

109TH CONGRESS
1ST SESSION

S. 749

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

APRIL 11, 2005

Mr. LEVIN (for himself, Mr. THOMAS, Mr. GRASSLEY, and Ms. STABENOW) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and 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. 401 et seq.) is amended by
8 adding at the end the following:

1 **“SEC. 42. 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, or
9 any service offered to be provided by Federal Prison In-
10 dustries, the head of an executive agency shall, except as
11 provided in subsection (d)—

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

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

23 “(b) **OFFERS FROM FEDERAL PRISON INDUS-**
24 **TRIES.**—In conducting a procurement pursuant to sub-
25 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;

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); and

9 “(3) consider a timely offer from Federal Pris-
10 on Industries without limitation as to the dollar
11 value of the proposed purchase, unless the contract
12 opportunity has been reserved for competition exclu-
13 sively among small business concerns pursuant to
14 section 15(a) of the Small Business Act (15 U.S.C.
15 644(a)) and its implementing regulations.

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

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

1 “(2) Federal Prison Industries performs its
2 contractual obligations to the executive agency to the
3 same extent as any other contractor for the execu-
4 tive agency.

5 “(d) EXCEPTION.—

6 “(1) OTHER PROCEDURES.—The head of an ex-
7 ecutive agency may use procedures other than com-
8 petitive procedures to enter into a contract with
9 Federal Prison Industries only under the following
10 circumstances:

11 “(A) The Attorney General personally de-
12 termines in accordance with paragraph (2),
13 within 30 days after Federal Prison Industries
14 has been informed by the head of that executive
15 agency of an opportunity for award of a con-
16 tract for a product or service, that—

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

21 “(ii) the award of the contract to Fed-
22 eral Prison Industries for performance at a
23 penal or correctional facility is necessary to
24 maintain work opportunities not otherwise
25 available at the penal or correctional facil-

1 ity that prevent circumstances that could
2 reasonably be expected to significantly en-
3 danger the safe and effective administra-
4 tion of such facility.

5 “(B) The product or service is available
6 only from Federal Prison Industries and the
7 contract may be awarded under the authority of
8 section 2304(c)(1) of title 10, United States
9 Code, or section 303(c)(1) of the Federal Prop-
10 erty and Administrative Services Act of 1949
11 (41 U.S.C. 253(c)(1)), as may be applicable,
12 pursuant to the justification and approval re-
13 quirements relating to noncompetitive procure-
14 ments specified by law and the Federal Acquisi-
15 tion Regulation.

16 “(2) DETERMINATION.—

17 “(A) IN GENERAL.—A determination made
18 by the Attorney General regarding a contract
19 pursuant to paragraph (1)(A) shall be—

20 “(i) supported by specific findings by
21 the warden of the penal or correctional in-
22 stitution at which a Federal Prison Indus-
23 tries workshop is scheduled to perform the
24 contract;

1 “(ii) supported by specific findings by
2 Federal Prison Industries regarding the
3 reasons that it does not expect to be se-
4 lected for award of the contract on a com-
5 petitive basis; and

6 “(iii) made and reported in the same
7 manner as a determination made pursuant
8 to section 303(c)(7) of the Federal Prop-
9 erty and Administrative Services Act of
10 1949 (41 U.S.C. 253(c)(7)).

11 “(B) NONDELEGATION.—The Attorney
12 General may not delegate to any other official
13 authority to make a determination that is re-
14 quired under paragraph (1)(A) to be made per-
15 sonally by the Attorney General.

16 “(e) PERFORMANCE AS A SUBCONTRACTOR.—

17 “(1) IN GENERAL.—A contractor or potential
18 contractor under a contract entered into by the head
19 of an executive agency may not be required to use
20 Federal Prison Industries as a subcontractor or sup-
21 plier of a product or provider of a service for the
22 performance of the contract by any means, including
23 means such as—

24 “(A) a provision in a solicitation of offers
25 that requires a contractor to offer to use or

1 specify a product or service of Federal Prison
2 Industries in the performance of the contract;

3 “(B) a contract clause that requires the
4 contractor to use or specify a product or service
5 (or classes of products or services) offered by
6 Federal Prison Industries in the performance of
7 the contract; or

8 “(C) any contract modification that re-
9 quires the use of a product or service of Federal
10 Prison Industries in the performance of the
11 contract.

