SOCIAL AND ECONOMIC PUBLIC POLICY GOALS and Their Impact on DEFENSE ACQUISITION

—A 2019 UPDATE

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Image designed by Michael Krukowski

In 1979, former Deputy Assistant Secretary of the Army (Acquisition) Thomas E. Harvey published an article in the *Notre Dame Law Review*, "Social and Economic Goals and Their Impact on the Defense Acquisition Process," which is reprinted in this Journal. The article explored a variety of policies aimed at promoting social and economic goals through the government's federal acquisition process, and the impact of such efforts on the acquisition process. At the time of the article, there were an estimated 35 to 40 such programs.

Defense Acquisition University asked a simple question: What has changed over the last 40 years since the article was published? The short answer—a great deal. In 1979, the Federal Acquisition Regulation (FAR) did not exist. The FAR was issued in 1983 and took effect the following year. The manufacturing base has also changed: From 1979-2018, the U.S. lost 6.7 million manufacturing jobs (U.S. Bureau of Labor Statistics, 2019). And in 1979, I was 10 years old; today my son is 10. But before discussing how socioeconomic policies have changed and considering the impact of those changes, it may be useful to ask: What is the goal of defense acquisition?

The Goal of Government and Defense Acquisition

In 1995, the FAR (2019a) was amended to state that the purpose of the federal acquisition system is to "deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives."[1] The FAR goes on to state that the acquisition system is expected to achieve four specific goals:

1. Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service.
2. Minimize administrative operating costs.
3. Conduct business with integrity, fairness, and openness.
4. Fulfill public policy objectives.

Embedded herein is the standard three-legged stool against which acquisition tends to be measured: cost, schedule, and performance. But read closely—the FAR seems to place public policy objectives on par with the standard goals of government acquisition, and by extension, defense acquisition. Sometimes, these goals align perfectly, for example when the Department of Defense (DoD) uses a small business program to acquire cutting-edge technology. But sometimes these goals conflict. Discussing a contract to restore roads in the aftermath of Hurricane Katrina—a major hurricane that devastated New Orleans and much of the United States Gulf Coast in 2005—a contracting officer complained that given the competing nature of the different goals of the acquisition process, no matter what he does, he will be criticized. For this contract, he said that he could get small business contracts or he can get best price, but he could not get both. (His complaint was that in such a situation, if he gets the best price, he is criticized for not using small business and vice versa.)

The goal of maintaining the public's trust and fulfilling public policy objectives is notably absent from the stated purpose of the Defense Federal Acquisition Regulation Supplement (DFARS) (DoD, 2019), which states:

> The primary objective of DoD acquisition is to acquire quality supplies and services that satisfy user needs with measurable improvements to mission capability and operational support at a fair and reasonable price. (sec. 201.101 [3])

The DFARS seems to be placing transparency, fairness, and public policy objectives as secondary objectives of defense acquisition. What explains the different approaches between the FAR and DFARS?

The 809 Panel, an advisory panel established by Congress, argued that "many of the current regulations taken as a whole, and sometimes even individually, impede DoD's ability to acquire the goods and services it needs when it needs them and to maintain technological superiority on the battlefield" (Advisory Panel on Streamlining and Codifying Acquisition Regulations, 2017b, p. 5).[2] Arguing that the primary goal of defense acquisition should be to promote the mission of DoD—not impede it—the first recommendation of the Panel was to revise acquisition regulations to reflect the belief that public policy objectives, while important, should be a secondary objective of defense acquisition.

Congress acted on the recommendation in the Fiscal Year (FY) 2018 National Defense Authorization Act (NDAA for FY 2018, 2017), requiring the statement of purpose for the DFARS to be amended to its current text. The committee report for the FY2018 NDAA explains the reason for the change.

> The committee notes that the Department of Defense is constantly forced to balance equities related to the near and far term defense needs as well as defense and national security goals and broader national and public policy goals. The Department also struggles to align goals relative to improving the speed and response to threats with public transparency and fiscal stewardship and in executing a growing set of missions within a defined budget. The committee remains concerned that these balances and

> goals sometimes drive the Department into practices that drive up costs, slow down the acquisition process, and result in sub-optimal capabilities being developed and deployed to operational forces. (S. Rep. No. 115-125, 2017)

Regardless of the stated purpose for these two sets of regulations, public policies are often grounded in statute and as such are binding requirements that can only be repealed by an act of Congress or through the regulatory rule-making process. But we still have not answered the basic question: What public policy objectives are we talking about?

