

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

NAICS APPEAL OF:

Keystone Turbine Services, LLC,

Appellant,

Solicitation No. N61340-19-R-0068

U.S. Department of the Navy
Orlando, Florida

SBA No. NAICS-5996

Decided: April 5, 2019

APPEARANCES

Kenneth B. Weckstein, Esq., Shlomo D. Katz, Esq., Brown Rudnick LLP, Washington, D.C., for Keystone Turbine Services, LLC

Tracy Harper, Contracting Officer, Naval Air Warfare Center Training Systems Division, Orlando, Florida

DECISION

I. Introduction and Jurisdiction

On December 11, 2018, the U.S. Department of the Navy (Navy) issued Request for Quotations (RFQ) No. N61340-19-R-0068 for the repair and overhaul of Rolls Royce model 250 aircraft engines for Navy TH-57 helicopters. On December 19, 2018, the Navy issued Amendment 3 to the RFQ, changing the assigned North American Industry Classification System (NAICS) code to 488190, Other Support Activities for Air Transportation, with an associated size standard of \$32.5 million in average annual receipts.

On December 31, 2018, Keystone Turbine Services, LLC (Appellant) filed the instant appeal of the NAICS code designation, asserting that the correct NAICS code for this procurement is 336412, Aircraft Engine and Engine Parts Manufacturing, with a corresponding size standard of 1,500 employees. For the reasons discussed *infra*, the appeal is granted.

The U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) decides NAICS code 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 timely filed the instant appeal on December 31, 2018.¹ Accordingly, this matter is properly before OHA for decision.

II. Background

A. Sources Sought Notice

In June 2018, the Navy issued a Sources Sought Notice for the instant procurement, seeking information from potential sources capable of performing TH-57 engine overhaul and repair services. (Notice at 1.) The Notice indicated that the Navy intended to utilize NAICS code 336412. (*Id.* at 2.)

B. RFQ and Amendments

On December 11, 2018, the Navy issued the instant RFQ under NAICS code 336412. The RFQ stated that the Navy planned to award a single Indefinite-Delivery/Indefinite-Quantity (ID/IQ) contract. The RFQ was issued on a full-and-open basis and was not restricted to small businesses. Quotations were due January 11, 2019.

The RFQ's Statement of Work (SOW) stated that “[t]he Contractor shall provide all labor, engineering, configuration management, equipment, tools, facilities, technical data, parts, and material to accomplish the repair and overhaul of TH-57 [] engines.” (SOW at 1.) The SOW defined “repair” as “restoring an engine inducted for discrepancies such as failing power assurance tests, leaking oil, making smoke or other items not functioning properly. The engine shall be restored to full [original equipment manufacturer (OEM)] condition and ready for fielding.” (*Id.* at 2.) “Overhaul” was defined as “major restoration of an engine assembly from a catastrophic event such as an aircraft mishap or [foreign object debris] damage.” (*Id.*)

On December 12, 2018, the Navy issued Amendment 2 to the RFQ. Among other changes, Amendment 2 indicated that the NAICS code assigned to the procurement would be 541512, Computer Systems Design Services.

On December 19, 2018, the Navy issued Amendment 3 to the RFQ, changing the assigned NAICS code to 488190, Other Support Activities for Air Transportation. (Amendment 3 at 1.) Amendment 3 stated that the resulting contract would have five Contract Line Item Numbers (CLINs), identified as follows:

¹ Ordinarily, a NAICS code appeal must be filed within 10 calendar days after issuance of the solicitation, or within 10 calendar days after issuance of an amendment affecting the NAICS code or size standard. 13 C.F.R. § 121.1103(b)(1). Here, Amendment 3, issued December 19, 2018, changed the assigned NAICS code. Ten days after issuance of Amendment 3 was December 29, 2018. Because December 29, 2018 was a Saturday, the appeal was due the next business day: Monday, December 31, 2018. 13 C.F.R. § 134.202(d)(1)(ii).

