COMMITTEE FOR PURCHASE FROM
PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

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Operations Memorandum No. 19

Subject: Javits-Wagner-O'Day Price and Price-Related Impasse and Dispute Resolution Procedures

1. Purpose

The purpose of this Operations Memorandum is to prescribe procedures for resolving price and price-related disputes between parties in the exercise and administration of the Javits-Wagner-O'Day (JWOD) Program (41 CFR Chapter 51). These procedures are applicable to:

A. Federal Contracting Activities obtaining products or services under the JWOD Program.

B. Nonprofit Agencies associated with NIB or NISH and providing products or services under JWOD contracts.

C. The Central Nonprofit Agencies (CNA): National Industries for the Blind (NIB) and NISH.

D. Federal contractors awarding subcontracts under the JWOD Program.

2. 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 USC 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 procedures implemented herein derive from the authority of the JWOD Act (41 U.S.C. 46-48c) as implemented through Federal Acquisition Regulation (FAR) Part 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.

3. Applicability.

This Memorandum serves as the sole procedure for resolving JWOD price and price-related disputes. The Committee encourages Contracting Activities and Nonprofit

Agencies to use this Memorandum as an Alternate Disputes Resolution (ADR) procedure for non-price issues. The Committee's JWOD Price and Price-Related Impasse and Disputes Resolution Procedures do not preclude the Contracting Activity or the Nonprofit Agency from pursuing remedies under the Contract Disputes Act of 1978 for other than price and price-related issues.

4. Policy

Partnering concepts will be used to establish business protocols for contract performance under the JWOD Program. Partnering encourages team building and mutual gains approaches to problem-solving. Business relationships under the JWOD Program must be conducted with fairness, integrity and openness. Issues should be resolved early and in a timely manner and at the local level if at all possible. When price and price-related issues cannot be resolved at the local level, the dispute resolution process of this Memorandum will be used.

5. JWOD Program Definitions

The following definitions are provided to establish a common language for parties participating in the JWOD Program.

A. **Javits-Wagner-O'Day (JWOD) Act** is the law under which the Program operates; is used to describe the Program and is often used as an adjective (*i.e.*, a JWOD contract).

B. **The Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee)** is the independent Government Agency responsible for the JWOD Program. This term is used to describe the Agency; the fifteen Presidentially appointed members of the Committee and sometimes, inappropriately, the Committee Staff (Federal Civil Service employees of the Committee). For more information, go to http://www.jwod.gov.

C. **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

D. **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.

E. **Nonprofit Agency (NPA)** (not-for-profit corporation**)** 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.

F. **Fair Market Price (FMP)** is the term used for the price established by the Committee for a product or service. The Fair Market Price must be established in reference to actual market prices for the same or similar product or service. Any new product or service being added to the Procurement List will have an initial Fair Market Price established.

G. **Impasse** exists when an issue, controversy or disagreement occurs and the Contracting Activity, contractor or the Nonprofit Agency is unable to proceed with a contract action.

6. Roles and Responsibilities

The acquisition process under the JWOD Program is governed by a different set of rules from "typical" FAR contracts. One of the unique aspects of the JWOD Program is the roles and responsibilities of the groups involved with the disputes resolution process.

A. **The Committee** is responsible for carrying out functions in support of its mission of providing employment and training 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) Disputes which cannot be resolved by these parties (Nonprofit Agency and Contracting Activity) shall be referred to the Committee for resolution. (See 41 CFR 51-6.15)

(2) The Committee 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))

B. **Contracting Activities** shall provide the Committee and NIB or NISH with information needed to enable the Committee to effectively manage the JWOD process and JWOD Program requirements. (See 41 CFR 51-5.1) Contracting Activities shall also:

(1) Provide the Committee detailed and timely information, to include Government estimates and budgetary restrictions, during the impasse resolution process.

(2) Provide NIB or NISH, as appropriate, copies of all contract documents for JWOD contracts.

(3) Keep NIB or NISH informed of contract issues that may result in an impasse.

(4) When unable to resolve issues locally with the Nonprofit Agency, seek support from NIB or NISH in resolving the issue before declaring impasse.

(5) Provide the Committee all relevant data in a Business Case when requested to support impasse resolution.

C. **NIB and NISH** are Central Nonprofit Agencies designated by the Committee which have a unique role in Federal Government acquisition program functions. NIB and NISH are responsible for ensuring that recommended Fair Market Prices are fair to all parties in the Program. NIB and NISH will:

(1) Provide technical assistance to both Contracting Activities and Nonprofit Agencies in all negotiations.

