

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

NAICS APPEAL OF:

Laredo Technical Services, Inc.,

Appellant,

Solicitation No. 36C26222Q1014

Department of Veterans Affairs

SBA No. NAICS-6173

Decided: September 23, 2022

APPEARANCES

Joseph G. Lukowski, President, Laredo Technical Services, Inc., San Antonio, Texas

James J. Moran, Contracting Officer, U.S. Department of Veterans Affairs, Gilbert, Arizona

DECISION

I. Introduction and Jurisdiction

On August 18, 2022, the U.S. Department of Veterans Affairs (VA) issued Request for Quotations (RFQ) No. 36C26222Q1014 for “Medical Support Assistants / Administrative Professionals to perform a variety of technical support duties.” (RFQ at 1.) The Contracting Officer (CO) set aside the procurement entirely for Service-Disabled Veteran-Owned Small Businesses, and assigned North American Industry Classification System (NAICS) code 561311, Employment Placement Agencies, with a corresponding size standard of \$30 million average annual receipts.

On August 22, 2022, Laredo Technical Services, Inc. (Appellant) filed the instant appeal with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA). Appellant maintains that the CO clearly erred in selecting NAICS code 561311, and that the appropriate code for this procurement is 561110, Office Administrative Services, with a corresponding size standard of \$11 million average annual receipts. For the reasons discussed *infra*, the appeal is granted.

OHA decides appeals of NAICS code designations 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 10 calendar days after issuance of the RFQ, so the appeal is timely. 13 C.F.R. §§ 121.1103(b)(1), 134.304(b); Federal Acquisition Regulation (FAR) 19.103(a)(1).

Accordingly, this matter is properly before OHA for decision.

## II. Background

### A. The RFQ

VA issued RFQ No. 36C26222Q1014 on August 18, 2022. The RFQ indicated that VA intends to award a single Blanket Purchase Agreement (BPA) against a U.S. General Services Administration (GSA) Federal Supply Schedule (FSS) contract. (RFQ at 5-6.) The awardee will provide “Medical Support Assistant staffing” for eight VA facilities located in California, Arizona, and New Mexico. (*Id.* at 5.)

According to the RFQ's Statement of Work (SOW),<sup>1</sup> VA requires “approximately 152 full-time employees” to perform “general administrative functions.” (RFQ, Amendment 0003, at 4.) VA will provide workspace and equipment for the contractor personnel to perform their work. (*Id.* at 13.) However, contractor personnel will not be “considered VA employees for any purpose.” (*Id.* at 10.) The contractor must ensure that all personnel are trained in relevant “VA procedures and policies.” (*Id.* at 10, 19.) The bulk of the required personnel will be “Medical Support Assistants/Administrative Professionals” who will:

perform a variety of technical support duties that facilitate the work of physicians, physician assistants, nurses, nursing assistants, and other members of the medical facility who provide direct patient care.

(*Id.* at 4.) In addition, the contractor must provide “at least eight (8) Supervisory Medical Support Assistants/Administrative Professionals to coordinate leave, oversee the quality of work, and act as a liaison for the contract staff.” (*Id.*) The SOW states that contractor personnel will perform “a variety of functions that support general administrative tasks in health care administration and clinical sections,” including, but not limited to:

Medical Support Assistants (MSA) working in outpatient clinics, patient call centers, or consult management team performing patient scheduling and general reception functions at a medical center or outpatient clinic.

Scanning of records and documents into an Electronic Medical Record (EMR) to support [Health Information Management (HIM)] functions at medical centers.

Providing general reception support in the Release of Information (ROI) offices at various medical centers.

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<sup>1</sup> On August 30, 2022, the CO issued RFQ Amendment 0003, which included a revised SOW. Unless otherwise indicated, citations are to the version of the SOW as revised by Amendment 0003.

Processing of claims for reimbursement for patient related travel (mileage reimbursement and vendor claims) and dispatch assistance for the Veterans Transportation Service at each medical center.

Assistance with processing claims for Eligibility and Enrollment at all VA Medical Centers in the network, as well as general reception support for all administrative offices at the facilities. [and]

Support for Community Care departments at all medical centers for community care scheduling, answering phone calls in that department, general reception functions, and consult management work.

(*Id.* at 5.) The SOW further provides that contractor personnel shall:

cover workload for general administrative staff who are on extended leave, bridge the gap during vacancies, or expect reassignment to handle work backlog in any clinic or area needed. Contractor personnel shall possess the ability to quickly adapt to change, handle multiple tasks simultaneously, and accommodate new situations and realities. Contractor employees shall learn all the required duties of their assigned or reassigned location and effectively function with little or no dependence on others.

(*Id.* at 6.) All personnel provided by the contractor must have at least “[o]ne year of education above high school or one to two years of job related experience.” (*Id.* at 1, 12.)

On September 1, 2022, the CO extended the response due date for the RFQ until September 15, 2022. (RFQ, Amendment 0004.) Appellant submitted a timely quotation on September 1, 2022.

## B. Appeal

On August 22, 2022, Appellant filed the instant appeal. Appellant alleges that the CO erred by utilizing an “objective standard,” rather than a “subjective standard,” in selecting the NAICS code for the instant procurement. (Appeal at 1.) More specifically, the CO incorrectly chose a NAICS code that corresponds with “the primary business of offerors.” (*Id.*) Appellant highlights that, according to SBA regulations, the CO instead should have selected “the single NAICS code which best describes the principal purpose of the product or service being acquired.” (*Id.*, quoting 13 C.F.R. § 121.402(b) (emphasis added by Appellant).)

Appellant maintains that the correct NAICS code for this RFQ is 561110, Office Administrative Services. (*Id.*) Appellant reasons that the instant procurement requires “**100% administrative services**” and “there is no requirement for [VA] to purchase the *suppliers* of the administrative services.” (*Id.* (emphasis Appellant's).)

Appellant posits that, if OHA were to affirm the use of an “objective standard” in selecting the NAICS code, then “*all* federal procurements for *any* and *all* service related” work could be assigned NAICS code 561311. (*Id.* (emphasis Appellant's).) Such a result would be untenable because “no Government service-related procurements would ever appear for size standards of \$11 million.” (*Id.*)

### C. CO's Response

On September 2, 2022, the CO responded to the appeal. The CO maintains that 561311, Employment Placement Agencies, is the correct NAICS code for the instant procurement, and that Appellant has not shown that NAICS code 561311 is clearly erroneous. (CO's Response at 1.)

The CO, first, disputes Appellant's claim that the CO improperly used an “objective standard,” rather than a “subjective standard,” when selecting the NAICS code. The applicable regulations make no mention of such terminology. (*Id.*) Next, the CO argues that Appellant has not shown how it is “adversely affected” by the NAICS code designation, as is required to establish standing to bring a NAICS code appeal. The CO observes that Appellant apparently would qualify as small under either NAICS code 561311 or NAICS code 561110. (*Id.* at 3.) Further, Appellant is not precluded from competing for this procurement, and in fact has already submitted a quotation. (*Id.* at 1-2.) During market research, VA informed prospective offerors that it intended to assign NAICS code 561311 to the instant RFQ, and Appellant voiced no objection at that time. (*Id.* at 2.)

The CO asserts that Appellant misinterprets the SOW and “has not done its due diligence as a prospective [offeror] in understanding the principal purpose of the instant procurement.” (*Id.*) The CO assigned NAICS code 561311, Employment Placement Agencies, because VA seeks a contractor to provide “recruiting for a specific job category with basic skills and qualifications and maintaining the staff it hires in those positions.” (*Id.* at 3.) VA will “buy services provided by [a business] in the industry and not the business itself.” (*Id.*)

