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DEPARTMENT
OF
DEFENSE



AUDIT REPORT

MOORE'S CAFETERIA SERVICES, INC., FOOD SERVICES CONTRACTS

No. 90-014

December 7, 1989

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*Office of the
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**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884**

December 7, 1989

**MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (FINANCIAL
MANAGEMENT)
ASSISTANT SECRETARY OF THE NAVY (FINANCIAL
MANAGEMENT)
ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL
MANAGEMENT AND COMPTROLLER)**

**SUBJECT: Report on the Audit of Moore's Cafeteria Services, Inc.,
Food Services Contracts (Report No. 90-014)**

This is our final report on the Audit of Moore's Cafeteria Services, Inc., (Moore's) food services contracts, for your information and use. Comments on a draft of this report were considered in preparing the final report. The audit was made from January through June 1988. The overall objectives of the audit were to determine whether the contractor's claims and pricing proposals were valid and to determine whether prices paid by the Government were reasonable, and in accordance with applicable Government regulations and contract terms. Moore's was awarded 17 food services contracts at 15 military installations in the United States from 1982 through 1987 for a total of \$35 million (Appendix A).

The audit showed that changes to food services contracts awarded to Moore's from 1982 through 1988 were overpriced by \$1.1 million. Contracting officers and their representatives did not comply with acquisition regulations and contract terms in negotiating changes to contract prices established by sealed bidding procedures. Moore's also furnished Government negotiators defective cost or pricing data in violation of the Truth in Negotiations Act, as amended (formerly codified at U.S.C., title 10, sec. 2306(f)), on one Army contract modification. The results of the audit are summarized in the following paragraphs, and the details, audit recommendations, and management comments are in Part II of this report.

Moore's submitted claims for additional costs to clean cafeteria equipment on five DoD contracts. Moore's claimed that its bids did not include estimates of the cost to clean equipment items omitted from schedules of Government-furnished equipment in the Invitations for Bids. Because the equipment schedules were inaccurate, the Government paid additional costs of \$358,933 for equipment cleaning claims. Also, an additional claim of \$144,765 has not been settled. We recommended that the Commanders at the applicable Air Force and Marine Corps bases establish procedures to ensure that procurement contracting officers comply with Federal Acquisition Regulation requirements and to verify the

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accuracy of work statements in Invitations for Bids on food service contracts. We also recommended improved contract language to avoid equipment cleaning claims (page 3).

The contracting officer at Fort Shafter, Hawaii, did not have proper authority to negotiate modification P00012 to contract DAHC77-86-C-0126. The modification violated the basic contract's ceiling pricing provisions, which were established by competitive bid, and the provisions of Federal Acquisition Regulation 52.243-1. Furthermore, the Government did not receive consideration from the contractor for the increase in contract price. As a result, the contract was overpriced by \$320,000. We recommended that the cognizant procurement contracting officer initiate action to obtain a price reduction of \$287,559 (\$320,000 less \$32,441 already credited by modification P00026 due to other errors found in the pricing of modification P00012) (page 9).

The contracting officer at Fort Shafter, Hawaii, negotiated a price increase to contract DAHC77-86-C-0126 without the Government receiving any consideration in return from the contractor. As a result, the contract was overpriced by \$156,205. We recommended that the cognizant procurement contracting officer initiate action to obtain a contract price reduction of \$156,205 (page 15).

The contracting officer at Naval Supply Center, San Diego, California, increased the line item prices under contract N00244-83-C-2780 without the Government receiving any consideration in return from the contractor. The contracting officer's actions resulted in contract overpricing of \$107,227. We recommended that the cognizant procurement contracting officer initiate action to obtain a contract price reduction of \$107,227 (page 19).

The contracting officer at Naval Supply Center, San Diego, California, deleted a portion of the workscope on contract N00244-83-C-2780, requiring the contractor to operate a dining facility, but did not obtain a contract price reduction for the reduction in Moore's cost of performance. This resulted in contract overpricing of \$69,949. We recommended that the cognizant procurement contracting officer obtain a price reduction of \$69,949 (page 23).

Moore's violated the Truth in Negotiations Act, as amended (formerly codified at U.S.C., title 10, sec. 2306 (f)), in pricing modification P00023 to contract DAHC77-86-C-0126. The contractor did not inform the Government that its proposed and certified labor hours included hours that were not subject to increase under the Department of Labor wage determination. Also, Moore's did not inform the Government that proposed and negotiated labor hours were not representative of the full year subject to adjustment. As a result, the modification negotiated was defectively priced by \$36,119. We recommended that the cognizant procurement contracting officer initiate action to obtain a downward contract price adjustment of \$36,119 (page 27).

Moore's received duplicate payments from the Naval Supply Center, San Diego, California, for operation of the Underwater Demolition Training dining facility under contract N00244-83-C-2780. As a result, Moore's was overpaid \$5,574 on the contract. We recommended that the cognizant procurement contracting officer initiate action to reduce the contract price by \$5,574 and obtain a refund of the duplicate payment from Moore's (page 31).

The contracting officer at the Naval Supply Center, San Diego, California, paid Moore's twice for the same work on contract N00244-83-C-2780. The contracting officer's actions resulted in overpayments of \$6,468. We recommended that the cognizant procurement contracting officer obtain a refund of \$6,468 from Moore's (page 33).

On May 3, 1989, a draft of this report was provided to the Comptroller of the Air Force (now the Assistant Secretary of the Air Force (Financial Management and Comptroller)), the Assistant Secretary of the Army (Financial Management), and the Assistant Secretary of the Navy (Financial Management).

We received comments from the Deputy Assistant Secretary of the Air Force (Acquisition Management and Policy), dated June 28, 1989, (see Appendix G). The Assistant Secretary of the Army, U.S. Army Contracting Support Agency, responded to the draft report on July 20, 1989, (see Appendix H). The Acting Principal Deputy Assistant Secretary of the Navy (Shipbuilding and Logistics) responded to the draft report on July 19, 1989, (see Appendix I).

The Deputy Assistant Secretary of the Air Force (Acquisition Management and Policy) partially concurred with Finding A, but did not concur with Recommendations A.1. and A.2. The Air Force stated that the Base Food Services Officer was responsible for the accuracy of work statements. Therefore, the contracting officer was not totally responsible for the accuracy of the equipment lists, which are a part of the work statements. The Air Force also felt that the determination of actual equipment, by the offerors, during prebid walk-through would not necessarily result in avoiding claims against the Government, as stated in Recommendation A.2. We do not agree with the Air Force; however, to clarify our position we have made some changes to Finding A and the recommendations. We are also asking the Air Force to comment on the changes in the final report.

The Assistant Secretary of the Army, U.S. Army Contracting Support Agency, concurred with Findings and Recommendations B and F and has planned to take action in accordance with the requirements of DoD Directive 7650.3. However, the Army did not agree with Finding and Recommendation C, which addressed the issue of an increase in contract price without the Government receiving consideration for the price increase, because the Army believes

that consideration was received. We believe the Recommendation is still valid for the reasons discussed in Part II of the report.

The Acting Principal Deputy Assistant Secretary of the Navy (Shipbuilding and Logistics) concurred with Findings A, E, G, and H and recommendations A, D, E, G, and H, and he has taken action on these recommendations. The Navy did not concur with Finding D, which addressed the failure of the Government to receive consideration for a contract modification, because the Navy felt that consideration for the Government and the contractor was received. We disagree with that determination as well as the Navy's method of recovery of funds on Recommendations D and E. However, if the funds are recovered by a voluntary refund process, then the method is acceptable, although the Navy's actions should be demands for payment by unilateral contracting officer determinations.

DoD Directive 7650.3 requires that all audit recommendations be resolved within 6 months of the date of the final report. To comply with this Directive, we request that all addressees provide us with a final position on the recommendations addressed to them within 60 days of the date of this report. These comments should indicate concurrence or nonconcurrence with the recommendations as applicable. If you concur, describe the corrective actions taken or planned, the completion dates for actions already taken, and the estimated dates for completion of planned actions. If appropriate, please describe alternative actions proposed to achieve the desired improvements. If you nonconcur, please state the specific reasons for the position taken.

In order for the Army's comments to be considered responsive, concurrence or nonconcurrence with the estimated monetary benefits (collections) identified in Finding and Recommendation C and Appendix J of \$156,205 must be stated. Therefore, we ask that the Army provide final comments on these estimated monetary benefits. If the Army nonconcurs with the estimated monetary benefits or any part thereof, the amount nonconcurred with and the basis for nonconcurrence must be stated. Potential monetary benefits are subject to resolution in the event of nonconcurrence or failure to comment.

The courtesies extended to the staff during the audit are appreciated. The names and titles of the audit team members are shown in Appendix L. If you have any questions on this audit, please contact (b)(6) on (b)(6) (AUTOVON (b)(6)). Copies of this report are being provided to the activities listed in Appendix M.



Stephen A. Trodden
Assistant Inspector General
for Auditing

cc:
Secretary of the Army
Secretary of the Navy
Secretary of the Air Force

REPORT ON THE AUDIT OF
MOORE'S CAFETERIA SERVICES, INC.,
FOOD SERVICES CONTRACTS

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Prepared by:
Contract Management Directorate
Project No. 7CA-045.01

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REPORT ON THE AUDIT OF
MOORE'S CAFETERIA SERVICES, INC.,
FOOD SERVICES CONTRACTS

PART I - INTRODUCTION

Background

The Inspector General, DoD, "Audit of Negotiated Settlements of Armed Services Board of Contract Appeals Cases," Report Number 88-180, July 8, 1988, indicated that some similar contractor disputes and claims were being settled differently by different contracting officers. Contracting officers settled claims without knowing that the contractor had submitted similar claims on other contracts. We selected Moore's Cafeteria Services, Inc., (Moore's) contracts for further review because we found the same kind of equipment cleaning claims on five contracts at five procurement offices. None of the claims were prepared with support of actual cost data.

Moore's is a small business incorporated in Texas in 1981. The firm's main location is San Antonio, Texas, and it also has an office in San Diego, California. The firm provides food services, catering, and operation of vending machines for Government and commercial customers. From January 1982 to December 1987, Moore's was awarded 17 food services contracts at 15 different military installations throughout the United States (Appendix A). The 17 contracts were valued at \$35 million. Moore's total sales for the fiscal year ended May 31, 1987, were \$6.9 million.

Objectives and Scope

The objectives of the audit were to determine whether contract changes and claims negotiated between Moore's and contracting officers were reasonably priced and negotiated in accordance with applicable Government regulations and contract terms. This performance audit was made from January to June 1988. The audit was made in accordance with auditing standards issued by the Comptroller General of the United States, as implemented by the Inspector General, DoD.

We reviewed documents and records related to transactions and events that occurred on contracts from January 1982 through June 1988. Documents reviewed included the contractor's proposals and claims to the Government, contract documents, technical reports, pricing reports, contractor financial and accounting records, Defense Contract Audit Agency audit reports, and contracting officer negotiation memorandums.

Activities visited or contacted during the audit are shown in Appendix K.

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Prior Audit Coverage

The Defense Contract Audit Agency, San Antonio Suboffice, is the cognizant contract audit office for Moore's. The Suboffice had performed five reviews of claims and change proposals between 1983 and 1988, but had not performed any defective pricing audits or incurred cost audits.

PART II - FINDINGS AND RECOMMENDATIONS

A. Inaccurate Schedules of Government-Furnished Equipment

FINDING

Moore's Cafeteria Services, Inc., (Moore's) submitted claims for additional costs to clean cafeteria equipment on five DoD contracts. Moore's claimed that its bids did not include estimates of the cost to clean equipment items omitted from schedules of Government-furnished equipment in the Invitations for Bids (IFB). Moore's claims for cleaning omitted items could have been avoided if the responsible contracting officers had verified the accuracy of the equipment schedules, with the requiring activity or the Food Service Officer, before the IFB's were issued. The claims could also have been avoided if contracting officers had included a clause, with appropriate provisions in the IFB's and contracts, requiring contractors to identify and determine equipment cleaning needs during preaward walk-throughs, rather than later. As a result of inaccurate equipment schedules, DoD paid an additional \$358,933, less applicable discounts, for performance on four of the five contracts. The fifth claim for \$144,765 has not been settled, but represents potential for additional costs.

DISCUSSION OF DETAILS

Background. The Federal Acquisition Regulation (FAR) 14.101-(a), "Preparation of Invitations for Bids," states, "Invitations must describe the requirements of the Government clearly, accurately, and completely."

The IFB provided to potential bidders on the five competitively awarded contracts included a listing of Government-furnished equipment that was to be located in each dining facility. The preparation of the IFB was the responsibility of the contracting officer in accordance with FAR 14.201-1-(a). Examples of the types of equipment were storage racks, refrigerators, food warmers, freezers, pastry cabinets, and tables. The Statement of Work required the successful bidder to maintain and clean the equipment in performance of the contract. Before submission of bids, Moore's was given the opportunity to make a walk-through of the dining facilities to observe the layout and equipment and to clarify any other matters necessary to prepare an accurate bid.

Some procurement officers included a provision in the IFB and contracts to make contractors responsible for identifying equipment cleaning requirements during walk-through. A good example of such a provision, found in a contract reviewed at Fort Shafter, Hawaii, where no claims had been submitted by Moore's for equipment cleaning, follows:

Equipment. The following represents the typical furnishings and the normal quantities of those items installed in the dining facilities in this contract. It constitutes a guide to the contractor and does not restrict or limit this contract to include only those items and quantities listed. Contractor will determine quantities of dining facility equipment utilized in each facility during pre-site survey

Details of the Audit. We reviewed 17 DoD contracts (valued at \$34,977,001) that were awarded to Moore's from 1982 through 1987 (Appendix A). Moore's submitted claims for equipment cleaning on five firm-fixed-price contracts, valued at \$11,826,023, because of errors in the IFB equipment schedules (Appendix B). Four claims valued at \$1,649,505 were settled for price increases of \$831,675, of which the Government paid \$358,933 less applicable discounts. The amount paid is less than the settled amount because the Government elected not to exercise all contract option years. One additional claim for \$144,765 was not settled at the time of our audit.

The four contracts for which Moore's claims were settled were issued with inaccurate equipment schedules. The equipment schedules included in the IFB did not accurately identify the kinds and quantities of equipment located in the dining facilities. Since the IFB and the contracts specified that the contractor was required to clean the items listed in the equipment schedule, the contractor had a technical claim for additional compensation to clean items not included or understated in the equipment schedules. The contractor claimed additional cleaning costs that were negotiated based on the contractor's estimates of the daily time required to clean the omitted or understated equipment items.

The following list of equipment items and amounts taken from Moore's claim, dated November 29, 1984, under contract F04612-82-D-0005, shows the kinds of equipment items that contracting officers omitted from Government equipment listings.

<u>Equipment Items</u>	<u>Amounts Claimed</u>
21 storage racks	\$ 28,307
1 food warmer	15,257
5 walk-in coolers	26,150
2 beverage dispensers	18,308
2 griddles	36,617
1 beverage counter	48,822
8 additional items	<u>41,316</u>
Total	<u>\$214,777</u>

The four contracts for which Moore's claims were settled were not awarded using an IFB with a provision requiring the contractor to identify equipment cleaning requirements during the prebid walk-through, similar to the provision used by Fort Shafter in its IFB and contract. In our opinion, the contracting officer should verify equipment schedule accuracy with the requiring activity or the Food Services Officer. In addition, a provision in the IFB and contract requiring the contractor to use the walk-through to identify its cleaning requirements may have avoided the claims.

Errors or omissions in IFB schedules of Government-furnished equipment provide contractors the opportunity to gain price increases through the claim process for work the Government intended to be covered by competitive bids. For example, the contractor's claim for the equipment listed above indicated that the equipment ". . . was in place at the onset of our contract start up date . . .," but not listed in the schedule for contract F04612-82-D-0005. Equipment cleaning is not the primary cost factor used in calculating bid prices. Instead, prices are calculated based on estimated staffing to operate the dining facility. The hours of operation and the frequency and quantity of meals to be served are the primary pricing factors. The walk-through of the facility before bidding provides the contractor sufficient information to estimate staffing for cleaning the equipment within the facility. With an inaccurate Government-furnished equipment schedule included in the IFB, the contractor has the opportunity to lower its bid price to obtain the contract with some chance of recoupment through the claim process after receiving the contract.

RECOMMENDATIONS FOR CORRECTIVE ACTION

We recommend that the Commanders at Little Rock Air Force Base, Arkansas; Edwards Air Force Base, California; Mather Air Force Base, California; Camp Lejeune Marine Corps Base, North Carolina; and Travis Air Force Base, California:

1. Establish procedures to ensure that procurement contracting officers comply with the Federal Acquisition Regulation requirement for the preparation of Invitations for Bids on food service contracts by verifying the accuracy of work statements with the individual or activity responsible for its preparation.

2. Require contracting officers to include a provision in Invitations for Bids and contracts for food services to make contractors responsible for identifying equipment cleaning requirements during prebid walk-throughs. The provision should be similar to the provision used at Fort Shafter.

MANAGEMENT COMMENTS

The Deputy Assistant Secretary of the Air Force (Acquisition Management and Policy) commented on the draft report and stated:

We concur with finding A that the Air Force contracts audited contained inaccurate schedules of government furnished equipment which resulted in claims against the government. We do not concur, however, that the contracting officer is totally responsible for the accuracy of the schedules.

The Air Force pointed out that, because the food service officer was responsible for the accuracy of work statements, the Air Force would concur with Recommendation A.1., if it was "changed to include the base food service officer as the individual with primary responsibility for the accuracy of work statements."

The Air Force did not agree with Recommendation A.2., which makes the contractor responsible for identification of equipment cleaning requirements. The Air Force stated that the existing site visit clause in Federal Acquisition Regulation 52-237.1 already provides "whatever limited protection from claims such a provision gives and inclusion of a clause similar to that used at Fort Shafter would be redundant." The full text of the Air Force's comments is in Appendix G.

The Principal Deputy (Acting) Assistant Secretary of the Navy (Shipbuilding and Logistics) concurred with Finding A and Recommendation A.1., and stated "Procedures currently exist in the acquisition planning area where by the contracting officer reviews the statement of work with the requiring activity to ensure that it accurately and completely reflects the Marine

Corps needs." The Navy concurred with Recommendation A.2. and stated that "The text of the suggested clause has been distributed to all field contracting activities." The full text of the Navy's comments is in Appendix I.

AUDIT RESPONSE TO MANAGEMENT COMMENTS

We agree with the Air Force that the primary responsibility for accuracy of the work statement resides with the food services officer. We also agree that Air Force Regulation 400-28, Vol I includes a requirement and a procedure for the preparation of an accurate work statement; however, it is apparent that the Regulation, at least for the contracts we reviewed, is not being followed. The problem remains that the work statements were not accurate, current, or complete in the identification of Government-furnished equipment, resulting in claims against the Government. The contractor will benefit if the Government provides inaccurate cost-related data during the competitive phase of contract selection. Once a contract has been awarded, the competitive constraint to keep the price low is no longer present, and the contractor is able to file a claim limited only by the negotiation process. It is because of this lack of competition that an accurate, dated work statement should be mandatory for inclusion in the Invitation for Bids process. We therefore restate that the contracting officer is responsible for the accuracy of the overall contract even though the food services officer is responsible for the accuracy of the work statement. Although the Air Force may have a regulation that delegates responsibility from the contracting officer to the functional area being contracted, the Federal Acquisition Regulation 14.101(a) prevails, and the contracting officer signs the contract.

We disagree with the Air Force's rationale for nonconcurring with Recommendation A.2. on the identification of equipment cleaning requirements during prebid walk-throughs. The inventory identified in the IFB's are presented as definitive listings in the contract. Our recommendation is that the listing provided in the IFB should not be definitive, but a guide that identifies typical equipment. For pricing purposes, contractors should use the site visit for determination of kind and quantity of equipment.

B. Overpricing of Contract DAHC77-86-C-0126, Modification P00012

FINDING

The contracting officer at Fort Shafter, Hawaii, did not have proper authority to negotiate modification P00012 to contract DAHC77-86-C-0126. The modification violated the basic contract's pricing provisions, which were established by competitive bid and the provisions of Federal Acquisition Regulation 52.243-1. Furthermore, the Government did not receive consideration from the contractor for the increase in contract price. This situation occurred because the contracting officer did not properly apply provisions of the basic contract and of the Federal Acquisition Regulation. As a result of the negotiation of modification P00012, the contract was overpriced by \$320,000.

DISCUSSION OF DETAILS

Background. The advertised firm-fixed-price contract for full food services at various military dining facilities was awarded September 26, 1986, with performance commencing October 1, 1986, for an estimated amount of \$1,694,184. The contract had two 1-year options with estimated funding amounts of \$2,129,898 and \$2,266,936, respectively. The initial base price for the part of the contract for the Quad A dining facility was \$379,092, based on an estimated 14,000 meals per month, plus or minus 20 percent (11,200 to 16,800 meals). The price per meal for each meal served in 1 month in excess of 120 percent, but not more than 130 percent, was \$1.00 in the basic contract and option 1, and \$0.50 in option 2. Section B.4 of the contract was the authority for negotiating contract modifications pricing meal quantities greater than the 130-percent level. Section B.4 made meals served in excess of the 130-percent level subject to negotiation and limited such pricing to the \$1.00 and \$0.50 prices per meal.

On October 22, 1986, the contracting officer issued unilateral modification P00001 changing the estimated number of meals for Quad A from 14,000 to 30,000 meals per month. The revised estimated meals resulted from the closing of another dining facility at Fort Shafter. No other changes occurred, such as meal serving times. As a result of modification P00001, the contractor submitted a proposal to the Army to increase the base price for Quad A by \$257,028 per year. This increase represented \$1.62 per meal for the additional number of meals served between 16,800 and 30,000 per month. This action ignored the fact that the contractor was obligated by the basic contract price to serve up to 16,800 (120 percent of 14,000) meals per month at the monthly price, and it ignored the unit ceiling prices of \$1.00 or \$0.50 per meal on additional meals.

On April 23, 1987, the contracting officer negotiated a contract price increase of \$236,000 for the initial contract year and

negotiated \$240,000 per year for each of the 2 option years representing \$1.49 and \$1.52 per meal, respectively, for meals from 16,800 to 30,000 per month. Modification P00012, which incorporated the negotiated price increase, definitized modification P00001.

Consideration. Armed Services Board of Contract Appeals (ASBCA) decisions have established that contracting officers do not have the authority to increase contract prices without the Government receiving consideration. This includes the increasing of contract prices for work the contractor was already obligated to perform by the contract and increasing contract prices because of revisions in pricing methodology.

