

June 20, 1995

Compliance Memorandum No. 1

Subject: Qualification Procedure for Nonprofit Agencies

1. Purpose

This memorandum prescribes the procedure a nonprofit agency must follow to become qualified to furnish either a commodity or a service under the Javits-Wagner-O'Day (JWOD) Act. This memorandum supersedes Workshop Memorandum No. 12, Verification of Nonprofit Status, dated January 22, 1986.

2. General Requirements

a. To participate in the program authorized by the JWOD Act, a nonprofit agency must complete two steps:

(1) First, a nonprofit agency must submit the required documentation of nonprofit status listed in the Committee regulations at 41 CFR 51-4.2(a) to the National Industries for the Blind (NIB) or NISH, which shall submit these documents to the Committee not more than 90 days or less than 30 days before submitting the initial request for addition of a commodity or service to be furnished by that agency to the Procurement List. Once the Committee has reviewed and approved the documents, the agency and NIB or NISH shall be notified that the Committee has verified the agency's nonprofit status under the JWOD Act.

(2) Second, as required by 41 CFR 51-4.2(c), at the time that the first proposal for a nonprofit agency to provide a commodity or service under the JWOD Program is forwarded to the Committee, the nonprofit agency must submit two completed copies of the Initial Certification Form (Committee Form 401 for nonprofit agencies affiliated with NIB or Committee Form 402 for nonprofit agencies affiliated with NISH) to NIB or NISH which will forward one original copy to the Committee. These forms require a nonprofit agency to provide:

(a) Data on the total direct labor hours performed by persons who are blind or have severe disabilities and by nondisabled persons.

(b) Certifications that documentation on each individual who is blind or has a severe disability is maintained according to Committee requirements, that the agency is functioning as a not-for-profit entity serving persons who are blind and/or

severely disabled, that there is a placement program as required by the Committee, and that the nonprofit agency complies with applicable occupational safety and health standards prescribed by the Secretary of Labor.

b. The Committee will maintain documentation of nonprofit status for only those nonprofit agencies which have been authorized, or have been requested to be authorized, to provide one or more commodities or services on the Procurement List, or which have one or more commodities or services under consideration for addition to the Procurement List.

c. One year after a nonprofit agency is no longer authorized to provide commodities or services on the Procurement List, the Committee will return that nonprofit agency's documentation of nonprofit status to NIB or NISH, as appropriate. Documentation for nonprofit agencies which have unsuccessfully proposed the addition of items to the Procurement List will be returned as soon as possible following the decision not to proceed with the addition.

d. When a nonprofit agency's documentation of nonprofit status has been returned, NIB or NISH may resubmit updated documentation only when requesting action on a proposed addition to the Procurement List of a commodity or service which the nonprofit agency would provide, or authorization for the nonprofit agency to provide an item already on the Procurement List.

### 3. Direct Labor Ratio Requirements

Direct labor as defined by the Committee regulations means "all work required for preparation, processing, and packing of a commodity or work directly related to the performance of a service, but not supervision, administration, inspection or shipping" (41 CFR 51-1.3).

a. Each nonprofit agency affiliated with NIB must record both the direct labor hours paid to persons who are blind and the direct labor hours paid to persons who are not blind. Agencies affiliated with NISH must provide the same data for persons with and without severe disabilities. The ratio of these two figures for the total agency (the direct labor ratio) must demonstrate that 75 percent of the agency's direct labor is being performed by employees who are blind (NIB agencies) and/or who have severe disabilities (NISH agencies).

b. The following procedures apply to nonprofit agencies that report a direct labor ratio below 75 percent on the Initial Certification Form. The nonprofit agency is required to submit a plan which explains "what action is being taken or is planned to

achieve 75 percent during the first fiscal year of operation in the JWOD Program. The submitted plan should include the following:

(1) A cover letter which introduces the plan and the nonprofit agency's procedures for implementing that plan.

(2) A detailed schedule which projects what the direct labor ratio will be monthly as well as what the cumulative ratio will be at the end of the fiscal year.

(3) A description of the available employee base in that geographical area of individuals who are blind and/or severely disabled, along with a listing of referral sources that will be used in filling positions to increase the direct labor ratio. Letters from referral sources indicating employee availability should be included.

#### 4. Related corporations.

Some nonprofit agencies are closely related to other corporations. The nonprofit agency may be one of several subsidiaries of a common parent corporation, or the parent or subsidiary of another corporation, or may otherwise be related to one or more corporations. If the nonprofit agency which wishes to participate in the JWOD Program is related to any other corporation, the following criteria must be met for the nonprofit agency to be qualified to participate in the JWOD Program:

a. The nonprofit agency must be an independent corporate entity:

(1) It must be incorporated as a separate nonprofit entity, with separate articles of incorporation and bylaws. These documents must not refer to another entity in a manner which implies control of the agency by that entity.

(2) It must maintain separate records to include payroll, accounting, personnel and, if applicable, rehabilitation.

(3) If the agency is paying commensurate wages, it must have a Department of Labor certificate in its own name.

b. Agreements with other entities for support services to be provided to the nonprofit agency must provide for reimbursement at market rates and sufficiently detailed billing and payment records to permit compliance personnel to conclude that an arm's-length relationship exists.

c. If any related entity is a for-profit corporation, the nonprofit agency must be able to demonstrate a complete separation from that entity in the areas of finance and control of the agency.

5. Maintaining Qualification

Once a nonprofit agency has met the above requirements, the nonprofit agency is qualified to participate in the JWOD Program, and shall be responsible for all of the requirements for maintaining qualification listed in the Committee regulations at 41 CFR 51-4.3. NIB or NISH shall ensure that each nonprofit agency is informed of these requirements, which are addressed in other Committee Compliance Memoranda.

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