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109TH CONGRESS
2D SESSION

H. R. 2965

AN ACT

To amend title 18, United States Code, to require Federal Prison Industries to compete for its contracts minimizing its unfair competition with private sector firms and their non-inmate workers and empowering Federal agencies to get the best value for taxpayers' dollars, to provide a five-year period during which Federal Prison Industries adjusts to obtaining inmate work opportunities through other than its mandatory source status, to enhance inmate access to remedial and vocational opportunities and other rehabilitative opportunities to better prepare inmates for a successful return to society, to authorize alternative inmate work opportunities in support of non-profit organizations and other public service programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Federal Prison Industries Competition in Contracting Act of 2006".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Governmentwide procurement policy relating to purchases from Federal Prison Industries.
Sec. 3. Public participation regarding expansion proposals by Federal Prison Industries.
Sec. 4. Transitional mandatory source authority.
Sec. 5. Authority to perform as a Federal subcontractor.
Sec. 6. Inmate wages and deductions.
Sec. 7. Clarifying amendment relating to services.
Sec. 8. Conforming amendment.
Sec. 9. Rules of construction relating to chapter 307.
Sec. 10. Providing additional rehabilitative opportunities for inmates.
Sec. 11. Re-entry employment preparation through work-based training and apprenticeship.
Sec. 12. Restructuring the Board of Directors.
Sec. 13. Management matters.
Sec. 14. Transitional personnel management authority.
Sec. 15. Federal Prison Industries report to Congress.
Sec. 16. Definitions.
Sec. 17. Implementing regulations and procedures.
Sec. 18. Rules of construction.
Sec. 19. Effective date and applicability.
Sec. 20. Clerical amendments.

SEC. 2. GOVERNMENTWIDE PROCUREMENT POLICY RELATING TO PURCHASES FROM FEDERAL PRISON INDUSTRIES.

Section 4124 of title 18, United States Code, is amended to read as follows:

"§ 4124. Governmentwide procurement policy relating to purchases from Federal Prison Industries

''(a) IN GENERAL.—Purchases from Federal Prison Industries, Incorporated, a wholly owned Government corporation, as referred to in section 9101(3)(E) of title 31, may be made by a Federal department or agency only in accordance with this section.

''(b) SOLICITATION AND EVALUATION OF OFFERS AND CONTRACT AWARDS.—(1)(A) If a procurement activity of a Federal department or agency has a requirement for a specific product or service that is authorized to be offered for sale by Federal Prison Industries, in accordance with section 4122 of this title, and is listed in the catalog referred to in subsection (g), the procurement activity shall solicit an offer from Federal Prison Industries, if the purchase is expected to be in excess of the micropurchase threshold (as defined by section 32(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(f))).

''(B) The requirements of subparagraph (A) shall also apply to a procurement that a Federal department or agency intends to meet by placing an order against a contract maintained by the General Services Administration under the Multiple Award Schedule Contracts Program.

"(C) Federal Prison Industries, upon its request, shall be listed on any Schedule, referred to in subparagraph (B), as offering products or services which Federal Prison Industries believes to be comparable to those products and services being offered by commercial contractors through the Multiple Award Schedule Contracts Program.

"(2) A contract award for such product or service shall be made using competitive procedures in accordance with the applicable evaluation factors, unless a determination is made by the Attorney General pursuant to paragraph (3) or an award using other than competitive procedures is authorized pursuant to paragraph (7).

"(3) The procurement activity shall negotiate with Federal Prison Industries on a noncompetitive basis for the award of a contract if the Attorney General determines that—

"(A) Federal Prison Industries cannot reasonably expect fair consideration to receive the contract award on a competitive basis; and

"(B) the contract award is necessary to maintain work opportunities otherwise unavailable at the penal or correctional facility at which the contract is to be performed to prevent circumstances that could reasonably be expected to significantly endanger the safe and effective administration of such facility.

"(4) Except in the case of an award to be made pursuant to paragraph (3), a contract award shall be made with Federal Prison Industries only if the contracting officer for the procurement activity determines that—

"(A) the specific product or service to be furnished will meet the requirements of the procurement activity (including any applicable prequalification requirements and all specified commercial or governmental standards pertaining to quality, testing, safety, serviceability, and warranties);

"(B) timely performance of the contract can be reasonably expected; and

"(C) the contract price does not exceed a current market price.

"(5) A determination by the Attorney General pursuant to paragraph (3) shall be—

"(A) supported by specific findings by the warden of the penal or correctional institution at which a Federal Prison Industries workshop is scheduled to perform the contract;

"(B) supported by specific findings by Federal Prison Industries regarding why it does not expect to win the contract on a competitive basis; and

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

"(6) If the Attorney General has not made the determination described in paragraph (3) within 30 days after Federal Prison Industries has been informed of a contracting opportunity by a procurement activity, the procurement activity may proceed to conduct a procurement for the product or service in accordance with the procedures generally applicable to such procurements by the procurement activity.

"(7) A contract award may be made to Federal Prison Industries using other than competitive procedures if such product or service is only available from Federal Prison Industries and the contract may be awarded under the authority of section 2304(c)(1) of title 10 or section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(1)), as may be applicable, and pursuant to the justification and approval requirements relating to such noncompetitive procurements specified by law and the Governmentwide Federal Acquisition Regulation.

"(8) A contract award may be made to Federal Prison Industries using other than competitive procedures by the Federal Bureau of Prisons.

"(9) A solicitation for a contract shall first be made to Federal Prison Industries using other than competitive procedures if the product or service to be acquired would otherwise be furnished by a contractor performing the work outside of the United States.

"(c) OFFERS FROM FEDERAL PRISON INDUSTRIES.—(1) A timely offer received from Federal Prison Industries to furnish a product or service to a Federal department or agency shall be considered for award without limitation as to the dollar value of the proposed purchase, unless the contract opportunity has been reserved for competition exclusively among small business concerns pursuant to section 15(a) of the Small Business Act (15 U.S.C. 644(a)) and its implementing regulations.

"(2)(A) Any offer made by Federal Prison Industries to furnish a product or service may exclude from the offered price the following:

"(i) The costs related to security of the facilities at which the contract will be performed.

"(ii) The costs of educating and training the prison work force performing the contract.

"(iii) Excess capital costs of machinery and excess inventories used within a prison environment that are the result of the unique environment of prison life.

"(iv) Other costs of performing the contract resulting from the unique environment of prison facilities.

"(d) PERFORMANCE BY FEDERAL PRISON INDUSTRIES.—Federal Prison Industries shall perform its contractual obligations under a contract awarded by a Federal department or agency to the same extent as any other contractor.

"(e) FINALITY OF CONTRACTING OFFICER'S DECISION.—(1) A decision by a contracting officer regarding the award of a contract to Federal Prison Industries or relating to the performance of such contract shall be final, unless reversed on appeal pursuant to paragraph (2) or (3).

"(2)(A) The Chief Operating Officer of Federal Prison Industries may protest a decision by a contracting officer not to award a contract to Federal Prison Industries pursuant to subsection (b)(4), in accordance with section 33.103, (Protests to the agency) of the Federal Acquisition Regulation (48 C.F.R. part 33.103).

"(B) In the event of an adverse decision of a protest filed pursuant to subparagraph (A), the Assistant Attorney General for Administration may request a reconsideration of such adverse decision by the head of the Federal agency or department, which shall be considered de novo and the decision issued by such agency head on a non-delegable basis. Such decision upon reconsideration by the agency head shall be final.

"(3) A dispute between Federal Prison Industries and a procurement activity regarding performance of a contract shall be subject to—

"(A) alternative means of dispute resolution pursuant to subchapter IV of chapter 5 of title 5; or

"(B) final resolution by the board of contract appeals having jurisdiction over the procurement activity's contract performance disputes pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

"(f) REPORTING OF PURCHASES.—Each Federal department or agency shall report purchases from Federal Prison Industries to the Federal Procurement Data System (as referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4))) in the same manner as it reports to such System any acquisition

in an amount in excess of the simplified acquisition threshold (as defined by section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

"(g) CATALOG OF PRODUCTS.—Federal Prison Industries shall publish and maintain a catalog of all specific products and services that it is authorized to offer for sale. Such catalog shall be periodically revised as products and services are added or deleted by its board of directors (in accordance with section 4122(b) of this title).

"(h) COMPLIANCE WITH STANDARDS.—Federal Prison Industries shall be subject to Federal occupational, health, and safety standards with respect to the operation of its industrial operations.".

SEC. 3. PUBLIC PARTICIPATION REGARDING EXPANSION PROPOSALS BY FEDERAL PRISON INDUSTRIES.

Section 4122(b) of title 18, United States Code, is amended—

(1) by redesignating paragraph (6) as paragraph (13); and

(2) by striking paragraphs (4) and (5) and inserting the following new paragraphs:

"(4)(A) Federal Prison Industries is authorized to offer a new specific product or furnish a new specific service in response to a competitive solicitation or other pur-

chase request issued by a Federal department or agency. No subsequent offering of such product or service may be made by Federal Prison Industries until the board of directors has approved the offering for sale of such new specific product or new specific service, in conformance with the requirements of paragraphs (5) through (9).

"(B) Federal Prison Industries may produce a product or furnish a service in excess of the authorized level of production for such product or service, in response to an order placed pursuant to an existing contract with a Federal department or agency, if the agency's need for the product or service is of such an urgency that it would justify the use of procedures other than competitive procedures pursuant to section 2304(c)(2) of title 10 or section 303(c)(2) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(2)), as may be applicable.

"(5) A decision to authorize Federal Prison Industries to offer a new specific product or specific service or to expand the production of an existing product or service for sale to the Federal Government shall be made by its board of directors in conformance with the requirements of subsections (b), (c), (d), and (e) of section 553 of title 5, and this chapter.

"(6)(A) Whenever Federal Prison Industries proposes to offer for sale a new specific product or specific service or to expand production of a currently authorized product or service, the Chief Operating Officer of Federal Prison Industries shall submit an appropriate proposal to the board of directors and obtain the board's approval before initiating any such expansion. The proposal submitted to the board shall include a detailed analysis of the probable impact of the proposed expansion of sales within the Federal market by Federal Prison Industries on private sector firms and their non-inmate workers.

"(B)(i) The analysis required by subparagraph (A) shall be performed by an interagency team on a reimbursable basis or by a private contractor paid by Federal Prison Industries.

"(ii) If the analysis is to be performed by an interagency team, such team shall be led by the Administrator of the Small Business Administration or the designee of such officer with representatives of the Department of Labor, the Department of Commerce, and the Federal Procurement Data Center.

"(iii) If the analysis is to be performed by a private contractor, the selection of the contractor and the administration of the contract shall be conducted by one of the entities referenced in clause (ii) as an independent execu-

tive agent for the board of directors. Maximum consideration shall be given to any proposed statement of work furnished by the Chief Operating Officer of Federal Prison Industries.

"(C) The analysis required by subparagraph (A) shall identify and consider—

"(i) the number of vendors that currently meet the requirements of the Federal Government for the specific product or specific service;

"(ii) the proportion of the Federal Government market for the specific product or specific service currently furnished by small businesses during the previous 3 fiscal years;

"(iii) the share of the Federal market for the specific product or specific service projected for Federal Prison Industries for the fiscal year in which production or performance will commence or expand and the subsequent 4 fiscal years;

"(iv) whether the industry producing the specific product or specific service in the private sector—

"(I) has an unemployment rate higher than the national average; or

"(II) has a rate of unemployment for workers that has consistently shown an increase during the previous 5 years;

"(v) whether the specific product is an import-sensitive product;

"(vi) the requirements of the Federal Government and the demands of entities other than the Federal Government for the specific product or service during the previous 3 fiscal years;

"(vii) the projected growth or decline in the demand of the Federal Government for the specific product or specific service;

"(viii) the capability of the projected demand of the Federal Government for the specific product or service to sustain both Federal Prison Industries and private vendors; and

"(ix) whether authorizing the production of the new product or performance of a new service will provide inmates with the maximum opportunity to acquire knowledge and skill in trades and occupations that will provide them with a means of earning a livelihood upon release.

"(D)(i) The board of directors may not approve a proposal to authorize the production and sale of a new

1 specific product or continued sale of a previously author-
2 ized product unless—
3 "(I) the product to be furnished is a prison-
4 made product; or
5 "(II) the service to be furnished is to be per-
6 formed by inmate workers.
7 "(ii) The board of directors may not approve a pro-
8 posal to authorize the production and sale of a new prison-
9 made product or to expand production of a currently au-
10 thorized product if the product is—
11 "(I) produced in the private sector by an indus-
12 try which has reflected during the previous year an
13 unemployment rate above the national average; or
14 "(II) an import-sensitive product.
15 "(iii) The board of directors may not approve a pro-
16 posal for inmates to provide a service in which an inmate
17 worker has access to—
18 "(I) personal or financial information about in-
19 dividual private citizens, including information relat-
20 ing to such person's real property, however de-
21 scribed, without giving prior notice to such persons
22 or class of persons to the greatest extent practicable;
23 "(II) geographic data regarding the location of
24 surface and subsurface infrastructure providing com-
25 munications, water and electrical power distribution,

pipelines for the distribution of natural gas, bulk petroleum products and other commodities, and other utilities; or

"(III) data that is classified.

"(iv)(I) Federal Prison Industries is prohibited from furnishing through inmate labor construction services, unless to be performed within a Federal correctional institution pursuant to the participation of an inmate in an apprenticeship or other vocational education program teaching the skills of the various building trades.

"(II) For purposes of this clause, the term 'construction' has the meaning given such term by section 2.101 of the Federal Acquisition Regulation (48 C.F.R. part 2.101), as in effect on June 1, 2004, including the repair, alteration, or maintenance of real property in being.

"(7) To provide further opportunities for participation by interested parties, the board of directors shall—

"(A) give additional notice of a proposal to authorize the production and sale of a new product or service, or expand the production of a currently authorized product or service, in a publication designed to most effectively provide notice to private vendors and labor unions representing private sector workers who could reasonably be expected to be affected by approval of the proposal, which notice shall offer to

furnish copies of the analysis required by paragraph (6) and shall solicit comment on the analysis;

"(B) solicit comments on the analysis required by paragraph (6) from trade associations representing vendors and labor unions representing private sector workers who could reasonably be expected to be affected by approval of the proposal to authorize the production and sale of a new product or service (or expand the production of a currently authorized product or service); and

"(C) afford an opportunity, on request, for a representative of an established trade association, labor union, or other private sector representatives to present comments on the proposal directly to the board of directors.

"(8) The board of directors shall be provided copies of all comments received on the expansion proposal.

"(9) Based on the comments received on the initial expansion proposal, the Chief Operating Officer of Federal Prison Industries may provide the board of directors a revised expansion proposal. If such revised proposal provides for expansion of inmate work opportunities in an industry different from that initially proposed, such revised proposal shall reflect the analysis required by paragraph

(6)(C) and be subject to the public comment requirements of paragraph (7).

"(10) The board of directors shall consider a proposal to authorize the sale of a new specific product or specific service (or to expand the volume of sales for a currently authorized product or service) and take any action with respect to such proposal, during a meeting that is open to the public, unless closed pursuant to section 552(b) of title 5.

"(11) In conformance with the requirements of paragraph (10) of this subsection, the board of directors may—

"(A) authorize the donation of products produced or services furnished by Federal industries and available for sale;

"(B) authorize the production of a new specific product or the furnishing of a new specific service for donation; or

"(C) authorize a proposal to expand production of a currently authorized specific product or specific service in an amount in excess of a reasonable share of the market for such product or service, if—

"(i) a Federal agency or department, purchasing such product or service, has requested that Federal Prison Industries be authorized to

furnish such product or service in amounts that are needed by such agency or department; or

"(ii) the proposal is justified for other good cause and supported by at least two-thirds of the appointed members of the board.".

SEC. 4. TRANSITIONAL MANDATORY SOURCE AUTHORITY.

(a) IN GENERAL.—Notwithstanding the requirements of section 4124 of title 18, United States Code (as amended by section 2 of this Act), a Federal department or agency having a requirement for a product that is authorized for sale by Federal Prison Industries and is listed in its catalog (referred to in section 4124(g) of title 18, United States Code) shall first solicit an offer from Federal Prison Industries and make purchases on a noncompetitive basis in accordance with this section or in accordance with section 2410n of title 10, United States Code, or section 318 of title III of the Federal Property and Administrative Services Act of 1949 (as added by subsection (j)).

(b) PREFERENTIAL SOURCE STATUS.—Subject to the limitations of subsection (d), a contract award shall be made on a noncompetitive basis to Federal Prison Industries if the contracting officer for the procurement activity determines that—

(1) the product offered by Federal Prison Industries will meet the requirements of the procurement activity (including commercial or governmental standards or specifications pertaining to design, performance, testing, safety, serviceability, and warranties as may be imposed upon a private sector supplier of the type being offered by Federal Prison Industries);

(2) timely performance of the contract by Federal Prison Industries can be reasonably expected; and

(3) the negotiated price does not exceed a fair and reasonable price.

(c) CONTRACTUAL TERMS.—The terms and conditions of the contract and the price to be paid to Federal Prison Industries shall be determined by negotiation between Federal Prison Industries and the Federal agency making the purchase. The negotiated price shall not exceed a fair and reasonable price determined in accordance with the procedures of the Federal Acquisition Regulation.

(d) PERFORMANCE OF CONTRACTUAL OBLIGATIONS.—

(1) IN GENERAL.—Federal Prison Industries shall perform the obligations of the contract negotiated pursuant to subsection (c).

(2) PERFORMANCE DISPUTES.—If the head of the contracting activity and the Chief Operating Officer of Federal Prison Industries are unable to resolve a contract performance dispute to their mutual satisfaction, such dispute shall be resolved pursuant to section 4124(e)(3) of title 18, United States Code (as added by section 2 of this Act).

(e) LIMITATIONS ON USE OF AUTHORITY.—

(1) IN GENERAL.—As a percentage of the sales made by Federal Prison Industries during the base period, the total dollar value of sales to the Government made pursuant to subsection (b) and subsection (c) of this section shall not exceed—

(A) 90 percent in fiscal year 2008;

(B) 85 percent in fiscal year 2009;

(C) 70 percent in fiscal year 2010;

(D) 55 percent in fiscal year 2011; and

(E) 40 percent in fiscal year 2012.

(2) SALES WITHIN VARIOUS BUSINESS SECTORS.—Use of the authority provided by subsections (b) and (c) shall not result in sales by Federal Prison Industries to the Government that are in excess of its total sales during the base year for each business sector.

(3) LIMITATIONS RELATING TO SPECIFIC PRODUCTS.—Use of the authorities provided by subsections (b) and (c) shall not result in contract awards to Federal Prison Industries that are in excess of its total sales during the base period for such product.

(4) CHANGES IN DESIGN SPECIFICATIONS.—If a buying agency directs a change to the design specification for a specific product, the costs associated with the implementation of such specification change by Federal Prison Industries shall not be considered for the purposes of computing sales by Federal Prison Industries for the purposes of paragraphs (2) and (3).

(f) ADDITIONAL AUTHORITY TO SUSTAIN INMATE EMPLOYMENT.—During the period specified in subsection (g), the authority of section 4122(b)(11)(C)(ii) of title 18, United States Code (as added by section 3), may be used by the Board to sustain inmate employment.

(g) DURATION OF AUTHORITY.—The preferential contracting authorities authorized by subsection (b) may not be used on or after October 1, 2012, and become effective on the effective date of the final regulations issued pursuant to section 17.

(h) DEFINITIONS.—For the purposes of this section—

(1) the term ''base period'' means the total sales of Federal Prison Industries during the period October 1, 2003, and September 30, 2004 (Fiscal Year 2004);

(2) the term ''business sectors'' means the seven product/service business groups identified in the 2004 Federal Prison Industries annual report as the Clothing and Textiles Business Group, the Electronics Business Group, the Fleet Management and Vehicular Components Business Group, the Industrial Products Business Group, the Office Furniture Business Group, the Recycling Activities Business Group, and the Services Business Group; and

(3) the term ''fair and reasonable price'' shall be given the same meaning as, and be determined pursuant to, part 15.8 of the Federal Acquisition Regulation (48 C.F.R. 15.8).

(i) FINDING BY ATTORNEY GENERAL WITH RESPECT TO PUBLIC SAFETY.—(1) Not later than 60 days prior to the end of each fiscal year specified in subsection (e)(1), the Attorney General shall make a finding regarding the effects of the percentage limitation imposed by such subsection for such fiscal year and the likely effects

of the limitation imposed by such subsection for the following fiscal year.

(2) The Attorney General's finding shall include a determination whether such limitation has resulted or is likely to result in a substantial reduction in inmate industrial employment and whether such reductions, if any, present a significant risk of adverse effects on safe prison operation or public safety.

(3) If the Attorney General finds a significant risk of adverse effects on either safe prison management or public safety, he shall so advise the Congress.

(4) In advising the Congress pursuant to paragraph (3), the Attorney General shall make recommendations for additional authorizations of appropriations to provide additional alternative inmate rehabilitative opportunities and additional correctional staffing, as may be appropriate.

(j) PROCEDURAL REQUIREMENTS FOR CIVILIAN AGENCIES RELATING TO PRODUCTS OF FEDERAL PRISON INDUSTRIES.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended by adding at the end the following new section:

"SEC. 318. PRODUCTS OF FEDERAL PRISON INDUSTRIES: PROCEDURAL REQUIREMENTS.

"(a) MARKET RESEARCH.—Before purchasing a product listed in the latest edition of the Federal Prison

1 Industries catalog under section 4124(g) of title 18,
2 United States Code, the head of an executive agency shall
3 conduct market research to determine whether the Federal
4 Prison Industries product is comparable to products avail-
5 able from the private sector that best meet the executive
6 agency's needs in terms of price, quality, and time of deliv-
7 ery.

8 "(b) COMPETITION REQUIREMENT.—If the head of
9 the executive agency determines that a Federal Prison In-
10 dustries product is not comparable in price, quality, or
11 time of delivery to products available from the private sec-
12 tor that best meet the executive agency's needs in terms
13 of price, quality, and time of delivery, the agency head
14 shall use competitive procedures for the procurement of
15 the product or shall make an individual purchase under
16 a multiple award contract. In conducting such a competi-
17 tion or making such a purchase, the agency head shall
18 consider a timely offer from Federal Prison Industries.

19 "(c) IMPLEMENTATION BY HEAD OF EXECUTIVE
20 AGENCY.—The head of an executive agency shall ensure
21 that—

22 "(1) the executive agency does not purchase a
23 Federal Prison Industries product or service unless
24 a contracting officer of the agency determines that
25 the product or service is comparable to products or

services available from the private sector that best meet the agency's needs in terms of price, quality, and time of delivery; and

"(2) Federal Prison Industries performs its contractual obligations to the same extent as any other contractor for the executive agency.

"(d) MARKET RESEARCH DETERMINATION NOT SUBJECT TO REVIEW.—A determination by a contracting officer regarding whether a product or service offered by Federal Prison Industries is comparable to products or services available from the private sector that best meet an executive agency's needs in terms of price, quality, and time of delivery shall not be subject to review pursuant to section 4124(b) of title 18.

"(e) PERFORMANCE AS A SUBCONTRACTOR.—(1) A contractor or potential contractor of an executive agency may not be required to use Federal Prison Industries as a subcontractor or supplier of products or provider of services for the performance of a contract of the executive agency by any means, including means such as—

"(A) a contract solicitation provision requiring a contractor to offer to make use of products or services of Federal Prison Industries in the performance of the contract;

"(B) a contract specification requiring the contractor to use specific products or services (or classes of products or services) offered by Federal Prison Industries in the performance of the contract; or

"(C) any contract modification directing the use of products or services of Federal Prison Industries in the performance of the contract.

"(2) In this subsection, the term 'contractor', with respect to a contract, includes a subcontractor at any tier under the contract.

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

"(1) any data that is classified;

"(2) any geographic data regarding the location of—

"(A) surface and subsurface infrastructure providing communications or water or electrical power distribution;

"(B) pipelines for the distribution of natural gas, bulk petroleum products, or other commodities; or

"(C) other utilities; or

"(3) any personal or financial information about any individual private citizen, including information relating to such person's real property however described, without the prior consent of the individual.

"(g) DEFINITIONS.—In this section:

"(1) The term 'competitive procedures' has the meaning given such term in section 4(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(5)).

"(2) The term 'market research' means obtaining specific information about the price, quality, and time of delivery of products available in the private sector through a variety of means, which may include—

"(A) contacting knowledgeable individuals in government and industry;

"(B) interactive communication among industry, acquisition personnel, and customers; and

"(C) interchange meetings or pre-solicitation conferences with potential offerors.".

SEC. 5. AUTHORITY TO PERFORM AS A FEDERAL SUBCONTRACTOR.

(a) IN GENERAL.—Federal Prison Industries is authorized to enter into a contract with a Federal contractor (or a subcontractor of such contractor at any tier) to produce products as a subcontractor or supplier in the performance of a Federal procurement contract. The use of Federal Prison Industries as a subcontractor or supplier shall be a wholly voluntary business decision by the Federal prime contractor or subcontractor, subject to any prior approval of subcontractors or suppliers by the contracting officer which may be imposed by the Federal Acquisition Regulation or by the contract.

(b) LIMITATIONS ON USE.—Federal Prison Industries is prohibited from being a subcontractor or supplier at any tier if—

(1) the product or service is to be acquired by a Federal department or agency pursuant to section 3 of the Javits-Wagner-O'Day Act (41 U.S.C. 48); or

(2) the product to be acquired by the Federal department or agency is subject to section 2533a of title 10, United States Code.

(c) COMMERCIAL SALES PROHIBITED.—The authority provided by subsection (a) shall not result, either directly or indirectly, in the sale in the commercial market

of a product or service resulting from the labor of Federal inmate workers in violation of section 1761(a) of title 18, United States Code. A Federal contractor (or subcontractor at any tier) using Federal Prison Industries as a subcontractor or supplier in furnishing a commercial product pursuant to a Federal contract shall implement appropriate management procedures to prevent introducing an inmate-produced product into the commercial market.

(d) PROHIBITIONS ON MANDATING SUBCONTRACTING WITH FEDERAL PRISON INDUSTRIES.—Except as authorized under the Federal Acquisition Regulation, the use of Federal Prison Industries as a subcontractor or supplier of products or provider of services shall not be imposed upon prospective or actual Federal prime contractors or a subcontractors at any tier by means of—

(1) a contract solicitation provision requiring a contractor to offer to make use of Federal Prison Industries, its products or services;

(2) specifications requiring the contractor to use specific products or services (or classes of products or services) offered by Federal Prison Industries in the performance of the contract;

(3) any contract modification directing the use of Federal Prison Industries, its products or services; or

(4) any other means.

SEC. 6. INMATE WAGES AND DEDUCTIONS.

Section 4122(b) of title 18, United States Code (as amended by section 3 of this Act), is further amended by adding after paragraph (11) a new paragraph (12) as follows:

''(12)(A) The Board of Directors of Federal Prison Industries shall prescribe the rates of hourly wages to be paid inmates performing work for or through Federal Prison Industries. The Director of the Federal Bureau of Prisons shall prescribe the rates of hourly wages for other work assignments within the various Federal correctional institutions. In the case of an inmate whose term of imprisonment is to expire in not more than 2 years, wages shall be earned at an hourly rate of not less than $2.50, but paid at the same rate and in the same manner as to any other inmate, and any amount earned but not paid shall be held in trust and paid only upon the actual expiration of the term of imprisonment.

''(B) The various inmate wage rates shall be reviewed and considered for increase on not less than a biannual basis.

''(C) The Board of Directors of Federal Prison Industries shall—

"(i) not later than September 30, 2008, increase the maximum wage rate for inmates performing work for or through Federal Prison Industries to an amount equal to 50 percent of the minimum wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)); and

"(ii) not later than September 30, 2013, increase such maximum wage rate to an amount equal to such minimum wage.

"(D) Wages earned by an inmate worker shall be paid in the name of the inmate. Deductions, aggregating to not more than 80 percent of gross wages, shall be taken from the wages due for—

"(i) applicable taxes (Federal, State, and local);

"(ii) payment of fines and restitution pursuant to court order;

"(iii) payment of additional restitution for victims of the inmate's crimes (at a rate not less than 10 percent of gross wages);

"(iv) allocations for support of the inmate's family pursuant to statute, court order, or agreement with the inmate;

"(v) allocations to a fund in the inmate's name to facilitate such inmate's assimilation back into society, payable at the conclusion of incarceration; and

"(vi) such other deductions as may be specified by the Director of the Bureau of Prisons.

"(E) Each inmate worker working for Federal Prison Industries shall indicate in writing that such person—

"(i) is participating voluntarily; and

"(ii) understands and agrees to the wages to be paid and deductions to be taken from such wages.".

SEC. 7. CLARIFYING AMENDMENT RELATING TO SERVICES.

(a) IN GENERAL.—Section 1761 of title 18, United States Code, is amended in subsection (a) and (c) by striking "goods, wares, or merchandise manufactured, produced, or mined" each place it appears and inserting "products manufactured, services furnished, or minerals mined".

(b) COMPLETION OF EXISTING AGREEMENTS.—Any prisoner work program operated by a prison or jail of a State or local jurisdiction of a State which is providing services for the commercial market through inmate labor on October 1, 2006, may continue to provide such commercial services until—

(1) the expiration date specified in the contract or other agreement with a commercial partner on October 1, 2006, or

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

(c) APPROVAL REQUIRED FOR LONG-TERM OPERATION.—A prison work program operated by a correctional institution operated by a State or local jurisdiction of a State may continue to provide inmate labor to furnish services for sale in the commercial market after the dates specified in subsection (b) if such program has been certified pursuant to section 1761(c)(1) of title 18, United States Code, and is in compliance with the requirements of such subsection and its implementing regulations.

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

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

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

''(d) This section shall not apply to services performed as part of an inmate work program conducted by a State or local government to disassemble, scrap, and recycle products, other than electronic products, that would otherwise be disposed of in a landfill. Recovered scrap from such program may be sold.''.

SEC. 8. CONFORMING AMENDMENT.

Section 4122(a) of title 18, United States Code, is amended by striking ''production of commodities'' and inserting ''production of products or furnishing of services''.

SEC. 9. RULES OF CONSTRUCTION RELATING TO CHAPTER 307.

Chapter 307 of title 18, United States Code, is further amended by adding at the end the following:

''§ 4130. Construction of provisions

''Nothing in this chapter shall be construed—

''(1) to establish an entitlement of any inmate to—

''(A) employment in a Federal Prison Industries facility; or

"(B) any particular wage, compensation, or benefit on demand, except as otherwise specifically provided by law or regulation;

"(2) to establish that inmates are employees for the purposes of any law or program; or

"(3) to establish any cause of action by or on behalf of any inmate against the United States or any officer, employee, or contractor thereof.".

SEC. 10. PROVIDING ADDITIONAL REHABILITATIVE OPPORTUNITIES FOR INMATES.

(a) ADDITIONAL EDUCATIONAL, TRAINING, AND RELEASE-PREPARATION OPPORTUNITIES.—

(1) PROGRAM ESTABLISHED.—There is hereby established the Enhanced In-Prison Educational and Vocational Assessment and Training Program within the Federal Bureau of Prisons.

(2) COMPREHENSIVE PROGRAM.—In addition to such other components as the Director of the Bureau of Prisons deems appropriate to reduce inmate idleness and better prepare inmates for a successful reentry into the community upon release, the program shall provide—

(A) in-prison assessments of inmates' needs and aptitudes;

(B) a full range of educational opportunities;

(C) vocational training and apprenticeships; and

(D) comprehensive release-readiness preparation.

(3) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of carrying out the program established by paragraph (1), $75,000,000 is authorized for each fiscal year after fiscal year 2007, to remain available until expended. It is the sense of Congress that Federal Prison Industries should use some of its net earnings to accomplish the purposes of the program.

(4) SCHEDULE FOR IMPLEMENTATION.—All components of the program shall be established—

(A) in at least 25 percent of all Federal prisons not later than 2 years after the date of the enactment of this Act;

(B) in at least 50 percent of all Federal prisons not later than 4 years after such date of enactment;

(C) in at least 75 percent of all Federal prisons not later than 6 years after such date of enactment; and

(D) in all Federal prisons not later than 8 years after such date of enactment.

(b) ADDITIONAL INMATE WORK OPPORTUNITIES THROUGH PUBLIC SERVICE ACTIVITIES.—

(1) IN GENERAL.—Chapter 307 of title 18, United States Code, is further amended by inserting after section 4124 the following new section:

"§ 4124a. Additional inmate work opportunities through public service activities

''(a) IN GENERAL.—Inmates with work assignments within Federal Prison Industries may perform work for an eligible entity pursuant to an agreement between such entity and the Inmate Work Training Administrator in accordance with the requirements of this section.

''(b) DEFINITION OF ELIGIBLE ENTITIES.—For the purposes of this section, the term 'eligible entity' means an entity—

''(1) that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code and that has been such an organization for a period of not less than 36 months prior to inclusion in an agreement under this section;

"(2) that is a religious organization described in section 501(d) of such Code and exempt from taxation under section 501(a) of such Code; or

"(3) that is a unit of local government, a school district, or another special purpose district.

"(c) INMATE WORK TRAINING ADMINISTRATOR.—There is hereby established the position of Inmate Work Training Administrator, who shall be responsible for fostering the creation of alternative inmate work opportunities authorized by this section. The Administrator shall be designated by the Chief Executive Officer of Federal Prison Industries, with the approval of the Board of Directors, and be under the supervision of the Chief Operating Officer, but may directly report to the Board.

"(d) PROPOSED AGREEMENTS.—An eligible entity seeking to enter into an agreement pursuant to subsection (a) shall submit a detailed proposal to the Inmate Work Training Administrator. Each such agreement shall specify—

"(1) types of work to be performed;

"(2) the proposed duration of the agreement, specified in terms of a base year and number of option years;

"(3) the number of inmate workers expected to be employed in the specified types of work during the various phases of the agreement;

"(4) the wage rates proposed to be paid to various classes of inmate workers; and

"(5) the facilities, services and personnel (other than correctional personnel dedicated to the security of the inmate workers) to be furnished by Federal Prison Industries or the Bureau of Prisons and the rates of reimbursement, if any, for such facilities, services, and personnel.

