DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
ACQUISITION LOGISTICS AND TECHNOLOGY
103 ARMY PENTAGON
WASHINGTON DC 20310-0103

14 MAR 2002

REPLY TO
ATTENTION OF
SAAL-PP

MEMORANDUM FOR PRINCIPAL ASSISTANTS RESPONSIBLE FOR CONTRACTING

SUBJECT: Supplemental Guidance for Implementation of Section 811, Purchases from Federal Prison Industries

The Director of Defense Procurement signed a memorandum dated March 4, 2002, that provides guidance on the implementation of Section 811 for the National Defense Authorization Act Fiscal Year 2002 (Public Law 107-107) regarding purchases from Federal Prison Industries (FPI). A copy of the memorandum is included as an Enclosure.

This memorandum establishes interim guidance for the contracting community by providing a uniform interpretation on the implementation of Section 811, pending formal rulemaking by the Defense Acquisition Regulation (DAR) Council.

Under Section 811, the contractor officer is responsible for determining whether FPI can best meet the Army's needs in terms of price, quality, and time of delivery. Specifically, the contracting officer will determine, in writing, whether the FPI product is comparable in price, quality, and time of delivery to products available from the private sector. All three elements must be considered in determining comparability. If the contracting officer determines that a FPI product is not comparable in price, quality and time of delivery, the Contracting Officer shall use competitive procedures for procurement of the product. If the FPI product is determined comparable, contracting officers must follow the policy contained at FAR 8.602 (a).

Until the DAR Council issues an interim Defense Federal Acquisition Regulation Supplement rule concerning Department of Defense purchases from FPI, contracting officers are strongly advised to consult and closely coordinate with their legal advisors relative to procurements conducted pursuant to the authority of Section 811.

My point of contact is Ms. Lynn M. Lovell who can be reached at 703-681-9292 or via email: Lynn.Lovell@saalt.army.mil.

Kenneth J. Oscar
Deputy Assistant Secretary of the Army
(Policy and Procurement)

Enclosure

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OFFICE OF THE UNDER SECRETARY OF DEFENSE

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WASHINGTON, DC 20301-3000

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

March 4, 2002

MEMORANDUM FOR DIRECTOR OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT, ASN(RD&A)/ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING), SAF/AQC
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT)
EXECUTIVE DIRECTOR FOR LOGISTICS POLICY AND ACQUISITION MANAGEMENT (DLA)

SUBJECT: Implementation of Section 811 of the National Defense Authorization Act, FY 2002, Regarding Purchases from Federal Prison Industries

Section 2410n of title 10, United States Code, enacted by section 811 of the National Defense Authorization Act, FY 2002 (Pub. L. No. 107-107), specifies under what circumstances the Department of Defense is not required to purchase mandatory items from Federal Prison Industries (FPI) (copy attached). This provision was effective on October 1, 2001, and takes precedence over the current Federal Acquisition Regulations (FAR) that address purchases from FPI. You should also be aware of 18 U.S.C. 4124 and consult with counsel in regard to such purchases.

While 10 U.S.C. 2410n is in effect and controlling, more definitive guidance will be forthcoming through an interim Defense FAR Supplement (DFARS) rule concerning DoD purchases from FPI. This interim rule has been forwarded to the Office of Management and Budget, Office of Information & Regulatory Affairs for approval. If you have any questions, please call Mr. Domenic Cipicchio, Deputy Director, Defense Procurement (Contract Policy & Administration) on (703) 697-0895 or Mr. Douglas Larsen, Deputy General Counsel (Acquisition & Logistics) on (703) 697-5387.

Deidre A. Lee
Director, Defense Procurement

Attachment:
As stated

SEC. 811. APPLICABILITY OF COMPETITION REQUIREMENTS TO PURCHASES FROM A REQUIRED SOURCE.

(a) CONDITIONS FOR COMPETITION.—(1) Chapter 141 of title 10, United States Code, is amended by adding at the end the following:

"§ 2410n. Products of Federal Prison Industries: procedural requirements

"(a) MARKET RESEARCH BEFORE PURCHASE.—Before purchasing a product listed in the latest edition of the Federal Prison Industries catalog under section 4124(d) of title 18, the Secretary of Defense shall conduct market research to determine whether the Federal Prison Industries product is comparable in price, quality, and time of delivery to products available from the private sector.

"(b) LIMITED COMPETITION REQUIREMENT.—If the Secretary determines that a Federal Prison Industries product is not comparable in price, quality, and time of delivery to products available from the private sector, the Secretary shall use competitive procedures for the procurement of the product. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries for award in accordance with the specifications and evaluation factors specified in the solicitation.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following:

"2410n. Products of Federal Prison Industries: procedural requirements.".

(b) APPLICABILITY.—Section 2410n of title 10, United States Code (as added by subsection (a)), shall apply to purchases initiated on or after October 1, 2001.

ATTACHMENT