.5 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 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 Amendment 0002, so the appeal is timely.<sup>2</sup> 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 Statement of Work

According to the Statement of Work (SOW), the A/E Firm to be selected is to provide site investigation, schematic design, design development, construction documents, and bid documents for Project No. 596-19-101, the renovation of Building 27 at the VA Medical Center in Lexington, KY. The project will include the renovation of approximately 16,000 gross square feet of space. The project will also replace the heating, ventilating, and air-conditioning (HVAC) systems in the building. Design disciplines expected for completion of the project include “architectural, civil, structural, asbestos and lead paint testing analysis and abatement specifications, industrial hygiene, mechanical, electrical, plumbing, fire protection, and physical security.” (*Id.*, at 2.)

The HVAC system design must be a building solution, incorporating demolition of the existing system, installation of new air handlers, and replacing and moving existing boilers. The power main distribution systems shall be replaced and relocated to above-grade in Building 27. The design must comply with the new Physical Security Design Manual for Mission Critical Buildings, issued July 28, 2015 (PSDM). (*Id.*) All second-floor windows will be replaced, compliant with the PSDM. The contractor must provide a register of the necessary permits required. The A/E Firm will use Space and Equipment Planning Systems as required by VA standards. The A/E Firm will provide a three-dimensional rendering of the renovation as part of design development, and coordinate design work with the VA's Contracting Officer Representative. The A/E Firm will provide all necessary drawings and information so that the

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<sup>1</sup> The solicitation stated an erroneous \$7.5 million annual receipts size standard for NAICS code 541330.

<sup>2</sup> “NAICS code appeals must be filed within 10 calendar days after issuance of the solicitation, or amendment to the solicitation affecting the NAICS code or size standard.” 13 C.F.R. 134.304(b).

VA can coordinate with the local historic district. The A/E Firm must also provide a design that meets VA sustainability requirements. (*Id.*, at 3.)

The project design must clearly show work required, phasing of work required, and instructions to the construction contractor on how to accomplish the necessary renovations in a medical environment taking into consideration demolition, dust control, and infection control. The A/E Firm must also note any limitations, such as work to be completed outside of normal business hours, etc. The A/E Firm must inform VA if the estimated cost exceeds the VA's budget target. (*Id.*)

The A/E Firm shall provide design services to include drawings and specifications in accordance with the SOW and as identified in project design meetings. The A/E Firm will provide competent design services using staff adequately knowledgeable in the required design disciplines. (*Id.*, at 4-5.) The A/E Firm shall also develop plans and schematics for actual in-place components from VA-provided drawings, and verify existing conditions affecting the design. The A/E firm will consider adjacent architectural and utility systems and components to avoid unforeseen change orders. (*Id.*, at 5.) The A/E Firm shall verify necessary building architectural and utility system components to provide for a full and complete design of replacement architectural elements and utility system components. (*Id.*)

VA is contracting for design services to include Schematic Design, Design Development, Construction Documents and Bid Documents. Schematic Design reflects the basic work required to define the design scope of the project. It includes options and what-if scenarios to allow VA to consider potential options for the final design. (*Id.*) Construction documents shall combine updates of earlier sets of specifications and drawings, and any other relevant project information making up a complete set of project documents. (*Id.*, at 6.) The Bid Documents submission shall combine all updates of earlier sets of specifications and drawings and any other relevant project information, making up the entire set of project documents. (*Id.*, at 7.) The A/E Firm shall utilize certain VA and other design and construction criteria in the development of submissions. The design should be the result of compliance with applicable codes and standards, the user requests, and the A/E Firm's creativity. (*Id.*)

## B. The Appeal

On November 8, 2019, Appellant filed the instant appeal. Appellant argues it was “adversely affected and rendered ineligible to compete” when the VA changed the NAICS code designation to NAICS code 541310, because Appellant's annual revenue exceeds the size standard. (Appeal, at 2.)

Appellant argues the principal services being procured are primarily engineering in nature, not architectural. (*Id.*, at 3.) Appellant maintains the contractor must have expertise not only in architecture, but in a variety of engineering disciplines. The SOW requires engineering designs to replace the heating, ventilation and air-conditioning (HVAC) systems in the building and mandates expertise in architectural, civil, structural, asbestos and lead paint testing analysis and abatement specification, industrial hygiene, mechanical, electrical, plumbing, fire protection, and physical security expertise beyond general architectural knowledge. (*Id.*, citing SOW, at 2.)

