

STATEMENT OF
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ON

OVERSIGHT OF CONTRACT MANAGEMENT
AT THE CENTERS FOR MEDICARE & MEDICAID SERVICES

BEFORE THE

U.S. SENATE COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,
AD-HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT

APRIL 28, 2010



**Testimony of
Rodney L. Benson**

**Director, Office of Acquisition and Grants Management
Centers for Medicare & Medicaid Services**

Before the

**U.S. Senate Committee on Homeland Security and Governmental Affairs,
Ad-hoc Subcommittee on Contracting Oversight**

On

“Oversight of Contract Management at the Centers for Medicare & Medicaid Services”

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Chairman McCaskill, Ranking Member Brown, and distinguished Subcommittee members, thank you for inviting me here to discuss the Centers for Medicare & Medicaid Services’ (CMS) oversight of contracts and acquisitions. Today, I would like to share with you the initiatives that CMS has undertaken, in concert with the Administration and the Department of Health and Human Services (HHS), to ensure proper oversight of its contracts and acquisitions.

CMS appreciates the thoughtful work of this Subcommittee and the Government Accountability Office (GAO), and the recommendations made to improve our programmatic oversight. CMS recognizes the importance of strong contract management. We are committed to assuring the efficient and effective administration and oversight of our contracting activities.

I serve as the Director of the Office of Acquisition and Grant Management (OAGM) within CMS. In my capacity as the Director of OAGM, I am responsible for the award and administration of all CMS acquisition contracts, both those subject to the Federal Acquisition

Regulation (FAR) and other contracts. OAGM is also responsible for the award and administration of CMS discretionary grants, interagency agreements, and the use of purchase cards. In addition, OAGM develops internal acquisition policies and procedures and performs a multitude of functions to support CMS contracting staff.

Current CMS Contract Management Landscape

By way of background, CMS is an Agency within HHS that administers Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). Through these three programs, CMS is responsible for providing health care to more than 100 million beneficiaries and expends more than \$700 billion per year.¹ Medicare and Medicaid alone account for 35 cents of each health care dollar spent in the United States.²

Since Medicare's inception, contractors have carried out much of its day-to-day administration. These contractors process claims, reimburse providers, and perform audit and program integrity work in consultation with and under the oversight of CMS staff. Similarly, CMS collaborates closely with States and State health care agencies who directly administer the Medicaid and CHIP programs. As our programs grow over time, the amount of contracting also has grown. In Fiscal Year (FY) 1998, CMS awarded approximately \$2 billion in contracts, of which approximately \$1.7 billion was obligated to the Medicare fiscal intermediary and carrier contracts, which are not considered to be subject to the FAR. By contrast, in FY 2009, CMS awarded approximately \$4 billion in contracts, which is inclusive of the legacy Medicare fiscal intermediary and carrier contract activities. Much of this growth in the last decade is due to the

¹ Budget in Brief, Fiscal Year 2011, U.S. Department of Health & Human Services, page 51.

² National Health Expenditures data 2009.

statutory expansion of our programs. In addition, more of CMS' contracts now fall under FAR requirements, which require additional Federal oversight of contractors.

Given the dollars and numbers of contracts involved, CMS understands the importance of fulfilling its fiduciary responsibility through its oversight and monitoring activities. CMS has a number of initiatives in place to manage this increase in workload and meet CMS' contracting needs and our internal control and oversight requirements. For example, we develop an annual fiscal year comprehensive acquisition plan for CMS. This plan identifies all anticipated contract actions and specifies a schedule for the completion of each action. This advance planning enables us to schedule and plan our work over the course of the year, and facilitates the efficient processing of CMS' contracting needs. These planning activities also help us ensure that our procurement actions have the sufficient lead-time needed for the use of competitive contracting procedures, where appropriate. Building on CMS' annual acquisition planning activities, HHS now requires that all HHS operating divisions utilize this strategic planning approach.

In addition, CMS has strategically established acquisition vehicles to meet our programmatic needs effectively and efficiently. For example, we have established, through full and open competition, multiple award indefinite-delivery indefinite-quantity (IDIQ) contracts for areas where CMS has recurring needs. We are then able to compete task orders among the contractors holding an IDIQ contract on an expedited basis. We have put into place multiple award IDIQ contracts for information technology requirements, for beneficiary outreach, for research and development projects, and for our 1-800-MEDICARE call center needs. The availability of these streamlined contracting vehicles has been vital to support our programmatic needs and to

meet our deadlines through a competitive acquisition strategy that must meet all requirements of the FAR.

While improving our oversight of contracts, we have simultaneously responded to new implementation needs, including Congressional mandates for new health care programs and benefits. For example, CMS awarded the contracts required to launch the Medicare prescription drug program, to establish the Medicare and Medicaid Integrity Programs, which are CMS' primary means of combating fraud and abuse, to pursue implementation of information technology initiatives, to advance outreach to Medicare beneficiaries, and to establish the 1-800-MEDICARE call center.

CMS is proud that it has met the FY 2009 benchmarks and performance metrics under the Department's Acquisition Dashboard, achieving a favorable rating of "Green" across all metrics. In addition, CMS exceeds the HHS goal for contract awards to small businesses.

CMS' Efforts to Improve Staffing of Contracting Oversight

We believe that the integrity and effectiveness of our contracting functions is dependent upon the skills and abilities of our Contracting Officers and other contracting professionals. The success of a Federal acquisition office in instituting and sustaining effective internal controls is dependent upon Contracting Officers' knowledge of, and adherence to, established policies and procedures.

CMS has a team of Contracting Officers that are highly skilled and dedicated to the Agency. To maintain and enhance their skill set, we have established an Acquisition Career Manager position dedicated to providing the staff necessary training and experience to attain the knowledge and abilities required to advance through GS-1102 certification levels. We also conduct monthly internal training for contracting staff. The focus of this training has been on such topics as invoice review and approval, acquisition data entry, contract types, and the use of competition. Through these efforts, CMS promotes awareness and commitment among its contracting staff to comply with applicable requirements and achieve best value in the award and administration of CMS' contracts.

We also aggressively recruit experienced contracting professionals to support the contracting function. For example, recent changes in the Contracting Office's senior leadership include a deputy who has an extensive acquisition background and a certification as a public contract manager. We have also added a new Director for the Acquisition and Policy Staff who is a nationally recognized expert in acquisition workforce development, and the development and promulgation of acquisition policies and procedures.

In addition, CMS made available to its contracting professionals a web-based acquisition tool that gives easy access to information regarding all acquisition statutes and regulations, comprehensive instructions on all aspects of contracting processes and procedures, detailed acquisition methods, and templates for virtually every contract action. This very detailed and complete resource has facilitated the efficiency and effectiveness of the staff.

CMS is Addressing the GAO Findings

CMS is committed to the highest degree of integrity in the conduct and management of its contracting activities. CMS continually seeks to strengthen its acquisition functions. We appreciate the work that GAO has done to review our contracting activities and believe the GAO's findings and recommendations have served as a catalyst for improvements to the internal controls for our contracting functions.

The various findings in GAO's reports broadly fall into four categories. GAO expressed concerns with certain CMS acquisition and invoicing policies, with certain aspects of CMS' management of cost-type contracts and with the accuracy of CMS' acquisition data. GAO also recommended that CMS develop and implement a comprehensive strategic acquisition workforce plan. I would like to share some examples of improvements that we have initiated.

CMS Acquisition and Invoicing Policies

We have made a substantial investment in the web-based acquisition tool and new staff resources that have and will continue to have a large impact on our internal contracting policies and procedures. This web-based tool is updated real-time to reflect acquisition regulatory and policy changes across the entire Federal Government. To respond to GAO's findings, we are tailoring the web-based tool to meet all CMS specific policies and plan to add our internal checklists.

Taken together, these additional internal controls will ensure a well informed acquisition workforce and enhances our ability to ensure compliance with contracting laws and regulations to ensure best value for the taxpayer.

In addition, consistent with GAO's recommendations, we have successfully instituted the use of HHS' standard checklists for all contract actions that identify the documentation required for each type of action. This provides a very effective internal control to assure that contract actions comply with applicable FAR requirements. We have also issued 64 separate internal policies that establish effective internal controls, such as processes for the approval of noncompetitive contract actions.

GAO expressed concerns that in some cases the contract files did not contain signed documentation to support the Contracting Officer's Technical Representative's (COTR) and Contracting Officer's review and approval of an invoice. For CMS' major contracting programs, we had in place robust processes and procedures that ensure the proper payment of invoices. We have now strengthened our policies to provide that in no event should an invoice be paid until the COTR and Contracting Officer have both signed the necessary documentation. We are continuing to monitor and explore ways to enhance further our processes to ensure acquisition staff compliance with these policies and procedures.

Administration of Cost Contracts

CMS' approach to contract type selection is to match the unique circumstances of the procurement with the appropriate contract type. In some instances, CMS' procurements are for complex requirements with significant technical risk and cost uncertainty; therefore, a cost-reimbursement type contract is most appropriate. As part of our internal controls, senior Agency leadership is engaged in determining when the use of cost-reimbursement contracts is warranted.

Additionally, CMS has developed policies to direct contracting staff in their selection of the most suitable contract types and on the best way to mitigate risks of cost-reimbursement contracts.

We have also established a senior-level position that will focus on the administration of CMS' cost reimbursement contracts focusing on the contract audit functions; including facilitation of the establishment of provisional and final overhead rates. We anticipate that this attention will resolve, and ultimately obviate, many of GAO's specific cost concerns.

Data Accuracy

Accurate data is a key component of the administration of contracts. CMS is committed to assuring that all acquisition data are accurately entered into the Federal Procurement Data System, and will continue its extensive efforts to train OAGM staff on data entry processes and procedures, and to assure that staff enters data appropriately. CMS processes require managers to check the data entry of their employees and provide for an independent review of data entered into FPDS, which has led to improved accuracy of data. CMS procedures to ensure data accuracy have been adopted as a best practice in other operating divisions of HHS, and CMS will continue to enhance these procedures to meet the data quality requirements expected under the Open Government initiative.

Acquisition Workforce Plan

We are currently developing a comprehensive strategic acquisition workforce plan. Our goal is to staff appropriately our acquisition functions, leading to an even more highly trained and skilled acquisition workforce at CMS. This plan will implement and supplement the HHS

Acquisition Human Capital Plan that was recently submitted to the Office of Management and Budget.

We believe that these various enhancements and improvements to CMS' contracting policy and support functions, together with the significant increased focus on our internal controls and workforce, will improve our oversight and address many of the issues identified by GAO.

Conclusion

CMS is strongly committed to improving the health care provided to beneficiaries of the Medicare, Medicaid, and CHIP programs and ensuring effective management of these programs. As evidenced by my testimony today, CMS has taken significant actions to increase its oversight of contract management, and we continue to explore additional strategies to improve our performance. We appreciate the work that GAO has done to review our contracting activities, and believe that GAO's findings and recommendations will help us prioritize our efforts to improve continuously our oversight of contracts.

CMS agrees with the GAO that strong contract management is vital to ensuring effective programs and safeguarding taxpayer dollars. This Administration is committed to strong internal controls, oversight, transparency, and accountability and CMS will continue to ensure that contracts support program goals in a wise and judicious manner.

I look forward to answering any questions you might have.