

Moderator: Hello and welcome to today's live SBA web conference. Please note that all participant lines will be muted for the duration of this event. You are welcome to submit written questions during the presentation, and Deborah Crumity will repeat the questions that come in for the benefit of the entire group. To send a note, please select the Participants menu at the top of your screen, and opt to send a note to all presenters.

If you are logged in using the web-based application, use the notes function on the lower right-hand side of your screen and address your note to all moderators. In addition, to adjust the presentation view on your screen, on the participant application, click on the "fit to whiteboard" icon located on the lower left section of your screen. If you are connected via the web-based application, you can adjust the presentation view by simultaneously clicking the control and the plus or minus button on your keyboard. If you require technical assistance, send a note to the ATTCES operator, or call our help desk at 888-796-6118.

I would now like to formally begin today's conference and turn the call over to Jan Kaiser. Jan, please go ahead.

Jan: Hello everyone and welcome to today's First Wednesday 2018 webinar series. This webinar series focuses on getting subject matter experts about small-business programs to provide information you can use in the performance of your job in the federal procurement process or in directly assisting small business concerns.

Did you know that last year, our average webinar had 672 attendees, and our highest attended event had 986 attendees? Fiscal year 2017 was our highest attended year, with over 8000 logins and listeners to the program for the year. We want to say, thank you, to those of you who are repeat attendees. And welcome to the people who are new to the program.

As Carla mentioned, I am Jan Kaiser and I work as a procurement center representative – or PCR – in Chicago, Illinois. Additionally, Deborah Crumity the SBA PCR, assigned to the Rock Island Arsenal will be reading your questions submitted during the program for our speaker to address, towards the end of today's session.

Let's discuss how today's webinar works. We are on slide three. We'll address questions that we've received during the program at the end of our speaker's presentation. So those questions are answered in about the last 10 minutes. If you have any technical difficulties, contact the moderator with a note or call the AT&T Connect support folks at 1-888-796-6118. I know that Carla mentioned this number earlier, but for anyone who was logging in later, or didn't get that, that is the number. The telephone number is also on the email invitation for

today's program and on slide 3 of your slide deck, if you are only following along with the paper version, or a computer version of the actual PowerPoint slide and not on the webinar, here.

Otherwise, just keep listening and following along with the PowerPoint that accompanied the invitation for today. For more about SBA training, small business program training, offered by the SBA, you can go to the SBA.gov website and visit the SBA Learning Center there.

The Procurement Technical Assistance Centers are huge resource partners to the SBA, and can be for you, if you are with the SBA or a federal agency. The Association of Procurement Technical Assistance Centers, or APTAC, has a website where they post the past First Wednesday programming. And their website is provided here, on slide 4. The slide deck for today's program has been modified from the PowerPoint that was originally emailed with the invitation for today. And when we get to slide 17, it's been edited slightly, and the speaker will discuss the change. Just so you know, the new slide deck will be posted to the APTAC website. That's on slide four.

The Procurement Technical Assistance Centers, or PTACs, are as I said, a great resource. And you can partner with them to host an industry day, share sole-source or RFI notices or refer small businesses to a PTAC when they are asking questions that you need assistance for or don't feel that you are equipped to handle. You can always reference those folks to Procurement Technical Assistance Centers, and to find the nearest Procurement Technical Assistance Center, you can go to the APTAC website at [www.aptac-us.org](http://www.aptac-us.org).

Slide five is the current schedule for fiscal year 2018. So a couple of topics that we have not done before. This is because we reviewed the topics suggested by the audience and as part of the survey that we conducted a few months ago. We appreciate all of you who participated in providing small business program topics to be covered for this series. We hope that you find these topics interesting and applicable to your job. I know that I'm looking forward to some of those topics.

So we just need to take one minute here, before we get started with our presentation, and stop and listen to how you are going to get your continuous learning points. This is a self-serve program. So you are going to take the PowerPoint that was sent with your invitation for today's training event, and go to slide seven, and this is the slide where you will insert your name and print off just that one slide in the slide deck. And that's how you create your certificate. You upload that, or submit that, however it is that your particular agency requires that you do that in order to request your training for today. Also, if you would like to

receive an email directly from us – if you didn't receive one for this event – if you would like to receive an email notifying you of the next First Wednesday Webinar event, email us at [sbalearning@sba.gov](mailto:sbalearning@sba.gov). And just put the words, "Add to list," in the subject line and we will know what to do to add your contact information, or your email address, to the list of attendees who would like to be notified about these training events.

So with that, we're going to begin our training for today, on slide nine. And the speaker will be directing me to change the page, and there may be some delays as the slide changes, as Mr. Ivey tells me to change the pages, just because I'm in Chicago and he's in DC. And that's just one of those webinar issues, this delay, but I'll catch up.

