

**EXAMINATION OF THE
KENTUCKY DEPARTMENT OF CORRECTIONS'
FOOD SERVICES CONTRACT WITH
ARAMARK CORRECTIONAL SERVICES, LLC**



**CRIT LUALLEN
AUDITOR OF PUBLIC ACCOUNTS
www.auditor.ky.gov**

**209 ST CLAIR STREET
FRANKFORT, KY 40601-1817
TELEPHONE (502) 564-5481
FACSIMILE (502) 564-2912**

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October 7, 2010

Honorable Greg Stumbo, Speaker of the House
Honorable David Williams, President of the Senate
Members of the House Judiciary Committee
J. Michael Brown, Secretary, Justice and Public Safety Cabinet
LaDonna Thompson, Commissioner, Department of Corrections

RE: Department of Corrections - ARAMARK Food Services Contract

The Auditor of Public Accounts (APA) has completed its examination of the Department of Corrections - ARAMARK Food Services Contract.

Examination procedures included reviewing the contract between the Department of Corrections and ARAMARK; assessing compliance with the requirements of the contract; analyzing detailed financial information, including contractor costs when possible; and conducting interviews of Department of Corrections employees, ARAMARK employees, inmates housed in state adult institutions, as well as other parties with expertise or professional knowledge of food service matters relevant to the contract.

Findings in this report include:

- ARAMARK declined the auditors' requests for certain cost records requested for its examination;
- The examination identified more than \$36,000 in overpayments made by DOC to ARAMARK due to billing errors and noncompliances with contract provisions, which may exceed \$130,000 when projected;
- Auditors were unable to verify that ARAMARK consistently followed approved recipes, used the proper quantity of ingredients, and met food safety standards regarding food temperatures or use of leftovers due to poor documentation;
- ARAMARK received almost \$148,000 in inmate-grown food for nearly no cost, which is not compliant with contract provisions; and
- DOC does not appear to have a comprehensive contract monitoring process in place.



Detailed findings and recommendations based on our examination are presented in this report to assist the Kentucky General Assembly and the Department of Corrections in improving procedures and internal controls.

Very truly yours,

A handwritten signature in black ink, appearing to read "Crit Luallen". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Crit Luallen
Auditor of Public Accounts

BACKGROUND

The Kentucky Department of Corrections (DOC) entered into a contract with ARAMARK Correctional Services, LLC (ARAMARK) to provide food services for all state operated adult prison institutions on November 10, 2004 with food service operations transferring to ARAMARK on January 5, 2005. Prior to entering into the food services contract with ARAMARK, DOC operated food service at each institution.

DOC management indicated food service operations under the department's direction were inefficient and costly due to poor procedures related to portion control and leftovers, lack of expertise in food service operations, and lack of ability to negotiate volume discounts on food products to the same extent as large food service vendors. Food service operations were privatized as a cost savings measure, but DOC indicated it also provided stability by standardizing operations at each institution. At that time, DOC estimated its daily food service cost to be approximately \$3.28 per inmate.

The contract with ARAMARK is based on providing three meals - breakfast, lunch and dinner - with an average caloric intake of 2,800 calories per day. ARAMARK was awarded the contract in FY 2005 with an initial daily rate of \$2.34 per inmate per day based on the daily morning inmate census at each institution. Due to contract price adjustments during the contract period, the contractual rate has increased to \$2.63 per inmate per day in FY 2010. The contract does not stipulate a price-per-meal rate, so the daily rate based on the inmate census is paid regardless of whether the inmate actually participates in meal services.

The public interest in prison food services escalated due to reports and testimony presented to the House Judiciary Committee related to the August 2009 riot at Northpoint Training Center. Those reports and testimony suggested problems related to poor sanitation and pest control in the institutions' kitchens, dining halls and/or food storage areas, poor food quality, inadequate food quantity, and reports of large scale food-related illness outbreaks. As a result of those allegations, in February 2010, the Auditor of Public Accounts (APA) received a legislative request to audit the ARAMARK food services contract. The APA also received information from Representative Brent Yonts related to similar allegations he noted from numerous sources.

The APA conducted the examination to review the contract for compliance and address the validity of the allegations to the extent possible. The auditors reviewed the contract to determine

whether the contractual language was sufficient to protect the Commonwealth's interest through appropriate monitoring and oversight provisions, including provisions that prohibit potential conflicts of interest. Also, auditors identified the various contractual requirements for food service operations, and then gathered information to assess whether both ARAMARK and DOC complied with the terms of the contract.

The procedures included on-site visits and observations, the collection and review of an extensive amount of documentation regarding payments, monitoring reports, food services production reports, grievances, external reports and inspections. Dozens of individuals were interviewed, including inmates, correction officers, DOC central office management, Wardens, Deputy Wardens, fiscal officers, and ARAMARK management, including institution food service managers. Auditors obtained additional feedback and information from other state governments, health department inspectors, and other state agencies.

Furthermore, the auditors performed additional limited procedures related to prison canteens to identify the existence of possible conflicts of interest between the canteen operations and food services, and to assess additional allegations raised during the course of the examination related to possible unfair canteen pricing policies. As a result of the canteen procedures, auditors identified concerns related to the administration of canteen profits, which were also addressed.

The report is divided into major topics relevant to the examination. Because it is important to understand the context of many of the findings, citations to the applicable contractual provisions are presented for relevant topics, as well as explanations of practices in place during the examination period as needed. Recommendations are presented at the end of each topical section.

CONTRACT PROVISIONS

Auditors reviewed the ARAMARK contract to determine whether it contained sufficient provisions to permit DOC to properly monitor the vendor's performance, rectify performance concerns, institute penalties, authorize changes to food service operations and menus, and protect the Commonwealth's interest from potential conflicts of interest. The ARAMARK contract contained numerous specifications to dictate the manner in which food service operations were to be conducted, and contained provisions to monitor and oversee the most significant of these specifications. Subsequent sections of this report present details

of specific weaknesses identified in the contract performance and monitoring, which indicated that these provisions were not always carried out. The objective of this section is to identify whether the contract itself contains adequate provisions, and assess whether the terms of the contract are reasonable in comparison with other similar types of contracts.

Certain provisions of the contract were either never implemented or were modified over time in operations without modifying the contract.

In reviewing the contract provisions, auditors identified that some specific operational provisions of the contract were not put into place or were changed over the course of the contract period, but the contract was not modified to reflect actual practice. Because the examination is based largely on compliance with contractual provisions, the failure to make these modifications may lead to contract noncompliances due to the inability to verify whether these changes were properly authorized and agreed to in advance by both parties and in writing, as stipulated in the contract. Section 40.050 of the contract states,

Pursuant to KRS 45A.210(1) and 200 KAR 5:311, no modification or change of any provision in the Contract(s) shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor(s) and the Commonwealth, and incorporated as a written amendment to the Contract(s) and processed through the Office of Material and Procurement Services and approved by the Finance and Administration Cabinet prior to the effective date of such modification or change pursuant to KRS 45A.210(1) and 200 KAR 3:311. Memorandum of understanding, written clarification, and/or correspondence shall not be construed as amendments to the Contract(s).

The failure to follow this section of the contract leads to serious concerns because the discrepancy between operational practices and the contract language also lends itself to confusion and misunderstandings among those impacted by this contract. Other than DOC and ARAMARK management, other individuals may not be aware of verbal agreements in place. The most significant deviations between the contractual language and operational practice are noted throughout the report as noncompliances, including the following examples of provisions that were either not implemented or subsequently modified:

- Section 30.120 - Daily Inmate Meal Count, as described in the “Payment for Services” and “Meal Service Line Delays” sections of this report;
- Section 30.090 - Food Supplies, as described in the “Inmate Grown Food section of this report; and
- Section 30.070 - Other Meals served under the Master Menu, as it relates to Religious/Alternate Entrees, as described in the “Payment for Services” section of this report.

Contract provisions do not reduce the risk for conflicts of interest between the food service operations and other related services.

Auditors also determined that the contract did not contain a provision to discourage or prohibit conflicts of interest that could lead to unsound or unethical business practices. During the course of the examination, many concerns were expressed regarding institutions in which ARAMARK held both the food services contract and the institution's canteen contract. The allegations were that ARAMARK canteens charge higher prices than other canteens, and also that ARAMARK has the ability to intentionally reduce the food quality in the dining halls of these institutions in order to increase canteen sales. Although examination procedures did not identify evidence of these practices, the contract provisions do not reduce the potential for such a conflict to exist.

ARAMARK holds the canteen contract in only two of the thirteen adult institutions in the state, and ARAMARK's canteen prices do not appear to reflect price gouging when compared to non-ARAMARK canteens. Furthermore, although varying meal participation rates among the adult institutions were noted, there did not appear to be a specific pattern indicating meal participation at institutions in which ARAMARK held the canteen contract was significantly less than other institutions.

ARAMARK has one person acting as regional manager for both its food service operations and canteen operations in Kentucky. Regardless of the separation of billing and staffing, if both operations report to the same individual, there is an increased risk that ARAMARK has the ability to use the food services operations to benefit the canteen. Therefore, DOC should consider strengthening its contract by addressing potential conflicts of interest.

In the "Canteens" section of this report, canteen vendor procurement practices are addressed, which may explain price fluctuations among the various canteens, and also may result in other inequities and conflicts at the institutional level.

Information obtained from other states and local governments indicated potential risks, the consideration of which may assist in strengthening the state's oversight.

To assist in the review of Kentucky's food services contract with ARAMARK, the bid files were reviewed to determine whether the ARAMARK contract was awarded fairly and in accordance with state requirements. No findings were identified as a result of this review. Auditors also polled and interviewed key individuals in other states and local governments regarding prison food service operations and reviewed copies of relevant reports or examinations conducted to gain an understanding of the industry and common practices. These procedures provided additional background in determining whether the food services contract contained reasonable provisions compared to other operations in the industry.

Inquiries were made of surrounding states and non-contiguous states with similar food services operations or with information relevant to the examination of Kentucky's food service operations, as well as a sample of local governments in Kentucky with large jail facilities. Not all entities contacted responded to the auditors' inquiries, but the information received was sufficient to provide an expanded perspective on prison food service operations, including information from states with current or former ARAMARK food service contracts, entities utilizing other vendors, and entities with self-operated food services. This information was utilized to help identify potential risks associated with the examination based on reports and experiences in other states and local governments.

The information obtained from other states and local governments indicated a wide range of food service contract specifications, including varying daily caloric requirements among states, and differing contract cost methodologies - such as charge per meal served versus charge per daily inmate census. Taking these differences into consideration, Kentucky's contract requirements did not appear to be out of line in comparison with other states.

As noted above, however, the examination of other states also assisted in assessing potential risks for Kentucky's prison food contract. During the review of those states with current or former ARAMARK contracts, information was also gathered to assess both positive aspects of ARAMARK operations and potential risks based on other states' experience with the company. Positive feedback was received from entities that were very satisfied with the services provided by ARAMARK. However, problems or disputes relating to food services contracts involving ARAMARK were also disclosed. The concerns raised in those examinations or contract disputes related to overbilling practices and menu changes. These risks also mirror concerns voiced during the examination and, therefore, were important to take into consideration to determine whether problems noted in other states could assist in strengthening Kentucky's contract oversight. Although this information assists in identifying areas for consideration, all findings noted within this report are directly related to specific operations in Kentucky.

Margarine and other condiments are used to meet the daily caloric requirements of the contract.

Numerous allegations were received regarding the use of margarine and other condiments to increase the caloric count of the menu inappropriately. The provisions of the contract call for 2,800 calories per day per person, and auditors noted the Master Menu builds in up to 300 calories per day in margarine and other condiments. DOC has approved the Master Menu, and, therefore, acknowledges the inclusion of these items to meet the daily caloric requirements. Also, through inquiry with other states and local governments, auditors determined that although not all governments permitted the use of margarine and condiments as part of the daily caloric requirements, it does appear to be a common practice.

Allegations were received indicating ARAMARK used margarine to meet the minimum daily caloric requirement in instances in which there was no logical use of the margarine in the meal, such as when serving peanut butter and jelly sandwiches and soup. In reviewing the production records and the Master Menu provided for the time period tested, combinations that appear to be out of line with industry practices were not identified, although it is possible that meal substitutions could create this problem, which is addressed in a separate section of this report.

Recommendations - Contract Provisions

Based on our review of the contract provisions, we recommend the following:

- DOC should review all contractual provisions, and modify the contract to reflect actual practice to the extent the practices are agreeable to both parties;
- DOC should consider adding a contractual provision restricting or prohibiting conflicts of interest to the extent feasible, or otherwise implement monitoring procedures to reduce the potential for such conflicts to impact food service operations; and
- In its annual contract renewal procedures, DOC should consider requesting information from ARAMARK regarding the results of internal or external audits or examinations, including those conducted by other clients, as it relates to correctional services. This information should be used as a risk assessment tool in determining what safeguards and assurances ARAMARK may put in place for Kentucky to avoid any weaknesses noted in those reports. These annual contract renewal procedures should be added as a provision of the contract.

COST ANALYSIS

One objective of the examination was to analyze the cost of the contract, not only for performance indicators, but also to help

address certain concerns raised during the examination. As noted above, Kentucky's food services contract with ARAMARK establishes a cost structure to pay a per diem for each inmate in Kentucky's adult institutions based on the daily prison census, regardless of whether those inmates actually participate in the meal service. Information obtained from other states identified food service costs ranging from \$2.35 per inmate to \$3.29 per inmate, with contracts containing varying cost structures and provisions. Kentucky's current per diem is \$2.63 per inmate.

The ability to perform cost analysis using the various components of cost, not just total dollars paid, should be an important oversight objective of DOC because it provides a better opportunity to identify the extent to which contract cost adjustments are related to the cost of providing services. Also, when government operations are privatized, this cost analysis is important for monitoring to ensure the government is achieving the cost objectives that initially led it to privatize the operations. Although fair and reasonable profit considerations should also come into play in DOC's consideration of the cost components, it should be equally fair and reasonable for DOC to know the actual basis for the cost of the privatized operations. The privatization of government functions should be approached with the same level of accountability and transparency as if the government operated the services itself.

It appears the food services contract with ARAMARK intends this level of cost transparency in Section 40.195 - Disclosure of Financial Records, which states,

The Contractor(s), as defined in KRS 45A.030(7), agrees that the Contracting Agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to the Contract(s) for the purpose of financial audit or program review. Furthermore, any books documents, papers, records, or other evidence provided to the Contracting Agency, the Finance and Administrative Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the Contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 6.878(1)C) prior to the execution of the Contract....

ARAMARK declined the APA's request for direct cost information for each institution and therefore certain analysis could not be performed.

The APA requested cost data from ARAMARK, including the direct cost of services (food costs, personnel costs, bonuses to institution managers) by institution. This information would have assisted us in:

- examining concerns about food service inequities among the institutions;
- considering the information in conjunction with other data in evaluating concerns regarding declining quality and quantity of menu items;
- performing analysis to determine whether contract price adjustments are justified by corresponding increases in direct charges; and
- determining whether the vendor's compensation policy could potentially create unintended consequences by encouraging cost cutting measures.

ARAMARK's official response to the APA's request indicated, "The requested information exceeds both the auditor's statutory authority and ARAMARK's contractual duty." The basis for this position was further described under the following points:

- "The information is not relevant to a review of ARAMARK's contract;"
- "The information sought is confidential and proprietary and its disclosure would result in competitive injury to the Commonwealth and ARAMARK;" and
- "Disclosure of the requested information would contravene the purposes and policies of the Kentucky Model Procurement Act."

In its response, ARAMARK did offer to provide the APA "information, by year, of its costs of goods, labor, direct expenses, overhead and profits on an aggregate basis." This information was offered to the APA under the following stipulations, "ARAMARK's offer is made on the condition that the information not appear in the audit report or any other public release, and that it be protected from disclosure under terms and safeguards acceptable to ARAMARK. The offer is also conditioned on the Auditor's agreement that the identified information, together with that previously furnished, is sufficient for the Auditor to complete her work with respect to information being sought from ARAMARK." The APA could not accept the information under these conditions while providing the level of accountability and transparency suitable for this examination, and, therefore, declined the offer.

We believe the APA not only has the direct statutory authority to audit food services as a program of prison institutions, but was also given authority by the Legislature through its request to

specifically examine the components of this contract. ARAMARK contends that the cost components requested are not “pertinent to the contract”, although it does not appear to be the role of the vendor to identify information pertinent to a review or examination of its services. Therefore, the failure to submit these records may constitute a breach of contract, and we will refer this matter to DOC and to Finance and Administration Cabinet for consideration.

Changes to the Master Menu were not analyzed for cost impact.

In analyzing cost data, the APA also reviewed the changes in the contractual cost of services over the contract period. As stated in the “Background” section of this report, ARAMARK’s contract initially called for a cost of \$2.34 per inmate per day, and as of March 1, 2010, the rate was \$2.63 per inmate per day. Cost price adjustments are requested to coincide with the annual contract renewal, and were established at 3% increase per year during most of the contract period. The most recent contract renewal increased the annual cost adjustment to 4% per year.

However, a concern related to contract price adjustments was identified. ARAMARK’s Master Menu was reviewed to determine whether planned meals remained of consistent quantity and quality throughout the contract period. There appeared to be changes having a qualitative impact on the menu selection in one year reviewed. Among the changes noted, whole chicken quarters were removed from the menu and replaced with a meatball sub entrée. The auditors inquired about the menu changes with ARAMARK to try to obtain the impact on direct cost of these changes. ARAMARK indicated cost impact could not be reasonably estimated because there were more than 40 menu changes that year, although not all of those changes would have a cost or qualitative impact.

The auditors also inquired about the cost of adding specific items back to the menu, such as the chicken quarters that were removed from the menu. ARAMARK indicated it would be a “meal enhancement” to add the chicken quarters back to the menu in place of a planned entrée. ARAMARK indicated it submitted meal enhancement options to DOC for consideration. One of the enhancement options included adding a chicken quarter in place of a planned entrée once per month and a cheeseburger on a bun in place of a planned entrée twice per month for a cost of an additional \$.06 per inmate per day, or \$250,000 per year. The treatment of the chicken quarters as an enhancement is concerning, since it was removed from the menu and neither ARAMARK nor DOC could provide information showing a corresponding price *decrease* for the removal of the chicken quarters from the menu.

DOC indicated these menu changes were approved, and were done so in lieu of the 3% contract price adjustment for that year. However, DOC was unable to provide documentation showing that the cost impact of these menu adjustments was provided by ARAMARK or analyzed by DOC. Therefore, they could not document the amount of the cost benefit provided to ARAMARK for the exchange. Furthermore, the auditors later determined that a 3% contract price increase was ultimately given to ARAMARK later that same year, indicating that ARAMARK, in effect, received two cost adjustments in the same year.

*Recommendations -
Cost Analysis*

We recommend the following actions resulting from cost analysis procedures:

- DOC and the Finance and Administration Cabinet (FAC) review the contractual provisions contained in Section 40.195 of the contract to determine whether ARAMARK is in breach of contract for its failure to submit relevant financial records to the APA.
- DOC and FAC modify Section 40.195 and 40.200 of the contract to clarify any possible ambiguity in the language, and to ensure that the vendor understands that information pertinent to the contract will be determined by DOC, FAC, APA, or the Legislative Research Commission.
- The dispute over financial records be considered by the Legislature in determining whether modifications to Kentucky law are needed to ensure the legislative and executive branches have appropriate access to financial and other information deemed appropriate, and expressly provide the Auditor of Public Accounts the ability to deem what information is “pertinent” to his or her audit objectives.
- DOC require a detailed cost analysis of changes to the Master Menu when changes are submitted for approval. Qualitative changes in the menu, in which lower cost options have replaced higher cost menu options, should be considered a cost adjustment and documented as such. Changes in which higher cost options have been added to the menu should, likewise, be taken into consideration when analyzing ARAMARK’s request for a price increase.

**PAYMENTS FOR
SERVICES**

As part of the examination, payments made to ARAMARK in connection with this contract were reviewed in order to determine whether the charges were properly supported and made in accordance with the terms of the contract. The contract stipulates ARAMARK is to be paid a per diem rate for the inmate meals based on the daily census at each institution, which is currently \$2.63 per inmate. Also, DOC pays for staff meals at a current

rate of \$.876 each. Additional rates are established for meal enhancements for outside work detail and inmate kosher meals. For billing purposes, ARAMARK submits a bill to its DOC contact for review and approval. The DOC employee then reviews the inmate census numbers, and works through any disparities prior to submitting the invoice to DOC accounts for payment. However, testing identified errors and inconsistencies in the invoices resulting from noncompliance with contract language and insufficient documentation to support the charges. Details of the errors noted are presented below.

Discrepancies existed between daily prison census and the amount ARAMARK invoiced for inmate meals.

Contract Section 30.120 - Daily Inmate Meal Count states,
Each morning all institutions are required to account for all inmates to the Central Office Classification Branch. This count shall be the basis for invoicing inmate meals. The total number of inmates actually present in each institution, daily shall become the total number of meals invoices. At the end of each month, these numbers will be totaled and the Contractor(s) shall bill the Department for the total number of inmates present by institution times per the per diem rates. Although the Contractor(s) will submit one (1) total invoice for the Department, each invoice shall be broken down by institution....

Test results identified a disparity between the amount billed by ARAMARK and the daily prison census. The test of invoices for August 2007, 2008 and 2009 identified the following:

- The August 2007 invoice billed DOC a per diem for 382,273 inmates, but the official department census showed the total number of inmates to be 379,182 for the month, which is a difference of 3,091 inmates. This difference resulted in an overbilling of \$7,662.60.
- The August 2008 invoice billed DOC a per diem for 370,570 inmates, but the official department census showed the total number of inmates to be 367,211 for the month, in which is a difference of 3,359 inmates. This difference resulted in an overbilling of \$8,575.53.
- The August 2009 invoice billed DOC a per diem for 374,847 inmates, but the official department census showed the total number of inmates to be 372,117 for the month, in which is a difference of 2,730 inmates. This difference resulted in an overbilling of \$7,179.90.

Based on the errors noted in this sample, the amount overbilled per year could be as much as \$84,000 to \$102,000. DOC indicated the error in part may be due to its policy of recording the weekend and holiday census for billing purposes. The daily institution census taken on Friday is used for the Saturday and

Sunday count for ARAMARK's billing purposes. The Friday census is also used for Monday's counts in those weeks when a holiday falls on Monday. DOC indicated this should closely approximate the weekend census since there is very little change in the prison populations during that time. DOC indicated this policy developed because historically the institutions' daily census was manually taken and then phoned in to a central office branch in Frankfort and the branch receiving those calls was closed on weekends and holidays. Currently, the institutions' census is taken electronically. It is not clear why the actual census numbers are not obtained and used for billing purposes. This explanation accounted for the errors, but the practice is still out of line with the contract language requiring the bills be based on the daily census.

In addition to the discrepancies in the weekend and holiday census counts, additional billing errors related to estimates that DOC provided to ARAMARK for billing were noted. The patients at Kentucky Correctional Psychiatric Center (KCPC) utilize the Luther Lockett Correctional Complex (LLCC) institution for meal services. For billing purposes, DOC adds an estimated 80 patients a day to the LLCC population count to account for these additional meals, and ARAMARK's bill is based on this estimated count. In return KCPC pays DOC \$3 per patient based on its daily head count. In August 2009, LLCC's estimate resulted in 2,480 patients, and, therefore, ARAMARK billed \$6,522.40 based on this estimate. However, KCPC's actual count was 1,839 patients which resulted in an overpayment of \$1,685.83 to ARAMARK for August 2009 due to errors in DOC's estimates. The auditors were unable to determine that DOC reconciles its estimates to actual numbers at a later date and adjusts the payments to ARAMARK accordingly. Based on this error, DOC could be overpaying ARAMARK as much as \$20,000 per year.

