the same attorneys whom he fired on July 22, 2009. The Panel then asked the attorneys to confirm that they represented Mr. Werwie and proposed a conference call to be held on September 2, 2010.

On August 30, one of the attorneys, Mr. Leiterman, responded by email that Mr. Werwie asked him and his colleague to represent him in this case. Mr. Leiterman continued that they had ''agreed in principle,'' and they expected the letter of representation to be signed in the next week. However, in the two weeks that followed, the Panel did not hear from either attorney.

On September 17, 2010, the Panel sent Mr. Werwie a letter indicating that it would grant the PA OVR's motion to dismiss if Mr. Werwie did not respond by November 1, 2010. Neither Mr. Werwie nor his attorneys responded to the motion to dismiss. On March 17, 2011, the Panel granted the PA OVR's motion to dismiss for failure to prosecute.

Synopsis of the Panel Decision

The Panel reviewed the statutory language of the Act and the RSA's implementing regulations, policies, and procedures. The Panel concluded that it has the authority to grant a motion to dismiss in this case without first conducting a hearing. It also concluded that there were unusual circumstances present in this case, notably delays in the process due to the change of Mr. Werwie's lawyers. The Panel repeatedly warned Mr. Werwie that his failure to move the case forward could result in dismissal and noted that he chose not to file a response at all although he was given ample time to do so. Because of these circumstances, the Panel decided that granting the PA OVR's motion to dismiss for Mr. Werwie's failure to prosecute was an appropriate exercise of its discretion.

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.

[FR Doc. 2017–07727 Filed 4–14–17; 8:45 am]

BILLING CODE 4000–01–P

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 May 30, 2012, an arbitration panel (the Panel) rendered a decision in the matter of the *Colorado Department of Human Services, Division of Vocational Rehabilitation, Business Enterprise Program* v. *the United States Department of Defense, Department of the Air Force* (Case no. R–S/10–06).

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 5028, 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(b), after receiving a complaint from the Colorado Department of Human Services, Division of Vocational Rehabilitation, Business Enterprise Program. 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

This is an arbitration between the Colorado Department of Human Services and the United States Department of Defense, Department of the Air Force, pursuant to the Act.

From October 1, 2006 through March 31, 2011, Don Hudson, a blind vendor licensed by the complainant, the Colorado Department of Human Services (CO DHS), Division of Vocational Rehabilitation, Business Enterprise Program, operated the High Country Inn, a food service operation located at the United States Air Force Academy near Colorado Springs, Colorado. In 2010, the respondent, the United States Department of Defense, Department of the Air Force (Air Force), published a competitive bidding announcement for the operation of the High Country Inn. The Air Force included in its solicitation for this contract a requirement that only those offerors whose price was within 5 percent of the lowest offeror's price would be considered for award of the contract.

The CO DHS's bid was in excess of this 5 percent competitive range and, accordingly, the CO DHS was eliminated from competition for the contract. The contract was awarded to the lowest bidder.

The CO DHS filed a complaint with the United States Secretary of Education pursuant to the Act and its regulations. The CO DHS claimed that the 5 percent competitive range was set at such a low figure that it eliminated the priority to be afforded to blind vendors under the Act and its regulations. It also asserted that the Air Force misled it into thinking it had the lowest bid and, therefore, the CO DHS did not reduce its price when it had the opportunity to revise its bid in response to an amendment to the solicitation. In addition, it claimed that the Air Force should have conducted direct negotiations with the blind vendor rather than using a competitive process.

The CO DHS also claimed that the Air Force violated 34 CFR 395.20(b) because the 5 percent competitive range was a limitation that the Air Force did not justify in writing to the Secretary of Education. Finally, the CO DHS asserted that the 5 percent competitive range was unlawful because it was based on the August 29, 2006, Joint Report to Congress, which required the setting of this competitive range but had not yet been implemented.

Synopsis of the Panel Decision

The Panel held, with one member dissenting, that the CO DHS had waived

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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You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

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.

[FR Doc. 2017–07728 Filed 4–14–17; 8:45 am]

BILLING CODE 4000–01–P

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