

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

NAICS APPEAL OF:

Savantage Solutions

Appellant,

Solicitation No. W52P1-J-12-R-0201
Department of the Army
Army Contracting Command
Rock Island, Illinois

SBA No. NAICS-5446

Decided: February 14, 2013

APPEARANCES

Katherine S. Nucci, Timothy Sullivan, Thompson Coburn LLP, Washington, D.C., for Appellant Savantage Solutions

Peter Cannon, President, Computers Universal, Inc., Westerville, Ohio.

David S. Cohen, Laurel A. Hockey, Gabriel E. Kennon, Cohen Mohr LLP, Washington, D.C., for Mission 1st Group, Inc.

DECISION

I. Introduction and Jurisdiction

On January 17, 2013, the Department of the Army, Army Contracting Command-Rock Island (Army) issued Solicitation W52P1J-12-R-0201 (RFP). The RFP will result in Multiple Award, Indefinite Delivery Indefinite Quantity (ID/IQ) contracts. The RFP is a partial small business set-aside. The Contracting Officer (CO) contemplates making three awards, and reserves the right to make more or less than three awards, to responsible small businesses that are eligible small businesses under North American Industry Classification System (NAICS) code 541512, Computer Systems Design Services, with a corresponding \$25.5 million annual receipts size standard.

On January 22, 2013, Savantage Solutions (Appellant) filed this appeal. Appellant contends the CO erred in selecting the assigned NAICS code. Appellant argues NAICS code 541330, Engineering Services, Military and Aerospace Equipment and Military Weapons (MAE&MW exception) with a corresponding \$35.5 million best captures the RFP's technical support services, primarily performed by personnel supporting engineering functions related to the maintenance of and upgrades to the Army's telecommunications and information technology

systems. For the reasons discussed below, the appeal is denied.

The U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) decides NAICS 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 following the issuance of the RFP, so the appeal is timely. Federal Acquisition Regulation (FAR) 19.303(c); 13 C.F.R. §§ 121.1103(b)(1), 134.304(b). Accordingly, this matter is properly before OHA for decision.

II. Issue

Whether the CO's designation of NAICS code 541512, Computer Systems Design Services, with a corresponding \$25.5 million annual receipts size standard, to a procurement for Enterprise Information Technology Services is based on a clear error of fact or law.

III. Background

A. The RFP

The RFP contemplates the award of multiple ID/IQ contracts. The RFP Performance Work Statement (PWS) explains that:

Program Manager Installation Information Infrastructure Communications and Capabilities (PM I3C2) provides a comprehensive approach to U.S. Army Information Technology initiatives. PM I3C2 provides the infrastructure and enterprise services that directly support the generating forces and provide the foundation for global tactical operations. I3C2 employs a synchronized effort to modernize the Army's information networks, outside cable plants, telephone switching systems, campus area networks and long haul gateway for Army installations in high priority Continental United States (CONUS) as well as Europe, Pacific, North America and South America locations. . . .

RFP at 2. The RFP indicates the purpose of the RFP is to “develop/provide an organic capability to support a full range of required Enterprise Information Technology Services” for I3C2 and its three product managers: Installation Information Infrastructure Modernization Program (I3MP); Power Projection Enablers (P2E); and Korea Transformation. *Id.* at 3. P2E provides “the full spectrum of network and information services for a globally connected Army.” P2E's products provide “a single communications system at any location worldwide; turnkey engineering and integration of telecommunications technologies and services; and provide customers with a simple and effective process for obtaining these services and logistics support through various contracts.” *Id.* at 2.

B. The Appeal

On January 22, 2013, Appellant filed the above-captioned appeal challenging the CO's designation of NAICS code 541512, with a \$25.5 million size standard. Appellant asserts the

RFP covers “a wide range of services that could arguably be covered by various NAICS codes,” but that the principal purpose of the RFP is not the “design of computer systems that integrate hardware, software, and communication technologies.” Appeal at 2 (citing *NAICS Appeal of Technica Corp.*, SBA No. NAICS-5248 (2011)). Instead, Appellant argues the most appropriate NAICS code for these support services, “which primarily will be performed by personnel supporting engineering functions related to the maintenance and upgrade to the Army's telecommunications and information technology (“IT”) systems and network infrastructure, is NAICS Code 541330 (Military and Aerospace Equipment and Military Weapons (“MAE&MW Exception”)), with a \$35.5 million size standard.” Appeal at 2-3.

