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**TITLE: QUALIFICATION ASSESSMENTS AND ENFORCEMENT ACTIONS PROCEDURES**

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**1. PURPOSE.**

This document sets forth the procedures applicable to the qualification assessments and enforcement actions set forth in Policy 51.407.

**2. APPLICABILITY.**

This policy applies to the U.S. AbilityOne Commission (Commission), designated Central Nonprofit Agencies (CNAs), and qualified Nonprofit Agencies (NPAs) participating in the AbilityOne Program (Program).

**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
- (c) Commission Policy 51.407

**4. DEFINITIONS AND ACRONYMS.**

Definitions, abbreviations, and acronyms frequently used throughout this policy system are found in Policy 51.102, Definitions of Terms. Definitions for terms unique to compliance policies and this implementing procedure appear in Commission Policies 51.400 and 51.407.

**5. RESPONSIBILITIES.** See Commission Policy 51.407.

**6. POLICY REFERENCE.** See Commission Policy 51.407.

**7. PROCEDURES.**

- (a) Establishment of Qualification Inspection Packages.
  - i. Each designated CNA shall submit a Qualification Inspection Package to the Commission for approval.
    - 1. The Qualification Inspection Package shall set forth the elements that the CNA will review during a compliance visit and the documentation that an NPA must submit prior to a compliance visit.
    - 2. Changes to the Qualification Inspection Package shall be submitted to the Commission for approval.



## U.S. ABILITYONE COMMISSION

### *Procedure 51.407-01 Qualification Assessments and Enforcement Actions Procedures*

#### (b) Inspections.

##### i. Notice.

1. The CNAs shall provide an NPA a minimum of 20 business days' prior notice before conducting a CNA inspection, unless the responsible CNA receives pre-approval from the Commission for a shorter notice period or the Commission's Director of Program Oversight has determined there is good cause to address an urgent issue.
2. The Commission will provide an NPA at least 20 business days' prior notice before conducting a Commission staff inspection, except when the Director of Program Oversight has determined there is good cause to address an urgent issue.

##### ii. Factors for Inspection Schedule. CNAs shall select and prioritize NPAs for inspection based on the following non-exhaustive factors:

1. Inspection cycle, including the length of time since the last inspection.
2. Findings from the previous three (3) inspections as identified by the Commission or the CNA.
3. An NPA's initial and/or recently authorized source designation for a particularly large or complex AbilityOne Procurement List (PL) project.
4. Significant changes at the NPA, such as key executive leadership turnover or pattern of overall direct labor hour (ODLH) ratio changes.
5. Volume, recency, and substance of complaints pursuant to Commission Policy 51.406.
6. Advantages to the Government or the Program as determined by the Commission.

##### iii. NPA-Completed Qualification Inspection Package. An NPA shall submit to the CNA a completed Qualification Inspection Package checklist at least five (5) business days prior to an inspection.

##### iv. Inspection Format.

1. Inspections may be virtual, in-person, or hybrid.
2. The inspection shall include a review of the NPA's documentation showing its Qualifying Direct Labor (QDL) employees' eligibility evaluations.
3. The inspection shall include conversations with participating employees without supervisors present.
4. At the conclusion of the inspection, the inspector(s) shall have an exit briefing with the executive leadership team to convey initial findings from the inspection.
5. The CNA shall not discuss findings of suspected fraud or other criminal matters with the NPA. The CNA shall disclose suspected fraud or other criminal matters

## U.S. ABILITYONE COMMISSION

### *Procedure 51.407-01 Qualification Assessments and Enforcement Actions Procedures*

to the Commission within two (2) business days of discovery.

v. Post-Inspection Actions.

1. The CNA shall complete a report of the inspection consistent with the Qualification Inspection Package. The CNA shall electronically transmit the report to the NPA and the Commission. The CNA shall discuss the report with the NPA's executive leadership team.
2. The CNA shall offer technical assistance, if appropriate, to improve the NPA's operations. The CNA shall document any such technical assistance.

(c) Notice of Finding(s).

- i. The Notice of Finding(s) must describe the qualification finding(s), the deadline of the 10-business-day grace period following receipt of the post-inspection report, and the potential next steps that may include possible enforcement action(s).
- ii. If the NPA corrects a finding(s) within the 10-business-day grace period following receipt of the post-inspection report, the CNA must supplement the post-inspection report to reflect such a correction(s) and any violations that still necessitate a CAP.

(d) Notice of Violation.

