

Evaluation Report

Opportunities Exist for the SBA to Improve the Monitoring of Non-Manufacturer Rule Waivers and Determine the Impact on Small Businesses





**U.S. Small Business Administration
Office of Inspector General
Washington, D.C. 20416**

Final Report Transmittal
Report Number 14-15

Date: August 14, 2014

To: John Shoraka, Associate Administrator, Government Contracts and Business Development
Calvin Jenkins, Deputy Associate Administrator, Government Contracts and Business Development

Subject: Review of Non-Manufacturer Rule Waivers

This final report presents the results of our review of the Small Business Administration's waivers to the non-manufacturer rule. Our objectives were to determine (1) if the Small Business Administration (SBA) appropriately issued non-manufacturer rule waivers based upon the requests received, and (2) the extent to which the SBA evaluated the impact of the non-manufacturer rule waivers on small businesses. Generally, we found that improvements are needed to standardize the waiver review process and better oversee the non-manufacturer rule waivers. Additionally, the SBA does not know the impact of the non-manufacturer rule waiver on small business because the SBA does not know which small businesses were awarded a contract with a waiver—for individual or class waivers.

We conducted this evaluation in accordance with the Council of Inspectors General on Integrity and Efficiency (CIGIE) *Standards for Inspection and Evaluations*. Those standards require that we plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our objectives.

We appreciate the courtesies and cooperation of the SBA extended to the staff during this review. Please direct any questions to me at (202) 205-6587 or Riccardo Buglisi, Director, Business Development Programs Group at (202) 205-7489.

/s/
Robert A. Westbrook
Deputy Inspector General

Executive Summary

Opportunities Exist for the SBA to Improve the Monitoring of Non-Manufacturer Rule Waivers and Determine the Impact on Small Businesses

Report Number 14-15

What the OIG Reviewed

This report presents the results of our review of the Small Business Administration's (SBA) waivers to the non-manufacturer rule. The non-manufacturer rule is an exception to the requirement that small business contractors supplying goods to the government on set-aside contracts perform at least 50 percent of the cost of manufacturing the items. The rule allows a small business contractor to supply products it did not manufacture so long as the products come from another small business. Under statutory authority, the SBA may grant a waiver to this rule and allow a large business to perform more than 50 percent of the cost of performing manufacturing contracts if it finds no small business exists in a particular industry. The objectives of the review were to determine if: (1) the SBA appropriately issued non-manufacturer rule waivers based upon the requests received, and (2) the extent to which the SBA evaluated the impact of the non-manufacturer rule waiver on small businesses. To complete our review, we obtained and reviewed data for individual and class waiver requests from fiscal year (FY) 2010 through March 2014 to identify the universe of requests received by the SBA. We also met with agency officials to discuss the process used to review and approve non-manufacturer rule waiver requests and to resolve discrepancies found in the data provided by the SBA. Further, we reviewed federal regulations, internal policies, and size decisions applicable to the non-manufacturer rule waiver.

What the OIG Found

We were unable to determine if waivers were appropriately issued because of a lack of established procedures, missing files, and other deficiencies. We found that between FY 2010 and FY 2013, the SBA received 214 individual waiver requests and of the requests received, the SBA approved 81 percent of those waivers. We note that the SBA has recently begun to deny or close more waivers due to incomplete requests or insufficient market research, and that, since the beginning of FY 2014, SBA officials have identified areas of improvement and have begun to make changes to improve the guidance and operating structure of this function. Implementations of steps identified by the program

staff, as well as additional actions, need to occur to improve the efficiency and effectiveness of the program.

We also found that the SBA has not evaluated the impact of non-manufacturer rule waivers on small businesses, and that the SBA currently lacks the processes to make such an evaluation. Non-manufacturer rule waivers affect a significant amount of federal contracting dollars. From FY 2010 to FY 2013, the SBA approved waivers with an estimated total of approximately \$10.6 billion federal contracting dollars associated with set-aside contracts for small businesses.

The SBA should have greater insight into the effect of non-manufacturer rule waivers on small business so that it may better aid, counsel, assist and protect the interests of small business concerns in accordance with its mission.

OIG Recommendations

The OIG originally made six recommendations to the Associate Administrator for Government Contracting and Business Development intended to improve the efficiency and oversight of the non-manufacturer waivers as well as provide greater insight into the impact of non-manufacturer rule waivers on small businesses.

Agency Comments

On June 24, 2014, we provided a draft copy of this report to SBA management for comment. On July 29, 2014, management submitted formal comments and generally concurred with our findings and five recommendations and non-concurred with one recommendation. Based on further discussion with management to clarify the intent of the recommendation it did not agree with, we ultimately decided to remove the recommendation.

Table of Contents

Introduction	2
Background	2
Results	7
Finding 1: Improvements Needed to Non-Manufacturer Rule Waivers Process to Ensure Waivers are Appropriately Issued	7
Conclusion	9
Recommendations	9
Finding 2: The SBA Does Not Know the Impact of Non-Manufacturer Rule Waivers on Small Businesses	10
Data about the Use and Value of Class Waivers Does Not Exist	10
Waivers Affect a Significant Amount of Federal Small Business Contracting Dollars	11
Conclusion	11
Recommendation	12
Agency Comments and OIG Response	12
Appendix I: Scope and Methodology	15
Appendix II: Key Definitions	17
Appendix III: Small Business Manufacturing Eligibility Decision Tree	18
Appendix IV: Non-Manufacturer Rule Waiver Data for FY 2010	19
Appendix V: Non-Manufacturer Rule Waiver Data for FY 2011	21
Appendix VI: Non-Manufacturer Rule Waiver Data for FY 2012	22
Appendix VII: Non-Manufacturer Rule Waiver Data for FY 2013	24
Appendix VIII: Non-Manufacturer Rule Waiver Data for FY 2014	25
Appendix IX: Agency Comments	27

Introduction

In February 2013, the OIG initiated a review of the SBA's waivers to the non-manufacturer rule (NMR). During the review, work on this project was temporarily suspended due to other audit priorities from July 2013 through February 2014. See Appendix I for a full discussion of our scope and methodology. We conducted this review in response to the findings in previous OIG reports pertaining to the non-manufacturer rule waivers.¹

Background

The SBA has a number of programs that provide benefits and assistance to help small and disadvantaged businesses grow and develop. These benefits include sole source and set-aside federal contracts so that small businesses do not need to compete with large businesses that may have an industry advantage. There have been longstanding concerns about fraud in these SBA preferential contracting programs, and we have identified problems with the SBA's management of these programs in prior audits.

Small Business Performance Requirements

A small business must agree to performance requirements when receiving set-aside contracts. Specifically, the prime contractor must generally perform at least 50 percent of the work on all services and supplies contracts, as outlined in federal regulations.² On a supply contract, a firm must incur at least 50 percent of the cost of manufacturing the supplies (not including the cost of materials).

Non-Manufacturer Rule

The non-manufacturer rule is an exception to the requirement that contractors supplying goods to the government perform at least 50 percent of the cost of manufacturing the items. Simply put, the non-manufacturer rule allows a firm to provide the products of a supply contract that it did not manufacture through a small business set-aside contract so long as the products come from another small business. In order to qualify as a non-manufacturer,³ a small business must have less than 500 employees, be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied, and supply the end item of a small business manufacturer, processor, or producer made in the U.S. In 2011, the SBA updated its regulation to include an additional requirement to be a non-manufacturer: the small business must take ownership or possession of the item(s) with its personnel, equipment, or facilities in a manner consistent with industry practice.⁴ This update to the requirements was intended to eliminate confusion at procuring agencies and prevent practices contrary to the intent of the Small Business Act. More specifically, the change seeks to eliminate situations where the SBA has waived the non-manufacturer rule and the prime contractor essentially subcontracts all services, such as warehousing or delivery, to a large business without taking possession of the products. Additionally, the

¹ See Appendix I – Prior Coverage

² 13 C.F.R. § 125.6 – Prime contractor performance requirement (limitations on subcontracting) and FAR Clause 52.219-14 – Limitations on Subcontracting. These prime contractor performance requirements contain exclusions for purchasing supplies from a regular dealer. The majority of our audit work occurred under the version of 13 C.F.R. § 125.6 in effect between and October 31, 2008, and December 30, 2013. See Appendix II for a list of key definitions that that impact the classification of a manufacturer, non-manufacturer, dealer/wholesaler, among other different classifications.

