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Washington, DC 20548

September 18, 2014

The Honorable Tim Murphy
Chairman
The Honorable Diana DeGette
Ranking Member
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
House of Representatives

Subject: *Healthcare.gov Contracts: Responses to Questions for the Record*

On July 31, 2014, we testified before your subcommittee on contract planning and oversight practices related to Healthcare.gov contracts.¹ Members of the subcommittee subsequently requested that we provide responses to a number of post hearing questions. The questions and our responses are provided in the enclosure. The responses are based on work associated with previously issued GAO products. We conducted this work in accordance with generally accepted government auditing standards.

If you have any questions about this letter or need additional information, please contact me at (202) 512-4841 or woodsw@gao.gov.

A handwritten signature in black ink that reads "W. T. Woods". The signature is written in a cursive, flowing style.

William T. Woods
Director
Acquisition and Sourcing Management

Enclosure

¹ GAO, *Healthcare.gov: Contract Planning and Oversight Practices Were Ineffective Given the Challenges and Risks*, GAO-14-824T, (Washington, D.C.: July 31, 2014).

Enclosure: GAO Responses to Questions for the Record from House Energy and Commerce Committee, Subcommittee on Oversight and Investigations

The Honorable Tim Murphy

Question 1. You mentioned during the hearing that only one person within CMS has the authority to change the contract in a manner that increases the government's obligation, a contracting officer. Who is that person?

Response: The Federal Acquisition Regulation provides that the contracting officer is the only person authorized to change the terms and conditions of the contract. It also states that other government personnel shall not direct the contractor to perform work that should be the subject of a contract modification. Large agencies such as the Department of Health and Human Services often have hundreds of contracting staff, including contracting officers, to help manage procurements. In fact, HHS reported having over 1,000 contracting staff in 2014. A contracting officer is typically a career federal employee with authority to award and administer contracts up to specified dollar values, depending on the contracting officer's level of training and experience. For the contract and two task orders we reviewed, three individuals were assigned contracting officer responsibilities during the period of performance we reviewed. Each of the contracting officers was from the Information Technology Contracts Group within CMS's Office of Acquisition and Grants Management. We would be pleased to brief committee staff, if additional details are needed.

Question 1a. You mentioned that other individuals, who were not authorized, made these authorizations in the mentioned 40 instances instead of the contracting officer. Please provide the committee with what changes were authorized and who made each authorization.

Response: According to contract file documents, the contractor identified 40 instances in which CMS staff approved additional items or changes within the federally facilitated marketplace (FFM). According to contractor documents, the 40 instances included changes that resulted in additional work for the following:

- eligibility and enrollment module
- plan management module
- project support
- authorizations for software licenses.

We would be pleased to provide additional details if needed. These changes were approved by staff in CMS' Office of Information Services, Center for Consumer Information and Insurance Oversight, and Office of Communications. The CMS contracting officer ultimately determined that this work was necessary and within the general scope of the task order, although the costs of the activities went beyond the estimated cost amount established in the order, thus requiring a task order modification.

Question 1b. If someone gave these individuals authority to make these decisions, who was that?

Response: To our knowledge, no one at CMS authorized anyone who was not a contracting officer to change contract terms and conditions. As noted in our report, however, CMS program officials described difficulties clarifying oversight responsibilities in organizations that were new to CMS. Program responsibilities were shared between CMS' Center for Consumer Information and Insurance Oversight (CCIIO), which was primarily responsible for developing business requirements, and the information technology staff in the Office of Information Service (OIS), where the government task leader and contracting officer's representative were located. CCIIO was relatively new to CMS, having been created shortly before the FFM and data hub task orders were issued. OIS program officials explained that CCIIO was not as experienced with CMS's organization and did not strictly follow their processes, including for oversight. CMS documents show that there were concerns about inappropriate authorizations identified in late 2012, as officials in the OIS acquisition group had repeatedly cautioned other OIS and CCIIO staff about inappropriately directing contractors. In April 2013, shortly after the inappropriate authorizations and related cost increases for the FFM and data hub task orders were identified, a senior contracting official at CMS sent instructions on providing technical directions to contractors to the program offices that had been involved in the authorizations and to CMS directors in general. Specifically, the program offices were reminded to avoid technical direction to contractors—particularly when there is an immediate need for critical functions—which might constitute unauthorized commitments by the government. Our report recommended that CMS formalize existing guidance on the roles and responsibilities of contracting officer representatives and other personnel assigned contract oversight duties, such as government task leaders, and specifically indicate the limits of those responsibilities in terms of providing direction to contractors. CMS concurred with this recommendation and said it is currently working to formalize existing guidance.

The Honorable Michael C. Burgess

Question 1. In your report, as the October 1, 2013, deadline for establishing enrollment through the website neared, CMS identified significant performance issues involving the Facilitated Federal Marketplace (FFM) contractor. But the agency took over only limited steps. Please provide the committee with the correspondence, evidence, and documents you relied upon to come to that conclusion, to make that statement.

