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September 12, 2017

The Honorable Orrin G. Hatch
Chairman
Committee on Finance
United States Senate

CENTERS FOR MEDICARE AND MEDICAID SERVICES: Analysis of Contracting Data

Dear Mr. Chairman:

The Centers for Medicare and Medicaid Services (CMS) within the Department of Health and Human Services (HHS) is responsible for administering the Medicare program and, in conjunction with the states, the Medicaid program. CMS uses an extensive network of private contractors to carry out its responsibilities, including benefit delivery, program administration, management, and oversight. These contractors perform a variety of functions such as handling claims under the Medicare program and maintaining information technology (IT) systems. In prior work, we have found that CMS could strengthen its processes for selecting and overseeing contractors under the Medicare program.¹ HHS has concurred with our findings, but has not implemented some of our most recent recommendations. Enclosure 1 summarizes our key outstanding recommendations to CMS.

You requested that we review contracting trends at CMS. This report identifies what federal procurement data show regarding recent CMS contracting in areas such as total spending, competition rates, and contract types.

We used data from the Federal Procurement Data System-Next Generation (FPDS-NG) over the 5-year period from fiscal years 2012 through 2016, the most recent and complete data available at the time of our review, to determine the range of products and services CMS procured, including items procured using commercial item procedures under Part 12 of the Federal Acquisition Regulation.² We also used the FPDS-NG data to determine how CMS procures its products and services—including competition rates and contract types—and to identify what types of contractors received contracts, including small business contractors.

¹GAO, *Medicare Advantage: CMS Should Use Data on Disenrollment and Beneficiary Health Status to Strengthen Oversight*, [GAO-17-393](#) (Washington, D.C.: Apr. 28, 2017); *Medicare Advantage: Fundamental Improvements Needed in CMS's Effort to Recover Substantial Amounts of Improper Payments*, [GAO-16-76](#) (Washington, D.C.: Apr. 8, 2016); *Medicare Part D: Changes Needed to Improve CMS's Recovery Audit Program Operations and Contractor Oversight*, [GAO-15-633](#) (Washington, D.C.: Aug. 14, 2015); *Medicare Administrative Contractors: CMS Should Consider Whether Alternative Approaches could Enhance Contractor Performance*, [GAO-15-372](#) (Washington, D.C.: Apr. 30, 2015) .

²In addition to contracting with contractors to fulfill unique government requirements, agencies can procure commercial items, such as products and services from the commercial marketplace, using streamlined solicitation and evaluation procedures.

Further, we identified the top products and services procured and the top large and small business contractors by obligation amount. To determine CMS's performance against its small business goals, we reviewed data from the HHS Office of Small and Disadvantaged Business Utilization. To better understand FPDS-NG data and the contracting environment at CMS, we met with officials from CMS's Office of Acquisition and Grants Management, the office responsible for awarding and administering CMS's contracts and grants, among other things. We also reviewed our prior reports to identify known actions CMS could take to improve contracting.

We assessed the reliability of FPDS-NG data by reviewing existing information about the FPDS-NG system and the data it produces. Specifically, we reviewed the data dictionary and data validation rules. We determined the FPDS-NG data were sufficiently reliable for the purposes of this report.

Enclosure 2 provides descriptions of key terms, including descriptions of contract types based on the Federal Acquisition Regulation, and additional information on how we analyzed data elements in FPDS-NG.

We conducted this performance audit from May 2017 to September 2017 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.

CMS Increased Obligations on Contracts and Competition Rates from Fiscal Years 2012 to 2016

CMS increased contracting obligations by about 40 percent between fiscal years 2012 and 2016, with about 97 percent of obligations on contracted services. CMS officials attributed this increase to the implementation of the Patient Protection and Affordable Care Act (ACA) and the Medicare Access and Children's Health Insurance Program (CHIP) Reauthorization Act (MACRA) of 2015. In fiscal year 2016, CMS obligated approximately \$7.2 billion through contracts—\$6.97 billion for services such as IT systems services; professional services; and assistance with governmental health insurance programs, including administering, overseeing, and auditing claims made under the Medicare program. The approximately \$221 million remaining contract obligations were for products, which were largely IT-related. Since fiscal year 2012, CMS has increased obligations for professional and management support services. CMS officials told us this increase was driven by the implementation of the ACA and MACRA. According to CMS officials, the ACA and MACRA have increased CMS's need for support services.

CMS's competition rate—the percentage of total obligations reported under competitive contracts—increased from 78 percent in fiscal year 2012 to 96 percent in fiscal year 2016. CMS officials attributed the increase to their leadership's commitment to promoting competition for all CMS contracts. CMS's Office of Acquisition and Grants Management annually conducts advanced acquisition planning with CMS's program offices, and during these advance planning meetings, CMS personnel look for opportunities to award contracts competitively. Additionally, CMS officials said they receive competition reports from HHS, which reinforce the importance of competition. CMS's fiscal year 2016 competition rate is higher than the government-wide rate of 63 percent and the civilian agency rate of 81 percent.

CMS obligated 78 percent of its fiscal year 2016 dollars on cost-reimbursement and time and material/labor hour contracts, consistent with fiscal year 2012 obligations. The Office of Management and Budget considers cost-reimbursement and time and material/labor hour contracts high risk because they do not directly incentivize contractors to control costs and thus carry significant potential risk of overspending. Nonetheless, the Federal Acquisition Regulation provides for, and we have previously reported that, these types of contracts are appropriate to use when uncertainties in the scope of the work, cost of services, or level of labor effort needed prevent the use of contract types in which prices are fixed.³ For example, these types of contracts help agencies remain flexible and better respond to unforeseeable or emergency situations. CMS officials stated that they are looking for opportunities to use more fixed-price contracts to minimize financial risk, but noted that much of CMS's work is appropriate for cost-reimbursement contracts due to uncertainties in the requirements.

Enclosure 3 provides a 2-page snapshot of CMS contracting, identifying the types of products and services procured, the methods of procurement the agency used, and details on the types of contractors used.

Agency Comments

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

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We are sending copies to appropriate congressional committees, the Secretary of Health and Human Services, the Administrator of the Centers for Medicare and Medicaid Services, and other interested parties. In addition, the report will be 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 or by e-mail at woodsw@gao.gov. GAO staff who made key contributions to this product were Nathan Tranquilli (Assistant Director); Marie Ahearn; Brandon Booth; Alexandra D. Gebhard; Stephanie M. Gustafson; Julia Kennon; Caryn E. Kuebler; Elizabeth Reed Fritts; Sylvia Schatz, and Robin Wilson.

Sincerely yours,



William T. Woods
Director, Acquisition and Sourcing Management

Enclosures – 3

³Federal Acquisition Regulation §§ 16.301-2, 16.601(c), 16.602 and GAO, *Contract Management: Extent of Federal Spending under Cost-Reimbursement Contracts Unclear and Key Controls Not Always Used*. [GAO-09-921](#) (Washington, D.C.: Sep. 30, 2009).

Key Outstanding GAO Recommendations to the Centers for Medicare and Medicaid Services

Table 1 provides a summary of our key outstanding recommendations to the Centers for Medicare and Medicaid Services (CMS) within the Department of Health and Human Services.

Table 1: Summary of Key Outstanding GAO Recommendations to the Centers for Medicare and Medicaid Services (CMS)

GAO report	Recommendation summary	Agency response	Status
GAO-17-393	We made one recommendation. To strengthen oversight of Medicare Advantage contracts, we recommended CMS examine data on disenrollment by health status and the reasons beneficiaries disenroll.	CMS concurred, noting that it uses disenrollment data in its review of Medicare Advantage plan quality and performance and will continue to consider ways of incorporating disenrollment data in its oversight.	Open
GAO-16-76	We made five recommendations. In summary, we recommended CMS modify its selection of contracts for audit by focusing on those that have the greatest potential for recovery of improper payments, and enhancing the timeliness of the audits, among other things.	CMS concurred with all of the recommendations and reaffirmed its commitment to identifying and correcting improper payments in the Medicare Advantage program.	All five recommendations remain open
GAO-15-633	We made three recommendations. In summary, we recommended, in preparation for the next solicitations of recovery audit contract(s), that CMS set clear expectations in contract work statements; improve annual recovery audit contractors' performance evaluations; and review the process for developing new audit issues.	CMS concurred with all of the recommendations and agreed to evaluate its strategy for the upcoming recovery audit solicitation including developing measurable performance standards for the new recovery audit contract and to conduct contract evaluations against these standards.	All three recommendations remain open

Source: GAO | GAO-17-735SP

Enclosure II

Descriptions of Key Terms

Table 2 provides descriptions of key terms from the report, including additional information on how we analyzed the data elements.

Table 2: Description of Key Terms

Term Used	Description
Products and Services	
Top Products / Services	<p>Products and services with the highest obligations in fiscal year 2016.</p> <p>To determine the top products and services by obligation amount, we used Federal Procurement Data System—Next Generation (FPDS-NG) data that identified how much agencies obligated on specific products and services in fiscal year 2016. We identified the five types of products and services with the highest obligations during fiscal year 2016.</p>
Competition	
Noncompetitive Obligations	<p>Obligations associated with contracts awarded noncompetitively.</p> <p>We defined noncompetitive obligations to include obligations through contracts that were awarded using the exceptions to full and open competition listed in Federal Acquisition Regulation (FAR) Subpart 6.3 (Other than Full and Open Competition). We also included noncompetitive orders issued under multiple award indefinite delivery/indefinite quantity contracts or under the General Service Administration’s schedules program. For noncompetitive contract actions, we included contracts and orders coded in FPDS-NG as “not competed,” “not available for competition,” and “not competed under simplified acquisition procedures,” as well as orders coded as an exception to “subject to fair opportunity”, including “urgency,” “only one source,” “minimum guarantee,” “follow-on action following competitive initial action,” “other statutory authority,” and “sole source.”</p>
Competitive Obligations	<p>Obligations associated with contracts awarded competitively.</p> <p>For competitive contract actions, we included contracts and orders coded in FPDS-NG as “full and open competition,” “full and open after exclusion of sources,” and “competed under simplified acquisition procedures” as well as orders coded as “subject to fair opportunity” and as “fair opportunity given,” and “competitive set aside.”</p>
Competition Rate	<p>The percentage of total obligations associated with contracts awarded competitively.</p> <p>We calculated competition rates as the percentage of total obligations on competitive contracts and orders over all obligations on contracts and orders annually.</p>
Procurement Method	
<i>Contract Type</i>	
Fixed-Price	<p>The government pays a fixed price even if actual total cost of product or service falls short of or exceeds the contract price. The government may also pay an incentive related to performance. The contractor provides an acceptable deliverable at the time, place, and price specified in the contract. The contractor bears the risk of cost overrun.</p>
Cost-reimbursement	<p>The government pays contractor’s allowable costs incurred, to the extent prescribed by the contract. The government may also pay a fee, which may be related to performance. Contracts include an estimated total cost for purposes of obligating funds and a ceiling that the contractor exceeds at its own risk unless approved by the contracting officer. The government is not guaranteed a completed end item or service within the estimated cost. The contractor makes a good faith effort to meet government’s needs within the estimated cost. The government bears the risk of cost overrun.</p>
Time and materials/labor hour	<p>The government pays fixed per-hour labor rates that include wages, overhead, general administrative costs, and profit as well as the actual cost of materials; government might reimburse contractor for other direct costs, such as travel and materials costs. In a labor hour contract materials are not supplied by the contractor. Contracts include a ceiling price that the contractor exceeds at its own risk. The government is not guaranteed a completed end item or service within the ceiling price. The contractor makes good faith effort to meet the government’s needs within the ceiling price. The government bears the risk of cost overrun.</p>

Enclosure II

<i>Type of Contract Vehicle</i>	
Definitive Contract	Contracts with a defined scope of work that do not allow for individual orders to be placed against the contract.
Indefinite Delivery Vehicles	Contracts or agreements that allow agencies to place orders against them. There are five types of indefinite delivery vehicles: (1) orders under the Federal Supply Schedule; (2) Blanket Purchase Agreements; (3) Basic Ordering Agreements; (4) Government-wide Acquisition Contracts; and, (5) Other indefinite vehicles, such as indefinite delivery/indefinite quantity (ID/IQ) contracts, which provide for an indefinite quantity, within stated limits of supplies or services during a fixed period. Government-wide Acquisition Contracts and the Federal Supply Schedule contracts are examples of ID/IQ contracts that can be used by multiple agencies to acquire products or services.
Purchase Order	An offer by the Government to buy supplies or services generally valued under \$150,000, using simplified acquisition procedures.
Blanket Purchase Agreement	A simplified method of filling anticipated repetitive needs that functions as a “charge account” with qualified sources of supply. It is not a contract. This category includes obligations on Blanket Purchase Agreements established under General Service Administration schedule contracts.
Basic Ordering Agreement	A written instrument of understanding with a contractor that contains the terms and clauses applying to future contracts between the parties, a description of supplies or services to be provided, and methods for pricing and issuing orders . It is not a contract.
Federal Supply Schedules	The Federal Supply Schedule program is managed by the General Services Administration (GSA) and provides federal agencies with a simplified method for obtaining commercial products and services at prices associated with volume buying. A schedule is a set of contracts awarded to multiple vendors that provide similar products and services.
Government-Wide Acquisition Contract	A task-order or delivery-order contract for information technology established by one agency for government-wide use.
<i>Commercial Item</i>	
Commercial Items	To determine the extent to which commercial item procedures were used, we obtained data from FPDS-NG on obligations under contracts that were identified as having used FAR Part 12 procedures to acquire commercial items.
Vendors	
Vendor Type	To determine the amount obligated to various types of vendors, we obtained FPDS-NG data for fiscal year 2016 for small business and other than small business vendors.
Top Vendors	Vendors with the highest total fiscal year 2016 obligations. To determine the top vendors—those awarded the highest obligations in fiscal year 2016—we obtained FPDS-NG data on obligations for contracts awarded by unique Dun & Bradstreet (DUNS) number.
Top Small Business Vendors	Vendors coded as small businesses in FPDS-NG with the highest total fiscal year 2016 obligations. To determine the top small business vendors—those awarded the highest obligations in fiscal year 2016—we obtained FPDS-NG data on obligations for contracts awarded to small businesses by unique DUNS number.

Source: GAO analysis of Federal Acquisition Regulation and Federal Procurement Data System-Next Generation (FPDS-NG) data elements. | GAO-17-735SP

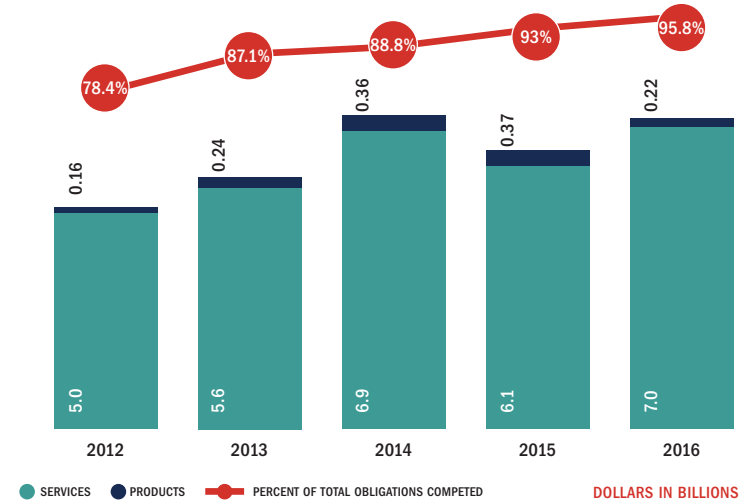
ENCLOSURE 3: CENTERS FOR MEDICARE AND MEDICAID SERVICES CONTRACTING SNAPSHOT

This snapshot provides information on contracting at the Centers for Medicare and Medicaid Services (CMS), identifying the types of products and services procured, the methods of procurement the agency employs, and details on the types of contractors used. All graphics are based on Federal Procurement Data System-Next Generation data unless otherwise noted.

In fiscal year (FY) 2016, the Centers for Medicare and Medicaid Services (CMS) within the Department of Health and Human Services (HHS) obligated about \$7.2 billion on contracts.

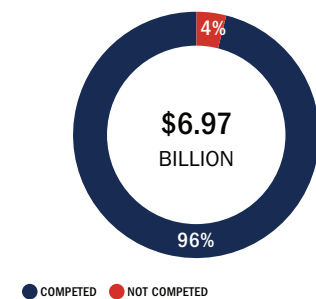
Every year, CMS procures billions in products and services to carry out its mission to strengthen and modernize the nation's health care system, and to provide high quality health care and improved health to its beneficiaries at a lower cost. CMS carries out its acquisition functions through its Office of Acquisition and Grants Management. In FY 2016, CMS contract obligations represented about 30 percent of HHS's total contract obligations.

SERVICES AND PRODUCTS OBLIGATIONS WITH PERCENT COMPLETED



1 TYPES OF PRODUCTS AND SERVICES PROCURED

OBLIGATIONS AND COMPETITION SERVICES

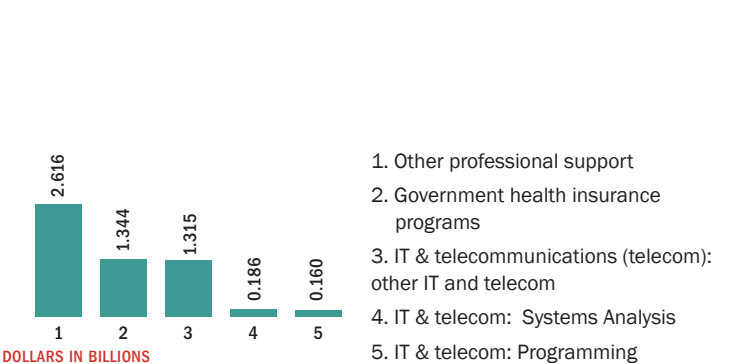


In FY 2016, roughly 97 percent of CMS's contract obligations were for services, and the top five service categories accounted for 80 percent of the agency's total obligations for services. CMS's top five product categories, which were largely IT-related, accounted for nearly all of CMS's obligations for products. CMS competed contracts for products and services at about the same rate.

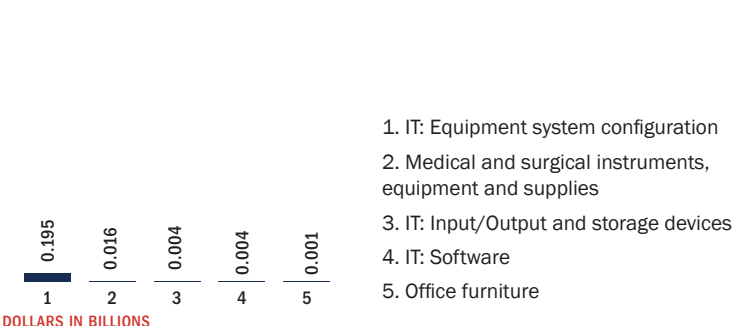
OBLIGATIONS AND COMPETITION PRODUCTS



TOP FIVE SERVICES



TOP FIVE PRODUCTS

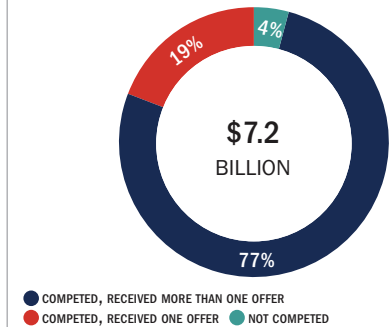


2 METHODS OF PROCUREMENT

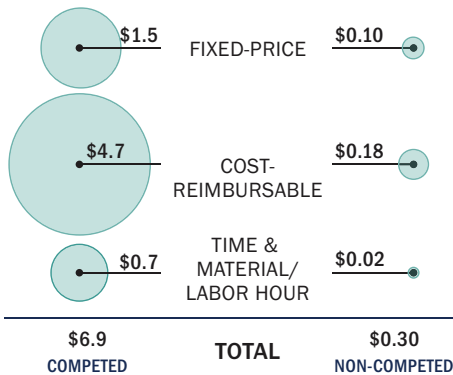
■ USE OF COMMERCIAL ITEM PROCEDURES
 12 percent, or roughly \$837 million, of CMS's FY 2016 obligations were for contracts using commercial item procedures.

In FY 2016, 96 percent of CMS's obligations were awarded competitively, which is above the rate of 81 percent competed obligations for all civilian agencies. CMS awarded 22 percent of its FY 2016 obligations on fixed-price contracts, below the average of 56 percent for all civilian agencies.

OBLIGATIONS AND COMPETITION
 OVERALL COMPETITION RATE



CONTRACT TYPE
 DOLLARS IN BILLIONS



CONTRACT TYPE

In FY 2016, \$3.4 billion, or 47 percent, of CMS's contract obligations were on definitive contracts and purchase orders. The remainder, \$3.8 billion, or 53 percent, were on various types of indefinite delivery vehicles, which is about the same amount CMS obligated on indefinite delivery vehicles in FY 2012.

TYPE OF CONTRACT VEHICLE
 FY 2016 OBLIGATED AMOUNT

\$3.4	DEFINITIVE CONTRACT/PURCHASE ORDER
\$0.08	BLANKET PURCHASE AGREEMENT
\$0.80	FEDERAL SUPPLY SCHEDULE
\$0.55	GOVERNMENT-WIDE ACQUISITION CONTRACT
\$2.4	OTHER INDEFINITE DELIVERY VEHICLES

DOLLARS IN BILLIONS

3 CONTRACTOR DETAIL

■ SMALL BUSINESS GOAL MET
 HHS reported that CMS achieved its overall small business goal of 16 percent in FY 2016.

According to the Office of Small and Disadvantaged Business Utilization within HHS, CMS awarded nearly all of its FY 2016 obligations on small business eligible contracts. In FY 2016, HHS awarded 23 percent of small business eligible dollars to small businesses, exceeding its overall small business goal. To meet its goals, HHS sets internal goals for its components, such as 16 percent for CMS. CMS exceeded its overall small business goal in FY 2016, but it did not meet its HUBZone or SDVOSB goals.

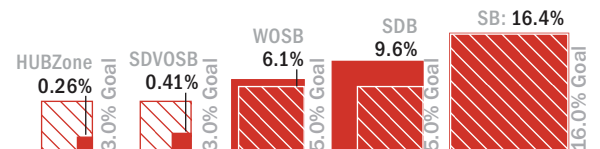
VENDOR TYPE
 SMALL BUSINESS OTHER THAN SMALL BUSINESS

\$1.2
 DOLLARS IN BILLIONS

\$6.0
 DOLLARS IN BILLIONS

SMALL BUSINESS PARTICIPATION
 PERCENTAGE

- HUBZone (Historically Underutilized Business Zone)
- SDVOSB (Service-disabled Veteran-owned Small Business)
- WOSB (Women-owned Small Business)
- SDB (Small Disadvantaged Business)
- SB (Small Business)



TOP VENDORS AND SMALL BUSINESSES
 FY 2016 OBLIGATIONS BILLIONS

TOP 10 VENDORS	59% of \$7.2B
TOP 10 SMALL BUSINESS	46% of \$1.2B

Source: GAO analysis of HHS data.
 □ GOAL ■ ACTUAL

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