12 “(2) SUBCONTRACTOR OR SUPPLIER.—A con-
13 tractor using Federal Prison Industries as a subcon-
14 tractor or supplier in furnishing a commercial prod-
15 uct pursuant to a contract of an executive agency
16 shall implement appropriate management procedures
17 to prevent an introduction of an inmate-produced
18 product into the commercial market.

19 “(3) DEFINITION.—In this subsection, the term
20 ‘contractor’, with respect to a contract, includes a
21 subcontractor at any tier under the contract.

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

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

3 “(2) any geographic data regarding the location
4 of—

5 “(A) surface or subsurface infrastructure
6 providing communications or water or electrical
7 power distribution;

8 “(B) pipelines for the distribution of nat-
9 ural gas, bulk petroleum products, or other
10 commodities; or

11 “(C) other utilities; or

12 “(3) any personal or financial information
13 about any individual private citizen, including infor-
14 mation relating to such person’s real property how-
15 ever described, without the prior consent of the indi-
16 vidual.”.

17 (b) CLERICAL AMENDMENT.—The table of contents
18 in section 1(b) of such Act is amended by adding at the
19 end the following:

 “Sec. 42. Governmentwide procurement policy relating to purchases from Fed-
 eral Prison Industries.”.

20 **SEC. 2. CONFORMING AMENDMENTS.**

21 (a) REPEAL OF INCONSISTENT REQUIREMENTS AP-
22 PLICABLE TO DEPARTMENT OF DEFENSE.—

23 (1) IN GENERAL.—Section 2410n of title 10,
24 United States Code, is repealed.

1 (2) TABLE OF SECTIONS.—The table of sections
2 at the beginning of chapter 141 of such title is
3 amended by striking the item relating to section
4 2410n.

5 (b) REPEAL OF INCONSISTENT REQUIREMENTS AP-
6 PLICABLE TO OTHER AGENCIES.—Section 4124 of title
7 18, United States Code, is amended—

8 (1) by striking subsections (a) and (b) and re-
9 designating subsections (c) and (d) as subsections
10 (a) and (b), respectively; and

11 (2) in subsection (a), as redesignated by para-
12 graph (1), by striking “Federal department, agency,
13 and institution subject to the requirements of sub-
14 section (a)” and inserting “Federal department and
15 agency”.

16 (c) OTHER LAWS.—

17 (1) JAVITS-WAGNER-O’DAY ACT.—Section 3 of
18 the Javits-Wagner-O’Day Act (41 U.S.C. 48) is
19 amended by striking “which, under section 4124 of
20 such title, is required” and inserting “which is re-
21 quired by law”.

22 (2) SMALL BUSINESS ACT.—Section 31(b)(4) of
23 the Small Business Act (15 U.S.C. 657a(b)(4)) is
24 amended by striking “a different source under sec-
25 tion 4124 or 4125 of title 18, United States Code,

1 or the Javits-Wagner-O'Day Act (41 U.S.C. 46 et
2 seq.)” and inserting “a different source under the
3 Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.) or
4 Federal Prison Industries under section 40(d) of the
5 Office of Federal Procurement Policy Act or section
6 4125 of title 18, United States Code”.

7 **SEC. 3. UNLAWFUL TRANSPORTATION OR IMPORTATION OF**
8 **PRODUCTS, SERVICES, OR MINERALS RE-**
9 **SULTING FROM CONVICT LABOR.**

10 (a) PROHIBITION.—Section 1761 of title 18, United
11 States Code, is amended—

12 (1) in subsection (a), by inserting after “re-
13 formatory institution,” the following: “or knowingly
14 sells in interstate commerce any services, other than
15 disassembly and scrap resale activities to achieve
16 landfill avoidance, furnished wholly or in part by
17 convicts or prisoners, except convicts or prisoners on
18 parole, supervised release, or probation, or in any
19 penal or reformatory institution,”; and

20 (2) in the matter preceding paragraph (1) in
21 subsection (c), by inserting “, or services furnished,”
22 after “or mined”.

