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Congress of the United States
U.S. House of Representatives
Committee on Small Business

2361 Rayburn House Office Building
Washington, DC 20515-6315

To: Members, Subcommittee on Contracting and the Workforce, Committee on Small Business
From: Committee Staff
Date: June 22, 2012
Re: Hearing: "Unlocking Opportunities: Recidivism versus Fair Competition in Federal Contracting"

On Thursday, June 28, 2012, at 10:00 am in Room 2360 of the Rayburn House Office Building, the Subcommittee on Contracting and Workforce of the Committee on Small Business will meet for the purpose of receiving testimony on contracting preferences provided to Federal Prison Industries (FPI). The hearing will specifically address whether contracting preferences provided to FPI, commonly known as UNICOR, unfairly disadvantage small businesses competing for federal contracts. Small businesses argue that they are unfairly prejudiced when UNICOR is allowed to compete for small business set-aside contracts, while UNICOR cites reduced rates of recidivism for prisoners working on UNICOR contracts. The Subcommittee will examine both arguments as well as potential legislative solutions, including H.R. 3634, the Federal Prison Industries Competition in Contracting Act of 2011, introduced by Congressman Bill Huizenga (R-MI).

Congressman Huizenga will testify on the first panel. The second panel will include Michael Mansh, President, Pennsylvania Apparel LLC, Fort Washington, PA, on behalf of the American Apparel and Footwear Association; John M. Palatiello, President of the Business Coalition for Fair Competition, Reston, VA; Rebecca Boenigk, CEO, Neutral Posture, Bryan, TX; and a witness selected by the minority. The Bureau of Prisons has been invited to provide a witness.

As will be discussed in more detail below, there has always been tension between industry and FPI. Historically, these complaints stemmed from FPI's status as a mandatory source of products and services because until the past decade, federal agencies were required to purchase from FPI before turning to the private sector. Now the complaints are concentrated in three areas: first, FPI retains its status as a mandatory source in some areas, thus excluding small business participation in those procurements. Second, in areas where FPI is not a mandatory source, FPI has the ability to bid on small business and other socio-economic set-aside contracts. Finally, even when using competitive procedures, small businesses allege that FPI enjoys certain intrinsic competitive benefits, since it does not have to pay its inmate-employees the same level of wages or comply with many of the rules and regulations that add costs in the private sector. FPI justifies its existence by citing reduced rates of recidivism among former prisoners who worked at a UNICOR job. At the heart of these arguments is the issue of when it is appropriate for the government to compete with the private sector.

To address these issues, this memorandum will present a brief history of UNICOR, and then discuss how the program has evolved through a series of statutory changes. It will then turn to the current state of the UNICOR program and related contracts. The memorandum also will discuss the justifications the Bureau of Prisons (BOP), which manages UNICOR, offers for continuing the program before turning to the current legislative initiatives regarding UNICOR. Finally, a brief summary of the issues before the Subcommittee is provided.

I. Background and History of UNICOR

The existence of prison labor industries has been a contentious issue in the United States for over a hundred years, particularly due to their effect on private industries. In 1905, President Theodore Roosevelt issued Executive Order 325-A "prohibiting the federal government from purchasing prison-made goods."[1] Nearly 30 years later this position was reversed when FPI, "a wholly-owned government corporation, was created by statute (P.L. 73-461) on June 23, 1934, and implemented by Executive Order No. 6917, signed by President Franklin Roosevelt on December 11, 1934."[2]

FPI's mission "is to provide work simulation programs and training opportunities for inmates confined in Federal correctional facilities."[3] The work within FPI "is designed to allow inmates the opportunity to acquire the knowledge, skills, and work habits which will be useful when released from the institution."[4] FPI "is authorized to operate industries in Federal penal and correctional institutions and disciplinary barracks."[5] FPI began officially operating on January 1, 1935[6], and in 1977, FPI adopted a new corporate logo and the trade name, UNICOR.[7]

