

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

NAICS APPEAL OF:

Aero Spray, Inc., d/b/a Dauntless Air

Appellant,

Solicitation No. 14D801-18-R-0015

U.S. Department of the Interior
Boise, Idaho

SBA No. NAICS-5969

Decided: October 29, 2018

ORDER DISMISSING APPEAL¹

I. Background

On September 18, 2018, the U.S. Department of the Interior (DOI) issued Request for Proposals (RFP) No. 14D801-18-R-0015 seeking single engine air tanker (SEAT) aircraft services for the Bureau of Land Management (BLM), Bureau of Indian Affairs, (BIA), United States Forest Service (USFS) and other federal and state agencies as needed for the suppression of forest fires. The Contracting Officer (CO) set aside the RFP entirely for small businesses, and designated North American Industry Classification System (NAICS) code 481212, Nonscheduled Chartered Frigate Air Transportation, with a corresponding 1,500 employee size standard, as the appropriate code for the procurement.

On September 21, 2018, the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) received an appeal from Aerial Timber Applicators, Inc. (Aerial) challenging the CO's designation of NAICS code 481212 for the procurement. On September 24, 2018, Western Pilot Service, Inc. (WPS) also filed an appeal of the CO's NAICS code designation. Both Aerial and WPS argued the RFP should be designated under NAICS code 115310, Support Activities for Forestry, which has a footnote specifically for "Forest Fire Suppression," providing for a \$19 million annual receipts size standard. 13 C.F.R. § 121.201, fn. 17.

On September 24, 2018, the CO issued Amendment 4 to the RFP notifying interested parties of Aerial's NAICS code appeal and that OHA's record closed on October 4, 2018. Aero Spray, Inc. d/b/a Dauntless Air (Appellant) did not file a response to the NAICS code appeal of

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.

Aerial or WPS. On October 10, 2018, OHA granted Aerial and WPS's appeal, finding NAICS code 115310 to be the appropriate NAICS code for this procurement. *See NAICS Appeal of Aerial Timber Applicators, Inc. and Western Pilot Service, Inc.*, SBA No. NAICS-5965 (2018).²

On October 15, 2018, the CO issued Amendment 6 to the RFP, notifying interested parties of OHA's decision and designating the procurement under NAICS code 115310, Support Activities for Forestry with a corresponding \$19 million annual receipts size standard. On October 24, 2018, Appellant filed the instant appeal challenging the CO's new designation, arguing the appropriate designation is NAICS code 481212, Nonscheduled Chartered Freight Air Transportation with a corresponding 1,500 employee size standard. (Appeal, at 2-5.)

Aerial and WPS filed Motions to Intervene, arguing the instant appeal should be dismissed on October 26, 2018 and October 29, 2018, respectively.

II. Discussion

OHA's decision on a NAICS code appeal may not be reconsidered. *See* 13 C.F.R. § 134.316(f). Any person with a general interest in an issue raised in a NAICS appeal may file a response supporting or opposing the appeal by a specific date established by OHA. *See* 13 C.F.R. § 134.09(a-b). Appellant received notice of Aerial's NAICS appeal on September 24, 2018 and failed to respond to the appeal during the allotted time period.

The findings in *Aerial Timber Applicators, Inc.*, were final, and became effective upon issuance of the decision. *See* 13 C.F.R. § 134.316 (d). Therefore, I must summarily dismiss this appeal with prejudice. *See* 13 C.F.R. §§ 134.316(f); 134.318(c).

III. Conclusion

The instant appeal is not properly before OHA. Therefore, the appeal is DISMISSED.

This is the final decision of the Small Business Administration. 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN
Administrative Judge

² *NAICS Appeal of Aerial Timber Applicators, Inc. and Western Pilot Service, Inc.*, SBA No. NAICS-5965 (2018) incorrectly refers to the instant procurement as RFP No. 12D801-18-R-0015, but should reflect the correct above-referenced RFP No. 14D801-18-R-0015.