

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**THE ASSISTANT SECRETARY FOR
ADMINISTRATION AWARDED AND
MANAGED FIVE SOLE SOURCE
CONTRACTS FOR COVID-19
TESTING IN ACCORDANCE WITH
FEDERAL AND CONTRACT
REQUIREMENTS**

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Office of Inspector General

<https://oig.hhs.gov>

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The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

Report in Brief

Date: January 2022

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U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Audit

HHS is one of the largest contracting agencies in the Federal Government. In fiscal year 2020, HHS awarded over \$14 billion in contracts in response to the COVID-19 pandemic. Of these contracts, HHS's Assistant Secretary for Administration (ASA) awarded five sole source COVID-19 testing contracts to national pharmacy and grocery retail chains to provide Americans convenient access to COVID-19 testing at testing site locations throughout the United States. The contracts provided a flat-fee payment to participating retailers for each test administered.

Our objective was to determine whether ASA awarded and managed the COVID-19 testing contracts in accordance with applicable Federal regulations, and contract terms and conditions.

How OIG Did This Audit

Our audit covered five sole source COVID-19 testing contracts awarded by ASA in April 2020, totaling \$1.8 billion. As of October 2021, over \$1.2 billion had been paid to the contractors.

We reviewed: (1) ASA's justification and awarding process for the contracts; (2) signed contracts, contract modifications, statements of work, and negotiated payment rates for COVID-19 tests; and (3) a judgmental sample of 18 invoices totaling \$217 million from the contracts.

The Assistant Secretary for Administration Awarded and Managed Five Sole Source Contracts for COVID-19 Testing in Accordance With Federal and Contract Requirements

What OIG Found

ASA awarded and managed five sole source COVID-19 testing contracts, totaling \$1.8 billion, in accordance with Federal regulations and contract requirements. Specifically, ASA complied with sole source justification requirements when awarding the contracts and set reasonable payment rates for COVID-19 tests in accordance with Federal regulations. ASA appropriately managed the contracts by establishing and maintaining ongoing communications with contractors, by verifying that lab result numbers matched the number of tests administered, and by reviewing invoices to ensure payment rates were in accordance with the contract terms and conditions.

What OIG Recommends

This report contains no recommendations.

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INTRODUCTION

WHY WE DID THIS AUDIT

The Department of Health and Human Services (HHS) is one of the largest contracting agencies in the Federal Government. In fiscal year (FY) 2020, HHS awarded over \$14 billion in contracts in response to the COVID-19 pandemic. Of these contracts, HHS's Assistant Secretary for Administration (ASA) awarded five sole source COVID-19 testing contracts to national pharmacy and grocery retail chains to provide Americans convenient access to COVID-19 testing at testing site locations throughout the United States. Approximately 70 percent of these testing sites are in underserved communities with populations most vulnerable to COVID-19. The contracts provided a flat-fee payment to participating retailers for each test administered, with retailers responsible for coordinating the full end-to-end testing.¹

COVID-19 has created extraordinary challenges for the delivery of health care and human services to the American people. As the oversight agency for HHS, the Office of Inspector General (OIG) oversees HHS's COVID-19 response and recovery efforts. This audit is part of OIG's COVID-19 response strategic plan.²

OBJECTIVE

Our objective was to determine whether ASA awarded and managed the COVID-19 testing contracts in accordance with applicable Federal regulations, and contract terms and conditions.

BACKGROUND

On March 13, 2020, the President declared the COVID-19 outbreak a national emergency.³ Congress passed legislation, including the Public Health Emergency Fund, to respond to the COVID-19 pandemic.⁴

¹ End-to-end testing includes scheduling, testing, and providing results of the tests.

² OIG's COVID-19 response strategic plan and oversight activities can be accessed at [HHS-OIG's Oversight of COVID-19 Response and Recovery | HHS-OIG](#).

³ Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, accessed at <https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> on October 20, 2021.

⁴ The Public Health Emergency Fund provided the Secretary of HHS funding to take action in the face of a public health emergency, including facilitating coordination between Federal, State, Tribal, and private health care entities; making grant awards and entering into contracts; accelerating advanced research and development; strengthening bio-surveillance capabilities and laboratory capacity; and other actions deemed necessary to support emergency operations.

ASA provides leadership for HHS departmental administration, including human resource policy, information technology, and departmental operations. ASA awarded the five sole source COVID-19 testing contracts through HHS's partnership with national pharmacy and grocery retail chains to continue to provide Americans access to COVID-19 testing.

Eligible health care providers, including public entities, for-profit entities, and not-for-profit entities, provided testing, diagnoses, and care for individuals with possible or actual cases of COVID-19. Certain health care providers were awarded sole source contracts that were not subject to full and open competition due to an unusual and compelling urgency necessitated by the pandemic.

HOW WE CONDUCTED THIS AUDIT

Our audit covered five sole source contracts that ASA awarded in April 2020 for COVID-19 testing. The five contracts were awarded to CVS, Rite-Aid, Walgreens, Quest (through services provided at Walmart), and eTrueNorth (through services provided at Kroger, Health Mart, and Walmart). These contracts totaled \$1.8 billion. As of October 2021, over \$1.2 billion had been paid to the contractors.

We reviewed ASA's justification for awarding these contracts as sole source contracts instead of using full and open competition and whether ASA was in compliance with the applicable requirements of Federal Acquisition Regulation (FAR) subpart 6.3, Other Than Full and Open Competition.⁵ We interviewed ASA staff and reviewed the process used to identify and mitigate the risks associated with awarding these government contracts by other than full and open competition, and with emergency funding. We reviewed signed contracts, contract modifications, statements of work, documentation of negotiations for the establishment of contracted rates for COVID-19 tests, and invoices for each of the five sole source contracts to determine whether the contracts were awarded and managed in accordance with applicable Federal regulations, and stated terms and conditions.

We selected a judgmental sample of 18 invoices totaling \$217 million from the 5 sole source contracts. To help ensure that our judgmental sample covered the entire audit period, we selected invoices dated at various points throughout the contract periods.

We conducted this performance audit 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.

⁵ For purposes of this audit, "other than full and open competition" and "sole source" are used interchangeably and refer to situations where exceptions to the FAR requirements for competition to the maximum extent practicable (i.e., full and open competition) are expressly permissible.

The Appendix contains the details of our audit scope and methodology.

RESULTS OF AUDIT

ASA managed 5 sole source contracts totaling \$1.8 billion awarded to national pharmacies and retail chains to administer COVID-19 tests to over 8 million patients at over 8,000 different testing sites across all 50 States, the District of Columbia, and Puerto Rico. ASA's awarding process complied with sole source justification requirements described in applicable Federal regulations.⁶ The contracts provided a flat-fee payment for each test administered, with participating retailers responsible for coordinating the full end-to-end testing. ASA set reasonable payment rates for COVID-19 tests in accordance with Federal regulations.⁷ ASA appropriately managed the contracts by establishing and maintaining ongoing communications with contractors, by verifying that lab result numbers matched the number of tests administered, and by reviewing invoices to ensure payment rates were in accordance with the contract terms and conditions.

The Assistant Secretary for Administration Complied With Sole Source Contract Justification Requirements

The FAR requires the Government to maximize the use of full and open competition. However, FAR subpart 6.3 allows for contract awards using other than full and open competition in certain circumstances. ASA awarded the five contracts in April 2020 to purchase critically needed supplies and services⁸ to support containment of and recovery from the COVID-19 outbreak. The contracts were awarded as sole source contracts using, as justification, the circumstance identified in FAR 6.302-2 (Unusual and Compelling Urgency).

According to FAR § 6.302-2(d)(2), the total period of performance of a contract awarded or modified using this authority may not exceed 1 year, including all options, unless the head of the agency determines that exceptional circumstances apply. The contracts were initially awarded for 1-year periods, but ASA determined that continued outbreak-related testing, onboarding new testing sites, and implementing new process workflows were critical as the Nation expanded testing to support back-to-school and return-to-work strategies under the National Strategy for the COVID-19 Response and Pandemic Preparedness.⁹ These exceptional circumstances warranted the extension of four contracts by 6 months through September

⁶ FAR subpart 6.3.

⁷ FAR §§ 31.201-2 and 46.102(b).

⁸ Services included patient registration, application of screening criteria, operation of the testing site, cost of conducting the test, and notification of results to patients.

⁹ Published January 21, 2021, the National Strategy for the COVID-19 Response and Pandemic Preparedness is a coordinated pandemic response outlining an actionable plan across the Federal Government to address the COVID-19 pandemic.

2021,¹⁰ as the continuation of the contracts would support diagnosis of individuals with COVID-19, reduce the spread of disease, and save lives. ASA provided us with a memorandum approved by the Assistant Secretary for Health and the Secretary of HHS, as authorized by FAR § 6.302-2(d)(2), requiring the determination and justification of exceptional circumstances to extend the contracts beyond 1 year.

The Assistant Secretary for Administration Appropriately Managed Contracts for COVID-19 Testing

The FAR requires that agencies ensure that supplies or services tendered by contractors meet contract requirements (FAR § 46.102(b)). The FAR also requires that costs chargeable to a contract, in order to be allowable, are reasonable, allocable, and comply with the terms of the contract (FAR § 31.201-2).

ASA appropriately managed the contracts for COVID-19 testing by communicating daily and weekly with the contractors; by reviewing invoices and verifying that lab result numbers matched the number of tests administered, and payment rates charged complied with the contract requirements; and by approving invoices. We found no issues from our review of 18 sampled invoices. We also determined that the average payment rates were fair and reasonable, and the use of a flat-fee payment met the purpose and intention of the contracts.

CONCLUSION

ASA awarded and managed five sole source contracts for COVID-19 testing, totaling \$1.8 billion, in accordance with applicable Federal regulations, and contract terms and conditions. Accordingly, this report contains no recommendations.

¹⁰ One of the contracts (Quest) ended in February 2021.

APPENDIX: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our audit covered five sole source contracts awarded by ASA in April 2020 for COVID-19 testing, totaling \$1.8 billion. The five contracts were awarded to CVS, Rite-Aid, Walgreens, Quest (through services provided at Walmart), and eTrueNorth (through services provided at Kroger, Health Mart, and Walmart). As of October 2021, over \$1.2 billion of the awards were paid to the contractors.

Our review of internal controls involved obtaining an understanding of the controls that ASA had in place related to awarding and managing contracts.

We conducted fieldwork from February through November 2021.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance;
- reviewed HHS policies and procedures, including the HHS Acquisition Regulations;
- reviewed signed contracts, contract modifications, statements of work, negotiated payment rates, and invoices for each of the five sole source contracts;
- interviewed ASA staff and reviewed the process for selecting the five contractors to identify and mitigate the risks associated with using emergency funding to award these government contracts by other than full and open competition;
- selected a judgmental sample of 18 invoices totaling \$217 million, and for each of the sampled invoices, reviewed:
 - the rate billed on the invoice and compared it with the contracted rate,
 - the number of tests invoiced and compared it with the number of lab results reported to HHS,¹¹ and

¹¹ Contractors reported testing data to the COVID Responder Network, which serves as a web-based common operating platform service enabling personnel among Federal, State, local, Tribal, territorial, and private-sector organizations to collect important data related to COVID-19 testing and associated critical supply tracking. The application enables Federal organizations such as the Federal Emergency Management Agency and HHS to aggregate large quantities of data to maintain situational awareness of COVID-19 testing progress in an effort to facilitate their decision making.

- the contracting official's approval of the invoices; and
- discussed the results of our audit with ASA officials.

We provided ASA with a draft report on December 13, 2021, for review. ASA elected not to provide formal written comments.

We conducted this performance audit 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.