

**DISABLED**

**41 CFR Parts 51-1, 51-2, 51-3, 51-4, 51-5, 51-6, 51-7, 51-8, 51-9, and 51-10**

**RIN: 3037-AA13**

**Provisions Relating to Public Contracts**

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** This proposed rule would amend the Committee for Purchase From People Who Are Blind or Severely Disabled's (Committee) regulations to address outdated information and proposes correction and clarifications within the chapter or with the Javits-Wagner-O'Day Act or the AbilityOne Program. This regulation was originally published in 1991 and changes in Committee practices and concepts have occurred which requires updates to the CFR. These updates merely are administrative in nature.

**DATES:** Comments should be submitted on or before August 23, 2021.

**ADDRESSES:** You may submit your comments, identified by "RIN 3037-AA13" by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov) including any personal information provided. To confirm receipt of your comment(s) please check [www.regulations.gov](http://www.regulations.gov) approximately two to three days after submission to verify posting (except allow for 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Shelly Hammond,  
[shammond@abilityone.gov](mailto:shammond@abilityone.gov), (571) 457-9468.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Committee's last rule making administrative changes was published in the Federal Register at June 2, 2000, at 65 FR 35286.

The Committee seeks to provide the following administrative changes based on changes to the Office of the Federal Register's language and processes. The Commission seeks to remove mailing address and add email address for the Committee and Central Nonprofit Agencies.

This proposed rule would update the Committee's regulations in 41 CFR chapter 51-1.1 – 51-10.101 to reflect those statutory changes.

### **II. Changes Proposed By the Committee in this Rulemaking**

This proposed rule amends the Committee's regulations to include the following administrative changes:

### **III. Expected Impact of the Proposed Rule**

This rulemaking is not expected to have a significant impact on small businesses.

### **IV. Regulatory Procedures**

#### **Executive Order 12866 - Regulatory Planning and Review and Executive Order 13563 -- Improving Regulation and Regulatory Review**

This proposed rule is not a significant regulatory action, under EO 12866.

#### **Executive Order 13771 – Reducing Regulations and Controlling Regulatory Costs**

This proposed rule is not expected to be an EO 13771 deregulatory action.

#### **Regulatory Flexibility Act**

It has been certified that this proposed rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

### **Paperwork Reduction Act**

This proposed rule does not contain an information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

### **Unfunded Mandates Reform Act of 1995**

This proposed rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments.

### **List of Subjects**

#### **41 CFR Part 51-1**

Government procurement, Individuals with disabilities.

#### **41 CFR Part 51-2**

Government procurement, Individuals with disabilities, Organization and functions (Government agencies).

#### **41 CFR Part 51-3**

Government procurement, Individuals with disabilities.

#### **41 CFR Part 51-4**

Government procurement, Individuals with disabilities, Reporting and recordkeeping requirements.

#### **41 CFR Parts 51-5 and 51-6**

Government procurement, Individuals with disabilities.

#### **41 CFR Part 51-7**

Environmental impact statements.

#### **41 CFR Part 51-8**

Administrative practice and procedure, Archives and records, Confidential business information, Freedom of information, Privacy Act.

#### **41 CFR Part 51-9**

Privacy Act Rules.

#### **41 CFR Part 51-10**

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

For reasons set forth in the preamble, the Committee proposes to amend 41 CFR parts 51-1 through 51-10 as follows:

1. The authority citation for parts 51-1, 51-2, 51-3, 51-4, 51-5, 51-6, 51-7, 51-8, 51-9, and 51-10 continues to read as follows:

Authority: 41 U.S.C. 46-48c.

#### **PART 51-1—GENERAL**

2. Revise § 51-1.1 to read as follows:

##### **§ 51-1.1 Policy.**

(a) It is the policy of the Government to increase employment and training opportunities for persons who are blind or have other severe disabilities through the purchase of products and services from qualified nonprofit agencies employing persons who are blind or have other severe disabilities. The Committee for Purchase from People Who Are Blind or Severely Disabled (hereinafter the Committee) was established by the Javits-Wagner—O'Day Act, Public Law [111-350, section 3, Jan. 4, 2011, 124 Stat. 3837], as amended and recodifies, 41 U.S.C. e 8501-8506 (hereinafter the JWOD Act). The Committee is responsible for implementation of a comprehensive program designed to enforce this policy.

(b) It is the policy of the Committee to encourage all Federal entities and employees to provide the necessary support to ensure that the JWOD Act is implemented in an effective manner. This support includes purchase of products and services published on the Committee's Procurement List through appropriate channels from nonprofit agencies employing persons who are blind or have other severe disabilities designated by the Committee; recommendations to the Committee of new products and services suitable for addition to the Procurement List; and cooperation with the Committee and the central nonprofit agencies in the provision of such data as the Committee may decide is necessary to determine suitability for addition to the Procurement List.

3. Revise § 51-1.2 to read as follows:

**§ 51-1.2 Mandatory source priorities.**

(a) The JWOD Act mandates that products or services on the Procurement List required by Government entities be procured, as prescribed in this regulation, from a nonprofit agency employing persons who are blind or have other severe disabilities, at a price established by the Committee, if that product or service is available within the normal period required by that Government entity. Except as provided in paragraph (b) of this section, the JWOD Act has priority, under the provisions of 41 U.S.C. 8504, over any other supplier of the Government's requirements for products and services on the Committee's Procurement List.

(b) Federal Prison Industries, Inc. has priority, under the provisions of 18 U.S.C. 4124 and 41 U.S.C. 8504(b), over nonprofit agencies employing persons who are blind or have other severe disabilities in furnishing products for sale to the Government. All or a portion of the Government's requirement for a product for which Federal Prison Industries, Inc. has exercised its priority may be added to the Procurement List. However, such addition is made with the understanding that procurement under the JWOD Act shall be limited to that portion of the

Government's requirement for the product which is not available or not required to be procured from Federal Prison Industries, Inc.

(c) The JWOD Act requires the Committee to prescribe regulations providing that, in the purchase by the Government of products produced and offered for sale by qualified nonprofit agencies employing persons who are blind and nonprofit agencies employing persons who have other severe disabilities, priority shall be accorded to products produced and offered for sale by qualified nonprofit agencies for the blind. In approving the addition of products, to the Procurement List, the Committee accords priority to nonprofit agencies for the blind. Nonprofit agencies for the blind and nonprofit agencies employing persons with severe disabilities have equal priority for services.

4. Amend § 51-1.3 by:

a. Revising the definitions of “AbilityOne Program,” “Central nonprofit agency,” “Committee”, Contracting activity”, “Direct labor”, “Interested person”, “Military resale”, “Nonprofit agency”, “Participating nonprofit agency”, and “Procurement List”;

b. Adding in alphabetical order a definition for “Qualified nonprofit agency for other severely disabled”;

c. Removing the definition of “Qualified nonprofit agency for other severely handicapped”; and

d. Revising the definition of “Qualified nonprofit agency for the blind”.

The revisions and addition read as follows:

**§ 51-1.3 Definitions.**

\* \* \* \* \*

*AbilityOne Program* means the program authorized by the JWOD Act to increase employment and training opportunities for persons who are blind or have other severe disabilities through Government purchasing of products and services from nonprofit agencies employing these persons.

\* \* \* \* \*

*Central nonprofit agency* means an agency organized under the laws of the United States or of any State, operated in the interest of the blind or persons with other severe disabilities, the net income of which does not incur in whole or in part to the benefit of any shareholder or other individual, and designated by the Committee to facilitate the distribution (by direct allocation, subcontract, or any other means) of orders of the Government for products and services on the Procurement List among nonprofit agencies employing persons who are blind or have other severe disabilities, to provide information required by the Committee to implement the JWOD Program, and to otherwise assist the Committee in administering these regulations as set forth herein by the Committee.

*Committee* means the Committee for Purchase from People Who Are Blind or Severely Disabled.

*Contracting activity* means any element of an entity of the Government that has responsibility for identifying and/or procuring Government requirements for products or services. Components of a contracting activity, such as a contracting office and an ordering office, are incorporated in this definition, which includes all offices within the definitions of “contracting activity,” “contracting office,” and “contract administration office” contained in the Federal Acquisition Regulation, 48 CFR 2.101.

*Direct labor* means all work required for preparation, processing, and packing of a product or work directly related to the performance of a service, but not supervision, administration, inspection or shipping.

\* \* \* \* \*

*Interested person* means an individual or legal entity affected by a proposed addition of a product or service to the Procurement List or a deletion from it.

*Military resale* products means products on the Procurement List sold for the private, individual use of authorized patrons of Armed Forces commissaries and exchanges, or like activities of other Government departments and agencies.

*Nonprofit agency* (formerly workshop) means a nonprofit agency serving people who are blind or a nonprofit agency employing persons with severe disabilities, as appropriate.

\* \* \* \* \*

*Participating nonprofit agency* (formerly participating workshop) means any nonprofit agency which has been authorized by the Committee to furnish a product or service to the Government under the JWOD Act.

*Procurement List* means a list of products (including military resale products) and services which the Committee has determined to be suitable to be furnished to the Government by nonprofit agencies for the blind or nonprofit agencies employing persons with severe disabilities pursuant to the JWOD Act and these regulations.

*Qualified nonprofit agency for other severely disabled* (formerly workshop for other severely handicapped) means an agency organized under the laws of the United States or any State, operated in the interests of persons with severe disabilities who are not blind, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; which complies with applicable occupational health and safety standards prescribed by the Secretary of Labor; and which in furnishing products and services (whether or not the products or services are procured under these regulations) during the fiscal year employs persons



with severe disabilities (including blind) for not less than 75 percent of the work-hours of direct labor required to furnish such products or services.

*Qualified nonprofit agency for the blind* (hereinafter nonprofit agency for the blind) (formerly workshop for the blind) means an agency organized under the laws of the United States or of any State, operated in the interest of blind individuals, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; which complies with applicable occupational health and safety standards prescribed by the Secretary of Labor; and which in furnishing products and services (whether or not the products or services are procured under these regulations) during the fiscal year employs blind individuals for not less than 75 percent of the work-hours of direct labor required to furnish such products or services.

\* \* \* \* \*

## **PART 51-2—COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

5. Revise § 51-2.2 to read as follows:

### **§ 51-2.2 Powers and responsibilities.**

The Committee is responsible for carrying out the following functions in support of its mission of providing employment and training opportunities for persons who are blind or have other severe disabilities and, whenever possible, preparing those individuals to engage in competitive employment:

(a) Establish rules, regulations, and policies to assure effective implementation of the JWOD Act.

(b) Determine which product and services procured by the Federal Government are suitable to be furnished by qualified nonprofit agencies employing persons who are blind or have other severe disabilities and add those items to the Committee's Procurement List. Publish

notices of addition to the Procurement List in the **Federal Register**. Disseminate information on Procurement List items to Federal agencies. Delete items no longer suitable to be furnished by nonprofit agencies. Authorize and deauthorize central nonprofit agencies and nonprofit agencies to accept orders from contracting activities for the furnishing of specific products and services on the Procurement List.

(c) Determine fair market prices for items added to the Procurement List and revise those prices in accordance with changing market conditions to assure that the prices established are reflective of the market.

(d) Monitor nonprofit agency compliance with Committee regulations and procedures.

(e) Inform Federal agencies about the AbilityOne Program and the statutory mandate that items on the Procurement List be purchased from qualified nonprofit agencies, and encourage and assist entities of the Federal Government to identify additional products and services that can be purchased from qualified nonprofit agencies. To the extent possible, monitor Federal agencies' compliance with JWOD requirements.

(f) Designate, set appropriate ceilings on fee paid to these central nonprofit agencies by nonprofit agencies selling items under the AbilityOne Program, and provide guidance to central nonprofit agencies engaged in facilitating the distribution of Government orders and helping State and private nonprofit agencies participate in the AbilityOne Program.

