ORDER

4950.1B

Vending Facility Program

July 22, 1987

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

Distribution: A-XYZ-3; A-FOF-0 (LTD); ZLG-369; A-W-2

Initiated By: ALG-110

FOREWORD

The administration and control of the Federal Aviation Administration's vending facility program, which includes cafeterias, shall be directed toward providing FAA employees with high quality and convenient service at reasonable prices under sanitary, healthful conditions.

This directive contains guidelines to help FAA personnel who are involved in the day-to-day operation of the agency's vending facility program to achieve that objective.

It also implements the Department of Education Regulations which carry out the 1974 Randolph-Sheppard Act Amendments mandate. The amendments are primarily designed to ensure that a blind person who has been licensed by a State agency for the blind is afforded priority in the operation of vending facilities, which include cafeterias, on FAA controlled property.

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and Materiel Service

TABLE OF CONTENTS

		Page No.
CHAPTER 1.	GENERAL.	1
1.	Purpose.	1
2.	Distribution.	1
3.	Cancellation.	1
4.	Explanation of Changes.	1
5.	Forms and Reports.	1
6.	Exception.	2
CHAPTER 2.	GUIDELINES	3
7.	Responsibility.	3
8.	Priorities.	3
9.	Criteria for Establishing New Cafeterias and Other Types of Food Establishments.	3 (and 4)
10.	Food Service Equipment.	4
11.	Space Rental Fees and Utility Charges.	4
12.	Term of Contract.	4
13.	Minority Business Enterprises.	5
14.	Bonds.	5
15.	Insurance.	5
16.	Hours of Service.	5
17.	Monetary Receipts.	5
18.	Audit.	5
CHAPTER 3.	RANDOLPH-SHEPPARD ACT.	6
19.	Location and Operation of Vending Facilities for Blind Vendors on FAA-Controlled Property.	6
20.	Acquisition and Occupation of Federal Property.	6
21.	Collection and Distribution of Vending Machine Income from Vending Machines on Federal Property.	8
22.	Application for Permits.	11
23.	Terms of the Permit.	12
24.	Operation of Cafeterias by Blind Vendors.	14
25.	Arbitration of State Licensing Agency Complaints.	15
26.	Reporting Requirements.	16
CHAPTER 4.	EMPLOYEE WELFARE AND RECREATION ASSOCIATIONS	17
27.	Authority.	17
28.	Determination and Finding.	17
29.	Prerequisites.	17

		Page No.
CHAPTER 5.	NEGOTIATIONS.	18
30.	Types of Contracts.	18
31.	Requests for Proposals.	19
32.	Selection of Offerors.	20
33.	Preproposal Conference.	20
34.	Evaluation Team.	20
35.	Evaluation Criteria.	21
36.	Evaluation Techniques.	22
37.	Evaluation Report.	22
38.	Contracting Officer's Responsibility.	23
39.	Discussions with Offerors.	23
40.	Competitive Range.	23
41.	Debriefing of Unsuccessful Offerors.	24
CHAPTER 6.	CLAUSES.	26
42.	General.	26
43.	Definitions.	27
44.	Assignment.	26
45.	Government-Operator Relationship.	27
46.	Federal, State, and Local Law.	27
47.	Termination.	27
48.	Waiver of Performance.	28
49.	Work Stoppage or Strike.	28
50.	Fair Labor Standards Act.	28
51.	Security.	29
52.	Facility Rules and Regulations.	29
53.	Restrictions.	29
54.	Promotion.	29
55.	Sanitation.	30
56.	Inspections.	30
57.	Establishment and Control of Prices and Services.	30
58.	Responsibilities of the Government.	31
59.	Responsibilities of the Operator.	32
60.	Employees of Operator.	32
61.	Payment to the Government.	34
62.	Equipment.	34
63.	Surrender of Possessions.	36
64.	Establishment of Operating Facilities.	36
65.	Accounting Records of the Operator.	37
66.	Accounting Data.	37
67.	Service Contract Act.	38
68.	Payment of Interest on Contractor's Claim.	38
69.	Disputes.	38

Page No.

CHAPTER 6. CLAUSES. (Continued)

70. Convict Labor. 38
71. Utilization of Small Business Concerns. 38
72. Utilization of Minority Business Enterprises. 38
73. Listing of Employment Openings. 38
74. Employment of the Handicapped. 38
75. Liability Insurance. 38
76. Contract Work Hours and Safety Standards Act-Overtime Compensation. 38
77. Equal Opportunity. 38
78. Officials Not to Benefit. 38
79. Examination of Records by Comptroller General. 38

APPENDIX 1. NOTICE OF FAA'S INTENTION TO ACQUIRE OR OTHERWISE OCCUPY A BUILDING

APPENDIX 2. APPLICATION AND PERMIT FOR THE ESTABLISHMENT OF A VENDING FACILITY

APPENDIX 3. POLICIES AND PROCEDURES FOR CONVENING AND CONDUCTING AN ARBITRATION

APPENDIX 4. LIABILITY INSURANCE

CHAPTER 1. GENERAL

1. PURPOSE.

a. This order prescribes guidelines and procedures for soliciting, awarding and administering vending facility contracts, including cafeterias, to serve agency employees on property occupied and controlled by the Federal Aviation Administration.

b. It also sets forth guidelines for implementation of the Randolph-Sheppard Act amendments, which accord priority to the blind in operating vending facilities, require suitable vending facility sites in FAA-owned or occupied buildings, and require vending machine income-sharing on property under the FAA's jurisdiction.

c. When used in this directive "vending facility" means automatic vending machines, cafeterias, snack-bars, cart service and counters.

2. DISTRIBUTION. This directive is distributed to division level in Headquarters; branch level in regions and centers; all field offices and facilities, and to all holders of the Federal Acquisition Regulation.

3. CANCELLATION. Order 4950.1A, Vending Facility Program, is canceled.

4. EXPLANATION OF CHANGES.

a. Changes Federal Procurement Regulation references to Federal Acquisition Regulation references.

b. Substitutes the Department of Education for the Department of Health, Education and Welfare and makes other organizational title changes to reflect the transfer of responsibility for implementing the Randolph-Sheppard Act.

5. FORMS AND REPORTS.

a. Forms.

(1) Request for Proposals. Standard Forms 33 may be used as set forth in FAR 15.406.

(2) Award Documents. Standard Forms 26 or 33 may be used as set forth in FAR 53.214 or 53.215-1.

(3) Small Purchase forms shall not be utilized for concession services contracts.

(4) Security. Standard Forms 86 and FD-258 shall be used for security checks in accordance with paragraph 51 of this directive.

b. Reports.

(1) Randolph-Sheppard reporting requirements. The report required by paragraph 26 of this directive shall be submitted to ALG-100, on or before November 1 of each year.

6. EXCEPTION. This directive DOES NOT apply to facilities controlled and operated by the FAA for the purpose of serving the general public.

CHAPTER 2. GUIDELINES

7. RESPONSIBILITY. The Managers, Logistics Divisions (for AAC, the Manager, Procurement Division) shall be responsible for administering the FAA vending facility program at facilities within their geographical jurisdictions.

8. PRIORITIES. The order of priority for soliciting a vending facility operator to provide food service and/or operate vending machines on property occupied and controlled by the Federal Aviation Administration is as follows:

a. State licensing agency for the blind.

b. 8(a) firms.

c. Other minority firms.

d. Eligible organizations for the handicapped and handicapped individuals.

e. Commercial operators.

f. Employee welfare and recreation associations.

9. CRITERIA FOR ESTABLISHING NEW CAFETERIAS AND OTHER TYPES OF FOOD ESTABLISHMENTS.

a. The FAA must first determine if a facility is subject to the Randolph-Sheppard Act provisions. (See Chapter 3.) If not, the following factors should be considered in determining if it is feasible to rely on nearby food establishments, in lieu of establishing vending facilities on property controlled and occupied by FAA.

(1) Accessibility. Such food establishments must be conveniently located, so that employees can reach them, obtain service and return to duty within the time allowed for that purpose.

(2) Suitability. To be acceptable, good quality service must be available at reasonable competitive prices, in clean, neat surroundings.

(3) Adequacy. The nearby food establishments must be able to serve FAA employees and their other patrons during required service hours, with reasonable promptness.

b. If it is not feasible to depend on nearby food establishments, the FAA may establish a vending facility if the following prerequisites are met:

(1) Justification. There must be adequate justification

for establishing a vending facility as set forth in this paragraph.

(2) Space. Sufficient, satisfactory space must be available.

(3) Funding. Sufficient funds must be available to the FAA in order to defray the costs for which the Government will be responsible.

(4) Necessity. The services must be necessary for the health or efficiency of agency employees while on duty.

(5) Codes. It shall be possible to establish and operate each vending facility in conformance with safety, health, and sanitary codes.

10. FOOD SERVICE EQUIPMENT. Generally, FAA shall furnish, install and connect all original food service equipment of fixed or substantially permanent nature, except vending machines operated under the provisions of the Randolph-Sheppard Act. Other food service equipment, including cash registers, should be provided by the concessionaire.

11. SPACE RENTAL FEES AND UTILITY CHARGES.

a. Blind vendors shall not be charged for Government space. Utilities and other support services may be provided without charge in accordance with 11.c. below.

b. Employee welfare and recreation associations, commercial cafeteria operators, and/or commercial vending machine operators should be assessed charges for space at a rate equivalent to commercial rents for comparable property and services. Utility charges should be assessed, based either on separate metering or appropriate proration by space occupied or by other acceptable methods for prorations.

c. Notwithstanding 11.b. above, space rental and/or utility charges may be waived or reduced upon determination by the regional or center director that uninterrupted operation of the vending facility is essential to the efficiency of operations of the activity and a significant factor in hiring and retaining employees and promoting employee morale.

12. TERM OF CONTRACT. (This paragraph does not apply to permits issued to State licensing agencies for the blind under the Randolph-Sheppard Act. (See Chapter 3)).

a. There is no statutory limitation for the term of a cafeteria contract in non-GSA activities. However, each contract

shall establish a definite period beyond which the contract and extensions thereof shall not be allowed to run.

b. The contract may permit termination by either of the contracting parties, without cause, after 90 days written notice to the other party. The 90-day notice provision is intended to allow the parties ample time in which to prepare for the transition necessitated by termination.

13. MINORITY BUSINESS ENTERPRISES. (This paragraph applies only when the state licensing agency is not interested in establishing a vending facility or the FAA facility is not subject to Randolph-Sheppard Act.) Prior to solicitation, the Contracting Officer shall, in conjunction with SBA, ascertain whether capable minority firms are available to permit the award of the project under the SBA Section 8(a) program. This can best be accomplished by alloting sufficient lead time to locate an acceptable firm and still satisfy the date for initiating the service. Upon identification of a potential 8(a) source the Contracting Officer, together with the facility Manager, shall survey the firm's capabilities. If satisfactory, the Contracting Officer shall proceed with the award of a contract in accordance with FAR 19. Where the 8(a) procedure is not appropriate, minority business enterprises shall be given every opportunity to submit bids or proposals and shall be considered for award. A record shall be made in the solicitation file in each such case of the efforts made to locate and award to minority business enterprises.

14. BONDS. At the discretion of the Contracting Officer and if required by the solicitation, the operator may be required to furnish a Performance Bond to guarantee the faithful performance of his obligations under the contract. The Performance Bond, if required, shall be of an amount determined by the Contracting Officer to be adequate to protect the Government's interest and shall be furnished prior to commencement of operations of the facilities.

15. INSURANCE. All contracts shall include the clause for contractor liability insurance contained in Appendix 4 herein, entitled Liability Insurance.

16. HOURS OF SERVICE shall be determined on a case-by-case basis by the Contracting Officer and the appropriate Facility Chief.

17. MONETARY RECEIPTS received by the Government from Operators for space, utilities, and other services shall be deposited into the U.S. Treasury as Miscellaneous Receipts, via the serving Accounting Division.

18. AUDIT. The Contracting Officer shall request the DOT Regional Office of Inspector General to conduct periodic spot reviews and audits during the term of the agreement. The frequency of such audits shall be determined jointly by the Contracting Officer and the Audit Manager.

CHAPTER 3. RANDOLPH-SHEPPARD ACT

19. LOCATION AND OPERATION OF VENDING FACILITIES FOR BLIND VENDORS ON FAA-CONTROLLED PROPERTY.

a. Blind persons licensed by a State Licensing Agency (SLA) for the blind shall be given priority in the operation of vending facilities, including cafeterias, on FAA-controlled property.

b. When the location and/or operation of a blind vending facility would adversely affect the interests of the United States, a complete, written justification shall be furnished to the Secretary of Education, who will make the final determination. Each determination shall be a matter of public record by publication in the Federal Register.

c. The regulations governing this program (45 CFR Part 1369) do not define "adversely affect the interests of the United States," because the statute requires a case-by-case determination. If a regional or center director believes that the establishment of a blind vending facility would adversely affect the interests of the United States, he shall make a written finding to that effect.

(1) The finding shall be signed by the regional or center director, with concurrence of regional or center counsel, and be addressed to the Director, Acquisition and Materiel Service, ALG-1.

(2) ALG will prepare a letter to the Secretary of Education, coordinate the letter with the FAA Chief Counsel, and forward it through normal channels to the Administrator (AOA-1). If ALG-1 does not concur, the appropriate regional or center director shall be advised and provided guidance in resolving the matter. If the matter cannot be resolved between ALG-1 and the regional or center director, ALG-1 will forward all appropriate correspondence through normal channels to AOA-1 for establishment of an agency position. If AOA-1 concurs with the findings, a determination to that effect will be requested from the Secretary of Education.

20. ACQUISITION AND OCCUPATION OF FEDERAL PROPERTY.

a. The following requirements are effective on and after the date of this directive except as provided below.

(1) Any FAA acquired (purchased, rented, or leased), constructed or substantially altered or renovated building is required to have one or more satisfactory sites for a blind-operated vending facility.

(a) Substantial alteration or renovation is considered to be a permanent material change in the floor area of a building which would render it appropriate for the location and operation of a vending facility by a blind vendor.

(b) Satisfactory site means an area fully accessible to vending facility patrons which has:

1 A minimum of 250 square feet available for the vending and storage articles necessary for the operation of a vending facility; and

2 Sufficient electrical, plumbing, heating, and ventilation outlets for the location and operation of vending facilities in accordance with applicable health laws and building codes.

(2) A region or center will notify by certified or registered mail, return receipt requested, the appropriate State licensing agency of buildings to be acquired or substantially altered or renovated. (See Appendix 1.) This notification will be provided at least sixty (60) days in advance of the intended acquisition date or the initiation of actual construction, alteration, or renovation. As a practical matter, the State licensing agency should be contacted early in the planning or design stage of a project. The notice will enable the Statge licensing agency to determine if it wants a vending facility in the building and will:

(a) Indicate that a satisfactory site or sites for the location and operation of a blind vending facility is included in the plans for the building;

(b) Forward a copy of a single line drawing indicating the proposed location of such site or sites; and

(c) Assure the State licensing agency that, subject to the approval of the FAA, it will be offered the opportunity to select the location and type of vending facility to be operated by a blind vendor prior to completion of the final space layout of the building.

(3) Responsibility for notification rests with Logistics Division Managers (Procurement Division in AAC), who shall be the designated contact point for the State licensing agencies. A copy of the notice and response, if any, shall be provided to the Division for Blind and Visually Impaired, Rehabilitation Services Administration, Department of Education, Washington, DC 20201.

(4) The State licensing agency shall be given the opportunity to visit the proposed vending facility site prior to preparation of the final space layout.

(5) The State licensing agency must respond within thirty (30) days acknowledging receipt of the notice from the FAA region or center and indicating whether it is interested in establishing a vending facility, and if interested, indicating its agreement or alternate selection of location and its selection of type of vending facility.

(6) If no response is received within the thirty (30) day period, the FAA region or center will notify the Secretary of Education at the address in (3) above that the State licensing agency's failure to respond has been construed as a determination by the SLA that the number of persons using the property is or will be insufficient to support a vending facility and that a satisfactory site to be operated under the auspices of the SLA will not be incorporated, unless directed by the Secretary of Education. This notification will also be provided if the SLA responds and affirmatively indicates that it has made such a determination.

b. The Secretary of Education has determined that the requirement to provide a satisfactory site, as delineated in a. above, does not apply:

(1) When fewer than 100 Federal employees will be located in the building during normal working hours; or

(2) When a building in which services are to be provided to the general public contains less than 15,000 square feet to be used for Federal Government purposes; or

(3) When a region or center is leasing all or part of a privately owned building in which the lessor or any of its tenants have an existing restaurant or other food facility in a part of the building not covered by the lease and operation of a vending facility would be in substantially direct competition with such restaurant or other food operation; or

(4) When the SLA and the Secretary of Education determine that the number of persons using the Federal property is or will be insufficient to support a vending facility; or

(5) When there is an existing vending facility on the Federal property which is not covered by contract with, or by permits issued to, SLA's. However, the SLA must be notified of the expiration of the existing contract or permit in accordance with the provisions of this chapter 3.

21. COLLECTION AND DISTRIBUTION OF VENDING MACHINE INCOME FROM VENDING MACHINES ON FEDERAL PROPERTY.

a. Definitions. The following terms, as defined in 34 CFR 395.1, are unique to this program and require special attention.

(1) Vending machine. For the purpose of assigning vending machine income under this paragraph, a vending machine is a coin (or currency) operated machine which dispenses those articles and services that are sold in blind-operated vending

facilities. The machines operated by the United States Postal Service for selling postage stamps or other postal products and services, machines providing services of a recreational nature, and telephones shall not be considered vending machines.

NOTE: The income from copy machines is to be made available for distribution to blind vendors in those cases where in the past such machines have been available within vending facilities operated by blind vendors.

(2) Vending machine income means receipts remaining to vending machine operators after deducting either:

(a) All applicable costs incurred (costs of goods, service maintenance, repair, cleaning, depreciation, supervisory and administrative personnel, normal accounting, accounting for income sharing and so forth); or

(b) Monies paid to the FAA or an employee welfare and recreation association by a commercial vending firm.

This definition applies to machines operated, serviced, or maintained on Federal property by, or with the approval of the FAA. It also applies to a commercial vending concern which operates, services, and maintains vending machines on FAA property for, or with the approval of the FAA. Receipts do not include a blind vendor's receipts. Commissions paid do not include those paid to a blind vendor.

(3) Direct competition means the presence and operation of a vending machine or a vending facility on the same premises as a vending facility operated by a blind vendor. Vending machines or vending facilities operated in areas where the majority of the employees normally do not have direct access (in terms of uninterrupted ease of approach and the amount of time required to patronize the vending facility) to the vending facility operated by a blind vendor shall not be considered in direct competition with that vending facility.

(4) Normal working hours means an eight-hour work period between the hours (approximately) of 8:00 a.m. - 6:00 p.m., Monday through Friday.

(5) Individual location, installation or facility means a single building or a self-contained group of buildings. A self-contained group of buildings is two or more buildings in close proximity to each other between which a majority of Federal employees working in the buildings regularly move from one building to another in the normal course of their official business during a normal working day.

b. Mandatory Distribution Requirements.

(1) Pursuant to 34 CFR 395.32, vending machine income, as defined in paragraph 21a(2), from vending machines on FAA-controlled property is required to be distributed to State licensing agencies. Distribution is made according to a formula which distinguishes situations in which the vending machine is in direct competition with a vending facility operated by a blind vendor from situations in which it is not. Where direct competition does not exist, the distribution formula further distinguishes between buildings which are open only during normal work hours from those which are open during non-normal work hours.

(2) Summary of distribution formula:

(a) One hundred percent of the vending machine income from a vending machine in "direct competition" with blind-operated vending facilities will be disbursed to the appropriate State Licensing Agency (SLA).

(b) Fifty percent of the vending machine income from vending machines not in "direct competition" with blind-operated vending facilities will be disbursed to the appropriate SLA.

(c) Thirty percent of the vending machine income from vending machines, not in "direct competition" with blind-operated vending facilities and located in a building where at least 50 percent of the total work hours worked on the premises occurs during other than "normal working hours," will be disbursed to the appropriate SLA.

c. Exemptions.

(1) The mandatory distribution requirements do not apply if vending machines are not in "direct competition" with a blind vending facility, and the total vending machine income from all such machines at any "individual location, installation, or facility" does not exceed $3,000.00 annually.

(2) The mandatory distribution requirements do not apply to existing arrangements under which the SLA receives a percentage of vending machine commissions less than that specified above, so long as the arrangement is covered by a contract with a specified expiration date, and upon expiration the contract is renegotiated according to the distribution formula.

(3) All arrangements pertaining to the operation of vending machines on Federal property not covered by contract with, or by permits issued to, State licensing agencies shall be renegotiated upon expiration of the existing contract or other arrangement to conform with the requirements of this directive.

d. Responsibility. The Regional and Center Logistics Division Managers (for AAC, Procurement Division Managers), or their duly-designated representatives, shall be responsible for:

(1) Assuring that vending machine income is collected and accounted for. Under no circumstances, shall the FAA become involved in the actual physical collection of vending machine income.

(2) Assuring that vending machine income is disbursed by the operator to the State licensing agency quarterly on a calendar year basis. The operator shall provide the FAA with a quarterly certified statement showing that such action has been taken. The first payment of income shall be made at the end of the first full quarter following the effective date of this directive.

(3) Determining, subject to the approval of the regional or center director, when a vending machine is in "direct competition" with a blind vending facility. A determination that a vending machine is not in "direct competition" with a blind vending facility shall be also subject to concurrence of the State licensing agency. In the event of a disagreement between the FAA region or center and the State licensing agency in the determination of whether a situation of direct competition exists, the disagreement should be resolved informally through negotiations between the FAA region or center and the SLA. If the negotiations do not resolve the disagreement, the matter would be appropriate for submittal to arbitration in accordance with Appendix 3.

22. APPLICATION FOR PERMIT.

a. This paragraph prescribes procedures for submission, review, and approval of permits for the establishment of vending facilities, other than cafeterias, on FAA-controlled property. The provisions of this paragraph and 34 CFR 395.35 shall be complied with in establishing a vending facility.

b. Authorization. In accordance with 34 CFR 395.34, the State licensing agency (SLA) shall submit the Department of Education form, Application and Permit for the establishment of a vending facility on Federal and other property, (see Appendix 2) for review and approval by the Logistics Division Manager (Procurement Division Manager in AAC).

c. Review of the permit. Upon receipt of a permit, the appropriate Logistics or Procurement Division Manager or their representative shall:

(1) Discuss all details of the permit with the SLA in order to develop a full and clear understanding of the type of facility proposed, the nature of the items to be sold, provisions for fixtures and equipments, the hours of operation, etc.

(2) Compare the type of facility to be provided and types of articles and services to be sold with the requirements as determined by FAA. Any discrepancies should be discussed and resolved with the SLA.

(3) Add the following clause to Attachment C of the permit if the SLA requests approval to prepare and sell brewed coffee and/or food items:

"Approval for the preparation and serving of brewed coffee and/or food items is subject to certification by the State licensing agency that the blind vendor is capable of performing these tasks in a safe and sanitary manner, in accordance with all applicable health, sanitation and building codes or ordinances, or that a sighted assistant will be employed to perform these tasks."

23. TERMS OF THE PERMIT.

a. The permit shall be issued in the name of the applicant State licensing agency.

b. The permit shall be issued for an indefinite period of time, subject to suspension or termination if either party does not comply with any of the terms and conditions of the permit.

c. The permit shall provide that:

(1) No charge shall be made by the FAA to the SLA for normal maintenance and repair of the building, or for cleaning areas adjacent to the designated vending facility boundaries, or for trash removal from a designated collection point.

(2) The SLA shall be responsible for cleaning and maintaining the appearance of and for the security of the vending facility within the designated boundaries of such facility and for all costs of every kind in conjunction with vending facility equipment, merchandise and other products to be sold, except as provided in (5) below. SLA shall be liable for the loss of, or damage to, property of the U.S. Government when such loss or damage is caused by the acts or omissions of SLA, the blind vendor or the employees or agents of the blind vendor. The SLA will also be responsible for the acts or omissions of the blind vendor, his employees or agents.

(3) Articles sold at such vending facilities may consist of newspapers, periodicals, publications, confections, tobacco products, foods, nonalcoholic beverages, or other articles or services which are determined by the SLA, in consultation with the Logistics or AAC Procurement Division Manager, to be suitable for a particular location.

(4) Vending facilities shall be operated in accordance with applicable health, sanitation and building codes, ordinances and regulations.

(5) Installation, modification, relocation, removal, and renovation of vending facilities shall be subject to the prior approval of the Logistics Division Manager (AAC Procurement Division Manager), and the SLA. Costs of installation, modification, removal, relocation or renovation shall be paid by the initiating party. In any case of suspension or termination of a permit to operate a vending facility on the basis of noncompliance by either party, the costs of removal from the building will be paid by the noncomplying party.

(6) The permit to the SLA shall also contain, if applicable, appropriate requirements for reimbursement or direct payment for support services such as utilities and telephone service.

d. If the blind licensee fails to provide satisfactory service or otherwise fails to comply with the requirements of the permit issued to the SLA, the appropriate Logistics or Procurement Division Managers shall coordinate with legal counsel and then notify the SLA of the deficiency in writing and request corrective action within a specified reasonable time. The notice shall indicate that failure to correct the deficiency will result in temporary suspension or termination of the permit, as appropriate. Any actual suspension or termination action will not be taken without prior coordination with Regional or Center Counsel.

e. FAA and SLA may terminate the permit by mutual agreement after providing ninety (90) day notice to the other party of the intended termination, including the reason therefor and supporting documentation.

f. Upon approval of the permit by a Regional or Center Logistics or Procurement Division Manager, two copies of the approved permit shall be forwarded to the SLA. The original permit shall be retained in the region or center.

24. OPERATION OF CAFETERIAS BY BLIND VENDORS.

a. Definition. "Cafeteria" means a food dispensing facility which can provide a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a serving line, in which the customer serves or selects for himself from displayed selections and dines at tables or booths located within the premises. The broad range of food selections available is one determining characteristic of a cafeteria. Thus, a fully automatic vending facility which offers a wide range of selections and provides seating may be considered a cafeteria, whereas a facility serving only items such as sandwiches (hot or cold) and other snacks would not be a cafeteria.

b. Priority afforded blind vendors. A priority shall be afforded blind vendors in operating cafeterias. This priority may be afforded by the following methods pursuant to 34 CFR 395.33:

(1) FAA regions and centers may initially decide to competitively negotiate the cafeteria contract and invite the SLA to respond to an RFP. The SLA's proposal will be evaluated in the same manner as that of all other offerors. If the proposal is within the competitive range established by the Contracting Officer, the Secretary of Education shall be consulted as required by 34 CFR 395.33(a), to determine whether award to the SLA is proper.

(2) The Contracting Officer may award to other than the SLA when the FAA believes that award to the SLA would adversely affect the interests of the United States and the Secretary of Education has agreed and issued a final determination to that effect (processing will be in accordance with Paragraph 19 of Chapter 3, above), or when the Regional or Center Director determines, and the Secretary of Education agrees that the blind vendor does not have the capacity to operate a cafeteria in such a manner as to provide food service at a comparable cost and of comparable high quality as that available from other providers of cafeteria services.

(3) If the SLA submits a proposal and it is not within the competitive range established by the Contracting Officer, award may be made to another offeror following normal procurement procedures, but only after consultations between the appropriate Logistics Division Manager, or AAC Procurement Division Manager and Regional or Center counsel.

(4) FAA regions and centers may enter into direct negotiations with the (SLA) to determine whether the SLA is capable of operating the cafeteria in a manner comparable to operation by a commercial food service operator. If it is determined that the SLA has the capability and can operate the

cafeteria at a reasonable cost with food of high quality, a contract will be awarded to the SLA. If the negotiations do not result in a contract awarded to the SLA, the cafeteria contract will be placed by competitive negotiation and the SLA shall be invited to respond to the RFP. Direct negotiations with the SLA should be conducted at an early stage so that the cafeteria contract can be competitively negotiated and awarded in a timely manner if negotiations with the SLA fail.

(5) See chapter 5, Negotiations, for additional procedures.

c. Terms of Contract.

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

(2) The SLA shall be expected to perform under contractual arrangements, applicable to commercial cafeteria operators. These may include, but are not limited to, the following.

(a) Submission of detailed quarterly income statements.

(b) Provision of all necessary supplemental cafeteria equipment and utensils.

(c) Performance of preventive maintenance on all Government-owned equipment.

(d) Compliance with all applicable health, sanitation, and building codes or ordinances.

(3) Termination actions shall not be taken without prior coordination with regional or center counsel.

(4) All contracts for the operation of cafeterias on FAA-controlled property with other than SLA's shall, upon expiration, be processed under this chapter 3, unless the State licensing agency informs the FAA that it is not prepared to exercise its priority at that time.

25. ARBITRATION OF STATE LICENSING AGENCY COMPLAINTS.

a. If the SLA alleges that the FAA is in violation of the Randolph-Sheppard Act as amended or Department of Education regulations, and the matter cannot be resolved informally, the SLA may file a complaint with the Secretary of Education to seek arbitration of the matter. The procedures for administering SLA complaints and conducting arbitration hearings shall be pursuant to 34 CFR 395.37 and the Department of Education "Revised Interim Policies and Procedures for Convening and Conducting an

Arbitration pursuant to Sections 5(b) and 6 of the Randolph-Sheppard Act as Amended. See Appendix 3.

b. When it has been determined that an arbitration panel will be convened, unless directed otherwise, the appropriate regional or center director shall appoint one FAA employee to serve as a panel member. In addition, a regional or center attorney shall represent the FAA before the panel.

c. The Secretary of Education shall pay all reasonable costs of arbitration.

26. REPORTING REQUIREMENTS.

a. At the end of each fiscal year, the FAA is required to submit a report to the Secretary of Education pursuant to Department of Education regulations (34 CFR 395.38). In order to comply with this requirement, each region and center shall submit a report to ALG-100, on or before November 1 of each year. The report shall include the following data:

b. Applications for vending facility locations from SLA, with the following breakdown:

(1) Total number of applications received.

(2) Number of applications accepted.

(3) Number of applications denied.

(4) Number of applications pending.

c. Vending machine income with the following breakdown:

(1) Total amount of vending machine income collected in each state.

(2) Amount of vending machine income distributed to each SLA.

CHAPTER 4. EMPLOYEE WELFARE AND RECREATION ASSOCIATIONS

27. AUTHORITY. The FAA may negotiate a vending facility agreement solely with an employee welfare and recreation association if: (a) the SLA is not interested in establishing a vending facility, and (b) there are no acceptable 8(a) firms available to perform the services, and (c) after solicitation of commercial concerns which might be interested in the vending facility, all proposals received are unacceptable and not susceptible to upgrading through further negotiations.

28. DETERMINATION AND FINDING. A written determination and findings which justifies negotiations with an employee welfare and recreation association shall be prepared and executed by the Contracting Officer, approved by the appropriate Logistics/Procurement Division Manager, and placed in the contract file.

