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The Federal Prison Industries: An Analysis of Sales, FY1993-FY2013

-name redacted-
Analyst in Crime Policy

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Summary

The Federal Prison Industries (FPI) is a government-owned corporation that employs offenders incarcerated in correctional facilities operated by the Department of Justice's (DOJ's) Federal Bureau of Prisons (BOP). The FPI was created to serve as a means for managing, training, and rehabilitating inmates in the federal prison system through employment in one of its industries.

The FPI manufactures products and provides services that are primarily sold to executive agencies in the federal government. In the past, federal departments and agencies were required to purchase products from the FPI. This requirement is sometimes referred to as the FPI's "mandatory source clause." It is the FPI's mandatory source clause that has been the focus of congressional scrutiny, in part because some policymakers feel that it has a deleterious effect on private vendors' ability to secure federal contracts.

Since 2001, Congress has made a series of changes to the FPI's mandatory source clause in response to concerns about the FPI's effect on private businesses. Congress requires all federal agencies to use competitive procedures for the procurement of a product if the agency determines that the FPI's product is not comparable in price, quality, and time of delivery to products available from the private sector. Congress, through section 827 of the FY2008 National Defense Authorization Act (P.L. 110-181), also requires the Department of Defense (DOD) to use competitive procedures to procure products and services when it determines that the FPI share of DOD's market for a product is greater than 5%.

Between FY1993 and FY2013, the FPI sold products and services to 59 different federal departments, agencies, offices, and boards. During this time period, DOD was the FPI's biggest customer, accounting for, on average, 61% of the FPI's sales to government agencies. Also, over the same time period, the FPI sold products and services in 160 different product and service codes (PSCs); yet, a majority of the FPI's sales were for seven products (hereinafter, the "FPI's core products"). The core products include cable, cord, and wire assemblies; miscellaneous electrical power/distribution equipment; household furniture; office furniture; cabinets, lockers, bins, and shelving; household furnishings; and clothing, special purpose.

This report provides an analysis of the FPI's sales from FY1993 to FY2013 in order to evaluate whether its sales changed following amendments to the mandatory source clause. Findings from the analysis include the following:

- There has been a significant decrease in the FPI's sales since FY2009. The FPI's nominal sales in FY2013 were $533 million, which is $352 million below the FPI's peak sales of $885 million in FY2009.
- The FPI generated a profit most fiscal years between FY1993 and FY2007. The FPI, however, reported losses each fiscal year between FY2008 and FY2013.
- The FPI's sales to DOD generally increased between FY1993 and FY2007, but they have declined since then. In addition, the FPI's sales to civilian agencies generally increased until FY2008, but they have decreased every fiscal year since.
- The FPI has experienced significant decreases in its sales of non-core products and services to DOD since FY2007 and in its sales of core products to DOD since FY2009. The FPI's sales of non-core products and services to civilian

agencies have decreased since FY2008 and its sales of core products to civilian agencies have decreased since FY2010; these sales have not declined to the same extent as sales of comparable products to DOD.

- The FPI has experienced a significant decrease in its share of both DOD and civilian agencies' markets for its core products since Congress made changes to the mandatory source clause, but those decreases might be the continuation of a long-term trend.
- The FPI's declining sales might be the result of federal agencies spending less money on products offered by the FPI. Between FY2008 and FY2013, there was a sizable decrease (64%) in DOD's purchases in the PSCs in which the FPI made a sale in a given fiscal year (this serves a rough estimate of the size of DOD's market for FPI products). The FPI's declining sales to DOD roughly coincides with decreasing DOD purchases. The FPI's sales to civilian agencies decreased 51% between FY2009 and FY2013, which coincides with a 21% decrease in civilian agencies' purchases in PSCs in which the FPI made a sale.
- Competition pursuant to section 827 of the FY2008 National Defense Authorization Act did not have a uniform effect on the FPI's share of DOD's market for six selected products. For some products, the FPI lost market share when that product was opened to competition and it never recovered. In other instances, the FPI's share of DOD's market for some products increased even though DOD has used competitive procedures to procure the product.

There is not a single cause that explains why the FPI's sales decreased after FY2009. One factor that might have contributed to the FPI's declining sales is that the federal government spent less money on products offered by the FPI. It is harder to determine what effect legislative changes to the FPI's mandatory source clause had on the FPI's sales. It might be that the FPI's sales would have declined even if Congress had not made changes to the mandatory source clause. Even if the FPI's share of the federal market remained consistent year-to-year, the fact that the federal government was spending less on products and services offered by the FPI would likely have resulted in declining sales for the FPI. However, opening the FPI to more competition has probably not made it easier for the FPI to continue to generate revenue at a time when there are fewer opportunities for the FPI to make sales.

The FPI's declining sales, regardless of the reason, might be of interest to policymakers because the FPI is a self-sustaining government corporation. In order for it to provide work opportunities for inmates, it has to generate sufficient revenue. The FPI has been employing a smaller share of the federal prison population since the late 1980s. At the same time, Congress has placed a greater emphasis on preparing inmates for life after prison, and the BOP asserts that the FPI is one of its most effective tools for rehabilitating inmates and managing its prisons. The tension between providing work opportunities to inmates through the sale of goods to federal agencies and the desire to provide contracting opportunities to private vendors continues to fuel the debate about the future of the FPI.

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The Federal Prison Industries, Inc. (FPI),[1] is a wholly owned government corporation that employs offenders incarcerated in correctional facilities operated by the Department of Justice's (DOJ's) Federal Bureau of Prisons (BOP). The FPI manufactures products and provides services that are primarily sold to executive agencies in the federal government. The FPI is economically self-sustaining and does not receive direct funding through congressional appropriations. It was created to serve as a means for managing, training, and rehabilitating inmates through employment in prison industry jobs.

In the past, all federal departments and agencies were required to purchase products from the FPI. This requirement is sometimes referred to as the FPI's "mandatory source clause," or "sole source preference." The FPI's mandatory source clause has been the focus of congressional scrutiny, in part because some policymakers believe that it has a deleterious effect on private vendors' ability to secure federal contracts. However, the FPI contends that the mandatory source clause is necessary to overcome inefficiencies written into its authorizing legislation and associated with producing products in a prison environment. The mandatory source clause, according to the FPI, allows it to generate revenue and provide work opportunities for inmates.

Since 2001, Congress has passed legislation to modify the FPI's mandatory source clause, thereby subjecting the FPI to more competition from private vendors. In addition, legislation has been introduced over the past several congresses that would eliminate the FPI's mandatory source clause, thereby requiring the FPI to compete with private vendors for all federal contracts.[2] Furthermore, Congress continues to hold hearings on the FPI, its effect on the private sector, and the effect changes to the mandatory source clause have had on the FPI's sales.[3]

This report provides an analysis of the FPI's sales from FY1993-FY2013. While this report focuses on how the FPI's sales changed both before and after changes to the FPI's mandatory source clause, it not possible to definitively determine cause and effect with the data used to conduct this analysis. Some of the limitations of this analysis are discussed in the "Concluding Thoughts" section of this report.

This report does not discuss the debate over the FPI's mandatory source clause; the debate over what, if anything, the FPI should be producing; nor how a prison work assignment might contribute to reducing recidivism and contribute to successful reentry.[4]

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[1] The FPI is sometimes referred to by its trade name, UNICOR.

[2] See for example, H.R. 2098 (introduced, 113th Congress); H.R. 3634 (introduced, 112th Congress); H.R. 2965 (passed by the House, 109th Congress); H.R. 1829 (passed by the House, 108th Congress); H.R. 1577 (reported by the House Judiciary Committee, 107th Congress); H.R. 2551 (introduced, 106th Congress); and H.R. 2758 (introduced, 105th Congress). In addition, see S.Amdt. 3118 to S. 3254 (the National Defense Authorization Act for Fiscal Year 2013, 112th Congress) and S.Amdt. 2222 to S. 1197 (the National Defense Authorization Act for Fiscal Year 2014, 113th Congress).

[3] See for example, U.S. Congress, House Committee on Small Business, Subcommittee on Contracting and Workforce, *Unlocking Opportunities: Recidivism Versus Fair Competition in Federal Contracting*, 112th Cong., 2nd sess., June 28, 2012; U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Federal Prison Industries—Examining the Effects of Section 827 of the National Defense Authorization Act of 2008*, 110th Cong., 2nd sess., May 6, 2008; U.S. Congress, Subcommittee on Workforce, Empowerment and Government Programs and Subcommittee on Tax, Finance and Exports, *Federal Prison Industries' Effect on the U.S. Economy and the Small Business Environment*, 108th Congress, 1st sess., October 1, 2003.

[4] For more information on the FPI, including a history of the program, a summary of the debate surrounding the FPI and competition with the private sector, and a discussion of policy options Congress might consider if it chooses to make further changes to the way the federal agencies procure products from the FPI, see CRS Report RL32380, (continued...)

Background on the Federal Prison Industries

The FPI has 78 factories operating in 62 federal prisons representing five different business segments:

- clothing and textiles;
- electronics;
- office furniture;
- recycling; and
- services (which includes data entry and encoding).[5]

The FPI operates as a revolving fund and does not receive an annual appropriation.[6] A majority of the FPI's revenues is derived from its sale of products and services to federal departments, agencies, and bureaus. Generated revenues are used to cover operating expenses such as staff salaries, inmate wages, and the cost of raw materials and supplies, and capital expenditures.[7]

Between FY1993 and FY2013, the FPI sold products and services to 59 different federal departments, agencies, offices, and boards; and, during this time period, the Department of Defense (DOD) was the FPI's biggest customer. DOD's proportion of the FPI's sales to government agencies ranged from 51% in FY2010 to 68% in FY2001. On average, DOD accounted for 61% of the FPI's sales to government agencies each fiscal year between FY1993 and FY2013.

Also, between FY1993 and FY2013, the FPI sold products and services in 160 different product and service codes (PSCs). Despite the variety of products and services offered by the FPI, a majority of its sales involved seven products (hereinafter, these seven products will be referred to as the "FPI's core products"):

- cable, cord, and wire assemblies (PSC 5995);
- miscellaneous electrical power/distribution equipment (PSC 6150);
- household furniture (PSC 7105);
- office furniture (PSC 7110);
- cabinets, lockers, bins, and shelving (PSC 7125);
- household furnishings (PSC 7210); and

(...continued)

Federal Prison Industries: Background, Debate, Legislative History, and Policy Options, by (name redacted). For more information on prisoner reentry and a discussion of programs that might help reduce recidivism, see CRS Report RL34287, *Offender Reentry: Correctional Statistics, Reintegration into the Community, and Recidivism*, by (name r edacted).

[5] U.S. Department of Justice, Bureau of Prisons, Federal Prison Industries, *Fiscal Year 2013 Annual Management Report*, hereinafter "FPI FY2013 Annual Management Report."

[6] Ibid.

[7] Ibid.

- clothing, special purpose (PSC 8415).

Between FY1993 and FY2013, sales in the FPI's core products accounted for, on average, 62% of the FPI's sales of products and services. Sales of the FPI's core products ranged from a low of 50% of the FPI's sales of products and services in FY2006 to a high of 73% in FY1993.

Under current law[8] and pursuant to subpart 8.6 of the Federal Acquisition Regulation (FAR) federal agencies are generally required to procure *products* offered by the FPI, unless authorized by the FPI to solicit bids from the private sector.[9] The requirement for federal agencies to purchase products from the FPI is commonly referred to as the "mandatory source clause."[10] The FPI does not have the same level of preference when it comes to *services*. Instead, the language of the FAR encourages agencies to buy services from the FPI. It is the mandatory source clause, and its effect on private businesses, that has drawn controversy over the years.

Throughout the 1990s, Congress placed more scrutiny on the requirement for federal agencies to purchase products from the FPI if they were available in the FPI's Schedule of Products, met the agency's delivery schedule and quality requirements, and were not above market price. Congress's increased interest in the FPI's mandatory source clause was driven, in part, by the concerns of private businesses that the FPI was monopolizing the federal market and taking jobs from law-abiding citizens.[11] Since 2001, Congress has made a series of changes to the FPI's mandatory source clause in response to these concerns.[12]

- The National Defense Authorization Act for FY2002 (P.L. 107-107, hereinafter "FY2002 NDAA") requires DOD to use competitive procedures for the procurement of a product if DOD determines that the FPI's product is not comparable in price, quality, and time of delivery to products available from the private sector. The Bob Stump National Defense Authorization Act for FY2003 (P.L. 107-314) codified this requirement at 10 U.S.C. §2410n.
- The Consolidated Appropriations Act of 2004 (P.L. 108-199, hereinafter "FY2004 Omnibus") requires all federal agencies to use competitive procedures for the procurement of a product if the agency determines that the FPI's product is not comparable in price, quality, and time of delivery to products available from the private sector. The Consolidated Appropriations Act, 2005 (P.L. 108-447) permanently extended this provision.
- The National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181, hereinafter "FY2008 NDAA") requires DOD compete any product in which

[8] 18 USC §4125(a).

[9] Such waivers can be granted by the FPI to executive agencies if its price exceeds the current market price for comparable products. Under section 8.002(a)(1) of the Federal Acquisition Regulation, agencies' inventories and excess property from other agencies are given priority over the FPI when an agency needs to procure products. However, procurement from the FPI is given priority over procurement from AbilityOne (i.e., products that are made by people who are blind or severely disabled), wholesale supply sources (e.g., the Defense Logistics Agency), mandatory Federal Supply Schedules, optional use Federal Supply Schedules, and commercial sources.

[10] Also referred to as "superpreference," "sole source," or "preferential status."

[11] Michael C. Groh, "FAR (8.602) Gone: A Proposal to Maintain the Benefits of Prison Work Programs Despite the Restructuring of Federal Prison Industries' Mandatory Source Status," *Public Contract Law Journal*, vol. 42, no. 2 (Winter 2013), p. 399, hereinafter "FAR (8.602) Gone."

[12] For an overview of legislative changes to the FPI's mandatory source clause, see CRS Report RL32380, *Federal Prison Industries: Background, Debate, Legislative History, and Policy Options*, by (name redacted).

> DOD determines the FPI's market share is more than 5%. The FPI can submit a bid if the procurement is competed. In cases where the FPI's market share is less than 5%, DOD has to follow the procurement procedures pursuant to 10 U.S.C. §2410n.

The analysis presented in this report focuses on the FPI's sales both before and after the changes Congress made to the FPI's mandatory source clause. For sales to civilian agencies, the analysis focuses on the period before (FY1993-FY2003) and after FY2004 (FY2004-FY2013), when Congress required all civilian agencies to competitively procure products and services from the FPI if they did not meet their needs in terms of price, quality, and time of delivery. For the FPI's sales to DOD, the analysis focuses on three distinct periods: FY1993-FY2001, the period before changes to the way DOD procured products from the FPI; FY2002-FY2007, the period when DOD had to competitively procure products from the FPI if those products did not meet their needs in terms of price, quality, and time of delivery; and FY2008-FY2013, when DOD had to compete contracts for products in which the FPI had more than 5% of the market.

The Federal Prison Industries' Sales

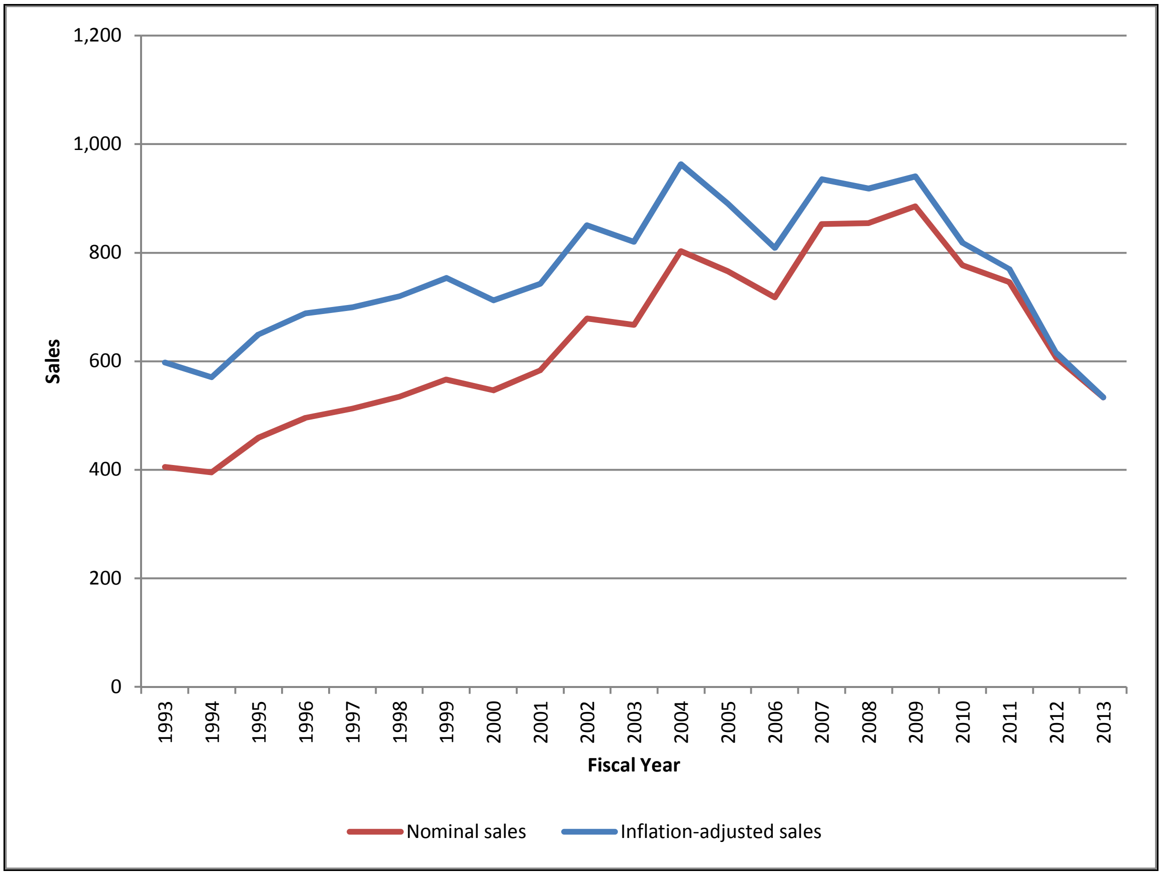
The FPI is a self-sustaining wholly government owned corporation, meaning that the FPI's ability to provide work opportunities for federal inmates is contingent on its ability to generate revenue through sales to other federal entities. Data show that there has been a significant decrease in both the FPI's nominal and inflation-adjusted sales since FY2009 (see **Figure 1**). Data on the FPI's nominal sales show a period of relatively steady growth between FY1993 and FY2009, followed by declining sales in each of the last four fiscal years. The FPI's nominal sales in FY2013 were $533 million; approximately $128 million higher than the FPI's nominal sales of $405 million in FY1993. However, the FPI's total nominal sales in FY2013 were $352 million below the peak of $885 million in nominal sales in FY2009. When adjusting for inflation, the FPI's sales peaked in FY2004. The FPI's inflation-adjusted sales in FY2013 were the lowest they have been during the period examined in this report.[13]

As shown in **Figure 1**, the FPI's total nominal sales are somewhat volatile. There were fiscal years in which the FPI's sales decreased before peaking in FY2009 (for example, the FPI's sales decreased in both FY2005 and FY2006). Despite some fluctuations in the FPI's year-by-year sales, two distinct trends emerge from the data presented in **Figure 1**: the FPI's sales increased from FY1993 to FY2009, and they have been decreasing since. On average, the FPI's nominal sales increased 5% each fiscal year between FY1993 and FY2009. Conversely, the FPI's nominal sales decreased 12% in FY2010, 4% in FY2011, 19% in FY2012, and another 12% in FY2013.

[13] Inflation-adjusted sales are presented in FY2013 dollars. The FPI's sales were adjusted for inflation using the GDP (Chained) Price Index presented in Table 10.1 in the Historical Tables of the President's FY2015 budget submission.

Figure 1. The FPI's Nominal and Inflation-Adjusted Sales

Sales in millions of dollars



Source: CRS presentation of sales data provided by the U.S. Department of Justice, Bureau of Prisons, Federal Prison Industries.

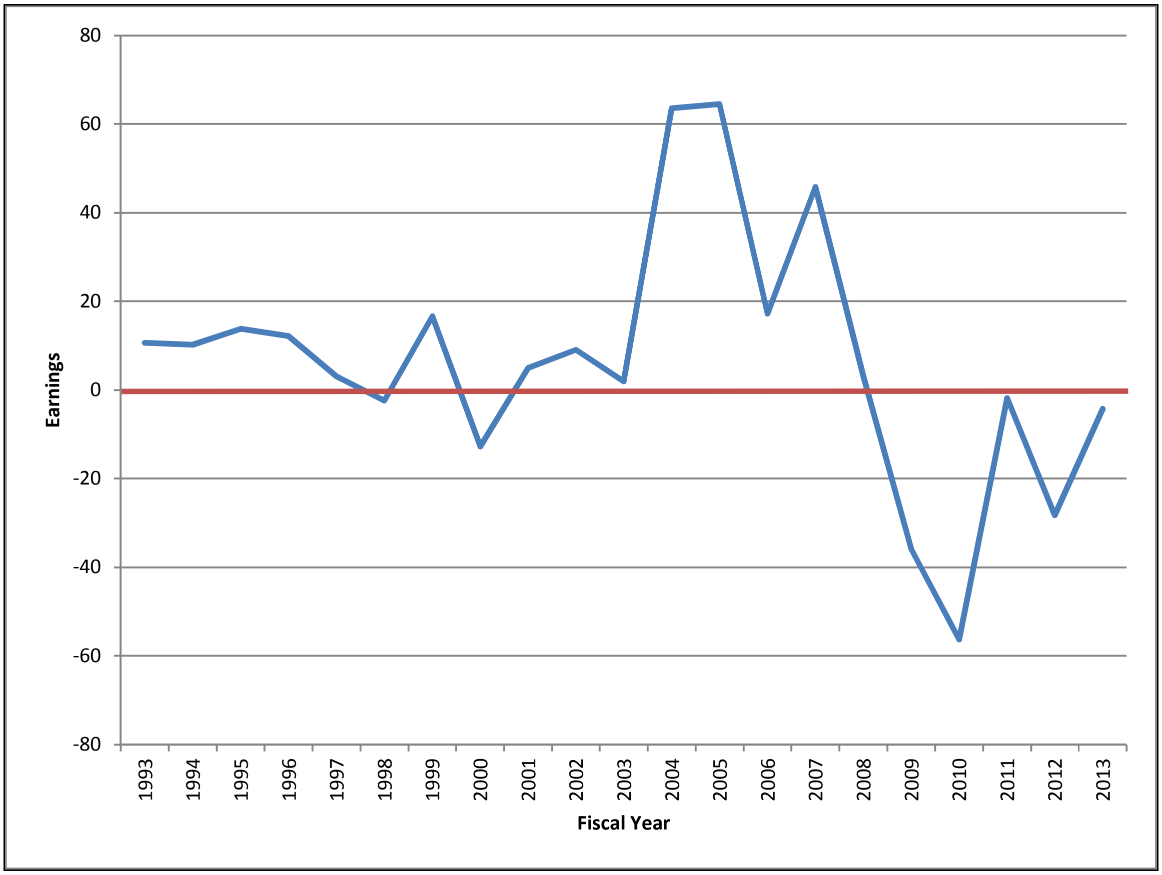
Note: Inflation-adjusted sales are presented in FY2013 dollars. FPI sales were adjusted using the GDP (Chained) Price Index presented in Table 10.1 of the Historical Tables in the President's FY2015 budget submission.

In general, the FPI generated a profit most of the fiscal years between FY1993 and FY2007 (see **Figure 2**); however, the FPI reported losses each fiscal year between FY2008 and FY2013. The FPI reported a $36 million loss in FY2009, even though the FPI's nominal sales peaked at $885 million in that fiscal year. According to the FPI, it has sought to address operating losses by "aggressively pursuing new customers and new products, employment of part time inmates, staffing and other cost reductions, new opportunities for revenue, and stringent measures to control cash."[14]

[14] FPI FY2013 Annual Management Report.

Figure 2. The FPI's Earnings

Earnings in millions of dollars



Source: CRS presentation of earnings data provided by the U.S. Department of Justice, Bureau of Prisons, Federal Prison Industries.

Note: Sales amounts presented in the above figure are in nominal dollars.

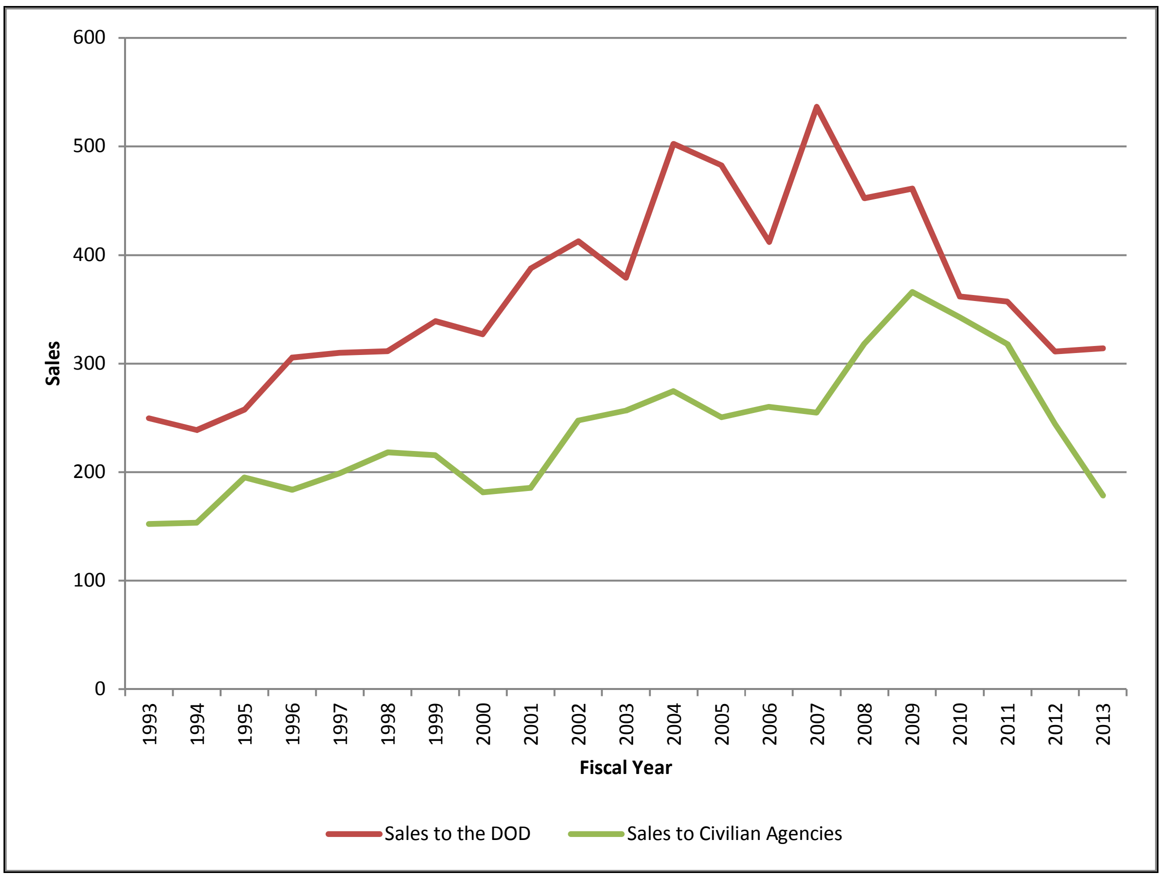
Figure 3 provides a breakdown of the FPI's total sales to both DOD and civilian agencies. The FPI's sales to DOD between FY2002 and FY2007 (the period of time between the implementation of the provisions of the FY2002 NDAA and the implementation of the provisions of the FY2008 NDAA) fluctuated. Between FY2002 and FY2007, sales to DOD decreased in three fiscal years but increased in two others. In comparison, the FPI's sales only decreased in two of the nine fiscal years between FY1993 and FY2002. However, despite some year-to-year fluctuation, there was a general upward trend in the FPI's sales to DOD from FY1993 to FY2007, even though Congress opened DOD's purchases of products from the FPI to a certain amount of competition for the last six fiscal years of this period. The FPI's sales to DOD increased 115% between FY1993 and FY2007. This suggests that even if increased competition had some effect on the FPI's sales to DOD, it was not enough to reverse a general upward trend in the FPI's sales to DOD. The FPI's sales to DOD in FY2013 were at the lowest level they have been since FY1998.

Figure 3 also shows the FPI's sales of goods and services to civilian agencies were relatively flat for the three fiscal years after the implementation of the provisions of the FY2004 Omnibus, though the FPI's sales to civilian agencies in FY2005-FY2007 were less than such sales in

FY2004. The increase in the FPI's sales to civilian agencies between FY2007 and FY2009 were part of a general upward trend in the FPI's sales to those agencies from FY1993 to FY2009. The FPI's sales to civilian agencies increased 140% between FY1993 and FY2009. However, the FPI's sales to civilian agencies decreased precipitously after FY2009. The significant decrease in the FPI's sales to civilian agencies can be explained partly by a significant decrease in customer vehicle reimbursement sales to civilian agencies. These are sales derived from the FPI selling modified or upfitted vehicles to federal agencies. The FPI started recording customer vehicle reimbursement sales in FY2004. These sales to civilian agencies peaked in FY2009 at $199.1 million, but by FY2013 they had decreased 73.4% to $52.9 million. The FPI's sales to civilian agencies in FY2013 were at their lowest level since FY1995. Civilian agencies were required to use competitive procedures for procuring products from the FPI if its products did not meet their need in terms of price, quality, and timeliness during the period when the FPI's sales decreased 51% (FY2009-FY2013), but the same requirements were in place for FY2004-FY2009, when the FPI's sales to civilian agencies generally increased.

Figure 3. The FPI's Sales to the Department of Defense and Civilian Agencies

Sales in millions of dollars



Source: CRS presentation of sales data provided by the U.S. Department of Justice, Bureau of Prisons, Federal Prison Industries.

