

Government contractor quarterly review

Providing quarterly regulatory updates to government contractor compliance professionals

PwC Government Contracts Practice—Report for Q1 government fiscal year
February 2021

US Government's continued response to COVID-19

Today's opportunity for government relief funding is unprecedented not only in volume but also in the significant number of recipients receiving their first government award. To date, through various pieces of legislation, the government's coronavirus response includes \$2.6 trillion in economic relief:

- \$7.8 Billion Coronavirus Preparedness and Response Supplemental Appropriations Act;
- \$15.4 Billion Families First Coronavirus Response Act;
- \$2.1 Trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act;
- \$483 Billion Paycheck Protection Program and Health Care Enhancement Act; and
- \$900 Billion Coronavirus Response and Relief Supplemental Appropriations Act.

Significant legislation has been implemented to support businesses across various industries. While much of the spotlight has been placed on healthcare and education relief funding, the Department of Defense (DOD) has also implemented several actions to many traditional government contractors to increase cash flow.

- **Section 3610:** authorizes the Federal government to reimburse qualifying contractors for the cost of providing certain paid leave to employees in an effort to maintain a ready-state through the COVID-19 pandemic for businesses critical to national security. Section 3610 authority originally lasted through September 30, 2020, but was extended to March 31, 2021, in the Consolidated Appropriations Act, 2021, which was signed into law on December 27, 2020.

Frequently asked questions regarding implementation of Section 3610 can be found [here](#) (updated January 13, 2021)

- Many agencies issued various directives and class deviations ranging from accelerated negotiations for contract award to modification of contracts to provide cash flow relief. These class deviations remain in effect until rescinded.
- **Defense Pricing and Contracting class deviations can be found [here](#).**

Federal Marketplace (FMP) Strategy Updates

The US Government seeks to help simplify and improve the buying and selling experience for customers by making policy, process, and technology improvements.

- The Verified Products Portal (VPP); tentatively planned for April 2021, is the next step in the Catalog Management effort, one of the four cornerstone FMP initiatives.
- The VPP can make catalog management simpler, streamlined, more modern, and increasingly efficient by capturing supplier authorization information and standardizing contractor catalogs.

More information can be found on GSA's website.¹

Highly anticipated government relief

In their first week in office, the Biden/Harris Administration has taken several actions to increase the US' response to the COVID-19 pandemic, including urging Congress to consider a \$1.9 trillion proposal for additional pandemic relief. The anticipated legislation would include funds focusing on vaccine distribution and other critical economic relief measures. **What's next? Check out PwC's 'Biden Administration: The first 100 days' outlook [here](#).**



What concerns are top of mind?

PwC is closely tracking sentiment and priorities for finance leaders, as businesses respond to unprecedented disruptions to daily operations and finance activities brought on by the coronavirus. PwC conducted a pulse survey, reflecting the views of 270 finance leaders from Fortune 1000 and private companies, along with other C-suite executives.

PwC's CFO pulse survey

June 11, 2020 Sept 3, 2020

You think the US economy needs more fiscal relief to recover from the effects of the COVID-19 pandemic

96%

You expect an increase in revenues and/or profits in 2020

11%

25%

A new wave of COVID-19 infections is your top concern with respect to operating in a changed business environment

59%

47%

Noteworthy Regulatory Updates

Topic	Key updates
National Defense Authorization Act (NDAA) for FY 2021 <i>Initially vetoed by President Trump, the House and Senate achieved the two-thirds majority required to override the veto; the NDAA for FY21 will be enacted into law.</i>	Various provisions ranging from cyber security, contracting policy changes, supply chain considerations, increased focus on disclosures and foreign ownership as well as updates to small business subcontracting. Some highlights include: <ul style="list-style-type: none">Section 806, Definition of Material Weakness for Contractor Business Systems; replaces “significant deficiency” with “material weakness.”Section 816, Documentation Pertaining to Commercial Item Determinations; adds a requirement that agencies document within 30 days of award whether the commercial product or service meets the requirements for commerciality and submit a memorandum justifying the determination.Section 863, Employment Size Standard Requirements for Small Business Concerns; changes the time frame for analyzing a company’s size status from preceding 12 months to preceding 24 months.
Cybersecurity Maturity Model Certification (CMMC)	DOD issued interim FAR rules for the incorporation of CMMC requirements in DOD future solicitations and contracts. The DOD also rolled out a separate NIST 800-171 self-attestation requirement which can result in DCMA reviews of contractors’ cybersecurity processes and controls. In December 2020, the DOD announced the first seven pilot contracts with CMMC requirements.
Federal Acquisition Regulation (FAR) changes to Buy American Act (BAA) <i>On January 19, 2021, the FAR Council published a final rule amending the FAR in accordance with EO 13881, “Maximizing Use of American-Made Goods, Products, and Materials.”</i>	The new rule is effective as of January 21, 2021, with the requirement to be included in all new solicitations by February 22, 2021. <ul style="list-style-type: none">Domestic content requirement changes; the final rule increases the percentage from 50% to 55% of domestic content in an end product (other than iron / steel).Commercial-Off-the-Shelf (COTS) Items Waiver changes; the final rule eliminates waivers for wholly or predominantly iron or steel end products, with minor exceptions.Price Preference for Domestic Products; the final rule increases the price preferences enjoyed by offerors of domestic end products under BAA from 6% to 20% for large business and 12% to 30% for small business.

The Biden administration: Recapping the first week

Since taking office on January 20, 2021, President Biden has signed an unprecedented number of executive orders, actions, memoranda and agency directives. While many focused on the Biden administration’s response to COVID-19, there have been several notable actions that may impact government contractors and recipients of government grants and awards; including:



Executive order

[Executive order on ensuring the future is made in all of america by all of america's workers](#)

What does this mean?

President Biden strengthens BAA requirements to support ‘Made in America’ laws and increase preference for domestic procurements. The FAR Council has 180 days to consider the proposed changes such as creation of ‘Made in America Director,’ increased scrutiny of existing and future waivers, and changes to the component test. **Contractors should consider how this may impact current and future solicitations; stay tuned for additional insight and how R&D, manufacturing and infrastructure projects may be affected.**

[Memorandum to extend federal support to governors' use of the national guard to respond to COVID-19 and to increase reimbursement and other assistance provided to states](#)

President Biden issued a Memorandum that increased state reimbursements for the National Guard and Federal Emergency Management Agency (FEMA). Specifically, the Memorandum stipulated that FEMA shall fund 100 percent of the cost of activities associated with all mission assignments for the use of the National Guard and vaccine administration through September 30, 2021.

Department of Justice Continued Focus on Anti-Kickback Statute

In late 2020, another pharmaceutical company pled guilty to federal charges for violating the Federal Anti-Kickback Statute. The latest in a string of high profile lawsuits and settlements, the regulatory activity has demonstrated increased scrutiny of healthcare and pharmaceutical organizations. Kickbacks to doctors or other healthcare providers are prohibited by two federal laws: the Anti-Kickback Statute [42 U.S. Code § 1320a-7b(b)] and the Stark Law (42 U.S.C. 1395nn). The Department of Justice (DOJ) continues to aggressively pursue claims of violations under both federal laws. It is clear with this recent settlement that the DOJ is committed to investigating and holding companies, and individuals if need be, accountable for the roles played in violating federal laws.

Protecting against a Purchasing Pandemic: Procurement Collusion Strike Force

Launched in November 2019, the US Department of Justice's Antitrust Division's Procurement Collusion Strike Force (PCSF) has geared its efforts towards combating fraudulent and anticompetitive schemes aimed at government procurement, inclusive of grant and program funding. The PCSF is focused on protecting the integrity of public procurement spend by identifying and prosecuting bid-rigging, price-fixing, and other fraud schemes that result in overcharges to the government. The PCSF was established in response to the DOJ's stance that that public procurement may be "particularly vulnerable to collusion" due to the predictable and repetitive nature of the procurement process.

In its first year, the PCSF opened more than two dozen active grand jury investigations to identify government contractors who have attempted to defraud the government. In response to COVID-19, the PCSF developed pandemic-focused training to address heightened collusion risks anticipated in light of exigent procurement by government agencies.

Also within its first year, the PCSF announced its first public indictment of an engineering firm for participating in long-standing conspiracies to rig bids. The six-count indictment asserted that the firm and an executive "conspired to rig bids for aluminum structure projects funded ... for nearly a decade." According to the firm, its practices did not affect competition and the case "is more complicated than the indictment suggests" as "a different legal test applies than the one offered by the government." This serves as an example of how important it is for contractors to assess for compliance with regulations or risk heightened scrutiny from the PCSF.

PwC is thoroughly versed in government contracting and brings extensive experience to bear when evaluating the outlook for your business. In today's challenging economic climate, government contractors face tight budgets and ever-increasing demands. We can help you navigate these often conflicting demands and create a strong plan—from strategy through execution—for your business.

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