



U.S. ABILITYONE COMMISSION

Policy 51.301-04
Effective Date: 05/01/2025

TITLE: COMPETITIVE DISTRIBUTION OF ORDERS TO NONPROFIT AGENCIES FOR NEW AND EXISTING SERVICES ON THE PROCUREMENT LIST

1. PURPOSE.

To serve as an interim framework for executing competitive distributions between nonprofit agencies (NPAs) to achieve greater AbilityOne Program (Program) transparency, spur innovation, and enhance training, placement, and employment opportunities for AbilityOne-participating employees at a competitive price.

2. APPLICABILITY.

- (a) This policy applies to **new** Procurement List (PL) service requirements estimated to exceed \$50 million in total project value for Department of Defense (DoD) agencies and \$10 million in total project value for non-DoD entities.
- (b) This policy applies to **existing** PL service requirements estimated to exceed \$75 million in total project value for DoD agencies and \$25 million in total project value for non-DoD entities.
- (c) This policy also applies to existing PL service requirements valued at more than \$5 million in total project value that have entered an “impasse” as defined by U.S. AbilityOne Commission (Commission) Policy 51.640.

3. AUTHORITY.

- (a) 41 U.S.C. §§ 8501-8506, Javits-Wagner-O’Day (JWOD) Act
- (b) 41 C.F.R. 51, Committee for Purchase From People Who Are Blind or Severely Disabled
- (c) U.S. AbilityOne Commission Policy 51.301, Procurement List and the NPA Selection Framework.

4. DEFINITIONS AND ACRONYMS.

Definitions, abbreviations, and acronyms frequently used throughout the Commission’s policy system are provided in Policy 51.102 and 51.301 or defined in this document. Whenever the term “day” or “days” is used within this document, it means calendar days, unless otherwise specified.



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5. RESPONSIBILITIES.

(a) The Commission will:

- i. Establish an AbilityOne Competition Subcommittee (AOCS) to oversee and approve all requests for competitive distributions in accordance with 41 C.F.R. 51-3.4(b).
- ii. Determine whether a competitive distribution is appropriate for each request accepted for competition and serve as the final approval authority for NPAs selected to participate in a competitive distribution.
- iii. Approve the evaluative criteria to be used by the CNA for each NPA selection decision as required by 41 C.F.R. 51-3.4(d).
- iv. Establish a long-term policy and procedures no earlier than three (3) years after the implementation of this interim policy.

(b) The AOCS will:

- i. Approve or disapprove requests from federal government entities (FGEs) for a competitive distribution in accordance with 41 C.F.R. 51-3.4(b) and any directed competition in accordance with 41 C.F.R. 51-3.4(e).
- ii. Update the Commission on an annual basis on the status of the competition schedule, potential problems, and recommendations for improving this policy.

(c) The Executive Director shall:

- i. Oversee the implementation of this policy and ensure that the CNAs' NPA recommendation process is conducted in a transparent and equitable manner.
- ii. Prepare a Decision Document for the Commission with CNA and staff recommendations as to the suitability of each approved request for competition.
- iii. Ensure the appropriate Federal Register notices have been provided in accordance with 41 C.F.R. 51-3.4(d).
- iv. Approve CNA procedures for conducting competitive distributions in accordance with 41 C.F.R. 51-3.4 (c) and (d).
- v. Provide a written recommendation to the AOCS for any competition request resulting from failed bilateral negotiations (price impasse).
- vi. Enter into a Memorandum of Agreement (MOA) as described in Sec. 7(c) on behalf of the Commission for all approved requests for a competitive distribution.

(d) The CNA shall:

- i. Post Opportunity Notices (ONs) in accordance with Commission Policy 51.301-02 and ensure NPAs are aware of potential competitive opportunities, including summarizing the scope of the competition.
- ii. Provide guidance and assistance to the NPAs when responding to the ON.

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- iii. Ensure sufficient coordination with the FGE during the requirement development stage the CNA recommendation process, evaluation, and NPA selection.
 - iv. Evaluate NPAs and make a recommendation to the Commission on the availability of capable NPAs and the suitability of an action proposed for a competitive distribution in accordance with the procedures described in Commission Policy 51.301-02.
 - v. Execute all competitive distributions in accordance with this policy, approved procedures, and applicable Commission guidance.
- (e) The FGE shall:
- i. Provide requests for competitive distributions in accordance with this policy and procedures.
 - ii. Develop the requirements documents and provide the resources (evaluators) to assist with reviewing and evaluating the responses to NPA ONs (cost/price, technical, past performance, etc.).
 - iii. Assist the CNA with developing the ON to reflect the FGE requirements.
 - iv. Assist the Commission and/or CNA with logistical support (site surveys, staff visits, etc.) to assist with the NPA evaluation process on an as-needed basis.

6. POLICY.

Section 898(a)(1) of the National Defense Authorization Act (NDAA) for Fiscal Year 2017 directed the Secretary of Defense to establish a panel of senior level representatives from the Department of Defense (DoD) agencies, the Commission, and other Federal Government agencies to address the effectiveness and internal controls of the Program related to DoD contracts. The most germane finding from that Panel called on the Commission to implement a price-inclusive competitive NPA selection process for new and existing PL requirements.

On March 22, 2024, the Commission issued a final rule to carry out the Panel's recommendation, with an effective date of April 22, 2024. This policy and related procedures represent the Commission's commitment to implement this rule in a deliberate and thoughtful manner. More specifically, though the Commission's regulation permits the agency to consider requests for competitive distributions for existing PL requirements at a much lower threshold (\$50 million for DoD, \$10 million for non-DoD, and \$1 million for price impasse), the Commission will only consider requests at the higher threshold established at paragraph 2(b) of this policy. This policy also directs the creation of the AOCS, which will ensure that stakeholder interest is incorporated throughout the implementation of the final rule and updating of this policy.

Lastly, it is the policy of the Commission to only approve a competitive distribution when competition is expected to (1) advance the Commission's commitment to creating good and optimal jobs for participating employees while (2) providing services at the "best value" for the Federal Government. In the AbilityOne Program, "best value" is achieved through a holistic

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evaluative process that begins with “authorizing” the most capable NPAs to participate in a competitive distribution and ends with selecting the single NPA that can provide the best overall solution to the Federal customer, after considering technical capability, past performance, price, and the ability to create employment and career development opportunities for participating employees.

7. PROCEDURES.

- (a) **Composition of the AOCS.** The AOCS shall be established no later than 30 days after the implementation of this policy through a written memorandum from the Commission Chairperson and shall consist of up to five (5) voting members. Voting members must be Commissioners, and the Chair of the AOCS shall be the most senior procurement professional of the voting members. In addition to voting members, the AOCS membership will include two (2) non-voting members from each CNA.
- (b) **Requests for a Competitive Distribution from an FGE.** All requests for competition must be sent to the AOCS within the timeframes described below. Once received, the AOCS has 60 calendar days to approve or disapprove a request for competition.
 - i. New PL Requirements: All requests to compete requirements not currently on the PL must be received by the AOCS no earlier than 36 months and no later than 18 months before the start of the expected period of performance, unless extenuating circumstances exist. A request for a competitive distribution must be made in writing from a senior executive service (SES) civilian, or a General or Flag officer. Each request must contain the following information:
 - a. General information about the service requirement (type of service, location, magnitude, scope, etc.).
 - b. The rationale for requesting a competition.
 - c. The most significant criteria for selecting a potential contractor.
 - d. Information about the FGE’s willingness to provide the necessary personnel and logistical support to assist with NPA selection.
 - e. The Independent Government Cost Estimate (IGCE)
 - f. The servicing contracting activity and point of contact information.
 - g. Any other information relevant to understanding the requirement.
 - ii. Existing PL Requirements: All requests to compete requirements currently on the PL must be received by the AOCS no earlier than 24 months and no later than 12 months before the start of the expected period of performance, unless extenuating circumstances exist. A request for a competitive distribution must be made in writing from a senior executive service (SES) civilian, or a General or Flag officer. Each request must contain the following information:

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- a. General information about the service requirement (type of service, location, magnitude, scope, etc.).
 - b. The rationale for requesting a competition.
 - c. The most significant criteria for selecting a potential NPA contractor.
 - d. All past performance information for the NPA currently performing the work. If a DoD contract, please provide the Contractor Performance Assessment Reporting System (CPARS) reports for the last three (3) years.
 - e. Information about the FGE's willingness to provide the necessary personnel and logistic support to assist with NPA selection.
 - f. The Independent Government Cost Estimate (IGCE)
 - g. The name of the servicing contracting activity and point of contact information.
 - h. Any other information relevant to understanding the requirement.
- iii. Existing PL Requirements (price impasse): An FGE cannot directly request a competitive distribution due to a price impasse. Instead, a competition based solely on pricing concerns may only be **directed by** the AOCS after receiving a recommendation from the Executive Director. The Executive Director's recommendation must include the business cases from the FGE and NPA and a detailed discussion that explains why continued negotiations or other pricing methodologies are unlikely to resolve the dispute. The recommendation package must also include a letter of support from the FGE, and the following information:
- a. All past performance information for the NPA currently performing the work. If a DoD contract, please provide the Contractor Performance Assessment Reporting System (CPARS) reports for the last three (3) years.
 - b. A statement containing the FGE's willingness to provide the necessary personnel and logistic support to assist with NPA selection.
 - c. The Independent Government Cost Estimate (IGCE)
 - d. The name of the servicing contracting activity and point of contact information.
- iv. AOCS Decision: The AOCS shall decide a request within 60 calendar days, unless additional documentation is needed. If the AOCS decides to approve a request (based on a majority vote of the AOCS), a decision memorandum will be sent to the FGE and CNA indicating approval, with instructions on how to proceed. If the AOCS disapproves a request, a decision memorandum shall be sent to the FGE that formally explains the basis for disapproval. The AOCS decision is final. No request for reconsideration will be granted.
- v. Work Performed at a NPA-Owned Facility: If the work under the incumbent contract is being performed at a NPA-owned facility, a request for a competitive distribution **shall not be approved** unless the AOCS has certified that the

