

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

NAICS APPEAL OF:

Computer Cite

SBA No. NAICS-4962

Appellant

Decided: June 6, 2008

Solicitation No. FA8773-08-R-0084
38th Engineering Installation Group/PKL
Tinker Air Force Base, Oklahoma

ORDER DISMISSING APPEAL AS PREMATURE¹

I. BACKGROUND

On May 13, 2008, the Department of the Air Force, Air Force Materiel Command (Air Force) posted Pre-Solicitation Notice FA8773-08-R-0084 for operation and maintenance of the base telecommunications system and medical center telecommunications system at Travis Air Force Base, California, on the FedBizOpps website, www.fbo.gov. The Pre-Solicitation Notice stated that the solicitation would be a total small business set aside and cited North American Industry Classification System (NAICS) code 517110, Wired Telecommunications Carriers, which has a small business size standard of 1,500 employees. 13 C.F.R. § 121.201. As of today's date, the Air Force has not issued the solicitation.

On May 21, 2008, Computer Cite (Appellant) filed a NAICS code appeal with the Small Business Administration's Office of Hearings and Appeals (OHA). Appellant asserts that the correct NAICS code is 811213, Communications Equipment Repair and Maintenance, which has a small business size standard of \$6.5 million average annual receipts. 13 C.F.R. § 121.201. Appellant states NAICS code is 811213 best describes the principal purpose of the goods and services being purchased by the government.

II. DISCUSSION

A NAICS code appeal must be filed within 10 calendar days after the issuance of the initial solicitation. 13 C.F.R. § 121.1103(b)(1), 134.304(a)(3); 48 C.F.R. § 19.303(c)(1). OHA "will summarily dismiss an untimely NAICS code appeal." 13 C.F.R. § 121.1103(b)(1).

OHA has held that internet publication of a pre-solicitation notice does not constitute a NAICS code designation within the meaning of the jurisdictional provisions of 13 C.F.R.

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.

§ 134.102(k) or the timeliness requirements of 13 C.F.R. § 134.304(a)(3), and, therefore, an appeal of a pre-solicitation notice must be dismissed as premature. *NAICS Appeal of Advanced Systems Technology Inc.*, SBA No. NAICS-4667 (2004). Mere publication of a pre-solicitation notice does not guarantee either that the procuring agency will issue a solicitation or that the contracting officer will assign the NAICS code anticipated in the notice. *Id.*

OHA's NAICS code appeal jurisdiction extends only to the issuance of solicitations, which by its terms does not include pre-solicitation notices such as the notice at issue here. 13 C.F.R. § 134.102(k); 48 C.F.R. § 19.303(c)(1).

Absent a formally issued solicitation, this appeal is premature, OHA has no jurisdiction to consider it, and the case must be dismissed. This dismissal does not preclude Appellant from submitting a response to the Pre-Solicitation Notice. Further, this dismissal does not prejudice any timely NAICS code appeal Appellant may file once the Air Force actually issues the solicitation.

III. CONCLUSION

I DISMISS WITHOUT PREJUDICE the instant NAICS appeal.

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

CHRISTOPHER HOLLEMAN
Administrative Judge