

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**CONFLICTS AND FINANCIAL
RELATIONSHIPS AMONG
POTENTIAL ZONE PROGRAM
INTEGRITY CONTRACTORS**



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EXECUTIVE SUMMARY: CONFLICTS AND FINANCIAL RELATIONSHIPS AMONG POTENTIAL ZONE PROGRAM INTEGRITY CONTRACTORS OEI-03-10-00300

WHY WE DID THIS STUDY

The Centers for Medicare & Medicaid Services (CMS) uses Zone Program Integrity Contractors (ZPIC) to perform program integrity activities designed to fight fraud, waste, and abuse in the Medicare program. Conflicts of interest among ZPICs could compromise CMS's efforts to protect the program. CMS requires companies that submit proposals for ZPIC contracts (offerors) and their subcontractors to (1) disclose information about any business or contractual relationships that may present conflicts and (2) provide a strategy to mitigate all conflicts of interest that may compromise the ZPICs' impartiality in conducting their work.

HOW WE DID THIS STUDY

We reviewed conflict-of-interest information for 18 offerors and 85 subcontractors. We also conducted a structured interview with CMS staff to determine how CMS addresses conflicts of interest among offerors. We determined whether offerors and subcontractors provided CMS all the information required for their reported conflicts and financial interests.

WHAT WE FOUND

Offerors and their subcontractors often had business and contractual relationships with CMS and with other offerors, but rarely considered them to be actual conflicts. They reported having relationships with CMS or contractors of CMS that provide Medicare Parts C and D plans, claims processing, program integrity, and/or quality improvement services. Offerors, subcontractors, and CMS identified 1,919 business and contractual relationships as possible conflicts and 16 as actual conflicts. CMS does not have a written policy for reviewing conflict and financial interest information submitted by offerors, and submitted information was not always consistent or complete. Specifically, some offerors and subcontractors failed to provide all the requisite information regarding financial interests in other entities.

WHAT WE RECOMMEND

To encourage an environment of transparency and accountability among contractors, we recommend that CMS: (1) provide clearer guidance in the Request for Proposals to offerors and subcontractors regarding which business and contractual relationships should be identified as actual conflicts and which should be identified as possible conflicts; (2) require offerors and subcontractors to distinguish those business and contractual relationships that they deem to be actual conflicts from those they deem to be possible conflicts; (3) state whether offerors and subcontractors need to report income amounts, periods of performance, and types of work performed for their contracts with CMS and income amounts generated from key personnel's other employment; (4) create a standardized format for reporting information in the Organizational Conflict of Interest Certificate and require its use by offerors and subcontractors; and (5) develop a formal, written policy outlining how conflict-of-interest information provided by offerors should be reviewed by CMS staff. CMS partially concurred with our first and second recommendations and fully concurred with the remaining recommendations.

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OBJECTIVES

1. To determine the extent to which offerors reported business and contractual relationships with other offerors and the Centers for Medicare & Medicaid Services (CMS).
2. To determine the number of conflicts of interest identified by offerors or CMS during the Zone Program Integrity Contractor (ZPIC) contracting process.
3. To determine what strategies offerors proposed to mitigate conflicts of interest.
4. To determine whether offerors provided consistent and complete information on their conflicts and financial interests to CMS and whether CMS reviewed this information.

BACKGROUND

A conflict of interest exists if a Federal contractor is unable or potentially unable to provide impartial assistance or advice to the Government.¹ Conflicts of interest among Federal contractors can compromise the integrity of the contracting process. Federal regulations provide guidance for resolving conflicts among contractors.

CMS employs program integrity contractors to identify fraud, waste, and abuse in the Medicare program. ZPICs are of particular importance because they perform the majority of program integrity work for CMS. Therefore, conflicts of interest that affect the impartiality of ZPICs could weaken CMS's efforts to protect Medicare from fraud, waste, and abuse. For example, a program integrity contractor owned by a health insurance company offering a Medicare prescription drug plan might have a disincentive to investigate suspected fraud involving those particular prescription drug plans.

Conflicts of interest that go undetected or are not appropriately addressed could cost the Medicare program money and weaken public trust in its services. If ZPICs with conflicts of interest become less vigilant in combating fraud, then taxpayer dollars may be wasted on payments to unscrupulous providers. Situations in which conflicted contractors are unable to conduct their responsibilities impartially could undermine public trust that Medicare is protected from fraud. As a result, it is important that systems be in place to ensure the independence and integrity of program integrity contractors.

¹ Federal Acquisition Regulation (FAR), 48 CFR pt.2, subpart 2.1.

In a letter to the Office of Inspector General (OIG), Senators Max Baucus, Thomas R. Carper, and Claire McCaskill raised concerns about potential conflicts of interest among contractors that perform Medicare administrative and program integrity functions. This report was prepared in response to their letter.

The Role of Private Contractors in Administering Medicare

As the agency responsible for administering Medicare, CMS employs contractors to conduct the day-to-day operations of the program, such as claims processing, as well as to conduct program integrity activities designed to fight fraud, waste, and abuse. Among other responsibilities, program integrity contractors develop and refer suspected cases of fraud to OIG for further investigation.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 substantially changed CMS's Medicare contracting process. The law requires CMS to award contracts under the FAR, which requires an open, competitive award process.² CMS has estimated that the Medicare contracting reform provisions in the law would result in cost savings from increased competition, consolidation of claims processing functions, and reductions in claims error rates.³

The Transition to ZPICs

CMS created ZPICs to consolidate all Medicare program integrity functions under one type of contractor in a geographic zone. As of October 2011, ZPICs are replacing Program Safeguard Contractors (PSC) that perform program integrity work in Medicare Parts A and B. At the time ZPICs were established, CMS stated that ZPICs may also assume some of the work of the Medicare Drug Integrity Contractors (MEDIC) that currently perform program integrity activities for Medicare Parts C and D. The new contracting arrangement requires that one ZPIC be assigned to each of seven geographic zones. CMS began to transfer program integrity workloads from the PSCs to ZPICs in 2008. ZPIC contracts for all seven zones have been awarded.

ZPICs identify improper billing patterns that indicate potential fraud, waste, and abuse; investigate cases of suspected fraud; and refer cases to OIG for further investigation. The ZPIC Statement of Work details the range of activities that may be required of ZPICs.

² 48 CFR pt.1, subpart 1.102-2(c).

³ Department of Health and Human Services (HHS), *Medicare Contracting Reform: A Blueprint for a Better Medicare*, p. IV-2, February 7, 2005.

The Contract Award Process for ZPICs

CMS begins the contract award process with the release of a Request for Proposal (RFP).⁴ The RFP outlines CMS's requirements, the nature of the work required, and the contract's period of performance and deliverables.

Prospective ZPICs (offerors) compete for contracts by submitting a business proposal, including information about the company's financial status; a technical proposal describing the company's ability to perform the required work; a list of any actual, apparent, or potential conflicts of interest; and a conflict-of-interest and compliance plan that stipulates how the company would resolve any conflicts.

A Technical Evaluation Panel evaluates and scores each technical proposal by applying criteria in the RFP.⁵ Using the panel's rating of each proposal, the CMS contracting officer may establish a "competitive range" that includes the most highly rated proposals. These offerors then have an opportunity to discuss improvements to their proposals with CMS before submitting final revised proposals. Finally, the contracting officer selects a proposal that is determined to provide the "best value" to the Government.

Conflicts of Interest Among Offerors in the ZPIC Award Process

Requirements for identifying and mitigating of conflicts of interest are provided in both the FAR and the RFP for ZPIC contracts.⁶ For example, a conflict of interest exists if a ZPIC is unable or potentially unable to provide impartial assistance or advice to the Government. The Government Accountability Office (GAO) has further clarified the FAR to establish three types of conflicts of interest:

- An offeror has an "unequal access to information" conflict when, through its work as part of a Government contract, it has access to nonpublic information that may provide the offeror a competitive advantage in a later solicitation for a Government contract.
- An offeror has a "biased ground rules" conflict when, as part of its performance of a Government contract, it has set the ground rules for another Government contract by, for example, writing a Statement of Work.

⁴ The contract award process is established in FAR pt. 15 and supplemented in HHS Acquisition Regulation pt. 315.

⁵ Criteria include the company's expertise in carrying out fraud investigations and conducting data analysis.

⁶ Requirements regarding conflicts of interest among Federal contractors are established in FAR subpart 9.5.

- An offeror has an “impaired objectivity” conflict when its work under a Government contract could involve evaluating itself.⁷

The FAR does not require that all contractors be free of conflicts. Contracting officers may award a contract even if an offeror has a conflict of interest that cannot be avoided or mitigated, as long as they establish that an award is in the Government’s “best interest.” In such a case, a waiver must be requested. However, the RFP explicitly states that contractors should be free of conflicts of interest “to the greatest extent possible.”

Requirements in the ZPIC RFP. The ZPIC RFP includes a number of disclosure requirements designed to identify any conflicts and address them before a contract is awarded. Offerors and their subcontractors must establish a conflict-of-interest program to identify, evaluate, and mitigate all conflicts of interest that prevent, or would appear to prevent, the ZPIC from conducting work in an impartial manner.⁸

The contracting officer assesses the offeror’s conflict-of-interest and compliance plan independently of the Technical Evaluation Panel’s formal scoring of the offeror’s proposal. The plan assessment is not part of the formal scoring process.

The RFP requires that offerors and their subcontractors disclose any actual, apparent, and potential conflicts of interest by means of an Organizational Conflict of Interest Certificate. However, the RFP does not provide definitions or examples that differentiate between actual, apparent, and potential conflicts. The certificate must identify all actual, apparent, and potential conflicts of interest that preclude, or would appear to preclude, impartiality. The document must include the following items (a complete list is provided in Appendix A):

- a description of all business or contractual relationships or activities that could be viewed as conflicts of interest by a prudent businessperson;
- a description of the methods to be used to mitigate any conflict;
- a description of the offeror’s program to monitor its own and its subcontractors’ compliance with conflict-of-interest requirements;

⁷ GAO Bid Protest Decision, Aetna Government Health Plans, Inc.; Foundation Health Federal Services, Inc., File B-254397.15, B-254397.16, B-254397.17, B-254397.18, and B-254397.19, July 27, 1995.

⁸ Subcontractors are used by offerors to perform services such as medical review of claims, statistical analysis, data management, and database administration.

- a written affirmation attesting to the accuracy of the information in the certificate;
- a description of the offeror’s corporate and organizational structure;
- an accounting of the offeror’s financial interests (percentage of ownership in any other entity, income generated from other sources, contracts or arrangements with any insurance organization or its subcontractors, or provider of Medicare- or Medicaid-reimbursed services);⁹
- a list of all of the officers, directors, and managers involved or potentially involved in the contract with a description of their potential conflicts of interest and financial interests (officers, directors, and managers are hereafter referred to as “key personnel”); and
- a list of all subcontractors to be used in the contract.

Offerors that are awarded ZPIC contracts are required under the RFP to submit an Organizational Conflict of Interest Certificate to the CMS contracting officer annually on October 31.

Although not required by the FAR, CMS performs annual conflict-of-interest compliance audits for each ZPIC contract. These compliance audits are for the period November 1 through October 31 each year. If any new conflicts are found, CMS will notify the ZPIC and require the contractor to submit updated information, which may include an updated Organizational Conflict of Interest Certificate and/or a revised mitigation strategy, depending on the specific issue.

CMS Review Process

CMS staff reported that they review all the certificates they receive from offerors and subcontractors to determine whether the requirements in the RFP are met. While the RFP requires that offerors and subcontractors provide certain information about their business and contractual relationships, it does not require that offerors and subcontractors use a standardized organizational format to do this. Therefore, the information CMS receives varies in length and format across all offerors and subcontractors. In addition, the number and complexity of the offerors’

⁹ Offerors and subcontractors are also required to report the dollar amount, type of work performed, and period of performance for contracts or arrangements with insurance organizations, subcontractors of insurance organizations, and providers of Medicare- or Medicaid- reimbursed services.

business and contractual relationships also affect the volume of the information received.

CMS staff also determine whether any conflicts of interest exist for offerors or subcontractors. They base these determinations on a review of the specific circumstances of disclosed business or contractual relationships. Each certificate that CMS receives from offerors and subcontractors can include hundreds of pages. During the entire ZPIC conflict-of-interest review process, CMS reviewed approximately 10,000 pages.

Once offerors are selected for the competitive range, their certificates and those of their subcontractors are more closely reviewed. CMS staff has discussions with these offerors regarding the information in the certificates. After the discussions, the offerors in competitive range are asked to submit revised certificates that address CMS's concerns.

After CMS determines which offeror will be awarded the ZPIC contract, it performs a more detailed review of the offeror's revised Organizational Conflict of Interest Certificate and those of its subcontractors. If any unresolved conflict-of-interest issues remain, CMS conducts an exchange with the offeror until a resolution is reached and the contract can be awarded. Any information that CMS needs to complete its assessment and review of the certificate is requested at this time.

Conflict-of-Interest Protests During the ZPIC Award Process

Offerors may file formal protests with GAO if they object to CMS's contracting decisions.¹⁰ Since the ZPIC award process began, protests have been filed covering various issues, including conflicts of interest.¹¹ In two of the sustained protests, the issue was the level of detail CMS accepted in the offerors' plan to mitigate a conflict of interest.¹² According to GAO, CMS awarded contracts for Zones 2 and 5 to AdvanceMed, Inc., without reasonably considering the plan proposed by AdvanceMed to mitigate its conflicts of interest.

AdvanceMed's parent company has contracts with Medicare Part D plan sponsors, e.g., information technology services contracts.¹³ According to CMS, AdvanceMed might have evaluated its parent company's work if it

¹⁰ GAO bid protest regulations are established in 4 CFR pt. 21.

¹¹ GAO bid protest determinations are not binding and can be overridden by an agency.

¹² GAO Bid Protest Decision, C2C Solutions, Inc., File B-401106.5, January 25, 2010; GAO Bid Protest Decision, Cahaba Safeguard Administrators, LLC, File B-401842.2, January 25, 2010.

¹³ Medicare Part D prescription drug coverage is provided through private sponsors that offer a choice of plans with different costs and coverage.

had been tasked with conducting program integrity work for Medicare Part D. There was a possibility that Part D program integrity work would never be awarded because it was an option under the ZPIC contract. However, GAO still held that CMS should have obtained a more detailed mitigation plan.

GAO recommended that CMS reconsider its determination of AdvanceMed's eligibility for awards. In both cases, CMS gave AdvanceMed an opportunity to draft a more detailed mitigation plan. The contracting officer reviewed the revised plans and approved them.

METHODOLOGY

Scope

Our study is limited to the five zones where ZPIC contracts were awarded at the time our study began in October 2010: Zones 1, 2, 4, 5, and 7. At the time of our data collection, ZPIC contracts for Zones 3 and 6 had not yet been awarded.