And our speaker today is Mr. Roman Ivey of SBA's Office of Government Contracting, as I said, at SBA headquarters in Washington DC. And he works extensively on issues regarding today's subject. Roman, we are very pleased that you could meet with us today, and I will turn the program over to you now.

Roman: Okay. Well, thank you so much Jan for that introduction, and thank you to everyone for joining our webinar today. The topic is, as you can see, the Non-Manufacturer Rule and the Non-Manufacturer Rule Waiver Process. This is not necessarily a very well understood rule. But it can be very important, depending on how your procurement is structured. And just so you know, I'm going to be referring to the Non-Manufacturer Rule, as the NMR, throughout this presentation. That's the acronym that we use. And also, just another FYI – at the bottom of some slides, you will find the actual cited regulation, where relevant. Based on the subject of the slide that you see.

So we're on slide nine, now. And this is a brief overview of the four general topics that we are going to cover. We'll talk about the NMR, in general. The applicability of the NMR – when it applies, when you need to think about it. Individual waivers to the NMR, and class waivers to the NMR.

So we should be on slide 11, for you guys. This is just an overall definition of the NMR. The Non-Manufacturer Rule (NMR) allows an otherwise responsible business concern to be awarded a procurement contract for the supply of a product – even though it is not the manufacturer or processor of the product – as long as it meets certain conditions. And this comes straight from the Small Business Act, and what we are basically dealing with on the NMR is an exception to the limitations on subcontracting, because we're dealing with the procurement, which is a (?) NAICS code procurement – and the awardee is not doing any of the work on that NAICS code. They are going to be the distributor, or the reseller.

If you would please mute your phone so we don't get any background noise – thank you.

So we should be on slide 12 now. In order to qualify as a non-manufacturer under the NMR, there are basically four key requirements: the non-manufacturer cannot exceed 500 employees. The non-manufacturer must be primarily engaged in retail or wholesale and normally sells the type of product being supplied. The non-manufacturer must take ownership or possession of the items in a manner consistent with industry practice. And, the non-manufacturer must supply the end product of a small business manufacturer or obtain a waiver.

So going through each of these briefly, you will note that the size restriction – the size standard for non-manufacturer is 500 employees. That applies regardless of the NAICS code assigned to the procurement. So you could have a NAICS code with the standard that is higher than 500 employees, or it could be based on the gross revenue per year. But the SBA has decided, and has applied this rule, across the board for simplification purposes. Such that, in order to qualify as a non-manufacturer, the firm cannot exceed 500 employees, regardless of the NAICS code.

The next requirement there – being primarily engaged in retail or wholesale – refers just to the fact that we want to make sure that a non-manufacturer awarded a contract has to be a legitimate reseller, and not a pass through, for anything other than small business.

Must take possession or ownership of the items, and I want to make a key distinction there. It doesn't have to be physical possession. It could be just legal ownership. And there is no requirement that a non-manufacturer do any of the other delivery work on the procurement. They just have to take possession or ownership of the item.

And then the last one, this is really a two-pronged approach. Either the non-manufacturer is going to end up supplying something made by another small business, or the contracting officer is going to get a waiver, which allows the small business non-manufacturer to supply a product made by any business. I do want to emphasize here, that the waivers, are really an exception to the non-manufacturer rule. The way that it reads, sort of simply, is a certified small business – if the small business is going to distribute or resell – they are supposed to, in general, distribute or resell something made by another small business. However, SBA will grant waivers in certain circumstances, and we will discuss those a little bit later in the presentation.

This next slide is really just for your reference. This tracks the language in our regulations of what defines a manufacturer, if there is any confusion about whether a firm qualifies as the actual manufacturer of the end item. I'm not really going to get into the details here. It might be a question for your various procurement legal offices, in terms of what actions have been taken by the firm. And whether they can or can't qualify as a manufacturer. But that's the language in the regulation, and I just wanted to have it there for your reference, in case it comes up, you have something to look at.

Now we are going to turn to kit assemblers. There is also a provision in our regulations for kit assemblers to qualify under the NMR. So, a small business that supplies a pre-assembled kit of supplies or goods meets the conditions of the NMR if the small business providing the kit doesn't exceed 500 employees, and 50% of the total value of the kit is manufactured by US small businesses. So I guess the classic example is the First Aid kit where all the various supplies are coming together, and maybe this small business non-manufacturer assembles those and puts those into a box. As long as 50% of the value of what's in the box is manufactured by US small businesses, that qualifies and satisfies the non-manufacturer rule.

So now we're going to talk a little bit about the applicability of the NMR. When do you have to think about it? Does it apply to your particular procurement?

So, the NMR applies to small business set-asides, against a manufacturing or supply contract, with a total estimated value greater than \$150,000. I want to highlight this \$150,000 number because, as currently written in the FAR, it refers to a number of \$25,000 – that is out of date. The CFR, was updated a little over a year ago, I believe. And that change has not been incorporated into the FAR yet. But that is our standard. So basically what that means is, if you have a procurement under \$150,000, you don't have to worry about the requirements of the non-manufacturer rule. You can go ahead and set it aside and not worry about obtaining a waiver.