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[1] AMERICAN CORRECTIONAL ASSOCIATION, A STUDY OF PRISON INDUSTRY: HISTORY, COMPONENTS, AND GOALS 6 (1986) *available at* http://static.nicic.gov/Library/004194.pdf (last visited June 12, 2012).
[2] ORGANIZATION, MISSION AND FUNCTIONS MANUAL: FEDERAL BUREAU OF PRISONS (2012), *available at* http://www.justice.gov/jmd/mps/manual/bop.htm (last visited June 12, 2012) (quotations changed to add full name of president to avoid confusion).
[3] Definitions, Federal Prison Industries, Inc. (FPI), 28 C.F.R. § 345.11.
[4] Purpose and Scope, 28 C.F.R. § 345.10.
[5] Federal Prison System, Federal Prison Industries, Inc., FY 2013 Congressional Budget, *available at* http://www.justice.gov/jmd/2013justification/pdf/fy13-bop-fpi-justification.pdf (last visited June 12, 2012).
[6] UNICOR, FACTORIES WITH FENCES, 8 *available at* http://www.unicor.gov/information/publications/pdfs/corporate/CATMC1101_C.pdf (last visited June 12, 2012).
[7] *Id.* at 24.

Due to opposition from labor unions and businesses when initially created, FPI's six person board of directors includes representatives from industry, labor, agriculture, retailers and consumers, as well as the Secretary of Defense and Attorney General,[8] meant to limit competition with the private sector. Further, FPI may only sell products to the federal government and is required to be "sufficiently diversified so as to avoid undue impact upon any particular industry."[9]

Despite this, the private sector, particularly small businesses, emphasize the unfair advantage FPI has when contracting with the federal government. FPI is aware of these concerns, and "[o]ver the years, [the FPI] board has adopted various resolutions to reduce competition with small businesses, like raising the threshold for buying the prisoner-made goods to $3,000, from $25, and eliminating its preferential status for products when the prison share of the federal market rises above" twenty percent.[10]

II. Congressional Reforms

Congress has enacted changes to ensure small businesses are protected when dealing with FPI. These reforms came in three waves, starting in 1988. While some of the 1988 changes focused on transparency, requiring the FPI board to submit an annual report to Congress on the conduct of business and condition of fiscal funds, the majority were designed to address competition.[11] Specifically, Congress instructed FPI to "conduct its operations so as to produce products on an economic basis, but [to] avoid capturing more than a reasonable share of the market."[12] Further, before producing a new product or service, FPI was required to conduct a detailed analysis of the "probable impact on industry and free labor" including "the the proportion of the Federal Government market for the product currently served by small businesses, small disadvantaged businesses, or businesses operating in labor surplus areas."[13] Congress then directed FPI to take these matters into account before launching the new product or service offering.

Not satisfied with the results of the 1988 reforms, from 2001 to 2004, Congress again attempted to reform FPI practices.[14] At the beginning, these changes applied primarily to the

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[8] 18 U.S.C. § 4121; note initially a five person board was established and this was later changed

[9] UNICOR, *supra note* 6, at 7; (*See also* 18 U.S.C. § 4122(b) requiring FPI to "diversify, so far as practicable, prison industrial operations and so operate the prison shops that no single private industry shall be forced to bear an undue burden of competition from the products of the prison workshops, and to reduce to a minimum competition with private industry or free labor").

[10] Diane Cardwell, *Private Businesses Fight Federal Prisons for Contracts*, N.Y. TIMES, March 14, 2012, *available at* http://www.nytimes.com/2012/03/15/business/private-businesses-fight-federal-prisons-for-contracts.html?_r=1&pagewanted=all.

[11] Anti-Drug Abuse Act of 1988, Pub. L. No. 100-290, § 7095, 102 Stat. 4181, 4413 (1988).

[12] *Id.* at § 7096, 102 Stat. at 4413.

[13] *Id.* §7096, 102 Stat. at 4414.

[14] *See* National Defense Authorization Act for Fiscal Year 2002, Pub. L. No. 107-107, 10 U.S.C. 2410n (2001) [*hereinafter,* 2002 NDAA]; Bob Stump National Defense Authorization Act for Fiscal Year 2003, Pub. L. No. 107-314, 10 U.S.C. 2410n (2002) [*hereinafter,* 2003 NDAA]; Consolidated Appropriations Act of 2004, Pub. L. No. 108-199 (2003) (prohibiting Congressionally Appropriated funds for 2004) [*hereinafter,* 2004 CAA]; Consolidated

Department of Defense (DoD) and required that the agency conduct additional market research before purchasing a product from FPI, and then only purchase the product if it was indeed comparable to the private sector product and still represented the best value under the same terms and conditions that applied to private contractors.[15] Eventually, the prohibitions expanded to civilian agencies as well, and for FY 2004, agencies were forbidden to use appropriations for FPI products. The next year, this restriction was relaxed to instead restrict the use of appropriations to purchases where the contracting agency found that FPI represented the best value.[16]

Most recently, in 2008, Congress began requiring DoD to use competitive procedures to procure goods and services offered by FPI if, during the prior fiscal year, FPI had greater than a five percent market share for that product or service.[17] This is stricter than FPI's practice of not insisting on its mandatory source status if it controlled more than 20 percent of the market in the prior fiscal year. Most recently, Congress has attempted to redirect FPI to focus on opportunities to partner with private industries to manufacture goods typically made outside the United States.[18]

III. Current State of UNICOR and FPI Contracting

During the past fiscal year, there were approximately 14,000 inmates employed in 88 FPI factories, manufacturing furniture, clothing, electronics, vehicular and metal products, and providing printing, data processing and laundry services.[19] Although recent congressional changes have attempted to curb FPI's affect on the private sector, FPI still receives a preference to the detriment of small businesses. This is due to various provisions of FPI's enacting statute and regulations prohibiting certain forms of competition. Specifically, "agencies are encouraged to purchase FPI supplies and services to the maximum extent practicable."[20] Due to this, if after conducting market research an agency determines that the FPI item is comparable to private sector goods, the agency must purchase the item; unless a waiver is obtained or other exceptions, such as acquiring items for use outside of the United States or the listed items total $3,000 or less, are met.[21] The current systems, which vary slightly for civilian and defense agencies, are represented by decision charts on the next two pages.

Appropriations Act of 2005, Pub. L. No. 108-447 (2004) ([*hereinafter*, 2005 CAA]; Intelligence Authorization Act for Fiscal Year 2004, Pub. L. No. 108-177, 117 Stat. 2599 (2003) [*hereinafter*, 2004 IAA] [14].

[15] 2002 NDAA at § 811; 2003 NDAA at 819(a)-(e). These bills also prohibited DoD from entering into contracts with FPI if inmates would have access to classified information.

[16] 2005 CAA at § 404, 117 Stat. at 2632. A similar provision was applied to Central Intelligence Agency, requiring that it only purchase from FPI if the FPI products met the CIA's needs. 2004 IAA at § 404, 117 Stat. at 2632.

[17] National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 827, 122 Stat. 3, 228 (2008).

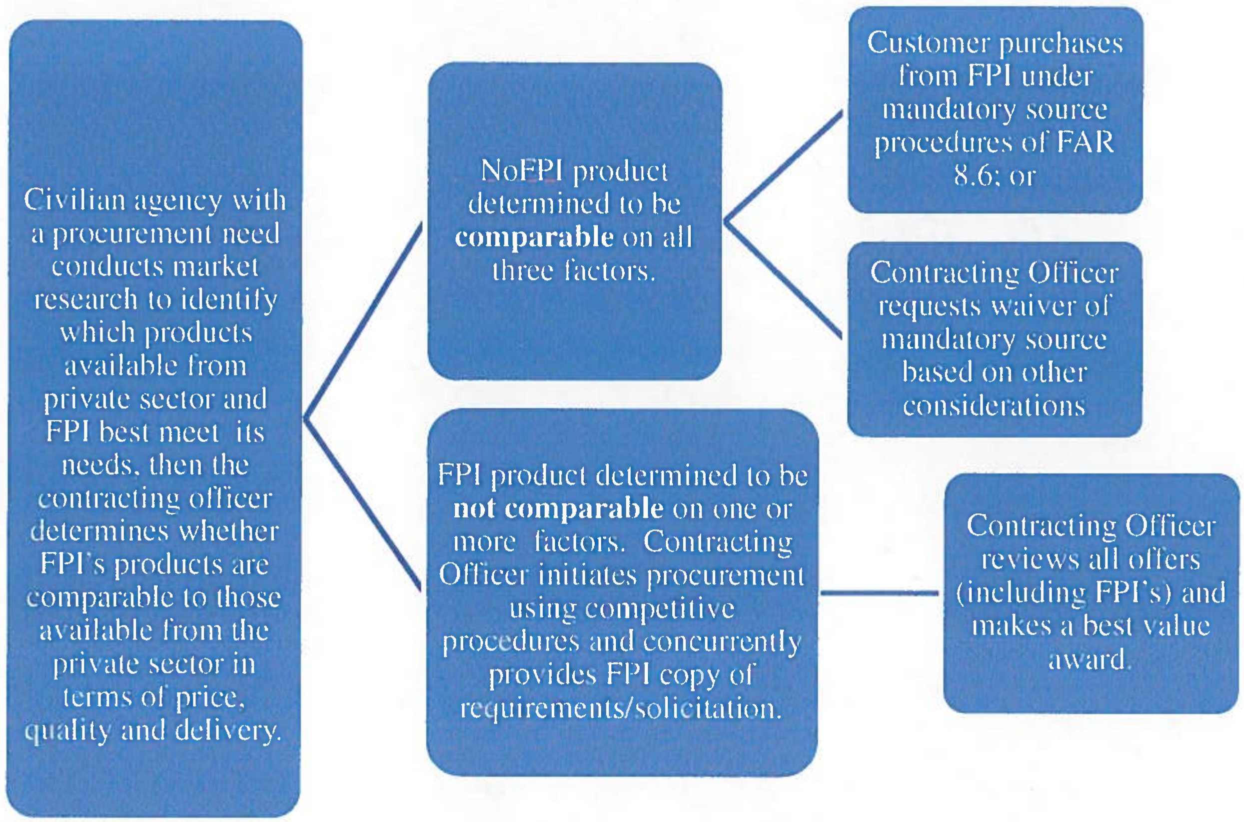
[18] Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, § 221, 125 Stat. 552, 621 (2011).