Data Collection

Documentation From CMS. We obtained the following from CMS:

- copies of the portions of the proposal that dealt specifically with conflicts of interest submitted by each offeror for the five ZPIC zones, including the Organizational Conflict of Interest Certificates submitted by each offeror and each of their subcontractors; and
- copies of statements, files, analyses, notes, records of conversations and meetings, and correspondence CMS used to review offerors' conflicts of interest.

Interview With CMS staff. We interviewed relevant CMS staff to determine what procedures CMS uses for identifying and reviewing conflicts of interest among ZPIC offerors.

Data Analysis

A total of 19 offerors submitted proposals for ZPIC contracts in Zones 1, 2, 4, 5, and 7. CMS provided Organizational Conflict of Interest Certificates for 18 of the 19 offerors. CMS was unable to locate and provide documentation for one offeror in one zone.¹⁴ We reviewed original and, if submitted, revised Organizational Conflict of Interest Certificates for 18 offerors and 85 subcontractors. Because some companies submitted proposals for ZPIC contracts in more than 1 zone, there were only 12 unique ZPIC offerors. The first finding of this report is

¹⁴ This offeror was not awarded a ZPIC contract.

based on these 12 unique offerors. All of the remaining findings are based on the total of 18 offerors.

We reviewed the original and revised Organizational Conflict of Interest Certificates submitted by offerors and their subcontractors to determine whether they met conflict-of-interest disclosure requirements outlined in the RFP. We also reviewed the certificates to determine the number of conflicts of interest disclosed by the offerors and their subcontractors.

To determine the business and contractual relationships that offerors and subcontractors had with each other and with CMS, we analyzed the conflict and financial interest information provided in Organizational Conflict of Interest Certificates.

We reviewed documentation generated by offerors, subcontractors, and CMS to quantify and categorize conflicts of interest. We categorized those conflicts into two groups: (1) actual conflicts and (2) possible conflicts.

Actual Conflicts. Actual conflicts are situations in which an offeror, a subcontractor, or CMS described a business or contractual relationship as an actual conflict. To be included in this category, a conflict must not have been described using other terms, such as “apparent,” “potential,” or “perceived.”

Possible Conflicts. Possible conflicts are situations in which an offeror, a subcontractor, or CMS described a business or contractual relationship as an apparent, potential, or perceived conflict. No additional information was provided that would designate the business or contractual relationship as an actual conflict. There was also no indication that the business or contractual relationship was not an actual conflict. This category also includes situations in which an offeror identified business or contractual relationships of various types without specifying which were actual or possible conflicts.

If documentation showed that CMS’s description of a conflict differed from the offeror’s or subcontractor’s description, we based our categorization of the conflict on CMS’s decision. For example, CMS determined some conflicts to be actual even though offerors did not specify the type of conflict.

We also reviewed mitigation information provided by offerors and subcontractors to quantify and categorize their mitigation strategies.

Some offerors submitted more than one version of their Organizational Conflict of Interest Certificates—an original certificate and a revised certificate(s) that incorporated changes based on concerns raised by CMS.

In categorizing conflicts and mitigation strategies, we used the most recent certificate submitted by each offeror during the award process.

We also determined whether offerors and subcontractors submitted complete information regarding their financial interests as well as those of their key personnel. According to the RFP, this includes: (1) percentage of ownership in any other entity, (2) income generated from other sources, and (3) contracts or arrangements with any insurance organization or its subcontractors or provider of Medicare- or Medicaid-reimbursed services.

To assess how CMS reviewed offerors' and subcontractors' conflicts of interest, we reviewed documentation submitted by CMS. This included copies of statements, files, analyses, notes, records of conversations and meetings, and correspondence. We reviewed the documentation to determine whether CMS identified any concerns with offerors' and subcontractors' Organizational Conflict of Interest Certificates.

Limitations

All of the information in the "Findings" section of this report was provided to us by CMS, including offerors' and subcontractors' information. We did not verify the information provided.

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.

FINDINGS

Offerors and their subcontractors often had business and contractual relationships with CMS and with other offerors, but rarely considered them to be actual conflicts

Ten of the twelve unique offerors described having business or contractual relationships with CMS and/or another offeror at the time proposals were submitted. These 10 offerors reported a total of 31 relationships with CMS or contractors of CMS that provide Medicare Parts C and D plans, claims processing, program integrity, and/or quality improvement services. The three unique offerors that won ZPIC contracts reported having six such relationships. Some of the 10 offerors considered these business and contractual relationships to be actual or possible conflicts, while others characterized them as financial relationships but not conflicts.

Seven offerors were subsidiaries of health insurance companies that offered Medicare plans

Seven offerors were owned by five health insurance companies, which had contracts to provide Medicare Part C and/or D plans. The seven offerors either did not report their relationships to Medicare Parts C and D plan sponsors as actual conflicts hindering their ability to provide impartial assistance to the Government or did not specify that these relationships were actual conflicts.

Some offerors stated that their ZPIC program integrity work would occur in a geographic area different from the one where their parent companies offered Medicare Part C and/or D plans. Other offerors contended that separate corporate and governance structures prevented any influence by their parent companies on their objectivity in performing program integrity work under the ZPIC contract. CMS determined that one of these relationships was an actual conflict because the offeror could be called upon to review the services of its parent company.

Two-thirds of offerors either were Medicare claims processors or had financial ties to claims processors

Two offerors were Medicare claims processors and six offerors had parent or sister companies that were claims processors. One of these six offerors had two parent companies that processed Medicare claims. The other five offerors were owned by parent companies that also owned subsidiaries that processed Medicare claims (i.e., the offeror and subsidiary were sister companies).

Neither the offerors nor CMS considered these eight relationships as actual conflicts. Some offerors determined that these relationships did not create actual conflicts because the offerors would be performing program integrity functions outside the zone where they or their parent and sister companies processed Medicare claims. Therefore, the offerors would not be performing program integrity functions on Medicare claims processed by related companies. CMS staff also reported that they do not consider an affiliation with a Medicare claims processor to be an actual conflict because the ZPIC is not investigating the claims processor, but instead is investigating the providers that submit claims.

Half of the offerors had existing Medicare program integrity contracts with CMS

Six of the twelve offerors stated they had existing program integrity contracts with CMS. Four of these six had PSC contracts with CMS, one had a MEDIC contract with CMS, and one had both a PSC and a MEDIC contract. None of these relationships were considered to be actual conflicts by either the offerors or CMS.

One offeror had a qualified independent contract (QIC) with CMS.¹⁵ This offeror did not consider this relationship to be an actual conflict because the scope of the QIC work was outside the ZPIC geographic zone. Four offerors had sister companies with CMS contracts to operate as quality improvement organizations (QIO) or QICs.¹⁶ Two of these offerors did not consider these relationships to be actual conflicts. Another offeror considered this relationship as a possible conflict. However, CMS determined it to be an actual conflict because the QIC (sister company) could be called upon to review the work of the offeror. The remaining offeror listed this relationship as a financial interest but did not address whether it was any type of conflict.

Offerors subcontracted with each other as well as with entities that had a contractual relationship with CMS

All 12 offerors stated they would use subcontractors to support their work. Eight offerors had subcontracting agreements with other offerors. Ten offerors had subcontracting agreements with entities that had existing relationships with CMS. These subcontractors included Medicare claims processors, PSCs, QIOs, and information technology providers.

¹⁵ A QIC conducts the second level of appeal when a beneficiary or provider appeals certain decisions related to a Medicare claim.

¹⁶ A QIO monitors the appropriateness, effectiveness, and quality of care provided to Medicare beneficiaries.