So the set-aside requirement. As Jan mentioned, this slide has slightly changed, and I will highlight that for you, in a second. But the non-manufacturer rule does not apply unless and until there is a small business set-aside. So I should also note that a sole-source qualifies as a small business set-aside. A sole-source to a small business is the same as a small business set-aside, for purposes of the NMR.

So basically this means that the NMR would apply to task orders that are set aside for small businesses within a full and open overall contract. But the NMR would not apply to an IDIQ, for example, where the intent is to establish small business

set-asides during the life of the contract. Until the set-asides actually occur, there is no NMR, really. And so, at that point, it would be premature, for example, to apply for a waiver to the NMR. Because we wouldn't be under the heading of the NMR, yet.

So, the NMR only applies to manufacturing and supply acquisitions. Which means that it only really applies if certain NAICS codes are designated for your procurement. The classic ones begin with 31-33, under the NAICS industry sectors. However, I want to flag two special NAICS codes, which do not qualify under the NMR. Those are 511210, and that's for a software procurement. As well as 541519 footnote 18, which is the Information Technology Value Added Reseller designation. So I just want to highlight that.

If any of these NAICS codes apply to your procurement, then you would fall under the NMR. And you would have to follow whatever the requirements of the NMR are given your procurement. But I do want to highlight that 541519 – it's only footnote 18 – so I'm getting very minutia here, but 541519 NAICS code procurements may not fall under the NMR. It has to be footnote 18, specifically.

So now we're going to talk about individual waivers to the NMR. This is most of your interactions with the SBA. They are going to be requesting either individual or class waivers to the NMR. I'm going to start with individual waivers to the NMR.

Very briefly, an individual waiver to the NMR is for a single solicitation or procurement, a single acquisition. It is a one-time waiver. It applies just to that particular procurement. So the standard for granting an individual NMR waiver, is that the SBA will grant an NMR individual waiver after determining that “no small business manufacturer or processor can reasonably be expected to supply the product meeting the specifications of the solicitation.”

And I'm actually going to give you the citation here. This is 13 CFR 121.406(b)(5)(i). This is the entire standard that we operate on. Whether or not we are going to grant an individual waiver to the NMR is whether or not we feel that this standard has been satisfied, based on the information we receive from the contracting officer.

Again, individual waiver apply only to a single solicitation. These are one-time waivers for one acquisition, one procurement. And also remember that these waivers are going to apply on an item-by-item basis, within that. Although there are special rules for multi-item procurements, which we are going to get into, in a second. I also want to emphasize here the words, "manufacturer or processor." So

the standard on the NMR is not whether a small business, in general, can supply the product. It's whether it will come from the actual small business that makes it.

That's a very common misperception that I deal with. I know that for a lot of contracting officers, they're trying to find a small business that can supply it, no matter which way. But the NMR is mostly concerned with who makes the item, specifically.

This again is a reference slide about how you would go about requesting an individual waiver to the NMR. We have a shared mailbox, [nmrwaivers@sba.gov](mailto:nmrwaivers@sba.gov) and any individual or class waiver request to the NMR would go there. And on the next item, I'm going to go over all the elements that should be included when requesting an individual waiver to the NMR.

So here we see a list of everything that needs to be received in order to process a request for an individual waiver to the NMR. And these come straight from the regs and I am going to go ahead and read them out, just so you have them in your mind. We need:

- Request signed by the contracting officer
- Solicitation number (or other ID code)
- Estimated total dollar amount of the contract
- Assigned NAICS code(s) for the solicitation
- Brief statement of the procurement history
- For contracts over \$500,000, a Statement of Work (or equivalent doc)
- A definitive statement of the items to be waived and justification for why they are required, and last, but certainly not least,
- A narrative describing market research and supporting documentation

A few quick notes here. It's not necessary that we have the actual solicitation number. We can accept an equivalent, or a reasonable alternative, such as a purchase request number or a RFQ. A lot of agencies will not have a solicitation number available, yet – at the point that they are requesting a waiver. Which is understandable, because actually our regs require that any waiver in place be provided when the solicitation is released, or posted. So if you don't have a solicitation number, we'll accept a purchase request number, or an RFQ, or some other identifying code.

Also I want to just emphasize that the market research section is definitely the most important section. Market research is what is going to provide the information that makes us determine whether or not we have satisfied that standard of a couple of slides earlier – whether or not a small business

manufacturer can reasonably be expected to supply the products meeting the requirements of the solicitation.

So briefly on the definitive statement of the items, which is one of the requirements on the last slide, SBA needs the items sought, to be described in terms of their qualities and attributes. So, this could include laymen's terminology, technical specifications, any other identifying characteristics. We just don't want to see a vague indefinite description of the items.

