

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

NAICS APPEAL OF:

NexOne

Appellant

Solicitation No. FA8202-11-R-1005

Department of the Air Force

OO-ALC/GHAKA

Hill AFB, UT

SBA No. NAICS-5233

Decided: May 16, 2011

**ORDER DISMISSING APPEAL**<sup>1</sup>

**I. BACKGROUND**

On May 5, 2011, the Department of the Air Force, OO-ALC/GHAKA, Hill AFB, Utah, published on FedBizOpps a presolicitation notice for Solicitation No. FA8202-11-R-1005. This procurement is for 3-Year Advisory and Assistance Services for A-10, and it is set aside for 8(a) concerns. The presolicitation notice indicates North American Industry Classification System (NAICS) code 541990, All Other Professional, Scientific, and Technical Services.

On May 11, 2011, NexOne (Appellant), filed the instant NAICS code appeal with the Small Business Administration Office of Hearings and Appeals (OHA). Appellant asserts the NAICS code should be 541330, Engineering Services.

**II. DISCUSSION**

A NAICS code appeal must be filed within 10 calendar days after issuance of the initial solicitation. 13 C.F.R. §§ 121.1103(b)(1), 134.304(b); 48 C.F.R. § 19.303(c)(1). OHA will summarily dismiss an untimely NAICS code appeal. 13 C.F.R. §§ 121.1103(b)(1), 134.304(c).

OHA has held that publication of a presolicitation notice does not constitute a NAICS code designation within the meaning of the jurisdictional provision of 13 C.F.R. § 134.102(k) or the timeliness requirement of 13 C.F.R. § 134.304(b) and, therefore, an appeal of a presolicitation notice must be dismissed as premature. *NAICS Appeal of Ukpik*, SBA No.

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<sup>1</sup> 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.

NAICS-5006 (2008). Likewise, mere publication of a presolicitation notice does not guarantee either that the procuring agency will issue a solicitation or that it will assign the NAICS code anticipated in the presolicitation notice. *Id.*

OHA's NAICS code appeal jurisdiction extends only to the issuance of solicitations, which by its terms does not include presolicitation notices such as the one at issue here. 13 C.F.R. § 134.102(k); 48 C.F.R. § 19.303(c)(1). Absent a formally issued solicitation, this appeal is premature. OHA has no jurisdiction to consider it, and the case must be dismissed. *NAICS Appeal of Ukpik, LLC*, SBA No. NAICS-5006 (2008).

Accordingly, because the appeal is premature, I must DISMISS the instant appeal.

### III. CONCLUSION

For the above reasons, Appellant's NAICS code appeal is DISMISSED.

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

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CHRISTOPHER HOLLEMAN  
Administrative Judge