

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

NAICS APPEAL OF:

DCX/CHOL Enterprises, Inc.

Appellant

Solicitation No. SPM7AX-08-R-0028

Defense Logistics Agency

Defense Supply Center Columbus

Columbus, Ohio

SBA No. NAICS-4880

Decided: January 15, 2008

ORDER DISMISSING APPEAL AS UNTIMELY¹

I. BACKGROUND

On December 20, 2007, the Defense Logistics Agency, Defense Supply Center Columbus, in Columbus, Ohio (DSCC), issued the subject Request for Proposals No. SPM7AX-08-R-0028 (solicitation) for cable assemblies to support spares for various weapons systems. The Contracting Officer (CO) set the procurement totally aside for small businesses, and designated North American Industry Classification System (NAICS) code 336321, Vehicular Lighting Equipment Manufacturing, with a small business size standard of 500 employees, as the NAICS code for this procurement. Proposals are due on January 22, 2008.

On January 7, 2008, DCX/CHOL Enterprises, Inc. (Appellant), filed a NAICS code appeal with the Small Business Administration's (SBA) Office of Hearings and Appeals (OHA). Appellant argues that the appropriate NAICS code for this solicitation is 334290, Other Communications Equipment Manufacturing, with a small business size standard of 750 employees.

On January 7, 2008, in response to OHA's request, the CO provided OHA with copies of the subject solicitation. On January 8, 2008, OHA issued a Notice and Order requiring any response to the appeal be filed by January 24, 2008.

On January 14, 2008, counsel for DSCC filed a motion to dismiss the instant NAICS appeal as untimely.

¹ This appeal is decided under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 121 and 134.

II. DISCUSSION

The Administrative Judge concludes he must DISMISS the instant NAICS code appeal as untimely. A NAICS code appeal must be filed and served within 10 days of the issuance of the solicitation. 13 C.F.R. § 134.304(a)(3). The term “days” in the regulations governing NAICS code appeals means calendar days, unless another regulation or a Judge otherwise specifies. 13 C.F.R. § 134.101. Here, DSCC issued the solicitation on December 20, 2007, and Appellant did not file its appeal until January 7, 2008, which is 18 calendar days later. The appeal, therefore, is untimely, and the regulations require me to dismiss an untimely appeal. 13 C.F.R. § 134.304(b); *NAICS Appeal of Stephen Coakley*, SBA No. NAICS-4754 (2006).

Accordingly, the Administrative Judge concludes that he must dismiss the instant appeal as untimely, because it was filed after the deadline for filing NAICS code appeals.²

III. CONCLUSION

The Administrative Judge DISMISSES the instant appeal as UNTIMELY, because Appellant filed the appeal after the applicable deadline.

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

CHRISTOPHER HOLLEMAN
Administrative Judge

² I note that the Record in this appeal does not close until January 24, 2008, and that a non-moving party (here the Appellant) is normally permitted a 20-day time period in which to respond to a motion, *see* 13 C.F.R. § 134.211(c). I am dismissing this appeal sooner than either of these timeframes, however, because the only two decisive facts here -- the date the solicitation was issued and the date the appeal was filed -- are incontrovertible. This appeal is clearly untimely, regardless of any argument Appellant could make. Thus, there is no need to delay the DCSS's procurement of these supplies to await the end of these timeframes.