(2) Evaluate and validate prices and, when used, the cost elements proposed by Nonprofit Agencies for reasonableness and consistency with Committee Pricing Memoranda.

(3) Ensure the Nonprofit Agencies and Contracting Activities are aware of and adhere to Committee rules, regulations and policies.

(4) Assemble and forward required information for impasse resolution to the Committee as required. NIB or NISH will assist the Contracting Activities and the Nonprofit Agencies in preparation of impasse Business Cases.

D. **Nonprofit Agencies** will provide a product or service at the established Fair Market Price and act as a responsible partner with Contracting Activities and endeavor to provide best value products or services to the Government. Nonprofit Agencies will:

(1) Continue contract performance during the impasse resolution process.

(2) Maintain accounting records to capture, allocate and report costs and support audits with full disclosure when directed by the Committee.

(3) Provide the Committee all relevant data in a Business Case when requested to support impasse resolution.

7. Impasse Resolution

The Committee Impasse Resolution process involves 6 steps:

Step 1. Informal Resolution: Disputes should be resolved locally if possible. NIB or NISH, as appropriate, should be involved in resolution if local attempts to resolve the issue are unsuccessful. Early involvement of NIB or NISH should facilitate a timely resolution. This step should not take more than 30 days. NIB and NISH are encouraged to issue procedures for resolving issues and that support this Memorandum.

Step 2. Declaration of Impasse: The Impasse Resolution process of this Memorandum will be initiated by a Declaration of Impasse. Any of the parties may unilaterally declare impasse as below:

(1) Impasse may be declared only:

(a) At the Contracting Activity by a person a level above the Contracting Officer.

(b) At the Nonprofit Agency by the Chief Executive of the Nonprofit Agency.

(c) By the Vice President, Operations Management & Business Development of NIB or the NISH Regional Director or by a person at a level above these positions.

(2) Impasse will be declared by written letter to the Committee (electronic mail is acceptable) with copies to the other party and NIB or NISH.

(3) The written declaration of impasse will indicate that Business Cases will be submitted to the Committee within fifteen (15) working days of the date that impasse is declared.

(4) The Committee will advise all parties regarding the Committee's point of contact. The declaration of impasse is submitted to this point of contact at the Committee.

Step 3. Preparation and submission of Business Cases: The Contracting Activity and the Nonprofit Agency will each prepare a Business Case for submission to the Committee within fifteen working days after declaration of impasse. The Business Case will include the following information:

(1) The project name and location. The contract number if a contract is involved. The NIB or NISH project number and Committee JPID number if appropriate.

(2) A statement of the issue that is the basis for the impasse and the desired outcome.

(3) The position and opinion of the party submitting the Business Case with supporting data.

(4) A chronology of steps taken to resolve the impasse.

(5) A discussion of areas of agreement pertaining to the issue.

(6) Specifically for price and price-related issues (See Committee Pricing Memorandum Number 3 (PR-3) for more details):

(a) The Contracting Officer will provide the Independent Government Estimate and any Pre- or Post Negotiation Memoranda available.

(b) The Nonprofit Agency will provide either market research information or details of cost elements that support the proposed price.

(7) The Contracting Activity will provide a copy of the current contract (if applicable) and all contract modifications.

(8) Each party will provide the name, telephone number, fax number, e-mail address (if available) and address of their point of contact. The Nonprofit Agency Business Case will provide information on the NIB or NISH point of contact.

Step 4. Initial Committee review: The Committee staff will review the Business Cases and, within ten working days of receipt, issue a written plan of action with milestones for resolution and request any additional data needed from either party. The plan will provide details on actions to be taken by the Committee staff to resolve the Impasse. The plan will provide estimated dates for each action. The Committee staff will provide a copy of the plan to designated points of contact at the Contracting Activity, Nonprofit Agency and NIB or NISH.

Step 5. Committee staff decision: The Committee staff will issue a written decision in accordance with their plan, advising all parties if there is to be a delay in the

decision. The decision will represent the best interests of the JWOD Program. The decision may or may not directly support one of the Business Cases submitted.

Step 6. Availability of Committee review: After a decision from the Committee staff, either the Contracting Activity or the Nonprofit Agency may request a formal review and decision from the full Committee. The Committee staff will forward its written decision, along with the two Business Cases, to the Committee. The Committee may also request additional information from the parties. The Committee will make a final decision that is binding on all parties. The Committee staff is responsible for enforcement of decisions.

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Executive Director