

--- Accessible Text File ---
NMR - Primer
Non-Manufacturer Rule
A Guide for Contracting Officers

U.S. Small Business Administration
Office of Government Contracting & Business Development
December 2013

Slide 1 NMR – Primer

A Guide for Contracting Officers

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Narrative

This is about the Non-Manufacturer Rule.

Welcome to SBA's guide -- for contracting officers.

Slide 2 Introduction

- Provide an overview of the Non-Manufacturer Rule
- Describe what it is, why it's important and how it's applied

Narrative

This training module is designed to provide an overview of the Non-Manufacturer Rule, describing what it is, why it's important and how it's applied.

Slide 3 NMR Training Contents

1. Introduction
2. NMR – A Summary
3. Regulatory Requirements
4. Definitions
5. NAICS Codes
6. Applicable Size Standards
7. NMR – Waivers
8. Important Clarifications
9. Resources & Questions

Narrative

The guide contains multiple topics and is indexed such that any specific topic, at any time can be easily accessed.

Slide 4 Non-Manufacturer Rule – A Summary

- Small Business Act (15 USC 637(a)(17) and 637(s))
- NMR applies to acquisition for supplies above \$3,000, set-aside for small business
- Small business awardees must furnish the product of a domestic small business manufacturer
- SBA can waive the requirement

Narrative

So... what is the Non-Manufacturer Rule?

The Non-Manufacturer Rule is an exception to the usual requirement that contractors supplying goods to the government perform at least 50 percent of the cost of manufacturing the items. Simply put, it allows a firm to supply products it did not manufacture – as long as the products come from another small business.

The Small Business Act, as amended, imposes requirements that a firm receiving a supply-based small business set-aside, or 8(a) Business Development contract – other than the actual manufacturer – must provide the products of a small business. That is, a small firm receiving a set-aside or 8(a) contract for supplies in an amount greater than \$25,000 -- may provide products it did not manufacture itself, as long as the products come from another small business located in the United States. The products may come from a large business if SBA issues a waiver.

In addition, the rule as amended in 2011 requires that a contractor – providing products it did not manufacture (such as a retailer, wholesaler or supplier) -- take ownership or possession of the furnished items – in a manner consistent with industry standards -- with its own personnel, equipment or facilities, before the products are provided to the government.

Further, the rule requires that contractors have less than 500 employees, be primarily engaged in the retail or wholesale trade, and normally sell the type of item being supplied.

SBA has the authority to waive the Non-Manufacturer Rule requirement.

Slide 5 Regulatory Requirements (content divider)

Narrative

Regulatory requirements.

Slide 6 Regulatory Requirements

- Federal Acquisition Regulation (FAR) Part 19
 - FAR 19.001 - Definitions
 - FAR 19.102 - Size Standards
 - FAR 52.219-1(a)(3) - Small Business Program Representations Provision
- Code of Federal Regulations (CFR) 13 CFR
 - 13 CFR § 121.406 - The Rule
 - 13 CFR § 121.1202/1203/1204 – Waivers
 - 13 CFR § 125.15 - SDVO Set-Asides
 - 13 CFR § 127.505 - WOSB Set-Asides

- Access the FAR - <http://www.acquisition.gov/far>
- Access the CFR - <http://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=-1&page.go=Go>

Narrative

The regulations that govern the Non-Manufacturer Rule are contained in Part 19 of the Federal Acquisition Regulation and Part 13 of the Code of Federal Regulations.

It is important to note that the Small Business Program Representations provision -- in FAR 52.219 -- states, the small business size standard for a concern submitting an offer in its own name, but proposes to supply a product which it did not itself manufacture, is 500 employees.

Slide 7 Definitions (content divider)

Narrative

Definitions.

Slide 8 Definitions

- Manufacturer
- Small Business Non-Manufacturer
- Kit Assembler
- Reseller
- Wholesaler

Narrative

For clarity and discussion purposes, several key terms -- manufacturer, non-manufacturer, kit assembler, reseller and wholesaler -- are defined.