What Are The Public Policy Objectives in Defense Acquisition?

For purposes of this discussion, public policy goals embedded in law or regulation that affect acquisition can generally be considered to fall into one (or more) of the following categories:

- *Goals directly related to a specific military need or specific missions.* Examples of such goals are regulations aimed at preserving a domestic supply of critical defense items to protect against a disruption of an overseas supply chain, promoting interoperability between U.S. and allied military forces to enable joint operations, certain export restrictions, and preferences for buying goods and services in Afghanistan to support campaign objectives in theatre.

- *Goals directly related to acquisition oversight and protecting the interests of DoD and the taxpayer.* Examples include the Procurement Integrity Act (prohibiting the release of source selection and contractor bid or proposal information); the Truth in Negotiations Act (requiring contractors to furnish cost or pricing data for certain contracts); the Anti-Kickback Act (prohibiting officials from accepting inducements for favorable treatment); and bid protest laws.

- *Goals generally aimed at enhancing DoD capabilities, but not directly tied to specific requirements or mission capabilities.* Examples include the Small Business Innovation Research program, established by Congress under the Small Business Innovation Development Act of 1982. Congress established the program with the intent to stimulate innovation, use small

businesses to meet federal research and development (R&D) needs, foster and encourage the participation of minority and disadvantaged persons in technological innovation, and increase private sector commercialization of innovations derived from federally funded R&D. Given these stated goals, the public policy is generally aimed at enhancing DoD access to innovation and promoting competition in the defense industrial base, although based on the language in the Small Business Act, some of the goals also fall into the next category.

- *Goals that have little or no relevant military value, but are deemed to serve a national public policy objective.* Examples include socioeconomic laws and regulations that promote national values or goals that are not connected to a military mission. Examples include the Davis-Bacon Act, which establishes a minimum wage for government construction contracts and the Indian Incentive Program, which provides incentives to prime contractors using Indian organizations and Indian-owned economic enterprises as subcontractors.[3]

The first two categories of public policy goals are intimately and directly connected to the ability of DoD to meet its mission through acquisition policies. The third category, *goals generally aimed at enhancing DoD capabilities*, seems to straddle both DoD and socioeconomic goals. The last category appears to neatly fall into those policies referred to as socioeconomic goals—goals aimed at promoting public policies that are focused on societal or economic needs, not the needs of DoD.

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But it is not that neat. Some public policies may serve multiple goals, such as promoting foreign military sales, which can have the parallel policy goals of promoting interoperability, building partner capacity, limiting peer competitors' access, and promoting the U.S. economy. Sometimes a particular foreign military sale is more about broader domestic economic

support than other military-focused goals. And sometimes the laudable public policies of foreign military sales may conflict with other perceived public policy goals, such as the U.S. commitment to human rights. In an effort to balance these goals, the Foreign Assistance Act (2019) prohibits providing U.S. assistance to specific foreign security forces when sufficient information confirms that the specific forces are responsible for serious human rights abuses. These tensions can be seen in the current debate taking place in Congress over the Saudi-led military intervention in Yemen.

National Policies Implemented Through the Procurement Process

The following is a discussion of select public policies promoted through the defense procurement process, and how those policies have evolved since 1979.

Maintenance of a Domestic Production and Service Base

It is as true today as it was in 1979 that an "important factor to be considered in the acquisition of any military material is the need to maintain a domestic production base capable of manufacturing such material in wartime" (Harvey, 1979, p. 255).[4] Without such a domestic capability, the United States could find itself cut off from sources of materials, goods, and services that are vital to conducting military operations.

In July 2017, President Donald Trump issued an executive order requiring an assessment of the United States' manufacturing capacity, defense industrial base, and supply chain resiliency (Executive Order No. 13806, 2017). In September 2018, DoD issued its analysis in a report, *Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States* (DoD, 2018b). According to the report, current industrial base trends are deteriorating U.S. capabilities, with "over 280 impacts across sectors, acutely affecting the vitality and resiliency of the industrial base" (DoD, 2018b, p. 3).

What needs to be part of a domestic defense base, and how should the government protect domestic production? The answer to this question has changed dramatically over the last 40 years. Jewel bearings—as cited in Harvey's article—are a case in point. During World War II, the United States experienced a shortage of jewel bearings, which were a critical component for navigational instruments, communications equipment, and other military hardware. At the time, most jewel bearings were manufactured in Switzerland, and the German navy disrupted shipments of these critical

items to the United States. To ensure a domestic supply in future conflicts, the Defense Acquisition Regulation required DoD to procure jewel bearings from the William Langer Jewel Bearing Plant, a government-owned facility managed through a contract by the General Services Administration. The jewel bearing plant no longer exists and there are no references to jewel bearings in the FAR, DFARS, Title 10 of the U.S.C., or in recent reports on the domestic industrial base.[5] In fact, the FY2002 NDAA (2001) provided the president the authority to dispose of more than 30 million jewel bearing pieces from the National Defense Stockpile.

The traditional defense industrial base, or what Harvey called the production base, has given way to a more dynamic, global, and technology-oriented defense marketplace, referred to by Congress as the National Technology and Industrial Base (NTIB).

National Technology and Industrial Base. While manufacturing and industrial capability are still important contributors to military capability, technology has become a critical focal point in the effort to maintain military dominance. Many analysts believe U.S. technological overmatch—and, by extension, national security—is at risk due to a number of factors, including a rapidly evolving global landscape for innovation; changes in the composition of R&D funding; and the increasing technological prowess of potential adversaries. Many policymakers believe that new approaches and mechanisms are required to maintain U.S. technological advantage in an increasingly global and evolving technological landscape.

In recognition of this evolution, Congress established the NTIB in the FY1993 NDAA (1992), codifying the extensive defense-related cooperation between Canada and the United States. The antecedents of the close relationship between the defense industrial bases can be traced to Canadian and American efforts to support the United Kingdom in World War II through the lend-lease program and other efforts.[6] The FY2017 NDAA (2016c) expanded the NTIB to include the United Kingdom and Australia, and required DoD to reduce the barriers and more closely integrate the industrial bases of the countries in the NTIB. DoD is working with its NTIB partners to reduce barriers to cooperation, share information regarding foreign direct investment, facilitate technology transfer, and improve cooperative cybersecurity efforts (DoD, 2018a, pp. 14–15).

In an era of increasing globalization, complex supply chains, and the ability to send information electronically, the NTIB may further evolve, depending on how certain questions are answered, including: How important is it to have territorial continuity in the NTIB? Should the NTIB be expanded, or

similar relationships be forged with reliable allies, with specific expertise in such critical military applications as artificial intelligence, cybersecurity, autonomous vehicles, and other such capabilities?

Defense Production Act. The Defense Production Act (DPA) of 1950 confers upon the President a broad set of authorities to influence domestic industry in the interest of national defense. Title III authorities under the DPA are intended to help ensure that the nation has an adequate supply of, or the ability to produce, essential materials and goods necessary for the national defense, including critical components, critical technology items, essential materials, and industrial resources to meet defense requirements.

Sections 301 and 302 of Title III of the DPA authorize the President to issue loan guarantees and direct loans to reduce current or projected shortfalls of industrial resources, critical technology items, or essential materials needed for national defense purposes. The federal government appears to have not used the loan authorities provided in Section 301 or Section 302 of Title III in more than 30 years.

Section 303 of Title III grants the President authorities to create, maintain, protect, expand, or restore domestic industrial base capabilities essential to the national defense. These authorities include purchasing or committing to purchase resources or critical technology items; making subsidy payments for domestically produced materials; and installing and purchasing equipment for government and privately owned industrial facilities to expand their productive capacity.[7] Prior to using Section 303 authorities, the President must determine that there is a "domestic industrial base shortfall" for a particular industrial resource, material, or critical technology item that threatens the national defense.

