

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE COMMITTEE FOR PURCHASE FROM PEOPLE
WHO ARE BLIND OR SEVERELY DISABLED
AND
THE U.S. DEPARTMENT OF EDUCATION
REHABILITATION SERVICES ADMINISTRATION

A. PURPOSE

The Committee for Purchase From People Who Are Blind or Severely Disabled (operating as the U.S. AbilityOne Commission) (Commission), and the U.S. Department of Education’s Rehabilitation Services Administration (RSA) in its Office of Special Education and Rehabilitative Services agree to work together to increase communication and understanding between the agencies regarding which opportunities are appropriate for persons who are blind to operate vending facilities under the Randolph-Sheppard Act¹ (R-S Act) (20 U.S.C. § 107 et seq.) and which are appropriate for placement on the Procurement List under the Javits-Wagner-O’Day (JWOD) Act (41 U.S.C. §§ 8501-8506). Furthermore, AbilityOne and RSA agree to work together to expand entrepreneurial and other employment-related opportunities for individuals who are blind or who have significant disabilities.

Employment outcomes and entrepreneurial opportunities for individuals who are blind or who have significant disabilities can be improved through a

¹ This MOU does not address RSA’s administration of the State Vocational Rehabilitation Services program under the Rehabilitation Act of 1973, as amended and the interaction of that program with both the Randolph-Sheppard program and the AbilityOne program.

closer working relationship between AbilityOne and RSA. This memorandum of understanding (MOU) establishes the framework for AbilityOne and RSA to work more closely together and to encourage their respective stakeholders to also work cooperatively together to promote improved services and entrepreneurial and employment opportunities to their mutual participants.

B. Background and Federal Policy

The JWOD Act and the R-S Act were enacted to increase employment of individuals who are blind and who have significant disabilities. The R-S Act gives individuals who are blind and who are licensed by a State licensing agency (SLA) a priority for the operation of vending facilities through the SLA's contracts for cafeterias and permits for other vending facilities on Federal and other property. Most States also have "mini R-S Acts" that grant the same priority for State and some county, municipal, and private facilities.

While the R-S Act focuses on support of individuals who are blind in operating their own vending facility businesses, the JWOD Act authorizes the AbilityOne Program, which creates employment for nonprofit agency (NPA) employees who are blind or have significant disabilities. This is accomplished through the award of contracts to NPAs for the mandatory Federal procurement of products and services deemed suitable by the Commission and placed on the AbilityOne Procurement List.

Closer collaboration and better communication between the agencies that administer the R-S vending facility and AbilityOne programs can lead to a clearer understanding of when the opportunities under the different Federal programs apply and the creation of new opportunities for the respective programs and the individuals they serve. RSA and the Commission entered into a prior Memorandum of Understanding and Protocol for Early Notification of Food-Related Service Opportunities in March 2015. With this MOU, RSA and the Commission seek to improve upon and expand that earlier memorandum and protocol for closer collaboration and better communication.

C. Authority

This agreement is authorized in accordance with the JWOD Act, (41 U.S.C. §§ 8503) and Commission regulation (41 C.F.R. § 51-2.2), the R-S Act, (20 U.S.C. § 701a(a)(6)(B)), Section 12(b) of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 709(b)), Department of Education Organization Act, 20 U.S.C. § 3475, and the John Warner National Defense Authorization Act for Fiscal Year 2007 (John Warner Act), (Pub. L. No. 109-354, div. A., title VIII, § 856(a), (d), Oct. 17, 2006, 120 Stat. 2347, 2349).

D. Goals and Objectives of this MOU

Consistent with, and in addition to, Federal statutes, regulations, executive orders, agency policies and guidance, the Commission and RSA agree to work collaboratively within, and in addition to, the terms of this MOU toward improved communication and understanding regarding when an opportunity is appropriate under the R-S Act and when it is appropriate for consideration for placement on the Procurement List under the JWOD Act. The Commission and RSA also will use the framework of this MOU to work toward the development of a common set of strategies for expanding business and employment opportunities for individuals who are blind or who have significant disabilities.

E. Terms

1. The Commission and RSA each appoints an individual in its own agency to serve as the point of contact for communication and coordination between the Commission and RSA, including the implementation of MOU activities within each agency.
 - a. The point of contact for RSA is the Deputy Commissioner for RSA, which includes any person acting in that position.
 - b. The point of contact for the Commission is the Deputy Executive Director, which includes any person acting in that position.

