

19.103 Appealing the contracting officer's North American Industry Classification System code and size standard determination.

(a) The *contracting officer's* determination is final unless appealed as follows:

(1) An appeal of a *contracting officer's* NAICS code designation and the applicable size standard *shall* be served and filed within 10 calendar days after the issuance of the initial *solicitation* or any amendment affecting the NAICS code or size standard. However, SBA *may* file a NAICS code appeal at any time before *offers* are due.

(2) Appeals of a *contracting officer's* NAICS code designation or applicable size standard *may* be filed with SBA's Office of Hearings and Appeals (OHA) by—

(i) Any person adversely affected by a NAICS code designation or applicable size standard. However, with respect to a particular sole source 8(a) contract, only the SBA Associate Administrator for Business Development *may* appeal a NAICS code designation; or

(ii) The Associate or Assistant Director for the SBA program involved, through SBA's Office of General Counsel.

(3) *Contracting officers shall* advise the public, by amendment to the *solicitation*, of the existence of a NAICS code appeal (see [5.102\(a\)\(1\)](#)). Such notices *shall* include the procedures and the deadline for interested parties to file and serve arguments concerning the appeal.

(4) SBA's OHA will dismiss summarily an untimely NAICS code appeal.

(5) NAICS code appeals are filed in accordance with [13 CFR 121.1103](#).

(6) Upon receipt of a NAICS code appeal, OHA will notify the *contracting officer* by a notice and order of the date OHA received the appeal, the docket number, and the Administrative Judge assigned to the case. The *contracting officer's* response to the appeal, if any, *shall* include argument and evidence (see [13 CFR part 134](#)), and *shall* be received by OHA within 15 calendar days from the date of the docketing notice and order, unless otherwise specified by the Administrative Judge. Upon receipt of OHA's docketing notice and order, the *contracting officer shall* withhold award, unless withholding award is not in the best interests of the Government, and immediately send to OHA an electronic link to or a paper copy of both the original *solicitation* and all amendments relating to the NAICS code appeal. The *contracting officer shall* inform OHA of any amendments, actions, or developments concerning the *procurement* in question.

(7) After close of record, OHA will issue a decision and inform the *contracting officer*. If OHA's decision is received by the *contracting officer* before the date the *offers* are due, the decision *shall* be final and the *solicitation shall* be amended to reflect the decision, if appropriate. OHA's decision received after the due date of the initial *offers shall* not apply to the pending *solicitation* but *shall*

apply to future *solicitations* of the same *products* or services.

(b) SBA's regulations concerning appeals of NAICS code designations are located at [13 CFR 121.1102](#) to [121.1103](#) and [13 CFR part 134](#).

Parent topic: [Subpart 19.1 - Size Standards](#)