

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

NAICS APPEAL OF:

Laredo Technical Services, Inc.,

Appellant,

Solicitation No. N0018922Q0396

U.S. Department of the Navy

SBA No. NAICS-6170

Decided: September 6, 2022

ORDER DISMISSING APPEAL¹

On August 31, 2022, Laredo Technical Services, Inc. (Appellant) filed the above-captioned appeal with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA). The appeal challenges the North American Industry Classification System (NAICS) code assigned to Request for Quotations (RFQ) No. N0018922Q0396, issued by the U.S. Department of the Navy (Navy) on August 18, 2022. After the appeal was filed, the Contracting Officer (CO) informed OHA that no amendments were made to the RFQ. (E-mail from L. Morton (Sept. 1, 2022).) However, the Navy posted a Questions and Answers (Q&A) document for the RFQ on the Navy Electronic Commerce Online (NECO) website on August 25, 2022. (*Id.*)

Because the appeal appeared to have been filed more than 10 calendar days after issuance of the RFQ, OHA ordered Appellant to show cause why the appeal should not be dismissed as untimely. OHA explained that, under applicable regulations, a NAICS code appeal must be filed “within 10 calendar days after issuance of the solicitation, or amendment to the solicitation affecting the NAICS code or size standard.” (Order at 1, quoting 13 C.F.R. § 134.304(b) and citing Federal Acquisition Regulation (FAR) 19.103(a)(1).)

On September 2, 2022, Appellant responded to OHA's order. Appellant observes that the NECO website classified the Q&A document as an “amendment”. (Response at 1.) Therefore, Appellant reasons, the appeal was timely filed within 10 calendar days after this amendment. (*Id.*)

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.

I find no merit to Appellant's argument. The RFQ was issued on August 18, 2022, and Appellant did not file its appeal with OHA until 13 calendar days later, on August 31, 2022. Accordingly, the appeal was not filed within 10 calendar days after issuance of the solicitation, as required by applicable regulations. 13 C.F.R. §§ 121.1103(b)(1) and 134.304(b); *see also* FAR 19.103(a)(1). An untimely appeal must be dismissed. 13 C.F.R. §§ 121.1103(b)(1) and 134.304(c); FAR 19.103(a)(4); *NAICS Appeal of Air Center Helicopters, Inc.*, SBA No. NAICS-6130 (2021).

Appellant contends that its appeal was filed within 10 calendar days after issuance of an amendment to the RFQ on August 25, 2022, but this argument is unpersuasive for two reasons. First, the purported “amendment” was merely a Q&A document responding to two questions posed to the Navy by prospective offerors. The Q&A document did not alter, or revise, any provisions in the RFQ, nor was the Q&A document accompanied by a Standard Form 30, “Amendment of Solicitation/Modification of Contract.” The Q&A document, then, was not a solicitation amendment. *See generally* FAR 15.206(a) (amendment occurs when a procuring agency “changes its requirements” or modifies a solicitation's “terms and conditions”). Notwithstanding that the NECO website may have classified the Q&A document as an “amendment,” the record does not support the conclusion that the Navy actually did amend the RFQ.

Second, even if OHA were to construe the Q&A document as an “amendment” to the RFQ, the applicable regulations instruct that a NAICS appeal may only be filed within 10 calendar days after an amendment that affected the NAICS code or size standard. 13 C.F.R. §§ 121.1103(b)(1) and 134.304(b); FAR 19.103(a)(1). The mere fact that a solicitation was amended is not by itself sufficient to permit a NAICS appeal to be filed. *NAICS Appeal of Regency Consulting, Inc.*, SBA No. NAICS-6101, at 3 (2021) (Q&A document that made “no substantive changes in the solicitation” did not give rise to a timely NAICS appeal); *NAICS Appeal of Mission Analytics, LLC*, SBA No. NAICS-6086 (2020); *NAICS Appeal of Caduceus Healthcare, Inc.*, SBA No. NAICS-6074, at 8-9 (2020); *NAICS Appeal of Kalotech*, SBA No. NAICS-5665 (2015). Here, even supposing the Q&A document were an amendment, Appellant has not attempted to demonstrate how it impacted the assigned NAICS code or size standard.

The instant appeal was not filed within 10 calendar days after the issuance of the RFQ, and Appellant has not shown that the Navy issued any solicitation amendment that affected the NAICS code or size standard. Accordingly, the appeal is **DISMISSED** as **UNTIMELY**. This is the final decision of the U.S. Small Business Administration. *See* 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge