



Department of Defense Proposed Regulations on Military Dining Contracts

Eliminate Department of Defense Penalties for Contracting with Blind Entrepreneurs

The Randolph-Sheppard Act is the only federal legislation that solely focuses on promoting entrepreneurship for blind people in the United States. The Act grants a priority for blind entrepreneurs to provide food services on federal properties, including military troop dining.

At any given time, approximately forty-five blind entrepreneurs have competed for, and won, mess hall contracts. Many have been recognized with the military's highest food service honors, including the prestigious Hennessy and Connelly Awards. Given that unemployment among blind Americans continues to hover at approximately 60 percent,¹ these opportunities for blind entrepreneurs to manage complex contracts are extremely important.

Although the Randolph-Sheppard Act gives a priority² to responsive, reasonably priced proposals submitted by blind entrepreneurs, the Department of Defense is penalized for making these awards. The Department is required to achieve target percentages of contract monetary value awarded as part of prime contracts to small and minority-owned businesses.³ When calculating achievement of those targets, prime contracts awarded to small or minority-owned enterprises are counted in the numerator, and the total value of contracts awarded is counted in the denominator.

Because of an anomaly in the law, Randolph-Sheppard awards do not count as "small business" even if the blind entrepreneur's operation qualifies under the appropriate NAICS code. Technically, Randolph-Sheppard contracts are awarded to state vocational rehabilitation agencies, then managed by blind entrepreneurs. The advantage of this system is that blind entrepreneurs enjoy the benefits of training and support from the state vocational rehabilitation agencies. However, awards to state agencies cannot count as small business awards in the numerator of the prime contracting calculations, even though they count in the denominator of all contracts. Therefore, any Randolph-Sheppard contract award, even when managed by a blind entrepreneur who is a small business owner, makes it more difficult for the Department of Defense to achieve its small business and minority contracting targets. This is a disincentive for a military contracting officer to award a contract to the state agency and the blind entrepreneur. Consequently, there is a lack of commitment to recognizing the priority afforded to blind entrepreneurs. This has resulted in multiple federal arbitration and federal court cases.

Other specialized service providers, including AbilityOne non-profits and Federal Prison Industries, are exempted from small and minority-owned business calculations.⁴ Under the law, the value of contracts awarded to these suppliers is excluded from both the numerator and the denominator of prime contract calculations. Therefore, while services provided by AbilityOne and Federal Prison Industries do not help the Department of Defense meet its contracting goals, they also do not make it more difficult for the Department to achieve them.

The National Federation of the Blind and its merchants division, the National Association of the Blind Merchants, urge Congress to enact legislation removing Randolph-Sheppard food service contracts from the calculation of small and minority owned businesses for the purposes of calculating contracting targets. This will remove the penalty to the Department of Defense that makes it more difficult to achieve contracting targets when significant contracts are awarded to state agencies and blind entrepreneurs under the Randolph-Sheppard Act. The secondary benefit is that the government will likely save thousands of dollars in litigation costs.

In the absence of being able to count contracts awarded to state licensing agencies for blind entrepreneurs as small businesses, the language below is proposed:

Amend 10 U.S.C. Sec. 2323 (b)(1) as follows:

“Less any funds obligated for contracts entered into by the Department of Defense for such fiscal year to a State licensing agency pursuant to U.S.C. Sec.107(a).”

**REMOVE THE ARTIFICIAL BARRIERS TO EMPLOYMENT FOR
BLIND SMALL BUSINESS OWNERS**

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) 599-7164, Email: TSmith@nfb.org

¹ US Census Bureau, American Community Survey. The percentage of non-institutionalized persons aged 21-64 years with a visual disability in the United States who were employed full-time/full-year in 2016. Retrieved from <http://www.disabilitystatistics.org/reports/acs.cfm?statistic=4>.

² 20 U.S.C. § 107(b)

³ 15 U.S.C. § 644

⁴ 10 U.S.C § 2410(d)