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

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## Executive Summary

### *Background*

The challenges posed by both man-made and natural crises require flexible and rapid responses from policymakers. However, the inherent uncertainty of these situations makes them vulnerable to waste, fraud, and abuse. Consequently, contracts awarded during crises would often be deemed unsuitable during ordinary times. The occupations of Iraq and Afghanistan, the American Recovery and Reinvestment Act (Recovery Act)'s efforts after the most recent financial crisis, and the government's responses to natural disasters since this century began have all involved high-profile incidents of crisis contracting. Government efforts to improve transparency and oversight regarding these contract awards have been admirable, but are limited in their ability to maintain and proliferate lessons learned. This project addresses that problem by creating crisis-funded contract dataset to test best practices across different domains and to enhance data transparency for future practitioners and researchers.

### *Scope*

This project considers crisis-funded contracting for Department of Defense contingencies, it also reviews studies of civilian efforts, such as the Recovery Act and disaster response efforts, because concerns about crisis contracting apply across domains. For the military, the focus is on Overseas Contingency Operations (OCO) funded contracting that occurred after the initial withdrawal from Iraq, a period of reduced scrutiny relative to the pre-withdrawal years that nonetheless benefited from efforts by DoD to improve data transparency.

### *Contingency Contracting*

Contingency contracting has been defined as “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.” In addition, this paper includes humanitarian and peacekeeping operations in this category.

### *Regulatory Environment*

The Competition in Contracting Act of 1984 (CICA) mandates that federal procurements involve full and open competition, but also stipulates exemptions that allow contracting officers to engage in noncompetitive procurement during “urgent and compelling” situations. Additionally, these contingency contracts enjoy exemptions from the requirements restricting undefinitized contracts and stalling awards until protests are resolved.

Despite the range of regulatory exemptions, aspects of crisis contracting face heightened scrutiny. The durations of crisis contracts are often quite limited, to minimize the amount of time the government is committed to expedited deals. Whether such restrictions should be further institutionalized is currently in dispute. Proposed reforms have sought to limit contingency

contracts by default, but opponents contend that shorter contingency contracts are not necessarily better.

### *Negative Outcomes of Crisis Contracting*

The urgency that inevitably surrounds crisis contracting provides opportunities for waste, fraud, and abuse because contracting officers are unable to obtain information parity with vendors before funds are dispersed. After Hurricane Katrina, hotels contracted to house the affected sent invoices to the relevant contracting officers before the latter could confirm the contract terms. Information asymmetry regarding performance can then extend over the life of these contracts. Moreover, 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. Insufficient documentation leaves the process vulnerable to fraud throughout.

### *Aggravating or Mitigating Factors*

**Noncompetitive Awards** - The ability to bypass competition in awarding contracts due to urgency is an important aspect of contingency contracting. Competition creates the risk of delays. For contingency contracting, delays can undermine mission efficiency, regarding both the effectiveness of responders and meeting the urgent needs of disaster-affected populations. Noncompetitive contracts that use the urgency exception are limited to only one year to reduce the risk of overspending, but the cost and benefits of shorter contracts are disputed. In addition to the risk of higher prices or lower quality products or services, noncompetitive contracts are also at greater risk of misconduct when compared to the standard procurement process.

**Undefinitized Contract Actions** - Undefinitized contract actions (UCAs) allow production to start without defining all the terms of the contract. In crisis funding situations, these contracts can be advantageous because they allow for the immediate production and allocation of critically needed goods or services. Unfortunately, UCAs increase the risk of overpaying for goods and services, and of making the contracting officer beholden to the vendor. In disaster relief contracting, they carry an even higher risk of cost overruns. Entering into a UCA through a noncompetitive award exacerbates these challenges.

**Reach-back Contracting** – Reach-back contracting allows contracting officers in the field to “reachback” to domestic contracting officers for support in contingency operations. Reach-back contracting shifts the workload back to domestic contracting offices, which can result in fewer deployed contracting officers. With reduced deployments, risks and costs associated with transportation and hazardous duty pay also decline. Utilizing reach-back methods, contracting officers could improve their strategic buying and develop greater expertise within their source selection. Furthermore, reach-back contracting facilitates continuity to workflow management and increased standardization for contingency contract reporting.

### *Methodology*

DIIG maintains its own database of federal spending. For this report, the study team primarily relied on FY2000–2016, and focused on 2012–2016 for Contingency data because funding

account data was not reliably available before those years. The study analyzes datasets on contingency contracts, disaster relief, and the Recovery Act. For the latter two, DIIG relies on identification by the government; contingency contracts are manually classified due to the gaps in the underlying data. The decision tree methodology utilized in this report increases the transparency and robustness of the ‘contingency’ classification by displaying the underlying data at each step. The report also incorporates a scoring system into its methodology, which allows direct observation of the underlying values in graphical form.

## *Results*

### *Competition*

Competitive trends in crisis contracting generally fare better than the comparison groups, in comparison with the literature review. Of the three dataset, disaster contracting made the greatest use of non-competitive awards, and had the highest level of single-offer competition of the three. The hypothesis that non-competed contracts would be at greater risk was not borne out by the termination measure, as competed contracts were regularly terminated at higher rates. Also running contrary to expectations from literature, both the disaster and contingency dataset did not appear to make disproportionately heavy use of urgency waivers versus the only-one-offer justification for non-competing.

### *Undefinitized Contract Actions*

the dramatic reduction in UCA contract usage in recent years is a laudatory trend but the rise in unlabeled contracts undercuts this good news story. As with competition, termination rates did not prove to be higher for UCA contracts than for other typical contracts.

### *Reach Back Contracting*

Reach-back contracting appears to result in more competitive contracts during years of greater demand, but shows no competitive benefit in recent years, nor does it show a lower usage rate for UCA contracts. This finding can be read both ways. It suggests that contracting officers located forward can perform their functions with little apparent decrement in capability due to their more austere work environment. However, it also suggests that reach back contracting can help meet theater needs with little loss of effectiveness due to the distances involved. There are many challenges with OCO contracting associated with contract administration and oversight, such as quality assurance and combatting human trafficking, which are not captured by the competition information examined in this report. As a result, the government might consider focusing scarce in-theater contracting resources on the more challenging functions of contract administration and oversight.

## *Recommendations*

- **Contracting Officers Appear to Avoid High Risk Crisis Contract Types**

As the Analysis section found, crisis funded contracts often achieved high levels of competition and eschewed UCAs. This does not mean that there is not more potential room for progress, but that public servants have already clearly heard the message coming out of the literature and are

responding according. Likewise, the comparatively low termination rates among non-competed and UCA contracts suggests that contracting officers are being conservative when employing those tools.

- **Reach-back contracting offices were more effective at achieving effective competition**

While this paper does not examine all aspects of reach-back contracting, there was a clear differential in competition rates between those offices that obligated 25 percent of their budget or more for officially classified contingency contracts and all others. That difference favored the offices that did less contingency work, which supports the idea that turning to home contracting offices of DoD units is an effective way to relieve the workload of those in the field and achieve better results. This paper does not examine where the point of diminishing returns is for this approach, but based on the data results it appears that the present approach is a net positive.

- **Be careful when applying simple risk based criteria to crisis funded contracts.**

Much of the literature focused specifically on the urgency exception because it is specific to crisis-funded contracts. However, with the exception of the Recovery Act, most forms of crisis-funded contracts did not primarily on that category of waiver for their non-competed contracts. Furthermore, both UCA and non-competed contracts proved to have lower termination rates. This suggests that risk based criteria for audits should be careful about overly relying whether statutory exceptions are used and instead look to other contract characteristics. The datasets generated in this study are available to other researchers and practitioners in part to aid them in further developing such criteria.

- **Address declines in the quality of labeling, particularly with regards to OCO spending and UCAs**

Finally, the strongest signal from this research is the increasing divergence between the spending on OCO budget accounts and related contingency contracts. The drawdown in operation may be revealing that a growing portion of OCO funding might be base funding in disguise. While the decline in contingency contracting spending has does seem to have stabilized above \$10 billion annually, this still does represent a notable decline. The DoD does internally track OCO funding of contracts in ways that are not included in the FPDS. More rigorous use of the fields relied on in the methodology section would be one means to improve transparency and accountability of these funds.

Furthermore, fields tracking contingency and humanitarian operations and national interest codes would be of far greater value to researchers, practitioners, and overseers if reliably filled out. In section 3.2.1, Figure 4 shows clearly that transactions caught by one classification are routinely ignored by others. Moreover, a great deal contracting performed in Afghanistan and Iraq are caught by neither of these fields. Another value of the dataset made available by this study is that researchers who wish to focus on studying rather than identifying contingency contracts may make unrestricted use of the work of this paper and further the study of these important contracts.

Lastly, given the history of regulatory failures regarding UCAs, the large unlabeled rate revealed in section 4.2 is a cause for concern. The study team did find in an earlier version of this paper that UCA use was steadily declining. That is potentially a salutary development, but the decline in reporting, combined with the comparative rarity of this contract type, means that even a small number of unreported UCAs could undermine the oversight that FPDS is meant to provide.

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## 1 Introduction

### 1.1 Background

Contracting during a crisis is replete with challenges. Speed and flexibility are essential because delays mean 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 abuse. Even setting those extremes aside, though, 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:

- During the invasion and subsequent occupation in Afghanistan and Iraq, the US government has utilized contingency contracting to support its forces. Through the

Logistics Civil Augmentation Program (LOGCAP), which carried over from the 1990s, American firms such as KBR and DynCorp have provided base services in both theaters of war.

- Government responses to a variety of disasters, such as Hurricane Katrina, incorporated private contractors in efforts to get urgently needed aid to victims, and to improve infrastructure after the crisis.
- In response to the most recent global financial crisis, the US government passed the American Recovery and Reinvestment Act (Recovery Act): a stimulus package meant bolster employment, fund temporary relief programs, and invest in infrastructure. In pursuit of shovel-ready projects, federal agencies awarded contracts for much of the ground work.

These cases have served as learning experiences for the agencies involved in awarding crisis contracts, and the federal government generally. Thus, important work has been done to provide oversight and transparency by the Government Accountability and Transparency Board, the Commission on Wartime Contracting, 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 might not be recognized in another. Moreover, as attention fades away, the increasing difficulty of determining whether recommendations were followed and whether they succeeded in mitigating preexisting risks produces a real threat of backsliding.

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. The paper then proceeds to analyze trends in contracting from the post-Iraq withdrawal period, focusing on three areas where the literature review indicated that crisis contracting diverges from conventional contracting: noncompetitive awards, undefinitized contract actions, and reach-back contracts. The paper concludes by discussing the results of the hypotheses before proceeding to recommendations and conclusions.

### *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.<sup>1</sup> McMillon provides 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.” This paper also includes a similar category of operations that falls under a different portion of the U.S. legal code: “humanitarian or peacekeeping operations.”<sup>2</sup>

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; the move to an all-volunteer

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<sup>1</sup> Chester L. McMillon, “Contingency Contracting within the Department of Defense: A Comparative Analysis,” (Monterey, CA: Naval Postgraduate School, 2000), 5–7, <http://calhoun.nps.edu/handle/10945/9207>.

<sup>2</sup> 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).

military had created an essential role for contractors to fill as shown in both the Gulf War and the war in Kosovo.<sup>3</sup> Nonetheless, the wars in Afghanistan and Iraq and the subsequent occupations of those countries prompted steady increases in spending on contingencies. From 2002 through 2008, approximately \$159 billion in contingency contracts were awarded.<sup>4</sup> 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 note, 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.”<sup>5</sup>

The tide turned as the Iraq war wound down and President Barack Obama took office in 2009. The GAO had already encouraged 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.”<sup>6</sup> Those changes are described in

Table 1. The Budget Control Act (BCA), implemented by Congress in 2011, created caps for defense spending in the base budget, but not for the OCO account. Since the OCO account was not subjected to the budget caps, there was an opportunity and temptation to use OCO spending to supplement the forced decreases in the base budget the trend of transferring OCO funds into the base budget request. As a result the trend of moving items from base budget to OCO was reversed.<sup>7</sup>

*Table 1: Fiscal Year 2010 OMB Guidance on What Qualifies as OCO Spending:*

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,	No time frame restrictions.	Funding for research and development must be for projects required for

<sup>3</sup> Chester L. McMillon, “Contingency Contracts with the Department of Defense: A Comparative Analysis,” 13-23. See McMillon for a summary of contracting operations in the 1990s and some of the challenges encountered.

<sup>4</sup> John P. Hutton and Cary B. Russell, “Contingency Contracting: Agency Actions to Address Recommendations by the Commission on Wartime Contracting in Iraq and Afghanistan,” (Washington, D.C.: U.S. Government Accountability Office, 2012).

<sup>5</sup> Sharon L. Pickup and Asif A. Khan, “Overseas Contingency Operations: Funding and Cost Reporting for the Department of Defense,” (Washington, D.C.: U.S. Government Accountability Office, 2009), 11.

<sup>6</sup> *Ibid.*, 7.

<sup>7</sup> Susan B. Epstein and Lynn M. Williams, “Overseas Contingency Operations Funding : Background and Status,” (Washington, D.C.: Congressional Research Service, 2017), <https://fas.org/sgp/crs/natsec/R44519.pdf>.

and Evaluation (RDT&E)		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.

Source: Pickup and Khan, “Overseas Contingency Operations: Funding and Cost Reporting for the Department of Defense,” 14.<sup>8</sup>

## 1.2 Scope

This paper relies on three datasets. For the first two datasets, the study team relies on existing reporting rather than attempting any tagging on its own. For the contingency dataset, the study team takes advantage of efforts by the DoD to improve data transparency, specifically the labelling of funding accounts.

- Contracts paid for by the Recovery Act which starts in 2009 and continues thereafter, though the bulk of the spending takes place in the first two years. This data had been collected through Recovery.Gov, which is no longer operational.<sup>9</sup>
- Contracts supporting natural disaster responses, that are captured by the National Interest Action Code in the period between 2005 and 2016. The first disaster coded in this dataset is Hurricane Katrina. Note that grants make up the bulk of many disaster responses, but this paper is exclusively focused on contracts.
- Contingency operations, with a focus on Overseas Contingency Operations (OCO) funded contracting that occurred after the initial withdrawal from Iraq; this situation is also comparatively understudied—in no small part because of the opaqueness and ambiguity surrounding the OCO budget.

While the greatest challenges in the dataset building relate to contingency 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.

<sup>8</sup> While the OCO budget has de facto not always been limited by these definitions, the study team employs the FY2010 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.

<sup>9</sup> The data is now available from the [archival Top Requests page at the FPDS-NG website](https://www.fpds.gov/downloads/top_requests/TAS_Report.xls): [https://www.fpds.gov/downloads/top\\_requests/TAS\\_Report.xls](https://www.fpds.gov/downloads/top_requests/TAS_Report.xls)

## 2 Literature Review

### 2.1 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 the 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.<sup>10</sup> 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 within the standard federal contracting process, which can lead to the trifecta of waste, fraud, and abuse.<sup>11</sup>

#### 2.1.1 Regulatory Exemptions

Competition has a longstanding presence within federal procurement practices. The Competition in Contracting Act of 1984 (CICA) requires that federal procurements must allow for full and open competition.<sup>12</sup> However, CICA also designates several exemptions for when a contracting officer may engage in a noncompetitive procurement. These exemptions include circumstances for unusual and compelling urgency, national security, and contracts that are necessary for public interest.<sup>13</sup> Notably for this report, during a national disaster, procurement of services may be noncompetitive in “urgent and compelling” situations.<sup>14</sup>

In addition to the option to bypass full and open competition, contingency contracts are currently exempt from both the requirement restricting un-definitized contracts and from having to wait until a protest is resolved to award emergency requirements.<sup>15</sup> Other exemptions simply involve raised thresholds. While threshold values change over time, as of the year 2000, the simplified acquisition threshold was twice as high for contingency contracts, increasing from \$100,000 to \$200,000.<sup>16</sup> In a final example of exemptions, crisis measures allow for civilian agencies to use

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<sup>10</sup> Curtis D. Britt and John L. Miles, “Contracting under conditions of national emergency/full mobilization,” (Wright-Patterson Air Force Base, Ohio: Air Force Institute of Technology, 1985).