- i. Upon determination of a violation or uncorrected finding(s) within the 10-business-day grace period, the CNA shall send a Notice of Violation(s) to the NPA, describing each violation(s).
- ii. The CNA shall electronically transmit a copy of the Notice of Violation(s) to the Commission.
- iii. An NPA may dispute the violation(s) identified in the Notice of Violation(s) by submitting a statement of facts to [violationsdispute@abilityone.gov](mailto:violationsdispute@abilityone.gov) within 10 business days of receipt of the notice.
- iv. The Commission staff will determine whether a violation is supported by the evidence and will send the NPA a written notification of whether the Notice of Violation(s) stands or is withdrawn.

(e) Corrective Action Plan.

- i. The CNA shall develop a CAP in consultation with the NPA to remedy the violation(s) identified in the Notice of Violation(s), within 10 business days of the issuance of the Notice, unless the proposed violation(s) is in dispute as described at 7(d)(iii).
- ii. A CAP shall:
  1. Identify the violations;
  2. Prescribe the action(s) necessary to remedy the violation(s); and
  3. Set forth the time period in which the NPA must complete the corrective action.
- iii. The CNA shall electronically transmit to the Commission the proposed CAP within 10 business days of establishing the CAP.

## U.S. ABILITYONE COMMISSION

### *Procedure 51.407-01 Qualification Assessments and Enforcement Actions Procedures*

- iv. The Commission will review the CAP and direct any modification(s), if needed.
  - v. The NPAs may, in advance of the CAP's prescribed time period expiration, contact the CNA in writing and request an extension of time.
  - vi. The CNA has the authority to grant a requesting NPA a single extension of time, not to exceed 60 business days. Upon request from the CNA or NPA, the Commission may grant a further extension.
  - vii. At the close of the CAP's prescribed time period, the CNA shall electronically transmit to the Commission an assessment (including rationale and supporting documents) of whether the NPA has complied with the CAP.
  - viii. The Commission shall determine whether an NPA has complied with the CAP.
- (f) Enforcement Actions. For the following enforcement actions, administered by the Commission staff, the Commission members will be notified via a weekly dashboard in advance of the action being taken.
- i. Provisional Enforcement Action (PEA).
    1. The Director of Program Oversight (or designee) will send the NPA written notification of the Commission's intent to place the NPA in PEA status.
    2. If an NPA submits a written response, it must be submitted to the Commission within 10 business days from the date of the notice.
    3. A PEA will include the conditions required for the PEA to be lifted.
    4. During the period of the PEA, the Commission may prescribe additional CAPs for the NPA to meet.
    5. A PEA may be lifted based on a demonstrated effort by the NPA to complete the conditions of the PEA.
    6. The appropriate CNA and the Commission will note that an NPA has an active PEA status when making recommendations or authorizations for new PL assignments. During the PEA period, the Commission may decide to provide a new authorization, or the CNA may make new recommendations, with a written decision explaining the special circumstances for doing so.
  - ii. Suspension of Eligibility to Receive New Authorizations or Allocations.
    1. The written notice of suspension, sent by the Director of Program Oversight (or designee), must contain, at a minimum, the following information:
      - a. The specific violation(s).
      - b. Length of suspension.
      - c. The necessary steps to remediate the underlying violation(s) (if possible).
      - d. The right of an NPA to provide a statement of facts challenging the suspension or to provide evidence of mitigation.
    2. If the Director of Program Oversight determines that continued suspension of an

## U.S. ABILITYONE COMMISSION

### *Procedure 51.407-01 Qualification Assessments and Enforcement Actions Procedures*

NPA beyond 24 months is warranted, the Director will notify the NPA in writing the reasons for continued suspension.

#### iii. AbilityOne Project Deauthorization.

1. Notice of Intent to Deauthorize. A Notice of Intent to Deauthorize must contain, at a minimum, the following information:
  - a. The specific violation(s),
  - b. The necessary steps to remediate the underlying violation(s) (if possible), and
  - c. The right of an NPA to provide a written statement of facts challenging the deauthorization, providing evidence of mitigation, and to request a hearing before the Deciding Official.
2. Deauthorization Decision.
  - a. If an NPA submits a written response to the Notice of Intent to Deauthorize, it must be submitted to the Commission within 10 business days from the date of the Notice of Intent to Deauthorize.
  - b. The Deciding Official shall consider the NPA's response.
  - c. The Deciding Official will review all relevant matters and the record to make one of the following determinations in writing:
    - i. Deauthorization.
    - ii. Dismissal of the notice to deauthorize.
    - iii. Any other administrative remedy deemed appropriate, such as extended corrective action with heightened administrative safeguards.
  - d. A deauthorization decision must include the NPA's right to appeal and the name and contact information of the appropriate appellate authority.
3. Right to an Appeal. An NPA may appeal the deauthorization decision to the designated staff appellate authority if any of the following is true:
  - a. The Deciding Official failed to follow the procedures described in this policy and failure to do so unfairly harmed the NPA;
  - b. The Deciding Official committed a clear error with respect to any material fact, controlling law, regulation, or policy;
  - c. New facts emerge after the initial statement of facts was submitted and considered. Such facts must be the kind of facts that, if known at the time of the decision, might have reasonably changed the outcome. An appellant may not re-litigate prior facts, or present "new facts" that it could have presented at the time of the initial decision; or
  - d. The intent to appeal is filed within five (5) business days of the deauthorization decision and the written appeal is filed with the agency within 15 business days of the deauthorization decision.

