

January 26, 2007

Pricing Memorandum Number 3 (PR 3)

Subject: Fair Market Price Determination for AbilityOne (formerly JWOD) Service Contracts

1. Purpose

The purpose of Pricing Memorandum Number 3 (PR-3) is to prescribe policies and requirements for recommending the Fair Market Price (FMP) for an AbilityOne (formerly JWOD) service contract. These procedures are applicable to:

- A. Determining the Fair Market Price when adding a service to the Procurement List.
- B. Determining the Base Fair Market Price and procedures for Follow-On Year adjustments for contracts longer in duration than a base year.
- C. Determining the Fair Market Price for contract modifications.

2. Effective Date: February 1, 2007

This Memorandum is mandatory for price negotiations that commence on or after the effective date and lead to the establishment of a new base price recommendation or a contract modification price. This memorandum supersedes **all** previous versions of PR-3 and all other previous service pricing memoranda.

- A. New Procurement List (PL) Additions:** This Memorandum is to be used for all price negotiations.
- B. Existing AbilityOne contracts:** It is the intention of the Committee to apply the procedures of this Memorandum to all applicable AbilityOne contracts. Prices established by the Committee under the previous version of PR-3 or PR-6 will remain in effect until the current contract expiration date. Contracting Activities need to coordinate the establishment of new Base Prices under this revised PR-3 with the Nonprofit Agency and NIB or NISH, as appropriate.

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 Committee implements a comprehensive program to enforce the policy of the Federal Government to increase employment opportunities for people who are blind or severely disabled. The pricing 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 procedures are intended to be consistent with FAR practices to the degree possible. The Committee is not bound to approve recommended prices and may establish a price other than negotiated.

4. Applicability

The procedures and guidance provided in this Memorandum apply to:

- A. All Federal entities subject to the Javits-Wagner-O'Day Act.
- B. National Industries for the Blind (NIB) and NISH.
- C. Nonprofit Agencies participating in the AbilityOne Program.
- D. Federal contractors awarding directed subcontracts under the AbilityOne Program.
- E. The Fair Market Price determination of all services under the AbilityOne Program including those services formerly called "Services Priced as Products." The Committee may determine that certain services on the Procurement List (PL) are not subject to these provisions.

5. AbilityOne Program Definitions

The following definitions are provided to establish a common language for parties participating in the pricing of an AbilityOne service contract. Appendix A is a glossary of other commonly used terms and Appendix B is a guide to commonly used acronyms.

- 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 will be used synonymously.
- B. Base Price:** Base Price is the term for the initial Fair Market Price for the product or service in the base year of a contract with multiple follow-on or option years.
- C. 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 Non-Profit 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)

D. Central Nonprofit Agency Fee: NIB and NISH are not Government entities and receive no appropriations from the Federal Government. Instead, they receive a percentage of revenue generated by sales of AbilityOne products and services. This percentage, known as the CNA Fee, is paid to NIB or NISH by the Nonprofit Agency. Annually, the Committee reviews NIB's and NISH's budgets, plans and accomplishments and establishes the fee limit for each CNA's fee. Current CNA fee ceiling(s) and Federal and Nonprofit agency guidance can be found in the Committee's Administrative Memorandum Number 11 – CNA Fee, found on the Committee's web site at <http://www.jwod.gov/jwod/library/policy.html>

E. 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 implementation of the Javits-Wagner-O'Day Act. For more information, go to <http://www.jwod.gov>.

F. Contracting Officer (CO or KO) is a Federal Government employee who has been granted authority by their Contracting Activity (CA) to negotiate and obligate government funds for products and services as the agency determines necessary to meet their mission.

G. 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 NPA.

H. Follow-On Year (FOY) is the term used instead of contract option year. As long as the requirement exists, the Contracting Activity is required to continue purchasing the service from the Nonprofit Agency designated by the Committee unless and until the Committee directs otherwise. The Committee may direct the transfer of the service to another Nonprofit Agency.

I. Impasse is the term used to describe when a price issue, controversy or disagreement occurs and either the Contracting Activity (CA) 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.

