



NATIONAL ASSOCIATION OF BLIND MERCHANTS

Department of Defense Proposed Regulations on Military Dining Contracts

Stop Efforts to Eliminate Opportunities for Blind Entrepreneurs

The Randolph-Sheppard Act¹ grants a priority for blind entrepreneurs to manage and operate vending facilities, including cafeterias, on all federal properties. Enacted in 1936 and amended in 1954 and 1974, the Randolph-Sheppard Act has been the only program in our nation's history to focus on self-employment and entrepreneurship for blind persons. As stated in the Act, its purposes are "providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting."² The courts^{3,4} have clearly established that this priority applies to military dining contracts, and today approximately forty-five blind entrepreneurs successfully operate these contracts across the country. Many have been recognized with the military's highest foodservice honors, including the prestigious Hennessy and Connelly Awards.

The Department of Defense is threatening the financial independence of blind entrepreneurs. In June 2016, DOD published draft regulations that would effectively eliminate the priority for blind entrepreneurs to operate these contracts in the future. These regulations were intended to implement the 2006 Joint Statement of Policy that was developed by the Department of Education, Department of Defense, and the Committee for Purchase from the Blind and Physically Handicapped (now known as AbilityOne). The Department of Education did not promulgate the Joint Policy Statement into regulations once it realized it violated the Randolph-Sheppard Act. When DOD published the draft rules, it received 4,776 comments⁵, most of which were in opposition to the proposed regulations. Even one DOD contracting officer submitted comments in opposition. The regulations have not been finalized, but DOD insiders are saying it is DOD's intent to move forward in promulgating these ill-advised regulations.

The Department of Defense lacks the authority to promulgate regulations related to the Randolph-Sheppard Act. In amending the Randolph-Sheppard Act in 1974, Congress made it clear that only the Department of Education could promulgate regulations related to the Randolph-Sheppard Act. In its deliberations on this point, it cited DOD's failure to comply with the Act.

The proposed regulations will cost the federal government hundreds of millions of dollars in additional costs. By taking contracts out of the competitive process and awarding them directly to AbilityOne, the costs to the military increase substantially. Randolph-Sheppard is only granted a priority if the proposal submitted by the State Licensing Agency is reasonably priced. However, AbilityOne is not competitive. AbilityOne essentially determines a monopoly price for the service, and it is never re-competed. In some cases where AbilityOne has replaced Randolph-Sheppard in the past, costs have increased dramatically. The proposed regulations will take contracts away from Randolph-Sheppard and award them to AbilityOne.

The proposed regulations would give hundreds of millions of dollars in new contracts to a program under investigation by the Department of Justice and several inspectors general.

Multiple news outlets have reported that the AbilityOne program is under federal investigation. One report characterized the program as corrupt.⁶ Why promulgate regulations that reward a program that is being investigated for corruption?

The proposed regulations are anti-small business. The proposed regulations will take contract opportunities away from small businesses. Even when Randolph-Sheppard is not awarded a contract to be managed by a blind entrepreneur, it is generally awarded to another small business. By removing these opportunities from the competitive arena, many small businesses will be hurt.

Join with Congressman Pete Sessions in asking the Department of Defense not to move forward with finalizing the proposed regulations.

For more information, contact:

Nicky Gacos, President, National Association of Blind Merchants

Phone: (908) 464-5359, Email: nicky@blindmerchants.org

Terry Smith, Director, National Federation of the Blind Entrepreneurs Initiative

Phone: (865) 599-7148, tsmith@nfb.org

¹ 20 U.S.C § 107

² 20 U.S.C § 107(a)

³ *NISH v. Cohen*, 247 F.3d 197 (4th Cir. 2001)

⁴ *NISH v. Rumsfeld*, 348 F.3d 1263 (10th Cir. 2003)

⁵ <https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=DARS-2015-0055&refD=DARS-2015-0055-0001>

⁶ <http://www.cnn.com/2015/07/27/us/disabled-work-program-investigation/>