(g) Conduct a continuing study and evaluation of its activities under the JWOD Act for the purpose of assuring effective and efficient administration of the JWOD Act. The Committee may study, independently, or in cooperation with other public or nonprofit private agencies, problems relating to:

(1) The employment of the blind or individuals with other severe disabilities.

(2) The development and adaptation of production methods which would enable a greater utilization of these individuals.

(h) Provide technical assistance to the central nonprofit agencies and the nonprofit agencies to contribute to the successful implementation of the JWOD Act.

(i) Assure that nonprofit agencies employing persons who are blind will have priority over nonprofit agencies employing persons with severe disabilities in furnishing products.

6. Revise § 51-2.3 to read as follows:

**§ 51-2.3 Notice of proposed addition or deletion.**

At least 30 days prior to the Committee's consideration of the addition or deletion of a product or service to or from the Procurement List, the Committee publishes a notice in the **Federal Register** announcing the proposed addition or deletion and providing interested persons an opportunity to submit written data or comments on the proposal. Interested persons submitting comments in bound form should also submit an unbound copy that is capable of being legibly photocopied.

7. Revise § 51-2.4 to read as follows:

**§ 51-2.4 Determination of suitability.**

(a) For a product or service to be suitable for addition to the Procurement List, each of the following criteria must be satisfied:

(1) *Employment potential.* The proposed addition must demonstrate a potential to generate employment for persons who are blind or have other severe disabilities.

(2) *Nonprofit agency qualifications.* The nonprofit agency (or agencies) proposing to furnish the item must qualify as a nonprofit agency serving persons who are blind or have other severe disabilities, as set forth in part 51-4 of this chapter.

(3) *Capability*. The nonprofit agency (or agencies) desiring to furnish a product or service under the JWOD Program must satisfy the Committee as to the extent of the labor operations to be performed and that it will have the capability to meet Government quality standards and delivery schedules by the time it assumes responsibility for supplying the Government.

(4) *Level of impact on the current contractor for the product or service*. (i) In deciding whether or not a proposed addition to the Procurement List is likely to have a severe adverse impact on the current contractor for the specific product or service, the Committee gives particular attention to:

(A) The possible impact on the contractor's total sales, including the sales of affiliated companies and parent corporations. In addition, the Committee considers the effects of previous Committee actions.

(B) Whether that contractor has been a continuous supplier to the Government of the specific product or service proposed for addition and is, therefore, more dependent on the income from such sales to the Government.

(ii) If there is not a current contract for the product or service being proposed for addition to the Procurement List, the Committee may consider the most recent contractor to furnish the item to the Government as the current contractor for the purpose of determining the level of impact.

(b) In determining the suitability of a product or service for addition to the Procurement List, the Committee also considers other information it deems pertinent, including comments on a proposal published in the **Federal Register** to add the product or service to the Procurement List and information submitted by Government personnel and interested persons. Because the Committee's authority to establish fair market prices is separate from its authority to determine the suitability of a product or service for addition to the Procurement List, the Committee does

not consider comments on proposed fair market prices for products and services proposed for addition to the Procurement List to be pertinent to a suitability determination.

8. Revise § 51-2.5 to read as follows:

**§ 51-2.5 Committee decision.**

The Committee considers the particular facts and circumstances in each case in determining if a product or service is suitable for addition to the Procurement List. When the Committee determines that a proposed addition is likely to have a severe adverse impact on a current contractor, it takes this fact into consideration in deciding not to add the product or service to the Procurement List, or to add only a portion of the Government requirement for the item. If the Committee decides to add a product or service in whole or in part to the Procurement List, that decision is announced in the **Federal Register** with a notice that includes information on the effective date of the addition.

9. Amend §51-2.7 by revising paragraphs (a) and (c) to read as follows:

**§ 51-2.7 Fair market price.**

(a) The Committee is responsible for determining fair market prices, and changes thereto, for products and services on the Procurement List. The Committee establishes an initial fair market price at the time a product or service is added to the Procurement List. This initial price is based on Committee procedures, which permit negotiations between the contracting activity and the nonprofit agency which will produce or provide the product or service to the Government, assisted by the appropriate central nonprofit agency. If agreed to by the negotiating parties, the initial price may be developed using other methodologies specified in Committee pricing procedures.

\* \* \* \* \*

(c) Recommendations for initial fair market prices, or changes thereto, shall be submitted jointly by the contracting activities and nonprofit agencies concerned to the appropriate central nonprofit agency. After review and analysis, the central nonprofit agency shall submit the recommended prices and methods by which prices shall be changed to the Committee, along with the information required by Committee pricing procedures to support each recommendation. The Committee will review the recommendations, revise the recommended prices where appropriate, and establish a fair market price, or change thereto, for each product or service which is the subject of a recommendation.

10. Amend § 51-2.8 by revising the section heading and paragraphs (a) and (b) to read as follows:

**§ 51-2.8 Procurement List.**

(a) The Committee maintains a Procurement List which includes the products and services which shall be procured by Government departments and agencies under the JWOD Act from the nonprofit agency(ies) designated by the Committee. Copies of the Procurement List, together with information on procurement requirements and procedures, are available at the Committee's website: <https://www.abilityone.gov>.

(b) For products, including military resale products, the Procurement List identifies the name and national stock number or item designation for each product, and where appropriate, any limitation on the portion of the product which must be procured under the JWOD Act.

\* \* \* \* \*

**PART 51-3—CENTRAL NONPROFIT AGENCIES**

11. Revise § 51-3.1 to read as follows:

**§ 51-3.1 General.**

Under the provisions of section 2(c) of the JWOD Act, the Committee designates Central Nonprofit Agency(ies) (CNAs) through a separate written agreement approved by vote of the Commission. The list of the current central nonprofit agency(ies) designated by the Committee is available at the Committee's website: <https://www.abilityone.gov>.