J. 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 will be used synonymously.

K. 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 about NIB, go to <http://www.nib.org>.

L. 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 about NISH, go to <http://www.nish.org>.

M. 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).

N. Procurement List (PL) is the list of services (and products) awarded under the AbilityOne Program as "mandatory source" acquisitions. Services are added to the Procurement List by the Committee and are listed by type and location. To view the Procurement List, go to http://www.AbilityOne.gov/AbilityOne/p_and_s/p_and_s.html

O. Procurement List (PL) 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.

P. Procurement List Information Management System (PLIMS) is the name of the information management system to be used by the Committee, beginning in mid-FY '07, to collect electronic submissions from the CNAs for proposed additions, deletions, and changes to the procurement list, including prices. Guidance will be issued separately for procedures for submission of electronic procurement list requests.

Q. Project Number is the term used to identify specific services on the PL by the type of service, Contracting Activity and Nonprofit Agency authorized to provide that service at a specific location.

R. Recommended FMP is the term used for the price the CNA has recommended to the Committee for services (and products) under the AbilityOne Program based on negotiations between the designated NPA and CA.

S. Service Pricing Formats (SPF) All Committee service pricing 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 under PR-3 to the Committee. The Contracting Activities' formats and forms must be used by the Nonprofit Agencies when requested by the CA and must be provided to the Committee, along with the service pricing formats, Draft Contract Section/ Schedule B.

6. Roles and Responsibilities

A. Committee

- (1) 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))
- (2) Designates and sets appropriate ceilings on fee paid to Central Nonprofit Agencies (NIB and NISH) by nonprofit agencies selling items or services under the AbilityOne Program. (See 41 CFR 51-2.2(f))
- (3) Issues guidance as necessary to facilitate negotiations.
- (4) Adjudicates impasses and publishes guidance on impasse resolution.
- (5) Obtains information from the Contracting Activity, NIB or NISH or the Nonprofit Agencies it deems appropriate for review and determination of a FMP.
- (6) Coordinates audits at the request of a contracting activity.

B. Contracting Activities

- (1) Provide a copy of the draft Statement of Work and Schedule B of the draft contract and any additional documentation that identifies the scope, terms, and conditions specific to the AbilityOne Program, the price adjustment mechanism (i.e., Follow-on Year agreement and FAR contract clauses for Service Contract Act adjustments), current U.S. Department of Labor Wage Determinations/Decisions (and Collective Bargaining Agreements where appropriate), previous contract price, SOW, contract modifications, and claims to the NPA, and NIB or NISH.
- (2) Conduct Market Research and establish an Independent Government Estimate (IGE), as directed by FAR Part 10 and Part 15.4, consistent with the contract requirements prior to contract negotiations. Estimate and research are to be provided directly to the Committee upon request.
- (3) Certify that an analysis has been conducted in a manner consistent with FAR 15.405 and that the negotiated recommended price is fair and reasonable.
- (4) Disclose the method of analysis used in determining that the negotiated recommended price is fair and reasonable.
- (5) Act in a timely manner. General guidelines for processing AbilityOne actions are listed in Appendix D.

- (6) Keep the Nonprofit Agency and NIB or NISH involved in all aspects of the negotiation processes.
- (7) Provide other documentation and information requested by the Committee Staff as may be needed to set the Fair Market Price.
- (8) Upon request, provide the Committee detailed information, to include Government estimates, previous contract prices, SOW, contract modifications, claims and budgetary restrictions.
- (9) Contact the Committee Staff if additional clarification of the AbilityOne Program or pricing procedures is needed beyond that provided by NIB or NISH.
- (10) Departments, agencies, major commands and local activities may issue implementing guidance to this Memorandum that is specific to their organization. Additional guidance, such as supplements, must be consistent with the procedures of this Memorandum. Additional guidance must be coordinated with the Committee. Activities issuing additional guidance to this Memorandum will provide the Committee, NIB and NISH a copy of that guidance.

