

RANDOLPH-SHEPPARD AND MILITARY DINING

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RSA INITIATIVE ON MILITARY DINING CONTRACTS

On September 21, 2011 the Rehabilitation Services Administration sponsored a four-hour invitation-only training and discussion session on military dining contracts in Nashville, Tennessee, site of the NFB's Blast Conference. President Dan Sippl and I were invited to the meeting, along with Eric Bridges of ACB. In all, some 25 people participated, including a number of State licensing agency representatives, food service consultants, attorneys, NFB representatives, and people from NABM. Catriona MacDonald of Linchpin Strategies, former lobbyist and policy analyst for BEA, the Blind Entrepreneurs Alliance that was dissolved in November of last year, also attended, along with Dan Frye, the RSA Randolph-Sheppard specialist.

It is RSA's expectation that the training session will serve as a platform for future, broader meetings to educate Randolph-Sheppard stakeholders on the challenges facing the blind vending program and the Randolph-Sheppard priority. President Sippl offered next year's Sagebrush convention as a site for the next, expanded training and orientation meeting on military dining contracts.

At the Nashville meeting, a number of the challenges facing the blind vending facility program in the military dining contract arena were discussed in depth. Among these were (1) the continuing competition from AbilityOne, formerly NISH, the Javits-Wagner-O'Day central nonprofit agency; (2) the Federal legislation (Section 848 of the National Defense Authorization Act of 2006) which supposedly prevents "poaching" by AbilityOne against existing Randolph-Sheppard military dining contracts; (3) the misunderstanding among contracting officers on the meaning, extent, and application of the priority; and (4) selection of food service consultants, or "teaming partners."

Beyond these broad brush topics, numerous other matters were addressed. Contracting officers and their bosses, the base commanders, have been given a very strong pitch by AbilityOne. They have been carefully cultivated to favor the JWOD program over Randolph-Sheppard. AbilityOne creams large sums of money from every contract it participates in, and those funds are used in a propaganda campaign for their program. Awards are given to key Department of Defense officials to recognize their support for AbilityOne.

Contracting officers often determine whether an SLA bid is within the “competitive range” and “reasonably priced” by applying a “five percent-\$1 million rule,” derived from a joint Department of Defense-Department of Education-Committee for Purchase from People Who Are Blind or Severely Disabled) joint policy statement which radically limits the Randolph-Sheppard priority.

There is another recent legislative provision that requires any military dining contractor who subcontracts any part of a food service operation to do so with an AbilityOne agency. The “no-poaching” prohibition that is supposed to protect existing contracts, including those held by State licensing agencies, is meaningless if it does not apply to follow-on contracts.

Currently, at Fort Polk, Louisiana, the contracting office is attempting to split mess attendant services away from the existing Randolph-Sheppard contract and award it to AbilityOne. This is clearly a violation of the no-poaching provision of law, but the Louisiana State licensing agency apparently is refusing to contest the Fort Polk action through the filing of an arbitration complaint. At Fort Eustis, Virginia, it appears that the contracting officer is asserting that the Randolph-Sheppard priority does not apply to its military dining contract. Everything seems to be stacked against the Randolph-Sheppard program in military dining contracts.

There was widespread agreement among the meeting participants that an information clearinghouse was needed to disseminate urgent information on dining contracts across the country to SLAs and to blind vendors and their food service consultants. There was also

agreement that if a contract solicitation was published that did not conform to the Randolph-Sheppard Act and other requirements, a bid protest should be filed before the SLA submits a bid. Filing a bid protest after responding to a solicitation is too late, because by responding the military contracting officers assert that the solicitation itself was properly issued. Many participants expressed the belief that the Randolph-Sheppard regulations should be opened up to change, but strictly limited to military dining issues. There was also agreement that the Federal Acquisition Regulations need to be amended to recognize the Randolph-Sheppard priority.

Other problems discussed included the value of the priority in relation to HubZone and SBA 8(a) contracts, where qualified organizations are awarded a 5 to 10 percent preference. Randolph-Sheppard has no such preference, and can be excluded from the competitive range because it does not have that advantage. SLAs bidding on contracts should routinely ask for direct negotiation under a sole source arrangement, on the basis that it is authorized under the Randolph-Sheppard regulations, and the priority should be considered an absolute so the contracting officer cannot dismiss.

Meeting participants agreed that contracting officers often were badly misinformed or uninformed about Randolph-Sheppard, and are inclined to ignore our program when issuing solicitations. It was further pointed out that AbilityOne is approaching contracting officers eighteen months in advance of the issuance of contract solicitations—State licensing agencies should be laying the groundwork two years in advance of contract announcements if they are to be competitive, much less being able to assert the priority.

Once a location is put on the procurement list by the Committee for Purchase, it is on the list forever, and even though Randolph-Sheppard has the priority, clearly acknowledged by the Federal Courts, the only way to get a location removed from the procurement list is through expensive litigation.

The foregoing is a snapshot of the proceedings in Nashville. I hope RSA capitalizes on the momentum of the meeting, and convenes a larger and broader session with more blind managers and State

agencies, so we can, together, minimize the incursions on the blind vending facility program by AbilityOne that have occurred so regularly, and correct the misconceptions held by many military contracting personnel.

A UNIFORM POLICY ON FOOD SERVICE CONSULTANTS

At the Sagebrush Convention this past February, I gave RSA Commissioner Lynnae Rutledge two papers I had developed as initiatives following the November 2010 RSVA Board retreat in New Orleans. These papers urged the adoption of a specific directive policy by the Rehabilitation Services Administration regarding the selection and use of food service consulting companies in connection with large contracts, primarily on military installations.

RSA has the proposed policy, and I had hoped the agency would address the issues contained in it at the September 21 meeting on military dining. Unfortunately, that did not happen. Sooner or later RSA must take a closer look at the use of food service consultants, and their relationship to blind managers and State licensing agencies.

The way food consultants are used to assist in the procurement of contracts for military dining, or troop feeding, varies widely from state to state. There is no coherent system in place to deal with food service operators, and no basic information available to states and blind vendors regarding the nature and processes of dealing with military contracting personnel. As a result, those states that have little or no experience in dealing with military dining matters are not prepared to deal with either contracting officers or food service consultants, and thus make serious errors and bad choices, or just as bad, shy away from efforts to secure such contracts out of ignorance.

Here are some of the problems that need to be addressed. Food service contractors often take advantage of the ignorance of State licensing agencies and blind managers and provide a smaller financial benefit to blind vendors than they should, overcharging for general and administrative expenses, insurance and a host of other

expense categories in order to obtain greater compensation for themselves. Competition for military dining contracts is fierce, because such contracts are often valued at millions of dollars a year. Some food service consultants enter into “no-compete” arrangements with State licensing agencies in order to ensure their status as subcontractors to the SLA or the assigned blind manager. Other, less scrupulous consulting companies have “teamed” with a State licensing agency then pulled out of the arrangement at the last minute and submitted their own bid independently. Still others have “teamed” with the SLA and at the same time submitted a separate, better bid, resulting in the award of the contract to the supposed teaming partner based on its separately submitted bid.

More often than not, the food service consultant operates the contract, leaving the assigned blind vendor in the background to collect a monthly check. This is the infamous “straw man” concept that tarnished the Small Business Administration’s “8(a)” program many years ago. The blind manager is the assigned manager, and the food service consultant is a subsidiary operator whose job it is to mentor and train the blind manager until the manager can operate the facility without the consultant.

It is my considered opinion that an RSA policy directive must have the following elements:

- When an SLA selects a food service consultant to prepare a bid on a military dining facility, the time commitment for participation in contract operation should not exceed one year.
- A blind manager should be selected before a food service consultant is identified, in order that the manager may participate fully in the selection of his or her own consultant. Depending upon the knowledge and experience of the manager, he or she could be the sole selector of the food service consultant. The State Committee of Blind Vendors can serve as a resource for such selection.
- In any event, the blind manager should be free to select his or her own food service contractor after one year of contract performance, and any Manager Support Agreement should so specify.

- General and Administrative (G&A) costs identified in the bid proposal should not exceed 3 percent of the annual projected contract price in any one year. Based upon the contribution of the blind manager and the food service consultant, G&A expenses returned to the blind manager and the subcontractor prior to distribution of net contract receivable should reflect actual cost experience in the previous year.
- Each blind manager must enter into a Manager Support Agreement clearly stating that the manager is the prime subcontractor on the contract (because the contract is between the military installation and the SLA) and the food service consultant is subservient to the blind manager, not a partner.
- Program rules in every State with a military or other large food service contract should be reviewed, and amended if necessary, to take into account the large and numerous differences between such contracts and the usual blind vending facility. For example, allowed expenses ordinarily will be much larger than those of most vending facilities, and equipment expenses, including trucks and automobiles, are likely to be essential to the operation of such large dining facilities, particularly where there are several dining halls and the military installation is spread out. Any requirement that a blind manager of a complex military dining contract must spend a specific number of hours on post at the locus of the contract is ludicrous and does not reflect the reality of such operations. That may or may not be appropriate for mom and pop snack bars and other small Randolph-Sheppard facilities, but it just does not fit a military dining operation.

The Rehabilitation Services Administration should move quickly, with input and assistance from blind managers (particularly those who operate military dining facilities), State Committees of Blind Vendors, vendor organizations, and food service consultants, to develop a sound policy and program instruction that would benefit the Randolph-Sheppard program for many years to come.