

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

NAICS APPEAL OF:

Veterans4You, Inc.,

Appellant,

Solicitation No. 647-365  
U.S. Government Printing Office  
Dallas, Texas

SBA No. NAICS-6021

Decided: August 13, 2019

APPEARANCES

Sarah C. Reida, Esq., Legal Meets Practical, LLC, Naperville, Illinois, for Appellant

Craig D. Barrett, Esq., Office of General Counsel, U.S. Government Publishing Office, Washington, D.C.

Kevin R. Harber, Esq., Office of General Counsel, U.S. Small Business Administration, Washington, D.C.

DECISION

I. Introduction

On February 14, 2019, the U.S. Government Publishing Office (GPO), on behalf of the U.S. Department of Veterans Affairs (VA), issued an Invitation for Bids (IFB) for suicide prevention gunlocks with printed components. Veterans4You, Inc. (Appellant) filed a bid protest with the U.S. Government Accountability Office (GAO), arguing that the IFB improperly failed to give preference to Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) or Veteran-Owned Small Businesses (VOSBs). GAO sustained Appellant's bid protest and recommended that "GPO coordinate its efforts with the VA to meet the VA's requirement for suicide prevention gun locks so as to give effect to the requirements of the [Veterans Benefits, Health Care, and Information Technology Act of 2006]." *See Matter of Veterans4You, Inc.*, B-417340, B-417340.2 (June 3, 2019), at 7.

On June 13, 2019, GPO reissued the procurement under the instant solicitation, IFB No. 647-365. The Contracting Officer (CO) assigned North American Industry Classification System (NAICS) code 323111, Commercial Printing (except Screen and Books), with a corresponding size standard of 500 employees.

On June 24, 2019, Appellant filed the instant NAICS code appeal with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA).<sup>1</sup> Appellant asserts that the correct NAICS code for this procurement is 332510, Hardware Manufacturing, with a corresponding size standard of 750 employees. GPO moves to dismiss the appeal on the grounds that GPO is a legislative branch agency excluded from the requirements of the Small Business Act and its implementing regulations. For the reasons discussed *infra*, the motion is granted and the appeal is dismissed.

## II. Background

### A. Appeal

Appellant maintains that the instant procurement is primarily for suicide prevention gun locks with only minor, incidental printing. Indeed, according to Appellant's estimates, printing constitutes “an inconsequential percentage of total contract value.” (Appeal at 1, 4.) As a result, NAICS code 323111 does not best describe the principal purpose of the procurement. (*Id.* at 4.) Conversely, NAICS code 332510 covers metal hardware and locks, and thus squarely describes the items sought by the IFB. (*Id.* at 5.) Appellant asserts that it is adversely affected by the NAICS code designation because “[c]haracterizing the procurement as ‘printing’ (and under NAICS subsector 323) facilitates the VA's ability to conduct the procurement through the GPO and not to set this opportunity aside for veteran-owned small businesses.” (*Id.* at 2.)

### B. Motion to Dismiss

On July 22, 2019, GPO moved to dismiss the appeal. GPO argues that OHA lacks jurisdiction to review the procurement actions of GPO, a legislative branch agency. (Motion at 1.) The U.S. Court of Appeals for the Federal Circuit has recognized that GPO is not subject to the requirements of the Small Business Act, even if GPO conducts a procurement on behalf of an executive branch agency. (*Id.* at 4, citing *Colonial Press Int'l, Inc. v. United States*, 788 F.3d 1350 (Fed. Cir. 2015).)

GPO contends that, because this procurement involves printing and will utilize appropriated funds, VA was required to conduct the procurement through GPO. (*Id.*, citing 44 U.S.C. §§ 501 *et seq.* and Federal Acquisition Regulation (FAR) subpart 8.8.) When, as here, a requirement involves both printing and non-printing aspects, GPO may, in the interests of efficiency, conduct a single procurement to address the entire requirement. (*Id.* at 5-6.)