[19] Federal Prison System, *supra* note 5.

[20] Acquisition from Federal Prison Industries, Inc., 48 C.F.R. § 8.601(e).

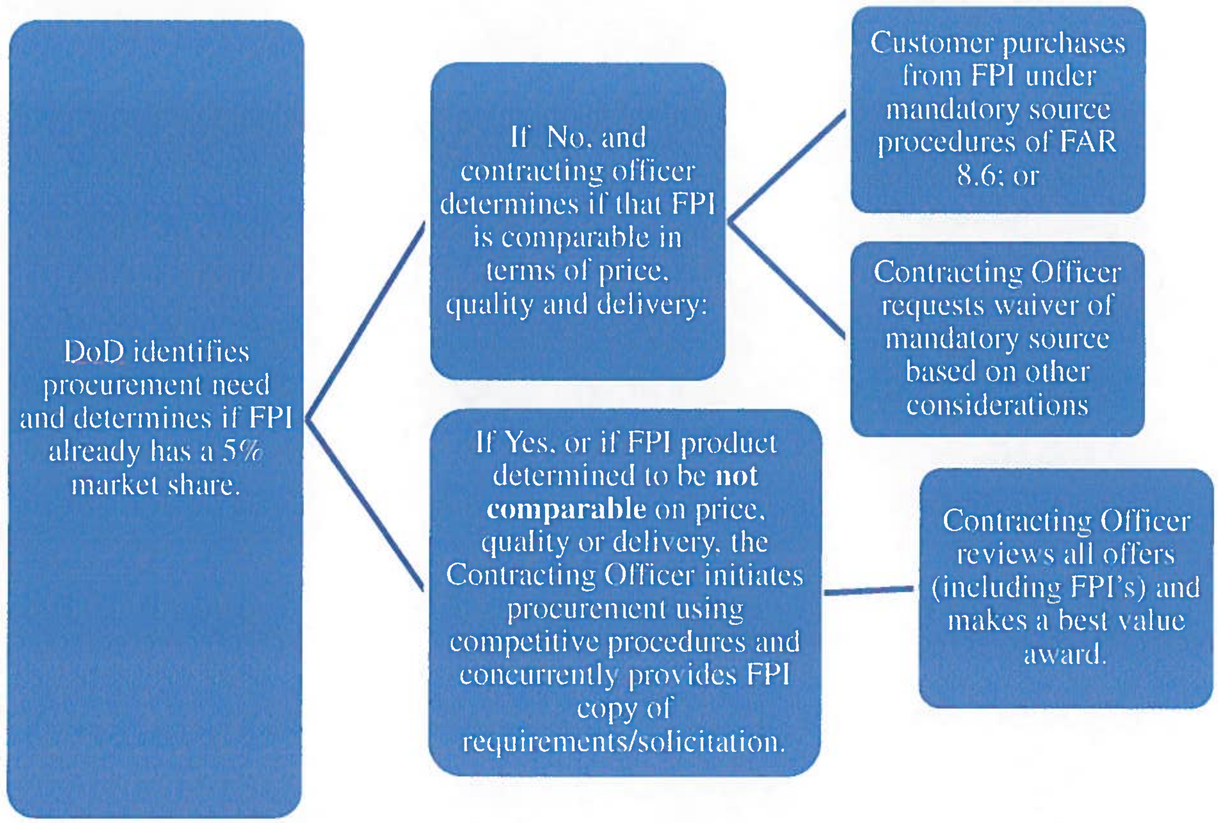
[21] *Id.* § 8.602 (a) and § 8.605.

