

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

NAICS APPEAL OF:

The Red Gate Group, LTD,

Appellant,

Solicitation No. HQ003425R0051

U.S. Department of Defense
Washington Headquarters Services

SBA No. NAICS-6330

Decided: January 22, 2025

ORDER DISMISSING APPEAL¹

I. Introduction and Jurisdiction

On December 23, 2024, The Red Gate Group, LTD (Appellant) filed the instant appeal challenging the NAICS code designation of DoD Washington Headquarters Services Acquisition Directorate (hereafter, WHS/AD or the Agency), task order Request for Proposals (RFP No. HQ003425R0051).

OHA decides appeals of NAICS code designations under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. parts 121 and 134. Appellant filed the instant appeal within ten calendar days after issuance of the Solicitation, so the appeal is timely. Federal Acquisition Regulation (FAR) 19.303(c)(1); 13 C.F.R. §§ 121.1103(b)(1), 134.304(b). Accordingly, this matter is properly before OHA for decision.

For the reasons discussed *infra*, I DISMISS this appeal.

II. Background

On December 20, 2024, the DoD Washington Headquarters Services Acquisition Directorate (hereafter, WHS/AD or the Agency), issued a task order Request for Proposals (RFP No. HQ003425R0051) for acquisition policy expertise services in support of the Acquisition Policy & Innovation (API) Directorate, part of the Office of the Under Secretary of Defense for Acquisition and Sustainment. The scope of the task order encompasses a range of “subject matter and technical expertise” in the field of acquisition policy. Ex. 1, RFP § C-3. The task order

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.

Performance Work Statement (PWS) contains three main task areas: Acquisition Pathway Policy Expertise, Defense Business Systems Pathway Expertise, and Intellectual Property Expertise. *See id.* at § C-4, C-5, C-6. The Contracting Officer designated NAICS code 541990 — All Other Professional, Scientific, and Technical Services, with a corresponding \$19.5 million annual receipts size standard, as the appropriate code for the task order.

The task order is being competed amongst the holders of Unrestricted Pool of the Analytic and Technical Support Services (ATSS) indefinite-delivery/indefinite-quantity (IDIQ) multiple-award contract (MAC). *See* Ex. 1, RFP at § L, ¶ 1. Services available under ATSS include “acquisition and sustainment oversight support, capability portfolio management, engineering and agile methodologies, acquisition intelligence, policy analysis and support, business and financial, international programs and security, legislative analysis and support, data science, data analytics, data governance, and technical support.” Ex. 3, ATSS Unrestricted Pool MAC at § C-1.1.

On December 23, 2024, The Red Gate Group, LTD (Appellant) filed the instant appeal challenging the NAICS code designation. Appellant asserts that WHS assigned a NAICS code that directly contradicts the NAICS codes used for incumbent contracts, that the assigned NAICS codes do not comply with the published definitions of those NAICS codes, and that WHS did not follow their published task order procedures for how to conduct market research to support their NAICS determination or size standard designation. Appellant argues that it is adversely affected by the NAICS code designation because it excludes them, as well as other small businesses, from competition. (Appeal at 1.)

The Agency filed a response to the Appeal on January 13, 2025, which was beyond the January 10 deadline set by OHA.² Nevertheless, I ADMIT the response in the interest of a complete record. In its response, WHS defended its selection of the NAICS code as proper.

WHS also contended that Appellant lacks the required standing in the matter because it is not an adversely affected party, because it is not a potential offeror for the instant procurement. The Agency chose to utilize the ATSS Unrestricted Pool MAC. Red Gate does not hold a ATSS contract in the Unrestricted Pool. Therefore, it is not a potential offeror and lacks standing to challenge the NAICS code designation. (Agency Response, at 3-5.)

II. Discussion

OHA adjudicates appeals of NAICS code designations under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. parts 121 and 134. Appellant filed the instant appeal within ten calendar days after issuance of the Solicitation, so the appeal is timely. FAR 19.303(c)(1); 13 C.F.R. §§ 121.1103(b)(1), 134.304(b).

However, Appellant lacks standing to bring this appeal, and therefore I must dismiss it. Under SBA regulations, an appeal of a NAICS code or size standard designation may only be

² The Agency filed its response after 5:00 on January 10th, which is the close of OHA's business hours. Thus, it is considered filed the next business day. 13 C.F.R. § 134.204(b)(2).

brought by an “interested party” that is “adversely affected” by the designation. 13 C.F.R. §§ 121.402(f), 121.1103(a), and 134.302(b). In interpreting whether a party is adversely affected, “OHA has long held that ‘in order for an aggrieved party to establish its standing to bring a NAICS code appeal, it must show that it is a potential bidder or offeror on a small business set-aside.’” *NAICS Appeal of J.D. Broco*, SBA No. NAICS-5389, at 2 (2012) (quoting *SIC Appeal of Advanced Tech., Inc.*, SBA No. SIC-2647, at 4 (1987).)

OHA has similarly long held that when an agency issues a solicitation under a particular vehicle and the appellant is not a contract holder under that vehicle, the appellant is not a potential offeror and therefore lacks standing. *See Bridge Systems Integration, LLC*, SBA No. NAICS-5836 (2017); *J.D. Broco*, SBA No. NAICS-5389 (2012). Separate pools of a named vehicle constitute separate MACs. Accordingly, when a vehicle has separate pools, Appellant must hold a contract in the specific pool under which the task order solicitation is issued. *NAICS Appeal of Credence Management Solutions*, SBA No. NAICS-5914, at 7 (2018).

OHA has also held that agencies have the discretion to choose which MAC to utilize for a specific procurement. Specifically, OHA stated that it “has no power to direct a procuring agency which MAC to utilize to meet its needs . . . [and] cannot exercise jurisdiction over the type of MAC from which an agency issues task orders.” *Credence* SBA No. NAICS-5914, at 6 (2018).

Regarding the instant procurement, WHS chose to utilize the ATSS Unrestricted Pool MAC. Appellant does not hold a ATSS contract in the Unrestricted Pool. Accordingly, Appellant lacks standing to file this appeal.

III. Conclusion

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

CHRISTOPHER HOLLEMAN
Administrative Judge