SBA will generally not grant an individual NMR waiver if the primary justification is a brand name requirement. Especially since the brand name, description of an item is not specific. However, if the requesting agency has a legitimate need for a particular brand name item, then the contracting officer must provide a Limited Sources Justification or an equivalent document, like a J&A, along with the individual NMR waiver request.

That LSJ must include the reasoning for why the brand name item is essential to the procurement and it must comply with all FAR requirements. So if you are dead set on a particular brand name, we need that reasoning. We need to know why. We need to know why you can't accept any other equivalent. At the point that you have a brand name only procurement, we don't really need a lot of other market research. Because if you need a brand name only, then only one company makes it. It's probably not going to be a small business.

But just to note the FAR requirements, there: 6.302, 6.303, if it's not a Federal supply schedule. If it is a Federal supply schedule, then the FAR requirements are in 8.405. And also note that you will have different signature requirements from various offices, depending on the total dollar value of your procurement.

So, Market Research. We can talk a little bit now about market research. This is the most important section, like I said in any non-manufacturer rule waiver request. It's going to really determine for us whether we have met that standard of no small business manufacturer reasonably expected to supply the product.

So we need to see, as mentioned a few slides ago, and outlined in the regs, narrative and documentation that provides reasonable certainty that there are no small business manufacturers that make and could supply the items sought. If we see market research which reveals that there is one small business out there that makes the item, and could reasonably provide it on the solicitation, we have to deny the waiver.

Even though that doesn't qualify or satisfy the Rule of Two, that's a separate issue. Once we see one – really, one is it, to defeat a waiver for our purposes. And this



really means that we need the contracting officer to perform that market research, but also we need them to provide a clear description of that market research.

Many times we receive non-manufacturer rule waiver requests, and maybe the contracting officer did quite a bit of research. But if they only provide us a very brief summary, and little supporting documentation, we don't have a lot to go on. In determining whether we have met our regulatory standard. So I really want to emphasize that this becomes something that you need to build into procurement.

And you realize that based on that applicability slide, that the NMR applies to your procurement, and you feel the need for a waiver, really document your market research efforts. Document anything you put out to the public, and document the responses you receive. So that when we get that package from you, we have a lot of information to go on.

Here are some examples of market research tools that we think could be useful. This is not an exhaustive list. You may have other methods that you think are better, or that you are familiar with. But these are just some examples that we see fairly frequently and just want to put out there for you to consider.

The first is a Sources Sought Notice or Request for Information posted to Fed Biz Ops, including language basically just looking for small business manufacturers of the product.

You could also do a DSBS or SAM search for potential small business manufacturers – with follow up, and I'll get to that in the second.

You could have Industry Days and roundtable discussions. And we really want those to be fairly recent, however. Given the fact that the market can change a lot. If it's been a little while since an Industry Day, or a roundtable discussion.

You can have direct correspondence with small businesses identified through whatever means. And last, general industry knowledge when based on recent, thorough market research and assertion of no change in the market.

I want to briefly touch on DSBS searches. DSBS is the SBA's tool for searching and identifying small businesses. You can find various small business firms, via DSBS, if you use a NAICS code and various keywords. The limitation of DSBS is that it does not distinguish between manufacturers and resellers. Also, many firms do not put a lot of information about their capabilities on their DSBS page. So if you use DSBS, even if you narrowed down with keywords, the next step is that you have to actually reach out to those firms identified, and get more information

on them. Such as, are you the manufacturer of these types of products? Or do you simply resell?

And on that last bullet, there – general industry knowledge. This is going to be a very rare case, but for example, if you have done a lot of market research for us and you have requested an individual waiver and we grant it to you, and then two weeks later another procurement comes along for the exact same sort of item. You might be able to cite that prior approval and say – look, we did this, we got this waiver, see the research in that prior request as evidence that there are no small business manufacturers for this product. But again, it has to be pretty detailed and pretty recent, in order for that to apply.

Still on the market research topic. So I will say, a generality is that the Sources Sought Notice, or request for information, is the most effective market research tool. Because it's both posted to Fed Biz Ops, it reaches the entire federal procurement market. If you have an Industry Day, I don't know – maybe you have a 100 firms, there. Maybe you have 200 firms there. But you are not reaching the entire federal procurement market.

If you have a roundtable discussion, same thing. I know that some contracting officers like to look at just the Federal supply schedule and do their market research within the small businesses on that Federal supply schedule. Again, the NMR applies to the entire country, essentially. So if you narrow your search in that way, it's not as effective of a market research tool.

And, in terms of what we want to see in a Sources Sought notice, or request for information, again, we want to have that language in there. Specifically seeking small business manufacturers, and sort of highlighting – we are looking for small business manufacturers of these products. We want the items defined in terms of their salient characteristics. So if you say similar or equal to, that's fine for your procurement, overall. But then on the Sources Sought notice, or RFI, we want you listing what the characteristics of that brand-named product are, that you are looking for. So that a small business that makes a substantially similar, or equivalent product, can respond.