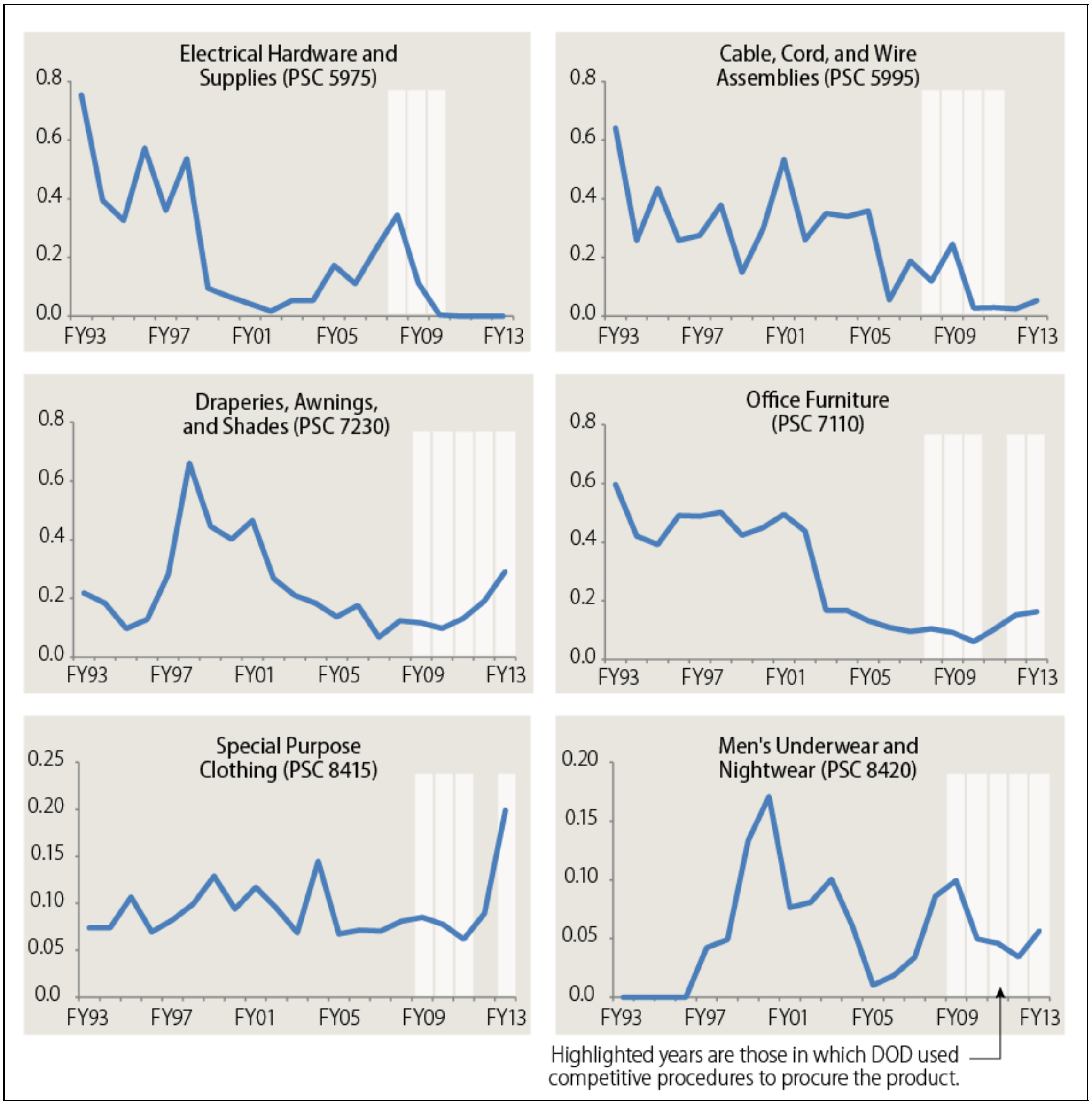
Note: Sales include customer vehicle reimbursement. Sales amounts presented in the above figure are in nominal dollars.

As highlighted in **Figure 3**, the FPI's sales to DOD generally started to decline in FY2008, which roughly coincides with the implementation of section 827 of the FY2008 NDAA. The procurement requirement put in place by section 827 of the FY2008 NDAA is unique to DOD; the same requirement is not in place for the civilian agencies. **Figure 4** presents data on the FPI's sales to DOD for six select products that were opened to competition per section 827 of the NDAA.[15]

The data in **Figure 4**, however, show that competition did not have a uniform effect on the FPI's share of DOD's market for the selected products. The FPI's share of DOD's market was generally declining for three products—cable, cord, and wire assemblies (PSC 5995); draperies, awnings, and shades (PSC 7230); and office furniture (PSC 7110)—before these products were subject to competition per section 827 of the FY2008 NDAA. This suggests that the FPI's decreasing market share for cable, cord, and wire assemblies, and office furniture when they were opened to competition might have been the continuation of a longer trend. It also appears to make the FPI's growing market share for draperies, awnings, and shades, which occurred while the product was competed, somewhat surprising. On the other hand, the FPI's share of DOD's market for special purpose clothing (PSC 8415) was fairly consistent from FY1993 to FY2008, it decreased slightly when it was opened to competition, but it increased significantly after being removed from the list of competed PSCs. For two other products—electrical hardware and supplies (PSC 5975) and men's underwear and nightwear (PSC 8420)—competition appears to have interrupted a rebound after several fiscal years of slipping market share. These last two instances might raise questions that are pertinent to this analysis. To wit, how did the FPI recover after years of losing market share? The FPI's share of DOD's market for both products dropped to nearly zero at some point. Was the FPI able to win more contracts from DOD because it was able to produce a product that was comparable to products available from the private sector in terms of price, quality, and time of delivery? If so, it would seem the FPI would be prepared to compete with private businesses for contracts when DOD opened the product to competition. Did the FPI's market share increase because businesses that were providing the product to DOD closed or stopped offering the product? If so, could the FPI's decreasing share of DOD's market be the result of an increasing number of businesses offering to sell the product to DOD?

[15] See the **Appendix** for a description of how certain PSCs were selected for inclusion in the analysis.

Figure 4. The FPI's Market Share for Select Products Competed by DOD Pursuant to Section 827 of the FY2008 National Defense Authorization Act



Source: Based on a CRS analysis using sales data reported by the U.S. Department of Justice, Bureau of Prisons, Federal Prison Industries and purchase data taken from the Federal Procurement Data System on September 13, 2013.

Note: The highlighted years are those in which DOD used competitive procedures to procure the product for either all or part of the fiscal year. Sales amounts presented in the above figure are in nominal dollars.

The DOJ Office of the Inspector General (OIG) reported that FPI officials believe that the FPI's recent financial difficulties are the result of decreased sales in key product lines.[16] **Figure 5**

[16] U.S. Department of Justice, Office of the Inspector General, *Audit of the Management of Federal Prison Industries and Efforts to Create Work Opportunities for Federal Inmates*, Audit report 13-35, Washington, DC, September 2013, p. 16, http://www.justice.gov/oig/reports/2013/a1335.pdf, hereinafter "DOJ OIG's audit of the FPI's efforts to create (continued...)

provides a breakdown of the FPI sales of core products[17] and non-core products and services to both DOD and civilian agencies. The data suggest that the post-FY2009 decline in the FPI's sales is largely the result of declining sales to DOD in both core products and non-core products and services. The FPI's sales of core products to DOD did start to decrease after FY2009, shortly after Congress required DOD to compete any PSC in which the FPI had more than 5% of the market, but the FPI's sales to DOD in non-core products and services started to decline before this requirement went into effect. On the other hand, the FPI's sales of non-core products and services rose nearly unabated between FY2002 and FY2007, when DOD had to open the contract to competition if it determined that the FPI's product did not meet its needs in terms of price, quality, and timeliness. The FPI's sales of core product to DOD fluctuated greatly over this same time period, with a notable decrease in sales between FY2004 ($313.6 million) and FY2006 ($178.7 million). Losses the FPI would have suffered in its overall sales to DOD between FY2004 and FY2006 resulting from decreased sales of core products were, by-in-large, offset by increasing sales of non-core products and services to DOD. The FPI's sales of core products to DOD recovered somewhat between FY2006 and FY2009, but they never reached the level they had in FY2004.

Changes in the FPI's sales of both core products and non-core products and services to civilian agencies both before and after the enactment of the requirements of the FY2004 Omnibus are fairly unremarkable. Sales of non-core products and services to civilian agencies did decline between FY2003 and FY2004, which roughly coincides with when Congress required civilian agencies to only purchase products from the FPI if they meet their needs in terms of price, quality, and timeliness, but the FY2004 decrease appears to be more of a regression towards the mean after the FPI's sales of non-core products and services to civilian agencies uncharacteristically increased between FY2001 and FY2003. The data in **Figure 5** show how much of the decline in sales to civilian agencies after FY2009 was the result of declining customer vehicle reimbursement sales. (**Figure 5** does not reflect customer vehicle reimbursement sales because they are not classified using a PSC, which means they are not considered a "product or service" for the purpose of this analysis.) Sales of both core products and non-core products and services to civilian agencies generally declined after FY2009, but not to the extent shown in **Figure 3**.

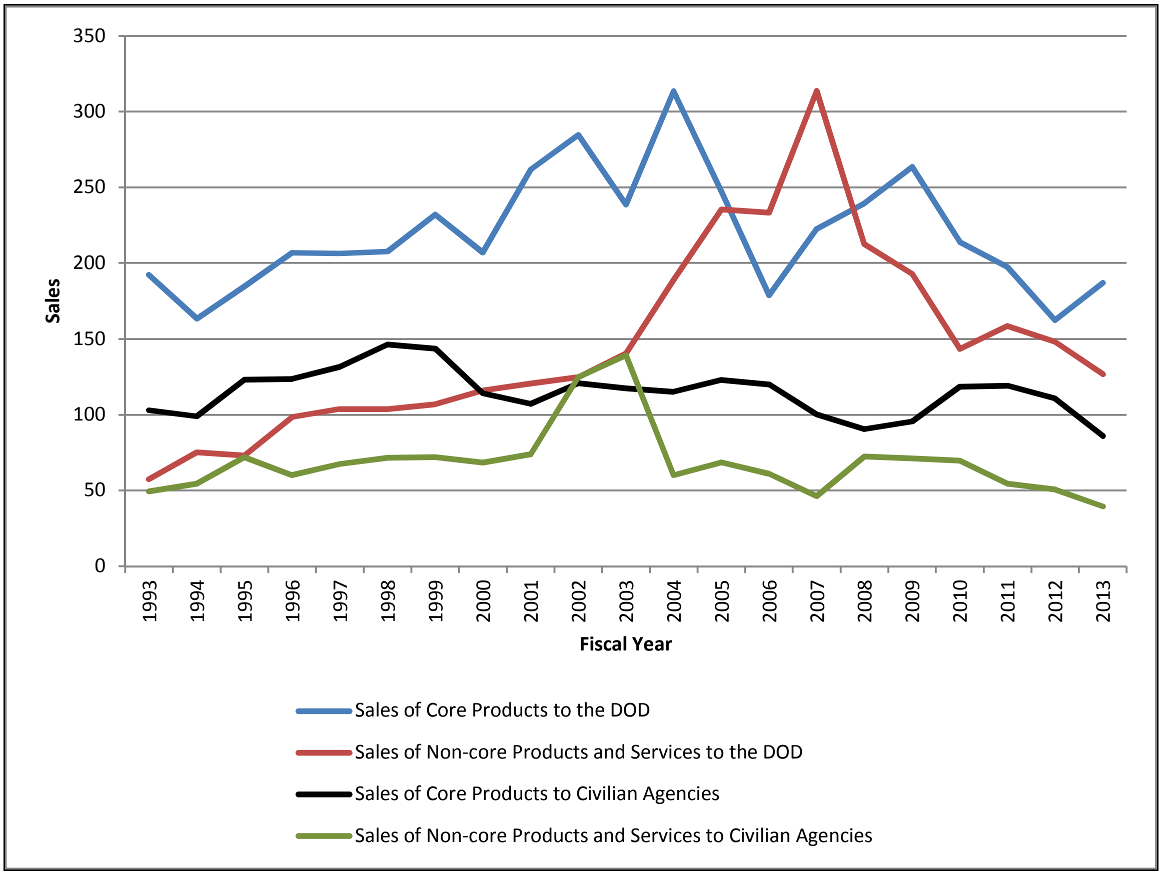
(...continued)

work opportunities."

[17] Core products include cable, cord, and wire assemblies (PSC 5995); miscellaneous electrical power/distribution equipment (PSC 6150); household furniture (PSC 7105); office furniture (PSC 7110); cabinets, lockers, bins, and shelving (PSC 7125); household furnishings (PSC 7210); and clothing, special purpose (PSC 8415).

Figure 5. The FPI's Sales of Core and Non-core Products to DOD and Civilian Agencies

Sales in millions of dollars

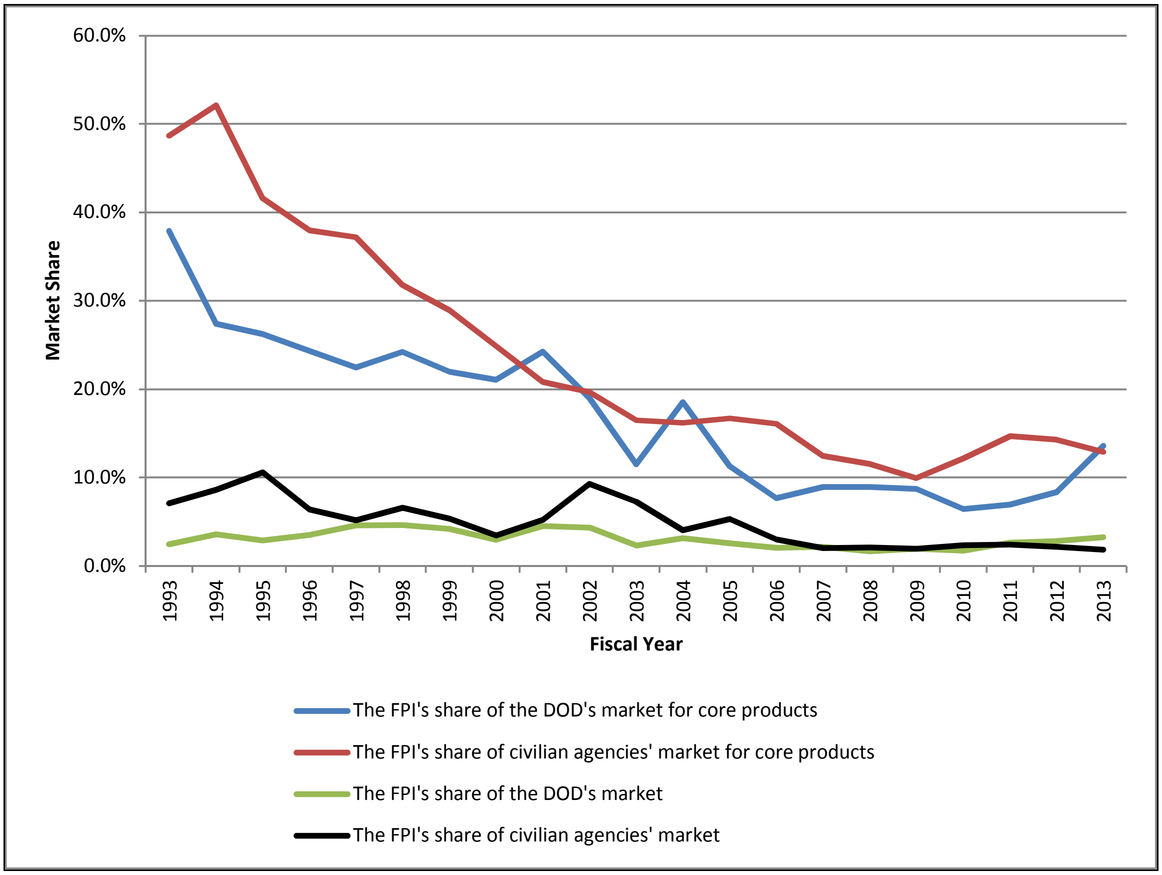


Source: CRS presentation of sales data provided by the U.S. Department of Justice, Bureau of Prisons, Federal Prison Industries.

Notes: "Core products" includes cable, cord, and wire assemblies (PSC 5995); miscellaneous electrical power/distribution equipment (PSC 6150); household furniture (PSC 7105); office furniture (PSC 7110); cabinets, lockers, bins, and shelving (PSC 7125); household furnishings (PSC 7210); and clothing, special purpose (PSC 8415). Sales of non-core products and services do not include customer vehicle reimbursement. Sales amounts presented in the above figure are in nominal dollars.

Figure 6 shows how the FPI's share of DOD's and civilian agencies' markets has changed since FY1993. First, the data show that the FPI has captured a relatively small share of the total DOD and civilian agencies' market over the years. Since FY1993, the FPI has never accounted for more than 5% of DOD's market. In a couple of fiscal years, the FPI's share of the civilians agencies' market was around 10%, but on average, the FPI's share of the civilian agencies' market has been approximately 5%. The data also show that since FY1993, the FPI has lost a significant share of both DOD's and civilian agencies' market for core products. Even though the FPI's market share for core products for both DOD and civilian agencies decreased after Congress made modifications to the FPI's mandatory source clause, it appears that those decreases were the continuation of a long-term trend. However, the FPI's recent rebound in its market share for core products has occurred at a time when the FPI was subject to more competition.