12. Amend § 51-3.2 by revising paragraphs (c), (d), (e), (h), (i), (k), and (l) to read as follows:

**§ 51-3.2 Responsibilities under the AbilityOne Program.**

\* \* \* \* \*

(c) Obtain from Federal contracting activities such procurement information as is required by the Committee to:

(1) Determine the suitability of a product or service being recommended to the Committee for addition to the Procurement List; and

(2) Establish an initial fair market price for a product or service or make changes in the fair market price.

(d) Recommend to the Committee, with the supporting information required by Committee policy or procedures, suitable products or services for procurement from its nonprofit agencies.

(e) Recommend to the Committee, with the supporting information required by Committee policy or procedures, initial fair market prices for products or services proposed for addition to the Procurement List.

\* \* \* \* \*

(h) Oversee and assist its nonprofit agencies to ensure contract compliance in furnishing a product or a service.

(i) As market conditions change, recommend price changes with appropriate justification for assigned products or services on the Procurement List.

\* \* \* \* \*

(k) When authorized by the Committee, enter into contracts with Federal contracting activities for the furnishing of products or services provided by its nonprofit agencies.

(l) At the time designated by the Committee, submit a completed, original copy of the appropriate Initial Representations and Certification(s) for the nonprofit agency concerned. This requirement does not apply to a nonprofit agency that is already authorized to furnish a product or service under the JWOD Act.

\* \* \* \* \*

13. Revise § 51-3.3 to read as follows:

**§ 51-3.3 Assignment of product or service.**

(a) The central nonprofit agencies shall determine by mutual agreement the assignment to one of them of a product or service for the purpose of evaluating its potential for possible future addition to the Procurement List, except that the Committee shall initially assign a product to a central nonprofit agency for the blind when a central nonprofit agency for other severely disabled has expressed an interest in the product and a central nonprofit agency for the blind has exercised the blind priority.

(b) Central nonprofit agencies for other severely disabled shall provide a central nonprofit agency for the blind with procurement information necessary for a decision to exercise or waive the blind priority when it requests a decision. A central nonprofit agency for the blind shall normally notify an interested central nonprofit agency of its decision within 30 days, but not later than 60 days after receipt of the procurement information, unless the central nonprofit agencies



agree to an extension of time for the decision. Disagreements on extensions shall be referred to the Committee for resolution.

(c) If a central nonprofit agency for the blind exercises the blind priority for a product, it shall immediately notify the Committee and any other central nonprofit agency and shall submit to the Committee a proposal to add the product to the Procurement List within nine months of the notification, unless the Committee extends the assignment period because of delays beyond the control of the central nonprofit agency for the blind. Upon expiration of the assignment period, the Committee shall reassign the product to another central nonprofit agency.

(d) The central nonprofit agency assigned a product shall, consistent with 41 U.S.C. 8504(b) and 41 CFR 51-6.2(d), confirm that the contracting activity obtain a decision from Federal Prison Industries on the exercise or waiver of its priority, including submitting the procurement information required by Federal Prison Industries when it requests the decision. Federal Prison Industries shall normally notify the contracting activity of its decision within 30 days, but not later than 60 days after receipt of the procurement information, unless it agrees with the contracting activity on an extension of time for the decision. The contracting activity shall notify the central nonprofit agency of any disagreements with Federal Prison Industries and the central nonprofit agency shall refer a disagreement over an extension to the Committee for resolution with Federal Prison Industries.

(e) The central nonprofit agency shall provide the Committee the decision of Federal Prison Industries on the waiver or exercise of its priority when it requests the addition of the product to the Procurement List. The central nonprofit agency shall also provide the decision of a central nonprofit agency for the blind waiving its priority.

14. Revise § 51-3.4 to read as follows:

**§ 51-3.4 Distribution of orders.**

Central nonprofit agencies shall distribute orders from the Government only to nonprofit agencies which the Committee has approved to furnish the specific product or service. When the Committee has approved two or more nonprofit agencies to furnish a specific product or service, the central nonprofit agency shall distribute orders among those nonprofit agencies in a fair and equitable manner.

**PART 51-4—NONPROFIT AGENCIES**

15. Amend § 51-4.3 by revising paragraphs (a), (b) introductory text, and (b)(1) and (9) to read as follows:

**§ 51-4.3 Maintaining qualification.**

(a) To maintain its qualification under the JWOD Act, each nonprofit agency authorized to furnish a product or a service shall continue to comply with the requirements of a “nonprofit agency for other severely disabled” or a “nonprofit agency for the blind” as defined in § 51-1.3 of this chapter. In addition, each such nonprofit agency must submit to its central nonprofit agency by November 1 of each year, two completed copies of the appropriate Annual Representations and Certifications covering the fiscal year ending the preceding September 30.

(b) In addition to paragraph (a) of this section, each nonprofit agency participating in the Ability One Program shall:

(1) Furnish products or services in strict accordance with Government orders.

\* \* \* \* \*

(9) Upon receipt of payment by the Government for products or services furnished under the Ability One Program, pay to the central nonprofit agency a fee which meets the requirements of § 51-3.5 of this chapter.

\* \* \* \* \*

16. Amend § 51-4.4 by revising paragraphs (a) through (c) to read as follows:

**§ 51-4.4 Subcontracting.**

(a) Nonprofit agencies shall seek broad competition in the purchase of materials and components used in the products and services furnished to the Government under the JWOD Act. Nonprofit agencies shall inform the Committee, through their central nonprofit agency, before entering into multiyear contracts for materials or components used in the products and services furnished to the Government under the JWOD Act.

(b) Each nonprofit agency shall accomplish the maximum amount of subcontracting with other nonprofit agencies and small business concerns that the nonprofit agency finds to be consistent both with efficient performance in furnishing products or services under the JWOD Act and maximizing employment for persons who are blind or have other severe disabilities.

