



ACQUISITION
TECHNOLOGY
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MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
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DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION & LOGISTICS MANAGEMENT),
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DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTORS, DEFENSE AGENCIES
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SUBJECT: Competition Requirements for Purchases From Federal Prison Industries

Section 827 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181, changes competition requirements for purchases from Federal Prison Industries, Inc. (FPI). This memorandum provides guidance with respect to implementation of section 827.

Section 827 requires DoD to use competitive procedures when procuring products for which FPI has significant market share. FPI will be treated as having significant market share for a product category if the FPI share of the Department of Defense market is greater than five percent. The Federal Supply Codes (FSC) that meet this criterion are as follows:

<u>FSC</u>	<u>FSC Description</u>
3510	Laundry and Dry Cleaning Equipment
5340	Miscellaneous Hardware
5935	Connectors, Electrical
5975	Electrical Hardware and Supplies
5995	Cable, cord, wire assemblies; comm equipment
6145	Wire and cable, Electrical
7110	Office Furniture
7210	Household Furnishings

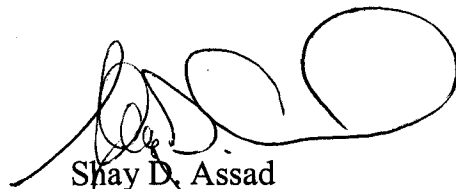


Products for which FPI has a significant market share (FSCs listed above) must be procured using competitive (or fair opportunity) procedures. In conducting such a competition, contracting officers shall consider a timely offer from FPI in accordance with FAR 8.602(a)(4). The procedures and requirements of this memorandum will apply to solicitations (and resultant contracts/orders) issued after March 28, 2008.

If FPI does not have a significant market share for a particular product, contracting officers should follow the current process outlined in the Federal Acquisition Regulation (FAR) Subpart 8.6. Specifically, FAR 8.602 requires agencies to conduct market research and make a comparability determination. Such determinations are made at the discretion of the contracting officer. Competitive (or fair opportunity) procedures are appropriate if the FPI product is not comparable in terms of price, quality, or time of delivery. In conducting such a competition, contracting officers shall include FPI in the solicitation process and consider a timely offer from FPI. Likewise, if the procurement is made using a multiple award schedule, then FAR 8.602(a)(4)(iii) requires contracting officers to communicate the item description or specifications and evaluation criteria directly to FPI, "so that an offer from FPI can be evaluated on the same basis as the contract or schedule holder." A timely offer from FPI must then be considered.

The Defense Federal Acquisition Regulation Supplement (DFARS) will be revised to reflect the procedures outlined in this memorandum. In the event of a conflict between this memorandum and the subsequent DFARS revision, the content of the DFARS will take precedence. The FSCs listed above will be updated, as necessary, in subsequent policy memoranda.

My staff point of contact for FPI procurement policy is Ms. Susan Pollack, 703-697-8336 or susan.pollack@osd.mil.



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