

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

NAICS APPEAL OF:

WEC1 Consulting,

Appellant,

Solicitation No. 80GSFC21R0021

National Aeronautics and Space
Administration

SBA No. NAICS-6115

Decided: August 11, 2021

ORDER DISMISSING APPEAL

On July 27, 2021, the Goddard Space Flight Center of National Aeronautics and Space Administration (NASA) issued Solicitation No. 80GSFC21R0021. The Contracting Officer (CO) designated as the appropriate code North American Industry Classification System (NAICS) code 541715, Research and Development in the Physical Engineering, and Life Sciences (Except Nanotechnology and Biotechnology), with the exception for Guided Missiles and Space Vehicles, Their Propulsion units and Propulsion Parts, with a corresponding 1,250 employee size standard.

On August 6, 2021, at 5:08 p.m., the Small Business Administration's (SBA) Office of Hearings and Appeals (OHA) received from WEC1 Consulting (Appellant) a certificate of service purporting to certify service for the above referenced NAICS code appeal from the NAICS code designation on the subject procurement. However, the filing included no appeal or other pleading. On August 9, 2021, upon OHA's inquiry to Appellant as to why it had filed a certificate of service e-mail with no pleadings, Appellant's Principal submitted its appeal and forwarded a second email as proof of service. Appellant's second email shows the appeal was transmitted at 5:08 p.m. on August 6, 2021, to an incorrect e-mail address with no other recipients.¹

On August 10, 2021, I issued an Order to Show Cause why the instant appeal should not be dismissed as untimely.

On August 11, 2021, Appellant responded to the Order. Appellant asserts that the procuring agency issued an Amendment to the Solicitation on August 6, 2021, which identified

¹ Appellant's second e-mail filing with its appeal was sent on August 6, 2021, at 5:08 p.m., to ohlfilings@sba.gov, a nonexistent email address, with no other parties copied to it.

the release date as July 26, 2021, which would set back the deadline for filing an appeal to August 5, 2021, the previous day. This caused confusion and required consultation among Appellant's staff. One of Appellant's staff contacted the CO and learned the date in the Amendment was a typographical error. Appellant then went ahead with its appeal. Appellant argues that the delay cause by the CO's error excuses its late filing.

Under the regulations governing NAICS code appeals, an appellant must file a NAICS code appeal ten calendar days after the issuance of the solicitation or within ten calendar days after the issuance of an amendment affecting the NAICS code. 48 C.F.R. § 19.303(c); 13 C.F.R. § 134.304(b). Filing is the receipt by OHA of the pleading or other submission. A filing received by OHA after 5 p.m. eastern time is considered filed on the next business day. 13 C.F.R. § 134.204(b)(2). Service means providing a copy of the submission to other parties (or their attorneys). 13 C.F.R. § 134.204(c).

Because the solicitation in question was issued on July 27, 2021, and subsequent amendments do not appear to have affected the NAICS code, any NAICS code appeal to OHA would have been due no later than August 6, 2021, by 5:00 p.m. 13 C.F.R. § 134.204(b)(2).

Appellant's argument that it was distracted by the typographical error in the Amendment is meritless. The regulation requires timely filing, and appellants are responsible for submitting their own timely pleadings. The regulation allows for no excuses. I have no discretion to extend or waive the deadline for filing an appeal. 13 C.F.R. §§ 134.202(d)(2)(i)(A), 134.304. Besides, the CO's purported error did not lead Appellant to believe that it had more time to appeal, but less. This error should not have led Appellant to be tardy in filing its appeal. Nonetheless, the discussion with the CO does not extend the time to file an appeal. “[D]eliberations 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)).

In any event, the document filed after 5:00 pm on August 6th, was not the appeal, but merely a Certificate of Service. Appellant transmitted its appeal to an incorrect, indeed nonexistent, email address. No appeal was filed with OHA until August 9, 2021, when the deadline for NAICS appeals was August 6th. A NAICS appeal must be filed with OHA to be timely. *NAICS Appeal of Dellew Corp.*, SBA No. NAICS-6013 (2019). Thus, Appellant filed its appeal after the deadline specified in the regulations. I have no discretion to take any other action than to dismiss this untimely appeal.

For the above reasons, the appeal is DISMISSED as UNTIMELY. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN
Administrative Judge