

Interim Policy 51.205.01
Effective Date: 3-22-2023

TITLE: INTERIM POLICY TO RESOLVE DISPUTES RELATED TO PROCUREMENT LIST SCOPING LIMITATIONS FOR CERTAIN PRODUCTS

1. PURPOSE

To provide a procedural framework to resolve disputes involving the covered products developed in partnership with U.S. Army Natick Soldier Systems Center (Natick) and the Defense Logistics Agency – Troop Support (DLA-TS).

2. APPLICABILITY

This interim policy applies to contracting activities (Federal customers), the central nonprofit agencies (CNAs), as applicable, and participating nonprofit agencies (NPAs) currently producing a covered product.

3. AUTHORITY

- (a) The Javits-Wagner-O'Day (JWOD) Act, 41 U.S.C. §§ 8501-8506.
- (b) 41 C.F.R. Part 51-6.15
- (c) Commission Policy 51.205 6(e)

4. DEFINITIONS AND ACRONYMS

Covered product: Procurement List additions developed in partnership with Natick and DLA for military individual equipment, military uniforms (trousers, blouses, etc.), military garments (coats, outerwear, caps, etc.), or other military issue items generally following the manufacturing and design—initial fielding—sustainment model.

Other definitions, abbreviations, and acronyms frequently used throughout this policy system are provided in 51.102, *Definitions*.

5. RESPONSIBILITIES

- (a). The Executive Director shall:
 - i. Review the Commission's administrative record of prior, covered product PL additions, including the underlying rationale supporting a percentage or other scope limitation on that product.
 - ii. Review relevant and pertinent information provided by the associated CNA and request additional information as needed.

- iii. Review the business case, justification or other information provided by the contracting activity in support of a percentage limitation on a covered product and request additional information as needed.
- iv. Review the business case or other information provided by the NPA, including the NPA's capability to produce quantities greater than the current percentage requirement on the PL and request additional information as needed.
- v. Expeditiously issue a final written decision resolving the dispute, and transmit that decision to the contracting activity, NPA, and the responsible CNA.

(b) The Central Nonprofit Agency shall:

- i. Provide records, documents, or other information to the Commission, contracting activity and the NPA, as needed, to further expedite the resolution of a dispute over a covered product.
- ii. Provide technical assistance to the Commission in resolving the dispute, advise the Commission on a NPA's production capabilities (considering the nonprofit agency's ability to increase production without subcontracting and without jeopardizing ODLH requirements).
- iii. Ensure the contracting activity and NPA are adhering to the current mandatory purchase requirements of the covered product on the PL.

(c) The Contracting Activity shall:

- i. Advise the Commission, in writing, that a dispute exists over a covered product between the activity that requested the covered product be placed on the PL, or the current contracting activity, if different, and the NPA fulfilling the requirement.
- ii. Submit requested information, in a timely manner, including justifying the activity's need for only a portion of its requirement to remain on the PL versus its full requirement.
- iii. Review its current procurement/acquisition strategy for substantive changes that may have occurred since the covered product was placed on the PL that minimizes or eliminates the need for a portion or percentage requirement on the PL.
- iv. Continue purchasing the covered product(s) in accordance with the contract's current requirements, including any current percentage requirements established by the Commission.

(d) The Nonprofit Agency shall:

- i. Advise the Commission, in writing, that a dispute exists between the NPA currently producing a portion or percentage of a covered product and the contracting activity only placing orders for a percentage or portion of a covered product.

ii. Submit requested information, in a timely manner, describing, in sufficient detail: the nonprofit agency's current rate(s) of production, and statement and other evidence demonstrating whether the nonprofit agency can reasonably increase production without jeopardizing ODLH requirements.

iii. Continue producing the covered product in accordance with the contract's terms, and the Federal customer's delivery schedules.

6. POLICY

The Commission's regulation at 41 CFR 51-6.15 requires that disputes arising under 41 CFR Parts 51-5 and 51-6 be resolved between the contracting activity and the nonprofit agency with assistance from the applicable central nonprofit agency. If the dispute is not resolved at that level, then the regulation requires that the dispute be referred to the Commission for resolution. However, in this interim policy the Commission is directing the parties to refer disputes related to covered products directly to the Commission for resolution.

AbilityOne nonprofit agencies (NPA) have been instrumental in developing new products for M&D, initial (or rapid) fielding, and long-term sustainment. The Commission recognizes that the AbilityOne Program (Program) is a critical part of the domestic industrial base, but NPAs in the Program are not the only producer in the M&D to sustainment pipeline. As such, it is Commission policy to ensure that the Program works in tandem with Natick and DLA-TS to support and strengthen the pipeline. Disputes administered under this policy will be resolved in a manner that causes the least amount of disruption to the pipeline and existing contractual relationships.

