

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

REDACTED DECISION FOR PUBLIC RELEASE

NAICS APPEAL OF:

Pinnacle Solutions, Inc.,

Appellant,

Solicitation No. FA8621-15-R-6330

U.S. Department of the Air Force

SBA No. NAICS-5651

Decided: April 8, 2015

APPEARANCES

Robert J. Symon, Esq., Aron C. Beezley, Esq., Bradley Arant Boult Cummings LLP, Washington, D.C., for Pinnacle Solutions, Inc.

Richard B. Oliver, Esq., J. Matthew Carter, Esq., McKenna Long & Aldridge LLP, Los Angeles, California, for CymSTAR, LLC.

John R. Hart, Esq., Major Matthew G. Karas, JA, Air Force Materiel Command Law Office, U.S. Department of the Air Force.

DECISION¹

I. Introduction and Jurisdiction

On February 26, 2015, the U.S. Department of the Air Force (Air Force) issued Request for Proposals (RFP) No. FA8621-15-R-6330 for the KC-10 training system program. The Contracting Officer (CO) set aside the procurement entirely for service-disabled veteran-owned small businesses, and assigned North American Industry Classification System (NAICS) code 336413, Other Aircraft Parts and Auxiliary Equipment Manufacturing, with a corresponding size standard of 1,000 employees.

¹ This decision was initially issued under a protective order. Pursuant to 13 C.F.R. § 134.205, OHA afforded counsel an opportunity to file a request for redactions if desired. OHA received one or more timely requests for redactions and considered any requests in redacting the decision. OHA now publishes a redacted version of the decision for public release.

On March 6, 2015, Pinnacle Solutions, Inc. (Appellant) filed the instant appeal. Appellant asserts that the correct NAICS code for the procurement is 611512, Flight Training, with a size standard of \$27.5 million average annual receipts. For the 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) 19.303(c); 13 C.F.R. §§ 121.1103(b)(1), 134.304(b). Accordingly, this matter is properly before OHA for decision.

II. Background

A. The RFP

The RFP indicates that the contractor will manage, operate, maintain, and modify aircraft simulator devices which are used to train Air Force personnel to properly operate the KC-10 aircraft. Specifically, the RFP explains:

The KC-10 Training System (TS) program consists of the Operations, Maintenance, and Sustainment (OM&S) of 39 Aircrew Training Devices (ATDs) and Maintenance Training Devices (MTDs) located at Travis [Air Force Base (AFB)] and Joint Base McGuire-Dix-Lakehurst. These training devices support the continuous training of [Air Force] maintenance and aircrew personnel. . . . The contract's primary objectives are to 1) provide effective management and maintenance of KC-10 training devices . . . , which minimizes the need for follow-on aircraft training thereby reducing aircraft usage and decreasing aircraft downtime, and 2) maintain or exceed training availability at AMC- levels as defined in Performance Work Statement (PWS 3.5).

(RFP, Attach. 9, § 1.1.) According to the RFP, the overall purpose of the procurement “is to provide a training program which results in thoroughly trained aircrews and maintenance personnel for KC-10 weapon system operations.” (PWS § 1.1.)

The RFP's Performance Work Statement (PWS) describes the required work in greater detail. The contractor must maintain the simulator devices, and “incorporate highly technical modifications into the [devices]” in order to “maintain KC-10 TS concurrency with the weapon system program.” (*Id.* § 2.) The PWS divides the required work into six categories: Program Management; Systems Engineering; Aircrew Training; Training Systems Support Center; Contractor Logistics Support; and Other Tasks. (*Id.* § 3.)

Under the Program Management category, the contractor will “develop and maintain a program management process to plan, direct, integrate, and control” the KC-10 TS program. (*Id.* § 3.1.) For Systems Engineering, the contractor must ensure that KC-10 TS hardware, software,

and courseware meets Air Force standards for safety, suitability and effectiveness. (*Id.* § 3.2.) For Aircrew Training, the contractor will train Air Force personnel to proficiently operate the KC-10 aircraft in accordance with Air Force requirements. (*Id.* § 3.3.) For Training Systems Support Center (TSSC), the contractor will establish and operate a TSSC in commercial facilities located within a 30-mile radius of Travis AFB. (*Id.* § 3.4.) For Contractor Logistics Support, the contractor will provide logistics support and maintenance of the training system. (*Id.* § 3.5.) Under Other Tasks, the contractor will perform various upgrades and improvements sought by the Air Force, including producing new cargo load trainers, modifying boom operator trainers, and replacing the host computer system. (*Id.* § 3.6.)

