



Testimony of John M. Palatiello
Subcommittee on Contracting and Workforce
House Committee on Small Business
“Unlocking Opportunities: Recidivism Versus Fair Competition in Federal Contracting”
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Mr. Chairman and Members of the Subcommittee, I am John Palatiello, President of the Business Coalition for Fair Competition, a coalition of businesses, associations, think tanks and taxpayer groups united in the proposition that government at all levels should utilize the private sector to the maximum extent possible and that government or government-sponsored entities should not duplicate or unfairly compete with private enterprise, particularly small business.

I am also Executive Director of MAPPS, a national association of firms in the mapping, spatial data and geographic information systems (GIS) field.

We commend the Subcommittee for their interest in holding this hearing. We strongly support H.R. 3634, a bill that seeks to infuse competition in the federal procurement process with regard to purchases from Federal Prison Industries (FPI), while providing work, training and rehabilitation opportunities for prisoners in a manner that does not penalize small businesses and their law abiding employees. We would especially like to thank Representatives Huizenga, Frank, Maloney, Sensenbrenner, former Small Business Committee chairman Manzullo, committee members Bartlett and Coffman, and so many others, for their bipartisan leadership and dedication to reforming the unfair competitive practices of FPI.

Since 1934, the Federal prisons have operated industrial facilities to keep idle inmates occupied and provide training in occupations designed to provide prisoners marketable skills that will make them productive, responsible citizens when their incarceration is complete. Historically, UNICOR, the Federal Prison Industries, has focused on a limited number of product areas, particularly those in which the goods produced in the prison can be consumed in the prison, such as furniture and paper products. In recent years, they have expanded dramatically, shifting to a wide array of products, and recently, to the services sector.

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Almost every year, FPI expands to produce even more goods and services. FPI's sales growth, all through non-competitive contracts, has been formidable. It has revenues that have ranged from \$745 million to more than \$885 million annually in recent years. Annual sales have grown by over \$100 million in the past decade alone. When you put FPI up against all other Federal contractors, they are the 36th ranked entity, when measured by gross sales to Federal agencies.

This makes FPI a formidable competitor even for a large private sector enterprise, much less a small business. Evidence indicates that FPI will continue its expansionist behavior, by exploiting its mandatory source status and increasingly encroaching on private sector industries, forcing businesses to halt production lines, lay off employees and even close their doors for good.

Ensuring a level playing field for the private sector in the federal procurement process by ending FPI's unfair advantage is a major priority for BCFC. We endorse the policy that the government should not perform the production of goods and services for itself or others if acceptable privately owned and operated services, firms found in the Yellow Pages of the phone book, are or can be made available for such purposes – which we call the Yellow Pages test. The private sector should be allowed to compete fairly with FPI for federal contracts – plain and simple – by eliminating the mandatory source requirement that government agencies purchase products and services from FPI.

Reform of FPI starts with the realization that FPI has exceeded its statutory authority. They are free to set any price they want within the range of market prices with no incentive to charge the lowest price. Until the recent enactment of reform measures, FPI, rather than federal agencies, determined whether FPI's products and services and delivery schedule meets the agency's needs. While these reform measures have provided some relief, permanent comprehensive reform is needed to reign in this organization. By granting FPI a monopoly, issues of price, quality and efficiency fall by the wayside at the expense of U.S. taxpayers. The General Accounting Office (GAO) reported in 1998 that FPI is neither a quality supplier to Federal agencies nor a provider of timely, quality products at low prices to meet their client-agency needs. No study has been conducted since that time to document improvement in FPI's performance. Moreover, a study for the Bureau of Prisons found “inmates who worked in prison industries were 24 percent less likely to recidivate throughout the observation period while those who participated in either vocational or apprenticeship training were 33 percent less likely to recidivate throughout the observation period.” (Post-Release Employment Project (PREP), Training Inmates through Industrial Work Participation, and Vocational and Apprenticeship Instruction, 1996).

FPI is also limited to no more than a “reasonable share” of the government market for any product, but in over 100 military apparel items, they have determined that 100% of the market is reasonable.

Recent expansion by FPI into the services arena has caused great concern in the business community. Even though FPI's authorizing statute does not specifically mention services, FPI has interpreted that it is a “preferential source” for services and used this to enter into sole source contracts with Federal agencies for services. They are quickly expanding their services portfolio, which includes printing, environmental testing, recycling, mapping and imaging, distribution and mailing, laundry services, data conversion, and call center and help desk support.

This expansion is alarming not only because it adversely impacts the private sector but also because it is wholly inappropriate to allow inmates access to classified or infrastructure information used in mapping projects or the personal or financial information of private citizens used in call center operations. We should be extremely cautious with the information we arm our federal inmates with in preparation for life beyond bars.

Not only is the mapping community confronted with prison competition at the Federal level, but state prison systems have entered the field as well.

The Texas Department of Criminal Justice has established a map scanning and digitizing service at their Ferguson Unit in Midway, Texas. Authorized by the Prison Made Goods Act of 1963, the prison company has a slick brochure claiming that under their program "Everybody Wins" since inmates are trained in a skill that is marketable upon their release, use of the prison agency provides a "quality product at a reduced price", and a "double savings" for the taxpayer. This unit has taken work for the Texas Department of Transportation, Texas counties and other clients that would otherwise have gone to the private sector.

Unigroup is the Oregon Department of Corrections' prison industry. It boasted that its "innovative CAD/CAM industry was conceived in early 1992 as a way to provide quality, inexpensive services to state and other governmental agencies. Private businesses are also welcome to use our services." Unigroup functioned as a conversion house, converting hard copy documents to digital files. The unit became productive in March, 1993 providing data in an Arc/Info format. It had a price list, brochure and standard cartography services agreement. This organization not only did work for Oregon State agencies and Oregon counties, but for Federal agencies and private firms. MAPPS member firms had to shut down their efforts to market these services to State and county government, as they were unable to compete with the below market prices and labor rates charged by the prisons. Unigroup closed its GIS capability, as it had production difficulties and challenges maintaining a civilian management staff.

PRIDE Enterprises, the Florida prison industry, is engaged in a variety of digital geographic information services, including converting hard copy maps to electronic files; plotting maps at various scales; creating databases with information on homeowners, property appraisal and tax assessment; digitizing, and other CADD and GIS services. While PRIDE works as a subcontractor to private firms, their direct contracting authority is unfair competition and again, diverts work for tax-paying, law-abiding citizens.

What the Federal prisons and these States naively fail to recognize is that when work goes to a prison rather than a profit-making, taxpaying company, the Federal and State government loses considerable corporate and individual tax revenues, and displaces law-abiding workers. Moreover, the pervasiveness of prison activity limits the private sector market, thus reducing the number of available jobs awaiting inmates upon release. Nobody wins when prison industries decimate the private sector and release inmates into a field where the only job market is in the prisons!

FPI's desire to expand into the commercial marketplace is an alarming development that is seen as a call to arms by industry. We oppose FPI's move into the commercial marketplace. The decision to expand into the commercial marketplace is in conflict with the clear language of FPI's enabling legislation and beyond the discretion of the Board. It is a reversal of more than nearly eighty years of public policy. This is authority that FPI has claimed for itself without any specific legislative authority from Congress. Finally, the creation of a state run enterprise, competing with its own citizens, is a policy so at odds with the role of government in a free society that it is a decision best left to Congress.

Title 18 U.S.C. section 4122(a) specifically states: "Federal Prison Industries shall determine in what manner and to what extent industrial operations shall be carried on in Federal penal and correctional institutions for the production of commodities for consumption in such institutions or for sale to the departments or agencies of the United States, but not for sale to the public in competition with private enterprise."

Now, however, despite this seemingly clear prohibition on entering the commercial market found in the statute, recent evidence shows that FPI has engaged in expansionist practices. Nearly eighty years of public policy should not be overturned, especially without public debate. The United States should not be selling commercial services in competition with law-abiding taxpaying businesses, using prison labor that is paid no more than \$1.25 an hour. FPI's expansion in the commercial market is a dramatic shift in policy, and in conflict with the clear language of 18 U.S. C. 4122(a). We urge that no proposal to inject Federal inmate provided services in the commercial marketplace be entertained by Congress.

Mr. Chairman, rehabilitation and retraining are commendable goals for prison programs, but at what price? "Penal" institution and "penitentiary" get their name from the Latin "poenalis", meaning pertaining to punishment. Who is being punished here, the inmates who have committed a crime against society, or the employees of private firms who play by the rules?

While we are sympathetic to FPI's goal to employ federal inmates to reduce recidivism by providing vocational and remedial opportunities while incarcerated, it should not be done at the expense of law-abiding, taxpaying businesses. It is unfortunate that in today's society we are faced with an increasing inmate population. However, we believe other sources of work opportunity, training, education and rehabilitation for inmates should be explored that do not infringe upon the private sector's opportunities to compete for government contracts, threaten the general safety of our citizens, and provide for expansion in the commercial market.

The original purpose of FPI was to reduce idleness in the prisons. Today, FPI is contributing to idleness in the private sector, especially small business, by taking jobs away and contributing to our unemployment.