Offerors, subcontractors, and CMS identified 1,919 business and contractual relationships as possible conflicts and 16 as actual conflicts

Actual Conflicts. Offerors, subcontractors, and CMS identified 16 actual conflicts out of 1,935 reported conflicts. CMS considered all 16 as mitigated. Ten of the 16 actual conflicts belonged to offerors and their subcontractors that were awarded ZPIC contracts. All 16 actual conflicts were “impaired objectivity” conflicts, meaning that the offeror or subcontractor could be in the position of evaluating work performed or associated with its own company. Table 1 provides the number and types of conflicts for offerors and their subcontractors. Appendix B shows the number and type of conflicts for individual offerors.

Table 1: Number and Types of Conflicts Among Offerors and Subcontractors

Offerors and Subcontractors		Number of Actual Conflicts	Number of Possible Conflicts	Total Number of Conflicts
Offerors Awarded ZPIC Contracts (5 offerors with 38 subcontractors)	Offerors	8	22	30
	Subcontractors	2	1,419	1,421
	Subtotal	10	1,441	1,451
Offerors Not Awarded ZPIC Contracts (13 offerors with 47 subcontractors)	Offerors	5	211	216
	Subcontractors	1	267	268
	Subtotal	6	478	484
All Offerors (18 offerors with 85 subcontractors)	Offerors	13	233	246
	Subcontractors	3	1,686	1,689
	Total	16	1,919	1,935

Source: OIG analysis of ZPIC offerors' Organizational Conflict of Interest Certificates and CMS documentation for Zones 1, 2, 4, 5, and 7, 2011.

Fourteen of the sixteen actual conflicts involved offerors and subcontractors with business or contractual relationships with Parts C and D plan sponsors. For instance, one offeror’s parent company had a contract to offer technology-related implementation and operations work to a company that was a Part D plan sponsor. In another case, an offeror’s parent company owned Parts C and D plans operating in all 50 States. Another subcontractor’s parent company operated as both Parts C and D plan sponsors in the zone where the offeror submitted its proposal.

One conflict involved an offeror whose parent company also owned a company acting as a QIC for CMS. According to CMS, this created an actual conflict because the QIC could be called upon to review the work of the offeror. Another actual conflict involved an individual whose spouse worked for a provider in the zone where the ZPIC was to perform work.

In a few cases, CMS disagreed with offerors' and subcontractors' own assessments of their conflicts. For example, CMS required that an offeror characterize its ties to a Parts C and D plan sponsor as actual conflicts. In this case, the offeror provided information about the relationships but did not consider them to be actual or possible conflicts.

Possible Conflicts. Of the 1,935 total conflicts reported, 1,919 were possible conflicts. For example, one offeror's parent company also owned a Medicare Administrative Contractor (MAC) that was processing Medicare claims in the same zone where the offeror would be evaluating claims. The offeror stated that the situation only presented the appearance of a conflict for two reasons: (1) although ZPICs analyze provider claims that may have been processed by a MAC, they do not evaluate how MACs process those claims; and (2) the company's corporate structure guaranteed its independence.

In another case, an offeror disclosed a possible conflict regarding an individual who sat on its board of directors. This individual's spouse was a vice president at a provider in the same zone where the contractor would be evaluating claims. This could present a possible conflict if the offeror evaluated this provider's claims.

A single subcontractor associated with 3 offerors that were awarded ZPIC contracts accounted for 1,231 of the 1,919 possible conflicts in this category. The subcontractor's contractual relationships were characterized differently across the three zones. In two zones, the subcontractor listed its contracts with providers and health care plans as possible conflicts because the providers and health care plans may come under the scrutiny of the ZPIC. Most of these conflicts stemmed from the company's contracts with providers or health insurance plans. Both types of relationships create a possible conflict because ZPICs could review the providers' and health plans' services. However, in a third zone, the subcontractor provided a list of its contracts with providers that could also come under the scrutiny of the ZPIC, but did not characterize them as any type of conflict.

The most common strategy proposed to mitigate conflicts was to impose restrictions on information and resource sharing within the offeror's or subcontractor's company

The RFP requires that offerors and subcontractors mitigate all conflicts of interest. For some of the conflicts, offerors proposed more than one mitigation strategy. Table 2 shows the mitigation strategies proposed by offerors and subcontractors and, in a very few instances, strategies suggested by CMS for offerors' consideration. According to CMS, CMS made a complete assessment of conflicts and mitigation strategies for all offerors that were awarded ZPIC contracts and the contracting officer made a determination in each case that all conflicts were adequately mitigated prior to the ZPIC contract award.

The mitigation strategy most frequently proposed involved various methods for restricting access to certain company information and/or resources. For example, offerors and subcontractors implemented measures designed to ensure that only employees performing ZPIC-related work could access these data. The goal was to make sure other divisions of the company did not have access to sensitive data or proprietary information. This type of mitigation strategy was also the most common among offerors (and their subcontractors) that won ZPIC contracts.

Table 2: Frequency of Mitigation Strategies for Conflicts Among Offerors, Subcontractors, and CMS in Zones 1, 2, 4, 5 and 7

Mitigation Strategy	Number of Times Mitigation Strategy Was Proposed
Restrictions on sharing information and resources within the company	1,567
Separation of corporate, organizational, or management structure	501
Limitations or restrictions on scope of work (including recusal)	378
Elimination of conflicting relationship	26
Use of subcontractor or another ZPIC	25
Divestiture	11
Audits	3
Total¹	2,511

Source: OIG analysis of ZPIC offerors' Organizational Conflict of Interest Certificates and CMS documentation for Zones 1, 2, 4, 5, and 7, 2011.

¹ Total number of mitigation strategies is greater than the total number of conflicts because offerors and subcontractors proposed more than one mitigation strategy for some conflicts.

The level of specificity in the mitigation strategies varied. For example, one subcontractor asserted that “there is no sharing of Medicare beneficiary or claim data” between the subcontractor and its affiliate.

Another subcontractor offered a more detailed mitigation strategy, which included methods to prevent clients from accessing other clients' data. That subcontractor proposed creating secure electronic platforms to house data in a way that allowed only the subcontractor's clients and the personnel working for those clients to have access.

Another offeror's detailed information security plan included methods to ensure that information gathered by the offeror would be inaccessible to its affiliated company. The mitigation strategy called for the offeror and its affiliated company to maintain separate information technology networks, separate human resources and payroll systems, password protection for information technology systems, and a security system to make work spaces accessible only to employees with proper badges.

Offerors and subcontractors often cited the separation of corporate, organizational, and management structures as mitigation strategies

In some cases, offerors stated that their current or future corporate, organization, and management structures mitigated any conflicts. For example, one offeror had a subcontractor that was already working as a QIC. To mitigate the conflict, the subcontractor created a separate business unit within its organization to isolate the QIC work from the ZPIC work. In another case, a subcontractor had individuals on its board of directors who also sat on the board of directors of sister companies that offered Medicare Parts C and/or D plans and also functioned as claims processors. The subcontractor ensured that its board of directors' day-to-day decisionmaking did not involve the ZPIC functions.

Offerors and subcontractors sometimes cited limitations or restrictions on the scope of their work to mitigate conflicts

In some cases, offerors reported that their business and contractual relationships with companies that have Medicare claims processing or Parts C and/or D contracts could create possible conflicts. To address one such possible conflict, an offeror stated that the ZPIC work it would be performing was outside the geographic area (zone) in which the parent company's Part C and Part D plans were offered. Another offeror stated that the company with a claims processing contract only provided it with technology support services.

