



DEPARTMENT OF EDUCATION

34 CFR Part 395 Limitation of the Randolph-Sheppard Vending Facility Program Priority for the Department of the Army

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Approval of a limitation of the Randolph-Sheppard priority for the Department of the Army.

SUMMARY: The Secretary has found that the placement and operation of dining facilities (DFACs), through the Randolph-Sheppard priority, on Department of the Army installations adversely affects the interests of the United States. As such, the Secretary has approved a limitation of the Randolph-Sheppard priority for the Department of the Army's DFAC contracts.

DATES: The limitation of the priority is approved on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. This limitation applies prospectively to DFAC contracts entered into by Department of the Army after the date of publication of this notice.

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SUPPLEMENTARY INFORMATION:

Background

The Randolph-Sheppard Vending Facility Program provides entrepreneurs who are blind with opportunities to operate a business in competitive integrated employment consistent with the Rehabilitation Act of 1973, as amended by title IV of the Workforce Innovation and Opportunity Act. In 1936, Congress established the program, through the Randolph-Sheppard Act, to enhance employment opportunities for trained, licensed blind persons to operate vending facilities on federal and other properties. Blind vendors are licensed by State licensing agencies (SLAs); SLAs are typically State Vocational Rehabilitation (VR) agencies. Each state (except Wyoming), Puerto Rico, and the District of Columbia operate a Randolph-Sheppard Vending Facility Program. In FFY 2024, there were approximately 1,200 licensed blind vendors. For the Department of the Army specifically, 24 DFAC contracts, across 22 installations in the United States, are currently awarded to SLAs through the Randolph-Sheppard priority.

Authority

The Randolph-Sheppard Act, 20 USC 107 et seq., and the Department's regulations implementing it at 34 CFR part

395, establish a priority for operation of vending facilities and cafeterias on Federal properties by blind vendors licensed by SLAs, where such operation is feasible and would not adversely affect the interests of the United States. Upon justification provided by a Federal department or agency to the Secretary, and the Secretary's determination that placement or operation of a vending facility or cafeteria adversely affects the interests of the United States and thus justifies a limitation on such placement or operation, the limitation becomes effective upon publication by the Secretary in the Federal Register. 34 CFR 395.30(a) and (b).

Justification of Limitation

Based on information provided by the Department of the Army, the Secretary has determined that a limitation of the Randolph-Sheppard priority is justified for the Department of the Army's DFAC contracts. The Secretary acknowledges that the Randolph-Sheppard Vending Facility program, as applied to the Department of the Army's DFAC contracts, adversely affects the interests of the United States. Specifically, the Department of the Army's critical role in national security and the paramount importance of maintaining operational mission readiness of its service members necessitates removal of barriers that prevent the Department of the Army from being in the best position possible to conduct its procurements and manage its DFAC

contracts. Based on the Department of the Army's representations, it is clear that the Randolph-Sheppard priority hinders the Department of the Army's ability to act swiftly, efficiently, and cost-effectively in procuring and managing DFAC contracts, which negatively impacts the availability and quality of food options for the nation's warfighters.

Higher Costs

Randolph-Sheppard regulations at 34 CFR 395.33(b) stipulate that when a proposal submitted by an SLA for the operation of a DFAC is determined to be within the competitive range, the agency shall consult with the Secretary as described in 34 CFR 395.33(a). The Secretary considered that the Department of the Army reported an instance where a DFAC contract had a 33 percent higher price differential and a cumulative difference of \$164 million more when comparing lowest price technically acceptable proposals with some proposals made by SLAs over a five-year period. The higher costs from applying the Randolph-Sheppard priority may also have the adverse effect of decreasing funds available for other investments critical to ensuring service member readiness. According to the Department of the Army, this requirement has stifled its ability to select a vendor proposing innovative approaches and process improvements, better service, and cost savings. The Secretary thus has determined, after consultation with the Department of the

Army, that operation of DFACs subject to a Randolph-Sheppard priority cannot be provided at a reasonable cost.

Arbitration Delays

SLAs are afforded the right to arbitration in the Randolph-Sheppard Act. On average, the Department of the Army has faced arbitrations that last 801 days resulting in significant delays in awarding DFAC contracts. The Secretary considers it unreasonable to expect the Department of the Army to be entangled in any DFAC contract arbitration that could last for more than two years. The Secretary believes this is an unreasonable burden to place on the Department of the Army, thus a limitation on applicability of the Act for Department of the Army DFAC contracts is justified.

Performance Issues

The Department of the Army conveyed various examples of performance issues with Randolph-Sheppard DFAC contracts including nutrition (e.g., not including nutritional menu standards and serving meals that do not meet requirements) and sanitation (e.g., cross-contamination of food and improper labeling). Other reported performance issues include food safety (e.g., foreign objects in food) and lack of documented employee training related to safety and sanitation.

Conclusion

For these reasons, the Secretary has concluded that a limitation of the Randolph-Sheppard priority is justified for future DFAC contracts competed by the Department of the Army. The Secretary notes that blind vendors may still bid for DFAC contracts even if there is no Randolph-Sheppard priority in place.

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Linda McMahon,

Secretary of Education.

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