

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

NAICS APPEAL OF:

Latvian Connection LLC,

Appellant,

Solicitation No. FA5702-14-R-0001

U.S. Department of the Air Force

SBA No. NAICS-5534

Decided: February 10, 2014

ORDER DISMISSING APPEAL¹

I. Background

On January 17, 2014, the U.S. Department of the Air Force (Air Force) issued Request for Proposals (RFP) No. FA5702-14-R-0001 seeking a contractor to repair condensation leaks at Al Udeid Air Base in Qatar. The Contracting Officer (CO) designated North American Industry Classification System (NAICS) code 236220, Commercial and Institutional Building Construction, but did not set aside the procurement for small businesses.

On January 20, 2014, Latvian Connection LLC (Appellant) filed this appeal with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA). Appellant contends that “NAICS codes are used exclusively for U.S. Small Business set-aside solicitation[s] and are for firms from United States, Canada, or Mexico.” (Appeal at 1.) Appellant therefore construes the CO's assignment of a NAICS code as “an indication that the Air Force [is] intending to utilize a U.S. Small Business.” (*Id.*) Appellant acknowledges that the RFP does not specify that the procurement is set aside for small businesses. Accordingly, Appellant requests that the Air Force should set aside the instant solicitation for small businesses.

On January 27, 2014, OHA ordered Appellant to show cause why the appeal should not be dismissed for lack of jurisdiction. The order explained that OHA does not have jurisdiction to review a CO's decision not to set aside a procurement for small businesses. Appellant did not respond to OHA's order, and did not otherwise address whether OHA has jurisdiction over the appeal.

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.

II. Discussion

Appellant does not dispute the particular NAICS code or size standard selected for this procurement. Rather, Appellant's sole argument on appeal is that the CO should have set aside the instant procurement for small businesses. It is well-settled, however, that "OHA has no jurisdiction to review a contracting officer's decision not to set aside a procurement for small business." *NAICS Appeal of McKissack & McKissack*, SBA No. NAICS-5154, at 2-3 (2010); *NAICS Appeal of Genome-Communications*, SBA No. NAICS-4995, at 2 (2008) ("OHA has no jurisdiction over a challenge to the CO's decision to set aside the procurement."). Accordingly, this appeal is beyond OHA's jurisdiction and must be dismissed.

It is worth noting that the premise of Appellant's argument also is flawed. Pursuant to Federal Acquisition Regulation (FAR) 19.303(a), contracting officers are instructed to include a NAICS code "in solicitations above the micro-purchase threshold." SBA regulations similarly indicate that NAICS codes are assigned even to full and open procurements. *See, e.g.*, 13 C.F.R. § 121.409. Accordingly, the mere fact that the CO designated a NAICS code for this procurement does not establish that a small business set-aside must have been intended.

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(d).

KENNETH M. HYDE
Administrative Judge