

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

NAICS APPEAL OF:

Secure Network Systems, LLC,

Appellant

Solicitation No. HQ0034-11-R-0036
U. S. Department of Defense
Washington Headquarters Services
Washington, D.C.

SBA No. NAICS-5246

Decided: June 8, 2011

ORDER DISMISSING APPEAL

On May 4, 2011, the U.S. Department of Defense (DoD), Washington Headquarters Services published a presolicitation notice on the Federal Business Opportunities website (<https://www.fbo.gov>). The agency later posted draft Solicitation No. HQ0034-11-R-0036 and invited comments from prospective offerors. The proposed procurement seeks integrated security services to improve the physical security system used to protect DoD sites.

On May 16, 2011, Secure Network Systems, LLC (Appellant), filed the instant appeal with the Small Business Administration Office of Hearings and Appeals (OHA). Appellant claims that the North American Industry Classification System (NAICS) code for the proposed acquisition should be changed from 561621, Security Systems Services (except Locksmiths), to 334290, Other Communications Equipment Manufacturing. OHA decides NAICS code appeals under the Small Business Act of 1958, 15 U.S.C. § 631 et seq. and 13 C.F.R. Parts 121 and 134.

A NAICS code appeal must be filed within ten calendar days after issuance of the solicitation. 48 C.F.R. § 19.303(c)(1); 13 C.F.R. §§ 121.1103(b)(1), 134.304(b). OHA has held that publication of a presolicitation notice does not constitute a NAICS code designation within the meaning of SBA regulations. *NAICS Appeal of NexOne*, SBA No. NAICS-5233 (2011)(citing *NAICS Appeal of Ukpik, LLC*, SBA No. NAICS-5006 (2008)). Rather, OHA's NAICS code appeal jurisdiction extends only to the issuance of solicitations. The publication of a presolicitation notice or a draft solicitation does not guarantee that the procuring agency will issue a solicitation, or that the agency will assign the same NAICS code originally anticipated in the presolicitation notice. Consequently, a NAICS appeal based upon a presolicitation notice or a draft solicitation must be dismissed as premature. *Id.*

Absent a formally issued solicitation, this appeal is premature, and OHA has no jurisdiction to consider it. Accordingly, Appellant's NAICS code appeal is **DISMISSED**. This is the final decision of the Small Business Administration. 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge