

Small Business Administration (S.B.A.)  
Office of Hearings and Appeals

[North American Industry Classification System]

OPTI-SERVE LENS LABORATORY, APPELLANT  
NAICS-2006-11-08-66  
Solicitation No. VA-246-07-RP-0002  
Department of Veterans Affairs, VISN 6  
Fayetteville, North Carolina  
November 16, 2006

ORDER DISMISSING APPEAL AS PREMATURE [FN1]

HOLLEMAN, Administrative Judge:

I. BACKGROUND

On November 1, 2006, the Department of Veterans Affairs, VISN 6 (the VA) posted a Presolicitation Notice on FedBizOpps for contractors to provide eyeglasses, lenses, frames, and fitting services at eight VA Medical Centers. The Presolicitation Notice, which contained no Statement of Work, stated that the solicitation would be 100% set-aside for small businesses and cited North American Industry Classification System (NAICS) code 446130 (Optical Goods Stores), which has a small business size standard of \$6.5 million. The Presolicitation Notice indicated that solicitation documents would be available on or about November 15, 2006, and that the tentative due date for proposals would be December 15, 2006. As of today's date, the VA has not issued the solicitation.

On November 7, 2006, the Contracting Officer posted Modification 01 to the Presolicitation Notice, which changed the NAICS code to 339115 (Ophthalmic Goods Manufacturing), which has a small business size standard of 500 employees.

On November 8, 2006, Opti-Serve Lens Laboratory (Appellant) filed the instant NAICS code appeal with this Office. Appellant asserts that the correct NAICS code is 446130, the code the VA originally cited in its November 1st Presolicitation Notice. On November 13, 2006, the VA filed its substantive response to the appeal. The VA asserts that the correct NAICS code is 339115, since eyeglass fitting is only an ancillary service. On November 15, 2006, Appellant filed a Reply to the VA's Response, stating that the current NAICS code "does not consider the service aspect of this contract where customer interactions and personal service are of critical importance."

II. DISCUSSION

A NAICS code appeal must be filed within 10 calendar days after the issuance of the initial solicitation. 13 C.F.R. § 121.1103(b)(1), 134.304(a)(3); 48 C.F.R. § 19.303(c)(1). This Office "will summarily dismiss an untimely NAICS code appeal." 13 C.F.R. § 121.1103(b)(1).

This Office has held that publication of a FedBizOpps Presolicitation Notice does not constitute a NAICS code designation within the meaning of the jurisdictional provisions of 13 C.F.R. § 134.102(k) or the

timeliness requirements of 13 C.F.R. § 134.304(a)(3), and therefore must be dismissed as premature. NAICS Appeal of Advanced Systems Technology Inc., SBA No. NAICS-4667 (2004). Mere publication of a notice does not guarantee either that the procuring agency will issue a solicitation or that the Contracting Officer will assign the NAICS code anticipated in the notice. Id.

This Office's NAICS code appeal jurisdiction extends only to the issuance of solicitations, which by its terms does not include Presolicitation Notices such as the Notice at issue here. 13 C.F.R. § 134.102(k); 48 C.F.R. § 19.303(c)(1). Further, this Presolicitation Notice lacks a complete Statement of Work, essential to the adjudication of a size determination. 13 C.F.R. § 121.402(b); NAICS Appeal of Advanced Systems Technology Inc., SBA No. NAICS-4667 (2004).

Absent a formally issued solicitation, this appeal is premature, and this Office has no jurisdiction to consider it. Thus, I must dismiss this premature appeal. This dismissal does not preclude Appellant from submitting a response to the Presolicitation Notice. Further, this dismissal does not prejudice any timely NAICS code appeal Appellant may file once the VA actually issues the solicitation itself.

### III. CONCLUSION

The Administrative Judge DISMISSES WITHOUT PREJUDICE the instant NAICS appeal.

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

Christopher Holleman

Administrative Judge

FN1. 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.