

110TH CONGRESS  
1ST SESSION

# S. 705

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.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2007

Mr. LEVIN (for himself, Mr. THOMAS, Ms. STABENOW, Mr. GRASSLEY, and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## 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. 403 et seq.) is amended by  
8 adding at the end the following new section:

1 **“SEC. 43. 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, the  
9 head of an executive agency shall, except as provided in  
10 subsection (d)—

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

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

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

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).

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

11           “(1) the executive agency does not purchase a  
12          Federal Prison Industries product or service unless  
13          a contracting officer of the executive agency deter-  
14          mines that the product or service is comparable to  
15          products or services available from the private sector  
16          that best meet the executive agency’s needs in terms  
17          of price, quality, and time of delivery; and

18           “(2) Federal Prison Industries performs its  
19          contractual obligations to the executive agency to the  
20          same extent as any other contractor for the execu-  
21          tive agency.

22           “(d) EXCEPTION.—(1) The head of an executive  
23          agency may use procedures other than competitive proce-  
24          dures to enter into a contract with Federal Prison Indus-  
25          tries only under the following circumstances:

1           “(A) The Attorney General personally deter-  
2           mines in accordance with paragraph (2), within 30  
3           days after Federal Prison Industries has been in-  
4           formed by the head of that executive agency of an  
5           opportunity for award of a contract for a product,  
6           that—

7                   “(i) Federal Prison Industries cannot rea-  
8                   sonably expect fair consideration in the selec-  
9                   tion of an offeror for award of the contract on  
10                  a competitive basis; and

11                   “(ii) the award of the contract to Federal  
12                  Prison Industries for performance at a penal or  
13                  correctional facility is necessary to maintain  
14                  work opportunities not otherwise available at  
15                  the penal or correctional facility that prevent  
16                  circumstances that could reasonably be expected  
17                  to significantly endanger the safe and effective  
18                  administration of such facility.

19           “(B) The product is available only from Federal  
20           Prison Industries and the contract may be awarded  
21           under the authority of section 2304(c)(1) of title 10,  
22           United States Code, or section 303(c)(1) of the Fed-  
23           eral Property and Administrative Services Act of  
24           1949 (41 U.S.C. 253(c)(1)), as may be applicable,  
25           pursuant to the justification and approval require-

1       ments relating to noncompetitive procurements spec-  
2       ified by law and the Federal Acquisition Regulation.

3           “(C) The head of the executive agency deter-  
4       mines that the product that would otherwise be fur-  
5       nished is to be produced, in whole or in significant  
6       part, by prison labor outside the United States.

7           “(2)(A) A determination made by the Attorney Gen-  
8       eral regarding a contract pursuant to paragraph (1)(A)  
9       shall be—

10           “(i) supported by specific findings by the war-  
11       den of the penal or correctional institution at which  
12       a Federal Prison Industries workshop is scheduled  
13       to perform the contract;

14           “(ii) supported by specific findings by Federal  
15       Prison Industries regarding the reasons that it does  
16       not expect to be selected for award of the contract  
17       on a competitive basis; and

18           “(iii) made and reported in the same manner as  
19       a determination made pursuant to section 303(c)(7)  
20       of the Federal Property and Administrative Services  
21       Act of 1949 (41 U.S.C. 253(c)(7)).

22           “(B) The Attorney General may not delegate to any  
23       other official authority to make a determination that is  
24       required under paragraph (1)(A) to be made personally  
25       by the Attorney General.

1       “(e) PERFORMANCE AS A SUBCONTRACTOR.—(1) A  
2 contractor or potential contractor under a contract en-  
3 tered into by the head of an executive agency may not  
4 be required to use Federal Prison Industries as a subcon-  
5 tractor or supplier of products or provider of services for  
6 the performance of the contract by any means, including  
7 means such as—

8               “(A) a provision in a solicitation of offers that  
9       requires a contractor to offer to use or specify prod-  
10       ucts or services of Federal Prison Industries in the  
11       performance of the contract;

12              “(B) a contract clause that requires the con-  
13       tractor to use or specify products or services (or  
14       classes of products or services) offered by Federal  
15       Prison Industries in the performance of the contract;  
16       or

17              “(C) any contract modification that requires the  
18       use of products or services of Federal Prison Indus-  
19       tries in the performance of the contract.

20       “(2) A contractor using Federal Prison Industries as  
21 a subcontractor or supplier in furnishing a commercial  
22 product pursuant to a contract of an executive agency  
23 shall implement appropriate management procedures to  
24 prevent an introduction of an inmate-produced product  
25 into the commercial market.

1       “(3) In this subsection, the term ‘contractor’, with  
 2       respect to a contract, includes a subcontractor at any tier  
 3       under the contract.

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

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

10              “(2) any geographic data regarding the location  
 11       of—

12                      “(A) surface or subsurface infrastructure  
 13       providing communications or water or electrical  
 14       power distribution;

15                      “(B) pipelines for the distribution of nat-  
 16       ural gas, bulk petroleum products, or other  
 17       commodities; or

18                      “(C) other utilities; or

19              “(3) any personal or financial information  
 20       about any individual private citizen, including infor-  
 21       mation relating to such person’s real property how-  
 22       ever described, without the prior consent of the indi-  
 23       vidual.”.