Offerors and subcontractors sometimes took more proactive measures to address conflicts among key personnel. For example, in a number of cases, key personnel had personal relationships with individuals who worked for providers in the zone where the ZPIC work was to be performed. Offerors and subcontractors required that those individuals be prohibited from working on or taking actions that involved those

providers. For two conflicts involving an offeror's and subcontractor's key personnel, CMS recommended recusal to mitigate conflicts.

CMS does not have a written policy for reviewing conflict and financial interest information submitted by offerors, and the submitted information was not always consistent or complete

CMS's process for reviewing conflict and financial interest information is neither outlined in a written policy nor standardized through the use of checklists or other methods. According to CMS staff, CMS performs a preliminary review of all the offerors' certificates upon initial receipt to determine whether the requirements in the RFP are met. More detailed reviews of certificates and exchanges are performed on offerors in the competitive range. A final review and exchange are performed before the ZPIC contract is awarded.

However, offerors and their subcontractors often failed to provide all the information required by the RFP, even after CMS reviewed the initial submission of certificates. Fifteen subcontractors (related to four offerors) never submitted the required Organizational Conflict of Interest Certificates. These four offerors were not awarded ZPIC contracts.

Our examination of CMS's documentation associated with its review of certificates did not reveal documentation showing that CMS conducted a preliminary review of three offerors' and four of their subcontractors' certificates. In addition, there was no consistent documentation detailing whether CMS reviewed every business and contractual relationship and financial interest that offerors and subcontractors reported. CMS also lacked consistent documentation showing whether its determination agreed or disagreed with offerors' and subcontractors' classification of business and contractual relationships as possible conflicts.

It is crucial that not only conflict but financial interest information (e.g., percentage of ownership in any other entity, income generated from other sources) be complete because CMS can use this information to identify conflicts of offerors and subcontractors. For instance, an offeror or a subcontractor may submit financial interest information that it does not report as an actual conflict, but CMS's review of the details of this information may reveal the relationship to be an actual conflict.

Some offerors and their subcontractors did not distinguish between actual and possible conflicts

Offerors and subcontractors reported 173 conflicts without specifying whether they were actual or possible conflicts. After reviewing the information provided by offerors and subcontractors, we could not

determine which of these were actual conflicts. For example, some offerors listed several conflicts under a single heading, such as “actual or apparent conflicts” or “actual, apparent, or potential,” without clarifying which were actual conflicts and which were apparent. In contrast, other offerors and subcontractors provided a list of relationships and clearly indicated which were actual conflicts.

Offerors and their subcontractors did not always provide all the required information regarding their financial interests in other entities

Many offerors and their subcontractors did not provide all the information required by the RFP in their original Organizational Conflict of Interest Certificates. Two offerors and thirty-two subcontractors did not report any information regarding their financial interests in other entities. They also did not state, as others did, that they had no any financial interests in other entities.

Another 7 offerors and 32 subcontractors did not provide all the required information regarding their financial interests. Some offerors and subcontractors simply stated whether they received income from other sources without including the amounts. Others provided only partial information regarding their contracts with health insurance organizations and providers of Medicare- or Medicaid-reimbursed services. For those contracts, the RFP requires disclosure of income amount, period of performance, and type of work performed. For a number of these offerors and subcontractors, information was still missing or incomplete even after CMS requested revised Organizational Conflict of Interest Certificates.

In some cases, offerors and subcontractors did not seem to interpret the RFP requirements in the same way. For example, offerors and subcontractors provided varying levels of detail on their existing contracts with CMS. Some disclosed all three items that the RFP required for contracts with health insurers and providers (income amount, period of performance, and type of work performed). Other offerors and subcontractors did not provide all of these details.

Offerors and their subcontractors did not always provide all the required information regarding key personnel’s financial interests in other entities

The RFP requires that offerors disclose not only the financial interests of the company, but also the financial interests of key personnel. Two offerors and twenty-seven subcontractors did not report any information regarding their key personnel’s financial interests in other entities even after CMS requested revised Organizational Conflict of Interest

Certificates. This does not include those offerors and subcontractors that stated their key personnel had no financial interests in other entities.

Another 14 offerors and 17 subcontractors did not provide all of the required information regarding key personnel's financial interests. For example, some offerors and subcontractors stated that key personnel were employed elsewhere, but did not provide their income amounts. Some stated that key personnel held investments, but did not provide the amounts held.

Some offerors seemed to have different interpretations of the scope of these disclosure requirements. For their key personnel, some offerors and subcontractors addressed only financial interests that they believed presented conflicts. Others addressed all financial interests, regardless of whether they considered them conflicts.

CONCLUSION AND RECOMMENDATIONS

Because ZPICs perform program integrity functions for CMS, it is crucial that they be free from conflicts of interest that could affect their work. Conflicts of interest could introduce bias, which in turn could influence ZPICs' efforts to reduce fraud, waste, and abuse in the Medicare program. Contractors and CMS have the responsibility to ensure that conflicts are identified and mitigated.

According to the ZPIC RFP, offerors and their subcontractors are required to identify their conflicts and their financial interests in other entities. However, some offerors and subcontractors failed to provide all the requisite information regarding financial interests in other entities.

Additionally, descriptions of their conflicts of interest the offerors and subcontractors presented were often unclear. Some offerors and subcontractors did not distinguish actual conflicts from possible conflicts.

Currently, CMS does not use a written policy or standard checklist to facilitate its review of Organizational Conflict of Interest Certificates. In addition, we found no documentation showing that CMS conducted a review of some offerors' and subcontractors' certificates. In some cases, even after CMS had requested revised certificates, required conflict and financial interest information was still missing.

The initial submission of certificates should contain clear, consistent, and complete information across offerors and subcontractors so that CMS has accurate information when addressing conflicts. The requirements in the RFP should be more clearly and thoroughly delineated.

The existence of conflicts of interest does not necessarily indicate that improper activity is taking place among CMS contractors. However, the public trust in CMS and its contractors could come into question if conflicts are not explicitly and openly disclosed as well as properly mitigated. Therefore, to encourage an environment of transparency and accountability among contractors, we recommend that CMS:

Provide Clearer Guidance in the RFP to Offerors and Subcontractors Regarding Which Business and Contractual Relationships Should Be Identified as Actual Conflicts and Which Should Be Identified as Possible Conflicts (i.e., Apparent or Potential Conflicts)

Require Offerors and Subcontractors To Distinguish Those Business and Contractual Relationships That They Deem To Be Actual Conflicts From Those That Are Possible Conflicts

(i.e., Apparent or Potential Conflicts) in Their Organizational Conflict of Interest Certificates

State Whether Offerors and Subcontractors Need To Report Income Amounts, Periods of Performance, and Types of Work Performed for Their Contracts With CMS and Income Amounts Generated From Key Personnel's Other Employment

Create a Standardized Format for Reporting Information in the Organizational Conflict of Interest Certificate and Require Its Use by Offerors and Subcontractors

Develop a Formal, Written Policy Outlining How Organizational Conflicts of Interest Certificates Are To Be Reviewed by CMS

This policy should include:

- guidance on what additional information CMS staff should collect regarding offerors and when they should collect it,
- the use of a standardized checklist to ensure that all required information has been submitted by each offeror in its Organizational Conflict of Interest Certificates, and
- documentation requirements showing that a complete review of each offeror's Organizational Conflict of Interest Certificates was conducted and the outcome and resolution of those reviews.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In its comments, CMS stated that it has had considerable experience addressing conflict-of-interest matters. CMS believes that receiving the magnitude of potential conflict-of-interest issues outlined in OIG's report is a direct result of CMS's consistent efforts of raising awareness of conflict-of-interest issues and working with the contractor community to identify possible conflicts.

CMS concurred in part with our first two recommendations. Regarding our first recommendation, CMS stated that it believes it is more appropriate to limit terms ("actual or potential conflicts of interest") to those exclusively identified in the FAR. CMS also stated that its draft conflict-of-interest review policy contains standard RFP language to be used in all procurements. Regarding the second recommendation, that offerors should identify their relationships as "potential or actual" conflicts, CMS agreed to consider language to request that the offeror classify its conflicts as "potential" and/or "actual." OIG continues to recommend that CMS offer guidance in the RFP regarding which business and contractual relationships should be identified as actual conflicts and which should be identified as other types of conflicts. OIG recommends that CMS request that offerors distinguish between their actual and potential conflicts. This guidance would allow for clearer and more consistent submissions regarding conflicts across offerors and their subcontractors.

CMS concurred with our last three recommendations. CMS shared an excerpt from its draft conflict-of-interest policy, which, it stated, addresses our third recommendation regarding the reporting of certain types of financial information in certificates. OIG requests that CMS, in its final management decision, clearly indicate how its new policy and the ZPIC RFP will address our fourth and fifth recommendations. In addition, we ask that CMS provide information on the new standardized format that offers and subcontractors will be required to use when reporting information in certificates.

CMS suggested that the report state that all substantive actual or potential conflicts were mitigated for ZPIC awardees to the satisfaction of the Contracting Officer and that these conflicts were addressed and mitigated prior to the award. While CMS states that all conflicts were mitigated to the satisfaction of the Contracting Officer, GAO found in favor of two bid protestors that questioned the level of detail CMS accepted in an offeror's plans to mitigate a conflict of interest. With regard to the mitigation plan

CMS originally accepted, GAO found “there [were] no details explaining how any of the plans would work or when they would, or could, be implemented. This lack of detail is significant given the inherently complex nature of the proposed strategies”

CMS also clarified that a preliminary or cursory review for three offerors and four of their subcontractors' certificates was conducted even though OIG found no documentation of this. CMS stated that no documentation was included in the file because it is not required for offerors excluded from the competitive range for award. However, during the review, OIG found documentation regarding the review of certificates for offerors that were not in the competitive range for award. OIG recommends that although not required, consistent documentation of any and all reviews should be maintained.

The full text of CMS's comments is provided in Appendix C.

APPENDIX A

Conflict-of-Interest Requirements Established in the Zone Program Integrity Contractor Request for Proposals

Section H.2

a. General: It is essential that the Contractor and the services provided to Medicare beneficiaries under this contract be free, to the greatest extent possible, of all conflicts of interest. Except as provided below, the Contracting Officer shall not enter into a contract with an Offeror or maintain a contract with a Contractor that the Contracting Officer determines has, or has the potential for, an unresolved organizational conflict of interest.

b. Definitions: As used in this subpart, the following definitions apply:

1. Financial relationship means--

(a) A direct or indirect ownership or investment interest (including an option or nonvested interest) in any entity that exists through equity, debt, or other means and includes any indirect ownership or investment interest no matter how many levels removed from a direct interest; or

(b) A compensation arrangement with an entity.

2. Organizational conflict of interest -- has the meaning given at FAR 9.501, as follows:

“Organizational conflict of interest” means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

For purposes of the Medicare Integrity Program, the activities and relationships described include those of the Offeror or Contractor itself and other business related to it and those of officers, directors (including medical directors), managers, and subcontractors.

c. Conflict of interest identification:

1. An organizational conflict of interest exists, or the potential for a conflict exists, if -

(a) The Offeror or Contractor is an entity that-

- (1) Provides, insures, or pays for health benefits, with the exception of health plans provided as the entity's employee fringe benefit; or
- (2) Conducts audits of health benefit payments or cost reports; or
- (3) Conducts statistical analysis of health benefit utilization; or
- (4) Would review or does review, under the contract, Medicare services furnished by a provider or supplier that is a direct competitor of the Offeror or Contractor; or
- (5) Prepared work or is under contract to prepare work that would be reviewed under the Medicare program integrity contract; or
- (6) Is affiliated, as that term is explained in FAR 19.101, with a provider or supplier to be reviewed under the contract.

(b) The Offeror or Contractor has a present, or known future, direct or indirect financial relationship with an entity described in paragraph H.2.c.1.(a) above.

A financial relationship may exist either--

- (1) Through an Offeror's or Contractor's parent companies, subsidiaries, affiliates, subcontractors, or current clients; or
- (2) From the activities and relationships of the officers, directors (including medical directors), or managers of the Offeror or Contractor and may be either direct or indirect. An Officer, director, or manager has an indirect financial relationship if an ownership or investment interest is held in the name of another but provides benefits to the Officer, director, or manager.

Examples of indirect financial relationships are, but are not limited to, holdings in the name of a spouse or dependent child of the Officer, director, or manager and holdings of other relatives who reside with the Officer, director, or manager.

2. The Contracting Officer may determine that an Offeror or Contractor has an organizational conflict of interest, or the potential for a conflict exists, based on the following:

(a) Apparent organizational conflicts of interest. An apparent organizational conflict of interest exists if a prudent business person has cause to believe that the Offeror or Contractor would have a conflict of interest in performing the requirements of a contract under this subpart. No inappropriate action by the Offeror or Contractor is necessary for an apparent organizational conflict of interest to exist.

(b) Other contracts and grants with the Federal Government.

3. Post-award conflicts of interest.

(a) In addition to the conflicts identified in paragraph H.2.c.1. of this section, the Contracting Officer considers that a conflict of interest has occurred if during the term of the contract--

(1) The Contractor receives any fee, compensation, gift, payment of expenses, or any other thing of value from any entity that is reviewed, audited, investigated, or contacted during the normal course of performing activities under the Medicare integrity program contract; or

(2) The Contracting Officer determines that the Contractor's activities are creating a conflict of interest.

(b) In the event the Contracting Officer determines that a conflict of interest exists during the term of the contract, the Contracting Officer may take action including, but not limited to,

(1) Not renewing the contract for an additional term;

(2) Modifying the contract; or

(3) Terminating the contract.

4. Exception. The Contracting Officer may contract with an Offeror or Contractor that has an unresolved conflict of interest if

the Contracting Officer determines that it is in the best interest of the Government to do so.

5. Offeror's or Contractor's responsibility with regard to subcontractors. An Offeror or Contractor is responsible for determining whether an organizational conflict of interest exists in any of its proposed or actual subcontractors at any tier and is responsible for ensuring that the subcontractors have mitigated any conflict of interest or potential conflict of interest.

A Contractor shall maintain documentation necessary to support its determination that its subcontractors have mitigated any conflict or potential conflict. A Contractor may require its subcontractors to follow the procedures for identifying, evaluating and disclosing conflicts of interest and potential conflicts of interest as contained herein.

d. Disclosure: Contractors must disclose all actual, apparent and potential conflicts of interest to the Contracting Officer during the term of the contract in accordance with paragraph H.2.d.1. below. The Contractor shall have programs in place to identify, evaluate and mitigate all actual, apparent and potential conflicts of interest that preclude, or would appear to preclude, the Contractor from rendering impartial assistance or advise on work performed for this contract. CMS protects disclosed proprietary information as allowed under the Freedom of Information Act (5 U.S.C. 552). The Contracting Officer requires signed statements from CMS personnel with access to proprietary information that prohibits personal use during the procurement process and term of the contract. The Contractor's Organizational Conflict of Interest Certificate, that includes the Contractor's plan to mitigate all actual, apparent and potential conflicts of interest (d.1.(c)) identified during the term of the contract and certification that all work to be performed under this contract is free of unresolved conflicts of interest, is incorporated by reference at Attachment J.11.

