



July 2020

FEDERAL PRISON INDUSTRIES

Actions Needed to Evaluate Program Effectiveness

Accessible Version

GAO Highlights

Highlights of [GAO-20-505](#), a report to congressional committees

Why GAO Did This Study

FPI is a government owned corporation that, as a national reentry program, manages, trains, and rehabilitates inmates through employment. FPI sells inmate-produced goods and services primarily to federal government agencies. The First Step Act of 2018 authorized FPI to sell its products to new markets.

A provision in the First Step Act of 2018 required GAO to review various aspects of FPI. This report addresses (1) the potential size and scope of the additional markets made available to FPI under the First Step Act; (2) the similarities and differences in selected requirements and business practices of FPI and private sector sellers of products and services; (3) customers' satisfaction with FPI regarding quality, price, and timely delivery of its products and services; and (4) the extent to which BOP has evaluated the effectiveness of FPI and other vocational programs in reducing recidivism and the results. GAO examined recidivism studies and data, analyzed performance data, conducted fieldwork at four FPI facilities selected based on security level and type of products produced, met with industry associations, and interviewed agency officials and employed inmates.

What GAO Recommends

GAO is making two recommendations: (1) BOP should update its evaluation plan for FPI by setting a new timeline for evaluation and (2) BOP should set a goal to reduce recidivism. DOJ concurred with the recommendations.

View [GAO-20-505](#). For more information, contact Gretta L. Goodwin at goodwin@gao.gov or 202-512-8777, or William T. Woods at woods@gao.gov or 202-512-4841.

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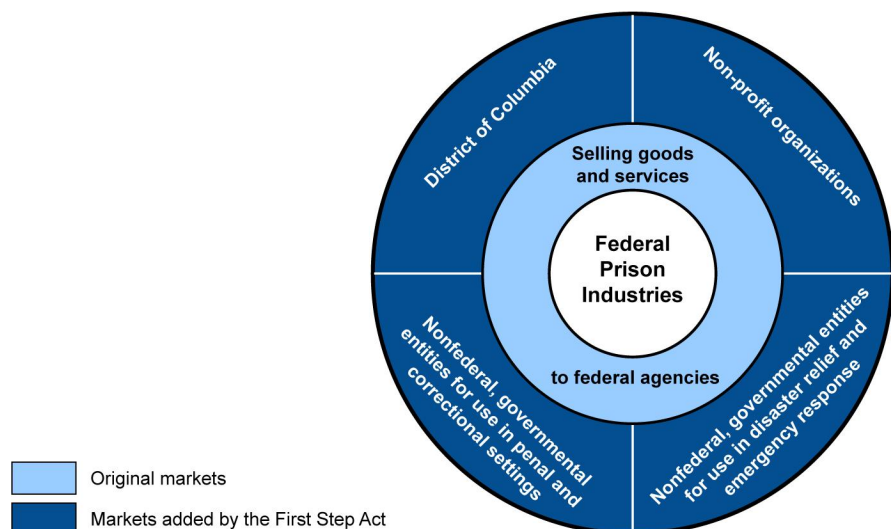
Actions Needed to Evaluate Program Effectiveness

What GAO Found

The First Step Act of 2018 made new, nonfederal markets and potential buyers available to Federal Prison Industries (FPI), a government corporation organized within the Bureau of Prisons (BOP); however, various challenges could limit FPI's ability to sell to customers in these markets. FPI makes apparel, personal protective equipment, and furniture, among other products. FPI may now sell to the District of Columbia government, including, for example, to its firefighters; nonfederal, governmental entities for use in correctional settings or in response to a disaster or emergency, such as local jails and first responders; and nonprofit organizations, such as universities. However, a lack of information makes it difficult to estimate the dollar value of these new markets.

The following figure depicts the new markets made available to FPI.

New Markets for Federal Prison Industries' Products under the First Step Act



Source: GAO analysis of First Step Act. | GAO-20-505

Data on the size of most of the new markets are very limited. For example, GAO found no existing national information to help estimate the size and scope of relevant spending by nonfederal entities on disaster relief and emergencies. Also, challenges related to state and local government operations, for example, could limit FPI's ability to sell products in the new markets made available under the First Step Act. Specifically, state-level prison industries and in-state vendors often have preferential access to many of the procurement markets now available to FPI.

FPI and the private sector share some similar operating requirements, such as those related to keeping workers safe. They also face different requirements and business practices, such as those related to the legal framework, security, and costs.

Available data indicate that buyers are generally satisfied with the delivery and quality of FPI products. GAO analyzed 231 performance reports on FPI in the federal government's database for contractor performance, as of August 2019. Customers rated FPI's performance in the delivery schedule and quality categories as exceptional, very good, or satisfactory on about 80 and 90 percent, respectively, of performance reports. There were too few ratings on cost to analyze them.

FPI aims to assist inmates in their reentry into society by providing marketable job skills, but BOP has not reviewed FPI's impact on recidivism in over 2 decades. BOP relies on outdated studies that assessed the impact of FPI on inmates released in the 1980s. In January 2020, BOP cited a 1992 study as the basis for the Attorney General's designation of FPI as an Evidence-Based Recidivism Reduction Program under the *First Step Act of 2018*. BOP made a plan to evaluate FPI but the plan's timeline passed and the BOP has not set a new one. Without an updated plan for evaluating FPI, BOP continues to rely on outdated evaluations of FPI and has limited information about FPI's effectiveness amidst changes to its inmate population. Additionally, while BOP has reported some descriptive statistics on recidivism rates, it has not developed a goal. Without a timeline for evaluation and a goal for reducing recidivism, BOP's ability to assess the effectiveness of FPI will be limited.

Contents

GAO Highlights	2
Why GAO Did This Study	2
What GAO Recommends	2
What GAO Found	2
Letter	1
Background	5
Estimating Size of New Markets Is Challenging and FPI Is Taking Steps to Help Address Potential Limits to Expansion	9
FPI and Private Companies Face Different Legal Frameworks, Security Environments, and Costs	16
Feedback Mechanisms Suggest Customers Are Generally Satisfied with FPI's Performance	20
BOP Lacks Program Evaluation Timeline and a Recidivism Goal for FPI	24
Conclusions	32
Recommendations for Executive Action	32
Agency Comments	33
Appendix I: Objectives, Scope and Methodology	35
Appendix II: Market Research for Federal Prison Industries (FPI) Products and Services	40
Appendix III: GAO Contact and Staff Acknowledgments	44
Tables	
Table 1: Federal Prison Industries (FPI) Sales and Number of Inmates Employed, Fiscal Years 2013-2019	6
Table 2: Federal Prison Industries (FPI) New Markets Authorized under the First Step Act	11
Table 3: Comparison of Federal Prison Industries (FPI) and Private Sector Costs	18
Table 4: Federal Prison Industries' Contractor Performance Assessment Reporting System Ratings	23

Abbreviations

BOP	Bureau of Prisons
CBP	U.S. Customs and Border Protection
COVID-19	Coronavirus Disease 2019
CPARS	Contractor Performance Assessment Reporting System
D.C.	District of Columbia
DHS	Department of Homeland Security
DLA	Defense Logistics Agency
DOD	Department of Defense
DOJ	Department of Justice
FAR	Federal Acquisition Regulation
FEMA	Federal Emergency Management Agency
FPI	Federal Prison Industries
GPRAMA	Government Performance and Results Modernization Act of 2010
IRS	Internal Revenue Service
OCP	District of Columbia (D.C.) Office of Contracting and Procurement (OCP)
OSHA	Occupational Safety and Health Administration
PATTERN	Prisoner Assessment Tool Targeting Estimated Risks and Needs
PIECP	Prison Industry Enhancement Certification Program
TSA	Transportation Security Administration

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July 29, 2020

The Honorable Lindsey Graham
Chairman
The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Jerrold Nadler
Chairman
The Honorable Jim Jordan
Ranking Member
Committee on the Judiciary
House of Representatives

In 1934, federal legislation authorized the incorporation of Federal Prison Industries (FPI)¹ to manage, train, and rehabilitate inmates through employment. The hope was to provide inmates with marketable job skills to reduce the rate of recidivism.² 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.³ FPI also aims to diversify its product offerings to minimize competition with the private sector. The policy challenges associated with balancing the trade-off inherent in maximizing inmate employment and minimizing harm to the private sector have been present since program inception. FPI is a wholly-owned government corporation managed by the Department of Justice's (DOJ) Bureau of Prisons (BOP), with approximately 16, 500 inmates employed in FPI factories in 2019. As

¹ Pub. L. No. 73-461, 48 Stat. 1211.

² According to the National Institute of Justice, recidivism is one of the most fundamental concepts in criminal justice. It refers to a person's relapse into criminal behavior, often after the person receives sanctions or undergoes intervention for a previous crime. Recidivism is measured by criminal acts that resulted in rearrest, reconviction or return to prison with or without a new sentence during a 3-year period following the prisoner's release.

³ 18 U.S.C. § 4122(b)(2). The Bureau of Prisons decides which inmates are eligible to participate in FPI.

of February 2020, FPI operates 57 factories and there are 122 federal correctional institutions.

FPI's operations are intended to be economically self-sustaining, as the program does not receive annual appropriations. Further, FPI sets prices that are designed to be comparable to those available in the private sector. Prior to the enactment of the First Step Act of 2018, FPI had been limited to selling its products— such as furniture and apparel —to the departments or agencies of the U.S. government.⁴ The Act authorizes FPI to sell into new markets to expand inmate employment. The new markets are:

- public entities, such as states,⁵ for use in penal or correctional institutions;
- public entities for use in disaster relief or emergency response;
- the government of the District of Columbia; and
- certain tax-exempt (or “nonprofit”) organizations.⁶

The First Step Act also addressed a number of other criminal justice issues.⁷ Among other provisions, the Act requires the Director of BOP to implement a system to assess the risk of recidivism for every individual inmate in BOP and to provide programming, including participation in FPI, to reduce that risk.⁸

The Act also included a provision for us to review a number of issues related to FPI, including the estimated size and scope of FPI's new markets, the similarities and differences in selected requirements and

⁴ Pursuant to 18 U.S.C. § 4122, “Federal Prison Industries shall determine in what manner and to what extent industrial operations shall be carried on in Federal penal and correctional institutions for the production of commodities for consumption in such institutions or for sale to the departments or agencies of the United States, but not for sale to the public in competition with private enterprise.”

⁵ Under the First Step Act, “public entity” means a State, a subdivision of a State, an Indian tribe, and an agency or governmental corporation or business of any of the foregoing.

