

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

NAICS APPEAL OF:

Genome-Communications

Appellant

Solicitation No. NIHAO200816

National Institute of Health

Bethesda, Maryland

SBA No. NAICS-4992

Decided: August 28, 2008

ORDER DISMISSING APPEAL AS UNTIMELY¹

I. BACKGROUND

On July 25, 2008, the National Institute of Health, Bethesda, Maryland, issued the subject solicitation No. NIHAO200816 for Technical Support and Administrative/Management Support Services. The Contracting Officer (CO) did not set the contract aside for small business, but did include a price evaluation preference for Historically Underutilized Business Zone firms and designated North American Industry Classification System (NAICS) code 541690, Other Scientific and Technical Consulting Services, with a corresponding \$6.5 million annual receipts size standard, as the applicable code for this procurement. Offers are due on August 28, 2008.

On July 28, 2008, the CO issued Amendment No. 1 to the solicitation. This amendment revised the cover page to indicate that the procurement is not a set-aside.

On August 14, 2008, the CO issued Amendment No. 2 to the solicitation. This amendment made several changes to the solicitation. The full text of the amendment follows:

1. The following language was added to Section L.2. paragraph b:

“The technical proposal must address all aspects of the statement of work. Technical proposals which only address a specific portion of the requirement will not be considered for award.”

2. The following language was deleted from Section L.2.b(1)c – Personnel:

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.

“...the approximate percentage of the total time each will be available for this program.”

3. The following language was added to Section L.2.b(5)f – Draft Information System Security Plan

“The offeror must include a draft Information System Security Plan (ISSP) using the current template in Appendix A of NIST SP 800 18, Guide to Developing Security Plans for Federal Information Systems (<http://csrc.nist.gov/publications/nistpubs/800-18-Rev1/sp800-18-Rev1-final.pdf>) for individual task orders.”

4. Section L.2.c(3)b paragraph 9 has been updated and paragraph 11 added.

5. Appendix C to the statement of work has been changed to reflect a five year period beginning in 2008 and ending in 2012.

ALL OTHER TERMS AND CONDITIONS OF THE SOLICITATION
REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.

Solicitation, Amendment No. 2, at 2.

On August 19, 2008, Genome-Communications (Appellant), filed a North American Industry Classification System (NAICS) code appeal with the Small Business Administration’s Office of Hearings and Appeals (OHA). Appellant asserts its appeal is timely because it is filed within 10 days of the CO’s issuance of Amendment No. 2. Appellant argues that the services required by this solicitation should be handled by several different procurements with several different, unspecified NAICS codes.

On August 21, 2008, the CO responded that the instant appeal should be dismissed as untimely.

II. DISCUSSION

A NAICS code appeal must be filed within 10 days of the issuance of the solicitation. 13 C.F.R. § 134.304(a)(3). If the appeal relates to an amendment affecting the NAICS code, the petition must be filed within 10 days of the issuance of the amendment. *Id.*

Appellant filed its appeal more than 10 days after the issuance of the solicitation, but within 10 days of the issuance of Amendment No. 2. In order for Appellant’s appeal to be timely, Amendment No. 2 must have changed the solicitation in some way so that the original NAICS code designation is now in question. *NAICS Appeal of Stephen Coakley*, SBA No. NAICS-4754 (2006). Changes could include a change in the NAICS code designation itself, a change in the stated size standard, or a change in the performance work statement that called into question whether the NAICS code designation was still appropriate. *Id.*

That is not the case here. As is clear from the full text quoted above, Amendment No. 2 made very minor changes to the solicitation. Accordingly, any appeal of this solicitation's NAICS code designation must have been filed no later than August 4, 2008. Appellant filed much later than that, and its appeal is untimely and I must dismiss it.

III. CONCLUSION

For the above reason, Appellant's NAICS code Appeal is DISMISSED as UNTIMELY.

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

CHRISTOPHER HOLLEMAN
Administrative Judge