



**PANDEMIC
RESPONSE
ACCOUNTABILITY
COMMITTEE**



Observations: Fiscal Year 2020 COVID-19 Federal Contracting

August 4, 2021



COVID-19 Contracting in Fiscal Year 2020

What We Found

- First-time federal contractors received **\$4.4 billion** worth of pandemic contracts in Fiscal Year 2020.
- **\$128 million** was deobligated from contracts with first-time federal contractors during the same period.

Since the beginning of the novel coronavirus disease 2019 (COVID-19) pandemic, Congress has authorized more than \$5 trillion¹ to mitigate the effects of the pandemic. Numerous federal agencies have used a large portion of these funds to award contracts for critical goods and services to support federal, state, and local response efforts.

In July 2020,² the Government Accountability Office reported that contracting—while critical during emergencies—can also present unique challenges. Officials may face pressure to provide goods and services as quickly as possible, which can result in fraud and improper payments.

Even in non-pandemic times, financial management controls and proper oversight of government contracts pose a challenge to federal agencies and programs. The substantial increase in funding for pandemic-related programs combined with the public's expectation that these funds get distributed quickly makes it more likely that these risks may occur. However, even in times of emergency, federal agencies must put controls in place to protect against fraud and ensure taxpayer dollars are spent effectively.



The CARES Act mandates the PRAC to conduct and coordinate oversight of covered funds and the coronavirus response.

This includes “...comprehensive audit and review of charges made to Federal contracts pursuant to authorities provided in the Coronavirus Aid, Relief, and Economic Security Act, to determine whether wasteful spending, poor contract or grant management, or other abuses are occurring...and reviewing whether competition requirements applicable to contracts ...using covered funds have been satisfied” | CARES Act 15010 (d)(1)(B)

¹The more than \$5 trillion in pandemic response funds includes funds authorized under the first-time Coronavirus Response and Relief Supplemental Appropriations Act as well as the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020; the Families First Coronavirus Response Act; the Coronavirus Aid, Relief, and

Economic Security Act; the Paycheck Protection Program and Health Care Enhancement Act, and the American Rescue Plan.

² COVID-19 Contracting: Observations on Federal Contracting in Response to the Pandemic, GAO-20-632, July 2020.

Why We Examined Federal Contracting for COVID-19 Impacts

The Coronavirus Aid, Relief, and Economic Security (CARES) Act created the Pandemic Response Accountability Committee (PRAC) to oversee the federal government's pandemic response. Among its many directives, the CARES Act requires the PRAC to audit or review funding for federal contracts (detailed above).

Additionally, on June 5, 2020, several members of Congress requested the PRAC investigate pandemic-related contracts entered with federal contractors that previously had never worked with the government. Moreover, during the past year several first-time federal contractors were convicted of failing to provide goods that were contracted for during the pandemic. For example, an individual lied to a federal agency about being able to produce large quantities of personal protective equipment, including N95 masks. His company was awarded contracts for more than \$35 million but was unable to deliver any of the equipment.

Our objective was to review pandemic-related federal contracts and identify first-time contractors and contracts awarded without competitive bidding. To accomplish this, we partnered with the Treasury Inspector General for Tax Administration to use a data-driven approach (see Appendix B).

How was Federal Contracting Affected by the Pandemic?

The federal government contracted for \$643 billion in goods and services between April 1, 2020, and September 30, 2020. Of this amount, **approximately \$28 billion was deemed related to the pandemic.** Of this amount, approximately \$12.5 billion was set aside for contract actions funded by COVID-19 supplemental appropriations and another approximately \$15.4 billion was for contract actions not funded by COVID-19 supplemental appropriations (see below). Contract actions are defined as written or verbal actions that result in the purchase, rent or lease of supplies or services using appropriated dollars over the

Pandemic Funded Contracts (\$12.5B)

Contracts that were awarded specifically to address needs of the agencies to address COVID-19. These are often for testing for COVID-19, cleaning of impacted buildings, personal protection equipment, and many other critical needs. In accordance with the Office of Management and Budget Memorandum M-20-21, COVID-19 supplemental appropriations are identified by a Disaster Emergency Fund Code (DEFC) in USA Spending reporting.

Pandemic Response Contracts Not Funded by Pandemic Funds (\$15.4B)

Some agencies already had contracts for goods or services that were affected by COVID-19. These contract actions are identified in the Federal Procurement Data System-Next Generation (FPDS) by the National Interest Action (NIA) code.

micro-purchase threshold (cannot be purchased with a government credit card). Contract actions also include any modifications to these actions regardless of dollar value.

First-Time Federal Contractors

Within the approximately \$28 billion of overall pandemic response contracts between April and September 2020, we found that **1,656 contract actions worth \$4.4 billion (16%) were awarded to first-time federal contractors.**

First-Time Federal Contractors in Pandemic Response Efforts

The Office of Federal Procurement Policy's (OFPP) *Emergency Acquisitions Guide (January 2011)* helps the federal contracting community plan and carry out procurement activities during emergencies. The guide is a supplement to agency-specific guidance and the Federal Acquisition Regulation (FAR). The guide reminds Contracting Officers that contractor responsibility determinations are still required in emergency operations, as detailed below.

Contractor Responsibility Determinations

Contracts may be awarded only to responsible prospective contractors that meet the requirements of FAR 9.104. The requirement for determinations of contractor responsibility is not waived during emergency operations...

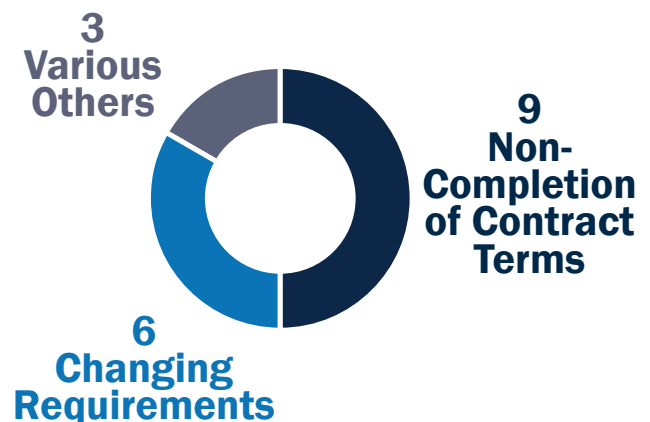
To provide insight on the extent to which pandemic-related contracts were awarded to responsible prospective contractors, we reviewed deobligations on pandemic contracts. Deobligations occur when funds are removed.

from a contract for reasons such as failure to meet requirements, contract termination for convenience, or change in contract scope. As of September 30, 2020, **pandemic contracts had almost \$1.2 billion in deobligations, \$128 million (approximately 11%) of which were associated with first-time federal contractors.**

More specifically, we found that 23% of first-time federal contractors' contract actions had an associated deobligation. Further, when sorted by product or service code, we found that certain industries had higher rates of deobligations than others related to contracts with first-time federal contractors. For example, the highest percentage of deobligations for pandemic contracts with first-time federal contractors was in the accommodation and food industry.

To determine why deobligations occurred with first-time federal contractors, we surveyed five agencies associated with 18 contracts (see Appendix B). We found the **reasons for the reduction or termination of the contracts were: (1) non-completion of contract terms; (2) changing requirements; and (3) other reasons.** (See Figure 3.)

Figure 3. Reasons for Deobligations



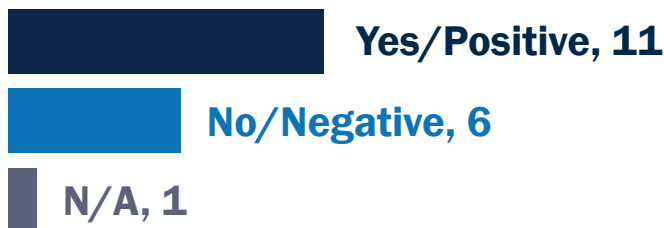
Source: Synopsis of survey responses from five agencies.

Contracting Officers responsible for several of the contracts in the survey noted the following reasons for deobligations:

- *The contractor could not deliver the required kinds [of products] and quantities under the order terms and conditions.*
- *The contractor was not able to meet the required delivery schedule of seven days after receipt of the order.*
- *The emergency requirement was for particular levels of isolation gowns. When the first delivery was made, it was discovered that the (individual) gowns were labeled as required. However “Not Intended for Medical Use” was posted on the shipping box. Upon inspection it was determined the gowns would not be acceptable for the intended use. It was decided by the authorities above to accept the delivered gowns for use in departments where medical care was not being performed, but the remainder of the order would be canceled.*

We also asked Contracting Officers for their ratings of the contractors in the Contractor Performance Assessment Reporting System (CPARS) to assist with gauging overall satisfaction, as depicted in Figure 4:

Figure 4. Planned Positive or Negative Ratings in CPARS



Source: Synopsis of survey responses from five agencies.

While contractor responsibility determinations are still required (see callout box on page 3) for some procurements, Contracting Officers noted the challenge of ensuring the contractor could perform. Our survey found contract officers attempted to verify contractors' capabilities through various methods, such as searching local markets or responses to solicitations. However, the results were mixed, as detailed below in the Contracting Officers' comments:

- Searched sources for the required products, but due to the urgency and limited quantity of the requirement, and the immediate need for delivery, a discussion was held with the verified business to determine if they could provide information on their capability of providing N95 NIOSH Masks. Discussion with Supplier provided information on their specifics such as available Quantities, Cost, and Shipping Availability, which met the requirements. However, in the end, the contract was terminated when the contractor could not deliver.
- As this COVID-19 requirement was needed immediately, we did not have time for a Request for Information or Sources Sought notice. We issued a combined synopsis and solicitation for the commercial product. Contractor failed to meet obligation as specified within the contract and it was Termination for Cause for failure to provide required product.
- The specific contractor was not identified during market research. They responded to a competitive, unrestricted open continuous solicitation for personal protective equipment/medical supplies. The contract was reduced due to the product being unavailable from the manufacturer.

- Contractor was identified by calling several local contractors and identifying which contractors had total or partial capacity to meet the government’s requirements. This contractor was ultimately selected as they were able to meet the government’s total requirement for lodging and laundry, were willing to mobilize immediately to provide support, and offered a lodging rate below the per diem rate.

Emergency acquisitions are of critical need during a pandemic and any delay in delivery can have catastrophic effects. Almost a quarter of these contracts contained decreases in obligation amounts and about half of our sample ended with non-completion of the contract terms, demonstrating the potential increased risk to the government. While not all decreases in value and terminations are due to a negative performance by the contractor, the results of our data analysis and survey responses highlight the need for heightened diligence during emergency acquisitions, especially when contracting with first-time federal contractors.

Limited Competition in Pandemic Contracting

The FAR generally requires agencies to use full and open competition when awarding contracts. However, FAR 6.302 allows for exceptions under certain circumstances, such as a declared emergency. While flexibilities are allowed during declared emergencies, FAR 6.301 (d) states:

“When not providing for full and open competition, the Contracting Officer shall solicit offers from as many potential sources as is practicable under the circumstances.”

This is further reiterated in OFPP’s Emergency Acquisitions guidance from January 2011,

Minimizing Risk

If time does not permit adequate acquisition planning and market research, an agency should carefully consider **limiting the value and length of a contract** to only address immediate needs. This approach allows the agency to plan strategically for ongoing requirements.