⁶ Pub. L. No. 115-391, § 605, 132 Stat. 5194, 5242-44. See, 18 U.S.C. § 4130. Pursuant to 18 U.S.C. § 4130(b), FPI may not sell office furniture to the eligible tax-exempt organizations.

⁷ Pub. L. No. 115-391, 132 Stat. 5194.

⁸ Pub. L. No. 115-391, § 102, 132 Stat. 5194, 5208-13. See 18 U.S.C. § 3621(h).

business practices of FPI and private-sector sellers of products and services, the satisfaction level of customers, and FPI's impact on recidivism rates.

This report addresses the following:

1. The potential size and scope of the additional markets made available to FPI under the First Step Act;
2. The similarities and differences in selected requirements and business practices of FPI and private sector sellers of products and services;
3. The extent to which FPI customers are satisfied with the quality, price, and timely delivery of its products and services; and
4. The extent to which BOP has evaluated the effectiveness of FPI and other vocational programs in reducing recidivism.

To describe the size and scope of the new markets made available to FPI pursuant to the First Step Act, we obtained and analyzed documentation and information on the number of organizations in each new market and their estimated spending on products and services comparable to those manufactured and sold by FPI. Additionally, we obtained summary procurement information from the District of Columbia (D.C.) Office of Contracting and Procurement (OCP) and interviewed agency officials. Regarding state public entities' products for use in corrections, we obtained information from relevant associations and interviewed cognizant officials. For public entities' products and services for use in disaster relief or emergency response, we conducted a literature search to identify existing studies, reports or summaries regarding state entities' purchases. Finally, we gathered documentation and interviewed representatives from the Federal Emergency Management Agency (FEMA), state auditing officials, and several associations.

To identify the similarities and differences in requirements and business practices of FPI and private-sector sellers of products and services as specified in the First Step Act, we reviewed laws, regulations, and policies, and interviewed key officials from private sector organizations and FPI. To identify differences in health and safety standards, we reviewed Occupational Safety and Health Administration (OSHA) guidance, and reviewed the Bureau of Prison's National Occupational Health and Safety Policy. We also interviewed officials from private sector

organizations representing the apparel and furniture industries, among others.

To describe the extent to which FPI customers were satisfied with FPI's performance, we reviewed relevant BOP program manuals to identify FPI's guidelines and procedures for ensuring that its products and services meet or exceed customer expectations. Additionally, we interviewed FPI quality managers. Moreover, we reviewed and analyzed Contractor Performance Assessment Reporting System (CPARS) data on FPI available as of August 2019, with submission dates ranging from fiscal years 2009 through 2019.

To determine the extent to which BOP has evaluated the effectiveness of FPI and other vocational programs in reducing recidivism and the results, we reviewed BOP's program evaluation plan. To examine the steps BOP has taken to prioritize evaluations of FPI and other programs, we reviewed agency documentation, and interviewed BOP officials from relevant offices and divisions. To identify the actions BOP took to establish a recidivism reduction goal, we identified relevant performance goals and measures in BOP plans, reports on recidivism reduction, and budget justification documents. Additionally, we interviewed BOP officials to obtain their views on the status of their efforts to implement requirements outlined in the aforementioned legislation. We conducted a literature search and interviewed BOP officials to identify studies on recidivism.

In addition, we visited four BOP institutions with FPI factories at three different locations. At these facilities, we observed FPI's production operations and interviewed inmates and FPI officials. We selected these sites based on factors such as the types of products made, security level of the different correctional facilities, and the number of inmates working for FPI at each location. Through applying the criteria, we visited 3 low-security institutions and 1 medium-security institution. The factories at these institutions were used to produce vehicle upfit services, apparel, and furniture. Sales of products in these 3 categories constituted approximately 80 percent of the total in fiscal year 2019. Our observations and interviews during these site visits are not generalizable to all FPI locations, but provide important perspectives on the operations of FPI. For all of our objectives, we interviewed BOP and FPI officials. We determined that the data we present were sufficiently reliable for the purposes of this engagement. Appendix I provides detailed information about our scope and methodology.

We conducted this performance audit from March 2019 to July 2020 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

Overview of Federal Prison Industries

FPI is a wholly-owned government corporation authorized by law,⁹ and established by executive order in 1934. FPI, and other programs, such as vocational training for example, are designed to reduce recidivism by providing inmates with the skills necessary to succeed upon reentry into society.¹⁰ FPI operates under the trade name “UNICOR” and has a board of six directors appointed by the President, which guides its activities.¹¹ Oversight of FPI rests with BOP, a component agency of DOJ. FPI provides employment and training for inmates through production and sales of its products and services. By law, FPI is required to diversify its products so that its sales are distributed among its industries as broadly as possible.¹² According to its policy, FPI aims to price its products and services so they are comparable to, and competitive with, private sector prices.

FPI manufactures products and provides services that are sold to federal agencies, primarily DOJ and the departments of Defense (DOD) and Homeland Security (DHS). FPI conducts industrial, agricultural, and

⁹ 18 U.S.C. § 4121.

¹⁰ Vocational training is designed to help inmates acquire marketable skills in a wide variety of trades such as carpentry.

¹¹ See 18 U.S.C. § 4121. The directors shall be representatives of (1) industry; (2) labor; (3) agriculture; (4) retailers and consumers; (5) the Secretary of Defense; and (6) the Attorney General, respectively.

¹² 18 U.S.C. § 4122(b)(3).

service operations at 57 factories and two farms. As of April 2020, FPI has suspended operations at many of its factories due to the Coronavirus Disease 2019 (COVID-19). Those factories that remain open are making personal protective equipment such as hand sanitizer, masks, and gowns for BOP and other federal customers and completing orders for DOD. In fiscal year 2019, FPI maintained seven business lines: agribusiness, clothing and textiles, electronics, fleet, office furniture, recycling, and services,¹³ all of which accounted for a total of \$531 million in sales that year (see table 1).

Table 1: Federal Prison Industries (FPI) Sales and Number of Inmates Employed, Fiscal Years 2013-2019

Fiscal year	Employees	Sales (\$ in millions)
2013	13,001	\$533
2014	12,468	\$389
2015	12,278	\$472
2016	10,896	\$498
2017	16,792	\$454
2018	17,041	\$503
2019	16,430	\$531

Source: GAO analysis of FPI data. GAO-20-505.

Note: For fiscal year 2017 and beyond, the number of inmates employed reflects the total number of inmates who worked in FPI at any point and for any length over the course of the fiscal year. Prior to fiscal year 2017, the numbers reflected only those inmates employed by FPI at the end of the fiscal year.

Laws, Regulations, and Practices Governing FPI Products and Services

Federal laws and regulations govern the process federal agencies must follow in buying FPI's products and services, along with the process FPI must follow in selling to these agencies and other customers. Pursuant to 18 U.S.C. § 4124, federal departments and agencies generally are required to purchase FPI's products that meet their needs and are available—generally referred as the “mandatory source” requirement.

¹³ The fleet business line includes installing upfit packages, removing original manufacturer equipment, installing branding decals, installing equipment, and other automotive services, according to specifications outlined on the vehicle order form. The services business line includes call centers.

FPI's prices may not exceed current market prices. Agencies are required to determine whether the FPI item is comparable to supplies available from the private sector in terms of price, quality, and time of delivery, in accordance with FAR subpart 8.6.¹⁴ If an agency determines that the FPI product is not comparable to what is available in the commercial market, the agency may then purchase the item needed using any of the various competitive procedures customarily available to the agency under the FAR.¹⁵ When using competitive procedures, the agency must consider a timely offer submitted by FPI.

FPI may waive the mandatory source requirement.¹⁶ In some cases, FPI may issue a general waiver that applies to all agencies for listed products not currently available from FPI. In other cases, an agency wishing to purchase a product from another source may apply to FPI for a waiver. FPI considers these waiver requests on a case-by-case basis. Agencies need not apply for a waiver for items not on FPI's mandatory list or for services.¹⁷ For these nonmandatory purchases, buying from FPI is at the discretion of the customer agency.

When FPI sells products or services to a federal agency, these transactions are considered to be intergovernmental transfers.¹⁸ As such, FPI transactions are conducted under its statutory authority and the implementing regulations in FAR subpart 8.6.¹⁹ Agencies purchase products and services from FPI through various means, including blanket purchase agreements, purchase orders, and orders under indefinite-

¹⁴ 48 C.F.R. subpt 8.6.

¹⁵ See 48 C.F.R. § 8.602.

¹⁶ 48 C.F.R. § 8.604.

¹⁷ Nonmandatory items include those items where FPI's board of directors has administratively waived the mandatory source requirement. Current items not subject to the mandatory source include mirrors and metal and wood wardrobes.

¹⁸ For more information see, Department of Justice, Office of Legal Counsel, *Application of the Federal Acquisition Regulations to Procurement from Federal Prison Industries*, (Washington, D.C.: Sept. 13, 1993).

¹⁹ 18 U.S.C. §§ 4121-4129, and 48 C.F.R. subpt. 8.6.

delivery, indefinite-quantity contracts.²⁰ The procedures for purchasing from FPI are generally the same for defense and civilian agencies. However, the Secretary of Defense is required to publish a list of product categories for which FPI's share of the DOD market was greater than 5 percent, based on the most recent fiscal year data available.²¹ The Secretary of Defense may purchase a product listed in the latest edition of the FPI catalog for which FPI has a significant market share only if the Secretary uses competitive procedures for the procurement of the product or makes an individual purchase under a multiple award contract in accordance with the competition requirements applicable to such contract.²²

The First Step Act expands the categories of potential customers for FPI's products, and FPI officials reported that FPI is expected to grow to provide more opportunities for inmates.²³ Generally, the First Step Act requires the Attorney General to submit a report that includes, among other elements, a strategy to expand the availability of such programs without reducing job opportunities for workers in the United States who are not in the custody of the Bureau of Prisons.²⁴

FPI contracts with private firms in the following five ways:

- FPI sells inmate-furnished services to the private sector, including the staffing of call centers and computer-aided design services. FPI sold approximately \$8.7 million in commercial market services in fiscal year 2019.

²⁰ Blanket Purchase Agreements are agreements between government agencies and vendors with terms and conditions, including prices, in place for future use. An indefinite-delivery, indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period.

²¹ National Defense Authorization Act, 2008, Pub. L. 110–181, § 827, 122 Stat. 3, 228-29.

²² 10 U.S.C. § 2410n(b).

²³ 18 U.S.C. § 4130.

²⁴ See 18 U.S.C. § 3634. The strategy also requires information on the feasibility of prisoners manufacturing products purchased by federal agencies that are manufactured overseas; and an assessment of the feasibility of expanding such programs, consistent with the strategy, with the goal that 5 years after the date of enactment of the Act, not less than 75 percent of eligible minimum- and low-risk offenders have the opportunity to participate in a prison work program for not less than 20 hours per week. The first report under this provision is due in December 2020.

- FPI sells goods to private-sector firms if FPI repatriates the production from overseas. Specifically, FPI may manufacture goods currently made, or that otherwise would be made, outside of the United States for private sector firms. According to officials, FPI performs this work under a contract whereby FPI produces goods under the label or brand of a private firm. FPI's board of directors must approve any product offered under this authority. FPI has approved 32 of these arrangements as of fiscal year 2019, including for the production of surgical appliances. FPI sold approximately \$2.5 million in goods to the private sector under this arrangement in fiscal year 2019.
- FPI participates in the Prison Industry Enhancement Certification Program (PIECP). Under this program, federal prisoners work at the direction of private sector firms to produce items if they are paid prevailing wages for their work, among other requirements. Overall, FPI generated \$2.8 million in sales under the program in fiscal year 2019.
- FPI acts as a subcontractor to private firms that provide goods or services to the federal government as a prime contractor. FPI sold approximately \$12 million from such activities in 2019. For example, a company that manufactures uniforms for DHS subcontracted some of this work to FPI to manufacture a portion of the order.
- FPI operates two farms in California and Oklahoma BOP facilities, which produce commodities such as cheese. FPI sold over \$6 million worth of agricultural products in fiscal year 2019, primarily to BOP.

Estimating Size of New Markets Is Challenging and FPI Is Taking Steps to Help Address Potential Limits to Expansion

Data on the D.C. Government Market Are Available, but Data to Estimate the Size of the Other New Markets Are Limited

The First Step Act authorized new markets for FPI. Specifically, FPI can now sell its products to: 1) the D.C. government; 2) public entities for use in penal or correctional institutions; 3) public entities for use in disaster relief or emergency response; and 4) certain nonprofit organizations (see table 2).

Data on the D.C. government market are available to estimate its size and scope, but there are insufficient procurement data available from the other markets established by the First Step Act and no national sources of data necessary to make reliable estimates.

Table 2: Federal Prison Industries (FPI) New Markets Authorized under the First Step Act

Market	Description
District of Columbia (D.C.) government	The D.C. government serves D.C. residents and procures products and services to fulfill government operations.
Public entities for products for use in penal or correctional institutions; and disaster relief or emergency response	Under the First Step Act, “public entity” means a State, a subdivision of a State, an Indian tribe, and an agency or governmental corporation or business of any of the foregoing.
Certain nonprofit organizations	Any organization described in subsection (c)(3), (c)(4), or (d) of section 501 of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Internal Revenue Code. The First Step Act prohibits FPI from selling furniture to nonprofit organizations.

Source: GAO analysis of First Step Act. Pub. L. No. 115-391, § 605, 132 Stat. 5194, 5242-44. See, 18 U.S.C. § 4130. | GAO-20-505

D.C. Purchased \$23 million in Products Similar to Those Sold by FPI.

From fiscal years 2017 through 2019, D.C. purchased more than \$23 million in the categories of clothing and textiles, office furniture, electronics and recycling, according to the data we reviewed.²⁵ D.C.’s Office of Contracting and Procurement oversees procurements for 79 of the D.C. government’s agencies and offices and the awarding of contracts to hundreds of suppliers. According to D.C.’s Supply Schedule, D.C. purchases products and services along 16 business lines, which include the following categories that overlap with products manufactured by FPI: apparel, furniture, industrial supplies, and printing services. OCP officials told us that FPI was registered to do business with D.C. and they were receptive to FPI entering their market. However, FPI officials told us that they did not anticipate that the D.C. market would be a significant revenue source for FPI’s products, as most D.C. government purchasing goes to vendors registered as Certified Business Enterprises. FPI does not qualify as a CBE, so they cannot bid on the majority of D.C. solicitations, making a small market (D.C.), significantly smaller, according to these officials.

State, County, and Municipal Spending on Correctional Institutions.

The Census Bureau estimated that in fiscal year 2017, there were approximately 90,000 public entities—which includes the governments of states, counties, cities, townships, villages, and/or special districts—across the United States. Each year, these state and local entities

²⁵ During these 3 fiscal years, D.C. spent about \$10.1 billion on products and services. D.C. spent \$159.7 million on products for use in penal and correctional institutions and for disaster relief and emergency response. Of this amount, funds spent for use in penal and corrections institutions accounted for about \$131.3 million while homeland security grants and the D.C. Homeland Security Management Agency accounted for \$28.4 million.

purchase products and services to operate, collectively, nearly 5,000 correctional facilities. There are no comprehensive data on the products purchased by public entities for use in correctional facilities.²⁶ However, according to the National Correctional Industries Association's 2019 Directory, state departments of corrections purchased about \$466 million in products and services from state correctional industries in 2018. Association officials told us that these purchases were made primarily by states and do not include procurement data from municipalities which operate a total of about 3,000 local jails.²⁷

State and Local Spending for Disaster Relief/Emergency Response.

State and local governments provide assistance to organizations and individuals who have been impacted by major disasters or emergency incidents, such as those caused by hurricanes, tornados, or fires. Disaster relief and emergency response involve a complex operating system across federal, state, and local governments, as well as public, for-profit, and nonprofit entities. Against this backdrop, we found no existing national information to help us estimate the size and scope of spending by public entities on products or services for disasters or emergency response that could be made by FPI. Moreover, the more individualized spending information available, such as information reported to FEMA, generally did not provide details on the purchases of specific products and services, according to agency officials.

Officials from several states provided some spending data on clothing, electronics, and office furniture by their states for disasters or emergency response. For example, the state of North Carolina reported \$23,000 in spending on electronics products for use in emergency response in fiscal year 2018. However, as acknowledged by North Carolina officials, this information does not necessarily provide a reliable estimate of spending on all products for disaster relief and emergency response purposes. This type of information only represents spending from each state's primary

²⁶ According to the *2017 Census of Governments*, state and local governments spent about \$79 billion to operate their corrections facilities. However, the Census Bureau did not report on the dollar figures for specific products and services. Absent more specific information on the types of products and services being sold, these spending figures cannot provide an estimate of the size and scope of the correctional industries market made available to FPI.

²⁷ The National Correctional Industries Association is a nonprofit professional association whose members represent Federal, state, county and international correctional industry agencies. Collectively, state prison industries manufacture and sell products such as clothing and office furniture primarily to state governments.

office of emergency management, and not applicable spending by other state agencies.

Furthermore, state auditing officials, and officials from the National Emergency Management Association told us that the collection of such information would be a difficult and complex process because spending on disaster relief and emergency response is spread across multiple state agencies, and their procurement systems do not categorize the procurement of products by purpose. FEMA officials told us that identifying states' use of FEMA disaster grants by a particular product line, such as office furniture and clothing, would need to be generated by grant recipients at the project level.²⁸ The officials noted, moreover, that while grant recipients must report grant-related obligations, expenditures, and performance on a periodic basis, they do not typically report data regarding the actual purchases of specific products to FEMA and DHS.

Nonprofit Organizations. In fiscal year 2018, nearly 1.7 million nonprofits across the United States were registered with the Internal Revenue Service (IRS) as 501(c) organizations, according to IRS statistics. About 80 percent of this nonprofit market consists of public charity organizations, such as hospitals, churches, and medical research centers, as well as educational institutions, including schools, colleges, and universities. The remaining 20 percent consists of an array of tax-exempt entities with varying purposes and numbers, including, for example, 9,000 cemetery corporations, 94 unemployment compensation trusts, 1,599 state-chartered credit unions, 62,884 business leagues, and 28,537 veterans' organizations.

There is insufficient information on the level of spending by nonprofit organizations—specifically on products such as clothing and apparel—to enable us to generate an estimate of the size of FPI's new markets. Sources of data that we reviewed, such as the Urban Institute's National Center for Charitable Statistics, primarily synthesize data from IRS Form 990, which public charities and private foundations must annually file to

²⁸ Programs, authorized under the *Robert T. Stafford Disaster Relief and Emergency Assistance Act*, as amended (42 U.S.C. § 5121 et seq.), outline the federal role in supporting state, local, tribal, and territorial governments as they respond to and recover from a variety of incidents. According to the Congressional Research Service, at the end of fiscal year 2019, the Disaster Relief Fund carried over a balance of more than \$29 billion.

report their activities.²⁹ Although some general information can be gleaned from these forms, such as the amount the firms spend on office expenses and information technology, the IRS does not require expenditures on specific products and services to be reported. BOP officials explained that as most FPI products are made to military specifications, their appropriateness for nonprofits is limited. Further, officials said that the product line with the most direct application to nonprofits is office furniture. However, the First Step Act prohibits the sale of office furniture to these organizations.³⁰

Various Challenges May Affect FPI's Ability to Expand into New Markets and FPI Has Efforts Underway to Help Address Them

Several challenges related to state and local government operations could limit FPI's opportunity to sell products in the new markets made available under the First Step Act. For example, state-level prison industries and in-state vendors can have preferential access to many of the procurement markets also made available to FPI.³¹ According to the National Correctional Industries Association's 2019 annual directory, 32 of the 49 state prison industries received a preference in their state procurement process. In addition, D.C. officials stated that many of its vendors are registered as Certified Business Enterprises and, therefore, receive preference in procurement opportunities offered by the D.C. government. According to FPI officials, FPI does not qualify for this

²⁹ In general, section 6033(a)(1) of the Internal Revenue Code (IRC), 26 U.S.C. § 6033(a)(1), requires every organization exempt from taxation under 26 U.S.C. § 501(a) to file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary of the Treasury may by forms or regulations prescribe. According to the IRS, Forms 990 are used by tax-exempt organizations, nonexempt charitable trusts, and certain political organizations to provide the IRS with the information required by 26 U.S.C. § 6033.

³⁰ 18 U.S.C. § 4130(b).

³¹ For example, some states may require their agencies to buy the products made by their in-state prison industries.

preference and as a result, cannot bid on the majority of D.C. solicitations.³²

In addition, FPI officials told us that they might avoid entering into markets where another prison industry program was already operating because of the in-state preference. Therefore, the number of public entities that could purchase products from FPI for use in correctional institutions could be limited. Several state auditors told us that their respective prison industry programs already supply their state agencies with products similar to those sold by FPI. Similarly, officials from the National Correctional Industries' Association told us that a state's Department of Corrections is more likely to buy from their own state correctional industries program before they would buy from FPI.³³ According to FPI officials, there may be instances whereby they could serve as subcontractors for other state prison industries, for example, to fulfill a particularly large order beyond the capacity of the state prison industry. In addition, officials told us that there might be opportunities to sell products that state prison industries did not manufacture or sell. However, in states like Texas and California, such opportunities could be limited because the state's prison industry manufactures similar products to FPI, according to information from the National Correctional Industries Association.³⁴

FPI officials also told us that while FPI's business model is primarily designed to serve the federal market, they have undertaken several steps to adapt the business to serve customers in their new markets. For example, in February 2020, FPI officials told us that they hired sales staff to assist with sales in the new markets. In addition, they said that in 2019, FPI assigned an FPI general manager to the National Correctional Industries Association's board of directors. FPI officials also stated that they plan to create a new marketing and business development team to

³² To qualify as a Certified Business Enterprise in D.C., a business must demonstrate that it meets one of the following: (1) more than 50 percent of the employees of the business enterprise are residents of D.C.; (2) the owners of more than 50 percent of the business enterprise are D.C. residents; (3) more than 50 percent of the assets of the business enterprise, excluding bank accounts, are located in D.C.; or (4) more than 50 percent of the business enterprise's gross sales come from purchase made by D.C.-based transactions.

³³ Additionally, they told us that they had not met with officials from FPI since the passing of the First Step Act and that many of the states that they represent were probably unaware of FPI's new authorities that resulted from the First Step Act.

³⁴ According to the National Correctional Industries Association's 2019 annual report, the California Prison Industries Authority managed over 100 factories and sold over 1,700 standard products and services in the state of California.

estimate the size of the new markets. FPI officials characterized the effort to estimate the size of the new markets—which they believe is a necessary step—as complex and resource-intensive and stated that FPI did not have the capacity to conduct this research on its own. In order to close this gap in research capacity, in January 2020 FPI began coordinating with the DOJ's Justice Management Division to hire a contractor to estimate the size of the market, conduct a comprehensive market opportunity analysis, and help FPI determine which markets it is best positioned to enter. FPI officials told us that they expect to hire the contractor by March 2020.

FPI and Private Companies Face Different Legal Frameworks, Security Environments, and Costs

While there are some similarities in how FPI and firms in the private sector operate, such as the need to provide safe working conditions, there are several significant differences in their respective approaches to selling goods and services to federal agencies. These differences primarily involve federal statutory and regulatory requirements, security issues, and costs. In addition, we found varied approaches in how the federal agencies in our review compare the products and capabilities of FPI to those of private sector businesses. Appendix II provides information on these varied approaches to conducting and documenting market research for certain products and services.

FPI and the Private Sector Operate Within Different Legal Frameworks

There are significant differences in the rules that apply to FPI's sales to federal agencies compared with private entities' sales to federal agencies. Pursuant to 18 U.S.C. § 4124(a), generally, federal departments and agencies and all other government institutions of the United States are required to purchase, at not-to-exceed current market prices, the products of FPI that meet their requirements and may be available. By regulation, federal agencies are encouraged to purchase FPI supplies and services to the maximum extent practicable.³⁵

³⁵ 48 C.F.R. § 8.601(e).

Prior to purchasing an item listed in the FPI schedule, federal agencies are required to conduct market research to determine whether the FPI item is comparable to supplies available from the private sector that best meet the government's needs in terms of price, quality, and time of delivery.³⁶ The agencies are also required to prepare a written determination that includes a supporting rationale explaining the assessment of price, quality, and time of delivery, based on the results of market research.³⁷ By regulation, if the FPI product is comparable, the agencies are required to purchase the item from FPI following the purchasing procedures on FPI's website (<http://www.unicor.gov>) unless a waiver is obtained in accordance with regulations from FPI.³⁸ If the FPI item is not comparable in one or more of the areas of price, quality, and time of delivery, federal agencies are required to acquire the item using authorized competitive procedures.³⁹ According to the federal contracting database, the Federal Procurement Data System – Next Generation, approximately half of the purchases from FPI from fiscal year 2014 through fiscal year 2018 were not available for competition. According to FPI, agencies may determine that certain terms, such as price, are not comparable to the private sector, in which case the mandatory source requirement would not apply. Officials said it would be helpful if agencies, particularly civilian agencies, sent FPI a copy of market research and said they do not know to what extent agencies are performing such research.

When agencies buy products and services from the private sector, by contrast, the Competition in Contracting Act requires that agencies generally obtain full and open competition through the use of competitive procedures.⁴⁰ The use of competitive procedures to award contracts means that all prospective contractors may submit proposals. Agencies generally are required to perform acquisition planning and undertake market research efforts to promote full and open competition.

³⁶ 48 C.F.R. § 8.602(a)(1). This is a unilateral determination made at the discretion of the contracting officer for the agency. According to FPI, it does not receive notice of these determinations.

³⁷ 48 C.F.R. § 8.602(a)(2).

³⁸ 48 C.F.R. § 8.602(a)(3).

³⁹ See 48 C.F.R. § 8.602(a)(4).

⁴⁰ The Competition in Contracting Act of 1984, Pub. L. No. 98-369, tit. VIII, §§ 2701-2753, generally requires agencies to obtain full and open competition through the use of competitive procedures in their procurement activities unless otherwise authorized in law.

FPI Operates in a Unique Security Environment

According to agency officials, managing a business enterprise is particularly challenging in an environment where one primary function of the institution is the treatment, custody, and supervision of criminal offenders. During our visits to several of FPI’s facilities, FPI officials discussed the challenges of operating a business in a prison. For example, shift supervisors and production managers are “correctional officers first,” and thus may be called upon to assist in a correctional role or other function whenever necessary. Supervising FPI’s production operations is an important, but secondary, consideration, according to FPI officials. These officials added that prison lockdowns can occur at any time, delaying production work for unknown periods. Officials also told us they must check and account for tools at the end of every shift. In certain industries, inmates must change clothes, which requires additional monitoring. Addressing these challenges in the face of the COVID-19 pandemic may become amplified because, for example, additional sanitation steps may become necessary.

FPI and Private Sector Have Different Cost Challenges

From our discussions with agency officials and private sector firms, both FPI and firms in the private sector incur similar types of costs in producing and selling their products, but the amount of those costs varies due to a variety of factors, as shown in table 3.

Table 3: Comparison of Federal Prison Industries (FPI) and Private Sector Costs

Business Aspect	FPI	Private Sector
Labor availability	There is a limited labor pool available to FPI, resulting in possible skill shortages, according to FPI officials. The workers in FPI’s production facilities are drawn from the prison population at large. Skills and experience vary greatly, according to officials. Officials added that there is a long waiting list to join FPI operations at most facilities. BOP officials give preference to inmates with prior FPI experience, veterans, and those within 3 years of release, among others.	Subject to constraints in the labor market, private sector firms have the ability to recruit and hire workers with the skill sets they require.

Business Aspect	FPI	Private Sector
Wages and benefits⁴¹	FPI is not subject to minimum wage provisions and compensates its inmate workers \$0.92 per hour, on average, according to agency officials. Inmates working for FPI do not receive compensation and benefits comparable to what is available in the private sector, according to industry officials. FPI officials also told us that inmates do not have to pay for food, housing, or medical expenses, may earn paid leave, and that their managers earn more than those in equivalent private sector firms.	The private sector is required to pay its workers in accordance with federal and state minimum wage requirements. Many firms in the private sector provide various fringe benefits to their employees beyond what is required by law, industry representatives told us. These benefits can include medical coverage, paid leave, or retirement income contributions, representatives added.
Correctional Setting	According to agency officials, FPI, averages about 6 hours of productive time per factory shift. FPI officials told us that requirements in the statute, such as that requiring the employment of as many inmates as possible, cause FPI to forgo any cost savings that may come from automation.	According to FPI, the private sector average is about 7.5 hours of productive time per factory shift.
Health and safety standards	According to Labor Department officials, OSHA sets and directly enforces occupational safety and health standards for federal agencies and FPI. Where inmates are employed in work similar to that outside prisons, OSHA protections, open to employees in similar situations, apply. OSHA must announce workplace inspections at BOP correctional facilities and FPI in advance, may issue Notices of Unsafe and Unhealthful Workplace Conditions, but may not issue a fine to BOP or FPI. FPI officials also told us inmates are eligible for accident compensation.	OSHA sets and directly enforces occupational safety and health standards for the private sector in about half the states. The remaining states have chosen to set and enforce their own occupational safety and health standards for these employers under a state plan approved by OSHA. Private firms are subject to unannounced inspections and fines, if citations are issued.
Taxes	FPI sales are exempt from federal and state taxes.	The private sector is subject to federal and state taxes, according to industry officials.
Product liability	Product liability risks faced by FPI are subject to limitations set within the Federal Tort Claims Act.	Private firms face product liability exposure and buy insurance to cover this risk.
Profit	FPI is self-funded and must earn a sufficient return to stay in business.	Firms in the private sector must earn a profit to stay in business.
Overhead costs	FPI faces general and administrative expenses. FPI incorporates these costs into their prices.	Firms in the private sector face general and administrative expenses. These and other expenses incurred by the private sector typically are priced into the products and services sold to customers.
Cost of capital	FPI receives financing through the Treasury Department for up to 25 percent of its net worth. FPI officials said they were unable to borrow beyond this limit to fund expansion.	Private firms must raise capital through the private markets, including banks or other lenders.

Sources: GAO analysis of statutes and regulations; discussions with FPI and industry officials. | GAO 20-505

⁴¹ The comparison of basic wage rates between prison and private industries above does not take into account potential differences in the productivity and skill levels of the two labor forces.

Feedback Mechanisms Suggest Customers Are Generally Satisfied with FPI's Performance

FPI uses various methods to obtain feedback from its customers. These mechanisms are both formal and informal and include surveys, onsite customer representatives, and an online performance database. To varying degrees, the feedback mechanisms indicate that FPI's customers are generally satisfied with the quality and delivery of FPI's products and services, though less is known about cost.

