

CONTRACT MANAGEMENT IN BUDGET TURMOIL

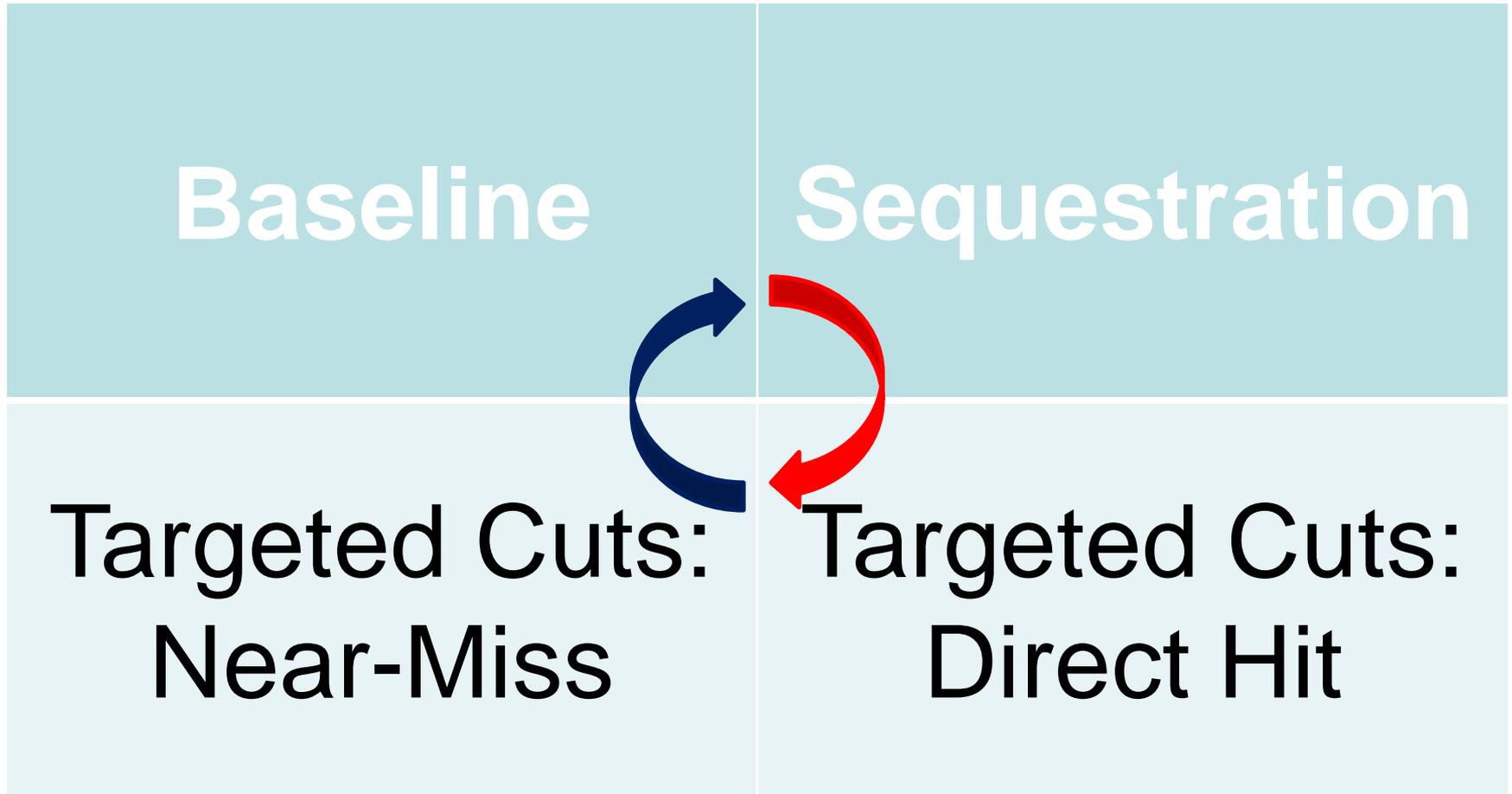
Presentation to the Greater Baltimore Chapter,
NCMA; Ronald L. Smith, CPCM, Fellow

December 4 2013

Budgeting Deja Vu

- ...DoD was forced to take a 4.9 percent reduction in each of almost 4,000 programs, projects, and activities, for a total cut of \$13.6 billion in budget authority and \$5.2 billion in outlays. **These across-the-board, automatic cuts allowed no analysis or management judgment to be exercised about priorities or about their effect on defense programs and forces. The essence of budgeting is setting priorities.** Our recommendations depend upon a rational choice of priorities by responsible defense managers, as opposed to a mechanistic allocation of resources across all activities. We must assume that government will remain a place of judgment...
- *President's Blue Ribbon Commission on Defense Management, June 30, 1986 pp.22-23 [emphasis added]*

Landscape View: Budget Realities



Sequestration Defined

- Budget Control Act of 2011 amended the Balanced Budget and Emergency Deficit Control Act of 1985 to provide for Sequestration as of January 2, 2013
 - Automatic process of across-the board* reductions in budgetary resources (“Sequestration”) specified in an order to be issued on January 2, 2013, if the Joint Select Committee on Deficit Reduction failed to propose, and the Congress failed to enact, a bill containing at least \$1.2 trillion in deficit reduction (OMB Memorandum M-12-17 July 31, 2012)
- American Taxpayer Relief Act (January 2, 2013) postponed Sequestration deadline to February 28, 2013: **IMPLEMENTED Mar 1 2013**

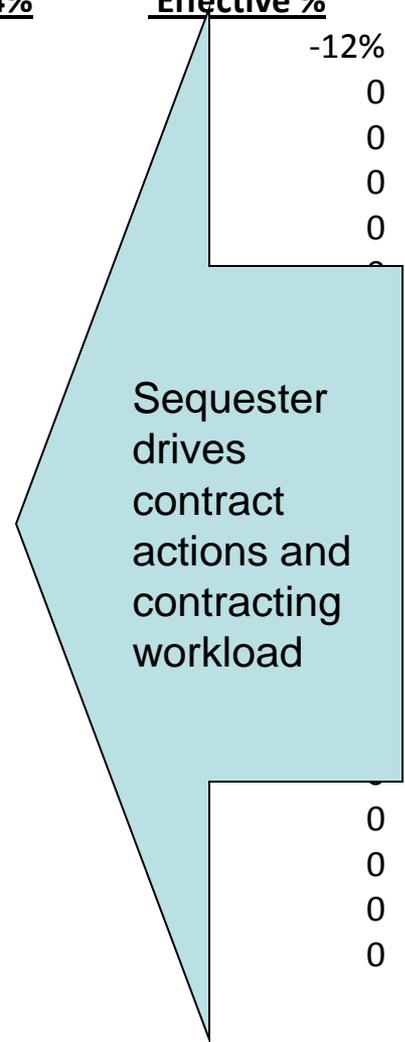
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Sequestration Implementation

- OMB report to Congress 1 March 2013
 - Implements apportionment rules per OMB Bulletin 12-02 dated 28 September 2012
- Continuing Resolution March XX 2013
- Additional OMB guidance: OMB Memorandum M-13-11 dated 4 April 2013
 - Across-the-Board = allocated percentage applied to each Program, Project, or Activity (PPA) per OMB guidance (9.4 % for FY 2013 full-year)
- FAA (controllers) reprogramming (P.L. YYYY) April 2013
- Additional Agency requests for reprogramming authority May 2013

Program Level vs PPA: USN Example

<u>PPA</u>	<u>\$M</u>	<u>Sequester 9.4%</u>	<u>Target 9.4%</u>	<u>Effective %</u>
Construction	\$ 1,441.0	\$ (135.5)	\$ (167.8)	-12%
Planning	\$ 84.0	\$ (7.9)	\$ -	0
Change Orders	\$ 73.0	\$ (6.9)	\$ -	0
Other Cost	\$ 67.0	\$ (6.3)	\$ -	0
AN/WSC6E(V)5	\$ 12.0	\$ (1.1)	\$ -	0
Key Mgmt Syst	\$ 2.0	\$ (0.2)	\$ -	0
Data Link	\$ 3.0	\$ (0.3)	\$ -	0
AN/URC-141	\$ 8.0	\$ (0.8)	\$ -	0
AN/USQ-172	\$ 2.0	\$ (0.2)	\$ -	0
Logistics Syst	\$ 1.0	\$ (0.1)	\$ -	0
Comm Syst	\$ 6.0	\$ (0.6)	\$ -	0
ANUSQ-144K	\$ 6.0	\$ (0.6)	\$ -	0
Radio	\$ 5.0	\$ (0.5)	\$ -	0
Other Elect.	\$ 11.0	\$ (1.0)	\$ -	0
SEARAM/RAM	\$ 36.0	\$ (3.4)	\$ -	0
Ordnance Equip	\$ 2.0	\$ (0.2)	\$ -	0
Bio Detection	\$ 1.0	\$ (0.1)	\$ -	0
AN/SRC-59	\$ 2.0	\$ (0.2)	\$ -	0
Trash Disposal	\$ 11.0	\$ (1.0)	\$ -	0
Visual Landing	\$ 11.0	\$ (1.0)	\$ -	0
Medical Equip	\$ 1.0	\$ (0.1)	\$ -	0
	\$ 1,785.0	\$ (167.8)	\$ (167.8)	



Credit: DLA Piper LLP, Richard Rector and Nathaniel Bell, NCMA website; budget analysis of Littoral Combat Ship (LCS) program

Landscape 2013: Contracts Workloads

Current Reality

- Tools are inadequate or unreliable
- Training issues; personnel issues
- Resource constraints
- Culture; behavior; confrontation

Potential Budget

Impacts

- Tools frozen at current functionality
- Training limited or eliminated
- Resource cutbacks in parallel with budget cutbacks
- All interpersonal factors magnified and expanded

Constrained workforce + increased workload = Double Hit

Current Events Mar-July 2012

- Impact per military service: \$12B
- USAF flight hours: -203K
- USAF O&M: -10%
- Reprogramming from other programs to Tanker/F-35/LRS-B
- Army aviation decrease (AH-64, CH47, LUH)
- Army exercises cancelled: six
- Navy aircraft cuts: P8, F-35 CV, F-35 STOVL
- USMC depot backlog \$511M

“Flat is the new Up”

Budget Strategies 2013

Government

- Know your Program, Project, Activity (PPA)
- Inventory contract status and options for all existing contracts/per PPA
- Scenario analysis per PPA (both with and without Sequester)
 - Who is the customer?
 - Who has the money?
 - Who decides?
- Confirm contracting resources for the Sequester/Budget mission
- Confirm tools and dependencies for Sequester/Budget mission

Industry

- Know where you stand per Program
 - Funding status
 - Customer relationship
- Contract status
 - Funding
 - Open modifications
 - Options and deadlines
 - Performance Scorecards
- Mirror Customer planning
 - Scenarios
 - Resources
 - Dependencies

Asking Effective Questions

- As a tool to manage the constant change imposed by sequestration mandates, are we asking effective questions to stimulate focused thought and solutions?
- Effective questions addressed to the customer, the vendor, the co-worker, the lawmakers inspires clearer thinking and solution finding.

What's Working Well?

- Acknowledge What's Working –
 - Who can give us an example of what IS working well?
 - Taking ownership of Program results
i.e., Defense Logistics Agency (DLA) Director Harnitchek said, “Instead of managing the supply, we're managing the supplier, “If it's out there in the commercial industry, why do we need to do it?”

What's working is already there—already available

Why did it work well?

- What made it work or caused the success?
- How would embracing change in this dynamic environment help you to manage your priorities?

What's Our Objective?

- What is the Contracting Professional's objective?
- Focus on the successful outcome stimulates and energizes the team

Observations -- New Awards

- Impact on New Contracts – Have you seen a decline in the number of new contract awards? Have you seen delays in awards?
- Have you experienced an impact in the type of awards as agencies shift cost risk from Gov to Contractor? i.e. CR & LH to FFP

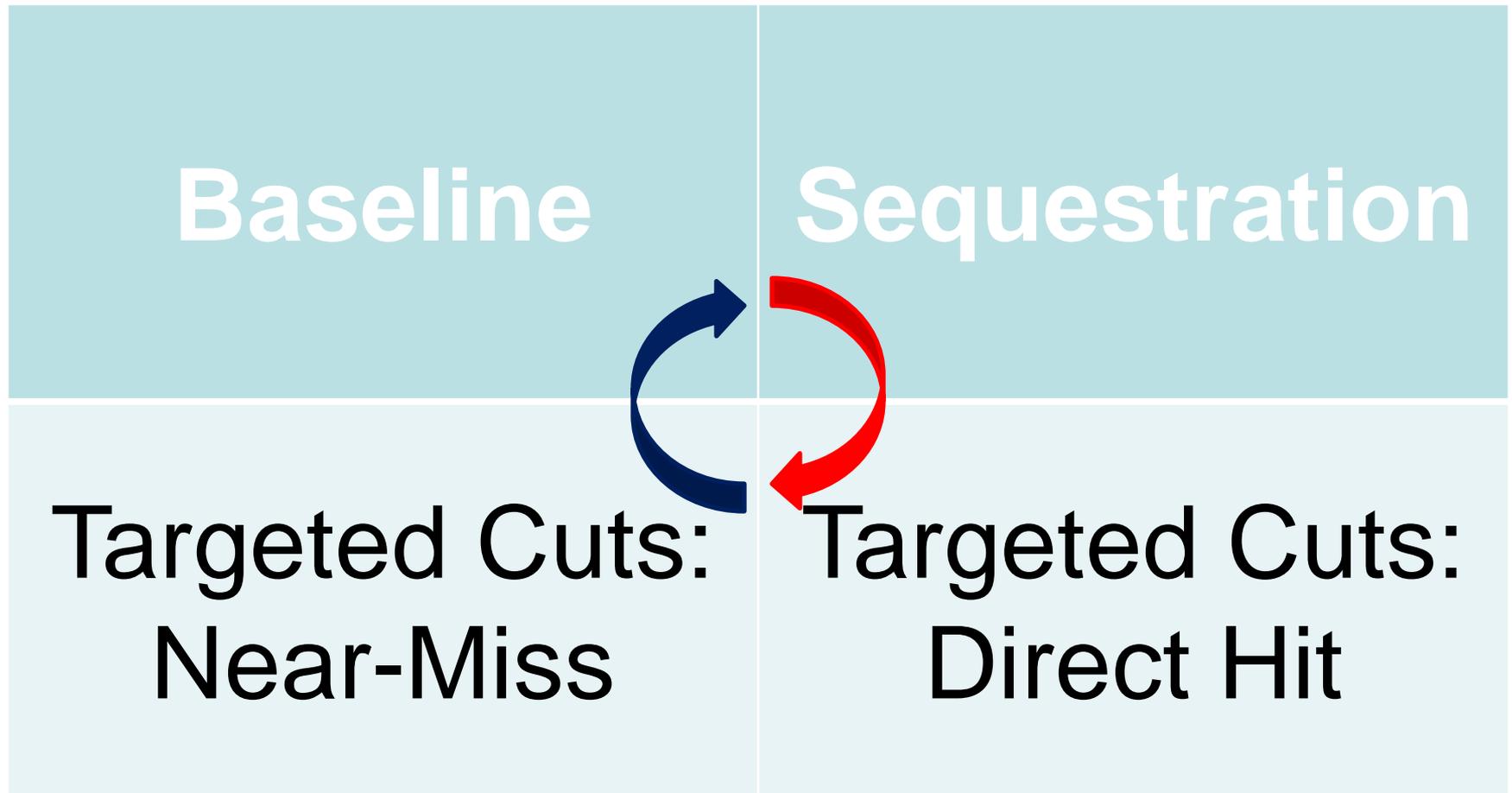
Observations -- Existing Contracts

- Impact on Existing Contracts?
 - Have you experienced reduced scope of quantities, products or services?
 - Descope quantity, capability, breadth of contract performance?

Observations -- Restructuring

- Restructuring? Deferring costs to future periods?
- Are agencies using this strategy rather than termination?
- How many small businesses are affected?

Landscape View: Budget Impacts



Budget Cuts Impacts: Solicitations

- Prospective contracts
 - Cancel RFP
 - Delay award
 - Defer IDIQ task orders
 - Defer/eliminate options
 - Selective Lowest-Price Technically Acceptable (LPTA) awards

Contract Changes

Guidance @FAR 43.205

Clauses @FAR 52.243 et seq

- CO written notice changes:
 - Drawings, designs, specs
 - Shipping /Packing
 - Place of Delivery
 - Description of services
 - Time of performance
 - Place of Performance
- Equitable adjustment to:
 - Cost, delivery, or completion
 - Fixed Fee
 - Other T&C

Considerations

- Scope reductions
- Restructuring impacts; changes to schedule or requirements
- Impact to options, upgrades, implementations
- Funding mods: constructive/implicit impacts
- Other constructive changes
- Impact proposals; net effect of change orders/mods
- Scenario competition; decision-making effects

Suspension/Stop Work

Guidance @FAR 42.13

Clauses @FAR 52.242-14 et seq

- CO written order to stop all or part of the contract work
- 90-days for government to:
 - Cancel stop work order
 - Terminate the work
- Equitable adjustments for:
 - Impact to delivery or price
 - Impact of stop work
 - Impact of terminations

Considerations

- Notice deadlines
- 90-day time bar
- Implicit or de-facto terminations
- Marching Army costs: government and industry
- Overhead impacts: industry
- Program risk
- Limitations on interaction, technical direction

Non-Release of Funds (LOF/LOC)

FAR 52.232-20 LOC (fully funded)

FAR 52.232-22 LOF (incremental)

- Costs next 60 days exceed 75% available
- Government not obligated to reimburse beyond funding
- Contractor not obligated to perform w/o funding
- No person other than CO can authorize work

Considerations

- Discontinuity (immediate trigger <60 days)
- Decision points
- Government confirmation of availability
- Contractor action pending response
- Impact of delays to program
- Impact of delays to stop work & termination settlement proposals

Termination for Convenience

Guidance @FAR 49.502

Clauses @FAR 52.249-1 et seq

- Full or partial termination
- Contractor obligations
 - Stop Work
 - Place no further subcontracts
 - Terminate subcontracts
 - Settle liabilities and transfer assets
 - Complete performance for work not terminated
 - Protect, preserve, dispose of assets as directed by CO
 - Submit inventory 120 days
 - Submit impact proposal 1 Yr

Considerations

- Notice requirements
- Time bars and triggers within FY2013
- Time bars and triggers within 12 months
- Impact to work not terminated
- Preservation strategies and costs

Termination for Default

Guidance @FAR 49.504

Clauses @FAR 52.249-8 et seq.

- Written Notice based on:
 - Failure to deliver
 - Failure to progress
 - Failure to perform
- Cure Notice required
- Contractor not liable for excess costs under certain circumstances
- Government pays for goods delivered/services performed

Considerations

- Impact to troubled programs (cure notice already issued)
- New T4D actions
 - Notice requirements
 - Cure actions
 - Contractor liabilities
- Funding requirements:
 - Goods delivered/services performed
 - Settlement costs in T4D-to-T4C scenario

Federal Government Shutdown 2013

- October 1 through 16, 2013, shutdown/curtailed most routine operations
 - Regular government operations resumed October 17 after an interim appropriations bill was signed into law.
 - Federal employees furloughed 800,000
 - Federal employees without known payment dates 1.3 million
 - Only those government services deemed "excepted" under the Anti-Deficiency Act were continued; and only those employees deemed "excepted" continued to report to work.
- 16-day-long shutdown of October 2013 was the third-longest government shutdown in U.S. history, after the 18-day shutdown in 1978 and the 21-day 1995–96 shutdown.
- Defense contractors and some manufacturers disruptions
 - United Technologies: Sikorsky/P&W 5,000 personnel impacted by absence of DCMA personnel
 - Lockheed Martin: 3,000 employees impacted by need for government inspectors
- Delays in SBA loans
- Importation/inspection delays
 - Pesticides
 - Semiconductor manufacturing equipment
 - Commercial aircraft

Summary

Government AND Industry

- Engage with Finance teams; understand budget scenarios
- Engage with Executive leadership
 - Confirm resources and support
 - Analyze and prioritize scenarios
 - Confirm risk management plans per scenario
- Engage Small Business advocates
 - Review impacts per PPA
 - Communicate with suppliers
- Review future programs
 - Develop bed-down strategies and discover what is working no matter how minor the impact
 - Recalculate out-year impact of FY2013 budget reality