

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

NAICS APPEAL OF:

DCX/CHOL Enterprises, Inc.

Appellant

Solicitation No. SPM4A6-08-R-0226
Defense Logistics Agency
Defense Supply Center Richmond
Richmond, Virginia

SBA No. NAICS-4933

Decided: April 9, 2008

ORDER DISMISSING APPEAL AS UNTIMELY¹

I. BACKGROUND

A. The Request For Proposals

On December 3, 2007, the Defense Logistics Agency, Defense Supply Center Richmond (DSCR) issued the subject Request for Proposal No. SPM4A6-08-R-0226 (RFP) for branched wiring harnesses. The Contracting Officer (CO) designated the RFP a small business set-aside and assigned the RFP North American Industry Classification System (NAICS) code 334419, Other Electronic Component Manufacturing, with a corresponding small business size standard of 500 employees. On December 5, 2007, the CO issued Amendment No. 1, extending the due date for proposals to January 7, 2008. On March 7, 2008, the CO issued Amendment No. 2. Amendment No. 2 extended the date proposals were due to April 7, 2008, updated an item description, and changed the quantity for the items being procured. Amendment No. 2 did not change any other terms or conditions in the solicitation.

B. The Appeal

On March 10, 2008, DCX/CHOL Enterprises, Inc. (Appellant) filed a NAICS code appeal with the Small Business Administration's (SBA) Office of Hearings and Appeals (OHA). Appellant asserted the appropriate NAICS code for this procurement is 336322, Other Motor Vehicle Electrical and Electronic Equipment Manufacturing, with a corresponding 750 employees size standard. Appellant argues its appeal is timely because it was filed within ten days of the issuance of Amendment No. 2.

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.

II. DISCUSSION

I must DISMISS this NAICS code appeal as untimely. A NAICS code appeal must be filed and served within ten days of the issuance of the solicitation or within ten days of the issuance of an amendment affecting the NAICS code. 13 C.F.R. § 134.304(a)(3). The term “days” in the regulation means calendar days, unless another regulation or a judge otherwise specifies. 13 C.F.R. § 134.101.

Here, DSCR issued the solicitation on December 3, 2007, and Appellant did not file an appeal until March 10, 2008. Appellant’s argument that the appeal is timely because it was filed within ten days of the issuance of Amendment No. 2, is meritless. The regulation states an appeal that “relates to an amendment affecting the NAICS code” must be filed within ten days of that amendment. 13 C.F.R. § 134.304(a)(3). However, this language means that amendment must have changed the solicitation in some way so that the original NAICS code designation is now in question. These changes could include a change in the NAICS code designation itself, a change in the stated size standard, or a change in the Performance Work Statement (PWS) that called into question whether the NAICS code designation was still appropriate. *See SIC Appeal of Jing Xing Technologies, Inc.*, SBA No. SIC-4396, at 4 (2000).²

Amendment No. 2 did not change the NAICS code designation or PWS. An amendment to a solicitation which does not substantively change the original NAICS code designation or the PWS does not fall into the category of an amendment affecting a NAICS code and does not give a party aggrieved at the designation another chance to file a NAICS code appeal. *NAICS Appeal of Stephen Coakley*, SBA No. NAICS-4754, at 3 (2006).

Accordingly, I must dismiss the instant appeal as untimely because it was filed after the deadline for filing a NAICS code appeal. 13 C.F.R. § 134.304(b).

III. CONCLUSION

The instant appeal is DISMISSED as UNTIMELY because Appellant filed the appeal after the applicable deadline.

This is the Small Business Administration’s final decision. 13 C.F.R. § 134.316(b).

CHRISTOPHER HOLLEMAN
Administrative Judge

² Where appropriate, case precedent under the prior Standard Industrial Classification (SIC) code system is applicable to NAICS code appeals. *NAICS Appeal of Phoenix Scientific Corporation*, SBA No. NAICS-4416, at 8 (2000).