



## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

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### **Pricing Memorandum No. 19 (Formerly Operations Memorandum No. 19)**

#### **Subject: AbilityOne Price and Price-Related Impasse and Dispute Resolution Procedures**

#### **1. Purpose:**

The purpose of this Pricing Memorandum is to prescribe procedures for resolving price and price-related disputes between parties in the exercise and administration of the AbilityOne (formerly JWOD) Program (41 CFR Chapter 51). These procedures are applicable to:

- A. Federal Contracting Activities obtaining products or services under the AbilityOne Program.
- B. Nonprofit Agencies associated with NIB or NISH and providing products or services under AbilityOne contracts.
- C. The Central Nonprofit Agencies (CNA): National Industries for the Blind (NIB) and NISH.
- D. Federal contractors awarding subcontracts under the AbilityOne Program.

#### **2. Effective Date: April 1, 2007**

This memorandum replaces and supersedes Committee Operations Memorandum No. 19, Javits-Wagner-O'Day Price and Price Related Impasse and Dispute Resolution Procedures, dated April 16, 2001.

#### **3. Authority:**

The Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) was established by the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c). The price impasse procedures implemented herein derive from the authority of 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 Committee has sole authority to establish the Fair Market Price.** Because of this authority, the Committee's pricing procedures take precedence for AbilityOne contracts over other pricing provisions of the FAR (See FAR 8.707). However, the Committee's pricing

An Independent Agency of the United States Government Established by the Javits-Wagner-O' Day Act. **JWOD**



procedures follow FAR practices that are consistent with the Committee's statutory and regulatory authorities.

#### **4. Applicability:**

This Memorandum serves as the sole procedure for resolving AbilityOne price and price-related disputes. The Committee encourages Contracting Activities and Nonprofit Agencies to use this Memorandum as an Alternate Disputes Resolution (ADR) procedure for non-price issues. The Committee's AbilityOne Price and Price-Related Impasse and Disputes Resolution Procedures do not preclude the Contracting Activity or the Nonprofit Agency from pursuing remedies under the Contract Disputes Act of 1978, 41 U.S.C. 601-613, for other than price and price-related issues.

#### **5. Policy:**

Partnering concepts will be used to establish business protocols for contract performance under the AbilityOne Program. Partnering encourages team building and mutual gains approaches to problem-solving. Business relationships under the AbilityOne Program must be conducted with fairness, integrity and openness. Issues should be resolved early and in a timely manner and at the local level if at all possible. When price and price-related issues cannot be resolved at the local level, the dispute resolution process of this Memorandum will be used.

#### **6. AbilityOne Program Definitions:**

The following definitions are provided to establish a common language for parties participating in the pricing of an AbilityOne product contract.

- A. **AbilityOne Program.** The Committee has changed the program name from JWOD to the AbilityOne Program. Use of the name AbilityOne will be transitioned to gradually replace JWOD as the program name. During that time, the two names may be used synonymously.
- B. **Central Nonprofit Agency (CNA)** means a not-for-profit corporation operated in the interest of people who are blind or have other severe disabilities, and 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 Program, and to otherwise assist the Committee in administering these regulations as set forth herein by the Committee. (41 CFR 51-1.3)

