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, or 150 employees for *information technology* value-added resellers under NAICS code 541519;

(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, or 150 employees for *information technology* value-added resellers under NAICS code 541519; 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