



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

June 21, 2002

703-603-7740
FAX 703-603-0655

Jefferson Plaza 2, Suite 10800
14211 Jefferson Davis Highway
Arlington, Virginia 22202-3259

Subject: Fair Market Price Determination for JWOD Service Contracts

1. Purpose

The purpose of Pricing Memorandum Number 3 (PR-3) is to prescribe procedures for determining the Fair Market Price for a 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 long-term contracts.
- C. Determining the Fair Market Price for contract modifications.

2. Effective Date: June 30, 2002

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. During the transition period (May 10, 2001 to June 30, 2002) use of this memorandum is optional. This memorandum supercedes **all** previous versions of PR-3.

- A. New Procurement List Additions:** This Memorandum may be used during the transition period at the option of the contracting activity and such use is strongly recommended.
- B. Existing JWOD contracts:** It is not the intention of the Committee to immediately apply the procedures of this Memorandum to all existing JWOD contracts.
 - (1) Previous version of PR-3:** The older version of PR-3 (dated November 30, 1995) is renumbered Pricing Memorandum Number 6 (PR-6). Parties negotiating Fair Market Price recommendations may continue to use the PR-6 until a new base price is established.

(2) **Previous Small Value Services:** Under the November 30, 1995 version of PR-3, service contracts with a value of less than \$250,000 were priced in accordance with Pricing Memorandum Number 18, Pricing of Small Value Items. This memorandum supercedes PR-18.

(3) **Prices previously established:** Prices established by the Committee under the previous version of PR-3 (or PR-18) will remain in effect until such time as the Committee establishes a new Base Price under this Memorandum, which would normally be at the expiration of the current contract. 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.

C. Central Nonprofit Agency (CNA) Fee: Current CNA fee limits and methods of calculation can be found at the Committee's website, <http://www.jwod.gov/jwod/library/policy.html>. All parties should check for the most current information before finalizing negotiations.

3. Authority

The Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) was established by the Javits-Wagner-O'Day (JWOD) 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 JWOD Act as implemented through Federal Acquisition Regulation (FAR) Subpart 8.7 and 41 CFR Chapter 51. **The Committee has sole authority to establish the Fair Market Price.** Because of this authority, the Committee's pricing procedures take precedence for JWOD contracts over other pricing provisions of the FAR.

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

F. Departments, Agencies, Major Commands and local activities that issue implementing guidance to this Memorandum that are 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.

5. JWOD Program Definitions

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

- A. Javits-Wagner-O'Day (JWOD) Act** (41 U.S.C. 46-48c) is the law under which the Program operates; is used to describe the Program and is often used as an adjective (e.g., a JWOD contract).
- B. The Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee)** is the independent Federal Government Agency responsible for administering the JWOD Program. For more information, go to <http://www.jwod.gov>.
- C. Central Nonprofit Agency** 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 orders of the Government for commodities 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 JWOD Program, and to otherwise assist the Committee in administering these regulations as set forth herein by the Committee. (41 CFR 51-1.3)
- D. National Industries for the Blind (NIB)** is the Central Nonprofit Agency (CNA) designated by the Committee to assist in creating employment opportunities for people who are blind. NIB is not a Government Agency. The NIB corporate headquarters is in Alexandria, Virginia. For more information, go to <http://www.nib.org>.
- E. NISH** is the Central Nonprofit Agency (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.) NISH has six regional offices with its corporate headquarters in Vienna, Virginia. For more information, go to <http://www.nish.org>.
- F. Nonprofit Agency (NPA)** (not-for-profit corporations) is the term used to describe the 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).

G. Procurement List (PL) is the list of services (and products) performed under the JWOD 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.jwod.gov>.

H. Fair Market Price (FMP) is the term used for the price established by the Committee for providing a service defined by the Government's Statement of Work (with terms and conditions) at a specific location. The Fair Market Price is established in reference to actual market prices for the same or similar services. Any new service being added to the Procurement List will have a Fair Market Price established by the Committee.

I. Central Nonprofit Agency (CNA) Fee: NIB and NISH receive no appropriations from the Federal Government. Instead, they receive a small percentage of revenue generated by sales of JWOD products and services. This percentage, known as the CNA Fee (also known as the NIB or NISH fee), is returned 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 agency's Fee. Current CNA fee limits and the methodology for calculating the fee can be found on the Committee's web site, www.jwod.gov. The CNA Fee must be included in all Fair Market Price recommendations.

J. Partnering is a procedure adopted early in the acquisition process to facilitate the Nonprofit Agency and Contracting Activity working together toward common goals. Partnering agreements may be signed at the local or national level and will involve NIB and/or NISH. Partnering agreements adopted at the national level can be used by local activities for Fair Market Price recommendation negotiations.

K. Impasse exists 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) is used to resolve price and price-related disagreements.

L. Service Pricing Formats (SPF) included in this document 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.

M. 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.

N. Rehabilitation Costs are costs incurred by the Nonprofit Agency in supporting people with disabilities. Rehabilitation costs are rarely 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.

6. Roles and Responsibilities

One of the unique aspects of the JWOD Program is the Fair Market Pricing determination process, due to the roles and responsibilities of the groups involved.

A. The Committee is responsible for carrying out functions in support of its mission of providing employment opportunities for persons who are blind or have other severe disabilities. 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) 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, sets appropriate ceilings on fee paid to central nonprofit agencies (NIB and NISH) by Nonprofit Agencies selling items under the JWOD 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 and the Nonprofit Agencies it deems appropriate for review and evaluation.
- (6) Coordinates audits.

B. Contracting Activities are encouraged to share information, which may include the Independent Government Estimate with JWOD partners in negotiations. Contracting Activities shall:

- (1) Prepare a statement of work, with terms and conditions, consistent with service requirements and available funding.

- (2) Establish an Independent Government Estimate prior to negotiations that is consistent with the contract requirements.
- (3) Act in a timely manner. Guidelines for processing JWOD actions are listed in Appendix D.
- (4) Keep the Nonprofit Agency and NIB or NISH involved in all aspects of the negotiation processes.
- (5) Provide the Nonprofit Agency, and NIB or NISH, copies of all documents for JWOD contracts.
- (6) Provide the Committee detailed information, to include Government estimates and budgetary restrictions, on the Government pricing position during the impasse resolution process.
- (7) Provide current U.S. Department of Labor Wage Determinations/ Decisions (and Collective Bargaining Agreements where appropriate) to the Nonprofit Agency and NIB or NISH.

C. NIB and NISH are designated by the Committee as CNAs and have a unique role in Federal Government acquisition program functions. NIB and NISH are responsible for ensuring that the recommended Fair Market Price is fair to all parties. NIB and NISH will also:

- (1) Provide technical assistance to both Contracting Activities and Nonprofit Agencies in negotiations. NIB or NISH should participate in all Fair Market Price recommendation negotiations.
- (2) Evaluate and validate prices and, when used, cost elements proposed by Nonprofit Agencies for reasonableness and consistency with PR-3 guidelines.
- (3) Ensure the Contracting Activity and the Nonprofit Agency are aware of and adhere to Committee rules, regulations and policies.
- (4) Assemble and forward required information for Fair Market Price determinations to the Committee.
- (5) Act in a timely manner. Guidelines for processing JWOD actions are listed in Appendix D.

D. Nonprofit Agencies (NPA) develop, with assistance of NIB or NISH, the pricing data necessary to prepare Fair Market Price recommendations. Nonprofit Agencies will comply with PR-3 when negotiating a Fair Market Price recommendation for services. Nonprofit Agencies will also:

- (1) Provide services at the established Fair Market Price. It is essential for Nonprofit Agencies to be actively involved in negotiations. Nonprofit Agencies must agree with the FMP recommendation prior to submission to the Committee for determination.
- (2) Maintain accounting records to capture, allocate and report costs.
- (3) Provide NIB or NISH and the Committee all relevant data when requested to support price estimates.
- (4) Act in a timely manner. Guidelines for processing JWOD actions are listed in Appendix D.
- (5) Keep NIB or NISH informed and involved in all aspects of the negotiation process.
- (6) Support audits with full disclosure.
- (7) Act as a responsible partner with Contracting Activities and provide best value services to the Government.
- (8) Perform market research to support the proposed Base Year Price recommendation.

7. JWOD Program Guidance

Contracting under the JWOD Program gives Contracting Activities a great deal of flexibility and represents acquisition streamlining at its best. For a Contracting Officer to take full advantage of JWOD contracting and negotiations, an understanding of JWOD 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. Some subjects with direct applicability to Fair Market Price recommendation negotiations are:

- A. Cost and Pricing Data** - In accordance with FAR 15.403-1(c)(2) contracting officers are prohibited from requiring cost and pricing data from nonprofit agencies under the JWOD Program because the prices are set by law or regulation.
- B. 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. Section 7 discusses when information other than cost or pricing data is to be submitted.
- C. Competition in Contracting Act (CICA)** - FAR Part 6 exempts JWOD contracts from the competition requirements of the CICA. (See FAR 6.302-5)

- D. JWOD Fixed Price Contracts** - JWOD 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 period, there should not be an adjustment in contract price, other than agreed upon rules for pricing Follow-On Years, without a concurrent change in contract requirements.
- E. Audits** - In most cases, because of the fixed price nature of most JWOD 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 to insure that they understand the JWOD Program and the differences between commercial companies and nonprofit agencies.
- F. 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 assure that personnel from NIB or NISH will be present during the survey.
- G. 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.
- H. Worker Productivity** -The purpose of the JWOD Program is to provide employment for persons who are blind or severely disabled. In accordance with provisions of 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, 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.
- I. 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. In accordance with OMB Circular

A-122, Nonprofit Agencies are permitted to earn Net Proceeds on JWOD contracts. Because of their legal not-for-profit status, agencies are restricted to using the Net Proceeds for the furtherance of their mission and not for the benefit of any private shareholder or other individual. For a copy of the circular, go to <http://www.whitehouse.gov/omb/circulars/a122/a122.html>.

J. 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 JWOD Program.

8. Fair Market Price Determination Process - General

The Committee has the sole authority to determine the Fair Market Price. To assist the Committee in its determination process, the Committee allows the Contracting Activity, NIB or NISH and the Nonprofit Agency to negotiate a Fair Market Price recommendation. 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 Contracting Activity will provide the Nonprofit Agency and NIB or NISH with a copy of the statement of work, with terms and conditions (a solicitation is not required), and specify the date by which the Nonprofit Agency must submit its proposal (generally within 30 days.) The Nonprofit Agency will submit its price proposal on the Contracting Agency's form(s) (usually Section B) or on SPF-1 (Base Year) and SPF-2 (Follow-on Years). See appendix C for formats.

A. Price Analysis - Upon receipt of the price proposal, the Contracting Activity will perform a price analysis. Price analysis is the preferred method of evaluating proposals under the JWOD Program. Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed Net Proceeds. The expectation is that the frank exchange of ideas and information permitted under the JWOD Program, fostered through partnering, will result in a determination of price reasonableness using price analysis alone. Price analysis methods include:

- (1) Comparison of the proposed prices with previously proposed prices and previous Government and commercial prices for the same or similar items or services, allowing for adjustments in wages, health and welfare benefits and changes in the scope of work.
- (2) Use of benchmarks or other parametric estimating methods (for example, dollars per unit).
- (3) Comparison with competitive published prices, published market prices of products, or similar indexes.

- (4) Comparison with Independent Government Estimates.
- (5) Comparison of proposed prices with prices obtained through market research, allowing for differences in scope of work, quality requirements, wages, competition and other factors.
- (6) Analysis of pricing information submitted by the Nonprofit Agency or NIB or NISH, including information on the prices at which the same or similar services have previously been sold. This may also include discussions about how the Nonprofit Agency arrived at its price, including references to specific cost elements, but does not require the submission of cost or pricing data.

B. Cost Analysis or Cost Realism Analysis - In those limited instances when the parties are unable to determine the reasonableness of the proposed price using price analysis alone, the Contracting Officer will use cost analysis or cost realism analysis, as appropriate. Analysis is the process of reviewing and evaluating the separate cost elements and Net Proceeds in the Nonprofit Agency's proposal and applying judgment to determine how realistic those costs are. Cost Realism Analysis is used to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials required for the contract.

- (1) Under the JWOD Program, Nonprofit Agencies are not subject to the Cost Accounting Standards of FAR Part 30. However, in those limited instances when a Nonprofit Agency may be required to submit information other than cost or pricing data, OMB Circular A-122, Cost Principles for Nonprofit Organizations, will apply in accordance with FAR Subpart 31.108. The Committee has established guidelines for use by all parties when cost analysis or cost realism analysis, as appropriate, is used as the basis for negotiations. These guidelines are in Appendix E.
- (2) Nonprofit Agencies are always exempt from submitting a certificate of cost or pricing data. (See FAR 15.403-1)
- (3) To simplify the process, Contracting Activities should not request more information than is necessary to determine the Nonprofit Agency's understanding of the work requirements of the contract and to establish a negotiation position.
- (4) Overhead (other than costs such as fringe benefits, which, under the JWOD Program, are treated as direct costs), General and Administrative Expense (G&A) and Net Proceeds are usually presented as a single element of cost. Overhead, G&A and Net Proceeds are calculated as a percentage of direct costs.

- (a) For a new Base Price proposed on an existing service, the Nonprofit Agency must provide supporting documentation only if it proposes a rate that is higher than was used on the determination of the current Fair Market Price.
- (b) For new Procurement List additions, a minimum rate of 9.5% will apply for the combination of overhead, G&A, and Net Proceeds. If the Nonprofit Agency proposes a higher rate, the Nonprofit Agency must provide documentation to support the proposed rate. Documentation for higher rates will provide data for each of the three elements - Overhead, G&A and net proceeds.

C. Negotiation - Negotiation is the process that allows the parties, through bargaining, discussion, persuasion and testing of assumptions, to reach agreement on the contract terms and propose a Fair Market Price recommendation.

- (1) Prior to negotiation, the parties perform their own price, cost analysis or cost realism analysis, as appropriate, (or Independent Government Estimate) to arrive at negotiation objectives. Predetermined objectives assist in the negotiation of a fair and reasonable price recommendation by preventing the parties from becoming mired in issues not relevant to desired outcomes.
- (2) Negotiations should result in an understanding and agreement on the contract requirements. This step is crucial to ensure that the parties are in agreement about what can realistically be accomplished for the negotiated Fair Market Price recommendation. In the case of performance based contracts, it is especially critical that agreement is reached on what is acceptable performance and how it will be measured.
- (3) A Fair Market Price recommendation does not require that the parties reach agreement on every element of cost, nor is it mandatory that the agreed Fair Market Price recommendation be within either party's initial negotiation position. The parties should not become preoccupied with any single element and should balance the contract type, cost, and Net Proceeds negotiated to achieve a total result -- a Fair Market Price recommendation that is fair and reasonable to both the Government and the Nonprofit Agency.

D. CNA Fee (defined in Section 5) - Must be included when negotiating the Fair Market Price recommendation. Whether price, cost analysis or cost realism analysis, as appropriate, is used, the CNA Fee must be included in the recommended Fair Market Price. The CNA Fee is to be included in all prices on JWOD service contracts including Indefinite Delivery/Indefinite Quantity (ID/IQ) contract line items. Current CNA fee limits and the methodology for calculating the fee can be found on the Committee's web site <http://www.jwod.gov/jwod/library/policy.html>. All parties should check the web site for the most current fee limitation and fee calculation methodology before finalizing negotiations.

E. Documentation: The negotiations, and their results, should be documented and, to the extent permitted by the Contracting Agency's regulations, incorporated into the resultant contract. Typically, the Contracting Officer prepares a "Price Negotiation Memorandum (PNM)" that details the agreement reached on the FMP recommendation. This document should include details on the agreement to the recommended Fair Market Price, the terms for negotiating follow-on year prices and other terms and conditions. The Contracting Activity may provide a copy of the PNM to NIB or NISH. NIB or NISH may submit this document to the Committee, along with other forms, supporting the recommended Fair Market Price. Section 9 identifies other formats that are to be used for submission of Fair Market Price recommendation actions. Evidence of a negotiated price recommendation must accompany any request to add a service to the Procurement List. This evidence should include letters of concurrence from the Contracting Activity and Nonprofit Agency.

9. Fair Market Price Determination Process - Base Price and Follow-On Year Price

The Committee determines the Fair Market Price when the service is added to the Procurement List and every five years thereafter. Normally, contracts are awarded with a Base Price and four Follow-On Years. (Longer-term contracts and multi-year contracts are acceptable if the Contracting Activity has proper authority).

A. Base Price - Each time the Committee makes a Fair Market Price determination, a Base Price is established. Good faith negotiations should lead to a fair and reasonable Fair Market Price recommendation being made to the Committee. Paragraph C provides guidance on the formats for information that must be provided to the Committee for review and establishing the Base Price part of the Fair Market Price.

B. Follow-On Years - The Fair Market Price consists of a Base Price and mutual agreement on the process for determining Follow-On Year Prices. It is essential that agreement be reached on clear and comprehensive rules for Follow-On Year Pricing. Any technique acceptable to the Contracting Activity, NIB or NISH and the Nonprofit Agency may be used. The Follow-On Year price will include a CNA fee calculated at the fee rate in effect for the follow-on-year. Some **alternative** methods for determining Follow-On Year Prices are:

- (1) At the time the Base Price is proposed, the Nonprofit Agency will forecast changes in cost elements. Other than a change in requirements, the only allowable price changes would be associated with changes in the Wage Determination in accordance with FAR clause 52.222-44 (Fair Labor Standards Act and Service Contract Act - Price Adjustment).
- (2) Application of a price index, such as the Committee published Economic Adjustment Rate, to selected elements of costs.

(3) Annual review and renegotiation of the contract. The Committee will establish a Base Year Price every five years.

(4) If cost analysis or cost realism analysis, as appropriate, was used to establish the base price, labor costs will be adjusted based on actual usage during the Base Price year.

C. Committee Documentation Formats - The Committee requires documentation in the following formats (see Appendix C) to support requests for Fair Market Price determinations:

- SPF-1 Price Proposal
- SPF-2 Price Proposal - Follow-On Year
- SPF-3 Price Breakdown
- SPF-4 Staffing Breakdown

(1) For Base Price and Follow-on Year Prices determined by price analysis, NIB or NISH will submit:

- SPF-1 Price Proposal
- SPF-2 Price Proposal - Follow-On Year

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

- SPF-1 Price Proposal
- SPF-2 Price Proposal - Follow-On Year
- SPF-3 Price Breakdown
- SPF-4 Staffing Breakdown

(3) If the Committee is asked to resolve an impasse in price negotiations, the following forms will be submitted by NIB or NISH as part of the Business Case:

- SPF-1 Price Proposal
- SPF-2 Price Proposal - Follow-On Year
- SPF-3 Price Breakdown
- SPF-4 Staffing Breakdown

(4) If the information contained in these formats is already contained in documents provided to the contracting activity, submit the information provided to the contracting activity.

10. Fair Market Price Determination - Changes

Negotiating changes to prices of JWOD contracts will be accomplished by the method accepted by all parties. The following guidelines apply:

- A. The Contracting Activity must provide the Nonprofit Agency and NIB or NISH a copy of any contract modification.
- B. All changes to price must be defined by contract modification.
- C. Incorporating line item prices in a Schedule/Section B for subsequent contract changes is acceptable.



Leon A. Wilson, Jr.
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 any procurement in which full and open competition would not be obtained. Procurements under the JWOD Program are exempt from the competition requirements of CICA. (FAR 6.302-5(b)(2).)

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 "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 any 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 the purpose of maximizing the capabilities, technology and competitive forces of the marketplace to meet an organization's need for supplies or services.

Negotiation means a flexible process that includes the receipt of a proposal from an offeror, and permits bargaining. Bargaining^{3/4}in the sense of discussion, persuasion, alteration of initial assumptions and positions and give and take^{3/4}may apply to price, schedule, technical requirements and other terms of the proposed contract.

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 a cost that is incurred for the benefit of, or caused by, and charged to more than one cost objective. Overhead costs are accumulated by logical cost groupings and normally accepted accounting practices and distributed based on benefits accruing to the several cost objectives.

Price Analysis means the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. (FAR 15.404-1(b).)

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
CIC	Competition in Contracting Act
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
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
PCER	Price Change Exception Request
PCO	Procuring Contracting Officer
PBSC	Performance Based Service Contract
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 as follows:

Price Proposal

SPF-1 (link to information required)

1. Submitting proposals to Contracting Activities.
2. Reporting the Base Price to the Committee at the time of Procurement List addition and for reporting Follow-On Year Prices on an annual basis.
3. As a cover sheet to forward pricing data requested by the Contracting Activity.

Price Proposal Follow-on Years

SPF-2 (link to information required)

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.

Price Breakdown

SPF-3 (link to information required)

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.

Staffing Breakdown

SPF-4 (link to information required)

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.

**SPF-1
Price Proposal**

Date: _____

Project Number: _____

JPID: _____

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 _____

*** Price Proposal:**

Price per Year: _____

Price per Month: _____

Or

Unit Price: _____

Quantity: _____

The price proposed was developed in accordance with the regulations and procedures of the JWOD Program. The following attachments are submitted to support this proposal:

*** Includes CNA Fee**

SPF-1

**SPF-2
Price Proposal
(Follow-On Year)**

Project Number: _____
JPID: _____

Date: _____

Solicitation/Contract Number: _____

Service Name: _____

Service Location: _____

Base Year Service Period: _____ through _____

1. Follow-On Year Annual Prices: *(as required)

FOY1: _____ _____ through _____

FOY2: _____ _____ through _____

FOY3: _____ _____ through _____

FOY4: _____ _____ through _____

2. Method of negotiating Follow-On Price:

* Includes the current CNA Fee. At the time the contract modification is effective for a FOY service period, the then current CNA Fee will be applied.

**SPF-3
Price Breakdown**

Project Number: _____

JPID: _____

Date: _____

Solicitation/Contract Number: _____

Service Period: _____ through _____

Service Name: _____

Service Location: _____

Direct Labor: _____

Supervision: _____

Direct Labor Fringe: _____

Supervisory Fringe: _____

Supplies: _____

Equipment: _____

Subcontracts: _____

Other Direct Costs: _____

Subtotal A: _____

Overhead/G&A/Net Proceeds: _____

(Subtotal A x ____%)

Subtotal B: _____

CNA Fee: * _____

ANNUAL BASE PRICE: (Subtotal B + CNA Fee) _____

MONTHLY PRICE: _____

or

UNIT PRICE _____

* See the Committee web-site for information on the current fee and fee calculation methodology.

APPENDIX D - Estimated Timeframes

1. Procurement List Addition Process:

DAY	ACTION
150	CA provides NIB/NISH and NPA with Statement of Work and WD.
120	Proposal submitted to CA.
105	CA and NPA concur to FMP Recommendation.
90	NIB/NISH submit PL Addition & FMP determination request to Committee staff for consideration (price may be adjusted upon receipt of current WD).
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. 5-Year FMP (Base Price) Determination: (Usually accomplished along with the negotiation of new 5-Year contract.)

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

3. Follow-On Year Service Periods: (The annual JWOD contract renewal process differs from "standard" Government practices. Contracting Officer use of the JWOD timeframes is recommended.)

DAY	ACTION
90	NIB/NISH notifies CA of upcoming FOY determination.
60	CA provides NIB/NISH and NPA with Statement of Work and WD.
45	Proposal submitted to CA.
30	CA and NPA concur to price.
25	CA issues contract modification for new service period, incorporating new WD and new FOY price (with then current CNA Fee).
0	FOY service period begins.

APPENDIX E
Committee 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 Fair Market Price recommendation. However, nonprofit agencies should consider these guidelines carefully when developing their price proposals.

(1) Transportation costs (for personnel, to and from job site) are allowable only under extenuating circumstances.

(2) Under FLSA and SCA, a Nonprofit Agency may pay less than minimum wage in certain circumstances (commensurate wages). However, the full Health & Welfare entitlement must be provided as required by the DOL Wage Determination. Additional Health & Welfare costs associated with paying commensurate wages are allowable. The Nonprofit Agency must be able to support average productivity rates used to calculate the additional Health & Welfare costs.

(3) Depreciation schedules should be negotiated for JWOD 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 must be addressed in Follow-On Year pricing agreements.

(4) Multiple vendor quotes to support non-labor costs are appropriate only when the item unit cost exceeds \$2,500. (Nonprofit Agencies are responsible for obtaining best value prices from vendors.)

(5) Vacation calculations must account for turnover of personnel. JWOD is a training and employment program. Nonprofit Agencies that participate in the JWOD Program may have a turnover of personnel associated with this mission. Computations of costs for vacation should consider actual rate of turnover.