29. PREREQUISITES. Negotiations with an employee association shall be based upon the following prerequisites:

a. The association must conduct a continuing, self-supporting operation with sales prices within the means of the employees at the facility.

b. See Paragraph 11, Chapter 2, for FAA policy concerning space rental and utility charges to be assessed employee welfare and recreation associations.

c. Prior to commencement of negotiation with an employee association, the association shall furnish the Contracting Officer a copy of its constitution and bylaws.

d. Any services rendered by the officers or members of the association in connection with the vending facility operation shall be without remuneration of any kind.

e. Vending machine income shall be distributed to the SLA in accordance with the criteria set forth in Paragraph 21.

f. Any remaining income derived from the vending facility operation shall be used for the benefit of the employee association's welfare activities.

g. An agreement shall be entered into between the association and the Contracting Officer, which provides for all of the aforementioned prerequisites and contains a commitment from the employee association that it will comply with the applicable provisions of this directive. The use of clauses prescribed in Chapter 6 is discretionary. The agreement should be in a format acceptable to both parties and concurred with by Government counsel prior to submission to the association and prior to execution by the Government.

CHAPTER 5. NEGOTIATIONS

30. TYPES OF CONTRACTS.

a. Contracts may be of the following types, dependent on the nature of the operation and what is in the best interest of the Government.

(1) Percentage of gross receipts. This type of contract provides that revenues to the Government shall be computed at a fixed percentage of the operator's gross receipts received during a specified period of time. It may also provide for a price adjustment clause to be included which provides that revenues to the Government shall be computed at predetermined percentages (upward or downward) for various levels of gross revenues received during a specified period of time.

(2) Fixed sums of money per month or other specified period. This type of contract provides for a reasonable fixed sum for depreciation of Government-owned equipment and charges for building services such as space rental, utilities and cleaning in the vending facility area. (See Paragraph 11.)

(3) A combination of (1) and (2) above.

b. Contracting Officers, if circumstances so warrant, may utilize other methods of determining return to the Government, provided that the method is fair and reasonable.

c. The factual basis for determining the return to the Government shall be included in the contract file.

d. The type of contract contemplated shall be clearly set forth in the solicitation which shall not, however, bind the Government absolutely to that contract type.

e. Revocable permits may be used for the operation of vending facilities other than cafeterias. The permit shall set forth:

(1) location.

(2) amount of space necessary for the operation of the vending facility.

(3) type of facility and equipment.

(4) number, location and type of vending machines and other terms and conditions to be included in the permit.

31. REQUESTS FOR PROPOSALS.

a. Requests for proposals shall contain all information necessary to enable a prospective offeror to prepare his proposal. The following elements should be included in the RFP:

(1) Location and type of facility, including types and number of vending machines required. Specify the items permitted to be sold in the vending machines.

(2) Days and hours of service.

(3) Estimated average number of persons to be employed on each shift.

(4) Terms of contract, including any options.

(5) Description of operational and storage space available for the operation, including ingress and egress restrictions and security requirements. Include applicable drawings.

(6) Scope of proposed activity, standards of quality to be expected, pricing policies, and minimum menu requirements.

(7) Statement of condition of premises, scope of utilities to be provided by the FAA, listing of Government and operator furnished equipment.

(8) Manner and types of payments required by the Government, bonding and insurance requirements, if any, and accounting statements required to be submitted to the Government.

(9) Garbage disposal and cleaning requirements.

(10) Statement that the contractor must comply with all applicable health, sanitation and building codes or ordinances.

(11) Gross receipts from the activity for the current and past 3 years, and

(12) Any other information deemed necessary by the Contracting Office to assure complete understanding of requirements.

b. Factors other than price which will be given consideration in evaluating proposals shall be included in the RFP. The solicitation shall list factors in order of importance. Numerical weights, which may be employed in the evaluation of proposals, shall not be disclosed in solicitations.

c. Requests for proposals shall specify a date and time by which proposals must be submitted. Extensions of time for receipt of proposals granted to one or more prospective offerors shall be granted to all prospective offerors receiving the original solicitation.

d. See Paragraph 24, Chapter 3 for negotiations under the Randolph-Sheppard Act.

32. SELECTION OF OFFERORS. While the highest return to the Government may be a factor to consider, award of a contract properly may be influenced by other factors which promise the greatest value to the Government. Price or cost should not be an overriding or even a major factor; its importance must be judged in relation to other factors essential to the needs of the Government.

33. PRE-PROPOSAL CONFERENCE. At the Contracting Officer's discretion, a pre-solicitation or pre-proposal conference may be held prior to submission of proposals to brief prospective offerors. (See FAR 15.404 and 15.409. When such a conference is to be held, widespread publicity must be given far enough in advance to permit attendance by all interested Operators.

34. EVALUATION TEAM. The following criteria are to be used when formal source procedures pursuant to the current version of FAA Order 4405.10B, Source Selection, are not applicable:

a. To assure impartial, equitable and thorough evaluation of proposals and the selection of an Operator who offers optimum satisfaction of the Government's requirements, an evaluation team should be designated by the Managers, Logistics Divisions, (for AAC, Procurement Division Manager), to perform the following functions for each proposed contract:

(1) Evaluate and score the proposals submitted by offerors by measuring them against the criteria set forth in the RFP.

(2) Prepare a report of the evaluation for the Contracting Officer.

(3) Provide such briefing and consultation concerning the evaluation as may be required by the Contracting Officer.

(4) Perform any other function in connection with the proposal evaluation and selection to assist the Contracting Officer in selecting the offeror who will best satisfy the Government's requirements.

b. The evaluation team shall consist of as many qualified personnel as the Managers, Logistics Divisions, or AAC Procurement Division Manager deem practical. The composition of the voting members of the team shall be established by the Managers, Logistics Divisions, and the AAC Procurement Division Manager. The team may consist of the following individuals:

(1) Representative of Contracting Officer - Chairman.

(2) Air Traffic Facility Chief or his representative.

(3) Airway Facilities Sector Manager or his representative.

(4) Flight Surgeon located at facility.

(5) Regional or Center Counsel or his representative.

Representatives of exclusive labor organizations at the facility may be invited to participate with the team as nonvoting members.

35. EVALUATION CRITERIA.

a. The appropriate evaluation criteria will be developed by cognizant facility personnel when the procurement request is initiated, and will be included in the RFP by the Contracting Officer.

b. The development of evaluation criteria and their relative importance or weight requires the exercise of judgment on a case-by-case basis. Since these criteria will serve as the standard against which all proposals will be evaluated, it is imperative that they be chosen carefully in order to emphasize factors considered to be critical to the selection of an Operator. Utilization of diverse criteria for the evaluation may lead to distorted proposal evaluation results and, consequently, a possibly inequitable or improper award.

c. The RFP must inform offerors of all evaluation criteria and clearly indicate their relative importance. Evaluation criteria shall be fully described in each RFP in order to inform prospective offerors of the specific issues and items to be addressed in the proposals. No factors, other than those specified in the RFP as evaluation criteria, shall be used in the evaluation of proposals.

d. Evaluation criteria should be reduced to as small a number as feasible, so that evaluation will not become mathematically "diluted" to the point where any proposer can achieve a reasonably high score, but actually be poor in one or more extremely important factors.

e. While a listing of the evaluation criteria and their relative importance must be provided to offerors, detailed evaluation procedures, such as the scoring system to be used, shall not be divulged in the solicitation documents or at any other time.

f. The following is a suggested list of evaluation criteria which may be used:

(1) Understanding of requirements.

(2) Approach to performance of contract.

(3) Management.

(4) Experience in providing food services at offices or industrial buildings comparable to those described in the proposed contract.

(5) Past compliance with all applicable health, sanitation and building codes or ordinances.

(6) Level of proposed staffing, including manager and supervisors.

(7) Menu pricing, portion sizes and variety based on cyclical menus.

(8) Adequacy of accounting and inventory systems and procedures.

36. EVALUATION TECHNIQUES.

a. Care must be exercised to assure that each proposal is analyzed thoroughly. The proposal evaluation should be conducted by comparing the specific parts of the submitted data against the applicable specification requirements and the set evaluation criteria and not by comparing the elements of the contractor's submission with those of another.

b. It is imperative that all members of the evaluation team understand the evaluation criteria to be applied, how they are to be applied, and the fact that only these criteria are to be applied in conducting the evaluation.

37. EVALUATION REPORT.

a. The evaluation team shall prepare an evaluation report to support its recommendations to the Contracting Officer. The report must fully explain the basis for the findings and recommendation. Information presented in numerical form shall

be accompanied by a suitable narrative explanation, in order to provide for proper interpretation. Care should be taken to insure that there are no apparent inconsistencies between the narrative and the numerical ratings to which the narrative relates.

b. The basic elements of the evaluation report are:

(1) Listing of team members and identification by job title.

(2) Listing of proposals received.

(3) Recommendation.

(4) Summary of the evaluation and findings including a factual explanation of the basis for the findings and recommendation.

38. CONTRACTING OFFICER'S RESPONSIBILITY.

a. Review the evaluation report to determine whether the justification is adequate and the document is complete.

b. Promptly notify, in writing, concerns whose proposals are not being considered for award and give a concise explanation of the basis therefor.

c. Conduct written or oral discussions with all responsible offerors who submit proposals which come within the competitive range, unless it is clear that award can be made without discussions with any offeror and the solicitation so stipulated.

d. Formally close negotiations as set forth below.

39. DISCUSSIONS WITH OFFERORS.

a. Those offerors submitting proposals requiring clarification shall be advised of deficiencies in their proposals and shall be offered a reasonable opportunity to clarify and to submit necessary revisions to their proposals.

b. Discussions shall not disclose the strengths or weaknesses of competing offerors, or any information from an offeror's proposal which would enable another offeror to improve his proposal, or any proprietary information.

40. COMPETITIVE RANGE.

a. The determination as to which proposals are in the competitive range shall be made by the Contracting Officer. The competitive range shall be determined on the basis of the evaluation team's findings and recommendations and shall include

all proposals which have a reasonable chance of being selected for award. When there is doubt as to whether a proposal is within the competitive range, it shall be included. The competitive range shall be decided on the basis of the actual array of scores achieved and not on a predetermined score for acceptability.

b. When a determination is made to conduct negotiations, the negotiations must be conducted with all offerors within the competitive range.

c. Auction techniques are strictly prohibited.

d. At the conclusion of negotiations a final cut-off date, which allows a reasonable opportunity for submission of written "best and final" offers, shall be established for all offerors within the competitive range, and they shall be so notified. The notification shall include information to the effect that (i) discussions have been concluded; (ii) offerors are being given an opportunity to submit a "best and final offer," with an explanation of any cost variances from negotiations, and (iii) it must be received by the date and time specified; and (iv) if received after that date and time, it will be subject to the Late Proposals and Modifications of Proposals provision of the RFP.

41. DEBRIEFING OF UNSUCCESSFUL OFFERORS.

a. Offerors for vending facility services generally expend substantial time and effort in preparing their proposals. Therefore, offerors not selected for contract award have a significant interest in learning why they were unsuccessful. Debriefing is the process by which procurement offices provide unsuccessful offerors with the Government's evaluation of the significant factors contained in their proposals, citing determinative deficiencies and weaknesses. An adequate debriefing can provide the basis upon which offerors may improve future proposals and in addition, may give assurance that the selection has been handled fairly, in accordance with applicable regulations and the provisions of the solicitations.

b. Unsuccessful offerors shall be debriefed upon their written request and furnished the basis for the selection decision and contract award. Debriefing shall be provided by the Contracting Officer at the earliest feasible time after contract award.

c. It is essential that debriefings be conducted in a scrupulously fair, objective and impartial manner. Debriefing information given offerors shall be factual and consistent with the evaluation. While offerors should be informed of the areas in

which their proposals were weak or deficient, point-by-point comparisons with the proposals of other offerors shall not be made. Furthermore, debriefings shall not reveal:

(1) trade secrets;

(2) commercial and financial information which is privileged or confidential;

(3) the relative merits or standing of competitors or their evaluation scores; or

(4) the details and specifics of the evaluation/scoring system used in this particular selection.

d. A summary of the debriefing shall be made a part of the contract file.

CHAPTER 6. CLAUSES

42. GENERAL. The following clauses are suggested for use in vending facility contracts. In the absence of prescribed or optional clauses for vending facility contracts in the Federal Acquisition Regulation (FAR) or Department of Transportation Acquisition Regulation (TAR), these clauses are intended to implement Federal Departmental and Agency policies, regulations, and procedures that apply to the procurement of all goods and services. It is intended that use of these suggested clauses will distinguish vending facility contracts, in which revenue accrues to the Government, from other contracting procedures which involve the expenditure of Government funds, while adhering to generally accepted business standards and practices.

43. DEFINITIONS.

a. The term "Secretary" means the Secretary of Transportation and the term "head of the agency" means the Administrator, Federal Aviation Administration. The term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.

b. The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his written authority.

c. The words "Contractor," and "Operator" shall be considered to be synonymous, as are the words "contract" and "agreement."

d. "Operating Facilities" means furniture, furnishings, special lighting fixtures, draperies, decorations, decorating or other special finishing work, signs, appliances, and trade fixtures, etc., furnished and installed or used by the Operator in its operations at the facility.

e. "Gross Receipts" means the total amount received, realized by or accruing to the Operator from all sales, for cash or credit, of services, materials or other merchandise, made pursuant to the privileges authorized by this contract, rendered at or from the facility. All revenue shall be deemed to be received at the time of determination of the amount due the Operator for each transaction, whether for cash or credit, and not at the time of billing or payment, unless otherwise specifically stated in this contract; provided, however, that any taxes imposed by law which are separately stated and paid by the customer, and directly payable to the taxing authority by the Operator, shall be excluded from gross receipts.

44. ASSIGNMENT. No sublease, transfer, subcontract, or assignment of any part hereof or interest herein, directly or indirectly, voluntarily or involuntarily, shall be made by the Operator of this contract, unless such sublease, transfer, subcontract or assignment is first approved in writing by the Contracting Officer and is subject to whatever limitations the Government may wish to apply; provided, however, that the Operator may, if specified elsewhere in this contract, install or use equipment or other operating facilities which are owned by others and leased to the Operator for its use under this contract.

45. GOVERNMENT-OPERATOR RELATIONSHIP. Nothing in this contract shall be construed as in any way creating or establishing a partnership relationship between the parties hereto or as constituting the Operator as an agent or representative of the Government for any purpose or in any manner whatsoever.

46. FEDERAL, STATE, AND LOCAL LAW. The Operator shall, at its own cost and expense: (a) comply with all Federal, State and local laws, including but not limited to county and local ordinances, rules or regulations now or hereafter in force, which are applicable to the operation of its vending facility; (b) obtain and pay for all necessary licenses and permits; (c) pay all fees and charges assessed under Federal, State and local law insofar as they are applicable to its vending facility.

47. TERMINATION.

a. Either party may terminate this contract without cause by giving the other party written notice of its intention to do so. Other than a termination by the Government in the interests of the National Defense, any such notice of termination shall be given at least ninety (90) days in advance of the effective date of termination.

b. The Contracting Officer may, by written notice to the Operator, terminate this contract, in whole or in part, for default upon the happening of any of the following events:

(1) Filing by, or the final adjudication against, the Operator of any petition in bankruptcy, or the making of any transfer or assignment for the benefit of creditors, which transfer or assignment has not been authorized previously by the Government.

(2) The abandonment of the vending facility or discontinuance thereof. Should this occur, the Government shall not be responsible for the protection of the Operator's merchandise, fixtures, supplies or equipment, and may remove same from the premises for storage or disposal.

(3) The failure of the Operator to perform or observe any of the terms, covenants or conditions of the contract, after the

expiration of any period of warning or notice given by the Contracting Officer to the operator concerning such failure.

c. The Government's termination of this contract for default shall be deemed to be a decision of the Contracting Officer as to a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

d. In the event this contract is terminated for default, the Government may retain as liquidated damages any monies which have been prepaid or advanced to the Government, based on occupancy to the end of the contract period.

e. In the event of termination in accordance with paragraph a. of this Clause 47, the Operator shall be entitled to have any monies, which have been prepaid or advanced to the Government based on occupancy of the premises to the end of the contract period refunded to it by the Government.

f. If after notice of termination for default of this contract under this Clause, it is determined for any reason that the Operator was not at fault under this Clause, or that the default was excusable under this clause, the termination shall be deemed to have been properly effected pursuant to paragraph a. of this Clause.

48. WAIVER OF PERFORMANCE. The failure of the Government to insist in any one or more instances upon a strict performance by the Operator of any of the terms of this contract shall not be construed as a waiver or relinquishment thereof for the future, but rather, said terms shall continue and remain in full force and effect. No waiver by the Government of any terms hereof shall be deemed to have been made in any instance unless specifically expressed in writing as an amendment to this contract.

49. WORK STOPPAGE OR STRIKE. Except as a result of damage to or destruction of the premises by fire or other casualty, in the event operations of the Operator are curtailed, interrupted, or otherwise handicapped in whole or in part for any reason, including but not limited to strikes and labor disputes, such conditions shall not relieve the Operator of its obligation to pay the revenue specified in this contract nor to pay for utilities consumed under such conditions, unless and except as otherwise specifically provided for elsewhere in this contract.

50. FAIR LABOR STANDARDS ACT. (Public Law 93-259, enacted April 8, 1974, amends the Fair Labor Standards Act of 1937, as amended (29 U.S.C. 201 et seq).) The administration and enforcement of this Act are the responsibility of the U. S. Department of Labor; any questions as to the requirements of the Act or its applicability to the work required by this contract should be addressed to the Administrator, Wage and Hour Division, U. S. Department of Labor, Washington, D. C. 20210, or to a Labor Department Regional Office.

51. SECURITY. The Operator and each of his employees engaged in work under this contract shall execute and submit to the Federal Aviation Administration a Standard Form FD-258, (3 copies), and Standard Form 86, (1 copy). The executed forms shall be furnished to the Contracting Officer's Representative (COR) not later than the first day Operator's employees report to the facility to perform services under this contract. Personnel of the Operator will not be allowed to perform services under this contract until the Contracting Officer has received the appropriate forms. The necessary forms will be furnished to the Operator by the COR.

Personnel of the Operator who have previously submitted Standard Forms 86 and FD-258 for work under other Federal Aviation Administration contracts need not submit new forms if they have been continuously employed at the same FAA facility since the original submission of the forms.

All personnel of the Operator who are cleared for security purposes will be allowed to continue to perform work under the contract; any individual who is not so cleared may not be employed by the Operator under this contract.

52. FACILITY RULES AND REGULATIONS. The Operator shall observe and obey all rules, regulations, and implementations thereof promulgated as authorized by law for the care, operation, maintenance and protection of the facility, which rules, regulations and implementations thereof would be applicable and valid irrespective of this clause. Failure of the Operator, any of those persons under its control or its subcontractors to observe such rules, regulations or implementations shall, in addition to assessment of any other penalty provided by law, be cause for termination of this contract for default.

53. RESTRICTIONS.

a. Unless specifically authorized in writing by the Contracting Officer, the Operator shall not remove any Government-owned equipment from the premises, advertise the concession operations in any manner, or prepare foods and beverages on the premises for sale at any location not covered by the contract.

b. Since the facilities to be provided hereunder are for the benefit and convenience of Federal employees, patronage from other sources which interfere with such purposes may be limited or prohibited by the Government at its sole discretion.

54. PROMOTION. The Operator agrees to use its best efforts in every proper manner to maintain and develop the business conducted by it under this contract, to increase same, and not to divert or cause or allow any business to be diverted from the facility.

55. SANITATION.

a. All cafeteria operations under the contract shall be conducted in conformance with the requirements for a Grade A food establishment, as set forth in the Food Service Sanitation Manual No. FDA-78-2081, of the Food and Drug Administration (GPO Stock No. 017-012-00267-6) (or revision thereof), or in conformance with local requirements for a top-grade establishment, if the latter should be more stringent; provided, however, that the Operator shall not be responsible for any structural deficiencies in the facility which are the responsibility of the Government.

b. Each food handler shall be required to pass a medical examination annually or as may be required by applicable local regulations, whichever requirement is more stringent, to determine that he has no communicable disease. Those found to be or suspected of suffering from a communicable disease shall be removed from duty immediately.

c. Food handlers shall not be permitted to operate the cash register or handle money nor shall any person operating the cash register or handling money be permitted to handle food.

56. INSPECTIONS.

a. Health. The facility operated under the contract may be inspected periodically by the Contracting Officer, representatives of local health departments, or the Regional Flight Surgeon. After each inspection, the Operator will be advised of any unsatisfactory conditions for which he is responsible. Deficiencies reported shall be corrected promptly by the Operator.

b. Fire Prevention. Periodic inspections shall be performed by an FAA-appointed fire inspector; any unsafe conditions found by such official shall be immediately corrected by the Operator.

c. Industrial Safety. Periodic inspections shall be performed by an FAA-appointed Safety Officer; and any unsafe conditions found by such official shall be immediately corrected by the Operator.

57. ESTABLISHMENT AND CONTROL OF PRICES AND SERVICES.

a. The Contracting Officer reserves the right to control the nature, types, and quantities of merchandise and services which may be sold or furnished by the Operator. If the Operator refuses or fails within forty-eight (48) hours after receipt of written notice from the Contracting Officer to discontinue the sale of any product or service which the Contracting Officer determines to be in violation of the rights granted hereunder or which the Contracting Officer determines should not be dispensed, or if the Contracting Officer is forced to make repeated and frequent

demands upon the Operator to cease the sale of such products or services, such refusal, failure or demands shall be cause for termination for default of this contract.

b. The Operator shall maintain and operate the vending facility to such extent and in such manner as provided in the contract, sell the articles and services authorized, and provide the management, personnel, equipment, goods and commodities necessary therefor.

c. All rates and prices established by the Operator for goods or services sold hereunder shall be reasonable and subject to approval by the Contracting Officer.

d. Reasonableness of prices shall be judged primarily by comparison with those currently charged for comparable goods or services furnished or sold outside the facility under similar conditions, with due allowance for accessibility, hours and time of operation, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges, but due regard may also be given other factors as the Contracting Officer may deem significant.

e. Only quality foods, such as Grade A poultry, U. S. Choice grades of beef, U. S. No.1 grade pork, Grade A or fancy vegetables, and Grade A or B canned goods may be used. All foods served shall be wholesome and free from spoilage and decay. Uncooked items, such as fresh fruits shall be clean and free from blemish. Salads and sandwiches shall be made fresh daily and all foods shall, when served, be attractive in appearance, at the proper temperature, and moist, dry, tender, etc., as appropriate.

f. Prices shall be posted by the Operator, preferably adjacent to the item.

58. RESPONSIBILITIES OF THE GOVERNMENT. The Government shall provide space for operation of the vending facility and such additional space as it may deem necessary including a reasonable use of existing elevators, corridors, passageways, driveways, and loading platforms. The Government shall, as it deems necessary provide lighting, ventilation, and the utilities required for the operation of the vending facility. In addition, the Government shall:

a. Make such improvements and alterations as it may deem necessary or desirable to prepare or recondition assigned space for its intended purpose, including improvements and alterations necessary to conform to applicable health and sanitary requirements.

b. Maintain and repair the following: (i) the building structure in areas assigned, for the Operator's use, including painting and redecoration; (ii) gas, water, steam, sewer, and electrical lines, ventilation, and existing air conditioning

lines, all to the point of connection with food service equipment or to the point of outlet in vending facility areas if not so connected; (iii) electrical lighting fixtures (including relamping); space heating systems, floors and floor coverings (except rugs and carpets) and walls and ceilings; provided that the Operator shall bear the expense of all repairs necessary because of damage caused by the fault or negligence of the Operator or any of his employees.

59. RESPONSIBILITIES OF THE OPERATOR.

a. The Operator shall provide prompt, efficient, and courteous service. He shall obtain licenses and permits as required by State and local authorities, and shall observe all applicable building, health, sanitary, and other regulations and laws. He shall use reasonable care in the use of space and Government-owned equipment, and, upon contract termination, shall yield up such space and equipment in the same condition as when received, except for ordinary wear and tear and damage or destruction beyond his control and not due to his fault or negligence.

b. The Operator shall maintain an effective program for the extermination of rodents and vermin in areas assigned for his use. Although the Government shall provide cleaning of the dining area floors and waxing of the floors as specified in the contract, the Operator shall provide necessary intermittent cleaning of the dining area floors between the cleanings provided by the Government. All cleaning and mopping of the area behind the counter and all kitchen and storage areas, as specified herein, shall be done by the Operator.

c The Operator shall employ sufficient and suitable personnel, secure and maintain insurance, and observe other contract requirements, all as more specifically set forth hereinafter. Except as otherwise stated herein, he shall pay each and every fee, cost, or other charge incident to, or resulting from operations under the contract.

60. EMPLOYEES OF OPERATOR.

a. The Operator shall employ a full-time qualified manager during the hours of _____,_____ days a week. In addition, the Operator shall employ _____ full-time working supervisors during each shift, _____ a day, _____ days a week. A representative of the Operator, other than one of the above supervisors, shall visit the facility monthly for general supervisory purposes at times agreed upon by the Contracting Officer and the Operator. Upon 48 hours advance notice from the Contracting Officer a representative of executive status shall visit the facilities to adjust matters requiring attention.

b. The Government may require the Operator to remove from the contract operations any employee who is considered incompetent, careless, insubordinate, unsuitable or otherwise objectionable or whose continued employment is considered contrary to the public interest by the Contracting Officer.

c. The Operator shall require its employees to wear a uniform and badge by which they may be known and distinguished as the employees of said Operator. Uniforms shall be clean. Hair nets, headbands or caps must be used by employees engaged in the preparation and serving of food to keep hair from food and food contact surfaces. The Operator shall provide his employees with frequent changes of uniforms to assure cleanliness.

d. The Operator shall require its employees to observe a strict impartiality as to quantities and services and in all circumstances to exercise courtesy and considerations in dealing with vending facility patrons.

Serving utensils shall be used by the Operator's employees to keep direct handling of food to a minimum.

e. Employees of the Operator shall not smoke or carry lighted cigarettes or tobacco products in the food preparation or serving area.

f. Each employee of the Operator shall be a citizen of the United States of America or an alien who has been lawfully admitted for permanent residence, as evidenced by an Alien Registration Receipt Card, Form I-151, or other evidence from the Immigration and Naturalization Service that employment will not affect his immigration status.

g. The Operator shall employ a full-time, on-site manager who possesses the necessary qualifications to supervise the establishment effectively. The on-site manager shall have previously had, as a minimum, two years of consecutive employment in a position with comparable responsibilities. The proposed manager's qualifications (resume) will be subject to the approval of the Contracting Officer. No one other than the person approved by the Contracting Officer shall be assigned to manage the vending facility. These provisions also apply to any replacement of the manager.

h. The Operator's manager shall be delegated the authority essential to the day-to-day effective operation of the cafeteria for personnel supervision and training, menu planning, purchasing, cost control, sanitation, etc. The Operator's manager shall be replaced on 30 days notice upon request of the Contracting Officer if he determines there are operational deficiencies resulting from inferior management.

i. The Operator shall at all times provide an adequate staff of food service employees to perform the varied and essential duties inherent in a successful food service operation. Except as otherwise provided in this contract, staffing shall be provided as submitted in the Operator's proposal and any changes are subject to approval of the Contracting Officer.

j. The Operator shall pay all employees not less frequently than once every two weeks, without deduction or rebate on any account, except as provided or allowed by law.

k. The Operator shall provide adequate, trained relief personnel to substitute for its regular employees when they are absent so that a high quality concession service will be maintained at all times.

l. The Operator shall require its employees to comply with such instructions pertaining to conduct and building regulations as are in effect for the control of persons in the building or as may be issued for that purpose by Government representatives.

m. The Operator shall schedule an employee training program that will continue for the duration of this contract and any extensions thereof to insure that its employees perform their jobs with the highest standards of efficiency and sanitation.

n. All articles found by the Operator, its agents or employees, or found by patrons and given to the Operator, shall be turned in to the Government as lost-and-found items.

o. Violations of the foregoing responsibilities may result in termination of the contract.

61. PAYMENT TO THE GOVERNMENT.

a. Payment of $ _____ to the Government shall be made monthly, in accordance with the provisions of the contract. Payments shall be made not later than the _____ day of each calendar month.

b. All payments shall be mailed to the Chief, Accounting Division, located at _____.

Checks shall be made payable to the Federal Aviation Administration and shall reference the contract number, period of time covered, and facility served.

62. EQUIPMENT.

a. Equipment to be provided by the Government. The Government shall provide and the Operator may use the

equipment listed herein. The Government shall also:

(1) furnish and install replacement equipment when it determines that the original equipment is worn out or beyond economical repair; and

(2) furnish and install such additional equipment of a similar type which it may deem necessary in connection with an expansion of these services, should any expansion be required.

Title to all Government furnished equipment shall remain in the Government. No Government furnished equipment shall be removed from the premises for any purposes except by the Government or with the prior approval of the COR. The Operator shall acknowledge receipt of all Government-owned equipment in writing.

b. Minor repairs to Government Furnished Equipment. Throughout the contract period or any extension thereof, the Operator sha l maintain, adjust, and repair the Government furnished equipment provided for his use in a manner satisfactory to the COR; provided, that the responsibility of the Operator for repairs to Government furnished cafeteria equipment shall be limited to repairs made at one time which cost less than 10% of the original cost of the equipment. The Operator shall also repair or replace any Government furnished equipment that may be damaged as a result of his own or his employees fault or negligence, regardle s of cost. The Operator shall:

(1) Service the dishwasher and care for it in accordance with the instructions of the manufacturer.

(2) Keep the deep-fat-fryer and toaster clean and in serviceable condition.

(3) Keep the canopy free from grease and thoroughly clean.

(4) Clean air filters daily and grease traps for the dishwasher and sink when required.

c. Replacement or Major Repairs to Government Furnished Equipment. If the cost of repairing a piece of Government furnished equipment will exceed the limitations specified in paragraph b. above or the equipment has become obsolete or no longer useful for its original purpose, the Operator shall notify the Contracting Officer so that arrangements may be made for appropriate repairs or replacements. The decision of the Contracting Officer as to whether a piece of equipment is to be repaired or replaced shall be final.

d. Equipment to be provided by the Operator. The Operator shall provide all required equipment not provided by the Government. The Operator shall repair, replace and supplement such equipment as necessary to insure sanitary, efficient and satisfactory operation of the vending facility.

e. Final Disposition of Equipment. At the end of the contract period or extensions thereof, all equipment shall be disposed of as provided in the contract.

63. SURRENDER OF POSSESSION.

a. As of the date this contract expires or is terminated as provided for elsewhere in this contract, the Operator shall immediately and peaceably yield up to the Government the premises in good repair in all respects, reasonable wear and tear excepted, and the Government may without further notice take possession of the premises.

b. Upon prior written notice to the Contracting Officer the Operator shall have the right at any time during the term of this contract to remove any operating facilities it may erect or install or use in the premises, and any or all fixtures and equipment and other property installed or placed by it at its expense in or about the leased premises; subject, however, to any valid lien which the Government may have thereon for unpaid charges and fees; and provided that, upon removal of any such operating facilities, the Operator shall restore the premises to a condition satisfactory to the Contracting Officer.

c. The Operator shall be deemed to have abandoned to the Government any operating facilities and other facilities, equipment and property of the Operator which it has failed to remove from the premises or from the possession of the Government within fifteen (15) calendar days after the end of the period of this contract, or effective date of termination thereof, unless the Contracting Officer shall grant additional time for this purpose in writing; PROVIDED, however, that the Government may, prior to the expiration of said fifteen (15)-day period, remove same and restore the premises to a satisfactory condition and hold the Operator liable for all costs incident thereto. In the event it is necessary for the Government to remove such facilities, equipment or property, the Government shall not be subject to any liability by reason of the removal or the custodial care of same.

