

SOCIO-ECONOMIC PROVISIONS

The following is a non-exhaustive list of socio-economic statutory provisions applicable to DoD contracts. If you are aware of others please share them with us.

1. **Davis-Bacon Act (P.L. 71-798)** - 1931. Established requirement for paying the prevailing minimum wage on public works for laborers and mechanics.
2. **Buy American (P.L. 72-482)** - 1933. Requires the acquisition of unmanufactured and manufactured articles, materials, and supplies that have been mined or produced in the United States for public construction and use within CONUS.
3. **Berry Amendment (10 USC 2533a)** - 1994¹. Requires DoD to give preference to 100% domestically produced, manufactured, or grown products.
4. **Miller Act (40 USC 270a et seq)** - 1935². Requires prime contractors on construction contracts to post performance and payment bonds.
5. **Service Contracts Act (41 USC 351-358)**³ – 1965 - Applies to contracts over \$2,500 for furnishing services through service employees (i.e., not construction, utilities, etc) and requires they be paid SCA wage rates.
6. **Walsh-Healy Public Contracts Act (41 USC 35 – 45)** - 1936. Applies to contracts for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding \$ 15,000 and requires workers be paid the prevailing minimum wage.
7. **AbilityOne Program (formerly Javits-Wagner-O'Day Act) (41 USC 46-48c)** – 1938⁴. Requires all federal agencies to purchase specified supplies from non-profit organizations employing blind and/or otherwise significantly disabled persons.
8. **Randolph-Sheppard Act (20 USC 107 et. Seq)** - 1936. Provides preferential employment opportunities to blind persons in the operation of vending facilities (including military dining facilities) on federal properties.
9. **Rehabilitation Act (29 USC 793)** – 1973. Any contract in excess of \$10,000 for the procurement of personal property and non-personal services (including construction) must have a provision requiring the contractor to take affirmative action to employ individuals with disabilities.
10. **Small Business Act (15 USC 631-657s)** – 1953⁵. Established the SBA and the current SB program.

¹ Originally an annual provision in the Appropriations Act.

² Replaced the Heard Act, 33 Sta. 811, ch. 778 (1905)

³ Also known as the McNamara-O'Hara Service Contracts Act

⁴ Originally enacted as the Wagon-O'Day Act, amended in 71 as the Javits, Wagner-O'Day Act and renamed as the Ability One Program in 2006.

⁵ See the earlier provision, Section 2, in the Armed Service Procurement Act of 1947

11. **SBA 8(a) Program (13 CFR 124) – 1953.** Derived from section 8(a) of the Small Business Act. Establishes criteria for what socio-economic groups qualify as socially and economically disadvantaged includes **Indian Tribes** and **Alaska Natives Corporations**.
12. **Contract goal for small disadvantaged businesses and certain institutions of higher education (10 USC 2323) – 1958.** Establishes goal of 5 percent of total combined amount of contracts and subcontracts. Gave DoD authority to use less than full and open competitive procedures as long as the price does not exceed 10% of fair market value.
13. **Credit for Indian contracting in meeting certain subcontracting goals for small disadvantaged businesses and certain institutions of higher education (10 USC 2323a).** Pertains to subcontracted work. DoD receives credit towards meeting subcontracting goals if work performed on Indian lands has at least 40% Indian workers or provides training and development to the Indian workforce and management.
14. **Research and educational programs and activities: historically black colleges and universities and minority-serving institutions of higher education (10 USC 2362).** Enhances defense-related research at educational institutions eligible for assistance under Title III of the Higher Educational Act of 1965. SECDEF may provide funding or technical assistance via grants, cooperative agreements, contracts, scholarships, fellowships, or the acquisition of research equipment. May also establish partnerships between institutions and defense laboratories.
15. **Procurement Technical Assistance Cooperative Agreement Program (10 USC 2411-2420) – 1984.** Allows DoD to provide technical assistance relating to contracts DoD, Fed, State and Local.
16. **Comprehensive Subcontracting Plan Test Program (Sec. 834 NDAA FY90) - 1990** Established to determine if comprehensive subcontracting plans on corporate-wide basis would lead to increased opportunities for small businesses and reduce administrative burdens on contractors.
17. **E.O. 13170, Increasing Opportunities and Access for Disadvantaged Businesses – 2000.** - Directed agencies to increase the usage of 8(a) companies, small disadvantaged businesses, and minority-owned businesses.
18. **E.O. 13360, Providing Opportunities for Service-Disabled Veteran Businesses to Increase Their Federal Contracting and Subcontracting – 2004.** Requires heads of agencies to significantly increase business opportunities for service-disabled veterans.
19. **E.O. 13658, Establishing a Minimum Wage for Contractors – 2014.** – Established Federal minimum wage on gov't contracts.
20. **E.O. 13788, Buy American and Hire American – 2017.** Requires or provides preference for the purchase or acquisition of goods, products and materials produced in the U.S., including iron, steel, and manufactured goods.
21. **Rights in technical data & Validation of proprietary data restrictions (10 USC 2320, 2321) – 1984⁶.** Allows SECDEF to prescribe regulations defining relevant parties'

⁶ Need to see what Sec 813 Panel does

legitimate interests in technical data. Sec 2321 outlines general processes and considerations for release restrictions and challenges.

22. **Supplies: identification of supplier and sources (10 USC 2384)** – 2011. Requires DoD contractors to mark or identify supplies furnished under the contract.
23. **National security strategy for national technology and industrial base (10 USC 2501)** – 1992. Requires SECDEF to establish a national security strategy for the national tech and industrial base; establishes national security objectives which that strategy must support.
24. **Industrial Base Fund (10 USC 2508)** – 2011. Requires SECDEF to establish a fund to support the monitoring of the industrial base, address critical issues and expand the industrial base and address supply chain vulnerabilities.
25. **Federal Prison Industries (UNICOR) (28 USC 500, et. Seq)⁷** – 1934. FPI is a required source of supply, with certain exceptions, for identified items.

Not included are Environmental Laws. The Section 800 Panel reviewed 78 Federal statutes and 4 Executive Orders pertaining to Environmental Laws impacting contracts⁸. The Sec 800 Panel quoting from the work of a previous Defense Management Review (DMR):

“A holistic approach to (environmental, safety and occupational health) must begin with Congressional review of the patchwork quilt of Federal environmental laws. Recodification into a unified, consistent, and simplified scheme is essential. Currently, Federal agencies expend a large portion of their (environmental resources compiling and filing reports – not improving manufacturing processes, identifying environmentally safe substitutes for hazardous materials and developing environmentally sound advances in technology”⁹

The Sec 800 Panel found that:

“As is the case with that part of this report dealing with small business, the Panel finds that environmental law is a field in which defense and defense acquisitions are simply two stakeholders among a number of others. Accordingly, the Panel did not attempt to make a comprehensive revision suggested by the DMR report, leaving that task for others with particular expertise in environmental issues.”¹⁰

⁷ [Pub.L. 73-461](#), 48 [Stat. 1211](#), enacted June 23, 1934, [Executive Order 6917](#) of 11 December 1934, implemented in FAR 8.6

⁸ There review included a recently completed report issued by DoD, Defense Management Review Background Analysis: Environmental Panel, Sep 1989.

⁹ Report of the Acquisition Law Advisory Panel to the United States Congress, Chapter 4, SocioEconomic, Small Business and Simplified Acquisition Thresholds, January 1993, p. 4-119.

¹⁰ Id., p.4-120

Nonetheless, the Sec 800 Panel went on to review the Clean Water Act (33 USC 1368), Clean Air Act (42 USC 7606) and Section 6002 of the Resource Conservation and Recovery Act (RCRA)(42 USC 6962) recommending that these statutory be retained without change.¹¹

The questions for the Panel are:

Do we want to look at the various Environmental statutes and regulations currently applicable to DoD contracts with a view to recommending changes?

If so, do we want to survey all Environmental statutes, or is there a subset we should focus our attention on?

¹¹ Id., p4-121 -4-132