(c) Nonprofit agencies may subcontract a portion of the process for producing a product or providing a service on the Procurement List provided that the portion of the process retained by the prime nonprofit agency generates employment for persons who are blind or have other severe disabilities. Subcontracting intended to be a routine part of the production of a product or provision of a service shall be identified to the Committee at the time the product or service is proposed for addition to the Procurement List and any significant changes in the extent of subcontracting must be approved in advance by the Committee.

\* \* \* \* \*

**PART 51-5—CONTRACTING REQUIREMENTS**

17. Revise § 51-5.1 to read as follows:

**§ 51-5.1 General.**

(a) Contracting activities are encouraged to assist the Committee and the central nonprofit agencies in identifying suitable products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities so that the Committee can attain its objective of increasing employment and training opportunities for individuals who are blind or have other severe disabilities. For items which appear to be suitable to be furnished by nonprofit agencies, the contracting activity should refer the candidate products and services to the Committee or a central nonprofit agency. If a contracting activity decides to procure one or more products which are similar to a product or products on the Procurement List, the contracting activity should refer the products it intends to procure to the Committee or a central nonprofit agency.

(b) Contracting activities shall provide the Committee and designated central nonprofit agencies with information needed to enable the Committee to determine whether a product or service is suitable to be furnished by a nonprofit agency. For products, information such as the latest solicitation and amendments, bid abstracts, procurement history, estimated annual usage quantities, and anticipated date of next solicitation issuance and opening may be needed. For services, similar information including the statement of work and applicable wage determination may be required. In order to assist in evaluating the suitability of an Office of Management and Budget Circular No. A-76 conversion, contracting activities should provide a copy of the draft statement of work and applicable wage determination to the central nonprofit agency upon its request.

18. Amend § 51-5.2 by revising paragraphs (a) through (d) to read as follows:

**§ 51-5.2 Mandatory source requirement.**

(a) As provided in 41 U.S.C. 8504, entities of the Federal Government intending to procure products or services on the Procurement List shall procure such products and services from nonprofit agencies authorized by the Committee. The only exception to this mandatory

requirement is for products available from the Federal Prison Industries, Inc., which has a purchase priority over products on the Procurement List.

(b) Purchases of products on the Procurement List by entities of the Government shall be made from sources authorized by the Committee. These sources may include nonprofit agencies, central nonprofit agencies when approved by the Committee, Government central supply agencies such as the Defense Logistics Agency and the General Services Administration, and certain commercial distributors. As noted in § 51-6.2 of this chapter, identification of the authorized sources for a particular product may be obtained from the central nonprofit agencies indicated on the Procurement List which is found at [www.abilityone.gov](http://www.abilityone.gov).

(c) Contracting activities shall require other persons providing products which are on the Procurement List to entities of the Government by contract to order these products from the sources authorized by the Committee.

(d) Procedures for obtaining military resale products are contained in § 51-6.4 of this chapter.

\* \* \* \* \*

19. Amend § 51-5.3 by revising paragraphs (a) and (c) to read as follows:

**§51-5.3 Scope of requirement.**

(a) When a product is included on the Procurement List, the mandatory source requirement covers the National Stock Number or item designation listed and products that are essentially the same as the listed item. In some instances, only a portion of the Government requirement for a National Stock Number or item designation is specified by the Procurement List. Where geographic areas, quantities, percentages or specific supply locations for a product are listed, the mandatory provisions of the JWOD Act apply only to the portion or portions of the product indicated by the Procurement List.

\* \* \* \* \*

(c) When a product or service is added to the Procurement List, the addition does not affect contracts for the product or service awarded prior to the effective date of the Procurement List addition or options exercised under those contracts.

20. Amend § 51-5.4 by revising paragraphs (a)(1) and (2) to read as follows:

**§ 51-5.4 Purchase exceptions.**

(a) \* \* \*

(1) The central nonprofit agency or its nonprofit agency(ies) cannot furnish a product or service within the period specified, and

(2) The product or service is available from commercial sources in the quantities needed and significantly sooner than it will be available from the nonprofit agency(ies).

\* \* \* \* \*

21. Amend § 51-5.5 by revising paragraphs (a), (b), (c), and (e) to read as follows:

**§ 51-5.5 Prices.**

(a) The prices for items on the Procurement List are fair market prices established by the Committee under authority of the Javits-Wagner-O'Day Act (41 U.S.C. 8503(b)).

(b) Prices for products include applicable packaging, packing, and marking. Prices include transportation to point of delivery as specified in § 51-5.6.

(c) Price changes for products and services shall usually apply to orders received by the nonprofit agency on or after the effective date of the change. In special cases, after considering the views of the contracting activity, the Committee may make price changes applicable to orders received by the nonprofit agency prior to the effective date of the change.

\* \* \* \* \*

(e) If a contracting activity desires packing, packaging, or marking of products other than the standard pack or as provided in the Procurement List, any difference in cost shall be negotiated with the nonprofit agency.

22. Revise § 51-5.6 to read as follows:

**§ 51-5.6 Shipping.**

(a) Except as provided in paragraph (b) of this section, products are sold to the Government on an “F.O.B. destination” basis, with delivery being accomplished when the shipment reaches the facility designated by the contracting activity. Time of delivery is when the shipment is released by the carrier and accepted by the contracting activity or its agent. In this delivery method, the nonprofit agency will normally use commercial bills of lading and will be responsible for any loss or damage to the goods occurring before the products reach the designated delivery point. The nonprofit agency will prepare and distribute commercial bills of lading, furnish delivery schedules, designate the carriers, and pay all shipping charges to specified delivery points.

(b) The Committee may determine that certain products are to be sold to the Government on an “F.O.B. origin” basis, with delivery being accomplished when a shipment is placed aboard the vehicle of the initial carrier. Time of delivery is when the shipment is released to and accepted by the initial carrier. In this delivery method, the nonprofit agency will normally use Government bills of lading, and responsibility for loss or damage to the goods while in transit passes to the Government at the time the initial carrier accepts a shipment. If the contracting activity fails to furnish a Government bill of lading promptly, such failure shall be considered an excusable delay in delivery.

