



December 2023

SMALL BUSINESS CONTRACTING

SBA Could Improve Oversight of Individual Waiver Requests to the Nonmanufacturer Rule

GAO Highlights

Highlights of [GAO-24-106196](#), a report to congressional requesters

Why GAO Did This Study

Congress has established set-aside programs that require federal agencies to offer contracting opportunities to small businesses. Some policymakers have raised questions about whether nonmanufacturer rule waivers are reducing federal contracting opportunities for small manufacturers.

GAO was asked to examine SBA's recent reviews of nonmanufacturer rule waiver requests. There are individual and class waivers, and this report focuses on individual waivers. This report examines (1) the number of individual waiver requests and their likely effect on small businesses and (2) SBA's policies and procedures for reviewing individual waiver requests. GAO reviewed the data reliability of a nongeneralizable sample of 67 waiver requests in SBA's electronic waiver log for fiscal years 2017–2022 (chosen to include a range of decision statuses for requests from selected agencies) and analyzed SBA's review process documented in the associated files for a subset of these requests. GAO interviewed officials at SBA and the Departments of Defense, Veterans Affairs, and the Interior (selected to account for the volume of waiver requests and a variety of outcomes). GAO also interviewed representatives from three industry associations with expertise in federal contracting.

What GAO Recommends

GAO recommends that SBA develop policies and procedures to (1) review the accuracy of entries in its nonmanufacturer rule electronic waiver log and (2) inform how management should review proposed waiver decisions. SBA concurred with both recommendations.

View [GAO-24-106196](#). For more information, contact Daniel Garcia-Diaz at (202) 512-8678 or GarciaDiazD@gao.gov.

December 2023

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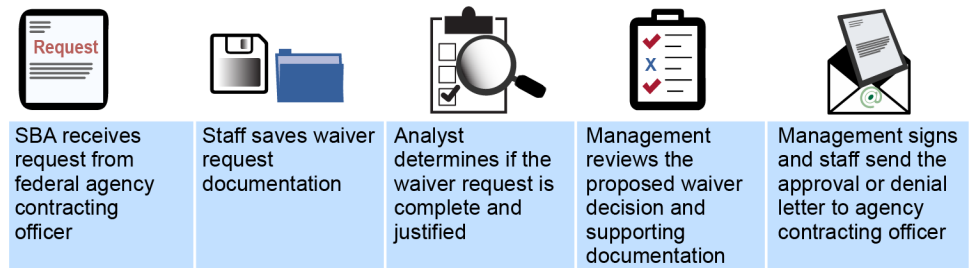
SBA Could Improve Oversight of Individual Waiver Requests to the Nonmanufacturer Rule

What GAO Found

The nonmanufacturer rule allows federal agencies to award contracts to small business contractors to supply products manufactured by another small business if the contractors do not manufacture those products themselves. If no small business manufacturers exist, federal agencies can request from the Small Business Administration (SBA) a nonmanufacturer rule waiver to allow a small business to supply the product of any sized manufacturer (see figure).

SBA data indicated that from fiscal years 2017 through 2022, agencies submitted approximately 670 waiver requests, roughly 80 percent of which were approved. Given the relatively small number of NMR waiver requests SBA has approved in recent years, stakeholders believed the effect of waivers to be limited. GAO could not determine the effect of these waivers as data in SBA's electronic waiver log on the number of approved requests were inaccurate or incomplete. Some log entries did not match underlying documentation and some status fields did not accurately indicate waiver request denial or approval. SBA officials told GAO they do not conduct scheduled quality reviews of the electronic waiver log. By developing policies and procedures for ensuring the reliability of its waiver request data on a scheduled basis, SBA would have more reasonable assurance that it has reliable data for reporting on and assessing the operation of its NMR program.

SBA's Process for Reviewing Requests for Waivers of the Nonmanufacturer Rule



Source: GAO analysis of interviews and Small Business Administration (SBA) policies and procedures. | GAO-24-106196

Additionally, SBA does not have policies or procedures describing how management is to review its analyst's decisions. SBA's guidance requires SBA to review certain types of information in waiver requests, but over half of the 12 approved waiver requests GAO analyzed did not contain evidence showing that analysts reviewed each required component. SBA stated that the analysts may have reviewed the components but not saved documents into the waiver request files. However, SBA was unable to provide support for this claim. By developing policies and procedures to inform management review, including which documents management should review to verify analysts' justification of waiver request decisions, SBA would have greater assurance that these decisions are sound and consistent.

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Abbreviations

FAR	Federal Acquisition Regulation
FPDS	Federal Procurement Data System
FY	fiscal year
HUBZone	historically underutilized business zone
NAICS	North American Industry Classification System
NMR	nonmanufacturer rule
OIG	Office of Inspector General
SBA	Small Business Administration
SOP	standard operating procedure

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December 14, 2023

The Honorable Roger Williams
Chairman
Committee on Small Business
House of Representatives

The Honorable Blaine Luetkemeyer
House of Representatives

A key responsibility of the Small Business Administration (SBA) is to oversee programs that assist small businesses in meeting the requirements for receiving federal government contracts. Among these are small business set-aside programs that require federal agencies to offer contracting opportunities to small businesses. Specifically, federal agencies must set aside certain contracts for small businesses to compete if a product the agencies need is manufactured by a small business and if they can identify two or more responsible small businesses that can provide the product at a reasonable price.¹ In cases where a small business contractor does not manufacture or process a given product, a related rule and waiver process provide federal agencies with additional options.²

The nonmanufacturer rule (NMR) allows federal agencies to award contracts to small business contractors to supply products manufactured by another small business if the contractors do not manufacture those products themselves.³ If no small business manufacturers exist, federal

¹Generally, in order to be awarded a small business set-aside contract or a contract set aside for certain socioeconomic programs, a small business may not pay more than 50 percent of the amount paid by the government for contract performance to subcontractors that are not similarly situated entities. 15 U.S.C. § 657s. A similarly situated entity is a subcontractor that has the same small business program status as that which qualified the prime contractor for the award and is considered small for the size standard under the North American Industry Classification System (NAICS) code the prime contractor assigned to the subcontract.

²As explained later in the report, there are individual and class waivers. This report does not discuss class waivers. In this report we use the term “waivers” to mean individual waivers.

³The NMR provides an exception to limitations on subcontracting. Certain contractors under supply contracts that meet certain requirements may provide items that they did not manufacture—as long as those products come from another small business in the United States or SBA grants a waiver of the requirement. 15 U.S.C. § 637(a)(17).

agencies can request a waiver from SBA, allowing a small business to supply the product of any sized manufacturer.⁴ Some policymakers have raised questions about whether NMR waivers are reducing federal contracting opportunities for small manufacturers.

You asked us to review issues related to waivers of the NMR. This report examines (1) the number of NMR waiver requests SBA received from federal agencies in fiscal years (FY) 2017 through FY 2022 and the likely effects of approved waivers on the number of contracts going to small businesses and (2) SBA's policies and procedures for reviewing NMR waiver requests. Additionally, appendix I discusses the information selected federal agencies used to prepare NMR waiver requests.

To address our first objective, we reviewed a nongeneralizable sample of 67 NMR waiver requests submitted to SBA by selected agencies as recorded in SBA's electronic waiver log from FY 2017 through FY 2022—the most recent data at the time of our review. We reviewed the data entered in the log as well as SBA's files containing the underlying documentation for each waiver request. We selected requests from the Defense Logistics Agency, Department of the Army, Department of the Interior, Department of the Navy, and Department of Veterans Affairs because these agencies submitted a relatively large number of NMR waiver requests or received a variety of waiver approvals, denials, and withdrawals.⁵ As discussed below, we found that data in the log were not sufficiently reliable for us to determine trends regarding any of the data fields we reviewed. In addition, we reviewed SBA's methodology for calculating annual Small Business Procurement Scorecard grades.⁶

⁴15 U.S.C. § 637(a)(17)(B)(iv).

⁵To assess the reliability of the data in SBA's waiver log, we compared whether data recorded in SBA's electronic waiver log for key data fields in a 10 percent sample of log records matched the information in the underlying documentation for those waiver requests. These data fields included the (1) fiscal year of the request, (2) solicitation number, (3) requesting agency, (4) date of SBA's decision, (5) NAICS code of item, (6) description of item, (7) status of request, and (8) estimated dollar value of the corresponding contract. We found the log data were sufficiently reliable for reporting the overall numbers of waiver requests but not for reporting on trends in waiver request approvals or trends in characteristics of the items for which waivers were being requested.

⁶The annual scorecard is an assessment tool for SBA to measure how well federal agencies reach their small business prime contracting goals. See GAO, *Small Business Administration: Actions Needed to Improve Confidence in Small Business Procurement Scorecard*, [GAO-18-672](#) (Washington, D.C.: Sept. 27, 2018).

To address our second objective, we reviewed SBA's guidance and training documents related to NMR waiver requests. We reviewed SBA's underlying files of documents for 24 of the 67 waiver requests in our sample, selected to include a mix of approvals and denials for each fiscal year. We conducted interviews with SBA officials and reviewed relevant regulations.⁷ We also compared SBA's procedures for reviewing waiver requests against federal internal control standards.⁸

For both of our objectives, we interviewed SBA officials and contracting officers from the selected federal agencies, representatives from three industry associations that represent small business government contractors, and one government contracting industry representative. Appendix II includes additional information about our objectives, scope, and methodology.

We conducted this performance audit from August 2022 to December 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The Small Business Reauthorization Act of 1997 set an annual government-wide goal of awarding at least 23 percent of prime federal contracts to small businesses.⁹ To help meet this goal, SBA consults with and establishes annual small business contracting goals for each federal agency. SBA is responsible for coordinating with executive branch agencies on this goal, and agency heads are responsible for achieving small business goals for their agencies. SBA issues each agency an

⁷13 C.F.R. § 121.1204(b); and Federal Acquisition Regulation (FAR) 19.505(c)(4).

⁸GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014). The internal control principle significant to these objectives was that management should establish control activities through policies.

⁹The Small Business Reauthorization Act of 1997 amended the Small Business Act. Pub. L. No. 105-135, § 603(b), 111 Stat. 2592, 2632 (codified, as amended, at 15 U.S.C. § 644(g)(1)). Prior to the Small Business Reauthorization Act of 1997, the Business Opportunity Development Reform Act of 1988 amended the Small Business Act to establish an annual government-wide goal of awarding at least 20 percent of prime contract dollars to small businesses. Pub. L. No. 100-656, § 502, 102 Stat. 3853, 3881. A prime contract is awarded directly to a contractor by the federal government. Prime contractors award subcontracts to other businesses.

annual Small Business Procurement Scorecard, which SBA uses to assess how well federal agencies reach their small business contracting goals.¹⁰

As noted earlier, the NMR allows small business contractors to supply products manufactured by another small business if the contractors do not manufacture those products themselves. To qualify as a small business nonmanufacturer, a small business must

- not exceed 500 employees;
- be primarily engaged in the retail or wholesale trade;
- normally sell the type of item being supplied;
- take ownership or possession of the item with its personnel, equipment, or facilities in a manner consistent with industry practice; and
- supply the end item of a small business manufacturer, processor, or producer making their products in the U.S.

The NMR applies to federal manufacturing and supply contracts for certain products and within certain small business programs. The NMR only applies to products under North American Industry Classification System (NAICS) codes in manufacturing and software (but not subscription or remote software) and to an Information Technology Value Added Reseller that meets an 150-employee limit.¹¹ Additionally, the NMR applies to set-aside programs, including small business set-asides, socioeconomic set-asides, partial set-asides, certain sole-source

¹⁰SBA does not consider NMR waivers in its scorecard methodology.

