



August 2021

# MEDICARE DURABLE MEDICAL EQUIPMENT

## Effect of New Bid Surety Bond Requirement on Small Supplier Participation in the Competitive Bidding Program

Accessible Version



A Century of Non-Partisan Fact-Based Work

# GAO@100 Highlights

Highlights of [GAO-21-602](#), a report to congressional committees

## Why GAO Did This Study

To achieve Medicare savings and address fraud concerns, Congress required that CMS, in the Department of Health and Human Services (HHS), phase in a CBP for certain DME product categories in designated geographical (or CBP) areas. CBP Round 2021 began on January 1, 2021, and included two product categories (off-the-shelf knee braces and off-the-shelf back braces) in a total of 235 CBP area and product category combinations (known as competitions). CMS estimated that round 2021 will save Medicare more than \$600 million over the 3-year contract period.

The Medicare Access and CHIP Reauthorization Act of 2015 included a provision for GAO to evaluate the effect of the new bid surety bond requirement on small supplier participation in the CBP. CMS defines small suppliers as those generating \$3.5 million or less in total gross Medicare and non-Medicare revenue annually. This report describes 1) the extent to which small suppliers participated in CBP round 2021 and 2) what is known about how the bid surety bond requirement and other factors affected or may affect small supplier participation in the CBP. GAO reviewed bidding process and contract award data; interviewed CMS officials; and interviewed representatives from two national DME industry trade organizations, including six of their small DME supplier members, that GAO selected based on their familiarity with the CBP and the new bid surety bond requirement.

HHS provided technical comments on a draft of this report, which GAO incorporated as appropriate.

View [GAO-21-602](#). For more information, contact Michelle B. Rosenberg at (202) 512-7114 or [rosenbergm@gao.gov](mailto:rosenbergm@gao.gov).

August 2021

## MEDICARE DURABLE MEDICAL EQUIPMENT

### Effect of New Bid Surety Bond Requirement on Small Supplier Participation in the Competitive Bidding Program

#### What GAO Found

The Centers for Medicare & Medicaid Services (CMS) administers a competitive bidding program (CBP) to determine which suppliers may furnish certain durable medical equipment (DME) to Medicare beneficiaries in designated geographical areas. Specifically, suppliers submit bids to provide specified categories of DME items; CMS determines winning bids based on several factors, including the bid amount, and whether the estimated capacity of suppliers would meet the projected demand for those DME items in each area. Historically, winning suppliers could reject any contract offer to furnish CBP-covered items without penalty. This allowed them to help set CBP payment amounts without being held accountable for furnishing items at those amounts. However, beginning with round 2021—the most recent round of the CBP—bidding suppliers were required by law to obtain a \$50,000 bid surety bond for each CBP area in which they submitted a bid. These bonds require a supplier to accept a contract offer when its bid amount is at or below the median of the winning suppliers' bids used to calculate the CBP payment amount offered for each product category. If it does not, the supplier forfeits the bond.

GAO found that small suppliers successfully obtained contracts in CBP round 2021. For example, small suppliers accounted for 58 percent of the suppliers awarded contracts in round 2021. Slightly more than half of the bids small suppliers submitted resulted in contracts.

**Contract Awards by Supplier Size for the Round 2021 Competitions**

Size of bidders	Suppliers that bid		Suppliers awarded contracts	
	Number	Percent	Number	Percent
Small suppliers	383	60	207	58
Large suppliers	231	36	148	42
Unknown suppliers	24	4	0	0
<b>Total</b>	<b>638</b>	<b>100</b>	<b>355</b>	<b>100</b>

Source: GAO analysis of Centers for Medicare & Medicaid Services (CMS) data. | GAO-21-602

Notes: CMS defines small suppliers bidding as those generating \$3.5 million or less in total gross Medicare and non-Medicare revenue annually, large suppliers as those generating more than that amount of revenue, and unknown suppliers as those whose entire bid was disqualified for a missing financial document and, therefore, did not advance to the evaluation process where a supplier's size is determined.

CMS data suggest that bid surety bonds did not negatively affect small supplier participation in CBP round 2021. Specifically, the data show that the small supplier participation rate in round 2021 was comparable to that of the five prior CBP rounds. The data also indicated that only about 5 percent of small suppliers' bids were disqualified due to submission of invalid bid surety bonds. Representatives from two national DME industry trade organizations, as well as six of their small supplier members, told GAO that the new bid surety bond requirement did not create a barrier for small suppliers, as bid surety bonds were accessible to small suppliers and reasonably priced. However, some of these representatives reported other factors may affect small suppliers' future participation in CBP rounds, such as concerns related to small suppliers' ability to provide items at rates that are competitive with larger suppliers.

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**Abbreviations**

CBIC	competitive bidding implementation contractor
CBP	competitive bidding program
CMS	Centers for Medicare & Medicaid Services
DME	durable medical equipment
DMEPOS	durable medical equipment, prosthetics, orthotics, and related supplies
HHS	Department of Health and Human Services
OTS	off-the-shelf

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August 12, 2021

The Honorable Ron Wyden  
Chairman  
The Honorable Mike Crapo  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Frank Pallone, Jr.  
Chairman  
The Honorable Cathy McMorris Rodgers  
Republican Leader  
Committee on Energy and Commerce  
House of Representatives

The Honorable Richard Neal  
Chairman  
The Honorable Kevin Brady  
Republican Leader  
Committee on Ways and Means  
House of Representatives

In 2020, Medicare—a federal health insurance program—spent approximately \$9 billion on Medicare fee-for-service payments for durable medical equipment (DME), including prosthetics, orthotics, and related supplies for beneficiaries.<sup>1</sup> The Medicare program is administered by the Centers for Medicare & Medicaid Services (CMS) within the Department of Health and Human Services (HHS). Most Medicare beneficiaries enroll in Medicare Part B, which helps pay for DME items, such as oxygen, wheelchairs, hospital beds, walkers, orthotics, prosthetics, and supplies, if

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<sup>1</sup>Collectively, DME, prosthetics, orthotics, and related supplies are referred to as DMEPOS. DME is equipment that serves a medical purpose, can withstand repeated use, is generally not useful in the absence of an illness or injury, and is appropriate for use in the home, including, for example, wheelchairs and hospital beds. Prosthetic devices (other than dental) are needed to replace body parts or functions. Orthotic devices provide rigid or semi-rigid support for weak or deformed body parts or restrict or eliminate motion in a diseased or injured part of the body, such as leg, arm, back, and neck braces. For this report, we use the term DME to refer to the DMEPOS items included in the Medicare DME competitive bidding program.

they are medically necessary and prescribed by a physician.<sup>2</sup> Medicare beneficiaries typically obtain these items from suppliers who submit claims for payment to Medicare on behalf of beneficiaries.

Historically, Medicare paid for DME items by using a fee schedule generally based on what suppliers charged for the items and services during the 1980s, and these amounts were increased annually. However, both we and the HHS Office of Inspector General have reported that Medicare and its beneficiaries sometimes paid higher than market and other private insurers' rates for various DME items.<sup>3</sup> These overpayments increased costs to both Medicare and its beneficiaries.

To achieve Medicare savings for DME and address fraud concerns, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 required that CMS phase in a competitive bidding program (CBP) for certain product categories of like DME items (such as walkers, wheelchairs, and oxygen) in designated CBP areas throughout the country.<sup>4</sup> As part of the CBP, suppliers submit bids to provide specified categories of DME items in designated geographical areas; CMS determines winning bids based on several factors, including the bid amount and the estimated capacity of suppliers needed to meet projected demand for the DME items in each CBP area. The most recent CBP

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<sup>2</sup>Medicare Part B helps pay for certain physician, outpatient hospital, laboratory, and other services, and medical equipment and supplies. Medicare beneficiaries are required to pay a monthly premium for Part B coverage and an annual deductible. In general, beneficiaries also pay 20 percent—the coinsurance—of the Medicare fee schedule payment rate after reaching their annual Medicare Part B deductible.

<sup>3</sup>Office of Inspector General, Department of Health and Human Services, *Power Wheelchairs in the Medicare Program: Supplier Acquisition Costs and Services*, OEI-04-07-00400 (August 2009). GAO, *Medicare: Review of the First Year of CMS's Durable Medical Equipment Competitive Bidding Program's Round 1 Rebid*, [GAO-12-693](#) (Washington, D.C.: May 9, 2012). GAO, *Medicare: Competitive Bidding for Medical Equipment and Supplies Could Reduce Program Payments, but Adequate Oversight Is Critical*, [GAO-08-767T](#) (Washington, D.C.: May 6, 2008). GAO, *Medicare: Past Experience Can Guide Future Competitive Bidding for Medical Equipment and Supplies*, [GAO-04-765](#) (Washington, D.C.: Sept. 7, 2004).

<sup>4</sup>Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, § 302(b), 117 Stat. 2066, 2224-30 (codified, as amended, at 42 U.S.C. § 1395w-3). In this report, we use the term "CBP area" to refer to what CMS calls a "competitive bidding area." A CBP area is either a metropolitan statistical area or a part thereof. CMS selected these areas based on the volume of DME items furnished, the number of suppliers, the number of beneficiaries within the designated CBP areas, or as otherwise mandated by the Social Security Act. CMS cannot award contracts for longer than a 3-year contract period, but may award contracts for a shorter period.

round—referred to as round 2021—included two product categories—off-the-shelf (OTS) back braces and OTS knee braces—across 127 CBP areas. Round 2021 contracts became effective on January 1, 2021, and expire on December 31, 2023.

Consistent with the Medicare Access and CHIP Reauthorization Act of 2015, CMS required that all bidding suppliers in round 2021 obtain a \$50,000 bid surety bond for each CBP area in which they submitted a bid.<sup>5</sup> In this case, a bid surety bond is a guarantee issued by a surety bond company that a bidding supplier will accept contract offers that meet certain conditions. Specifically, a supplier must accept a contract offer when the amount it bid is at or below the median of the winning suppliers' bids used to calculate the CBP payment amount (referred to as the single payment amount) for the product category and CBP area. If the winning supplier fails to do so, then the surety bond company must pay CMS \$50,000 for each forfeited bid surety bond, which the surety bond company then collects from the supplier that submitted the bid.

The new bid surety bond requirement helped address a long-standing concern held by DME industry representatives and some economists related to the submission of “non-binding” bids. In CBP rounds prior to round 2021, suppliers were able to submit bids that could help set single payment amounts without being held accountable for actually furnishing items at those amounts. Specifically, suppliers could reject any contract offer without penalty.<sup>6</sup>

CMS noted in its 2016 Final Rule that it anticipated the new bid surety bond requirement may disproportionately affect small suppliers as a result

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<sup>5</sup>Medicare Access and CHIP Reauthorization Act of 2015, Pub. L. No. 114-10, § 522, 129 Stat. 87, 176-77. Implementation of the new \$50,000 bid surety bond to participate in CBP is separate from another \$50,000 surety bond that CMS began requiring certain DME suppliers to obtain for each of their business locations in 2009 as part of their Medicare supplier enrollment requirements under the Balanced Budget Act of 1997. Pub. L. No. 105-33, § 4312(a), 111 Stat. 251, 386. These bonds are designed to reduce the amount of money that is lost due to fraudulent or abusive billing schemes by suppliers.

<sup>6</sup>While implementation of the bid surety bond requirement penalizes suppliers that do not accept contract offers when their bid amounts are at or below the median of the suppliers' bids used to calculate single payment amounts for each product category in a CBP area, it does not guarantee that suppliers who accept CBP contracts will comply with all contract obligations throughout the entire contract period. Such contract obligations include, for example, furnishing all items included in the contract to any beneficiary who visits or maintains a permanent residence in the CBP area and requests such items from the contract supplier.

of the increased costs to participate in the CBP. The Medicare Access and CHIP Reauthorization Act of 2015 included a provision for us to evaluate the effect of the new bid surety bond requirement on small supplier participation in the CBP.<sup>7</sup> This report describes

1. the extent to which small suppliers participated in CBP round 2021; and
2. what is known about how the bid surety bond requirement and other factors affected or may affect small supplier participation in the CBP.

To describe the extent to which small suppliers participated in CBP round 2021, we reviewed supplier bid and contract data from CMS to determine the number and percentage of small and large suppliers that submitted bids and were awarded contracts for round 2021. For purposes of CBP, CMS defined small suppliers as those generating \$3.5 million or less in total gross Medicare and non-Medicare revenue annually and large suppliers as those generating more than that amount of revenue. We also reviewed the number of bids that were submitted by both large and small suppliers and the percentage of bids that resulted in final contract awards.

To describe what is known about how the bid surety bond requirement and other factors affected or may affect small supplier participation in the CBP, we reviewed relevant CBP-related laws and regulations, as well as reports, guidance, fact sheets, press releases, and bidding instructions issued by CMS and its competitive bidding implementation contractor (CBIC). We also reviewed relevant reports issued by the Medicare Payment Advisory Commission and HHS's Office of Inspector General. To determine how the bid surety bond requirement may have played a role in small supplier participation in round 2021, we reviewed and compared historical data from prior CBP rounds that were in effect before the bid surety bond requirement was implemented to the round 2021 supplier bid and contract data from CMS. We also reviewed the percentage of small and large suppliers' bids that were disqualified for not meeting bid surety bond and other requirements.

In addition, we interviewed CMS officials and contacted officials from the U.S. Small Business Administration, HHS's Office of Small and Disadvantaged Business Utilization, and CMS's Competitive Acquisition Ombudsman, to determine the extent to which, if any, they received

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<sup>7</sup>Pub. L. No. 114-10, § 522(c), 129 Stat. at 177.

questions or requests for assistance from small suppliers regarding the bid surety bond requirement or other CBP-related processes.<sup>8</sup> To obtain an industry perspective on criteria and costs associated with bid surety bonds, we also interviewed representatives from two national associations representing surety bond companies and agents, as well as two companies and one organization that issued bid surety bonds to small and large suppliers bidding in round 2021. Finally, to obtain information about small suppliers' experiences in obtaining bid surety bonds in round 2021 and other CBP-related processes, we interviewed representatives from two national DME industry trade organizations that represent small and large suppliers, including six of their small supplier members that bid in round 2021 or have knowledge of CBP-related issues.<sup>9</sup>

To assess the reliability of data CMS provided, we looked for obvious errors, compared the data to outcomes we have previously reported in our prior CBP-related reports, and followed up with CMS to clarify and resolve any discrepancies we found. Based on these steps, we determined that the data were sufficiently reliable for the purposes of our reporting objectives.

We conducted this performance audit from November 2020 to August 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>8</sup>We conducted outreach to these three external stakeholders for the following reasons. According to CMS, because the U.S. Small Business Administration's website states that it encourages surety companies to bond small businesses, CMS anticipated that small suppliers may reach out to the Small Business Administration if they encountered difficulty obtaining bid surety bonds. In addition, HHS's Office of Small and Disadvantaged Business Utilization's website states that it promotes the participation of all small businesses in HHS contracts. Finally, the Competitive Acquisition Ombudsman was created to respond to CBP-related complaints and inquiries made by suppliers and individuals, and works with CMS officials and the CBIC to resolve them.

<sup>9</sup>We selected these two DME industry trade organizations based on their familiarity with the new bid surety bond requirement and other CBP processes. Specifically, they developed several educational tools, including a website, webinars, and bidding tools, to assist bidding suppliers and to address their questions and concerns.

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## Background

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### CBP Contract Supplier Eligibility and Award Processes

CMS and the CBIC administer and implement the CBP and have phased in several CBP rounds since 2011.<sup>10</sup> In each CBP round, suppliers can submit bids for one or more product categories in multiple CBP areas. After a round's bidding period closes, CMS conducts a bid evaluation to determine whether a supplier's bid submission complies with all bidding requirements. Such requirements include meeting certain financial standards, being accredited by a CMS-approved organization that verifies the supplier meets required durable medical equipment, prosthetics, orthotics, and related supplies (DMEPOS) quality standards, and meeting state licensure requirements. If a supplier's bid meets all eligibility requirements, it is considered a qualified bid and can then advance in CMS's process to award contracts.

In general, only DME suppliers that are awarded contracts—referred to as contract suppliers—can furnish and bill Medicare for competitively bid items provided to Medicare beneficiaries in each CBP area and product category combination (referred to as a competition) included in the CBP. To determine the number of contract suppliers needed for each competition, CMS first calculates projected beneficiary demand by taking into account historic beneficiary utilization as well as expected growth in both the number of Medicare fee-for-service beneficiaries and utilization, in general. CMS then calculates how many contract suppliers are needed for each competition by calculating bidding suppliers' estimated capacities to meet beneficiary demand throughout the contract period.<sup>11</sup> Qualified bids are ordered from lowest to highest, and suppliers that win contracts on their bid price alone are those in which their combined capacity meets the projected beneficiary demand in each competition.

In some cases, CMS may award additional contracts to suppliers whose bids did not win on price alone. Specifically, to ensure that small suppliers are considered when selecting contract suppliers, CMS set a target that

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<sup>10</sup>We have issued several products on CMS's implementation of prior CBP rounds, see the Related GAO Products page of this report.

<sup>11</sup>If a bidder's accepted capacity is greater than 20 percent of projected beneficiary demand in each competition, CMS adjusts the bidder's capacity to 20 percent of projected beneficiary demand to ensure at least five contracts are awarded for each competition, in accordance with applicable regulations. See 42 C.F.R. § 414.414(h) (2020).

at least 30 percent of the suppliers awarded contracts in each competition are small. In cases in which CMS does not meet the small supplier target with qualified bids that fall within the winning range, CMS may award contracts to additional small suppliers that submitted qualified bids until it meets that target or until there are no more qualified bids from small suppliers for each competition. In addition, CMS may also offer additional contracts to suppliers that submitted qualified bids if initial contracts are declined or bids that were initially disqualified are later overturned. Single payment amounts are not recalculated when CMS offers additional contracts to suppliers whose bids did not win on price alone.

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## CBP Rounds Prior to Round 2021

CMS and the CBIC implemented five CBP rounds prior to round 2021. Each round operated for a certain period of time in designated geographic CBP areas for certain product categories.<sup>12</sup>

- Round 1 rebid. Round 1 rebid included nine product categories and nine CBP areas. Contracts were effective January 1, 2011, through December 31, 2013.<sup>13</sup>
- Round 1 recompetes. Round 1 recompetes included six product categories in the same nine CBP areas that were included in round 1 rebid. Contracts were effective January 1, 2014, through December 31, 2016.
- Round 2. Round 2 included eight product categories and expanded CBP to an additional 100 CBP areas. Contracts were effective July 1, 2013, through June 30, 2016.

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<sup>12</sup>In addition to the five CBP rounds prior to round 2021, CMS also implemented a separate national mail-order competitive bidding program for diabetes testing supplies that included all parts of the United States, including all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa.

<sup>13</sup>Prior to round 1 rebid, CMS conducted the first round of the CBP—referred to as round 1. However, the Medicare Improvements for Patients and Providers Act of 2008 terminated the contracts two weeks after they became effective and required CMS to make several changes and repeat the competition—referred to as round 1 rebid. Pub. L. No. 110-275, § 154(a), 122 Stat. 2494, 2560-3 (2008) (codified, as amended, at 42 U.S.C. § 1395w-3).

- Round 2 recompetete. Round 2 recompetete included seven product categories and 117 CBP areas.<sup>14</sup> Contracts were effective July 1, 2016, through December 31, 2018.
- Round 1 2017. Round 1 2017 included seven product categories in 13 CBP areas. Contracts were effective January 1, 2017, through December 31, 2018.<sup>15</sup>

Beginning on January 1, 2019, CMS implemented a 2-year temporary gap period for CBP to allow CMS to make several reforms to the program. During the 2-year temporary gap period, any Medicare enrolled supplier could furnish CBP-covered items to Medicare beneficiaries residing in CBP areas. Following the temporary gap period, CMS implemented round 2021, which included all of the CBP areas that were in the five prior rounds.

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## CBP Round 2021

Round 2021 included 235 competitions for OTS back braces and OTS knee braces across 127 CBP areas.<sup>16</sup> These two product categories were not included in prior CBP rounds. However, in recent years, several agencies have scrutinized OTS back and knee braces for being particularly vulnerable to fraud and unnecessary overutilization. For example, in 2019, the HHS Office of Inspector General, the Department of Justice, and the Federal Trade Commission issued notices warning of

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<sup>14</sup>Round 2 recompetete included the same geographic areas as those included in round 2. However, CMS subdivided some of the CBP areas included in round 2 so that there were 117 CBP areas instead of 100.

<sup>15</sup>Round 1 2017 included the same geographic areas as those included in round 1 rebid and round 1 recompetete. However, CMS subdivided some of the CBP areas included in those prior two rounds so that there were 13 CBP areas instead of nine.

<sup>16</sup>When CMS opened the 65-day bid window in July 2019, round 2021 originally included 16 product categories and 130 CBP areas. However, in April 2020, prior to awarding contracts in October 2020, CMS announced the removal of the non-invasive ventilator product category due to the COVID-19 pandemic; <https://www.dmecompetitivebid.com/cbic/cbicr2021.nsf/DID/TXYEIKZ5FH> (accessed July 22, 2021). Then, in October 2020, CMS announced that it did not award CBP contracts for 13 of the remaining 15 product categories because CMS determined that including them in the CBP would not have achieved expected savings; <https://www.cms.gov/files/document/round-2021-dmepos-cbp-single-payment-amts-fact-sheet.pdf> (accessed July 22, 2021). In addition, CMS also removed three of the original 130 CBP areas and certain competitions in other CBP areas because savings were not achieved; this affected 25 of the total original 260 OTS back brace and OTS knee brace competitions.

fraudulent schemes by DME suppliers that provide Medicare beneficiaries with unrequested or medically unnecessary OTS back braces and OTS knee braces and other related DME items.<sup>17</sup> CMS has reported that including DME items in the CBP has helped limit fraud and abuse in the Medicare program. For example, implementation of the CBP allows for Medicare claims to be more closely monitored since there are fewer suppliers furnishing CBP-covered items. CMS estimated that round 2021 would save the Medicare program more than \$600 million over the 3-year contract period for these two product categories due to lower payments for these items.

CMS also implemented several changes to the CBP bidding process that began with round 2021. To begin with, suppliers were required to obtain a \$50,000 bid surety bond for each CBP area in which they submitted a bid. Bid surety bonds must remain in effect until they are either collected upon by CMS due to forfeiture (i.e., a supplier rejected a contract offer for one or more product categories when the amount it bid was at or below the median of the suppliers' bids used to calculate the single payment amount in a CBP area) or the liability is returned for not meeting forfeiture conditions (i.e., a supplier was not offered a contract or was offered a contract and the amount it bid was above the median of the suppliers' bids used to calculate the single payment amount for a product category in a CBP area). CMS is to collect on bid surety bonds that meet forfeiture conditions or return the bid surety bond liability within 90 days of when CMS publicly announces contract suppliers for each CBP area. Suppliers who attempt to avoid forfeiting a bid surety bond by accepting a contract and subsequently not meeting contractual obligations will have their entire contract terminated, and will be precluded from participating in the next CBP round.

