

**Deletions***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 may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may 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 deletion from the Procurement List.

*End of Certification*

The following products and services are proposed for deletion from the Procurement List:

**Products***Refill, Ballpoint Pen*

NSN: 7510-00-754-2689—Refill, Ballpoint Pen.

NSN: 7510-00-543-6793—Refill, Ballpoint Pen.

NPA: Industries for the Blind, Inc., West Allis, WI.

*Contracting Activity:* Office Supplies & Paper Products Acquisition Ctr, New York, NY.

**Services**

*Service Type/Location:* Custodial Services, USDA, Animal and Plant Health Inspection Service, (6901 West Sunrise Blvd), Plantation, FL.

NPA: Abilities, Inc. of Florida, Clearwater, FL.

*Contracting Activity:* USDA, Animal & Plant Health Inspection Service-PFQ, Minneapolis, MN.

*Service Type/Location:* Grounds Maintenance, Marine Corps Air Station, San Diego, CA.

NPA: The ARC of San Diego, San Diego, CA.

*Contracting Activity:* Department of the Navy.

**Sheryl D. Kennerly,**

*Director, Information Management.*

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**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 a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List services previously furnished by such agencies.

**DATES:** Effective Date: January 7, 2007.

**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 CONTACT:** Sheryl D. Kennerly, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail [CMTEFedReg@jwod.gov](mailto:CMTEFedReg@jwod.gov).

**SUPPLEMENTARY INFORMATION:****Additions**

On September 29, 2006, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (71 FR 57464 ) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are 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 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. 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

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the services proposed for addition to the Procurement List.

**End of Certification**

Accordingly, the following service is added to the Procurement List:

**Services**

*Service Type/Location:* Full Food Service, FBI & Drug Enforcement Administration Training Academies, Quantico, VA.  
NPA: ServiceSource, Inc., Alexandria, VA.

*Contracting Activity:* Federal Bureau of Investigation, Dept of Justice, Washington, DC.

Comments were received for the above addition from an association which represents State licensing agencies for the Randolph-Sheppard program (SLAs) and from the Virginia SLA. The association stated that the Committee's proposal to add full food service at the FBI and DEA training academies in Quantico, VA to the Procurement List is a violation of the Randolph-Sheppard Act, 20 U.S.C. 107 *et seq.*, which the association believes establishes a "mandatory priority" for blind vendors to provide food services on Federal property.

The documentation submitted to the Committee as a basis for this proposed addition to the Procurement List included a document from the FBI which enclosed a statement from the Virginia SLA indicating that the SLA had reviewed the statement of work for the food service and was "not interested in submitting a proposal for these operations." The Committee's program is well known to the Virginia SLA and the rest of the Randolph-Sheppard community, and the FBI, the Committee, and the other parties involved in developing this proposed addition to the Procurement List all regarded the Virginia SLA's statement as a knowing waiver of the Randolph-Sheppard priority. Relying on this waiver, the Committee's nonprofit community selected a nonprofit agency to provide the food service. That nonprofit agency has gone to considerable trouble and expense to prepare to provide the food service, which will generate employment for a substantial number of people with severe disabilities.

In the Virginia SLA's comment on the proposed addition, the same State official who earlier waived the Randolph-Sheppard priority now says that should the FBI offer to directly negotiate a contract for the food service with the SLA or publish a solicitation

for the food service, the SLA "may" exercise its right to respond. The State official expressed surprise that the FBI had not offered to negotiate or solicit a contract after the SLA waived the Randolph-Sheppard priority.

According to the SLA comment, the FBI indicated that it considered the SLA's earlier waiver of its priority to be final, which would explain why no subsequent offer to negotiate or solicit for the food service was forthcoming. The Committee believes that allowing the SLA to ignore its own priority waiver at this late hour, when a capable nonprofit agency is ready to create many jobs by providing this food service and the SLA has identified no blind vendor ready and able to serve as an alternative provider, could not have been the intent of the Randolph-Sheppard Act. In the absence of the Randolph-Sheppard priority, the Committee sees no bar to adding the food service to the Procurement List.

#### Deletions

On September 29, 2006, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 57464; 57465) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services 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 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 services deleted from the Procurement List.

#### End of Certification

Accordingly, the following services are deleted from the Procurement List:

#### Services

*Service Type/Location:* Custodial Services, Denver Federal Center

(Buildings 41, 44, and 48), Denver, CO.

