

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

NAICS APPEAL OF:

DCX/CHOL Enterprises, Inc.

Appellant

Solicitation No. SPM4A6-08-T-8783

Defense Logistics Agency

Defense Supply Center Richmond

Richmond, Virginia

SBA No. NAICS-4889

Decided: February 6, 2008

APPEARANCE

Mark W. Uslan, Government Sales Manager, Centerville, Ohio, for Appellant.

DECISION

HOLLEMAN, Administrative Judge:

I. Jurisdiction

This appeal is decided under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 121 and 134.

II. Issue

Whether the appropriate North American Industry Classification System (NAICS) code for a special purpose electrical cable assembly is 221122, Electrical Power Distribution, or 336413, Other Aircraft Parts and Auxiliary Equipment Manufacturing.

III. BACKGROUND

On January 23, 2008, the Defense Logistics Agency, Defense Supply Center Richmond (DSCR), in Richmond, Virginia, issued the subject Request for Quotations No. SPM4A6-08-T-8783 (solicitation) for cable assembly. The Contracting Officer (CO) set the procurement totally aside for small businesses, and designated NAICS code 221122, Electric Power Distribution, with a corresponding small business size standard that provides a business is small if “its total electric output for the preceding fiscal year does not exceed 4 million megawatt hours,” as the NAICS code for this procurement. *See* 13 C.F.R. § 121.201, fn.1. Proposals are due on February 6, 2008.

On January 25, 2008, DCX/CHOL Enterprises, Inc. (Appellant), filed the instant NAICS code appeal with the Small Business Administration's (SBA) Office of Hearings and Appeals (OHA). Appellant argues that the appropriate NAICS code for this solicitation is 336413, Other Aircraft Parts and Auxiliary Equipment Manufacturing, with a corresponding small business size standard of 1,000 employees.

Appellant asserts the item in question is a component of A-10 Thunderbolt military aircraft. Accordingly, Appellant argues that the code for an aircraft part is the more appropriate NAICS code.

The solicitation describes the part as "cable assembly, special purpose, electrical," and lists Appellant and Northrop Grumman Systems as previous suppliers of the product.

IV. DISCUSSION

A. Timeliness

Appellant filed the instant appeal within 10 days after DSCR issued the solicitation. Thus, the appeal is timely. 13 C.F.R. §§ 121.1103(b)(1); 134.304(a)(3).

B. Standard of Review

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

C. The Merits

The NAICS code designated by the CO, 221122, Electric Power Distribution, covers:

[E]lectric power establishments primarily engaged in either (1) operating electric power distribution systems (i.e., consisting of lines, poles, meters, and wiring) or (2) operating as electric power brokers or agents that arrange the sale of electricity via power distribution systems operated by others.

NAICS Manual.

¹ Executive Office of the President, Office of Management and Budget, *North American Industry Classification System-United States (2007)*, available at <http://www.census.gov/epcd/www/naics.html> [hereinafter *NAICS Manual*].

Appellant's requested NAICS code, 336413, Other Aircraft Parts and Auxiliary Equipment Manufacturing, covers:

[E]stablishments primarily engaged in (1) manufacturing aircraft parts or auxiliary equipment (except engines and aircraft fluid power subassemblies) and/or (2) developing and making prototypes of aircraft parts and auxiliary equipment. Auxiliary equipment includes such items as crop dusting apparatus, armament racks, inflight refueling equipment, and external fuel tanks.

NAICS Manual.

It is clear that the CO's designation is in error. NAICS code 221122 is meant to cover power companies which generate and deliver electric power, as conclusively established by the unique size standard expressed in megawatt hours delivered rather than annual receipts or number of employees. This code is meant only for the generation and delivery of electric power, and most certainly not for the manufacture or delivery of parts or equipment, even if the parts and equipment are part of electrical systems.

Conversely, Appellant's preferred code is meant to cover manufacture of aircraft parts, such as the part this solicitation seeks to procure. While the solicitation does not specifically mention aircraft, Appellant's knowledge as a prior manufacturer of the part and Northrup Grumman's presence on the list of previous suppliers establishes that Appellant's characterization of the part as an aircraft part is correct. Further, the CO stated in a telephone conversation with OHA and provided documentation that this procurement was for an aircraft part. NAICS code 336413 clearly covers this item, while the CO's designated code is wholly inappropriate. Appellant has met its burden of establishing the CO's designation is in error. NAICS code 336413 is the appropriate code for this procurement.

V. CONCLUSION

For the above reasons, the instant appeal is GRANTED, and the CO's NAICS code designation is VACATED and REVERSED. The correct NAICS code designation for this procurement is 336413, Other Aircraft Parts and Auxiliary Equipment Manufacturing.

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

CHRISTOPHER HOLLEMAN
Administrative Judge