C. NIB and NISH

- (1) Recommend to the Committee, with the supporting information required by Committee procedures, initial fair market prices for commodities or services proposed for addition to the Procurement List.
- (2) As market conditions change, recommend price changes with appropriate justification for assigned commodities or services on the Procurement List.
- (3) 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 recommendations before submission to the Committee.
- (4) Evaluate prices and, when used, cost elements proposed by Nonprofit Agencies for consistency with Committee guidelines and procedures.
- (5) Ensure the Contracting Activity and the Nonprofit Agency are aware of Committee rules, regulations and policies.
- (6) Assemble and forward required information for Fair Market Price recommendations to the Committee according to Committee procedures.
- (7) Act in a timely manner.
- (8) Certify their concurrence with the Fair Market Price recommendation.

D. Nonprofit Agencies (NPA)

- (1) Develop, with the assistance of NIB or NISH, the pricing data necessary to prepare the proposal for the Recommended Fair Market Price. It is essential for Nonprofit Agencies to be actively involved in negotiations.
- (2) Comply with PR-3 when negotiating a Fair Market Price recommendation for services.
- (3) Provide services at the established Fair Market Price. Nonprofit Agencies must agree to provide the service at the recommended FMP prior to submission to the Committee for determination.
- (4) Maintain accounting records to capture, allocate and report costs, sales, and direct labor hours of employees employed on specific PL service contracts.
- (5) Provide NIB or NISH and the Committee all relevant data when requested to support price estimates.
- (6) Act in a timely manner. Guidelines for processing AbilityOne actions are listed in Appendix D.
- (7) Keep NIB or NISH informed and involved in all aspects of the negotiation process and any changes to circumstances that result in changes to the approved FMP or the recommended FMP after it has been submitted to the Committee.
- (8) Report to NIB or NISH and provide copies of all contract changes and modifications to price.
- (9) Support audits with full disclosure.
- (10) Act as a responsible partner with Contracting Activities and provide best value services to the Government.
- (11) Perform market research to support the proposed Fair Market Price recommendation.
- (12) Certify their participation in developing the Recommended FMP and their agreement to provide the service as negotiated with the Contracting Activity.
- (13) Ensure any subcontracting meets the requirements of AbilityOne policies and guidance under the AbilityOne Program refer to the Committee Operations Memorandum 21, "Guidance on Nonprofit Agency Establishment of Subcontract Relationships for Current or Potential JWOD Work."

7. AbilityOne Program Guidance

Contracting under the AbilityOne Program gives Contracting Activities 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. Specific guidance can be found in 41 CFR Chapter 51, FAR Subpart 8.7, OMB Circular A-122 and Committee Memoranda. In addition, it is important that the CNAs and NPAs understand that the Federal Government is the AbilityOne Program's customer. 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. Some subjects with direct applicability to the Recommended Fair Market Price negotiations are:

A. Audits - In most cases, because of the fixed price nature of most AbilityOne contracts, there will seldom be a need for a Contracting Officer to request an audit. If a Contracting Officer believes that there is a reason for an audit, they shall coordinate the audit with the Committee staff. During any resulting audit, Committee staff will meet with the auditors as necessary to insure that they understand the AbilityOne Program and the differences between commercial companies and nonprofit agencies.

B. Competition in Contracting Act (CICA) - FAR Part 6 exempts AbilityOne contracts from the competition requirements of the CICA. (See FAR 6.302-5) This exemption applies only to products and services on the Procurement List.

C. Cost and Pricing Data - 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 Program because the prices are set by law or regulation.

D. Cost Principles - 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. For a copy of the circular, go to <http://www.whitehouse.gov/omb/circulars/a122/a122.html>

E. Fixed Price Contracts - AbilityOne contracts are generally fixed price contracts subject to the Committee's authority to change prices as market conditions warrant. Contracting activities interested in using other than fixed price contracts must make the type of contract to be used part of the negotiations. During the contract performance period, there should not be an adjustment in contract price, other than the agreed upon rules for pricing Follow-On Years, without a concurrent change in contract requirements. Negotiated Follow-On Year agreements shall be incorporated into contract documents.

