



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, DC 20416

May 8<sup>th</sup>, 2018

**VIA Email – Jayme.Defac@va.gov**

Jayme Defae  
Contract Specialist, Specialized Branch  
Network Contracting Office (NCO) 20  
US Department of Veterans Affairs  
5115 NE 82<sup>nd</sup> Avenue  
Vancouver, WA 98662

**RE: SOLICITATION 36C260-18-Q-0088**

Dear Jayme Defae,

This letter is in response to your request dated May 2, 2018, sent via electronic mail for an individual waiver of the Nonmanufacturer Rule (NMR) under NAICS Code 339113 to allow a set-aside for small business for the proposed acquisition. Based on the justification below, a waiver of the NMR is hereby established for a one-time purchase of Continuous Positive Airway Pressure/Bilevel Positive Airway Pressure (CPAP/BiPAP) supplies under solicitation number 36C260-18-Q-0088.

The request for an individual waiver of the NMR is approved. An explanation of the determining factors follows.

The waiver of the NMR on an individual procurement is provided for in section 8(a)(17) of the Small Business Act, 15 U.S.C. § 637(a)(17), and section 121.406(b)(5) of title 13 of the Code of Federal Regulations, 13 CFR § 121.406(b)(5). At a minimum, an individual NMR waiver request must include the specific item to be waived, why the specific item is required, the proposed solicitation number, the NAICS code, the dollar amount of the procurement, a brief statement of the procurement history, and a Statement of Work (for contracts expected to exceed \$500,000). 13 CFR § 121.1204(b)(1).

Your waiver request includes all of the above information.

In addition, the contracting officer must provide a determination that no small business manufacturer can reasonably be expected to offer the product(s) required under the solicitation. This determination must be supported by a narrative of market research and supporting documentation. 13 CFR § 121.1204(b)(1)(iii).

You claim that no small business manufacturer can meet the specifications of this solicitation. In support of this claim, your recent market research included a search on AbilityOne, Federal Prison Industries, and Vetbiz that revealed no manufacturers of the products sought. In addition, a sources sought notice on Federal Business Opportunities website also failed to reveal small business manufacturers of the products.

Thus, an individual waiver of the NMR is justified.

This waiver applies only to this one-time award and does not apply to modifications outside the scope of the contract or other procurement actions. The effect of this waiver is to allow an otherwise qualified small business to supply the product of an other-than-small manufacturer or processor on this intended small business set-aside contract. However, it must be emphasized that this waiver of the NMR **does not waive other legal requirements** applicable to Government procurements, such as the Buy American Act and the Trade Agreements Act.

Please also note that this individual waiver will expire on May 8, 2019. If you need an extension, please contact our office.

If you have any questions or require any additional information, please contact Carol J. Hulme of my staff at (202) 205-6347.

Sincerely,



David Wm. Loines  
Acting Director  
Office of Government Contracting