



Overseas Contingency Operations Contracts after Iraq: Enabling Financial Management Research and Transparency through Contract Labeling

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Andrew Hunter

Director, Defense-Industrial Initiatives Group, and Senior Fellow, International Security Program

Greg Sanders

Deputy Director and Fellow, Defense-Industrial Initiatives Group

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INITIATIVES GROUP

Research Question:

There is inherent risk in crisis-funded contracts, but what approaches to contracting exacerbate or mitigate risk?

Why do crisis contracts merit special attention:

- Crisis contracting has challenging trade-offs with time of the essence.
- By statute, many forms of crisis contracting use a different contracting system, allows for less competition, more cost-based.
- Past crisis contracts should be watched closely as they often have incomplete documentation, backlogged contracting officers, and late or never finished close outs.
- Comptroller Gene Dodaro succinctly put it “[e]xperience tells us that the risk for fraud and abuse grows when billions of dollars are going out quickly” (2009, p. 6).
- Transparency has improved, but contingency contractings are still not reliably labeled.

Methodology:

- This presentation is part of larger project that includes the American Recovery and Reinvestment Act (Recovery Act) and Natural Disaster, but many of the concerns raised apply across all forms of crisis contracting.
- The Federal Procurement Data System (FPDS) and the DoD Comptroller Budget Documents were the primary sources for this portion of the report. Federal regulations only require reporting for unclassified prime contracts worth \$3,500+.
- All dollar values shown in figures are constant 2015 dollars.
- 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.

Policy Context of Contingency contracting

What Qualifies for the Overseas Contingency Operation budget?

Varies within recent years:

- 2007-DoD revised its Financial Management Regulation, expanding the definition of acceptable maintenance and procurement costs and including “longer war on terror.”
- GAO pushed back, arguing for shifting costs into the base budget to “allow for prioritization and trade-offs... and to enhance visibility in def. spending” (Pickup & Khan, 2009). OMB tightened definitions in FY2010.
- Budget Control Act of 2011 makes it tempting to shift funds back into OCO, to avoid base budget caps.

FY2010 OMB Definition for OCO Funding

Area	Prior OCO Funding Guidance	FY2010 OCO Funding Guidance
Geographic Theater of Operations	Does not specify locations, allowed for 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.	Stricter definitions of replacement, repair, modification, and procurement of equipment; and 1-year time limit.
Research, Development, Test, and Evaluation (RDT&E)	No time frame restrictions.	Funding for RDT&E 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 budget request.	Excluded.
Family Support Initiatives	Included enduring post deployment family support initiatives.	Excluded.
Base Realignment and Closure	Included.	Excluded.

Labeled Contingency Contracts

Three different ways that data fields in FPDS directly classify crisis contracts:

- The Contingency, Humanitarian, or Peacekeeping Operation column, which makes explicit reference to the relevant statuses. Better coverage in earlier years.
- The National Interest Action field, which includes designators for natural disasters as well as contingencies. Better coverage in later years.
- Some transactions employ a waiver available to contracting officers deployed into a contingency to Central Commercial Registry reporting requirements.

The Commission on Wartime Contracting reported that spending on contracts and grants performed support of operations in Iraq and Afghanistan was expected to exceed \$206 billion through the end of fiscal year (FY) 2011 (2011, p. 2).

During that same period, transactions directly labeled as contingency contracts only account for less than \$30 billion. Grants do not come close to closing that gap.

Identifying Ambiguous Contingency Contracts

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 Product or Service (PSC) being Purchased (Maximum 2 points):

- 2 points: PSC with 25%+ of obligations labeled as contingency contracts.
- 1 point: PSC with between 10%- 25% of obligations labeled as contingency contracts.
- 1 point: PSC codes with \$1+ billion in labeled contingency contracts.
- -1 point: PSCs with \$1+ billion in obligations, but no labeled contingency contracts.
- -1 point: Procurement or RDT&E account funded contracts with an anticipated duration of 1+ year.

