19.505 Limitations on subcontracting and nonmanufacturer rule.

(a) Applicability.

(1) This section applies to small business set-asides above the simplified acquisition threshold and orders issued directly to a small business in accordance with 19.504(c)(1)(ii) above the simplified acquisition threshold.

(2) This section applies, regardless of dollar value, to the following awards under subparts 19.8, 19.13, 19.14, and 19.15:

(i) Contracts that are set aside.

(ii) Contracts that are awarded on a sole-source basis.

(iii) Orders that are set-aside as described in 8.405-5 and 16.505(b)(2)(i)(F).

(iv) Orders that are issued directly in accordance with 19.504(c)(1)(ii).

(v) Contracts that use the HUBZone price evaluation preference to award to a HUBZone small business concern unless the concern waived the evaluation preference.

(b)

(1) Limitations on subcontracting. A small business concern subject to the limitations on subcontracting is required to comply with the following:

(i) For a contract or order assigned a North American Industry Classification System (NAICS) code for services (except construction), the concern will not pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the concern’s 50 percent subcontract amount that cannot be exceeded. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract.

(ii) For a contract or order assigned a NAICS code for supplies or products (other than a procurement from a nonmanufacturer of such supplies or products), the concern will not pay more than 50 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the concern’s 50 percent subcontract amount that cannot be exceeded. When a contract includes both supplies and services, the 50 percent limitation shall apply only to the supply portion of the contract.

(iii) For a contract or order assigned a NAICS code for general construction, the concern will not pay more than 85 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the concern’s 85 percent
subcontract amount that cannot be exceeded.

(iv) For a contract or order assigned a NAICS code for construction by special trade contractors, the concern will not pay more than 75 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the concern’s 75 percent subcontract amount that cannot be exceeded.

(2) Compliance period. A small business contractor subject to the limitations on subcontracting is required to comply with the limitations on subcontracting—

(i) For a contract that has been set aside, either by the end of the base term and then by the end of each subsequent option period, or by the end of the performance period for each order issued under the contract, at the contracting officer's discretion; and

(ii) For an order set aside under a contract as described in 19.504(a), (b), or (c)(1)(i) or an order issued in accordance with 19.504(c)(1)(ii), by the end of the performance period for the order.

(c) Nonmanufacturer rule. The nonmanufacturer rule applies to nonmanufacturers in accordance with paragraph (c)(1) of this section and to kit assemblers who are nonmanufacturers in accordance with paragraph (c)(2) of this section.

(1) Nonmanufacturers. Any concern, including a supplier, that is awarded a contract or order subject to the nonmanufacturer rule, other than a construction or service acquisition, but proposes to furnish an end item that it did not itself manufacture, process, or produce (i.e., a “nonmanufacturer”), is required to—

(i) Provide an end item that a small business has manufactured, processed, or produced in the United States or its outlying areas (see paragraph (c)(3) of this section for determining the manufacturer of an end item);

(ii) Not exceed 500 employees;

(iii) Be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied; and

(iv) Take ownership or possession of the item(s) with its personnel, equipment, or facilities in a manner consistent with industry practice; for example, providing storage, transportation, or delivery.

(2) Kit assemblers. When the end item being acquired is a kit of supplies—

(i) The offeror may not exceed 500 employees; and

(ii) At least 50 percent of the total cost of the components of the kit shall be manufactured, processed, or produced in the United States or its outlying areas by business concerns that are small under the size standards for the NAICS codes of the components of the kit.

(3) Identification of manufacturers. For the purposes of applying the nonmanufacturer rule, the manufacturer, processor, or producer is the concern that manufactures, processes, or produces an end item with its own facilities (i.e., transforms raw materials, miscellaneous parts, or components into the end item being acquired). See 13 CFR 121.406(b)(2).
(4) Waiver of nonmanufacturer rule.

(i) The SBA may grant an individual or a class waiver to the nonmanufacturer rule to allow a nonmanufacturer to provide an end item of an other than small business without regard to the place of manufacture, processing, or production.

(A) **Class waiver.** An agency may request that SBA waive the requirement at paragraph (c)(1)(i) or (c)(2)(ii) of this section for a specific product or class of products. See 13 CFR 121.1202 for an explanation of when SBA will issue a class waiver.

(B) **Individual waiver.** The contracting officer may also request a waiver of the requirements at paragraph (c)(1)(i) or (c)(2)(ii) of this section for an individual acquisition once the contracting officer determines through market research that no known small business manufacturers, processors, or producers in the United States or its outlying areas can reasonably be expected to offer an end item meeting the requirements of the solicitation. This type of waiver is known as an individual waiver and would apply only to a specific acquisition.

(ii) **Waiver requests.** Requests for waivers shall include the content specified at 13 CFR 121.1204 and shall be sent via email to nmrwaivers@sba.gov or by mail to the—Director, Office of Government Contracting, Small Business Administration, 409 Third Street SW, Washington, DC 20416.

(iii) **List of class waivers.** For the most current listing of class waivers, contact the SBA Office of Government Contracting or go to https://www.sba.gov/document/support-non-manufacturer-rule-class-waiver-list.

(iv) **Notification of waiver.** The contracting officer shall provide potential offerors with written notification of any class or individual waiver in the solicitation. If providing the notification after solicitation issuance, the contracting officer shall provide potential offerors a reasonable amount of additional time to respond to the solicitation.

(5) **Multiple-item acquisitions.**

(i) If at least 50 percent of the estimated contract value is composed of items that are manufactured, processed, or produced by small business concerns, then a waiver of the nonmanufacturer rule is not required. There is no requirement that each item acquired in a multiple-item acquisition be manufactured, processed, or produced by a small business in the United States or its outlying areas.

(ii) If more than 50 percent of the estimated acquisition cost is composed of items manufactured, processed, or produced by other than small business concerns, then a waiver is required. SBA may grant an individual waiver for one or more items in an acquisition in order to ensure that at least 50 percent of the cost of the items to be supplied by the nonmanufacturer comes from small business manufacturers, processors, and producers in the United States or its outlying areas or are subject to a waiver.

(iii) If a small business offeror is both a manufacturer of item(s) and a nonmanufacturer of other item(s) for an acquisition, the contracting officer shall apply the manufacturer size standard.

**Parent topic:** Subpart 19.5 - Small Business Total Set-Asides, Partial Set-Asides, and Reserves