

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

NAICS APPEAL OF:

Radiance Technologies, Inc.,

Appellant,

Solicitation No. RCCTOASIS 24-005

U.S. Department of the Army

SBA No. NAICS-6302

Decided: July 31, 2024

APPEARANCES

W. Brad English, Esq., Jon D. Levin, Esq., Emily J. Chancey, Esq., Maynard Nexsen, PC, Huntsville, Alabama, for Radiant Technologies, Inc.

Hillary S. Roy, Contracting Officer, U.S. Department of the Army, Rapid Capabilities and Critical Technologies Office

DECISION

I. Introduction and Jurisdiction

On May 20, 2024, the U.S. Department of the Army (Army) Rapid Capabilities and Critical Technologies Office (RCCTO) issued Task Order Request for Proposals (RFP) 24-005, under General Services Administration (GSA) One Acquisition Solution for Integrated Services (OASIS) Small Business Pool 4 multiple award contract (MAC), seeking to procure systems engineering and technical assistance (SETA). The Contracting Officer (CO) set the procurement entirely aside for small business and designated North American Industry Classification Systems (NAICS) code 541715, Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology) with a corresponding 1,000 employee size standard as the appropriate code.

On May 30, 2024, Radiant Technologies, Inc. (Appellant) filed the instant NAICS code appeal, asserting that Exception 3 to NAICS code 541715, Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts, with a corresponding 1,300 employee size standard, is applicable here, and the appropriate size standard. For reasons discussed *infra*, the appeal is DENIED.

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 filed the instant appeal within ten calendar days after issuance of the RFP, so the appeal is timely. Federal Acquisition Regulation (FAR) 19.103; 13 C.F.R. §§ 121.1103(b)(1), 134.304(b). Accordingly, this matter is properly before OHA for decision.

## II. Background

### A. The Performance Work Statement (PWS)

The Army seeks to procure systems engineering and technical assistance (SETA) for the Army's RCCTO. RCCTO's purpose is to improve the speed of technology and capability delivery to implement the Army's National Defense Strategy and Army Vision. RCCTO researches and develops critical enabling technologies and capabilities that address near-term and mid-term threats. It focuses on finding solutions to be in the hands of soldiers in the one-to-three-year timeframe. (*Id.*, at 2, citing PWS at 3, 5.)

The PWS defines requirements for the contractor to provide program management services, scientific services, engineering services, logistics services, financial services, and ancillary services in support of RCCTO, including the Directed Energy Project Office (DEPO); Advanced Concept and Critical Technologies Project Office (ACCT); Cyber, Electronic Warfare, and Information Dominance Project Office (CEID); Rapid Acquisition Prototyping Office (RAPPO); Counter-small Unmanned Aerial Systems Project Office (C-sUAS); Multi-Domain Artillery Cannon System Project Office (MDACS-PO); and Joint Program Executive Office Guam Defense System (JPEO-GDS). (PWS, at 1.)

DEPO is pursuing a variety of directed-energy weapons, including lasers and high-powered microwaves. MDACS-PO is developing a prototype system that uses gun-fired hypervelocity projectiles to defeat an array of air and missile threats. JPEO-GDS is providing oversight of integration of multiple weapons systems across multiple services. ACCT develops advanced technologies to address high priority items from Army leadership. CEID works on cyber, electronic warfare, and information dominance related technologies. RAPPO researches enabling technologies as prototypes to address near-term and mid-term threats. C-sUAS works on the threat from unmanned aerial systems, fielding experimental prototypes. (*Id.*, at 12-13.)

The PWS indicates the support and services are intended to maximize the operational capability and efficiency of RCCTO by providing personnel with the necessary skill level and expertise in executing rapid prototyping effort and delivering residual combat capabilities that address the threats faced by the Army. (*Id.*)

The contractor will provide performance analysis, to include analysis of data of project status in relation to program objectives and assess prototype development to assure consistency with budget restraints and technology and manpower requirements. The contractor will provide schedule development assessment for prototype testing. (*Id.*, at 19.)

Further, the contractor will provide earned value management analysis. In supporting Project Management, the contractor will provide analytical expertise to support conferences,

meetings and program reviews. (*Id.*, at 20.) In supporting Program Documentation, the contractor will assist in the development of a Concept Plan, a Single Acquisition Management Plan, a Development Plan, and a Production and Deployment Plan. The contractor will also provide training support for RCCTO employees. (*Id.*, at 21-22.) In addition, the contractor will provide Operations Support Service as well as services that are primarily involved in the application of comprehensive scientific and professional knowledge in planning, conducting and evaluating fundamental research, technology development and innovation. This will include engineering services, technical assessments, and systems engineering; and testing and evaluation and integration support. (*Id.*, at 23-26.) The contractor will provide International Engineering support, which includes support for tactical vehicles, command and control systems, radio sets and intercoms. (*Id.*, at 30.) Moreover, the contractor will provide expert support for RCCTO prototype weapons systems and subject matter experts in the field of armament systems including but not limited to munitions, weapons platforms and associated technologies. (*Id.*, at 32.)

