

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.

Parent topic: [Subpart 8.6 - Acquisition from Federal Prison Industries, Inc.](#)