Procurement List Additions

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

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 23, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 4, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 39946) of proposed additions to the Procurement List. Comments were received from the current contractor for the portion of the Government's requirement for the cold weather drawers which is procured from commercial sources and from a former contractor. Comments were also received from four local organizations, three Members of Congress, and a State legislator, all writing in support of the two contractors.

The current contractor has indicated that it is entirely dependent on Government purchases of its products. Loss of the ability to sell the drawers to the Government would cause it to lay off some of its workers and would cause the irretrievable loss of an investment in equipment and training. The current contractor also cited the impacts on it of the Committee's addition of other clothing items to the Procurement List, including chemical protective undergarments, cold weather undershirts, and a physical fitness uniform.

In its initial comments, in August 1995, the current contractor indicated that it had a larger number of Government contracts than usual, and anticipated that the ultimate impact of the Committee's action on the company would be greater than apparent at that time because its Government business would return to the normal level. In a later comment, submitted in June 1996, the current contractor indicated that the predicted decline had occurred, and further contended that all the impacts the Committee's actions have had on the current contractor over the years should be taken into account in assessing the impact of the proposed addition of the remaining Government requirement for the drawers on the current contractor. The current contractor also noted that the nonprofit agencies can already bid on the part of the Government requirement which is procured commercially, while the current contractor cannot bid on the portion reserved for the nonprofit agencies, so it would not be fair to add the commercially procured part of the Government requirement to the Procurement List.

The current contractor challenged the fair market prices the Committee has set for the drawers and for another similar clothing item as not being fair prices under the Committee guidelines. The current contractor also challenged the compliance of the nonprofit agency designated to produce the drawers with the Committee's disabled direct labor ratio and other program requirements, and the nonprofit agency's ability to achieve the required ratio on this project, given the current contractor's assessment of the productivity of the workers with disabilities involved in the project.

Based on its review of Committee records received in response to a Freedom of Information Act (FOIA) request, the current contractor claimed that decisions on impact of the proposed addition to the Procurement List on the current contractor and capability of the nonprofit agency to produce the drawers had been made outside the prescribed process. The current contractor also claimed that several requirements set forth in Committee procedural memoranda had not been followed in preparing the record for a Committee decision on the proposed addition to the Procurement List.

The former contractor characterized the Committee's 1989 decision to add only fifty percent of the Government requirement for the drawers to the Procurement List as an agreement to split the requirement between the Committee's Javits-Wagner-O'Day (JWOD) Program and the commercial sector. The former contractor noted its substantial dependence on Government business and the loss of business to foreign competition, Federal Prison Industries, and the JWOD Program as factors responsible for the downsizing of its business and a loss of jobs for its workers. The former contractor claimed that the proposed addition to the Procurement List would cause it to furlough a large number of its remaining workers. It also questioned the fairness of the Committee's price for the drawers, and claimed that it is establishing a facility to create jobs for people with disabilities.

The comments received from the local organizations, the State legislator, and Members of Congress emphasized some of the arguments of the contractors on whose behalf these comments were submitted. Some of the commenters also cited the loss of jobs and unemployment rates in the two geographical areas involved. One Member of Congress questioned the ability of the nonprofit agencies to meet military emergency requirements, indicated that loss of this business by the private sector would erode the defense industrial base as well as an industry greatly beset by foreign competition, and questioned whether all work of this type should be set aside for the JWOD Program. The State legislator suggested that the needs of people with disabilities should be balanced against those of the workers who stand to be displaced if the Committee's proposal were to be approved.

The Committee added only fifty percent of the Government requirement for the drawers to the Procurement List in 1989 because of concern that adding the entire requirement at that time would have a severe adverse impact on the former contractor, which was then a subcontractor but was anticipated to, and did, become the contractor for the drawers. Since that time, the former contractor has lost the contract to the current contractor. Under the competitive bidding system, no contractor is guaranteed a Government contract for the drawers. Accordingly, it is possible that the former contractor, which has not produced the drawers in over a year, will never again hold a Government contract for the drawers. For this reason, the Committee looks at the current contractor when assessing impact, since that entity is most likely the one which would lose sales if an item were to be added to the Procurement List. Claims of impact by other contractors are generally considered by the Committee to be objections to losing the possibility of bidding on future contracts for the item. Loss of this possibility is not considered to be severe adverse impact. Consequently, any loss which the former contractor and its employees may experience in the immediate future would not be caused by the Committee's action in adding the remaining Government requirement for the drawers to the Procurement List, since they will not be losing anything they have not already lost.

