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Overseas Contingency Operations Contracts After Iraq: Enabling Financial Management Research and Transparency Through Contract Labeling

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Abstract

Contracts relying on crisis funds (including emergency funds) may bypass many safeguards built into normal spending processes. This study examines the literature on how these contracts are fulfilled for both civilian and defense crisis funds, primarily focusing on the American Recovery and Reinvestment Act (ARRA), disaster funds, and Overseas Contingency Operations (OCO) funds, beginning with contracts awarded in 2012 and using publicly available data.

This paper discusses the challenges and contradictions that make identifying OCO-funded contracts difficult and then presents a methodology for classifying them. The paper then analyzes trends in contracting from the post-Iraq withdrawal period. This analysis focuses on three areas where the literature review showed that crisis contracting diverges from conventional contracting: noncompetitive awards, undefinitized contract actions, and reachback contracts. The dataset created for this study will be made publicly available to allow for analysis of this data by other researchers and to close an important transparency gap.

Introduction

Contracting during a crisis is replete with challenges. Speed and flexibility are essential because delay means that urgent needs go unmet. However, uncertainty is commonplace, whether the crisis is prompted by natural disasters, military conflicts, or economic disturbances. These conditions are vulnerable to the infamous trifecta of waste, fraud, and/or abuse, but even setting those extremes aside, many justifiable crisis contracts cannot or should not be sustained in ordinary times.

This century has already seen a range of high-profile crisis contracting: contingency contracting during the invasion and subsequent occupation in Afghanistan and Iraq, the American Recovery and Reinvestment Act (Recovery Act) pursuit of shovel-ready projects in response to the global financial crises, and government responses to range of disasters such as Hurricane Katrina. Important work has been done to provide oversight and transparency by the Government Accountability and Transparency Board and the Commission on Wartime Contracting, as well as inspectors general (IGs) and others.



However, when the news moves on to a new set of crises and the final reports are filed, lessons identified in one domain may never be transferred to another. Worse yet, as attention fades, there is risk of backsliding because it becomes increasingly challenging to determine whether recommendations were followed and whether they succeeded in mitigating the risks that drove reform efforts. This paper is focused on Overseas Contingency Operations (OCO) funded contracting after the initial withdrawal from Iraq, a period that benefits from efforts by the DoD to improve data transparency; this situation is also comparatively understudied, in no small part, because of the opaqueness and ambiguity surrounding the OCO budget.

While this portion of the project is focused specifically on Department of Defense contracting, the study team has conducted a literature review that also includes studies of civilian efforts, such as the Recovery Act and disaster response efforts. Despite their differences, the many concerns about crisis contracting apply across domains. Likewise, the publicly available Federal Procurement Data System (FPDS) provides a common window through which these distinct crisis contracts cases can be observed and compared.

Following the literature review, this paper discusses the challenges and contradictions that make identifying OCO-funded contracts difficult and then presents a methodology for classifying them.¹ The paper then analyzes trends in contracting from the post-Iraq withdrawal period. This analysis focuses on three areas where the literature review indicated that crisis contracting diverges from conventional contracting: noncompetitive awards, undefinitized contract actions, and reachback contracts. The paper concludes by summarizing initial findings from the contingency contracting dataset.

What Is Contingency Contracting?

Handling crises is an important part of the job of the United States military, so it comes as no surprise that there are explicit legal categories for crisis contracting. McMillon (2000) provided a helpful glossary, including contingency contracting itself:

Direct contracting support to tactical and operational forces engaged in the full spectrum of armed conflict and Military Operations Other Than War, both domestic and overseas. It includes Major Regional Conflicts, Lesser Regional Conflicts, Military Operations Other Than War, and Domestic Disaster/Emergency Relief. (pp. 5–7).

This paper also includes a similar category of operations that fall under a different portion of the U.S. legal code: “humanitarian or peacekeeping operations.”²

The U.S. government extensively relied on contingency contracting after the 9/11 attacks and the wars in Afghanistan and Iraq. This was not a new phenomenon; with the move to an all-volunteer military, contractors had an important role to play from the Gulf War

¹ The study team has published a dynamic web tool for visualizing OCO-funded contracts starting in 2012. For researchers wishing to replicate the results of this study or conduct their own research, the study team is sharing a complete list of the procurement identifiers and key characteristics of contracts in the dataset.

² For the full definition of contingency operations, see 10 U.S.C. 101(a)(13). For the full definition of humanitarian operations and peacekeeping, see 10 U.S.C. 2302(8).



to the war in Kosovo.³ Nonetheless, the wars in Afghanistan and Iraq and the subsequent occupations prompted steady increases in spending on contingencies. From 2002 until 2008 approximately, \$159 billion in contracts were awarded in contingency contracts (GAO, 2012). Specifically, emergency supplemental appropriations, which later evolved into the OCO budget, rapidly grew and focused on difficult to predict wartime expenses including contingency contracts. As Sharon Pickup and Asif Khan (2009) noted, this growth continued in 2007 when the “DOD revised its Financial Management Regulation, expanding the definition of acceptable maintenance and procurement costs and directing the military services to begin including ‘longer war on terror’ costs in their OCO funding requests” (p. 11).