Mechanisms Exist to Obtain Customer Feedback

According to FPI policy and officials, several mechanisms exist to obtain customer satisfaction from FPI's buyers. These mechanisms include (1) a customer satisfaction survey, (2) in-person feedback through customer representatives, and (3) a formal customer complaint system. Moreover, FPI views customer feedback as a key component of their continual improvement efforts. To that end, at various points throughout the buying process, customers have the opportunity to comment on the cost, quality, and timely delivery of FPI products. FPI utilizes these mechanisms and customer feedback as follows:

Customer satisfaction survey. FPI fields a survey to assess its customers' satisfaction level. According to the survey procedure, the facility-based quality manager, who is responsible for onsite quality assurance efforts, is expected to survey each customer on a monthly basis, either by mail or by telephone. The survey contains questions on customer satisfaction with quality, overall experience, adherence to delivery requirements, and the fulfillment of contractual requirements, among other aspects related to FPI performance. The survey varies slightly by business line. For example, the survey for furniture line customers contains over 20 questions, with the five response options ranging from very good to very poor. By comparison, the survey for the fleet line customers contains only five questions, with the five response options ranging from excellent to poor. However, FPI documents state that they score all surveys using the same 5-point scale outlined in its survey procedure. FPI considers a score of 3.8 or higher as an indicator of an effectively run FPI facility. In the event that a facility fails to meet this

score, facility-level management would be responsible for addressing problems identified through the survey to improve customer satisfaction.

In October 2019, officials told us that all FPI facilities are operating at or above this rating. However, we were unable to verify the customer satisfaction survey scores because FPI could not provide the underlying data used to calculate the score. Specifically, officials told us that they calculate scores at the facility level, but do not track the number of individual surveys used to compile the score at each facility. FPI officials told us that the number of customers varies by facility and product, which could be as low as a single customer. Officials estimated that the response rate to their customer satisfaction survey is very low.

Customer representative feedback. FPI officials told us that they also receive feedback through conversations with purchasing agencies' customer representatives. For example, U.S. Customs and Border Protection (CBP) sends staff to the FPI facility to ensure the quality and accuracy of orders. According to FPI officials, they provide CBP staff with an office, for example, at the Bastrop, Texas, location and consider them an unofficial part of the quality team. Specifically, the purchasing agencies' representative conducts inspections of items while they are in process on the factory floor and prior to shipment. In addition to helping ensure the accuracy of orders, FPI officials said this approach also allows the facility to identify and incorporate potential process improvements. FPI officials in Bastrop explained that they discuss orders with CBP's visiting customer representatives on a weekly basis. Moreover, FPI officials at another facility we visited said they have monthly meetings with customer representatives. Officials told us that they do not document this face-to-face feedback because they view it as a preventative measure used to address issues before they become formal complaints.

Customer complaint system. FPI operates a formal customer complaint system at its Customer Service Center in Lexington, Kentucky. The service center receives complaints from customers who order online or via fax, for example, and subsequently contact FPI to report an issue. According to FPI officials, in order to track formal customer complaints received through the center, staff enter information obtained from calls into a financial management system and assign a number to the complaint. The information collected on the call includes the type of issue, customer name, and the date of the complaint. Officials explained that, once the information is entered into the system, FPI facility-level staff are able to retrieve the details on the complaint. During the course of our review, officials at two of the FPI facilities we visited told us that facility-

level quality managers retrieve complaints from this system and use them to create a record of the ongoing customer issues they need to resolve. Furthermore, officials at one of these facilities indicated that they use daily quality assurance reports to help identify the cause of problems. Officials at the other facility told us that they use these reports to shape training and to identify issues that can be brought before inmates through periodic “town hall meetings.”

Available Data Indicate Customers Are Generally Satisfied with FPI Performance in Quality and Delivery, but Satisfaction with Cost Is Largely Unknown

Available data indicate customers are generally satisfied with FPI’s performance. The Contractor Performance Assessment Reporting System (CPARS) is the government database agencies use to record contractor performance, research a contractor’s performance history, and inform future contract awards. A CPARS performance report contains a series of evaluation categories that allow buyers to rate a contractor’s performance. The categories focus on various areas, including the small business’ goals, business management, quality, cost, and timely delivery of the item, with possible ratings ranging from exceptional to unsatisfactory. Buyers of FPI products may indicate that a question is “not applicable” or “N/A.” Moreover, buyers are offered the option of adding additional comments to each report.

Our analysis of available CPARS data and discussions with buyers indicates customers are generally satisfied with some aspects of FPI’s performance. We analyzed all 231 performance reports submitted into CPARS by FPI customers from 2009 to 2019. We included all performance reports available as of August 21, 2019, in our analysis. Customers rated FPI performance in five categories: cost, quality, schedule, small business goals, and business management. For our purposes, we analyzed responses in three categories: cost, quality, and schedule. We chose these categories because they align with the parameters buyers use to determine whether FPI’s products are comparable to those available in the private sector. In the quality and schedule categories, customers rated FPI’s performance as exceptional, very good, or satisfactory on about 80 and 90 percent, respectively, of performance reports. Additionally, customers rated FPI’s performance as marginal in the schedule and quality categories on about 6 percent of reports. For the cost category, customers did not rate or selected “N/A” for FPI’s performance on 184 reports, which is approximately 80 percent

of the reports we analyzed. As a result, customer satisfaction with cost cannot be identified from the CPARS data that were available to us at the time of our review. See table 4 below.

Table 4: Federal Prison Industries’ Contractor Performance Assessment Reporting System Ratings

	Exceptional	Very good	Satisfactory	Marginal	Unsatisfactory	N/A
Cost	1%	2%	16%	0%	0%	80%
Quality	4%	39%	45%	6%	1%	5%
Schedule	3%	34%	41%	6%	7%	8%

Source: GAO analysis of Contractor Performance Assessment Reporting System Data. GAO-20-505.

Note: The information outlined in this table is based on our review of all 231 performance reports available as of August 21, 2019. The percentages shown represent the number of times, out of 231 reports, Federal Prison Industries received a certain rating in the chosen categories. Rows may not equal 100 percent due to rounding.

DHS and DOD told us they are generally satisfied with FPI’s products. Officials from CBP told us that FPI’s vehicle modification work, which includes adding law enforcement equipment to civilian vehicles, is of high quality. According to officials, the modifications, known as vehicle upfitting, involve installing an entire law enforcement package—cages, radio systems, and lighting—on civilian vehicles for use near the southern border. FPI officials explained that upfitting is a major product line, but most small, private companies cannot provide the same level of customization as FPI. Moreover, CBP has found that FPI has extensive knowledge of and experience with law enforcement requirements to work with CBP to plan vehicle modifications and upfits. Officials from DOD’s Defense Logistics Agency (DLA) told us that they consider FPI a valuable member of the industrial base and that it consistently delivers clothing and textile end items that meet contractual quality and delivery requirements. Furthermore, these officials told us that FPI does a good job and rate their work as above average. One official explained that his division within DLA, which buys clothing and textiles from FPI, enters feedback in the CPARS database. According to the official, the organization currently has 15 reports with ratings of satisfactory or higher for FPI in the CPARS database.

BOP Lacks Program Evaluation Timeline and a Recidivism Goal for FPI

BOP's Program Evaluation Plan Is Outdated and Lacks a Timeline for Conducting an FPI Evaluation

BOP has relied on outdated studies to demonstrate the effectiveness of its inmate reentry programs to reduce recidivism and, when we examined this issue in 2015, did not have a plan in place to prioritize their evaluation. As a result, we recommended that BOP prioritize evaluations of its reentry programs, which included FPI.⁴²

In July 2017, BOP announced a five-stage program evaluation plan, developed in response to our prior recommendation. BOP planned to complete the evaluation of FPI in fiscal year 2018. However, BOP officials confirmed that, as of April 2020, they had made little progress and had not established a new completion date. According to BOP officials, an evaluation of FPI would require a significant investment of time and staff resources and approval by the BOP's Institution Review Board at a time when BOP has additional reporting mandates from the First Step Act.

BOP officials primarily attribute the delay to complexities in conducting program evaluations in a prison environment. Specifically, officials told us that measuring the outcome variables of a program like FPI, at both baseline and after a follow-up period, may not always be feasible. When the outcome of interest is "recidivism," such as whether an inmate will continue to commit criminal offenses after participating in a prison program, they stated that the outcome can only be measured after the

⁴² See GAO, *Federal Prison System, Justice Could Better Measure Progress Addressing Incarceration Challenges*, GAO-15-454 (Washington, D.C.: July 19, 2015). In that report, we recommended that the Director of BOP includes, as part of its current evaluation plan, all 18 of BOP's national reentry programs, and prioritizes its evaluations by considering such factors as resources required for conducting evaluations and changing characteristics of inmates over time. In response to our recommendation, BOP provided an updated evaluation plan that included all of BOP's national reentry programs, including FPI, with target dates for the evaluation of each program. This new plan was consistent with our recommendation.

program is delivered. Officials told us that conducting another quasi-experimental study comparable to the study it concluded in 1987⁴³ would be costly and time consuming because it takes many years to identify and match appropriate treatment and control groups, have individuals complete their prison sentences, and then release them back into the community for up to 3 years or longer.⁴⁴ Moreover, BOP officials also said that the conditions at the time of the earlier study were different and that changes in the demographics of the federal prison population make it more difficult for FPI to identify matching cohorts. Also, because FPI has undergone a number of factory closures, there are fewer inmates employed by FPI in high-security facilities serving sentences long enough to facilitate a study. They noted there is more turnover among inmates in low- and medium-security facilities employed by FPI, making the creation and following of matching cohorts more difficult.⁴⁵ BOP officials also stated that prior BOP-wide hiring freezes have reduced its research capacity and ability to conduct such analyses.

Additionally, officials from the Office of Research and Evaluation, the Reentry Services Division, and other BOP components told us they have prioritized staffing to support research projects related to the implementation of the First Step Act. For example, BOP collaborated with agencies and components across DOJ, such as the National Institute of Justice, to support the creation and implementation of the Attorney General's risk and needs assessment system, Prisoner Assessment Tool

⁴³ See BOP, *PREP: Training Inmates through Industrial Work Participation, and Vocational and Apprenticeship Instruction*, (Washington, D.C.: September 1996). This study was designed to evaluate the impact of prison work experience and vocational and apprenticeship training on an offender's behavior following his or her release to the community. The evaluation began in 1983 and data were collected through October 1987 on over 7,000 offenders.

⁴⁴ Quasi-experimental methodologies may include, for example, statistical procedures, such as "propensity score matching." Propensity score matching can be used to statistically model variables that influence participants' assigned to a program compared with individuals not assigned. These procedures are then applied to the analysis of outcome data to reduce the influence of those variables on the results attributable to the program. For more on designing evaluations, see GAO, *Designing Evaluations: 2012 Revision*, GAO-12-208G (Washington, D.C.: January 2012).

⁴⁵ According to BOP, the ideal approach to evaluating the effects of a reentry program, including FPI, would be to compare the outcomes of a group of inmates randomly assigned to receive treatment to a group of inmates who did not receive treatment. BOP also stated that in a prison environment, it is not ethical or appropriate to deny treatment based on research needs. Therefore, BOP must rely on creating a comparison group that is equivalent to the treatment group after the treatment.

Targeting Estimated Risks and Needs (PATTERN), which will determine the recidivism risk of each incoming prisoner during the inmate intake process on an ongoing basis.⁴⁶ As a part of the implementation of this process, BOP conducted evaluations of all recidivism reduction programs offered at its facilities, including FPI, to determine their effectiveness and availability to inmates as a recidivism reduction activity. However, officials told us that these evaluations were not designed to produce information about program outcomes. Instead, officials said the studies were quick, low-cost assessments to help BOP and other researchers establish a list of evidence-based recidivism reduction programs in order to meet the First Step Act-mandated January 2020 deadline.

In October 2019, BOP officials told us that they had hired a contractor to assist with various First Step Act-related tasks, specifically, developing a framework to independently evaluate programs submitted by external organizations, conducting market research on needs assessment best practices, and developing a design and prototype of the new needs assessment system.⁴⁷ According to BOP, the contract was written broadly enough to enable the contractor to conduct an evaluation of FPI, if directed. However, officials told us that they have not directed the contractor to conduct an evaluation of FPI because they have been focused on meeting the terms of the First Step Act, specifically, the development and implementation of the PATTERN risk and needs assessment tool.

The primary purpose of program evaluations is to provide systematic evidence of how well a program such as FPI is achieving its intended

⁴⁶ The First Step Act, Pub. L. No. 115-391, § 101, 132 Stat. 5194, 5195-5208, required DOJ to develop a risk and need assessment system to assess the recidivism risk and needs of federal inmates and assign them to evidence-based recidivism reduction programs and activities to reduce their recidivism risk. See 18 U.S.C. § 3632. In July 2019, DOJ announced the development of a new risk assessment tool called PATTERN. The need areas to be assessed are anger/hostility, antisocial peers, cognitions, dyslexia, education, family/parenting, work, finance/poverty, medical, mental health, recreation/leisure/fitness, substance abuse, and trauma. In January 2020, DOJ announced updates to its implementation of the First Step Act, including changes to PATTERN.

⁴⁷ The contractor, the MITRE Corporation, is a nonprofit organization that operates federally funded research and development centers. The research centers are unique organizations that assist the U.S. government with scientific research and analysis; development and acquisition; and systems engineering and integration.

results.⁴⁸ Evaluations can be especially useful for helping improve program performance when the results help identify program conditions that are effective or ineffective. As underscored by BOP's comments above, we recognize that developing an appropriate study design can face various challenges. Yet overcoming these challenges—which may involve trade-offs—will yield dividends. Given delays to BOP's evaluation of FPI, it is important that BOP develop a new timeline, within its available resources, for its evaluation of FPI. The Project Management Institute's *Standard for Program Management* calls for agencies to use key planning elements to help ensure successful program management. These elements include identifying goals and documenting them in a plan, with time frames, to achieve a specific result.⁴⁹ Updating the program evaluation plan to set a timeline for the evaluation of FPI could provide BOP with greater assurance that the evaluation would be completed in a timely manner.

BOP Has Not Developed a Recidivism Goal for FPI

BOP has not developed a recidivism reduction goal for FPI, citing challenges with controlling and forecasting the size and makeup of its inmate population, among other factors. In 2008, the Second Chance Act of 2007 (Second Chance Act) required BOP to establish recidivism reduction goals for its inmate reentry programs.⁵⁰ Starting in 2010, BOP was to submit to Congress statistical data showing the relative reductions in recidivism for inmates released by BOP and use the first report to set the baseline for future reporting. Under the Act, BOP is to establish a 5-year goal to increase the recidivism reduction rate and work to attain that goal.⁵¹ Further, the Act requires BOP to select a valid and evidence-based measure of recidivism—such as rearrest, reconviction or

⁴⁸ GAO, *Program Evaluation: Strategies to Facilitate Agencies' Use of Evaluation in Program Management and Policy Making*, GAO-13-570 (Washington, D.C.: June 26, 2013).

⁴⁹ See GAO, *Bureau of Prisons: Improved Planning Would Help BOP Evaluate and Manage Its Portfolio of Drug Education and Treatment Programs*, GAO-20-423 (Washington, D.C.: May 26, 2020) and Project Management Institute, *The Standard for Program Management*®, Third Edition. .

⁵⁰ Pub. L. No. 110-199, § 231, 122 Stat. 657, 683-89 (2008). See 34 U.S.C. § 60541.

⁵¹ See, 34 U.S.C. § 60541(d)(3)(C). Under the Act, the reported data should reflect the rates of inmates released by the Bureau of Prisons within that fiscal year and the 2 prior fiscal years.

reincarceration—that is consistent with research undertaken by the Bureau of Justice Statistics.⁵² The Act also requires BOP to set recidivism measures that compare inmates who participated in major inmate programs (including, among others, residential drug treatment, vocational training, and prison industries) with inmates who did not participate in such programs.⁵³

In addition to the requirements of the Second Chance Act, the *Government Performance and Results Modernization Act of 2010* (GPRAMA) provides that performance measurement is the ongoing monitoring and reporting of program accomplishments—particularly toward pre-established, objective, and quantifiable goals—and agencies are to establish performance measures to assess progress toward those goals.⁵⁴ While GPRAMA is applicable to the department or agency level, performance measures and goals are important management tools at all levels of an agency, including the program, project, or activity level. Agencies can use performance measurement to make various types of management decisions to improve programs and results, such as developing strategies and allocating resources, including identifying problems and taking corrective action when appropriate.

According to DOJ budget documents, FPI directly supports BOP's mission by keeping inmates productively occupied and by enhancing the likelihood of their successful reentry into society. FPI has developed a goal and performance measures intended to measure its success.⁵⁵ Specifically, FPI established a goal that 33 percent of inmates released by the BOP, who have spent 3 years or more in a prison facility with an FPI presence, will have had at least 180 days of FPI experience.⁵⁶ FPI performance measures include the number of inmates employed and the number of eligible inmates employed as a percentage of inmates housed

⁵² See 34 U.S.C. § 60541(d)(3)(B).

⁵³ See 34 U.S.C. § 60541(d)(3)(A).

⁵⁴ GPRA, Pub. L. No. 103-62, 107 Stat. 285 (1993), was updated by the F Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (2011); 31 U.S.C. § 1115 (relating to agency performance plans and performance measurement).

⁵⁵ Department of Justice *FY 2021 Performance Budget Congressional Submission*, Federal Prison System, Federal Prison Industries.

⁵⁶ FPI also established a goal that 30 percent of its inmate workforce be made up of inmates within thirty-six (36) months or less of their release date. The goal ensures that the skills and work habits learned in FPI are "fresh" in inmates' minds at the time of their release, according to officials.

in facilities with FPI operations. However, FPI's goal and performance measures do not demonstrate or measure FPI's contribution toward reducing recidivism.

BOP officials told us that they have not developed a recidivism reduction goal because they believed that such a goal is impractical as an accurate measure of demonstrating progress. They explained that a goal to reduce recidivism would not be achievable if the incoming cohort is larger than they are able to control for and manage. Consequently, officials said the measure would make it difficult to gauge progress accurately. Further, once BOP releases an inmate from custody, it does not control and cannot control for how they will respond to the many factors in the community, which could affect their potential involvement in criminal activity, such as the availability of employment and the influence of the former inmate's peer group. As a result, those released inmates returning to better conditions, such as supportive families or communities with higher rates of employment, might find it less challenging to find employment, which likely affects recidivism.

In 2009, BOP informed Congress that it would establish recidivism reduction goals after submitting the first annual report under the Second Chance Act. However, BOP did not submit the report to Congress until December 2016. BOP noted in its report that the late submission was due to the extended time frames necessary for a thorough data collection and analysis. BOP stated in the report that it had notified the House and Senate Judiciary Committees of the need for additional time to fulfill the Second Chance Act reporting requirement. However, as of January 2020, BOP had not developed a recidivism reduction goal or measures.⁵⁷

We have reported on the factors affecting the size of the federal prison population and recognize not only the challenges in designing any measurement system, but also the degree to which the complexities of the criminal justice system can make this task even more challenging.⁵⁸

⁵⁷ Since fiscal year 2017, BOP has submitted three annual reports to Congress. However, none of the reports include recidivism reduction goals.

⁵⁸ We have previously reported that the size of the federal prison population is a function of many factors, including the nation's crime levels, prosecutorial priorities, federal sentencing laws, and law enforcement policies, all of which are beyond the control of BOP. See GAO, *Bureau of Prisons: Eligibility and Capacity Impact Use of Flexibilities to Reduce Inmates' Time in Prison*, GAO-12-320 (Washington, D.C.: Feb. 7, 2012) and GAO, *Federal Prison System, Justice Could Better Measure Progress Addressing Incarceration Challenges*, GAO-15-454 (Washington, D.C.: July 19, 2015).

Nonetheless, effective measurement is critical to understanding whether BOP is making progress towards reducing recidivism. Without performance measures, including the establishment of a goal, BOP does not have the basis to determine if variations in inmate recidivism are due to factors outside the control of the criminal justice system, or due to weaknesses in its programs or management operations that require corrective action. Furthermore, while BOP has reported some descriptive statistics on recidivism rates, it has not developed a goal.

A measurable goal would also help decision makers conduct assessments of whether program objectives were achieved, and develop linkages between FPI's mission, goals, and performance measures so that everyone understands how program activities contribute to the organization's goals.⁵⁹ Additionally, doing so would better position BOP to meet the requirements of the Second Chance Act and to use performance information to gauge and improve the performance of FPI.

Studies Show FPI and Other Vocational Programs Generally Reduce Recidivism

Generally, the research that we reviewed found that prison work programs, such as FPI, have statistically significant reductions in recidivism.⁶⁰ However, there are no recent evaluations of the effects of FPI on recidivism for a general inmate population. For example, the research that we reviewed included a recent evaluation of FPI that focused on a sample of female inmates released from federal prison between 1993 and 2003. The study found no significant difference in recidivism rates for program participants as compared to nonparticipants. According to FPI officials, the most recent study of the effectiveness of FPI for the general inmate population was published in 1996. Since that time, the demographics of FPI's inmate population have changed. Despite this limit, BOP continues to rely on outdated studies to demonstrate FPI's effectiveness. Most recently, BOP cited an outdated

⁵⁹ GAO, *Managing For Results: Enhancing Agency Use of Performance Information for Management Decision Making*, GAO-05-927 (Washington, D.C.: Sept. 9, 2005).