The design must comply with VA's Physical Security Design Manual for Mission Critical Buildings. This requires that the design team include a licensed professional engineer who has specialized training in blast design and analysis. (*Id.*, citing SOW at 2-3 and VA's Physical Security Design Manual, at 8.) In Appellant's view, these requirements fit “precisely within NAICS code 541330” as NAICS code 541310 “does not encompass the required expertise.” (*Id.*, at 3-4.)

Appellant maintains the original NAICS code designation of 541330 was correct. Its description in the *NAICS Manual* contains all of the services mandated by the SOW: civil engineering, construction engineering, electrical engineering, environmental engineering, heating engineering consulting, mechanical engineering, and industrial engineering. In contrast, the description for NAICS code 541310 does not contain the engineering disciplines required by the SOW, but only refers to architectural services. (*Id.*, at 4-5.)<sup>3</sup>

Appellant maintains the SOW is clear, the principal purpose of the services to be acquired is engineering, not architectural. The SOW requires a myriad of different disciplines: architectural, civil, structural, asbestos abatement, fire control, industrial hygiene, mechanical, electrical, and plumbing. These go beyond architectural services and mirror the disciplines included in the Engineering Services code. (*Id.*, at 5.)

Appellant further asserts that prior VA procurements for the same or similar services were conducted under the 541330 NAICS code designation. All required the contractor to have proficiency in architectural, electrical and mechanical systems. Appellant identifies a number of such procurements. (*Id.*, at 6-8.)

Appellant concludes by noting that when the procurement was first announced, the VA designated NAICS code 541330 and reaffirmed this in its October 7th Modification. Appellant points out that the VA only changed the code just prior to the due date for offers, without explanation. Appellant argues that the SOW establishes that 541330 is the appropriate code. (*Id.*, at 8.)

### C. The CO's Response

On November 27, 2019, the CO responded to the appeal. In its response, the CO states the principal purpose of the procurement is to procure a design to renovate approximately 16,000 square feet of space on the second floor of Building 27 to relocate 30 patient bedrooms and one nurse's station from Building 29. The project also requires the replacement of the HVAC system in the building. (Response at 2.) The CO argues, Appellant “is essentially hanging [its] hat on the fact that there will be a large amount of engineering services involved in the replacement of the HVAC system, but as it is clearly demonstrated, that is not the principal purpose of the project.” (*Id.*)

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<sup>3</sup> Appellant makes reference to its own proposal, but this is not relevant to a NAICS code appeal, which is based upon the requirements of the solicitation. (Appeal at 4.)

In the CO's view, the services provided under NAICS code 541310 appear to be “primarily engaged in design which affects occupied spaces in buildings and structures such as patient rooms, offices, clinical space, etc.” (*Id.*) On the other hand, the services provided under NAICS code 541330 appear to be “primarily engaged in design that affects machines, equipment, systems, and associated structures and their respective layout as it relates to buildings and landscapes.” (*Id.*)

The CO also asserts the change in NAICS code did not limit competition. The Government had received 5 SF330s before the NAICS code change, and 17 SF330s afterwards. (*Id.*)

#### D. NAICS Manual<sup>4</sup> Descriptions

The CO's designated code, NAICS Code 541310, Architectural Services, comprises:

[E]stablishments primarily engaged in planning and designing residential, institutional, leisure, commercial, and industrial buildings and structures by applying knowledge of design, construction procedures, zoning regulations, building codes, and building materials.

*NAICS Manual*, at 465

Index entries which refer to this NAICS Code are:

Architects' (except landscape) offices;  
Architects' (except landscape) private practices;  
Architectural (except landscape) consultants' offices;  
Architectural (except landscape) design services;  
Architectural (except landscape) services; and  
Building architectural design services

*Id.* at 665, 689.

Appellant's preferred code, NAICS Code 541330, Engineering Services, comprises:

[E]stablishments 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.

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<sup>4</sup> Executive Office of the President, Office of Management and Budget, *North American Industry Classification System-United States (2017)*, available at <http://www.census.gov>.

Illustrative Examples:

Civil engineering services;  
Environmental engineering services;  
Construction engineering services;  
Mechanical engineering services; and  
Engineers' offices

*Id.*, at 465.

