RSC
Republican Study Committee

Rep. Sue Myrick (R-NC), Chairman
Neil Bradley, Executive Director

230 Cannon House Office Building
Washington, D.C. 20515

www.house.gov/burton/RSC

ph (202) 226-9717 • fax (202) 226-1633

Legislative Bulletin………………………………….…November 6, 2003

Contents:

Summary of the Bills Under Consideration Today

<u>Total Number of New Government Programs:</u> 3

<u>Total Cost of Discretionary Authorizations:</u> Approximately $410 million over 5 years

<u>Total Amount of Revenue Reductions:</u> None

<u>Total Increase in Mandatory Spending:</u> Insignificant

<u>Total New State & Local Government Mandates:</u> 1

H.R. 1829—Federal Prison Industries Competition in Contracting Act of 2003 (Hoekstra)

<u>Order of Business</u>: The bill is scheduled for consideration on Thursday, November 6th, under an open rule. The rule provides for one hour of general debate and for consideration of amendments under the five-minute rule.

<u>Summary and Background</u>: H.R. 1829 amends the current government policy regarding procurement of goods and services from Federal Prison Industries, Incorporated (FPI). FPI is a government-owned corporation that furnishes goods and services to the Federal Government using prison labor. Currently, Federal agencies are required to purchase products from FPI if it offers the needed item and FPI's offered price not exceed the highest price offered to the government for a comparable item, unless a waiver is received from FPI. H.R. 1829 would require that the purchase of a product or service from FPI by a Federal agency would have to be made using a competitive procurement process and would eliminate FPI's "mandatory source" status within the Federal government over a five-year transition period. FPI had $678.7 million in sales in 2002, up from $583.5 million in 2001.

Elimination of Mandatory Source:

- Federal agencies would be responsible for soliciting an offer from FPI on any purchase over $2,500 where FPI offers the product or service. Any contract would be awarded competitively, with the contract awarded to FPI if it represents the best value (as determined by the contracting officer).
- The bill provides FPI with a five-year period during which it must phase out sole-source status with the Federal government. During the first transition year (fiscal year 2005), the amount of sales by FPI to the government on a noncompetitive basis may not exceed 90 percent of FPI's total base year sales (FY02). This percentage declines to 85 percent in FY06, 70 percent in FY07, 55 percent in FY08, and 40 percent in FY09. "Preferential contracting" with FPI could not take place on or after October 1, 2009.
- During the transition period the Attorney General is required to conduct a yearly assessment of the impact of the phase-out and determine if it has or will "result in a substantial reduction in inmate industrial employment" or presents "a significant risk of adverse effects on safe prison operation or public safety."
- The bill contains a permanent provision allowing a sole-source contract to be awarded to FPI if the Attorney General determines that the contract is necessary "to maintain work opportunities otherwise unavailable" to prevent a circumstance "that could reasonably be expected to significantly endanger the safe and effective administration of such facility" and FPI cannot reasonably expect to win the competition after fair consideration through a competitive process.
- FPI would be authorized to act as a subcontractor or supplier for any Federal contractor if the contractor voluntarily agrees to such an arrangement.
- General Accounting Office is required to study the effects of the elimination of mandatory source authority in FPI and to issue a report by June 30, 2004.

Alternative Programs for Inmates:

- H.R. 1829 establishes several new programs and options for inmates as an alternative to FPI-related activities.
  - Establishes the Enhanced In-Prison Educational and Vocational Assessment and Training Program, which would provide educational opportunities, vocational training and apprenticeships, and comprehensive release-readiness preparation. Requires a phased-in implementation schedule, with the program established in 25 percent of Federal prisons within two years and 100 percent implementation within 8 years. Authorizes $75 million annually for the program.
  - Requires the Chief Operating Officer of FPI to develop a proposal to have FPI donate products and services to non-profit organizations. Authorizes $7 million for each of fiscal years 2004-2008 to carry out such a program, including paying inmate wages.
  - Establishes the Cognitive Abilities Assessment Demonstration Program at 12 institutions. The program would assess the cognitive abilities and perceptual skills of Federal inmates to "maximize the benefits of various rehabilitative opportunities." Authorizes $3 million annually for fiscal years 2004-2006.

- Requires priority in prerelease employment assistance to be given to inmates participating in FPI work programs and within 24 months of release.

FPI Management/Board of Directors:

- Replaces the current Board of Directors (six appointed by the President, one representing the Attorney General, one representing the Secretary of Defense, and four private sector members representing industry, labor, agriculture, retailers, and consumers) with a new 11-member board appointed by the President. Of the new board, three members would represent business, three would represent labor, one would have expertise in inmate rehabilitation, one would represent victims of crime, one would represent inmate workers, and two additional members appointed at the discretion of the President.
- Requires meetings of the board to take place in public and on the record.
- Adds additional requirements for information in FPI's annual report.
- Prohibits the board from approving a new product unless it is prison made. Products may not be approved that will impact import-sensitive products or that are produced by an industry with chronically high unemployment. The board is also prohibited from authorizing inmates to perform services that would give them access to personal or financial information about private citizens.
- Gives the board authority to authorize the donation of FPI products and services.

Additional Provisions:

- Explicitly prohibits the commercial sale of inmate-furnished services, as well as products (consistent with interpretation of current law prior to 1998). Permits the completion of existing projects with a private sector partner. Also allows the continuation of direct commercial sales until September 30, 2005. Allows state and local prison work programs to engage in commercial sales if meeting certain requirements.
- Gives priority in the deductions from inmate wages to restitution and to a savings fund for the inmate payable at the end of incarceration.
- Expresses the sense of Congress that it is "important to study the concept of implementing a 'good time' release program for non-violent criminals in the Federal prison system."

Possible Amendments:

Toomey #1: Current language in the bill provides that a competitive offer from FPI will always be considered, even if the competition is restricted. The Toomey amendment would allow an exception if the competition has been restricted exclusively to small business.

Millender-McDonald #2: Requires the Board of Directors of FPI to increase the maximum wage for inmates to 50 percent of the minimum wage by September 30, 2004 and to 100 percent of the minimum wage by September 30, 2009 (currently FPI's maximum wage is $1.15 an hour). Requires to board to make a request to the Secretary of Labor to establish an "inmate training wage" by October 1, 2004.

Waters #3: Requires inmates whose term of imprisonment will expire in 2 years or less to be paid an hourly rate of not less than $2.50. A similar amendment was defeated during committee consideration by a vote of 5 to 22.

Scott of Virginia #4: Deletes from the bill a provision that allows a contract to be awarded to FPI on a non-competitive basis only if it meets certain requirements and a provision requiring contracts to be negotiated between FPI and the Federal agency. A similar amendment was offered and withdrawn during committee consideration.

Scott of Virginia #5: Deletes a provision making explicit that current law prohibits commercial sale of inmate-furnished services as well as products. A similar amendment was offered and withdrawn during committee consideration.

Scott of Virginia #6: Adds the following provisions to the bill:

- Allows inmates with FPI work assignments to perform public service activities through non-profits, religious organizations, units of local government, and school districts. Authorizes $5 million per year for fiscal years 2004-2008. Requires the board to designate an Inmate Work Training Administrator to oversee the program.
- Authorizes programs for inmates to produce products or perform services for commercial companies that in previous years used foreign labor outside the U.S. or work that would otherwise be performed by domestic labor. Also allows inmates to produce products or perform services for non-profit agencies. Prohibits direct commercial sale of products or services furnished by Federal inmates. Sets limits on the number of inmates that may participate in each activity.

A similar amendment was offered and withdrawn during committee consideration.

Green of Wisconsin #7: Requires suspension of the reduction in sole-source contracts for one year if, as already provided for under H.R. 1829, the Attorney General finds a significant risk of adverse effects on safe prison management or public safety. The Attorney General can resume the phase-out of mandatory source if it is determined that it will not result in a substantial reduction in inmate employment and will not have an adverse effect on safe prison operation or public safety. A similar amendment was defeated during committee consideration by a vote of 8 to 19.

Green of Wisconsin #8: Strikes all provisions of the bill and instead requires a GAO study of the effects of eliminating mandatory source requirements for FPI. *Note: GAO has already begun such a study that is expected to be completed by April 2004.*

Committee Action: The Judiciary Committee favorably reported H.R. 1829 by voice vote on July 25, 2003.

Outside Organizations: Organizations supporting H.R. 1829 include the U.S. Chamber of Commerce, the National Association of Manufacturers, the National Federation of Independent Business, Americans for Tax Reform, and the AFL-CIO.

Cost to Taxpayers & Mandates: The Congressional Budget Office (CBO) estimates that H.R. 1829 will cost $587 million over the 2004-2008 period, subject to appropriations. CBO also states that the bill will change direct spending and contains an intergovernmental mandate, although the effect of both would be insignificant.

In its report for H.R. 1829, the Judiciary Committee provides additional information regarding the CBO estimate. The Committee states that the bill provides Federal agencies with potential savings in acquisition costs of $69 million to $203.6 million that were not acknowledged by CBO. The Committee also disputes CBO's assumption that FPI operations will decline under the bill, requiring the hiring of additional corrections officers to oversee inmates who will no longer be working (CBO estimated this cost at $177 million over 5 years).

According to CBO, "H.R. 1829 contains an intergovernmental mandate as defined in UMRA because it would require work programs in state and local prisons that provide services in interstate commerce to obtain federal certification in order to continue operating after September 2005 or the end of their current contract. CBO estimates that the administrative cost to obtain this certification would be insignificant and well below the threshold established in UMRA ($59 million in 2003, adjusted annually for inflation)."

Does the Bill Create New Federal Programs or Rules?: Yes, the bill creates several new programs and rules within Federal Prison Industries.

Constitutional Authority: The Judiciary Committee, in House Report 108-286, cites Article I, Section 8, but fails to cite a specific clause.

Staff Contact: Lisa Bos, lisa.bos@mail.house.gov, (202) 226-1630