The CO contends that the purpose of the procurement “is to obtain additional staffing to supplement the current MSA full-time employee (FTE) workforce at [VA Medical Centers (VAMCs)].” (*Id.* at 4.) It is difficult for VA to fill such vacancies through the federal hiring process, due to “the limited pool of qualified and interested candidates in each location,” and the “continuous need to be actively recruiting and retaining staff in the MSA position.” (*Id.*) In addition, “[t]he government is limited in how it can post its vacancy announcements, in the preference it must give to certain candidates, and in the amount of time it must wait between the posting of announcements for the same position.” (*Id.*) A contractor operating under NAICS code 561311, Employment Placement Agencies, “does not have these limitations in its hiring process and can supply the government more quickly with qualified candidates.” (*Id.*) “Recruiting and retaining staff” is fundamental to the instant procurement, and supports the choice of NAICS code 561311. (*Id.*) The CO adds:

The performance on the current contracts is for the contractor to recruit candidates with basic qualifications for the MSA position and to provide those

resumes to the government from which to select whom it deems best situated for the position and to start the three-month training and onboarding at the VAMC. It is not assumed that there is a readily available workforce within the walls of any contractor that could immediately step into this position and effectively provide the services needed. It must be a supplemental workforce developing with tutelage from the current VA staff.

(*Id.* at 5.) The SOW makes clear that all contractor personnel must receive training in VA procedures and policies and that no contractor personnel may work until the completion of orientation and training. (*Id.* at 9.) The SOW also provides a full list of the minimum requirements for contractor personnel, including “requirements for proficiency in English language, communication requirements, professionalism, computer skills and proficiency, citizenship, education and experience or a combination of both, ability to work independently, dependability, typing speed, and job specific skills for working in a hospital with patients and their family members.” (*Id.* at 8.)

Finally, the CO states that the NAICS code Appellant advocates, 561110, Office Administrative Services, does not adequately describe the services sought by the RFQ because it “denotes routine office work of an existing contractor staff that is not integrated with the VA staff at the facility.” (*Id.* at 11.) Instead, the RFQ here seeks a contractor to “provide staff with basic qualifications according to VA requirements.” (*Id.*) At the same time, VA will “continue [its own] recruiting and retention effort to employ full-time VA employees in the MSA position.” (*Id.*) The RFQ seeks a contractor to assist VA by “recruiting and retaining such a workforce to integrate and work alongside the current VA workforce in the same position.” (*Id.*)

#### D. NAICS Manual<sup>2</sup>

The NAICS code chosen by the CO, 561311, Employment Placement Agencies, covers:

establishments primarily engaged in listing employment vacancies and in referring or placing applicants for employment. The individuals referred or placed are not employees of the employment agencies.

*NAICS Manual* at 491. Examples of businesses in this industry include: “[b]abysitting bureaus (i.e., registries),” “[e]mployment registries,” “[m]odel registries,” “[c]asting agencies or bureaus (i.e., motion picture, theatrical, video), and “[e]mployment agencies.” (*Id.*) Index entries which refer to NAICS code 561311 include “[e]mployment agencies,” “[e]mployment placement agencies or services,” “[e]mployment referral agencies or services,” “[e]mployment registries,”

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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)*, available at <http://www.census.gov>. Although a 2022 edition of the *NAICS Manual* has been released, SBA has instructed that, for purposes of SBA programs, the 2017 edition of the *NAICS Manual* will continue to be utilized until October 1, 2022, “the beginning of the new fiscal year following the effective date of the OMB's release of the NAICS 2022 revision.” See 87 Fed. Reg. 40,034 (July 5, 2022). Accordingly, all citations herein are to the 2017 edition of the *NAICS Manual*.

“[i]nternet job listing services,” “[i]nternet resume listing services,” “[p]lacement agencies or services, employment,” “[r]eferral agencies or services, employment,” and “[r]egistries, employment.” (*Id.* at 748, 801, 860, and 883.)

The NAICS code advocated by Appellant, 561110, Office Administrative Services, is comprised of:

establishments primarily engaged in providing a range of day-to-day office administrative services, such as financial planning; billing and recordkeeping; personnel; and physical distribution and logistics, for others on a contract or fee basis. These establishments do not provide operating staff to carry out the complete operations of a business.

