

Frequently Asked Questions about the JWOD Program from a Federal Perspective

What is the Javits-Wagner-O'Day (JWOD) Program?

Providing employment opportunities to more than 48,000 Americans who are blind or have other severe disabilities, the Javits-Wagner-O'Day Program is the single largest source of jobs for such individuals in the United States. The JWOD Program uses the purchasing power of the Federal Government to buy products and services from participating, community-based nonprofit agencies nationwide dedicated to training and employing individuals with disabilities.

The JWOD Act appears in Title 41 of the United States Code, Sections 46 through 48c (41 U.S.C. 46-48c). The Committee for Purchase From People Who Are Blind or Severely Disabled, an independent Federal agency, administers the JWOD Program. To carry out its mission, the Committee works closely with National Industries for the Blind (NIB) and NISH—Creating Employment Opportunities for People with Severe Disabilities, to assist the more than 600 community-based nonprofit agencies that obtain Federal contracts through the Program. The JWOD Program is a cost-effective way to help people who are blind or have other severe disabilities to achieve greater independence, as it enables many individuals to reduce dependence on Government support and join the ranks of taxpayers. Through the JWOD Program, people with disabilities enjoy fuller participation in their community and can market their JWOD-learned skills into other public and private sector jobs.

What are the benefits of contracting under the JWOD Program?

The JWOD Program collaborates with its Federal customers to satisfy their needs with quality products and services at fair prices, and leverages a national network of nonprofit agencies to continue developing and expanding the wide array of solutions it provides. JWOD products are available through a variety of distributors at fair prices and delivered when needed. JWOD service contracts offer a stable workforce dedicated to quality and customer satisfaction. The provisions of the JWOD Program enable a long-term supplier relationship, eliminating the need to re-compete the contract. Finally, contracting with the JWOD Program allows people who are blind or have other severe disabilities an opportunity to gain meaningful employment, lead more independent lives and reduce dependence on Government entitlement programs.

Where do NIB and NISH derive their responsibilities under the JWOD Program?

The JWOD Act (41 CFR Part 51) directs the Committee to designate one or more “central nonprofit agencies” to assist community-based nonprofit agencies serving people who have disabilities participating in the JWOD Program. The Committee has designated National Industries for the Blind (NIB) and NISH (serving people with a range of disabilities) to fulfill responsibilities as listed in 41 CFR Part 51-3. These responsibilities include evaluating nonprofit agency capabilities, providing nonprofit agencies with technical assistance and allocating Government orders among them. NIB and NISH also provide their associated agencies with many other services, including: assistance in complying with the JWOD Act, Federal contract provisions and the Committee’s regulations; legislative and regulatory assistance; communications and public relations

materials; information technology support; engineering, financial and technical assistance; and professional training programs.

Where can Federal customers find the Procurement List and what are some examples of available products and services?

The complete Procurement List is available to view and download on the Web site of the Committee for Purchase From People Who Are Blind or Severely Disabled at www.jwod.gov. Many JWOD common-use products included on the Procurement List are also clearly identified in the print and electronic catalogs of authorized JWOD Federal and commercial distributors, such as GSA Advantage!TM (www.gsaadvantage.gov), GSA Global Supply (www.gsaglobalsupply.gov), and JWOD.com (www.jwod.com). The Committee notifies appropriate contracting activities to inform them of actions affecting the Procurement List such as additions or price changes.

Nonprofit agencies vary widely in their interests and capabilities. Current JWOD product lines include office products (e.g. pens, binder clips, paper products, etc.), environmentally friendly and recycled products (e.g. biodegradable disposable cutlery), military specific products (such as chemical protective over garments and cold weather infantry kits) and medical supplies (such as catheters and surgical masks). Services offered through the JWOD Program include fleet maintenance, secure document destruction, janitorial/custodial, administrative services, document management services, call centers, warehousing and distribution of Federal supplies, full facility management, recycling, food service, laundry services and grounds maintenance.

How do Federal customers order common-use products, such as office supplies, under the JWOD Program?