¹¹These descriptions correspond to NAICS codes in Sectors 31–33, Sector 511210, and Sector 541519, footnote 18, respectively. NAICS is the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. NAICS was developed in conjunction with the Office of Management and Budget and adopted in 1997 to replace the previous Standard Industrial Classification system.

contracts, and set-asides of orders against a multiple award contract.¹² The NMR is applicable to socioeconomic set-asides valued above the micropurchase threshold, and to small business contracts above the simplified acquisition threshold.¹³

Federal contracting agencies can request that the requirement that a small business supply the product be waived for selected products if no small business manufacturers exist that can meet the contract requirements.¹⁴ Two types of NMR waivers exist:

- **Individual waivers.** SBA may issue an individual waiver when the contracting officer has determined there is no small business manufacturer or processor that can reasonably be expected to meet the requirements of a specific solicitation.¹⁵ Individual waivers are contract- and product-specific, must be used within 1 year of issuance, and expire at the end of the contract.¹⁶ Contracting officers (the federal agency officials authorized to execute, modify, or

¹²The set-aside groups include 8(a) businesses, service-disabled veteran-owned small businesses, women-owned small businesses, economically disadvantaged women-owned small businesses, and historically underutilized business zone (HUBZone) Businesses. The 8(a) program is a 9-year program created to help firms owned and controlled by socially and economically disadvantaged individuals. Businesses that participate in the program receive training and technical assistance designed to strengthen their ability to compete effectively in the American economy. The HUBZone program helps small businesses in distressed communities designated as HUBZones gain preferential access to federal procurement opportunities by employing residents of and maintaining a "principal office" in one of these specially designated areas.

¹³A micropurchase is an acquisition of supplies or services, the aggregate amount of which does not exceed the micropurchase threshold. There are different micropurchase thresholds for supplies, construction, and services. The NMR does not apply below the micropurchase threshold because contract provisions of the Small Business Act do not generally apply to micropurchases. The micropurchase threshold for supplies is currently \$10,000, with exceptions as noted in FAR 2.101 or other agency supplements. The simplified acquisition threshold is the anticipated award amount of a contract under which contracting officers are directed to use simplified acquisition procedures to solicit and award the resulting contracts. The simplified acquisition threshold is currently \$250,000, with the exceptions as noted in FAR 2.101 or other agency supplements.

¹⁴See 15 U.S.C. § 637(a)(17), 15 U.S.C. § 657s(a)(4), and 13 C.F.R. §§ 121.1201 - 121.1206 for the statute and regulations governing waivers to the NMR.

¹⁵Prior to granting a waiver, SBA reviews and accepts the contracting officer's determination. 13 C.F.R. § 121.406(b)(5)(i).

¹⁶A waiver expires 1 year after SBA grants the waiver. Where a contract is not awarded within 1 year, the agency must come back to SBA with revised market research requesting that the waiver be extended.

terminate a contract) may request an individual waiver for more than one product on a contract.¹⁷

- **Class waivers.** A class waiver authorizes SBA to waive the NMR for products under a specific NAICS code for which there are no small business manufacturers or processors available to participate in the federal procurement market for that class of product. SBA may issue a class waiver when no small business manufacturer has submitted an offer on a solicitation or performed or been awarded a contract for a specific class of products within the previous 2 years. Class waivers remain in place until SBA determines small business manufacturers or processors have become available to participate in the federal market or receives evidence that a small business manufacturer exists in the federal market for a waived class of products. SBA maintains a list of approved NMR class waivers on its website.¹⁸

In 2014, SBA's Office of Inspector General (OIG) issued a report noting it was unable to determine if SBA appropriately issued NMR waivers because of a lack of established procedures, missing files, and other deficiencies.¹⁹ The report found that between FY 2010 and FY 2013, SBA received 214 waiver requests and, of the requests received, SBA approved 81 percent of those waiver requests. The report also noted that, since the beginning of FY 2014, SBA officials had identified areas of improvement and had begun to make changes to improve the guidance and operating structure of this function.

SBA OIG's 2014 report made several recommendations to improve the efficiency and effectiveness of the program, including that SBA

- complete and publish the NMR waiver program's standard operating procedure (SOP);
- establish procedures to ensure that all data and memorandums developed by SBA during waiver request reviews were complete, accurate, and up to date; and

¹⁷For purposes of this report, the term contracting officials includes all officials involved in the contracting process, whether they are contracting officers, contracting officer representatives, or contracting specialists.

¹⁸Class waivers were not the subject of this review and are not discussed in this report.

¹⁹Small Business Administration, Office of Inspector General, *Evaluation Report: Opportunities Exist for the SBA to Improve the Monitoring of Non-Manufacturer Rule Waivers and Determine the Impact on Small Businesses*, Report Number 14-15 (Washington, D.C.: Aug. 14, 2014).

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- develop more structured and specific guidance that federal agencies use to understand the type of market research and required documentation needed to prove that no known small business manufacturer can meet the requirements outlined in the solicitation.

In response to these recommendations, in 2017 SBA drafted an SOP for the NMR program that formalized the procedures its staff are to follow for reviewing NMR waiver requests. SBA officials also noted in their response to the OIG report that its Office of Government Contracting's website contained detailed information for contracting officers on how to structure waiver requests to SBA, including what constituted market research. SBA management also noted that each federal agency structured market research according to the complexity of the items being solicited and that SBA could not mandate the type of market research an agency must perform.

Agencies Submitted Few NMR Waiver Requests, and the Effect of Approved Waiver Requests Was Likely Limited

Federal Agencies Submitted Few NMR Waiver Requests, but Some Waiver Request Data Were Missing or Incorrect

For the 6-year period we reviewed (FY 2017–FY 2022), SBA's electronic waiver log indicated that federal agencies submitted approximately 670 NMR waiver requests—an average of about 112 requests annually.²⁰ This represents a small number of requests relative to the approximately 102,000 federal contracts during this period that used small business set-

²⁰SBA staff use an electronic waiver log to maintain a record of NMR waiver requests. The log is an Excel spreadsheet maintained in an electronic file for each fiscal year. The data fields in the log varied by fiscal year but at a minimum were to include, according to SBA's NMR Program SOP, the solicitation number, requesting agency, contracting officer name, NAICS code of the item(s) for which the waiver is being sought, item description(s), and estimated dollar amount of the underlying contract.

aside programs.²¹ The Departments of Defense and Veterans Affairs submitted approximately 77 percent of these waiver requests. The Department of the Interior submitted approximately 5 percent.

SBA approved roughly 80 percent of waiver requests it received during FY 2017–FY 2022, according to agency data. However, as discussed later, this figure is not completely accurate. Contracts receiving waivers were for the purchase of products such as medical supplies and computer and communications equipment. According to SBA’s electronic waiver log and related documentation we reviewed, waiver requests were denied or withdrawn for a variety of reasons.²² These included ineligible products, requests below the simplified acquisition threshold, the identification of a small business manufacturer that could provide the product, or insufficient market research to justify the need for a waiver.

