

Calendar No. 807

108TH CONGRESS
2D SESSION

S. 346

[Report No. 108–415]

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, Mr. THOMAS, Mr. BURNS, Mr. LUGAR, Mr. GRASSLEY, Mr. SHELBY, Mrs. DOLE, Ms. STABENOW, and Mr. CHAMBLISS) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

NOVEMBER 18, 2004

Reported by Ms. COLLINS, with an amendment

[Omit the part struck through and insert the part printed in *italic*]

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,*

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

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

7 **“SEC. 40. GOVERNMENTWIDE PROCUREMENT POLICY RE-**
8 **LATING TO PURCHASES FROM FEDERAL**
9 **PRISON INDUSTRIES.**

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

17 “(1) use competitive procedures for entering
18 into a contract for the procurement of such product,
19 in accordance with the requirements applicable to
20 such executive agency under sections 2304 and 2305
21 of title 10, United States Code, or sections 303
22 through 303C of the Federal Property and Adminis-
23 trative Services Act of 1949 (41 U.S.C. 253 through
24 253e); or

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

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

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

10 “(2) consider a timely offer from Federal Pris-
11 on Industries for award in the same manner as
12 other offers (regardless of whether Federal Prison
13 Industries is a contractor under an applicable mul-
14 tiple award contract).

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

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

24 “(2) Federal Prison Industries performs its
25 contractual obligations to the executive agency to the

1 same extent as any other contractor for the execu-
2 tive agency.

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

7 “(A) The Attorney General personally deter-
8 mines in accordance with paragraph (2), within 30
9 days after Federal Prison Industries has been in-
10 formed by the head of that executive agency of an
11 opportunity for award of a contract for a product,
12 that—

13 “(i) Federal Prison Industries cannot rea-
14 sonably expect fair consideration in the selec-
15 tion of an offeror for award of the contract on
16 a competitive basis; and

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

1 “(B) The product is available only from Federal
2 Prison Industries and the contract may be awarded
3 under the authority of section 2304(c)(1) of title 10,
4 United States Code, or section 303(c)(1) of the Fed-
5 eral Property and Administrative Services Act of
6 1949 (41 U.S.C. 253(c)(1)), as may be applicable,
7 pursuant to the justification and approval require-
8 ments relating to noncompetitive procurements spec-
9 ified by law and the Federal Acquisition Regulation.

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

14 “(2)(A) A determination made by the Attorney Gen-
15 eral regarding a contract pursuant to paragraph (1)(A)
16 shall be—

17 “(i) supported by specific findings by the war-
18 den of the penal or correctional institution at which
19 a Federal Prison Industries workshop is scheduled
20 to perform the contract;

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

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

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

9 “(e) PERFORMANCE AS A SUBCONTRACTOR.—(1) A
10 contractor or potential contractor under a contract en-
11 tered into by the head of an executive agency may not
12 be required to use Federal Prison Industries as a subcon-
13 tractor or supplier of products or provider of services for
14 the performance of the contract by any means, including
15 means such as—

16 “(A) a provision in a solicitation of offers that
17 requires a contractor to offer to use or specify prod-
18 ucts or services of Federal Prison Industries in the
19 performance of the contract;

20 “(B) a contract clause that requires the con-
21 tractor to use or specify products or services (or
22 classes of products or services) offered by Federal
23 Prison Industries in the performance of the contract;
24 or

1 “(C) any contract modification that requires the
2 use of products or services of Federal Prison Indus-
3 tries in the performance of the contract.

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

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

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

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

19 “(2) any geographic data regarding the location
20 of—

21 “(A) surface or subsurface infrastructure
22 providing communications or water or electrical
23 power distribution;

1 “(B) pipelines for the distribution of nat-
 2 ural gas, bulk petroleum products, or other
 3 commodities; or

4 “(C) other utilities; or

5 “(3) any personal or financial information
 6 about any individual private citizen, including infor-
 7 mation relating to such person’s real property how-
 8 ever described, without the prior consent of the indi-
 9 vidual.”.

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

“Sec. 40. Governmentwide procurement policy relating to purchases from Fed-
 eral Prison Industries.”.

