

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

NAICS APPEAL OF:

Genome-Communications

Appellant

Solicitation No. W911SERPA011A
Mission Installation Command Center
Fort McPherson, Georgia

SBA No. NAICS-5056

Decided: July 28, 2009

ORDER DISMISSING APPEAL AS UNTIMELY¹

I. BACKGROUND

On June 12, 2009, the Mission Installation Command Center, Fort McPherson, Georgia, issued Solicitation No. W911SERPA011A (solicitation). The solicitation seeks offerors to work with the Public Affairs Office at Fort McPherson and other various locations performing marketing, media, and public relations services. The Contracting Officer (CO) set the contract aside for small businesses and designated North American Industry Classification System (NAICS) code 541820, Public Relations Agencies, with a corresponding \$7 million average annual receipts size standard. Offers were due on June 22, 2009.

On June 18, 2009, the CO issued Amendment No. 1 to the solicitation. The purpose of Amendment 1 was to change the period of performance and to extend the proposal due date to July 7, 2009.

On July 2, 2009, the CO issued Amendment No. 2 to the solicitation. The purpose of Amendment 2 was to extend the proposal due date to July 21, 2009 and to respond to questions received.

On July 8, 2009, Genome-Communications (Appellant), filed a NAICS code appeal with the Small Business Administration's Office of Hearings and Appeals (OHA). Appellant argues that the services required by this solicitation "go far beyond what is expected of a small business" and that the CO's decision is erroneous. Appellant asserts its appeal is timely because it is filed within 10 days of the CO's issuance of Amendment No. 2.

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.

On July 27, 2009, the CO responded to the appeal. The CO maintains NAICS code 541820, Public Relations Agencies, is the appropriate NAICS code and is justified by the nature of the services and the total small business set-aside. The CO asserts Appellant's appeal was not filed within 10 days after the issuance of the solicitation as required by FAR Part 19.303(c)(1) and does not contain a specific statement as to why the NAICS code designation is erroneous, or argument supporting the allegation, as required by FAR Part 19.303(c)(2)(B). Additionally, the CO argues the appeal should be denied 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. Amendment No. 2 extended the proposal due date and responded to questions received. Amendment No. 2's responses to questions illuminate the work to be performed, but do not alter the NAICS code selected. Accordingly, any appeal of this solicitation's NAICS code designation must have been filed no later than June 22, 2009. Appellant filed its appeal on July 8, 2009. Thus, Appellant's appeal is untimely and I must dismiss it. 13 C.F.R. § 134.304(b).

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).

THOMAS B. PENDER
Administrative Judge