64. ESTABLISHMENT OF OPERATING FACILITIES.

a. The Operator shall provide and install at its own costs and expense, all operating facilities and furnish all supplies and materials required for the proper and adequate operation of the vending facility under this contract.

b. All such installations shall be subject to the Contracting Officer's approval for conformity with safety standards and similar criteria and with regulations established for the facility and for compatibility of design, quality, conditions, or color arrangement with the architectural and general character of the vending facility area and the facility. In addition, all installations shall conform to applicable state and Federal building, plumbing, electrical, or similar codes or ordinances. The Operator shall provide all necessary maintenance for the operating facilities.

65. ACCOUNTING RECORDS OF THE OPERATOR.

a. In the event this contract provides for payment of revenue to the Government which is computed in any manner upon the gross receipts or net receipts of the Operator derived from its operations hereunder, the Operator shall maintain accounting records, in accordance with accepted accounting practices, of all its transactions at, through, or in any way connected with operations under this contract. These records shall be maintained current during the contract period at the business address of the Operator and be retained at that location for a period extending three (3) years from the date of termination or expiration of this contract, unless a longer period of time specifically is stated elsewhere in this contract.

b. The Operator shall permit any verification, examination or audit of these accounting records deemed advisable by the Government as well as verification, examination or audit of the accounting records of any proprietary or affiliate concern during the term of this contract, and for three (3) years afterwards, during regular business hours.

c. The Operator also shall permit inspection by the officers, employees, or representatives of the Government of any accounting, bookkeeping, or similar equipment used by the Operator in the development and maintenance of these accounting records.

66. ACCOUNTING DATA. The Operator shall submit a copy of its quarterly income statement to the Contracting Officer through the Contracting Officer's Representative. It shall include, as a minimum, the information shown on page 39.

INSERT THE FOLLOWING CLAUSES AS SET FORTH IN THE FAR AND TAR IN ACCORDANCE WITH THE CONDITIONS SPECIFIED THEREIN

67. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (FAR 52.222-04)

68. DISPUTES (FAR 52.233-01, ALT I)

69. CONVICT LABOR (FAR 52.222-03)

70. UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS (FAR 52.219-08)

71. EQUAL OPPORTUNITY (FAR 52.222-26)

72. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (FAR 52.222-36)

73. OFFICIALS NOT TO BENEFIT (FAR 52.203-01)

74. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL (FAR 52.215-01)

75. SERVICE CONTRACT ACT OF 1965 (TAR 1252.222-75)

76. CIVIL SERVICE CLASSIFICATIONS AND RATES (TAR 1252.222-76)

77. FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MULTIYEAR AND OPTION CONTRACTS) (TAR 1252.222-77)

OR

78. FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (TAR 1252.222-78)

79. STRIKES OR PICKETING AFFECTING TIMELY COMPLETION OF THE CONTRACT WORK (TAR 1252.222-71)

80. STRIKES OR PICKETING AFFECTING ACCESS TO FAA FACILITY (TAR 1252.222-72)

81. ACCIDENT AND FIRE REPORTING (TAR 1252.223-71)

INCOME STATEMENT

Period From _____ to _____
Date Date

SALES
- Food
- Vending Machines

TOTAL INCOME FROM SALES

COST OF GOODS SOLD
- Inventory
- Purchases
- Total
- Inventory

TOTAL COST OF GOODS SOLD

GROSS PROFIT

Less: OVERHEAD
- Accounting & Legal
- Depreciation
- Interest & Penalties
- Laundry
- Miscellaneous
- Payroll Taxes
- Other Taxes - Unempl. Tax
  - Sales Tax

Repair & Maintenance
Rent
Salaries
Supplies - Office
- Cleaning
- Kitchen

Telephone
TOTAL OVERHEAD

NET INCOME, (LOSS) FROM OPERATIONS

Less: Bad Debt

NET INCOME, (LOSS)

Amount Due Federal Aviation Administration Paid by Check No. ____
in the amount of _____.

NOTICE OF THE FEDERAL AVIATION ADMINISTRATION'S INTENTION TO ACQUIRE OR OTHERWISE OCCUPY A BUILDING

NOTICE NO. _____ DATE _____

This is to inform you that not less than 60 days from the date hereof, the Federal Aviation Administration, _____(address)_____ intends to acquire or otherwise occupy _____ square feet of space in which ____ Federal Government employees are or will be located during normal working hours, in ____(building name and address). (If this is a lease action, just insert city and State.)

Accordingly, as provided by the Randolph-Sheppard Act (20 USC 107 et. seq.) and regulations issued pursuant thereto, notice is hereby given that a satisfactory site or sites for the location and operation of a vending facility by a blind vendor is included in the plans for the building to be acquired or otherwise occupied. Receipt of this notice shall be acknowledged in writing promptly but no later than within 30 days from the date of receipt. Indication shall be made at that time whether you are interested in establishing a vending facility. We assure you that, in the event we receive written advice of your interest in establishing a vending facility, you will be afforded the opportunity to determine the suitability of the proposed site or sites. We further assure you that, subject to the approval of this agency, you will be given the opportunity to select the location and type of vending facility to be operated by a blind vendor. An opportunity to make your determination and selection, as indicated above, will be offered to you prior to the completion of the final space layout but no later than _____(date)_____. Your prompt attention to this matter will be appreciated.

_____ _____
Signer's Name (Type or print) Signature
FAA

CHECK APPROPRIATE BOX

() We are interested in establishing a vending facility in connection with the proposed acquisition.

() We are not interested in establishing a vending facility in connection with the proposed acquisition, because in our estimation, the operation would not be feasible. Therefore, we waive our priority right to a satisfactory site in this building pursuant to 34 CFR 395.31(d).

Receipt of Notice No. _____ is hereby acknowledged.

_____ _____
Approval Official (Type or print) Signature

_____ _____
Title (Type or print) Date

_____

_____

Complete this form and return the original to the Federal Aviation Administration, _____(regional or center address)_____, and one copy to the Division for the Blind and Visually Impaired, Rehabilitation Services Administration, Department of Education, Washington, DC 20201. Retain one copy for your records.

DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
WASHINGTON, DC

APPLICATION AND PERMIT FOR THE ESTABLISHMENT OF A VENDING FACILITY ON FEDERAL AND OTHER PROPERTY AS AUTHORIZED BY P.L. 74-732, AS AMENDED BY P.L. 83-565 AND TITLE II OF P.L. 93-516 (RANDOLPH-SHEPPARD ACT)

The _____ (designated State Licensing Agency) of the State of _____ requests approval of _____ _____ (Federal or other Property Agency/Owner) to place a vending facility on the property located _____
_____

SATISFACTORY SITE: It has been determined that this location meets the criteria of a satisfactory site as defined in 34 CFR 395.1(q). Any exceptions are documented in Attachment A.

TYPE, LOCATION AND SIZE OF FACILITY: Type of facility: _____ _____; Facility location _____; Facility size _____ floor plan Attachment B. The types of articles to be sold and services to be offered are enumerated in Attachment C. The fixtures and equipment for this facility, including the responsibility for the provision thereof, are set forth in Attachment D. The location, type and number of vending machines which constitute all or a part of this facility are noted in Attachment E. The facility will operate _____ days of the week from _____ A.M. to _____ P.M. commencing on _____.

MACHINE INCOME SHARING: Both parties shall comply with 34 CFR 395.35. any additional terms and conditions applicable to this location are included in Attachment G. This permit shall be issued for an indefinite period of time subject to suspension or termination on the basis of noncompliance by either party with any of the agreed upon terms and conditions of the permit. By mutual agreement the State licensing agency and the FAA may terminate the permit after providing notice of the intended termination, including the reason therefor and supporting documentation to the other part. Both parties shall comply with all regulations issued in Title VI of the Civil Rights Act of 1964. Reason for denial of the application shall be set forth in writing to the State.

_____	_____
Approving FAA Official	Approving Licensing Agency Official
_____	_____
Title Date	Title Date

Policies and Procedures for Convening and Conducting an Arbitration Pursuant to Sections 5(b) and 6 of the Randolph-Sheppard Act as Amended

The policies for the convening of an ad hoc arbitration panel provided for by sections 5(b) and 6 of the Act and Section 395.37 of the regulations, and the procedures governing the designation of the arbitration panel members, the notices to be given, the conduct of the arbitration including the authority and duties of the panel and the rights of the parties, the decision making by the panel, and the rights of appeal from the decision, are as follows:

1. Definitions

As used in this document:

(a) "Act" means the Randolph-Sheppard Act, 20 USC 107, as amended by the Randolph-Sheppard Act Amendments of 1974, Title II of P.L. 93-516;

(b) "Party" or "Parties" means one or both, as the context indicates, of the complainant State licensing agency and the "Federal agency," which is the department, agency, or instrumentality of the United States that has control of the maintenance, operation, and protection of Federal property against which the State licensing agency has filed a complaint with the Secretary;

(c) "Federal agency" means the department, agency, or instrumentality of the United States referred to in paragraph (b) of this section which is the subject of a complaint filed by a State licensing agency with the Secretary;

(d) "Secretary" means the Secretary of the Department of Education.

(e) "Regulations" means the regulations at 34 CFR 395.1 et seq.

2. Communications

(a) All communications, including originals and copies of required notices, pleadings, motions, petitions, and briefs in connection with and related to the arbitration, between the parties, between a party and the Secretary, between a

party and the arbitration panel, between the parties or the arbitration panel and the arbitration clerk or the Division for Blind and Visually Impaired of the Rehabilitation Services Administration, shall be in writing transmitted by registered or certified mail return receipt requested.

(b) A copy of the complaint shall be sent by the State licensing agency to the head of the Federal agency. Thereafter all communications, and sufficient copies thereof, will be transmitted to the arbitration clerk in the Division for Blind and Visually Impaired who will maintain the official docket of the arbitration proceedings, and who will transmit promptly the original or the copies to the parties and, the arbitration panel, as may be appropriate, and, as may be necessary, to the Division for the Blind and Visually Impaired.

3. Complaint by State Licensing Agency

(a) When the informal efforts of a State licensing agency and a Federal agency fail to resolve a dispute between them arising under the Act or regulations the State licensing agency may file a written complaint with the Secretary.

(b) The complaint may be filed by the State Attorney General on behalf of the State licensing agency, or by the State licensing agency with the written concurrence of the State governor.

(c) The complaint shall set forth the specific provisions of the Act or regulations (including the Secretary's determination with respect to any limitation on the placement or operation of a vending facility under Section 1(b) of the Act) with which the Federal agency is alleged to have failed to comply; all the relevant and material facts which are alleged to constitute or to be related to the alleged failure; and a detailed statement of the informal attempts to resolve the dispute.

4. Arbitration Clerk

Upon receipt of the complaint by the Secretary it will be forwarded promptly to the designated arbitration clerk in the Division for Blind and Visually Impaired, Rehabilitation Services Administration, Department of Education. Within 7 days of receipt by the arbitration

5. Review and Disposition of Complaint

After the complaint has been docketed it will be reviewed by the Division for Blind and Visually Impaired. No later than 30 days after acknowledgement of the complaint, the parties will be notified of the results of the review as follows:

(a) If the complaint specifies the provisions of the act or regulations with which it is alleged that the Federal agency has failed to comply and contains sufficient relevant and material facts which, if proved, would establish the failure, the parties will be notified that an ad hoc arbitration panel will be convened.

(b) If the complaint specifies the provisions of the act or regulations with which it is alleged that the Federal agency has failed to comply; but does not allege sufficient relevant and material facts which, if proved, would establish the failure, the State agency will be so notified in writing and given an opportunity to amend its complaint within 21 days from the date of the notice.

(c) If the State Licensing Agency does not file a timely amendment to its complaint the parties will be notified in writing that the complaint is dismissed.

(d) If the State Licensing Agency files a timely amendment to its complaint the parties will be notified of the sufficiency of the amended complaint expeditiously (normally not to exceed 15 days) after receipt of the amendment. If it is determined that the amended complaint alleges sufficient relevant and material facts, the notice will inform the parties that an ad hoc arbitration panel will be convened. If it is determined that the amended complaint fails to allege sufficient relevant and material facts, the notice will inform the parties that the complaint is dismissed.

(e) If the complaint does not specify the provisions of the act or regulations with which the Federal agency is alleged not to have complied, the notice will inform the parties that the complaint is dismissed.

(f) If it is determined that the complaint is specious or that it has been filed solely for the purpose of harassment, the notice will inform the parties that the complaint is dismissed and will contain a statement of the reasons for the conclusion reached and the action taken.

(g) If for the purpose of any decision under this section the Division for Blind and Visually Impaired deems it necessary to obtain information in addition to that at hand, such information will be requested through the arbitration clerk from the parties. The request will state a reasonable period for the furnishing of the information, and the determination will be made no later than 15 days after its receipt.

(h) If the complaint is dismissed for any of the reasons set forth in paragraphs (c), (e), or (f) of this Section, such dismissal shall constitute a final agency action.

6. Designation of Arbitration Panel

(a) Within 15 days from the date of the notice informing the parties that an arbitration panel will be convened, each party shall designate one panel member and promptly notify the arbitration clerk of the designation including the name and address of the designee. Within 30 days from the date of the notice, the two panel members designated by the parties, or by the Secretary under paragraph (b) of this section, shall designate as the third member of the panel, a person who is not an employee of the Federal agency who shall serve as panel chairperson.

(b) If the Secretary, through the arbitration clerk, is not notified promptly by the parties of the timely designation of the panel members, and by the panel chairperson of his timely designation as such by the panel members, the Secretary will make such designation or designations on behalf of the parties or the first two panel designees.

7. Answer to Complaint

Within 30 days from the date of the notice informing the parties that an arbitration panel will be convened, the Federal agency may file an answer to the complaint with the arbitration clerk. The failure to file an answer will not be deemed to be an admission of the allegations in the complaint, nor result in the default of the Federal agency. The issues for arbitration and the positions of the parties thereon, may be identified at the pre-arbitration conference.

8. Notice of Arbitration and Prearbitration Conference

(a) The arbitration panel, after consulting with the parties, shall schedule a reasonable date, time, and place for the arbitration which shall not be later than 45 days

after the designation of the panel chairperson. The panel chairperson shall notify the parties and the arbitration clerk of the date, time, and place of the arbitration at least 30 days prior to the time scheduled.

(b) The arbitration panel shall schedule a prearbitration conference with the parties to settle or simplify the issues between the parties and to encourage them to resolve the issues in whole or in part. If the panel so requires, stipulations or proposed exhibits shall be exchanged at the prearbitration conference or otherwise prior to the arbitration. The panel chairperson shall give the parties and the arbitration clerk reasonable notice of the date, time, and place of the prearbitration conference.

9. Conduct of the Arbitration

(a) The panel chairperson shall preside over the arbitration.

(b) The arbitration panel shall be responsible for the order, conduct, and decorum of the proceeding and shall have the authority to take all appropriate steps necessary to assure an orderly, expeditious, and fair arbitration, including, but not limited to the following:

(1) To change the date, time, and place of the arbitration, upon due notice to the parties and the arbitration clerk. This includes the authority to continue the proceeding in whole or in part.

(2) To consider matters that may aid in the expeditious disposition of the arbitration.

(3) To regulate participation of the parties and require them to state their position with respect to the issues in the arbitration.

(4) To administer oaths and affirmations.

(5) To rule on motions and other procedural items.

(6) To regulate the course of the arbitration and conduct of counsel therein.

(7) To examine witnesses.

(8) To receive, rule on, exclude or limit evidence.

(9) To fix the time for filing motions, petitions, briefs, or other items in matters pending before it.

(10) To make a final agency decision for purposes of Chapter 7 of Title V, United States Code.

(c) The arbitration panel does not have the authority to compel by subpoena the production of witnesses, papers, or other evidence.

10. Rights of Parties

The parties may:

(a) Appear by counsel or other authorized representatives in all arbitration proceedings.

(b) Agree to stipulations as to facts which will be made a part of the record.

(c) Make brief opening statements at the arbitration which shall be limited to describing the party's position and what it intends to prove.

(d) Present relevant and material evidence on the issues in the arbitration.

(e) Present witnesses who will testify under oath or affirmation and who then must be available for cross-examination by the other party.

(f) Present oral arguments at the arbitration.

(g) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the close of the presentation of evidence in the arbitration.

11. Rules of Evidence

Technical rules of evidence shall not apply to the arbitration, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied by the panel chairperson. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his direct examination. The panel chairperson may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given

to refute facts and arguments advanced on either side of the issues.

12. Depositions

If the panel chairperson determines that the interest of justice would be served, he may authorize the taking of depositions but only if the parties are afforded an opportunity to participate in the taking of the depositions. The party who requested the deposition shall arrange at its expense for a transcript of the proceedings and shall, upon request of the other party, furnish such party with a copy of the transcript.

13. Unsponsored Written Material

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the arbitration. These data are not deemed part of the evidence or record in the arbitration.

14. Official Transcript and Record

(a) The arbitration clerk will designate the official reporter for the arbitration. Copies of transcripts may be obtained by the parties and the public at rates not to exceed the maximum rate fixed by the contract between the arbitration clerk and the reporter. Upon notice to the parties, the panel chairperson may authorize corrections to the transcript which involve matters of substance.

(b) The transcripts of testimony, including transcripts of depositions introduced as evidence, and any pleadings, motions, stipulations, exhibits, briefs, and rulings by the panel, shall be filed with the arbitration clerk and, except for the correspondence section of the docket, shall constitute the exclusive record for decision. If, however, a panel ruling or decision rests on official notice of a material fact not appearing in evidence in the record, the parties are entitled, on timely request, to an opportunity to show the contrary.

15. Arbitration Briefs and Decision

(a) The panel chairperson shall fix the time for filing briefs by the parties following the conclusion of the taking of evidence in the arbitration proceeding, and, if permitted, reply briefs. The briefs may contain proposed findings of fact and conclusions of law.

(b) The arbitration panel shall render its decision within 30 days after the expiration of the time for filing briefs as fixed pursuant to paragraph (a) of this section.

(c) The decision of the arbitration panel shall be in writing and contain a statement of the rationale, including findings of fact and conclusions of law, upon which it is based. It shall be filed promptly with the arbitration clerk who shall serve it promptly on the parties.

(d) If the decision of the arbitration panel is that the acts or practices of the Federal agency are in violation of the Act or the regulations, the head of the Federal agency shall cause such acts or practices to be terminated promptly and shall take such other action as may be necessary to carry out the decision of the panel.

(e) The decision of the arbitration panel is the final agency action on the matters adjudicated by it and is subject to appeal and review as such pursuant to Chapter 7, Title 5, United States Code.

(f) The decision of the arbitration panel is a matter of public record and will be published in the Federal Register by the Secretary through the arbitration clerk.

16. Costs of Arbitration

The Secretary will pay the reasonable costs of arbitration proceedings hereunder which may include:

(a) The salaries of panel members not to exceed that of GS-18 if they are are not otherwise employed by the State or Federal Governments.

(b) Travel expenses and per diem costs for panel members, if not otherwise paid for from Federal funds.

(c) The costs of the services of the official reporter and the official transcripts under contract with the arbitration clerk, not to exceed the reasonable costs for such services in the locality in which performed and furnished.

(d) Travel expenses and per diem costs for witnesses unavailable at the locality of the arbitration proceeding and whose testimony is deemed reasonably necessary by one of the parties and approved by the arbitration chairperson.

APPROVED BY:_____
Commissioner of Rehabilitation Services
Office of Human Development Services
Rehabilitation Services Administration

DATE:_____

LIABILITY INSURANCE

The Contractor shall procure and maintain at his expense during the contract period, general public liability insurance providing limits of liability for bodily injury of not less than $50,000 for each person and $100,000 for each occurrence and property damage limits of liability of not less than $25,000 for each accident. The general liability policy shall name "The United States of Amercia, acting by and through the Federal Aviation Administration" as an additional insured with respect to operations performed under this contract.

Each insurance policy shall include the following provision: "It is a condition of this policy that the insurer shall furnish written notice to the Federal Aviation Administration, in care of the issuing office, 30 days in advance of any reduction in or cancellation of this policy."

Before commencing work, the Contractor shall furnish to the Contracting Officer written evidence from the insurer that the required insurance is in effect and that it complies with the requirements of this clause. The Contractor shall furnish to the Contracting Officer at any time during the contract period, upon request by the Contracting Officer, a certified true copy of the liability policy and manually countersigned endorsements of any changes thereto.