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**SUPPLEMENTARY INFORMATION:** Pursuant to the Randolph-Sheppard Act (the Act), (20 U.S.C. 107d-2(c)), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

### Background

This dispute concerns the alleged violation of the Act by the Washington Department of Services for the Blind, the State licensing agency (SLA), in denying Mr. Steven Erickson's request to operate 21 vending machines located outside his snack bar facility. A summary of the facts is as follows: Mr. Steven Erickson, the complainant, was licensed by the SLA on May 1, 1992, to operate a snack bar facility, which included vending machines, at the Madigan Army Hospital Medical Center in Fort Lewis, Washington.

In addition to the vending machines located inside the snack bar and operated by the complainant, there were 21 other vending machines at various locations throughout the hospital center. These vending machines were operated and serviced by a private vending company through a contract with the SLA. During 1992 and 1993, as required under the Act, Mr. Erickson received all income generated from the 21 vending machines. In 1995, complainant submitted a request to the SLA that he be permitted to operate the 21 vending machines. This request was denied by the SLA. Mr. Erickson challenged the SLA's refusal to allow him to operate these vending machines.

The SLA alleged that, as the agency designated to administer the Randolph-Sheppard program in the State of Washington, it had the responsibility to arrange for the placement and operation of vending equipment at the Madigan Army Hospital Medical Center. The SLA further alleged that it had valid business reasons for its decision to contract out the operation of the 21 vending machines to a private vending company.

Mr. Erickson requested and received an administrative review of this matter on February 5, 1996. As a result of an adverse decision, the complainant requested an evidentiary hearing, which was held on March 14, 1996. The hearing officer issued a final order on May 9, 1996, finding that the decision by the SLA to contract out the 21 vending machines to a private contractor was a lawful exercise of the agency's discretion and should be affirmed. Mr. Erickson filed for reconsideration of the decision on May

15, 1996. The SLA denied the petition for reconsideration on May 24, 1996. The SLA adopted the hearing officer's decision as final agency action, and it is this decision that Mr. Erickson sought to have reviewed by a Federal arbitration panel. A Federal arbitration hearing on this matter was held on September 24 and 25, 1997.

### Arbitration Panel Decision

The issues before the arbitration panel as raised in the complaint were: (1) Whether the order and actions of the Director of the SLA failed to give priority to blind vendors as required by the State statute; (2) whether there was substantial evidence to support the Administrative Law Judge's (ALJ) conclusion that only profits from vending machines inside the snack bar facility were included in the vendor agreement between complainant and the SLA; (3) whether the order and actions of the SLA are arbitrary and capricious with regard to determining which public facilities are available for contracting to blind vendors; (4) whether there was substantial evidence to support the ALJ's finding that the operation of the vending machines by the complainant would place an undue financial burden on the SLA; and (5) whether the SLA correctly concluded that vending machines at the Madigan Army Hospital Medical Center outside the snack bar are not available to blind vendors.

The majority of the arbitration panel found that neither the Act, its implementing regulations, nor the State regulations precluded the SLA from determining that it best served the objectives and needs of the community of blind vendors to divide the permit into two components consisting of a blind vendor's snack bar/espresso bar/cart and a vending machine route operated by a private vending company. This arrangement allowed for the distribution of a percentage of the profits to the SLA, thus allowing the SLA to serve the collective needs of all of the blind vendors.

The panel further concluded that, while the complainant had every right to seek to improve his economic status, his needs conflicted with the SLA's concerns and needs to serve the broader interests of all the blind vendors in the program. In the view of the SLA, licensing individual blind vendors to operate vending machine routes could leave the program without adequate funds to serve the collective needs of all of the blind vendors.

Accordingly, the majority of the panel found that the SLA acted within the scope of its authority. The division of

the permit at the Madigan Army Hospital Medical Center was lawful, and deference must be given to the SLA's expertise in administering the Act in the broad interest of all the blind vendors.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: December 10, 1999.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

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## DEPARTMENT OF EDUCATION

### Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of arbitration panel decision under the Randolph-Sheppard Act.

**SUMMARY:** Notice is hereby given that on September 25, 1998, an arbitration panel rendered a decision in the matter of *David J. Stewart v. Alabama Department of Rehabilitation Services (Docket No. R-S/97-12)*. This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d-1(a) upon receipt of a complaint filed by petitioner, David J. Stewart.

**FOR FURTHER INFORMATION CONTACT:** A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Mary E. Switzer Building, Washington DC 20202-2738. Telephone: (202) 205-9317. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205-8298.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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<http://ocfo.ed.gov/fedreg.htm>

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Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)) (the Act), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

### Background

This dispute concerns the alleged improper denial of Mr. David J. Stewart's request to bid on a vending location at Fort McClellan, Anniston, Alabama by the Alabama Department of Rehabilitation Services, the State licensing agency (SLA). A summary of the facts is as follows: In May 1994, the United States Army through the Directorate of Contracting issued a solicitation for bids to provide food services at Fort McClellan, Anniston, Alabama. The advertised solicitation merely referred to the provision of food services. There was no mention that the facility was to be operated as a cafeteria-type operation, nor were there any restrictions limiting applicants to only persons with cafeteria training or experience.

The SLA issued a memorandum to licensed blind vendors and licensees informing them that a bid proposal for the food services contract at Fort McClellan, Anniston, Alabama was available. The successful bidder would be involved in a joint venture with KCA, a private food service company that would be responsible for the operation of three 1,000-personnel dining facilities serving three meals per day, seven days per week, and one 500-personnel dining facility serving three meals a day, Monday through Friday. The SLA listed the operation of a food service facility as required experience.

The complainant, David J. Stewart, submitted his bid application along with 12 other applicants. The complainant, who operated a vending route, did not have any prior experience at that time in operating a cafeteria. However, in 1990 Mr. Stewart and five other blind licensees completed a cafeteria training program conducted by

the E. H. Gentry Technical Facility under the auspices of the SLA.

Following the close of the bidding process, the selection committee, which included SLA staff and members of the Committee of Blind Vendors, reviewed the applicants' eligibility, qualifications, and experience. In addition, each applicant was given points for vendor appraisals and seniority. The selection committee awarded the Fort McClellan cafeteria food service to the vendor who had received the highest total number of points.

Mr. Stewart requested and received a State evidentiary fair hearing on this matter on February 7, 1997. In April 1997, the Hearing Officer affirmed the SLA's decision to award the Fort McClellan facility to another vendor. The SLA adopted the Hearing Officer's decision as final agency action, and it is this decision that Mr. Stewart sought to have reviewed by a Federal arbitration panel. A Federal arbitration hearing on this matter was held on July 30, 1998.

### Arbitration Panel Decision

The issue before the arbitration panel was whether the Alabama Department of Rehabilitation Services violated its policies and procedures governing the Business Enterprise Program of Alabama during the advertisement and selection of a vendor/manager for the Fort McClellan facility.

The majority of the panel found that there was no evidence to support the complainant's allegations. Specifically, the panel found that the SLA's announcement of the bid opening at the Fort McClellan facility tracked the language of the United States Army's solicitation for food service and could not be construed as misleading. The panel found that it was not within the SLA's authority to unilaterally alter the terms of the solicitation or set aside its own job qualifications. The majority also found that the selection of the members to serve on the selection committee was consistent with and conducted in accordance with existing procedures and practices that had been in effect for years without any showing of prejudice to the complainant. Further, the panel found that the successful applicant, who had the highest total number of points among the applicants considered and was unanimously selected as the manager of the Fort McClellan facility, had food service experience as advertised in the United States Army's solicitation. The selection committee fully considered Mr. Stewart's completion of a cafeteria training program, which was a factor, but was not an employment guarantee as complainant's position implied.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: December 10, 1999.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

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## DEPARTMENT OF ENERGY

### Notice of Program Interest for Medical Research Using Isotopes

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of program interest.

**SUMMARY:** The Office of Isotope Programs, Office of Nuclear Energy (NE) solicits responses for research programs for new and innovative uses of isotopes, including alpha emitting isotopes in the diagnosis and therapy of cancer, HIV and other infectious diseases or other innovative medical applications. The diagnosis and therapy of many diseases with the use of isotopes will be the subject of a high risk/high impact research program the Department calls the Advanced Nuclear Medicine Initiative (ANMI). The Department wishes to encourage research in these areas by providing resources for the required research.

**DATES:** Opening date: December 10, 1999, and closing date: January 28, 2000.

**ADDRESSES:** Complete details, instructions on how to apply, and the forms may be obtained from the DOE NE home page on the internet at: <http://www.ne.doe.gov>. The formal solicitation document will be disseminated electronically as solicitation number DE-PS01-00NE22740 through the Department's Industry Interactive Procurement System (IIPS) Homepage located at <http://doe-iips.pr.doe.gov>.

**FOR FURTHER INFORMATION CONTACT:** John Pantaleo, Program Manager at 301-903-2525 and Richard G. Lewis, Contracting Officer at 202-426-0066.

**SUPPLEMENTARY INFORMATION:** This program is not intended to support human clinical trials. Researchers with innovative ideas in the use of isotopes for diagnosis and therapy of many diseases have had difficulty obtaining funding for areas of research that are not closely tied to specific isotopes, means of delivery and disease. The purpose of the ANMI is to support broad-based research on new uses of isotopes, including alpha emitters for the