The RFP states that the Air Force plans to award a single contract for the KC-10 TS program. (RFP, Attach. 10, § 1.1.) There are three evaluation factors: Technical; Past Performance; and Price. (*Id.* § 2.) The Technical factor in turn consists of three subfactors: (1) Training System Support Center (TSSC) and Site Operations (On-Site Contractor Logistics Support); (2) System Upgrades; and (3) Experience. For the Experience subfactor, the Air Force will assess “the technical experience of the offeror to execute the rehost of KC-10 ATDs.” (*Id.* § 2.1.3.)

The RFP states that the Technical factor will be evaluated on a pass/fail basis because the Air Force “must be assured that each offeror has the ability to perform the requirements of the KC-10 TS [PWS].” (*Id.* § 2.1.) After proposals are evaluated against the Technical factor, a tradeoff analysis will be made between Past Performance and Price considering only those offerors that are determined to be technically acceptable. (*Id.* § 1.) Proposals are due April 10, 2015.

The RFP contains 17 Contract Line Item Numbers (CLINs) for the base year of contract performance, and 18 CLINs for each option year.² (RFP § B.) CLIN 0001 covers operation of the TSSC; CLINs 0002 and 0003 cover operation and logistics support at Travis AFB and at Joint Base McGuire-Dix-Lakehurst, respectively; CLINs 0004 and 0005 cover additional instruction time (surge) at Travis AFB and at Joint Base McGuire-Dix-Lakehurst, respectively; CLIN 0006 covers obsolescence and technology insertion; CLIN 0007 is for incidental expenses; CLIN 0008 is for travel; CLIN 0009 covers transition ramp up and/or ramp down; CLIN 0010 is for contract data requirements; CLIN 0011 is for collective bargaining agreement adjustments; CLINs 0012 and 0013 cover Engineering Change Proposals (ECPs) and Contract Change Proposals (CCPs); and CLINs 0014 through 0018 cover the upgrades and other tasks identified in § 3.6 of PWS. CLINs 0014 through 0018 are identified in the RFP as optional CLINs. (*Id.*)

B. The Appeal

On March 6, 2015, Appellant filed its appeal of the NAICS code. Appellant insists that NAICS code 336413 is improper and that the correct NAICS code is 611512. Although Appellant qualifies as a small business under either code, Appellant maintains that it would be placed at a disadvantage if it were forced to compete with larger firms under NAICS code

² CLIN 0015 is not used during the base year of contract performance, but is used during each option year.

336413. (Appeal at 2, citing *NAICS Appeal of SAC Cleaners, Inc.*, SBA No. NAICS-5468, at 6 (2013).) Appellant further asserts that it is harmed by the selection of a manufacturing NAICS code rather than a NAICS code for services. The assignment of a manufacturing NAICS code triggers application of the nonmanufacturer rule and limits an offeror's discretion in developing its proposal and performing the contract. (*Id.* at 3.)

In Appellant's view, "it is beyond dispute that this procurement is primarily for the acquisition of *services*." (*Id.* at 8, emphasis in original.) Appellant asserts that the "overwhelming majority of the effort set forth in the PWS" is for services. (*Id.*) In addition, Appellant states, services comprise 12 of the 17 CLINs used during the base year of contract performance. Appellant contends that services constitute an even larger percentage of the CLINs if optional CLINs are disregarded. Optional CLINs should not be considered in determining the principal purpose of the procurement, Appellant argues, since optional CLINs may never be exercised and the Air Force could elect to obtain such items elsewhere. (*Id.* at 8-9.)

Appellant alleges that the CO clearly erred in selecting a manufacturing NAICS code because services comprise more than [XX]% of the total value of the contract and because the RFP makes clear that the principal purpose of the contract to provide aircrew training services. (*Id.* at 9.) Further, Appellant states, the RFP instructs that offerors provide more pricing information pertaining to services than to manufacturing. (*Id.*) Appellant argues that manufacturing is a small part of the contract and that the majority of the manufacturing is optional in any event. (*Id.* at 10.)