In addition to the bid surety bond requirement, beginning with round 2021, CMS implemented several other changes to the CBP bidding process in

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<sup>17</sup>Office of Inspector General, "Fraud Alert: Nationwide Brace Scam," *U.S. Department of Health and Human Services*, April 9, 2019; Department of Justice, "Federal Indictments & Law Enforcement Actions in One of the Largest Health Care Fraud Schemes Involving Telemedicine and Durable Medical Equipment Marketing Executives Results in Charges Against 24 Individuals Responsible for Over \$1.2 Billion in Losses," press release no. 19-341, April 9, 2019, <https://www.justice.gov/opa/pr/federal-indictments-and-law-enforcement-actions-one-largest-health-care-fraud-schemes> (accessed May 31, 2021). Lisa Lake, "Back brace scams target people on Medicare," *Consumer Information* (blog), *Federal Trade Commission*, October 25, 2019, <https://www.consumer.ftc.gov/blog/2019/10/back-brace-scams-target-people-medicare> (accessed May 31, 2021).

response to stakeholder feedback and to simplify and improve the bidding process. For example, CMS began requiring that bidding suppliers submit just one bid amount in each product category; this bid would be for the “lead item” in the product category as identified by CMS.<sup>18</sup> This was a change from prior rounds, in which suppliers submitted a bid for each individual item in a product category.<sup>19</sup> In addition, single payment amounts for lead items are now equal to the maximum winning bid for each competition; in prior rounds the single payment amount was the median bid of all winning bids for each competition.

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## Small Suppliers Accounted for 58 Percent of Suppliers Awarded Contracts, and Slightly More Than Half of Small Suppliers’ Bids Resulted in Contracts

Our analysis of CMS bid and contract data shows that small suppliers successfully obtained contracts in CBP round 2021. Specifically, a total of 383 small suppliers submitted bids for the 235 competitions in CBP round 2021. Of the 383 small suppliers that submitted bids, 207 were awarded a contract. In total, 58 percent of all suppliers awarded contracts were small. (See table 1.)

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<sup>18</sup>The lead item in the product category is the item with the highest total allowed charges (i.e., the item within the product category that generates the most revenue for suppliers in general) nationwide (all states, District of Columbia, Puerto Rico, and the U.S. Virgin Islands). The single payment amount for the lead item is the maximum bid submitted for that item by suppliers whose bids for the item are in the winning range in each competition. Single payment amounts for all non-lead items within each competition are determined by multiplying the lead item single payment amount by a relative ratio. The ratios are based on the historic differences in the fee schedule amounts for the lead item and non-lead items. Suppliers that accept contracts are responsible for furnishing all items within the product category.

<sup>19</sup>Individual items in a product category are identified using a standardized coding system—the Healthcare Common Procedure Coding System.

**Table 1: Contract Awards by Supplier Size for the 235 Competitions in CMS’s Competitive Bidding Program (CBP) Round 2021**

Size of bidders	Suppliers that submitted bids		Suppliers awarded contracts	
	Number	Percent	Number	Percent
Small suppliers	383	60	207	58
Large suppliers	231	36	148	42
Unknown suppliers	24	4	0	0
<b>Total</b>	<b>638</b>	<b>100</b>	<b>355</b>	<b>100</b>

Source: GAO analysis of Centers for Medicare & Medicaid Services (CMS) data. | GAO-21-602

Notes: CMS defines small suppliers bidding in the CBP as those generating \$3.5 million or less in total gross Medicare and non-Medicare revenue annually and large suppliers as those generating more than that amount of revenue. Unknown suppliers are those whose entire bid was disqualified for a missing financial document and, therefore, did not advance to the evaluation process where a supplier’s size is determined.

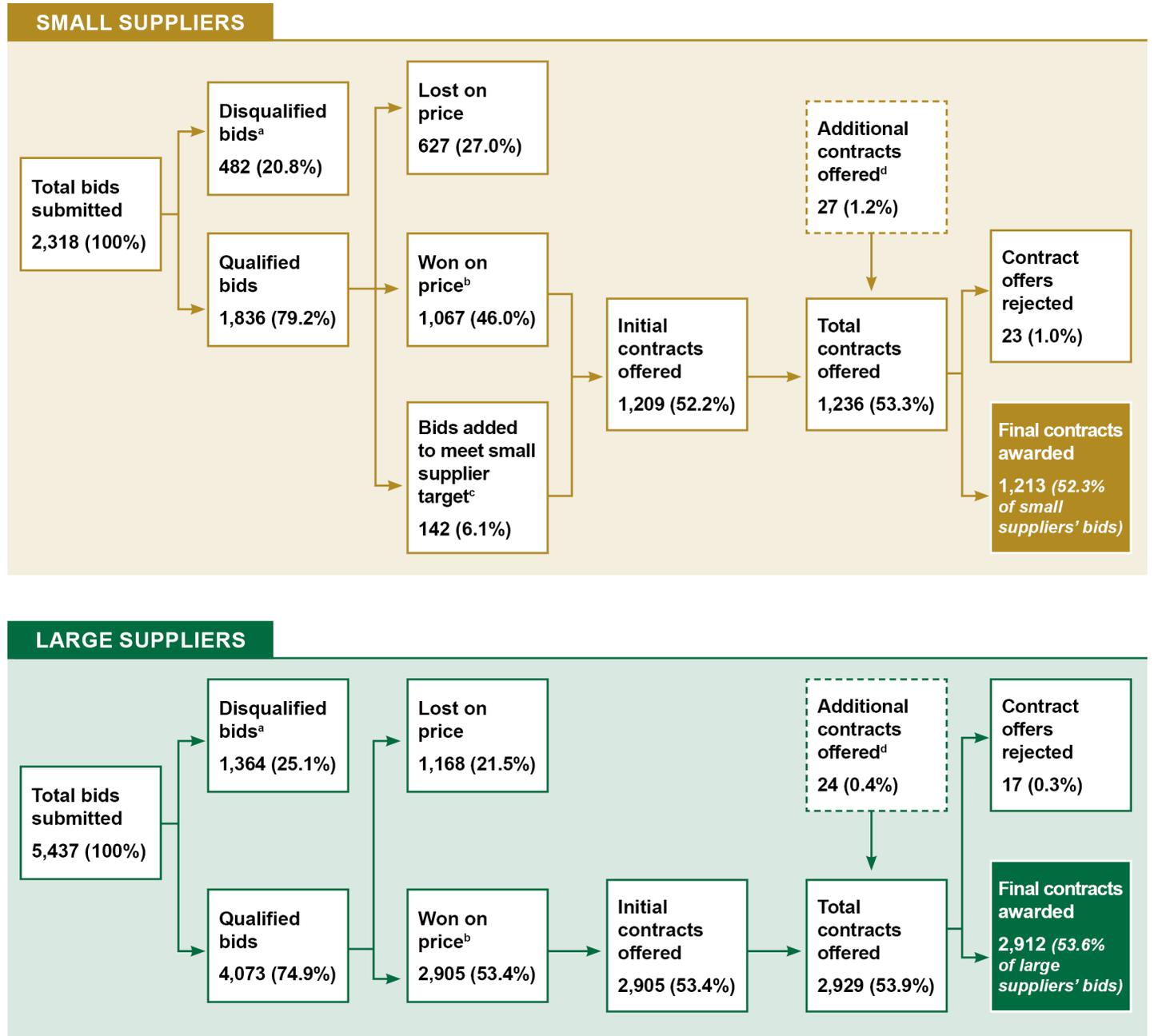
Our analysis also shows that the 383 small suppliers submitted a total of 2,318 bids across all 235 competitions in round 2021. Of those 2,318 bids:

- about 52 percent resulted in contract awards, meaning that they either won on price or were added to meet the small supplier participation target goal;
- about 21 percent of small suppliers’ bids were disqualified; and
- 27 percent of their bids lost on price.

In comparison, large suppliers submitted a total of 5,437 bids for the same competitions. Outcomes for large suppliers were similar to those of small suppliers in that about half of their bids resulted in contract awards. (See figure 1.) Small suppliers’ bids comprised only about 30 percent of contract awards. However, this is not unexpected given that large suppliers generally submitted bids in more CBP areas than small suppliers. CMS data show that small suppliers submitted bids for an average of six competitions per bidder, whereas large suppliers submitted bids for an average of 23 competitions per bidder.<sup>20</sup>

<sup>20</sup>For information about additional bids that were submitted by small and large suppliers for product categories and competitions that CMS removed from round 2021 prior to the contract award process, see appendix I.

**Figure 1: Number and Percentage of Bids, by Process Step and Supplier Size, for the 235 Competitions in CMS’s Competitive Bidding Program (CBP) Round 2021**



Source: GAO analysis of Centers for Medicare & Medicaid (CMS) data. | GAO-21-602

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Notes: CMS defines small suppliers bidding in the CBP as those generating \$3.5 million or less in total gross Medicare and non-Medicare revenue annually and large suppliers as those generating more than that amount of revenue. Percentages in each process step box are based on the total number of bids submitted for small and large suppliers, respectively, and may not add to total due to rounding.

<sup>a</sup>Bids may be disqualified for one or more of 13 bid disqualification reasons, such as a supplier having poor financials, not being licensed, or withdrawing bids.

<sup>b</sup>CMS's competitive bidding implementation contractor arrays qualified bids in a list from the lowest to highest bid amount. It then starts at the bottom of the list and goes up until it identifies the bid that meets CMS's estimated beneficiary demand in each competition. These bids win on price and advance in CMS's process to award contracts.

<sup>c</sup>CMS has a goal that at least 30 percent of the suppliers awarded contracts in each product category and CBP area combination are small. In cases in which CMS does not meet this small supplier target with qualified bids that fell within the winning range, CMS may award contracts to additional small suppliers until it meets that target or until there are no more qualified bids from small suppliers. However, bids added to meet this target do not affect the single payment amounts that were originally calculated based on winning bids.

<sup>d</sup>CMS offered additional contracts to suppliers for several reasons. For example, additional contracts were offered to meet beneficiary demand (due to initial contracts being declined) for CBP-covered off-the-shelf (OTS) back braces and OTS knee braces and in response to initial bid disqualifications that were overturned during CMS's informal bidder inquiry process (which allows suppliers an opportunity to have their disqualified bids reviewed).

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## CMS Data and Stakeholders Suggest That Bid Surety Bonds Did Not Negatively Affect Small Supplier Participation in CBP, but Stakeholders Say Other Factors May

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### Small Supplier Participation In CBP Round 2021 Was Comparable to Prior CBP Rounds and Most Small Suppliers Submitted Valid Bid Surety Bonds

CMS data indicate that small supplier participation in the 235 competitions in round 2021 was comparable to the five prior CBP rounds, which indicates that the surety bond requirement did not negatively affect small supplier participation after it was implemented. For example, as noted earlier, we found that 60 percent of the suppliers that bid in round 2021 were small. This was similar to the percentage of small suppliers that bid in the five prior CBP rounds, which ranged from 49 to 63 percent. Similarly, the percentage of the suppliers awarded contracts in round 2021 that were small (58 percent) fell within the range that CMS reported in the five prior rounds (46 to 63 percent). In addition, CMS met its small supplier participation target goal to award at least 30 percent of contracts in each competition to qualified small suppliers in 63 percent of the 235

competitions in round 2021.<sup>21</sup> This was also consistent with outcomes from the five prior CBP rounds, in which CMS met its small supplier participation target goal in 38 to 97 percent of the competitions.<sup>22</sup>

Data from CMS also indicate that the bid surety bond requirement did not result in a large number of small suppliers' bids being disqualified. Small suppliers submitted 482 bids for the competitions in round 2021 that were disqualified for one or more of 13 reasons. However, only 26 (or about 5 percent) of these bids were disqualified because suppliers submitted an "invalid bid surety bond," meaning the bid surety bonds did not contain one or more elements required by CMS.<sup>23</sup> In comparison, 334 bids (about 69 percent) were disqualified because suppliers had "poor financials," and 94 bids (about 20 percent) were disqualified because suppliers were "not accredited" by a CMS-approved organization.

The reasons for disqualifications were similar for large suppliers. CMS data show 99 of their total 1,364 bids (about 7 percent) were disqualified because suppliers submitted an "invalid bid surety bond", whereas 826 (about 61 percent) of bids were disqualified because suppliers had "poor financials," and 120 (about 9 percent) were disqualified because suppliers were "not accredited." (For additional information on bid disqualification reasons, including percentages of disqualified bids for each reason, see appendix II.)

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## Stakeholders Reported That the Bid Surety Bond Requirement Did Not Create a Barrier for Small Bidding Suppliers

Representatives we spoke with from two DME industry trade organizations as well as six of their small DME supplier members told us

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<sup>21</sup>CMS's small supplier target was met in 56 percent of the OTS back brace competitions and 71 percent of the OTS knee brace competitions.

<sup>22</sup>Specifically, CMS met its 30 percent small supplier participation target goal in 97 percent of the competitions included in round 1 rebid, 69 percent of the competitions included in round 1 recompetes, 38 percent of the competitions included in round 1 2017, 89 percent of the competitions included in round 2, and 68 percent of the competitions included in round 2 recompetes.

<sup>23</sup>The following minimum elements are needed for a surety bid bond to be valid: (1) bidding entity's legal business name, (2) name and identification number of the authorized surety, (3) CMS as the named obligee, (4) conditions for the return of the bid surety bond liability, (5) CBP area covered by the bond, (6) bid surety bond number, (7) date of issuance, and (8) a bid surety bond value of \$50,000.

that the new bid surety bond requirement did not create a barrier for small bidding suppliers because small suppliers were easily able to obtain bid surety bonds. In addition, they told us that costs to purchase bid surety bonds were reasonable, that implementation of the bid surety bond requirement created a necessary safeguard to protect bidding suppliers, and that CMS and the CBIC provided extensive bid surety bond educational materials.

- **Small suppliers' costs to obtain bid surety bonds were substantially less than CMS originally estimated.** In its 2016 Final Rule, CMS estimated the cost per bid surety bond to be approximately \$1,000. However, representatives we interviewed from two DME industry trade organizations and two surety bond companies told us that the average cost per bond for round 2021 was generally only about one-third to one-half of CMS's estimate, which representatives from the DME industry trade organizations said were reasonable. For example, representatives from one DME industry trade organization that issued 4,754 bid surety bonds in round 2021 on behalf of a surety bond company told us that, on average, the cost of a bid surety bond was \$378. However, suppliers' bid surety bond costs varied based on several factors, including suppliers' financial statements, credit histories, and number of bid surety bonds purchased.<sup>24</sup> Typically, this resulted in suppliers with lower total revenues generally paying more to obtain bid surety bonds. For example, they reported that suppliers with total revenue of under \$3 million paid an average of \$467 per bond, while suppliers with total revenue of \$10 million and above paid an average of \$361—both of which are less than half of what CMS estimated as the cost of the bonds.
- **Bid surety bonds create a necessary safeguard to protect bidding suppliers.** Representatives from two DME industry trade organizations told us that the bid surety bond requirement created a necessary safeguard to protect bidding suppliers by reducing the likelihood that "speculative" bidders would submit bids in the CBP. According to CMS, the CBIC evaluates all bids to ensure that they are rational and feasible and disqualifies bids that do not pass scrutiny; however, representatives from the DME industry trade organizations told us that in prior CBP rounds some suppliers that won contracts in CBP areas did not have the experience or the necessary presence to

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<sup>24</sup>Representatives reported that the cost of individual bid surety bonds ranged from between \$275 and \$2,500 (which was an outlier).

provide certain DME items to Medicare beneficiaries.<sup>25</sup> Furthermore, representatives told us that many of these suppliers submitted artificially low bids. They said that identifying and removing such bidders in prior CBP rounds may have resulted in a less significant decrease in payments for CBP-covered items.

- **CMS and the CBIC offered extensive bid surety bond education materials.** Representatives from two DME industry trade organizations told us that CMS and the CBIC offered extensive materials to help educate bidding suppliers on the new bid surety bond requirement. According to CMS, such materials included a factsheet, a checklist, a template, a webcast, frequently-asked-questions, and frequent listserv reminders. Furthermore, representatives from two DME industry trade organizations told us that they did not receive any complaints and received very few questions about the new bid surety bond requirement from their small supplier members because they generally did not have difficulty understanding it. This was corroborated by our outreach to officials from the U.S. Small Business Administration, HHS's Office of Small and Disadvantaged Business Utilization, and CMS's Competitive Acquisition Ombudsman, who all reported that they did not receive any questions or requests for assistance from small suppliers related to obtaining bid surety bonds.

While stakeholders we interviewed did not think the bid surety bond requirement negatively affected small supplier participation in round 2021, they did offer a couple of suggestions to improve CMS communications related to bid surety bonds.

- **Providing a list of authorized companies that offer bid surety bonds.** CMS provided round 2021 bidding suppliers with a list of 266 authorized surety bond companies from which they could obtain bid surety bonds.<sup>26</sup> However, representatives from one DME industry trade organization told us that most of these companies did not offer the specific bid surety bond required for the CBP. As such, they

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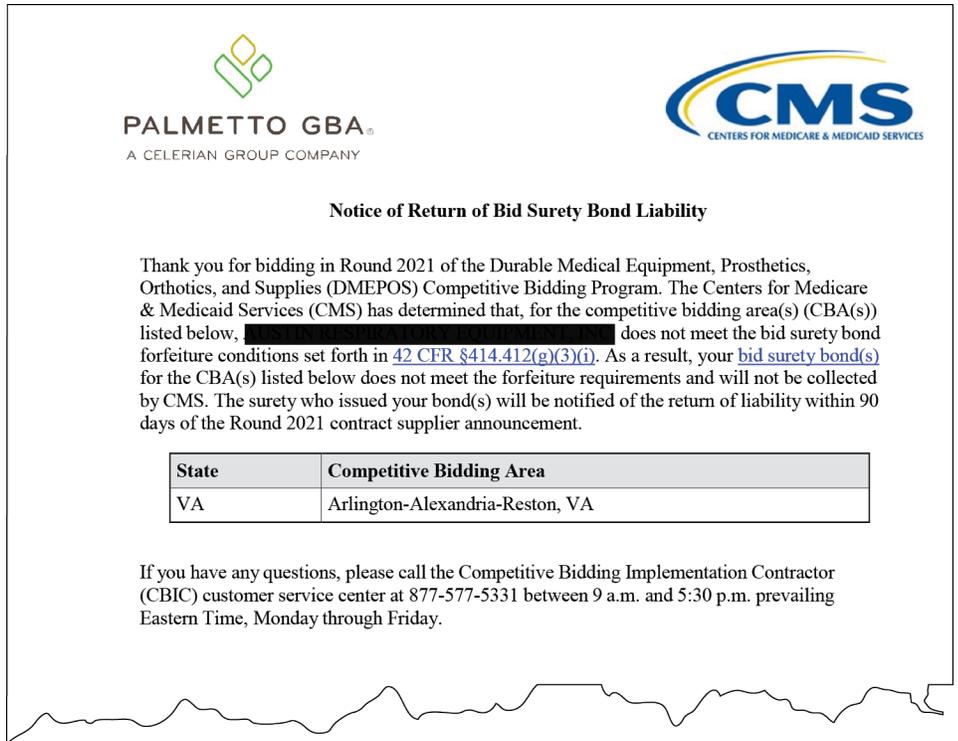
<sup>25</sup>The CBIC screens all bids to ensure that they are bona fide—meaning that the amount the supplier bid for the lead item passes scrutiny as a rational and feasible bid for furnishing the lead item and all non-lead items in the product category. In some circumstances, the CBIC may ask a supplier to provide additional information to substantiate that a supplier can obtain a lead item for less than its bid amount. If the supplier does not provide the necessary information, or the information provided does not support that the bid is bona fide, the bid for the competition is disqualified.

<sup>26</sup>Bid surety bonds must be obtained from an authorized surety from a list of certified companies on the Department of Treasury's website.

suggested that it would be helpful if CMS and the CBIC provide a curated list of surety bond companies that do offer the required type of bond. CMS officials said it seems appropriate to continue directing suppliers to the official list of all surety bond companies authorized to provide bid surety bonds in future CBP rounds as to not appear to favor certain ones over others. However, CMS officials said that for round 2021, the CBIC compiled a list of authorized surety bond companies it knew provided the specific bid surety bonds required in case suppliers contacted the CBIC because they were unable to locate one. However, CMS officials said that, to the best of their knowledge, no suppliers contacted the CBIC to request such information.

- **Clarifying communication to suppliers regarding whether bid surety bonds are forfeited.** Representatives from one DME industry trade organization told us that many small suppliers found the notification letter that CMS sent suppliers regarding the return of the bid surety bond liability—that is, notification that they did not forfeit their bid surety bonds—difficult to understand. (See figure 2 for a sample letter.) Representatives suggested that CMS clarify the language and include a statement that makes it clear that there is no further action needed and there is no continued risk. CMS officials confirmed that CMS received questions from suppliers asking for clarification about the language in the letter. They told us that CMS and the CBIC evaluate all stakeholder feedback, especially from suppliers, to improve the effectiveness of their communication to bidders and will consider revising this language in future CBP rounds.

**Figure 2: Example of Notification Letter CMS Sent Bidding Suppliers Regarding Return of the Bid Surety Bond Liability**



Source: Centers for Medicare & Medicaid Services (CMS) | GAO-21-602

## Stakeholders Said Other Factors May Play a Role in Small Suppliers' Future Participation in the CBP

Stakeholders and small suppliers we interviewed told us that while the new bid surety bond requirement did not negatively affect small supplier participation in the CBP, other factors may play a role in suppliers' future participation in the CBP. These factors include the complexity and expenses related to submitting bids and concerns related to small suppliers' ability to provide items at rates that are competitive with larger suppliers.

- Representatives from one DME industry trade organization said that the bid submission process overall is tedious and complicated, and that small suppliers do not have access to the same resources that large suppliers do. They said that the bidding processes are especially difficult to navigate when CMS makes changes to the rules,

such as implementation of the new lead-item bidding approach to submit bids in round 2021. Representatives from another DME industry trade organization told us that the majority of questions they received from suppliers were in regard to the bid submission process rather than the bid surety bond requirement.

- Two small suppliers we interviewed said that they incurred additional costs to hire companies to prepare the financial documents required as part of the bid submission process. They said that these costs are expensive and may be hard for small suppliers to absorb.<sup>27</sup> As such, they said participating in future rounds may be cost prohibitive given that these additional costs are also coupled with lower payment amounts for DME items as a result of the implementation of the CBP.
- Representatives from one DME industry trade organization told us that small suppliers may be discouraged from bidding because they think the likelihood of winning a contract is low given the high number of bidding suppliers. According to representatives from another DME industry trade organization, this may be exacerbated by large suppliers being able to submit more competitive bids than small suppliers because they have the ability to buy in bulk from manufacturers at reduced rates, while small suppliers do not. While CMS's 30 percent small supplier participation target may help in some cases, the contracts offered to these additional small suppliers would still be based on the single payment amounts calculated based on winning bids. The payment amounts are not recalculated when additional contracts are offered to small suppliers that submitted bids outside of the winning range. Thus, these small suppliers would be offered contracts with lower payment amounts than their bids.
- In addition, four small suppliers we interviewed told us that bid amounts are based on their base price to purchase DME items within a product category. However, they said they must also consider additional costs when submitting their bids, such as those associated with delivering them and possible future repairs.
- Representatives from one DME industry trade organization noted that CBP rounds generally have a significant lag between the time that suppliers submit bids and are notified of the outcomes (e.g., about 13 months for round 2021). They said that unexpected events, such as was the case with the COVID-19 pandemic, can occur during such lag times and may result in increased manufacturer costs. Such events can also cause supply chain issues that affect suppliers' ability to

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<sup>27</sup>All bidding suppliers are required to provide certain financial documentation in each CBP round in which they submit bids.

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provide equipment and services. In addition, they said they do not receive extra reimbursement during natural disasters, such as floods or ice storms, which may result in increased labor costs associated with longer travel times to deliver items to beneficiaries.

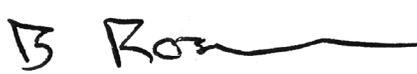
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## Agency Comments

We provided a draft of this report to HHS for review. HHS provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the Secretary of Health and Human Services, appropriate congressional committees, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7114 or [rosenbergm@gao.gov](mailto:rosenbergm@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.



Michelle B. Rosenberg  
Director, Health Care

# Appendix I: Information Related to Product Categories and Areas Removed from the Competitive Bidding Program Round 2021

In July 2019, the Centers for Medicare & Medicaid Services (CMS) opened the 65-day window to accept bids for the 16 product categories and 130 competitive bidding areas originally included in CMS's durable medical equipment competitive bidding program (CBP) round 2021.<sup>1</sup> However, prior to the round 2021 contract award process, CMS removed the non-invasive ventilator product category due to the COVID-19 pandemic, and 13 of the remaining 15 product categories, because CMS determined that including them in the CBP would not have achieved expected savings.<sup>2</sup> In addition, CMS also removed three of the original 130 competitive bidding areas and certain competitions (i.e., a product category and CBP area combination) in other CBP areas because savings were not achieved. This affected 25 of the combined 260 off-the-shelf (OTS) back brace and OTS knee brace competitions. Table 2 provides information on the bids for the 13 product categories and 25 OTS back brace and OTS knee brace competitions that were removed from round 2021.<sup>3</sup>

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<sup>1</sup>The 16 product categories originally included in round 2021 were: 1) commode chairs, 2) continuous positive airway pressure devices and respiratory assist devices, 3) enteral nutrition, 4) hospital beds, 5) nebulizers, 6) negative pressure wound therapy, 7) off-the-shelf back braces, 8) off-the-shelf knee braces, 9) oxygen and oxygen equipment, 10) patient lifts and seat lifts, 11) standard manual wheelchairs, 12) standard power mobility devices, 13) support surfaces (groups 1 and 2), 14) transcutaneous electrical nerve stimulation devices, 15) walkers, and 16) non-invasive ventilators.

<sup>2</sup>For CMS announcements regarding the removal of product categories, see <https://www.dmecompetitivebid.com/cbic/cbicr2021.nsf/DID/TXYEIKZ5FH> (accessed July 22, 2021) and <https://www.cms.gov/files/document/round-2021-dmepos-cbp-single-payment-amts-fact-sheet.pdf> (accessed July 22, 2021).

<sup>3</sup>We did not include information about the non-invasive ventilator product category because it was not included in the data we received from CMS.

**Appendix I: Information Related to Product Categories and Areas Removed from the Competitive Bidding Program Round 2021**

**Table 2: Number and Percentage of Bids for 13 Product Categories and 25 Off-the-Shelf (OTS) Back Brace and OTS Knee Brace Competitions Removed from the Competitive Bidding Program (CBP) Round 2021**

	Submitted by large suppliers		Submitted by small suppliers		Submitted by unknown suppliers	Submitted by all suppliers	
	Number	Percent	Number	Percent	Number	Number	Percent
<b>Bid review</b>							
Bids reviewed	27,305	100	9,204	100	1,385	37,894	100
Bids disqualified	(4,453)	16.3	(2,200)	23.9	(1,385)	(8,038)	21.2
<b>Qualified bids Qualified bids</b>							
<b>Total qualified bids</b>	<b>22,852</b>	<b>83.7</b>	<b>7,004</b>	<b>76.1</b>	<b>0</b>	<b>29,856</b>	<b>78.8</b>
Bids that would have lost on price	(6,072)	22.2	(1,791)	19.5	(0)	(7,863)	20.7
Bids that would have won on price	16,780	61.5	4,188	45.5	0	20,968	55.3
Bids from small suppliers that would have been added to meet the 30 percent target <sup>a</sup>	0	0	1,025	11.1	0	1,025	2.7

Source: GAO analysis of Centers for Medicare & Medicaid Services (CMS) data. | GAO-21-602

Notes: CMS defines small suppliers bidding in the CBP as those generating \$3.5 million or less in total gross Medicare and non-Medicare revenue annually and large suppliers as those generating more than that amount of revenue. Unknown suppliers are those whose entire bid was disqualified for a missing financial document and, therefore, did not advance to the evaluation process where a supplier's size is determined. Numbers in parentheses are decreases.

<sup>a</sup>CMS has a goal that at least 30 percent of the suppliers awarded contracts in each product category and CBP area combination are small. In cases in which CMS does not meet this small supplier target with qualified bids that fell within the winning range, CMS may award contracts to additional small suppliers until it meets that target or until there are no more qualified bids from small suppliers. However, bids added to meet this target do not affect the single payment amounts that were originally calculated based on winning bids.

## Appendix II: Information on Competitive Bidding Program (CBP) Round 2021 Bid Disqualifications

Suppliers submitted bids for two product categories—off-the-shelf (OTS) back braces and OTS knee braces—across a total of 235 competitions (i.e., each product category and CBP area combination) that were included in the Centers for Medicare & Medicaid Services (CMS) CBP round 2021. Some of these bids were disqualified during the review process for one or more of 13 bid disqualification reasons. See Table 3 for a description of each bid disqualification reason and the proportion of large and small suppliers' disqualified bids that were disqualified for each reason.

**Table 3: Percent of Disqualified Bids, by Reason and Supplier Size, for the 235 Competitions in CMS's Competitive Bidding Program (CBP) Round 2021**

Bid disqualification reasons and descriptions	Percent of small suppliers' disqualified bids	Percent of large suppliers' disqualified bids
<b>Unacceptable financial documentation</b> [Unacceptable financial document(s) were submitted. All bids from the supplier are disqualified.]	12.0%	0.7%
<b>Poor financials</b> [Bidder's financial score is below the minimum financial threshold. All bids from the supplier are disqualified.]	69.3	60.6
<b>Missing financial documentation</b> [All required financial documents were not submitted. All bids from the supplier are disqualified.]	0.0	0.0
<b>Bona fide bid</b> [Bidder did not submit a bona fide bid (i.e., the bid amount could not be or was not supportable.) The bid for the competitions with non-bona fide bid amounts are disqualified. <sup>a]</sup>	1.0	29.0
<b>Not licensed</b> [All bidder locations for the competitions did not possess the applicable state license to furnish the product category. The bid for the competition is disqualified.]	3.1	4.7

**Appendix II: Information on Competitive Bidding Program (CBP) Round 2021 Bid Disqualifications**

<b>Bid disqualification reasons and descriptions</b>	<b>Percent of small suppliers' disqualified bids</b>	<b>Percent of large suppliers' disqualified bids</b>
<b>Not accredited</b> [All bidder locations for the competition are not accredited to furnish the product category. The bid for the competition is disqualified.]	19.5	8.8
<b>Provider Transaction Access Number status revoked or inactive</b> [All locations on all the bids under these Medicare-issued numbers were revoked or inactive. All bids from the supplier are disqualified.]	2.3	2.0
<b>Common ownership</b> [Commonly owned and/or commonly controlled suppliers submitted a bid for the same competition. Bids for such competitions are disqualified.]	1.7	0.3
<b>Network agreement not received</b> [Legal Network agreement not uploaded in the bid submission system. Entire network bid is disqualified.]	0.0	0.0
<b>Invalid bid surety bond</b> [Bid surety bond did not contain the required elements. <sup>b</sup> All bids for that CBP area are disqualified.]	5.4	7.3
<b>Specialty supplier</b> [Bidder submitted bid as specialty supplier but was not enrolled with the National Supplier Clearinghouse as a skilled nursing facility or nursing facility. <sup>c</sup> All bids from the supplier (network) are disqualified.]	0.0	0.0
<b>Withdrew bid</b> [Bidder retracted bid for one or more competitions. The bid is disqualified.]	1.9	0.0
<b>No eligible location on bid</b> [Bid validation criteria is collectively met for the locations included on a bid but is not met when evaluating licensure, accreditation, and inactive/revoked for an individual provider transaction access number on a bid.]	0.0	0.0

Source: GAO analysis of Centers for Medicare & Medicaid Services (CMS) data. | GAO-21-602

Notes: CMS defines small suppliers bidding in the CBP as those generating \$3.5 million or less in total gross Medicare and non-Medicare revenue annually and large suppliers as those generating more than that amount of revenue. Percentages do not equal 100 percent because suppliers' bids may have been disqualified for more than one reason.

<sup>a</sup>A competition is defined as a CBP area and product category combination.

<sup>b</sup>The following minimum elements are needed for a surety bid bond to be valid: (1) bidding entity's legal business name, (2) name and identification number of the authorized surety, (3) CMS as the named obligee, (4) conditions for the return of the bid surety bond liability, (5) CBP area covered by the bond, (6) bid surety bond number, (7) date of issuance, and (8) a bid surety bond value of \$50,000.

<sup>c</sup>Skilled nursing facilities and nursing facilities have the option to bid for and be awarded contracts to be "specialty suppliers" that only furnish competitively bid items to their own residents.

Suppliers also submitted bids for 14 product categories and 25 OTS back and OTS knee brace competitions that were not implemented in round

**Appendix II: Information on Competitive Bidding Program (CBP) Round 2021 Bid Disqualifications**

2021.<sup>1</sup> Although CMS ultimately did not award contracts for these product categories and competitions, some bids would have been disqualified during the bid review process for one or more of the 13 bid disqualification reasons.<sup>2</sup> (See table 4.)

**Table 4: Percent of Disqualified Bids, by Reason and Supplier Size, for 13 Product Categories and 25 Off-the-Shelf (OTS) Back Brace and OTS Knee Brace Competitions Removed from CMS’s Competitive Bidding Program (CBP) Round 2021**

<b>Bid disqualification reasons and descriptions</b>	<b>Percent of small suppliers’ disqualified bids</b>	<b>Percent of large suppliers’ disqualified bids</b>
<b>Unacceptable financial documentation</b> [Unacceptable financial document(s) were submitted. All bids from the supplier are disqualified.]	9.6%	1.4%
<b>Poor financials</b> [Bidder’s financial score is below the minimum financial threshold. All bids from the supplier are disqualified.]	53.0	66.2
<b>Missing financial documentation</b> [All required financial documents were not submitted. All bids from the supplier are disqualified.]	0.0	0.0
<b>Bona fide bid</b> [Bidder did not submit a bona fide bid (i.e., the bid amount could not be or was not supportable.) The bid for the competitions with non-bona fide bid amounts are disqualified. <sup>a</sup> ]	3.0	1.3
<b>Not licensed</b> [All bidder locations for the competitions did not possess the applicable state license to furnish the product category. The bid for the competition is disqualified.]	32.5	29.1
<b>Not accredited</b> [All bidder locations for the competition are not accredited to furnish the product category. The bid for the competition is disqualified.]	17.9	7.3
<b>Provider Transaction Access Number status revoked or inactive</b> [All locations on all the bids under these Medicare-issued numbers were revoked or inactive. All bids from the supplier are disqualified.]	1.1	1.5

<sup>1</sup>The following 14 product categories were removed from round 2021: 1) commode chairs, 2) continuous positive airway pressure devices and respiratory assist devices, 3) enteral nutrition, 4) hospital beds, 5) nebulizers, 6) negative pressure wound therapy, 7) oxygen and oxygen equipment, 8) patient lifts and seat lifts, 9) standard manual wheelchairs, 10) standard power mobility devices, 11) support surfaces (groups 1 and 2), 12) transcutaneous electrical nerve stimulation devices, 13) walkers, and 14) non-invasive ventilators.

<sup>2</sup>We did not include information about the non-invasive ventilator product category because it was not included in the data we received from CMS.

**Appendix II: Information on Competitive Bidding Program (CBP) Round 2021 Bid Disqualifications**

<b>Bid disqualification reasons and descriptions</b>	<b>Percent of small suppliers' disqualified bids</b>	<b>Percent of large suppliers' disqualified bids</b>
<b>Common ownership</b> [Commonly owned and/or commonly controlled suppliers submitted a bid for the same competition. Bids for such competitions are disqualified.]	0.9	0.1
<b>Network agreement not received</b> [Legal Network agreement not uploaded in the bid submission system. Entire network bid is disqualified.]	0.0	0.0
<b>Invalid bid surety bond</b> [Bid surety bond did not contain the required elements. <sup>b</sup> All bids for that CBP area are disqualified.]	5.0	9.1
<b>Specialty supplier</b> [Bidder submitted bid as specialty supplier but was not enrolled with the National Supplier Clearinghouse as a skilled nursing facility or nursing facility. <sup>c</sup> All bids from the supplier (network) are disqualified.]	0.0	0.1
<b>Withdrew bid</b> [Bidder retracted bid for one or more competitions. The bid is disqualified.]	1.5	0.1
<b>No eligible location on bid</b> [Bid validation criteria is collectively met for the locations included on a bid but is not met when evaluating licensure, accreditation, and inactive/revoked for an individual provider transaction access number on a bid.]	0.1	<0.1

Source: GAO analysis of Centers for Medicare & Medicaid Services (CMS) data. | GAO-21-602

Notes: CMS defines small suppliers bidding in the CBP as those generating \$3.5 million or less in total gross Medicare and non-Medicare revenue annually and large suppliers as those generating more than that amount of revenue. Percentages do not equal 100 percent because suppliers' bids may have been disqualified for more than one reason.

<sup>a</sup>A competition is defined as a CBP area and product category combination.

<sup>b</sup>The following minimum elements are needed for a surety bid bond to be valid: (1) bidding entity's legal business name, (2) name and identification number of the authorized surety, (3) CMS as the named obligee, (4) conditions for the return of the bid surety bond liability, (5) CBP area covered by the bond, (6) bid surety bond number, (7) date of issuance, and (8) a bid surety bond value of \$50,000.

<sup>c</sup>Skilled nursing facilities and nursing facilities have the option to bid for and be awarded contracts to be "specialty suppliers" that only furnish competitively bid items to their own residents.

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## Appendix III: GAO Contact and Staff Acknowledgments

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### GAO Contact

Michelle B. Rosenberg, (202) 512-7114 or [rosenbergm@gao.gov](mailto:rosenbergm@gao.gov)

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### Staff Acknowledgements

In addition to the contact named above, Greg Giusto (Assistant Director), Michelle Paluga (Analyst-in-Charge), and Phil Steinberg made key contributions to this report. Also contributing were Sam Amrhein, Emily Wilson Schwark, and Vikki Porter.

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## Related GAO Products

*Medicare Fee-for-Service: Information on the First Year of Nationwide Reduced Payment Rates for Durable Medical Equipment.* [GAO-18-534](#). Washington, D.C.: July 25, 2018.

*Medicare: CMS's Round 2 Durable Medical Equipment and National Mail-order Diabetes Testing Supplies Competitive Bidding Programs.* [GAO-16-570](#). Washington, D.C.: September 15, 2016.

*Medicare: Utilization and Expenditures for Complex Wheelchair Accessories.* [GAO-16-640R](#). Washington, D.C.: June 1, 2016.

*Medicare: Bidding Results from CMS's Durable Medical Equipment Competitive Bidding Program.* [GAO-15-63](#). Washington, D.C.: November 7, 2014.

*Medicare: Second Year Update for CMS's Durable Medical Equipment Competitive Bidding Program Round 1 Rebid.* [GAO-14-156](#). Washington, D.C.: March 7, 2014.

*Medicare: Review of the First Year of CMS's Durable Medical Equipment Competitive Bidding Program's Round 1 Rebid.* [GAO-12-693](#). Washington, D.C.: May 9, 2012.

*Medicare: The First Year of the Durable Medical Equipment Competitive Bidding Program Round 1 Rebid.* [GAO-12-733T](#). Washington, D.C.: May 9, 2012.

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