According to DoD, in FY2017, it "managed 22 [Title III] projects and oversaw 7 projects in the monitoring phase. Three projects were completed, eight projects were in active acquisition, and seven projects were explored as potential future efforts" (DoD, 2018a, p. 33). Examples of Title III projects include an "Advanced Drop-In Biofuel Production Project" to accelerate the commercialization of drop-in biofuels for military and commercial use, and several projects to support radar and electronic warfare, including to establish a domestic, economically viable, open-foundry merchant supplier production capability for Ka-band gallium nitride integrated circuits (Brown & Schwartz, 2018).

Congress last reauthorized the DPA in the FY2019 NDAA, extending the termination of the Act by 6 years, to September 30, 2025 (John S. McCain NDAA for FY 2019, 2018).

The Organic Industrial Base. 10 U.S.C. § 2464 (2019) requires DoD to maintain core logistics capabilities through government-owned and government-operated facilities to "ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements." This organic industrial base consists of depots and shipyards performing depot-level maintenance and repair; Army arsenals and ammunition plants that manufacture and store ammunition; and Navy and Air Force weapon system support centers conducting R&D, testing and evaluation, and other activities.

DoD depots and shipyards conduct maintenance, repair, and complete overhauls of weapon systems. According to statute, generally, at least 50% of funds provided to a military department or defense agency for depot-level maintenance must be used for work at government-owned, government-operated depots. This statute prevents DoD from outsourcing more than 50% of its maintenance to industry. The ratio of public to private depot-level funds expenditures has changed over time from a 70:30 requirement established in DoD regulation in the 1970s and early 80s, to a statutory 60:40 mix in the early nineties. The current 50:50 ratio was enacted in 1997.

The Buy American Act. Established in 1933, the Buy American Act (1933) requires that final products purchased by a federal agency be mined, produced, or manufactured domestically. For manufactured products, at least 50% of the cost—or value—must be manufactured in the United States. Items that are deemed Commercial Off the Shelf (COTS) are exempt from parts of the Buy American Act (FAR, 2019b).

In 1988, Congress required that when considering purchases under the Buy American Act, DoD must consider a variety of factors, including balance of payments with foreign governments, small businesses, and the cost of shipping goods from overseas. These considerations did not carve out exceptions. However, in 1994, Congress created some exceptions, adding that when determining applicability of Buy American, DoD shall consider ensuring that DoD has access to "advanced, state of the art commercial technology" and the need to maintain the source of supply for spare and replacement parts so as not to "impair integration of the military and commercial industrial base" and national security (NDAA for FY 1995, 1994).

The Berry Amendment. First enacted in 1941, the Berry Amendment (2019) requires that certain products acquired by DoD must be "entirely grown, reprocessed, reused, or produced" in the United States. Berry requirements can be waived under certain circumstances, such as when products are unavailable from American manufacturers at satisfactory quality and in sufficient quantity at market prices, or for items used in support of combat operations or contingency operations. The Berry Amendment does not apply to purchases below the Simplified Acquisition Threshold, generally $250,000, beneath which certain federal procurement regulations do not apply. When first enacted, the Berry Amendment only covered military uniforms and food. Other items have been added or removed over time. The Berry Amendment became a permanent statute in 2001 (NDAA for FY 2002, 2001).

In the FY2014 NDAA (2013), Congress required the DoD Inspector General to conduct periodic audits on DoD compliance with the Berry Amendment.

In the FY2017 NDAA (2016b), Congress extended footwear to Berry Amendment items to require the military services to provide recruits with 100% U.S.-made running shoes. Prior to this legislation, DoD provided recruits with vouchers, allowing military personnel to purchase their own footwear, which did not have to be domestic in origin.

Specialty Metals. Specialty metals requirements first appeared in the FY1973 DoD appropriations bill as an expansion of the Berry Amendment. The specialty metals requirements were moved out of the Berry amendment in 2006 to 10 U.S.C. § 2533b (2019), where the statute currently resides.

Today, the statute generally requires any specialty metals incorporated into certain categories of military platforms—or components thereof—to be melted or produced in the United States. It applies to certain types of steel alloys; nickel, iron-nickel, and cobalt base alloys containing a total of other

alloying metals (except iron) in excess of 10 percent; titanium and titanium alloys; and zirconium and zirconium alloys. The foundry location where final production takes place establishes domesticity, meaning that titanium sponge (unwrought titanium metal that has not been melted) manufactured in Kazakhstan and shipped to the United States for final smelting into a finished stock product would be considered compliant with the specialty metals requirement.

Law and policy provide a number of exceptions to this requirement. For example, the mandate does not apply to purchases below the simplified acquisition threshold; may be waived to comply with international agreements; and may be waived if the DoD determines that compliant specialty metal of satisfactory quality and sufficient quantity cannot be obtained as and when needed.

Expanded Promotion of Small Businesses and Participation Goals

As discussed by Harvey, the Small Business Administration (SBA) was established by the Small Business Act in 1953. In creating the SBA, Congress identified small business concerns as an integral element of American "free competitive enterprise," and declared that a "fair proportion" of federal procurement spending should be directed towards small business enterprises. In 1978, the Small Business Act was amended to require each federal agency to establish contracting goals for the participation by small businesses and by small businesses owned by socially and economically disadvantaged individuals (commonly referred to as the 8(a) Business Development program after section 8(a) of the Small Business Act) (Small Business Act, 1978). The goals were undefined.

Government-wide Small Business Goals

In 1988, Congress required the establishment of government-wide goals for procurement contracts awarded to small businesses and small businesses eligible for set-asides under the 8(a) program, and required that the first government-wide small business participation goal be at least 20% of the total value of all prime contract awards for that fiscal year (Business Opportunity Development Reform Act, 1988). Congress also set a minimum government-wide participation rate for socially and economically disadvantaged small businesses[8] of 5% of all prime contract and subcontract awards for that fiscal year. In addition, each agency was required to establish their own annual goals.

In the 1990s and 2000s, Congress gradually expanded government-wide and agency-specific small business participation goals and set-asides. Today, the President is required to annually establish government-wide goals for procurement contracts awarded at the following minimum values:

- Small businesses at not less than 23% of the value of prime contract awards
- Small businesses owned and controlled by service-disabled veterans at not less than 3% of prime and subcontract awards
- Qualified HUBZone small business concerns at not less than 3% of prime and subcontract awards
- Socially and economically disadvantaged small businesses at not less than 5% of prime and subcontract awards
- Small businesses owned and controlled by women at not less than 5% of all prime and subcontract awards

DoD-Specific Goals

The FY1987 NDAA (1986) established DoD participation goals for certain categories, including small businesses eligible for set-asides under the 8(a) program; historically Black colleges and universities; and minority institutions as defined by the Secretary of Education pursuant to the General Education Provisions Act. The established goal was 5% of annual DoD contract obligations for procurement; research, development, test and evaluation (RDT&E); military construction; and operations and maintenance. These goals were codified in the FY1993 NDAA (1992). In the ensuing years, Congress renewed and expanded these goals to include Hispanic-serving institutions; Native Hawaiian-serving institutions; and Alaska Native-serving institutions. The 809 Panel recommended the repeal of 10 U.S.C. § 2323 (2011) (related to contract goals for small disadvantaged businesses and certain institutions of higher education), and Congress implemented it in the FY2019 NDAA (John S. McCain NDAA for FY 2019, 2018).

In FY2017, DoD obligated $61 billion on contracts with small businesses.[9] Some observers such as the Section 809 Panel have highlighted what they perceive as a fundamental disconnect between many of DoD's small business programs and the Department's strategic priorities and missions, describing the DoD as being more focused on "acquiring goods and services based on meeting societal goals not related to mission" instead of capitalizing

on the potential of small businesses to provide innovative "warfighting capabilities and capacities" (Advisory Panel on Streamlining and Codifying Acquisition Regulations, 2018, p. 168). A number of analysts argue that how it works today, promoting small business contracting for DoD appears to be a socioeconomic policy connected to social and economic concerns that Congress has chosen to promote in its own right, even if these goals are disconnected from DoD mission goals. But there may be other DoD-specific reasons to promote small businesses in acquisition. Small businesses could help DoD save money by promoting competition to large defense contractors who, without such competition, could charge higher prices for defense-unique goods and services.

A number of DoD programs are also aimed at supporting and incubating unique technologies and capabilities that small businesses can offer DoD, including the Small Business Innovation Research (SBIR), Small Business Technology Transfer (STTR), and Defense Research and Development Rapid Innovation programs.

The Small Business Innovation Research program was established in 1982 to increase the participation of small innovative companies in federally funded R&D (Pub. L. 97-219, 1982). The Act applies to all federal agencies with extramural R&D budgets of $100 million or more to set aside a portion of these funds to finance an agency-run SBIR program.

The Small Business Technology Transfer (STTR) program was established in 1992 to facilitate the commercialization of university and federal R&D by small companies (Small Business Research and Development Enhancement Act, 1992). Agencies with extramural R&D budgets of $1 billion or more are required to set aside a portion of these funds to finance an agency-run STTR program.

The Defense Research and Development Rapid Innovation Program was established in the FY2011 NDAA as a DoD-specific program and made permanent in the FY2017 NDAA (2016a). It is a competitively awarded, merit-based funding program. Known as the Rapid Innovation Fund, it is intended to accelerate the fielding of mature innovative technologies developed through SBIR projects, DoD laboratory work, or other innovative technologies (including dual use technologies) that can be rapidly inserted into acquisition programs meeting specific defense needs. Proposals funded under the program must generally cost less than $3 million, and must be completed in less than 2 years. Selection preference is given to small businesses.

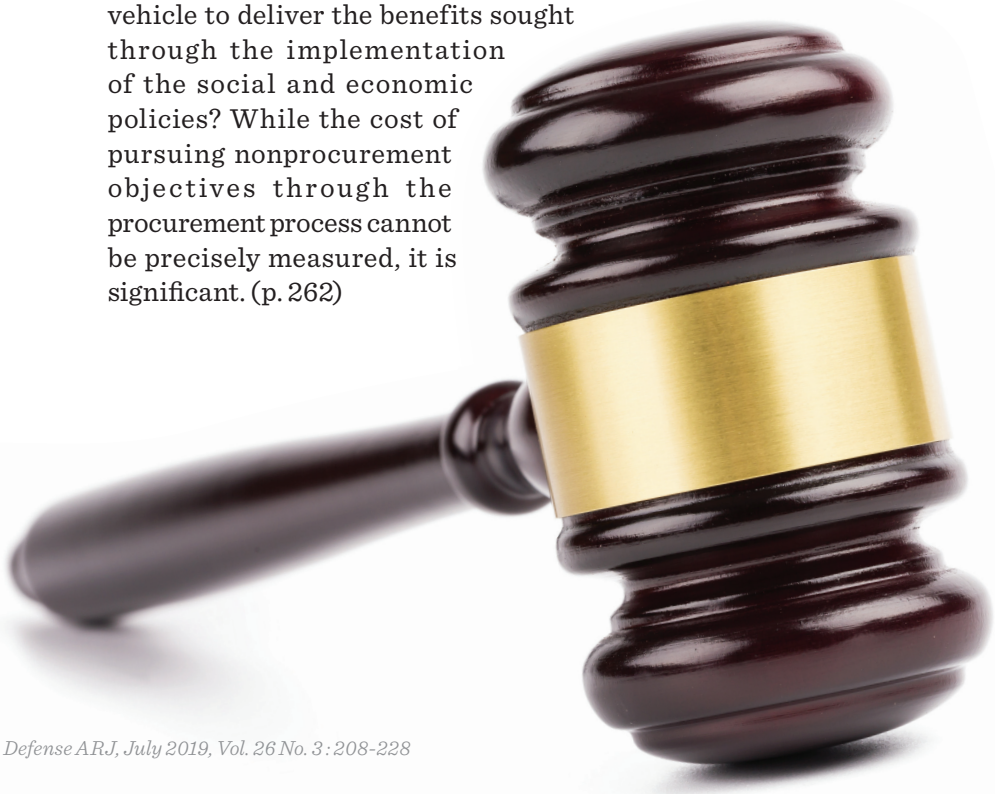
What Impact Do Public Policy Regulations Have on Defense Acquisition?

Using the procurement process to promote economic and social goals can increase the cost and time it takes to buy goods and services. In some instances, the costs can be calculated. For example, under the Buy American Act, when buying materials for construction, DoD incorporates a price premium of up to 50% for a domestic source (DoD, 2019, sec. 225.7501[a][7]). And for HubZone small businesses, under certain circumstances contracting officers are required to provide a price evaluation preference of up to 10% to all other bidders (FAR, 2019c). In other cases, the financial costs may be less clear, but the impact to DoD could be more substantial in terms of time and lost opportunity.

Each individual socioeconomic policy promoted in the acquisition system may be laudable and worth the cost for the particular policy. However, the cumulative cost of all of the policies have led some to conclude that there is a need to take a more holistic view of the socioeconomic policies embedded in the defense acquisition system. The 809 Panel argued that in the aggregate, such policies add "substantial cost, complexity, as well as bureaucracy and time to the acquisition process—cost that DoD may no longer be able to afford when weighed against the public benefit" (Advisory Panel on Streamlining and Codifying Acquisition Regulations, 2017a, p. 24).

But that, then, is the question. Can DoD accomplish its national security mission and simultaneously support other public policy goals? To what degree, and at what cost, should the government use the defense acquisition process to promote general public policy goals? DoD has an important mission, but it is also a part of the federal government, and can be an effective instrument for promoting national public policies that go beyond defense, such as fairness and transparency (as reflected in the bid protest process) and social equality (as reflected in the decision to integrate the military). What is in the best interest of the Department of Defense may not be in the best interest, or fully reflect, the values of the United States as a whole. The question then is how to balance socioeconomic policy objectives with DoD's mission to provide a common defense and promote national security objectives. As Harvey (1979) said in his article:

> The principal problem engendered by the use of the procurement process in the implementation of national economic and social goals is that the procurement of material becomes more costly and time-consuming with the addition of each new social and economic program. Legitimate questions may be raised as to how much of the extra costs and other burdens of these social and economic programs should be absorbed in the procurement process and how much should be supported by more explicit means. Indeed, is the use of the procurement process even an efficient vehicle to deliver the benefits sought through the implementation of the social and economic policies? While the cost of pursuing nonprocurement objectives through the procurement process cannot be precisely measured, it is significant. (p. 262)



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[1] The change occurred after the 1993 National Performance Review conducted by the Clinton Administration. Retrieved from https://www.govinfo.gov/content/pkg/FR-1995-07-03/pdf/95-16080.pdf#page=1 and https://www.govinfo.gov/content/pkg/FR-1995-01-20/pdf/95-1397.pdf.

[2] The author of this article served as executive director of the 809 Panel, Streaming and Codifying Acquisition, from October 2016–September 2017.

[3] 25 U.S.C. 154, Pub. L. 100-442 was signed into law in 1988. The regulations are found in DFARS Clause 252.226-7001.

[4] Readers can cross-reference the Thomas E. Harvey article, "Social and Economic Goals and Their Impact on the Defense Acquisition Process," in this issue of *Defense Acquisition Research Journal,* p. 190. Also corresponds to p. 255, Vol. 55, Issue 4, of the *Notre Dame Law Review* journal in which Harvey's article was originally published.

[5] No references appeared in the recent DoD report, *Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States* (September, 2018), or previous Annual Industrial Capabilities reports put out by the Pentagon's Office of Manufacturing and Industrial Base Policy (see https://www.businessdefense.gov/resources/).

[6] The W. L. Mackenzie King, Hyde Park Declaration, April 1941 (see http://wartimecanada.ca/sites/default/files/documents/WLMK.HydePark.1941.pdf) states, in part:

> It was agreed as a general principle that in mobilizing the resources of this continent each country should provide the other with the defence articles which it is best able to produce, and, above all, produce quickly, and that production programmes should be co-ordinated to this end.
>
> [Author's note: British spelling kept in the original form for historical accuracy.]

[7] Whereas DPA Title I authorities help ensure that the government has priority access to goods that are already being produced by domestic industries, Title III authorities help create a sufficient supply of these essential goods in the interest of national defense.

[8] As defined in the Small Business Act, Pub. L. 95-507, 92 Stat. 1757 (1978).

[9] See Small Business Goaling FY2017 Report at https://www.fpds.gov/downloads/top_requests/FPDSNG_SB_Goaling_FY_2017.pdf.

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