³ See FAR Section 19.102(f) and 13 C.F.R. § 121.406(b).

⁴ For this clause, industry practice(s) are dependent upon the primary NAICS code assigned to the contract, and the application of this clause may vary from contract to contract—when applicable.

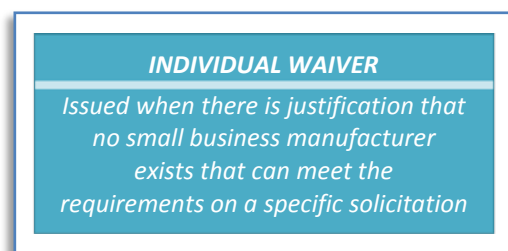
non-manufacturer rule applies only to procurements that have been assigned a manufacturing or supply North American Industry Classification System (NAICS) code—NAICS Sectors 31-33.⁵

Non-Manufacturer Rule Waiver

If the SBA finds that no small business manufacturers exist in a particular industry, it may issue a waiver to the non-manufacturer rule.⁶ The waiver permits a small business to provide the product of any domestic firm regardless of size.⁷ There are two types of waivers to the non-manufacturer rule: (1) an individual contract waiver, and (2) a class of products waiver. The SBA Office of Government Contracting provides primary oversight of non-manufacturer rule waivers.⁸ This office reviews and grants, if applicable, individual waivers and it maintains the Class Waiver List.⁹ See Appendix III for a depiction of different scenarios that may arise when a procuring agency issues a solicitation for a small business set-aside contract with a manufacturing NAICS Code (31XXXX through 33XXXX).

Individual Waivers

An individual waiver for a specific solicitation may be issued when the SBA affirms that no small business manufacturer exists that can meet the contract requirements. This type of waiver is solicitation-specific and applies only to the primary contract. The SBA will consider granting an individual waiver after reviewing a Contracting Officer's small business determination, including market research. This determination states that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications, including period of performance, required of an offeror or by the solicitation. An individual waiver is applied narrowly to a select contract line item or items for a specific solicitation. The waiver must be in place prior to the receipt of offers in order for a non-manufacturer to qualify as a small business for set-aside purposes.



The SBA will consider granting an individual waiver after reviewing a Contracting Officer's small business determination, including market research. This determination states that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications, including period of performance, required of an offeror or by the solicitation. An individual waiver is

Only Contracting Officers can request an individual waiver for a specific solicitation. The waiver request must include:

- 1) A definitive statement identifying the specific products for which the Contracting Officer is requesting the waiver, and market research documentation justifying a determination that there are no known small business manufacturers or processors for the requested item(s);

⁵ According to FAR Section 19.102, a product or service shall be classified in one industry, whose definition best describes the principal nature of the product or service being acquired even though for other purposes it could be classified in more than one industry.

⁶ The Small Business Act specifically provides the SBA Administrator the authority to waive the requirements to provide a product of a small business when there are no small business manufacturers or processors available to supply the product to the Federal government. The SBA Administrator delegated the authority to make decisions on the waivers of the non-manufacturer rule to the Associate Administrator for Government Contracting—also known as the Director of the Office of Government Contracting.

⁷ This clause does not affect the requirements external to the Small Business Act which involve domestic sources of supply, such as the Buy American Act - 13 C.F.R. § 121.406(b)(5)

⁸ The SBA regulations provide a process to review individual and class waiver requests, but not from a programmatic aspect. Given the number of waivers, estimated value, and the use of program staff for these processes, we reviewed the non-manufacturer rule waiver function from a programmatic standpoint for proper oversight, designated procedures, and assessment of staff resources.

⁹ The procedures for requesting and granting waivers are outlined in 13 C.F.R. § 121.1204.

- 2) The solicitation number for the procurement on which the item(s) is required, the NAICS code, estimated dollar amount of the procurement, and a brief statement of the procurement history;
- 3) A determination by the procuring agency’s Contracting Officer that there are no known small business manufacturers for the requested item(s). The determination must contain a clear, narrative statement of any efforts to search for small business manufacturers or processors of the item(s) and the results of those efforts; and
- 4) For contracts expected to exceed \$500,000, a copy of the Statement of Work.

According to guidance on SBA’s website directed to Contracting Officers, the information submitted to the SBA should include the findings of a search from the SBA’s Dynamic Small Business Search; other market surveys performed; the results of discussions with small business representatives to find manufacturers; and a statement by the Contracting Officer that no small business can reasonably be expected to offer the required supplies. A Contracting Officer may request an individual waiver for more than one item on a solicitation. However, the required information discussed above must be included for each item. Figure 2 below outlines important clarifications about individual waivers.

Figure 1 Important Clarifications about the Individual Waiver to the Non-Manufacturer Rule

- Waivers do not apply to service contracts.
- Waivers do not apply to small business HUBZone procurements.
- Waivers cannot be granted after bids on a solicitation have been received.
- Waivers only apply to supply contracts over \$25,000.
- For contracts below \$25,000, if two or more small business manufacturers cannot be identified, a small business non-manufacturer (including a Historically Underutilized Business Zone (HUBZone) manufacturer) can supply the product of any domestic business (large or small).
- Proper NAICS and size standards must be designated for each waiver requested—which includes selecting the NAICS code which best describes the principal purpose of the product being acquired. The Contracting Officer cannot assign a wholesale or retail trade NAICS to a procurement for supplies.
- The waiver does not exclude the requirements of the Buy American Act, status requirements, or other issues related to bidding on Federal procurement opportunities.

Source: OIG presentation of SBA data.

Class Waivers

A class waiver is issued only when no small business manufacturer exists within a specific industry.¹⁰ Once approved and added to the Class Waiver List, such a waiver is applied to all set-aside solicitations, except for HUBZone set-asides, and is used in combination with a Product Service Code number. A class waiver also applies to all items in a class of products, which is defined as a subcategory within a six-digit NAICS code. For example, a class waiver for “canned spinach” has a six-digit NAICS code of 311421– Fruit and Vegetable

CLASS WAIVER

Issued only when no small business manufacturer exists within a specific industry

¹⁰ The class waivers only apply when a small business for a specific industry does not exist in the Federal procurement marketplace. 13 C.F.R. § 121.1202(a) Additionally, a small business manufacturer must have participated in the Federal procurement marketplace within the last two years to be considered an active participant – 13 C.F.R. § 121.1202(c) If a small business exists in a specific industry outside of the Federal marketplace, a class waiver may still apply.

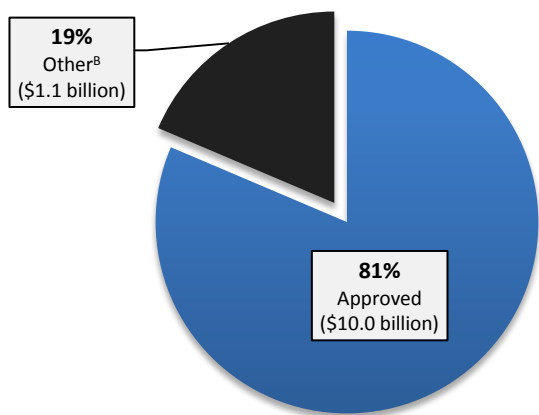
Canning, and a Product and Service Code of 8915— Fruits and Vegetables. Class waivers apply to categories of items and continue in effect unless rescinded by the SBA. A waiver of the non-manufacturer rule for a class of products has no time limitation or duration. For example, the class waiver for “canned spinach” was added to the class waiver list on October 2, 1991, and remains in effect today. The SBA maintains, on its website, a full list of class waivers. As of December 31, 2013, there were 138 class waivers.

A request for a waiver of a class of products should refer to a specific subdivision, or statement of product, within the NAICS Code Manual and Product and Service Code Manual.¹¹ Any Federal agency, individual, or organization may request a waiver for a class of products. The request should supply the SBA with the relevant NAICS code and other identifying information concerning the item. The requestor should also supply the SBA with market research and other data to support a determination that no small business manufacturer—participating in the federal procurement market—is producing the specific product. The discovery of even one small business manufacturer for a single item in the class will justify denial of a class waiver request.