CLIN 0001: Engine Overhaul — Firm Fixed Price — Est Qty 12 ea
 CLIN 0002: Engine Repair — Firm Fixed Price — Est Qty 10 ea
 CLIN 0003: Over and Above — [Labor Hour] — IAW H-clause
 CLIN 0004: Engineering Investigations — CPFF — Est Qty 1 ea
 CLIN 0005: Technical Data — NSP – Lot

(*Id.*) Amendment 3 revised the definition of “repair” as “restoring an engine (excluding accessories, e.g., FCU, gov pump, etc.) inducted for discrepancies such as failing power assurance tests, leaking oil, making smoke or other items not functioning properly. The engine shall be restored to the full OEM condition and ready for fielding.” (*Id.*) The definition of “overhaul” also was revised as “major restoration of an engine assembly (excluding accessories, e.g., FCU, gov pump, etc.) due to metal discovered in the engine oil, or after a catastrophic event, and includes replacing any components with less than 50% service life remaining.” (*Id.*)

C. Appeal

On December 31, 2018, Appellant appealed the designation of NAICS code 488190 for the instant procurement. Appellant argues that NAICS code 336412, Aircraft Engine and Engine Parts Manufacturing, is the most appropriate NAICS code. (Appeal at 2.) Appellant asserts that it is an interested party with standing to contest the NAICS code under 13 C.F.R. § 121.1103(a). (*Id.* at 3.)

Appellant highlights that, in the Sources Sought Notice, the Navy indicated that it planned to use NAICS code 336412 for this procurement. (*Id.*) On December 20, 2018, after the Navy issued Amendment 3 changing the NAICS code to 488190, Appellant inquired about the rationale for the change. (*Id.* at 4.) According to Appellant, the CO did not provide a clear explanation for the change in the NAICS code designation. (*Id.* at 5.)

Appellant observes that CLIN 0001, the first and largest CLIN, is for engine overhaul work, and the RFQ makes numerous references to the repair and overhaul of TH-57 engines. (*Id.* at 6-7.) Further, the RFQ identifies various maintenance manuals and publications with which the contractor must comply. (*Id.* at 7.) Overhauling and rebuilding of aircraft engines falls under NAICS code 336412. (*Id.* at 8.)

Appellant argues that the CO clearly erred in selecting NAICS code 488190, Other Support Activities for Air Transportation. This procurement is primarily for the overhaul and rebuilding of aircraft engines, activities which are excluded from NAICS code 488190. (*Id.*) In addition, the procurement does not involve aircraft passenger screening or aircraft testing services, work which would fall within NAICS code 488190. (*Id.*, citing *NAICS Manual*² at 398).

Appellant points to *NAICS Appeal of Phoenix Scientific Corporation*, SBA No. NAICS-4416 (2000), where OHA found that NAICS code 488190 did not apply to a procurement of

² Executive Office of the President, Office of Management and Budget, *North American Industry Classification System — United States (2017)*, available at <https://www.census.gov/econ/isp/index.php>.

depot-level maintenance. (*Id.* at 9.) Although the contractor here will not be overhauling entire aircraft, “it will be overhauling and rebuilding [aircraft engines], which goes beyond the services covered in NAICS code 488190.” (*Id.*) Appellant reiterates that the largest CLIN for this procurement is for rebuilding and overhauling engines, work which falls under NAICS code 336412. Thus, the principal purpose of this procurement is best described as Aircraft Engine and Engine Parts Manufacturing, under NAICS code 336412.

D. CO's Response

On February 13, 2019, the CO responded to the appeal.³ The CO highlights that the examples provided in the *NAICS Manual* for NAICS code 488190 include “Aircraft maintenance and repair,” which, in the CO's view, “is precisely the scope of this procurement.” (Response at 2, citing *NAICS Manual* at 398.) Further, the NAICS code Appellant recommends, 336412, covers the manufacturing of aircraft engines and components. (*Id.*) The CO observes that none of the work under this procurement will be performed in a factory. (*Id.*)

The CO argues that Appellant is not harmed by the NAICS code designation because the procurement is not set aside for small businesses, nor is any evaluation preference being given to small businesses. (*Id.*) Appellant therefore is eligible to compete for award regardless of the assigned NAICS code. While it may be true that the Navy could lose small business credit by choosing a NAICS code with a smaller size standard, this again does not harm Appellant. (*Id.*) Thus, Appellant is not adversely affected by the NAICS code designation. (*Id.* at 2-3.)

E. Reply

On February 21, 2019, six days after the close of record, Appellant moved to reply to the CO's Response and submitted its proposed Reply. A Reply is warranted, Appellant argues, because the CO's Response raised two new issues: (1) that Appellant lacks standing to bring the instant appeal and (2) that work will be completed on-site. (Reply at 1-2.)

Appellant asserts that, contrary to the CO's Response, Appellant is adversely affected by the NAICS code because at least two small businesses submitted quotations in response to the RFQ, so the procurement could, and should, have been set aside for small businesses. (*Id.* at 3.) Appellant also argues that the CO is incorrect in suggesting that work will be performed at Government sites. Appellant contends that the RFQ requires work to be completed in a Rolls Royce-certified facility, not at a Government site. (*Id.* at 3-4.)

