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Draft Policy (51.303)

TITLE: U.S. ABILITYONE COMMISSION COMPETITION POLICY AND PROCEDURE ON AUTHORIZATION OF NONPROFIT AGENCIES FOR PROJECT ORDER ALLOCATION

1. PURPOSE.

- 1.1 The purpose of this Competition policy is to establish roles, responsibilities, and processes for executing competitive AbilityOne acquisitions for Federal Government entities procuring products and services on the Procurement List (hereafter referred to FGEs).
- 1.2 This guidance maximizes competition between the nonprofit Agencies (NPA) while enhancing the interests of the blind and significantly disabled community.

2. APPLICABILITY.

- 2.1. This policy automatically applies to new and existing Procurement List actions for services estimated to exceed \$10 million annually.
- 2.2. This policy applies to new and existing Procurement List actions for services with an estimated value less than \$10 million that have been directed to follow this policy by written Vote Letter IAW Commission Policy 51-203.

3. AUTHORITY.

- (a) The Javits-Wagner-O’Day (JWOD) Act, 41 U.S.C §§ 8501-8506
- (b) 41 C.F.R. Ch. 51
- (c) U.S. AbilityOne Commission Policy 51.301, “Selection of Nonprofit Agencies for Project Assignment and Order Allocation”
- (d) Section 898 of the National Defense Authorization Act (NDAA) for Fiscal Year 2017 (FY17) (Public Law 114-328) “Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity”

4. DEFINITIONS AND ACRONYMS.

Definitions, abbreviations, and acronyms frequently used throughout the Commission’s policy system are provided in Policy 51.102, Definitions or as defined in this document.

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5. RESPONSIBILITIES.

5.1. The AbilityOne Commission shall:

- 5.1.1. Establish a procedure for executing the AbilityOne competitive policy.
- 5.1.2. Ensure the competition policy is reviewed and updated biannually or as needed.
- 5.1.3. Appoint the AbilityOne Competition Subgroup (AOCS).
- 5.1.4. Direct the Central Nonprofit Agencies (CNA) regarding the competition responsibilities.
- 5.1.5. Direct the CNAs to report the outcome of the competitions to the NPA community.

5.2. The AOCS shall:

- 5.2.1. Develop in coordination with CNAs and FGEs standardized procedures and processes for executing this policy.
- 5.2.2. Oversee the service/agency competition, process, procedure, and source recommendations within the AbilityOne program.
- 5.2.3. Update the Commission on an annual basis on the proposed competition schedule, potential problems, and recommendations for improving this policy.
- 5.2.4. De-conflict source selection schedules between the FGEs due to limited AbilityOne resources.

5.3. The CNA shall:

- 5.3.1. Post Opportunity Notices and ensure NPAs are aware of potential competitive opportunities, including summarizing the scope of the competition.
- 5.3.2. Provide guidance and assistance to the NPAs when responding to the Opportunity Notice.
- 5.3.3. Maintain a tracking system to identify contracts that are due for contract renewal.
- 5.3.4. Assist in the mitigation of legal actions against the FGE.

5.4. The FGE shall:

- 5.4.1. Develop the requirements documents, evaluation criteria, and provide the resources (evaluators) to assist with reviewing the responses to the proposals (cost/price, technical, management, etc.) criteria.

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5.4.2. Assist the CNA with developing the Opportunity Notice to reflect the FGE requirements.

5.5. The AbilityOne Commission, FGE and the CNA are responsible for developing a Memorandum of Agreement (MOA) outlining the level of support and the competition framework for the individual competition(s).

6. EXCEPTIONS TO POLICY.

The Commission Chairperson has exclusive authority to consider and grant exceptions to this policy.

7. PROCEDURES.

7.1. Procurement Competition Analysis Process.

7.1.1. The CNA shall maintain a tracking system that identifies the contract renewal dates for all eligible contracts over the next five years, hereinafter referred to as the five-year competition schedule.

7.1.2. The CNA shall affirmatively notify the AbilityOne Commission staff when an eligible contract is within the competition window and begin to work with the AOCS and FGE on a source selection plan. The competition window is normally two-years from the expiration of the current contract.

7.1.3. The CNA in consultation with the FGE and AOCS shall establish an Integrated Evaluation Team (IET) at the start of the competition window. The purpose of the IET will be to assess performance issues with the incumbent contractor (if any), pricing, changes to the requirement and the competitive procurement plan.

7.1.4. **Waiver:** The competition requirements described in this policy may be waived through a written request to the Commission from the CNA with concurrence from the FGE. The written request must describe the incumbent NPAs superior performance, unique capabilities, and the FGE’s satisfaction with the Fair Market Price. Waivers to seeking competition may be approved by the Executive Director or designee on a case-by-case basis. This authority cannot be delegated.

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7.2. MOA amongst FGE, AbilityOne, and the CNA.

7.2.1. The AbilityOne Commission shall execute a Memorandum of Agreement (MOA) with the appropriate CNA and FGE (Parties) seeking to engage in competition for a contract renewal. Senior Leadership signatures are required on the MOA between the FGE, AbilityOne leadership, and the CNA. See Attachment 1- MOA Template.

7.2.2. The content of the MOA should include the Purpose, Competitive Procedures, Milestones, Modification Rules, Disputes, Effective Date and Termination of Agreement.

7.2.3. The FGE shall provide the Performance Work Statement, contract type, period of performance, Contract Line Item Number (CLIN) structure, provisions/clauses, Quality Assurance Surveillance Plan (QASP), technical exhibits, site visit information, response conference time and place, evaluation criteria, and response instructions (collectively, the Contract Package Materials) to be included in the CNA Opportunity Notices. The FGE shall provide the Contract Package Materials prior to issuing the Opportunity Notice.

7.2.4. The evaluation criteria shall be agreed upon amongst the Parties prior to issuing the Opportunity Notice. The evaluation criteria should include Minimum Eligibility Qualifications, Technical proposal (i.e. Technical Approach, Management Plan, Equipment Plan, Staffing Plan, Quality Control Plan, Transition Plan, etc.), Past Performance, Social Impact proposal, and Price.

7.2.5. The use of Low Price Technically Acceptable (LPTA) or a price-only evaluation process is explicitly disallowed

7.2.6. The Minimum Eligibility Qualifications and the Social Impact proposal shall be a stand-alone criterion evaluated by the CNA involved in the competition.

7.2.7. The Technical proposal, Past Performance and Price shall be evaluated by the FGE in consultation with the AOCS and CNA. The responsibilities of each party shall be clearly identified in the MOA.

7.2.8. The CNA shall issue the Opportunity Notice to all NPAs in their network unless a Source Limitation document has been approved by the AbilityOne staff establishing any restrictions.

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7.3. Opportunity Notice Process.

7.3.1. FGEs are responsible for submitting their requirements as incorporated in the Contract Package Materials to the CNA. (See sections 7.2.3. and 7.2.4.) Opportunity specific criteria must be developed and posted on the CNA portal.

7.3.2. The FGE has the option of posting a price range or ceiling for initial NPA proposals.

7.3.3. Industry days, site visits, and other means of communicating with potential NPAs shall be conducted by the FGE or CNA, to the maximum extent possible.

7.3.4. The Commission, CNA and FGE shall respond to NPA questions in a timely manner. The CNA shall be responsible for coordinating the responses from the Parties in a timely manner. All NPA questions and responses shall be posted on the CNA’s portal and made available for all of the NPA competitors.

7.3.5. The MOA shall establish the right of first refusal for competitions within the AbilityOne program. The Opportunity Notice shall include the requirement for all NPA responses to include and address a Right of First Refusal for employing the incumbent NPA’s employees to continue performance of the contract work.

7.3.6. The NPAs are responsible for submitting responses to the Opportunity Notice by the time and date specified in the Opportunity Notice.

7.4. Evaluation, Recommendation and Decision Process.

7.4.1. The AbilityOne Commission, CNAs, and FGE must agree on the transmittal platform, document standardization, timeframes for response evaluation, and communication rules in terms of who shall communicate directly with NPAs.

7.4.2. The CNAs are responsible for assessing the minimum eligibility qualifications. The minimum eligibility qualifications consist of financial capability to perform contract requirements; status of any loans or any outstanding Program Fees; AbilityOne programmatic criteria such as maintaining 75% overall direct labor hour agency ratio; and contract requirements PWS-specific criteria (e.g. security clearances, certifications, etc.)

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7.4.2.1. The CNA shall evaluate the Social Impact proposal. Social Impact should be stand-alone criteria.

7.4.2.2. The Commission staff, CNA and the FGE shall evaluate the Technical proposal, Past Performance and Price.

7.4.2.3. The IET shall forward their evaluation results to the NPA Recommendation Authority (NPARA) in accordance with the established timeline.

7.4.3. The CNA is the NPARA and will compile the evaluation results; develop the source recommendation based on relative importance identified in evaluation criteria; and re-engage with the FGE and Commission staff on the recommendation.

7.4.4. The NPARA prepares the NPA recommendation document (NPARD). The FGE shall have the opportunity to review and provide comments on the NPARD. The NPARD is then forwarded to AbilityOne Commission Staff Director of Business Operations (DBO).

7.4.4.1. The CNA is the NPARA for Procurement List (PL) additions and competitions for contract renewals. The CNA shall provide the NPARD to the AbilityOne Commission Staff Director of Business Operations (DBO).

7.4.5. The AbilityOne Commission Staff DBO prepares the Decision Document, which is emailed to Commission Members and available in the Procurement List Information Management System (PLIMS) Voting Portal. The Decision Document includes the NPARD and any other applicable documents that form the AbilityOne Commission record.

7.4.6. The AbilityOne Commission members are responsible for approving the recommendation for selection of the NPA to include the proposed fair market price.

7.5. Notification, Debriefs and Appeals.

7.5.1. Notification. After award, the DBO or designee will provide timely notification to unsuccessful offerors. If an unsuccessful offeror requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the award decision shall be provided.

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7.5.2. Debriefing. The DBO or designee shall provide the unsuccessful offerors a debriefing, if a debrief is requested in writing within three days of the notification of the award decision.

7.5.3. If requested, the Commission staff will prepare and deliver an initial, summary debriefing, with input from all parties involved in the evaluation process, to the debriefed NPA in writing.

7.5.4. The debriefing is limited to the evaluation of responses in accordance with the criteria provided in the Opportunity Notice.

7.5.5. While the debriefing will address significant strengths and weaknesses applicable to the specific NPA being debriefed, there will be no point-by-point comparison of the debriefed NPA with responses from other NPAs.

7.5.6. Questions may be submitted in writing to the Commission, NLT 5:00 p.m. EDT, 10 business days after receipt of the summary debriefing, unless otherwise extended by the Executive Director of the Commission staff, or his/her designee.

7.5.7. Questions shall be no more than two pages, in Times New Roman 12-point font. Questions must focus on the NPA’s individual evaluation in terms of the ON criteria.

7.5.8. The Commission will not provide information regarding or in comparison to other NPAs’ submissions that are otherwise prohibited from disclosure by the Privacy Act or the Freedom of Information Act or by FAR 24.202.

7.5.9. Responses to questions, if submitted, will be provided in writing to the NPA(s) in the order of receipt.

7.5.10. Appeals. All appeals to a selection decision will be submitted IAW Commission Policy at 51.3016(c). The Commission is responsible for responding to Appeals and may include assistance from the FGE representatives, when determined it is in the best interest of the Government.

8. Post Award Activities.

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8.1. The AOCS shall develop meaningful metrics to determine the effectiveness of NPA competition strategy.

8.2. The AOCS is responsible for ensuring that the results of all competitions conducted under this policy are provided to the AbilityOne Commission on an annual basis.

9. Templates.

- Attachment 1 - MOA Template
- Attachment 2 - Pricing Template
- Attachment 3 - Past Performance Template

APPROVED: _____ **DATE:** _____

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Chairperson