1 (b) CLERICAL AMENDMENT.—The table of contents  
 2 in section 1(b) of such Act is amended by adding at the  
 3 end the following new item:

“Sec. 43. Governmentwide procurement policy relating to purchases from Federal Prison Industries.”.

4 **SEC. 2. CONFORMING AMENDMENTS.**

5 (a) REPEAL OF INCONSISTENT REQUIREMENTS AP-  
 6 PLICABLE TO DEPARTMENT OF DEFENSE.—

7 (1) REPEAL.—Section 2410n of title 10, United  
 8 States Code, is repealed.

9 (2) CLERICAL AMENDMENT.—The table of sec-  
 10 tions at the beginning of chapter 141 of such title  
 11 is amended by striking the item relating to section  
 12 2410n.

13 (b) REPEAL OF INCONSISTENT REQUIREMENTS AP-  
 14 PLICABLE TO OTHER AGENCIES.—Section 4124 of title  
 15 18, United States Code, is amended—

16 (1) by striking subsections (a) and (b);

17 (2) by redesignating subsections (c) and (d) as  
 18 subsections (a) and (b), respectively; and

19 (3) in subsection (a), as redesignated by para-  
 20 graph (2), by striking “Federal department, agency,  
 21 and institution subject to the requirements of sub-  
 22 section (a)” and inserting “Federal department and  
 23 agency”.

24 (c) OTHER LAWS.—



1           (1) Section 3 of the Javits-Wagner-O'Day Act  
 2           (41 U.S.C. 48) is amended by striking “which,  
 3           under section 4124 of such title, is required” and in-  
 4           serting “which is required by law”.

5           (2) Section 31(b)(4) of the Small Business Act  
 6           (15 U.S.C. 657a(b)(4)) is amended by striking “a  
 7           different source under section 4124 or 4125 of title  
 8           18, United States Code, or the Javits-Wagner-O'Day  
 9           Act (41 U.S.C. 46 et seq.)” and inserting “a dif-  
 10          ferent source under the Javits-Wagner-O'Day Act  
 11          (41 U.S.C. 46 et seq.) or Federal Prison Industries  
 12          under section 40(d) of the Office of Federal Pro-  
 13          curement Policy Act or section 4125 of title 18,  
 14          United States Code”.

15 **SEC. 3. CLARIFYING AMENDMENT RELATING TO SERVICES.**

16          (a) IN GENERAL.—Section 1761 of title 18, United  
 17          States Code, is amended in subsections (a) and (c) by  
 18          striking “goods, wares, or merchandise manufactured,  
 19          produced, or mined” each place it appears and inserting  
 20          “products manufactured, services furnished, or minerals  
 21          mined”.

22          (b) COMPLETION OF EXISTING AGREEMENTS.—Any  
 23          prisoner work program operated by a prison or jail of a  
 24          State or local jurisdiction of a State which is providing  
 25          services for the commercial market through inmate labor

1 on October 1, 2007, may continue to provide such com-  
2 mercial services until—

3 (1) the expiration date specified in the contract  
4 or other agreement with a commercial partner on  
5 October 1, 2007; or

6 (2) until September 30, 2011, if the prison  
7 work program is directly furnishing the services to  
8 the commercial market.

9 (c) APPROVAL REQUIRED FOR LONG-TERM OPER-  
10 ATION.—A prison work program operated by a correc-  
11 tional institution operated by a State or local jurisdiction  
12 of a State may continue to provide inmate labor to furnish  
13 services for sale in the commercial market after the dates  
14 specified in subsection (b) if such program has been cer-  
15 tified pursuant to section 1761(c)(1) of title 18, United  
16 States Code, and is in compliance with the requirements  
17 of such subsection and its implementing regulations.

18 (d) EXISTING WORK OPPORTUNITIES FOR FEDERAL  
19 INMATES.—Any private for-profit business entity having  
20 an agreement with Federal Prison Industries in effect on  
21 the date of the enactment of this Act, under which Federal  
22 inmates are furnishing services that are being introduced  
23 into the commercial market, may continue to furnish such  
24 services for the duration of the term of such agreement.

1 (e) ADDITIONAL AMENDMENT.—Section 1761 of title  
2 18, United States Code, is further amended—

3 (1) by redesignating subsection (d) as sub-  
4 section (e); and

5 (2) by inserting after subsection (c) the fol-  
6 lowing new subsection:

7 “(d) This section shall not apply to services per-  
8 formed as part of an inmate work program conducted by  
9 a State or local government to disassemble, scrap, and re-  
10 cycle products, other than electronic products, that would  
11 otherwise be disposed of in a landfill. Recovered scrap  
12 from such program may be sold.”.

13 (f) CONFORMING AMENDMENT.—Section 4122(a) of  
14 title 18, United States Code, is amended by striking “pro-  
15 duction of commodities” and inserting “production of  
16 products or furnishing of services”.

17 **SEC. 4. EFFECTIVE DATE.**

18 (a) IN GENERAL.—Except as provided in subsection  
19 (b), this Act and the amendments made by this Act shall  
20 take effect 180 days after the date of the enactment of  
21 this Act.

22 (b) EXCEPTION.—Subsections (b), (c), and (d) of sec-  
23 tion 3 shall take effect on the date of the enactment of  
24 this Act.

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