June 14, 2024

The Honorable Mike Rogers
Chairman
House Committee on Armed Services
2216 Rayburn House Office Building
Washington, DC 20515

The Honorable Jack Reed
Chairman
Senate Committee on Armed Services
228 Russell Senate Office Building
Washington, DC 20510

The Honorable Adam Smith
Ranking Member
House Committee on Armed Services
2216 Rayburn House Office Building
Washington, DC 20515

The Honorable Roger Wicker
Ranking Member
Senate Committee on Armed Services
228 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Rogers, Chairman Reed, Ranking Member Smith, and
Ranking Member Wicker:

For almost 90 years, the AbilityOne® Program has provided products and services to the federal government, including the program's largest customer - the Department of Defense (DoD). Currently, nearly four hundred nonprofit organizations employing over 36,000 people who are blind or significantly disabled participate in this employment program and a large majority of these organizations perform AbilityOne® contracts with DoD.

These essential members of the DoD industrial base also employ 2,500 veterans with disabilities. This work for DoD is critically important because 70% of working-age Americans who are blind or significantly disabled are not employed. The AbilityOne Program and the associated DoD contracts provide meaningful jobs and opportunities for career advancement for individuals with disabilities. The robust salary and benefit packages give them the ability to support themselves and their families and reduce or eliminate any impact on federal and state entitlement program budgets.

This year's House version of the NDAA threatens to disrupt these contracts and potentially eliminate the employment of thousands of individuals who are blind or significantly disabled, including many veterans. The House version of the NDAA includes language that aims to increase contracting opportunities for veteran-owned small businesses. To be clear, as organizations that employ disabled veterans, we wish to co-exist with veteran-owned small businesses but are gravely concerned about what this provision could mean for tens of thousands of Americans employed in the AbilityOne Program.

While the language is seemingly harmless, principled, and designed to help veterans, the unintended consequences of this language is to create confusion at DoD about its contracting priorities – pitting its statutory requirement to purchase from AbilityOne nonprofit agencies (NPAs) employing people who are blind or significantly disabled through the Javits-Wagner-O'Day Act (JWOD), against its desire to prioritize veteran-owned small businesses in the context of competitive procurements.

The language will result in the upending of the AbilityOne Program. We encourage you to remove this provision from any final NDAA and work with stakeholders to address their concerns and identify a solution that does not harm existing employment programs supporting people who are blind and significantly disabled but respects the government procurement process and acknowledges that both programs can continue to exist simultaneously.

Specifically, Section 861 under Subtitle F (Small Business Matters), Subsection C (Use of Restricted Competition), states:

> *"…for purposes of meeting the goals under subsection (a) and in accordance with this section, a contracting officer may award contracts on the basis of competition restricted to small business concerns owned and controlled by veterans if 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."*

Despite being at odds with the plain language of the Federal Acquisition Regulation, nearly identical language was interpreted by the U.S. Federal Circuit Court of Appeals to require the Department of Veterans Affairs to first give priority to veteran-owned and service-disabled veteran-owned small businesses capable of meeting the government's requirements before selecting an AbilityOne NPA to perform the work, even where the AbilityOne NPA is the incumbent contractor. *See PDS Consultants, Inc. v. United States*, 907 F.3d 1345 (Fed. Cir. 2018).

As a result of this court decision, AbilityOne nonprofit agencies that employ thousands of people who are blind or significantly disabled have lost – and continue to lose – contracts with the Department of Veterans Affairs (VA), and have had to lay off vulnerable employees, many of whom have not been able to secure other employment.

We do not believe Congress intends to make DoD also choose between expanding opportunities for veteran-owned small business owners and an almost 90-year-old employment program that provides economic independence for tens of thousands of people who are blind or significantly disabled, including veterans. However, this NDAA provision would do just that.

We believe there is more than ample opportunity for veteran-owned businesses and AbilityOne nonprofit agencies that employ people who are blind or significantly disabled to coexist in supplying our men and women in uniform with critical supplies and services. Both goals can flourish, but not under the language as is currently proposed in the NDAA. We would welcome the opportunity to work with you on this issue.

We ask the Committee to not enact legislation of this nature in the NDAA process until such time that:

- Any and all statutory and regulatory conflicts are resolved.
- The ability to meet public policy objectives for two underserved communities can be met, and veteran business entrepreneurship does not supersede blind and disabled veteran employment.
- The DoD is able to study the far-reaching changes to the existing procurement framework and determine if there are any contracting delays or other supply chain risks in the procurement of national security items used in national defense.

- The Armed Services Subcommittee on Readiness can study the implications of supply chain disruptions for critical defense items currently being onshored.

- DoD has been able to review the eligibility of firms through the database described in section 36(f)(1) of the Small Business Act to ensure that nonmanufacturers and other companies cannot simply mark-up prices and pass through these contracts to firms that are not owned by veterans as required by statute.

We thank you in advance for removing any legislative priority from the FY 2025 NDAA that does not have a permanent legislative solution to preserve and grow both AbilityOne career opportunities and contracting opportunities for veterans.

Sincerely,

Soraya Correa
President & CEO
National Industries for the Blind

Jeffrey Mittman
President
National Association for the Employment of People who are Blind
President & CEO
Bosma Enterprises