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# NAVAL POSTGRADUATE SCHOOL Monterey, California



## THESIS

AN ANALYSIS OF NAVY, MARINE CORPS,  
AND ARMY FOOD SERVICE CONTRACTING

by

Matthew Gerard Ochs

December 1991

Thesis Advisor:

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**An Analysis of Navy, Marine Corps,  
and Army Food Service Contracting**

by

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B.S., Clarion University of Pennsylvania, 1982

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## ABSTRACT

The purpose of this thesis was to examine the major difficulties associated with administration of food service contracts in the Army, Navy, and U.S. Marine Corps. Specifically, pre-award causes of these difficulties, actions taken by Government contract administration officials, and reactions of contractors to these difficulties have been identified. Actions both Government and industry can take during pre-award and post-award to improve the performance of food service contracts are recommended. An informational background for food service contracting has been developed. Armed Services Board of Contract Appeals and protests to the Comptroller General were examined in detail; General Accounting Office (GAO), Army Audit Agency, and Navy Audit Service reports relative to food service contracting were reviewed; and mail survey results of Government officials and contractors were presented to determine the major difficulties associated with administration and performance of food service contracts. The thesis describes how administration and performance difficulties are caused by pre-award actions by the Government, and how corrective actions can significantly reduce the incidence of difficulties, and failure, of food service contracts.

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## I. INTRODUCTION

### A. GENERAL

During the Carter Administration, the Office of Management and Budget Circular A-76 was emphasized as an important Government program for reducing spending. A-76 established that the Government should not perform work in-house that could be completed by the private sector. Any product or service that is required by the Government should be purchased commercially unless the Government can perform the service at a competitive price.

This emphasis on the civilian sector has immensely increased the use of service contractors to perform many functions previously accomplished by Government employees. Contracting for services from the private sector increased during the last decade more than 30 percent. [Ref. 1:p. 14] In fact, during Fiscal Year 1990, service contracting by Government agencies amounted to over \$80 billion. [Ref. 2:p. 501] Included in these contracts is the use of civilian contractors to provide food service support to Government installations. The service components of the Department of Defense have all begun to contract out for food service support. This contract action is not designed simply to obtain food service at a competitive price, but also to allow

military personnel to perform mission essential duties without being tasked the additional duties as mess attendants.

Installations have had varied levels of success with food service contracts, ranging from successful completions to terminations due to contractor defaults.

#### **B. OBJECTIVES OF THE RESEARCH**

The objective of this research is to identify specific post-award difficulties and pre-award causes of these difficulties in food service contracting for the Departments of the Army and Navy, and recommend improvements to the procurement process. Contract administration is divided into three distinct areas. These areas are: specific tasks to administer a food service contract, contract types and incentives that encourage successful contract performance, and the level of education and training achieved by Government technical representatives and contract administrators.

Food service contracting was chosen because it is an area in which very little research has been done, and it is a fairly recent service to be contracted out. However, more and more food service contracts are awarded each year and the results are not always acceptable.

#### **C. RESEARCH QUESTIONS**

The primary research question is: What are the major difficulties associated with the administration of food

service contracts and how might these difficulties be resolved?

The secondary questions are:

- What are the primary causes of failure or default of food service contracts?
- What difficulties in the performance of food service contracts can be attributed to pre-award actions?
- How have Government Contract Administration officials attempted to resolve post-award problems associated with food service contracts and what degree of success has been achieved?
- How have contractors reacted to the difficulties associated with performing food service contracts?
- What actions can both Government and industry take prior to award that could improve the performance of food service contracts?

#### **D. SCOPE AND LIMITATIONS**

The food service contracts that will be looked at are those associated with operating a military installation in the Army, Navy, and Marine Corps. However, in review of judicial proceedings, Air Force food service contracts were also researched to receive valuable input from rulings provided by the Armed Services Board of Contract Appeals (ASBCA) and the Comptroller General of the United States.

#### **E. METHODOLOGY**

The initial research material was collected from a literature search conducted through the Defense Technical Information Center, Defense Logistics Studies Information Exchange, Dudley Knox Library at the Naval Postgraduate

School, discussions with contracting officers and their technical representatives, and audit officials from the Army and Navy. From this information, the research questions were developed.

An analysis of all Armed Services Board of Contract Appeals (ASBCA) and Comptroller General decisions relative to food service contracts from 1985 to present was conducted to develop data that would help answer the research questions. This approach was considered an appropriate way to begin to develop a trend analysis of difficulties associated with the administration of food service contracts and associated pre-award causes of these post-award difficulties.

An analysis of reports conducted by the General Accounting Office, Army Audit Agency, and Navy Audit Service pertaining to food service contracts was also performed. This method was considered an appropriate way of conducting research to determine Government audit official's opinions concerning pre-award and post-award difficulties pertaining to food service contracts. Additionally, this analysis was conducted to develop data on recommendations and subsequent actions Government officials have taken to resolve pre-award and post-award difficulties associated with food service contracts.

An informal survey questionnaire was sent to contracting officers, and Contracting Officer's Technical Representatives (COTR's) in the Army, Navy, and Marine Corps who are actively involved with food service contracts. Additionally, a

separate survey questionnaire was sent to civilian food service contractors. These surveys were conducted to develop data that would help answer the research questions. This method was considered an appropriate way to solicit and receive data from all parties that are actively involved in food service contracting. The researcher chose to frame the questions so as to allow the participant to subjectively answer questions pertinent to this research in a manner which would provide new ideas from field activities and contractors.

The survey participants from the Government consisted of 78 Contracting Officers and COTR's in the Army, Navy and Marine Corps. The survey participants from the civilian contractor population consisted of 80 contractors that have either been awarded a food service contract or have submitted a proposal or bid in response to a Request for Proposal (RFP) or Invitation for Bid (IFB) by the Government for a food service contract.

The contracting officer that was responsible for food service contract administration at the installation was asked to participate and receive input from the COTR in providing a response. The names of the contractors were provided by the contracting officers for those contractors performing food service contracts, and by use of a bidders list of a current food service contract solicitation.

After the surveys were returned to the researcher, the results were collated, analyzed, and conclusions and recommendations were developed.

To conduct a complete analysis of the difficulties associated with administration of food service contracts and the pre-award causes of these difficulties this researcher sought to obtain not only the Government officials view but also the view of judicial bodies and that of the civilian contractor.

#### **F. ORGANIZATION OF THE THESIS**

The thesis consists of six chapters. This chapter is an introduction to the thesis. The next chapter provides the reader with general information about food service contracts and how they are administered. Chapter III presents an analysis of Armed Services Board of Contract Appeals (ASBCA) cases and Comptroller General decisions involving food service contracts. Chapter IV presents an analysis of audits of the General Accounting Office, Army, and Navy pertaining to food service contracts. The fifth chapter presents the survey questions and the responses given by Government officials and civilian contractors. The final chapter discusses the results of this study, draws conclusions based upon the research data, and makes specific recommendations resulting from this effort. The chapter concludes with recommended areas for additional research.

## II. BACKGROUND

This chapter will provide the reader with a general overview of food service contracting. It will cover some basic definitions, laws, the administrative processes that are involved in food service contracting, and potential problem areas associated with pre-award and post-award of food service contracts.

### A. SERVICE CONTRACTS DEFINED

The Federal Acquisition Regulation (FAR) defines a service contract as: [Ref. 3:part 37.101]

. . . a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. A service contract may be either a nonpersonal or personal contract. It can also cover services performed by either professional or nonprofessional personnel whether on an individual basis or organizational basis.

Other than food services, these contracts are normally for maintenance, housekeeping, transportation, research and development, or similar services.

It is important to understand the distinction between personal and nonpersonal services. A nonpersonal services contract is one in which the [Ref. 3:part 37.101]

. . . personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to supervision and control usually prevailing in relationships between the Government and its employees.

On the other hand, a personal services contract "makes the contractor personnel appear, in effect, Government employees". [Ref. 3:part 37.101] Contracting personnel must fully understand these differences. The FAR prohibits the use of personal service contracts unless authorized by 5 U.S.C. 3109. Normally, the Government must obtain its employees by directly hiring under the civil service laws.

#### **B. FOOD SERVICE CONTRACTS DEFINED**

Food service contracts are nonpersonal contracts which provide for food service support under three basic arrangements: full food services, management and food preparation services, and dining facility attendant services. Full food service contracts encompass all aspects of dining facility management, food preparation, menu planning, food ordering, and dining facility attendant services. Management and food preparation service contracts are essentially for full food service less dining facility attendant services. Under this arrangement, dining facility attendant services are performed by military personnel. This arrangement is normally found at basic training installations. Contracts for dining facility attendant services involve only those activities required to perform sanitation, custodial, and limited food preparation duties.

### C. SERVICE CONTRACT ACT OF 1965

The Service Contract Act of 1965, effective 19 January 1966 extended Federal minimum wage, fringe benefits and working condition standards, to all contracts and subcontracts thereunder for services, such as laundry and dry cleaning, guard services, food services, custodial and janitorial duties, packing and crating, and miscellaneous housekeeping functions in excess of \$2,500.00. The law specifies that service contracts in excess of \$2,500.00 must require that the contractor pay employees the prevailing wage rate for the locality as determined by the Secretary of Labor, including fringe benefits as an element of wages. Successor contractors are required to pay wage rates and fringe benefits based on those agreed to by the predecessor contractors in collective bargaining agreements when the new service contract is for substantially the same work and will be performed at the same location. In no case can the wage rate be less than that provided under the Fair Labor Standards Acts. In addition to its wage rate provisions, the law also covers safety standards and sanitary working conditions. [Ref. 4:p. H-4-14]

The effect of this act was to provide the same protection to service employees that the Walsh-Healey Public Contracts Act and Davis-Bacon Act provided supply and construction employees.

A serious problem of the Service Contract Act involves successor contracts. The Act requires that when the

Government awards a successor contract for work previously under contract, the successor contract must pay the employees at least as much in wages and fringe benefits as contained in the predecessor's collective bargaining contract. The Department of Labor extended the provision to all continuing requirements for services even though the work might be performed in different locations. The Office of Federal Procurement Policy felt that the successorship provision be applied only in circumstances where substantially the same services are to be performed at the same location as the previous contract. The Office of Federal Procurement Policy contended that the existing labor policy acts to restrain competition for those service contracts where the Government does not specify a place of performance. If the location of performance is immaterial to the procuring agency the actual location of performance may be unknown until a successful offeror is selected. The Department of Labor requires the minimum wage determination be based on the rates applicable to the area where the procurement is located. [Ref. 5:p. A-15]

The Service Contract Act and OMB Circular A-76 are to a great extent interrelated. OMB Circular A-76 was established to assure reliance on the private enterprise system for the products and services needed by the Government to the maximum extent consistent with effective accomplishment of essential programs. OMB Circular A-76 requires a comparative cost analysis prior to the issuance of a service contract to

determine if functions can be performed at a lower cost to the Government "in-house" than under a service contract. Executive agencies must make a comparative cost analysis between commercial and Government sources, and the cost to be incurred under each alternative must be determined in accordance with OMB Circular A-76. Industry spokesmen have long complained that cost factors used by the Government for its personnel when making this determination as to whether the function should be performed in-house or under contract are generally grossly unrealistic and understated. [Ref. 6:p. A-23]

OMB Circular A-76 defines the circumstances under which the Government may provide commercial and industrial products and services for its own use. Comparative cost analysis must be used to provide justification for the decision to contract or accomplish work in-house. This also includes compiling and maintaining an inventory of commercial or industrial activities, conducting triennial reviews of these activities and evaluating "new starts" to determine if the service can be obtained from commercial sources. Each agency is required to develop a schedule for the review of all its commercial and industrial activities and the contracting out of those similar functions. These figures will be made available to the public. There will also be an objective review of appeals from A-76 determinations. The one area not intended for cost analysis is research and development. [Ref. 7:p. A-1-2]

#### **D. PRE-AWARD CONSIDERATIONS**

##### **1. Preparation of the Performance Work Statement**

As soon as the decision is made to formally consider the use of a service contract, the installation should begin to prepare the performance work statement (PWS). A performance work statement is defined as: [Ref. 8:p. 4]

A document that describes accurately the essential and technical requirements for items, materials, or services including the standards used to determine whether the requirements have been met.

The PWS is prepared by the activity that requires the work be performed, with help from the contracting office and the base management office. The PWS for food service contracts is normally prepared by the base food service office. They are the organization that has the responsibility to define the requirements. Additionally, the PWS is reviewed by a legal representative to assure it is suitable for a contract.

For contract administration to be effective, the contract must contain an adequate performance work statement (PWS). The PWS should describe the performance to be accomplished by the contractor, and furnish reasonable performance standards to measure the quality of work. The performance requirement summary identifies required services, performance standards, maximum allowable deviations from the standards, methods of surveillance, and deductions from the contract price for exceeding the maximum allowable deviation.

An element critically important to the service acquisition process is an accurate description of the performance required. The essential performance requirements for the service are described in the contract specifications. Based on the specifications, the other elements of the acquisition process are initiated. The method of acquisition is determined, a source list is compiled, the contract terms and conditions are established, the service is performed, and the results are evaluated.

If the specifications are inadequate or inconsistent, legal and administrative problems could be encountered. Some of the effects of inadequate specifications are:

1. Increases in contract prices
2. Substandard performance by contractors
3. Delays in delivering services
4. Litigation
5. Increases in contract administration costs

The specifications are contained in the performance work statement (PWS), which is part of the solicitation. The PWS describes the required output desired. The PWS should be based on the most current workload data available.

The Office of Federal Procurement Policy (OFPP) has recently issued a Policy Letter concerning service contracting. It emphasizes the use of performance requirements and quality standards in defining contract requirements,

source selection, and quality assurance. The OFPP stated in this Policy Letter that: [Ref. 2:p. 504]

It is the policy of the Federal Government that (1) agencies use performance-based contracting methods to the maximum extent practicable, when acquiring services, and (2) agencies carefully select acquisition and contract administration strategies, methods, and techniques that best accommodate the requirements. In addition, agencies shall justify the use of other than performance-based contracting methods when acquiring services, and document affected contract files.

Performance-based contracting means structuring all aspects of an acquisition around the purpose of the work to be performed as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work. This OFPP Policy Letter further defines how the PWS should be structured: [Ref. 2:p. 104]

When preparing statements of work, agencies shall, to the maximum extent practicable, describe the work in terms of "what" is to be the required output rather than "how" the work is to be accomplished. To assist in refining statements of work, consideration shall be given to issuing draft solicitations.

Additionally, this OFPP Policy Letter states that when an agency is acquiring services which previously have been provided by contract, they shall rely on experience gained from the prior contract to incorporate performance-based acquisition methods. For such follow-on requirements, the PWS shall further describe the services in terms of "what" is to be performed, and performance standards and surveillance plans shall be more definitive than those for the prior acquisition. [Ref. 2:p. 505] Therefore, the emphasis of the OFPP Policy Letter relevant to the PWS is as follows: (1) For the initial

procurement of a service the PWS should be written in more general terms "what" is to be required, and (2) for repetitive (follow-on) requirements the PWS will be written in more definitive terms based on experience gained. This policy is a major change in the way PWS for services, specifically, food service contracts have been written in the past. The majority of PWS for services have been structured in detail describing how to perform each task.

## **2. Quality Assurance**

The responsibility for quality control rests solely with the contractor. The Government will inspect the work but only to insure contract compliance by the contractor. This Government inspection is known as quality assurance (QA).

The OFPP has addressed the area of quality assurance in its recent policy letter as follows: [Ref. 2:p. 504]

Agencies shall, to the maximum extent practicable, assign contractors full responsibility for quality performance. Agencies shall develop formal, measurable (i.e., in terms of quality, timeliness, quantity, etc.) performance standards and surveillance plans to facilitate the assessment of contractor performance and the use of performance incentives and deduction schedules. Agencies shall, to the maximum extent practicable, avoid relying on cumbersome and intrusive process-oriented inspection and oversight programs to assess contractor performance.

QA is a difficult area that must be planned for while the PWS is being developed. Again, the activity that requires the service is responsible for the Quality Assurance or Surveillance Plan. This plan is: "An organized written document used for quality assurance surveillance. The document contains sample guides, checklists, and decision

tables." [Ref. 8:p. 4] The plan is developed along with the PWS. These plans are normally based on statistical sampling techniques, therefore, developing the plans require some expertise.

The plan should include a sampling guide that states what will be checked, the required standard of performance or acceptable quality level (AQL), decision tables that assist in determining who is at fault for deficiencies, and a checklist. [Ref. 8:p. 15]

A Government quality assurance surveillance plan is essential to insure that services required by the contract are performed at an acceptable quality level. The objectives of the plan are to detect unsatisfactory performance, identify causes, and take corrective action when unacceptable performance is not corrected.

The Government uses five different methods of monitoring contractors' performance. They are random sampling, planned sampling, 100% inspection, validated complaints, and unscheduled inspection.

Random sampling uses a statistical approach to choose a percentage of the total work that a contractor is performing and inspecting that work. The amount sampled is determined from a sample size table found in MIL-STD-105D. It is based on the number of times an item occurs and the AQL for the item. Individual samples are chosen by a random number table.

Planned sampling is used when the Government personnel monitoring the contract want to place specific emphasis on a certain portion of the contract. To use this method, the Contracting Officer's Technical Representative (COTR) or Quality Assurance Evaluator (QAE) develops a schedule of which area they will look at and at what frequency.

One hundred percent inspection is a system used only on contracts that contain infrequent, highly critical work items. If the Government inspects all of the contractor's work, it is very time consuming and should only be specified when that level of supervision is required. If a work item is critical and frequent analysis must be done, a decision must be made that weighs the costs of 100% inspection against the risks of not examining each item.

Customer awareness is the key to using the validated complaints method. Customers (i.e., users of the dining facility) notify the COTR/QAE when the contractor is not performing properly and the COTR/QAE verifies the complaint. This notification normally occurs by use of customer complaint forms.

Unscheduled inspection is done by the COTR/QAE simply conducting an inspection whenever it is felt that there is a need to do so. Because the contractor may consider unscheduled inspections arbitrary, this type of inspection should be avoided unless there are specific reasons why the other methods cannot be used.

Each of these types of inspections should be considered as the quality assurance plan is being developed and the best combination chosen to support the PWS.

### **3. Deductions**

Deductions are used to reimburse the Government for work that was not performed or was not performed within the AQL by the contractor. The amount of deduction should represent the cost of the item of work in question. The deduction is figured using a deduction formula normally found in the quality assurance plan.

To insure reasonable deductions are determined, the PWS and the quality assurance checklist must list critical tasks required by the contractor and related subtasks. A corresponding deduction percentage must also be assigned to each critical task and related subtask. It is important that deduction percentages be assigned to subtasks, not only to critical tasks. This point was highlighted by a decision of the Comptroller General of the United States. [Ref. 9]

Performance requirements summaries in invitation for bids for services contracts which permit the Government to deduct from the contractor's payments an amount representing the value of several tasks where a random sample inspection reveals a defect in only one task imposes an unreasonable penalty, unless the agency shows the deductions are reasonable in light of the particular procurement's circumstances.

### **4. Contract Type**

Presently the FAR requires that service contracts be awarded through sealed bidding if the requirements for this method of solicitation exist. [Ref. 3:part. 37-105] By

definition then, the contract awarded will be either firm fixed-price or fixed-price with economic price adjustment. Using sealed bidding and a firm fixed-price contract for services has the advantage of transferring the majority of the financial risk onto the contractor. Additionally, it promotes competition between different contractors. The contract type most frequently awarded for food services is a firm fixed-price contract. Cost type contracts are not often used or recommended in the food service environment.

Although competition is considered extremely important by Congress, this type of contract does not always provide the best service to the installation. Contractors tend to sacrifice quality in order to control their costs when assuming the majority of the financial risk in performing a complex service. Awarding a firm fixed-price contract to acquire a complex service affords only limited opportunity to reduce costs without adversely affecting the quality of service. This, coupled with the problem that service contract performance work statements tend to be inaccurate or at least subject to ambiguous interpretations, highlights the potential difficulty of blindly using sealed bidding and firm fixed-price contracts for all services. [Ref. 10:p. 17]

Contract types most likely to motivate contractors to perform at optimal levels should be chosen. The OFPP has recently defined the use of contract type for acquiring services as follows: [Ref. 2:p. 505]

Fixed price contracts are appropriate for services that can be objectively defined and for which risk of performance is manageable. In most instances, services that are routine, frequently acquired, and require no more than a minimal acceptable level of performance fall into this category. For such acquisitions, performance-based statements of work and measurable performance standards and surveillance plans shall be developed and fixed price contracts shall be preferred over cost reimbursement contracts. Cost reimbursement contracts are appropriate for services that can only be defined in general terms and for which risk of performance is not reasonably manageable. Complex or unique services for which quality of performance is paramount frequently fall into this category.

Even though the use of firm fixed-price contracts for complex services appear to have a negative impact upon the quality of service provided by a contractor, the General Accounting Office has stated that installations are using too many cost type contracts and are not justifying the decision fully in accordance with law and regulation. [Ref. 11:pp. 30-39]

#### **5. Incentives**

The use of incentives or award fees reward contractors for good performance, thus motivating the contractor to perform above, not below the established minimal acceptable levels. Incorporating only deductions for poor performance without also including incentive provisions in the contract will tend to discourage contractors from competing, dedicating their best personnel, and putting forth their best efforts. Therefore, incorporating incentive provisions along with quality assurance deduction schedules into service contracts will motivate contractors to perform at maximum efficiency.

The subject of incentives has been addressed by the OFPP as follows: [Ref. 2:p. 505]

To the maximum extent practicable, contracts shall include incentive provisions to ensure contractors are rewarded for good performance and quality insurance deduction schedules to discourage unsatisfactory performance. These provisions shall be based on measurement against predetermined performance standards and surveillance plans.

#### **6. Selection Procedures**

One of the final steps in the pre-award phase of service contracting is source selection. Source selection in the arena of service contracts, particularly food services, should place emphasis on attracting and selecting competent and quality oriented contractors in addition to obtaining the lowest price. Inattention to quality-related factors leads to the selection of contractors with marginal capability who submit the lowest prices but then perform at unsatisfactory levels. Therefore, it is apparent that other than price related factors must be considered in evaluation and selection of a food service contractor. The OFPP has defined the policy for source selection procedures as follows: [Ref. 2:p. 504]

Agencies shall use competitive negotiations for acquisitions where the quality of performance over and above the minimum acceptable level will enhance agency mission accomplishment and be worth the corresponding increase in cost. In such instances, contracting activities shall give careful consideration to developing evaluation and selection procedures that utilize quality-related factors such as: technical capability; management capability; cost realism; and past performance. These factors shall receive increased emphasis to the extent requirements are more complex and less clearly defined. The desired relative importance among these factors and between these factors and price shall be applied as stated in the solicitation.

Based upon the aforementioned policy of the OFPP, the use of discussions/negotiations in the service contract selection process will enhance not only both parties understanding of the contract requirements, but also the likelihood of receiving the greatest quality in the service performed. Additionally, the OFPP further states "Sealed bidding shall be used when the goal of the acquisition is to achieve the desired service at the lowest price with minimum stated acceptable quality." [Ref. 2:p. 504] This new policy set by the OFPP will have a drastic impact upon the food service acquisition process. Most food service contracts have been awarded using the sealed bid process.

#### **E. PROCUREMENT AND ADMINISTRATION OF SERVICES**

The contracting officer that solicits for and awards a contract is known as the Procuring Contracting Officer (PCO). The contracting officer that administers the contract is called the Administrative Contracting Officer. In food service contracting the PCO normally performs both these functions and is located at the installation where the service is performed. When the contract PCO and ACO are not located at the installation where the service is to be performed the Contracting Officers Technical Representative becomes the only Government representative on the installation. The COTR must manage the contract without daily guidance and support from the PCO or ACO. This situation requires the utmost coordination and communication between the PCO or ACO and the

COTR. The COTR for most food service contracts is a resident food service officer or senior enlisted person.

#### **F. ADMINISTRATION OF SERVICE CONTRACTS**

Contract Administration can broadly be defined as "those activities, on the part of the Government contracting agency, that takes place during performance of the contract." [Ref. 10:p. 138] From the Government standpoint contract administration has two purposes. First: "The broad goals of contract administration are to assure that the Government obtains the needed work on time and that the contractor receives proper compensation." [Ref. 11:p. 1] The secondary purpose of contract administration is to "protect the public trust." [Ref. 13:p. 8]

Contract administration can be broken down into the following activities: [Ref. 12:p. 141]

- Orienting the contractor
- Processing invoices for payment
- Modifying the contract
- Resolving disputes
- Interpreting the contract
- Contract monitoring

Each of these requirements, as they relate to food service contracts, will be discussed below.

##### **1. Orienting the Contractor**

This function is critically important for service contractors. Unlike the large contractors that provide

equipment and construction to the Government, service contractors are likely to be small businesses, to include small disadvantaged businesses. Proper contract administration includes ensuring that the contractor fully understands all the contract requirements and possesses the capacity to perform. Some explanation of contract requirements should be accomplished during pre-award negotiations, if they are conducted. Additionally, after the contract is awarded, a post-award conference covering all contract requirements must take place.

Orientation for service contractors is also important because service contractors, more than any other contractor, will be providing services for the entire installation. The potential for conflict with other activities transpiring on the installation is much higher with service contractors.

The orientation should include but not be limited to:

- A discussion of all the locations that will be affected by the contract
- The contractor's limits in moving about the installation
- An introduction to the contracting officer's technical representative (COTR) or Quality Assurance Evaluator (QAE)
- A review of the performance work statement (PWS) to insure all terms and conditions are understood
- A discussion of how invoices should be submitted and payment forwarded
- A discussion of any incentives and deductions, and how they will be determined

## **2. Processing Invoices for Payment**

Processing invoices involves assuring that the contractor receives payment in a timely manner. The Prompt Payment Act, 31 U. S. C. 3901 et seq. requires: [Ref. 13:p. 877]

Government payment of interest for delays in payment for a "completed delivered item of property or service," the "required payment date" is stated to be the date of payment specified in the contract or "thirty days after receipt of proper invoice . . . if a specific date on which payment is due is not established by contract."

This is a very important concept that must be adhered to if the Government is to be a responsible customer and abide by its laws.

## **3. Modifying the Contract**

Contract modifications or changes are covered in the changes clause of the contract. This clause gives the Government the unilateral right to make changes to the contract. The contractor is obligated to perform any changes and will be given an equitable adjustment for increased costs. FAR 52.243-1 lists the types of changes allowed to contracts that provide nonprofessional services without supplies. The following may be changed within the scope of a service contract: [Ref. 3:part. 52.243-1]

1. Description of services to be performed
2. Time of performance (i.e., hours of the day, days of the week, etc.)
3. Place of performance of the services

The changes clause provides the contracting officer with one of the most powerful tools for managing the contract. An important area of contract administration is finding the performance areas that were either left out of the contract or not adequately defined. The contracting officer should always attempt to resolve these areas with a bilateral supplemental agreement. If agreement cannot be reached, however, the changes clause provides the mechanism for getting the contractor to do the required work. As with any of the contract administration issues, a professional business relationship between the contractor and the administrator is the key to successful contract performance.

#### **4. Resolving Disputes**

The Contract Disputes Act of 1978, 41 U. S. C. 601 et seq. is implemented in Federal Government contracting by including a disputes clause in the contract. The clause is listed in FAR 52.233-1. A dispute arises when a disagreement about the contract cannot be resolved and a formal claim is made to the contracting officer.

When a dispute cannot be resolved through negotiation, the contracting officer makes a final decision on the matter and informs the contractor. If the contractor is not satisfied with the contracting officer's decision, the contractor can appeal to the judicial system or Board of Contract Appeals for relief. Throughout the appeal process the contractor must continue to perform the contract in the

manner set forth in the contracting officer's final decision. Should the appeal be sustained and find the contracting officer in error, the contractor will be given an adjustment to compensate him for his effort.

#### **5. Interpreting the Contract**

Contract interpretation is basically the same for service, supply or construction contracts. "The basic objective of contract interpretation is to determine the intent of the parties." [Ref. 13:p. 103] Because the Government writes the contract and the Government contracting officer makes the final decisions on interpretation, the Government should take extreme care in clearly wording service contracts to prevent ambiguity problems. This is especially true in service contracting because the contractors tend to be less sophisticated.

#### **6. Contract Monitoring**

Contract Monitoring is where the Government uses the Quality Assurance Plan that was developed prior to the award of the contract. This function is normally delegated by the contracting officer to the contracting officer's technical representative (COTR) who executes it through Quality Assurance Evaluators (QAE).

##### **a. Contracting Officer's Technical Representative**

Service contracts are normally monitored by a contracting officer's technical representative (COTR). The primary requirement for a COTR is that they be technically

knowledgeable in the service for which they are responsible.

COTR's are responsible for:

1. Insuring that contractor performance complies with the technical requirements of the contract
2. Inspecting the quality of the services performed by the contractor
3. Maintaining detailed inspection records
4. Reporting identified performance problems to the contracting officer

The COTR is assisted by the QAE who are responsible for inspecting and evaluating contractor performance. COTR's should be designated in writing, and the designations should clearly define the scope and limitations of the COTR's authority.

The COTR's job in contract monitoring is extremely important and complex. Since COTR's are technical experts and not contracting specialists, they have to be trained to perform their duties. COTR training can be a weak link and so must be planned well in advance. Installations should have an established program to assure that the COTR is well prepared to perform the required duties. The responsibility for providing training to the COTR in the area of monitoring contract performance is that of the contracting officer. If COTR's are not properly trained, problems in administration of the contract are certain to occur, particularly, an adversarial relationship between the Government and the contractor due to misunderstanding and misinterpretation is likely.

COTR's and QAE's are the people who manage the contract for the contracting officer on a daily basis. These individuals represent the Government on a daily basis with the contractor's personnel. Normally the contracting officer only interjects into the relationship to solve problems.

The process of monitoring contractor quality is the joint responsibility of the contractor and the Government. This joint process includes the contractor's quality control program and the Government's quality assurance program.

To insure the contract requirements will be met in a satisfactory manner, a contractor must prepare a quality control plan. Specifically, a quality control plan must include:

1. An acceptable inspection system
2. A method of identifying deficiencies in the quality of services performed
3. A provision for maintaining records of all inspections conducted and corrective action taken

The records are to be made available to Government personnel and should be used, as appropriate, to reduce or increase the amount of surveillance performed by the Government during the contract period. [Ref. 3:part 52.246]

The primary objective of the Government's quality assurance program is to insure that the contractor quality control program is functioning effectively and will produce the quality of performance specified in the contract. [Ref. 3:part 46.000]

The quality assurance plan should provide a systematic approach to surveillance that will enable Government evaluators to determine the acceptability of work completed by a contractor. If unacceptable performance exceeds certain prescribed levels, payments to the contractor should be reduced in accordance with a reduction formula included in the quality assurance plan. Surveillance inspections by quality assurance personnel should be sufficiently documented to support payment for satisfactory performance or to withhold payment for unsatisfactory work or nonperformance. [Ref. 3:part 46.104] Surveillance is accomplished by the use of a quality assurance surveillance plan which contains provisions for conducting inspections to estimate the contractor's overall level of performance in the tasks which are performed on a continuous basis.

#### **G. CRITICAL FUNCTIONS IN ADMINISTRATION OF FOOD SERVICE CONTRACTS**

The following is a discussion of the critical areas of administering food service contracts which require extreme attention. Without proper planning and implementation these areas will be prone to problems.

##### **1. Inspection Procedures**

The basic guidance for administering contracts is contained in the FAR part 42. According to the FAR part 42 the contracting officer has primary responsibility for insuring that a contractor fully complies with the terms of

the contract. The contracting officer may, however, appoint other personnel, referred to as the contracting officers' technical representative (COTR), to monitor contractor performance.

Deficiencies in contract surveillance can occur because of inadequate training and guidance provided to the COTR's. COTR's should be appointed in writing, and be provided with written instructions concerning general duties and responsibilities, appropriate inspection techniques, and the requirements for documenting and reporting inspection results. The process of monitoring a contractor's performance is generally very time-consuming and involves many complex tasks, such as using statistical sampling techniques and analyzing various reports prepared by the contractor. Unless the individuals responsible for monitoring contractor performance are provided sufficient training and guidance on appropriate inspection techniques, and are made aware of the requirements for performing and documenting all inspections, performance deficiencies will not be detected and reported to the contracting officer. COTR's must receive the training and guidance needed to effectively perform their duties.

## **2. Surveillance Plans**

A critical aspect in properly administering a food service contract is an effective surveillance plan. The basic purpose of the plan is to assist the COTR in performing comprehensive and systematic inspections of all aspects of

contractor performance. A surveillance plan generally consists of a series of performance requirements summaries. These summaries should identify, by contract paragraph, the required services, performance standards for these services, acceptable quality levels for contractor performance, and methods of surveillance. The surveillance plan should provide for monitoring performance through a combination of statistical sampling, customer complaints, and checklists. An effective surveillance plan must include a disciplined approach for reviewing all aspects of contractor performance.

Typical problems that can occur in performing contractor surveillance are:

a. The techniques to design and select samples are invalid, resulting in inadequate sample sizes and improper methods for selecting sample items. These inadequate sample results cannot be used to calculate the amount of payment reductions for unsatisfactory performance. If a contractor receives a deduction based upon inadequate sampling procedures and this improper action cannot be resolved with the contracting officer, litigation is certain to occur and will be decided in favor of the contractor.

b. The surveillance plan's inspection checklist does not contain the same amount of tasks that are identified in the contract. To insure effective surveillance of contractor performance the checklist must contain the identical tasks included in the contract.

c. Investigation into customer complaints is improper. Customer complaints are normally provided to the COTR by use of customer complaint forms. Customer complaints must be aggressively managed. If not aggressively managed, the contractor may be being paid for services that are inadequate.

### **3. Material Testing**

The FAR part 52.246 prescribes policies and procedures for insuring that services performed by contractors conform to contract specifications. As part of the inspection process described in the FAR part 52.246 samples of materials provided by a contractor may be tested prior to the start of work and periodically while work is in progress. The contract must include appropriate clauses to require such testing. When the tests show that the materials provided by the contractor do not meet contract specifications, the contracting officer should be notified so that appropriate corrective actions can be taken. Frequent tests of contractor-furnished materials (i.e., detergent, condiments, etc.) must be performed to insure that contractors are furnishing materials of the quality specified in the contract. If left uninspected, the customer may be provided with inadequate services, and the contractor may be given compensation for substandard materials and services.

#### **4. Contractor Payments**

According to the FAR part 32.9 the contracting officer is responsible for verifying that the services included on contractors' invoices have been adequately performed prior to authorizing payment to the contractors. Generally, in food service contracts a contracting officer appoints COTR's to certify, through inspection reports or other documentation, that the work included on contractor invoices was completed in a satisfactory manner. These certifications then serve as the basis for the contracting officer to approve payment of the invoices submitted by a contractor. When services are not performed in accordance with contract requirements the COTR should prepare a contract discrepancy report. These reports are submitted to the contractor, who is then responsible for correcting the deficiencies. If the contractor does not correct the identified deficiencies within the specified time-frames, the COTR should notify the contracting officer. The contracting officer should then reduce the contractor's payment to compensate the Government for any services which were not provided. Adequate procedures must be implemented to review and approve contractor invoices and to assess penalties for inadequate performance or uncorrected deficiencies. If these procedures are inadequate, contractors may be paid for services which were not performed or were not performed in accordance with contract requirements. Additionally, unless a contracting officer requires certification that the services

included in the contractors' invoices were performed in accordance with contract requirements there are no assurances that the payments made to the contractors are appropriate.

#### **5. Contract Modifications**

After a contract is awarded price adjustments should not be made for the original work. Changes in requirements, however, frequently result in modifications to the original contract. Policies and procedures for modifying contracts are contained in the FAR and Department of Defense supplements to the FAR. The FAR 43.103 classifies contract modifications in two types: bilateral (supplemental agreement) or unilateral (change order). Supplemental agreements, which are referred to as bilateral modifications, generally result from negotiations between contractors and the contracting officers. The normal sequence for processing a supplemental agreement begins when a contracting officer issues a written notice of proposed changes to the work and requests a price proposal from the contractor. Normally, the contractor must submit the proposal within 30 days after receipt of the notice. An independent Government estimate is prepared to assist the contracting officer in evaluating the contractor's proposal. Following evaluation of the proposal, a price is negotiated and the contractor is notified to start work.

If a price cannot be negotiated in a reasonable time consideration should be given to issuing a change order, which is referred to as a unilateral modification. The change order

is a written notice (Standard Form 30) signed by the contracting officer directing the contractor to make certain changes in the products or services being provided. These changes can be directed without the contractor's consent. When a change order is issued, the contractor can either accept the price established by the Government or submit a claim for a higher amount.

When delays are experienced in negotiating a modification the Government experiences an unreasonable amount of risk because the contractor has the benefit of knowing actual costs prior to agreeing to the price for the modification. When a contractor delays negotiations the contracting officer should establish an equitable price for the work and issue a unilateral modification.

The FAR 15.808 requires that a record of price negotiations, called a price negotiation memorandum, should be prepared for every modification. The record should include the contractor's proposal, the independent Government estimate, the negotiated price, and an explanation of any variances between the estimate and the negotiated price. Problems can occur if price negotiations are not fully documented and the records not maintained on file. For example, if independent Government estimates are not included, and no explanations are provided as to how the contracting officer arrived at the price, then it is difficult to insure that a fair and reasonable price was reached for both parties.

## **H. SUMMARY**

The purpose of this chapter was to provide the reader with terms, laws, procedures, and documentation peculiar to food service contracting. Additionally, this chapter discussed the actions and associated documentation necessary in both the pre-award and post-award phases. Critical personnel involved in the process were identified, and potential problem areas were also highlighted.

In summary, the successful administration and performance of food service contracts relies heavily upon proper pre-award planning and actions. The entire process from the very beginning must be a team effort between the contracting officer, the Contracting Officer's Technical Representative (COTR), and the civilian contractor. Therefore, this thesis will present and analyze valuable input received from contracting officers, COTR's, and civilian food service contractors.

The next chapter is a case summary of relevant judicial proceedings where food service contractors have sought relief from the Armed Services Board of Contract Appeals (ASBCA), and have protested Government actions to the Comptroller General of the United States. This case summary will initiate an analysis to uncover problem trends in the administration of food service contracts and pre-award causes of these problems.

### **III. ANALYSIS OF ARMED SERVICES BOARD OF CONTRACT APPEALS (ASBCA) CASES AND PROTESTS TO THE COMPTROLLER GENERAL (CG)**

This chapter summarizes ASBCA cases and Comptroller General decisions relevant to food service procurement actions for the years 1985 to present. A total of 21 ASBCA cases and 55 Comptroller General decisions were reviewed. Appendix A is the list of ASBCA cases reviewed and Appendix B lists the protests to the Comptroller General that were reviewed.

The purpose of the chapter is twofold: (1) to identify the difficulties encountered in the administration and performance of food service contracts, which could not be resolved between the contracting officer and the contractor, thus resulting in a litigation action; and (2) to identify pre-award problems, to include pre-award causes of post-award difficulties.

The intent of this chapter is to conduct a trend analysis regarding the reasons for claims submitted to the ASBCA that could not be resolved at the contracting officer level and the reason for submission of protests to the Comptroller General. The intent was not to conduct a trend analysis of the decisions made by the judges of the ASBCA, or the Comptroller General of the United States.

The most frequent reason for a claim submitted to the ASBCA and the most frequent reason for a submission of a

protest to the Comptroller General will be discussed in detail, including an actual case summary of an appeal and a protest which are indicative of the most common trends.

**A. ARMED SERVICES BOARD OF CONTRACT APPEALS (ASBCA) CASE ANALYSIS**

All ASBCA cases from 1985 to present were reviewed and are listed in Appendix A. A trend analysis approach was used to determine the most frequent reason for a contractor submitting a claim to the ASBCA. Additionally, all reasons for the submittal of claims are presented along with their frequency. In all ASBCA cases reviewed, not only were the post-award difficulties addressed, but also the pre-award causes of the post-award difficulties were identified. Therefore, the format of this analysis will list the post-award difficulty along with the pre-award cause identified in the case with the subsequent frequency of occurrence. As the result of multiple occurrences of post-award difficulties and pre-award causes of these difficulties in some of the ASBCA cases reviewed, the reader will realize that in some instances, the total of the post-award difficulties and pre-award causes will be more than 21, which is the number of cases reviewed.

The following is the result of the ASBCA case analysis listing the post-award difficulty, which was the reason for the submission of the claim, along with the pre-award cause of the difficulty, listed in descending order of frequency.

1. Reason for claim: The food service contractor felt that services were being demanded that were outside

the scope of the requirements listed in the performance work statement (PWS).

This post-award difficulty was a reason for a claim in 15 of the 21 cases. The specific areas addressed included: cleaning extra items; providing a snack line; performing additional labor hours; renovation of a dining facility; increased work load; number of meals served were greater than requirement in contract; change in messing equipment caused increase in cleaning costs; misunderstanding of requirements; expenses incurred that were not known at time of submission of bid/proposal; expending more man hours than anticipated; and perform food preparation which was not listed as a contract requirement. All of these areas were either not addressed in the contract, ordered by the COTR, or the result of ambiguous contract language.

1. Pre-award causes:

- Specifications listed in the PWS were either deficient or ambiguous.

In the 15 instances that the contractor felt that services were being demanded outside the scope of the contract requirements, ambiguous or deficient specifications in the PWS was cited in 11 cases. Specific areas addressed were: ambiguous language in a cleaning section of the contract; solicitation did not require a snack line which was needed; performance requirement summary was deficient; PWS grossly underestimated number of meals required; and contractor did

not understand contract language and failed to clarify prior to submitting bid.

- Contractor made a mistake in preparing the proposal/bid.

This pre-award cause appeared in three of the 15 instances. In all three cases involving a mistake in submission of an offer, the contractor was aware of the meal requirement but underestimated the number of labor hours required to provide the service.

- No on-site visit by contractor prior to submission of bid/proposal.

This cause occurred in one of the 15 cases. In this instance, the contractor had the opportunity to conduct an on-site visit and declined to do so. This declination was a result of the contractor having had prior experience in food service contracts and felt the visit was not necessary.

2. Reason for claim: The food service contractor felt that payments were incorrectly reduced as a result of improper inspection techniques.

This post award difficulty was a reason for a claim in seven of the 21 cases. This area is extremely important to a food service contractor because if unsatisfactory results are received on the inspection their payments could be reduced by the reduction formula contained within the contract. Specific areas addressed were: improper monetary deduction; and improper inspection standards. The majority of inspections

conducted are done by the COTR/QAE based upon the requirements set forth in the contract.

2. Pre-award causes: In all seven cases that exhibited this post-award difficulty, the claim was a result of the Government and the contractor interpreting the inspection requirements and procedures differently. The reason for the different interpretations was the result of ambiguous contract specifications and inspection clauses. Additionally, in three of the seven cases improper training and follow-up of the COTR/QAE by the contracting officer was cited as a pre-award cause of this post-award difficulty.

3. Reason for claim: The contractor felt that an adversarial relationship between himself and the COTR/QAE disrupted efficient operations.

This post-award difficulty was a reason for a claim in two of the 21 cases. The contractor specified that this adversarial relationship was the major cause of their inability to perform food services efficiently.

3. Pre-award cause: In both instances, the cause of this adversarial relationship was documented as having stemmed from improper training and follow-up of the COTR/QAE on the part of the contracting officer. If the COTR/QAE are not properly trained and educated on the contract requirements prior to award of the contract, the administration and performance of the contract will not begin as a cooperative evolution.

4. Reason for claim: The final reason was that a contract was extended at a price not agreed upon by the Government and the contractor.

4. Pre-award cause: In both cases, the disagreement in extended contract price was the result of the ambiguous language contained in the contract clause.

In conducting this trend analysis of the ASBCA cases for post-award difficulties and pre-award causes of specific post-award difficulties the following additional areas were discovered.

- In 18 of the 21 cases analyzed, Sealed Bid was used as the method of procurement. Sealed Bid is the preferred method when, among other things, the requirement and specifications can be well defined by the Government. However, as addressed above, the majority of the post-award difficulties were caused by ambiguous or deficient contract specifications.

- In 19 of the 21 cases a firm fixed-price contract was the type of contract awarded. This appears to be the result of the use of sealed bid as the primary method of procurement. When sealed bid is used, only a firm fixed-price or firm fixed-price with economic price adjustment contract may be awarded.

- In ten of the 21 cases the contractor submitting the claim was a Small Disadvantaged Business (SDB). Contracting agencies in some cases use their food service contract actions to meet their established SDB goal.

To provide the reader with a better understanding of the circumstances surrounding a claim submitted by a

contractor for the most frequent reason discovered during this case analysis, the following summary of an actual ASBCA case is provided. This case is not only an example of a claim for services outside the scope of the contract, it is also indicative of the majority of the post-award difficulties discovered during this analysis.

Board Case: Eagle Management, Inc. (EMI), ASBCA No. 35902, November 30, 1989. Contract No. F38606-87-C-0003 [Ref. 14:p. 22, 513]

Essence of Litigation: The contractor seeks additional compensation for providing salads, pastries, and desserts on a snack line as well as on the main serving line. This requirement was called for on the service wide daily menu; however, the sample menu provided with the solicitation did not include this requirement. When bidding on the contract, the contractor relied upon the sample menu provided as an indication of the daily requirements. Additionally, the contractor seeks compensation for cleaning Government Furnished Equipment (GFE) not listed in the contract.

Findings of Fact:

1. Contract F38606-87-C-0003, a small business set-aside contract for mess attendant services was awarded to EMI on 12 September 1986. The contract included options for two successive one-year terms after the initial term. The contract price was a fixed price per individual meal served. The total estimated price for the first year was \$326,193.09.
2. EMI began performance as scheduled on 1 October 1986. The contract work consisted generally of preparing specified food items (but not cooking), serving the food, performing cashier services, and cleaning the mess hall facilities, equipment and utensils.

3. Detailed specifications of the services to be performed and the quality standards to be met were set forth in the PWS and the attached technical exhibits. Pastry items, salads and desserts were not listed under the "SNACK LINE" heading contained in the PWS. EMI submitted its bid based upon the information contained in the PWS.
4. After contract award, EMI was directed to stock the snack line, as well as the main serving line, with salads, pastries and desserts.
5. A list of Government Furnished Equipment (GFE) provided in the PWS as a technical exhibit was relied upon by EMI in submitting a bid as indicating the scope of the required equipment and utensil cleaning.
6. When EMI began performance of the contract, it found additional GFE in the mess halls which required cleaning and which had not been listed in the technical exhibit of the PWS.
7. As a result of the additional GFE found EFI estimated the additional time required to clean the GFE to be 985 man minutes per day, while the Government's estimate was 267 man minutes per day based upon the Quality Assurance Evaluator's (QAE's) estimate.
8. Attempt to negotiate a settlement failed; therefore, the Government issued unilateral Modification P00004 based upon its estimate.
9. Under the inspection and acceptance provisions of the contract, EMI's performance was subject to inspection by Government QAE's. Performance deficiencies found by the QAE's could be the basis for reduction in contract payment.
10. Paragraph 10 of Section H of the contract stated that the Government shall not exercise any supervision or control over the contractor's employees. The employees are accountable not to the Government, but solely to the contractor, who in turn is responsible to the Government.
11. The mess hall superintendent for the Government was the chief QAE and was assigned to monitor EMI's performance.
12. The chief QAE and other QAE's under his supervision gave instructions directly to EMI's staff, without going to EMI's management, particularly, EMI's on-site

manager; gave conflicting instructions; dictated specific personnel assignments; and otherwise interfered with, harassed and intimidated EMI's staff.

