

**With 100 factories employing more than 21,000 inmates, FPI [Federal Prison Industries] booked \$546.3 million in net sales last year. The Bureau of Prisons uses FPI's gross profits (about \$34 million last year) to build factories and expand into new products and services. And FPI is looking to grow because 12,000 additional federal inmates are expected to go to work for the corporation between now and 2007.<sup>1</sup>**



# FEDERAL PRISON INDUSTRIES

## ENDING THEIR MANDATORY SOURCE STATUS

**N**o ordinary employer, UNICOR is a “wholly owned government corporation,” created to further the Bureau of Prison’s goal of providing meaningful work for inmates in federal institutions.<sup>2</sup> In fiscal year 2001, UNICOR was the 67th largest contractor with the Department of Defense (DoD) with over \$211 million in contracts.<sup>3</sup> FPI competes with one of Michigan’s largest industries, furniture manufacturing, and also supplies many products to the U.S. Army’s Tank Automotive and Armaments Command (TACOM) located in Warren.

In 1934, the 73rd Congress created the Federal Prison Industries. Until 2001, the legislation that created UNICOR remained unchanged.<sup>4</sup> It required, “FPI to operate on the state-use principle, selling the goods that it produces only to federal departments and agencies. Sale to the public in competition with private enterprise is prohibited. Federal departments and agencies must purchase FPI products to meet their requirements as long as FPI’s prices are competitive.”<sup>5</sup> Products include modular office furniture, components for missile guidance systems, and many clothing items used by our armed forces sold exclusively to federal agencies.

Private industry objected to UNICOR’s mandatory source status with the federal government. As a result, Congress amended the statutes controlling UNICOR eliminating its mandatory source status with the federal government. Now federal contracting officers may purchase items available through UNICOR from other sources.<sup>6</sup>

FPI’s charter requires it to provide employment for the greatest number of inmates eligible to work.<sup>7</sup> About 15 percent of the inmates in federal prisons work in

FPI factories<sup>8</sup> and nearly 60 percent of its contracts are with the DoD.<sup>9</sup>

Rehabilitation, not profit, is the intent of the program. FPI’s profits go right back to the organization to run itself.<sup>10</sup> This employment gives the inmates of federal prisons a maximum opportunity to acquire a knowledge and skill in trades that will provide them a means of earning a livelihood upon release.<sup>11</sup> UNICOR’s charter foresees expansion of its programs and products.<sup>12</sup> As the inmate population increases, expansion will be necessary,<sup>13</sup> but expansion conflicts with FPI’s responsibility to minimize the impact on private business.<sup>14</sup> FPI’s charter states: “no single private industry shall be forced to bear an undue burden of competition from the products of the prison workshops . . . .”<sup>15</sup>

Even with these limitations, UNICOR operates as a business.<sup>16</sup> Its board of directors consists of representatives from industry, labor, agriculture, retailers and consumers, the Secretary of Defense, and the Attorney General.<sup>17</sup> The money received is deposited in an account with the U.S. Treasury and used: (1) as operating capital; (2) in the lease, purchase, other acquisition, repair, alteration, erection, and maintenance of industrial buildings and equipment; (3) in the vocational training of inmates; and (4) paying . . . compensation to inmates employed in any industry.<sup>18</sup>

UNICOR makes 30 different types of products that can be purchased from the federal supply schedule. One criticism against UNICOR is that it makes technically complicated parts, and U.S. Rep. Peter Hoekstra (R-MI) has argued that we do not want prisoners making “stuff for our elaborate weapon systems.”<sup>19</sup> However,

UNICOR’s production of office furniture appears to be the driving force behind the efforts to eliminate mandatory source status.<sup>20</sup>

UNICOR had annual sales of more than \$500 million during the past several years. Office furniture averaged over 28 percent of this amount. Congressman Hoekstra represents an area of Michigan that contains several office furniture manufacturers including Steelcase Furniture of Grand Rapids, which employs 18,000 people worldwide.<sup>21</sup> In 1998, UNICOR outsold Steelcase in sales to the federal government.<sup>22</sup> By September 2003, after mandatory source status ended, Steelcase sold five times more furniture to the federal government than UNICOR.<sup>23</sup>

Through the efforts of Congressman Hoekstra and Senator Carl Levin, UNICOR’s mandatory source status ended in 2002. As amended, 10 USCS 2410n states: If the product is not comparable in price, quality, or time of delivery to products available from the private sector that best meet the Department’s needs, competitive procedures shall be used for the procurement.

