

# Committee for Purchase From People Who Are Blind or Severely Disabled



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NISH National Training Conference  
May 2004

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# Objectives

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- 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.
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# Committee staff Introductions

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- 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
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# Committee staff (cont'd)

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- 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
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# **Statutory and Regulatory Environment of the JWOD Program**

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# JWOD ACT 41 U.S.C. § 46

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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
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# JWOD ACT 41 U.S.C. § 47

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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
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# **JWOD ACT 41 U.S.C. § 47**

## **(cont'd)**

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- 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
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# JWOD ACT 41

## U.S.C. § 48 -48c

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- 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
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# 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
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# 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
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# Committee Regulations

## 41 CFR 51-2 (cont'd)

### Fair Market Price Determination (41 CFR 51-2.7)

- Initial Price Determination
  - Proposed Price Change Methodology
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# What Does It All Mean?

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- 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.
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# Additions Process

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# Committee Additions Process

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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)
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# Process Requirements

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- 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.
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# Process Requirements (cont'd)

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- 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.
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# Proposed Additions Package Analysis

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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
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# Proposed Additions Package Analysis (cont'd)

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- 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*
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# Initial Publication in *Federal Register*

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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.
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# Initial Publication in *Federal Register* (cont'd)

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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.

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# Process After Initial Publication

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- 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.
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# Vote Letter Decision Package

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## 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.”
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# Vote Letter Decision Package (cont'd)

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- Incorporates Public Comments, if any, and staff's Recommended Response to Comments.
  - Incorporates Committee decision on initial price and price change mechanisms.
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# Issuance of Vote Letter Decision

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- 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.
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# Vote Period and Vote Tracking

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- 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.
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# Final Publication in *Federal Register*

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- 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.
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# Notice of Addition

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- 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.
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# Procurement List Process Recap

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- 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
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# Why Is This Process Important?

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- 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.
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# Why Is This Process Important? (cont'd)

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- 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?
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# Process Improvement Project

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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
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# Process Improvement Project (cont'd)

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- 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
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# **“Hot Issues”**

## **2004**

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# Addition “Hot Issues” for Suitability

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- 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
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# Addition “Hot Issues” for Service Pricing

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## 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
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# Addition “Hot Issues” for Product Pricing

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## Product Pricing

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

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Questions?

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