

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

NAICS APPEAL OF:

MissionAnalytics, LLC,

Appellant,

Solicitation No. 36C25625Q0078

U.S. Department of Veterans Affairs

SBA No. NAICS-6324

Decided: December 6, 2024

ORDER DISMISSING APPEAL<sup>1</sup>

I. Background

On November 26, 2024, MissionAnalytics, LLC (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. 36C25625Q0078, issued by the U.S. Department of Veterans Affairs (VA).

Because the appeal appeared to be untimely, OHA ordered Appellant to show cause, no later than December 4, 2024, why the appeal should not be dismissed. OHA explained that a timely NAICS appeal must be filed within 10 calendar days after issuance of the solicitation, or within 10 calendar days after an amendment to the solicitation affecting the NAICS code or size standard. (Order at 1, citing 13 C.F.R. § 134.304(b) and Federal Acquisition Regulation (FAR) 19.103(a)(1).) In the instant case, VA last amended the RFQ's NAICS code on November 6, 2024, but the appeal was not filed until 20 days later. (*Id.*)

On December 4, 2024, Appellant responded to OHA's Order. Appellant asserts that, at the time Appellant filed the NAICS appeal on November 26, 2024, the RFQ was listed as “inactive” in the System for Award Management (SAM). (Response to Order at 1.) Further, the RFQ continues to be identified in SAM as “inactive”. (*Id.*) In Appellant's view, “inactive” is akin to “closed” or “cancelled,” so there is not currently any controversy for OHA to adjudicate. (*Id.*) As such, Appellant maintains, the 10-day deadline for filing a NAICS appeal should not begin unless and until the RFQ returns to “active” status in SAM. (*Id.*) Appellant adds that the subject requirement previously was issued under a different solicitation number. (*Id.* at 1-2.)

---

<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.

If OHA “agrees that this appeal is premature,” Appellant will withdraw the appeal. (*Id.* at 2.) Alternatively, if OHA considers the appeal to be untimely, OHA should apply its recent decision in *NAICS Appeal of MissionAnalytics, LLC*, SBA No. NAICS-6320 (2024). There, OHA directed that NAICS code 334220, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, should be assigned to a similar VA procurement. (*Id.*) Appellant urges that *MissionAnalytics* should take precedence over any timeliness problem with the instant appeal. (*Id.*) Furthermore, the U.S. Supreme Court has recognized an exception to mootness in situations where controversies are recurrent but continually evade review. (*Id.*, citing *Kingdomware Techs., Inc. vs. United States*, 136 S. Ct. 1969 (2016).)

## II. Discussion

The instant appeal is untimely and must be dismissed. As explained in OHA's Order to Show Cause, a timely NAICS appeal must be filed within 10 calendar days after issuance of the solicitation, or within 10 calendar days after an amendment to the solicitation affecting the NAICS code or size standard. 13 C.F.R. § 134.304(b) and FAR 19.103(a)(1). Absent a timely NAICS appeal, “[t]he contracting officer's determination of the applicable NAICS code is final.” 13 C.F.R. § 121.1103(b); *see also* 13 C.F.R. § 121.402(d); FAR 19.103(a). Furthermore, OHA must dismiss an untimely NAICS appeal. 13 C.F.R. §§ 121.1103(b)(1) and 134.304(c); FAR 19.103(a)(4). Here, VA amended the RFQ to change the NAICS code on November 6, 2024, yet Appellant did not file its appeal until 20 days later, on November 26, 2024. Section I, *supra*. As a result, the appeal is plainly untimely.

Appellant's suggestion that OHA should apply its recent *MissionAnalytics* decision to the instant case fails for two reasons. First, apart from mere assertion, Appellant has not established that the procurement at issue here is fundamentally similar to *MissionAnalytics*. Second, and as discussed above, Appellant did not file a timely appeal of the NAICS code assigned to this RFQ. By regulation, because no timely NAICS appeal was filed, the NAICS code selected by the contracting officer is now “final,” 13 C.F.R. §§ 121.402(d) and 121.1103(b); FAR 19.103(a). Even if OHA were to agree, then, that *MissionAnalytics* is analogous to the instant case, OHA lacks authority to disturb the NAICS code assigned to the RFQ at this stage of the acquisition. *E.g.*, *NAICS Appeal of Caduceus Healthcare, Inc.*, SBA No. NAICS-6074, at 10 (2020).

I also see no validity to Appellant's claim that, if VA were later to change the RFQ to “active” status on SAM, a new window for a NAICS appeal should arise. Again, by regulation, a NAICS appeal may only be filed within 10 calendar days after issuance of the solicitation, or within 10 calendar days after an amendment to the solicitation affecting the NAICS code or size standard. *See* 13 C.F.R. § 134.304(b); FAR 19.103(a)(1). Appellant has not explained why a change of status in SAM is, without more, equivalent either to the issuance of a new solicitation, or to a solicitation amendment. *E.g.*, *NAICS Appeal of Laredo Tech. Servs., Inc.*, SBA No. NAICS-6170, at 1-2 (2022) (Q&A document which “did not alter, or revise, any provisions in the RFQ” was not a solicitation amendment).

III. Conclusion

For the above reasons, Appellant's NAICS appeal is DISMISSED as UNTIMELY. This is the final decision of the U.S. Small Business Administration. 13 C.F.R. § 134.316(d).

KENNETH M. HYDE  
Administrative Judge