Our analysis of eight data fields in SBA’s electronic waiver log showed it contained some inaccurate or invalid entries. Of the 67 waiver request records we reviewed for FY 2017–FY 2022, 45 (67 percent) had one or more entries in the log that did not match the underlying documentation, including 27 (40 percent) that had two or more such entries.²³ These errors existed in records in each of the 6 fiscal years we reviewed, and in each of the fields we reviewed.

In addition, there were limited reliable data on whether requested waivers were approved during this period because SBA did not require its staff to update the log’s status field (e.g., as approved, denied, or withdrawn). In response to our raising this issue, SBA officials told us they began requiring this field to be completed as of FY 2023. Further, given the non-matching entries we identified in our analysis of the log data, we were

²¹This estimate of contracts was derived using Federal Procurement Data System (FPDS) data for FY 2017–FY 2022. The estimate is a count of actual federal contracts recorded in FPDS that were classified as awarded to small business set-asides for the NMR waiver NAICS codes during this period and does not include contract modifications. It may not include all contracts that were subject to the NMR and is for comparison purposes only.

²²SBA considers a waiver request to be withdrawn for a variety of reasons, including the procuring agency officials cancelling the solicitation, identifying a small business manufacturer, or being unresponsive to SBA’s follow-up questions. The use of withdrawal and denial decision statuses may have varied depending on the SBA coordinator who completed the log.

²³Log entries could not be matched with underlying documents in the files because documents were missing or had different data than what were entered in the electronic log.

unable to make any reliable statements about trends regarding any of the data fields we reviewed.

SBA officials told us the data were sufficiently reliable for their purposes—to capture waiver request activity, determine SBA’s resource needs, and help with SBA internal planning. However, SBA has used the electronic log data for more than these stated purposes. For example, in 2021 and 2022, SBA used these data to respond to two congressional inquiries about recent NMR waiver request activity, including the number of waivers requested and approved. In addition, SBA officials told us they plan to use waiver log data to track program statistics and waiver request status, which will help them consider program changes.

SBA’s SOP for the Nonmanufacturer Rule Program states that the Director of Government Contracting is to ensure that all data developed during the NMR waiver request review process are complete, accurate, and up to date. Further, the SOP states that the Director is to maintain a log of all NMR waiver requests considered in each fiscal year. However, SBA officials told us that, other than internal audits, there are no quality reviews of the log entries. Also, these reviews do not occur at a set rate of frequency.

By developing processes and procedures for ensuring accuracy and completeness of its NMR waiver request data on a scheduled basis, SBA would have more reasonable assurance that it has reliable data for assessing its NMR program and for reporting to Congress or others on waiver requests and their outcomes.

Waivers Likely Had Limited Effect on Small Business Contracting According to Stakeholders

While we could not determine the effect of approved waiver requests on small business contracting activity, stakeholders believe the effect to be limited. SBA does not have reliable, comprehensive data on whether requested waivers were approved. In addition, the Federal Procurement Data System (FPDS) does not include data on whether an approved waiver was used on a contract, further limiting the ability to assess the

effect of these waivers on small business contracting.²⁴ Further, none of the agencies in our sample maintained data on whether requested waivers were approved and used.²⁵

Some stakeholders and procuring agency officials we interviewed noted that NMR waivers benefit small businesses by increasing their contracting opportunities. However, given the relatively small number of NMR waiver requests SBA has approved in recent years, the effect of the waivers on small businesses is likely limited, according to agency officials. The contracting officials we interviewed who requested NMR waivers did so because their procurement strategies, such as purchasing a brand-name product through a mandatory small business source, needed a waiver to proceed or market research identified an opportunity to contract with small business nonmanufacturers. Some officials said NMR waiver requests are rare because waivers are not necessary for most of their procurements. For example, one contracting official said most of their office's purchases were below the simplified acquisition threshold, meaning the NMR did not apply. Additionally, contracting officials with one agency noted that requesting an NMR waiver is voluntary, adding that contracting officials can sometimes choose not to set aside a procurement for small businesses.

In fiscal year 2021, SBA began asking agencies that received NMR waivers to provide SBA with the date, contract number, and dollar value of the contract using the waiver. Most contracting officials told us they complied with SBA's request. SBA officials said they use this information for record-keeping and to respond to inquiries, such as whether a

²⁴The Small Business Act establishes minimum statutory contracting goals on a government-wide basis for small businesses as well as various socioeconomic subcategories of small businesses. The act also requires federal agencies to establish annual small business contracting goals that provide small businesses with contracting opportunities to the maximum extent practicable. 15 U.S.C. § 644 (g)(1). SBA negotiates annually with the 24 agencies that are subject to the Chief Financial Officers Act to establish individual agency goals that, in the aggregate, constitute government-wide goals. SBA is responsible for reporting on agencies' achievements toward meeting those goals, using data on federal contracts from FPDS. The NMR only applies to set-asides, and the goaling figures count all contracts regardless of whether they are set aside. However, as there is no data field in FPDS to indicate whether an approved NMR waiver was used for a contract, there is no mechanism to indicate whether NMR waivers were used in helping agencies to achieve those goals.

²⁵Contracting officials who had used their waivers told us they used them shortly after receiving approval from SBA. We refer to contracting officers, contracting officer representatives, and other agency officials we interviewed who are involved in contracting matters as contracting officials.

particular solicitation was granted a waiver. They said it will also allow them to report on certain characteristics of contracts with approved waivers.