F. Incentive Contracts - It is permissible to use fixed-price incentive contracts (FAR 16.403) and fixed-price contracts with award fees (FAR 16.404) for contracts awarded under the AbilityOne Program when the Contracting Officer makes the determination it is in the Government's best interest to do so and all FAR requirements for such contracts are met.

G. Information Other than Cost or Pricing Data - In accordance with FAR 15.403-1(b) contracting officers may request information other than cost and pricing data to support price reasonableness.

H. Mistakes - Mistakes discovered by the Nonprofit Agency prior to the determination of the Fair Market Price can be corrected and a revised recommendation submitted. Contracting Officers discovering an apparent mistake should bring the mistake to the attention of NIB or NISH and the Nonprofit Agency. Mistakes identified by either party after determination of the Fair Market Price or award should be corrected using sound business techniques and judgments. If a mistake cannot be resolved, the impasse process will be used to reach a resolution.

I. Pre-Award Survey - During the addition of a new service to the Procurement List the contracting activity will be given the opportunity to conduct a pre-award survey (also called a site visit) of the nonprofit agency. The survey dates must be coordinated with NIB or NISH to allow for personnel from NIB or NISH to be present during the survey.

J. Price Negotiations – Price negotiations shall be conducted in a manner consistent with FAR 15.405.

K. 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 Program. For guidance under the AbilityOne Program refer to the Committee Operations Memorandum 21, "Guidance on Nonprofit Agency Establishment of Subcontract Relationships for Current or Potential JWOD Work."

L. Worker Productivity -The purpose of the AbilityOne Program is to provide employment for persons who are blind or severely disabled. In accordance with provisions of the Service Contract Act and the Fair Labor Standards Act, employers may pay a sub-minimum (commensurate) wage to workers who are blind or with severe disabilities if they have a special certificate from the Department of Labor. When paying the sub-minimum wage, the full Health and Welfare benefit must be paid in accordance with the Department of Labor Wage Determination or Collective Bargaining Agreement if applicable regardless of worker productivity. The additional Health and Welfare benefits may result in an additional, allocable and allowable cost to the Nonprofit Agency. Contracting Activities may not restrict Nonprofit Agencies from using a less than fully productive workforce to reduce the negotiated Fair Market Price recommendation.

8. Fair Market Price Determination Process

A. Fair Market 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, NIB 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 Base Prices. Good faith negotiations should result in a reasonable Fair Market Price recommendation.

The AbilityOne Program recognizes three analysis methods described in FAR 15.404 (Price Analysis, Cost Analysis and Cost Realism). In addition to analyzing proposals under AbilityOne Program guidelines; these same methods will be used to develop the proposal prices. 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 FMP. 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 FMP.

Before a Recommended Fair Market Price is submitted to the Committee staff, the NPA and the CNA must ensure that the CNA fee (defined in Section 5) is included on all AbilityOne service contracts including Indefinite Delivery/Indefinite Quantity (ID/IQ) contract line items. No adjustments will be made to agreed-upon prices to add the CNA fee as a separate cost element.

B. Fair Market Price Determination

The Committee determines the Fair Market Price when the service is added to the Procurement List and every contract base period thereafter. Once the Committee receives a complete proposal package, the Committee will review the proposal to determine suitability to the AbilityOne Program and determine the Fair Market Price. During Committee review, the Contracting Activity, the NPA, and/or CNA might be contacted to provide additional information or clarification as the Committee deems necessary.

Proposals submitted to the Committee for price determination are either for a new Procurement List addition or an existing service. Normally, contracts are awarded with a Base Price and four Follow-On Years (Periods); however, the Contracting Activity will determine the length of the contract period. Longer-term contracts and multi-year (period) contracts are acceptable if the Contracting Activity has proper authority.

(1) Base Price - Each time the Committee makes a FMP determination, a Base Price is established except in cases of contract modifications. If the Contracting

Activity determines to its contract performance period is one year (i.e., one period only), a Base Price with no Follow-On Years (periods) is established every year (period) and each base price shall be submitted to the Committee for approval. Section 9 provides guidance on the formats and information that must be provided to the Committee for review and establishment of the Base Year as the FMP.

