

104TH CONGRESS
2D SESSION

H. R. 3745

To amend title 18, United States Code, to minimize unfair competition for Federal contracting opportunities between Federal Prison Industries and private firms, especially small business concerns, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 27, 1996

Mrs. MEYERS of Kansas (for herself, Mr. HOEKSTRA, Mr. CHRYSLER, Mr. MANZULLO, Mr. HILLEARY, Mr. BARCIA, Mr. HEFLEY, Mr. BARTLETT of Maryland, Mr. COLLINS of Georgia, Mr. OXLEY, Mr. EHLERS, Mr. TAYLOR of North Carolina, Mr. BALLENGER, Mr. UPTON, Mr. ENGLISH of Pennsylvania, Mr. COBLE, Mr. KNOLLENBERG, Mr. CALVERT, Mr. CHAMBLISS, Mr. CRAMER, Mr. BARR of Georgia, Mr. DEAL of Georgia, Mr. LINDER, Mr. EVERETT, Mr. SALMON, Mr. STUMP, Mr. BAKER of Louisiana, Mr. FLANAGAN, and Mr. QUILLEN) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to minimize unfair competition for Federal contracting opportunities between Federal Prison Industries and private firms, especially small business concerns, 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. SHORT TITLE.**

2 This Act may be cited as the “Federal Prison Indus-
3 tries Competition in Contracting Corrections Act of
4 1996”.

5 **SEC. 2. PURCHASE OF PRISON-MADE PRODUCTS BY FED-
6 ERAL AGENCIES.**

7 Section 4124 of title 18, United States Code, is
8 amended to read as follows:

9 **“§ 4124. Purchase of prison-made products by Federal
10 departments and agencies**

11 “(a) PURCHASE OF PRISON-MADE PRODUCTS.—
12 Each Federal department and agency shall offer to pur-
13 chase prison-made products in accordance with this sec-
14 tion.

15 “(b) REQUIREMENTS FOR PRISON-MADE PROD-
16 UCTS.—(1) When a procurement activity of a Federal de-
17 partment or agency has a requirement for a specific prod-
18 uct that is authorized to be offered for sale by Federal
19 Prison Industries (in accordance with section 4122 of this
20 title) and is listed in the catalog referred to in subsection
21 (f), the procurement activity shall solicit an offer from
22 Federal Prison Industries.

23 “(2) A contract award for such product shall be made
24 using competitive procedures in accordance with the speci-
25 fications and evaluation factors specified in the sollicita-
26 tion.

1 “(3) A contract award for such product may be made
2 to Federal Prison Industries if the contracting officer for
3 the procurement activity determines that—

4 “(A) the prison-made product to be furnished
5 will meet the requirements of the procurement activ-
6 ity (including any applicable prequalification require-
7 ments and all specified commercial or governmental
8 standards pertaining to quality, testing, safety, serv-
9 iceability, and warranties);

10 “(B) timely performance of the contract can be
11 reasonably expected; and

12 “(C) the contract price does not exceed a cur-
13 rent market price as established by the competition.

14 “(c) PERFORMANCE BY FEDERAL PRISON INDUS-
15 TRIES.—Federal Prison Industries shall be required to
16 perform its contractual obligations under a contract
17 awarded by a Federal department or agency to the same
18 extent as any other contractor under such a contract.

19 “(d) FINALITY OF CONTRACTING OFFICER’S DECI-
20 SION.—(1) A decision by a contracting officer regarding
21 the award of a contract to Federal Prison Industries or
22 relating to the performance of such contract shall be final,
23 unless reversed on appeal pursuant to paragraph (2) or
24 (3).

1 “(2) The Director of Federal Prison Industries may
2 appeal to the head of a Federal department or agency a
3 decision by a contracting officer not to award a contract
4 to Federal Prison Industries pursuant to subsection
5 (b)(3). The decision of the head of a Federal department
6 or agency on appeal shall be final.

7 “(3) A dispute between Federal Prison Industries
8 and a procurement activity regarding performance of a
9 contract shall be subject to a final resolution by the board
10 of contract appeals having jurisdiction over the procure-
11 ment activity’s contract performance disputes pursuant to
12 the Contract Disputes Act of 1978 (41 U.S.C. 601 et
13 seq.).

