

its claim that the 5 percent competitive range on its face violated the Act because the CO DHS failed to protest the competitive range at the time the Air Force issued the solicitation. The Air Force had the discretion to set a competitive range at this level.

The Panel also held that the CO DHS waived its claim that the 5 percent limitation was a limitation on the operation of a vending facility because it failed to raise it at the time the Air Force issued the solicitation.

The Panel further held that the Joint Report was not effective because regulations implementing that report had never been promulgated and the 5 percent competitive range set by the Air Force was not based on the Joint Report. The Panel held that, instead, the competitive range was the product of the Air Force's need to keep down its costs and emphasize the importance of price to bidders.

In addition, the Panel held that the Air Force was not required to conduct discussions with the CO DHS because the Act permits, but does not require, such discussions. In addition, the Federal Acquisition Regulation (FAR) does not require discussions with bidders. The Panel held that, even if the FAR did require discussions, a violation of the FAR cannot be the subject of arbitration under the Act.

The Panel held that such a claim did not involve an alleged violation of the Act and, therefore, could not be brought in arbitration. The Panel also determined that the claim that the Air Force misled the CO DHS into thinking it had the lowest bid did not involve an alleged violation of the Act and, therefore, could not be brought in arbitration. Under the facts of this case, the Panel determined that the CO DHS could not reasonably claim prejudice because of an allegedly misleading statement by the Air Force.

The Panel concluded, with one member dissenting, that the Air Force violated the Act's regulations when it failed to consult with the Secretary of Education during this solicitation. Even though the Air Force determined that the CO DHS's bid was not within the 5 percent competitive range, the Panel held that 34 CFR 395.33(a) required the Air Force to consult with the Secretary of Education in order to determine whether the blind vendor was entitled to a priority in the solicitation pursuant to that regulatory provision. The Panel directed that, if the Secretary of Education determines after consultation with the Air Force that the CO DHS should be afforded a priority pursuant to 34 CFR 395.33(a), the Air Force will

be required to initiate a new acquisition in compliance with 34 CFR 395.33.

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Dated: April 11, 2017.

**Ruth E. Ryder,**

*Deputy Director, Office of Special Education Programs, delegated the duties of the 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 decision.

**SUMMARY:** The Department of Education (Department) gives notice that, on October 7, 2012, an arbitration panel (the Panel) rendered a decision in *Rutherford Beard v. the Michigan Commission for the Blind* (Case no. R-S/09-01).

**FOR FURTHER INFORMATION CONTACT:** You may obtain a copy of the full text of the Panel decision from Donald Brinson, U.S. Department of Education, 400 Maryland Avenue SW., Room 5045, Potomac Center Plaza, Washington, DC 20202-2800. Telephone: (202) 245-7310. If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll-free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** The Panel was convened by the Department under

the Randolph-Sheppard Act (Act), 20 U.S.C. 107d-1(a), after receiving a complaint from Rutherford Beard, a licensed blind operator of a vending facility at the Joint Forces Training Center. Under section 107d-2(c) of the Act, the Secretary publishes in the **Federal Register** a synopsis of each Panel decision affecting the administration of vending facilities on Federal and other property.

### Background

The complainant, Rutherford Beard, is a food vendor in the respondent's, the Michigan Commission for the Blind's (Commission), business enterprise program (BEP). On May 1, 2008, Mr. Beard signed a vending facility agreement to operate a cafeteria at the Joint Forces Training Center. He was provided with initial inventory and equipment, and the cafeteria began to sell food. This facility was projected to generate \$150,000 in annual sales with an 11 percent profit. The facility did not generate the expected sales and ultimately Mr. Beard had to lay off two employees. As a result, his staff was reduced to himself and a part-time employee.

Because the facility was not generating any profit, Mr. Beard asked for a profit percentage exception after six months. He explained that, if a vendor does not meet the expected profit margin and does not get an exception, he is not eligible to bid on a different facility. Mr. Beard testified that he "tried everything," including opening on some weekends and opening for breakfast, but he did not generate a profit. After Mr. Beard attempted to transfer to another location, the Commission informed him that he had to remain for at least a year according to the BEP rules. The cafeteria was then closed.

In his appeal, Mr. Beard claimed that he did not get sufficient help from the BEP and was not allowed to transfer out after six months. He also asserted that there were vending machines in different buildings on the same grounds that could have been awarded to him to lessen the adverse financial effect of the lack of business. That solution was also denied. Mr. Beard also contended that because the initial projection for sales at this cafeteria was miscalculated, and because he was not allowed to transfer after six months, the Commission should reimburse him for his losses.

In response, the Commission asserted that, under its rules, there is no guarantee that a vendor will make a profit. It also pointed out that Mr. Beard did not exercise the procedural rights

granted by the Act and the Commission's rules.

### Summary of Panel Decision

At Mr. Beard's request, the Panel was convened on October 7, 2012. The Panel concluded that the Commission did not have the authority to grant Mr. Beard's requested relief. One Panel member asserted that section 107b(3) of the Act authorizes the Commission to provide licensed vendors with a fair minimum return when circumstances warrant it. Another Panel member indicated that this section is not mandatory language and that the Commission's rules do not provide for remuneration. The Panel chair stated that the Commission ought to adopt a rule to provide some remuneration for situations like this. However, absent any rule in place, the Panel decided that there was insufficient justification for any remuneration and, therefore, remuneration was not appropriate in this case.

The views and opinions expressed by the Panel do not necessarily represent the views and opinions of the Department.

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Dated: April 11, 2017.

**Ruth E. Ryder,**

*Deputy Director, Office of Special Education Programs, delegated the duties of the Assistant Secretary for Special Education and Rehabilitative Services.*

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## DEPARTMENT OF EDUCATION

### Application Deadline for Fiscal Year 2017; Small, Rural School Achievement Program

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice.

**SUMMARY:** Under the Small, Rural School Achievement (SRSA) program, Catalog of Federal Domestic Assistance (CFDA) number 84.358A, the U.S. Department of Education (Department) awards grants on a formula basis to eligible local educational agencies (LEAs) to address the unique needs of rural school districts. In this notice, we establish the deadline and describe the submission procedures for fiscal year (FY) 2017 SRSA grant applications.

All LEAs eligible for FY 2017 SRSA funds must submit an application electronically via [Grants.gov](http://Grants.gov) by the deadline in this notice.

#### DATES:

*Applications Available:* May 1, 2017.

*Application Deadline:* June 30, 2017 by 4:30:00 p.m., Washington, DC time.

**FOR FURTHER INFORMATION CONTACT:** Mr. Eric Schulz, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E-210, Washington, DC 20202. Telephone: (202) 260-7349 or by email: [reap@ed.gov](mailto:reap@ed.gov).

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Award Information

*Type of Award:* Formula grant.

*Estimated Available Funds:* The Further Continuing and Security Assistance Appropriations Act, 2017, would provide, on an annualized basis, \$87,752,864 for this program. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

*Estimated Range of Awards:* \$0-\$60,000.

**Note:** Depending on the number of eligible LEAs identified in a given year and the amount appropriated by Congress for the program, some eligible LEAs may receive an SRSA allocation of \$0 under the statutory funding formula.

*Estimated Number of Awards:* 4,300.

**Note:** The Department is not bound by any estimates in this notice.

## II. Program Authority and Eligibility Information

*Under what statutory authority will FY 2017 SRSA grant awards be made?*

The FY 2017 SRSA grant awards will be made under the statutory authority in title V, part B, subpart 1 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA) (Pub. Law 114-95).

*Which LEAs are eligible for an award under the SRSA program?*

For FY 2017, an LEA (including a public charter school that is considered an LEA under State law) is eligible for an award under the SRSA program if it meets one of the following criteria:

(a)(1) The total number of students in average daily attendance at all of the schools served by the LEA is fewer than 600; or each county in which a school served by the LEA is located has a total population density of fewer than 10 persons per square mile; and

(2) All of the schools served by the LEA are designated with a school locale code of 41, 42, or 43 by the Department's National Center for Education Statistics (NCES); or the Secretary has determined, based on a demonstration by the LEA and concurrence of the State educational agency, that the LEA is located in an area defined as rural by a governmental agency of the State.

(b) The LEA is a member of an educational service agency (ESA) that does not receive SRSA funds, and the LEA meets the eligibility requirements described in (a)(1) and (2) above.

(c) The LEA meets the requirements for a hold harmless award as described in section 5212(b)(4) of the ESEA, as amended by the ESSA. These are LEAs that are no longer eligible for the SRSA program because of amendments made under the ESSA to the locale code designations referenced in section 5211(b)(1)(A)(ii) of the ESEA, as amended by the ESSA. However, these LEAs may receive a FY 2017 award at a reduced rate as described in section 5212(b)(4) of the ESEA, as amended by the ESSA.

**Note:** A new "Choice of Participation" provision under section 5225 of the ESEA, as amended by the ESSA, gives LEAs eligible for both SRSA and the Rural and Low-Income School (RLIS) program authorized under title V, part B, subpart 2 of the ESEA, as amended by the ESSA, the option to participate in either the SRSA program or the RLIS program. LEAs eligible for both SRSA and RLIS are referred to as "dual-eligible LEAs".