

Federal Acquisition Regulation

8.606

(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.

[69 FR 16149, Mar. 26, 2004, as amended at 70 FR 18958, Apr. 11, 2005; 71 FR 222, Jan. 3, 2006; 73 FR 53994, Sept. 17, 2008]

8.603 Purchase priorities.

FPI and nonprofit agencies participating in the AbilityOne Program under the Javits-Wagner-O'Day Act (see Subpart 8.7) may produce identical supplies or services. When this occurs, ordering offices shall purchase supplies and services in the following priorities:

(a) *Supplies*. (1) Federal Prison Industries, Inc. (41 U.S.C. 48).

(2) AbilityOne participating nonprofit agencies.

(3) Commercial sources.

(b) *Services*. (1) AbilityOne participating nonprofit agencies.

(2) Federal Prison Industries, Inc., or commercial sources.

[69 FR 16149, Mar. 26, 2004, as amended at 73 FR 53994, Sept. 17, 2008]

8.604 Waivers.

FPI may grant a waiver for purchase of supplies in the FPI Schedule from another source. FPI waivers ordinarily are of the following types:

(a) General or blanket waivers issued when classes of supplies are not available from FPI.

(b) Formal waivers issued in response to requests from offices desiring to acquire, from other sources, supplies listed in the FPI Schedule and not covered by a general waiver. Agencies shall process waiver requests in accordance with the procedures at <http://www.unicor.gov>.

8.605 Exceptions.

Purchase from FPI is not mandatory and a waiver is not required if—

(a)(1) The contracting officer makes a determination that the FPI item of supply is not comparable to supplies available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery; and

(2) The item is acquired in accordance with 8.602(a)(4);

(b) Public exigency requires immediate delivery or performance;

(c) Suitable used or excess supplies are available;

(d) The supplies are acquired and used outside the United States;

(e) Acquiring listed items totaling \$3,000 or less;

(f) Acquiring items that FPI offers exclusively on a competitive (non-mandatory) basis, as identified in the FPI Schedule; or

(g) Acquiring services.

[69 FR 16149, Mar. 26, 2004, as amended at 70 FR 18958, Apr. 11, 2005; 71 FR 223, Jan. 3, 2006; 73 FR 53994, Sept. 17, 2008]

8.606 Evaluating FPI performance.

Agencies shall evaluate FPI contract performance in accordance with subpart 42.15. Performance evaluations do not negate the requirements of 8.602