(2) Follow-On Years (Periods) – 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 FMP has been established by the Committee. Other than changing the contract’s scope of requirements, the following are some **alternative** methods for determining Follow-On Year Prices (not limited to the following):

(a) Application of FAR clauses 52.222-43/44 (Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts/ Fair Labor Standards Act and Service Contract Act—Price Adjustment). Changes are required by Department of Labor’s Wage Determination Register for direct labor only.

(b) Application of a price index, such as the Committee published (<http://www.jwod.gov/jwod/library/policy.html>) Economic Adjustment Rate, to selected elements of the price such as supplies, equipment, fuel, and subcontracting.

(3) Contract Modifications - Occasionally, the Contracting Activity will modify the contract’s Statement of Work due to minor changes in the requirement. Negotiating changes to prices of AbilityOne contracts will be accomplished by the pricing method appropriate to the change.

(a) All changes to price must be defined by contract modification.

(b) Committee approval is not needed for price changes within the terms of the previously approved follow-on year pricing agreement and changes that represent less than a 25% increase in the contract unit price.

(c) All significant changes in the scope of the requirement must be approved by the Committee before the modification regardless of the change in price percentage.

(d) Price changes must be submitted to the Committee for approval if the contract modifications will result in a change in price of more than 25%

above the current price. The Committee must approve the change before the modification is executed, unless the Contracting Activity declares compelling urgency.

(e) Incorporating line item prices in a Schedule/Section B for subsequent contract changes is acceptable.

(f) Either a price concurrence to the current FMP by the Contracting Activity, NPA and CNA or a price change submission must accompany request for service project transfers from one NPA to another NPA.

9. Committee Documentation Formats

The Committee requires the documentation of information to be as follows to support recommendations for Fair Market Price determinations submitted to the Committee (see Appendix C for service pricing formats (SPF)). The Committee may change the method and format for submitting documentation and information consistent with the PR3 guidelines.

A. For Base Price and Follow-On Year Prices determined by price analysis, NIB or NISH will submit:

- (1) SPF-1 Price Proposal including signatures for certifications
- (2) SPF-2 Price Proposal - Follow-On Year Agreement (indicate if no FOY applies)
- (3) Documentation of data upon which Price Analysis was accomplished
- (4) All price proposal information submitted to the CA

B. For Base Price and Follow-On Year Prices determined by cost analysis or cost realism analysis, as appropriate, NIB or NISH will submit:

- (1) SPF-1 Price Proposal including signatures for certifications
- (2) SPF-2 Price Proposal - Follow-On Year Agreement (indicate if no FOY applies)
- (3) SPF-3 Price Breakdown
- (4) SPF-4 Staffing Breakdown
- (5) All price proposal information submitted to the CA

C. If the Committee is asked to resolve an impasse in price negotiations, the following forms will be submitted by the NPA as part of the Business Case. See Operations Memo #19 for Price and Price Related Impasses and Disputes:

- (1) SPF-1 Price Proposal including signatures for certifications
- (2) SPF-2 Price Proposal - Follow-On Year Agreement (indicate if no FOY applies)
- (3) SPF-3 Price Breakdown
- (4) SPF-4 Staffing Breakdown
- (5) Documentation of data upon which Price Analysis was accomplished
- (6) All price proposal information submitted to the CA

Service Pricing Memorandum No 3 (PR3)

D. Before execution of contract modifications as discussed in paragraph 8.B.3(d), the NPA will notify NIB or NISH of the proposed change before the modification is issued. The following must be submitted to the Committee by NIB or NISH for approval of the change before the modification is issued:

- (1) SPF-1 Price Proposal including signatures for certifications
- (2) SPF-2 Price Proposal - Follow-On Year Agreement (indicate if no FOY applies)
- (3) All contract modifications, claims and the existing contract
- (4) New Statement of Work, if applicable
- (5) Documentation of data upon which Price Analysis was accomplished if applicable
- (6) All price proposal information submitted to the CA