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performance issues are so pervasive that replacing the NPA under this policy is the most effective means for keeping the work in the Program *and* satisfying the needs of the FGE.

- (c) **Establishing a Memorandum of Agreement.** The purpose of the MOA is to ensure that all parties involved understand their roles, responsibilities, and important milestones throughout the entire process. The Executive Director shall execute a Memorandum of Agreement (MOA) on behalf of the Commission with the appropriate CNA and FGE (Parties). Each MOA shall, at a minimum, contain the following information:
- i. The content of the MOA shall include the Purpose, Competitive Procedures, Milestones, Modification Rules, Disputes, Effective Date and Termination of Agreement.
 - ii. 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 ONs. The FGE shall provide the Contract Package Materials prior to issuing the ON.
 - iii. The evaluation criteria shall be agreed upon amongst the Parties prior to issuing the ON. 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, and Price. The MOA will also include the criteria the CNA will use to determine each NPAs capability to support employment and career development opportunities.
 - iv. Criteria may be weighted, but price shall not have greater weight than the non-price criteria when combined, except for competitive distributions directed by the AOCS in accordance with paragraph 7(b)(iii) of this policy.
 - v. The CNA shall issue the ON to all NPAs in their network unless a Source Limitation document has been approved by the AOCS establishing any restrictions.

7.1. The AbilityOne Competition Framework: An AbilityOne competitive distribution will consist of two (2) interrelated phases. The first phase will focus on the Commission's role in making the suitability determination and authorizing two (2) or more NPAs to participate in a competitive distribution. The second phase consists of the responsible CNA evaluating and distributing an order to the authorized NPA that can provide the "best value" to the Federal customer and best meet the mission of the Program. The FGE will provide support throughout both phases, but most significantly in phase two (NPA evaluation and the competitive distribution).

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- (a) **Phase One.** This phase begins after the AOCS has approved a request and a MOA has been established. It ends and phase two begins if the Commission determines through a written Decision Document that a competitive distribution is appropriate and authorizes two (2) or more NPAs to participate in the phase two competitive distribution. If the Commission determines that a competitive distribution is not appropriate, phase one will end, and phase two will not take place. To facilitate phase one, the CNA and Executive Director shall accomplish the following:
- i. CNA Recommendation Process: The CNAs, either separately or jointly, shall establish written procedures for governing how the CNA will evaluate criteria and recommend capable NPAs to the Commission for participation in a competitive distribution. These written procedures must be submitted to the Executive Director (or delegate) no later than 60 days after the implementation date of this policy. The CNAs procedures shall contain, at a minimum, the following:
 - a. The process for issuing an ON.
 - b. Allowable evaluative criteria, consistent with the criteria set forth in Commission Policy 51.301-02.
 - c. Standards for assessing NPA management capability, experience, and the NPA's history/capability for providing employee career development.
 - d. The process for conducting evaluation of NPA ON responses.
 - e. NPA debriefing procedures.
 - f. Information about NPA's right to dispute a CNA recommendation and how to appeal to the Commission.
 - ii. Decision Document: The Executive Director (or delegate) is responsible for preparing and submitting the CNA and staff recommendations to the full Commission through a written decision document. The decision document shall contain all the necessary information to allow the Commission to make a suitability determination in accordance with 41 C.F.R. 51-2.4. Additionally, the decision document for a competitive distribution shall contain, at a minimum, the following assessments and determinations:
 - a. A formal determination that this requirement is or is not suitable for a competitive distribution.
 - b. The names of the NPA(s) recommended for authorization and/or a written determination explaining why a recommended NPA was not authorized.
 - c. The evaluative criteria approved by the Commission for the phase two competitive distribution, consistent with the criteria set forth in Commission Policy 51.301-02.

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- d. The method for establishing the fair market price (FMP) and any other pricing limitations.
 - e. If applicable, a determination that the impact on the incumbent NPA is outweighed by a potential competition. If the incumbent NPA provides written comment, those comments shall be included as an attachment for Commission members to consider.
 - f. An impact analysis on the incumbent workforce. Note: If the work under the incumbent contract is being performed at an NPA-owned facility, a competitive distribution **shall not** be approved unless the AOCS has certified that the performance issues are so pervasive that replacing the NPA is the most effective means for keeping the work in the Program and satisfying the needs of the FGE.
- iii. Federal Register Publication: If the Commission approves a competitive distribution, the Executive Director shall ensure that the names of the authorized NPAs, the service requirement, approved phase two evaluative criteria, any limitations on setting the FMP, and information about the responsible contracting activity shall be published in the Federal Register (FR) no later than 10 days after the Commission's final vote has been certified by the Executive Director.
- (b) **Phase Two**. This phase shall immediately commence after the publication of the FR notice described at 7.1(a)(iii). Only those NPAs authorized and identified in the FR notice shall be permitted to compete in phase two. The CNAs, either separately or jointly, shall establish and submit procedures for evaluating authorized NPAs and selecting a single NPA using criteria that include technical capability, past performance, price, and any other criteria or subcriteria specific to the service requirement. In addition, the procedures shall include a method for considering criteria or subcriteria that address the NPA's capability to provide employee career development for participating individuals. These procedures shall be completed and submitted to the Executive Director within 60 days of the implementation date of this policy. The CNA's phase two procedures shall include, at a minimum, the following:
- i. Standards for assessing the approved Commission evaluative criteria and subcriteria.
 - ii. The process for conducting evaluation of NPA responses.
 - iii. How NPAs (successful and unsuccessful) will be notified of the distribution decision
 - iv. NPA debriefing procedures.
 - v. Information about NPA's right to dispute a CNA distribution decision, and appellate rights.
 - vi. A standardized process for completing an after-action report (AAR) for each competitive distribution that provides the results of each competition, the basis for

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each selection decision, the final price, and recommended best practices for future competitions.

7.2. Disputes and Appeals.

- (a) **Disputes.** Any dispute arising out of a competitive distribution decision described at 7.1(b) of this policy shall be submitted to the appropriate CNA for resolution within 10 days of being notified of the distribution decision, unless a debrief is requested. If a debrief is requested, an NPA may file a dispute with the appropriate CNA for resolution within five (5) days of receiving a debrief. The CNA has up to 15 calendar days to provide a resolution decision to a dispute arising under this policy.
- (b) **Appeals.** If the NPA(s) not selected disagrees with the CNA's resolution of the dispute, it may appeal that decision to the Commission for final resolution. Appeals must be filed with the Commission within five (5) business days of the NPA's notification of the CNA's resolution decision, and only an NPA that participated in the competitive distribution process described in this policy may file an appeal. The Commission's Ombudsman is the decision authority for appeals arising under this policy. The Ombudsman has up to 30 calendar days to provide a written resolution on an appeal. Appeals are limited to the following matters:
- i. Appeals may not challenge the judgment of the deciding official (or dispute resolution official), but may appeal a failure to follow Commission policy, procedures, or FR notice directives.
 - ii. Failure to follow the parameters established in the ON.
 - iii. The Ombudsman will only consider the facts and arguments raised during the 7.2(a) dispute proceedings. New facts and arguments may not be raised on appeal.

While a matter is pending an appeal, Commission notification to proceed with a contract award will automatically be stayed until the Ombudsman issues a written resolution. A written resolution issued by the Ombudsman is final, but a request for reconsideration is permitted. A request for reconsideration will not extend the automatic stay provision of this policy.

7.3. Post-Award Activities.

- (a) Based on Commission staff, CNA, and FGE inputs, the AOCS shall assess the results of each completed competition to ensure appropriate staff and CNA administration and to determine the best practices that may be leveraged for future competitions.
- (b) The AOCS is responsible for ensuring the results from each competition are provided to the Commission on an annual basis.

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8. EXCEPTIONS.

The Commission Chairperson is the proponent of this policy. Exceptions to this policy or related procedures are permitted with written approval from the Executive Director. Any responsibilities assigned to the Executive Director may be delegated in accordance with Commission Policy 51.205.

9. SUPERSESSION.

None.



APPROVED: _____ Date: _____

Robert D. Hogue
Chairperson