

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

NAICS APPEAL OF:

Caduceus Healthcare, Inc.,

Appellant,

Solicitation No. HSTS05-15-R-SPP047

U.S. Department of Homeland Security
Transportation Security Administration

SBA No. NAICS-6074

Decided September 28, 2020

APPEARANCES

Katherine S. Nucci, Esq., Thompson Coburn LLP, Washington, D.C., for Appellant

Michael D. Kiffney, Esq., Office of Chief Counsel, Transportation Security
Administration, Arlington, Virginia

DECISION

I. Introduction and Jurisdiction

This appeal is the second challenge by Caduceus Healthcare, Inc. (Appellant) against the North American Industry Classification System (NAICS) code assigned to Transportation Security Administration (TSA) procurements for airport security screening services. In the first NAICS appeal, TSA issued a new solicitation for the required work — Request for Proposals No. 70T05020R9NSPP019 (“the 2020 RFP”) — and the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) agreed with Appellant that TSA had clearly erred in its choice of NAICS code for that solicitation. *NAICS Appeal of Caduceus Healthcare, Inc.*, SBA No. NAICS-6058 (2020) (“*Caduceus I*”).

After *Caduceus I* was decided, TSA cancelled the 2020 RFP, and on August 19, 2020, TSA issued Amendment 00004 to an earlier solicitation, Request for Proposals No. HSTS05-15-R-SPP047 (“the 2015 RFP”). According to Amendment 00004, TSA was reopening the 2015 RFP to seek additional small business prime contractors, utilizing the NAICS code originally assigned to the 2015 RFP.

On August 24, 2020, Appellant filed the instant appeal challenging the NAICS code associated with the 2015 RFP and Amendment 00004. Appellant maintains that TSA is

improperly attempting to circumvent OHA's decision in *Caduceus I*. TSA moves to dismiss the appeal as untimely, emphasizing that the appeal was not filed within 10 calendar days after the issuance of the 2015 RFP, or within 10 calendar days of an amendment affecting the NAICS code. For the reasons discussed *infra*, TSA's motion is granted and the appeal is dismissed.

II. Background

A. The 2015 RFP

On September 18, 2015, the Contracting Officer (CO) issued the 2015 RFP seeking contractors to perform airport security screening services at airports participating in TSA's Screening Partnership Program (SPP). The 2015 RFP contemplated the award of multiple indefinite-delivery / indefinite-quantity (IDIQ) contracts, which would have a period of performance from June 1, 2016 to May 31, 2026. (2015 RFP at 2, 9, 158.) Specific work would be defined in task orders issued after award of the base contracts. (*Id.* at 120.) Each contract would have a guaranteed minimum of \$5,000. (*Id.* at 9-10, 120.) The combined maximum value of all orders across all contracts was \$3.3 billion. (*Id.*)

The 2015 RFP was issued as a full-and-open competition, and was not set-aside or otherwise restricted to small businesses. The CO assigned NAICS code 561612, Security Guards and Patrol Services, which at that time had a size standard of \$20.5 million average annual receipts.¹ (*Id.* at 148.) No NAICS code appeal was filed against the 2015 RFP.

The 2015 RFP contained a clause H.9, "Rolling Admissions," stating as follows:

H.9 ROLLING ADMISSIONS

The Government reserves the right to periodically hold a new competition for the purpose of adding additional IDIQ holders, or to allow an airport authority to submit a proposal for an IDIQ contract in the instance that TSA will be releasing a task order RFP for that airport. At TSA's sole discretion, the government will assess the quality of performance by each IDIQ holder, the number, value and complexity of work assigned to each holder, the amount of competition achieved on each order, the amount of small business participation, whether revisions are needed to the scope of the Statement of Work, and if the ceiling amount of the IDIQ contract needs to be revised. Based on these criteria and the anticipated need for task orders at additional airports, if it is in the best interest of the Government, the Contracting Officer [may] conduct a new competition to add additional IDIQ holders. The Government reserves the right to limit rolling admissions to small businesses or other socioeconomic categories, or interested airport authorities. Additionally, the Government reserves the right to revise the evaluation criteria for new IDIQ contract competitions.

¹ Effective August 19, 2019, SBA increased the size standard for NAICS code 561612 from \$20.5 million to \$22 million. *See* 84 Fed. Reg. 34,261 (July 18, 2019).