And our timeline in general is 14 calendar days. So that's two solid weeks.

Now I want to talk a little bit about multi-item procurements. As I mentioned a little bit earlier, the non-manufacturer rule waivers will apply on an item-by-item basis. So if you have 50 items in a procurement, and you want a waiver for 10 of them, you have to provide distinct justifications for each one. Because the market research is going to be different determining if there is a small business for product X, versus product Y.

However, an NMR waiver is not necessary for every item manufactured by any other than small business in a multi-item procurement. And we are going to get to that in a second here. But you have to have a waiver, separate distinction, separate justification, for every waiver on every item. However, there is some math which allows you to not necessarily get a waiver for every single item. And we'll discuss that now.

So if you have a multi-item procurement, there are two ways to comply with the non-manufacturer rule. The first way is if at least 50% of the total estimated contract value is mainly manufactured by small business. Again, I want to emphasize that word – mainly manufactured. So if you have a million-dollar procurement – actually, let's use a different example. Spoiler alert, coming up.

If you have a \$100,000 procurement and \$50,000 worth of that procurement is manufactured by small business, you can go ahead and set it aside, without asking SBA for a waiver. That would comply with the non-manufacturer rule.

However, option two – if more than 50% of the total estimated contract value is manufactured by large – or I should say, other than small business – then you will need to obtain an NMR waiver so that at least 50% of the remaining total value – the items not covered by the NMR waiver – are manufactured by small business.

So that's a little bit confusing, so we're going to go to the next slide, with some examples, so you see how that plays out.

Jan: I like the emphasis you placed on those two particular points by having the train horn!

Roman: Yeah, yeah. So we have the train – we still have trains in America. It's good to hear one.

Jan: So we're going to slide 30 now.

Roman: Yes. So let's work through a couple of examples on a multi-item procurement. So, Example 1 – we have a total contract value of \$1 million. And \$500,000 worth of that contract is manufactured by small business. What does that mean? That means that we are good to go. We have satisfied the non-manufacturer rule. 50% of total contract value is manufactured by small business, even though the rest of it isn't, that's okay. Under the NMR, we are good to go. Since we have 500 items, or whatever, adding up to \$1 million and half the value is made by small business – so we are good to go.

Now, in Example 2 – here we have a total contract value of \$1 million. We found out that \$200,000 worth of that contract is manufactured by small business. The

contracting officer goes ahead and obtains NMR waivers for \$200,000 of the remaining value. So we've got \$1 million. And, under the rule, we take out whatever has been waived. So that's \$800,000. So we are not okay here. This does not comply with the NMR, because we have \$800,000 of the total procurement not covered by a waiver. \$200,000 of that \$800,000 is manufactured by small business, and that's only 25%. That is under the 50% threshold.

Now, let's look at Example 3 – here we have again a \$1 million contract. We now have \$300,000 that is manufactured by small business. And the contracting officer here, has come to SBA and obtained NMR waivers for \$400,000 of the remaining value, that which wasn't made by small business. Now, are we okay? Yes, we are good to go here. We take the amount out of the total dollars that was covered by a waiver. So we have \$1 million. The contracting officer got NMR waivers for \$400,000, which leaves us with \$600,000 left, which is not covered by waiver. Of that \$600,000, we have \$300,000 made by small businesses. That's 50%. That hits our threshold. And we're okay. We can go ahead with our procurement.

I know it's a little bit confusing, and there is some math involved. That's the way it is written. You take the amount covered by a waiver out of the total dollar amount and see what proportion left is made by small business. And if it is 50%, or higher, you're good to go. If it is under, that means basically that you need to get more waivers till you get to that 50% number.

So that was individual waivers to the NMR that we just talked about for the last 10-15 minutes. Now we are going to talk about class waivers to the NMR. Now class waivers are sort of across-the-board waivers. Once they have been established, they apply to any procurement that comes along as long as they cover that same class of products.

We keep a list of this here at SBA, and I will get you that a little bit later on, but these are across the board. These are not one-time . They apply to any procurement.

A class waiver is justified – this is the standard for class waiver – we will establish a class waiver when no small business manufacturers are available to participate in the federal market for a class of products. In the coming slides, I will discuss what it means for class of products, available to participate.

Just so you know, the federal market essentially means the entire US. There is a possibility of geographically dividing a federal market based on the kind of product, but I've never come across it, and I don't know how that would work. So essentially, the federal market is the entire United States.

So what is a class of products? “Class of products” refers to an individual subdivision within a NAICS Industry number. For practical purposes, SBA uses a combination of the NAICS code, the Product Service Code, and an item description to identify the “class of products” for a class waiver. The idea here is just to give the contracting officer a clear idea of what is covered by a class waiver. So they can look at the NAICS code, see if it matches up with the PSC and the item description, and then they are good to go.

