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ACQUISITION
TECHNOLOGY
AND LOGISTICS

JUN - 3 2009

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 (PROCUREMENT), ASA (ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION & LOGISTICS MANAGEMENT), ASN (RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING), SAF/AQ
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Purchases From Federal Prison Industries; Updated List of Federal Supply Classification Codes (FSCs) to be Competed

Section 827 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181, required the Department of Defense (DoD) to publish a list of product categories for which the Federal Prison Industries' (FPI) share of the DoD market is greater than five percent. We issued the initial list on March 28, 2008.

Attached is an updated list of product categories for which FPI's share of the DoD market is greater than five percent based on Fiscal Year 2008 data from the Federal Procurement Data System. It also identifies five product categories that have been removed from the list. Products on the list must be procured using competitive (or fair opportunity) procedures in accordance with Defense Federal Acquisition Regulation Supplement 208.602-70. In conducting such a competition, contracting officers shall consider a timely offer from FPI for any of these products on the list. FPI must be included in the process even if the procurement opportunity otherwise would have been set aside in accordance with Federal Acquisition Regulation (FAR) Part 19. In addition, an award must be made in accordance with the policy at FAR 8.602(a)(4)(ii) through (v). When the FPI item is determined to provide the best value to the Government as a result of FPI's response to a competitive solicitation, follow the ordering procedures at http://www.unicor.gov.

The attached updated list supersedes the initial list and shall apply to solicitations (and resultant contracts/orders) issued 30 days after the date of this memorandum or later. The revised list will be posted on the DPAP website at: http://www.acq.osd.mil/dpap/cpic/cp/specific_policy_areas.html#federal_prison.

If FPI does not have a significant market share for a particular product, contracting officers should follow the current process outlined in the 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, the 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 be considered.

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

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

Products for which Federal Prison Industries has a Significant Market Share: Current Federal Supply Classification (FSC) Codes*

FSC	FSC Description
FSCs to be Competed	
5440	Scaffolding Equipment & Concrete Forms
5975	Electrical Hardware and Supplies**
5995	Cable, cord, wire assemblies; comm equipment**
6007	Filters
6150	Miscellaneous Electric Power & Distribution Equipment
6160	Miscellaneous Battery Retaining Fixtures & Liners
7110	Office Furniture**
7230	Draperies, Awnings, and Shades
8405	Outerwear, Men's
8415	Clothing, Special Purpose
8420	Underwear and Nightwear, Men's
AP46	Recreation (Management/Support)
FSCs Deleted from the List**	
3510	Laundry and Dry Cleaning Equipment
5340	Miscellaneous Hardware
5935	Connectors, Electrical
6145	Wire and cable, Electrical
7210	Household Furnishings

*Based on Fiscal Year 2008 data from the Federal Procurement Data System

**Items that were on the previous list of FSCs to be competed as identified in the DPAP Memo dated March 28, 2008.