

Contractor Suggestions Regarding Implementation of Medicare Administrative Contracts

NOTE: *The following comments on Medicare Contracting Reform were submitted to CMS by a current Medicare fee-for-service contractor. The comments do not reflect CMS' policy or operational decisions on contracting reform. However, we felt that it would be worthwhile to share these comments and give other contractors, as well as other individuals and organizations, the opportunity to respond with comments and/or reactions of their own concerning Medicare Contracting Reform.*

Medicare contractors are committed to maintaining the stability of the Medicare fee-for-service program. To the extent possible, we urge CMS to use the collective expertise of the system, solicit input and recommendations through appropriate forums, and incorporate it into final strategic planning.

The following are suggestions one contractor provided on areas where information should be developed and released related to MAC procurement strategy and process, application of the FAR, MAC functions and performance standards.

A. Procurement Strategy – When developing the procurement strategy for Medicare Administrative Contractors (MAC) contracts, major operational contingencies and concerns should be identified. We recommend that CMS obtain “Comments from Industry” from current, experienced Medicare contractors of all sizes to assist in identifying any such areas. CMS should consider the following in soliciting these industry comments:

1. As the MAC contract will be a combined Part A and Part B contract, we recommend that CMS:
 - a. Discuss the strategy for combining the two programs and any implications or risks that CMS has identified in combining the programs. Develop plans to mitigate risks of combining the programs.
 - b. Identify transition concerns and contingency planning for the transitions.
2. Release information on CMS' overall strategic plan to implement MAC contracts, including the MAC jurisdictions, the jurisdictional rollout plan (e.g., by state, by contractor's size or performance, by region, nationally, administration/rollover of current contracts), possibility of multiple jurisdictional awards, the timeline and how this timeline might be impacted by voluntary contractor withdrawal. The implications for contractors will vary depending on which approach(s) CMS chooses to employ.
3. Provide information on plans for re-competition of specialty contracts, such as Durable Medical Equipment Regional Carrier and Home Health and handling of the single intermediary arrangements that currently exist for chain providers. Identify how these specialty contractors will interface with the MACs.

B. Application of the Federal Acquisition Regulations (FAR) – There are a number of issues pertaining to the FAR that should be decided before the RFPs are developed.

These represent items for CMS to consider including in the RFP for MAC contracts. CMS should consider obtaining “Comments from Industry” or opinions from FAR contracting subject matter experts before finalizing any RFP requirements.

1. State how the FAR will be utilized in MAC contracts.
2. Describe the type(s) of FAR contract(s) to be used. Notify contractors of the formula that will be used for allowable profits from the MAC program. Disclose the magnitude of the potential incentives available or the ceiling on MAC profits, if any.
3. If change orders are included in MAC contracts, discuss how change orders will be administered.
4. Define how the cost principles in FAR 31 will apply to MAC contracts. Discuss whether there will be contract clarifications, modifications and additions to the cost principles, similar to Appendix B in the Medicare contract.
5. Note if cost and pricing data will be required in the submission. If data is required, disclose the number of years of data required.
6. Define whether full cost accounting standards (CAS) coverage will be required in the MAC contract. If full CAS coverage is required, include details on CAS reporting expectations. Include discussion of:
 - a. Items that constitute a change in accounting practices for reporting.
 - b. Elements required in a MAC disclosure statement.
 - c. Type of monthly, quarterly and annual financial reporting that will be required of MACs.
 - d. How Activity Based Contracting can be integrated into CAS.
7. Disclose policies on the payment of termination costs for contractors that choose not to bid or contractors that submit an unsuccessful bid. Include information on restrictions, if any, on the development of termination and run-out costs.
8. Per CAS regulations, contract awards under a \$50 million threshold are required to comply with modified CAS coverage, not full CAS coverage. CMS should provide information on how it will apply the CAS requirement if a MAC contract award is less than \$50 million.

C. Functions, Eligibility and Performance of MAC –The program constituents (beneficiaries, providers and associations) have grown accustomed to the stability of existing relations with local contractors. To ensure ongoing stability a sufficient number of qualified contractors must remain in the program and participate in the competitions. There are a number of issues related to the MAC procurement that CMS must finalize in this area. We recommend using incumbent contractors' expertise as long as it is feasible and as effectively as possible.

1. Provide information as soon as possible on the specific MAC functions CMS will procure at initial procurement and during subsequent procurement periods, given CMS' ability to move workload during a MAC contract period. To preserve accountability we recommend less fragmentation and program segmentation. Program and contractor experience have shown that fragmentation does not increase efficiency and productivity. Rather, it increases administrative complexity and cost and impedes beneficiary service.
2. Allow contractors an opportunity to provide "industry comments" on the proposed standards for MAC performance measurement.
3. Describe how MAC effectiveness will be evaluated. Determine the audit formats or protocols that will be used to evaluate MAC effectiveness. Audits could include OIG, CFO and administrative cost audits, SAS 70 Reviews, entity-wide penetration testing and systems security audits.
4. Identify changes that may be instituted to the current OIG administrative cost audits.
5. Define the scope of the entity-wide security programs that are required in the MAC contract.
6. Determine if MACs will be required to be certified for quality management systems, such as ISO 9001.
7. Consider ways to "level the playing field" so that current contractors are not unfairly impacted when compared to new entrants with no performance history (or favorably impacted by opportunities to participate in CMS special projects). This should take into consideration such factors as:
 - a. Variations in CMS Regional Office review methods;
 - b. Special funding provided to contractors for "work around" software;
 - c. Participation in CMS demonstration projects (such as HIGLAS).

8. Determine how CMS will manage projects, such as MCS transitions and HIPAA security implementation, during the bidding process. If these projects are being implemented at certain sites during the bidding process, comment on ways CMS will ensure that current contractors are not put at a competitive disadvantage.

D. FAR Competition Process – The following are suggested recommendations for CMS to consider when finalizing the MAC competition process.

1. Develop detail on the planned MAC competitive bid process, using the knowledge and experience of parties that have experience with FAR based competitions.
2. Develop a process to solicit information and input from all existing Medicare contractors and other interested parties on how best to implement the MAC procurement process.
3. Using these FAR competition subject matter experts, evaluate the recent Qualified Independent Contractor competition process, to identify process enhancements and “lessons learned” that might be applied to the MAC competitions.
4. Consider holding a national meeting or a series of regional meetings with potential interested parties prior to the release of the MAC RFP. The conference(s) could be used to solicit questions regarding the MAC procurement process and contract. It would also allow for an exchange of information between the potential bidders and CMS prior to the formal release of the MAC RFP.
5. After the conference(s), develop Questions & Answers that respond to identified issues, and incorporate the information into the MAC RFP.
6. Host a pre-bidders conference to provide more details on the information in the RFP and MAC contract, after the release of the RFP.
7. Respond to inquiries from interested parties on a timely basis. If CMS cannot answer a question, indicate the reason for the non-response or indicate a tentative timeframe when the information will be available that answers the question.
8. Make public all of CMS’ responses to submitted questions. Use the CMS website to communicate the information to potential bidders.
9. Under the FAR contracting, bid protests are allowed. Describe CMS’ policy on bid protests and include information on how protests to contract awards will be handled.