

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**CMS DID NOT ALWAYS  
MANAGE AND OVERSEE  
CONTRACTOR PERFORMANCE  
FOR THE FEDERAL MARKETPLACE  
AS REQUIRED BY  
FEDERAL REQUIREMENTS AND  
CONTRACT TERMS**

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Inspector General

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# *Office of Inspector General*

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## EXECUTIVE SUMMARY

*The Centers for Medicare & Medicaid Services did not always manage and oversee Federal marketplace contracts in accordance with Federal acquisition regulations and the Department of Health and Human Services policy.*

### WHY WE DID THIS REVIEW

The Affordable Care Act (ACA) established health insurance exchanges (commonly referred to as “marketplaces”) to allow individuals and small businesses to shop for health insurance in all 50 States and the District of Columbia (States). For each State that elected not to establish and operate its own marketplace (State marketplace), the ACA required the U.S. Department of Health and Human Services (the Department) to operate a marketplace (the Federal marketplace) within the State. Beginning on October 1, 2013, the Federal marketplace offered private insurance plans, known as qualified health plans, and enrolled individuals in those plans through its HealthCare.gov Web site (Web site) or through other means. However, consumers experienced significant problems accessing the Web site, including slow response times, errors that dropped consumers out of the enrollment process, and unplanned outages that made enrollment difficult or impossible.

The Centers for Medicare & Medicaid Services (CMS), through its Center for Consumer Information and Insurance Oversight, relied extensively on contractors to create and operate the Federal marketplace. Among others, CMS contracted with CGI Federal, Inc., for the Web site and other functions supporting the federally-facilitated marketplace (FFM); Quality Software Services, Inc., for the Federal Data Services Hub; and IDL Solutions, Inc., for the Multidimensional Insurance Data Analytics System.

The problems that consumers experienced raised concerns about the Department’s oversight of the contractors involved in the development, implementation, and operation of the Federal marketplace. We received requests from the Department and Congress to review the work performed by contractors and CMS’s management and oversight of, and payment for, the Federal marketplace. This audit is part of a broader portfolio of Office of Inspector General reviews examining various aspects of marketplace operations, including payment accuracy, eligibility verification, management and administration, and data security.

Our objectives were to determine whether CMS ensured that:

- contracting officers and contracting officer’s representatives managed and oversaw contractor performance as required by Federal regulations and contract terms;
- contracting officer’s representatives were properly designated and authorized to manage and oversee Federal marketplace contracts and met experience, training, and certification requirements; and
- contracting officers and contracting officer’s representatives maintained required contract records and performance monitoring and technical documentation.

## **BACKGROUND**

A marketplace is designed as a one-stop shop at which individuals are provided information about health insurance options, are evaluated for eligibility for a qualified health plan, and are enrolled in the plan of their choice. Also, individuals can determine whether they are eligible for financial assistance through insurance affordability programs. Each marketplace must certify that its plans meet certain participation standards and cover a core set of benefits. CMS and the States share responsibilities for core functions of State-Federal partnership marketplaces. As of October 1, 2013, 36 States, including 7 State-Federal partnership marketplaces, used the Federal marketplace. Fifteen States, including the District of Columbia, had established separate State marketplaces.

CMS identified 62 contracts that it had awarded through March 31, 2014, to 35 different contractors to develop, implement, and operate the Federal marketplace.

### **Federal Requirements**

The Federal Acquisition Regulation (FAR) (48 CFR chapter 1) and the supplemental Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR chapter 3) provide a framework for awarding contracts, for paying contractor invoices, and for conducting management and oversight of contractor performance, including submitting all past-performance evaluations using the Contractor Performance Assessment Reporting System.

## **HOW WE CONDUCTED THIS REVIEW**

We reviewed the 62 contracts that CMS identified as awarded for the development, implementation, and operation of the Federal marketplace. We identified 20 of the 62 contracts as critical to the development, implementation, and operation of the Federal marketplace and limited our detailed analysis to these 20 contracts.

## **WHAT WE FOUND**

Contracting officers and contracting officer's representatives did not always manage and oversee contractor performance as required by Federal requirements and contract terms. CMS did not always comply with Federal regulations regarding designation and certification requirements for contracting officer's representatives. Also, contracting records did not always include all critical contract deliverables and other management and oversight documentation.

Because CMS did not always provide adequate contract management and oversight for Federal marketplace contracts, (1) contractor delays and performance issues were not always identified, (2) a contractor incurred unauthorized costs that increased the cost of the contract, (3) contracting officers in all Government agencies did not have access to contractor past-performance evaluations when making contract awards, and (4) critical deliverables and management decisions were not properly documented.

In addition, the HHSAR and the Standards of Ethical Conduct for Employees of the Executive Branch may not have been complied with in connection with an employee who served as a member of the technical evaluation panel for one contract.

## WHAT WE RECOMMEND

We recommend that CMS:

- direct contracting officers and contracting officer's representatives to comply with Federal regulations and contract terms by ensuring that all contract deliverables are received and are used in their management and oversight of the contract;
- direct acquisition personnel not to authorize additional work on contracts until the work is approved by the contracting officer and properly funded;
- direct contracting officers to prepare contractor past-performance evaluations at least annually and at the conclusion of the contract and electronically submit them to the Contractor Performance Assessment Reporting System;
- direct contracting officers to designate and authorize contracting officer's representatives in writing and identify their specific duties, responsibilities, and limitations for each contract they manage and oversee;
- provide appropriate training for contracting officer's representatives to enable them to gain experience and to achieve and maintain their appropriate level of acquisition certification;
- maintain contracting files that adequately document contractor performance and CMS management and oversight of contracts; and
- require all acquisition personnel to disclose their past-employment relationships for purposes of determining their eligibility to participate in making contract award decisions.

## CMS COMMENTS

In written comments on our draft report, CMS concurred with our recommendations and described corrective actions it had taken or planned to take to address them.

CMS also sent technical comments on the draft report under separate cover, and we made changes, as appropriate.

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## INTRODUCTION

### WHY WE DID THIS REVIEW

The Affordable Care Act (ACA)<sup>1</sup> established health insurance exchanges (commonly referred to as “marketplaces”) to allow individuals and small businesses to shop for health insurance in all 50 States and the District of Columbia (States). Each State may have an individual marketplace and a Small Business Health Options Program marketplace.

For each State that elected not to establish and operate its own marketplace (State marketplace), the ACA required the U.S. Department of Health and Human Services (the Department) to operate a marketplace (the Federal marketplace) within the State.<sup>2</sup> Beginning on October 1, 2013, the Federal marketplace offered private insurance plans, known as qualified health plans, and enrolled individuals in those plans through its HealthCare.gov Web site (the Web site) or through other means.<sup>3</sup> However, consumers experienced significant problems accessing the Web site, including slow response times, errors that dropped consumers out of the enrollment process, and unplanned outages that made enrollment difficult or impossible.

The Centers for Medicare & Medicaid Services (CMS) relied extensively on contractors to create and operate the Federal marketplace.<sup>4</sup> Among others, CMS contracted with CGI Federal, Inc., for the Web site and other functions supporting the federally-facilitated marketplace (FFM), Quality Software Services, Inc., for the Federal Data Services Hub (the Hub), and IDL Solutions, Inc., for the Multidimensional Insurance Data Analytics System (MIDAS).

The problems that consumers experienced during the troubled launch of the Federal marketplace raised concerns about the Department’s oversight of the contractors involved in its development, implementation, and operation. The Office of Inspector General (OIG) received requests from the Department and Congress to review the work performed by these contractors and CMS’s management and oversight of the Federal marketplace.

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<sup>1</sup> The Patient Protection and Affordable Care Act, P.L. No. 111-148 (March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, P.L. No. 111-152 (March 30, 2010), is known as the Affordable Care Act.

<sup>2</sup> For this audit, we did not review State marketplace contracts.

<sup>3</sup> Individuals who chose not to use the Web site enrolled in the Federal marketplace by mail, using a paper application, or by telephone, using the Federal marketplace call center.

<sup>4</sup> CMS operates the Federal marketplace through its Center for Consumer Information and Insurance Oversight. Initially, the Department established the Office of Consumer Information and Insurance Oversight (OCIIO) within the Office of the Secretary. In early 2011, the Office of the Secretary transferred the function to CMS; however, we acknowledge and include in this report the activities initiated by OCIIO and other Department offices, particularly the Program Support Center that awarded three Federal marketplace contracts and paid invoices submitted before the transfer to CMS’s Center for Consumer Information and Insurance Oversight. When we refer to CMS contracts in this report, we include contracts awarded by the Program Support Center subsequently transferred to CMS.

This report addresses oversight of the contract management process: whether contracting personnel used contract performance monitoring and technical deliverables<sup>5</sup> to properly manage contracts and whether CMS properly maintained contract documentation. This audit is part of a broader portfolio of OIG reviews examining various aspects of marketplace operations, including payment accuracy, eligibility verification, management and administration, and data security.<sup>6</sup>

## **OBJECTIVES**

Our objectives were to determine whether CMS ensured that:

- contracting officers and contracting officer’s representatives managed and oversaw contractor performance as required by Federal regulations and contract terms;
- contracting officer’s representatives were properly designated and authorized to manage and oversee Federal marketplace contracts and met experience, training, and certification requirements; and
- contracting officers and contracting officer’s representatives maintained required contract records and performance monitoring and technical documentation.

## **BACKGROUND**

### **The Affordable Care Act**

The ACA provides Americans access to health care by creating new health insurance marketplaces, enforcing rights and protections for those individuals who apply for insurance, and providing financial assistance through insurance affordability programs for people who cannot afford insurance. To do this, the ACA requires the establishment of a health insurance marketplace within each State. The Department is required to operate a Federal marketplace within each State that elects not to establish its own State marketplace. CMS is responsible for the development, implementation, and operation of the Federal marketplace for the Department.

### **The Federal Marketplace**

A marketplace is designed to serve as a one-stop shop at which individuals are provided information about health insurance options, are evaluated for eligibility for a qualified health plan, and are enrolled in the plan of their choice. Also, individuals can determine whether they are eligible for financial assistance through insurance affordability programs. Each marketplace must certify that its plans meet certain participation standards and cover a core set of benefits.

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<sup>5</sup> Performance monitoring deliverables under the contracts included integrated baseline reviews, earned value management system reports, project management plans, quality assurance surveillance plans, monthly performance status reports, and monthly financial status reports. Technical deliverables included transition plans, capacity management plans, security plans, compliance reports, and risk assessment plans.

<sup>6</sup> The *OIG Work Plan, Appendix A*, for fiscal year 2015 summarizes new and ongoing reviews and activities, including ACA reviews that OIG plans to pursue with respect to Department programs and operations during the current fiscal year and beyond. In addition, OIG has issued several reports on marketplace issues related to the ACA. (See the ACA Reviews Web page, accessible at <http://oig.hhs.gov/reports-and-publications/aca/>.)

CMS works with States to establish State and State-Federal partnership marketplaces and to oversee their operations. For States that elect not to establish and operate a State marketplace, CMS operates the Federal marketplace within the State. CMS and the States share responsibilities for core functions of State-Federal partnership marketplaces. As of October 1, 2013, 36 States, including 7 State-Federal partnership marketplaces, used the Federal marketplace. Fifteen States, including the District of Columbia, had established separate State marketplaces.

### **Contracts for the Federal Marketplace**

CMS relied, and continues to rely extensively, on contractors to develop, implement, and operate the Federal marketplace. As of March 31, 2014, CMS had identified 62 contracts that it had awarded to 35 different contractors to develop, implement, and operate the Federal marketplace, which includes the Web site, the FFM, the Hub, and MIDAS:

- The Web site provides consumers online access to the Federal marketplace and is supported by several systems, including the FFM and the Hub.
- The FFM processes data provided by the user through the Web site and manages eligibility and enrollment, health care plan management, and financial management functions of the Federal marketplace.
- The Hub enables the Federal marketplace and the State marketplaces to access information from several Federal agencies, allowing marketplaces to verify consumers' application information in near real-time.
- MIDAS provides a central repository to capture, organize, aggregate, and analyze information obtained through the Federal marketplace and other CMS programs.

Additional contracts provide, but are not limited to, cloud computing, enterprise architecture and operational support, health insurance oversight, information technology security, and quality assurance testing.

The launch of the Federal marketplace raised serious concerns about the Department's management and oversight of these contracts, including the selection and oversight of those contractors that played a significant role in the development, implementation, and operation of the Federal marketplace. To address these concerns, CMS brought in a team of information technology specialists from across the industry to oversee repairs to the Federal marketplace. In January 2014, CMS hired a new contractor, Accenture Federal Services, LLC, to replace CGI Federal and complete the Federal marketplace. We included this contract in our review.

See Appendix A for a detailed list of contracts awarded or modified in support of the Federal marketplace.

### **Federal Requirements**

The Federal Acquisition Regulation (FAR) (48 CFR chapter 1) is the primary regulation for use by all Federal Executive agencies in their acquisition of supplies and services with appropriated

funds. The supplemental Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR chapter 3) provides the regulatory framework for conducting acquisitions across the Department. Both provide a framework for awarding contracts, for paying contractor invoices, and for conducting management and oversight of contractor performance.

Contracting officers, appointed by the agency head, are the only individuals authorized to enter into, administer, or terminate contracts (FAR, 48 CFR § 1.602). Contracting officers appoint contracting officer's representatives to assist in the technical monitoring and administration of a contract (FAR, 48 CFR § 1.604). The contracting officer works with the contracting officer's representative to ensure satisfactory contractor performance and to validate compliance with all terms and conditions of the contract, including the receipt and use of contract deliverables to accomplish the contract's objectives (HHSAR, 48 CFR subpart 342.70).<sup>7</sup> Contracting officers must ensure that the contracting officer's representative understands and completes all assigned responsibilities to assess and monitor the contractor's performance. An Office of Management and Budget (OMB) memorandum (the OMB memorandum) requires contracting officer's representatives to obtain Federal acquisition certification.<sup>8</sup>

The FAR provides policies and establishes responsibilities for recording and maintaining contractor performance information. Agencies must prepare contractor past-performance evaluations at least annually and at the time work under a contract is completed and submit all past-performance evaluations using the Contractor Performance Assessment Reporting System (CPARS), the Governmentwide evaluation reporting tool for all past-performance reports on contracts and orders (FAR, 48 CFR §§ 42.1502(a) and 42.1503(f)). Also, personnel responsible for contracting, contract administration, and payment must establish files that contain a record of all contractual actions, and these files must be readily accessible to principal users (FAR, 48 CFR §§ 4.801 and 4.802).

See Appendix B for a summary of Federal regulations referenced in this report.

## **HOW WE CONDUCTED THIS REVIEW**

We reviewed the 62 contracts that CMS identified as awarded for the development, implementation, and operation of the Federal marketplace. We identified 20 of the 62 contracts as critical to the development, implementation, and operation of the Federal marketplace on the basis of the contract purpose and dollar value. These 20 contracts accounted for 72 percent of the total contract obligations for the Federal marketplace. We limited our detailed analysis to these 20 contracts, including CMS management and oversight of contractor performance, the authorization and certification of contracting officer's representatives, and the adequacy of contract documentation.

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<sup>7</sup> The HHSAR refers to a contracting officer's representative as the contracting officer's technical representative.

<sup>8</sup> OMB, Office of Federal Procurement Policy, *Revisions to the Federal Acquisition Certification for Contracting Officer's Representatives* (issued on September 6, 2011). This revised the memorandum issued on November 26, 2007: *Federal Acquisition Certification for Contracting Officer's Technical Representatives*. In this report, we refer to these memorandums collectively as the "the OMB memorandum."

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.

See Appendix C for the details of our scope and methodology.

## **FINDINGS**

Contracting officers and contracting officer's representatives did not always manage and oversee contractor performance as required by Federal requirements and contract terms. Specifically:

- contracting officers and contracting officer's representatives did not receive all contract deliverables and did not always use contract deliverables to monitor contractor performance,
- unauthorized CMS personnel added work to and increased the cost of one contract, and
- contracting officers did not always prepare contractor past-performance evaluations.

Contracting officers did not always designate and authorize in writing contracting officer's representatives assigned to manage and oversee contracts, and when required, CMS did not ensure that all contracting officer's representatives obtained Level-III certification.

Contracting officers and contracting officer's representatives did not maintain contracting records that included all critical contract deliverables and performance monitoring and technical documentation used in the management and oversight of Federal marketplace contracts.

As a result of these deficiencies in contractor monitoring and oversight, (1) contractor delays and performance issues were not always identified, (2) a contractor incurred unauthorized costs that increased the cost of the contract, (3) contracting officers in all Government agencies did not have access to contractor past-performance evaluations when making contract awards, and (4) critical deliverables and management decisions were not properly documented.

In addition, a CMS employee who was a member of the technical evaluation panel for one contract may not have complied with the HHSAR and the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct). CMS could provide no documentation that the employee disclosed recent prior employment with a subcontractor of the contractor that was selected by the panel and awarded the contract. Even the appearance of a conflict of interest could diminish the integrity of the contract awarding process if an impartial observer views the contract award as biased toward a specific contractor.

### **CMS'S CONTRACTING OFFICIALS DID NOT ALWAYS MANAGE AND OVERSEE CONTRACTOR PERFORMANCE AS REQUIRED**

Contracting officers and contracting officer's representatives did not always receive contract deliverables and did not always use contract deliverables to monitor contractor performance.

Also, unauthorized CMS personnel added work and increased the cost of one contract. In addition, contracting officers did not always prepare contractor past-performance evaluations.

### **Contract Deliverables Not Provided or Not Used To Monitor Contracts**

The contracting officer monitors contracts with the contracting officer's representative (HHSAR, 48 CFR subpart 342.70). The contracting officer must ensure that the contractor complies with contract requirements. The contracting officer's representative is responsible for assisting and advising the contracting officer by providing technical monitoring of the contract and advising the contracting officer about delivery, acceptance, or rejection of deliverables; assessing contractor performance; and recommending changes to the work and performance period necessary to accomplish the contract requirements (HHSAR, 48 CFR § 342.7001).

The contracts we reviewed required specific performance and technical deliverables on the basis of the purpose, type, and dollar value of the contract. However, for 13 of the 20 contracts, the contractor did not provide all required deliverables, the contractor provided the deliverables after the due date, the contractor provided the deliverables but CMS did not use them to monitor contractor performance, or the deliverables were missing from the contract files. For example:

- An infrastructure contract awarded to Terremark Federal Group, Inc., on April 1, 2011, required the contractor to provide a system security plan within 90 days of contract award. A system security plan provides an overview of the security requirements of the system and describes the controls in place or planned to meet those requirements. The contractor submitted the plan in July 2013, more than 2 years after it was required. Because CMS could not provide copies of monthly status reports for May 2011 through August 2012, we could not determine whether CMS asked the contractor to provide the security system plan during that time. Also, the monthly status reports for September 2012 through June 2013 did not address the requirement for the contractor to provide the security system plan.
- The FFM contract awarded to CGI Federal on September 30, 2011, required the contractor to provide a quality assurance surveillance plan within 45 days of contract award. The plan provides a systematic and structured process for the Government to evaluate the services the contractor will provide, including but not limited to processes, methods, metrics, customer satisfaction surveys, service-level agreements, and operational level agreements. The contractor's January 2012 status reports showed that the contractor provided its plan on January 19, 2012, more than 2 months after it was required. CMS officials were unable to show us the plan and said that they never received it. The contracting officer's representative had not questioned the accuracy of the January 2012 status report.

Also, for the FFM contract, the contractor did not know who was responsible for receiving deliverables. During the first year of the contract, the contractor submitted four monthly performance status reports that each included a request for CMS to identify individuals responsible for accepting and reviewing deliverables. In September 2012, after a new contracting officer's representative was assigned to the contract, the contractor's monthly performance status report no longer included the request.

CMS officials told us that some of the performance and technical deliverables under the contracts were not required. However, the contract files contained no documentation supporting this assertion, and we found no contract modification that removed the deliverables from the contracts. Contracting officer's representatives sometimes could not explain why required deliverables were not on file because some of these representatives were not assigned to the contract at the time the deliverables were due. For these representatives, access to complete and accurate contract files was especially important to ensure effective contract monitoring.

### **Unauthorized Personnel Added Work and Increased Contract Cost**

Only the contracting officer is authorized to execute contract modifications (FAR, 48 CFR § 43.102(a)). The contracting officer's representative is responsible for technical monitoring of the contract and assessing contractor performance (HHSAR, 48 CFR § 342.7001).

Between March and December 2012, CMS personnel not authorized to modify the contract added 40 work items to the FFM contract without the knowledge of the contracting officer's representative and without the approval of the contracting officer. The additional work was not part of the original scope of work or authorized on subsequent modifications to the contract. CMS stated that these work items, which resulted in a \$28 million cost overrun, were needed for the completion of the contract but were not authorized or funded before the contractor was directed to perform the work.

The contracting officer's representative had limited experience monitoring information technology contracts and did not recognize that the contractor did not report its total projected costs in its monthly financial status report. As a result, the contracting officer's representative did not identify the overrun. The contracting officer did not identify the overrun because the contract had sufficient funds available to cover contractor billings.

CMS usually assigns information technology contracts to contracting officer's representatives who are part of a centralized oversight group in its Resource and Acquisition Management Group. However, CMS initially assigned management and oversight responsibility for the FFM contract to its Consumer Information and Insurance Systems Group.

In September 2012, after approximately 1 year, CMS reassigned the contract to a contracting officer's representative from the Resource and Acquisition Management Group. In October 2012, this contracting officer's representative found the error in the monthly financial status report and reported it to the contracting officer. In December 2012, the contracting officer required the contractor to identify the cost overrun related to the additional work.<sup>9</sup> In April 2013, the contracting officer determined that additional funds would be needed and increased funding for the contract to cover the cost overrun.

In April 2013, in response to these errors, CMS issued two internal memorandums addressing "unauthorized commitments and technical direction" that outlined the proper way to authorize additional work and to modify contracts. CMS distributed these two memorandums to its management and acquisition personnel.

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<sup>9</sup> CGI Federal initially estimated a cost overrun of \$36 million, but the cost overrun was ultimately determined to be \$28 million.

## **Contracting Officers Did Not Always Prepare Contractor Past-Performance Evaluations**

Federal regulations require agencies to prepare contractor past-performance evaluations at least annually and when work under a contract or order is completed. Past-performance evaluations of contractors help in the proper management and oversight of contractor performance and are critical to ensure that the Federal Government does business with companies that deliver quality goods and services on time and within budget. Agencies are required to submit these evaluations electronically into CPARS, the Governmentwide evaluation reporting tool (FAR, 48 CFR §§ 42.1502(a) and 42.1503(f)).

For 11 of the 20 contracts we reviewed, contracting officers did not prepare contractor past-performance evaluations as required by Federal regulations. CMS stated that during our audit period, the Department and CMS did not monitor the completion of past-performance evaluations and, in some cases, CMS may not have registered contracts in CPARS. Because the contracts were not registered, CPARS did not periodically alert contracting officers to complete the required contractor past-performance evaluations.

To help ensure that CPARS is useful, CMS is participating in a Governmentwide initiative to complete contractor past-performance evaluations.

## **CMS DID NOT ENSURE THAT CONTRACTING OFFICER'S REPRESENTATIVES WERE AUTHORIZED AND PROPERLY CERTIFIED**

Contracting officers did not always designate and authorize in writing contracting officer's representatives assigned to manage and oversee contracts. In addition, not all contracting officer's representatives who managed contracts valued at \$10 million or more had obtained Level-III certification.

## **Contracting Officer's Representatives Were Not Designated and Authorized in Writing**

The FAR requires the contracting officer to designate and authorize, in writing and in accordance with agency procedures, a contracting officer's representative for all appropriate contracts (48 CFR § 1.602-2).<sup>10</sup> The designation letter must identify the specific duties and responsibilities required of the contracting officer's representative, such as monitoring contractor performance and reviewing contractor invoices. The letter should also establish limitations on the duties and responsibilities of contracting officer's representatives, including the inability to change the contract terms or create additional financial obligations. Contracting officer's representatives must maintain the designation letter and other documents outlining their duties, responsibilities, and limitations in their contract file (FAR, 48 CFR § 1.604).<sup>11</sup>

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<sup>10</sup> These requirements also appear in the Department's implementing memorandum, Acquisition Policy Memorandum 2012-02, *Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR)*. On March 16, 2011, the FAR was amended to require contracting officers to designate contracting officer's representatives in writing (48 CFR § 1.602-2(d)).

<sup>11</sup> As of March 16, 2011, the FAR was amended to require contracting officer's representatives to maintain a file documenting their responsibilities (48 CFR § 1.604).



For 15 of the 20 contracts reviewed, the contracting officer did not always designate and authorize in writing the contracting officer's representative and did not document the specific duties and responsibilities assigned for each contract. During the audit period, contracting officers assigned one or more contracting officer's representatives for each contract reviewed. Some were designated, authorized, and their specific duties and responsibilities documented; some were not.

For example:

- For the FFM contract awarded to CGI Federal and the Hub contract awarded to Quality Software Services, we identified one individual who acted as the contracting officer's representative on both contracts, but we found no written designation letters. Contract documentation stated that CMS management planned to transition both contracts to a new contracting officer's representative on September 17, 2012, but there was a problem transferring contract files. CMS could not provide us designation letters for either contract, so the actual transition date was unclear. The contracting officer did not issue contract modifications reflecting the change until November 8 (CGI Federal) and November 16, 2012 (Quality Software Services).
- For a systems testing and integration contract awarded to Quality Software Services, we identified five successive individuals who acted as the contracting officer's representative; however, we found designation letters for only two of them and could not identify the period for which three of them were responsible for the contract. One contracting officer's representative, for whom the contracting officer did not provide a written designation letter, was certifying invoices as early as November 1, 2012, but the contracting officer did not issue a contract modification reflecting the change in personnel until February 27, 2013.

CMS officials stated that the contracting officer's representative duties and responsibilities were clearly outlined in the contracts and adequately discussed during the initial postaward meetings, and therefore written designation letters were not necessary. However, for 14 of the 20 contracts that we reviewed, the contracting officer assigned at least 1 new contracting officer's representative who did not participate in the initial postaward meeting. For 7 of these 14 contracts, we noted that 3 or more contracting officers' representatives were assigned to a contract during our audit period. When a new contracting officer's representative is assigned to a contract, documenting the beginning date and the specific duties, responsibilities, and limitations of the individual is particularly important because it establishes accountability to a specific individual.<sup>12</sup>

### **CMS Delayed Implementation of Level-III Certification for Contracting Officer's Representatives**

The revised OMB memorandum established a risk-based, three-level certification program for contracting officer's representatives. The new certification program requires different levels of

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<sup>12</sup> Because CMS did not always maintain adequate documentation, we were unable to determine whether additional contracting officer's representatives served on the 20 contracts we reviewed.

training and professional experience to attain and maintain the desired certification level.<sup>13</sup> The Department issued its implementing memorandum on January 25, 2012, effective on January 1, 2012. At that time, existing contracting officers' representatives were transitioned to Level-II certification.<sup>14</sup> The Department's implementing memorandum requires Level-III certification for contracting officer's representatives who manage contracts valued at \$10 million or more.<sup>15</sup>

Not all contracting officer's representatives who managed contracts valued at \$10 million or more had obtained Level-III certification. This occurred because CMS established its own dollar thresholds and implementation dates that will not meet Departmental requirements until October 1, 2016.<sup>16</sup>

For example:

- For the FFM contract, which was valued at over \$55 million,<sup>17</sup> the initial contracting officer's representative never obtained Level-III certification. This contract was one of several valued at over \$10 million assigned to this individual.
- For a Web site support services contract, valued at more than \$130 million, the contracting officer's representative did not obtain Level-III certification as of March 31, 2014. The Level-II certification for this contracting officer's representative expired in December 2012. For at least the next 15 months, the contracting officer's representative was not certified and did not complete all actions to obtain the required Level-III certification.

Contracting officer's representatives stated that these situations occurred because they were confused about the training, experience, and contract value requirements for attaining and maintaining the Federal acquisition certification, particularly for Level III. Without proper certification, contracting officer's representatives may be unable to recognize when a contractor is underperforming and unable to manage high-value, complex contracts involving varying degrees of risk.

CMS management said that, as of January 1, 2012, CMS did not have the required number of contracting officer's representatives with Level-III certification. Therefore, CMS established its

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<sup>13</sup> Contracting officer's representatives require 24 hours of training to attain Level-I certification, 60 hours for Level II, and 96 hours for Level III. To maintain certification, contracting officer's representatives require 16 hours of training for Level-I, 40 hours for Level-II, and 80 hours for Level III every 2 years.

<sup>14</sup> The Department requires Level-II certification for all contracts between \$25,000 and \$10 million.

<sup>15</sup> The Department's certification program allows contracting officer's representatives to request a 6-month waiver of this requirement on a case-by-case basis.

<sup>16</sup> Between October 1, 2012, and March 30, 2014, CMS required Level-III certification for all contracts greater than \$50 million. Between March 31, 2014, and September 30, 2016 (changed from September 30, 2014), the Level-III certification threshold was reduced to greater than \$25 million. Effective October 1, 2016, the Level-III certification will be reduced to the Department threshold of greater than \$10 million.

<sup>17</sup> As of March 31, 2014, the value of the FFM contract had increased to \$204 million, of which CMS identified \$203 million as related to the Federal marketplace.

own dollar thresholds and implementation dates but did not request a waiver from the Department's certification requirements. Department personnel stated that the Department did not issue a waiver. CMS said that it expects all Level-III contracting officer's representatives to meet its October 1, 2016, deadline for certification requirements.

### **CMS DID NOT MAINTAIN ADEQUATE DOCUMENTATION OF CONTRACT ACTIONS FOR ALL CONTRACTS**

The personnel responsible for contracting, contract administration, and payment must establish files that contain a record of all contractual actions, and these files must be readily accessible to principal users (FAR, 48 CFR §§ 4.801 and 4.802). Contracting officer's representatives must maintain a file documenting their responsibilities, as designated by the contracting officers, and actions the contracting officer's representatives took to carry out those responsibilities (FAR, 48 CFR § 1.604).

Contracting officers and contracting officer's representatives did not maintain contracting records that included all critical contractor deliverables and performance monitoring and technical documentation used in the management and oversight of Federal marketplace contracts.

During our audit, we requested all documentation related to the 20 contracts selected for review. After our initial review of the documentation provided by CMS, we requested 129<sup>18</sup> routine contract documents that were not provided. These requested documents should have been maintained in either the program files, the contract files, or other files maintained by the program officer, contracting officer, or the contracting officer's representative. The documents should have been prepared by either CMS or its contractors, and those documents should have been available for review promptly. However, after 5 months, CMS had provided all of the documents for 53 of these items, only part of the documents for 33 items, and had not provided documentation for 43 items.

CMS personnel stated that the requested documentation could not be provided because it was not prepared by CMS, not provided by contractors, or had been lost when files were transferred from the Department to CMS in early 2011. CMS stated that it "does not have a record of this document" for many of the documents that it did not provide.

As a result, CMS staff may not have been able to adequately monitor and oversee contractor performance. Also, when a contract is reassigned to a new contracting officer's representative, missing documentation could affect that transition, making oversight of the contract more difficult.

### **CMS MAY NOT HAVE COMPLIED WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ACQUISITION REGULATION AND THE STANDARDS OF ETHICAL CONDUCT**

If a member of a technical evaluation panel has an actual or apparent conflict of interest related to a proposal under evaluation, the individual cannot serve on the panel (HHSAR, 48 CFR

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<sup>18</sup> We initially requested 136 documents; later we agreed that 7 were not required.

§ 315.305 (a)(3)(ii)(D)(1)). The Standards of Ethical Conduct require employees to recuse themselves from a particular matter involving a “covered relationship”<sup>19</sup> (5 CFR 2635.502). Among other things, an employee has a covered relationship with any person “for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee” (5 CFR 2635.502(b)(1)(iv)). However, the agency may evaluate whether the appearance of a conflict of interest due to the covered relationship is outweighed by the benefit that the Government would receive by having the employee participate in the particular matter.

CMS and one of its employees may not have complied with the HHSAR and the Standards of Ethical Conduct when the employee participated in the panel that awarded the FFM contract to CGI Federal. The CMS employee worked for a subcontractor to CGI Federal on a CMS contract before being hired by CMS in November 2010; the panel met in August 2011, less than 12 months later. Information and statements provided by the Department do not establish that the employee disclosed the prior employment relationship or that the potential conflict was reviewed. CMS management said that panel members usually document discussions regarding potential conflicts of interest. However, for this contract, CMS could provide no documentation to support that any discussions of a potential conflict of interest had occurred or that the individual had either cleared to participate or was recused from the panel.

Because CMS could not provide documentation of discussions regarding potential conflicts of interest, we could not determine whether the employee disclosed the prior employment relationship. The CMS deputy ethics counselor stated that he had not been asked to determine whether a violation of the Standards of Conduct existed in this case. Therefore, he did not consider whether the individual should have been allowed to sit on the panel.

An apparent conflict of interest could diminish the integrity of the contract-awarding process if an impartial observer views the contract award as biased toward a specific contractor.

## RECOMMENDATIONS

We recommend that CMS:

- direct contracting officers and contracting officer’s representatives to comply with Federal regulations and contract terms by ensuring that all contract deliverables are received and are used in their management and oversight of the contract;
- direct acquisition personnel not to authorize additional work on contracts until the work is approved by the contracting officer and properly funded;
- direct contracting officers to prepare contractor past-performance evaluations at least annually and at the conclusion of the contract and submit them electronically to CPARS;

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<sup>19</sup> That covered relationship could “cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter” (5 CFR 2635.502(a)).

- direct contracting officers to designate and authorize contracting officer’s representatives in writing and identify their specific duties, responsibilities, and limitations for each contract they manage and oversee;
- provide appropriate training for contracting officer’s representatives to enable them to gain experience and to achieve and maintain their appropriate level of acquisition certification;
- maintain contracting files that adequately document contractor performance and CMS management and oversight of contracts; and
- require all acquisition personnel to disclose their past-employment relationships for purposes of determining their eligibility to participate in making contract award decisions.

### **CMS COMMENTS**

In written comments on our draft report, CMS concurred with our recommendations and described corrective actions it had taken or planned to take to address them.

CMS’s comments are included in their entirety as Appendix D.

CMS also sent technical changes to the draft report under separate cover, and we made changes, as appropriate.

**APPENDIX A: FEDERAL MARKETPLACE CONTRACTS AS OF MARCH 31, 2014**

**Table 1: Contracts and Task Orders Reviewed in Detail**

<b>Award Date<sup>20</sup></b>	<b>Contractor Name</b>	<b>Contract/Task Order Number</b>	<b>Obligations</b>	<b>Expenditures</b>
04/01/2011	Terremark Federal Group Inc.	HHSP233-2011-00177G	\$50,375,124	\$37,686,346
07/06/2011	The Mitre Corporation	HHSP233-2010-00138W	1,975,024	1,899,481
09/30/2011	CGI Federal Inc.	HHSM500-2007-00015I T0012	203,454,453	194,594,993
09/30/2011	Quality Software Services Inc.	HHSM500-2007-00024I T0007	99,658,836	77,887,450
01/27/2012	Science Applications International	HHSM500-2007-00020I T0001	10,870,013	6,467,867
02/06/2012	The Mitre Corporation	HHSM500-2009-00021U	2,761,533	2,649,112
04/03/2012	Quality Software Services Inc.	HHSP233-2010-00588G	199,364	35,848
04/15/2012	CGI Federal Inc.	HHSM500-2010-00157G	11,022,422	11,009,575
04/24/2012	DEDE Inc. dba Genova Technologies	HHSM500-2012-00021B B0003	7,579,256	6,628,929
06/01/2012	The Mitre Corporation	HHSM500-2011-00014U	550,000	535,997
06/07/2012	CGI Federal Inc.	HHSM500-2007-00015I T0011	7,922,182	6,661,855
06/14/2012	Quality Software Services Inc.	HHSM500-2007-00024I T0010	38,510,666	17,290,327
08/15/2012	Quality Software Services Inc.	HHSM500-2007-00024I T0008	41,684,784	12,074,891
09/17/2012	CGI Federal Inc.	HHSM500-2007-00015I T0007	20,928,862	15,928,862
09/26/2012	The Mitre Corporation	HHSM500-2011-00036U	6,477,310	6,153,688
09/27/2012	IDL Solutions Inc.	HHSM500-2007-00023I T0001	31,770,557	13,793,360
09/27/2012	DEDE Inc. dba Genova Technologies	HHSM500-2012-00021B B0013	6,390,739	4,963,816
04/08/2013	CGI Federal Inc.	HHSM500-2013-00236G	12,648,328	11,397,274
09/20/2013	The Mitre Corporation	HHSM500-2012-00008I T0015	5,591,641	2,295,660
01/03/2014	Accenture Federal Services LLC	HHSM500-2014-00191C	45,000,000	-
<b>Total – 20 Contracts and Task Orders Reviewed in Detail</b>			<b>\$605,371,094</b>	<b>\$429,955,331</b>

<sup>20</sup> Dates are the contract award date or, for preexisting contracts, the date of the first contract modification related to the Federal marketplace.

**Table 2: Contracts and Task Orders Not Reviewed in Detail**

<b>Award Date</b>	<b>Contractor Name</b>	<b>Contract/Task Order Number</b>	<b>Obligations</b>	<b>Expenditures</b>
05/20/2011	DEDE Inc. dba Genova Technologies	HHSM500-2005-00001B B0018	\$3,266,077	\$3,156,044
07/25/2011	Heitech Services Inc.	HHSM500-2011-00027U	1,424,380	1,396,872
08/12/2011	Innosoft Corporation	HHSM500-2011-00071C	2,103,114	1,464,777
05/15/2012	Turningpoint Global Solutions LLC	HHSM500-2012-00008	5,748,814	4,401,116
06/08/2012	DEDE Inc. dba Genova Technologies	HHSM500-2012-00021B B0006	1,110,327	1,110,327
06/08/2012	Carahsoft Technology Corp.	HHSM500-2013-00249G	238,349	238,349
07/03/2012	Heitech Services Inc.	HHSM500-2012-00074G	3,781,653	2,779,532
07/15/2012	Spherecom Enterprises Inc.	HHSM500-2011-00001B B0003	2,941,411	2,088,031
07/18/2012	Northrop Grumman Information	HHSM500-2007-00014I T0006	2,911,828	2,648,239
08/02/2012	Lockheed Martin Services Inc.	HHSM500-2009-00002U	19,724,700	17,273,184
08/02/2012	Creative Computing Solutions Inc.	HHSM500-2012-00097G	11,972,974	9,184,566
08/02/2012	Government Acquisitions Inc.	HHSM500-2012-00014U	3,442,756	3,442,756
08/08/2012	Onix Network Corp.	HHSM500-2012-00103G	44,340	44,340
08/31/2012	Deloitte Consulting LLP	HHSM500-2012-00016G	670,486	670,486
09/07/2012	Quality Technology Inc.	HHSM500-2012-00123G	13,199,916	11,298,782
09/11/2012	Spherecom Enterprises Inc.	HHSM500-2011-00001B B0001	1,436,417	684,095
09/14/2012	Booz Allen & Hamilton Inc.	HHSM500-2011-00011B B0003	12,498,850	8,140,831
09/18/2012	Global Tech Inc. dba Eglobaltech	HHSM500-2012-00154G	1,307,031	951,671
09/21/2012	Fedresults Inc.	HHSM500-2012-00038G	3,801,526	3,801,526
09/24/2012	Corporate Executive Board	HHSM500-2012-00186G	373,474	373,474
09/25/2012	Blast Design Studios Inc.	HHSM500-2012-00080C	197,635	197,635
09/26/2012	L and M Policy Research LLC	HHSM500-2010-00015I T0002	1,494,238	580,000
02/27/2013	Maricom System Incorporated	HHSM500-2007-00025I T0005	14,393,226	5,172,849
03/13/2013	DEDE Inc. dba Genova Technologies	HHSM500-2012-00021B B0007	674,192	674,192
03/28/2013	Protelecom LLC	HHSM500-2009-00005I T0014	65,500	65,500
04/15/2013	Scope Infotech Inc.	HHSM500-2013-00109C	1,094,967	1,003,720
05/03/2013	Global Tech Inc. dba Eglobaltech	HHSM500-2013-00046U	2,349,754	1,083,267
05/15/2013	DEDE Inc. dba Genova Technologies	HHSM500-2012-00021B B0008	3,627,003	2,115,837

<b>Award Date</b>	<b>Contractor Name</b>	<b>Contract/Task Order Number</b>	<b>Obligations</b>	<b>Expenditures</b>
06/07/2013	Carahsoft Technology Corp.	HHSM500-2012-00066G	39,979	39,979
06/12/2013	Global Tech Inc. dba Eglobaltech	HHSM500-2013-00052U	2,405,205	1,125,578
06/20/2013	DEDE Inc. dba Genova Technologies	HHSM500-2012-00021B B0019	1,642,651	907,707
06/21/2013	HP Enterprise Services LLC	HHSM500-2013-00014I T0003	77,561,786	26,513,046
08/01/2013	Heitech Services Inc.	HHSM500-2013-00275G	3,655,525	599,801
08/15/2013	Blue Canopy Group LLC	HHSM500-2013-00054U	1,159,863	99,602
09/03/2013	Blast Design Studio Inc.	HHSM500-2013-00153C	392,700	196,350
09/12/2013	Protelecom LLC	HHSM500-2009-00005I T0015	53,490	20,422
09/13/2013	Aquilent Inc.	HHSM500-2013-00074U	14,505,811	5,080,022
09/20/2013	DEDE Inc. dba Genova Technologies	HHSM500-2012-00021B B0020	1,302,384	-
09/25/2013	Spann & Associates Inc.	HHSM500-2013-00334G	3,000,000	-
11/22/2013	Global Tech Inc. dba Eglobaltech	HHSM500-2014-00083U	1,975,916	740,968
12/30/2013	Four LLC	HHSM500-2014-00347G	4,850,000	4,850,000
12/31/2013	Affigent LLC	HHSM500-2014-00087U	1,928,431	1,928,431
<b>Total - 42 Contracts and Task Orders Not Reviewed in Detail</b>			<b>\$230,368,679</b>	<b>\$128,143,904</b>
<b>Grand Total</b>			<b>\$835,739,773</b>	<b>\$558,099,235</b>



## **APPENDIX B: FEDERAL REGULATIONS**

### **STANDARDS OF ETHICAL CONDUCT**

#### **5 CFR § 2635.502, Impartiality in Performing Official Duties—Personal and Business Relationships**

This section contains a provision intended to ensure that an employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties. An employee who was an employee of a specific party within the last year should not participate in a matter involving the specific party if he or she determines that a reasonable person with knowledge of the relevant facts would question his or her impartiality in the matter.

### **FEDERAL ACQUISITION REGULATION**

#### **The FAR, 48 CFR § 1.602, General Information About the Authority and Responsibilities of Contracting Officers**

This section describes the authority and responsibilities of contracting officers that are received from the appointing authority, including limitations of their authority.

#### **The FAR, 48 CFR § 1.604, General Information About Contracting Officer's Representatives**

This section describes the role of the contracting officer's representative and outlines documentation requirements related to the delegation of authority received from the contracting officer.

#### **The FAR, 48 CFR subpart 4.8, Government Contract Files**

This subpart prescribes the requirements for establishing, maintaining, and disposing of contract files.

#### **The FAR, 48 CFR part 42.15, Contract Administration and Audit Services**

This part describes the policies and procedures for assigning and performing contract administrative functions, including the responsibilities for recording and maintaining contractor past-performance evaluations in CPARS.

#### **The FAR, 48 CFR § 43.102, General Information About Contract Modifications**

This section describes the contracting officer's role in executing contract modifications and stipulates that other Government personnel do not have the authority to execute contract modifications or ask contractors to perform additional work.

## **HHS ACQUISITION REGULATION**

### **The HHSAR, 48 CFR subpart 342.70, Contract Monitoring**

This subpart identifies the Department's operating concepts related to contract monitoring and describes the joint duties and responsibilities of the contracting officer and the contracting officer's representative.

### **The HHSAR, 48 CFR § 342.7001, Contract Monitoring Responsibilities**

The contracting officer works with the contracting officer's representative to ensure satisfactory contractor performance and validates the completeness of the contractor invoice before payment. This section identifies the responsibilities of the contracting officer and the contracting officer's representative to monitor contracts. The contracting officer is the only person authorized to modify the contract and must confirm all modifications in writing.

### **The HHSAR, 48 CFR subpart 315.3, Source Selection**

This subpart requires technical evaluation panel members to disclose actual or apparent conflicts of interest. When the conflict of interest cannot be resolved, the individual cannot serve on the panel.

## **OFFICE OF MANAGEMENT AND BUDGET MEMORANDUMS**

### **Federal Acquisition Certification for Contracting Officer's Technical Representatives, November 26, 2007**

This memorandum established Governmentwide standards for training leading to the fulfillment of core competencies in a variety of acquisition-related disciplines. Also, the memorandum authorized the development of a certification program for selected contracting personnel, including contracting officer's technical representatives and contracting officer's representatives. Further, the policy letter authorized the development of refresher training requirements for contracting officer's representatives to achieve certain competencies for certification and maintain their certification through continuous education.

### **Revisions to the Federal Acquisition Certification for Contracting Officer's Representatives, September 6, 2011**

This memorandum revised the November 26, 2007, memorandum to include all acquisition personnel who ensure proper development of contract requirements and those who assist the contracting officer in managing contracts. Further, it established a three-tiered acquisition certification requirement for these acquisition personnel.

## **THE DEPARTMENT MEMORANDUM**

### **Acquisition Policy Memorandum 2012-02, “Federal Acquisition Certification for Contracting Officer’s Representatives (FAC-COR),” January 25, 2012**

This policy memorandum revised Department policy to establish a risk-based, three-tiered acquisition certification program for contracting officer’s representatives. The term “contracting officer’s technical representative” was changed to “contracting officer’s representative” to align with the FAR. Both this memorandum and the FAR incorporate a definition for contracting officer’s representative and include the designation of a contracting officer’s representative as part of a contracting officer’s responsibilities.

The three levels of certification are based on a combination of required experience, contract type and complexity, knowledge, minimum core training, and total contract value. Level-I certification requires no experience and is appropriate for low-risk contracts that do not exceed \$25,000. Level-II certification requires 1 year of experience as a contracting officer’s representative and is appropriate for contracts of moderate to high complexity that have a value between \$25,000 and \$10 million. Level-III certification requires 2 years of experience and is appropriate for highly complex, mission-critical contracts that exceed \$10 million.

## APPENDIX C: AUDIT SCOPE AND METHODOLOGY

### SCOPE

We reviewed the 62 contracts CMS identified as awarded to 35 different contractors from March 23, 2010, through March 31, 2014 (the audit period), for the development, implementation, and operation of the Federal marketplace, including the Web site, the Hub, and other related computer systems, to implement the comprehensive health insurance reforms required by the ACA. We identified 20 of the 62 contracts as critical to the development, implementation, and operation of the Federal marketplace on the basis of the contract purpose and dollar value. These 20 contracts accounted for 72 percent of the contract obligations for the Federal marketplace. We limited our detailed analysis to these 20 contracts, including CMS management and oversight of contractor performance, the authorization and certification of contracting officer's representatives, and the adequacy of contract documentation.

For the audit period, CMS identified \$2.1 billion that had been obligated and \$1.7 billion that had been expended on these contracts, of which it estimated that \$835.7 million had been obligated and \$558.1 million had been expended in support of Federal marketplace projects. For the 20 contracts we reviewed, CMS obligated \$605.4 million (72 percent) and expended \$430.0 million (77 percent).

We limited our review of internal controls to those in place for CMS management and oversight of contractor performance and monitoring of contractors because our objectives did not require an understanding of all internal controls over the CMS processes related to Federal marketplace contracts.

We conducted our audit from January through November 2014 and performed fieldwork at CMS in Baltimore, Maryland.

### METHODOLOGY

To accomplish our objectives, we:

- reviewed applicable laws, regulations, and guidance pertaining to the CMS management and oversight of contractor performance and monitoring of contractors;
- reviewed the 62 contracts, including the statements of work, contract clauses, and contract modifications to identify the contract purpose, type, and period of performance;
- interviewed contracting and program office management personnel to identify policies and procedures used by contracting personnel to supervise and monitor contracts and contractor performance;
- identified and reviewed 20 contracts critical to the development, implementation, and operation of the Federal marketplace and
  - determined whether contracts identified adequate contract performance monitoring requirements, particularly one-time or periodic deliverables;

- determined whether contracting officers and contracting officer’s representatives adequately managed and oversaw contractor performance, particularly identifying potential and actual contractor delays;
- determined whether contractors submitted and contracting officer’s representatives adequately reviewed contract performance and technical deliverables, including monthly performance status reports, to prevent delays in the Federal marketplace contracts;
- determined whether any additional performance-related requirements were completed in accordance with the contract or task order;
- determined whether contracting officers and contracting officers’ representatives maintained pertinent documentation during the life of the contract that documented contract management and oversight;
- interviewed selected program officers, contracting officers, and contracting officer’s representatives to determine whether CMS provided adequate management and oversight of the 20 contracts selected for review;
- reviewed contracting officer’s representatives’ certifications to ensure that they were assigned to contracts commensurate with their experience, training, and level of certification; and
- discussed the results of our review with CMS officials.