### B. The Appeal

On May 30, 2024, Appellant filed the instant appeal. Appellant agrees that the appropriate NAICS code is 541715, “Research and Development in the Physical Engineering and Life Sciences” but argues that Exception 3 for “Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts,” with a corresponding 1,300 employee size standard, is applicable here, and the appropriate size standard. (Appeal, at 1.)

Appellant notes the Army seeks to procure SETA for RCCTO, whose purpose is to improve the speed of technology and capability delivery to implement the Army's National Defense Strategy and Army Vision. RCCTO researches and develops critical enabling technologies and capabilities that address near-term and mid-term threats. It focuses on finding solutions to be in the hands of soldiers in the one-to-three-year timeframe. Appellant maintains this work requires in-depth knowledge of missiles and missile systems, including directed short-range air defense directed energy systems and technologies and hypervelocity projectiles. It involves integration of multiple weapons across multiple services. (*Id.*, at 2, citing PWS at 3, 5.)

Appellant asserts the Army considers these programs to be a critical need to maximize operational capability of RCCTO by providing personnel with the necessary expertise in executing rapid prototyping and delivering residual combat capabilities that address threats faced by Army operational units. (*Id.*, at 2-3.) Appellant also asserts that there is no disagreement that NAICS code 541715 is the appropriate code here, but the question is whether the Guided Missiles exception applies. The *NAICS Manual*<sup>1</sup> description for NAICS code 541715 describes research and development in a number of fields, while Exception 3 includes evaluations and simulations and other services requiring thorough knowledge of complete missiles and spacecraft. (*Id.*, at 3-4.)

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<sup>1</sup> Executive Office of the President, Office of Management and Budget, *North American Industry Classification System-United States (2022)*, available at <http://www.census.gov>.

Next, Appellant argues there is not a strict standard in evaluating procurements under NAICS code 541715 as in other fields. Appellant finds it particularly true for services involving missiles. Exception 3 includes evaluations and simulation, and other unspecified services requiring thorough knowledge of complete missiles and spacecraft. (*Id.* at 4, citing *NAICS Appeal of Advanced Concepts Enterprises, Inc.*, SBA No. NAICS-5968, at 13 (2018).) Appellant adds that in the complex world of missiles and spacecraft, research and development may be viewed more expansively than in traditional disciplines. (*Id.* citing *NAICS Appeal of Millenium Engineering and Integration Co.*, SBA No. NAICS-5309 at 11-12 (2011).) Therefore, an RFP which requires evaluations and simulations involving missiles and similar devices as well as a thorough knowledge of these technologies, may be designated under NAICS code 541715, under Exception 3. (*Id.*, citing *NAICS Appeal of DCS Corp.*, SBA No. NAICS-5703, at 4 (2016).)

Appellant asserts the contractor here will provide support to the full array of project office within RCCTO, including the DEPO; ACCT; CEID; RAPPO; C-sUAS; MDACS-PO; and JPEO-GDS. The awardee will also provide support to any other project office the Army stands up in support of RCCTO's mission. (*Id.*) Conversely, the contractor will not perform research for agriculture, the environment, fisheries, geology, physics or the other subjects listed in the *NAICS Manual* description of NAICS code 541715. This procurement is oriented towards war. The RCCTO project offices almost uniformly perform research and development applicable to Exception 3. (*Id.*)

Appellant also points to the PWS, which states that DEPO is pursuing a variety of directed energy weapons, including lasers and microwaves. Their strategy is focused on two capability sets: Directed Energy Maneuver Short Range Air Defense (DEMSHORAD) and Indirect Fire Protection Capability (IFPC). They are developing a gun-fired guided hypervelocity projectile (HVP) to defeat an array of threats. JPEO GDS provides oversight of multiple weapon systems across multiple services. CsUAS's operating principles include fielding experimental prototypes with combat capabilities to the soldiers. (*Id.*, at 4-5, citing PWS at 11-13.)

The offices the contractor will support are devoted to missile related activities, both offensive and defensive. The broad range of services are linked by an extensive need for missile-related research and development and thorough knowledge of missile and missile related activities. The contractor must provide services primarily involved in the application of comprehensive scientific and professional knowledge in planning, conduction, evaluation and managing fundamental research, and/or technology development. (*Id.*, at 5, citing PWS on Scientific Services at 16.)