Slide 9 Manufacturer

- A manufacturer is a business concern that, with its own facilities, performs primary activities in transforming organic or inorganic substances, including the assembly of parts and components, into the end item being acquired
- Learn more... 13 CFR § 121.406 (b)

Narrative

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 acquired.

In other words, a manufacturer makes or produces products.

Slide 10 Small Business Non-Manufacturer

A small business non-manufacturer is an organization:

- less than 500 employees;
- is primarily engaged in retail or wholesale and normally sells the type of product being supplied;
- takes ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice; and
- will supply the end product of a U.S. small business manufacturer or processor, unless a waiver to the Non-Manufacturer Rule is in place
- Learn more... 13 CFR § 121.406 (b)

Narrative

A small business non-manufacturer, as defined in regulations is an organization with less than 500 employees that is primarily engaged in retail or wholesale activities and normally sells the type of product being 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, or a waiver to the Non-Manufacturer Rule would have to be in place.

Slide 11 Kit Assembler

- Organization supplying a kit of supplies or other goods for a special purpose
- Cannot exceed 500 employees
- 50% 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
- Source directed components, manufactured by large businesses are excluded from the 50% calculation
- Assembler does not need to be the manufacturer of any of the items in the kit

Narrative

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 within the kit must be from a small business – meeting the size standards for the NAICS

codes of the components being assembled. The assembler does not itself need to be the manufacturer of any of the items assembled in the kit.

Slide 12 Reseller and Wholesaler

Reseller

- Business concern that is authorized to sell someone else's goods and/or services

Wholesaler

- Intermediary business concern that sells to other intermediary firms

Narrative

A reseller or retailer is an organization who is authorized to sell someone else's goods and/or services.

A wholesaler is an intermediary organization that sells to other intermediary firms -- such as a firm that buys from a manufacturer and sells to a retailer.

Slide 13 NAICS Codes (content divider)

Narrative

NAICS codes.

Slide 14 NAICS Codes

- The North American Industry Classification System (NAICS) code chosen for the procurement must best describes the principal purpose of the product or service acquired
- Procurements for supplies must be classified under the appropriate manufacturing NAICS code, NOT under the wholesale or retail trade NAICS code (NAICS Sectors 42,44, or 45) 13 C.F.R. § 121.402(b)
- NAICS code sections 42, 44 and 45 are not to be used for government procurement of supplies
- NMR does not apply to procurements for services
 - Access the FAR - <http://www.acquisition.gov/far>
 - Access the CFR - <http://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=-1&page.go=Go>

Narrative

As with any procurement, the NAICS code selected is suppose to be the one that best describes the principal purpose of the product or service being acquired.

Considerations should include: descriptions in the NAICS code manual; product or service description in the solicitation; value of the components used in the procurement; and, the function of the goods or services being purchased.

Further, according to FAR Part 19.102, sections (c)(d)&(e) -- a product or service shall be classified in only 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. When acquiring a product or service that could be classified in two or more industries with different size standards, contracting officers shall apply the size standard for the industry accounting for the greatest percentage of the contract price. And finally, if a solicitation calls for more than one item and allows offers to be submitted on any or all of the items, an offeror must meet the size standard for each item it offers to furnish. If a solicitation calling for more than one item requires offers on all or none of the items, an offeror may qualify as a small business by meeting the size standard for the item accounting for the greatest percentage of the total contract price.

In addition, procurements for supplies must be classified under the appropriate manufacturing NAICS code, NOT under the wholesale or retail trade NAICS codes. Sections 42,44 and 45 are not to be used for government procurement of supplies.

Slide 15 Updated NAICS Codes

- OMB issued revisions to NAICS codes in August 2011 and they became effective January 1, 2012
- SBA has updated and implemented the revised NAICS codes
- The agency has also updated its Table of Small Business Size Standards, which is matched to the 2012 NAICS codes
- **Links to 2012 NAICS Codes & Table of Size Standards**
- <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?chart=2012>
- <http://www.sba.gov/content/table-small-business-size-standards>

Narrative

OMB issued revisions to NAICS codes in August 2011. These revisions were effective on January 1, 2012, but not immediately for size standard purposes.

SBA has updated and implemented the revised NAICS codes. In addition, SBA has updated its Table of Small Business Size Standards, which is matched to the 2012 NAICS codes

Slide 16 Applicable Size Standards (content divider)

Narrative

Applicable size standards.

Slide 17 Applicable Size Standards – NMR

- Small business non-manufacturer must meet the criteria outlined in 13 CFR 121.406(b) and can provide the end item of:
 - ✓ a small business manufacturer as defined by the NAICS code and the small business size standard for the manufactured component, or
 - ✓ a firm other than a small business manufacturer, if SBA has granted a waiver
- Even if a firm with more than 500 employees can qualify as a small business under SBA's Size Standards – in NO INSTANCE can a small business non-manufacturer exceed 500 employees

Narrative

For purposes of government contracting, a small business non-manufacturer must meet the size standards that apply to acquisitions covered by the Non-Manufacturer Rule.

That is, a small business non-manufacturer with less than 500 employees can, (1) provide the end item of a small business manufacturer, as regulated by SBA's Table of Size Standards --whether the size standard is 500 employees or not, or, (2) a firm other than a small business manufacturer under a waiver.

Importantly, the size standard threshold for a small business non-manufacturer is not based on a dollar amount, but instead on the number of employees. In any case, a small business non-manufacturer cannot exceed 500 employees. It must be primarily engaged in the retail or wholesale trade, and normally sell the type of item being supplied. And further, it takes possession of the item or items with its personnel, equipment or facilities in a manner consistent with industry practice.

Slide 18 NMR Waivers (content divider)

Narrative

Non-Manufacturer Rule waivers.

Slide 19 NMR Waivers

- Two types of NMR waivers:
 - Class Waiver
 - Individual Waiver

Narrative

There are two types of waivers. A class waiver, which is issued only when no small business manufacturer exists within a specific industry, or an individual waiver, which is issued when there is

justification that no small business manufacturer exists that can meet the requirement on a specific solicitation.

Slide 20 Class Waiver

- Applies to all items in a class of products
- Applies to categories of items and continues in effect unless revoked by SBA
- No time limitation or duration
- Any government agency, business association, or interested party may request a waiver for a class of products
- Discovery of even one small business manufacturer for a single item in the class will justify denial of a request for a class waiver
- Learn more... 13 CFR § 121.1202

Narrative

A class waiver is issued only when no small business manufacturers exists within a specific industry. Such a waiver, is applied broadly to all set-aside solicitations and is used in combination with a GSA Product Service Code Number.

A class waiver applies to all items in a class of products, which is defined as a subcategory within a six digit NAICS code. For example, Computer and Electronic Product Manufacturing is 334, which is a sub-sector in the class of products. The six digit NAICS for electronic computer manufacturing is 334111.

Class waivers apply to categories of items and continue in effect unless revoked by SBA. A waiver of the Non-Manufacturer Rule for classes of products has no time limitation or duration. Any government agency, business association, or interested party may request a waiver for a class of products.

Importantly, the discovery of even one small business manufacturer for a single item in the class will justify denial of a request for a class waiver. The turn-around time for a class waiver request is about 60 days.

Slide 21 Class Waiver (cont)

Learn more...

View the latest SBA Non-Manufacturer

Class Waiver List --- <http://www.sba.gov/content/class-waivers>

Narrative

At your convenience, view the latest SBA Non-Manufacturer Class Waiver List.

Slide 22 Individual Waiver

- Individual waiver to a specific solicitation may be considered when a contracting officer determines no small business manufacturers exist to meet requirement
- Such waivers:
 - Narrowly applied to select contract line item numbers (CLINS) for a specific solicitation
 - Must be in place prior to receipt of offers in order for a non-manufacturer to qualify as a small business for set-aside purposes
 - Authorized in Section 8(a)(17) of the Small Business Act
 - Learn more... 13 CFR § 121.1203

Narrative

An individual waiver for a specific solicitation may be issued when no small business manufacturer exists that can meet the requirements of the solicitation. This type of waiver, is solicitation-specific and is applied only to the primary contract.

