
(a)(1) The contracting officer shall determine the appropriate North American Industry Classification System (NAICS) code and related small business size standard and include them in solicitations above the micro-purchase threshold. For information on size standards matched to industry NAICS codes, including the use of new NAICS codes, see also 19.102(a).

(2) The contracting officer shall select the NAICS code which best describes the principal purpose of the product or service being acquired. Primary consideration is given to the industry descriptions in the U.S. NAICS Manual, the product or service description in the solicitation and any attachments to it, 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 purchased. A procurement is usually classified according to the component which accounts for the greatest percentage of contract value. A concern that submits an offer or quote for a contract where the NAICS code assigned to the contract is one for supplies, and furnishes a product it did not itself manufacture or produce, is categorized as a non-manufacturer and deemed small if it meets the requirements of 19.102(f).

(b) If different products or services are required in the same solicitation, the solicitation shall identify the appropriate small business size standard for each product or service.

48 CFR Ch. 1 (10–1–14 Edition)
The contracting officer’s determination is final unless appealed as follows:

(1) An appeal from a contracting officer’s NAICS code designation and the applicable size standard must be served and filed within 10 calendar days after the issuance of the initial solicitation or any amendment affecting the NAICS code or size standard. However, SBA may file a NAICS code appeal at any time before offers are due.

(2) Appeals from a contracting officer’s NAICS code designation or applicable size standard may be filed with SBA’s Office of Hearings and Appeals by—

(i) Any person adversely affected by a NAICS code designation or applicable size standard. However, with respect to a particular sole source 8(a) contract, only the SBA Associate Administrator for Business Development may appeal a NAICS code designation; or

(ii) The Associate or Assistant Director for the SBA program involved, through SBA’s Office of General Counsel.

(3) Contracting officers shall advise the public, by amendment to the solicitation, of the existence of a NAICS code appeal (see 5.102(a)(1)). Such notices shall include the procedures and the deadline for interested parties to file and serve arguments concerning the appeal.

(4) SBA’s Office of Hearings and Appeals (OHA) will dismiss summarily an untimely NAICS code appeal.

(5)(i) The appeal petition must be in writing and must be addressed to the Office of Hearings and Appeals, Small Business Administration, Suite 5900, 409 3rd Street SW., Washington, DC 20416.

(ii) There is no required format for the appeal; however, the appeal must include—

(A) The solicitation or contract number and the name, address, email address, and telephone number of the contracting officer;

(B) A full and specific statement as to why the NAICS code designation is allegedly erroneous and argument supporting the allegation; and

(C) The name, address, telephone number, and signature of the appellant or its attorney.

(6) The appellant must serve the appeal petition upon—

(i) The contracting officer who assigned the NAICS code to the acquisition; and

(ii) SBA’s Office of General Counsel, Associate General Counsel for Procurement Law, 409 Third Street SW., Washington, DC 20416, facsimile 202-205-6873, or email at OPLService@sba.gov.

(7) Upon receipt of a NAICS code appeal, OHA will notify the contracting officer by a notice and order of the date OHA received the appeal, the docket number, and Judge assigned to the case. The contracting officer’s response to the appeal, if any, must include argument and evidence (see 13 CFR Part 134), and must be received by OHA within 15 calendar days from the date of the docketing notice and order, unless otherwise specified by the Administrative Judge. Upon receipt of OHA’s docketing notice and order, the contracting officer must withhold award, unless withholding award is not in the best interests of the Government, and immediately send to OHA an electronic link to or a paper copy of both the original solicitation and all amendments relating to the NAICS code appeal. The contracting officer will inform OHA of any amendments, actions, or developments concerning the procurement in question.

(8) After close of record, OHA will issue a decision and inform the contracting officer. If OHA’s decision is received by the contracting officer before the date the offers are due, the decision shall be final and the solicitation must be amended to reflect the decision, if appropriate. OHA’s decision received after the due date of the initial offers shall not apply to the pending solicitation but shall apply to future solicitations of the same products or services.

(d) SBA’s regulations concerning appeals of NAICS code designations are found at 13 CFR 121.1101 to 121.1103 and 13 CFR part 134.