In the instant case, GPO is acting as the servicing agency for a procurement of printing goods and services on behalf of VA. (*Id.* at 6-7.) “[A]ny challenge to the procurement in this

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<sup>1</sup> Ordinarily, a NAICS code appeal must be filed within 10 calendar days after issuance of the solicitation. 13 C.F.R. § 134.304(b). Here, the IFB was issued on June 13, 2019. Ten calendar days after June 13, 2019 was June 23, 2019. Because June 23, 2019 was a Sunday, the appeal petition was due on the next business day: Monday, June 24, 2019. 13 C.F.R. § 134.202(d)(1)(ii).

case, then, would be a challenge to a procurement conducted by GPO, a Legislative Branch Agency, a challenge which OHA does not have jurisdiction to review.” (*Id.* at 7.)

GPO highlights that, in *Colonial Press*, the Court of Appeals concluded that GPO is not subject to the Small Business Act. (*Id.* at 7-9.) The requirements of FAR part 19 and Title 13 of the Code of Federal Regulations likewise do not apply to GPO. (*Id.* at 9.) Further, it is immaterial that GPO is conducting the instant procurement on behalf of VA, an executive branch agency. The Court of Appeals made clear that SBA's legal authority and jurisdiction do not extend to “contracts and contracting on behalf of legislative agencies such as the GPO, regardless of whether such agencies are contracting for executive agencies.” (*Id.*, quoting *Colonial Press*, 788 F.3d at 1357.)

With its Motion, GPO provided a Form SF-1, “Printing and Binding Requisition,” prepared by VA on June 5, 2019. The Form does not specify, or recommend, any particular NAICS code for this procurement.

### C. SBA Comments

On August 1, 2019, SBA submitted comments on GPO's motion, agreeing with GPO's view of the holding in *Colonial Press*. (SBA Comments at 1.) SBA observes that the Court of Appeals also cited approvingly to a District Court opinion which reached a similar conclusion. (*Id.* at 2.) Given that “the Federal judiciary has expressly held that the Small Business Act does not apply to GPO,” SBA “knows of no legal ground that would support the denial of [GPO's] Motion to Dismiss.” (*Id.*)

### D. Appellant's Opposition

On August 5, 2019, Appellant opposed GPO's motion. Appellant contends that the instant case can be distinguished from *Colonial Press*, because VA “designated this procurement as involving ‘printing’ and therefore routed it through the GPO.” (Opp. at 1.) As a result, “this [a]ppeal does not involve solely the actions of the GPO. It involves also the actions of the VA, which designated this procurement as falling under [NAICS] Subsector 323.” (*Id.* at 2.)

## III. Discussion

OHA's jurisdiction to decide NAICS code appeals stems from the Small Business Act of 1958, and from implementing regulations in FAR part 19 and Title 13 of the Code of Federal Regulations. *See* 15 U.S.C. § 634(i); FAR 19.303; 13 C.F.R. parts 121 and 134. In *Colonial Press Int'l, Inc. v. United States*, 788 F.3d 1350 (Fed. Cir. 2015), however, the Court of Appeals held that legislative branch agencies such as GPO are not subject to the Small Business Act “regardless of whether such agencies are contracting for executive agencies.” *Colonial Press*, 788 F.3d at 1357. Similarly, it is undisputed that SBA regulations and part 19 of the FAR do not apply to GPO procurements. Accordingly, because the instant procurement is being conducted by GPO, a legislative branch agency, OHA lacks jurisdiction over this appeal.

Appellant contends that VA, rather than GPO, in effect chose the NAICS code for this procurement when VA determined that the procurement involved printing and requested that the procurement be processed by GPO. I find no merit to this argument. Notably, the Form SF-1, "Printing and Binding Requisition," does not specify, or recommend, any particular NAICS code for this procurement. Section II.B, *supra*. Further, a NAICS code designation occurs at the time a solicitation is issued, whereas VA's decision to direct the procurement to GPO would have occurred far earlier in the process, as a matter of acquisition planning. *See generally* FAR subpart 8.8 and FAR 19.303(a)(1). Contrary to Appellant's contentions, then, GPO made the NAICS code designation at the time it issued the IFB. I therefore see no basis to distinguish this case from *Colonial Press*.

#### IV. Conclusion

For the above reasons, GPO's motion is GRANTED and the 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