## U.S. ABILITYONE COMMISSION

### *Procedure 51.407-01 Qualification Assessments and Enforcement Actions Procedures*

4. Final Deauthorization. The final decision to deauthorize an NPA will be made by the Deciding Official. The appellate authority for a deauthorization action must be at least one level above the Deciding Official.
- iv. Disqualification Proceedings and Disqualification from the Program.
  1. Notice. The Director of Program Oversight shall send the affected NPA a Notice of Intent to Disqualify. The Notice shall include:
    - a. The specific violation(s);
    - b. The agency's intent to start disqualification proceedings;
    - c. A brief description of the evidence relied upon to trigger disqualification proceedings;
    - d. The NPA's right to provide a statement of facts to challenge the violations or provide evidence in mitigation; and
    - e. The right to request a hearing before the Executive Director (or designee).
  2. Show Cause.
    - a. If an NPA submits a statement of facts and/or evidence in mitigation showing good cause as to why the NPA should not be disqualified, it must be submitted to the Commission within 10 business days from the date of the Notice of Intent to Disqualify. The NPA may also request a hearing in its response. Examples of good cause include:
      - i. A showing that the stated reason for disqualifying the NPA is based on an erroneous understanding of a dispositive fact which, properly considered, would result in a finding that the NPA is qualified;
      - ii. A showing that the legal basis for disqualification is unsupported by applicable law;
      - iii. A specific showing of a change in circumstance showing that the NPA is presently compliant; and
      - iv. Any other exigent circumstance demonstrating that noncompliance was beyond the NPA's control.
    - b. If the Director of Program Oversight determines that disqualification is still justified after considering the NPA's response to the Notice of Intent to Disqualify, the Director will forward a written determination to the Deciding Official for a removal decision. The Deciding Official for a disqualification action must be at least one level above the Director of Program Oversight.
    - c. If an NPA requested a hearing, the NPA may provide additional facts or evidence beyond what has been provided in its written statement. However, a hearing shall not be used as a substitute for a written statement of facts.

## U.S. ABILITYONE COMMISSION

### *Procedure 51.407-01 Qualification Assessments and Enforcement Actions Procedures*

#### 3. Disqualification Decision.

- a. The Deciding Official shall consider the NPA's statement of facts, arguments at the hearing (if requested), and the record to make one of the following determinations in writing:
  - i. Disqualification from the Program;
  - ii. NPA is not disqualified from the Program; or
  - iii. Any other administrative remedy deemed appropriate, such as extended corrective action with heightened administrative safeguards.
- b. The Deciding Official will not rely on substantive evidence that has not been presented to the NPA prior to a disqualification decision. Substantive evidence is not all evidence, but only the type of evidence that could reasonably shape the outcome. All decisions will affirmatively state the legal and factual basis for the decision.
- c. Right to an Appeal. If an NPA wants to appeal, the NPA must submit an intent to appeal within five (5) business days of the Decision to Disqualify. The written appeal must be submitted to the Commission within 20 business days of the date of the Decision to Disqualify.

4. Finality. A disqualification decision applies to the NPA as a corporate entity and all principals in a substantive leadership position (i.e., CEO, CFO, etc.). If an NPA elects not to appeal the disqualification decision, that decision will be administratively final. If an NPA elects to appeal said decision to the appellate authority, the appellate decision is the final level of administrative review.

- v. Delivery of Notices. The Commission will deliver all notices in writing.

#### 8. EXCEPTIONS.

An NPA must submit any request for exceptions to the Executive Director at [violationsdispute@abilityone.gov](mailto:violationsdispute@abilityone.gov).

#### 9. SUPERSESSION.

This procedure supersedes that in Commission Policies 51.403 Nonprofit Agencies Out of Compliance with Commission Regulations, and 51.404 On-Site Compliance Reviews, dated November 12, 2020, and March 22, 2013, respectively, and any other previous sub-regulatory guidance issued by the Commission related to assessing nonprofit agency qualifications and enforcement.



Approved: \_\_\_\_\_ Date: \_\_\_\_\_

Kimberly M. Zeich  
Executive Director