

The Debt Control Initiative: What It Means For Contractors

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Introduction/Presentation Overview

- Federal Budget Situation
- The Budget Control Act of 2011
 - Spending Caps
 - Balanced Budget Amendment
 - The Super Committee
 - Sequestration
- Impact of Budget Cuts on Procurements
- Preparing for the Inevitable

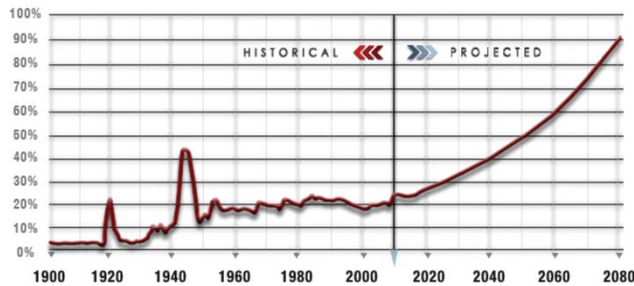


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4 Pictures Worth 4000 Words

Federal Spending as a Percentage of GDP



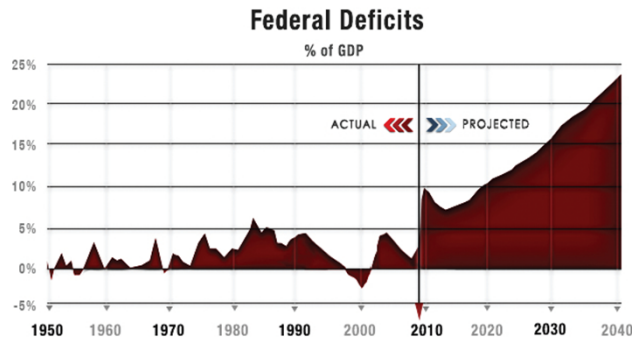
Source: Compiled by PGPF using data from the Office of Management and Budget, *The 2011 Budget Historical Tables*; the Government Accountability Office, *The Federal Government's Long-term Fiscal Outlook*; January 2010; and the *Historical Statistics of the United States*, Millennial Edition On Line, Cambridge 2006.



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Figure 1.
Federal Debt Held by the Public, 1790 to 2035

(Percentage of gross domestic product)



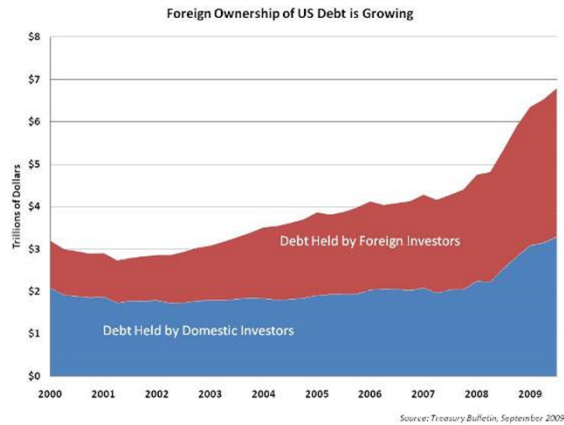
Note: The extended-baseline scenario adheres closely to current law, following CBO's 10-year baseline budget projections through 2020 (with adjustments for the recently enacted health care legislation) and then extending the baseline concept for the rest of the long-term projection period. The alternative fiscal scenario incorporates several changes to current law that are widely expected to occur that would modify some provisions that might be difficult to sustain for a long period.



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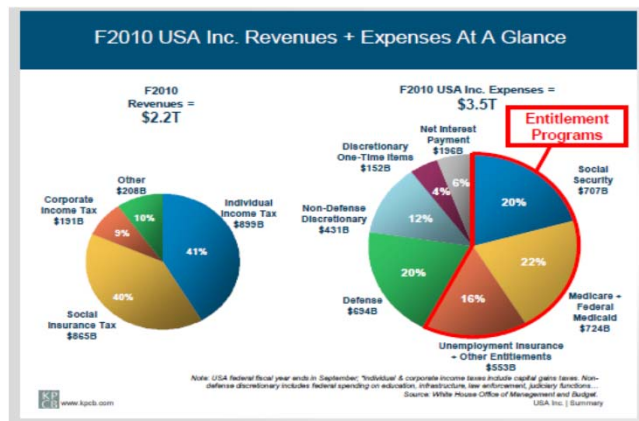
4 Pictures Worth 4000 Words



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What Drives Our Debt?



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Why is the National Debt so Important?

Secretary of State Hillary Clinton

- "We cannot sustain this level of deficit financing and debt without losing our influence, without being constrained in the tough decisions we have to make," Clinton said, adding that it was time to **"make the national security case about reducing the deficit and getting the debt under control."**
- **"It undermines our capacity to act in our own interest. And it does constrain us where constraint may be undesirable,"** she said. **"And it also sends a message of weakness internationally.**
I mean, it is very troubling to me that we are losing the ability not only to chart our own destiny, but to, you know, have the leverage that comes from this enormously effective economic engine that has powered American values and interests over so many years."



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Why is the National Debt so Important?

Admiral Michael Mullen
former Chairman of the Joint Chiefs of Staff

"[T]he single biggest threat to our national security is our debt."



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Long Term Structural Imbalance

- The Long-Term Fiscal Problem Cannot Be Solved by
 - a growing economy;
 - wiping out fraud, waste, and abuse;
 - ending the wars in Iraq and Afghanistan or cutting defense;
 - restraining discretionary spending;
 - eliminating congressional earmarks; and
 - letting 2001 and 2003 tax cuts expire.



New Age of Fiscal Austerity

- Focus on national spending, deficits and debt has made Federal Government budget cutting a priority
 - \$14.3 trillion debt
- Spending reductions included in FY 2011 appropriations
- Proposals for FY 2012 budget include even greater spending reductions
- Budget Control Act of 2011
 - Raises debt ceiling and reduces deficit
 - Reduces budget authority by \$841B from adjusted March baseline (\$1.1 trillion reduction from January baseline)
 - Establishes Debt Reduction Super Committee and puts in place other mechanisms to reduce the national debt



New Age of Fiscal Austerity (cont'd)

- Debt Reduction Super Committee mandate
 - Super Committee charged with finding additional \$1.5 trillion in deficit reductions
 - Reductions beyond savings reached in Budget Control Act
- If Super Committee is not successful in making debt reduction recommendations that become law:
 - Automatic spending reduction of \$1.2 trillion (sequestration)
 - \$109.3B in cuts per year from 2013 to 2021
 - Cuts split 50/50 between “security” and “nonsecurity” budgets



Budget Control Act of 2011

- Debt Ceiling Increases
 - \$2.1 to \$2.4 trillion over 2012-2021
- Balanced Budget Amendment
- Discretionary Spending Caps
 - \$917 billion in spending reductions
- Joint Select Committee on Deficit Reduction
 - Goal: \$1.5 trillion in deficit reduction



BCA Debt Ceiling Increases

- The BCA authorizes an increase in the debt ceiling of at least \$2.1 trillion
 - Possibly as high as \$2.4 trillion
- No additional action necessary by Congress
- Provided in three tranches
 - \$400 Billion
 - Became available on August 2, 2011, when President submitted certification that the debt was within \$100 billion of debt limit



BCA Debt Ceiling Increases

- Second tranche
 - \$500 Billion
 - Available unless a joint resolution of disapproval is enacted
- Third tranche
 - At least \$1.2 trillion
 - Could be as high as \$1.5 trillion if Balanced Budget Amendment is submitted to states for ratification, OR
 - An amount between \$1.2 trillion and \$1.5 trillion if Joint Committee legislation is enacted with greater than \$1.2 trillion in deficit reduction
 - Available if President submits another certification that the debt is within \$100 billion of debt limit, and a joint resolution of disapproval is not enacted within 15 calendar days of receipt of certificate
 - Estimated time: early 2012



Balanced Budget Amendment



BCA Requires a Vote

- House and Senate “shall vote on passage of” a balanced budget amendment to the Constitution between September 30, 2011, and December 31, 2011.
- No content requirements in BCA
 - House and Senate free to develop own versions
 - Substance/“Workability” will be an issue
- Even if passes Congress (by 2/3 majority), would have to be ratified by the states (38 out of 50)

BCA 10-Year Caps on Budget Authority

- Fiscal Years 2012 through FY 2013
 - Two Categories: Security and Non-Security
 - Security: Defense; Homeland Security; VA; National Nuclear Security Administration; Intelligence Community Management Account; and International Affairs
 - \$684 billion in FY 2012
 - Non-Security: Everything else
 - \$359 billion in FY2012
- Fiscal Years 2014 through FY 2021
 - Single Category



Joint Select Committee on Deficit Reduction



Joint Select Committee Members



Joint Select Committee on Deficit Reduction

- The Joint Committee must report by November 23 and each House must pass by December 23. Where is the time to draft Tax Reform or Entitlement Reform?
- Report and proposal must be made public "promptly" after Committee action
- 3 days for minority and alternative views
- JSC must transmit report/proposal to President, Vice-President, House and Senate by December 2, 2011

BCA Enforcement

Secretary Panetta:
“Doomsday Trigger”



BCA Enforcement

- Sequestration
 - Automatically triggered if discretionary budget authority exceeds its cap
 - President required to issue an order canceling budget authority in non-exempt categories by the uniform percentage necessary to eliminate the breach
 - Certain health and medical care accounts limited to 2 percent reduction

Sequestration under the BCA

- Bill must be signed by 1/15/12 or there will be a \$1.2T sequester
 - If bill reduces deficit less than \$1.2T, sequester will occur for the difference, starting on January 2, 2013
- Reductions/sequester cover FY 2013-FY 2021
 - Half from “defense;” half from “non-defense”
 - Reductions in each of these categories are then divided proportionally between mandatory and discretionary spending



Effect of Sequestration

- Hardship on many programs
- New or increased funding will have to be offset by reductions in other discretionary funding
- Legislation produced by Joint Select Committee could further ratchet down on discretionary caps
- Future Congresses could adjust caps
- Since sequestration does not kick in until 2013, Congress would have all of 2012—before and after the 2012 elections—to put an alternative package in place



Joint Select Committee Likely Outcomes

- Deadlock
 - No recommendations
- “Bare Bones” Compliance
 - \$1.2 to \$1.5 trillion in spending cuts
 - No (or very little) revenue increases
 - No (or very little) entitlement reform
- Grand Bargain
 - Significantly exceeds \$1.5 trillion goal
 - Revenue increases/tax reform
 - Entitlement reform
- Or Something In-Between



Budget Impacts

- Bottom line: DoD and other Agencies will have to cut even more spending (DOD is already planning to cut \$489 billion over 10 years)
- Will force re-evaluation of Agency needs.
 - What procurements are “critical”
 - What can be sacrificed
- For example, DoD will need to consider:
 - RDT&E vs. mature systems
 - Likely to change emphasis between mature and new technology
 - Likely to return to proven, mature, technology over more expensive, new, development technology
 - Changing assessment of future threats, roles, and missions



Budget Impacts (cont'd)

- Other Agencies will need to re-assess what procurements are most important or critical
- Areas likely to be deemed most important/critical:
 - information and communications systems
 - air traffic control
 - power generation and distribution
 - anti-terrorism, border control, law enforcement
 - emergency and disaster assistance
 - public health and medical care
 - protection of federal buildings and assets
 - defense activities



Budget Impacts (cont'd)

- Non-critical programs/procurements may be eliminated entirely
- Even where programs/procurements are critical, agencies will be forced to reduce spending
- We will see reductions in:
 - Internal spending
 - Spending on contracts



Reductions in Internal Spending

- Reductions in amounts spent internally by agency
 - Agency administrative costs for procurement (e.g., salaries)
 - Reductions may impact availability of government personnel needed for contract award. E.g., personnel needed to:
 - Issue solicitations
 - Evaluate proposals
 - Reductions may impact availability of government personnel needed for contract performance. E.g., personnel needed to:
 - Approve submittals
 - Inspect and accept work
 - Provide technical direction



Impact on Acquisition Strategies

- Agencies may delay awarding new contracts at beginning of fiscal year to see if sequestration is going to happen
- Funding levels may be insufficient for new procurements or option exercises
- Agencies will reconsider whether services should be performed by contractors or federal employees
 - Will depend on:
 - nature of services
 - availability of experienced federal employees
 - costs
 - Decision impacted by recent OFPP Guidance on “Inherently Governmental” functions



Contracting for Services

- OFPP Final Policy Letter September 12, 2011
 - Furthers Obama administration's efforts to reign in government contracting for services
 - Defines what functions are "inherently governmental" and must be performed by federal employees (e.g., awarding and termination of prime contracts, determination of federal program priorities)
 - Work "closely associated" with "inherently governmental" functions (e.g., services in support of any inherently governmental function):
 - if performed by a contractor, agency must give special management attention to the contractors' performance to make sure no encroachment on "inherently governmental" areas
 - safest course for agency—keep in house



Focus on Fixed-Price Contracting

- Will likely see reduction in use of contract types that create "high-risk" to government budgets
 - *i.e.* time and materials, labor hours, and cost type contracts
 - Instead, Government emphasis on fixed price and fixed price incentive work
- DoD has already stated intention to:
 - Use FFP to maximum extent practicable
 - Use FPI when moving from development to production



DOD Push for FP Contracts

- DOD Memorandum for Acquisition Professionals (Sept 14, 2010) (USDA Ashton Carter)
 - Guidance for obtaining greater efficiency and productivity in defense spending
 - Direction to increase use of fixed-price incentive firm target (FPIF) contract type
 - Especially for acquisitions moving from development to production
 - FPIF contracts:
 - Contain target cost, target profit, ceiling price and share line
 - DOD preferred position will be:
 - 50/50 share line
 - ceiling of 120%
- Proposed DFARS 216.403-1 (March 2, 2011) designed to implement guidance



2011 FAR Rule on Use of Cost-Reimbursement Contracts

- Interim rule amending FAR (effective March 16, 2011)
- Addresses "Proper Use and Management of Cost-Reimbursement Contracts"
- Implements Obama 2009 direction to agencies to save \$40B annually by FY 2011 by reducing use of cost-reimbursement, time and material, labor hour contracts
- Requires strategy to transition to FFP contracts to maximum extent practicable
- Requires CO to consider combining contract types if entire effort cannot be FFP
 - Structure contract requirements (CLINs) to allow some parts to be FFP



Risks of Fixed-Price Contracting

- Push for fixed-price contracting for budget reasons will create risks for contractors
 - Agencies may now decide to compete requirements on FFP basis that were previously cost reimbursable
 - Contractors will need to be diligent
 - Especially contractors used to performing in cost reimbursement/T&M environment
 - Requirements need to be sufficiently well- defined
 - Applies whether contract is for services or supplies



How Will Existing Contracts Be Affected?

- Agencies are expected to react to funding shortfalls and budget cuts by:
 - Reducing what is being purchased
 - Reducing capabilities by scaling back requirements
 - Cutting quantities (of supplies or services)
 - Extending schedules to match funding levels
 - Contract Stretch-outs
 - Production breaks
 - Terminating contracts
 - Other Restructuring efforts
 - Taking other actions to move/defer costs to future



Reducing Quantities in Indefinite Quantity Contracts

- Indefinite quantity contracts do not obligate Government to purchase definite quantity
 - Delivery order contracts (supplies)
 - Task order contracts (services)
 - GSA schedule contracts (commercial supplies and services)
- Government must order “minimum quantity”
- Budget cuts may mean that:
 - Agencies will place fewer orders than prior years



De-Scoping Fixed Requirements

- Government may de-scope or reduce what is being procured to stay within available funding levels
- De-scoping can be accomplished in several ways.
- De-scoping by reducing quantities
 - Reductions in quantities for:
 - Test articles, Production items, or Spares
 - Reductions in level/quantities of services
- De-scoping by reducing requirements, such as:
 - performance capabilities of products
 - types of services



De-Scoping (cont'd)

- De-scoping creates program risk
 - Reducing production quantities creates risk that per unit costs becomes too high and might lead to termination in future (particularly for R&D efforts)
 - Reducing test articles or reducing development effort creates risk that RDT&E effort is incomplete/inadequate
 - Reducing product capabilities or reducing services creates risk that user community will not be satisfied



Government's Authority to De-Scope

- "Changes" clause
 - Limits on authority – May not be used to:
 - Decrease quantity of deliverables
 - Eliminate major work items
 - Pricing deductive changes
 - Deduct what the work would have cost
 - May impact unchanged work
- Partial termination for convenience under T/C clause
 - Compensation under T/C clause
 - Costs to complete the non-terminated work plus termination settlement expenses for the terminated work
- Whether contractor is better off financially with a partial T/C or a deductive change depends on circumstances



Contract Stretch Outs

- What are funding-driven stretch outs?
 - Where there is no change in requirements, but schedule growth occurs due to funding constraints
 - Contract stretches out over longer period to match lower funding levels
 - Stretch delivery of same quantity of services/supplies over longer period of time
- Stretching out contract may delay important milestones:
 - E.g., completing development in RDT&E contract



Contract Stretch Outs (cont'd)

- Stretching out contracts creates risk of future T/C, particularly for weapons systems
 - Nature of threats/roles/missions not static
 - System might become obsolete because of roles/missions changes before contract completed
 - Increased costs may make contract unaffordable in future
- Stretch outs increase costs of performance (for both service and supply contracts)
 - Shifting work to later time period
 - Costs more (labor rate increases, OH rate increases, major subcontractor cost growth, increase in prices for materials)
 - Disrupting planned sequence of work
 - Stretching time span for effort
 - Causes inefficiencies
 - Increased OH (longer period)
- Contractor entitled to equitable adjustment



Production Breaks in Supply Contracts

- Government may not have sufficient funding to proceed with production as planned
 - Gaps in funding or insufficient funding levels can result in gaps in production
- Production breaks are caused when there is a gap in production between:
 - LRIP and production
 - Later production lots
- With a production break, the contractor has to stop production until more funding is made available



Production Breaks (cont'd)

- Impact of production breaks
 - Government loses benefit of prime and subcontractor pricing
 - Cost growth may be significant
 - Additional costs to re-establish production line
 - Additional costs to perform in later time period
 - Loss of learning curve efficiencies
 - Cost growth may make contract unaffordable in the future
 - May encounter problems in re-establishing supplier base
 - Suppliers may no longer be available (out of business, no capacity to accept work)
 - May have issues with parts becoming obsolete
 - Increases risk of termination, if unable to achieve milestones and place systems into inventory as planned
- Contractor entitled to an equitable adjustment



Other Adverse Action Caused by Funding Shortfalls

- Funding shortfalls may adversely impact performance in other ways
- Constructive acceleration (both supply and service contracts)
 - Where Government wants to recover schedule lost during period of funding shortfall by ramping up after additional funds provided
 - May require concurrency in development contracts
 - Concurrency increases performance risk



Other Adverse Action Caused by Funding Shortfalls (cont'd)

- Performance impacts caused by Government inability to fulfill its obligations due to funding constraints. E.g.,
 - Government lacked funding to purchase major GFE for contractor
 - Government reduces workforce and federal employees are not available to perform contract administration in timely fashion



Other Adverse Action Caused by Funding Shortfalls (cont'd)

- “Stop-Work Order” clause 52.242-15 (used in contracts for supplies, services and R&D)
 - Included in both fixed-price and cost-reimbursement contracts
 - May be used by Government to allow time to assess whether contract should be terminated/restructured
 - May order that all or part of the work stop
 - Contractor required to comply with terms of SWO
 - Contractor required to take reasonable steps to minimize incurrence of costs
 - If contract is underfunded, risk that contractor will not recover costs
 - Contractor entitled to equitable adjustment



Other Adverse Action Caused by Funding Shortfalls (cont'd)

- “Government Delay of Work” clause 52.242-17
 - Included in some fixed-price supply and services contracts
 - No stop work order is issued by CO
 - Work delayed by CO action/inaction (e.g., delay in providing funding)
 - Contractor entitled to “adjustment” (but no profit)



Recovery for Cost Impact of Stretch Outs, Production Breaks, and Other Impact

- Contractors are entitled to an equitable adjustment for impact of stretch outs, production breaks, constructive acceleration, stop work orders, and other funding shortfall impacts
 - Exception: for Government Delay of Work, entitled to “adjustment” but no profit
- Fixed-price contracts
 - Adjustment of fixed-price (including profit)
- Cost reimbursable contracts
 - Adjustment of estimate of costs/ceiling
 - Adjustment of fee
 - Adjustment of cost share (CPIF contracts)



Equitable Adjustments or Breach?

- If Contracting Officer action results in a fundamental alteration of the contract work, “cardinal change” has occurred.
- May be treated by contractor as Government breach of contract.
- Contractor may be able to insist on restructuring of contract/program as a condition of continuing.
 - Depends on which “Disputes” clause is in the contract
 - 52.233-1: contractor has no duty to proceed with performance if Government is in breach
 - Alternate I requires the contractor to continue to perform even if the Government has breached
 - Alt I Clause used when agency determines that continued performance is necessary pending resolution of any claim



Terminations

- Government may react to funding shortfalls by terminating contracts in whole or in part
 - “Termination” clauses permit total or partial terminations
- Usually budget-driven termination will be a T/C
- But, termination may be T/D
 - T/D has been used as budget saving strategy
 - T/D can be perceived by Government as no-risk option
 - Consequence of improper T/D is conversion to T/C
 - Majority of development contracts are behind schedule and not meeting all specs, which could support T/D



T/C Recovery: Fixed-Price Contracts

- T/C recovery under fixed-price contracts
 - “Fair” compensation for the work
 - FAR 49.201: “Use of business judgment, as distinguished from strict accounting principles, is the heart of a settlement.”
 - Contract price for completed supplies/services
 - Allowable costs of other contract work performed
 - Profit or application of loss adjustment
 - Costs continuing after termination (e.g., winding down costs such as rental costs, salaries, severance)



T/C Recovery: FP Contracts (cont'd)

- T/C recovery under fixed-price contracts (continued)
 - Settlement expenses (e.g., accounting and legal expenses, settlements with subs, asset disposition expenses)
 - Equitable adjustments:
 - May be important to avoid application of loss adjustment
 - May have equitable adjustment after partial termination
 - Adjustment of price of continued portion



T/C Recovery: Cost-Reimbursable Contracts

- T/C recovery under cost-reimbursable contracts
 - Allowable costs of contract work performed
 - Costs continuing after termination (e.g., winding down costs such as rental costs, salaries, severance)
 - Settlement expenses (e.g., accounting and legal expenses, settlements with subs, asset disposition expenses)
 - Adjustment of fee
 - Generally % of fee based upon % complete
 - May include consideration of extent and difficulty of work performed and winding down efforts



Limits on T/C Recovery

- Funding Limitations on T/C recovery
 - Cost-reimbursable contracts:
 - “Limitation of Cost” clause 52.232-2 (Fully funded contracts)
 - “Limitation of Funds” clause 52.232-22 (Incrementally funded contracts)
 - Fixed-price contracts:
 - “Limitation of Government’s Obligation” clause 252.232-7007 (incrementally funded fixed-price contracts)
 - LOC, LOF and LOGO clauses limit recovery of costs, including termination costs
 - Recovery in excess of LOC/LOF/LOGO amounts rarely happens



Limits on T/C Recovery (cont’d)

- Other contractual limits on T/C recovery
 - Special Termination Costs (DFARS 252.249-7000)
 - Limits recovery of special termination costs (severance pay, costs continuing after termination, settlement expenses, costs of return of field service personnel)
 - No recovery for STC costs in excess of stated amount
 - Other contractual provisions limiting recovery (e.g., certain provisions addressing advance costs or where contractor agrees to absorb certain costs)



Other Program Restructuring

- Contractors should expect other Government efforts to make contracts more affordable by restructuring or renegotiating
- Cherry picking R&D effort and moving to another contract which has funding
- Re-negotiation of profit or fee
- Conversion of cost-reimbursable to fixed-price contract
 - Can make costs more predictable
 - Can lower costs
- All of these require bi-lateral agreement
 - Pressure on contractors to agree or face possible termination



Pressure to Self-Fund to Make Up For Funding Shortfall

- Contractors may feel pressure to self-fund to remedy funding shortfalls and keep performance on track.
 - May be encouraged by CO
 - Contractors may decide to do so for customer relations purposes
 - Contractors may feel that self-funding is needed to avoid termination
- Performing with contractor funds with expectation that catch-up funds will later be available at later date
 - Risk that sufficient funds are not provided in the future
 - Risk that contract will be terminated while in an underfunded state



Pressure to Self-Fund (cont'd)

- Performing with contractor funds as a volunteer with no expectation that Government will later provide catch-up funds
 - Contractor investment in ongoing contract/program
 - Risk that contractor investment will ultimately not benefit contractor
 - After contractor makes investment, contract terminated anyway
 - Contractor transfer of R&D effort to IR&D after contract termination with hope of benefitting future procurements
 - Risk that effort will not bear fruit



Anti-Deficiency Act Issues

- Self-funding can create Anti-Deficiency Act issues
- Anti-Deficiency Act prohibits Government officers from:
 - Incurring an obligation or involving the Government in a contract for the payment of money in advance of an appropriation
 - Accepting voluntary services (or goods)
 - Can create “coercive deficiencies” where Government feels morally obliged to later fund
- Penalties for Government officials violating the ADA:
 - Adverse personnel actions—31 USC 1349
 - Criminal penalties—31 USC 1350



Nunn-McCurdy Implications

- Nunn-McCurdy Requirements for Major Defense Acquisitions
- “Significant cost growth” is defined as:
 - 15 % of current baseline cost estimate, or
 - 30 % of original baseline cost estimate
- “Critical cost growth” is defined as:
 - 25 % of current baseline cost estimate, or
 - 50 % of original baseline cost estimate
- “Significant” and “Critical” cost growth (Nunn-McCurdy breaches) trigger obligation to make report to Congress



Nunn-McCurdy Implications (cont'd)

- Presumption of termination of programs that experience “critical cost growth,” unless Secretary of Defense certifies that:
 - Continuing program is essential to national security
 - No alternative to meet military requirement at less cost
 - New costs estimates are reasonable per Director of Independent Cost Assessment
 - The program is a higher priority than programs whose funding must be reduced to accommodate the cost growth
 - Management structure is adequate to manage and control costs
- If program is not terminated, Secretary required to:
 - Restructure the program in a manner that addresses the root cause of the critical cost growth
 - Rescind most recent Milestone Approval and obtain new Milestone Approval before next contracting action



Nunn-McCurdy Implications (cont'd)

- GAO Report on Nunn-McCurdy Trends (March 9, 2011)
 - 74 Nunn-McCurdy breaches since 1997
 - Breaches involved 47 programs
 - Breaches often the result of multiple factors
 - Primary reasons for unit cost growth were:
 - Engineering and design issues
 - Schedule issues
 - Quantity changes
 - In 2009, DOD cited following factors for breaches:
 - Reductions in quantity
 - Changes in requirements since baseline
 - Development or production stretch-out
 - Technical or performance/reliability issues
 - Inadequate baseline cost estimate



Nunn-McCurdy Implications (cont'd)

- Funding shortfalls will cause cost growth and lead to more Nunn-McCurdy breaches
 - Budget driven:
 - reduction in quantities
 - production breaks
 - stretch-outs
- DOD drafting proposed legislative amendment:
 - Lessen Nunn-McCurdy requirements where:
 - Breaches were caused by quantity changes, and
 - Quantity changes were due to changing needs and not program-specific cost concerns



How Should Contractors Prepare?

- Assess programmatic vulnerabilities caused by:
 - Changes in threats, roles and missions (particularly for defense related procurements)
 - Changes in technology (has your product become obsolete?)
 - Changes in priorities (where should scarce dollars be spent?)
 - Cost and schedule growth: what are the optics?
 - Has your contract cost more than originally anticipated?
 - Has it taken longer?
- Understand the Government's current assessment of your programs/contracts. (How do they rate your performance? How critical do they think your contract is?)



How Should Contractors Prepare? (cont'd)

- Re-examine portfolios of products and services
 - What makes long-term strategic sense to invest in?
 - Where will scarce agency dollars be spent in the future?
- Develop procurement advocacy strategy
- Understand contractual limits of government's authority to make unilateral budget-driven changes to contracts, and risks created by alterations to the contractual effort



How Should Contractors Prepare? (cont'd)

- Assess contractual vulnerabilities, including performance status to avoid possibility that a termination could be for default
 - Document milestone and technical reviews
 - Formalize specification changes
 - Document waivers of requirements



How Should Contractors Prepare? (cont'd)

- Recognize critical importance of funds status (incrementally funded and cost reimbursable contracts)
 - Regularly track contract funding status
 - Contract Funds Status Reports (CFSR)
 - Cost schedule status reports
 - Other contract documents that track funds/rate of expenditure
 - Include status of long lead funding
 - Regularly calculate projected termination liability
 - Include projected T/L for major subs (including cancellation fees or other payments due if T/C)
 - Include costs of possible stop work period
 - Identify potential limitation of costs/funds issues



How Should Contractors Prepare? (cont'd)

- Prepare for possible termination, e.g.,
 - Resolve subcontractor claims
 - Re-consider the need for capital expenditures
 - Identify technology developments to be preserved or continued



Conclusion

- This is a new age of procurement austerity
- Both the Government and contractors will have to do more with less money
- Every program is at risk for funding cuts
- Prepare now for the inevitable



QUESTIONS?



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END

Thank you for participating in today's program.



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