

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

NAICS APPEAL OF:

Laredo Technical Services, Inc.,

Appellant,

Solicitation No. 36C25223Q0878

U.S. Department of Veterans Affairs

SBA No. NAICS-6259

Decided: December 19, 2023

APPEARANCES

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

Erika A. Cannaday, Contracting Officer, U.S. Department of Veterans Affairs,
Milwaukee, Wisconsin

DECISION

I. Introduction and Jurisdiction

On November 21, 2023, the U.S. Department of Veterans Affairs (VA) issued Request for Quotations (RFQ) No. 36C25223Q0878 for medical coding services at the Edward Hines Jr. VA Hospital in Hines, Illinois. (RFQ, SF 1449.) 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 541511, Custom Computer Programming Services, with a corresponding size standard of \$34 million average annual receipts. (*Id.*)

On November 22, 2023, a prospective offeror, 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 541511, and that the appropriate code for this procurement is 561410, Document Preparation Services, with a corresponding size standard of \$19 million average annual receipts. For the reasons discussed *infra*, the appeal is granted in part.

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. 36C25223Q0878 on November 21, 2023. The RFQ seeks a contractor for a one-year base period and four one-year option periods. (RFQ at 30.) The RFQ's Performance Work Statement (PWS) indicates that the contractor will:

a. Assign [medical] codes based on medical record documentation of outpatient and inpatient care provided at or under the auspices of Edward Hines Jr. VA Hospital.

[and]

b. Furnish validation of the integrity, quality, and assignment of codes to the data contained in the outpatient Patient Care Encounter (PCE), inpatient Patient Treatment File (PTF), the Non-VA database, and the integrated billing package.

(*Id.*) Coders must be credentialed and have at least two years' experience. (*Id.* at 36-37.) Quotations are due December 27, 2023. (RFQ, Amendment 0004.)

B. Appeal

On November 22, 2023, Appellant filed the instant appeal. Appellant alleges that the CO erred in selecting NAICS code 541511 because the RFQ calls solely for medical coding services. (Appeal at 2.) Appellant argues that the correct NAICS code for the RFQ is 561410. (*Id.*) According to Appellant, “[t]he *NAICS Manual* is explicit that ‘Medical Coding Services’ not associated with accounting are to be assigned to NAICS 561410 — *Document Preparation Services*.” (*Id.*, citing *NAICS Manual* at 813.)

C. CO's Response

On December 8, 2023, the CO responded to the appeal. The CO agrees with Appellant that NAICS code 541511 is clearly inappropriate for the instant procurement. (CO's Response at 1.) However, the code advocated by Appellant also is incorrect. (*Id.* at 1-2.)

The CO asserts that medical coding is referenced twice in the *NAICS Manual* but never in conjunction with NAICS code 561410. (*Id.* at 1.) The first reference is to NAICS code 541219, Other Accounting Services. (*Id.*) The second reference is to NAICS code 561499, All Other Business Support Services. (*Id.*) The CO maintains that Appellant's recommended code would be too broad for the RFQ, given that two other NAICS codes specifically refer to medical coding. (*Id.* at 2.)

The CO argues that the better selection of these two codes is 541219 because this code was previously used for a predecessor procurement at the Edward Hines Jr. VA Hospital. (*Id.*) In the alternative, the CO recommends NAICS code 561499. (*Id.*) This code was recently used to solicit medical coding services at a different VA facility. (*Id.*)

D. *NAICS Manual*¹

The NAICS code assigned by the CO, 541511, Custom Computer Programming Services, covers:

establishments primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer.

NAICS Manual at 464. Index entries which refer to NAICS code 541511 include: “[a]pplications software programming services, custom computer”; “[c]omputer program or software development, custom”; “[c]omputer programming services, custom”; “[c]omputer software analysis and design services, custom”; “[c]omputer software programming services, custom”; “[c]omputer software support services, custom”; “[p]rogramming services, custom computer”; “[s]oftware analysis and design services, custom computer”; “[s]oftware programming services, custom computer”; “[w]eb (i.e., Internet) page design services, custom”; and “[w]elding robot applications/software design and development services.” *Id.* at 647, 701, 863, 901, and 949.