Senator Levin said that the change ends FPI’s “mandatory preference, and Federal Prison Industries would have to compete for future Department of Defense contracts.” Even though UNICOR still retains mandatory source status if it produces a product equal, or comparable, to those available in the private sector,<sup>24</sup> the change requires UNICOR to compete for federal contracts when the private sector produces a similar item.

The new law resulted from a compromise between those who would eliminate UNICOR altogether and those who would allow it to expand to additional markets. In 1999, Congressman Bill McCollum (R-FL) attempted to pass legislation to expand UNICOR in an effort to put more prisoners to work. This legislation would have

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allowed FPI to sell products on the open market.<sup>25</sup> In contrast, Congressmen Hoekstra and Barney Frank (D-MA) along with Senator Levin initiated legislation that “would have narrowed the parameters on work performed and goods sold by FPI in an effort to protect small business.”<sup>26</sup> The new law neither allows UNICOR to compete in the private sector, nor has it restricted the products it produces.

The effort to change the law started in 1996 when Congressman Hoekstra confronted UNICOR’s effort to expand furniture production. He stated: “FPI’s proposal to increase sales to \$80 million over a six-year period can be seen for what it is—a plan to dominate a segment of the federal furniture market and do so at the expense of private-sector furniture suppliers.”<sup>27</sup> Lobbying efforts intensified in 2000 when the Competition in Contracting Act Coalition spearheaded by furniture makers Herman Miller, Haworth, and Steelcase hired the firm Fierce & Isakowitz to make its case on Capitol Hill. “The hiring of the firm—whose named partners are Donald Fierce, a former senior official with the Republican National Committee, and Mark Isakowitz, a veteran Republican lobbyist—represent[ed] the first time anti-FPI forces banded together to hire outside lobbyists.”<sup>28</sup>

Major supporters of UNICOR, Congressman Bill McCollum, (R-FL) and Senator Phil Gramm (R-TX) have left Congress. When Phil Gramm retired in 2001 and Bill McCollum lost his bid for re-election in 2000, UNICOR lost its greatest elected allies. The legislation ending UNICOR’s mandatory source status passed in the next Congress.

Those who want to see UNICOR left alone argue its purpose is rehabilitation through work that teaches inmates a useful skill. UNICOR offers much more to prisoners than menial labor. Studies show prison work experience produces better-behaved prisoners during confinement, lower recidivism rates, and higher rates of constructive employment after release.<sup>29</sup> The industrial wing of the Federal Bureau of Prisons provides a model of labor force efficiency; it offers hundreds of on-the-job training, vocational education, and apprenticeship programs in federal prisons while making a profit at the

same time. UNICOR is “widely diversified, well managed, and . . . profitable.”<sup>30</sup>

Employment results in greater prison stability by reducing control problems. Kathleen Hawk, Director of the Bureau of Prisons, told Congress that FPI “is the most effective correctional management program to relieve inmate idleness and ensure the orderly operation of federal prisons.”

As a business, FPI generally earns profits at twice the average rate of all American industries; it has been termed “far and away the most profitable line of business in the country.” FPI reinvests its profits in new manufacturing facilities and equipment. Some profits also go to support inmate education and vocational training, and even to pay the wages of prisoners employed in institutional-support capacities within the federal prisons.<sup>31</sup>

The new law fails to offer new programs for FPI to replace the work lost, it fails to provide money to the prison system to replace the lost income, and it fails to offer a solution to the inmate control problem that would likely result. Inmate populations, despite recent drops in crime rates and the enormous costs of incarceration, continue to rise. Meanwhile, in a conundrum that virtually defines “penny wise, pound foolish,” education and job training get cut instead.<sup>32</sup>

The debate cannot lose sight of the public interest. Many contemporary prisons do little more than warehouse their human residents by subjecting them to coerced and regimented idleness. Eliminating or reducing UNICOR will only aggravate the problem. Marianne Cantwell, FPI’s General Counsel, expressed concern that a substantial loss of business to FPI could lead to more violence and discontent in prisons.<sup>33</sup>

If FPI were reduced or eliminated, the federal government still has the obligation to house, feed, secure, and occupy the time of these inmates. Using 1993 as an example, incarceration costs of FPI’s inmate workforce totaled almost \$200 million.<sup>34</sup> The portion of the money UNICOR receives to offset these costs will have to come from somewhere else in the federal government. Ninety-eight percent of the inmates will get out of prison and go back to their own neighborhoods.<sup>35</sup> Prison employment can help decrease prison overcrowding through

## FAST FACTS:

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its positive effects on rehabilitation and recidivism.

In addition, small businesses that supply FPI will also lose contracts. UNICOR buys many of its supplies from private subcontractors. Eliminating UNICOR only causes a shift in those jobs, not more jobs.<sup>36</sup>

Some have argued that prison labor can be contracted to private industry. Selling prison labor to private enterprise motivated by profit will still compete with civilian sector industries and offer none of the positive aspects of education and vocational training.<sup>37</sup> Besides, the government has no interest in selling prison labor when FPI already makes a profit using prison labor for the federal government. This solution fails to address the concern of private industry of prisoners competing with private labor.

Now less than two years old, the new law has impacted DoD procurements. John Orr, Contract Specialist, TACOM, has purchased parts for military armored and tactical vehicles from UNICOR since 1986 and continues to purchase from UNICOR. Private industry has expressed much more interest for items ordinarily procured from UNICOR on a sole source basis. For example, a wiring harness historically procured from UNICOR now has 15 additional private industry

sources making inquiries. These sources make electronic products for the civilian markets and now want to compete for government contracts.<sup>38</sup>

The Army must evaluate claims of lower price, better quality, and better delivery schedule. Pre-award surveys, Certificates of Competency, first article tests, and requests for deviation and clarification all delay the procurement process. While those who changed the law focused on furniture, the law affects all UNICOR products, even those that do not easily fit into an existing marketplace. New companies entering the market are competing for procurements almost exclusively held by UNICOR.

Most military vehicles contain parts manufactured by UNICOR. As more and more companies become accustomed to the government procurement process, mistakes in the solicitation process should decrease. Of course, critics could argue the U.S. Army risks putting substandard parts in vehicles as the country goes to war. One positive result from the change is that UNICOR's prices have become more competitive and the Army gets a cheaper product faster.<sup>39</sup>

Reducing price and increasing quality are a positive result. However, purchases from UNICOR simply transfer funds from one government account to another. UNICOR then uses the money to perform a government purpose. Most of that purpose, the care and control of federal inmates, still exists even if UNICOR does not. Other federal money will have to pay for these requirements. Some have argued that the government will get better value for its money by breaking the UNICOR monopoly,<sup>40</sup> but the financial implications involve more than the government buying the cheapest product.

UNICOR has proposed a possible solution to continuing meaningful prison employment and reducing the impact on private industry. UNICOR would manufacture products currently on the market made exclusively overseas. "Thousands of items would fall under that category—toys, electronic items, and other products made exclusively outside the U.S.," said Steve Schwalb, FPI's chief operating officer." The Chinese use prison labor to make products exported to the United States.<sup>41</sup> Even though the law

prohibits the practice,<sup>42</sup> The U.S. Customs Service admits it cannot distinguish the products.<sup>43</sup> We should be allowed to use prison labor to produce those same products and sell them domestically.

Unemployment rates are currently 6.1 percent.<sup>44</sup> On February 3, 2003, Steelcase, the world's largest office furniture manufacturer, and charter member of the coalition to eliminate UNICOR, announced plant closings and voluntary layoffs.<sup>45</sup> The furniture manufacturers "will continue its extensive lobbying effort in Congress to bring about a level playing field" with UNICOR.<sup>46</sup> Federal prison inmates have few avenues of redress and they lack electoral presence. They are pariahs without moral influence and their powerless status invites indifference and neglect from the elected branches.<sup>47</sup> In a soft economy, UNICOR may find itself in a losing battle. ♦

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