In ASBCA Case Number 13,574 (1978), Booker T. Washington Foundation, the contractor appealed the contracting officer's disallowance of \$16,262 of indirect expenses on a cost-reimbursement contract. The contracting officer had already allowed an increase in the contract specified indirect expense ceiling rate from 33 to 42.8 percent so that the contractor would not have to absorb a large amount of indirect costs. The contractor's appeal was denied in all respects. The Board also ruled that the contracting officer had no authority to increase the indirect expense rate specified in the contract; therefore, the Government was due a refund from the contractor for the increase in the indirect expense rate. In its ruling the Board stated:

Turning to the issue raised, as government counsel notes, "A well settled rule is that agents and officers of the Government have no authority to modify existing contracts, or to surrender or waive contract rights which have vested in the Government unless there is a compensating benefit to the Government," citing J.J. Pries & Co. v. U.S., 58 Ct. Cl. 81 (1923) and Jaeger, ASBCA 11413, 66-2 BCA para 5757. As this board noted in The Aircraft Strauss Sign Corp. 76-1 BCA para 11,638 "In the absence of some valuable consideration moving to the Government, its agents have no authority to give away property or contractual rights" citing B-124389, 35 Comp Gen 56, 59 (1955). Under the facts presented here, there does not appear to be any basis for an exception. The Government Contracting Officer was without authority to increase the indirect costs rate from the 33% mandated in the contract to 42.8%. That action is void for want of consideration.

In ASBCA Case Number 22091, 1978, "States Roofing and Metal Company, Incorporated," the Board stated the following:

As this Board has previously reiterated, contracting officers are expected to enforce contracts as they are written, and no Government official may pay gratuities for the performance of contractual obligations which the contractor is already under a duty to perform. Such lack of authority cannot be overcome by the issuance of a contractual document which has the effect of increasing the amount to be paid to the contractor without any increase in the latter's obligations to the Government, and such document will not be binding upon the Government

Authority for Modification. The contracting officer cited the Federal Acquisition Regulation (FAR) 52.243-1, Alternate 1, Changes, in modification P00001, as the basis for changing the estimated quantity of meals for Quad A from 14,000 to 30,000 per month. This FAR clause states in part:

The Contracting Officer may at any time, by written order, and without notice to sureties, if any, make changes within the general scope of this contract in any one or more of the following:

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

The changing of the estimated number of meals to be served monthly in Quad A did not represent a change in contract scope contemplated by the change clause. The Quad A dining facility, which the contractor bid on to operate, had the seating and serving capacity to handle more than 30,000 meals without implementing a workscope change. In its bid, the contractor was given the opportunity to establish a unit ceiling price for additional meals. Materialization of the higher meal level covered by the basic contract pricing provisions did not justify the contracting officer's negation of the established contract ceiling price per meal. The Government received no consideration for the pricing action, and the action violated the original contract terms by increasing prices over the \$1.00 and \$0.50 price-per-meal maximums specified in the contract. The contract already provided for that event and no contract work requirements were changed.

Calculation of Overpricing. Calculations of the amount of contract overpricing resulting from negotiating a meal price exceeding the contract ceiling price are detailed in Appendix C and the price increase is summarized as follows:

	<u>Negotiated Price Increase</u>	<u>Amount Overpriced</u>
Basic Year	\$236,000	\$ 77,600
Option 1	240,000	81,600
Option 2	<u>240,000</u>	<u>160,800</u>
Total	\$716,000	\$320,000
Modification P00026	<u>(32,441)</u>	<u>(32,441)</u>
Net Overpricing	<u>\$683,559</u>	<u>\$287,559</u>

During our exit conference with the contracting officer, we provided evidence of overpricing of modification P00012 caused by the double application of health and welfare benefits. The contracting officer corrected this error by negotiating a price adjustment of \$32,441 in modification P00026, effective for the basic and 2 option years. Accordingly, we have adjusted the total amount of overpricing on modification P00012.

The amount of overpricing applicable to the meal quantity estimated in the contract price schedule is an approximation because the actual amount cannot be determined until completion of the contract performance when actual meals served become known.

Conclusion. The negotiated increase in contract price over the ceiling prices per meal violated the prices and volume adjustment provisions established by competitive bid. The increase in meal level did not represent a workscope change in accordance with the contract change clause and should not have been priced as such. The contract terms provided the method and price limitations for pricing meals served 130 percent above the contract estimate, without further limitations other than the limitations of the facility. The Government received no consideration from the contractor for the additional \$320,000 in excess of basic contract price provisions. Since consideration is a basic requirement for a contract to be enforceable, the modifications are not binding and the ceiling prices per meal in the original contract terms should be enforced.

RECOMMENDATION FOR CORRECTIVE ACTION

We recommend that the Commander, U.S. Army Support Command, Hawaii, request the cognizant procurement contracting officer to initiate action to obtain a price reduction of \$287,559.

MANAGEMENT COMMENTS

The Director, U.S. Army Contracting Support Agency, concurred with Recommendation B. and stated that the "... Government did not receive consideration for the increased contract price. Action will be taken to negotiate recoupment of all monies due the Government by 30 July 1989." The full text of the Army's comments is shown in Appendix H.

C. Overpricing of Contract DAHC77-86-C-0126, Modification P00028

FINDING

The contracting officer at Fort Shafter, Hawaii, increased the price of contract DAHC77-86-C-0126 without the Government receiving consideration for the price increase. This situation occurred because the contractor proposed a price increase and the contracting officer did not properly apply Federal Acquisition Regulation 52.243-1, Alternate 1, Changes. As a result, the contract was overpriced by \$156,205.

Background. Contract DAHC77-86-C-0126 was awarded to Moore's on September 26, 1986, with performance commencing October 1, 1986, based on competitive bids. The contract was for performance of full food services at various military dining facilities. The basic contract covered the period from October 1, 1986, through September 30, 1987. Option 1 of the contract covered the period October 1, 1987, through September 30, 1988. For the Quad E dining facility, option 1 was priced at \$41,291 per month when 27,360 to 41,040 meals per month were served. The contract price was \$0.50 per meal for meals served between 41,040 and 44,460 per month. For meals served in excess of 44,460 per month, the contract provided for negotiation of a price subject to a \$0.50 ceiling price per meal.

The basic contract included the following clauses relevant to the operation of the Quad E dining facility.

C-5.2.16 - Sufficient personnel shall be provided to ensure that patrons are served at the following rates:

C-5.2.16.2 - Short order and breakfast line - three (3) patrons per minute.

C-5.2.16.2 - Regular cafeteria line - five (5) patrons per minute.

Operation of Quad E Facility Before Modification P00022. Quad E had two entrances, each entrance leading to a separate serving section. Although the contractor occasionally used both serving sections, its normal mode of operation was to use only one. Instead of using both the short order and regular cafeteria serving sections, the contractor consolidated them, locating the two serving points in one serving section. The result was a reduction in operating cost and a long patron line, which extended outside the building.

Modification P00022. Based on a general officer's observation of a long patron line outside the dining facility in November 1987, the Director of Logistics requested the contracting officer to require Moore's to open both serving sections. On January 8, 1988, the contracting officer issued modification P00022. Modification P00022 stated:

1. Paragraph 5.2.16 is changed to add the following effective 11 January 1988:

a. Para 5.2.16.3 - E Quad dining facility shall have two lines in use at all times as follows:

- (1) Two breakfast lines daily;
- (2) One short order line each for lunch and dinner;
- (3) One main line each for lunch and dinner

Modification P00028. In response to modification P00022, Moore's submitted an undated proposal for a price increase of \$20,399.80 per month. The proposal was based on the difference in labor hours incurred from January 11 through 27, 1988, after modification P00022, and labor hours incurred during May through September 1987, before modification P00022.

Modification P00028 was negotiated on April 15, 1988, to definitize modification P00022 for the remainder of the option 1 performance period. The price increase was \$156,205, which represented the estimated difference in the cost of operating both serving sections and the cost of operating only one serving section. The serving rates of 3 and 5 patrons per minute, specified in the basic contract, were not changed.

Federal Acquisition Regulation 52.243-1, Alternative 1. The contracting officer cited FAR 52.243-1, Alternative 1, Changes, as authority for modification P00022. This FAR clause states in part:

The Contracting Officer may at any time, by written order, and without notice to sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (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.

Modification P00022 did not represent a change in contract scope contemplated by the change clause; therefore, the modification was not necessary. Contract clause C-5.2.16 already provided for operation of short order and regular cafeteria lines. Moore's had operated part of the dining facility by operating only one serving section to reduce operating costs and increase profits. Moore's was not entitled to a price increase when the Director of

Logistics requested that both serving sections be opened, because the basic contract provided for operation of both sections. We believe that the Government received no consideration for the \$156,205 price increase, and modifications P00022 and P00028 are not binding on the Government because of the precedents cited in the discussion of consideration in Finding B.

RECOMMENDATION FOR CORRECTIVE ACTION

We recommend that the Commander, U.S. Army Support Command, Hawaii, request the cognizant procurement contracting officer to initiate action to obtain a price reduction of \$156,205.

MANAGEMENT COMMENTS

The Director, U.S. Army Contracting Support Agency, nonconcurred with Recommendation C. and stated that "Modification P00034 in response to modification P00028 does provide consideration, of unspecified value, to the Government by requiring simultaneous operation of the short order/breakfast and regular cafeteria lines."

AUDIT RESPONSE TO MANAGEMENT COMMENTS

We do not agree with the Army. The issue we have identified is that of a contractual agreement between the Government and the contractor arising from the basic contract. That is, the contract already specified the requirement for a short order and breakfast line and a regular cafeteria line in contract clauses identified on page 15 of Finding C. Even if the Army needed to issue modifications to clarify the operation of the dining facility, we still believe that the clarifications regarding the serving lines are within the original scope of the contract. Notwithstanding that issue, modification P00034, dated August 25, 1988, which was issued after our review was completed, does not alleviate the contracting officer's responsibility to initiate action to obtain a price reduction.

D. Overpricing Advertised Firm-Fixed-Price Contract
N00244-83-C-2780

FINDING

The contracting officer at Naval Supply Center, San Diego, California, increased the line item prices of contract N00244-83-C-2780 without the Government receiving consideration for the price increase. This situation occurred because the contracting officer did not properly apply Defense Acquisition Regulation (DAR) 7-1902.2, Changes. As a result, the contract was overpriced by \$107,227.

DISCUSSION OF DETAILS

Background. Contract N00244-83-C-2780 was awarded to Moore's on January 1, 1983, based on competitive bids. The contract provided for operation of various dining facilities at the Naval Air Station, San Clemente Island, California. The basic contract covered the period from January through September 1983. The contract included two 1-year options, which were exercised by the Government.

The pricing of the basic contract and options was based on Navy estimates of monthly meal counts and contractor prices for three levels or ranges of monthly meal counts. The contract was awarded to Moore's on the basis of the following monthly prices:

<u>Meals per Month</u>	<u>Basic Award Monthly Price</u>
10,000 - 16,000	\$19,840
16,001 - 24,000	28,344
24,001 - 34,000	42,516

The IFB and contract stated in Attachment A, subsection II, paragraph 2c, "The Government expressly disclaims responsibility for the estimate's accuracy in connection with any offer made or the resultant contract." In other words, the Government and contractor agreed to monthly prices depending on the number of meals served during each month, but prices were not contingent on the actual number of months at each meal-count level.

Modification P00002. For the first month of performance, the contractor served less than 10,000 meals. The contracting officer determined that new prices needed to be negotiated because a monthly price did not exist for less than 10,000 meals per month. Instead of establishing a price for months in which meal counts were less than 10,000, the contracting officer repriced all levels of meal counts by establishing a new stratification of meal counts ranging from 0 to 20,000 per month.

On March 30, 1983, the Navy issued modification P00002, effective January 1, 1983, to include three pricing issues: operating the Observation Post dining facility occasionally on weekends (no audit findings), deleting the Vista dining facility (see Finding E), and repricing the monthly meal levels (covered by this finding).

Modification P00004. On August 30, 1983, the Navy issued modification P00004 to definitize modification P00002. The modification resulted in the following monthly prices:

<u>Meals per Month</u>	<u>Modified Monthly Price</u>
0 - 8,000	\$19,840
8,001 - 15,000	23,600
15,001 - 20,000	28,344

Modification P00004 increased the price of serving 10,000 to 15,000 meals per month from \$19,840 to \$23,600. It also increased the price of serving 15,001 to 16,000 meals per month from \$19,840 to \$28,344.

Defense Acquisition Regulation 7-1902.2, Changes. The contracting officer cited DAR 7-1902.2 as authority for modifications P00002 and P00004. DAR 7-1902.2, Changes, allows for increased or decreased prices if a change results in an increase or a decrease in the cost of performance. The contractor's cost of performance to serve 10,000 to 34,000 meals per month, as originally priced, did not change because of occasionally serving less than 10,000 meals. Cost of serving less than 10,000 meals per month represented a negotiable change, but the cost should be expected to be less than or equal to the cost to serve 10,000 meals, not more. Modification P00004 did not increase prices because of increased workscope, but repriced the entire contract. Accordingly, the Government did not receive consideration for the increases in monthly prices of 10,000 or more meals, and modification P00004 should not be binding for the new prices except those under 10,000 meals per month.

Computation of Overpricing. We computed overpricing of \$107,227 as the difference between total costs based on monthly prices established by modification P00004 and total cost based on monthly prices in the original contract. We used the rate of 10,000 to 16,000 meals per month to compute the cost for months in which less than 10,000 meals were served. The details of our computation are shown in Appendix D.

RECOMMENDATION FOR CORRECTIVE ACTION

We recommend that the Commander, Naval Supply Center, San Diego, California, require the cognizant procurement contracting officer to initiate action to obtain a price reduction of \$107,227 from Moore's Cafeteria Services, Inc.

MANAGEMENT COMMENTS

The Principal Deputy (Acting) Assistant Secretary of the Navy (Shipbuilding and Logistics) nonconcurred with Finding D, stating that, "The Government received consideration when NSC [Naval Supply Center] issued a bilateral modification to change the incremental pricing and the number of meals served." However, the Navy concurred with Recommendation D and stated that, "On 6 July 1989 Naval Regional Contracting Center, San Diego (NRCC), which now has cognizance over the contract, sent a letter to the contractor requesting a refund of \$107,227."

AUDIT RESPONSE TO MANAGEMENT COMMENTS

We disagree with the Navy regarding the statement that, "The Government received consideration when NSC issued a bilateral modification to change the incremental pricing and the number of meals served." We do not believe that it was necessary for the contracting officer to completely change the pricing structure to provide for less than 10,000 meals served. By restructuring the monthly prices, the contracting officer negated prices between 10,000 and 16,000 that had been established through a competitive award process. Also, the Government did not receive consideration for the increases in monthly prices of 10,000 or more meals served. Therefore, modification P00004 should not be binding for the new prices except those under 10,000 meals per month, since the contracting officer did not properly apply Defense Acquisition Regulation 7-1902.2, Changes.

We also disagree with the Navy's attempt to recover the funds through a voluntary refund. Although the Navy is attempting to recover the funds resulting from the overpricing, the method is not in concurrence with our recommendation. Our intent was for the contracting officer to issue a demand for the return of funds because the contracting officer had no authority to issue the modification except for pricing less than 10,000 meals per month. We did not intend for the contracting officer, to ask the contractor for a voluntary refund. However, if funds are voluntarily returned by the contractor, as a result of this request, then we accept the Navy's method of recovery.

E. Price Reduction for Deletion of Workscope From
Contract N00244-83-C-2780

FINDING

The Naval Supply Center, San Diego, California, deleted a portion of the scope of work Moore's Cafeteria Services, Inc., (Moore's) was to perform under contract N00244-83-C-2780 without obtaining an equitable price reduction in accordance with the change clause of the contract. This situation occurred because the contracting officer did not require Moore's to comply with the provisions of the Defense Acquisition Regulation (DAR) 7-1902.2, Changes, in pricing the deleted work and getting a related proposal from Moore's. As a result, the contract was overpriced by \$69,949.

DISCUSSION OF DETAILS

Background. The Navy awarded contract N00244-83-C-2780 to Moore's on January 1, 1983, for operation of various dining facilities at the Naval Air Station, San Clemente Island, California. The basic contract covered the period from January through September 1983. The contract was awarded competitively for a firm-fixed price of \$243,758. Thirteen companies bid for the contract.

Modification P00002. On March 30, 1983, the Navy issued modification P00002, effective January 1, 1983, and included three pricing issues: operating Observation Post dining facility occasionally on weekends (no audit findings), deleting the Vista dining facility (this finding), and repricing the monthly meal levels (see Finding D).

Modification P00002 deleted the Vista dining facility on San Clemente Island and stated that Moore's should submit a cost proposal for the decrease in workscope within 30 days. Moore's responded on April 15, 1983, stating that no costs were included in its bid for the Vista dining facility because it was a matter of record that the facility had not been open for 3 years and there were no plans to open it. The contracting officer did not pursue the cost reduction further.

Price Reduction Due. The contract included the provisions of DAR 7-1902.2, Changes, which states:

If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly.

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The contractor's method of deriving its bid price is not relevant to negotiation of a price adjustment under the change clause. A change in contract price for addition or deletion of work is to be based solely on the estimated cost to perform added or deleted work required at the time of change. Moore's should have been required to comply with the contract change clause and submit a cost reduction proposal, and Moore's can still be required to do so. In the absence of Moore's cost proposal, we have estimated the cost of performance for the Vista dining facility to be \$69,949.

Price Reduction. We computed the price adjustment based on the work requirements specified in Attachment A, subsection V of the contract. The Vista dining facility was to operate three 1-hour meal periods per day, 5 days per week (about 260 days per year). The facility was to be staffed with one cook responsible for food preparation, transportation to the site, serving, and clean-up, as required, for an estimated 10 to 35 people per meal. The cook's hourly rate, fully burdened and including profit, for FY 1983 was \$10.87. We obtained this rate from Moore's claim for operation of the Observation Post dining facility, dated March 9, 1984. This claim was paid under modification P00011 using the proposed hourly rate. We estimated the annual cost of operating the Vista dining facility to be \$25,436 (9 hours per day times 260 days per year times the hourly rate of \$10.87). The estimated total cost reduction for modification P00002 is \$69,949 (2.75 years times annual cost of \$25,436).

RECOMMENDATION FOR CORRECTIVE ACTION

We recommend that the Commander, Naval Supply Center, San Diego, California, request the cognizant procurement contracting officer to initiate action to obtain a price reduction of \$69,949 from Moore's Cafeteria Services, Inc., for the reduction in workscope on contract N00244-83-C-2780.

MANAGEMENT COMMENTS

The Principal Deputy (Acting) Assistant Secretary of the Navy (Shipbuilding and Logistics) concurred with Recommendation E and stated that the Navy Regional Contracting Center, San Diego, sent a letter on July 6, 1989, requesting a voluntary refund of \$69,949.

AUDIT RESPONSE TO MANAGEMENT COMMENTS

The Navy's response to Recommendation E does not meet the intent of our recommendation. It is our opinion that the contractor should have been required to submit a proposal for a reduction in workscope to the Government. If the contractor fails to submit a proposal, then the Government should compute an estimate of the price reduction. In this case we calculated the reduction at

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\$69,949. Also the action should be a unilateral decision by the contracting officer, not a request for a voluntary refund. However, if as a result of the request, the contractor refunds the amount calculated, we would concur with the Navy response.

F. Defective Pricing of Contract DAHC77-86-C-0126,
Modification P00023

FINDING

Moore's Cafeteria Services, Inc., violated the Truth in Negotiations Act, as amended (formerly codified at U.S.C., title 10, sec 2306 (f)), by not submitting accurate, complete, and current cost and pricing data to the Government negotiator in support of modification P00023 to contract DAHC77-86-C-0126. Estimating procedures and practices did not provide for the disclosure of accurate and current labor hour data. As a result, this contract modification was defectively priced by \$36,119.

DISCUSSION OF DETAILS

Background. The U.S. Army Support Command, Hawaii, awarded contract DAHC77-86-C-0126 to Moore's on September 26, 1986. The contract provided for food services to be provided at several U.S. Army dining facilities in Hawaii for 1 year, from October 1, 1986, to September 30, 1987, and provided the Army with the option to extend the contract for two additional 1-year periods. The Army exercised this option on August 20, 1987, and extended the contract from October 1, 1987, to September 30, 1988.

Pursuant to the Fair Labor Standards Act and Service Contract Act, provisions were included in the contract that provided for adjustment of the contract price if the Department of Labor changed the wage determination applicable to covered employees working under the contract. This provision limited the contract price adjustment to increases or decreases to wages or fringe benefits covered by the determination and any related increases in social security and unemployment taxes and worker's compensation insurance. No other adjustments to general and administrative costs, overhead, or profits were permitted.

The Department of Labor issued Wage Determination 74-419 (REV 17) on August 12, 1987, (revised because of administrative errors, by REV 18 on October 1, 1987), which increased the labor rates for covered employees, effective October 1, 1987. The contractor submitted a proposal on October 12, 1987, for \$490,625 to cover the increased labor cost from October 1, 1987, to September 30, 1988. The Government negotiator relied on this proposal, as well as on additional cost and pricing data provided by the contractor, to negotiate a price adjustment of \$437,631. The differences between the proposed amount and the negotiated amount are accounted for by adjustments to the estimates for fringe benefit costs. Proposed and certified hours were accepted as negotiated based on the revised technical report on January 11, 1988. These negotiations were concluded on January 12, 1988, and contract modification P00023 was issued on February 2, 1988, to provide for the adjustment in the contract price. The contractor certified that all cost and pricing data furnished were accurate, complete,

and current as of the conclusion of negotiations on January 12, 1988. A complete chronology of significant events is shown in Appendix E.

These contract price adjustment negotiations were subject to the Truth in Negotiations Act, as amended (formerly codified at U.S.C., title 10, sec 2306 (f)). The provisions are intended to avoid contract overpricing by ensuring that the Government and contractor have equal knowledge of facts affecting contract pricing. Informational parity is achieved by requiring Government contractors to certify that their cost or pricing data are accurate, complete, and current at the time of agreement on contract price. The law also requires a downward price adjustment if a negotiated price is overstated because a contractor furnished inaccurate, incomplete, or noncurrent pricing data to the Government. The duty of the Government in a defective pricing case is to prove that:

- the data causing defective pricing fulfill the definition of cost or pricing data,
- the data were reasonably available to the contractor before agreement on the contract price,
- the Government relied on defective cost or pricing data in negotiating a contract price, and
- reliance on the defective data caused an increase in the contract price.

Details of the Audit. An audit of the contractor's accounting records and proposal, including data provided to the Government negotiator before and during contract negotiations, and a review of the Government's negotiation memorandum disclosed that cost and pricing data provided to the Government negotiator were not accurate, complete, and current. In our opinion, Moore's estimating procedures and practices did not provide for the disclosure of accurate and current labor hour data. The contractor's certified cost and pricing data and defective contract pricing are detailed below.

	<u>Contractor's Certified Data</u>	<u>Amount of Defective Pricing</u>
Direct Labor and Fringe		
Benefits:		
Quad A Dining Facility	\$242,557	\$36,119
Other Dining Facilities	<u>195,074</u>	<u>0</u>
Total	<u>\$437,631</u>	<u>\$36,119</u>

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Quad A Dining Facility. The certified direct labor and fringe benefit costs for the Quad A dining facility at Schofield Barracks, Hawaii, were computed by applying the increase in labor rates provided for by the Department of Labor wage determination, plus applicable increases in fringe benefit costs, to the estimated hours of work to be performed by covered employees from October 1, 1987, through September 30, 1988. The estimated hours were developed by annualizing the actual recorded labor hours for the period April 1, 1987, to August 31, 1987.

A review of the labor rate and fringe benefit data did not disclose any instances of, or offsets to, defective pricing. Certified and negotiated rates were used to calculate the recommended price adjustment. The certified direct labor hours were inaccurate because they included hours worked by management and administrative employees that were not covered by the wage determination, and because they included hours for employees who were detailed to other dining facilities. The certified labor hours also were not current because they failed to disclose the effect of 4 additional months of labor experience that were available to the contractor prior to the commencement of final contract negotiations. Three of the months of actual cost experience were applicable to the FY 1988 period requiring adjustment. Because of the significant monthly variances in incurred labor hours, we used the actual labor hours expended by covered employees during the full 12 months of 1987 as being representative of FY 1988 to compute the effect of the contractor's failure to disclose accurate and current labor hour data. The computation of the amount of defective pricing is summarized below.

<u>Labor Category</u>	<u>Certified Hours</u>	<u>Actual 1987 Hours</u> ^{1/}	<u>Defective Hours</u>	<u>Certified Labor Rate Adjustment</u> ^{2/}	<u>Amount of Defective Pricing</u> ^{2/}
First Cook	5,400	4,715	685	\$4.30	\$ 2,952
Second Cook	6,096	8,671	(2,575)	5.03	(12,946)
Baker	2,088	865	1,223	5.88	7,187
Storekeeper	5,928	1,842	4,086	6.84	27,958
Mess Attendant	<u>33,432</u>	<u>30,732</u>	<u>2,700</u>	4.06	<u>10,968</u>
Total	<u>52,944</u>	<u>46,825</u>	<u>6,119</u>		<u>\$36,119</u>

^{1/} Computations of actual 1987 direct labor hours by labor category are shown in Appendix F.

^{2/} Rates were derived from dollars calculated for adjustments to each labor and fringe benefit component. The rates and amounts shown have been rounded to simplify report representation. Detailed computations will be provided separately to the contracting officer.

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Other Dining Facilities. A review of the costs for other dining facilities did not disclose any instance of, or offsets to, defective pricing.

RECOMMENDATION FOR CORRECTIVE ACTION

We recommend that the Commander, U.S. Army Support Command, Hawaii, request the cognizant procurement-contracting officer to initiate action to obtain a downward price adjustment of \$36,119 for FY 1988 plus applicable interest and any additional adjustments that may be necessary for subsequent option years if exercised, from Moore's Cafeteria Services, Inc., on modification P00023 to contract DAHC77-86-C-0126, as provided for by the Truth in Negotiations Act, as amended (formerly codified at U.S.C., title 10, sec 2306 (f)).

MANAGEMENT COMMENTS

The Director, U.S. Army Contracting Support Agency, concurred with Finding and Recommendation F. The Army stated that, "The contracting officer requested Defense Contract Audit Agency (DCAA) audit on 14 June 1989 to determine the extent of defective pricing for FY 1988. The final benefit value to the Government will be determined within 60 days of the DCAA audit."

AUDIT RESPONSE TO MANAGEMENT COMMENTS

We agree with the Army and accept its method of responding to our recommendation.

G. Duplicate Pricing of Contract N00244-83-C-2780

FINDING

Moore's received duplicate payments from the Naval Supply Center, San Diego, California, for operation of the Underwater Demolition Training dining facility under contract N00244-83-C-2780. The duplicate payment resulted because the contracting officer did not properly evaluate the contractor's claim concerning contract requirements. The contracting officer's actions resulted in overpayments of \$5,574 to the contractor.

DISCUSSION OF DETAILS

Background. Modification P00016 to contract N00244-83-C-2780, dated April 11, 1983, was comprised of the following three elements.

- It increased FY 1984 meal level prices by \$433.21 per month for a Department of Labor wage determination totaling \$5,198.52.

- It increased the FY 1984 price for food services at the Underwater Demolition Training dining facility by \$5,574.27.

- It increased FY 1984 contract funding by \$6,533.60 related to actual versus estimated number of months by meal level.

The contract included a 1-percent discount for prompt payment. Final payment on the contract was made on November 12, 1985.

Overpricing for Underwater Demolition Training Dining Facility. On January 11, 1985, the contractor submitted a \$6,967.85 claim for reimbursement of cost to operate the Underwater Demolition Training dining facility. The contractor's claimed cost was for the FY 1984 contract; however, only \$5,574.27 was related to FY 1984, and \$1,393.58 was related to FY 1985 performance. The cost claimed for FY 1984 was for four camp sessions of about 20 days each during January to September 1984. The contracting officer accepted the contractor's FY 1984 claimed cost and increased the contract price, accordingly, under modification P00016, dated April 11, 1985. The contractor billed the Navy for modification P00016 in invoice 45A and the Navy paid on April 22, 1985. Moore's claimed costs for FY 1985 were not paid.

The contract workscope, Attachment A, subsection III, page 81 of 122, Underwater Demolition Training dining facility, required the contractor to operate this facility an estimated 160 days per year (eight sessions of 20 days). The contractor was already compensated for this work, as it was for the other dining facilities in the contract, through the monthly meal level prices for actual meals served. The contractor did not serve more than

160 days in that dining facility in FY 1984. We did not find any evidence that the contracting officer was aware of the contract terms when pricing the FY 1984 increase.

On April 22, 1985, the contractor submitted another claim for FY 1985 and stated that it expected to incur 40 days over contract terms. This claim was inconsistent with the contractor's claim for FY 1984, in which it claimed total incurred days. The contracting officer, upon advice from the contracting officer representative, denied Moore's FY 1985 claim based on the provisions of Attachment A, subsection III of the contract. The denial of Moore's FY 1985 claim was correct, but it was inconsistent with the resolution of Moore's FY 1984 claim.

RECOMMENDATION FOR CORRECTIVE ACTION

We recommend that the Commander, Naval Supply Center, San Diego, California, request the cognizant procurement contracting officer to initiate action to reduce the contract price by \$5,574.27 and to obtain a refund of the amount paid to Moore's Cafeteria Services, Inc.

MANAGEMENT COMMENTS

The Acting Principal Deputy Assistant Secretary of the Navy (Shipbuilding and Logistics) agreed with Finding and Recommendation G and has issued a demand letter to the contractor for \$5,574.27.

AUDIT RESPONSE TO MANAGEMENT COMMENTS

We concur with the Navy's action.

H. Duplicate Payment on Contract N00244-83-C-2780

FINDING

The contracting officer at the Naval Supply Center, San Diego, California, overpaid contract N00244-83-C-2780 by paying the contractor twice for the same work. The overpayment resulted because the contractor billed the Government twice and the contracting officer failed to verify the contractor's invoices. The contracting officer's actions resulted in the Government overpaying \$6,468.26.

DISCUSSION OF DETAILS

Background. Modification P00016 to contract N00244-83-C-2780, dated April 11, 1983, was comprised of the following three elements.

- It increased FY 1984 meal level prices by \$433.21 per month for a Department of Labor wage determination totaling \$5,198.52.
- It increased the FY 1984 price for food services at the Underwater Demolition Training dining facility by \$5,574.27.
- It increased FY 1984 contract funding by \$6,533.60 related to actual versus estimated number of months by meal level.

The contract included a 1-percent discount for prompt payment. Final payment on the contract was made on November 12, 1985.

Overpayment Related to Funding. The contractor invoiced twice and the Government paid the contractor twice for part of the FY 1984 contract. Included in modification P00016, dated April 11, 1985, was funding of \$6,533.60 for FY 1984 food services. The additional contract funding was necessary to increase the contract price because actual FY 1984 performance, valued at \$284,184.80, exceeded the estimated FY 1984 price of \$277,651.20. Actual costs exceeded estimated costs because the actual number of meals served under the contract exceeded the estimate.

During FY 1984, the contractor billed the Navy and was paid the contract monthly rates based on actual meals served. The \$6,533.60 increase in funding included in modification P00016 was for adjusting the contract funding and price to reflect what had occurred in FY 1984. The contractor included this additional funding in its invoice 45A, which the Navy paid on April 22, 1985. Our review of all contractor invoices and Navy payments of all invoices for the entire contract, before discounts, disclosed overpayment of \$6,533 less a 1-percent discount (\$812,027 invoiced before discount less \$805,494 contract price before discount), which represented the duplicate payment caused by Moore's billing of the funding portion of modification P00016.

RECOMMENDATION FOR CORRECTIVE ACTION

We recommend that the Commander, Naval Supply Center, San Diego, California, require the cognizant procurement contracting officer to initiate action to obtain a refund of \$6,468.26 (\$6,533.60 less 1-percent discount) from Moore's Cafeteria Services, Inc.

MANAGEMENT COMMENTS

The Acting Principal Deputy Assistant Secretary of the Navy (Shipbuilding and Logistics) concurred with Finding and Recommendation H and has sent a demand letter to the contractor for \$6,468.26.

AUDIT RESPONSE TO MANAGEMENT COMMENTS

We concur with the Navy's response.

MOORE'S CAFETERIA SERVICES, INC.,
CONTRACTS REVIEWED

We reviewed the following contracts awarded to Moore's Cafeteria Services, Inc., during the period from January 1982 to December 1987.

<u>Contract</u>	<u>Installation</u>	<u>Price</u>
F03602-82-C-0036	Little Rock AFB, AR	\$ 1,513,440
F04700-82-D-0003	Edwards AFB, CA	1,983,601
F08602-84-C-0100	MacDill AFB, FL	1,104,166
F04612-82-D-0005	Mather AFB, CA	2,865,502
F04626-84-C-0051	Travis AFB, CA	3,969,991
DAKF24-84-D-0009	Fort Polk, LA	1,320,906
F04605-82-C-0014	March AFB, CA	1,380,963
M67001-86-D-0037	Camp Lejeune Marine Corps Base, NC	3,690,185
M67001-86-D-0077	Camp Lejeune Marine Corps Base, NC	1,493,489
N00244-83-C-2780	Naval Supply Center, CA	836,718
F04605-84-C-4044	March AFB, CA	2,170,608
F41687-84-C-0026	Bergstrom AFB, TX	927,494
F16600-85-C-0005	England AFB, LA	632,747
N00140-86-C-9422	Philadelphia Naval Shipyard, PA	1,414,423
DAHC77-86-C-0126	Fort Shafter, HI	6,091,018
N00244-86-C-0504	Naval Supply Center, CA	1,799,750
F07603-87-D-0018	Dover AFB, DE	1,782,000
Total		<u>\$34,977,001</u>

MOORE'S CAFETERIA SERVICES, INC.,
CONTRACTS FOR WHICH CLAIMS WERE SUBMITTED
BECAUSE OF INACCURATE EQUIPMENT SCHEDULES

<u>Contract Number</u>	<u>Procurement Office</u>	<u>Contract Value</u>	<u>Contract Award Date</u>	<u>Contractor's Claims</u>	<u>Negotiated Amounts</u>	<u>Amounts Paid</u>
<u>Settled Claims</u>						
F03602-82-C-0036	Little Rock AFB	\$ 1,513,440	May 21, 1982	\$ 93,762	\$ 57,087	\$ 31,479
F04700-82-D-0003	Edwards AFB	1,983,601	Jan 12, 1982	416,569	315,671	218,993
F04612-82-D-0005	Mather AFB	2,865,502	Feb 24, 1982	214,777	61,000	61,000
M67001-86-D-0077	Camp Lejeune	<u>1,493,489</u>	July 29, 1986	<u>924,397</u>	<u>397,917</u>	<u>47,461</u>
		\$ 7,856,032		\$1,649,505	\$ 831,675	\$ 358,933
<u>Unsettled Claims</u>						
F04626-84-C-0051	Travis AFB	<u>3,969,991</u>	Sept 19, 1984	<u>144,765</u>		
Total		<u>\$11,826,023</u>		<u>\$1,794,270</u>	<u>\$ 831,675</u>	<u>\$ 358,933 *</u>

* Does not reflect discounts taken on monthly invoices.

MOORE'S CAFETERIA SERVICES, INC., OVERPRICING OF
CONTRACT DAHC77-86-C-0126, MODIFICATION P00012

Key Contract Provisions and Prices

The following contract provisions and prices are provided to assist in understanding the issues related to pricing modification P00012 and our calculated amount of overpricing. Item LXXX is for the basic year, while the other items are for successive option years.

<u>Item No.</u>	<u>Supplies/Services</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
1003	Bldg. 133, Quad A, Schofield Barracks				
1003AA	Base price for the month to serve 80 percent to 120 percent of the monthly estimated meals	12	Month	\$31,591	\$379,092

		<u>Estimate</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
1003AB	Price per meal for each meal served in excess of 120 percent, but not in excess of 130 percent of the estimate for any month	16,800*	Meal	\$1.00	\$ 16,800

* See paragraph B.3

<u>Item No.</u>	<u>Supplies/Services</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
2003	Bldg. 133, Quad A, Schofield Barracks				
2003AA	Base price for the month to serve 80 percent to 120 percent of the monthly estimated meals	12	Month	\$30,591	\$367,092

**MOORE'S CAFETERIA SERVICES, INC., OVERPRICING OF
CONTRACT DAHC77-86-C-0126, MODIFICATION P00012 (Continued)**

	<u>Estimate</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
2003AB Price per meal for each meal served in excess of 120 percent, but not in excess of 130 percent of the estimate for any month	16,800*	Meal	\$1.00	\$ 16,800

* See paragraph B.3

<u>Item No.</u>	<u>Supplies/Services</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
3003	Bldg. 133, Quad A, Schofield Barracks				
3003AA	Base price for the month to serve 80 percent to 120 percent of the monthly estimated meals	12	Month	\$30,591	\$367,092

	<u>Estimate</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
3003AB Price per meal for each meal served in excess of 120 percent, but not in excess of 130 percent of the estimate for any month	16,800*	Meal	\$0.50	\$ 8,400

* See paragraph B.3

Auditor's Note: The basic estimate for the "AA" items was 14,000 meals per month or a range of 11,200 to 16,800 meals. The "AB" items would thus cover 16,801 through 18,200 meals.

* Paragraph B.3

The per meal price quantity equals 10 percent of the total estimated number of meals to be served for the dining facility This estimated variance is included for evaluation purposes and is neither an estimated quantity nor a guarantee that such a variance will, in fact, be experienced.

**MOORE'S CAFETERIA SERVICES, INC., OVERPRICING OF
CONTRACT DAHC77-86-C-0126, MODIFICATION P00012 (Continued)**

B.4 Compensation for meals served in excess of 130 percent will be subject to negotiation. The price per meal for each meal served in excess of 130 percent shall not exceed the price per meal bid in the Schedule (Line Items 1003AB, 2003AB, and 3003AB).

Summary of Price Adjustment. The \$320,000 of overpricing resulted from the contracting officer repricing the firm-fixed monthly prices, line items 1003AA, 2003AA, and 3003AA, for the estimated increase in meals from 14,000 to 30,000 per month, instead of pricing the increased meals using the contract pricing procedures specified in paragraphs B.3 and B.4, and adhering to the ceiling prices of \$1.00 per meal established in contract line items 1003AB and 2003AB, and \$0.50 in 3003AB. The contracting officer negotiated a fixed price for an estimated 192,000 (30,000 - 14,000 = 16,000 x 12 months = 192,000) meals. The increased prices, when added to the initial firm-fixed prices for 14,000 meals per month, resulted in firm-fixed monthly prices for meals served between 80 and 120 percent of 30,000 meals per month (24,000 to 36,000 meals per month). The firm-fixed monthly prices should not have been increased. Instead, the firm-fixed prices already established by contract line items 1003AB, 2003AB, and 3003AB for meals served between 16,800 and 18,200 per month (1.20 x 14,000 = 16,800 and 1.30 x 14,000 = 18,200) should have been used. For meals served in excess of 18,200 meals per month (classified as line items 1003ABX, 2003ABX, and 3003ABX for this appendix (30,000 less 18,200 = 11,800 meals x 12 months = 141,600)), the ceiling prices of \$1.00 or \$0.50 per meal (contract paragraph B.4) should not have been exceeded. Our computation follows.

<u>CLIN</u>	<u>Meals</u>	<u>Rate Per Meal</u>	<u>Negotiated Price Increase</u>	<u>Price Increase Per Basic Contract Provisions</u>	<u>Overpricing</u>
1003AA	192,000	\$1.229	\$236,000		
1003AB	16,800	1.00		\$ 16,800	
1003ABX	141,600	1.00		141,600	
Total Basic			\$236,000	\$158,400	\$77,600
2003AA	192,000	\$1.25	\$240,000		
2003AB	16,800	1.00		\$ 16,800	
2003ABX	141,600	1.00		141,600	
Total Option 1			\$240,000	\$158,400	\$81,600
3003AA	192,000	\$1.25	\$240,000		
3003AB	16,800	.50		\$ 8,400	
3003ABX	141,600	.50		70,800	
Total Option 2			\$240,000	\$ 79,200	\$160,800
Total			\$716,000	\$396,000	\$320,000 *

* The estimated amount of overpricing. The actual amount depends on actual meals served during contract performance.

MOORE'S CAFETERIA SERVICES, INC.,
PRICE IMPACT OF MODIFICATION P00004
TO CONTRACT N00244-83-C-2780

<u>Level</u>	<u>Monthly Meals</u>	<u>Estimated Months</u>	<u>Monthly Price</u>	<u>Total Price</u>
<u>Initial Contract 1/</u>				
Basic:				
I	10,000-16,000	3	\$19,840.80	\$ 59,522
II	16,001-24,000	5	28,344.00	141,720
III	24,001-34,000	1	42,516.00	<u>42,516</u>
Subtotal				<u>\$243,758</u>
Option 1:				
I	10,000-16,000	5	\$19,840.80	\$ 99,204
II	16,000-24,000	6	28,344.00	170,064
III	24,001-34,000	1	42,516.00	<u>42,516</u>
Subtotal				<u>\$311,784</u>
Option 2: Same as Option 1				<u>\$311,784</u>
Total Price - Basic and two options				<u>\$867,326 A</u>
<u>Contract Price after Modification P00004 2/</u>				
Basic:				
I	0- 8,000	2	\$19,840.80	\$ 39,682
II	8,000-15,000	5	23,600.00	118,000
III	15,001-20,000	2	28,344.00	<u>56,688</u>
Subtotal				<u>\$214,370</u>
Option 1:				
I	0- 8,000	4	\$19,840.80	\$ 79,363
II	8,001-15,000	6	23,600.00	141,600
III	15,001-20,000	2	28,344.00	<u>56,688</u>
Subtotal				<u>\$277,651</u>
Option 2: Same as Option 1.				<u>\$277,651</u>
Total Price - Basic and two options				<u>\$769,672 B</u>
Total amount of modification, funding reduction (B - A) 3/				<u>\$ (97,654)</u>

MOORE'S CAFETERIA SERVICES, INC.,
PRICE IMPACT OF MODIFICATION P00004
TO CONTRACT N00244-83-C-2780 (Continued)

<u>Level</u>	<u>Monthly Meals</u>	<u>Estimated Months</u>	<u>Monthly Price</u>	<u>Total Price</u>
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Contract Price Using Actual Performance Levels and Audit Method
for P00004 4/

Basic:

	0-9,999	3	\$19,840.80	\$ 59,522
I	10,000-16,000	6	19,840.80	119,045
II	16,001-24,000	0	28,344.00	0
III	24,001-34,000	0	42,516.00	<u>0</u>
Subtotal				<u>\$178,567</u>

Option 1:

	0-9,999	5	\$19,840.80	\$ 99,204
I	10,000-16,000	6	19,840.80	119,045
II	16,001-24,000	1	28,344.00	28,344
III	24,001-34,000	0	42,516.00	<u>0</u>
Subtotal				<u>\$246,593</u>

Option 2:

	0-9,999	7	\$19,840.80	\$138,886
I	10,000-16,000	4	19,840.80	79,363
II	16,001-24,000	1	28,344.00	28,344
III	24,001-34,000	0	42,516.00	<u>0</u>
Subtotal				<u>\$246,593</u>

Total Price - Basic and two options	<u>\$671,753 C</u>
-------------------------------------	--------------------

See footnotes on pages 3 and 4 of this appendix.

**MOORE'S CAFETERIA SERVICES, INC.,
PRICE IMPACT OF MODIFICATION P00004
TO CONTRACT N00244-83-C-2780 (Continued)**

Contract Price Established and Paid by P00004 Using Actual
Performance Levels 5/

<u>Level</u>	<u>Monthly Meals</u>	<u>Estimated Months</u>	<u>Monthly Price</u>	<u>Total Price</u>
I	0-8,000	0	\$19,840.80	\$ 0
II	8,001-15,000	8	23,600.00	188,800
III	15,001-20,000	1	28,344.00	<u>28,344</u>
Subtotal				<u>\$217,144</u>

Option 1:

I	0-8,000	1	\$19,840.80	\$ 19,841
II	8,001-15,000	10	23,600.00	236,000
III	15,001-20,000	1	28,344.00	<u>28,344</u>
Subtotal				<u>\$284,185</u>

Option 2:

I	0-8,000	4	\$19,840.80	\$ 79,363
II	8,001-15,000	6	23,600.00	141,600
III	15,001-20,000	2	28,344.00	<u>56,688</u>
Subtotal				<u>\$277,651</u>

Total Price - Basic and two options \$778,980 D

Overpriced - Related to changing price
levels (D - C) 6/ \$107,227

1/ The contract was awarded for 9 months with two 1-year options. The contract was issued with firm-fixed monthly prices for monthly meals served from 10,000 to 34,000. Estimated months by monthly meal level were included for funding purposes.

2/ Modification P00004, signed by the contracting officer on September 6, 1983, priced the revised monthly meal levels established by modification P00002, effective January 1, 1983.

3/ This represents an estimated reduction in funding only, as the higher fixed monthly prices really apply to the actual months in which more than 10,000 meals are served as shown on page 2.

**MOORE'S CAFETERIA SERVICES, INC.,
PRICE IMPACT OF MODIFICATION P00004
TO CONTRACT N00244-83-C-2780 (Continued)**

4/ We calculated what the total contract price would have been if the contracting officer had complied with the contract change clause, DAR 7-1902.3, using actual performance levels and allowing the contractor to receive \$19,840.80 for months in which less than 10,000 meals were served. This is the amount the contractor bid for 10,000 to 16,000 meals per month.

5/ These data show the actual price that would be paid under modification P00004 prices using actual meals served. The data are comparable to the data shown under Note 3.

6/ The contracting officer's revision of prices resulted in an increase of \$107,227.20 in contract price for which the Government received no consideration. We used \$19,840.80 for meals under 10,000, the same price bid by the contractor for meals served from 10,000 to 16,000.

MOORE'S CAFETERIA SERVICES, INC., CHRONOLOGY OF SIGNIFICANT
EVENTS, CONTRACT DAHC77-86-C-0126, MODIFICATION P00023

Original Contract DAHC77-86-C-0126 awarded	September 26, 1986
P00001 increased estimated meals 14,000 to 30,000	October 22, 1986
Union agreement executed	February 20, 1987
FY 1988 Option Exercised	August 20, 1987
P00017 signed (DoL Wage Determination)	September 17, 1987
Technical Evaluation	September 28, 1987
Original proposal submitted by Moore's Cafeteria Services, Inc.	October 12, 1987
Revised Technical Evaluation	January 11, 1988
Price negotiations completed	January 12, 1988
Contractor's certificate of current cost or pricing data, as of	January 12, 1988
P00023 signed (definitized P00017)	February 2, 1988

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MOORE'S CAFETERIA SERVICES, INC.,
COMPUTATION OF DEFECTIVELY PRICED HOURS
CONTRACT DAHC77-86-C-0126, MODIFICATION P00023

Recorded Direct Labor Hours* by 1987 Pay Period

<u>Labor Category</u>	<u>Jan. 15</u>	<u>Jan. 31</u>	<u>Feb. 15</u>	<u>Feb. 28</u>
First Cook	383.25	302.75	323.25	282.00
Second Cook	470.25	442.00	445.25	466.75
Baker	.00	.00	.00	.00
Storekeeper Ration Clerk	.00	.00	.00	.00
Mess Attendant	<u>1,444.50</u>	<u>1,294.75</u>	<u>1,250.00</u>	<u>1,431.25</u>
Total	<u>2,298.00</u>	<u>2,039.50</u>	<u>2,018.50</u>	<u>2,180.00</u>

<u>Labor Category</u>	<u>Mar. 15</u>	<u>Mar. 31</u>	<u>Apr. 15</u>	<u>Apr. 30</u>
First Cook	249.50	285.25	162.75	205.00
Second Cook	420.50	418.50	363.00	404.00
Baker	.00	.00	.00	111.75
Storekeeper Ration Clerk	.00	.00	.00	.00
Mess Attendant	<u>1,378.75</u>	<u>1,476.25</u>	<u>1,163.75</u>	<u>1,429.75</u>
Total	<u>2,048.75</u>	<u>2,180.00</u>	<u>1,689.50</u>	<u>2,150.50</u>

<u>Labor Category</u>	<u>May 15</u>	<u>May 31</u>	<u>June 15</u>	<u>June 30</u>
First Cook	206.25	94.00	149.50	172.50
Second Cook	413.00	362.00	399.00	211.25
Baker	63.00	7.75	.00	.00
Storekeeper Ration Clerk	71.25	130.25	132.00	145.50
Mess Attendant	<u>1,723.00</u>	<u>1,419.50</u>	<u>1,222.50</u>	<u>1,247.50</u>
Total	<u>2,476.50</u>	<u>2,013.50</u>	<u>1,903.00</u>	<u>1,776.75</u>

* Hours were summarized from the contractor's payroll registers.

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MOORE'S CAFETERIA SERVICES, INC.,
COMPUTATION OF DEFECTIVELY PRICED HOURS
CONTRACT DAHC77-86-C-0126, MODIFICATION P00023 (Continued)

Recorded Direct Labor Hours* by 1987 Pay Period

<u>Labor Category</u>	<u>July 15</u>	<u>July 31</u>	<u>Aug. 15</u>	<u>Aug. 31</u>
First Cook	174.25	303.00	221.75	179.50
Second Cook	252.25	355.00	346.50	337.75
Baker	.00	.00	.00	37.50
Storekeeper Ration Clerk	145.00	235.75	163.00	177.75
Mess Attendant	<u>1,256.25</u>	<u>1,424.50</u>	<u>1,183.25</u>	<u>1,242.50</u>
Total	<u>1,827.75</u>	<u>2,318.25</u>	<u>1,914.50</u>	<u>1,975.00</u>

<u>Labor Category</u>	<u>Sept. 15</u>	<u>Sept. 30</u>	<u>Oct. 15</u>	<u>Oct. 31</u>
First Cook	175.25	80.75	108.50	128.50
Second Cook	297.75	371.50	309.50	331.00
Baker	79.75	72.00	83.50	70.00
Storekeeper Ration Clerk	136.50	75.50	80.25	77.25
Mess Attendant	<u>1,124.50</u>	<u>1,133.25</u>	<u>1,163.00</u>	<u>1,148.00</u>
Total	<u>1,813.75</u>	<u>1,733.00</u>	<u>1,744.75</u>	<u>1,754.75</u>

<u>Labor Category</u>	<u>Nov. 15</u>	<u>Nov. 30</u>	<u>Dec. 15</u>	<u>Dec. 31</u>
First Cook	152.00	148.00	137.00	90.25
Second Cook	304.00	336.00	333.25	280.50
Baker	79.75	88.75	85.50	85.25
Storekeeper Ration Clerk	69.00	67.25	65.25	70.25
Mess Attendant	<u>1,153.50</u>	<u>1,202.75</u>	<u>1,091.00</u>	<u>1,128.00</u>
Total	<u>1,758.25</u>	<u>1,842.75</u>	<u>1,712.00</u>	<u>1,654.25</u>

<u>Labor Category Summary</u>	<u>Total Direct Labor Hours</u>	<u>Rounded Total</u>
First Cook	4,714.75	4,715
Second Cook	8,670.50	8,671
Baker	864.50	865
Storekeeper Ration Clerk	1,841.75	1,842
Mess Attendant	<u>30,732.00</u>	<u>30,732</u>
Total 1987	<u>46,823.50</u>	<u>46,825</u>

* Hours were summarized from the contractor's payroll registers.

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DEPARTMENT OF THE AIR FORCE
WASHINGTON DC 20330-1000

OFFICE OF THE ASSISTANT SECRETARY

JUN. 28 1989

Final Report
Page Number

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

SUBJECT: Draft Report on the Audit of Moore's Cafeteria Services,
Inc., Food Service Contracts, May 3, 1989 (Project
7CA-045.01) - INFORMATION MEMORANDUM

This is in reply to your memorandum for Comptroller of the
Air Force requesting comments on the findings and recommendations
made in subject report.

3 We concur with finding A that the Air Force contracts audited
contained inaccurate schedules of government furnished equipment
which resulted in claims against the government. We do not
concur, however, that the contracting officer is totally
responsible for the accuracy of the schedules. AFR 400-28, Vol I
(Base Level Service Contracts), paragraph 1-6a(1) places the
responsibility for work statement preparation on the functional
area being contracted - in this case, the Base Food Services Of-
ficer. Since the equipment schedules are a part of the work
statement, the Food Service officer is responsible for their ac-
curacy.

3 Additionally, we do not agree that the inclusion of a
solicitation provision alerting offerors that the equipment
schedules are not all inclusive and that offerors must determine
actual equipment during site visits would have necessarily
resulted in the avoidance of claims. Each of the contracts
audited contained the site visit provision of the Federal Acquisi-
tion Regulation (FAR 52-237.1) which states that all offerors are
urged and expected to inspect the performance site for reasonably
obtainable general and local conditions which may affect the cost
of performance. The provision further states that "In no event
shall failure to inspect the site constitute grounds for a claim
after contract award." In the case of the audited contracts, the
existence of the equipment in the dining facilities was informa-
tion which was reasonably obtainable. This being the case, it
would appear that any claims for equipment not listed, but obvi-
ously existing in the facilities should be denied, but that must
be tempered with the fact that government contract law holds that
defects in work statements are held against the writer of the work
statement. Therefore, inclusion of the site visit provision at

FAR 52-237.1, and other disclaimers such as the one used at Fort Shafter, Hawaii, might mitigate claims, but there is no guarantee that such claims would be eliminated nor that if claims were received and disputed under the Armed Services Board of Contract Appeals procedures that the government would win such disputes.

3 With regard to the recommendations for corrective action, we concur with paragraph 1 if it is changed to include the base food service officer as the individual with primary responsibility for the accuracy of work statements. We do not concur with paragraph 2 of the recommendations as the existing site visit clause in FAR 52-237.1 already provides whatever limited protection from claims such a provision gives and inclusion of a clause similar to that used at Fort Shafter would be redundant.

There is no action necessary to implement the recommendations. AFR 400-28, Vol I already contains requirements and procedures for preparation of accurate work statements. These requirements are emphasized to commanders at the commanders course at Gunter AFB, AL. The mandatory site visit provision at FAR 52-237.1 contains substantially the same requirements as the recommended provision.

We have no comment regarding the estimated savings as none were applicable to the Air Force.

We appreciate the opportunity to comment on this draft report.



DANIEL S. RANK
Deputy Assistant Secretary
(Acquisition Management & Policy)



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
U.S. ARMY CONTRACTING SUPPORT AGENCY
WASHINGTON, DC 20310-0103



REPLY TO
ATTENTION OF

SFRD-KI

20 JUL 1989

MEMORANDUM FOR THE INSPECTOR GENERAL, DEPARTMENT OF
DEFENSE, AUDITING

Final Report
Page Number

SUBJECT: DODIG Draft Report on the Audit of Moore's
Cafeteria Services, Incorporated, Food Services
Contracts (7CA-045.01)

1. Reference is made to your memorandum, subject as above,
5 May 1989.

2. Subject Draft Report has been reviewed and the Army
position concerning the recommendations contained therein
are as follows:

9 a. Concur with Finding "B". The modification
contravened the contract ceiling price provisions of the
basic contract. The Government did not receive consider-
ation for the increased contract price. Action will be
taken to negotiate recoupment of all monies due the
Government by 30 July 1989.

15 b. Concur with Command's nonconcurrence with Finding
"C". The contract modification increased the price of the
contract without the Government receiving any consideration
in return. Modification P00034 in response to modification
P00028 does provide consideration, of unspecified value, to
the Government by requiring simultaneous operation of the
short order/breakfast and regular cafeteria lines.


27 c. Concur with Finding "F". Moore's violated the Truth
in Negotiation Act by not informing the Government its
proposed and certified labor hours included hours not
subject to increase under the Department of Labor wage
determination, and that proposed and negotiated labor hours
were not representative of the full year, subject to
adjustment. The Contracting Officer requested Defense
Contract Audit Agency (DCAA) audit on 14 June 1989 to
determine the extent of defective pricing for FY 88. The
final benefit value to the Government will be determined
within 60 days of the DCAA audit.

SFRD-KI

SUBJECT: DODIG Draft Report on the Audit of Moore's
Cafeteria Services, Incorporated, Food Services
Contracts (7CA-045.01)

3. POC is (b) (6).

Encl


HARRY G. KAREGEANNES
Major General, GS
Director, U.S. Army Contracting
Support Agency

CF:
SAIG-PA



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(SHIPBUILDING AND LOGISTICS)
WASHINGTON, DC 20360-8000

JUL 19 1989

MEMORANDUM FOR THE DEPARTMENT OF DEFENSE ASSISTANT INSPECTOR
Final Report
Page Number
GENERAL FOR AUDITING

Subj: DRAFT REPORT ON THE AUDIT OF MOORE'S CAFETERIA SERVICES,
INC., FOOD SERVICES CONTRACTS (PROJECT NO. 7CA-045.01)

Encl: (1) Navy Comments

In response to your memorandum of May 3, 1989 we are
forwarding our comments in Enclosure (1).

6 Camp Lejeune Marine Corps Base, North Carolina has
implemented your recommendations. Also, the Naval Regional
Contracting Center, San Diego, California has initiated action to
obtain a price reduction from Moore's Cafeteria Services, Inc.
for the full amount you recommended, \$189,218.

Frank Swofford

FRANK W. SWOFFORD
PRINCIPAL DEPUTY (ACTING)
DEPUTY SECRETARY OF THE NAVY
(SHIPBUILDING AND LOGISTICS)

Copy to:
NAVCOMPT (NCB-53)
NAVINSGEN
COMNAVSUPSYSCOM
CMC

**NAVY COMMENTS
ON
AIG(A) DRAFT REPORT ON THE AUDIT OF MOORE'S CAFETERIA
SERVICES, INC., FOOD SERVICES CONTRACTS
(PROJECT NO. 7CA-046.01)**

I. Audit Section A. Inaccurate Schedules of Government-Furnished Equipments

Summary of Findings

3 Moore's Cafeteria Services, Inc., (Moore's) submitted claims for additional costs to clean cafeteria equipment on five DOD contracts. Moore's claimed that its bids did not include estimates of the cost to clean equipment items omitted from schedules of Government-Furnished Equipment in the Invitations for Bids (IFB). Moore's claims could have been avoided if the responsible contracting officers had verified the accuracy of the equipment schedules before the IFBs were issued and if contracting officers had included appropriate provisions in the IFBs and contracts to require contractors to identify equipment cleaning needs during pre award walk-throughs.

Navy Comment

Concur.

Recommendations

6 We recommend that the commanders at.... Camp Lejeune Marine Corps Base, North Carolina:

1. Establish procedures to ensure that procurement contracting officers comply with the Federal Acquisition Regulation's requirements for accurate work statements in Invitations for Bids on food service contracts.

Navy Comment

3 Concur. Procedures currently exist in the acquisition planning area where by the contracting officer reviews the statement of work with the requiring activity to ensure that it accurately and completely reflects the Marine Corps needs. The incident at Camp Lejeune can be regarded as an isolated case rather than the normal course of doing business.

6 2. Require contracting officers to include a provision in Invitations for Bids and contracts for food services to make contractors responsible for identifying equipment cleaning requirements during pre-bid walk throughs. The provision should be similar to the provisions used at Fort Shafter.

Navy Comment

Concur. The text of the suggested clause has been distributed to all field contracting activities.

II. Audit Section D. Over Pricing Advertised Firm-Fixed-Price Contract N00244-83-C-2780

Summary of Findings

19 The contracting officer at Naval Supply Center, San Diego (NSC) increased the line item prices of contract N00244-83-C-2780 without the government receiving consideration for the price increase. This occurred because the contracting officer did not properly apply Defense Acquisition Regulation 7-1902.2, Changes. As a result, the contract was overpriced by \$107,227.

Navy Comment

21 Non concur. The Government received consideration when NSC issued a bilateral modification to change the incremental pricing and the number of meals served.

After the start of contract performance the Contracting Officer's Technical Representative (COTR) at Naval Auxiliary Landing Field, San Clemente Island, California, and the contractor, advised the contracting officer that the Navy was not ordering the minimum amount of meals required by the contract. (The contract had no provision for ordering fewer than 10,000 meals each month.) The contractor was performing and requested an equitable adjustment in the contract price.

The modification reduced the number of meals to be served, increased the price of meals at each increment, and decreased the total estimated contract price. Both sides received consideration: the government received the right to order fewer meals in accordance with its revised estimates, and the contractor agreed to provide fewer meals, but at a higher price per increment.

As the contract was performed the contractor received more than the estimated price because the specific increments of meals the Government ordered were higher priced after the modification. Had the Government continued to order fewer than 8,000 meals there would have been no increase in price because of the modification.

Recommendation

20 We recommend that the Commanding Officer, Naval Supply Center, San Diego, California, require the cognizant procurement contracting officer to initiate action to obtain a price reduction of \$107,227 from Moore's Cafeteria Services, Inc.

Navy Comment

21 Concur. The government received consideration for the price increase. Nonetheless, we are pursuing a voluntary refund. On 6 July 1989 Naval Regional Contracting Center, San Diego (NRCC), which now has cognizance over the contract, sent a letter to the contractor requesting a refund of \$107,227.

III. Audit Section E. Price Reduction for Deletion of Work Scope From Contract N00244-83-C-2780

Summary of Findings

23 The DOD IG found that NSC deleted Mess Attendant Services at the Vista dining facility from the contract, and did not negotiate a reduction in contract price since the contractor alleged that his original bid price did not include any amount for operation of the Vista facility. The contractor stated that the facility had not been in use for three years and he did not anticipate its use during the contract period, so he did not include the cost of operation of that facility in the bid price.

Navy Comment

24 Concur. The file contains little detail regarding this issue, but there is a memorandum of minutes from the pre-bid conference stating: (b) (6) (the COTR) briefly discussed actual requirements and the various service sites required to be manned by the contractor." The contractor made no mention of the fact that he was not bidding on providing services at the Vista facility and, if he had, this would have been an exception which would have rendered his bid nonresponsive.

We agree there should have been consideration for this modification.

Recommendation

24 We recommend that the Commanding Officer, Naval Supply Center, San Diego, California, request the cognizant procurement contracting officer to initiate action to obtain a price reduction of \$69,949 from Moore's Cafeteria Services, Inc., for the reduction in work scope on contract N00244-83-C-2780.

Navy Comment

24 Concur. On 6 July 1989, NRCC San Diego sent a letter requesting a voluntary refund of \$69,949.

IV. Audit Section G. Duplicate Pricing of Contract
N00244-83-C-2780

Summary of Findings

- 31 The DOD IG found that the contractor received duplicate payments from NSC for operation of the Underwater Demolition Training dining facility during fiscal year 1984.

Navy Comment

- 32 Concur. Attachment A, Subsection III to the contract clearly states that the estimated number of classes to be held at the Underwater Demolition Training dining facility would be eight per year. The contractor submitted a claim for four classes during fiscal year 1984 and the contract was modified to add a line item for those four classes even though they were already in the Statement of Work.

Recommendation

- 32 We recommend that the Commanding Officer, Naval Supply Center, San Diego, California, request the cognizant procurement contracting officer to initiate action to reduce the contract price by \$5,574.27 and to obtain a refund of the amount paid to Moore's Cafeteria Services, Inc.

Navy Comment

- 32 Concur. On 6 July 1989, NRCC San Diego sent a demand letter for \$5,574.27.

V. Audit Section H. Duplicate Payment on Contract
N00244-83-C-2780

Summary of Findings

- 33 The DOD IG found that the Navy had paid the contractor twice for the same work. The implication in the finding is that the contractor had billed the government for an amount exceeding the contract price, based on meal levels served, and that after NSC had modified the contract to increase the funding level to the amount billed, the contractor again billed for the amount in the funding modification. The DOD IG found that both bills were paid.

Recommendation

- 34 We recommend that the Commanding Officer, Naval Supply Center, San Diego, California, require the cognizant procurement contracting officer to initiate action to obtain a refund of \$6,468.26 (\$6,533.60 less one percent discount) from Moore's Cafeteria Services, Inc.

Navy Comment

34 Concur. On 6 July 1989, NRCC San Diego sent a demand letter requesting the refund of \$6,468.26 for the duplicate payment.

**REPORT OF POTENTIAL MONETARY AND OTHER
BENEFITS RESULTING FROM AUDIT**

<u>Recommendation Reference</u>	<u>Description of Benefit</u>	<u>Fiscal Year</u>	<u>Amount and/or Type of Benefit</u>
A.	Internal Control. Avoid payment of unsupported contractor claims.		Nonmonetary
U.S. Army Support Command, Fort Shafter, Hawaii Finance and Accounting Office, Fort Shafter, Hawaii			
B.	Economy and efficiency. Refund as a result of Government not receiving consideration	1987 1988 1989	\$ 77,600 81,600 <u>160,800</u> \$320,000
C.	Economy and efficiency. Refund as a result of Government not receiving consideration.	1988	156,205
F.	Economy and efficiency. Refund as a result of Government not receiving consideration.	1988	<u>36,119</u>
	Subtotal of one-time collections		<u>\$512,324</u>
Naval Supply Center, San Diego Fleet Accounting and Disbursing Center, U.S. Pacific Fleet, San Diego, California			
D.	Economy and efficiency. Refund as a result of Government not receiving consideration.	1983 1984 1985	\$ 38,577 37,592 <u>31,058</u> \$107,227
E.	Economy and efficiency. Refund for deleted workscope.	1983 1984 1985	\$ 19,077 25,436 <u>25,436</u> \$ 69,949
G.	Economy and efficiency. Refund for duplicate pricing.	1985	<u>\$ 5,574</u>
H.	Economy and efficiency. Refund for duplicate pricing.	1985	<u>\$ 6,468</u>
	Subtotal of one-time collections		<u>\$189,218</u>
	Total one-time collection benefit		<u>\$701,542</u>

**REPORT OF POTENTIAL MONETARY AND OTHER
BENEFITS RESULTING FROM AUDIT (Continued)**

<u>Recommendation Reference</u>	<u>Fiscal Description of Benefit</u>	<u>Year</u>	<u>Amount and/or Type of Benefit</u>
<u>Summary</u>		1983	\$ 57,654
		1984	63,028
		1985	68,536
		1987	77,600
		1988	273,924
		1989	<u>160,800</u>
	Total (Functional Area, Procurement-Other)		<u>\$701,542</u>

ACTIVITIES VISITED OR CONTACTED

Office of the Secretary of Defense

Assistant Secretary of Defense (Production and Logistics)

Department of the Army

Office of the Chief Trial Attorney, U.S. Army, Falls Church, VA
Directorate of Contracting, U.S. Army Support Command, Hawaii,
Fort Shafter, HI

Department of the Navy

Naval Supply Center, San Diego, CA
Contracting Division, Camp Lejeune, NC

Department of the Air Force

Air Force Contract Law Center, Wright-Patterson Air Force
Base, OH
Base Contracting Center, Mather Air Force Base, CA
Base Contracting Center, Little Rock Air Force Base, AR
Base Contracting Center, Edwards Air Force Base, CA
Base Contracting Center, Travis Air Force Base, CA

Other Defense Activities

Defense Contract Audit Agency, San Antonio Suboffice, TX

Moore's Cafeteria Services, Inc.

Headquarters, San Antonio, TX
Accounting Office, San Diego, CA
Operating Locations: Schofield Barracks, HI
Camp Lejeune, NC
March Air Force Base, CA

AUDIT TEAM MEMBERS

(b) (6)



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Congressional Committees:

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Senate Ranking Minority Member, Committee on Armed Services
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