

NDIA
National Defense Industrial Association

**JOINT ARMAMENTS
CONFERENCE & EXHIBITION**
Seattle, Washington
May 14-18, 2012



Top Issues

- NDIA's national 'agenda'
- Derived from member inputs
- Guides advocacy and educational activities
- Distributed to.....
 - Members of Congress
 - Government Leaders and Policy Makers
 - Event attendees
 - Others



The poster features the NDIA logo at the top left and the tagline 'PROMOTING NATIONAL SECURITY SINCE 1919' at the top right. The main content is a list of seven issues, each accompanied by a small image: Issue 1 (Energy Security), Issue 2 (Defense Industry Capacity), Issue 3 (Acquisition Process), Issue 4 (Military Readiness), Issue 5 (Cyber Policy), Issue 6 (International Competitiveness), and Issue 7 (Small Business Contracts). The bottom of the poster has the title 'TOP ISSUES 2012' in large yellow letters and 'NATIONAL DEFENSE INDUSTRIAL ASSOCIATION' in smaller white letters below it.

NDIA
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PROMOTING NATIONAL SECURITY SINCE 1919

- 1** **ISSUE 1:** Promote Energy Security While Reducing Costs
- 2** **ISSUE 2:** Align Defense Industry Capacity and Investment with National Security Requirements, Priorities and Budgets
- 3** **ISSUE 3:** Strengthen the Integrity and Responsiveness of the Acquisition Process
- 4** **ISSUE 4:** Pursue Efficiencies While Maintaining the Industrial Base to Ensure Military Readiness
- 5** **ISSUE 5:** Adopt a Comprehensive Whole-of-Government Approach to Cyber Policy
- 6** **ISSUE 6:** Enable International Competitiveness of US Industrial Base
- 7** **ISSUE 7:** Increase Awareness, Opportunity and Utilization of Small Business in Government Contracts

TOP ISSUES 2012
NATIONAL DEFENSE INDUSTRIAL ASSOCIATION

2012 Legislative & Policy Agenda

1. Promote Energy Security While Reducing Costs
2. Align Defense Industry Capacity and Investment with National Security Requirements, Priorities and Budgets
3. Strengthen the Integrity and Responsiveness of the Acquisition Process
4. Pursue Efficiencies While Maintaining the Industrial Base to Ensure Military Readiness
5. Adopt a Comprehensive Whole-of-Government Approach to Cyber Policy

