

## Background on the AbilityOne Program and Return on Investment

The mission of the Program is first and foremost to provide employment opportunities for people who are blind or have significant disabilities. Impact on employment opportunities and quality jobs for individuals with the highest barriers to employment is the most critical benchmark to review any regulatory change to the Program.

Per the Commission, there is a related economic benefit to the American taxpayer from reduced federal disability support payments made to people with significant disabilities and the increased tax revenue generated by their employment. Two recent studies from Virginia Tech and Mathematica have quantified and demonstrated that there is a positive return on investment from the federal government procuring goods and services through the AbilityOne Program.<sup>1</sup>

October 2022, Virginia Tech released a cost-benefit analysis of the AbilityOne Program at Melwood. The study demonstrates the considerable overall savings by federal and state governments of employment through the AbilityOne Program at Melwood. The study found that people with disabilities experienced increased job opportunities, increased average wages, greater financial independence, and less dependence on government benefits, and that employment at Melwood through the AbilityOne Program reduced government spending by \$38,354 per person served per year.<sup>2</sup>

A study released by Mathematica in June 2023 supports the positive return on investment found in the Virginia Tech study for the AbilityOne Program as a whole. The Mathematica study found that “AbilityOne generates a positive return on investment of \$2.31 dollars to the federal government for every dollar spent on the program.”<sup>3</sup>

The impact on this quantified benefit to the federal government of the proposed regulatory changes must be studied and we have three Commission-run pilots that have or will have substantial data to provide; they just haven’t been fully studied.

Finally, the program serves Federal customers by providing them with high quality products and services, delivered on time and at a reasonable price. The impact of a significant regulatory change to how this portion of the Program operates must be measured and weighed against its costs and impact on the primary goals of the Program – employment, quality jobs, and ROI to the government as a whole.

Data drives the determination for whether rulemaking is necessary and in the interest of the public and federal government. Good data is also required to ensure that the regulatory changes proposed will achieve the intended outcomes. The current proposed rule lacks a thorough assessment of (1) the three pilots that the Commission has run, and (2) the impact of the rulemaking on the primary value proposition of the Program -- which is jobs for Americans with the highest barriers to employment and the resulting ROI for the federal budget. Further, what little analysis has been done is inaccurate, incomplete, and misleading. Due to the lack of a thorough cost-benefit analysis, OIRA should send back the draft final rule to the Commission.

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<sup>1</sup> [https://www.abilityone.gov/abilityone\\_program/who\\_works.html](https://www.abilityone.gov/abilityone_program/who_works.html)

<sup>2</sup> “Assessing the Impacts of AbilityOne Program at Melwood,” <https://melwood.org/newsroom/news/assessing-the-impacts-of-abilityone-study-released-by-virginia-tech-and-melwood/>

<sup>3</sup> “Socioeconomic Impact Analysis Evaluation Report,” “Assessing the Impacts of AbilityOne Program at Melwood,” <https://melwood.org/newsroom/news/assessing-the-impacts-of-abilityone-study-released-by-virginia-tech-and-melwood/>

## Overview of AbilityOne Price Competition Pilots

The Commission authorized three "price competition" pilots to determine the **cost**, **benefit**, and **impact** of adding re-competition and including price as a component of competition in the AbilityOne Program. The contract sites selected for the price re-competition pilots were Fort Bliss, Fort Meade, and Fort Knox.

Only the Fort Bliss price competition pilot was carried out fully as planned with the competition winner (the incumbent) operating the new contract for a substantial amount of time. It should be noted that a court did issue a ruling that price competition was not supported by the JWOD statute, but because the incumbent had the opportunity to compete and did not suffer irreparable harm, the competition was allowed to continue.<sup>4</sup>

The second price competition (at Fort Meade) was challenged and stopped by a federal court<sup>5</sup>; resulting in a pivot from the competition to a contract renegotiation with the incumbent under the current process of bilateral negotiation – with a very valuable result. Ft. Meade demonstrated that open bilateral negotiations between the incumbent and the contracting agency is a viable alternative to price competition and leads to substantial cost savings without the additional burdens and expenses resulting from competition. The ROI of this approach to the Federal Government and the American public is significantly higher than the alternative of price competition.

