

## 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.