U.S. ABILITYONE COMMISSION

Policy 51.402
Effective Date: 03/22/2013

TITLE: INITIAL QUALIFICATION OF NONPROFIT AGENCIES

1. PURPOSE.

This document prescribes the policy and procedures for approval of a Nonprofit Agency (NPA) to become qualified to receive the U.S. AbilityOne Commission's designation on the AbilityOne® Program Procurement List (PL) to provide a product or service.

2. APPLICABILITY.

This policy is applicable to the U.S. AbilityOne Commission (Commission), Central Nonprofit Agencies (CNA) and NPAs seeking or receiving qualification.

3. AUTHORITY.

(a) 41 U.S.C. §§ 8501- 8506, Javits-Wagner-O'Day (JWOD) Act

(b) 41 CFR Chapter 51, Committee for Purchase From People Who Are Blind or Severely Disabled.

4. DEFINITIONS AND ACRONYMS.

Definitions, abbreviations, and acronyms frequently used throughout this policy system are provided in 51.102, Definitions. Terms unique to this subject matter are defined below.

Term	Definition
Authorized Agency **Participating Agency** **Producing Agency**	A qualified NPA that the Commission has designated (approved) to provide a product or service on the Procurement List.
Deleted Agency	An NPA that has not been authorized to provide a product or service on the Procurement List in more than one year, or a verified agency that has not received a project in a year since its verification.
Direct Labor	All work required for preparation, processing, and packing of a commodity or work directly related to the performance of a service, but not supervision, administration, inspection, or shipping.
Related Corporation	A corporation that is related to another corporation by owning shares, common ownership, significantly overlapping board members or management or other means of control. Some NPAs are closely related to other corporations. The nonprofit agency may be one of several subsidiaries of a common parent corporation, or the parent or subsidiary of another corporation, or may otherwise be related to one or more corporations that are either nonprofit or for-profit.
Verified agency	An NPA whose articles of incorporation and by-laws have been reviewed by the Commission and found to meet the requirements for qualification to participate in the AbilityOne Program as per 41 CFR 51-4.1, but the agency has not yet been approved on the Procurement List to provide a product or service.

5. RESPONSIBILITIES.

(a) The Commission determines whether an NPA is qualified to participate in the AbilityOne Program.

(b) The Commission establishes and maintains the PL; therefore, the Commission is responsible for interpreting the scope of PL requirements and designating which NPA(s) are responsible for providing the products and services on the PL.

(c) CNAs have been delegated authority to assist the Commission in collecting and initially assessing NPA legal documentation used by the Commission to determine whether the NPA is qualified and can receive verified status to participate in the AbilityOne Program.

(d) NPAs seeking qualification to participate in the AbilityOne Program submit the required documentation in a timely manner through the appropriate CNA.

6. POLICY.

(a) To participate in the AbilityOne Program, an NPA must be represented by the appropriate CNA. NPAs serving individuals who are blind shall be represented by National Industries for the Blind (NIB), and NPAs serving individuals who have other significant disabilities shall be represented by NISH. (41CFR 51-3.1)

   i. For an NPA to be represented by NIB, it must meet the requirements of a "Qualified Nonprofit Agency for the Blind" as defined in 41 USC 8501 and 41 CFR 51.4.

   ii. For an NPA to be represented by NISH, it must meet the requirements of a "Qualified Nonprofit Agency for Other Severely Disabled" as defined in 41 USC 8501 and 41 CFR 51.4.

(b) To qualify for participation in the AbilityOne Program, an NPA's legal documentation and completed Initial Certification Form must be submitted through the appropriate CNA to the Commission and receive the Commission's subsequent approval.

(c) An NPA primarily serving individuals who are blind may seek to qualify as a Nonprofit Agency for Other Severely Disabled if:

   i. Upon request, NISH will review the NPA's articles of incorporation and bylaws to determine whether the purpose statement specifies that it operates in the interest of persons who have severe disabilities other than blindness. NISH shall seek further direction from Commission staff prior to submitting any request for verification.

   ii. If an agency is verified as a "Nonprofit Agency for Other Severely Disabled," it is then subject to Commission regulations pertaining to such an NPA, which differ from the regulations for an NPA employing individuals who are blind.

   iii. An NPA that qualifies as a "Nonprofit Agency for Other Severely Disabled" loses its designation as a "Nonprofit Agency for the Blind" under the statute and the priority accorded qualified NPAs for the blind.

(d) NPAs may not be represented by both NIB and NISH.

(e) NPAs that are not independent legal entities, but are part of a larger nonprofit corporation or government agency (jointly referred to as "umbrella organizations"), may be considered by the Commission for qualification.

i. When an NPA that is a subsidiary or affiliate of a larger umbrella organization seeks verification of its nonprofit status, its CNA shall submit the legal documents listed in 41 CFR 51 4.2 (a) as well as the articles of incorporation and bylaws of the umbrella organization with which it is affiliated.

ii. Each participating agency is responsible for notifying its CNA and the Commission of changes to its relationship with a larger umbrella organization.

