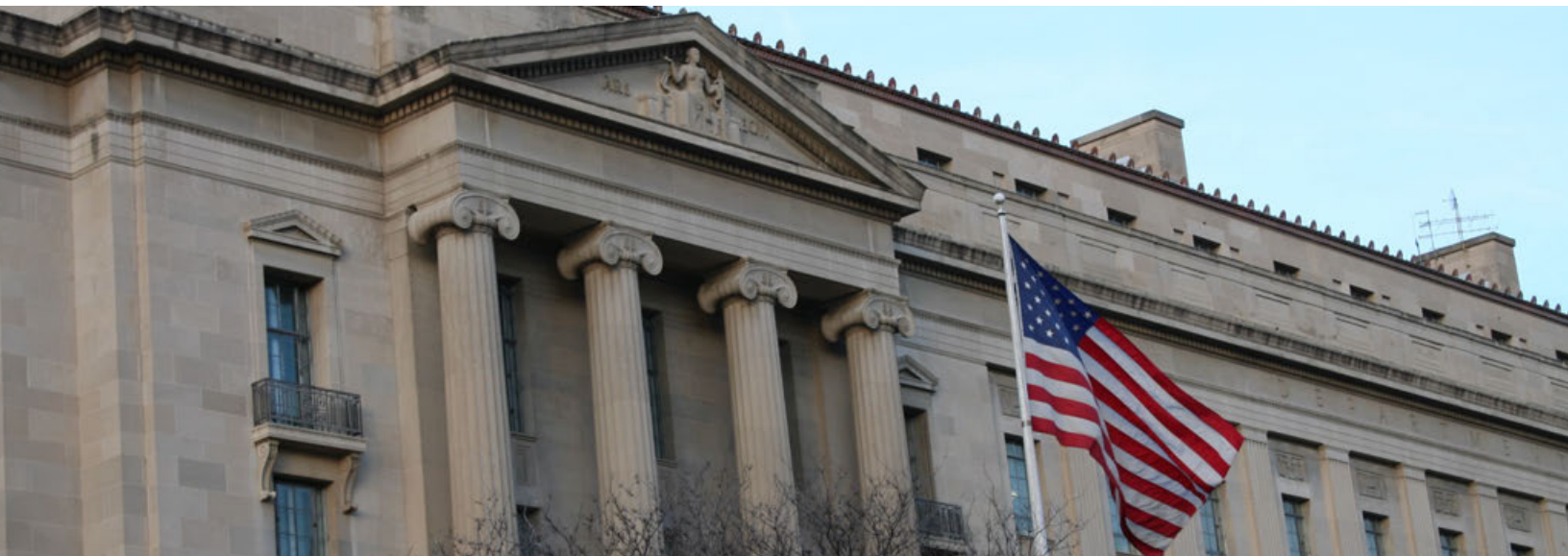




Office of the Inspector General
U.S. Department of Justice

OVERSIGHT ★ INTEGRITY ★ GUIDANCE



**Audit of the Federal Bureau of
Prisons' Perimeter Security
Upgrade Contract for
Administrative U.S. Penitentiary
Thomson Awarded to DeTekion
Security Systems, Incorporated**



Executive Summary

Audit of the Federal Bureau of Prisons' Perimeter Security Upgrade Contract for Administrative U.S. Penitentiary Thomson Awarded to DeTekion Security Systems, Incorporated

Objective

In May 2016, the Federal Bureau of Prisons (BOP) awarded a \$2.4 million firm-fixed price (FFP) contract to DeTekion Security Systems, Incorporated (DeTekion), for construction of an electronic taut wire fence detection system at Administrative U.S. Penitentiary (AUSP) Thomson, in Thomson, Illinois. The Department of Justice (DOJ) Office of the Inspector General (OIG) conducted an audit of this contract to: (1) determine whether the BOP adhered to federal regulations during the contract award and administration processes, (2) assess the adequacy of the BOP's contract oversight, and (3) determine if DeTekion properly invoiced the government and complied with the terms and conditions of the contract award.

Results in Brief

We found that the BOP did not comply with the Federal Acquisition Regulation (FAR) in several instances, and that the non-compliance resulted in significant concerns regarding the BOP's process for awarding this contract. Specifically, the BOP limited competition by awarding a sole source contract when BOP officials acknowledged that other companies exist that may be able to install the same type of fence. As a result, the BOP has less assurance that it obtained the most cost advantageous price. We also identified other areas for improvement in the BOP's contract award process, including inadequate market research, inadequate coordination of the acquisition plan with the Competition Advocate, questionable commission costs, and an unsupported Independent Government Cost Estimate (IGCE). Notwithstanding these issues, we determined that the BOP performed adequate oversight of the contracted work and DeTekion completed construction of the fence as specified in the award. In addition, based upon evidence provided during the audit, we concluded that the bills DeTekion submitted to the BOP were consistent with the agreed upon completion milestones and related compensation as outlined in the contract.

Recommendations

Our report contains nine recommendations to assist the BOP in improving its contract award and administration practices. The BOP agreed with all our recommendations.

Audit Results

Our audit focused on contract number DJBP0419P7Y40002, which is a firm-fixed price, sole source contract between the BOP and DeTekion for \$2,412,717. The contract period of performance was from June 2016 to January 2018. In November 2017, DeTekion completed construction and successfully conducted testing of the electronic taut wire fence detection system at AUSP Thomson.

Sole Source Justification – As noted in the FAR, federal law requires contracting officers to promote and provide for full and open competition when soliciting offers and awarding contracts, except under limited circumstances. We determined that the BOP did not comply with this requirement when awarding a sole source contract to DeTekion. While the BOP supported its actions by identifying one of the FAR-recognized circumstances that permits contracting without full and open competition, we found that the BOP's Justification for Other Than Full and Open Competition (JOFOC) memorandum contained inaccurate statements. First, the cover page to the JOFOC memorandum states that DeTekion is the only vendor able to install an electronic taut wire fence detection system. However, a senior BOP official and the BOP procuring contracting officer (PCO) told us that other vendors exist that may be able to install the same type of fence. Further, the JOFOC memorandum indicates that the BOP required a two-fence system—the electronic taut wire fence detection system and a non-lethal/lethal fence—be installed at AUSP Thomson and DeTekion was the only vendor able to install the non-lethal/lethal fence. However, the contract awarded to DeTekion was only for the installation of an electronic taut wire fence detection system and there is no non-lethal/lethal fence at AUSP Thomson. As a result, we believe that the BOP improperly awarded a sole source contract to DeTekion when other vendors existed that may have been able to install the electronic taut wire fence detection system and, thus, limited competition. Therefore, the BOP may not have obtained the most cost advantageous price for fence installation.