The SBA Approved 81 Percent of Individual Waiver Requests Received

Between FY 2010 and FY 2013, the SBA received 214 individual waiver requests. Of those requests received, the SBA approved 81 percent of those waivers—totaling around \$10 billion in estimated contract dollars—see Figure 2. In part of FY 2014, the SBA began to deny or close waiver requests due to incomplete requests or insufficient market research.

Figure 2 Percent of Individual Waiver Requests Approved by the SBA, between FY 2010 - FY 2013^A



Source: OIG presentation of SBA data. See Appendices IV-VIII for the original data from FY 2010 through FY 2014.

^A Data for FY 2014 is still in process without a final determination for all waivers requested. This data was excluded from the analysis.

^B The data marked as “Other” in the figure above includes all individual waiver requests where the final action for the request is withdrawn, open, denied, or unknown. See Appendix I for a discussion about the data reliability issues associated with the data provided by the SBA.

The SBA experienced a 60 percent increase in individual waiver requests from FY 2012 to FY 2013, receiving 49 requests in FY 2012 and 82 requests in FY 2013. In FY 2014 (through February 2014), the SBA has received 52 individual waiver requests, and is on track to receive a similar number of requests as in FY 2013.

¹¹ Refer to Appendix II for more information about NAICS Codes and Product Services Codes.

The Department of Defense Submitted 66 Percent of All Individual Waivers Requested

The Department of Defense (DOD) is the primary requestor of individual waivers. Generally, the Defense Logistics Agency submitted these waiver requests for fresh produce, food, and military vehicle parts. See Figure 3 below for a breakdown of individual waivers requested and the estimated value for the DOD. In the last four years, individual waiver requests from the DOD and the General Services Administration (GSA) represented 91 percent of the total estimated value of those requests. However, DOD requested 175 individual waivers while the GSA only requested 7 individual waivers.

During FY 2013 and FY 2014, the GSA requested three waivers: one for janitorial/sanitation supplies, one for the GSA Schedule 51V - Hardware SuperStore, and one for office supplies. The three requested waivers had a combined estimated total of \$8.29 billion. However, the GSA withdrew its individual waiver request for office supplies in FY 2014, which had an estimated total of \$2.5 billion.

Figure 3 Waiver Requests Made by the Department of Defense, FY 2010 - FY 2014

Agency Requestor	Individual Waivers Requested	Total Estimated Value
General Services Administration	7	\$8,696,042,302.00
Department of Defense	175	\$5,192,324,362.89
Other Federal Agencies	84	\$1,376,366,235.91
Total	266	\$15,253,014,804.80

Agency Requestor	Individual Waivers Requested	Total Estimated Value
DLA	99	\$4,271,846,996.94
NSA	1	\$341,000,000.00
Army	18	\$276,267,190.32
DeCA	3	\$159,453,560.00
Air Force	21	\$108,054,220.00
Marines	5	\$24,998,520.17
Navy	12	\$7,457,251.46
DMA	14	\$3,206,624.00
DOD	1	\$40,000.00
National Guard	1	Unavailable ^A

Source: OIG presentation of SBA data. See Appendices IV-VIII for the original data from FY 2010 through FY 2014.

^A This data was not completed in the data logs maintained by the SBA. See Appendix I for a discussion about the data reliability issues associated with the data provided by the SBA.

Five out of 26 Industry Manufacturing Subsectors represented 71 Percent of All Individual Waiver Requests

Since FY 2010, the SBA has received individual waiver requests associated with 26 different NAICS subsectors. Of those 26 NAICS subsectors, five NAICS Subsectors were used as the primary NAICS for the solicitation on approximately 71 percent of all waivers requested—see Table 1. Additionally, between FY 2010 and FY 2012, the SBA received individual waiver requests associated with non-manufacturing NAICS Subsectors such as NAICS Subsector 111 – Crop Production and NAICS Subsector 423 – Merchant Wholesalers, Durable Goods. The SBA also received individual waiver requests associated with a NAICS code 111998 - All Other Miscellaneous Crop Farming in FY 2011. However, in FY 2011, a ruling by the SBA Office of Hearings and Appeals (OHA) found that the non-manufacturer rule did not apply to that NAICS Subsector—recommending that NAICS Subsector 311– Food Manufacturing, be used. For example, the Defense Logistics Agency (DLA) had previously requested waivers for fresh

produce under NAICS Code 111998, but after the OHA ruling in FY 2011, the DLA resubmitted their requests under NAICS Code 311991.

Table 1 Total Individual Waivers Requested by Top Five NAICS Subsectors, FY 2010-FY 2012 and FY 2014^A

NAICS Subsector and Definition	Individual Waivers Requested	Sum of Estimated Contract Value
334 - Computer and Electronic Product Manufacturing	39	\$615,867,467.54
311 - Food Manufacturing	32	\$681,513,092.43
333 - Machinery Manufacturing	26	\$22,604,326.00
339 - Miscellaneous Manufacturing	21	\$564,844,898.64
336 - Transportation Equipment Manufacturing	13	\$21,207,350.16
Top 5 Total	131	\$1,906,037,134.77
Total Requested	184	\$7,032,908,339.64

Source: OIG presentation of SBA data. See Appendices IV-VIII for the original data from FY 2010 through part of FY 2014.

^AWe did not have complete data for the applicable NAICS Subsectors for FY 2013. Therefore, the data for FY 2013 is not included in this analysis. See Appendix I for a discussion about the data reliability issues associated with the data provided by the SBA.

Based upon the data we received, procuring agencies did not submit any individual waiver requests with a non-manufacturing NAICS code from October 2013 through March 2014. Additionally, it appears that the SBA is no longer approving individual waiver requests with non-manufacturing NAICS codes.

Results

We found that opportunities exist for the SBA to improve the monitoring of non-manufacturer rule waivers and determine the impact on small businesses. We were unable to determine if the SBA appropriately issued waivers because of a lack of established procedures, missing files, and related deficiencies. The SBA approved 81 percent of waivers during the period under review, and we note that the agency has denied or closed individual waiver requests due to incomplete requests or insufficient market research since the beginning of FY 2014. We found that the SBA has not determined the impact of non-manufacturer rule waivers on small businesses and lacks the processes to make such a determination. The SBA should have greater insight into the effect of non-manufacturer rule waivers on small business so that it may better aid, counsel, assist and protect the interests of small business concerns in accordance with its mission. Since the beginning of FY 2014, program officials have identified areas to improve the non-manufacturer rule waiver function, and have initiated changes to improve the guidance and operating structure. While the SBA has taken steps to improve the waiver function in the last fiscal year, implementation of identified steps, as well as additional actions, need to occur to improve the efficiency and effectiveness of the program.

Finding 1: Improvements Needed to Non-Manufacturer Rule Waivers Process to Ensure Waivers are Appropriately Issued

We found that the SBA approved 81 percent of waiver requests from FY 2010 to FY 2013, and the agency has denied or closed individual waiver requests due to incomplete requests or insufficient market research since the beginning of FY 2014. We were unable, however, to determine if the SBA appropriately issued waivers because of a lack of established procedures, missing files, and other deficiencies.

When we began our review, we found that the Program Office did not properly maintain files for the waivers, did not track its data consistently, approved waivers after contracts had been awarded, as well as other areas of concern. The SBA had a basic infrastructure in place to manage the waiver function. The waiver function had no guiding Standard Operating Procedure (SOP), and relied solely on federal regulations for direction with no additional guidance to instruct SBA personnel when undertaking waiver decisions. Staff had misplaced a large majority of the waiver files for FY 2012, and was not tracking its data effectively. Due to the extent of missing files, we expanded our scope from FY 2012 to include three additional fiscal years to capture enough existing files to fully understand the review and approval process. During our review, we observed that the SBA tracked different data about the waiver requests from year to year. For example, in FY 2013, the data log did not include the applicable NAICS code for each waiver request even though a solicitation must have a manufacturing NAICS code for a waiver to apply to the procurement.¹²

Additionally, we found issues concerning the SBA waiver approval letters. Once the waiver is approved by the Director of the Office of Government Contracting, the Director signed an approval letter, which was then sent to the requesting agency. We found that the approval letters did not include the date approved or the NAICS code under which the waiver was approved. By not including the approval date and applicable NAICS code, the SBA did not have the sufficient safeguards to ensure the waiver only applied to specific products within a solicitation and is used within one year, as required.

