

agency, or instrumentality. Such solicitations for offers shall establish criteria under which all responses will be judged. Such criteria may include sanitation practices, personnel, staffing, menu pricing and portion sizes, menu variety, budget and accounting practices. If the proposal received from the State licensing agency is judged to be within a competitive range and has been ranked among those proposals which have a reasonable chance of being selected for final award, the property managing department, agency, or instrumentality shall consult with the Secretary as required under paragraph (a) of this section. If the State licensing agency is dissatisfied with an action taken relative to its proposal, it may file a complaint with the Secretary under the provisions of § 395.37.

(c) All contracts or other existing arrangements pertaining to the operation of cafeterias on Federal property not covered by contract with, or by permits issued to, State licensing agencies shall be renegotiated subsequent to the effective date of this part on or before the expiration of such contracts or other arrangements pursuant to the provisions of this section.

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, Federal property managing departments, agencies, and instrumentalities may afford priority in the operation of cafeterias by blind vendors on Federal property through direct negotiations with State licensing agencies whenever such department, agency, or instrumentality determines, on an individual basis, that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided employees: *Provided, however,* That the provisions of paragraphs (a) and (b) of this section shall apply in the event that the negotiations authorized by this paragraph do not result in a contract.

#### § 395.34 Application for permits.

Applications for permits for the operation of vending facilities other than cafeterias shall be made in writing on the appropriate form, and submitted for the review and approval of the head

of the Federal property managing department, agency, or instrumentality.

#### § 395.35 Terms of permit.

Every permit shall describe the location of the vending facility including any vending machines located on other than the facility premises and shall be subject to the following provisions:

(a) The permit shall be issued in the name of the applicant State licensing agency which shall:

(1) Prescribe such procedures as are necessary to assure that in the selection of vendors and employees for vending facilities there shall be no discrimination because of sex, race, age, creed, color, national origin, physical or mental disability, or political affiliation; and

(2) Take the necessary action to assure that vendors do not discriminate against any person or persons in furnishing, or by refusing to furnish, to such person or persons the use of any vending facility, including any and all services, privileges, accommodations, and activities provided thereby, and comply with title VI of the Civil Rights Act of 1964 and regulations issued pursuant thereto.

(b) The permit shall be issued for an indefinite period of time subject to suspension or termination on the basis of compliance with agreed upon terms.

(c) The permit shall provide that:

(1) No charge shall be made to the State licensing agency for normal cleaning, maintenance, and repair of the building structure in and adjacent to the vending facility areas;

(2) Cleaning necessary for sanitation, and the maintenance of vending facilities and vending machines in an orderly condition at all times, and the installation, maintenance, repair, replacement, servicing, and removal of vending facility equipment shall be without cost to the department, agency, or instrumentality responsible for the maintenance of the Federal property; and

(3) Articles sold at vending facilities operated by blind licensees may consist of newspapers, periodicals, publications, confections, tobacco products, foods, beverages, chances for any lottery authorized by State law and conducted by an agency of a State within

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such State, and other articles or services as are determined by the State licensing agency, in consultation with the on-site official responsible for the Federal property of the property managing department, agency or instrumentality, to be suitable for a particular location. Such articles and services may be dispensed automatically or manually and may be prepared on or off the premises in accordance with all applicable health laws.

(d) The permit shall further provide that vending facilities shall be operated in compliance with applicable health, sanitation, and building codes or ordinances.

(e) The permit shall further provide that installation, modification, relocation, removal, and renovation of vending facilities shall be subject to the prior approval and supervision of the on-site official responsible for the Federal property of the property managing department, agency, or instrumentality, and the State licensing agency; that costs of relocations initiated by the State licensing agency shall be paid by the State licensing agency; and that costs of relocations initiated by the department, agency, or instrumentality shall be borne by such department, agency, or instrumentality.

(f) The operation of a cafeteria by a blind vendor shall be covered by a contractual agreement and not by a permit.

**§ 395.36 Enforcement procedures.**

(a) The State licensing agency shall attempt to resolve day-to-day problems pertaining to the operation of the vending facility in an informal manner with the participation of the blind vendor and the on-site official responsible for the property of the property managing department, agency, or instrumentality as necessary.

(b) Unresolved disagreements concerning the terms of the permit, the Act, or the regulations in this part and any other unresolved matters shall be reported in writing to the State licensing agency supervisory personnel by the Regional or other appropriate official of the Federal property managing department, agency, or instrumentality in an attempt to resolve the issue.

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**§ 395.37 Arbitration of State licensing agency complaints.**

(a) Whenever any State licensing agency determines that any department, agency, or instrumentality of the United States which has control of the maintenance, operation, and protection of Federal property is failing to comply with the provisions of the Act or of this part and all informal attempts to resolve the issues have been unsuccessful, such licensing agency may file a complaint with the Secretary.

(b) Upon receipt of a complaint filed under paragraph (a) of this section, the Secretary shall convene an ad hoc arbitration panel which shall, in accordance with the provisions of 5 U.S.C. ch. 5, subchapter II, give notice, conduct a hearing and render its decision which shall be final and binding on the parties except that such decision shall be subject to appeal and review as a final agency action for purposes of the provisions of 5 U.S.C. ch. 7. The arbitration panel convened by the Secretary to hear complaints filed by a State licensing agency shall be composed of three members appointed as follows:

(1) One individual designated by the State licensing agency;

(2) One individual designated by the head of the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose; and

(3) One individual, not employed by the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose, who shall be jointly designated by the other members of the panel and who shall serve as chairman of the panel.

(c) If either the State licensing agency or the head of the Federal department, agency, or instrumentality fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

(d) If the panel finds that the acts or practices of any department, agency, or instrumentality are in violation of the Act or of this part, the head of any such department, agency, or instrumentality (subject to any appeal under paragraph (b) of this section) shall