Executive Summary

In many ways, the federal government can react effectively to an emergency like COVID-19 without contracting. Mobilizing the Reserves and the National Guard, sending funds to the states, and providing business loans do not result in contract obligations.

Yet federal agencies are tasked with important missions that require engagement with industry. In the current situation, agencies continue updating guidance to maintain operations to the greatest extent possible while protecting government and contractor workforces.

Federal spending on COVID-19 response has dramatically accelerated in recent days. For example, the Pentagon recently awarded an $84 million contract for ventilators. [Link] Health and Human Services awarded a $173 million contract for N95 masks. [Link] Obligations almost tripled in the final week of March, going from around $636 million on 24 March to $1.9 billion on the 31st. As of April 5, non-defense COVID-19 contract actions had reached $1.97 billion.

Business opportunities are also rapidly emerging to address COVID-19 response as well as to strengthen the public health supply chain for the longer-term.

In this COVID-19 update, the Center for Government Contracting will discuss the latest on:

- Federal guidance, DPA, and the CARES Act
- Contract data
- Business opportunities
U.S. Government Guidance Updates

Government agencies continue releasing guidance both to industry as well as to their respective contracting organizations. The clear theme of these efforts is to maximize flexibility for the continuity of operations to the greatest extent possible while protecting the health of the government and contractor workforces.

Here are a series of links to pertinent USG sites:

- **General Services Administration (GSA).** Coronavirus Acquisition-Related Information and Resources. Links to OMB, DoD, DoJ, DHS, GSA, NASA, USAID, and other documents. [Link]
- **Small Business Administration (SBA).** Coronavirus relief options for small businesses (loans, paycheck protection program, etc.) [Link]
- **The COVID-19 Joint Acquisition Task Force** has an open request for information on COVID-19. [Link]
- **DoD Defense Pricing and Contracting (DPC).** DPC announcements, memorandums, class deviations, etc. [Link]
- **DoD Industrial Policy.** Reporting changes in operations, defense industrial base guidance, small business resources, etc. [Link]

Defense Production Act Update

The recent focus on the Defense Production Act (DPA) has been on how the Administration has used the authority to distribute materials (i.e. rate contracts) and direct the production of critical items such as ventilators. [Link] Another provision of the DPA gives the President the authority to “create, maintain, protect, expand, or restore industrial base capabilities essential for national defense” [Link] through grants, loans, purchases and purchase commitments. That authority is used regularly [Link], but it is likely to become a central part of medium- and longer-term efforts to strengthen the domestic public health industrial base over the coming weeks. This is because the CARES Act included a $1 billion appropriation for the DPA Fund. These resources will be used for projects to spur the expansion of domestic production facilities for personal protective equipment (PPE) and pharmaceuticals to reduce the reliance on Chinese sources. The President authorized these uses of DPA funds in a little-noticed Executive Order last week. [Link]

Key CARES Act Provisions

The CARES Act included a number of provisions that provide relief across the government contracting community. [Link] Here are some of the most pertinent ones:

- **Loans and relief for small businesses.** The CARES Act provides $376 billion in relief for small businesses, including several temporary programs for COVID-19 focused on loan forgiveness, bridge loans, debt relief, and loan advance. See SBA link above for details.

- **Contractor reimbursement of leave.** Section 3610 authorizes federal agencies, at their discretion, to reimburse contractor paid leave and sick leave.

- **Other Transactions (OT) Authority expansions.** The Act expanded the authority and raised the funding caps for HHS (Section 3301) and DoD (Section 13006) to use OT agreements on larger-scale projects to foster innovation on COVID response efforts.

- **Strategic National Stockpile expansion.** The Act (Section 3102) added the requirement to include medical equipment relevant for pandemic response in the Stockpile. This will be critical for building up domestic reserves for use in a potential next wave of COVID-19 or a future public health crisis.

- **DPA funding limits.** In addition to the infusion of resources in the DPA Fund described above, the Act (Section 4017) removed funding caps to facilitate DPA Title III actions in excess of $50 million.

- **Undedinitized Contract Actions (UCAs) relaxation.** The Act (Sections 13004 and 13005) loosened UCA limits and restrictions to facilitate the commencement of work before contract finalization.

All of these provisions are time-limited and focused on enabling the government contracting community’s response to COVID-19. Numerous law and advisory firms have published detailed articles about these provisions and their respective implications.
Contract Data Update

Analysis of the Federal Procurement Data System data [Link] illustrated in Figure 2 indicates total non-defense federal obligations reached over $22 billion for the month of March 2020. That’s on the high-side of normal months.

COVID-19 affects the ability of some contractors to execute their projects. The pattern of federal contract work across the country and the location of COVID-19 cases is shown in Figure 3 on the left. Most federal contract work avoids the biggest COVID-19 hotspot in New York City. However, defense work is at risk of disruption around Seattle and New England, as well as several other areas. [Link] Under Secretary of Defense Ellen Lord reported that “the bulk of the defense industry is working today. We’ve had a few specific issues, such as Boeing, where they had to shut down an operation.” [Link]

Contractors may worry, for example, about the government terminating contracts for convenience during the COVID-19 crisis. Non-defense contract actions, however, do not indicate a significant uptick in terminations. Specifically, less than $21 million was deobligated across 2,172 identified contracts in March 2020 compared with $54 million the month before.

As illustrated in Figure 1, non-defense obligations in response to COVID-19 reached essentially $2 billion by 5 April. Nearly $700 million of that came from three actions on existing OT contracts for research and development of antivirals. The more numerous transactions for personal protective equipment, ventilators, medical services, and other responses grew dramatically in the last week of March, from just $300 million to nearly $1 billion.

Commercial items procedures can speed up the contract process, bypassing over 100 statutes and regulations. [Link] For COVID-19 obligations excluding research and development, 72 percent reported using commercial item procedures, compared to 45 percent for all March 2020 contracts. However, to use these procedures the commercial item buy must meet the definition in FAR 2.101. [Link] Emergency use of FAR 12.102(f) allows the procedures to be used when an item has not been determined as commercial. [Link] More than $17
4 million in COVID-19 obligations used the emergency authorities.

Simplified acquisition procedures can reduce process timelines even further. Informal quoting and price comparison may occur, performed orally rather than written. Overall, simplified acquisition may reduce processing touch time by as much as 90 percent. [Link]

For the COVID-19 emergency, the domestic micro-purchase threshold increased from $10,000 to $20,000, purchase orders from $250,000 to $750,000, and certain commercial items from $7 million to $13 million. [Link]

The Pentagon invoked these flexibilities on March 20. [Link] $62 million in COVID-19 obligations used simplified acquisition procedures out of as much as $300 million eligible.

**Business Opportunities**

Business opportunities are rapidly emerging each day. They range from requests for medical equipment and antiviral research to address the immediate COVID-19 response to prototyping and other efforts to increase production and strengthen the public health supply chain and industrial base. Most of the opportunities are coming out of HHS, FEMA, VA, and DoD, and are listed on [www.sam.beta.gov](http://www.sam.beta.gov). [Link]

Suppliers are given short turn-around times on contracts responding to COVID-19. Some responses are due the same day as the notification. Out of a sample of 129 new contracts representing $659 million, the average time from solicitation to award was just 6 days. For the 20 contracts reporting multiple offers, the time to award increased by another 11 days.

One interesting acquisition was for N95 masks. The contract Request for Information went out February 26. The Request for Proposals went out on March 4 with a response date of March 18. [Link] The solicitation sought 500,000 masks, but the contract award to 3M on March 25 went for nearly $173 million, suggesting a much larger order. [Link]

In the emergency, it took HHS nearly a month to compete the N95 mask contract. That is fast for a federal contract, especially considering there were 59 companies bidding. Another approach to this acquisition could have been to split the $173 million into 59 equal parts and use simplified commercial item procedures to purchase smaller lots of masks sooner. That could be an option for future orders to quickly engage a broader range of industrial potential.

The Federal Emergency Management Agency has COVID-19 opportunities for PPE, medical supplies, hospital support, cleaning services, and temporary facilities. HHS has dozens more opportunities for PPE, ventilators, antibody discovery, and lab testing. Veterans Affairs is looking for medical equipment, test collection, and cleaning services. While the Pentagon has open topics for COVID-19 submission, most of its COVID-19 opportunities are for cleaning services and conversion of facilities into patient care. [see DACIS]

Some additional opportunities are emerging through grants and OT consortia that are not necessarily listed on sam.beta.gov. The Department of Commerce, for example, just issued a funding opportunity for rapid, high-impact projects to the network of advancing manufacturing institutes—public-private partnerships in areas such as 3D printing, biofabrication, and textiles—focused on medical or nonmedical countermeasures, accelerating the production of critical materials, and other COVID-19-related areas. [Link] In another effort, the Medical Technology Enterprise Consortium, a group of biomedical technology companies collaborating with the Army, has a series of quick-turn COVID-19 solicitations on the street. [Link] These and other efforts to bring forward non-traditional solutions will build industrial capacity to support the current response, but also inform future planning and preparation.

For the much larger pool of contract opportunities unassociated with COVID-19, there are dozens of indications that the government is deferring action. Two deferred opportunities include the Army’s Artificial Intelligence initiative and the Navy’s Contested Environment Advanced Technology Exercise. While many Industry Days are moving to teleconferencing, some are postponing, such as Next-Gen Nuclear Command & Control and US Coast Guard. [see DACIS]

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