

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

**Tuesday, April 13, 2023
1:00 p.m. – 4:00 p.m. ET**

I. Call to Order and Introductions

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

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

Commission members and Commission staff introduced themselves.

II. Consideration of Minutes

There were no changes to the minutes from the virtual public meeting on January 31, 2023. The minutes were approved.

III. Chairperson Opening Remarks

Koses said in the last two years he has emphasized building the Commission’s regulatory muscle—as seen, for instance, in the rule “[Prohibition on the Payment of Subminimum Wages Under 14\(c\) Certificates as a Qualification for Participation as a Nonprofit Agency Under the Javits Wagner O’Day Act.](#)” which took effect in October 2022.

Competition

He noted that on March 13, 2023, the Commission published the notice of proposed rulemaking (NPRM) “[Supporting Competition in the AbilityOne Program](#)” in the Federal Register. The NPRM is an important step in the modernization of the AbilityOne Program, and is an element in the Commission’s [FY 2022-2026 Strategic Plan](#), Koses said.

“The value of competition within the program is a message that we hear loudly and clearly from many Federal agencies, including my own,” added Koses, who is the Senior Procurement Executive for the General Services Administration (GSA).

The proposed rule incorporates specific recommendations that came out of the [2017 National Defense Authorization Act Section 898 Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability and Integrity](#) (898 Panel). Koses said the proposed rule would:

- Increase transparency
- Incentivize performance
- Ensure the program remains a trusted source of supply and services for Federal agencies, while still creating and maintaining jobs for people who are blind or have significant disabilities.

Koses observed that there are strong views on both sides of this issue, and the public comment process can be a mechanism for airing those views.

In addition to building regulatory muscle, the Commission is building strength in drafting legislation, Koses said. Three legislative proposals were transmitted to the relevant Congressional committees on April 13, 2023. These proposals would:

- Give the Commission authority to update its legal name
- Shorten the time it takes to make an addition to or a deletion from the Procurement List
- Give the Commission authority to approve pilot projects below the 75% direct labor hour ratio, if the Commission found that doing so would increase good jobs

Koses observed that the second proposal recognizes the speed at which government must operate today.

Compliance

Modernizing the oversight of nonprofit agency (NPA) compliance is another important part of the Strategic Plan, Koses said.

On January 27, 2023, the Commission issued [three updated compliance policies](#) for public feedback, and, based on initial feedback, posted a second version of the policies on April 5, 2023.

There is no required public comment process for policy, but the Commission made the decision that, as good business partner, it should listen to its stakeholders, Koses said.

Interim Policy Number 51.205.01

Koses discussed the [context of](#), and background to, [Interim Policy Number 51.205.01](#), whose purpose is to provide a procedural framework to resolve disputes involving the covered products developed in partnership with U.S. Army Natick Soldier Systems Center and the Defense Logistics Agency – Troop Support.

Subcontracting and Other Partnerships with Industry

Noting the meeting's public engagement session topic, Koses said that while the Commission historically sought to minimize subcontracting in the AbilityOne Program, the agency now believes that the creative use of subcontracting can be a source of opportunities, including:

- Opportunities to create integrated or more integrated workplaces.
- Opportunities to help AbilityOne employee meet their goals for career advancement.
- Opportunities to create pathways to employment in the broader economy.

IV. Remembrance of Judy Heumann

Commission Vice Chairperson Chai Feldblum, one of the Commission's private citizen members, led the remembrance of Judy Heumann, a trailblazer of the disability rights movement and a key force behind some of its milestone achievements. Heumann passed away on March 4, 2023.

Two staff members – Workforce Development Specialist Bradley Crain and Compliance and Enforcement Counsel Chris Stewart – also shared what they had learned from Heumann.

V. Subcommittee Updates

Enterprise Risk Management Subcommittee

Commission Chief Financial Officer George Govan gave an [update](#) in the absence of the subcommittee's chairperson, Commission Member Virna Winters, who had a competing obligation.

Performance Management Subcommittee

Commission member Jennifer Sheehy, Deputy Assistant Secretary in the Office of Disability Employment Policy, U.S. Department of Labor, and the subcommittee chair, provided an [update](#).

Regulations and Policy Subcommittee

Subcommittee Chair Feldblum gave an [update](#).

VI. Executive Director Report

Executive Director Kim Zeich gave a [report](#), covering topics including staff alignment with the Commission's strategic plan, and operational updates.

VII. Presentation by Inspector General

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

VIII. Public Engagement: Subcontracting and Opportunities with Industry

The Federal Register [notice](#) for the meeting had invited public comments and suggestions about subcontracting and other partnerships with industry by or with AbilityOne employers.

Zeich began the public engagement section by providing [background](#) on how the Commission historically considered subcontracting, and how it currently does.

Panel

The Commission's Acting Deputy Executive Director, Amy Jensen, moderated a panel of nonprofit, for-profit, and government leaders.

Justin Crosby, Strategic Programs Division, Department of Energy (DoE), and DoE AbilityOne Representative (ABOR)

Crosby said that more than 85% of the Department of Energy's (DoE's) annual contracting dollars flow through 36 major contracts like those covering national laboratories. These multi-billion-dollar contracts have broad scope with long durations, and much of the contractor workforce remains even if the contract transitions. DoE has long-term relationships that enable enduring results, he said.

Subcontracting with AbilityOne is new for DoE contractors, Crosby said. He and his colleagues have been focused on education, obtaining experience, and lessons learned, rather than establishing contractual goals or reserving scope.

Ken Crum, Chief Operating Officer, ServiceSource

Crum discussed ServiceSource's Total Facilities Management contract for the Mark Center in Alexandria, Va., and ServiceSource's subcontracting partnership with M.C. Dean.

Lawrence Melton, President, The Building People

Melton described how, during his decades-long career at GSA that culminated in a position as an assistant commissioner, he learned how to ensure that the agency’s relationships with AbilityOne NPAs were truly partnerships. Now, as the head of The Building People, a real estate and facilities services company, he has an opportunity to partner and work alongside many NPAs.

For The Building People, the opportunity to subcontract to AbilityOne “just makes good sense,” he said.

Shannon Satterfield, Director of Professional Services, IFB Solutions

Satterfield discussed overseeing a team whose 42 members – all legally blind, as she is – work on call center contracts. Her call center staffing group got its start thanks to AbilityOne subcontract requirements that were included in prime contract solicitations. Today, the call center group has partnerships with large staffing and call center firms like Maximus, and entities including Denny’s and the North Carolina Department of Health and Human Services and.

Her team is able to meet the core challenges of the call center staffing industry: high turnover and low employee engagement, she said. The jobs IFB Solutions provides are changing lives, she added.

Jim Murdaugh, AbilityOne Key Accounts Manager, 3M Government Marketing-Sales, 3M Corporation

Murdaugh discussed how 3M works with AbilityOne nonprofits – examples include furnishing raw materials or products like tape and anti-slip product.

3M’s outsourcing needs include packaging, assembly, kitting, metalworking, and call center work. AbilityOne agencies and suppliers that register in the 3M sourcing portal are available to 3M sourcing experts for subcontracted opportunities.

“We’re learning, in just the short time that we’ve been doing this program, that many...NPAs are near our facilities and we’re finding new ways of building relationships with folks that are just a few miles down the road,” he said. “I look forward to helping lead the expansion of our support of the AbilityOne Program and the opportunities registering with our sourcing portal are going to provide.”

Following the panelists’ initial remarks, the discussion included the following:

Koses observed that the discussion had touched on a variety of approaches to subcontracting. He asked Crosby about any data that might be captured at DoE with regard to the number and types of jobs created.

Crosby mentioned some ways DoE is looking at data related to AbilityOne, including identifying AbilityOne usage that is occurring but that the agency isn’t tracking.

Feldblum asked the panelists how much effort is going into making sure jobs created through subcontracting are integrated jobs. She also asked what criteria were being used to decide which AbilityOne NPAs were right for subcontracting opportunities.

With regard to the question about criteria, Crosby reiterated the importance of getting a good data tracking system in place.

With regard to the integration question, Melton says his company focuses on putting the best team forward, and treats everybody as a team member working on the same mission.

Crum echoed Melton's team-oriented perspective, and said subcontracting provides opportunity for integration, with employees with different backgrounds and different skill sets working together to deliver a service to the customer.

Murdaugh said he sees potential for industry to support the AbilityOne Program in a multitude of different ways, small and large, including "injection molding, full-blown manufacturing, printing services, liquid filling, and many others."

Commission Member Tara Jamison, Deputy Senior Procurement Executive and Director, Office of Acquisition Management, at the Department of Justice, asked panelists if they knew of a best practice or mechanism in subcontracting arrangements to make sure that, throughout performance, the meaningful work that is planned for gets executed and the teaming arrangement is maintained.

Crosby mentioned regular monitoring of key performance indicators "based on the scope of services that we are to provide to the...federal customer."

Feldblum talked further about using subcontracting specifically to advance integration. How subcontracting ordinarily works, she said, is that a prime might do jobs A, B, and C, but then subcontract out job D to an entity that can do it better: The employees working on job D would be doing a different job from those working on A, B, and C. By contrast, the Commission has been exploring the idea of using subcontracting to create integration: According to this potential model, an AbilityOne NPA might bring on a subcontractor whose employees do not have significant disabilities specifically to create more integration in the workplace: All the employees would be doing the same job, but in a more integrated context.

Koses clarified how payment typically works in government contracts that include subcontracting arrangements: Government contracts with, and pays, the prime.

Koses then asked for any further comments about when an AbilityOne nonprofit is the sub, rather than the prime.

Melton said an advantage to having a small or large business subcontracting to a nonprofit is bringing the business's experience with financial stewardship to the arrangement.

Jensen read a question that had been posed in the chat about how NPAs can discover subcontracting opportunities.

Crosby said in his experience prime contractors work with the CNAs, who in turn make opportunities known in the NPA community.

Crum said ABORs can be helpful in identifying opportunities.

Murdaugh said 3M works closely with the CNAs, but he also returned to the subject of 3M's sourcing portal, where potential suppliers of things that 3M is outsourcing can register.

Feldblum read a comment from the chat: "Although my company subcontracts a lot with small business subcontracting, I have to ask, couldn't you accomplish the same outcome by hiring additional people without significant disabilities and not potentially increase expenses to government?"

Feldblum said one response to that question was that AbilityOne's direct labor hour ratio requirement is a limitation on simply hiring additional people without significant disabilities.

More broadly, she took issue with the idea that a subcontracting arrangement in which an NPA was the prime, subcontracting some work to a for-profit or non-AbilityOne nonprofit, would necessarily cost the government more money. She asked that given that the sub in this case would be interested in being a part of the sole-source ecosystem, and would additionally see the arrangement as a step towards reaching its Section 503 goals through access to a pool of talent, wouldn't the sub therefore have an incentive to come in with a good price for the subcontract?

Koses said that there probably are a number of examples where you subcontract to add additional capability. He has seen that in call centers, for example.

He also said that when prime contractors are going after jobs, they want to be competitive. They are competing often in very aggressive marketplaces and are looking for the most efficient means of going to market and pursuing contracts. They're going to look at whether it is more economical for them to do everything with their own staff or bring in subcontractors for a discreet area focus approach.

Koses thanked the DoD's Susan Pollack for a comment she had dropped into the chat noting a provision within Title 10 under which DoD prime contractors receive credit towards their small business subcontracting goals when they subcontract to AbilityOne nonprofits. Koses said he had not been aware of that, and that the provision was a powerful motivator that the Commission may not have previously recognized.

Crum observed, with regard to using subcontracting to increase integration, that anytime you subcontract a function that you could also self-perform, there will be a markup.

Jensen then read some comments that had been submitted in advance of the meeting.

Jewelyn Cosgrove, Vice President, Government and Public Relations at Melwood, had commented that there are tensions between the efforts to increase subcontracting agreements to achieve higher integration between disabled employees and non-disabled subcontracting staff, and the efforts by Federal agencies to encourage or require self-performance. Will the Commission inform Federal agencies with current contracts of the intention to increase subcontracting?

Zeich said a goal of the April 13 public meeting was to start to emphasize the Commission's recent thinking about subcontracting. The Commission will discuss that thinking with ABORs and customers.

She said the discussion about pricing and the tensions Cosgrove referred to was good to have. For the Commission to embrace subcontracting, it needs to think about typical challenges and barriers, explore avenues, and figure out what will work.

There will be times where additional capacity is needed and it makes sense to have a sub; at other times it won't be economically feasible to further divide something that's small to begin with. Sometimes a nonprofit may be the prime, sometimes they may be the sub. Supplier relationships are also worth exploring.

The Commission will be educating customers and looking to subcontract where it makes economic sense.

Jensen read a comment submitted by Dennis Edwards, Founder and Executive Director of Rising Star Resource Development Corporation: "Will the Commission's guidance related to subcontracting be updated to remove barriers to NPAs that want to work with subcontractors to build their technical capabilities? Today, some of the guidance, including the guidance for nonprofit agencies, recommendations, and assignments, indicate that using subcontractors may increase performance risks."

Zeich answered the question: Historically, the Commission was concerned about subcontract risks and therefore sought for NPAs to build as much organic capability as possible, she said. It is still important for the Program to have the capability to deliver when a product or service has been added to the PL. That said, it's worth thinking about:

- Customer needs where a state-of-the-art solution (for example, expensive IT equipment or support) is needed.
- When does it make sense for an NPA to build organic capability, and when might there be a great opportunity to partner with an innovative company?

Zeich said updating the subcontracting policy is on the Commission's to-do list.

Jensen read another comment from the chat making the point that companies often only hire subcontractors to provide a skill or expertise the company doesn't possess, and that subcontracting adds an additional layer of complexity.

Feldblum said sometimes strategic purposes, or a goal of integrated employment, can provide a reason for subcontracting. She also said that, in the case of knowledge-based areas or other sophisticated contracts, an NPA might not necessarily be able to show extensive past experience, but if it is coming in with a subcontractor who does, then that could make them more qualified.

Jensen then read a question from Jessica Watson of Central Association for the Blind and Visually Impaired (CABVI): "To increase chances of subcontracting opportunities, will you be addressing the challenges in software and database inaccessibility for blind and visually-impaired employees?"

Feldblum said that Federal contractors have Section 503 obligations, so when an AbilityOne NPA works as subcontractor to another government contractor who's the prime, the prime should have accessible systems.

Zeich said that on occasion the Commission has become involved after learning from an NPA about a system that is not fully accessible, and the issues have been worked through. AbilityOne NPAs have a lot of accessibility knowledge, and that can be a great resource for partners. As the Commission continues to think through subcontracting issues, accessibility will be important.

Rebecca Ogle, former executive director of the Presidential Task Force on Employment of Adults with Disabilities, asked Jo Sinha, Chief Executive and Inclusion Officer at Peckham, to elaborate on a comment Sinha had made in the chat about a contract where AbilityOne employees work alongside employees from a staffing agency and view the staffing agency's policies as less employee-friendly than Peckham's. Elaborating at Ogle's request, Sinha also said she had heard anecdotal accounts of AbilityOne employees feeling that that workplace seemed less inclusive after the staffing agency employees came on board. Her advice is to ask AbilityOne employees what they think about their work opportunities and prospects.

Feldblum agreed with Sinha's point about the importance of seeking AbilityOne employees' own views.

Feldblum then read a question asking: "Will the Commission's action related to subcontracting be a ruling or sub-regulatory guidance? If it's to be guidance, what reporting and enforcement mechanisms will be used to ensure that the outward placement opportunities are being created as intended?"

Feldblum said the topic had come up in the Regulations and Policy Subcommittee. Currently, she said, there is guidance about subcontracting in the Commission's Direct Labor Hour compliance guidance, and that will be looked at going forward. The Commission will want to go with

guidance because it's a case of communicating a shift in perspective, as opposed to any regulatory change.

Bruce Patterson, President and CEO of ServiceSource, said that, at the Mark Center, ServiceSource as the prime has commercial subs who perform a variety of functions that ServiceSource does not offer. ServiceSource would be amenable to integrating commercial subs into some of the functions that it currently performs, so as to increase integration (although he thinks ServiceSource sites are generally very integrated), but he doesn't think that ServiceSource customers would tolerate it. It would add expense and complexity, he said.

Patterson also thinks SourceAmerica is conditioned to award opportunities to organizations that indicate that they are going to provide the most direct labor jobs for the NPAs. If, by contrast, an NPA says it will bring in a subcontractor who will take some of the direct labor jobs, that will be a disadvantage.

Feldblum answered that, while that may be the case under current guidance, the Commission is considering a strategic shift in the way it thinks about subcontracting, and in that case will need to make that shift clear in compliance guidance. The Commission is hugely fortunate to have Federal agency members who are procurement experts and can help the agency figure out how to make a new AbilityOne Program position on subcontracting not just acceptable, but actually positive to the government, Feldblum said.

Koses returned to the question about whether the Commission would be addressing subcontracting in regulation. Koses said there may be ways that portions of guidance can be drawn that will not involve regulation, but that the Commission may need to figure out whether other issues belong on a future regulatory agenda.

Zeich said there is room within the Commission's current regulations for updating some of the guidance to CNAs around the recommendation process.

IX. Concluding Remarks

Koses said the Commission realizes that it has introduced a lot of change into the AbilityOne Program in recent years. "We recognize the AbilityOne staff, the Federal customers, the nonprofit agencies, the central nonprofits, they all need time to absorb this, to understand the direction, to understand where a lot of these things are going," he said. "We think it's going to be important that we spend much of the next several months communicating the changes, helping everyone to understand where the ground stands, what's changed, where things are moving forward."

Feldblum said the Commission is "making decisions about what to take on when, so that we can get adequate feedback so we can get it done right."

“It only helps if the NPAs succeed,” she said. “That is a north star for us.”

Koses thanked panelists for sparking a robust conversation, and thanked all attendees for making time to attend. He adjourned the meeting.

Meeting Attendees

More than 200 people attended, including:

Commission Members

Jeffrey Koses, Chairperson
Chai Feldblum, Vice Chairperson
Bryan Bashin
Angela Billups
Chris Brandt
Gabe Cazares
Megan Dake
Carol Dobak
Robert Hogue
Tara Jamison
Jennifer Sheehy
Malcom Shorter

Panelists in Public Engagement Session: “Subcontracting and Opportunities with Industry”

Justin Crosby, Strategic Programs Division, Department of Energy (DoE ABOR)
Ken Crum, Chief Operating Officer, ServiceSource
Lawrence Melton, President, The Building People
Shannon Satterfield, Director of Professional Services, IFB Solutions
Jim Murdaugh, AbilityOne Key Accounts Manager, 3M Government Marketing–Sales, 3M Corporation