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Congress

The 2010 Election—How Will it Affect Government Contractors?

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The 2010 elections represent a historic turn-around in American politics from just two years earlier. Republicans took Capitol Hill by storm, winning 60 seats to take over the House. In the Senate they made strong inroads picking up six seats, but Democrats held enough of their own seats to retain control of the chamber.

Come January 2011 when the new Congress is sworn in, rhetoric will meet reality. What does this mean for government contractors? Does reducing the size of government and shrinking the federal deficit mean more opportunities for contractors, or fewer? The answer is the same as most answers in business—it depends. Either way, it will be important to your company's bottom line. So here are some potential threats, opportunities, and uncertainties that government contractors should think about because they could have a significant impact on how business is conducted over the next two years.

The Big Picture

The Republican House and the Democrat Senate will have to reach agreement before any new laws are enacted. And even within the House and Senate, the parties do not speak with one voice. Some Senate Democrats will agree will some Republican initiatives. Some Tea Party House Republicans will stray from the Republican mainstream.

In 1983, the shoe was on the other foot. The 98th Congress that convened on January 3, 1983, had a Republican controlled Senate and a House controlled by Democrats, all of whom had to work with a Republican President (Reagan). The list of major legislation passed by that Congress contained two laws: The Comprehensive Crime Control Act and the Voting Accessibility for the Elderly and Handicapped Act. The 99th Congress, which convened on January 3, 1985 and was similarly divided, passed 11 pieces of major legislation. This suggests that the two parties may need to feel each other out and flex their muscles before consensus can be reached on major laws.

This likely means that we will not see major new laws on immigration, energy, tax reform or social programs. At some point we should see progress made on deficit reduction and cutting back earmarks. The government also will be asked to do more with less.

There will not be any specific initiatives that target government contractors, but government contractors will be affected by the big picture. To the extent that the budget is cut, it is likely to be cut for some programs that are performed by government contractors. However, as discussed below, the cuts are more likely to be absorbed by the federal workforce than by government contractors.

Continued Contracting in Afghanistan

The president and incoming congressional Republicans may not agree on the same approach to military policy in Afghanistan. An extended or increased American presence in that country beyond the administration's current plan could mean additional work opportunities for a significant number of government contractors.

Downsizing the Federal Workforce

The federal workforce has grown by over 200,000 full-time employees since 2000 to over 2 million today. Many commentators, including the bipartisan National Commission on Fiscal Responsibility and Reform created by President Obama, believe this growth is unsustainable. The commission's recently issued draft recommendations included a proposal to shrink the current government workforce by 10 percent, an estimated 200,000 employees. Although the president fully supports a robust federal workforce, he has higher priorities. And, when the House and Senate do confer in an effort to pass legislation, a smaller federal workforce could be a by-product. That will impact government contractors. A smaller budget for federal employees and a smaller workforce will mean that initiatives to increase and provide additional training for procurement professionals may be curtailed. That in turn could result in delayed contracting decisions and more claims, disputes and protests. Also, the work of government must be done whether it is done by contractors or federal employees. At some point, cuts and freezes in hiring of federal employees will lead to

performance of required work by contractors. Similarly, initiatives to expand the definition of "inherently governmental" will be slowed down.

Shift From Insourcing to Outsourcing

Collectively, the committees that will debate government contract issues in the House will be markedly different than last year, as well as the last decade. The election resulted in the Democrats losing extensive policy experience at the top ranks of the House Armed Services Committee. Newly empowered congressional Republicans in the House could use this as an opportunity to undo many of the legislative changes enacted over the last two years that made it more difficult to outsource work to government contractors. On their own, these efforts might face resistance from a president intent on protecting his 'insourcing' agenda. But in a protracted budget fight with a more moderate Senate, they are exactly the kinds of changes that can get enacted if the president is forced to choose between them and a legacy item like health care reform.

Increase in Investigations

While the Republican controlled House cannot pass new laws without the agreement of the Democrat controlled Senate and the president, it is not without power. Indeed, the Republicans will control all committees in the House. They will provide the speaker and two-thirds of the staff. They will use that power to hold hearings, issue subpoenas and conduct investigations. Likely targets are earmarks and programs that appear to have favored Democrats. The new incoming chairman of the House Committee on Oversight and Government Reform has stated his intention to hold 280 oversight hearings next year on the stimulus bill and many other government areas. Investigations into contracts awarded under these initiatives will be fair game. Presidential earmarks and the grant making process are also in the committee's sights for the coming year. More hearings and investigations could produce evidence of wrongdoing by government officials and government contractors. Given various committees' intent on finding wrongdoing by agencies headed by Obama appointees, government contractors could be collateral damage. Even when they are not the primary targets, they will be caught up in the investigations. Operation Ill Wind, which was launched in 1986, eventually led to the conviction of 12 government officials and over 60 private individuals. Several major defense contractors were convicted. Once an investigation starts, it is hard to control. And, through the need for urgent results, carelessness or bad intent, we know that corners were cut in prosecuting the wars in Iraq and Afghanistan. Decisions made on the ground then that seemed reasonable at the time could be questioned now.

Budget Deadlock

If Congress and the president cannot agree on a new budget, they will try to agree on a continuing resolution that allows the government to continue to operate. If they cannot agree on a continuing resolution, the government will not be funded and will shut down. There is precedent for this. For example, from December 16, 1995 to January 6, 1996, the government shut down. Because (except for emergencies) there are no appropriated funds to operate during a shutdown, government employees are furloughed, government contractors are unable to interact with their contracting officers and other contract officials, and contractors are not paid. This results in stop-work orders, suspension of work, terminations for convenience, and delay. This in turn disrupts the work of the government and government contractors. When funding finally is appropriated and the government and its contractors resume work, the government is flooded with claims and requests for equitable adjustments.

While few advocate a government shutdown to achieve objectives, it is possible that the parties could reach a stalemate over what to include in an appropriations bill. It is possible that certain members will try to block a budget to which they object. And it is possible that certain members will see a government shutdown as a political victory. Is a shutdown likely? Probably not. Could it happen? Definitely.

Deficit Reduction

The deficit is too high. Government spending is out of control. The government needs more funds to operate. One would think that the way to start solving those problems would be to raise taxes and cut spending, but we should not expect to see much of either in the next two years. The same forces that will prevent the parties from reaching compromises on significant legislation will prevent tax increases and will prevent material spending cuts. Thus, while there will be some spending cuts, and while some of those cuts will be to programs performed by government contractors, there likely will not be significant spending cuts any time soon. Moreover, much of the work presently performed by contractors already has been awarded under prior budgets and under long-term contracts. Any refusal to fund new work will not be immediately felt by contractors.

Conclusion

The current political situation and the split in control of the House and Senate will have important implications on our economy over the next two years. Government contractors are a major part of that economy, and they will be impacted. However, as a whole, government contractors will feel fewer effects than other sectors of the economy. That is especially true for defense contractors that will receive the benefit of a pro-defense House and a willingness to continue fighting the war on terrorism.

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