Appellant predicts that the Air Force may defend NAICS code selection by arguing that NAICS code 336413 is routinely used for aircrew training and aircrew training device procurements. However, OHA has held that the NAICS codes assigned to other procurements have little probative value. (*Id.* (citing *NAICS Appeal of Eagle Design and Management, Inc.*, SBA No. NAICS-4521, at 5 (2002).) In addition, Appellant asserts, OHA has previously suggested that the Air Force has a history of improperly utilizing NAICS code 336413 for similar procurements. (*Id.* at 10-11 (quoting *Size Appeal of CymSTAR Services, LLC*, SBA No. SIZ-5329, at 14 n.5 (2012) ("The Air Force's selection of [NAICS code 336413] for an RFP which largely seeks to procure services is questionable, but because no timely NAICS appeal was filed it is that NAICS code which governs this procurement").)

Appellant highlights that the RFP includes FAR provisions pertaining to the Service Contract Act. (*Id.* at 11.) The issue is significant, Appellant asserts, because the Service Contract Act applies to contracts that have "as its principle purpose the furnishing of *services* to the United States through the use of service employees." (*Id.* (quoting 41 U.S.C. § 6702(a)(3) (emphasis added by Appellant).) Appellant observes that the RFP also references the Limitation on Subcontracting restrictions pertaining to services contracts. (*Id.*) Appellant argues that the inclusion of such provisions in the RFP demonstrates that the Air Force itself has concluded that the principle purpose of the procurement is the acquisition of services. (*Id.* at 12.)

Appellant maintains that NAICS code 611512, Flight Training, best describes the principal purpose of the procurement. The RFP makes repeated references to the training of Air

Force personnel, and explains that “[t]he overall objective of the KC-10 TS is to provide a *training program* which results in *thoroughly trained aircrews and maintenance personnel* for KC-10 weapon system operations.” (*Id.* at 12 (quoting PWS § 1.1 (emphasis added by Appellant).) In addition, the RFP later reiterates that the objectives of the procurement are to “provide effective *management and maintenance* of KC-10 training devices” and to “maintain or exceed *training availability*” at levels defined in the PWS. (*Id.* (quoting RFP, Attach. 9, § 1.1. (emphasis added by Appellant).) Appellant requests that OHA grant the appeal and designate NAICS code 611512 as the correct code for this solicitation. (*Id.* at 13).

On March 18, 2015, Appellant moved to supplement its appeal with additional evidence. Specifically, Appellant seeks to introduce “industry day” slides prepared by the Air Force in May 2014. The slides are relevant, Appellant argues, because one of the slides states that the procurement is expected to be a “Services contract.” (Motion at 1.) The Air Force opposes the motion on grounds that any supporting evidence should have been submitted with the initial appeal. (Air Force Opp. at 1-2.) Because Appellant filed the additional evidence before the close of record, and no other party is prejudiced by this evidence, Appellant's motion is GRANTED and the additional evidence is ADMITTED into the record.

C. Air Force's Response

On March 24, 2015, the Air Force responded to the appeal. The Air Force defends the choice of NAICS code 336413 for this procurement.

The Air Force explains that the instant procurement consolidates requirements for aircrew training and maintenance/upgrade of the simulator devices into a single acquisition. (Air Force Response at 4.) As a result, the NAICS code Appellant advocates, 611512, Flight Training, cannot be correct because it captures, at most, only one portion of the overall effort. (*Id.* at 7.) The Air Force contends that Appellant ignores the fact that much of this procurement does not involve aircrew instruction. In addition, the Air Force asserts, NAICS code 611512 is questionable even for the aircrew training aspects of this procurement, because according to the *NAICS Manual*, industries in NAICS code 611512 are engaged in vocational or recreational flight instruction. Thus, the Air Force reasons, NAICS code 611512 is not applicable to the types of instruction conducted here, which involve training military personnel to properly operate a military aircraft for military purposes. (*Id.* at 16-17, 24.)