We also found that 10 individual waivers, with an estimated total of \$75 million, were approved after the solicitation had been issued and a contract awarded. The SBA had an agreement with the Defense Logistics Agency (DLA) that it could submit any additional individual waivers for more parts after the contract was awarded so long as the original individual waiver was approved because of the “add-on” nature of the contract. Conversely, SBA guidance states that an individual waiver request must be submitted prior to issuing a solicitation.¹³

We found other issues on some of these individual DLA waiver requests that the SBA approved. For example, the Statements of Work for some of these waivers submitted by the DLA appeared to be directed more toward a services contract rather than a contract for products. In another request, the DLA provided market research from 2006 and 2007—citing industry days and pre-solicitation conferences—for an individual waiver requested on September 19, 2012, to add-on more items. This proof of market research exceeded the 12 to 18 month requirement for applicable market research.

In December 2013, the Associate Administrator for Government Contracting and Business Development realigned the function under new leadership, and the new staff began making changes to improve the quality of the waiver review process. The Program Office developed a new electronic data tracking file and prepared a draft SOP to direct the program. The Program Office has also identified other areas of improvement, and it is in the process of implementing changes to the review process. For example, the Program Office stated that the SOP will include a process outlining the intake of waiver requests, templates for corresponding with the requesting agency, and file maintenance and archiving

¹² 13 C.F.R. § 121.1204 – What are the procedures for requesting and granting waivers?

¹³ During an interview with the Office of Government Contracting, senior officials stated that they were in the process of updating federal regulations to require individual waiver requests be submitted prior to receiving bids on a solicitation and contract award.

procedures.¹⁴ However, the Program Office has not set a date for internal processing of the draft SOP prior to issuance. Additionally, the staff created a comprehensive data log to track all waiver requests received as well as the final action on those requests. The new data log format will allow the SBA to better track data across fiscal years and analyze that data to help more accurately project resources needed. However, when data is input and tracked manually over time, the data can become susceptible to errors in data quality and to possible corruption of the Excel document. If the SBA plans to use an Excel document to track annual waiver data, the Office of Government Contracting needs to ensure that the correct controls are put in place to verify the accuracy of the information and prevent a loss of data.

The new Director for the Office of Government Contracting and her staff are also developing outreach and education initiatives and processes to help better educate the acquisition workforce.¹⁵ It is her view that better education of the acquisition workforce about the requirements and format of an individual waiver request will improve the quality of the waiver requests. For example, these education efforts could limit the amount of review and scrutiny by the SBA to verify that no known small business manufacturer can meet the requirements outlined in the solicitation. These efforts include developing better instructions about what is required for the market research to support a Contracting Officer's determination. Currently, the Federal Acquisition Regulations (FAR) requirements for a waiver do not mirror the requirements in the Code of Federal Regulations that the SBA follows. Specifically, SBA officials believe that procuring agencies may be submitting incomplete requests because the requirements outlined in the FAR do not include all of the request requirements as outlined in SBA regulations.

Conclusion

While the SBA has made progress in improving the efficiency and effectiveness of the non-manufacturer rule waiver process, further success depends upon the Office of Government Contracting implementing the action steps identified. Until the SBA finalizes its SOP and implements these actions, the Agency runs the risk of not adequately managing and overseeing the waiver process.

Recommendations

The OIG recommends that the Associate Administrator for Government Contracting and Business Development:

- 1) Include the NAICS code and the date of approval on all individual waiver approval letters.
- 2) Complete and publish the Standard Operating Procedure for the Non-Manufacturer Rule Waiver Program.
- 3) Establish procedures to ensure that all data and memorandums developed by the SBA during the review of waiver requests are complete, accurate, and up-to-date.
- 4) Develop more structured and specific guidance for procuring agencies on the type of market research and required documentation to show that no known small business manufacturer can meet the requirements outlined in the solicitation.

¹⁴ The non-manufacturer rule waiver for a class of products was added to the Small Business Act in 1988, and the non-manufacturer rule waiver for individual solicitations was added in 1990. It does not appear that the SBA has ever had a formal SOP for this program. A draft SOP was previously developed in the 1990s; however, this draft was never finalized.

¹⁵ The Director of the Office of Government Contracting at the time we completed our fieldwork retired prior to the issuance of our report. The current Acting Director of the Office of Government Contracting stated that he plans to move forward with the initiatives started by his predecessor.

Finding 2: The SBA Does Not Know the Impact of Non-Manufacturer Rule Waivers on Small Businesses

Currently, the SBA Office of Government Contracting only reviews and approves non-manufacturer rule waiver requests, but it does not have insight into what occurs after a waiver is approved and how these waivers impact small businesses. Once the SBA approves an individual waiver request and sends an approval letter to the requestor, a procuring agency does not have to notify the SBA if the solicitation with an approved waiver resulted in a contract. For example, if the SBA approves a request from the DLA to procure fresh produce with a waiver, the DLA does not have to notify the SBA if it subsequently awarded a contract for fresh produce. Additionally, the DLA is not required to notify the SBA if the Statement of Work or the estimated contract value changed after the waiver was granted. This structure does not provide the SBA with insight into the total contract dollars associated with individual non-manufacturer rule waivers each year. Moreover, this structure does not allow the SBA to ensure that a procuring agency does not alter its solicitation in a manner that would allow a small business to perform the work once a waiver is approved.

Because the SBA does not know which small businesses were awarded a contract through an individual waiver, the SBA cannot determine the impact of the waiver on that business, and if the waiver protects the interests of those businesses. If Contracting Officers provided the contract number and actual contract value to the SBA if a waiver is used to award the contract, the information could then be used to track the overall dollar impact of the program and the impact on the affected small businesses.

Data about the Use and Value of Class Waivers Does Not Exist

Procuring agencies do not need to notify the SBA when they utilize a class waiver. Additionally, no data or information system currently captures this information. Because this information is not captured, the SBA has no way to determine the overall use of class waivers or the impact of class waivers on small businesses or on agency small business contracting goals under the Small Business Act.

The SBA is currently updating its internal processes to review the Class Waiver List posted on its website more regularly. Federal regulations provide that the SBA will periodically review existing class waivers to determine if any class waivers should be terminated because the SBA identified a small business competing in the Federal marketplace for that product. The last comprehensive review of the Class Waiver List occurred in 2009. The Office of Government Contracting plans to initiate another comprehensive review of the list once it finalizes its draft SOP. During this review, the Office of Government Contracting will publish a Notice to the Federal Register requesting that any small business manufacturer or processor in the Federal marketplace for those products or supplies identify themselves. The Office of Government Contracting then plans to complete a comprehensive review of the Class Waiver List every two to three years. Additionally, when a comprehensive review is not underway, a federal agency, individual, or organization may request that a class of products be added or removed from the list. For example, the SBA published a Notice to the Federal Register on April 11, 2014, to rescind one class of products and update three classes of products on the list to classify, properly the products under the appropriate NAICS code.¹⁶ Maintaining an accurate and up-to-date Class Waiver List, in which no known small business manufacturer or processors exists in the Federal

¹⁶ To update these three classes of products with the appropriate NAICS code, the SBA had to rescind the previous three class waivers and add three class waivers with the correct product classification.

marketplace for those classes of products, helps to mitigate class waivers from being used inappropriately. Until the SBA requires federal procuring agencies to provide data about the extent to which class waivers are used, the SBA cannot determine the full impact of the waivers.

Utilizing data from the Federal Procurement Data System—Next Generation, the OIG was unable to calculate an estimated total value for class waivers used to procure manufactured products and supplies with any degree of certainty. Our challenges in calculating the use of class waivers highlights the complications the SBA currently faces in monitoring the impact of this program.

Waivers Affect a Significant Amount of Federal Small Business Contracting Dollars

If a waiver is obtained on a small business contract, then, by definition, more than 50 percent of the dollars are going to a large business. Based upon our prior work, it is possible that a small business will subcontract out almost all of the work required under the contract, and a higher percentage of the small business dollars would go to a large business.¹⁷ For example, in [Advisory Memorandum 12-19](#), we found that one small business contracted out 98 percent of its total contract value to a large business for the procurement of Dell® computers.

