

the road ahead for
government contractors



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The road ahead for government contractors Venable LLP and the ACC National Capital Region Chapter

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Robert Burton



Robert A. Burton is a nationally-recognized federal procurement attorney, who focuses his practice on assisting government contractors navigate the complex and rule-driven procurement process. He represents a wide range of companies that conduct business with the federal government, from large defense contractors and systems integrators to small businesses. Mr. Burton assists government contractors with the development and management of their ethics and compliance programs and aids them with their marketing strategies for selling to the government.

PROFESSIONAL EXPERIENCE

A thirty-year veteran of procurement law and policy development, Mr. Burton served in the Executive Office of the President as Deputy Administrator of the Office of Federal Procurement Policy (OFPP), the nation's top career federal procurement official. He also served as Acting Administrator for two years during his seven-year tenure at OFPP.

As Deputy Administrator of OFPP, Mr. Burton was responsible for the government's acquisition policy and procurement guidance to all Executive Branch agencies. His office was charged with developing policy affecting more than \$400 billion in annual federal spending – a figure that doubled during Mr. Burton's time in office as a result of the Iraq War and other major events.

He also served as the Executive Director of the Chief Acquisition Officers (CAO) Council, which comprises the Chief Acquisition Officers from each federal agency. Mr. Burton also managed the activities of the Federal Acquisition Regulatory (FAR) Council, which has statutory authority to promulgate the government's procurement regulations.



Alan Chvotkin



Alan L. Chvotkin is the executive vice president and counsel of the Professional Services Council, the principal national trade association of the government professional and technical services industry, where he is responsible for the association's legislative and regulatory policy activity.

Prior to joining PSC, he was a vice president of AT&T Government Services where he was responsible for managing key AT&T programs and opportunities. From 1986 to 1995, he was corporate director of government relations and senior counsel at Sundstrand Corporation. Chvotkin also has 13 years experience as a professional staff member on Capitol Hill, serving first as a staff member on the Senate Budget Committee and, later, the Senate Governmental Affairs Committee. He became counsel and staff director to the Senate Small Business Committee and then counsel to the Senate Armed Services Committee.

Chvotkin is a member of the American, Supreme Court and District of Columbia Bar Associations and a fellow of the National Contract Management Association, where he serves on its national board of advisors. He is also a founding member and continuing leader of the federal contracting industry's Acquisition Reform Working Group, which was established in 1993. He also co-chairs the operating committee of the Council of Defense and Space Industries Association. For his service to the contracting community, he twice received the prestigious Fed 100 Award. He has a law degree from American University's Washington College of Law, a master's in public administration and a bachelor's in political science, both from American University.



Kenneth W. Dodds



Kenneth Dodds is the Director of Policy, Planning and Liaison at the Small Business Administration (SBA). His office is responsible for small business government contracting regulations, small business size standards, and establishing small business prime contracting goals for executive agencies. Previously he was the Director, Office of Government Contracting at SBA and a senior attorney in SBA's Office of General Counsel. He is a graduate of James Madison University and received his law degree from the Marshall-Wythe School of Law at the College of William & Mary.



Kevin Plexico



Kevin Plexico is Vice President of Information Solutions at Deltek where he manages the delivery of Deltek's industry leading government market research and information products providing essential information and insights to over 2,800 clients. Mr. Plexico has responsibility for leading the industry's largest team of analysts focused on the government contracting industry.

Mr. Plexico came to Deltek from its acquisition of INPUT in 2010. At INPUT, Mr. Plexico played an instrumental role in helping to grow the company from a boutique market research firm to the industry leading provider of market information to government contractors.

Mr. Plexico provides thought leadership and expert opinion to industry executives and is a recognized expert on the public sector market.

Mr. Plexico earned an MBA in Information Systems from the University of Maryland, College Park, Maryland and a B.B.A. in Economics from James Madison University, Harrisonburg, Virginia.



Paul Debolt



Paul Debolt assists companies and individuals on issues that arise from conducting business with the federal government, including civil fraud. He is experienced in the competitive source selection process, defending or prosecuting bid protests, issuing advice concerning compliance with government regulations and laws during the performance of a contract, and helping to resolve disputes and claims during contract performance or as a result of contract termination. Mr. Debolt also has significant experience with due diligence in connection with the merger and acquisition of government contractors, as well as post-transaction matters such as novations. He counsels clients on the Service Contract Act, the civil False Claims Act, joint ventures and teaming agreements, prime-subcontractor disputes, internal investigations, mandatory disclosures and data rights issues.

Mr. Debolt has extensive government contracts law experience and applies a team approach that ensures clients receive the benefit of firm-wide strength in all related areas.



agenda

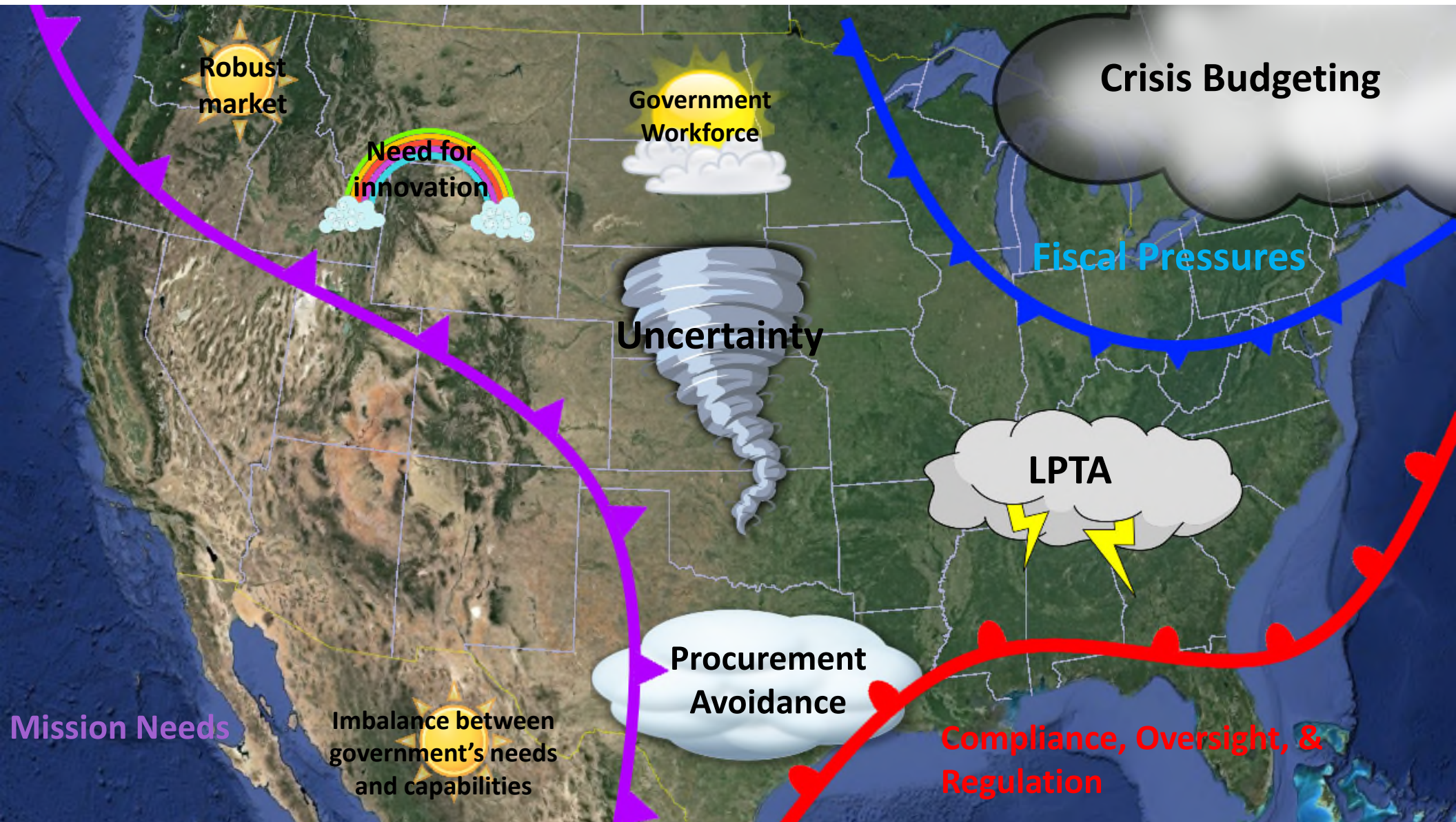
- Health of the Industry
- Challenges Facing the Industry
- Budget
- Legislative Agenda
- Small Business
- Legal Issues
- Executive Orders



Health of the Government Contracts Industry

- What is the panel's assessment of the overall health of the government contract's industry?





Health of the Government Contracts Industry

- What is the panel's sense of how the government's myth busters program is going?
- Has it opened up the lines of communication between the government and industry?
- What do you see as the biggest impediments to communication?



Health of the Government Contracts Industry

- Is strategic sourcing having an impact?
- What is your assessment of that impact?

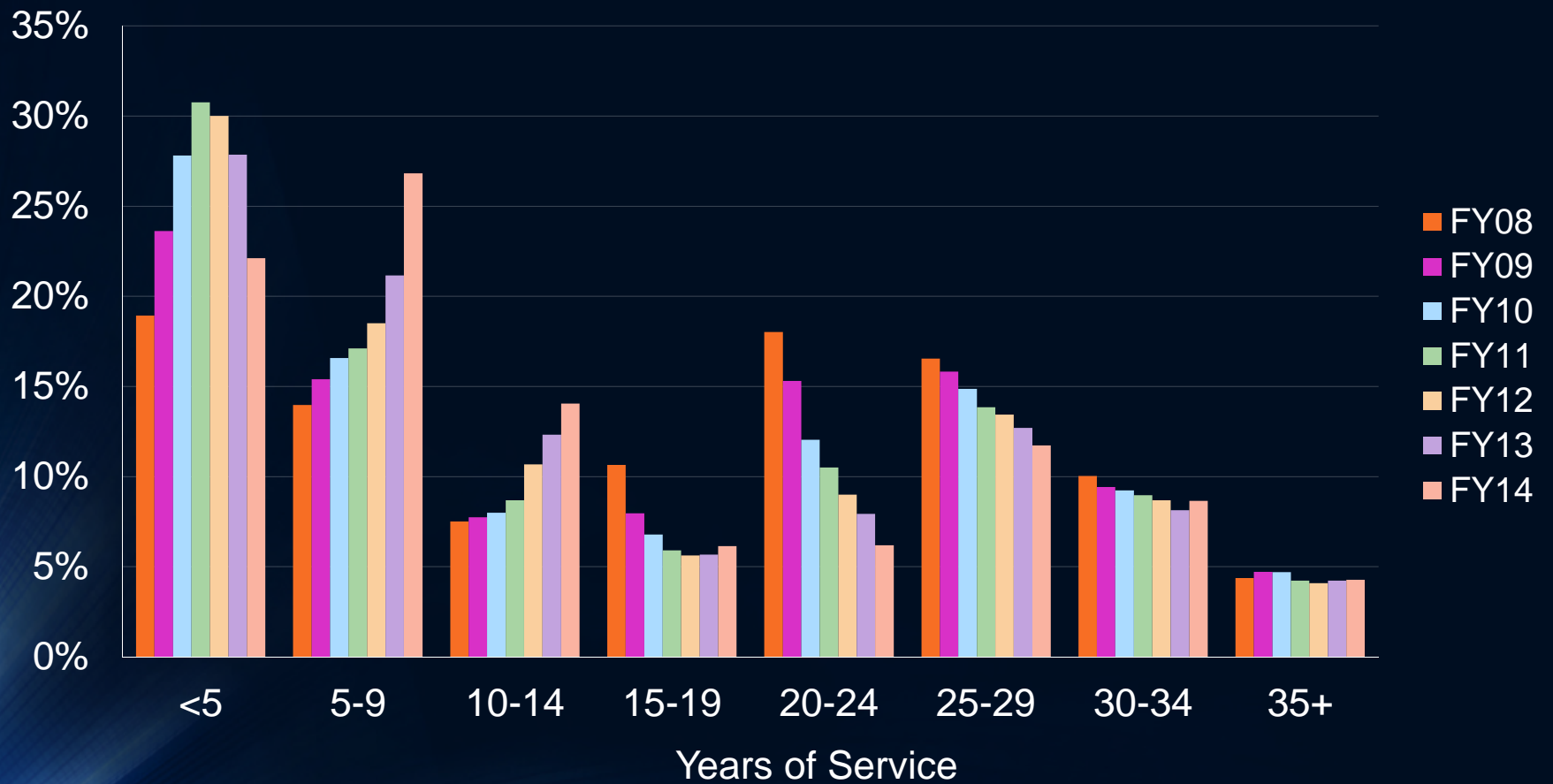


Challenges Facing the Industry

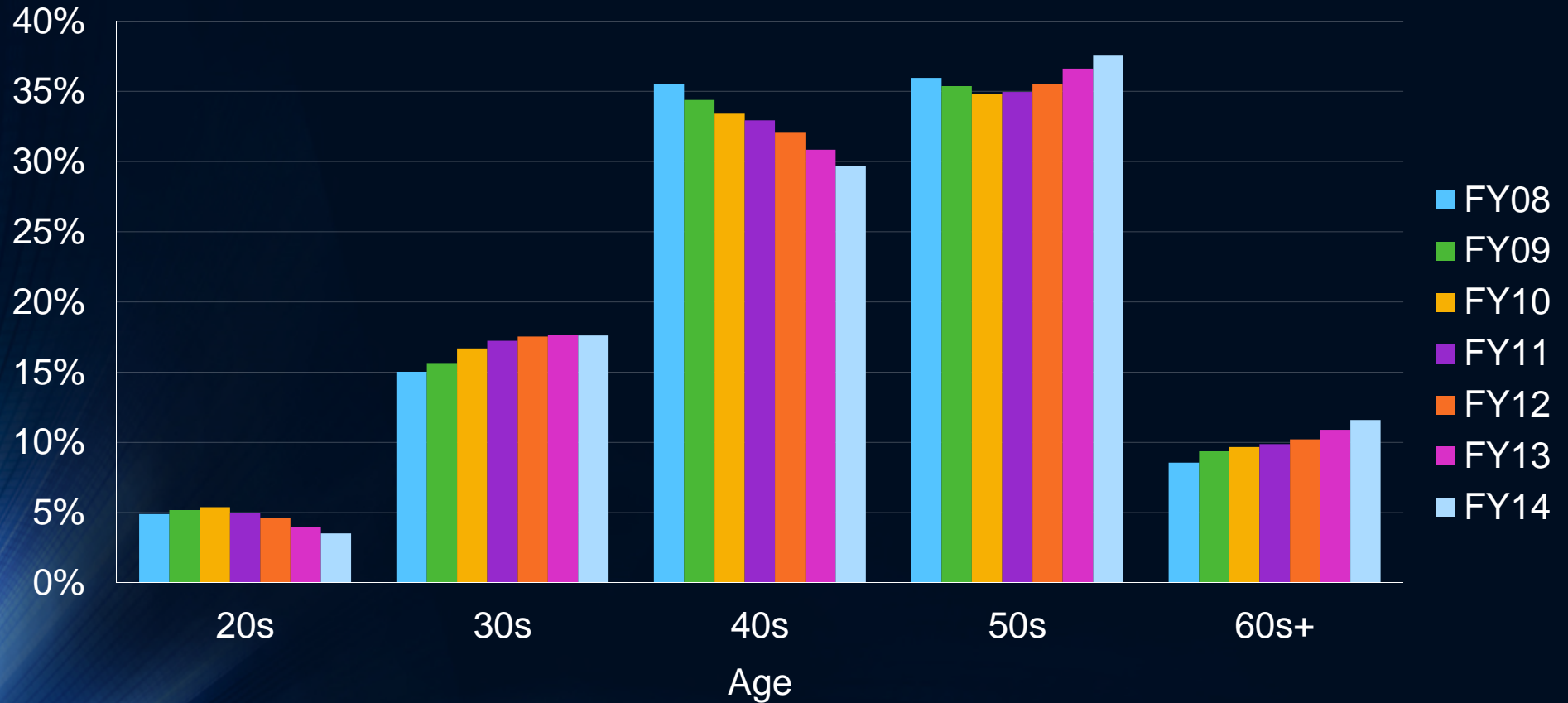
- What do you believe are the biggest challenges facing the industry?
- What steps do contractors take to address these challenges?



Contracting Officer Workforce Demographics, FY08-FY14



IT Workforce Demographics, FY08-FY14



BUDGET

- What trends do you expect to see in federal spending over the next 12 to 18 months?

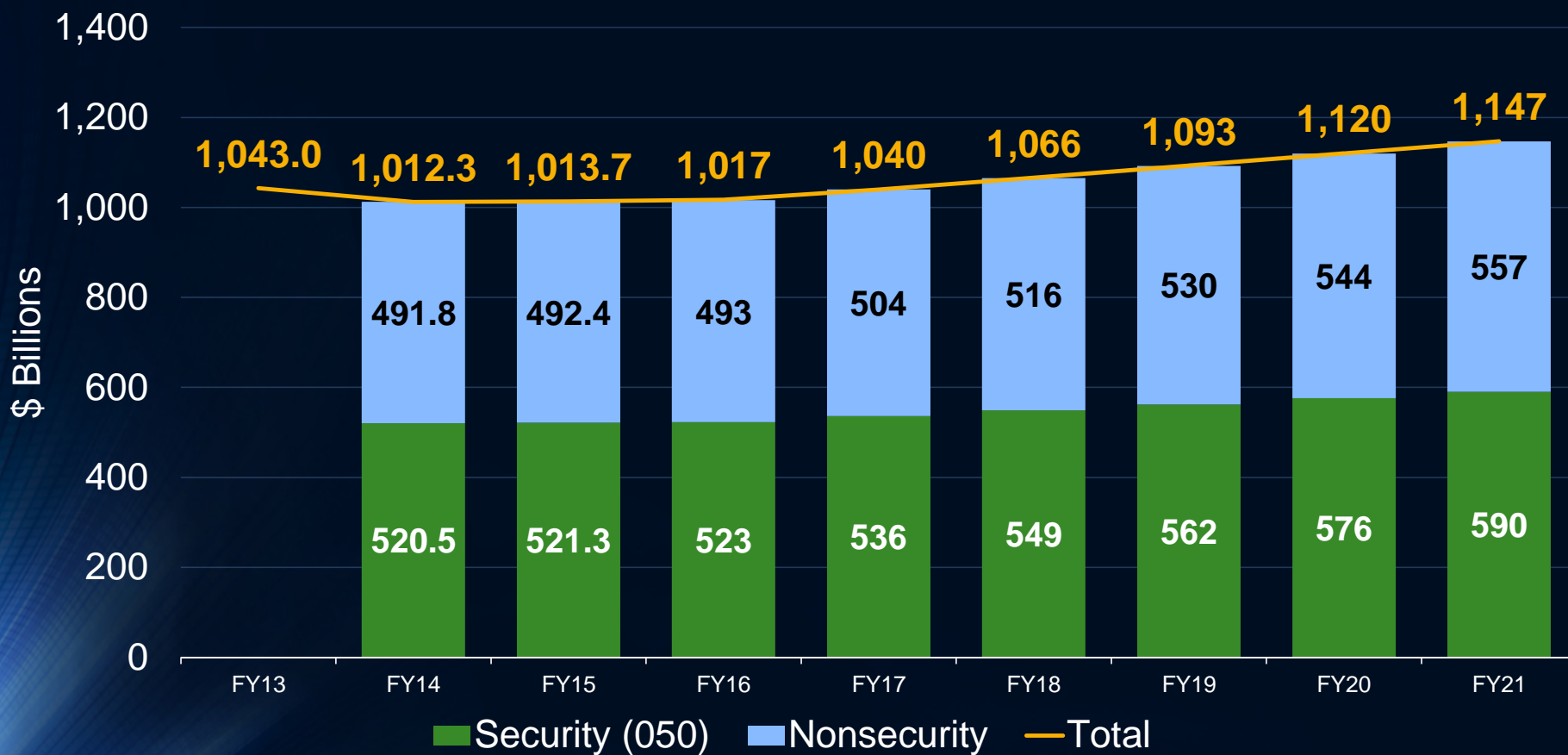


Bending the Curve

Total Contract Spend, FY04-FY14



The Budget Control Act



Budget

- Based on the budget, what areas appear to present the best growth opportunities for contracts over the next 12 to 18 months?
- Are there areas that do not appear poised for growth?



In the House Budget Proposal: Defense Up, Nondefense Down



Budget

- Is it likely that we will see another sequestration prior to the elections in 2016?



Legislative Agenda

- Given the results of the election and the upcoming Presidential race, what should we expect out of Congress over the next 12-18 months?
- What legislation do you expect to have the greatest impact on government contractors over the next 12 to 18 months?
- Are there any major legislative initiatives that could impact small business?



Small Business

- On December 29, 2014, the Small Business Administration proposed to amend its regulations to implement provisions of the National Defense Authorization Act of 2012. These proposed changes touch on a number of issues including: the limitation of subcontracting and small business subcontracting plans, identity of interest, size protests, NAICS appeals, certificates of competency, the calculation of annual receipts, recertification requirements, affiliation rules, joint ventures and changes to the nonmanufacturer rule. Which of these do you believe are going to have the biggest impact on small businesses when the rules are finalized?
- What do successful small businesses do to differentiate themselves in the current environment?



Limitations on Subcontracting

- National Defense Authorization Act of 2013
- In the case of a contract for services, may not expend on subcontractors more than 50 percent of the amount **paid** to the concern under the contract.
- In the case of a contract for supplies (other than from a regular dealer in such supplies), may not expend on subcontractors more than 50 percent of the amount, less the cost of materials, **paid** to the concern under the contract.
- **Similarly Situated Entities** - Contract amounts expended by a covered small business concern on a subcontractor that is a similarly situated entity shall not be considered subcontracted.
- Sealift, Inc., B-409001, Jan. 6, 2014



NDAA 2013 Proposed Rule

- 79 FR 77955 (Dec. 29, 2014)
- Comment period closed April 6, 2015.
- Combined Supplies/Services – NAICS code will dictate applicable performance requirements.
- Written agreement required identifying subs and forecasting percentage of work.
- Whether specific firms performed forecasted amount is not material, as long as overall percentage was met.
- Only work performed by the subcontractor will count – work that the subcontractor subcontracts will count toward the subcontract amount that cannot be exceeded.



NDAA 2013 Proposed Rule

- Joint Venture – Any JV will be considered small as long as each member qualifies as small under size standard.
 - but excessive JV between two firms can result in affiliation
- Recertification required where acquisition occurs after offer but prior to award.
- Rebuttable presumption of affiliation among family members, firms which derive 70% of revenue from another firm.



NDAA 2013 Proposed Rule

- LOS and NMR do not apply to small business set asides below \$150,000.
- Non-manufacturer rule and software.
 - When will SBA issue a waiver of the NMR for software?
- CO must request waiver of the NMR prior to posting solicitation, and must notify potential offerors of applicable waivers of the NMR.



Mentor Protégé Program

- Authority to establish program for all small business concerns, “shall be identical” to 8(a) mentor protégé program, except to the extent necessary.
 - 15 U.S.C. 657r
- SBA has the authority to review and approve small business mentor protégé programs of other agencies.
 - Within one year of final regulations
 - Does not include DoD



Mentor Protégé Program

- Proposed Rule 80 FR 6618 (February 5, 2015).
- Comment period extended until May 6, 2015.
- How many protégés, how many mentors?
- Mentor – good character, financial condition.
- Protégé – small for primary industry?
 - 8(a) program – half size standard, no 8(a) contract, developmental stage
- Written agreement approved by SBA – identify assistance.
- Lasts up to 3 years, with one 3 year extension.
 - Annual reports, SBA may not approve continuation



Advisory Size Decisions

- Advisory Small Business Size Decisions.
 - Final Rule: 80 FR 7533, Feb. 11, 2015, effective date August 10, 2015
- Businesses cannot be penalized if they rely, in good faith, on an advisory opinion re: **size** issued by a PTAC or SBDC.
- Discretionary authority for PTACs and SBDCs.
- PTACs and SBDCs must:
 - submit a copy of each determination to SBA's Office of Procurement Law (OPL)
 - Provide a written analysis and include Form 355 and other evidence
- OPL may either refer for a formal size determination or issue a decision within 10 business days.
- OPL must provide PTAC or SBDC a copy of the decision.
- SBC may rely on PTAC or SBDC decision that it is small until SBA issues a decision stating otherwise or there has been a change that affects its size.
- Size status may still be protested on a procurement.
- Any firm that receives a negative determination from a PTAC or SBDC may request a formal size determination.



Section 1614 NDAA 2014

- (A) For purposes of determining whether or not a prime contractor has attained the percentage goals specified in paragraph (6)--
 - ‘(i) if the subcontracting goals pertain only to a single contract with the executive agency, the prime contractor **shall receive credit for small business concerns performing as first tier subcontractors or subcontractors at any tier** pursuant to the subcontracting plans required under paragraph (6)(D) in an amount equal to the dollar value of work awarded to such small business concerns; and
 - (ii) if the subcontracting goals pertain to more than one contract with one or more executive agencies, or to one contract with more than one executive agency, the prime contractor may only count first tier subcontractors that are small business concerns.
- (B) Nothing in this paragraph shall abrogate the responsibility of a prime contractor to make a good-faith effort to achieve the first tier small business subcontracting goals negotiated under paragraph (6)(A), or the requirement for subcontractors with further opportunities for subcontracting to make a good-faith effort to achieve the goals established under paragraph (6)(D).’.
- 15 USC 637(d)(16)



Section 825 of NDAA of 2015

- Authority to Award Sole Source Contracts to WOSBs or EDWOSBs.
 - Contract value less than \$6.5 million for manufacturing, \$4 million for all others
 - No reasonable expectation of receiving two offers
- SBA must conduct study of industries where WOSBs and EDWOSBs are substantially underrepresented or underrepresented by January 2016.
- Certification – by Federal agency, a State government, SBA, or national certifying entity approved by SBA.



Legal Issues

- What are the hot legal issues that government contractors should be aware of over the next 12 to 18 months?
- What are some of the areas where you see government contractors incurring greater potential for risk?
- Should contractors still factor in a bid protest into their acquisition planning?



Executive Orders

- Over the last year, there has been a lot written about Executive Orders. Is this something that government contractors really need to be concerned about?
- Do you expect President Obama to continue to utilize Executive Orders during the remainder of his presidency?



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