Place of Performance and Contracting Office (Maximum 4 points):

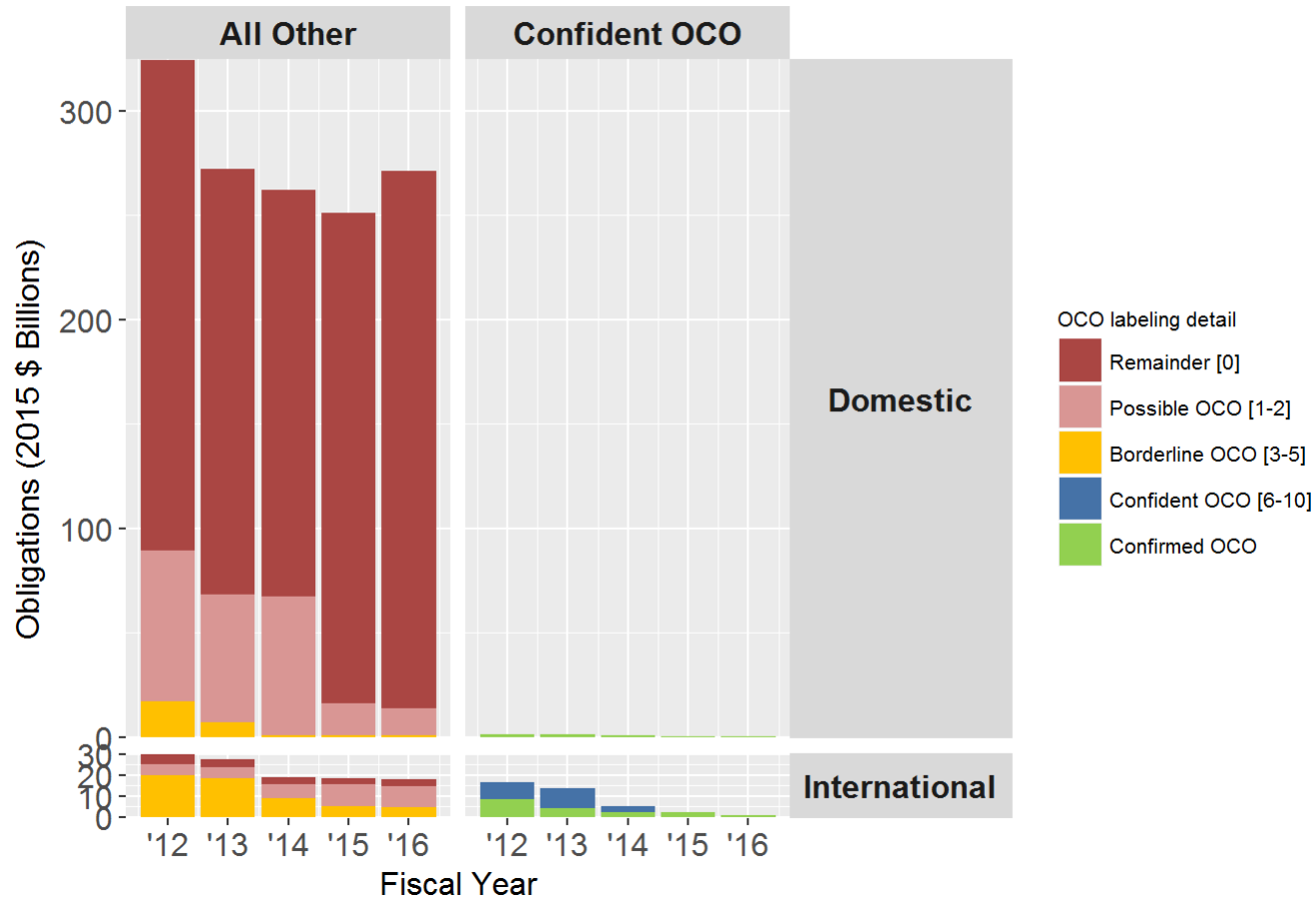
Place of Performance:

- 3 points: Contract performed in Iraq or Afghanistan.
- 2 points: Contract performed in the Philippines.
- 1 point: Contract performed in the U.S. Military's Central Command area of responsibility.
- -1 point: Contracts being performed domestically.

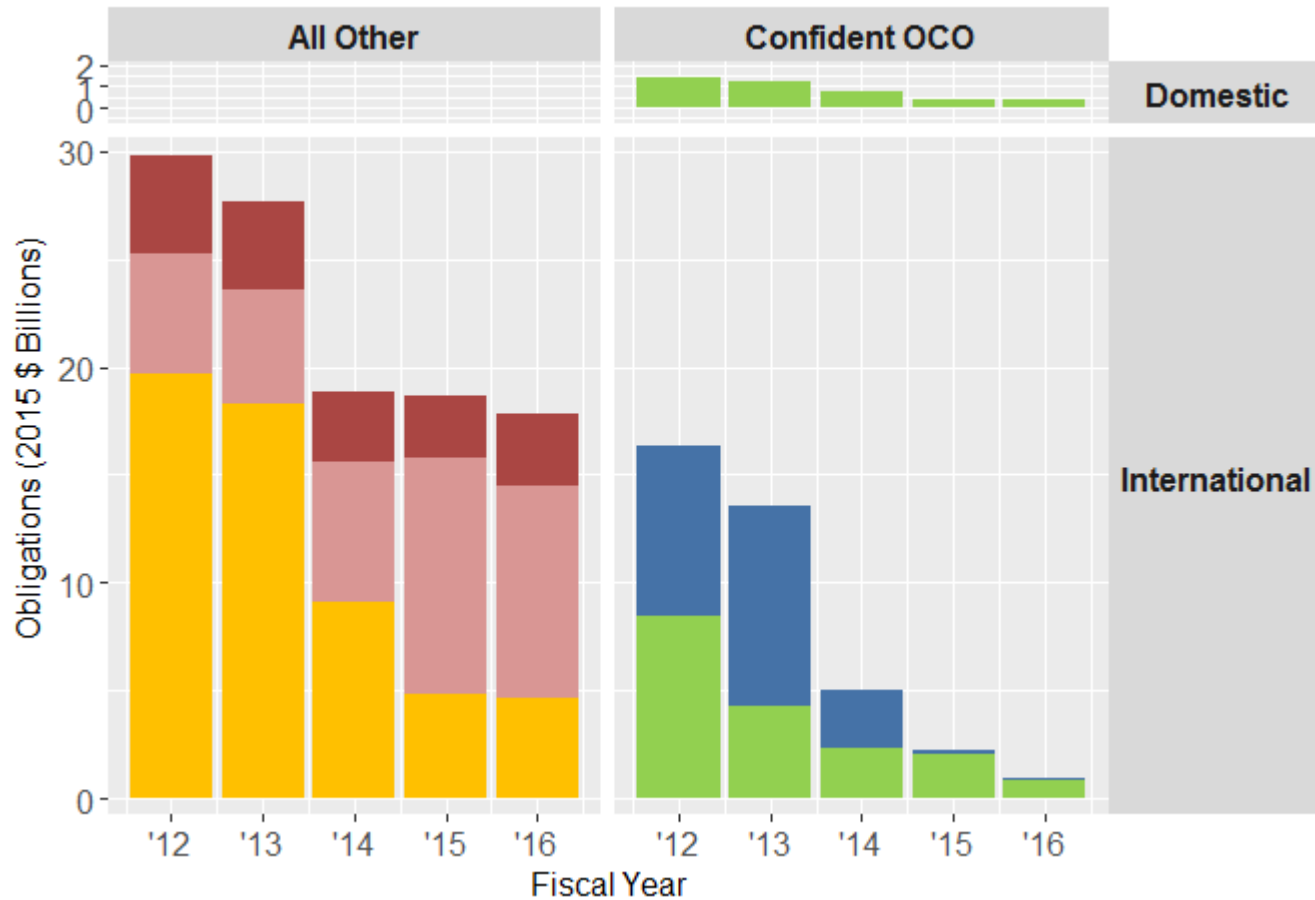
Contracting Office:

- 3 points: Office where 50%+ of obligations are officially contingency contracts.
- 2 points: Office where 25%-49% of obligations are labeled as contingency contracts.
- 1 point: Office where 10%-15% of obligations are labeled as contingency contracts.
- -1 point: Office with at least \$1 billion in obligations but no labeled contingency contracts.

Contract Spending by OCO evaluation and Place of Performance



Contract Spending by OCO evaluation and Place of Performance (Zoom)



Literature Review: Overall

Exemptions for Contingency Contracts:

- Comp. in Contracting Act of 1984 (CICA) offers exception, including urgency.
- Higher thresholds allow for broader use of the simplified acquisition threshold.
- More ability to use cost-base contracts, including undefinitized contract actions.

