



August 2023

DEFENSE CONTRACTING

DOD's Use of Federal Prison Industries

GAO Highlights

Highlights of [GAO-23-106240](#), a report to congressional committees

Why GAO Did This Study

Federal agencies, including DOD, are encouraged to purchase FPI products and services to the maximum extent practicable. In fiscal year 2022, DOD represented over 50 percent of FPI's revenue and purchased a range of items, including furniture, apparel, and electronics.

The Joint Explanatory Statement for the National Defense Authorization Act for Fiscal Year 2022 included a provision for GAO to assess DOD's contracting with FPI. This report describes (1) the value and various characteristics of DOD contracts awarded to FPI from fiscal years 2018 through 2022 and the factors DOD considers when awarding FPI contracts, and (2) the extent to which DOD complied with selected regulations and policies governing contracting with FPI in awarding 12 fiscal year 2021 contracts that GAO reviewed.

GAO selected a nongeneralizable sample of 12 fiscal year 2021 contracts based on factors such as product category and total obligations, among other criteria. GAO reviewed federal laws and DOD regulations and guidance. GAO also analyzed contract file documentation to determine whether DOD met three key acquisition requirements, including whether to directly award contracts to FPI. Further, GAO also interviewed DOD and FPI officials.

View [GAO-23-106240](#). For more information, contact Mona Sehgal at (202) 512-4841 or SehgalM@gao.gov.

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What GAO Found

Federal Prison Industries (FPI) is a wholly government-owned corporation that employs federal prison inmates to produce products and services that it sells to federal agencies. The Department of Defense (DOD) was FPI's largest federal customer for fiscal year 2022.

Clothing Produced by Federal Prison Industries



Source: Federal Prison Industries. | GAO-23-106240

GAO found that DOD obligations averaged about \$163 million annually from fiscal years 2018 through 2022 for FPI products and services. The Defense Logistics Agency and the Army accounted for the vast majority—more than 90 percent—of the total. The most prevalent product category that DOD obligated funds for was special purpose clothing, such as cold weather jackets.

To decide when and how to contract with FPI, DOD contracting officers told GAO—and our review of contract files confirmed—they primarily consider two factors:

- Whether FPI has a greater than 5 percent share of DOD's market for the product category containing a particular item. If so, the contracting officer must use competitive procedures to buy the item. If not, they must directly award the contract to FPI, subject to certain criteria.
- Whether, on the basis of market research (collecting and analyzing data about market capabilities that meet the agency's procurement needs), FPI products are comparable in terms of price, quality and delivery time.

The 12 contracts GAO reviewed generally met the three key acquisition requirements governing contracting with FPI that GAO assessed, such as whether they were to competitively award the contracts or award the contracts directly to FPI.

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Abbreviations

DFARS	Defense Federal Acquisition Regulation Supplement
DLA	Defense Logistics Agency
DOD	Department of Defense
FAR	Federal Acquisition Regulation
FPDS	Federal Procurement Data System
FPI	Federal Prison Industries
FSC	Federal Supply Class

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August 30, 2023

The Honorable Jack Reed
Chairman
The Honorable Roger Wicker
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Mike Rogers
Chairman
The Honorable Adam Smith
Ranking Member
Committee on Armed Services
House of Representatives

Federal Prison Industries (FPI) is a wholly government-owned corporation that employs inmates in correctional facilities operated by the Department of Justice's Federal Bureau of Prisons. FPI's mission is to facilitate rehabilitation and reduce recidivism by providing inmates in the federal prison system with job training and practical work skills. FPI sells products and services to federal agencies and, by law, must concentrate on providing products that permit the employment of the greatest number of inmates as is reasonably possible.¹ In recent years, the Department of Defense (DOD) has represented over 50 percent of FPI's annual sales revenue.

The Joint Explanatory Statement to Accompany the National Defense Authorization Act for Fiscal Year 2022 includes a provision for us to assess DOD's contracting with FPI. This report describes (1) the value and various characteristics of DOD contracts awarded to FPI from fiscal year 2018 through fiscal year 2022 and the factors DOD considers when awarding FPI contracts; and (2) the extent to which DOD complied with selected regulations and policies governing contracting with FPI in awarding 12 fiscal year 2021 contracts we reviewed.

To describe the value and various characteristics of DOD contracts awarded to FPI from fiscal year 2018 through fiscal year 2022, we collected data from the Federal Procurement Data System (FPDS) on

¹18 U.S.C. § 4121 *et seq.*

contracts awarded to FPI. We analyzed these data to identify information such as total annual contract obligations, the types of contracts used, the extent to which contracts were awarded using competitive procedures (“competed”), and the types of products purchased. To assess the reliability of the data, we reviewed related documentation, interviewed agency officials, conducted electronic data testing to look for obvious errors or outliers, and compared the data to selected contract documentation. Based on the steps we took, we determined the data were sufficiently reliable for the purposes of reporting on DOD’s contracting with FPI. We also interviewed officials from DOD’s Office of Defense Pricing and Contracting to better understand the process for contracting with FPI, officials from FPI to understand how they interact with DOD, and DOD contracting officials to understand decision-making related to use of FPI.

To assess the extent to which DOD complied with selected regulations and policies governing contracting with FPI, we identified a nongeneralizable sample of 12 DOD contracts and orders (hereafter referred to as contracts, unless otherwise specified) awarded in fiscal year 2021 based on product category, total obligations, whether or not the contract was awarded to FPI, and DOD component.² The selected contracts included eight awards to FPI and four awards to non-FPI vendors for product categories that include items that FPI produces. We selected awards from two DOD components—the Defense Logistics Agency (DLA) and the Army—because they had the highest obligations to FPI over the time period we reviewed. We compared findings from our analysis of these contract files against applicable federal and DOD regulations and guidance. The three specific requirements we considered were (1) whether the contract was competitively or directly awarded to FPI consistent with the applicable regulations; (2) whether a comparability analysis was documented, where applicable; and (3) whether a waiver

²We selected contracts awarded in fiscal year 2021 in the following categories: 1) four awarded to FPI in a product category for which FPI had more than 5 percent of DOD’s market, 2) four awarded to FPI in product categories for which FPI did not have at least 5 percent of DOD’s market, and 3) four awarded to non-FPI vendors in the same product categories for which FPI did not have at least 5 percent of DOD’s market. We selected these categories because, as discussed later in the draft, whether or not DOD must compete a contract or directly award it to FPI is, in some circumstances, dependent on FPI’s percentage of DOD’s market share. As a result, selecting contracts from these categories provided a variety of scenarios for competing or directly awarding a contract to FPI.

was obtained for contracts not awarded to FPI, where applicable.³ We also interviewed DOD contracting officials and their leadership to discuss contract-specific decisions for our selection and to understand the guidance and oversight mechanisms in place.

We conducted this performance audit from September 2022 to August 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

In 1934, federal legislation authorized the incorporation of Federal Prison Industries to manage, train, and rehabilitate federal prison inmates through employment. In fiscal year 2022, FPI had industrial, agricultural, and service operations at 69 factories and two farms located at 51 prison facilities that employed over 11,000 inmates. FPI manufactures products and provides services that are primarily sold to federal agencies, such as office furniture, clothing, and textiles. According to a March 2023 financial audit by the Department of Justice's Office of the Inspector General, FPI's largest federal customers for fiscal year 2022 included DOD, the Department of Homeland Security, the Social Security Administration, and the General Services Administration.⁴

Process for Determining Whether to Contract with FPI

Agencies, including DOD, are encouraged to purchase FPI products and services to the maximum extent practicable.⁵ Federal and DOD regulations establish the process for DOD to determine whether or not FPI is a mandatory source when acquiring products on the FPI Schedule.⁶ DOD must first identify whether FPI has a significant market

³These three requirements were selected because they cover the widely applicable provisions of Federal Acquisition Regulation (FAR) subpart 8.6 and Defense Federal Acquisition Regulation Supplement (DFARS) subpart 208.6. Other provisions of those regulatory sections are generally more situationally-specific, such as a prohibition on awarding classified contracts to FPI.

⁴Department of Justice, Office of the Inspector General, *Audit of the Federal Prison Industries, Inc. Annual Financial Statements Fiscal Year 2022*, 23-039 (Washington, D.C.: Mar. 7, 2023).

⁵FAR 8.601(e).

⁶According to the FPI website, the FPI Schedule is a complete listing of the products FPI produces.

share for a given item. A significant market share is defined as when FPI's share of the DOD market for a Federal Supply Class code (FSC) was greater than 5 percent (which we call the "5 percent rule" in this report).⁷ When FPI has a significant market share, DOD must use competitive procedures for the procurement of the item and open the competition to potential suppliers other than FPI.⁸ In these situations, however, DOD must also include FPI in the solicitation process and consider a timely offer from FPI when making an award.

When FPI does not have a significant share of the DOD market for the item needed, DOD is generally required to determine whether the item offered by FPI is comparable to products offered by private vendors that best meet the government's needs in terms of price, quality, and time of delivery.⁹ DOD is required to document its comparability determination.¹⁰ For products deemed comparable, DOD is generally required to purchase directly from FPI, unless FPI grants a waiver.¹¹ If DOD determines that the FPI product is not comparable to what is available in the market, it is to acquire the required item using competitive procedures as described in the Federal Acquisition Regulation (FAR).¹² If DOD sets aside the solicitation for competition among small businesses or other groups, FPI

⁷10 U.S.C. § 3905(b); DFARS subpart 208.6. Federal Supply Class codes are four-digit codes that are used to identify broad categories of products and services, such as office furniture or athletic and sporting equipment.

⁸DOD is to acquire a product for which FPI has significant market share using competitive procedures which includes those described in FAR 6.102, the set aside procedures for small businesses in FAR Subpart 19.5, the procedures for simplified acquisitions in FAR Part 13, or the fair opportunity procedures in FAR 16.505 when placing an order under a multiple-award delivery-order contract. DFARS 208.602-70(c)(1).

⁹FAR 8.602(a)(1). DOD does not have to determine if a product is comparable if an exception applies. Purchase from FPI is not required if: public exigency requires immediate delivery or performance; suitable used or excess products are available; the products are acquired and used outside the United States; the acquisition totals \$3,500 or less; the acquisition is for services; and in some additional circumstances. FAR 8.605.

¹⁰FAR 8.602(a)(2).

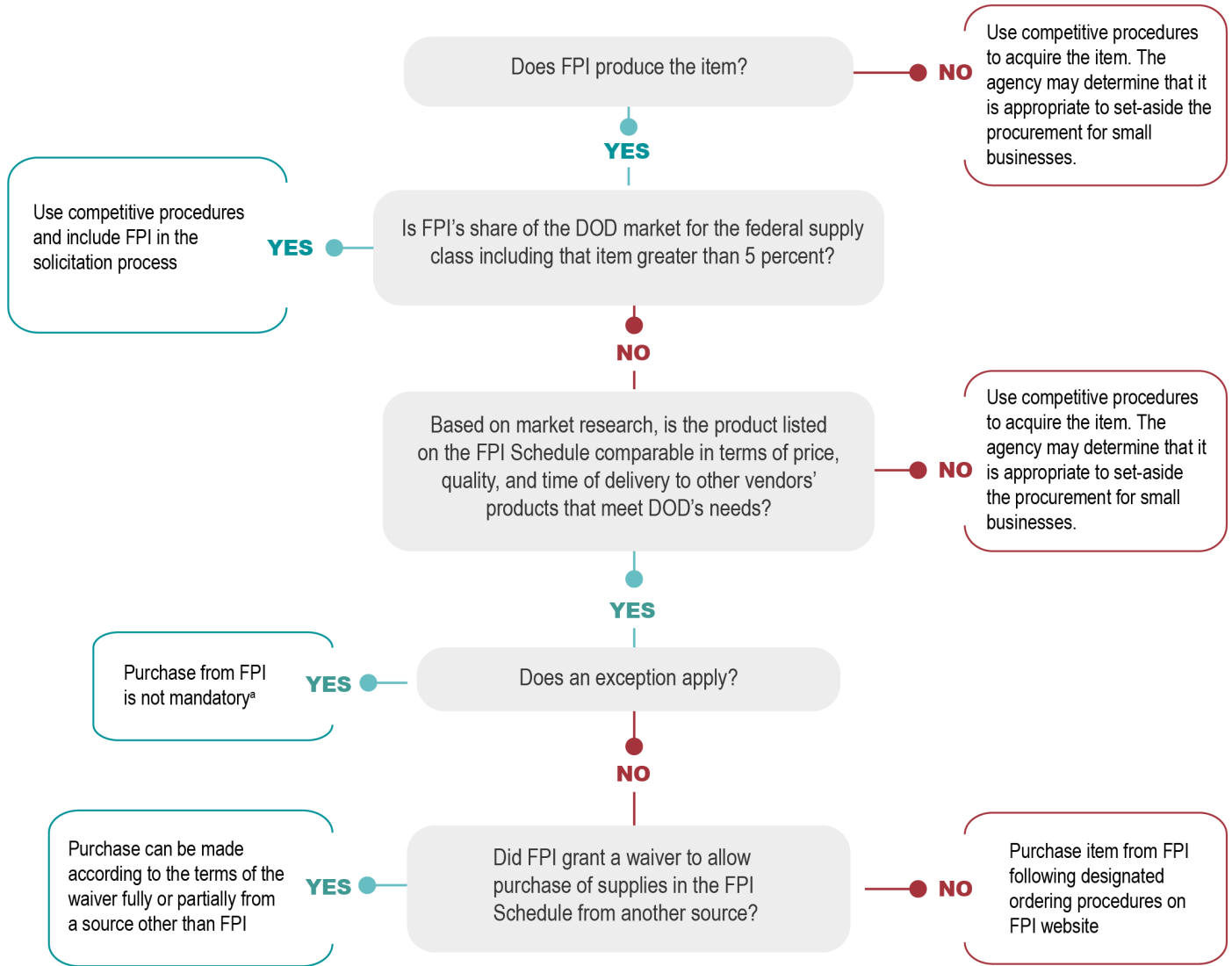
¹¹FAR 8.602(a)(3). FPI is a mandatory source for federal acquisitions of products, and purchase from FPI takes priority over other mandatory sources if the products they produce are identical. FAR 8.002 and 8.603; FAR 6.302-5(b). Preferences for small businesses and other set-asides are not mandatory under FAR Part 8. If an agency is unable to satisfy requirements from mandatory sources, it will consider non-mandatory sources, and small business and other set-aside preferences in FAR Part 19 may apply. Different priority rankings apply for the purchase of services.

¹²FAR 8.602(a)(4).

is included in the solicitation process.¹³ See figure 1 for the notional DOD process to determine whether to acquire a product from FPI as a mandatory source.

¹³FAR 8.602(a)(4)(i)(A); FAR 19.502-7.

Figure 1: Notional Process for Department of Defense (DOD) Decision-Making on Whether to Contract with Federal Prison Industries (FPI)



Source: GAO analysis of federal regulations. | GAO-23-106240

Note: 10 U.S.C. § 3905; Federal Acquisition Regulation subpart 8.6; Defense Federal Acquisition Regulation Supplement 208.602-70.

^aPurchase from FPI is not mandatory and a waiver is not required if any of the following exceptions apply: public exigency requires immediate delivery or performance; suitable used or excess supplies are available; the supplies are acquired and used outside the US; items total to \$3,500 or less; acquiring items that FPI offers exclusively on a competitive basis; or acquiring services.

FPI may grant a waiver for an agency to purchase products FPI offers from another source.¹⁴ In some cases, FPI may issue a general waiver that applies to all agencies for listed items not currently available from FPI. In other cases, an agency, such as DOD, may apply to FPI for a waiver if it seeks to acquire a product from another source.¹⁵ FPI considers these waiver requests on a case-by-case basis.

Prior GAO Work on Federal Prison Industries

In July 2020, we reported on challenges to evaluating the effectiveness of the FPI program.¹⁶ We found that the Bureau of Prisons had limited information about FPI's effect on recidivism and that, while the Bureau of Prisons had reported some descriptive statistics on recidivism rates, it had not developed a goal. We made two recommendations: that the Bureau of Prisons (1) update its program evaluation plan to set a new timeline for conducting an evaluation of FPI, and (2) develop a goal for FPI related to recidivism reduction and measure progress toward meeting that goal. The Bureau of Prisons concurred with the recommendations and took actions to implement them, including contracting with an external firm to evaluate FPI's effect on recidivism and by setting goals for reductions in recidivism. The firm performing the evaluation issued its report in September 2021.

In April 2023, we added Strengthening Management of the Federal Prison System to GAO's High Risk List.¹⁷ In doing so, we acknowledged the progress the Bureau of Prisons had made by addressing the two recommendations related to FPI from our July 2020 report. However, among other issues, in the High Risk report we cited the need for the Bureau of Prisons to more broadly (i.e., beyond FPI) improve data collection efforts related to inmates' risks of recidivism and needs for rehabilitation.

¹⁴FAR 8.604.

¹⁵Agencies do not need to apply for a waiver for services or items not on FPI's Schedule of Products.

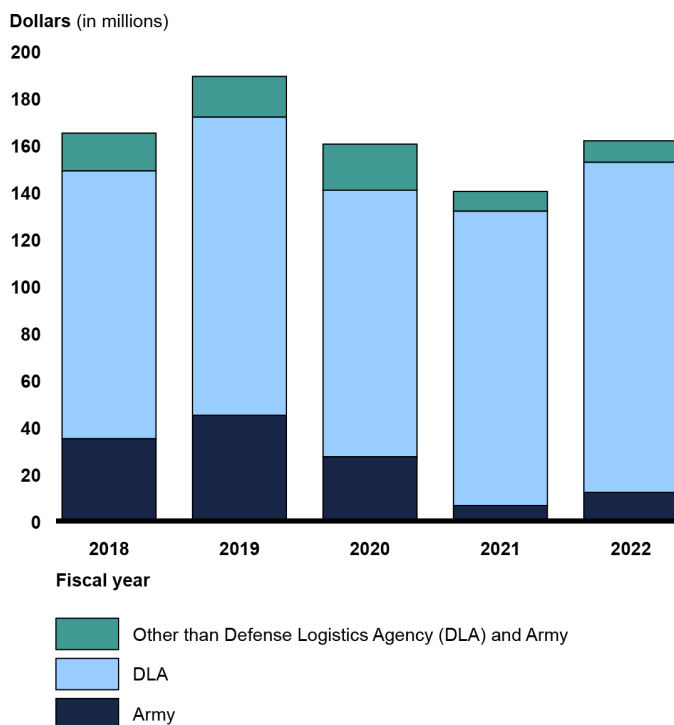
¹⁶GAO, *Federal Prison Industries: Actions Needed to Evaluate Program Effectiveness*, [GAO-20-505](#) (Washington, D.C.: July 29, 2020).

¹⁷GAO, *High-Risk Series: Efforts Made to Achieve Progress Need to Be Maintained and Expanded to Fully Address All Areas*, [GAO-23-106203](#) (Washington, D.C.: Apr. 2023).

DOD Obligated About \$163 Million Annually on Contracts with FPI and Used Market Research to Inform Contracting Decisions

DOD obligated an average of \$163 million annually from fiscal year 2018 through fiscal year 2022 on products and services acquired from FPI.¹⁸ During these years, DLA accounted for the largest share of DOD's total obligations on contracts awarded to FPI. Additionally, DLA and the Army collectively accounted for over 90 percent of DOD obligations to FPI. Figure 2 shows DOD's total annual obligations on FPI contracts, broken down by component.

Figure 2: Annual Department of Defense Obligations on Federal Prison Industries Contracts by Component, Fiscal Years 2018–2022



Source: GAO analysis of Federal Procurement Data System data. | GAO-23-106240

Note: All amounts are in fiscal year 2022 dollars.

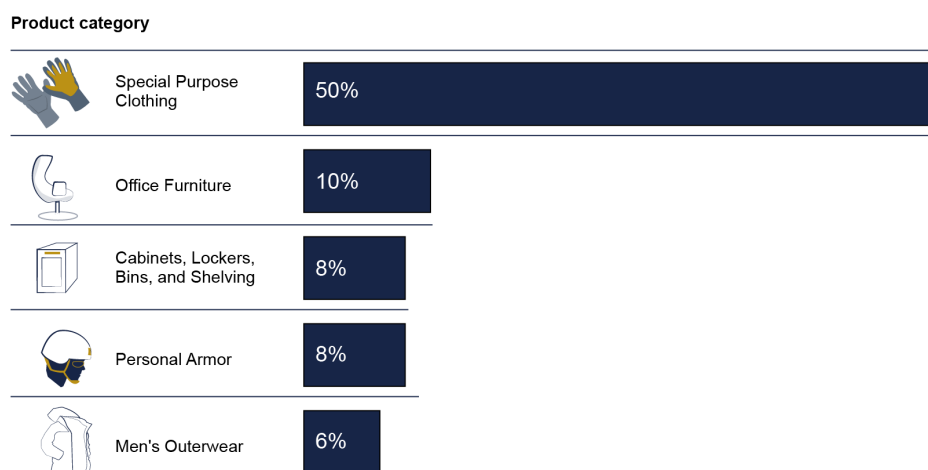
Over 99 percent of DOD obligations on contracts with FPI were made on firm-fixed-price contracts. A firm-fixed-price contract provides for a price

¹⁸Obligation amounts obtained from FPDS were adjusted for inflation to fiscal year 2022.

that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.¹⁹

More than 80 percent of DOD obligations to FPI were concentrated in five product categories. Furthermore, the most prevalent product category in terms of obligations—special purpose clothing, which includes items such as safety helmets and work gloves—accounted for almost 50 percent of all DOD obligations on FPI contracts (see fig. 3).

Figure 3: Top Five Federal Prison Industries Product Categories Purchased by Department of Defense by Amount of Obligations, Fiscal Years 2018–2022



Source: GAO analysis of Federal Procurement Data System data; GAO/icons. | GAO-23-106240

DOD is to conduct market research before purchasing a product from FPI. The FAR defines market research as collecting and analyzing information about capabilities in the market to satisfy an agency's needs. The FAR provides general policies and procedures for conducting market research, with the goal of arriving at the most suitable approach to acquiring, distributing, and supporting supplies and services.²⁰ Federal regulations provide some flexibility in terms of how and to what extent market research should be conducted. The extent of market research

¹⁹The firm-fixed-price contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. FAR 16.202-1. A firm-fixed-price contract is suitable for, among other things, acquiring commercial products or commercial services. FAR 16.202-2.

²⁰FAR Part 10.

varies, depending on factors such as urgency, estimated dollar value, complexity, and past experience.

To conduct market research related to the decision about whether or not FPI is a mandatory source, DOD contracting officials told us that they reviewed information available on FPI's website, reviewed contract history and contractor past performance information, and relied on contracting officer experience. FPI officials told us that FPI generally does not advertise its products and services, and primarily relies on its website to inform federal agencies of their offerings. FPI's website has multiple ways to identify available products, ranging from a schedule of product categories to an item search function. If DOD contracting officers identify FPI as able to provide the relevant FSC for the requirement, they may subsequently solicit quotes from potential vendors, including FPI. This step enables contracting officers to determine whether FPI and other vendors can provide the specific products and services to meet DOD needs within the relevant product category. DOD contracting officials also use market research information to inform the comparability analysis and determine whether FPI is comparable to other vendors in terms of price, quality, and time of delivery.

DOD must also determine whether FPI is a mandatory source. This determination is informed by whether or not FPI has a significant share of the market for a product, per Defense Federal Acquisition Regulation Supplement (DFARS) subpart 208.6. In particular, as discussed previously, when FPI has a significant market share for a product—defined as an item for which FPI's share of the DOD market for its FSC was greater than 5 percent—DOD must use competitive procedures to procure the product. Officials at DOD's Defense Pricing and Contracting calculate market share by analyzing FPI obligations as a percentage of total DOD obligations for each applicable FSC for the prior fiscal year. The Director of Defense Pricing and Contracting then issues a memorandum annually, hereafter called the "5 percent memorandum", which lists the FSCs for which FPI had more than 5 percent market share for the prior fiscal year.²¹ As part of developing this memorandum, DOD

²¹According to Defense Pricing and Contracting officials, the memorandum is issued around the March timeframe because FPDS data for a fiscal year is not finalized until the end of January of the following fiscal year in accordance with the timeframe stated in FAR subpart 4.604(c). See, for example, Department of Defense, "Purchases from Federal Prison Industries; Updated List of Federal Supply Classification Codes to be Competed," (Washington D.C.: Apr. 25, 2023).

officials told us they coordinate with officials at the Office of Federal Procurement Policy and at FPI to ensure concurrence on the process and results.²² Generally 30 days after the memorandum’s issuance, DOD is required to use competitive procedures for the list of FSCs identified in the memorandum, and this list stays in effect until a subsequent memorandum becomes effective.

Since 2018, 14 FSCs have appeared on memorandums as having greater than 5 percent of DOD’s market share (see table 1).

Table 1: Product Categories for Which Federal Prison Industries Had More than 5 Percent of DOD Market Share, for Memorandums Issued in 2018–2023

Description	FSC number	2018	2019	2020	2021	2022	2023
Office furniture	7110	-	-	X	X	-	-
Cabinets, lockers, bins, and shelving	7125	X	X	X	X	X	X
Household furnishings	7210	-	X	X	X	-	X
Draperies, awnings, and shades	7230	X	-	-	-	-	-
Standard forms	7540	-	X	-	-	-	-
Athletic and sporting equipment	7810	-	X	-	-	-	-
Bags and sacks	8105	-	-	-	-	X	-
Men’s outerwear	8405	X	-	X	X	X	X
Women’s outerwear	8410	-	-	-	-	-	X
Special purpose clothing	8415	-	-	X	X	X	X
Men’s underwear and nightwear	8420	X	X	X	X	X	X
Individual equipment	8465	-	-	-	-	-	X
Personal armor	8470	-	X	-	-	-	-
Signs, advertising displays, and identification plates	9905	-	-	-	-	-	X

Legend: X = Included in memorandum; - = Not included in memorandum

Source: GAO analysis of Department of Defense (DOD) documentation. | GAO-23-106240

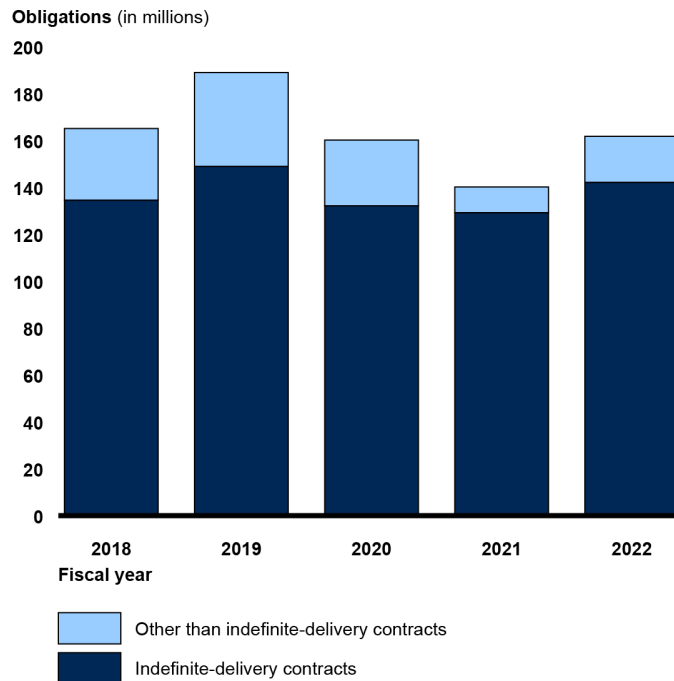
²²The Office of Federal Procurement Policy within the Office of Management and Budget provides direction for government-wide procurement policies, regulations, and procedures.

The vast majority—about 84 percent—of DOD obligations on FPI contracts were on delivery orders under indefinite-delivery contracts.²³ For the remainder, DOD used various contract vehicles, including blanket purchase agreements and purchase orders (see fig. 4).²⁴

²³Indefinite-delivery contracts provide flexibility and can be used to acquire products and services delivered to the government in cases where the exact times or exact quantities are not known at the time of award. These types of contracts allow the government to issue orders for specific products and services as the need arises. Contracts may be awarded to multiple vendors under a single solicitation for the same or similar supplies or services (commonly referred to as a multiple-award indefinite-delivery contract) or to a single vendor (commonly referred to as a single-award indefinite-delivery contract). FAR subpart 16.5. While orders off of multiple-award contracts are generally subject to a “fair opportunity” process, orders may be directly placed on single-award indefinite-delivery contracts, whether the base contract was awarded competitively or not.

²⁴Blanket purchase agreements can be used to fill anticipated repetitive needs for supplies and services through the establishment of “charge accounts” with a qualified source of supply to facilitate future purchases, and are not contracts. FAR 13.303-1(a). A purchase order is an offer by the government to buy supplies or services upon specified terms and conditions. FAR 2.101. Purchase orders and blanket purchase agreements can be used when following simplified acquisition procedures.

Figure 4: Department of Defense Annual Contract Obligations to Federal Prison Industries by Contract Vehicle, Fiscal Years 2018–2022



Source: GAO analysis of Federal Procurement Data System data. | GAO-23-106240

Note: All amounts are in fiscal year 2022 dollars.

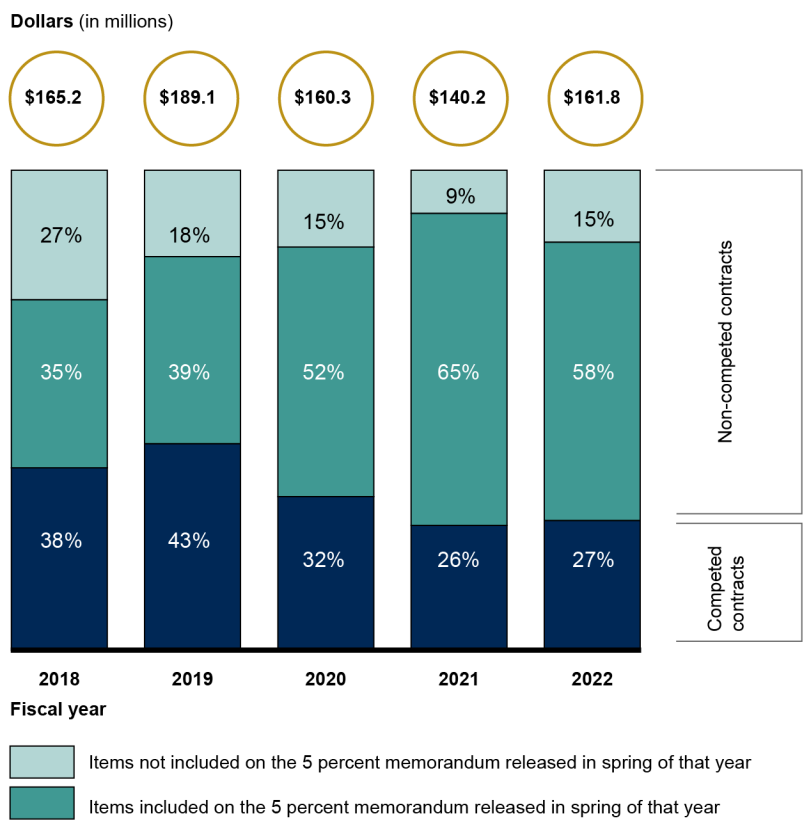
For products FPI makes, the 5 percent rule in effect at the time applies to new solicitations of contracts, including indefinite-delivery contracts. According to DOD officials, and as stated in several of the 5 percent memorandums, the memorandum that is applied during the solicitation of a contract also applies to resultant orders on that contract.²⁵ In other words, the memorandum applies to orders on the indefinite-delivery contracts throughout the period of performance of the contract. Consequently, if the award of a multiple-year, single-award indefinite-delivery contract to FPI is not required to be competed because the product category is under the 5 percent threshold for the year of the solicitation, DOD does not need to recompete orders placed under that

²⁵The 2018, 2019, and 2020 memorandums contained the language “shall apply to new solicitations and the resultant contracts/orders,” but this language was absent from the 2021, 2022, and 2023 memorandums. A DOD official confirmed that it was the intent that this approach to resultant orders still applied in 2021 through 2023 and told us that they intend to reintroduce the language to the 2024 memorandum.

contract in subsequent years. Instead, even if the product category were to exceed the 5 percent threshold in those years, DOD may fulfill requirements through delivery orders issued to FPI under the existing indefinite-delivery contract.

From fiscal years 2018 through 2022, the percentage of DOD obligations on contracts awarded competitively to FPI ranged between 26 percent and 43 percent (see fig. 5).

Figure 5: Department of Defense Annual Contract Obligations on Contracts With Federal Prison Industries on Competed and Non-competed Contracts, Fiscal Years 2018–2022



Source: GAO analysis of Federal Procurement Data System data. | GAO-23-106240

Note: All amounts are in fiscal year 2022 dollars. Percentages may not sum to 100 percent due to rounding. Because DOD’s memorandums are updated midway through the fiscal year, a fiscal year analysis will not reflect the memorandum that applies for the beginning of the fiscal year.

We found, however, a large portion of obligations on noncompeted contracts with FPI were for items included on the 5 percent memorandum issued in the spring of that fiscal year. They were not competed, in part, because a large proportion of these obligations were on orders associated with single-award, indefinite-delivery contracts awarded directly to FPI pursuant to a memorandum from a prior year. Specifically, over the reviewed period, over half of DOD obligations were associated with single-award, indefinite-delivery contracts initially awarded to FPI in a prior year. For example, using FPDS data, we identified an indefinite-delivery contract solicited in fiscal year 2019 that was directly awarded to FPI because the acquired product—extreme cold weather jackets—was not associated with an FSC on the 2019 5 percent memorandum. The relevant FSC—special purpose clothing—was subsequently added to the 5 percent memorandum in 2020, and was again on the list in 2021. Because the 2019 indefinite-delivery contract was a direct award, however, the delivery orders, totaling \$14 million in obligations in 2020 and 2021, were noncompetitively awarded to FPI.

Relatedly, FPI officials indicated that they prefer to secure longer-term indefinite-delivery contracts from DOD in situations where FPI has close to 5 percent share of DOD’s market. By doing so, they continue to receive delivery orders on the existing contract in subsequent fiscal years through the original direct award, even if the product category is added to the 5 percent memorandum.

DOD Contracts Reviewed Generally Met Key Requirements We Assessed

DOD generally complied with the three federal and defense acquisition requirements we assessed when awarding the 12 contracts reviewed. Our contract selections included eight contracts awarded to FPI, and four contracts that DOD did not award to FPI but that were for FSCs that include items produced by FPI. Table 2 shows our assessment of two requirements for the eight contracts we reviewed that were awarded to FPI.²⁶

²⁶We did not review waivers of the requirement to award to FPI for contracts awarded to FPI, since a waiver was not applicable.

Table 2: Assessment of Whether Eight Fiscal Year 2021 DOD Contracts Awarded to Federal Prison Industries (FPI) Met Selected Requirements

Component	Product category	Awarded in accordance with DOD guidance ^a	Comparability analysis documented
Defense Logistics Agency	Men's outerwear	Y	Y
Defense Logistics Agency	Men's outerwear	Y	N/A ^b
Defense Logistics Agency	Power equipment	Y	Y
Defense Logistics Agency	Power equipment	Y	N
Army	Furniture and fixtures	Y	Y
Army	Furniture and fixtures	Y	Y
Army	Men's outerwear	Y	Y
Army	Men's outerwear	Y	Y

Source: GAO analysis of Department of Defense (DOD) contracting data. | GAO-23-106240

^aConsistent with Defense Federal Acquisition Regulation Supplement 208.6, DOD issues an annual memorandum that lists the product categories for which FPI has more than 5 percent of the DOD market. In general, contracts for product categories on the list should be competitively awarded, while contracts for products FPI offers in federal supply classifications not on the list should be directly awarded to FPI. We considered a contract "awarded in accordance with DOD guidance" if it was competed or directly awarded to FPI consistent with the memorandum in effect at the time of the solicitation.

^bA documented comparability analysis was not required under Defense Logistics Agency guidance.

All eight contracts were awarded competitively or directly awarded to FPI consistent with selected regulations and guidance. DOD directly awarded three of the eight contracts to FPI, rather than competing them, even though they were for product categories included on the 2021 memorandum (indicating that FPI had more than 5 percent market share at the time of the award). However, these awards were made consistent with selected regulations and guidance because, similar to what we reported above, they were orders on single-award indefinite-delivery contracts awarded in prior years. The decisions not to compete were subject to memorandums that did not contain those product categories.

Contract files for six of the eight awards to FPI contained a documented comparability analysis. This documentation ranged from a few sentences affirming comparability with reference to market research to several multi-page documents. In one comprehensive example, on a \$1 million order for power cable assemblies, DLA contracting officials developed market research for a list of similar items and parts the user needed and performed analysis to determine which of these items were provided by FPI at a comparable price, quality, and time of delivery. They then grouped these items into a single contract that DLA directly awarded to FPI, and acquired the items deemed not comparable separately.

For both of the contracts that did not document a comparability analysis, contracting officials told us that the decision to not develop one was based on component-level guidance.

- In one case, the DLA contracting officer told us that a comparability analysis was not necessary for orders below a certain dollar threshold, and provided us with DLA’s guidance to support this claim. In reviewing the guidance, however, we found that it stated the comparability assessment should be documented, even at dollar amounts below the stated threshold. We further identified some inconsistencies within DLA’s guidance that led to the misinterpretation of requirements. After informing DLA officials responsible for developing the guidance of the discrepancy, they updated their guidance in May 2023 to clarify the requirement and mitigate confusion in the future.
- In the other case, the DLA contracting officer told us that a comparability analysis was not required for competitively awarded contracts to FPI under DLA’s guidance, which we confirmed.

Similarly, our review found that DOD generally met the selected requirements we assessed for the four contracts awarded to private sector vendors, or that the requirements were not applicable (see table 3).

Table 3: Assessment of Whether Four Fiscal Year 2021 DOD Contracts with Private Vendors Met Selected Requirements on Contracting with Federal Prison Industries (FPI)

Component	Product category	Awarded in accordance with DOD guidance ^a	Comparability analysis documented	Waiver obtained
Defense Logistics Agency	Power equipment	Y	N/A ^b	N ^c
Defense Logistics Agency	Power equipment	Y	N/A ^b	N ^c
Army	Furniture and fixtures	Y	N/A ^d	Y
Army	Furniture and fixtures	Y	N/A ^b	N ^c

Source: GAO analysis of Department of Defense (DOD) contracting data. | GAO-23-106240

^aConsistent with Defense Federal Acquisition Regulation Supplement 208.6, DOD issues an annual memorandum that lists the product categories for which FPI has more than 5 percent of the DOD market. In general, contracts for product categories on the list should be competitively awarded, while contracts for products FPI offers in federal supply classifications not on the list should be directly awarded to FPI. We considered a contract “awarded in accordance with DOD guidance” if it was competed or directly awarded to FPI consistent with the memorandum in effect at the time of the solicitation.

^bNo comparability analysis was documented because the specific item being acquired was not produced by FPI.

^cNo waiver was obtained because the specific item being acquired was not produced by FPI.

^dNo comparability analysis was documented because the direct award requirement was waived by FPI.

None of the four contract files we reviewed included an assessment of whether products offered by FPI were comparable. We determined, however, that a documented comparability analysis was not needed because in each of the four cases, the specific requirement being acquired was not one that FPI could fulfill.

For one of the four contract files, a general waiver was cited, and for the other three, contracting officers did not rely on a waiver of the requirement to preference FPI. In discussions of each of these contracts, contracting officials explained the circumstances behind their decision:

- For a \$355,000 Army contract for a suite of items to furnish an Air Force base school in Germany, contracting officials pointed to a general waiver on the FPI website for full package contracts on furniture, such as this one.²⁷
- In another case, a \$214,000 Army contract to furnish a videoconferencing room included furniture, which FPI makes, as well as audio-visual equipment, which FPI does not make. The contract was characterized as being for furniture because the predominate value of the contract was for furniture, according to the market research report. However, the contracting official we spoke with confirmed that FPI could not fulfill the audio-visual requirement.
- For the other two contracts, contracting officials identified the product as part of a category FPI makes, but the requirement included a proprietary design that FPI was unable to produce. In particular, these DLA contracts were both for aircraft power cable equipment, which FPI makes. In both cases, however, the defense contractor that developed the specific design had only licensed one vendor to produce them, so DOD contracted with that vendor.

Agency Comments

We provided a draft of this report to DOD and the Department of Justice for review and comment. Neither department had any comments on the draft report.

²⁷In order to furnish the school, the package included items FPI produces, such as folding chairs, as well as items FPI does not produce, such as a pottery wheel and tuba stands.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Defense, the Attorney General, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4841 or sehgalm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix I.

A handwritten signature in black ink, appearing to read 'M. Sehgal', with a long horizontal stroke underneath.

Mona Sehgal
Acting Director, Contracting and National Security Acquisitions

Appendix I: GAO Contact and Staff Acknowledgments

GAO Contact

Mona Sehgal at (202) 512-4841 or sehgalm@gao.gov

Staff Acknowledgments

In addition to the contact listed above, Janet McKelvey (Assistant Director), Scott Purdy (Analyst-in-Charge), Rose Brister, Breanne Cave, Kurt Gurka, David Hu, Gabriel Nelson, Anne Louise Taylor, Alyssa Weir, and Robin Wilson made key contributions to this report.

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