

modern diesel submarines; and train with the actual sensors and weapons systems used in combat to mimic realistic wartime conditions.

The Draft OEIS/EIS evaluates the potential impacts of five alternatives for USWTR including the No Action Alternative. The alternatives were evaluated in the Draft OEIS/EIS to ensure they met the purpose and need, giving due consideration to the following: physiographic features (water depth, range area length/width ratio, shallow/deep water depth ratio, and range orientation to the shoreline), adequacy of support infrastructure (shore landing site for trunk cable and helicopter training and recovery support), climatological criteria (visibility, wind speeds, and wave height), proximity to homeports/air stations (helicopter, submarine, and surface ship homeports), range installation and use (commercial fishing, ocean currents, and bottom type), and non-critical support infrastructure (air space control, shore landing site, and proximity to docking facility for range support craft).

These alternatives include: The No Action Alternative, under which no USWTR would be installed off the east coast of the U.S., although ASW training, including active sonar activities, would continue across Navy operating areas (OPAREAs) and adjacent areas; Site A (Preferred Alternative) which would be located offshore of northeastern Florida in the Jacksonville OPAREA; Site B, located offshore of Charleston, South Carolina in the Charleston OPAREA; Site C, located offshore of southeastern North Carolina, within the Cherry Point OPAREA; and Site D, located offshore of the northeastern coast of Virginia in the VACAPES OPAREA. Two alternative sites, Gulf of Mexico and Gulf of Maine, were eliminated from further consideration because of distance and climatology.

The Draft OEIS/EIS analyzed potential impacts on multiple resources including, but not limited to: The marine environment; biological resources, including threatened and endangered species; and socioeconomic resources. No significant adverse impacts were identified for any resource area for any of the alternatives that cannot be mitigated, with the exception of exposure of marine mammals to underwater sound.

The Navy has applied to NMFS under the Marine Mammal Protection Act for a Letter of Authorization and governing regulations to authorize incidental takes of marine mammals that may result from operation of the proposed USWTR.

The Navy is consulting with NMFS under section 7 of the Endangered Species Act on the potential for effects on sea turtles from installation and operation of the proposed range.

The USWTR Draft OEIS/EIS was distributed to Federal, State, and local agencies, elected officials, and other interested individuals and organizations on September 12, 2008. The public comment period will end on October 27, 2008. Copies of the USWTR Draft OEIS/EIS are available for public review at the following libraries: Chincoteague Island Library, 4077 Main Street, Chincoteague, VA; Eastern Shore Public Library, 23610 Front Street, Accomac, VA; Virginia Beach Central Library, 4100 Virginia Beach Boulevard, Virginia Beach, VA; Worcester County Library, Ocean City Branch, 200 14th Street, Ocean City, MD; Wicomico County Free Library, 122 South Division Street, Salisbury, MD; Carteret County Public Library, 210 Turner Street, Beaufort, NC; Onslow County Public Library, 58 Doris Avenue East, Jacksonville, NC; Charleston County Library, 68 Calhoun Street, Charleston, SC; and Jacksonville Public Library, Regency Square Branch, 9900 Regency Boulevard, Jacksonville, FL.

The USWTR Draft OEIS/EIS is also available for electronic public viewing at <http://projects.earthtech.com/uswtr/>. A paper copy of the Executive Summary or a single CD with the USWTR Draft OEIS/EIS will be made available upon written request by contacting Naval Facilities Engineering Command, Atlantic Division; Attention: Code EV22LL (USWTR OEIS/EIS PM); 6506 Hampton Blvd; Norfolk, VA 23508-1278. Facsimile: 804-200-5568. Federal, State, and local agencies and interested parties are invited to be present or represented at the public hearing. Written comments can also be submitted during the open house sessions preceding the public hearings.

Oral statements will be heard and transcribed by a stenographer; however, to ensure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on the Draft OEIS/EIS and will be responded to in the Final OEIS/EIS. Equal weight will be given to both oral and written statements. In the interest of available time, and to ensure all who wish to give an oral statement have the opportunity to do so, each speaker's comments will be limited to three (3) minutes. If a long statement is to be presented, it should be summarized at the public hearing with the full text submitted either in writing at the hearing, or mailed or faxed to Naval

Facilities Engineering Command, Atlantic Division; Attention: Code EV22LL (USWTR OEIS/EIS PM); 6506 Hampton Blvd; Norfolk, VA 23508-1278. Facsimile: 804-200-5568.

In addition, comments may be submitted on-line at <http://projects.earthtech.com/uswtr/> during the comment period. All written comments must be postmarked by October 27, 2008 to ensure they become part of the official record. All comments will be addressed in the Final OEIS/EIS.

Dated: September 5, 2008.

**T. M. Cruz,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

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**BILLING CODE 3810-FF-P**

## 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:** The Department of Education (Department) gives notice that on December 5, 2007, an arbitration panel rendered a decision in the matter of *Hawaii Department of Human Services, Vocational Rehabilitation and Services for the Blind Division v. United States Department of Defense, Department of the Navy (Case No. R-S/06-4)*. This panel was convened by the Department under 20 U.S.C. 107d-1(b), after the Department received a complaint filed by the petitioner, the Hawaii Department of Human Services, Vocational Rehabilitation and Services for the Blind Division.

**FOR FURTHER INFORMATION CONTACT:** You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 5022, Potomac Center Plaza, Washington, DC 20202-2800. *Telephone:* (202) 245-7374. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** Under section 6(c) of 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

The Hawaii Department of Human Services, Vocational Rehabilitation and Services for the Blind Division, the State Licensing Agency (SLA) alleged violations by the United States Department of Defense, Department of the Navy (Navy) of the Act, and the implementing regulations in 34 CFR part 395. Specifically, the SLA alleged the Navy improperly denied the SLA's request to establish a Randolph-Sheppard vending facility at three parcels of real property located at the Pearl Harbor Naval Base. The Navy owned the parcels but leased them to private entities as described in this notice.

In 1999, Congress gave the Navy authority to lease or convey real and personal property in Hawaii that was not needed for Navy operations. On June 30, 2003, the Navy entered into a lease with Fluor Hawaii, LLC, which was terminated in April 2007, covering an area of property at Pearl Harbor immediately adjacent to the USS Arizona Memorial Visitor Center that is known as Halawa Landing. The lease granted exclusive use and possession of the property for a term of 65 years and provided that the property be used solely for a support facility for visitor attractions.

In November 2004, the lessee entered into an agreement with the Pearl Harbor Visitor Center (PHVC) providing for the provision of visitors services at Halawa Landing including but not limited to food, beverage, bag storage, and visitor information. Between late 2004 and early 2007, PHVC operated several food concessions and other visitor services in a large white tent constructed on a portion of the Halawa Landing property adjacent to the primary parking lot used by visitors. A blind vendor operated a food stand at the entrance to that complex pursuant to a concession granted by the National Park Service.

In June 2003, the Navy entered into a lease with a private party for Ford Island, which covered certain Pearl Harbor property on which old and underutilized airplane hangars stood. In 2006, the lessee subleased a portion of the area to the Pacific Aviation Museum (PAM) at Pearl Harbor. The PAM included a cafe, which sold a variety of food and beverages.

On July 7, 1986, the Navy leased certain property near Halawa Landing

for the sole purpose of establishing a museum. Inside the museum, known as the USS Bowfin Museum, was a hot dog cart where, in addition to hot dogs, sandwiches, snacks, beverages, and ice cream, some nonfood items were sold.

The SLA alleged that the three parcels of real property at the Pearl Harbor Naval base leased by Navy to a private entity were in violation of the Act that authorizes blind persons to operate vending facilities on any Federal property. Navy responded that the Act did not apply to leased property. After several informal attempts to resolve this dispute, the SLA filed for Federal arbitration in February 2006. A hearing on this matter was held on July 25, 2007.

*The issues heard by the arbitration panel were:* whether the act applies to real property owned by Navy if leased to a private entity and whether an arbitration panel convened under the Act can award monetary damages.

### Arbitration Panel Decision

After reviewing all of the records and hearing testimony of witnesses, the panel ruled for the Navy. While finding the Act ambiguous with regard to whether the priority provisions of the Act at 20 U.S.C. 107(b) applies to Federally owned property that has been leased to a private entity, the panel concluded, based on legislative history as well as the text of the Act and its implementing regulations, that the priority applies only on property "controlled, maintained, or operated by Federal agencies."

Specifically, the panel majority found that Congress had authorized the Secretary of the Navy to sell or lease any property in excess of the needs of the Navy. The Navy entered into lease agreements granting exclusive use and possession of the leased properties. With respect to the USS Bowfin Museum, the arbitration panel determined that, because no cafe or cafeteria was planned for the museum, the SLA's claims regarding the museum were moot. With respect to the Halawa Landing and PAM properties, the majority concluded that the priority did not apply because the Navy did not control the leased properties.

Furthermore, the panel concluded that the satisfactory site provisions of the Act did not apply because no Federal employees used the properties and there was not any Federal office space located there. Based upon the foregoing, the panel ruled that the Act's priority did not apply to these properties leased by the Navy.

Lastly, although stating that the concession area in the white tent at

Halawa Landing apparently damaged the blind vendor financially, the panel concluded that the Act does not prohibit competition except in instances where vending machines are in direct competition with a blind vendor's facility, which did not occur here. In addition, the panel concluded that the SLA would not be entitled to damages even if the Navy violated the Act because the Act does not authorize the panel to make damages awards. One panel member concurred with the majority opinion and one panel member dissented.

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

### Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using 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.gpoaccess.gov/nara/index.html>.

Dated: September 8, 2009.

**Tracy R. Justesen,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 12569–001]

#### Public Utility District No. 1 of Okanogan County; Notice of Application Tendered for Filing With the Commission

September 5, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

- a. *Type of Application:* Major License.
- b. *Project No.:* P–12569–001.