The Air Force argues that NAICS code 336413 is most appropriate because “the Air Force seeks to procure a very sophisticated training system, with numerous special design and performance requirements modeled after the KC-10.” (*Id.* at 16.) The Air Force explains that the KC-10 acts as “a flying gas station” used primarily for the in-flight refueling of other aircraft. (*Id.* at 17.) Due to the complex nature of the KC-10 and its missions, the KC-10 TS program consists of multiple training devices, each designed to train one or more crewmembers on their unique roles in the operation and maintenance of the aircraft. (*Id.* at 18.) Further, aircrews must be trained to accomplish their tasks with precision, in the midst of combat operations. It therefore is imperative that the simulator devices exactly replicate the actual characteristics and conditions of the KC-10 aircraft. The Air Force insists that aircrew training services will have little benefit, and may be counterproductive, unless the system upgrades are accomplished to ensure that

aircrews receive training on the current systems and workings of the KC-10 aircraft. (*Id.* at 21, 28.) As a result, proper maintenance/upgrade of the training devices is the most important function performed by the contractor. (*Id.* at 22.) The Air Force also highlights that aircrew instruction is omitted entirely from the Technical evaluation factor, which describes the minimum technical expertise necessary to perform the contract. The RFP's evaluation criteria therefore reflect that the Air Force “chose to emphasize the difficult manufacturing, engineering, and supply components of the contract and deemphasize many of its easier service components.” (*Id.* at 22-23.)

The Air Force claims that Appellant greatly exaggerates the proportion of the procurement pertaining to services as opposed to manufacturing. According to the Air Force, although the appeal suggests that more than [XX]% of the procurement is for services, Appellant reaches this result by construing CLINs that are a mix of services and equipment as being purely services. (*Id.* at 20, 26.) Further, the Air Force argues, Appellant improperly assumes that all services should be classified as Flight Training. (*Id.* at 26.) According to the Air Force, aircrew training accounts for only [XX]% of the total value of the procurement. (*Id.* at 7, 29.) Rebuilding and overhaul of the devices represents a comparable share of the effort, and such activities are directly manufacturing, or in direct support of manufacturing, best classified under NAICS code 336413. (*Id.* at 18-20.) Furthermore, the Air Force maintains, SBA regulations do not require that every procurement always be assigned the NAICS code which represents the largest percentage of contract value. (*Id.* at 28.)

The Air Force argues that “OHA should not fall prey to Appellant's simplistic and erroneous logic that application of the Service Contract Act (SCA) to this acquisition leads inexorably to the conclusion that a manufacturing NAICS code is improper.” (*Id.* at 27.) The Air Force asserts that the RFP contains provisions pertaining to both manufacturing and services because this is a consolidated procurement addressing multiple requirements.

Attached to its Response, the Air Force offers several exhibits, including: a Determination & Findings (D&F) memorandum prepared by the former CO and dated February 19, 2015 explaining the choice of NAICS code 336413; a Market Research Report dated September 29, 2014 providing the Air Force's estimate of the “approximate percentage breakout of the basic tasks” for the procurement; and affidavits from Air Force leaders, technical experts, and procurement personnel supporting the selection of NAICS code 336413.

The D&F describes the procurement as a “consolidated integrated training system buy consisting of equally important and integrally related service and supply efforts.” (Attachment 1, at 2.) Based upon the Market Research Report, the D&F estimates that aircrew instruction will comprise [XX]% of the value of the procurement, whereas known system upgrades to the training devices will be [XX]%. However, “[t]hough not identified at present, other system upgrades can be expected to be required during the period of performance of this contract to ensure that the training devices are current with upgrades to the capability of the aircraft.” (*Id.*) The D&F indicates that the upgrades of the devices are most important aspects of the procurement because “[t]he value of aircrew instruction services provided under this contract is wholly dependent on system upgrades to the training devices so that aircrews receive training on the current configuration and capabilities in the KC-10 aircraft they will fly.” (*Id.*) The D&F

asserts that NAICS code 611512 “is not the most appropriate [code] because it is focused more on recreational/commercial training than military aircrew training.” (*Id.* at 4.) In addition, NAICS code 611512 would not encompass the portions of the procurement “to provide contractor logistics support to the existing systems along with providing the engineering and technical expertise to perform necessary system upgrades and sustaining engineering support.” (*Id.* at 4-5.)

