

S 346 IS

108th CONGRESS
1st Session
S. 346

To amend the Office of Federal Procurement Policy Act to establish a governmentwide policy requiring competition in certain executive agency procurements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

February 11, 2003

Mr. LEVIN (for himself and Mr. THOMAS) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend the Office of Federal Procurement Policy Act to establish a governmentwide policy requiring competition in certain executive agency procurements, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. GOVERNMENTWIDE PROCUREMENT POLICY
RELATING TO PURCHASES FROM FEDERAL PRISON
INDUSTRIES.**

(a) REQUIREMENTS- The Office of Federal Procurement Policy Act (41 U.S.C. 403 et seq.) is amended by adding at the end the following new section:

**SEC. 40. GOVERNMENTWIDE PROCUREMENT POLICY
RELATING TO PURCHASES FROM FEDERAL PRISON
INDUSTRIES.**

(a) COMPETITION REQUIRED- In the procurement of any product that is authorized to be offered for sale by Federal Prison Industries and is listed in the catalog published and maintained by Federal Prison Industries under section 4124(b) of title 18, United States Code, the head of an executive agency shall, except as provided in subsection (d)--

(1) use competitive procedures for entering into a contract for the procurement of such product, in accordance with the requirements

applicable to such executive agency under sections 2304 and 2305 of title 10, United States Code, or sections 303 through 303C of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253 through 253c); or

(2) make an individual purchase under a multiple award contract in accordance with competition requirements applicable to such purchases.

(b) OFFERS FROM FEDERAL PRISON INDUSTRIES- In conducting a procurement pursuant to subsection (a), the head of an executive agency shall--

(1) notify Federal Prison Industries of the procurement at the same time and in the same manner as other potential offerors are notified; and

(2) consider a timely offer from Federal Prison Industries for award in the same manner as other offers (regardless of whether Federal Prison Industries is a contractor under an applicable multiple award contract).

(c) IMPLEMENTATION BY AGENCIES- The head of each executive agency shall ensure that--

(1) the executive agency does not purchase a Federal Prison Industries product or service unless a contracting officer of the executive agency determines that the product or service is comparable to products or services available from the private sector that best meet the executive agency's needs in terms of price, quality, and time of delivery; and

(2) Federal Prison Industries performs its contractual obligations to the executive agency to the same extent as any other contractor for the executive agency.

(d) EXCEPTION- (1) The head of an executive agency may use procedures other than competitive procedures to enter into a contract with Federal Prison Industries only under the following circumstances:

(A) The Attorney General personally determines in accordance with paragraph (2), within 30 days after Federal Prison Industries has been informed by the head of that executive agency of an opportunity for award of a contract for a product, that--

(i) Federal Prison Industries cannot reasonably expect fair consideration in the selection of an offeror for award of the contract on a competitive basis; and

(ii) the award of the contract to Federal Prison Industries for performance at a penal or correctional facility is necessary to maintain work opportunities not otherwise available at the penal or correctional facility that prevent circumstances that could reasonably be expected to significantly endanger the safe and effective administration of such facility.

(B) The product is available only from Federal Prison Industries and the contract may be awarded under the authority of section 2304(c)(1) of title 10, United States Code, or section 303(c)(1) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(1)), as may be applicable, pursuant to the justification and approval requirements relating to noncompetitive procurements specified by law and the Federal Acquisition Regulation.

`(C) The head of the executive agency determines that the product that would otherwise be furnished is to be produced, in whole or in significant part, by prison labor outside the United States.

`(2)(A) A determination made by the Attorney General regarding a contract pursuant to paragraph (1)(A) shall be--

`(i) supported by specific findings by the warden of the penal or correctional institution at which a Federal Prison Industries workshop is scheduled to perform the contract;

`(ii) supported by specific findings by Federal Prison Industries regarding the reasons that it does not expect to be selected for award of the contract on a competitive basis; and

`(iii) made and reported in the same manner as a determination made pursuant to section 303(c)(7) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(7)).

`(B) The Attorney General may not delegate to any other official authority to make a determination that is required under paragraph (1)(A) to be made personally by the Attorney General.

`(e) PERFORMANCE AS A SUBCONTRACTOR- (1) A contractor or potential contractor under a contract entered into by the head of an executive agency may not be required to use Federal Prison Industries as a subcontractor or supplier of products or provider of services for the performance of the contract by any means, including means such as--

`(A) a provision in a solicitation of offers that requires a contractor to offer to use or specify products or services of Federal Prison Industries in the performance of the contract;

`(B) a contract clause that requires the contractor to use or specify products or services (or classes of products or services) offered by Federal Prison Industries in the performance of the contract; or

`(C) any contract modification that requires the use of products or services of Federal Prison Industries in the performance of the contract.

`(2) A contractor using Federal Prison Industries as a subcontractor or supplier in furnishing a commercial product pursuant to a contract of an executive agency shall implement appropriate management procedures to prevent an introduction of an inmate-produced product into the commercial market.

`(3) In this subsection, the term 'contractor', with respect to a contract, includes a subcontractor at any tier under the contract.

`(f) PROTECTION OF CLASSIFIED AND SENSITIVE INFORMATION- The head of an executive agency may not enter into any contract with Federal Prison Industries under which an inmate worker would have access to--

`(1) any data that is classified or will become classified after being merged with other data;

`(2) any geographic data regarding the location of--

`(A) surface or subsurface infrastructure providing communications or water or electrical power distribution;

`(B) pipelines for the distribution of natural gas, bulk petroleum products, or other commodities; or

- (C) other utilities; or
 - (3) any 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.'
- (b) CLERICAL AMENDMENT- The table of contents in section 1(b) of such Act is amended by adding at the end the following new item:
- 'Sec. 40. Governmentwide procurement policy relating to purchases from Federal Prison Industries.'

SEC. 2. CONFORMING AMENDMENTS.

- (a) REPEAL OF INCONSISTENT REQUIREMENTS APPLICABLE TO DEPARTMENT OF DEFENSE- (1) Section 2410n of title 10, United States Code, is repealed.
- (2) The table of sections at the beginning of chapter 141 of such title is amended by striking the item relating to section 2410n.
- (b) REPEAL OF INCONSISTENT REQUIREMENTS APPLICABLE TO OTHER AGENCIES- Section 4124 of title 18, United States Code, is amended--
- (1) by striking subsections (a) and (b) and redesignating subsections (c) and (d) as subsections (a) and (b), respectively; and
 - (2) in subsection (a), as redesignated by paragraph (1), by striking 'Federal department, agency, and institution subject to the requirements of subsection (a)' and inserting 'Federal department and agency'.
- (c) OTHER LAWS- (1) Section 3 of the Javits-Wagner-O'Day Act (41 U.S.C. 48) is amended by striking 'which, under section 4124 of such title, is required' and inserting 'which is required by law'.
- (2) Section 31(b)(4) of the Small Business Act (15 U.S.C. 657a(b)(4)) is amended by striking 'a different source under section 4124 or 4125 of title 18, United States Code, or the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.)' and inserting 'a different source under the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.) or Federal Prison Industries under section 40(d) of the Office of Federal Procurement Policy Act or section 4125 of title 18, United States Code'.

SEC. 3. UNLAWFUL TRANSPORTATION OR IMPORTATION OF PRODUCTS, SERVICES, OR MINERALS RESULTING FROM CONVICT LABOR.

- Section 1761 of title 18, United States Code, is amended--
- (1) in subsection (a), by inserting after 'any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners,' the following: 'or sells in interstate commerce any services furnished wholly or in part by convicts or prisoners,'; and
 - (2) in subsection (c), by inserting ', or services furnished,' after 'or mined' in the matter preceding paragraph (1).

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall take effect 180 days after the date of the enactment of this Act.