13 **SEC. 2. CONFORMING AMENDMENTS.**

14 (a) REPEAL OF INCONSISTENT REQUIREMENTS AP-
 15 PPLICABLE TO DEPARTMENT OF DEFENSE.—(1) Section
 16 2410n of title 10, United States Code, is repealed.

17 (2) The table of sections at the beginning of chapter
 18 141 of such title is amended by striking the item relating
 19 to section 2410n.

20 (b) REPEAL OF INCONSISTENT REQUIREMENTS AP-
 21 PPLICABLE TO OTHER AGENCIES.—Section 4124 of title
 22 18, United States Code, is amended—

1 (1) by striking subsections (a) and (b) and re-
 2 designating subsections (c) and (d) as subsections
 3 (a) and (b), respectively; and

4 (2) in subsection (a), as redesignated by para-
 5 graph (1), by striking “Federal department, agency,
 6 and institution subject to the requirements of sub-
 7 section (a)” and inserting “Federal department and
 8 agency”.

9 (c) OTHER LAWS.—(1) Section 3 of the Javits-Wag-
 10 ner-O’Day Act (41 U.S.C. 48) is amended by striking
 11 “which, under section 4124 of such title, is required” and
 12 inserting “which is required by law”.

13 (2) Section 31(b)(4) of the Small Business Act (15
 14 U.S.C. 657a(b)(4)) is amended by striking “a different
 15 source under section 4124 or 4125 of title 18, United
 16 States Code, or the Javits-Wagner-O’Day Act (41 U.S.C.
 17 46 et seq.)” and inserting “a different source under the
 18 Javits-Wagner-O’Day Act (41 U.S.C. 46 et seq.) or Fed-
 19 eral Prison Industries under section 40(d) of the Office
 20 of Federal Procurement Policy Act or section 4125 of title
 21 18, United States Code”.

1 **SEC. 3. UNLAWFUL TRANSPORTATION OR IMPORTATION OF**
 2 **PRODUCTS, SERVICES, OR MINERALS RE-**
 3 **SULTING FROM CONVICT LABOR.**

4 Section 1761 of title 18, United States Code, is
 5 amended—

6 (1) in subsection (a), by inserting after “any
 7 goods, wares, or merchandise manufactured, pro-
 8 duced, or mined, wholly or in part by convicts or
 9 prisoners,” the following: “or sells in interstate com-
 10 merce any services furnished wholly or in part by
 11 convicts or prisoners,”; and

12 (2) in subsection (c), by inserting “, or services
 13 furnished,” after “or mined” in the matter pre-
 14 ceeding paragraph (1).

15 **SEC. 3. ADDITIONAL INMATE WORK OPPORTUNITIES**
 16 **THROUGH PUBLIC SERVICE ACTIVITIES.**

17 (a) *COOPERATION WITH CHARITABLE ORGANIZA-*
 18 *TIONS.*—Chapter 307 of title 18, United States Code, is
 19 amended by adding at the end the following new section:

20 **“§4130. Cooperation with charitable organizations**

21 *“(a) SALE OR DONATION OF PRODUCTS OR SERVICES*
 22 *TO CHARITABLE ENTITIES.*—Federal Prison Industries
 23 *may, subject to subsection (b), sell or donate products or*
 24 *services to an organization described in section 501(c)(3)*
 25 *of the Internal Revenue Code of 1986 that is exempt from*
 26 *taxation under section 501(a) of such Code. Products or*

1 *services sold or donated under this section may be donated*
 2 *or sold by the charitable organization to low-income indi-*
 3 *viduals who would otherwise have difficulty purchasing*
 4 *such products or services.*

5 “(b) *WORK AGREEMENTS WITH CHARITABLE ORGANI-*
 6 *ZATIONS.—(1) Federal Prison Industries may sell or donate*
 7 *products or services to a charitable organization under sub-*
 8 *section (a) only pursuant to a work agreement with the*
 9 *charitable organization receiving such products or services.*

10 “(2) *Federal Prison Industries may enter a work*
 11 *agreement relating to products and services under para-*
 12 *graph (1) only if—*

13 “(A) *the Attorney General determines, in con-*
 14 *sultation with the Secretary of Labor and the Sec-*
 15 *retary of Commerce, that the product or services*
 16 *would not be available except for the availability of*
 17 *inmate workers provided by Federal Prison Indus-*
 18 *tries; and*

19 “(B) *the work agreement is accompanied by a*
 20 *written certification by the chief executive officer of*
 21 *the charitable organization that—*

22 “(i) *no job of a noninmate employee or vol-*
 23 *unteer of the charitable organization (or any af-*
 24 *filiate of the charitable organization) will be*
 25 *abolished, and no such employee’s or volunteer’s*

1 *work hours will be reduced, as a result of the en-*
 2 *tity being authorized to utilize inmate workers;*
 3 *and*

4 *“(ii) the work to be performed by the in-*
 5 *mate workers will not supplant work currently*
 6 *being performed by a contractor of the charitable*
 7 *organization.*

8 *“(3) The Attorney General may not delegate authority*
 9 *to make determinations under paragraph (2)(A) to any per-*
 10 *son serving in a position below the lowest level of positions*
 11 *that are filled by appointment by the President, by and*
 12 *with the advice and consent of the Senate.”.*

13 *(b) CLERICAL AMENDMENT.—The table of sections at*
 14 *the beginning of such chapter is amended by adding at the*
 15 *end the following new item:*

“4130. Cooperation with charitable organizations.”.

16 **SEC. 4. ADDITIONAL REHABILITATIVE OPPORTUNITIES FOR**
 17 **INMATES.**

18 *(a) ESTABLISHMENT OF PROGRAM.—(1) Chapter 303*
 19 *of title 18, United States Code, is amended by adding at*
 20 *the end the following new section.*

21 **“§4049. Enhanced In-Prison Educational and Voca-**
 22 **tional Assessment and Training Program**

23 *“There is hereby established the Enhanced In-Prison*
 24 *Educational and Vocational Assessment and Training Pro-*
 25 *gram within the Federal Bureau of Prisons. The program*

1 *shall provide, at a minimum, a full range of educational*
 2 *opportunities, vocational training and apprenticeships,*
 3 *and comprehensive release-readiness preparation for in-*
 4 *mates in Federal prisons.”.*

5 *(2) The table of sections at the beginning of such chap-*
 6 *ter is amended by adding at the end of the following new*
 7 *item:*

“4049. Enhanced In-Prison Educational and Vocational Assessment and Training Program.”.

8 *(b) IMPLEMENTATION OBJECTIVE.—It shall be the ob-*
 9 *jective of the Federal Bureau of Prisons to implement the*
 10 *program established under section 4049 of title 18, United*
 11 *States Code (as added by subsection (a)), in all Federal*
 12 *prisons not later than eight years after the date of the enact-*
 13 *ment of this Act.*

14 **SEC. 5. NEW PRODUCTS AND EXPANDED PRODUCTION OF**
 15 **EXISTING PRODUCTS.**

16 *Federal Prison Industries shall, to the maximum ex-*
 17 *tent practicable, increase inmate employment by producing*
 18 *new products or expanding the production of existing prod-*
 19 *ucts for the public sector that would otherwise be produced*
 20 *outside the United States.*

21 **SEC. 6. TRANSITIONAL PERSONNEL MANAGEMENT AU-**
 22 **THORITY.**

23 *Any correctional officer or other employee of Federal*
 24 *Prison Industries being paid with nonappropriated funds*

1 *who would be separated from service because of a reduction*
 2 *in the net income of Federal Prison Industries before the*
 3 *date that is five years after the date of the enactment of*
 4 *this Act shall be—*

5 (1) *eligible for appointment (or reappointment)*
 6 *in the competitive service in accordance with subpart*
 7 *B or part III of title 5, United States Code;*

8 (2) *registered on a Bureau of Prisons reemploy-*
 9 *ment priority list; and*

10 (3) *given priority for any other position within*
 11 *the Bureau of Prisons for which such employee is*
 12 *qualified.*

13 **SEC. 4. 7. EFFECTIVE DATE.**

14 The amendments made by this Act shall take effect
 15 180 days after the date of the enactment of this Act.

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