



Post-Election Period Holds Little Relief For Contractors

By **Dietrich Knauth**

Law360, New York (October 24, 2012, 8:16 PM ET) -- While November's elections could change the long-term outlook for contractors facing defense cuts and unfriendly regulations, experts say contractors' short-term forecast remains stormy, with reduced federal budgets and slow progress on acquisition policies no matter which party wins.

Some contractors hope that Republican candidate Mitt Romney's administration would be more contractor-friendly than President Barack Obama's if he is elected, as he has pledged to increase defense spending and roll back regulations on businesses. But even if Romney is elected, experts say, real change will be delayed by a handover of power and by the government's much more pressing need to resolve the so-called fiscal cliff, which includes the expiration of Bush-era tax cuts and the haphazard, across-the-board budget cuts of sequestration, which contractors dread.

"We're going to have a bumpy road over the next year or so in government contracting," Larry Allen of Allen Federal Business Partners said while moderating a Tuesday panel discussion hosted by [Delttek Inc.](#) "It may get a little bit worse before it starts to get better."

The policy that's giving contractors the biggest headaches right now is sequestration, which is set to slash \$1 trillion from federal accounts beginning in January. For the military, nonexempt accounts would be cut by 9.4 percent, a \$109 billion reduction in 2013, and nondefense accounts will be cut by about 8 percent. Contractors worry that the cuts could cause contract cancellations and have slowed hiring and threatened to lay workers off because of the uncertainty.

Obama, Romney and lawmakers from both parties agree that sequestration — included in the 2011 Budget Control Act as a doomsday trigger that would motivate a deficit compromise — is bad policy, but congressional gridlock has made a compromise seem unlikely. During Monday's presidential debate, Obama said sequestration "will not happen." But with deep disagreement between Republicans, who seek to shift cuts from defense to nondefense programs, and Democrats, who seek to offset the cuts with higher taxes for wealthy Americans, most experts are much less certain.

Sequestration would be an immediate priority for whoever wins the election, although Obama and Romney would likely take different approaches. A re-elected Obama might leverage congressional aversion to the cuts to allow the Bush tax cuts to expire or push for a "grand bargain" that reduces the deficit even further than sequestration's \$1.2 trillion target, while an incoming Romney administration might be more inclined to delay sequestration and deal with it in the first few months of 2013, after he has more time to put his own staff in place, experts said.

While contractors hope for a quick solution, an Obama re-election might make contractors more anxious because of the prospect that deep political disagreements about revenue increases and domestic cuts will turn the sequestration debate into a head-on game of chicken.

Trey Hodgkins, senior vice president of global public policy at TechAmerica, said that there is no legislative solution in sight and that Congress would be more inclined to delay the start date if there is turnover in Congress or the presidency.

"It may be such a mess that they simply decide to punt it," Hodgkins said.

But even if sequestration is triggered on Jan. 2, it "doesn't necessarily mean that it's the end of the world," according to Jonathan Etherton of Etherton & Associates. The [Office of Management and Budget](#), which is charged with overseeing agencies' budget cuts, could delay the process somewhat, allowing for a softer landing for contractors and agencies and giving Congress additional time to work out a solution, he added.

And just as both Obama and Romney would face the same immediate hazard of sequestration, both would be forced to operate at a time when federal budgets are constrained, in part due to separate caps that were included in another section of the Budget Control Act.

"No matter what, there's going to be less money," said Angela Styles, chair of [Crowell & Moring LLP's](#) government contracts practice. "It's going to be difficult. Companies are going to be fighting pretty hard for business."

Contractors will also have to deal with restrained spending by agencies, which are holding back from investment because of both sequestration and lingering uncertainty over longer-term appropriations, according to Juliane C. Sullivan, senior policy adviser at [Akin Gump Strauss Hauer & Feld LLP](#).

Agency spending has slowed as a result of the continuing resolution, a six-month spending bill that is keeping the government funded in the absence of complete appropriations bills, and due to the concern that the fiscal cliff issues could further delay full appropriations bills from getting through Congress, Sullivan said.

"You're dealing with a CR, and when you're in any type of CR situation, the agencies aren't spending aggressively," she said. "Everything that they can hold back, they're holding back."

Presidential goals will impact what types of contracts get funded, even if overall spending decreases. During Monday's presidential debate, Romney reiterated his commitment to increase defense spending, particularly for building more Navy ships, while Obama, who has pushed for a smaller military that invests more resources in areas like special operations and cyberwarfare, argued that his opponent was clinging to outdated notions of what kinds of spending would help the U.S. project power abroad.

"I think that the military community would do a little better under President Romney, if you take both of them at their word," said George LeMieux, chairman at [Gunster Yoakley & Stewart PA](#) and a former Republican senator from Florida. "But in the medium and long term, everything is going to be on the table because there's a \$16 trillion national debt."

And even if Romney is elected and aggressively pushes for more defense spending, Obama's 2013 budgets will likely form the basis for next year's appropriations bills, which are scheduled to be voted on before the current spending resolution runs out in March. Romney would have to build his administration and deal with sequestration's fallout before turning to his own budget, Styles said.

"They'd only get a month to work with that information and turn it into their own budget, and there's only so much you can do with that timetable," Styles said. "It's really hard to make changes to what's already in that pipeline."

Republicans, including Romney, have campaigned on the promise of rolling back regulations that burden businesses. But with congressional appetite for oversight of contractor spending showing no signs of slackening, Styles said that Republicans' deregulation rhetoric might not extend to creating a more friendly environment for contractors.

"That's a different regulatory environment that plays by a different set of rules," Styles said. "I think you'll have a lot of people, Republicans and Democrats, who say the regulations aren't enough."

Even under decreased budgets, there will be contract opportunities in the near term. The government is spending more on medical care and will need to transport and repair military equipment coming back from Iraq and Afghanistan, according to Bill Greenwalt, vice president for acquisition at the Aerospace Industries Association. Hodgkins pointed to cybersecurity and data efficiencies, such as cloud computing, big data analytics and consolidation of data centers, as well as other areas of growth.

But to succeed, contractors will have to be willing to focus their sales pitches on savings and efficiencies, in addition to going above and beyond their normal compliance with regulations and work requirements, Hodgkins said.

"We've heard from several folks [at agencies] who still have some money to spend and they say, 'Don't even bother to show up if you can't tell me how the product you're going to sell is going to help me find efficiencies and savings,'" Hodgkins said. "That's what really seems to be driving the conversation."

--Editing by Elizabeth Bowen and Katherine Rautenberg.

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