Further, Appellant points out that under Engineering Services/Technical Assessments, the PWS requires the contractor to perform and provide modeling and simulation development. This is to include simulation, high-level architecture, planning development, verification, validating and simulation support for RCCTO prototypes and subsystems. (*Id.*, at 5-6, citing PWS at § 2.3.2.) Similarly, the requirements for Systems Engineering Services, are to provide systems engineering support that includes model-based systems engineering, requirements development, systems architecture, specification development and support, risk analysis/management and safety analysis assessment. This will include architecture studies, development and sustainment and radar/sensor modification. (*Id.*, at 5-6, citing PWS at § 2.3.3.)

Moreover, Appellant asserts the contractor must provide the Army with integration services. This will involve providing engineering support for the integration of various prototyping efforts, e.g. mechanical engineering, electrical engineering, prototype engineering, modeling and simulation, and systems engineering. The contractor must also provide program level system integration support for prototype engineering. (*Id.*, at 6, citing PWS at § 2.3.6, p. 19.) The contractor must also provide international engineering support, supporting new case development research on radio systems specific to a country, analyze radio compatibilities, identify integration issues, and provide draft notional RCCTO prototype unit organization and major end items and provide recommendations of test and training equipment. (*Id.*, citing PWS, at § 2.5.)

Appellant argues the remaining services required by the PWS require extensive understanding of the subject matter. Program management support services include acquisition support, cost schedule, performance analysis, cost estimation, earned value management analysis, and project management. (*Id.*, citing PWS at §§ 2.1.2-2.2.5.) Appellant points to the example of cost schedule support, which also requires the contractor to analyze and synthesize data to present project status and long-range plans, assess prototype development and provide technical recommendations. (*Id.*, citing PWS at §§ 2.1.2.2, 2.1.2.2.) All these activities could not be achieved without extensive knowledge of the subject matter, and this mandates the use of Exception 3 in categorizing this procurement.

### C. CO's Response

On June 27, 2024, the CO responded to the appeal. The CO argues her designation of NAICS code 541715 is correct, and the appeal is untimely because the GSA designated NAICS code 541715 for the GSA OASIS Small Business Pool 4 MAC in 2014. Appellant and the public at large were on notice since 2014 that the task orders issued under the GSA OASIS Small Business Pool 4 would be designated under NAICS codes 541713, 541714 or 541715. The CO further maintains that any objection to the designation of NAICS code 541715 should have been filed within 10 days of the issuance of the original OASIS solicitation. (CO's Response, at 4, citing *NAICS Appeal of Credence Mgmt, Solutions*, SBA No. NAICS-5914 (2018).)<sup>2</sup>

Further, the CO asserts the Task Order seeks to procure SETA services for the Army RCCTO. These services include program management services, scientific services, engineering services, logistics services, financial services, and other ancillary services. (*Id.*, at 1.) It will support the full array of project office within RCCTO, including the DEPO; ACCT; CEID; RAPPO; C-sUAS]; and MDACS-PO. The DEPO researches and develops high energy laser systems. The ACCT conducts outreach and collaboration across the Army to discover disruptive technologies. The CEID requires the same disciplines with the addition of computing sciences. The RAPPO conducts research and development in hybrid electrical tactical vehicles. The C-

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<sup>2</sup> The CO also argues Appellant has no standing, because it admits it is not a small business for GSA OASIS Small Business Pool 4. (CO's Response at 4.) However, Appellant has shown standing because under Appellant's preferred NAICS it would be small and it is adversely affected by the CO's NAICS code. Thus, this argument is moot.

sUAS conducts research and development in electronic warfare. Lastly, the MDACS office conducts research and development for high-velocity projectiles. These offices, however, do not perform research and development on guided missiles and space vehicles, their propulsion units and propulsion parts. (*Id.*, at 2-3.)

#### D. NAICS Manual Descriptions

The NAICS code designated by the CO, 541715, Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology), covers:

[E]stablishments primarily engaged in conducting research and experimental development (except nanotechnology and biotechnology research and experimental development) in the physical, engineering, and life sciences, such as agriculture, electronics, environmental, biology, botany, computers, chemistry, food, fisheries, forests, geology, health, mathematics, medicine, oceanography, pharmacy, physics, veterinary and other allied subjects.

*NAICS Manual* at 476. The *NAICS Manual* defines “research” as “original investigation undertaken on a systematic basis to gain new knowledge,” and “experimental development” as “the application of research findings or other scientific knowledge for the creation of new or significantly improved products or processes.” *Id.*, at 475.

For NAICS code 541715, the footnote in the Size Standards table states:

“Research and Development” means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

13 C.F.R. § 121.201, fn.11(a).

For Exception 3, Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts, the footnote states:

“Research and Development” for guided missiles and space vehicles includes evaluations and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

13 C.F.R. § 121.201, fn.11(d).

### 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. FAR 19.303(a)(2); 13 C.F.R. § 121.402(b). A procurement is usually classified according to the component that accounts for the greatest percentage of contract value. (*Id.*) 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. Analysis

Having reviewed the RFP, the descriptions in the *NAICS Manual*, OHA's prior decisions, and the arguments presented by the parties, I conclude that the CO's NAICS code designation is correct.

OHA has explained SBA regulations provide that for a [MAC], the contracting officer must “[a]ssign the solicitation 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 Multiple Award Contract.” 13 C.F.R. § 121.402(c)(1)(i). In the alternative, the contracting officer must “[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). Further, when placing orders under a MAC, “the contracting officer must assign a single NAICS code for each order issued against a [MAC].” *Id.* § 121.402(c)(2)(i). If there are multiple NAICS codes available under the MAC, “the contracting officer must assign the NAICS code and corresponding size standard that best describes the princip[al] purpose of each order.” *NAICS Appeal of Dellew Corporation*, SBA No. NAICS-5837, at 1 (2017); *NAICS Appeal of Credence Management Solutions*, SBA No. NAICS-5914, at 6 (2018).

In the instant appeal, the CO argues that NAICS code 541715 was one of the three NAICS codes assigned to the GSA OASIS Small Business Pool 4 MAC and therefore this designation was required. As this NAICS code designation was made in 2014, the CO asserts that Appellant's challenge now is untimely. However, the language at 13 C.F.R. § 121.402(c)(2)(i) does not prevent appellants from filings appeals of the same NAICS code under an exception, such as this case, NAICS code 541715, Exception 3, Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts. Appellant here is not challenging the designation of NAICS code itself. Rather, Appellant is arguing that one of the Exceptions within the designated NAICS code is applicable. Accordingly, under the present facts, I conclude that the appeal is timely.

Nevertheless, I also conclude that the appeal fails to establish clear error in the CO's designation. This is a research and development procurement under NAICS 541715, which is not

in dispute. The issue is whether Exception 3 applies. Exception 3 is very specific; it calls for research and development into guided missiles and space vehicles and other services, requiring a complete knowledge of missiles and spacecraft. It is true, as Appellant argues, that in the complex world of missiles and spacecraft, research and development may be viewed more expansively than in traditional disciplines. *NAICS Appeal of Advanced Concepts Enterprises, Inc.*, SBA No. NAICS-5968, at 13 (2018). An RFP which requires evaluations and simulations involving missiles and similar devices, as well as a thorough knowledge of these technologies, may be designated under Exception 3. *NAICS Appeal of Applewood Engineering*, SBA No, NAICS-6119, at 10 (2021).

However, this procurement does not call for research and development into missiles or spacecraft. The PWS does not address or support the research on “missiles.” Section II.A, *supra*. Similarly, the PWS does not even mention “spacecraft.” *Id.* It does mention lasers, microwaves, high tech artillery and projectiles, and discusses unmanned aerial vehicles, tactical vehicles and electronic warfare, mandating extensive research and development requirements, but they do not call for knowledge of or research on missiles or spacecraft. Particularly, the RFQ clearly calls for the support of a number of offices, which do not appear to conduct research and development on missiles and spacecraft. Certainly, the RFQ does not discuss missiles and spacecraft, and the duties are not consistent with Appellant's allegations that “broad range of services are linked by an extensive need for missile-related research and development and thorough knowledge of missile and missile related activities.” Sections II.A, II.B, *supra*.

While this procurement is clearly a research and development procurement, the PWS does not support the argument that is for research and development on missiles and spacecraft, under Exception 3. Accordingly, I conclude Appellant has failed to establish that the CO's designation of NAICS code 541715 was based upon clear error of fact or law. I must therefore deny the instant appeal.

#### IV. Conclusion

Appellant has failed to meet the burden of proving that the CO committed a clear error of fact or law in designating NAICS code 541715, for this procurement. For that reason, I AFFIRM the CO's NAICS code designation and find the appropriate NAICS code for this procurement is 541715, Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology), with a corresponding 1,000 employee size standard. Therefore, I DENY the instant appeal.

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

CHRISTOPHER HOLLEMAN  
Administrative Judge