

U.S. AbilityOne Commission

Tribal Consultation Plan



April 26, 2021

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I. Introduction

This Plan complies with the Presidential Memorandum (2009 Presidential Memorandum) issued November 5, 2009, directing agencies to develop a plan to implement Executive Order 13175 [“Consultation and Coordination with Indian Tribal Governments”](#) (Executive Order) issued November 6, 2000. The Executive Order specified that each Agency must have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. On January 26, 2021, President Biden reinforced this Executive Order and the 2009 Presidential Memorandum by issuing [“Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships”](#) (2021 Presidential Memorandum).

II. Background

The [U.S. AbilityOne Commission](#)¹ oversees the AbilityOne Program, one of the largest sources of employment in the United States for people who are blind or have significant disabilities. Our mission is to provide employment opportunities for this underserved population in the manufacture and delivery of products and services to the Federal Government. Our vision is to enable all people who are blind or have significant disabilities to achieve their maximum employment potential.

More than 42,000 people who are blind or have significant disabilities, including approximately 3,200 veterans, are employed in private sector jobs through AbilityOne contracts at approximately 500 nonprofit agencies nationwide, across 15 time zones, from Maine to Guam. AbilityOne employees empower themselves economically while delivering high value and performance to Federal customers. People who are blind or have significant disabilities have the lowest employment level of any segment of American society, across all age groups and at all levels of educational attainment.²

AbilityOne provided nearly \$4 billion in products and services to the Federal Government in FY 2020. The Program operates at more than 1,000 locations, representing 40 Government agencies, including more than 150 Base Supply Centers at military and Government installations.

The Commission is an independent Federal agency composed of 15 Presidential appointees: 11 represent Federal agencies, and four serve as private citizens who are knowledgeable about employment barriers facing people who are blind or have significant disabilities. The Presidential appointees are supported by a staff of approximately 30 employees who maintain Commission operations and prepare materials required by law, regulation and policy to inform the decisions made by the Presidential appointees. The Commission also has an Office of Inspector General (OIG).

The Commission designates Central Nonprofit Agencies (CNAs) to facilitate the employment of people who are blind or have significant disabilities. Commission oversight of the AbilityOne

¹ The U.S. AbilityOne Commission is the operating name of the Committee for Purchase From People Who Are Blind or Severely Disabled.

² Department of Labor, Bureau of Labor Statistics. “Persons with a Disability: Labor Force Characteristics Summary – 2020.” <https://www.bls.gov/news.release/disabl.nr0.htm> (retrieved April 26, 2021).

Program includes cooperative agreements with two CNAs: National Industries for the Blind and SourceAmerica. Commission-designated CNAs are private entities.

As the AbilityOne Program operates in all 50 States, some of the participating NPAs' headquarters or contract performance locations are near tribal territories. Program demographic data shows that a small percentage of self-identified Native American employees participate in the Program. The Commission recognizes that (1) there are additional, acquisition-focused programs that offer opportunities for Native American corporations and workers, such as the Small Business Administration's Alaska Native Corporation (ANC) set-aside program, and (2) the Native American population may disproportionately experience blindness, visual impairment, or significant disabilities.

The Commission is committed to pursuing opportunities for greater participation in the AbilityOne Program by Native Americans, in accordance with the President's Executive Order, as it works to expand employment and growth for all people who are blind and have significant disabilities.

The Commission plans to consult on a government-to-government basis with Federally recognized tribal governments when Commission actions and decisions beyond the Agency's prescribed, regulatory Procurement List process may directly affect tribal interests. Consultation is a process of meaningful communication and coordination between the Commission and tribal officials prior to the Commission taking such actions or implementing such decisions. As a process, consultation includes several methods of interaction that may occur at different levels. The appropriate level of interaction will be determined by adjustments made through this Plan, and dialogue between the Commission and tribal governments.

This Plan establishes guidelines and institutional controls for consultation across the Program. The Commission has the primary responsibility for consulting with tribes, but reserves the right to work through, and with, the CNAs when executing these engagements. All AbilityOne Program and CNA consultation plans and practices must be in accordance with this Commission Plan.

The goal of this Plan is to strike a balance between providing sufficient guidance for purposes of achieving consistency and predictability while allowing for, and encouraging, the tailoring of consultation approaches to reflect the circumstances of each consultation situation unique to the impacted tribal governments. The consultation process is further detailed in Section IV of this document.

III. Definitions

- A.** "Indian tribe" or "tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1944, 25 U.S.C. 479a.
- B.** "Tribal official" means an elected, appointed, or designated official or employee of a tribe.

C. “Indian country” means:

- All land within limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;
- All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and
- All Indian allotments, the Indian titles which have not been extinguished, including rights-of-way running through the same.

IV. The Consultation Process

To the fullest extent possible, the Commission plans to use existing business operations to put this Plan into effect.

Not only does the Commission determine what requires consultation; tribal officials may request consultation as well. The Commission will make its best effort to honor the tribal government’s request in view of available resources, timing considerations given the nature of the activity, past consultation efforts, and other relevant factors.

Consultation at the Commission will consist of four phases: Identification, Notification, Input, and Follow-up.

- A. **Identification Phase:** The Commission identifies activities that may be appropriate for consultation, using mechanisms described in Section V.B. below. The Identification Phase will be based on a determination of the complexity of the activity, its potential implications for tribes, and time and/or resource constraints relevant to the consultation process. This phase should include an annual identification of the potentially affected tribe(s).
- B. **Notification Phase:** The Commission notifies tribes of activities that may be appropriate for consultation. Notification may occur through telephone, e-mail, mail, or other means, with tribal preference for mode of contact. Notification should include enough information for tribal officials to make an informed decision about the desire to continue with consultation and enough information to understand how they can provide input.
- C. **Input Phase:** Tribes provide input to the Commission on the consultation matter. The Input Phase may include written and oral communications, meetings, phone calls, e-mails, or other appropriate interactions based on the circumstances. The Commission intends to coordinate with tribal officials during the Input Phase to be responsive to their requests for information and to provide opportunities to receive and discuss input.

- D. Follow-up Phase:** The Commission provides feedback to tribes(s) involved in the consultation to explain how their input was considered for final Commission action. This Follow-up Phase will be a formal written communication from a senior Commission staff member involved to the most senior tribal official involved in the consultation.

V. What Activities May Involve Consultation?

- A. General Categories of Activities Appropriate for Consultation:** Commission actions to maintain the Procurement List (PL) are not regulatory actions subject to Executive Order 13175 or the 2021 Presidential Memorandum. Any concerns about specific additions to the PL will be handled through the impact analysis or comments to the Federal Register notices at the time the actions are announced.

The following, non-exclusive list of Commission activity categories may be appropriate for consultation if they may affect a tribe(s):

- Regulations or rules
 - Policies, guidance documents, directives
 - Budget and priority planning development
 - Addition of Native American NPAs
 - Contracts with Federal agencies that have a mission related to serving Native Americans customers (e.g., Bureau of Indian Affairs)
 - Compliance monitoring actions
 - Response actions and emergency preparedness
 - State or tribal authorizations or delegations
- B. Commission Mechanisms for Identifying Matters for Consultation:** The mechanisms the Commission uses for identifying matters appropriate for consultation are as follows:
- Tribal Government-Requested Consultation. Tribal officials may request consultation. The Commission makes its best effort to honor the tribal governments' request in view of available resources, timing considerations, the nature of the activity, past consultation efforts, and any other relevant factors.
 - Action Development Process (ADP). Early in the process, the Commission representative assesses whether consultation is appropriate for the action in question. The Commission's determination will be communicated to tribes.

- This Plan is not intended to subject additional Agency actions to the ADP process for the sole purpose of a consultation analysis. Non-ADP actions are subject to consultation analysis through other mechanisms identified within the Plan.

When Consultation Occurs. Consultation should occur early enough to allow tribes the opportunity to provide meaningful input that can be considered prior to the Commission deciding whether, how, or when to act on the matter under consideration. As proposals and options are developed, including through additions or amendments that occur later in the process, consultation and coordination should be continued. Notices for additions to the Procurement List are not subject to this consultation process.

How Consultation Occurs. There is no single formula for what constitutes appropriate consultation; and the analysis, planning, and implementation of consultation should consider all aspects of the action under consideration. In the case of national rulemaking that directly affects tribal interests, a series of meetings in geographically diverse areas may be appropriate, or virtual meetings to the maximum extent possible. For more routine operational matters, a less formal process may be sufficient.

C. Managing the Consultation Process

- **Roles and Responsibilities**

Due to the small size of the Commission, only one Commission official is designated to facilitate Commission implementation of this Plan. These roles and responsibilities reflect the fact that, while oversight and coordination of consultation occurs at the Commission, as a practical matter, the Commission may request or recommend support from its designated Central Nonprofit Agencies (CNAs). The responsibility for initially analyzing the need for consultation will be conducted by the Commission.

- **Designated Consultation Official**

The Designated Consultation Official under the Executive Order is the Deputy Executive Director of the Commission staff. Responsibilities include coordination and implementation of tribal consultation in accordance with this Plan, and Agency compliance with the Executive Order.

The Designated Consultation Official has the authority for: (1) defining Commission actions appropriate for consultation; (2) evaluating the adequacy of that consultation; and (3) ensuring that the AbilityOne Program is consistent with this Plan.

Per the 2021 Presidential Memorandum, the Designated Consultation Official reports annually to OMB on the progress of implementation of the Executive

Order. Further, the Designated Consultation Official certifies compliance with the Executive Order for applicable Commission activities.

VI. Reporting

Pursuant to the 2021 Presidential Memorandum, the Commission will submit annual progress reports to OMB on the status of the consultation process and actions, and provide any updates to this Plan.