



May 2022

DHS CONTRACTS

Opportunities Exist to Improve Oversight and Monitoring of Urgent Noncompetitive Awards

Accessible Version

Why GAO Did This Study

Agencies are permitted to award contracts without full and open competition, such as when the unusual and compelling urgency of the agency’s circumstances justify limiting competition. But past GAO work found problems with various agencies’ use and oversight of contracts awarded citing the urgency exception to competition. GAO was asked to review this issue within DHS.

GAO examined (1) trends in DHS’s use of the urgency exception from fiscal years 2016 through 2020; (2) selected DHS components’ reasons for using this exception and whether their use of justifications and approvals met acquisition regulations and policies; and (3) whether selected DHS components monitored and documented the performance of urgent, noncompeted contracts. To do so, GAO analyzed federal procurement data; reviewed relevant policies and guidance; and analyzed a nongeneralizable sample of urgent DHS contracts and orders. The sample was selected based on factors such as total dollar value from seven selected DHS components with obligations awarded using the urgency exception. GAO also interviewed DHS officials.

What GAO Recommends

GAO is making three recommendations, including that DHS take steps to ensure that components revise justifications and approvals when appropriate, and maintain COR appointment letters as required. DHS agreed with our recommendations.

View [GAO-22-105074](#). For more information, contact Marie A. Mak at (202) 512-4841 or makm@gao.gov

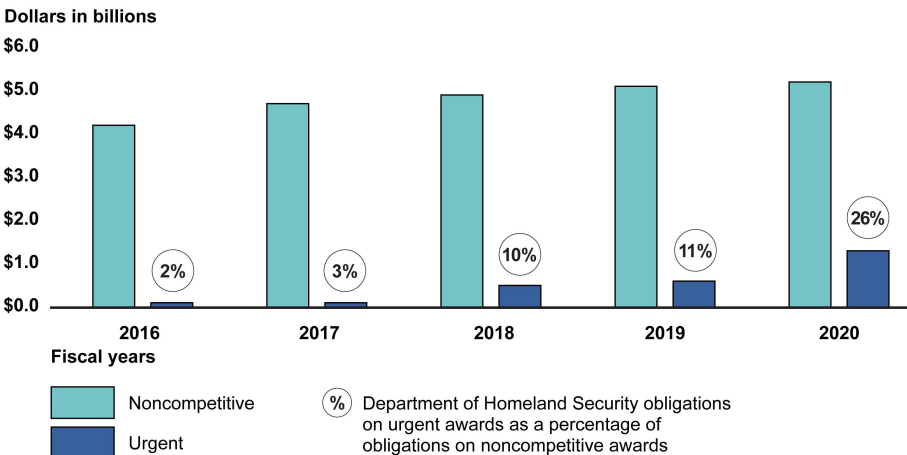
DHS CONTRACTS

Opportunities Exist to Improve Oversight and Monitoring of Urgent Noncompetitive Awards

What GAO Found

The Department of Homeland Security (DHS) acquires billions of dollars of goods and services each year through contracts awarded through limited or no competition. Competition is generally required for federal contract awards, which GAO has found helps the government determine a fair price. But, there are certain exceptions to competition requirements when justified by an urgent need. Spending on urgent contracts increased from \$75 million in fiscal year 2016 to \$1.3 billion in fiscal year 2020 due to contracts awarded in response to COVID-19, hurricanes, and other needs. Fiscal year 2020 saw the largest increase in DHS’s obligations on urgent awards due to the COVID-19 response (see figure).

COVID-19 Drove a Large Increase in Urgent Noncompetitive Obligations in Fiscal Year 2020



Source: GAO analysis of Federal Procurement Data System data. | GAO-22-105074

Accessible Data for COVID-19 Drove a Large Increase in Urgent Noncompetitive Obligations in Fiscal Year 2020

| Fiscal year | Total Not Competed | Urgency | Percent of Noncompeted Obligations Awarded Using Urgency |
|-------------|--------------------|-----------------|--|
| FY16 | \$4,177,216,368 | \$74,893,283 | 2% |
| FY17 | \$4,690,248,034 | \$148,233,205 | 3% |
| FY18 | \$4,890,953,378 | \$487,131,540 | 10% |
| FY19 | \$5,111,168,842 | \$547,906,621 | 11% |
| FY20 | \$5,176,870,168 | \$1,349,353,407 | 26% |

All 18 urgent awards GAO reviewed from selected components justified forgoing competition due to unexpected events, such as natural disasters or bid protests. However, across the contracts GAO reviewed, DHS did not always revise justifications after significant increases in contract value. For example, a U.S. Customs and Border Protection order for soft-sided facilities to shelter individuals arriving at the southwest border increased almost \$20 million before a new

written justification for using the urgency exception was drafted. Justifications provide an oversight mechanism for senior procurement officials. Taking action to better communicate when contracting officers should revise justifications and approvals after changes in contract value could help DHS ensure increases in value are transparent and in the best interest of the government.

GAO also found that some selected components did not have required appointment letters to document contracting officer representative (COR) responsibilities for monitoring performance across contracts GAO reviewed. Contracting officers are responsible for monitoring contractor performance but may delegate these responsibilities to CORs via appointment letters. Having these letters to clearly document monitoring responsibilities helps ensure that these activities are not overlooked and that contractors are held accountable to provide quality goods and services aligned with the terms of their contracts.

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Abbreviations

| | |
|-------|--|
| CBP | U.S. Customs and Border Protection |
| COR | contracting officer's representative |
| CPARS | Contractor Performance Assessment Reporting System |
| DHS | Department of Homeland Security |
| FAR | Federal Acquisition Regulation |
| FEMA | Federal Emergency Management Agency |
| FLETC | Federal Law Enforcement Training Centers |
| FPDS | Federal Procurement Data System |
| ICE | U.S. Immigration and Customs Enforcement |
| OPO | Office of Procurement Operations |
| TSA | Transportation Security Administration |

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May 3, 2022

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
House of Representatives

The Honorable J. Luis Correa
Chairman
Subcommittee on Oversight, Management, and Accountability
Committee on Homeland Security
House of Representatives

From fiscal years 2016 through 2020, the Department of Homeland Security (DHS) obligated tens of billions of dollars on contracts, and about a quarter of those obligations were on contracts that were not competed. We previously reported that competition is a critical tool for achieving the best return on the government's investment, and federal agencies are generally required to award contracts competitively.¹ However, agencies are permitted to award contracts without full and open competition under certain circumstances, such as when the agency's need for goods and services are of such an unusual and compelling urgency that a delay in award would result in serious financial or other harm to the government.²

Our prior work found that noncompetitive contracts carry the risk of overspending because, among other things, they have been negotiated without the benefit of competition to help establish pricing.³ As such,

¹GAO, *Federal Contracting: Noncompetitive Contracts Based on Urgency Need Additional Oversight*, [GAO-14-304](#) (Washington, D.C.: Mar. 26, 2014).

²For the purposes of this report, obligations on contracts and orders identified as using exceptions to competition related to urgency include those coded as urgent in the Federal Procurement Data System and associated with contracts subject to Federal Acquisition Regulation (FAR) 6.302-2, Federal Supply Schedule contracts subject to FAR 8.405-6, and orders under multiple award contracts, which are subject to separate competition requirements under FAR Part 16. We refer to such contracts and orders as using the urgency exception. We refer to any contract or order awarded pursuant to the above as an urgent noncompetitive or urgent contract, urgent order, or unless otherwise noted, when referring to both contracts and orders, urgent award. For the purposes of our contract obligation and contract monitoring analysis, the terms contracts and awards both include orders awarded under FAR Part 16.5 and Part 8 procedures.

³[GAO-14-304](#).

noncompetitive awards generally must be supported by written justifications that contain sufficient facts and rationale for the acquisition and are approved in writing. Contracts awarded using the urgency exception to competition are subject to additional requirements beyond those in place for other noncompetitive awards. For example, written justifications and approvals should generally include any facts supporting the use of the urgency exception, such as the estimated cost or extent of harm to the government if an award is not made urgently, and are also generally subject to period of performance limits to encourage competition.

You asked us to review DHS's use of the urgency exception to full and open competition. This report examines: (1) the extent to which DHS used the urgency exception to acquire goods and services from fiscal years 2016 through 2020; (2) the reasons why selected DHS components awarded contracts using the urgency exception and the extent to which justifications and approvals met acquisition regulations and DHS policies; and (3) the extent to which selected DHS components monitored and completed required contractor performance activities for contracts awarded due to urgency.

To conduct our work we analyzed procurement data for fiscal years 2016 through 2020, the 5 most recent years for which data were available. We assessed the reliability of Federal Procurement Data System (FPDS) data by reviewing existing information about the FPDS system and the data it collects—specifically, the data dictionary and data validation rules and performing electronic testing. We also reviewed DHS's Fiscal Year 2020 FPDS Procurement Data Quality Certification Report, among other steps. We determined these data to be sufficiently reliable for the purposes of describing DHS's reported contract obligations for awards under the urgency exception. We selected seven DHS contracting activities based on their obligations on contracts and orders awarded using the urgency exception: the Federal Law Enforcement Training Centers (FLETC), the Office of Procurement Operations (OPO), Transportation Security Administration (TSA), U.S. Coast Guard, U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and

U.S. Secret Service.⁴ From these components, we selected a nongeneralizable sample of 18 contract files to obtain a range of obligations and based on recency of award, among other factors, and reviewed key documents including justifications and approvals, contract monitoring plans, contracting officer representative (COR) appointment letters, and available Contractor Performance Assessment Reporting System (CPARS) evaluations.⁵ We also reviewed the Federal Acquisition Regulation (FAR) and other relevant regulations and guidance, and interviewed DHS and component acquisition policy and contracting officials. Appendix I provides more information about our objectives, scope, and methodology.

We conducted this performance audit from March 2021 to May 2022 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.

Background

FAR Requirements for Noncompetitive Urgent Awards

Agencies are generally required to use full and open competition—achieved when all responsible sources are permitted to compete—when awarding contracts. However, the Competition in Contracting Act of 1984 recognizes that full and open competition is not feasible in all

⁴For the purposes of this report, we will refer to these contracting activities, which include six components and one office, as components. The other component with relevant obligations on urgent contracts and orders was the Federal Emergency Management Agency, which we did not include due to other ongoing work on the component's contracting in response to COVID-19.