Testing also identified instances between August 2007 and August 2009 in which DOC was adding inmates to the daily census at one facility. The Warden at one facility authorized "double meals" for 20 outside detail inmates. Rather than working out a billing arrangement for meal enhancements, DOC added 20 inmates to the daily census. Based on inquiry with DOC, these 20 inmates were receiving double meals for all three meal services, and therefore there is likely minimal impact on cost. However, the meal enhancement was not in writing, and artificially changing the census is a poor control which increases the risks of errors. According to DOC, this practice has ceased.

Supporting documentation for charges related to staff meals was inadequate, and instances of billing errors related to staff meals were noted.

During the examination, it appeared the contract provisions in Section 30.070 - Other Meals served under the Master Menu were not consistently followed. The contract states,

Staff/Guest Meals

The Contractor(s) shall ensure that one (1) meal per shift is provided for the facility's staff at no charge [to the staff person]. Staff shall eat the same foods as served on the inmate Master Menu. All staff shall sign for meals. The contractor(s) shall use the completed sign in sheets for the purpose of invoicing staff meals to the Department....

Audit procedures indicated that not all institutions utilize a sign-in sheet for the staff meals, which makes it difficult to verify the accuracy of meals provided to staff in these institutions. Although the staff meals are currently charged at a rate of only \$.876 each, some institutions are being billed for more than 1,000 staff meals per month, and therefore it is important to have procedures in place to support the associated costs.

A sample of available staff meal sign-in sheets were tested for four institutions. The test identified discrepancies between the staff meal sign-in sheets and the amount ARAMARK charged for staff meals. In investigating these differences, one Warden indicated that the number of staff meals billed by ARAMARK was not verified but only reviewed for consistency from month to month. The test identified one example in which ARAMARK billed 890 staff meals for the month, but documentation indicated only 527 staff members signed the log. In this example, the auditors noted the log for one day was missing; however, it is not likely that the missing day would account for the 363 meal discrepancy. Furthermore, a DOC employee indicated that procedures were in place at his/her institution for reviewing ARAMARK charges, and an error of more than 500 staff meals was noted. The employee was able to resolve the discrepancy with ARAMARK, but this highlights the need for institutions to implement similar controls to thoroughly review the billing statements.

Supporting evidence did not exist for kosher meals billed at a higher rate.

As of September 2008, DOC began providing a kosher alternative for inmates of the Jewish faith, and this meal is billed at a higher rate than the standard per diem for inmate meals. Kosher meals are billed at a rate of \$4.683 per inmate rather than the standard \$2.63 per diem rate. In preparing the invoice for kosher meals, ARAMARK backs out participating Jewish inmates from the respective institutional census count, and adds the actual number of kosher meals served at the higher rate. The auditors tested billing for kosher meals served at two institutions for August 2009, and noted ARAMARK provided kosher meals for 955

inmates for these institutions. However, DOC did not have supporting documentation to verify the number of inmates invoiced at the higher kosher rate for this month. The difference between the kosher and standard inmate per diem for this month would be approximately \$1,960.62. Because of the rate difference, there is a higher risk of billing errors related to these types of meals, and, therefore, DOC should have appropriate controls in place to reduce those risks.

Religious holiday meals are not provided in accordance with the contract.

Contract section 30.070 states,

Religious/Alternate Entrees -

The Contractor(s) shall provide alternate (meatless) entrees as required by the Master Menu. The alternate (meatless) entree is designed to provide meal options for inmates who choose to abstain from pork and/or meat in their diets. Examples of alternative choices are peanut butter, cheese, dried beans, or other vegetarian entrees. Inmates shall be given a choice of the regular, pork free or alternate (meatless) entree. The protein alternative shall meet the requirement for both the alternative and pork free menu component.

In addition, during Ramadan, two (2) enhanced pork free meals shall be served before sunrise and after sunset. On all menus, entrees or products containing pork shall be indicated as such on the main line cafeteria style feeding. Currently pork free signs or pork product signs are in use at all facilities. During the Lenten season at least one (1) meatless meal shall be served on Ash Wednesday, Good Friday, and each Friday of Lent. This meatless meal may be served as the alternative choice. There may be other religious dietary observances that shall be handled on an individual basis.

Testing indicated that DOC began paying an additional cost to ARAMARK for Ramadan meals starting in 2007 and Passover meals beginning in 2008. DOC has paid a total of \$9,290.09 for providing these meals, although it appears they are included as part of the contract cost. Typically, the contract identifies provisions for additional costs when intended, but this section of the contract does not contain such provisions, indicating that DOC either overpaid for these meals or modified the provisions of the contract without putting the changes in writing.

Recommendations - Payment for Services

We recommend the following in respect to billing procedures:

- DOC should develop a plan to review bills submitted by ARAMARK for each institution over the previous year to identify any errors or inconsistencies with supporting documentation or contractual requirements. If this review identifies overbilling, DOC should consider extending its

review into earlier periods. DOC should request reimbursement or credit from the vendor for amounts overbilled, and should consider whether a penalty should be applied.

- DOC should improve its procedures for documenting the source information for ARAMARK charges. These procedures should include standardizing the documentation for staff meals eaten, and for ensuring the official daily census is used for billing purposes. DOC should also consider billing errors made by ARAMARK a serious contractual noncompliance and implement corrective action with the vendor.
- DOC should review the contract provisions related to religious and holiday meals, and update those provisions to reflect current practice. If DOC's intent was for ARAMARK to provide religious and holiday meals as part of its standard contract, DOC should consider requesting reimbursement for payments made to date for these meals.

MASTER MENU

ARAMARK developed the Master Menu using an internally developed food services program called PRIMA (Production, Recipes, Inventory, and Menu Analysis). The system is used to generate the menu to the contract specifications, and also generates the recipes and nutritional analysis for the meals developed. The auditors inquired as to whether this system is independently audited or verified. ARAMARK was not able to confirm an independent verification of this system, but did indicate it has been accepted for use in certain federal food programs.

The contract contains several provisions related to the Master Menu and the related recipes, including review and approval of the menu, substitutions of items on the menu, and modifications of the recipe. These provisions were tested by examining a sample of ARAMARK's meal production records at three different facilities, as well as by reviewing DOC meal reports. These tests covered a total of 534 meals for the three institutions.

ARAMARK's meal production records included:

- production sheets, which document information related to the estimated number of inmates expected to participate in the meal, the approximate number of servings made and served, food temperatures throughout the meal service, and comments from ARAMARK employees regarding significant matters from the meal service such as line delays, food shortages, etc.;

- recipes used during the meal;
- product pull sheets, which documents the amounts of the ingredients needed from the storage areas to prepare the recipes based on the estimated participant level;
- inventory reports; and
- other information attached to the production records, such as leftover tags or notes.

The results of the examination identified that certain provisions in Section 30.060 - Master Menu were not consistently followed. The weaknesses noted are described below.

Instances in which substitutions are not approved in advance as required by the contract were noted.

As it relates to reporting, Section 30.060 states,

The Contractor(s) shall comply with the Master Menu, as written, in all twelve (12) institutions [sic]. Any substitutions or changes shall be documented and submitted to the Contract Manager in the monthly report. Monthly reports shall be reviewed for unapproved substitutions.

Documentation and inquiries with DOC officers and inmates indicated menu substitutions were common occurrences at the institutions. Substitutions indicate instances in which an item on the menu was replaced by another item either during the entire meal or for part of the meal when there were shortages in the availability of the original menu item or items. Contract provisions require preapproval of menu substitutions. DOC indicated it maintains a list of preapproved menu substitutions it considers acceptable replacements to facilitate and expedite the approval process, which includes menu items in the same category (for example, vegetable for vegetable, dessert for dessert, etc.).

Testing indicated 142 meals out of the 534 meals in which production records identified a food shortage and/or substitution. Copies of the monthly reports mentioned in Section 30.060 of the contract were requested for review to determine whether DOC obtained these reports monthly and that it was aware of the various menu substitutions. DOC indicated that the monthly substitution reports were not obtained from the institutions.

Written notification to and/or approval by DOC was not identified for any of the 142 meals in which food shortages and/or substitutions were noted. Although auditors recognize it is not always feasible to receive prior authorization for meal substitutions caused by food shortages during actual meal production, it is important for those substitutions to follow DOC's preapproved substitution list and for those instances to be documented and reported for DOC's review in the monthly report

called for by the contract in order to provide the department appropriate monitoring opportunities. Contract Section 30.100 - Menu Modifications and Substitutions indicates that unauthorized exceptions to the master menu may be considered a breach of contract, and that the approval or disapproval of substitutions for extenuating circumstances will be provided by the department's contract manager. Due to the lack of adequate documentation or reports specified in Section 30.060 as noted above, auditors were unable to verify that the substitutions were approved.

DOC indicated it believes it is routinely notified of substitutions and has an opportunity to approve them, but documentation of these communications was not available. Also, as noted above, DOC indicated it permits substitutions without approval if they were in the same category and has provided ARAMARK with a list of what it considers to be acceptable substitutions. However, auditors identified instances in which substitutions were made with foods that were not in the same category, but documentation of DOC's preapproval of these items was not provided. Examples of these substitutions include:

- Four pieces of brownie substituted for a meat;
- Three pieces of cake substituted for two hotdogs;
- Cheese substituted for coney sauce; and
- Watermelon substituted for broccoli and for a dessert.

These types of substitutions draw into question whether ARAMARK is violating the provisions of its contract to adhere to the Master Menu, and certain substitution choices also raise questions whether it is meeting the minimum daily caloric intake identified in the contract for the individuals impacted.

ARAMARK's production and inventory records may indicate approved recipes were not followed, or proper quantities of ingredients were not used.

During the examination, allegations were also received indicating that certain items on the menu were watered down or that items were routinely missing or cut out of recipes. As it relates to menu modifications, the contract Section 30.060 states,

The Contractor(s) shall comply with the Master Menu without variations except where approved by the Contract Manager or designee. Compliance with the Master Menu shall include correct portions, correct utilization of approved recipes and use of proper ingredients. ...

Production records were tested in an attempt to reconcile pull sheets to inventory usage reports to verify that sufficient quantities of food product were used. As noted above, pull sheets are developed in PRIMA to identify the amount of each ingredient needed from the storage areas to prepare the recipes for each meal. Significant variances were identified between the pull sheets and inventory records that document the amount of product used

during the week. In a majority of the instances, the inventory records showed less product was used than the pull sheets indicate was needed for the recipes.

Testing identified instances in which products listed on the pull sheet were marked out, indicating they were not pulled for use in the meal preparation. Also, pull sheets contained instances in which the quantity of the food product called for was reduced, and had instances in which the pull sheets were not available for review. The auditors noted numerous instances in which spices were left out of recipes, and even more serious instances in which flour, beef base, and bulk food ingredients called for in the recipe were dramatically reduced or omitted. Just a few of the many examples of bulk ingredients reduced from what was called for in the recipe include:

- one instance in which the recipe called for 150lbs of beans, but only 100lbs were used;
- one instance in which the recipe called for 181.25 lbs of rotini pasta, but only 138 lbs were used;
- one instance in which the amount of rice was reduced from 197.5 lbs to 149 lbs; and
- one instance in which the amount of potatoes was reduced from 152.75 lbs to 116 lbs.

Auditors did not note the approval of any recipe modifications identified. In following up with DOC regarding whether the recipe modifications were approved, it indicated that since spices did not have a nutritional value, they were not concerned about those modifications. No explanation was provided for any other recipe modification.

ARAMARK indicated that discrepancies between the pull sheets and the inventory records may be attributed to several possible contributing factors, such as undocumented use of leftovers, failure to use spices called for in the recipe due to the institution's policy, etc. Although ARAMARK's explanation may be accurate, production records did not document the use of leftovers for the meals in which discrepancies were identified. Therefore, based on these issues, we were unable to rely on the pull sheets and inventory records to verify the amount of food product used in meal preparation followed the recipes.

Portion sizes are difficult for ARAMARK to standardize.

Auditors noted concerns indicating that ARAMARK was not serving the appropriate portions of items listed on the Master Menu. During site visits to institutions and in discussions with ARAMARK employees, auditors noted one operational practice that may explain portion disparities. Portions served in the food service lines are based on volume measure utensils (ladles,

scoops and spoons), although many items on the Master Menu are expressed in weight (ounces). ARAMARK indicated this poses a challenge because they then have to weigh the portion prior to the meal service to determine how much of the volume measure is needed to arrive at the proper weight, and then train food service line workers on the appropriate serving size. For instance, for an 8 ounce portion of a casserole, they may instruct line workers to use a heaping scoop of a 4 or 6 ounce volume measure. This method is subjective and subject to error. Meal evaluation reports also identified inconsistent portions, even from one tray to the next, which further supports this concern. Because of this operational practice, ARAMARK appears to have difficulty standardizing serving sizes for some items.

ARAMARK indicated that it recognizes this issue, and is moving toward revising the Master Menu to list volume-based portions when possible to avoid these types of discrepancies. DOC indicated that this was also a problem when the department operated food services, but that it tended to err on the side of over-serving rather than under-serving.

*Recommendations -
Master Menu*

We recommend the following in respect to Master Menu provisions of the contract:

- DOC should improve its document retention for menu modifications, substitutions and other matters impacting the Master Menu.
- DOC should develop a standard monthly report for each institution regarding its food services. The report should include a log of menu modifications or food shortages. As stipulated in the contract, these reports should be reviewed monthly to ensure all modifications and substitutions are reasonable and are approved. DOC should also develop procedures to implement the fine for unapproved substitutions stipulated in the contract (Section 30.060).
- DOC should include a provision in its future food services contract to require the vendor to reconcile its inventory records to meal preparation reports to improve documentation regarding the sufficiency of inventory purchases. This type of reconciliation should identify the details of any discrepancies, such as use of leftovers, recipe modifications, etc.
- DOC should work with ARAMARK to resolve discrepancies between portion sizes and serving utensils, which may necessitate modifying the Master Menu as recommended by ARAMARK or by changing food service procedures for items served by weight.

USE OF LEFTOVERS

Allegations were also received during the examination regarding the use and recycling of leftovers in meal production. The use of leftovers is a common industry practice, and can be an effective method for reducing overall cost. However, proper handling of leftovers is critical to avoid potential health hazards.

The reuse of food is permissible by food safety standards when appropriate precautions are taken. Kentucky's Food Code establishes food safety standards for use in food service establishments in the Commonwealth. These standards incorporate the U.S. Food and Drug Administration (FDA) Food Code by reference, which promulgates food safety requirements, including those related to the reuse of food. Also, the FDA Food Code recommends food safety processes contained in Hazard Analysis and Critical Control Points (HACCP) guidelines. HACCP processes are national guidelines for the use of food products from harvest to consumption. ARAMARK's policies indicates it follows HACCP guidelines.

To address the concerns raised regarding the use of leftovers, ARAMARK's meal production records were reviewed to determine whether they complied with provisions of the contract regarding leftovers, with HACCP guidelines adopted in its policies, and that documentation was sufficient to identify the source and use of leftovers in meal production.

The contract does not contain specific requirements regarding the use of leftovers.

Requirements regarding the use of leftovers are not directly specified in the contract. DOC management stated when it ran its own food services, its practice in most institutions was to make the previous day's leftovers a self service item to inmates. DOC indicated this provided some element of choice to the inmates, and, therefore, they included this as an option in the contract under Section 30.000, which states,

Although portion sizes are listed on the menus, self-serve food choices of certain food items (vegetables, salads) are encouraged whenever possible. The self-serve items could include at a minimum, leftovers from a previous meal, farm or commodity products that may be received in large quantities, or less popular vegetables. This allows an individual inmate to make choices as well as giving the inmate some control of his own dietary health.

At some point during the contract period, leftover practices changed and DOC permitted ARAMARK to utilize leftovers in its meal preparation. ARAMARK has policies regarding the use of leftovers, which appear to be acceptable under HACCP guidelines. For instance, ARAMARK's policies stipulate that

leftovers returned to the cooler be used within 72 hours, and leftovers returned to the freezer be used within 28 days. However, this policy was not documented in the contract. Additional concerns related to the documentation of leftovers are detailed below.

Documentation indicating the source and use of leftovers is inadequate.

Deficiencies were identified in documentation related to the source, use and storage of leftovers. ARAMARK indicated that production records document the use of leftovers in the meal production by having a leftover tag attached to the meal's production sheet. However, weaknesses were noted with the tags themselves in that they did not contain certain information that would identify the source of the leftovers. Weaknesses were also noted in regards to the improper use of the tags.

- Instances in which the leftover tags utilized did not indicate the source of the leftovers by date or meal were identified. The tags indicated the meal for which the leftovers could be used, but no source information identifying the date of the leftovers. This information helps ensure that ARAMARK's and HACCP requirements regarding the acceptable timeframe for the use of leftovers are followed. The format of leftover tags changed during the timeframe covered by our examination, and the current format of the leftover tags utilized by ARAMARK appear to require this information.
- Leftover tags are generic slips of paper, which are easily replicable, do not contain control numbers, and are not logged. The use of control numbers on tags improves the validity of the documentation because it reduces the risk that the tags could be changed or replaced without detection. Also, control numbers help identify the timeframe of leftovers if tags are lost, which appears to be a common occurrence based on the examination of production records.
- Numerous instances in which the leftover tags were not attached to meal production sheets were noted. The production sheets do not identify when leftovers were used in the meal preparation. ARAMARK indicates that when leftovers are used, the leftover tags are attached to that meal's production sheet, so when the tags are not attached to the records it is difficult to determine what leftovers, if any, were used.

The auditors identified instances in which leftovers were likely used but not documented because in some instances the amount of product pulled from storage for meal preparation was less than required by the recipe. ARAMARK suggested these discrepancies in the pull sheets may be due to the usage of leftovers in the meal preparation. Also, although the production records do not have specific spaces to record the *use* of leftovers,

they do document when food was returned to dry storage, returned to the cooler, or returned to the freezer, thereby indicating the existence of leftovers available for use.

Because food returned to the cooler is required to be used within 72 hours, leftover tags are expected to be seen on production sheets within that timeframe for refrigerated items, especially when pull sheets show a reduction in the amount of product pulled. Production records identify items such as casseroles, soups, entrees, side dishes, and biscuits were returned to the cooler for later use, but for which leftover tags did not exist. Disposal logs were not maintained so there is no record indicating what happened to the leftovers returned to the cooler. ARAMARK indicated the Master Menu is set up to facilitate the use of leftovers within a 72 hour time period. Without appropriate documentation of the source, use or disposal of the leftovers, it is difficult to detect when leftovers are at risk of being recycled longer than 72 hours.

Auditors observed leftovers in food storage areas past the acceptable HACCP timeframes.

During site visits to institution kitchens, the auditors noted several leftover items in the refrigerator and freezer areas with dates outside the acceptable timeframes. As noted above, leftovers returned to the refrigerator must be used within 72 hours and leftovers returned to the freezer must be used within 28 days per ARAMARK's policies. However, we identified several leftovers, such as broccoli, meatloaf, cheese pizza, and turkey bologna stored in refrigerators with dates more than two months old. The auditors also observed in May 2010, 10 cases of beef livers in a refrigerator dated "12-02," although beef livers had not been on the Master Menu since 2007. Although the auditor did not determine that these leftovers were used in meal production, leaving leftovers in food storage areas past their acceptable usage dates increases the risk that the leftovers could be inadvertently used in the meal preparation. This is especially risky since leftover tags can easily be lost or removed.

Production records indicate instances in which leftovers were returned to the cooler or freezer at unacceptable temperatures.

Food safety standards indicate that leftover hot foods must be brought to temperatures at or below 41 degrees within a four hour timeframe, and before returning the items to the cooling area or freezer. Cooling leftovers prior to placing them in a refrigerator or freezer area is a food safety concern because warm food placed in a cooler or freezer heats up the temperature in the cooling areas and, therefore, could impact the temperatures of other food stored in those areas. Production records tested indicated instances in which the final temperatures of leftovers returned to the cooler or freezer were at temperatures higher than is deemed to be acceptable. These records indicated instances with some items having final temperatures as high as 70 degrees. Although 70

degrees is an ARAMARK goal at the 2-hour cooling mark, the food should continue to be cooled until it reaches 41 degrees prior to placing the item in the cooling area. If the 41 degree target is not met within four hours, the leftovers should be discarded.

*Recommendations -
Use of Leftovers*

We recommend the following related to the use of leftovers in the prison food services:

- DOC should establish specific policies regarding the use of leftovers, and incorporate those policies as a provision of its food services contract.
- DOC should require ARAMARK to maintain a log of leftovers to identify the source of the leftovers, and the use or disposition of them. Leftover tags should cross-reference to this log by the use of control numbers or other methodology.
- DOC should require ARAMARK to document the use of leftovers (quantity, tag control number, etc.) on its meal production records so the use of leftovers in the meal preparation is evident and less likely to get lost or misplaced.
- DOC should include food storage areas in its weekly sanitation inspections, and require that ARAMARK throw out any unlabeled or expired leftovers. These inspections should include a scan of production records for temperatures of food on service lines, as well as those returned to refrigerator or cooling areas. Since DOC employees are not certified sanitation inspectors, inspection sheets should be sufficiently detailed to assist in identifying the proper temperatures.

**INMATE GROWN
FOOD**

DOC provided over 115,000 pounds of produce to ARAMARK at almost no charge.

The results of the examination identified that the contract provisions in Section 30.090 - Food Supplies related to inmate grown food were not followed. The contract states,

The Contractor(s) is encouraged to purchase and use inmate grown produce from the department upon notification of availability from the Farm's Program. The produce shall be offered at fair market value. In the event the Contractor(s) can document lower prices from other wholesale sources, the Department shall have the option of reducing the price of the produce for the Contractor(s), prior to the Contractor(s) purchasing from another source. The value of any Department farm produce utilized shall be listed on the invoice, as a separate line item, as a credit.

Upon initial inquiry into inmate grown food, DOC management indicated the inmate food program is in decline and isn't utilized

much by ARAMARK. Additionally, upon inquiry with ARAMARK, it indicated that it does not use much of the inmate grown food in actual meal production, and when it does it is generally an additional item added to the menu. Auditors obtained the 2009 farm report identifying the source and use of inmate grown produce, and identified almost 115,000 pounds of produce was provided to ARAMARK for the year between May 2009 and August 2009. Examples of the amounts of specific vegetables provided to ARAMARK include over 37,000 pounds of cabbage and 27,000 pounds of squash. Furthermore, production records tested indicate that inmate grown food was utilized as a menu substitution for another menu item rather than as an additional menu item.

Based on the farm report, a review of invoices, and receipts in the state's financial accounting system, eMARS, ARAMARK's total payment was \$531 for this produce. Using UK's Department of Agriculture's guide for produce prices in Kentucky, the auditors were able to estimate the fair value of some specific types of produce. The fair value of certain types of produce could not be readily estimated, due to the farm report having a different basis of reporting the produce than the price guide. For instance, the price guide may report the estimated cost of produce in quarts, whereas the DOC farm report identifies the produce in pounds. Those items with a determinable fair market value amounted to almost \$148,000 of produce provided to ARAMARK between May 2009 and August 2009. The total value of all produce provided would likely be much higher. Although the contract stipulates that DOC may offer produce at cost lower than fair value when ARAMARK can document a lower wholesale price available, the intent of the contract does not appear to offer the produce nearly free of charge.

It should be noted that by all accounts, inmate grown produce is very well received by inmates and DOC employees, and this is not an attempt to discourage the practice of using inmate grown produce in food service operations. Also, DOC management clearly identified other benefits of the inmate farm program as a way to assist in rehabilitation efforts. This finding relates to the disparity between contract language and actual billing practice, and is not critical of the obvious rehabilitation benefits of the program itself. However, the contract appears to intend for any financial benefit of the program to be used to assist DOC, not to further enhance profits of the vendor.

*Recommendations -
Inmate Grown Food*

We recommend DOC re-examine its policy related to the use of inmate grown food. The farm program is an important inmate program but DOC should receive the monetary benefit resulting

from the use of the inmate grown food instead of the vendor. If DOC believes that charging fair value or a negotiated rate to its food services is not feasible, it should modify the contract to reflect actual practice.

MINIMUM MEAL SERVICE REQUIREMENTS

Exceptions with the minimum meal service requirements stipulated in the contract were identified.

The examination identified that the contract provisions in Section 30.020 - Minimum Meal Service Requirements were not always followed. The contract states,

... Policy dictates that three (3) meals per day shall be served with a minimum of two (2) hot meals and not more than fourteen (14) hours between the evening meal and the following's day breakfast meal...

Three institutions were identified for which the meal times exceeded fourteen (14) hours between the evening meal and the following's day breakfast meal. For example, one institution was noted as starting its dinner meal at 3:15pm, and starting breakfast at 6:00am the following morning, which exceeds the 14 hour minimum meal requirement by 45 minutes. The contract indicates the meal times are established by DOC, stating:

The Contractor(s) shall ensure that meals are served within the time ranges as determined by the Warden at each institution.

Auditors also noted complaints from inmates during the examination about feelings of hunger. These concerns are vitally important to inmates, but are also subjective and difficult to evidence in an examination. Several DOC officers indicated that this also may be a significant security concern because increased hunger appears to contribute to behavioral problems in the institutions. In considering the findings related to meal times noted above, auditors questioned whether the time between meals contributes to this problem. Inquiry with DOC employees about the meal times identified in some institutions early evening times were necessary due to the need to have all inmates report to the dormitories before dark, and that winter months pose the greatest challenges.

*Recommendations -
Minimum Meal Service
Requirements*

We recommend that DOC review its meal time policies to determine what, if any, adjustment is needed to meet the contractual requirement to have less than 14 hours between the evening meal and the following day's breakfast. If this requirement is not feasible, DOC should update its contractual provisions to agree to actual practice and also should consider what alternatives are available to improve timeframes between meals in its populations with the earliest meal times.

FOOD TEMPERATURES

Numerous allegations were received indicating that temperatures of the food served were not properly maintained. Auditors recognize that prison institutions create challenges for food service due to the transportation of food trays to satellite locations that is often required, and because of the age and condition of equipment. Also, complaints regarding food temperatures may be viewed as subjective. However, food temperatures are not only a matter of personal preferences but also pose health risks. Therefore, in order to assess the validity of these concerns, ARAMARK's meal production records were reviewed to identify whether temperatures recorded by ARAMARK indicate the existence of any pervasive concerns.

Production sheets contain areas for documenting the temperatures of food at different intervals throughout the meal service. Kentucky's Food Code indicate hot foods should be held on serving lines above 140 degrees and cold foods should be held at or below 41 degrees to meet food safety standards.

Documentation was not sufficient for determining whether ARAMARK maintained appropriate food temperatures during meal service.

Inconsistent and insufficient documentation was noted related to the documentation of food temperatures for meals served. Testing indicated 358 instances of the 534 meals in our sample in which the food temperature documentation was not completed, temperatures were recorded without a corresponding time noted, or instances in which temperatures were outside the required temperature limits.

Also, health department reports reviewed noted one report related to a possible food illness outbreak, which identified that food items were not maintained at the appropriate temperature. However, ARAMARK's production records for that meal did not note a food temperature below that required by Kentucky's Food Code or HACCP guidelines, drawing into question the accuracy of those meal production records.

Temperatures for meals transported to satellite locations did not meet food safety standards.

Meal evaluations completed by DOC employees identified numerous instances in which meals transported to satellite locations were at temperatures much lower than required by food safety standards. ARAMARK's policy indicates that equipment used to transport hot food to satellite locations, called hotboxes, must be at or above 145 degrees to maintain the appropriate temperatures of the meals. This is important since food trays often stay in hotboxes for over an hour between the time they are loaded for transport and the time they are served to the inmates. The reports reviewed identified 103 out of 279 meals evaluated in which the hotbox temperatures were below 135 degrees, including instances in which hotbox temperatures were as low as

79 degrees. Furthermore, instances were noted in which the temperature of the actual food was tested, and was below appropriate temperatures required for hot foods, such as potatoes noted below 90 degrees, and instances in which soup, taco meat, eggs, and other entrees were noted as being less than 125 degrees.

Holding food at these temperatures creates potential health concerns since food safety standards indicate hot food held at temperatures below 135 degrees increases the risk for bacterial growth. Auditors recognized that equipment failures may be a contributing factor for this problem. Equipment concerns are discussed further in the "Equipment" section of this report.

*Recommendations -
Food Temperatures*

We recommend that in addition to its current meal evaluation procedures, DOC implement periodic no-notice testing procedures for food temperatures. This testing should include checking the temperature of hotboxes used for transporting food to satellite locations, and also taking actual food temperatures of items on the meal service line and/or leftovers placed in the cooler, rather than testing meal trays without the use of a thermometer. Because of the safety implications, DOC should consider implementing fines for food temperature violations.

**MEAL SERVICE LINE
DELAYS AND FOOD
SHORTAGES**

Numerous complaints were noted regarding line stoppages and food shortages during meal services. DOC officers noted that this is a particular concern in institutional settings because the institution runs on strict schedules, and line stoppages interfere with those schedules and create frustration among inmates. Furthermore, most line stoppages appear to be created because of shortages in food prepared for the meal, with inmates waiting in line while additional food is being prepared or substitutions are being made. Although ARAMARK indicated that line stoppages or food shortages are rare, the examination results indicated that it is not uncommon.

*Food shortages and
substitutions raise
questions as to
whether ARAMARK's
participation rate
estimates are too
conservative.*

Based on inquiry with ARAMARK, food shortages may be created when ARAMARK's estimated participation rate for the meal is inaccurate. Although ARAMARK is paid a contractual rate based on the daily census for each institution, not all inmates utilize the dining hall for meals. Many inmates purchase food from the canteens if they have the funds available to do so. In order to minimize waste and leftovers, ARAMARK estimates the number of inmates likely to eat by averaging the actual number of meals served the last three times the same meal was scheduled. ARAMARK indicates that participation rates vary based on the

weather conditions, sporting events or other popular activities, and it notes those conditions and revises its estimates if needed. ARAMARK estimated that in 2009, it achieved approximately an 82% annual participation rate. It was not practical for the auditors to re-calculate ARAMARK's annual participation rate because it would require averaging the participation rate for each meal at all thirteen institutions. However, auditors did recalculate daily participation rates for individual meals, and it appears that ARAMARK's methodology for calculating it is questionable because participation rates over 100% were noted on daily production sheets, which suggests that more inmates were served than the day's census.

Projecting the participation rate is a useful tool in minimizing waste and leftovers, and is an industry standard. However, routine food shortages and substitutions related to an institutional contract raises questions as to whether ARAMARK's estimates are too conservative.

Documentation of line stoppages is not consistent between ARAMARK and DOC's records.

Testing included a review of DOC late meal reports and meal evaluation reports for the existence and frequency of line stoppages. Testing covered a sample of three months of reports for two institutions. Testing intended to cover a third institution, but its late meal reports were not available. DOC's records tested indicated 18 line stoppages with delays ranging from 5 to 43 minutes.

To determine whether ARAMARK's reports are reliable indicators of line stoppages, ARAMARK's production records were compared to DOC's late meal reports for the same time period. ARAMARK's records identified only having 3 line stoppages in the time period tested. This increases the risk that ARAMARK management relying on production records for this information may not be fully aware of the significance of or number of instances meal lines are stopped.

Based on inquiry with ARAMARK, it considers any line stoppage over 10 minutes serious. Therefore, it is possible that some food services managers are only documenting line stoppages exceeding this timeframe, which may explain some of the discrepancy between ARAMARK's records and DOC's late meal reports. However, this does not explain all of the discrepancies since approximately half of the line stoppages in DOC's late meal reports exceeded 10 minutes for the time period tested.

Also, inquiry with officers and inmates indicate that line stoppages are more common than may be reported. Auditors

noted instances in which the DOC reports stated that ARAMARK ran out of food with people still in line. Although this would suggest a line delay while additional food was being prepared, the reports did not always indicate such.

Meal evaluation reports also identified instances in which meals transported to satellite locations were delayed, some extensively. These reports noted instances in which officers did not receive all the trays ordered for the unit, requiring officers to call for additional trays. Also, the meal evaluations identified instances in which trays had missing items or no utensils. The calls for new trays or missing items created extensive delays in some cases noted, with one wait noted as exceeding 30 minutes.

Although ARAMARK received verbal and written warnings regarding food shortages in 2005, shortages continue to occur, leading to meal service line delays.

Furthermore, as indicated above, most line stoppages are due to food shortages. Section 30.120 - Daily Inmate Meal Count states, *...The Contractor(s) shall be responsible for determining the appropriate number of meals to be prepared according to the census and the approved Master Menu for each facility. Inadequate meal quantities shall be considered a breach of contract. A written warning will be given for the first offense; reoccurring offenses will be subject to a fine of \$250.00 for each offense.*

Although instances were noted in which the additional food prepared was the same or similar to the menu item scheduled, numerous substitutions were noted resulting from these shortages. Examples of these substitutions were listed previously in the “Master Menu” section of this report.

Auditors noted that ARAMARK received a verbal and written warning from DOC in 2005 due to food shortages, so it appears as though DOC was monitoring and addressing these concerns at that time. No such warnings were noted during the time period covered by the examination procedures, and it is not clear whether that is because DOC was not fully aware of the extent of the concerns or whether monitoring of the issue tapered off over the years.

Recommendations - Meal Service Line Delays and Food Shortages

Based on the evaluation of line stoppages and food shortages, we recommend the following:

- DOC should include information from the meal reports in its monthly report related to line stoppages and food substitutions. It should periodically evaluate the number of occurrences, and implement the penalties permitted by the contract when appropriate.
- DOC should discuss ARAMARK’s estimate for determining meal participation to determine if the

estimate is too conservative. Again, as noted above, DOC should consider implementing the penalties permitted by the contract for shortages and substitutions.

INMATE TRAINING PROGRAM

The contract requires a comprehensive inmate training program, IN2WORK, in the culinary arts and food service management. ARAMARK offers three levels of training - 1) Basic Sanitation, 2) Retail Food Service, and 3) Servsafe Certification. The Retail Food Service part of the program teaches the inmates about marketing and inventory. In order to put this practice into action, ARAMARK offers a program called Fresh Favorites.

Fresh Favorites is a program that allows inmates with good behavior an opportunity to purchase restaurant quality food via menu including pizza, hamburgers, french fries, etc. ARAMARK invoices DOC separately for the inmate Fresh Favorite orders placed, and DOC pays ARAMARK from inmates accounts that are charged at the time the inmates places their orders.

From the sale of Fresh Favorite items, DOC receives a commission of approximately 15% of the total sales, and if an inmate club is sponsoring the Fresh Favorites event then it also receives a percentage of the sales in certain institutions. ARAMARK receives the remaining profit which it estimates to be approximately 15% after cost.

ARAMARK indicated it uses its profit to fund the IN2WORK program required by the contract, and that the food purchased for this program was separate from the food purchased for the regular meal service. This would be appropriate considering the need to have a separate cost basis for estimating costs of the IN2WORK program and calculating the shared profits, and also to avoid the appearance that fees derived from inmates are being used to pay for the food products used in the regular meal service.

During the examination, allegations were noted indicating that ARAMARK used food in storage for regular meal production for the Fresh Favorites program. This suggests that food products used in the regular meal production was being paid for by both DOC's per diem and inmates through their payments for Fresh Favorite meals. This also suggests that regular meal service items are being used in the calculation of Fresh Favorite profits even if additional items were not purchased.

We could not verify that ARAMARK was properly invoicing DOC for Fresh Favorites and we could not verify they were not using food that was part of the per diem.

In order to assess the validity of the allegation, the Fresh Favorite menu, invoices for food, and invoices submitted to DOC for one facility that participates in the Fresh Favorite Program were reviewed. The testing resulted in the following:

- ARAMARK did not provide all the invoices in their entirety. Some invoices did not have all the pages copied;
- The dates on some invoices did not correlate with the dates the Fresh Favorites menu was being offered; and
- Unrelated invoices were submitted for review.

Upon follow up with ARAMARK staff, they claimed not all food items associated with the Fresh Favorite sales are on the respective invoice. For instance, items such as buns for burgers, condiments, paper products, etc., were used from “stock,” therefore would not be on the invoice. Therefore, the documentation of food costs for the Fresh Favorites was not sufficient for verifying the costs of the program or for ensuring inmates are not inadvertently paying for food for the regular meal service already covered by the DOC contract per diem rate.

Recommendations - Inmate Training Program

We recommend that DOC require ARAMARK to attach invoices for food product related to Fresh Favorites with its invoice. The invoices should be reviewed for dates and reasonableness of items. ARAMARK should note on the menu attached to the invoice any item that was in inventory from a previous Fresh Favorite sale.

EQUIPMENT

Section 30.160 - Equipment states,

...The Contractor(s) shall be responsible for ensuring that the equipment is operated and cleaned in strict accordance with the manufacturers operating manuals. The Contractor(s) shall adequately operate, clean and maintain the kitchen equipment to minimize any abuse to the equipment. The Department will be available to assist in the maintenance of food service equipment, but maintenance shall ultimately be the responsibility of the Contractor(s)...

Equipment maintenance concerns were seen during on-site visits; disputes exist as to the responsible party for equipment maintenance.

During site visits to institutions, auditors observed several instances in which repairs were needed in the kitchen, such as leaks in pipes, malfunctioning hotboxes used to maintain the appropriate temperature of food during transport, and leaking kettles. Inquiries with DOC employees indicated the equipment needed parts which could be ordered, but they were not. In one institution, a list of 13 pending repairs was provided to the auditor, and the institution said some of the repairs have been pending for months although the parts to repair the items were available for purchase.

ARAMARK employees indicated that certain equipment was beyond repair, and, therefore, it was DOC's responsibility to replace the equipment. ARAMARK employees indicated that it had notified the Warden and/or Deputy Warden of these concerns, but that the equipment condition continued to be a concern. DOC employees indicated some of the equipment in the facilities is very old and acknowledged the problems with the equipment. However, they did believe some of the equipment could be repaired and that budgetary constraints made equipment replacement difficult.

Auditors inquired about the process for replacing equipment, and noted that ARAMARK presents DOC a "wish list" of new equipment items annually, and DOC purchases what it can based on its budget. DOC indicated it purchases items based on its need, necessity and price. In the inquiry with other states, auditors noted that some states include contract provisions requiring the vendor to be responsible for both equipment maintenance and replacement, which would result in a higher overall contract price.

The auditors also noted that the contract does not stipulate a timeframe for the completion of the repairs. However, because of the impact on food temperatures, and in certain cases, the increased risk of injury caused by leaking equipment and pipes, we believe this is an area of concern.

Recommendations - Equipment

We recommend DOC modify the contract to stipulate a timeframe for repairs of equipment, and also implement monitoring procedures to identify equipment that exceeds the timeframe for repair. We also recommend that DOC evaluate the cost-benefit of a provision requiring equipment replacement be the responsibility of the vendor.

MONITORING

The food services contract contains numerous provisions to permit the monitoring of various aspects of the food service operations, such as sanitation, contractual compliance, and meal service. However, monitoring provisions were not consistently utilized by DOC, or were not incorporated as part of a comprehensive monitoring process.

Meal evaluation reports identify significant areas of concern, but do not appear to be used in an overall contract monitoring process.

Auditors reviewed a sample of meal evaluations performed by DOC employees to identify the existence of food service problems. The meal evaluations identified concerns similar to those noted in the examination of food service production records, which indicates that DOC had information on hand that would help in overall contractual monitoring. Some of the problems identified in the sample of meal evaluation reports tested included:

- Instances in which ARAMARK ran out of food during a meal service and no substitutions were provided;
- Temperature issues, such as those noted during the auditor's testing, and especially for trays at satellite locations;
- Instances in which food delivered to satellite locations were mixed in the tray during transport;
- Mold noted on equipment used in food services, such as drink coolers;
- Cold food items transported in hotboxes causing them to melt and run into other food; and
- Instances in which insects were noted on trays and drink containers.

Although these evaluations are readily available, the auditors were unable to determine how meal evaluations are used in an overall contract monitoring process. Furthermore, it appears that in some cases, employees may be aware that the evaluations are not utilized because auditors noted concerns in the preparation of the meal evaluation reports, such as:

- Instances in which meal evaluations appeared to be completed prior to the meal service, only requiring an employee signature;
- Instances in which temperatures on meal evaluation forms are noted as "satisfactory" instead of listing an actual temperature of the food on the tray; and
- Instances in which meal evaluations were submitted blank or partially blank.

Quarterly contract review meetings between DOC and ARAMARK required by the contract were not held.

The contract Section 30.330 - ACA Accreditation states, *The Contractor(s) and the Department shall, within sixty (60) days of execution of the Contract(s), schedule dates for quarterly review meetings between the Contractor(s) and the Department for evaluation of the Contract(s). Any monthly reports to be used to monitor and maintain adequate food service operations shall be submitted and approved at this time.*

Auditors determined that DOC and ARAMARK did not hold formal quarterly contract review meetings outlined in Section

30.330 of the contract. This section required ARAMARK and DOC to schedule these meetings in order to comply with ACA accreditation requirements, and stipulated that monthly reports used to monitor and maintain adequate food service operations shall be submitted and approved during these meetings. During inquiry with department management, they indicated any evaluation they perform is informal. Problems at the institutional level are communicated to DOC's central management and worked out with ARAMARK, but are not formally documented in most cases and are not part of routine meetings held with the vendor. Inquiry with ARAMARK indicated that they do maintain a good line of communication with DOC to resolve issues as they arise, but it also confirmed that formal meetings were not scheduled at the institution or the central level.

Menu Surveys were not conducted in a consistent manner at all institutions, and results do not appear to be consistently used in an overall contract evaluation.

The contract Section 30.110 - Menu Surveys of the contract states,

At a minimum, menu surveys shall be conducted on an annual basis. Survey results are to be used in planning menus and evaluation of food service operations. Results shall be summarized and made available to the respective Warden and the Contract Monitor. Results shall be used in evaluation of the Contractor(s) at the time of renewal.

Testing included a review of the results of the menu surveys conducted during the time period DOC operated the institutional food services, as well as those conducted during the period ARAMARK operated the institutional food services. The review indicated that the survey procedures varied between institutions, such as in the number of surveys distributed to inmates and in the survey distribution methodology. DOC management indicated that the surveys were sent to the Wardens for distribution to inmates, and the decision on how the distribution is handled is left up to the Warden. Because survey procedures are at the discretion of the Wardens, distribution methods varied in that some Wardens select the individuals to receive the surveys and other institutions randomly distribute them throughout the living quarters. The number of menu surveys distributed varied from 25 at one institution and more than 60 at another institution.

Also, there is no evidence indicating that the surveys were used to assist in planning menus or to evaluate food service operations or that the survey results were used as an evaluation tool during the contract renewal periods. DOC indicated that both it and ARAMARK review the surveys upon completion to look for potential issues with the food. However, DOC management indicated its primary interest was whether the food was hot when it should be hot, and that it is cold when it should be cold.

The lack of a standardized policy among the institutions may lead to inconsistent or unreliable results. Furthermore, DOC employees and inmates should have a clear understanding of the objectives of the surveys in order for them to be taken seriously. It appears that the meal surveys contain information that could have assisted DOC in monitoring the contract. For example, we noted the following results:

- For the question, “*Rate the quality of food overall (1-10, 1 being the lowest, 10 being the highest).*”:
 - In 2004 under DOC’s food services operations, the rating was 6.18;
 - In 2009, the rating was 3.24.
- For the question, “*Are the hot foods served hot?*”:
 - In 2004, 54% indicated most of the time as the response;
 - In 2007, 25% indicated most of the time.

Although the survey results would be more reliable if the survey methodology was improved, based on the results presented, DOC should have noted changes in perception of the quality and temperatures of food served over time.

Weekly sanitation reports showed deficiencies that were not always addressed by ARAMARK or DOC.

The contract Section 30.200 - Sanitation states in part:

The Contractor(s) shall be responsible for maintaining sanitation in the food service operations, including personal hygiene, staff sanitation certifications, Hazard Analysis Critical Control Points (HACCP) regulations, all Health Department regulations, ACA standards, and any federal and state mandated policies and regulations. At a minimum, sanitation inspections by Department personnel shall be conducted on a weekly basis by the Warden or his designee and by other Department staff as needed. Inspections can be conducted without prior notice and any discrepancies shall be documented and necessary action taken...

Weekly sanitation reports at three facilities were tested, and auditors inquired of DOC and ARAMARK employees regarding these reports. Those procedures identified deficiencies documented on the sanitation reports that were not always addressed in ARAMARK’s corrective action plan or were not addressed timely by DOC.

This lack of follow-up resulted in repeat deficiencies and comments on subsequent sanitation reports. Without the resolution of the discrepancies, DOC and ARAMARK could be found in violation of federal and state policies and regulations.

Although external sanitation reports are generally favorable, one non-routine report identified serious weaknesses.

External inspections performed by the local health departments were also reviewed, which are required to be performed twice annually. In discussing the inspection process with ARAMARK and also through inquiry with a health department inspector, these inspections are performed as no-notice inspections although the food service managers generally know when the inspection is due. In most cases, passing health department inspections were noted, and those reports with weaknesses indicated the problems noted were corrected in a reasonable period of time.

However, one health department report of particular concern was a non-routine report related to a possible food illness outbreak mentioned in a previous section of this report. The report indicated that food workers had cuts, blisters, and other wounds on their hands and arms, and also indicated ARAMARK failed to inspect the part-time food service workers for illnesses. The health department notified ARAMARK of this weakness.

The report also indicated the most probable cause of the illness outbreak was bacteria from the lunch meal served on the day of the illness outbreak. The health department tested samples of food from the meal sample trays, which are required to be maintained for at least 72 hours after the meal is served. However, the report indicated the health department was unable to test the food item that was the most likely source of the bacteria because the food service workers failed to include the item on the meal sample trays.

Documentation provided regarding this incident did not indicate whether the results of the report led to a penalty or warning against ARAMARK, or that measures were taken to ensure food safety policies noted by the health department were communicated to all other institutions.

Grievance procedures appear to be fair, but may not be fully utilized in identifying potential food service problems.

The contract Section 30.300 - Inmate Complaints and Grievances states,

Inmates have the opportunity to file grievances about any aspect of their incarceration, including food service. Any grievances filed by inmates regarding food service shall be referred to the Contractor Management Staff (Food Services Manager), who shall review the informal grievance and take appropriate action consistent with inmate grievance procedures outlined in Chapter 14 (14.6 Inmate Grievance Procedure). Upon request from the Department or Contract Manager, the Contractor(s), shall furnish all information provided in response to any grievance in a timely manner. The inmate may appeal to the Commissioner for further resolution of any grievance not satisfied in the informal or Wardens' level

review. A high number of appeals upheld at this level would indicate a problem or breakdown and possible weakness in the delivery of food services. A large percentage of upheld grievances may result in breach of Contract(s) and possible non-renewal or termination of Contract(s).

Because the contract language states that a large percentage of upheld grievances may result in breach of the contract and possible non-renewal or termination of the contract, the summary reports for inmate grievances appealed to the DOC Commissioner were reviewed. Of all grievances appealed to the Commissioner, the categories most appealed were portion sizes, food shortages, and sanitation. This testing indicated that most food-related grievances appealed to the Commissioner are not upheld. Although the justification of whether to uphold a particular grievance is at the discretion of the Commissioner based on the specific circumstances presented, the low percentage of upheld appeals likely acts as a deterrent for inmate appeals, which suggests that grievance appeals may not be the most reliable way to determine whether food service problems exist. Also, this methodology does not take into consideration the food-related grievances that are filed and resolved at the institution level, which may also identify problems and patterns related to food services that could be addressed centrally.

During interviews with DOC employees and inmates, auditors inquired as to whether the grievance and appeals process in the institutions is considered fair. Most individuals indicated that the grievance process is generally fair, but that food service related grievances are usually viewed as less serious matters and may not receive the same attention that other types of grievances receive.

The monthly Grievance Activity Reports for January 2007 through March 2010 submitted to DOC central level management by each institution were also reviewed. This report shows all grievances filed at the institutions per month based on issues varying from Department Regulations, Food, Personal Property, etc. An analysis was performed to determine how significant the numbers of food-related grievances were during the examination period. Based on the documentation received, calendar year 2010 through March had the highest level of food-related grievances during the period, indicating that food related grievances may be increasing. The auditors were not able to determine whether this is related to a change in food service or related to increased attention given to food services in 2010.

DOC does not appear to have a comprehensive monitoring plan for identifying contractual problems.

The objective in reviewing the grievance and appeals procedures above was to determine whether food-related concerns are taken seriously and used as monitoring procedures for the contract as a whole. It does appear that DOC's grievance and appeals processes appear to be taken seriously in most cases, but it is not clear whether the results of the grievance process were used centrally for overall contract monitoring.

In addition to grievance procedures, the contract includes numerous monitoring provisions for use by DOC. However, there does not appear to be a comprehensive monitoring process in place that takes into account information from all areas - such as grievances, meal reports and evaluations, billing reviews, sanitation inspections, etc. Auditors did note that DOC has various ways of communicating with the individual institutions and ARAMARK regarding noted problems, but specific problems noted are not always documented, and generally do not appear to be considered in the context of the contract as a whole. The approach of addressing problems on a case-by-case basis at the institution level misses the opportunity to identify pervasive problems in operations that should be addressed on a more comprehensive basis.

Recommendations - Monitoring

We recommend DOC review its overall contract monitoring strategy, and develop a systematic way to ensure results from its various oversight functions are coordinated into a cohesive monitoring process. DOC should use the results of this central review to identify best practices and areas for improvement at individual institutions and work with the vendor on any corrective action or improvements needed. The monitoring plan should incorporate specific functions already part of the contractual provisions, such as quarterly review meetings, meal evaluations, etc., but should also clarify and standardize many of those practices in order to improve the reliability and understandability of the data.

Because of the magnitude of the food services contract, the results of the monitoring efforts should be compiled in an annual report or summary, which can be considered in the annual contract evaluation for assisting DOC in decisions regarding contract renewal, cost adjustments or contract modifications.

**NORTHPOINT
TRAINING CENTER**

Due to the concerns arising from a riot at the Northpoint Training Center in August 2009, testing procedures included this institution in the sample for detailed examination and for review of the allegations implicating food services as a possible factor

leading to the riot. Unfortunately, the majority of records needed for the examination were destroyed by the fire in the kitchen facility during the riot. Auditors did, however, conduct site visits, interviews, and reviewed other records available. The results of these procedures have been included in our report, where applicable.

One notable concern identified during on-site visits not addressed elsewhere in this report relates to the temporary kitchen facility used at the institution. NTC lost its kitchen facility to fire during the August 2009 riot, and is utilizing a temporary building for its food services until a new permanent structure can be built. The temporary building presents significant challenges for food service operations, which result in sanitation and food storage concerns. Based on interviews and the auditor's observations, the auditors noted:

- Temperature instability in the structure. Because it is a temporary unit, temperature is very difficult to regulate. Most notably, during the winter months, individuals indicated the temperatures in the unit were very cold. Cooking in the building caused condensation to form on the walls and ceiling. Ultimately the condensation froze, causing it to "snow" inside.
- Structural problems make the building more susceptible to animals, rodents, and insects. Caulking between floor and wall panels was visible throughout the temporary kitchen unit. Upon inquiry as to whether the caulking provides sufficient insulation from pests, auditors were told that it is a concern. Auditors learned that an animal had found its way into the kitchen facility at one point. Also, there were concerns about insects because the floor panels of the temporary kitchen sit so close to the ground that food can fall between cracks on the floor, attracting insects and rodents. In addition, auditors observed gnats in the kitchen area during this site visit.

Auditors acknowledge the circumstances are beyond the control of ARAMARK, and it did appear that ARAMARK and DOC were implementing controls to reduce the risk of insect and rodent infestations to the extent possible. However, this is a high risk area for potential sanitation and contamination problems, and should continue to be closely monitored.

CANTEENS

Although the examination primarily focused on DOC's prison food services contract with ARAMARK, numerous allegations and concerns arose regarding canteen operations, including possible conflicts of interest between canteen operations and the food service operations, complaints of price gouging, and concerns that DOC may not take food service concerns seriously due to profits it receives from canteens. Therefore, procedures were performed to assess the validity and seriousness of these concerns.

Auditors did not find evidence of institutional bias favoring ARAMARK when awarding canteen operations contracts.

As part of the procedures performed to identify potential conflicts of interest between food service and canteen operations, four institutions were tested to review the procurement of canteen vendors. Of the four institutions, one utilized ARAMARK as the canteen vendor and the other three were under different management for comparative purposes. Auditors also inquired of canteen procurement at institutions other than those selected for testing to determine that procedures were generally consistent to those institutions tested. These procedures did not identify an institutional bias toward ARAMARK as a vendor, even after ARAMARK was awarded the statewide food services contract.

Price differences among institution canteens may be partially explained through the lack of centralized procedures in awarding canteen contracts and varying commission rates among the institutions.

Although food services are contracted on a statewide basis, canteen operations are contracted separately by each institution. Each institution negotiates the canteen commission with the vendor independently, and, therefore, canteen commissions are not the same for each institution. Statewide, commission rates vary between 17% and 32%, and even though higher commissions did not necessarily equate to the highest prices, the varying commission rates do explain how prices variances would exist even if the same vendor was utilized statewide. Price differences were also noted when the same vendor was used at different institutions. These types of inconsistencies are likely due to the procurement method of having canteen contracts awarded separately by each institution.

KCIC, which administers the receipt and expenditure of inmate commissions, has not adopted the model procurement code and is not reported in the Commonwealth's financial statements.

The canteen commissions noted above are required by KRS 196.270 to be used for the benefit of the inmates, and DOC created the Kentucky Centralized Inmate Commissary, Inc. (KCIC) to administer these funds. KCIC is comprised of the DOC Commissioner, Deputy Commissioner for Adult Institutions, Director of Administrative Services, and the Warden of each institution, and manages between \$2 and \$3 million dollars in revenues annually. During this examination, the auditors gained an understanding of KCIC's administration and activity to consider the possibility of any conflicts of interest, as noted above, and also to determine that any payments made to

ARAMARK from these funds comply with statutory requirements. During this review, other matters related to KCIC were noted that are important to disclose.

KCIC receives an annual audit of these funds, but its funds are not recorded in the state's accounting system and are not reported in the Commonwealth's Annual Financial Report (CAFR). Furthermore, although KCIC has worked with Finance and Administration Cabinet on its procurement methods, it has not adopted the model procurement code detailed in KRS Chapter 45A.

Of even greater concern, although the members of KCIC are state employees, are assigned to KCIC as part of their official roles in DOC, and are performing some KCIC duties during working hours for their state position, it asserts it is not a public entity required to report its activity in the CAFR and is not required to follow the model procurement code. Therefore, it is not administering itself as a public board. This appears to be inconsistent with accounting standards for financial reporting, but more importantly, because KCIC does not administer itself as a public board, it does not adhere to open records and open meeting statutes. The APA sought an opinion from the Finance and Administration Cabinet regarding KCIC's status as a public entity and it upheld KCIC's position.

*Recommendations -
Canteens*

We recommend:

- KCIC should be fully transparent and accountable to the public, including adherence to the open meetings and open record laws, and should adopt the model procurement code.
- Legislative changes should be made to require KCIC be treated as a public agency for purposes of procurement, open records and open meetings to ensure transparency and accountability.
- KCIC should consider awarding canteen contracts at a central level. The Commission should take into consideration the pros and cons of awarding a single statewide canteen contract versus awarding individual contracts, while striving for equity among institutions.

CONCLUSION

The examination of the DOC's food services contract with ARAMARK was an extensive review of numerous contract provisions, operations at the institutions, and monitoring procedures performed by DOC. The food services contract between DOC and ARAMARK establishes requirements for feeding between 11,000 and 12,000 inmates three meals every day, at an annual cost of approximately \$12 million. The results of testing indicate there may be pervasive noncompliances with the contract requirements. Many areas for improvement were identified, but two themes impacting the contractual compliance were prevalent:

- There were significant weaknesses in documentation of approvals, changes in policy and/or contractual provisions, and food service problems identified from various sources, and
- There is a lack of formalized and/or standardized policies and procedures to monitor the contract centrally.

The findings also identify that more often than not, it appears that billing errors and production problems tend to favor the vendor rather than the department. Even though DOC has contracted with an external vendor for its food services, it still has a duty to manage its taxpayer resources in the most effective and efficient way possible, and should improve procedures to enhance its ability to do so.

Although the contract contains adequate provisions to give DOC the ability to adequately monitor the food service operations, DOC did not appear to approach its monitoring from a comprehensive perspective. Even though DOC may have routinely discussed its concerns related to food service operations with ARAMARK on an institution by institution basis, the documentation of the problems noted, and department's oversight and follow-up is scarce. Ultimately, auditors were unable to determine how ARAMARK's performance at each institution was considered and evaluated for the contract as a whole, or how the problems were followed up on and resolved.

Department of Corrections' Response



JUSTICE AND PUBLIC SAFETY CABINET

Steven L. Beshear
Governor

J. Michael Brown
Secretary

Department of Corrections

P.O. Box 2400
Frankfort, Kentucky 40602
Phone (502) 564-4726
Fax (502) 564-5037
www.kentucky.gov

LaDonna H. Thompson
Commissioner

September 30, 2010

The Honorable Crit Luallen
Auditor of Public Accounts
209 St. Clair Street
Frankfort, Kentucky 40601-1817

RE: Agency Response to Review of DOC-ARAMARK Food Service Contract

Dear Ms. Luallen:

On behalf of the Kentucky Department of Corrections (DOC), please accept this letter in response to the (Draft) Examination of the Kentucky Department of Corrections' Food Services Contract with ARAMARK Correctional Services, LLC. We appreciate the opportunity to provide this initial feedback to the findings and recommendations associated with the report, as well as the additional opinions expressed in it.

DOC recognizes that the Auditor of Public Accounts (APA) has conducted a very extensive examination of all aspects of DOC/ARAMARK operations over a five-month period. There are key findings within the report that DOC would like to emphasize:

- The APA report indicates that the contract with ARAMARK represents a substantial savings to the taxpayers of the Commonwealth in that DOC's current per diem price of \$2.63 per inmate is in the lower end of a range of \$2.35 to \$3.29 per inmate, as revealed in information recently gathered by APA from other states. The savings is further exemplified when considering the DOC cost per inmate in 2004 prior to the contract was \$3.28 and was subject to inflation each subsequent year. (Refer to Page 9 of the report)
- The APA report confirms that the Master Menu providing for 2800 calories per day is appropriate and in line with other state correctional system requirements. The auditors also state that the DOC Master Menu does not violate industry standards. (Refer to Pages 7 and 8 of the report)

Department of Corrections' Response (Continued)

- The auditors reviewed records, conducted site visits, and interviewed staff and did not indicate any finding to substantiate the allegation implicating food service operations as a contributing factor in the disturbance at the Northpoint Training Center in August of 2009. The report did not make any recommendations other than for the operation of the temporary kitchen facility. (Refer to Pages 40 and 41 of the report)
- The report confirmed that ARAMARK canteen operations, which are present in only two (2) of the thirteen (13) state facilities, did not reflect price gouging, a pattern of decreased rate of meal participation, or an inappropriate award of contract. (Refer to Page 6 of the report)

DOC has completed the review of the findings noted on the cover page of the draft audit report and responses to the findings follow:

1. **ARAMARK declined the auditors' requests for certain cost records requested for its examination. The auditors recommend DOC and Finance and Administration Cabinet (FAC) review the contractual provisions contained in Section 40.195 of the contract to determine whether ARAMARK is in breach of contract for its failure to submit relevant financial records to the APA.**
 - DOC agrees to meet with FAC to determine if ARAMARK is in breach of contract for failure to submit relevant financial records to the APA.
2. **The examination identified more than \$36,000 in overpayments made by DOC to ARAMARK due to billing errors and non-compliances with contract provisions, which may exceed \$130,000 when projected.**
 - DOC agrees that billing errors have occurred due to estimations of inmate counts for weekends, inmate religious meals, staff meals, and meals for the Kentucky Psychiatric Treatment Center, as noted in the report. With the advent of increased technology and databases within DOC, up-to-date count reports will provide an immediate correction for the identified billing errors.
3. **Auditors were unable to verify that ARAMARK consistently followed approved recipes, used the proper quantity of ingredients, and met food safety standards regarding food temperature or use of leftovers due to poor documentation.**

DOC agrees with the recommendations from APA that call for increased monitoring efforts to include:

- Development of a standard monthly report
- Increased documentation of menu modifications and substitutions
- Increased documentation of the use of leftovers

Department of Corrections' Response (Continued)

- Resolving discrepancies of portion sizes and weight

4. ARAMARK received almost \$148,000 in inmate-grown food for nearly no cost, which is not compliant with contract provisions.

DOC agrees with the recommendation to re-examine the policy on the use of inmate-grown food. ARAMARK is billed for produce that is used as a menu item substitute, but is not billed for produce used as a supplement. As a matter of good practice, DOC will increase the documentation concerning the quality, billing, and value of inmate-grown produce, as well as whether the produce is appropriate to be used as a substitute or serve as a supplemental item to the menu.

5. DOC does not appear to have a comprehensive contract monitoring process in place.

DOC does not agree that there is not a comprehensive contract monitoring process. The current monitoring includes staff at each facility as well as staff in central office. This process includes:

- Approval of the Master Menu by the Director of Nutrition
- Meal evaluation by DOC staff, which requires staff to participate in meal at each service, to document temperatures, quality, and quantities
- Review of inmate grievances at institutional and central office level
- Daily meal reports completed by DOC documenting delays/shortages
- Approval of substitutions at central office
- Inmate Menu surveys conducted on annual basis
- Presence of DOC staff in dining room/kitchen for all meals
- On site inspections by Central Office staff
- Sanitation Inspections completed by DOC twice weekly
- Monthly review of inmate and staff meal counts at both institutional and central office level
- Monthly review of Invoice from contractor by institution
- Health Department Inspections on semi-annual basis
- Audits by American Correctional Association
- Annual audits by Program Security Review team

However, DOC appreciates the recommendation to further enhance the current monitoring strategy of all aspects of food service operations and contract compliance. The monitoring strategy will include quarterly review meetings at the central office level, increased documentation of operations, and documented corrective action plans. DOC will review the assignment of staff to accomplish this monitoring strategy.

Department of Corrections' Response (Continued)

DOC has completed the review of the findings noted in the body of the draft audit report and responses to the findings follow:

- **Recommendation for a cost analysis to be conducted for the master menu when considering changes in the contractual cost of services.**

All reviews for changes in contractual cost of services are conducted in accordance with Section 50.410 of the ARAMARK contract which states, "Any price increase shall not exceed three percent (3%) or the annual Consumer Price Index, whichever is less." The most recent contract modification in January of 2009 changed the language to four percent (4%) or the Consumer Price Index. DOC uses both the "Food Away From Home – South Urban Area" and "Food at Employee Sites and Schools" consumer indices for analysis as recommended by the Bureau of Labor Statistics. These indexes provide a complex and integrated benchmark in which to compare the increased costs to ARAMARK, including food commodities.

ARAMARK received a 3% rate increase effective July 1, 2008. The next 3% rate increase was effective on January 5, 2009. There was no increase in 2010.

- **Recommendation that DOC review its meal time policies to meet the requirement of less than 14 hours between the evening meal and following breakfast meal.**

DOC consistently maintains compliance in all facilities with ACA standards applying to time periods between meals. This practice is documented in annual reviews. It should be noted that the auditors only had the opportunity to review the meal start times and did not review documentation of the meal periods, which can last up to 1 ½ to 2 hours. DOC will continue to monitor meal time periods to ensure continued compliance with contractual and ACA standards.

- **Recommendation that DOC implement periodic no-notice testing procedures for food temperatures.**

DOC currently documents food temperatures and accepts the recommendation to conduct no-notice testing on a weekly basis.

- **Recommendation to document line stoppages and food shortages in a monthly report.**

DOC accepts this recommendation.

- **Recommendation that DOC require ARAMARK to attach invoices for food products related to Fresh Favorites with its invoice.**

DOC agrees with this recommendation as a good practice to document the Fresh Favorite program.

- **Recommendation that DOC modify the contract to address equipment concerns.**

Department of Corrections' Response (Continued)

DOC agrees that there is a need to establish accountability for the repair and replacement of equipment. Equipment issues are to be documented in the monthly reports and quarterly meetings. DOC will evaluate the cost benefit of requiring equipment replacement by the vendor in future contract reviews.

- **Recommendation regarding Kentucky Centralized Inmate Commissary, Inc (KCIC).**

The DOC agrees with the opinion of the Finance and Administration Cabinet regarding KCIC's position. KCIC is required to be audited annually by an outside agency. The KCIC is required to file semi-annual reports with the Interim Joint Committee on Appropriations and Revenue detailing the revenues and expenditures from the Canteen Fund for each state-operated prison, private prison, and the central office of the department.

This concludes our responses to the draft audit document. Please contact me if clarification is needed for any statements the Department has submitted in this response.

Sincerely,



LaDonna H. Thompson
Commissioner

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Auditor's Reply

**EXAMINATION OF THE KENTUCKY DEPARTMENT OF CORRECTIONS’
FOOD SERVICES CONTRACT WITH
ARAMARK CORRECTIONAL SERVICES, LLC
Auditor’s Reply**

The Department of Corrections was provided an opportunity to respond to the findings and recommendations identified in the report of the ARAMARK food services contract; their response is included in the previous section. The auditors have chosen to reply to selected portions of the department’s response.

DOC Response: *“The APA report indicates that the contract with ARAMARK represents a substantial savings to the taxpayers of the Commonwealth in that DOC’s current per diem price of \$2.63 per inmate is in the lower end of a range of \$2.35 to \$3.29 per inmate, as revealed in information recently gathered by APA from other states. The savings is further exemplified when considering the DOC cost per inmate in 2004 prior to the contract was \$3.28 and was subject to inflation each subsequent year. (Refer to Page 9 of the report).”*

Auditor’s Reply

As stated in the report, the state-to-state comparison identified a wide range of factors that impact the per diem, such as the number of calories served per day and different billing methodologies, as well as quality of menu options and other contractual specifications. The data is presented for informational purposes because it was used to assist the auditors in gaining an understanding of industry practices. However, due to the various contract specifications, a conclusion regarding cost “savings” cannot be drawn from this information without detailed analysis on the specific cost factors that comprised the per diems for each state compared to Kentucky. Therefore, that was not the objective of this information.

Also, DOC indicates the savings is further exemplified considering the 2004 cost of service was \$3.28 when DOC ran food service operations. The auditors do not agree that ARAMARK’s per diem can be compared to the department’s 2004 cost-per-inmate estimate as quoted. The APA noted that DOC’s \$3.28 data include certain elements of cost, such as security provided by DOC officers, which is still provided by the department but not factored into ARAMARK’s per diem.

DOC Response: *“The auditors reviewed records, conducted site visits, and interviewed staff and did not indicate any finding to substantiate the allegation implicating food service operations as a contributing factor in the disturbance at the Northpoint Training Center in August of 2009. The report did not make any recommendations other than for the operation of the temporary kitchen facility. (Refer to Pages 40 and 41 of the report).”*

Auditor’s Reply

Our work did not draw a conclusion that food service was not a primary factor of the August 2009 inmate riot at Northpoint Training Center. In fact, the department’s report on the riot identified four primary causes of the riot based on its interviews with staff and inmates, with the third and fourth items being related to food and canteen prices.

Auditor's Reply (Continued)**Auditor's Reply (Continued)**

We would like to clarify that the objective of our report was not to determine the cause of the riot, but to examine the contract for food service operations. It was our understanding that ongoing investigations related to the riot were underway by the Kentucky State Police and DOC at the time of our examination, and that the scope of our procedures was limited to food service operations.

DOC Response: *“DOC agrees with the recommendation to re-examine the policy on the use of inmate-grown food. ARAMARK is billed for produce that is used as a menu item substitute, but is not billed for produce used as a supplement. As a matter of good practice, DOC will increase the documentation concerning the quality, billing, and value of inmate-grown produce, as well as whether the produce is appropriate to be used as a substitute or serve as a supplemental item to the menu.”*

Auditor's Reply

The auditors appreciate DOC's agreement to re-examine its policy on the use of inmate-grown food. We would like to clarify that during the examination of ARAMARK's production records, the auditors did not identify any instance in which inmate-grown food was provided as a supplemental menu item. The inmate-grown food was provided as a menu substitution in all instances identified in our testing, which included one of the highest yield months of the growing season.

DOC Response: *“DOC does not agree that there is not a comprehensive contract monitoring process. The current monitoring includes staff at each facility as well as staff in central office. This process includes:*

- *Approval of the Master Menu by the Director of Nutrition*
- *Meal evaluation by DOC staff, which requires staff to participate in meal at each service, to document temperatures, quality, and quantities*
- *Review of inmate grievances at institutional and central office level*
- *Daily meal reports completed by DOC documenting delays/shortages*
- *Approval of substitutions at central office*
- *Inmate Menu surveys conducted on annual basis*
- *Presence of DOC staff in dining room/kitchen for all meals*
- *Onsite inspections by Central Office staff*
- *Sanitation Inspections completed by DOC twice weekly*
- *Monthly review of inmate and staff meal counts at both institutional and central office level*
- *Monthly review of Invoice from contractor by institution*
- *Health Department Inspections on semi-annual basis*
- *Audits by American Correctional Association*
- *Annual audits by Program Security Review team*

Auditor's Reply (Continued)

DOC Response (Continued): *However, DOC appreciates the recommendation to further enhance the current monitoring strategy of all aspects of food service operations and contract compliance. The monitoring strategy will include quarterly review meetings at the central office level, increased documentation of operations, and documented corrective action plans. DOC will review the assignment of staff to accomplish this monitoring strategy."*

Auditor's Reply

We acknowledge that DOC has several of the oversight procedures listed above in place, but testing indicated that many of DOC's internal procedures listed are not well documented, not effective, and/or not well communicated. Also, as stated in the APA's report, DOC's monitoring procedures were not part of a cohesive overall approach, and therefore weaknesses identified in one area may not be known or considered in the context of overall contract performance. The impact of this means that while some problems may have been handled at a facility level, the annual contract renewal and cost increase decisions did not include consideration of many problems identified. We appreciate DOC's response related to improving the documentation and communication of these matters.

DOC Response: *"All reviews for changes in contractual cost of services are conducted in accordance with Section 50.410 of the ARAMARK contract which states, "Any price increase shall not exceed three percent (3%) or the annual Consumer Price Index, whichever is less." The most recent contract modification in January of 2009 changed the language to four percent (4%) or the Consumer Price Index. DOC uses both the "Food Away From Home ~ South Urban Area" and "Food at Employee Sites and Schools" consumer indices for analysis as recommended by the Bureau of Labor Statistics. These indexes provide a complex and integrated benchmark in which to compare the increased costs to ARAMARK, including food commodities.*

ARAMARK received a 3% rate increase effective July 1, 2008. The next 3% rate increase was effective on January 5, 2009. There was no increase in 2010."

Auditor's Reply

For clarification, the APA's report identifies an instance in which ARAMARK was, in effect, given two contract price adjustments in one year. One of those adjustments was a percentage increase in accordance with the language as noted above. The other adjustment may have been an inadvertent price adjustment resulting from changes in the Master Menu. The APA recommends DOC analyze the financial impact of changes to the Master Menu, or other contractual changes with a potential cost impact, and document the cost benefit provided to ARAMARK, if any. These costs benefits should be considered price adjustments, and documented as such.