

NON-MANUFACTURER RULE

Fact Sheet

Section 303 (h) of Public Law 100-656 and Section 210 of Public Law 101-574 incorporated into the Small Business Act a requirement that a recipient of a contract set aside for small business or the Small Business Administration's (SBA) 8(a) contract program, other than the actual manufacturer or processor, must provide the products of a small business. This requirement is commonly referred to as the Nonmanufacturer Rule.

The Small Business Act also contains provisions which allow for the Administrator of the SBA to waive this requirement when there are no small business manufacturers or processors available to supply the product to the Federal Government. Section 8 (a)(17)(B)(iv) allows the Administrator to grant waivers of the Nonmanufacturer Rule; however, the Administrator has delegated the authority to make decisions on waivers of the Nonmanufacturer Rule to the Associate Administrator for Government Contracting when:

- 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 by the solicitation; or
- for a product or class of products after determining that no small business is available to participate in the Federal procurement market.

These two types of waivers of the Nonmanufacturer Rule are regularly referred to as "class waivers" and "individual waivers" or "solicitation-specific."

Class Waivers

For the purpose of waivers, a class of products is defined based on the Office of Management and Budget's North American Industrial Classification System (NAICS) Manual and, at the present time, on the General Services Administration's Product and Service Code Directory. Within each four-digit code are subdivisions of products which can be considered for waiver. A request for a waiver of a class of products should refer to a specific subdivision, or statement of product, within a four-digit code in one of these manuals.

Any individual or organization (government agency, business, association, etc.) may request a waiver for a class of products. The request should be in writing addressed to the Associate Administrator for Government Contracting and should specifically state the class (or classes) of products for which the waiver is sought.

Individual Waivers

Only a contracting officer for the Federal Government may request an individual or solicitation-specific waiver. The request should be in writing and addressed to the Associate Administrator for Government Contracting and should consist of:

1. a definitive statement of the specific item(s) to be waived;
2. the solicitation number for the procurement on which the item(s) is required and a brief statement of the procurement history; and
3. 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:
 - i. a clear 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. This should include information on the findings of a search of the SBA's PRO-Net System, or other market survey performed, and the results of discussions with small business representatives to find manufacturers. For example, the representative may be a member of the Office of Small and Disadvantaged Business Utilization (OSDBU) or an SBA Procurement Center Representative (PCR); and
 - ii. 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.

While a contracting officer may request an individual waiver for more than one item on a solicitation, he or she must include a determination which includes the above information for each item.

Time frames for Handling

A request for an individual waiver takes about **15 working days** to process if the contracting officer provides complete information. Requests for waivers of classes of products take an average of **45 working days** for processing. This period of time allows SBA staff to publish in the Federal Register a required notice of an intent to grant a waiver for the class of products, a notice in the FedBizOpps of potential sources sought, and a final notice in the Federal Register of decision to grant the waiver if no small business manufacturers or processors have been identified.

Submitting Requests

A format for requesting a waiver of the Nonmanufacturer Rule, additional information about waivers of the Nonmanufacturer Rule, or answers to any questions regarding the information contained in this Fact Sheet can be obtained by contacting the Office of Government Contracting at telephone number (202) 205-6475 or log onto <http://www.sba.gov/GC/indexprograms-nonmanufacturer.html> for additional details.

Click below to obtain a list of nonmanufacturer waivers.

<http://www.sba.gov/GC/approved.html>

Requests for waivers of the Nonmanufacturer Rule should be sent to the Associate Administrator for Government Contracting at:

U. S. Small Business Administration
Office of Government Contracting
Mail Code 6250
409 3rd Street, SW
Washington, DC 20416