In FY 2013, the SBA approved 64 individual waivers with a total value of approximately \$7.3 billion, and more than 50 percent of these dollars are going to large businesses. Table 2 identifies the number and estimated value of individual waivers from October 2009 through February 2014.

Table 2 Number and Dollar Value of Approved Non-Manufacturer Rule Waivers

Fiscal Year	Individual Waiver Approved	Total Estimated Value of Approved Waivers
2010	27	\$171,218,343
2011	39	\$581,347,449
2012	45	\$1,963,347,322
2013	63	\$7,256,090,166
2014 (through Feb. 2014) ^A	17	\$598,191,495
Total (FY10-FY14)	191	\$10,570,194,777

Source: OIG presentation of SBA data. See Appendices IV-VIII for the original data from FY 2010 through FY 2014.

^A Fifteen waiver requests were still open and pending when we obtained data for FY 2014 from the SBA so the total estimated value could increase when a final action is taken on the waiver requests.

The federal dollars going to large businesses through non-manufacturer rule waivers are included in an agency’s small business contracting goals under the Small Business Act.

Conclusion

The SBA needs to improve processes to track and monitor non-manufacturer rule waivers—both individual and class—so it can better determine the impact of the waivers on small businesses. This insight into the effect of non-manufacturer rule waivers on small businesses will enable the SBA to

¹⁷ See the following OIG reports: (1) Advisory Memorandum 12-19, *A Non-Manufacturer Rule Waiver Allowed an 8(a) Recovery Act Contract to Bypass Established Small Business Requirements*, September 2012. (2) Audit Report 11-08, *SBA’s Procurement of Information Technology Hardware and Software Through Isika Technologies, Inc.*, February 2011. and (3) Audit Report 10-16, *SBA’s Planning and Award of the Customer Relationship Management Contracts*, June 2010.

better aid, counsel, assist and protect the interests of small business concerns in accordance with its mission.

Recommendation

The OIG recommends that the Associate Administrator for Government Contracting and Business Development:

- 5) Require procuring agencies with approved individual waivers to notify the SBA when a contract has been awarded using the approved waiver, the contract number, and the total contract value.

Agency Comments and OIG Response

On June 24, 2014, we provided a draft copy of this report to SBA management for comment. On July 29, 2014, SBA management provided formal comments, which are included in their entirety in Appendix IX. Management generally agreed with the findings and five recommendations and did not concur with one recommendation. Based on further discussion with management to clarify the intent of the recommendation it did not agree with, we ultimately decided to remove the recommendation. A summary of management's comments and our response follows.

Recommendation 1 - Include the NAICS code and the date of approval on all individual waiver approval letters.

Management Comments

SBA management concurred with this recommendation. Management stated that all waivers approval letters now include the NAICs code and date of approval.

OIG Response

Management's comments were responsive to our recommendation. Management provided a copy of an approval letter sent to a procuring agency that included the NAICs code and date of approval. We determined this action met the intent of the recommendation and consider this recommendation resolved and closed based on the management decision and final action.

Recommendation 2 - Complete and publish the Standard Operating Procedure for the Non-Manufacturer Rule Waiver Program.

Management Comments

SBA management concurred with this recommendation. Management stated that it was drafting a Standard Operating Procedure for the Non-manufacturer Rule Waiver Program.

OIG Response

Management's comments were responsive to our recommendation. We consider this recommendation resolved but open pending completion of final action.

Recommendation 3 - Establish procedures to ensure that all data and memorandums developed by the SBA during the review of waiver requests are complete, accurate, and up-to-date.

Management Comments

SBA management concurred with this recommendation. Management stated that these procedures will be formalized in the Standard Operating Procedures.

OIG Response

Management's comments were responsive to our recommendation. We consider this recommendation resolved but open pending completion of final action.

Recommendation 4 - Develop more structured and specific guidance for procuring agencies on the type of market research and required documentation to show that no known small business manufacturer can meet the requirements outlined in the solicitation.

Management Comments

Management stated that the Office of Government Contracting website contains detailed information for contracting officers regarding how to structure the waiver request to the SBA, including market research. Management also stated that each agency structures market research according to the complexity of the items being solicited and that SBA cannot mandate the type of research an agency must perform.

OIG Response

Management's comments were responsive to our recommendation. We consider this recommendation resolved and closed based on the management decision and final action.

Recommendation 5 - Require procuring agencies with approved individual waivers to notify the SBA when a contract has been awarded using the approved waiver, the contract number, and the total contract value.

Management Comments

SBA management concurred with this recommendation and stated that it has already implemented this recommendation by including the requirement in SBA's Approval letter to the requesting activity.

OIG Response

Management's comments were responsive to our recommendation. Management provided a copy of an approval letter sent to a procuring agency that included the request to provide the contract number and contract value. We determined this action met the intent of the recommendation. We consider this recommendation resolved and closed based on the management decision and final action.

Recommendation 6 - Using the data obtained through Recommendation 5, develop specific measurements to evaluate the impact of the non-manufacturer rule waiver on small businesses.

Management Comments

SBA management did not agree with this recommendation. Management stated that it was unclear what type of evaluation the Inspector General's recommendation contemplated. Management also stated that the data obtained by SBA, as supplied by the requesting activity and as verified by the SBA, is used by the Agency to verify that there are either no small manufacturers who can compete for the supplies under the proposed acquisition or that there are no small manufacturers of the items for the acquisition.

OIG Response

Management's comments were not responsive to our recommendation. However, in discussions with management, we explained that the evaluation contemplated by the recommendation was a determination as to whether small businesses that performed waiver contracts were benefitting financially and in terms of business experience or whether the waiver contracts were simply pass through contracts that primarily benefitted the large suppliers. Although the OIG believes that undertaking this assessment would be beneficial to the Agency, the OIG is removing this recommendation since the SBA has only begun collecting data in response to Recommendation 5. In the future, the OIG will determine whether to conduct an additional audit to determine whether the SBA should undertake the assessment addressed in Recommendation 6. We consider this recommendation resolved and closed.

Appendix I: Scope and Methodology

During our review of the SBA's process for granting waivers to the non-manufacturer rule (NMR), our objectives were (1) to determine if the SBA appropriately issued NMR waivers based upon the requests received; and (2) to determine the extent to which the SBA evaluated the impact of the NMR waivers on small businesses. To meet our objectives we obtained waiver data for individual and class waiver requests for fiscal years (FY) 2010, 2011, 2012, and 2013, as well as part of FY 2014 to identify the universe of requests received by the SBA. We then determined how many of those requests were approved in addition to any other trends in the data such as type of products or requesting agency. We also met with SBA officials to discuss the process used to review and approve NMR waiver requests received and to rectify discrepancies found in the waiver data provided by the SBA. Additionally, we reviewed the Small Business Act, the Code of Federal Regulations, and the Federal Acquisition Regulations to identify statutory and regulatory requirements dictating the process used to request NMR waivers. The audit team also reviewed any applicable Office of Hearings and Appeals size decisions to determine if any rulings impacted the non-manufacturer designation of small businesses. Further, the audit team identified and reviewed OIG and GAO reports to help provide a background about the function and identify any possible pre-existing issues within the NMR waiver process.

We conducted our review of the NMR waivers between February 2013 and April 2014 in accordance with the Council of Inspectors General on Integrity and Efficiency (CIGIE) *Standards for Inspection and Evaluations*. Those standards require that we plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our objectives. Work on this project was temporarily suspended due to other audit priorities from July 2013 through February 2014.

Data Reliability

Data Maintained by the SBA

The SBA did not maintain its files for NMR waiver requests received in compliance with records management regulations. Specifically, the SBA did not have files for more than half of the waiver requests received in FY 2012, and did not start to maintain a structured data log to document the waiver requests received and the end-result of the waiver until FY 2013. During the review, the audit team obtained a list of waivers requested and the status of those requests for FY 2010 through part of FY 2014. The format of the data tracked for each of the fiscal years varied and could not be compared in its original format (except for FY 2010 and FY 2011, which used the same format). Therefore, the audit team added information to the data logs to develop data sets that could be compared across fiscal years. For example, the data log for FY 2013 did not include the NAICS code in the tracker, and was not updated to include this information to identify any trends in products or supplies associated with requested individual waivers. However, even with the additional information the team added to the logs, several discrepancies in the data still existed. The audit team provided the SBA with the discrepancies for each fiscal year in an attempt to reconcile any inconsistencies in the data, yet, we were unable to develop a complete data set.

