

# Office of Inspector General



April 1<sup>st</sup> – September 30<sup>th</sup>, 2019

U.S. AbilityOne Commission  
OIG

# Message from the Inspector General

## *Steps to Start-Up*

The theme for this Semiannual Report to Congress is Steps to Start-up. A few weeks ago, I was helping the Inspector General Criminal Investigator Academy (IGCIA) with the instruction of 45 employees from various Inspector General offices across government at a course held at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia. After the course was completed, we were talking to the IGCIA Program Director, who is an experienced Special Agent. We talked at length about the extensive compendium of tasks we are undertaking to start-up the U.S. AbilityOne Office of Inspector General. The IGCIA Program Director was deep in thought as we talked about the numerous ground up activities. He realized how many things are taken for granted within established offices, such as having an investigative management system, a budget plan and tracking system, written policies, referral protocols with law enforcement partners, and an audit plan. All of these things are required to successfully stand-up a new office and all have to be created from a non-existent platform. That post-class conversation gave us the perspective to share here the many steps we have taken to get where we are today.

In this Semiannual Report, we have developed a chart to celebrate a variety of both small and large achievements to illustrate the steps of the journey of our office becoming operational. We also report on the completion of our first civil fraud case, which involved Goodwill Memphis. Cases like this one represent our commitment to preserving the integrity of the AbilityOne program and preventing fraud on the government, which in this agency would have the effect of taking away jobs from severely disabled and blind individuals.

During this reporting period, we commenced two innovative audits: 1) a review of the AbilityOne Program Fee and 2) a review of the Cooperative Agreements between Central Non-Profits and the Commission. These performance audits are the first two from our seven-point review plan. The ultimate goal is to help better position the Commission for its next phase of innovation and growth.

Through our work, we are continuously striving to help the Program reach the potential, innovation, and growth that will sustain the AbilityOne's special mission.



**Thomas K. Lehrich**  
Inspector General

## **Frequently Used Abbreviations**

American Foundation for the Blind (AFB)

Central Nonprofit Agency (CNA)

Council of the Inspectors General for Integrity and Efficiency (CIGIE)

Committee for Purchase from People Who Are Blind or Severely Disabled (Commission)

Department of Justice (DOJ)

Department of Veterans Affairs (VA)

Federal Information Security Modernization Act (FISMA)

Fiscal Year (FY)

Government Accountability Office (GAO)

Generally Accepted Government Auditing Standards (GAGAS)

Independent Public Accounting (IPA)

Inspector General (IG)

Information Technology (IT)

Javits-Wagner-O'Day (JWOD)

National Industries for the Blind (NIB)

Nonprofit Agency (NPA)

Office of Inspector General (OIG)

Office of Management and Budget (OMB)

Procurement List (PL)

Semiannual Report (SAR)

Inspector General Act of 1978, as amended (IG Act)

Memorandum of Understanding (MOU)

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## Introduction

The Committee for Purchase from People Who Are Blind or Severely Disabled, operating as the U.S. AbilityOne Commission (Commission or Agency), is responsible for administering the AbilityOne Program pursuant to the Javits-Wagner-O'Day (JWOD) Act (41 U.S.C. §§ 8501–8506). The AbilityOne Program is the largest source of employment in the United States for people who are blind or have significant disabilities. Through the AbilityOne Program, over 45,000 Americans who are blind and have significant disabilities are employed in the service, manufacturing, and delivery of over \$3.6 billion in federal contracts for products and services to the Federal Government.

The Commission designates Central Nonprofit Agencies (CNAs) to facilitate the employment of people who are blind or have significant disabilities through nonprofit agencies (NPAs). The dynamics of the CNAs in the program is changing and growing. The Commission administers the AbilityOne Program with the assistance of two CNAs, National Industries for the Blind (NIB) and SourceAmerica.<sup>1</sup> The Commission designated a third CNA, American Foundation for the Blind (AFB), on July 26, 2018. AFB joins NIB (established in 1928) and SourceAmerica (established in 1974) as a Commission-designated CNA, with an allowed 18-month period of research and studies, with no NPAs or federal contracts.

On December 18, 2015, the Consolidated Appropriations Act of 2016 (P.L. 114-113) amended the Inspector General Act of 1978 (IG Act) and created the IG (Inspector General) for the U.S. AbilityOne Commission. The Office of Inspector General (OIG) is responsible for conducting audits and investigations, recommending policies and procedures to promote economy, efficiency, and effectiveness of agency programs and operations. The OIG is responsible for preventing fraud, waste, abuse, and mismanagement in agency programs and operations. The IG Act requires the IG to keep the Commission Chairperson and Congress fully and currently informed about problems and deficiencies of the Commission and its operations.

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<sup>1</sup> 41 CFR Chapter 51-3.

## U.S. AbilityOne OIG Accomplishments in Review 2017-2019

| Congressional             |                             |                                   |
|---------------------------|-----------------------------|-----------------------------------|
| 15 Congressional Meetings | Regular Committee Briefings | \$250k increase in Appropriations |

| Commission |                                     |                 |                      |
|------------|-------------------------------------|-----------------|----------------------|
| Briefings  | 6 Commission Meetings/Presentations | New Agency Head | Member of Commission |

| Training       |              |                  |                          |                       |
|----------------|--------------|------------------|--------------------------|-----------------------|
| Appropriations | False Claims | CIGIE Leadership | Investigative In-Service | CIGIE AIGI Conference |

| CIGIE                        |  |                                    |                 |                                     |
|------------------------------|--|------------------------------------|-----------------|-------------------------------------|
| Member Legislation Committee | Pilot Project, Oversight.gov, Web portal | Taught Seven Classes at IG Academy | Fellows Program | IG Act's 40th Anniversary Committee |

| 898 Panel                |   |   |
|--------------------------|---|---|
| IG Chair in Subcommittee | OIG staffed Waste, Fraud, And Abuse Subcommittees | Completed 2 Subcommittee Reports with Recommendations |

| Reports Issued    |                                |
|-------------------|--------------------------------|
| Two FISMA Reports | One Financial Statement Report |

## Top Management Reports, 2017 & 2018

### Developed OIG Mission Statement

Enhancing Confidence in the Program

Program Growth

Enhance Economy and Efficiency Within the Program

### Live Hotline Center/ OIG Website

Received over Forty Hotline Complaints

OIG Website linked to the Agency's Homepage

### Knowledge-Based Center

Interns

CIGIE

Law Clerks

Memorandums of Understanding

Shared Services

### SemiAnnual Reports

Four SemiAnnual Reports Issued

Adopted Best Practices, Charts, Sections on Audit/Investigations

Previous IG Message Themes, Sustainability and Innovation, Hitting Our Stride

### Procedures Policies and Handbook

Issued Audit Handbook & Policy

Issued Investigative Manual & Policy

## NPAs: OIG visited nearly thirty AbilityOneProgram employers Across the Country



CNA: Over Twenty Five Meetings with CNA Leadership/CEOs

OIG Cooperation Letter by Agency Head





Nonprofit Agencies. During the reporting period, the OIG completed five audit products and activities.

**1. Quarterly Follow-up on Recommendations from the Federal Information Security Modernization Act**

During this reporting period, the OIG performed follow-up work from the FY18 IG FISMA Reporting Metrics (Report No. 19-02, December 19, 2018). The Commission completed the four open recommendations from the FY 2017 IG FISMA evaluation, needed for its better compliance with the information security policies, procedures, and practices. The OIG worked with the Commission’s Information Technology (IT) management to follow and track the implementation of the evaluation recommendations. The OIG maintains a record of actions taken by management on implemented recommendations.

**Figure 1: Follow-up Actions**

| End of Quarter<br>Follow-up Actions | Recommendation Status |           |           |
|-------------------------------------|-----------------------|-----------|-----------|
|                                     | Open                  | Completed | Remaining |
| Q1 2019 (report issued)             | 4                     | 0         | 4         |
| Q2 2019                             | 4                     | 3         | 1         |
| Q3 2019                             | 1                     | 0         | 1         |
| Q4 2019                             | 1                     | 1         | 0         |

The OIG worked with the Commission’s IT staff to emphasize the importance of implementing recommendations in order to ensure the Commission completes the planned corrective actions. The IT management took actions to resolve the findings and recommendations and improved the effectiveness and efficiency of IT operations and AbilityOne Program operations.

**2. Audit of the AbilityOne Program Fee**

In this reporting period, the OIG commenced the first program-wide performance audit. The audit of the program fee includes a comprehensive analysis of the history and function of the fee. The audit objective is to determine whether effective and transparent criteria exist with the program fee. The purpose of the AbilityOne Program Fee is to provide funding for the operations of two designated Central Nonprofit Agencies (CNAs) – National Industries for the Blind (NIB) and SourceAmerica. The AbilityOne Program Fee is paid by nonprofit agencies (NPAs) to their respective CNA – NIB or SourceAmerica, to fund CNA activities that facilitate the NPAs participation in the AbilityOne Program. The Commission determines the program fee ceiling for each CNA.

The OIG contracted with the independent public accounting firm of CliftonLarsonAllen (CLA) LLP to conduct the performance audit of the AbilityOne Program Fee. The OIG is overseeing the work by CLA.

### **3. Evaluation of the U.S. AbilityOne Commission's Compliance with the Federal Information Security Modernization Act**

In accordance with the Federal Information Security Modernization Act of 2014 (FISMA) and OMB Memorandum M-19-02, *Fiscal Year 2018-2019 Guidance on Federal Information Security and Privacy Management Requirements*, all Federal agencies submit their IG metrics into the Department of Homeland Security's (DHS) CyberScope application by October 31, 2019. FISMA requires the Inspector General for each agency to perform an annual independent evaluation of the agency's information security programs and practices.

The objective of the evaluation is to determine the effectiveness of the Commission's information security policies, procedures, and practices. The FY 2019 IG FISMA Reporting Metrics covers the five function areas from the *National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity* (Cybersecurity Framework): Identify, Protect, Detect, Respond, and Recover.

The OIG contracted with McConnell & Jones LLP, an independent public accounting firm, to perform the OIG evaluation of the Commission's information security program pursuant to FISMA and NIST guidance for determining effectiveness of security controls.<sup>2</sup> The OIG is overseeing the work by McConnell and Jones, LLP.

### **4. Audit of the U.S. AbilityOne Commission's Fiscal Year 2019 Financial Statements**

The OIG contracted with the independent public accounting firm of Allmond & Company LLC to conduct the OIG annual financial statements audit of the Commission for the period ending September 30, 2019. The OIG is overseeing the work by Allmond & Company. In August 2019, the audit was announced and is currently underway.

For Federal entities not covered by the Chief Financial Officers Act (CFO Act), the Accountability of Tax Dollars Act of 2002 (ATDA) requires those Federal agencies and entities to prepare and submit audited financial statements to OMB and Congress. The objective of the financial statement audit is to express an opinion on whether the Commission's financial statements are fairly presented, in all material respects, in accordance with the U.S. Generally Accepted Accounting Principles for Federal Entities.<sup>3</sup>

### **5. OIG Issues Audit Policy and Manual in Draft**

The OIG updated the audit policy and manual to meet the professional standards presented in the 2018 revision of *Government Auditing Standards* (known as the Yellow Book), as established by the Government Accountability Office (GAO) Comptroller General.<sup>4</sup> The policy and procedures provide guidelines for the OIG in performing high-quality audit work with competence, integrity, objectivity, and independence. The comprehensive OIG audit manual first issued in November of

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<sup>2</sup> [NIST Special Publication \(SP\) 800-53, Rev. 4, Security and Privacy Controls for Federal Information Systems and Organizations](#)

<sup>3</sup> See also 31 U.S.C. §§ 3515 and 3521.

<sup>4</sup> GAO, *Government Auditing Standards 2018 Revision*, GAO-18-568G

2017 has been updated and ensures the OIG follows standards in conducting timely, independent audits that can assist the Commission leadership in improving accountability, effectiveness, efficiency, and integrity of its AbilityOne Program.

## **Investigations**

The OIG Office of Investigations (OI) investigates possible violations of statute, regulation, or policy in the administration of the AbilityOne Program. Investigations may be criminal, civil, or administrative, and, due to the nature of the AbilityOne Program, they are often worked in collaboration with other federal agencies.

## **Investigation Accomplishments**

OI has made substantial progress during the reporting period – from building critical infrastructure to achieving new milestones in ongoing criminal and civil investigations.

In June of 2019, the OIG filled its vacant Assistant Inspector General for Investigations (AIGI) position. The new AIGI brings knowledge and expertise to this office. Since the AIGI's arrival in June 2019, the Office of Investigations has focused on completing active investigations and building investigative infrastructure.

## **Active Investigations**

During the reporting period, OIG assisted DOJ and other partner agencies with several investigations and can report on a number of investigative activities. On June 19, 2019, DOJ announced a settlement with NPA Goodwill Memphis for its false certifications of compliance with regulations involving AbilityOne contracts Goodwill Memphis had entered into for services rendered to three government agencies: The Internal Revenue Service, the Department of Veterans Affairs and the General Services Administration pursuant to the AbilityOne Program. Our Inspector General was quoted in the DOJ press release:

*“Fraud on the AbilityOne program harms inclusion of workers in the program as well as law-abiding AbilityOne contractors,” said Thomas Lehigh, Inspector General of the U.S. AbilityOne Commission. “We are committed to preserving the integrity of the AbilityOne program. Working with DOJ and our partners, the Office of Inspector General will continue to protect the confidence and public trust in the largest employment program in the nation of blind and significantly disabled workers.”*

While we anticipate further accomplishments in the next reporting period, we do not provide details on active investigations. We also do not provide metrics on investigations where we assist DOJ and partner agencies. We also worked a number of investigations without partner agencies. While we will not provide details, we do provide statistics.

**Figure 1: Investigation Activity April 1, 2019 - September 30, 2019**

| <b>Office of Investigations</b>  | <b>Number</b> |
|--|---------------|
| Total number of closed investigations  | 0             |
| Total number of persons referred to DOJ for criminal prosecution   | 2             |
| Total number of persons referred to State and Local prosecuting authorities for criminal prosecution                 | 0             |
| Total number of indictments and criminal information that results from any prior referral to prosecuting authorities | 0             |
| Closed Hotline complaints during the reporting period  | 1             |
| Open activities at the end of the reporting period   | 16            |

### **Investigative Infrastructure**

During the reporting period, OI focused on standing up two critical areas: case management and cyber security.

#### **Case Management**

During the reporting period, OI researched investigative case management systems and successfully procured one for the office. Implementation of the new system begins immediately. Our goal during the upcoming reporting period is to complete deployment and establish a fully functional case management system tracking cases from inception to close-out.

OI anticipates that implementation of the new case management system will enhance the OIG investigative function. It will also assist us in presenting investigative metrics.

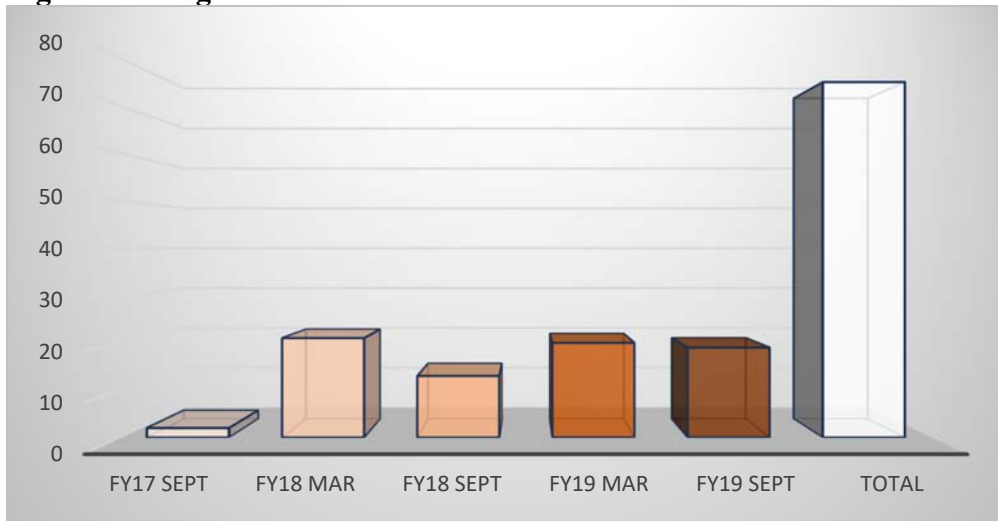
#### **Investigative Outreach and Fraud Awareness**

During the reporting period, OI participated in visits with three NPAs and attended forums hosted by Source America and NIB. At these programs, OI promoted fraud awareness to AbilityOne Program members. The OIG continues to keep fraud awareness orientation posted to the AbilityOne OIG website. OI intends to draft a comprehensive outreach plan during the upcoming reporting period.

#### **Allegations**

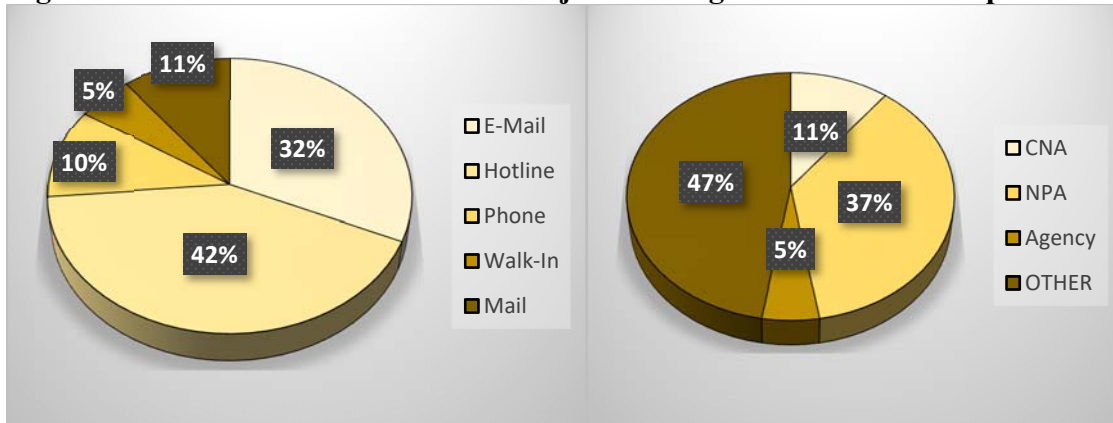
The number of allegations has increased year over year due to the Inspector General's efforts on outreach. By visiting over 30 NPAs and engaging with stakeholders at multiple levels, the OIG increases its exposure, leading to an increase in referrals. See Figure 2 below.

**Figure 2: Allegations Received Since FY 17**



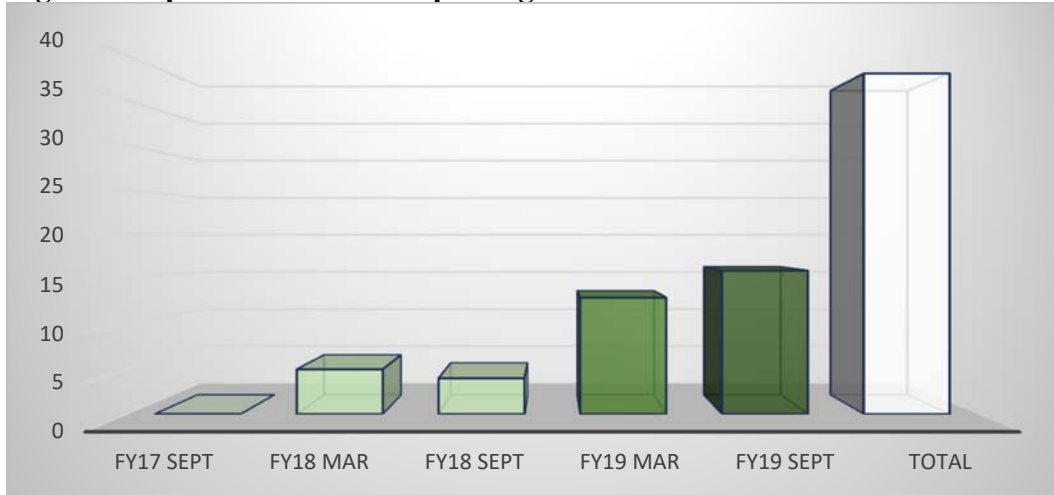
The majority of the allegations received by the OIG during the reporting period arrived via e-mail directly to OIG staff (see Figure 3), with the next largest number arriving through the OIG hotline. Of the three types of allegations regarding program participants – allegations regarding the Commission, the CNAs, and the NPAs – all are proportionately represented relatively to their size (see Figure 4).

**Figure 3 and 4: Intake Methods and Subject of Allegations for FY 19 September**



OI has an increasing number of open matters due to lack of staffing resources. Figure 5 depicts the number of open allegations from each reporting period.

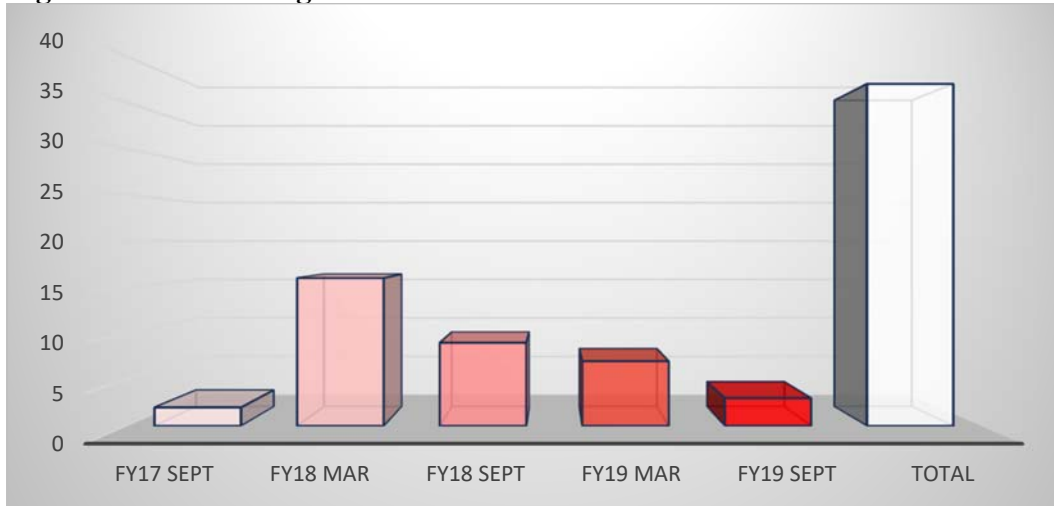
**Figure 5: Open Matters Per Reporting Period**



Most allegations are closed with a note to file. In the case of allegations received pursuant to the Agency’s system of mandatory disclosures, any memoranda to the file closing a matter is provided by the OIG to the head of AbilityOne’s compliance office. If an allegation is converted to an investigation, it is disposed of with either a Memorandum, Report of Investigation, or case work in collaboration with other federal agencies, including DOJ.

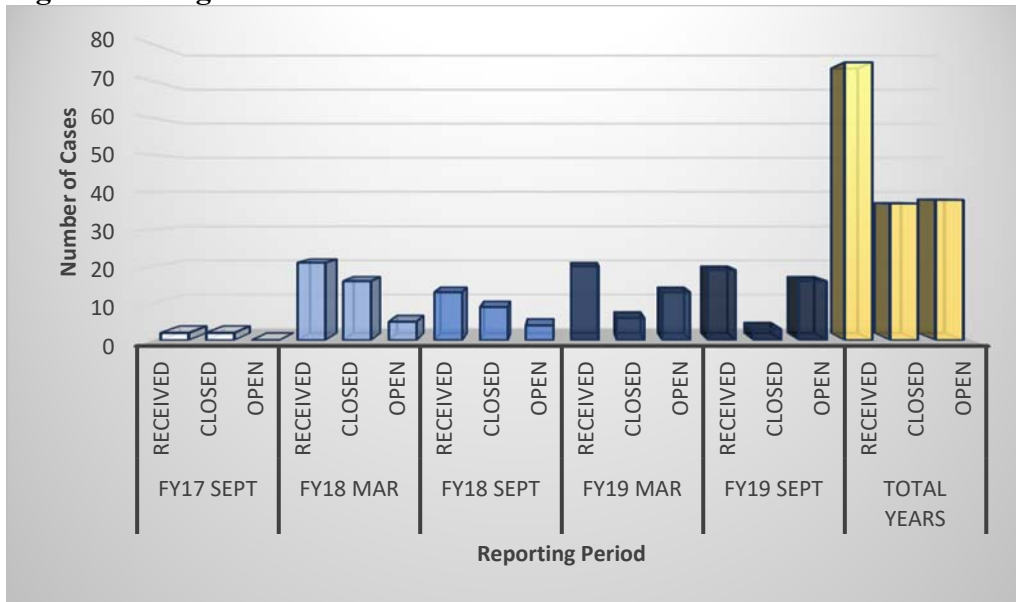
Figure 6 depicts the number of closed allegations per reporting period.

**Figure 6: Closed Allegations**



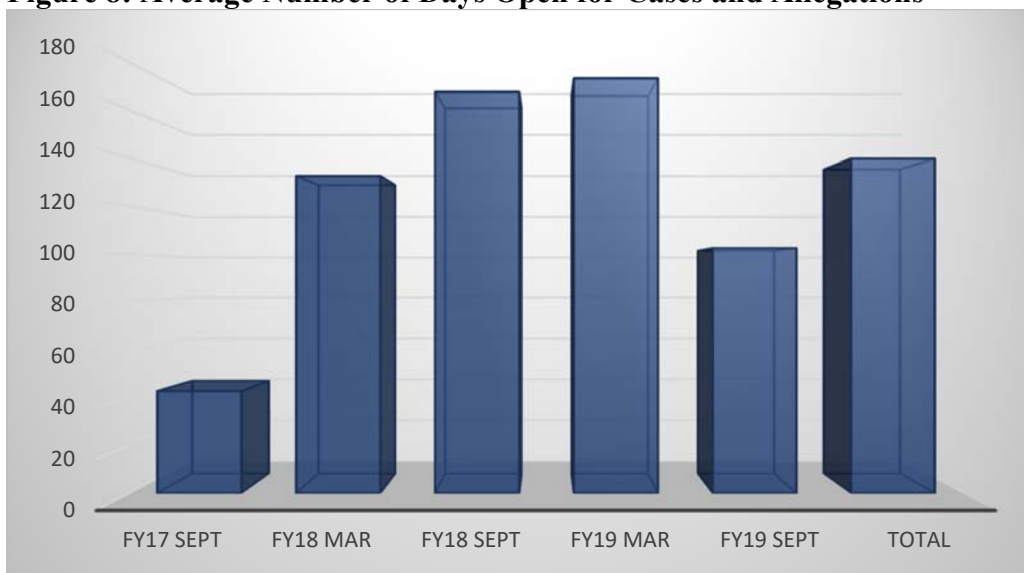
Combining the above charts, Figure 7 shows that, with the number of allegations received rising, fewer allegations were closed in the last two reporting periods.

**Figure 7: Allegations**



We have mapped the average length of time that matters are taking to resolve relative to each reporting period. The graph below shows that allegations received in the April to September FY17 reporting period were resolved more quickly than subsequent reporting periods. The allegations of that period were less complex than the ones OIG received in subsequent periods, as OIG implemented its outreach efforts.

**Figure 8: Average Number of Days Open for Cases and Allegations**





## Challenges

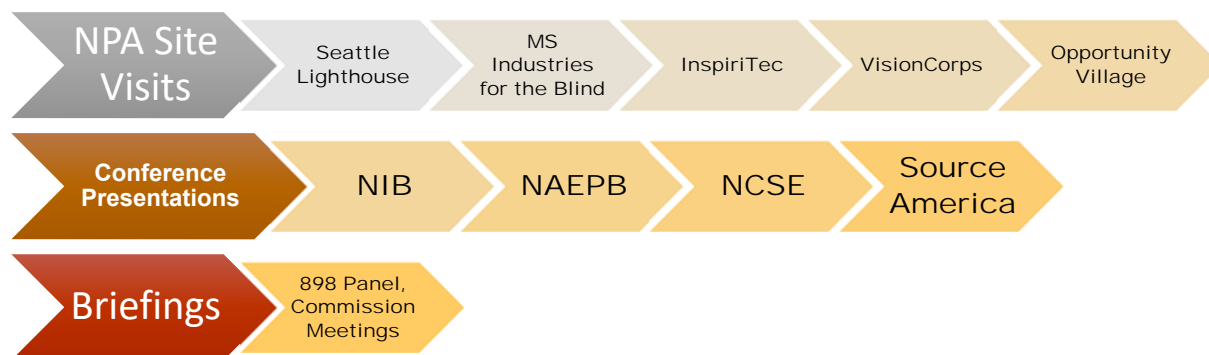
The program consists of a Commission, three Central Non-profit Agencies (CNAs), about 500 Non-Profit Agencies (NPAs), and 45,000 blind or severely disabled NPA employees engaged in providing \$3.6 billion annually in products and services for the federal government. The public, GAO, other federal agencies, and Congress want to ensure that any substantial risk of fraud within the program be met with oversight and reform. The OIG resources are insufficient.

## OIG Outreach

The mission of the AbilityOne Program is to provide employment and training opportunities for people who are blind or have significant disabilities. The Program serves federal customers by providing them with high quality products and services, delivered on time and at a reasonable price. The American taxpayer benefits from reduced disability payments made to people with significant disabilities and from the increased tax revenues their employment generates. As a part of a continuous effort to deepen its learning and understanding of the AbilityOne Program that it oversees, the OIG conducts NPA visits, presents at relevant conferences, briefs the Commission, and meets with industry experts.

The outreach is designed to inform the AbilityOne Program community of the function of an IG in a government agency that never had IG oversight, and to promulgate the IG message of promoting integrity and efficiency, as well as preventing waste, fraud, and abuse.

**Figure 9: Outreach Activities (April 1, 2019 - September 30, 2019)**



## 1. OIG NPA Site Visits

During this reporting period, the OIG visited five NPAs. During these visits to Seattle Lighthouse, Mississippi Industries for the Blind, InspiriTec, VisionCorps, and Opportunity Village, the OIG achieved a greater understanding of the impact of AbilityOne programs and the value of the OIG oversight. Each visit and the accomplishments are described below.

### **The Lighthouse for the Blind, Inc. (May 2019)**

San Diego, CA

The Lighthouse for the Blind, Inc. headquartered in Seattle, WA, is an NPA with fifteen manufacturing, retail, and contract close-out locations, including four locations in San Diego. The OIG visited the Lighthouse at the San Diego CMS location (contract management services), inside



the U.S. Navy facility located in the San Diego harbor. The OIG met with President and CEO Cindy Watson, along with other NPA managers and program participants. We talked with the 7 program participants that staff the AbilityOne Program contract, working for the U.S. Navy on CMS contracts. The CMS specialists are program participants who are empowered by the NPA to work on the AbilityOne contract through appropriate training and the use of technology to meet their needs.



Source: OIG photos



**Mississippi Industries for the Blind (May 2019)**  
San Diego, CA

Mississippi Industries for the Blind (MIB) is an NPA operating in several locations in the United States. The OIG visited MIB at the San Diego location, inside the U.S. Navy facility by the San Diego harbor. The OIG met with NPA Executive Director Michael Chew, along with other NPA managers and program participants. In San Diego, MIB employs 8 people on an AbilityOne Program contract, supporting the Navy Household Goods Document Management Project. The OIG visited the worksite and met with the program participants performing the AbilityOne program contract work through appropriate training provided by the NPA and the use of technology to meet their needs.

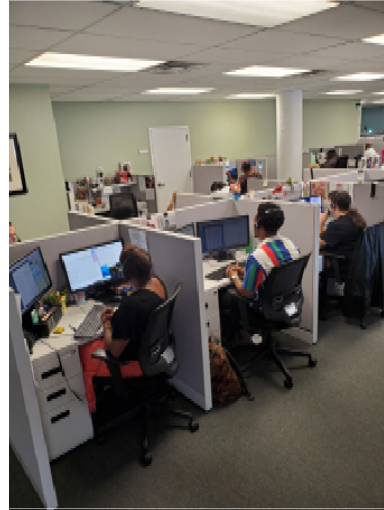
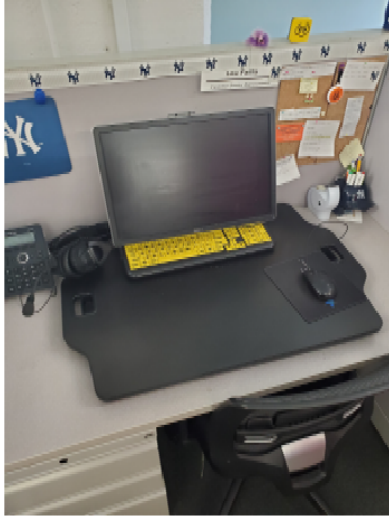
**InspiriTec (June 2019)**  
Philadelphia, PA

InspiriTec was founded in 2000 by its management team formed over twenty-five years ago. The management team was formed while under the Computer Science program at the University of Pennsylvania. The group pioneered one of the earliest IT training courses for people with disabilities, which later evolved into the first social enterprise model whereby program graduates themselves staffed their own computer and information systems firm.

InspiriTec provides Contact Center & IT Help Desk solutions, delivering services by combining customized technology with affirmative employment of professionals with disabilities, veterans, and disadvantaged individuals. At Inspiritec, over 500 employees perform under an innovative model that integrates intelligent technology with inspiring compassion to raise the standards of contact center and IT support, transforming these services from a point of trouble to a point of pride for businesses, non-profits and government organizations.

The OIG held meetings with the CEO, CFO, and senior social workers at InspiriTec's office in Philadelphia, PA. During the visit, the OIG had the opportunity to walk through the contact center facility and meet the team lead and staff of Department of Defense/Defense Manpower Data Center project.

InspiriTec has offices in Philadelphia, PA; Wyomissing, PA; Newark, NJ and Fort Knox, KY.



Source: OIG photos

### **VisionCorps (July 2019)**

Lancaster, PA

VisionCorps is an NPA with several operating locations in Pennsylvania. The OIG visited the Lancaster location and met with President and CEO Dennis Steiner and his senior management team, along with other NPA managers and with program participants. VisionCorps employs more than 140 people, of whom 75% are blind or disabled and ten are veterans. The impact on the community is even greater, as VisionCorps provides rehabilitation services for more than 2,000 individuals in the counties in and around their operations, as well as more than \$1 million in services to people living with vision loss.

VisionCorps plays a role in the manufacture of various cleaning supplies for federal use, as well as, unusually for an NPA, a role in food products. VisionCorps uses a processing facility to receive, package, and distribute bags of rice for DLA, the Defense Logistics Agency. VisionCorps has the capability for a variety of roles in food manufacturing and packaging from individual pouches to vertical form fill seal packaging. Their goal with all of their products is to provide the highest level of quality while achieving VisionCorps' mission of "[e]mpowering individuals with vision loss to attain independence."



Source: OIG photos



**Opportunity Village (September 2019)**  
Las Vegas, Nevada

Opportunity Village is an NPA operating in more than 60 locations in Nevada and is the largest employer of people with severe disabilities in Southern Nevada. The OIG visited the headquarters of Opportunity Village at the Ralph & Betty Engelstad Campus and met with CEO Bob Brown and his directors.



Source: Opportunity Village Photos



The NPA has nearly 750 employees and operates two community-based programs for people with intellectual disabilities, called PRIDE and Enable. The OIG visited two locations where Opportunity Village performs AbilityOne contracts. One AbilityOne contract location is in the City of Las Vegas for a maintenance contract with GSA for the building of the United States Bankruptcy Courts. The other AbilityOne contract is for a janitorial and ground maintenance contract with the Department of the Interior Bureau of Land Management at Red Rock Canyon National Conservation Area. The OIG met with program participants and had the opportunity to interact with them as well as ask questions about the work performed on the AbilityOne contracts for their federal customers.



Source: OIG Photos



## 2. Forum Presentations

In May 2019, the OIG attended and spoke at the SourceAmerica National Training and Achievement Conference in Anaheim, California. The IG presented at the U.S. AbilityOne Commission meeting, held in conjunction with the Source America conference. At the conference the Inspector General addressed the general session and spoke about the value of social capital in the program and about the OIG role in enhancing confidence in the program.

In June 2019, the OIG addressed the National Council of SourceAmerica Employer (NCSE) forum in Denver, CO. NCSE is a group of executives that provide services and products under the AbilityOne Program. The NCSE addresses issues of significant relevance to NPAs and their participation in AbilityOne Program and assists SourceAmerica with research and data collection necessary to advance the program. The Inspector General delivered an address to an audience of about 70 participating non-profit agencies (NPAs), highlighting the work performed by the OIG.

## Ongoing OIG Work

### 1. 898 Panel Issues and Activities

Section 898 of the National Defense Authorization Act for Fiscal Year 2017 (P.L. 114-328) required the Secretary of Defense to establish a panel known as the “Panel on Department of Defense and U.S. AbilityOne Contracting Oversight, Accountability, and Integrity” (“the Panel”). The Panel started reporting to Congress for three consecutive years beginning in 2018.

Pursuant to Section 898(a)(2), a representative of the Inspector General of the Department of Defense and a representative of the Inspector General of the AbilityOne Commission are statutory members of the Panel, among others. The primary mission of the Panel is to identify vulnerabilities and opportunities for improvement in DoD contracting within the AbilityOne Program. The Panel established seven subcommittees to fulfill its duties as indicated in Section 898(c). Since its inception, and during the reporting period, the IG led the Panel’s Inspector General subcommittee. In addition to leading the subcommittee, the OIG provided support and advice to multiple Panel

subcommittees dealing with the effectiveness and internal controls of the AbilityOne Program as it relates to DoD contracting, including the DOJ-led subcommittee on Waste Fraud and Abuse.

The Panel's Inspector General subcommittee was tasked with reviewing the progress of DoD IG's recommendations from the 2016 audit report, DODIG-2016-097. The subcommittee found that the DoD had made progress with the report's recommendations to implement existing DoD policy requiring contracting officers to check the AbilityOne's Product List (PL) to verify whether a product or service is on the List, and to improve training for procurement personnel.

The Panel identified its FY 2019 goals to include prioritizing and refining the actionable recommendations to improve oversight, accountability, transparency, and integrity in contracting with the Program. Execution of these recommendations will have a positive impact on the employment opportunities for individuals who are blind or have other significant disabilities. Until the sunset of the Panel in 2020, as established by the law, the IG will continue to report on the progress of the panel.

## **2. Audit Activities**

The current OIG audit activities are as follows:

### **Audit of the AbilityOne Program Fee**

Generally Accepted Government Auditing Standards (GAGAS) defines performance audits as objective analysis, findings, and conclusions to assist management and those charged with governance and oversight, among other things, improve program performance and operations.<sup>5</sup> Performance audits facilitate decision making by parties responsible for overseeing or initiating corrective action and contributing to public accountability. CLA auditors are conducting a comprehensive analysis of the history and function of the AbilityOne Program Fee with the overall audit objective to determine whether effective and transparent criteria exist with the program fee. The audit engagement is scheduled to be completed by December 2019.

### **Evaluation of the U.S. AbilityOne Commission's Compliance with the Federal Information Security Modernization Act**

In accordance with FISMA and OMB Memorandum M-19-02, *Fiscal Year 2018-2019 Guidance on Federal Information Security and Privacy Management Requirements*, all Federal agencies submit their IG metrics into DHS CyberScope application by October 31, 2019.

The FY 2019 IG FISMA Reporting Metrics evaluates the status of the Commission's information security program through the completion of testing and fieldwork on the five functional areas in the Cybersecurity Framework. McConnell & Jones follow the evaluation guidance developed by OMB, DHS, and CIGIE to complete the IG FISMA Metrics.

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<sup>5</sup> See *Government Auditing Standards 2018 Revision*, GAO-18-568G, para. 1.21

## **Audit of the U.S. AbilityOne Commission's Fiscal Year 2019 Financial Statements**

For Executive Branch department and agencies subject to ATDA, OMB Bulletin No. 19-03, *Audit Requirements for Federal Financial Statements*, implements the audit provisions for audits of financial statements.

The OIG has contracted with the independent public accounting (IPA) firm Allmond & Company to audit the Commission's financial statements, in accordance with GAGAS and the provisions of Bulletin No. 19-03. The auditor will determine whether the Commission's financial statements are fairly presented, in all material respects, in accordance with the U.S. generally accepted accounting principles for Federal entities and will render an opinion on the Commission's financial statements.

## **Audit of the AbilityOne Program Cooperative Agreements Implementation**

The OIG contracted with the independent public accounting (IPA) firm of CliftonLarsonAllen (CLA) LLP, to perform an audit of the AbilityOne Program Cooperative Agreements. The audit was announced in September 2019.

The audit objective is to determine whether the Cooperative Agreements (Agreements) are adequately designed and operating effectively to improve performance and transparency in the AbilityOne Program. The review will determine whether the performance criteria are reasonable, measurable, and implemented to achieve effective oversight.

The Commission established Agreements with the AbilityOne Program designated CNAs – NIB and SourceAmerica, pursuant to the requirements from the Consolidated Appropriations Act of 2016 (P.L. 114-113). The Agreements define among other things, the responsibilities, performance, and results to ensure effective stewardship of the AbilityOne Program. The Agreements were created in 2016 and have been in effect for over two years.

## **3. Top Management and Performance Challenges Report**

Pursuant to the Reports Consolidation Act of 2000, the OIG identified as the most serious challenges facing the Commission: erosion of statutory program authority, transparency, implementation of the cooperative agreements, adequate resources, needed enhancements to program compliance, and a lack of risk management. In this year's report we will describe the status of the continued progress for each challenge, and for inclusion in the Commission's Performance and Accountability Report (PAR) for fiscal year 2019.

OIG conducted a number of stakeholder meetings to receive input on the top management challenges and considered its risk-based methodology. OIG also met with the Commission senior staff to request updates and seek information on the status of Commission's progress for the Top Management Challenges report from last year.



#### **4. Investigative Activities**

During the upcoming reporting period, we will continue to pursue investigations and to support joint investigations led by our partners among other federal agencies.

#### **Other Matters**

During the upcoming reporting periods, OI intends to:

- Review existing policies and, as needed, continuing to ensure compliance with CIGIE standards;
- Establish policies to ensure that agency support for OIG IT equipment maintains standards for cyber security to ensure the security of confidential investigative and other OIG work products;
- Seek case-specific law enforcement authority for active criminal cases;
- Procure software to enhance the efficiencies of document review.

#### **5. Department of Veteran Affairs Medical/Surgical Prime Vendor- Next Generation (MSPV-NG) 2.0 and Non-Manufacturer Rule Waiver**

Department of Veterans Affairs (VA) Acquisition Management was recently added to the GAO 2019 High Risk List, where the VA was specifically cited for a “lack of effective medical supplies procurement strategy.”<sup>6</sup> The VA is CNA National Institute for the Blind (NIB)’s third largest federal customer under the AbilityOne Program. In 2018, sales to the VA amounted to fifteen percent of NIB’S total AbilityOne Program sales. These sales equate to nearly 800 jobs for Americans who are blind or significantly disabled, many of whom are veterans.

SourceAmerica has numerous contracts within this program. Program erosion is a top management challenge identified by the OIG facing the U.S. AbilityOne Commission and its Program. OIG has identified three inter-related issues of concern. They include the lack of essentially-the-same (ETS) and AbilityOne compliance on the current MSPV NG formulary; the absence of AbilityOne products on the MSPV 2.0 formulary; and the risk of a blanket non-manufacturer waivers being issued to cover products sold to the VA.

#### *MSPV-NG Current Structure*

Contracts were awarded to four prime vendors (PVs) that cover 23 VISNs, 152 medical centers and 1,400 community-based outpatient clinics across the United States. The VA allows PVs to partner with veteran owned small businesses (VOSB)/service-disabled veteran owned small businesses (SDVOSB). The VA determines the contract offering and issues a monthly product catalog known as the “formulary.” The current formulary has up to 22,757 products listed; 872

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<sup>6</sup> Government Accountability Office (GAO) 2019 High Risk List, See <https://www.gao.gov/assets/700/697245.pdf>

are AbilityOne items. The Veterans Health Administration (VHA) manages the product offering and the Strategic Acquisition Center (SAC) manages the contracts.

Current challenges have been identified with MSPV NG that include the lack of an agreement with the VA to implement an ETS review process for the formulary. Federal law prohibits federal agencies from purchasing items that are essentially the same as AbilityOne items on the Procurement List. *See* 41 CFR § 51-5.3(a). Accordingly, agencies such as GSA have used an ETS review process to avoid products appearing on the formulary that are ETS to AbilityOne products which are mandated for purchase by the Javits-Wagner-O'Day Act as implemented by the Federal Acquisition Regulation (FAR).

Additionally, PVs require commercial supplier agreements to be signed by the NPAs which manufacture the products. The GSA requires its distributors to block any ETS offerings to the federal customer and requires AbilityOne distributor authorization for all large contracts including Federal Strategic Sourcing Initiatives (FSSI) for commodity products. The VA, however, does not have any similar requirement to be a PV. Three of the four PVs have agreed to terms required by the U.S. AbilityOne Commission, but one PV has refused; this lack of a single completed vendor agreement results in lost sales for the AbilityOne program, thus reducing employment opportunities for people who are blind.

#### *MSPV 2.0 and the Unknown Acquisition Strategy for the AbilityOne Program*

On February 28, 2019, the VA hosted a webinar for industry to provide an overview of the new MSPV 2.0 Program. During this forum the VA announced that AbilityOne procurement would take place outside of the formulary, which will now be known as the “catalog.” Absent an expressed acquisition strategy for AbilityOne products, this raises concerns about the impact this will have on VA compliance with the mandatory source provisions of the FAR. The new MSPV 2.0 catalog has 26 categories; AbilityOne items should be included in 10 of those categories. The MSPV 2.0 also references use of this procurement vehicle by other federal agencies. This could magnify the concerns already described and place other federal agencies in a non-compliant situation. Not including AbilityOne items on the MSPV 2.0 catalog will have a detrimental impact on the AbilityOne Program and its mission to generate meaningful employment for Americans who have significant disabilities.

The OIG will be following the developments of the VA’s decision not to include AbilityOne. *“Blanket” Non-manufacturing Waiver.*

In February 2019, the VA Office of Small and Disadvantaged Business Utilization (OSDBU) posted a request for information (RFI) with guidance that respondents reply via electronic survey. The purpose of the RFI was to conduct market research to determine the potential industrial base of small businesses capable of manufacturing products reflected in the MSPV 2.0 catalogue. The survey questions focused on the manufacturing capabilities for 26 product categories to be included in the MSPV catalog.

In April 2019, the VA OSDBU sent non-manufacturer waiver requests to the SBA for 10 supply categories for MSPV 2.0 and are proposing five more categories. Four of those categories cover 7.5-percent of AbilityOne products. Beginning in mid-April 2019 and into September 2019 these waivers were established by the SBA creating further challenges for the AbilityOne Program. The impact of this could result in a potentially devastating loss of jobs for people who are blind, estimated at approximately 437 Blind Work Years, since lost sales in the amount of \$63.9M are projected.

#### *Current Procurement Process for VA Requirements and Application of Non-Manufacturing Waivers*

The VA follows the VAAR Rule of 2 (“Ro2”) in determining fulfillment of their support requirements for consumable medical supplies used in the MSPV program.

The non-manufacturing waiver allows the item(s) to be acquired from VSOB/SDVOSB suppliers who have the capability to *source* the item(s), but not the capability to *manufacture* them. Allowing this practice opens the door for VOSB/SDVOSBs (many of whom are individually owned “storefront” operations) to source products offshore; whereas, if the requirements were sourced from NPAs through the AbilityOne Program, the products would remain in production in the United States and continue to create employment for people who are blind or significantly disabled, many of whom are veterans.

#### *Potential Impact of a “Blanket” Non-Manufacturing Waiver:*

The decision to allow a non-manufacturing waiver would only compound the current situation by virtually eliminating the sale of AbilityOne products on the formulary/catalogue and essentially lead to the probability of no new VA-sponsored Federal Procurement List additions. This will have an impact on the AbilityOne Program’s mission of creating employment opportunities for Americans who are blind or have significant disabilities. In our work, we are going to explore resolutions that include program compliance strategies such as:

1. Refusing to grant non-manufacturing waivers and require the VA to come to AbilityOne for everything their NPAs can do; or,
2. When a requirement receives a non-manufacturing waiver, require VOSB/SDVOSB contractors to source through the AbilityOne Program (where NPAs can provide the items).

The OIG is also exploring the role of program risk. As stated earlier, the VA Acquisition Management was recently added to the GAO 2019 High Risk List. The VA was specifically cited for a “lack of effective medical supplies procurement strategy.” Removing mandatory AbilityOne products from a national procurement solutions program exacerbates this risk.

## 6. E-Commerce

The U.S. AbilityOne Commission announced the end of the pilot program between the Commission and Amazon at the end of the fiscal year. While the Commission was able to gain insight into ecommerce platforms, the pilot did not lead to an increase in AbilityOne sales. Amazon did not block ETS offerings on its platform and substitute those products with AbilityOne products, which is a feature that the Commission requires of its authorized distributors.

In addition to the AbilityOne and Amazon arrangement, other federal agencies (the Department of Homeland Security (DHS), and the U.S. Air Force) are establishing pilot programs with Amazon allowing the purchase by procurement officers of commercial products online through Amazon. The FY2018 NDAA, P.L. 115-91, was signed by the President on December 12, 2017 and included Section 846, "Procurement Through Commercial E-Commerce Portals." Section 846 directed GSA, in partnership with OMB, to "...establish a program to procure commercial products through commercial e-commerce portals for the purposes of enhancing competition, expediting procurements, enabling market research, and ensuring reasonable pricing of commercial products" (e.g., Amazon, Office Depot, etc.).

GSA's implementation of the Section 846 E-Commerce Platform is expected to extend through FY 2020. On October 1, 2019, GSA issued a solicitation seeking platform providers in support of this initiative. With a response date of November 15, 2019, the solicitation requires respondents to respect the mandatory source requirements of the AbilityOne Program. The solicitation requires providers to block ETS items in the e-marketplace and substitute those products with AbilityOne items. The solicitation also includes FAR 52.208-9, Contractor Use of Mandatory Sources of Supply or Services, and references to the mandatory source requirements in FAR 8.002, 8.004, and 8.005.

The OIG will continue exercising its oversight role and deepening its understanding of the e-commerce platforms and their application to the AbilityOne Program. The OIG views the innovations of E-Commerce as the future of an evolving marketplace. The OIG also considers that, for the shared success of the E-Commerce platform, it is key that the buyers of products and services, i.e. the government agencies and their purchase officers, understand that the customer that the e-commerce platform seeks to serve is the AbilityOne Program itself.



*Council of the*  
**INSPECTORS GENERAL**  
*on INTEGRITY and EFFICIENCY*

### **Activities with the Inspector General Community**

The AbilityOne IG is a member of CIGIE and is on the legislation and committee. Members of our staff contribute to the law enforcement community as guest speakers for the Federal Law Enforcement Training Center and the IG Academy. The OIG regularly participates in CIGIE working groups designed to focus on areas of IG interest, sharing best practices, and addressing various topics of pertinence specifically to smaller size OIGs. The Assistant Inspector General for Auditing (AIGA) participates in subgroups of CIGIE with emphasis on audit operations. The Deputy Inspector General & Counsel to the IG is a member of the Council of Counsels of Inspectors General and the co-chair of the smaller OIG Counsel Group. The Deputy Inspector General & Counsel to the IG also serves as the OIG liaison with other government agencies and enforcement entities and with OIG counterparts for joint investigations, in cooperation with the Assistant Inspector General for Investigations (AIGI).

The OIG has participated in the Oversight.gov program since the earliest stages of its creation, and it continues to contribute its work products. Specifically, our office was recently invited to work on CIGIE's latest innovation, and the IG will help lead the initiative. Our OIG continues to participate in a new CIGIE working group and pilot program for OIGs who are interested in creating a webpage that will be hosted by oversight.gov. The CIGIE initiative will make oversight.gov a single portal for government-wide oversight.

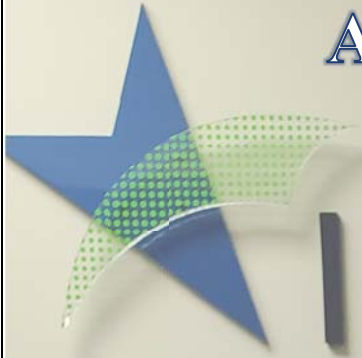
As introduced earlier, the OIG participated in the CIGIE Fellows Program during this reporting period. As a part of the Knowledge-Based Center, the OIG hosted an employee from the Environmental Protection Agency (EPA) OIG for one year. This was the first time the CIGIE Fellows Program had a Fellow work under an MOU with a host agency for more than six months. The CIGIE Fellows Program provides selected IG community employees with opportunities to expand their leadership competencies, broaden their organizational experiences, and foster professional networks.

As a part of its commitment to fostering growth and development in the OIG community, the OIG provided its fellow with the opportunity to meet Fellows program objectives such as:

- Work in a senior level assignment opportunity that fosters growth and development
- Provide executive-level mentorship
- Expand the Fellows' experience, either within or outside of their current area of expertise

The OIG anticipates continued participation in the CIGIE Fellows Program.

## Ability One OIG Webpage



# INSPIRITEC

Inspiring Work Through Technology™

Over this reporting period, the AbilityOne OIG has worked to increase the public's access to completed OIG reports. All OIG reports are posted on our webpage and posted on Oversight.gov. In addition to posting completed reports, the OIG also provides access to current and past documents such Semi-Annual Reports, Top Management Challenge Reports, IG briefings and remarks, and organizational structure information. All of these items are provided as a means to increase transparency and keep the public informed about the work of the OIG.

**WELCOME!**  
Office of Inspector General  
U.S. Ability One Commission



To view the OIG's current website, visit <https://abilityone.gov/commission/oig.html>

Photo: OIG visit to InspiriTec in Philadelphia, Pennsylvania.



# AbilityOne OIG Hotline

## What should you do if you suspect fraud, waste or abuse?

The OIG Hotline provides a way for employees and other concerned citizens to report suspected wrongdoing within the AbilityOne Program.

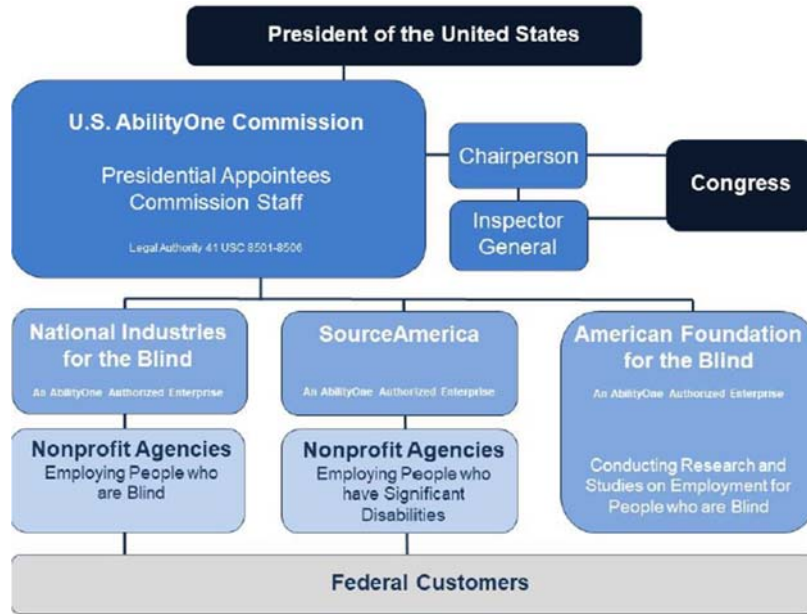
If you suspect fraud, waste or abuse, call our Hotline at (844) 496-1536, or email the Office of Inspector General at [hotline@oig.abilityone.gov](mailto:hotline@oig.abilityone.gov). All callers may remain anonymous or may request confidentiality.

Further details of the OIG Website and Hotline Contact information are below.

|                   |  |
|-------------------|--|
| Toll-Free Number: | (844) 496-1536   |
| Email:            | <a href="mailto:Hotline@oig.abilityone.gov">Hotline@oig.abilityone.gov</a>                         |
| OIG website:      | <a href="http://www.abilityone.gov/commission/oig.html">www.abilityone.gov/commission/oig.html</a> |

# Appendix I- Organizational Chart and Staffing Structure

**Figure 1: AbilityOne Program Organization Chart**



**Figure 2: U.S. AbilityOne Commission Staff's Organization Structure**

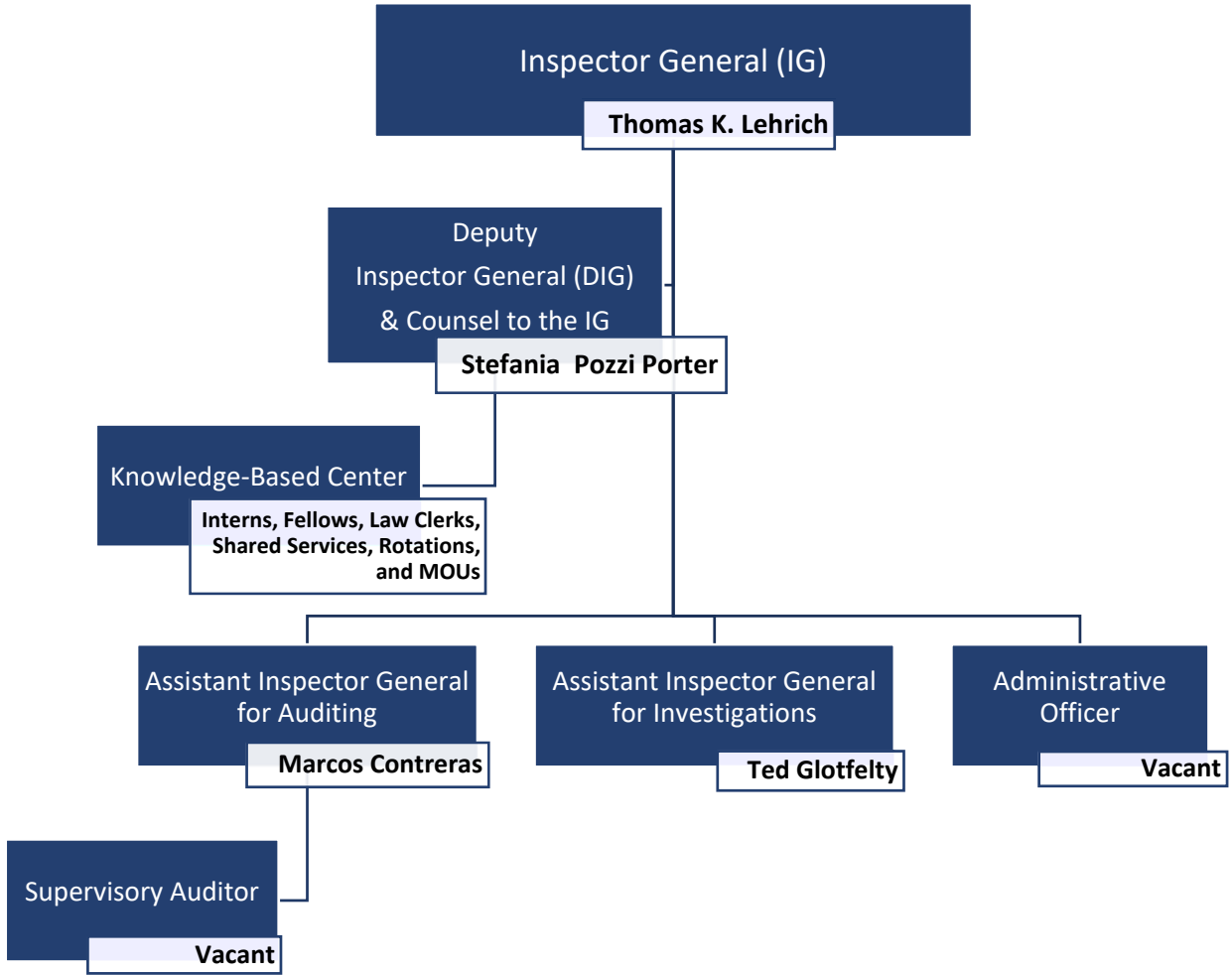
To help carry out its mandate, the Commission has a full-time staff located in Crystal City, VA, reporting to the presidentially appointed Commission members (Commissioners). The Executive Director reports directly to the Commission Chairman and the Commissioners.





### Figure 3: OIG Organizational Structure

The OIG is working to stand up the office and provide oversight of the agency’s programs and operations. The following figure depicts the current organizational structure as the office moves forward.



## Appendix II- Reporting Requirements under the Inspector General Act of 1978, as amended

Figure 4: OIG Reporting Requirements

| IG Act Reference          | OIG Reporting Requirements  | Page Number |
|---------------------------|---|-------------|
|                           | Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. |             |
| Section 4(a)(2)           | Review of legislation and regulations.  | N/A         |
| Section 5(a)(1)           | Significant problems, abuses, and deficiencies.   | N/A         |
| Section 5(a)(2)           | Recommendations for corrective action.  | N/A         |
| Section 5(a)(3)           | Significant outstanding recommendations.  | N/A         |
| Section 5(a)(4)           | Matters referred to prosecutorial authorities.  | 13          |
| Section 5(a)(5) / 6(c)(2) | Information or assistance unreasonably refused or not provided.   | N/A         |
| Section 5(a)(6)           | Listing of completed audit, inspection, and evaluation reports.   | N/A         |
| Section 5(a)(7)           | Summary of significant reports.   | N/A         |
| Section 5(a)(8)           | Statistical table pertaining to questioned costs.   | N/A         |
| Section 5(a)(9)           | Statistical table pertaining to funds recommended to be put to better use.  | N/A         |
| Section 5(a)(10)          | Prior OIG reports unresolved, uncommented upon, desired timetable for achieving a management decision.  | N/A         |
| Section 5(a)(11)          | Significant revised management decisions.   | N/A         |
| Section 5(a)(12)          | Management decision disagreements.  | N/A         |
| Section 5(a)(13)          | Information described under Section 804(b) of the Federal Financial Management Improvement Act of 1996.   | N/A         |
| Section 5(a)(14)          | Information regarding peer reviews involving the Office of Inspector General.   | N/A         |
| Section 5(a)(15)          | List of any outstanding recommendations from any peer review conducted by another Office of IG.   | N/A         |
| Section 5(a)(16)          | List of any peer reviews conducted by the IG of another Office of Inspector General during reporting period.  | N/A         |
| Section 5(a)(17)          | Statistical tables pertaining to OIG investigations.  | 13-16       |
| Section 5(a)(18)          | Description of the metrics for OIG investigative table.   | 13-16       |
| Section 5(a)(19)          | Reports involving senior Government employees where allegations were substantiated, including the facts and circumstances of the investigation and status and disposition of the matter.  | N/A         |
| Section 5(a)20            | Instance of whistleblower retaliation.  | N/A         |
| Section 5(a)21            | Attempted agency interference with OIG independence, including budget constraints designed to limit OIG capabilities; and incidents where agency has resisted, objected, or significantly delayed access to information.                    | N/A         |
| Section 5(a)22            | Inspections, evaluations, audits, and investigations of senior Government employees undisclosed to the public.  | N/A         |

Upon the enactment of the IG Empowerment Act on December 16, 2016, the OIG is required under IG Act section 5(a)(20) to provide “a detailed description of any instance of whistleblower retaliation, including ... what, if any, consequences the establishment imposed to hold that official accountable.” Pursuant to the IG Empowerment Act’s reporting requirement, the OIG will provide information about any consequences imposed by the establishment for retaliation in the semiannual report for the period in which the OIG is informed that the consequences were imposed.

## **Appendix III- FY2018 National Defense Authorization Act**

### **SEC. 898. ESTABLISHMENT OF PANEL ON DEPARTMENT OF DEFENSE AND ABILITYONE CONTRACTING OVERSIGHT, ACCOUNTABILITY, AND INTEGRITY; DEFENSE ACQUISITION UNIVERSITY TRAINING.**

(a) ESTABLISHMENT OF PANEL ON DEPARTMENT OF DEFENSE AND ABILITYONE CONTRACTING OVERSIGHT, ACCOUNTABILITY, AND INTEGRITY. —

(1) IN GENERAL. —The Secretary of Defense shall establish a panel to be known as the “Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity” (hereafter in this section referred to as the “Panel”). The Panel shall be supported by the Defense Acquisition University, established under section 1746 of title 10, United States Code, and the National Defense University, including administrative support.

(2) COMPOSITION. —The Panel shall be composed of the following:

(A) A representative of the Under Secretary of Defense for Acquisition, Technology, and Logistics, who shall be the chairman of the Panel.

(B) A representative from the AbilityOne Commission.

(C) A representative of the service acquisition executive of each military department and Defense Agency (as such terms are defined, respectively, in section 101 of title 10, United States Code).

(D) A representative of the Under Secretary of Defense (Comptroller).

(E) A representative of the Inspector General of the Department of Defense and the AbilityOne Commission.

(F) A representative from each of the Army Audit Agency, the Navy Audit Service, the Air Force Audit Agency, and the Defense Contract Audit Agency.

(G) The President of the Defense Acquisition University, or a designated representative.

(H) One or more subject matter experts on veteran’s employment from a veteran’s service organization.

(I) A representative of the Commission Directorate of Veteran Employment of the AbilityOne Commission whose duties include maximizing opportunities to employ significantly disabled veterans in accordance with the regulations of the AbilityOne Commission.

(J) One or more representatives from the Department of Justice who are subject matter experts on compliance with disability rights laws applicable to contracts of the Department of Defense and the AbilityOne Commission.

(K) One or more representatives from the Department of Justice who are subject matter experts on Department of Defense contracts, Federal Prison Industries, and the requirements of the Javits-Wagner-O’Day Act.

(L) Such other representatives as may be determined appropriate by the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(b) MEETINGS. —The Panel shall meet as determined necessary by the chairman of the Panel, but not less often than once every three months.

(c) DUTIES. —The Panel shall—

(1) review the status of and progress relating to the implementation of the recommendations of report number DODIG–2016–097 of the Inspector General of the Department of Defense titled “DoD Generally Provided Effective Oversight of AbilityOne Contracts”, published on June 17, 2016;

- (2) recommend actions the Department of Defense and the AbilityOne Commission may take to eliminate waste, fraud, and abuse with respect to contracts of the Department of Defense and the AbilityOne Commission;
  - (3) recommend actions the Department of Defense and the AbilityOne Commission may take to ensure opportunities for the employment of significantly disabled veterans and the blind and other severely disabled individuals;
  - (4) recommend changes to law, regulations, and policy that the Panel determines necessary to eliminate vulnerability to waste, fraud, and abuse with respect to the performance of contracts of the Department of Defense;
  - (5) recommend criteria for veterans with disabilities to be eligible for employment opportunities through the programs of the AbilityOne Commission that considers the definitions of disability used by the Secretary of Veterans Affairs and the AbilityOne Commission;
  - (6) recommend ways the Department of Defense and the AbilityOne Commission may explore opportunities for competition among qualified nonprofit agencies or central nonprofit agencies and ensure an equitable selection and allocation of work to qualified nonprofit agencies;
  - (7) recommend changes to business practices, information systems, and training necessary to ensure that—
    - (A) the AbilityOne Commission complies with regulatory requirements related to the establishment and maintenance of the procurement list established pursuant to section 8503 of title 41, United States Code; and
    - (B) the Department of Defense complies with the statutory and regulatory requirements for use of such procurement list; and
  - (8) any other duties determined necessary by the Secretary of Defense.
- (d) CONSULTATION. —To carry out the duties described in subsection (c), the Panel may consult or contract with other executive agencies and with experts from qualified nonprofit agencies or central nonprofit agencies on—
- (1) compliance with disability rights laws applicable to contracts of the Department of Defense and the AbilityOne Commission;
  - (2) employment of significantly disabled veterans; and
  - (3) vocational rehabilitation.
- (e) AUTHORITY. —To carry out the duties described in subsection (c), the Panel may request documentation or other information needed from the AbilityOne Commission, central nonprofit agencies, and qualified nonprofit agencies.
- (f) PANEL RECOMMENDATIONS AND MILESTONE DATES. —
- (1) MILESTONE DATES FOR IMPLEMENTING RECOMMENDATIONS. —After consulting with central nonprofit agencies and qualified nonprofit agencies, the Panel shall suggest milestone dates for the implementation of the recommendations made under subsection (c) and shall notify the congressional defense committees, the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, qualified nonprofit agencies, and central nonprofit agencies of such dates.
  - (2) NOTIFICATION OF IMPLEMENTATION OF RECOMMENDATIONS. —After the establishment of milestone dates under paragraph (1), the Panel may review the activities, including contracts, of the AbilityOne Commission, the central nonprofit agencies, and the relevant qualified nonprofit agencies to determine if the recommendations made under subsection (c) are being substantially implemented in good faith by the AbilityOne Commission or such agencies. If the Panel determines that the AbilityOne Commission or any such agency is

not implementing the recommendations, the Panel shall notify the Secretary of Defense, the congressional defense committees, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate.

(g) REMEDIES. —

(1) IN GENERAL. —Upon receiving notification under subsection (f)(2) and subject to the limitation in paragraph (2), the Secretary of Defense may take one of the following actions:

(A) With respect to a notification relating to the AbilityOne Commission, the Secretary may suspend compliance with the requirement to procure a product or service in section 8504 of title 41, United States Code, until the date on which the Secretary notifies Congress, in writing, that the AbilityOne Commission is substantially implementing the recommendations made under subsection (c).

(B) With respect to a notification relating to a qualified nonprofit agency, the Secretary may terminate a contract with such agency that is in existence on the date of receipt of such notification, or elect to not enter into a contract with such agency after such date, until the date on which the AbilityOne Commission certifies to the Secretary that such agency is substantially implementing the recommendations made under subsection (c).

(C) With respect to a notification relating to a central nonprofit agency, the Secretary may include a term in a contract entered into after the date of receipt of such notification with a qualified nonprofit agency that is under such central nonprofit agency that states that such qualified nonprofit agency shall not pay a fee to such central nonprofit agency until the date on which the AbilityOne Commission certifies to the Secretary that such central nonprofit agency is substantially implementing the recommendations made under subsection (c).

(2) LIMITATION. —If the Secretary of Defense takes any of the actions described in paragraph (1), the Secretary shall coordinate with the AbilityOne Commission or the relevant central nonprofit agency, as appropriate, to fully implement the recommendations made under subsection (c). On the date on which such recommendations are fully implemented, the Secretary shall notify Congress, in writing, and the Secretary's authority under paragraph (1) shall terminate.

(h) PROGRESS REPORTS. —

(1) CONSULTATION ON RECOMMENDATIONS. —Before submitting the progress report required under paragraph (2), the Panel shall consult with the AbilityOne Commission on draft recommendations made pursuant to subsection (c). The Panel shall include any recommendations of the AbilityOne Commission in the progress report submitted under paragraph (2).

(2) PROGRESS REPORT. —Not later than 180 days after the date of the enactment of this Act, the Panel shall submit to the Secretary of Defense, the Chairman of the AbilityOne Commission, the congressional defense committees, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate a progress report on the activities of the Panel.

(i) ANNUAL REPORT. —

(1) CONSULTATION ON REPORT. —Before submitting the annual report required under paragraph (2), the Panel shall consult with the AbilityOne Commission on the contents of the report. The Panel shall include any recommendations of the AbilityOne Commission in the report submitted under paragraph (2).

(2) REPORT. —Not later than September 30, 2017, and annually thereafter for the next three years, the Panel shall submit to the Secretary of Defense, the Chairman of the AbilityOne

Commission, the congressional defense committees, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate a report that includes—

(A) a summary of findings and recommendations for the year covered by the report;

(B) a summary of the progress of the relevant qualified nonprofit agencies or central nonprofit agencies in implementing recommendations of the previous year's report, if applicable;

(C) an examination of the current structure of the AbilityOne Commission to eliminate waste, fraud, and abuse and to ensure contracting integrity and accountability for any violations of law or regulations;

(D) recommendations for any changes to the acquisition and contracting practices of the Department of Defense and the AbilityOne Commission to improve the delivery of goods and services to the Department of Defense;

and (E) recommendations for administrative safeguards to ensure the Department of Defense and the AbilityOne Commission follow the requirements of the Javits-Wagner-O'Day Act, Federal civil rights law, and regulations and policy related to the performance of contracts of the Department of Defense with qualified nonprofit agencies and the contracts of the AbilityOne Commission with central nonprofit agencies.

(j) SUNSET. —The Panel shall terminate on the date of submission of the last annual report required under subsection (i).

(k) INAPPLICABILITY OF FACA. —The requirements of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Panel established pursuant to subsection (a).

(l) DEFENSE ACQUISITION UNIVERSITY TRAINING. —

(1) IN GENERAL. —The Secretary of Defense shall establish a training program at the Defense Acquisition University established under section 1746 of title 10, United States Code. Such training shall include—

(A) information about—

(i) the mission of the AbilityOne Commission;

(ii) the employment of significantly disabled veterans through contracts from the procurement list maintained by the AbilityOne Commission;

(iii) reasonable accommodations and accessibility requirements for the blind and other severely disabled individuals; and

(iv) Executive orders and other subjects related to the blind and other severely disabled individuals, as determined by the Secretary of Defense; and

(B) procurement, acquisition, program management, and other training specific to procuring goods and services for the Department of Defense pursuant to the Javits-Wagner-O'Day Act.

(2) ACQUISITION WORKFORCE ASSIGNMENT. —Members of the acquisition workforce (as defined in section 101 of title 10, United States Code) who have participated in the training described in paragraph (1) are eligible for a detail to the AbilityOne Commission.

(3) ABILITYONE COMMISSION ASSIGNMENT. —Career employees of the AbilityOne Commission may participate in the training program described in paragraph (1) on a non-reimbursable basis for up to three years and on a non-reimbursable or reimbursable basis thereafter.

(4) FUNDING. —Amounts from the Department of Defense Acquisition Workforce Development Fund established under section 1705 of title 10, United States Code, are authorized for use for the detail of members of the acquisition workforce to the AbilityOne Commission.

(m) DEFINITIONS. —In this section:

- (1) The term “AbilityOne Commission” means the Committee for Purchase from People Who Are Blind or Severely Disabled established under section 8502 of title 41, United States Code.
- (2) The terms “blind”, “qualified nonprofit agency for the blind”, “qualified nonprofit agency for other severely disabled”, and “severely disabled individual” have the meanings given such terms under section 8501 of such title.
- (3) The term “central nonprofit agency” means a central nonprofit agency designated under section 8503(c) of such title.
- (4) The term “executive agency” has the meaning given such term in section 133 of such title.
- (5) The term “Javits-Wagner-O’Day Act” means chapter 85 of such title.
- (6) The term “qualified nonprofit agency” means—
  - (A) a qualified nonprofit agency for the blind; or
  - (B) a qualified nonprofit agency for other severely disabled.
- (7) The term “significantly disabled veteran” means a veteran (as defined in section 101 of title 38, United States Code) who is a severely disabled individual.



## **Appendix IV- FY2019 National Defense Authorization Act**

### **SEC. 846. PROCUREMENT THROUGH COMMERCIAL E-COMMERCE PORTALS**

(a) Establishment of Program. —The Administrator shall establish a program to procure commercial products through commercial e-commerce portals for purposes of enhancing competition, expediting procurement, enabling market research, and ensuring reasonable pricing of commercial products. The Administrator shall carry out the program in accordance with this section, through multiple contracts with multiple commercial e-commerce portal providers, and shall design the program to be implemented in phases with the objective of enabling Government-wide use of such portals.

(b) Use of Program. —The head of a department or agency may procure, as appropriate, commercial products for the department or agency using the program established pursuant to subsection (a).

(c) Implementation and Reporting Requirements. —The Director of the Office of Management and Budget, in consultation with the Administrator and the heads of other relevant departments and agencies, shall carry out the implementation phases set forth in, and submit to the appropriate congressional committees the items of information required by, the following paragraphs:

(1) PHASE I: IMPLEMENTATION PLAN. —Not later than 90 days after the date of the enactment of this Act, an implementation plan and schedule for carrying out the program established pursuant to subsection (a), including a discussion and recommendations regarding whether any changes to, or exemptions from, laws that set forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government are necessary for effective implementation of this section.

(2) PHASE II: MARKET ANALYSIS AND CONSULTATION. —Not later than one year after the date of the submission of the implementation plan and schedule required under paragraph (1), recommendations for any changes to, or exemptions from, laws necessary for effective implementation of this section, and information on the results of the following actions:

(A) Market analysis and initial communications with potential commercial e-commerce portal providers on technical considerations of how the portals function (including the use of standard terms and conditions of the portals by the Government), the degree of customization that can occur without creating a Government-unique portal, the measures necessary to address the considerations for supplier and product screening specified in subsection (e), security of data, considerations pertaining to nontraditional Government contractors, and potential fees, if any, to be charged by the Administrator, the portal provider, or the suppliers for participation in the program established pursuant to subsection (a).

(B) Consultation with affected departments and agencies about their unique procurement needs, such as supply chain risks for health care products, information technology, software, or any other category determined necessary by the Administrator.

(C) An assessment of the products or product categories that are suitable for purchase on the commercial e-commerce portals.

(D) An assessment of the precautions necessary to safeguard any information pertaining to the Federal Government, especially precautions necessary to protect against national security or cybersecurity threats.

(E) A review of standard terms and conditions of commercial e-commerce portals in the context of Government requirements.

(F) An assessment of the impact on existing programs, including schedules, set-asides for small business concerns, and other preference programs.

(3) PHASE III: PROGRAM IMPLEMENTATION GUIDANCE. —Not later than two years after the date of the submission of the implementation plan and schedule required under paragraph (1), guidance to implement and govern the use of the program established pursuant to subsection (a), including protocols for oversight of procurement through the program, and compliance with laws pertaining to supplier and product screening requirements, data security, and data analytics.

(4) ADDITIONAL IMPLEMENTATION PHASES. —A description of additional implementation phases, as determined by the Administrator, that includes a selection of agencies to participate in any such additional implementation phase (which may include the award of contracts to multiple commercial e-commerce portal providers).

(d) Considerations For Commercial E-Commerce Portals.—The Administrator shall consider commercial e-commerce portals for use under the program established pursuant to subsection (a) that are widely used in the private sector and have or can be configured to have features that facilitate the execution of program objectives, including features related to supplier and product selection that are frequently updated, an assortment of product and supplier reviews, invoicing payment, and customer service.

(e) Information On Suppliers, Products, And Purchases. —

(1) SUPPLIER PARTICIPATION AND PRODUCT SCREENING. —The Administrator shall provide or ensure electronic availability to a commercial e-commerce portal provider awarded a contract pursuant to subsection (a) on a periodic basis information necessary to ensure compliance with laws pertaining to supplier and product screening as identified during implementation phase III, as described in subsection (c)(3).

(2) PROVISION OF ORDER INFORMATION. —The Administrator shall require each commercial e-commerce portal provider awarded a contract pursuant to subsection (a) to provide order information as determined by the Administrator during implementation phase II, as described in subsection (c)(2).

(f) Relationship To Other Provisions Of Law. —

(1) All laws, including laws that set forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, apply to the program established pursuant to subsection (a) unless otherwise provided in this section.

(2) A procurement of a product made through a commercial e-commerce portal under the program established pursuant to subsection (a) is deemed to be an award of a prime contract for

purposes of the goals established under section 15(g) of the Small Business Act ([15 U.S.C. 644\(g\)](#)), if the purchase is from a supplier that is a small business concern.

(3) Nothing in this section shall be construed as limiting the authority of a department or agency to restrict competition to small business concerns.

(4) Nothing in this section shall be construed as limiting the applicability of section 1341 of title 31, United States Code (popularly referred to as the Anti-Deficiency Act).

(g) Use of Commercial Practices and Standard Terms and Conditions. —A procurement of a product through a commercial e-commerce portal used under the program established pursuant to subsection (a) shall be made, to the maximum extent practicable, under the standard terms and conditions of the portal relating to purchasing on the portal.

(h) Disclosure, Protection, And Use of Information. —In any contract awarded to a commercial e-commerce portal provider pursuant to subsection (a), the Administrator shall require that the provider—

(1) agree not to sell or otherwise make available to any third party any information pertaining to a product ordered by the Federal Government through the commercial e-commerce portal in a manner that identifies the Federal Government, or any of its departments or agencies, as the purchaser, except if the information is needed to process or deliver an order or the Administrator provides written consent;

(2) agree to take the necessary precautions to safeguard any information pertaining to the Federal Government, especially precautions necessary to protect against national security or cybersecurity threats; and

(3) agree not to use, for pricing, marketing, competitive, or other purposes, any information related to a product from a third-party supplier featured on the commercial e-commerce portal or the transaction of such a product, except as necessary to comply with the requirements of the program established pursuant to subsection (a).

(i) Simplified Acquisition Threshold. —A procurement through a commercial e-commerce portal used under the program established pursuant to subsection (a) shall not exceed the simplified acquisition threshold in section 134 of title 41, United States Code.

(j) Comptroller General Assessments. —

(1) ASSESSMENT OF IMPLEMENTATION PLAN. —Not later than 90 days after the Director of the Office of Management and Budget submits the implementation plan described in subsection (c)(1) to the appropriate congressional committees, the Comptroller General of the United States shall submit to the appropriate congressional committees an assessment of the plan, including any other matters the Comptroller General considers relevant to the plan.

(2) ASSESSMENT OF PROGRAM IMPLEMENTATION. —Not later than three years after the first contract with a commercial e-commerce portal provider is awarded pursuant to subsection (a), the Comptroller General of the United States shall submit to the appropriate congressional committees a report on the challenges and benefits the General Services Administration and participating departments and agencies observe regarding implementation of the program established pursuant to subsection (a). The report shall include the following elements:

(A) A description of the acquisition of the commercial e-commerce portals (including the extent to which the portals had to be configured or otherwise modified to meet the needs of the program) costs, and the implementation schedule.

(B) A description of participation by suppliers, with particular attention to those described under subsection (e), that have registered or that have sold goods with at least one commercial e-commerce portal provider, including numbers, categories, and trends.

(C) The effect, if any, of the program on the ability of agencies to meet goals established for suppliers and products described under subsection (e), including goals established under section 15(g) of the Small Business Act ([15 U.S.C. 644\(g\)](#)).

(D) A discussion of the limitations, if any, to participation by suppliers in the program.

(E) Any other matters the Comptroller General considers relevant to report.

(k) Definitions. —In this section:

(1) ADMINISTRATOR. —The term “Administrator” means the Administrator of General Services.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES. —The term “appropriate congressional committees” means the following:

(A) The Committees on Armed Services of the Senate and House of Representatives.

(B) The Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

(C) The Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives.

(3) COMMERCIAL E-COMMERCE PORTAL. —The term “commercial e-commerce portal” means a commercial solution providing for the purchase of commercial products aggregated, distributed, sold, or manufactured via an online portal. The term does not include an online portal managed by the Government for, or predominantly for use by, Government agencies.

(4) COMMERCIAL PRODUCT. —The term “commercial product” means a commercially available off-the-shelf item, as defined in section 104 of title 41, United States Code, except the term does not include services.

(5) SMALL BUSINESS CONCERN.—The term “small business concern” has the meaning given such term under section 3 of the Small Business Act ([15 U.S.C. 632](#)).

**Office of Inspector General**

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