

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

NAICS Appeal of:

Bridges Systems Integration, LLC,

Appellant

Solicitation No. N0042123RAV01

United States Navy
Naval Air Warfare Center Aircraft Division

SBA No. NAICS-6202

Decided: March 29, 2023

APPEARANCES

Jonathan D. Shaffer, Esq., Aaron A. Kor, Esq., Haynes and Boone, LLP, Tysons, Virginia, for Appellant

Aldo Perez, Esq., Office of General Counsel, Naval Air Warfare Center Aircraft Division, Patuxent River, Maryland

DECISION

I. Introduction

On January 30, 2023, Bridges Systems Integration LLC (Appellant) filed an appeal with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA), challenging the North American Industry Classification System (NAICS) code assigned to the subject solicitation. The procuring agency - the U.S. Navy, Naval Air Warfare Center Aircraft Division (NAWCAD) - moves to dismiss the appeal as untimely. For the reasons discussed *infra*, NAWCAD's motion is granted and the appeal is dismissed.

II. Background

A. The MAC

On July 29, 2020, NAWCAD issued Request for Proposals (RFP) No. N00421-20-R-0161. (RFP at 1, 7.) The RFP explained that NAWCAD planned to establish a Multiple Award Contract (MAC) for audio visual technical support. (*Id.* at 2-3, 7.) Specific requirements would be defined in orders issued after award of the base contracts. (*Id.* at 5, 7, 36-37.) The Contracting Officer (CO) set aside the procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 334310, Audio and Video Equipment

Manufacturing, with a corresponding size standard of 750 employees. (*Id.* at 2.) There were no timely challenges to the NAICS code or size standard prior to contract award.¹ In June 2021, NAWCAD awarded contracts to several offerors, including Appellant.

The RFP contained the following provisions pertinent to this appeal:

Section A - Solicitation/Contract Form

SECTION A INFORMATION

1. This requirement is 100% set aside for Small Businesses. [NAWCAD] intends to make an award to each and all Qualifying Offerors. All awardees will be Small Businesses.

...

3. The NAICS code for this effort is 334310 - Audio and Video Equipment Manufacturing with a size standard of 750 employees.

...

5. Cost Reimbursement, Cost Plus Fixed-Fee (CPFF) Level of Effort (LOE) Term, CPFF Completion, and Firm Fixed Price (FFP) Delivery or Task Orders (DO/TO's) will be issued under this [MAC].

...

Section C - Descriptions and Specifications

[Statement of Work] SOW/[Performance Work Statement] PWS

...

1. SCOPE:

1.1 INTRODUCTION:

This is a [MAC] in support of [NAWCAD's] Integrated Command, Control and Intelligence (IC2&I) Division . . . IC2&I integrates and delivers products for Command, Control, Communications, Computers, Combat Systems, Intelligence, Surveillance, and Reconnaissance (C5ISR) Systems. As the organic Lead Systems Integrator (oLSI), IC2&I provides non-repetitive, rapid response solutions for U.S.

¹ In November 2020, a prospective offeror filed a NAICS appeal with OHA, contending that the RFP should have been assigned a services NAICS code. OHA dismissed the appeal as untimely. *NAICS Appeal of Mission Analytics, LLC*, SBANo. NAICS-6086 (2020).

Military, National Agencies, and other Government Program Offices needs for critical Audio Visual (AV) products comprising of Briefing Display Systems (BDS), Operation Centers, Decision Support Systems (DSS), Video Walls and other control systems. To complete these products, IC2&I will utilize this contract to obtain the AV specific technical expertise and deliverables needed to complete unique systems.

1.2 SPECIFIC SCOPE:

The Contractor shall provide engineering and technical services for legacy, current, and next generation AV systems. The Contractor's systems shall enable efficient information exchange of voice, video and/or data from concept through deployment and the planning, research, design, testing, integration, verification, customization, installation and system operations support of those systems, subsystems, and components. This work will be continuous for existing and new customers with schedules that are not well-defined in advance. Tasking will be concurrent and could require significant resource ramp ups for periods of time to meet simultaneous [delivery order (DO) or task order (TO)] requirements. Tasking will range from standard to urgent schedules and routine to complex technical requirements. A routine tasking type will be considered a dual class Video Teleconference system; a complex tasking type will be considered as a significant Operations Center with considerably larger than average video walls and a significant number of inputs/outputs. The Contractor shall provide the management necessary for the efficient and effective execution of work considering the conditions described in each DO/TO. IC2&I operates within Integrated Product Teams (IPTs) for all aspects of performance, and the Contractor shall be required to work in a highly integrated team environment with civil servants, military personnel and other Contractors.

