Rec. IR2: Increase contract time for fuel storage from 20 years to 30 years.

Fuel Storage from Interim Report p. 20

Problem

The 20-year limitation on the duration of DoD fuel storage contracts, in effect under Title 10 U.S. Code (U.S.C.) Sec. 2922, Contracts for Energy or Fuel for Military Installations, is out of date. The secretary of defense and the secretaries of the military departments have the authority to contract for "the storage, handling, or distribution of, liquid fuels or natural gas."[1] The statute authorizes a maximum contract of 5 years, with options to renew the contract for additional 5-year periods up to 20 years total. Modern fuel storage infrastructure is capable of operating for up to 30 years without any operational interruption.[2]

Background

The initial version of Section 2922 of Title 10, enacted on August 3, 1956 as Pub. L. No. 968 § 416, contained language that does not exist today. The 1956 version explicitly tied the authority to contract for liquid fuel infrastructure to DoD's need for a secure fuel supply. The original statute limited the fuel contract authority to "facilities which conform to the criteria prescribed by the Secretary of Defense for protection, including dispersal, and also are included in a program approved by the Secretary of Defense for the protection of petroleum facilities."[3]

Later statutory changes altered the scope of the authority under the provision. Congress amended the statute three times between 1982 and 1993. Amendments in 1982 and 1990 modified and then eliminated reporting requirements to Congress. The 1993 amendment struck all language referring to protected petroleum facilities and broadened the authority under the section to encompass natural gas, as well as liquid fuels. In effect, the Fiscal Year (FY) 1994 National Defense Authorization Act (NDAA) modernized the law by acknowledging the emergence of an additional energy source since the 1950s and removing security-related language. Though Congress modernized other aspects of the statute, the maximum length of contract extensions remained unchanged at a cumulative 20 years.[4]

After the 1993 revision of Section 2922, DoD initiated contracts with the expectation contractors would dismantle the fuel infrastructure when the contract terminated. In recent years, however, the administering agency, Defense Logistics Agency (DLA) Energy, has identified this practice as inefficient because the fuel facilities have not reached their lifespans.[5] With many contracts authorized

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[1] Liquid Fuels and Natural Gas: Contracts For Storage, Handling, Or Distribution, 10 U.S.C. § 2922.

[2] Environmental Protection Agency, Email Response to Questions, as quoted by Beth Evans, "EPA Biofuel Storage Rule Marks 'New Round' of Federal Requirements," *Platts Oilgram News*, November 22, 2010, http://www.platts.com/latest-news/oil/newyork/epa-biofuel-storage-rule-marks-new-round-of-federal-6617352. Yale Environmental Health and Safety, *Underground Storage Tanks*, accessed April 21, 2017, http://ehs.yale.edu/sites/default/files/files/underground-storage-tanks.pdf.

[3] An Act to Authorize Certain Construction at Military Installations, and for Other Purposes, Pub. L. No. 968, 70 Stat. 1018 (1956).

[4] National Defense Authorization Act for Fiscal Year 1994, Pub. L. No. 103-160, 107 Stat. 1711 (1993).

[5] Defense Logistics Agency Energy, briefing to Section 809 Panel professional staff, February 2, 2017.

by the statute nearing their conclusion, agency staff members face a potential disruption of fuel services, as well as a potential inefficient use of government resources.[6]

DLA Energy currently oversees 51 Section 2922-authorized contracts that total roughly $1.5 billion in value. The agency administers 32 contractor-owned, contractor-operated terminal operations contracts, valued at $1.1 billion, that allow for providing fuel support services not located on military service installations. Section 2922 contracts account for approximately 70 percent of DLA Energy's terminal operations budget. The agency also administers 19 contractor-owned, contractor-operated military service contracts, with a total value of $363 million, which provide fuel support services on military installations, whereby the contractor builds and owns a fuel facility (albeit one located on government property) but only provides services to DLA Energy. The most common Section 2922 contracts are fuel operating service contracts for storage and bulk/retail operations, as well as contracts for military fuels such as JP-8, JP-5, and F-76. According to DLA Energy, the agency uses Section 2922 seven to eight times annually, including one or two new contracts per year.[7]

Findings

Section 2922's 20-year contractual limit no longer reflects the physical realities of fuel infrastructure. The fuel infrastructure landscape has changed dramatically since 1956 as described below:[8]

- Environmental Protection Agency (EPA) and accompanying efforts from other federal, state, local, and private institutions have generated technological advances in fuel storage safety to comply with a stricter regulatory framework. EPA has synchronized fuel infrastructure standards with health and environmental protection objectives.
- Double-wall tanks and secondary containment requirements are now mandatory for fuel tanks. Leak detection and automatic tank gauging technology have become commonplace.
- Newfound anticorrosion techniques have offered improved protection to underground fuel storage tanks.
- DoD's development of the Unified Facilities Criteria (UFC) program, an effort to coordinate technical criteria and standards for the department's real property facilities, has led to the standardization of certain fuel infrastructure facilities under the department's auspices.[9]

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[6] Ibid.
[7] Defense Logistics Agency Energy, written answers to questions posed by Section 809 Panel, February 2, 2017.
[8] "Frequent Questions About Underground Storage Tanks," Environmental Protection Agency, accessed April 21, 2017, https://www.epa.gov/ust/frequent-questions-about-underground-storage-tanks. Wayne Geyer, *Secondary Containment Options for Aboveground and Underground Tanks*, Steel Tank Institute, accessed April 21, 2017, https://www.steeltank.com/Portals/0/Articles/Secondary%20Containment%20Options%20for%20Aboveground%20and%20Underground%20Tanks.pdf?ver=2009-05-31-010754-563.
[9] Department of Defense Unified Facilities Criteria, *Design: Petroleum Fuel Facilities*, accessed April 26, 2017, http://www.wbdg.org/FFC/DOD/UFC/ufc_3_460_01_2010_c2.pdf.

- The commercial fuel sector itself has voluntarily standardized certain design, construction, and operational elements through the efforts of the National Fire Protection Association (NFPA).[10]

- The 1988 expansion of the Comprehensive Environmental Response, Compensation, and Liability Act formalized technical requirements for fuel tanks and paved the way for a uniform set of national standards regarding leak detection, prevention, and corrective action that is now in effect.[11]

As noted by EPA, fuel storage technology has evolved to the point that the industry standard for fuel facility lifecycle extends to 30 years.[12]

DoD is already integrating this new reality of modern fuel storage into its infrastructure system. Recent projects have met their goals by updating the department's fuel storage facilities to "meet all applicable United Facilities Criteria, NFPA and American Petroleum Institute design requirements," as well as adopting the latest "leak detection, cathodic protection and secondary containment" requirements.[13]

The department's Section 2922 contracting authority has not evolved in tandem with its fuel infrastructure facilities. Synchronizing contract length to the 30-year fuel tank lifespan could produce substantial savings.[14]

Conclusions

Section 2922 no longer reflects the reality of the fuel infrastructure system. Extending the maximum Section 2922 timeframe from 20 years to 30 years for both new and existing contracts would address this problem in a cost-effective manner. This approach could achieve substantial savings in the near term based on reduced infrastructure costs for existing contracts and updated economic analysis reports for new contracts.[15]

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[10] Environmental Protection Agency, *Underground Storage Tank Flood Guide*, accessed April 26, 2017, https://www.epa.gov/sites/production/files/2014-03/documents/ustfloodguide.pdf.

[11] Technical Standards and Corrective Action Requirements For Owners and Operators of Underground Storage Tanks (UST), 53 FR 37194, September 23, 1988, https://www.gpo.gov/fdsys/pkg/CFR-2014-title40-vol27/pdf/CFR-2014-title40-vol27-part280.pdf.

[12] Environmental Protection Agency, Email Response to Questions, as quoted by Beth Evans, "EPA Biofuel Storage Rule Marks 'New Round' of Federal Requirements," *Platts Oilgram News*, November 22, 2010, http://www.platts.com/latest-news/oil/newyork/epa-biofuel-storage-rule-marks-new-round-of-federal-6617352.

[13] "Fuel Storage Tank Replacement," Burns & McDonnell, accessed February 8, 2017, http://www.burnsmcd.com/projects/fuel-storage-tank-replacement. Hassan Sahudin, Bill Shehane and Alan Strecker, Burns & McDonnell, *Refueling the Lifespan*, accessed February 8, 2017, file:///D:/User/My%20Documents/Downloads/articleRefuelingTheLifespa.pdf.

[14] According to DLA Energy, the agency could achieve up to $28 million in total savings by extending the length of four, 20-year contracts that are set to terminate in the next 2 years. The agency estimates that it could achieve up to $25 million in additional savings by applying a 30-year timeframe to 11 economic analysis reports that it has completed—based upon the 20-year timeframe—for impending contracts under Section 2922. By contrast, if the statute remains in its present form, DLA Energy indicated it would face infrastructure replacement costs between $6.5 million and $7.5 million for each new contract award on a Section 2922 contract. DLA Energy, response to questions posed by Section 809 Panel, March 16, 2017.

[15] DLA Energy, response to questions posed by Section 809 Panel, March 16, 2017.

Recommendations

Legislative Branch

- Extend the maximum length of Section 2922 fuel storage contracts to 30 years.
- Allow existing contracts to be extended to the 30-year maximum by adding a statement to the *effective date* clause that says the 30-year maximum "may be applied to a contract entered into before that date if the total contract period under the contract (including options) has not expired as of the date of any extension of such contract period by reason of such amendment."

Executive Branch

- Update any pertinent regulation.

Implications for Other Agencies

- None.