23. Revise § 51-5.7 to read as follows:

**§ 51-5.7 Payments.**

Payments for products or services of persons who are blind or have other severe disabilities shall be made within 30 days after shipment or receipt of a proper invoice or voucher.

**PART 51-6—PROCUREMENT PROCEDURES**

24. Amend § 51-6.1 by revising paragraphs (a) and (c) to read as follows:

**§ 51-6.1 Direct order process.**

(a) Once a product or service is added to the Procurement List, the central nonprofit agency may authorize the contracting activity to issue orders directly to a nonprofit agency without requesting an allocation for each order. This procedure is known as the direct order process.

\* \* \* \* \*

(c) An order for products or services shall provide leadtime sufficient for purchase of materials, production or preparation, and delivery or completion.

\* \* \* \* \*

25. Amend § 51-6.2 by revising paragraphs (a), (b) introductory text, (b)(1), (c), (d), (g), (i), and (k) to read as follows:

**51-6.2 Allocation process.**

(a) In those cases where a direct order authorization has not been issued as described in § 51-6.1, the contracting activity shall submit written requests for allocation to the appropriate central nonprofit agency indicated by the Procurement List which is found at the Committee's website: <https://www.abilityone.gov>.

(b) Requests for allocations shall contain, as a minimum:



(1) For products. Name, stock number, latest specification, quantity, unit price, and place and time of delivery.

\* \* \* \* \*

(c) Contracting activities shall request allocations in sufficient time for the central nonprofit agency to reply, for the order(s) to be placed, and for the nonprofit agencies to furnish the product or service (*see* paragraph (i) of this section).

(d) When a product on the Procurement List also appears on the Federal Prison Industries' "Schedule of Products," the contracting activity shall obtain clearance from the Federal Prison Industries prior to requesting an allocation or placing an order directly to the nonprofit agency(ies).

\* \* \* \* \*

(g) An allocation is not an obligation to supply a product or service, or an obligation for the contracting activity to issue an order. Nonprofit agencies are not authorized to commence production until receipt of an order.

\* \* \* \* \*

(i) An order for products or services shall provide leadtime sufficient for purchase of materials, production or preparation, and delivery or completion.

\* \* \* \* \*

(k) In those instances where the central nonprofit agency is the prime contractor rather than the nonprofit agency, the central nonprofit agency will designate the nonprofit agency(ies) authorized by the Committee to furnish definite quantities of products or specific services upon receipt of an order from the contracting activity.

26. Revise § 51-6.3 to read as follows:

### **§ 51-6.3 Long-term procurements.**

(a) Contracting activities are encouraged to investigate long-term ordering agreements for products listed on the Procurement List to level off demand, thereby helping ensure stability of employment and development of job skills for persons who are blind or have other severe disabilities.

(b) Contracting activities are encouraged to use the longest contract term available by law to their agencies for contracts for products and services under the AbilityOne Program, in order to minimize the time and expense devoted to formation and renewal of these contracts.

27. Revise § 51-6.4 to read as follows:

### **§ 51-6.4 Military resale products.**

(a) Purchase procedures for ordering military resale products are available from the central nonprofit agencies. Authorized resale outlets (military commissary stores, Armed Forces exchanges and like activities of other Government departments and agencies) shall request the central nonprofit agency responsible for the military resale product being ordered to designate the nonprofit agency or its agent to which the outlets shall forward orders.

(b) Authorized resale outlets shall stock military resale products in as broad a range as practicable. Authorized resale outlets may stock commercial items comparable to military resale products they stock, except that military commissary stores shall stock military resale products in the 300-800-, 900-, 1000-, 1100-, 10000- (10000-10999); 13000 (13000-13999); 14000 (14000-14999); 15000 (15000-15999); and 16000 (16000-16999) series exclusively, unless an exception has been granted on an individual store basis for the stocking of comparable commercial items for which there is a significant customer demand.

(c) The Defense Commissary Agency shall, after consultation with the Committee:

(1) Establish mandatory lists of military resale products to be stocked in commissary stores.

(2) Require the stocking in commissary stores of military resale products in the 0- (0-99), 200-, 300-, 400-, 500-, 600-, 700-, 800-, 900-, 1000-, 1100-, 1200- (1200-9999), 10000- (10000-10999), 11000 (11000-11999); 12000 (12000-12999); 13000 (13000-13999); 14000 (14000-14999); 15000 (15000-15999); and 16000 (16000-16999) series in as broad a range as is practicable.

(3) Issue guidance requiring commissary store personnel to maximize sales potential of military resale products.

(4) Establish policies and procedures which reserve to its agency headquarters the authority to grant exceptions to the exclusive stocking of 300-, 800-, 900-, 1000-, 1100-, 10000- (10000-10999); 13000 (13000-13999); 14000 (14000-14999); 15000 (15000-15999); and 16000 (16000-16999) series military resale products.

(d) The Defense Commissary Agency shall provide the Committee a copy of each directive which relates to the stocking of military resale products in commissary stores, including exceptions authorizing the stocking of commercial items in competition with 300-, 800-, 900-, 1000-, 1100-, 10000- (10000-10999); 13000 (13000-13999); 14000 (14000-14999); 15000 (15000-15999); and 16000 (16000-16999) series military resale products.

(e) The prices of military resale products include delivery to destination or, in the case of destinations overseas, to designated depots at ports of embarkation. Zone pricing is used for delivery to Alaska and Hawaii.

28. Amend § 51-6.6. by revising paragraph (a) to read as follows:

**§ 51-6.6 Request for waiver of specification requirement.**

(a) Nonprofit agencies and central nonprofit agencies are encouraged to recommend changes to specification requirements or request waivers where there are opportunities to provide equal or improved products at a lower cost to the Government.