The Contractor shall provide expertise in AV technologies including: audio distribution and control of analog, digital and Internet Protocol (IP) audio; video distribution and control of analog, digital and IP video; integration of audio and video systems onto IP networks in unclassified and classified environments; designs for AV integration into fixed sites including lighting, acoustics, viewing angles, workstation layout; and impacts of technology and equipment end-of-life on system planning, design and product and operations.

1.3 DO/TOs:

Contract services shall be performed in accordance with the SOW/PWS as detailed in each individual DO/TO. The DO/TO's SOW/PWS will detail requirements that fall within the scope of the MAC. [Contract Line Item Numbers (CLINs)] by Fiscal Appropriation will be separately priced in the DO/TOs so that the hours/dollars can be drawn-down as orders are issued during the applicable ordering period of the MAC.

...

3.3. DETAILED TASKING: All detailed tasking will be provided at the DO/TO Level, the contractor shall provide services in accordance with each DO/TO's specific SOW/PWS. The below tasking represents general categories of tasking required by this solicitation, more specific tasking will be provided at the DO/TO level. DO/TO specific requirements will dictate specific tasking at the order level.

3.3.1 AV PLANNING: Using IC2&I furnished criteria, the Contractor shall provide services to perform analyses to develop new or modify/upgrade in-service AV systems with consideration of the Government's overall mission and technical requirements, in addition to the physical limitations of the AV systems configuration. These analyses shall provide necessary documentation to support the development of new AV systems or the modification, upgrade, or replacement of existing AV systems to meet mission and operational requirements

3.3.2 AV ENGINEERING RESEARCH, DESIGN AND TESTING: The Contractor shall provide Certified Technology Specialist Design (CTS-D) services in accordance to Avixa industry set standards to research AV technologies and develop designs for the development of new AV systems ranging from small room to large facility solutions in support of IC2&I activities

(RFP at 2, 7, 14.)

The RFP included descriptions of “potential labor categories” that might be utilized on future orders, and cautioned that the identified labor categories “are not all inclusive and do not represent all Labor Categories that may be included on DO/TO's under this MAC.” (*Id.* at 15.) The labor categories included: “General and Operations Manager,” “Computer and Information Research Scientist,” “Computer Network Architect,” “Software Developer,” “Electronics Engineer,” “Audio and Video Equipment Technician,” “Sound Engineering Technician,” and “Team Assembler.” (*Id.* at 15-16.) According to the RFP, a “General and Operations Manager” will “[p]lan, direct, or coordinate the operations of public or private sector organizations, overseeing multiple departments or locations,” and perform such duties and responsibilities as “formulating policies, managing daily operations, and planning the use of materials and human resources.” (*Id.* at 15.) A “Computer and Information Research Scientist” will “[c]onduct research into fundamental computer and information science as theorists, designers, or inventors” and “[d]evelop solutions to problems in the field of computer hardware and software.” (*Id.*) A “Computer Network Architect” will “[p]erform network modeling, analysis, and planning,” “design network and computer security measures,” and “research and recommend network and data communications hardware and software.” (*Id.*) A “Software Developer” will “[r]esearch, design, and develop computer and network software or specialized utility programs,” “[a]nalyze user needs and develop software solutions,” and “[u]pdate software or enhance existing software capabilities.” (*Id.*) An “Electronics Engineer” will “[r]esearch, design, develop, or test electronic components and systems.” (*Id.*) An “Audio and Video Equipment Technician” will “[s]et up, maintain, and dismantle audio and video equipment, such as microphones, sound

speakers, connecting wires and cables, sound and mixing boards, video cameras, video monitors, and servers.” (*Id.* at 15-16.) A “Sound Engineering Technician” will “[a]ssemble and operate equipment to record, synchronize, mix, edit, or reproduce sound, including music, voices, or sound effects, for theater, video, film, television, podcasts, sporting events, and other productions.” (*Id.* at 16.) A “Team Assembler” will be responsible for “assembling an entire product or component of a product.” (*Id.*)

