

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

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FILE: B-218487.3 **DATE:** January 2, 1986
MATTER OF: Environmental Aseptic Services
Administration--Request for
Reconsideration
DIGEST:

Prior decision on random sampling method of monitoring performance of custodial services contract is affirmed, since protester has not shown that sampling does not provide a reasonably accurate surveillance method, based on statistical principles.

Environmental Aseptic Services Administration (E.A.S.A.) requests reconsideration of our decision in Environmental Aseptic Services Administration, B-218487, Aug. 16, 1985, 85-2 CPD ¶ 180, where we denied a protest alleging that invitation for bids (IFB) No. F29650-84-B-0096, covering custodial services at Kirtland Air Force Base, New Mexico, was defective and should be revised.

We affirm our prior decision.

In that decision, we found that the use of inspection units that were disparate in size fell within the parameters of a mandatory military standard (MIL-STD) governing inspection by random sampling. Accordingly, we denied E.A.S.A.'s protest.

In its reconsideration request, E.A.S.A. argues that we did not decide its second basis of protest, that the IFB imposed unreasonable liquidated damages by its failure to give pro-rata credit for work performed. E.A.S.A. contends that the pass/fail system of inspection of the MIL-STD random sampling plan denies credit for partial or substantial performance in an inspection unit, resulting in the imposition of an unenforceable penalty.

As we stated in our prior decision, under the random sampling plan applicable to this contract, if one or more defects in a particular service are found in a unit during an inspection, an unsatisfactory is recorded for that

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service for the unit. If the number (or percentage) of units rejected exceeds the acceptable quality level for that service, as determined from MIL-STD tables attached to the IFB, the government may deduct specified amounts from monthly payments due the contractor. The amount deducted is determined by comparing the value of the unsatisfactory performance with the total contract value of the particular service.

We find the random sampling method of monitoring performance of a task in an inspection unit is not legally objectionable as an unenforceable penalty. We agree that such a method of surveillance does not guarantee complete accuracy, but the only way to ensure that full credit is given for all areas of an inspection unit that have been cleaned would be to inspect all units 100 percent of the time. Since this cannot reasonably be done, the random sampling plan provides a statistically accurate surveillance method that has been endorsed by the Office of Federal Procurement Policy (OFPP) for use in service contracts. See OFPP Pamphlet No. 4 (1980).

In this case, E.A.S.A. has not presented any evidence showing that the credits and penalties of the random sampling plan to be employed at Kirtland do not balance out over the term of the contract (for example, the firm has not shown that more small units are inspected more often than large units). Nor has the protester challenged the statistical accuracy of the MIL-STD governing inspection by random sampling. It therefore has not made the requisite showing that the solicitation provisions are unreasonable or unnecessary. See Kime-Plus, B-215979, Feb. 27, 1985, 85-1 CPD ¶ 244.

Further, to the extent that the random sampling method imposes a risk that sampled work in an inspection unit will not precisely indicate the quality of the contractor's performance of the entire task in that unit, we believe this is a risk any prospective contractor must consider in preparing its bid price. See Saxon Corp., B-214977, Aug. 21, 1984, 84-2 CPD ¶ 205.

We will only object to a liquidated damages provision as imposing a penalty if a protester shows that there is no possible relation between the amount stipulated for liquidated damages and the losses that are contemplated by the parties. See Massman Construction Co., B-204196, June 25, 1982, 82-1 CPD ¶ 624. Adherence to the provisions of the MIL-STD in this case establishes a reasonable relationship

between amounts stipulated for liquidated damages and the losses resulting from individual services defectively performed.

The cases cited by the protester in support of its allegation, Environmental Aseptic Services Administration, 64 Comp. Gen. 54 (1984), 84-2 CPD ¶ 510; Environmental Aseptic Services Administration et al., 62 Comp. Gen. 219 (1983), 83-1 CPD ¶ 194; and Linda Vista Industries, Inc., B-214447 et al., Oct. 2, 1984, 84-2 CPD ¶ 380, are inapplicable here, since the Air Force did not combine all cleaning tasks and will not reject an entire lot for deficiencies in one task. E.A.S.A. therefore has failed to meet its burden of proof. TM Systems, Inc., B-214543.2, Sept. 18, 1984, 84-2 CPD ¶ 313.

We therefore find that the damages assessed pursuant to the MIL-STD do not constitute unreasonable liquidated damages, since the Air Force followed the procedures and tables of that MIL-STD.

The prior decision is affirmed.

for 
Comptroller General
of the United States