However, I want to emphasize the class waiver does not apply to an entire NAICS code. A class waiver doesn't even apply to an entire Product Service Code. A class waiver only applies to that class of products which is defined by the NAICS code. Within the NAICS code, the Product Service Code – and within that, also the item describe. The item description that we have. So it is narrowly applied.

So just because you have a NAICS code that is on our class waiver list, and your procurement has that NAICS code – that doesn't mean you're okay. Because you're going to have to look at what the item description says. Because we know that NAICS code has thousands, even tens of thousands, of items under it. And only a specific subset of that will be covered by class waiver.

What does it mean for a firm to be “Available to participate?” So, available to participate means that small business contractors have performed, been awarded, or even just submitted an offer on a federal government contract for the class of products within the last 24 months. So this is a very high standard.

If just one small business manufacturer has even just submitted a bid for a solicitation concerning the item in question in the previous 2 years, then that means that SBA has to deny the class waiver request. So one firm – ABC, Inc. – a year and a half ago they submitted a bid on a federal contract for this class of products. Even if it wasn't awarded, or it wasn't taken seriously, under our regulations that will defeat the class waiver request.

So what are the procedures for requesting and establishing a class waiver? Any government agency – including the SBA, a business association, a member of private industry or any interested party can request a NMR class waiver. It must include a description of the class of products to be waived – again, that is going to be a NAICS code, PSC, item description – and detailed information on efforts to identify domestic small business manufacturers for the class of products.

We don't have a standard format for what a class waiver should look like. We don't have a list of items, like we have for individual waivers of every single thing we have in there. Typically we receive a fairly detailed request memo in a number of attachments or exhibits to that memo, showing us detailed information on

efforts to identify small business manufacturers. Again, I can't emphasize enough how detailed it should be. Because since that standard is so high, and we receive a very low detail request – then we are going to have to do a ton of market research to determine whether any small business has been awarded a contract on that class of products in the last two years. And that is just going to slow down the time that it takes to process that class waiver request.

Once we received the initial class waiver request, as long as it meets the standards that we have established, and it looks like it has made some detailed efforts to find small business manufacturers, SBA will conduct its own market research to make the same determination whether any small business manufacturers received a contract on the class of products within the prior 24 months.

If no small business manufacturers are found initially, then we publish the initial notice in Fed Biz Ops and the Federal Register announcing intent to establish class waiver. We then open it up for public comments. That public comment period will be at least 15 days. If at the end of the public comment period, we don't receive any information on a small business manufacturer that has been awarded or submitted a bid in the last 24 months, then we will grant the class waiver.

If we receive information that there is a small business out there that was awarded or even just submitted a bid on a federal government contract for that class of products, within the last two years, then we will deny the class waiver.

So, a class waiver to the non-manufacturer rule has no time limitation. So once we establish a class waiver, it is in place until it is removed. So, when would a class waiver be removed? SBA will periodically review existing class waivers to determine if there are now small business manufacturers for that class of products. Also, any interested parties, member of industry, or contracting officer can also request a review and termination of a class waiver.

We would go through, then, a market research to again see if any small business was awarded or bid on a government contract, in the last two years for that class of products. If we find one, then we go back through the whole thing – notice in the Federal Register of intent to terminate class waiver, public comment period – if no public comments show up otherwise, we would then do a final Federal Register notice terminating or removing the class waiver.

So existing NMR class waivers requests and attachments to the NMR program can be found at the following link. I want you to know that this is not the most perfect or up-to-date list. The emphasis in our program is to get this refreshed as

early as possible, in fiscal year 2018. That is the correct link, but it is not 100% up to date. We are looking at reformatting and updating it as soon as possible.

And please do make sure to keep track of class waiver terminations, and always check the list for up-to-date class waivers before you assume that you can set aside a procurement for small business because it is a class waiver. Because it could have changed in the past year, month, or week.

I'll just let you know, for example, that current list has a class waiver for rubber gloves. But about four or five months ago, we terminated that class waiver, because we discovered a small business manufacturer of rubber gloves in New Hampshire, which bid on a federal government contract, in the last year. So that's something to keep in mind – that list can change.

This next slide is more about convenience for our office. As I said earlier, all NMR waiver requests, whether individual or class, should go to the shared mailbox at [nmrwaivers@sba.gov](mailto:nmrwaivers@sba.gov). For individual waivers, we really appreciate if you would put the solicitation number, or equivalent ID code in the subject line, and the agency abbreviation. That's just for our record-keeping purposes. You know, we get a lot of these and it's just easier to incorporate the incoming, the messages and the correspondence, if we have that full solicitation number in the subject line.

Likewise for class waivers, you do the same thing. But instead of using the solicitation number in the subject line, you use the NAICS code, the Product Service Code, and a description of the product, for example.

That is all that I have today. So we are just about at the last 10 minutes. And I am more than happy to open it up for questions at this time.

Jan: Thanks, Roman. That was a lot of information. And we have received a number of questions. Debbie – have you been able to receive those questions?