The RFP also described additional “Service Contract Act (SCA) Labor Categories” that “represent potential labor categories for DO/TO's issued under this MAC, but are not all inclusive and do not represent all Labor Categories that may be included on DO/TO's under this MAC.” (*Id.*) The SCA labor categories included: “Telecommunications Mechanic,” “Supply Technician,” “Electronics Maintenance Technician,” “Word Processor,” and “Engineering Technician.” (*Id.* at 16-17.)

B. The TOR

On January 19, 2023, NAWCAD issued Task Order Request (TOR) No. N0042123RAV01 for “Audio Visual Technical Services Support.” (TOR at 10.) The TOR explains that “[t]his is a task order (TO) under the Audio Visual (AV) Multiple Award Contract (MAC),” and that “[a]n Offeror must be an AV Technical Services Support MAC holder to compete for this task order.” (*Id.* at 2, 10.) NAICS code 334310 was assigned to the TOR. (*Id.* at 2.) The TOR contains the following provisions pertinent to this appeal:

Section A - Solicitation/Contract Form

...

This requirement is being set-aside for AV Technical Services Support MAC contract holders.

...

The resulting task order will be a single Cost Plus Fixed Fee (CPFF) type work order issued in accordance with the terms and conditions of the AV Technical Services Support IDIQ MAC. **All provisions and clauses included in the basic contract will apply to the task order.**

...

Section C - Descriptions and Specifications

STATEMENT OF WORK

1.0 Scope.

...

This TO will obtain AV services to include, but not be limited to, assessment, design, testing and installation for the United States Information System[s] Engineer Command, and United States Army Cyber Center of Excellence (CCoE) in support of Ft. Gordon Information Technology Campus Transformation Cyber Center of Excellence activities.

...

3.3 Detailed Support Requirements

3.3.1 AV Planning

...

3.3.1(b) . . . Provide support to systems engineering planning and execution of efforts to support modernization and modification of AV-related technologies and systems to include production, engineering, fabrication, and assembly

...

3.3.1(c) . . . Provide support to the evaluation of operations and technical support of fielded/in-service, and out-of-production AV-related technologies and systems.

...

3.3.2 AV Engineering Research, Design, and Testing.

...

3.3.2(b) . . . Provide modernization and modification support of AV-related technologies, including product improvements during production engineering and verifying, validation, kitting, customizing, installing, assimilation, and logistics support

3.3.2(c) . . . Provide life cycle planning and Integrated Product Support (IPS) support during the design and validation support phase of in-service, fielded, and out-of-production AV-related technologies.

...

3.3.3. AV Integration and Verification

...

3.3.3(b) . . . Provide planning and execution support to support both new systems and the modifications of existing AV-related technologies including integration, verification and validations, and operations and sustainment support

3.3.3(c) . . . Provide operations and sustainment support efforts to AV-related technologies to support in-service and out-of-production integration in addition to verification and validation support for fielded systems.

. . .

3.3.4 AV Software Customization

. . .

3.3.4(b) . . . Provide planning and execution efforts to support both new systems and the modifications of existing AV-related technologies for function and performance software solutions, to include production, engineering, fabrication and assembly

3.3.4(c) . . . Provide operations and sustainment support efforts to AV-related technologies for functional and performance software solutions of in-service and out-of-production fielded systems.

. . .

3.3.5 AV Equipment Installation

. . .

3.3.5(b) . . . Provide planning and execution efforts to support both new systems and the modifications of existing AV-related technologies, including integration and installation, verification and validation, and operations and sustainment support

3.3.5(c) . . . Provide operations and sustainment support efforts to AV-related technologies to support in-service and out-of-production integration and installation in addition to verification and validation support for fielded systems.

. . .

3.3.6 AV System Operation Support

. . .

3.3.6(b) . . . Provide planning and execution of efforts to support modernization and modification of AV-related technologies and systems to include production, engineering, fabrication, and assembly

3.3.6(c) . . . Provide operations, maintenance, and training efforts for in-service AV-related technologies and systems to support in-service and out-of-production support for fielded systems.

