

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

NAICS APPEAL OF:

Lindahl Reed Inc.,

Appellant,

Solicitation No. SPE604-23-Q-0400\

Defense Logistics Agency

SBA No. NAICS-6197

Decided: March 10, 2023

ORDER DISMISSING APPEAL

I. Background

On February 2, 2023, the U.S. Department of Defense, Defense Logistics Agency issued Request for Quotations (RFQ) No. SPE604-23-Q-0400, seeking a contractor to perform administrative and technical services in support of the Energy Savings Performance Contracts Facility Energy Program. The Contracting Officer (CO) assigned North American Industry Classification System (NAICS) code 541611, Administrative Management and General Management Consulting Services, which has a corresponding size standard of \$24.5 million average annual receipts.

On February 13, 2023, Lindahl Reed Inc. (Appellant) filed the above-captioned appeal with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA). In its appeal, Appellant contends that the CO erred in selecting NAICS code 541611, and that the appropriate NAICS code is 541330, Engineering Services, Exception 2 for “Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992,” with a corresponding size standard of \$47 million average annual receipts.

While the appeal was pending, the CO issued Amendment 0005 to the RFQ, changing the assigned NAICS code to “541330 Exception 2” with a size standard of \$47 million average annual receipts. In an e-mail to OHA, the CO urged that, in light of Amendment 0005, OHA should dismiss the appeal as there is no longer any dispute over the assigned NAICS code. (E-mail from C. Lopez to C. Lee (Mar. 9, 2023).)

Appellant opposes dismissal, on grounds that “the subject RFQ continues to list special item numbers (SINs) 541611 and 54169\$\$ as applicable SINs, which no longer aligns with the NAICS Code configuration of the solicitation.” (E-mail from N. Hough to C. Lee (Mar. 9, 2023).) According to Appellant, “the only SIN associated with NAICS Code 541330 [Exception] 2 is SIN 54133\$\$ MI.” (*Id.*) Appellant requests that the CO clarify that “only firms that hold SIN

54133\$\$MI are eligible to submit a [quotation].” (*Id.*) Appellant further asks that the CO extend the due date for receipt of quotations. (*Id.*)

II. Discussion

I agree with the CO that this appeal has become moot and must be dismissed. OHA has repeatedly held that, when a procuring agency amends a solicitation to adopt the exact NAICS code and size standard advocated in a NAICS code appeal petition, there is no longer any case or controversy for OHA to resolve. *E.g.*, *NAICS Appeal of Sea Box, Inc.*, SBA No. NAICS-6055 (2020); *NAICS Appeal of Elevator Serv., Inc.*, SBA No. NAICS-5889 (2018); *NAICS Appeal of Design and Prod. Inc.*, SBA No. NAICS-5773 (2016); *NAICS Appeal of Allard Nazarian Group, Inc. d/b/a Granite State Mfg.*, SBA No. NAICS-5676 (2015). Here, as a result of Amendment 0005, there is no longer any dispute over the assigned NAICS code or size standard, and the appeal therefore is moot.

Although Appellant opposes dismissal, Appellant's arguments do not pertain to the assigned NAICS code or size standard. Section I, *supra*. Rather, Appellant expresses concern over the particular Special Item Numbers (SINs) associated with this RFQ, and the deadline for receipt of quotations. *Id.* Such matters are beyond OHA's jurisdiction, and OHA lacks authority to grant Appellant any relief on these questions. *See generally* 13 C.F.R. § 134.102; *NAICS Appeal of T3 TigerTech*, SBA No. NAICS-5674 (2015) (declining to adjudicate arguments over applicability of certain SINs).

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

KENNETH M. HYDE
Administrative Judge