



Ensuring Compliance with the Javits-Wagner- O'Day Act

September 5, 2019

Fiscal Year 2019 Report to Congress



**Homeland
Security**

Under Secretary for Management

Message from the Office of the Under Secretary for Management

September 5, 2019

I am pleased to submit the following report, “Ensuring Compliance with the Javits-Wagner-O’Day Act,” which has been prepared by the Department of Homeland Security’s (DHS) Office of the Chief Procurement Officer.

This document has been compiled to satisfy language set forth in the Joint Explanatory Statement accompanying the Fiscal Year (FY) 2019 DHS Appropriations Act (P.L. 116-6). This report provides information on internal procedures and DHS policy to avoid the purchase of “essentially the same” items in violation of the Javits-Wagner-O’Day Act; procedures for ensuring that procurement officers and government purchase cardholders are trained on the requirements of the Act; and the total value of goods and services purchased through the AbilityOne Program during FY 2018, delineated by product or service category.



Pursuant to congressional requirements, this report is being provided to the following members of Congress:

The Honorable Lucille Roybal-Allard
Chairwoman, House Appropriations Subcommittee on Homeland Security

The Honorable Chuck Fleischmann
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable Shelley Moore Capito
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jon Tester
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

Inquiries relating to this report may be directed to me at (202) 447-3400.

Sincerely,

A handwritten signature in red ink that reads "R. D. Alles".

R. D. Alles
Deputy Under Secretary for Management



Ensuring Compliance with the Javits-Wagner-O’Day Act

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I. Legislative Language

This report was compiled pursuant to language set forth in the Joint Explanatory Statement accompanying the Fiscal Year (FY) 2019 U.S. Department of Homeland Security (DHS) Appropriations Act (P.L. 116-6).

The Joint Explanatory Statement includes the following language:

As directed by House Report 115–948, the Department shall...provide a report, within 180 days of enactment, detailing internal procedures to avoid the purchase of “essentially the same” items in violation of the Javits Wagner O’Day Act...

House Report 115-948, referenced in the Joint Explanatory Statement, includes the following language:

The Department shall, not later than 180 days after the date of enactment of this Act, submit a report to the Committee detailing (1) internal DHS procedures to avoid the purchase of “essentially the same” items in violation of the Javits-Wagner-O’Day Act (41 U.S.C. 8501); (2) procedures for ensuring procurement officers and government purchase cardholders are trained on the requirements of the Javits-Wagner-O’Day Act; and (3) the total value of goods and services purchased through the AbilityOne Program during fiscal year 2018, delineated by product or service category.

II. Background

The Joint Explanatory Statement accompanying P.L. 116-6 directs the Department to provide a report detailing internal procedures to avoid the purchase of “essentially the same” (ETS) items in violation of the Javits-Wagner-O’Day (JWOD) Act; procedures for ensuring that procurement officers and government purchase cardholders are trained on the requirements of the JWOD Act; and the total value of goods and services purchased through the AbilityOne Program during FY 2018, delineated by product or service category.

DHS ensures compliance with the JWOD Act (41 U.S. Code Chapter 85), which requires federal agencies to procure specified products or services from qualified nonprofit agencies that employ blind or other severely disabled persons. This procurement is accomplished in accordance with the AbilityOne regulations at the price established by AbilityOne if the product or service is available within the period required by the Department.

DHS further complies with the regulations implementing the JWOD Act, 41 Code of Federal Regulations (CFR) Chapter 51. Section 51-5.3(a) of 41 CFR provides that when a commodity is included on the Procurement List (PL), the mandatory source requirement covers the National Stock Number (NSN) or item designation listed and commodities that are essentially the same as the listed item. In some instances, only a portion of the DHS requirement for an NSN or item designation is specified by the PL. Where geographic areas, quantities, percentages, or specific supply locations for a commodity are listed, the mandatory provisions of the JWOD Act apply only to the portion or portions of the commodity indicated by the PL. For services (41 CFR 51-5.3(b)), there is no corresponding ETS language as is applicable to supply items. As a result, the ETS regulatory requirement applies to supplies on the PL and not to services.

DHS procurements are made in accordance with Part 8 of the Federal Acquisition Regulation (FAR). FAR 8.002 makes AbilityOne supplies and services mandatory sources as required by the JWOD Act. FAR Subpart 8.7 provides additional information on required AbilityOne procurements applicable to DHS and other federal agencies.