- c. The Commission and RSA points of contact will serve as contacts for Federal agencies, SLAs, central nonprofits (CNAs), NPAs, blind vendors, and other stakeholders under both the R-S Act and JWOD Act to provide information regarding the Commission's and RSA's activities under this MOU.
 - d. The Commission and RSA points of contact will serve as contacts for the protocol outlined in Section E (2) regarding the Commission's notification to RSA of any opportunities that may have R-S Act implications.
 - e. The Commission and RSA points of contact will share information and coordinate activities with others in their respective agencies to carry out and support the terms, goals, and objectives of this MOU.
2. The Commission and RSA establish the following protocol that will be used when a Federal agency approaches an AbilityOne contact (including one of the CNAs) with an opportunity that may have R-S Act implications.
- a. "An opportunity that may have R-S Act implications" is construed broadly to mean any contracting opportunity for an NPA that could be for any part of a "vending facility" as defined in the R-S Act implementing regulations at 34 C.F.R. § 395.1(x) as "automatic vending machines, cafeterias, snack bars, cart services, shelters, counters and such other appropriate auxiliary equipment which may be operated by blind licensees and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of chances for any lottery authorized by State law and conducted by an agency of a State within such State."
 - b. A broad construction of the term "vending facility" is necessary to fulfill the intent of the MOU to increase communication and

collaboration and to provide RSA with the opportunity at the earliest possible time to determine whether the R-S Act may apply and to notify the appropriate SLA of the opportunity.

- c. The Commission will notify RSA in writing of the opportunity within 30 days of being approached by the Federal agency and will provide any documentation provided by the Federal agency, including the contract documents or permitting information, if available. In all cases, such notification will occur before the Commission publishes the proposed addition of the opportunity to the Procurement List in the *Federal Register*. The Commission will notify its CNAs of the protocol agreed to in Section E(2) of this MOU so that if one of the CNAs is approached by a Federal agency with an opportunity that may have R-S Act implications, it will notify the Commission so that it can comply with its obligations under the MOU. The Commission will inform the Federal agency that it has notified RSA in accordance with this MOU and the protocol in Section E(2).
- d. The Commission's notification to RSA of the opportunity will include the service location, the service requirement, the responsible Federal Contracting Activity (including the contact information for the Federal agency contracting officer), and all documentation originally provided by the Federal agency. The Commission will also provide the permitting information and any contract documents, including the performance work statement, if available, and, if not available, will assist RSA in requesting such documentation from the Federal agency. However, the unavailability of the permitting or contract documentation will not delay the notification to RSA.
- e. RSA will determine within 30 days of the receipt of all documentation provided by the Federal agency whether the opportunity merits additional review by the appropriate SLA to decide whether the SLA intends to exercise the priority to provide

a licensed blind vendor to operate a vending facility to which the R-S Act applies. If RSA believes that the opportunity merits additional review by the appropriate SLA, it will forward its determination and all documentation to the SLA. Once RSA makes the determination to forward the opportunity for additional review to the appropriate SLA, RSA will notify the Commission of that determination. The Commission will inform the Federal agency that RSA has referred the opportunity to the appropriate SLA to decide whether to exercise the priority to provide a licensed blind vendor to operate a vending facility to which the R-S Act applies, and to expect communication from the SLA.

- f. RSA will maintain contact with the SLA and the Commission will maintain contact with the Federal agency during the determination process to monitor progress and will share the status of the opportunity with each other.
- g. The Commission will not take any action to put the opportunity on the Procurement List until or unless RSA has determined that the opportunity does not merit additional review by the appropriate SLA in accordance with the timeframes cited in E(2)(e).
- h. Once RSA has referred the opportunity to the appropriate SLA for additional review, the negotiation of the opportunity is between the SLA and the Federal agency until and unless the SLA notifies the Federal agency that it has decided not to pursue the opportunity as a vending facility to which the R-S Act applies. RSA will request notification and documentation at that time as well, at which time it will inform the Commission and share the documentation. The Commission will request that the Federal agency provide the Commission with documentation of its receipt of the SLA's decision not to pursue the opportunity, which the Commission will likewise share with RSA. At this point, the Commission may proceed to initiate its processes to add the opportunity to the Procurement List.

- i. The Commission and RSA understand that an SLA has a statutory priority under the R-S Act to operate a vending facility opportunity but may not be able to use that priority at the time the Federal agency offers it for a variety of reasons (*e.g.*, a blind vendor is not available, the site is not deemed profitable enough, etc.). The Commission and RSA also understand that placing the opportunity on the Procurement List precludes the SLA from subsequently using its statutory priority for that opportunity even if changing circumstances would allow it to do so. Therefore, the Commission and RSA agree that, upon the effective date of this agreement and going forward, if an SLA does not exercise its priority for an opportunity, and if that opportunity is subsequently added to the Procurement List, there will be another review and determination by RSA at the time each contract is up for renewal (not including option years). The Commission will document in the Notice of Procurement List Addition it publishes in the *Federal Register* that the R-S Act priority was applicable but was not exercised by the SLA at that time, and that, when the Federal agency's contract is due for renewal (normally after five years), the Federal agency is required to notify RSA. RSA will then initiate the determination process described in E(2)(e) and RSA will forward the documentation to the SLA for it to determine whether it is prepared to exercise its priority to operate that vending opportunity under the R-S Act. The Commission will inform the authorized CNA and NPA contractor that this review will take place prior to each contract renewal. Both the Commission and RSA will track vending opportunities added to the Procurement List in this manner.
- j. Both the Commission and RSA agree to make all good faith efforts to adhere to this protocol. The parties agree to remedy any failure to meet one of the requirements of the protocol as soon as reasonably practicable and to work cooperatively to resolve any concerns or conflicts. Within six months of the date of this

agreement, the parties agree to mutually publish a list of definitions pertinent to this agreement that will become an appendix and will facilitate both clearer communication and adherence to the agreement.

- k. If RSA, SLAs, or blind vendors become aware of the Commission or CNA personnel assessing an opportunity that may have R-S Act implications that has not gone through this protocol's notification process, the Commission requests such information be reported to it. The Commission will investigate whether there is an assessment in process and will notify RSA of its findings and initiate this Protocol at Step E(2)(c), if appropriate.
 - l. Neither the Commission nor RSA, nor any of the organizations or stakeholders by virtue of being named in this protocol, relinquishes their respective priority or authority to act in accordance with applicable laws, regulations, or policies.
3. RSA will provide information to SLAs concerning their obligation to apply the JWOD Act and contact the Commission to identify an AbilityOne NPA if they intend to award a subcontract under their prime contract with the U.S. Department of Defense for full food services, mess attendant services, or other services supporting the operation of a military dining facility (Section 856(a)(2)(B) of the John Warner Act).
 4. The Commission and RSA will notify the other if either agency is approached by a Federal agency or a commercial entity seeking to discuss or explore strategic initiatives, subcontracting or joint ventures that might affect food operations or any other vending facility operations on a global scale (larger than one individual contract—the protocol specified in Section E(2)) so that the other agency may participate in such discussions.
 5. The Commission and RSA will ensure that if either agency develops any regulations or non-regulatory guidance that aims to promote a greater understanding of the R-S Act, JWOD Act, and how the two laws

intersect, the other agency will be asked for input informally before the regulations or guidance regarding the intersection of the Acts are released outside of that agency. A goal for the Commission and RSA is to work on non-regulatory guidance jointly that addresses this intersection. However, as specified in Section F below, nothing in this agreement will limit or otherwise affect either the Commission's or RSA's ability to promulgate regulations or non-regulatory guidance independently, as needed.

6. RSA will provide training to the Commission staff and Commissioners on the laws, regulations, and policies of the R-S Act, and the Commission staff will provide training to RSA and other Departmental staff, as appropriate, on the JWOD Act, regulations, and policies. Such training may also include the operations of each program and potential opportunities each may be able to develop with the other for more business and employment opportunities for stakeholders.
7. The Commission and RSA may, through the points of contact, invite personnel of the other agency to appropriate national meetings, trainings, and conferences for purposes of familiarizing each other with the requirements, best practices, and issues relating to the R-S Act and JWOD programs and to open up opportunities for discussion about collaboration with stakeholders.
8. The Commission and RSA agree to consider other strategies for increased communication and collaboration which could include, but are not limited to:
 - a. Assign staff to participate in workgroups on topics or issues of mutual interest;
 - b. Explore information exchange and training opportunities for stakeholders, such as Federal agencies, SLAs, CNAs, NPAs, and blind vendors regarding the operations of each program and potential business opportunities each may be able to develop with the other;and

- c. Explore possibilities for internships and opportunities for employees working with RSA and the Commission and stakeholders of the R-S Act and JWOD programs to work with the other agency.

F. Other Matters

This agreement does not authorize the expenditure or reimbursement of any funds, and nothing in this agreement obligates either the Commission or RSA to expend appropriations or other funds, or to enter into any contract or other obligation.

Further, this agreement will not be interpreted to limit, supersede, or otherwise affect either the Commission's or RSA's normal operations or decisions in carrying out its mission or statutory or regulatory duties.

G. Effective Period

This MOU will become effective upon the signatures of the Commission and RSA officials. It shall remain in effect unless otherwise modified or terminated by either the Commission or RSA. Either the Commission or RSA may withdraw from the MOU upon 30 days of written notification to the other.

H. Modifications

This MOU may be modified through mutual written agreement between the Commission and RSA.

I. Stakeholder Input

The Commission and RSA value the input of their respective stakeholders and will seek the input of stakeholders such as the National Council of State Agencies for the Blind (NCSAB), the National Association of Blind Merchants (NABM), the Randolph-Sheppard Vendors of America, and the CNAs—SourceAmerica and National Industries for the Blind—in assessing whether any modifications should be made to this MOU. Input will be sought from stakeholders in FY 2021 on an individual basis and shared

between the Commission and RSA. This MOU will also be posted on the websites of both the Commission and RSA.

The undersigned parties warrant that they have the requisite authority to sign this MOU.

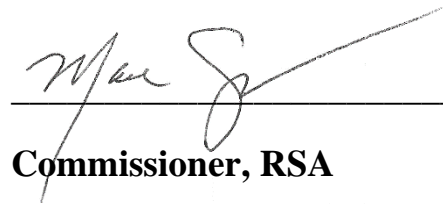
Signatures:



Executive Director
U.S. AbilityOne Commission

January 19, 2021

Date



Commissioner, RSA

January 19, 2021

Date