Under applicable regulations governing NAICS code appeals, a reply to a response is generally not permitted unless OHA so directs. 13 C.F.R. § 134.309(d). No such direction occurred here. Further, OHA does not entertain evidence or argument filed after the close of record. *Id.* § 134.225(b). Accordingly, Appellant's motion to reply to the CO's Response is DENIED, and the proposed Reply is EXCLUDED from the record. *NAICS Appeal of T3*

³ At the time the appeal was filed, OHA's offices were closed due to a lapse of appropriations. OHA resumed normal operations on January 28, 2019, and thereafter issued an order establishing a close of record for this dispute of February 15, 2019.

TigerTech, SBA No. NAICS-5674, at 2 fn.2 (2015); *NAICS Appeal of Allserv, Inc.*, SBA No. NAICS-5629, at 7 (2014).

F. NAICS Manual

The NAICS code designated by the CO, 488190, Other Support Activities for Air Transportation, covers “establishments primarily engaged in providing specialized services for air transportation (except air traffic control and other airport operations).” *NAICS Manual* at 398. Examples of work under NAICS code 488190 include: “Aircraft maintenance and repair services (except factory conversion, overhauls, and rebuilding); “Aircraft passenger screening security services”; and “Aircraft testing services.” *Id.* NAICS code 488190 falls within NAICS Sector 48-49, Transportation and Warehousing. In describing the Sector as a whole, the *NAICS Manual* states:

One of the support activities identified in the Support Activities for Transportation subsector is the routine repair and maintenance of transportation equipment (e.g., aircraft at an airport, railroad rolling stock at a railroad terminal, or ships at a harbor or port facility). Such establishments do not perform complete overhauling or rebuilding of transportation equipment (i.e., periodic restoration of transportation equipment to original design specifications) or transportation equipment conversion (i.e., major modification to systems). An establishment that primarily performs factory (or shipyard) overhauls, rebuilding, or conversions of aircraft, railroad rolling stock, or ships is classified in Subsector 336, Transportation Equipment Manufacturing, according to the type of equipment.

Id. at 379. The *NAICS Manual* reiterates that Subsector 488, Support Activities for Transportation, “[e]xclude[s] . . . establishments primarily engaged in providing factory conversion and overhaul of transportation equipment, which are classified in Subsector 336, Transportation Equipment Manufacturing.” *Id.* at 397.

The NAICS code Appellant advocates, 336412, Aircraft Engine and Engine Parts Manufacturing, covers:

[E]stablishments primarily engaged in one or more of the following: (1) manufacturing aircraft engines and engine parts; (2) developing and making prototypes of aircraft engines and engine parts; (3) aircraft propulsion system conversion (i.e., major modifications to systems); and (4) aircraft propulsion systems overhaul and rebuilding (i.e., periodic restoration of aircraft propulsion system to original design specifications).

Id. at 294. Index entries which refer to NAICS code 336412 include “[a]ircraft engine overhauling” and “[a]ircraft engine rebuilding.” *Id.* at 658. The *NAICS Manual* states that “[e]stablishments primarily engaged in the repair of aircraft engines (except overhauling, conversion, and rebuilding) are classified in Industry 488190, Other Support Activities for Air Transportation.” *Id.* at 294.

III. Discussion

A. Standard of Review

Appellant has the burden of proving, by a preponderance of the evidence, all elements of its appeal. Specifically, Appellant must show that the CO's NAICS code designation is based upon 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). SBA regulations do not require the CO to select the perfect NAICS code. *NAICS Appeal of Evanhoe & Assocs., LLC*, SBA No. NAICS-5505, at 14 (2013). Rather, the CO must assign the NAICS code that best describes the principal purpose of the product or service being acquired in light of the industry descriptions in the *NAICS Manual*, the description in the solicitation, the relative value and importance of the components of the procurement making up the end item being procured, and the function of the goods or services being acquired. Federal Acquisition Regulation (FAR) 19.303(a)(2); 13 C.F.R. § 121.402(b). OHA will not reverse a NAICS code designation “merely because OHA would have selected a different code.” *NAICS Appeal of Eagle Home Med. Corp.*, SBA No. NAICS-5099, at 3 (2009).

