

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

NAICS APPEAL OF:

AMEL Technologies, Inc.,

Appellant,

Solicitation No. N62742-18-R-1171

U.S. Department of the Navy

NAVFAC Pacific

Pearl Harbor, HI

SBA No. NAICS-5892

Decided: March 13, 2018

ORDER DISMISSING APPEAL¹

I. Background

On January 25, 2018, the U.S. Department of the Navy, Naval Facilities Engineering Command, issued Request for Proposals (RFP) No. N62742-18-R-1171 for construction management services. The Contracting Officer (CO) set aside the procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 236220, Commercial and Institutional Building Construction, with an associated size standard of \$36.5 million average annual receipts. On February 16, 2018, the CO issued Amendment 0004, extending the deadline for receipt of proposals until March 2, 2018. There have been no further amendments to the RFP following Amendment 0004.

On March 6, 2018, AMEL Technologies, Inc. (Appellant) filed the instant appeal with the U.S. Small Business Administration Office of Hearings and Appeals (OHA). Appellant asserts that, on February 5, 2018, Appellant “filed a protest asking NAVFAC Pacific to change the NAICS code” to 541330, Engineering Services. (Appeal, at 1.) The CO did not respond to this correspondence until March 1, 2018, less than 24 hours before the proposal deadline. (*Id.*) In her response, the CO did not address the merits of Appellant's arguments, but instead stated that she “consider[ed] this matter closed” because Appellant did not file a proper NAICS code appeal. (E-mail from K. Pamplona-Rita to M. Yalcintas (Mar. 1, 2018).)

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. Analysis

The instant appeal is untimely and must be dismissed. Under applicable regulations, a NAICS code appeal must be filed within 10 calendar days after issuance of the solicitation, or within 10 calendar days of an amendment affecting the NAICS code or size standard. 13 C.F.R. §§ 121.1103(b)(1) and 134.304(b); Federal Acquisition Regulation (FAR) 19.303(c). “OHA will summarily dismiss an untimely NAICS code appeal.” 13 C.F.R. § 121.1103(b)(1); *see also* 13 C.F.R. § 134.304(c), FAR 19.303(c)(4). Further, OHA has no discretion to extend, or waive, the deadline for filing an appeal. 13 C.F.R. § 134.202(d)(2)(i)(A). Here, Appellant filed this appeal 40 calendar days after issuance of the RFP, and 18 calendar days after issuance of Amendment 0004, the most recent amendment to the RFP. Section I, *supra*. Thus, the appeal is plainly untimely. *E.g.*, *NAICS Appeal of AeroSage, LLC*, SBA No. NAICS-5557 (2014).

Appellant maintains that it timely requested that the CO reconsider the assigned NAICS code. The applicable regulations, though, make clear that a NAICS code appeal may be filed only at OHA. 13 C.F.R. §§ 121.402(d), 121.1102, and 121.1103(b)(2)(i); FAR 19.303(c)(5). Moreover, OHA has repeatedly explained that “deliberations with a procuring agency, which do not result in any change to the solicitation, do not extend the [NAICS] appeal deadline.” *NAICS Appeal of Metris, LLC*, SBA No. NAICS-5700, at 2 (2015) (quoting *NAICS Appeal of R. Christopher Goodwin & Assocs., Inc.*, SBA No. NAICS-5382, at 2 (2012); *see also NAICS Appeal of Trans Aero Ltd.*, SBA No. NAICS-5443, at 5 (2013); *NAICS Appeal of Secure Network Sys., LLC*, SBA No. NAICS-5236, at 2 (2011). Accordingly, the fact that Appellant requested that the CO reconsider the NAICS code does not alter Appellant's deadline for bringing a NAICS code appeal at OHA.

III. Conclusion

The instant appeal was filed more than 10 calendar days after issuance of the RFP, and more than 10 calendar days after issuance of the most recent amendment to the RFP. Therefore, the appeal is DISMISSED as untimely. This is the final decision of the Small Business Administration. 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge