

Date: February 17, 2017

From: Acting Deputy Senior Procurement Executive (DSPE)

Subj: Class Deviation — Authority to approve the submission of a request for a Nonmanufacturer Rule Waiver to the Small Business Administration (SBA) and use of other than competitive procedures or restricted competition as defined in 38 U.S.C. § 8127, for procurements where SBA has issued a class waiver to the Nonmanufacturer Rule (VAIQ 7762400).

To: Heads of the Contracting Activities (HCAs)

1. **Purpose:** To issue a class deviation, in accordance with the Federal Acquisition Regulation (FAR) 1.404 - Class deviations and Department of Veterans Affairs (VA) Acquisition Regulation (VAAR) 801.404 - Class deviations, to add section VAAR 819.102(f)(4) and (5), which requires the HCA to approve any request for a Nonmanufacturer Rule waiver prior to submission to the Small Business Administration (SBA) for class waivers or for a specific solicitation; and the use of other than competitive procedures or restricted competition as defined in 38 U.S.C. § 8127, for procurements where SBA has issued a class waiver to the Nonmanufacturer Rule.

2. **VAAR Parts Impacted:** VAAR Part 819.

3. **Effective Date:** Immediately.

4. **Expiration Date:** Expires when incorporated into the VAAR or the new VA Acquisition Manual (VAAM) unless otherwise rescinded.

5. **Applicability:** This class deviation applies to all VA contracting activities.

6. **Background:**

a. **Current VAAR Policy:**

- (1) FAR 19.102(f)(4) authorizes a contracting officer to request a waiver of the Nonmanufacturer Rule from the SBA. The SBA provides the most current listing of classes for which SBA has granted a waiver at <https://www.sba.gov/contracting/contracting-officials/non-manufacturer-rule/class-waivers>. Currently, only the requirement in FAR exists; there is no additional policy in the VAAR.

Subject: Class Deviation — Authority to approve the submission of a request for a Nonmanufacturer Rule waiver to the Small Business Administration (SBA); and the use of other than competitive procedures or restricted competition as defined in 38 U.S.C. § 8127, for procurements where SBA has issued a class waiver to the Nonmanufacturer Rule (VAIQ 7762400).

(2) FAR 19.102(f)(5) authorizes a contracting officer to request a waiver of the Nonmanufacturer Rule from the SBA for a specific solicitation. Currently, only the requirement in FAR exists; there is no additional policy in the VAAR.

b. **Need for Class Deviation:** A deviation is needed to require that any Nonmanufacturer Rule waiver request by the contracting officer be approved by the appropriate VA HCA prior to submitting to SBA. Additionally, HCA's must approve the use of other than competitive procedures or restricted competition as defined in 38 U.S.C. § 8127, for procurements where SBA has issued a class waiver to the Nonmanufacturer Rule. This is necessary in order to ensure HCAs have situational awareness of issues prompting the requests or use and, if needed, can take actions to mitigate requests or use.

c. **New Policy:** The following VAAR section 819.102(f)(4) and (5) is added.

819.102 Size standards.

(f)(4) A contracting officer must receive approval from the Head of Contracting Activity (HCA) prior to submitting any request for a Nonmanufacturer Rule waiver to the Small Business Administration (SBA) pursuant to 13 C.F.R. 121.1204. This authority cannot be redelegated.

(5) Where the SBA has issued a class waiver to the Nonmanufacturer Rule, a contracting officer must receive approval from the HCA prior to utilizing other than competitive procedures or restricted competition as defined in 38 U.S.C. § 8127. This authority cannot be redelegated.

7. **Attachment:** Class Deviation, VAAR 819.102(f)(4)-(5).

8. **Additional Information:** Direct any questions or comments regarding this deviation to Procurement Policy and Warrant Management services via email at vacovaproc@va.gov or (202) 632-5288.

/s/

Phil W. Parker

ATTACHMENT
CLASS DEVIATION — AUTHORITY TO APPROVE THE SUBMISSION OF A
REQUEST FOR A NONMANUFACTURER RULE WAIVER TO
THE SMALL BUSINESS ADMINISTRATION
and USE OF OTHER THAN COMPETITIVE PROCEDURES OR RESTRICTED
COMPETITION AS DEFINED IN 38 U.S.C. § 8127, FOR PROCUREMENTS WHERE
SBA HAS ISSUED A CLASS WAIVER TO THE NONMANUFACTURER RULE.

PART 819—SMALL BUSINESS PROGRAMS

819.102 Size standards.

f)(4) A contracting officer must receive approval from the Head of Contracting Activity (HCA) prior to submitting any request for a Nonmanufacturer Rule waiver to the Small Business Administration (SBA) pursuant to 13 C.F.R. 121.1204. This authority cannot be re-delegated.

(5) Where the SBA has issued a class waiver to the Nonmanufacturer Rule, a contracting officer must receive approval from the HCA prior to utilizing other than competitive procedures or restricted competition as defined in 38 U.S.C. § 8127. This authority cannot be redelegated.

END