The current CO avers that he “completely agree[s] with [the D&F] that the principal purpose of this acquisition is to secure and maintain training devices that are fully concurrent with the KC-10 aircraft and that the upgrades and manufacturing aspects of the work are therefore the most important.” (Attachment 11, at 2.)

An Air Force engineer describes the KC-10 TS as “an aging system that needs constant refurbishment of components” in addition to large-scale upgrades. (Attachment 4, at 6.) He further states that NAICS code 336413 is the best choice for the procurement because “[t]he awardee will be heavily involved in the design, creation, and implementation of hardware and software manufacturing, particularly with regards to the constant, highly technical system upgrades.” (*Id.* at 6-7.)

The Director of Operations, Headquarters Air Mobility Command states that “[k]eeping simulator training ‘concurrent’ or accurately reflective of the flight capability is of absolutely critical importance.” (Attachment 2, at 4.) According to the Director, training on a device that is not concurrent with the actual aircraft “is more harmful to aircrew readiness than receiving no training at all.” (*Id.*)

D. CymSTAR's Response

On March 24, 2015, CymSTAR, LLC (CymSTAR) responded to the appeal. CymSTAR supports the Air Force's choice of NAICS code 336413 for this procurement.

CymSTAR contends that the appeal incorrectly frames the issue as a choice between services and manufacturing, and incorrectly assumes that all services are flight training. (CymSTAR Response, at 2.) The appropriate inquiry, according to CymSTAR, is whether the CO had a reasonable basis to select NAICS code 336413 for this procurement. (*Id.*) CymSTAR emphasizes that the CO is not required to select the perfect NAICS code.

CymSTAR argues that “the Air Force is buying much more than Flight Training services under this procurement.” (*Id.* at 5.) Rather, in addition to performing “relatively straightforward flight training” services, the contractor must also provide “complex modifications and upgrades to the hardware and software of the KC-10 simulators in real time to maintain aircraft configuration concurrency.” (*Id.*) CymSTAR highlights the vital importance that the KC-10 simulator devices maintain concurrency with the actual aircraft and replicate real tactics, techniques, and procedures used in combat. (*Id.*) CymSTAR argues the CO reasonably selected a broad NAICS code because the simulator and training have little value without the ability to perform critical modifications and upgrades. As a result, CymSTAR asserts, NAICS code 336416 is most appropriate for this complex, multi-faceted procurement. (*Id.*)

CymSTAR disputes Appellant's arguments that services comprise nine out of ten non-option CLINs. According to CymSTAR, Appellant's argument is misleading because only three of those CLINs deal specifically with flight training services. (*Id.*) CymSTAR indicates the other CLINs require the successful contractor to perform engineering and maintenance capabilities more complex than flight training services. (*Id.* at 6-7).

CymSTAR maintains that the RFP's evaluation criteria further support the Air Force's NAICS code selection. CymSTAR argues that Technical subfactor 2, System Upgrades, has no relation whatsoever to flight training, but instead assesses the offeror's ability to upgrade, modify, and maintain devices to maintain concurrency with the KC-10 weapon system platform. (*Id.* at 10.) The same is true of Technical subfactor 3, Experience, which examines the offeror's experience performing a rehost modification of the ATDs. (*Id.* at 10-11.) "Thus, two of the three Technical subfactors are associated with an offeror's ability to upgrade and modify the training devices, not with the offeror's ability to provide Flight Training services." (*Id.* at 11.)

E. Appellant's Reply

On March 30, 2015, six days after the close record, Appellant moved to reply to the Air Force's response. In OHA practice, a reply to a response is not ordinarily permitted, unless the judge directs otherwise. 13 C.F.R. § 134.309(d). Further, OHA does not entertain evidence or argument filed after the close of record. *Id.* § 134.225(b). Here, Appellant's reply was filed after the close of record, and was not directed by OHA. Further, the Air Force's response defended the choice of NAICS code 336413, but did not raise new factual or legal questions. Accordingly, Appellant's motion to reply is DENIED, and the reply is EXCLUDED from the record. *NAICS Appeal of Allserv, Inc.*, SBA No. NAICS-5629, at 7-8 (2014).

