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SMALL BUSINESS ADMINISTRATION

[Docket No. SBA-2022-001]

Class Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notification of class waiver of the Nonmanufacturer Rule for dental equipment and supplies.

SUMMARY: The U.S. Small Business Administration (SBA) is granting a request for a class waiver of the Nonmanufacturer Rule (NMR) for dental equipment and supplies.

DATES: This action will be effective thirty days after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Carol Hulme, Attorney Advisor, by telephone at 202-205-6347; or by email at Carol-Ann.Hulme@sba.gov.

SUPPLEMENTARY INFORMATION: Sections 8(a)(17) and 46 of the Small Business Act (Act), 15 U.S.C. 637(a)(17) and 657s, and SBA's implementing regulations, found at 13 CFR 121.406(b), require that recipients of Federal supply contracts provide the product of a small business manufacturer or processor if the recipient of the set-aside contract is not the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule (NMR). 13 CFR 121.406(b). The NMR applies to a contract issued as a small business set-aside (except as stated below); a service-disabled veteran-owned small business (SDVOSB) set-aside or sole-source contract; a Historically Underutilized Business Zone (HUBZone) set-aside or sole source contract; a women-owned small business (WOSB) or economically disadvantaged women-owned small business (EDWOSB) set-aside or sole source contract; or 8(a) set-aside or sole source contract; a partial set-aside; or a set-aside of an order against a multiple award contract. The NMR does not apply to small business set-aside

acquisitions with an estimated value between the micro-purchase threshold and the simplified acquisition threshold.

Sections 8(a)(17)(B)(iv)(II) and 46(a)(4)(B) of the Act authorize SBA to waive the NMR for a “class of products” for which there are no small business manufacturers or processors available to participate in the Federal market. The SBA identifies a “class of products” based on a combination of the six-digit North American Industry Classification (NAICS) code and a description of the class of products. A waiver would not have any effect on the requirements in 13 CFR 121.406(b) or on requirements external to the Act that involve domestic sources of supply, such as the Buy American Act, 41 U.S.C. 8301-8305, or the Trade Agreements Act, 19 USC 2501 *et. seq.* As implemented in SBA’s regulations at 13 CFR 121.1202(c), 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 solicitation or been awarded a contract to supply the class of products within the last 24 months.

SBA received a request for a class waiver for dental supplies and equipment. Specifically, the waiver would apply to dental chairs, dental delivery systems, dental lights, dental cabinets, dental stools, dental handpieces, dental infection control apparatus, dental air management systems, and mechanical room equipment under NAICS code 339114. A search of the Federal marketplace confirmed that no small business manufacturers have submitted a proposal or been awarded a contract to supply these products within the last 24 months.

On March 11, 2022, SBA issued a Notice of Intent to grant a class waiver for dental equipment and supplies and provided until April 11, 2022, for members of the public to submit comments. That notice can be found at 87 FR 14084. As there were no comments submitted pertaining to issuance of the waiver, SBA has determined a class waiver is appropriate for dental chairs, dental delivery systems, dental lights, dental cabinets, dental stools, dental handpieces, dental infection control apparatus, dental air management systems, and

mechanical room equipment under NAICS code 339114. This class waiver allows otherwise qualified regular dealers to supply the waived items on certain small business contracts, regardless of the business size of the manufacturer. More information on the NMR and class waivers can be found at <https://www.sba.gov/partners/contracting-officials/small-business-procurement/nonmanufacturer-rule>

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