. . .

3.3.7 AV Procurement Support

. . .

3.3.7(b) . . . Provide material and equipment procurement and control support while testing, kitting, customizing, modernizing, and modifying AV Systems

3.3.7(c) . . . Provide material and equipment procurement and control support while conducting IPS of in-service, field, and out-of-production systems.

(*Id.* at 2, 10, 15-20 (emphasis in original).)

The TOR includes a list of anticipated labor categories. “Key Personnel” under the labor categories include “General and Operations Manager, Journeyman,” “Software Developers, Applications, Journeyman,” and “Computer Network Architects, Journeyman.” (*Id.* at 20.) Other labor categories include “Computer and Information Research Scientist,” “Electronics Engineer,” “Audio and Video Equipment Technician,” and “Miscellaneous Assemblers and Fabricators.” (*Id.* at 22.)

C. Appeal

On January 30, 2023, Appellant filed the instant appeal, challenging the NAICS code assigned to the TOR.

Appellant argues that NAICS code 334310 is improper for the TOR. NAICS code 334310 is a manufacturing NAICS code and thus necessarily “concerns the supply of equipment.” (Appeal at 6.) By contrast, the instant task order is predominantly for services. (*Id.*) The TOR's requirements do not involve “manufacturing activities” that would be consistent with NAICS code 334310. (*Id.* at 7.) Rather, the TOR contemplates “servicing activities of equipment previously manufactured,” and “none of the task order's key personnel . . . [will] perform[] manufacturing functions.” (*Id.*) In Appellant's view, the TOR primarily calls “for the design and installation of AV technology to support the Army for classroom instruction.” (*Id.*) As a result, Appellant maintains, the “proper” NAICS code for the TOR is 541330, Engineering Services, or another code within the “Professional, Scientific and Technical Services” subsector. (*Id.*)

Appellant claims that it is “materially harmed” by the choice of NAICS code 334310, because the size standard associated with this code will require Appellant to compete for the task order against “substantially larger firms.” (*Id.* at 8.)

Appellant asserts that the instant appeal presents “a matter of first impression,” because OHA has yet to decide a case “involving a task order that clearly requires services different from the underlying contract.” (*Id.* at 9.) Specifically, the TOR here “is for AV technology services,” whereas the MAC is for “manufacturing equipment.” (*Id.*) OHA's decision in *NAICS Appeal of Dellew Corp.*, SBANo. NAICS-5837 (2017) therefore is distinguishable. Appellant posits that “the TOR materially modifies the MAC to include AV service work outside the initial NAICS [c]ode 334310,” and adds that it appeals only the NAICS code assigned to the TOR but “take[s] no issue with the MACs NAICS code.” (*Id.*)

In the alternative, Appellant requests that OHA “reconsider or re-visit *Dellew* as it applies to this appeal given the unique circumstances presented here.” (*Id.*) Appellant contends that permitting NAWCAD to “apply a manufacturing NAICS code to a new task order that involves no manufacturing” would be “manifestly unjust and contrary to the Small Business Act and [Federal Acquisition Regulation (FAR)] Part 19,” because “all eligible contractors are not capable of manufacturing,” and because NAWCAD's approach will require genuine small businesses to compete against substantially larger firms. (*Id.*)

D. Motion to Dismiss

On February 14, 2023, NAWCAD moved to dismiss the appeal. NAWCAD highlights that, according to SBA regulations:

[A CO] must assign a MAC “a single NAICS code and corresponding size standard which best describes the principal purpose of the acquisition . . . only if the NAICS code will also best describe the principal purpose of each order to be placed under the [MAC].” 13 C.F.R. § 121.402(c)(1)(i). Alternatively, the [CO] may “[d]ivide the solicitation into discrete categories . . . and assign each discrete category the single NAICS code and corresponding size standard that best describes the principal purpose of the goods or services to be acquired under that category . . .” *Id.* § 121.402(c)(1)(ii).

Under 13 C.F.R. § 121.402(c)(2)(i), “[t]he [CO] must assign a single NAICS code for each order issued against a [MAC],” and “[t]he NAICS code assigned to an order must be a NAICS code included in the underlying [MAC].”