Appellant argues the Army's IT and telecommunication systems and network infrastructure are already established and the work required by the RFP will require highly-specialized and trained personnel to maintain and upgrade the Army's worldwide network infrastructure making the MAE&MW Exception the most appropriate NAICS code for the RFP. Appellant asserts the MAE&MW Exception has been upheld by OHA where the “predominant contract tasks are the performance of highly-technical safety-related analyses, assessments, and investigations and the provision of safety-related advice and expertise.” Appeal at 5 (quoting *NAICS Appeal of Millienium Eng'g and Integration Co.*, SBA No. NAICS-5309 (2011), and citing *NAICS Appeal of Nelson Eng'g Co.*, SBA No. NAICS-5166 (2010)).

Appellant also relies on *NAICS Appeal of Inklings Media Co.*, SBA No. NAICS-5054 (2009), where OHA rejected a challenge to the use of the MAE&MW Exception by the Missile Defense Agency to certain contract line item numbers for advisory and assistance services essential “to plan, define, create a system design, build, test and verify, assess, and field the BMDS [Ballistic Missile Defense System].” Appeal at 6-7 (citing *id.* at 7). Appellant states OHA found the CO did not err in relying on the MAE&MW Exception in *Inklings Media Company* because the BMDS mission is a “sophisticated undertaking, and it is virtually impossible to separate the work performed by the engineers and scientists from those supporting them.” Appeal at 7 (quoting *Inklings Media Co.* at 10-11).

Similar to *Inklings Media Company*, Appellant contends that the NAICS code 541330 MAE&MW Exception best describes the principal purpose of the IT services being acquired under the RFP. Appellant cites to the PWS for the I3MP Task Order 001 to assert that the broadly-defined support services do not include the design and planning of a computer system, but require highly-trained personnel with expertise in engineering functions related to IT and communications network systems. Appeal at 9. Appellant cites to requirements in the PWS for Task Order 001 which do not include the design and planning of computer systems. Appellant asserts that although certain tasks may be covered by other NAICS codes, the “common characteristic of all tasks is that they support the engineering efforts to design, integrate, test and utilize upgrades and enhancements to the Army's IT and telecommunications systems and network.” Appeal at 13.

Appellant concludes by asserting that this procurement cannot be a Computer Design Services procurement, because certain Labor Categories are not included in the PWS, including: “a systems development expert, systems development manager, systems, applications or computer programmer, software developer and/or programmer, database specialist or

administrator, systems analyst, systems architect, and tester” and these personnel are essential for a computer design procurement. Appeal at 14.

C. Computers Universal, Inc.'s Response

On January 24, 2013, Computers Universal, Inc. responded to the NAICS appeal. Computers Universal argues the NAICS code should not be changed. Computers Universal states the RFP calls for “Enterprise Information Technology Services to include: Project/Product Management; Business Process Reengineering (BPR); Enterprise Design and Information Technology (IT) support.” Computers Universal Response at 1. Computer Universal states raising the size standard will eliminate small businesses from being able to bid on this requirement.

D. Mission 1st Group, Inc.

On February 6, 2013, Mission 1st Group, Inc. (Mission 1st) responded to the appeal. Mission 1st argues the CO did not err in assigning NAICS code 541512 to the RFP and asserts that Appellant's NAICS code appeal should be denied. Mission 1st states the PWS demonstrates the principal purpose of the RFP is “the planning and design of computer systems that integrate hardware, software, and communication technologies” and even the tasks not directly related to planning and designing an integrated computer system are still in pursuit of developing a system. Mission 1st Response at 2, 14-19. Mission 1st argues the NAICS code appeal is largely based on the work under Task Order 0001, but the PWS should be given more weight in determining the primary purpose of the RFP. *Id.* at 5.

