

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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<https://oversight.house.gov>

January 3, 2024

Kimberly Zeich
Executive Director
U.S. AbilityOne Commission
355 E. Street S.W., Suite 325
Washington DC, 20024

Dear Ms. Zeich:

The House Committee on Oversight and Accountability is conducting oversight over the AbilityOne Commission's (Commission) rulemaking to modify regulations implementing the Javits-Wagner-O'Day Act (JWOD Act).¹ The Commission's mission is to provide blind and severely disabled Americans with employment opportunities to deliver essential products and services to Federal agencies.² The Commission's activities support jobs for more than 36,000 people who are blind or have significant disabilities supplying almost \$4 billion in products and services to federal civilian and defense agencies every year.³ The Committee seeks additional information regarding the Commission's recent rulemaking activities, including how it is considering feedback from stakeholders and potential impacts on how Americans who are blind or severely disabled will continue to participate and benefit from the AbilityOne Program.

On March 13, 2023, the Commission published a Notice of Proposed Rulemaking (NPRM) entitled "Supporting Competition in the AbilityOne Program" seeking to revise regulations implementing the AbilityOne Program.⁴ The Commission engaged in the rulemaking to amend the Commission's regulations with respect to pricing methodologies used to establish fair market prices for items on the Procurement List and the procedures for allocating orders among approved nonprofit agencies.⁵ The JWOD Act mandates commodities or services on the Commission's Procurement List to be procured by federal agencies from a nonprofit agency employing persons who are blind or have other severe disabilities.⁶ The JWOD Act also authorizes the Commission to "determine the fair market price of products and services contained on the procurement list that are offered for sale to the Federal Government by a

¹ See generally 41 U.S.C. § 46 et seq.

² Mission and Vision, U.S. ABILITYONE COMM'N, available at <https://www.abilityone.gov/commission/mission.html>.

³ U.S. ABILITYONE COMM'N FISCAL YEAR 2023 PERFORMANCE AND ACCOUNTABILITY REPORT (Nov. 15, 2023), available at <https://www.abilityone.gov/commission/documents/U.S.%20AbilityOne%20Commission%20FY2023%20PAR%2015Nov2023%20signed%20508.pdf>.

⁴ See Supporting Competition in the AbilityOne Program, 88 Fed Reg. 15,361 (Mar. 13, 2023).

⁵ *Id.*

⁶ See 41 C.F.R. § 51-1.2(a).

qualified nonprofit agency for the blind or a qualified nonprofit agency for other severely disabled.”⁷

Nearly 100 stakeholders and members of the public filed comments to the NPRM.⁸ Commenters raised serious concerns with the NPRM, including that the Commission’s underlying analysis related to estimated costs of preparing competitive bids is flawed, and that the proposed revisions would undermine the Commission’s mission.⁹ The Committee is interested in understanding how the proposed revisions to existing regulations contained in the NPRM will impact the JWOD mandate and the Commission’s mission. Given the Commission’s critical role in providing real economic opportunities to people who are blind or severely disabled, we seek to ensure that the Commission’s rulemaking is consistent with law and will further its mission.

To assist the Committee in understanding how the Commission is receiving and addressing comments received in response to the NPRM, we request the following information no later than January 17, 2024:

1. A comprehensive description of the process by which the Commission is reviewing and responding to stakeholder comments raising concerns about the March 13, 2023 NPRM;
2. An estimated timeline for the Commission’s rulemaking initiated by the March 13, 2023 NPRM, including any anticipated date for publication of the Final Rule; and
3. An explanation of all anticipated impacts of the proposed regulatory changes on the Commission’s ability to achieve its mission to deliver products and services to federal agencies supplied by a workforce of Americans who are blind or have significant disabilities.

To arrange for delivery of responsive information or to ask any related follow-up questions, please contact the Committee on Oversight and Accountability staff at (202) 225-5074. The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. Thank you for your attention to this important matter.

⁷ 41 U.S.C. § 8503.

⁸ Rulemaking Docket, *Supporting Competition in the AbilityOne Program* (last accessed Dec. 12, 2023), available at <https://www.regulations.gov/docket/CPPBSD-2023-0009/comments>.

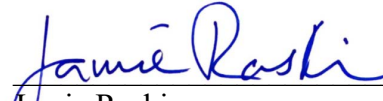
⁹ See e.g. Comment from Larysa Kautz, President and CEO, Melwood Horticultural Training Ctr., Inc., to Kim Zeich, Exec. Dir., U.S. AbilityOne Comm’n, at 2 (Jun. 13, 2023) (noting that “The cost analysis in the Proposed Rule insufficiently analyzed and estimated the costs of preparing competitive bids and transfers of work . . . and thus has led to a rule based on flawed assumptions and one that may exacerbate the problems it purports to solve.”), available at <https://www.regulations.gov/comment/CPPBSD-2023-0009-0065>.

Ms. Kimberly Zeich
January 3, 2024
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Sincerely,



James Comer
Chairman
Committee on Oversight and Accountability



Jamie Raskin
Ranking Member
Committee on Oversight and Accountability