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Executive Director

Enclosures (5)

Appendix A Glossary
Appendix B Acronyms
Appendix C Pricing Formats
Appendix D Estimated Timeframes
Appendix E Guidelines on Costs

APPENDIX A
Glossary of Terms

Competition in Contracting Act (CICA) is the 1984 Act that amended the Armed Services Procurement Act and the Federal Property and Administrative Services Act of 1949 to, among other things, enhance competition in Federal contracting by requiring a justification for most procurements in which full and open competition would not be obtained. Procurements under the AbilityOne Program are exempt from the competition and justification requirements of CICA. (FAR 6.302-5(b)(2), (c)(2)(ii)).

Contracting Activity means any element of an entity of the Government that has responsibility for identifying and/or procuring Government requirements for products or services. Components of a contracting activity, such as a contracting office and an ordering office, are incorporated in this definition, which includes all offices within the definitions of "procurement activity," "contracting activity," "contracting office," and "contract administration office" contained in the Federal Acquisition Regulation, 48 CFR 2.101. (41 CFR 51-1.3.)

General and Administrative Expense (G&A) is allowable management, financial and other expense which is incurred by or allocated to a business unit and which is for the general management and administration of the business as a whole.

Market prices are current prices that are established in the course of ordinary trade between buyers and sellers, free to bargain and that can be substantiated from sources independent of the offeror.

Market research is a process to collect, organize, maintain, analyze and present data for maximizing the capabilities, technology and competitive forces of the marketplace to meet an organization's need for supplies or services. See FAR Part 10 for detailed definition and procedures.

Negotiation means a flexible process that includes the receipt of a proposal from an offeror, and permits bargaining. Bargaining in the sense of discussion, persuasion, alteration of initial assumptions and positions and give and take may apply to price, schedule, technical requirements and other terms of the proposed contract. See FAR Part 15 for information on contract negotiation.

Net Proceeds is used in OMB Circular A-122, Cost Principles for Nonprofit Organizations, as part of the definition of a nonprofit agency that "uses its net proceeds (revenues less expenses) to maintain; improve; and/or expand its operations."

Overhead is allowable indirect costs that are incurred for the benefit of more than one project or cost objective (e.g., facility costs), and are charged to more than one project or cost objective. Overhead costs are accumulated by logical cost groupings and generally accepted accounting practices and distributed based on benefits accruing to the several cost objectives.

APPENDIX B
List of Common Acronyms

| | |
|-----------|---|
| ACO | Administrative Contracting Officer |
| BOA | Basic Ordering Agreement |
| CA | Contracting Activity |
| CAGE Code | Commercial Activity/Government Entity Code |
| CBA | Collective Bargaining Agreement |
| CFR | Code of Federal Regulations |
| CICA | Competition in Contracting Act |
| CNA | Central Nonprofit Agency |
| CRP | Community Rehabilitation Program (Nonprofit Agency) |
| CO | Contracting Officer |
| DOL | Department of Labor |
| FAR | Federal Acquisition Regulation |
| FLSA | Fair Labor Standards Act |
| FMP | Fair Market Price |
| FOY | Follow-On Year |
| HWB | Health and Welfare Benefit |
| ID/IQ | Indefinite Delivery/Indefinite Quantity |
| JWOD | Javits-Wagner-O'Day |
| JPID | JWOD Program Information Database |
| KO | Contracting Officer |
| MOU | Memorandum of Understanding |
| NIB | National Industries for the Blind |
| NPA | Nonprofit Agency |
| OFPP | Office of Federal Procurement Policy |
| PCO | Procuring Contracting Officer |
| PBSC | Performance Based Service Contract |
| PLIMS | Procurement List Information Management System |
| PWS | Performance Work Statement |
| QAP | Quality Assurance Plan |
| QCP | Quality Control Plan |
| SCA | Service Contract Act |
| SOW | Statement of Work |
| SPF | Service Pricing Form |
| TINA | Truth in Negotiation Act |
| USC | United States Code |
| WD | DOL Wage Determination |

APPENDIX C
Committee Pricing Formats

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 under PR-3 to the Committee. The Contracting Activities' formats and forms must be used by the Nonprofit Agencies when requested by the CA and must be provided to the Committee, along with the following formats and the Contract Section Schedule B.

