

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

NAICS APPEAL OF:

DCX/CHOL Enterprises, Inc.

Appellant

Solicitation No. SPM4A6-08-R-0292

Defense Logistics Agency

Defense Supply Center Richmond

Richmond, Virginia

SBA No. NAICS-4890

Decided: February 8, 2008

APPEARANCE

Mark W. Usan, Government Sales Manager, DCX/CHOL Enterprises, Inc., Centerville, Ohio, for Appellant.

DECISION

PENDER, 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 Contracting Officer's (CO) designation of NAICS code 334419 to a solicitation for supplying a Wiring Harness for installation in a Bradley Land Vehicle was based upon a clear error of fact or law.

III. Background

A. Facts

1. On December 21, 2007, the Defense Logistics Agency, Defense Supply Center Richmond, in Richmond, Virginia (DSCR) posted a pre-solicitation notice that stated it would be buying sixty-eight Wiring Harnesses, National Stock Number (NSN) 6150-01-492-4611, in RFP

SPM4A6-08-R-0292 (RFP). The notice stated the wiring harness is used on the Bradley Land Vehicle (Bradley) and that export control requirements apply.

2. On January 17, 2008, DSCR issued the RFP for the wiring harnesses. The Contracting Officer (CO) set the procurement totally aside for small businesses, and designated North American Industry Classification System (NAICS) code 334417, Electronic Connector Manufacturing, with a small business size standard of 500 employees, as the NAICS code for this procurement.

3. On January 24, 2008, the CO issued Amendment 0001 to the RFP changing the NAICS code designation to 334419, Other Electronic Component Manufacturing, which also has a size standard of 500 employees. Proposals are due on February 17, 2008.

4. RFP Section B describes the item to be purchased. It identifies an NSN and various drawings that are applicable to the item, including one restricted drawing. In addition, Schedule B provides for First Item Testing of two sample harnesses and states the item to be purchased is a “critical application item.”¹ In total, the contractor is to supply sixty-six production items (plus two first articles) and has 410 days in which to supply the wiring harnesses.

B. The Appeal

On January 22, 2008, DCX/CHOL Enterprises, Inc. (Appellant) filed a NAICS code appeal with the Office of Hearings and Appeals (OHA), challenging the CO’s NAICS code designation. Appellant argues that the appropriate NAICS code for this solicitation is 336992, Military Armored Vehicle, Tank and Tank Component Manufacturing, with a small business size standard of 1,000 employees.

Appellant argues that the CO’s designated NAICS code is too general and “fails to take into consideration the specialized nature of the item being manufactured.” Appeal, at 4. Appellant asserts that 336992 is the more appropriate code because “[t]he function of the product is to serve in a military armored vehicle (not a generalized electrical connector, which is NAICS 334417²).” *Id.*

C. DSCR’s Response

On January 31, 2008, I ordered the CO to file a response to the appeal petition, by February 6, 2008, addressing whether the item in question is a specialized component for a Bradley. The CO has not responded.

¹ DLA defines a critical application item in the Defense Logistics Acquisition Directive (DLAD) 11.301 as “an item that is essential to weapons performance, operation, the preservation of life, or safety of operating personnel, as determined by the Military Services.”

² At the time of appeal, Amendment 0001 that changed the NAICS code to 334419, had not been issued.

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 must prove the CO's NAICS code designation is based on a clear error of fact or law. 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*,³ the description in the solicitation, and the relative weight of each element in the solicitation. 13 C.F.R. § 121.402(b).

C. Analysis

1. NAICS code definitions

NAICS code 336992 covers, “establishments primarily engaged in manufacturing complete military armored vehicles, combat tanks, *specialized components* for combat tanks, and self-propelled weapons.” *NAICS Manual*, available at <http://www.census.gov/eos/www/naics/htmls/3/336992.htm> (emphasis added).

NAICS code 334419 covers, “establishments primarily engaged in manufacturing electronic components (except electron tubes; bare printed circuit boards; semiconductors and related devices; electronic capacitors; electronic resistors; coils, transformers and other inductors; connectors; and loaded printed circuit boards).” *NAICS Manual*, available at <http://www.census.gov/eos/www/naics/htmls/3/334419.htm>.

2. The Merits

The issue on appeal is whether NAICS code 336992 best describes the principal purpose of the services being procured, *i.e.*, whether wiring harnesses for a Bradley are “specialized components for combat tanks and self-propelled weapons.”

I take notice the Bradley:

- a. Weighs in excess of thirty tons;
- b. Is armored;

³ 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/naics07/index.html>).

- c. Is tracked;
- d. Has a wide range of missions and configurations;
- e. Carries and supports various kinds of sophisticated weapons; and
- f. Is operated by the U.S. Army for use in combat.

Accordingly, the Bradley is effectively a combat tank or self-propelled weapons system for the purposes of this NAICS code. I find the principal purpose of the RFP is to buy a wiring harness for the Bradley. The remaining question is whether the wiring harness is a specialized component.

There is clear evidence that the wiring harness is a specialized component for a combat tank or self-propelled weapons system as anticipated by NAICS code 336992. For example, the RFP provides the item to be procured (the wiring harness) is a “critical application item” for the Bradley, requires first article testing, and states the successful offeror has 410 days to supply the wiring harnesses. In addition, I note that wiring harnesses are necessarily unique to the system or vehicle upon which they are installed, *i.e.*, a wiring harness for a Bradley is very unlikely to have an application for a truck, a diesel electric locomotive, or any other vehicle. Accordingly, a more generalized electronic components code, *e.g.*, 334419, fails to encompass the specialized nature of a wiring harness for a combat tank or self-propelled weapons system.

Moreover, the CO elected not to respond to Appellant’s arguments, as I ordered him to do on January 31, 2008.⁴ Accordingly, I have determined to take a negative inference from his conduct. Although the negative inference reinforces Appellant’s appeal, I would still find the item to be procured by the RFP is a specialized component for the Bradley that is not susceptible to either “off the shelf” supply or a short turn-around. Therefore, I find the evidence clearly and convincingly proves the CO should have designated NAICS code 336992 because it best describes the principal purpose of the RFP. Thus, the CO is clearly in error to have designated NAICS code 334419.

⁴ The restricted aspect and unavailability of the drawings partially prompted my Order.

V. Conclusion

For the above reasons, I REVERSE the CO's NAICS code designation and hold the appropriate NAICS code for this procurement is 336992 and GRANT the instant appeal.

This is the Small Business Administration's final decision. 13 C.F.R. § 134.316(b).

THOMAS B. PENDER
Administrative Judge