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SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration

ACTION: Notice of Final Action: Partial Waiver Rescission of the Nonmanufacturer Rule for Aerospace Ball and Roller Bearings.

SUMMARY: The U.S. Small Business Administration (SBA) received a request from a small business manufacturer of Aerospace Ball and Roller Bearings to rescind the Class Waiver of the Nonmanufacturer Rule (NMR) for Aerospace Ball and Roller Bearings, under North American Industry Classification System (NAICS) code 332991, Product Service Codes (PSC) 3110. Based on public comments and analysis of data submitted, SBA has determined that several small business manufacturers of aerospace ball and roller bearings exist for many, but not all, of the aerospace ball and roller bearings the Federal government requires. As a result, SBA is partially rescinding the Class Waiver for aerospace ball and roller bearings and replacing it with a class waiver for 305 aerospace ball and roller bearings. A list of the specific 305 aerospace ball and roller bearings can be accessed by accessing the following URL:

http://www.sba.gov/sites/default/files/files/NMR_WAIVED_3110_BEARING_LIST.pdf

The partial rescission of this class waiver will require recipients of Federal contracts set aside for small businesses, Service-Disabled Veteran-Owned small businesses, Participants in SBA's 8(a) Business Development Program, or Women-Owned Small Businesses to provide aerospace ball and roller bearings manufactured by small businesses, unless an Individual Waiver of the NMR is granted by SBA or the required

bearing is found on the list of aerospace ball and roller bearings for which a class waiver has been granted, maintained by SBA at the aforementioned URL.

DATES: This action is effective the date of publication in the Federal Register.

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SUPPLEMENTARY INFORMATION: Sections 8(a)(17) and 46 of the Small Business Act (the Act) and SBA’s implementing regulations generally require that recipients of Federal supply contracts that are set aside for small businesses, Service-Disabled Veteran-Owned small businesses, Women-Owned Small Businesses, or Participants in the SBA’s 8(a) Business Development Program provide the product of a domestic small business manufacturer or processor if the recipient is other than the actual manufacturer or processor of the product. 15 U.S.C. §§ 637(a)(17), 657s; 13 CFR 121.406(b). This requirement is commonly referred to as the Nonmanufacturer Rule. The Act authorizes SBA to waive the Nonmanufacturer Rule for any “class of products” for which there are no small business manufacturers or processors available to participate in the Federal market. In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract or received a contract from the Federal government within the last 24 months. See 13 CFR 121.1202(c). SBA defines “class of products” as an individual subdivision within a North American Industry Classification System (NAICS) Code as established by the Office of Management and Budget in the NAICS Manual. See 13 CFR 121.1202(d). In addition, SBA uses Product Service Codes (PSCs) to further identify particular products

within the NAICS code to which a waiver would apply. SBA may then identify a specific item within a PSC and NAICS code to which a class waiver would apply.

On April 16, 2001, SBA granted a class waiver for aerospace ball and roller bearings, consisting of, but not limited to, annular ball bearings, cylindrical ball bearings, linear ball bearings, linear roller bearings, needle roller bearings, ball or roller bearing races, roller bearings, tapered roller bearings and thrust roller bearings, identified within NAICS code 332991 under PSC 3110. 66 FR 19381.

Subsequently, a small business manufacturer of roller bearings notified SBA that their firm had lost several aerospace ball and roller bearing contract bids based on the existence of the class waiver and brought to SBA's attention that several small business manufacturers of roller bearing had submitted proposals for bearings contracts or received bearings contracts from the Federal government within the previous 24 months.

On April 4, 2013, SBA published a notice in the Federal Register stating that SBA was considering a complete rescission of the NMR class waiver for aerospace ball and roller bearings. 78 FR 20371. The initial public comment period closed May 4, 2013. Subsequently, the public comment period was extended once and reopened once, and closed for the final time on June 25, 2013. Fourteen comments were received from ten submitters.

Some commenters opposed a total rescission of the class waiver. A small business distributor of aerospace ball and roller bearings expressed concern that a total rescission would have a devastating impact on small value-added distributors. As such, the commenter suggested that SBA analyze data to determine which specific bearings, if any, are manufactured by small manufacturers. A small businesses manufacturer of

bearings expressed similar concern over the impact of a complete rescission of this class waiver.

Several commenters supported the proposal for a total rescission of the class waiver. One commenter stated that the class waiver has resulted in severely limiting opportunities for small business manufacturers of these items and acted as a disincentive to a number of small business manufacturers to develop and sell products under this category. Another commenter supported the proposal on the basis that its participation in the federal arena was paramount to its continued viability.

The Defense Logistics Agency (DLA) suggested a partial rescission of the class waiver, based on the possible damage to the small business dealer base that might result from a complete rescission of the class waiver. DLA provided a list of bearings for which there was no known small business manufacturers in existence. Another commenter expressed support for DLA's recommendation of a partial rescission. The commenter noted that a partial rescission of the class waiver would strike the balance of meeting the Government's needs while stimulating the growth and development of small business manufacturers of aerospace ball and roller bearings who have the capabilities and resources to meet standard commercial item descriptions. The commenter further noted that a partial rescission of the class waiver would not only invigorate domestic small business bearing manufacturers to develop new procedures and abilities, but it would also encourage others who have been on the side lines because of this waiver to reenter the market and some to enter the market.

SBA considered all of the comments and data presented by all of the commenters. After conducting independent market analysis, analyzing the data submitted by DLA and

small bearing manufacturers, and considering public comments, SBA has decided to partially rescind the Aerospace Ball and Roller Bearing Class Waiver and replace it with a waiver for 305 specifically identified aerospace ball and roller bearings, which can be viewed at:

http://www.sba.gov/sites/default/files/files/NMR_WAIVED_3110_BEARING_LIST.pdf.

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Director, Office of Government Contracting.

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