Decision Path of Civilian Agency Procedures for Purchasing from FPI[22]



[22] *See* 2002 NDAA; 2003 NDAA, 2005 CAA; 48 C.F.R. §§ 8.6, 208, 210, 252. N.B. that FPI is required to waive its mandatory source preference if the private sector offers a product at a lower cost. http://www.unicor.gov/information/purchasing_made_simple/.

Decision Path of DoD Procedures for Purchasing from FPI[23]



However, to put these charts in context, it is important to understand that when a contracting officer uses competitive procedures rather than relying on FPI as mandatory source, FPI does not follow the same eligibility criteria as other vendors. For example, when a contract is set aside for small businesses, it is generally understood that only small businesses may compete. However, the Federal Acquisition Regulations (FAR) provide that even in the case of a small business set-aside, the contracting officer must notify FPI and "consider a timely offer from FPI."[24] While not specified in regulation or statute, FPI is additionally allowed to bid on HUBZone, Women-Owned, Service-Disabled Veteran-Owned, and 8(a) set-asides.[25] This

[23] 2002 NDAA; 2003 NDAA, 2008 NDAA; 2005 CAA; 48 C.F.R. §§ 8.6, 208, 210, 252.
[24] 48 C.F.R. § 19.504.
[25] *See, e.g.*, Solicitation SPM1C1-09-R-0081 and Amendments 0001 - 0011 for the manufacture of Trousers, Extreme Cold/Wet Weather, Gen III, Layer 6, awarded to FPI as contract SPM1C1-12-D-F503 on December 28, 2011, for $45,048,914.69. The contract consists of a base year and 2 additional option years, and was originally a HUBZone set-aside contract.

inclusion of FPI is particularly troubling for small businesses as FPI does not pay inmates minimum wage[26] nor face other tax, regulatory, or healthcare burdens. Additionally, the industries where FPI has the strongest presence are those where domestic companies face strong international competition, such as textiles and furniture manufacturing – industries that Congress has previously sought to protect by providing domestic source preferences.[27]

Despite the preferences afforded to FPI, it has not been profitable for the last two years. In FY2011, FPI incurred an operating loss of $1.8 million on sales of approximately $745 million, and the prior year lost $52 million on sales of $772 million.[28] FPI opines that congressional changes to FPI over the past decade have harmed their sales, despite FPI's internal changes to decrease operational expenses.[29] FPI's primary costs are the purchases of raw material and equipment, which account for 80 percent of expenses, while only 4 percent of expenses go towards inmate salaries, and the remainder pay staff salaries.[30]

Of the $745 million in FY 2011 sales, FPI reports that approximately $40 million was earned as a subcontractor, with approximately $20 million as a subcontractor to small businesses.[31] The sales themselves were generated in the following business segments:

[26] Cardwell, *supra* note 10.
[27] The so-called "Berry Amendment," 10 U.S.C. § 2533a, requires DoD to give domestic companies a preference when purchasing food, clothing, fabrics, and specialty metals. The Buy American Act, 10 U.S.C. §§ 10a-10d and the Trade Agreements Act, 19 U.S.C. §§ 2501-2581 also provide protections for domestic production when contracting with the government.
[28] Federal Prison System, *supra* note 5. These losses are borne by FPI's reserves, and resulted in the closing of four factories.
[29] Federal Prison System, *supra* note 5.
[30] FPI, ANNUAL REPORT 2009, http://www.unicor.gov/information/publications/pdfs/corporate/catar2009_C.pdf. FPI has noted that UNICOR staff are required to be both prison guards and shop foreman, which increases management costs. Conversation between Jennifer Edens, Chief, Office of Legislative Affairs, Federal Bureau of Prisons (BOP), Judith Garret, Dep'ty. Dir., Office of Information, Policy & Public Affairs, Mary Mitchell, Acting Assistant Director for Correctional Programs Division, BOP, Marian Cantwell, General Counsel, BOP, Phil Sibal, Dep'ty Dir. UNICOR, Robert Grieser Chief, Strategic Business Development & Marketing Branch, BOP with Committee Staff (June 15, 2012) [*hereinafter*, BOP Conversations].
[31] BOP Conversations.

UNICOR Sales by Business Segment[32]

Business Segment	Fiscal Year	
Clothing and Textiles	**2011**	**2010**
Sales (all in thousands)	$238,631	$246,470
Earnings	$34,035	$35,885
Electronics		
Sales	$76,443	$99,107
Earnings	($7,391)	($45,360)
Fleet Management and Vehicular Components		
Sales	$177,863	$205,221
Earnings	$14,112	$7,029
Industrial Products		
Sales	$55,281	$44,029
Earnings	$7,004	$5,999
Office Furniture		
Sales	$155,819	$129,312
Earnings	$11,141	$2,880
Recycling		
Sales	$15,276	$13,596
Earnings	$4,555	$3,586
Services		
Sales	$26,110	$35,161
Earnings	($1,447)	($4,385)
Corporate Total		
Sales	$745,423	$772,896
Earnings	$62,009	$5,634

[32] FPI, FISCAL YEAR 2011 ANNUAL MANAGEMENT REPORT 8 (2011).

IV. FPI and Recidivism

According to its authorizing statute, UNICOR is supposed to provide inmates with "a maximum opportunity to acquire a knowledge and skill in trades and occupations which will provide them with a means of earning a livelihood upon release."[33] However, when BOP was asked what factors the Subcommittee should consider when looking at UNICOR, their only response was recidivism.[34] To support this contention, they provided information demonstrating that FPI participation provided greater declines in recidivism than any other program, except for vocational and occupational therapy.

Bureau of Prisons Recidivism-Reducing Programs [35]

Program	Inmate Participation	Recidivism
Federal Prison Industries (FPI or UNICOR)	9% of inmates in BOP facilities work in FPI (15,907 workers).	24% decrease in recidivism for as long as 12 years after release. 14% increase in employment 1 year after release.
All Education Programs	36% of designated inmates in BOP facilities are enrolled in one or more education programs.	16% decrease in recidivism within 3 years of release.
Vocational and Occupational Training Programs	7% of designated inmates in BOP facilities are enrolled occupational or vocational training programs.	33% decrease in recidivism for as long as 12 years after release.
Residential Drug Abuse Program (RDAP)	Approximately 40% of incoming offenders have a drug use disorder. Of those with a drug use disorder, 92% of sentenced inmates within BOP institutions volunteer for RDAP.	16% decrease in recidivism within 3 years of release. 15% decrease in relapse within 3 years of release.

Presently, the key difference between FPI and traditional vocational programs is that the cost of running FPI does not require an appropriation. However, traditional vocational programs focus on training inmates for jobs outside of prison. In contrast, the market for most domestically-produced FPI products is shrinking, and with it the potential for jobs in this sector. Despite this, BOP contends that FPI is not intended to train inmates for a specific job, but to instead provide them with skills and experiences related to going to work on time each day and working

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33 18 U.S.C. § 4123.

34 BOP Conversation.

35 Provided by BOP. Data on FPI is from an article published by William Saylor and Gerald Gaes, *The Differential Effect of Industries and Vocational Training on Postrelease Outcomes for Ethnic and Racial Groups: Research Note,* Corrections Management Quarterly 5(4) 17-24 (2001).

collaboratively with others.[36] This is contradicts the statutory mandate for UNICOR – inmate employees are supposed to be learning a trade they can use upon release, rather than simply learning employee skills.

