

IG5308.7

Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled

IG5308.705 Procedures

(a) **Definitions.** A “contractor” under the Javits-Wagner-O’Day (JWOD) Act is known as a participating Nonprofit Agency (NPA)—also called a Community Rehabilitation Program (CRP). NPAs work with a Central Nonprofit Agency (CNA). National Industries for the Blind (NIB) is the CNA that works with associated nonprofit agencies that serve people who are blind, while NISH-associated CRPs serve people with a range of severe disabilities. The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) is the independent federal agency responsible for administering the JWOD Program.

(b) **Adding Products/Services to the Procurement List (PL).** Initial contacts by a JWOD-associated NPA or CNA with a contracting office are generally to obtain information to use in determining whether or not it can produce a commodity or perform a service. These contacts can occur at any time and alone are not sufficient to suspend planned purchasing actions. This determination is made by the contracting activity after discussions with the Committee staff based on the procurement milestones and the Committee staff’s estimate of when the item will be submitted to the Committee for its decision on the inclusion of the item on the PL.

(c) Once a requirement has been identified as a candidate for addition to the PL, the following steps are taken:

(1) The contracting office identifies the requirement, working with the NPA and the appropriate CNA.

(2) The CNA works with their associated nonprofit agency in gathering background information, statement of work (SOW), performance work statement (PWS), and technical requirements. The CNA also assists in determining production and/or service capability. At this time, the CNA will also seek preliminary, publicly-available data related to any incumbent contractor(s) to determine whether there are any concerns about severe adverse impact, which is later reviewed and determined by the Committee members.

(3) The CNA assigns the requirement to the NPA for development. The contracting office provides the NPA with a copy of the PWS and applicable wage determination.

(4) The CNA helps the NPA develop a proposal, usually an informal proposal versus a full technical proposal, to demonstrate capability to the Contracting Officer.

(5) Included in the proposal is the CNA/NPA recommended fair market price of the product or service, which should be negotiated with the Contracting Officer prior to submission to the Committee.

(6) The Contracting Officer should review the proposal, including pricing, just like any other proposal, and should negotiate accordingly with the NPA if appropriate. The Committee's Pricing Memorandum #3 details JWOD Program pricing policy and procedures for JWOD service contracts, and may be viewed or downloaded at <http://www.jwod.gov/jwod/library/policy.html>. Issues that arise in the negotiation may involve the NPA's understanding of the technical aspects of the requirement, procedures, risk management, pricing, manpower usage, application of the Service Contract Act (SCA), etc. The goal is a fair market price that all parties find reasonable. In the development process, the Contracting Activity must concur to the Fair Market Price in order to proceed with a request for addition to the PL.

(i) The SCA applies to JWOD service contracts and each worker must be paid full fringe benefits, but the wage rate may be adjusted for productivity. In accordance with the Fair Labor Standards Act (FLSA), NPAs that have received a Special Certificate from the Department of Labor (DOL) may legally pay a worker with disabilities a commensurate (adjusted) wage, based on DOL-approved productivity measures. However, regardless of the level of productivity, employees must receive the full hourly health and welfare benefits. Contracting Officers should request support from their Regional Air Force Labor Advisors office if they have concerns about the unique application of the SCA and/or FLSA to JWOD contracts.

(ii) The contracting office does not review the productivity rates of workers. This measurement is performed by the NPA's rehabilitation professionals who are trained in DOL-approved methodologies, every six months. When JWOD Program compliance personnel (trained Committee and NIB/NISH staff) review a JWOD-associated NPA, they review the actual productivity studies as well as the methodology used to determine the commensurate wages, where applicable.

(iii) Contracting Officers have occasionally misunderstood the 75% disabled labor rate. This does not apply to any individual contract, but applies to the total direct labor hours performed at the NPA by persons who are blind or severely disabled. The 75% ratio is statutory and is monitored for compliance by the Committee and the appropriate CNA.

(7) It is the respective CNA's responsibility to compile all of the above information and submit a proposed addition package to the Committee staff. The review and rule making activities, performed by the Committee and its staff, associated with placing a requirement on the PL require a minimum of 75-90 days. Upon receiving from one of the CNAs a complete proposed addition package, to include documentation of the Contracting Officer's concurrence with capability and price, the Committee staff publishes a Notice of Proposed Rulemaking in the Federal Register for 30 days, advising of its intent to add the requirement to the PL. This notice allows any interested parties to submit comments; however, the

Contracting Officer would have a direct communication channel with the CNA and Committee staff throughout the process, and thus would not need to wait for the Federal Register Notice to make comments. Prior to or concurrent with the Federal Register Notice, the Committee staff seeks sales data from any current contractors to be used in the Committee's decision as to whether or not severe adverse impact would result from addition of the contract to the PL.

(8) During the 30-day comment period following the Federal Register Notice of Proposed Rulemaking, the Committee staff ensures that all information related to the addition is complete, accurate, and consistent with the Committee's regulations and procedures. Impact information is received and calculated, and any comments in response to the Federal Register Notice are addressed for the Committee members' information.

(9) The Committee staff prepares and submits a decision package (called a Vote Letter) electronically to the Committee members, with a two-week suspense.

(10) If the Committee members approve the addition to the PL, a Notice of Final Rulemaking is published in the Federal Register, and an additional 30-day comment period begins. Once the 30 days have elapsed, the PL addition becomes effective, and the procuring activity and the CNA are notified. This notification is called a "Notice of Change to the Procurement List – Addition" and it is mailed to both the procuring activity and the CNA by the Committee Staff.

(d) After the effective date, the Contracting Activity and the NPA may enter into a contract for the product or service using JWOD authority as the sole source justification. However, if an existing commercial contract has options, the Contracting Officer at his or her discretion has the ability to exercise all such options, and should not forego such options simply because of the PL addition. However, if there are other reasons warranting that the option not be exercised, or if all options have expired, it is mandatory to contract with the Committee-designated NPA as a result of the PL addition.

(e) A CNA and/or NPA may have been assigned a requirement internally for development; however, the requirement may not be added to the PL by the time the solicitation is ready for release. In this event, the Contracting Officer should contact the CNA and inform it of the intent to release the solicitation and provide the intended release date. The CNA will provide the status of the addition package process. If a Committee decision is not expected by the intended release date, the Contracting Officer should determine, based on the information received from the CNA, whether or not to delay issuance of the solicitation. Common sense should be exercised in these instances; however, the Contracting Officer's judgment should prevail in these cases.

(f) If the Committee staff indicates that it is in the final stages of processing the item for addition to the PL, a solicitation should not be issued without prior approval of SAF/AQCK.

(g) Certain additional factors are relevant when a cost comparison is required in determining whether or not a service will be purchased. In such cases, the in-house estimate should be prepared and sealed prior to receipt of the NPA pricing data. Once the sealed in-house estimate

is received, the procuring activity should inform the CNA who will forward the NPA pricing package concurrently to the Committee and the procuring activity. The NPA pricing package should cover the period plus two additional years. The Committee staff will discuss the package with the procuring activity and obtain its concurrence or nonconcurrence. The proposed action is then processed by the Committee staff for a decision by the Committee. If the Committee approves the addition, the staff will transmit to the procuring activity a “Notice of addition” which includes the approved prices. The cost comparison should not be made until after receipt of the notification that the item has been added to the PL. If the cost comparison results in retention of performance in-house, the Committee price has no consequence. If the resultant decision is to contract for performance, the contract should be prepared and transmitted to the NPA for performance.

(h) NPAs are not currently authorized to participate in small business set-aside acquisitions, since they are nonprofit and do not meet the definition for a small business.

(i) Randolph-Sheppard Act (RSA) vendors are not JWOD NPAs. RSA vendors are for-profit entities contracted through the state and are not authorized to participate in small business set-aside acquisitions since they do not meet the definition of a small business. Do not code RSA contract actions as “JWOD” or “NPA” in the DD350 system. RSA is a Department of Education activity and should be coded as “Other Educational.”