13. The interference, harassment, and intimidation by the QAE's reduced the efficiency of EMI's employees in all aspects of the work including the cleaning of the additional GFE.
14. By unilateral Modification P00005 dated 1 June 1987, the contract was terminated for convenience of the Government effective 1 July 1987.
15. On 12 August 1987, the contracting officer received a certified claim for price adjustment from EMI which included services provided for the snack line, and for services required for cleaning the additional GFE.
16. By letter dated 2 October 1987, the contracting officer denied all items listed in EMI's 10 August 1987 claim.

Summary of Case: This case contained the following post-award difficulties:

- EMI was required to perform services outside the scope of the contract requirements by providing items for a snack line not addressed in the solicitation.
- EMI was required to clean GFE that was not addressed in the solicitation.
- An adversarial relationship existed between the contractor and the QAE's which inhibited efficient performance and administration of the contract.
- A modification to the contract was issued unilaterally by the Government as a result of both parties not agreeing upon a price.
- The contract was terminated for convenience by the Government.

The following pre-award causes of the aforementioned post-award difficulties were identified in this case:

- The solicitation when drafted failed to identify the requirements for a snack line and did not list all GFE required to be cleaned.

- The QAE's were not adequately trained in performing their duties prior to contract award.
- The QAE's were not fully educated on the requirements of the contract prior to contract award.

#### **B. ANALYSIS OF PROTESTS TO THE COMPTROLLER GENERAL**

All protests to the Comptroller General from 1985 to present were reviewed and are contained in Appendix B. Again, a trend analysis approach was used to determine the most frequent reason for initiating a protest action. The five most frequent reasons for protest are identified and include a brief discussion. Other reasons for protest that were discovered are also listed. This analysis was used as another avenue to identify pre-award problems which without discovery could go on to be a cause of post-award difficulties. To provide the reader with a better understanding of the primary reason discovered for a protest, a summary of an actual protest will be provided.

The following is the result of the analysis conducted for protests submitted to the Comptroller General. The five most frequent reasons are listed in order of frequency.

1. Original solicitation released by the Government contained deficiencies resulting in multiple amendments to the solicitation.

In 25 of the 55 protests reviewed, this reason for a protest was cited. Some of the specific reasons multiple amendments to the original solicitation resulted in a protest are as follows: confusion on the part of the contractor;

contractors not meeting a change in the required submission date addressed in an amendment; and contractors not receiving an amendment at all.

This most frequent reason for protest is a result of the contracting agency releasing an invitation for bid (IFB) or request for proposal (RFP) and then discovering an error or omission causing an amendment to be issued to correct the deficiency. The most common reason for the Government to amend an IFB or RFP is that the requirements originally included are either overstated or understated. In other words, the solicitation is released prior to accurately identifying the agency's need. Amending a solicitation not only confuses the offerors, but also the contracting agency itself.

2. Protestor found not to be responsive or responsible by contracting officer.

This was the reason for protest in six of the 55 instances reviewed. The decision of responsibility and responsiveness rests with the contracting officer. At times the offeror will be found to be not responsible or responsive. The contracting officer should notify these offerors immediately that the company will not be considered for source selection.

3. The Government changed the food service contract from a past Small Business Set-aside to strictly a Small Disadvantaged Business Set-aside.

This occurred in six of the 55 protests reviewed. All of the protests were originated by a Small Business contractor in response to a decision by the contracting officer to procure the food service from a Small Disadvantaged Business only, and not in the total realm of Small Business.

4. The protest was a result of multiple Best and Final Offers (BAFO's) prior to award of the contract.

This reason occurred in five of 55 protests. The use of more than one BAFO during negotiations/discussions has given the appearance of auctioneering, and therefore, should be avoided. As a result of this auctioneering appearance in using more than one BAFO, Under Secretary of the Navy, G. Lawrence Garrett III, issued a memorandum that addressed that more than one BAFO only be authorized if approved by the head of the contracting agency in other than formal source selection, and the approval of the Navy Acquisition Executive for use in formal source selection. [Ref. 15:p. 2] As a result of this awareness in the use of more than one BAFO during negotiations, this type of protest should not occur in the future.

5. Protestor was low offeror in terms of price, but was not awarded contract as a result of being found not technically qualified.

This reason occurred in four of 55 protests. This situation will normally occur when other than price related factors are used as source selection evaluation criteria,

specifically, when competitive procurement (negotiations) is the acquisition method. In this scenario the contractor that offers the most advantageous service to the Government considering all relevant factors (price, technical . . . etc.) as per section M of the RFP will be selected.

Other reasons for protest discovered during this analysis are as follows:

- Protestor submitted lowest bid, corrected an obvious mistake, and subsequently was no longer the lowest bidder.
- Requirement was previously strictly Small Disadvantaged Business (SDB) setaside. Contracting officer changed to Small Business setaside.
- Original solicitation canceled due to error made in determining requirements. New solicitation was not reissued, but instead was awarded to a Small Disadvantaged Business through the Small Business Administration.
- Two-step sealed bid process was used, the contracting officer did not address bonding requirement until step two.
- Protestor found not to be eligible for the Small Disadvantaged Business Program.
- Government allowed offeror to correct a mistake in a bid making them the lowest bidder.
- Past contract was awarded using the sealed bid method, new procurement utilized competitive procurement method.
- Retired Government official who was previously involved in this procurement is now employed by an offeror.
- Interim contract awarded non-competitively based on urgent and compelling need which was the result of delays in preparing the PWS.
- Government use of competitive procurement method in order to award a Cost Reimbursement type contract.

The following is a summary of an actual protest action that is indicative of a protest in response to the Government issuing multiple amendments to its original solicitation as a result of deficiencies in the solicitation.

Protest: Comptroller General Decision No. B-222405.4, February 26, 1987 [Ref. 16:p. 100, 724]

Essence of Protest: Integrity Management International, Inc. protests the cancellation of invitation for bid (IFB) No. DAKF03-86-B0014, issued by the Government for food services at an installation. The protestor challenges the Government's basis for canceling the IFB and requests recovery of the costs incurred in anticipation of receiving award under the IFB, as well as its bid preparation costs, and costs incurred as the result of filing and pursuing the protest.

Findings of Fact:

1. The IFB, issued on 5 November 1985, as a small business setaside, called for award of a fixed-price requirements contract for full food services.
2. From 6 November 1985 through 20 August 1986, 18 amendments to the IFB were issued. While most involved postponing the bid opening date and other minor revisions, at least five of the amendments made numerous substantive changes to the IFB.
3. Because of the delay resulting from the amendments, the basic contract period was changed from 1 January 1986 to 30 April 1986, to 1 October 1986 to 30 April 1987, with two one year options.
4. Bid opening was held on 3 September 1986. Sixteen firms submitted bids ranging from \$5.6 million to \$24 million; the Government estimate was \$16.2 million.
5. The apparent low bidder was allowed to withdraw its bid, the protestor, the second low bidder, was in line for award. Because of the difference between the protestor's bid (\$9.1 million) and the Government

estimate (\$16.2 million), however, the contracting officer found the protestor nonresponsible, concluding that the protestor lacked the financial capacity to incur a potential \$7 million loss over the life of the contract.

6. By letter dated 24 October 1986, the Army notified the protestor that the IFB had been canceled.
7. The Government stated that the IFB was canceled because of numerous defective provisions, which either misstated the Government's needs, or made it virtually impossible for the bidders to determine the Government's actual requirements. Examples included are:
  - The estimate in the IFB for the number of meals to be served was based on a three month period which the Government later determined was not a representative sample.
  - The IFB failed to provide for incorporation of the quality assurance plan into the contract which was referenced in one of the technical exhibits.
  - The IFB required field feeding of troops but had no provision in the bidding schedule for payment for the service, and lacked any workload data with regard to the requirement that the contractor pick up, deliver and unload food supplies.
  - Additionally, in the Government's view, the sheer number of amendments caused great difficulty in its own accurate tracking of the revisions to the IFB.

Summary of Protest: The Government conceded that the numerous defects found in the IFB, together with the wide price range of bids received, justify its conclusion that the requirements were not clearly stated in the IFB.

#### C. SUMMARY

This chapter has reviewed ASBCA cases and Comptroller General decisions from 1985 to present relevant to food service contracts and solicitations. A trend analysis was conducted in both areas to determine the most frequent reasons

for the two respective litigative actions. The following summarizes the analysis of claims and protests submitted to these judicial bodies:

- a. The primary reason for a claim submitted to the ASBC was that in the contractor's opinion, services were being provided outside the scope of the requirements listed in the PWS. This reason translates into the primary post-award difficulty encountered in performance and administration of food service contracts based upon submission of claims to the ASBCA.
- b. The most frequent pre-award cause of performing work outside the scope of the contract requirements found in the analysis of the ASBCA cases was that specifications in the PWS were either deficient or ambiguous.
- c. The findings of the analysis of protest actions to the Comptroller General identified that the primary reason for a submission of a protest was that a solicitation had been amended a multitude of times and caused confusion for both parties, the Government and the contractor.
- d. The results of the Comptroller General protest and ASBCA analysis' support one another in the pre-award problem of deficient and ambiguous specifications, and multiple amendments to a solicitation are interrelated. The inability to accurately identify, and subsequently describe the agencies requirements in a solicitation will cause deficient, and ambiguous specifications leading to multiple amendments to the solicitation, or post-award problems.
- e. An adversarial relationship between the Government and the contractor may develop because the COTR/QAE conduct contract administration functions, specifically, inspection procedures, in a manner not in accordance with contract requirements. This can result from inadequate training and follow-up of the COTR/QAE by the contracting officer.
- f. Improper deductions from contractor payments may occur as the result of improper inspection procedures being performed which are not in compliance with the language of the contract. This can be caused by ambiguous contract language, and/or improper training and follow-up of the COTR/QAE who conducts the inspections.

The next chapter will be an analysis of the General Accounting Office, Army Audit Agency, and Naval Audit Service findings and recommendations pertaining to audits conducted for food service contracts.

#### **IV. AUDITS OF FOOD SERVICE CONTRACTS**

This chapter summarizes the reports by the U.S. General Accounting Office (GAO), Army Audit Agency, and the Naval Audit Service from 1980 to present. A list of the audits reviewed is contained in Appendix C.

The purpose of this chapter is threefold: (1) to identify the most frequent contract administration problems found by the auditors; (2) to identify the most frequent pre-award causes of contract administration problems found by the auditors; and (3) to identify the auditors recommended corrective actions.

##### **A. REPORTS BY THE U.S. GENERAL ACCOUNTING OFFICE**

The GAO conducted an audit of the Department of Defense (DOD) food service program during 1981. This has been the only report provided by the GAO specifically addressing food service contracting. Although, this report was submitted in the early 1980's, the reader will recognize that the problems identified in this report are the same problems currently being experienced in food service contracting.

The GAO found that the major problem in contract administration was that the methods for inspecting and measuring contractor performance are of limited effectiveness. The specific areas found were: (1) food service contracts do not contain specific, measurable standards, tolerances

allowed, and deduction rates for unacceptable performance; (2) inspection methods and the criteria used were inadequate; (3) inspection frequencies varied and inspections were inadequately documented; and (4) inspectors were inadequately trained in contract administration. As a result of the deficient inspection and monitoring procedures, the GAO concluded that the DOD was left with the options of accepting marginal or unacceptable performance, performing some of the work with military personnel, or terminating the contract. The GAO addressed the inspection environment the contractor was operating within as follows: [Ref. 17:p. 25]

Food service contracts described the functions the contractor was to perform and provided detailed instructions of the functions to be performed. Performance standards were often stated in general terms. As a result, assessing performance was largely a matter of judgement.

In addition to a lack of measurable criteria for assessing a contractor's performance, the GAO found that contract provisions and methods for performing inspections of dining facilities were inadequate. Inspections were found to be primarily consisting of completing checklists and logs containing inadequate criteria for determining unacceptable performance. Therefore, the inspection results were judgmental in nature and had limited effectiveness. The following is an example that the GAO report cited as being representative of the type of inspection they found being conducted: [Ref. 17:p. 31]

July 2, 1979 inspection	July 11, 1979 inspection
Rating: Unsatisfactory	Rating: Satisfactory
Findings: Door dirty Dirty carts Dirty dishes in sink Deck needs scrubbing	Findings: Door dirty One dirty cart Gear adrift in sink Deck and bulkheads need scrubbing
Space not properly cleaned	Improperly opened closet Machine not properly cleaned Outside machine needs shining Vacuum cleaner hose improperly stowed Screen missing

Food service officials could not explain these apparently inconsistent ratings.

During their visits to military installations the GAO auditors found that personnel assigned to inspect contractors' performance were food service officials or personnel with extensive experience and training in food services. However, their discussions with the officials disclosed that the monitors generally had little or no experience and training in contracts and contract administration. In many instances the monitors were not familiar with the contract provisions.

In its report to the Secretary of Defense, the GAO also identified two major problem areas in the pre-award phase of food service contracting: (1) estimating requirements; and (2) evaluating contractor capabilities. The GAO comments on these two areas as follows: [Ref. 17:p. 36]

In many instances, Government estimates of meals on which contractor bids and proposals were submitted, were inaccurate and Government performance evaluations were inadequate. As a result, contractors may have submitted unrealistic bids and proposals. Also, in the absence of effective evaluations, the Government had little assurance that contractors could meet performance requirements.

In its visits to military installations, the GAO found many monthly estimates of the number of meals used for the requirements of the contracts varied significantly from the actual number of meals served by contractors. The GAO recognized the significance of determining accurate estimates of meal requirements: [Ref. 17:p. 36]

Since contractor bids are based in part on the estimated meals to be served, meal estimates need to be as realistic as possible or obviously contractors will not be able to submit responsible bids and proposals.

The second major deficiency the GAO found in the pre-award phase was that evaluation of bidder's ability to perform contract requirements was inadequate. This problem was identified by the GAO in the following finding: [Ref. 17:p. 37]

Several food service contracts were awarded based on inadequate pre-award surveys to determine the contractor's ability to perform the required services. Navy contracting officers generally accepted the lowest bid without a detailed evaluation of the contractor's proposed staffing plan for performing the contract. In addition, Army, Navy, and Air Force determination of contractors' abilities to meet contract requirements were generally based on verbal input from other installations. As a result, contracts were awarded to some contractors that could not meet contract requirements.

The GAO determined that a major pre-award cause of contract failure was the inadequate source selection and evaluation process being used for food service contracts. The

GAO expressed in the report that a proper pre-award survey is vital to the selection and subsequent performance of a contractor.

Although, the GAO found that a major contract administration problem was that Government inspection personnel were not adequately trained in contracts, and contract administration, this area could also be identified as a pre-award phase problem. Training of Government quality assurance personnel should begin prior to award and administration of the contract.

As a result of their study, the GAO made the following recommendations to the Secretary of Defense: [Ref. 17:pp. 7-8]

To improve management control of food service contracting, we recommend that the Secretary of Defense take appropriate actions that will:

- Require that DOD's current efforts in developing and testing of improved food service contract methods provide:
  1. uniform statements of work for full food service dining facility attendant, and food preparation;
  2. common units of measure (preferably the meal);
  3. uniform meal adjustment formulas;
  4. measurable performance standards;
  5. inspection provisions requiring adequate documentation; and
  6. equitable deduction rates for unacceptable contractor performance.
- Provide for retaining adequately documented inspection records supporting contract payments long enough to

enable contract administrators and auditors to verify that the Government received the services paid for.

- Reemphasize the need to consider recent past experience as well as anticipated major personnel changes in preparing the estimates of the number of meals to minimize unrealistic contract bids and proposals, unprogrammed cost increases, and contractor claims and disputes.
- Remind contracting officers that comprehensive pre-award surveys of potential food service contractors should be made in sufficient detail to reveal potential problem areas and to identify marginal or unsatisfactory past contractor performance.

#### **B. REPORTS BY THE ARMY AUDIT AGENCY**

Thirteen Army Audit Agency reports relative to food service contracts from 1980 to present were reviewed. The purpose of this review as well as the forthcoming Naval Audit Service Review, was to determine the most frequent contract administration problems; identify the most frequent pre-award causes of contract administration problems; and determine the most frequent recommended corrective actions by the audit officials.

##### **1. Contract Administration Problems**

In ten of the 13 audits reviewed the auditors identified that improper inspection procedures used by quality assurance personnel were used, resulting in improper deductions from contractor payments. The improper inspection procedures were identified as being the result of the quality assurance personnel not following the contract requirements, and/or the contract language was ambiguous.

Two other contract administration problems frequently identified by the auditors were: (1) The quality assurance personnel were not acting within the requirements of the contract, because they were not properly supervised by the contracting officer; and (2) improper and inadequate surveillance of the contractor's performance. Both of these problem areas were identified in seven of the 13 audit reports.

## **2. Pre-award Causes of Contract Administration Problems**

The auditors identified two major pre-award causes of the contract administration problems: (1) the quality assurance personnel were not properly trained in contract administration; and (2) the contract contained inadequate and ambiguous language.

The quality assurance personnel were food service specialists; however, the auditors found that they were not trained in contract administration or in the requirements of the contract. The auditors found that the contracting officers were negligent in their duties regarding the training of their representatives. In addition to the lack of training, the auditors found that certain clauses of the contract, particularly inspection clauses, contained inadequate or ambiguous language.

## **3. Auditor Recommended Corrective Actions**

The two corrective actions most frequently given by the auditors were: (1) the contracting officer properly train

and supervise quality assurance personnel; and (2) the Government must properly identify their requirements in the solicitation and avoid ambiguous language.

The following is a summary of an Army Audit Agency report which is indicative of the frequent contract administration problems, pre-award causes of these problems, and recommended actions that have been made by the auditors. This audit was conducted at Fort Lee, Virginia from May 1987 through July 1988. [Ref. 18]

#### Background

On 1 January 1987, a firm fixed-price contract valued at about \$6.8 million was awarded to provide dining facility services at Fort Lee. According to the contract requirements, services were to be provided at 11 Government-owned, contractor-operated dining facilities (nine full food service and two dining facility attendant facilities). Services provided by the contractor for the full food service facilities included food preparation and serving; equipment and facility maintenance; cleaning and sanitation; and records administration. For the dining facility attendant facilities the contractor provided only cleaning and sanitation services, with the remaining services provided by military personnel.

A contracting officer's representative and three inspectors were assigned to monitor services performed by the contractor. Contractor surveillance responsibilities were assigned primarily to the inspectors. Basic duties of the

inspectors included performing onsite inspections of contractor performance, documenting inspection results, and reporting deficiencies to the contracting officer's representative, who in turn was responsible for insuring that services performed and billed conformed to the terms of the contract.

#### Contract Administration Problems

- Contracted food service work was not adequately monitored to ensure that all food services specified by the contract were performed.

The contracting officer's representative (COR) had not established standard inspection procedures nor instructed the inspectors on required inspection techniques. Also, the contractor did not submit a complete or accurate schedule of planned work. As a result, the contractor did not accomplish some services specified in the contract. Overpayment for services that were not accomplished by the contractor could not be quantified due to inadequate inspection procedures.

- The contracting officer's representative provided little or no guidance to the inspectors for determining what, when, and how often to inspect facilities.

As a result of no guidance, inspectors examined food service tasks on an item-by-item basis in each dining facility. For example, to evaluate contractor performance in cleaning dining tables, inspectors inspected all tables within a facility. In essence, inspectors attempted to inspect 100 percent of the contractor's work. Because of time constraints, this method of inspection limited the number of

services and facilities that could be inspected. As a result, inspectors were not able to regularly monitor contractor performance.

- Neither the contracting officer's representative nor the inspectors prepared detailed inspection reports to show that services rendered by contractors were performed satisfactorily.

Although, three types of inspection reports were developed and used, they were of little use for documenting contractor performance. For example, a quality assurance checklist was used for inspecting cleaning services; however, the checklist did not include many of the required services and the frequency that services should be performed. Detailed inspection reports are essential, otherwise the ability to reduce contractor payments for nonperformance is limited.

- Results of inspections were not reported to the contracting officer.

Although the inspection method used by surveillance personnel was not adequate to evaluate overall contractor performance, numerous recurring deficiencies were identified and documented during the inspections. No deductions were made from the contractor payments, however, because inspection reports indicating poor performance were not forwarded to the contracting officer. Consequently, the contractor had little incentive to correct the deficiencies and to insure that the same deficiencies did not recur.

- Surveillance of the contractor's performance was not sufficiently performed.

The contracting officer's representative did not enforce contract provisions and require the contractor to maintain an effective quality control program. Contract provisions required the food service contractor to implement an effective quality control program to insure compliance with contract requirements. The contracting officer's representative, however, did not enforce contract provisions and did not obtain and evaluate the contractor's quality control program and inspection records.

**Pre-award Causes of Contract Administration Problems**

- The contractor did not submit an updated work schedule before start of the contract.

Contract provisions required the contractor to provide a schedule of planned work for each dining facility, showing the day and times of each day that each cleaning service would be performed. The contractor did not submit this schedule prior to starting contract performance.

- Contract requirements for the food service contract were not based on minimum needs.

Contract requirements were based on the maximum number of meals that each of the 11 dining facilities were designed to serve in a 90 minute period. As a result, the food service contractor was paid for services that were not required and were not performed.

- The contracting officer's representative and the inspectors were not properly trained prior to contract execution.

The improper inspection and sampling techniques occurred as a result of these individuals not receiving the appropriate training prior to contract award on inspection and sampling techniques.

#### Auditor Recommendations

- Determine the Government estimate for meals for the 1988 contract based upon actual historical head counts vice maximum number of meals that each dining facility was designed to serve.
- Require the food service contractor to provide detailed work schedules to show planned performance of work including locations, dates and times cleaning services will be performed.
- Strengthen inspection procedures over the contract by implementing a formal contract surveillance program.
- Train the contracting officer's representative and inspectors in statistical sampling techniques to perform their assigned duties.
- Require the contracting officer's representative to insure that the contractor implements an effective quality control system. On a recurring basis, review and document the adequacy of the contractors inspection records.

#### **C. REPORTS BY THE NAVAL AUDIT SERVICE**

Six audits by the Naval Audit Service relative to food service contracts were reviewed. The following is the identification of contract administration problems, pre-award causes of these problems, and recommended corrective actions given by the auditors.

## **1. Contract Administration Problems**

The three common problems identified by the Naval Audit Service were; (1) improper surveillance of the contractor's performance; (2) inadequate inspections being conducted; (3) improper accountability of Government Furnished Equipment (GFE).

As was noted by the GAO in its report to the Secretary of Defense, the Navy prefers to conduct unannounced inspections of the contractors performance. [Ref. 17:p. 32] The auditors noted in four of the six audits reviewed that unannounced inspections were either not being made, or being made inadequately. Inadequate surveillance of the contractors performance was identified by the auditors in five of the six audits. Included within this finding was the routine certification of contractor payment without adequate evaluation of performance. Additionally, the auditors found in three audits that GFE was being utilized by the contractor which was not properly accounted for by both parties.

## **2. Pre-award Causes of Contract Administration Problems**

The auditors identified the primary pre-award cause of the contract administration problems was that the contracting officer's technical representative (COTR) was not properly trained in his duties. Additionally, in one report the COTR was not designated in writing, and his duties were not outlined.

### **3. Auditors Recommended Corrective Actions**

There were two common recommendations given by the Naval Audit Service auditors: (1) Implement and conduct a COTR training course; and (2) installations conduct their own local periodic audits of the enlisted dining facilities. The auditors two primary areas to focus on were training and periodic reviews to evaluate the results of the training.

The following is a summary of the findings of an audit conducted at the Naval Technical Training Center, Corry Station, Pensacola, Florida, which is indicative of the results of the audits reviewed. [Ref. 19:pp. 12-15]

#### **Auditor Findings**

The following are the findings that were discovered during the audit by the Naval Audit Service:

- Invoices for contract messing services are being routinely certified for payment although contractor performance is not being reviewed. Therefore, there is no assurance that services are commensurate with payments made.
- Unannounced inspections of food service operations to determine performance ratings are not being made. The contract specified that such inspections will be made using a Food Service Ratings Sheet.
- Military personnel were performing duties for which the contractor is being paid. Military personnel were observed, who were untrained in food sanitation, and without a medical screening, preparing and cooking food.
- The scope of work was increased in the contract by over 6,800 labor hours, an increase of 11 percent. This increase in scope was the result of a possible increase of 600 students due to closure of another activity. However, this possible increase was based upon a contingency which was unlikely to occur. Since the contract is firm fixed price, the contractor will be compensated for services not performed.

The above summary was provided to illustrate the common problems associated with contract administration that were discovered in the review of the audits conducted by the Naval Audit Service.

#### **D. SUMMARY**

This chapter has reviewed reports by the GAO, the Army Audit Agency, and the Naval Audit Service. The following summarizes the conclusions of the Government Auditors identified in this analysis of audit reports:

##### **1. Contract Administration Problems**

- a. Food service contracts do not contain specific, measurable standards, tolerances allowed, and deduction rates for unacceptable performance which precludes proper surveillance of contractors performance.
- b. Inspection methods and criteria used are inadequate resulting in improper deductions from contractor payments, or over payment to the contractor.
- c. Inspection frequencies varied and inspections were inadequately documented and reported to the contracting officer.
- d. Quality assurance personnel not acting within the parameters of the contract requirements.
- e. Improper accountability of GFE.

##### **2. Pre-award Causes of Contract Administration Problems**

- a. In many instances, Government estimates of its requirement used in the solicitation were inaccurate, which resulted in the contractor submitting unrealistic bids and proposals.
- b. The evaluation of an offeror's ability to perform the contract requirements was inadequate. The result of inadequate source selection and evaluation is a major cause of contract failure.

- c. Quality assurance personnel were not properly trained in contract administration, and the requirements of the contract.
- d. The solicitation and the resulting contract contained ambiguous and inadequate language.

### **3. Recommended Corrective Action**

- a. Utilize uniform statements of work for full food service, dining facility attendant, and food preparation.
- b. Use common units of measure (preferably the meal) to determine contract requirements and to price the contract.
- c. Use uniform meal adjustment formulas to facilitate contract pricing when the required meal count fluctuates.
- d. Ensure that measurable performance standards are included in the contract to facilitate surveillance.
- e. Include specific inspection provisions in the contract requiring adequate documentation.
- f. Ensure the deduction rates for unacceptable performance are equitable.
- g. Provide for retaining adequate documented inspection methods to support contractor payments.
- h. Base contract requirements on historical data as well as anticipated major changes in personnel for the meal estimate to minimize unrealistic bids and proposals.
- i. Emphasize the use of comprehensive pre-award surveys of potential food service contractors to prevent possible non-performance of the contract.
- j. The contracting officer must properly train and supervise the quality assurance personnel (i.e., COTR's, COR'S, and QAE's)
- k. Avoid ambiguous language that leads to subjective conclusions on the part of the quality assurance personnel.
- l. Installations should conduct local periodic audits of their dining facilities.

The next chapter presents the results of a random mail survey sent to contracting offices and civilian food service contractors. This chapter addressed the views of Government auditors in the areas of contract administration problems, pre-award causes of the problems, and recommendations. The next chapter will present the views of those actively involved, on a day-to-day basis with food service contracts, in the same three areas.

## V. SURVEY RESULTS

### A. INTRODUCTION

The data presented in this study were gathered through a random mail survey sent to 78 contracting officers from the Army, Navy, and Marine Corps, and 80 civilian contractors. Of the 78 mail surveys sent to contracting officers, 24 were sent back that properly answered the questions, nine were returned stating that their contracting office has not awarded a food service contract, and the remaining 45 surveys were not responded to. Of the 80 mail surveys sent to civilian food service contractors, eighteen were returned that properly answered the questions, twelve were returned stating that they have never been awarded a food service contract through the Government, and the remaining 50 were not responded to.

In the analysis of the mail survey results, all numbers and percentages will be based on only those mail survey questionnaires that were sent back properly answering the questions. These totals as stated above are 24 Government, and 18 civilian food service contractor.

The Government survey consisted of nine questions, and the civilian contractor survey consisted of seven questions. Most of the questions asked in both surveys were similar; therefore, the format of this chapter has been structured by listing the question first, then listing the Government

response, followed by the civilian contractor response. If any question is unique to either entity, it will be noted as such.

This survey was not intended to be a statistically significant sampling of responses, but rather a collection of opinions from the experts in the field of food service contracting on what the difficulties are in the post-award and pre-award phases, and what actions have been or could be taken to prevent these difficulties.

## B. THE RESPONSES

### 1. Question One

What type of contract has been awarded for your food service contract(s)?

#### a. Government Responses

Firm Fixed-Price:	63%
Fixed-Price Requirements:	21%
Cost Plus Award Fee:	8%
Fixed-Price Incentive Firm:	4%
Fixed-Price Award Fee:	4%

#### b. Contractor Responses

Firm Fixed-Price:	89%
Fixed-Price Award Fee:	11%

This response provided a basic idea of what types of contracts are being awarded for food service contracts.

### 2. Question Two

Did you negotiate this contract?

#### a. Government Responses

Yes:	58%
No:	42%

b. Contractor Responses

Yes:	55%
No:	45%

This response provided an idea of the most common procurement method being used. The responses indicate that competitive procurement is most common, however, the use of the sealed bid method is also being used in a lot of instances.

3. **Question Three (Government only):**

What types of incentives are you presently using in your food service contracts?

Government Responses

Negative incentives only:	83%
Positive incentives only:	0%
Both Positive and Negative:	17%

The clear majority of the respondents are utilizing negative incentives only, which are in the form of deductions as a result of inspections procedures. However, five of the negative incentive only respondents stated that upon completion of the current contract, both positive and negative incentives will be implemented into the new contract action.

The respondents that are utilizing both positive and negative incentives are using deductions as the result of substandard inspection results, along with an award fee for performance above the minimal required level. The award fee is decided upon by an award fee board, and is used in conjunction with a Fixed Price Award Fee or Cost Plus Award Fee contract.

#### 4. Question Four

In your opinion, what are the major difficulties associated with administration (Government) or performance (contractor) of food service contracts?

##### a. Government Responses

The biggest difficulty identified by the Government respondents was that as a result of the continuous changes in the meal requirement, the contractor is constantly performing work outside the scope of the contract requirements. Sixty-three percent of those responding to the survey listed this as the largest contract administration problem. Additionally, they felt that this was the result of the inability to accurately determine requirements due to the continuous changes in the meal requirements.

Others addressed the difficulty of insuring Quality Assurance personnel (i.e., COTR's, QAE's) follow appropriate guidelines, and that they do not make unauthorized changes to the contract. Some typical comments received are paraphrased below:

Food service contracts are "attention getters" as they affect the morale of those being fed. Also, there are perceptions that a problem exists when actually performance received is in accordance with the contract. This perception develops when the Government expects more than what is required by the contract. Government requests to perform services outside those defined in the contract also create problems. Termination situations are extremely difficult as there is rarely a contingency plan to cover the absence of contracted food service.

Government does not adhere to the statement of work.

The lack of communication and knowledge of contracting as it pertains to the relationship between the contract administrator and the agency that requires the services.

Evaluation plan(s) not set forth in the contract in sufficient detail to permit accurate surveillance.

Added inspection required due to contractors efforts to maintain costs within the Firm Fixed-Price Contract.

Insuring QA personnel follow appropriate guidelines, and are familiar with procurement procedures.

Keeping everyone from making unauthorized changes to the contract.

Delays in effecting changes (i.e., from COTR to NRCC, to vendor, back to NRCC, to COTR for reasonableness evaluation back to NRCC for final modification).

8(a) contractors declaring bankruptcy.

The Government and the contractor have had continuing disagreements as to the acceptable manning level caused by not including an estimated manning chart in the solicitation.

Keeping contract current as to the changing requirements for opening and closing dining facilities due to changes in troop strength and budget cuts.

Doing quality assurance on the quality of food preparation at all times--not only when inspector is present.

Making military managers cognizant of their limitations in dealing with the contractor, and insuring accurate penalty deductions for non performance.

Competition is so close that contractors usually cannot afford to perform well. This requires constant vigilance on the part of the COTR.

b. Contractors Responses

The civilian contractors identified two major difficulties in performance of their food service contracts. Fifty percent identified performing work outside the requirements listed in the contract as one of the biggest difficulties. Forty-four percent of the respondents listed that an adversarial relationship between employees and the Government

Quality Assurance personnel as one of the major difficulties. Presented below are some paraphrased comments in response to this question:

Lack of flexibility. Innovation discouraged. Low bid mentality precludes quality programs. Contracting for specific areas of operations reduces ability for overall operation planning.

Unqualified Contracting Officers Representatives display bitterness towards all contractors (as if the contractors took their jobs).

Areas of concern and most important are the different interpretations of the statement of work (SOW), frequent replacement of COTR's, and the SOW requiring satisfactory performance while customer and COTR's expect excellent performance.

Indefinite quantities and changing requirements, and inaccurate projections of the meals to be served. Conflicts with military personnel.

Firm fixed-price contract eliminates the profit incentive private enterprises operate under.

The Government tells the contractors "how" to perform the contract requirements instead of "what" the requirements are.

When quality inspectors change so does the interpretation of the provisions of the Performance Requirements Summary (PRS).

Government allows contractor very little time to start-up the contract from date of award (ie one to two weeks).

Bad attitude toward contractor by QA personnel.

Unrealistic Government inspection techniques and evaluation.

Being requested or directed by Government officials to perform tasks not specifically addressed in contract requirements.

Unrealistic requirements that are asked, but not identified in the contract.

Performing work outside contract requirements because the PWS is ambiguous and open for many interpretations.

Quality Assurance Evaluators (QAE's) expecting Rolls Royce service for Pinto prices (i.e., QAE's timing the time from when a patron gets up, and writes up the contractor if plates are not picked-up "exactly" within the time specified--which is two minutes. If my pick-up time is two minutes, ten seconds I get written up for a deduction).

Lack of experience of COTR's and QAE's in dealing with civilian contractors.

#### 5. Question Five

In your opinion, what difficulties in the performance of your food service contract can be attributed to pre-award actions by the Government or your company?

##### a. Government Responses

The primary reason why 67% of the Government respondents believed that post-award difficulties were caused was because the Government drafted ambiguous or inadequate specifications for the PWS as a result of not being able to properly identify the requirement. Responses of the Government officials are as follows:

Many food service contract difficulties can be eliminated or minimized during pre-award phase. Careful review of staffing proposals, cost proposals, and key personnel will eliminate firms trying to "buy-in" to a food service contract.

Contracting personnel need to analyze recommendations from other agencies carefully. A recent pre-award survey by DCAMO, recommended full award on the exercise of an option, after applying the established criteria for pre-award surveys on financial capability. After further investigation, we learned the company has large debts and that the exercise of the option under this contract would result in bankruptcy proceedings for this small business.

Failure of the contracting officer to communicate those issues or specifications in the contract with the agent or

user. The contracting officer oftentimes makes decisions to meet deadlines which result in contract modifications.

The quality assurance evaluation plan developed was not workable, resulting in deductions that were inadequate, and claims were received.

Failure to identify accurate requirements. Unrealistic assessment or no assessment of manning levels.

Inadequate and ambiguous specifications caused by inaccurate historical data and incomplete inventory lists.

Evaluations on technical proposals are merely acceptable or unacceptable. We cannot rate technical proposals in order of desirability. We thus end up with the low bidder, when another company may have offered a more cost effective proposal.

A lack of adequate workload data during pre-award phase to insure an accurate assessment of the contract requirements. This often means the contractor based his price on erroneous information, which leads to poor performance in an attempt to recoup costs.

The PWS limits the flexibility of the contractor.

Buy-ins or unrealistic bidding for food service contracts is required in order to win the award. Once the contractor wins, he must find ways to recover from his unrealistic low bid. The bidders consistently underestimate the amount of personnel needed to meet the requirements of the PWS.

Ambiguities in the PWS, inaccurate technical exhibits and overstating contractor personnel qualification requirements.

PWS not being clear on what is required.

Unusable Quality Assurance Plans along with a lack of positive incentives to improve performance beyond minimum levels.

We do not have a clear understanding of the requirements.

b. Contractor Responses

Seventy-two percent of the contractors felt that difficulties in contract performance were caused by submitting

bids and proposals in response to ambiguous and deficient solicitations, which did not adequately identify the requirements for the food service. Additional comments are paraphrased below:

Contracting officers are not available for meetings or discussions of needs. The Government has a lack of understanding of food service management.

The Government allows contractors to buy-in as a result of sealed bids.

COTR's are not properly educated and trained.

Government does not provide any idea of the minimum staffing requirement.

The Government drags out small details for days or weeks prior to officially notifying you of the award, sometimes leaving you with very little start-up time. I have started several contracts with less than 10 working days notice and I always had poor cooperation from the Government.

Future actions of the Government that are known and will affect my performance of the contract are not mentioned or discussed during pre-award phase.

Government does not adequately check the low bidder during sealed bid to verify if his low price can perform the job.

Certain questions are sometimes not asked by my company and the Government wants to modify the contract as soon as it is awarded.

#### **6. Question Six**

What actions have you taken to resolve post-award problems associated with food service contracts?

##### **a. Government Responses**

Fifty-four percent of the respondents identified the action taken to be implementing a training program for the COTR and the relevant contractor personnel. Additionally, thirty-eight percent stated that the action taken to resolve

their post-award difficulties was to modify the contract to reflect the actual requirements. Responses are paraphrased below:

Actions taken on post-award problems include: Providing additional training to COTR and contractor, the loan of Government furnished equipment, forbearance of deductions.

Initiated contract modifications to meet specifications that appeared ambiguous or otherwise debated.

Added incentives (award fee) to new contract to incentivize contractor.

Conduct periodical meetings with contractor to facilitate understanding of contract.

Correct specification error by modifying contract.

I, as a contracting officer have provided training to food service personnel and Government inspectors so that they understand their role. I have been very proactive in contract administration.

Negotiated arrangements to correct deficiencies in requirement determination.

Conduct Government/contractor workshops and conduct onsite assistance visits as a contracting officer.

Several modifications have been issued to clarify or add definitive requirements to the services required.

Implemented mandatory COTR and contractor weekly meetings.

Emphasize mutual expectations during weekly meetings and use award fee to incentivize.

Changed the type of contract being used from Firm Fixed-Price to Fixed-Price Award Fee to incentivize contractor.

Sent cure notices to contractor.

b. Contractor Responses

The contractors had varied actions that were taken to resolve post-award difficulties. Typical comments are paraphrased below:

Continue to meet demands of the inspecting officers regardless of benefit to operation.

Conduct constant regular training of personnel in food preparation and sanitation.

Employ personnel that are qualified and loyal to their operations.

Work closely with the COTR. State problem with a recommended solution.

Perform under all circumstances, then address problem at a later time.

Constantly negotiate with the Government in order to arrive at a decision.

Regulate our shifts to accommodate the number of meals served.

Conduct extensive training of supervisor.

Enforce open communication with COTR.

Seek to clearly define terms and conditions of ambiguous wording in contract during pre-award phase.

I have tried to resolve differences through using the contracting officer. In many cases this action has been to no avail, and I have wasted many man hours and have had to resort to submitting claims.

Constant open communications with COTR to get feedback on how we are doing and what needs to be changed.

Generally, we are able to solve problems simply by meeting with the contracting officer and his staff.

I insure good communication. If both parties are willing to bend, problems can be resolved.

**7. Question Seven (Government only)**

What degree of success has been achieved by your actions to correct post-award difficulties?

Government Responses

Highly successful:	50%
Moderately successful:	21%
Not successful:	13%
Undecided:	16%

Seventy-one percent of the respondents believed that the actions they have taken were at least somewhat successful in correcting post-award difficulties. However, 29% of the respondents either had not experienced any success or did not want to respond to this question. This was probably because there was not a significant improvement in performance as the result of actions taken to correct a difficulty. Typical responses are paraphrased below:

Performance has improved somewhat but not sufficiently to meet the minimum requirements of the contract. The company president had advised me that he cannot afford to cure poor performance because of cash flow difficulties.

By insuring the COTR's are properly informed of what the contract states has decreased the number of unauthorized commitments made by this agency and subsequent claims submitted by the contractor.

By basing profit on an incentive basis has improved contractor performance.

Negotiating fixed labor rate for additional services has expedited negotiating of post-award modifications for additional effort.

Meeting with the contractor and insuring he understands the contract requirements has led to superior performance by allowing the contractor to be able to plan opening, closing, and staffing in advance.

All of my negative actions taken (i.e., pressure at all points in the process) have had minimal success.

Generally, the contractor has provided a "quick fix" solution to the problem(s), which normally erodes in a short period of time.

Insuring COTR and contractor have weekly meetings to identify potential problems has had excellent results.

The major success has occurred as a result of positive incentives (ie award fee, praise, etc.).

Insuring frequent interaction between contracting officer, COTR, and contractor has reduced problems. If interaction stops, the contractor will cut corners.

### **8. Question Eight**

In your opinion, what actions can the Government take prior to contract award that would improve the performance of food service contracts?

#### **a. Government Responses**

Forty-two percent of the respondents believed that the Government must take more actions to insure that the PWS is accurate and non-ambiguous. Another popular response was that competitive procurement instead of sealed bidding should be the primary acquisition method for food service contracts. These respondents felt that discussions/negotiations are necessary to insure that all ambiguities are worked out prior to contract award. Typical comments are paraphrased below:

Contingency planning for failed contracts.

A panel review of the proposed statement of work. Panel should consist of those parties that interface with food service contractor performance.

The solicitation should require a technical proposal containing at a minimum: staffing plans, resumes for key personnel, strike contingency plans, and corporate experience.

Training for quality assurance evaluators and COTR's in contracting procedures and relationships are important to contract performance.

Insure PWS is proper and reflects the needs of the Government and equipment listing is accurate.

Contracting officer must meet with the user of the services and review the PWS for clarity.

The Government must clearly define their requirements. There must be a sit down meeting between the COTR, contracting officer, and contractor to discuss all aspects of the contract. The Government and contractor must clearly understand the contract requirements prior to awarding the contract.

Have people, other than those who prepared the PWS, review the solicitation for accuracy and completeness.

Use Request for Proposal rather than Invitation for Bid. This permits evaluations of offers including a technical proposal to insure award is made to the most reliable and favorable offeror based upon evaluation criteria. This permits a Total Quality Management (TQM) award.

The Government should devise a uniform method of source selection which considers quality, staffing, past performance, and management, as well as price consideration.

b. Contractor Responses

As with the Government responses, the two most popular opinions on the part of the civilian contractors were:

(1) the Government needs to more properly identify its requirements in the PWS to avoid ambiguities and confusion, and (2) negotiations/discussions are needed to insure all parties fully understand the contract requirements. Therefore, competitive procurement instead of sealed bidding, in the respondents opinion, is the preferred method of acquisition for food service contracts. Typical comments are paraphrased below:

Make all food service contracts negotiated rather than sealed bid.

State requirements concisely rather than amending the solicitation eight to ten times before award.

Develop a solicitation which allows private enterprise to maximize their entrepreneurial spirit.

Using negotiations/discussions to insure all persons involved in the contract understand exactly what the contract requirements are, and that each person understands their responsibilities.

Write specifications that are straight forward instead of so ambiguous that they can be interpreted in any way a person wishes.

Thoroughly evaluate the proposed contractor's ability to provide the kind of service the contract calls for. Insure contractors are technically qualified, not just low price.

Government needs to understand their own requirements and use discussions to negotiate a fair and equitable price for both the Government and contractor.

All food service contracts should be negotiated so the Government knows exactly what the contractor is offering. A technical proposal including manning charts, quality control plan, and a cost proposal should be mandatory.

#### 9. Question Nine

Do you have any free form comments relative to food service contracting?

##### a. Government Responses

This question provoked a myriad of responses, which was the intended purpose. This question was utilized to uncover any opinions from the experts in the field that were not brought out by the primary questions in the mail survey. The popular response was that a formal training school should be developed for the Government Quality Assurance Evaluators (QAE's). All COTR's and QAE's should be required to attend

this formal training prior to administering a food service contract. Other comments received are paraphrased below:

Recommend the use of a fixed-price award fee contract on a trial basis for food services. This type of contract would offer contractors an incentive to perform above the minimum required level. The award fee could be administered by a board of those affected at the base level. A fee determination recommended by the board could be made by the base commanding officer. Award fees are not subject to appeal. The benefit derived by the Government in obtaining services that exceed the minimum needs of the Government must also be examined.

Contractors must possess good management skills to enable the supervisor to accomplish staffing of the dining facilities.

Vendors should be competing on other factors than price alone; therefore, technical proposals are an essential requirement in the acquisition process. Award should be allowed to be given to other than the low offeror.

SBA set aside contracts are necessary for affirmative action to enhance small disadvantaged business; however, they cost much more and force many commands out of the contracting arena due to funding constraints.

b. Contractor Responses

Again, a full spectrum of responses were received: some contractors felt that a contractor "buying-in" on a food service contract is a common occurrence because they know that the Government will issue contract modifications after award. Most of the respondents believed, however, that solicitations are being sent out by the Government which have numerous mistakes causing amendments and confusion. This spectrum is illustrated by the seven responses paraphrased below:

One thing I have extreme difficulty understanding is why so many activities have been contracting food services for 15 to 20 years and still have to issue one to ten amendments to each solicitation which keeps a company in limbo for two to three months trying to identify one contract.

In my experience, all Government agencies use prototype solicitations. In a lot of cases, the contracting officers are not deleting the inapplicable portions of the PWS, and are not adding pertinent information concerning the contracted facility.

Everyone should understand that in food service contracts each person involved may see the results differently. Contrary to contracts for merchandise which may be measured and tested in reference to exact verifiable specifications, service contracts are measured in reference to an individual's opinion. Beauty is in the eye of the beholder.

One of the greatest problems is with the release of a solicitation which has not been thoroughly checked for mistakes, omissions, and ambiguities, which generate contractor protests. This in turn causes unnecessary delays, wastes time, and money for both parties.

Government should evaluate all the contract requirements to make sure they are realistic and attainable. Some contractors may agree to anything just to get a contract, and later discover they cannot perform.

Stop awarding contracts which are too low for a contractor to do a good job. This would eliminate modifications to the contract.

Sometimes the Government requires a minimum manning level which is more than is needed. A contractor who earnestly attempts to comply with this level will not be awarded the contract. This means the winner often lied about the labor hours and the Government failed to check the numbers thoroughly. On the other hand, contracting officers often award to the low bidder no matter how ridiculously low it is. In some cases this contract is out for bid again in less than a year.

### **C. SUMMARY OF THE DATA**

This section will summarize the data presented in this chapter, and along with the data presented in Chapters III and IV will serve as the foundation for conclusions presented in Chapter VI. This summary will be divided into the following areas:

- Post-award difficulties
- Pre-award causes of post-award difficulties
- Actions taken to resolve post-award difficulties and degree of success realized
- What actions the Government could take prior to award to improve the performance of the contractor

These areas are the primary subsets for this research effort. Therefore, by understanding the difficulties associated with the pre-award and post-award phases, along with actions taken, or actions that could be taken, conclusions and recommendations can be made to improve food service contract administration.

#### **1. Post-award difficulties**

Both the Government officials and the civilian contractors identified the same two areas of difficulty: (1) Performing work outside the scope of the contract requirements; and (2) Quality Assurance personnel (i.e., COTR's and QAE's) not acting in a manner consistent with the requirements of the contract.

Sixty-three percent of the Government officials and 50% of the contractors felt that performing services outside the scope of the contract requirements was the largest difficulty in post-award. Both respondents further stated that the inability of the Government to accurately identify the requirements was the major cause of this difficulty.

The other major difficulty addressed by both respondents was the area of Quality Assurance activities. The

Government officials addressed that they had difficulties in insuring that COTR's and QAE's follow appropriate guidelines during inspection, and that they do not make unauthorized changes to the contract. The contractor respondents identified an adversarial relationship between themselves and the Government Quality Assurance personnel as a major difficulty.

## **2. Pre-award causes of post-award difficulties**

Again, both the Government officials and the civilian contractors identified the same problem area. Sixty-seven percent of the Government respondents and 72% of the contractor respondents felt that the major pre-award cause of their post-award difficulties was that the Government drafted ambiguous or inadequate specifications for the PWS that is sent out in the solicitation.

Ambiguous or inadequate specifications can have a direct impact upon performance and administration of food service contracts. Specifically, the two major post-award difficulties identified, performing services outside the scope of the contract, and improper activities on the part of Quality Assurance personnel, can be the result of ambiguous or inadequate contract specifications. Performing services outside the scope of the contract requirements can be the result of failing to adequately identify the requirements of an agency. Additionally, improper activities by Quality Assurance personnel and an adversarial relationship with these personnel can be caused by ambiguous contract language where

the COTR/QAE interpret the language one way, and the contractor interprets the language another way.

**3. Actions taken to resolve post-award difficulties and degree of success realized.**

The Government respondents most frequently identified two actions that have been taken. Fifty-four percent of the respondents have implemented periodic training for the COTR and relevant contractor personnel. Additionally, thirty-eight percent of the respondents stated that the action taken was to modify the contract to reflect the actual requirements.

The Government officials that identified that they have taken a corrective action by instituting a training program or modifying a contract have in most cases experienced some degree of success. Overall, seventy-one percent of the respondents feel they have witnessed at least a moderate degree of success. There were, however, still 29% of the respondents who either did not experience any success, or did not want to respond to this question.

The action of modifying a contract to correct a post-award difficulty is an action, that the Government in most cases is forced to do. Modifying the contract to correct ambiguous language or deficient specifications after award of the contract is the only alternative other than terminating the contract. Although this action was identified as being one to correct a post-award difficulty, it is not considered by this researcher as being a proactive management step, but rather a forced reaction.

The contractor respondents listed a myriad of actions that have taken to resolve post-award difficulties. Although the actions taken were varied, however, the majority were concerned with communication and relationship with the Government Quality Assurance personnel.

**4. What actions the Government could take prior to award to improve the performance of the contractor.**

Again, both the Government respondents and the contractor respondents identified the same two actions that could be taken by the Government prior to contract award that could improve contract performance. The two actions are: (1) the Government needs to more properly identify its requirements in the PWS to avoid ambiguities and confusion, and (2) use competitive procurement instead of sealed bid as the primary acquisition method to procure food services.

These two actions are interrelated to one another. The second action identified by both respondents, using competitive procurement in lieu of sealed bid, would be a specific action the Government could take to avoid ambiguities and confusion in the language of the contract. By using competitive procurement, both parties are permitted to conduct negotiations/discussions. During this dialogue, ambiguities and deficiencies are more certain to be identified and worked out, than if no negotiations/discussions transpired as in the use of the sealed bid method. In fact, this same point has been recently made by the Office of Federal Procurement Policy

in its Policy Letter 91-2 concerning service contracting [Ref. 2:p. 501].

It is important to mention at this point that not only Government officials at the military installation level who are personally involved in soliciting, awarding, and administering food service contracts feel that actions are needed to correct ambiguities and deficiencies in specifications. The most senior food service officials in the Army, Navy, and Marine Corps share this same opinion. These senior officials have also taken action to correct the Government's inability to properly identify the requirements contained in the PWS by drafting Prototype Food Service Solicitations to be used by contracting agencies. These prototype solicitations have been constructed in the format of an order or directive. Although the use of prototype solicitations appear to be a movement in the right direction, it is of significant importance that the installations be proactive in the use of these documents. These prototypes should not be used as a substitute for an installation's own planning and identification of its needs. It was addressed by some of the contractor respondents that some contracting officers are using prototype solicitations and are not deleting inapplicable portions of the PWS, and are not adding pertinent information that is unique to their contract.

**5. Other relevant data received from the results of the mail surveys.**

In addition to the data summarized for the four major subsets of this research listed above, the following are other actions that were identified by the survey respondents which this researcher considers relevant.

- The use of a fixed-price award fee contract to facilitate the use of a positive incentive in conjunction with the negative incentives that are already in place (i.e., inspection deductions). This type of contract will incentivize a contractor to perform above the minimum required level, as well as discourage substandard performance by including inspection deductions. All respondents who have awarded a fixed-price award fee contract have had successful results.
- The use of a technical proposal to facilitate an evaluation of factors other than price. These other factors include: management, corporate experience, manning levels, and resumes for critical positions. Basing award on factors other than price also supports the use of competitive procurement instead of the sealed bid method.
- Both Government and contractor respondents identified that "buy-ins" were taking place in the food service contracting arena because of the use of the sealed bid procurement method.

This chapter presented and summarized the data gathered through a mail survey sent to Government officials and civilian food service contractors. The data received as a result of this mail survey was from the experts in the field who are personally involved in the administration and performance of a food service contract. It was discovered that both the Government respondents and the contractor respondents share the same opinion in many areas.

The next chapter will present the researcher's conclusions, recommendations, and suggested areas of

additional research based upon the data gathered in this research effort.

## **VI. CONCLUSIONS, RECOMMENDATIONS, AND AREAS FOR ADDITIONAL RESEARCH**

### **A. GENERAL**

Chapter II discussed the terms, laws, procedures, and documentation relative to food service contracting. That chapter also identified the critical personnel involved in the process; the necessary actions to be taken; and associated documentation in both the pre-award and post-award phases. In addition the chapter established a foundation of knowledge for the reader in reviewing the subsequent chapters by identifying potential problem areas and new policy changes occurring in this area.

Chapter III examined ASBCA cases and protests submitted to the Comptroller General relative to food service contracts. A trend analysis was conducted to determine common reasons for claims and protests. It was ascertained that there were common post-award difficulties and pre-award causes of these difficulties that resulted in litigative action.

Chapter IV identified the most common significant problem areas in contract administration (post-award) and pre-award causes of these problems in the opinion of Government auditors. Additionally, recommended corrective actions as given by the auditors were identified. These audits supported the findings of Chapter III.

In Chapter V, mail survey questions regarding the difficulties associated with administration and performance of food service contracts; pre-award causes of these difficulties; actions taken to resolve difficulties; and recommended pre-award actions to improve contractor performance were addressed to both Government officials and contractors. Again, the opinion of these experts in the field supported the findings of Chapters III and IV.

#### **B. CONCLUSIONS**

The purpose of this study was to determine the major difficulties associated with administration of food service contracts in the Army, Navy, and Marine Corps and how these difficulties might be resolved. The major difficulties will be addressed in this section, and suggested ways to resolve these difficulties will be addressed in the recommendations section of this chapter. The first conclusions of this study are:

- 1. Upon award of the contract, or shortly thereafter, food service contractors are being required to perform services not identified in the contract, resulting in a modification to the contract.**

This was the overwhelming response by both Government officials and contractors to the mail survey. Additionally, this was the primary reason for contractors claims to the ASBCA. When contractors are required to perform services outside the scope of the contract requirements, the action that must be taken is either modify, or terminate the existing

contract. If both parties are not satisfied, then the result could be submission of a claim, as witnessed in Chapter III.

2. **Government quality assurance personnel (i.e., COTR's, COR's, QAE's) who have been assigned responsibility to monitor contractor performance, conduct themselves, and order contractor personnel to perform services not within the scope of their authority or the requirements of the contract. This improper activity by the Government's quality assurance personnel has resulted in an adversarial relationship with the contractor.**

This difficulty was identified in the ASBCA analysis, concluded by Government Auditors, and addressed by both Government and contractor mail survey respondents. Contracting officers identified that one of their major concerns is insuring that quality assurance personnel do not make unauthorized changes to their food service contract. In most cases, quality assurance personnel are experts in food service, but have never been asked to conduct surveillance over civilian contractors.

3. **Quality assurance inspection procedures being used are improper, and the results of the inspection are not being documented and reported to the contracting officer.**

Again, the results of the ASBCA case analysis, the findings of Government auditors, and the opinions of the respondents to the mail survey, indicate inadequate inspection procedures, and failure to properly document, and forward the results as a post-award difficulty. The use of inadequate inspection procedures can result in improper deductions from contractor payment, while failure to document the results of the inspection on the Quality Deficiency Report (QDR) may lead

to paying a contractor for services that are deficient, or not performed.

The first subsidiary question for this study concerned the primary causes of failure or default of food service contracts. The next two conclusions of this study are:

4. In many instances, Government estimates of requirements included in the solicitation were inaccurate. As a result, contractors have submitted unrealistic bids and proposals which the subsequent award of the contract was based upon.

Failure to accurately estimate the requirements in the solicitation will result in inaccurate bids and proposals and false expectations on the part of the contractor. The outcome may be failure or termination because the contractor cannot meet the real requirement due to staffing or financial constraints.

5. Inadequate pre-award surveys to determine the contractors ability to perform the required food service, lead to failure or termination of the contract.

Not properly researching and evaluating the contractors ability to perform is detrimental to successful performance. Specifically, the financial position of a contractor if not adequately reviewed can lead to inability to meet payroll expenses and even bankruptcy.

The second subsidiary question of this research concerned the pre-award causes of post-award difficulties. The following three conclusions for this study are:

6. Inability to adequately identify the agency's food service requirements will lead to ambiguous or deficient specifications in the solicitation,

resulting in amending the solicitation a multitude of times, and modifying the contract, thus inhibiting successful performance and administration of the contract.

This pre-award problem will cause all of the post-award difficulties concluded. Performing services outside the scope of the contract requirements; improper activities of the quality assurance personnel; an adversarial relationship with the contractor; and improper inspection procedures can be the direct result of ambiguous and deficient contract language.

7. Failure to properly assign, train, and educate Government quality assurance personnel concerning contract administration procedures and the specific contract requirements will cause contract administration and performance difficulties.

All areas of research conducted in this study have identified inadequate training of quality assurance personnel as being a primary cause of post-award difficulties. Additionally, contractor respondents to the mail survey addressed this as the primary cause of an adversarial relationship with the Government.

8. The strict use of the sealed bid method of procurement in lieu of competitive procurement (negotiations) precludes the clarification and confirmation of contract requirements. The absence of discussions and negotiations will allow ambiguous and deficient specifications in the solicitation to cause performance outside the scope of contract requirements, an adversarial relationship due to different interpretations, and improper activities on the part of quality assurance personnel.

Sealed bidding is the primary reason that many of the mail survey participants felt that ambiguities and confusion in the requirements of the contract during performance

existed. Negotiation, vice sealed bid, gives the Government the opportunity to insure the contractor understands all the requirements of the contract.

Chapter V examined among other areas, the actions taken by Government contract administration officials in an attempt to resolve post-award problems associated with food service contracts, and the degree of success that they have achieved, which was the third subsidiary question of this study. The ninth conclusion of this study is:

9. **Implementing training programs for quality assurance and contractor personnel, and modifying the contract are the two primary actions taken by contracting officers in attempt to resolve post-award problems. In most cases, contracting officers have witnessed some degree of success in the actions taken.**

Although modifying the contract was identified as an action to correct a post-award problem, this is a forced reaction, not an action to prevent contract administration problems from occurring.

The fourth subsidiary question for this research concerned contractor's reactions to the difficulties associated with performing food service contracts. The tenth conclusion of this study is:

10. **Civilian food service contractors primarily react to contract performance difficulties in two ways. Contractors will continue to meet the demands of the Government, no matter what, and submit a claim at a later date. Additionally, contractors attempt to diminish the adversarial relationship with Government quality assurance personnel by conducting employee training and stressing cooperation and open communications.**

These two reactions by contractors were the ways they have attempted to resolve the two major problems associated with contract performance they identified: performance of services outside the scope of the contract requirements and an adversarial relationship with quality assurance personnel. Performing all Government demands, no matter what is also the result of a noncooperative relationship with the Government.

In addition to the above conclusions, the following four areas of concern are presented:

- Eighty-three percent of the contractors operate in an environment with negative incentives only. There are presently very few techniques being used to positively motivate contractor performance.
- Both Government official's and contractors have identified that "buy-ins" are taking place as the result of awarding to low bidder, and the Governments willingness to modify the contract to correct deficient requirements.
- The requirements of the Office of Federal Procurement Policy (OFPP), Policy Letter 91-2, have not been implemented into food service contracting.
- Most Government agencies have not developed a contingency plan in case of contract termination.

### **C. RECOMMENDATIONS**

The primary research question addressed how might the major difficulties with contract administration be resolved, and the fifth subsidiary question addresses what actions both Government and industry can take prior to award that could improve the performance of food service contracts. In regards to both of these questions the following six recommendations are presented:

1. **The Office of Federal Procurement Policy (OFPP) Policy Letter 91-2, Service Contracting, should be implemented into food service contracting.**

Among the requirements of the OFPP Policy Letter 91-2 are: (1) the use of "performance-based contracting;" (2) preparing the performance work statement (PWS) in terms of "what" is to be required rather than "how" the work is to be accomplished; (3) use of competitive negotiations instead of sealed bid where quality of performance above the minimum acceptable level will enhance agency mission accomplishment; and (4) to the maximum extent practicable, contract provisions shall include incentive provisions to ensure that contractors are rewarded for good performance, and quality assurance deduction schedules to discourage unsatisfactory performance.

Using "performance-based contracting" to include a PWS based on "what" is to be done instead of "how" the work is to be accomplished, will interject contractor expertise and entrepreneurship into food service contracting, and facilitate a cooperative relationship in the pre-award phase. Using competitive negotiations instead of sealed bid will give the Government a better opportunity to insure the contractor understands the requirements of the contract and can perform for the price he is quoting. Additionally, ambiguous and deficient contract language can be identified and corrected during discussions, and the multiple amendments to the solicitation and modifications to the contract will be reduced. Using competitive procurement will facilitate evaluation of

contractors proposals for other than price related factors such as technical capability, management capability, cost realism, and past performance. The use of draft requests for proposals, if time allows, will also enhance requirements determination.

2. **The fixed-price award fee contract should be used to provide positive incentives in contracting food services.**

A fixed-price award fee contract affords the Government the opportunity to incentivize contractors to perform services above the minimum required level, and at the same time includes quality assurance deductions to discourage unsatisfactory performance. An award fee, which is established in the contract, is decided upon by an award fee board, and approved by a designated official. The amount of fee awarded, or not awarded, is not subject to appeal by the contractor.

The fixed-price award fee has been awarded by some of the mail survey respondents, and based upon their input, the use of the award fee has resulted in a significant increase in the quality of service, and morale of the contractor.

3. **A contingency plan must be developed during the acquisition planning phase in the event unexpected contract termination occurs.**

In the event of an unexpected contract termination the installation must have a plan to replace the absent contracted food service. Without a contingency plan, the Government is often faced with awarding a new contract for urgent and

compelling reasons resulting in improper requirements determination; ambiguous contract language; and awarding the contract to a contractor who can begin immediately, but may not be the most qualified. An example of a contingency plan would be to utilize the nearest reserve unit that has cooks and bakers on active drilling status.

4. **All food service quality assurance personnel (COTR's, COR's, QAE's) should be trained prior to assuming their duties, and receive follow-up training during the performance of their duties.**

The training provided to the quality assurance personnel should include cooperative relationships with civilian contractor personnel; the requirements of the contract; the scope of authority; specific responsibilities; and statistical sampling techniques. Training should emphasize the avoidance of an adversarial relationship.

5. **Contractor quality control personnel should attend the same training seminars as Government quality assurance personnel.**

This is required to facilitate better communications between industry and the Government as well as educate contractor quality control personnel "from the same book." This recommendation would also minimize adversarial relationships and claims as a result of disagreements in judgement.

6. **The Army, Navy, and Marine Corps should develop and implement a central contract management concept to provide continuity and consistency to food service contracting. A Headquarters level agency should be designated as the functional proponent for all matters relating to food service contracting.**

The central management agency should establish policy and procedures to provide:

1. A performance work statement (PWS)/quality assurance surveillance plan (QASP) team to coordinate and assist the installations in developing functional documents to include the PWS, QASP, Government estimate, and the contingency plan.
2. Conduct assistance visits to installations within one year prior to the anticipated award date of a new contract.
3. Review and certify functional requirements (i.e., PWS and QASP) of all food service contract solicitations.
4. Establish and keep current the course of instruction for Government quality assurance and contractor quality control personnel, and insure that initial and follow-on training is properly conducted.

**D. AREAS FOR ADDITIONAL RESEARCH**

The following are recommended topics for further research:

1. Research how installations have implemented OFPP Policy Letter 91-2, and the impact it has had on food service contracting.
2. Conduct a Benefit and Cost Analysis of the use of a fixed-price award fee contract for food service.
3. Research the measures to develop an appropriate contingency plan for terminated food service contracts.
4. Research the recommendation of using a central contract management concept and the impact it will have at the installation level.

## APPENDIX A

### LIST OF ARMED SERVICE BOARD OF CONTRACT APPEALS (ASBCA) CASES REVIEWED

1. Appeal of -- Diversified Contract Services, Inc., ASBCA No. 40509, 91-1 B.C.A. (CCH), P23,311, August 31, 1990.
2. Appeal of -- Western States Management Services, Inc., ASBCA No. 39301, 90-2 B.C.A.
3. Appeal of -- Eagle Management, Inc., ASBCA No. 35902, 90-1 B.C.A. (CCH) P22,513, November 30, 1989.
4. Appeal of -- Hart's Food Service, Inc., ASBCA No. 30756, 89-2 B.C.A. (CCH) P21,789, April 10, 1989.
5. Appeal of -- Delta Food Service, ASBCA No. 30757, 89-2 B.C.A. (CCH) P21,789, April 10, 1989.
6. Appeal of -- Arrow Janitorial Service, ASBCA No. 35209, 89-2 B.C.A. (CCH) P21,860, March 1989.
7. Appeal of -- Holmes and Narver Services, Inc., ASBCA No. 33025, 88-3 B.C.A. (CCH) P20,932, June 2, 1988.
8. Appeal of -- J.E.T.S., Inc., ASBCA No. 28083, 88-2 B.C.A. (CCH) P20,540, February 4, 1988.
9. Appeal of -- Logistical Support, Inc., ASBCA No. 35578, 88-1 B.C.A. (CCH) P20,469, December 17, 1987.
10. Appeal of -- Logistical Support, Inc., ASBCA No. 34493, 87-3 B.C.A. (CCH) P20,035, July 15, 1987.
11. Appeal of -- Food Services, Inc., ASBCA No. 34067, 87-3 B.C.A. (CCH) P20,013, June 19, 1987.
12. Appeal of -- JBS Missouri, Inc., ASBCA No. 34044, 87-2 B.C.A. (CCH) P19,904, June 4, 1987.
13. Appeal of -- Kee Service Company, ASBCA No. 28966, 86-3 B.C.A. (CCH) P19,242, August 11, 1986.
14. Appeal of -- Mark Dunning Industries, ASBCA No. 29599, 86-1 B.C.A. (CCH) P18,521, October 18, 1985.

15. Appeal of -- The Casserole of Alabama, Inc., ASBCA No. 28812, 85-3 B.C.A. (CCH) P18,364, August 14, 1985.
16. Appeal of -- Moore's Cafeteria Services, Inc., ASBCA No. 28441, 85-3 B.C.A. (CCH) P18,187, June 17, 1985.
17. Appeal of -- Crothall Food Services, Inc., ASBCA No. 30674, 85-3 B.C.A. (CCH) P18,308, June 10, 1985.
18. Appeal of -- Leal's Food Service, Inc., ASBCA No. 28829, 85-2 B.C.A. (CCH) P18,136, May 8, 1985.
19. Appeal of -- Advance Building Maintenance Company, ASBCA Nos. 27183 and 28219, 85-2 B.C.A. (CCH) P18,076, April 23, 1985.
20. Appeal of -- Lewis Management and Service Company, ASBCA No. 24398, 85-2 B.C.A. (CCH) P18,042, April 2, 1985.
21. Appeal of -- ITG Corporation, ASBCA No. 27285, 85-1 B.C.A. (CCH) P17,935, February 25, 1985.

## APPENDIX B

### LIST OF COMPTROLLER GENERAL DECISIONS REVIEWED

1. Matter of: KCA Corporation, B-236260.2, Comptroller General of the United States, 69 Comp. Gen. 549, July 2, 1990.
2. Matter of: Western States Management Services, Inc., B-235956.2, Comptroller General of the U.S., December 7, 1989.
3. Matter of: Kalara Corporation -- Reconsideration, B-230562.8, Comptroller General of the U.S., November 2, 1989.
4. Matter of: Mabuhay Building Maintenance Co., Inc. -- Reconsideration, B-235630.3, Comptroller General of the U.S., October 10, 1989.
5. Matter of: Industrial Maintenance Services, Inc.; Logistical Support, Inc., B-235717.2, Comptroller General of the U.S., October 6, 1989.
6. Matter of: Moore's Cafeteria Services, Inc., B-234063.4, Comptroller General of the U.S., June 29, 1989.
7. Matter of: Diversified Contract Services, Inc., B-234660, Comptroller General of the U.S., June 29, 1989.
8. Matter of: Logistical Support, Inc., B-234621, Comptroller General of the U.S., May 24, 1989.
9. Matter of: Marlow Services, Inc., B-229990.3, Comptroller General of the U.S., April 19, 1989.
10. Matter of: Logistical Support, Inc.: Moore's Cafeteria Services Inc., B-234894, Comptroller General of the U.S., April 10, 1989.
11. Matter of: MIA Creative Foods, Inc., B-233940, Comptroller General of the U.S., March 28, 1989.
12. Matter of: Cantu Services, Inc., B-219998.9, B-233697, Comptroller General of the U.S., March 27, 1989.
13. Matter of: Western States Management Services, Inc., B-231545.3, Comptroller General of the U.S., March 27, 1989.

14. Matter of: HLJ Management Group, Inc. -- Request for Reconsideration, B-255843.5, Comptroller General of the U.S., March 6, 1989.
15. Matter of: Benco Contract Services, B-233748, Comptroller General of the U.S., February 24, 1989.
16. Matter of: C.N.Y. Enterprises, Inc.; B&R Food Systems, Inc.; ABC Services, Inc., B-234063, B-234063.2, B-234063.3, Comptroller General of the U.S., January 26, 1989.
17. Matter of: Rice Services, Ltd., B-232610, Comptroller General of the U.S., November 23, 1988.
18. Matter of: Americorp, B-232688, Comptroller General of the U.S., November 23, 1988.
19. Matter of: KIME Plus, Inc., B-230190.3, Comptroller General of the U.S., November 1, 1988.
20. Matter of: Defense Services, Inc., B-232303.3, Comptroller General of the U.S., November 1, 1988.
21. Matter of: L&E Service Company, B-231841.2, Comptroller General of the U.S., October 27, 1988.
22. Matter of: HLJ Management Group, Inc., B-225843.3, Comptroller General of the U.S., October 20, 1988.
23. Matter of: Americorp, B-231769, Comptroller General of the U.S., September 13, 1988.
24. Matter of: LD Research Corporation, B-230912.3, Comptroller General of the U.S., September 9, 1988.
25. Matter of: JL Associates, Inc., B-225843.4, Comptroller General of the U.S., July 22, 1988.
26. Matter of: Colbar, Inc., File: B-230754, Comptroller General of the U.S., June 13, 1988.
27. Matter of: Alaska Lee/Global Services, Inc., B-230912.2, Comptroller General of the U.S., May 27, 1988.
28. Matter of: Kime-Plus, Inc., B-229990, Comptroller General of the U.S., May 4, 1988.
29. Matter of: Integrity Management International, Inc., B-230795.2, Comptroller General of the U.S., April 25, 1988.

30. Matter of: Ramirez Enterprises, E-229636.3, Comptroller General of the U.S., March 28, 1988.
31. Matter of: Colbar, Inc., B-227555.4, Comptroller General of the U.S., February 19, 1988.
32. Matter of: Uniserv, Inc.; Fort Riley Food Service Co., a Joint Venture, B-228530; B-228530.2, Comptroller General of the U.S., December 23, 1987.
33. Matter of: Diversified Contract Services, Inc., B-227555.3, Comptroller General of the United States, November 25, 1987.
34. Matter of: Diversified Contract Services, Inc., B-224152.2, Comptroller General of the U.S., July 27, 1987.
35. Matter of: Appletown food Service and Management Corporation, B-225125.2, Comptroller General of the U.S., May 27, 1987.
36. Matter of: Kime-Plus, Inc., B-223945.2, Comptroller General of the U.S., May 14, 1987.
37. Matter of: Integrity Management International, Inc., B-222405.4, Comptroller General of the U.S., February 26, 1987.
38. Matter of: Military Base Management, Inc., B-224115, Comptroller General of the U.S., December 30, 1986.
39. Matter of: Variable Staffing Systems, B-224105, Comptroller General of the U.S., December 23, 1986.
40. Matter of: Diversified Contract Services, Inc., B-224152, Comptroller General of the U.S., December 15, 1986.
41. Matter of: Robertson & Penn, Inc., B-223945, Comptroller General of the U.S., October 30 1986.
42. Matter of: T.A.M., Inc., B-224193, Comptroller General of the U.S., September 26, 1986.
43. Matter of: Food Services, Inc., B-222578, Comptroller General of the U.S., July 24, 1986.
44. Matter of: Exquisito Services, Inc., B-222200.3, Comptroller General of the U.S., July 17, 1986.

45. Matter of: United Food Services--Reconsideration, B-218165.2; B-218165.3, Comptroller General of the U.S., June 10, 1986.
46. Matter of: Military Services, Inc. of Georgia, B-221384, Comptroller General of the U.S., April 30, 1986.
47. Matter of: United Food Services, Inc., B-220367, Comptroller General of the U.S., February 20, 1986.
48. Matter of: Colbar, Inc.--Reconsideration, B-218228.4, Comptroller General of the U.S., February 13, 1986.
49. Matter of: Benco Contract Services Co., B-218465.2, Comptroller General of the United States, January 15, 1986.
50. Matter of: United Food Services, Inc., B-218228.3, Comptroller General of the U.S., December 30, 1985.
51. Matter of: United Food Services, Inc., B-217211, Comptroller General of the U.S., September, 24, 1985.
52. Matter of: Appletown Food Service and Management Corporation--Reconsideration, B-218201.5, Comptroller General of the U.S., July 1, 1985.
53. Matter of: J.E.D. Service Co., B-218228, Comptroller General of the U.S., May 30, 1985.
54. Matter of: DAVSAM International, Inc., B-218201.3, Comptroller General of the U.S., April 22, 1985.
55. Matter of: Rice Services, B-218001.2, Comptroller General of the U.S., April 8, 1985.

## APPENDIX C

### AUDITS REVIEWED

#### A. GAO AUDITS

1. Report to the Secretary of Defense (PLRD-82-3), Department of Defense Food Service Program Needs Contracting and Management Improvements, 20 October 1981.

#### B. ARMY AUDIT AGENCY

1. Contracting For Food Services, SO91-203, U.S. Army Infantry Center and Fort Benning, Fort Benning, Georgia, March 1991.
2. Food Service Operations, SW-90-25, U.S. Army South, September 1990.
3. Contracting For Food Services, SW-90-215, III Corps and Fort Hood, Fort Hood, Texas, August 1990.
4. Food Service Operations, WE 89-11, I Corps and Fort Lewis, Fort Lewis, Washington, July 1989.
5. Food Service Operations, SW-89-7, 4th Infantry Division (Mechanized) and Fort Carson, January 1989.
6. Food Service Operations, MW 88-12, U.S. Army Armor Center and Fort Knox, Fort Knox, Kentucky, September 1988.
7. Food Service Operations, NC 88-11, U.S. Army Quartermaster Center and Fort Lee, Fort Lee, Virginia, September 1988.
8. Food Service Operations, SW 87-15, U.S. Army Field Artillery Center and Fort Sill, Fort Sill, Oklahoma, June 1987.
9. Food Service Operations, SW 87-9, Fort Sam Houston, Texas, April 1987.
10. Food Service Operations, SW 87-8, Academy of Health Sciences, Fort Sam Houston, Texas, March 1987.

11. Food Service Contracting, HQ 87-704, 7th Infantry Division (Light) and Fort Ord, Fort Ord, California, March 1987.
12. Food Service Operations, U.S. Army Missile Command, Redstone Arsenal, Alabama, June 1985.
13. Food Service Operations, SO 85-14, U.S. Army Chemical and Military Police Centers and Fort McClellan, Fort McClellan, Alabama, June 1985.

**C. NAVAL AUDIT SERVICE**

1. Medical Operations Food Service Supply Support, A20016, August 1986.
2. Review of Supply Management, Financial Management, and Real Property, A40284L, May 1984.
3. Covering Functional Area Food, C44460, Pensacola, Florida, September 1980.
4. Commander Medium Attack Tactical Electronic Warfare Wing Audit, A10589/A10479, San Diego, California, April 1980.
5. Naval Technical Training Center, Corry Station Audit, A41140, Pensacola, Florida, April 1980.
6. Naval Station Charleston Audit, A 41479, Charleston, South Carolina, March 1980.

### LIST OF REFERENCES

1. National Contract Management Journal, CM Interview with Dr. Allan V. Burman, Administrator, Office of Federal Procurement Policy, by Bill Welsh, March 1991.
2. Office of Federal Procurement Policy, Policy Letter 91-2, Service Contracting, April 1991.
3. Federal Acquisition Regulation, 1991 Edition, Department of Documents, U.S. Government Printing Office, Washington, D.C.
4. The Service Contract Act of 1965, 79 Stat. (1965), USC 357.
5. "Contract Services: OFPP Current Labor Department Regs, Proposes Revised Policies for Government Agencies Under SCA," Federal Contracts Report, 31 January 1977.
6. "Contract Services: OMB Proposes Sharp Rise in Cost Factors on Retirement Insurance for Cost Comparison," Federal Contracts Reports, 30 August 1977.
7. "Contract Services: OFPP Solicits Congress' Support in Managing A-76 Policy without Undue Restrictions," Federal Contracts Report, 17 April 1978.
8. Office of Federal Procurement Policy Pamphlets No. 4., Writing and Administering Performance of Work Statements, October 1980.
9. Comptroller General of the United States Decision 207771, dated 28 February 1983.
10. Ault, D.K., "Smarter Contracting of Installation Support Services," Contract Management, November 1986.
11. General Accounting Office Report to the Secretary of Defense (GAO/NSAID 87-7) Opportunity to Use More Preferred Practices for Base Support Contracts, February 1987.
12. Kittner, P.M. and Lawrence L. Martin Purchase of Service Contracting, Newbury Park, California: SAGE Publications, 1987.

13. Cibinic, Jr., J. and Ralph C. Nash, Jr. Administration of Government Contracts, 2d ed., 2d printing, 1986.
14. Appeal of Eagle Management, Inc., ASBCA No. 39360, Armed Services Board of Contract Appeals, 1989 ASBCA, 90-1 B.C.A. (CCH), November 30, 1989.
15. Office of the Secretary of the Navy, Memorandum, Reducing the Cost of Competition In Navy Acquisition, 15 September 1988.
16. Integrity Management International, Inc., B-222405.4, Comptroller General of the United States, 1987 U.S. Comp. Gen. Proc. Dec. P. 220, February 26, 1987.
17. U.S. General Accounting Office Report to the Secretary of Defense (PLRD-82-3), Department of Defense Food Service Program Needs Contracting and Management Improvements, 20 October 1981.
18. Department of the Army, East Central Region U.S. Army Audit Agency, Food Service Operations, U.S. Army Quartermaster Center and Fort Lee, NC88-11, Fort Lee, Virginia, 30 September 1988.
19. Department of the Navy, Naval Audit Service Southeast Region, Audit Report A41140, Naval Technical Training Center, Corry Station, Pensacola, Florida, 19 April 1980.

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