The tide turned as the Iraq war wound down and President Barack Obama took office in 2009. The GAO had already encouraged the DoD to “shift certain contingency costs into the annual base budget to allow for prioritization and trade-offs among DoD’s needs and to enhance visibility in defense spending” (Pickup & Khan, 2009, p. 7). The changes are described in Table 1. The Budget Control Act, implemented by Congress in 2011, reversed the trend of transferring OCO funds into the base budget request (Epstein & Williams, 2017). The BCA caps limited the funds available in the base budget, but OCO funds were not subject to caps. As a result, there was an opportunity and temptation to use OCO spending to supplement the forced decreases in the base budget (Epstein & Williams, 2017). While the OCO budget has de facto not always been limited by these definitions, the study team employs the Fiscal Year (FY) 2010 guidelines as part of contract labeling because they are compatible with a specific focus on crisis-funded contracts, rather than longer term and more persistent efforts.

³ See McMillon (2000, pp. 13–23) for a summary of contracting operations in the 1990s and some of the challenges encountered.



Table 1. Fiscal Year 2010 OMB Guidance on What Qualifies as OCO Spending
(Pickup & Khan, 2009, p. 14)

Area	Prior OCO Funding Guidance	FY2010 OCO Funding Guidance
Geographic Theater of Operations	Does not specify locations, which allowed for funding such items as home station needs to support contingency operations.	Includes U.S. Central Command, the Horn of Africa, the Indian Ocean, and the Philippines, among others.
Equipment	Does not specify obligation time frames.	Specifies stricter definitions of replacement, repair, modification, and procurement of equipment; new criteria specify a 12-month time frame for obligating funds.
Research, Development, Test, and Evaluation (RDT&E)	No time frame restrictions.	Funding for research and development must be for projects required for combat operations in the theater that can be delivered in 12 months.
Personnel	Included pay and allowances for end strength above level requested in budget.	Excluded.
Family Support Initiatives	Included family support initiatives that would endure after U.S. forces redeploy to home stations.	Excluded.
Base Realignment and Closure	Included.	Excluded.

Literature Review

Regulatory Environment

With crisis funding continuing to grow to compensate for BCA caps, it is important to conduct a thorough review of the positive and negative aspects of crisis contracting. Both civilian and military crises covered by this paper share a key trait: time is of the essence. When a national emergency is present, or an impending military conflict requires rapid acquisition, the typical procedures defined by regulation can become a hindrance. Without the ability to bypass them, the regulations could prevent many solutions from being implemented within the time frame driven by the crisis (Britt & Miles, 1985). In anticipation of this problem, acquisition regulations offer a range of exceptions to allow for the speed of acquisition called for by crisis situations. However, this approach inherently leads to concerns that contingency contracts do not operate in the same environment of the standard federal contracting process (McMillon, 2000).

Regulatory Exemptions

Competition has been longstanding in its presence within federal procurement practices. The Competition in Contracting Act of 1984 (CICA) requires that procurements must enter into a full and open competition (Manuel, 2011). However, CICA also designates specific exemptions to competition requirements. CICA establishes seven instances when a contracting officer may engage in a noncompetitive procurement process (Manuel, 2011). Included within these exemptions are circumstances for unusual and compelling urgency, national security, and contracts necessary for the public interest (Manuel, 2011). Likewise, during a natural disaster, funds for procurement of services may disregard competition in cases of “urgent and compelling” situations (GAO, 2015).



In addition to the option to bypass full and open competition, contingency contracts are currently exempt from the requirement restricting undefinitized contracts and from having to wait until a protest is resolved to award emergency requirements (McMillon, 2000). Other exemptions simply involve raised thresholds. In 2000, the simplified acquisition threshold was twice as high for contingency contracts, increasing from \$100,000 to \$200,000 (McMillon, 2000, pp. 9–10). For other parts of government, crisis measures may allow for greater use of forms of contracting that the DoD already regularly relies on, such as cost-based contracts. Within the first reporting to Recovery.gov, the Recovery Act spent \$7.8 billion on contracts that were noncompetitive or were not fixed price (Lipowicz, 2009).

Limitations on Crisis Contracting

However, while crisis contracting may employ a range of regulatory exemptions, it faces heightened scrutiny in other areas, particularly time frames. Certain crises may have even shorter time frames, depending on their expected duration. During Operation Restore Hope in Somalia, contracts were limited to 90 days (McMillon, 2000, pp. 16–18). These limitations are a measure to reduce the period that the United States is committed to deals that are hastily made by necessity. Without the competition requirements, crisis funding runs the risk of being unable to validate presented contract data with competitors or government sources (Dodaro, 2009). In 2009, time limitations were extended to all contracts using the urgency exemption:

In 2008, the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. No. 110-417, § 862, amended certain laws to require that contracts awarded using the urgency exception not exceed the time necessary to meet the unusual and compelling requirements and for the agency to enter into another contract, and may not exceed 1 year unless the head of the agency determines exceptional circumstances apply. (Marvin, 2014, p. 13)

An area of dispute within the policy literature is whether these restrictions should be further institutionalized. The Commission on Wartime Contracting (2011) was severely critical of non-competed contracts extended without competition, even if the original contract was competed:

\$36.3 billion Defense (Army) LOGCAP III contract—The Army has awarded a number of contracts under its worldwide Logistics Civil Augmentation Program (LOGCAP). Of these contracts, the largest is the LOGCAP III contract supporting the wars in Iraq and Afghanistan. The base contract for LOGCAP III was awarded competitively, but lasted for 10 years without competition on any of its task orders. ... As sole provider, without the discipline of task-order competition, KBR proposals included large amounts of questioned and unsupported costs identified by the Defense Contract Audit Agency (DCAA). (p. 75)