- C. **Fair Market Price (FMP)** is the price that the Committee has set and approved for each product or service on its Procurement List, and the price that the Government is required to pay when purchasing the product or service from the designated nonprofit agency. FMP can either be FOB Origin or Destination as recommended by negotiation between the designated NPA and CA and as approved by the Committee.
- D. **Impasse** exists when an issue, controversy or disagreement occurs and the Contracting Activity, contractor or the Nonprofit Agency is unable to proceed with a contract action.
- E. **Javits-Wagner-O'Day Act** (41 U.S.C. 46-48c) is the law under which the Program operates; “JWOD” has been used to describe the Program and is often used as an adjective (e.g., a JWOD contract). The Committee has changed the program name from JWOD to the AbilityOne Program. Use of the name AbilityOne will be transitioned to gradually replace JWOD as the program name. During that time the two names may be used synonymously.
- F. **The Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee)** is the independent Federal Government agency responsible for administering the AbilityOne Program. The Committee establishes rules, regulations, and policies to assure effective administration of the Javits-Wagner-O’Day Act. For more information, go to <http://www.jwod.gov>.
- G. **National Industries for the Blind (NIB)** is the CNA designated by the Committee to assist in creating employment opportunities for people who are blind. NIB is not a Government Agency. For more information, go to <http://www.nib.org>.
- H. **NISH** is the CNA designated by the Committee to assist in creating employment opportunities for people with severe disabilities. NISH is not a Government Agency. (NISH is not an acronym.). For more information, go to <http://www.nish.org>.
- I. **Nonprofit Agency (NPA)** is the term used to describe the state and local agencies employing people who are blind (NIB-associated agencies) or severely disabled (NISH-associated agencies). Nonprofit Agencies are also referred to as Community Rehabilitation Programs (CRP).
- J. **Procurement List Number** is the term used to identify a potential or actual Procurement List product(s) or service(s) addition also known as Action Number, JPID number or Request number.

## 7. Roles and Responsibilities:

The acquisition process under the AbilityOne Program is governed by a different set of rules from “typical” FAR contracts. One of the unique aspects of the AbilityOne Program is the roles and responsibilities of the groups involved with the disputes resolution process.

- A. **The Committee** establishes rules, regulations, and policies to assure effective implementation of the JWOD Act. (See 41 CFR 51-2.2, Committee Powers and Responsibilities.)
- (1) Disputes which cannot be resolved by these parties (Nonprofit Agency and Contracting Activity) shall be referred to the Committee for resolution. (See 41 CFR 51-6.15)
  - (2) The Committee determines Fair Market Prices for items added to the Procurement List and revises those prices in accordance with changing market conditions to assure that the prices established are reflective of the market. (See 41 CFR 51-2.2(c))
- B. **Contracting Activities** shall provide the Committee and NIB or NISH with information needed to enable the Committee to effectively manage the AbilityOne process and AbilityOne Program requirements. (See 41 CFR 51-5.1) Contracting Activities shall also:
- (1) Provide the Committee detailed and timely information, to include Government estimates and budgetary restrictions, during the impasse resolution process.
  - (2) Provide NIB or NISH, as appropriate, copies of all contract documents for AbilityOne contracts.
  - (3) Keep NIB or NISH informed of contract issues that may result in an impasse.
  - (4) When unable to resolve issues locally with the Nonprofit Agency, seek support from NIB or NISH in resolving the issue before declaring impasse.
  - (5) Provide the Committee all relevant data in a Business Case when requested to support impasse resolution.
- C. **NIB and NISH** are Central Nonprofit Agencies designated by the Committee which have a unique role in Federal Government acquisition program functions. NIB and NISH are responsible for ensuring that recommended Fair Market Prices are fair to all parties in the Program. NIB and NISH will:

- (1) Provide technical assistance to both Contracting Activities and Nonprofit Agencies in negotiations. NIB or NISH shall participate and/or review all negotiations for Fair Market Price recommendation before submission to the Committee.
- (2) Evaluate prices and, when used, cost elements proposed by Nonprofit Agencies for consistency with Committee guidelines and procedures.
- (3) Ensure the Nonprofit Agencies and Contracting Activities are aware of and adhere to Committee rules, regulations and policies.
- (4) Assemble and forward required information for impasse resolution to the Committee as required. NIB or NISH will assist Contracting Activities and Nonprofit Agencies in preparation of impasse Business Cases unless designated by the Nonprofit Agency to represent it in the impasse.

D. **Nonprofit Agencies** will provide a product or service at the established Fair Market Price and act as a responsible partner with Contracting Activities and endeavor to provide best value products or services to the Government. Nonprofit Agencies will:

- (1) Continue contract performance during the impasse resolution process.
- (2) Maintain accounting records to capture, allocate and report costs and support audits with full disclosure when directed by the Committee.
- (3) Provide the Committee all relevant data in a Business Case when requested to support impasse resolution.