In addition, it should be noted that the Committee also limited the 1989 addition of a related item—cold weather undershirts—to the Procurement List to

fifty percent to avoid having a severe adverse impact on the former contractor. In this case, that contractor continues to hold the contract for the portion of the undershirt requirement that is commercially procured. The Committee's action at this time will not affect the contractor's ability to retain this business.

The current contractor indicated that it had been impacted previously by Committee actions. A search of Committee records revealed that the current contractor was not the current contractor for any other item at the time it was added to the Procurement List. However, based on information provided by the contractor, it appears that it had been a subcontractor for the items cited. Notwithstanding this, the current contractor's total sales increased after the Committee's previous additions and are now at approximately the level they were before the contractor's recent substantial expansion and decline. While the contractor's sales data indicates that 1996 sales are likely to be well below those of 1995, the entire decline appears to be due to the current contractor's having completed a large contract for a type of chemical protective underwear that is not on the Procurement List. In addition, sales for the first half of 1996 are already about equal to the company's average annual sales for the years 1988 through 1994. Accordingly, the Committee's previous actions do not appear to be having any substantial impact on the current contractor.

The one possible exception in this situation is the Marine Corps chemical protective underwear which has been added to the Procurement List. The current contractor thinks this underwear might be adopted by the other military services, displacing the underwear which the current contractor has recently produced for the Government and impacting its sales. The Committee thinks that this development is unlikely, but has promised the current contractor that it will revisit the impact issue and, if appropriate, modify its previous action if the development the current contractor fears were to occur.

The Committee does not believe its previous actions have led to any reduction in the current contractor's sales or to other continuing impacts. However, it has decided that adding the total remaining portion of the Government requirement for the drawers to the JWOD Program, as requested, might cause severe adverse impact to the current contractor. Consequently, the Committee has decided to add only an additional 25 percent of the requirement for the drawers, leaving one-quarter of the requirement available for the current contractor to continue competing for.

The machinery used to make the drawers is primarily standard sewing equipment used for serging operations and can easily be used for other Government or commercial applications. Consequently, the Committee does not agree with the current contractor that use of its machinery or its investment in training its workers would be irretrievably lost because of the addition of the remaining Government requirement for the drawers to the Procurement List. Moreover, since the Committee has decided to leave 25 percent of the requirement in the competitive procurement arena, the contractor will have the opportunity to continue using some of its employees and equipment to produce the drawers.

The current contractor's contention that the producing nonprofit agency is not in compliance with Committee regulations is based on a 1991 report of a documentation problem which has since been corrected, and the current contractor's misunderstanding of the percentage of disabled direct labor required on a Committee project. The 75 percent disabled labor requirement applies to total direct labor employed by a nonprofit agency on all its contracts, not to individual projects, which can be performed at a lower (or higher) percentage. In addition, the Committee permits nonprofit agencies to start projects at a lower percentage than is ultimately intended, as long as the overall 75 percent requirement is met and the ultimate percentage for the project in question is acceptable.

The current contractor's challenge to the nonprofit agency's qualification to participate in the JWOD Program also included a contention that it was really not a nonprofit agency because a recent substantial increase in its net worth showed it had made a ''profit.'' Nonprofit status, as defined in both the Committee's law and the Federal tax code, requires only that a nonprofit corporation be structured and operated in a manner that precludes the inurement of the net earnings of the corporation to any individual. The first step in the Committee's qualification of a nonprofit agency to participate in its program is a verification that the nonprofit agency meets this qualification. The Committee has no evidence that suggests the nonprofit agency in question has failed to meet this requirement since its original qualification.

Interpreting data presented in a Committee publication, the current contractor concluded that people with severe disabilities are only capable of working 396.5 hours per year and that there are only 739 such individuals in the nonprofit agency's State who are eligible to work on JWOD contracts. The current contractor therefore questioned whether the nonprofit agency would be able to obtain the disabled labor necessary to perform its contract. The current contractor misinterpreted the data in question; the people covered by the data are not limited to the number of hours stated by the current contractor, nor is participation in the JWOD Program limited to current participants, as assumed by the contractor.

The current contractor's claims that decisions were made in the administrative process outside normal procedures are based on a misreading of documents obtained under FOIA. Decisions on severity of impact are made by the Committee when it votes on addition of an item to the Procurement List, not by Committee staff or NISH personnel. Inspections were conducted to determine the capability of the two nonprofit agencies which will produce the new requirement of the drawers: no waivers of inspection were granted. Documents were submitted by NISH to the Committee in accordance with the timetable set out in Committee procedural memoranda. Because of the contemplated initial disabled direct labor ratio, no phase-in plan is required by Committee procedures.