The Contingency Contracting Reform Act did not become law, but it usefully illuminates arguments on these issues. Section 201 of that bill sought to limit the duration of contingency contracts across the board by default. The bill would have limited contingency contracts that were not competed or that received only one offer to one year and competed contracts to three years (GAO, 2012). The Professional Service Council, a government services industry association, objected to the proposal on multiple grounds. Their primary point was that even in contingency contracting, shorter does not necessarily mean better:

Primarily, the limitation on contract length fails to recognize the benefits and efficiencies that can be achieved by longer contract lengths. One of the key



lessons learned from the Special Inspector General for Iraq Reconstruction was that short periods of performance significantly increased the contract price and added to the government's burden to award new contracts and administer existing ones. (Professional Services Council, 2012, p. 6)

Negative Outcomes of Crisis Contracting

Regulatory exceptions and limitations on contracting officers are worth studying, but it is the outcomes of crisis contracting that have drawn so much negative attention to the area. The first challenge is that the circumstances and requirements limit the ability to confirm contract, grant, or loan information prior to the disbursement of funds (Dodaro, 2009). The Commission on Wartime Contracting (2011) also raised this issue with recommendation 11 which cited a need to “improve contractor performance-data recording and use” (p. 10).

This challenge can extend over the entire life of these contracts. Crisis funding for natural disasters can lead to increased levels of incomplete documentation, a lack of contract closeouts, and little to no evidence of higher level contract reviews (GAO, 2015). An example of this is when hotels received contracts to house those affected by the disaster during Hurricane Sandy. The hotels received noncompetitive contract awards through the urgent need justification, but the joint field contracting offices were often left unaware of these contract awards until the contract was closed out and they received the vendor invoices (GAO, 2015).

Due to the urgency and need for a significant number of contracts in a short period of time, the contract closeouts can often become backed up and delay the documentation from being properly completed (GAO, 2015). A portion of these contracts require further approval from a level above the contracting officer. Of the nine contracts reviewed that required this approval, the GAO found only one that had received the appropriate justification (GAO, 2015). The Recovery Act, with its emphasis on oversight and considering the comparatively straightforward operating environment of an economic crisis, gives a sense of what the baseline failure rate may be for crisis contracting. Within the grants and contracts awarded to broadband services under the Recovery Act, 14% were terminated before they were completed (Goldstein, 2014). When these contracts and grants are terminated or sustained with cost overruns, the lost funds can present a larger issue to the efficiency of crisis funds being awarded for stimulus purposes (Goldstein, 2014).

Worse yet, as Comptroller Gene Dodaro (2009) succinctly put it, “experience tells us that the risk for fraud and abuse grows when billions of dollars are going out quickly” (p. 6). Compounding the challenges of gaps in documentation, staff are exposed to higher rates of fraud without the ability to conduct system edit checks or time to identify problems prior to disbursement of funds (Dodaro, 2009).

Specifically within contingency contracting, fraud has been a very present issue (Gordon, 2014). Operating under a time-stressed environment where the need for a solution is overwhelming can create many opportunities for fraud (Gordon, 2014). Citing specific numbers for waste and fraud is always controversial, and subjective determinations of what constitutes waste can easily overshadow cases of outright corruption or criminality. Nonetheless, the magnitude of these challenges is tremendous, as the Commission on Wartime Contracting (2011) argued that “at least \$31 billion, and possibly as much as \$60 billion, has been lost to contract waste and fraud in America’s contingency operations in Iraq and Afghanistan” (p. 1).



Past Reform Efforts Have Led to Increased Transparency

Due to its inherent challenges, crisis contracting is an area where regulation and practice steadily evolve in reaction to past challenges. As with defense acquisition writ large, there will likely be no final equilibrium solution, but instead the system will evolve and reprioritize in response to the successes, or more often the failures, of past efforts. However, ongoing challenges do not mean that reform efforts were fruitless. This richness of data that enables this study is possible in no small part because of past reforms. The Recovery Act set a high standard for transparency, with President Obama insisting “every taxpayer dollar spent on our economic recovery must be subject to unprecedented levels of transparency and accountability” (Gaffney & Berger, 2009, p. 1). While disagreements about the Recovery Act persist, after stimulus funds were dispersed, Sam Rosen-Amy of OMB Watch argued, “I think it helped show Congress that there is a use for and a need for more information on where federal money is going and how it’s being used” (Holeywell, 2012, p. 2).

The DoD has also made great strides in tracking crisis contract data, with financial tracking systems and contingency contract databases such as the “Synchronized Pre-deployment and Operational Tracker (SPOT)” (Swan, 2012, p. 17). However, unlike FPDS or the Recovery Act dataset, those tools are not available to the public. Improving the ability of contracting officers and others within the government to make more informed award decisions and track contract performance plays an important role in mitigating the data gaps that can mask problems. However, in Laura Dickinson’s (2011) book on wartime contracting, she explained why the benefit of transparency regarding contracts is of direct interest to the public:

As this example [regarding a Dyncorp Police Training Contract] illustrates, foreign affairs contracting raises serious concerns about public participation and transparency (which for simplicity’s sake I will often refer to collectively as public participation). Significantly, public participation is simultaneously a value in and of itself—reflecting the view that people affected by an activity should have some input into how that activity is carried out—and a mechanism for either accountability or constraint. For example, if various populations are able to participate in the formulation and critique of future plans of action, such participation may well impact the actions ultimately undertaken. Just as contractual arrangements may be structured to protect and promote public law values, so too public participation may be harnessed to restrain governments from abuses and help to protect other public values, such as human dignity and anticorruption. (p. 104)

There are logical reasons for the different levels of public transparency between the Recovery Act’s public dataset and the restricted tools such as SPOT. First and foremost, sharing too much data when operating in conflict environments could reveal operational details that place U.S. personnel, vendors, or the civilian population in danger. In addition, this public participation role is partially fulfilled by Inspector Generals, and the Special Inspector General for Afghanistan has remained active during the study period. Nonetheless, Dickinson’s argument suggests that there is value in making the vetted and sometimes anonymized contingency contracting data more accessible, in no small part because “governments may outsource foreign affairs precisely to avoid oversight” (Dickinson, 2011, p. 105).

Factors That Aggravate or Mitigate the Risk of Crisis Contracting

The prior sections have touched on a range of the ways in which crisis contracting operates in a unique operational and regulatory environment. During the review, the study



team evaluated various factors apparent in regular contract reporting that aggregate or mitigate the inherent risks of crisis contracting. Three key criteria were applied: do multiple sources, ideally in multiple domains, point to this factor as a significant source of risk; is this factor something at least partially under the U.S. government's control; can it be tracked using FPDS? By these criteria, three factors stood out: the risks of noncompetitive awards, the risk of UCAs, and the opportunity for expeditionary contracting offices to support home contracting offices, called reachback contracting.

Noncompetitive Awards

The option to bypass competition for urgency reasons is one of the better documented aspects of crisis contracting. From 2010 until 2012, only 3% of the DoD's contracts were awarded in a noncompetitive environment under the urgency exception, but this 3% still accounts for \$12.5 billion worth of funds. During this same time, State's contracting efforts under contingency contracting accounted for 12.5% of contract awards (Marvin, 2014). An early report after the Recovery Act debuted reported that at least \$7.8 billion was awarded to noncompetitive contracts (Lipowicz, 2009). That said, this use of noncompetitive contracts in part was a result of relying on existing contracts. Of the 32% of new contracts that were awarded through the Recovery Act, 11% were awarded without competition (Needham, 2010). That said, these numbers should be put in context of the range of other forms of noncompetitive contracting employed by the government. In 2013 alone, 36% of funds for procurement of goods and services, approximately \$164 billion, were not competed (Marvin, 2014).

Trade Off Between Speed and the Benefits of Competition

The rate of competition for crisis-funded contracting is not unusually high; instead, critics emphasize noncompetitive contracts because competition is often more important in a crisis. Higher prices can qualify as reasonable in disaster relief contracting, due to the significant and immediate increase in demand for a product offered by a contractor. Relief items in a natural disaster experience such high demands that prices significantly increase on goods such as water, lumber, and generators (Gordon, 2014). Marvin (2014) extended this finding to other forms of crisis contracting, arguing that "promoting competition—even in a limited form—increases the potential for quality goods and services at a lower price in urgent situations" (p. 1). In addition to the risk of higher prices or lower quality, noncompetitive contracts are also at greater risk of misconduct when compared to the standard procurement process (Manuel, 2011).

Of course, the challenge is that competition does not necessarily create quickly. For contingency contracting, delays can undermine a unit's effectiveness, morale, and ability to complete its mission (McMillon, 2000). Likewise, for the sake of the affected population in a natural disaster, the need to provide goods and services as soon as possible is of utmost importance (Mackin, 2015). While economic recession presents an easier operating environment, considering the primary goal of Recovery Act was to act quickly on high priority needs, contracting officers relied heavily on avenues that presented the fewest opportunities for competition to arise (Needham, 2010).

Urgency is also not the only constraint on competition. Built into the Recovery Act were guidelines specific to small business programs, which effectively encouraged the use of noncompetitive contracts to ensure they had equal opportunities to receive assistance. In May 2010, approximately 80% of the noncompetitive contracts were awarded to small businesses through these guidelines (Needham, 2010). Similarly, natural disaster contracting further allows a preference in noncompetitive contracts for local area firms in the affected area which can aid in economic recovery (Gordon, 2014). Bontjer, Holt, and Angle



(2009) applied this idea to contingency contracting when they studied the impact of such measures in Afghanistan:

Using local goods and services to carry out project work, for instance, allows a development dollar to be spent twice—providing much needed services to Afghan citizens and communities while simultaneously creating jobs, generating revenue, and promoting a more sustainable marketplace—all of which can ultimately reduce the likelihood of a relapse into conflict. (p. 39)

Competition advocates do acknowledge competing needs, but given the benefits of even limited competition, they nonetheless urge prioritizing maximizing competition within those constraints (Office of Inspector General, 2016). This approach is mandated by the Federal Acquisition Regulations (FAR) which allows for urgency exceptions but still requires contracting officers to solicit responses from as many contractors as possible under these circumstances (Gordon, 2014). In the case of disaster relief, such regulations are not always followed. After a new competitive requirement was enacted, FEMA contracting officers reported that they were still instructed to treat every disaster relief contract as urgent and could therefore award contracts without competition. This problem created an opportunity for \$32 million of procurement costs going unreported in noncompetitive disaster relief contracts in FY2013 (Mackin, 2015). The Commission on Wartime Contracting (2011) similarly believed that there was room for more competition, and it proposed the government should “set and meet annual increases in competition goals for contingency contracts” (p. 10).

Duration Limits on Noncompetitive Contracts

As was discussed in the section *Limitations on Crisis Contracting*, noncompetitive contracts that use the urgency exception are limited only one year to reduce the risk of overspending (Marvin, 2014; Office of Inspector General, 2016). With that said, the cost and benefits of a shorter contract are disputed (Professional Services Council, 2012). Reform efforts after Hurricane Katrina resulted in an even stricter 150-day limit to disaster relief contracts awarded in a noncompetitive environment (Mackin, 2015). Contingency contracting, on the other hand, is allowed to award contracts for up to a year in a noncompetitive environment (Office of Inspector General, 2016).

Upon the GAO’s review of noncompetitively awarded contracts, more than half exceeded the 150-day time limit. This is not necessarily a problem; the agency can waive that requirement under certain conditions. However, in each of these contracts that violated the time limit, FEMA did not approve the extension, and some went beyond the regulation by a year and a half (Mackin, 2015).

Undefinitized Contract Actions

Undefinitized contract actions (UCAs) are a type of contract that differs from standard procurement methods in allowing the production to start without defining all the terms of the contract (Actions, 2017).⁴ In crisis funding situations, these contracts can be seen as advantageous because they allow the production of goods or the allocation of services to be immediately received (Federal Audit Executive Council, 2010). Circumstances created by crisis funding certainly qualify as circumstances of urgent need that can allow for

⁴ Letter Contracts are a subset of UCAs in that they specifically seek to start production of the goods immediately (Calvaresi-Barr, 2007).



UCAs (Marvin, 2014). Contingency contracts often utilize UCAs, and they can be coupled with the risk of awarding them without competition. Contingency contracts often utilize UCAs which can be coupled with the risk of awarding them without competition (Federal Audit Executive Council, 2010).

UCAs are entered under cost reimbursement contracts until later defined. This allows the vendor to be reimbursed for all reasonable costs within the procurement up until the point of defining the contract terms (Federal Audit Executive Council, 2010). While the initial award of the contract can be obligated without the terms set, the FAR still requires that within 180 days or when 40% of the work has been completed that the contract terms must be defined (Federal Audit Executive Council, 2010). This allows the vendor to be reimbursed for all reasonable costs within the procurement process up until the point of defining the contract terms (Federal Audit Executive Council, 2010). The vendor, not the customer, is responsible for determining a “reasonable” price for this initial work (Calvaresi-Barr, 2007). UCAs are to have, at the least, a “not to exceed” price amount stated at the beginning. However, upon awarding the UCA, up to 50% of the “not to exceed” amount can be paid without any approval or review (Calvaresi-Barr, 2007).

Unfortunately, UCAs also create a very high risk of overpaying for goods and services and at times make the contracting officer beholden to the vendor (Commission on Wartime Contracting in Iraq and Afghanistan, 2011). In cases of disaster relief contracting, they present an even higher risk of cost overruns. Gordon (2014) mentioned that when natural disasters occur, the price of needed materials significantly increases as the demand for these products skyrocket. Entering into a UCA through a noncompetitive award furthers the risk of the government overpaying for needed goods and services to provide relief to the affected areas (Gordon, 2014).

Historically, the use of UCAs presented high risk with contingency contract awards and led to schedule delays coupled with high cost overruns. The GAO reviewed 77 UCA awards for contingency contracting within the DoD and in 10 cases found that other contracting methods would have sufficed and promoted cost savings. In 2007, 60% of these cases DoD contracting officers failed to definitize contract award terms by the 180-day FAR regulation (Calvaresi-Barr, 2007). By 2008, although still a concerning number, the amount of cases failing to meet the definitize timeline decreased to 51%. Furthermore, the GAO found that out of 83 reviewed UCAs, 66 resulted in paying the awardee 45% or more of the not to exceed estimate at the award (Hutton, 2010).

From 2001 to 2005, obligations awarded under UCAs increased from \$5.98 billion to \$6.53 billion (Calvaresi-Barr, 2007).⁵ UCA data collection was not centralized within the DoD, leading the DoD to have a significant lack of data to properly evaluate how much is truly being spent under UCA conditions (Calvaresi-Barr, 2007). Since 2007, the DoD has taken measures to require centralized reporting of UCAs, but in 2010, the GAO found that many UCAs are not being properly reported to the centralized offices (Hutton, 2010). On average, DoD UCA contracts overran the 180-day definitization requirement by two months (Calvaresi-Barr, 2007). The Air Force was the only branch at the time to have requirements to report UCAs, but despite reporting requirements, the GAO found nine UCA contracts in

⁵ It is important to note that these costs do not include obligations awarded to undefinitized task order contract or UCA modifications (Calvaresi-Barr, 2007).



the Air Force that overran the 180-day requirement by at least a full year (Calvaresi-Barr, 2007). A majority of the UCA contracts were awarded to maintain program schedules and directly and indirectly support war efforts (Hutton, 2010). While there is the opportunity to waive the 180-day requirement, the GAO found only two of the contingency contracts that met the requirements necessary to waive the regulation in 2007 (Calvaresi-Barr, 2007).

The Office of the Inspector General had similar findings to the GAO on UCAs in 2012. Out of 251 UCAs reviewed, the Inspector General's Office found that 132 cases failed to meet the timeline for definitization (Office of Inspector General, 2012). 118 of the cases highlighted noncompliance with requirements on the impact of allowable profit on the undefinitized period (Office of the Inspector General, 2012). 64 of the cases resulted in an obligation of funds significantly above the allowable amounts (Office of the Inspector General, 2012).