\* \* \* \* \*

29. Revise § 51-6.7 to read as follows:

**§ 51-6.7 Orders in excess of nonprofit agency capability.**

(a) Nonprofit agencies are expected to furnish products on the Procurement List within the time frames specified by the Government. The nonprofit agency must have the necessary production facilities to meet normal fluctuations in demand.

(b) Nonprofit agencies shall take those actions necessary to ensure that they can ship products within the time frames specified by the Government. In instances where the nonprofit agency determines that it cannot ship the product in the quantities specified by the required shipping date, it shall notify the central nonprofit agency and the contracting activity. The central nonprofit agency shall request a revision of the shipping schedule which the contracting activity should grant, if feasible, or the central nonprofit agency shall issue a purchase exception authorizing procurement from commercial sources as provided in §51-5.4 of this chapter.

30. Amend § 51-6.8 by revising paragraphs (a), (b), (c), and (e) to read as follows:

**§ 51-6.8 Deletion of items from the Procurement List.**

(a) When a central nonprofit agency decides to request that the Committee delete a product or service from the Procurement List, it shall notify the Committee staff immediately. Before reaching a decision to request a deletion of an item from the Procurement List, the central nonprofit agency shall determine that none of its nonprofit agencies is capable and desirous of furnishing the product or service involved.

(b) Except in cases where the Government is no longer procuring the item in question, the Committee shall, prior to deleting an item from the Procurement List, determine that none of the nonprofit agencies of any other central nonprofit agency is desirous and capable of furnishing the product or service involved.

(c) Nonprofit agencies will normally be required to complete production of any orders for products on hand regardless of the decision to delete the item. Nonprofit agencies shall obtain concurrence of the contracting activity and the Committee prior to returning a purchase order to the contracting activity.

\* \* \* \* \*

(e) The Committee may delete an item from the Procurement List without a request from a central nonprofit agency if the Committee determines that none of the nonprofit agencies participating in the AbilityOne Program are capable and desirous of furnishing the product or service to the Government, or if the Committee determines that the product or service is no longer suitable for procurement from nonprofit agencies employing people who are blind or have other severe disabilities. In considering such an action, the Committee will consult with the appropriate central nonprofit agency, the nonprofit agency or agencies involved, and the contracting activity.

31. Revise § 51-6.9 to read as follows:

**§ 51-6.9 Correspondence and inquiries.**

Routine contracting activity correspondence or inquiries concerning deliveries of products being shipped from or performance of services by nonprofit agencies employing persons who are blind or have other severe disabilities shall be with the nonprofit agency involved. Major problems shall be referred to the appropriate central nonprofit agency. In those instances, where the problem cannot be resolved by the central nonprofit agency and the

contracting activity involved, the contracting activity or central nonprofit agency shall notify the Committee of the problem so that action can be taken by the Committee to resolve it.

32. Amend § 51-6.10 by revising paragraph (a) to read as follows:

**§ 51-6.10 Quality of merchandise.**

(a) Products furnished under Government specification by nonprofit agencies employing persons who are blind or have other severe disabilities shall be manufactured in strict compliance with such specifications. Where no specifications exist, products furnished shall be of a quality equal to or higher than similar items available on the commercial market. Products shall be inspected utilizing nationally recognized test methods and procedures for sampling and inspection.

\* \* \* \* \*

33. Amend § 51-6.11 by revising paragraph (a) to read as follows:

**§ 51-6.11 Quality complaints.**

(a) When the quality of a product received is not considered satisfactory by the using activity, the activity shall take the following actions as appropriate:

(1) For products received from Defense Logistics Agency supply centers, General Services Administration supply distribution facilities, Department of Veterans Affairs distribution division or other central stockage depots, or specifically authorized supply source, notify the supplying agency in writing in accordance with that agency's procedures. The supplying agency shall, in turn, provide copies of the notice to the nonprofit agency involved and its central nonprofit agency.

(2) For products received directly from nonprofit agencies employing persons who are blind or have other severe disabilities, address complaints to the nonprofit agency involved with a copy to the central nonprofit agency with which it is affiliated.

\* \* \* \* \*

34. Amend § 51-6.12 by revising paragraphs (a), (b), and (e) to read as follows:

**§ 51-6.12 Specification changes and similar actions.**

(a) Contracting activities shall notify the nonprofit agency or agencies authorized to furnish a product on the Procurement List and the central nonprofit agency concerned of any changes to the specification or other description of the product.

(b) When a government entity is changing the specification or description of a product on the Procurement List, including a change that involves the assignment of a new national stock number or item designation, the office assigned responsibility for the action shall obtain the comments of the Committee and the central nonprofit agency concerned on the proposed change and shall notify the nonprofit agency and the central nonprofit agency concerned at least 90 days prior to placing an order for a product covered by the new specification or description.

\* \* \* \* \*

(e) Nonprofit agencies shall recommend changes in specifications, item descriptions, and statements of work that will improve the product or service being provided, reduce costs, or improve overall value to the Government. Contracting activities shall respond promptly to these recommendations and work with the nonprofit agencies to implement them when appropriate.

35. Revise § 51-6.13 to read as follows:

**§ 51-6.13 Replacement and similar products.**

(a) When a product on the Procurement List is replaced by another product which has not been recently procured, and a nonprofit agency can furnish the replacement product in accordance with the Government's quality standards and delivery schedules, the replacement product is automatically considered to be on the Procurement List and shall be procured from the nonprofit agency designated by the Committee at the fair market price the Committee has set for the replacement product. The product being replaced shall continue to be included on the Procurement List until there is no longer a Government requirement for that product.

(b) If contracting activities desire to procure additional sizes, colors, or other variations of a product after the product is added to the Procurement List, and these similar products have not recently been procured, these products are also automatically considered to be on the Procurement List.

(c) In accordance with § 51-5.3 of this chapter, contracting activities are not permitted to purchase commercial items that are essentially the same as products on the Procurement List.