When ordering common-use products such as office supplies, the order may be placed with an authorized JWOD distributor and payment is typically made by the use of the Federal purchase card. Go to www.jwod.gov/distributors for a current listing of authorized JWOD distributors.

Are Federal Government purchase card holders exempt from the mandatory source requirements of the JWOD Program for products? What if the purchase is below \$2,500?

The statutory requirement to buy JWOD products is universal and applies to any dollar amount. Government purchase card holders are required to buy JWOD products provided by designated nonprofit agencies through one of the many convenient distribution channels. Federal personnel should not use their purchase cards to buy items that are essentially the same as JWOD products at local commercial businesses unless the products required are not available through the JWOD Program. Purchase card holders can obtain JWOD products from Base and Federal Supply Centers located on military installations and in Federal buildings (many of which are operated by JWOD-participating nonprofit agencies), as well as through various Internet and catalog distribution channels. For more information, visit www.jwod.gov.

What documentation do Federal customers use to contract for services or unique items under the JWOD Program?

As with any other acquisition, a complete request for proposal or quote (statement of work) must be provided in order to negotiate a price recommendation under the JWOD Program. The requirements document should describe the product (and quantity) or service to be procured, the contract period, payment procedures, delivery schedule, applicable wage rates and other information necessary for both sides to understand the terms of the procurement.

How are new products or services added to the JWOD Program Procurement List?

When a Federal contracting activity chooses to work with the JWOD Program to meet its requirements, the first step of the process is to develop the project with either NIB or NISH. Preparing the proposed addition to the Procurement List for the Committee's review can take between six and nine months to finalize. The Committee's review of the proposed addition takes about 90-120 days from when it receives a complete package from either NIB or NISH. During this time, the Committee considers the proposed addition in terms of job creation; potential impact on other commercial entities; nonprofit agency capabilities; and, the recommended contract price as determined through negotiations between the contracting activity and the nonprofit agency that will perform the work, with assistance from NIB or NISH. In accordance with the Committee's Regulations, a portion of this time is also used to notify the public, through the *Federal Register*, of its intent to consider the addition, as well as of the action's effective date, should the proposal meet the Committee's approval.

When is it appropriate to award a contract under the JWOD Program? At what point in the process is a contract awarded for a JWOD project?

A contract can be awarded (orders can be placed) at any point after the effective date of the Procurement List addition. This date is listed in the final *Federal Register* notice that is published if the Committee decides to add the project or service to the Procurement List and is also on the notice of addition that is sent by the Committee to the contracting activity and the nonprofit agency.

Can a contracting activity establish a contract with the nonprofit agency during the Procurement List addition process?

Yes, but only as permitted by the FAR using authority other than the JWOD mandate. Contracting activities cannot use JWOD authority as the exception to competition for issuing a contract or in a determination and findings (D&F) for sole source contracts. Provision of products and services by nonprofit agencies under the authority of the JWOD Program cannot take place until the effective date of addition to the Procurement List. The Committee alone is authorized to establish the fair market price for a JWOD product or service, and proposed additions under JWOD are not legally binding until approved by the Committee.

Does the Committee ever place a portion of the total Government requirement for a product or service on the Procurement List?

Yes. Occasionally, the Committee will add only a portion of the Government's requirement for a particular product or service to the Procurement List. This approach is normally followed when taking the entire Government requirement would have a severe adverse impact on the current contractor. This is also the case when the Government's requirements exceed the capability of the nonprofit agency(ies) proposing to provide the product or service or when the Government wishes to have multiple contractor sources. Under such circumstances, a portion of the requirement is obtained through the JWOD Procurement List addition process, while the remaining portion is competitively procured from commercial sources. The Code of Federal Regulations (41 CFR Part 51-2.5 and 41 CFR Part 51- 5.3(a)) allows for this procedure.

What is "Severe Adverse Impact?"