Any new awards will have the same contract expiration date as previously awarded contracts.

(*Id.* at 89.)

On June 27, 2016, TSA awarded 15 identical IDIQ prime contracts stemming from the 2015 RFP.

B. The 2020 RFP and *Caduceus I*

On May 7, 2020, TSA issued the 2020 RFP, seeking contractors to provide airport security screening services at airports participating in the SPP. The 2020 RFP was set-aside for small businesses, and was assigned NAICS code 561612. On May 14, 2020, Appellant filed a NAICS code appeal at OHA, contending that the correct NAICS code for the procurement was 488190, Other Support Activities for Air Transportation.

At the time the 2020 RFP was issued, it made no mention of the 2015 RFP. While the appeal was pending at OHA, though, TSA amended the 2020 RFP, characterizing it as a “reopener” of the 2015 RFP and citing to clause H.9 of the 2015 RFP. In response to the appeal, TSA argued that any challenge to the assigned NAICS code should have been filed within 10 days after the issuance of the 2015 RFP on September 18, 2015.

On June 17, 2020, OHA issued its decision in *Caduceus I*. OHA agreed with Appellant that the 2020 RFP was a new procurement and not a reopening or continuation of the 2015 RFP. *Caduceus I*, SBA No. NAICS-6058, at 5. As a result, OHA determined, the appeal was timely because it was filed within 10 calendar days after issuance of the 2020 RFP. *Id.* OHA further found that Appellant had met its burden of proving that NAICS code 561612 did not best describe the required work. The *NAICS Manual*² twice states that “[a] irport passenger screening services” should be classified under NAICS code 488190. *Id.* at 5-6. OHA granted the appeal and directed the CO to change the NAICS code to 488190.

On August 19, 2020, TSA issued Amendment 00005 cancelling the 2020 RFP.

C. Amendment 00004

On August 19, 2020, TSA issued Amendment 00004 to the 2015 RFP. The amendment stated that TSA was reopening the 2015 RFP, pursuant to clause H.9, to award up to ten additional IDIQ prime contracts. The new contractors will then compete for task orders with the existing contractors. Amendment 00004 explained:

The purpose of this amendment is to notify all potentially interested parties that this is a reopening of [the 2015 RFP] and that any awards resulting from this solicitation will contain identical terms and conditions that are currently in the

² Executive Office of the President, Office of Management and Budget, *North American Industry Classification System-United States (2017)*, available at <http://www.census.gov>.

contracts that were awarded as a result of [the 2015 RFP] which was competed in full and open competition under the NAICS [code] of 561612 - Security Guards and Patrol Services. The submission period for [the 2015 RFP] was opened on May 22, 2015 and was closed on November 19, 2015. This amendment is a result of [TSA] invoking its right to open the solicitation for the purpose of adding additional IDIQ holders as per [clause] H.9 of the contracts that were awarded as a result of [the 2015 RFP].

(Amendment 00004 at 2.) Amendment 00004 stated that, although the substantive terms of the new contracts will be identical to those previously awarded, the new contracts “will have an ordering period that is determined by the date of award for the start date and it will last through May 31, 2026 to ensure equal competition with the current awards.” (*Id.*)

According to Amendment 00004, “all vendors who qualify as a Small Business Concern in NAICS [code] 561612” may submit a proposal for the reopened competition. (*Id.*) The amendment included the full text of Federal Acquisition Regulation (FAR) clause 52.219-6, Notice of Total Small Business Set-Aside (MAR 2020). (*Id.* at 3-4.)

D. Appeal

On August 24, 2020, Appellant filed the instant appeal. Appellant contends that Amendment 00004 is “a transparent effort by TSA to skirt around OHA's decision [in *Caduceus I*] instructing TSA to change the applicable NAICS code for purposes of this 'new competition' restricted to small business concerns.” (Appeal at 3.) Although Amendment 00004 referenced clause H.9, “[n]owhere does the clause state that any such 'new competitions' will be based on a resurrection of the 2015 RFP rather than on a new competitive procurement.” (*Id.* at 4.) Appellant urges OHA to find, as it did in *Caduceus I*, that NAICS code 488190 is the correct code for this procurement.

Appellant highlights differences between the 2015 RFP and Amendment 00004. The 2015 RFP was a full-and-open competition whereas Amendment 00004 is a total small business set-aside. As a result, the “field of competitors” that are eligible to submit a proposal in response to Amendment 00004 is very different than in 2015. (*Id.* at 6.) Furthermore, the 2015 RFP and Amendment 00004 do not have the same evaluation factors or award criteria. Appellant elaborates:

The 2015 RFP was conducted on an unrestricted basis; required the submission of a small business subcontracting plan by large business offerors; required the submission of technical proposals addressing four non-price factors listed in descending order of importance (Transition and Workforce Management Approach, Program Management and Team Organizational Approach, Logistics Management Approach, and Past Performance), and submission of price proposals including IDIQ Labor Rates proposed on the designated pricing template, a pricing narrative, and completed worksheets including direct labor rates and locality and indirect rates; and set forth evaluation criteria under which

the non-price factors when combined were significantly more important than the price/cost factor.

(*Id.* at 4-5.) By contrast, Amendment 00004 is a total small business set-aside, includes only three technical evaluation factors (Corporate Experience, Program Management Approach, and Past Performance), requests different pricing information, and has different award criteria. (*Id.* at 5.) Such differences demonstrate that Amendment 00004 “represents a substantially different procurement from that which was held in 2015.” (*Id.* at 6.)

Appellant anticipates that TSA may contend, as it did in *Caduceus I*, that the appeal is untimely. Further, in *NAICS Appeal of Kalotech*, SBA No. NAICS-5665 (2015), OHA dismissed a NAICS code appeal that was filed within 10 calendar days after issuance of an amendment, because that amendment did not alter or otherwise affect the NAICS code. (*Id.*) In reaching its *Kalotech* decision, though, OHA commented that an exception would exist when an amendment “puts into question the solicitation's original NAICS code designation.” (*Id.* at 6-7, quoting *Kalotech*, SBA No. NAICS-5665, at 1). Such is the case here, as OHA has already recognized, in *Caduceus I*, that 561612 is the wrong NAICS code for airport security screening services. (*Id.* at 7.)

Appellant highlights that NAICS code 561612 “comprises establishments primarily engaged in providing guard and patrol services, such as bodyguards, guard dog, and parking security services.” (*Id.* at 9-10, quoting *NAICS Manual* at 501.) Airport security screeners, though, “are not bodyguards, do not patrol with guard dogs, and do not provide parking security.” (*Id.* at 10.) Instead, airport security screeners ensure that explosives, weapons, or other prohibited items are not carried onto aircrafts at commercial airports. (*Id.*)

Appellant urges that NAICS code 488190 best describes the work called for by Amendment 00004. This NAICS code encompasses a wide range of specialized services in support of the air transportation industry, and specifically includes “[a]ircraft passenger security screening services.” (*Id.*, quoting *NAICS Manual* at 398.) Such work is “precisely the type of services” sought by Amendment 00004. (*Id.*) In *Caduceus I*, OHA agreed with Appellant that NAICS code 488190 is the correct code for the SPP program. (*Id.* at 12.)

E. Motion to Dismiss

On August 27, 2020, TSA moved to dismiss the appeal. TSA observes that, according to SBA regulations, any challenge to the NAICS code assigned to a solicitation must be filed within 10 calendar days after issuance of the solicitation, or within 10 calendar days after issuance of an amendment affecting the NAICS code. (Motion at 4, citing 13 C.F.R. § 134.304(b).) Here, the 2015 RFP was issued on September 18, 2015, and Appellant voiced no objection to the assigned NAICS code until nearly five years later. (*Id.*) Although Amendment 00004 recently reopened the 2015 RFP, that amendment “did not change or otherwise affect the NAICS code.” (*Id.*) As such, this appeal is untimely and must be dismissed.

TSA highlights that, if OHA were to grant the instant appeal, OHA would find itself in the absurd position of “directing TSA to change the NAICS code in an IDIQ solicitation issued

in 2015—a solicitation that resulted in multiple IDIQ contract awards, and under which numerous task orders have been awarded over the past five years.” (*Id.*) In TSA's view, no useful purpose would be served by “requiring an agency to modify a five-year old IDIQ solicitation under which multiple awards have been made.” (*Id.*)

TSA disputes the notion that it is attempting to circumvent OHA's decision in *Caduceus I*. Under FAR 19.102, a contracting officer may assign only one NAICS code to a given solicitation, including a task or delivery order solicitation. (*Id.* at 3.) Awarding SPP prime contracts under different NAICS codes and size standards would thus be problematic, because “in any future task order solicitations the contracting officer would be forced to decide which NAICS code to use—and therefore which group of small businesses should be allowed to compete for the award.” (*Id.*) To avoid these situations, TSA determined that cancelling the 2020 RFP, and reopening the 2015 RFP, would best “achieve the agency's goals of maximizing competition and small business participation.” (*Id.*)

Lastly, TSA maintains that, under OHA case precedent, a NAICS code appeal becomes moot once contract award has occurred. (*Id.* at 4-5, citing *NAICS Appeal of K2 Aerial Application, LLC*, SBA No. NAICS-5896 (2018).) Even if the instant appeal were not untimely, then, it should be dismissed as moot, as TSA has already “awarded multiple IDIQ contracts under the 2015 RFP—not to mention subsequent task orders.” (*Id.* at 4.)

F. Appellant's Opposition

On August 31, 2020, Appellant opposed TSA's motion. Appellant insists that the appeal is timely because it was filed within 10 days after the issuance of Amendment 00004 on August 19, 2020. Further, Appellant asserts, TSA's motion is flawed for several reasons.

Appellant argues, first, that Appellant could not have challenged the NAICS code assigned to the 2015 RFP because that solicitation was not a set-aside and contained no price or evaluation preference for small businesses. OHA's practice at the time was to dismiss NAICS code appeals against unrestricted procurements. (*Opp.* at 3-4, citing *NAICS Appeal of Head, Inc.*, SBA No. NAICS-5214 (2011), *recons. dismissed*, SBA No. NAICS-5218 (2011) (PFR).) As a result, “interested parties had no basis to challenge the designation of NAICS code 561612 in 2015, and OHA would have dismissed any such appeal for lack of jurisdiction in any event.” (*Id.* at 4.) Only when Amendment 00004 was issued, as a small business set-aside, did Appellant have standing to challenge the NAICS code associated with the 2015 RFP. (*Id.* at 3.)

Next, Appellant asserts that Amendment 00004 is, in actuality, a “new competition” for the purpose of adding more IDIQ prime contractors to the SPP program, not a reopening of the 2015 RFP. (*Id.* at 5.) Clause H.9, upon which TSA purportedly based the reopening, permits TSA to increase the number of IDIQ contract holders by initiating a “new competition.” (*Id.*) Further, Amendment 00004 has different terms than the 2015 RFP and elicits an “entirely different field of potential competitors.” (*Id.* at 2.) Because Amendment 00004 is a new competition, the “amendment puts into question the solicitation's original NAICS code designation” and allows for an exception to the normal 10-calendar day deadline for filing a NAICS appeal. (*Id.* at 2, 6 (citing *NAICS Appeal of Kalotech*, SBA No. NAICS-5665 (2015).)

Third, Appellant argues that TSA's reliance on FAR 19.102 is misplaced. (*Id.* at 6-7.) Appellant contends:

[T]he cited FAR provision simply provides that a solicitation, contract, task or delivery order, shall not include multiple NAICS codes — a result that will not occur in this situation. Reinstating and amending the 2020 RFP to change the NAICS code from 561612 to [488190], as required by OHA [in *Caduceus I*], and proceeding with that procurement would not violate this FAR provision because the 2020 RFP was a separate solicitation.

...

There will be no conflict or confusion caused by this “new competition” restricted to small business concerns subject to a different but correct NAICS code, and thus no violation of the clear intent of FAR 19.102, namely, to avoid a single competition under which competitors would be simultaneously subject to multiple NAICS codes.

(*Id.* at 7.) Furthermore, this is not a situation where different work requirements will necessitate having different NAICS codes. (*Id.* at 8, n.3.) Rather, all task order solicitations will be for the same services (*i.e.*, airport screening services). In addition, “TSA may choose to correct the erroneous NAICS code designation for the original SPP IDIQ awards.” (*Id.*)

Fourth, contrary to TSA's suggestions, changing the NAICS code from 561612 to 488190 will expand, not restrict, the field of competition. (*Id.* at 8.) Only two of the existing SPP prime contractors are small businesses under the size standard associated with NAICS code 561612. (*Id.*) NAICS code 488190, on the other hand, has a “substantially larger size standard” and thus “will allow for small business participation not only among the new group of awardees, but also among the two original small business awardees and possibly other original awardees if they qualify as small” under the new size standard. (*Id.*) Utilizing NAICS code 488190, then, would best serve TSA's stated goals of expanding the field of competition and enhancing small business participation. (*Id.*)

Lastly, changing the NAICS code to 488190 will not threaten the validity of the original IDIQ contracts. (*Id.* at 9.) Appellant has not requested that TSA retroactively amend the 2015 RFP or make any change to the existing contracts. (*Id.*) Instead, Appellant asks only that TSA correct the NAICS code designation for the new competition conducted pursuant to Amendment 00004. (*Id.*) Further, because Amendment 00004 is a new competition, and no contracts have yet been awarded under the new competition, the appeal is not moot. (*Id.*)

G. TSA's Response

On September 8, 2020, TSA responded to the appeal. TSA reiterates its view that the appeal should be dismissed as untimely or as moot. In the event it is not dismissed, however, the appeal should be denied. TSA contends that “[t]he use of re-openers, or 'on-ramps' for existing

IDIQ contracts is a common practice in federal procurement,” and TSA here has long been “focused on re-opening the existing 2015 IDIQ in a way that will allow for maximum small business participation through the end of the contract.” (Response at 2.) Although TSA cannot now change the NAICS code it assigned in 2015, “TSA will consider [NAICS code 488190] when the current IDIQ expires and [TSA] issues a new IDIQ solicitation.” (*Id.*) Accompanying its Response, TSA attached a Memorandum to File, dated July 8, 2020, detailing TSA's rationale for cancelling the 2020 RFP and reopening the 2015 RFP.

H. Reply

On September 9, 2020, the day before the close of record, Appellant filed a Reply to TSA's Response. In its Reply, Appellant complains that TSA's Response “did not actually respond to the merits of [the] appeal,” nor did TSA attempt to demonstrate that NAICS code 561612 is suitable for the required work. (Reply at 1.) Appellant also takes issue with the reasoning set forth in the Memorandum to File. (*Id.* at 1-2.)

Under applicable regulations governing NAICS code appeals, a reply to a response generally is not permitted, unless OHA so directs. 13 C.F.R. § 134.309(d). No such direction occurred here. Further, Appellant did not file a motion explaining why a reply is warranted, as is contemplated by 13 C.F.R. § 134.207(b). Accordingly, Appellant's Reply is EXCLUDED from the record, and has not been considered in reaching this decision. *NAICS Appeal of PrimeTech Int'l, Inc.*, SBA No. NAICS-6014, at 6 (2019); *NAICS Appeal of AllServ, Inc.*, SBA No. NAICS-5629, at 7 (2014).

III. Discussion

I agree with TSA that this appeal is untimely and must be dismissed. As TSA correctly observes, SBA regulations provide that, except for an appeal brought by SBA itself, any challenge to the NAICS code assigned to a solicitation must be filed within 10 calendar days after issuance of the solicitation, or within 10 calendar days of an “amendment to the solicitation affecting the NAICS code or size standard.” 13 C.F.R. §§ 121.1103(b)(1) and 134.304(b); *see also* FAR 19.103(a)(1). Here, the 2015 RFP was issued on September 18, 2015, and Appellant did not file a NAICS code appeal at that time. Section II.A, *supra*. Amendment 00004 recently reopened the 2015 RFP, and Appellant did file the instant appeal within 10 calendar days after the issuance of Amendment 00004. Sections II.C and II.D, *supra*. Amendment 00004, though, did not change the NAICS code assigned to the 2015 RFP, nor alter the services required under the 2015 RFP. Sections II.A and II.C, *supra*. As such, Amendment 00004 is not the type of amendment that can give rise to a timely NAICS code appeal. Because this appeal is untimely, OHA must dismiss it. 13 C.F.R. §§ 121.1103(b)(1) and 134.304(c); FAR 19.103(a)(4).

OHA's decision in *NAICS Appeal of Kalotech*, SBA No. NAICS-5665 (2015) is analogous to the instant case. In *Kalotech*, OHA dismissed a NAICS code appeal that was filed within 10 calendar days after issuance of an amendment, because that amendment did not affect the NAICS code or size standard assigned to the solicitation. OHA explained that, under SBA regulations and OHA precedent, a NAICS code appeal may relate to a solicitation amendment only if that amendment materially affects the NAICS code designation, such as through “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 call[s] into question whether the NAICS code designation was still appropriate.” *Kalotech*, SBA No. NAICS-5665, at 1 (quoting *NAICS Appeal of DCX/CHOL Enters., Inc.*, SBA No. NAICS-4925, at 1 (2008).) The amendment at issue in *Kalotech* did not fall within any of these categories. Specifically, the amendment revised the underlying solicitation “from unrestricted to a 100% small business set-aside,” but made no change to the NAICS code or to the required work. *Id.* at 2.

Likewise, in the instant case, Amendment 00004 reopened the 2015 RFP, stated that TSA planned to award additional SPP prime contracts to small businesses, and made various changes to the proposal instructions, evaluation factors, and award criteria. Section II.C, *supra*. Importantly, though, Amendment 00004 did not change the NAICS code assigned to the 2015 RFP, and did not alter the services required under the 2015 RFP. *Id.* As in *Kalotech*, then, the deadline to file a NAICS code appeal begins from the date of issuance of the solicitation, not from the date of the most recent amendment.

In its opposition to TSA's motion to dismiss, Appellant contends that the instant appeal should be considered timely because Appellant could not have challenged the NAICS code assigned to the 2015 RFP. Section II.F, *supra*. Appellant reasons that the 2015 RFP was a full-and-open competition, and OHA had long had the practice of dismissing NAICS code appeals against full-and-open procurements. *E.g.*, *NAICS Appeal of Head, Inc.*, SBA No. NAICS-5214 (2011), *recons. dismissed*, SBA No. NAICS-5218 (2011) (PFR). Appellant's argument fails because SBA revised its regulations in 2013 to expressly authorize NAICS code appeals against full-and-open procurements. *See* 76 Fed. Reg. 61,114 (Oct. 2, 2013). Further, whereas OHA case law had permitted a NAICS code appeal against a full-and-open procurement only if the solicitation contained a price or evaluation preference for small businesses, this requirement was not included in SBA's revised regulations. Rather, SBA regulations, as revised, stated that “[a]n interested party [for a NAICS code appeal] would include a business concern seeking to change the NAICS code designation in order to be considered a small business for the challenged procurement, regardless of whether the procurement is reserved for small businesses or unrestricted.” 13 C.F.R. § 121.1103(a)(1) (2015). Contrary to Appellant's contentions, then, it would have been possible for Appellant or another interested party to have filed a NAICS code appeal against the 2015 RFP.

Appellant also argues that clause H.9 requires TSA to conduct a new competition instead of reopening the 2015 RFP; that TSA improperly cancelled the 2020 RFP; and that the NAICS code Appellant advocates, 488190, would better serve TSA's goal of expanding competition. Such issues, though, are beyond the scope of OHA's review for a NAICS code appeal. *NAICS Appeal of TASI, LLC*, SBA No. NAICS-5959, at 1 (2018) (declining to examine a procuring agency's “compliance with commercial items procedures, its conduct of market research, or its acquisition strategy”); *NAICS Appeal of Pacific Shipyards Int'l, LLC*, SBA No. NAICS-5464, at 6 (2013) (maximizing field of competition is “not part of the criteria for selecting the NAICS code.”). Accordingly, OHA is not the proper forum to consider these lines of argument.

Lastly, Appellant's argument that NAICS code 488190 is most appropriate for the required work is unavailing. While it is true that OHA agreed with Appellant on this point in

Caduceus I, OHA cannot reach that issue here because the appeal is untimely. Applicable regulations make clear that the CO's choice of NAICS code "is final unless timely appealed" to OHA. 13 C.F.R. § 121.402(d); *see also* 13 C.F.R. § 121.1103(b) and 134.318(a); FAR 19.102(b)(4). Absent a timely NAICS code appeal, then, the NAICS code assigned to the 2015 RFP may not be disturbed.

IV. Conclusion

For the above reasons, TSA's motion is GRANTED and the appeal is DISMISSED. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge