

**U.S. AbilityOne Commission
Minutes – Quarterly Public Meeting**

**Thursday, July 13, 2023
1:00 p.m. – 4:00 p.m. ET**

I. Call to Order and Introductions

U.S. AbilityOne Commission Chairperson Jeffrey Koses called the meeting to order at 1 p.m. and greeted the more than 200 participants attending via Zoom.

Commission Executive Officer Angela Phifer gave administrative remarks. She noted that two American Sign Language interpreters would interpret, and that the meeting was being live captioned.

Commission members and Commission staff introduced themselves.

Koses noted that President Biden had [announced](#) his intent to appoint Scott R. Calisti as the Air Force representative to the Commission. Calisti said it was an honor to be nominated.

II. Consideration of Minutes

Minutes from the April 13, 2023, virtual public meeting were approved.

III. Chairperson Opening Remarks

Koses said the meeting’s format would differ from the usual format because there would be an extended version of the public engagement session, which would focus on the Notice of Proposed Rulemaking (NPRM) [Supporting Competition in the AbilityOne Program](#).

The extended session was in response to NPA requests for public discussion on the issue.

Koses observed that today’s economy is fundamentally different from that of 1938, when the AbilityOne Program was launched, or even 1971, when Congress made the most recent statutory update to the Program. Moreover, he said, there is a very different understanding today of the capabilities of the individuals the Program serves.

In response to this change, he said, the Commission has focused heavily on Program modernization. The hard work of modernization requires ongoing engagement and communication with stakeholders.

Koses said the Commission has been engaging with the Central Nonprofit Agencies (CNAs), the nonprofit agencies (NPAs) and Compliance Council, disability advocates, and other interested parties on key topics including the FY 2022-2026 Strategic Plan, proposed rules and policies, and general direction of the Program.

The Commission’s regular quarterly public meetings are among the avenues for such engagement, as are meetings with AbilityOne employees.

Koses said the Commission values and encourages stakeholder input.

He then mentioned highlights of Commission activity since the April 13 public meeting, including:

Legislative Proposals

On April 13, 2023, the Commission sent Congress 3 legislative proposals to amend the Javits-Wagner-O'Day (JWOD) Act by:

- 1) Changing the outdated name of the “Committee for Purchase From People Who Are Blind or Severely Disabled” to the “Commission for the Employment of People Who Are Blind or Have Significant Disabilities” and authorizing the Commission to make updates to the name in the future without further legislative action.
- 2) Authorizing the Commission to conduct pilot tests to require a lower minimum ratio of direct labor hours performed by employees who are blind or have significant disabilities in order to increase integrated workplaces and enhance employment opportunities for such employees, and to provide data that may inform Congress for purposes of modernizing the JWOD Act.
- 3) Promoting efficiency and effectiveness by shortening the required public notice period for Procurement List additions and deletions, and providing flexibility to publish the Procurement List in a location other than the Federal Register.

Koses said each proposal is important, including because:

- Proposal 1 is about the Commission owning its identity.
- Proposal 2 is about innovation, creativity and keeping up with changing market forces to create employment.
- Proposal 3 is about customer service, responsiveness, and speed.

Draft Compliance Policies

Since the previous public meeting, the Commission received feedback on [the three draft compliance policies](#) released earlier in 2023.

The Commission had invited comments because modernization requires ongoing engagement and communication with stakeholders, Koses said.

First In-Person AbilityOne Representative (ABOR) Meeting

On June 13, 2023, the Commission held its first-ever in-person¹ meeting of AbilityOne Representatives (ABORs).

There are currently 21 ABORs at Federal agencies, plus an additional 7 ABORs at Department of Defense components including the military services.

Koses said the ABORs are advocates for AbilityOne inside Federal agencies – they are AbilityOne champions supporting and helping to create opportunities.

Significant Anniversaries

Koses observed that some significant anniversaries fall during June and July, including:

- The Wagner O’Day Act (June 25, 1938), which became the JWOD Act
- The Americans with Disabilities Act (July 26, 1990)

Key anniversaries for the Commission also include:

- Policy No. 51.542, “Nonprofit Agency Use of AbilityOne Products in the Performance of AbilityOne Service Contracts” (signed July 20, 2022)
 - The policy is working, Koses said.
 - By adding a product to the Procurement List (PL), the Commission affirms that the product is high quality and reasonably priced for the Government customer. It follows that the product is also high quality and reasonably priced for NPAs.
 - It is time to show that the Program supports its own products, and, in doing so, help create and sustain AbilityOne jobs.
 - The Commission asked the CNAs to create an implementation plan for Commission Policy 51.542, and they worked with the NPAs to do that.
 - By the end of the first year under this policy, the Commission projects that \$3.7 million in sales of PL products will be captured on an annual basis going forward. This is \$3.7 million of AbilityOne sales that would otherwise not have happened.
- Final rule prohibiting payment of subminimum wages on contracts within the AbilityOne Program (issued July 21, 2022; took effect October 19, 2022)

Recognizing these significant anniversaries fuels the Commission’s determination to continue modernizing the Program, Koses said.

IV. Data Driven Partnering Efforts

Erville Koehler, Asst. Commissioner, General Services Administration (GSA)/Federal Acquisition Service (FAS), [discussed](#) GSA’s data-driven partnering efforts with the AbilityOne Program.

V. Executive Director Report

Executive Director Kim Zeich gave a [report](#), including on challenges recently mitigated and removed from the OIG’s Top Management and Performance Challenges Report, and the Commission’s focus on outreach and engagement.

VI. Presentation by Inspector General

Inspector General Stefania Porter provided an [update](#) on Office of Inspector General (OIG) activities.

VII. Competition Background and Context

This section of the meeting focused on the Notice of Proposed Rulemaking (NPRM) “[Supporting Competition in the AbilityOne Program](#),” which the Commission had issued on March 13, 2023.

William Sproule, Chief, Installation Support, Air Force - SAF/AQCA, and Marlin Paschal, Commission General Counsel, provided [background and context](#) on the NPRM.

VIII. Public Engagement

The Federal Register [notice](#) for the meeting had invited discussion on how the Commission can consider a nonprofit agency’s positive performance in improving employment opportunities for people who are blind or have significant disabilities, both within the AbilityOne workplace and placements outside the AbilityOne Program, in initial Procurement List additions, and in any competitive process covered by the NPRM “[Supporting Competition in the AbilityOne Program](#).”

Cassandra Assefa, the Commission’s Regulatory and Policy Counsel, moderated this section of the meeting. She began by providing [a quick overview](#) of the NPRM.

She then said the scheduled speakers in this section of the meeting had requested time to speak or were invited to do so based on their written comments or previous discussions.

Paul Courtney, Chief Procurement Officer, Department of Homeland Security (DHS)

Courtney said he has been an advocate of AbilityOne. DHS contracts with AbilityOne for many services and has strategic sourcing vehicles for PPE.

Prior to his current position, he was head of contracting at the FBI. While he was there, the FBI had issues with the performance of an AbilityOne contract and wanted to compete the contract while keeping it within the AbilityOne Program. The FBI was not able to compete the contract, Courtney said.

He thinks having competition in the Program might increase usage of AbilityOne, since Federal customers would not worry about being locked into a contract.

Koses recapped what he heard: that Courtney is not looking to compete between AbilityOne and the private sector, and is not looking to move requirements out of AbilityOne, but that there are times when competition is important, especially from a performance perspective.

Courtney agreed with Koses's summary. He also said he believed that competition could drive innovation.

Feldblum asked whether options for addressing performance issues during the contract might make resorting to competition unnecessary.

Courtney said typical contract remedies are used, and if the situation still isn't where it should be, competition can be a step to try to get the best value for the Government.

Calisti said, by way of example, that the Air Force had used remedies within a contract to address a performance issue with an NPA, and the NPA had not only fixed the issue, but gone on to perform so well that the installation in question was now considering turning to AbilityOne for another requirement.

Marie Campanoli, Vice President, Government Affairs, Skookum

Campanoli was representing not only Skookum but the National Council of SourceAmerica Employers (NCSE).

They applaud the Commission's efforts to improve the program, she said. They feel modernization is imperative, embrace the concept of competition, and recognize that many Federal stakeholders are eager for competition in the Program.

However, while they see much good in the proposed rule, they fear that, as currently written, the rule could result in the designation of AbilityOne contracts to the lowest bidder.

She cited an assistant site manager who, at SourceAmerica's Xforce Conference, described a scenario of feeling pressured to arrive at a lower price for a proposal and realizing that the only area in which he could significantly cut costs was labor. Moreover, he would feel the need to focus on the most productive employees.

Pricing pressure will disproportionately impact the most vulnerable employees in the Program, Campanoli said.

She also summarized some of the points Skookum raised in its comments in response to the proposed rule.²

Koses asked Campanoli to talk about the weighting of social impact versus technical capacity.

She said technical and past performance needs to be in the mix, but so does social impact.

He asked if it would be fair to say that the overriding concern in her comments was about overreliance on price and having the competitions be price driven.

She said yes, there is concern that the rule as currently written could be interpreted as meaning that price would be the most important factor. She would like to see the Commission be specific about how weighting of factors would happen during competition.

In answer to a question from Calisti about a dollar threshold, she said that contracts with a \$10 million in total contract value (as opposed to annual value) may be held by small nonprofits, which don't have the resources that larger ones do. It is a concern if the rule seriously impacts such small nonprofits, she said.

Sproule made some points about the considerations around weighting.

Feldblum asked Campanoli to talk further about weighting, and Campanoli reiterated the concern that an individual contracting officer might interpret the rule as meaning that price could be the most important factor. She also emphasized how expensive it for an NPA to provide supports for upward-and-outward mobility and similar employment supports.

Sproule asked Campanoli if she thought that proposal preparation costs would be significantly higher under the proposed competition rule, as opposed to the current process. If so, what would make the difference?

She said the difference was that NPAs would be doing more proposal preparation.

Commission private citizen member Chris Brandt said everyone is in agreement that there should not be a race to the bottom and that social impact is key. She wondered if there is confusion around what will trigger the competition process.

Campanoli said it is clear that competition will be at the customer's request, but she speculates that contracting officers may feel obligated to compete a contract even if they are delighted with the current NPA's performance. Would there be a way, she asked, to give contracting officers an "out" (via, say, a box to check) if they are delighted with the NPA's performance?

Julie Christensen, Executive Director, Association of People Supporting Employment First (APSE)

APSE is a member organization that serves those professionally involved in improving employment outcomes for people with disabilities.

Christensen said she has heard much feedback about the proposed rule, with sentiment ranging from total opposition to total support.

She said APSE believes in the importance of fiscal responsibility and oversight, and also believes that competition drives innovation and efficiencies.

She thinks that some of the pushback to the competition rule and Strategic Plan perpetuate the myth that people with disabilities cannot work competitively in an integrated environment.

APSE views AbilityOne as a jobs program. It should not be compared to disability services that are rehabilitative in nature, she said.

APSE agrees that the customer should be able to request a contract review annually if there are concerns related to technical issues or performance. However, APSE is not in favor of competition being prompted if price is the only issue at play. Ambiguity in the language of the proposed rule gives rise to concerns about competition driving towards the lowest bid, she said. She does not believe the proposed rule is clear enough about the weighting of price as a factor.

She said it is unrealistic for NPAs to assume that business costs associated with more traditional rehabilitative services and supports should be absorbed in the fair market price.

Regarding social impact, APSE agrees in theory that social impact is a factor that should be considered on some level in determining the outcome of competition.

To summarize, APSE would like to see 3 things:

- Clarification in the rule language in regard to if, and how, price factors into the initiation of competition.
- Clarification on how the Commission intends to ensure that the final determination of competition considers multiple factors and is not simply driven by price.
- Clarification from the Commission on how it intends to weigh social-impact factors.

Koses asked for her perspective on how the proposed rule would advance or inhibit efforts to increase competitive integrated employment (CIE).

Christensen said in her view the direction the Commission has outlined in its strategic plan is working towards moving the Program as close to CIE as is within its authority. She doesn't see the competition rule as in opposition to that goal.

Commission member Tara Jamison, who is Deputy Senior Procurement Executive and Director, Office of Acquisition Management, at the Department of Justice, asked if Christensen had insight as to whether the proposed rule might increase jobs within the Program, for instance by counteracting any reluctance a Federal agency might have to engage with AbilityOne.

Christensen spoke about looking at the bigger picture of organizations providing services and employment opportunities for people with disabilities.

Commission private citizen member Gabe Cazares thanked Christensen for observing that APSE views AbilityOne as a jobs program. He said the Commission sees the competition rule as one way to increase good and optimal jobs in the Program.

Larysa Kautz, President & CEO, Melwood

Kautz said there is a critical need for Federal agencies to carefully analyze and balance the costs and benefits of any new regulations. She asked the Commission to look at the data and make a final decision that fairly balances the benefits of price competition with the costs and the negative impacts, and to limit that competition so as to ensure that no harm is done.

She took issue with the proposed rule's discussion of the pilot tests at Fort Bliss and Fort Meade, because in her view it did not take into account: 1) the different scopes of the contracts, pre-competition versus during the competition; 2) the impact of the competition on employees, jobs and training; and 3) the impact of the competition on the incumbent and bidding NPAs. Failing to take these factors into account, she said, has led to incorrect conclusions about the proposed rule's benefits, and an underestimation of its costs. She asked that the Commission request a more in-depth analysis of the pilots and their outcomes, including a comparison of the scopes of the competed contracts with the previous contracts.

She also asserted that the pilots resulted, or would have resulted, in significant job losses, including, in the case of Fort Meade, a disproportionate number of lower wage, lower skilled positions being replaced with a smaller number of higher wage, higher skilled positions.

She said Melwood has been able to achieve cost savings at Fort Meade through bilateral negotiations. She suggested that such a process could be an alternative to competition or else a step to go through before a competition is mandated.

She urged the Commission to re-examine the conclusions that formed the basis for the NPRM; to ensure that the final rule reflects the AbilityOne mission; and to ensure there are adequate protections in place for both employees and NPAs. And she urged that reasonable limitations be placed on the ability to re-compete contracts.

Koses asked her to elaborate on what she sees as appropriate triggers for competition.

Kautz said a concern she has heard from government agencies working with the Program is that they feel stuck with a contractor forever, even if there are performance or price issues. If performance or price issues exist, she said, then competition is warranted, especially over a certain threshold. But she hopes there will be limitations before automatic competition at the behest of a contracting officer. Factors to take into account could include the customer's own inspections and quality reports, as well as some "neutral" way of looking at price.

Koses asked if she was saying that a trigger should be 1) the Federal agency thinks there is poor performance; 2) some type of independent review validates that there is poor performance; and 3) the agency is dissatisfied on price. Kautz said, yes, that summarized her perspective.

Since Kautz still had concerns about the threshold for competition, Paschal said the Commission would look at whether the language of the rule needed clarification.

Mark Riccobono, President, National Federation of the Blind

He said he welcomed the clear and consistent message from the Commission that the AbilityOne Program exists in service of advancing people with disabilities.

He said NFB is pleased to see the Commission making strides to align the AbilityOne Program with modern business practices, while also increasing transparency. He would like to see the Commission moving even faster.

He commended the Commission and its staff on ending the use of 14(c) certificates in the Program—a step NFB had long advocated for.

The Program should position itself to benefit people with disabilities, rather than long-standing institutions serving people with disabilities, he said.

He said NFB was committed to providing the Commission with feedback and data from people who are blind, and to helping the Commission navigate complicated questions.

He said NFB was pleased that Commission members and staff member attended the recent NFB convention. He invited the Commission to hold a public meeting at a future NFB convention.

Laurie Staph, President & CEO, Keystone Vocational Services

She said her agency is a small NPA that has products on the procurement list, as well as one large service contract for high-security clearances.

She voiced concerns about how the proposed rule would affect small NPAs like hers. Adding price as a factor, she fears, would make the playing field even more uneven for small NPAs, since larger NPAs will have the upper hand when it comes to price. She also worries that the proposed rule would reduce opportunities for people who have the most barriers to employment.

But she also said that, if there are quality issues, competition should come into play as long as all other avenues of remediation have been exhausted.

Koses asked how she defined “small NPA.” She defined it as an NPA that doesn’t have much Federal work.

Cazares noted that he and the other private citizen Commission members are keenly aware of, and have lived experience with, the perceived barriers that the mainstream economy sees when trying to integrate people with disabilities into the workforce. When approaching rules, policies and guidance, he said, the Commission members are taking the approach of “First: Do no harm.”

Feldblum amplified that the approach was not only “First: Do no harm” but also “And do good.”

James Rankin, Acquisition Division Chief, U.S. Army Installation Management Command (IMCOM)

He said his commander's bottom-line imperatives are that every installation deliver superior base support that enables Army readiness and provides highest quality of life for soldiers, families and civilians. AbilityOne NPAs help IMCOM accomplish these goals, he said.

IMCOM supports efforts to introduce competition into the Program. He said the Fort Bliss Competition Pilot Test, which IMCOM conducted, resulted in cost savings of millions of dollars. IMCOM has more recently worked on competing the Fort Knox contract.

He said he could not over-emphasize the importance of competition in the Program, especially since IMCOM has been asked to take on new missions, and sustain an aging infrastructure, with fewer dollars in the face of future budget constraints and high inflation.

He believes the proposed rule change has the potential to not only generate savings but also grow the AbilityOne Program.

Koses asked Rankin what the biggest benefit of competition was to IMCOM. Rankin answered that competition allows for innovative ways of doing business and achieving savings.

Koses asked whether cost savings at Fort Meade were attributable to changes in requirements. Rankin said, no, changes in requirements happen all the time, and IMCOM regularly examines contract requirements to see if any are unnecessary or outdated.

Calisti asked how Rankin thinks the proposed rule on competition will affect discussion of AbilityOne when IMCOM approaches re-competes (of contracts). Rankin said it might increase willingness to consider AbilityOne as a solution. Competition decreases complacency, he said.

Jeffrey Mittman, CEO of Bosma Enterprises, Indianapolis, and President, National Association for the Employment of People Who Are Blind (NAEPB)

He observed that the meeting had already touched on NAEPB's concerns about the dollar threshold set out in the rule and how that would affect smaller NPAs.

He also said that several NAEPB agencies provide jobs that are Competitive Integrated Employment (CIE).

A lot of the concern with regard to the rule centers on what exactly would trigger a competition, he said. More clarity on that issue would be appreciated.

Bartholomew Devon, Senior Director of Government Relations, Eggleston

He said the JWOD statute is an antique that needs a major overhaul rather than tweaks, and only Congress can address that.

He said the public has an outdated or incorrect understanding of AbilityOne.

He believes the power dynamics inside the AbilityOne community are unbalanced, since the various entities aren't operating as a single community with a single purpose. He thinks the Commission, CNAs, and NPAs need to come together as a team with a shared focus.

Jo Sinha, Chief Executive and Inclusion Officer, Peckham

She pointed out the importance of including the voices of AbilityOne employees in discussions.

She asked for more clarity not only on what triggers competition but on what happens after a competition is triggered, and what the time frame looks like.

She thinks the uncertainty caused by confusion around competition could drive prices up, as people factor the uncertainty into their pricing.

Lisa Montalbano, CEO, Employment Horizons, Inc.

She asked for more clarity on the dollar threshold.

IX. Concluding Remarks

Koses thanked participants and said the conversation would continue. He adjourned the meeting.

Meeting Attendees

More than 200 people attended, including:

Commission Members

Jeffrey Koses, Chairperson

Chai Feldblum, Vice Chairperson

Chris Brandt

Gabe Cazares

Megan Dake

General Services Administration

Private Citizen

Private Citizen

Private Citizen

Department of the Army

Carol Dobak
Robert Hogue
Tara Jamison
Jennifer Sheehy

Department of Education
Department of the Navy
Department of Justice
Department of Labor

Scott Calisti
(subsequently appointed to the Commission by President Biden, effective July 19, 2023)

Department of the Air Force

Scheduled Speakers

Paul Courtney
Marie Campanoli
Julie Christensen
Larysa Kautz
Mark Riccobono
Laurie Staph
James Rankin

Department of Homeland Security
Skookum /NCSE
Association of People Supporting Employment First
Melwood
National Federation of the Blind
Keystone Vocational Services
U.S. Army IMCOM

¹ An in-person meeting had not previously been held because the ABOR program was launched during the COVID-19 pandemic.

² Comments in response to the NPRM “Supporting Competition in the AbilityOne Program” can be found by searching for RIN 3037-AA14 on www.regulations.gov.