



U.S. Small Business
Administration

Office of Government Contracting and Business Development | 409 3rd Street SW | Washington DC 20416

April 19, 2023

VIA EMAIL: Peter.Kim33@va.gov

Mr. Peter Kim, Contracting Officer
U.S. Department of Veterans Affairs, NCO 22
4811 Airport Plaza Drive, Suite 600
Long Beach, CA 90815

RE: Solicitation No. 36C26223Q0750

Dear Mr. Kim:

On March 21, 2023, the U.S. Department of Veterans Affairs (VA), NCO22, submitted a request to the U.S. Small Business Administration (SBA) for an individual waiver of the Nonmanufacturer Rule (NMR) for the purchase of Meal Delivery Carts. The applicable North American Industry Classification System (NAICS) code for this procurement is 333241, *Food Product Machinery Manufacturing*, and the estimated value of this procurement is \$141,835.26.

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 C.F.R. § 121.406(b)(5). The NMR applies to socioeconomic categories for contracts valued above the micropurchase threshold as well as for socioeconomic categories and small businesses above the simplified acquisition threshold. 13 C.F.R. § 121.406(c). 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 C.F.R. § 121.1204(b)(1).

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 C.F.R. § 121.1204(b)(1)(iii).



According to your submission, the VA has a requirement for Meal Delivery Carts to be used by VA hospital staff to transport food from the kitchen to patients in the hospital. The carts must meet salient characteristics in terms of size, material, number of food trays they can hold, sound dampening construction, and other features to meet the VA's requirements. Market research methods included contact with known manufacturers of carts meeting these requirements and a search on SBA's VetCert Search Tool to locate SDVOSB-certified firms. VA received confirmation from one of the known manufacturers, Aladdin Temp-Rite, that there are only three manufacturers in the patient meal delivery system category: Aladdin Temp-Rite, Cambro Manufacturing and Dinex/Carlisle Food Service Brands. All three are other-than-small businesses. The VA's market research found twenty-three SDVOSB-certified firms who sell food transport carts, but none are made by small business manufacturers. Two of the SDVOSB-certified firms have verified that they can provide the items as distributors.

As the VA has demonstrated no small business can meet the specifications of the contract as a manufacturer, an individual waiver is appropriate in this instance. This individual waiver applies to this one-time award only and does not apply to modifications to the scope of the contract or other procurement actions. Modifications determined by the contracting officer to be within the scope of the contract will require an additional waiver. 13 C.F.R. § 121.1203(b).

This individual waiver is good for the duration of the contract provided that it does not exceed five years. At the end of the fifth year, whether the contract is in the base period or an option period, the agency must submit and receive a new waiver before entering into the contract's sixth year.

This waiver must be published with the solicitation so that potential offerors are aware of the waiver and the specific product(s) covered. 13 C.F.R. § 121.1206. 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 SDVOSB 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.

This individual waiver must be used within one year of issuance. If that time period expires, the agency may request a waiver extension by contacting nmrwaivers@sba.gov. **Please inform SBA of the date you enter a contract using the waiver, the contract number, and the actual dollar value of the contract.** Should you have any questions or require any additional information, please contact Ms. Yuri Dyson of my staff at 503-593-4138 or yuri.dyson@sba.gov.

Sincerely,

For
Wallace D. Sermons, II
Deputy Director
Office of Government Contracting

