



ACQUISITION,  
AND SUSTAINMENT

THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

JUL 18 2018

Mr. Thomas D. Robinson  
Chairman  
U.S. AbilityOne Commission  
Arlington, VA 22202

Dear Mr. Chairman:

Section 898(i)(2) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328), requests that the Panel on the Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity (hereinafter "the Panel") submit an annual report not later than September 30, 2017, and annually thereafter for the next three years. Pursuant to section 898(i)(1), enclosed is the Panel's first annual report to Congress outlining the Panel structure, and provides initial findings and recommendations. Please note that as of February 1, 2018, this reporting requirement is now the responsibility of my office, the Office of the Under Secretary of Defense for Acquisition and Sustainment.

On September 12, 2017, the Under Secretary of Defense for Acquisition, Technology, and Logistics submitted a progress report pursuant to section 898(h)(2) and indicated the Department planned to submit the first annual report by the end of March 2018. Additional time was required for the seven Panel subcommittees to finalize and present their initial findings and recommendations to the Panel at the April 12, 2018 meeting, and to consult with the U.S. AbilityOne Commission as required by section 898(i)(1). We appreciate the Commission's participation on the Panel, and concurrence of the enclosed report.

An identical letter has been sent to the other congressional defense committees, the Chairman of the House Committee on Oversight and Government Reform, and the Chairman of the Senate Committee on Homeland Security and Governmental Affairs.

Sincerely,

A handwritten signature in blue ink that reads "Ellen M. Lord".

Ellen M. Lord

Enclosure:  
As stated



THE UNDER SECRETARY OF DEFENSE  
3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

ACQUISITION,  
AND SUSTAINMENT

JUL 18 2018

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Section 898(i)(2) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328), requests that the Panel on the Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity (hereinafter "the Panel") submit an annual report not later than September 30, 2017, and annually thereafter for the next three years. Pursuant to section 898(i)(1), enclosed is the Panel's first annual report to Congress outlining the Panel structure, and provides initial findings and recommendations. Please note that as of February 1, 2018, this reporting requirement is now the responsibility of my office, the Office of the Under Secretary of Defense for Acquisition and Sustainment.

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Ellen M. Lord

Enclosure:  
As stated

cc:  
The Honorable Claire McCaskill  
Ranking Member



THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

ACQUISITION,  
AND SUSTAINMENT

The Honorable Trey Gowdy  
Chairman  
Committee on Oversight and  
Government Reform  
U.S. House of Representatives  
Washington, DC 20515

JUL 18 2018

Dear Mr. Chairman:

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Enclosure:  
As stated

cc:  
The Honorable Elijah E. Cummings  
Ranking Member



THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

ACQUISITION,  
AND SUSTAINMENT

The Honorable William M. "Mac" Thornberry  
Chairman  
Committee on Armed Services  
U.S. House of Representatives  
Washington, DC 20515

JUL 18 2018

Dear Mr. Chairman:

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As stated

cc:  
The Honorable Adam Smith  
Ranking Member



THE UNDER SECRETARY OF DEFENSE  
3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

ACQUISITION,  
AND SUSTAINMENT

The Honorable Rodney P. Frelinghuysen  
Chairman  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

JUL 18 2018

Dear Mr. Chairman:

Section 898(i)(2) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328), requests that the Panel on the Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity (hereinafter "the Panel") submit an annual report not later than September 30, 2017, and annually thereafter for the next three years. Pursuant to section 898(i)(1), enclosed is the Panel's first annual report to Congress outlining the Panel structure, and provides initial findings and recommendations. Please note that as of February 1, 2018, this reporting requirement is now the responsibility of my office, the Office of the Under Secretary of Defense for Acquisition and Sustainment.

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As stated

cc:  
The Honorable Nita M. Lowey  
Ranking Member



THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

ACQUISITION,  
AND SUSTAINMENT

JUL 18 2018

The Honorable Richard C. Shelby  
Chairman  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

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cc:  
The Honorable Patrick J. Leahy  
Vice Chairman



THE UNDER SECRETARY OF DEFENSE  
3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

ACQUISITION,  
AND SUSTAINMENT

JUL 18 2018

The Honorable John McCain  
Chairman  
Committee on Armed Services  
United States Senate  
Washington, DC 20510

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Enclosure:  
As stated

cc:  
The Honorable Jack Reed  
Ranking Member

**TAB**

**1**



# Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity

## 2018 First Annual Report to Congress



### Office of the Under Secretary of Defense for Acquisition and Sustainment

The estimated cost of this report for the Department of Defense is approximately \$8,800.00 for Fiscal Year 2018. This includes \$8,800.0 in DoD labor.  
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## **Executive Summary**

### **Basis of Submission**

Section 898 of the National Defense Authorization Act (NDAA) for Fiscal Year 2017 (Public Law 114-328), directs the Secretary of Defense to establish a panel of senior level representatives from Department of Defense (DoD) agencies, the U.S. AbilityOne Commission, and other organizations as specified in the legislation. The overall mission of the Panel is to address the effectiveness and internal controls of the AbilityOne Program related to DoD contracts. As required by section 898, the Defense Acquisition University (DAU) provides administrative support to the Panel, and is developing improved training related to the AbilityOne Program. Section 898(i)(2) requires the Panel to provide an annual report on its activities not later than September 30 each year. This is the Panel's first annual report to Congress outlining the structure, process, and initial findings and recommendations.

### **Panel Accomplishments**

The Panel established seven subcommittees aligned with the duties specified in section 898: (1) Inspector General, (2) Eliminate Fraud, Waste, and Abuse, (3) Employment Initiatives, (4) Regulations and Law, (5) Veterans Eligibility, (6) Acquisition and Procurement, and (7) Business Process Re-engineering. Each subcommittee completed a formal report documenting the review of their designated focus areas and presented recommendations to the Panel. Of significance, a subcommittee leader off-site was held January 17-18, 2018. The full Panel has convened four times since the initial meeting one year ago, and meets every 3-4 months.

### **Panel Findings**

The significant overarching challenge for the AbilityOne Program is the lack of resources for the Federal agency, the U.S. AbilityOne Commission, which has the oversight function for the Program. The U.S. AbilityOne Commission and the supporting 32 full-time Federal employees (including five Office of Inspector General employees)<sup>1</sup> are required to oversee a \$3.3 billion<sup>2</sup> program, more than 500 nonprofit agencies located across the U.S. and its territories, and currently two Central Nonprofit Agencies (CNAs) with staffing and funding that far exceed the resources of the Commission.<sup>3</sup>

In the 80 years since the Wagner-O'Day Act was enacted in 1938, Federal spending has grown with commensurate regulations, and competing laws for disability employment have been passed. Newer legislation shifted the long term goals for employees with disabilities toward workplaces integrated with non-disabled employees, which include some AbilityOne Program service locations. What has not changed is the need to provide opportunities for the dignity of work to all Americans. Those who are blind or have severe disabilities suffer from an unemployment rate of upwards of 60 percent according to the Bureau for Labor Statistics. While pursuing its mission to provide employment opportunities to this population, the

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<sup>1</sup> U.S. AbilityOne Commission FY 2019 Congressional Budget Justification, submitted February 2018.

<sup>2</sup> U.S. AbilityOne Commission FY17 annual data compiled from nonprofit agencies' Representations and Certifications

<sup>3</sup> In FY 2017, the CNAs had combined revenues in excess of \$100 million, according to the quarterly fee reports they submitted to the Commission. The Commission's FY 2017 appropriation was \$8 million, of which not less than \$1 million was reserved for the Office of Inspector General.

Commission is working to modernize the AbilityOne Program's policies and business practices. This modernization will be informed by the Panel's recommendations.


### **Panel Recommendations: Initial Actions Identified in 2018**

The Panel identified 41 initial recommendations for consideration and implementation in the following focus areas:

- Resources
- Program Oversight
- Contract Goal
- Definitions
- Training
- Technology

The recommendations, when implemented, will result in greater awareness and compliance with the AbilityOne Program requirements with respect to DoD contracts. These efforts will have a positive effect on the employment needs of individuals who are blind or have severe disabilities and who are hired on DoD contracts to provide products and services vital to the defense mission. I would also like to highlight the Panel recommendations of eligibility criteria for more veterans with disabilities to participate in the AbilityOne Program, and a recommendation for an AbilityOne contracting goal for DoD, which will create more job opportunities for individuals who are blind or have significant disabilities.

In Fiscal Year 2019, the Panel will prioritize and refine the actionable recommendations, identify the recommendations that require more research, and focus on other recommendations that improve oversight, accountability, transparency and integrity in contracting with the AbilityOne Program. I am pleased to have the full participation of the Chairperson of the U.S. AbilityOne Commission, as well as the Executive Director and Commission's Director of Veterans Employment & Initiatives, on the Panel. Appendix A of this report includes a memorandum from the current Chairperson of the Commission and remarks from the former Chairperson. Together, the Panel members are committed to advancing the AbilityOne mission of employment for individuals who are blind or who have significant disabilities, and for veterans with disabilities, and to eliminating vulnerabilities that may erode the employment of the Nation's most underemployed population.



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Shay D. Assad  
Chair  
Panel on Department of Defense and  
AbilityOne Contracting Oversight,  
Accountability and Integrity

## **Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability and Integrity**

### **Section I: Overview, Mission, Background, Recent Reports, Panel Duties and Functions, Panel Organization, Panel Membership, Description of Subcommittees, Meetings**

#### **Overview**

Section 898 of the National Defense Authorization Act (NDAA) for Fiscal Year 2017 (FY17) (Public Law 114-328), directs the Secretary of Defense to establish the “Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability and Integrity” (“the Panel”), and that a representative to the Under Secretary of Defense (USD) for Acquisition, Technology, and Logistics (AT&L) shall serve as the Panel Chairman. Effective February 1, 2018, the responsibility for the reporting requirement became the responsibility of the Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)).

Appendix E provides the full text of section 898. Section 898 requires that the Panel shall submit findings and recommendations in a series of annual reports to Congress over a three year period. This is the first annual report to Congress outlining the Panel structure, process, and the initial findings and recommendations to address the concerns in contracting that led to the establishment of the Panel.

#### **Mission**

The primary mission of the Panel is to review the effectiveness and internal controls of the AbilityOne Program related to Department of Defense (DoD) contracts, and report back to Congress on ways to eliminate waste, fraud, and abuse in contracting between DoD and nonprofit agencies participating in the AbilityOne Program, and to ensure integrity and accountability for any violations of law or regulation, and policy; to recommend changes to business practices and IT systems to facilitate compliance with the Javits-Wagner-O’Day (JWOD) Act (41 U.S.C. §§8501-8506); to make recommendations for increasing employment opportunities for individuals who are blind or have severe<sup>4</sup> disabilities and for employment of service-disabled veterans; and recommend ways to explore opportunities for competition among qualified nonprofit agencies to ensure an equitable selection in work allocation; and to develop enhanced AbilityOne Program training at the Defense Acquisition University (DAU).

As described below, seven Panel subcommittees have been established, each responsible for one aspect of this overall mission.

#### **AbilityOne Program**

The AbilityOne Program is a Federal procurement program with a purpose to provide jobs for people who are blind or have severe disabilities in the manufacture and delivery of products and services to the Federal Government. The products and services are identified on a mandatory source AbilityOne Procurement List, which is implemented in the Federal Acquisition Regulation, Subpart 8.7. Over the years, the AbilityOne Program has grown to be the largest

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<sup>4</sup> Pursuant to 41 C.F.R. 51-3, Definitions, “severely disabled” and “severe disability” is interchangeable and synonymous with “significantly disabled” and “significant disability.”

source of employment for people who are blind or have severe disabilities with approximately 46,000 employed through Federal contracts in FY17. These individuals are employed by the nearly 550 participating AbilityOne nonprofit agencies (NPAs) located across the United States, Guam, and Puerto Rico. The DoD is the largest customer of the Program and in FY17 contracting officials awarded approximately \$2.1 billion dollars in prime contracts for products and services to support the defense mission. Overall, in FY17, the AbilityOne Program received \$3.3 billion in prime contracts across all Federal agencies.

To summarize, the Javits-Wagner-O'Day (JWOD) Act (41 U.S.C. §§8502-8506) established a Presidentially-appointed Commission of 15 members, currently supported by a staff of 32 professionals, of which five are in the Office of Inspector General. The statute authorizes the Commission to identify Central Nonprofit Agencies and qualify nonprofit agencies respectively.

- Nonprofit agencies (NPAs) that employ people who are blind or have severe disabilities must meet the Commission's regulation for qualification at 41 C.F.R. 51-4.2 and 4.3.
- Central Nonprofit Agencies (CNAs) are designated by the Commission in accordance with 41 U.S.C. 8503. In accordance with 41 C.F.R. Chapter 51, the CNAs facilitate the distribution of orders by direct allocation, subcontract, or any other means.
- National Industries for the Blind and SourceAmerica have been designated by the Commission as CNAs.

#### **Statutory Background – AbilityOne Program**

In 1938, the Wagner-O'Day Act was passed, creating employment opportunities for people who are blind by authorizing the manufacturing of mops and brooms to sell to the Federal Government. In 1971, under the leadership of Senator Jacob Javits, Congress amended the Wagner-O'Day Act to include employment for people with severe disabilities and to expand the services provided to the Federal Government under the Program.

The AbilityOne Program is administered by the U.S. AbilityOne Commission, the operating name for the Committee for Purchase From People Who Are Blind or Severely Disabled, which is an independent Federal agency. The Commission is comprised of 15 presidential appointees, who are led by the Commission Chairperson. The Commission administers the JWOD Act with support from 32 full-time professional staff.<sup>5</sup>

The JWOD Act directs the AbilityOne Commission to designate Central Nonprofit Agencies (CNAs) to facilitate, by direct allocation, subcontract, or any other means, the distribution the distribution of Government orders of products and services among nonprofit agencies employing people who are blind or who have severe disabilities. The AbilityOne Commission has currently designated National Industries for the Blind (NIB) and SourceAmerica (serving people with significant disabilities) as the national nonprofit organizations that perform functions to facilitate nonprofit agencies' participation in the AbilityOne Program. In order to be authorized to participate in the AbilityOne Program, at least 75 percent of a nonprofit agency's total direct labor hours must be performed by people who are blind or who have severe disabilities.

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<sup>5</sup> Five of whom work for the Office of Inspector General (OIG)

Employees in the Program meet the statutory definition of a person who is blind or a person with a severe disability under the JWOD Act.

Historically, the CNAs have coordinated with contracting activities to jointly explore the products and services that may be suitable for provision by local nonprofit agencies. Once a potential Procurement List addition is identified, the CNA works with the contracting activity to obtain the data needed by the AbilityOne Commission to determine its suitability for the AbilityOne Program. In addition to the Commission's duty to determine suitability, the JWOD Act authorizes the Commission to set a fair market price for each product or service on the AbilityOne Procurement List.

### **Recent Reports and Activities - DoD, AbilityOne, and DAU**

In recent years, a number of official reports have identified a need to modernize the AbilityOne Program while focusing on the critical mission of employing people who are blind or have severe disabilities.

### **Cooperative Agreements**

In 2013, the Government Accountability Office issued a report, "Employing People With Blindness or Severe Disabilities: Enhanced Oversight of the AbilityOne Program Needed," (GAO-13-457). The report provided recommendations for improvements in the Commission oversight of the CNAs to include written agreements to promote greater accountability within the AbilityOne Program.

In December 2015, the Consolidated Appropriations Act, 2016 (Public Law 114-113), required that the Commission enter into written agreements with the CNAs. Cooperative Agreements were signed in June 2016 between the Commission and each of the two CNAs. Additionally, the Commission established a Program Management Office to administer and implement the Cooperative Agreements. The Cooperative Agreements are the first such documents to outline in detail how the CNAs are to be accountable through auditing, oversight, and reporting.

The agreements state that "High value is associated with sustaining and increasing current employment levels and developing and executing new lines of business that also increase new employment opportunities." The agreements' key performance indicators are (1) Employment Growth; (2) Program Administration, Oversight, and Integrity; (3) NPA Support, Assistance, and Development; and (4) Training and Strategic Communications. The agreements also include performance-based specifications that express the Government's requirements in the form of the minimum quality standards to be met, and consequences for deficient performance. The CNAs must also report on finances, including reserve funds. The agreements required both CNAs to develop and implement a business ethics plan, which includes steps to avoid any conflict of interest among board members with the Program and NPAs. The respective CNA business ethics plans have been completed.

The Cooperative Agreements address points related to contracting, integrity, accountability, and oversight, including but not limited to:

- In-Process Reviews (IPR) of program performance with special emphasis on employment growth and financial management updates
- Review and/or approval of CNA internal policies (Allocation and Recommendation process, Performance Improvement Plan, MOA, MOUs)
- Quality Assurance and Surveillance Plan (QASP) which include timed deliverables and performance metrics
- Monthly meetings with the Commission to discuss performance and deliverables
- Review of all NPA Site Visits
- Review all annual Reps/Certs
- Quarterly Contract Closeout reports (includes veteran employment growth)

### **DoDIG Audit Report**

In 2015, the DoD Office of Inspector General (DoDIG) opened an audit of DoD and AbilityOne contracts. The resulting OIG Audit Report, DODIG-2016-097, “DoD Generally Provided Effective Oversight of AbilityOne Contracts,” dated June 17, 2016, found issues both with how DoD contracting personnel used AbilityOne and their understanding of the Program. The Report contains one recommendation with three subparts for the Director, Defense Procurement and Acquisition Policy (DPAP), to:

- a. issue a policy memorandum requiring DoD contracting officials to ensure all products and services procured under AbilityOne are on the AbilityOne Procurement List before contract award,
- b. update existing training to clearly define DoD contracting officers’ roles and responsibilities when awarding contracts under AbilityOne, and
- c. require that all contracting personnel planning to procure under AbilityOne complete the updated AbilityOne training.

### **DoD Policy for Checking AbilityOne Procurement List**

To address the first DoDIG recommendation, and as advised by subcommittee one of the Panel, the Director, DPAP, issued a memorandum, “Contracting with the AbilityOne Program,” dated November 1, 2017, and is provided as Appendix B. The memorandum reminds the DoD contracting workforce to check the AbilityOne Procurement List before purchasing, to verify the item is on the List. The IG report found instances in which DoD contracting personnel purchased products or services from AbilityOne not on the Procurement List.

### **AbilityOne Office of Inspector General (OIG)**

The AbilityOne OIG, a relatively new office, moved forward with key work to carry out its oversight mission. In May 2017, the first Inspector General, Thomas Lehigh, was appointed. The office began execution for start up of the operation, including standing up a live Hotline Center and portal where callers can report waste, fraud and abuse, and possible misconduct or other problems related to the AbilityOne Program. The hotline number, and information about using it, are included in the OIG web page on the AbilityOne website. Both the hotline and the web page were added in 2017, soon after the Agency’s first IG was named.

The AbilityOne OIG issued a Top Management and Performance Challenges Report in October 2017, which describes challenges and issues AbilityOne faces in carrying out its

mission. The IG also issued its first Federal Information Security Modernization Act report in December, providing the results of an audit of the Commission information security program and recommendations for improvement. A two year audit plan was issued and initiated for audit coverage and oversight. In less than a year over eight audit products were issued. In the last year, the office issued two Semiannual Reports to Congress.

### **Directorate of Veterans Employment and Initiatives**

In 2017, the Commission added a Directorate of Veterans Employment and Initiatives. This initiative helps fulfill the commitment of the Program to hire veterans who are service-disabled and match them with community resources through the AbilityOne Program. In addition to the Director, there is one other full-time staff member and an intern. Pursuant to section 898 of the FY17 NDAA, the Directorate serves on the Panel.

As one of the largest sources for employment opportunities for people who are blind or who have severe disabilities, AbilityOne is well positioned to help with challenges faced by service-disabled veterans for obtaining and keeping a job. It is a problem that has been highlighted by the conflicts in Iraq and Afghanistan. For example, veterans who have served since September 2001, known as Gulf War II veterans, and who have a service-connected disability are less likely to be in the workforce than those who do not have a disability – 76 percent compared to 86.6 percent.<sup>6</sup> Of the total number of veterans serving since September 2001, 36 percent have a service-connected disability.

The AbilityOne Directorate of Veterans Employment and Initiatives speaks with veteran agencies and participates in wounded warrior events as part of the Commission outreach to veterans. They provide information on AbilityOne resources for veterans. Approximately 3,000 disabled veterans are currently employed through the AbilityOne Program.<sup>7</sup> The range of their military service stretches from Vietnam through the most recent conflicts in Iraq and Afghanistan.

### **DAU Training**

To address the second DoDIG recommendation, DPAP subject matter experts and the U.S. AbilityOne Commission program manager and staff, collaborated with DAU over several months to complete a comprehensive update to continuous learning module 023, “AbilityOne Contracting,” and to add a one hour block of instruction to CON 090, “Federal Acquisition Regulation (FAR) Fundamentals.” The updated training will clearly articulate the roles and responsibilities of contracting officers when procuring products and services from the AbilityOne Program as required by the FAR. DAU will deploy the updated training module by August 31, 2018. Once the training is deployed, the Director, DPAP, will issue a memorandum to require the contracting workforce take the training to meet continuous

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<sup>6</sup> U.S. Bureau of Labor Statistics, Employment Situation of Veterans Summary, 2017

<sup>7</sup> U.S. AbilityOne Commission FY17 annual data compiled from nonprofit agencies’ Representations and Certifications documents



learning requirements in 2019 and 2020. Senior procurement executives will be asked to advise their contracting personnel of the requirement. Results will be reported at each panel meeting.

These actions will fully address the IG recommendations, and implement the training duties of the section 898 of the FY17 NDAA, which directs the Secretary of Defense to establish a DAU program that includes information about:

- The AbilityOne mission
- Employment of significantly disabled veterans through the Program
- Accommodations that must be made for those who are blind or severely disabled
- Executive orders concerning those who are blind or severely disabled
- Training for DoD procurement and program management under the JWOD Act

A report foundational to the Panel, DODIG-2016-097, made the training recommendation. In the report, the DODIG documented that it found instances where DoD contracting personnel did not check the Procurement List before awarding a contract with a participating AbilityOne NPA. The training will explicitly address this issue.

### **Progress Report**

Section 898(h)(2) of the NDAA for FY17 (Public Law 114-328) requires the Secretary of Defense to provide a progress report on the recent activities of the Panel. Appendix C provides the letters, signed September 12, 2017, and submitted to the congressional defense committees, the House Committee on Oversight and Government Reform, and the Senate Committee on Homeland Security and Governmental Affairs on the progress in the annual report. Copies of the letters transmitting the Department's progress report were also submitted to the Chairman of the U.S. AbilityOne Commission.

### **Panel Duties & Functions**

Pursuant to section 898(c), the Panel shall:

1. Review status/progress relating to implementation of recommendations in the DoDIG report 2016-097, "DoD Generally Provided Effective Oversight of AbilityOne Contracts," published June 17, 2016;
2. Recommend actions to eliminate waste, fraud, and abuse in contracts of the DoD and of AbilityOne;
3. Recommend actions the DoD and the AbilityOne Commission may take to ensure opportunities for the employment of significantly disabled veterans and for the blind and other individuals with severe disabilities;
4. Recommend changes to law, regulations, and policy necessary to eliminate vulnerabilities to waste, fraud, and abuse with respect to the performance of contracts of the DoD;
5. Recommend criteria for veterans with disabilities to be eligible for employment opportunities through programs of the U.S. AbilityOne Commission that considers the definition of disabilities used by the Secretary of Veterans Affairs and the AbilityOne Commission;
6. Recommend ways that the DoD 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's compliance with regulations that establish and maintain the Procurement List requirements established pursuant to 41 U.S.C. § 8503; and (B) the DoD complies with the statutory and regulatory requirements for use of such Procurement List; and
  8. Any other duties that are determined necessary by the Secretary of Defense.

## **Panel Organization**

### **Appointment of Chair and Executive Director**

In accordance with the USD(AT&L) memorandum, Appendix D, dated March 6, 2017, Mr. Shay Assad, Director, Defense Pricing/Defense Procurement and Acquisition Policy, was appointed as the Panel Chairman, and Mr. Kenyata Wesley was appointed as the Executive Secretary to the Panel. The memorandum also set forth Panel membership requirements and responsibilities, delineated Panel duties, and requested membership nominations. As specified in section 898, the Panel meets as determined necessary by the Chairman, but not less than once every three to four months.

In accordance with the approved Charter for the Panel, the Chairman's duties are to:

- chair Panel meetings;
- provide overarching strategic direction and guidance to the Panel;
- approve the final agenda and minute for each Panel meeting;
- after timely consensus from the Panel, serve as the final approval authority for the Charter and any future revisions;
- in consultation with the Panel members, establish subcommittees or working groups to support the Panel's mission;
- facilitate Panel discussion and voting on the recommendations from Panel members and subcommittees;
- designate a chair for Panel meetings, as needed; and
- execute the mission of the Panel with assistance from the members and established subcommittees.

The Executive Secretary's duties are to:

- chair Panel meetings, as needed by the Chairman;
- establish schedules for Panel meetings;
- review meeting agendas, presentations, and minutes;
- send communications to Panel members;
- oversee the activities of Panel subcommittees;
- oversee the drafting and coordination of the Reports to Congress; and
- support the Chairman in executing the mission of the Panel.

**Panel Membership**

The Panel consists of representatives of OSD, the U.S. AbilityOne Commission and the Program Office of Inspector General (OIG). It also has representatives from the military service branches, Department of Justice (DoJ), Department of Veterans Affairs (VA), and the Defense Acquisition University (DAU). Section 898(a)(2) was specific in the composition of the Panel, and also provided discretion to the Panel Chairman in identifying other representatives, as needed. The DoD organizations and other applicable organizations responded to the USD(AT&L) call for nominations. The Panel Chairman and Executive Secretary reviewed the nominations of the members to serve on the Panel, and identified members from other organizations. Accordingly, the following organizations are represented on the Panel -

<b>Representatives (Organizations)</b>	<b>Office/Position</b>
Panel Chairman	Office of the Under Secretary of Defense (Acquisition, Technology and Logistics); Director, Defense Pricing/Defense Procurement and Acquisition Policy (SES)
Executive Secretary	Department of the Army, Army Contracting Command – Aberdeen Proving Ground (ACC-APG); Executive Director (SES)
U.S. AbilityOne Commission	Chairperson
U.S. AbilityOne Commission	Executive Director
U.S. AbilityOne Commission	Directorate of Veteran Employment Initiatives
Office of the Under Secretary of Defense (Acquisition, Technology and Logistics);	Deputy Director, Defense Procurement and Acquisition Policy (SES)
Department of the Army	Deputy Assistant Secretary of the Army (Procurement)
Department of the Air Force	Associate Deputy Assistant Secretary of the Air Force (Contracting) (SES)
Department of the Navy	Deputy Assistant Secretary of the Navy; Naval Supply Systems Command, Assistant Commander for Contracting (SES)
Department of the Navy	Deputy Assistant Secretary of the Navy; Naval Facilities Command, Assistant Commander for Acquisition (SES)
Defense Logistics Agency	Troop Support, Acquisition Executive (SES)
Defense Contract Management Agency	Director, Contract Management Branch
Defense Contract Audit Agency	Assistant Director for Policy and Plans (SES)
Department of Defense Office of Inspector General	Assistant Inspector General for Contract Management and Payments (SES)
U.S. AbilityOne Commission Office of Inspector General	Inspector General (SES)
Air Force Audit Agency	Associate Director, Acquisition Division
Defense Acquisition University	Center Director for Contracting
Defense Health Agency	Director of Contracting (SES)

<b>Representatives (Organizations)</b>	<b>Office/Position</b>
U.S. Department of Justice	Office of the Assistant Attorney General, Civil Rights Section, Senior Counsel
U.S. Department of Justice	Office of the Assistant Attorney General, Disability Rights Section, Deputy Chief
U.S. Department of Justice	UNICOR, General Counsel
U.S. Department of Justice	Office of the Inspector General, Deputy Assistant Inspector General for Investigations
U.S. Department of Labor	Office of Disability Employment Policy (ODEP), Senior Advisor
U.S. General Services Administration	Federal Acquisition Service, Office of Supplies and Services Categories
National Aeronautics and Space Administration	Headquarters, Procurement
U.S. Department of Education	Office of Special Education and Rehabilitative Services, Deputy Commissioner, Rehabilitation Services Administration
U.S. Department of Veterans Affairs	Vocational Rehabilitation and Employment (VR&E) Service; Director, Rehabilitations Services (SES)
National Veteran Small Business Coalition	Executive Director

In addition to the above membership, the Office of Management and Budget is included on the Panel email communications and invitations for meetings.

### **Description of Panel Subcommittees**

The seven subcommittees are aligned with the duties of the Panel as outlined in section 898(c).

One subcommittee focuses on DoDIG-2016-097:

- Inspector General

Two others focus on employment within the AbilityOne Program:

- Employment Initiatives
- Veterans Eligibility

Four subcommittees focus on law and operations of AbilityOne, including DoD contracting and how to eliminate the potential for fraud, waste and abuse with respect to performance of DoD contracts:

- Waste, Fraud and Abuse
- Laws and Regulations
- Acquisition and Procurement
- Business Process Re-engineering

1. ***Subcommittee One: Inspector General*** – This subcommittee is charged with reviewing the implementation of the DoDIG report findings and recommendations (DODIG-2016-097, <https://media.defense.gov/2016/Jun/17/2001714249/-1/-1/1/DODIG-2016-097.pdf>). The IG found that the DoD contracting workforce is generally following the regulations for procuring products and services from the AbilityOne Program. Lead: U.S. AbilityOne Commission Office of Inspector General.
2. ***Subcommittee Two: Eliminate Waste, Fraud, and Abuse*** – This subcommittee is charged with recommending actions that the DoD and the AbilityOne Commission may take in order to eliminate waste, fraud, and abuse with respect to performance of contracts of the DoD and AbilityOne nonprofit agencies. Lead: Department of Justice.
3. ***Subcommittee Three: Employment Initiatives*** – This subcommittee is charged with recommending actions that would ensure opportunities for employment of veterans with significant disabilities and for employment of individuals who are blind or who have significant disabilities. Lead: Department of Veterans Affairs.
4. ***Subcommittee Four: Regulations and Law*** – This subcommittee is charged with recommending changes to law, regulations, and policy that the Panel determines necessary in order to eliminate vulnerability to waste, fraud, and abuse with respect to the performance of DoD contracts. Lead: Department of Justice.
5. ***Subcommittee Five: Veterans Eligibility*** – This subcommittee is charged with recommending criteria for veterans with disabilities to be eligible for employment opportunities through the programs of the AbilityOne Commission that consider the definitions of disability used by the Secretary of Veterans Affairs and the AbilityOne Commission. Lead: AbilityOne Commission.
6. ***Subcommittee Six: Acquisition and Procurement*** – This subcommittee is charged with recommending ways in which the DoD and the AbilityOne Commission may explore opportunities for competition among AbilityOne nonprofit agencies or central nonprofit agencies and for ensuring equitable selection and allocation of work. Lead: AbilityOne Commission.
7. ***Subcommittee Seven: Business Process Re-engineering*** – This subcommittee is charged with recommending changes to business practices, information systems, and training necessary in order to ensure AbilityOne Commission and DoD compliance with regulations for use of the Procurement List. Lead: Defense Logistics Agency.

### **Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability and Integrity: Meetings and Events in 2017 and 2018**

The Panel subcommittees meet regularly, as determined by the subcommittee lead, in order to make progress towards achieving its mission. A summary of the Panel meetings and events is provided below in Figure 01. Panel members shared information, ideas and perspectives at the meetings. The time in 2017 was used to organize and support the subcommittees with their

efforts on the initial reports. The membership includes representatives from agencies and departments who can offer expertise to accomplish the specified Panel duties. Including: OSD, the Commission and staff, DoJ, the military service branches, VA, and DAU.

Date	Purpose
March 6, 2017	Panel Chair and Executive Secretary named; DoD call for Panel nominations issued
April – August 2017	Panel members named
June 1, 2017	Panel Chair hosted the first Panel meeting at the Defense Acquisition University (DAU), Fort Belvoir, Virginia, with 37 participants.
May – July 2017	Charter for the Panel was drafted and coordinated with the Panel members. The Charter was signed by the Chair on July 26, 2017.
June 1, 2017	Panel Meeting <ul style="list-style-type: none"> <li>• Established and organized seven Subcommittees to support the Panel’s mission</li> <li>• Identified subcommittee leads and team members.</li> </ul>
September 12, 2017	Panel Progress Report submitted to Congress
September 13, 2017	Panel Meeting <ul style="list-style-type: none"> <li>• Reviewed draft Report format</li> <li>• Subcommittee status reports</li> </ul>
December 6, 2017	Panel Meeting: <ul style="list-style-type: none"> <li>• Reviewed subcommittee findings and actionable recommendations</li> </ul>
January 17-18, 2018	Panel Chair and Executive Secretary hosted a Subcommittee Lead Off-site <ul style="list-style-type: none"> <li>• Subcommittee leads presented for review the details of the respective findings and actionable recommendations</li> </ul>
April 12, 2018	Panel Meeting <ul style="list-style-type: none"> <li>• Finalized Panel initial recommendations</li> </ul>

**Figure 01.** Schedule of Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability and Integrity Meetings and Events in 2017 and 2018

## **Section II: Subcommittee Research and Findings; and Recommendations**

### **Subcommittee One: Inspector General**

The subcommittee reviewed the progress of DoDIG recommendations pertaining to DoD contracting with the AbilityOne Program. The subcommittee found that the DoD is moving forward with changes as a result of the 2016 DoDIG report. However, the subcommittee noted other reports highlighted additional issues and vulnerabilities impacting the Program, including staffing and resources for the U.S. AbilityOne Commission to oversee and enforce compliance, and the erosion of the statutory Program authority.

Specifically, the subcommittee focused on DoDIG-2016-097 report as required by NDAA FY17 section 898. The report looked at 39 AbilityOne contracts to determine if the DoD contracting workforce complied with regulations to purchase products and services from the AbilityOne Procurement List. Most were processed correctly. There were three instances where the DoD bought products or services from AbilityOne that were not on the Procurement List. This raised concerns whether the contracting officers should have followed competitive procedures. The subcommittee found that the DoD adopted the DoDIG report recommendations: policy changes requiring DoD contracting officers check the Procurement List to verify a product or service is on the List; and improved training for contracting personnel.

The subcommittee found other issues with AbilityOne after studying related reports as discussed in more detail below:

- AbilityOne OIG “Semiannual Report to Congress,” April 2017 to September 2017
- AbilityOne OIG Report of the AbilityOne Commission “Top Management and Performance Challenges,” October 2017
- GAO report, GAO-13-457, May 2013

The AbilityOne IG report points out that AbilityOne does not have a sufficient levels of staffing or funding to oversee 532 NPAs located across the U.S. and Guam. Additionally the statutory authority giving the Program precedence over competitors is being eroded. The JWOD Act, which is the foundation of the AbilityOne Commission, has not been amended since 1971. In contrast newer laws and regulations, supported by decisions in courts, have created other special procurement categories, such as veterans and small business owners, with similar priority when competing for Federal contracts. Technology has revolutionized the way AbilityOne’s Federal customers buy products and services, making it challenging to track compliance with regulations that require DoD contracting personnel to buy from the Procurement List.

The DoDIG audit, which led to the 2016 report, pointed out a number of issues outside the scope of the audit. These raised concerns about making the role of CNAs more transparent. The audit stated there was general confusion about the 75 percent direct labor hour requirement,<sup>8</sup> which

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<sup>8</sup> The direct labor hour ratio requirement is prescribed in 41 U.S.C. 8501(6)(C) and (7)(C).

requires nonprofits in the AbilityOne Program to get three-quarters of their overall direct labor hours from employees who meet Program standards for blindness or severe disability. The DoDIG audit questioned the ease of using the AbilityOne Procurement List. The audit also echoed the AbilityOne IG concern about competing laws that contradict the mandate to buy from AbilityOne and support its mission of creating jobs for those individuals who are blind or who have severe disabilities.

The subcommittee's recommendations for actions were implemented and are as follows:

- Implement existing policy by DoD requiring Contracting Officers to check Procurement List, and training on the AbilityOne Program.
- U.S. AbilityOne training must be continually updated for DAU.

### **Subcommittee Two: Eliminate Waste, Fraud, and Abuse Subcommittee**

This subcommittee recommended ways that the DoD and Commission can eliminate fraud, waste and abuse in respect to performance of contracts of the DoD and of AbilityOne. The subcommittee found five vulnerabilities in the AbilityOne Program. It makes five recommendations that can be accomplished by changing Commission policy, increasing oversight and placing stricter requirements in government contracts. As a result, the subcommittee states, Federal government contracting personnel will have more confidence in the Program and AbilityOne jobs will be safeguarded for people who are blind or have severe disabilities.

The subcommittee reviewed reports from AbilityOne OIG and the GAO. Members also examined AbilityOne's Compliance Manual, its Procurement Guide, and the 2016 Cooperative Agreements which the Commission signed with the CNAs.

The subcommittee then identified five vulnerabilities in the AbilityOne Program:

- More oversight is needed of the CNAs – NIB and SourceAmerica – and the NPAs. The Cooperative Agreement that the Commission signed with each CNA is a positive step towards establishing stronger oversight mechanisms, however, the NPAs are not tied to similar governance requirements that the CNAs have agreed to with the Commission.
- Auditors report finding it difficult to evaluate NPA performance and NPA compliance with Program regulations and policy. The Commission is responsible for evaluating NPA compliance with Program regulations and policy, and requires more resources to perform this duty. The subcommittee identified both the complexity of verifying the 75



percent of direct labor hours at NPAs, and the NPAs' methodology for determining significant disability as justification for stricter Program requirements.

- There is no access to a database on fair market pricing or on prevailing wages for manufacturing (service-related wage determinations are provided by the Department of Labor in a searchable database).<sup>9</sup> A fair market pricing database would provide more transparency and support for price increases on contract renewals and increases transparency.
- CNAs spend of the program fee on lobbying. The CNA practices do not follow standard government rules that prohibit lobbying as an allowable expense.
- The NPA recommendation process needs to be structured such that there is no opportunity for bias. More safeguards need to be in place to assure that CNAs do not show favoritism in project assignment (choosing which NPA to recommend for providing a product or service) and to further ensure that the recommended NPA fulfills its compliance obligations to employ people who are blind or have severe disabilities at 75 percent of direct labor hours during the fiscal year.<sup>10</sup> The Commission relies on the CNA recommendations for finalizing project assignments.

This subcommittee's initial recommended actions for implementation are to:

- Increase oversight and strengthen audit coverage.
- Impose stricter requirements on NPAs for documentation and disability determinations.
- Build a centralized database on pricing, and require fair market pricing documentation and prevailing wage documentation in contracts and negotiation processes between CNAs and NPAs.
- Prohibit use of the Program fee for lobbying expenses.
- Increase transparency in CNAs' nonprofit agency recommendation processes with mandatory criteria and certifications.

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<sup>9</sup> Found at <https://www.wdol.gov/>.

<sup>10</sup> Definitions are found at 41 C.F.R. 51-1.3.

### **Subcommittee Three: Employment Initiatives**

This subcommittee explored ways that the DoD and the Commission can facilitate employment opportunities for service-disabled veterans as well as for people who are blind or have severe disabilities. As part of their research, subcommittee members evaluated AbilityOne for:

- Employment options
- Support services for employees
- Individualized career planning
- Training opportunities

The subcommittee also considered ways to increase employment through DoD procurement and identified challenges such as the backlog on security clearances. The subcommittee found that both the employee evaluations for disability, using the Individual Employment Eligibility (IEE) form, and the language within the JWOD Act hamper efforts to recruit eligible veterans with significant disabilities to work within the AbilityOne Program, a population that may identify with having service-related illness or injuries, but not necessarily “severe disabilities.”

The subcommittee recommended ways to improve careers for those already working at AbilityOne NPAs, and to give others in the disability community a chance to qualify. The subcommittee is particularly interested in AbilityOne workers’ opportunities to progress. NPAs offer jobs in a variety of fields, from programming to food service. However, the subcommittee did not have data to evaluate the extent to which case management or guidance on career goals is provided to AbilityOne employees. The subcommittee recommended more robust outcome measures for transitioning AbilityOne Program employees from direct labor jobs into competitive employment, which is intended to integrate them with nondisabled co-workers.

For those seeking work within the Program, the JWOD Act defines a qualifying person as one with a disability preventing the person from holding a job under “normal competitive employment” conditions. This statutory requirement excludes many people who are classified as disabled in other programs, and prevents the VA and other agencies from referring clients who would benefit from participating in the AbilityOne Program.

This subcommittee’s initial recommended actions for implementation are:

- In concert with the Veterans Eligibility Subcommittee: develop training, and certification/validation programs for the AbilityOne Individual Eligibility Evaluation (IEE).
- Outside (VA/State/contracted) IEE submissions should be accepted/encouraged, as feasible.
- Further study the need for and benefits of program wide implementation of case management records and protocols with defined vocational goals/assessments for all

AbilityOne qualified nonprofit agencies. For example, from the VA statute: “The term vocational goal means a gainful employment status consistent with the veteran’s abilities, aptitudes, and interests”. (Authority: 38 U.S.C. 3103(8))

- Better define AbilityOne Program participant career goals leading to a career path.
- Establish an AbilityOne Commission eligibility and employment ‘cell’ of qualified personnel who are occupational therapists, Vocational Rehabilitation Counselors (VRCs), and Licensed Clinical Social Workers, and other similar qualifications.
- Use AbilityOne Program participant ‘mapping’ against established disability employment programs (e.g., Vocational Rehabilitation and Employment Services/Compensated Work Therapy/Wounded Warrior programs, etc.) in order to enable NPA hiring for AbilityOne.
- Further define, measure and track AbilityOne Program employment outcomes.

#### **Subcommittee Four: Laws and Regulations**

This subcommittee recommended changes to law, regulations and policy preventing fraud, waste and abuse in the performance of contracts between DoD and AbilityOne. As part of its research, the subcommittee evaluated law and policy governing AbilityOne, and consulted with other Federal agencies and experts.

The 1938 law that set the foundation for the AbilityOne Program was last amended in 1971. In 2010, a bill was introduced by the Chairman of the House Oversight and Government Reform Committee to modernize the JWOD Act; however, the bill did not advance. Congress has passed a number of laws benefitting people who have disabilities in the workplace, including the Americans with Disabilities Act of 1990 and the 2014 Workforce Innovation and Opportunity Act. These laws require that people with disabilities are given the services and support necessary to be in integrated workplaces with non-disabled employees.

The JWOD Act requires that during the fiscal year, 75 percent of the nonprofit agency’s total direct labor hours be performed by workers who meet the definition in the law for person with a severe disability. By its nature, the 75 percent requirement reduces the chance for NPAs to build an integrated workforce. Some NPAs have also been accused of committing fraud, by claiming to meet the standard for Federal contracts, but hiring non-disabled individuals instead. If such an accusation is proven, those who are blind or have severe disabilities, for whom the AbilityOne jobs are created, are not benefitting.

The subcommittee’s initial recommendations for action are for the Commission to propose amendments to the JWOD Act, particularly in the definitions, to modernize the AbilityOne Program.

- Amend the Javits-Wagner-O’Day Act, 41 U.S.C. §§ 8501(6)(C), definition of “Qualified nonprofit agency for other severely disabled,” and 41 U.S.C. §§ 8501(7)(C), definition of “Qualified nonprofit agency for the blind” to reduce the existing direct labor hour ratio requirement (75 percent) to create an integrated employment environment. While the Panel has discussed ratios of at least 15 percent and at most 50 percent of hours of total direct labor hours worked during the fiscal year, the range continues to be discussed, and a final recommendation will follow.
- Amend the Javits-Wagner-O’Day Act, 41 U.S.C. §§ 8501(3), definition of “Direct labor” to allow indirect labor positions to be included in the ratio calculation. These changes will result in an AbilityOne Program work environment that is modernized, integrated and consistent with the vision and goals of the broader disability community.
- Amend the Javits-Wagner-O’Day Act, 41 U.S.C. §§ 8501(5) and (8) to be combined as follows:

The term “other disabled” means an individual “with a disability other than blindness—  
 (i) who has a severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;  
 (ii) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and  
 (iii) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, intellectual disability, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.”

### **Subcommittee Five: Veterans Eligibility**

This subcommittee is responsible for developing criteria so that service-disabled veterans can qualify for and meet annual requirements for employment through AbilityOne using their VA records. The goal is to make the process easier for veterans to seek employment in the AbilityOne Program, using documents that exist in another Federal agency such as the VA.

Subcommittee members studied the ways the NPAs document disability, noting the process and the definition differed between AbilityOne and the VA. The subcommittee found NPA staff regularly determine if a person is eligible for AbilityOne Program employment at their site. The staff are not required to have specific educational credentials. In contrast, the VA staff determining disability must have a master’s degree in vocational rehabilitation or a related field.

NPA staff use the Individual Eligibility Evaluation (IEE) form, which is a standard requirement of the AbilityOne Program. The subcommittee concluded the form should include sections for career goals and assistance. The subcommittee also found there could be a perceived inherent conflict of interest in NPA staff involvement with eligibility evaluations since NPAs stand to benefit through contracts that require employing those who meet the disability standards.

In addition, the subcommittee found issues with the JWOD Act language stating those with severe disabilities are only eligible when unable to engage in “normal competitive employment”. The restriction creates a substantial barrier for veterans and others who are disabled, as it is not part of the definition for eligibility in other Federal or State programs.

This subcommittee’s initial recommended actions for implementation are:

- Collaborate and expound the definition of “significant disabled individual” and “normal competitive employment” that allows the eligible veteran to participate in VA’s Vocational Rehabilitation and Employment (VR&E), Compensated Work Therapy (CWT) and the Military Services Wounded, Ill, and Injured and other appropriate programs to participate in the AbilityOne direct labor ratio.
- Work with Department of Veteran Affairs and the Department of Education for one year on feasibility, impact, and implementation of recommendations that rely on their determination of veteran and non-veteran eligibility for the AbilityOne Program and include the results in the 2019 report to Congress with the updates as indicated.
- Develop a certification/validation program for individuals certifying the IEE form and recommend that AbilityOne contract for eligibility assessment of individuals whose IEE is not provided by the VA or a state vocational rehabilitation agency.
- Revise the definition of the severely disabled individual, so it does not state that participants are “unable to engage in competitive integrated employment” which will allow the VA (VRE/CWT) and VR to refer veterans to participating NPAs in the AbilityOne Program.
- Within the AbilityOne Program, the Commission develop a goal for Veterans to be integrated into the workforce under internships, part-time, or full-time employment opportunities. Special consideration should be given to Veterans living with mental illness or physical disabilities to help them secure and maintain community based competitive employment.

## **Subcommittee Six: Acquisition and Procurement**

This subcommittee analyzed ways to introduce more competition in the acquisition process for the products and services among AbilityOne NPAs and CNAs; and to create a more equitable allocation process.

The subcommittee found:

- The current process does not give the Commission adequate input and oversight into technical proposals, evaluation of NPA proposals, or pricing.
- CNAs use a truncated process for NPA recommendations.
- CNAs and NPAs are the first point of contact with DoD contracting officials on any initial project work for consideration, pre-contract award, and after contract award.
- “AbilityOne” is used interchangeably when referring to the CNAs by name.
- Contracting personnel and CNAs do not have an “arm’s length” interaction – CNAs are often mistakenly seen as government personnel.
- Current contracting and acquisition training, regulations or policy do not clarify the difference in CNA functions and Commission authority.
- Contracting personnel frequently do not know the Commission is a Federal agency
- Deficiencies exist in both CNAs’ policies and procedures.
- Adding a requirement to the Procurement List and designating a NPA to fulfill the requirement is incorrectly perceived as a single process.
- CNA and NPA perception that a designated NPA remains the provider of a product or service in perpetuity can erode performance, escalate prices, and impact customer satisfaction, and the AbilityOne Program reputation and employment.

The subcommittee recommends changes to how work is assigned or re-assigned, and also changes to Title 41 CFR 51. For example, the subcommittee proposes adding policy which would establish mandatory source selection procedures. This process would require CNAs to use a specific list of measurable qualifications when choosing an NPA for project assignment, such as: price, technical capability for the work, past performance, and the percentage of disabled hours.

This process includes steps that reward NPAs who do well on a product or service, by giving them Commission approval to continue. Those who do not, would either see the work reassigned or would have to re-compete. The subcommittee makes provisions to protect AbilityOne workers by giving them the right of first refusal if the NPA management changes.

The subcommittee’s initial recommended actions for implementation are:

1. Commission writes policy and implements business practices that provide sufficient oversight and transparency. Create incentives for inclusion and mentoring of smaller nonprofits and veteran employment opportunities on DoD contracts.

2. Designation and allocation of work:
  - a. Commission issues policy establishing mandatory source selection procedures that CNAs will follow.
    - Potentially addresses process in the Cooperative Agreements.
    - Require best value trade-off analysis process that considers price, size of NPA, technical capability, past performance, percentage of disable hours, percentage of Veteran's hours, percentage of work in the AbilityOne Program, etc.
    - Identify announcement process similar to FEDBIZOPPS and electronic proposal submittal process so all interested NPAs in the AbilityOne network may apply to participate in the specified procurement.
  - b. Require J&A type documentation if only one NPA can support.
  - c. Submit Source Selection Decision Document equivalent as part of the Decision Document the Commission votes on to designate work to the Procurement List.
  - d. Establish a dollar threshold for representations and certification requirements on contracts.
3. Commission establishes policy and business rules that include competition and re-competition within the AbilityOne Program :
  - a. Allow for continued performance for NPAs that perform well, use award term type process to continue performance.
  - b. Transfer or re-compete work for marginal or poor performance, require Commission approval.
  - c. Protect direct labor employees who are blind or who have severe disabilities during transfer/recompete process. Establish a policy that provides "Right of First Refusal" to the existing workforce when an incumbent NPA is replaced through competition or otherwise.
4. Implement mandatory source selection procedures that CNAs will follow that requires a best value trade-off similar to other Federal source selection procedures. Pilot different approaches to make a sound decision on the appropriate way forward. Specifically, implement pilots that include DoD and Commission led evaluations and recommendations. The pilots should include government only and government and CNA participation. The objective is to improve Commission oversight prior to the evaluation when recommendations are made to the Commission.
5. Establish penalties if a CNA or NPA does not follow policies and procedures.

6. Reduce the existing gaps and deficiencies in CNAs' processes:
  - a. Recommend CNA must write a detailed justification when deviating from the technical evaluation team's NPA recommendation.
  - b. Recommend CNA requires, in their policies and procedures, consistent use of the requiring activity's SMEs as a part of the technical evaluation team.
  - c. Recommend that the final documentation that is submitted to the Committee for NPA selection contain all technical, financial and cost/price evaluations, rather than just an abbreviated version of the Recommendation Authority's decision document.
  - d. Recommend, when competition is limited amongst NPAs in any way, CNA policy and procedure must contain an approval authority along with a requirement to include the approved justification in the final recommendation package submitted to the Committee.
  - e. Recommend requiring detailed documentation for each phase of the Recommendation and Allocation Process to ensure transparency in the acquisition process; especially the step when the Finance SMEs conduct evaluations of the NPAs as this aspect is not documented at any level of detail and criteria specific to financials (not to be confused with cost/price evaluation).
  - f. Recommend CNAs remove all allowance of broad discretion and place parameters around external input during their source selection process.
  - g. Recommend CNAs require strict adherence to evaluation criteria without deviation to ensure fair evaluations of NPAs. Further, technical criteria must be developed in collaboration with the requiring activity and must contain order of importance and/or weights of the criteria.
  - h. Recommend both CNAs require formal training and develop a robust training program that is mandatory for all parties participating in their Recommendation and Allocation Process.
  - i. Recommend CNAs staff includes sufficiently trained personnel with expertise and competencies that aligns with lines of business for their source selection business process. This will help reduce the frequency of utilizing unqualified staff from other departments to conduct technical evaluation of NPAs.
7. Change 41 CFR 51 to include:
  - a. Authorize and undesignate/de-authorize central nonprofit agencies and nonprofit agencies as the authorized source on the Procurement List to accept contracts from contracting activities for the furnishing of specific products and services on the Procurement List.



- b. In matters of resolution regarding contract disputes, the contracting activity or the nonprofit agencies can request assistance from either the central nonprofit agency or the Commission.
- c. In the event the Commission removes the designation of an NPA as the authorized source of supply for [a product or] services on the Procurement List, the NPA shall allow as many personnel as practicable to remain on the job to help the designated Successor NPA maintain the continuity and consistency of the services required by a contract.
- d. The Successor NPA is required to offer employees under the predecessor contract, whose employment will be terminated as a result of the designation of a Successor NPA, the right of first refusal of employment under the Successor contract in positions for which they are qualified.
- e. The previously designated NPA also shall disclose necessary personnel records and allow the Successor NPA to conduct on-site interviews with those identified employees, who are potentially qualified for positions under the successor contract.
- f. If selected employees are agreeable to the change, the previously designated NPA shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits and any other relevant employment information to the Successor nonprofit agency.

### **Subcommittee Seven: Business Process Re-engineering**

This subcommittee examined ways the DoD and Commission can change business practices, information systems, and training to make sure each area facilitates compliance with regulations for proper use of the AbilityOne Procurement List. To accomplish this, the subcommittee focused on technology, policy and training.

**Technology:** The subcommittee found the on-line Procurement List is not user-friendly. Its search engines are difficult to use, and terms for products and services are poorly phrased. Also, the subcommittee discussed the possibility of linking the Procurement List to contracting systems, which would result in more buyers using the Procurement List. Currently, contracting systems do not have built-in checks to monitor due diligence of using mandatory sources before orders are processed.

**Policy:** In policy, the subcommittee found there is not enough emphasis on using the Procurement List. It also found existing U.S. AbilityOne Commission policy is not always enforced within the Military Services, and AbilityOne needs to do a better job with communicating with the Military Services in terms of promoting how to contract with the Program.

**Training:** In the area of training, the subcommittee found that courses on AbilityOne are out of date and need to be improved. The subcommittee discussed updating or developing a separate

section in the Federal Acquisition Regulations to explain how to do business with AbilityOne. The subcommittee found DoD is falling short in complying with section 508 standards under the Rehabilitation Act, which require Federal agencies make information and electronic technology accessible to people with disabilities.

This subcommittee's initial recommended actions for implementation are:

Technology:

- Commission staff will update the online Procurement List (PL) to reflect detailed information and improve the search functions to enable a more user-friendly interface.
- Deploy an IT solution either utilizing a system where the PL can be linked to existing contracting vehicles or developing a communal system that routes purchases through the PL prior to other avenues.
- Recommend contracting systems across DoD be modified to add "flagged checkpoints" requiring the Contracting Officer to ensure mandatory sources (AbilityOne Program) have been searched before the order can be processed.
- Updating the programs to send up "flags" without easy bypass and requiring a typed justification for audit purposes can help increase the use of the PL.
- Make the AbilityOne Procurement List Information Management System (PLIMS) available to DoD contracting personnel to check status of contracts, decision documents, and other pertinent information: Include the up-to-date Fair Market Price.

Policy:

- Recommend changes/additions to local regulations/procedures to enhance ability of DoD contracting personnel to check the PL before making purchases.
- Recommend DoD-wide policy memo emphasizing the importance and establishing a goal for growth in AbilityOne Program participation, as well as requiring the use of AbilityOne representatives.
- DoD Components can consider using the Air Force model as a starting point: Air Force Memo Subject: AbilityOne Representative (ABOR) Nomination dated August 31, 2017.
- Recommend interim DFARS (Procurement Guidance and Information (PGI)) revision until FAR can be modified to incorporate a change detailing a change to business practices, information systems, and training for a proper use of the PL.

- End goal: develop separate part in the FAR, in addition to FAR 8.7, that details how to do business with AbilityOne (use reserved section). This section would cover topics such as:
  1. Roles and responsibilities (CNA vs. AbilityOne as the government entity).
  2. Disputes (AbilityOne pricing-impasse process).
  3. NPA performance (government recourse for poor performance).
  4. Requirements and approval levels for contract modifications that result in removal of products or services from the program.
  
- Recommend change to allotted timeframe currently required by the Administrative Procedures Act when adding products or services to the Procurement List.
  1. Current time is 60 days (one 30-day segment on the front end for public comment and one 30-day segment on the back end for preparation to officially add on the PL).
  2. Recommend one public comment period of 30 days with addition to PL effective immediately after approved.

#### Training:

- Incorporate Section 508 training for contracting personnel.
  1. The KO must ensure applicable 508 standards are itemized in the contract.
  2. A Voluntary Product Accessibility Template (VPAT) is typically required to ensure products, systems, and application meet 508 standards.
  3. New website standards, WGAC 2.0, aid in meeting 508 standards.
  4. Training can prevent these errors as well as reinforce the importance of working closely with agency 508 coordinators.
  
- Use DAU online and classroom training to teach AbilityOne information.
  1. Federal Acquisition Regulation Fundamentals (CON 090) section has been revamped with current AbilityOne information.
  2. AbilityOne Contracting (CLM 023) will be prerequisite to CON 090.
  3. Recommend making CLM 023 a prerequisite to Intermediate Systems Acquisition (ACQ 203) or other similar course based on Acquisition Career Field (i.e. PM, LCL, FE, PUR).
  4. Updated CON 090 will roll out in Jan 2018.
  5. CLM 023 package will be completed and submitted to DAU in 2018 with roll out for FY19 (dependent on DAU training requirement modifications).

### **Section III: Next Steps – Take Action**

#### **Panel Way Ahead in 2018**

Based on the subcommittee recommendations, the Panel identified 41 initial recommendations for consideration and implementation. The Panel will employ a rolling assessment and tasking process, quarterly or upon action completion, to manage the efficient implementation of all subcommittee recommendations and/or identify new recommendations if warranted. This process will provide for continuous improvement in efficiency and effectively address the areas of vulnerability in contracting with the AbilityOne Program that could allow waste, fraud, and abuse to occur.

The subcommittees will focus on implementation of the recommendations identified as the top priorities by the Panel. This may involve drafting changes to law, regulations, or policy to eliminate the specific areas of vulnerability to waste, fraud, and abuse, which will result in a positive impact on growing the employment mission of the Program. Additionally, the subcommittees will assess the feasibility of the other recommendations.

**Section IV: Appendices** (attached as stated)

Appendix A – Chairperson, U.S. AbilityOne Commission, Concurrence Memorandum to the Secretary of Defense, dated July 17, 2018

Appendix B – Director, DPAP memorandum, “Contracting with the AbilityOne Program,” dated November 1, 2017

Appendix C – DoD Progress Report dated September 12, 2017

Appendix D – USD(AT&L) memorandum, “Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity – Call for Nominations,” dated March 6, 2017

Appendix E – Full text of Section 898 of the NDAA for FY17

# Appendix

## A



## U.S. ABILITYONE COMMISSION

July 17, 2018

PHONE: 703-603-2100  
FAX: 703-603-0655

1401 S. Clark Street, Suite 715  
Arlington, Virginia 22202-4149

MEMORANDUM FOR HONORABLE JAMES N. MATTIS, SECRETARY OF DEFENSE

THROUGH: HONORABLE ELLEN M. LORD, UNDERSECRETARY OF DEFENSE  
(ACQUISITION & SUSTAINMENT)

*E. Ballard*  
FROM: *for* THOMAS D. ROBINSON, CHAIRPERSON

The U.S. AbilityOne Commission administers the AbilityOne Program under the auspices of the Javits-Wagner-O'Day (JWOD) Act, 41 U.S.C Chapter 85. As required by section 898(i)(1) of the FY 2017 National Defense Authorization Act, I am providing the Commission's assessment on the First Annual Report of the Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity. We appreciate the opportunity to consult on the report.

The Commission has reviewed and supports the recommendations contained in the report. The Chairperson and Commission staff members participate on the Panel, and look forward to its continued discussions, as well as further development and prioritization of its recommendations.

In particular, we strongly concur with the finding that the Commission lacks adequate resources – a conclusion also reached in reports from the Government Accountability Office (GAO Report GAO-13-457) and the Commission's Office of Inspector General. The Commission is a critical partner in the implementation of the recommendations in this report. Currently, the Commission has only 27 full-time personnel to administer a \$3.3B program employing more than 45,000 people who are blind or severely disabled in more than 500 organizations across all 50 States, Puerto Rico and Guam. Additional funding is crucial to the successful execution of the Commission's mission and the Panel's recommendations.

We commend the excellent work of the Panel Chairman, Mr. Shay Assad, Director of Defense Pricing and Contracting. At the Panel's first meeting, Mr. Assad graciously invited the Commission's Chairperson (now Chairperson Emeritus) James Kesteloot to share his perspective as a person who is blind (see attached remarks).

The Commission remains committed to the success of the Panel, and looks forward to its continued progress.

cc: Mr. Shay Assad, Director, Defense Pricing and Contracting  
Mr. James M. Kesteloot, Chairperson Emeritus, U.S. AbilityOne Commission  
Mr. Robert M. Kelly, Vice Chairperson, U.S. AbilityOne Commission



COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED  
An Independent Federal Agency



**National Defense Authorization Act (NDAA)**  
**898 Panel, June 1, 2017**  
**Comments by James Kesteloot, Chairperson**  
**U.S. AbilityOne Commission**

**Let me begin by thanking DOD for all that it does for people who are blind and people with significant disabilities.**

- (1) So many of the employees in our Program are veterans – More than 3,000 of them -- and they honor us by their presence.**
- (2) I was thinking about DOD, and its employees and veterans, this past Monday, Memorial Day.**

**There's a quote about veterans that's attributed to Ronald Reagan -- "Some people spend an entire lifetime wondering if they made a difference in the world. But a veteran doesn't have that problem."**

- (3) So I want to thank all of the veterans in the room for their service, and for making a difference.**
- (4) One of the great things about Veterans and the AbilityOne Program is that they have a lot in common. All of our AbilityOne employees are making a difference too, and those who work on DOD contracts are grateful for the opportunity to contribute to the defense of our country.**

**Having said that, I'd like to briefly describe other reasons that those of us working with the AbilityOne Program are thanking DOD.**

- 1. DOD is approximately 60% of AbilityOne's business.**
- 2. There are 565 local not for profit agencies across America ranging from Guam to Hawaii, to California, to Alaska, to Maine, to Puerto Rico, to Florida to Texas, across 15 time zones, and most have AbilityOne contracts with DOD.**
- 3. DOD contracts employ the majority of the 47,000 people who are blind or severely disabled, including 3000 veterans working on contracts through the AbilityOne Program. AbilityOne values our country's disabled veterans and will continue to give priority to veterans. The AbilityOne Commission in recognition of the employment needs of**



**veterans has established the “Directorate for Veterans employment” initiatives to emphasize the importance of employment opportunities for veterans.**

- 4. DOD jobs have a profound impact on people who are blind and severely disabled.**

**Let me elaborate for a minute. People with disabilities have often been excluded from military service. As I visit local not for profits that employ people with disabilities, I frequently get feedback from employees who are so very “proud” to work at a military base or who produce products used by our military. Such work is a huge boost to people’s morale, self esteem and self worth. Thank you for that!**

**Since this Panel is largely about AbilityOne, I’d like to talk about the nature of our Program. One of the major topics in the AbilityOne Program, and in the whole field of disability, is about who is severely disabled? There are many definitions used by Federal and local agencies, and they are all different.**

**Blindness is an exception. The definition of blindness is the same for all Federal agencies. Blindness can be measured mathematically by using a standard eye chart. Normal vision is 20/20.**

**This simply means that a normally sighted person reads the line on the eye chart (6 or 8 or so lines down) that a normally sighted person is expected to read at 20 feet away. If the patient can only read the top letter “E” with the best eye with best correction which is about 6 or so inches square, then the person has 20/200 vision, and is defined as legally blind. The legally blind person sees at 20 feet what the normally sighted person sees at 200 feet away. Most legally blind people cannot see the “E” at 20 feet, so the doctor moves the person closer to the chart, to see that “E,” perhaps 10 feet, 5 feet, or 2 feet away and the person has 10/200, 5/200, or 2/200 vision. Some people cannot see anything at 2 feet, but can count fingers 5 inches, 3 inches or one inch away from the eye. Others may not be able to perceive fingers at all, but could see light coming from a window or a light bulb, called light perception. You’re totally blind when you cannot even see light.**

**People see two ways, straight ahead into the distance 20/20 or 20/200, etc. The second way you see is in your field, left to right and up and down. If you have less than a 20 degree field in the best eye with best correction, the person is legally blind. Some of the major eye diseases affect your field of vision, and you lose sight like looking through a smaller and smaller hole. For example, if your car windshield is frosted, and you wipe a hole in the**

**frosted windshield the size of a quarter you can see through that hole with 20/20 vision, but you would have to clean off the entire windshield to drive safely.**

**But how do you measure severity with the thousands of other disabilities?**

- **How mentally ill do you have to be to be considered severely disabled? How severe does your paranoia have to be to be considered severely disabled; or how schizophrenic do you have to be to be considered severely disabled? How depressed do you have to be?**
- **How learning disabled do you have to be or how severe must the autism be to be considered severely disabled? How impaired must your thinking, judgment or memory be; how severely impacted must your ability to reason, follow instructions be; or how limited must your attention span, language skills, ability to read, or math skills be to be considered severely disabled? How limited must your mobility be or your independence?**
- **Does the disability have to be visible? Can you look into someone's chest to see whether they need a heart transplant or have serious limitations due to heart disease, and that over exertion could aggravate their condition? What if you have PTSD, and can you see that? What if you have a cognitive disability affecting learning and/or judgment, and can you always see that? Can you see depression? Suicide is a major problem with veterans, but once the person kills themselves, family and friends often say that they did not realize that the problem was so severe or they would have done something about it! In the 1930's and 1940's, most Americans did not realize how severely disabled President Roosevelt was because he was rarely photographed in a wheelchair, and he wore braces under his pants while standing at a podium giving speeches!**
- **What if you are always in pain? Is tolerating pain relevant to determining whether a person is severely disabled? I know people who have a disability with its inherent limitations and they also, simultaneously, have to deal with pain. I know disabled individuals who have been in pain for 20 years straight. I know disabled people who have been in pain for 50 years. How severe does the pain have to be? Many doctors use a simple test. The doctor will ask the patient. On a scale from 0 to 10, 0 being no pain and 10 being unbearable pain, what number are you on this pain scale? Is pain a factor to consider?**
- **What if you are healing from an injury or battle wound, and once healed you may still have a disability. Is time for healing relevant? Are you severely disabled while healing from a major wound?**

- **What if the disability is progressively getting worse such as in Multiple Sclerosis (MS), ALS, Parkinson's disease, loss of sight? Most eye diseases are progressive. Is progression a relevant factor?**
- **How long do you have to be unemployed to be considered severely disabled, 3 months, 1 year, 5 years, 10 years?**
- **What about other social, economic, and/or cultural factors that complicate disability such as being disadvantaged through early life, without an opportunity for a good education, in combination with the new onset of severe disability. Does gender or minority status make a difference? I once heard a presentation by the Director of the Illinois Division of Vocational Rehabilitation. The most common number to describe the incidence of unemployment for disabled individuals is 70%. The Director stated that it is higher for women with disabilities, and she said that if you are a minority and a woman, the unemployment rate is probably 90%. Are such factors relevant?**
- **What about adjustment factors to disability? If you go blind, deaf, or lose your legs, do you usually go back to work that afternoon? Are you allowed time to adjust to the trauma of the onset of a severe disability? Is how well you are adjusted to the disability relevant as to whether you are severely disabled?**

**I have been blind for my entire life. I want to ask you to close your eyes for 20 or 30 seconds. You are now blind. Imagine going home right now from your office. Leave your office room. Find your way to the front entrance of the building. Walk down the hallway to the elevator, escalator, and/or a stairway, and use them. Remember you cannot drive or read. How will you use your smart phone or read your computer screen? Catch a cab. Will the cab driver see you. How will you get the driver's attention. If he sees you, will he stop for you? If you cannot catch a cab, head to the underground, the subway. What direction do you travel to find the underground? Stay on the sidewalk. Find the entrance to the underground. How do you get a ticket? Where is the vending machine? How do you use the machine? Can you handle the noise? Can you use the escalator? Stay away from the edge of the platform. Get on the underground subway train. Instead of the subway, maybe catch a bus. How do you cross the street, and is the light red or green? How do you stay on the sidewalk?**

**If you have a different disability, you face the same kind of travel and other challenges. If you have Cerebral Palsy, Multiple sclerosis, ALS, had a traumatic brain injury from a gunshot or IED, or had a stroke and are now hemiplegic (paralyzed on one side of your body) you may expend a day's work**

**in energy getting to work, then you will work all day, then expend another day's work in energy getting home. If you drive and use a wheelchair, how will you get the chair into your car. When you get home, are there stairs to your front door? What if your bedroom is on the second floor, or your apartment does not have an elevator? Can you afford a van with a power lift to access the vehicle? Are you strong enough to go up that ramp? At the same time, are you dealing with pain, too?**

**The AbilityOne program, and employment, helps a person to adjust to their disability. It provides time for a person to relearn skills, and apply the new skills, with support, to their life in a real practical setting, their job, their social life. Learn to use a white cane, special computer software or hardware, build up strength to use a wheelchair, find out that they can work and be productive.**

**Work can help a person adjust to psychological aspects of disability. When you go blind or experience any severe disability you:**

- 1) Go into stark fear, "how will I support my family, pay the rent, put food on the table, what is going to happen to me, am I going to survive"**
- 2) Get angry, "Why me, it's my doctor's fault, my spouse doesn't understand, it's the Army's fault!"**
- 3) Go into depression, "is life worth living, I can't do it, I'm better off dead!"**
- 4) Stress and frustration sets in**
- 5) Considered separately, fear, anger, and depression, can be disabling**
- 6) A job helps one adjust and to move on. The person discovers that they can do things as before, they can earn and support their family. The person moves on with life and happiness.**

**Thank you for those jobs!**

**As Chairman of the AbilityOne Commission, I can assure you that I speak for all of the Commission's Presidential Appointees when I say that we are committed to the purpose of this Panel. We absolutely want to ensure the success of this Panel, and we are ready to help.**

**So thank you for contributing your valuable time and expertise in helping to make AbilityOne a valuable employment option for people who are blind or severely disabled.**

# Appendix

# B



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

NOV 01 2017

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Contracting with the AbilityOne<sup>®</sup> Program

A report issued by the Department of Defense (DoD) Office of Inspector General, DoDIG-2016-097, "DoD Generally Provided Effective Oversight of AbilityOne Contracts," found that a small percentage of the DoD AbilityOne contracts reviewed were for products or services not on the AbilityOne Procurement List at the time of contract award. In response to this finding, contracting officers are reminded to follow the purchasing priorities of the Federal Acquisition Regulation, Subpart 8.7.

The U.S. AbilityOne Commission, the Federal agency that administers the AbilityOne Program, maintains the Procurement List of all AbilityOne products and services required to be purchased by contracting officers. As part of the market research process and at the time of contract award, contracting officials should check the Procurement List accessed at <http://www.abilityone.gov> to determine whether a product or service is on the list. If the required product or service is not on the Procurement List then the DoD customer may work with the U.S. AbilityOne Commission to add it to the list through the Federal rulemaking process. Further, questions concerning whether a product or service is on the Procurement List may be submitted at e-mail address [info@abilityone.gov](mailto:info@abilityone.gov).

To learn more about contracting with the AbilityOne Program and as part of the continuous learning requirements for the contracting workforce, I recommend completing the Continuous Learning Module 023, "AbilityOne Contracting," which is offered on the Defense Acquisition University website at [http://icatalog.dau.mil/onlinecatalog/courses.aspx?crs\\_id=418](http://icatalog.dau.mil/onlinecatalog/courses.aspx?crs_id=418). My staff specialist for the above is Ms. Susan Pollack who may be contacted at 703-697-8336.

Shay D. Assad  
Director, Defense Pricing/Defense  
Procurement and Acquisition Policy

# Appendix

# C



ACQUISITION,  
TECHNOLOGY,  
AND LOGISTICS

THE UNDER SECRETARY OF DEFENSE  
3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

SEP 12 2017

The Honorable John McCain  
Chairman  
Committee on Armed Services  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Section 898(h)(2) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Public Law 114-328) requires the Secretary of Defense to provide a progress report on the recent activities of the Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity Panel's (hereinafter the "Panel"). Pursuant to section 898(h)(1), the Department is providing the enclosed progress report, and has consulted with the U.S. AbilityOne Commission. The Commission has no recommendations at this time.

On March 6, 2017, James A. MacStravic, Performing the Duties of the Under Secretary of Defense for Acquisition, Technology, and Logistics appointed Mr. Shay Assad as the Panel Chairman, identified Panel membership requirements, and requested membership nominations. On June 1, 2017, Mr. Assad hosted the first Panel meeting at the Defense Acquisition University, with 37 participants, and signed the enclosed Panel Charter on July 26, 2017. Currently, the Panel is in the process of finalizing subcommittees to support the Panel missions, as well as identifying subcommittee leads and members. The Panel's next meeting is scheduled for September 13, 2017. To address the annual reporting requirements, the Department plans to submit the Panel's first annual Report to Congress by the end of March 2018.

An identical letter has been sent to the other congressional defense committees, the Chairman of the House Committee on Oversight and Government Reform, the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, and the Chairman of the U.S. AbilityOne Commission.

Sincerely,

Ellen M. Lord

Enclosure:  
As stated

cc:  
The Honorable Jack Reed  
Ranking Member





THE UNDER SECRETARY OF DEFENSE  
3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

ACQUISITION,  
TECHNOLOGY,  
AND LOGISTICS

SEP 12 2017

The Honorable Thad Cochran  
Chairman  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Section 898(h)(2) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Public Law 114-328) requires the Secretary of Defense to provide a progress report on the recent activities of the Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity Panel's (hereinafter the "Panel"). Pursuant to section 898(h)(1), the Department is providing the enclosed progress report, and has consulted with the U.S. AbilityOne Commission. The Commission has no recommendations at this time.

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Sincerely,

Ellen M. Lord

Enclosure:  
As stated

cc:  
The Honorable Patrick J. Leahy  
Vice Chairman



ACQUISITION,  
TECHNOLOGY,  
AND LOGISTICS

THE UNDER SECRETARY OF DEFENSE  
3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

SEP 12 2017

The Honorable William M. "Mac" Thornberry  
Chairman  
Committee on Armed Services  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Section 898(h)(2) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Public Law 114-328) requires the Secretary of Defense to provide a progress report on the recent activities of the Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity Panel's (hereinafter the "Panel"). Pursuant to section 898(h)(1), the Department is providing the enclosed progress report, and has consulted with the U.S. AbilityOne Commission. The Commission has no recommendations at this time.

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Sincerely,

A handwritten signature in blue ink that reads "Ellen M. Lord".

Ellen M. Lord

Enclosure:  
As stated

cc:  
The Honorable Adam Smith  
Ranking Member



ACQUISITION,  
TECHNOLOGY,  
AND LOGISTICS

THE UNDER SECRETARY OF DEFENSE  
3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

SEP 12 2017

The Honorable Rodney P. Frelinghuysen  
Chairman  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Section 898(h)(2) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Public Law 114-328) requires the Secretary of Defense to provide a progress report on the recent activities of the Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity Panel's (hereinafter the "Panel"). Pursuant to section 898(h)(1), the Department is providing the enclosed progress report, and has consulted with the U.S. AbilityOne Commission. The Commission has no recommendations at this time.

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Sincerely,

Ellen M. Lord

Enclosure:  
As stated

cc:  
The Honorable Nita Lowey  
Ranking Member



ACQUISITION,  
TECHNOLOGY,  
AND LOGISTICS

THE UNDER SECRETARY OF DEFENSE  
3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

SEP 12 2017

The Honorable Trey Gowdy  
Chairman  
Committee on Oversight and  
Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Section 898(h)(2) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Public Law 114-328) requires the Secretary of Defense to provide a progress report on the recent activities of the Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity Panel's (hereinafter the "Panel"). Pursuant to section 898(h)(1), the Department is providing the enclosed progress report, and has consulted with the U.S. AbilityOne Commission. The Commission has no recommendations at this time.

On March 6, 2017, James A. MacStravic, Performing the Duties of the Under Secretary of Defense for Acquisition, Technology, and Logistics appointed Mr. Shay Assad as the Panel Chairman, identified Panel membership requirements, and requested membership nominations. On June 1, 2017, Mr. Assad hosted the first Panel meeting at the Defense Acquisition University, with 37 participants, and signed the enclosed Panel Charter on July 26, 2017. Currently, the Panel is in the process of finalizing subcommittees to support the Panel missions, as well as identifying subcommittee leads and members. The Panel's next meeting is scheduled for September 13, 2017. To address the annual reporting requirements, the Department plans to submit the Panel's first annual Report to Congress by the end of March 2018.

An identical letter has been sent to the other congressional defense committees, the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, and the Chairman of the U.S. AbilityOne Commission.

Sincerely,

Ellen M. Lord

Enclosure:  
As stated

cc:  
The Honorable Elijah E. Cummings  
Ranking Member



ACQUISITION,  
TECHNOLOGY,  
AND LOGISTICS

THE UNDER SECRETARY OF DEFENSE  
3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

SEP 12 2017

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and  
Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Section 898(h)(2) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Public Law 114-328) requires the Secretary of Defense to provide a progress report on the recent activities of the Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity Panel's (hereinafter the "Panel"). Pursuant to section 898(h)(1), the Department is providing the enclosed progress report, and has consulted with the U.S. AbilityOne Commission. The Commission has no recommendations at this time.

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Sincerely,

Ellen M. Lord

Enclosure:  
As stated

cc:  
The Honorable Claire McCaskill  
Ranking Member



ACQUISITION,  
TECHNOLOGY,  
AND LOGISTICS

THE UNDER SECRETARY OF DEFENSE  
3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

SEP 12 2017

U.S. AbilityOne Commission  
Chairperson  
Mr. James M. Kesteloot  
Jefferson Plaza 2, Suite 10800  
1421 Jefferson Davis Highway  
Arlington, VA 22202-3259

Dear Mr. Chairperson:

Section 898(h)(2) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Public Law 114-328) requires the Secretary of Defense to provide a progress report on the recent activities of the Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity Panel's (hereinafter the "Panel"). Pursuant to section 898(h)(1), the Department is providing the enclosed progress report, and has consulted with the U.S. AbilityOne Commission. The Commission has no recommendations at this time.

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Sincerely,

Ellen M. Lord

Enclosure:  
As stated

## **CHARTER FOR THE “PANEL ON DEPARTMENT OF DEFENSE AND ABILITYONE CONTRACTING, OVERSIGHT, ACCOUNTABILITY, AND INTEGRITY”**

**Purpose:** The charter formalizes the mission, duties, governance, roles, responsibilities, authorities, and milestones required of the “Panel on Department of Defense and AbilityOne Contracting, Oversight, Accountability, and Integrity” (hereafter referred to as the “Panel”).

**Mission:** The primary mission of the Panel is to review the effectiveness and internal controls of the AbilityOne Program related to Department of Defense (DoD) contracts, and report back to Congress on ways to eliminate waste, fraud, and abuse and ensure integrity and accountability for any violations of law or regulation; to recommend changes to business practices and IT systems to facilitate compliance with the Javits-Wagner-O’Day Act; and to establish Ability One Program training at the Defense Acquisition University pursuant to section 898 of the National Defense Authorization Act for Fiscal Year 2017.

**Background:** The Under Secretary of Defense (USD) for Acquisition, Technology, and Logistics (AT&L) established the Panel as directed by section 898 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328). The USD(AT&L) memorandum, dated March 6, 2017, appointed the Director, Defense Pricing as the Panel Chairman.

**Reports to Congress:** The Panel shall submit findings and recommendations in a series of annual reports to Congress. The initial report shall focus on the progress of the activities of the Panel and be submitted to the Secretary of Defense, the Chairman of the U.S. AbilityOne Commission, the congressional defense committees, the House Committee on Oversight and Government Reform, and to the Senate Committee on Homeland Security and Governmental Affairs.

**Membership:** Pursuant to section 898(a)(2), the Panel shall be comprised of the following -

- (1) A representative of the Under Secretary of Defense (Acquisition, Technology, and Logistics (USD(AT&L))), who will serve as the Panel Chairman;
- (2) A representative of the U.S. AbilityOne Commission;
- (3) A representative of the Service Acquisition Executive representative from each Military Department and Defense Agency – [There shall be a mandatory representative from the Defense Logistics Agency, and the Defense Contract Management Agency; other Defense Agency participation is discretionary];
- (4) A representative from the USD Comptroller;
- (5) A representative from the Office of the Inspector General of DoD and from the U.S. AbilityOne Commission;
- (6) A representative from the Army Audit Agency, Naval Audit Service, the Air Force Audit Agency, and the Defense Contract Audit Agency;
- (7) The President, Defense Acquisition University, or designated representative;
- (8) One or more subject matter experts (SMEs) on veterans employment from a veterans service organization;
- (9) A representative from the U.S. AbilityOne Commission Directorate of Veteran Employment whose duties include maximizing opportunities to employ significantly disabled veterans in accordance with the regulations of the U.S. AbilityOne Commission;

- (10) One or more representatives from the Department of Justice – who are SMEs on compliance with disability rights and laws that are applicable to contracts of the DoD and the U.S. AbilityOne Commission;
- (11) One or more representatives from the Department of Justice – who are SMEs on DoD contracts, Federal Prison Industries, and the requirements of the JWOD Act;
- (12) Such other representatives as may be determined by the USD(AT&L)

**Roles and Responsibilities:**

- **Chairman**
  - Chairs Panel meetings
  - Provides overarching strategic direction and guidance
  - Approves final agenda for Panel meetings and the minutes
  - After timely consensus from the Panel, the Chairman serves as the final approval authority for the Charter and any future revisions
  - In consultation with the Panel members, establishes subcommittees or working groups to support the Panel mission
  - Facilitates Panel discussion and voting on the recommendations from Panel members and subcommittees
  - May designate a chair for Panel meetings, as needed
  - Executes the mission of the Panel with assistance from the members and established subcommittees
  
- **Executive Secretary**
  - Chairs the Panel meetings as needed by the Chairman
  - Establishes the schedule for the Panel meetings
  - Reviews meeting agendas, presentations, and meeting minutes
  - Sends communications to the Panel members
  - Oversees the activities of the Subcommittees
  - Oversees the drafting and coordination of the reports to congress
  - Supports the Chairman in executing the mission of the Panel
  
- **Panel Members**
  - Attend and participate in Panel meetings
  - Lead a subcommittee at the request of the Chairman
  - Serve and/or appoint a staff member/subject matter expert to serve on subcommittees
  - Complete assigned action items
  - Advise the Chairman
  - Recommend agenda topics
  - Empower designated representative to speak on their behalf when unable to attend meetings
  - Contribute to the reports to congress
  - Vote on the recommendations from Panel members and subcommittees



- **Defense Acquisition University**
  - Help the Panel address and carry out the duties pursuant to section 898(l), and
  - Provide administrative and logistical support to the Panel to include scheduling the Panel meeting locations, in coordination with senior staff of the Defense Procurement and Acquisition Policy (DPAP) office and the Executive Secretary.

**Subcommittees:** In coordination with the Panel members, the Panel Chairman may approve the establishment of subcommittees or working groups deemed necessary to support the Panel mission. Such subcommittees shall report all of their recommendations and advice to the Panel for full deliberation and discussion. Subcommittees have no authority to make decisions, verbally or in writing, on behalf of the Panel.

**Meetings:** Pursuant to section 898(b), the Panel shall meet as determined necessary by the chairman of the Panel, but not less than every three months.

**Duties:** Pursuant to section 898(c), the Panel shall -

- (1) Review status/progress relating to implementation of recommendations in the DoDIG report 2016-097, "DoD Generally Provided Effective Oversight of AbilityOne Contracts," published June 17, 2016;
- (2) Recommend actions to eliminate waste, fraud, and abuse in contracts of the DoD and of AbilityOne;
- (3) Recommend actions the DoD and the AbilityOne Commission may take to ensure opportunities for the employment of significantly disabled veterans and for the blind and other individuals with severe disabilities;
- (4) Recommend changes to law, regulations, and policy necessary to eliminate vulnerabilities to waste, fraud, and abuse with respect to the performance of contracts of the DoD;
- (5) Recommend criteria for veterans with disabilities to be eligible for employment opportunities through programs of the U.S. AbilityOne Commission that considers the definition of disabilities used by the Secretary of Veterans Affairs and the U.S. AbilityOne Commission;
- (6) Recommend ways that the DoD and the U.S. 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's compliance with regulations that establish and maintain the procurement list requirements established pursuant to 41 U.S.C. § 8503; and (B) the DoD complies with the statutory and regulatory requirements for use of such procurement list; and
- (8) any other duties that are determined necessary by the Secretary of Defense.

**Consultation:** Pursuant to section 898(d), 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 DoD and the AbilityOne Program;
- (2) Employment of veterans with significant disabilities; and
- (3) Vocational rehabilitation.

**Authority:** Pursuant to section 898(e), the Panel may request documentation or other information from the AbilityOne Commission, the AbilityOne central nonprofit agencies, and qualified AbilityOne nonprofit agencies.

**Inapplicability of FACA:** Pursuant to section 898(k), the requirements of the Federal Advisory Committee Act (FACA) shall not apply to the Panel.

**Travel:** The employers/organizations of the respective Panel members are responsible for reimbursement of allowable travel expenses; Panel members and subcommittee members shall serve without compensation.

**DAU Training and Developmental Assignments:** Section 898(l) requires that -

- (1) The Secretary of Defense establish a program at DAU on the mission of the U.S. AbilityOne Commission; on the employment of significantly disabled veterans through contracts from the procurement list maintained by the U.S. AbilityOne Commission; on reasonable accommodations and accessibility requirements for the blind and other individuals who have severe disabilities; on Executive orders and other subjects related to the blind and other individuals who have severe disabilities as determined by the Secretary of Defense; and procurement, acquisition, program management, and other training that is specific to procuring goods and services for the DoD pursuant to the JWOD Act;
- (2) Employees of the U.S. AbilityOne Commission may participate in the training program;
- (3) Members of the Defense Acquisition Workforce (DAW) (as defined in 10 U.S.C. § 101), who have participated in the training are authorized to be detailed to the U.S. AbilityOne Commission; and
- (4) The Defense Acquisition Workforce Development Fund (DAWDF) (established under 10 U.S.C. § 1705) is authorized for use when detailing DAW members to the U.S. AbilityOne Commission.

**Milestones:**

- June 23, 2017 – Progress report due to Congress;
- September 30, 2017 – First annual report due to Congress;
- September 30, 2018 – Second annual report due to Congress;
- September 30, 2019 – Third annual report due to Congress;
- September 30, 2020 – Fourth and final annual report due to Congress;
- Sunset: Panel terminates after submission of the last annual report.

**Reviewed by:** The Panel members reviewed the Charter during the month of June 2017.

**Approved by:**



Shay D. Assad  
Director, Defense Pricing  
Panel Chairman

7/26/2017  
Date

# Appendix

# D



ACQUISITION,  
TECHNOLOGY,  
AND LOGISTICS

## OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

MAR - 6 2017

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Panel on Department of Defense and AbilityOne Contracting Oversight,  
Accountability, and Integrity – Call for Nominations

Section 898 of the National Defense Authorization Act for Fiscal Year 2017 (the Act), Public Law 114-328, requires the Secretary of Defense to establish a panel to be known as the "Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity." The duties of the Panel set forth in section 898 include addressing the effectiveness and internal controls of the AbilityOne Program related to Department of Defense (DoD) contracts, and the Act requires the Secretary of Defense to establish a more comprehensive AbilityOne training program at the Defense Acquisition University (DAU). Pursuant to the Committee for Purchase From People Who Are Blind or Severely Disabled statute (formerly known as the Javits-Wagner-O'Day Act), the Panel shall make recommendations focused on increasing employment in the AbilityOne Program for veterans with disabilities and for individuals who are blind or who have other severe disabilities. The Panel shall submit findings and recommendations to the Secretary and congressional defense committees in a progress report within 180 days of enactment of the Act, and an annual report not later than September 30<sup>th</sup> of each year.

The Director of Defense Pricing, Mr. Shay Assad, is appointed as the Panel Chairman. The Special Advisor to the Director of Defense Procurement and Acquisition Policy (DPAP), Mr. Kenya Wesley, will serve as the Executive Secretary and will be responsible for preparing the annual reports to Congress. DAU and DPAP will provide administrative support to the Panel. Pursuant to section 898, the Panel shall be comprised of the following members:

- (A) A representative of the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)), who will serve as the Panel Chairman;
- (B) A representative of the U.S. AbilityOne Commission;
- (C) A representative of the Service Acquisition Executive representative from each Military Department and Defense Agency – [There shall be a mandatory representative from the Defense Logistics Agency, and the Defense Contract Management Agency; other Defense Agency participation is discretionary];
- (D) A representative from USD(Comptroller);
- (E) A representative from the Office of the Inspector General of DoD and from the U.S. AbilityOne Commission;
- (F) A representative from the Army Audit Agency, Naval Audit Service, the Air Force Audit Agency, and the Defense Contract Audit Agency;
- (G) The President, Defense Acquisition University, or designated representative;
- (H) One or more subject matter experts (SMEs) on veterans employment from a veterans service organization;

- (I) A representative from the U.S. AbilityOne Commission Directorate of Veteran Employment whose duties include maximizing opportunities to employ significantly disabled veterans in accordance with the regulations of the U.S. AbilityOne Commission;
- (J) One or more representatives from the Department of Justice who are SMEs on compliance with disability rights and laws that are applicable to contracts of the DoD and the U.S. AbilityOne Commission;
- (K) One or more representatives from the Department of Justice who are SMEs on DoD contracts, Federal Prison Industries, and the requirements of the Javits-Wagner-O'Day Act;
- (L) Such other representatives as may be determined by USD(AT&L)

Nominations for the above-referenced members (with the exception of the Chairman) are due to the Chairman not later than March 22, 2017. The Panel will convene as soon as possible after the members have been appointed, and shall meet not less than every three months. Your assistance when called upon by the Panel Chairman will be vital to meeting the ambitious congressionally mandated schedule, and to the Panel's overall mission success. If you have any questions concerning the Panel, please contact Ms. Susan Pollack, senior staff specialist, DPAP, at 703-697-8336 or at [susan.w.pollack.civ@mail.mil](mailto:susan.w.pollack.civ@mail.mil).



James A. MacStravic  
Performing the Duties of the  
Under Secretary of Defense  
for Acquisition, Technology,  
and Logistics

cc:  
Under Secretary of Defense (Comptroller)  
Under Secretary of Defense for Personnel and Readiness  
Office of Diversity Management and Equal Opportunity  
Executive Director, U.S. AbilityOne Commission  
Inspector General of the U.S. AbilityOne Commission  
Department of Justice, Disability Rights Section  
Department of Justice, Civil Rights Division

**DISTRIBUTION:**

**COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND  
(ATTN: ACQUISITION EXECUTIVE)**

**COMMANDER, UNITED STATES TRANSPORTATION COMMAND  
(ATTN: ACQUISITION EXECUTIVE)**

**ASSISTANT SECRETARY OF THE ARMY FOR ACQUISITION, LOGISTICS,  
AND TECHNOLOGY**

**ASSISTANT SECRETARY OF THE NAVY FOR RESEARCH, DEVELOPMENT,  
AND ACQUISITION**

**ASSISTANT SECRETARY OF THE AIR FORCE FOR ACQUISITION**

**GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE**

**INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE**

**DIRECTOR, ADMINISTRATION AND MANAGEMENT**

**DIRECTORS OF DEFENSE AGENCIES**

**DIRECTORS OF THE DOD FIELD ACTIVITIES**

**INSPECTOR GENERALS OF THE MILITARY DEPARTMENTS**

**PRESIDENT, DEFENSE ACQUISITION UNIVERSITY**

# Appendix

# E



vation Research Program or Small Business Technology Transfer Program for the pilot program under this section shall be considered to be use of competitive procedures for purposes of chapter 137 of title 10, United States Code.

“(d) **DISCRETION TO USE NON-CERTIFIED ACCOUNTING SYSTEMS.**—In executing programs under this pilot program, the Secretary of Defense shall establish procedures under which a small business or nontraditional contractor may engage an independent certified public accountant for the review and certification of its accounting system for the purposes of any audits required by regulation, unless the head of the agency determines that this is not appropriate based on past performance of the specific small business or nontraditional defense contractor, or based on analysis of other information specific to the award.

“(e) **GUIDANCE AND TRAINING.**—The Secretary of Defense shall ensure that acquisition and auditing officials are provided guidance and training on the flexible use and tailoring of authorities under the pilot program to maximize efficiency and effectiveness.”.

**SEC. 897. RAPID PROTOTYPING FUNDS FOR THE MILITARY DEPARTMENTS.**

Section 804(d) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note), as amended by section 864 of this Act, is further amended—

(1) in the subsection heading, by striking “FUND” and inserting “FUNDS”;

(2) in paragraph (1), by striking “IN GENERAL.—The Secretary” and inserting the following: “DEPARTMENT OF DEFENSE RAPID PROTOTYPING FUND.—

“(A) IN GENERAL.—The Secretary”;

(3) by redesignating paragraphs (2) and (3) as subparagraphs (B) and (C), respectively, and moving such subparagraphs, as so redesignated, two ems to the right;

(4) in subparagraph (B), as redesignated by paragraph (3), by striking “this subsection” and inserting “this paragraph”;

and

(5) by inserting after paragraph (1) the following new paragraph:

“(2) **RAPID PROTOTYPING FUNDS FOR THE MILITARY DEPARTMENTS.**—The Secretary of each military department may establish a military department-specific fund (and, in the case of the Secretary of the Navy, including the Marine Corps) to provide funds, in addition to other funds that may be available to the military department concerned, for acquisition programs under the rapid fielding and prototyping pathways established pursuant to this section. Each military department-specific fund shall consist of amounts appropriated or credited to the fund.”.

**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 veterans employment from a veterans 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 are in compliance with 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 estab-

lic accountant for the review and certification of its accounting system for the purposes of any audits required by this section.

The House amendment contained no similar provision.

The House recedes with an amendment that would include auditing officials in the list of personnel who are provided guidance and training on the flexible use and tailoring of authorities under the pilot program.

*Rapid prototyping funds for the military departments (sec. 897)*

The Senate bill contained a provision (sec. 899A) that would amend section 804(d) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92) to authorize the Secretary of the Army, Navy, and Air Force each to establish service-specific funds for acquisition programs under the rapid fielding and prototyping pathways established in this section.

The House amendment contained no similar provision.

The House recedes.

*Establishment of Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity; Defense Acquisition University training (sec. 898)*

The Senate bill contained a provision (sec. 829H) that would prohibit the Secretary of Defense from arranging contracts through AbilityOne, or its central non-profit agency, SourceAmerica, and instead require the Secretary to contract directly with qualified non-profit agencies for the severely disabled until the Department of Defense (DOD) Inspector General conducted a review and certified the effectiveness of the internal controls and financial management of AbilityOne and SourceAmerica.

The House amendment contained no similar provision.

The House recedes with an amendment that would establish a panel on DOD and AbilityOne contracting oversight, accountability, and integrity to review and address the effectiveness and internal controls of the program related to DOD contracts.

*Coast Guard major acquisition programs (sec. 899)*

The House amendment contained a provision (sec. 835) that would amend section 56(c) of title 14, United States Code, to direct the Chief Acquisitions Officer of the Coast Guard to inform the Commandant of developments in major acquisition programs that have new or revisited trade-offs between costs, scheduling, feasibility, and performance. This section also would amend chapter 15 of title 14, United States Code, to clarify the role of the Acquisition Directorate in ensuring that the needs of customers in major acquisition programs are met in the most cost-effective manner practicable. The Vice Commandant of the Coast Guard would be responsible for representing the operating field units and would serve an advisory role to the Commandant for major acquisition programs. The customer of a major acquisition program would be specified as the operating field unit that would field the acquired system and "major acquisition program" would be defined as a program with a life-cycle cost estimate of \$300.0 million or more.

This section also would prohibit the Commandant of the Coast Guard from awarding a contract for the design of an unmanned