Mission 1st argues Appellant's proposed MAE&MW Exception is legally and factually incorrect because the MAE&MW Exception only applies to procurements seeking engineering services for weapons systems, not IT services. *Id.* at 19-24. Mission 1st also raises concerns over Appellant's standing to challenge the NAICS code. Mission 1st argues because Appellant fails to demonstrate the MAE&MW Exception applies to this RFP Appellant is arguing for a smaller size standard under which Appellant is not an eligible small business and, therefore, Appellant lacks standing. *Id.* at 20-22.

IV. Discussion

Appellant has the burden of proving, by a preponderance of the evidence, all elements of its appeal. Specifically, it must prove the CO's NAICS code designation is based on a clear error of fact or law. *NAICS Appeal of Durodyne, Inc.*, SBA No. NAICS-4536, at 4 (2003); 13 C.F.R. § 134.314. The proper NAICS code is that which best describes the principal purpose of the services being procured, in light of the industry description in the NAICS MANUAL,¹ the description in the solicitation, and the relative weight of each element in the

¹ EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM-UNITED STATES (2012), *available* at <http://www.census.gov>.

solicitation. *Durodyne*, SBA No. NAICS-4536, at 4; 13 C.F.R. § 121.402(b).

The NAICS code designated by the CO, 541512, covers:

[E]stablishments primarily engaged in planning and designing computer systems that integrate computer hardware, software, and communication technologies. The hardware and software components of the system may be provided by this establishment or company as part of integrated services or may be provided by third parties or vendors. These establishments often install the system and train and support users of the system.

Illustrative Examples:

Computer systems integration design consulting services Local area network (LAN) computer systems integration design services Information management computer systems integration design services Office automation computer systems integration design services.

NAICS MANUAL, at 753-54.

Appellant requests a special size standard under NAICS code 541330, Engineering Services. The basic description for this NAICS code is:

[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.

Illustrative Examples:

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

NAICS MANUAL, at 733.

Under this code, SBA has promulgated a special size standard of \$35.5 million in annual receipts for MAE&MW. 13 C.F.R. § 121.201. The NAICS Manual does not describe what services fall under the MAE&MW exception. However, OHA has addressed the applicability of the size standard exception in its case law. *E.g.*, *SIC Appeal of Giordano Assocs., Inc.*, SBA No. SIC-2502 (1986) (holding the application of the exception depends on whether the engineering services being procured are “military in nature”); *SIC Appeal of New Tech., Inc.*, SBA No. SIC-

2505 (1986) (affirming the CO's designation of the exception because the procurement was for weapons testing and evaluation and called for engineers and engineering-related professionals); *SIC Appeal of Jack Faucett Assocs.*, SBA No. SIC-2782 (1987) (reversing the CO's designation of the exception because the solicitation contained no reference to aerospace equipment or military weapons).²

More recently, upon reviewing these previous cases, OHA concluded, “the MAE&MW special size standard applies to procurements that involve professional engineering services with a military or aerospace application.” *NAICS Appeal of CSMI, LLC*, SBA No. NAICS-5433, at 8 (2012); *see also NAICS Appeal of Davis-Page Mgmt. Sys., LLC*, SBA No. NAICS-5055, at 5 (2009) (holding that for the MAE&MW designation to be appropriate, the procurement must involve professional engineering services with a military application). OHA has also determined that the use of the special size standard is not limited to Department of Defense procurements. *NAICS Appeal of Millennium Eng'g and Integration Co.*, SBA No. NAICS-5309, at 10-11 (2011) (holding that civilian agencies such as NASA may utilize the special size standard.).

In this case, I find the Army did not err in designating NAICS code 541512. This RFP does not seek to procure military weapons, aerospace equipment, or engineering services to support such equipment, and therefore does not qualify for the MAE&MW special size standard. The work the contractor will perform is not connected with weapons or weapons systems, nor with the design, engineering, or maintenance of weapons. The PWS does not mention weapons systems or aerospace equipment.

