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

FILE: B-215538 **DATE:** October 23, 1984

MATTER OF: United Food Services, Inc.

DIGEST:

Establishment of inspection procedures, including imposition of random sampling inspection, to insure that services being procured meet specifications is the responsibility of the contracting agency. GAO will not question an agency's determination as to what provisions should be included in the solicitation for this purpose unless they unduly restrict competition or violate statutes or regulations.

United Food Services, Inc. protests allegedly defective specifications in invitation for bids (IFB) No. DABT01-84-B-1008, issued by the Department of the Army for dining facility attendant services in four buildings at Fort Rucker, Alabama.

We deny the protest.

United initially protested two IFB provisions, entitled "Quality Assurance Evaluator Surveillance Plan" and "Performance Requirements Summary." The contracting agency, by amendment No. 009, deleted the former provision from the IFB and, as a consequence, this ground of protest has become moot. Office Products International, Inc., B-209610, Apr. 5, 1983, 83-1 CPD ¶ 363.

The Performance Requirements Summary (PRS) permits the government--after surveillance by random sampling of the contractor's performance--to deduct payments for services exceeding the "maximum allowable degree of deviation from perfect performance" in an amount calculated to represent the value that unsatisfactory services bear to all contract requirements.

United initially alleged that the PRS provision was unduly restrictive and constituted a penalty because of

excessive deductions that did not adequately represent actual damages to the government. United cited examples such as 0% (zero percent) allowable degree of deviation for food storage, cleaning of tableware, and other items. By amendment No. 009, however, the Army, apparently in response to United's concerns, extended the bid opening date and revised and liberalized various provisions of the solicitation, including those related to the examples cited by United. In its comments on the agency report filed with this Office on the protest, United failed to specify which, if any, of the alleged defects still existed in the solicitation. Our review of the amended solicitation indicates that there are only two areas not specifically addressed and revised by amendment No. 009.

First, United objects to inspections based on random sampling. United contends that, unlike a manufacturing operation, a service contractor should not be subjected to inspection based on random sampling since different contractor personnel with varying degrees of proficiency perform the work at different locations, and substandard performance by one crew cannot be imputed to another crew at another facility. According to United, random sampling thus is not a rational way to judge performance in a service contract of this sort.

We find no legal merit to United's position. The establishment of inspection procedures to insure that services will meet the government's needs is a matter of specification preparation, which is primarily the responsibility of the contracting agency. We therefore will question such provisions only if they are shown to restrict competition unduly or otherwise to violate procurement statutes or regulations. Environmental Aseptic Services Administration and Larson Building Care Inc., 62 Comp. Gen. 219 (1983), 83-1 CPD ¶ 194.

Here, we simply cannot accept United's contention that there is no rational basis for an agency to impose random sampling inspections where food attendant services are being performed at different locations by the same contractor. The fact is there is a common element that is being inspected: effective management by the contractor to insure uniform performance levels consistent with contract requirements at all locations. We see nothing unreasonable in the Army's view that deficient performance at one of the four facilities, disclosed through an

unannounced or random inspection, warrants concern about the contractor's overall performance and resort to contractual rights addressing that concern.

United also argues that the solicitation does not define the term "defect," which triggers the quality assurance provisions of the proposed contract.

We see no legal basis to object to this aspect of the solicitation. The solicitation establishes allowable variances from standards before the government will reject a specific service, defining these "Acceptable Quality Levels" in terms of "maximum percent defective," maximum number of defects per hundred units, or the number of defects that can be "considered satisfactory on the average." Obviously, a "defect" can occur in innumerable factual circumstances during contract performance, and cannot always be precisely defined. In our view, the specific application of this term should be left to the reasonable judgment of the agency during contract performance as part of the agency's contract administration function.

The protest is denied.

Milton J. Socolar

Acting Comptroller General
of the United States