Price Proposal
SPF-1

1. Submitting proposals to Contracting Activities.
2. Recommending the Base Price to the Committee at the time of Procurement List addition and for recommending new Base Year.
3. As a cover sheet to forward pricing data and formats requested by the Contracting Activity.

Price Proposal Follow-on Years
SPF-2

1. Submitting proposals to Contracting Activities for Follow-On Year Pricing.
2. Reporting Follow-On Year Pricing agreements to the Committee.
3. Incorporation into a contract's Schedule B upon award of a contract after Procurement List addition.

Price Breakdown
SPF-3

1. Submitting details on cost elements to support proposed prices when required under cost analysis or cost realism analysis.
2. Reporting details on specific price elements to the Committee when required.
3. A tool for Nonprofit Agencies to develop a price proposal.
4. As a cover sheet to forward pricing data and formats requested by the Contracting Activity.

Staffing Breakdown
SPF-4

1. Submitting details on direct labor elements to support proposed prices when required under cost analysis or cost realism analysis.
2. Reporting details on specific price elements to the Committee when required.
3. As a work tool for developing other data required by the Committee for the addition of a project to the Procurement List.

Price Proposal

Date: _____ PL Number: _____ Project Number: _____

Solicitation/Contract Number: _____

Service Name: _____

Service Location: _____

Contracting Office: _____

Contracting Officer: _____

Contracting Officer Phone: _____ Fax: _____ Email: _____

Nonprofit Agency: _____

NPA Contact: _____

NPA Contact Phone: _____ Fax: _____ Email: _____

NIB or NISH: _____

Contact: _____

Contact : Phone: _____ Fax: _____ Email: _____

Service Period: _____ through _____ FOY Agreement? YES NO

Price Proposal:

Price per Year: _____ **Price per Month:** _____

Or

Unit Price: _____ **Quantity:** _____

Certifications:

Contracting Activity Certification: Signature: _____

As Contracting Officer, I certify that I have determined the price recommendation to be fair and reasonable in accordance with The Committee's Pricing Memorandum No. 3 and using the standards set forth in FAR 15.404-1 Proposal Analysis Techniques. The analysis method used for determining the recommended price(s) to be fair and reasonable was: Price Analysis Cost Analysis Cost-realism Analysis Other (Explain)

NPA Certification: Signature: _____

As the Nonprofit Agency representative, I certify that we have participated in development of this FMP recommendation and agree to provide the service according to the pricing terms and conditions of this agreement

CNA Certification: Signature: _____

In accordance with the Code of Federal Regulations (CFR 51-3.2(e) and 51-3.2(i)), as the Central Nonprofit Agency representative, I certify that my organization has participated in the development and/or review of the recommended FMP and that the Contracting Officer has indicated their agreement with the recommended price. I recommend the Committee approve the Fair Market Price.

SPF-1

Price Breakdown

Date: _____ PL Number: _____ Project Number: _____

Solicitation/Contract Number: _____

Service Period: _____ through _____

Service Name: _____

Service Location: _____

Direct Labor: _____

Direct Labor Fringe: _____

Direct Line Supervision: _____

Direct Line Supervision Fringe: _____

Supplies: _____

Equipment: _____

Subcontracts: _____

Other Direct Costs: _____

Total Direct Costs: _____

Overhead/G&A/Net Proceeds _____

ANNUAL BASE PRICE: _____

MONTHLY PRICE: _____

or

UNIT PRICE/Quantity _____

SPF 3

APPENDIX D
Estimated Timeframes

1. Procurement List Addition Process (estimated minimum time; actual time may be longer):

| DAY | ACTION |
|-----|--|
| 150 | CA provides CNA and NPA with Statement of Work and WD. |
| 120 | Proposal submitted to CA. |
| 105 | CA and NPA concur to FMP Recommendation. |
| 90 | CNA submit PL Addition Package to Committee staff for consideration. |
| 75 | Committee publish Intent in Federal Register (30 day comment period) |
| 45 | Committee issue Vote Letter to Committee members. |
| 30 | Committee publish addition in Federal Register (30 day comment period) |
| 0 | Effective date of PL addition. CA issues contract. |