## **PART 51-7—PROCEDURES FOR ENVIRONMENTAL ANALYSIS**

36. Amend § 51-7.1 by revising paragraph (b) to read as follows:

### **§ 51-7.1 Purpose and scope.**

\* \* \* \* \*

(b) *Scope.* This part applies to all actions of the Committee for Purchase from Persons Who Are Blind or Severely Disabled which may affect environmental quality in the United States.

37. Amend § 51-7.2 by revising paragraph (a) to read as follows:

### **§ 51-7.2 Early involvement in private, State, and local activities requiring Federal approval.**



(a) 40 CFR 1501.2(d) requires agencies to provide for early involvement in actions which, while planned by private applicants or other non-Federal entities, require some sort of Federal approval. Pursuant to the JWOD Act (41 U.S.C. 8501-8506), the Committee for Purchase from People Who Are Blind or Severely Disabled makes the determination as to which qualified nonprofit agency serving persons who are blind or have other severe disabilities will furnish designated products and services to the Government.

\* \* \* \* \*

## **PART 51-8—PUBLIC AVAILABILITY OF AGENCY MATERIALS**

38. Amend § 51-8.4 by revising the section heading and adding paragraph (g) to read as follows:

### **§ 51-8.4 Responsibility for responding to requests.**

\* \* \* \* \*

(g) *Appointments.* Material described in 5 U.S.C. 552(a)(2) shall be available for inspection during normal business hours at the Committee's offices. An individual who intends to visit the Committee offices to inspect this material shall make an appointment with the Executive Director at least one week in advance, except when the Committee has provided notification to the individual that the material is available for inspection in the Committee offices, in which case an appointment must be made at least 24 hours in advance. Appointments can be requested at the Committee's email address: [info@abilityone.gov](mailto:info@abilityone.gov).

39. Amend § 51-8.5 by adding paragraph (a) introductory text and revising paragraph (a)(1) to read as follows:

### **§ 51-8.5 Timing of Responses to Requests.**

(a) *In general.* Requests to obtain copies of any material maintained by the Committee must be submitted to the Executive Director at the Committee's offices, email address: info@abilityone.gov. The requester may in his or her petition ask for a fee waiver if there is likely to be a charge for the requested information. All requests for records shall be deemed to have been made pursuant to the FOIA, regardless of whether the Act is specifically mentioned. Failure to submit a request in accordance with these procedures may delay the processing of the request.

(1) The Committee ordinarily will respond to requests according to their order of receipt. The time limits prescribed in the FOIA will begin only after the Committee identifies a request as being made under the FOIA and deemed received by the Committee.

\* \* \* \* \*

## **PART 51-9—PRIVACY ACT RULES**

40. Revise § 51-9.301 to read as follows:

### **§51-9.301 Notification.**

Any individual who wishes to determine if a system of records maintained by the Committee contains a record pertaining to him should direct a request to the Executive Director at the address indicated in the public notice or at the Committee's email address: info@abilityone.gov describing the system of records which has been published in the **Federal Register**. The request should display clearly the legend "Privacy Act Request" on the face of the request letter. The request letter should contain the complete name and identifying number of the system as published in the **Federal Register**; the full name, address, and telephone number of the subject individual; a brief description of the nature, time, place and circumstances of the individual's association with the Committee and any other information which the individual believes would facilitate the Executive Director's determination whether the individual's name is

included in the system of records. The Executive Director shall answer or acknowledge the request within ten working days.

41. Amend § 51-9.301-1 by revising paragraphs (b) and (c) to read as follows:

**§ 51-9.303-1 Form of requests.**

\* \* \* \* \*

(b) A written request should be directed to the Executive Director as listed in the public notice describing the system of records or at the Committee's email address: [info@abilityone.gov](mailto:info@abilityone.gov). The individual should display clearly on the face of the request letter and on the face of the envelope the legend "Privacy Act Request", and include the complete name and identifying number of the system as published in the Federal Register; the full name, address, the telephone number of the individual; a brief description of the nature, time, place and circumstances of the individual's association with the Committee; and any other information which the individual believes would facilitate the Executive Director's search for the record.

(c) An individual who wishes to have a person of his choosing accompany him in reviewing a record must sign a statement authorizing the disclosure of his record in the presence of another individual, if so requested by the Executive Director. An individual who intends to visit the Committee office in order to review a record should make an appointment with the Executive Director using the Committee's email address at: [info@abilityone.gov](mailto:info@abilityone.gov) at least one week in advance.

42. Revise § 51-9.304-4 to read as follows:

**§ 51-9.304-4 Form of payment.**

Payment shall be by check or money order payable to the Committee for Purchase from People Who Are Blind or Severely Disabled and shall be addressed to the Executive Director.

43. Amend § 51-9.401 by revising paragraph (a) to read as follows:

**§ 51-9.401 Submission of requests to amend records.**

(a) An individual who desires to amend any record or information pertaining to him should direct a written request to the Executive Director, Committee for Purchase From People Who Are Blind or Severely Disabled at the Committee's email address: info@abilityone.gov.

\* \* \* \* \*

44. Amend § 51-9.405 by revising paragraph (a) to read as follows:

**§51-9.405 Request of review of refusal to amend a record.**

(a) An individual who disagrees with the refusal to amend may appeal that refusal with the Committee. An individual should address a request for review of a refusal to amend any record, exclusive of a personnel record of a current Committee employee to the Chairperson, Committee for Purchase from People Who Are Blind or Severely Disabled at the Committee's email address: info@abilityone.gov.

\* \* \* \* \*

**PART 51-10—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

45. Amend § 51-10.170 by revising paragraph (c) to read as follows:

**§ 51-10.170 Compliance procedures.**

\* \* \* \* \*

(c) The Executive Director shall be responsible for coordinating the implementation of this section. Complaints may be sent to the Executive Director, Committee for Purchase from

People Who Are Blind or Severely Disabled at the Committee's email address:

info@abilityone.gov.

\* \* \* \* \*

Michael R. Jurkowski,  
Deputy Director, Business Operations.

[FR Doc. 2021-15154 Filed: 7/22/2021 8:45 am; Publication Date: 7/23/2021]