

Rec. IR1: Affirm agency mission as the primary goal of DoD acquisition.

Problem

A number of statutes, executive orders, and regulations to which DoD is subject promote public policies not directly tied to mission. The Section 809 Panel believes it is important to establish that mission comes first.

The panel's specific purview, as established in statute, is acquisition regulations. In the statement of guiding principles for the FAR, public policy objectives receive equal priority to delivering "on a timely basis the best value product or service to the customer." The Section 809 Panel has found instances in which public policy objectives do not align with mission requirements.

In its future work, the Section 809 Panel plans to make numerous recommendations for revising regulations (as well as statutes) to prioritize mission. Amending the FAR purpose statement to reflect this priority in advance of the panel's recommendations would facilitate timely implementation of that portion of the panel's work. The Section 809 Panel firmly believes problems should be addressed without a legislative fix whenever possible. Although the FAR Council has authority to make the needed change to the FAR purpose statement unilaterally, the Section 809 Panel recognizes that the process required to do so could preclude the ability to have the change in place before the panel issues its final report. In this case, to facilitate making the change expeditiously, the panel varies from its position, and recommends that Congress require the change in statute.

Background

The FAR Subpart 1.1, Purpose, Authority, Issuance, sets forth guiding principles for the federal acquisition system. The 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."

Findings

Some of the public policies promoted in the FAR or defense-specific regulations support the mission of DoD. Examples of such regulations include those aimed at preserving a domestic supply of critical defense articles and those aimed at promoting the ability of DoD to access innovative technologies developed by small businesses.

Other regulations promote public policies that do not directly relate to the mission. For example, the Presidential \$1 Coin Act of 2005 requires business operations performed on government premises to provide for accepting and dispensing \$1 coins. Whatever the merits of promoting the use of \$1 coins, the requirement does not relate to the agency mission. Nor does the requirement in the FAR to ban text messaging while driving (applicable to contractors on government business), yet the relevant FAR Clause, 52.223-18, must be included in all solicitations and contracts and in all subcontracts exceeding the micro-purchase threshold.

Although these and many other regulations are designed to further laudable public policy objectives, and individually may impose marginal costs, in the aggregate their effect places substantial burdens on DoD both in terms of financial costs and fulfilling the agency mission. It is important to assess the costs and benefits of such regulations to industry, government, and the regulations' intended beneficiaries.

Conclusions

The primary goal of acquisition regulations should be to promote the mission of the agency, not to impede it. 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.

Recommendations

Legislative Branch

- Enact a law requiring the FAR be revised so that references to fulfilling public policy objectives are stated as being a secondary objective of the federal acquisition system in any statement of the vision or guiding principles for the federal acquisition system or any statement of purposes of the FAR.

Regulatory Changes

- Revise FAR Part 1.

Implications for Other Agencies

- All other federal agencies would be affected by implementation of these recommendations.