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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

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MEMORANDUM FOR DIRECTORS, DEFENSE AGENCIES
DEPUTY ASSISTANT SECRETARY OF THE ARMY (POLICY AND PROCUREMENT), ASA(ALT)
DIRECTOR, ARMY CONTRACTING AGENCY
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION MANAGEMENT), ASN(RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING), SAF/AQC
EXECUTIVE DIRECTOR, ACQUISITION, TECHNOLOGY, AND SUPPLY DIRECTORATE (DLA)
DIRECTOR, ADMINISTRATION AND MANAGEMENT

SUBJECT: Federal Prison Industries, Inc.

Chairman F. James Sensenbrenner, Jr., House Committee on the Judiciary, recently wrote to me expressing his concern over efforts by the Federal Prison Industries (FPI) staff and its marketing arm, the Government Marketing Group (GMG), that are thwarting the intended implementation of Section 2410n of Title 10, United States Code. He indicates his Committee continues to receive reports that FPI is advising our contracting officers that the DoD buying activity must be granted a "waiver" before being able to conduct a competitive procurement pursuant to Section 2410n. Obviously, this is not a correct interpretation and undermines our implementation of Section 2410n.

The Chairman requested that I reissue "interim" guidance pending an update to the Defense Federal Acquisition Regulation Supplement. Accordingly, please make wide distribution of the attached, recently updated, policy paper. It clearly states the current DoD position on dealing with FPI and the procedures we expect our contracting officers to follow. In addition, I wish to reiterate that the DoD contracting officer has the authority and responsibility to conduct market research activities and make comparability determinations. Further, these determinations are not subject to review by FPI and, if appropriate, subsequent procurements must be conducted without obtaining a "waiver" of any kind from FPI.

If you have any questions regarding the Department's policies or procedures for doing business with FPI, please contact Mr. Phil Degen at (703) 697-8334 or Ms. Michele Peterson at (703)602-0311.

Deidre A. Lee
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

Federal Prison Industries (FPI), Inc., Update

Purpose: To update contracting officers on recent Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) changes that allow increased competition and provide additional small business opportunities when purchasing items typically reserved for Federal Prison Industries, Inc. (FPI).

Latest Changes: In the last 2 years, procedures at FAR 8.6 and DFARS 208.6 for purchasing from FPI have changed. Highlights include the following—

1. Comparability Determinations Regarding FPI-Offered Products. In April, 2002, the DFARS was changed to require contracting officers to conduct market research to determine if an FPI-offered product is comparable to products available from the private sector. Contracting officers can now consider what product best meets the Government's needs in terms of price, quality, and time of delivery and must document the results of market research. If the FPI-offered product is deemed to be comparable, the purchase must be made from FPI. If the FPI-offered product is not comparable, the products must be acquired using competitive procedures. The contracting officer's determinations are unilateral. No clearance or so-called "waiver" is required from FPI.

2. FPI and the Use of Competitive Procedures. 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. This policy is clarified in a proposed DFARS change, which the Defense Acquisition Regulations (DAR) Council expects to finalize in September 2003.

3. FPI Blanket Waiver Threshold. In May, 2003, the FAR was changed to increase the blanket waiver threshold from $25 to $2,500. Contracting officers are no longer required to purchase products on FPI's Schedule that are at or below $2,500 and instead may purchase on the open market without following the FPI comparability and competitive procedures.

4. FPI Performance Evaluation. In May, 2003, the FAR was changed to require the Government to evaluate FPI contract performance. It is important that contracting officers record FPI performance on delivery, price, and quality and seek out this information to make future comparability determinations.

Additional Information: These are significant improvements that will enhance DoD's business relationship with FPI. You can review the comments to the proposed amendments to DFARS 208.6 by accessing the Web Site below. Refer questions to either Ms. Michele Peterson at Michele.Peterson@osd.mil or Mr. Philip Degen at Philip.Degen@osd.mil in the office of the Director of Defense Procurement and Acquisition Policy.

See **http://www.acq.osd.mil/dpap/policy/dfarspubliccomments.htm**