The current contractor contends that it is unfair for nonprofit agencies to be able to bid against it for commercial contracts for the drawers while the current contractor is precluded from supplying the part of the Government requirement reserved for the JWOD Program. This position does not take into account the remedial nature of the statute which created the program.

Persons with severe disabilities historically and now have extremely high rates of unemployment, exceeding 65 percent. Congress created the JWOD Program to remedy this situation to the extent possible through the Federal procurement process. As a result, Congress knowingly limited the Government procurement opportunities of less disadvantaged companies, such as the current and former contractors, to create a fairer situation for Americans as a whole. By doing so, Congress addressed the balancing of the needs of disabled and non-disabled citizens as the State legislator who wrote in support of the former contractor asked the Committee to do. The current contractor also charged that the

nonprofit agency has an unfair advantage over his firm and others in bidding for the portion of the Government requirement for the drawers that is not in the JWOD Program. This unfair advantage is alleged to exist because the fair market price is higher than market and provides the nonprofit agency with a substantial profit which enables it to bid at a below market price. Based on the Committee's review of the nonprofit agency's costs to make the drawers, it does not agree that a substantial profit is being made. In addition, the drawers are being procured through small business set-aside procurements which nonprofit agencies are currently barred from participating in. Even when nonprofit agencies were eligible to compete for small business set-aside contracts, the nonprofit agency involved in making the drawers did not submit bids in competition with the commenter for the non-JWOD portion of the drawers. Moreover, if a nonprofit agency bids on and wins a contract for an item which it is also supplying under the JWOD Program, the fair market price for that item is revised to reflect the award price. This makes it unlikely that the type of situation feared by the current contractor will occur, since the result would be to reduce the price received by the nonprofit agency for the JWOD portion.

The current contractor observed that the nonprofit agency did not appear capable of producing the drawers at a fair market price as required by the Committee's regulations. Therefore, the current contractor concluded, the nonprofit agency was not entitled to produce more of the Government requirement for the drawers, and should lose its existing right to produce 50 percent of the Government requirement. The current contractor supported its position by comparing nonprofit agency prices for the drawers with its own and stating that the nonprofit agency's prices exceeded those permitted by the Committee's fair market pricing policy. The current contractor alleged that a similar situation existed with a comparable product being furnished to the Government under the JWOD Program by another nonprofit agency. The former contractor also questioned whether the nonprofit agency's price represented a fair market value.

The Committee has established the prices that have been charged by the nonprofit agency for the drawers (as well as the prices charged by another nonprofit agency for the comparable product) since their addition to the JWOD Program in August 1989. Those prices have in each case been consistent with the Committee fair market pricing policies in effect at the time they were established—policies that take into account the competitive bids submitted by the current contractor and other potential suppliers. Consequently, the nonprofit agency has proven itself capable of producing the drawers at a fair market price.

The differences between Committee prices and the current contractor's prices for both products are less than reported by the current contractor. This is partially because the Committee prices used by the current contractor were older than the current contractor's prices and, thus, not comparable. The differential is also less because of a Committee procedural change instituted after receipt of the comments and applied to all future deliveries on current orders. As a result of the comments, the Committee will also consider a change in its fair market pricing policy for concurrent buy items (i.e., items where the Committee has only added a portion of the Government requirement to the JWOD Program). If approved, the new policy will affect the future adjustment of prices for the drawers (and the comparable item mentioned by the current contractor).

After discussing changes over time in the nonprofit agency's prices, the current contractor concluded that the existence of competitive bids for a portion of the Government requirement for the drawers appeared to be responsible for reducing the fair market prices for those drawers. In the absence of this ''check and balance,'' the current contractor speculated that the Government would unnecessarily spend millions of additional dollars for the drawers. The Committee believes that its fair market pricing policies, which are based on competitive bids, changes in Producer Prices Indices and, to a certain extent, nonprofit agency costs, provide the Government with fair prices for JWOD items without the necessity of the type of ''check and balance'' advocated by the current contractor. However, in this particular case, the Committee's decision to permit 25% of the Government requirement to remain available for competitive procurement, will assure that the ''check and balance'' the current contractor believes necessary will continue to exist.