V. Current Legislative Proposals

On December 12, 2011, Rep. Huizenga introduced the *Federal Prison Industries Competition in Contracting Act of 2011* (H.R. 3634). Currently, this bipartisan bill has 19 co-sponsors; including Committee Members Representative Bartlett (R-MD) and Representative Coffman (R-CO). This bill seeks to reform FPI by requiring FPI to compete for federal contracts, thus ensuring equitable footing and reducing unfair competition with private companies.[37]

Under current law, FPI is provided exclusive contracts with the federal government for certain items. H.R. 3634 establishes competitive procedures for contract awards unless the Attorney General determines that: (1) "Federal Prison Industries cannot reasonably expect fair consideration to receive the contract award on a competitive basis"[38] and (2) "the contract award is necessary to maintain work opportunities otherwise unavailable at the penal or correctional facility at which the contract is to be performed to prevent circumstances that could reasonably be expected to significantly endanger the safe and effective administration of such facility."[39] If those two qualifications are met, then the contract may be negotiated with FPI on a noncompetitive basis.[40]

Additionally, under this legislation FPI is required "to submit a detailed analysis of the impact to the private sector before entering into new product markets and would not be able to sell products commercially or internationally; the only customer could be the federal government."[41] This aims to prevent FPI from impeding private sector growth by unfairly targeting new industries and products. This bill also restricts the percentages of sales based on total dollar value that FPI makes to the federal government from FY2012 to FY2016.

Further, H.R. 3634:[42]

- requires federal agencies to report purchases from FPI to the Federal Procurement Data System (FPDS);[43]

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[36] BOP Conversation. BOP also highlighted the fact that FPI inmate-employees are not cherry picked, but instead FPI employs the most violent offenders.
[37] Press Release, Congressman Bill Huizenga, *Huizenga Introduces Bipartisan Bill to Increase Private Sector Competition For Government Contracts* (Dec. 13, 2011) *available at* http://huizenga.house.gov/News/DocumentSingle.aspx?DocumentID=272384.
[38] H.R. 3634, 112th Cong. (2011).
[39] *Id.*
[40] *Id.*
[41] Huizenga, *supra* note 37.
[42] H.R. 3634, *supra* note 38.
[43] Currently, FPDS captures only about one third of all FPI purchases, making it difficult to analyze the effects on small business.

- allows for FPI to act as a subcontractor, but prohibits requiring that FPI be used as subcontractor or use of FPI infringing on procurement preferences under Buy America or the Javits-Wagner-O'Day Act (41 U.S.C. 48);
- authorizes additional rehabilitative and prerelease employment training programs;
- directs the FPI Board to set hourly wages for inmates performing work under FPI and review this biannually (current wages are 23 cents to $1.15 per hour);[44] and
- requires FPI to establish a cost accounting system.

VI. Issues Before the Subcommittee

There are four primary issues before the Subcommittee. First, the Subcommittee will examine whether current implementation of FPI contracting violates the Small Business Act. Second, the Subcommittee will consider whether FPI unfairly competes with small businesses. Third, if FPI does have an unfair competitive advantage, the Subcommittee will consider whether FPI's affect on recidivism justifies the competition. Fourth, the Subcommittee will consider ways in which FPI's effect on small businesses could be mitigated.

a. Violations of the Small Business Act

The Small Business Act provides very specific scenarios during which competition is to be limited to only members of certain classes of small businesses, and the interpretation of the FPI authorities appears to conflict with the plain language of the Small Business Act. When FPI is not a mandatory source, the law requires that the purchasing agencies "shall use competitive procedures for the procurement of the product, or shall make an individual purchase under a multiple award contract in accordance with the competition requirements applicable to such contract. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries."[45] Competitive procedures or requirements are read to mean compliance with the Competition in Contracting Act, which established full and open competition as the preferred method for conducting federal procurements, but which also allowed limited competition under the Multiple Award Schedules or small business contracting programs.[46]

The "Rule of Two," which sets aside all contracts for small businesses if two or more small businesses can compete at a fair and reasonable price, is a regulatory construct derived to ensure that agencies meet the Small Business Act requirement that small businesses receive "the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency."[47] Therefore, while one can debate the policy choices, it falls within the purview of the Federal Acquisition Council to waive this preference and allow FPI to compete on small business set asides, as it has done at 48 C.F.R. 19.504.

However, the decision to restrict contracts to participation from HUBZone small business concerns, 8(a) small and disadvantaged small businesses, women-owned small businesses, or

[44] FPI General Overview FAQs, *available at* http://www.unicor.gov/about/faqs/faqsgeneral.cfm.
[45] 10 U.S.C. § 2410n.
[46] Pub. L. No. 98-369 § §§ 2701-2753, 98 Stat. 1175 (1984).
[47] 15 U.S.C. § 637(d)(1).

service-disabled veteran-owned small businesses is not a policy choice left for the Executive Branch, since each has strict eligibility requirements found within the Small Business Act itself.[48] Indeed, the regulations enacting these sections of the Federal Acquisition Regulation do not delineate an exemption for FPI competition.[49] This is consistent with one of the basic principles of statutory construction – more specific sections trump general sections, since general provisions have "no power to give what the text of the statute takes away."[50]

Therefore, the decision of FPI to compete for set-asides restricted to HUBZone firms and in other types of statutorily mandated set-asides contradicts the spirit and the letter of the law, and the decision of agencies to entertain these bids contradicts the letter of the regulations. The Subcommittee wishes to inquire as to why this practice is being permitted, and whether additional clarification is necessary.

b. Unfair Competition

The Small Business Act dictates that the free competition is necessary to the economic well-being and security of America.[51] Specifically, the Act requires preservation of free enterprise by insuring that small businesses contract with the government.[52] As previously mentioned, concerns regarding FPI's effects on private industries, and in particular small businesses has been a contentious issue for several years. The Subcommittee hopes to learn whether FPI, a wholly-owned government corporation, limits small businesses ability to compete for federal contracts through provisions such as the mandatory source clause and inclusion in small business set-aside programs. Further, the Subcommittee will examine whether FPI has an unfair advantage when submitting a bid as FPI is not required to pay inmates minimum wage, nor do they face other tax, regulatory, or healthcare burdens which affect small businesses submissions.

c. Recidivism

BOP boasts of lowered rates of recidivism as the benefit of FPI. Specifically, while the average rate of recidivism is 40 percent, BOP finds a 24 percent decrease in recidivism for as long as 12 years after release.[53] A reduction in crimes, therefore, would be the benefit of contracting with FPI to the government. On the other hand, traditionally the benefit of government contracting with small businesses has been to increase jobs, foster innovation, ensure a healthy industrial base, and promote cost savings. Consequently, small businesses ensure a long-term vibrant economy with contracting as means to assist that goal.

In light of these two countervailing arguments, the Subcommittee will focus on whether FPI's benefit of reduced recidivism outweighs the impact to small businesses and the economy at

[48] 15 U.S.C. § 637(a), § 637 (m), § 657a(b), § 657f(b).
[49] 48 C.F.R. §19.8, § 19.13, § 19.14, § 19.5.
[50] Demore v. Kim, 538 U.S. 510, 535 (2003).
[51] 15 U.S.C. § 631(a)
[52] 15 U.S.C. § 631(a)
[53] *Supra* note 34.

large. Specifically, with a third of inmates participating in FPI still reoffending, the Subcommittee will examine whether this decrease in recidivism is truly substantial.

d. Mitigation

As previously noted, over the past 25 years, Congress has been active in reforming FPI to mitigate the effects on small business. During this Congress, Rep. Huizenga has introduced the Federal Prison Industries Competition in Contracting Act of 2011 (H.R. 3634) to continue this trend. The Subcommittee will look at the effects of this bill on mitigating the effects of FPI on small business contracting. Further, as previously indicated, the FPI Board has traditionally attempted to ensure equitable opportunities in federal contracting for small business by altering internal policies to reduce conflicts. The Subcommittee will examine if that trend is still ongoing, and what changes the Board should consider to reduce the effects of FPI on small businesses. Specifically, the Subcommittee will inquire into how FPI is using its new authority to partner with private industries to pursue the manufacturing of products traditionally produced outside of the United States. Finally, the Subcommittee will discuss obstacles and potential solutions with small businesses affected by FPI.

VII. Conclusion

The federal government uses contracting not simply to buy goods and services, but also to affect important policy aims. When FPI and small businesses are focused on the same opportunities, these policy aims become oppositional rather than complimentary. Thus, as the Subcommittee seeks to provide small businesses with greater opportunities in order to encourage job creation, innovation, and lower costs, it must find a way to address the relationship between FPI and small businesses.