

**Department of Health and Human Services**

**OFFICE OF  
INSPECTOR GENERAL**

**FEDERAL MARKETPLACE:  
INADEQUACIES IN CONTRACT  
PLANNING AND PROCUREMENT**



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# Office of Inspector General

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## **EXECUTIVE SUMMARY: FEDERAL MARKETPLACE: INADEQUACIES IN CONTRACT PLANNING AND PROCUREMENT**

**OEI-03-14-00230**

### **WHY WE DID THIS STUDY**

The Federal Marketplace at HealthCare.gov was designed to enable millions of Americans to select health insurance in a “one-stop shop” environment. A project of this magnitude and complexity required the development, integration, and operation of multiple information technology (IT) systems and Government databases. The Centers for Medicare & Medicaid Services’ (CMS) acquisition planning and procurement activities were among the first steps critical to ensuring the success of this project. CMS awarded 60 contracts across 33 companies to perform this work. The troubled launch of the Federal Marketplace at HealthCare.gov in October 2013 raised a number of concerns, including questions about the adequacy of CMS’s planning and procurement efforts for this key project under the Affordable Care Act.

### **HOW WE DID THIS STUDY**

We conducted a detailed review of documentation provided by CMS for the 60 Federal Marketplace contracts; selected 6 key contracts for indepth review; and interviewed Department of Health and Human Services (HHS) and CMS officials involved with contracting for the Federal Marketplace. We also reviewed procurement regulations, manuals, guides, and procedures provided by both HHS and CMS for acquisition planning, contractor selection, and contracting oversight processes.

### **WHAT WE FOUND**

When awarding the Federal Marketplace contracts, CMS did not always meet contracting requirements. For example, CMS did not develop an overarching acquisition strategy for the Federal Marketplace or perform all required oversight activities. Moreover, for a project of this size and importance, CMS missed opportunities to leverage all available acquisition planning tools and contracting approaches to identify and mitigate risks. Specifically, CMS did not exercise the option to plan for a lead systems integrator to coordinate all contractors’ efforts prior to the launch of the Federal Marketplace. The complexity of the Federal Marketplace underscored the need for CMS to select the most qualified contractors. However, CMS did not perform thorough reviews of contractor past performance when awarding two key contracts. CMS also made contracting decisions that may have limited the number of acceptable proposals for much of the key Federal Marketplace work. In addition, CMS selected contract types that placed the risk of cost increases for this work solely on the Government.

### **WHAT WE RECOMMEND**

We recommend that (1) CMS ensure that acquisition strategies are completed as required by regulation, (2) CMS assess whether to assign a lead systems integrator for complex IT projects, (3) CMS ensure contract actions are properly documented, (4) CMS ensure that all contracts subject to oversight review requirements undergo those reviews, (5) HHS limit or eliminate regulatory exceptions to acquisition planning requirements, and (6) HHS revise its acquisition guidance to include specific standards for conducting past performance reviews. HHS and CMS concur with all of our recommendations.

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## OBJECTIVES

1. To determine what acquisition planning activities were performed for the Federal Marketplace at HealthCare.gov (hereinafter referred to as the Federal Marketplace).
2. To determine whether required procurement oversight activities were performed for Federal Marketplace contracts.
3. To describe the procurement process for selecting the contractors for the implementation of the Federal Marketplace.
4. To determine the extent to which past performance reviews were conducted when selecting contractors for the Federal Marketplace.
5. To review the estimated values developed at the time of award for Federal Marketplace contracts.

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## BACKGROUND

### **Federal Marketplace**

The Patient Protection and Affordable Care Act (ACA) required the establishment of a health insurance exchange (marketplace) in each State.<sup>1, 2</sup> A marketplace is designed to serve as a “one-stop shop” where individuals can obtain information about health insurance options, determine eligibility for qualified health plans and insurance affordability programs, and select the plan of their choice.<sup>3</sup> Appendix A provides a glossary of selected terms used in this report.

For States that elect not to establish their own marketplaces, the Federal Government is required to operate a marketplace on behalf of the State. As of October 1, 2013, CMS operated the Federal Marketplace for

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<sup>1</sup> P.L. No. 111-148, §§ 1311(b), 1321(c) (March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, P.L. No. 111-152 (March 30, 2010).

<sup>2</sup> Centers for Medicare & Medicaid Services (CMS), *Creating a New Competitive Health Insurance Marketplace*. Accessed at

<http://www.cms.gov/CCIIO/Resources/Marketplace-Grants/> on June 26, 2014. The ACA uses the term “exchanges” to refer to State and Federal competitive marketplaces for insurance. However, CMS now uses the term “marketplaces” to refer to these exchanges.

<sup>3</sup> Qualified health plans are private health insurance plans that each marketplace recognizes and certifies as meeting certain standards and covering a core set of benefits.

36 States—29 States that use the Federal Marketplace and 7 State-partnership marketplaces.<sup>4,5</sup>

Upon the launch of the Federal Marketplace in October 2013, consumers experienced difficulties navigating the Federal Marketplace at HealthCare.gov. The Secretary of Health and Human Services (the Secretary) described the consumer experience with the Federal Marketplace as “not acceptable,” and stated that some contractors selected to build the Federal Marketplace had not met expectations.<sup>6</sup>

In February 2014, CMS identified 60 contracts that were awarded to support the development and operation of the Federal Marketplace.<sup>7</sup> An OIG report published in August 2014 found that CMS had obligated nearly \$800 million for the Federal Marketplace under these contracts and paid \$500 million as of February 2014.<sup>8,9</sup>

### **HHS Offices Responsible for Federal Marketplace Contracting**

Once the ACA was signed into law, HHS established the Office of Consumer Information and Insurance Oversight (OCIO) within the Office of the Secretary in April 2010. In January 2011, HHS moved OCIO to CMS, making CMS the lead agency tasked with implementing the Federal Marketplace. The Center for Consumer Information and Insurance Oversight (CCIO, formerly OCIO) within CMS oversees the implementation of the ACA’s provisions related to private health insurance. For the Federal Marketplace, CCIO focused on developing policies and regulations, such as defining the criteria consumers need to meet to be eligible for health insurance premium tax credits.

CMS’s Office of Information Services (OIS) ensures the effective management of CMS’s information technology (IT), and information systems and resources. Within OIS, contracting officers’ representatives monitor contractors’ technical progress, provide technical direction, and perform technical evaluations. OIS focused on the technical development

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<sup>4</sup> In a “State-partnership marketplace,” HHS and the State share responsibilities for core functions.

<sup>5</sup> Fifteen States (including the District of Columbia) operated their own State-based marketplaces.

<sup>6</sup> Hearing before the U.S. House Committee on Energy and Commerce, 113th Congress, *Affordable Care Act Implementation*, October 30, 2013. Statement of Kathleen Sebelius, HHS Secretary.

<sup>7</sup> We use the term “contracts” to collectively refer to new contracts, as well as task, delivery, and call orders placed under previously established contracts.

<sup>8</sup> An obligation is a definite commitment that creates a legal liability of the Federal Government for the payment of goods and services ordered or received. An obligation is incurred, for example, when a contract is signed or an order is placed for goods and/or services.

<sup>9</sup> OIG, *An Overview of 60 Contracts That Contributed to the Development and Operation of the Federal Marketplace*, OEI-03-14-00231, August 2014.

of the Federal Marketplace, including working directly with the IT contractors.

CMS's Office of Acquisition and Grants Management (OAGM) serves as the lead for developing and overseeing CMS's acquisition efforts and is responsible for awarding and administering CMS contracts. Within OAGM, contracting officers have the authority to obligate Government funds, and enter into, administer, and/or terminate contracts. OAGM is required to conduct its work in accordance with regulations set forth in the Federal Acquisition Regulation (FAR), the HHS Acquisition Regulation (HHSAR), and HHS acquisition policy directives.

### **Acquisition Regulations**

The FAR is the primary regulation governing Federal agencies in their acquisition of supplies and services. The FAR requires Federal agencies to perform acquisition planning for all acquisitions to ensure that the Government meets its needs in the most effective, economical, and timely manner. Its guiding principles include promoting competition and conducting business with integrity, fairness, and openness. Under specific circumstances, the FAR allows for contracting without full and open competition.<sup>10</sup> For example, an agency can contract without full and open competition when its need for the supplies or services is of unusual and compelling urgency. In addition to the FAR, multiple agencies have published supplementary acquisition regulations. The HHSAR implements and supplements the FAR for HHS and provides the regulatory framework for conducting acquisitions across HHS.

### **CMS Acquisition Planning and Procurement**

OAGM collaborates with CMS program offices—such as CCIIO and OIS—when a contracting need is identified, and these offices work together to develop and refine key planning documents. The program office is responsible for preparing the necessary planning documents, with guidance from OAGM.

The HHSAR requires the development of a written acquisition strategy for all major IT investments to document the overall acquisition approach for a project.<sup>11</sup> The acquisition strategy contains information that guides acquisition decisions and allows for the identification of risks and ways to mitigate those risks.<sup>12</sup> Additionally, certain contracts require a written acquisition plan, which describes methods for competition, provides a justification for the proposed contract type, contains budgeting and

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<sup>10</sup> FAR Subpart 6.3.

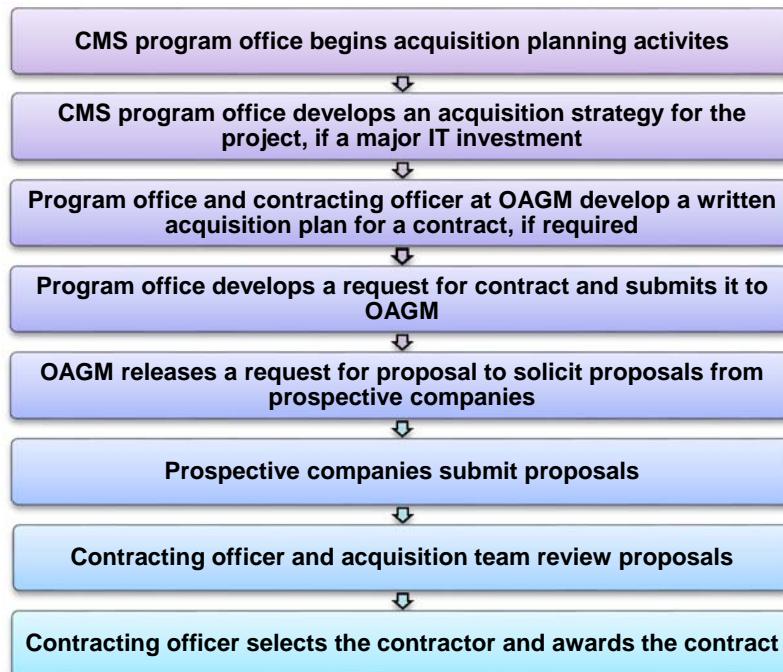
<sup>11</sup> HHSAR §§ 307.104-70, 307.104-71.

<sup>12</sup> HHS, *HHS Instructions for Preparation of an Acquisition Strategy*, p. 1. Accessed at <http://www.hhs.gov/asfr/ogapa/acquisition/policies/worktool.html> on July 1, 2014.

funding information, and tracks the target and actual milestone dates throughout the acquisition process. Appendix B contains a list of the HHSAR exceptions to the acquisition plan requirement.

The program office develops and submits to OAGM a “request for contract,” which describes, among other things, the contract’s purpose, requirements, and estimated cost. Generally, OAGM then develops a “request for proposal” document to communicate the contract’s requirements to prospective companies.<sup>13</sup> The contracting officer at OAGM receives proposals from prospective companies and evaluates these proposals, taking into consideration how the proposal conforms to the contract’s requirements, the company’s past performance, the company’s ability to fulfill the technical requirements, and the proposed cost. The contracting officer can also utilize an acquisition team, including a technical evaluation panel (TEP), which assesses the strengths, weaknesses, and deficiencies of each proposal. The contracting officer selects the contractor and awards the contract. Chart 1 provides a general overview of the steps in CMS’s acquisition planning and procurement process. Appendix C provides a more detailed description of these steps.

#### **Chart 1: CMS’s Acquisition Planning and Procurement Process**



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<sup>13</sup> When we refer to proposals, this may also include any bids submitted under the “sealed bidding” process.

## CMS's Contracting Approach

To meet its contracting needs, CMS may establish new contracts or place orders under previously established contracting vehicles. Examples of contracting vehicles include indefinite-delivery-indefinite-quantity (IDIQ) contracts, blanket purchase agreements, governmentwide acquisition contracts (GWACs), and the General Services Administration (GSA) Federal supply schedules.

*Enterprise System Development (ESD) IDIQ contract.* CMS used the ESD IDIQ contract as a contracting vehicle for a number of the Federal Marketplace contracts. In 2007, several years prior to the development of the Federal Marketplace, CMS created the ESD IDIQ contract to meet its ongoing needs for IT systems. At that time, CMS conducted a full and open competition and awarded the ESD IDIQ contract to 16 companies. When placing an order against the ESD IDIQ contract, CMS may solicit proposals from these 16 companies. According to CMS staff, when an IT need arises, the ESD IDIQ contract offers a streamlined approach for ordering services from companies familiar with CMS's systems and procedures.

## Contract Type Selection

A variety of contract types are available to the Government to provide flexibility in acquiring goods and services. The FAR defines two broad categories of contracts: fixed-price and cost-reimbursement. Table 1 provides descriptions of selected contract types within these two categories and the advantages of each contract type.

**Table 1: Descriptions of Selected Contract Types**

Contract Category	Selected Contract Types	Entity that Assumes Risk for Cost Overrun	Payment Structure	Advantages
Fixed-price	Firm-fixed-price	Contractor	Payment of a fixed price that does not change based on contract cost	Provides maximum incentive for the contractor to control costs and perform effectively
Cost-reimbursement	Cost-plus-fixed-fee	Government	Payment of allowable costs, plus a negotiated fee that is fixed at the beginning of the contract	Supports contracting efforts that might present a risk to contractors, but provides the contractor only a minimum incentive to control costs
	Cost-plus-award-fee	Government	Payment of allowable costs, plus a base amount and an award amount based upon a judgmental evaluation by the Government	Provides the contractor with an incentive to provide excellent performance

Source: FAR Subparts 16.1, 16.2, 16.3, and 16.4.

## Contract Review Board

The Contract Review Board is a contract oversight mechanism implemented by OAGM.<sup>14</sup> Under the Contract Review Board process, certain contract actions are reviewed to ensure compliance with agency requirements and to ensure that contract documents comply with established laws. The reviews may be conducted presolicitation, preaward, and/or for certain contract modifications after award.

Presolicitation and preaward Contract Review Board reviews are required for all contract actions greater than \$50 million. The Director of OAGM, i.e., the Head of Contracting Activity, may approve a waiver to exempt a specific contract from a Contract Review Board review. Appendix D contains a detailed description of the Contract Review Board process, as well as a description of other CMS and HHS contract oversight mechanisms.

## Related Office of Inspector General Reports

This report is one in a series that will address the planning, acquisition, management, and performance oversight of Federal Marketplace contracts, as well as various aspects of Federal Marketplace operations. The Office of Inspector General (OIG) will be issuing additional, indepth audits and evaluations that look at other aspects of contract management and performance for the Federal Marketplace.

OIG released a report in August 2014 that provides descriptive and financial data on 60 contracts related to the development and operation of the Federal Marketplace.<sup>15</sup> OIG found that nearly \$800 million had been obligated for the Federal Marketplace as of February 2014.<sup>16</sup>

Two OIG reports released in June 2014 examined (1) how the Federal and State Marketplaces ensured the accuracy of information submitted by applicants for enrollment in qualified health plans and for advance payment of premium tax credits and cost sharing reductions; and (2) selected Marketplaces' internal controls for enrolling applicants.<sup>17</sup> OIG found that Marketplaces faced challenges resolving inconsistencies

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<sup>14</sup> Other contract oversight mechanisms include, but are not limited to, contract file checklists, prospective service acquisition reviews, and appropriations law compliance reviews.

<sup>15</sup> OIG, *An Overview of 60 Contracts That Contributed to the Development and Operation of the Federal Marketplace*, OEI-03-14-00231, August 2014.

<sup>16</sup> The estimated contract value is the value of the contract at the time of award and includes the base year and option years.

<sup>17</sup> OIG, *Marketplaces Faced Early Challenges Resolving Inconsistencies With Applicant Data*, OEI-01-14-00180, June 2014; OIG, *Not All Internal Controls Implemented by the Federal, California, and Connecticut Marketplaces Were Effective in Ensuring That Individuals Were Enrolled in Qualified Health Plans According to Federal Requirements*, A-09-14-01000, June 2014.

between applicants' self-attested information and data received through the Data Services Hub or other sources, despite having policies and procedures in place. OIG also found that not all internal controls were effective in ensuring applicants were enrolled in qualified health plans according to Federal requirements. CMS concurred with OIG's recommendations to strengthen internal controls.

OIG released a report in September 2014 that provided an overview of the results of three reviews of the security of certain information technology at selected Marketplaces. Although CMS had implemented controls to secure HealthCare.gov and consumer personally identifiable information on the Federal Marketplace, OIG identified areas for improvement in its information security controls.<sup>18</sup>

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<sup>18</sup> OIG, *Health Insurance Marketplaces Generally Protected Personally Identifiable Information but Could Improve Certain Information Security Controls*, A-18-14-30011, September 2014.

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## METHODOLOGY

### Scope

CMS identified 60 contracts that supported the development and operation of the Federal Marketplace as of February 2014.<sup>19</sup> Appendix E provides a short description of these 60 contracts. For these contracts, we reviewed the contracting process up to the time of award. For our review of estimated contract values, however, we included postaward revisions to the estimated values through early 2014. We reviewed information in the contract files for the 60 Federal Marketplace contracts provided by CMS. We also selected six contracts (hereinafter referred to as key contracts) for a more indepth review of the contract files. Table 2 shows the six contracts selected for our indepth review.

We used a combination of factors to select the six, including: the contract's purpose, contract value, whether concerns were raised about the contract following the Federal Marketplace launch, and whether CMS identified the contract as key to the implementation of the Federal Marketplace.<sup>20</sup>

**Table 2: Six Contracts Selected for Indepth Review**

Contract	Contract Description	Company Awarded Contract	Start of Contract Period	Estimated Contract Value at Time of Award
MIDAS	Multidimensional insurance data analytics system	IDL Solutions Inc. (IDL)	9/27/2011	\$58,966,657
DSH	Data services hub	Quality Software Services Inc. (QSSI)	9/30/2011	\$68,740,877
FFM1	Federally facilitated marketplace system	CGI Federal Inc. (CGI)	9/30/2011	\$93,735,469
RIDP	Remote identity proofing	Science Applications International Corporation (SAIC)	1/31/2012	\$78,600,380
EIDM	Enterprise identity management	QSSI	6/18/2012	\$109,926,956 <sup>1</sup>
FFM2	Replacement of the FFM1 contract	Accenture Federal Services LLC (Accenture)	1/11/2014	\$90,000,000 <sup>2</sup>

Source: OIG analysis of six CMS contract files, 2014.

<sup>1</sup> The estimated value of the EIDM contract was initially \$104,926,956, but increased to \$109,926,956 on the contract period start date.

<sup>2</sup> The FFM2 letter contract was for \$45 million, but the estimated value of the contract was \$90 million.

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<sup>19</sup> Not all of these contracts were awarded solely for the purpose of the Federal Marketplace. Some contracts also provided services for State marketplaces or other CMS systems and programs. In addition, some of these contracts were awarded by the HHS Program Support Center on behalf of OCIO and later transferred to CMS.

<sup>20</sup> CMS provided OIG with a list of 18 contracts that it identified as key to the implementation of the Federal Marketplace.

## **Data Sources and Collection**

We initially requested from CMS the contract files, contracting officer's representatives' files, and financial information for all Federal Marketplace contracts awarded prior to December 31, 2013. We subsequently requested these files for the FFM2 contract that was awarded in January 2014. We specifically requested the files for this contract because it was the FFM1 replacement contract. We also requested that CMS provide all HHS and CMS manuals, guides, and procedures related to procurement, acquisition planning, contractor selection, and contract management. In addition, we asked CMS to indicate which contracts had undergone contract oversight reviews.

We conducted structured interviews with high-level HHS and CMS staff, and with the contracting officer and contracting officer's representative assigned to each of the six key contracts during the acquisition planning and contract procurement phases. We asked staff to describe the acquisition planning and procurement activities for the Federal Marketplace, and challenges encountered during the initial phases of the Federal Marketplace.

A more detailed description of our data sources, data collection methods, and data analyses is provided in Appendix F.

## **Limitations**

Our review of contracting files was restricted to the contract documentation provided by CMS for the 60 Federal Marketplace contracts.

## **Standards**

This study was conducted in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

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## FINDINGS

CMS relied extensively on contractors to plan and build the Federal Marketplace. As of February 2014, CMS obligated nearly \$800 million for the Federal Marketplace under 60 contracts. When awarding the Federal Marketplace contracts, CMS did not always meet contracting requirements. For example, CMS did not develop an overarching acquisition strategy for the Federal Marketplace or perform all required oversight activities. Moreover, for a project of this size and importance, CMS missed opportunities to leverage all available acquisition planning tools and contracting approaches to identify and mitigate risks. Specifically, CMS did not exercise the option to plan for a lead systems integrator to coordinate all contractors' efforts prior to the launch of the Federal Marketplace. The complexity of the Federal Marketplace underscored the need for CMS to select the most qualified contractors; however, it did not conduct thorough past performance reviews of potential contractors. Finally, CMS used contracting vehicles that may have restricted the number of technically acceptable proposals for much of the key Marketplace work and chose contract types that placed the risk of cost increases solely on the Government.

### **CMS did not adequately plan for the Federal Marketplace contracts**

Although CMS developed operational objectives and project management plans for the implementation of the Federal Marketplace, it did not perform all required acquisition planning for the Federal Marketplace contracts. CMS also did not avail itself of other acquisition planning tools that, although not required, may have strengthened its planning for the Federal Marketplace contracts.

### ***CMS did not develop the required acquisition strategy for the Federal Marketplace project***

The HHSAR requires that agencies develop a written acquisition strategy to describe the overall acquisition approach and document the factors and assumptions that will guide acquisition decisions for major IT projects. The development of an acquisition strategy allows for the identification of risks and consideration of tradeoffs needed to mitigate those risks. However, CMS did not develop the required acquisition strategy document for the Federal Marketplace project.

The Director of OAGM acknowledged that there was no acquisition strategy for the Federal Marketplace. Although acquisition strategies are required by the HHSAR, this official reported that CMS program managers were not aware of the requirement. Another HHS official

reported that one of the lessons learned from the Federal Marketplace project was the need for an overall acquisition strategy.

***HHS regulations did not require acquisition plans for most Federal Marketplace contracts***

Unlike the acquisition strategy, an acquisition plan addresses an individual contract instead of a project. The acquisition plan serves as a guide for major decisions regarding how the contract will be competed, what contract type will be selected, how a contractor will be chosen, and when acquisition milestones will occur. The HHSAR requires the creation of acquisition plans, but it establishes nine broad exceptions to this requirement. For example, acquisition plans are often not required for task orders issued on agency-specific IDIQ contracts, regardless of dollar value. Appendix B provides a list of the HHSAR exceptions. Because of these exceptions, acquisition plans were not required for most Federal Marketplace contracts, including contracts for complex, high-risk work. Fifty-three of the sixty Federal Marketplace contracts, including the six key contracts, did not require acquisition plans. These 53 contracts had a total estimated contract value of \$1.3 billion.<sup>21</sup>

***CMS's contract files were often missing commonly required acquisition planning information***

For the seven contracts that required acquisition plans, only five contracts had acquisition plans in their contract files. However, these acquisition plans did not all address certain planning elements, such as risks, constraints, and market research conducted. In addition, four of the five acquisition plans were missing required signatures from CMS officials.