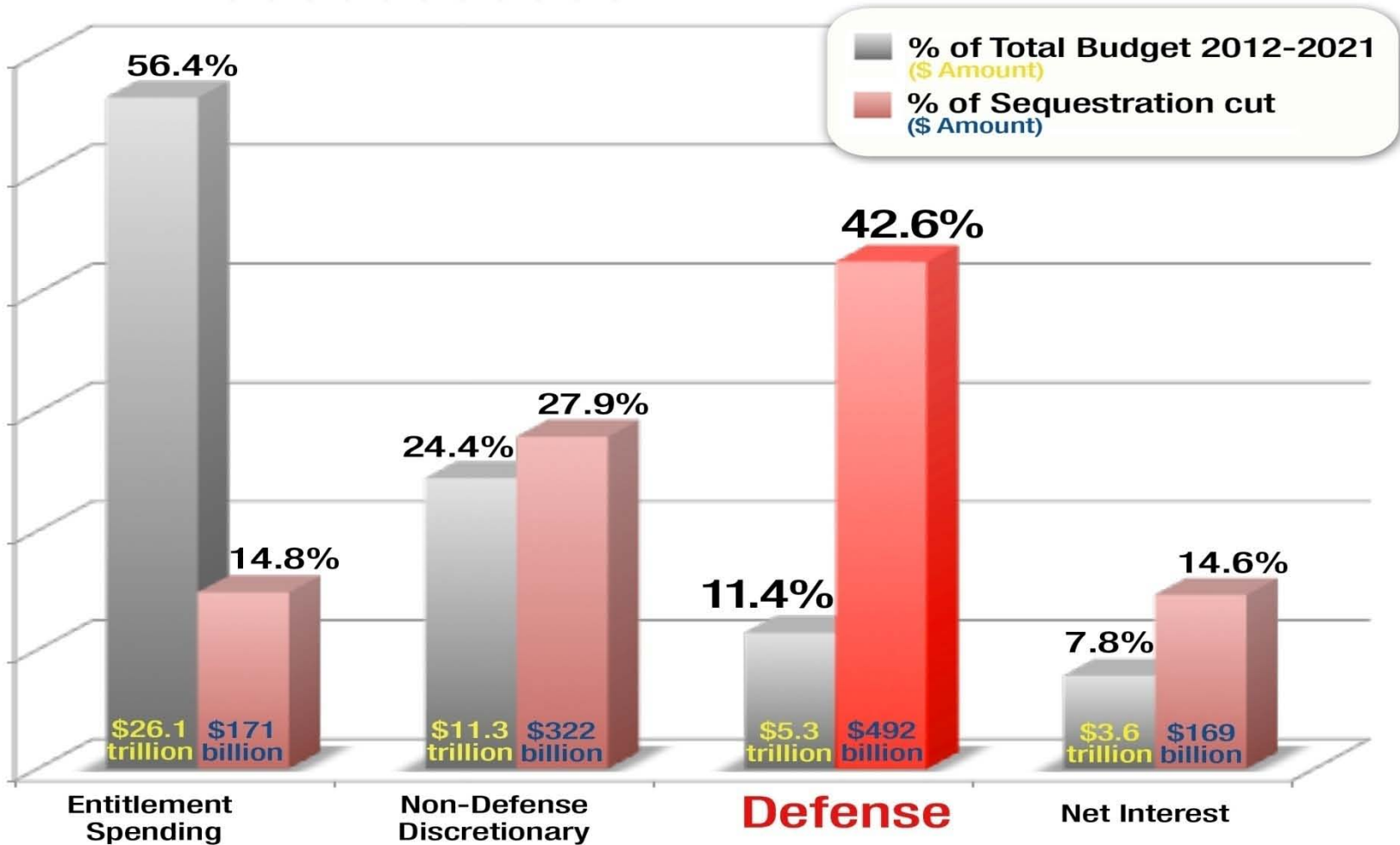
2012 Legislative & Policy Agenda

(continued)

6. Enable International Competitiveness of US Industrial Base
7. Increase Awareness, Opportunity and Utilization of Small Business in Government Contracts

SEQUESTRATION !

Share of Total Sequestration Cuts by Percentage of Total Spending 2013-2021



A Ticking Clock

- Sequestration takes effect on January 1, 2013.
- The sequestration impact for defense industry has begun now.
- It is expected that will DoD change what it is buying in anticipation of sequestration.
- This will result in lost revenue, lost jobs, and a depleted defense industrial base.
- It is expected that DoD will begin a “soft shutdown” in preparation for a “hard stop” of programs on January 2.
- Even if Congress passes a lame duck deal, it may already be too late for some plans and programs.

House Sequestration Actions

- The House passed H.R. 5652 on May 10th by a vote of 218 to 199 the Sequestration Replacement Reconciliation Act.
 - Takes funding from Agriculture, Energy and Commerce, Financial Services, Judiciary, Oversight and Government Reform, and Ways and Means and deletes any cuts to defense, at least for 2013.
 - The Senate is unlikely to take up this bill, if at all, before the elections
- House leaders want to highlight the urgent need to fix sequestration now and pressure the Senate to act.
- HASC Chairman McKeon's solution: federal workforce attrition (HR 3662). Currently has 72-co-sponsors.

Possible Senate Actions

- Senate Unlikely to Address Sequestration Before the last days of the Lame Duck Session
 - House proposals will be DOA in the Senate prior to the elections
- In the absence of a balanced plan that would reduce the deficit, Senate Majority Leader, Senator Harry Reid has stated: “I will oppose any efforts to change or roll back the sequester.”

Packed Agenda for the Lame Duck Session

- Bush tax cuts expiration
- Increase the debt ceiling ... again
- Defense and non-defense sequestration
- Transportation and Farm bill reauthorization
- Temporary payroll tax relief holiday expires
- Annual “tax extenders” break expires
- Medicare “Doc fix”
- All FY 2013 appropriations bills
- And more yet to be determined

Coalition Partners

NDIA Teams with the Following Organizations and Coalitions on Legislative Issues

- **ARWG**: Acquisition Reform Working Group (10)
- **ILC**: Industry Logistics Coalition (10)
- **SMART**: Specialty Metals Availability Reform Team (12)
- **GWRC**: Government Withholding Relief Coalition (116)
- **CODSIA**: Council of Defense and Space Industry Association (7)
- **SCRC**: Security Clearance Reform Coalition (8)
- **FCC**: Fair Competition Coalition (23)
- **TAP**: Tapping America's Potential (16)
- **BCSA**: Business Coalition for Student Achievement (75)
- **CSC**: Coalition for Security and Competitiveness (18)
- **MWC**: Multi-Sector Workforce Coalition (16)



- The ARWG represents thousands of small, mid-sized and large companies and hundreds of thousands of employees that provide goods, services and personnel to the government.

2012 ARWG LEGISLATIVE RECOMMENDATIONS

- **DETECTION AND AVOIDANCE OF COUNTERFEIT ELECTRONIC PARTS**
- **GOVERNMENT COMPETITION**
- **ACCESS TO COMMERCIAL TECHNOLOGIES, PROCESSES AND PRODUCTS**
- **CONTRACTOR COMPENSATION**
- **RIGHTS IN TECHNICAL DATA**
- **LIMITATION ON USE OF COST-TYPE CONTRACTS FOR PRODUCTION**

DETECTION AND AVOIDANCE OF COUNTERFEIT ELECTRONIC PARTS

- **ISSUE:** Refinements to the framework established by Section 818 of the FY 2012 NDAA, Detection and Avoidance of Counterfeit Electronic Parts
- Section 818 instructs DoD to implement a risk-based approach to detection and avoidance of counterfeit parts.
- Section 818 also requires DoD contractors to establish policies that go beyond those in commercial and federal markets today and thus represents a significant shift.
- **Recommendations:**
 - **Enhance Industry Engagement During the Policy and Regulation Formulation**
 - **Changes to provide exception to strict liability under certain conditions**
 - **Changes to recognize the role that parts obsolescence plays in the proliferation of counterfeit parts**
 - **Changes to DoD internal policy guidance on supplier exclusion**

GOVERNMENT COMPETITION

- On September 12, 2011 final OMB policy memo titled “Performance of Inherently Governmental and Critical Functions.” The policy memo lays the foundation for what work should be performed by government employees and what factors should be taken into consideration when contemplating the use of contractors.
- Title 10 USC 2330a (e) (2) (C) requires DoD to review their inventories to ensure that “to the maximum extent practicable,” the activities do not include any functions closely associated with inherently governmental functions.
- Recommendation:
 - Amend Title 10 USC 2330a (e) (2) (C) to mirror the civilian agency standard—and the OMB policy letter on inherently government functions—so that DoD is required to ensure special management attention is being given to contractor performance of closely associated with inherently governmental functions

ACCESS TO COMMERCIAL TECHNOLOGIES, PROCESSES AND PRODUCTS

- The importance of the government's ability to access the commercial marketplace for items and services is clear. The enactment of the Federal Acquisition Streamlining Act of 1994 (FASA), Federal Acquisition Reform Act of 1996 (FARA), and Services Acquisition Reform Act (SARA) of 2004 all underscore the importance of commercial item acquisition
- Over the last decade, there has been an erosion of the government's ability to access the commercial marketplace because of the proliferation of government-unique requirements imposed by various legislative and regulatory changes that are often unrelated to the government's acquisition process.
- A March 12, 2012 DFAR requires that Contracting Officers obtain higher level approval to use FAR Part 12 for commercial item procurements over \$1 million when the determination is based on "of a type" or "offered for sale" language of the commercial item definition. This change reduces decisional flexibility, constrains the CO, and increases the probability that COs will not utilize FAR Part 12 procedures for anything other than Commercial Off-the-Shelf Items (COTS).
- NDIA recommends that Congress reiterate its statutory preference for acquiring commercial items to meet its requirements, and direct all agencies to improve and expand acquisition training to reinforce their functional capabilities in market research, requirements definition and price analysis.

CONTRACTOR COMPENSATION

- Since 1994, the law requires that the Office of Federal Procurement Policy annually establish a limit on the allowability of contractors' executive compensation. The current 2011 cap of \$763,029 had, until recently, applied only to the five highest paid management employees of the contractor. Last year, Congress broadened the coverage of the cap to include all employees of federal contractors, with limited exception.
- Recent Actions:
 - Proposed legislation would further reduce the current cap to \$200,000 or the President's salary, \$400,000.
 - OMB Proposed Rule on FY-2012 Legislation to reduce the cap to SES levels, \$199,000
- Recommendations:
 - Any proposal regarding contractor compensation should include broad exemption authority to ensure that DoD and civilian agencies are able to access critical skills needed to carry out their missions. Further, Congress should refrain from adopting any new statutory limitations on contractor compensation until the provisions from the FY 2012 NDAA have been fully implemented and their impacts adequately assessed.

RIGHTS IN TECHNICAL DATA

- Section 815 of the NDAA for FY-12 makes a number of significant changes to technical data delivery procedures and technical data rights in current law by introducing new concepts.
- Among the most significant changes to the statutes are:
 - A new authority for the government to release a new and as yet undefined class of contractor limited rights (referred to as “interface data”).
 - U.S. government purpose rights in technical data pertaining to items or processes developed in part with federal funds
 - Restoration of the historical treatment of IR&D/B&P as private expense funding
 - new authority allowing the government to require the delivery at any time of technical data generated or utilized in the performance of a contract

LIMITATION ON USE OF COST-TYPE CONTRACTS FOR PRODUCTION

- NDIA is opposed to pending legislation (S. 1694, the “Defense Cost-Type Contracting Reform Act of 2011,”), because the proposed legislation and its underlying premise is that DoD should be prohibited from using cost-type contracts for any stage of production under a major defense acquisition program (MDAP). This prohibition would also establish a preference – as yet unjustified – for the use of fixed-price development contracts in MDAP programs, even during low-rate initial production (LRIP).
- The proposed legislation runs counter to the existing regulatory guidance provided at FAR Part 16.1 “Selecting Contract Types”.
- The proposed legislation would likely have a negative impact on the industrial base.
- Current law already contains additional restrictions on the use of cost-type contracts and requires written justifications for the use of cost-type contracts.

2012 Areas of Special Interest

- Sequestration actions
- Support for WarFighters
- Small Business Advocacy
- Industrial Base Resiliency
- Cyber Security
- Export Controls Modernization
- Energy Security
- STEM - Science, Technology, Engineering and Math Education

Questions - Comments

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