

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

NAICS APPEAL OF:

DCX/Chol Enterprises, Inc.

Appellant

Solicitation No. SPM4L1-09-R-0054

Defense Logistics Agency

Defense Supply Center Richmond

Richmond, Virginia

SBA No. NAICS-5033

Decided: April 16, 2009

APPEARANCES

Mark W. Uslan, Government Sales Manager, DCX/Chol Enterprises, Inc., Centerville, Ohio, for Appellant.

Kreylon Crewe-Bacon, Contracting Officer, Defense Logistics Agency, Defense Supply Center Richmond, Richmond, Virginia.

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 Contracting Officer's assignment of North American Industry Classification System (NAICS) code 334512, Automatic Environmental Control Manufacturing for Residential, Commercial and Appliance Use, to a procurement for a "Panel, Power Distribution" is based on a clear error of fact or law.

III. BACKGROUND

A. The Solicitation

On March 20, 2009, the Defense Logistics Agency (DLA), Defense Supply Center Richmond (DSCR) issued the subject Request for Proposals No. SPM4L1-09-R-0054 (RFP).

The Contracting Officer (CO) set the procurement totally aside for small businesses, and assigned NAICS code 334512, Automatic Environmental Control Manufacturing for Residential, Commercial and Appliance Use, with a corresponding small business size standard of 500 employees, to the procurement. Proposals are due May 1, 2009.<sup>1</sup>

DSCR seeks to procure a quantity of an item named “Panel, Power Distribution” and listed as National Stock Number (NSN) 6110-01-507-4061.

### B. The Appeal

On March 20, 2009, DCX/Chol Enterprises, Inc. (Appellant), filed the instant NAICS code appeal with the Small Business Administration’s (SBA) Office of Hearings and Appeals (OHA). In its Amended Appeal Petition, Appellant asserts that NAICS code 334512, chosen by the CO, is incorrect. Appellant asserts that the correct NAICS code for this solicitation is 334511, Search, Detection, Navigation, Guidance, Aeronautical and Nautical System and Instrument Manufacturing, with a corresponding small business size standard of 750 employees.

In its argument, Appellant points to the industries, which are listed in the online version of the NAICS MANUAL.<sup>2</sup> Under NAICS code 334511, the list includes: “Cabin environment indicators, transmitters, and sensors manufacturing.” Appellant notes the item being procured is a component of a T-38C aircraft, and points to a Lockheed-Martin drawing (81755) 16E1081-908, which identifies the part being procured as an aircraft “PANEL ASSY-AIR CONDITION CONTROL.”

Appellant asserts this item is a power distribution panel that, contrary to the NAICS code 334512 definition of “Automatic Environmental Control Manufacturing for Residential, Commercial and Appliance use,” is not used for any residential, commercial, or appliance application. Rather, the item being procured is used in the cockpit (cabin) of a military aircraft. Thus, this item belongs under the industry “Cabin environment indicators, transmitters, and sensors manufacturing” that is listed under NAICS code 334511.

Because this item is an aircraft air conditioning control switch, and its principal purpose is the control of the aircraft’s air conditioning system, it is an environment transmitter. Thus, as a specialized item, NAICS code 334512 is an inappropriate NAICS code for it. Therefore, NAICS code 334511 is the proper NAICS code.

---

<sup>1</sup> The original solicitation contained two NAICS codes and an offer deadline of April 20, 2009. On March 24, 2009, the CO amended the solicitation to notify all interested persons of the pendency of this appeal, and to extend the offer deadline. Following a teleconference with both parties, the CO issued an amendment to place the intended NAICS code on the RFP cover sheet and Appellant, as directed by the Judge, filed an Amended Appeal Petition.

<sup>2</sup> EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM-UNITED STATES (2007), *available at* <http://www.census.gov>. [hereinafter NAICS MANUAL].

C. CO's Response

On April 3, 2009, the CO filed her response to the appeal. She also included an official copy of the Lockheed-Martin drawing and a page from the DLA's Cataloging Handbook H6-A, which is the Federal item name directory for supply cataloging. Pointing to the drawing, she points to the description "PANEL ASSY-AIR CONDITION CONTROL." The CO asserts the critical term in the description is "control." The item is a panel label "AIR COND" with two control knobs, labeled "TEMP" and "AIR SOURCE." The TEMP knob gives the operator control over turning the unit on or off. If it is in the on position, the operator controls whether to use automatic or manual settings, and may choose cool or warm within either setting. The AIR SOURCE knob provides the operator with similar choices. The item is an air conditioning switch, and properly identified under NAICS 334512. The CO maintains that it is not a detection, guidance, or aeronautical instrument.