"Severe Adverse Impact" is a determination the Committee makes when considering whether a product or service is suitable for addition to the JWOD Program. The Committee defines severe adverse impact as the level of impact that might weaken the business base of the contractor of the product or service to the extent that the firm's viability could be jeopardized. In deciding whether or not a proposed addition to the Procurement List is likely to have severe adverse impact on the current contractor, the Committee gives particular attention to: 1) the possible impact on the contractor's total sales; and 2) whether the contractor has been a continuous supplier to the Government and is, therefore, more dependent on the income from such sales to the Government. If the Committee determines that severe adverse impact might result from a proposed addition, the product or service in question may be dropped from consideration altogether, or the Committee may place only a portion of the Government requirement for a particular product or service on the Procurement List to avoid having a severe adverse impact on the current contractor. Products and services dropped from consideration due to severe adverse impact may be re-evaluated at a later date.

Does the JWOD Program and/or the Committee have priority over all other suppliers to the Federal Government?

Federal Prison Industries (FPI) has priority over the JWOD Program for products, but not for services. However, products can be considered for addition to the JWOD Procurement List after FPI gives clearance. FPI provides both full and partial waivers on particular products. Under an agreement with FPI, if FPI provides a full waiver for a product and the Committee places it on the Procurement List, FPI's priority is no longer in effect for that product. Thereafter, the product must be purchased from the source designated by the Committee. If FPI provides a partial waiver, circumstances vary depending upon the nature of the waiver. FPI does not have priority over the JWOD Program for services. Within the JWOD Program, nonprofit agencies associated with NIB have priority over agencies associated with NISH for products. As a result, the Committee will not place a product on the Procurement List for provision by a NISH nonprofit agency unless NIB has agreed to waive its priority. Both NIB and NISH nonprofit agencies have equal priority for services. After a product or service has been added to the Procurement List, the JWOD Program takes precedence over all other procurement preference programs with respect to that product or service.

How does the Competition in Contracting Act (CICA) apply to the JWOD Program?

The JWOD Program is a statutorily mandated source. JWOD procurements are considered “other than competitive” procurements under the Competition in Contracting Act (CICA). Also, the Federal Acquisition Regulation (FAR) exempts JWOD procurements from the justification requirement, which normally applies to other than competitive procurements. Under FAR Part 6.302.5, full and open competition need not be obtained when a statute or express authority exists; the JWOD Program falls under this statute. Contracting activities should use 10 U.S.C. 2304 (c)(5) as the exception on award documents.

Can contracting activities request that “one-time requirements” be designated for nonprofit agencies?

Products and services produced under the JWOD Program are generally ones for which a continuing need exists. These projects allow uninterrupted employment for people who are blind or have other severe disabilities. However, the Committee recognizes that although “one-time requirements” do not offer long-term stable employment opportunities, they often serve as useful training vehicles. For this reason, the Committee will sometimes consider “one-time requirements.” A stipulation for such consideration is that the project should generate enough work years (normally at least ten) of direct labor to make the addition worthwhile. Federal personnel should contact the Committee, NIB or NISH to explore the feasibility of proposing a particular one-time requirement for addition to the Procurement List.

Can requirements that are currently set aside under the 8(a) Program be added to the JWOD Procurement List?

Yes, requirements currently set aside under the 8(a) Program can be added to the JWOD Procurement List. However, in recognition and support of other socioeconomic initiatives, the Committee’s voluntary practice is to refrain from adding projects to the Procurement List that are currently in the 8(a) Program when the incumbent contractor has not yet graduated from the 8(a) Program and/or when more than one option year remains on the contract.

Can nonprofit agencies bid competitively on Federal contracts?

Yes, participating in competitions and offering products and services on the GSA Schedules is a means of increasing opportunities for nonprofit agencies to create jobs for people who are blind or have other severe disabilities. By reaching a larger procurement audience, the reputation for quality of JWOD products and services will be enhanced. After participating in Federal contracting through the unrestricted competitive bidding process, the nonprofit agency may then request that the Committee consider the product or service for addition to the Procurement List. Nonprofit agencies cannot bid on contracts designated for small business since they do not meet the “for-profit” requirements as currently defined by the Small Business Administration. In accordance with their missions to create jobs for people who are blind or have other severe disabilities, NIB and NISH may assist nonprofit agencies bidding on competitive and commercial contracts as well.

