



TITLE: ABILITYONE PROGRAM PRICE IMPASSE

1. PURPOSE.

This document prescribes the policy, procedures and prevailing guidance to resolve price disputes between parties in the exercise and administration of the AbilityOne Program®.

2. APPLICABILITY.

This policy is applicable to the U.S. AbilityOne Commission (Commission, Contracting Activities, Central Nonprofit Agencies (CNA), and Nonprofit Agencies (NPA).

3. AUTHORITY.

- (a) 41 U.S.C. §§ 8501 – 8506, Javits-Wagner-O’Day (JWOD) Act
- (b) 41 CFR 51-5.5 Prices
- (c) FAR Subpart 31.7, Contracts with Nonprofit Organizations

4. DEFINITIONS AND ACRONYMS.

TERM/ACRONYM	DEFINITION
Impasse	When a pricing issue, controversy or disagreement occurs and the Contracting Activity or the Nonprofit Agency is unable to reach a recommended fair market price or is unable to proceed with negotiation of a contract price.
Procurement List Number	The reference number assigned by the Commission to identify a potential or actual Procurement List product(s) or service(s) addition; formerly known as Action Group number, JPID number or Request number.

5. RESPONSIBILITIES.

- (a) The Commission, in accordance with the JWOD Act, has the sole authority and responsibility to establish Fair Market Prices (FMPs). It is the final authority in resolving price disputes between AbilityOne Program-participating parties for all products and services on the AbilityOne Procurement List (PL).
- (b) CNAs, NPAs, and Contracting Activities are required to fully and fairly participate in developing and recommending a FMP to the Commission when items are proposed for addition to the PL or when price revisions are recommended.
- (c) Contracting Activities and NPAs, with the assistance of their associated CNA, shall provide information or otherwise participate in the price impasse in a manner that assists the Commission in reaching a timely conclusion.



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6. POLICY.

- (a) The Commission encourages partnering, team building and mutual gains approaches to problem-solving. Business relationships under the AbilityOne Program must be conducted with fairness, integrity, and openness.
- (b) When price issues cannot be resolved at the local level, the dispute resolution process described in Section 8 of this policy will be used.
- (c) The Commission, after obtaining all appropriate information, will act to resolve price impasses in the most expeditious manner.
- (d) The Commission will take into consideration any and all pricing information available when making price decisions.
- (e) The Commission makes decisions in the best interest of the AbilityOne Program, which may not necessarily be consistent with the recommendations in either the Contracting Activity's or NPA's business case.

7. EXCEPTION TO POLICY.

This policy does not apply to contracts with commercial prime contractors; particularly service contracts on the PL being performed as directed subcontracts to commercial prime contractors.

8. PROCEDURES.

Impasse Resolution Process

- (a) **Informal Resolution:** Disputes should be resolved locally whenever possible, within 30 days. The responsible CNA will be involved in resolution if local attempts to resolve the issue are unsuccessful. Early involvement of the CNA should facilitate a timely resolution. The CNAs are encouraged to issue procedures for resolving FMP issues that support this policy.
- (b) **Declaration of Impasse:** The Impasse Resolution process is initiated by a Declaration of Impasse, which must be in writing to the Executive Director of the Commission; electronic mail is required and should be sent to PLRequest@AbilityOne.gov, with simultaneous copies to the other party and the responsible CNA, only if the following apply:
 - i. The Declaration, if originating with Contracting Activity, is made by an official at an organizational level above the Contracting Officer.
 - ii. The Declaration, if from the NPA, is made by the Chief Executive Officer of the NPA, or, if designated by the NPA to represent it in the impasse process:
 - a. NIB Assistant Vice President, Operations Support,
 - b. SourceAmerica Regional Executive Director, or
 - c. Official at an organizational level above these positions.

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- iii. If more than one NPA or Contracting Activity is designated on the Procurement List then the price positions must be coordinated between the parties before the impasse is declared.
 - iv. When the CNA is authorized by the Commission to serve as the prime on a contract, the CNA may utilize this impasse resolution procedure. The Declaration is made by the organizational representative identified at paragraph b. ii above.
 - a. NIB Assistant Vice President, Operations Support,
 - b. SourceAmerica Regional Executive Director, or
 - c. Official at an organizational level above these positions.
 - v. The written declaration of impasse must indicate an acknowledgement that Business Cases will be submitted to the Commission within fifteen (15) working days of the date that impasse is declared.
 - a. Upon receipt of the Declaration or a request from either party, the Commission staff may elect to extend the deadline for submittal of Business Cases beyond 15 working days for impasses that involve unusually complex issues, multiple parties, voluminous records, or other extenuating circumstances.
- (c) **Preparation and Submission of Business Cases:** The Contracting Activity(s) and the NPA(s) shall independently prepare a Business Case for submission to the Commission within fifteen (15) working days after declaration of impasse, unless a later deadline has been established by the Commission. Business Case information is limited to price information only. Extraneous information or other complaints shall not be included. Business cases must be submitted electronically, in accessible format to PLRequest@AbilityOne.gov. At a minimum, each Business Case shall include:
- i. The project name and location, including the contract number if a contract is involved. The NIB or SourceAmerica project number and Commission PL number.
 - ii. A statement of the issue that is the basis for the impasse and the desired outcome.
 - iii. The position of the party submitting the Business Case with supporting data.
 - iv. Contract price history (length of contract or the last 10 years, whichever is longer).
 - v. A chronology of steps taken to resolve the impasse.
 - vi. A discussion of areas of agreement pertaining to the issue.
 - a. The Contracting Officer will provide the Independent Government Estimate and any Pre- or Post-Negotiation Memoranda available.
 - b. The NPA will provide market research information (if available) in addition to details of cost elements that support the proposed price.
 - c. The Contracting Activity will provide a copy of the current contract (if applicable) and all contract modifications.

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- d. Each party will provide the name, telephone number, fax number, e-mail address, and mailing address of their point of contact. The Nonprofit Agency Business Case will provide information on the NIB or SourceAmerica point of contact.

Initial Commission Review: The Commission staff will review the Business Cases and may request additional supporting documentation from any source.

Commission Staff Decision: The Commission staff will issue a written decision in the most expeditious manner. The decision will represent the best interests of the AbilityOne Program. The decision may or may not directly support either of the Business Cases submitted.

- (d) After a decision from the Commission staff, either the Contracting Activity or the NPA may request a formal review and decision from the full Commission.
- i. The request for a formal review and decision by the full Commission must be received in the Commission offices in electronic, accessible format, no later than 15 calendar days from the transmittal date of the staff decision letter.
 - ii. A request for a formal review and decision must include supporting rationale for the formal review. The Commission staff may also request additional information, if deemed necessary.
 - iii. The Commission will make a final decision on the price that is binding on all parties. If the NPA determines that it is unable or unwilling to perform at the established FMP, a purchase exception may be issued or the project may be considered for deletion from the PL or transfer to another qualified NPA. The Commission staff is responsible for enforcement of those decisions.

9. SUPERSESSION.

This policy supersedes Pricing Memorandum Number 19, AbilityOne Price and Price-Related Impasse and Dispute Resolution Procedures, dated March 16, 2007, in its entirety.



APPROVED: *E. Ballard*
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