## **8. Impasse Resolution**

The Committee Impasse Resolution process involves 6 steps:

**Step 1. Informal Resolution:** Disputes should be resolved locally if possible. NIB or NISH, as appropriate, should be involved in resolution if local attempts to resolve the issue are unsuccessful. Early involvement of NIB or NISH should facilitate a timely resolution. NIB and NISH are encouraged to issue procedures for resolving issues and that support this Memorandum. Step 1 should not extend beyond 30 days.

**Step 2. Declaration of Impasse:** The Impasse Resolution process of this Memorandum will be initiated by a Declaration of Impasse.

- (1) Impasse may be declared only:

- (a) At the Contracting Activity by an official an organizational level above the Contracting Officer.

Or

- (b) By the Chief Executive Officer of the Nonprofit Agency, or if designated by the Nonprofit Agency to represent it in the impasse process, by the Vice President, Operations Management & Business Development of NIB or the NISH Regional Executive Director or by an official at an organizational level above these positions.
- (2) Impasse will be declared by written notice to the Executive Director of the Committee (electronic mail is acceptable) with simultaneous service of copies to the other party to the impasse and NIB or NISH.
  - (3) The written declaration of impasse must indicate an acknowledgement that Business Cases will be submitted to the Committee within fifteen (15) working days of the date that impasse is declared. However, on receipt of the impasse declaration or a request from either party, the Committee staff may elect to extend the deadline for Business Cases submittal beyond 15 working days for impasses that involve unusually complex issues, multiple parties, voluminous records, or in other extenuating circumstances.

**Step 3. Preparation and submission of Business Cases:** The Contracting Activity and the Nonprofit Agency will each prepare a Business Case for submission to the Committee within fifteen (15) working days after declaration of impasse unless a later deadline has been established by the Committee staff. At a minimum, each Business Case shall include the following information:

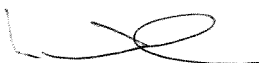
- (1) The project name and location. The contract number if a contract is involved. The NIB or NISH project number and Committee Procurement List number if appropriate.
- (2) A statement of the issue that is the basis for the impasse and the desired outcome.
- (3) The position and opinion of the party submitting the Business Case with supporting data.
- (4) A chronology of steps taken to resolve the impasse.
- (5) A discussion of areas of agreement pertaining to the issue.

- (6) Specifically for price and price-related issues (See Committee Pricing Memorandum Number 3 (PR-3) and Pricing Memorandum Number 2 (PR-2) for more details):
  - (a) The Contracting Officer will provide the Independent Government Estimate and any Pre- or Post Negotiation Memoranda available.
  - (b) The Nonprofit Agency will provide market research information (if available) in addition to details of cost elements that support the proposed price.
- (7) The Contracting Activity will provide a copy of the current contract (if applicable) and all contract modifications.
- (8) Each party will provide the name, telephone number, fax number, e-mail address (if available) and address of their point of contact. The Nonprofit Agency Business Case will provide information on the NIB or NISH point of contact.

**Step 4. Initial Committee review:** The Committee staff will review the Business Cases and usually within ten working days of receipt shall issue a written plan of action with milestones for resolution of the impasse and a request for any additional data to be submitted by either or both parties. The Committee staff will provide a copy of the plan to designated points of contact at the Contracting Activity, Nonprofit Agency and NIB or NISH.

**Step 5. Committee staff decision:** The Committee staff will issue a written decision in accordance with the plan, advising all parties if there is to be a delay in the decision. The decision will represent the best interests of the AbilityOne Program. The decision may or may not directly support one of the Business Cases submitted.

**Step 6. Availability of Committee review:** After a decision from the Committee staff, either the Contracting Activity or the Nonprofit Agency may request a formal review and decision from the full Committee. The request for an appeal must be received in the Committee offices no later than 30 calendar days from the transmittal date of the staff decision letter. The Committee staff will forward its written decision, along with the two Business Cases, to the Committee. The Committee may also request additional information from the parties. The Committee will make a final decision that is binding on all parties. The Committee staff is responsible for enforcement of decisions.



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Executive Director