2. Contract Repricing: New Base Year Contract Performance Period

| DAY | ACTION |
|-----|---|
| 120 | CNA notifies CA of upcoming Base Price determination. |
| 90 | CA provides CNA and NPA with Statement of Work and WD. |
| 70 | Proposal submitted to CA. |
| 40 | CA and NPA concur with Fair Market Price recommendation. |
| 35 | CNA submit request for FMP determination to Committee. |
| 30 | Committee publishes Notice of Price Change. CA issues contract. |
| 0 | New contract service period begins. |

3. Follow-On Year Service Periods:

| DAY | ACTION |
|-----|--|
| 90 | CNA notifies CA of upcoming FOY determination. |
| 60 | CA provides CNA and NPA with new WDR. |
| 45 | Proposal submitted to CA. If greater than 25% increase, submit proposal to Committee |
| 30 | CA and NPA concur to price. |
| 25 | CA issues contract modification for new service period. |
| 0 | FOY service period begins. |

APPENDIX E
Guidelines on Costs

Nonprofit Agencies typically utilize accounting systems different than for-profit companies. To prevent confusion and to mitigate proposal preparation and evaluation costs, the Committee has established some guidelines for use by all parties during negotiations. These guidelines will only apply when cost analysis or cost realism analysis is used to negotiate the FMP recommendation.

- (1) Transportation costs (for personnel, to and from job site) are allowable only under extenuating circumstances, as defined by contract requirements.
- (2) Under FLSA and SCA, a Nonprofit Agency may pay commensurate wages in certain circumstances in accordance with CFR Part 4.6(o). However, for service contracts the full Health & Welfare Benefit (HWB) must be provided as required by the DOL Wage Determination. Additional HWB costs associated with paying commensurate wages are allowable. The NPA must document average productivity rates used to calculate HWB costs.
- (3) Depreciation schedules should be negotiated for AbilityOne contracts; equipment may be depreciated for periods longer than five years. For example, when new vehicles are purchased a seven-year depreciation schedule may be appropriate. Equipment residual value and disposal/salvage must be addressed in Follow-On Year pricing, when appropriate.
- (4) Multiple vendor quotes to support non-labor subcontract costs are required only when the item unit cost exceeds \$2,500. Nonprofit Agencies are responsible for obtaining best value prices from vendors based on broad competition as directed in Committee Operation Memorandum 21.
- (5) Vacation calculations must account for turnover of personnel. AbilityOne is a training and employment program. Nonprofit Agencies that participate in the AbilityOne Program may have a turnover of personnel associated with this mission. The NPA must document average turnover rates used to calculate vacation costs.
- (6) Rehabilitation Costs are costs incurred by the Nonprofit Agency in supporting people with disabilities. Rehabilitation costs are never an allowable cost in Fair Market Price recommendation negotiations. These costs can include services such as job coaches, special training, transportation and vocational rehabilitation counselors.
- (7) Overhead, General and Administrative Expense and Net Proceeds (OH/G&A/NP) are calculated as a percentage of direct costs. For FOY Agreements, application of OH, G&A and Net Proceeds may be applied to new direct costs if specifically negotiated. If there are no statements included in the Follow-On Year Agreement that allows for changes to OH, G&A, Net Proceeds amounts in the FOYs, FAR Clause 52-222.43 will preside.

Service Pricing Memorandum No 3 (PR3)

(8) CNA Fee (defined in Section 5) is included in the Fair Market Price recommendation. The fee is not a markup on the FMP, but is instead a component of the NPA's overhead costs in the total price. Total NPA 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 the CNA fee be factored as a separate line item in base or follow-on year prices or agreements.