

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

(a) For a commodity 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 commodity 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 commodity 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 commodity 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 commodity 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 commodity 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 commodity 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 commodity 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 commodity or service for addition to the Procurement List, the Committee does not consider comments on proposed fair market prices for commodities and services proposed for addition to the Procurement List to be pertinent to a suitability determination.

[56 FR 48977, Sept. 26, 1991, as amended at 59 FR 59341, Nov. 16, 1994; 62 FR 66529, Dec. 19, 1997]

**§ 51-2.5 Committee decision.**

The Committee considers the particular facts and circumstances in each case in determining if a commodity 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 commodity 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 commodity 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.

[59 FR 59342, Nov. 16, 1994]

**§ 51-2.6 Reconsideration of Committee decision.**

(a) The Committee may reconsider its decision to add items to the Procurement List if it receives pertinent information which was not before it when it initially made the decision. Unless otherwise provided by the Committee, requests for reconsideration from interested persons must be received by the Committee within 60 days following the effective date of the addition in question. A request for reconsideration must include the specific

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facts believed by the interested person to justify a decision by the Committee to modify or reverse its earlier action.

(b) In reconsidering its decision, the Committee will balance the harm to the party requesting reconsideration if the item remains on the Procurement List against the harm which the nonprofit agency or its employees who are blind or have other severe disabilities would suffer if the item were deleted from the Procurement List. The Committee may also consider information bringing into question its conclusions on the suitability criteria on which it based its original decision as factors weighing toward a decision to delete the item, and information concerning possible harm to the Government and the JWOD Program as factors weighing toward confirmation of the original decision.

[56 FR 48977, Sept. 26, 1991, as amended at 59 FR 59342, Nov. 16, 1994]

## §51-2.7 Fair market price.

(a) The Committee is responsible for determining fair market prices, and changes thereto, for commodities and services on the Procurement List. The Committee establishes an initial fair market price at the time a commodity 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 commodity 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.

(b) Prices are revised in accordance with changing market conditions under Committee procedures, which include negotiations between contracting activities and producing nonprofit agencies, assisted by central nonprofit agencies, or the use of economic indices, changes in nonprofit agency costs, or other methodologies permitted under these 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 cen-

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tral 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 commodity or service which is the subject of a recommendation.

[64 FR 55842, Oct. 15, 1999]

## §51-2.8 Procurement list.

(a) The Committee maintains a Procurement List which includes the commodities 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 to contracting activities upon request.

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

(c) For services, the Procurement List identifies the type of service to be furnished, the Government department or agency responsible for procuring the service, and, where appropriate, the activity or item to be serviced.

(d) Additions to and deletions from the Procurement List are published in the FEDERAL REGISTER as they are approved by the Committee.

## §51-2.9 Oral presentations by interested persons at Committee meetings.

(a) Upon written request from an interested person, that person may, at the discretion of the Committee Chair, be permitted to appear before the Committee to present views orally. Generally, only those persons who have raised significant issues which, if valid,