"(e) REPRESENTATIONS.—

"(1) ELEEMOSYNARY WORK ACTIVITIES.—Each proposed agreement shall be accompanied by a written certification by the chief executive officer of the eligible entity that—

"(A) the work to be performed by the inmate workers will be limited to the eleemosynary work of such entity in the case of an entity described in paragraph (1) or (2) of subsection (b);

"(B) the work would not be performed in the United States but for the availability of the inmate workers; and

"(C) the work performed by the inmate workers will not result, either directly or indirectly, in the production of a new product or the furnishing of a service that is to be offered for other than resale or donation by the eligible entity or any affiliate of the such entity.

"(2) PROTECTIONS FOR NON-INMATE WORKERS.—Each proposed agreement shall also be accompanied by a written certification by the chief executive officer of the eligible entity that—

"(A) no non-inmate employee (including any person performing work activities for such governmental entity pursuant to section 607 of subchapter IV of the Social Security Act (42 U.S.C. 607)) of the eligible entity (or any affiliate of the entity) working in the United States will have his or her job abolished or work hours reduced as a result of the entity being authorized to utilize inmate workers; and

"(B) the work to be performed by the inmate workers will not supplant work currently being performed in the United States by a contractor of the eligible entity.

"(f) APPROVAL BY BOARD OF DIRECTORS.—

"(1) IN GENERAL.—Each such proposed agreement shall be presented to the Board of Directors, be subject to the same opportunities for public comment, and be publicly considered and acted upon by the Board in a manner comparable to that required by paragraphs (7) and (8) of section 4122(b).

"(2) MATTERS TO BE CONSIDERED.—In determining whether to approve a proposed agreement, the Board shall—

"(A) give priority to an agreement that provides inmate work opportunities that will provide participating inmates with the best prospects of obtaining employment paying a livable wage upon release;

"(B) give priority to an agreement that provides for maximum reimbursement for inmate wages and for the costs of supplies and equipment needed to perform the types of work to be performed;

"(C) not approve an agreement that will result in the displacement of non-inmate workers contrary to the representations required by subsection (e)(2) as determined by the Board or by the Secretary of Labor (pursuant to subsection (i)); and

"(D) not approve an agreement that will result, either directly or indirectly, in the production of a new product or the furnishing of a service for other than resale by an eligible entity described in paragraph (1) or (2) of subsection (b) or donation.

"(g) WAGE RATES AND DEDUCTIONS FROM INMATE WAGES.—

"(1) IN GENERAL.—Inmate workers shall be paid wages for work under the agreement at a basic hourly rate to be negotiated between the eligible entity and Federal Prison Industries and specified in the agreement. The wage rates set by the Director of the Federal Bureau of Prisons to be paid inmates for various institutional work assignments are specifically authorized.

"(2) PAYMENT TO INMATE WORKER AND AUTHORIZED DEDUCTIONS.—Wages shall be paid and deductions taken pursuant to section 4122(b)(12)(D).

"(3) VOLUNTARY PARTICIPATION BY INMATE.—Each inmate worker to be utilized by an eligible entity shall indicate in writing that such person—

"(A) is participating voluntarily; and

"(B) understands and agrees to the wages to be paid and deductions to be taken from such wages.

"(h) ASSIGNMENT TO WORK OPPORTUNITIES.—Assignment of inmates to work under an approved agreement with an eligible entity shall be subject to the Bureau of Prisons Program Statement Number 1040.10 (Non-Discrimination Toward Inmates), as contained in section 551.90 of title 28 of the Code of Federal Regulations (or any successor document).

"(i) ENFORCEMENT OF PROTECTIONS FOR NON-INMATE WORKERS.—

"(1) PRIOR TO BOARD CONSIDERATION.—Upon request of any interested person, the Secretary of Labor may promptly verify a certification made pursuant subsection (e)(2) with respect to the displacement of non-inmate workers so as to make the results of such inquiry available to the Board of Directors prior to the Board's consideration of the proposed agreement. The Secretary and the person requesting the inquiry may make recommendations to the Board regarding modifications to the proposed agreement.

"(2) DURING PERFORMANCE.—

"(A) IN GENERAL.—Whenever the Secretary deems appropriate, upon request or otherwise, the Secretary may verify whether the actual performance of the agreement is resulting in the displacement of non-inmate workers or the use of inmate workers in a work activity not authorized under the approved agreement.

"(B) SANCTIONS.—Whenever the Secretary determines that performance of the agreement has resulted in the displacement of non-inmate workers or employment of an inmate worker in an unauthorized work activity, the Secretary may—

"(i) direct the Inmate Work Training Administrator to terminate the agreement for default, subject to the processes and appeals available to a Federal contractor whose procurement contract has been terminated for default; and

"(ii) initiate proceedings to impose upon the person furnishing the certification regarding non-displacement of non-inmate workers required by subsection (d)(2)(B) any administrative, civil, and criminal sanctions as may be available.".

(2) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated $5,000,000 for each of the fiscal years 2008 through 2012 for the purposes of paying the wages of inmates and otherwise undertaking the maximum number of agreements with eligible entities pursuant to section 4124a of title 18, United States Code, as added by paragraph (1).

(3) SENSE OF CONGRESS.—For purposes of sections 4124a and 4124b of title 18, United States Code, as added by sections 10(b) and 11, respectively, it is the sense of Congress that an inmate training wage that is at least 50 percent of the minimum wage prescribed pursuant to section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) will facilitate successful achievement of the goals of the work-based training and apprenticeship program authorized under such section 4124a.

(c) INMATE WORK OPPORTUNITIES IN SUPPORT OF NOT-FOR-PROFIT ENTITIES.—

(1) PROPOSALS FOR DONATION PROGRAMS.—The Chief Operating Officer of Federal Prison Industries shall develop and present to the Board of Directors of Federal Prison Industries proposals to have Federal Prison Industries donate products and

services to eligible entities that provide goods or services to low-income individuals who would likely otherwise have difficulty purchasing such products or services in the commercial market.

(2) SCHEDULE FOR SUBMISSION AND CONSIDERATION OF DONATION PROGRAMS.—

(A) INITIAL PROPOSALS.—The Chief Operating Officer shall submit the initial group of proposals for programs of the type described in paragraph (1) within 180 days after the date of the enactment of this Act. The Board of Directors of Federal Prison Industries shall consider such proposals from the Chief Operating Officer not later than the date that is 270 days after the date of the enactment of this Act.

(B) ANNUAL OPERATING PLAN.—The Board of Directors of Federal Prison Industries shall consider proposals by the Chief Operating Officer for programs of the type described in paragraph (1) as part of the annual operating plan for Federal Prison Industries.

(C) OTHER PROPOSALS.—In addition to proposals submitted by the Chief Operating Officer, the Board of Directors may, from time to

time, consider proposals presented by prospective eligible entities.

(3) DEFINITION OF ELIGIBLE ENTITIES.—For the purposes of this subsection, the term ''eligible entity'' means an entity—

(A) that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code and that has been such an organization for a period of not less than 36 months prior to inclusion in a proposal of the type described in paragraph (1), or

(B) that is a religious organization described in section 501(d) of such Code and exempt from taxation under section 501(a) of such Code.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $7,000,000 for each of the fiscal years 2008 through 2012 for the purposes of paying the wages of inmates and otherwise carrying out programs of the type described in paragraph (1).

(d) MAXIMIZING INMATE REHABILITATIVE OPPORTUNITIES THROUGH COGNITIVE ABILITIES ASSESSMENTS.—

(1) DEMONSTRATION PROGRAM AUTHORIZED.—

(A) IN GENERAL.—There is hereby established within the Federal Bureau of Prisons a program to be known as the ''Cognitive Abilities Assessment Demonstration Program''. The purpose of the demonstration program is to determine the effectiveness of a program that assesses the cognitive abilities and perceptual skills of Federal inmates to maximize the benefits of various rehabilitative opportunities designed to prepare each inmate for a successful return to society and reduce recidivism. The demonstration program shall be undertaken by a contractor with a demonstrated record of enabling the behavioral and academic improvement of adults through the use of research-based systems that maximize the development of both the cognitive and perceptual capabilities of a participating individual, including adults in a correctional setting.

(B) SCOPE OF DEMONSTRATION PROGRAM.—The demonstration program shall to the maximum extent practicable, be—

(i) conducted during a period of three consecutive fiscal years, commencing during fiscal year 2008;

(ii) conducted at 12 Federal correctional institutions; and

(iii) offered to 6,000 inmates, who are categorized as minimum security or less, and are within five years of release.

(C) REPORT ON RESULTS OF PROGRAM.—Not later than 60 days after completion of the demonstration program, the Director shall submit to Congress a report on the results of the program. At a minimum, the report shall include an analysis of employment stability, stability of residence, and rates of recidivism among inmates who participated in the program after 18 months of release.

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $3,000,000 in each of the three fiscal years after fiscal year 2007, to remain available until expended, for the purposes of conducting the demonstration program authorized by subsection (a).

(e) PRERELEASE EMPLOYMENT ASSISTANCE.—

(1) IN GENERAL.—The Director of the Federal Bureau of Prisons shall, to the maximum extent practicable, afford to inmates opportunities to participate in programs and activities designed to help prepare such inmates to obtain employment upon release.

(2) PRERELEASE EMPLOYMENT PLACEMENT ASSISTANCE.—Such prerelease employment placement assistance required by subsection (a) shall include—

(A) training in the preparation of resumes and job applications;

(B) training in interviewing skills;

(C) training and assistance in job search techniques;

(D) conduct of job fairs; and

(E) such other methods deemed appropriate by the Director.

(3) PRIORITY PARTICIPATION.—Priority in program participation shall be accorded to inmates who are participating in work opportunities afforded by Federal Prison Industries and are within 24 months of release from incarceration.

SEC. 11. RE-ENTRY EMPLOYMENT PREPARATION THROUGH WORK-BASED TRAINING AND APPRENTICESHIP.

(a) IN GENERAL.—Chapter 307 of title 18, United States Code, is further amended by inserting after section 4124a, as added by section 10(b), the following new section:

"§ 4124b. Re-entry employment preparation through work-based training and apprenticeship

''(a) PARTICIPATION AUTHORIZED.—A private for-profit business entity shall be an eligible entity for participation in the program authorized by section 4124a of this title, if such participation conforms with the requirements and limitations of this section.

''(b) REQUIREMENTS RELATING TO PRODUCTS AND SERVICES.—A private for-profit business entity is eligible for such participation if such business entity proposes to train participating inmates, pursuant to subsection (c), by producing a product or performing a service, if such product or service is of a type for which there is no production or performance within the United States by noninmate workers.

''(c) REQUIREMENTS RELATING TO TRAINING.—

''(1) IN GENERAL.—For purposes of this section, the training of participating inmates shall be work-based training that provides to a participating

inmate apprenticeship training or a functionally equivalent structured program that combines hands-on work experience with conceptual understanding of the work being performed. Other inmates with regular work assignments within Federal Prison Industries may be assigned to support the program.

"(2) DOCUMENTATION OF PROGRAM PARTICIPATION.—

"(A) Each inmate who successfully completes participation in training undertaken pursuant to this section shall be provided a certificate or other written document memorializing such successful completion, providing a marketable summary of the skills learned and an overall assessment of performance.

"(B) Copies of such documents shall be furnished to perspective employers upon the request of the participant for a period of not less than 24 months from the date of such participant's release from incarceration.

"(3) DOCUMENTS REQUIRED FOR EMPLOYMENT.—The Federal Bureau of Prisons, in cooperation with a business entity providing an inmate work-based training at the time of his or her scheduled release, shall make every reasonable effort to

help the inmate timely obtain such documentation (including a State government-issued photo identification card) as a person may be required to provide to a prospective employer, after such person completes an Employment Eligibility Verification (ICE Form I–9).

"(d) WAGE RATES.—

"(1) IN GENERAL.—Business entities participating in the program authorized by subsection (a) shall propose wages for inmates participating in the program at rates not less than the inmate training wage promulgated pursuant to section 17(c) of the Federal Prison Industries Competition in Contracting Act of 2006.

"(2) INMATE TRAINING WAGE.—Not more than 30 days after the date of enactment of this section, the Board of Directors of Federal Prison Industries shall request the Secretary of Labor to promulgate an inmate training wage pursuant to section 14(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(a)).

"(e) SUPPORT FOR OTHER RELEASE PREPARATION PROGRAMS.—In addition to the matters listed in section 4124a(d) of this title, a proposal for an agreement referred to in such section submitted by an eligible business

entity shall specify an amount of any supplemental funding, specified as a per-capita amount for each inmate participating pursuant to the agreement, that the business entity will provide for the purpose of supporting remedial, vocational, and other release preparation programs for other nonparticipating inmates.

"(f) ADDITIONAL STANDARDS APPLICABLE.—In considering a proposed agreement pursuant to section 4124a(f)(1) of this title, the Board of Directors shall—

"(1) give preference to an agreement that proposes—

"(A) work-based training opportunities that provide the participating inmate the best prospects for obtaining employment paying a livable wage upon release;

"(B) the highest per-capita amount pursuant to subsection (e) relating to providing financial support for release preparation for other inmates; and

"(C) the highest inmate wage rates;

"(2) not approve any agreement with respect to furnishing services of the type described in section 4122(b)(6)(D)(iii) of this title;

"(3) not approve any agreement with respect to furnishing construction services described in section

4122(b)(6)(D)(iv) of this title, unless to be performed within a Federal correctional institution;

"(4) not approve an agreement that does not meet the standards of subsection (b); and

"(5) request a determination from the Department of Commerce (and such other executive branch entities as may be appropriate), regarding whether a product or service is of the type being produced or performed in the United States by noninmate workers, whenever the Board determines that such an additional assessment is warranted, including upon a request from an interested party presenting information that the Board deems to warrant such additional assessment prior to the Board's consideration of the proposed agreement.

"(g) LIMITATIONS ON THE USE OF THE AUTHORITY.—

"(1) NO SALES BY FEDERAL PRISON INDUSTRIES.—Federal Prison Industries is prohibited from directly offering for commercial sale products produced or services furnished by Federal inmates, including through any form of electronic commerce.

"(2) DURATION.—

"(A) No proposed agreement pursuant to this subsection may be approved by the Board of Directors after September 30, 2016.

"(B) Performance of all such agreements shall be concluded prior to October 1, 2021.".

(b) REVIEW AND REPORTING BY THE ATTORNEY GENERAL.—Not less than biannually, beginning in fiscal year 2008, the Attorney General shall meet in person jointly with the Chairman of the Board of Directors and the Chief Executive Officer of Federal Prison Industries to review the progress that Federal Prison Industries is making in maximizing the use of the authority provided by sections 4124a and 4124b of title 18, United States Code. The Attorney General shall provide annually a written report to the Committees on the Judiciary and Appropriations of the House of Representatives and the Senate addressing such progress by Federal Prison Industries.

(c) GAO ASSESSMENT OF WORK-BASED TRAINING PROGRAM.—

(1) IN GENERAL.—The Comptroller General of the United States shall undertake an on-going assessment of the authority granted by section 4124b of title 18, United States Code, as added by subsection (a).

(2) MATTERS TO BE ASSESSED.—In addition to such other matters as the Comptroller General deems appropriate, the assessment shall include—

(A) efforts to recruit private for-profit business entities to participate;

(B) the quality of training provided to inmates;

(C) the amounts and types of products and services that have been produced incident to the work-based training programs;

(D) the types of worksite arrangement that encourage business concerns to voluntarily enter into such partnerships;

(E) the extent and manner of the participation of supervisory, quality assurance, and other management employees of the participating business entity in worksites within correctional facilities of various levels of security;

(F) the extent of the facilities, utilities, equipment, and personnel (other than security personnel) provided by the host correctional agency, and extent to which such resources are provided on a nonreimbursable basis;

(G) the rates of wages paid to inmate workers and the effect that such wage rates

have on willingness of business entities to participate;

(H) any complaints filed regarding the displacement of noninmate workers or of inmate workers being paid less than required wages and the disposition of those complaints;

(I) any sanctions recommended relating to displacement of noninmate workers or payment of less than the required wages, and the disposition of such proposed sanctions;

(J) the extent to which the new authority provided additional inmate work opportunities assisting the Bureau of Prisons in attaining its objective of providing 25 percent of the work-eligible inmates with work opportunities within Federal Prison Industries;

(K) measures of any adverse impacts of implementation of the new authority on business concerns using noninmate workers that are engaged in providing similar types of products and services in direct competition; and

(L) a compilation of data relating work opportunities for Federal inmates with work assignments with Federal Prison Industries provided by—

(i) sales to Federal agencies pursuant to the status of Federal Prison Industries as a mandatory source of supply during the period fiscal year 1990 through fiscal year 2007;

(ii) sales to Federal agencies of services, both through non-competitive interagency transfers and as a result of direct competition from private-sector offerors during the period fiscal year 1990 though fiscal year 2007;

(iii) performance as a subcontrator to a Federal prime contractor or Federal subcontractor at a higher tier beginning in fiscal year 1990;

(iv) introduction of inmate-furnished services into the commercial market, beginning in the second quarter of fiscal year 1998;

(v) alternative inmate work opportunities, beginning in fiscal year 2007, provided by agreements with—

(I) non-profit organizations, pursuant to section 4124a(b)(1) of title

18, United States Code, as added by section 10(b), and section 10(c);

(II) religious organizations, pursuant to section 4124a(b)(2) of title 18, United States Code;

(III) units of local governments, school districts, or other special purpose districts, pursuant to section 4124a(b)(3) of title 18, United States Code;

(IV) work-based Employment Preparation Programs for Federal inmates, pursuant to section 4124b of title 18, United States Code, as added by section 11; or

(V) other means.

(3) OPPORTUNITY FOR PUBLIC COMMENT.—The Comptroller General shall provide an opportunity for public comment on the proposed scope and methodology for the assessment required by paragraph (1), making such modifications in response to such comments as he deems appropriate.

(4) REPORTS AND RECOMMENDATIONS.—

(A) IN GENERAL.—The Comptroller General shall submit to the Congress in accordance

with this subsection two interim reports and a final report of the assessment of implementation of the new authority, including such recommendations as the Comptroller General may deem appropriate.

(B) INTERIM REPORTS.—The two interim reports shall encompass the assessment of the implementation of the new authority—

(i) from the effective date of the authority through the end of fiscal year 2009; and

(ii) from the effective date of the authority through the end of fiscal year 2012.

(C) FINAL REPORT.—The final report shall assess the implementation of the new authority from the effective date of the authority through the end of fiscal year 2014.

(D) SUBMISSION TO CONGRESS.—The Comptroller General shall submit the reports required by this paragraph within 6 months after the end of the fiscal years referred to in subparagraphs (B) and (C).

(d) CONFORMING AMENDMENT.—Section 1761 of title 18, United States Code, as amended by section 7, is further amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) inserting after subsection (d) the following new subsection:

''(e) This section shall not apply to products produced or services furnished with inmate labor incidental to the work-based training program authorized pursuant to section 4124b of this title.''.

SEC. 12. RESTRUCTURING THE BOARD OF DIRECTORS.

(a) IN GENERAL.—Section 4121 of title 18, United States Code, is amended to read as follows:

''§ 4121. Federal Prison Industries; Board of Directors: executive management

''(a) Federal Prison Industries is a government corporation of the District of Columbia organized to carry on such industrial operations in Federal correctional institutions as authorized by its Board of Directors. The manner and extent to which such industrial operations are carried on in the various Federal correctional institutions shall be determined by the Attorney General.

''(b)(1) The corporation shall be governed by a board of 11 directors appointed by the President.

"(2) In making appointments to the Board, the President shall assure that 3 members represent the business community, 3 members represent organized labor, 1 member shall have special expertise in inmate rehabilitation techniques, 1 member represents victims of crime, 1 member represents the interests of Federal inmate workers, and 2 additional members whose background and expertise the President deems appropriate. The members of the Board representing the business community shall include, to the maximum extent practicable, representation of firms furnishing services as well as firms producing products, especially from those industry categories from which Federal Prison Industries derives substantial sales. The members of the Board representing organized labor shall, to the maximum practicable, include representation from labor unions whose members are likely to be most affected by the sales of Federal Prison Industries.

"(3) Each member shall be appointed for a term of 5 years, except that of members first appointed—

"(A) 2 members representing the business community shall be appointed for a term of 3 years;

"(B) 2 members representing labor shall be appointed for a term of 3 years;

"(C) 2 members whose background and expertise the President deems appropriate for a term of 3 years;

"(D) 1 member representing victims of crime shall be appointed for a term of 3 years;

"(E) 1 member representing the interests of Federal inmate workers shall be appointed for a term of 3 years;

"(F) 1 member representing the business community shall be appointed for a term of 4 years;

"(G) 1 member representing the business community shall be appointed for a term of 4 years; and

"(H) the members having special expertise in inmate rehabilitation techniques shall be appointed for a term of 5 years.

"(4) The President shall designate 1 member of the Board as Chairperson. The Chairperson may designate a Vice Chairperson.

"(5) Members of the Board may be reappointed.

"(6) Any vacancy on the Board shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that term.

"(7) The members of the Board shall serve without compensation. The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, to attend meetings of the Board and, with the advance approval of the Chairperson of the Board, while otherwise away from their homes or regular places of business for purposes of duties as a member of the Board.

"(8)(A) The Chairperson of the Board may appoint and terminate any personnel that may be necessary to enable the Board to perform its duties.

"(B) Upon request of the Chairperson of the Board, a Federal agency may detail a Federal Government employee to the Board without reimbursement. Such detail shall be without interruption or loss of civil service status or privilege.

"(9) The Chairperson of the Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

"(c) The Director of the Bureau of Prisons shall serve as Chief Executive Officer of the Corporation. The Director shall designate a person to serve as Chief Operating Officer of the Corporation.".

(b) CONTINUED GOVERNANCE.—The members of the Board of Directors serving on the date of enactment of this Act, and the person selected by them as Chairman, shall continue to exercise the duties and responsibilities of the Board until the earlier of—

(1) the date on which the President has appointed at least 6 members of the Board and designated a new Chairman, pursuant to section 4121 of title 18, United States Code (as added by section 12(a) of this Act); or

(2) the date that is 365 days after the date of enactment of this Act.

SEC. 13. MANAGEMENT MATTERS.

(a) ADDITIONAL FLEXIBILITIES.—Section 4122(b)(3) of title 18, United States Code, is amended—

(1) by striking ''(3)'' and inserting ''(3)(A)''; and

(2) by adding at the end the following new paragraphs:

''(B) Federal Prison Industries may locate more than one workshop at a Federal correctional facility.

''(C) Federal Prison Industries may operate a workshop outside of a correctional facility if all of the inmates working in such workshop are classified as minimum security inmates.''.

(b) COST ACCOUNTING SYSTEM.—

(1) ESTABLISHMENT.—Federal Prison Industries shall establish a cost accounting system that meets the requirements of part 30 (Cost Accounting Standards Administration) of the Federal Acquisition Regulation (48 C.F.R. part 30). The compliance of the cost accounting system with such standards shall be annually verified as part of the independent audit of Federal Prison Industries, Inc., pursuant to section 9106(b) of title 31, United States Code.

(2) APPLICATION OF RELATED PROVISION.—Section 4124(c)(2) of title 18, United States Code, shall apply when Federal Prison Industries has been found to have a complaint cost accounting system pursuant to paragraph (1).

SEC. 14. TRANSITIONAL PERSONNEL MANAGEMENT AUTHORITY.

Any correctional officer or other employee of Federal Prison Industries being paid with nonappropriated funds who would be separated from service because of a reduction in the net income of Federal Prison Industries during any fiscal year specified in section 4(e)(1) shall be—

(1) eligible for appointment (or reappointment) in the competitive service pursuant to title 5, United States Code;

(2) registered on a Bureau of Prisons reemployment priority list; and

(3) given priority for any other position within the Bureau of Prisons for which such employee is qualified.

SEC. 15. FEDERAL PRISON INDUSTRIES REPORT TO CONGRESS.

Section 4127 of title 18, United States Code, is amended to read as follows:

"§ 4127. Federal Prison Industries report to Congress

''(a) IN GENERAL.—Pursuant to chapter 91 of title 31, the board of directors of Federal Prison Industries shall submit an annual report to Congress on the conduct of the business of the corporation during each fiscal year and the condition of its funds during the fiscal year.

''(b) CONTENTS OF REPORT.—In addition to the matters required by section 9106 of title 31, and such other matters as the board considers appropriate, a report under subsection (a) shall include—

''(1) a statement of the amount of obligations issued under section 4129(a)(1) of this title during the fiscal year;

''(2) an estimate of the amount of obligations that will be issued in the following fiscal year;

''(3) an analysis of—

"(A) the corporation's total sales for each specific product and type of service sold to the Federal agencies and the commercial market;

"(B) the total purchases by each Federal agency of each specific product and type of service;

"(C) the corporation's share of such total Federal Government purchases by specific product and type of service; and

"(D) the number and disposition of disputes submitted to the heads of the Federal departments and agencies pursuant to section 4124(e) of this title;

"(4) an allocation of the profits of the corporation, both gross and net, to—

"(A) educational, training, release-preparation opportunities for inmates;

"(B) opening new factories; and

"(C) improving the productivity and competitiveness of existing factories;

"(5) an analysis of the inmate workforce that includes—

"(A) the number of inmates employed;

"(B) the number of inmates utilized to produce products or furnish services sold in the commercial market;

"(C) the number and percentage of employed inmates by the term of their incarceration; and

"(D) the various hourly wages paid to inmates employed with respect to the production of the various specific products and types of services authorized for production and sale to Federal agencies and in the commercial market; and

"(6) data concerning employment obtained by former inmates upon release to determine whether the employment provided by Federal Prison Industries during incarceration provided such inmates with knowledge and skill in a trade or occupation that enabled such former inmate to earn a livelihood upon release.

"(c) PUBLIC AVAILABILITY.—Copies of an annual report under subsection (a) shall be made available to the public at a price not exceeding the cost of printing the report.".

SEC. 16. DEFINITIONS.

Chapter 307 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 4131. Definitions

''As used in this chapter—

''(1) the term 'assembly' means the process of uniting or combining articles or components (including ancillary finished components or assemblies) so as to produce a significant change in form or utility, without necessarily changing or altering the component parts;

''(2) the term 'current market price' means, with respect to a specific product, the fair market price of the product within the meaning of section 15(a) of the Small Business Act (15 U.S.C. 644(a)), at the time that the contract is to be awarded, verified through appropriate price analysis or cost analysis, including any costs relating to transportation or the furnishing of any ancillary services;

''(3) the term 'import-sensitive product' means a product which, according to Department of Commerce data, has experienced competition from imports at an import to domestic production ratio of 25 percent or greater;

''(4) the term 'labor-intensive manufacture' means a manufacturing activity in which the value

of inmate labor constitutes at least 10 percent of the estimate unit cost to produce the item by Federal Prison Industries;

"(5) the term 'manufacture' means the process of fabricating from raw or prepared materials, so as to impart to those materials new forms, qualities, properties, and combinations;

"(6) the term 'reasonable share of the market' means a share of the total purchases by the Federal departments and agencies, as reported to the Federal Procurement Data System for—

"(A) any specific product during the 3 preceding fiscal years, that does not exceed 20 percent of the Federal market for the specific product; and

"(B) any specific service during the 3 preceding fiscal years, that does not exceed 5 percent of the Federal market for the specific service; and

"(7) the term 'services' has the meaning given the term 'service contract' by section 37.101 of the Federal Acquisition Regulation (48 C.F.R. 36.102), as in effect on July 1, 2004.".

SEC. 17. IMPLEMENTING REGULATIONS AND PROCEDURES.

(a) FEDERAL ACQUISITION REGULATION.—

(1) PROPOSED REVISIONS.—Proposed revisions to the Governmentwide Federal Acquisition Regulation to implement the amendments made by this Act shall be published not later than 60 days after the date of the enactment of this Act and provide not less than 60 days for public comment.

(2) FINAL REGULATIONS.—Final regulations shall be published not later than 180 days after the date of the enactment of this Act and shall be effective on the date that is 30 days after the date of publication.

(3) PUBLIC PARTICIPATION.—The proposed regulations required by subsection (a) and the final regulations required by subsection (b) shall afford an opportunity for public participation in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

(b) BOARD OF DIRECTORS.—

(1) IN GENERAL.—The Board of Directors of Federal Prison Industries shall issue regulations defining the terms specified in paragraph (2).

(2) TERMS TO BE DEFINED.—The Board of Directors shall issue regulations for the following terms:

(A) Prison-made product.

(B) Prison-furnished service.

(C) Specific product.

(D) Specific service.

(3) SCHEDULE FOR REGULATORY DEFINITIONS.—

(A) Proposed regulations relating to the matter described in subsection (b)(2) shall be published not later than 60 days after the date of enactment of this Act and provide not less than 60 days for public comment.

(B) Final regulations relating to the matters described in subsection (b)(2) shall be published not less than 180 days after the date of enactment of this Act and shall be effective on the date that is 30 days after the date of publication.

(4) ENHANCED OPPORTUNITIES FOR PUBLIC PARTICIPATION AND SCRUTINY.—

(A) ADMINISTRATIVE PROCEDURE ACT.—Regulations issued by the Board of Directors shall be subject to notice and comment rulemaking pursuant to section 553 of title 5, United States Code. Unless determined wholly impracticable or unnecessary by the Board of

Directors, the public shall be afforded 60 days for comment on proposed regulations.

(B) ENHANCED OUTREACH.—The Board of Directors shall use means designed to most effectively solicit public comment on proposed regulations, procedures, and policies and to inform the affected public of final regulations, procedures, and policies.

(C) OPEN MEETING PROCESSES.—The Board of Directors shall take all actions relating to the adoption of regulations, operating procedures, guidelines, and any other matter relating to the governance and operation of Federal Prison Industries based on deliberations and a recorded vote conducted during a meeting open to the public, unless closed pursuant to section 552(b) of title 5, United States Code.

(c) SECRETARY OF LABOR.—

(1) SCHEDULE FOR REGULATORY ACTION.—Upon receipt of a request from the Federal Prison Industries Board of Directors, pursuant to section 11(d)(2), to establish an inmate training wage pursuant to section 14(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(a)), the Secretary of

Labor, in consultation with the Attorney General, shall issue—

(A) an advanced notice of proposed rulemaking within 60 days;

(B) an interim regulation with concurrent request for public comments within 180 days; and

(C) a final regulation within 365 days.

(2) ALTERNATIVE TO TIMELY ISSUANCE.—In the event that the Secretary of Labor fails to issue an interim inmate training wage by the date required by paragraph (1)(B), the Federal Prison Industries Board of Directors may prescribe an interim inmate training wage, which shall be in an amount not less than 50 percent of the amount of the minimum wage prescribed pursuant to section 6(a)(1) of such Act (29 U.S.C. 206(a)(1)).

(3) CONTINUED USE OF INTERIM INMATE TRAINING WAGE.—

(A) The interim inmate training wage issued pursuant to paragraph (1)(B) or prescribed under paragraph (2) shall remain in effect until the effective date of a final regulation, issued pursuant to paragraph (1)(C).

(B) An eligible entity having an approved agreement with Federal Prison Industries pursuant to section 4124b of title 18, United States Code, may continue to pay participating inmates at the wages prescribed in the agreement for the duration of the agreement, if those wages comply with the standards of the interim inmate training wage issued pursuant to paragraph (1)(B) or prescribed under paragraph (2).

(4) EXISTING AGREEMENTS WITH NONCONFORMING WAGES.—Any for-profit business concern having an agreement with Federal Prison Industries in effect on the date of enactment of this Act, under which Federal inmates are furnishing services that are being introduced into the commercial market, may continue to pay wages at rates specified in the agreement for the duration of the term of such agreement.

SEC. 18. RULES OF CONSTRUCTION.

(a) AGENCY BID PROTESTS.—Subsection (e) of section 4124 of title 18, United States Code, as amended by section 2, is not intended to alter any rights of any offeror other than Federal Prison Industries to file a bid protest

in accordance with other law or regulation in effect on the date of the enactment of this Act.

(b) JAVITS-WAGNER-O'DAY ACT.—Nothing in this Act is intended to modify the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).

SEC. 19. EFFECTIVE DATE AND APPLICABILITY.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

(b) APPLICABILITY.—Section 4124 of title 18, United States Code, as amended by section 2, shall apply to any requirement for a product or service offered by Federal Prison Industries needed by a Federal department or agency after the effective date of the final regulations issued pursuant to section 17(a)(2), or after September 30, 2007, whichever is earlier.

SEC. 20. CLERICAL AMENDMENTS.

The table of sections for chapter 307 of title 18, United States Code, is amended—

(1) by amending the item relating to section 4121 to read as follows:

"4121. Federal Prison Industries; Board of Directors: executive management.";

(2) by amending the item relating to section 4124 to read as follows:

"4124. Governmentwide procurement policy relating to purchases from Federal Prison Industries.";

1 (3) by inserting after the item relating to sec-
2 tion 4124 the following new items:

"4124a. Additional inmate work opportunities through public service activities.
"4124b. Re-entry employment preparation through work-based training and apprenticeship.";

3 (4) by amending the item relating to section
4 4127 to read as follows:

"4127. Federal Prison Industries report to Congress.";

5 and
6 (5) by adding at the end the following new
7 items:

"4130. Construction of provisions.
"4131. Definitions.".

Passed the House of Representatives September 14, 2006.

Attest:

Clerk.

109TH CONGRESS
2D SESSION

H. R. 2965

AN ACT

To amend title 18, United States Code, to require Federal Prison Industries to compete for its contracts minimizing its unfair competition with private sector firms and their non-inmate workers and empowering Federal agencies to get the best value for taxpayers' dollars, to provide a five-year period during which Federal Prison Industries adjusts to obtaining inmate work opportunities through other than its mandatory source status, to enhance inmate access to remedial and vocational opportunities and other rehabilitative opportunities to better prepare inmates for a successful return to society, to authorize alternative inmate work opportunities in support of nonprofit organizations and other public service programs, and for other purposes.