In addition, DHS contracting officers consult the implementing policies found at the AbilityOne (www.abilityone.gov) website in order to apply the ETS requirements. AbilityOne Policy 51.541 (April 27, 2015), “Requirement to Purchase Products on the Procurement List Instead of ‘ETS’ Items,” is the primary policy document used to describe procedures pertaining to the requirement that agencies purchase PL products from AbilityOne-designated sources in lieu of non-AbilityOne items that are ETS. DHS contracting officers also consult and rely on AbilityOne Policy 51.530 (August 9, 2012), “Exceptions to AbilityOne Procurement List Purchases,” when seeking a purchase exception to the statutory and regulatory procurement requirements. In addition, DHS procurement personnel rely on AbilityOne Operations Memorandum No. 22 (October 1, 2006), “Guidance on the Addition of Co-Branded Products to the Procurement List,” in situations where there is a choice between one or more nationally recognized branded products in addition to, or in lieu of, an ETS generic product.

The DHS Strategic Sourcing Program Office (SSPO), reporting to the Chief Procurement Officer, manages Department-wide category management and strategic sourcing programs, to include the award of DHS strategic sourcing vehicles and the use of governmentwide contracts, including the Federal Supply Schedules (FSS). For example, DHS is committed to maximizing use of AbilityOne sources in SSPO-managed or -adopted contracts/agreements for the following supply items, to which ETS policy applies:

- Janitorial & Sanitation Supplies, a Federal Strategic Sourcing Initiative (FSSI) Blanket Purchase Agreement (BPA) against the General Services Administration's (GSA) FSS Schedule 73.
- Office Supply III, an FSSI contract vehicle permitting DHS ordering with the governmentwide purchase card.
- Nitrile Gloves, a DHS BPA awarded to Central Association for the Blind, Inc.
- Personal Protective Equipment II, including a BPA for hand sanitizer awarded to Travis Association for the Blind.

DHS encourages the use of FSS in its strategic sourcing portfolio. As FSS ordering officers, DHS procurement personnel rely on GSA's contracting officers to make sound ETS decisions on their supply contracts, consistent with governing AbilityOne regulations.

DHS internal guidance reinforces the statutory and regulatory AbilityOne purchase requirements implemented by FAR Part 8:

- Section 3008.004 of the Homeland Security Acquisition Manual reminds Contracting Officers of the FAR 8.002 mandatory sources, including AbilityOne.
- The DHS Purchase Card Manual reminds cardholders that the statutory requirement for AbilityOne products applies at all dollar values. The required DHS Form 1501 "Purchase Card Transaction Worksheet" includes AbilityOne as a required source of supplies.
- The DHS Market Research Template (December 2014) requires the contract specialist to check the following as part of complete market research:
 - Supplies: Procurement list maintained by the Committee for Purchase from People who are Blind or Severely Disabled (AbilityOne) (formerly JWOD Program) at: <http://www.AbilityOne.gov>
 - Services: Procurement list maintained by the Committee for Purchase from People who are Blind or Severely Disabled (AbilityOne) (formerly JWOD Program) at: <http://www.AbilityOne.gov>
- The DHS Streamlined Acquisition Plan Template (Version 11, September 2017) and the Formal Acquisition Plan Template (Version 11, September 2017) both require the program office to consider and document "required sources of supplies or services (see FAR 8)" as part of acquisition planning.

DHS contracting officers are trained on the requirements of the JWOD Act through mandatory training as part of the Federal Acquisition Certification in Contracting (FAC-C) Program for all contracting professionals in the Federal Government performing procurement activities and functions. For example, mandatory sources such as AbilityOne are covered in the course topics for core course CON 121 Contract Planning, required for initial FAC-C certification. The requirements for use of mandatory U.S. Government sources of supply, which includes

AbilityOne Program vendors under the JWOD Act, also are covered in the DHS Purchase Card Manual. This manual is referenced in mandatory training for all purchase cardholders, and is identified as the guidance to use when making purchase card transactions. Purchase cardholders are monitored for compliance with the policies, procedures, and internal controls outlined in the DHS Purchase Card Manual.

Section III contains data from the Federal Procurement Data System - Next Generation, and shows the total value of contracts and orders awarded during FY 2018 through the AbilityOne program, listed by product or service code.