The NAICS code advocated by Appellant, 561410, Document Preparation Services, is comprised of establishments primarily engaged in one or more of the following:

(1) letter or resume writing; (2) document editing and proofreading; (3) typing, word processing, or desktop publishing; and (4) stenography (except court reporting or stenotype recording), transcription, and other secretarial services.

NAICS Manual at 489. Index entries which refer to NAICS code 561410 include: “[d]esktop publishing services (i.e., document preparation services)”; “[d]ictation services”; “[d]ocument preparation services”; “[d]ocument transcription services”; “[e]diting services”; “[l]etter writing services”; “[p]roofreading services”; “[r]esume writing services”; “[s]ecretarial services”; “[s]tenographic services (except court or stenographic reporting)”; “[t]echnical editing services”; “[t]ranscription services”; “[t]yping services”; and “[w]ord processing services.” *Id.* at 718, 720, 724, 730, 801, 863, 877, 888, 908, 919, 930, 936 and 953.

NAICS code 541219, Other Accounting Services, is comprised of:

establishments (except offices of CPAs) engaged in providing accounting services (except tax return preparation services only or payroll services only). These establishments may also provide tax return preparation or payroll services. Accountant (except CPA) offices, bookkeeper offices, and billing offices are included in this industry.

NAICS Manual at 458-59. Index entries which refer to NAICS code 541219 include: “[a]ccountants' (except CPAs) offices”; “[a]ccountants' (except CPAs) private practices”;

¹ Executive Office of the President, Office of Management and Budget, *North American Industry Classification System-United States (2022)*, available at <http://www.census.gov>.

“[a]ccounting services (except CPAs)”; “[b]illing services”; “[b]ookkeepers' offices”; “[b]ookkeepers' private practices”; “[b]ookkeeping services”; [m]edical coding services combined with accounting services (except CPA services)”; “[p]ublic accountants' (except CPAs) offices”; and “[p]ublic accountants' (except CPAs) private practices.” *Id.* at 635, 662, 668, 813, and 865.

NAICS code 561499, All Other Business Support Services, is comprised of:

establishments primarily engaged in providing business support services (except secretarial and other document preparation services; telephone answering and telemarketing services; private mail services or document copying services conducted as separate activities or in conjunction with other office support services; monetary debt collection services; credit reporting services; repossession services; and court reporting and stenotype recording services).

NAICS Manual at 494. Index entries which refer to NAICS code 561499 include: “[a]ddress bar coding services”; “[b]ar code imprinting services”; “[c]haritable fundraising campaign organization services on a contract or fee basis”; [c]haritable fundraising using a crowdfunding platform, on a contract or fee basis”; “[m]ail consolidation services”; “[m]ail presorting services”; “[m]edical coding services, not combined with accounting services”; “[t]eleconferencing services”; and “[v]ideoconferencing services.” *Id.* at 637, 657, 686-87, 808, 813, 920, and 943.

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 the parties that NAICS code 541511 is clearly incorrect for the instant RFQ. According to the *NAICS Manual*, NAICS code 541511 applies when a contractor is “writing, modifying, testing, and supporting software to meet the needs of a particular customer.” Section

II.D, *supra*. The instant RFQ, though, does not call for a contractor to develop software, but rather seeks a contractor to perform medical coding services. Section II.A, *supra*.

Because Appellant has established that the CO clearly erred in selecting NAICS code 541511, 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).

Pursuant to the *NAICS Manual*, medical coding services are classified either under NAICS code 541219 or NAICS code 561499, depending on whether such services are combined with accounting services. Section II.D, *supra*. Since there is no indication here that the contractor will perform any accounting services, NAICS code 541219 is not appropriate. Section II.A, *supra*. Accordingly, NAICS code 561499 best encompasses the medical coding services the contractor will perform. Assisting with medical coding is, fundamentally, a type of “business support services.” Moreover, the *NAICS Manual* expressly states that “[m]edical coding services, not combined with accounting services” are classified under NAICS code 561499. Section II.D, *supra*.

IV. Conclusion

Appellant has shown that the CO clearly erred in selecting NAICS code 541511, and the appeal is GRANTED to that extent. The most appropriate NAICS code for this procurement is 561499, All Other Business Support Services, with a corresponding size standard of \$21.5 million average annual receipts. Because this decision is being issued before the deadline for receipt of quotations, the CO MUST amend the RFQ to change the NAICS code designation from 541511 to 561499. 13 C.F.R. § 134.318(b); 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