

EVEN IF PROCUREMENT IS NOT SET ASIDE FOR SMALL BUSINESS, SOMETIMES A CONTRACTOR MAY APPEAL THE NAICS CODE

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A recent appeal of a North American Industry Classification System (“NAICS”) code demonstrates that there are certain circumstances where a contractor may appeal the code, even if it is contained in a procurement that is not set aside for small business. *Keystone Turbine Servs, LLC*, SBA No. NAICS-A5996, April 5, 2019. In *Keystone*, the appellant appealed a NAICS code of 488190 (Other Support Activities for Air Transportation with a size standard of \$32.5 million in average annual receipts), urging that the correct NAICS code was 336412 (Aircraft Engine and Parts Manufacturing, size standard 1,500 employees). The procurement was issued on a full-and-open basis and was not restricted to small business.

The Contracting officer suggested that Keystone was not adversely affected by the NAICS code, and therefore lacked standing to appeal, because the procurement was not set aside for small business. The Office of Hearings and Appeals (OHA-which considered this appeal), rejected this argument, noting that SBA regulations permit a prospective offeror to challenge an assigned NAICS code “regardless of whether the procurement is reserved for small businesses or unrestricted.” 13 CFR § 1103(a)(1). OHA cited *Milani Constr, LLC*, SBA No. NAICS-5749 (2016), which states that “NAICS code appeals may be filed on unrestricted procurements if the appellant is seeking a change in NAICS code designation which would render it a small business for the subject procurement.”

OHA found that Keystone, the Appellant, had standing to bring this NAICS appeal, even though the procurement is unrestricted.

Takeaway. Even if a procurement is not set aside for small business, a company may appeal a NAICS code if a change to the proper code would render that company a small business for that procurement.

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