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.

## APPENDIX D: CMS COMMENTS



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

200 Independence Avenue SW  
Washington, DC 20201

**To:** Daniel R. Levinson  
Inspector General  
Office of the Inspector General

JUL 21 2015

**From:** Andrew M. Slavitt  
Acting Administrator  
Centers for Medicare & Medicaid Services

**Subject:** CMS Did Not Always Manage and Oversee Contractor Performance for the Federal Marketplace as Required by Federal Requirements and Contract Terms (A-03-14-03001)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the Office of Inspector General's (OIG) draft report. CMS is committed to providing effective management and oversight of contracts including those for the Health Insurance Marketplaces, thereby acting as a good steward of taxpayer dollars.

The Marketplaces play a critical role in achieving one of the Affordable Care Act's (ACA) core goals: reducing the number of uninsured Americans by providing affordable, high-quality health insurance. During Open Enrollment for 2015, about 11.7 million Americans selected plans through the Marketplaces. On March 31, 2015, about 10.2 million consumers had "effectuated" coverage which means those individuals paid for Marketplace coverage and still have an active policy on that date. Nearly 8.7 million consumers (85 percent) nationwide and 6.4 million consumers in the 34 states with Federally-facilitated Marketplaces received an average premium tax credit of \$272 per month to make their premiums more affordable throughout the year.

CMS is committed to improving the management of the Marketplace to ensure that this investment will serve consumers for years to come. Since the OIG conducted their review, CMS has implemented several initiatives to improve the management of Marketplace contracts focusing on clear lines of authority, prioritization of requirements and deliverables, and metric-driven quality reviews. These include implementing a strong management structure, which focuses priorities and provides clear direction, adopting a strict process for reviewing and approving all Marketplace requirements, and designating specific staff that is responsible for coordination and integration among CMS and various contractors. In addition, CMS has issued formal guidance that lays out the roles and responsibilities for each member of the acquisition workforce community, and has established a standardized Contracting Officer Representative (COR) Appointment Memorandum that will provide CORs, and their managers, with better guidance about their respective acquisition team roles and responsibilities. CMS is in the process

of developing a COR Manual, which contain templates, guidance, samples, and information that will help CORs to perform their assigned duties.

### **OIG Recommendation**

The OIG recommends that CMS direct contracting officers and contracting officer's representatives to comply with Federal regulations and contract terms by ensuring that all contract deliverables are received and are used in their management and oversight of the contract.

### **CMS Response**

CMS concurs with this recommendation. CMS already requires contract deliverables to track continued performance and mitigate the need for additional funding. This continuous oversight helps limit any unanticipated costs that may arise. Since the OIG conducted their review, CMS now requires greater collaboration and coordination with its contractors, increasing the number and frequency of contract deliverables, and instituting value measures to more effectively monitor cost control within contracts.

### **OIG Recommendation**

The OIG recommends that CMS direct acquisition personnel not to authorize additional work on contracts until the work is approved by the contracting officer and properly funded.

### **CMS Response**

CMS concurs with this recommendation. In October of 2014, CMS issued a standardized COR Appointment Memorandum that provides CORs with better guidance with respect to their authority. In addition, CMS published the Acquisition Roles and Responsibilities in November 2014 that defines the foundational roles and responsibilities for acquisition workforce members and clearly delineates that only the contracting officer can make changes to the terms and conditions of the contract and direct the contractor to perform work or make deliveries not specifically required under the contract.

### **OIG Recommendation**

The OIG recommends that CMS direct contracting officers to prepare contractor past-performance evaluations at least annually and at the conclusion of the contract and submit them electronically in CPARS.

### **CMS Response**

CMS concurs with this recommendation. In 2013, the Office of Federal Procurement Policy set a goal of having HHS report past performance information on awards in 80 percent of cases by the end of 2014. At the end of FY2014, CMS' percentage of completed performance assessments for contracts awarded was 81 percent. CMS is continuing to improve and as of June 26, 2015, its percentage of completed performance assessments was 91 percent.

### **OIG Recommendation**

The OIG recommends that CMS direct contracting officers to designate and authorize contracting officer's representatives in writing and identify their specific duties, responsibilities, and limitations for each contract they manage and oversee.

### **CMS Response**

CMS concurs with this recommendation and is working with its acquisition personnel to ensure there is a clear understanding of roles and responsibilities. In October of 2014, CMS formalized a standard COR Appointment Memorandum, which designates the COR on each contract. In addition, the new COR Appointment Memorandum provides the CORs with better guidance with respect to their responsibilities. The new COR Appointment Memorandum is now issued on each active CMS contract. In addition, CMS published an Acquisition Roles and Responsibilities guidance document and disseminated it to CMS staff through an Acquisition news message in November 2014. This document lays the foundational roles and responsibilities for all acquisition workforce members.

### **OIG Recommendation**

The OIG recommends that CMS provide appropriate training for contracting officer's representatives to enable them to develop experience and to achieve and maintain their appropriate level of acquisition certification.

### **CMS Response**

CMS concurs with this recommendation. CMS offers extensive training to enable CORs to obtain and maintain their Federal Acquisition Certification-Contracting Officers Representatives (FAC-COR) certifications. CMS is committed to improving the training for its acquisition personnel and recently established a performance goal to increase the number of acquisition professionals who have FAC-COR certifications. As of June 29, 2015, CMS had 388 CORs with FAC-COR Level III certifications. CMS established a goal that by April 2016 it will increase the number of FAC-COR Level III certification levels by 15%. In addition, CMS has established a COR Community of Practice for sharing lessons learned and best practices.

### **OIG Recommendation**

The OIG recommends that CMS maintain contracting files that adequately document contractor performance and CMS management and oversight of contracts.

### **CMS Response**

CMS concurs with this recommendation. CMS has standard file documentation checklists that are used by all contract specialists to organize their file documentation. Additionally, the COR Appointment Memo contains a section that addresses the need to maintain a working contract file and identifies the minimum content for the COR file. CMS is in the process of developing a COR Manual, which will contain templates, guidance, samples, and information that will help CORs to perform their assigned duties.

### **OIG Recommendation**

The OIG recommends that CMS require all acquisition personnel to disclose their past-employment relationships for purposes of determining their eligibility to participate in making contract award decisions.

### **CMS Response**

CMS concurs with this recommendation. CMS provides numerous opportunities to inform staff of ethics issues, including a session at the New Employee Orientation followed by an additional on-line training module, required annual online trainings, in-person sessions at management



trainings and on-on-one consultations. These trainings identify when an employee must disclose, mitigate, or resolve any conflicts of interest. Employees who retain a “cooling off period” with personal and/or business relationships with non-federal parties in accordance with 5 CFR 2635.502 are identified and addressed during New Employee Orientation. Additionally, CMS conducts online and one-on-one training for managers to ensure that employees are properly designated as confidential financial disclosure filers.

In addition to general ethics requirements of all CMS employees, CMS uses a Nondisclosure/Conflict of Interest form for all acquisition staff participating on technical evaluation panels (TEPs), which evaluate contractor proposals. By completing the nondisclosure form, TEP members certify that they have no conflicts of interest and certify that they understand the rules of ethical conduct.