Reachback Contracting

At least as important as the methods used in contingency contracting are the contracting officers charged with managing the system. McMillon in 2000 reviewed four different military contingencies since the end of the Cold War and found that "consistent problems for all components during contingencies have been the lack of experienced personnel, restrictive regulations, and a lack of proper supplies such as computers and contracting SOPs and forms" (McMillon, 2000, p. 23). The 9/11 attacks and the subsequent wars in Afghanistan and Iraq were dramatically different operating environments than the prior decade's humanitarian operations or even the first Gulf War. Nonetheless, in 2011, the Commission on Wartime Contracting (2011) reached similar conclusions, recommending that the government "provide adequate staffing and resources, and establish procedures to protect the government's interests" (pp. 4, 11).

Given the inherent challenges of deploying people and resources to the field, one straightforward approach to this problem is to rely on those not on the battlefield. One prominent implementation of this idea is reachback contracting, a unique method that allows contracting officers in the field to "reachback" to domestic contracting offices for contracting support in contingency operations (Dunn, 2016). In 2007, the Reachback Division was originally set up to offer contracting support to those in theater in Kuwait (Adrian, 2010). This idea was not entirely novel, particularly in the later stages of an operation. McMillon (2000) noted that the Air Force instructed contracting officers to "consider support from the unit's home base" in addition to a range of other options outside of the deployment area (p. 34). Within three years, the division grew to a team of 62 people supporting contracting officers in the field in Afghanistan, Iraq, Kuwait, and Qatar (Adrian, 2010). After years of successful trials and results, the Reachback Division grew to include the Air Force and then added members from the Expeditionary Contracting Command Contingency Contracting Team (Adrian, 2010).

Reviews of this approach were positive. Commanding General Michael Hoskin of U.S. Army Expeditionary Contracting Command referred to reachback as a "very effective tool" in the contracting officers' arsenal (Dunn, 2016). Reachback contracting can result in fewer deployed contracting officers because the workload is shifted back to domestic contracting offices (Dunn, 2016). Utilizing reachback methods, contracting officers could improve their strategic buying and develop greater expertise within their source selection (Ausink, Castaneda, & Chenoweth, 2011). Furthermore, reachback contracting can provide continuity to workflow management and create better standardization for contingency contract reporting (Dunn, 2016).



Reachback's intention was to help ease the challenges faced by field contracting officers in attempts to support the warfighter (Calhoun & Larssen, 2013). Reachback is able to provide support in the Financial Services Division, Contracting Policy, Property Expertise, and the Army Sustainment Command Counsel (Calhoun & Larssen, 2013). Specializing in logistics, warehousing, transportation, base operations, security, counterinsurgency, telecommunications service, and supply acquisitions, reachback provides needed support to contingency contracting (Calhoun & Larssen, 2013).

In its review of reachback capabilities, RAND found that most contingency contracting officers cared more about the advantages in workflow, standardization of requirements, and concentration of contracting expertise than the reduction in deployments (Ausink et al., 2011). Reachback contracting has the potential to lower costs and reduce risks by not having to incur the same transportation and hazardous duty pay (Ausink et al., 2011). Workflow continuity could help increase the efficiency as well, since the contracting officers do not experience the same amount of turnover that deployed CCOs experience (Ausink et al., 2011). Reachback has been used in a multitude of ways. From small commodity purchases to cradle-to-grave large contract support, reachback methods have been successfully implemented (Ausink et al., 2011).

Although reachback methods can be used in various applications, the RAND study noted that reachback provides the greatest benefit when used for commodities, highly technical items, the use of a government-wide purchasing card, theater-wide purchases, and long-term contracts (Ausink et al., 2011). Each of these areas received multiple sources of agreement and near universal government-wide support of benefitting from reachback practices (Ausink et al., 2011). In the case of urgent and local projects, many turned away from the benefits that reachback practices could offer (Ausink et al., 2011). Limitations can also arise from policies applied to specific contingencies: the Iraqi first and Afghan first policies prevented field contracting officers from utilizing reachback practices due to the local requirements (Ausink et al., 2011).

If reachback had been utilized for the areas mentioned above in FY2008, 40 field contracting officers would not have needed to have been deployed (Ausink et al., 2011). Beyond reducing deployments, reachback methods provide greater concentrations of contracting expertise and continuity of the contracting officials maintaining the contracts (Ausink et al., 2011). The RAND study concludes that when used in the appropriate categories, reachback can mitigate risk, save cost, and provide greater efficiency in contingency contracts (Ausink et al., 2011).

Identifying Contingency Contracts

The Commission on Wartime Contracting (2011) reported that spending on contracts and grants performed in Iraq and Afghanistan in support of operations in those countries was expected to exceed \$206 billion through the end of FY2011 (p. 2). During that same period, transactions directly labeled as contingency contracts could only account for less than \$30 billion in obligations. The study team identified three different ways that data fields available in FPDS could be used to classify contingency contracts.

- The Contingency, Humanitarian, or Peacekeeping Operation column, which has better coverage in earlier years and makes explicit reference to the relevant statutes.
- The National Interest Action field, which has seen more frequent use in recent years and includes designators for natural disasters as well as



contingencies. Only those Actions pertaining to contingencies by the U.S. military were considered labeled as contingency contracts.

- Some transactions indirectly label themselves by employing a waiver to Central Commercial Registry reporting requirements that are only available to deployed contracting officers deployed into a contingency. As a result, FPDS lacks Registry information for these transactions, but we do learn that they were conducted in a contingency environment.

Perhaps the most surprising characteristic of these data fields is how little they overlap with one another. Both identify tens of billions of contracts, yet less than a quarter of contracts are considered contingency efforts by both criteria. While these fields are contradictory and only captured a portion of the universe of contingency contracting, they were a valuable launchpad for creating the heuristic score by which other contracts were classified. This study uses a 10-point scale to label contracts, based on a range of contingency-related characteristics. For each of the criteria below, when the history of officially labeled contingency contracts being referenced covers the period from 2000 to 2016 and all obligation amounts are in constant 2015 dollars.

OCO Funding (Maximum 4 Points)

- 0 to 4 points: corresponding to the percent of the contract’s funding account that was made up by enacted OCO spending. A funding account with no OCO funding would receive 0 points, a funding account with full funding provided through OCO would receive 4 points, those in between are rounded to the nearest whole number.

The study team relied on spreadsheets provided by the DoD comptroller to classify the percentage of OCO appropriation in each DoD funding account for each year. This data was then linked to the FPDS using treasury account fields, which have been reliably available in FPDS since 2012. These funding accounts are only partially standardized, requiring the team to make judgment calls on classification when treasury account symbols did not align.

Place of Performance and Contracting Office (Maximum 4 Points)

Table 2. Contracting Office and Place of Performance

Contracting Office	Place of Performance
<ul style="list-style-type: none"> • 3 points: Contracting office where 50% or more of obligations are officially contingency contracts. • 2 points: Office where 25 to 49% of obligations are labeled as contingency contracts. • 1 point: Office where 10 to 15% of obligations are labeled as contingency contracts. • -1 point: Office with at least 1 billion in obligations over the period but no labeled contingency contracts. 	<ul style="list-style-type: none"> • 3 points: Contract being performed in Iraq or Afghanistan. • 2 points: Contract being performed in the Philippines, which are explicitly included in OMB’s guidance thanks to joint counterterrorism efforts. • 1 point: Contracts being performed in a country included in the U.S. Military’s Central Command area of responsibility. Much of the direct support for the wars in Iraq and Afghanistan came from infrastructure in neighboring countries. • -1 point: Contracts being performed domestically.

These two criteria work in tandem to overcome one of the main sources of ambiguity in the contract data. Bases in neighboring countries are often key to contingency efforts, but



without proper labeling, it can be challenging to identify what activity any given contract is supporting. Past CSIS research efforts have also uncovered major expenditures being classified as performed far away from the battlefield. Specifically, a surprising amount of contracting obligations were “performed” in Switzerland to deliver supplies to Afghanistan.

The Product or Service Being Purchased (Maximum 2 Points):

- 2 points: Product or service codes with at least 25% of obligations labeled as contingency contracts.
- 1 point: Product or service codes with between 10 and 25% of obligations labeled as contingency contracts.
- 1 point: Product or service codes with at least \$1 billion in labeled OCO expenditures from.
- -1 point: Product or service codes with at least \$1 billion in total expenditures, but no OCO labeled obligations.
- -1 point: Contracts funded by Procurement or RDT&E accounts with an anticipated contract duration of more than 1 year. Such contracts are excluded from OCO funding by OMB guidance (Pickup & Khan, 2009, p. 14).

Many of the items categorized through this process are consistent with McMillon’s list of “Examples of supplies ... include bottled water, food, office and field supplies, construction items, repair parts, and medical supplies. Contracted services may include construction, laundry, food service, transportation, billeting, utilities maintenance, and sanitation services” (McMillon, 2000, p. 9). Unexpectedly, security services were not captured by these automatically generated lists. Private security contractors have been among the most controversial recipients of contingency contractors, and the Commission on Wartime Contracting (2011) recommended that they be “phased out for certain functions” (2011, p. 4).

Initial Results

After assigning scores to transactions during the study period, the team found that entries scoring 6 points or more reliably shared traits with contingency contracts. As the above graph shows, these contracts have reduced in their prevalence during the downturn but have also continued to shrink in value even as total contracting began to rebound in 2016.

One of the larger drivers of this decline has been the continued reduction in contract spending, first due to the withdrawal from Iraq and then to a lesser degree reinforced as the footprint of U.S. operations in Afghanistan was reduced. OCO spending has not gone away during this period, and U.S. operations in Iraq have resumed. However, Figure 1 shows the same pattern reduction with confirmed OCO contracts and those identified via the heuristic method.



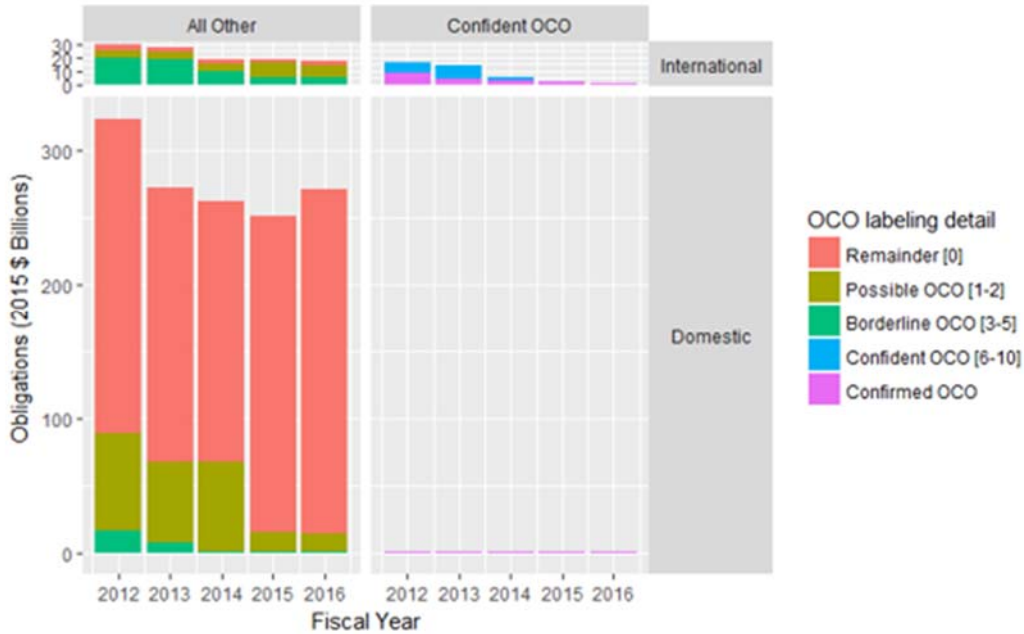


Figure 1. Contract Spending by OCO Evaluation and Place of Performance

Analysis of competition trends within the contingency dataset confirms findings from the literature review. While competition is an area of concern for contingency contracts, crisis-funding has not prevented contracting officers from already achieving higher rates of competition than across facility-related services and constructions (FRS&C), other services, and supplies in most years. The finding that most noncompetitive contracts employ an only one source exception in contrast to the urgency exception (which is reported in the no competition (other) category) departs from the literature review.



Figure 2. Competition Across Facility-Related Services and Construction, Other Services, and Supplies

While competition is more prevalent in contingency contracting, the trend has changed for the worse. Figure 2 also shows that noncompetitive contracting has become more prevalent in all three categories. The trend is most alarming in FRS&C where competition rates have cratered, which is particularly troubling because this is classically a sector where a range of different vendors can easily enter to provide services. The trend for other services involves a slow decline, which is typical in contracting markets. However, the rise in noncompetitive contracts in supplies is not necessarily as problematic as it first appears. Much of the decline has been in competition that results in only a single offer. Noncompetitive procedures do have tools to help when only one vendor is available, so going directly to these arrangements may be preferable to competitions that only ever attract one vendor. Nonetheless, the goods acquired in contingency contracting are often simpler than the advanced weapon systems acquired domestically. There may be an opportunity in this sector for greater use of competition.

When it comes to UCA contracting, the concerns raised in the literature appear to have been addressed. Usage is declining across the board and in recent years there are no reported UCA contracts in FRS&C or for supplies. The takeaway here is that perhaps the acquisition community should be less concerned about UCAs in contingency contracting and more focused on ensuring that they do not return to the past prevalence level in the category of conventional supply contracting.

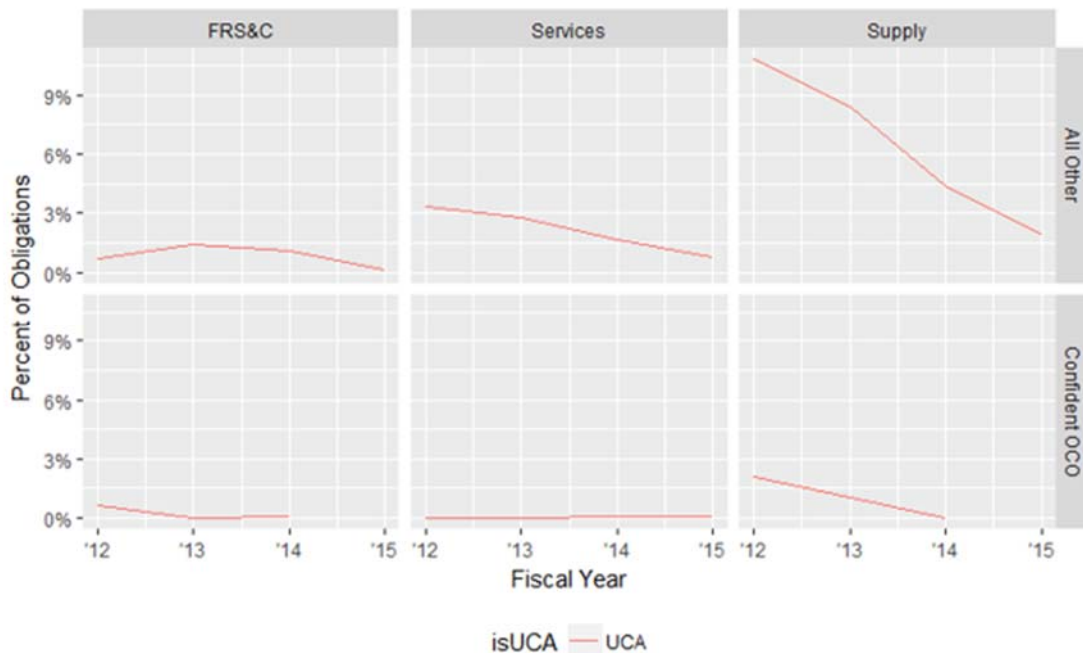


Figure 3. Undefinitized Contract Actions Across Facility-Related Services and Construction, Other Services, and Supplies

Closing Thoughts

Competitive trends appear to be in keeping with past results, but it does show the risk of relapse as contingency contracts are less used and are further from the public eye. While the sums being discussed are much smaller than in prior years, there may be room to regain previous rates of competition. By comparison, the dramatic reduction in UCA contract usage in recent years is a laudatory trend and may mean that reformers should focus on the remaining pockets of UCA elsewhere, although the study team will watch this space carefully in the next steps of this project, which consider the civilian forms of crisis contracting. The strongest signal from this research is the increasing divergence between the spending on OCO budget accounts and related contingency contracts. Future iterations of this study will examine this discrepancy and what it means for this challenging form of contracting.

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