8.602 Policy.

(a) In accordance with 10 U.S.C. 3905 and Section 637 of Division H of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447) (18 U.S.C. 4124 note), and except as provided in paragraph (b) of this section, agencies *shall*-

(1) Before purchasing an item of supply listed in the FPI Schedule, conduct *market research* to determine whether the FPI item is comparable to *supplies* available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery. This is a unilateral determination made at the discretion of the *contracting officer*. The arbitration provisions of 18 U.S.C. 4124(b) do not apply.

(2) Prepare a written determination that includes supporting rationale explaining the assessment of price, quality, and time of delivery, based on the results of *market research* comparing the FPI item to *supplies* available from the private sector.

(3) If the FPI item is comparable, purchase the item from FPI following the ordering procedures at http://www.unicor.gov, unless a waiver is obtained in accordance with 8.604; and

(4) If the FPI item is not comparable in one or more of the areas of price, quality, and time of delivery-

(i) Acquire the item using-

(A) Competitive procedures (*e.g.,* the procedures in 6.102, the set-aside procedures in subpart 19.5, or competition conducted in accordance with part 13); or

(B) The fair opportunity procedures in 16.505, if placing an order under a multiple award delivery-order contract;

(ii) Include FPI in the *solicitation* process and consider a timely *offer* from FPI for award in accordance with the item description or specifications, and evaluation factors in the *solicitation*-

(A) If the *solicitation* is available through the *Governmentwide point of entry* (Contract Opportunities at *SAM.gov*), it is not necessary to provide a separate copy of the *solicitation* to FPI;

(B) If the *solicitation* is not available through Contract Opportunities at *SAM.gov* , provide a copy of the *solicitation* to FPI;

(iii) When using a multiple award schedule issued under the procedures in subpart 8.4 or when using the fair opportunity procedures in 16.505-

(A) Establish and communicate to FPI the item description or specifications, and evaluation factors that will be used as the basis for selecting a source, so that an *offer* from FPI can be evaluated on the same basis as the contract or schedule holder; and

(B) Consider a timely *offer* from FPI;

(iv) Award to the source offering the item determined by the agency to provide the *best value* to the Government; and

(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.

(b) The procedures in paragraph (a) of this section do not apply if an exception in 8.605(b) through (g) applies.

(c) In some cases where FPI and an AbilityOne participating nonprofit agency produce identical items (see 8.603), FPI grants a waiver to permit the Government to purchase a portion of its requirement from the AbilityOne participating nonprofit agency. When this occurs, the portion of the requirement for which FPI has granted a waiver-

(1) *Shall* be purchased from the AbilityOne participating nonprofit agency using the procedures in subpart 8.7; and

(2) *Shall* not be subject to the procedures in paragraph (a) of this section.

(d) Disputes regarding price, quality, character, or suitability of *supplies* produced by FPI, except for determinations under paragraph (a)(1) of this section, are subject to arbitration as specified in 18 U.S.C. 4124. The statute provides that the arbitration *shall* be conducted by a board consisting of the Comptroller General of the *United States*, the Administrator of General Services, and the President, or their representatives. The decisions of the board are final and binding on all parties.

Parent topic: Subpart 8.6 - Acquisition from Federal Prison Industries, Inc.