The CO also asserts the item is catalogued under National Stock Number Federal Supply Class 6110, "Electrical Control Equipment," and this designation is consistent with NAICS code 334512, which includes controls and regulators for air conditioning.

D. Appellant's Reply

On April 7, 2009, Appellant filed a reply to the CO's response to the appeal. Ordinarily, a reply is not permitted to a response, unless the judge directs it. 13 C.F.R. § 134.309(d). However, because of the confused initial NAICS code designation by the CO, which left Appellant uncertain as to what to argue initially, I will permit this reply to be filed.

Appellant argues that the type of controls covered by NAICS code 334512 do not include the item procured here. NAICS code 334512 involves automatic environmental controls, used in residential, commercial or appliance applications. This procurement is an aerospace procurement, concerning a product to be used on T-38 aircraft. It gives the pilot control over the aircraft's environmental system either automatically or by using manual controls. This control panel merely transmits the pilot's instructions to the system. Appellant asserts that this procurement is for an aerospace application requiring a higher degree of quality control than the residential, commercial or appliance applications covered by NACIS code 334512.

IV. DISCUSSION

A. Preliminary Matters

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).

Appellant has the burden of proving, by a preponderance of the evidence, all elements of its appeal. Specifically, it must prove the NAICS code designation assigned to the solicitation is based on 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). 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, the description in the solicitation, and the relative weight of each element in the solicitation. 13 C.F.R. § 121.402(b); *Durodyne*, SBA No. NAICS-4536, at 4.

B. The Merits of the Appeal

The NAICS code designated by the CO, 334512, Automatic Environmental Control Manufacturing for Residential, Commercial and Appliance Use, covers:

[E]stablishments primarily engaged in manufacturing automatic controls and regulators for applications, such as heating, air-conditioning, refrigeration and appliances.

NAICS MANUAL, at 439.

Appellant's requested NAICS code 334511, Search, Detection, Navigation, Guidance, Aeronautical and Nautical System and Instrument Manufacturing, covers:

[E]stablishments primarily engaged in manufacturing search, detection, navigation, guidance, aeronautical, and nautical systems and instruments. Examples of products made by these establishments are aircraft instruments (except engine), flight recorders, navigational instruments and systems, radar systems and equipment, and sonar systems and equipment.

NAICS MANUAL, at 439.

The online version of the NAICS MANUAL lists Corresponding Index Entries identifying various industries associated with each NAICS code. Among these for NAICS code 334511, as Appellant points out, is "Cabin environment indicators, transmitters, and sensors manufacturing." U.S. Census Bureau, NAICS, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

Nevertheless, reviewing the description of the item being procured here, it is clear that it is a control panel for the air conditioning for the cockpit of the T-38 trainer aircraft. In reviewing procurements for armored vehicles, OHA reached the same conclusion that merely because an item procured was to be used on an armored vehicle, that did not mean that it should be classified under a NAICS code for parts for armored vehicles. Rather, the issue was whether the part in question was a part uniquely used in armored vehicles. *NAICS Appeal of DCX/CHOL Enterprises, Inc.*, SBA No. NAICS-4920, at 5 (2008). Similarly, merely because the item being procured here is to be used in an aircraft, does not mean that its procurement must be designated under a NAICS code for aeronautical systems.

Here, while the item is to be used in an aircraft, it is an air-conditioning control panel, is not unique to aircraft, and is clearly not a navigation, guidance radar or flight recorder system. NAICS code 334512 covers the controls of air conditioning, as noted by the CO. The NAICS MANUAL description does not limit this to air conditioning controls used in buildings, nor does it exclude aircraft air conditioning from the category.

The CO's designation relies upon the principal purpose of the item being procured, and has designated an air conditioning control under the NAICS code for air conditioning controls. Appellant has failed to meet its burden of establishing clear error in the CO's designation. I conclude that I must deny the instant appeal.

V. CONCLUSION

For the above reasons, the instant appeal is DENIED, and the CO's NAICS code designation, 334512, Automatic Environmental Control Manufacturing for Residential, Commercial and Appliance Use, is AFFIRMED.

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

---

CHRISTOPHER HOLLEMAN  
Administrative Judge