F. NAICS Manual³ Descriptions

The NAICS code designated by the CO, 336413, Other Aircraft Parts and Auxiliary Equipment Manufacturing, covers:

establishments 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 at 473.

A footnote in the Size Standards table states that:

³ Executive Office of the President, Office of Management and Budget, *North American Industry Classification System-United States (2012)*, available at <http://www.census.gov>.

Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis are classified under NAICS code 336413.

13 C.F.R. § 121.201, n.7.

The NAICS code Appellant advocates, 611512, Flight Training, covers:

establishments primarily engaged in offering aviation and flight training. These establishments may offer vocational training, recreational training, or both.

NAICS Manual at 823.

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. 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. Analysis

Appellant has not demonstrated that the selection of NAICS code 336413 for this procurement is clearly erroneous. Appellant bases its appeal primarily upon the RFP's CLIN structure, and asserts that services represent approximately [XX]% of the overall effort. *See* Section II.B, *supra*. The Air Force and CymSTAR reasonably counter, though, that Appellant's analysis is flawed because many CLINs are actually hybrids of supplies and services. This position finds support from the D&F and the Market Research Report - both prepared prior to the commencement of this litigation - which indicate that aircrew training services represent [XX]% of the procurement, whereas upgrade of the devices is [XX]%. Section II.C, *supra*. In addition, the D&F makes clear that the [latter percentage] could subsequently increase, because “[t]hough not identified at present, other system upgrades can be expected to be required during the period of performance of this contract to ensure that the training devices are current with upgrades to the capability of the aircraft.” *Id.* Accordingly, contrary to the premise of the appeal, it is not evident from the record that aircrew training services constitutes a larger portion of this procurement than the device upgrades.

The Air Force and CymSTAR also argue persuasively that, even supposing that aircrew training were shown to be the largest portion of this procurement, such services are nevertheless of secondary importance to the upgrades, because there is little benefit from training simulations unless the devices exactly replicate the characteristics and performance of the underlying aircraft. This argument is supported by several affidavits submitted by the Air Force in response to the appeal, as well as by the RFP's evaluation criteria, which emphasize that an offeror must, at a minimum, have the technical capability to perform the device upgrades in order to progress in the competition. *See* Sections II.A and II.C, *supra*. SBA regulations provide that, although a procurement “usually” is classified according to the component which accounts for the greatest percentage of contract value, the CO may also consider other factors including “the importance of the components of the procurement making up the end item being procured” and “the function of the goods or services being purchased.” 13 C.F.R. § 121.402(b)(1). Thus, I agree with the Air Force and CymSTAR that the CO could properly weigh the relative importance of the upgrades and training services, and consider the fact that the upgrades are essential for training to occur, when determining the appropriate NAICS code.

Because Appellant has not demonstrated that the CO's choice of NAICS code was erroneous, it is unnecessary to consider the alternative NAICS code Appellant advocates, or other alternative codes. *E.g.*, *NAICS Appeal of Environment International Ltd.*, SBA No. NAICS-5628, at 7 (2014); *NAICS Appeal of Pacific Shipyards International, LLC*, SBA No. NAICS-5464, at 7 (2013) (“OHA will not assign a different NAICS code to a procurement unless the CO's choice of NAICS code is shown to be clearly erroneous.”). It is worth noting, however, that Appellant advocates only for a services NAICS code, and does not contend that any other manufacturing code would be more suitable than NAICS code 336413. Arguably, the instant procurement might be classified under NAICS code 333318, Other Commercial and Service Industry Machinery Manufacturing, rather than NAICS code 336413, Other Aircraft Parts and Auxiliary Equipment Manufacturing, since the *NAICS Manual* indicates that flight simulator machinery manufacturing falls under NAICS code 333318. *NAICS Manual* at 403, 1201. The issue is immaterial, however, because NAICS codes 333318 and 336413 have the same size standard (*i.e.*, 1,000 employees).

IV. Conclusion

For the above reasons, the appeal is DENIED. The CO appropriately selected NAICS code 336413, Other Aircraft Parts and Auxiliary Equipment Manufacturing, with an associated size standard of 1,000 employees, for this procurement. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge