



COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

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MEMORANDUM FOR CHIEF ACQUISITION OFFICERS SENIOR PROCUREMENT EXECUTIVES

FROM: Leon A. Wilson, Jr., Executive Director

SUBJECT: AbilityOne Program Updated Pricing Memoranda

The purpose of this memorandum is to notify the contracting community of updates to the pricing procedures for products and services procured from nonprofit agencies under the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c). The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) is the Federal agency that administers the AbilityOne (formerly JWOD) Program. The Committee implements a procurement program within the Federal Government to increase employment opportunities for people who are blind or severely disabled. The pricing procedures implemented within the Committee's pricing memoranda derive authority from the Javits-Wagner-O'Day Act, as implemented through Federal Acquisition Regulation (FAR) Subpart 8.7, 41 CFR Chapter 51, and OMB Circular A-122.

The subject updates to the Committee's pricing memoranda build upon the previous pricing procedures, focusing on negotiations and price analysis by emphasizing use of market price indicators and market research. All parties are required to conduct market research, consistent with FAR Part 10 guidelines, to support the fair market price and price change recommendations submitted for approval by the Committee. While the Committee has the sole statutory authority to establish the fair market price for items on the Procurement List, Contracting Officers will certify that the price recommended to the Committee is a fair market price, and that it is based on price analysis techniques conducted in accordance with the Committee's pricing memoranda and standards set forth in FAR 15.404-1 Proposal Analysis Techniques.

Contracting under the AbilityOne Program gives Contracting Officers flexibility and results in acquisition streamlining. For a Contracting Officer to take full advantage of AbilityOne contracting and negotiations, an understanding of AbilityOne Program requirements is necessary. Over the next year, the Committee staff will seek opportunities for direct communications with Federal contracting personnel to increase awareness of their rights and responsibilities when purchasing products and services from nonprofit agencies employing people who are blind or severely disabled under the AbilityOne Program. Should your

agency have such an opportunity or desire more information on contracting with the AbilityOne Program, please contact Sheryl Kennerly or Kimberly Zeich at (703) 603-7740 for more information.

The attached questions and answers are intended to provide further edification on this issue. The updated Memoranda can be found at the Committee's website:

Product Pricing (PR2) <http://www.jwod.gov/jwod/library/PricingMemo2.pdf> and
Service Pricing (PR3) <http://www.jwod.gov/jwod/library/PricingMemo3.pdf>

Attachment

FREQUENTLY ASKED QUESTIONS –
Applicable to AbilityOne (formerly JWOD) Products and Services

1. When are the new memos effective? Why is effectiveness not being delayed?

Both of the pricing memoranda are effective February 1, 2007. The revisions to the pricing memoranda implement decisions of the Committee regarding the Central Nonprofit Agency (CNA) fee ceiling, subcontracting, and use of market research. Due to the importance of implementing these decisions as soon as possible, the memos were made effective immediately upon signature to ensure consistency in processes and procedures with the Committee's decisions. As most upcoming service price negotiations will be targeted for the beginning of the Federal Fiscal Year on October 1, 2007, and most commodity products are not due for price changes until January 2008, there should be adequate time for all parties to incorporate the provisions of these memoranda into the FY 2008 pricing cycle.

2. What about negotiations currently underway when the memos are issued?

Negotiations commencing on or after February 1, 2007 must be conducted in accordance with the updated memoranda. The staff recognizes the need for flexibility for a short period of time; however, all parties are encouraged to immediately begin adopting the procedures in the memoranda. For negotiations currently underway, the resulting agreements should incorporate the procedures to the greatest degree possible for negotiations agreed to by the Contracting Officer on or after February 1, 2007.

3. What is the Committee's general pricing philosophy for AbilityOne contracts?

As directed by the Javits-Wagner-O'Day Act, the Committee has sole authority to establish the Fair Market Prices to be paid by the Government for products and services on the Procurement List. The Committee's pricing procedures, detailed in the pricing memoranda, are intended to result in prices that are fair and reasonable. Such prices should fall between the high and low extremes of the market.

4. Do the Committee's pricing procedures take precedence over requirements of the Federal Acquisition Regulation (FAR)?

The Committee has sole, statutory authority to establish the Fair Market Price. Because of this authority, the Committee's pricing procedures take precedence for AbilityOne (formerly JWOD) contracts over other pricing provisions of the FAR (See FAR 8.707). The Committee is not bound to approve recommended prices and may establish a price other than negotiated. However, the Committee's

pricing procedures are intended to be consistent with FAR practices to the degree possible. Where 41 CFR Chapter 51, FAR Subpart 8.7, OMB Circular A-122 and Committee Memoranda do not address exceptions or exemptions, the FAR is applicable.

5. Why must the Contracting Officer, Nonprofit Agency and Central Nonprofit Agency sign a certification to the price recommendation?

The Committee has the sole authority to determine the Fair Market Price. To assist the Committee in its determination process, the Committee permits the Contracting Activity, the Central Nonprofit Agency (National Industries for the Blind or NISH) and the Nonprofit Agency to negotiate a Recommended Fair Market Price. The negotiation process should assure that all parties can introduce relevant data into the recommendations of initial and revised Fair Market Prices. Good faith negotiations should result in a reasonable Fair Market Price recommendation. The signatures assure that all parties have participated in the process and agree with the recommendation. Certification that a price is fair and reasonable is a standard acquisition practice.

6. Who is responsible for conducting market research? If the Committee is responsible for setting the price, why do the Contracting Officer and Nonprofit Agency have responsibility for conducting market research?

Focusing on price analysis and use of market data is consistent with the Javits-Wagner-O'Day Act and the Committee's regulations. For example, the powers and responsibilities of the Committee include at 41 CFR § 51-2.2 (c):
“Determine fair market prices for items added to the Procurement List and revise those prices in accordance with changing market conditions to assure that the prices established are reflective of the market.” Because the products and services on the Procurement List are offered in a sole source environment, appropriate emphasis must be placed on ensuring the prices are reflective of the market. Furthermore, the majority of the products and services provided through the Program are widely available in the commercial market place, therefore the first and foremost consideration for determining a Fair Market Price is to look to the markets in which the items are readily available.

7. Why is the Committee focusing so much on market research? What about products and services that cannot be compared against commercial market prices?

The AbilityOne (formerly JWOD) Program recognizes three analysis methods described in FAR 15.404 (Price Analysis, Cost Analysis and Cost Realism.) Under the AbilityOne Program and in accordance with FAR 15.404-1(a)(2), price analysis shall be used when cost or pricing data is not required. Price analysis is the preferred method for arriving at the recommended Fair Market Price. Consistent with FAR 15.404, cost analysis or cost-realism shall be used only when information is not available for price analysis, such as when a new service has not been previously performed in the local and/or general commercial market.

Use of exceptions to price analysis shall be documented and submitted to the Committee accompanied with the Recommended Fair Market Price.

8. What about forms for submitting prices based on cost analysis?

All Committee formats have multiple uses. These formats may be used by Nonprofit Agencies and NIB/NISH for submitting proposals to Contracting Activities and must be used for providing information required to the Committee. The Contracting Activities' formats and forms must be used by the Nonprofit Agencies when requested by the Government and must be provided to the Committee, along with the formats and documents required by the memos.

9. Does the Nonprofit Agency have to provide its detailed cost data or estimates?

In accordance with FAR 15.403-1(c)(2) contracting officers are prohibited from requiring certified cost and pricing data from nonprofit agencies under the AbilityOne (formerly JWOD) Program because the prices are set by law or regulation. If the negotiation process is based on cost analysis or cost realism analysis, as appropriate, OMB Circular A-122, Cost Principles for Non-Profit Organizations, will apply. Direct and indirect costs are allowable only if they are reasonable, allocable, not prohibited by OMB Circular A-122, and consistent with applicable accounting practices and standards. In accordance with FAR 15.403-1(b), contracting officers may request information other than cost and pricing data to support price reasonableness. Cost or cost-realism shall be used only when information is not available to analyze price such as no commercial market exists or commercial prices are artificially lowered. Use of exceptions to price analysis shall be documented and submitted to the Committee accompanied with the Recommended Fair Market Price.

10. Does the Contracting Officer have to conduct and/or share their Independent Government Estimate or price negotiation memorandum?

The contracting officer has responsibility to conduct market research and establish an Independent Government Estimate (IGE), as directed by FAR Part 10 and Part 15.4, consistent with the contract scope and requirements prior to contract negotiations. These estimates may be provided to the nonprofit agency and Central Nonprofit Agency (NIB or NISH) at the Contracting Officer's discretion, but shall be provided directly to the Committee upon request of the Committee staff. The Committee staff will use these estimates along with other information it may obtain independently and/or from the Central Nonprofit Agencies or Nonprofit Agencies in its review and analysis to establish a price; however, the Committee will not release the information consistent with applicable rules and regulations.

11. How do the updates to the pricing memos affect application of the CNA Fee?

The pricing memoranda implement the Committee’s decisions regarding the CNA Fee as a transaction between the CNAs and the NPAs, not as a distinct pricing element added to the price to be passed through to the Government. The pricing memoranda are consistent with the Committee decisions regarding the CNA Fee and the guidance in Administrative Memorandum No. 11, CNA Fee Determination Process, which was effective October 1, 2006. CNA Fee is included in the Fair Market Price recommendation. The fee is not a markup on the Fair Market Price, but is instead a component of the Nonprofit Agency’s overhead costs in the total price. The total Nonprofit Agency price, including the applicable fee as an overhead cost, must be included in the recommended Fair Market Price submitted for Committee approval. CNA Fee is a part of overhead and at no time should it be factored as a separate line item in Fair Market Prices or price change recommendations.

12. What if the Nonprofit Agency and Contracting Office cannot come to agreement on a price recommendation?

Impasse is the term used to describe when a price issue, controversy or disagreement occurs and either the Contracting Activity or the Nonprofit Agency is unable to proceed with a contract action. The “JWOD Price and Price-Related Impasse and Disputes Resolution Procedure” (published separately by the Committee in Operations Memorandum Number 19, <http://www.jwod.gov/jwod/library/policy.html>) is used to resolve price and price-related disagreements. Impasse may occur only during price change actions to an existing product or service on the Procurement List.

13. Who are NIB and NISH? What are Central Nonprofit Agencies CNAs? Are they Government agencies? What is their role in setting the price?

National Industries for the Blind (NIB) and NISH are Central Nonprofit Agencies (CNAs) or not-for-profit corporations operated in the interest of people who are blind or have other severe disabilities. They are designated by the Committee to facilitate the distribution (by direct allocation, subcontract, or any other means) of Government orders for products and services on the Procurement List among Nonprofit Agencies employing persons who are blind or have other severe disabilities, to provide information required by the Committee to implement the AbilityOne (formerly JWOD) Program, and to otherwise assist the Committee in administering these regulations as set forth herein by the Committee (41 CFR 51-1.3). NIB and NISH are not Government entities and receive no appropriations from the Federal Government. They provide technical assistance to both Contracting Activities and Nonprofit Agencies in negotiations. NIB or NISH participate in and/or review all negotiations for Fair Market Price recommendations before submission to the Committee.

14. How do the pricing memos relate to subcontracting procedures?

Subcontracting is defined by the Committee as any acquisition from another source of materials or services required by the Nonprofit Agency(ies) to provide a Procurement List product or service allocated under the AbilityOne (formerly JWOD) Program. For further guidance, refer to the Committee Operations Memorandum 21, "Guidance on Nonprofit Agency Establishment of Subcontract Relationships for Current or Potential JWOD Work."

15. For service pricing, what happened to the 9.5% "Other Burden" rate in the previous Pricing Memorandum # 3 (PR-3)?

A standard burden rate is not consistent with price analysis based on market conditions. Dropping this standard rate will eliminate the current confusion among Contracting Officers who have difficulty understanding how to negotiate JWOD contracts because they believe there are somehow "different rules" than those used in commercial contracting practices. By eliminating a special price category of "Other Burden" that is not used in any standard pricing methodologies, AbilityOne (formerly JWOD) pricing practices will be reflective of industry and market standards.

16. How often can a service price change? How are price changes determined?

If the Contracting Activity determines the contract length will be longer than one period, any period(s) beyond Period One is (are) considered Follow-On Years (periods or options). It is essential that an agreement be reached on clear and comprehensive rules for Follow-On Year Pricing. Any technique acceptable to the Contracting Activity and the Nonprofit Agency (as advised by NISH or NIB), consistent with the Committee's pricing procedures, may be used.

The approved Follow-On Year agreement must be incorporated into the final contract once the Fair Market Price has been established by the Committee.

17. How often can a product price change for a military spec or agency unique product? How is the price change determined?

Price changes for products already on the Procurement List will occur on an annual basis, unless the contract specifies more frequent price changes or includes economic price adjustment (EPA) clauses. Prices may remain in effect for longer than one year as negotiated between the Nonprofit Agency and the Contracting Activity.

During price negotiations for a new or an existing product on the Procurement List, the Contracting Activity and Nonprofit Agency shall also negotiate an agreement on the method to be used to adjust prices in the future. Indices of product or raw material prices, market conditions, and negotiations are methods commonly used to determine new price recommendations for AbilityOne (formerly JWOD) products.

18. Why are there so many different prices for AbilityOne products on GSAA Advantage! and Multiple Award Schedule (MAS) vendors/commercial distribution sources?

AbilityOne (formerly JWOD) products are available through a wide variety of channels to meet customers' delivery requirements. All products must be approved before being offered for sale through GSA MAS vendors or commercial wholesalers for distribution by MAS vendors. AbilityOne prices are only changed and disseminated quarterly by the Committee to wholesalers and authorized AbilityOne MAS vendors according to Committee published deadlines. All products are sold to MAS vendors or wholesalers for commercial distribution channels at the same wholesale prices, before distribution and delivery costs are added by the distributor to the retail price to the customer. The retail price to the final, end-user customer is not established by the Committee and varies according to terms of the vendors' contracts with GSA, the delivery terms selected by the end-user (next-day delivery or 5-7 day delivery), and quantity ordered.