

**U.S. AbilityOne Commission**  
**Final Rule “Supporting Competition in the AbilityOne Program”**  
**Frequently Asked Questions**  
**March 21, 2024**

**1. Why is a rule “Supporting Competition in the AbilityOne Program” needed?**

In the 2017 National Defense Authorization Act, Congress directed the Secretary of Defense to establish a “Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity” and tasked it with making several recommendations, including ways the Defense Department and the U.S. AbilityOne Commission (Commission) may explore opportunities for competition among qualified nonprofit agencies (NPAs). The rule also enables the Commission to implement recommendations developed by the panel, including those applicable to the AbilityOne Program’s civilian government agency customers. Additionally, the Commission recognizes that establishing a means for limited competition within the AbilityOne Program can help protect existing AbilityOne jobs from insourcing or other procurement actions while also rewarding nonprofit agency actions to support employee career development.

**2. When was the rule “Supporting Competition in the AbilityOne Program” initially published and what was the process to finalize it?**

On March 13, 2023, the Commission issued a Notice of Proposed Rulemaking (NPRM) in the Federal Register to clarify the agency’s authority to set fair market prices; to create a competitive process, inclusive of price, in the distribution of opportunities for selected services on the procurement list; and to set forth the agency’s authority to authorize and deauthorize NPAs as mandatory sources. The initial comment period was open for 60 days and was extended another 30 days. Additionally, the Commission held informal listening sessions with stakeholders, including devoting two hours to stakeholder feedback on the rule at the agency’s July 2023 quarterly public meeting.

The Commission carefully considered all comments received and, as a result, revised the rule in several key areas. As required, the Commission submitted a final rule to the Office of Management and Budget (OMB) for interagency review. Some additional revisions were made to the rule during the interagency process. Once the rule received clearance from OMB, the Commission members unanimously approved the final regulatory changes. The final rule will be published in the Federal Register on March 22, 2024, with an effective date of April 22, 2024.

**3. What key changes were made between the NPRM and the final rule, including the preamble?**

The final rule includes substantive changes that limit the scope of the rule and make several safeguards, as well as AbilityOne mission priorities, more explicit. Specifically,

- The dollar threshold to request competition was bifurcated. For DoD and its components, the threshold for competition requests is \$50 million total project value. For civilian agencies, the threshold remains \$10 million total project value, in recognition of the lower base value for such requirements.

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- The final rule addresses price in three other ways. It states that price shall not have greater weight than the non-price factors in a competition. Additionally, the final rule states that a competition shall not be approved by the Commission due to failed, good faith bilateral price negotiations (i.e., a price impasse), until the parties have exhausted all administrative remedies. The final rule also limits those impasse-related competitions to service requirements that exceed \$1 million in total project value.
- The final rule requires that all requests for competition under this process must come from a Federal agency Senior Executive or Flag or General Officer, and competition can only take place if approved by the Commission. It also specifies that the Commission must, at a minimum, consider the suitability criteria under its regulation at 41 C.F.R. 51-2.4 before approving a competition.
- In response to public comments, the final rule explicitly directs the CNA to consider criteria or subcriteria related to training and placements, and employment opportunities, at the same time that it evaluates price and non-price factors for the competitions. The preamble explains that training and placements refer to employee career development activities undertaken by an NPA.
- Administratively, the final rule is reorganized, and terms are amended to ensure consistency throughout the rule, where appropriate.

**4. Will the final rule be implemented immediately? When can Federal agencies request competition?**

The Commission intends to engage in a collaborative process with AbilityOne Program stakeholders as it considers how best to implement the rule changes throughout the Program. After the rule is effective on April 22, 2024, the Commission will establish policies and procedures before full scale implementation.

**5. How many AbilityOne services and AbilityOne contractors are covered by the rule?**

Compared to the NPRM, the final rule reduces the number of AbilityOne services that could be considered for re-competition from approximately 346 to 155. Approximately 63 out of 413 nonprofit agencies participating in the AbilityOne Program perform one or more services to which the rule applies; this is about 15 percent of the AbilityOne NPA network.

**6. What criteria will the Commission consider in determining whether to approve a Federal agency request for competition?**

The rule identifies certain thresholds or standards for a service requirement to be subject to competition, such as the dollar value of the total project and the organizational level within the Federal agency that may request competition. The final rule states that a competition shall not

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be approved by the Commission due to failed, good faith bilateral price negotiations (price impasse), until the parties have exhausted all administrative remedies. The final rule also limits those impasse-related competitions to service requirements that exceed \$1 million in total project value. Additionally, the rule states that the Commission must, at a minimum, consider the suitability criteria under its regulation at 41 C.F.R. 51-2.4 before approving a competition. The Commission will establish additional implementing policies and procedures that explicate these thresholds and standards, or identify other criteria the Commission will use in determining whether to approve a request for competition.

**7. How does the final rule address price as a factor in competition?**

The final rule helps the Commission modernize the AbilityOne Program by balancing two important objectives. First, it advances competition within the Program, including price as well as non-price factors. Second, it ensures that competition considers AbilityOne NPA employers’ capability to provide opportunities that promote the Program’s employment and career development objectives for individuals who are blind or have significant disabilities.

The rule addresses the longstanding request of AbilityOne Program Federal customers to provide a limited competition process within and among AbilityOne NPAs that includes consideration of price as one of multiple factors when service requirements proposed for addition to the AbilityOne Program’s Procurement List, or service requirements already on the Procurement List, meet certain thresholds. At the same time, the rule contains several safeguards requested by AbilityOne Program participants by requiring such competitions to consider criteria or subcriteria that address the nonprofit agency’s capability to provide opportunities related to training and placements, as well as employment, for individuals who are blind or have significant disabilities. Other safeguards include limiting the weight of price as a factor in competition, and ensuring that incumbent employees have the right of first refusal if the responsible AbilityOne contractor changes through a competition.

**8. How does the final rule support employees in the AbilityOne Program?**

The final rule supports AbilityOne employees in two ways. First, the rule is designed to increase the attractiveness of the Program to encourage continued customer participation in the AbilityOne Program (sustaining current jobs), and to incentivize the addition of new opportunities for good and optimal jobs, consistent with the Commission’s Strategic Plan.

Second, the final rule states that when a competition has been approved, the selection official must consider criteria or subcriteria related to training and placement, and employment opportunities for AbilityOne employees. This explicit requirement addresses the concern noted in many comments to the proposed rule that price competition might reduce the number of individuals who are blind or have significant disabilities who are hired, might result in the substitution of employees whose disabilities are not as significant as those of other employees, or might hinder AbilityOne NPAs’ investments into employee career development activities.

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As stated in the preamble published with the final rule, a clearly stated social policy objective of the AbilityOne Program is to increase training, employment and placement opportunities for individuals who are blind or have other severe disabilities through the purchase of commodities and services from qualified nonprofit agencies employing persons who are blind or have other severe disabilities. The Commission’s work updating its compliance policies, following issuance of its Strategic Plan, reflects the Commission’s commitment to enhancing the employment aspects of the Program. For example, in November 2023, the Commission finalized Commission Policy 51.400, which introduced the long-term objective of providing job individualizations, employee career plans, and career advancement programs.

Until the Commission updates its regulations with terminology addressing the activities described above, the Commission has determined that the most appropriate way to promote these types of activities is to use existing regulatory language regarding training and placement opportunities. The final rule makes clear that the Commission will approve competitive evaluation criteria or subcriteria that support these types of opportunities.

**9. In addition to clarifying the Commission’s authority to consider price competition among the methodologies to establish the initial Fair Market Price for Procurement List work, does the rule clarify other authority(ies)?**

The final rule clarifies and explicates the Commission’s authority to authorize and deauthorize NPAs as mandatory sources. The final rule requires authorized NPAs that assume responsibility for an existing AbilityOne contract (successor NPAs), whether or not as the result of competition, to provide the right of first refusal of employment to the prior NPA’s current employees who are blind or have other significant disabilities for positions for which they are qualified. Additionally, the final rule requires deauthorized NPAs to disclose necessary personnel records in accordance with all applicable laws protecting the privacy of the employee to allow the successor nonprofit agency to conduct interviews with those identified employees.