

Committee for Purchase From People Who Are Blind or Severely Disabled
NISH National Training Conference
May 2004

Objectives

- Provide an overview of the statutory and regulatory environment of the JWOD Program.
- Describe and demystify the Procurement List Addition Process.
- Clarify **your** role in the process.
- Identify “Hot Issues” for Proposed Additions.

Committee staff Introductions

- Patrick Rowe, Deputy Executive Director
- Louis Bartalot, Director, Program Analysis & Evaluation
- Connie Corley, Director, Resource Management
- John Heyer, General Counsel
- Sheryl Kennerly, Director, Information Management
- Kim Zeich, Director, Business Development
- Mary-Carolyn Bell, Information Management Specialist
- Darren Buck, Operations Analyst, Services
- Annmarie Hart-Bookbinder, Manager, Communications
- Janice Friedeborn, Compliance Specialist
- Robert Hartt, Manager, Legislative Affairs & Program Outreach
- Angela Phifer, Executive Assistant
- Joan Smith, Business Management Specialist

Statutory and Regulatory Environment of the JWOD Program

JWOD ACT 41 U.S.C. § 46

Established the Committee for Purchase From People Who Are Blind or Severely Disabled

- Independent Federal Agency composed of 15 Presidentially appointed members
 - 11 Federal Agency Members
 - 4 Private Citizen Members
- Supported by a staff of 29 Government Employees

JWOD ACT 41 U.S.C. § 47

Establishes Duties and Powers of the Committee:

- Determine suitability of products and services to add to Procurement List (PL)
- Publish additions/deletions to the PL in the *Federal Register* according to the Administrative Procedures Act
- Determine qualified nonprofit agencies to produce products and services on the PL
- Determine Fair Market Prices of products and services on the PL
- Designate Central Nonprofit Agency(ies) (CNA) to facilitate orders from the PL
- Make Rules and Regulations as necessary to carry out the purposes of the JWOD Act
- Conduct Continuing Study and Evaluation of activities under the JWOD Act

JWOD ACT 41 U.S.C. § 48 -48c

- Establishes priority for Federal Prison Industries for Products
- Allows for Audits of Committee, CNA(s), and qualified Nonprofit Agencies (NPAs)
- Establishes definitions for individuals who are blind or severely disabled
- Establishes NPA qualification requirements for 75% direct labor ratios
- Provide for Federal Appropriation of the Committee's budget

Committee Regulations 41 CFR 51-2

Establishes Regulations for Additions/Deletions of Products and Services from the JWOD PL:

- Requires initial publication of proposed PL additions/deletions for 30 day public comment period before Committee consideration
- Requires publication in *Federal Register* of notice of addition/deletion and effective date
- Requires maintenance of list of products and services on PL
- Establishes decision and reconsideration processes

Committee Regulations 41 CFR 51-2

Suitability Criteria for Additions (41 CFR 51-2.4)

- Employment Potential for People with Disabilities
- Nonprofit Agency Qualification
- Capability of NPA to Meet Quality and Delivery Standards
- Impact on Current or Most Recent Contractor

Fair Market Price Determination (41 CFR 51-2.7)

–Initial Price Determination

–Proposed Price Change Methodology

What Does It All Mean?

- As a Federal Agency, the Committee works within a statutory and regulatory framework
- Need for openness and transparency of the Committee’s operations set the tone for business processes and procedures
- Every Proposed Addition involves a **decision** by the Committee
- All decisions are based on suitability **judgments**; no set formula; JWOD is not an entitlement program or a ministerial function.

Additions Process

Committee Additions Process

Five phases to each PL Addition:

- Identification (usually by NPA or CNA)
- Development (by CNA)
 - Gathering information and documents, assessing feasibility
- Analysis and Rulemaking Process (by Committee staff)
- Decision (by Committee members)
- Production or Performance (by NPA)

Process Requirements

- Law requires use of Administrative Procedures Act, with public comment periods, for PL additions or deletions.
- Decision/Rulemaking is not just a “formality.” Each addition is a rulemaking based on application of suitability criteria.
- Deliberative Process, not an entitlement or administrative action, i.e. getting Social Security or registering a car; more like applying for a mortgage or life insurance—not certain; lots of room for questions which must be addressed.
- Decision/Rulemaking process takes about 85-120 days from Committee’s receipt of a **complete** package.
- Only upon PL Effective Date (30 days after Notice of Final Rule) may the Government use JWOD sole source authority to enter into a contract.

Proposed Additions

Package Analysis

Steps taken upon receipt of proposed addition package:

- Logged by Information Management
- Formalities Review for Technical Completeness (Forms, Signatures, Legibility)
- Routed for Analysis by:
 - Business Development (Products or Services)
 - Impact Determination
 - Compliance for Qualification of Nonprofit Agency (Current Ratio and Effect of Proposed Addition)
 - Price Review of Initial Price Recommendation and Price Change Methodology
 - Legal and Regulatory Compliance
- Review by Information Management Director for Publication in *Federal Register*

Initial Publication in *Federal Register*

Determine whether the product/service meets the suitability threshold before initial publication as a Notice of Proposed Rulemaking:

- All Committee addition forms included
- Addresses all suitability criteria, including initial staff impact determination,
- Capability & price concurrence from contracting activity,
- Waivers from other priority sources.

Concerns with specific projects that do not meet the above requirements are discussed at a weekly “Red Flag” meeting with all additions staff and senior management.

If the threshold is met, the Notice of Proposed Rulemaking is published with a 30-day public comment period.

Process After Initial Publication

- Committee staff works ongoing issues.
- Committee staff draft responses to public comments, if any
- After expiration of public comment period, draft vote letter is routed for staff approval:
 - Business Development
 - Pricing

- Compliance
- Impact
- Legal
- Deputy Final Review
- Executive Director Reviews/Signs Vote Letter.

Vote Letter Decision Package

Vote Letter is Prepared and Reviewed

- Purpose: Transmits the PL Addition **Decision** Package to Committee members.
- Includes staff Analysis and Comments as appropriate
 - i.e., “Price is 20% higher than current contract due to expanded scope of work.”
- Incorporates Public Comments, if any, and staff’s Recommended Response to Comments.
- Incorporates Committee decision on initial price and price change mechanisms.

Issuance of Vote Letter Decision

- Issued only after the 30-day Notice of Proposed Addition has expired.
- Issued only after all questions or concerns raised during comment period have been addressed by CNA on behalf of NPA.
- Issued only when staff comments and public comments are satisfactorily addressed.

Vote Period and Vote Tracking

- Any Committee member’s questions or concerns are transmitted to IM and disseminated among staff for response. IM coordinates response to member(s).
- Committee members reply to IM staff with their votes to approve or disapprove suitability and price.
- When all members have voted and/or when vote period expires, IM determines whether majority of Committee members approved or disapproved.
- If approved, the *Federal Register* Notice of Final Rule is prepared for publication.

Final Publication in *Federal Register*

- Notice of Final Rule is published upon expiration of vote period if a majority of Committee members approve the addition.
- In accordance with APA, addition is effective 30 days after final notice is published.

- This effective date is the legal basis for the Government to enter into a sole source contract w/the JWOD provider.

Notice of Addition

- Committee staff issues Notice of Change to Procurement List-Addition.
- Notice is sent to Contracting Officer and the CNA for distribution to NPAs.
- Notice contains effective date, price and other specific conditions, i.e. requirements coverage or any limitations.

Procurement List Process Recap

- Process Requirements
- Proposed Additions Package Analysis
- Initial Publication in *Federal Register*
- Process After Initial Publication
- Vote Letter Decision Package
- Issuance of Vote Letter Decision
- Vote Period and Vote Tracking
- Final Publication in *Federal Register*
- Notice of Addition

Why Is This Process Important?

- Every additions package is a **formal** request for action to a Federal agency for an exclusive license to provide a product or service to the Government—accuracy and full disclosure are critical.
- Only the Committee **decides** on an addition—NPA, CNA and Committee staff can not promise **anything**.
- Know the rules of the road and educate the Federal customer about the JWOD Process.
- Know and understand **suitability criteria** to facilitate review and action.
- Address questions from Committee staff promptly and fully to keep your package moving—what happens to your life insurance application if you do not answer the medical history questions?

Process Improvement Project

Identify areas in “As-Is” Process for Improvement:

- Greater Support for Direct Involvement of Contracting Activities

- Greater involvement of Committee/ Committee staff in early stages
- Policy, Regulation, and Procedure Documentation Readily Available
- Product and Service Projects in Committee's System
- Alerts and Status Information Available
- Electronic Project Certification and Submission by NPA, CA, CNA
- Committee Staff Workflow and Decision Support
- Improved Support for Committee Member Voting
- Project Life Cycle Tracking

"Hot Issues" 2004

Addition "Hot Issues" for Suitability

- Subcontracting Competition & Partnering agreements
- Competitive Sourcing under A-76 rules
- Contracts awarded before effective date of PL addition (Premature Awards)
- Phase-ins and Compliance with Ratios
- Timing of addition process
- Definition of Requirements

Addition "Hot Issues" for Service Pricing

Service Pricing

- Consistency between price recommendations and price negotiations
- Concurrence to price recommendations from NPA and CA
- FOY price agreements consistent with contract
- Explain significant increases in price above current contract

Addition "Hot Issues" for Product Pricing

Product Pricing

- Identify distribution channel and freight costs
- Use of Market Surveys for common-use products
- Price Analysis used for negotiations