Roman: I have not. You can go ahead and read them to me.

Deborah: Yes, Jan. I have them. Right now we have a total of five questions, Roman, and they are still coming in. Can you hear me okay?

Roman: Can you please speak up a little bit?

Deborah: Okay, what about now? Is that better? Question number one ... (indiscernible)... \$150,000, even though the non-manufacturer rule does not apply, does the small business concern have to supply a domestic product?

Roman: I hate to be evasive, but I don't know if that is an NMR issue. And I don't feel equipped to answer it. That would seem to be maybe a "Buy America Act" question, or another issue. There are other rules at play. Unfortunately, my expertise is really only on the non-manufacturer rule, and whether it applies or not. Once it doesn't, if there are other procurement laws and regulations in place that you need to follow – I would refer to either another subject matter expert, or your procurement attorneys, for that question.

Deborah: Okay, thank you Roman. The next question – and this is for classification purposes – if you have a... (indiscernible)... of less than \$150K, the NMR does not apply and the procurement agency cannot... (indiscernible)... from any manufacturer. If the NAICS or PSC code has already been determined, that no small business manufacturer is expected to (supply?) the product?

Roman: So I think there are two questions going on there. If you are under \$150,000, yes, you can do a small business set-aside. And the small business, for an (?) supply contract, and a small business can provide an item made by a business of any size.

Now, if you are talking about the NAICS and PSC code, I am assuming that you are referring to the class waiver. If a class waiver is in place, and you determine that what you are going to be procuring falls within that class waiver, then that would also be a reason that you could set it aside. Without coming to SBA for a waiver.

However, if it's over \$150,000, and there's a class waiver in place, you would need to publish that class waiver with the solicitation. You would need to notify all potential offerors that there is a class waiver in place.

If it's under \$150,000, you don't need to do that. You could just set aside. Because you would be outside of the NMR, at that point.

Deborah: Okay, thank you. The next question – would it be fair to assume that every product that is listed on the GSA schedule provided by a small business manufacturer, that the NMR has been satisfied? Or is a waiver required?

Roman: Well, if you are obtaining a product directly from a small business manufacturer, then you have definitely satisfied the NMR. Because even if it's set aside for small business, and the small business is not the manufacturer itself, but it is going to be providing you with something made by a small business manufacturer? Then you have satisfied the NMR. As long as the awardee is, again, going back to our earlier requirements – less than 500 employees, takes ownership or possession, and is a legitimate reseller.



So those are the sort of four general requirements of the NMR. So if you are on a GSA schedule, and you find an actual small business manufacturer – then, yeah, you would be satisfying the non-manufacturer rule.

If you are acquiring directly from a small business manufacturer, then you would not even need the non-manufacturer rule because you would just be getting something directly from the manufacturer.

Deborah: Okay, thank you. You had mentioned, in your presentation, the SBA regulation currently states that \$150K is an applicable threshold for... (indiscernible)... NMR. But the agencies are wanting to know, what are they to do with the \$25,000 language that's included in FAR 52.219-6?

Roman: Yes, so as I mentioned briefly in my presentation, the FAR, is out of date. So, the SBA is the agency in charge of administering the non-manufacturer rule. I can tell you right now, as the Point of Contact for the non-manufacturer rule – the non-manufacturer rule does not apply to any procurement under \$150,000.

So if you are between those 25,000-\$150,000 numbers, I understand that the first point of reference is the FAR. But the FAR is not the governing regulation for this rule. The CFR is the governing regulation for this rule. So under the CFR, you do not need a waiver. If it is under \$150,000.

We have corresponded with contracting agencies and officers over the past year or so, after the change was made in the CFR. We are happy to continue to do so. But I would just emphasize that the governing regulation is the CFR. Under the CFR, the threshold is \$150,000, not \$25,000. So if you are having difficulty convincing a supervisor, or anyone, I would be happy to contact them and correspond with them directly and explain to them that the governing rule, the governing regulation, is the CFR. And that threshold has been changed to \$150,000.

Deborah: Thank you, Roman. How often are the NMR class waivers terminated? Or if they are terminated?

Roman: Well, I can only speak to as long as I have been here. But we have had one this fiscal year. I don't know – I can't really say – for sure how often they have been, in the past. I would have to go through the Federal Register and look at that. I haven't done that, honestly. So I wouldn't hazard a guess.

All I can say is that it is something that can and probably will, continue to happen. As small businesses come in and out of existence. And decide to go into the federal contracting sphere. So it's a possibility, it is always a possibility. However,

keep in mind that it won't affect your procurement until it is finalized. So if we get a request to terminate a class waiver on October 4th, 2017 – it is going to take some time for us to do the research.

And then once we finish that, we have to publish a notice of intent in the Federal Register. And then we have to allow a comment period. And then you have to publish a (FAR?) notice. So if you're keeping track of it, it could still take some time, even when we first get the request in.

