

Audit



Report

FOOD SERVICE CONTRACTS AT DOD DINING FACILITIES

Report No. 98-131

May 7, 1998

Office of the Inspector General
Department of Defense

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Acronyms

FAR
NISH

Federal Acquisition Regulation
National Industries for the Severely Handicapped



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

May 7, 1998

**MEMORANDUM FOR ASSISTANT SECRETARY OF DEFENSE (FORCES
MANAGEMENT POLICY)
DIRECTOR, DEFENSE PROCUREMENT
ASSISTANT SECRETARY OF THE NAVY (FINANCIAL
MANAGEMENT AND COMPTROLLER)
ASSISTANT SECRETARY OF THE AIR FORCE
(FINANCIAL MANAGEMENT AND COMPTROLLER)
DIRECTOR, DEFENSE LOGISTICS AGENCY
AUDITOR GENERAL, DEPARTMENT OF THE ARMY**

**SUBJECT: Audit on Food Service Contracts at DoD Dining Facilities
(Report No. 98-131)**

We are providing this report for information and use. We conducted the audit in response to allegations referred by the Inspector General, Department of Education, and concerns expressed by the Army regarding the award of food service contracts at DoD dining facilities. Army comments on a draft of this report were considered in preparing the final report.

We appreciate the courtesies extended to the audit staff. Questions on the audit should be directed to Mr. Joseph P. Doyle at (703) 604-9348 (DSN 664-9348), or Mr. Ronald W. Hodges at (703) 604-9340 (DSN 664-9340). See Appendix C for the report distribution. Audit team members are listed inside the back cover.

David K. Steensma

David K. Steensma
Deputy Assistant Inspector General
for Auditing

Office of the Inspector General, DoD

Report No. 98-131
(Project No. 7CK-5045)

May 7, 1998

Food Service Contracts at DoD Dining Facilities

Executive Summary

Introduction. We conducted the audit in response to allegations referred by the Inspector General, Department of Education, and concerns expressed by the Army regarding food service contracts that were awarded under the Randolph-Sheppard and National Industries for the Severely Handicapped Programs. The programs support blind and disabled individuals. The allegations stated that DoD did not pay fair and reasonable prices for food service contracts at DoD dining facilities, and that DoD improperly used funds appropriated for DoD dining facilities to fund nonappropriated activities. The allegations also stated that DoD did not comply with Randolph-Sheppard Act (the Act) requirements that give priority to blind managers when awarding food services contracts at DoD dining facilities. The Army expressed concern that the price of contracts awarded under the Randolph-Sheppard Program was excessive. For FY 1997, food service contracts awarded under the two programs at Army and Air Force dining facilities totaled \$38.2 million.

Audit Objectives. The audit objectives were to determine whether DoD paid fair and reasonable prices for food service contracts at DoD dining facilities, and whether DoD appropriately used funds provided for food service contracts. The audit focused on food service contracts that DoD awarded under the Randolph-Sheppard and National Industries for the Severely Handicapped Programs. We reviewed applicable laws and regulations to determine if a Randolph-Sheppard priority existed for food service contracts at DoD dining facilities. We also reviewed the management control program as it applied to the audit objectives.

Audit Results. We did not substantiate the allegations and concerns received from the Department of Education and the Army. The Army and Air Force paid fair and reasonable prices for DoD dining facility food service contracts that were awarded under both the Randolph-Sheppard and the National Industries for the Severely Handicapped Programs. DoD did not use funds appropriated for food service at DoD dining facilities to fund nonappropriated activities. We could not determine whether a Randolph-Sheppard priority exists when awarding food service contracts at DoD dining facilities. The Act does not specify that the Randolph-Sheppard priority applies to DoD dining facilities. For FY 1999, DoD submitted a proposal to Congress to amend the Act that would specifically exempt DoD dining facilities from the Randolph-Sheppard priority. See Appendix A for a discussion of the audit process and Appendix B for a proposed DoD amendment to the Act.

Management Comments. The Acting Assistant Secretary of the Army (Research, Development and Acquisition) provided comments on a draft of this report. The Acting Assistant Secretary disagreed with the audit conclusion that the Army paid fair and reasonable prices for DoD dining facility food service contracts that were awarded under the Randolph-Sheppard Program. The Acting Assistant Secretary did not consider quality a relevant factor under best value contract awards, stating that price analysis would have determined that the Army did not pay fair and reasonable prices for food service contracts awarded under the Randolph-Sheppard Program. Also, the Acting Assistant Secretary's position is that the Randolph-Sheppard priority does not apply to food service contracts at DoD dining facilities. See Part I for a summary of the comments and Part III for a full text of the comments.