SBA Policies Do Not Include Steps for Management to Ensure Waiver Request Reviews and Associated Documentation Are Complete

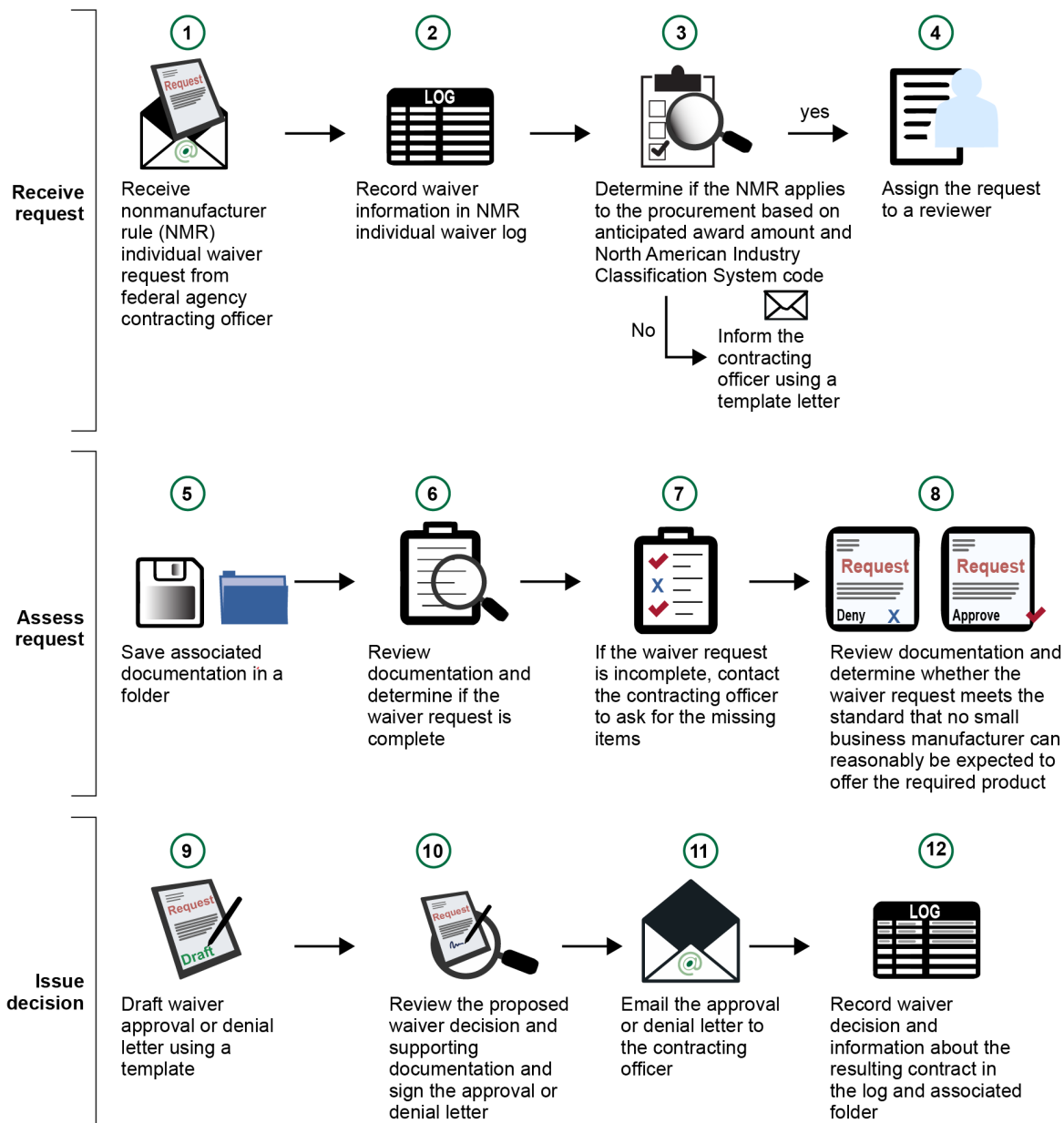
Federal Regulations and SBA Policies Describe NMR Waiver Request Review Procedures

To assess NMR waiver requests, SBA staff are instructed to follow a series of steps described by federal regulations and SBA guidance documents (see fig. 1). First, the NMR coordinator receives an NMR waiver request from a federal agency contracting officer. The coordinator records the request in the NMR waiver log, creates a file to store documents associated with the request, and saves those documents. An Area Director then assigns the request to an analyst, generally a Procurement Center Representative or other regional staff.²⁶ The analyst reviews the submitted documents for completeness and determines whether a waiver is justified based on the documentation. After making this determination, the analyst uses a template to prepare an approval or denial letter. The Area Director reviews the proposed decision and routes the draft letter to the Director of Government Contracting for further review and approval. The Director of Government Contracting then signs a letter communicating the decision and the NMR coordinator saves the

²⁶Prior to June 2022, the NMR coordinator reviewed all NMR waiver requests. SBA officials told us that in June 2022, they began to assign Procurement Center Representatives to review NMR waiver requests. According to SBA officials, as of June 2023, over 40 Procurement Center Representatives and other regional staff have been assigned to review NMR waiver requests. SBA employs Procurement Center Representatives to identify and facilitate small business contracting opportunities among federal agencies. These representatives help to implement SBA's Prime Contracts Program, which is intended to increase contracting opportunities for small businesses and help ensure that small businesses receive a fair and equitable opportunity to participate in federal contracts. Section 15(m) of the Small Business Act, as amended, states Procurement Center Representatives "shall increase, insofar as possible, the number and dollar value of procurements" for small business programs. 15 U.S.C. § 644(m).

letter to the waiver request file and sends it to the requesting contracting officer.

Figure 1: SBA's Process for Reviewing NMR Waiver Requests, as of June 2023



Source: GAO analysis of interviews and Small Business Administration policies and procedures. | GAO-24-106196

According to SBA officials, staff rely on four sources to inform their review of NMR waiver requests:

- **Federal regulations.** 13 C.F.R. § 121.406 and 13 C.F.R. § 121.1204 describe the procedures for requesting and granting waivers of the NMR. 13 C.F.R. § 121.1204 also contains a list of components that are required for NMR waiver requests.
- **Standard operating procedure.** SBA's SOP outlines the procedures for SBA staff to process requests for NMR waivers, as well as a general description of the characteristics of these waivers.
- **Desk guide.** The desk guide, located within the SOP, provides a step-by-step description of how SBA staff should respond to NMR waiver requests from receipt to decision and contains a list of required waiver request components.
- **Internal training.** Internal training slides for new reviewers describe the procedures to review NMR waiver requests and contain the list of required components described in federal regulations.

Federal regulations require contracting officers to provide the following components of an NMR waiver request:

- A definitive statement of the item to be waived and justification as to why it is required.
- The proposed solicitation number, NAICS code, dollar amount of the procurement, and a brief statement of the procurement history.
- A determination by the contracting officer that no small business manufacturer or processor can be expected to offer a product or products meeting the specifications required by the solicitation.²⁷
- A copy of the statement of work for contracts or orders expected to exceed \$500,000.