While we identified discrepancies in the data, it was the only information available about the use of the individual waivers, and therefore we used it to provide details about the use of the waivers, in general.

However, any data used in the report about the waivers requested may be incomplete and only provides an estimation of the number of waivers and possible value.

Class Waiver Data

Currently, no data exists that documents or tracks the extent to which class waivers are used in the procurement of products and supplies by the Federal Government. This information does not exist because procuring agencies are not required to notify the SBA when a class waiver is used. The Federal Procurement Data System—Next Generation (FPDS-NG) also cannot be used to identify this type of information. In an attempt to identify the use of class waivers for individual procurements, the audit team conducted data runs in FPDS-NG for a judgmental selection of existing class waivers. Each class waiver has an assigned NAICS code and PSC used as criteria for the data runs, in addition to requiring the contract to be designated as a small business set-aside. The audit team completed five test runs of NAICS code and PSC combinations that exist on the Class Waiver List, which encompassed a total of 16 products on the list. Once we completed the test runs, we reviewed the “Description of Requirements” field to determine if the identified classes of products were listed. However, during the review of the “Description of Requirements” field, the audit team determined that the data was not reliable enough to identify the use of class waivers.

Nature of Limited or Omitted Information

No information was omitted due to confidentiality or sensitivity, nor were there limitations to information on this audit.

Prior Coverage

U.S. Small Business Administration, Office of Inspector General Audit Reports

Advisory Memorandum 12-19R, A Non-Manufacturer Rule Waiver Allowed an 8(a) Recovery Act Contract to Bypass Established Small Business Requirements, September 2012.

Audit Report 11-08, SBA’s Procurement of Information Technology Hardware and Software Through Isika Technologies, Inc., February 2011.

Audit Report 10-16, SBA’s Planning and Award of the Customer Relationship Management Contracts, June 2010.

U.S. Government Accountability Office Audit Reports

Report GAO-03-311R, Nonmanufacturer Rule Waivers: Waivers of the Small Business Administration’s Nonmanufacturer Rule Have Limited Effect, December 2002.

Appendix II: Key Definitions

The table below discusses key terms that apply to the non-manufacturer rule and waiver process. The definitions help provide clarification about who qualifies as a small business non-manufacturer and when a waiver applies.

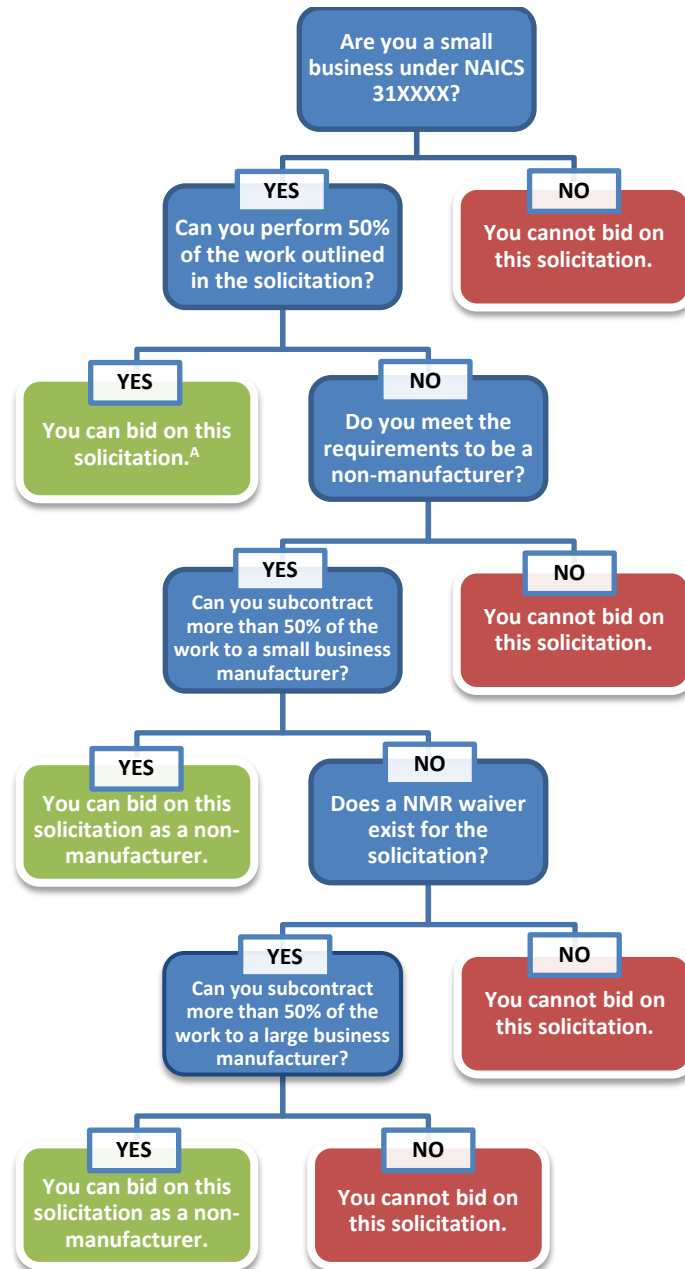
Key Term	Definition
Manufacturer	A manufacturer is a business concern that, with its own facilities, performs primary activities in transforming inorganic or organic substances, including the assembly of parts and components, into the end item being required. In order words, a manufacturer makes or produces products. See 13 C.F.R. § 121.406(b).
Small Business Non-Manufacturer	A small business non-manufacturer, as defined in regulations, is a business concern with less than 500 employees that is primarily engaged in retail or wholesale trade activities and normally sells the type of product supplied. The firm has or takes ownership or possession of the item or items—it is supplying—with its own personnel, equipment or facilities in a manner consistent with industry practice. In addition, the firm would supply the end product of a U.S. small business manufacturer, unless a waiver to the rule has been approved. See 13 C.F.R. § 121.406(b).
Kit Assembler	A kit assembler is an organization supplying a kit of supplies, or other goods provided for a special purpose. The assembler cannot exceed 500 employees, and 50 percent of the total value of the components in the kit must be manufactured by domestic small business concerns—meeting applicable NAICS code and size standards for those components. Also, source directed components, manufactured by large businesses are excluded from the 50 percent calculation. The assembler does not itself need to be the manufacturer of any of the items assembled in the kit. See 13 C.F.R. § 121.406(c).
Reseller	A reseller or retailer is a business concern that is authorized to sell someone else’s goods and/or services.
Wholesaler	A wholesaler is an intermediary business concern that sells to other intermediary firms—such as a firm that buys from a manufacturer and sells to a retailer. See 13 C.F.R. § 121.406(b).
North American Industry Classification System (NAICS) Code	The North American Industry Classification System assigns a numerical code to all economic activities. This code contains information on the sector and subsector of that economic activity. 13 C.F.R. § 121.101(b). The NAICS code chosen for the procurement must best describe the principle purpose of the product being acquired.
Manufacturing NAICS Code	Procurements for supplies with a waiver must be classified under the appropriate manufacturing NAICS code (NAICS sectors 31, 32, and 33), and not under the wholesale or retail trade NAICS code (NAICS Sectors 42, 44, or 45). See 13 C.F.R. § 121.201.
Product and Service Code (PSC)	A PSC is used to record the products and services being purchased by the Federal Government. In many instances, a given contract, task order, or purchase order will include more than one product and/or service. In such cases, the PSC should be selected based upon the predominant product or service that is being procured.
Individual Waiver	An individual waiver is issued when there is justification that no small business manufacturer exists that can meet the requirement on a specific solicitation.
Class Waiver	A class waiver is issued only when no small business manufacturer exists within a specific industry in the Federal marketplace.

Source: OIG presentation of Federal regulations and SBA guidance.

