



OFFICE OF THE CHAIRPERSON

March 22, 2023

MEMORANDUM

TO: QUALIFIED NONPROFIT AGENCIES IN THE ABILITYONE PROGRAM

FROM: Jeffrey Koses, Chairperson DocuSigned by:
Jeffrey A. Koses
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SUBJECT: The Manufacturing & Development (M&D) to Sustainment Pipeline

In view of recent court decisions in the U.S. Court of Federal Claims (COFC), the U.S. AbilityOne Commission (Commission) is making an interim procedural change for processing all new and existing Procurement List (PL) additions developed in partnership with U.S. Army Natick Soldier Systems Center (Natick) and the Defense Logistics Agency – Troop Support (DLA-TS).

For decades, AbilityOne nonprofit agencies (NPA) have been instrumental in developing new products for M&D before mass producing those products for initial (or rapid) fielding and long-term sustainment. This M&D to sustainment pipeline has traditionally begun at Natick before transitioning to DLA-TS. This multi-phased process was managed as a C-List addition, which meant that depending on where the product was in the pipeline, procurement was only mandatory for the specified DOD activity (Natick or DLA-TS). The Commission also, depending on the circumstances, would place quantity limitations on some products to provide DOD flexibility in managing production opportunities across the entire domestic industrial base.

Over the past two years, there have been numerous lawsuits challenging PL additions processed under this arrangement. Of note, was an allegation that called into question the Commission's authority to place quantity limitations for products added to the Procurement List IAW 41 CFR 51-2.4, 2.5, and 5.3. The Court has rejected this assertion on multiple occasions, and affirmed the Commission's authority to place a portion of or the entire requirement on the Procurement List as it has done for decades. Nevertheless, the Court has also identified several process deficiencies that will require both near and long-term solutions.

In the near term, the Commission assures that every NPA in the AbilityOne Program will continue to provide the products its customers need at the high standards they have come to expect. Additionally, the most recent COFC decision will not be construed as a license to unfairly displace existing contractual relationships, but as a framework for ensuring the Program's processes are fair, predictable, and consistently applied. In furtherance of this goal, I am establishing the following procedures effective immediately:

1. New PL additions in the M&D to sustainment pipeline: Initial or rapid fielding initiatives will be treated as time limited opportunities and will only be approved for a specified ordering

period. The Commission will NOT process any new PL product additions originating from the Army Natick M&D service agreement unless the requirement owner provides an ordering period and an estimated quantity. Time limitations can be exempted if there is an expectation that the added product will transition from Natick to DLA-TS for sustainment. In those instances, the requestor must provide the expected transition date and written concurrence from DLA-TS. If the explanation is insufficient or there is no DLA-TS concurrence, the item will only be added to the PL in accordance with Natick's requirements on a time limited basis. The NPA and Federal agency must also agree to refer any disputes with quantity and time limitations to the Commission for resolution in accordance with Commission Interim Policy 51.205.01.

2. Existing PL additions in the M&D to sustainment pipeline: All C-List items originating under the Army-Natick M&D agreement and added prior to March 22, 2023, are hereby placed in an "under review" status. The "under review" status means that all Federal agencies may continue to procure the item at the quantities and limitations specified on the PL, unless there is a disagreement between the NPA and the Contracting Activity. In those instances, all scope-related disagreements shall be immediately referred to the Commission for resolution in accordance with Commission Interim Policy 51.205.01.

The interim policy and new procedures will remain in place until all PL items under review have been fully reevaluated, and a long-term solution has been codified in writing between the Army, DLA, and the Commission. If you have any questions or seek additional clarification on a specific issue related to the procedure for submitting a request or the standards outlined in this memorandum, please contact your National Industries for the Blind (NIB) or SourceAmerica representative for additional guidance. For all other Procurement List matters, please contact the Directorate of Business Operations, at Operations@abilityone.gov.