Per federal regulation, SBA will examine the contracting officer's determination and any other information it deems necessary to make an informed decision on the waiver request.²⁸ SBA's guidance provides

²⁷Federal regulations state that this determination includes a narrative describing market research and supporting documentation. 13 C.F.R. § 121.1204(b)(1)(iii). SBA's website lists market surveys, discussions with small business representatives, and the results of a search from SBA's Dynamic Small Business Search as types of documentation of market research.

²⁸13 C.F.R. § 121.1204(b)(4).

additional details for how staff are to review the components of a request, including types of evidence that may support the contracting officer's determination, and information about certain types of requests such as procurements of brand name products. SBA officials told us that staff can also reach out to the NMR coordinator or SBA legal counsel for further guidance. According to SBA officials, the SOP and desk guide provide guidance on internal procedures to review NMR waiver requests, and the desk guide is the working guide that provides more detail for SBA staff. Officials said the SOP and desk guide cite examples of documents that could demonstrate evidence of market research to support the contracting officer's determination, but they do not expect requests to contain all of these documents.

Selected Waiver Request Files Did Not Contain Evidence of Review of Some Required Components

SBA did not adequately ensure that its NMR waiver request decisions were reviewed for required components. Under federal regulations, SBA is to approve a waiver request for an item in a solicitation after reviewing and accepting a contracting officer's determination that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications described in a solicitation.²⁹ These regulations identify the specific components to be included in the request for a waiver. Further, SBA's guidance directs staff to verify that these components have been submitted as part of the requests.

However, over half (seven out of 12) of the approved waiver request files in our sample did not contain evidence of review of at least one of these waiver request components.³⁰

- **Statement of work.** Three of the six approved waiver requests for contracts over \$500,000 did not include a copy or other evidence of review of the statement of work. SBA uses this information to verify

²⁹13 C.F.R. § 121.1203. For a multiple item acquisition, if at least 50 percent of the estimated contract value is composed of items that are manufactured by small business concerns, then a waiver of the nonmanufacturer rule is not required. If more than 50 percent of the estimated contract value is composed of items manufactured by other than small concerns, then a waiver is required. 13 C.F.R. § 121.406(d).

³⁰We reviewed SBA's underlying files for 24 of the 67 waiver requests in our sample, selected to include a variety of approvals and denials for each fiscal year FY 2017 through FY 2022. Of these 24 requests, 12 were approved. For these 12 approved requests, we reviewed the underlying documents to identify the extent to which these files contained evidence of review of the required components identified in federal regulation. We considered a file to include evidence of review where the documents associated with the component were saved into the associated waiver request file.

whether a small business manufacturer could be expected to fulfill the solicitation requirement.

- **Statement of market research.** Two of the 12 approved waiver requests did not contain a copy or other evidence of review of a statement of market research to support the contracting officer's determination that no small business manufacturer can provide the product. These materials allow SBA to determine whether contracting officials conducted sufficient market research to determine that an NMR waiver is justified.
- **Procurement history.** Two of the 12 approved waiver requests did not contain a copy or other evidence of review of a statement of procurement history—information that allows SBA to consider whether a small business manufacturer previously provided a product.
- **Dollar amount of the procurement.** One of the 12 approved waiver requests did not contain a copy or other evidence of review of the dollar amount of the procurement. The dollar amount of the procurement allows SBA to determine whether the NMR applies to the procurement.³¹

SBA officials told us the lack of evidence of review could be due to staff not saving documents in the file rather than an indication that the review did not occur. Our analysis confirmed that some of SBA's waiver request files were incomplete or inaccurate. For example, one file we reviewed included a denial letter and was described as denied in SBA's log, but the contracting officer requesting the waiver stated it had been approved and provided us a copy of the approval letter, which had not been saved in SBA's file.³² During our review, SBA also identified several incomplete files associated with waiver requests in our sample. SBA does not know the extent to which the lack of evidence of review in its files is due to staff not saving documents or SBA not considering all the components required by their procedures when making waiver request decisions.

As described earlier in figure 1, SBA's policy is for analysts to review NMR waiver requests to ensure that the contracting officer submitted the required documents to support their determination. Further, SBA policy requires managers to review the proposed decision and sign the approval

³¹The nonmanufacturer rule applies to socioeconomic categories for contracts valued above the micropurchase threshold, and to both socioeconomic categories and small businesses above the simplified acquisition threshold.

³²GAO confirmed that the waiver request was initially denied but was later approved after the contracting official provided additional documentation.

or denial letter. Federal internal control standards state that management should implement control activities through policies.³³ However, SBA does not have specific policies and procedures, such as a checklist of the items management should review, to inform how management should review waiver request decisions proposed by its analysts. Instead, according to SBA officials, these reviews are informed by management's familiarity with the program. Officials said that because the waiver request decision letters explain how SBA analysts reached their decision, management does not need to review the waiver request files. However, without a review, management does not know if analysts completed all the required steps in making their recommendation.

Developing policies and procedures for conducting management reviews of waiver request decisions proposed by analysts could provide greater assurance that final waiver request decisions are sound and consistent.

Conclusions

SBA plays an important role in helping to ensure small businesses gain access to federal contracting opportunities by overseeing federal agency requests for waivers to the NMR. However, because SBA's data on these requests are not fully reliable, its ability to assess the operation of its NMR program and to report accurate data on waiver requests and their outcomes is limited. In addition, we identified NMR waiver request files that were missing evidence that SBA officials had followed their procedures to review waiver request documentation. By developing written policies for how management should review waiver request decisions, SBA could provide greater assurance that its final waiver request decisions are sound.

Recommendations for Executive Action

We are making the following two recommendations to SBA:

The SBA Administrator should ensure that the Associate Administrator for the Office of Government Contracting & Business Development develops policies and procedures to regularly review the accuracy of entries in its electronic waiver log, including the final status of each NMR waiver request. (Recommendation 1)

The SBA Administrator should ensure that the Associate Administrator for the Office of Government Contracting & Business Development develops

³³[GAO-14-704G](#).

policies and procedures for management review of NMR waiver request decisions. (Recommendation 2)

Agency Comments

We provided a draft of this report to SBA, the Department of Defense, the Department of the Interior, and the Department of Veterans Affairs for comment.

In its comments, reproduced in appendix III, SBA agreed with recommendations 1 and 2, stating that it plans to make updates to its NMR guidance to strengthen controls over SBA's monitoring of the NMR process. These actions would address both recommendations. SBA also provided technical comments, which we incorporated, as appropriate.