⁵We selected an initial nongeneralizable sample of 33 urgent awards awarded in fiscal years 2018 through 2020 and excluded contracts awarded in response to COVID-19 due to our ongoing work in that area. Subsequent to these selections, we removed 15 contracts from our review after we determined from contract file documentation that they were awarded using a different exception to competition and were not urgent contracts, which left us with a total of 18 awards. In our analysis of whether justifications met FAR requirements, we reviewed the justifications associated with the initial award and not justifications issued for subsequent modifications.

circumstances and authorizes contracting without full and open competition under certain conditions.⁶ Examples of these allowable exceptions to full and open competition include when the contractor is the only source capable of performing the work or when the need for goods and services is of such an unusual and compelling urgency that the federal government faces the risk of serious financial or other injury.⁷ However, an agency is not permitted to justify awarding a noncompetitive contract due to a lack of advance planning.

In addition to more general requirements for noncompetitive awards, contracts awarded using the urgency exception are also subject to specific provisions:

- **Sources.** When using the urgency exception to competition, an agency may limit the number of sources from which it solicits proposals. However, when using the urgency exception, agencies still must request offers from as many potential sources as is practicable under the circumstances.⁸
- **Duration of award.** Unlike the other exceptions to full and open competition provided by the FAR, contracts above the simplified acquisition threshold that are awarded using the urgency exception have certain time restrictions.⁹ Specifically, agencies must limit the contract's period of performance to the time necessary to meet the agency's requirements and for the agency to enter into another contract competitively.¹⁰ Further, the contract's period of performance

⁶Pub. L. No. 98-369, §§ 2711(a)(1) and 2723(a)(1), codified as amended at 41 U.S.C. § 3304 and 10 U.S.C. § 2304, recodified at 10 U.S.C. § 3204.

⁷FAR § 6.302-2.

⁸FAR § 6.302-2(c)(2).

⁹Agencies generally must use simplified acquisition procedures to the maximum extent practicable for purchases of goods or services at or below the simplified acquisition threshold. The fiscal year 2018 National Defense Authorization Act increased the simplified acquisition threshold for civilian agencies from \$150,000 to \$250,000, with some exceptions. See National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, § 805 (2017). The simplified acquisition threshold is \$800,000 for acquisitions of goods or services that are to support a response to an emergency or major disaster declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The FAR period of performance restriction on urgent contracts does not apply to urgent orders. FAR §§ 8.405-6; 16.505.

¹⁰FAR § 6.302-2(d).

may not exceed 1 year unless the head of the agency determines that exceptional circumstances apply.

Justification and Approval

The FAR outlines requirements for justifications and approvals for the use of noncompetitive contracts awarded using the urgency exception, and similar justification requirements apply to certain orders, such as those awarded under indefinite delivery contracts.¹¹ Generally, agencies must support noncompetitive awards with written justifications that contain sufficient facts and rationale to justify the use of the specific exception to competition that is being applied to the purchase. In the absence of full and open competition, these justifications serve as a kind of oversight mechanism. Unlike other contracts awarded without full and open competition, justifications for urgent contracts may be prepared and approved within a reasonable time after award when doing so prior to award would unreasonably delay the acquisition.¹²

Justifications must include specific elements identified in the FAR. These elements can include a description of the goods and services being procured, market research conducted, and efforts to solicit offers, among other things. However, what is contained in a justification varies depending on whether the award is a contract or an order on an existing contract vehicle, such as an indefinite delivery contract. Figure 1 summarizes the documentation requirements for urgent contracts and orders.

¹¹For the purposes of this report, we use the term justifications to collectively refer to justifications for other than full and open competition made under FAR § 6.303, limited source justifications made under FAR § 8.405-6, and justifications for an exception to fair opportunity made under FAR §16.505. An indefinite delivery contract provides for an indefinite quantity, within stated limits, of goods or services during a fixed period. The government places orders on the contract for individual requirements.

¹²FAR § 6.303-1(e).

Figure 1: Federal Acquisition Regulation (FAR) Documentation Requirements and Limitations on Noncompetitive Urgent Contracts and Orders

| | Urgent contracts | Urgent orders |
|--|---|---|
| Below simplified acquisition threshold | No period of performance limits | |
| | Contract file must include documentation justifying use of urgency | |
| Above simplified acquisition threshold | Subject to 1-year period of performance limits ^a | No period of performance limits |
| | ↓ Justification with the following elements required ↓ | |
| | 1 Identification of agency and contracting activity, and specific identification of the document as a "justification for other than full and open competition." | Identification of agency and contracting activity, and specific identification of the document as a "justification for an exception to fair opportunity" or a "limited-sources justification" |
| | 2 | Nature or description of action being approved. |
| | 3 | Description of goods/services required to meet the agency's needs, including estimated value. |
| | 4 Identification of statutory authority permitting other than full and open competition. | Identification of the exception to fair opportunity or authority and the supporting rationale. ^b |
| | 5 Determination by the contracting officer that the anticipated cost to the government will be fair and reasonable. | Determination that cost will be fair and reasonable or that the order represents the best value. |
| | 6 Any other facts supporting use of other than full and open competition, such as an explanation why technical data packages, engineering descriptions, or statements of work suitable for full and open competition have not been developed or are not available. When the urgency exception is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the government. | Any other facts supporting the justification. |
| | 7 Statement of actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the goods or services. | Statement of actions, if any, the agency may take to remove or overcome any barriers that led to the exception before any subsequent acquisition for goods or services. |
| | 8 Description of the market research conducted and the results of the research or a statement as to why market research was not conducted. | Evidence that any supporting data that are the responsibility of technical or requirements personnel and that form a basis for the justification have been certified as complete and accurate by those personnel. |
| | 9 Demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of cited authority. | A written determination by the approving official that urgency applies. ^c |
| | 10 Description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized. | Contracting officer's certification that justification is accurate and complete to the best of the officer's knowledge and belief. |
| | 11 List of sources, if any, that expressed interest in the acquisition in writing. | |
| | 12 Contracting officer certification that justification is accurate and complete to the best of the officer's knowledge and belief. | |

Source: Federal Acquisition Regulation. | GAO-22-105074

^aPeriod of performance limit applies unless the head of the agency or designee determines that exceptional circumstances apply.

^bIf applicable, urgent orders under FAR part 8 must also provide a demonstration of the proposed contractor's unique qualifications to provide the required good or service. FAR § 8.405-6(c)(2)(iv). Orders under FAR part 16 must include a demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires the use of the exception. FAR § 16.505(b)(2)(ii)(B)(4).

^cUrgent orders under FAR part 8 also require a description of the market research conducted and the results, or a statement of the reason market research was not conducted. FAR § 8.405-6(c)(2)(vi).

The FAR has more streamlined procedures for awards under the simplified acquisition threshold—generally \$250,000. For example, contracting officers awarding an urgent contract under simplified acquisition procedures must only document the determination that competition was not feasible due to an urgent and compelling need; no approval beyond the contracting officer is required.

Justifications must be approved at various levels within the contracting organization. These levels do not vary based on whether an award is made using the urgency exception, but rather according to the estimated total dollar value of the proposed award, including all options. As outlined in table 1, unless a higher approving level is established in agency procedures, the approval levels range from the contracting officer for smaller dollar contract awards, up to the agency's senior procurement executive for larger dollar contract awards.

Table 1: Federal Acquisition Regulation Approval Levels for Justifications for Other Than Full and Open Competition, Limited Source Justifications, and Justifications for an Exception to Fair Opportunity

| Estimated value of proposed award | Approval by |
|--|--|
| \$750,000 or less ^a | Contracting officer (unless higher approving level established in agency procedures) |
| Over \$750,000 but not exceeding \$15 million | Competition advocate for the procuring activity or officials authorized to approve at a higher level |
| Over \$15 million but not exceeding \$75 million (below \$100 million for the Department of Defense, National Aeronautics and Space Administration, and Coast Guard) | Head of the procuring activity, or designee meeting certain criteria |
| Over \$75 million (\$100 million for the Department of Defense, National Aeronautics Space Administration, and Coast Guard) | Agency senior procurement executive |

Source: Federal Acquisition Regulation. | GAO-22-105074

^aAwards below the simplified acquisition threshold of \$250,000 do not require documentation of a justification and approval.

Justifications are required to be published on the System for Award Management—the primary government database for contract

opportunities—within 14 days after contract award for orders, and 30 days after contract award for new contracts.¹³

Contract Performance Monitoring

The FAR also identifies requirements for monitoring performance to ensure compliance with the terms and conditions of the contract. Requirements for performance monitoring in the FAR generally do not vary based on whether the contract was awarded using the urgency exception. Contracting officers are ultimately responsible for administering contracts, which includes monitoring contractor performance, but may delegate some responsibilities to CORs, depending on the type and complexity of the contract.¹⁴ Responsibilities delegated to the COR are to be documented in COR appointment letters and maintained in the contract file.

Requirements for monitoring performance on a contract can vary based on factors such as the contract type or value. Specifically, the type and extent of requirements used to ensure the quality of the good or service being provided depend on the specific acquisition. These requirements may range from inspection by the contractor at the time the good or service is provided to higher levels of contract surveillance.¹⁵ For example, contracts providing more complex and critical goods and services may require quality assurance surveillance plans that identify the work that requires surveillance and the methods for doing so.

The FAR also requires that past performance evaluations be entered into CPARS—an evaluation reporting tool for all past performance on government contracts and orders. Performance evaluations are generally required to be entered at least annually for contracts and orders above the simplified acquisition threshold, and when work is completed.¹⁶ Contracting officers rely on past performance evaluations, among other information available in government-wide databases, when making award

¹³FAR § 6.305, 8.405-6, and 16.505. There are additional posting requirements for justifications for other than full and open competition when the acquisition is for a brand name product or item.

¹⁴FAR § 1.602-2 and 1.604.

¹⁵FAR § 46.202.

¹⁶FAR § 42.1502.

decisions. CPARS guidance instructs that performance evaluations should be entered within 120 days of the end of the contract's period of performance.¹⁷

DHS Regulation and Guidance

DHS relies on additional policies to supplement the FAR for noncompetitive awards. The Homeland Security Acquisition Regulation and the Homeland Security Acquisition Manual—which are issued by DHS's Chief Procurement Officer—outline specific requirements related to certain exceptions to other than full and open competition and justification approval levels. For example, the Homeland Security Acquisition Regulation states that DHS must restrict the duration of urgent contracts awarded to facilitate the response to or recovery from a natural disaster, act of terrorism, or other disaster to no more than 150 days, as required by the Post-Katrina Emergency Management Reform Act of 2006, unless the Head of the Contracting Activity or higher approval authority, as applicable, determines that exceptional circumstances apply.¹⁸

DHS also developed a Justification and Approval for Other than Full and Open Competition Guide (the DHS justification guide), which provides guidance and a justification template used by the components when awarding certain types of contracts noncompetitively. Some DHS components further supplement these policies with component-specific guidance and templates related to the urgency exception or for preparing written justifications and approvals for noncompetitive awards. For example, the Secret Service has multiple component specific templates, including templates for justifications for other exceptions to full and open competition not addressed by the DHS justification guide.

DHS also has additional guidance on contract performance monitoring and entering performance evaluations. Specifically, the Homeland Security Acquisition Manual states that CORs are required to be appointed through an appointment letter prior to award for every firm-fixed-price contract or order above the simplified acquisition threshold and

¹⁷Guidance for the Contractor Performance Assessment Reporting System (CPARS), May 2021.

¹⁸Department of Homeland Security Acquisition Regulation, § 3006.302-270; Pub. L. No. 109-295, § 695.

for any contract or order that is high risk or a major investment, unless the contracting officer retains these responsibilities.¹⁹ The manual also identifies required key elements to be included in COR appointment letters, including:

- performing surveillance, inspection, and acceptance;
- monitoring activities, including providing input to contractor performance evaluations;
- making recommendations for invoice and payment;
- managing government-furnished property; and
- managing contractor employee access to facilities or systems.

DHS's COR Guidebook provides additional details on COR certifications, nominations and appointments, COR roles and responsibilities, and key practices and reference materials to help CORs administer contracts.

Within DHS, the Head of the Contracting Activity is responsible for ensuring that contractor performance evaluations are entered into CPARS as required by the FAR. DHS established its own thresholds for determining whether performance evaluations are required. For example, CPARS evaluations are generally required for contracts and orders for goods over \$500,000 and for services over \$1 million.

Federal Procurement Data System Reporting

Generally, once a contract is awarded, agencies are required to enter certain information into FPDS, the federal government's procurement database.²⁰ Timely and accurate reporting of procurement actions into FPDS is required by the FAR and provides the basis for recurring and special reports to Congress, federal agencies, and the general public. Within FPDS, there are several ways to report whether a contract was awarded noncompetitively based on the authority cited by the agency for not seeking full and open competition. For example, according to the FPDS Data Element Dictionary, which guides the entry of information into

¹⁹Department of Homeland Security Acquisition Manual, 3042.270-1. Under a firm-fixed-price contract, the price is not subject to any adjustment on the basis of the contractor's cost while performing the contract.

²⁰FAR § 4.603.

the system, contracts can be identified as not competed, not available for competition, or not competed under simplified acquisition procedures.

Prior GAO Work

Our prior work involving the Federal Emergency Management Agency (FEMA), U.S. Agency for International Development, and Departments of Defense and State found problems with the use or oversight of contracts awarded citing the urgency exception, including contracts that exceeded the time restrictions set forth in acquisition regulation.²¹ We recommended that FEMA provide guidance to ensure that contracting officers were aware of requirements related to the 150-day limit on certain noncompetitive contracts justified as urgent and compelling. DHS agreed, and FEMA issued an acquisition alert to remind its contracting staff that disaster contracts justified based on urgency cannot exceed 150 days without appropriate approval. We also recommended that the Office of Management and Budget's Office of Federal Procurement Policy—which provides government-wide policy on federal contracting procedures—clarify when a determination of exceptional circumstances is needed for urgent contracts that exceed the 1 year period of performance limit. The Office of Management and Budget agreed and a final rule modifying the FAR was issued instructing contracting officers to obtain a determination of exceptional circumstances for modifications that will extend an urgent contract's period of performance beyond 1 year.

DHS Increased Use of the Urgency Exception, but Some Contracts Reviewed Were Not Accurately Reported

DHS increased its use of contracts awarded using the urgency exception from fiscal years 2016 through 2020, with fiscal year 2020 accounting for the largest increase due to the COVID-19 pandemic. In addition to COVID-19, DHS components involved in responding to events such as natural disasters and immigration needs represented a majority of the obligations on urgent contracts for the fiscal years we reviewed. Those obligations on urgent contracts were primarily for services until fiscal year 2020, when DHS acquired about \$1 billion for COVID-19-related

²¹GAO, *Disaster Contracting: FEMA Needs to Cohesively Manage Its Workforce and Fully Address Post-Katrina Reforms*, [GAO-15-783](#) (Washington, D.C.: Sept. 29, 2015); and [GAO-14-304](#).

products. However, we found that DHS incorrectly reported some noncompetitive contracts as urgent.

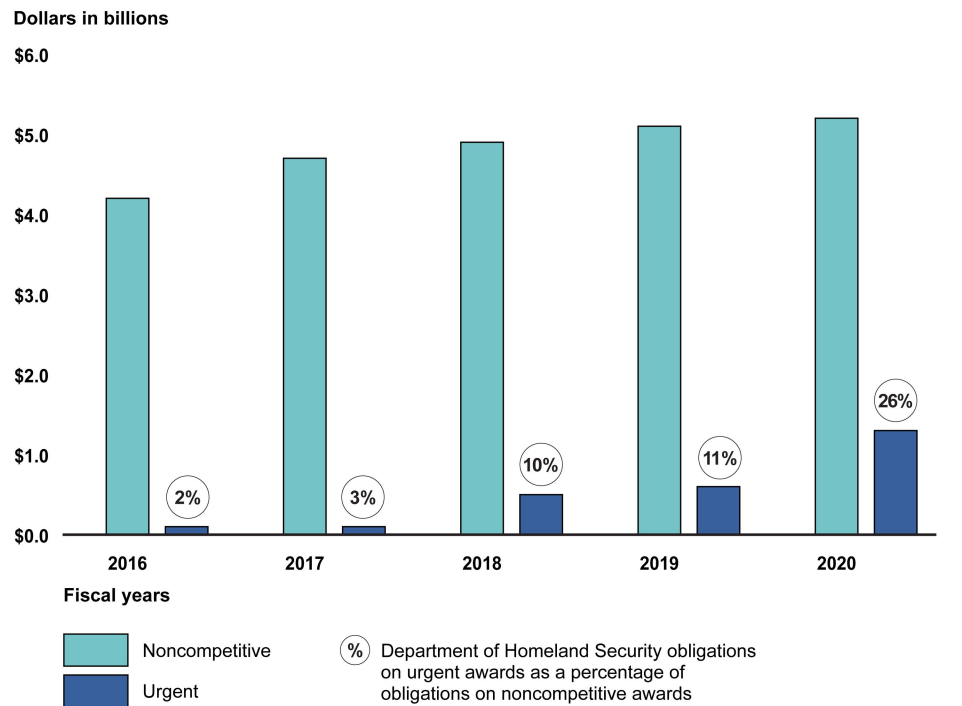
Obligations Increased since Fiscal Year 2016, Most Recently to Address COVID-19 Needs

DHS obligations on urgent noncompetitive contracts increased during the fiscal years reviewed due to the response to the COVID-19 pandemic and other needs. Specifically, DHS obligations on contracts awarded using the urgency exception increased from \$75 million in fiscal year 2016 to \$1.3 billion in fiscal year 2020 (see fig. 2). Factors contributing to the increase include:

- Contracts awarded in response to the COVID-19 pandemic—primarily by FEMA—accounted for about \$1.1 billion, or 80 percent, of the obligations on urgent contracts in fiscal year 2020.
- CBP and ICE’s response to the increase in the number of individuals apprehended and detained at the U.S.-Mexico border contributed to increases in obligations on urgent contracts in fiscal year 2019.
- FEMA and the Coast Guard drove obligation increases from fiscal year 2017 to fiscal year 2018 due in large part to urgent contracts awarded in response to Hurricanes Harvey and Maria or oil spills.

Excluding COVID-19, obligations on urgent contracts in fiscal year 2020 decreased to \$271 million, or 5 percent of noncompetitive awards, from \$548 million in fiscal year 2019. Over the entire time period, obligations on awards made using the urgency exception accounted for about \$2.6 billion, or 11 percent, of DHS’s \$24 billion in noncompetitive contract obligations.

Figure 2: Department of Homeland Security Obligations on Urgent Awards as a Percentage of Obligations on Noncompetitive Awards



Source: GAO analysis of Federal Procurement Data System data. | GAO-22-105074

Accessible Data for Figure 2: Department of Homeland Security Obligations on Urgent Awards as a Percentage of Obligations on Noncompetitive Awards

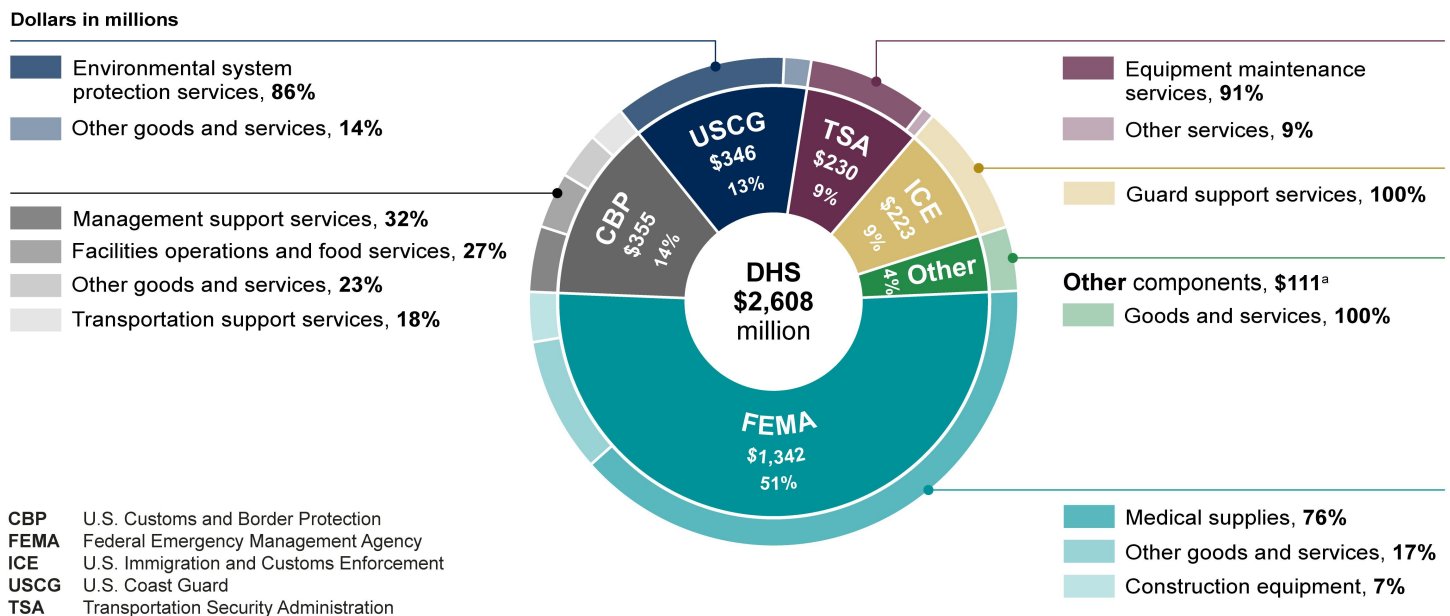
| Fiscal year | Total Not Completed | Urgency | Percent of Noncompleted Obligations Awarded Using Urgency |
|-------------|---------------------|-----------------|---|
| FY16 | \$4,177,216,368 | \$74,893,283 | 2% |
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| FY18 | \$4,890,953,378 | \$487,131,540 | 10% |
| FY19 | \$5,111,168,842 | \$547,906,621 | 11% |
| FY20 | \$5,176,870,168 | \$1,349,353,407 | 26% |

Note: Obligations in fiscal year 2020 dollars.

Components Used the Urgency Exception to Respond to Critical Mission Needs

DHS and its components used the urgency exception to respond to critical mission needs, such as disaster response and immigration services. Specifically, five components—FEMA, the Coast Guard, CBP, ICE and TSA—accounted for 96 percent of DHS’s \$2.6 billion in obligations on urgent contracts from fiscal years 2016 through 2020. For the 5 year period, 51 percent of all obligations on urgent contracts were for services. However, this overall percentage is skewed by urgent awards for goods in fiscal year 2020 due to the COVID-19 pandemic. Specifically, from fiscal years 2016 through 2019, \$1.3 billion, or about 84 percent of DHS’s obligations on urgent contracts, were for services. By contrast, about \$1 billion or 78 percent of the \$1.3 billion in obligations on urgent contracts in fiscal year 2020 were for goods, such as medical equipment and supplies, primarily purchased by FEMA in response to the pandemic. See figure 3 for a breakdown of the top five components’ obligations by top goods and services.

Figure 3: Department of Homeland Security Obligations on Urgent Awards by Component with Top Services or Goods, Fiscal Years 2016-2020



Source: GAO analysis of Federal Procurement Data System data. | GAO-22-105074

Note: Obligations in fiscal year 2020 dollars.

^aOther components includes obligations by the Federal Law Enforcement Training Centers, Office of Procurement Operations, U.S. Citizenship and Immigration Services, U.S. Secret Service, and the Office of the Inspector General.

Each component made obligations on urgent contracts relevant to its mission, such as disaster response or immigration needs from fiscal years 2016 through 2020. For example:

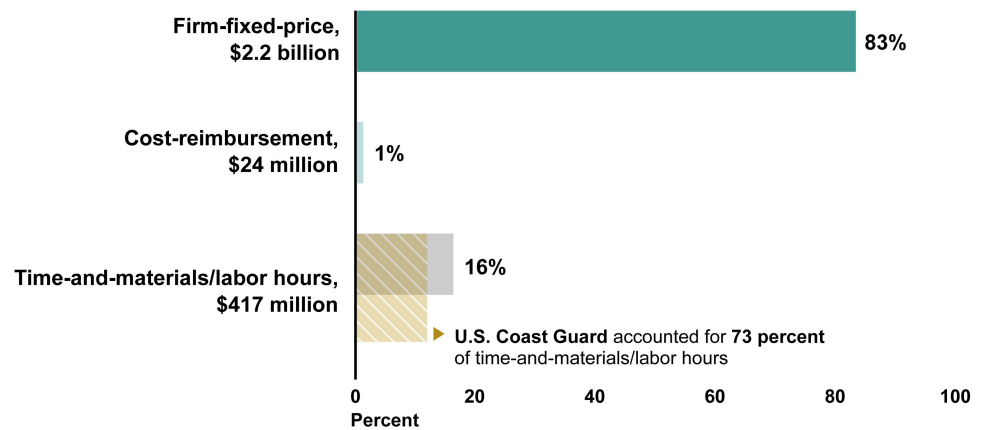
- FEMA obligated about \$260 million related to hurricanes and other disasters, a majority of which was for goods such as tank and pump systems, fuel tanks, and hot meals during the response to Hurricanes Harvey and Maria.
- The Coast Guard obligated about \$294 million on urgent contracts for services in response to oil spills, \$114.5 million of which was related to declared natural disasters.
- CBP obligated about \$276 million for services to support logistics or emergency response, transportation or relocation, and facilities operations, typically used to hold apprehended individuals and conduct legal proceedings. These obligations on urgent contracts coincided with increases in CBP's self-reported apprehensions of inadmissible individuals at the southwest border in 2019, and continued support of these services in 2020.
- Almost all of ICE's obligations on urgent contracts were for guards, food, and transportation services to support immigration detention facilities.
- A majority of TSA obligations were on a single urgent contract for services pertaining to the maintenance and repair of airport screening equipment.

Across the top five components, obligations on urgent contracts accounted for a relatively small portion of overall obligations. For example, obligations on urgent contracts accounted for 9 percent of FEMA's total obligations from fiscal years 2016 through 2020. Obligations on urgent contracts at the other four components accounted for 2 percent of their total obligations.

DHS's obligations on contracts awarded using the urgency exception were primarily firm-fixed-price (see fig. 4). Our prior work has noted that fixed-price contracts—where the government pays a fixed price even if the actual total cost of the good or services falls short or exceeds the contract price—are considered generally less risky to the government

because the contractor bears the risk of cost overrun.²² Most of the remainder of obligations on contracts awarded using the urgency exception were for time-and-materials/labor-hours contracts—where the government pays fixed per-hour labor rates as well as actual costs of materials, if applicable. Our prior work noted that time-and-materials contracts place the risk of cost overrun on the government.²³

Figure 4: Department of Homeland Security Obligations on Urgent Awards by Contract Type, Fiscal Years 2016-2020



Source: GAO analysis of Federal Procurement Data System data. | GAO-22-105074

Notes: Obligations in fiscal year 2020 dollars. Cost-reimbursement includes cost-plus-fixed-fee and cost-no-fee.

Six of Seven Selected DHS Components Did Not Accurately Code Some Noncompetitive Contracts

Based on our review of selected contract documentation, we found that six of our seven selected components did not accurately code some noncompetitive contracts in FPDS. Specifically, of the 33 contracts we initially selected for review, 15 contracts—ranging in value from \$0 to \$47.7 million—were incorrectly reported in FPDS as being awarded

²²GAO, *Contracting Data Analysis: Assessment of Government-wide Trends*, [GAO-17-244SP](#) (Washington D.C.: Mar. 9, 2017).

²³[GAO-17-244SP](#).

noncompetitively using the urgency exception.²⁴ We found that 14 of the 15 contracts were awarded using other exceptions to competition, and therefore had different reporting requirements. Specifically:

- Nine contracts were awarded using simplified acquisition procedures, which allow the contracting officers to streamline acquisition procedures for small dollar awards—generally under \$250,000.
- Five contracts were awarded using other exceptions to competition, such as only one responsible source available or as a direct award to a small business.
- In the remaining case, contracting officials associated with that contract said that it was miscoded and was competed with as many contractors as possible.

According to the FAR, the senior procurement executive is responsible for developing and monitoring a process to ensure timely and accurate reporting of contract actions in FPDS.²⁵ DHS acquisition policy states that all DHS components are required to enter contract actions directly into FPDS, and that given the variety of stakeholders that rely on FPDS data, the quality and timeliness of the data are critical.²⁶ Further, the FPDS Data Dictionary describes how various types of noncompetitive awards should be entered into the system. For example, contracts using simplified acquisition procedures or awarded using the only one available source exception have separate data entry practices from contracts awarded using the urgency exception. Some component officials we spoke with generally said that they follow these procedures but acknowledged that there are sometimes errors or confusion related to coding noncompetitive awards. For example, CBP officials said that while contracting officers are instructed to follow the FPDS Data Dictionary

²⁴Based on our analysis of FPDS data, about 5 percent, or \$131.2 million, of DHS obligations coded as urgent under FAR § 6.302-2 or other limitation on competition were below the current simplified acquisition threshold. While not all procurements under the simplified acquisition threshold are required to use simplified acquisition procedures, of the 15 contracts in our nongeneralizable sample that were miscoded as urgent, nine were coded as urgent and were below the simplified acquisition threshold. In addition, the DHS Fiscal Year 2020 FPDS Procurement Data Quality Certification Report found an accuracy rate of 98 percent for FPDS data elements related to competition in the sample of FPDS records reviewed. Based on this information, we determined DHS's obligation data to be sufficiently reliable for our purposes of reporting trends in DHS's obligations under urgent contracts.

²⁵FAR § 4.604.

²⁶Department of Homeland Security Acquisition Manual, 3004.603, noting the requirements in FAR 4.6.

instructions, errors are possible in entering data, so some urgent contracts awarded using simplified acquisition procedures may be coded incorrectly.

Our prior work found coding errors in FPDS for contracts awarded by the Departments of Defense and State, and the U.S. Agency for International Development. In March 2014, we found 28 of 62 contracts selected for our sample were coded as having been awarded noncompetitively using the urgency exception, but were not actually urgent contracts. We recommended that the three agencies provide or reemphasize guidance to contracting staff on the correct procedures for accurately reporting competition data for contracts using simplified acquisition procedures that were awarded on an urgent basis. All three agencies agreed with our recommendation and issued or updated guidance.²⁷

Inaccurate reporting in FPDS can add to existing concerns about the reliability of some data elements in FPDS.²⁸ Without action, such as clearly communicating and enforcing correct procedures to ensure that contracting officials accurately report noncompetitive urgent awards in FPDS, DHS lacks reasonable assurance that it has quality information on the full extent of its use of noncompetitive awards to inform procurement policy decisions and facilitate congressional oversight.

Selected Components Generally Met Requirements for Use of Urgency Exception but Documented It Inconsistently

We found that the selected components generally documented their use of the urgency exception in justifications and approvals as required. Across our selected contracts and orders, component justifications generally cited the need to use the urgency exception to maintain mission

²⁷The Department of Defense updated its guidance on entering federal procurement competition data to reiterate that noncompetitive contracts using simplified acquisition procedures on an urgent basis should be coded as using simplified acquisition procedures, rather than as urgent. The Department of State and the U.S. Agency for International Development issued additional guidance on the correct data entry procedures for urgent awards using simplified acquisition procedures.

²⁸We focused our review on a selection of DHS urgent awards from 2018 through 2020; thus, we did not assess the extent to which all contracts and orders that were identified as being noncompetitively awarded were properly coded. Therefore, we did not assess the overall reliability of DHS's competition information.

critical operations or respond to unexpected needs. Components also generally met regulatory requirements related to the contents of the justifications and period of performance limits. However, the components were inconsistent in seeking additional approvals for certain modifications to urgent contracts.

Selected Components Used the Urgency Exception to Respond to Unexpected Circumstances

In our review of selected contract files and interviews with contracting officials, we found that all 18 of the awards in our sample documented that they relied on the urgency exception to respond to an unexpected need or maintain mission critical services after an unexpected circumstance. Our review of justifications identified a variety of reasons that components used the urgency exception, including:

- **Maintaining mission critical services.** We found 12 examples of components making awards using the urgency exception to maintain mission critical services. Most of these awards were bridge contracts following a bid protest or unexpected termination of a prior contract or agreement.²⁹ For example, FLETC urgently awarded a contract with \$4.4 million in obligations to avoid a lapse in essential training services when a competitively solicited contract for those services became subject to a bid protest. ICE awarded two bridge contracts using the urgency exception with obligations totaling \$42.8 million to maintain services at detention facilities after local governments terminated their agreements with the vendors to provide these services.
- **Emergency response.** We found three instances in our sample where components used the urgency exception to make awards to respond to an emergency situation, such as a hurricane, earthquake, or civil unrest. In one example, the Coast Guard obligated \$500,000 on an urgent contract to obtain temporary office space after its normal facilities sustained damage following a hurricane.

²⁹For the purposes of this report, we considered a contract a bridge contract if the component identified the award as a bridge in the contract file documentation or if the contract met the following definition established in our prior work: an extension to an existing contract beyond the period of performance (including option years), or a new, short-term contract awarded on a sole-source basis to an incumbent contractor to avoid a lapse in service caused by a delay in awarding a follow-on contract. See GAO, *Sole Source Contracting: Defining and Tracking Bridge Contracts Would Help Agencies Manage Their Use*, [GAO-16-15](#) (Washington, D.C.: Oct. 14, 2015).

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- **Increased demand for immigration services.** In three instances in our sample, components used the urgency exception to make awards to respond to increased numbers of reported migrants at the southwest border. For example, CBP had requirements with obligations totaling \$230.5 million for temporary facilities to shelter family units and unaccompanied children and support remote immigration hearings following increases in immigration activity at the southwest border.

Appendix II describes the reasons that contracts and orders in our sample were awarded using the urgency exception, among other contract characteristics.

Selected Components Generally Met Regulatory Requirements

Most of the awards in our review met regulatory requirements for elements to include in justifications and period of performance limitations detailed in the FAR. For example, of the 17 awards in our sample above the simplified acquisition threshold, all but one had a written justification for the base award in the contract file as required by DHS policy.³⁰ These justifications also generally met requirements to include various elements specified in the FAR, such as:

- a description of the supplies or services required to meet the agency need;
- an identification of the authority used to award the contract urgently; and
- a determination that the cost to the government will be fair and reasonable.

Of the 16 available justifications, three were missing a required element, but we did not identify a pattern to these errors.

The justifications we reviewed also generally supported their rationale for the use of the urgency exception. When urgency is cited for certain contracts above the simplified acquisition threshold, justifications should include any facts supporting the justification, such as data, estimated cost, or other rationale as to the extent and nature of the harm to the

³⁰ICE officials were unable to locate the justification for the initial award of a contract for detention, food, and transportation services above the simplified acquisition threshold.

government if an urgent award is not made. The selected justifications we reviewed for awards above the simplified acquisition threshold generally included supporting facts, with varying support and detail provided. For example, most of the justifications we reviewed used either quantitative data or qualitative description to detail the extent of the harm. For example, in one justification for a contract, ICE officials supported the urgent nature of an award to extend services at a detention facility by quantifying the number of detainees who would need to be relocated multiple times—incurring additional financial costs and safety risks—if the service were to lapse while the requirement was competed. In contrast, three justifications for contracts above the simplified acquisition threshold identified that there was a risk of harm to the government without the use of the urgency exception to make the award but did not include additional data, estimated cost, or description as to the nature or extent of that harm.

We also found that justifications for the awards in our sample were generally approved by the proper authority based on their estimated value, as required by the FAR. Of the 16 awards in our sample with justifications, all but one award from the Secret Service had documentation showing they were approved by the proper authority.³¹

Further, we also found that selected urgent contracts subject to period of performance limitations generally met those limits. Certain urgent awards are limited to a 1-year period of performance, unless the head of the agency documents exceptional circumstances.³² At DHS, this limit is 150 days for certain urgent awards in response to a natural disaster, act of terrorism, or other disaster. Of the 11 contracts in our sample above the simplified acquisition threshold and thus subject to period of performance limitations, four had subsequent modifications that extended the contract beyond the applicable period of performance limit of 1 year. For three of these awards, officials issued a new justification that extended the period of performance beyond 1 year under a different exception to competition. As a result, the period of performance requirements for urgent awards no longer applied. The fourth contract exceeded the period of performance limit, but according to component officials, additional documentation and

³¹Secret Service officials were unable to verify whether the Head of the Contracting Activity approved an urgent award supporting relocation services for Secret Service agents.

³²DHS's Homeland Security Acquisition Manual delegates this approval to the Head of the Contracting Activity. Department of Homeland Security Acquisition Manual, 3006.302-2.

approval was not required because the clause extending the period of performance was approved by the Head of the Contracting Activity.

Selected Components Were Inconsistent in Documenting Revisions to Justifications for Use of the Urgency Exception

We found that selected DHS components did not always revise justifications for urgent awards following increases in the approved contract value or obtain related approvals. Specifically, some components varied in whether they documented revised justifications for selected awards following a modification that increased contract value, and component officials described different understandings of policy for when a new justification is required. For example, of the 11 awards in our sample where the final contract value exceeded the estimate approved in the initial justification, eight did not have new or revised justifications to address the increase in contract value.

- In one example, a CBP order for a soft-sided facility to shelter individuals apprehended at the southwest border experienced several increases in value totaling almost \$20 million before a new justification was drafted. CBP officials told us that the decision to update justifications after an increase in value is made on an individual basis based on the risk level of the contract and availability of funds.
- In another example, FLETC extended the period of performance of a contract for critical training services resulting in a more than fivefold increase in obligations, from about \$677,000 to \$4.4 million, without revising the justification and getting approval for the revision. Officials told us that they recalled the proper authority approving the modification, but said that they were unable to find written documentation of the approval.

According to DHS acquisition policy, when revisions are made to justifications for exceptions to full and open competition that affect the dollar value, contracting officers must ensure that a revised justification is reviewed and approved by the original approving official and any other approving official needed based on the change in the dollar value.³³

Office of the Chief Procurement Officer officials confirmed that any change in the contract value or significant change in scope warrants a revised justification. These officials also told us that they were not aware

³³Department of Homeland Security Acquisition Manual, 3006.304.

of inconsistencies between components regarding when to revise a justification following a contract modification that necessitated changes to the justification.

However, officials at selected components described different understandings of policy for when a new justification is required. For example, contracting officials at the Coast Guard told us that any change in contract value would require a new justification, while contracting officials at CBP, the Secret Service, and OPO said that they would only seek approval for a new justification if the award value increased by a significant margin, such as if the increase was greater than 25 percent of the previous value. Officials noted that this rule is not documented in DHS policy but that they used such thresholds to guide their decision-making, in some cases based on their experiences at other agencies.

Our prior work identified challenges with limited oversight of urgent contracts that experienced significant cost growth at the Departments of Defense and State, and the U.S. Agency for International Development. In March 2014, we found instances where, after award, these agencies increased funding on urgent contracts to well beyond the original contract value without alerting senior procurement officials.³⁴ We recommended that the three agencies develop an oversight mechanism when the cumulative value of urgent noncompetitive contracts increases considerably beyond the initial contract award value. The agencies agreed with our recommendation and issued additional guidance. For example, the Department of Defense updated its acquisition regulations to instruct contracting officers to notify management when the cumulative dollar value of an urgent contract increases beyond the initial award value. The Department of State issued guidance specifying that contracting officials should seek a higher level of approval when modifications raise the cumulative dollar value of an urgent contract above the next higher approval threshold. In addition to updating its guidance, the U.S. Agency for International Development also updated its noncompetitive justification tracking tool to track the cumulative value of urgent contracts.

In addition, federal standards for internal control state that management should use quality information that is current, complete, and accurate to make informed decisions and address risks.³⁵ Up-to-date justifications

³⁴[GAO-14-304](#).

³⁵[GAO-14-704G](#).

that are reviewed and approved by the appropriate procurement officials serve as a mechanism for communicating changes about and conducting oversight of urgent awards. Taking action—such as updating or clarifying department guidance—to better communicate to contracting officers the circumstances under which justifications should be revised, and subsequently approved following an increase in contract value, will help to facilitate effective oversight of these urgent noncompetitive awards. Ensuring that contracting officers are consistently revising justifications in these circumstances is particularly important if those justifications were not initially approved by senior procurement executives, and could help DHS ensure increases in contract value are transparent and in the best interest of the government.

Monitoring of Selected Contract Awards Varied Appropriately but Some Activities Were Not Completed as Required

We found that selected components' methods for monitoring contract performance varied based on the characteristics of the contracts. However, some selected components did not complete required performance monitoring steps across contract awards reviewed.

Contract Monitoring Activities Varied Based on Factors Other than Use of Urgency Exception

We found that contract monitoring activities across our selected components varied based on factors such as contract type, value, and complexity, rather than if the contract was awarded urgently. The FAR and DHS guidance to CORs do not provide monitoring activities specific to urgent awards.

Contract type. We identified some differences in the type and frequency of monitoring activities based on the type of contract awarded. For example, the Secret Service COR responsible for monitoring a time-and-materials order for financial management support services with total obligations of \$1.8 million said that monitoring included weekly status reports documenting planned and completed activities and weekly meetings with the contractor to discuss these reports and review deliverables and invoices. Because time-and-materials contracts provide no profit incentive to the contractor for cost control or efficiency,

appropriate government surveillance of contractor performance is required.³⁶ In contrast, Coast Guard contracting officials monitoring a \$3.5 million firm-fixed-price contract for information technology security relied on equipment inspections and meetings with the contractor, among other things. Fixed-price contracts place the burden of cost overruns on vendors and in that way are considered less risky to the government than cost-reimbursement, time-and-materials, and labor-hour contracts.

Award value and complexity. Across our sample of selected awards, we also found that monitoring activities varied depending on award value and complexity. DHS COR guidance recommends a documented plan for monitoring awards above the simplified acquisition threshold. For example:

- A TSA contract for maintenance and sustainment of airport security equipment with total obligations of \$205 million included an appointed COR to monitor activities and provide input to the contracting officer regarding contractor performance evaluations. Additionally, the contract had a quality assurance surveillance plan that outlined various methods to monitor contractor performance, including scheduled and unscheduled inspections of the services performed, and daily and monthly equipment status reports.
- An ICE contract for detention and transportation services with total obligations of \$55 million included a COR appointment and a quality assurance surveillance plan. Performance monitoring included a full annual inspection, unscheduled inspections, and maintaining an on-site presence for more frequent monitoring.

Officials from the Office of the Chief Procurement Officer and all seven selected components told us that, generally, contract monitoring activities do not differ for awards made using the urgency exception. However, officials also told us that, due to the nature of urgent awards, some monitoring activities may not be possible. For example, DHS guidance recommends post-award orientations to help ensure that the government and contractors share a mutual understanding of the contract requirements. However, officials from TSA and the Coast Guard told us

³⁶FAR § 16.601.

that they did not hold orientations for two selected contracts because of the urgency associated with awarding these contracts.³⁷

Based on our review of contract documents and interviews with contract officials, the awards we reviewed generally did not encounter significant performance challenges. As noted earlier, most of the urgent awards we selected were identified as bridge contracts to incumbent vendors with known past performance to maintain operations. For example, TSA officials cited an incumbent contractor's positive performance on a bridge contract for maintenance and sustainment of airport security equipment. According to officials, the incumbent contractor had less than 1-day's notice to quickly reacquire technicians to continue services after a new vendor was unable to meet requirements.

Some Components Did Not Complete Monitoring Responsibilities for Selected Awards

Some DHS components in our review did not complete required performance monitoring steps across our selected contract awards. Specifically, our review found that CBP, ICE, and the Secret Service did not document COR appointment letters for six of the 15 contracts where CORs were appointed. We also found instances where components either did not enter required performance evaluation information into CPARS, or were overdue in entering this information. However, DHS is currently taking steps to improve timeliness of performance evaluation information.

Selected Contract Files Did Not Always Have Appointment Letters

We found that six selected contract files did not have COR appointment letters. These appointment letters document key COR responsibilities such as surveillance and monitoring contractor performance and contributing to contractor performance evaluations, among other things. Contracting officers may appoint CORs to assist in monitoring contracts, such as those with complex requirements. According to DHS policy, these appointments should occur prior to award.³⁸ The contracting officer must

³⁷In the case of the TSA contract, officials further stated that a post-award orientation was not held because the contract was a bridge contract awarded to the incumbent contractor.

³⁸Department of Homeland Security Acquisition Manual, 3042.270-1(d).

provide an appointment letter to both the COR and the contractor, and the COR is to maintain a copy in their contract file.³⁹

CBP, ICE, and Secret Service were unable to provide COR appointment letters for six of the 15 awards that we reviewed for which CORs were assigned, as shown in table 2. In one instance, component officials said the urgency of the requirement left them with insufficient time to draft the letters. Also, Coast Guard officials identified a contract for which they said there was not enough time to assign and appoint a COR due to the urgency of the requirement. They instead had to rely on on-site personnel to manage performance and contract oversight.

Table 2: Documentation of Whether Contracting Officer Representative (COR) Appointment Letters Were Maintained for Selected Department of Homeland Security Awards

| Component | Obligations as modified (dollars in millions) | Description | Contract or order type | COR appointment letter |
|--|--|--|----------------------------------|--|
| Federal Law Enforcement Training Centers | 4.4 | Role player training services | Labor hour contract ^b | Appointment letter documented |
| Office of Procurement Operations | 0.3 | Project management and operations support services | Time-and-materials order | Appointment letter documented |
| Transportation Security Administration | 204.6 | Maintenance and sustainment of airport security equipment | Hybrid contract ^c | Appointment letter documented |
| Transportation Security Administration | 1.6 | Role player training services | Hybrid contract ^d | Appointment letter documented |
| U.S. Customs and Border Protection | 138.3 | Temporary soft-sided facilities and support ^a | Firm-fixed-price order | Appointment letter documented |
| U.S. Customs and Border Protection | 92.1 | Temporary soft-sided facilities and support | Firm-fixed-price order | Appointment letter documented |
| U.S. Customs and Border Protection | 64.3 | Transportation and guard support | Hybrid contract ^c | Unable to locate |
| U.S. Customs and Border Protection | 0.4 | Installation of temporary soil berm, fencing, and wire to fortify U.S.-Mexico border | Firm-fixed-price contract | Did not draft due to time constraints related to urgent nature of requirements |
| U.S. Immigration and Customs Enforcement | 55.1 | Detention and transportation services | Firm-fixed-price contract | Appointment letter documented |

³⁹FAR § 1.602-2, 1.604.

Letter

| Component | Obligations as modified (dollars in millions) | Description | Contract or order type | COR appointment letter |
|--|--|---|---------------------------|--|
| U.S. Immigration and Customs Enforcement | 29.3 | Detention services | Firm-fixed-price contract | Appointment letter documented |
| U.S. Immigration and Customs Enforcement | 20.5 | Detention, food, and transportation service | Firm-fixed-price contract | Did not provide reasons for not drafting |
| U.S. Immigration and Customs Enforcement | 13.5 | Detention services | Firm-fixed-price contract | Did not provide reasons for not drafting |
| U.S. Secret Service | 9.6 | Relocation management services | Firm-fixed-price order | Unable to locate due to staff turnover |
| U.S. Secret Service | 1.8 | Financial management support | Time-and-materials order | Unable to locate due to staff turnover |
| U.S. Secret Service | 0.5 | Civil disturbance defense equipment | Firm-fixed-price order | Appointment letter documented |

Legend:

✓ = Appointment letter documented

Source: GAO analysis of Department of Homeland Security contract information. | GAO-22-105074

Note: Obligations are as of June 8, 2021.

^aThis order was awarded by the Office of Procurement Operations and then transferred to U.S. Customs and Border Protection.

^bContract includes cost-reimbursement and firm-fixed-price line items.

^cContract includes firm-fixed-price, firm-fixed-unit-price, and time-and-materials pricing.

^dContract includes time-and-materials and firm-fixed-price line items.

CORs serve as the eyes and ears of the contracting officer by monitoring technical performance and reporting any potential or actual problems to the contracting officer, according to the DHS COR Guidebook.⁴⁰ COR appointment letters delegate and outline specific responsibilities for administering the contract, which can be unique depending on the size and type of contract. Clearly communicating and enforcing existing requirements for maintaining formal appointment letters that clearly identify delegated responsibilities for contract performance monitoring activities can help contracting officials ensure that key monitoring activities are not overlooked. This communication and enforcement can also provide greater certainty that DHS is getting quality goods and services and using timely performance evaluations to inform future award decisions.

⁴⁰DHS Office of the Chief Procurement Officer, *Contracting Officer Representative (COR) Guidebook*, October 2019.

DHS Is Taking Steps to Improve Timeliness of Contractor Performance Evaluations

We found that selected components did not always enter contractor performance evaluations when required; however, DHS has actions underway to improve timeliness issues. As specified in the Homeland Security Acquisition Manual, a critical function of the COR is the timely input of contractor performance, when applicable, into CPARS—the federal government’s performance evaluation reporting tool.⁴¹ Additionally, federal regulations and DHS policy require contracting officials to enter contractor performance data into CPARS in a timely manner, at least annually per the FAR and within 120 days of contract completion per CPARS guidance.⁴²

We found that, of the 13 awards we reviewed requiring CPARS entries:

- three were on time;
- seven were overdue (from 6 weeks to approximately 9 months);
- two were not entered, and
- one is not yet due, as shown in table 3.

Some component officials could not explain late or missing entries, while others said that CPARS access issues or contractor rating disputes delayed evaluation entries.⁴³ TSA administered two of the selected contracts with timely entries. Officials told us that the TSA Head of the Contracting Activity prioritized CPARS entries and that TSA created a program to train CORs to enter performance information into CPARS. CBP administered the other selected contract with a timely entry, although the performance evaluation initially did not cover the entire

⁴¹At DHS, the requirement to prepare evaluations in CPARS applies to contracts and orders for goods over \$500,000 and all service contracts and orders over \$1 million. Task orders or delivery orders may be combined into one evaluation under certain circumstances. Department of Homeland Security Acquisition Manual, 3042.1502. According to the FAR, CPARS evaluations are also required for construction contracts over \$750,000 and architect and engineering services contracts over \$35,000. FAR § 42.1502(e)(f).

⁴²FAR § 42.1502(a); DHS Office of the Chief Procurement Officer, *Contracting Officer Representative (COR) Guidebook*, October 2019; *Guidance for the Contractor Performance Assessment Reporting System (CPARS)*, May 2021.

⁴³According to CPARS guidance, the 120 day time frame for the evaluation process includes the contractor’s review of the rating.

period of performance. In fiscal year 2020, CBP reported internally that it had implemented a workshop focusing on timely CPARS entries.

Table 3: Department of Homeland Security (DHS) Selected Component Timeliness with Contractor Performance Assessment Reporting System (CPARS) Evaluation Entries for Selected DHS Awards

| DHS component | Obligations as modified (dollars in millions) | Description | CPARS final evaluation deadline according to guidance |
|---|--|--|---|
| Federal Law Enforcement Training Centers | 4.4 | Role player training services | 111 days late |
| Transportation Security Administration | 204.6 | Maintenance and sustainment of airport security equipment | entered on time |
| Transportation Security Administration | 1.6 | Role player training services | entered on time |
| U.S. Coast Guard | 3.5 | Information technology security | 200 days late |
| U.S. Customs and Border Protection | 138.3 | Temporary soft-sided facilities and support ^a | 162 days late |
| U.S. Customs and Border Protection | 92.1 | Temporary soft-sided facilities and support | entered on time |
| U.S. Customs and Border Protection | 64.3 | Transportation and guard support | 259 days late |
| U.S. Immigration and Customs Enforcement | 55.1 | Detention and transportation services | not entered |
| U.S. Immigration and Customs Enforcement | 29.3 | Detention services | 53 days late |
| U.S. Immigration and Customs Enforcement | 20.5 | Detention, food, and transportation services | 46 days late |
| U.S. Immigration and Customs Enforcement | 13.5 | Detention services | 202 days late |
| U.S. Secret Service | 9.6 | Relocation management services | not entered |
| U.S. Secret Service | 1.8 | Financial management services | due July 2022 |

Legend:

✓= CPARS evaluation entered on time

X= CPARS evaluation not entered

Source: GAO analysis of DHS contract information and CPARS data. | GAO-22-105074

Note: Obligations are as of June 8, 2021.