The Committee applauds the former contractor's intent to establish a facility to create jobs for people with disabilities. However, the Committee does not believe that such facilities would eliminate the need to create jobs through the JWOD Program, as the former contractor, like other companies, would be free to terminate the employment of people with disabilities for business or other reasons at any time. More importantly, the former contractor's new operation will not be guaranteed to continue receiving Federal or other business, so the jobs would not be as stable as those afforded by the JWOD Program.

With respect to the question about the ability of nonprofit agency's to meet military requirements, the Committee notes that such organizations are held to the same military emergency requirements and industrial capability requirements as commercial contractors. The Committee does not believe that the defense industrial base will be eroded by the participation of nonprofit agencies in furnishing defense commodities through the JWOD Program, as these agencies have performed as least as well as their commercial counterparts as defense suppliers. Through this action, the Committee is in fact expanding the industrial base by adding another producer under the JWOD Program. The Committee is also aware that a substantial majority of the apparel business of the Federal agency that purchases the drawers remains available for competitive procurement, thus, the non-JWOD participants in the defense industrial base continue to have the opportunity to obtain significant business from a major defense procurement agency, so the dependence of the current and former contractors on Government contracting should not seriously affect their future well-being.

The questions of impact on the clothing industry and the employment rates of areas hard hit by foreign competition and domestic downsizing are difficult ones. The Committee is aware that its nonprofit agencies and their employees with disabilities have also been hit by these developments. Given their greater difficulty in securing and holding employment, and the remedial nature of the Committee's statute mentioned above, the Committee believes that the best course is for it to continue to achieve its mission of creating jobs for people with severe disabilities within the restrictions imposed by its regulations, and that placing a part of the proposed additional requirement for the drawers on the Procurement List is within the meaning of those restrictions.

For the reasons stated above, the Committee does not believe the addition of another 25 percent of the cold weather drawers requirement constitutes severe adverse impact on the current contractor or other parties. Also for the reasons stated above, the Committee believes that the objections

raised by the current contractor and other parties fail to justify a decision not to place any additional quantity of the drawers on the Procurement List.

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

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 commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. 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 commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Drawers, Cold Weather

8415–01–227–9542

8415–01–227–9543

8415–01–227–9544

8415–01–227–9545

8415–01–227–9546

(Additional 25% of the Government's requirement)

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 96–21548 Filed 8–22–96; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 63–96]

Foreign-Trade Zone 170—Clark County, Indiana Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indiana Port Commission, grantee of Foreign-Trade Zone 170, requesting authority to expand its zone in the Clark County, Indiana area, within the Louisville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 15, 1996.

FTZ 170 was approved on December 27, 1990 (Board Order 495, 56 F.R. 673, 1/8/91). The zone currently consists of two sites in Clark County: *Site 1* (35 acres)—within the 830-acre Clark Maritime Centre Complex on Utica Pike at Port Road, Jeffersonville; and, *Site 2* (22 acres)—at the Clark County Airport between State Route 31 and the airport terminal, Sellersburg.

The applicant is now requesting authority to expand the general-purpose zone to include a site (Proposed *Site 3*—2,000 acres)—within the 10,000-acre former Indiana Army Ammunition Plant, 11452 State Road 62, Charlestown. In 1993, the U.S. Army through its Industrial Operations Command and ICI Americas Inc. (ICI) entered into a facilities use contract that allowed ICI to use the plant for non-defense activities as part of conversion efforts. ICI is in the process of developing the facility as an industrial park with the infrastructure to accommodate a range of warehouse/distribution and manufacturing operations. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 22, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 6, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 601 W. Broadway, Room 634B, Louisville, Kentucky 40202

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: August 16, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–21562 Filed 8–22–96; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 36–96]

Foreign-Trade Zone 7—Mayaguez, Puerto Rico, Application for Subzone Status, Mani Can Corporation Facilities (Steel Cans), Mayaguez, Puerto Rico; Extension of Public Comment Period

The comment period for the above case, requesting special-purpose subzone status for the easy-open steel can processing facilities of Mani Can Corporation (a wholly-owned affiliate of Star-Kist Foods, Inc., in turn wholly owned by the H. J. Heinz Company), located in Mayaguez, Puerto Rico (61 FR 24271, 5/14/96), is further extended to October 22, 1996, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 3 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th and Pennsylvania Avenue NW, Washington, DC 20230.

Dated: August 16, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–21561 Filed 8–22–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–841]

Initiation of Antidumping Duty Investigation: Vector Supercomputers From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 23, 1996.