The Department of Defense and the Department of the Interior did not provide comments on this report.

The Department of Veterans Affairs provided technical comments, which we incorporated, as appropriate.

We are sending copies of this report to the appropriate congressional committees and the Administrator of the Small Business Administration, the Secretary of Defense, the Secretary of the Interior, the Secretary of Veterans Affairs, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8678 or GarciaDiazD@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.



Daniel Garcia-Diaz
Managing Director, Financial Markets and
Community Investment

Appendix I: Information Selected Federal Agencies Used to Prepare Nonmanufacturer Rule Waiver Requests

Nonmanufacturer rule (NMR) waivers are requested by contracting officers at federal procuring agencies. The agencies in our review were the Department of Defense (the Defense Logistics Agency, Department of the Army, and Department of the Navy), the Department of Veterans Affairs, and the Department of the Interior. To prepare their waiver request, the contracting officials we interviewed told us they primarily followed the requirements outlined in the Federal Acquisition Regulation (FAR) and the Small Business Administration (SBA).¹ These sources describe the elements that must be included in the request and instructions for submitting it to SBA.

Contracting officials told us they also used supplementary guidance or forms provided by their agencies. For example, the Department of the Interior developed a small business screening form that includes a checkbox to indicate if the NMR applies to a procurement. The department provides instructions for requesting a waiver when procuring brand-name radios from mandatory small business sources. Department of Defense agencies have a form that their small business officials may review to identify opportunities to use an NMR waiver. Prior to November 2022, the Department of Veterans Affairs required contracting officers to receive approval from the Head of Contracting Activity before submitting a waiver request. This requirement was removed when the department streamlined its acquisition procedures in 2022.

Some contracting officials told us they also received guidance from their offices' small business officials, managers, and other colleagues. Several also reviewed previously approved waiver requests. None of these officials contacted their SBA Procurement Center Representative or SBA's contracting office staff for guidance, although SBA officials told us these staff were available to answer questions upon request.

SBA periodically offers training to contracting officials on the NMR. These trainings explain when the rule is applicable and when a waiver may be useful. In addition, the Department of the Navy, Department of the Army, and Department of Veterans Affairs offer their own training, according to officials, using live instructors or recorded video.

¹The FAR is the primary regulation for use by all executive agencies in their acquisition of supplies and services with appropriated funds. The FAR also contains standard solicitation provisions and contract clauses and the various agency FAR supplements.

Appendix II: Objectives, Scope, and Methodology

This report examines (1) the number of nonmanufacturer rule (NMR) waiver requests the Small Business Administration (SBA) received in fiscal years (FY) 2017 through FY 2022 and the likely effects of approved waivers on the number of contracts going to small businesses and (2) SBA's policies and procedures for reviewing waiver requests.

For both objectives, we analyzed SBA's NMR individual waiver data and documentation associated with waiver requests for FY 2017 through 2022. We selected FY 2017 as our starting point because it was the earliest year for which SBA maintained data on the number of NMR waiver requests received. We selected FY 2022 as our end point because it was the most recent available data. We also selected five federal agencies—Defense Logistics Agency, Department of the Army, Department of the Interior, Department of the Navy, and Department of Veterans Affairs—for additional analysis and interviews. We selected these agencies because they (1) submitted at least one NMR waiver request during the 6 years in our review, (2) submitted a majority of NMR waiver requests according to SBA's electronic waiver log data, and (3) received a range of NMR waiver request decisions, including approved, denied, or withdrawn. While the Department of Homeland Security submitted slightly more requests than the Department of the Interior, we selected the Department of the Interior to reflect a variety of products.

To answer our researchable questions, we selected three groups of waiver requests in the following manner:

- **Data reliability sample.** We selected 67 waiver requests, or 10 percent of all waiver request entries between FY 2017 and FY 2022, for a data reliability sample for our first objective. First, we randomized the entire list of entries and then substituted within that list for the next available entry by fiscal year to select one approved, one denied, and one withdrawn waiver request for each fiscal year. We then randomly selected an additional number of waiver requests to reach a 10 percent sample for each fiscal year, resulting in a sample of 67 total waiver request entries. Within the data reliability sample for FY 2022, we included at least one approved and one denied or withdrawn waiver request (if possible) for each of the five selected agencies.
- **File content review sample.** We selected 24 waiver requests for a file content review, including 12 approved, six denied, and six withdrawn waiver requests (see table 1). From among the 67 waiver requests in the data reliability sample, we selected one approved, one denied, and one withdrawn waiver request (if possible) for each fiscal year, choosing the first file of each status in each fiscal year from our

randomized list. For FY 2022, we selected all waiver requests regardless of the waiver request status.

Table 1: Number of Files Selected for File Content Review Sample by Fiscal Year and Waiver Request Status

Fiscal year	Approved	Denied	Withdrawn	Total
2017	1	1	1	3
2018	1	0	1	2
2019	2	1	0	3
2020	1	1	1	3
2021	1	1	1	3
2022	6	2	2	10
Total	12	6	6	24

Source: GAO analysis. | GAO-24-106196

- Interview sample.** We selected 10 waiver requests, or all previously selected FY 2022 waiver requests, for interviews with the responsible contracting officials. We chose these waiver requests as the basis for our interview sample to increase the likelihood of contacting contracting officials who were still working at their respective agencies. We determined that contracting officials who prepared one of the selected FY 2022 NMR waiver requests no longer worked at the selected agency. We substituted this request and planned interview with an FY 2021 request prepared by an official from the same agency and with the same waiver request status.

To assess the reliability of SBA’s electronic log of waiver request data, we (1) performed electronic testing, (2) reviewed related documentation, and (3) interviewed agency officials knowledgeable about the data. In addition, we used a data collection instrument to test the reliability of our nongeneralizable data reliability sample of entries in the log.

For these 67 waiver request entries, we used a data collection instrument to compare whether data recorded in SBA’s electronic waiver log for key data fields matched the information in the underlying documentation files for those waiver requests. These data fields included the (1) fiscal year of the request, (2) solicitation number, (3) requesting agency, (4) date of SBA’s decision, (5) North American Industry Classification System (NAICS) code of item, (6) description of item, (7) status of request, and (8) estimated dollar value of the corresponding contract. Because the data fields recorded in each fiscal year varied, we focused on these eight

fields as they were available for each of the fiscal years recorded in the electronic log.