SBA will consider granting an individual waiver after reviewing a determination by a contracting officer 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 narrowly applied to select contract line item numbers 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.

Slide 23 How to Obtain a Waiver

- SBA Administrator has statutory authority to waive requirements of the Non-Manufacturer Rule
- Solid market research is the best first step in seeking a waiver
- Learn more...
 - 13 C.F.R. § 121.406
 - 13 CFR § 121.1202/1203/1204
 - www.sba.gov

Narrative

The Small Business Act contains provisions that allow the Administrator of the SBA to waive requirements of the Non-Manufacturer Rule when there are no small business manufacturers or producers available to supply the product to the government. The Administrator has delegated authority to grant waivers to the agency's Director of Government Contracting.

Solid market research is the best first step in seeking a waiver request.

The process to obtain a waiver to the Non-Manufacturer Rule is found in 13 C.F.R. as noted in the slide. Additional guidance can also be found on SBA's website at www.sba.gov.

Specific information about class and individual waivers is included in the following slides.

Slide 24 Class Waivers

- A class of products is defined based on the NAICS Manual and GSA's Product and Service Code Directory
- Any individual or organization may request a waiver for a class of products
- A requesting organization should provide SBA with relevant market research and sufficient documentation that justifies a waiver
- Learn more... 13 CFR § 121.1202-1204

Narrative

Regarding class waivers, a class of products is defined based on the NAICS Manual and the General Services Administration's Product and Service Code Directory.

Within each NAICS code and Product Service Code there are subdivisions of products that can be considered for a waiver. 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 Service Code Directory.

Any individual or organization may request a waiver for a class of products. The requester should supply SBA with the relevant NAICS code and other identifying information concerning the item. The requester should also supply 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 turn-around time for a response to a class waiver request is about 45-60 days.

Slide 25 Individual Waivers

- Only a contracting officer can request an individual waiver for a specific solicitation
- Specific documentation is required to justify an individual waiver request

Narrative

As the contracting officer, you are the only one who can request an individual waiver for a specific solicitation. Your request must include:

- (1) a definitive statement identifying the specific products for which you are requesting the waiver, and provide SBA with the market research documentation justifying your determination that there are no known small business manufacturers or processors for the requested items.
- (2) the solicitation number for the procurement on which the item or items is required, the NAICS code, estimated dollar amount of the procurement, and a brief statement of the procurement history.

For contracts expected to exceed \$500,000, you must also include:

- (a) a copy of the Statement of Work;
- (b) a determination by the procuring agency's contracting officer that there are no known small business manufacturers for the requested items. The determination must contain a clear, narrative statement of the contracting officer's efforts to search for small business manufacturers or processors of the item(s) and the results of those efforts.

The information should include the findings of a search from SBA's "Dynamic Small Business Search" component within CCR – which will soon become the System for Award Management or (SAM); other market surveys performed; the results of discussions with small business representatives to find manufacturers; and, a statement by the contracting officer that there are no known small business manufacturers for the items and 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. The required information indicated above must be included for each item.

Slide 26 Submitting a Waiver Request

Non-manufacturer waiver requests should be sent to:

NonMfgRuleWaiverReqsts@sba.gov.

Attn: Director of Government Contracting

Or you can mail your request to:

U.S. Small Business Administration

Office of Government Contracting

Mail Code 6250

409 3rd Street, SW

Washington, DC 20416

Attn: Director of Government Contracting

Questions about NMR waivers can be addressed by calling 202 205-2500

Narrative

Requests for waivers to the Non-Manufacturer Rule should be sent to SBA's Director of Government Contracting at the e-mail address noted in the slide or sent to the street address also noted. The preferred and most expeditious method for submission of your request, however is by e-mail. If you have questions specific to the non-manufacturer rule, you can call 202-205- 2500.