Audit Response. We disagree with the Acting Assistant Secretary's position that the Army did not obtain fair and reasonable prices on military dining facility food service contracts awarded under the Randolph-Sheppard Program. At the time of our audit, the Army had three contracts awarded under the Randolph-Sheppard Program. Two were awarded using best value selection practices and one was awarded based on price alone. In the case of the two contracts awarded using best value practices, we determined that Army contracting officials properly evaluated and relied on both quality and price to ensure that the Army paid fair and reasonable prices for military dining facility food service contracts awarded under the Randolph-Sheppard Program. Both contracting officers complied with existing acquisition regulations and guidance on the use of best value contracting procedures. Both contracting officers determined that the combination of quality and price was the best value to the Army. The Acting Assistant Secretary's focus on price analysis alone implies that quality is not relevant when determining a fair and reasonable price for food service contracts awarded using best value contracting procedures. This is inconsistent with the guidance on best value contracting promulgated by the Acting Assistant Secretary's office. The applicability of the Randolph-Sheppard Act to food service contracts at DoD dining facilities is a legal issue. If the Acting Assistant Secretary's position was correct, DoD would not have submitted legislation to clarify the applicability of the Randolph-Sheppard Act to food service contracts at military dining facilities. We support the intent of the proposed legislation.

Table of Contents

Executive Summary

Part I - Audit Results

Audit Background	2
Audit Objectives	3
Food Service Contracts	4

Part II - Additional Information

Appendix A. Audit Process	10
Scope and Methodology	10
Management Control Program	11
Appendix B. Randolph-Sheppard Act Excerpts and Proposed DoD Amendment to the Act	12
Appendix C. Report Distribution	14

Part III - Management Comments

Department of the Army Comments	18
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Part I - Audit Results

Audit Background

Introduction. We conducted the audit in response to allegations referred by the Inspector General, Department of Education, and concerns expressed by the Army regarding food service contracts that were awarded under the Randolph-Sheppard and National Industries for the Severely Handicapped (NISH) Programs. The programs support blind and disabled individuals. The allegations stated that DoD did not pay fair and reasonable prices for food service contracts at DoD dining facilities, and that DoD improperly used funds appropriated for DoD dining facilities to fund nonappropriated activities. The allegations also stated that DoD did not comply with 20 United States Code, Section 107, Randolph-Sheppard Act (the Act) requirements that give priority to blind managers when awarding food services contracts at DoD dining facilities. The Act authorized the Randolph-Sheppard Program. The Army expressed concern that the price of contracts awarded under the Randolph-Sheppard Program was excessive.

For FY 1997, the Army and Air Force had 12 full-food service dining facility contracts that were awarded under the Randolph-Sheppard and NISH Programs. The contract values were \$38.2 million. The Navy did not use full-food service contracts to operate its dining facilities. In addition to full-food service contracts, NISH also performs attendant-food service contracts that provide personnel to support military cooks and cashiers at DoD dining facilities. The attendant contracts, which were not part of our review, employ contractor personnel in positions such as busboy, food server, and dishwasher.

Randolph-Sheppard Program. The Act requires the Government to offer blind vendors a priority in the Randolph-Sheppard Program to operate (manage) vending facilities on Federal property. The Act defines vending facility as, "automatic vending machines, cafeterias, snack bars, cart services, shelters, counters, and other such auxiliary equipment" The Department of Education administers the Randolph-Sheppard Program and requires blind managers in the program to be licensed by their state rehabilitation agency.

NISH Program. 41 United States Code, Section 46, the Javits-Wagner-O'Day Act requires the Government to purchase certain supplies and services from nonprofit agencies, such as NISH. The Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee), an independent Government organization, determines and maintains a list of those supplies and services to be purchased from NISH. The Committee also establishes prices for the NISH supplies and services.

Federal Acquisition Regulations. Subpart 8.7 of the Federal Acquisition Regulation (FAR), "Acquisition From Nonprofit Agencies Employing People Who are Blind or Severely Disabled," establishes policies and procedures for awarding NISH contracts. When purchasing services, the FAR requires Government offices to offer NISH contractors the first priority followed by Federal Prison Industries, Inc.

The FAR does not establish a priority for Randolph-Sheppard contractors or policies and procedures for awarding Randolph-Sheppard contracts. In 1994, the Department of Education proposed a FAR change to establish a priority for Randolph-Sheppard contractors that would include DoD dining facilities. However, in 1996, the Department of Education withdrew the proposed FAR change because of a revised proposal submitted by the Defense Acquisition Regulations Council that would exempt DoD dining facilities. The Department of Education stated that the revised proposal would inhibit rather than further the Randolph-Sheppard priority.

DoD Policy. DoD Directive 1125.3 establishes policy for the Randolph-Sheppard Program. The Directive states that blind vendors will be given a priority in the award of contracts to operate cafeterias. Comptroller General Report B-250783.2, "Air Force Reconsideration," June 4, 1993, holds that military dining facilities are "cafeterias" within the definition of vending facilities under the Directive.

Audit Objectives

The audit objectives were to determine whether DoD paid fair and reasonable prices for food service contracts at DoD dining facilities and whether DoD appropriately used funds provided for food service contracts. Specifically, we reviewed food service contracts awarded under the Randolph-Sheppard and NISH Programs. We reviewed applicable laws and regulations to determine if a Randolph-Sheppard priority existed for food service contracts at DoD dining facilities. We also reviewed the management control program as it applied to the other audit objectives. See Appendix A for a discussion of the audit process.

Food Service Contracts

The Army and Air Force paid fair and reasonable prices for DoD dining facility food service contracts that were awarded under the Randolph-Sheppard and NISH Programs. The price of contracts awarded under both programs was in accordance with applicable laws and regulations. Also, DoD properly used the funds appropriated for food service contracts at DoD dining facilities. We could not determine whether a Randolph-Sheppard priority exists for awarding food service contracts at DoD dining facilities.

Contract Price

The prices of the Randolph-Sheppard and NISH contracts we reviewed were fair and reasonable. The prices included costs that were unique to the respective programs; however, the costs were allowable and in accordance with established program policies.

Randolph-Sheppard Contract. The price of the Randolph-Sheppard contract at Fort Campbell, Kentucky, was fair and reasonable. The contractor's base price of \$3.4 million was well within the competitive range. The contract was awarded using a best value selection process that considered quality as well as price. The contracting officer determined that the Randolph-Sheppard contractor offered the best value to the Government, considering both price and quality. The contract price included annual costs of \$214,000 associated with the Randolph-Sheppard program.

The Randolph-Sheppard program costs provided salary, benefits, and profit for the blind manager and a fee for the state licensing agency. The Randolph-Sheppard contractor is the product of a joint venture between a blind individual and the prior food service contractor. The joint venture agreement, in effect, added a manager position to the food service contractor's existing organization to accommodate the blind individual.

NISH Contracts. The prices for the NISH food service contracts at Vandenburg and Sheppard Air Force Bases were fair and reasonable. Because NISH contracts are not competitively awarded, we determined price reasonableness by comparing prices to pricing guidance established by the Committee as well as comparing prices to actual costs.

Vandenburg Air Force Base. The annual price of \$3.0 million on the food service contract at Vandenburg Air Force Base, California, was consistent with guidelines established by the Committee. Actual costs for categories representing 98 percent of the contract price differed by less than 1 percent from those in the contract. The price included costs of \$211,000 per year related to the NISH Program.

The NISH Program costs included in the Vandenburg Air Force Base contract price provided a higher cost on health and welfare benefits for handicapped employees and an administration fee for NISH. The health and welfare benefits cost was higher under the NISH contract because NISH employees at Vandenburg were hired and paid on the basis of a productivity rate of 75 percent; however, they received full health and welfare benefits, resulting in a more costly benefit package. Also, NISH charged a 4 percent administration fee of \$124,000 that was consistent with rates established by the Committee.

Sheppard Air Force Base. The price of \$6.8 million per year on the food service contract at Sheppard Air Force Base, Texas, was consistent with pricing guidelines established by the Committee. Actual contract costs representing 99 percent of the contract price differed by less than 1 percent from those in the contract. The price included costs of \$270,000 related to the 4 percent administration fee charged by NISH.

Appropriated Funds

For the contracts we reviewed, DoD properly used funds appropriated for food service contracts at DoD dining facilities. Based on discussions with contracting and payment officials and contract reviews, we found no indication that DoD diverted funds appropriated for DoD dining facilities to fund nonappropriated activities.

Randolph-Sheppard Priority

We could not determine whether the Randolph-Sheppard Act grants priority to blind managers when awarding food service contracts at DoD dining facilities. The Act states that blind individuals should receive priority when awarding cafeteria contracts but it does not specify that the priority applies to food service contracts at DoD dining facilities. Although DoD policy generally supports the Randolph-Sheppard Program regarding cafeteria operation, senior DoD officials disagree with a Comptroller General opinion. The opinion concluded that military troop dining facilities are "cafeterias" within the definition of dining facility contracts under the Act. To clarify the applicability of the law, DoD proposed legislation that would amend the Randolph-Sheppard Act to exclude military troop dining facilities from the definition of cafeteria. See Appendix B for excerpts from the Randolph-Sheppard Act and the proposed DoD amendment.