H.R. 3634, is nearly identical to legislation that that passed the House in 2003 by a 350-65 margin, and in 2006 by a 362-57 vote. Unfortunately, in both cases, the bill was not taken up by the full Senate, although a companion bill was approved by the Senate Homeland Security and Governmental Affairs Committee in 2004.

Piecemeal reforms have been enacted in recent years on Appropriations bills and on Defense Authorization bills. Recent language enacted in the FY02 and FY03 Defense Authorization bills, the FY04 Consolidated Appropriations Act, and the FY05 Omnibus Appropriations Act provided interim and selective relief from FPI's monopoly by allowing federal agencies to decide how to best meet their procurement needs by examining existing marketplace opportunities and purchasing products on a competitive basis.

But there is still a need for comprehensive Prison Industry reform.

For many years, the broad-based FPI Competition in Contracting Act Coalition, comprised of the business, labor and federal manager communities have advocated comprehensive, fundamental reform of FPI.

H.R. 3634 provides for fundamental reform while maintaining a process in which FPI can still sell to federal agencies but on a competitive, rather than a preferential sole-source basis. It requires federal agencies to use competitive procedures for the purchase of products. H.R. 3634 makes permanent the language included in the FY02 and FY03 Defense Authorization bill and the FY04 Consolidated Appropriations bill and FY05 Omnibus Appropriations bill. H.R. 3634 would require FPI to be a more responsible supplier to Federal agencies and the taxpayer, and would allow the private sector to compete fairly with FPI for federal contracts by eliminating the requirement that government agencies purchase products from FPI. Agency contract officers, not FPI, would determine if FPI's offered product best meets buying agencies' needs in terms of quality and time of delivery. Most importantly, H.R. 3634 provides new authorities for FPI that do not infringe on the private sector and its law abiding employees.

Even with reform, FPI would still have an enormous competitive advantage over the private sector. FPI pays its inmates significantly less than the minimum wage, let alone the prevailing wage, a requirement of private sector Federal contractors. It is not required to provide any employee benefits like Social Security, unemployment compensation or insurance. In addition, as a Government-owned corporation, FPI is exempt from Federal and state income taxes, gross receipts taxes, excise tax and state and local sales taxes on purchases. FPI does not have to pay for utilities or equipment and has a special statutory line-of-credit from the U.S. Treasury for \$20 million at 0% interest. FPI is also exempt from standards, inspections or fines by various Federal, state or local enforcement agencies, such as OSHA, that regulate all private sector suppliers to the Federal Government.

H.R. 3634 includes language that would prohibit inmates from having access to classified data, critical infrastructure data, and personal or financial data under any Federal contracts. The American people would be outraged to know that prisoners can be given access to their credit card numbers, the address and value and tax assessments of homes, as well as location information on our underground gas pipelines and other critical infrastructure that, if in the wrong hands, threatens our security. Simply adequately stated, sensitive information of this nature should not be in the hands of convicted criminals.

H.R. 3634 also protects Federal prime contractors and subcontractors at any tier from being forced to use products or services furnished by FPI. FPI would no longer be able to force

contractors to use FPI as a mandatory source for products or to be specified as a mandatory source on contracts. We have seen this new, expansive authority, which was not enacted by Congress through legislation, but claimed by FPI through interpretation, used, for example, to force architects and engineers to include FPI products in their design specifications, even if those products are not the most efficient, cost effective or appropriate solution.

To assure the safety of the prison guards and the inmates themselves, H.R. 3634 would allow the Attorney General to award a contract to Federal Prison Industries if he/she believes that the loss of such prison work would endanger the safe and effective administration of a prison facility. While this is a valid concern, it is important to note only a small percentage - roughly 17% - of inmates actually work in the FPI program. The remaining able bodied inmates are engaged in various tasks relating to the operation and maintenance of the correctional facility. These tasks reduce the operating costs of the facility and keep inmates occupied in daily work activities.

Many concessions have been made on behalf of FPI reform supporters over the years and H.R. 3634 provides additional safeguards in addition to a level playing field on which FPI and the private sector can compete. FPI asserts that comprehensive reform will cause inmate employment to decline, factories to be shut down, and sales to decrease. We argue that for decades businesses have suffered from declining employment rates and decreases in sales, and have been forced to shut down factories and production lines because of FPI's unfair competitive advantage and practices. Therefore, the time is now for balanced comprehensive reform.

Thank you for the opportunity to appear before you today to seek an efficient, fair competitive process in providing the federal government with goods and services to maintain and grow small businesses. We appreciate the Subcommittee's examination of FPI's impact on small business and urge prompt consideration of H.R. 3634 by Congress. I'd be happy to answer any questions you might have. Thank you.