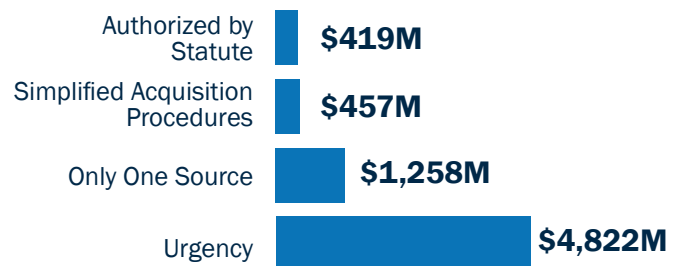
Situational Terms, Conditions, and Pricing

Contract pricing, terms, and conditions will vary depending on the emergency environment. Contracting Officers should **be aware of opportunities for terms and pricing to change through different phases of an emergency response.**

which highlights the importance of minimizing risk through appropriate contract pricing, terms, and conditions.

We reviewed contracting data for pandemic spending and found the four most common flexibilities identified to justify limited competition were **urgency, only one source, simplified acquisition procedures and authorized by statute**, as shown in Figure 5.

Figure 5. Top Four Limited Competition Authorities



Source: Summarized data from FPDS and USAspending.

Of the competition flexibilities recognized by the FAR allowed in an emergency, the **“only one responsible source” authority is defined to be used when supplies and services are available from only one source in certain conditions,** either unsolicited research proposals or a follow-on contract for continued development.

In our review of federal contract data, we found that **11% of non-competitive contracts used the “only one responsible source” authority.** Upon closer review of award descriptions for these contracts, we found several that did not fit this authority and instead should have used a different FAR authority. Refer to Figure 5 to see how the only one source authority falls in the top four authorities for limited competition in terms of amounts awarded.

Based on this observation, we conducted a survey (see Appendix B) involving 14 contracts from five agencies. Our survey found that **71% of contracts either had data entry errors or an inappropriate authority selection.** Specifically, we found:

- Five should have used urgency (FAR 6.302-2) rather than only one source and;
- Five used the urgency authority but had data entry errors in the federal procurement system.

Both instances demonstrate the importance of ensuring acquisitions are properly developed and documented. The use of the “only one responsible source” authority reduces

competition in emergency situations, a situation that can enhance the risk of increased prices and decreased contractor performance.

Conclusion

In our review of the contracts awarded in FY 2020 related to the pandemic response, the use of first-time federal contractors and limited competition authorities affected agencies’ response. Even in emergency acquisitions, agencies are expected to use sound fiscal prudence and due diligence to maximize value for each taxpayer dollar spent.

Appendix A: Acronyms

CARES Act	Coronavirus Aid, Relief, and Economic Security Act
CPARS	Contractor Performance Assessment Reporting System
DEFC	Disaster Emergency Fund Code
FAR	Federal Acquisition Regulations
FPDS	Federal Procurement Data System – Next Generation
NIA (code)	National Interest Action (code)
OFPP	Office of Federal Procurement Policy
OMB	Office of Management and Budget
PRAC	Pandemic Response Accountability Committee
TIGTA	Treasury Inspector General for Tax Administration

Appendix B: Scope and Methodology

The objectives of our review were to (1) review pandemic-related federal contracts to identify first-time vendors; and (2) review pandemic-related federal contracts to identify those that were awarded without competitive bidding.

We partnered with Treasury Inspector General for Tax Administration (TIGTA), on a data driven approach and analyzed two sets of data as they relate to our scope.

The scope of our review included COVID-19 pandemic-related federal contracts reported in USAspending through September 30, 2020 with COVID-19 Disaster Emergency Fund Code values (“L”, “M”, “N”, “O”, and “P”). For contracts reporting in Federal Procurement Data System (FPDS), all awards with the National Interest Action (NIA) Static Report on COVID-19 as of September 30, 2020. The FPDS COVID-19 NIA Static Report captures all contracting actions where the NIA value is ‘COVID-19 2020’ (code P20C). The NIA code is used to track COVID-19 spending. However, it only applies to procurement actions (i.e., contracts) and is not necessarily tied to COVID-19 supplemental appropriations (unlike the USA Spending COVID-19 report).

First-Time Federal Contractor

We defined a first-time federal contractor as any vendor that did not have a contract with the federal government in the last ten fiscal years, or between October 1, 2009 and September 30, 2019.

Criteria Review

We reviewed the following regulations and applicable guidance:

- a. Coronavirus, Aid, Relief, and Economic Security Act, March 27, 2020;
- b. Federal Acquisition Regulation (FAR), March 10, 2021;
- c. Office of Management and Budget M-20-18, Managing Federal Contract Performance Issues Associated with the Novel Coronavirus (COVID-19), March 20, 2020; and
- d. Office of Federal Procurement Policy Emergency Acquisitions Guide, January 14, 2011.

Survey Selection

Based on our observations in the contract data, we conducted a survey on contracts with associated deobligations and contracts with limited competition, using “Only One Source-Other (FAR 6.302-1 Other)” to obtain feedback from Contracting Officers on these two areas. We selected two non statistical samples.

- a. The deobligations sample included those contracts within the scope period issued to first-time federal government contractors that fall into one of the top five North American Industrial

Classification System (NAICS) codes by count. For each of the five NAICS Codes, we selected the top three to five largest deobligations.

The “Only One Source-Other (FAR 6.302-1 Other)” sample included those contracts within our scope period that have an “Other than Full and Open Competition” field identified as “Only One Source-Other (FAR 6.302-1 Other). We decided to select all contracts greater than \$100,000 and then judgmentally select contracts under the \$100,000 that were for goods and services that are likely, based on our professional judgement, to have more than one source available.

After selecting our sample, we reached out to each of the contracting agency’s Office of Inspector General (OIG) for coordination and deconfliction purposes. We had some modifications due to their feedback to the sample.

We sent surveys to each of the heads of contracting activity for each of the respective contracts within our sample to gain an understanding about either the justification and use of “Only One Source-Other (FAR 6.302-1 Other)” or the reason for deobligating funds on the contract.

For the limited competition sample, we contacted 10 agencies about 24 contracts and received responses from five. These five agencies provided feedback on 14 contracts.

b. We received responses from the Departments of Veterans Affairs, Justice, State, Interior, and also from the Department of Labor Office of the Inspector General, whom had a contract in our sample.

For the deobligation sample, we contacted nine agencies about 23 contracts and received responses from six agencies.

a. We received responses from the Departments of Veterans Affairs, Justice, Homeland Security, Defense (the Army and Navy), Agriculture, and Transportation.

b. These six agencies provided feedback on 21 contracts.

c. Note: We removed three contracts during review of responses, since the response indicated the contract did not fit the parameters of the sample, resulting in a total of 18 contracts from five agencies in our synopsis.

Data Reliability

TIGTA performed a data reliability assessment for the four primary data sources used to support our conclusions: (1) USA Spending COVID-19 Profile Page Contract Prime Award Summaries Table, (2) Federal Procurement Data System (FPDS) National Interest Action (NIA) Static Report on COVID-19, (3) Federal Procurement Data System (FPDS) Ad Hoc Report on Vendor DUNS Number and Dollars Obligated, and (4) System for Award Management (SAM) Entity Management Extracts Sensitive Data Package. The data from these four sources were found to be accurate and reliable.

Standards

We conducted the review in accordance with the Quality Standards for Inspection and Evaluation issued by the Council of the Inspectors General on Integrity and Efficiency.

POINT OF CONTACT

PRAC

Brooke Holmes, Associate Director of Oversight and Accountability

Brooke.Holmes@cigie.gov

REPORT FRAUD, WASTE, ABUSE, AND MISMANAGEMENT

To report allegations of fraud, waste, abuse, or misconduct regarding funds or programs covered within the following Acts, please go to the PRAC website at PandemicOversight.gov.

[CARES Act](#)

[Paycheck Protection Program and Health Care Enhancement Act](#)

[Families First Coronavirus Response Act](#)

[Coronavirus Preparedness and Response Supplemental Appropriations Act](#)

[Coronavirus Response and Relief Supplemental Appropriations Act, 2021](#)

[American Rescue Plan Act of 2021](#)



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