When are prices for JWOD Program products changed?

The Committee usually changes product prices on an annual basis in conjunction with the contract period or the beginning of the calendar year (effective Jan. 1). If market conditions for certain raw materials are extremely volatile, the contracting activity and nonprofit agency may include an economic price adjustment clause in the contract that could result in more frequent price changes. The preferred method for establishing base prices is by negotiation between the producing nonprofit agency and the contracting activity, with the assistance of NIB or NISH. The method of determining future prices will be a part of those negotiations and may include price adjustment based on changes in the appropriate U.S. Department of Labor Producer Price Index or another appropriate index, market surveys, or changes in the nonprofit agency's costs. The nonprofit agency, NIB and/or NISH, and the contracting activity negotiate recommended price changes to be submitted to the Committee for final approval. Price changes are not effective until the Committee has approved the price and issued a notice of price change.

When are prices for JWOD Program services changed?

Normally, the Committee will establish a base year and four follow-on years for service contracts: however, the contracting activity determines the contract period and number of follow-on years of performance based upon their agency's needs. The method for pricing JWOD service contracts has been revised by the issuance of a pricing guidance memorandum ("PR-3"), which was put into effect in June 2002. The nonprofit agency and the contracting activity will negotiate a base-year price recommendation and the method of revising follow-on year prices. More details are available on the Committee's Web site, www.jwod.gov.

How are protests, disputes and appeals handled under the JWOD Act?

Issues related to daily contract performance should be resolved at the contracting activity and nonprofit working levels wherever possible. NIB and NISH are available and recommended as sources to facilitate the resolution. Any contractual protest before or after award, or any contractual dispute or appeal is the responsibility of the Contracting Officer as guided by the Contracts Disputes Act, unless the provisions are in conflict with the JWOD Act or regulations. Any JWOD-specific price or price-related dispute may be resolved through the Committee's Impasse Resolution Process, and should be brought to the attention of the Committee staff in accordance with Operations Memorandum #19 (available on www.jwod.gov). In addition, the Committee's Impasse Resolution Process may be used as an alternate dispute resolution (ADR) for other non-price related issues at the contracting activity's discretion.

What is the 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. On an annual basis, the Committee reviews NIB's and NISH's budgets, plans and accomplishments and establishes the fee ceiling for each agency's fee. Current CNA fee ceilings and the methodology for calculating the fee

can be found on the Committee's Web site, www.jwod.gov. The CNA fee is an intrinsic component of the Fair Market Price recommendation that is provided to the Committee for its review when considering whether or not to add a contract to the Procurement List. It is a program funding fee—not a fee for service, nor does it represent profit. The CNA fee is used by NIB and NISH to support the JWOD Program under the supervision of their independent boards of directors and with Federal oversight by the Committee for Purchase From People Who Are Blind or Severely Disabled.

This support includes:

- Identifying, researching and developing opportunities for addition to the Procurement List.
- Providing administrative support to the Committee by serving as the main interface between the participating community agencies, the Federal Government procuring activities and the Committee for Purchase.
- Professional contract management.
- On-site technical assistance, business and production engineering services.
- Quality assurance programs.
- Costing/pricing, contract negotiation and payment assistance.
- Raising JWOD Program awareness through marketing, communications and advocacy.
- Providing an extensive program of training activities for community rehabilitation programs, contracting agencies and NIB/NISH team members.
- Monitoring JWOD Program regulatory and statutory compliance.
- Improving technology to advance JWOD Program capacity and capability.
- Providing other assistance to community-based nonprofit agencies such as workforce development and financial assistance programs.

Can Federal employees recommend products and/or services for addition to the Procurement List?

Yes. The Code of Federal Regulations (41 CFR Part 51- 5.1(a)) encourages acquisition and procurement professionals to recommend products and services that appear suitable for procurement by the Government from nonprofit agencies under the JWOD Program. Recommendations should be sent to the Committee, NIB or NISH.

Are JWOD Program participating nonprofit agencies registered in the Central Contractor Registration (CCR)?

