

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

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

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a product and a service previously furnished by such agencies.

DATES: *Effective Date:* July 3, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail SKennerly@jwod.gov.

SUPPLEMENTARY INFORMATION:

Additions

On February 18, March 25, April 1, April 8, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 8340, 15288, 16797, 17969) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

The following comments pertain to the Navy Promotional Recruiting Materials:

Comments were received from 74 persons or organizations, 72 of which are employees, suppliers or others sympathetic to the nonprofit agency which has been designated to provide the products at issue upon their addition to the Procurement List. These commenters noted that the products provide meaningful work and job training opportunities for blind people, who have few other work opportunities, as well as benefiting both the

community and the Navy customers. The suppliers claimed that they would be severely affected if they lost the opportunity to provide these products through the nonprofit agency. The Committee agrees that these comments provide good reasons for adding these products to the Procurement List. Two businesses did comment in opposition to this addition to the Procurement List. One of them claimed to represent a "lengthy list" of other affected businesses, but did not provide any information to identify those businesses.

As the notice proposing addition of these products to the Procurement List (70 FR 8340, Feb. 18, 2005) noted, these products were previously added to the Procurement List as a customization and distribution service for the Navy, which decided in 2004 to change to products contracting to meet its requirement. This decision was due in part to the legal challenges noted by the business commenters. As the Committee is now adding the products in question to the Procurement List in their own right, the challenges and resulting legal decisions on them are no longer relevant.

Based in part on contacts the designated nonprofit agency had with them while it was providing the products to the Navy under the previous service arrangement, the business commenters claimed that the products are not appropriate for addition to the Procurement List because the nonprofit agency, as a mere broker of products produced by others, does not perform "preparation, processing and packing" operations as required by the Committee's statutory and regulatory definitions of direct labor, 41 U.S.C. 48b(5) and 41 CFR 51-1.3. However, the nonprofit agency has informed the Committee that it does manufacture some of the products, and has shown the Committee that it does engage in processing and/or packing of the remaining items at its warehouse before shipping them to the Navy's central facility in Tennessee. These activities generate considerable blind direct labor, in addition to the indirect blind labor created by supervisory, warehousing, order picking and quality assurance activities associated with these products.

The business commenters also claimed that the nonprofit agency will be providing foreign goods, in contravention of the Government's domestic preference statutes. However, the Committee's program is exempt from the Trade Agreements Act, *see* 48 CFR 25.401(a)(4), and the rationale for that exemption—to protect socioeconomic programs such as the Committee's program—is such that the

Committee believes its program is exempt from related statutes such as the Buy American Act. In addition, the manufacturing and other processing the nonprofit agency will be doing should sufficiently transform many of these products to bring them into compliance with these preference statutes. The Navy contracting office has informed the Committee that it will apply the Berry Amendment, 10 U.S.C. 2533a, to procurements of these products, and the nonprofit agency has agreed to provide only products which meet the domestic source requirements of the Berry Amendment.

One of the business commenters claimed that the notice of proposed addition was misleading, as a statement at 70 FR 8341 indicating that replacement items for the products listed in the notice would be added to the Procurement List in accordance with the Committee's regulation, 41 CFR 51-6.13, characterized the items as "the Navy's entire requirement for recruiting and promotional materials." This statement was based on the Navy's characterization of its requirement.

The same page of the proposed addition notice contained a certification that the "action will not have a significant impact on a substantial number of small entities." Both business commenters disputed this statement, citing the impact of the addition on themselves and their industry. However, these comments show a misunderstanding of the statement, which is clearly labeled as a "Regulatory Flexibility Act Certification." This certification is required by the Regulatory Flexibility Act, 5 U.S.C. chapter 6. The Committee has its own regulation concerning the impact of Procurement List additions on current contractors, at 41 CFR 51-2.4(a)(4). However, in this situation the current contractor is the designated nonprofit agency, which held the Navy's contract under the previous service arrangement. Neither the two business contractors nor anyone else in their industry are considered current contractors under the Committee's regulation, as they are not losing contracts as a result of this Procurement List addition. Therefore, there is only one "small entity" involved here, the designated nonprofit agency, so this Procurement List addition does not affect "a substantial number of small entities." Accordingly, the Committee's Regulatory Flexibility Act Certification is correctly stated.

One of the business commenters claimed that manufacturing some of these products, such as golf balls, would expose blind workers to hazardous

conditions. This would not be the case for golf balls, which the designated nonprofit agency will not manufacture. However, the nonprofit agency has a long history of safely manufacturing items, including some of those involved in this Procurement List addition, using equipment and procedures which have been modified to accommodate blind workers.

The business commenters claimed that the nonprofit agency's price to the Government would be higher than what industry could offer, citing a 2004 market survey by an official at the Navy facility in Tennessee. However, this survey reflects the opinion of the official and not the Navy contracting office, which agreed with the Committee that the nonprofit agency's price is a fair market price.

The following material pertains to all of the items being added to the Procurement List.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Navy Promotional Recruiting Materials:

Ball Caps.

NSN: 8405-00-WIM-0175—Ballcap, Flexible Fit Ballcaps Upper Quality.

NSN: 8405-00-WIM-0177—Ballcap, Flexible Fit.

NSN: 8405-00-WIM-0176—Ballcap, Chaplain.

Beverage Can Cooler.

NSN: 7830-00-WIM-0012—Beverage Can Cooler, Blue w/3Color Imprint, NASCAR.

NSN: 7830-00-WIM-0010—Beverage Can Cooler, Blue w/3Color Imprint. Coins.

NSN: 8145-00-NIB-0013—Coin, Admiral Coins.

NSN: 8145-00-NIB-0014—Coin, Anodized Blue & Gold Sport Coins.

Flashlight.

NSN: 7830-00-WIM-0008—Flashlight, Health Care.

NSN: 7830-00-WIM-0011—Flashlight, Carabiner Flashlight w/Compass.

Flyer.

NSN: 7830-00-NIB-0001—Flyer, Blue w/ Gold Foil.

Golf Balls.

NSN: 7830-00-NIB-0007—Golf Balls/Tees. Lanyards.

NSN: 5340-00-WIM-0079—Lanyard, Red, White & Blue NASCAR.

NSN: 5340-00-WIM-0076—Lanyard, 2 pc. Health Care.

NSN: 5340-00-WIM-0078—Lanyard, Red, White & Blue w/Navy in Gold.

NSN: 5340-00-WIM-0077—Lanyard, 2 pc. Chaplain Corps.

Lapel Pin.

NSN: 8145-00-WIM-0101—Navy Lapel Pin.

Luggage Tag.

NSN: 9905-00-NIB-0089—Luggage Tag, Healthcare.

NSN: 9905-00-NIB-0088—Luggage Tag, Enlisted.

Mini Pouch w/Ear Plugs.

NSN: 8145-00-WIM-0026—Mini Pouch w/ Ear Plugs, NASCAR.

NSN: 8145-00-WIM-0025—Mini Pouch w/ Ear Plugs.

Mouse Pad, Computer.

NSN: 7045-00-NIB-0170—Mouse Pad, Lenticular 3D Motion.

Pack, Personal Gear.

NSN: 8465-00-NIB-0057—Bag (DEP), Backpack, Blue DEP.

Pen, Cushion Grip, Transparent.

NSN: 7520-00-WIM-1550—Pen, Wide Barrel—DEP.

NSN: 7520-00-WIM-1545—Pen, Patriotic w/ wave clip.

Pen, Executive, Twist Retractable.

NSN: 7520-00-WIM-1472—Pen, Blue Lacq.—Health Care.

NSN: 7520-00-WIM-1471—Pen, Blue Lacq. Eng—Span Bilingual.

Pencil, Metallic Foil, Imprint, Navy.

NSN: 7510-00-NIB-0525—Pencil, Blue/gold foil Bilingual.

Planner.

NSN: 7510-00-WIM-0552—Planner (DEP). Polo Shirts.

NSN: 8415-00-NIB-0161—Polo Shirt, Navy blue, Small.

NSN: 8415-00-NIB-0160—Polo Shirt, Navy blue, XL.

NSN: 8415-00-NIB-0159—Polo Shirt, Navy blue, Large.

NSN: 8415-00-WIM-0171—Polo Shirt, XL Chaplain.

NSN: 8415-00-WIM-0170—Polo Shirt, Large Chaplain.

NSN: 8415-00-NIB-0162—Polo Shirt, Navy blue, Medium.

Retractable Badge Holder.

NSN: 8145-00-WIM-0020—Retractable Badge Holder, Blue.

Rulers.

NSN: 9905-00-WIM-0095—Ruler, Notable African American.

NSN: 9905-00-WIM-0090—Ruler, Presidential.

Slingbag.

NSN: 8465-00-WIM-0070—Bag (DEP), Slingbag, Blue Dep.

Stress Baseball.

NSN: 7830-00-NIB-0006—Stress Ball, Baseball.

Stress Basketball.

NSN: 7830-00-NIB-0005—Stress Ball, Basketball.

Stress Football.

NSN: 7830-00-NIB-0002—Stress Ball, Football.

Sunglasses.

NSN: 8465-00-NIB-0067—Sunglasses.

Table Cloth.

NSN: 8460-00-WIM-0004—Table Cloth.

Temporary Tattoos.

NSN: 9905-00-WIM-0091—Temporary Tattoos.

NSN: 9905-00-WIM-0092—Temporary Tattoos, NASCAR.

Travel Mug.

NSN: 7350-00-WIM-0151—Mug, 14oz. Blue Acrylic Mug, Enlisted.

NSN: 7350-00-WIM-0150—Mug, 11oz. Acrylic Mug, Chaplain Corps.