*NPA:* Aspen Diversified Industries, Inc., Colorado Springs, CO.

*Contracting Activity:* GSA, PBS Region 8, Denver, CO.

*Service Type/Location:* Janitorial/Custodial, Federal Records Center and USDA Laboratory, East Point, GA.

*NPA:* WORKTEC, Jonesboro, GA.

*Contracting Activity:* GSA, PBS.

*Service Type/Location:* Janitorial/Grounds and Related Services, Motor Pool Office and Garage, 450 N. Grande, Tucson, AZ.

*NPA:* Beacon Group SW, Inc., Tucson, AZ.

*Contracting Activity:* GSA, PBS—9PMFC, San Francisco, CA.

*Service Type/Location:* Repair of Small Hand Tools, Robins Air Force Base, Robins AFB, GA.

*NPA:* Epilepsy Association of Georgia, Warner Robins, GA.

*Contracting Activity:* Department of the Air Force.

**Sheryl D. Kennerly,**

*Director, Information Management.*

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### Action Affecting Export Privileges; Data Physics Corporation, Data Physics China, Data Physics China, Sri Welaratna, Bill Chen

Data Physics Corporation, 2025 Gateway Place, Suite 260, San Jose, California 95110. Data Physics China, 1605B Westgate Tower, 1038 Nanjing Road West, Shanghai, P.R. China 200041. Data Physics China, RM. 1509, Building 2, Xinquan Jiayan, No. 5 Changchunquia Road, Haidian District, Beijing, P.R. China 100089. Sri Welaratna, President, Data Physics Corporation, 2025 Gateway Place, Suite 260, San Jose, California 95110. Bill Chen, Manager, AKA: Yuequan Chen, Data Physics China, RM. 1509, Building 2, Xinquan Jiayan, No. 5 Changchunquia Road, Haidian District, Beijing, P.R. China 100089, Respondents.

#### Order Renewing Order Temporarily Denying Export Privileges

Pursuant to section 766.24 of the Export Administration Regulations ("EAR"),<sup>1</sup> I hereby grant the Bureau of

<sup>1</sup> 15 CFR Parts 730-774 (2006). The EAR are issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420 (2000)) ("EAA"). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended most recently

Industry and Security's request for renewal of the Order Temporarily Denying the Export Privileges of Respondents, Data Physics Corporation, Data Physics China (Shanghai and Beijing Offices), Sri Welaratna and Bill Chen for 180 days as I find that renewal of the TDO is necessary in the public interest to prevent an imminent violation of the EAR.

#### I. Procedural History

On May 12, 2006, I signed an Order Temporarily Denying the Export Privileges of the Respondents for 180 days on the grounds that its issuance was necessary in the public interest to prevent an imminent violation of the EAR ("TDO"). Pursuant to Section 766.24(a), the TDO was issued *ex parte* and went into effect on May 23, 2006, the date it was published in the **Federal Register**. The TDO is valid through November 19, 2006.

On October 13, 2006, the Bureau of Industry and Security ("BIS"), through its Office of Export Enforcement, filed a written request for renewal of the TDO against the Respondents for 180 days and served a copy of its request on the Respondents in accordance with Section 766.5 of the EAR. On November 6, 2006, Data Physics Corporation, Data Physics China (Shanghai and Beijing Offices) and Sri Welaratna (collectively referred to hereinafter as "Data Physics Group") filed a written opposition to the request for renewal of the TDO. The Data Physics Group also requested the production of documents and a hearing. I approved Data Physics Group's two requests for production of documents as good cause was shown and I ordered that BIS produce the relevant nonprivileged documents by 1 p.m. on November 3, 2006. BIS served the Data Physics Group with its responses in a timely manner and a hearing on the record was held on the request for renewal on November 8, 2006 at the U.S. Department of Commerce in Washington, DC. BIS and the Data Physics Group each presented oral arguments.

#### II. Discussion

##### (A) Legal Standard

Pursuant to section 766.24(d)(3) of the EAR, the sole issue in determining whether to continue a TDO is whether the TDO should be renewed to prevent an imminent violation of the EAR. "A violation may be 'imminent' either in

by the Notice of August 3, 2006 (71 FR 44,551, (August 7, 2006)), has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)) ("IEEPA").