Yes, all JWOD-participating nonprofit agencies are registered in the CCR, a central repository of all companies and agencies currently performing, or seeking to perform, business with the Federal Government. The JWOD Program fully supports the Government's efforts to provide a basic framework or foundation that will allow migration to an integrated acquisition environment.

How do Department of Defense prime contractors get credit for subcontracting with JWOD Program nonprofit agencies?

Department of Defense (DoD) prime contractors are allowed to receive credit toward their small business subcontracting goals if they subcontract with qualified nonprofit

agencies participating in the JWOD Program. This authority can be found at 10 US Code 2410(d). The Defense Logistics Agency has added a clause to its solicitations that informs officers of this opportunity to support JWOD-associated nonprofit agencies through their subcontracting programs. The clause (DLAD 52.215.9004) (DEC 1997) stems from DLA PROCLTR 97-34, the second in a series of guidance letters on supporting the JWOD Program. DLA was looking for innovative ways to work with the JWOD Program and to “provide JWOD agencies a maximum practicable opportunity to participate as subcontractors.” JWOD subcontracts are easiest to envision in terms of a facilities management contractor that subcontracts with a JWOD participating agency for janitorial or groundskeeping services; or an industrial prime vendor (integrator) that subcontracts with JWOD manufacturing agencies for certain products needed. Some more innovative approaches would be for a Federal contractor to subcontract with a JWOD-participating agency that provides temporary administrative services or Web site development/maintenance (both areas in which several JWOD-participating agencies have capabilities). Other services available from JWOD agencies include copy center operation, secure document destruction, fleet maintenance, warehousing and distribution, data entry, recycling, laundry, and food services. DoD contractors may also support the JWOD Program by purchasing JWOD office or cleaning supplies from JWOD authorized commercial distributors. (NIB/NISH should verify highlighted business lines.)

Do JWOD Program products and services meet Federal requirements for recycled content and other environmentally preferable attributes?

The JWOD Program is committed to providing products and services that Federal customers demand in terms of both quality and performance. Additionally, as a Federal program, we must also ensure that JWOD products and services comply with Federal mandates, including environmental initiatives. JWOD paper products meet General Service Administration (GSA) and Environmental Protection Agency (EPA) specifications and guidelines for recycled content, including post-consumer material content. Additionally, NIB and NISH technical experts, along with participating associated nonprofit agencies, are constantly reviewing JWOD offerings to ensure compliance with Federal requirements.

What types of wages do JWOD Program employees earn?

On JWOD product contracts, employees are paid based on the prevailing industry wage for a specific locality. On JWOD service contracts, employees are paid in accordance with the Service Contract Act (SCA). As of FY 2005, the average hourly wage for a JWOD employee was \$9.49 per hour (with some JWOD employees earning as much as \$18 - \$20 per hour), compared to the Federal minimum wage of \$5.15 per hour. JWOD wages allow for many people who are blind or have other severe disabilities to live more independent lives. Some JWOD participating nonprofit agencies hold special certificates issued by the Department of Labor to pay employees a commensurate wage (a percentage of the prevailing wage) based on employee productivity.

Is the JWOD Program really necessary in light of the 1990 enactment of the Americans with Disabilities Act (ADA)?

Yes, the JWOD Program is necessary. While the landmark ADA legislation assures basic civil rights for people with disabilities, including the provision of reasonable accommodations by employers, it does not assure jobs for all people with disabilities who want to work. The JWOD Program was created for just this purpose—to help create employment opportunities for people with severe disabilities and reduce the staggering unemployment rate (70 percent) facing this population. According to the 2000 Census, of the 31 million United States residents between the ages of 21 and 64 who have disabilities, nearly 21 million are unemployed or underemployed.

Moreover, the vast majority of people with disabilities employed under the JWOD Program are currently not capable of competitive employment. Consequently, they are not currently in a position to benefit from the ADA's reasonable accommodations provision. It is expected, however, that many JWOD employees will obtain work skills as a result of their JWOD jobs and therefore, be able to take advantage of opportunities made available because of the Americans with Disabilities Act.