

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

NAICS APPEAL OF:

AeroSage, LLC,

Appellant,

Solicitation No. W911RX-14-T-0112

U.S. Department of the Army

Fort Riley, Kansas

SBA No. NAICS-5554

Decided: May 7, 2014

**ORDER DISMISSING APPEAL**<sup>1</sup>

On April 29, 2014, the U.S. Department of the Army (Army) issued Solicitation No. W911RX-14-T-0112 for propane. The Contracting Officer (CO) set aside the procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 325120, Industrial Gas Manufacturing, with a corresponding size standard of 1000 employees. Responses were due April 30, 2014. On May 1, 2014, the CO awarded the contract to Propane Central, LLC, and posted the award notice on FedBizOpps.

On May 1, 2014, at 11: 55 p.m., Eastern Time, the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) received the instant NAICS code appeal filed by AeroSage, LLC (Appellant). Appellant asserted that the NAICS code selected by the CO is erroneous and that the correct NAICS code is “the 50 employees Fuel Dealer size standard because this is classic fuel dealer service.” Appellant also challenges the small business size status of the awardee, Propane Central, LLC, and complains about the Army's “excessively short (less than 24 hours) bid period without providing an urgent and compelling need statement.”

The instant appeal is moot and must be dismissed. Under OHA precedent, once a procurement has been awarded, any additional dispute over the NAICS code is moot. *E.g.*, *NAICS Appeal JRS Staffing Services*, SBA No. NAICS-5485, at 2 (2013) (“It is settled law that once the contracting agency awards the contract at issue in a NAICS code appeal, the appeal becomes moot, and OHA must dismiss the case.”); SBA No. NAICS-4991 (2008) (PFR) (“Based on well-established case precedent, when a contract award is made in a NAICS code appeal OHA dismisses the proceeding and does not consider the substantive appeal.”). Here, even if

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<sup>1</sup> 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.

OHA were to agree with Appellant that the CO selected an erroneous NAICS code, the issue is irrelevant at this stage of the acquisition. The competition has already been concluded, and OHA lacks authority to order the CO to reopen the competition. Accordingly, because the contract has been awarded, OHA will not entertain arguments as to which NAICS code should have been assigned to the procurement.

The instant appeal is moot because it seeks to challenge the NAICS code assigned to a procurement that has been awarded. For this reason, the appeal is DISMISSED.

This is the final decision of the Small Business Administration. 13 C.F.R. § 134.316(d).<sup>2</sup>

CHRISTOPHER HOLLEMAN  
Administrative Judge

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<sup>2</sup> OHA staff informed Appellant by telephone of the size protest procedure outlined in FAR 19.302 and 13 C.F.R. § 121.1001 *et seq.* OHA has no control over the time frame for bidding used by a contracting activity.