Management Comments on the Finding and Audit Response

Management Comments on the Randolph-Sheppard Contract at Fort Campbell. The Acting Assistant Secretary of the Army (Research, Development, and Acquisition) disagreed that Fort Campbell paid a fair and reasonable price for the Randolph-Sheppard contract stating that there were four contractor proposals with a lower price than the proposal submitted by the Randolph-Sheppard contractor. The lower-priced proposals were not considered because of the priority given to the Randolph-Sheppard contractor.

Audit Response. The Acting Assistant Secretary's comments are incorrect. We agree that four contractors submitted proposals with a lower price than the Randolph-Sheppard contractor; however, only one of the four contractors was considered qualified to perform the contract. The contract was awarded using a best value selection practice that considered quality substantially more important than price. Of 18 proposals received, 10 were considered fully acceptable from a quality aspect. Only 1 of the 10 qualified proposals had a price lower than the Randolph-Sheppard contractor. Based on price analysis, the contracting officer determined that the lower-priced proposal was not fair and reasonable because the proposal had substantially less hours than the Government estimate and 40,000 hours less than the proposal submitted by the Randolph-Sheppard contractor. Federal Acquisition Regulation 15.403-3, "Requiring information other than cost or pricing data," states that when adequate price competition exists, no additional information is necessary to determine the reasonableness of price. The contracting officer determination that the Randolph-Sheppard contractor's price was fair and reasonable was based on price analysis and adequate price competition.

We disagree that the lower-priced proposals were not considered because priority was given to the Randolph-Sheppard contractor. In the business clearance memorandum, the contracting officer stated the following.

Under the Randolph-Sheppard Act, KD/B [Kentucky Division for the Blind, referred to in the audit report as the Randolph-Sheppard contractor] was to receive any award if determined to be within the competitive range; however, KD/B would have been determined to offer the best value to the Government and awarded a contract without the priority consideration.

If the Acting Assistant Secretary disagrees with the best value selection practices used by the Fort Campbell contracting officer, or other Army contracting officers, the Acting Assistant Secretary should initiate actions to correct the problem.

Management Comments on Selection of Fort Campbell as Audit Site. The Acting Assistant Secretary questioned our conclusion that it paid fair and reasonable prices for food services at military dining facilities because we reviewed only one contract. Application of the Act has adversely impacted several solicitations and contracts for these services, such as the recent contract award at Redstone Arsenal.

Audit Response. At the time of our audit, the Army had three military dining facility food service contracts that were awarded under the Randolph-Sheppard Program. The dining facilities were located at Fort Campbell, Fort Sam Houston, and Fort McClellan. We selected Fort Campbell because the Army identified that contract as the most glaring example of excessive prices. Based on the results of our review at Fort Campbell and information obtained from the contracting offices at Fort Sam Houston and Fort McClellan, we determined that additional audit work was not warranted.

The Acting Assistant Secretary's statement that several solicitations and contracts were adversely impacted by the Act and its rules is unsupported. Documentation obtained from the contracting offices at Fort Sam Houston and Fort McClellan showed that Randolph-Sheppard contractors provided food services to Army dining facilities at the best value or the lowest price. At Fort Sam Houston, the Randolph-Sheppard contractor received the highest quality rating of the 11 contractors that responded to the solicitation. Although four contractors proposed a lower price than the Randolph-Sheppard contractor, they received marginal to unsatisfactory quality ratings because of inadequate proposed staffing. If adequate staffing were proposed, the four contractor's prices would have been higher than the Randolph-Sheppard contractor. When comparing the price proposed by four contractors receiving outstanding quality ratings to the price proposed by the Randolph-Sheppard contractor, the business clearance memorandum stated the following.

The proposed price from the Commission [Texas Commission for the Blind is the Randolph-Sheppard contractor] was approximately 3% to 8% lower than three other offerors whose technical merit was also rated Outstanding and 17% lower than the other offeror receiving an Outstanding rating.

At Fort McClellan, only two of eight contractors submitted proposals that were in the competitive range. Of the two contractors, the Randolph-Sheppard contractor proposed the lower price.

Based on the results of our review at Fort Campbell and the additional review of the two remaining dining facility contracts, we maintain our position that the Army obtained fair and reasonable prices for contracts awarded under the Randolph-Sheppard Program. We did not include the Redstone Arsenal dining facility contract in our audit because it was awarded in FY 1998, after our audit field work was completed.

Food Service Contracts

Management Comments on the Randolph-Sheppard Act. The Acting Assistant Secretary's position is that the Randolph-Sheppard Act does not apply to food service contracts at military dining facilities.

Audit Response. At a June 11, 1997 entrance conference, the Acting Assistant Secretary requested, and we agreed, that we should not attempt to take a position on this legal issue because DoD planned to submit legislation to clarify the applicability of the Randolph-Sheppard Act to food service contracts at military dining facilities.

Part II - Additional Information

Appendix A. Audit Process

Scope and Methodology

For our review, we selected one contract from a total of five Randolph-Sheppard food service contracts valued at \$20.3 million per year. The contract provided food service at the Army dining facility in FY 1997 and four option years, valued at \$3.4 million per year.

To determine whether prices on the Randolph-Sheppard contract for DoD food services were fair and reasonable, we compared the successful bidder's proposal with others in the competitive range. We visited the Army contracting office at Fort Campbell, Kentucky, and reviewed preaward documents for the contract including: requirements documents, Government cost estimates, and contractor cost proposals. We also visited the contractor and reviewed financial accounting records and dining facility meal counts.

For our review of NISH contracts, we selected two Air Force contracts valued at \$9.9 million per year from a total of seven full-food service contracts valued at \$17.9 million per year. We selected only full-food service contracts to be consistent with DoD dining facility contracts awarded under the Randolph-Sheppard Program. We did not select Army and Navy contracts for review because Army contracts accounted for only 8 percent of the total dollars, and the Navy did not use full-food service at its dining facilities.

To determine whether prices on NISH contracts for DoD food service were fair and reasonable, we visited Vandenburg Air Force Base, California, and Sheppard Air Force Base, Texas. At each location, we reviewed contract price proposals and compared them to the Committee's pricing guidelines. Additionally, we visited the contractors and compared their cost proposals to actual costs incurred.

To determine whether DoD properly used funds appropriated for DoD dining facilities, we reviewed FY 1997 payment vouchers at DoD contracting offices and contacted DoD payment officials.

Use of Computer-Processed Data. To achieve the audit objective, we relied on computer-processed financial accounting data at contractor locations. We conducted tests of the data by tracing sampled transactions from the general ledger to source documents. We concluded that the computer-processed data are sufficiently reliable for use in meeting the audit objective.

Audit Type, Dates, and Standards. We performed this program audit from June 1997 through January 1998 in accordance with auditing standards issued by the Comptroller General of the United States, as implemented by the Inspector General, DoD. Accordingly, we included tests of management controls considered necessary.

Contacts During the Audit. We visited or contacted individuals and organizations within DoD and:

- the Committee for Purchase From People Who Are Blind or Severely Disabled, Arlington, Virginia;
- the Department of Education, Washington, D.C.;
- NISH, Vienna, Virginia; and
- Randolph-Sheppard and NISH contractors at Fort Campbell, Kentucky, Vandenburg Air Force Base, California, and Sheppard Air Force Base, Texas.

Additional information is available upon request.

Prior Coverage. We found no recent audit coverage relating to the Randolph-Sheppard or NISH Programs.

Management Control Program

DoD Directive 5010.38, "Management Control Program," August 26, 1996, require DoD organizations to implement a comprehensive system of management controls that provides reasonable assurance that programs are operating as intended and to evaluate the adequacy of the controls.

Scope of Review of the Management Control Program. We reviewed the adequacy of management controls over contract management and administration. Specifically, we reviewed management controls over the selection of Randolph-Sheppard and NISH vendors and the evaluation of contractor proposals. We also reviewed management controls over contractor performance and payment procedures. Because we did not identify any material weakness, we did not assess the adequacy of management's self-evaluation of those controls.

Adequacy of Management Controls. Management controls over contract management and administration were adequate as they applied to the audit objectives.

Appendix B. Randolph-Sheppard Act Excerpts and Proposed DoD Amendment to the Act

Randolph-Sheppard Act

Title 20, U.S. Code

Chapter 6A, 107. Operation of vending facilities authorized; preferences regulations; justification for limitation on such operation.

(a) For the purposes of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting, blind persons licensed under the provisions of this chapter shall be authorized to operate vending facilities on any Federal property.

(b) In authorizing the operation of vending facilities on Federal property, priority shall be given to blind persons licensed by a State agency as provided in this chapter. . . .

107d-3

(e) Regulations establishing priority for operation of cafeterias
The Secretary, through the Commissioner, shall prescribe regulations to establish a priority for the operation of cafeterias on Federal property by blind licensees when he determines, on an individual basis and after consultation with the head of the appropriate installation, that such operation can be provided at a reasonable cost with food of a high quality comparable to that currently provided to employees, whether by contract or otherwise.

107e.(7) "vending facility" means automatic vending machines, cafeterias, snack bars, cart services, shelters, counters, and such other appropriate auxiliary equipment as the secretary may by regulation prescribe as being necessary for the sale of the articles or services described in section 107a(a)(5) of this title and which may be operated by blind licensees. . . .

Proposed DoD Amendment to the Act

DEFINITION OF CAFETERIA IN THE RANDOLPH-SHEPPARD ACT

Section 107 of title 20, United States Code is amended as follows:

§107d-3. Vending machine income

(a) thru (d) no change

(e) Regulations establishing priority for operation of cafeterias.

The Secretary, through the Commissioner, shall prescribe regulations to establish a priority for the operation of cafeterias, except Department of Defense military troop dining facilities, military mess halls, or other similar military dining facilities, on Federal property by blind licensees when he determines, on an individual basis and after consultation with the head of the appropriate installation, that such operation can be provided at a reasonable cost with food of a high quality comparable to that currently provided to employees, whether by contract or otherwise.

(f) thru (g) no change

§107e. Definitions

As used in this chapter - -

(1) thru (6) no change

(7) "vending facility" means automatic vending machines, cafeterias, except Department of Defense military troop dining facilities, military mess halls, or other similar military dining facilities, operated under contracts using appropriated funds, snack bars, cart services, shelters, counters, and such other appropriate auxiliary equipment as the Secretary may by regulation prescribe as being necessary for the sale of the articles or services described in section 107a(a)(5) of this title and which may be operated by blind licensees, and

(8) no change

Sectional Analysis

The definition of cafeteria introduced by amendment into the Randolph-Sheppard Act (the Act) in 1974 is too broad, and was interpreted in 1993, twenty years later, to include military dining facilities. While military dining facilities may resemble cafeterias, they are not vending facilities, i.e. payment for food is not made by the consumer. Food service contracts for the operation military dining facilities use appropriated funds and are acquired using the procedures in the Federal Acquisition Regulation, neither of which circumstances were intended when the Act was amended in 1974 to include cafeterias as a vending facility.

The lack of clarity in the definition of which vending facilities may properly be classified as cafeterias for the purposes of the Act, has brought the Department of Defense into direct conflict with State Licensing Agencies for the blind and the Department of Education, the Agency that implements the Act. These disputes have resulted in costly Federal Court suites and arbitration actions between the parties.

The application of the Act to appropriated funded contracting actions has also resulted in the expenditure of those funds in excess of that which were necessary to acquire the food services competitively. Additionally, the Department of Defense's small business and small disadvantaged business programs, as well as the Javits-Wagner-O'Day program in support of persons who are blind and severely disabled are adversely impacted when the Act is used to assert a priority over military dining facility services.

The requested amendment is required to correct the deficiencies cited above and to return sound business practices to the acquisition of food services for military dining facilities.

Appendix C. Report Distribution

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Director, Defense Logistics Studies Information Exchange
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Assistant Secretary of Defense (Force Management Policy)
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Department of the Army

Auditor General, Department of the Army

Department of the Navy

Assistant Secretary of the Navy (Financial Management and Comptroller)

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)

Other Defense Organizations

Director, Defense Contract Audit Agency
Director, Defense Logistics Agency

Non-Defense Federal Organizations and Individuals

Inspector General, U.S. Department of Education
Immediate Office of the Commissioner, Rehabilitation Services Administration, Office of
Special Education and Rehabilitative Services, U.S. Department of Education
Office of Management and Budget
Technical Information Center, National Security and International Affairs Division,
General Accounting Office
Committee for Purchase From People Who Are Blind or Severely Disabled

Non-Defense Federal Organizations and Individuals (cont'd)

Chairman and ranking minority member of each of the following congressional committees and subcommittees:

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on National Security, Committee on Appropriations
House Committee on Government Reform and Oversight
House Subcommittee on Government Management, Information, and Technology,
Committee on Government Reform and Oversight
House Subcommittee on National Security, International Affairs, and Criminal Justice,
Committee on Government Reform and Oversight
House Committee on National Security

Part III - Management Comments

Department of the Army Comments



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH DEVELOPMENT AND ACQUISITION
103 ARMY PENTAGON
WASHINGTON DC 20310-0103

1 APR 1998

SARD-PS

MEMORANDUM FOR THE ASSISTANT INSPECTOR GENERAL FOR
AUDITING, DEPARTMENT OF DEFENSE

SUBJECT: Draft Audit Report; Food Service Contracts at DOD Dining
Facilities, Project No. 7CK-5045

The enclosed comments are recommended for adoption in the final report.

The Randolph-Sheppard Act was amended in 1974 to include "cafeterias" among the vending facilities for which the blind are given an operating priority; however, the Act was never intended to govern source selection for appropriated fund military dining facility contracts – even after the 1974 amendment. Appropriated fund military dining facilities are not vending facilities; rather, in such military dining facilities food is served free to eligible service members. Appropriated fund military dining facilities are not the cafeterias intended to be covered by the Act, and are not subject to the Act's contracting preferences.

