

## PPD ALERT



### “Nonmanufacturers’ Rule”

The Nonmanufacturer Rule requires that the contractor under a set-aside (small business, HUBZone, or 8(a)) contract be a small business who must provide either its own product or the product of a domestic small business manufacturer or producer within the United States. It does not apply to construction or service contracts. The rule applies to set-asides involving supplies obtained through the open market where the following conditions will apply:

**Simplified Acquisition Valued at \$25,000 and Below.** The small business concern may furnish any product manufactured or produced within the United States.

**Acquisitions Valued at \$25,000 and Above.** To be eligible for award, bidders shall qualify as a small business manufacturer or nonmanufacturer (regular dealer) in accordance with the definitions below:

- (a) **Manufacturer.** The concern that, with its own forces, transforms raw materials and/or miscellaneous parts or components into end items and performs at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials (FAR 52.219-14).
- (b) **Nonmanufacturer.**
  - (i) The concern that supplies a product that it did not manufacture itself.
  - (ii) The processor (or Kit Assembler), is a concern which purchases and packages items into a kit. More than 50 percent of the total value, (kit and contents), shall be accounted for by items manufactured by small business concerns.

On a set-aside, the nonmanufacturer must provide the product of a small business concern. On unrestricted acquisitions, the nonmanufacturer may furnish any domestically produced or manufactured product. 8(a) and Very Small Business concerns must furnish the domestic products of small business concerns and HUBZone concerns must furnish the product of another HUBZone concern (FAR 19.1303(d)).

**Waivers of the Nonmanufacturers' Rule.** For selected products or product classes the Small Business Administration (SBA) may determine that there are no small business manufacturers or processors and may grant a waiver, by "class" or "individual" so that a nonmanufacturer does not have to furnish the product of a small business. Waivers will have no effect outside of the Small Business Act and will not affect laws involving domestic sources of supply, such as the Buy American Act.

- (a) **Class Waivers.** The most current list of product class waivers can be found at <http://www.sba.gov/gc/approved.html>.
- (b) **Individual Waivers.** A Contracting Officer may request a waiver for a particular product by providing a determination that there are no known small business manufacturers for the requested item(s), along with a supporting statement of the efforts made to search for small business manufacturers or processors. The determination shall include a search of PRO-Net and the results of discussions with small business representatives to find manufacturers (i.e., USDA-Office of Small and Disadvantaged Business Utilization (OSDBU) Representative or SBA's Procurement Center Representative). If a Justification for Other than Full and Open Competition has been approved, a copy shall be attached to the waiver request.

The SBA will process individual waivers within 15 working days. Class waivers take an average of 45 working days and will be published in the Federal Register, if approved. Waiver requests should be sent to the Associate Administrator for Government Contracting at the address below:

U. S. Small Business Administration  
Office of Government Contracting  
Mail Code 6250  
409 3rd Street, SW  
Washington, DC 20416  
Telephone number 202-205-6475.

For your convenience, a suggested format for the Waiver Request is provided, at <http://www.sba.gov/GC/indexprograms-nonmanufacturer.html>.

Please contact Theresa Stephens, REE OSDBU Coordinator on 301-504-1729 if you have any questions.

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