So, I wouldn't worry about it as an immediate concern, if your procurement is something that is going through, right now. I can say that we don't have any terminations in process at the moment. But it is something to keep in mind and keep an eye on. Because it is something that could potentially change.

Deborah: Okay, thank you. Next question is in reference to slide #30. They want you to please review the... (indiscernible)... in slide #30.

Roman: Sure, the multi-item procurement? Absolutely. So we have here, a total contract value of \$1 million. \$300,000 is manufactured by small business. The contracting officer obtains NMR waivers for \$400,000 of the remaining value. So the way this works in a multi-item procurement, is you take out, you remove, the amount that was waived. That was covered by waiver. In this case, that's \$400,000. So if you take \$400,000 out of the million, you get \$600,000.

The question then is, what percentage is manufactured by small business? We have to get to at least 50%. In this example, it says that \$300,000 was manufactured by small business. So that is half of the \$600,000 that we get when we take out the \$400,000 that was covered by waivers.

I know this is really a lot of words. We are trying to get to sort of a mathematical thing. But, basically, as simply as possible – you get waivers on a certain amount. You remove that from the equation. Whatever is left, you then have to calculate what percentage is made by small business. In this case, it was 50% of what was left, and that is the requirement, per the reg. We have \$300,000 made by small business out of \$600,000 not covered by a waiver, which is 50%. So we are good to go.

Deborah: Okay, thank you. I hope that answers your question, but if you need further collaboration on that, Mr. Ivey will be able to assist you later on, by email. And we have one final question. It states – how does the (?) verify whether or not a small business satisfies the NMR conditions, on slide 12? This would be post solicitation during the evaluation of offers in this proposal.... (indiscernible)...

Roman: I am sorry, you are going to have to repeat that. I didn't catch some of the end, there.

Deborah: Okay, I think the question is, what if you have a situation, and there is a 50% requirement from kit assemblers? How would you handle that?

Roman: The kit assemblers, specifically?

Deborah: Yes, what about the 50% requirement for kit assemblers?

Roman: So it is the same math as what we just talked about. Again, I just want to say – I just want to flag this. I didn't really spend a lot of time on this kit assemblers slide. And the reason is that I was informed by our own procurement General Counsel, that they are not especially satisfied with the way this regulation is written, and they are thinking about changing it.

But, basically, you're just going to look at a small business that provides a kit. Again, the classic example is the First Aid Kit. They are going to provide a kit of pre-manufactured goods, assembled together and give it to you. You're going to have to get to 50% total value manufactured by small business. It's kind of similar to the multi-item procurement map, where you need to have 50% of the total value manufactured by small business, or get waivers to get to that amount.

I suppose you could do the same thing in a kit assembler. I think it's just – we haven't done a good job, unfortunately, in defining what exactly is a, "kit." So I'm not sure how that would apply. I can honestly say that I have never dealt with a kit assembler case. I don't know how that would play out. But I would just say that this is not something that comes about very often. But I would be happy to talk to the person with that question, after, by email. And even for the question of our own procurement attorneys to get more insight there.

Deborah: Okay, thank you Roman. And I will provide the name of that particular participant for you. I think we have one final question here that just came through. If it's a large business manufacturer, that issues an exclusive... (indiscernible)... confirm that NMR does not apply?

Roman: I'm sorry. Can you repeat that? I did not catch that.

Deborah: If a large business manufacturer issues an exclusive distribution letter, so then, regardless of the business size, does that concern NMR? That the NMR does not apply?

Roman: No, that would not mean that the NMR does not apply. The NMR applies based on those three qualifications, we had before. Small business set-aside on a manufacturing or supply NAICS code valued at above \$150,000.

The NMR applies always when (?) are made. Whether or not a large business manufacturer has an exclusive distribution agreement with a small business – that really doesn't get at what the non-manufacturer rule is looking at. I want to again emphasize, in the non-manufacturer rule, we're trying to figure out who makes the item. And if a small business makes the item.

What I think this person is asking me, is if they have a brand name only requirement, and they want to get it straight from a large business – well, in that case, as I said in one of my slides, they can provide a Limited Sources Justification.

But just because a large business manufacturer has an exclusive distribution agreement with a small business distributor – that does not mean that the NMR does not apply. If it's above \$150,000, the NAICS code is a manufacturing and supply NAICS code, and it sets aside for small business – then the NMR applies.

Jan: Okay, Roman, I really appreciate your speaking with us today. And, Deborah, I appreciate your going through those questions. I know we got a lot of questions from people. And I apologize if we didn't get to everybody. But we will meet you again, next month. When our program will be held on November 1. And we are anticipating the subject being the SBA Native American program, which is a topic we haven't had before. So we are hoping that you can meet with us again, as I said, next month on November 1. Thanks very much.

Moderator: Thank you for joining today's conference. The session has now concluded, and you may disconnect.

**[End of Recording]**