

## 8.602 Policy.

(a) In accordance with [10 U.S.C. 2410n](#) 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 (FedBizOpps, also known as FBO), it is not necessary to provide a separate copy of the solicitation to FPI;

(B) If the solicitation is not available through FedBizOpps, 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.](#)