<sup>11</sup> McMillon, “Contingency Contracts with the Department of Defense: A Comparative Analysis.”

<sup>12</sup> Kate M. Manuel, “Competition in Federal Contracting: An Overview of the Legal Requirements,” OAI, 2011, , <http://oai.dtic.mil/oai/oai?verb=getRecord&metadataPrefix=html&identifier=ADA497721>.

<sup>13</sup> Ibid.

<sup>14</sup> Michelle Mackin, “Disaster Contracting. FEMA Needs to Cohesively Manage Its Workforce and Fully Address Post-Katrina Reforms,” September (Washington, D.C.: U.S. Government Accountability Office, 2015) 59.

<sup>15</sup> McMillon, “Contingency Contracts with the Department of Defense: A Comparative Analysis.”

<sup>16</sup> Ibid. 9-10.

cost-based contracts and other unique mechanisms.<sup>17</sup> Within the first reporting to Recovery.gov, the Recovery Act spent \$7.8 billion on contracts that were not competitive or fixed price.<sup>18</sup>

### 2.1.2 Limitations on Crisis Contracting

However, while crisis contracting may employ a range of regulatory exemptions, it faces heightened scrutiny in other areas, particularly with time frames. Certain crises may have even tighter limits depending on their expected duration; for example, contracts were limited to 90 days during Operation Restore Hope in Somalia.<sup>19</sup> These limitations are a measure to reduce the time period that the United States is committed to deals that are hastily made out of immediate necessity. 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.”<sup>20</sup>

An area of dispute within the policy literature is whether these restrictions should be further institutionalized. The Commission on Wartime Contracting (CWC) is severely critical of contracts that are 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).”<sup>21</sup>

Although the Contingency Contracting Reform Act did not become law, it usefully illuminates arguments on these issues. Section 201 sought to limit the duration of contingency contracts across the board by default. Had it become law, the bill would have limited contingency contracts that were not competed, or that received only one offer to one year and competed

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<sup>17</sup> Cost-based contracts are regularly used by the Department of Defense for circumstances such as advanced technology development, but are less prevalent for many other departments.

<sup>18</sup> Alice Lipowicz, "Agencies spent billions of stimulus money on noncompetitive contracts," *The Business of Federal Technology*, October 15, 2009, <https://fcw.com/articles/2009/10/15/agencies-spent-billions-from-stimulus-on-noncompetitive-nonfixedprice-contracts.aspx>.

<sup>19</sup> McMillon, "Contingency Contracts with the Department of Defense: A Comparative Analysis," 16-18.

<sup>20</sup> Belva Martin, "Noncompetitive Contracts Based on Urgency Need Additional Oversight," (Washington, D.C.: U.S. Government Accountability Office, 2014), 13.

<sup>21</sup> Michael J. Thibault and Christopher Shays, "Commission on Wartime Contracting in Iraq and Afghanistan, Transforming Wartime Contracting Controlling Costs, Reducing Risks," (Arlington, VA, 2011), 75.

contracts to three years.<sup>22</sup> The Professional Service Council (a government services industry association) objected to the proposal on multiple grounds, but 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.”<sup>23</sup>

## 2.2 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.<sup>24</sup> CWC also raised this issue, and cited a need to “[i]mprove contractor performance-data recording and use.”<sup>25</sup> This challenge of collecting performance data can extend over the entire life of these contracts. Furthermore, 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.<sup>26</sup> After Hurricane Sandy ravaged the east coast, hotels received noncompetitive contract awards to house those affected by the storm through an urgent need waiver. These contracts provided a necessary service, but the joint field contracting offices responsible for oversight were unable to do their jobs because they were often left unaware of these contract awards until the contract was closed out and they received the vendor invoices.<sup>27</sup>

Due to the urgency and need for a significant volume of contracts in a short period of time, contract closeouts can often become backed up and delay documentation from being properly completed.<sup>28</sup> Further, these contracts occasionally require additional approval from a level above the contracting officer. The sample examined by the GAO included nine contracts that required this approval, but the GAO only found one that had actually received it.<sup>29</sup> Considering the comparatively straightforward operating environment of an economic crisis, the Recovery Act—with its emphasis on oversight—gives a sense of what the baseline failure rate may be for crisis

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<sup>22</sup> John P. Hutton and Cary B. Russell, “Contingency Contracting: Agency Actions to Address Recommendations by the Commission on Wartime Contracting in Iraq and Afghanistan.”

<sup>23</sup> Professional Services Council, “Statement for the Record of the Professional Services Council S. 2139, The Comprehensive Contingency Contracting Reform Act Of 2012,” (2012), 6.

<sup>24</sup> Dodaro, “American Recovery and Reinvestment Act: GAO’s Role in Helping to Ensure Accountability and Transparency Highlights.”

<sup>25</sup> Hutton and Russell, “Contingency Contracting: Agency Actions to Address Recommendations by the Commission on Wartime Contracting in Iraq and Afghanistan,” 10.

<sup>26</sup> Mackin, “Disaster Contracting. FEMA Needs to Cohesively Manage Its Workforce and Fully Address Post-Katrina Reforms.”

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

contracting. Within the grants and contracts awarded to broadband services under the Recovery Act, 14 percent were terminated before they were completed.<sup>30</sup>

Comptroller Gene Dodaro also raises a threat worse than regulatory noncompliance and termination, namely “[e]xperience tells us that the risk for fraud and abuse grows when billions of dollars are going out quickly.”<sup>31</sup> Compounding on the challenges of gaps in documentation, staff are exposed to higher rates of fraud without the ability to conduct system edit checks, or the time to identify problems prior to disbursement of funds.<sup>32</sup> Specifically within contingency contracting, fraud has been a very present issue. Many opportunities for fraud are created while operating under a time-stressed environment where the need for a solution is overwhelming.<sup>33</sup> 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; the Commission on Wartime Contracting argues that “[a]t 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.”<sup>34</sup>

#### 2.2.1 Past Reform Efforts Have Led to Increased Transparency

Due to inherent challenges, crisis contracting is an area where regulation and practice steadily evolve in reaction to past challenges. As with other challenges in defense acquisition, there is likely no final equilibrium solution. Instead, the system evolves and reprioritizes in response to the successes, or more often the failures, of past efforts. However, ongoing challenges do not mean that reform efforts were fruitless. The 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.”<sup>35</sup> 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.”<sup>36</sup>

The DoD has also made great strides in tracking crisis contract data through financial tracking systems and contingency contract databases, such as the “Synchronized Pre-deployment and

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<sup>30</sup> Mark L. Goldstein, “Recovery Act: USDA Should Include Broadband Program’s Impact in Annual Performance Reports,” (Washington, D.C.: U.S. Government Accountability Office, 2014).

<sup>31</sup> Dodaro, “American Recovery and Reinvestment Act: GAO’s Role in Helping to Ensure Accountability and Transparency Highlights,” 6.

<sup>32</sup> Dodaro, “American Recovery and Reinvestment Act: GAO’s Role in Helping to Ensure Accountability and Transparency Highlights.”

<sup>33</sup> Ibid.

<sup>34</sup> Thibault and Shays, “Commission on Wartime Contracting in Iraq and Afghanistan, Transforming Wartime Contracting Controlling Costs, Reducing Risks,” 1.

<sup>35</sup> Susan Gaffney and Barrie Tabin Berger, “Accountability and Transparency in the American Recovery and Reinvestment Act,” (Government Finance Review, 2009), 1.

<sup>36</sup> Ryan Holeywell, “Did the Stimulus Do Anything for Transparency?,” *Governing*, 2012, <http://www.governing.com/topics/mgmt/gov-did-the-stimulus-do-anything-for-transparency.html>, 2



Operational Tracker (SPOT).<sup>37</sup> Improving the ability of officials to make more informed award decisions, and track contract performance plays, an important role in mitigating the data gaps that can mask problems. However, unlike FPDS or the Recovery Act dataset, those tools are not available to the public.

In Laura Dickinson's book on wartime contracting, she explains 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 can 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.”<sup>38</sup>

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 civilians in danger. In addition, the public participation role is partially fulfilled by Inspector Generals. Nonetheless, Dickinson's argument suggests that there is value in making the vetted, and sometimes anonymized, contingency contracting data more accessible because “governments may outsource foreign affairs precisely to avoid oversight.”<sup>39</sup>

### 2.3 Factors that Aggravate or Mitigate the Risk of Crisis Contracting

The prior sections in this study have touched on a range of ways in which crisis contracting functions 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 tests were applied in choosing hypotheses of interest: 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?; And finally, 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 receive support from home contracting offices, which is called reach-back contracting.

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<sup>37</sup> Collin Swan, ““SPOT ON” Contracting : Improving Transparency and Contractor Personnel Monitoring in Contingency Operations,” *Journal of Contract Management*, 2012, 17.

<sup>38</sup> Laura A. Dickinson, *Outsourcing war and peace: preserving public values in a world of privatized foreign affairs* (New Haven: Yale University Press, 2011), 104.

<sup>39</sup> *Ibid.* 105

### 2.3.1 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 three percent of the DoD's contracts were awarded in a noncompetitive environment under the urgency exception, but this three percent still accounts for \$12.5 billion worth of funds. During this same time, the Department of State's contracting efforts under contingency contracting accounted for 12.5 percent of contract awards.<sup>40</sup> An early report after the Recovery Act debuted reported that at least \$7.8 billion was awarded to noncompetitive contracts.<sup>41</sup> That said, this use of noncompetitive contracts was partially a result of relying on existing contracts, as the most readily available contracts to extend were not necessarily competed before the economic crisis struck. Of the 32 percent of new contracts that were awarded through the Recovery Act, 11 percent were awarded without competition.<sup>42</sup> It is also important, however, to put these numbers in proper context by comparing them to rate of competition for the overall government contracting. In 2013 alone, 36 percent of funds for procurement of goods and services (approximately \$164 billion) were not competed.<sup>43</sup>

#### *Trade Off Between Speed and the Benefits of Competition*

The rate of competition for crisis-funded contracting is not unusually low; rather, it's the importance of competition that is the most relevant aspect for this study's focus. Higher prices can qualify as reasonable in disaster relief contracting due to the significant and immediate increase in demand for the 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, generators, etc.<sup>44</sup> Marvin extends this finding to other forms of crisis contracting, arguing that "[p]romoting competition—even in a limited form—increases the potential for quality goods and services at a lower price in urgent situations."<sup>45</sup> In addition to the risk of higher prices, shoddy products, or lower quality services, noncompetitive contracts are also at greater risk of misconduct when compared to the standard procurement process.<sup>46</sup>

Of course, the challenge is that competition creates the risk of delays. For contingency contracting, delays can undermine a unit's effectiveness, morale, and ability to complete its mission.<sup>47</sup> 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.<sup>48</sup> The economic

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<sup>40</sup> Martin, "Noncompetitive Contracts Based on Urgency Need Additional Oversight."

<sup>41</sup> Lipowicz, "Agencies spent billions of stimulus money on noncompetitive contracts."

<sup>42</sup> John Needham, "Recovery Act: contracting approaches and oversight used by selected federal agencies and states," (Washington, D.C.: U.S. Government Accountability Office, 2010).

<sup>43</sup> Martin, "Noncompetitive Contracts Based on Urgency Need Additional Oversight."

<sup>44</sup> Daniel I Gordon, "Emergency Acquisitions Guide," (Washington, D.C.: U.S Office of Management and Budget, 2014),

[https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/procurement\\_guides/emergency\\_acquisitions\\_guide.pdf](https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/procurement_guides/emergency_acquisitions_guide.pdf).

<sup>45</sup> Ibid. 1.

<sup>46</sup> Manuel, "Competition in Federal Contracting: An Overview of the Legal Requirements."

<sup>47</sup> McMillon, Contingency Contracts with the Department of Defense: A Comparative Analysis.

<sup>48</sup> Mackin, "Disaster contracting: FEMA needs to cohesively manage its workforce and fully address post-Katrina reforms."

recession presents an easier operating environment than responding to a disaster or implementing a contingency operation. However, urgency is still essential as the primary goal of the Recovery Act was to act quickly on high priority needs. With this goal in mind, contracting officers relied heavily on pre-existing contract vehicles. These contracting vehicles were easier to use, but had the downside that they presented the few opportunities for competition to arise.<sup>49</sup>

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 of 2010, approximately 80 percent of the noncompetitive contracts were awarded to small businesses through these guidelines.<sup>50</sup> Similarly, natural disaster contracting further allows for steering noncompetitive contracts to local-firms in the affected area, which can aid in economic recovery.<sup>51</sup> Richard Bontjer, Jennifer Holt, and Susan Angle applied this idea to contingency contracting when they studied the impact of such measures in Afghanistan. In this case, using small or local businesses to carry out work allowed development money to impact the community in two ways: first, it provides the services needed and second, it creates jobs and generates revenue. These effects ultimately reduced the likelihood of the community relapsing into conflict because of the sustainable marketplace that was created.<sup>52</sup>

While a range of waivers are available, in some circumstances the use of non-competitive awards violates the rules. This competition-first 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.<sup>53</sup> In the case of disaster relief, FAR regulations are not always followed. After a new competitive requirement was enacted, Federal Emergency Management Agency (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 to go unreported in noncompetitive disaster relief contracts in FY 2013.<sup>54</sup>

Competition advocates do acknowledge the need to tradeoff between multiple priorities, but given the benefits of even limited competition, they nonetheless urge prioritizing maximizing competition within those constraints.<sup>55</sup> The Commission on Wartime Contracting similarly

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<sup>49</sup> Needham, "Recovery Act: contracting approaches and oversight used by selected federal agencies and states."

<sup>50</sup> Ibid.

<sup>51</sup> Gordon, "Emergency Acquisitions Guide."

<sup>52</sup> Richard Bontjer, Jennifer Holt, Susan Angle, "Spending the Development Dollar Twice: The Local Economic Impact of Procurement in Afghanistan," (Peace Dividend Trust, 2009), 39.

<sup>53</sup> Gordon, "Emergency Acquisitions Guide."

<sup>54</sup> Mackin, "Disaster contracting: FEMA needs to cohesively manage its workforce and fully address post-Katrina reforms."

<sup>55</sup> Department of Defense, "Contingency Contracting: A Framework for Reform," (Washington, D.C.: Office of Inspector General, 2012, Update 2016).

believed that there was room for more competition, and it proposed that the government should “Set and meet annual increases in competition goals for contingency contracts.”<sup>56</sup>

#### *Duration Limits on Noncompetitive Contracts*

As was discussed in the section *Limitations on Crisis Contracting*, noncompetitive contracts that use the urgency exception are limited to only one year in order to reduce the risk of overspending.<sup>57</sup> With that said, the cost and benefits of shorter contracts are disputed.<sup>58</sup> Reform efforts after Hurricane Katrina resulted in an even stricter 150 day limit to disaster relief contracts awarded in a noncompetitive environment.<sup>59</sup> Contingency contracting, on the other hand, is allowed to award contracts for up to a year in a noncompetitive environment.<sup>60</sup>

Upon the GAO’s review of noncompetitively awarded contracts, more than half exceeded the 150-day time limit. This is not necessarily a problem, because the agency can waive that requirement under certain conditions. However, in the case of each of the contracts that violated the time limit, FEMA did not sign off on the extension. Some even went beyond the regulatory limits by a year and a half.<sup>61</sup>

#### 2.3.2 *Undefinitized Contract Actions*

Undefinitized contract actions (UCAs) are contracts that differ from standard procurement methods by allowing contract performance to start without defining all the terms of the contract.<sup>62</sup> In crisis funding situations, these contracts can be seen as advantageous because they enable the immediate delivery of critically needed goods and services while many contracting details are worked out later.<sup>63</sup> Circumstances created by crisis funding certainly qualify as circumstances of urgent need that can also allow for UCAs.<sup>64</sup> Nonetheless, this flexibility comes from removing contracting safeguards and thus is inherently risky. In addition, the competition waivers discussed earlier can apply to UCAs, which can compound the risk.

UCAs are cost reimbursable contracts until definite terms are established, which allows the vendor to be reimbursed for all reasonable contract costs up until the point of defining the

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<sup>56</sup> Thibault and Shays, “Commission on Wartime Contracting in Iraq and Afghanistan, Transforming Wartime Contracting Controlling Costs, Reducing Risks,” 10.

<sup>57</sup> Martin, “Noncompetitive Contracts Based on Urgency Need Additional Oversight.” Department of Defense, “Contingency Contracting : A Framework for Reform.”

<sup>58</sup> Professional Services Council, “Testimony on The Comprehensive Contingency Contracting Reform Act of 2012.”

<sup>59</sup> Mackin, “Disaster contracting: FEMA needs to cohesively manage its workforce and fully address post-Katrina reforms.”

<sup>60</sup> Department of Defense, “Contingency Contracting: A Framework for Reform.”

<sup>61</sup> Mackin, “Disaster contracting: FEMA needs to cohesively manage its workforce and fully address post-Katrina reforms.”

<sup>62</sup> Ann Calaversi-Barr, U.S. Government Accountability Office, “Use of Undefinitized Contract Actions Understated and Definitization Time Frames Often Not Met,” (2007). Department of Defense, “Defense Federal Acquisition Regulation Supplement: Part 217 – Special Contracting Methods,” Office of Acquisition, Technology, and Logistics, [http://www.acq.osd.mil/dpap/dars/dfars/pdf/current/20161222/217\\_74.pdf](http://www.acq.osd.mil/dpap/dars/dfars/pdf/current/20161222/217_74.pdf), 74-76.

<sup>63</sup> Federal Audit Executive Council, “Undefinitized Contract Actions,” 2010, <https://www.ignet.gov/sites/default/files/files/caguideuac.pdf>.

<sup>64</sup> Ibid.

contract terms.<sup>65</sup> While the initial award of the contract can be obligated without set terms, the FAR still requires that within 180 days or when 40 percent of the work has been completed, the contract terms must be defined.<sup>66</sup> UCAs are to have, at the least, a “not to exceed” price amount stated at the beginning and the vendor, not the customer, is responsible for determining a “reasonable” price for this initial work. However, upon awarding the UCA, up to 50 percent of the “not to exceed” amount can be paid out without any approval or review.<sup>67</sup>

Unfortunately, UCAs also create a very high risk of overpaying for goods and services and can, at times, make the contracting officer beholden to the vendor.<sup>68</sup> In cases of disaster relief contracting, they present an even higher risk of cost overruns. Gordon mentions that historically, when natural disasters occur, the price of needed materials significantly increases as the demand for these products skyrockets. 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.<sup>69</sup>

In the past, 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 they found that other contracting methods would have both been sufficient and promoted cost savings. In 2007, 60 percent of these cases failed to definitize contract award terms by the 180-day FAR regulation.<sup>70</sup> Although still a concerning number, that percentage had fallen to 51 percent by 2008. Furthermore, in a separate study the GAO found that out of 83 reviewed UCAs, 66 resulted in paying the awardee 45 percent or more of the “not to exceed” estimate.<sup>71</sup>

From 2001 to 2005, DoD obligations awarded under UCAs increased from \$5.98 billion to \$6.53 billion.<sup>72</sup> UCA data collection was not centralized within the DoD, leading to a significant lack of data to properly evaluate the true costs of contracts under UCA conditions.<sup>73</sup> Since 2007, the DoD has taken measure to require centralized reporting of UCAs, but the GAO cast doubt on the efficacy of these requirements when it found in 2010 that many UCAs are not being properly

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<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> Calaversi-Barr, “Use of Undefined Contract Actions Understated and Definitization Time Frames Often Not Met.”

<sup>68</sup> Thibault and Shays, “Commission on Wartime Contracting in Iraq and Afghanistan, Transforming Wartime Contracting Controlling Costs, Reducing Risks.”

<sup>69</sup> Gordon, “Emergency Acquisitions Guide.”

<sup>70</sup> Calaversi-Barr, “Use of Undefined Contract Actions Understated and Definitization Time Frames Often Not Met.”

<sup>71</sup> John P. Hutton, “Defense contracting: DOD has Enhanced Insight into Undefined Contract Action Use, but Management at Local Commands Needs Improvement,” (Washington, D.C.: U.S. Government Accountability Office, 2010).

<sup>72</sup> Calaversi-Barr, “Use of Undefined Contract Actions Understated and Definitization Time Frames Often Not Met,” 7.

<sup>73</sup> Ibid.

reported to the centralized offices.<sup>74</sup> On average, DoD UCA contracts overran the 180 day definitization requirement by two months.<sup>75</sup> At the time, the Air Force was the only branch that required its contracting officers to report UCAs, but even despite reporting requirements, the GAO found nine UCA contracts in the Air Force that overran the 180 day limit by at least a full year. While there are justifications that allow DoD to waive this 180 day requirement, the GAO only found two of the contingency contracts met the requirements necessary to waive the regulation in 2007.<sup>76</sup>

The Office of the Inspector General had similar findings to the GAO on UCAs in 2012. Out of 251 UCAs reviewed, the IG's Office found that 132 cases failed to meet the timeline for definitization.<sup>77</sup> The violations discovered extended beyond overrunning time limits. Almost half of the UCAs reviewed had contractors making profit above the allowable limits. 64 cases involved payments "significantly above" what the rules allow.<sup>78</sup> In short, many of the regulations meant to contain UCAs have been found to be stronger on paper than they are in practice.

### 2.3.3 Reach-back Contracting

At least as important as the methods used in contingency contracting are the contracting officers charged with managing the system. McMillon reviewed four different military contingencies since the end of the Cold War and found that "[c]onsistent 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."<sup>79</sup> 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 reached similar conclusions, recommending that the government "[p]rovide adequate staffing and resources, and establish procedures to protect the government's interests."<sup>80</sup>

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. A prominent implementation of this idea is reach-back contracting, a unique method that allows contracting officers in the field to "reach-back" to domestic contracting offices for support in contingency operations.<sup>81</sup> Though not an entirely novel concept, in 2007, the Reach-back Division was officially set up to

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<sup>74</sup> Hutton, "Defense contracting: DOD has Enhanced Insight into Undefined Contract Action Use, but Management at Local Commands Needs Improvement."

<sup>75</sup> Calaversi-Barr, "Use of Undefined Contract Actions Understated and Definitization Time Frames Often Not Met."

<sup>76</sup> Ibid.

<sup>77</sup> Department of Defense, Office of Inspector General, "Contingency Contracting: A Framework for Reform 2012 Update, 2012, <http://www.dodig.mil/audit/reports/fy12/dodig-2012-134.pdf>."

<sup>78</sup> Department of Defense, Office of Inspector General, "Summary Report on DoD's Management of Undefined Contractual Actions," 2012, <http://www.dodig.mil/audit/reports/fy12/dodig-2012-039.pdf>.

<sup>79</sup> McMillon, "Contingency Contracts with the Department of Defense: A Comparative Analysis," 23.

<sup>80</sup> Thibault and Shays, "Commission on Wartime Contracting in Iraq and Afghanistan, Transforming Wartime Contracting Controlling Costs, Reducing Risks", 4, 11.

<sup>81</sup> Luc Dunn, "Reachback Contracting Can Provide A Wide Variety Of Advantages," Association of the United States Army, January 04, 2016,.

offer contracting support to those in theatre in Kuwait.<sup>82</sup> Within three years, the division grew to a team of 62 people supporting contracting officers in the field in Afghanistan, Iraq, Kuwait and Qatar. After years of successful trials and results, the Reach-back Division grew to include the Air Force and then added members from the Expeditionary Contracting Command Contingency Contracting Team.<sup>83</sup>

Reviews of this approach were positive. Commanding General Michael Hoskin of U.S. Army Expeditionary Contracting Command referred to reach-back as a “very effective tool” in the contracting officers’ arsenal. Reach-back contracting can result in fewer deployed contracting officers because the workload is shifted back to domestic contracting offices.<sup>84</sup> Utilizing reach-back methods, contracting officers could improve their strategic buying and develop greater expertise within their source selection.<sup>85</sup> Furthermore, reach-back contracting can provide continuity to workflow management and create better standardization for contingency contract reporting.<sup>86</sup>

The intention in developing reach-back contracting and setting up the Reach-back Division was to help ease the challenges faced by field contracting officers in their attempts to support the warfighter.<sup>87</sup> Furthermore, the Reach-back Division was able to provide support from the Financial Services Division, Contracting Policy, Property Expertise, and the Army Sustainment Command Counsel. Specializing in logistics, warehousing, transportation, base operations, security, counterinsurgency, telecommunications service, and supply acquisitions, the Reach-back Division provided needed support to contingency contracting.<sup>88</sup>

#### *Capabilities of Reach-back Contracting*

In its review of reach-back 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.<sup>89</sup> Reach-back contracting has the potential to lower costs and reduce risks by not having to incur the transportation and hazardous duty pay required for contracting officers deployed to the field. Workflow continuity could help increase the efficiency as well, as the contracting officers do not experience the same amount of turnover that deployed CCOs experience. Reach-back has been used in a multitude of ways and has been successfully implemented in a range of contracts from small commodity purchases to cradle to grave large contract support.<sup>90</sup>

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<sup>82</sup> Liz Adrian, “Reachback Support: Providing stateside support to deployed contracting elements,” Report (Fort Belvoir, VA: ACC Today, 2010).

<sup>83</sup> Ibid.

<sup>84</sup> Dunn, “Reachback Contracting Can Provide A Wide Variety Of Advantages.”

<sup>85</sup> John A. Ausink, Laura Castenada, and Mary Chenoweth, “Airforce Contingency Contracting: Reachback and Other Opportunities for Improvement,” (Rand Corporation, 2011).

<sup>86</sup> Dunn, “Reachback Contracting Can Provide A Wide Variety Of Advantages.”

<sup>87</sup> Angela Calhoun and Marcia Larssen, “Implications and Constraints of Fiscal Laws Contingency Contracting,” (Monterey, CA: Naval Postgraduate School, 2013).

<sup>88</sup> Ibid.

<sup>89</sup> Ausink, Castenada, and Chenoweth, “Reachback and Other Opportunities for Improvement.”

<sup>90</sup> Ibid.

Although reach-back contracting methods can be used in various applications, the RAND study noted that it provides the greatest benefit when used for commodities, highly technical items, the use of a government-wide purchasing card, theatre-wide purchases, and long-term contracts.<sup>91</sup> Conversely, in the case of urgent and local projects, many turned away from the benefits that reach-back practices could offer. Limitations can also arise from policies applied to specific contingencies: the *Iraqi First* and *Afghan First* policies prevented field contracting officers from utilizing reach-back practices due to the local requirements.<sup>92</sup>

If reach-back would have been utilized in FY2008 for the areas the RAND study highlighted as receiving the most benefit, 40 field contracting officers would not have needed to have been deployed. Beyond reducing deployments, reach-back methods provide a greater knowledge-base in contracting expertise and a continuity of the contracting officials, since they are US-based and not deployed. The RAND study concludes that when used in the appropriate categories, reach-back contracting can mitigate risk, save cost, and provide greater efficiency in contingency contracts.<sup>93</sup>

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<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.



## 3 Methodology

### 3.1 FPDS

For nearly a decade, the Defense-Industrial Initiatives Group (DIIG) has issued a series of analytical reports on federal contract spending for national security across the government.<sup>94</sup> These reports are built on FPDS data, presently downloaded in bulk from [USAspending.gov](http://USAspending.gov). DIIG now maintains its own database of federal spending, including years 2000–2016. For this report, however, the study team primarily relied on FY2000–2016, and focused on 2012–2016 for Contingency data because funding account data was not reliably available before that years.

#### *Inherent Restrictions of FPDS*

Since the analysis presented in this report relies almost exclusively on FPDS data, it incurs four notable restrictions.

First, contracts awarded as part of overseas contingency operations are not separately classified in FPDS. As a result, we do not distinguish between contracts funded by base budgets and those funded by supplemental appropriations.

Second, FPDS includes only prime contracts, and the separate subcontract database (Federal Subaward Reporting System, FSRs) has historically been radically incomplete; only in the last few years have the subcontract data started to approach required levels of quality and comprehensiveness.<sup>95</sup> Therefore, only prime contract data are included in this report.

Third, reporting regulations require that only unclassified contracts be included in FPDS. We interpret this to mean that few, if any, classified contracts are in the database. For the DoD, this omits a substantial amount of total contract spending, perhaps as much as 10 percent. Such omissions are probably most noticeable in R&D contracts.

Finally, classifications of contracts differ between FPDS and individual vendors. For example, some contracts that a vendor may consider as services are labeled as products in FPDS and vice versa. This may cause some discrepancies between vendors' reports and those of the federal government.

#### *Constant Dollars and Fiscal Years*

All dollar amounts in this data analysis section are reported as constant FY 2014 dollars unless specifically noted otherwise. Dollar amounts for all years are deflated by the implicit GDP deflator calculated by the U.S. Bureau of Economic Analysis, with FY2014 as the base year,

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allowing the CSIS team to more accurately compare and analyze changes in spending across time. Similarly, all compound annual growth values and percentage growth comparisons are based on constant dollars and thus adjusted for inflation.

Due to the native format of FPDS and the ease of comparison with government databases, all references to years conform to the federal fiscal year. FY2014, the most recent complete year in the database, spans from October 1, 2013, to September 30, 2014.

### 3.1.1 Reach-back Contracting

Specifically identifying reach-back contracts is analytically challenging. There are thousands of contracting offices, and the descriptors and surrounding data is often arcane. As a proxy, the project looked at what percentage of a contracting office's obligations go to officially labeled contingency contracts—a measure also used in producing the OCO contracting score. Those contracting offices with 25 percent or more of their obligations going to labeled contingency contracts are called “Contingency-Contracting Offices” in the two figures below. The remainder of the contracting offices have more varied portfolios and thus are relevant to the concept of Analysis.

## 3.2 Identifying the Datasets

This study involves multiple data sets: contingency contracts, disaster relief, and the Recovery Act. For the latter two CSIS relies on identification work already done by the government. This manual classification of contingency contracts is a response to the gaps in the underlying data. The Commission on Wartime Contracting reported that spending on contracts and grants executed in Iraq and Afghanistan in support of operations in those countries is 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 could only account for less than \$30 billion in obligations.

The study team presented a contingency dataset, based on a point scale, at the Acquisition Research Symposium. Based on conversations after the presentation, the study team came to believe that the dataset may overestimate the extent of the drop-off in contingency contracting in 2015 and 2016.<sup>96</sup> To increase the transparency and robustness of the contingency classification, the study team consulted with other experts and chose to adopt a decision tree methodology, which allows for the display of the underlying data at each step of the process. Rather than giving different pieces of information weight, the first five steps proceed in order, one criteria at a time. Contradictions are resolved in favor of the first criteria, each subsequent step only assigns unlabeled transactions, already labeled transactions are not reclassified.

The report still used a scoring system, which is still included in step six of the methodology. This paper also updates the ways these scores are used, applying the measures directly rather than grouping them into bands to translate them into points (for example, 4 points for a transaction

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<sup>96</sup> This feedback included the information that internal DoD reporting does label OCO funding streams on a transactional level. The study team was unsuccessful in obtaining that information.

taking place in Iraq, 0 points for one domestically). This change allows direct observation of the underlying values in graphical form and is less dependent on intermediary steps which are not as visible to readers. In the graphs below, note that the y-axis varies between rows. The reasoning this approach was chosen was because often the criteria only applies to 1% or less of the dataset, which would make the data of interest challenging to observe.