Appendix III: Small Business Manufacturing Eligibility Decision Tree

The following decision tree represents the process by which a business may determine its eligibility for a small business manufacturing contract under NAICS Codes 31XXXX through 33XXXX. This decision tree is limited to manufacturing eligibility considerations and does not take into account other status requirements or other issues related to bidding on Federal procurement opportunities.

Figure 4 Decision Tree for a Small Business Set-Aside Contract for Manufactured Products or Supplies (NAICS Code 31XXXX)



Source: OIG Presentation of contract guidance and non-manufacturer rule waiver guidance.

^A 13 C.F.R. § 125.6(b)(4) and (c)(4) contain special requirements for Service Disabled Veteran Owned and HUBZone small business concerns relevant to this determination.

Appendix IV: Non-Manufacturer Rule Waiver Data for FY 2010

The data below provides a breakdown of non-manufacturer rule waivers requested in FY 2010. See Appendix I, Data Reliability for a discussion about the sufficiency of the data we received from the SBA.

Table 3 Individual Waivers Requested and Final Action, FY 2010

Summary	Total Individual Waivers	% of Total Requested	Total Estimated Value	Total Waivers With Estimated Value
Approved	27	75%	\$171,218,343.77	24
Withdrawn	7	19%	\$28,634,537.44	3
Denied	2	6%	\$2,030,000.00	2
Requested	36	100%	\$201,882,881.21	29

Source: OIG presentation of SBA data.

Table 4 Individual Waivers Requested by NAICS Subsector, FY 2010

NAICS Subsector and Definition	Individual Waivers Requested	Total Estimated Value
111 - Crop Production	2	\$41,274,600.24
311 - Food Manufacturing	4	\$74,853,965.12
315 - Apparel Manufacturing	1	Unavailable
321 - Wood Product Manufacturing	1	\$3,250,000.00
322 - Paper Manufacturing	1	\$42,302.00
325 - Chemical Manufacturing	1	\$1,200,000.00
327 - Nonmetallic Mineral Product Manufacturing	1	\$45,000,000.00
332 - Fabricated Metal Product Manufacturing	5	\$20,844,798.05
333 - Machinery Manufacturing	3	\$405,000.00
334 - Computer and Electronic Product Manufacturing	9	\$4,861,884.08
336 - Transportation Equipment Manufacturing	3	\$122,400.00
339 - Miscellaneous Manufacturing	1	\$5,374,000.00
423 - Merchant Wholesalers, Durable Goods	2	\$4,000,000.00
444 - Building Material and Garden Equipment and Supplies Dealers	1	Unavailable
Unavailable	1	\$653,931.72

Source: OIG presentation of SBA data.

Table 5 Individual Waivers Requested by Procuring Agency, FY 2010

Agency Requestor	Individual Waivers Requested	Total Estimated Value
Defense Logistics Agency, Department of Defense	12	\$140,047,295.13
Army, Department of Defense	1	\$45,000,000.00
Air Force, Department of Defense	6	\$8,001,000.00
National Institute of Science and Technology	1	\$4,000,000.00
Department of Treasury	3	\$1,962,122.08
Marines, Department of Defense	1	\$1,200,000.00
Department of State	4	\$952,400.00
Navy, Department of Defense	2	\$372,762.00
Department of Energy	2	\$250,000.00
Department of the Interior	1	\$55,000.00
General Services Administration	1	\$42,302.00
Department of Health and Human Services	1	Unavailable
National Guard, Department of Defense	1	Unavailable

Source: OIG presentation of SBA data.

Appendix V: Non-Manufacturer Rule Waiver Data for FY 2011

The data below provides a breakdown of non-manufacturer rule waivers requested in FY 2011. See Appendix I, Data Reliability for a discussion about the sufficiency of the data we received from the SBA.

Table 6 Individual Waivers Requested and Final Action, FY 2011

Summary	Total Individual Waivers	% of Total Requested	Total Estimated Value	Waivers with Estimated Total Value
Approved	39	83%	\$581,347,449.37	36
Withdrawn	8	17%	\$4,904,596.64	7
Requested	47	100%	\$586,252,046.01	43

Source: OIG presentation of SBA data.

Table 7 Individual Waivers Requested by NAICS Subsector, FY 2011

NAICS Subsector and Definition	Individual Waivers Requested	Total Estimated Value
311 - Food Manufacturing	7	\$70,084,208.41
316 - Leather and Allied Product Manufacturing	1	\$819,180.00
321 - Wood Product Manufacturing	2	Unavailable
325 - Chemical Manufacturing	1	\$388,000,000.00
326 - Plastics and Rubber Products Manufacturing	1	\$7,620,675.00
332 - Fabricated Metal Product Manufacturing	2	\$49,370,389.50
333 - Machinery Manufacturing	12	\$15,883,399.00
334 - Computer and Electronic Product Manufacturing	7	\$28,238,141.46
335 - Electrical Equipment, Appliance, and Component Manufacturing	1	\$5,000,000.00
336 - Transportation Equipment Manufacturing	5	\$6,680,578.00
337 - Furniture and Related Product Manufacturing	1	\$597,000.00
339 - Miscellaneous Manufacturing	7	\$25,676,570.64

Source: OIG presentation of SBA data.

Table 8 Individual Waivers Requested by Procuring Agency, FY 2011

Agency Requestor	Individual Waivers Requested	Total Estimated Value
Department of Veterans Affairs	5	\$402,635,615.64
Defense Logistics Agency, Department of Defense	13	\$129,833,675.91
Department of Homeland Security	10	\$22,945,634.00
Marines, Department of Defense	2	\$20,035,452.00
Department of Treasury	3	\$8,803,000.00
Navy, Department of Defense	4	\$4,809,309.46
Air Force, Department of Defense	1	\$4,313,220.00
Department of State	4	\$2,710,000.00
Army, Department of Defense	5	\$1,884,235.00

Source: OIG presentation of SBA data.

Appendix VI: Non-Manufacturer Rule Waiver Data for FY 2012

The data below provides a breakdown of non-manufacturer rule waivers requested in FY 2012. See Appendix I, Data Reliability for a discussion about the sufficiency of the data we received from the SBA.

Table 9 Individual Waivers Requested and Final Action, FY 2012

Summary	Total Individual Waivers	% of Total Requested	Total Estimated Value	Total Waivers With Estimated Value
Approved	45	92%	\$1,963,347,322.00	40
Unknown	2	4%	\$75,122.00	2
Open	2	4%	\$82,000,000.00	1
Requested	49	100%	\$2,045,422,444.00	43

Source: OIG presentation of SBA data.

Table 10 Individual Waivers Requested by NAICS Subsector, FY 2012

NAICS Subsector and Definition	Individual Waivers Requested	Total Estimated Value
311 - Food Manufacturing	19	\$319,383,358.90
325 - Chemical Manufacturing	2	\$79,500,000.00
326 - Plastics and Rubber Products Manufacturing	1	\$400,000.00
333 - Machinery Manufacturing	3	\$3,542,000.00
334 - Computer and Electronic Product Manufacturing	4	\$4,644,000.00
335 - Electrical Equipment, Appliance, and Component Manufacturing	1	\$263,068.17
336 - Transportation Equipment Manufacturing	4	\$14,242,783.74
337 - Furniture and Related Product Manufacturing	4	\$91,059,988.19
339 - Miscellaneous Manufacturing	4	\$213,075,122.00
561 - Administrative and Support Services	1	\$680,000.00
Unavailable	6	\$1,318,632,123.00

Source: OIG presentation of SBA data.

Table 11 Individual Waivers Requested by Procuring Agency, FY 2012

Agency Requestor	Individual Waivers Requested	Total Estimated Value
Defense Logistics Agency	28	\$2,006,507,406.64
Department of Commerce	1	\$11,959,988.19
Department of Veterans Affairs	2	\$8,000,000.00
Air Force, Department of Defense	2	\$5,950,000.00
Marines, Department of Defense	2	\$3,763,068.17
Department of Homeland Security	3	\$3,527,859.00
Department of Health and Human Services	2	\$2,408,000.00
Department of Transportation	1	\$1,720,000.00
Navy, Department of Defense	3	\$971,000.00
Department of the Interior	1	\$400,000.00
Small Business Administration	1	\$100,000.00
Army, Department of Defense	1	\$75,122.00
Department of Defense	1	\$40,000.00
Department of State	1	Unavailable

Source: OIG presentation of SBA data.