Index entries which refer to this NAICS Code are:

Acoustical engineering consulting services;  
Acoustical system engineering design services;  
Boat engineering design services;  
Chemical engineering services;  
Civil engineering services;  
Combustion engineering consulting services;  
Construction engineering services;  
Consulting engineers' offices;  
Consulting engineers' private practices;  
Electrical Engineering Services;  
Engineering consulting services;  
Engineering design services;  
Engineering services;  
Engineers' offices;  
Engineers' private practices;  
Environmental engineering services;  
Erosion control engineering services;  
Geological engineering services;  
Geophysical engineering services;  
Heating engineering consulting services;  
Industrial engineering services;  
Logging engineering services;  
Maritime technology engineering services;  
Mechanical engineering services;  
Mining engineering services;  
Petroleum engineering services; and  
Traffic engineering consulting services

*Id.* at 654, 682, 703, 706, 713, 718, 719, 745, 749, 750, 775, 787, 797, 816, 822, 824, 829, 856, 936.

### III. Discussion

#### 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 SOW, 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 541310 for the instant procurement. I must, however, voice concern with the CO's lack of attention to detail regarding including two NAICS codes in the initial solicitation. I must also point out the short amount of time provided to potential offerors to respond to the change in the NAICS code designation. Nevertheless, I find that NAICS code 541310 best describes the principal purpose of the services sought under the solicitation.

As a preliminary note, Appellant's argument that procurements for the same or similar services were designated under NAICS code 541330 is irrelevant, as those procurements are not before OHA for consideration and will not be considered in this analysis. See *NAICS Appeal of Curtin Maritime, Corp.*, SBA NO. NAICS-5947 (2018); *NAICS Appeal of U.S. Small Business Administration*, SBA No. NAICS-5899 (2018); *NAICS Appeal of Arrowhead Contracting, Inc.*, SBA No. NAICS-5725 (2016).

The VA here seeks to procure the design services for the renovation of a building of approximately 16,000 square feet. The solicitation plainly states: “The VA is contracting for design services.” SOW, at 5. The renovation will include replacing the HVAC system in the building, which is only a part of the project and not the principal purpose of the procurement. The principal purpose is to obtain the designs for the renovation of the building. The design will include architectural, civil, structural, asbestos, and lead paint analyses. The replacement of windows is also a component of the design. Indeed, the solicitation emphasizes window replacement at least as much as the replacement of the HVAC system.

The A/E Firm selected must provide a three-dimensional rendering of the renovation and must show the work required for execution of the project, with instructions for the construction contractor on carrying out the renovations including dust control and infection control. These are

all architectural services, involving the planning and designing of the building, requiring the application of knowledge of design and construction procedures, building codes, and materials. There is no need for engineering services in the replacement of windows or the renovation of building space, as the design for these tasks is of an architectural nature.

OHA has reviewed NAICS code 541330 in the past. OHA has found its predecessor, Standard Industrial Classification code 8711, Engineering Services, covered procurements for engineering services for radar systems; engineering and computer services of the testing and evaluation of prototypes; engineering services for an electronic systems centers; and engineering in support of military equipment. *NAICS Appeal of Rhinocorps, Ltd.*, SBA No. NAICS-4736, at 7 (2005), and cases cited therein. Similarly, NAICS code 541330, Engineering Services, covers services involving the design and utilization of machines, materials, and systems. *Id.*, at 5. OHA has found NAICS code 541330 appropriate for procurements calling for highly technical analyses. *NAICS Appeal of Millennium Engineering and Integration Co.*, SBA No. NAICS-5309, at 8 (2011) (finding that the SOW called specifically for safety engineering, which required offerors to provide “technical responses to realistic safety-related scenarios.”) OHA has held NAICS code 541330 describes an industry where the establishments provide engineering services, including providing advice, feasibility studies, preparing preliminary and final plans, and inspecting and evaluating engineering projects. *NAICS Appeal of Inkling Media Co.*, SBA No. NAICS-5054, at 10 (2009).

This procurement does not meet these criteria. While there will be some engineering services required to provide the designs for the HVAC system replacement, the bulk of the work will involve designing the renovation of a building, which also requires replacement of windows. This work does not involve applying physical laws and principles of engineering to machines and systems. There are no machines here other than the HVAC system. The work involved will not be cutting-edge engineering, but the renovation of a building which includes the replacement of windows and the HVAC system. The work here is better described as the planning and designing of a building, and this work is squarely within the definition of NAICS code 541310.

I therefore conclude that Appellant has failed to meet its burden of establishing a clear error of fact or law in the CO's NAICS code designation and that the CO's designation of NAICS code 541310, Architectural Services, is correct.

#### IV. Conclusion

Appellant has the burden of proving that the CO committed a clear error of fact or law in designating NAICS code 541310 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 541310, Architectural Services, with a corresponding \$8 million annual receipts size standard, 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