



The government contracts attorneys at Covington & Burling LLP recently issued a [summary article](#)

discussing a [GAO report](#)

analyzing FPDS-NG data over five years (2011 through 2015). (FPDS-NG is the Federal Procurement Data System-Next Generation. It is notorious for being filled with errors and for missing lots of required data. Nonetheless, GAO found it to be “sufficiently reliable” for analyzing trends.) GAO used the data to support several conclusions about government spending during that five-year period, some of which we found to be counter-intuitive.

Let’s start with Covington & Burling’s assessment of the GAO analysis:

Importantly, GAO reported that overall, spending on federal contracts decreased from FY 2011 to FY 2015 by nearly 24%. The primary reason for that decline was a 31% decrease in spending by the DoD agencies during that time, during which civilian spending decreased by less than 7%. GAO noted that the largest decreases occurred for both DoD and civilian agencies around sequestration in FY 2013. But following sequestration, civilian obligations rose back to near FY 2011 levels, while DoD obligations continued to decrease.

The trends identified in GAO’s report stand in direct contrast to the emerging details of the Trump administration’s proposed federal budget, which was released on March 16, 2017 by way of the Office of Management and Budget’s “[Budget Blueprint](#).” That blueprint proposes a significant increase in DoD funding, at the (potentially significant) expense of a variety of civilian agencies.

Government-wide Contracting Trends

Written by Nick Sanders
Monday, 27 March 2017 00:00

The GAO report looked at (1) what goods and services were being acquired, (2) the rate of competition, (3) procurement methods/contract types used, and (4) the suppliers that provide goods and services.

As noted in the Covington & Burling summary, GAO found that DoD spending declined by almost one-third during the five-year period reviewed. To understand what happened, you need to understand “[sequestration](#)” and its impact to Federal spending. You can get the details in the Wikipedia article (link in previous sentence), but the gist of it is that, in order to resolve the 2011 “debt-ceiling crisis,” President Obama and Congress agreed to create a “Super Committee” with authority to cut Federal spending in order to create a \$1.2 trillion reduction in the Federal deficit over 10 years. The Super Committee failed (some asserted that it was sabotaged) and thus automatic “across-the-board” spending cuts went into effect in January, 2013. The automatic cuts were to be split evenly (by dollar amounts) between defense and non-defense spending; however, certain programs (e.g., Social Security, Medicaid, Federal pensions, and veterans’ benefits) were exempted. The Congressional Budget Office estimated that the impact of sequestration was to decrease GDP growth by about 0.6% annually. In other words, sequestration harmed the overall economy.

Unsurprisingly, the GAO study found that “the largest decrease in obligations for both defense and civilian agencies occurred around the time of sequestration in fiscal year 2013.” About one-quarter (26%) of the DoD sequestration reductions came from its procurement accounts; i.e., contracting activity. However (as Covington & Burling noted), “While defense obligations continued to decrease, civilian obligations increased to just under fiscal year 2011 levels.” What that seems to mean is that DoD bore the brunt of the sequestration impacts. Its budget was cut, and continued to decline relative to pre-2013 levels, while the civilian agencies’ budgets took a one-time hit and then began to climb back to previous levels.

Interestingly, the report found that services now make up 60 percent of government-wide contracting obligations. At civilian agencies, services make up 80 percent of contract spending. Looking at what services were being acquired, GAO found that the number one service (in both defense and civilian agencies) was “professional support services.” This category included engineering and technical support. In other words, as the agencies’ budgets (and headcounts) were cut, they outsourced the required efforts to the private sector. Nearly 20 cents of every obligated dollar went to such support services. GAO noted the “risk” of such contractors performing “inherently governmental work.”

With respect to competition, GAO found that the Federal government awarded contracts through competition about 65 percent of the time (DoD lagged with only 55% of awards being

Government-wide Contracting Trends

Written by Nick Sanders
Monday, 27 March 2017 00:00

made through competition.) In 14 percent of the time, competitive solicitations resulted in receipt of only one offer.

Two-thirds of all contract awards were made on a fixed-price basis. Part 12 (commercial item) procedures accounted for about 25 percent of contract obligations for products and services.

There are many more details in the GAO report, and we suggest you may want to review it in full. However, we have attempted to provide a summary (in addition to the summary provided by Covington & Burling) because we think it's an interesting study.

WARNING! *We are about to talk about politics. We normally strive to avoid political discussions, because in today's environment you really cannot expect to change anybody's mind. If you don't like political discussions or if you are going to get offended by a point of view that is not aligned with your point of view, we suggest you stop reading right now. You've gotten everything of value that this article has to offer you.*

The counter-intuitive conclusion in the GAO report was how the civilian agencies recovered from the sequestration cuts. DoD's budget was cut and stayed cut, but the civilian agencies' spending started to trend back up. We don't pretend to understand how that happened but, according to GAO, it did happen.

If you remember back to the "Super Committee" and its mission, most people expected it to work. The sequestration was intended to force a compromise. Many people expected that the Draconian budget cuts—the meat-axe across all Federal agencies—would be too unpalatable and thus a compromise would be found. Conservative Republicans would be unwilling to see cuts to defense spending and Liberal Democrats would be unwell to see cuts to civilian agencies such as the EPA. Sequestration was intended to get both sides to the table in order to reach a budget compromise.

As a 2012 Huffington Post article (written by Jason Linkins) stated—

The irony is that at the time of the Super Committee's formation, it was widely believed that the

Government-wide Contracting Trends

Written by Nick Sanders

Monday, 27 March 2017 00:00

sequestration was an awesome idea that would totally guarantee the Super Committee's success. By hanging the sequestration over everyone's heads like the [Sword of Damocles](#), they reasoned, the members of the Super Committee would be Super Motivated to reach a Super Agreement. Paul Ryan (R-Wis.)

[heralded the sequestration](#)

as a victory of bipartisanship and a welcome change in Congress' culture.

That plan failed.

Sequestration went into effect. Most observers at the time thought that non-defense programs were going to face the biggest cuts. See, for example, [this 2015 article](#) by David Reich and the Center on Budget and Policy Priorities. In it Mr. Reich concludes that "In short, the BCA [Budget Control Act], with its caps and sequestration, will soon mean that the federal government is devoting the lowest share of national income in at least five decades to the services and investments covered by non-defense appropriations."

But it didn't work out that way, according to the GAO study. The civilian agencies recovered from the sequestration cuts while the DoD did not. We do not pretend to understand how that happened, but it seems to be the reality of the spending data. If the analysis is correct then the Conservative Republicans were the big losers of the 2011 budget negotiations.

We say this because the threat of huge DoD cuts was supposed to compel those Conservative Republicans to a compromise, just like the threat of huge non-DoD cuts was supposed to compel the Liberal Democrats to a compromise. The compromise never happened but the DoD cuts were long-lasting while the non-DoD cuts were (seemingly) temporary. The Liberal Democrats paid a short-term price for failing to compromise while the Conservative Republicans paid a long-term price.

(Yes. We understand that we are painting with a broad brush. There are moderate and even liberal Republicans, and there are conservative Democrats. We get that. There's really no need to write us emails pointing that fact out.)

End of political discussion. We now return you to the normal blog articles discussing government contracting and compliance matters.

Government-wide Contracting Trends

Written by Nick Sanders
Monday, 27 March 2017 00:00