*NAICS Manual* at 490. Index entries which refer to NAICS code 561110 include “[a]dministrative management services,” “[b]usiness management services,” “[e]xecutive management services,” “[h]otel management services (except complete operation of client's business),” “[i]ndustrial management services,” “[m]anagement services (except complete operation of client's business),” “[m]anaging offices of dentists,” “[m]anaging offices of physicians and surgeons,” “[m]edical office management services,” “[m]otel management services (except complete operation of client's business),” “[o]ffice administration services,” and “[o]ffice management services.” (*Id.* at 655, 691, 751, 792, 797, 820-21, 825, 832, and 842.)

### 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 13 (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. 13 C.F.R. § 121.402(b); FAR 19.102(b)(1). 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

I agree with Appellant that NAICS code 561311 is unsuitable for the instant RFQ. The *NAICS Manual* makes clear that NAICS code 561311 applies to establishments engaged “in listing employment vacancies and in referring or placing applicants for employment.” Section II.D, *supra*. The *NAICS Manual* further provides, however, “[t]he individuals referred or placed are not employees of the employment agencies.” *Id.* Accordingly, when NAICS code 561311

applies to a procurement, the individuals referred or placed are not contractor employees. Here, although the CO emphasizes that “recruiting and retaining staff” are important aspects of the contractor's work, the RFQ plainly states that such personnel will be contractor employees, not VA employees. Sections II.A and II.C, *supra*. Indeed, the RFQ cautions that contractor personnel will not be “considered VA employees for any purpose.” Section II.A, *supra*. Nor will contractor personnel be supervised by VA, as the RFQ stipulates that the contractor must provide its own supervisory personnel to oversee its workforce. *Id.* The instant RFQ, then, does not call for a contractor to recruit and refer candidates to VA for prospective employment, but rather seeks a contractor to perform administrative support functions utilizing the contractor's own personnel.

OHA's decision in *NAICS Appeal of Caduceus Healthcare, Inc.*, SBA No. NAICS-5847 (2017) is instructive. In *Caduceus*, OHA found that a procurement which primarily called for the “recruitment, referral, and placement of applicants” was best classified under NAICS code 561311. *Caduceus*, SBA No. NAICS-5847, at 10. OHA observed, however, that the applicants in question were to be hired by the procuring agency. NAICS code 561311 was appropriate because “the contractor will undertake the process of recruiting the candidates for [the procuring agency], which will make the final hiring decisions.” *Id.* Unlike the situation presented in *Caduceus*, the contractor in the instant case will directly perform the requisite services with its own employees.

The CO also questions whether Appellant has standing to challenge the selection of NAICS code 561311, because Appellant is not precluded from submitting a quotation under the size standard associated with that NAICS code. Section II.C, *supra*. OHA has long held, however, that “a concern which is small under the size standard challenged in a NAICS code appeal has standing to file an appeal advocating a lower size standard, because it is adversely affected by having to compete with larger firms.” *NAICS Appeal of SAC Cleaners, Inc.*, SBA No. NAICS-5468, at 4 (2013).

Because Appellant has demonstrated that the CO erred in selecting NAICS code 561311, 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 considers, 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).

I agree with Appellant that NAICS code 561110 best describes the principal purpose of this procurement. NAICS code 561110 applies to establishments that perform “a range of day-to-day office administrative services,” which may include “[m]edical office management services.” Section II.D, *supra*. NAICS code 561110 thus appropriately encompasses the administrative support duties the contractor will perform here, such as “patient scheduling and general reception functions,” “[s]canning of records and documents,” and “[p]rocessing of claims.” Section II.A, *supra*.

#### IV. Conclusion

Appellant has shown that the CO clearly erred in selecting NAICS code 561311, and the appeal is GRANTED to that extent. The most appropriate NAICS code for this procurement is

561110, Office Administrative Services, with a corresponding size standard of \$11 million average annual receipts. Because this decision is issued after the deadline for receipt of quotations, this decision “shall not apply to the pending solicitation but shall apply to future solicitations of the same products or services.” FAR 19.103(a)(7); *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