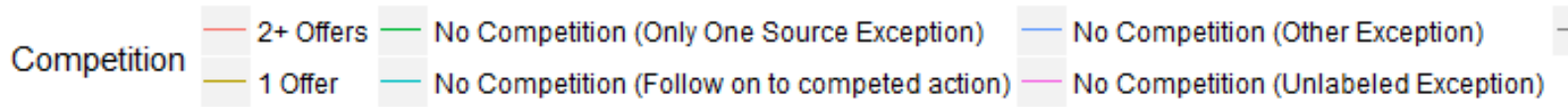
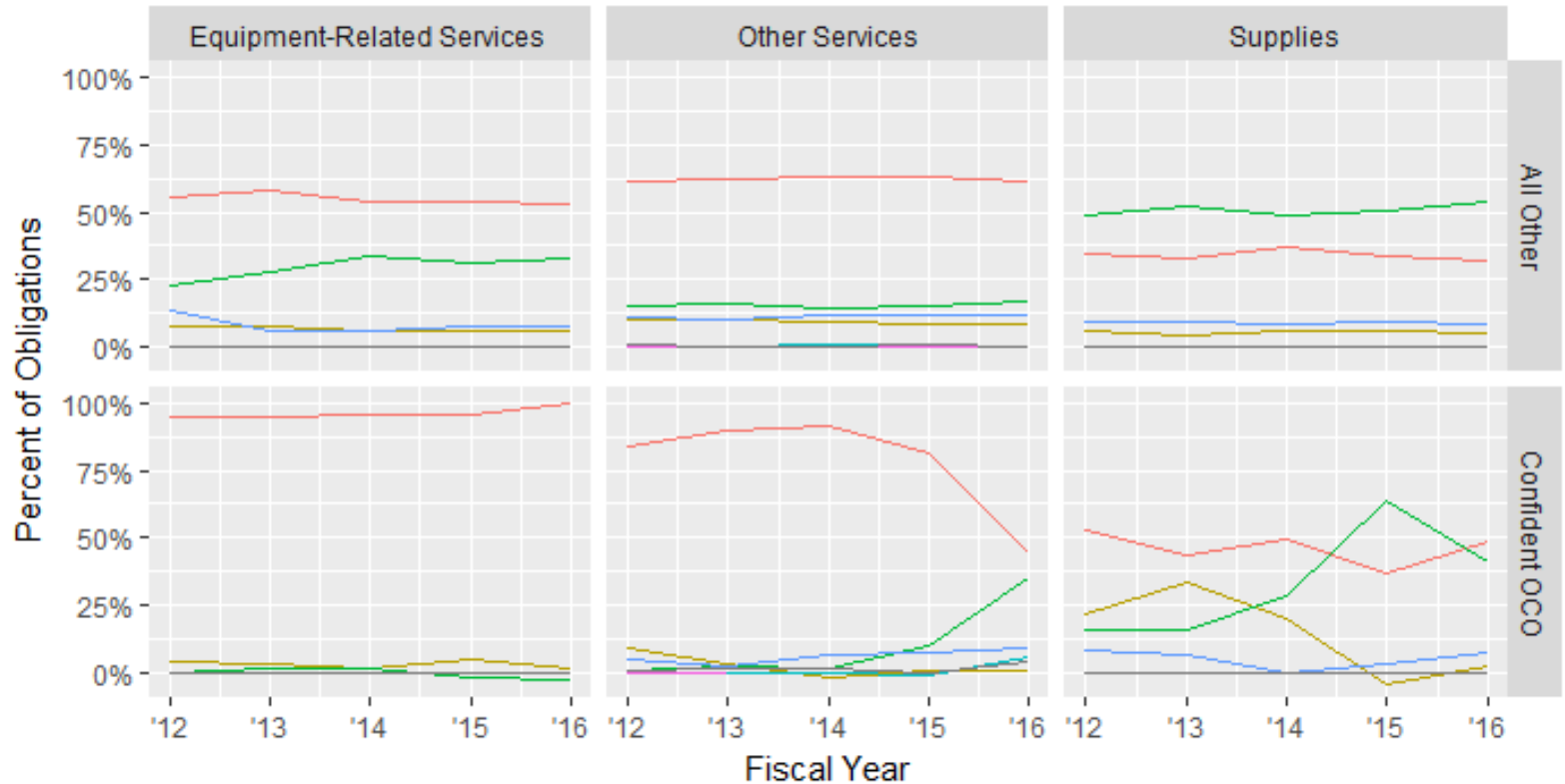
Limits on Contingency Contracts:

- Limited personnel in the field, may have warrants.
- Time limitations, especially for contracts that use the urgency exception.
- Controversy: should we shorten more?
 - Commission on Wartime Contracting is severely critical of non-competed contracts extended without competition, even if the original contract was competed, noting LOGCAP III which was extended 10 years.
 - Professional Services Council argues that past investigations have found “short periods of performance significantly increased the contract price and added to the government’s burden to award new contracts and administer existing ones” (2012, p. 6).

Research Variables

1. **Competition: How does contingency contracting use of competition compare with overall DoD?**
2. **Unfinitized Contract Actions: How frequent use does contingency contracting make of high risk unfinitized contract actions versus other the rest of DoD?**
3. **Reachback Contracting: Are Contracting Offices that do not primarily conduct contingency contracting able to avoid its downsides?**

Competition Across Equipment-Related Services, Other Services, and Supplies



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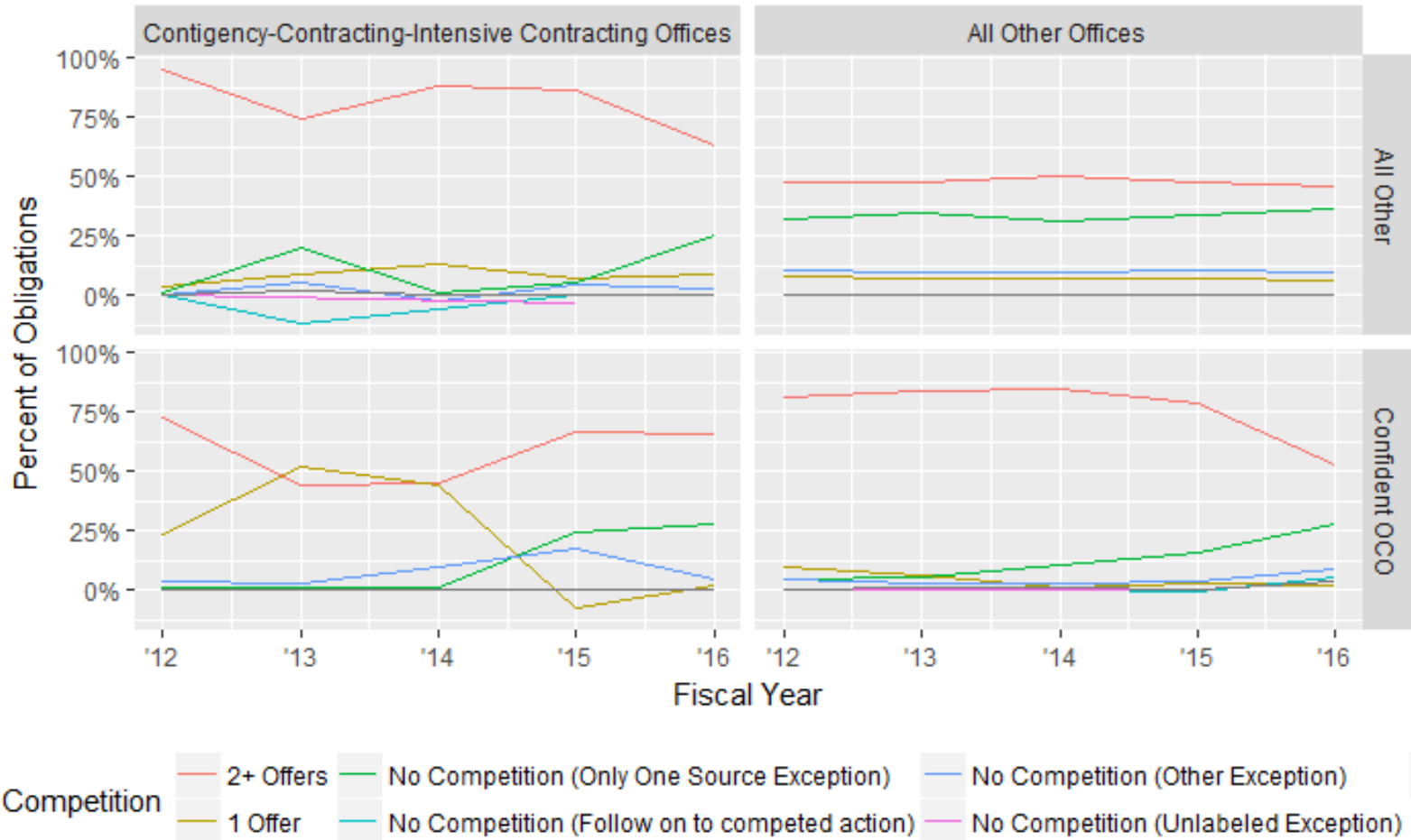
Undefinitized Contract Actions Across Equipment-Related Services, Other Services, and Supplies



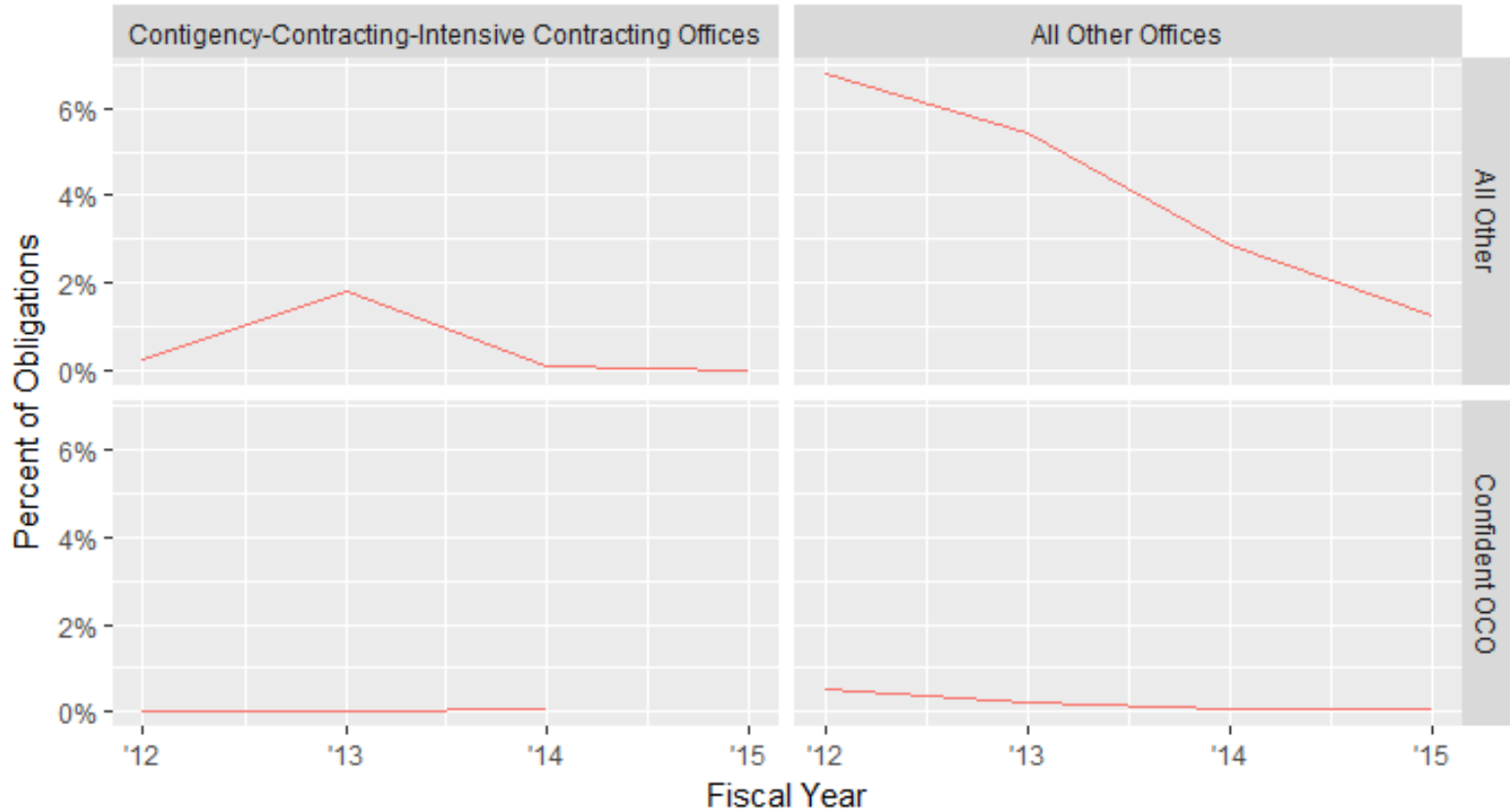
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Competition by Contingency-Contracting-Intensity of Contracting Office



Undefinitized Contract Actions Across Equipment-Related Services, Other Services, and Supplies



Is Undefinitized Contract Action (UCA) — UCA

Conclusions

- Competitive trends appear to be in keeping with past results, but some slippage as contracts obligations have shrunk and attention has waned.
- Dramatic reduction in UCA contract usage in recent years is a laudatory trend and contingency contracting has lead the way.
- Reachback contracting appears to result in more competitive contracts during years of greater demand, but not as demand declined.
- Finally, there is divergence between declining contingency contract obligations and steady OCO budgets. The drawdown in operation may be revealing that a growing portion of OCO funding might be base funding in disguise.