The third pilot at Fort Knox is on-going with no data yet for purposes of this cost-benefit analysis and with the impact of competition on jobs and on employees yet unknown. This is the first pilot where the incumbent has been replaced by a new contractor, the results of which will add much insight into the true cost-benefit and impact of re-competitions with price as a factor -- particularly impact on jobs, employees, contractors, and scope of work.

### Fort Bliss Price Competition Pilot

In making the case for utilizing price as a factor in competitions for projects on the Procurement List, the Commission relies heavily on the results of one pilot project conducted at Fort Bliss in 2019. As the incumbent contractor on the Fort Bliss Facilities Support and Operations Services (FSOS) contract, and the winner of the 2019 competition, PRIDE is in a unique position to shed light on this pilot. The description of this pilot project in the NPRM exaggerates the benefits it produced and ignores the substantial costs altogether.

According to the NPRM, the Fort Bliss pilot produced an annual savings for the Army of \$7.2 million (from \$66.7 million per year to \$59.5 million per year). This narrative suggests that, after the competition, Fort Bliss received the same level of services for \$7.2 million less in payments. This is not accurate and warrants a deeper analysis of the facts.

### *Changes in Scope of the New Contract*

This narrative suggests that, after the competition, Ft. Bliss received the same level of services for \$7.2 million less in payments without considering the substantial changes to the scope of work of the contract.

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<sup>4</sup> Pride Indus. v. Comm. for Purchase from People Who Are Blind or Severely Disabled, 420 F. Supp. 3d 1035 (E.D. Cal. 2019) <https://casetext.com/case/pride-indus-v-comm-for-purchase-from-people-who-are-blind-or-severely-disabled>

<sup>5</sup> Melwood Horticultural Training Center, Inc. v. The United States, No. 1:2020cv01884 - Document 38 (Fed. Cl. 2021), <https://law.justia.com/cases/federal/district-courts/federal-claims/cofce/1:2020cv01884/42226/38/>

Contract change is a normal part of the 5-year renewal process and there is nothing untoward or surprising about this. However, merely comparing the cost of the prior contract to the cost of the new contract without assessing the scopes of the different contracts is blatantly misleading and should not be the basis for a rulemaking that overturns the way that a Program was set up to operate by Congress.

Under the new contract, there were several structural and scope of work changes that resulted in reduction in resources and pricing compared to the former contract. These changes, explained below, account for the most substantial portion of the reduction in price between the two contracts.

Approximately 80% of the \$7.2 million in savings that the Commission credits to the pilot's competitive process is actually due to 2 major scope changes.

The former contract was a "pay as you go" model with respect to Demand Maintenance Orders (DMOs), with no contractual limit to the volume of DMO work the government could order. Thus, as DMOs comprised a substantial percentage (about 50%) of the overall contract value, the government had discretion over the annual price/spend it would eventually incur. Further, the former contract required a costly and burdensome quoting process on each individual DMO, providing the government a detailed time and materials cost estimate for each maintenance request, no matter how large or small. This requirement applied to more than 60,000 DMO service orders each year under the prior contract.

The new re-competed contract is Firm Fixed Priced (FFP) with a not-to-exceed volume for the government to order up to a specified number of DMOs per contract year. For example, the base year had a band of up to 65,000 DMOs. Under this contract structure, PRIDE does not submit individual DMO pricing packages and the government orders DMOs within the pre-determined limit (volume and funding limit) upon which PRIDE priced the overall contract. The elimination of this intensive, individual DMO quoting process in favor of FFP pricing and predetermined workload structure in the new contract, led to significant annual cost savings for the federal customer – savings that would have been realized through a transparent and collaborative bilateral contract negotiation, without the need for a re-competition.

In addition, prior to the competition, the requirement to operate a service order desk to receive maintenance requests and assign them to staff was removed from the contract.

These significant changes in contractual requirements reduced the cost of the contract by roughly \$6 million per year before the competition was even conducted and would have been adequately addressed through the traditional direct negotiation process without a significantly different outcome in price.

#### *Impact on the Number of Jobs on the Contract*

Due to the format of the pilot re-competition emphasizing price competition as a tradeoff to social impact, as well as contractual scope changes, sixty (60) people with disabilities were eliminated from the Fort Bliss operations. In addition, as a result of the competitive pressures of the pilot project, PRIDE felt compelled to reduce its overhead budget for important support services and accommodations that enable workers with disabilities to be successful. The "social impact" supports funded by the overhead fees are an essential component of the AbilityOne program, designed to help workers with significant disabilities who have previously struggled in the workforce develop job skills and be successful in their careers.

One example of the social impact programs affected by the re-compete, PRIDE had to reduce its support staff (job coaches and counselors) who work with employees to make sure they receive necessary accommodations, resolve unanticipated workplace problems or medical issues, and ensure that workers with disabilities have the tools they need to perform well and develop their careers. These social impact

programs are most at risk in the process laid out by the NPRM. The most significant impacts to PRIDE's employment of people with disabilities and related support system are noted below:

**Reduction in entry-level trades positions:** PRIDE eliminated maintenance trades helper positions. These entry-level positions are ideal for training people with disabilities who lack work experience. Many of these workers were entry-level workers with some of the highest levels of disabilities at Fort Bliss, including people with visual and hearing impairments, veterans struggling with PTSD, and people with multiple disabilities. However, under price competition, PRIDE eliminated the lower-skilled positions to gain pricing efficiencies, instead forced to utilize more experienced employees to do the work. This staffing change was a direct result of prioritizing price efficiencies over social impact. The outcome was a direct reduction of employment pathways for people with disabilities.

**Reduction in rehabilitation/support staff:** The former contract supported 11 total support staff dedicated to supporting employees with disabilities (job coaches with American Sign Language skills, counselors, and Rehabilitation manager). This team was present across all work teams and readily available to support team members with disabilities. The new contract has 4 fewer support staff. Even with an overall reduction of 60 employees with disabilities, this smaller support staff has less bandwidth to provide critical support coverage for the disabled workforce at Fort Bliss.

**Reduction in overhead/operational supports:** PRIDE eliminated a trade skills training program that had been funded through the social impact support overhead on the Fort Bliss contract. This technical training academy provided individuals with disabilities with plumbing and carpentry training through certificated programs.

#### *Impact Evaluated by AbilityOne Commission*

In the Commission's Report on the 2018-2019 Competition Pilot Test for AbilityOne Program Nonprofit Agencies approved for public release on May 11, 2023 (the "2023 Commission Report"), in Learning Objective #1, the Commission states *"Competing the Fort Bliss requirement on the Procurement List among the NPAs resulted in a contract award of \$59.5M per year, a savings of \$7.2M per year (\$39.6M over the entire performance period of 66 months) or a 12% reduction. It was not possible for the JIPT to determine exactly where all of the contract price savings came from because the NPAs were not required to submit detailed cost breakdowns within their price proposals."* This statement is a clear indication that the pilot competition does not provide sufficient analysis of the cost-benefit of re-competing AbilityOne contracts.

The 2023 Commission Report further states in the lessons learned that in future procurements the Commission needs to *"...ensure that the objectives of the JWOD Act, Commission policies, and special considerations are properly considered before an NPA is evaluated under a price-inclusive competitive process. This will help to avoid a "race to the bottom" as NPAs look for ways to cut costs, remain competitive, and achieve the employment objectives of the AbilityOne Program."* This statement is another acknowledgment that further study must be performed to understand and validate the costs and benefits of re-competing AbilityOne contracts more thoroughly.

In Learning Objective #2, the Army said that they reduced the procurement administrative lead time (PALT) by 50% from a normal 365 days to 184 days. However, the preparation for those 184 days took almost two years prior with bridge contracts, leading to instability and uncertainty for the incumbent's workforce and business model. The typical contract RFP renewal period if the government has a fully vetted Performance Work Statement ready to go can be as little as 120 days from start to finish. The contractor doesn't drive

the timeline; rather, the contractor responds to the government's timeline for submitting pricing and other technical information. The 2023 Commission Report references a single PALT data point, which in itself may be an outlier, with no analysis or sampling of the thousands of historical procurement data points that exist. Thus, support for factual, statistical timelines of AbilityOne procurements is missing from the report and should be considered in a more thorough cost-benefit analysis. Furthermore, the Commission notes that it lacks sufficient capacity to administer a high volume of procurements in the form that the Fort Bliss pilot was conducted. This is a capacity constraint that has not changed since the pilot was conducted and would only be compounded under the current proposed rule.

#### *Impact Not Evaluated by AbilityOne Commission*

The impact not evaluated by the Commission was the difference in the two contracts, the spend and where on the contract the dollars were being spent and how that translated to the new contract which is substantially different in structure and scope. The Commission and Army cannot point to the specific area where money was saved but say they saved \$7.2M per year on average over the 5 years. The impact to employees with disabilities was not evaluated nor was the degradation of the support infrastructure for people with disabilities that resulted due to the pilot competition.

As pointed out in the 2023 Commission Report, the scope of the pilot competition did not include factors other than "...technical capability, past performance, and price". The impact on people with disabilities was ignored despite the Commission's assertion that the goals of the pilot competition included determining whether the competition "...meets (or exceeds) the goals of the AbilityOne Program". The Commission made no attempts to include or analyze input from nonprofit agency or employees with disabilities, key stakeholders, in its after-action report.

In the NPRM, the Commission acknowledges that the results of the pilot competition "...suggest that price competition at the pre-selection stage, when compared to bilateral negotiations after NPA selection, can have some very tangible benefits to the Federal Government through cost savings". This statement demonstrates the lack of thorough cost-benefit analysis that should be performed prior to drawing conclusions about "best value" and whether competition creates improved outcomes over established bilateral negotiations, especially when the data from Ft. Meade is reviewed.

Without an any effort expended to gather and evaluate data to determine where the savings came from, the cost-benefit analysis is incomplete, and the conclusions drawn are not valid. The cost-benefit must be thoroughly explored to ensure any new regulation is in the best interests of the AbilityOne program and federal government.

#### **Fort Meade Price Competition Pilot**

The only analysis of the Fort Meade pilot provided by the Commission was in the NPRM: "The second pilot test for the Ft. Meade Maintenance and Repair Services contract was valued at \$19.6 million per year. The new price would have been \$16.8 million per year, an annual savings of \$2.8 million (\$14 million over the entire performance period) or a 17% reduction." While the Commission celebrates a hypothetical \$14 million cost savings over the term of the contract if the price competition had been allowed by the courts to continue, it neglects to acknowledge that a subsequent non-competitive bilateral negotiation resulted in significantly higher cost savings. The Army published an article on the successful bilateral negotiations,

which saved the customer \$24 million over the term of the new contract, an additional \$10 million of savings.<sup>6</sup>

The \$16.8 million mentioned was the lowest bid purportedly offered by the bidding competitors in a competition that was not allowed to continue. Any conclusions based on that price are illusory at best and intentionally misleading at worst. It requires hypothetical presumptions that the particular bidder would have won. And assumptions that the price after contract operations commenced would not be increased through modifications and additional funding to make up for ambiguities in the statement of work, which were plentiful.

Fort Meade demonstrates that the current process of bilateral negotiations, when done properly, results in substantial cost savings, and results in contracts that are well suited to executing the customer's mission, an improved relationship between the NPA and the customer, and minimal impact to AbilityOne employees. Contracting and operations representatives from the Army and Melwood, who were the most familiar with the base, worked together to ensure that the scope of the final contract and the price met the needs of the customer – needs that are often not documented in the statement of work but known well by the incumbent and base operations personnel. During bilateral negotiations, contracting officers have full and complete transparency on overhead rates, labor, supplies, etc. The NPAs are responsible for providing a basis of estimate breaking down all these costs. We were able to preserve the jobs on the contract while arriving at significant cost savings for the DoD.

The MICC-Fort Sam Houston Mission Division chief said the negotiation allowed “for a fluid discussion that allowed both sides to be heard on their respective positions, which resulted in a mutual appreciation for each side's dedication to mission execution.”<sup>7</sup>

When a regulation as significant as this one is reviewed, alternatives must be assessed and analyzed to find the least burdensome rulemaking to achieve the government's goals. This rulemaking does not provide any such analysis or assessment.

There are myriad methods outside of competition that the AbilityOne Commission can utilize to ensure that negotiated contracts reflect a fair market price of services. Independent government estimates, for example, are required for each contract. The procuring federal agency, the regulatory federal agency, and the central nonprofit agencies all have an abundance of resources and expertise to be able to assess and arrive at a reasonable price without resorting to imposing arbitrary re-competitions to squeeze the nonprofit contractors with respect to their offered price and imposing millions of dollars of additional costs to these businesses, a lower ROI for the Program to the federal government at large, and a substantial negative impact on job satisfaction and employee career growth for the individuals that this Program was created to serve. When a regulation as significant as this one is reviewed, alternatives must be assessed and analyzed to find the least burdensome rulemaking to achieve the government's goals. This rulemaking does not provide any such analysis, assessment, or protection for the primary goals of the Program.

With respect to the true cost/benefits of the pilot, the impact on jobs, employees and contractors in the Program, there has been no published after-action report on Ft. Meade. We are available to provide information on the costs and assumptions involved in preparing our bid for the competition, compared to

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<sup>6</sup> “MICC-Fort Sam Houston team saves IMCOM millions,” <https://www.dvidshub.net/news/421614/micc-fort-sam-houston-team-saves-imcom-millions>.

<sup>7</sup> “MICC-Fort Sam Houston team saves IMCOM millions,” <https://www.dvidshub.net/news/421614/micc-fort-sam-houston-team-saves-imcom-millions>

the resources and methods used for the bilateral negotiation, as well as the costs of retention and replacement of key personnel that we incurred because of the competition, as well as the impact on corporate culture, morale, and our business model. The nonprofit organizations that took part in the halted competition can provide the costs that they incurred to prepare their bids – a critical data point to assess the costs of competition. These data points are also available for the Ft. Bliss and Ft. Knox competitors.

### **Fort Knox Price Competition Pilot**

Ft. Bliss and Ft. Meade do not provide any insight into how best to protect workers since the incumbents at both retained the contract. The price competition pilot at Fort Knox would provide the best data on this since the incumbent will be replaced by a new NPA. This third pilot has not been completed, with the new NPA contractor having just been selected. The Commission should conduct a thorough evaluation of the impact on workers from all three pilots once the contract at Fort Knox has been fully transferred to the new NPA and operational.

It is important to include the data and cost/benefit analysis of this third pilot before issuing this rulemaking that rests solely on the minimal and misinformed data reviewed from the Ft. Bliss pilot.

### **Issues with the Analysis Provided in the NPRM and AAR**

Evaluation of quantitative and qualitative data through a cost-benefit analysis is the underpinning of the federal rulemaking process. Data drives the determination for whether rulemaking is necessary and in the interest of the public and federal government. Good data is also required to ensure that the regulatory changes proposed will achieve the intended outcomes, the government's primary tool for accomplishing this is through a thorough cost-benefit analysis.

The current proposed rule supporting price competition in the AbilityOne Program lacks a thorough cost-benefit analysis because it lacks a thorough assessment of (1) the three pilots that the Commission has run, and (2) the impact on the primary value proposition of the Program, which is jobs for Americans with the highest barriers to employment and the resulting ROI for the Federal Budget. The data from these pilots should be analyzed for the following purposes (required for approval of Final Regulations):<sup>8</sup>

- Documenting the compelling need for the Regulation,
- Tailoring the Final Regulation to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account the costs of cumulative regulations;
- Minimizing uncertainty and litigation arising from uncertainty;
- Assessing all costs and benefits of regulatory alternatives (including alternative of not regulating), including both quantifiable and qualitative measures;
- Identify and estimate additional benefits and costs external to the market;
- Seek to achieve statutory goals as effectively and efficiently as possible, without imposing unnecessary burdens on the public;
- Avoiding unnecessary and disproportionately burdensome demands (e.g., legal, accounting and consulting costs) upon small businesses and small organizations;
- Avoiding inefficient use of regulatory agency resources and to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation.

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<sup>8</sup>E.O. 12866 Regulatory and Planning Review; OMB Circular A-4; The Regulatory Flexibility Act.

As mentioned earlier, there was a major impact on jobs as a result of the Fort Bliss re-competition. However, the proposed rule neglected to include any analysis of the impact of competition on the people with disabilities employed through the Program. The Commission believes that they have adequately protected workers by including a right of first refusal when a contract moves between NPAs. This is a limited understanding of how the proposed rule could impact employees. The AAR failed to evaluate how the cost savings achieved in the pilot negatively impacted the employment of people with significant disabilities, undermining the core mission of the Program.

While the threat of re-competition may appear to serve the federal procuring agencies, it will serve to dismantle the core values of the Program – jobs, stability, and supports for employees with the most significant disabilities, while adding a significant burden on the social enterprises in the Program and decreasing the Program’s net value to the federal budget.

The current analysis in the Proposed Rule underestimates the costs to the NPAs, the CNAs, the procuring agencies, and the Commission to operate in a price-competitive environment, diverting resources away from the Congressional intent and mission of the program. The actual costs of these three pilot competitions can be measured and analyzed. The NPRM mentions that the Federal customer provided 7 FTEs of general staff and evaluation support (i.e., technical evaluation, past performance, and pricing). The staff time from the CNA and the Commission can also be analyzed and quantified. Based on initial estimates, three of the NPAs who bid on Bliss and/or Mead spent between \$200,000 and \$350,000 preparing their bids. This is in line with the fact that, across all of federal procurement, bid and proposal costs (B&P) fall in a range of 1-3% of the total contract value per bidder, which can vary depending on the complexity of the solicitation and requirements. Activities in a pre-proposal phase include staff time and financial investments to prepare plans on management, transition, finances, quality assurance, risk management, staffing, training, solicitation of subcontractor proposals, etc.

While the Commission acknowledges the cost for a single NPA to prepare a proposal, it neglects to recognize that bids are likely to be submitted by multiple NPAs. A recent Opportunity Notice received twelve (12) proposals as NPAs competed for the initial allocation of a contract. On this basis alone, the potential costs to the NPA community are more significant than those on the CNAs and on the AbilityOne Commission, and yet the cost assessment consists of the least rigorous analysis in the Proposed Rule’s discussion on costs of the Proposed Rule. When you add the anticipated costs of protests and litigation if there is no transparent process and safeguards in the regulation to ensure social impact is addressed and unnecessary burdens are minimized, the overall costs of re-competitions increase exponentially. Comparing the real costs of the pilots (including the ensuing instability and uncertainty for the social enterprises’ workforce and business models) to the cost savings to the procuring agencies is critical.

Current analysis also does not adequately assess whether the cost of adding competition, especially price competition, leads to:

- increased ongoing contract administration costs to the Contracting Officers,
- Increased number of ongoing modifications of the contract to clarify misunderstandings and ambiguity of the scope of work during a competitive price-based RFP process,
- increased costs for protests and litigation,
- a decrease in the number of jobs for people with the most significant disabilities,
- a decrease in retention and employee satisfaction,



- increased use of federal and state benefits by unemployed individuals and lower tax revenue, leading to an overall lower ROI of the Program to the Federal Government,
- increases in overhead and G&A costs for the contractors in the Program, and
- Increased misdirection of charitable assets away from social impact and towards pricing, business development, legal, and contracting expertise.

Most of these data points can be garnered from the three pilots. Without that analysis up front, this Regulation will prove to be extremely costly for both the Federal Government and the nearly 400 nonprofit organizations using their charitable assets to reinvest in the community.

**Recommendation**

OIRA should send back the draft final rule to the Commission because an inadequate cost-benefit analysis and no analysis of regulatory alternatives have been conducted.