Response: GAO's finding regarding the steps CMS took to address contractor performance issues is based on a variety of sources, specifically:

- A letter that CMS contracting officials sent to the contractor in August 2013, which was later withdrawn.
- A series of letters exchanged between CMS and the contractor in November 2013.
- CMS documents reflecting decisions not to pay any fee requested by the contractor for what CMS regarded as "re-work,"

We can make these documents available to the committee following the conclusion of our ongoing engagements. Meanwhile, we would be pleased to brief committee staff, if additional details are needed.

The Honorable Diana DeGette

Question 1. Please provide the committee with the files you referred to during the hearing that indicate that people within the agency knew that the website would not work on October 1.

Response: During the subcommittee's hearing on July 31, 2014, GAO noted that CMS had knowledge that the system would not be fully complete by October 1, 2013. In March 2013, CMS realized that more time would be needed to develop the FFM and data hub, which were originally intended to be complete by September 2013. CMS decided to extend the period of performance of the task orders until February 2014, because officials estimated that only 65 percent of the requirements included in the FFM statement of work—and 75 percent of the requirements in the data hub statement of work—would be completed before October 1, 2013. Recognizing that neither the FFM nor the data hub would function as originally intended by the beginning of the initial enrollment period, CMS made trade-offs in an attempt to provide necessary system functions by the October 1, 2013, deadline. Specifically, CMS prioritized the elements of the system needed for the launch, such as the FFM eligibility and enrollment module, and postponed the financial module, which would not be needed until post enrollment. While CMS knew that the system would not be fully complete by the October 1, 2013 deadline and that system development and testing activities were not yet complete, we do not have evidence that CMS knew the system was insufficiently functional to launch.

We can make the evidentiary documents available to the committee following the conclusion of our ongoing engagements. Meanwhile, we would be pleased to brief committee staff, if additional details are needed.

Question 2. Please explain how the quality assurance surveillance plans and other oversight documents can be effectively used to monitor performance.

Response: Oversight documents such as a quality assurance surveillance plan ensure that agencies use systematic quality assurance methods to provide for government oversight of the quality, quantity, and timeliness of contractor performance. Quality assurance surveillance plans enhance an agency's ability to monitor performance by establishing metrics that are agreed upon by the agency and the contractor. The plans also outline roles and responsibilities, key measures to be assessed, the surveillance methods used to monitor performance and the process for accepting contractor deliverables. Ultimately, the quality assurance surveillance plan provides a means for evaluating whether the contractor is meeting the performance standards at the quality levels needed to fulfill contract requirements. The Federal Acquisition Regulation requires that contract quality assurance be performed as may be necessary to determine that the supplies or services conform to contract requirements.

The Honorable G.K. Butterfield

Question 1. Mr. Woods, the testimony offered by Mr. Slavitt described a number of new planning and oversight changes implemented by Secretary Burwell.

Question 1a. Are these improvements in line with the recommendations provided by GAO?

Response: Mr. Slavitt described CMS' plans to better manage the marketplace in part by implementing changes to enhance communications with contractors, better define requirements, and use of metrics-driven contract reviews. Such actions are in line with our recommendations. Specifically, in the response to our draft report, CMS concurred with four of our five recommendations, and partially concurred with the last recommendation, all aimed at improving the management of the marketplace. CMS partially concurred with our recommendation that CMS assess the causes of continued cost growth for the FFM contract. In their response to our draft report, CMS explained that it had already assessed the reasons for cost growth under the first FFM task order and that any increase in costs in the later contract was attributable to additional requirements, not cost overruns. GAO recognized that much, but not all, of the cost increase is due to new requirements or enhancements and we continue to believe a further assessment is needed.

CMS noted its efforts to address the remaining recommendations, including better enforcing policies and improving strategies to monitor contractor performance, formalizing guidance and improving training regarding responsibilities for providing directions to contractors, ensuring program managers understand their responsibilities for creating acquisition strategies, and adopting a governance structure to oversee development. GAO will follow and report on CMS' progress in addressing these recommendations through our ongoing recommendation review process.

Question 1b. As CMS continues to improve oversight of contractors and their responsibilities, what tangible benefits can consumers expect to see?

Response: If CMS successfully implements our recommendations to improve contractor oversight, such as ensuring the use of quality assurance surveillance plans, CMS should improve its ability to identify and mitigate risks that can result in cost, schedule, and performance issues. For example, use of quality assurance surveillance plans and other oversight tools such as timely governance reviews can help CMS use defined metrics to detect contractor performance issues at early stages. Such actions could allow CMS time to take corrective actions, such as withholding contractor fee if needed and make cost, schedule, or program performance changes to better ensure that program requirements and intended system functionality are delivered. In turn, this should improve the experience for consumers that use the Healthcare.gov website.

Question 1c. The Congressional Budget Office has already updated projections and indicated the cost of implementing the ACA is less than expected. As CMS continues to strengthen its oversight of contractors, can you describe potential areas of additional savings?

Response: CMS concurred with our recommendations to improve contractor oversight, which will contribute to its ability to ensure that requirements for remaining contracts are delivered at the expected costs, on time, and with the expected level of performance. GAO's prior work has shown that effective management can improve project results, including the avoidance of cost increases and schedule delays. For example, when requirements are well understood, agencies are in a better position to estimate costs and schedules more accurately. For remaining contracts, such information would enable CMS to develop more reasonable estimates and make better tradeoffs between cost and requirements.