Slide 27 Important Clarifications (content divider)

Narrative

Important clarifications.

Slide 28 Important Clarifications

- Waivers to the Non-Manufacturer Rule apply only to supply contracts over \$25,000
- Waivers do not apply to small business HUBZone set-asides
- Below \$25,000, if two or more small business manufacturers can not be identified, a small non-manufacturer (Including a HUBZone mfg) can supply the product of any domestic business
- Rule does not apply to service contracts
- Proper NAICS code and size standard must be designated
- Non-manufacturer waivers are not granted for HUBZone procurements
- Waivers cannot be granted after a solicitation has been issued

Narrative

As the contracting officer applying the Non-Manufacturer Rule to your acquisition strategy, there are some important clarifications and things to remember.

- The Non-Manufacturer Rule applies only to supply contracts above \$25,000.
- Waivers do not apply to small business HUBZone set-asides.

- Below \$25,000, if two or more small business manufacturers can not be identified, a small non-manufacturer, including a HUBZone manufacturer, can supply the product of any domestic business.
- The rule does not apply to service contracts. The Non-Manufacturer Rule is an exception to the manufacturing performance requirements -- limitations on subcontracting -- applicable to supply contracts. Service and construction contracts have different performance requirements.
- You are required to designate the proper NAICS code and size standard in the solicitation, selecting the NAICS code which best describes the principal purpose of the product or service being acquired. Primary consideration should be given to the industry description for the NAICS code, the product or service description in the solicitation and any attachments to it, the relative value and importance of the components of the procurement making up the end item being procured, and the function of the goods or services being purchased. You cannot assign a wholesale or retail trade to the NAICS code for the procurement of supplies.
- And finally, non-manufacturer waivers cannot be granted after a solicitation has been issued.

Slide 29 Resources & Questions (content divider)

Narrative

Resources and questions.

Slide 30 Resources and Tools

- Federal Acquisition Regulations
 - <https://www.acquisition.gov/far>
- Acquisition Central
 - <https://www.acquisition.gov/>
- FAR Part 19 – Small Business Programs
 - <http://www.acquisition.gov/far>
- Code of Federal Regulations (13CFR)
 - <http://www.gpoaccess.gov/cfr/index.html>
- Federal Business Opportunities
 - <http://www.fbo.gov>
- SBA-Government Contracting

- <http://www.sba.gov/aboutsba/sbaprograms/gc/index.html>

Narrative

Numerous resources are available to assist contracting officers and other contracting personnel.

Slide 31 Resources and Tools

- Learn more about:
 - Non-manufacturer waivers (SBA information) - <http://www.sba.gov/category/navigation-structure/contracting/contracting-officials/non-manufacturer-waivers>
 - SBA Size Standards - <http://www.sba.gov/category/navigation-structure/contracting/contracting-officials/eligibility-size-standards>
 - 8(a) Business Development Program - <http://www.sba.gov/content/8a-business-development-0>
 - WOSB Program - <http://www.sba.gov/content/contracting-opportunities-women-owned-small-businesses>
 - HUB Zone Program- <http://www.sba.gov/content/hubzone-0>
- Local (client) resources:
 - SBA district office - <http://www.sba.gov/localresources/index.html>
 - Procurement Technical Assistance Center (PTAC) - http://www.aptac-us.org/new/Govt_Contracting/find.php
 - SCORE chapter - <http://www.score.org>
 - Small Business Development Center - <http://www.asbdc-us.org>
 - Women’s Business Center - <http://www.awbc.biz/locate.asp>

Narrative

Use these resources to enhance your procurement strategy.

Slide 32 Contact Us...

- Thank you for taking the time to learn about the Non-Manufacturer Rule
- Please contact us with any questions you may have

U.S. Small Business Administration

Office of Government Contracting

800 827-5722

Narrative

Thank you for taking the time to learn about the Non-Manufacturer Rule. Much information has been discussed and we hope it is helpful.

However, please contact us with any additional questions you may have about the rule or how to seek a waiver.

Thank you.