NSN: 7350-00-WIM-0149—Mug, 16oz. American Pride Travel Mug.

NSN: 7350-00-NIB-0147—Mug, 14oz. Blue Acrylic Mug, Health Care.

T-Shirts.

NSN: 8415-00-WIM-0168—T-Shirt, Chaplain, Protestant Version XL.

NSN: 8415-00-WIM-0167—T-Shirt, Chaplain, Protestant Version L.

NSN: 8415-00-WIM-0166—T-Shirt, Chaplain, Catholic Version XL.

NSN: 8415-00-WIM-0165—T-Shirt, Chaplain, Catholic Version L.

NSN: 8415-00-NIB-0158—T-Shirt, White XL Health Care.

NSN: 8415-00-NIB-0157—T-Shirt, White L Health Care.

NSN: 8415-00-NIB-0140—T-Shirt, White XL.

NSN: 8415-00-NIB-0139—T-Shirt, White L. Tumbler.

NSN: 8125-00-NIB-0007—Tumbler, 16oz. White.

Water Bottle.

NSN: 8125-00-NIB-0006—Water Bottle, Screw Lid.

Zipper Jacket and Jogging Pants.

NSN: 8415-00-NIB-0144—T-Shirt, XL.

NSN: 8415-00-NIB-0143—T-Shirt, Large.

NSN: 8415-00-NIB-0142—T-Shirt, Medium.

NSN: 8415-00-NIB-0141—T-Shirt, Small.

NPA: Industries for the Blind, Inc.,

Milwaukee, Wisconsin.

Contracting Activity: Fleet and Industrial Supply Center, Philadelphia, Pennsylvania.

Services

Service Type/Location: Custodial Services, Shasta Lake Ranger Station, 14225 Holiday Road, Redding, California.

NPA: Shasta County Opportunity Center, Redding, California.

Contracting Activity: USDA, Forest Service, Redding, Redding, California.

Service Type/Location: Grounds Maintenance, Fort Worden Cemetery, Fort Worden State Park, Port Townsend, Washington.

NPA: Skookum Educational Programs, Port Townsend, Washington.

Contracting Activity: Directorate of Contracting, Fort Lewis, Washington.
Service Type/Location: Mailroom Operation, DC Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC.
NPA: Didlake, Inc., Manassas, Virginia.
Contracting Activity: DC Pretrial Services Agency, Washington, DC.

Deletions

On April 1, and April 8, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 16797, and 17969) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the product and service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and service deleted from the Procurement List.

End of Certification

Accordingly, the following products and service are deleted from the Procurement List:

Product

Labels, Laser.
 NSN: 7530–01–514–5944—Assorted Fluorescent.
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Service

Service Type/Location: Janitorial/Custodial, Point Mugu Naval Air Station Commissary, Point Mugu, California.
NPA: Association for Retarded Citizens—Ventura County, Inc., Ventura, California.
Contracting Activity: Defense Commissary Agency, Fort Lee, Virginia.

Sheryl D. Kennerly,

Director, Information Management.
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COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions, Clarification of Requirement

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

ACTION: Addition to the procurement list; clarification of requirement.

SUMMARY: In this document, we are reiterating an earlier clarification of the Federal Government requirement for the addition to the Procurement List of vegetable oil (domestic) to be furnished to the Federal Government by a nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* June 19, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or to Submit Comments Contact: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail skennerly@jwod.gov.

SUPPLEMENTARY INFORMATION: On May 20, 2005, we published in the **Federal Register** (70 FR 29274–29276) a notice to add one product and four services to the Procurement List, and to delete two services from the Procurement List. That notice was based in part on a notice of proposed addition (70 FR 5963–5964) dated February 4, 2005, clarifying an earlier notice (69 FR 71777–71778) dated December 10, 2004.

The February 4, 2005 notice (70 FR 5963–5964) clarified the Federal Government requirement for one of the products to be added: Vegetable Oil (Domestic), 10 percent of U.S. Department of Agriculture (USDA) Requirement, 8945–00–NSH–0002; *NPA:* Advocacy and Resources Corporation, Cookeville, Tennessee; *Contracting Activity:* USDA, Farm Service Agency, Washington, DC.

The February 4, 2005 notice (70 FR 5963–5964) stated that this product will be provided exclusively as liquid oil (all types) in one gallon bottles in a quantity equivalent to 10% of the total Government requirement for refined, packaged, vegetable oil for domestic purchases regardless of type or pack style according to CID A–A–20091, Salad Oil, Vegetable. This same clarification applies to the listing of the product on the Procurement List announced in the May 20, 2005 final addition notice (70 FR 29274–29276).

Authority: 41 U.S.C. 46–48c.

Sheryl D. Kennerly,
Director, Information Management.
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COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

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

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: July 3, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

For Further Information or to Submit Comments Contact: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail SKennerly@jwod.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed action.

If the Committee approves the proposed addition, the entities of the Federal Government identified in the notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. If approved, the action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish