



Office of Inspector General
Committee for Purchase From People
Who Are Blind or Severely Disabled
(U.S. AbilityOne Commission)

December 2, 2019

MEMORANDUM

FOR: Thomas D. Robinson
Chairperson
U.S. AbilityOne Commission

FROM: Thomas K. Lehrich 
Inspector General

SUBJECT: Top Management and Performance Challenges Report

In accordance with the Reports Consolidation Act of 2000, the Office of Inspector General (OIG) reports on the most serious management and performance challenges facing the U.S. AbilityOne Commission, for inclusion in the Commission's Performance and Accountability Report (PAR) for fiscal year 2019.

The U.S. AbilityOne Commission (Commission) designates Central Nonprofit Agencies (CNAs) to facilitate the employment of people who are blind or have significant disabilities, and the dynamics of the CNAs in the program are changing and growing. Our reporting reflects on, and seeks to assist in, this challenging environment. OIG met with the Commission leadership to understand their perspective on the challenge areas, and OIG requested feedback from the Agency's officials regarding the challenges. In this year's Top Management and Performance Challenges Report we include as the most pressing challenges: transparency, erosion of statutory program authority, implementation of the cooperative agreements, inadequate resources, needed enhancements to program compliance, and a lack of risk management.

We thank you for your support of our mission, and we look forward to working with the Commission and the AbilityOne stakeholders, as the OIG continues its oversight mission.

Enclosure: Top Management and Performance Challenges Report

Top Management and Performance Challenges Report

Introduction

In accordance with the Reports Consolidation Act of 2000 (P.L. 106-531), the Office of Inspector General (OIG) reports on the most significant management and performance challenges facing the U.S. AbilityOne Commission (Commission), for inclusion in the Commission's Performance and Accountability Report (PAR) for fiscal year (FY) 2019.

The challenge areas identified are connected to the Commission's mission to provide employment and training opportunities in the manufacture and delivery of products and services to the Federal Government of the United States for people who are blind or have significant disabilities.

The OIG identified the top management and performance challenges (TMPC) for fiscal year (FY) 2019 as:

- Higher Level of Transparency and Communication Needed to Enhance Program Confidence;
- Erosion of Statutory Program Authority;
- Implementation of Cooperative Agreements given Central Nonprofit Agencies (CNA) Growth;
- Lack of Adequate Resources Impacts Program Effectiveness;
- Establishing an Enterprise-wide Risk Management Framework; and
- Enhancement of Program Compliance.

The topics discussed in the report encompass multiple challenge areas and attest to the complex nature of the AbilityOne Program. In this report, we introduce an emerging challenge with organizational governance and are placing it on a watch list as a potential, reportable challenge for the Commission. The allocation of roles, authorities, and responsibilities among the Commission Senior Staff creates challenges in achieving positive business outcomes such as the ability to implement timely policies and initiatives, effectively execute changes in the programs, and support program growth.

This report is based on OIG and U.S. Government Accountability Office (GAO) audits and reviews, as well as our knowledge of the AbilityOne programs and operations. OIG met with the Commission leadership to gain their perspective on the challenge areas and considered the accomplishments the Commission reported as of September 30, 2019. OIG also received input on the challenges to the program from Congress, CNAs, and NPAs.

As previously reported, the Council of Inspectors General on Integrity and Efficiency (CIGIE) consolidated the challenges encountered by agencies across government in 2017, reported by their respective federal IGs. The AbilityOne OIG work was among the few referenced from the 61 OIG reports that CIGIE considered. The CIGIE report afforded the Commission positive exposure on its resource challenges for the administration of the complex AbilityOne Program.

Background

Enacted in 1938, the Wagner-O'Day Act established the Committee on Purchases of Blind-Made Products to provide employment opportunities for the blind. Legislation sponsored by Senator Jacob K. Javits was signed in 1971, amending and expanding the Wagner-O'Day Act to include persons with other severe disabilities. The Act, as amended, became known as the Javits-Wagner-O'Day (JWOD) Act (41 U.S.C. §§8501-8506), and the program's name became the JWOD Program. The 1971 amendments also established the federal agency as the Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) to reflect the expanded capabilities of the JWOD Program. In 2006, the Committee changed the program's name from the JWOD Program to the AbilityOne Program. The Committee is now known as the U.S. AbilityOne Commission (Commission).

By statute, the Commission is composed of fifteen Presidential appointees: eleven members representing federal agencies and four members serving as private citizens from the blind and disabled community, bringing their expertise in the field of employment of people who are blind or have significant disabilities. In the composition of the Commission's fifteen Presidential appointees, currently there are nine vacancies: seven federal agencies and two private citizens. This amounts to more than half of the Commission membership being vacant (9 out of 15).

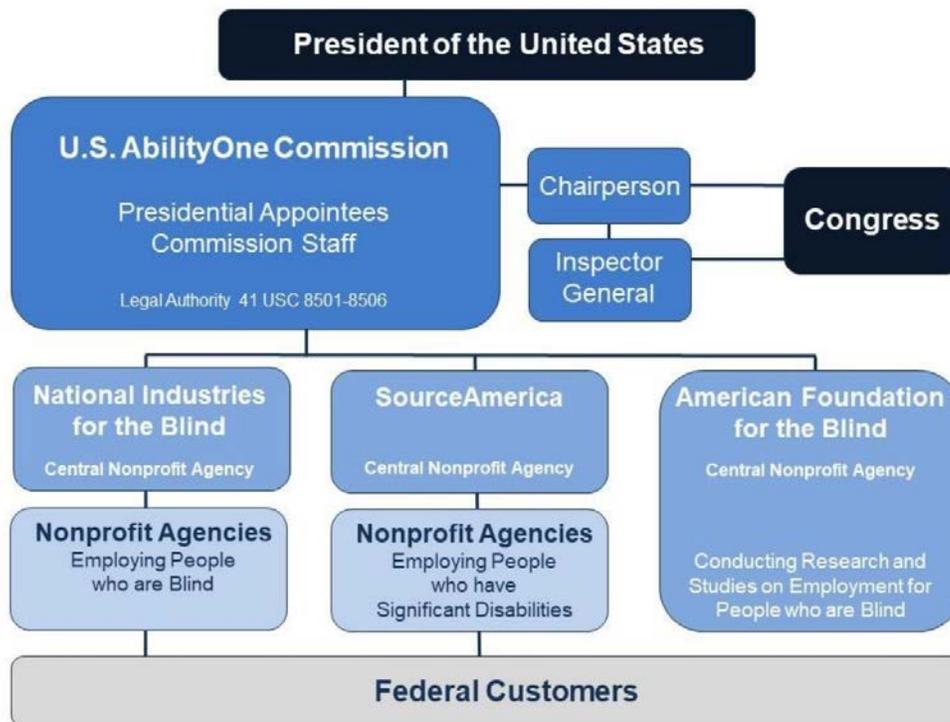
The Commission has about 32 full-time employees for the administration of the AbilityOne Program. The Program is a source of employment for approximately 45,000 people who are blind or have significant disabilities through contracts across all fifty states and U.S. territories by more than 500 nonprofit agencies (NPAs) with federal agencies. The Commission administers contracts for more than \$3.6 billion in products and services to the federal government annually through the AbilityOne Program.

The Commission designates CNAs to facilitate the employment by NPAs of people who are blind or have significant disabilities. The Commission currently administers the AbilityOne Program with the assistance of two CNAs,¹ the National Industries for the Blind (NIB) (established in 1928) and SourceAmerica (established in 1974). On July 26, 2018, the Commission designated the American Foundation for the Blind (AFB) as a third CNA with an initial phase of research and studies. Each CNA has its own Cooperative Agreement with the Commission, and that Agreement helps govern the relationship and performance of each CNA. AFB is not fully operating as a CNA as it doesn't have any NPAs. Also, as a consequence of AFB not having any NPAs and AbilityOne Program contracts, AFB doesn't collect any program fee.

The Commission is ultimately responsible for the administration of the \$3.6 billion worth of contracts between the NPAs and the federal government. Stakeholders expect greater program integrity, efficiency, accountability, and transparency across its operations. The OIG will continue to report on management progress and to highlight the benefits of an open and transparent culture, ultimately leading to a more resilient AbilityOne Program.

¹ 41 CFR Chapter 51-3.

Figure 1:
AbilityOne Program Organization



Management Challenge 1: Higher Level of Transparency Needed to Enhance Program Confidence

Why This Is a Challenge

The stakeholders and program participants are extremely interested in the Commission activities including effective communication by the Commission on program operations. The AbilityOne Program is challenged with improving transparency.² Congress has made repeated observations regarding challenges in transparency, especially in a program that employs over 45,000 blind and severely disabled workers. Congress has consistently commented on the expectations of a high level of practices by the Commission with communicating effectively to the interested public. During the amendments of the Wagner-O’Day Act in 1971, Congress stated: *The Committee’s procedures have not necessarily complied with due process of law, such as adequate notice, presentation of views prior to adding to or removing commodities at a fair market price from the*

² GAO-13-457, “Employing People with Blindness or Severe Disabilities: Enhanced Oversight of the AbilityOne Program Needed,” (May 2013). See also “Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity” 2018 First Annual Report to Congress (898 Panel Report (2018)).

*Schedule of Blind-Made Products. As a result, actions of the Committee in carrying out its role under the Wagner-O'Day Act have been subject to question and review in a court decision.*³ Greater level of communication by the Agency staff would enhance operations in administering the program and result in increased program confidence. Several factors point to the benefits of improving transparency in the program.

The GAO report published in May 2013 identified the need to enhance program oversight and transparency as a challenge for the Commission.⁴ On the same issue, in 2019, despite being included in the Chairman's Mark,⁵ a provision increasing contracting goals and setting the stage for expanded Program growth was abandoned at the NDAA Conference. The reason discussed by lawmakers for not increasing the contracting goal provision was: "...both the [AbilityOne] Inspector General and the [DoD] Panel are generating findings and recommendations for needed reforms and expect the AbilityOne Commission to take appropriate steps in the future to increase transparency and effectiveness of the program."⁶

Commission Membership

The Commission's statutorily mandated broad composition of membership provides a benefit for participating Agencies and the Commission's operations by maximizing representation across the federal government. By statute, four members of the Commission come specifically from the blind and disabled community, as private citizens.⁷ The varying expertise and backgrounds of the talented members is key to the success of the AbilityOne Program.

By statute, nine members come from representative government agencies. In May 2019, Mr. Stuart Hazlett, Deputy Assistant Secretary of the Army, was sworn in as a member of the Commission from the Department of the Army. To the credit of the Commission, the Chairperson through correspondence made requests to federal agencies with a vacant presidentially appointed position encouraging attention to filling the vacancies. The Chairperson requested that the heads of such federal agencies coordinate with the Commission to begin the nomination process.

As mentioned above, in the composition of the Commission's fifteen Presidential appointees, currently there are nine vacancies: seven federal agencies and two private citizens. This amounts to more than half of the Commission membership being vacant (9 out of 15). Low membership level means diminished representation by government agencies, and it decreases program outreach and opportunities for greater communication across the government program.

Commission Meetings

The Commission's public meetings are regularly held four times a year.⁸ The holding of public meetings at each of the CNA's Annual Conference has positively impacted transparency and

³ U.S. Congress, House of Representatives, Government Operations Committee, *Amendments to the Wagner-O'Day Act: Report (To accompany H.R. 8011)*, 92nd Cong., 1st Sess., 1971, H.R. Rep. 92-228, 1082.

⁴ [GAO-13-457, "Employing People with Blindness or Severe Disabilities: Enhanced Oversight of the AbilityOne Program Needed," \(May 2013\).](#)

⁵ [FY 2019 NDAA Chairman's Mark.](#)

⁶ [FY 2019 NDAA House Conference Report 115-874 at 920.](#)

⁷ [41 U.S.C. §8502\(b\)\(2\)-\(5\).](#)

⁸ [2019 Commission Public Meetings.](#)

maximized access and consumption of information. However, Commission meetings, enhanced by advance subcommittee work, with larger and more robust agendas that have open discussions, would work better to inform stakeholders. Over the past year, the Executive Director's reporting in public meetings had little or no written content or written reference materials. We have been informed by stakeholders that agendas and materials are not consistently provided by the Commission.

Revitalizing the Commission-held subcommittee system would increase open member dialogue and solutions. Subcommittees could meet more often and establish or encourage liaisons from each of the CNAs to provide input. Additionally, the subcommittees should have a role in completing initiatives. A better organized library of public meetings with a collection of content material would increase communication and provide access to relevant and reliable information related to AbilityOne Program events.

The Commission aggravates the perception of opacity with two practices: the frequent use of executive sessions (non-public sessions) and the execution of nondisclosure agreements (NDAs) with Commission members and third-parties. Both practices are permissible and needed in many instances. However, they limit transparency and encourage participants and other stakeholders to infer that Commission actions are not meant to be well understood. Encouraging the dynamics of information flow would benefit information exchange, with the Commission acting as a leader in communication practices and not viewed as controlling or restricting it. For instance most recently, the House Report points to questions raised by Congress about language in the Cooperative Agreements between the Commission and the CNAs requiring the CNAs to notify in advance and report to the Commission any meetings with key stakeholders, including with Congressional members and staff.⁹

[Progress In Addressing The Challenge](#)

In 2015, the Commission published a series of pricing policies ranging from market research, development and recommendation, submission and negotiation of Fair Market Prices (FMP) for products on the AbilityOne Program Procurement List (PL).¹⁰ The Cooperative Agreements, as required by the Consolidated Appropriations Act of 2016, measure CNA operations.¹¹ This is a step in the right direction. The step should also, though, include a description of the Commission's review procedures of pricing packages so that CNAs and NPAs can prepare the pricing packages accordingly.

The Cooperative Agreement between the Commission and AFB, signed in July 2018, is supposed to provide an enhanced CNA model focusing on increasing job placement and career-advancement opportunities in knowledge-based positions. AFB has no NPAs and no AbilityOne contracts. At this time, the work of AFB, the third Commission-designated CNA, consists of research and studies. Upon completion of 12 to 15 months, not to exceed 18 months, the Commission plans to conduct a review of AFB's Phase I.

⁹ [House Report 116 -62 at 223.](#)

¹⁰ [AbilityOne Program Procurement List Pricing Policy \(51.600 series\)](#)

¹¹ [Public Law 114-113.](#)

In December 2018, the renewal of the Cooperative Agreements with NIB and SourceAmerica was intended to be a step taken by the Commission to strengthen oversight and evaluate performance.¹²

In the 2017 NDAA, Congress created a panel- the Department of Defense and AbilityOne Contracting, Oversight, Accountability, and Integrity¹³ (hereinafter, the “898 Panel”). The mandate of the 898 Panel includes making recommendations to Congress regarding the JWOD Act and improving the AbilityOne Program.

The 898 Panel is responsible for recommendations in seven areas of Congressional interest. The Panel’s first report to Congress was issued in July 2018 and identified 41 recommendations in several focus areas: resources, program oversight, contract goal, definitions, training, and technology. The Commission leadership has increased its outreach through program visits, meeting with DoD customers, and designing a communication initiative for the 898 Panel recommendations for the CNAs and the NPAs. This includes town halls and webcasts hosted or sponsored by the Commission, and commitment and collaboration of the Panel members and subcommittees to engage CNAs’ perspective and inputs to improve the AbilityOne Program.

What Needs To Be Done

The Commission is facing challenges with improving the transparency in the administration of the AbilityOne Program. Commissions and Boards typically benefit from publishing quality information and program-wide communication tailored to the business of the Agency. Increased use of appropriate methods of communication such as social media outreach and reporting on metrics and compliance data could provide useful communication on project status and needs, updates of activities, and performance planning. The Commission takes advantage of this and publishes an annual regulatory agenda. Agencies are increasingly using electronic filing and document dissemination systems to manage deadlines and actions. The Commission has two excellent, dedicated communications staff that support the strategic communication of the Agency. However, these staff have a large portfolio and are responsible with assisting with the delivery of information for an enormous program with limited resources.

Further NPA outreach and increased use of notice of proposed rulemaking by the Commission would increase transparency by soliciting public and open dialogue, and informing interested stakeholders of completed, as well as impending, actions.

Management Challenge 2: Erosion of Statutory Program Authority

Why This Is a Challenge

The challenge of program erosion is at a pivotal stage. During the last two reports, we presented the concept of erosion of statutory program authority as a challenge to ensure this excellent program has the resources and support it needs to grow and increase employment of

¹² See [NIB Cooperative Agreement](#); See also [SourceAmerica Cooperative Agreement](#).

¹³ Pub. L. 114-328, FY 2017 National Defense Authorization Act.

blind and severely disabled workers. The legal framework for the AbilityOne Program was created in 1938 and amended in 1971 and, since then, has not had a reauthorization or modernization. Since the last intervention, in 1971, Congress has enacted, and agencies have implemented, multiple acquisition reform laws designed to modernize the way government agencies buy goods and services. Several new laws passed ensure our Nation's disabled veterans have expanded opportunities in federal government acquisitions; however, these laws are in conflict with the statutory authority of the AbilityOne Program.

Congress passed the Veterans Entrepreneurship and Small Business Development Act in 1999, the Veterans Benefits Act (VBA) in 2003, and in 2006 it approved the Veterans Benefits, Health Care, and Information Technology Act which removed important language from the VBA of 2003. Each of these laws established procedures related to service-disabled veteran business procurement goals and requirements, but the VBA of 2006 created problems with JWOD supremacy. As applied to the Department of Veterans Affairs (VA), the VBA of 2006 challenges the Program by antagonizing what Congress contemplated for JWOD Act jurisdiction. Executive Order 13360 increased federal contracting and subcontracting opportunities for service-disabled veteran businesses to the detriment of AbilityOne Program participants.

The creation of multiple initiatives that are in competition with each other makes it difficult for contracting officers to navigate compliance. Recent court challenges further demonstrate the confusion as to how AbilityOne Program rules should be interpreted and implemented.

PDS Consultants – the “Rule of Two” analysis

In *Kingdomware Technologies, Inc. v. United States*, 136 S.Ct. 1969 (2016), the Supreme Court held that VA contracting officers are required to give veteran-owned small businesses (VOSBs) procurement priority when there is a “reasonable expectation” that two or more VOSBs will bid on the contract “at a fair and reasonable price that offers best value to the United States” (Veterans Benefits Act of 2006, 38 U.S.C. § 8127(d)). This is known as the “Rule of Two” analysis. The Court also held that this analysis was required regardless of whether the VA had already met its annual minimum VOSB contracting goals.¹⁴

PDS Consultants, Inc. alleged in the Court of Federal Claims that the VA improperly implemented the VBA of 2006¹⁵ mandate when it revised its contracting rules in an attempt to comply with the Supreme Court ruling in *Kingdomware* while remaining compliant with the JWOD Act.¹⁶

In *PDS*, the VA awarded a contract to a qualified NPA provider on the AbilityOne Procurement List without first employing the VBA's “Rule of Two” analysis. The VA did so because it believed that *Kingdomware* could be distinguished as applying only to competitive contracts and that JWOD procurements were non-competitive. The VA further believed that the mandatory nature of the VBA's “Rule of Two” applied only to new contracts and that here it was merely renewing a contract that existed prior to the VA's 2010 implementation of the VBA of 2006. The Court of Federal Claims disagreed with the VA, holding that the VA must conduct a “Rule

¹⁴ *Kingdomware Technologies, Inc. v. United States*, 136 S.Ct. 1969 (2016).

¹⁵ 38 U.S.C. §§ 8127, 8128.

¹⁶ *PDS Consultants, Inc. v. United States*, Case No. 16-1603C, (Fed. Cl. 2017).

of Two” analysis for all new procurement contracts before treating the AbilityOne Procurement List as a mandatory source pursuant to the JWOD Act. The Court of Federal Claims also held that because the VBA of 2006 applied only to the VA’s procurements, the VBA was a more specific statute than the JWOD Act’s broad application government-wide, and thus the VBA would take precedence, regardless of the existence of a prior contract with a Procurement List contractor.

On September 1, 2017, the Court of Federal Claims stayed its decision in *PDS* pending appeal to the United States Court of Appeals for the Federal Circuit in order to resolve the issue of whether the court properly interpreted the interplay between the VBA and JWOD Act. Oral arguments took place on September 4, 2018 and a final order was issued on October 17, 2018.

The United States Court of Appeals for the Federal Circuit affirmed the lower court’s decision in favor of PDS.¹⁷ The court held that *Kingdomware* “requires the [VA] to apply the Rule of Two to all contracting determinations.”¹⁸ To hold this way essentially requires that the VA compete all contracts where “the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States” before a mandatory source determination is made (by checking whether an item is on the AbilityOne Procurement List).¹⁹

To reconcile the competing provisions, the court relied on the “basic tenant of statutory construction . . . that a specific statute takes precedence over a more general one” and “when two statutes conflict, the later-enacted statute controls.”²⁰ The court held that “while the JWOD applies to all agencies of the federal government, the VBA applies only to VA procurements and only when the Rule of Two is satisfied.”²¹ Additionally, the court explained that “we assume that Congress was aware that it wrote an exception into the agency-wide Veterans Benefits Act in 2003 [expressly retaining JWOD’s primacy over the VBA] when it left that very same exception out of the VBA only three years later.”²²

This decision in favor of PDS Consultants, Inc. would have a negative impact on the AbilityOne Program and Federal Acquisition Regulation Part 8 Mandatory procurement sources as applied to the VA. On September 9, 2019, a petition for a *writ of certiorari* was filed before the U.S. Supreme Court and the respondent’s response is due on December 9th, 2019. The United States as the respondent represents the VA but the JWOD Act interpretation is also of interest to the Commission. The issue presented to the Court is whether Congress intended 38 U.S.C. § 8127(d) competitive-bidding preference for providers owned and controlled by veterans to be superior to the mandatory requirements of JWOD that dictate that agencies must acquire goods and services using the AbilityOne Procurement List.

¹⁷ *PDS Consultants., Inc. v. United States*, Court of Appeals for the Federal Circuit (decided Oct. 18, 2018).

¹⁸ *Id.* (citing *Kingdomware*, 136 S. Ct. at 1976).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

Randolph-Sheppard Act

The Randolph-Sheppard Act (RSA) was passed in 1936 and amended in 1954 and 1974.²³ Its implementation has been in conflict with the JWOD Act since the latter's 1938 inception. "The RSA was enacted to provide blind persons with remunerative employment, enlarge their economic opportunities, and encourage their self-support through the operation of vending facilities in federal buildings. The U.S. Department of Education prescribes regulations, as set forth in 34 CFR, Part 395, implementing the *Act* as amended (See 41 CFR 101-20.2)."²⁴ Under the Randolph Sheppard Vending Facility Program, "state licensing agencies recruit, train, license, and place individuals who are blind as operators of vending facilities located on federal and other properties. The RSA authorizes a blind individual licensed by the state to conduct specified activities in vending facilities through permits or contracts."²⁵ However, recent progress has been made by RSA participants and supporters to implement the respective mandates as Congress intended.

In 2006, Congress sought to dispel the confusion and conflict between the JWOD and RSA Acts via the 2006 National Defense Authorization Act. Congress required the agencies administering both the JWOD Act and the RSA, (the Commission and the Department of Education, respectively), as well as the Department of Defense (DoD) to issue a joint statement clarifying "the application of those Acts to both operation and management of all or any part of a military mess hall, military troop dining facility, or any similar dining facility."²⁶

The Commission, the Department of Education, and the DoD complied with this Congressional directive. The three agencies developed a task force comprised of representatives from each agency that "met weekly and engaged in almost daily discussions by electronic mail and telephone to develop a joint statement of policy pursuant to Section 848 [of the 2006 NDAA]."²⁷ The three agencies also "solicited public comments through a notice in the Federal Register, and approximately 240 comments were received."²⁸

The agencies memorialized their agreement as to the policy that should govern application of the JWOD Act and RSA to military dining facilities in a joint report to Congress dated August 29, 2006 (the "Joint Policy Statement"). According to the Joint Policy Statement, "contracts will be competed under the RSA when the [Department of Defense] solicits a contractor to exercise management responsibility and day-to-day decision-making for the overall functioning of a military dining facility," i.e., operation of the military dining facility.²⁹ However, "In all other cases, the contracts will be set aside for JWOD performance . . . Dining Facility Attendant Services (DFA) . . . when the [Department of Defense] needs dining support services (e.g., food preparation services, food serving, ordering and inventory of food, meal planning, cashiers, mess

²³ 20 U.S.C. § 107 et. seq.

²⁴ [Randolph Sheppard Vending Facility Program](#).

²⁵ *Id.*

²⁶ NDAA of 2006, Pub. L. No. 109-163, § 848(b), 119 Stat. 3136, 3395 (2006).

²⁷ Joint Report to Congress, Section 848 of the National Defense Authorization Act for Fiscal Year 2006: Application of the Javits-Wagner-O'Day Act and the Randolph-Sheppard Act to the Operation and Management of Military Dining Facilities (Aug. 29, 2006) ("Joint Policy Statement") at 3.

²⁸ *Id.*; see also [Statement of Policy and Report Relating to Contracting with Employers of Persons with Disabilities, 71 Fed. Reg. 5819 \(Feb. 3, 2006\) \(requesting public comments\)](#).

²⁹ Joint Policy Statement at 4, Full Food Services (FFS).

attendant, or other services that support operation of a dining facility) . . .”³⁰ Relevantly, mess attendant services are also known as dining facility attendant services.³¹

After two years³² of lost AbilityOne Program jobs, the Unified Agenda³³ published on June 11, 2018, includes an entry by DoD regarding this proposed rule. The DoD entry states that the “DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) . . . to implement the Joint Report and Policy Statement (Joint Policy Statement) issued by DoD, the Department of Education, and the CFP pursuant to section 848 of the NDAA for FY 2006. Pursuant to the Joint Policy Statement, the RSA applies to contracts for the operation of a military dining facility, also known as full food services, while the Commission statute applies to contracts and subcontracts for dining support services (including mess attendant services).”

E-Commerce

Government-wide use of procurement through E-Commerce portals is both an opportunity and a challenge to the AbilityOne Program. The FY 2018 NDAA was signed by the President on December 12, 2017, and included Section 846, “Procurement Through Commercial E-Commerce Portals.”³⁴ Section 846 directed the General Services Administration (GSA), in partnership with the Office of Management and Budget (OMB), to “...establish a program to procure commercial products through commercial E-Commerce portals for the purposes of enhancing competition, expediting procurements, enabling market research, and ensuring reasonable pricing of commercial products.”

The U.S. AbilityOne Commission announced the end of the pilot program between the Commission and Amazon at the end of the fiscal year. While the Commission was able to gain insight into E-commerce platforms, the pilot did not lead to an increase in AbilityOne sales. Amazon did not block ETS offerings on its platform and substitute those products with AbilityOne products, which is a feature that the Commission requires of its authorized distributors. This required feature is accomplished when the E-Commerce purchases comply with the JWOD Act, which requires that government agencies buy from the AbilityOne Program.

On April 2019, the U.S. General Services Administration (GSA) and OMB issued the phase 2 joint implementation plan, which focuses on market research. Phase 3 of the plan will focus on implementation guidance, informed by an initial proof of concept and continued stakeholder engagement.³⁵ The OIG views the innovations of E-Commerce as the future of an evolving marketplace. There is, however, risk for significant program erosion despite shared success of the E-Commerce platform. It is paramount that the buyers of products and services, i.e. the government agencies and their purchase officers, understand that the customer that the E-Commerce platform seeks to serve is the AbilityOne Program itself.

³⁰ *Id.* (emphasis added).

³¹ See Food Services for Dining Facilities on Military Installations, 81 Fed. Reg. 36,506, 36,508 (June 7, 2016) (“Mess attendant services’ (also known as ‘dining facility attendant services’) are a subset of ‘dining support services.’”).

³² See FY 2015 NDAA Joint Explanatory Statement (prompting the DFARS rule). P.L. 113-291 (December 2014).

³³ The Unified Agenda is a semi-annual report on the actions that agencies plan to issue in the near and long term.

³⁴ Pub. L. 115-91.

³⁵ [Procurement Through Commercial E-Commerce Portals, Phase II Report: Market Research & Consultation](#)

Additional Examples of Erosion of Statutory Program Authority

The following illustrates additional examples of AbilityOne Program erosion:

- a. Recommendations for changes to the AbilityOne Program and the definition of “competitive integrated employment” resulting from the report of the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities established under Section 609 of the Rehabilitation Act of 1973, as amended by Section 461 of the Workforce Innovation and Opportunity Act. The 898 Panel report identified definitions that should be amended to bring JWOD into compliance with the Workforce Innovation and Opportunity Act³⁶;
- b. Efforts by the Small Business Administration to assert its preference programs over the mandated priority of the JWOD Act;
- c. Lack of enforcement capabilities for the AbilityOne Program to assert its mandated source-priority when federal agencies fail to purchase AbilityOne products and services;
- d. Increased legal challenges from qualified NPAs questioning the Commission’s ability to administer the AbilityOne Program;
- e. As discussed in more detail in the transparency challenge, despite being included in the Chairman’s Mark,³⁷ a provision increasing contracting goals, and thus AbilityOne Program size, was not passed. The reason discussed by lawmakers was: “...both the [AbilityOne] Inspector General and the [DoD] Panel are generating findings and recommendations for needed reforms and expect the AbilityOne Commission to take appropriate steps in the future to increase transparency and effectiveness of the program.”³⁸

Progress In Addressing The Challenge

As mandated by Congress, the Commission is a member of the 898 Panel. The mandate of the 898 Panel includes making recommendations to Congress regarding the JWOD Act and improving the AbilityOne Program.

The 898 Panel released its first annual report to Congress on July 18, 2018.³⁹ Issuing 41 recommendations, the 898 Panel concluded that the overall lack of funding committed to the Commission was the AbilityOne Program’s largest challenge.⁴⁰ The 41 recommendations were grouped into six areas, and the 898 Panel reports that it intends to refine the specific recommendations by priority level and to implement them accordingly. The second report to Congress is scheduled to be issued at the end of December 2019.

The recommendations identified in DoDIG-2016-097, and tracked by the 898 Panel, are on the path for successful implementation.⁴¹ The Commission will continue to work with Congress to update legislation improving the AbilityOne Program’s statutory authority per the 898 Panel’s

³⁶ [“Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity” 2018 First Annual Report to Congress \(898 Panel Report \(2018\)\) at 19.](#)

³⁷ [FY 2019 NDAA Chairman's Mark.](#)

³⁸ [FY 2019 NDAA House Conference Report 115-874 at 920.](#)

³⁹ [898 Panel 2018 Annual Report to Congress.](#)

⁴⁰ *Id.* at 2.

⁴¹ See [Contracting with the AbilityOne Program](#); see also [Required AbilityOne Program Training](#).

recommendations. The Commission continues to seek increased cooperation from AbilityOne Program CNAs and NPAs participants to improve processes and controls, and to recognize the market evolution where NPAs increasingly contribute their own ideas for inclusion of items to the Procurement List.

What Needs To Be Done

While the Commission continues its work with the 898 Panel (which has a three-year mandate ending in 2021) and agency partners, it is vital that contracting officials have a thorough understanding of the AbilityOne Program requirements. The implementation of the requirements will ensure Program growth.

In an effort to improve awareness about the AbilityOne Program, the Commission's initiative of issuing educational materials and providing presentations to agencies, so government entities understand how the AbilityOne Program works, helps meet critical agency needs and should continue.

The lack of Commissioners currently appointed, due to corresponding vacancies from federal government agencies,⁴² deprives the agencies of a senior government official with AbilityOne Commission-specific expertise, and deprives the Commission of a representative voice in those federal agencies. As a result, these unrepresented departments or agencies⁴³ may be disadvantaged, and so is the Commission.

Management Challenge 3: Implementation of Cooperative Agreements with CNAs

Why This Is a Challenge

The Commission designates CNAs to facilitate the employment and training opportunities of people who are blind or have significant disabilities. The dynamics of the CNAs in the program are changing and growing. The Commission administers the AbilityOne Program with the assistance of two CNAs – NIB and SourceAmerica. The Commission designated AFB as a third CNA on July 26, 2018. This third CNA, AFB, is conducting research and studies, and has no NPAs or AbilityOne contracts.

The Commission is responsible for overseeing the implementation of the Cooperative Agreements with the CNAs to ensure performance.⁴⁴ The Commission established a Program Management Office (PMO) with two professional staff to administer the implementation of the Cooperative Agreements. The new Director that has been onboard since last year and has

⁴² [41 U.S.C. §8502\(b\)\(1\)\(A\)-\(K\) \(listing the 11 Agencies that AbilityOne Commissioners must come from as the Department of Agriculture, Department of Defense, Department of the Army, Department of the Navy, Department of the Air Force, Department of Education, Department of Commerce, Department of Veterans Affairs, Department of Justice, Department of Labor, and General Services Administration\).](#)

⁴³ *Id.* at (b)(1) (stating that Commissioners are Presidential Appointees that must be nominated by the head of the department or agency). There are no confirmed Commissioners from the Departments of Agriculture, Defense, Army, Navy, Education, Veterans Affairs, Justice, and GSA.

⁴⁴ [U.S. AbilityOne Commission Fiscal Year 2020 Budget Justification.](#)

improved significantly the performance of the PMO during her tenure with improved communication, effective management of timelines and deliverables and developing positive workflow with the stakeholders. The Director and Deputy Director of the PMO are however understaffed to efficiently analyze and manage large volumes of deliverables received and reviewed annually in the administration for the three CNA Cooperative Agreements. According to the Commission's FY 2020 Congressional Budget Justification, the Commission hired a data analyst who is shared by the PMO and Chief of Staff. However, the PMO has been challenged in performing data analytics of CNAs reporting requirements and submissions to uncover actionable insights, and then recommend business operations that can improve overall program performance. When ensuring quality performance for their respective Cooperative Agreements, the Commission's PMO size stands in stark contrast to the size of the corresponding CNAs' offices.

Progress In Addressing The Challenge

In December 2018, the renewal of the Cooperative Agreements with NIB and SourceAmerica was intended to be a step taken by the Commission to strengthen oversight and evaluate performance. In September 2019, the OIG announced the audit of the implementation on Cooperative Agreements between the Commission and NIB and SourceAmerica. The audit objective is to determine if the Cooperative Agreements are adequately designed and operating effectively to improve performance and transparency in the AbilityOne Program.

The Commission continues to pursue budget increases for Agency operations and resources to perform greater program oversight. The increasingly complex responsibilities combined with the need to manage and monitor the Cooperative Agreements, implement the 898 Panel's recommendations, are outlined in the Commission's budget justifications to Congress.

The Cooperative Agreements include the Commission's requirements for timeliness and accuracy in the CNAs' reporting submissions, requests for Procurement List or pricing transactions. The Cooperative Agreements have Quality Assurance Surveillance Plans that measure the timeliness and accuracy in accordance with specified standards. Additionally, the Cooperative Agreements address the AbilityOne Program fee ceiling determination and implementation. In accordance with the Consolidated Appropriations Act of 2016, the Cooperative Agreements require program fees and expenditures to be disclosed to Congress on a quarterly basis.

What Needs To Be Done

The Commission PMO's is performing well and building the infrastructure needed to strengthen its oversight through Cooperative Agreements with designated CNAs. The positive results flow from stronger leadership in the PMO organization under the new Director. Increased resources are needed for the PMO. The Cooperative Agreements emphasize employment growth, program integrity, support for nonprofit agency employers participating in the AbilityOne Program, as well as enhanced training and communications. A strong focus on increasing resource allocation to the PMO office needs to be addressed by the Commission.

The Commission PMO's continuous evaluation and improvement process will ensure greater success, including deeper involvement with the 898 Panel. The 898 Panel's duties will continue

through at least FY 2021, and the Commission is required to annually implement the Panel's recommendations in support of the AbilityOne Program.

Management Challenge 4: Lack of Adequate Resources Impacts Program Effectiveness

Why This Is a Challenge

The Commission does not have adequate staffing and resources to effectively execute its responsibilities and sustain the mission to provide employment opportunities in the manufacture and delivery of products and services to the federal government for people who are blind or have significant disabilities. The Commission, with 32 full-time employees, is responsible for the administration of the AbilityOne Program that is a source of employment, by more than 550 NPAs, for approximately 45,000 people who are blind or have significant disabilities. The Commission administers contracts for more than \$3.6 billion in products and services to the federal government annually through the AbilityOne Program.

As noted in the 2018 CIGIE Top Management and Performance Challenges Facing Multiple Federal Agencies (TMPC) report, lack of resources is a significant challenge that can negatively affect an agency's ability to meet its mission. Consistently with the CIGIE TMPC reporting, funding and staffing are a challenge for the Commission to effectively execute its responsibilities and sustain its mission.⁴⁵ If adequate funding is not provided, pressure on the Commission's capacity to ensure program accountability and operational efficiency will hit a critical state.

The Commission's FY 2020 budget justification recognized the imbalance between its resources and a historic increase in mission requirements.⁴⁶ Currently, the Commission operates with a staff of 32 people (Figures 2 and 3) responsible for establishing the rules, regulations, and policy to ensure effective implementation of the JWOD Act. The FY 2020 budget justification demonstrates the need for funding of seven new FTEs for the Commission, from a Chief Financial Officer, Cybersecurity official, Compliance Inspectors, Vocational Rehabilitation Specialists, Business Operations staff, to a staff member for the Directorate of Veterans Employment and Initiatives.

Another impact on resources results from supporting the 898 Panel. The 898 Panel is required to report to Congress annually on its activities, findings and recommendations. The Commission has the added responsibility of implementing certain Panel recommendations addressing diverse issues ranging from waste, fraud, and abuse to business practices and veteran's employment.⁴⁷

The resource levels of the Commission are not adequate for the geographical size and complexity of the program it manages. The Commission needs adequate resources to meet mission-critical requirements, and to maintain and accelerate the momentum toward strengthening oversight of

⁴⁵ CIGIE, *Top Management and Performance Challenges Facing Multiple Federal Agencies* (TMPC). April 2018, pg. 8.

⁴⁶ [U.S. AbilityOne Commission Fiscal Year 2020 Budget Justification](#).

⁴⁷ First Panel Annual Report to Congress, *Under Secretary of Defense for Acquisition and Sustainment*, July 18, 2018.

the AbilityOne Program that it manages. Increased resources are essential for the Commission to successfully respond to the rapidly growing demands resulting from Congressional requirements for the Commission to exercise stronger management of the AbilityOne Program.

Figure 2:



Figure 3:



Progress In Addressing The Challenge and What Needs To Be Done

The Commission has strengthened its oversight of the Program through changes in response to the Consolidated Appropriations Act 2016. The implementation of Cooperative Agreements with NIB and SourceAmerica link employment growth and other key performance indicators to the fees collected by the CNAs for their assistance in administering the AbilityOne Program. The Cooperative Agreement with AFB is supposed to provide opportunities for a new CNA model on increasing job placement and career advancement opportunities in knowledge-based positions.

The Commission also needs additional resources to advance the progress that started with the enhancement of the PMO and Compliance Office. Resources are needed to conduct on-site compliance inspections designed to ensure adherence with statutory, regulatory, and other requirements by NPAs participating in the AbilityOne Program.⁴⁸

The Commission should continue to assess the level of resources needed to fully achieve and implement its strategic objectives and manage limited resources through a risk based model and enhanced planning.

Management Challenge 5: Establishing an Enterprise-wide Risk Management Framework

Why This Is a Challenge

The Commission does not have a formal enterprise-wide program for organizational risk and, as a result, is unable to effectively prioritize and manage risks. Since two years ago the OIG identified lack of risk management as a serious management challenge, the Agency has made virtually no progress in addressing the challenge.

In July 2016, OMB issued an update to Circular A-123 requiring federal agencies to implement Enterprise Risk Management (ERM) procedures so executives can ensure the achievement of the agency's strategic objectives (Figure 4). OMB Circular A-123 provides guidance to Federal Managers on improving accountability and effectiveness of Federal programs and operations by identifying and managing risks, establishing requirements to assess, correct, and report on the effectiveness of internal controls.

The Commission has failed to prepare a risk profile document as required by OMB guidance, or make progress toward achieving this goal. This has limited the Commission's ability to identify challenges early, bring them to the attention of Commission leadership, and to develop the needed solutions.

To aggravate the risk, the Commission does not currently have a Chief Financial Officer. Like other agencies, the Commission is required to align ERM processes with its goals and objectives, and to report on each of the identified risk areas. The Commission has acknowledged the need of establishing a risk profile. The primary purpose of a risk profile is to provide an analysis of the risks an Agency faces toward achieving its strategic objectives arising from its activities and

⁴⁸ [U.S. AbilityOne Commission FY 2018 Performance and Accountability Report](#)

operations, and to identify appropriate options for addressing significant risks.⁴⁹ To this date, the Commission has not been able to use available staff or resources to accomplish the Enterprise-wide Risk Management Framework.

Figure 4:

OMB Circular A-123 Seven Continuous Risk Identification and Assessment

Establish the Context	Understanding and articulating the internal and external environments of the organization.
Initial Risk Identification	Using a structured and systematic approach to recognizing where the potential for undesired outcomes or opportunities can arise.
Analyze and Evaluate Risks	Considering the causes, sources, probability of the risk occurring, the potential positive or negative outcomes, and then prioritizing the results of the analysis.
Develop Alternatives	Systematically identifying and assessing a range of risk response options guided by risk appetite.
Respond to Risks	Making decisions about the best options(s) among a number of alternatives, and then preparing and executing the selected response strategy.
Monitor and Review	Evaluating and monitoring performance to determine whether the implemented risk management options achieved the stated goals and objectives.
Continuous Risk Identification	Must be an iterative process, occurring throughout the year to include surveillance of leading indicators of future risk from internal and external environments.

Progress In Addressing The Challenge

Last year the Commission’s Oversight and Compliance Office initiated a risk-based model to help identify at-risk or high-risk levels of an NPA’s compliance with the AbilityOne Program. The office utilizes an internal control system using quantifiable metrics and the automated documentation system, referred to as Procurement List Information Management System (PLIMS). The risk-based model, when fully implemented, should help integrate risk management and internal control activities into the compliance framework.

What Needs To Be Done

The Commission needs to implement the ERM to effectively respond to both expected and unexpected events. ERM is beneficial because it addresses a fundamental organizational

⁴⁹ [OMB Circular No. A-123, Management's Responsibility for Enterprise Risk Management and Internal Controls, July 15, 2016, Section II.B - Risk Profiles.](#)

principle: the need for information about major risk to flow both vertically (i.e. up and down) and horizontally (i.e. across business functions).

As the Commission continues to explore opportunities to increase resources as addressed in the Agency's Congressional Budget Justification, prioritizing to improve risk planning will better help achieve the intended benefits of the program.

Management Challenge 6: Enhancement of Program Compliance

Why This Is a Challenge

Pursuant to Title 41 CFR 51-4, the Commission's Oversight and Compliance Office assesses the 500 AbilityOne NPAs with their 45,000 employees for compliance with AbilityOne program requirements. Inspections by the office involve the NPA compliance of direct labor hour ratios, eligibility requirements (i.e. NPA-provided documentation regarding the employee's significant disability), and company health and safety standards.

We are impressed with the Acting Director for the Office of Compliance, who since joining the office has made progress in improving the performance of the compliance office and contributes to positive communication with the stakeholders. Notwithstanding the progress, it remains that the Commission's Oversight and Compliance Office does not have sufficient resources to execute its compliance responsibilities, which include implementation of issued policy guidance, conducting routine inspections, providing comprehensive reviews of annual certifications, and training the NPAs participating in the AbilityOne Program. The Office of Compliance is left to operate with a mere number of three employees. Without additional resources, the Commission cannot meet its compliance goals.

The Compliance Office delegates certain governmental compliance duties to the CNAs. Since 2011 the Compliance Office has not performed a compliance visit to NIB-affiliated NPAs. This lack of direct oversight of the 56 NPAs under NIB poses a risk to program-wide compliance. In addition, a higher rate of compliance oversight by the Commission on the CNAs will help identify risks for fraud, as reported on the civil fraud case involving Goodwill Memphis, a SourceAmerica-affiliated NPA.⁵⁰

OIG is impressed with the accomplishments of the Acting Director, who since joining the office has made progress; however, support by senior leadership of the compliance program continues to be ineffective. The Acting Director has been acting in the position for over a year without the support or help of a deputy or increased level of staff.

Essential and basic areas of program integrity remain unfinished. For instance, NPAs have expressed concerns about the absence of a revised and finalized compliance manual containing the procedures and practices to fulfill compliance requirements. The last compliance manual

⁵⁰ <https://www.justice.gov/usao-wdtn/pr/memphis-goodwill-industries-inc-will-pay-150000-untied-states-claims-were-violation>

issued by the Commission was over ten years ago. The Commission has removed it from its website years ago and, to date, has not published on the website or made available to the NPAs a revised manual.

Though compliance staff completed a draft revision more than a year ago, Commission's senior staff has failed to implement and publish the needed guidance, and to perform training for the NPAs on it. The website does not currently contain a compliance manual. The critical area of compliance rules and information on metrics is not transparent.

Progress In Addressing The Challenge

The OIG previously reported progress made on this management challenge. The hiring of a new deputy director (Acting Director), the implementation of virtual NPA documentation assessments, and streamlining of the compliance standardization processes all contributed to making progress.

The Commission's Oversight and Compliance Office designed a risk-based model. The risk-based model introduced a process for the identification of NPAs considered either at-risk or at high risk, through the automated documentation system – PLIMS –tracking quantifiable metrics. The risk model was derived from the International Standard for Compliance Management (ISO) 19600: The Development of Global Standard on Compliance Management.

In FY2017, the Commission established a Western field office, located at Joint Base Lewis-McChord, in Washington state. The office is currently staffed with one employee, the field office director. A plan allocates a lead pricing analyst and a compliance inspector position to the office, but the two designed positions are vacant.

What Needs To Be Done

The Commission's Oversight and Compliance Office should continue to integrate risk management capability with program compliance responsibilities. With as many as 500 NPAs in the program, there should be qualitative and quantitative measures to inform and reflect the process of balancing risks and opportunities for reaching and reporting compliance assessment results. The possibility of a direct improvement in the Program compliance area by a field office, or the manner in which the field office is improving the Commission's oversight and compliance duties, should be better communicated. In addition, reporting on site visits completed by HQ office and field office would improve program integrity and serve transparency.

Conclusion

The OIG reports on the most significant management and performance challenges facing the Commission, in accordance with the Reports Consolidation Act of 2000 (P.L. 106-531), for inclusion in the Commission's Performance and Accountability Report for FY 2019.

The challenge areas identified by the OIG are connected to the Commission's mission to provide employment and training opportunities in the manufacture and delivery of products and services to the Federal Government for people who are blind or have significant disabilities.

The OIG identified the top management and performance challenges facing the U.S. AbilityOne Commission as:

- Higher Level of Transparency and Communication Needed to Enhance Program Confidence
- Erosion of Statutory Program Authority
- Implementation of Cooperative Agreements given Central Nonprofit Agencies Growth
- Enhancement of Program Compliance
- Lack of Adequate Resources Impacts Program Effectiveness
- Establishing an Enterprise-wide Risk Management Framework

The topics discussed in the report encompass multiple challenge areas and attest to the complex nature of the AbilityOne Program. In this report, we introduce an emerging challenge with organizational governance and are placing it on a watch list as a potential reportable challenge for the Commission. The allocation of roles, authorities, and responsibilities among the Commission Senior Staff creates challenges in achieving positive business outcomes such as the ability to timely implement policies and initiatives, effectively execute changes in the programs, and support program growth.

As previously reported, the Council of Inspectors General on Integrity and Efficiency (CIGIE) consolidated the challenges encountered in 2017 by federal IGs across government. Our work was among the few referenced from the 61 OIG reports that CIGIE considered. The CIGIE report afforded the Commission positive exposure on its resource challenges for the administration of the complex AbilityOne Program.