(f) When an NPA's corporate structure includes one or more related corporations (parents, subsidiaries, or other closely related organizations), it is necessary to ensure that this structure is not a means to pass control to a for-profit corporation, or to avoid the overall annual 75 percent direct labor requirement. NPAs related to other corporations must meet the following criteria when seeking verification from the Commission:

i. NPAs must identify any other corporations they are related to when submitting their request to the CNA and the Commission.

ii. The NPA seeking verification must be an independent corporate entity.

a. It must be incorporated as a separate nonprofit entity, with separate articles of incorporation and bylaws. If these documents imply or state control by another entity, that entity must be another NPA whose mission also involves serving people who are blind or severely disabled. Its articles of incorporation and bylaws must be submitted concurrently with the NPA seeking verification.

b. The NPA must provide written confirmation from the controlling entity, stating that it will not interfere with any requirements of the NPA to participate in the AbilityOne Program.

c. The NPA seeking verification must maintain separate records that include payroll, accounting, personnel, and, if applicable, rehabilitation.

d. If the NPA seeking verification is paying commensurate wages, it must have a Department of Labor certificate in its own name.

iii. Agreements with other entities for support services to be provided to the NPA seeking verification must provide for reimbursement at market rates, as well as detailed billing and payment records that permit compliance personnel to conclude that an arm's length relationship exists.

iv. If any related entity is a for-profit corporation, the NPA seeking verification must be able to demonstrate a complete separation from that entity in the areas of finance and control of the agency (for example, separate accounting capability; separate members of the boards of directors, separate key leadership positions). Additionally, documentation verifying that no private inurement will occur is required.

(g) Agreements NPAs may have with other entities for support services to be provided to the NPA seeking verification must not interfere with the independence of the NPA. It should be apparent that an arm's length relationship exists between the NPA and the other entity.

(h) NPAs seeking Commission verification that are owned, operated, authorized or established under other than state corporation laws and are not privately incorporated, must submit through their CNA the appropriate documents described in 41 CFR 51-4.2.

(i) At least two members of the senior management team of all new NPAs shall attend specialized AbilityOne Program training as part of the NPA's verification process. NPAs with fewer than 50 employees are only required to have one senior manager receive training. Unless specifically waived under certain circumstances, NPAs that have not completed this training will not be verified.

  i. CNAs shall develop specialized training for new NPAs.
  ii. The appropriate CNA will certify that an NPA has completed the training as part of its submission for the new NPA's verification.

(j) The Commission maintains current documentation of nonprofit status as required by its regulations for NPAs that have been authorized, or have been requested to be authorized, on the PL to provide one or more products or services, or that have one or more products or services under consideration for addition to the PL.

(k) Inactive NPAs will be moved from "verified" or "producing" status to "deleted" status after a specified period of time.

  i. The Commission will no longer consider the NPA's documentation of nonprofit status current, and the NPA will no longer be considered verified one year after an NPA is no longer authorized to provide any product or service on the PL, or after one year in a "verified" status without being authorized to provide a product or service,
  ii. The NPA's status will be revised to "deleted" in the Commission's records and notice of this change will be sent to the CNA.
  iii. Once an NPA's status has been changed to "deleted," its CNA may resubmit updated documentation only when requesting action on a proposed addition to the PL of a product or service that the NPA would provide, or authorization for the NPA to provide an item already on the PL.

(l) After Initial Qualification, NPAs are responsible for meeting all of the requirements for maintaining qualification listed in the Commission regulations at 41 CFR 51-4.3. The CNAs shall ensure that each NPA is informed of these requirements, which are addressed in the 51.400-series policy and procedural documents. Any change to an NPA's legal status or documents (articles of incorporation & bylaws) must be reported to its CNA and the Commission promptly but not later than 60 days following any such change and included in the NPA's annual certification filing.

7. EXCEPTION TO POLICY.

None.

8. PROCEDURES.

(a) An NPA must submit the legal documents listed in 41 CFR 51-4.2(a) to the appropriate CNA.

(b) After evaluating the documents to determine the appropriate qualifications and capabilities of the NPA, the CNA should submit these documents to the Commission between 30 and 90 day before submitting the initial request for addition to the PL of a product or service to be furnished by that NPA.

(c) The NPA must submit two completed copies of the Initial Certification Form (Commission Form 401 for NPAs affiliated with NIB, or Commission Form 402 for NPAs affiliated with

(d) NISH) to its CNA. The CNA forwards one original copy to the Commission. These forms require an NPA to provide:

i. The ratio of the hours of people who are blind or who have other significant disabilities to the total hours and demonstrate that the agency is meeting the 75 percent direct labor ratio requirement.

ii. Certifications that documentation for each individual who is blind or has a significant disability is maintained according to Commission requirements, that the NPA is functioning as a not-for-profit entity serving persons who are blind and/or or who have other significant disabilities, maintains a placement program as required by the Commission, and complies with applicable occupational safety and health standards prescribed by the Secretary of Labor and will be able to comply with all contracting requirements.

(e) An NPA that reports a direct labor ratio below 75 percent on the Initial Certification Form must submit a plan detailing actions to achieve 75 percent during the first fiscal year of participation in the AbilityOne Program. The submitted plan shall include:

i. A cover letter that introduces the plan and the NPA's procedures for implementing that plan.

ii. A detailed schedule that projects the direct labor ratio monthly, as well as the projected cumulative ratio at the end of the fiscal year.

iii. A description of the available employee base in that geographical area of individuals who are blind or have other significant disabilities, along with a listing of referral sources that will be used in filling positions to increase the direct labor ratio. Letters from referral sources indicating employee availability.

(f) After the Commission has reviewed and approved the documents, the NPA and its CNA shall be notified that the Commission verified the NPA's nonprofit status.

9. SUPERSESSION.

(a) Compliance Memorandum Number 1, Qualification Procedure for Nonprofit Agencies, dated June 20, 1995.

(b) Compliance Memorandum Number 2, NISH Representation of Nonprofit Agencies Serving Individuals Who Are Blind, dated September 15, 1993.

(c) Compliance Memorandum Number 3, Documentation Requirements for NIB, NISH, and Umbrella Organizations, dated November 19, 1999.

APPROVED: _____ **Date:** 3/22/2013

E. Ballard

Executive Director