14 “(e) REPORTING OF PURCHASES.—Each Federal de-
15 partment or agency shall report purchases from Federal
16 Prison Industries to the Federal Procurement Data Sys-
17 tem (as referred to in section 6(d)(4) of the Office of Fed-
18 eral Procurement Policy Act (41 U.S.C. 405(d)(4))) in the
19 same manner as it reports to such System any acquisition
20 in an amount in excess of the simplified acquisition thresh-
21 old (as defined by section 4(11) of the Office of Federal
22 Procurement Policy Act (41 U.S.C. 403(11))).

23 “(f) CATALOG OF PRODUCTS.—Federal Prison In-
24 dustries shall publish and maintain a catalog of all specific
25 products and services that it is authorized to offer for sale.

1 Such catalog shall be periodically revised as products and
2 services are added or deleted by its Board of Directors
3 (in accordance with section 4122(b) of this title).”.

4 **SEC. 3. DEFINITIONS.**

5 Chapter 307 of title 18, United States Code, is
6 amended by adding at the end thereof the following new
7 section:

8 **“§ 4130. Definitions**

9 “As used in the chapter:

10 “(1) The term ‘reasonable share of the market’
11 means a share of the total purchases by the Federal
12 departments and agencies, as reported to the Fed-
13 eral Procurement Data System for any specific prod-
14 uct during the 3 preceding fiscal years, that does not
15 exceed 20 percent of the Federal market for the spe-
16 cific product.

17 “(2) The term ‘specific product’ means a prod-
18 uct that is designed and manufactured to meet re-
19 quirements distinct in function and predominant ma-
20 terial of manufacture from another product, as de-
21 scribed by—

22 “(A) the 7-digit classification for the prod-
23 uct in the Standard Industrial Classification
24 (SIC) Code published by the Office of Manage-
25 ment and Budget (or if there is no 7-digit code

1 classification for a product, the 5-digit code
2 classification); and

3 “(B) the 13-digit National Stock Number
4 assigned to such product under the Federal
5 Stock Classification System (including group,
6 part number, and section), as determined by
7 the General Services Administration.”.

8 **SEC. 4. IMPLEMENTATION IN THE FEDERAL ACQUISITION**
9 **REGULATION.**

10 (a) PROPOSED REVISIONS.—Proposed revisions to
11 the government-wide Federal Acquisition Regulation to
12 implement the amendments made by this Act shall be pub-
13 lished not later than 60 days after the date of the enact-
14 ment of this Act and provide not less than 60 days for
15 public comment.

16 (b) FINAL REGULATIONS.—Final regulations shall be
17 published not later than 180 days after the date of the
18 enactment of this Act and shall be effective on the date
19 that is 30 days after the date of publication.

20 (c) PUBLIC PARTICIPATION.—The proposed regula-
21 tions required by subsection (a) and the final regulations
22 required by subsection (b) shall afford an opportunity for
23 public participation in accordance with section 22 of the
24 Office of Federal Procurement Policy Act (41 U.S.C.
25 418b).

1 **SEC. 5. RULE OF CONSTRUCTION.**

2 Subsection (d) of section 4124 of title 18, United
3 States Code, as amended by section 2, is not intended to
4 alter any rights of any offeror other than Federal Prison
5 Industries to file a bid protest in accordance with other
6 law or regulation in effect on the date of the enactment
7 of this Act.

8 **SEC. 6. EFFECTIVE DATE AND APPLICABILITY.**

9 (a) EFFECTIVE DATE.—Except as provided in sub-
10 section (b), this Act and the amendments made by this
11 Act shall take effect on the date of enactment of this Act.

12 (b) APPLICABILITY.—Section 4124 of title 18, United
13 States Code, as amended by section 2, shall apply to any
14 requirement for a product offered by Federal Prison In-
15 dustries needed by a Federal department or agency after
16 the effective date of the final regulations issued pursuant
17 to section 3(b), or after March 31, 1997, whichever is ear-
18 lier.

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