

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

NAICS APPEAL OF:

Ukpik, LLC

Appellant

Solicitation No. FA8773-08-R-0192

Department of the Air Force

38th EIG/PKL

Tinker AFB, OK

SBA No. NAICS-5006

Decided: October 7, 2008

ORDER DISMISSING APPEAL¹

I. BACKGROUND

On September 8, 2008, the Department of the Air Force, 38th EIG/PKL, at Tinker AFB, OK, published a draft version of Solicitation No. FA8773-08-R-0192 on FedBizOpps. The cover sheet, SF 1449, has the word “DRAFT” printed through it. The solicitation states, in Block 10 of the cover sheet, that the acquisition is unrestricted.

On September 19, 2008, Ukpik, LLC (Appellant), filed the instant NAICS code appeal with Office of Hearings and Appeals (OHA). Appellant objects to the Air Force issuing this requirement under full and open competition, and asks OHA to direct the Air Force to solicit this requirement as either an 8(a) competitive procurement or a small business set-aside.

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 publication of a pre-solicitation notice on FedBizOpps does not constitute a NAICS code designation within the meaning of the jurisdictional provisions of 13 C.F.R. § 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). Likewise, mere

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.

publication of a draft solicitation on FedBizOpps 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 draft. *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 draft solicitation at issue here. 13 C.F.R. § 134.102(k); 48 C.F.R. § 19.303(c)(1); *NAICS Appeal of Computer Cite*, SBA No. NAICS-4962 (2008).

Absent a formally issued solicitation, this appeal is premature. OHA has no jurisdiction to consider it, and the case must be dismissed. *NAICS Appeal of Computer Cite*, SBA No. NAICS-4962 (2008).

This appeal, however, has an additional defect requiring dismissal. It is settled law that OHA has no jurisdiction to review a contracting officer's decision not to set aside a procurement for small business, and thus I cannot consider Appellant's request that I order the Air Force to do so. *NAICS Appeal of Genome-Communications*, SBA No. NAICS-4995 (2008).

Accordingly, because the appeal is premature, and because OHA has no jurisdiction over a challenge to the CO's decision not to set aside the procurement, I must DISMISS the instant appeal.

III. CONCLUSION

For the above reasons, Appellant's NAICS code appeal is DISMISSED.

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

CHRISTOPHER HOLLEMAN
Administrative Judge