

APPEAL PANEL DECISION FORM

I. CLAIMANT AND CLAIM INFORMATION

Claimant Name	Last/Name of Business [REDACTED]	First [REDACTED]	Middle
Claimant ID	[REDACTED]	Claim ID	[REDACTED]
Claim Type	Business Economic Loss		
Law Firm	[REDACTED]		

II. DECISION

Select the Compensation Amount set forth in either BP's Final Proposal or the Claimant's Final Proposal as the final outcome on the claim and check the appropriate box to signify your decision.

<input type="checkbox"/> BP's Final Proposal	Compensation Amount	\$0
	Risk Transfer Premium	.25
	Prior Payment Offset	\$0
<input checked="" type="checkbox"/> Claimant's Final Proposal	Compensation Amount	\$30,164.22
	Risk Transfer Premium	.25
	Prior Payment Offset	\$0

III. PRIMARY BASIS FOR PANELIST DECISION

Please select the primary basis for your decision. You may also write a comment describing the basis for your decision.

- Error in documentation review.**
- Error in calculation.**
- Error in RTP multiplier.**
- Error in Prior Spill-Related Payment Amount.**
- No error.**

Comment *(optional)*:

See reasons submitted to Appeals Coordinator.

Reasons for Decision

Appeal # [REDACTED]

November 24, 2015

BP appeals this BEL award on the grounds that Claimant should have been excluded as an Oil and Gas Business.

Claimant is an independent contractor who performs welding services. From 2008 to 2010 Claimant derived an average of 90% of its revenues performing welding services for oil and gas businesses – *e.g.* [REDACTED]
[REDACTED]

Based on this revenue source, BP contends that Claimant should have been assigned NAICS Code 237120 – Oil and Gas Pipeline and Related Structures Construction. Businesses with this code are:

“primarily engaged in the construction of oil and gas lines, mains, refineries, and storage tanks. The work performed may include new work, reconstruction, rehabilitation, and repairs. **Specialty trade contractors are included in this group if they are engaged in activities primarily related to oil and gas pipeline and related structures.**”

Settlement Agreement, Exhibit 16 at 6 (emphasis added).

Instead, the Settlement Program assigned Claimant NAICS Code 811310 – Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.

A Summary of Review was requested wherein this Panelist asked the Claims Administrator to provide a rationale for assigning NAICS Code 811310. In its response, the Claims Administrator stated that a keyword search for “welding” in the U.S. Census Bureau’s NAICS Code led to NAICS Code 811310, which reads as follows:

“811310 Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance

This industry comprises establishments primarily engaged in the repair and maintenance of commercial and industrial machinery and equipment. Establishments in this industry either sharpen/install commercial and industrial machinery blades and saws or **provide welding (e.g., automotive, general) repair services**; or repair agricultural and other heavy and industrial machinery and equipment (e.g., forklifts and other materials handling equipment, machine tools, commercial refrigeration equipment, construction equipment, and mining machinery).” (emphasis added)

Because the Claimant specified on its Claim Form and 2010 tax return that it provides “welding and repairs,” the Claims Administrator determined that NAICS Code 811310 was appropriate.

As to why BP’s choice of NAICS Code 237120 (Oil and Gas Pipeline and Related Structures Construction) was not considered, the Claims Administrator noted that this code’s description does not mention welding.

This appeal presents for review the on-going philosophical difference between BP and claimants over how to interpret the phrase “in the Oil and Gas business.” Claimant argues that one should look to the type of work that Claimant performs – welding – rather than to its customer base. BP argues that the source of the revenue does matter – that if a business is primarily engaged in welding on pipelines, then its “primary business activities” is related to oil and gas, and thus under Policy 480, it should be assigned an Oil and Gas Industry NAICS code.

Ordinarily, resolving this difference favors the Claimant. For example, a food caterer that services only off shore rigs and platforms falls under NAICS Code 722310 (Food Service Contractors) and not under NAICS Code 211111 (Crude Petroleum and Natural Gas Extraction) because the business’ primary activity is “providing food services at . . . industrial locations of others” and not “exploration, development and/or the production of petroleum or natural gas from wells.”

That said, the distinction in the instant matter is less clear. Claimant’s preference, NAICS Code 811310, does make reference to “welding repair services.” However, BP’s preference, NAICS Code 237120, applies to “[s]pecialty trade contractors . . . if they are engaged in activities primarily related to oil and gas pipeline and related structures.” One could certainly make the case that either code applies.

On balance, this Panelist defers to the Settlement Program’s choice of NAICS code in this matter. This Panelist is of the opinion that, for consistency, the focus should not be on a claimant’s customer base or revenue source. Thus, Claimant’s Final Proposal is adopted.