23 (b) COMPLETION OF EXISTING AGREEMENTS.—Any
24 prisoner work program operated by the Federal Govern-
25 ment or by a State or local government which was pro-

1 viding a service for the commercial market through inmate
2 labor on October 1, 2005, may continue to provide such
3 commercial services until—

4 (1) the expiration that was specified in the con-
5 tract or other agreement with a commercial partner
6 on October 1, 2005; or

7 (2) until September 30, 2006, if no expiration
8 date was specified in a contract or other agreement
9 with a commercial partner.

10 (c) APPROVAL REQUIRED FOR LONG-TERM OPER-
11 ATION OF STATE AND LOCAL PROGRAMS.—Except as pro-
12 vided in subsection (b), a prison work program operated
13 by a State or local government may provide a service for
14 the commercial market through inmate labor only if such
15 program has been certified pursuant to section 1761(c)
16 of title 18, United States Code, and is in compliance with
17 the requirements of such subsection and its implementing
18 regulations.

19 (d) APPROVAL REQUIRED FOR LONG-TERM OPER-
20 ATION OF FEDERAL PROGRAMS.—Except as provided in
21 subsection (b), a prison work program operated by the
22 Federal Government may provide a service for the com-
23 mercial market through inmate labor only if a Federal
24 Prison Industries proposal to provide such services is ap-
25 proved in accordance with the requirements of this sub-

1 section by the Secretary of Commerce, the Secretary of
2 Labor, and the Administrator of the Small Business Ad-
3 ministration. Such a proposal may be approved only upon
4 a determination, after notice and an opportunity for public
5 comment, that—

6 (1) the service to be provided would be provided
7 exclusively by foreign labor in the absence of the
8 Federal Prison Industries proposal; and

9 (2) the approval of the proposal will not have
10 an adverse impact on employment in any United
11 States business.

12 (e) PROTECTION OF CLASSIFIED AND SENSITIVE IN-
13 FORMATION.—A prison work program operated by a State
14 or local government may not provide a service, including
15 a service for the commercial market through inmate labor
16 pursuant to section 1761(c) of title 18, United States
17 Code, under which an inmate worker would have access
18 to—

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

21 (2) any geographic data regarding the location
22 of—

23 (A) surface or subsurface infrastructure
24 providing communications or water or electrical
25 power distribution;

1 (B) pipelines for the distribution of natural
 2 gas, bulk petroleum products, or other commod-
 3 ities; or

4 (C) other utilities or transportation infra-
 5 structure; or

6 (3) any personal or financial information about
 7 any individual private citizen, including information
 8 relating to such person's real property however de-
 9 scribed, without the prior consent of the individual.

10 **SEC. 4. ADDITIONAL INMATE WORK OPPORTUNITIES**
 11 **THROUGH PUBLIC SERVICE ACTIVITIES.**

12 (a) COOPERATION WITH CHARITABLE ORGANIZA-
 13 TIONS.—Chapter 307 of title 18, United States Code, is
 14 amended by adding at the end the following:

15 **“SEC. 4130. COOPERATION WITH CHARITABLE ORGANIZA-**
 16 **TIONS.**

17 “(a) SALE OR DONATION OF PRODUCTS OR SERV-
 18 ICES TO CHARITABLE ENTITIES.—Federal Prison Indus-
 19 tries may, subject to subsection (b), sell or donate a prod-
 20 uct or service to an organization described in section
 21 501(c)(3) of the Internal Revenue Code of 1986 that is
 22 exempt from taxation under section 501(a) of such Code.
 23 Any product or service sold or donated under this section
 24 may be donated or sold by the charitable organization to

1 low-income individuals who would otherwise have difficulty
2 purchasing such products or services.

3 “(b) WORK AGREEMENTS WITH CHARITABLE ORGA-
4 NIZATIONS.—

5 “(1) IN GENERAL.—Federal Prison Industries
6 may sell or donate a product or service to a chari-
7 table organization under subsection (a) only pursu-
8 ant to a work agreement with the charitable organi-
9 zation receiving the product or service.

10 “(2) TERMS.—Federal Prison Industries may
11 enter a work agreement relating to a product and
12 service under paragraph (1) only if—

13 “(A) the Attorney General determines, in
14 consultation with the Secretary of Labor and
15 the Secretary of Commerce, that the product or
16 service would not be available except for the
17 availability of inmate workers provided by Fed-
18 eral Prison Industries; and

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

22 “(i) no job of a noninmate employee
23 or volunteer of the charitable organization
24 (or any affiliate of the charitable organiza-
25 tion) will be abolished, and no such em-

1 ployee’s or volunteer’s work hours will be
 2 reduced, as a result of the entity being au-
 3 thorized to utilize inmate workers; and

4 “(ii) the work to be performed by the
 5 inmate workers will not supplant work cur-
 6 rently being performed by a contractor of
 7 the charitable organization.

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

14 (b) CLERICAL AMENDMENT.—The table of sections
 15 at the beginning of chapter 307 of title 18, United States
 16 Code, is amended by adding at the end the following:

“4130. Cooperation with charitable organizations.”.

17 **SEC. 5. ADDITIONAL REHABILITATIVE OPPORTUNITIES**
 18 **FOR INMATES.**

19 (a) ESTABLISHMENT OF PROGRAM.—

20 (1) IN GENERAL.—Chapter 303 of title 18,
 21 United States Code, is amended by adding at the
 22 end the following:

1 **“SEC. 4049. ENHANCED IN-PRISON EDUCATIONAL AND VO-**
2 **CATIONAL ASSESSMENT AND TRAINING PRO-**
3 **GRAM.**

4 “(a) IN GENERAL.—There is established the En-
5 hanced In-Prison Educational and Vocational Assessment
6 and Training Program within the Federal Bureau of Pris-
7 ons.

8 “(b) REQUIREMENTS.—The program established
9 under this section shall provide, at a minimum, a full
10 range of educational opportunities, vocational training and
11 apprenticeships, and comprehensive release-readiness
12 preparation for inmates in Federal prisons.”.

13 (2) TABLE OF SECTIONS.—The table of sections
14 at the beginning of such chapter is amended by add-
15 ing at the end the following:

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

16 (b) IMPLEMENTATION OBJECTIVE.—It shall be the
17 objective of the Federal Bureau of Prisons to implement
18 the program established under section 4049 of title 18,
19 United States Code (as added by subsection (a)), in all
20 Federal prisons not later than 8 years after the date of
21 the enactment of this Act.

1 **SEC. 6. NEW PRODUCTS AND EXPANDED PRODUCTION OF**
2 **EXISTING PRODUCTS.**

3 Federal Prison Industries shall, to the maximum ex-
4 tent practicable, increase inmate employment by pro-
5 ducing new products or expanding the production of exist-
6 ing products for the public sector that would otherwise be
7 produced outside the United States.

8 **SEC. 7. TRANSITIONAL PERSONNEL MANAGEMENT AU-**
9 **THORITY.**

10 Any correctional officer or other employee of Federal
11 Prison Industries being paid with nonappropriated funds
12 who would be separated from service because of a reduc-
13 tion in the net income of Federal Prison Industries before
14 the date that is 5 years after the date of the enactment
15 of this Act shall be—

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

19 (2) registered on a Bureau of Prisons reemploy-
20 ment priority list; and

21 (3) given priority for any other position within
22 the Bureau of Prisons for which such employee is
23 qualified.

1 **SEC. 8. EFFECTIVE DATE.**

2 The amendments made by this Act shall take effect

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

○