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28 Aug 03

From: Commander, Naval Supply Systems Command

Subj: FEDERAL PRISON INDUSTRIES

Ref: (a) DASN(ACQ) memo of 20 Aug 03  
(b) DPAP memo of 15 Aug 03

1. Recent Congressional interest has focused on the process by which Department of Defense contracting officers have implemented Section 2410n of Title 10 of the United States Code. The FAR and DFARS have codified these statutory revisions that have fundamentally changed the process by which Department contracting officers conduct business with Federal Prison Industries (FPI). The purpose of this memorandum and references (a) and (b), is to clarify the Department's position with regard to contracting with FPI. A summary of the most significant changes is provided below.

a. The blanket waiver threshold was increased from \$25 to \$2,500. This means that contracting officers are no longer REQUIRED to purchase products and services from FPI Schedule's that are at or below \$2,500. Contracting officers can use the procedures of FAR Part 8, including use of Federal Supply Schedules, or FAR Part 13 procedures for soliciting and awarding micropurchases without having to observe FPI comparability or competitive procedures. No clearance or "waiver" is required from FPI.

b. When making purchases on the open market above \$2,500, contracting officers can use all available procedures including small business set-asides and multiple award contracts under Federal Supply Schedules. FPI may still participate in these procurements and contracting officers must make requirements and/or solicitation information available to FPI and must fairly evaluate an offer from FPI.

c. Contracting officers must now evaluate FPI contract performance in accordance with FAR Part 42.15.

2. These are significant improvements that will enhance DOD's business relationship with FPI and will allow for increased competition and small business opportunity. My point of contact for questions regarding this issue is Mr. Robert Desmarts, who

Subj: FEDERAL PRISON INDUSTRIES

can be reached at 717-605-2521 or DSN 430-2521 or via e-mail at Robert.Desmarests@navy.mil.

  
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## **Subpart 8.6 -- Acquisition from Federal Prison Industries, Inc.**

### **8.601 -- General.**

- (a) Federal Prison Industries, Inc. (FPI), also referred to as UNICOR, is a self-supporting, wholly owned Government corporation of the District of Columbia
- (b) FPI provides training and employment for prisoners confined in Federal penal and correctional institutions through the sale of its supplies and services to Government agencies (18 U.S.C. 4121-4128).
- (c) FPI diversifies its supplies and services to prevent private industry from experiencing unfair competition from prison workshops or activities.

### **8.602 -- Policy.**

- (a) Agencies shall purchase required supplies of the classes listed in the Schedule of Products made in Federal Penal and Correctional Institutions (referred to in this subpart as "the Schedule") at prices not to exceed current market prices, using the procedures in this subpart.
- (b) Subject to the priorities in 8.002 and 8.603, agencies are encouraged to use the facilities of FPI to the maximum extent practicable in purchasing --
  - (1) Supplies that are not listed in the Schedule, but that are of a type manufactured in Federal penal and correctional institutions; and
  - (2) Services that are listed in the Schedule.
- (c) If a supply not listed in the Schedule is of a type normally produced by Federal penal and correctional institutions, agencies are encouraged to suggest that FPI consider the feasibility of adding the item to its Schedule.

### **8.603 -- Purchase Priorities.**

(a) FPI and nonprofit agencies participating in the Javits-Wagner-O'Day (JWOD) Program (see Subpart 8.7) may produce identical supplies or services. When this occurs, ordering offices shall purchase supplies and services in the following priorities:

(1) *Supplies.*

- (i) Federal Prison Industries, Inc. (41 U.S.C. 48).
- (ii) JWOD participating nonprofit agencies.
- (iii) Commercial sources.

(2) *Services.*

- (i) JWOD participating nonprofit agencies.
- (ii) Federal Prison Industries, Inc., or commercial sources.

(b) Supplies and services manufactured or performed by FPI are in strict conformity with Federal Specifications. These supplies and services are listed in the Schedule. Copies of the Schedule are available from--

Federal Prison Industries, Inc.

Department of Justice

Washington, DC 20534.

### 8.604 -- Ordering Procedures.

(a) Contracting officers shall order --

- (1) Less-than-carload lots of common-use items (Schedule A of the Schedule) from the regional warehouses of GSA, unless it is more practical and economical to purchase directly from FPI; and
- (2) Carload lots of common-use items, and other items listed in the Schedule, from FPI.

(b) Contracting officers shall prepare orders to FPI using the procedures in the Schedule.

(c) When the contracting officer believes that the FPI price exceeds the market price, the matter may be referred to the cognizant product division identified in the Schedule or to the FPI Washington office for resolution.

### 8.605 -- Clearances.

(a) Clearance is required from FPI before supplies on the Schedule are acquired from other sources, except when the conditions in 8.606 apply. FPI clearances ordinarily are of the following types:

(1) General or blanket clearances issued when classes of articles or services are not available from FPI.

(2) Formal clearances issued in response to requests from offices desiring to acquire, from other sources, supplies listed in the Schedule and not covered by a general clearance. Requests should be addressed to--  
Federal Prison Industries, Inc.

Department of Justice

Washington, DC 20534.

(b) Purchases from other sources because of a lower price are not normally authorized, and clearances will not be issued on this basis except as a result of action taken to resolve questions of price under 8.604(c).

(c) Disputes regarding price, quality, character, or suitability of supplies produced by FPI are subject to arbitration as specified in 18 U.S.C. 4124. The statute provides that the arbitration shall be conducted by a board consisting of the Comptroller General of the United States, the Administrator of General Services, and the President, or their representatives. The decisions of the board are final and binding on all parties.

### **8.606 -- Exceptions.**

FPI clearances are not required when --

(a) Public exigency requires immediate delivery or performance;

(b) Suitable used or excess supplies are available;

(c) Purchases are made from GSA of less-than-carload lots of common-use items stocked by GSA (see Schedule A of the Schedule);

(d) The supplies are acquired and used outside the United States; or

(e) Orders are for listed items totaling \$2500 or less.

### **8.607 - Evaluating FPI performance.**

Agencies shall evaluate FPI contract performance in accordance with Subpart 42.15. Performance evaluations do not negate the requirements of 8.602 and 8.605, but they may be used to support a clearance request in accordance with 8.605.

**SUBPART 208.6--ACQUISITION FROM FEDERAL PRISON  
INDUSTRIES, INC.**

*(Revised June 20, 2003)*

**208.602 Policy.**

(a) Before purchasing a product listed in the FPI Schedule, departments and agencies shall conduct market research to determine whether the FPI product is comparable to products available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery (10 U.S.C. 2410n). This is a unilateral decision made solely at the discretion of the department or agency.

(i) If the FPI product is comparable, follow the policy at FAR 8.602(a).

(ii) If the FPI product is not comparable--

(A) Use competitive procedures to acquire the product;  
and

(B) Consider a timely offer from FPI for award in accordance with the specifications and evaluation factors in the solicitation.

**208.606 Exceptions.**

For DoD, FPI clearances also are not required if market research shows that the FPI product is not comparable to products available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery.