

Statement
of
Pete Hoekstra
United States Representative, Second District of Michigan

Before
the Subcommittee on Crime
Committee on the Judiciary
U.S. House of Representatives

Hearing
on
Federal Prison Industries
and
the Federal Prison Industries Competition in Contracting Act of 2001
(H.R. 1577)

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2237 Rayburn House Office Building

Mr. Chairman (Mr. Smith of Texas), I thank you for scheduling today's hearing on Federal Prison Industries (FPI) and the need to bring about fundamental change to the corrosive manner in which the program operates today. Such reform has remained sorely needed for far too long. With you as the new Chairman of the Subcommittee on Crime and Jim Sensenbrenner as the new Chairman of the Judiciary Committee, the prospects for actually moving forward on such reform are much improved.

As you requested, I introduced the "Federal Prison Industries Competition in Contracting Act of 2001" (H.R. 1577). H.R. 1577 is an improved version of the bill in the 106th Congress (H.R. 2551). You and the members of Subcommittee were furnished a summary of the bill along with the bill text. Many of the improvements are an outgrowth of the protracted discussions conducted in the last Congress with the former Chairman of this Subcommittee. They are fully supported by the Federal Prison Industries Competition in Contracting Coalition, both from the business community and by the AFL-CIO on behalf of organized labor. Most notably, it provides a "soft landing" for FPI. A five-year transition period during which it may adjust to the loss of its mandatory source status with safeguards against abuse.

Other provisions of H.R. 1577, such as the bill's provisions to enhance opportunities for inmates to obtain modern "hands-on" vocational training linked to remedial education, are included because access to such opportunities has been shown to improve the prospects for obtaining a job that pays a living wage upon release. Other provisions, such as those seeking to expand job placement opportunities for inmates, were included at the suggestion of the AFL-CIO. They are still in their rudimentary stages and will benefit from the assistance of members of this Committee, especially the Ranking Democratic Member, my colleague from Michigan, who are dedicated to giving inmates the most help possible in making a successful return to society. Individual inmates and their families, as well as society at large, will benefit if we better prepare inmates to make a successful reentry into society.

Other provisions of the bill, such as those related to inmate wages, grew out of suggestions made on Pat Nolan on behalf of Chuck Colson's Prison Fellowship Ministries. They try to recognize the concepts of "restorative justice" by increasing amounts deducted from inmate wages allocated to the payment of victim restitution. They give greater priority to the funds the inmate can allocate to staying in touch with his or her family. They enable the inmate to build a "gate fund," savings that will increase the likelihood of a successful return to society.

FPI's continued advocacy for authority to sell products and services in the commercial market will likely generate a new round of intense discussions. Business and organized labor remain steadfastly opposed on very practical grounds as well as issues of fundamental principle. Providing new work opportunities by allowing inmates to help with the public service activities of nonprofit organizations has been accepted in concept, but has not been placed on the table.

I am again privileged to have Rep. Barney Frank as the principal Democratic co-sponsor, with Rep. Mac Collins and Rep. Carolyn Maloney as lead bipartisan co-sponsors. We are again privileged to have Jim Sensenbrenner and Howard Coble as original cosponsors. Mr. Frank and I look forward to having the opportunity to demonstrate to Mr. Conyers that this version of the bill is even more worthy of his cosponsorship than the bills he cosponsored in the 105th Congress and 106th Congress. Finally, Mr. Chairman, we hope that you will again find yourself able to lend your support to our bill, as you did in the 105th and 106th Congress. It remains a firm foundation upon which you and other Members of the Committee can structure fundamental FPI reform.

Today, I plan to share with the Subcommittee the records of five oversight hearings I conducted during the 105th and 106th Congress, while I chaired the Subcommittee on Oversight and Investigations of the Committee on Education and the Workforce. I believe that these hearings and other assessments further demonstrate that the current FPI program must be fundamentally reformed. Those reforms are provided in the H.R. 1577, the “Federal Prison Industries Competition in Contracting Act of 2001.” That view is shared by a broad coalition that encompasses virtually all segments of the business community joined with organized labor, led by the AFL-CIO. It includes a number of the Federation’s affiliated unions, whose members feel just as strongly as Mr. Glover that FPI cannot be allowed to continue to operate as it does today.

The current FPI system is fundamentally unfair to private-sector firms, large and small. Under FPI’s mandatory source status, they are foreclosed from being able to even bid on more than a half a billion dollars worth of federal contract opportunities funded with taxpayer dollars. Law-abiding private-sector workers are deprived of job opportunities in the name of providing work opportunities for inmates. During my testimony before this Subcommittee in the 106th Congress, I recounted a series of specific examples. Other testimony received today will amplify that theme.

FPI’s federal agency “customers” are also victims under the current system. They, and the taxpayer dollars charged to their care, are made prisoners by FPI’s array of preferences. Under FPI’s mandatory source status, FPI’s captive federal agency “customers” are required to purchase products offered by FPI, even if the agency can obtain a commercial product that better meets its needs, get it more quickly, and get it at a lower price, even a substantially lower price. A buying agency must actually obtain FPI’s permission, a waiver, before being able to get the “best value” for the taxpayers’ money.

Under its Depression-era authorizing statute, FPI, rather than the buying agency, has the power to determine whether FPI’s offered product and delivery schedule adequately meets the buying agency’s mission needs. FPI, rather the buying agency, determines the reasonableness of the price that the buying agency will have to pay to FPI. FPI can compel the buying agency to accept its offered price, so long as FPI’s offered price is less than the highest price offered to the government, regardless of whether any purchases were actually made at that price.

These preferences allow FPI to perpetuate the myth of being self-sustaining. Under the current system, FPI can help itself to the appropriated funds of its captive federal agency customers. Too frequently, Federal agencies must accept products of lesser quality at a higher price than are competitively available from the commercial market, and receive them late.

Dollars appropriated for military readiness or quality of life can be unilaterally diverted by FPI. When we are demanding that Federal managers and employees do “more with less” and do it “faster, better, and cheaper,” it should be no surprise that the Federal Managers Association supports our FPI reform legislation.

Recently, the Social Security District Office in Holland, Michigan transferred to new space. Although the office is within miles of the manufacturing facilities of some of the nation’s most prominent office furniture manufacturers, that Social Security office had to be furnished with FPI product. FPI was a month late in delivering their product, which delayed the move for a month. The Social Security Administration had to pay \$13,500 in rental for the new space as well as rental on the existing space. FPI justified the delay on the basis that its production was shutdown while it converted to a new computerized inventory system. Fortunately for Social Security beneficiaries, the Social Security Administration recognizes that it can’t just suspend operations for a month during computer system upgrades. They recognize that there would be consequences. FPI has no such concerns.

The failures of the current system does not stop with its unfair treatment of business and workers and FPI’s authorized exploitation of federal agencies. The current system even fails the inmates used to justify FPI’s excesses.

We should do more to prepare inmates for a successful return to society. Many inmates need access to remedial educational opportunities. They need more access to modern, “hands-on” vocational education opportunities that will prepare them for jobs that will pay a living wage. This has repeatedly been suggested by organized labor and the business community. Most prison industry jobs may impart fundamental work skills such as learning to be on time, work as part of a team, and complete an assigned task. The same skills can be learned as part of inmate work details that help maintain and run the prisons. Coupled with appropriate vocational and remedial education programs, helping to run the prison kitchens, the laundries, doing electrical, plumbing and carpentry repairs and alternations are long-term work opportunities that can steadily develop practical skills that are actually marketable upon release.

Why did FPI have 6,149 inmates, nearly one-third of its workforce, engaged in textile manufacturing during 1999, when unemployment among skilled textile workers remains substantially higher than the national average due to foreign imports? The answer does not lie in FPI's desire to impart technical skills to improve job prospects upon release. The answer lies in the fact that a \$1 billion military clothing market is there for the taking without any consequences for FPI. Rather, the consequences are suffered by the small group of American suppliers capable of meeting military requirements, and their non-inmate workers, as you shall shortly hear. The consequences are also borne by the Department of Defense which has to watch as successive FPI expansions steadily erode the industrial base that supports military readiness, a base that probably can't be rebuilt.

H.R. 1577 addresses these problems by simply making FPI compete for its government contracts and to fully perform them like any other supplier to the government.

FPI says that loss of mandatory source will result in massive inmate idleness. Only 20 percent of inmate work opportunities are provided through FPI. The vast majority of inmates work at helping maintain and operate the correctional institutions in which they are incarcerated.

FPI asserts that it will lose work for the inmates employed by FPI if they lose their mandatory source status. This assertion squarely contradicts the statements annually made in FPI's report to the Congress that FPI only delivers its federal agency customers a high-quality product, on-time, at market prices. From my business experience, that's the description of a successful competitor. Both can't be true.

I also urge you to ask the proponents of letting FPI compete in the commercial market to explain how FPI can say with a straightface that it will be able to successfully compete in the rough-and-tumble of the commercial market, but it can't compete in the federal market. Generally, the laws prescribing the federal procurement process place get emphasis on according fair treatment to all prospective suppliers.

As I mentioned before, H.R. 1577 does not alter many of FPI's other advantages over its private-sector competitors. FPI's highest wage of \$1.23 per hour is about one-quarter of today's federal minimum wage. FPI's facilities, its workshops, are constructed with appropriated funds as part of prison construction. FPI can take, at no cost, excess government equipment for use in conducting its industrial operations.

FPI has a \$20 million line-of-credit at the U.S. Treasury at rates well below rates available to a Fortune 100 firm, much less any small business.

Within the government market, federal agencies would be required to solicit an offer from FPI for any product or service that FPI is authorized to sell by its Board of Directors. Small businesses in your district will tell you that they have to find government contract opportunities, an increasingly daunting task.

H.R. 1577 provides special authority for the award of a contract to FPI on a non-competitive basis when the work is needed to maintain safety. This provision was expressly included for the protection of guards, like Mr. Glover, and other prison staff. It is permanent.

So that FPI doesn't abuse this authority, the decision to allow FPI to take the contract must be supported by the warden at the prison where the work is to be performed. FPI asserts that the authority will not be used. I simply can't believe that any warden would voluntarily endanger any staff member simply to avoid making the determination required to support the sole-source award of the contract to FPI to continue the flow of needed inmate work. More realistic are the fears of the business community: that the "safety value" authority will be abused.

As I mentioned earlier, H.R. 1577 provides a five-year period for FPI to adjust to the loss of its mandatory source status. During this transition period, federal agencies would be able to make a non-competitive award to FPI, if the buying agency determines that FPI's offered product and delivery schedule meet its mission needs and that FPI's offered price is fair and reasonable as compared to market prices. Use of this authority would be subject to annually decreasing caps. The caps are quite generous. Ninety (90) percent in the first year. Eighty-five (85) percent in the second year. Seventy (70) percent in the third year. Fifty-five (55) percent in the fourth transition year and 40 percent in the final transition year.

Some urge that we must guarantee FPI sufficient business to guarantee work for the 20 percent of the inmates currently employed by FPI and to guarantee expansion of FPI work opportunities to 25 percent of the inmate population.

Are these guarantees to be made at the expense of law-abiding workers and the firms that employ them? Are these jobs to be guaranteed at the expense of federal agencies and the taxpayer dollars entrusted to their care?

Despite the benefits of inmate work opportunities in combatting idleness and helping to prepare inmates for a successful return to society, guaranteeing government contract work or commercial contracts to FPI, at any price, is simply too much for most in the business community and in the labor community. It certainly doesn't ring true to me.

Having said that, I am confident that the business community and organized labor will evaluate any proposal with an open mind. What they have seen to date, simply didn't make the grade.

Mr. Chairman and Members of the Subcommittee, I look forward to working with you on promptly advancing this bill, early in the First Session of this Congress. Action has been blocked too frequently in the past.