

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

NAICS APPEAL OF:

DCX/CHOL Enterprises, Inc.

Appellant

Solicitation No. SPM4A6-08-R-0148

Defense Logistics Agency

Defense Supply Center Richmond

Richmond, Virginia

SBA No. NAICS-4893

Decided: February 13, 2008

APPEARANCE

Mark W. Uslan, 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. Accordingly, this appeal is properly before SBA's Office for Hearings and Appeals (OHA) for decision.

II. Issue

Whether the Contracting Officer's (CO) designation of North American Industry Classification System (NAICS) code 334419 to a solicitation for supplying a wiring harness for installation in an F/A 18 Hornet aircraft was based upon a clear error of fact or law.

III. Background

A. Facts

1. On January 23, 2008, the Defense Logistics Agency, Defense Supply Center Richmond, Aviation Supply Chain, in Richmond, Virginia (DSCR) issued Request for Proposals SPM4A6-08-R-0148 (RFP) for the purpose of buying twenty-nine National Stock Number

(NSN) 6150-01-304-5490, Cable Assembly, Special Purpose, Electrical, for the F/A 18 Hornet aircraft. The CO set the procurement totally aside for small businesses, and designated NAICS code 335931, Current-Carrying Wiring Device Manufacturing, with a small business size standard of 500 employees, as the NAICS code for this procurement. Proposals are due by February 25, 2008.

2. RFP Section B describes the item to be purchased. It identifies the NSN and references various drawings that are applicable to the item. In total, the contractor is to supply twenty-nine production items (twelve in CLIN 0001 and seventeen in CLIN 0002).

3. On January 30, 2008, the CO issued Amendment 0001, which informed interested parties of the appeal and attached a copy of OHA's January 28, 2008 Notice and Order. On February 4, 2008, I ordered the CO to respond to the appeal.

B. Appeal

On January 24, 2008, DCX/CHOL Enterprises, Inc. (Appellant) appealed the CO's NAICS code designation and argued the correct NAICS code should be 336413, Other Aircraft Part and Auxiliary Equipment Manufacturing, with a 1,000 employee size standard. Appellant generally argued NAICS code 336413 is a more specific code to describe items used in an aircraft.

C. CO Response

On February 7, 2008, the CO filed his response and issued Amendment 0002. In Amendment 0002, the CO changed the NAICS code from 335931 to 334419, Other Electronic Component Manufacturing, which also has a size standard of 500 employees. In his written response, the CO wrote:

The required Cable Assembly, Special Purpose, Electrical is used on the F/A 18 Hornet aircraft. All cable assemblies perform the same or similar functions and use similar production processes, but actual design/size/configuration is tailored by the component manufacturer to a specific weapon system. NAICS code 334419, Other Electronic Component Manufacturing, best describes the required item. NAICS code 336413 is appropriate for aircraft assemblies or auxiliary parts unique to aircraft and is typically used for aircraft structural components, propellers, armament racks, and similar items. . . .

D. Appellant's Response to Amendment 0002

On February 12, 2008, Appellant responded to the CO's designation of NAICS code 334419 in Amendment 0002. In an argument almost identical to its original Appeal, Appellant argued that NAICS code 336413 was a more specific NAICS code and best describes the principal purpose of the procurement. Appellant did not respond to the CO's explanation of why he had chosen NAICS code 334419 cited above.

IV. Discussion

A. Introduction

Even though the CO changed his NAICS code designation after Appellant's appeal, the CO's action does not resolve Appellant's appeal. Appellant responded to Amendment 0002 and the CO's designation of NAICS code 334419 and argued that NAICS code 336413, with a larger employee size standard (1000 employees) than NAICS code 334419 is appropriate. Accordingly, I must rule on whether the CO's designation of NAICS code 334419 is based upon a clear error of law or fact.

At the onset, I note that Appellant's appeal, including Appellant's Response to the CO's designation of NAICS code 334419 in Amendment 0002 is close to being insufficient under 13 C.F.R. § 134.305(5), *i.e.*, Appellant must include a full and specific statement as to why the NAICS code designation is in error. The core of Appellant's argument is that the CO chose a non-specific NAICS code (twice) and that the NAICS code Appellant advocates, 336413, is more specific. However, Appellant does not explain why its choice of NAICS code 336413 more specifically describes the purpose of the services being provided than NAICS code 334419. While the lack of specificity in Appellant's appeal materially weakens its appeal, I do not find it is fatal to Appellant's appeal. Accordingly, I will decide the matter on the merits.

B. 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).

C. 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*,¹ the description in the solicitation, and the relative weight of each element in the solicitation. 13 C.F.R. § 121.402(b).

D. Analysis

1. NAICS code definitions

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

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/ipeds/naics07/index.html>) [hereinafter *NAICS Manual*].

inductors; connectors; and loaded printed circuit boards).” *NAICS Manual*, available at <http://www.census.gov/eos/www/naics/htmls/3/334419.htm>.

NAICS code 336413 covers, “establishment[s] 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*, available at <http://www.census.gov/eos/www/naics/htmls/3/336413.htm>.

2. The Merits

The issue on appeal is whether NAICS code 334419 best describes the principal purpose of the services being procured, *i.e.*, whether the CO’s designation of NAICS code 334419 for a procurement for cable assemblies for an F/A 18 Hornet aircraft is based upon a clear error of fact or law.

Appellant’s suggested NAICS code, 336413, does not encompass all specialized components made for aircraft.² Rather, the *NAICS Manual* states NAICS code 336413 generally encompasses aircraft parts and components and provides examples. These examples list structural parts applicable to aircraft or aircraft auxiliary equipment, not cable assemblies or electrical components. Therefore, the *NAICS Manual* supports the CO’s explanation that NAICS code 336413 applies to aircraft structural components, not cable assemblies.

NAICS code 334419 covers the manufacture of various electronic components. While the *NAICS Manual* does not specifically mention cable assemblies, it does list “Harness assemblies for electronic use manufacturing” as being properly indexed under NAICS code 334419, which supports the CO’s designation. Since a harness assembly and a cable assembly are arguably similar, I find this to be probative. Moreover, my own research of the *NAICS Manual* yields no code more applicable than 334419 for aircraft cable assemblies.

Based upon: (1) the information in the *NAICS Manual*; (2) the CO’s cogent and credible explanation for designating NAICS code 334419 in Amendment 0002 to the RFP; and (3) Appellant’s relatively unspecific appeal, I conclude the CO did not base his designation of NAICS code 334419 on a clear error of fact or law. Therefore, I find NAICS code 334419 best describes the principal purpose of the RFP.

V. Conclusion

For the above reasons, I AFFIRM the CO’s NAICS code designation and hold the appropriate NAICS code for this procurement is 334419 and DENY the instant appeal.

² In contrast, NAICS code 336992 covers specialized components for combat tanks. See *NAICS Appeal of DCX/CHOL Enterprises, Inc.*, SBA No. NAICS-4890 (2008).

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

THOMAS B. PENDER
Administrative Judge