Rather, this solicitation seeks to procure IT services to provide network and information services for the Army so that soldiers, commanders and supporting organizations can access, process, and act upon information anytime and anywhere (PWS at 2). It is quite clear that the PWS sets forth a scope of work that demonstrates that the primary purpose of this procurement is planning and design of computer systems that integrate hardware, software, and communications technologies. This PWS clearly requires extensive IT services. Appellant relies heavily on the initial task order to argue the RFP is seeking engineering functions for maintenance and upgrades to the Army's IT systems and network infrastructure; however, one task order is not probative of the primary purpose of the solicitation. The proper NAICS code is that which best describes the principal purpose of the solicitation as described in the RFP.

The ultimate purpose of this procurement is communication. This solicitation does not seek to procure any weapons or aerospace equipment, nor are the services in support of efforts to procure weapons and aerospace equipment. While the services sought here will support military operations, which will involve the use of weapons, they are not part of the procurement of weapons or aerospace equipment. There is nothing in the solicitation which supports the use of the MAE&MW size standard here.

² “Where appropriate, OHA's case precedent decided under the prior Standard Industrial Classification (SIC) code system will apply to NAICS code appeals.” *NAICS Appeal of CSMI, LLC*, SBA No. NAICS-5433, at 7 n.3 (2012).

Appellant's argument that the labor categories do not support the use of NAICS code 541516 because certain categories of labor are not included is meritless. The description in the NAICS MANUAL does not specify that an establishment must include these labor categories in order to be classified under Computer Design Services, and Appellant cites to no authority which supports its contention. Merely because the procurement does not include certain labor categories does not remove it from the Computer Design Services category, if the primary purpose of the procurement is, as it is here, the design of an extensive IT and communications network.

Appellant argues that OHA precedent supports its contention that this procurement should be designated under MAE&MW. Appellant asserts that *NAICS Appeal of Inklings Media Company*, SBA No. NAICS-5054 (2009) supports its case, arguing that OHA approved the MAE&MW size standard in that case, holding that the code was not limited to pure engineering services, and could include related services. Upon review, I find that *Inklings Media* does not support Appellant. There, the procuring agency was the Missile Defense Agency, and the mission was the Ballistic Missile Defense Shield (BMDS), a great technological challenge which required state of the art engineering and science. The procurement required assessment of program performance, communicating the requirements of the shield to contractors who would be developing it, and assessment of program performance and evaluation of the programs developed. OHA held that it was impossible to separate the work performed by engineers from the team supporting them, because it was all part of engineering the BMDS. That is to say, the work required by the procurement was an integral part of the development of a weapon system, which was the key factor that brought it under MAE&MW. The *Inklings Media* procurement was part of the development of the BMDS, and therefore was part of a very large military weapons system. *Inklings Media* therefore does not stand for the proposition that the MAE&MW standard is not limited to the procurement of military equipment and weapons and aerospace equipment. Rather, *Inklings Media* establishes that if the procurement is for engineering or related services which are an integral part of the aerospace or weapons system development, then the MAE&MW standard is appropriate. Here, however, the procurement is not part of the development of aerospace equipment or military weapons, and therefore the MAE&MW standard is not applicable.

Similarly, Appellant's reliance on *NAICS Appeal of Millennium Engineering and Integration Co.* SBA No. SIZ-5309 (2011) is also misplaced. OHA upheld the designation of MAE&MW for a National Aeronautics and Space Administration (NASA) solicitation for safety and mission support services because that contract contained highly-technical safety-related analyses and the provision of safety-related advice, and so were engineering services. However, this was an engineering services procurement related to aerospace equipment for NASA. Therefore, this was a procurement for services which were an integral part of procuring aerospace equipment. Accordingly, while this procurement was covered by MAE&MW, it does not vary the rule that the procurement must be for aerospace equipment or military weapons for the size standard to be applicable.

Accordingly, I find Appellant has failed to meet its burden of establishing clear error in the CO's designation of NAICS code 541512, Computer Systems Design Services, with a corresponding \$25.5 million annual receipts size standard.

V. Conclusion

For the above reasons, the instant appeal is DENIED. The CO's NAICS code designation is not based on clear error. The NAICS code designation assigned to the RFP remains 541512, Computer Systems Design Services, with a corresponding \$25.5 million annual receipts size standard.

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

CHRISTOPHER HOLLEMAN
Administrative Judge