III. Data Report

Contracts and orders awarded during FY 2018 through the AbilityOne program, listed by product or service code, are shown below:

Product or Service Code	Product or Service Description	Base and All Options Value (Total Contract Value)
2040	MARINE HARDWARE AND HULL ITEMS	\$1,597,337.71
2090	MISCELLANEOUS SHIP AND MARINE EQUIPMENT	\$12,174.93
4240	SAFETY AND RESCUE EQUIPMENT	\$12,211.29
4510	PLUMBING FIXTURES AND ACCESSORIES	\$9,775.55
5130	HAND TOOLS, POWER DRIVEN	\$4,780.80
5140	TOOL AND HARDWARE BOXES	\$8,100.53
5965	HEADSETS, HANDSETS, MICROPHONES AND SPEAKERS	\$8,944.00
6515	MEDICAL AND SURGICAL INSTRUMENTS, EQUIPMENT, AND SUPPLIES	\$8,026.20
6840	PEST CONTROL AGENTS AND DISINFECTANTS	\$49,224.00
7020	INFORMATION TECHNOLOGY CENTRAL PROCESSING UNIT (CPU, COMPUTER, ANALOG)	\$4,652.70
7105	HOUSEHOLD FURNITURE	\$9,199.03
7110	OFFICE FURNITURE	\$93,053.83
7125	CABINETS, LOCKERS, BINS, AND SHELVING	\$6,667.35
7220	FLOOR COVERINGS	\$134,143.02
7510	OFFICE SUPPLIES	\$494,053.04
7690	MISCELLANEOUS PRINTED MATTER	\$3,118,217.40
7920	BROOMS, BRUSHES, MOPS, AND SPONGES	\$5,310.24
7930	CLEANING AND POLISHING COMPOUNDS AND PREPARATIONS	\$19,615.00
8010	PAINTS, DOPES, VARNISHES, AND RELATED PRODUCTS	\$5,352.24
8030	PRESERVATIVE AND SEALING COMPOUNDS	\$9,810.00
8105	BAGS AND SACKS	\$44,837.56
8135	PACKAGING AND PACKING BULK MATERIALS	\$34,257.60
8405	OUTERWEAR, MEN'S	\$325,375.20
8415	CLOTHING, SPECIAL PURPOSE	\$5,834,274.71
8430	FOOTWEAR, MEN'S	\$9,184.60
8455	BADGES AND INSIGNIA	\$24,480.00
8540	TOILETRY PAPER PRODUCTS	\$178,152.20
8970	COMPOSITE FOOD PACKAGES	\$2,000.00
9310	PAPER AND PAPERBOARD	\$3,466.80

D318	IT AND TELECOM- INTEGRATED HARDWARE/SOFTWARE/SERVICES SOLUTIONS, PREDOMINANTLY SERVICES	\$2,428,490.41
D399	IT AND TELECOM- OTHER IT AND TELECOMMUNICATIONS	\$5,496.86
J028	MAINT/REPAIR/REBUILD OF EQUIPMENT- ENGINES, TURBINES, AND COMPONENTS	\$493,417.15
R602	SUPPORT- ADMINISTRATIVE: COURIER/MESSENGER	\$299,286.00
R614	SUPPORT- ADMINISTRATIVE: PAPER SHREDDING	\$4,774.69
R699	SUPPORT- ADMINISTRATIVE: OTHER	\$395,005.44
S201	HOUSEKEEPING- CUSTODIAL JANITORIAL	\$48,306,264.32
S202	HOUSEKEEPING- FIRE PROTECTION	\$2,265,953.14
S203	HOUSEKEEPING- FOOD	\$4,164,761.20
S205	HOUSEKEEPING- TRASH/GARBAGE COLLECTION	\$753,906.31
S208	HOUSEKEEPING- LANDSCAPING/GROUNDSKEEPING	\$1,946,013.28
S209	HOUSEKEEPING- LAUNDRY/DRYCLEANING	\$45,066.49
S222	HOUSEKEEPING- WASTE TREATMENT/STORAGE	\$51,187.20
Z1AZ	MAINTENANCE OF OTHER ADMINISTRATIVE FACILITIES AND SERVICE BUILDINGS	\$8,131,298.07
Total		\$81,357,598.09

IV. Conclusion

DHS ensures compliance with the JWOD Act through guidance, training, and mandatory consideration of contract vehicles offering AbilityOne items. The Department remains committed to supporting the AbilityOne program, and continues to monitor and improve its adherence to the program.

Appendix: Abbreviations

Abbreviation	Definition
BPA	Blanket Purchase Agreement
CFR	Code of Federal Regulations
DHS	U.S. Department of Homeland Security
ETS	Essentially the Same
FAR	Federal Acquisition Regulation
FAC-C	Federal Acquisition Certification in Contracting
FY	Fiscal Year
FSS	Federal Supply Schedules
FSSI	Federal Strategic Sourcing Initiative
GSA	U.S. General Services Administration
JWOD	Javits-Wagner-O'Day
NSN	National Stock Number
PL	Procurement List
SSPO	Strategic Sourcing Program Office