### 3.2.1 Decision Tree Step 1: Is the contract directly labeled in FPDS.

These initial measures rely on labeling done by government contracting officers that directly label transactions or contracts. The labels are considered one at a time, in order to offer greater transparency as to the quality of the underlying data.<sup>97</sup>

#### *Step 1A Is this a Recovery Act labeled contract?*

#### **Does the contract appear on the Recovery Act list?**

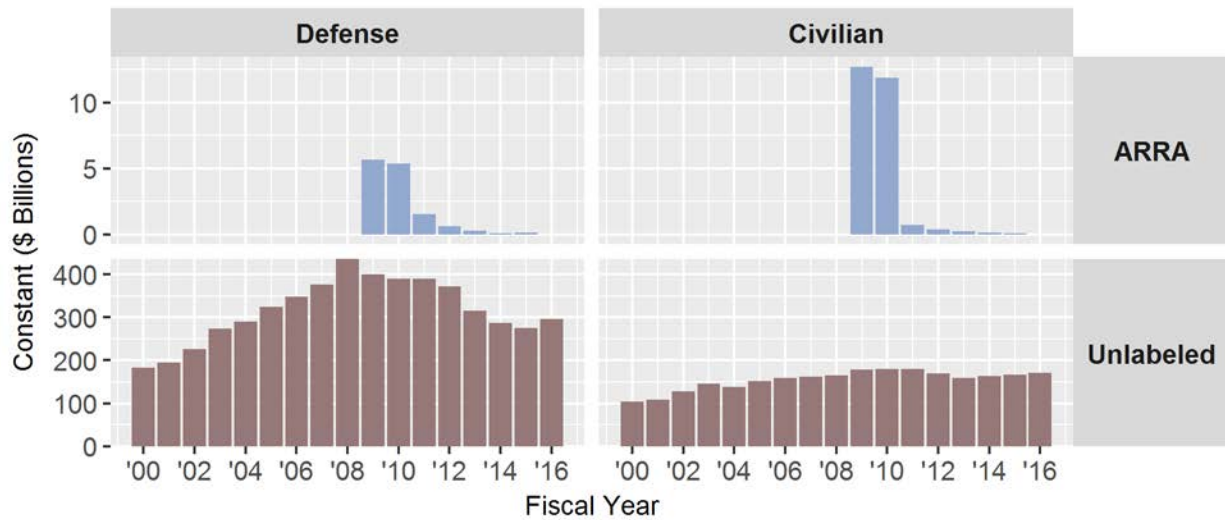
- If yes, classify as ARRA.
- If no, go to step 1B

The contracts for the Recovery Act are not directly identified in the version of FPDS downloadable through USAspending.gov. However, thanks to government reporting elsewhere, they have already been identified based on their procurement identifiers, as part of an extensive tracking effort. The study team imported these identifiers into the CSIS contract database. This was taken as the first step, because the direct identification by contract identifiers offers a high degree of precision. Figure 1 shows that the stimulus contract spending was overwhelmingly obligated in 2008 and 2009. Also in line with domestic economic focus, civilian spending exceeded defense spending by more than a multiple of two.

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<sup>97</sup> The first iteration of this paper also included whether the transaction had received certain exceptions to the requirement to report vendor information. However, when using the closer examination enabled by the decision tree, the study team found that total expenditure for contracts receiving relevant exceptions summed on less than \$100 million over the study period. As a result, this criteria did not add enough information to justify the complexity of including it. The reason for this paucity of data may relate to a failure of conversion from a prior coding of the variable. Letter codes have billions of dollars obligated under them, but recent iterations of the FPDS codebook and online tool only cover numerical codes.

Figure 1 Annual Recovery Act Contract Obligations by Defense or Civilian, 2000-2016



Source: FPDS; CSIS analysis

Step 1B is this transaction a Contingency or Humanitarian Peacekeeping Operation?

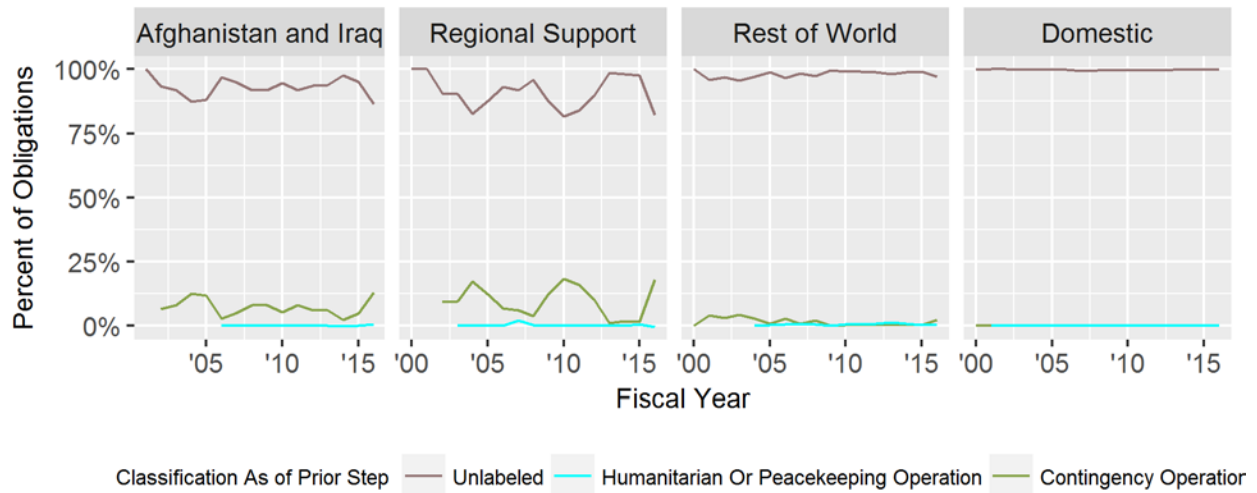
**How does the Contingency, Humanitarian, or Peacekeeping Operation column classify the transaction?**

- If “Contingency Operation As Defined In 10 U.S.C. 101(A)(13),” classify as OCO  
If “Humanitarian Or Peacekeeping Operation As Defined In 10 U.S.C. 2302(8)” classify as OCO.
- If neither, go to step 1C.<sup>98</sup>

This field directly references the statutes discussed in section 2.1 and is trusted to positively identify crisis contracts. However, as is shown in Figure 2, it only captures a fraction of the spending in countries such as Iraq and Afghanistan, where the study team is comfortable considering all contracts to be contingency contracts.

<sup>98</sup> In early years, transactions that are not in either of the first two categories are typically simply left unlabeled. In later years, almost all contracts are labeled in the first two categories or as “Not Applicable.” However, given the number of “Not Applicable” contracts performed in Iraq and Afghanistan, the study team is not confident in that determination and groups it together with Unlabeled.

Figure 2 Annual Contract Market Share Classified as Contingency or Humanitarian Operations by Theater, 2000-2016



Source: FPDS; CSIS analysis

Note: Transaction with Unlabeled Place of Performance are excluded from the graph.

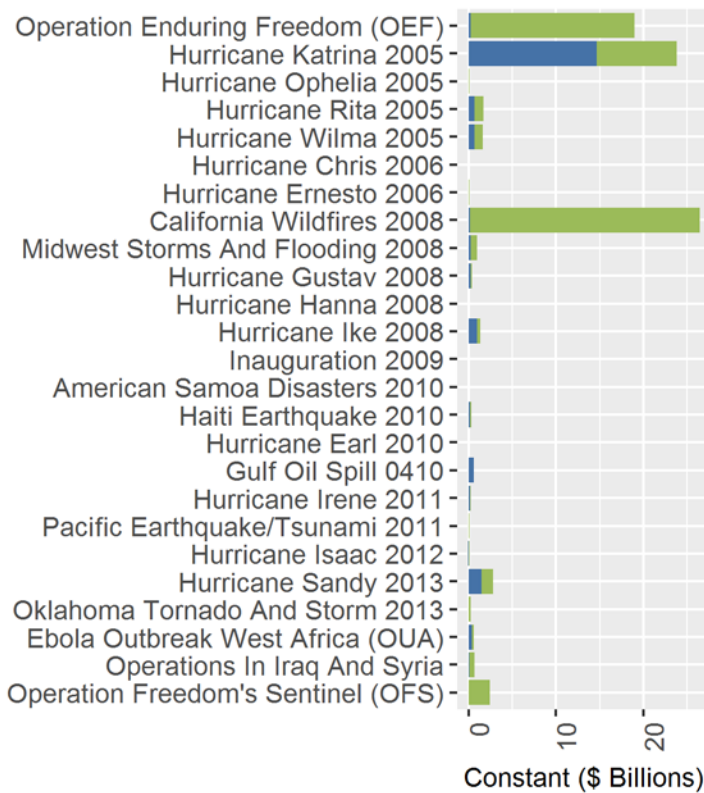
Step 1C Is the National Interest Action Code a Disaster or a Contingency Operation?

**How does the Contingency, Humanitarian, or Peacekeeping Operation column classify the transaction?**

- If the National Interest Action Code classifies the transaction as supporting a contingency operation, humanitarian operations such as the response to Ebola in West Africa, classify as OCO.
- If the National Interest Action Code classifies the transaction as supporting a disaster, classify it as Disaster.
- If the National Interest Action Code classifies the entry as the 2009 Inauguration, none, or unlabeled, go to step 1D.

The *National Interest Action* field is the first criteria that includes multiple crisis types, in this case natural disasters as well as contingencies. Only those National Interest Actions pertaining to contingencies by the U.S. military were labeled as contingency contracts.

Figure 3 Obligations by National Interest Action Code



Source: FPDS; CSIS analysis

National Interest Action Defense

The full list of National Interest Action Codes is displayed in Figure 3 in historical order. They are managed by the Department of Homeland Security and have tracked 20 disasters throughout the study period. Examination of the list reveals a significant coding error. The 2008 California wildfires were a terrible disaster and did have a national guard response. However, they were not on the same order of magnitude as Hurricane Katrina.<sup>99</sup> Examination of the underlying data found \$26 billion in transactions taking place before 2008 with only a quarter billion in the years during and after the disaster occurred. The study team treated these premature classifications as unlabeled.

For list includes four contingency operations for each vast majority of transactions were classified in 2012 or later. This holds true even for Operation Enduring Freedom, which had begun nearly a decade before significant spending is tracked.<sup>100</sup>

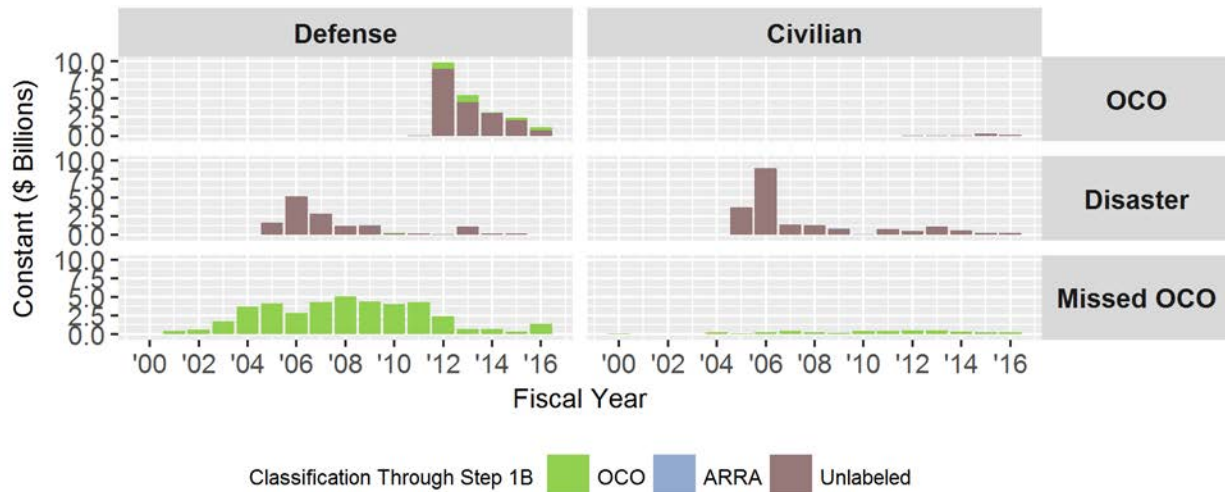
The line between disasters and operations is not always clear cut, the study team followed limited contingency coding to those which were explicitly referred to as operations, including Operation United Assistance, the military lead humanitarian response to the Ebola Outbreak in West Africa. The 2009 inaugural was also tracked by national interest action codes, but it is excluded from both figures and the sample because large, orderly, peaceful events which are planned well in advance do not typically qualify as crisis spending.

<sup>99</sup> “Statewide, Schwarzenegger said, the fires have burned 26,800 acres and destroyed 64 structures. About 3,100 personnel, including National Guard members, are using 321 fire engines and 22 helicopters to fight the blazes.” CNN, “Thousands Who Fled Fires May Be Able to Return, Official Says - CNN.com,” Cable News Network, October 4, 2008, <http://www.cnn.com/2008/US/10/14/calif.wildfires/>.

<sup>100</sup> Operation Enduring Freedom started with the 9/11 attacks. However, according to the FPDS codebook, “[t]his code is valid for actions signed starting 10/01/2011 through 12/31/2014” “The FPDS-NG User’s Manual and Data,” 65, accessed September 30, 2017, [https://www.fpds.gov/downloads/Manuals/FPDS\\_NG\\_Users\\_Manual\\_V1.4.pdf](https://www.fpds.gov/downloads/Manuals/FPDS_NG_Users_Manual_V1.4.pdf).

Perhaps the most surprising characteristic of the National Interest Action codes is how little it aligns with the Contingency or Humanitarian Peacekeeping Operation data. In Figure 4 below, the bars are colored based on the classification in steps 1A and 1B. Notably, the first row of the chart is overwhelmingly entirely unlabeled with the overlap limited to the fraction in green. The second row, Disaster, is also unlabeled, but that is not a problem, because this is the first time disaster transactions have been labeled. The third and final row, Missed OCO, includes all transactions labeled in step 1B that were not classified by the National Interest Action code.

Figure 4 Annual Labeled Crisis Contracts Obligations by National Interest Action Code



Source: FPDS; CSIS analysis

Note: Inauguration 2009 is excluded from the graph as are transaction labeled after step 1C.

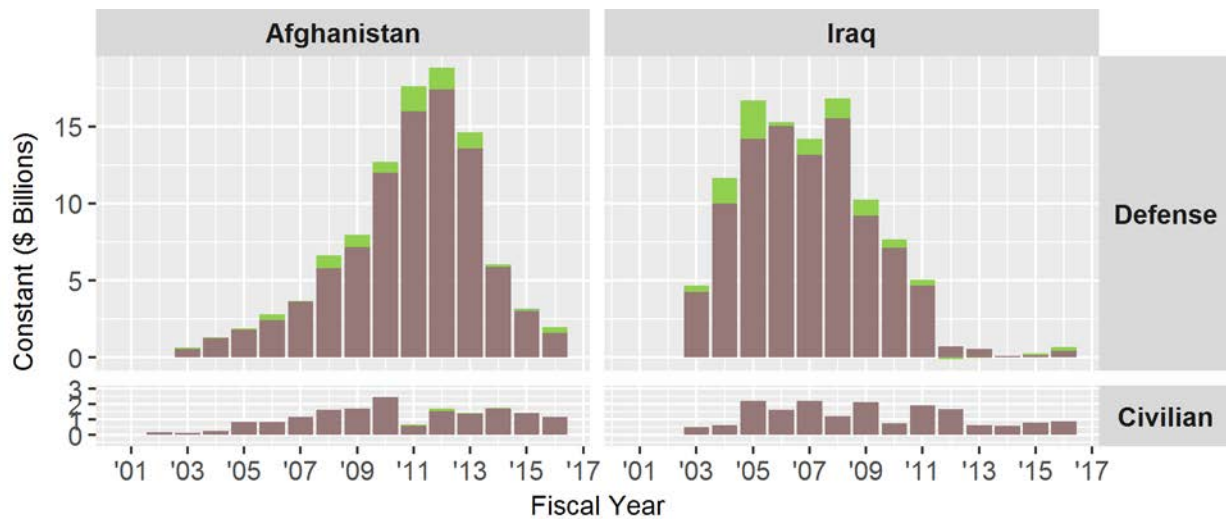
### 3.2.2 Decision Tree Step 2: Contract performed in Iraq or Afghanistan?

#### Is the place of performance for the transaction Iraq or Afghanistan?

- If yes, classify the transaction as OCO
- If no, go to step 3.

Both Iraq and Afghanistan were challenging operational environment for the entire relevant period of this study. While the wars did not start precisely at the beginning of this century, as Figure 5 shows, no significant contracting was taking place in either country prior to the onset of operations. The study classifies both civilian and defense operations taking place in either country. Only of a fraction of transactions occurring in both countries are classified as contingency-related by the criteria in step 1, though the minimal slices of green in the 2<sup>nd</sup> row shows that civilian transactions are less likely to be classified than military transactions. The decision to include civilian contracts is made on research rather than statutory grounds. All contracts in Iraq and Afghanistan faced sufficient challenges and urgency requirements so as to be analytically interesting.

Figure 5 Annual Contract Obligations in Iraq and Afghanistan



Source: FPDS; CSIS analysis

### 3.2.3 Decision Tree Step 3: Does this contract violate the OMB Procurement and R&D criteria?

1. Is this contract funded by Procurement or RDT&E accounts?
2. Is the anticipated contract duration of more than 1 year?

#### Does the contract meet both of these criteria?

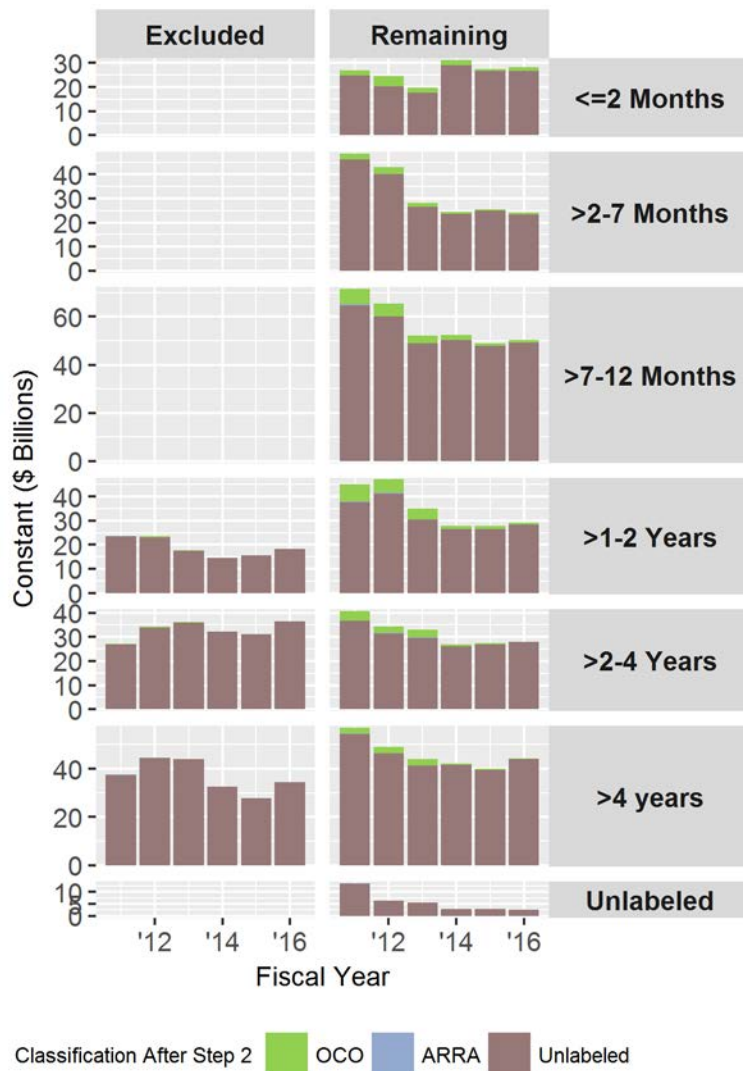
- If yes, exclude from dataset.
- If no, got to step 4.

OCO funding is intended for support of operations, not for longer term development projects. As a result, the OMB guidance excludes longer term procurement and R&D projects from qualifying for OCO funding.<sup>101</sup> While the resulting systems may well be used in the ongoing wars, the larger principle at stake is that OCO spending is meant for difficult to predict operational spending and not the traditional DoD acquisition system. Because this guidance applies to DoD funding accounts, Figure 6 below only includes DoD contract spending.

Figure 6 Annual DoD Contract Obligations by Initial Duration and OMB Procurement and RDT&E test

<sup>101</sup> Sharon L. Pickup and Asif A. Khan, “Overseas Contingency Operations: Funding and Cost Reporting for the Department of Defense,” 14.





Gratifyingly, there is no significant obligations classified by the previous measures that fails the OMB test. Figure 6 uses a shorter time frame than prior graphs because the information on treasury accounts is sparse until 2011 and not reliable until 2012.

The distribution of green contingency contracts in each of the labeled time increments also shows that contingency contracts see a fair amount of variety in terms of duration. For this graph, the criteria used is initial ultimate duration, which is to say the maximum amount of time a contract is expected to last when it is signed. In practice, many contracts are shorter, but the long potential maximum length of many of these contracts is somewhat surprising, given the range of regulatory approaches seeking to limit the length of contracts started in response to emergencies.

### 3.2.4 Decision Tree Step 4: Does the transaction’s product or service code or transaction’s contracting office have no history of contingency contracting

*Step 4A Does the transaction’s contracting office have no history of contingency contracting?*

#### **Does contract consistently employ product or service codes with at least \$1 billion in obligations, but no labeled contingency contracts?**

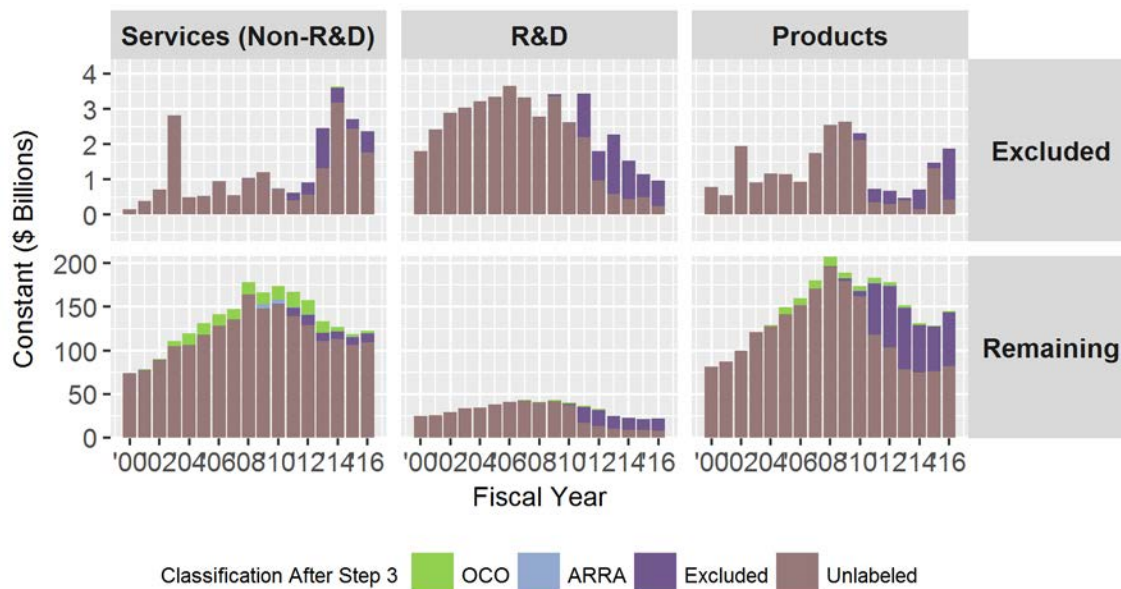
- If yes, exclude from dataset
- If no, go to step 5.

This criteria is based on the study teams assessment that if a product or service code is never used in any official labeled-contingency contracts, it is unlikely to be used in any unlabeled ones either.<sup>102</sup> That said, product or service codes are the most granular means for describing a

<sup>102</sup> Officially labeled contracts refers to those contingency contracts that were identified in section 4.1. Thus, those contracts that were performed in Iraq and Afghanistan but were not officially labeled as contingency were not included in this test.

contract’s content and for the less commonly used codes, they may simply have avoided labeled contingency transactions due to their rarity. To mitigate this possibility, this test only includes contracts with at least a billion in spending during the study period. In practice, Figure 7 shows that less than \$5 billion a year is spent in such codes annually, showing that contingency contracting touches a wide range of products and services.

Figure 7 Annual Defense Contract Obligations by Excluded Product or Service Codes



Source: FPDS; CSIS analysis

Note: Unlabeled Product or Service Codes are Excluded

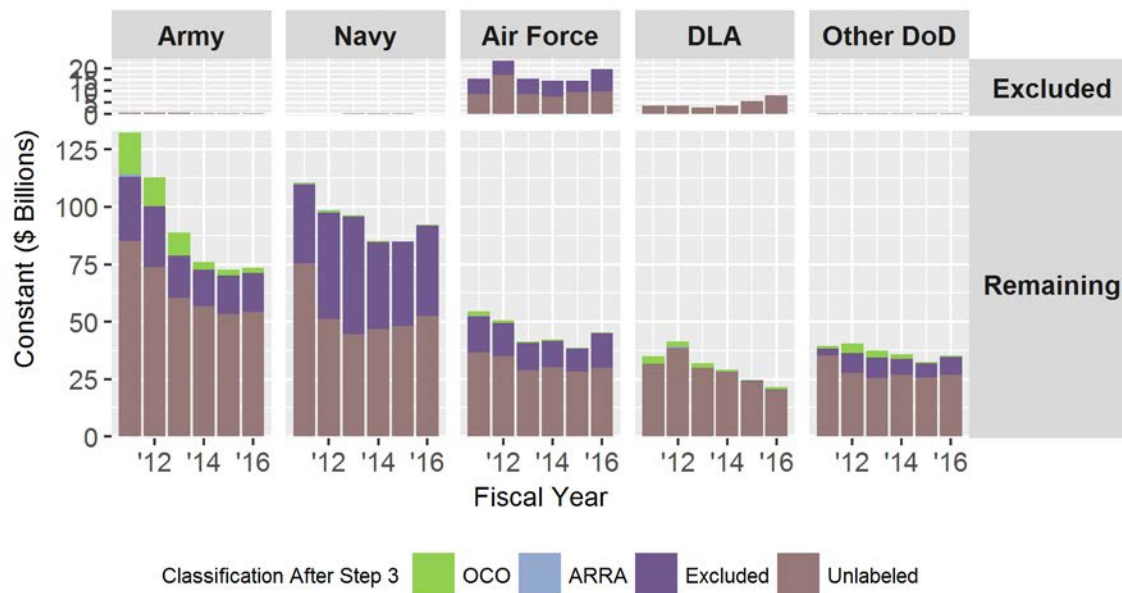
Step 4B Does the transaction’s product or service code have no history of contingency contracting?

**Does the contract consistently draw from contracting office with at least \$1 billion in obligations over the period but no labeled contingency contract?**

- If yes, exclude from dataset
- If no, go to step 5.

The same exclusion process is then applied to contracting offices, the most granular unit available in FPDS for identifying the part of the government managing a contract. In this instances, the Air Force proved to have the most contracting offices that completely avoided official contingency spending. While the fact that almost no Army offices were excluded is to be expected, it is somewhat surprising that almost all Naval contracting offices had some contingency spending.

Figure 8 Annual Defense Contract Obligations by Excluded Contracting Office



Source: FPDS; CSIS analysis

### 3.2.5 Decision Tree Step 5: Calculate the contracts contingency likelihood score.

This score is found by calculating three values and evaluating whether each surpasses a threshold value. This is an abductive test, put colloquially steps 5 and 6 follow the idea that is something looks like a duck, swims like a duck, and quacks like a duck, it is probably a duck. The three tests used here whether it is paid for like contingency contracts, if what is bought is common among contingency contracts, and if the buyer awards a significant portion of contingency contracts.

Each of the scores below are a yes/no determination based on whether the metric reaches a threshold value, typically 25 percent. The threshold value is set at a point where 70 to 80 percent of contingency obligations exceed the threshold, 5 percent or less of excluded transactions exceed the threshold, and less than 25 percent of unlabeled transactions exceed the threshold. The criteria for contracting office and product or service code both take the square root of the percentage of labeled contingency spending. This transformation is applied because, unlike OCO spending, there is a significant false negative rate for labeled contingency contracts, which is why this elaborate exercise is necessary.<sup>103</sup>

<sup>103</sup> Taking the square root of the percentage means small differences at the bottom end of the scale matter, e.g. the square root of 0.1 percent is 1 percent and the square root of 0.25 percent is 5 percent.

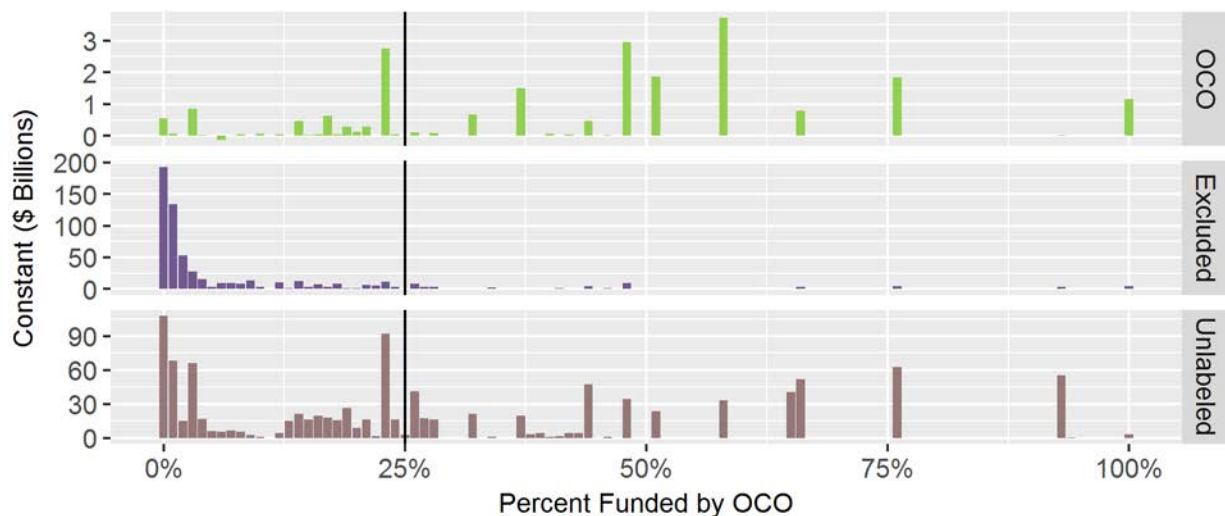
### Step 5A Calculate the Funding Source Score

**The Funding Source Score is the percent of the transactions annual funding account enacted budget that was made up by OCO spending.**

- If the Funding Source Score is greater than or equal to 25 percent, then the transaction receives 1 point.
- If the Funding Source Score is less than 25 percent, then the transaction receives 0 points.

This percentage is calculating by looking at each funding account in the comptroller’s budget and determining what percentage of the funding comes from OCO in that year. As shown in Figure 9, most transactions draw from funding accounts with less than a quarter of their funding from OCO. The vertical black line is the threshold chosen for this metric, obligations to the right of the line qualify, those to the left do not. The upper row shows that by nearly seventy percent of contingency expenditures are paid for by funding accounts that draw at least a quarter of their funds from OCO. By comparison, only about 13 percent of unlabeled transactions and less the 5 percent of excluded contracts do the same. The large gaps in the upper row suggests that there are only a small number of funding accounts that fit this bill, but that a large portion of funding comes from them.

Figure 9 Distribution of Funding Account Scores, Defense Contracts 2012-2016



Source: FPDS; CSIS analysis

### Step 5B Calculate the Product or Service Score

**Product or Service Score: The square root of the percent of product or service code that went to contingency contracting**

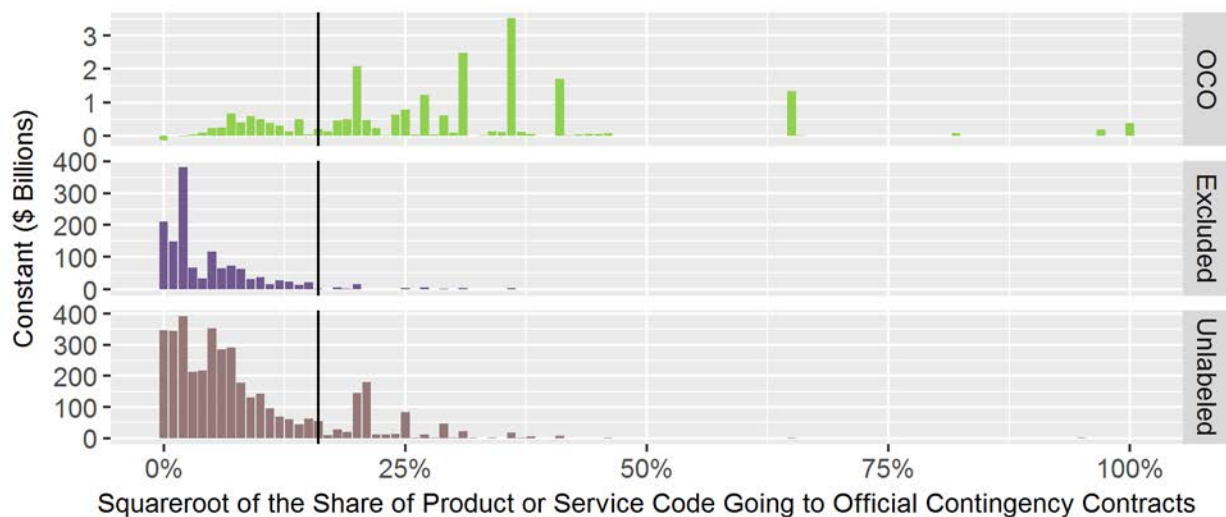
- If the *Product or Service Score* is greater or equal to 5 percent, then the transaction receives 1 point
- If the *Product or Service Score* is less than 5 percent, then the transaction receives 0 points.

This percentage is taken by examining each product or service code to determine what percentage of its obligations goes to official contingency contracts. The square root to magnify

the differences at the left end of the scale, because most product or service codes only have a miniscule portion of spending going to official contingency contracts. As is shown in Figure 10, excluded and unlabeled obligations are both clumped on the left part of the chart. The black threshold line was drawn at 16 percent, and less than a fifth of unlabeled and a twentieth of excluded obligations exceed that threshold.<sup>104</sup> This threshold was lower than the only 60 percent of OCO spending would be above the threshold if the line was drawn at the same place as in Figure 9 and Figure 11.

Because of the lower threshold, this criterion is the most inclusive of the three. As a precaution, the study team also examined the products or service codes that fall above the threshold. Many of top ranked product and service codes 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, 2000a, 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 contracts, and the Commission on Wartime Contracting recommended that they be “phased out for certain functions”<sup>105</sup>

Figure 10 Distribution of Product or Service Code Scores, Defense Contracts 2000-2016



Source: FPDS; CSIS analysis

<sup>104</sup> The x-scale is the square root of the percentage of a product or service codes expenditures going to official contingency contracting. Thus a 16 percent threshold means that any product or service codes with 4 percent or more of obligations going contingency spending qualify.

<sup>105</sup> (Commission on Wartime Contracting in Iraq and Afghanistan, 2011, p. 4).

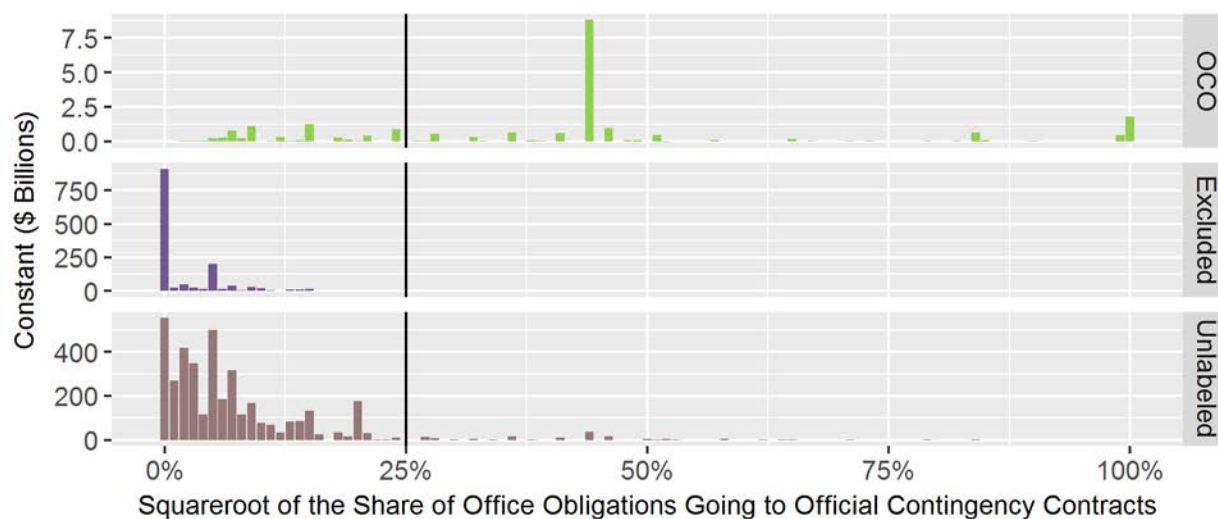
### Step 5C Calculate the Customer Score

**Customer Score: The square root of the percent of contracting office’s obligations that went to contingency contracting.**

- If the *Customer Score* is greater or equal to 5 percent, then the transaction receives 1 point
- If the *Customer Score* is less than 5 percent, then the transaction receives 0 points.

Similarly to the product or service score, the customer score percentage is taken by examining each contracting office to determine what percentage of its obligations goes to official contingency contracts. Likewise, the square root is taken because the most contracting offices obligate very small amounts towards contingency contracting spending. The black threshold line is set at 25 percent.<sup>106</sup> Over 70 percent of contingency contract obligations are to the right of that line. More the 99 percent of excluded obligations are to the left, as are more than 96 percent of unlabeled obligations. The concentration of OCO expenditures in a single band is noteworthy, and suggests the importance of a small number of high spending contracting offices.

Figure 11 Distribution of Customer Scores, Defense Contracts 2000-2016



Source: FPDS; CSIS analysis

### 3.3 Decision Tree Step 6: Determine if the contingency likelihood score exceeds the threshold for the place the contract was performed.

**Compare the contingency likelihood score (generated in step 5) to the threshold based on the place where the contract was performed.**

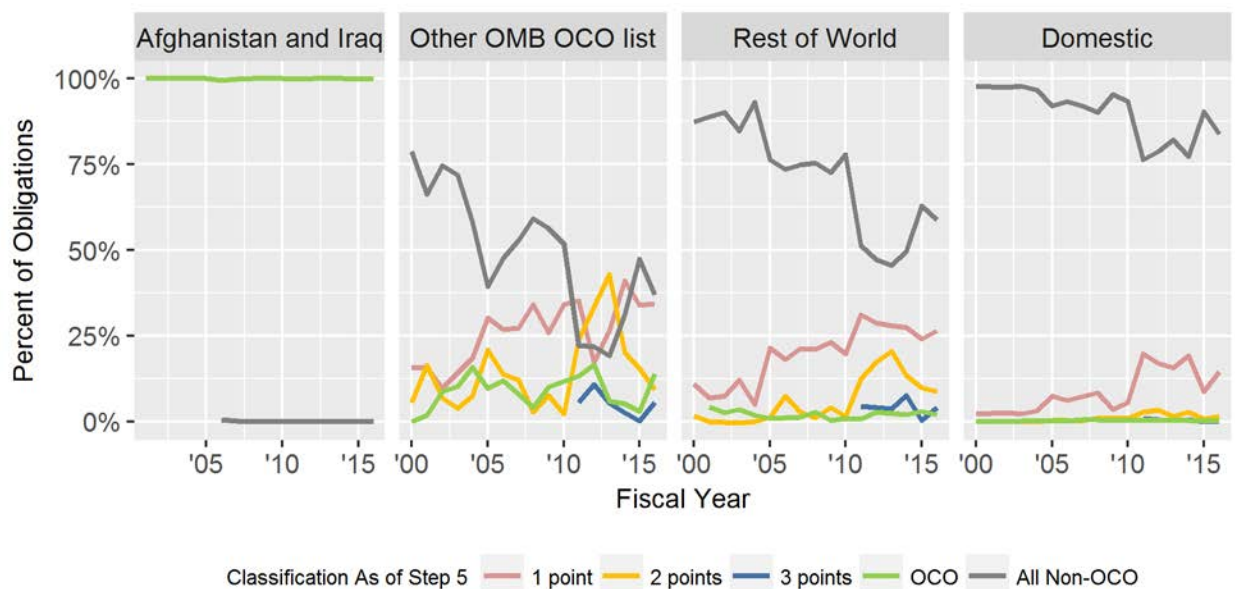
- Was the transaction performed in a country on the OMB criteria list? If so, then if the transaction received 1 or more points, classify it as contingency.

<sup>106</sup> The x-scale is the square root of the percentage of a contracting office expenditures going to official contingency contracting. Thus a 25 percent threshold means that any contracting office with 5 percent or more of obligations going contingency spending qualify.

- Was the transaction was performed internationally, but not in OMB criteria list countries? If so then if the transaction received 2 or more points, classify it as contingency.
- Was the transaction was performed domestically, if so, then if the transaction received 3 points, classify it as a contingency.

This mix of threshold values and contingency likelihood score does not rely on country alone, because past CSIS research efforts have also uncovered major contingency contracting expenditures that were classified as being performed far away from the battlefield. Specifically, a surprising amount of contracting obligations were “performed” in Switzerland to deliver supplies to Afghanistan. For transactions taking place in countries on the OMB list, it is enough to have received a point from the funding account score, the product or service score, or customer score. For transactions taking place internationally, the standard is higher, requiring two a point in two categories. The standard is highest for domestic contracts, which will only be labeled in this step if all three pieces of information corroborate their identity as a contingency contract.

Figure 12 Share of Obligations Classified as Contingency with Likely Contingency Points



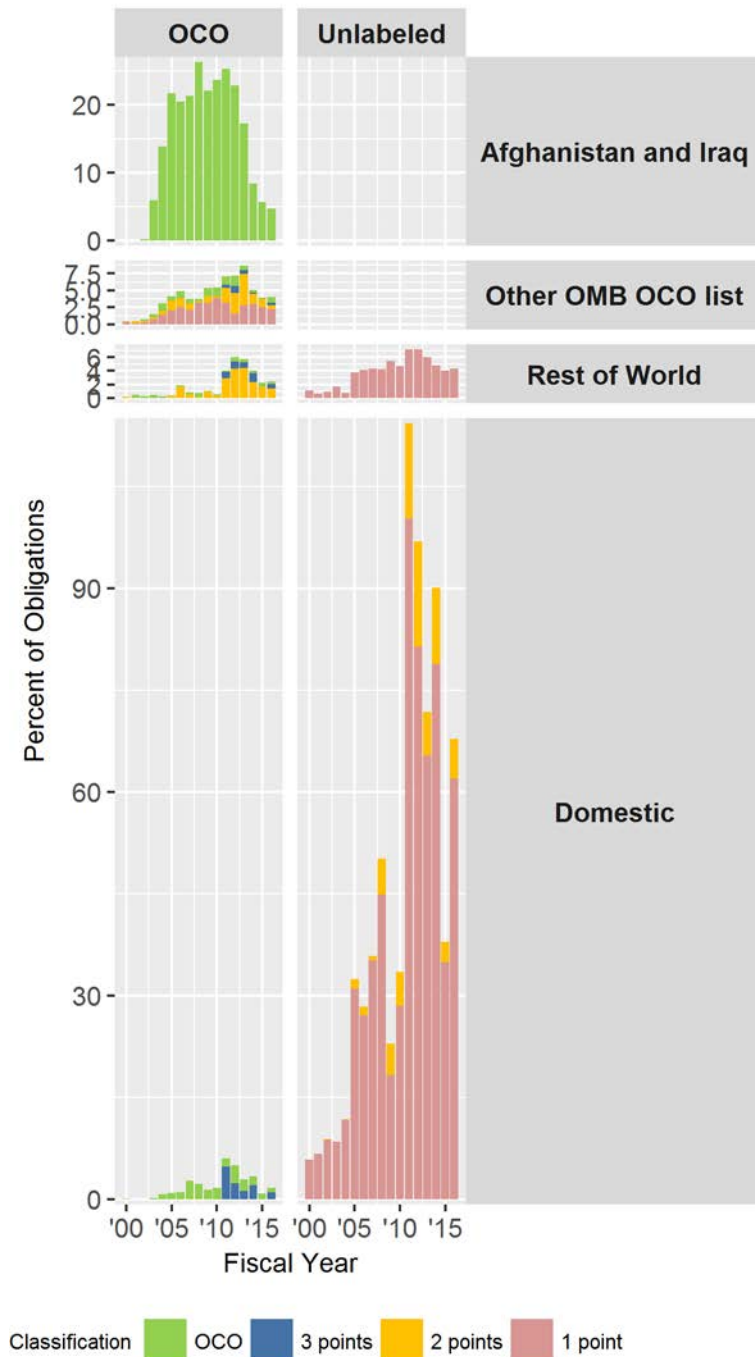
Note: Percentages do not sum to 100% because Unlabeled, Excluded, Disaster, and ARRA transactions are included in the calculations but are not displayed.

With Afghanistan and Iraq automatically classified as Contingency in step 3.2.2, the next region one would expect to find the most contingency spending are the countries identified by OMB as falling within the bounds of valid OCO spending. The results of the data bears this out. While the OMB OCO list and the Rest of the World show share of contracts receiving a single point, the former has a significant larger fraction of obligations qualifying for two points in most years.

There are also period effects in the graph that reflect the limitation of data sources rather than any underlying trend. Namely, funding account data first becomes widely available for the DoD

in FPDS between 2011 and 2012. Due to data reliability issues, the study team did not even attempt to calculate funding account shares prior to 2011, and as a result it is impossible to receive three points before that data is available. This also explains why for 2011 and subsequent years, the percentage share receiving one or two points rapidly shifts up in the OMB OCO list, the Rest of the World, and for Domestic contracts.

Figure 13 Distribution of Obligations Classified as Contingency with Likely Contingency Points



While the study team is better able to capture contingency contracts after 2011, the overwhelming trend of a decline in contingency spending remains unmistakable in Figure 13. The decreases in Afghanistan and Iraq, as well as the OMB OCO list, follows from the withdraw from Iraq and then the drawdown in Afghanistan. Notably this drawdown in international contract spending with contingency characteristics is in no way limited to Iraq and Afghanistan or even the other OMB OCO list countries.

Figure 13 also clarifies why different thresholds are needed between different regions: without strict standards, the sheer quantity of contract obligations in the United States would otherwise overwhelm the dataset. This is also a period following the withdrawal from Iraq and in more recent years followed by a drawdown in Afghanistan. As a result, even though it becomes easier to qualify earn points as a likely contingency contracting, overall spending levels decline as shown in below. This step concludes the decision tree process. The final dataset, including the Disaster and Recovery Act spending is shown in Figure 14 and leads off the chapter 4.

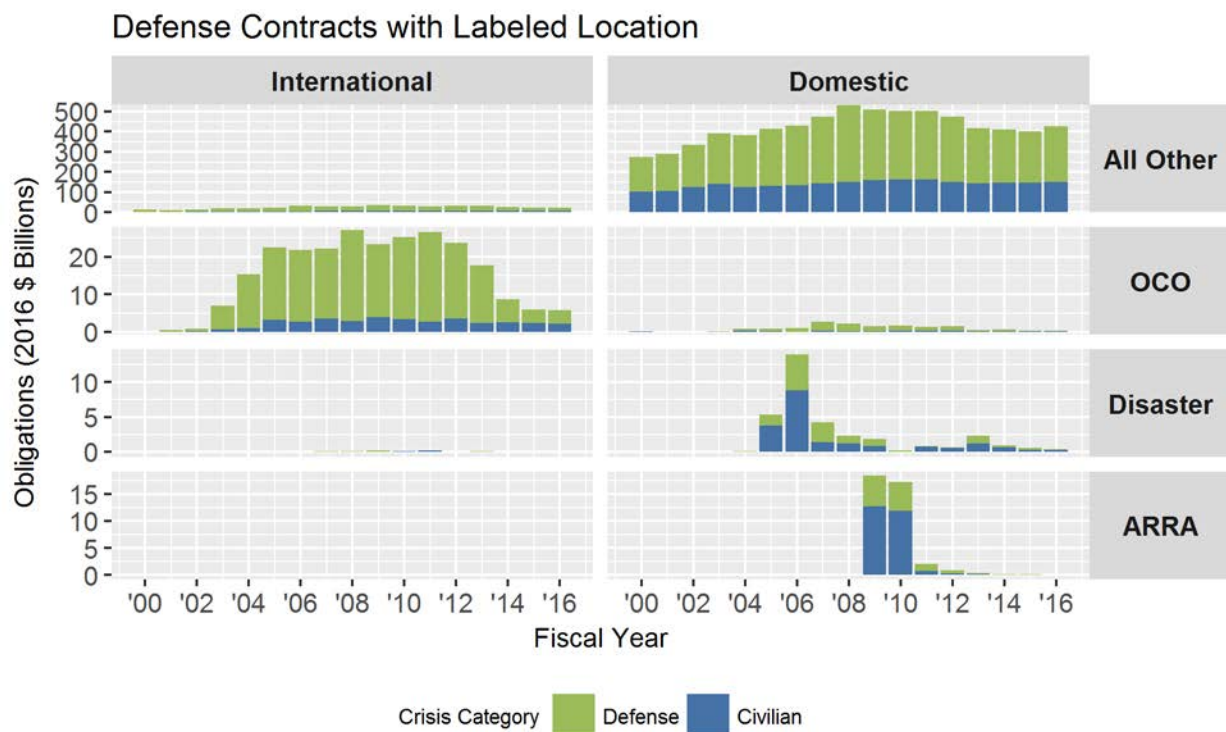


## 4 Analysis

Across the different datasets, Figure 10 shows the largest stand out trend was a reduction in crisis contracting. 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.

The winddown of the Recovery Act was always planned, but natural disasters have not lessened in their intensity in intervening years. The reduction in disaster spending may be attributable to increasing utilization of grants and other mechanisms or a drop off in diligence in labeling. The biggest unexpected trend is the relative stability of contingency contract funding through civilian agencies. This is predominantly driven by activities in Iraq and Afghanistan, but it is nonetheless remarkable that the military drawdown, civilian activity has been comparatively stable.

Figure 14 Contract Spending by OCO evaluation and Place of Performance



Source: FPDS; CSIS analysis

The analysis below compares the three crisis datasets with four comparison groups.

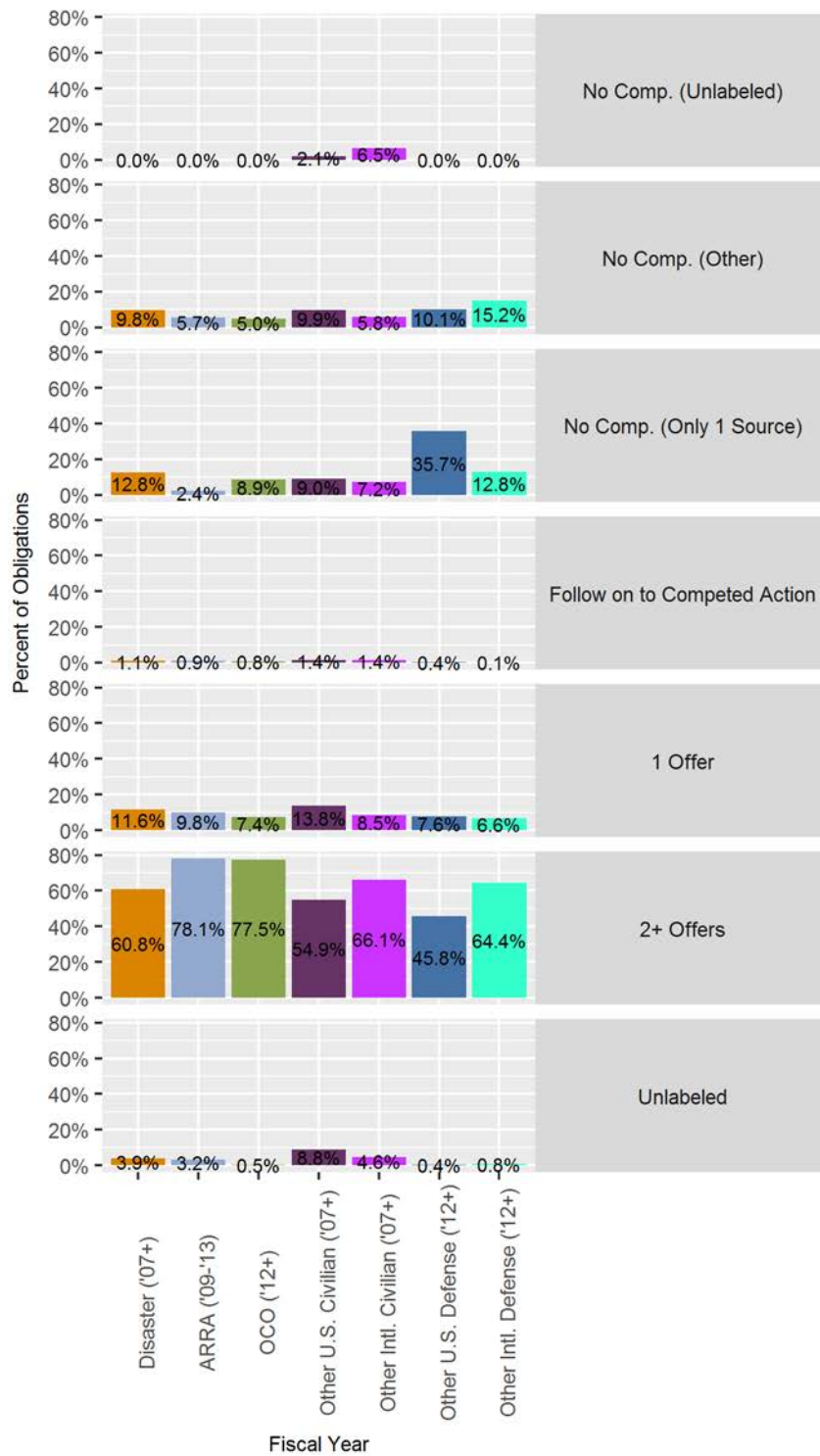
- Contingency Contracts (2012+): This dataset focuses on the contingency contracts after Iraq, where the contracts have undergone less scrutiny but better budget data allowed the approach employed in the methodology.
- Disasters (2007+): This is the entire dataset after 2007. This unfortunately excludes a great deal of Hurricane Katrina related spending, but reliable contracting duration is not available before 2007.

- Recovery Act (2009-2013): This is the full run of the Recovery Act dataset. There is some risk that contract outcome data will be different for this dataset than the others, because this is the only dataset that has cleanly finished. However, the study team deemed that inclusion of more recent years in the other dataset had value that exceeded this risk.
- Other International Civilian (2007+): Other U.S. government civilian contract spending starting in 2007, with a place of performance inside the United States.
- Other U.S. Civilian (2007+): Other U.S. government civilian contract spending starting in 2007.
- Other U.S. Defense (2012+): Other U.S. government civilian contract spending starting in 2012, with a place of performance inside the United States. 2012 was chosen as a starting point for greater comparability on outcome measures with OCO data.
- Other International Defense (2012+): Other U.S. government civilian contract spending starting in 2012. As with the other Defense dataset, 2012 was chosen as the starting year for comparability reasons.

Those comparison groups are domestic civilian contract obligations, domestic defense contract obligations, international civilian contract obligations, and international military contract obligations. These comparison groups were selected to aid in distinguishing how crisis-funded contracts are stand out in their own right, rather than just reflecting the way that defense and civilian are distinct or spending oversees has different challenges than awards in the United States.

## 4.1 Competition

Figure 15 Rates of Competition Across Datasets



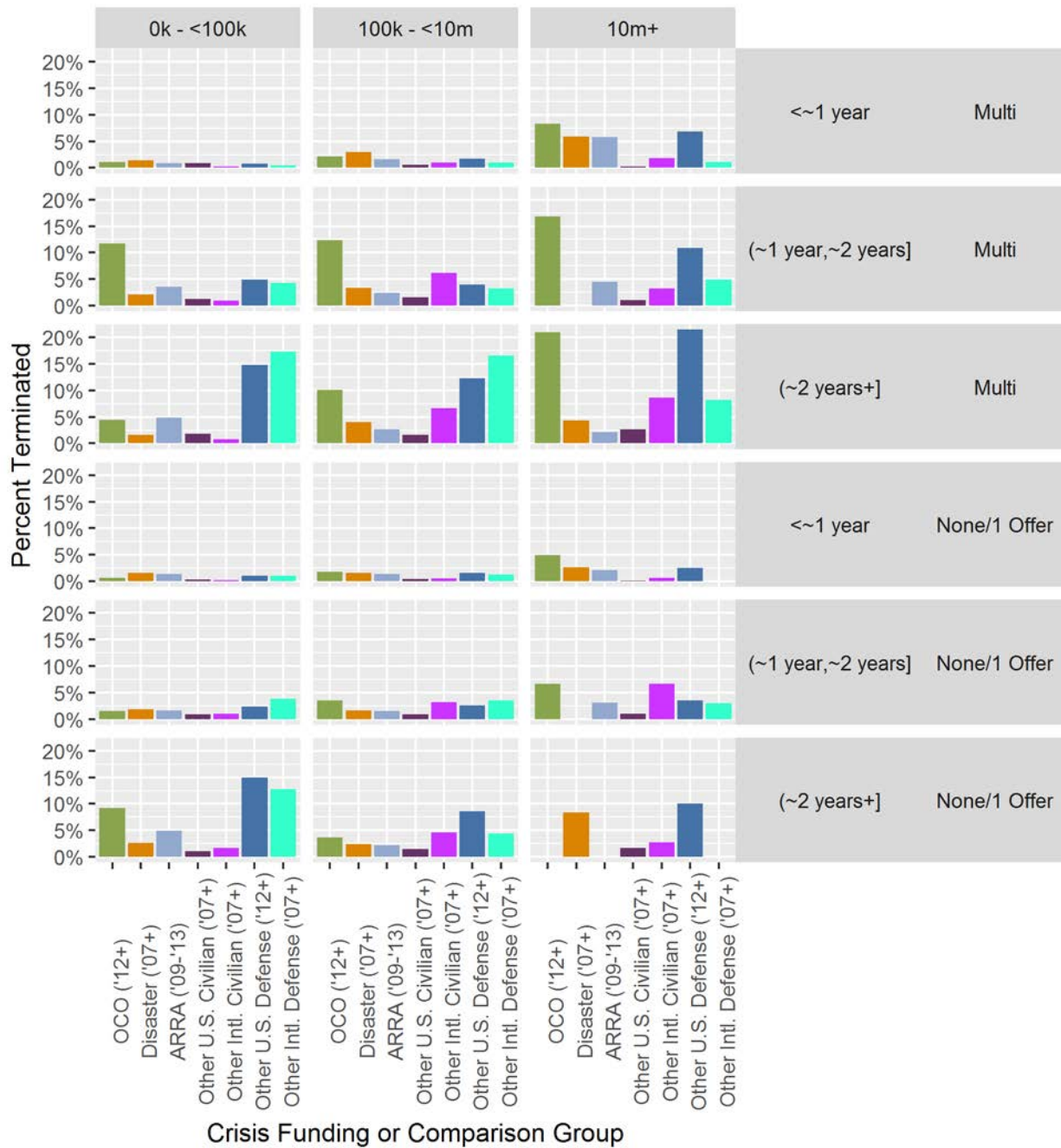
Source: FPDS; CSIS analysis

Analysis of competition trends within the contingency datasets, shown in Figure 15, confirms findings from the literature review. While competition is an area of concern for contingency contracts, crisis-funding has not prevented OCO and ARRA contracting officers from already achieving higher rates of competition than have comparable customers in the domestic civilian and defense sectors. Disaster contracting shows competition rates that are no worse than domestic contracting rate for other civilian contracts, albeit a bit less competitive than other international civilian contracting.

Surprisingly, the urgency exception does not appear to be a primary driver of crisis contracting. The urgency waiver is covered under no competition (other) category. As the second row in Figure 15 shows, only in disaster contracting is that category only exceed the percentage of obligations going to no competition (other).

This is not to say that there is not room for further reduction of non-competitive awards, including using the no competition waiver, however, for both the OCO dataset and the disaster dataset, contracts were most likely to go uncompleted because of use of an only one source exception. Only for the Recovery Act, did a majority of non-competitive awards go to “no competition (other),” although in that case the 5.7 percent rate is still lower than for any of the comparison groups.

Figure 16 Terminations Rates Across Datasets and Multi-Offer Competition

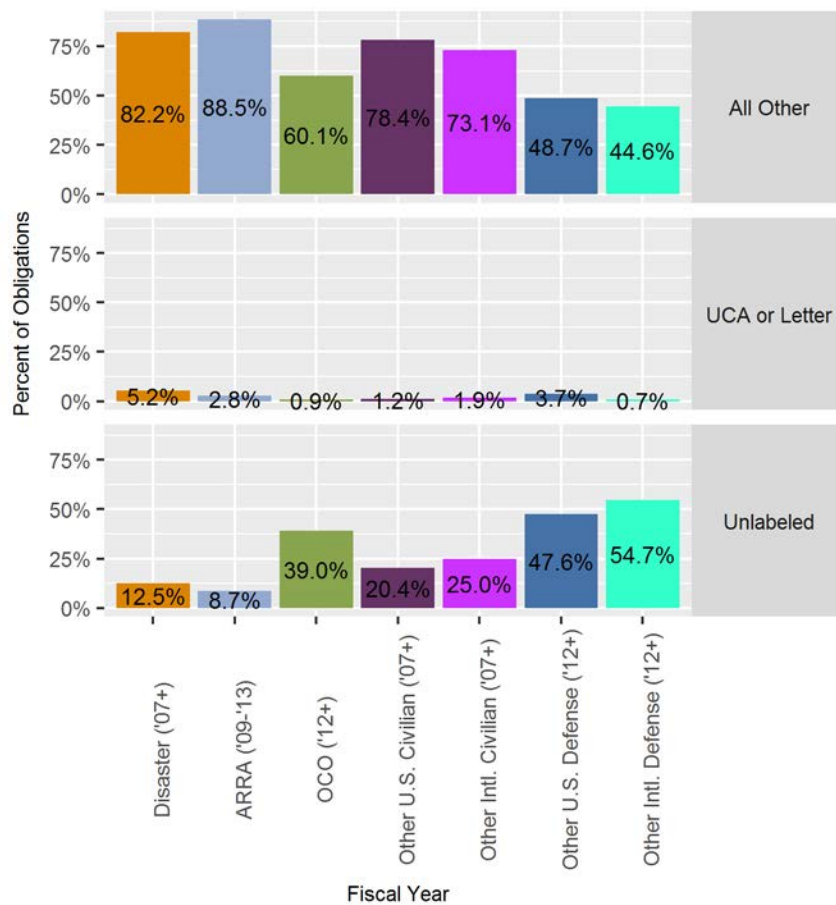


Source: FPDS; CSIS analysis

The striking and unexpected observation that immediately stands out from Figure 16 is that competition is not associated with lower rates of termination. No doubt the criteria by which non-competed awards are chosen plays a factor here, but given the downsides of non-competed awards documented in the literature, this runs contrary to expectation and hypothesis. What does run along with expectations is that in most categories, all three of the crisis data-set regularly had higher terminations than the comparison groups. Contingency contracts were least consistent in this phenomenon, particularly with competed contracts with expected durations of two years or more.

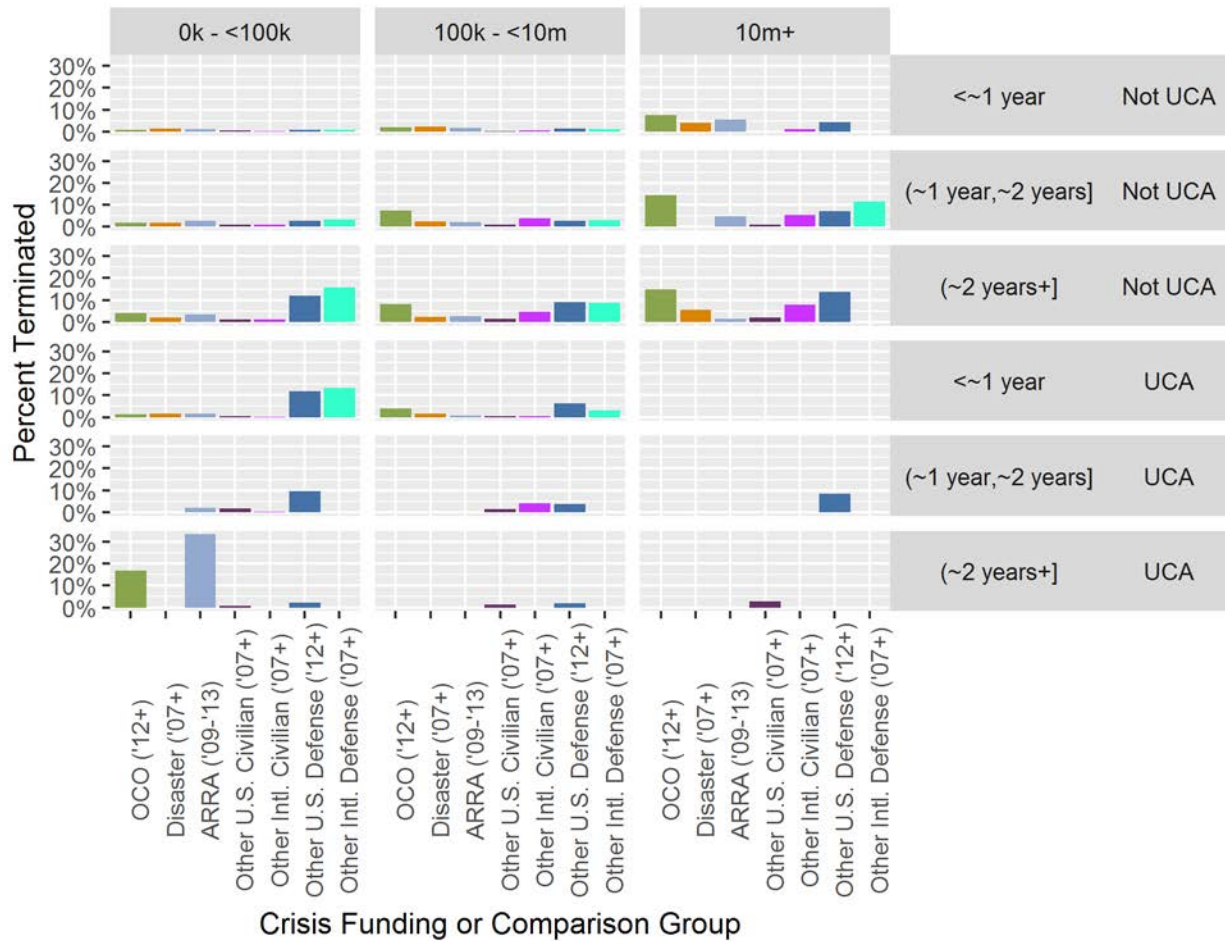
## 4.2 Undefined Contract Actions

Figure 17 Rates of Undefined Contract Action



UCA contract was used in disaster recovery and under the recovery act at rates notably higher than for U.S. civilian contracting. The rate for disaster recovery is even higher than for domestic defense spending, where some development contracts are another notable user in the U.S. government. Another phenomenon of note raises an alarm, though in this case it is not crisis funding that is the largest cause of concern. Nearly half of all defense contracts in the comparison group had did not label whether they were employing a UCA contract. The study team believes, that 'unlabeled' in this case means no UCA, but cannot be certain.

Figure 18 Undefinitized Contract Actions Across Equipment-Related Services, Other Services, and Supplies



Source: FPDS; CSIS analysis

The termination rates for UCAs were not across the board larger for crisis contracts than for more traditional forms of contracting. There were categories, including oddballs such as contracts with ceilings of less than one hundred thousand dollars that last more than two years, but that result was likely primarily driven by a small sample size as larger contracts are often have greater durations and vice versa. For non-UCA contracts, terminations rates were regularly higher than the comparison groups, however, the primary take away from that observation is support the well-established principle that typical crisis-funded contracts are at great risk than traditional contracts.

### 4.3 Reach-back Contracting

By using a wider range of contracting offices to support crisis efforts, the overall enterprise has the potential to overcome the shortages in staffing numbers and experienced personnel that complicate contingency contracting efforts. This portion of the analysis is limited to OCO contracting because the concept is a defense specific one.

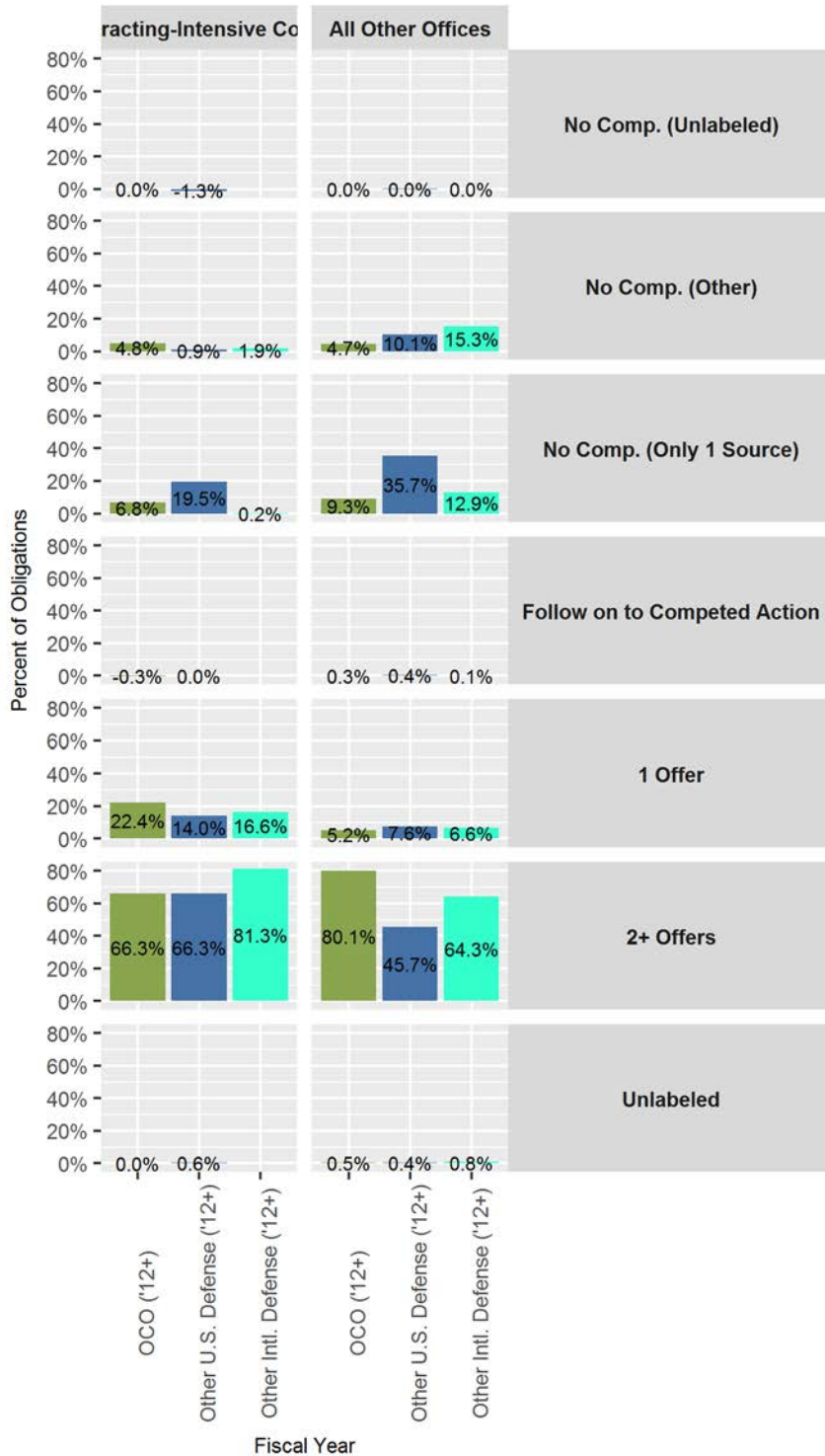


Figure 19 Competition by Contingency-Contracting-Intensity of Contracting Office

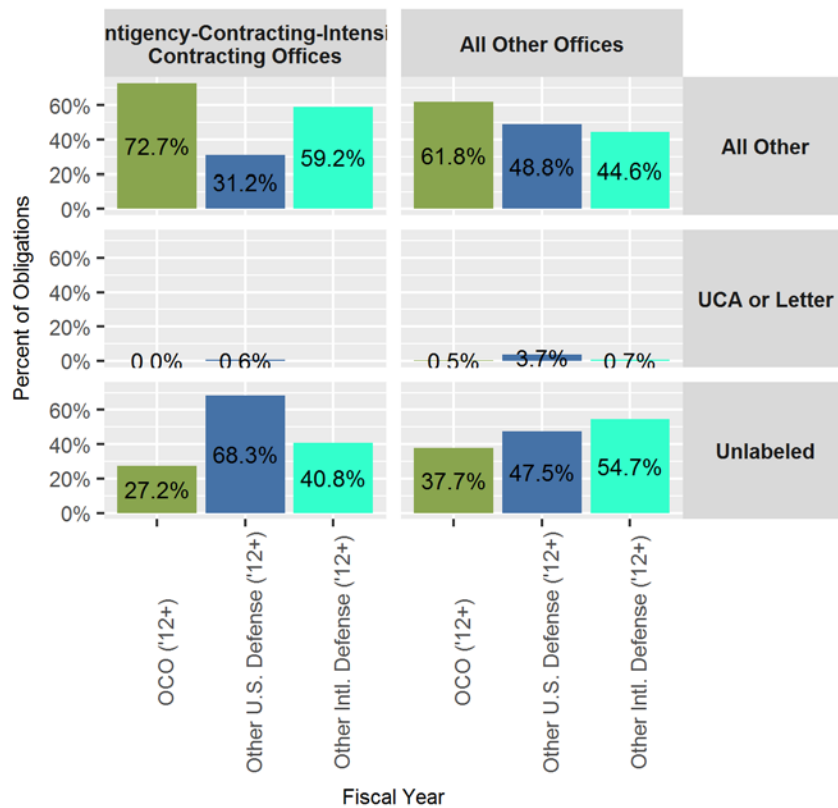
When it comes to competition for OCO contracts Figure 17 shows reach-back contracting does appear to deliver better results in the early years of the sample. Contingency-contracting-intensive Contracting Offices had high frequencies of single offer competition, perhaps because they did not have the resources or time to attract more vendors.

Interestingly, the contingency contracting intensive offices have lower rates of competition than non-contingency work collectively done by those same offices. When comparing with the domestic work done by those contingency offices, the largest difference is that for their contingency work, they are more likely to hold a single offer competition (22 percent contingency versus 14 percent non-crisis domestic). For their domestic non-contingency, they are more likely to employ a waiver (7 percent only 1 source for

contingency versus 20 percent for non-crisis domestic).

Source: FPDS; CSIS analysis

Figure 20 Undefinitized Contract Actions by Contingency-Contracting-Intensity of Contracting Office



In contrast, Figure 18 shows that reach-back contracting offices make greater, albeit still minimal, use of UCA contracts when managing OCO contracts. The quantities and percentages involved are small enough that the results are likely not significant. Nonetheless, contracting offices away from the field do not appear to be any more likely to employ UCA contracts than those whose portfolios have a larger percentage of crisis contracts. Finally, the unlabeled rate for UCAs is terrible across the board, and highlights the risks of UCA underreporting.

Source: FPDS; CSIS analysis



## 5 Conclusions

### 5.1 Hypothesis Results

#### *Competition*

Competitive trends in crisis contracting generally fare better than the comparison groups, in comparison with the literature review. Of the three dataset, disaster contracting made the greatest use of non-competitive awards, and had the highest level of single-offer competition of the three. The hypothesis that non-competed contracts would be at greater risk was not borne out by the termination measure, as competed contracts were regularly terminated at higher rates. Also running contrary to expectations from literature, both the disaster and contingency dataset did not appear to make disproportionately heavy use of urgency waivers versus the only-one-offer justification for non-competing.

#### *Undefinitized Contract Actions*

the dramatic reduction in UCA contract usage in recent years is a laudatory trend but the rise in unlabeled contracts undercuts this good news story. As with competition, termination rates did not prove to be higher for UCA contracts than for other typical contracts.

#### *Reach Back Contracting*

Reach-back contracting appears to result in more competitive contracts during years of greater demand, but shows no competitive benefit in recent years, nor does it show a lower usage rate for UCA contracts. This finding can be read both ways. It suggests that contracting officers located forward can perform their functions with little apparent decrement in capability due to their more austere work environment. However, it also suggests that reach back contracting can help meet theater needs with little loss of effectiveness due to the distances involved. There are many challenges with OCO contracting associated with contract administration and oversight, such as quality assurance and combatting human trafficking, which are not captured by the competition information examined in this report. As a result, the government might consider focusing scarce in-theater contracting resources on the more challenging functions of contract administration and oversight.

### 5.2 Recommendations

- **Contracting Officers Appear to Avoid High Risk Crisis Contract Types**

As the Analysis section found, crisis funded contracts often achieved high levels of competition and eschewed UCAs. This does not mean that there is not more potential room for progress, but that public servants have already clearly heard the message coming out of the literature and are responding according. Likewise, the comparatively low termination rates among non-competed and UCA contracts suggests that contracting officers are being conservative when employing those tools.

- **Reach-back contracting offices were more effective at achieving effective competition**

While this paper does not examine all aspects of reach-back contracting, there was a clear differential in competition rates between those offices that obligated 25 percent of their budget or more for officially classified contingency contracts and all others. That difference favored the offices that did less contingency work, which supports the idea that turning to home contracting offices of DoD units is an effective way to relieve the workload of those in the field and achieve better results. This paper does not examine where the point of diminishing returns is for this approach, but based on the data results it appears that the present approach is a net positive.

- **Be careful when applying simple risk based criteria to crisis funded contracts.**

Much of the literature focused specifically on the urgency exception because it is specific to crisis-funded contracts. However, with the exception of the Recovery Act, most forms of crisis-funded contracts did not primarily on that category of waiver for their non-competed contracts. Furthermore, both UCA and non-competed contracts proved to have lower termination rates. This suggests that risk based criteria for audits should be careful about overly relying whether statutory exceptions are used and instead look to other contract characteristics. The datasets generated in this study are available to other researchers and practitioners in part to aid them in further developing such criteria.

- **Address declines in the quality of labeling, particularly with regards to OCO spending and UCAs**

Finally, the strongest signal from this research is the increasing divergence between the spending on OCO budget accounts and related contingency contracts. The drawdown in operation may be revealing that a growing portion of OCO funding might be base funding in disguise. While the decline in contingency contracting spending has does seem to have stabilized above \$10 billion annually, this still does represent a notable decline. The DoD does internally track OCO funding of contracts in ways that are not included in the FPDS. More rigorous use of the fields relied on in the methodology section would be one means to improve transparency and accountability of these funds.

Furthermore, fields tracking contingency and humanitarian operations and national interest codes would be of far greater value to researchers, practitioners, and overseers if reliably filled out. In section 3.2.1, Figure 4 shows clearly that transactions caught by one classification are routinely ignored by others. Moreover, a great deal contracting performed in Afghanistan and Iraq are caught by neither of these fields. Another value of the dataset made available by this study is that researchers who wish to focus on studying rather than identifying contingency contracts may make unrestricted use of the work of this paper and further the study of these important contracts.

Lastly, given the history of regulatory failures regarding UCAs, the large unlabeled rate revealed in section 4.2 is a cause for concern. The study team did find in an earlier version of this paper that UCA use was steadily declining. That is potentially a salutary development, but the decline in reporting, combined with the comparative rarity of this contract type, means that even a small number of unreported UCAs could undermine the oversight that FPDS is meant to provide.