Further, 13 C.F.R. § 121.1103(b)(1) provides that, “[t]he [CO]'s determination of the applicable NAICS code is final unless . . . [a]n appeal from a [CO]'s NAICS code or size standard designation [is] served and filed within 10 calendar days after the issuance of the solicitation or amendment affecting the NAICS code or size standard.”

(Motion at 2 (emphasis added by NAWCAD).)

Here, when the RFP was issued, the CO determined that NAICS code 334310 would “best describe the principal purpose of each order to be placed under the [MAC],” and because the resulting MAC contains only NAICS code 334310, the same NAICS code must be used for the instant TOR. (*Id.* at 3.) Appellant itself concedes that NAICS code 334310 is appropriate for the underlying MAC. (*Id.*) Furthermore, “Appellant was on notice when the [RFP for the] MAC was issued, on July 29, 2020, that all TORs thereunder would have—indeed, must have—the exact same NAICS code,” pursuant to SB A regulations at 13 C.F.R. § 121.402©(2)(i). (*Id.*) Appellant, however, did not challenge the selection of NAICS code 334310 within 10 calendar days after issuance of the RFP. (*Id.*) The instant appeal thus is “over two years” late. (*Id.*)

In its appeal, Appellant also attempts to argue that the TOR materially alters the MAC. (*Id.*) Appellant, however, fails to offer “any argument as to how the TOR is ‘materially different’ from or ‘materially modifies’ the MAC.” (*Id.*, emphasis NAWCAD’s.) NAWCAD insists that “[t]he TOR is wholly within the scope of the MAC and indeed tracks the MAC while providing the more specific tasking associated with task orders.” (*Id.*) According to NAWCAD, the MAC, as well as the TOR, “seeks to procure not just services but also supplies and equipment manufacturing.”

For example, the scope section of the MAC provides:

The Contractor shall provide engineering and technical services for legacy, current, and next generation AV systems. The Contractor's systems shall enable efficient information exchange of voice, video and/or data from concept through deployment and the planning, research, design, testing, integration, verification, customization, installation and system operations support of those systems, subsystems, and components.

...

Likewise, the TOR provides:

This [task order] will obtain AV services to include, but not be limited to, assessment, design, testing and installation for the United States Information System Engineer Command, and United States Army [CCoE] in support of Ft. Gordon Information Technology Campus Transformation Cyber Center of Excellence activities.

...

Additionally, the MAC directs that, “The Contractor's primary fabrication and productions facility shall be located within 125 ground transportable miles of [Naval Air Station] Patuxent River Webster Outlying Field, St. Inigoes, MD.” Tracking the MAC, the TOR instructs the contractor that its “primary fabrication and productions facility” shall be within a specified number of miles of government sites, and further instructs that the contractor must provide industrial

space “equipped with heating, ventilation and air conditioning (HVAC) systems capable of sustaining a controlled environment consistent with the storage, assembly and operation of electronic equipment.”

(*Id* at 4, quoting MAC and TOR (emphases added by NAWCAD).) NAWCAD also provides analysis of how “the TOR implements exactly what the MAC contemplates: AV planning; engineering research, design, and testing; integration and verification; software customization; equipment installation; system operation support; and procurement support:”

The MAC, for instance, provides:

3.3.1 AV PLANNING: Using IC2&I furnished criteria, the Contractor shall provide services to perform analyses to develop new or modify/upgrade in-service AV systems with consideration of the Government's overall mission and technical requirements, in addition to the physical limitations of the AV systems configuration. These analyses shall provide necessary documentation to support the development of new AV systems or the modification, upgrade, or replacement of existing AV systems to meet mission and operational requirements.

...

The TOR's AV planning section similarly states:

Provide support to systems engineering planning and execution of efforts to support modernization and modification of AV-related technologies and systems to include production, engineering, fabrication, and assembly.

...

[The MAC provides]:

3.3.2 AV ENGINEERING RESEARCH, DESIGN AND TESTING: The Contractor shall provide Certified Technology Specialist Design (CTS-D) services in accordance to Avixa industry set standards to research AV technologies and develop designs for the development of new AV systems ranging from small room to large facility solutions in support of IC2&I activities.

...

[The TOR similarly states]:

Provide modernization and modification support of AV-related technologies, including product improvements during production engineering and verifying, validation, kitting, customizing, installing, assimilation, and logistics support.

(*Id.* at 5-6, quoting MAC and TOR (emphasis added by NAWCAD).) NAWCAD also highlights that both the MAC and the TOR contemplate “manufacturing and supply delivery” in the labor categories:

[T]he MAC's labor categories include team assemblers and sound engineering technicians. The former “[w]ork as part of a team having responsibility for assembling an entire product or component of a product.” The latter “[a]ssemble and operate equipment to record, synchronize, mix, edit, or reproduce sound, including music, voices, or sound effects, for theater, video, film, television, podcasts, sporting events, and other productions.”

(*Id.* at 6.)

NAWCAD concludes that while the TOR “clearly contemplates the performance of services,” it also includes “manufacturing and supply delivery.” (*Id.*) Appellant incorrectly contends that the TOR materially deviates from the MAC, and Appellant's attempts to distinguish the instant appeal from *Dellew* are “manifestly inaccurate.” (*Id.*) Just as in *Dellew*, Appellant should have voiced any objection to the assigned NAICS code at the time the RFP was issued in July 2020, and “[i]t is far too late” for Appellant to do so now. (*Id.*)

E. Appellant's Opposition

On March 1, 2023, Appellant opposed NAWCAD's motion. Appellant maintains that the instant appeal was timely filed within 10 calendar days after issuance of the TOR. (Appellant's Opp. at 1.) Appellant emphasizes that it is challenging only the NAICS code “assigned to the TOR,” not the NAICS code associated with the MAC; as a result, this appeal “could not have been filed within 10 days of the MAC” or at “any time before issuance of the TOR.” (*Id.*) Appellant reasons that it could not have known the relevant facts and issues arising out of the TOR until after the TOR was issued on January 19, 2023. (*Id.*)

Appellant renews its claim that the TOR “is not principally for manufacturing.” (*Id.*) “The TOR labor categories demonstrate this is a professional services task order,” which Appellant could not have known until after NAWCAD issued the TOR. (*Id.* at 2.) Appellant contends that the instant appeal is analogous to *NAICS Appeal of King's Thrones LLC*, SB A No. NAICS-4845 (2007), wherein OHA found that a NAICS appeal was timely filed “more than ten days after the issuance of the solicitation when the initial solicitation did not contain any NAICS code.” (*Id.*) OHA agreed that the *King's Thrones* appellant “could not have appealed earlier since it had no earlier knowledge of the assignment of the ultimate NAICS code.” (*Id.*)

Appellant maintains that its position is supported by NAWCAD's own “prior conduct” as discussed *m NAICS Appeal of Mission Analytics, LLC*, SB A No. NAICS-6086 (2020). (*Id.*) In *Mission Analytics*, which involved a challenge to the NAICS code on the underlying MAC, NAWCAD asserted that MAC was predominantly for manufacturing. (*Id.*) The instant TOR, however, “demonstrates otherwise and shows that no appeal could be timely except within ten days of the TOR, as Appellant did here.” (*Id.*)

Appellant argues that *Dellew* is not applicable to the instant case. (*Id.* at 3.) At the time the RFP was issued in 2020, Appellant “had no reason to believe [NAWCAD] would issue an order with a different ‘principal purpose’ than the MAC.” (*Id.*) Appellant reiterates its view that the principal purpose of the MAC is “equipment and manufacturing,” whereas the principal purpose of the TOR is “technical services.” (*Id.*) Appellant insists that “no extensive comparison of the MAC and TOR” is necessary to reach this conclusion, because the TOR’s requirements materially differ from the MAC’s. (*Id.* at 3-4.) Further, according to Appellant, NAWCAD represented in *Mission Analytics* that the MAC “is for manufacturing equipment and supplies” and “not services.” (*Id.* at 5.)

Although NAWCAD now attempts to “expand[] the definition of manufacturing and argue[] that the TOR covers the same scope of work as the MAC,” the principal purpose of the TOR, nonetheless, is for services. (*Id.* at 4-5.) NAWCAD improperly “conflate[s] the MAC requirements to manufacture equipment with the TOR requirements to provide technical services.” (*Id.* at 5.) Specifically, NAWCAD seeks to “sidestep” these fundamentally different requirements by “blending the work” performed by systems integrators with that of manufacturers. (*Id.*) However, “[t]here is no manufacturing” in this TOR. (*Id.*) “If [NAWCAD]’s position is accepted, every information technology service provider would be considered a manufacturer,” an absurd result. (*Id.*) Contrary to the premise of NAWCAD’s motion, a small business “tasked with designing an AV network . . . is not in the same business as [a manufacturer] who manufactures the switches.” (*Id.*)

Lastly, Appellant renews its claim that it is “materially prejudiced” by the assignment of NAICS code 334310 to the instant TOR, because this NAICS code “covers much larger businesses than [a] NAICS code for services,” and has a “grossly” larger size standard. (*Id.* at 6.) “The impact is chilling to a small business service contractor like Appellant.” (*Id.*)

III. Discussion

I agree with NAWCAD that this appeal is untimely and must be dismissed. As NAWCAD correctly observes, applicable regulations instruct that “[f]or solicitations issued on or before October 1, 2025, that will result in [MACs], the [CO] shall assign a [single] NAICS code” to the solicitation. Federal Acquisition Regulation (FAR) 19.102(b)(2)(i). Furthermore, “[w]hen placing orders under [MACs] with a single NAICS code, the [CO] shall assign the order the same NAICS code and corresponding size standard designated in the contract.” FAR 19.102(b)(3)(i); *see also* 13 C.F.R. § 121.402(c)(2)(i). For “solicitations issued after October 1, 2025, that will result in [MACs],” the CO either must designate a single NAICS code for the entire MAC, or must “[d]ivide the acquisition into distinct portions or categories” and assign a separate NAICS code for each such portion or category. FAR 19.102(b)(2)(ii).

Here, it is undisputed that the instant TOR contemplates the award of an order under a MAC. Sections II. A and II.B, *supra*. The MAC itself was awarded prior to October 1, 2025, and was assigned a single NAICS code: 334310, Audio and Video Equipment Manufacturing. Section II. A, *supra*. There were no timely challenges to the NAICS code assigned to the MAC. *Id.* As a result, the NAICS code assigned to the MAC became final. FAR 19.103(a); 13 C.F.R. § 121.402(d). Accordingly, because there is only one NAICS code associated with the

underlying MAC, all orders issued thereunder - including the instant TOR - must utilize that same NAICS code. FAR 19.102(b)(3)(i); 13 C.F.R. § 121.402(c)(2)(i). Appellant's attempt to challenge the NAICS code assigned to this TOR is, therefore, untimely, as Appellant in effect takes issue with the NAICS code assigned to the underlying MAC. *See NAICS Appeal o/Dellew Corp.*, SBANo. NAICS-5837 (2017); *NAICS Appeal of Global Dynamics, LLC*, SBANo. NAICS-5470 (2013). Like other offerors, Appellant was on notice, when the RFP for the MAC was issued in 2020, that orders issued under the MAC would necessarily utilize NAICS code 334310. Appellant thus could have challenged the NAICS code assigned to the MAC at the time the RFP was issued. As Appellant did not do so, its opportunity to dispute the NAICS code assigned to the MAC, and therefore the TOR, has long since expired.

Even if this appeal were not untimely, it is unclear what relief OHA might grant Appellant. As discussed above, pursuant to applicable regulations, the underlying MAC properly was assigned a single NAICS code, which has become final and must be applied to all ensuing orders. The CO thus did not err in assigning NAICS code 334310 to the instant TOR, and indeed the CO would have had no alternative but to do so. While Appellant may consider the policies underpinning the regulations “manifestly unjust,” such arguments should be directed to SBA policy officials, not to OHA. It is well-settled that “OHA has no authority to determine the validity of SBA regulations and will entertain no challenge to them.” *NAICS Appeal of The McConnell Group, Inc.*, SBA No. NAICS-5463, at 2 (2013).

IV. Conclusion

For the above reasons, NAWCAD's motion is GRANTED and the appeal is DISMISSED as UNTIMELY. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge