

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

NAICS APPEAL OF:

T3 TigerTech,

Appellant

Solicitation No. VA119A-15-Q-0175  
U.S. Department of Veterans Affairs  
Strategic Acquisition Center — Frederick

SBA No. NAICS-5674

Decided: August 26, 2015

ORDER DISMISSING APPEAL<sup>1</sup>

I. Background

On July 28, 2015, the U.S. Department of Veterans Affairs (VA), Strategic Acquisition Center — Frederick issued Request for Quotations (RFQ) No. VA119A-15-Q-0175 seeking Program Management Lean Six Sigma subject matter experts. The Contracting Officer (CO) set aside the procurement entirely for veteran-owned small businesses, and assigned North American Industry Classification System (NAICS) code 541611, Administrative Management and General Management Consulting Services, with a corresponding size standard of \$15 million average annual receipts. The RFQ indicated that VA planned to award a single Blanket Purchase Agreement (BPA) through the U.S. General Services Administration (GSA) Mission Oriented Business Integrated Services (MOBIS) Federal Supply Schedule (FSS) 874. VA sought offers from contractors under Special Item Number (SIN) 874-7, Integrated Business Program Support Services. (RFQ, Amendment A00001, at 3.) Quotations were due August 18, 2015.

On August 7, 2015, the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) received an appeal from T3 TigerTech (Appellant). Appellant does not address whether NAICS code 541611 is appropriate for the RFQ. Rather, Appellant devotes the bulk of its appeal to disagreeing with the use of SIN 874-7. Appellant maintains that the services being acquired are “normally” procured under SIN 874-1 and requests that the solicitation be amended to include SIN 874-1. (Appeal at 1.) Appellant further asserts that “the NAICS code (541611) has a size restriction well below the anticipated reward. This will push small disadvantaged businesses away from VA.” (*Id.*)

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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.

On August 18, 2015, the CO responded to the appeal. The CO observes that Appellant does not object to the assignment of NAICS code 541611, nor does Appellant advocate for any different NAICS code. (CO's Response, at 1-2.) As a result, OHA should dismiss or deny the appeal. The CO adds that VA issued a Request for Information (RFI) on April 24, 2015 which asked prospective offerors whether NAICS code 541611 is proper for this acquisition. Appellant responded "Yes" to this question. (*Id.* at 1.)

On August 25, 2015, Appellant, without instruction from OHA, replied to the CO's response.<sup>2</sup>

## II. Analysis

Appellant has the burden of proving, by a preponderance of the evidence, all elements of its NAICS appeal. Specifically, Appellant must show that the CO's NAICS code designation is based upon a clear error of fact or law. 13 C.F.R. § 134.314; *NAICS Appeal of Durodyne, Inc.*, SBA No. NAICS-4536, at 4 (2003). SBA regulations do not require the CO to select the perfect NAICS code. *NAICS Appeal of Evanhoe & Assocs., LLC*, SBA No. NAICS-5505, at 14 (2013). Rather, the CO must assign the NAICS code that best describes the principal purpose of the product or service being acquired in light of the industry descriptions in the *NAICS Manual*,<sup>3</sup> the description in the solicitation, the relative value and importance of the components of the procurement making up the end item being procured, and the function of the goods or services being acquired. 48 C.F.R. § 19.303(a)(2); 13 C.F.R. § 121.402(b).

In the instant case, as the CO observes, Appellant does not attempt to argue that NAICS code 541611 is inappropriate for the RFQ. As a result, Appellant offers no cognizable argument for changing the NAICS code.

Appellant does express concern with the size standard, contending that it will "push small disadvantaged businesses away from VA." *See* Section I, *supra*. OHA has explained, however, that "arguments based on the level of completion afforded by a particular size standard are meritless, because size standards are not part of the criteria for selecting the NAICS code." *NAICS Appeal of Circle Solutions, Inc.*, SBA No. NAICS-5181, at 12 (2011) (citing *NAICS Appeal of Eagle Design and Mgmt., Inc.*, SBA No. NAICS-4521 (2002)). Thus, Appellant has not offered any valid basis to disturb the NAICS code or size standard.

Appellant's contention that the CO improperly restricted competition to SIN 874-7 is beyond OHA's jurisdiction. *See* 13 C.F.R. § 134.102. SBA regulations provide no basis for OHA

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<sup>2</sup> Under applicable regulations governing NAICS code appeals, a reply to a response is not permitted unless OHA so directs. 13 C.F.R. § 134.309(d). No such direction occurred here. The reply is therefore EXCLUDED from the record. *NAICS Appeal of Allserv, Inc.*, SBA No. NAICS-5629, at 7 (2014).

<sup>3</sup> Executive Office of the President, Office of Management and Budget, *North American Industry Classification System-United States (2012)*, available at <http://www.census.gov>.

to grant Appellant its requested relief of expanding the pool of eligible bidders to include SIN 874-1.

III. Conclusion

The instant appeal does not challenge the assigned NAICS code and therefore does not present a justiciable issue. For this reason, the appeal is DISMISSED. This is the final decision of the U.S. Small Business Administration. 13 C.F.R. § 134.316(d).

KENNETH M. HYDE  
Administrative Judge