Appendix VII: Non-Manufacturer Rule Waiver Data for FY 2013

The data below provides a breakdown of non-manufacturer rule waivers requested in FY 2013. See Appendix I, Data Reliability for a discussion about the sufficiency of the data we received from the SBA.

Table 12 Individual Waivers Requested and Final Action, FY 2013

Summary	Total Individual Waivers	% of Total Requested	Total Estimated Value	Total Waivers With Estimated Value
Approved	63	77%	\$7,256,090,166.84	56
Withdrawn	6	7%	\$43,000.00	2
Denied	6	7%	\$133,335,000.00	5
Open	7	9%	\$830,638,298.32	7
Requested	82	100%	\$8,220,106,465.16	71

Source: OIG presentation of SBA data.

Individual Waivers Requested by NAICS Subsector, FY 2013

The SBA provided data to the OIG that does not include the NAICS code or description of a large majority of the individual requested received. We did not follow-up with the SBA to have them complete the data logs with this information.

Table 13 Individual Waivers Requested by Procuring Agency, FY 2013

Agency Requestor	Individual Waivers Requested	Total Estimated Value
General Services Administration	4	\$5,790,000,000.00
Defense Logistics Agency, Department of Defense	37	\$1,778,922,386.84
Department of Veterans Affairs	10	\$299,520,000.00
Department of State	3	\$296,000,000.00
Department of Energy	3	\$25,595,000.00
Air Force, Department of Defense	11	\$19,790,000.00
Army, Department of Defense	6	\$4,129,298.32
Defense Commissary Agency, Department of Defense	1	\$3,000,000.00
Department of Treasury	2	\$1,191,000.00
Department of Health and Human Services	1	\$1,098,000.00
Unavailable	1	\$500,000.00
Department of Transportation	1	\$283,583.00
National Aeronautics and Space Administration	1	\$42,197.00
Navy, Department of Defense	1	\$35,000.00

Source: OIG presentation of SBA data.

Appendix VIII: Non-Manufacturer Rule Waiver Data for FY 2014

The data below provides a breakdown of non-manufacturer rule waivers requested in FY 2014—from October 2013 through February 2014. See Appendix I, Data Reliability for a discussion about the sufficiency of the data we received from the SBA.

Table 14 Individual Waivers Requested and Final Action, FY 2014 (October 2013 – March 2014)

Summary	Total Individual Waivers	% of Total Requested	Total Estimated Value	Total Waivers With Estimated Value
Approved	17	32.69%	\$598,191,495.42	16
Partially Approved	1	1.92%	\$2,132,855.00	1
Withdrawn	14	26.92%	\$2,907,354,093.00	12
Denied	5	9.62%	\$229,587,426.00	4
Open	15	28.85%	\$462,085,099.00	14
Requested	52	100%	\$4,199,350,968.42	47

Source: OIG presentation of SBA data.

Table 15 Individual Waivers Requested by NAICS Subsector, FY 2014 (October 2013 – March 2014)

NAICS Subsector and Definition	Individual Waivers Requested	Total Estimated Value
311 - Food Manufacturing	2	\$217,191,560.00
316 - Leather and Allied Product Manufacturing	1	\$819,180.00
324 - Petroleum and Coal Products Manufacturing	1	\$153,000,000.00
325 - Chemical Manufacturing	1	\$14,048,631.00
332 - Fabricated Metal Product Manufacturing	2	\$82,102.00
333 - Machinery Manufacturing	8	\$2,765,023.00
334 - Computer and Electronic Product Manufacturing	19	\$578,123,442.00
335 - Electrical Equipment, Appliance, and Component Manufacturing	1	\$35,496.00
336 - Transportation Equipment Manufacturing	1	\$161,588.42
339 - Miscellaneous Manufacturing	9	\$320,719,206.00
325, 322, and 339 - Chemical Manufacturing; Paper Manufacturing; and Miscellaneous Manufacturing	1	\$2,500,000,000.00
333, 335, and 336 - Machinery Manufacturing; Electrical Equipment, Appliance, and Component Manufacturing; and Transportation Equipment Manufacturing	1	\$223,045.00
333 and 336 - Machinery Manufacturing; and Transportation Equipment Manufacturing	1	\$1,500,000.00
Unavailable	4	\$410,681,695.00

Source: OIG presentation of SBA data.

Table 16 Individual Waivers Requested by Procuring Agency, FY 2014 (October 2013 – March 2014)

Agency Requestor	Individual Waivers Requested	Total Estimated Value
General Services Administration	2	\$2,906,000,000.00
National Surveillance Administration	1	\$341,000,000.00
Army, Department of Defense	5	\$225,178,535.00
Defense Logistics Agency, Department of Defense	9	\$216,536,232.42
Social Security Administration	1	\$173,000,000.00
Defense Commissary Agency, Department of Defense	2	\$156,453,560.00
Air Force, Department of Defense	1	\$70,000,000.00
Department of State	2	\$62,000,000.00
Department of Veterans Affairs	10	\$40,167,837.00
Department of Agriculture	1	\$4,500,000.00
Defense Media Activity, Department of Defense	14	\$3,206,624.00
Navy, Department of Defense	2	\$1,269,180.00
National Aeronautics and Space Administration	1	\$39,000.00
Unavailable	1	Unavailable

Source: OIG presentation of SBA data.

Appendix IX: Agency Comments

U.S. Small Business Administration
WASHINGTON, D.C. 20416



DATE: July 29, 2014

TO: Robert A. Westbrook
Deputy Inspector General

THRU: Calvin Jenkins
Deputy Associate Administrator
Office of Government Contracting and Business Development

A. John Shoraka, Associate Administrator
Office of Government Contracting and Business Development

FROM: Dean Koppel, Acting Director, Office of Government Contracting

SUBJECT: Review of Non-Manufacturer Rule Waivers, Project No. 13005

Thank you for the opportunity to respond to the Office of Inspector General's Draft Report of June 24, 2014 regarding Non-manufacturer Rule Waivers. Based on our review, the Office of Government Contracting and Business Development generally concur with your recommendations and offer the following comments.

Recommendation No. 1 – Include the NAICS code and date of approval on all individual waiver approval letters.

Response – All waiver approval letters now include NAICS code and date of approval.

Recommendation No. 2 – Complete and publish the Standard Operating Procedure for the Non-Manufacturer Rule Waiver Program.

RESPONSE – Drafting of a Standard Operating Procedure for the Non-Manufacturer Rule Waiver Program is in process.

Recommendation No. 3 – Establish procedures to ensure that all data and memorandums developed by the SBA during the review of the waiver requests are complete, accurate and up-to-date.

RESPONSE – Procedures for maintaining Non-Manufacturer Waiver files will be included in the Standard Operating Procedures. However, it is noted that Waiver files currently contain all additional information, correspondence, data, etc. which was developed while processing the request.

Recommendation No. 4 – Develop more structured and specific guidance for procuring agencies on the type of market research and required documentation to show that no known small business manufacturers can meet the requirements outlined in the solicitation.

RESPONSE – The SBA Office of Government Contracting’s Non-Manufacturing Waiver Page at <http://www.sba.gov/content/non-manufacturer-waivers> contains detailed information to contracting officers on how to structure their Waiver Requests to SBA. “Current” Market Research is one of the requirements. Each agency structures market research according to the complexity of the items being solicited. SBA cannot mandate the type of research an agency must perform. Where SBA finds the market research included in a waiver request to be lacking, contracting officers are requested to submit additional data.

Recommendation No. 5 – Require procuring agencies with approved individual waivers to notify the SBA when a contract has been awarded using the approved waiver, the contract number, and the total contract value.

RESPONSE – This recommendation has already been implemented and is included in SBA’s Approval letter to the requesting activity.

Recommendation No. 6 – Using the data obtained through Recommendation 5, develop specific measurements to evaluate the impact of the non-manufacturer rule waiver on small businesses.

RESPONSE – The data obtained by SBA, as supplied by the requesting activity and as verified by SBA, is used by the Agency to verify that there are either no small manufacturers who can compete for the supplies under the proposed acquisition or that there are no small manufacturers of the items for the acquisition. It is unclear what type of evaluation the Inspector General’s recommendation is contemplating.