^aThis order was awarded by the Office of Procurement Operations and then transferred to U.S. Customs and Border Protection.

DHS has efforts underway to improve the timeliness of CPARS evaluations. For example, DHS's Office of the Chief Procurement Officer is tracking CPARS timeliness metrics on a monthly basis and established a quarterly working group for the components to share best practices and challenges related to CPARS. Based on our review of DHS's metrics, we found that from fiscal years 2018 to 2021, timeliness of CPARS entries for

most DHS components in our review improved by 10 to 22 percent. Additionally, officials from the Office of the Chief Procurement Officer told us that DHS reviews components' CPARS data entry each year, and follows up with a data quality report to each component. In fiscal year 2020, as part of these data quality reports, DHS required each component to identify causes of late entries and planned mitigations, among other things.

Conclusions

In response to unexpected events in recent years—the COVID-19 pandemic and major hurricanes, among others—DHS significantly increased its use of the urgency exception when awarding noncompetitive contracts to meet immediate needs. DHS has guidance and templates for completing justifications for the use of the urgency exception, which are positive steps toward ensuring its components are consistently documenting and approving its use. However, DHS faces challenges in its use of the urgency exception that could hinder the department's oversight of the risks that contracts that are awarded quickly and without the benefits of competition can bring. Specifically, DHS lacks quality information about its use of the urgency exception, limiting its own insight into its use of these noncompetitive contracts, and that of congressional decision makers and the general public. Further, some components we reviewed did not consistently document revisions to justifications or obtain related approvals when changes in noncompetitive contract values occurred or consistently document COR appointment letters, further hindering transparency into the value of some urgent contracts and responsibilities for monitoring them. With over \$2 billion in obligations on contracts awarded using the urgency exception in fiscal years 2016 through 2020, the department's attention to effective visibility and oversight into these contracts is important to ensure that it makes sound decisions in the best interest of the taxpayer.

Recommendations for Executive Action

We are making three recommendations to DHS:

The Secretary of Homeland Security should ensure that the DHS Chief Procurement Officer take action, such as clearly communicating and enforcing correct procedures, to ensure officials responsible for entering

data into FPDS accurately enter information on noncompetitively awarded contracts. (Recommendation 1)

The Secretary of Homeland Security should ensure that the DHS Chief Procurement Officer take action to better communicate and enforce department guidance to revise justifications and obtain approvals following certain post-award modifications to urgent noncompetitive contracts. (Recommendation 2)

The Secretary of Homeland Security should ensure that the DHS Chief Procurement Officer take action, such as clearly communicating and enforcing existing requirements, to ensure contracting officials maintain formal COR appointment letters in the contract file. (Recommendation 3)

Agency Comments

We provided a draft of this report to DHS for review and comment. In its comments, reproduced in appendix III, DHS concurred with our three recommendations. DHS also provided technical comments, which we have incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Homeland Security, the DHS Chief Procurement Officer, the Director of Federal Law Enforcement Training Centers, the Administrator of the Transportation Security Administration, the Commandant of the U.S. Coast Guard, the Commissioner of U.S. Customs and Border Protection, the Acting Director of the U.S. Immigration and Customs Enforcement, and the Director of the U.S. Secret Service. In addition, the report will be made available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-4841. Contact points for our offices of Congressional Relations and Public Affairs may be found on the last page

of this report. Staff members making key contributions to this report are listed in appendix IV.

Letter

A handwritten signature in black ink, appearing to read "Marie A. Mak", with a long horizontal flourish extending to the right.

Marie A. Mak
Director, Contracting and National Security Acquisitions

Appendix I: Objectives, Scope, and Methodology

You asked us to review the Department of Homeland Security's (DHS) use of the urgency exception. This report examines (1) the extent to which DHS used the urgency exception to acquire goods and services without full and open competition from fiscal years 2016 through 2020; (2) the reasons why selected DHS components awarded contracts using the urgency exception and the extent to which justifications and approvals met acquisition regulations and DHS policies; and (3) the extent to which selected DHS components monitored and completed required contractor performance activities for contracts awarded due to urgency.

To identify the extent to which DHS acquired goods and services using the urgency exception, we analyzed data available in the Federal Procurement Data System (FPDS) from fiscal years 2016 through 2020—the 5 most recent years for which data were available. We adjusted the data for inflation using the Gross Domestic Product Price Index. We identified contract actions and associated obligations related to the urgency exception by using the Other than Full and Open Competition and the Fair Opportunity/Limited Sources fields.¹ To identify contract actions and associated obligations related to the COVID-19 response, we

¹For the purposes of this report, obligations on contracts and orders identified as using exceptions to competition related to urgency include those coded as urgent in FPDS and associated with contracts subject to FAR 6.302-2, Federal Supply Schedule contracts subject to FAR 8.405-6, and orders under multiple award contracts, which are subject to separate competition requirements under FAR Part 16. We refer to such contracts and orders as using the urgency exception. Specifically, under FAR 16.505(b)(2), orders on multiple award contracts require contracting officers to give every awardee a fair opportunity to be considered for a delivery order or task order exceeding the micro-purchase threshold (generally \$10,000), with exceptions, including if the agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays. When making awards using the unusual and compelling urgency exception to full and open competition, agencies still must request offers from as many potential sources as is practicable under the circumstances. We refer to any contract or order awarded pursuant to the above as urgent noncompetitive or urgent contract, urgent order or, unless otherwise noted, when referring to both contracts and orders, urgent award.

primarily used the National Interest Action code.² We supplemented the use of the National Interest Action code by searching for coronavirus and COVID-19 in the contract description field to identify a number of additional contract actions and associated obligations.

Based on our review of selected contracts, described later in this appendix, we took steps to exclude obligations associated with 15 contracts that we determined were awarded using other procedures, and that were miscoded in FPDS.³ Given these coding errors, we took additional steps to assess the reliability of the data. For example, based on our analysis of FPDS data, we determined that about 5 percent, or \$131.2 million, of DHS obligations coded as urgent under FAR part 6.302-2 were below the current simplified acquisition threshold.⁴ Of the 15 contracts in our nongeneralizable sample that were miscoded as urgent, nine were coded as urgent under FAR part 6.302-2 and were below the simplified acquisition threshold. We also reviewed the DHS Fiscal Year 2020 FPDS Procurement Data Quality Certification Report and found an accuracy rate of 98 percent for FPDS data elements related to competition in the sample of FPDS records reviewed. We further assessed the reliability of FPDS data by reviewing existing information about the FPDS system and the data it collects—specifically, the data dictionary and data validation rules—and performing electronic testing. Based on this information, we determined the FPDS data were sufficiently reliable for the purposes of describing trends in and characteristics of DHS and its components' reported contract obligations for awards under the urgency exception.

To determine the reasons why selected DHS components awarded contracts using the urgency exception, and the extent to which

²National Interest Action codes were established in 2005 after Hurricane Katrina with the purpose of tracking federal procurements for specific disasters, emergencies, or contingency events. A National Interest Action code was established on March 13, 2020, for the COVID-19 pandemic, and contract actions and their associated obligations are coded as related to the COVID-19 response in a field in FPDS.

³In March 2014, we identified coding errors at the Departments of Defense and State, and the U.S. Agency for International Development, related to awards that were coded as being urgent, but that used other exceptions to competition or more simple acquisition procedures that are separate from those required by the urgency exception. GAO, *Federal Contracting: Noncompetitive Contracts Based on Urgency Need Additional Oversight*, [GAO-14-304](#) (Washington, D.C.: Mar. 26, 2014).

⁴The fiscal year 2018 National Defense Authorization Act increased the simplified acquisition threshold from \$150,000 to \$250,000, with some exceptions. See National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, § 805 (2017).

justifications and approvals met acquisition regulations and policies, we selected seven of the eight DHS contracting activities with obligations awarded using the urgency exception that exceeded 0.5 percent of their fiscal years 2018 through 2020 total contract obligations:

- Federal Law Enforcement Training Centers (FLETC),
- Office of Procurement Operations (OPO),
- Transportation Security Administration (TSA),
- U.S. Coast Guard,
- U.S. Customs and Border Protection (CBP),
- U.S. Immigration and Customs Enforcement (ICE), and
- U.S. Secret Service.

For the purposes of this report, we will refer to these contracting activities, which include six components and one office, as components. The other component with obligations on urgent contracts that represented at least 0.5 percent of total fiscal years 2018 through 2020 obligations was the Federal Emergency Management Agency, which we did not include because of other ongoing work on the component's contracting response to COVID-19.

From these components, we selected an initial nongeneralizable sample of 33 urgent awards not related to COVID-19 awarded in fiscal years 2018 through 2020, stratified across components based on the number of urgent contracts awarded during those years.⁵ We excluded contracts related to COVID-19 from our sample due to the unique circumstances surrounding that response and GAO's ongoing review of the response to COVID-19 under the CARES Act.⁶ We selected a range of contracts based on whether awards were above or below the simplified acquisition threshold, whether awards were for goods or services, recency, and whether the award was identified as a disaster response contract with a National Interest Action code, among other factors. Subsequent to these

⁵We used the National Interest Action Code and the description fields in FPDS to identify contracts associated with the COVID-19 response.

⁶The CARES Act includes a provision for GAO to provide a comprehensive audit and review of federal contracting pursuant to the authorities provided in the act. In addition to specific contracting reviews, we have reported on federal contracting in response to the pandemic as part of regularly issued government-wide reports on the federal response to COVID-19.

selections, we removed 15 contracts from our review after we determined from contract file documentation that they were awarded using a different exception to competition and were not urgent contracts, which left us with a total of 18 awards. To review our selected contracts, we gathered and reviewed contract documentation, including justifications and approvals, contract monitoring plans, contracting officer representative (COR) appointment letters, and available Contractor Performance Assessment Reporting System (CPARS) evaluations.⁷

To assess the extent to which justifications and approvals met acquisition regulations and policies, we reviewed government-wide, department, and agency regulations and guidance related to justifications for noncompetitive awards and requirements for the use of the urgency exception. This included the Federal Acquisition Regulation (FAR), the Department of Homeland Security Acquisition Regulation, and the Department of Homeland Security Acquisition Manual. We determined that the information and communication component of federal internal control standards, specifically the underlying principle that management should internally communicate the necessary quality information to achieve the entity's objectives, was significant to this objective, and assessed DHS guidance and policy against this principle.⁸ We interviewed DHS and component acquisition policy and contracting officials responsible for our selected contracts to determine contracting officers' awareness of requirements and resources available for preparing justifications and other approvals.

To identify contract monitoring practices for our selected contracts, we reviewed federal and DHS regulations, including the FAR, Homeland Security Acquisition Regulation, Homeland Security Acquisition Manual, CPARS guidance, and DHS and component-specific guidance on monitoring contract performance. We also interviewed acquisition policy and contracting officials responsible for our selected contracts to identify their efforts to monitor selected contracts awarded under urgency.

We conducted this performance audit from March 2021 to May 2022 in accordance with generally accepted government auditing standards.

⁷In our analysis of whether justifications met FAR requirements, we reviewed only the justifications associated with the initial award and not justifications issued for subsequent modifications.

⁸GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

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.

Appendix II: Description of Selected Department of Homeland Security Awards Made Using Urgency Exception

Table 4: Reasons Selected Department of Homeland Security Components Made Selected Awards Using the Urgency Exception

| Component | Description of good or service and circumstance that resulted in need for urgency exception | Award details |
|--|--|--|
| Federal Law Enforcement Training Centers | Maintain mission critical role player training services after bid protest | <ul style="list-style-type: none"> Total obligations: \$4.4 million Period of performance: 305 days Contract or order type: Labor hour contract^a |
| Office of Procurement Operations | Maintain mission critical project management, information management, and operations support services after delay in competing requirement | <ul style="list-style-type: none"> Total obligations: \$0.3 million Period of performance: 151 days Contract or order type: Time-and-materials order |
| Transportation Security Administration | Maintain mission critical maintenance and sustainment services for airport security equipment after termination of prior contract | <ul style="list-style-type: none"> Total obligations: \$204.6 million Period of performance: 609 days Contract or order type: Hybrid contract^b |
| Transportation Security Administration | Maintain mission critical role player training services after bid protest | <ul style="list-style-type: none"> Total obligations: \$1.6 million Period of performance: 90 days Contract or order type: Hybrid contract^c |
| U.S. Coast Guard | Maintain mission critical information technology security needs following equipment failure | <ul style="list-style-type: none"> Total obligations: \$3.5 million Period of performance: 17 days Contract or order type: Firm-fixed-price contract |
| U.S. Coast Guard | Emergency response services and trailers to continue operations after sustaining hurricane damage to leased facilities | <ul style="list-style-type: none"> Total obligations: \$0.5 million Period of performance: 66 days Contract or order type: Firm-fixed-price contract |
| U.S. Coast Guard | Emergency response services to assess building damage following an earthquake | <ul style="list-style-type: none"> Total obligations: \$0.2 million Period of performance: 15 days Contract or order type: Firm-fixed-price order |

**Appendix II: Description of Selected
Department of Homeland Security Awards
Made Using Urgency Exception**

| Component | Description of good or service and circumstance that resulted in need for urgency exception | Award details |
|--|--|---|
| U.S. Customs and Border Protection/Office of Procurement Operations ^d | Temporary soft-sided facilities and support to meet increased demand for immigration services | <ul style="list-style-type: none"> • Total obligations: \$138.3 million • Period of performance: 550 days • Contract or order type: Firm-fixed-price order |
| U.S. Customs and Border Protection | Temporary soft-sided facilities and support to meet increased demand for immigration services | <ul style="list-style-type: none"> • Total obligations: \$92.1 million • Period of performance: 393 days • Contract or order type: Firm-fixed-price order |
| U.S. Customs and Border Protection | Maintain mission critical transportation and guard support after delay in soliciting for new requirement | <ul style="list-style-type: none"> • Total obligations: \$64.3 million • Period of performance: 394 days • Contract or order type: Hybrid contract^b |
| U.S. Customs and Border Protection | Installation of temporary soil berm, fencing, and wire to fortify U.S.-Mexico border after increased need for immigration services | <ul style="list-style-type: none"> • Total obligations: \$0.4 million • Period of performance: 92 days • Contract or order type: Firm-fixed-price contract |
| U.S. Immigration and Customs Enforcement | Maintain mission critical detention and transportation services following unexpected need to continue housing detainees | <ul style="list-style-type: none"> • Total obligations: \$55.1 million • Period of performance: 519 days • Contract or order type: Firm-fixed-price contract |
| U.S. Immigration and Customs Enforcement | Maintain mission critical detention services after termination of prior agreement | <ul style="list-style-type: none"> • Total obligations: \$29.3 million • Period of performance: 547 days • Contract or order type: Firm-fixed-price contract |
| U.S. Immigration and Customs Enforcement | Detention, food, and transportation services ^e | <ul style="list-style-type: none"> • Total obligations: \$20.5 million • Period of performance: 194 days • Contract or order type: Firm-fixed-price contract |
| U.S. Immigration and Customs Enforcement | Maintain mission critical detention services after termination of prior agreement | <ul style="list-style-type: none"> • Total obligations: \$13.5 million • Period of performance: 366 days • Contract or order type: Firm-fixed-price contract |
| U.S. Secret Service | Maintain mission critical relocation management services after termination of prior contract | <ul style="list-style-type: none"> • Total obligations: \$9.6 million • Period of performance: 182 days • Contract or order type: Firm-fixed-price order |
| U.S. Secret Service | Maintain mission critical financial management services after delays in transitioning to a new contractor | <ul style="list-style-type: none"> • Total obligations: \$1.8 million • Period of performance: 551 days • Contract or order type: Time-and-materials order |

**Appendix II: Description of Selected
Department of Homeland Security Awards
Made Using Urgency Exception**

| Component | Description of good or service and circumstance that resulted in need for urgency exception | Award details |
|---------------------|---|--|
| U.S. Secret Service | Civil disturbance defense equipment for personnel supporting emergency response | <ul style="list-style-type: none"> • Total obligations: \$0.5 million • Period of performance: 31 days • Contract or order type: Firm-fixed-price order |

Source: GAO analysis of Federal Procurement Data System data and selected contract files. | GAO-22-105074

Notes: Agencies may award contracts or orders noncompetitively under the unusual and compelling urgency exception to full and open competition or other limitation on competition due to urgency. For the purposes of this report, we refer to contracts and orders identified as using exceptions to competition related to urgency under FAR 6.302-2, Federal Supply Schedule contracts subject to FAR 8.405-6, and orders under multiple award contracts, as using the urgency exception. Total obligations are as of June 8, 2021. Obligations are rounded.

^aContract includes cost-reimbursement and firm-fixed-price line items.

^bContract includes firm-fixed-price, firm-fixed-unit-price, and time-and-materials pricing.

^cContract includes time-and-materials and firm-fixed-price line items.

^dOrder was awarded by the Office of Procurement Operations, then transferred to U.S. Customs and Border Protection.

^eAn ICE official was unable to locate the justification for the initial award of this contract.

Appendix III: Comments from the Department of Homeland Security

**Appendix III: Comments from the Department
of Homeland Security**

U.S. Department of Homeland Security
Washington, DC 20528



April 12, 2022

Marie A. Mak
Director, Contracting and National Security Acquisitions
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Management Response to Draft Report GAO-22-105074, "DHS CONTRACTS:
Opportunities Exist to Improve Oversight and Monitoring of Urgent
Noncompetitive Awards"

Dear Ms. Mak:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

The Department is pleased to note GAO's positive recognition of DHS's efforts to improve the timeliness of Contractor Performance Assessment Reporting System evaluations. We also noted that GAO highlighted the Department's additional policies and guidance used to supplement the Federal Acquisition Regulation for non-competitive awards and contractor performance monitoring. DHS remains committed to achieving meaningful competition when awarding contracts, and demonstrated this commitment in fiscal years (FY) 2016-2020 by surpassing the government-wide competition rate each year by an average of more than 8 percent, as the average government-wide competition rate during this time period was 63.5 percent compared to 72.3 percent for DHS.

The draft report contained three recommendations for DHS with which the Department concurs. Attached please find our detailed response to each recommendation. DHS previously submitted technical comments addressing several accuracy, contextual, and other issues under a separate cover for GAO's consideration.

**Appendix III: Comments from the Department
of Homeland Security**

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

JIM H
CRUMPACKER

 Digitally signed by JIM H
CRUMPACKER
Date: 2022.04.12 12:54:35 -04'00'

JIM H. CRUMPACKER, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Enclosure

**Enclosure: Management Response to Recommendations
Contained in GAO-22-105074**

GAO recommended that the Secretary of Homeland Security ensure that the DHS Chief Procurement Officer:

Recommendation 1: Take action, such as clearly communicating and enforcing correct procedures, to ensure officials responsible for entering data into FPDS [Federal Procurement Data System] accurately enter information on noncompetitively awarded contracts.

Response: Concur. The DHS Office of the Chief Procurement Officer (OCPO) will issue an Acquisition Alert to remind contracting officials of the requirement for FPDS reporting accuracy, particularly when coding noncompetitive awards. Estimated Completion Date (ECD): May 31, 2022.

Recommendation 2: Take action to better communicate and enforce Department guidance to revise justifications and obtain approvals following certain post-award modifications to urgent noncompetitive contracts.

Response: Concur. OCPO will review existing guidance and policy (i.e., DHS Justification and Approval for Other than Full and Open Competition Guide version 3.3, dated July 2021, and the Homeland Security Acquisition Manual) to identify areas requiring clarification or expanded guidance. OCPO will then issue an Acquisition Alert and/or update policy and guidance, as appropriate. ECD: August 31, 2022.

Recommendation 3: Take action, such as clearly communicating and enforcing existing requirements, to ensure contracting officials maintain formal COR appointment letters in the contract file.

Response: Concur. In October 2021, OCPO updated the OCPO oversight review checklist to include the Contracting Officer Representative (COR) appointment letter. OCPO will issue an Acquisition Alert to remind contracting officials of the requirement to maintain formal COR appointment letters in the contract files. ECD: May 31, 2022.

Accessible Text for Appendix III: Comments from the Department of Homeland Security

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Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Marie A. Mak, 202-512-4841 or MakM@gao.gov

Staff Acknowledgments

In addition to the contact named above, Angie Nichols-Friedman (Assistant Director), Meghan Perez (Analyst-in-Charge), Lisa Fisher, Betsy Gregory-Hosler, Kathryn Long, and Hunter Stephan were principal contributors. In addition, the following people made contributions to this report: Mark Besonen, Rose Brister, Lorraine Ettaro, Lori Fields, Suellen Foth, Julia Kennon, and Anne Louise Taylor.

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