1. Certificate Requirements. Offerors that wish to be eligible for the award of a Program Integrity contract under this subpart and Program Integrity Contractors, must submit, at times specified in paragraph H.2.d.2. of this section, an Organizational Conflicts of Interest Certificate. The Certificate must contain the information specified in paragraphs H.2.d.1.(a) through (h) of this section as follows:

(a) A description of all business or contractual relationships or activities that may be viewed by a prudent business person as a conflict of interest.

(b) A description of the methods the Offeror or Contractor will apply to mitigate any situations listed in the Certificate that could be identified as a conflict of interest.

(c) A description of the Offeror's or Contractor's program to monitor its compliance and the compliance of its proposed and actual subcontractors with the conflict of interest requirements as identified in the relevant solicitation.

(d) An affirmation, using language provided below, signed and dated by an official authorized to bind the Contractor:

I, (Name and Title), certify that to the best of my knowledge and belief: 1) I am an official authorized to bind the entity; 2) the information contained in the Organizational Conflict of Interest Certificate is true and accurate as of (Date); and 3) I understand that the Contracting Officer may consider any deception or omission in this Certificate to be grounds for non-consideration for contract award, modification or non-renewal or termination of the current contract, and/or other contract or legal action.

An Offeror or Contractor shall submit an affirmation certifying the information to be true and accurate as of the date the proposal is submitted. Upon award, the Contractor shall submit an updated affirmation, if necessary, certifying the information to be accurate as of the date of contract award.

(e) Corporate and organizational structure.

(f) Financial interests in other entities, including the following:

- (1) Percentage of ownership in any other entity.
- (2) Income generated from other sources.
- (3) A list of current or known future contracts or arrangements, regardless of size, with any--

(i) Insurance organization or subcontractor of an insurance organization; or

(ii) Providers or suppliers furnishing health services for which payment may be made under the Medicare or Medicaid program.

(4) In the case of contracts or arrangements identified in accordance with paragraph H.2.d.1.(f)(3) of this section, the dollar amount of the contracts or arrangements, the type of work performed, and the period of performance.

(g) The following information for all of the Offeror's or Contractor's officers, directors (including medical directors), and managers who would be, or are involved with, the performance of this Medicare Integrity Program contract:

(1) The information required under paragraph H.2.d.1.(a) of this section.

(2) The information specified in paragraphs H.2.d.1.(f) of this section.

(h) A list of all subcontractors used, at any tier, in the performance of the contract.

2. When disclosure is made. The Organizational Conflict of Interest Certificate is submitted—

(a) With the contractor's task order proposal, unless otherwise identified in the task order solicitation;

(b) When the Contracting Officer requests a revision in the Certificate;

(c) With the submission of the ZPIC proposal and annually on October 31st thereafter; and

(d) 45 days or less (as the information becomes known) before any change in the information submitted in accordance with paragraph H.2.d.1. Only changed information shall be submitted.

Section L.18.A

In order to be eligible for award of a contract the Government must ensure that an Offeror and its proposed subcontractors are free, to the greatest extent possible, of all conflicts of interest. Therefore, the Offeror and its subcontractors are required to submit the disclosure of information contained in contract section H.2 Conflict of Interest, in order to be considered for award. Failure to submit the required information may deem an Offeror's proposal to be non-responsive to the solicitation.

APPENDIX B

Number and Type of Conflicts by Individual Offerors

Offerors and Subcontractors		Actual Conflicts	Possible Conflicts	Total Conflicts
Offerors Awarded ZPIC Contracts	Offeror 1	0	0	0
	Subcontractors	0	7	7
	Offeror 2	4	13	17
	Subcontractors	0	486	486
	Offeror 3	0	0	0
	Subcontractors	0	11	11
	Offeror 4	4	9	13
	Subcontractors	2	915	917
	Offeror 5	0	0	0
	Subcontractors	0	0	0
	Offerors subtotal	8	22	30
	Subcontractors subtotal	2	1,419	1,421
	Subtotal	10	1,441	1,451
Offerors Not Awarded ZPIC Contracts	Offeror 6	1	26	27
	Subcontractors	0	39	39
	Offeror 7	0	25	25
	Subcontractors	0	5	5
	Offeror 8	0	18	18
	Subcontractors	0	6	6
	Offeror 9	0	28	28
	Subcontractors	0	49	49
	Offeror 10	0	4	4
	Subcontractors	0	5	5
	Offeror 11	0	7	7
	Subcontractors	1	29	30
	Offeror 12	0	5	5
	Subcontractors	0	0	0
	Offeror 13	0	18	18
	Subcontractors	0	34	34
	Offeror 14	0	34	34
	Subcontractors	0	53	53
	Offeror 15	0	0	0
	Subcontractors	0	0	0
	Offeror 16	4	21	25
	Subcontractors	0	2	2
	Offeror 17	0	2	2
	Subcontractors	0	41	41
Offeror 18	0	23	23	
Subcontractors	0	4	4	
Offerors subtotal	5	211	216	
Subcontractors subtotal	1	267	268	
Subtotal	6	478	484	
All Offerors	Total	16	1,919	1,935

Source: Office of Inspector General analysis of Zone Program Integrity Contractor offerors' Organizational Conflict of Interest Certificates and Centers for Medicare & Medicaid Services' documentation for Zones 1, 2, 4, 5, and 7, 2011.

APPENDIX C

Agency Comments



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

DATE: MAY 03 2012

TO: Daniel R. Levinson
Inspector General

FROM: Marilyn Tavenner */S/*
Acting Administrator

SUBJECT: Office of Inspector General (OIG) Draft Report: "Conflicts and Financial Relationships among Potential ZPIC Contractors" (OEI-03-10-00300)

Thank you for the opportunity to review and comment on the Office of Inspector General (OIG) draft report titled, "Conflicts and Financial Relationships Among Potential ZPIC Contractors." The purpose of this report was to determine conflicts of interest identified by offerors during the Zone Program Integrity Contractor (ZPIC) contracting process, strategies offerors proposed to mitigate conflicts of interest, whether offerors provided complete information on conflicts, and whether the Centers for Medicare & Medicaid Services (CMS) reviewed this information.

As the report indicates, CMS ensures that its contractors are free from conflicts of interest or have taken the appropriate steps to mitigate any potential conflicts. CMS has had considerable experience addressing Organizational Conflict of Interest (OCI) matters. Since 1999, with the early implementation of the Medicare Integrity Program (MIP), CMS was forward-looking enough to consider OCI as a major concern. As a result, CMS requires its offerors and contractors to submit OCI information during the solicitation period and annually thereafter. As a result, and as reflected in the OIG report, the ZPIC offerors identified almost 2,000 apparent, potential or actual OCIs. We believe receiving this magnitude of potential OCI issues is a direct result of CMS consistent efforts of raising awareness of OCI and working with the contractor community to identify possible OCIs. Consistent with section 9.5 of the Federal Acquisition Regulations (FAR 9.5), CMS reviewed and resolved conflicts of interest for those organizations who were awarded a ZPIC contract.

It is important to note that CMS has experienced a large number of Government Accountability Office (GAO) bid protests over the last several years. In many of these, bidders have challenged CMS' OCI analysis. In almost all cases, when a GAO decision was rendered, CMS OCI evaluation and determination was found acceptable by GAO.

The Contracting Officer is responsible for exercising common sense, good judgment and sound discretion when making OCI determinations. CMS addressed the ZPIC conflicts of interest through exchanges with the apparent awardees. If there was a substantive issue concerning an actual or potential conflict, CMS worked with the apparent awardee to either avoid, neutralize or mitigate any significant potential conflict(s). The Contracting Officer, in consultation with other appropriate CMS representatives, determined that mitigation strategies submitted by the awardees were sufficient prior to awarding any contracts. The mitigation strategies employed in the ZPIC procurements included, but were not limited to, divestitures, de-identification of information to subcontractors, exclusion of conflicted work for certain subcontractors, and separation/firewalls for access to information conflicts.

All ZPIC awardees have Compliance Officers on staff that oversee OCI matters and the implementation of mitigation strategies. After the contract is awarded, ZPIC contractors are required to submit annual OCI certificates and are also required to submit updated information within 45 days before any change in the information is made. CMS reviews the annual submissions and also contracts with an independent firm that performs an audit of the OCI submission. CMS uses this information to address any new or emerging OCI issues that might arise during performance of the contract.

CMS receives OCI submissions for all ZPIC offerors. However, CMS prioritizes the review and mitigation of OCIs for those organizations that are in the competitive range and thus have potential for winning the contract effort. Since not all offerors will be successful in being awarded a contract, CMS believes its resources are best utilized in this manner.

CMS is in the process of finalizing an OCI review policy for procurement staff. CMS provided OIG with the draft of the policy during its review. Following the final internal CMS committee review, the policy will be implemented.

CMS' response to each OIG recommendation and general comments follows:

OIG Recommendation

CMS should provide clearer guidance in the Request for Proposal to offerors and subcontractors regarding which business and contractual relationships should be identified as actual conflicts and which should be identified as possible conflicts (i.e., apparent or potential conflicts).

CMS Response

CMS concurs with this recommendation in part. We believe it is more appropriate to limit the terms to those exclusively identified in the FAR. Section 9.502(c) of FAR uses the term of "actual or potential conflict of interest." CMS' draft OCI review policy, soon to be implemented, contains standard RFP language to be used in all procurements. Regarding the recommendation that offerors should identify their business and contractual relationships as "potential or actual" conflicts, CMS will agree to consider language in our guidance to request that the offeror classify its conflicts as "potential" and/or "actual."

OIG Recommendation

CMS should require offerors and subcontractors to distinguish those business and contractual relationships that they deem to be actual conflicts from those that are possible conflicts (i.e., apparent or potential conflicts) in their organizational conflict of interest certificates.

CMS Response

CMS concurs with this recommendation in part. See previous response.

OIG Recommendation

CMS should state whether offerors and subcontractors need to report income amounts, periods of performance, and types of work performed for their contracts with CMS and income amounts generated from key personnel's other employment.

CMS Response

CMS concurs with the recommendation. The attached is an excerpt from CMS' draft OCI review policy which outlines the proposal submission requirement(s) for prime and subcontractors.

OIG Recommendation

CMS should create a standardized format for reporting information in the organizational conflict of interest certificate and require its use by offerors and subcontractors.

CMS Response

CMS concurs with the recommendation. CMS' draft OCI review policy contains RFP language that standardizes the format for reporting information in the organization conflict of interest certificate.

OIG Recommendation

CMS should develop a formal, written policy outlining how organization conflicts of interest certificates are to be reviewed by CMS.

CMS Response

CMS concurs with the recommendation. The draft policy includes documentation templates for use by Contracting Officers. In addition, CMS has recently performed extensive training in this area and will continue to educate its staff on how to properly assess, analyze and document OCI matters.

General Comments

In an effort to provide further clarity as to how CMS addressed ZPIC OCI issues, the following general comments are also provided:

CMS suggests that the OIG report state that all substantive actual or potential OCIs were mitigated for ZPIC awardees to the satisfaction of the Contracting Officer. These conflicts were addressed and mitigated prior to the award.

In performing OCI analysis, it is important to understand the contract requirements and the roles of the contractor. As background, CMS uses ZPICs to perform program integrity activities designed to fight fraud, waste, and abuse in the Medicare program. In doing so, ZPICs review providers and suppliers (i.e. physician, hospitals, DME suppliers, etc) and their submitted fee-for-service Medicare claims in performing its activities. In traditional fee-for-service, the fraud in which the ZPIC is required to review occurs at the provider level, not at the claims processing level. The ZPIC contract has the potential for ZPICs to also perform program integrity activities associated with Medicare Part C and/or D. Unlike traditional fee-for-service Medicare, where fraud typically occurs at the provider level as indicated above, in Part C/D, fraud can occur at the plan level. This distinction is important for OCI analysis because consideration must be given regarding who or what the ZPIC is reviewing.

Page 10 states; “Offerors and their subcontractors often had business and contractual relationships with CMS and with other offerors, but rarely considered them to be actual conflicts.”

As stated in the beginning of this report, CMS has been addressing OCI issues since 1999. We required that ZPIC offerors disclose conflicts so we could make an independent analysis of the specific conflicts, regardless of how offerors characterized such conflicts. In some cases we disagreed with the offerors assessment of the conflict, and in other cases we agreed with the offerors/contractor’s assessment.

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Page 12-13 stated “Offerors, subcontractors, and CMS identified 1,919 business and contractual relationships as possible conflicts and 16 as actual conflicts.”

Again, CMS considers it a success that the offerors disclosed as many OCI issues as they did. As stated earlier, CMS addressed all significant OCI’s of the successful ZPIC awardees.

OIG also mentions on page 16 of the report that its review of certificates did not reveal documentation of CMS conducting a preliminary review of three offerors and four of their subcontractors’ certificates. CMS would like to clarify that a preliminary or cursory review was conducted; however, no documentation was included in the file as this is not required for offerors not included in the competitive range for award.

CMS thanks the OIG for evaluating this important issue and is confident our new OCI policy will enhance our already rigorous OCI evaluations and determination process.

ACKNOWLEDGMENTS

This report was prepared under the direction of Robert A. Vito, Regional Inspector General for Evaluation and Inspections in the Philadelphia regional office; and Linda M. Ragone, Deputy Regional Inspector General.

Tanaz Dutia served as the team leader for this study. Other principal Office of Evaluation and Inspections staff from the Philadelphia regional office who contributed to the report include Russell Tisinger; central office staff who contributed include Scott Manley.

Office of Inspector General

<http://oig.hhs.gov>

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The Office of Investigations (OI) conducts criminal, civil, and administrative investigations of fraud and misconduct related to HHS programs, operations, and beneficiaries. With investigators working in all 50 States and the District of Columbia, OI utilizes its resources by actively coordinating with the Department of Justice and other Federal, State, and local law enforcement authorities. The investigative efforts of OI often lead to criminal convictions, administrative sanctions, and/or civil monetary penalties.

Office of Counsel to the Inspector General

The Office of Counsel to the Inspector General (OCIG) provides general legal services to OIG, rendering advice and opinions on HHS programs and operations and providing all legal support for OIG's internal operations. OCIG represents OIG in all civil and administrative fraud and abuse cases involving HHS programs, including False Claims Act, program exclusion, and civil monetary penalty cases. In connection with these cases, OCIG also negotiates and monitors corporate integrity agreements. OCIG renders advisory opinions, issues compliance program guidance, publishes fraud alerts, and provides other guidance to the health care industry concerning the anti-kickback statute and other OIG enforcement authorities.