Of the 53 contracts that did not require an acquisition plan, 30 were missing at least one fundamental piece of acquisition planning information from their contract files. This information is commonly required even when contracts are exempted from the acquisition plan requirement.<sup>22</sup>

This information includes documents such as an acquisition milestone schedule, a certified funding document, and an independent Government cost estimate. Twenty-six of the contract files were missing an acquisition milestone schedule. An acquisition milestone schedule introduces discipline into the planning process by identifying the points at which decisions must be made, and time factors that must be observed when action is critical to a successful acquisition. Contract files for

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<sup>21</sup> For each contract, the estimated contract value includes the estimates for the expected values for the base and option year amounts at the time of award.

<sup>22</sup> HHSAR § 307.7101(c) states that this information (as applicable) shall be provided to the Chief of the Contracting Office for acquisitions other than those processed pursuant to an interagency agreement.

seven contracts were missing a certified funding document that contains official sign off that funds were available prior to the award of the contract. These seven contracts had a total estimated contract value of \$45 million. In addition, contract files for three contracts were missing an independent Government cost estimate, which calculates the probable cost to perform services or deliver products under the contract.

### ***CMS did not plan for a lead systems integrator***

CMS missed the opportunity to plan for a lead systems integrator to coordinate the efforts of multiple contractors for the Federal Marketplace. CMS did not identify a systems integrator until after the October 2013 launch of the Federal Marketplace. CMS eventually assigned this role to a contractor, QSSI. The 33 companies that were awarded the 60 Federal Marketplace contracts each had individual tasks to support the implementation of the Federal Marketplace, but there was no single point-of-contact with responsibility for integrating contractors' efforts and communicating the common project goal to all 33 companies.

CMS's former Chief Information Officer reported to OIG that CMS perceived CGI to be the project's lead integrator, but the company did not have the same understanding of its role. This deficiency could have been addressed through more rigorous acquisition planning, such as clearly defining roles in an acquisition strategy and in descriptions of contractors' work. The CMS Administrator and Chief of Staff acknowledged that, in retrospect, the role of a lead integrator should have been given more consideration, as the Federal Marketplace project was too complex not to have an integrator.

### **Only two of the six key contracts underwent CMS Contract Review Board oversight prior to award**

Oversight reviews by the Contract Review Board are intended to ensure compliance with agency requirements and to ensure that contract documents comply with established laws. Although the six key contracts met the criteria for oversight by the Contract Review Board, only two of the six contracts were reviewed prior to award.

Both the EIDM contract and RIDP contract had a presolicitation review by the Contract Review Board. The EIDM contract also underwent a preaward review. However, the preaward review for the RIDP contract was waived by the Acting Director of OAGM because "there is not enough time left to perform [the review] and make the January 31, 2012

task order award date... If the task order award is delayed, critical program milestones will not be met.”<sup>23</sup>

For the FFM2 contract, the contract file contained an approved Contract Review Board Waiver indicating that there was not enough time to perform the review and make the award by the required date. The MIDAS, DSH, and FFM1 contracts were not reviewed by the Contract Review Board prior to being awarded in 2011, and approved waivers were not contained in these contracts’ files.

Although the six key contracts were high-profile Federal Marketplace acquisitions with estimated values totaling almost \$500 million at the time of award, their contract files did not contain documentation that any other types of CMS or HHS quality control reviews were performed prior to award. In interviews with OIG, CMS’s contracting staff indicated that they were not aware of any other types of quality assurance reviews that had been conducted for the six key contracts. These other types of contract oversight reviews are described in Appendix D.

### **CMS’s procurement decisions may have limited its choices for selecting Federal Marketplace contractors**

Although CMS’s contracting approaches were permitted under Federal regulations, its procurement decisions may have limited the number of qualified companies that competed for contracts and the number of technically acceptable proposals from which CMS could choose. Of the 60 Federal Marketplace contracts, only 5 were newly awarded contracts. Fifty-five of the sixty Federal Marketplace contracts were awarded as orders under previously established contracts. Therefore, only companies that held previously established contracts were eligible to obtain these orders. Furthermore, for one-third of the 60 contracts, CMS solicited a proposal for the contract from only one company.<sup>24</sup> Appendix G describes the contracting vehicles CMS used to request proposals for the Federal Marketplace contracts awarded as orders.

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<sup>23</sup> CMS, *CRB [Contract Review Board] Waiver Request*, January 24, 2012.

<sup>24</sup> Five of these twenty-two contracts were sole source procurements that required written justifications and approvals; the remaining 17 contracts were orders under a federally funded research and development center contract, orders under a blanket purchase agreement, or procurements under the Small Business Administration 8(a) Business Development Program. One of these twenty-two contracts was a key contract.

***For the six key contracts, few companies submitted proposals and even fewer submitted technically acceptable proposals***

CMS stated that there were tight timelines to implement the Federal Marketplace project, and its staff reported that these timelines had an impact on the procurement process for key contracts. A CMS contracting officer, responsible for some of the key contracts, reported that the ESD IDIQ was a faster way to award the contract. CMS decided to award five of the six key Federal Marketplace contracts as orders procured under its ESD IDIQ contract.

Because of CMS's decision to use the ESD IDIQ contract, it could only solicit proposals from the 16 companies awarded the ESD IDIQ contract in 2007. Only the RIDP contract had more than half of the 16 ESD IDIQ companies submit proposals. For four key contracts, six or fewer ESD IDIQ companies submitted proposals. In fact, for the FFM1 and DSH contracts—2 key components of the Federal Marketplace—4 of the 16 ESD IDIQ companies submitted proposals.

For three of the five ESD IDIQ contracts, TEP reviewers determined that no more than half of the proposals submitted for the contract were technically acceptable. This further limited CMS's choices in selecting a company for the contract. For key Federal Marketplace contracts, Chart 2 shows that although CMS solicited proposals from the 16 ESD IDIQ companies, few of these companies submitted proposals, and even fewer submitted technically acceptable proposals.

**Chart 2: Number of Companies that Submitted Proposals for Six Key Federal Marketplace Contracts**

Key Contract	Eligible Companies (ESD IDIQ)	Companies that Submitted Proposals	Technically Acceptable Initial Proposals	Technically Acceptable Final Proposals	Company Selected for Award
FFM1	16	4	1	1	CGI
DSH	16	4	0	2	QSSI
RIDP	16	9	3	2	SAIC
EIDM	16	6	5	Not applicable <sup>1</sup>	QSSI
MIDAS	16	5	5	Not applicable <sup>1</sup>	IDL
FFM2	Not applicable <sup>2</sup>	0	Not applicable	Not applicable	Accenture

Source: OIG analysis of CMS contract files, 2014.

<sup>1</sup>The EIDM and MIDAS contracts were awarded based on the review of companies' initial proposals.

<sup>2</sup>CMS did not solicit formal proposals from prospective companies prior to awarding the FFM2 contract. It was awarded as a sole source contract.

Although 4 of the 16 ESD IDIQ companies submitted proposals for the FFM1 contract, TEP reviewers determined that only 1 proposal, from CGI, was technically acceptable. The initial TEP report for this contract stated that the other three proposals would expose CMS to unacceptable levels of implementation and schedule risks. These three companies' proposals were still deemed unacceptable after revised and final proposals were reviewed, leaving CGI as the only option for the award. Similarly, all four of the initial proposals submitted for the DSH contract had technical deficiencies and, after multiple rounds of revisions, CMS had only two companies from which to choose for the award.

The only key contract not awarded under CMS's ESD IDIQ contract was the FFM2 contract, which was awarded to Accenture as a sole source contract. The FFM2 contract file contained a "Justification for Other than Full and Open Competition" approved by the HHS Senior Procurement Executive and CMS's Head of Contracting Activity. CMS stated that it urgently required a company to take over the work from CGI, the company awarded the FFM1 contract.<sup>25</sup> Because of time constraints, CMS decided not to solicit proposals from companies for the FFM2 contract. CMS indicated in its justification that "[a] normal competitive procedure of this magnitude normally requires between six to twelve months to complete..." after the request for proposals is issued. CMS awarded the FFM2 contract without competition less than 3 weeks after OIS requested the contract.

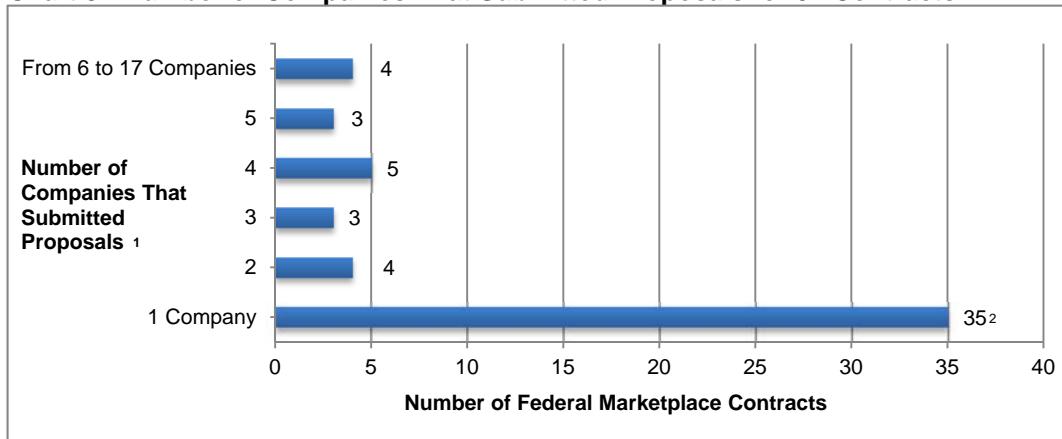
***For many of the remaining 54 Federal Marketplace contracts, CMS sought or received proposals from only one company***

For 35 of the remaining 54 Federal Marketplace contracts, CMS requested or received proposals from only 1 company. The total estimated contract value of these 35 contracts was \$658 million. For 21 of the 35 contracts, CMS requested a proposal from only 1 company. For an additional 14 contracts, CMS requested proposals from multiple companies, but received a proposal from only 1 company for each contract. CMS then awarded the contract to the one company that submitted a proposal. Chart 3 displays the number of prospective companies that submitted proposals for each of these 54 Federal Marketplace contracts.

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<sup>25</sup> In January 2014, CMS awarded a letter contract to Accenture. CMS stated in its contract documents that the Federal Marketplace developed by CGI had proven to be problematic and it did not believe CGI would have been able to deliver specific portions of the contract's work on time.

**Chart 3: Number of Companies That Submitted Proposals for 54 Contracts**



Source: OIG analysis of CMS contract and contracting officer's representatives' files, 2014.

<sup>1</sup> For each Federal Marketplace contract, we counted the number of companies that submitted a proposal for that contract.

<sup>2</sup> For 21 of these 35 contracts, CMS requested a proposal from only 1 company.

## When awarding two key Federal Marketplace contracts, CMS did not perform thorough reviews of contractor past performance

CMS reviewed companies' past performance for all six key contracts. However, for the FFM1 and DSH contracts, these performance reviews were limited. These two contracts implemented important elements of the Federal Marketplace, such as allowing consumers to enter information into HealthCare.gov, determining eligibility for premium tax credits, selecting health plans, and transmitting data between the Federal Marketplace and Federal and State databases to confirm enrollee information.

The FAR states that past performance should be considered when awarding orders under an existing contract, but it does not provide explicit procedures for conducting these reviews. The HHSAR does not address past performance reviews, but HHS has provided guidance that reinforces the use of due diligence to assess past performance.<sup>26</sup> This guidance also states that use of the Past Performance Information Retrieval System (PPIRS) should be considered when reviewing past performance.

When conducting past performance reviews for four of the key contracts, CMS accessed performance information from PPIRS, or similar government performance databases. In addition, companies were asked to submit past performance information for similar projects and references for CMS to contact. However, for the FFM1 and DSH contracts, CMS did not use PPIRS or any other Government performance database to evaluate the past performance of the companies that submitted proposals.

<sup>26</sup> HHS, APM-2009-07, *Guidance Regarding Generation and Use of Contractor Past Performance Information*, released December 23, 2009.

Instead, for these two contracts, CMS's review involved providing three questions about past performance to CMS staff associated with other contracts awarded to the prospective companies. These questions were sent to CMS staff 2 days before awarding the FFM1 and DSH contracts and pertained to only the companies' work performed under CMS's ESD IDIQ contract. Even though this level of review met the basic FAR requirement, it would not have identified performance issues on non-ESD IDIQ projects.

**For five of the six key contracts, CMS chose a contract type that placed the risk of cost increases solely on the Government**

CMS awarded five of the six key contracts as cost-reimbursement contracts. Cost-reimbursement contracts place the risk of contract requirements changes, delay, and cost overruns with the Government. Because of these added risks, Federal regulations require a documented rationale for choosing a cost-reimbursement contract. Contract files did not always contain specific and comprehensive rationales for why CMS selected this contract type.

CMS selected a cost-plus-fixed-fee contract type for the FFM1 contract awarded to CGI, the DSH contract awarded to QSSI, and the MIDAS contract awarded to IDL.<sup>27</sup> Files for these three key contracts did not include a detailed rationale for why this particular type of cost-reimbursement contract was selected. These files also did not detail why it was in the Government's best interest to select a contract type under which it assumed the risk for cost increases. Instead, there were general statements that fixed-price contracts could not be used because costs could not be defined accurately due to uncertainties with the required work.

CMS selected a cost-plus-award-fee contract type when awarding the EIDM contract to QSSI and the FFM2 contract to Accenture. Files for these contracts provided a thorough analysis in "Determination and Findings" documents, which were signed by CMS's Head of Contracting Activity, for why this contract type was in the best interest of the Government. CMS justified using this contract type for the EIDM contract because it allowed CMS to change its priorities and provided the contractor with an incentive to maintain high-quality work at a reasonable cost to the Government. Similarly, CMS stated that cost-plus-award-fee represented the best contract type for the FFM2 contract because it

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<sup>27</sup> The contract type for the FFM1 and DSH contracts was cost-plus-fixed-fee for the base year and cost-plus-award-fee for the option years.

provides motivation for excellence in areas such as quality, timeliness, technical ingenuity, and cost-effective management.

**CMS estimated a total contract value of \$464 million for the key contracts at the time of award**

During the procurement process, CMS determines a contract's purpose, requirements, and estimated cost. CMS uses this information to establish the value of the contract at the time of award. CMS originally estimated the contract value for the 6 key contracts to be \$464 million. As of early 2014, CMS had updated the estimated value of these contracts to \$824 million. The updated contract value more than tripled for the FFM1 contract awarded to CGI, from \$58 million to \$207 million.<sup>28</sup> In addition, the value for the DSH contract more than doubled, from \$69 million to \$180 million. The remaining 4 contract values increased between 1 and 54 percent.

The initial estimated value of a contract may increase after award for a number of reasons, including tasks added to the contract or increases in the cost of scheduled work. CMS reported that contract requirements changed during the implementation of the Federal Marketplace, and that not all of these requirements were known at the time of award.

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<sup>28</sup> These contract values do not include option years that CMS later decided not to exercise.

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## CONCLUSION AND RECOMMENDATIONS

The Federal Marketplace at HealthCare.gov was designed to enable millions of Americans to select health insurance in a “one-stop shop” environment. A project of this magnitude and complexity required the development, integration, and operation of multiple IT systems and Government databases. CMS’s acquisition planning and procurement activities were among the first steps critical to ensuring the success of this project. CMS awarded 60 contracts across 33 companies to perform this work. However, the problems following the October 2013 launch of the Federal Marketplace at HealthCare.gov raised questions about the adequacy of CMS’s planning and procurement efforts.

When awarding the Federal Marketplace contracts, CMS did not meet all requirements and did not leverage all available acquisition planning tools, oversight activities, or contracting approaches to identify and mitigate risks. CMS did not develop an overarching acquisition strategy for the project, as required. In addition, CMS did not plan for a lead integrator to coordinate all contractor efforts, and did not take all possible steps to plan for and oversee individual acquisitions. Because CMS did not leverage all of these tools, it operated without a comprehensive roadmap when awarding the Federal Marketplace contracts.

The complexity and significance of the Federal Marketplace underscored the need for CMS to have the opportunity to select the most qualified contractors. CMS’s procurement decisions may have limited its choices for selecting Federal Marketplace contractors. In addition, CMS did not perform thorough reviews of contractor past performance when awarding two key contracts, but met only the basic regulatory requirement for these reviews. Following the launch, CMS had to replace one of these contractors because of problematic performance. Furthermore, CMS’s choice of contract type for certain key contracts resulted in the Government shouldering the risk for cost increases.

Although the Federal Marketplace was an unprecedented project with unique challenges, the experience of contracting for the Federal Marketplace has broader implications for Federal contracting.

Government contracting personnel are continually faced with the competing demands of timeliness, fiscal responsibility, and attracting contractors that will provide outstanding performance. The issues raised in this report demonstrate the need for HHS and CMS to make changes to strengthen their contracting processes. To strengthen HHS and CMS acquisition planning and procurement processes for future projects, including ongoing work for the Federal Marketplace, OIG makes the following recommendations:

**CMS should ensure that acquisition strategies are completed as required by the HHSAR**

Pursuant to HHSAR Part 307.104-70, an acquisition strategy is a required component of the acquisition planning process for major IT systems. It provides a comprehensive roadmap that will guide acquisition decisions and is a means of reducing potential diversions from program objectives that could have adverse cost, schedule, and technical consequences. HHS has developed an acquisition strategy template that enables program staff to describe the overall approach for acquiring the capabilities to meet a program need at the beginning of the acquisition process, prior to developing acquisition plans for individual contracts.

The acquisition strategy requirement has been in effect since 2009 and CMS did not develop an acquisition strategy to describe or guide its approach for acquiring contracts for the high-impact and high-expenditure Federal Marketplace project. Going forward, CMS should ensure that acquisition strategies are completed for all major IT systems, as required by the HHSAR.

In these acquisition strategies, CMS should consider ways to attract highly skilled IT contractors and develop contingency plans for when few companies submit technically acceptable proposals for contracts that are critical to the success of major IT investments.

**CMS should assess whether to assign a lead systems integrator for complex IT projects involving multiple contractors**

The task of implementing the Federal Marketplace required the coordination and integration of work by many companies. However, CMS did not specifically designate a lead integrator until after the launch, and the CMS Administrator later acknowledged that this should have been given more consideration. As part of its acquisition planning process, CMS should assess whether to assign a lead integrator for future IT projects with complex requirements that require the coordination of multiple contractors.

**CMS should ensure that contract actions are supported by required documentation**

Our review of the contract files for the 60 Federal Marketplace contracts revealed that certain pieces of documentation were missing from many of CMS's files, which were often paper rather than electronic files. In October 2013, OAGM implemented a Contract File Organization policy that established requirements for creating an electronic contract file for new contract actions; completing all steps in the contracting process and completing an E-Contract File Checklist; and digitally signing the

Checklist for review and approval of contract actions. CMS should take advantage of its planned reviews of sampled contract files to ensure that contract files are complete and contract actions are fully supported.

Specifically, CMS should determine whether approved Checklists are filled out completely and accurately, confirm the applicability of contract file documents, and determine whether appropriate documents are contained in the contract files.

**CMS should ensure that all contracts that are subject to its Contract Review Board requirements undergo these reviews**

CMS spends billions of dollars to fund the procurement of a wide range of supplies and services to support its programs. With so much funding at stake, it is critical that CMS perform adequate contract oversight. One mechanism CMS has in place to oversee contract actions is the Contract Review Board process. However, the Contract Review Board reviewed only a few of the key Federal Marketplace contracts. CMS should ensure all contracts that are subject to the Contract Review Board requirements undergo these reviews. CMS should also consider limiting the use of Contract Review Board waivers for contracts that are instrumental to major initiatives.

**HHS should review the HHSAR to limit or eliminate certain exceptions to developing a written acquisition plan**

HHS is conducting a review of the HHSAR to reorganize these regulations and eliminate sections that are duplicative of the FAR. As HHS revises the HHSAR, we believe it should take this opportunity to strengthen acquisition planning requirements. We found that nearly all of the Federal Marketplace contracts did not require written acquisition plans; this includes all six key contracts. Because an acquisition plan should address in a comprehensive manner the tactical details of how the acquisition will be executed, exceptions to formulating an acquisition plan should be rare. Therefore, HHS should review, and where possible, limit or eliminate the HHSAR exceptions to the acquisition plan requirement.

**HHS should revise its guidance to include specific standards for conducting past performance reviews of companies under consideration during contract procurement**

It is imperative that CMS conduct comprehensive reviews of companies' past performance to ensure that it contracts with reliable companies. In 2009, HHS issued guidance to reinforce the need for due diligence when assessing past performance of prospective companies, making use of past performance information, and making decisions based on this information. However, the guidance does not explicitly set standards for the extent to

which contracting officers conduct these reviews. HHS should revise the guidance to (1) improve the reporting of contractor performance and integrity information and (2) include outreach and research methods for evaluating timely and relevant information to ensure that awards are made to contractors with good performance records.

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## AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

HHS and CMS concurred with all of our recommendations. CMS stated that it has moved aggressively to implement extensive contracting reforms and has appointed a task force to develop a program-wide view of the cost of the Federal Marketplace to strategically manage Federal Marketplace acquisitions. According to CMS, the agency is enforcing a strict governance structure for contracts and is training a stronger acquisition workforce. CMS also stated that it is using our report as an opportunity to make needed change. The full text of HHS's and CMS's comments is provided in Appendix H.

In its response to our first recommendation, CMS acknowledged the benefits of developing an acquisition strategy, and stated that it held a mandatory training session in August 2014 for program managers assigned to major IT investments with a specific emphasis on preparing acquisition strategies. According to CMS, its major IT investment acquisition strategies will follow HHS guidance, be simple and clear, and will focus on broadening procurement options, improving acquisition oversight, and employing Federal Government best practices.

CMS also stated that the value of a systems integrator was a key lesson learned from implementing the Federal Marketplace and that our second recommendation, assessing whether to assign a systems integrator, will be a CMS best practice when planning for a complex IT project.

In response to our third recommendation, HHS and CMS stated that they are working to ensure that acquisition and program staff meet their required responsibilities. HHS noted that it established acquisition Learning Communities to provide training, and CMS offers approximately 140 acquisition training classes for contract officer's representatives and program managers. CMS also indicated that it is working to ensure that all required acquisition plans are prepared and submitted using the HHSAR template. In response to our fourth recommendation, CMS stated that it will ensure full compliance with the requirements of the Contract Review Board policy.

HHS concurred with our fifth recommendation that it review the HHSAR to limit or eliminate certain exceptions to developing a written acquisition plan. HHS stated that it is preparing to release revised regulations for public comment that will state that a written acquisition plan is required for all acquisitions exceeding the simplified acquisition threshold, and will supplement the FAR by outlining the required content of an acquisition plan.<sup>24</sup>

HHS and CMS concurred with our sixth recommendation about having specific standards for conducting past performance reviews. HHS plans to enhance its past performance guidance and has taken steps to implement the Office of Federal Procurement Policy's July 10, 2014, memorandum, *Making Better Use of Contractor Performance Information*. This memorandum included additional consideration when evaluating and using contractor past performance information, and in sharing this information with agency leadership. HHS stated that it has plans to assess the use of past performance in selecting contractors by reviewing a representative sample of solicitations quarterly, and is monitoring contractor performance databases for compliance on a quarterly basis.

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## APPENDIX A

### Glossary of Selected Terms

This glossary is not intended to be a comprehensive source of technical or regulatory definitions. Rather, it provides basic definitions for a general understanding of contracting terms used in this report.

<b>acquisition plan</b>	A formal, written plan that allows agencies, e.g., CMS, to document the proposed acquisition approach for a particular contract. Serves as a mechanism to review, approve, and document acquisition decisions and create a guide for the implementation of those decisions.
<b>acquisition strategy</b>	A document required by HHS that describes an overall acquisition approach and documents the factors and assumptions that guide acquisition decisions for major IT projects.
<b>appropriations law compliance review</b>	An HHS review to ensure that a contract is properly funded, and ensure that particular acquisitions exceeding a dollar threshold (\$10 million for CMS contracts) comply with appropriation laws and regulations.
<b>blanket purchase agreement (BPA)</b>	A simplified method of filling anticipated repetitive needs for supplies or services by establishing an agreement with qualified companies. BPAs provide opportunities to negotiate improved discounts, reduce administrative costs, and reduce procurement lead time.
<b>Center for Consumer Information and Insurance Oversight (CCIIO)</b>	Program office within CMS that oversees the implementation of the ACA's provisions related to private health insurance.
<b>Centers for Medicare &amp; Medicaid Services (CMS)</b>	Agency within HHS that operates the Federal Marketplace at HealthCare.gov.
<b>contract</b>	A mutually binding legal relationship obligating a contractor to furnish the supplies or services and the Government to pay for them. For the purposes of this report, a "contract" collectively refers to new contracts as well as task, delivery, and call orders placed under previously established contracts.

<b>Contract Review Board</b>	A CMS process consisting of a two-tiered review and approval process: tier 1 involves a review of the contract file to ensure compliance with agency and HHS requirements; tier 2 is a more in-depth review of specified contract actions to ensure, in part, that contract documents comply with laws and established policies, procedures, and sound business practices, and that the contracting officer is aware of (and takes corrective action to address) any deficiencies and questions.
<b>contracting officer</b>	Person that has the authority to enter into, administer, and/or terminate contracts and make related determinations and findings.
<b>contracting officer's representative</b>	Program office staff that is responsible for monitoring the contractor's technical progress and providing technical direction, among other tasks.
<b>cost sharing reductions</b>	Cost sharing reductions help qualifying individuals with out-of-pocket costs, such as deductibles, coinsurance, and copayments.
<b>Department of Health and Human Services (HHS)</b>	The Government's principal agency for protecting the health of all Americans and providing essential human services.
<b>data services hub (DSH) contract</b>	Contract awarded to Quality Software Services Inc. for the purpose of building a mechanism to permit transmission of data between the Federal Marketplace and Federal and State databases to confirm enrollee information.
<b>enterprise identity management (EIDM) contract</b>	Contract awarded to Quality Software Services Inc. to design, build, operate, and maintain an enterprise identity and access management infrastructure to include integration with third-party online identity proofing and multifactor authentication services.
<b>enterprise system development (ESD) IDIQ</b>	An Indefinite-Delivery-Indefinite-Quantity (IDIQ) contract awarded in September 2007 to 16 companies to meet CMS's ongoing needs for IT systems.
<b>estimated contract value</b>	The expected value of the contract at the time of award. This estimate includes the base year and any option years.
<b>exchanges</b>	Term used in the ACA that refers to State and Federal Marketplaces that facilitate the purchase of qualified health plans.

<b>Federal Acquisition Regulation (FAR)</b>	The Federal regulations governing the acquisition of supplies and services that apply to all Federal Executive agencies.
<b>full and open competition</b>	Situation in which all responsible sources, e.g., companies, are permitted to compete for a contract award.
<b>federally facilitated marketplace (FFM1) contract</b>	Contract awarded to CGI Federal Inc. for the purpose of building an IT system that would allow consumers to enter information into HealthCare.gov, determine eligibility for premium tax credits, and select health plans.
<b>FFM2 contract</b>	Contract awarded to Accenture Federal Services LLC to replace CGI Federal Inc. as the contractor for the federally facilitated marketplace system (FFM1).
<b>governmentwide acquisition contract (GWAC)</b>	A contract established by a single agency for Governmentwide use.
<b>GSA Federal supply schedules (FSS)</b>	Indefinite-delivery-indefinite-quantity (IDIQ) contracts available for use by Federal agencies worldwide. These long-term contracts assist agencies with procuring a vast array of supplies and services directly from quality commercial suppliers.
<b>Head of Contracting Activity</b>	Official with authority, for example, to establish CMS policy, appoint contracting officers, and make approvals and determinations above the contracting office level.
<b>HHS Acquisition Regulation (HHSAR)</b>	Regulations that implement and supplement the FAR, and provide the regulatory framework for conducting acquisitions across HHS.
<b>indefinite-delivery-indefinite-quantity (IDIQ)</b>	A contract type that provides for an indefinite quantity of services for a fixed time. Generally used when the Government cannot determine above a specified minimum the precise quantities and/or delivery times of supplies or services that it will require during the contract period.
<b>independent government cost estimate (IGCE)</b>	The Government's estimate of the probable cost to perform services or deliver products under a Federal contract.
<b>insurance affordability programs</b>	Programs including premium tax credits and cost-sharing reductions for those who enroll in a qualified health plan.

<b>key contracts</b>	Six contracts selected for indepth review for this report.
<b>major IT investment</b>	HHS defines a major IT investment as an IT investment that applies to one or more of the following: (1) has total planned outlays of \$10 million or more in the budget year; (2) is for financial management and obligates more than \$500,000 annually; (3) is designated as critical to the HHS mission or the administration of HHS programs, finances, property, or other resources; or (4) has life-cycle costs exceeding \$50 million.
<b>marketplace</b>	A health insurance exchange designed to serve as a “one-stop shop” where individuals can obtain information about health insurance options, determine eligibility for qualified health plans and insurance affordability programs, and select the plan of their choice.
<b>multidimensional insurance data analytics system (MIDAS) contract</b>	Contract awarded to IDL Solutions Inc. to evaluate, design, implement, and test the initial Multidimensional Insurance Data Analytics System, which will serve as CCIIO’s central repository for capturing, organizing, aggregating, and analyzing information related to CCIIO’s mission.
<b>obligation</b>	A definite commitment that creates a legal liability of the Government for the payment of goods and services ordered or received. An obligation is incurred, for example, when a contract is signed or an order is placed for goods and/or services.
<b>Office of Acquisition and Grants Management (OAGM)</b>	Office within CMS that leads development and oversight of CMS’s acquisition planning efforts, and is responsible for awarding and administering CMS contracts.
<b>Office of Consumer Information and Insurance Oversight (OCIIO)</b>	Office originally in the HHS Office of the Secretary, later moved to CMS and renamed CCIIO, which was responsible for overseeing the implementation of the ACA’s provisions related to private health insurance.
<b>Office of Information Services (OIS)</b>	Program office within CMS that ensures the effective implementation and administration of CMS’s IT, information systems, and resources, including, but not limited to, the Federal Marketplace project.
<b>option</b>	Provision in a contract that gives the Government a unilateral right to extend the term of a contract.

<b>Patient Protection and Affordable Care Act (ACA)</b>	Legislation that, among other things, required the establishment of a health insurance exchange (marketplace) in each State.
<b>premium tax credit</b>	A tax credit provided by the ACA that reduces the cost of a health plan's premium to help eligible individuals afford health coverage purchased through a marketplace.
<b>procurement</b>	Acquisition functions and duties, such as: determining contract type, awarding a contract, and determining contractor responsibility.
<b>prospective service acquisition review</b>	HHS review of certain high-dollar and high-risk contracts to ensure that acquisitions are cost-effective and comply with statutory and regulatory requirements.
<b>qualified health plan</b>	Private health insurance plans that each marketplace recognizes and certifies as meeting certain standards and covering a core set of benefits.
<b>request for contract</b>	A document drafted by a program office and submitted to OAGM that describes, among other things, a prospective contract's purpose, requirements, and estimated cost.
<b>request for proposal</b>	A formal request by the Government communicating the Government's needs and asking offerors to submit a proposal to fulfill those needs (also called a "request for quote").
<b>remote identity proofing (RIDP) contract</b>	Contract awarded to Science Applications International Corporation (SAIC) for the purpose of increasing security and providing authentication services.
<b>sole source contract</b>	A contract for the purchase of supplies or services that is entered into or proposed to be entered into without competition and with only one source, i.e., one company.
<b>technical evaluation panel (TEP)</b>	Panel that assesses the strengths, weaknesses, and deficiencies of technical proposals submitted by prospective companies against the technical evaluation factors in the solicitation.

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## APPENDIX B

### **HHSAR Exceptions to the Acquisition Plan Requirement**

*HHSAR Part 307.7101(a):*

“307.7101 Policy.

- (a) An AP [acquisition plan] is required for all acquisitions, to be placed by an HHS contracting office, expected to exceed \$500,000 (inclusive of options) with the following exceptions:
  - (1) Letter contracts,
  - (2) Unsolicited proposals.
  - (3) Regulated utility services available from only one source.
  - (4) Proposals under the Small Business Innovative Research (SBIR) and Small Business Technology Transfer (STTR) programs.
  - (5) Acquisition of commercial items/services – see FAR 2.101, including orders placed under FSS [Federal Supply Schedule] contracts meeting the definition of a commercial item/service, and not exceeding \$5.5 million [\$11 million for acquisitions as described in FAR 13.500(e)].
  - (6) Task orders or delivery orders of any dollar amount placed under—
    - (i) An IDIQ [indefinite-delivery-indefinite-quantity] contract, other than a GWAC [governmentwide acquisition contract]; or
    - (ii) A BPA [blanket purchase agreement], provided there is an approved acquisition planning document for the original action, and there is no significant deviation from that plan.
  - (7) Orders of any dollar amount placed under HHS-wide strategic sourcing vehicles.
  - (8) Contract/order modifications that—
    - (i) Exercise options;
    - (ii) Only provide additional funding; or
    - (iii) Make changes authorized by the Changes clause.
  - (9) Assisted acquisitions processed pursuant to an interagency agreement. However, the OPDIV must comply with the requirements specified in 317.5 Interagency Agreements under the Economy Act and 317.70, Multi-agency and Intra-agency Contracts.”

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## APPENDIX C

### CMS Acquisition Planning and Contract Procurement

The FAR governs how Federal Executive agencies can acquire supplies and services with appropriated funds. The FAR also describes what information and documentation should be contained in contract files. In addition, agencies may develop procedures to supplement and implement the FAR provisions. As such, acquisitions by HHS also must conform to regulations set forth in the HHSAR.<sup>29</sup>

Acquisition strategy and planning. Acquisition planning activities generally begin when the program office, e.g., OIS, identifies a need. With guidance from the contracting office, i.e., OAGM, the program office prepares the necessary acquisition documents. According to the HHSAR, program and project managers responsible for major IT capital investments shall prepare a written acquisition strategy using the HHS acquisition strategy template.<sup>30</sup> The *HHS Instructions for Preparation of an Acquisition Strategy* state that:

“[t]he primary function of an acquisition strategy is to document the factors, approach, and assumptions that will guide acquisition decisions related to the investment. The development of an acquisition strategy allows for identification of risks and consideration of tradeoffs needed to mitigate those risks.”<sup>31</sup>

HHS has also identified the acquisition strategy as a focus for acquisition assessments and an area for improvement.<sup>32</sup>

In addition to the acquisition strategy, some contracts also require a written acquisition plan. An acquisition plan must follow instructions set forth in the FAR and HHSAR. Examples of the contents required in an acquisition plan include: a description of how competition will be sought, promoted, and sustained throughout the course of the acquisition; a discussion of what contract types may be selected for each contract contemplated; and budgeting and funding information. According to the

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<sup>29</sup> HHSAR, 48 CFR ch. 3.

<sup>30</sup> HHSAR § 307.104-70.

<sup>31</sup> HHS, *HHS Instructions for Preparation of an Acquisition Strategy*, p. 1. Accessed at <http://www.hhs.gov/asfr/ogapa/acquisition/policies/worktool.html> on July 1, 2014.

<sup>32</sup> HHS, *Acquisition Policy Memorandum No. 2009-05*, “Acquisition Strategy Requirements and Template,” July 29, 2009. Accessed at [http://www.hhs.gov/asfr/og/acquisition/policies/apm2009-05acq\\_strategy\\_guid07-29-2009.pdf](http://www.hhs.gov/asfr/og/acquisition/policies/apm2009-05acq_strategy_guid07-29-2009.pdf) on July 1, 2014.

HHSAR, HHS staff must review and certify the acquisition plan.<sup>33</sup> An acquisition plan also must contain a schedule that tracks the target and actual dates of milestones throughout the acquisition process.

Under the HHSAR, certain contracts are exempt from the acquisition plan requirement, including letter contracts and task orders placed under IDIQ contracts.<sup>34, 35, 36</sup> However, even contracts exempted from the acquisition plan requirement are required to have certain acquisition planning documents, such as an acquisition milestone schedule, a certified funding document, and an independent Government cost estimate.<sup>37</sup>

*Request for contract and contract competition.* During the next phase of contract acquisition, the program office develops and submits a request for contract to the contract office. Using the information from this request for contract, the contracting officer considers the appropriate contract type and determines how competition requirements will be met.

Generally, agencies must promote and provide for full and open competition of contracts (or obtain competition to the maximum extent practicable) using sealed bids, competitive proposals, or a combination of competitive procedures.<sup>38</sup> There are several exceptions to this requirement, including contracts awarded using the simplified acquisition procedures, contract modifications, and certain task orders placed under existing IDIQ contracts. In the case of the latter, competition is limited to the companies that were originally awarded the IDIQ contract.

Contracting without providing for full and open competition is also acceptable when supplies or services are available from only one source, or when there is an unusual and compelling urgency for certain supplies or services. The contracting officer must provide written justification for

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<sup>33</sup> The review and certification of the acquisition plan is the responsibility of the head of the sponsoring program office (typically a Division Director or equivalent), Project Officer, Funds Certification Official, contracting officer, and other signatories in accordance with agency policies. See HHSAR § 307.7104.

<sup>34</sup> A letter contract is a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or providing services. FAR § 16.603-1.

<sup>35</sup> HHSAR § 307.7101(a). Orders developed under a GWAC are not exempt from the acquisition plan requirement. A GWAC is a contract established by a single agency for Governmentwide use.

<sup>36</sup> IDIQ contracts provide for an indefinite quantity of services for a fixed time and are used when the Government cannot determine above a specified minimum the precise quantities of supplies or services that it will require during the contract period. Accessed at <http://www.gsa.gov/portal/content/103926> on July 1, 2014.

<sup>37</sup> HHSAR § 307.7101(c) states that this information (as applicable) shall be provided to the Chief of the Contracting Office for acquisitions other than those processed pursuant to an interagency agreement.

<sup>38</sup> FAR § 7.102; FAR § 6.101.

most contracts awarded using procedures other than full and open competition.<sup>39</sup>

*Request for proposal and proposal evaluation.* Requests for proposals communicate Government requirements to prospective contractors and solicit proposals. The contracting officer is responsible for developing the request for proposal, which must include: a description of the supplies or services requested and the related specifications, requirements for quality assurance and reliability, the required time and method of delivery or performance, and factors that will be used to evaluate the proposals.<sup>40</sup>

After prospective contractors submit proposals, proposals are evaluated to determine companies' ability to perform the work. At CMS, a TEP may evaluate proposals on the basis of factors such as the cost estimate, past performance information, and technical approach. The TEP then rates proposals based on criteria established in the request for proposal.

TEP panelists are required to provide a report with complete written documentation of each company's strengths, weaknesses, and deficiencies. Using the findings from this report, the contracting officer must consider how each proposal conforms to the contract's requirements, the cost evaluation, and the company's past performance and ability to fulfill the technical requirements. The contracting officer's goal is to select the contractor that provides the best value to the Government.<sup>41</sup>

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<sup>39</sup> FAR § 6.303-1.

<sup>40</sup> FAR § 14.201-2; FAR § 15.203(a)(4).

<sup>41</sup> FAR § 14.408-1; FAR § 15.302.

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## APPENDIX D

### Contract Oversight Reviews

According to the HHSAR, the Head of Contracting Activity for each agency is responsible for establishing procedures for the review and approval of proposed contract actions to ensure that: (1) contract documents comply with law, established policies and procedures, and sound business practices; (2) contract awards properly reflect the mutual understanding of the parties; and (3) the contracting officer is informed of deficiencies and items of questionable acceptability and takes corrective action.<sup>42</sup> Within CMS, the Director of OAGM, i.e., the Head of Contracting Activity, is responsible for meeting these HHSAR requirements.

#### ***OAGM Quality Assurance Reviews of Contracts***

Contract Review Board review. OAGM has a formal Contract Review Board policy to fulfill its responsibility required under HHSAR Part 304.71. OAGM revised this policy most recently in February 2011.<sup>43</sup> The Contract Review Board process consists of a two-tiered review and approval process that may be conducted presolicitation, preaward, and/or for certain contract modifications, after award. Presolicitation and preaward reviews must take place for all contract actions greater than \$50 million, as well as for IDIQ contracts. However, the Head of Contracting Activity in OAGM may approve a waiver to exempt a specific contract from a Contract Review Board review.

During the Tier 1 review, the contract specialist and contracting officer review the contract file to ensure compliance with agency and HHS requirements. The Tier 2 review is a more indepth review of specified contract actions to ensure, in part, that contract documents comply with established laws and that the contracting officer is aware of (and takes corrective action to address) any deficiencies and items of questionable acceptability. Prior to the solicitation or award of the contract, the contracting officer must address any Contract Review Board findings or recommendations by providing documentation of the supporting rationale for any decision(s).

Contract file checklists. Effective October 1, 2013, OAGM implemented a Contract File Organization policy. This policy created a consolidated list

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<sup>42</sup> HHSAR § 304.71.

<sup>43</sup> A 2009 GAO report found that the Contract Review Board process had not been fully implemented and that many contracts selected for Contract Review Board review had not actually undergone review. GAO, *Centers for Medicare and Medicaid Services: Deficiencies in Contract Management Internal Control are Pervasive*, October 2009, GAO-10-60.

of all required contract actions needed to award, modify, and administer a contract and also provided a comprehensive approach for creating and maintaining electronic contract files. As part of this policy, checklists are used to ensure that contract actions are executed consistently across OAGM. There are checklists for preaward actions, postaward actions, and modifications. Each checklist details what documents must be contained in the contract file and is required to be digitally signed once contract actions have been reviewed and approved.<sup>44</sup>

*Contract specialist and contracting officer file review.* According to OAGM's 2014 *Quality Assurance Plan*, it will review the contract specialist's and contracting officer's contract files to test the effectiveness of the new Contract File Organization policy, as well as other internal controls that are in place.<sup>45</sup> Each year, a minimum of 60 active and previously awarded contracts will be selected for review. The contract files will be reviewed to determine compliance with policies, procedures, and regulations and see that all required contract steps/actions are taken.

*Contracting officer's representative working file review.* According to OAGM's 2014 *Quality Assurance Plan*, it will also annually review a random selection of files from each contracting officer's representative to ensure that the contracting officer's representative is properly monitoring contractor performance. Contracts considered highly visible, or having the potential to be high risk to CMS, will be targeted to ensure that CMS is not vulnerable from a program management perspective. A random selection of additional contracts will also be chosen for review. Reviews of files from contracting officer's representatives will be conducted, in part, to identify OAGM improvements that could be made regarding acquisitions, and to identify tools that could be provided to help contracting officer's representatives become more efficient and effective.

#### ***HHS Quality Assurance Reviews of Contracts***

In 2011, as part of HHS's overall strategy to evaluate its acquisitions and ensure that contracts awarded are properly funded, HHS implemented prospective service acquisition reviews and appropriations law compliance reviews.

*Prospective service acquisition review.* These reviews are completed to ensure that certain high-dollar and high-risk contracts are reviewed prior to award. The goal of the reviews is to ensure that acquisitions are cost-effective and comply with statutory and regulatory requirements.

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<sup>44</sup> The level of approval required is determined by the total potential value of the contract.

<sup>45</sup> CMS/OAGM, 2014 *Quality Assurance Plan*.

Contracts for advisory services, such as legal services, as well as contracts for IT services can undergo a prospective service acquisition review.<sup>46</sup>

Appropriations law compliance review. Appropriations law compliance reviews are a type of prospective review and are part of HHS's strategy to ensure that contracts are properly funded in compliance with laws and regulations. These reviews are an additional safeguard to ensure that particular acquisitions exceeding a dollar threshold—\$10 million for CMS—comply with appropriation laws and regulations. The types of acquisitions required to undergo an appropriations law compliance review include research and development, data collection to support management, and special studies.<sup>47</sup>

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<sup>46</sup> HHS, APM-2011-02, *HHS' Prospective Service Acquisition Reviews*, released June 3, 2011. Accessed at [http://www.hhs.gov/asfr/ogapa/acquisition/apm2011-02\\_060311.html](http://www.hhs.gov/asfr/ogapa/acquisition/apm2011-02_060311.html) on May 4, 2014.

<sup>47</sup> HHS, APM-2011-04, *Appropriations Law Compliance Reviews*, released October 6, 2011. Accessed at [http://www.hhs.gov/asfr/ogapa/acquisition/apm2011-04\\_100611.html](http://www.hhs.gov/asfr/ogapa/acquisition/apm2011-04_100611.html) on May 4, 2014.

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## APPENDIX E

### Federal Marketplace Contracts

Table E-1 provides a description of the 60 contracts awarded for the development and operation of the Federal Marketplace. The six key contracts in this report are highlighted in the table.

**Table E-1: Description of the Contracts Awarded for the Federal Marketplace**

Contract Identifier	Contractor Name	Contract Number/Order Number <sup>1</sup>	Description of Contract	Start of Contract Period
1	Accenture Federal Services LLC	HHSM-500-2014-00191C/ No task order	Federally facilitated marketplace system development and implementation	1/11/2014
2	Aquilent Inc.	HHSN-316-2012-00005W/ HHSM-500-2013-00074U	Support Web site development, operations, maintenance, and training for CMS Web sites (such as HealthCare.gov), their components, and tools	9/13/2013
3	Blast Design Studio Inc. dba Blast Advanced Media	HHSM-500-2012-00080C/ No task order	Online marketing services for HealthCare.gov	9/28/2012
4	Blast Design Studio Inc. dba Blast Advanced Media	HHSM-500-2013-00153C/ No task order	Online marketing services for HealthCare.gov	9/28/2013
5	Blue Canopy Group LLC	HHSN-316-2012-00120W/ HHSM-500-2013-00054U	Services to perform security controls assessment testing	7/15/2013
6	Booz Allen Hamilton	GS-23F-9755H/ HHSM-500-2011-00011B/ HHSM-500-B0003	Exchange operational integration support	9/17/2012
7	Carahsoft Technology Corp.	GS-35F-0119Y/ HHSM-500-2013-00249G	Application code analysis	6/8/2013
8	Carahsoft Technology Corp.	GS-35F-0119Y/ HHSM-500-2012-00066G	Application code software	6/8/2012
9	CGI Federal Inc.	GS-35F-4797H/ HHSM-500-2010-00157G	Information system to support the data collection for the internet Web portal and health benefit exchanges, development of the Health Insurance Oversight System (HIOS)	4/15/2010
10	CGI Federal Inc.	GS-35F-4797H/ HHSM-500-2013-00236G	IT development and data services in support of HIOS	4/15/2013
11	CGI Federal Inc.	HHSM-500-2007-00015I/ HHSM-500-T0007	Web site maintenance and support services	4/30/2010
12	CGI Federal Inc.	HHSM-500-2007-00015I/ HHSM-500-T0011	Provide rate and benefits information system for the HealthCare.gov Plan Finder application	6/7/2011

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Contract Identifier	Contractor Name	Contract Number/ Order Number <sup>1</sup>	Description of Contract	Start of Contract Period
13	CGI Federal Inc.	HHSM-500-2007-00015I/ HHSM-500-T0012	Federally facilitated marketplace system development and implementation	9/30/2011
14	Corporate Executive Board	GS-35F-0549W/ HHSM-500-2012-00186G	Professional research Web-based subscription service	9/24/2012
15	Creative Computing Solutions Inc.	GS-06F-0612Z/ HHSM-500-2012-00097G	Security oversight support services	8/2/2012
16	DEDE Inc. dba Genova Technologies	GS-35F-0303M/ HHSM-500-2005-00001B/ HHSM-500-B0018	Requirements engineering support services	5/20/2011
17	DEDE Inc. dba Genova Technologies	GS-35F-0303M/ HHSM-500-2012-00021B/ HHSM-500-B0006	Requirements support for the enterprise eligibility service project	6/11/2012
18	DEDE Inc. dba Genova Technologies	GS-35F-0303M/ HHSM-500-2012-00021B/ HHSM-500-B0019	Development of a comprehensive testing strategy	6/21/2013
19	DEDE Inc. dba Genova Technologies	GS-35F-0303M/ HHSM-500-2012-00021B/ HHSM-500-B0008	Data model and requirements integration support	6/25/2012
20	DEDE Inc. dba Genova Technologies	GS-35F-0303M/ HHSM-500-2012-00021B/ HHSM-500-B0007	Strategic and technical support	6/21/2012
21	DEDE Inc. dba Genova Technologies	GS-35F-0303M/ HHSM-500-2012-00021B/ HHSM-500-B0020	Architecture support to develop a set of enterprise standards and engineering approaches	8/1/2013
22	DEDE Inc. dba Genova Technologies	GS-35F-0303M/ HHSM-500-2012-00021B/ HHSM-500-B0003	Requirements engineering support services	5/20/2012
23	DEDE Inc. dba Genova Technologies	GS-35F-0303M/ HHSM-500-2012-00021B/ HHSM-500-B0013	Business and test data requirements integration engineering support	9/28/2012
24	Deloitte Consulting LLP	GS-10F-0083L/ HHSM-500-2012-00016G	Market report card and operational dashboard development	1/24/2012
25	FedResults Inc.	GS-35F-0256K/ HHSM-500-2012-00038G	GovDelivery digital communication suite	4/1/2012
26	Global Tech Inc. dba eGlobalTech	GS-06F-1088Z/ HHSM-500-2013-00052U	Marketplace technical integration support	6/15/2013
27	Global Tech Inc. dba eGlobalTech	GS-06F-1088Z/ HHSM-500-2013-00046U	Support for verifying Hub Web services and other Hub related components and provide testing integration support	5/3/2013

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Contract Identifier	Contractor Name	Contract Number/ Order Number <sup>1</sup>	Description of Contract	Start of Contract Period
28	Global Tech Inc. dba eGlobalTech	GS-06F-1088Z/ HHSM-500-2014-00083U	Technical interoperability and management support oversight and coordination of technical activities at the Exchange Operations Center for CMS	11/25/2013
29	Global Tech Inc. dba eGlobalTech	GS-35F-0183T/ HHSM-500-2012-00154G	Develop cloud-computing technical framework, architecture, and transitional solutions	9/24/2012
30	Government Acquisitions Inc.	HHSN263999900442I/ HHSM-500-2012-00014U	Informatica enterprise license agreement and maintenance	8/2/2012
31	Heitech Services Inc.	GS-06F-0276Z/ HHSM-500-2011-00027U	General systems design support services	7/25/2011
32	Heitech Services Inc.	GS-06F-0726Z/ HHSM-500-2012-00074G	General systems design operations and maintenance	7/3/2012
33	Heitech Services Inc.	GS-06F-0726Z/ HHSM-500-2013-00275G	General program system support	8/2/2013
34	HP Enterprise Services LLC	HHSM-500-2013-00014I/ HHSM-500-T0003	Host production virtual data center and a disaster recovery virtual data center for its production exchange and Hub systems	7/1/2013
35	IDL Solutions Inc.	HHSM-500-2007-00023I/ HHSM-500-T0001	Development, operation, and maintenance of multidimensional insurance data analytics system (MIDAS), an analytics system that will be used to implement tasks mandated by the ACA	9/27/2011
36	Innosoft Corporation	HHSM-500-2011-00071C/ No task order	Application lifecycle management tool and support	8/15/2011
37	L & M Policy Research LLC	HHSM-500-2010-00015I/ HHSM-500-T0002	Consumer research enhancing Web tools	1/23/2012
38	Lockheed Martin Services Inc.	263-01-D-0054/ HHSM-500-2009-00002U	Data center hosting	1/1/2009
39	Maricom Systems Inc.	HHSM-500-2007-00025I/ HHSM-500-T0005	Support important aspects of CMS's data management and systems capability	11/28/2011
40	Northrop Grumman Information Technology Inc.	HHSM-500-2007-00014I/ HHSM-500-T0006	ACA integrated care data and applications	11/28/2011
41	Onix Networking Corp.	GS-35F-5519H/ HHSM-500-2012-00103G	Purchase Google site search licenses	9/19/2012
42	ProTelecom LLC	HHSM-500-2009-00005I/ HHSM-500-T0014	Video teleconferencing equipment	3/28/2013

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Contract Identifier	Contractor Name	Contract Number/ Order Number <sup>1</sup>	Description of Contract	Start of Contract Period
43	ProTelecom LLC	HHSM-500-2009-00005I/ HHSM-500-T0015	Video teleconferencing equipment and maintenance	9/12/2013
44	Quality Software Services Inc. (QSSI)	GS-06F-0148Z/ HHSP-233-2010-00588G	Enterprise architecture support for the Exchange	9/24/2010
45	Quality Software Services Inc. (QSSI)	HHSM-500-2007-00024I/ HHSM-500-T0007	Data Services Hub	9/30/2011
46	Quality Software Services Inc. (QSSI)	HHSM-500-2007-00024I/ HHSM-500-T0010	Enterprise identity management and credential services	6/18/2012
47	Quality Software Services Inc. (QSSI)	HHSM-500-2007-00024I/ HHSM-500-T0008	Provide technical testing expertise and support	1/17/2012
48	Quality Technology Inc.	GS-06F-0653Z/ HHSM-500-2012-00123G	Operational Support Center for CMS	9/25/2012
49	Science Applications International Corporation (SAIC)	HHSM-500-2007-00020I/ HHSM-500-T0001	Enterprise service for remote identity proofing and multi-factor authentication	1/31/2012
50	Scope Infotech Inc.	HHSM-500-2013-00109C/ No task order	Integration support and system development for Exchange collaboration tools	4/15/2013
51	Spann & Associates Inc.	GS-35F-0235M/ HHSM-500-2013-00334G	Information systems security support	9/25/2013
52	SphereCom Enterprises Inc.	GS-35F-0437N/ HHSM-500-2011-00001B/ HHSM-500-B0001	Information systems security support	3/1/2011
53	SphereCom Enterprises Inc.	GS-35F-0437N/ HHSM-500-2011-00001B/ HHSM-500-B0003	Information systems security support	7/15/2011
54	Terremark Federal Group Inc.	GS-35F-0073U/ HHSP-233-2011-00177G	Cloud computing services for the health insurance Marketplace	4/1/2011
55	The Mitre Corporation	HHSM-500-2012-00008I/ HHSM-500-T0015	Acquisition and systems engineering support services	9/27/2013
56	The Mitre Corporation	TIRNO-99-D-00005/ HHSM-500-2011-00014U	Security engineering, integration, and enterprise vulnerability management	6/13/2011
57	The Mitre Corporation	TIRNO-99-D-00005/ HHSM-500-2009-00021U	Security test and evaluations for CMS systems	7/28/2009
58	The Mitre Corporation	TIRNO-99-D-00005/ HHSM-500-2011-00036U	Broad systems engineering support	9/26/2011

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Contract Identifier	Contractor Name	Contract Number/ Order Number <sup>1</sup>	Description of Contract	Start of Contract Period
59	The Mitre Corporation	TIRNO-99-D-00005/ HHSP-233-2010-00138W	IT modernization support	9/28/2010
60	TurningPoint Global Solutions LLC	GS-06F-0672Z/ HHSM-500-2012-00008U	Independent verification and validation services support for the Federal Exchange	5/15/2012

Source: OIG analysis of CMS contract files, 2014.

<sup>1</sup> For some contracts, we have provided both a contract number and a blanket purchase agreement number. CMS can utilize blanket purchase agreements to fill anticipated repetitive needs for supplies and services.

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## APPENDIX F

### **Detailed Methodology**

#### ***Data Sources and Collection***

Document and information request. We requested from CMS the contract files and contracting officer's representatives' files for all Federal Marketplace contracts awarded prior to December 31, 2013. We subsequently requested these files for the FFM2 contract (awarded in January 2014). The contract files include documentation such as the contract's award and modifications, acquisition plan, request for proposal, negotiation memoranda, TEP reports, and Determination and Findings memoranda (if applicable). We also requested all CMS emails related to these contracts.

We also requested that CMS provide all HHS and CMS manuals, guides, and procedures related to contract procurement, acquisition planning, contractor selection, and contract management. Lastly, we asked CMS to indicate which of the 60 Federal Marketplace contracts had undergone contract oversight reviews, e.g., Contract Review Board reviews, the dates the reviews were completed, and whether any reviews were waived.

Interviews. We conducted structured interviews with high-level HHS and CMS staff. We also interviewed the contracting officer and contracting officer's representative who were assigned to the six key contracts during the acquisition and procurement phases. We asked staff to describe the acquisition policies and planning strategies, extent of communication and coordination among various divisions involved with planning, and factors involved with evaluating and selecting the Federal Marketplace contractors. Lastly, we asked staff to describe any challenges encountered during the acquisition planning and contract procurement process of the Federal Marketplace contracts.

FAR and HHSAR. We identified certain requirements in the FAR and the HHSAR relevant to acquisition planning and contract procurement.

#### ***Data Analysis***

Acquisition planning for the Federal Marketplace. Using information collected through interviews, contract files, and related policy and procedure documents, we evaluated HHS's acquisition planning process for the Federal Marketplace project. We reviewed the interview responses and documents provided by CMS to determine whether the HHSAR-required acquisition strategy was developed. We analyzed the FAR and HHSAR requirements to identify which of the 60 Federal Marketplace contracts did not require an acquisition plan. For these contracts, we reviewed the contract files and contracting officer's representatives' files to determine whether they contained other types of

acquisition planning information. Specifically, we determined whether the contract file contained an acquisition milestone schedule for the base award, a signed certified funding document dated prior to award, and an independent Government cost estimate for the base award. For the contracts that required an acquisition plan, we reviewed the acquisition plan to determine the extent to which certain planning areas were addressed.

*Contract oversight reviews.* For each of the six key contracts, we reviewed the contract files and any additional documentation provided by CMS to determine whether it conducted any type of quality control review, including, but not limited to, a Contract Review Board review. We also reviewed the interview responses provided by each contract's contracting officer and contracting officer's representative about the types of quality assurance reviews performed on the contract.

*Procurement of the Federal Marketplace contracts.* We used the contract files to determine how many of the 60 Federal Marketplace contracts HHS and CMS procured as an original contract or as an order under a previously established contract. We identified the type of previously established contract used to procure the order.

We also determined the number of Federal Marketplace contracts for which CMS sought services from only one company and the number of contracts for which only one company submitted a proposal for CMS's consideration. For these contracts, we summed the total estimated contract value at the time of award.<sup>48</sup> For the six key contracts, we also determined the number of proposals that were deemed technically acceptable.

For the six key contracts, we reviewed various documents in the contract files to determine how CMS evaluated proposals. We also analyzed interview responses from the contracting officers and contracting officer's representatives to gain additional insight into the rationale for selecting these contractors. We reviewed HHS policies and procedures and the FAR requirements related to proposal review and contractor selection.

*Contract value and type for the six key contracts.* We identified the estimated contract value listed in the base award for each of the six key contracts. We also reviewed the most recent modification CMS provided and determined the most up-to-date contract value for each of the six key

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<sup>48</sup> The total estimated contract value is an expected value. This amount may be less, for example, if option years are not exercised. This amount may be more, for example, if modifications are made to the contract that increase the cost of the contract.

contracts and calculated the difference between the original and updated amounts.

We reviewed contract files for the six key contracts and relevant FAR requirements regarding contract file documentation to determine the rationale for choosing contract type. We determined whether the files contained explanations for selecting the contract type and reviewed these explanations.

*Challenges.* We reviewed interview responses and CMS documents to identify challenges and barriers encountered during the acquisition planning and procurement of the Federal Marketplace contracts.

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## APPENDIX G

### Contracting Vehicles Used for Federal Marketplace Contracts

Table G-1 displays the contracting vehicles that CMS used for the 55 Federal Marketplace contracts (including 5 key contracts) that were awarded as orders under previously established contracts.

**Table G-1: Contracting Vehicles CMS Used for the 55 Federal Marketplace Contracts Awarded as Orders Under Previously Established Contracts**

Contracting Vehicle	Number of Contracts
General Services Administration (GSA) IT Schedule 70 (Federal Supply Schedule) <sup>1</sup>	11
CMS Enterprise System Development (ESD) Indefinite-Delivery-Indefinite-Quantity (IDIQ)	10
GSA 8(a) Streamlined Technology Acquisition Resources for Services (STARS) II Governmentwide Acquisition Contract (GWAC) <sup>2</sup>	8
CMS Professional Requirements Engineering Services Blanket Purchase Agreement	7
Internal Revenue Service's Federally Funded Research and Development Center (FFRDC)	4
CMS Video Teleconferencing (VTC) IDIQ	2
GSA Alliant Small Business GWAC	2
CMS Consumer Research and Communication (CRC) IDIQ	1
CMS Enterprise Business Planning Group (EBPG) Blanket Purchase Agreement	1
CMS FFRDC	1
CMS Information Security Program Support Blanket Purchase Agreement <sup>1</sup>	1
CMS Requirements Engineering Support Services Blanket Purchase Agreement	1
CMS Virtual Data Center (VDC) IDIQ	1
GSA Mission Oriented Business Integrated Services (MOBIS) Schedule 874 (Federal Supply Schedule)	1
National Institutes of Health (NIH) Information Technology Acquisition and Assessment Center (NITAAC) Chief Information Officer Solutions and Partners 2 Innovations (CIO-SP2i) GWAC	1
NIH NITAAC Chief Information Officer Solutions and Partners 3 (CIO-SP3) GWAC	1
NIH NITAAC CIO-SP3 Small Business GWAC	1
NIH NITAAC Electronic Commodities Store III (ECS-III) GWAC	1

Source: OIG analysis of CMS contract files and files from the contracting officer's representatives, 2014.

<sup>1</sup> Two of the 55 Federal Marketplace contracts are orders placed under the CMS Information Security Program Support Blanket Purchase Agreement. However, one of these orders was procured simultaneously with the Blanket Purchase Agreement itself using the GS IT Schedule 70 (Federal Supply Schedule). For the purposes of this table, we counted this contract as using the GS IT Schedule 70 contracting vehicle.

<sup>2</sup> Two of these contracts used the GSA 8(a) STARS GWAC, the GSA 8(a) STARS II GWAC's predecessor.

## APPENDIX H

### Agency Comments



#### DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington DC 20201

NOV 14 2014

**TO:** Daniel R. Levinson  
Inspector General, Office of the Inspector General

**FROM:** Ellen G. Murray *[Signature]*  
Assistant Secretary for Financial Resources and Chief Financial Officer  
Office of the Assistant Secretary for Financial Resources

*[Signature]*  
Marilyn Tavenner  
Administrator, Centers for Medicare and Medicaid Services

**SUBJECT:** HHS Comments on OIG Draft Report: *Federal Marketplaces: Inadequacies in Contract Planning and Procurement*, OEI-03-14-00230

The Department of Health and Human Services (HHS) appreciates the opportunity to review and respond to the recommendations identified in the OIG's draft report *Federal Marketplace: Inadequacies in Contract Planning and Procurement*, OEI-03-14-00230. HHS recognizes the need to continually improve its contract management and responds to the recommendations below.

After the enactment of the Affordable Care Act in March 2010, the HHS and the Centers for Medicare and Medicaid Services (CMS) faced a unique and difficult challenge – establish a first-of-its-kind online Marketplace to determine consumer's eligibility for coverage and insurance affordability programs and enroll them in coverage beginning January 1, 2014. To accomplish this, CMS awarded contracts and task orders for the development and support of the Federally-facilitated Marketplace (FFM) and the Federal Data Services Hub (the Hub). Those contracts included developing technical requirements, building the application, performing security monitoring and testing, and securing the infrastructure needed to support the FFM and the Hub. A vast majority of the contracts and task orders did not have performance issues and delivered quality services or products on time and within budget.

CMS has moved aggressively to implement extensive contracting reforms, bring in new leadership to oversee Marketplace operations, hire a systems integrator, and end our largest contract with CGI and move to a new type of contract with Accenture that rewards performance and reduces risk to the federal government. CMS is working to ensure effective management of the Marketplace with a focus on clear lines of authority, prioritization of requirements and deliverables, and metric-driven quality reviews for its Healthcare.gov contracts and for contracts across the agency. A task force has been appointed to develop a program-wide view of the cost of the Marketplace in order to strategically manage Marketplace acquisitions. Additionally, CMS is enforcing a strict governance structure for contracts and is training a stronger acquisition workforce. CMS has brought in new leadership to oversee the Marketplace, with an eye on

focusing on Marketplace operations such as contract management. CMS is working to develop a strategic and unified view of the Marketplace and its other major IT contracts and costs. CMS is taking the HHS OIG's findings and recommendations seriously, and is using the report as an opportunity to make needed change.

**OIG Recommendation #1:**

CMS should ensure that acquisition strategies are completed as required by the HHSAR.

**HHS Response**

HHS concurs with this recommendation. CMS and its contracting task force agrees with the HHS OIG that the development of an acquisition strategy allows for identification of risks and mitigations and the use of such strategies would improve CMS's ability to control costs, while meeting scheduled technical milestones. CMS's major IT investment acquisition strategies will follow HHS guidance, be simple and clear, and will focus on broadening procurement options, improving acquisition oversight, and employing federal government best practices. The strategies will clearly identify risks and tradeoffs, and will be updated iteratively to refine approaches as circumstances change.

Additionally, CMS held a mandatory training session on August 28, 2014 for program managers assigned to CMS's major IT investments with a specific emphasis on preparing acquisition strategies.

**OIG Recommendation #2:**

CMS should assess whether to assign a lead systems integrator for complex IT projects involving multiple contractors.

**HHS Response**

HHS concurs with this recommendation. The value of a systems integrator was a key lesson learned from CMS's experience implementing the Marketplace, and the assessment of whether to assign a systems integrator will be a CMS best practice when planning for a complex IT project.

Starting as of October 2013, the Marketplace has a systems integrator. In order to improve communication and accountability in the Marketplace, functional and technical teams collaborate and coordinate on planning and execution through daily meetings staffed with lead federal policy, operations and technical staff, contractors, and representatives from the systems integrator. The systems integrator works with these teams to monitor, assess, and identify potential technical and operations issues. They work with CMS staff to develop solutions and ensure that effective and timely decisions are made to meet Marketplace deadlines.

**OIG Recommendation #3:**

CMS should ensure that contract actions are supported by required documentation.

**HHS Response**

HHS concurs with this recommendation. HHS and CMS are working with its acquisition and program staff to ensure that required responsibilities are met. HHS established acquisition Learning Communities to provide integrated training for members of the acquisition community. This training is designed to assist participants in understanding the acquisition lifecycle for various goods and services. Along with the HHS training, CMS offers extensive training for its contracting officers representatives (CORs) and program and project managers, including approximately 140 classes focused on strategic planning, implementation, risk management, and ensures that requirements, including documentation requirements, are met.

To address the OIG's finding that Marketplace contracts did not have an acquisition plan and other required documents, CMS is working with its CORs to ensure that all required acquisition plans are prepared and submitted using the template prescribed in the HHSAR. If a formal acquisition plan is not required, the COR must submit an acquisition request memo to the CMS Office of Acquisition and Grants Management (OAGM), along with a Statement of Work or a Performance Work Statement. This submission includes requirements for deliverables and reporting, a certified funding document, source selection strategy and criteria, necessary approvals and justifications, a milestone schedule, and an independent Government cost estimate.

**OIG Recommendation #4:**

CMS should ensure that all contracts that are subject to its Contract Review Board requirements undergo these reviews.

**HHS Response**

HHS concurs with this recommendation. The Contract Review Board was established by CMS to ensure that contractual documents followed established policies and procedures, contract awards properly reflected the mutual understanding of the parties, and the Contracting Officer was informed of any items needing corrective action. OAGM worked to implement the Contract Review Board in 2011. During this time, OAGM educated managers and staff about the purpose of the Contract Review Board, identified staff to serve on the Contract Review Board, and formalized processes for contracts to be reviewed by the Contract Review Board. By early 2012, OAGM had fully implemented the Contract Review Board. The presolicitation and preaward process for many of the Marketplace contracts for actions greater than \$50 million took place during the implementation process of the Contract Review Board. Since then the Contract Review Board has been fully implemented, and CMS will ensure that it fully complies with the requirements in its policy and that all required contracts are approved through the Contract Review Board.

**OIG Recommendation #5**

HHS should review the HHSAR to limit or eliminate certain exceptions to developing a written acquisition plan.

**HHS Response**

HHS concurs with this recommendation. The Department's supplement to the Federal Acquisition Regulation (FAR), the HHS Acquisition Regulation (HHSAR) is currently being revised and is in its final stages of internal review process prior to being released for public comment. Additionally, the Department is in the process of developing a set of Policies, Guidance and Instructions (PGI) to complement the HHSAR with internal operating information and principles; to include an Acquisition Strategy Guide and an Acquisition Planning Guide. The HHSAR will state that a written Acquisition Plan is required for all acquisitions exceeding the Simplified acquisition threshold and will supplement the FAR by outlining the required content of an acquisition plan. The two guides will explain why acquisition strategies and acquisition plans are required and necessary to be developed, will address key considerations for program and contracting officials in developing their strategies and plans, and will outline the agency procedures and review and approval thresholds. The final guides are expected to be completed in early 2015.

**OIG Recommendation #6**

HHS should revise its guidance to include specific standards for conducting past performance reviews of companies under consideration during contract procurement.

**HHS Response**

HHS and CMS concur with this recommendation. The Department has taken and will continue to take steps for conducting past performance reviews and using this information in the source selection process. The Department has developed and plans to enhance guidance on Past Performance as part of its efforts to develop the HHS PGI. HHS has also taken steps to implement the Office of Federal Procurement Policy's July 10, 2014 memorandum on *Making Better Use of Contractor Performance Information*, which included additional consideration when evaluating and using contractor past performance information, and in sharing this information with agency leadership. In support of this memorandum, HHS implemented a requirement that each Operating Division appoint a point of contact (PoC) to be accountable for their past performance reporting compliance. Agency PoCs are required to complete the Contractor Performance Assessment Reports System (CPARS) Focal Point and Agency POC training and will serve as the Department's leads in addressing past performance compliance requirements. The Department has also held, and will continue to hold, working group sessions with representatives from the Operating/Staff Divisions to discuss the application of current Federal Guidance. HHS has plans to assess the use of past performance in source selection decision-making by reviewing a representative sampling of solicitations quarterly. Finally, the Department is monitoring CPARS and Federal Awardee Performance and Integrity Information System (FAPIIS) records for compliance on a quarterly basis. These efforts are yielding positive

results; HHS's compliance with the requirement to evaluate and report on contractor past performance has increased significantly in FY2014.

In addition to HHS's steps to address past performance, CMS established an initiative in the OAGM Strategic Plan to complete 80 percent of CPARS performance evaluations that are currently overdue. In FY2014, CMS made significant progress in completing contractor past performance evaluations and successfully surpassed the federal government-wide goal of completing 80 percent of overdue CPARS evaluations by September 2014.

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