Figure 6. The FPI's Share of DOD's and Civilian Agencies' Markets, Total and Core Products



Source: Based on a CRS analysis using sales data reported by the U.S. Department of Justice, Bureau of Prisons, Federal Prison Industries and procurement data taken from the Federal Procurement Data System on March 13, 2014.

Notes: "Core products" include cable, cord, and wire assemblies (PSC 5995); miscellaneous electrical power/distribution equipment (PSC 6150); household furniture (PSC 7105); office furniture (PSC 7110); cabinets, lockers, bins, and shelving (PSC 7125); household furnishings (PSC 7210); and clothing, special purpose (PSC 8415). Market share was calculated as the FPI's sales for products and services by the total amount procured for those same products and services. Market share was calculated using nominal dollars.

In addition to changes in its mandatory source clause, the FPI's declining sales might also be the result of decreased federal spending. Total federal purchases decreased from $541.098 billion in FY2008 (total federal procurement between FY1993 and FY2013 peaked in FY2008) to $461.006 billion in FY2013, a decrease of 15%.[18] However, most of that decrease happened between FY2012 ($517.547 billion) and FY2013, and was most likely the result of the federal government spending less due to sequester cuts. The 15% decrease in federal procurement between FY2008 and FY2013 was less than the 38% decrease in sales the FPI experienced over the same time period. There was a steeper decrease in purchases by the FPI's biggest customer, DOD, between FY2008 and FY2013. DOD's total procurement decreased 23% from $397.495

[18] Procurement data taken from the Federal Procurement Data System on March 13, 2014.

billion in FY2008 to $308.043 billion in FY2013.[19] The DOJ OIG notes that DOD spending has decreased in recent fiscal years due to a scaling back of war efforts in Iraq and Afghanistan.[20]

However, overall federal and DOD purchases might not properly estimate the size of the FPI's market. After all, total federal spending includes purchases in PSCs in which the FPI did not sell any goods or services. **Figure 7** shows the trends in both DOD's and civilian agencies' purchases in PSCs in which the FPI made a sale in a given fiscal year. **Figure 7** also compares trends in purchases by DOD and civilian agencies to the FPI's sales to both. Between FY2008 and FY2013, there was a significant decrease (64%) in DOD's total purchases in the PSCs in which the FPI made a sale. The FPI's declining sales to DOD roughly coincide with decreasing DOD purchases, though the FPI's sales to DOD peaked in FY2007 while DOD's purchases peaked one fiscal year later. Also, the FPI's sales did not decrease at a rate commensurate with the decrease in DOD's purchases (the FPI's sales decreased 31% between FY2008 and FY2013), which would be expected given the increase in the FPI's share of DOD's market since FY2008.[21] The FPI's declining sales to civilian agencies coincide with the decrease in civilian agencies' total purchases in PSCs which the FPI made a sale. The FPI's sales to civilian agencies decreased 51% between FY2009 and FY2013, even though the civilian agencies' purchases only decreased 21% over the same period. However, as mentioned above, sales to civilian agencies include customer vehicle reimbursement revenue, and these sales are not classified using a PSC, which means the amount civilian agencies spent on customer vehicle reimbursement are not reflected in civilian agencies' purchases. If customer vehicle reimbursement amounts are excluded (as indicated by the "FPI's sales of products and services to civilian agencies" line in **Figure 7**), the FPI's sales to civilian agencies decreased 25% between FY2009 and FY2013.

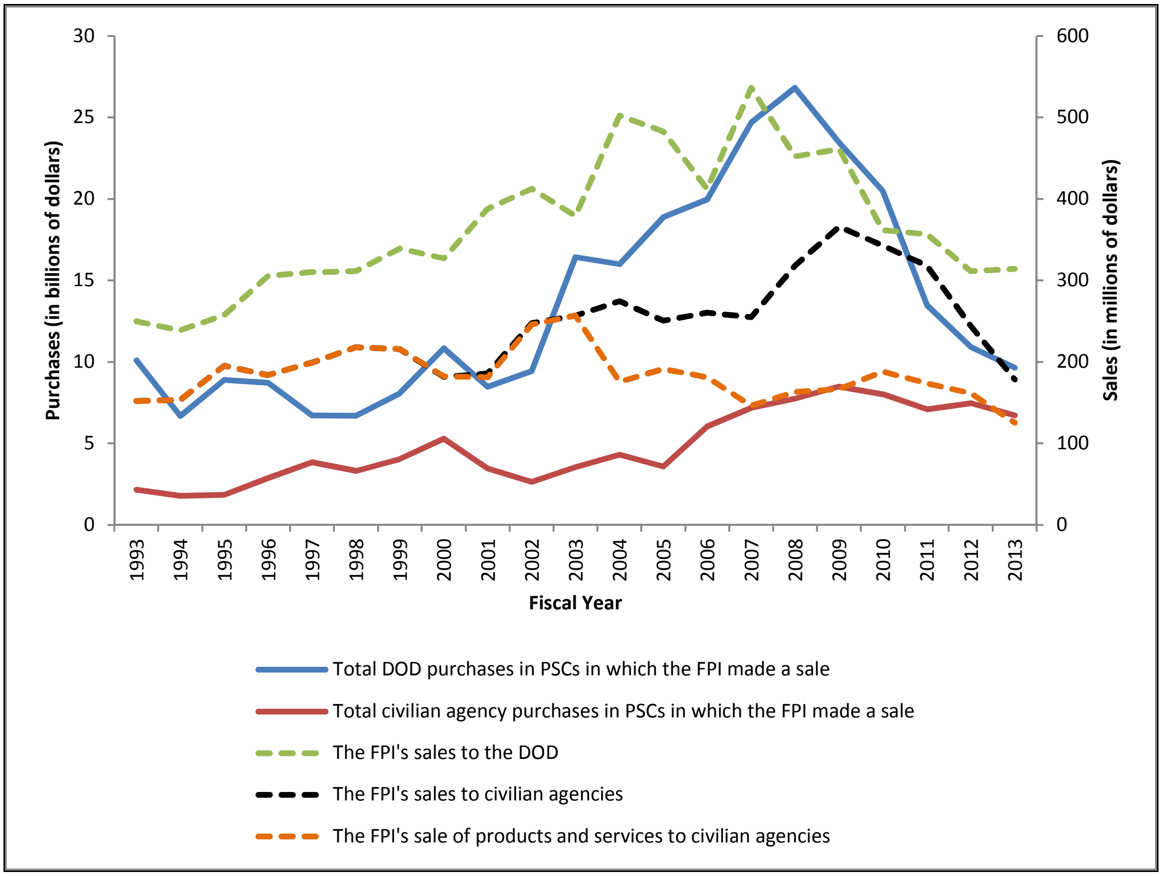
[19] Ibid.

[20] DOJ OIG's audit of the FPI's efforts to create work opportunities, pp. 14-15.

[21] If the FPI's sales accounted for the same proportion of DOD's purchases from one fiscal year to the next, then the decrease in the FPI's sales would be the same as the decrease in DOD's purchases over the same period.

Figure 7. DOD's and Civilian Agencies' Purchases in PSCs in which the FPI Made a Sale Compared to the FPI's Sales to DOD and Civilian Agencies

Purchases are in billions of dollars and sales are in millions of dollars



Source: Sales data provided by the U.S. Department of Justice, Bureau of Prisons, Federal Prison Industries. Procurement data was taken from the Federal Procurement Data System on March 13, 2014.

Notes: Sales and purchase amounts presented in the above figure are in nominal dollars.

Concluding Thoughts

The above analysis shows that the FPI's total sales started to decline after FY2009, but there is probably not a single factor that explains why this occurred. One possible reason is the federal government began spending less money purchasing products offered by the FPI. It is more difficult to determine what effect legislative changes to the FPI's mandatory source clause had on the FPI's sales. The FPI's sales to both DOD and civilian agencies continued to increase after Congress required them to use competitive procedures to procure products if they determined that the product offered by the FPI did not meet their needs in terms of price, quality, and timeliness. There was a noticeable decline in the FPI's sales of its core products to DOD between FY2004 and FY2006, but those sales did rebound somewhat, though not to their peak, even though the same competition requirements were in place. The FPI's share of the federal market, for all of its products and its core products, decreased after Congress made changes to the mandatory source clause, but it appears that this was the continuation of a trend that began before those changes were implemented. The requirement for DOD to use competitive procedures to procure products for which the FPI had a significant market share appears to have had negative consequences for the FPI's sales of some products, but not for others.

It might be that the FPI's sales would have declined even if Congress had not made changes to the mandatory source clause. Even if the FPI's share of the federal market remained consistent year-to-year, the fact that the federal government was spending less purchasing products and services offered by the FPI would have likely resulted in declining sales for the FPI. However, opening the FPI to more competition might have affected the FPI's ability to continue to generate revenue at a time when there were fewer opportunities for the FPI to make sales.

There are limitations that must be considered when drawing conclusions about what effect changes to the mandatory source clause had on the FPI's sales. Macro-level data were used to conduct this analysis, i.e., the FPI's total sales for a given product or service, the FPI's total sales to an agency, and the total amount an agency spent purchasing a certain product. However, each time an agency procures a product it must determine whether the product offered by the FPI meets its need in terms or price, quality, and timeliness. Some contracting officers might have a positive view of the FPI and its products and they might be willing to purchase from the FPI more frequently than from private vendors. On the other hand, some contracting officers might find the FPI's products to be of inferior quality or they might have found that the FPI cannot deliver on time, and therefore they are more likely to procure the product from the private sector. Ultimately, determining how giving agencies more discretion about when they purchase products from the FPI would probably require reviewing the decisions of thousands of contracting officers; something that is beyond the scope of this report. Also, correlation does not equal causation. Perhaps the FPI would have lost its share of DOD's market for electrical hardware and supplies even if the product had not been opened to competition. There is no way to know what would have happened to the FPI's sales to DOD if Congress had *not* put the competition requirement in place.

The FPI's declining sales, regardless of the reason, might be of interest to policymakers because the FPI is a self-sustaining government corporation. It does not receive an appropriation to support its operations. In order for the FPI to provide work opportunities for inmates, it has to generate revenue. If private businesses cannot secure a federal contract, they can sell their products in the private market, an option that is not available to the FPI. Federal law generally prohibits the sale of prisoner-made goods in the private market.[22] The one exception is when inmate labor is used to make products through the Prison Industry Enhancement Certification Program (PIECP).[23] Congress has granted the FPI authority to participate in the PIECP and to manufacture goods for the commercial market if they are currently, or would have otherwise been, manufactured outside the United States (i.e., repatriation authority).[24] However, the DOJ OIG has found that these authorities have not proven to be a boon for the FPI's bottom line.[25] In

[22] 18 U.S.C. §1761(a).

[23] PIECP exempts certified correctional industries for current restrictions on the sale of prisoner-made goods in interstate commerce (18 U.S.C. §1761(a)). The program is intended to place inmates in a realistic work environment, pay them the prevailing local wage for similar work, promote rehabilitation, and enable them to acquire marketable skills to increase their potential for finding gainful employment after completing their terms of incarceration. DOJ OIG's audit of the FPI's efforts to create work opportunities, p. 22.

[24] Section 221 of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2012 (P.L. 112-55, 125 Stat. 621).

[25] The DOJ OIG notes that "in general, repatriation has been less successful than expected, primarily due to (continued...)

addition to prohibitions on selling prisoner-made goods in the private market, Congress has also placed restrictions on the FPI's ability to produce new products for sale to federal agencies.[26]

(...continued)

unanticipated difficulties identifying domestic business partners willing to associate with the use of inmate labor." In addition, the DOJ OIG reports that "FPI officials ... viewed [PIECP] as a less viable option for new business development than the repatriation authority ... under [PIECP], FPI would be required to pay inmates higher wages, thus increasing overhead costs." Additionally, the FPI noted that based on their assessment of currently certified programs and the variability of market rates wages across the country, the FPI was "unlikely to be able to pursue regional or nationwide programs, but instead might have to identify smaller, niche markets to be successful." DOJ OIG's audit of the FPI's efforts to create work opportunities, p. 22.

[26] Under 18 U.S.C. §4122(b) the FPI is required to employ as many inmates as reasonably possible; concentrate on manufacturing products that are labor-intensive; diversify production as much as possible to minimize competition with private industry and labor, and reduce the burden on any one industry; avoid taking more than a reasonable share of the federal market for any one product; sell products only to the federal government; and conduct market research before making a decision to produce a new product or significantly expand the production of an existing product.

Appendix. Methodology

Section 827 of the FY2008 NDAA requires DOD to use competitive procedures to procure any product for which DOD determines that the FPI's share of the market is greater than 5%. On March 28, 2008, DOD published a memorandum that specified which PSCs must be competed per section 827 of the FY2008 NDAA.[27] DOD published subsequent memoranda on June 3, 2009 (effective July 3, 2009); March 19, 2010 (effective April18, 2010); January 19, 2011 (effective February 18, 2011); January 12, 2012 (effective February 12, 2012); March 7, 2013 (effective April 5, 2013); and February 24, 2014 (effective March 26, 2014) that updated the initial list of competed PSCs.[28] Products and services in the PSCs identified in a memorandum are to be procured competitively until the list is superseded by a subsequent memorandum.

Figure 4 shows the FPI's share of DOD market for six selected products that were listed on the March 28, 2008, or June 3, 2009, memoranda published by DOD. These products were selected for the analysis because they were the first PSCs to be open to competition under section 827 of the FY2008 NDAA. The analysis provides more data to show how trends in the FPI's sales to DOD have changed after the PSC was competed.[29] As previously shown, the FPI's sales of products and services fluctuate, so a decrease in sales from one fiscal year to the next might not portend a long term decline in sales. The products listed in **Figure 4** were also selected because they remained on the list of competed products for several years, which can help give a better indication of what effect competition might have had on the FPI's market share.

One issue with this portion of the analysis is that the dates for which products must be competitively procured pursuant to section 827 of the FY2008 NDAA do not coincide with the beginning of each fiscal year. For example, wire and cable, electrical (PSC 6145) was listed on the initial memorandum published by DOD. DOD had to use competitive procedures to procure this product from March 28, 2008, until July 3, 2009, when the second memorandum issued by DOD superseded the first memorandum. This means that the product was subject to competition for roughly the last six months of FY2008 and approximately three-quarters of FY2009. This makes it difficult to assess what effect competition might have had on sales of this product for FY2008 and FY2009 because sales data are only available for the entire fiscal year. Focusing on the analysis on products that were listed in consecutive memoranda is likely to provide better insight into what effect competition might have had on the FPI's market share for those products since it means that those products were competed over at least one complete fiscal year.

[27] Shay D. Assad, Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing, *Competition Requirements for Purchases from Federal Prison Industries*, Department of Defense, Office of the Assistant Secretary of Defense for Acquisition, March 28, 2008.

[28] A list of the memoranda specifying which PSCs must be competed can be found at http://www.acq.osd.mil/dpap/cpic/cp/specific_policy_areas.html#federal_prison.

[29] Former BOP Director Harley G. Lappin, in a hearing on the effect of section 827 of the FY2008 NDAA on the FPI, testified that "We expect the impact of Section 827 on the FPI program will occur over some period of time." Testimony of former Director of the Bureau of Prisons, Harley G. Lappin, U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Federal Prison Industries—Examining the Effects of Section 827 of the National Defense Authorization Act of 2008*, 110th Cong., 2nd sess., May 6, 2008, Serial Number 110-150 (Washington: GPO, 2009), p. 15, hereinafter "Testimony of former BOP Director Lappin."

Author Contact Information

(name redacted)
Analyst in Crime Policy
[redacted]@crs.loc.gov, 7-....