

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

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

1 **“SEC. 40. GOVERNMENTWIDE PROCUREMENT POLICY RE-**
2 **LATING TO PURCHASES FROM FEDERAL**
3 **PRISON INDUSTRIES.**

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

11 “(1) use competitive procedures for entering
12 into a contract for the procurement of such product,
13 in accordance with the requirements applicable to
14 such executive agency under sections 2304 and 2305
15 of title 10, United States Code, or sections 303
16 through 303C of the Federal Property and Adminis-
17 trative Services Act of 1949 (41 U.S.C. 253 through
18 253e); or

19 “(2) make an individual purchase under a mul-
20 tiple award contract in accordance with competition
21 requirements applicable to such purchases.

22 “(b) **OFFERS FROM FEDERAL PRISON INDUS-**
23 **TRIES.**—In conducting a procurement pursuant to sub-
24 section (a), the head of an executive agency shall—

1 “(1) notify Federal Prison Industries of the
2 procurement at the same time and in the same man-
3 ner as other potential offerors are notified; and

4 “(2) consider a timely offer from Federal Pris-
5 on Industries for award in the same manner as
6 other offers (regardless of whether Federal Prison
7 Industries is a contractor under an applicable mul-
8 tiple award contract).

9 “(c) IMPLEMENTATION BY AGENCIES.—The head of
10 each executive agency shall ensure that—

11 “(1) the executive agency does not purchase a
12 Federal Prison Industries product or service unless
13 a contracting officer of the executive agency deter-
14 mines that the product or service is comparable to
15 products or services available from the private sector
16 that best meet the executive agency’s needs in terms
17 of price, quality, and time of delivery; and

18 “(2) Federal Prison Industries performs its
19 contractual obligations to the executive agency to the
20 same extent as any other contractor for the execu-
21 tive agency.

22 “(d) EXCEPTION.—(1) The head of an executive
23 agency may use procedures other than competitive proce-
24 dures to enter into a contract with Federal Prison Indus-
25 tries only under the following circumstances:

1 “(A) The Attorney General personally deter-
2 mines in accordance with paragraph (2), within 30
3 days after Federal Prison Industries has been in-
4 formed by the head of that executive agency of an
5 opportunity for award of a contract for a product,
6 that—

7 “(i) Federal Prison Industries cannot rea-
8 sonably expect fair consideration in the selec-
9 tion of an offeror for award of the contract on
10 a competitive basis; and

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

19 “(B) The product is available only from Federal
20 Prison Industries and the contract may be awarded
21 under the authority of section 2304(c)(1) of title 10,
22 United States Code, or section 303(c)(1) of the Fed-
23 eral Property and Administrative Services Act of
24 1949 (41 U.S.C. 253(c)(1)), as may be applicable,
25 pursuant to the justification and approval require-

1 ments relating to noncompetitive procurements spec-
2 ified by law and the Federal Acquisition Regulation.

3 “(C) The head of the executive agency deter-
4 mines that the product that would otherwise be fur-
5 nished is to be produced, in whole or in significant
6 part, by prison labor outside the United States.

7 “(2)(A) A determination made by the Attorney Gen-
8 eral regarding a contract pursuant to paragraph (1)(A)
9 shall be—

10 “(i) supported by specific findings by the war-
11 den of the penal or correctional institution at which
12 a Federal Prison Industries workshop is scheduled
13 to perform the contract;

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

18 “(iii) made and reported in the same manner as
19 a determination made pursuant to section 303(e)(7)
20 of the Federal Property and Administrative Services
21 Act of 1949 (41 U.S.C. 253(e)(7)).

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

1 “(e) PERFORMANCE AS A SUBCONTRACTOR.—(1) A
2 contractor or potential contractor under a contract en-
3 tered into by the head of an executive agency may not
4 be required to use Federal Prison Industries as a subcon-
5 tractor or supplier of products or provider of services for
6 the performance of the contract by any means, including
7 means such as—

8 “(A) a provision in a solicitation of offers that
9 requires a contractor to offer to use or specify prod-
10 ucts or services of Federal Prison Industries in the
11 performance of the contract;

12 “(B) a contract clause that requires the con-
13 tractor to use or specify products or services (or
14 classes of products or services) offered by Federal
15 Prison Industries in the performance of the contract;
16 or

17 “(C) any contract modification that requires the
18 use of products or services of Federal Prison Indus-
19 tries in the performance of the contract.

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

1 “(3) In this subsection, the term ‘contractor’, with
2 respect to a contract, includes a subcontractor at any tier
3 under the contract.

4 “(f) PROTECTION OF CLASSIFIED AND SENSITIVE
5 INFORMATION.—The head of an executive agency may not
6 enter into any contract with Federal Prison Industries
7 under which an inmate worker would have access to—

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

10 “(2) any geographic data regarding the location
11 of—

12 “(A) surface or subsurface infrastructure
13 providing communications or water or electrical
14 power distribution;

15 “(B) pipelines for the distribution of nat-
16 ural gas, bulk petroleum products, or other
17 commodities; or

18 “(C) other utilities; or

19 “(3) any personal or financial information
20 about any individual private citizen, including infor-
21 mation relating to such person’s real property how-
22 ever described, without the prior consent of the indi-
23 vidual.”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 in section 1(b) of such Act is amended by adding at the
3 end the following new item:

“Sec. 40. Governmentwide procurement policy relating to purchases from Federal Prison Industries.”.

4 **SEC. 2. CONFORMING AMENDMENTS.**

5 (a) REPEAL OF INCONSISTENT REQUIREMENTS AP-
6 PPLICABLE TO DEPARTMENT OF DEFENSE.—(1) Section
7 2410n of title 10, United States Code, is repealed.

8 (2) The table of sections at the beginning of chapter
9 141 of such title is amended by striking the item relating
10 to section 2410n.

11 (b) REPEAL OF INCONSISTENT REQUIREMENTS AP-
12 PPLICABLE TO OTHER AGENCIES.—Section 4124 of title
13 18, United States Code, is amended—

14 (1) by striking subsections (a) and (b) and re-
15 designating subsections (c) and (d) as subsections
16 (a) and (b), respectively; and

17 (2) in subsection (a), as redesignated by para-
18 graph (1), by striking “Federal department, agency,
19 and institution subject to the requirements of sub-
20 section (a)” and inserting “Federal department and
21 agency”.

22 (c) OTHER LAWS.—(1) Section 3 of the Javits-Wag-
23 ner-O’Day Act (41 U.S.C. 48) is amended by striking

1 “which, under section 4124 of such title, is required” and
2 inserting “which is required by law”.

3 (2) Section 31(b)(4) of the Small Business Act (15
4 U.S.C. 657a(b)(4)) is amended by striking “a different
5 source under section 4124 or 4125 of title 18, United
6 States Code, or the Javits-Wagner-O’Day Act (41 U.S.C.
7 46 et seq.)” and inserting “a different source under the
8 Javits-Wagner-O’Day Act (41 U.S.C. 46 et seq.) or Fed-
9 eral Prison Industries under section 40(d) of the Office
10 of Federal Procurement Policy Act or section 4125 of title
11 18, United States Code”.

12 **SEC. 3. UNLAWFUL TRANSPORTATION OR IMPORTATION OF**
13 **PRODUCTS, SERVICES, OR MINERALS RE-**
14 **SULTING FROM CONVICT LABOR.**

15 Section 1761 of title 18, United States Code, is
16 amended—

17 (1) in subsection (a), by inserting after “any
18 goods, wares, or merchandise manufactured, pro-
19 duced, or mined, wholly or in part by convicts or
20 prisoners,” the following: “or sells in interstate com-
21 merce any services furnished wholly or in part by
22 convicts or prisoners,”; and

23 (2) in subsection (c), by inserting “, or services
24 furnished,” after “or mined” in the matter pre-
25 ceding paragraph (1).

1 **SEC. 4. EFFECTIVE DATE.**

2 The amendments made by this Act shall take effect

3 180 days after the date of the enactment of this Act.

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