⁶⁰ Additionally, FPI officials and inmates told us that FPI also provides benefits other than reducing recidivism, such as helping to control inmate behavior and providing inmates with marketable skills.

study as the basis for DOJ's designation of FPI as an Evidence-Based Recidivism Reduction Program under the First Step Act.

For our review of prison industry programs, we identified three published research studies that met our selection criteria.⁶¹ All three studies focused on programs that met requirements for the PIECP managed by the Bureau of Justice Assistance. Two of the studies were evaluations of state industries, and one was a study of FPI. The two studies of state programs found that participation in the certification program resulted in a significant reduction of recidivism relative to a matched comparison group. However, as mentioned above, the study that focused on female federal inmates participating in FPI found that the program did not produce a significant difference in recidivism rates for participants relative to a matched comparison group.

We also reviewed four meta-analyses that examined the effect of corrections-based education, vocational education, and work programs on recidivism.⁶² All four meta-analyses found that education and work programs, separately, reduced recidivism for participants as compared to nonparticipants, by an estimated 6-12 percentage points.⁶³ Although

⁶¹ Richmond, K.M. (2014). The Impact of Federal Prison Industries employment on the recidivism outcomes of female inmates. *Justice Quarterly*, 31(4): 719-745; Hopper, J.D. (2013). Benefits of inmate employment programs: Evidence from the Prison Industry Enhancement Certification Program. *Journal of Business & Economics Research*, 11(5): 213-222; Smith, C.J., Bechtel, J., Patrick, A., Smith, R.R., and Wilson-Gentry, L. (2006). Correctional industries preparing inmates for re-entry: Recidivism & post-release employment. Washington, D.C.: U.S. Department of Justice.

⁶² Wilson, D.B., Gallagher, C.A., and MacKenzie, D.L. (2000). A meta-analysis of corrections-based education, vocation, and work programs for adult offenders. *Journal of Research in Crime and Delinquency*, 37(4): 347-368; Davis, L.M., Bozick, R., Steele, J.L., Saunders, J., and Miles, J.N.V. (2013). *Evaluating the effectiveness of correctional education: A meta-analysis of programs that provide education to incarcerated adults*. Washington, DC: RAND Corporation; Aos, S., Miller, M., and Drake, E. (2006). *Evidence-based adult corrections programs: What works and what does not*. Olympia, WA: Washington State Institute for Public Policy; and Britney, K., Drake, E., Grice, J. Hirsch, M, and Lee, S. (2017). *The effectiveness of reentry programs for incarcerated persons: Findings for the Washington statewide reentry council*. Olympia: Washington State Institute for Public Policy.

⁶³ Three of the meta-analyses reported effects specifically for prison industry programs. Of these, two reported significant though modest reductions in recidivism for inmates who participated in prison industry programs, and one did not report significant effects. All four meta-analyses examined the impact of vocational education programs on recidivism, and all reported that the reviewed programs significantly reduced recidivism. In one meta-analysis, (Aos and colleagues, 2006), the authors cautioned that "the relatively small number of studies meeting inclusion criteria meant that these findings were tentative and further research is needed."

these findings show reductions in recidivism, some studies were found to be of poor methodological quality. Further, researchers cited difficulties in trying to isolate the effects of individual work and educational programs because of confounding factors such as inmate participation in multiple programs and preexisting differences between inmates who choose to participate as compared to those who do not. Studies that do not control for these effects may overestimate or underestimate the impact of program participation.

Conclusions

FPI is authorized to manage, train, and rehabilitate inmates through employment. At the same time, the trade-off inherent in maximizing inmate employment and minimizing harm to the private sector has been present since program inception. The First Step Act expanded access to new markets, including public entities and certain tax-exempt organizations. For FPI to balance the trade-offs inherent in its mission, it will need to demonstrate its value as a tool to reduce recidivism and to rehabilitate inmates. While BOP developed a plan for evaluating selected programs, the bureau has not adhered to the time frames corresponding to FPI. Updating its evaluation plan will allow BOP to understand the effectiveness of its programs and therefore make more informed decisions regarding BOP's future investments in FPI and other programs. Additionally, BOP has not developed a goal for the program related to recidivism reduction. As FPI expands, the developing and reporting of a goal for recidivism reduction will help inform stakeholder support.

Recommendations for Executive Action

We are making the following two recommendations to BOP:

The Director of BOP should update its program evaluation plan to set a new timeline for conducting an evaluation of FPI. (Recommendation 1)

In order to help promote a meaningful program assessment, the Director of BOP should develop a goal for FPI related to recidivism reduction and measure progress toward meeting that goal.(Recommendation 2)

Agency Comments

We provided a draft of this report to the Departments of Justice, Homeland Security, Defense, and Labor, for review and comment. The Department of Justice concurred with our recommendations and did not provide written comments. However, the Department provided written technical comments, including additional context and clarifications, which we incorporated where appropriate. The Department of Homeland Security provided a technical comment, which we incorporated. The Department of Defense and the Department of Labor did not provide any comments. We also provided relevant draft sections of the report for review and comment to pertinent officials from the state auditor's offices of Idaho, Iowa, North Carolina, and to the Office of Contracting and Procurement of the District of Columbia. We received a reply from one entity, which did not have any comments.

We are sending copies of this report to the appropriate congressional committees, the Attorney General, the BOP Director, 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) 512-8777 or goodwing@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 III.



Gretta L. Goodwin
Director, Homeland Security and Justice



Letter

William T. Woods
Director, Contracting and National Security Acquisitions

Appendix I: Objectives, Scope and Methodology

This report examines: (1) the potential size and scope of the additional markets made available to Federal Prison Industries (FPI) under the First Step Act of 2018; (2) similarities and differences between the business practices of FPI and private sector sellers of products and services; (3) the extent to which FPI customers are satisfied with the quality, price, and timely delivery of its products and services; and (4) the extent to which the Bureau of Prisons (BOP) has evaluated the effectiveness of FPI and other vocational programs in reducing recidivism.

For all four objectives, we interviewed BOP and FPI officials. We visited four (out of 52) FPI factories at four facilities. We visited the factories associated with the low-security Federal Correction Institution in Bastrop, Texas; the low-security institution at the Federal Correctional Complex in Beaumont, Texas; and a low-security institution and a medium-security institution at the Federal Correctional Complex in Coleman, Florida. At these locations, we observed FPI's production operations and interviewed inmates and FPI officials. We selected these sites based on factors such as the types of products made, the security level of the different correctional facilities, and the number of inmates working for FPI at each location. Our observations and interviews during these site visits are not generalizable to all FPI locations, but provide important perspectives on the operations of FPI.

To describe the size and scope of the new markets made available to FPI pursuant to the First Step Act, we obtained and analyzed documentation and information on the number of organizations in each new market and their estimated spending on products and services comparable to those manufactured and sold by FPI. For the government of the District of Columbia (D.C.), we obtained summary procurement information from the D.C. Office of Contracting and Procurement for recent years (fiscal years 2017 through 2019) and interviewed agency officials. We assessed the reliability of the data we obtained from D.C. by interviewing the appropriate officials. We determined that the data were sufficiently reliable for the purposes of estimating spending on products and services similar to those offered by FPI. To identify the total number of public entities, we obtained reports from the Census Bureau. To identify the total number of nonprofits, we reviewed the Internal Revenue Service (IRS)

2018 Data Book, which reports annual data on tax returns filed by nonprofits. Regarding state public entities for use in corrections, we obtained information from the National Correctional Industries Association and interviewed officials from that organization. For public entities' products and services for use in disaster relief or emergency response, we conducted a literature search to identify existing studies, reports or summaries regarding state entities' purchases. We also gathered documentation and interviewed representatives from the Federal Emergency Management Agency (FEMA) and state auditing officials. We also corresponded with several associations, including the National Association of State Auditors, Comptrollers, and Treasurers to obtain information on relevant spending in the new markets made available to FPI. Additionally, we reviewed IRS Form 990, which public charities and private foundations file annually to report their financial activities.¹ We determined that information collected from these latter sources could not be used for the purposes of our review because the forms did not capture specific information on purchases of products and services made by nonprofit organizations.

To identify the similarities and differences in requirements and business practices of FPI and private-sector sellers of products and services as specified in the First Step Act, we reviewed laws, regulations, and policies, and interviewed key officials from private sector organizations and FPI. Specifically, we reviewed FPI's authorizing statute and relevant provisions of the Federal Acquisition Regulation (FAR).² To identify differences in health and safety standards, we reviewed Occupational Safety and Health Administration (OSHA) guidance, which applies both to the private sector and to inmates working at Federal Prison Industries, and reviewed the Bureau of Prison's National Occupational Health and Safety Policy. To determine how FPI sets inmate pay, we reviewed the Bureau of Prison program statement "Work Programs for Inmates – FPI" and interviewed agency officials responsible for compensation issues to identify other pay policies, as applicable. We also interviewed officials

¹ In general, section 6033(a)(1) of the Internal Revenue Code requires every organization exempt from taxation under section 501(a) to file an annual return, stating specifically the items of gross income, receipts, and disbursements, and other information, and grants the secretary of the Treasury the power to use any forms or regulations to obtain that information. According to the IRS, Forms 990 are used by tax-exempt organizations, nonexempt charitable trusts, and section 527 political organizations to provide the IRS with the information required by section 6033.

² The FAR is the primary regulation for use by all executive agencies in their acquisition of supplies and services with appropriated funds.

from private sector organizations representing producers of apparel and furniture, two of FPI's largest product lines, as well as other representatives of other industries. We reviewed information from the Federal Procurement Data System—Next Generation. We also assessed the reliability of the data by reviewing documents and interviewing users. We determined that these data were sufficiently reliable to describe FAR-based contract actions between FPI and federal customers.

To describe the extent to which FPI customers were satisfied with FPI's performance, we reviewed relevant BOP program manuals to identify FPI's guidelines and procedures for ensuring that its products and services meet or exceed customer expectations. Specifically, we reviewed the FPI customer satisfaction survey procedure and survey templates, which FPI customizes by product line. We also reviewed the survey scoring system, as well as how the execution of the survey varies by product, including the differences in the number of survey questions and question categories outlined on each template. We interviewed FPI quality managers to determine and describe how information collected through its customer satisfaction procedures is used, if at all. Specifically, we obtained information related to how FPI delivers surveys to customers, how FPI counts and tracks survey responses, and how responses are used to calculate an overall satisfaction score. Through these interviews, we also identified additional avenues used to collect customer satisfaction data, including in-person feedback and a formal complaint system. We also reviewed and analyzed Contractor Performance Assessment Reporting System (CPARS)³ data on FPI.⁴ Specifically, we analyzed the 231 CPARS performance reports of FPI available as of August 2019, with submission dates ranging from fiscal years 2009 through 2019. We focused on the ratings in three categories: cost, quality, and schedule. We assessed the reliability of the data by reviewing documentation and conducting selected data checks. We

³ Federal agencies use CPARS to evaluate contractors' and FPI's performance across several categories, including delivery, price, and quality.

⁴ Agencies complete a CPARS assessment report if the dollar value of a contract meets a certain threshold—with thresholds varying by agency. Agencies generally follow the simplified acquisition threshold amount of \$250,000 or greater, although some agencies have higher reporting thresholds. For example, Department of Homeland Security's department-wide CPARS reporting threshold is \$1,000,000 for contracts for services, and \$500,000 for contracts for supplies. Department of Defense's reporting threshold is \$5,000,000 for operations support and \$1,000,000 for services.

determined that the data were sufficiently reliable for the purpose of identifying the ratings in the cost, quality, and schedule categories.

To determine the extent to which BOP has evaluated the effectiveness of FPI and other vocational programs in reducing recidivism and the results, we reviewed BOP's program evaluation plan in accordance with criteria from the Project Management Institute's resource, *Standard for Program Management* which recommends that agencies identify goals and document them in a plan, with timeframes, to achieve a specific result.⁵ To examine the steps BOP has taken to prioritize evaluations of FPI and other programs, we reviewed agency documentation, such as documents related to BOP's implementation of the First Step Act, and interviewed BOP officials from the Office of Research and Evaluation and the Reentry Services Division. To identify the actions BOP took to establish a recidivism reduction goal, as required by the Second Chance Act of 2007 (Second Chance Act),⁶ we identified relevant performance goals and measures in BOP plans, reports on recidivism reduction, and budget justification documents. We compared BOP's performance goals and measures to the specific requirements in the Second Chance Act related to establishing goals and the general requirements of the Government Performance and Results Modernization Act of 2010 (GPRAMA)⁷ related to performance measurement. Additionally, we interviewed BOP officials to obtain their views on the status of their efforts to implement the Second Chance Act's requirements for goal setting. We conducted a literature search and interviewed BOP officials to identify studies that describe what is known about the extent to which work and vocational programs reduced recidivism among participants compared to nonparticipating inmates. We also reviewed four meta-analyses studies that examined the effect of corrections-based education, vocational education, and work programs on recidivism.

We conducted this performance audit from March 2019 to July 2020 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

⁵ See GAO, Bureau of Prisons: Improved Planning Would Help BOP Evaluate and Manage Its Portfolio of Drug Education and Treatment Programs, GAO-20-423 (Washington, D.C.: May 26, 2020) and Project Management Institute, *The Standard for Program Management* ©, Third Edition.

⁶ Pub. L. No. 110-199, § 231, 122 Stat. 657, 683-89 (2008). See, 34 U.S.C. § 60541(d)(3).

⁷ 31 U.S.C. § 1122(a).

**Appendix I: Objectives, Scope and
Methodology**

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.

Appendix II: Market Research for Federal Prison Industries (FPI) Products and Services

This appendix discusses how the agencies selected for our review conducted and documented market research for certain FPI products and services. By regulation, federal agencies are encouraged to purchase FPI supplies and services to the maximum extent practicable.¹ Prior to purchasing an item listed in the FPI schedule, federal agencies are required to conduct market research to determine whether the FPI item is comparable to supplies available from the private sector that best meet the government's needs in terms of price, quality, and time of delivery.² The agencies are also required to prepare a written determination that includes a supporting rationale explaining the assessment of price, quality, and time of delivery, based on the results of market research.³ By regulation, if the FPI product is comparable, the agencies are required to purchase the item from FPI following the purchasing procedures on FPI's website (<http://www.unicor.gov>) unless a waiver is obtained in accordance with regulations from FPI.⁴ If the FPI item is not comparable in one or more of the areas of price, quality, and time of delivery, federal agencies are required to acquire the item using authorized competitive procedures.⁵

To describe the approaches federal agencies in our review took to compare the products and capabilities of FPI to private sector businesses, we identified examples of market research by analyzing Federal Procurement Data System and FPI's sales data from fiscal years 2014 to 2018. We identified the largest customers of FPI, specifically the Departments of Defense (DOD), Homeland Security (DHS), and Justice

¹ 48 C.F.R. § 8.601(e).

² 48 C.F.R. § 8.602(a)(1). This is a unilateral determination made at the discretion of the contracting officer for the agency. According to FPI, it does not receive notice of these determinations.

³ 48 C.F.R. § 8.602(a)(2).

⁴ 48 C.F.R. § 8.602(a)(3).

⁵ 48 C.F.R. § 8.602(a)(4).

(DOJ). Within each department, we identified the largest customer for FPI: within DOD, the Defense Logistics Agency (DLA); within DHS, U.S. Customs and Border Protection (CBP); and within DOJ, the Bureau of Prisons (BOP). We then spoke with officials about how they conduct market research and reviewed sample documentation of purchases from FPI's clothing and apparel, fleet, and furniture business segments. Such sample documentation included an interagency agreement between DHS and FPI and contracts between FPI and DOD. In addition, we obtained and analyzed market research from DHS on furniture based on analysis of Federal Procurement Data System – Next Generation (FPDS) data over fiscal years 2014 through 2018 and discussions with Transportation Security Administration officials. We also reviewed market research on the two DHS-wide contract vehicles for two other mandatory source products—body armor and uniforms—based on our knowledge of them from prior work.⁶

Department of Defense

We reviewed 17 purchases for fiscal years 2018, 2019, and 2020 from FPI by the Defense Logistics Agency (DLA) for various clothing and textile products. These included trousers, blankets, and tarps, among other items. For all of these purchases, DLA documented a comparability analysis that addressed the price, quality, and delivery schedule of products available from both FPI and the private sector. The documents described the agency's market research efforts, which included, for example, sending surveys to firms producing the items as well as checking the Supplier Performance Risk System. This system collects past performance information on DOD suppliers, which is available to contracting officers when awarding new contracts.

Bureau of Prisons

In 2017, BOP established a blanket purchase agreement with FPI covering products such as mattresses, furniture, and apparel. A blanket purchase agreement is an instrument that establishes the terms and conditions applicable to future, usually repetitive, orders. BOP documented the market research for the blanket purchase agreement in a memorandum and spreadsheet describing how a list of products available from FPI compared to similar items available from a correctional supply company. These documents addressed prices as well as whether the

⁶ See GAO-18-116, *Government Procurement: Effect of Restriction on DHS's Purchasing of Foreign Textiles Is Limited*. (Washington, D.C.: Nov. 21, 2017).

items were comparable in terms of intended function. The spreadsheet did not identify information on how supplies from FPI compared to supplies from the private sector in terms of quality or time of delivery. BOP officials told us that the market research requirements were to be met by institutions at the time the purchase orders were issued.

Department of Homeland Security

The DHS documents we reviewed related to purchases of furniture, apparel, body armor, and vehicle upfit services.

Furniture. TSA officials told us that purchases of furniture from FPI have declined in recent years. According to TSA officials, the decline followed a decision by DHS to enter into blanket purchase agreements with four vendors in 2016. According to DHS, the department's Office of the Chief Procurement Officer requires the use of these agreements. The market research documentation in support of these agreements did not mention FPI. Nevertheless, a DHS official responsible for procurement stated that the agency considered FPI as a potential source, but that FPI was unable to meet the requirement. According to officials, the intent was to acquire products and ancillary services together, achieving a "packaged office," through a single contractor. According to DHS, FPI's prices for these ancillary services are significantly higher than the prices the private sector charges. According to FPI, although the mandatory source designation does not apply to services, including services such as installation, the mandatory source requirements apply to purchases of furniture.

Uniforms. Many agencies within DHS have a need for employees to wear uniforms, particularly law enforcement personnel. CBP is responsible for a 5-year contract for uniform clothing items open to several agencies within and outside DHS. Although FPI makes uniforms, CBP officials told us that CBP did not conduct a comparability analysis because FPI could not meet the agency's requirements. Specifically, CBP believed that FPI did not have an adequate website for use in ordering uniforms and could not comply with requirements to provide fitting services for law enforcement personnel. DHS officials told us that they did not view the website and fitting services as separable from the uniform itself. According to FPI, they make dress uniforms for the military services without a requirement for fitting services. DHS officials concluded that FPI did not meet its requirements and therefore DHS did not seek a waiver.

Body armor. CBP administers a multiyear contract for body armor, which FPI produces. Documents we reviewed indicated that CBP did not consider FPI for the procurement because FPI could not meet requirements regarding sizing, warranty, and website capabilities. A CBP official explained to us that the service of fitting body armor is important because the armor does not work as well if it does not fit properly. The official also noted that inmates could not perform the sizing function because of their incarcerated status. However, FPI officials indicated to us they could perform the sizing function. Additionally, CBP completed a legal review in 2004 and determined that body armor was not subject to the mandatory source requirement and, therefore, did not seek a waiver from FPI. CBP officials told us that they did not review this determination for subsequent procurements of body armor.

Vehicle upfit services. Approximately 24 percent of FPI's sales in fiscal year 2019 were for vehicle upfit services for DHS. These services typically involved outfitting law enforcement vehicles with specialized equipment, such as lights and sirens, or replacing seats in a van with bench seating to accommodate more passengers. DHS procured these services from FPI through an interagency agreement. Unlike the purchases discussed earlier, services are not subject to the mandatory source requirement and associated procedures related to market research. However, FPI's authorizing legislation requires buying agencies to report all purchases from FPI in the same manner as all other acquisitions. The purpose of this reporting is to provide a complete overview of acquisitions by the federal government. CBP officials cited federal regulation indicating that services procured through an interagency agreement do not require a data system entry.⁷ Furthermore, according to a CBP official, department systems do not prompt users to record this information into FPDS.

⁷48 C.F.R. § 4.606.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

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Staff Acknowledgments

In addition to the contact named above, Brett Fallavollita (Assistant Director), R. Gifford Howland (Analyst-in-Charge), Andrea Bivens and Lerone Reid made key contributions to this report. Breanne Cave, Billy Commons, Ben Crossley, Elizabeth Dretsch, Namita Bhatia Sabharwal, and Adam Vogt also provided substantial assistance.

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