Disagreement over the scope of the Act has been the cause of costly litigation in recent years. Additionally, the Department of Defense's small business and small disadvantaged business programs, as well as the Javits-Wagner-O'Day program in support of persons who are blind and severely disabled, are adversely impacted when the Act is used to assert a source selection priority for appropriated fund military dining facility contracts. A more complete explanation of our position and recommended changes to the draft report are included in the enclosed comments.

We also note that your conclusions regarding prices paid for food services in military dining facilities were based on a sample of one contract. There have been several solicitations and contracts for these services, which were adversely impacted by application of the Act and its rules. The enclosed comments offer information that you should consider in reaching conclusions regarding the contract at Fort Campbell and several others that were not included in the audit.

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-2-

My point of contact for this report is Ray Kelly, (703) 681-7563.



Kenneth J. Oscar
Acting Assistant Secretary of the Army
(Research, Development and Acquisition)

Enclosure

Final Report
Reference

Comments and suggested additions and deletions recommended for adoption in the final report (Project No. 7CK-5045).

The report title should be changed to "Food Service Contracts at DOD Appropriated Fund Military Dining Facilities." This will eliminate potential confusion between DOD non-appropriated fund dining facilities, such as the vending cafeterias operated in the Pentagon, and DOD appropriated fund military dining facilities – the true focus of the report. Note that this distinction should be observed throughout the report.

Executive Summary

Introduction.

First Sentence. The phrase "... awarded under Randolph-Sheppard and the National Institutes for the Severely Handicapped ..." in order to be technically correct should read "awarded under the Randolph Sheppard social program and under the NISH/Javits-Wagner-O'Day Act (JWOD) mandatory source procurement program." Note that the acronym NISH is now substituted for the former title -- please pick up this change throughout the report. The JWOD is implemented at FAR Part 8, Subchapter B, and NISH is a component of the JWOD program. Further note that the Randolph-Sheppard Act (R-S Act) is not implemented in Federal Acquisition Regulation (FAR), one indication that it is not intended to apply to appropriated fund contracts.

Revised

Second sentence should read "The programs provide employment opportunities to severely disabled and blind individuals." The term "handicapped" is no longer used in the JWOD program -- please apply the current terminology throughout the draft.

Fourth sentence should conclude either "... awarding food service contracts at DOD vending facilities." or "... requirements that purportedly give priority to blind managers when awarding food service contracts at DOD appropriated fund military facilities."

Audit Objectives.

Second sentence. Substitute "JWOD/NISH Programs" for "National Institutes for the Severely Handicapped Programs" per comment above.

Revised

Third Sentence. Recommend deletion of the sentence or replacement of the term "compliance." Please address this concern throughout the report. The sentence suggests that the scope of the R-S Act is clearly established. It is also not clear how and where the review of compliance was conducted.

Audit Results.

The Audit results regarding prices paid by the Army for contracts awarded to State Licensing Agencies under the R-S Act appear either flawed or insufficiently precise. Whereas the report declines to comment on the advisability of applying the R-S Act contracting priority to appropriated fund contracts, the report tacitly supports the use of this priority for the appropriated fund military dining facility food service contract at Fort Campbell when it states that the Army paid a fair and reasonable price for the services. The State Licensing Agency's (SLA) offer was \$16.9M, which was \$3.14M higher than the lowest offeror of \$13.78M. There were a total of four offers lower than the SLA. The contract was apparently awarded through an imperfect combination of FAR procedures and the R-S Act priority. While the procurement ostensibly followed best value procedures, negotiations were held only with the SLA, resulting in an *upward* adjustment of the price. In short, the Fort Campbell appropriated fund food service contract was neither sufficiently described, nor fully evaluated in the report.

We question the conclusion that the Army pays fair and reasonable prices for appropriated fund military dining facility services under the R-S Act. Apparently, only the Fort Campbell contract was reviewed, and the report does not elucidate the basis for its conclusion. FAR 15.805-2 "Price Analysis" enumerates six methods for determining whether or not a price is fair and reasonable; it is unclear which of these methods may have been used by the auditor in arriving at the conclusion that prices paid by Fort Campbell were fair and reasonable. The first price analysis method listed at FAR 15.805-2 is a comparison of proposed prices received in response to the solicitation; as described above, the SLA's offer was nowhere near the four lowest offers. One can also examine historical prices for the same (or similar) procurements, apply rough yardsticks to highlight inconsistencies, compare an offer with other published/known prices, compare an offer with independent Government cost estimates, or compare an offer with prices obtained through market research. Objectively, and without applying the R-S Act contract priority, it would appear that none of these methods could yield the conclusion reached by the report.

More recently, the contracting office at Redstone Arsenal awarded a contract using the R-S Act's contracting priority to the Alabama SLA, DAAH03-97-C-0025 for \$7,461,868. There were four lower offers; the lowest was \$6,179,977. This award reflected a potential premium of \$1.2 million to the SLA that is justified by nothing more than the (mis)application of the R-S Act contracting priority to an appropriated fund contract. Note that award to the SLA also thwarts the competition requirements and socioeconomic programs that are mandated by the Competition in Contracting Act (CICA), the Small Business Act (SBA), and JWOD -- and that are embodied in the FAR. At the time your office called for data, this award had not been made.

It is our view that the prices paid to SLA's are often not fair and reasonable. These prices result from the misapplication of the R-S contracting priority through DOD's use of regulations drafted by the Department of Education. In cases where the Act's contracting priority is applied, DODD 1125.3 mandates contract award to a SLA if the SLA's offer is within the competitive range. While the requirement to award a contract to the SLA when their offer is within the competitive range does not necessarily mean that a contract with the SLA will not result in fair and reasonable prices, in many cases, application of the R-S Act contracting priority thwarts CICA's emphasis on cost and value – and can prevent the procurement from being earmarked for the socioeconomic programs established by JWOD and SBA.

See comments at "Randolph-Sheppard Priority."

PART I - AUDIT RESULTS

Page 2. Introduction, second paragraph, fifth sentence.

Delete "assign military personnel to positions such as cook and cashier." Contracts for Attendant services are not likely to include provisions for military staffing.

Unknown

Page 3. DOD Policy.

The Comptroller General Report [See Department of the Air Force—Reconsideration, B-250465.6 et. al., (June 4, 1993)] gave insufficient weight to the clear language of the R-S Act and to the intent of Congress in passing the statute and its amendment. The Act states that it applies to *vending facilities*, and its legislative history indicates that vending facilities are not appropriated fund facilities. The Comptroller General's opinion focused on the definition of "cafeteria," a term added to the Act by amendment in 1974. The Comptroller General opinion failed to acknowledge that the term cafeteria must be read as a subset of the larger subject of the statute – vending facilities.

Page 3

Page 4. Food Service Contracts.

We believe that there is insufficient documentation/analysis to support a determination that the Army paid fair and reasonable prices for appropriated fund military dining facilities awarded under the Randolph-Sheppard Program – see comments above regarding Fort Campbell. Also, without an evaluation of the applicability of R-S contracting preferences, it would appear impossible to evaluate whether or not the contracts were awarded in accordance with applicable laws and regulations. Note that the price for the contract examined at Fort Campbell was not determined in accordance with FAR procedures governing the expenditure of appropriated funds.

Page 4

Page 4. Contract Price & Randolph-Sheppard Contract.

There is insufficient documentation/analysis of the Fort Campbell contract award.

Page 4. Contract Price & Randolph-Sheppard Contract.

There is insufficient documentation/analysis of the Ft. Campbell contract award.

Page 6. Randolph-Sheppard Priority.

The purpose of the R-S Act at Title 20, Chapter 6A, Vending Facilities for Blind in Federal Buildings, is to provide blind persons with remunerative employment by authorizing them to operate vending facilities on Federal property.

The Act states that the operation of vending facilities is "for the *vending* of newspapers, periodicals, confections, tobacco products, foods, beverages and other articles or services dispensed automatically or manually . . ." 20 U.S.C. Section 107a(a)5 (*emphasis added*). Vending is the transfer to another for pecuniary equivalent . . . to sell. See BLACK'S LAW DICTIONARY 1555 (6th Ed. 1990). Military dining facilities are not vending facilities; nothing is transferred to the consumer by immediate sale. The primary mission of a military dining facility is to dispense food to eligible consuming soldiers, who do not pay for their meals. This mission may be accomplished by military or civilian Government personnel, or by contract with a commercial firm for a specified period of time using appropriated funds -- in which case both the FAR and department specific supplements would apply.

Since its passage in 1938, the R-S Act has been properly applied to vending facilities operated by the blind on federal property, who profit from selling food and other items to federal employees or the visiting public. The authors of the Act did not create a preference in the Act for blind vendors to operate facilities that do not engage in *vending*.

The R-S Act was amended in 1974 to include "cafeterias" in the listing of vending facilities. Relevant DOD and Army regulations were also amended to reflect the change. Twenty years after the amendment's passage, inappropriate interpretations of the amendment have brought DOD into direct conflict both with State Licensing Agencies for the blind and with the DOE. These disputes have resulted in costly Federal Court suits and arbitration proceedings. The act was not intended for use when contracting for services in military dining facilities with appropriated funds.

A thorough examination of the scope of the R-S Act is attached to these comments. We respectfully request that it be included as an appendix to the report.

Enclosure

Page 5

Not included

Audit Team Members

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