

DECISION

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

MORRIS

27206

FILE: B-212743**DATE:** January 16, 1984**MATTER OF:** Kleen-Rite Corporation**DIGEST:**

1. Protester alleging that IFB cook-to-order requirements were ambiguous is actually complaining about reasonableness of requirements. Protester has failed to demonstrate clearly that contracting agency's requirements have no reasonable basis.
2. Where protester challenges quality assurance provisions that monetarily penalize contractor by alleging disparity in treatment between contractor-operated facility and military-operated facility and Army advances rational basis for distinction and penalties are based on importance of requirement violated, there is no basis for our Office to question these provisions.

Kleen-Rite Corporation (KRC) protests the specifications in invitation for bids (IFB) No. DABT23-83-B-0056, issued by the Procurement Division, Fort Knox, Kentucky, for dining facility attendants and full food services for 48 dining facilities.

We deny the protest.

KRC initially protested several IFB work requirements as unclear. The contracting agency, by amendment No. 0003, deleted the protested portions of the IFB and, as a consequence, these grounds of protest have become moot. Office Products International, Inc., B-209610, April 5, 1983, 83-1 CPD 363.

Next, KRC protests that paragraphs 5.1.18.4 and 5.1.18.11 were ambiguous and in need of clarification. KRC states the former paragraph changed the accepted practice from precooking breakfast items to cooking these items to order without modifying the various required timeframes, increasing the number of grills, or adding more serving

027599

lines. KRC questions how the successful contractor can cook to order numerous breakfast variations within the required timeframes, if the government does not provide additional equipment. As to the latter paragraph, KRC maintains that roast beef cannot be cooked to order because, as it sits in the warmers, it cooks to well done, thereby eliminating the choice of rare and medium.

Amendment No. 0003 changed the requirement in paragraph 5.1.18.4 from cooking breakfast items to order to cooking eggs and egg omelets to order. Pancakes, french toast and toast are required to be prepared not earlier than 3 minutes prior to serving to the individual. As noted in the agency report, the requirement in paragraph 5.1.18.11 states that "a choice of rare, medium, or well-done portions when the menu specifies roast beef or grilled steaks," instead of requiring that roast beef be cooked to order. Hamburgers and cheeseburgers are required to be prepared not earlier than 5 minutes prior to serving.

While KRC contends these provisions are ambiguous, it is clear from the protest that KRC understands the clauses and is actually complaining about the reasonableness of the specifications.

We have recognized that government procurement officials who are familiar with the conditions under which services have been used in the past and how they are to be used in the future are generally in the best position to know the government's actual minimum needs and, therefore, are best able to draft appropriate specifications. Inter-science Systems, Inc., B-205458, March 9, 1982, 82-1 CPD 220. Consequently, we will not question an agency's determination of what its actual minimum needs are unless there is a clear showing that the determination has no reasonable basis.

To support the reasonableness of the specifications, the contracting agency points to the regulations governing military-staffed dining facilities, FM-10-25, "Preparation and Serving of Food in the Garrison Dining Facility." The contracting agency reports that it is standard practice that eggs are cooked-to-order, that toast, pancakes, french toast, hamburgers and cheeseburgers are precooked a very limited amount of time before serving and that when roast beef is served, there be a choice between rare, medium, and well done. The contracting agency notes that the requirements are not in excess of the regulations which were established in order for the patrons to receive palatable meals.

Also the precooking practice has been an inspection deficiency in past contract inspections. In addition, the contracting officer reports that while it is not the government's duty to plan the contractor's job for him, technical representatives assure the procurement office that these requirements can be met within established serving times with the space and facilities provided although it may require more employees than currently staffed by the present contractor.

We conclude that KRC has failed to clearly demonstrate that the cooking requirements have no reasonable basis.

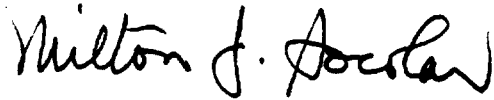
Finally, KRC protests that the IFB's "Quality Assurance Plan, Acceptance Quality Level, Frequency of Surveillance, Performance Criteria, Surveillance Procedure and Deduction Schedule" are arbitrary and capricious. KRC reaches this conclusion because the Army performs more stringent inspections of contractor-operated dining facilities than Army-operated dining facilities and monetarily penalizes the contractors for failing the inspection. In KRC's opinion, the quality assurance requirements can be no greater than those which the Army enforces upon itself.

The establishment of qualification and testing procedures to insure that services will meet the government's need is a matter of specification preparation primarily the responsibility of the contracting agency. We will question such provisions only if the provisions are shown to unduly restrict competition or otherwise violate procurement statutes or regulations. Environmental Aseptic Services Administration and Larson Building Care, Inc., B-207771, February 28, 1983, 83-1 CPD 194. Furthermore, we will object to liquidated damage provisions as imposing a penalty if the protester shows that there is no possible relation between the amounts stipulated for liquidated damages and the losses which are contemplated by parties. Id.

The Army responds that a rational basis exists for the difference in the inspection systems because the contractor enters the contract to make a profit, while the military facility is only operated to provide necessary food services. Concerning the monetary penalties the Army advises that the inspection plan is based on random sampling of services and allows varying amounts of deviation from the contract requirements, depending on the importance of the requirement in question; the plan requires reperformance if feasible and, if the permitted deviation is exceeded, a deduction in the contract price is made based on the importance of the requirement not met and the damage suffered by

the government. Therefore, since the provisions permit deductions based on the importance of the requirement, we find they have a rational basis and our Office will not question the quality assurance provision.

Accordingly, the protest is denied.

A handwritten signature in black ink, reading "Milton J. Acosta". The signature is written in a cursive style with a large, prominent initial "M".

Acting Comptroller General
of the United States