



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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PROCUREMENT, LOGISTICS,
AND READINESS DIVISION

B-210405

APRIL 13, 1983

The Honorable Clarence L. Long
House of Representatives

Dear Mr. Long:

Subject: Complaint About A Contract Awarded by Federal
Prison Industries, Incorporated (GAO/PLRD-83-65)

On October 12, 1982, you asked us to consider a complaint by Mr. Charles P. Harbaugh, the President of Bar-Tee Imagineering Company Incorporated, concerning the award of a contract for metal fabricating equipment by Federal Prison Industries. Specifically, Mr. Harbaugh said Federal Prison Industries rejected a proposal that was about \$250,000 lower than the proposal of the firm awarded the contract. In accordance with a telephone discussion with Mr. Albert J. Zawicki of your district office on December 29, 1982, we are providing the following summary on the results of our review.

We made our review at the U.S. Penitentiary, Lewisburg, Pennsylvania. We discussed the subject contract with Federal Prison Industries officials and reviewed pertinent files. We also discussed procedures for reviewing contracts with the Controller of Federal Prison Industries in Washington, D.C.

The specifications in the contract called for the design, manufacture, assembly, testing, delivery, and start-up of the equipment. The existing equipment was to be sold either under the contract by a trade-in allowance provision or under a separate contract, depending on which transaction yielded the greater amount. Since work had to be performed in a penal institution, the solicitation required interested firms to visit and inspect the site prior to submitting proposals to acquaint themselves with the conditions under which the work had to be performed.

Proposals were received from four firms by the July 30, 1982, closing date. Federal Prison Industries officials determined that one from Gary Steel Products was not acceptable because it did not comply with the request for proposals. The contract (number 14PI-6025) was awarded on August 16, 1982, to the low offeror, John R. Wald Company, in the amount of \$756,320. The existing equipment was sold under a separate contract to another firm for \$21,800.

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Gary Steel Products' proposal was about \$220,000 less than the contract awarded to the John R. Wald Company. However, Gary's proposal included a \$120,000 trade-in allowance, dependent upon inspection of the existing equipment. Gary's proposal, without the trade-in allowance, was \$656,750, or about \$100,000 less than the John R. Wald Company's proposal. Gary's proposal was also based on delivery at the point of manufacture, while the contract with the John R. Wald Company included delivery to the penitentiary.

Federal Prison Industries officials at the Lewisburg Penitentiary cited two primary reasons they did not consider Gary Steel Products' proposal. First, a representative of Gary Steel Products had not visited and inspected the site, as required by the solicitation. This point is in dispute, since Mr. Harbaugh told us that he was an agent for Gary Steel Products. While the visitors' log at the Lewisburg Penitentiary showed that Mr. Harbaugh did visit the penitentiary, the Federal Prison Industries officials pointed out that he did not register as an agent of Gary Steel Products. Regardless, according to a prior decision of the Comptroller General (B-193045), the failure to make a mandatory site visit is not in itself grounds for rejection of an otherwise acceptable proposal since the firm would still be bound to perform under the terms of the contract for the price proposed.

Second, the Gary Steel Products proposal itself was not responsive to the solicitation. It was not submitted on forms provided with the solicitation, the equipment proposed deviated from that which was specified, and the trade-in allowance was subject to change.

Gary Steel Products was not provided the opportunity to clarify its proposal and correct any deficiencies. Federal procurement regulations provide that, with certain exceptions, written or oral discussions shall be conducted with all responsible offerors who submit proposals that are reasonably susceptible of being made acceptable. In fact, negotiations were conducted with John R. Wald Company and a requirement in the solicitation and the proposed price were changed as a result of the negotiations. Federal Prison Industries officials rejected the Gary Steel Products proposal because they believed that the proposal could not be corrected through negotiations. For instance, the officials pointed out that a number of the items offered by Gary Steel Products did not comply with the solicitation's requirements. However, those items comprised only a small portion of the total number of items required. In addition, it does not appear that the Federal Prison Industries adequately considered whether the few nonconforming items were so material as to justify rejecting the proposal despite the considerable cost savings the proposal offered.

In conclusion, in view of the substantial potential savings, we question the rejection of the proposal from Gary Steel Products. However, since we found no specific deficiencies in the procurement regulations and believe that the rejection of the proposal was an honest disagreement as to the degree of the offeror's noncompliance with requirements, we are making no recommendations. However, we do suggest that the Commissioner of Federal Prison Industries review existing procedures and bring this report and the referenced Comptroller General

decision to the attention of his contracting officers. In addition, consideration should be given to higher level approval for rejection of offers if the offers could result in sizable savings.

We trust that the information furnished satisfies your request. As discussed with your office, we are sending copies of this report to other interested parties.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Donald J. Horan".

Donald J. Horan
Director