We determined that FY 2017–FY 2022 data in the NMR waiver log on whether a request was approved, denied, or withdrawn were not reliable because SBA did not require its staff to update this information. Additionally, we identified non-matching entries in each of the fields we reviewed. Because of these limitations, we found the log data were sufficiently reliable for reporting the overall numbers of waiver requests but not for reporting on trends in waiver request approvals or trends in characteristics of the items for which waivers were being requested.

To provide a sense of the scale for the number of waivers, we compared the approximate number of waiver requests for this period to the approximate number of manufacturing contracts awarded to small businesses for items under NAICS codes subject to the NMR. This estimate of contracts was derived using Federal Procurement Data System (FPDS) data for FY 2017–FY 2022. It is a count of actual federal contracts recorded in FPDS that were classified as awarded to small business set-asides for products under NAICS codes subject to the NMR during this time period and does not include contract modifications. It may not include all contracts that were subject to the NMR and is for comparison purposes only. To assess the reliability of the data elements within FPDS, we reviewed related documentation about that system such as the data dictionary and performed testing of the data. We determined these data were sufficiently reliable for the purpose of reporting on the number of manufacturing contracts awarded to small businesses.

In addition, we reviewed SBA’s methodology for calculating annual Small Business Procurement Scorecard grades to determine the extent to which SBA considered waivers in its methodology. We interviewed SBA officials about this methodology and the reliability of SBA’s data on NMR waiver requests and use. We also interviewed officials from the five federal agencies about their waiver requests and the effects of waivers on small business contracting activity at their agencies. These officials included contracting officers with responsibility for preparing the 10 FY 2022 and FY 2021 NMR waiver requests in our nongeneralizable interview sample of waiver requests, as well as agency small business contracting specialists.

Additionally, we interviewed representatives from three industry associations that represent small business government contractors to obtain their perspectives on the potential effects of waivers on small

business contracting: the Small Business Alliance of Government Contractors, HUBZone Contractors National Council, and the Coalition for Government Procurement. We identified these organizations through snowball sampling and internet searches, selecting those organizations whose members had experience with NMR waivers. We also interviewed one government contracting industry representative with extensive small business contracting knowledge. These interviews are not generalizable to other agencies or associations but offer important perspectives.

For our second objective, we compared SBA's procedures for reviewing and monitoring waiver requests against federal internal control standards.¹ Specifically, we reviewed NMR waiver request files provided by SBA; reviewed SBA's standard operating procedure, desk guide, and training on NMR waivers; interviewed agency officials about these waiver request and review procedures; and reviewed relevant regulations.² We determined that the control activities component of internal control was significant to the second objective, along with the underlying principle that management should implement control activities through policies.

Further, for our second objective we reviewed SBA's standard operating procedure, desk guide, and training materials on NMR waivers, which contain guidance on the steps SBA officials are to follow and the components that NMR waiver request reviewers are to consider when deciding whether to approve or deny a waiver request. To identify the information SBA considered in making waiver request decisions, we used a data collection instrument to review SBA's underlying documentation files for a nongeneralizable file content review sample of 24 waiver requests, described above. For each of the 24 selected files, we identified evidence of review of components of waiver requests as identified in federal regulation and in SBA's standard operating procedure and desk guide. We considered a file to include evidence of review of a specific component where the documents associated with the component were saved into the associated waiver request file.

We conducted this performance audit from August 2022 to December 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for

¹GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

²13 C.F.R. § 121.1204(b); and Federal Acquisition Regulation (FAR) 19.505(c)(4).

**Appendix II: Objectives, Scope, and
Methodology**

our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix III: Comments from the Small Business Administration



WASHINGTON, DC 20416

November 6, 2023

Mr. William B. Shear
Director, Financial Markets and Community Investment
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Shear:

Thank you for providing the U. S. Small Business Administration (SBA) with a copy of the Government Accountability Office (GAO) draft report titled “*Small Business Contracting: SBA Could Improve Oversight of Individual Waiver Requests to the Nonmanufacturer Rule*,” GAO-24-106196. The draft report examined (1) the number of NMR waiver requests SBA received from federal agencies in fiscal years (FY) 2017 through FY 2022 and the likely effects of approved waivers on the number of contracts going to small businesses and (2) SBA’s policies and procedures for reviewing NMR waiver requests. SBA appreciates the role GAO plays in working with management in ensuring that SBA’s programs are administered effectively and understands the importance of the work you do to support risk mitigation for the agency.

GAO made the following two recommendations directed to the Administrator of SBA and SBA’s responses to the recommendations in the draft report are noted as follows:

GAO Recommendation 1: The SBA Administrator should ensure that the Associate Administrator for the Office of Government Contracting & Business Development develops policies and procedures to regularly review the accuracy of entries in its electronic waiver log, including the final status of each NMR waiver request.

SBA’s Response to Recommendation 1: SBA agrees with this recommendation. SBA plans to make updates to its NMR guidance to strengthen controls over SBA’s monitoring of the NMR process.

GAO Recommendation 2: The SBA Administrator should ensure that the Associate Administrator for the Office of Government Contracting & Business Development develops policies and procedures for management review of NMR waiver request decisions.

**Appendix III: Comments from the Small
Business Administration**

SBA's Response to Recommendation 2: SBA agrees with the recommendation. SBA plans to make updates to its NMR guidance to strengthen controls over SBA's monitoring of the NMR process.

Thank you for the opportunity to comment on this draft report.

Sincerely,

**LARRY
STUBBLEFIELD**

Digitally signed by LARRY
STUBBLEFIELD
Date: 2023.11.06 12:43:02 -05'00'

Larry Stubblefield,
Acting Associate Administrator
Government Contracting and Business Development

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Daniel Garcia-Diaz, (202) 512-8678 or GarciaDiazD@gao.gov.

Staff Acknowledgments

In addition to the contact name above, William Shear (Director), Patricia MacWilliams (Assistant Director), Deena Richart (Analyst in Charge), Garrett Hillyer, Jill Lacey, Alberto Lopez, Gifty Owusu-Tawiah, Catherine Paxton, Jena Sinkfield, and John Yee made significant contributions to this report.

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