7. EXCEPTIONS

There are no exceptions to this policy, but the Executive Director may delegate the authority to act as a deciding official to the Deputy Executive Director or the Director of Business Operations. No further delegations are authorized.

8. PROCEDURES

Dispute Resolution Process

- (a) **Referral:** The Dispute Resolution process is initiated by written referral to the Director of Business Operations; electronic mail is required and should be sent to disputes@abilityone.gov, with simultaneous copies to the responsible CNA, only if the following apply:
- i. The Referral, if originating with Contracting Activity, is made by the responsible Contracting Officer.
 - ii. The Referral, if from the NPA, is made by the Chief Executive Officer of the NPA, or an individual formally authorized by the CEO to represent it in the dispute.
 - iii. If more than one NPA or Contracting Activity is designated on the Procurement

List, then the referral must be coordinated between all affected parties before dispute resolution is referred.

- iv. When the CNA is authorized by the Commission to serve as the prime on a contract, the CNA may utilize this dispute resolution procedure. The referral is made by the organizational representative identified below:
 - a. NIB Assistant Vice President, Operations Support,
 - b. SourceAmerica Regional Executive Director, or
 - c. Official at an organizational level above these positions.

(b) **Contracting Activity Statement:** The Contracting Activity shall prepare a statement that describes the following:

- i. The project name and location, including the contract number if a contract is involved, the NIB or SourceAmerica project number and Commission PL number.
- ii. If NPA has provided this product to you in the past, provide the NPA's current on time delivery rate.
- iii. A statement of the issue that is the basis for referring the matter to the Commission and the desired outcome. The desired outcome must include proposed scope limitation (quantity, percentage, location, etc.).
- iv. The specific reason(s) a scope limitation is needed (impact on existing contractors, poor performance history from NPA, etc.).
- v. Contracting Activity Statement must be signed and verified by the responsible Contracting Officer.

(c) **NPA Capability Statement:** The purpose of the capability statement is to verify that the authorized NPA has the technical expertise to produce the covered product in the quantities and time needed by the Federal agency. The capability statement shall contain the following information:

- i. Description of NPA's overall capacity. This description shall identify the number of all projects currently being done, and the total number of significantly disabled workers employed in support of all products currently produced by NPA.
- ii. Number of significantly disabled workers employed in the manufacturing of this product.
- iii. The role of workers in the manufacturing of this product (i.e., sewing, assembly, packaging, etc.).
- iv. NPA overall direct labor hour (ODLH) ratio.
- v. NPA direct labor hour ratio for this project.
- vi. Percentage of subcontracting used to fulfill this product. If subcontracting is greater than 20 percent, please explain what role each subcontractor does in the production of this product.

vii. The suitability statement shall be prepared by the NPA but verified by the responsible CNA.

viii. The CEO or an authorized representative must also sign and attest to the veracity of the NPA’s reported capabilities and employment potential.

(d) **Commission Staff Recommendation:** The Commission staff will review the referral and may request additional supporting documentation from any source. **All statements must be provided to the staff within 14 days of referral.** If the staff determines that the NPA is a mandatory source, but this matter does not fall within the scope of this policy, the parties will be informed, and the referral will be closed. If, on the other hand, the Commission staff determines that this policy applies, the referral and statements will be forwarded to the Deciding Official with a recommendation from the responsible CNA and the Commission staff. The Commission staff will publish applicable Federal Register notices when a dispute is referred to the deciding official.

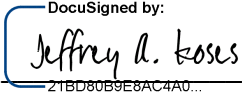
(e) **Deciding Official:** The Executive Director (or an appropriate designee) will adjudicate the referral and issue a written decision in the most expeditious manner practicable, but not to exceed 60 days from receipt of a referral. The deciding official has the authority to provide the following resolutions in accordance with (IAW) 41 CFR 51-6.15.

- i. Eliminate any scope limitations and direct a change to the Procurement List to reflect an unrestricted addition.
- ii. If the conditions and/or circumstances for adding the requirement have substantially changed since the product was added to the PL, the Deciding Official may instruct the staff to prepare the action for a new suitability determination IAW 41 CFR 51-2.4, to reflect changes in NPA capabilities, employment opportunities, impact on other contractors, or any other pertinent information not previously provided at the time of addition.
- iii. Issue a purchase exception IAW 41 CFR 51-6.7, if applicable.
- iv. Delete the requirement from the PL IAW 41 CFR 51-6.8, if applicable.

Each decision must be supported with substantial evidence and represent the best interests of the AbilityOne Program.

9. SUPERSESION

N/A

APPROVED:  **Date:** 3/22/2023

Jeffrey Koses
Chairperson