

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

NAICS APPEAL OF:

Genome-Communications

Appellant

Solicitation No. NCNJ0000-8-42698

Job No. 82904

National Oceanic & Atmospheric Administration
Silver Spring, Maryland

SBA No. NAICS-5000

Decided: September 12, 2008

ORDER DISMISSING APPEAL¹

On August 21, 2008, the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), in Silver Spring, Maryland, issued Solicitation No. NCNJ0000-8-42698 (Job No. 82904) for a study on charting economic analysis. The CO assigned the solicitation North American Industry Classification System (NAICS) code 541990, Other Professional, Scientific and Technical Services, with a \$7 million average annual receipts size standard. *See* 13 C.F.R. § 121.201. The procurement is not limited to small business, but there is an evaluation preference for small businesses. The procurement is limited to offerors with items on an existing General Services Administration (GSA) Multiple Award Schedule (MAS) 899. Responses were due on September 4, 2008.

On August 28, 2008, Genome-Communications (Appellant) filed the instant NAICS code appeal with the Small Business Administration's Office of Hearings and Appeals (OHA). Appellant asserts that the solicitation offers conflicting information as to whether the procurement is set aside, and whether any vendor could bid or just those on the GSA Schedule. Appellant requests that OHA investigate its allegations and issue a clarifying order.

On September 3, 2008, Appellant moved for sanctions against NOAA, asserting that NOAA failed to comply with OHA's docketing order by failing to publish a notice of this pending action, and reposted the instant solicitation on September 3rd.

Appellant's contentions are frivolous. The solicitation is not unclear. Appellant appears to confuse a NAICS code designation, setting a side standard, with a set-aside clause. All solicitations must have a NAICS code designation. FAR § 19.303(a). This is clearly an

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.

unrestricted procurement, and OHA cannot order NOAA to change it to a set aside, or otherwise alter its solicitation. *NAICS Appeal of Genome Communications*, SBA No. NAICS-4995 (2008).

Appellant's assertion there is conflicting information as to who can bid is simply false, as noted above. Even if Appellant were correct, OHA has no jurisdiction to rewrite solicitations, only to adjudicate NAICS code appeals. 13 C.F.R. § 134.102(k). Appellant does not propose an NAICS code different from that designated, nor allege any error in the designation made.

Accordingly, Appellant raises no issue that can be adjudicated by OHA, and its appeal must be, and is, DISMISSED.

Appellant's motion for sanctions is DENIED. While NOAA may have failed to comply with the docketing order, its actions were not so gross as to require sanctions, especially in the case of a frivolous appeal such as this.

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

CHRISTOPHER HOLLEMAN
Administrative Judge