B. Standing to Appeal

In her Response, the CO suggests that Appellant is not adversely affected by the NAICS code designation, and therefore lacks standing to appeal, because the instant procurement was not set aside for small businesses. SBA regulations, though, permit a prospective offeror to challenge the assigned NAICS code “regardless of whether the procurement is reserved for small businesses or unrestricted.” 13 C.F.R. § 121.1103(a)(1); *see also NAICS Appeal of Milani Constr., LLC*, SBA No. NAICS-5749, at 8 (2016) (“NAICS code appeals may be filed on unrestricted procurements if the appellant is seeking a change in NAICS code designation which would render it a small business for the subject procurement.”). Thus, Appellant has standing to bring the instant appeal, notwithstanding that the procurement is unrestricted.

C. Analysis

Having reviewed the RFQ, the descriptions in the *NAICS Manual*, OHA's prior decisions, and the arguments of the parties, I find that Appellant has met its burden of proving that the CO clearly erred in selecting NAICS code 488190. As a result, the appeal is granted.

The instant RFQ calls for both the “overhaul” and “repair” of aircraft engines. Section II.B, *supra*. According to the *NAICS Manual*, “[a]ircraft engine overhauling” and “[a]ircraft engine rebuilding” fall under NAICS code 336412. Section II.F, *supra*. The *NAICS Manual* defines aircraft engine overhaul and rebuilding as the “restoration of aircraft propulsion system[s] to original design specifications,” a description which parallels the definition of aircraft engine “overhaul” in the RFQ. Sections II.B and II.F, *supra*. Further, the *NAICS Manual* expressly excludes aircraft engine overhaul and rebuilding work from NAICS code 488190. Section II.F, *supra*. On the other hand, according to the *NAICS Manual*, the “routine repair and maintenance” of aircraft engines falls under NAICS code 488190. *Id.* In short, then, the *NAICS Manual* distinguishes between routine aircraft engine “maintenance and repair services,” which

are classified under NAICS code 488190, and “factory conversion, overhauls, and rebuilding” of aircraft engines, which are classified under NAICS code 336412. *Id.*; *see also NAICS Appeal of Phoenix Scientific Corp.*, SBA No. NAICS-4416, at 9 (2000) (a procurement of “depot-level maintenance,” under which the contractor would “provide all of the supplies and services to convert, overhaul, and rebuild aircraft,” was properly classified as manufacturing, rather than under NAICS code 488190).

Both the FAR and SBA regulations make clear that, when there is no single NAICS code that applies to the full range of products or services being acquired, the procurement normally will be classified under the NAICS code which represents the greatest percentage of contract value. FAR 19.102(d) and 19.303(a)(2); 13 C.F.R. § 121.402(b)(2); *NAICS Appeal of Allserv, Inc.*, SBA No. NAICS-5629 (2014). In the instant case, because both NAICS code 336412 and NAICS code 488190 are applicable to portions of the RFQ, the most appropriate NAICS code is the one which constitutes the largest share of contract value.

The instant RFQ consists of two principal CLINs:

CLIN 0001: Engine Overhaul — Firm Fixed Price — Est Qty 12 ea

CLIN 0002: Engine Repair — Firm Fixed Price — Est Qty 10 ea

Section II.B, *supra*. Accordingly, the RFQ estimates that the quantity of engine overhauls will be greater than the quantity of engine repairs. Moreover, based on the RFQ's descriptions of “repair” and “overhaul,” aircraft engine overhaul is a far more extensive effort than a mere repair. Thus, the RFQ characterizes a “repair” as addressing relatively-minor engine “discrepancies” such as “leaking oil, making smoke or other items not functioning properly.” *Id.* Conversely, engine “overhaul” is a “major restoration of an engine assembly,” such as may arise from a “catastrophic event.” *Id.* Accordingly, based on the RFQ, this procurement not only calls for more engine overhauls than engine repairs, but engine overhauls also are more extensive and costly than engine repairs. Thus, the greatest percentage of contract value is engine overhaul under CLIN 0001, and the appropriate NAICS code is 336412.

In her response, the CO highlights that the RFQ does not call for the contractor to manufacture entirely new aircraft engines. While this is true, NAICS code 336412 is not limited only to the manufacturing of new aircraft engines. Rather, as discussed above, NAICS code 336412 also covers major engine overhaul and rebuilding, such as found in this RFQ.

IV. Conclusion

For the above reasons, the appeal is GRANTED. The CO clearly erred in assigning NAICS code 488190 to this procurement. The appropriate NAICS code is 336412, Aircraft Engine and Engine Parts Manufacturing, with a corresponding size standard of 1,500 employees. Because this decision is rendered after the deadline for receipt of quotations, the decision does not apply to the instant RFQ, but will apply to future solicitations for the same supplies or

services. 13 C.F.R. § 134.318(b) and FAR 19.303(c)(8). This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge