

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

**Parent topic:** [Part 8 - Required Sources of Supplies and Services](#)

## 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 minimize adverse impact on private industry.

(d) *Supplies* manufactured and services performed by FPI are listed in the FPI Schedule, which can be accessed at <http://www.unicor.gov> or by submitting a written request to Federal Prison Industries, Inc., Department of Justice, Washington, DC 20534.

(e) Agencies are encouraged to purchase FPI *supplies* and services to the maximum extent practicable.

## 8.602 Policy.

(a) In accordance with [10 U.S.C. 3905](#) and Section 637 of Division H of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447) ([18 U.S.C. 4124](#) note), and except as provided in paragraph (b) of this section, agencies *shall*-

(1) Before purchasing an item of supply listed in the FPI Schedule, conduct *market research* to determine whether the FPI item is comparable to *supplies* available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery. This is a unilateral determination made at the discretion of the *contracting officer*. The arbitration provisions of [18 U.S.C. 4124\(b\)](#) do not apply.

(2) Prepare a written determination that includes supporting rationale explaining the assessment of price, quality, and time of delivery, based on the results of *market research* comparing the FPI item to *supplies* available from the private sector.

(3) If the FPI item is comparable, purchase the item from FPI following the ordering procedures at <http://www.unicor.gov>, unless a waiver is obtained in accordance with [8.604](#); and

(4) If the FPI item is not comparable in one or more of the areas of price, quality, and time of delivery-

(i) Acquire the item using-

(A) Competitive procedures (*e.g.*, the procedures in [6.102](#), the set-aside procedures in [subpart 19.5](#),

or competition conducted in accordance with [part 13](#)); or

(B) The fair opportunity procedures in [16.505](#), if placing an order under a multiple award delivery-order contract;

(ii) Include FPI in the *solicitation* process and consider a timely *offer* from FPI for award in accordance with the item description or specifications, and evaluation factors in the *solicitation*-

(A) If the *solicitation* is available through the *Governmentwide point of entry* (Contract Opportunities at [SAM.gov](#) ), it is not necessary to provide a separate copy of the *solicitation* to FPI;

(B) If the *solicitation* is not available through Contract Opportunities at [SAM.gov](#) , provide a copy of the *solicitation* to FPI;

(iii) When using a multiple award schedule issued under the procedures in [subpart 8.4](#) or when using the fair opportunity procedures in [16.505](#)-

(A) Establish and communicate to FPI the item description or specifications, and evaluation factors that will be used as the basis for selecting a source, so that an *offer* from FPI can be evaluated on the same basis as the contract or schedule holder; and

(B) Consider a timely *offer* from FPI;

(iv) Award to the source offering the item determined by the agency to provide the *best value* to the Government; and

(v) When the FPI item is determined to provide the *best value* to the Government as a result of FPI's response to a competitive *solicitation*, follow the ordering procedures at <http://www.unicor.gov>.

(b) The procedures in paragraph (a) of this section do not apply if an exception in [8.605\(b\)](#) through (g) applies.

(c) In some cases where FPI and an AbilityOne participating nonprofit agency produce identical items (see [8.603](#)), FPI grants a waiver to permit the Government to purchase a portion of its requirement from the AbilityOne participating nonprofit agency. When this occurs, the portion of the requirement for which FPI has granted a waiver-

(1) *Shall* be purchased from the AbilityOne participating nonprofit agency using the procedures in [subpart 8.7](#); and

(2) *Shall* not be subject to the procedures in paragraph (a) of this section.

(d) Disputes regarding price, quality, character, or suitability of *supplies* produced by FPI, except for determinations under paragraph (a)(1) of this section, 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.

## **8.603 Purchase priorities.**

FPI and nonprofit agencies participating in the AbilityOne Program under [41 U.S.C. chapter 85](#),

Committee for Purchase from People Who Are Blind or Severely Disabled (see [subpart 8.7](#)) may produce identical *supplies* or services. When this occurs, ordering offices *shall* purchase *supplies* and services in the following priorities:

(a) *Supplies*.

(1) Federal Prison Industries, Inc. ([41 U.S.C. 8504](#)).

(2) AbilityOne participating nonprofit agencies.

(3) Commercial sources.

(b) *Services*.

(1) AbilityOne participating nonprofit agencies.

(2) Federal Prison Industries, Inc., or commercial sources.

## **8.604 Waivers.**

FPI *may* grant a waiver for purchase of *supplies* in the FPI Schedule from another source. FPI waivers ordinarily are of the following types:

(a) General or blanket waivers issued when classes of *supplies* are not available from FPI.

(b) Formal waivers issued in response to requests from offices desiring to acquire, from other sources, *supplies* listed in the FPI Schedule and not covered by a general waiver. Agencies *shall* process waiver requests in accordance with the procedures at <http://www.unicor.gov>.

## **8.605 Exceptions.**

Purchase from FPI is not mandatory and a waiver is not required if-

(a)

(1) The *contracting officer* makes a determination that the FPI item of supply is not comparable to *supplies* available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery; and

(2) The item is acquired in accordance with [8.602\(a\)\(4\)](#);

(b) Public exigency requires immediate delivery or performance;

(c) Suitable used or excess *supplies* are available;

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

(e) Acquiring listed items totaling \$3,500 or less;

(f) Acquiring items that FPI *offers* exclusively on a competitive (non-mandatory) basis, as identified in the FPI Schedule; or

(g) Acquiring services.

## **8.606 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 8.604, but they *may* be used to support a waiver request in accordance with 8.604.

## **8.607 Performance as a subcontractor.**

Agencies *shall* not require a contractor, or subcontractor at any tier, to use FPI as a subcontractor for performance of a contract by any means, including means such as-

(a) A *solicitation* provision requiring a potential contractor to *offer* to make use of FPI *supplies* or services;

(b) A contract specification requiring the contractor to use specific *supplies* or services (or classes of *supplies* or services) offered by FPI; or

(c) Any *contract modification* directing the use of FPI *supplies* or services.

## **8.608 Protection of classified and sensitive information.**

Agencies *shall* not enter into any contract with FPI that allows an inmate worker access to any-

(a) Classified data;

(b) Geographic data regarding the location of-

(1) Surface and subsurface infrastructure providing communications or water or electrical power distribution;

(2) Pipelines for the distribution of natural gas, bulk petroleum *products*, or other commodities; or

(3) Other utilities; or

(c) Personal or financial information about any individual private citizen, including information relating to such person's real property however described, without the prior consent of the individual.