

**ENVIRONMENTAL NEW BUSINESS CAPTURE  
IN DOD BASE CLOSURES,  
PRIVATIZATION, AND DOE REMEDIATION**

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# MISSION STATEMENT

- I. Opening Remarks/Introduction
- II. Procurement Reforms and Environmental New Business Capture
  - (a) New Contract Vehicles (“Accelerants”)
  - (b) DoD Base Closures/Privatization
  - (c) DoE Remediation
- III. Questions (Spirited Discussion Throughout)

# THE GOOD, THE BAD, AND THE UGLY

## THE GOOD

Projected environmental spending = **\$500 billion-\$1 trillion** over next 20 to 30 years

## THE BAD

EPA's new policy to "pursue the full range of [EPA] enforcement authorities against contractor operators of government-owned facilities in appropriate circumstances."

## THE UGLY

For 15 of DoD's largest contractors, environmental cleanup costs approx. \$2.1 billion over the next several years (e.g., remediation of worst sites can take up to 30 years)

Who faces environmental liabilities at all levels (federal, state, & local):

- (1) GOCOs
- (2) COCOs
- (3) Retained contractors

## Procurement Reforms (“Accelerants”)

- Arbitrary Constriction of the Competitive Range to Achieve “Efficient” Competition (“If in doubt, throw them out”)
- Mandatory Evaluation of Past Performance on Initial Proposals (up to 50% of award criteria)
- Shift to Performance-Based Contracting (see DoE below)
- Profit caps (see DoE below)

# ARBITRARY CONSTRICTION OF COMPETITIVE RANGE FOR “EFFICIENT” COMPETITION

Before FARA: If in doubt, keep them in competitive range

Since FARA:

- Both civilian agency & DoD COs may constrict competitive range to “efficient number” after evaluation of initial proposals (“if in doubt, throw them out”)
- If stated in RFP, Gov’t may predetermine competitive range size

⇒ **Contractors must prepare proposals as “First and Final Offers” to ensure new business capture**

# “PAST PERFORMANCE” EVALUATION

- Historically, COs could evaluate Past Performance (“PP”)
- Now, PP is mandatory “significant” evaluation factor (25-50%)
- Quality, cost control, schedule adherence, contracting/business relationships, and customer satisfaction
- PP Report Cards at close-out (or annually for multi-year Ks)
- Business partners will impact PP evaluation (50¢ to subs; SDBs)
- Failure to rebut adverse report card = voluntary debarment (extinguish source of poor past performance; ADR)
- Sources of information are endless (competitors, disgruntled employees)

- **Imperative: immediate implementation of strategies to compartmentalize and remediate damage**

# CONTRACTING OPPORTUNITIES

## (Introduction)

- DoD/DoE
  - See below
- NASA
  - NASA anticipates 12 facilities need considerable cleanup
- DOI
  - Thousands of abandoned mining sites contaminated with acidic mine drainage and heavy metals, hundreds of oil and gas wells that are uncapped or contaminated with wastes
- DOT
  - Controls airfields and Coast Guard installations contaminated by fuel and petroleum product spills and leaks
  - Costs associated with cleaning these sites -- TBD



# DOD OPPORTUNITIES/PRIVATIZATION

- DoD, with EPA oversight, must clean up military installations listed on the NPL (Executive Order 12,580 for all residuals)
- Prior to DoD transferring the subject property, the contract must identify
  - (1) type and content of hazardous substances, and
  - (2) time that storage, release, or disposal took place
- DoD cannot separate “clean” parcels from contaminated property and transfer the property piece-by-piece **until remedial action has “been taken” (“Hostage Policy”)**
- CERCLA requires adherence to EPA’s detailed National Contingency Plan (NCP) that governs the cleanup of sites contaminated with hazardous substances (culminates in RoD)
- All steps DO NOT have to be completed before deed TRANSFER (still months or years to complete)
  - As part of the Comprehensive Environmental Response Facilitation Act of 1992 (CERFA), **all remedial action has been taken when remedy is installed and operating**
  - Consequently, DoD still faces years of regulatory and administrative hurdles to satisfy CERCLA’s requirements before DoD can privatize “contaminated” base
- Explore alternatives to expedite transfer
  - **Examples:** Interim Leasing, Licenses, etc. -- No deed or title needs to be provided

# DOD OPPORTUNITIES/PRIVATIZATION

*Under the Defense Base Closure and Realignment Act, certain underutilized or obsolete DoD installations must be closed and turned over to states, municipalities, or private parties (privatized). Prior to turnover, however, all hazardous contamination must be cleaned up*

- Efforts are coordinated under the Defense Environmental Restoration Program, which provides centralized management for cleanup of past contamination from toxic and hazardous substances, low-level radioactive materials, and petroleum products
- Each service is responsible for procuring its own cleanup contractors

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|-----------------------------|--|
| (1) <b><u>Army</u></b>      | Corps of Engineers   |
| (2) <b><u>Air Force</u></b> | Air Force Center for Environmental Excellence (AFCEE) at Brooks AFB and Air Force Civil Engineering Support Agency |
| (3) <b><u>Navy</u></b>      | Naval Facilities Engineering Command (NAVFAC)  |

# DOD OPPORTUNITIES/PRIVATIZATION

- Over 9,000 sites at 1,800 active installations require further evaluation for possible remediation efforts
  - Over 7,000 formerly used sites could be included in DoD's cleanup program
  - Deputy Under Secretary of Defense for Environmental Security allocates funds among the services
- **DoD Under Pressure:** Limiting Multiple Award Task & Delivery Order Contracts
    - Complaint: Failure to maintain reliable contractor because of post-award jockeying of task and delivery orders
    - Disastrous impacts of multiple awards for environmental remediation
      - continuity of tasks
      - competed once on main contract; subsequent competition on TAD orders

# DOE ENVIRONMENTAL REMEDIATION

- Largest share of environmental contracting opportunities within the federal government  
**INNOVATIVE AND VARIED TECHNIQUES FOR EACH PROCUREMENT** (total field discretion)
  - Types of DoE contracts
    - M&O and M&O-like
      - (1) Environmental Restoration Management
      - (2) Research and Development
      - (3) Production
      - (4) Construction and Construction Management (Environmental Restoration and Special Equipment, i.e., nuclear)
  - Fixed-price line items allowed, but must be separated from cost-type line items (CPAF contracts still preferred)
  - Increased use of oral proposals (limits skeletal written proposals)
  - Devastating impact of consolidated contracts (DoD-type down-selects)
- **All recent DoE competitive procurements contain preferences to privatize or buy up to 50% of operations within 5 years**

# DOE ENVIRONMENTAL REMEDIATION

- **Performance-Based Contracting**

- Use of clearly stated results-oriented, performance criteria and measures\*\*\*
- Appropriate incentives for contractors to meet and exceed the performance criteria effectively and efficiently (Prime Flowdown Discretion)
- Shifts risk to the contractor because payment of fee only for results (vague SOW; annual WAD negotiations)
- Incentives for contractors to subcontract for tasks that may be performed by firms other than the prime (FFPK subcontracts)
- Specific incentives for cost savings from design and process improvements (Cost Reduction Incentive Programs -- “CRIPS”)
- Improved financial accountability (Certified C/P data not required for prime)
- Actively pursue and solicit competition for new contracts, increase subcontract opportunities, streamline procurements and innovative approaches

\*\*\* MEASURES

<b>EFFECTIVENESS</b>	<b>EFFICIENCY</b>	<b>QUALITY</b>
<b>TIMELINESS</b>	<b>PRODUCTIVITY</b>	<b>SAFETY</b>

# THE DOE MODEL

Standard Contract Form

CPAF

Other Options (requires NEGO)

CPFF, CPIF, FPIF, FFPK

Operation

SOW -- 5 Years, then WADs negotiated yearly

➤ C/P Data

Not required because WADs are NOT NEGOTIATED  
Based on appropriations or budget estimates  
(required for sub-contractors)

Fee Structure (New Rule)

Elimination of “At Risk” Fee (50% of AFF) -- “Satisfactory”  
Adjusted Base Fee (formerly, 50% of AFF) -- “Minimum” Award Fee  
(2X AFF: the lower the base fee, the higher potential return);  
**CRIPs, (VECPs) = BONUS**  
Payment of fee only for results & risk is shifted to contractor  
Can price base fee at 0%, banking on considerable return;  
however, base fee should be used to cover unallowable costs

Evaluation Period

CPAF -- Profits withheld until evals occur, usually every 6 mo.

Performance-Based  
Management Contracts

**CPFF** to **CPAF** (subjective) to **CPIF** (objective) & FP-type on  
specified line-items -- Negotiate WADs and New Incentives

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