Executive Summary

Audit of the Federal Bureau of Prisons' Perimeter Security Upgrade Contract for Administrative U.S. Penitentiary Thomson Awarded to DeTekion Security Systems, Incorporated

Market Research – The BOP did not adequately document market research as required by the FAR. The FAR requires a government agency to conduct market research before soliciting offers for acquisitions with an estimated value greater than the simplified acquisition threshold of \$150,000. The FAR further states that market research results should be documented. The JOFOC memorandum made a few references to market research. It stated that based upon previous market research and acquisition, the BOP determined DeTekion to be the exclusive provider of the materials and services to install the electronic taut wire fence detection system. However, as previously discussed, BOP officials told us that other vendors exist that may have been able to complete the required work. We were unable to substantiate the adequacy of the market research performed because the BOP did not adequately document it in the contract file.

Acquisition Plan Coordination with BOP's

Competition Advocate – The BOP Competition Advocate, who concurred with BOP's use of a sole source award, stated that he was aware that other vendors exist that may be able to build an electronic taut wire fence detection system. However, he was not aware that this contract was only for this type of system. Therefore, we believe that the BOP's acquisition plan was not adequately coordinated with the BOP Competition Advocate as required by the FAR.

Commission Costs Awarded – During the acquisition process, DeTekion identified two subcontractors it would use to assist in completing the project. In addition, following direction provided by the PCO, DeTekion included in its total price proposal commission costs for finding and overseeing the subcontractors.

However, we found that the President of DeTekion is a part owner of one of the subcontractors. Therefore, we do not believe the BOP should have allowed DeTekion to include \$56,018 in commission costs for finding and overseeing a related party subcontractor. The BOP PCO acknowledged that these costs would have at least been questioned, if not disallowed, had the BOP PCO determined DeTekion was using a related party as one of its subcontractors.

Independent Government Cost Estimate – The independent government cost estimate (IGCE) submitted to the BOP PCO for the proposed contract did not include adequate supporting documentation. Specifically, the IGCE did not include any detailed supporting documentation for the estimated cost of materials, and the labor breakdown schedule did not contain any explanations for the proposed labor rates or hours. According to the FAR, an IGCE should contain sufficient detail as the government would expect when competing for an award. In light of the previously identified weaknesses, the BOP did not ensure it relied upon a fully supported IGCE when determining whether the price proposal was fair and reasonable.

FPDS Entries – We found that certain entries in the Federal Procurement Data System (FPDS) were inaccurate. According to the FAR, contracting officers are responsible for the completion and accuracy of individual contract action reports in FPDS. FPDS is a government-wide automated system used to collect and report on federal procurement spending. We believe it is important that entries in FPDS are accurate.

**AUDIT OF THE FEDERAL BUREAU OF PRISONS'
PERIMETER SECURITY UPGRADE CONTRACT FOR
ADMINISTRATIVE U.S. PENITENTIARY THOMSON AWARDED TO
DETEKION SECURITY SYSTEMS, INCORPORATED**

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AUDIT OF THE FEDERAL BUREAU OF PRISONS' PERIMETER SECURITY UPGRADE CONTRACT FOR ADMINISTRATIVE U.S. PENITENTIARY THOMSON AWARDED TO DETEKION SECURITY SYSTEMS, INCORPORATED

INTRODUCTION

The Federal Bureau of Prisons' (BOP) mission is to protect society by confining offenders in prisons and community-based facilities that are safe, humane, cost efficient, appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens. To accomplish this mission, the BOP manages and regulates correctional institutions across the United States.

Administrative United States Penitentiary (AUSP) Thomson is an administrative security prison with an adjacent minimum security satellite camp located in Thomson, Illinois. The prison started housing inmates in June 2017 and as of May 2018, had 191 inmates. The adjacent minimum security camp has been housing inmates since September 2017 and as of May 2018, had 131 inmates.

In October 2012, the Department of Justice (DOJ) purchased AUSP Thomson from the state of Illinois for \$165 million. According to the BOP, from the time of purchase until May 2018, the BOP has obligated \$113.5 million to upgrade AUSP Thomson to meet BOP security requirements. As part of the modifications to the prison, the BOP entered into a contract with DeTekion Security Systems, Incorporated (DeTekion) to upgrade perimeter security systems at the facility by installing an electronic taut wire fence detection system.¹ Figure 1 is a photograph showing a portion of the electronic taut wire fence detection system at AUSP Thomson.

¹ The electronic taut wire fence detection system consists of barbed wires that are strung taut between two anchor posts and clamped to sensor posts. The fence is designed so that attempts to climb, spread, or cut the fence will trigger an alarm to the prison control room.

Figure 1
Electronic Taut Wire Fence Detection System
at AUSP Thomson



Source: DOJ OIG

The DOJ Office of the Inspector General (OIG) audited the contract between the BOP and DeTekion for the construction of an electronic taut wire fence detection system at AUSA Thomson. The \$2.4 million Firm-Fixed-Price (FFP) contract was awarded to DeTekion on May 25, 2016, with an expected completion date of January 21, 2018. In November 2017, DeTekion and BOP officials completed their final testing of the fence, and the BOP considered the fence fully operational at that time.

A Procurement Contracting Officer (PCO) in BOP's Field Acquisition Office awarded the contract, while an Administrative Contracting Officer (ACO) performed the contract administration responsibilities at AUSA Thomson. A Contracting Officer's Representative (COR) was appointed to perform the contract oversight responsibilities, including the monitoring of contractor performance and the review of invoices.² The CORs were located on-site at AUSA Thomson during the construction of the electronic taut wire fence detection system.

² During the contract period of performance, different CORs were appointed to perform contract oversight duties due to personnel transfers. However, only one COR was appointed at any given time during the contract period of performance.

OIG Audit Approach

Our audit objectives were to: (1) determine whether the BOP adhered to federal regulations during the contract award and administration processes, (2) assess the adequacy of the BOP's contract oversight, and (3) determine if DeTekion properly invoiced the government and complied with the terms and conditions of the contract award.

In conducting our audit, we tested compliance with what we consider to be the most important conditions of the contract action. Unless otherwise stated in our report, the criteria we used to evaluate compliance are contained in the Federal Acquisition Regulation (FAR) and internal BOP policies and procedures. We interviewed key BOP employees at BOP Headquarters; the responsible BOP Field Acquisition Office (in Grand Prairie, Texas); and AUSB Thomson, including the Competition Advocate, the former program manager for perimeter security, the PCO, the ACO, and CORs. We also reviewed relevant documentation including contract award documents, contract oversight documents, invoices, and other contract file documents. In addition, we conducted work at DeTekion's headquarters in Vestal, New York, including interviews with key employees and a review of contractor documentation.

AUDIT RESULTS

We found that critical BOP actions in awarding and administering the construction contract for the electronic taut wire fence detection system at AUSA Thomson did not comply with the FAR. Specifically, we have significant concerns regarding the process that the BOP followed in awarding this contract. In the end, BOP's non-compliance with certain FAR requirements resulted in limiting competition by awarding a sole source contract to DeTekion when other companies existed that may have been able to deliver the same services. As a result, the BOP may not have obtained the most cost advantageous price. Notwithstanding the issues we identified with the awarding of the contract, we determined that the BOP performed adequate contract oversight during the award period, and that DeTekion completed construction of the fence as specified in the award. In addition, we concluded that the bills DeTekion submitted to the BOP were consistent with the agreed upon completion milestones and related compensation as outlined in the contract.

Contract Award Process

We examined the BOP's actions in awarding the audited \$2.4 million contract to DeTekion. We determined that the BOP did not adhere to the FAR and was deficient in several areas related to the contract awarded to DeTekion to construct an electronic taut wire fence detection system at AUSA Thomson. Specifically, we found that the BOP awarded a sole source contract to DeTekion when, as noted by BOP officials, other companies existed that may have been able to install this type of fence. In addition, BOP contracting personnel did not adequately document market research, paid \$56,018 in commission costs for DeTekion to find and oversee the work of a related party subcontractor, prepared an inadequate IGCE, and did not adequately coordinate the acquisition plan with the BOP Competition Advocate as required.³ As a result, we believe that the BOP did not sufficiently safeguard the financial interests of the United States and may have obtained a better price than the \$2.4 million awarded to DeTekion if it had competed the contract. In addition to the deficiencies related to the award process, we identified areas for improvement in the BOP's contract administration process – ensuring compliance with BOP policy regarding proper invoices and ensuring entries in the Federal Procurement Data System (FPDS) are accurate.

Sole Source Justification

The FAR incorporates the competition requirements found in 10 U.S.C 2304 and 41 U.S.C. 3301 that require contracting officers to promote and provide for full and open competition in soliciting offers and awarding contracts. However, the FAR also recognizes certain circumstances that would permit contracting without full and open competition, which include instances where there is only one reliable source, a situation where there is an unusual and compelling urgency, or instances where national security would be compromised. The BOP's Justification for Other Than

³ For purposes of this report, we use the term "related party" to refer to companies with a common, part owner.

Full and Open Competition (JOFOC) memorandum for the audited contract utilized one of the FAR justifications – stating that there was only one responsible source to complete the work. However, we found that the BOP’s justification was inaccurate because BOP officials told us that there were other companies that may have been able to complete the work that was performed. As a result, we found that the BOP did not have sufficient justification to limit competition on the contract.

According to the contents of the JOFOC memorandum, the BOP required a two-fence system (an electronic taut wire fence detection system and a non-lethal/lethal electrified fence) to be installed at AUSA Thomson.⁴ The cover page of the JOFOC memorandum further stated DeTekion was the only provider for the design, configuration, and installation of the electronic taut wire fence detection system at AUSA Thomson. We found both of these statements to be inaccurate. First, although BOP officials told us that DeTekion is the only provider of the non-lethal/lethal fence, such a fence was not procured and installed at AUSA Thomson. The contract awarded to DeTekion was only for an electronic taut wire fence detection system, and this was the only type of fence installed at AUSA Thomson. Second, according to our discussions with a senior BOP official and the PCO, other companies exist that may have been capable of installing an electronic taut wire fence detection system. In particular, the PCO informed us that she has since been involved in the procurement of an electronic taut wire fence detection system with a different vendor.

The PCO explained that she relied on input from BOP technical experts regarding the section of the JOFOC memorandum indicating that the BOP required a two-fence system be installed at AUSA Thomson. The PCO requested the BOP technical experts review the related explanation in the JOFOC memorandum for accuracy. The PCO stated that one of the BOP technical experts informed her that the explanation was accurate. Subsequently, we interviewed the other BOP technical expert, and he told us that at the time he provided the explanation to the PCO, he believed a non-lethal/lethal electrified fence was going to be installed at AUSA Thomson. The PCO said that throughout the entire procurement process she believed the BOP was seeking to procure a non-lethal/lethal fence, even though we found that BOP’s statement of work and DeTekion’s price proposal indicated only the electronic taut wire fence detection system would be installed. The PCO said that it was not until we interviewed her in September 2017 that she thoroughly reviewed the contract and noticed that only an electronic taut wire fence detection system was required to be installed at AUSA Thomson. During our review of the contract file, we did not identify any references to installing a non-lethal/lethal electrified fence at AUSA Thomson other than where it was mentioned in the JOFOC memorandum.

We found that the BOP limited competition on the contract using a justification that contained an inaccurate description of the type of fence being procured for at AUSA Thomson. The benefits of competition in acquiring goods

⁴ A non-lethal/lethal electrified fence has the capacity to administer a non-lethal shock to stun someone initially touching the fence and then switching to deliver a lethal shock upon touching the fence a second time.

from the private sector are well established. For instance, competitive contracts can save money, improve contractor performance, and promote accountability for results. Because the contract was awarded as a sole source acquisition and competition was limited, we were unable to determine whether the BOP received the best value for the installed fence. We recommend that the BOP reviews its acquisition procedures to ensure those procedures include adequate guidance on writing JOFOC memoranda that match contract requirements and do not limit competition unnecessarily. We also recommend that the BOP reiterate these requirements to its contracting personnel.

Market Research

The FAR requires a government agency to conduct market research before soliciting offers for acquisitions with an estimated value greater than the simplified acquisition threshold (\$150,000).⁵ The FAR further requires that a contract file contain sufficient documentation to constitute a complete history of the transaction. Given the audited contract is a sole source award, we believe the market research should be documented in the contract file. We reviewed the contract file and found that the BOP did not document its market research other than a few brief references to market research in the JOFOC memorandum. Specifically, the JOFOC memorandum stated that based upon previous market research and acquisition, the BOP determined that DeTekion is the exclusive provider of the materials and services to install the electronic taut wire fence detection system. In addition, the JOFOC memorandum stated that the BOP determined that DeTekion's price proposal was fair and reasonable based upon brief market research conducted for this acquisition. Despite these references in the JOFOC memorandum, the contract file did not contain documentation supporting the market research conducted.

Moreover, the PCO stated that she did not perform her own market research but relied on input from BOP technical experts regarding this section of the JOFOC memorandum. In particular, the PCO requested the BOP technical experts review the explanation in the JOFOC memorandum for accuracy, and one of the technical experts confirmed that DeTekion was the only provider for such services. However, as discussed, a senior BOP official told us that other companies exist that may have been capable of installing an electronic taut wire fence detection system, which the PCO also acknowledged when we interviewed her in March 2018. It is especially critical when awarding a sole source contract to document that adequate market research was conducted to support a conclusion that no other companies exist to perform the same required work. Otherwise, it is possible to award a sole source contract that does not comply with the authorized exceptions cited in the FAR and, thereby, improperly limit competition. As acknowledged by a senior BOP official and the PCO, other companies besides DeTekion exist that may have been able to install the required fence at AUSA Thomson. Therefore, by not awarding the fence contract through fair and open competition, the BOP did not adequately safeguard the financial interests of the government and may not have received the best value for the installed fence. We recommend that the BOP reiterate to its contracting

⁵ FAR 10.001(a)(2)(ii) states that agencies shall conduct market research before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold.

officers the importance of conducting an appropriate level of market research during the contract award process and documenting that analysis in the contract file.

Commission Costs Awarded

The FAR requires contracting officers to safeguard the financial interests of the United States in its contractual relationships.⁶ However, the contract with DeTekion included \$56,018 in commission paid to DeTekion for finding and overseeing the work of a related party subcontractor.⁷ As a result, we are concerned that the financial interests of the BOP were not appropriately safeguarded and that the PCO did not adequately determine a fair and reasonable price on the contract award, as detailed below.

While preparing the price proposal, the President of DeTekion asked the PCO about the allowable percentage for markup of subcontractor costs because the cost template provided in the solicitation did not contain a line item for subcontractor overhead and profit. The PCO responded that the cost template did not have a markup for subcontractors. However, the PCO told the President of DeTekion that as a prime contractor, DeTekion could include a line item for commission costs to cover its work related to hiring and overseeing the work of subcontractors.

The price proposal submitted by DeTekion included work to be completed by two subcontractors. One of the subcontractors named in DeTekion's price proposal was Reliance Fence; the President of DeTekion stated that he is a part owner of Reliance Fence, which is also co-located with DeTekion. We were concerned as to why DeTekion would receive a commission for finding and overseeing this subcontractor given it is related party. The President of DeTekion told us that he did not see an issue with including these costs on the proposal, and that the PCO allowed the commission costs because DeTekion was not allowed to claim overhead and profit on subcontractor costs.

In September 2017, the PCO told us that she was unaware that DeTekion and Reliance Fence were located at the same address even though the subcontractor's address was reflected on the contractor's price proposal. During a follow-up discussion, in March 2018, the PCO stated that if she had known that DeTekion and Reliance Fence were related parties, she would not have allowed the commission costs to be included in the contract award amount, or she would have at least questioned the inclusion of these costs.

We recommend that the BOP reiterates to contracting officers the importance of properly evaluating price proposals when making fair and reasonableness price determinations. This evaluation should include an appropriate review of the

⁶ FAR 1.602-2 *Responsibilities* states that contracting officers are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships.

⁷ The contract award included an additional \$16,866 in commission costs that were associated with another subcontractor that was not a related party of DeTekion.

subcontractors listed in the price proposal and determine the appropriateness of costs associated with using subcontractors that are related to the prime contractor. Additionally, we recommend that the BOP evaluates whether DeTekion should repay \$56,018 associated with commission costs paid to a related party subcontractor.

Independent Government Cost Estimate

According to the FAR, an independent government cost estimate (IGCE) should be prepared in as much detail as though the government were competing for the contract.⁸ We found that the IGCE submitted to the PCO for the contract with DeTekion did not include adequate supporting documentation. Specifically, the IGCE did not include any detailed documentation supporting the material costs, and the schedule identifying labor costs did not contain any explanations for the proposed labor rates or hours. We believe that the PCO relied upon a technically deficient IGCE as described below.

We compared the IGCE to DeTekion's price proposal and determined that the IGCE was \$214,117, or approximately 9 percent, less than the price proposal. According to documents in the contract file, the PCO determined that \$183,047 of the \$214,117 difference was due to the IGCE not including travel or commission costs, which were included in the price proposal. The PCO did not address the remaining \$31,070 difference between the IGCE and the price proposal because the PCO determined the difference to be within an acceptable range. We acknowledge that the PCO has discretion to determine a price proposal to be within an acceptable range. This acceptable range, however, did not account for the \$56,018 in commission costs that the PCO would have disallowed or questioned if she had known the subcontractor was a related party. Additionally, the PCO was relying on an IGCE that did not contain adequate supporting documentation. We believe that her decision to not address the remaining \$31,070 in conjunction with the subsequent determination that the PCO would have disallowed or questioned \$56,018 in commission costs, and relying upon a technically deficient IGCE calls into question the PCO's efforts to safeguard the financial interests of the United States in its contractual relationship with DeTekion.

IGCEs are the government's best estimate of a contract's potential costs and are a tool utilized by a contracting officer to determine if a price proposed by a contractor in a sole source contract is fair and reasonable. We recommend that the BOP reiterate to its personnel who prepare IGCEs the importance that IGCEs contain sufficient details and documentation as required by the FAR. As part of this effort, we believe that training should be provided to BOP personnel who prepare IGCEs so that they fully understand the intricacies and importance of this government document, which is ultimately to help ensure the BOP does not enter into contracts that include unfair or unreasonable costs and taxpayer dollars are protected from waste. Additionally, we recommend that the BOP remind its contracting officers about the importance of contract negotiations so that they do

⁸ FAR 36.203(a) *Government estimate of construction costs.*

not unnecessarily accept cost differences between the IGCE and contractor price proposal.

Acquisition Plan Coordination with BOP's Competition Advocate

According to the FAR, when using other than full and open competition to award a contract, proper acquisition planning should be coordinated with the cognizant Competition Advocate.⁹ For this contract action, the BOP Assistant Director for Administration was the Competition Advocate. The BOP Competition Advocate stated that he does not receive acquisition plans on sole source contract awards. The Competition Advocate did state that he was aware of other vendors that may have been able to build an electronic taut wire fence detection system, but that he was not aware that this contract was only for this type of system. The BOP Competition Advocate had a responsibility to promote full and open competition and to know the BOP's requirements and what was being procured.

We reviewed the acquisition plan and found that it did not specify the type of fence to be installed at AUSA Thomson. In fact, it did not identify that requirement of the contract. Instead, the acquisition plan stated that DeTekion was the only company capable of meeting all of the requirements and referenced the JOFOC memorandum for additional details. Had the BOP adequately coordinated the acquisition plan with the Competition Advocate (as required by the FAR) and had this individual been aware of the BOP's requirement, this contract action may have been appropriately competed and the BOP may have received a better price. We would expect that during this coordination, the BOP Competition Advocate would have inquired as to the specific requirements for this contract action; reviewed the referenced JOFOC memorandum, including the cover sheet; and ensured adequate market research had been performed. As mentioned, the cover page to the JOFOC memorandum stated that only an electronic taut wire fence detection system was being installed at AUSA Thomson and that DeTekion was the only company able to complete this work. Therefore, we recommend that the BOP reiterates to its acquisition officials, including the Competition Advocate, the importance of coordinating sole source acquisition plans to help ensure the appropriateness of the decision to limit competition.

Contract Administration and Implementation

We examined the BOP's actions in administering the \$2.4 million contract to DeTekion. We determined that the BOP performed adequate contract oversight during the award period and DeTekion completed construction of the fence as specified in the award. In addition, we concluded that the bills DeTekion submitted

⁹ FAR 7.104(c) states that when the acquisition plan proposes using other than full and open competition, the plan shall also be coordinated with the cognizant Competition Advocate. FAR 6.502(a) states that the Competition Advocate is responsible for promoting the acquisition of commercial items, promoting full and open competition, challenging requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics, and challenging barriers to the acquisition of commercial items and full and open competition such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.

to the BOP were consistent with the agreed upon completion milestones and related compensation as outlined in the contract. However, we identified issues with the content of contract invoices and inaccuracies in the BOP's entries in FPDS, as described in the following sections.

Contract Oversight

Through our review of provided documentation and interviews with BOP and DeTekion personnel, we determined that the BOP conducted proper oversight of the construction of the electronic taut wire fence detection system at AUSP Thomson. The BOP contracting officers appointed a COR at AUSP Thomson who was responsible for contract oversight. The COR was generally present on-site during construction of the fence, maintained daily construction logs summarizing daily work completed by DeTekion, and participated in monthly progress meetings with DeTekion and BOP personnel. Additionally, the COR participated in the final testing of the fence to ensure functionality.

DeTekion Performance and Billings

In November 2017, DeTekion completed construction and successfully conducted testing of the electronic taut wire fence detection system at AUSP Thomson. DeTekion also provided training to BOP personnel at AUSP Thomson. BOP personnel demonstrated the system's functionality and operability when we visited AUSP Thomson later in November 2017. We determined that DeTekion complied with the terms and conditions of the contract.

DeTekion completed construction of the electronic taut wire fence detection system on schedule, and there were no contract modification requests to increase the total cost of the firm-fixed-price contract. DeTekion submitted monthly invoices using the form required by the contract that utilized schedule of values based on the percentage of work completed. According to the COR at AUSP Thomson, these billings were consistent with the work performed during the defined timeframes. In total, DeTekion billed the BOP \$2.4 million, which equaled the agreed-upon contract award amount for this firm-fixed price contract. As a result, we concluded that the bills DeTekion submitted to the BOP were consistent with the agreed upon completion milestones and related compensation as outlined in the contract.

BOP Policy Regarding Invoices

To be considered a proper invoice, the FAR states that it must contain certain information. In addition, agencies have discretion to require whether certain other information must be included on invoices, such as the contractor's taxpayer identification number (TIN).¹⁰ According to BOP policy, a proper invoice must contain the contractor's TIN; otherwise, the invoice is considered defective.

¹⁰ FAR 32.905(b)(viii) *Content of invoices* states that the contractor must include its TIN on the invoice only if required by agency procedures.

However, we found that the BOP's guidance was inconsistent by requiring DeTekion to use a certain invoice form that did not require an entry for the contractor's TIN.

We reviewed all 10 invoices submitted for the contract, valued at \$2.4 million, and found none of these invoices contained the contractor's TIN. DeTekion used the specific BOP form that was cited in the contract's terms for submitting invoices, but the form did not include a line item for the TIN. The BOP approved all of the invoices for payment. We do not take exception to DeTekion submitting invoices without a TIN because the contractor followed the instructions it was given. We recommend that the BOP ensures that the form it expects contractors to use for submitting invoices contains the elements required by BOP policy.

FPDS Entries

According to the FAR, contracting officers are responsible for the completion and accuracy of individual contract action reports in FPDS.¹¹ We found several inaccurate FPDS entries for this contract action with DeTekion. For example, FPDS lists the completion date of the contract as January 13, 2018, but the completion date according to contract's notice to proceed document was January 21, 2018. Additionally, we found that the business classification code input into FPDS was not the most specific available.¹² FPDS lists the code as 238290 – Other Building Equipment Contractors, but it is more accurate to describe the contract work under classification number 238990 – All Other Specialty Trade Contractors, which includes contractors that can perform fence installation. Finally, modification 1 of the contract was described as a “funding only action” in FPDS. Upon review of modification 1, we noted that the modification was created to allow for the installation of console racks to hold the monitors for the electronic taut wire fence detection system, but the modification did not change the funding amount as a “funding only action” would indicate. FPDS is a government-wide automated system used to collect and report on federal procurement spending. We believe it is important that entries in FPDS are as accurate as possible. We recommend that the BOP improves its contract administration practices to ensure information entered into FPDS is accurate.

¹¹ FAR 4.604(b)(1), *Contract Reporting Responsibilities* states that the responsibility for the completion and accuracy of the individual contract action report resides with the Contracting Officer who awarded the contract action.

¹² The codes are those defined by the North American Industry Classification System (NAICS), which is the standard used to classify business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

CONCLUSION AND RECOMMENDATIONS

We identified significant concerns regarding the BOP's process for awarding this contract to DeTekion. We found that the BOP limited competition by awarding a sole source contract when BOP officials acknowledge other companies exist that may have been able to install the same type of fence. This may have resulted in the BOP not obtaining the most cost advantageous price for this procurement action. We also identified other areas in need of improvement in the BOP's administration of the contract. Notwithstanding the issues we identified with the awarding and administration of the contract, we determined that the BOP performed adequate contract oversight, and that DeTekion completed construction of the fence as specified in the award. In addition, based upon the evidence provided during the audit, we concluded that the bills DeTekion submitted to the BOP were consistent with the agreed upon completion milestones and related compensation as outlined in the contract.

We recommend that the BOP:

1. Review its acquisition procedures to ensure those procedures include adequate guidance on writing JOFOC memoranda that match contract requirements and do not limit competition unnecessarily. The BOP should reiterate these requirements to its contracting personnel.
2. Reiterate to its contracting officers the importance of adequately performing and documenting market research as required by the FAR.
3. Reiterate to its contracting officers the importance of properly evaluating price proposals when making fair and reasonableness price determinations.
4. Determine whether DeTekion should repay \$56,018 in commission costs paid to a related party subcontractor.
5. Educate and remind BOP personnel who prepare IGCEs of the importance of IGCEs containing sufficient details and documentation as required by the FAR.
6. Reiterate to its contracting officers the importance of contract negotiations in safeguarding the interests of the BOP and taxpayers.
7. Reiterate to its acquisition officials, including the Competition Advocate, the importance of coordinating sole source acquisition plans to help ensure the appropriateness of the decision to limit competition.
8. Ensure that the form it expects contractors to use for submitting invoices contains the elements required by BOP policy.
9. Reiterate to its contracting officers the importance of entering accurate information into FPDS.

STATEMENT ON INTERNAL CONTROLS

As required by *Government Auditing Standards*, we tested, as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect in a timely manner: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our audit of the contract awarded to DeTekion to upgrade perimeter security at AUSP Thomson was *not* made for the purpose of providing assurance on these entities' internal control structures as a whole. BOP management is responsible for the establishment and maintenance of internal controls.

As noted in the Audit Results section of this report, the BOP needs to improve its internal controls to ensure compliance with all rules, regulations, and guidelines related to the award and administration of the contract. Specifically, the BOP needs to: (1) ensure that its contracting officers properly award non-competitive contract actions; (2) document that proper research was conducted before determining a contract will be sole-sourced; (3) properly review all price proposal line items, including commission costs, to ensure that all proposed costs are fair and reasonable; (4) prepare an IGCE that has an appropriate level of supporting documentation; (5) adequately coordinate with the Competition Advocate during the acquisition planning process for proposed non-competitive contract awards; (6) ensure billing templates contain all provisions for a proper invoice; and (7) input accurate contract information into FPDS.

Because we are not expressing an opinion on BOP's internal control structure as a whole, this statement is intended solely for the information and use of the BOP. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by *Government Auditing Standards*, we tested, as appropriate given our audit scope and objectives, selected transactions, records, procedures, and practices to obtain reasonable assurance that the BOP and DeTekion's management complied with federal laws and regulations for which noncompliance, in our judgment, could have a material effect on the results of our audit. BOP and DeTekion's management are responsible for ensuring compliance with applicable laws and regulations. In planning our audit, we identified the following laws and regulations that concerned the operations of the auditees that were significant within the context of our audit objectives:

- Federal Acquisition Regulation (FAR) Subpart 1.602 – *Responsibilities*
- FAR Subpart 4.604(b)(1) – *Contract Reporting*
- FAR Subpart 4.8 – *Government Contract Files*
- FAR Subpart 6.302 – *Circumstances permitting other than full and open competition*
- FAR Subpart 6.502 – *Competition Advocates*
- FAR Subpart 7.104(c) – *Acquisition Plans*
- FAR Subpart 10.001(a) – *Market Research*
- FAR Subpart 32.905(b) – *Content of Invoices*
- FAR Subpart 36.203(a) – *Government estimate of construction costs*

Our audit included examining, on a test basis, the BOP and DeTekion's compliance with the aforementioned laws and regulations that could have a material effect on the BOP's operations. We interviewed BOP and DeTekion personnel, assessed internal control procedures, and examined contract award and administration records.

As noted in the Audit Results section of this report, we found that the BOP did not comply with the FAR. Specifically, we found that the BOP did not adequately perform all necessary responsibilities to ensure it properly awarded the contract. For example, the BOP relied upon an inaccurate sole source justification and an incomplete IGCE, did not document adequate market research, and allowed commission costs in the award amount that the PCO subsequently said should not have been included. We believe that the BOP's actions inappropriately limited competition by awarding a sole source contract to DeTekion when other companies exist that may have been able to perform the same required work.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

The objectives of this audit were to: (1) determine whether the BOP adhered to federal regulations during the contract award and administration processes, (2) assess the adequacy of the BOP's contract oversight, and (3) determine if DeTekion properly invoiced the government and complied with the terms and conditions of the contract award.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions on our audit objectives.

To accomplish the audit objectives, we reviewed various federal regulations and policies, including the FAR, Justice Acquisition Regulations, and BOP policies that involved contracting award, administration, oversight, and invoice procedures.¹³ We also interviewed approximately 20 BOP employees, including the Warden at AUSP Thomson, contracting officials in the BOP Field Acquisition Office, and other BOP officials who participated in the contract award, oversight, and invoice review processes. Additionally, we interviewed four DeTekion employees involved in the awarding, ordering, and billing on this contract action.

We determined if BOP officials properly awarded and administered the contract action in accordance with federal regulations and internal policies. Specifically, we determined if the BOP:

- Properly safeguarded the interests of the United States in its contractual relationships in accordance with FAR 1.602-2.
- Properly completed a sole source justification in accordance with FAR 6.302.
- Reviewed contractor invoices in accordance with FAR 32.905(b), which outlines the components of a proper invoice.
- Prepared and furnished the Contracting Officer with an adequate independent government cost estimate in accordance with FAR 36.203(a).
- Performed adequate market research in accordance with FAR 10.001(a).
- Properly coordinated with the Competition Advocate the proposed acquisition plan that utilized other than full and open competition in accordance with FAR 6.502 and FAR 7.104(c).

¹³ The applicable criteria for the purposes of this audit were the same in the Justice Acquisition Regulations as in the FAR. Therefore, we only refer to the specific FAR requirements throughout the report.

- Maintained complete contract files in accordance with FAR 4.801(b), which states that the documentation in the files shall be sufficient to constitute a complete history of the transaction.
- Accurately entered information into the Federal Procurement Data System in accordance with FAR 4.604(b)(1), which states that the responsibility for the completion and accuracy of the individual contract action report resides with the contracting officer who awarded the contract action.
- Adhered to internal BOP policies, including BOP policy for reviewing and paying invoices.

BOP'S RESPONSE TO THE DRAFT AUDIT REPORT



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, D.C. 20534

March 13, 2019

MEMORANDUM FOR JASON R. MALMSTROM
ASSISTANT INSPECTOR GENERAL
FOR AUDIT

FROM: 
Hugh J. Hurwitz
Acting Director

SUBJECT: Response to the Office of Inspector General's (OIG) Draft Audit Report: Audit of the Federal Bureau of Prisons' Perimeter Security Upgrade Contract for Administrative U.S. Penitentiary Thomson Awarded to DeTekion Security Systems, Incorporated

The Bureau of Prisons (BOP) appreciates the opportunity to provide a response to the Office of the Inspector General's above-referenced report. Therefore, please find the BOP's responses to the recommendations below:

OIG recommends the BOP:

Recommendation 1: Review its acquisition procedures to ensure those procedures include adequate guidance on writing JOFOC memoranda that match contract requirements and do not limit competition unnecessarily. The BOP should reiterate these requirements to its contracting personnel.

Initial Response: The BOP agrees with this recommendation. The BOP will review its acquisition procedures to ensure those procedures include adequate guidance on writing JOFOC memoranda that match contract requirements and do not limit competition

unnecessarily. The BOP will reiterate these requirements to its contracting personnel.

Recommendation 2: Reiterate to its contracting officers the importance of adequately performing and documenting market research as required by the FAR.

Initial Response: The BOP agrees with this recommendation. The BOP will reiterate to its contracting officers the importance of adequately performing and documenting market research as required by the FAR.

Recommendation 3: Reiterate to its contracting officers the importance of properly evaluating price proposals when making fair and reasonableness price determinations.

Initial Response: The BOP agrees with this recommendation. The BOP will reiterate to its contracting officers the importance of properly evaluating price proposals when making fair and reasonableness price determinations.

Recommendation 4: Determine whether DeTekion should repay \$56,018 in commission costs paid to a related party subcontractor.

Initial Response: The BOP agrees with this recommendation. The BOP will determine whether DeTekion should repay \$56,018 in commission costs paid to a related party subcontractor.

Recommendation 5: Educate and remind BOP personnel who prepare IGCEs the importance of IGCEs containing sufficient details and documentation as required by the FAR.

Initial Response: The BOP agrees with this recommendation. The BOP will educate and remind BOP personnel who prepare IGCEs the importance of IGCEs containing sufficient details and documentation as required by the FAR.

Recommendation 6: Reiterate to its contracting officers the importance of contract negotiations in safeguarding the interests of the BOP and taxpayers.

Initial Response: The BOP agrees with this recommendation. The BOP will reiterate to its contracting officers the importance of contract negotiations in safeguarding the

interests of the BOP and taxpayers.

Recommendation 7: Reiterate to its acquisition officials, including the Competition Advocate, the importance of coordinating sole source acquisition plans to help ensure the appropriateness of the decision to limit competition.

Initial Response: The BOP agrees with this recommendation. The BOP will reiterate to its acquisition officials, including the Competition Advocate, the importance of coordinating sole source acquisition plans to help ensure the appropriateness of the decision to limit competition.

Recommendation 8: Ensure that the form it expects contractors to use for submitting invoices contains the elements required by BOP policy.

Initial Response: The BOP agrees with this recommendation. The BOP will ensure that the form it expects contractors to use for submitting invoices contains the elements required by BOP policy.

Recommendation 9: Reiterate to its contracting officers the importance of entering accurate information into FPDS.

Initial Response: The BOP agrees with this recommendation. The BOP will reiterate to its contracting officers the importance of entering accurate information into FPDS.

If you have any questions regarding this response, please contact David Shinn, Assistant Director, Program Review Division, at (202) 307-3198.

**DETEKION SECURITY SYSTEMS, INC.'S
RESPONSE TO THE DRAFT AUDIT REPORT**

DeTekion Security Systems, Inc.



DeTekion

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March 7, 2019

Carol S. Taraszka
Regional Audit Manager
Chicago Regional Audit Office
Office of the Inspector General
U.S. Department Of Justice
500 West Madison Street, Suite 1121
Chicago, IL 60661

Re: Office of the Inspector General's OIG Audit
Federal Bureau of Prison's
(BOP) Contract No. DJBP0419P7Y40002

Dear Ms. Taraszka

I am writing to you concerning the Office of the Inspector General's OIG Audit of the Federal Bureau of Prison's Contract No. DJBP0419P7Y40002 awarded to DeTekion Security Systems Incorporated. I am in receipt of the Draft Audit Report for this audit. Please note that DeTekion Security Systems Inc. has the following comments on the Draft Audit Report.

First note that on page 7 of the Draft Audit Report under Commission Costs Awarded it states "the PCO stated that if she had known that DeTekion and Reliance Fence were related parties, she would not have allowed the commission costs to be included in the contract award amount, or she would have at least questioned the inclusion of these costs". This is not my recollection of that event. I believe that the fact that there was common ownership between DeTekion Security Systems, Inc. and Reliance Fence Company was discussed with the PCO. My recollection was that I stated that there was common ownership but the companies were not "related". This recollection can be implied from the fact that the Commission Costs awarded for the work performed by Reliance Fence were 5% whereas the Commission Costs awarded for the work performed by the electrician were 7 ½%.

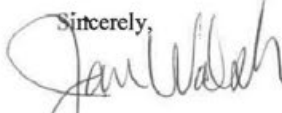
Second, DeTekion Security Systems, Inc. disagrees with your Conclusion and Recommendation #4 on page 12 which states “we recommend that the BOP determine whether DeTekion should repay \$56,018 in commission costs paid to a related party subcontractor”. DeTekion Security Systems, Inc. did in fact oversee the work performed by Reliance Fence. There is no indication in the Draft Audit Report that there is any concern for the Commission Costs awarded to oversee the work of the electrician. The distinction appears to be due to OIG believing that DeTekion Security Systems, Inc. and Reliance Fence are related.

I don't believe the OIG would think that companies are controlled or related if the common ownership was 10%. I do believe that the OIG would think that companies are controlled or related if the common ownership was 90%. DeTekion Security Systems, Inc. believes that the best method to determine if companies are related is by using the IRS Code. IRS Code Section 1563 defines a controlled group of corporations.

As per Code Section 1563(a) 2 a Brother –Sister Controlled Group is defined as when 5 or fewer persons possess more than 50% of the total value of shares of each corporation. By this definition DeTekion Security Systems, Inc. and Reliance Fence are not controlled corporations. Since the companies are not considered controlled by the IRS, the corporations should not be considered controlled by the OIG. Since DeTekion Security Systems, Inc. and Reliance Fence are not considered controlled corporations, DeTekion Security Systems, Inc. should be entitled to Commission Costs for overseeing work performed by Reliance Fence Company. There should not be any recommendation for the FBOP to determine if the commission costs paid to DeTekion Security Systems, Inc. for supervising the work of Reliance Fence should be repaid.

The remainder of the Draft Audit Report dealt with issues related to BOP policies and not by DeTekion Security Systems, Inc. performance. DeTekion Security Systems, Inc. has no comments on these other issues.

If you have any questions or need additional information, please contact me.

Sincerely,

Jim Walsh

OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT

The OIG provided a draft of this audit report to DeTekion Security Systems, Incorporated (DeTekion) and the Federal Bureau of Prisons (BOP). The BOP's response is incorporated in Appendix 2 of this final report, and DeTekion's response is incorporated in Appendix 3. In response to our audit report, the BOP agreed with our recommendations and discussed the actions it will implement in response to our findings. As a result, the status of the audit report is resolved.

Although none of our recommendations were directed to DeTekion, the contractor provided a response to our draft report that included statements related to our commission costs finding and expressed its disagreement with the associated recommendation. We address DeTekion's concerns within our analysis of Recommendation Number 4 below.

The following provides the OIG analysis of the response and summary of actions necessary to close the report.

Recommendations for the BOP:

- 1. Review its acquisition procedures to ensure those procedures include adequate guidance on writing JOFOC memoranda that match contract requirements and do not limit competition unnecessarily. The BOP should reiterate these requirements to its contracting personnel.**

Resolved. The BOP agreed with our recommendation.

This recommendation can be closed when we receive evidence that the BOP has reviewed its acquisition procedures and has ensured those procedures include adequate guidance so that competition is not limited unnecessarily. Additionally, please provide documentation that these requirements were reiterated to all BOP contracting personnel.

- 2. Reiterate to its contracting officers the importance of adequately performing and documenting market research as required by the FAR.**

Resolved. The BOP agreed with our recommendation.

This recommendation can be closed when we receive evidence that the BOP reiterated to all contracting officers the importance of adequately performing and documenting market research.

- 3. Reiterate to its contracting officers the importance of properly evaluating price proposals when making fair and reasonableness price determinations.**

Resolved. The BOP agreed with our recommendation.

This recommendation can be closed when we receive evidence that the BOP reiterated to all contracting officers the importance of properly evaluating price proposals when making fair and reasonableness price determinations.

4. Determine whether DeTekion should repay \$56,018 in commission costs paid to a related party subcontractor

Resolved. The BOP agreed with our recommendation, and therefore the status of this recommendation is resolved.

In its response, DeTekion stated its disagreement with this recommendation. Specifically, DeTekion raised an objection to our characterization of the relationship between it and subcontractor Reliance Fence, stating that the Internal Revenue Service (IRS) Code should be used to determine if two organizations with some amount of common ownership should be considered related parties. DeTekion's response also stated that it believes the relationship between DeTekion and Reliance Fence was adequately communicated to the BOP and that it did, in fact, oversee the work performed by Reliance Fence, thus indicating the commission costs paid to DeTekion were appropriate.

DeTekion's reliance on the IRS Code Section 1563 and its definition of a "controlled group of corporations" is misplaced. Whether these two companies are considered a "controlled group of corporations" for tax purposes is entirely unrelated to the concern we identified in our report, namely whether the BOP contracting officer appropriately safeguarded the financial interests of the United States as required by the FAR. In carrying out this responsibility, BOP contracting officers must carefully evaluate price proposals when making fair and reasonable price determinations, which is the basis for Recommendation Number 3 above. Such an evaluation should include reviewing the subcontractors listed in the prime contractor's price proposal and determining the appropriateness of costs associated with a subcontractor that is related to the prime contractor. We do not believe that was done here. As discussed in the report, the BOP's contracting officer told DeTekion that it could include a line item for commission costs to cover its work related to hiring and overseeing the work of subcontractors. However, we also state in the report that the BOP contracting officer indicated that she was unaware the prime contractor and subcontractor were located at the same address. The report also states that the BOP contracting officer told us that she would have at least questioned the inclusion of these costs (if not disallowed them) had she known of the relationship between the two entities. We believe that the BOP contracting officer should have identified any relationship between DeTekion and the proposed subcontractors when evaluating the price proposal, particularly since the fact that DeTekion and Reliance Fence were co-located was evident from DeTekion's price proposal. Given the BOP contracting officer's statements to us about potentially not allowing these costs, the FAR requirement to safeguard the financial interests of the United States, and the fact that a relationship between DeTekion and

Reliance Fence did exist, we believe our recommendation for the BOP to reexamine this matter is warranted.

This recommendation can be closed when we receive documentation regarding the BOP's determination of whether DeTekion should repay \$56,018 in commission costs paid to a related party subcontractor. If the BOP determines the \$56,018 should be recovered, the BOP should provide evidence that those funds have been returned.

5. **Educate and remind BOP personnel who prepare IGCEs the importance of IGCEs containing sufficient details and documentation as required by the FAR.**

Resolved. The BOP agreed with our recommendation.

This recommendation can be closed when we receive evidence that the BOP reiterated to contracting personnel the importance of preparing sufficiently detailed IGCEs and that training was provided to BOP personnel where deemed necessary.

6. **Reiterate to its contracting officers the importance of contract negotiations in safeguarding the interests of the BOP and taxpayers.**

Resolved. The BOP agreed with our recommendation.

This recommendation can be closed when we receive evidence that the BOP reiterated to its contracting officers the importance of contract negotiations in safeguarding the interests of the BOP and taxpayers.

7. **Reiterate to its acquisition officials, including the Competition Advocate, the importance of coordinating sole source acquisition plans to help ensure the appropriateness of the decision to limit competition.**

Resolved. The BOP agreed with our recommendation.

This recommendation can be closed when we receive evidence that the BOP reiterated to its acquisition officials, including the Competition Advocate, the importance of coordinating sole source acquisition plans to help ensure the appropriateness of decisions to limit competition.

8. **Ensure that the form it expects contractors to use for submitting invoices contains the elements required by BOP policy.**

Resolved. The BOP agreed with our recommendation.

This recommendation can be closed when we receive evidence that the BOP's form that contractors use for submitting invoices contains the elements required by BOP policy.

9. Reiterate to its contracting officers the importance of entering accurate information into FPDS.

Resolved. The BOP agreed with our recommendation.

This recommendation can be closed when we receive evidence that the BOP reiterated to its contracting officers the importance of entering accurate information into FPDS.



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