



Highlights of [GAO-03-842](#), a report to the Chairman, Committee on Finance, U.S. Senate

Why GAO Did This Study

In September 2002, the Centers for Medicare & Medicaid Services (CMS) awarded the RAND Corporation, with the University of Wisconsin's Center for Health Systems Research & Analysis as a subcontractor, a task order to study inconsistency in the nursing home survey process. Allegations were made that CMS directed RAND not to retain the Center as a subcontractor in retaliation for technical concerns that the Center's Director had raised about another CMS initiative. GAO was asked to examine these allegations. Specifically, GAO was asked to examine CMS's selection of RAND for this task order, the basis for CMS's decision to exclude the Center as a subcontractor, and whether the Center's exclusion extended to other CMS contracts.

What GAO Recommends

GAO recommends that the Secretary of Health and Human Services take appropriate action to remedy this situation. Such a remedy could include permitting RAND to subcontract with the Center as RAND had proposed or reopening the competition for the award of this task order. Also, the Secretary should have CMS procurement decisions affecting the Center since September 2002 reviewed to ensure they were supported by a reasonable basis. HHS and CMS concurred with our recommendations, although CMS disagreed with our conclusion that the Administrator's action was improper.

www.gao.gov/cgi-bin/getrpt?GAO-03-842.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Kathryn G. Allen at (202) 512-7118.

CMS CONTRACTING

Issues Concerning Administrator's Decision to Exclude Subcontractor

What GAO Found

CMS followed a competitive process in awarding the nursing home survey inconsistency research task order to RAND, with the Center as its subcontractor. RAND's proposal outlined a plan in which the Center would perform approximately half of the work, in terms of cost, in the first year and about 80 percent over a 3-year period, if the government exercised its options to extend the task order for 2 additional years. Based on four criteria, including an evaluation of personnel and experience and past performance, CMS awarded the task order to RAND on September 27, 2002.

At virtually the same time as the award, the Administrator intervened to exclude the Center from the RAND task order. The Administrator provided several reasons to support his exclusion of the Center, including his conclusion that the Center had performed poorly on a number of ongoing CMS task orders, especially those related to nursing home survey and certification. He understood that contract provisions provided him the legal authority to direct RAND not to use the Center as a subcontractor. GAO reviewed each of the reasons provided by the Administrator and concluded that, in light of the evidence, the Administrator did not have a reasonable basis to direct RAND not to subcontract with the Center. For example, GAO's review of the evidence did not support the Administrator's assertion of poor past performance by the Center; in fact, its strong past performance was a key factor in the decision to award the task order to RAND.

Instead, the Administrator's decision to exclude the Center from the RAND task order appears to have been retaliation for the Center Director's involvement in another CMS nursing home initiative. Because of technical concerns voiced about this separate initiative, the Administrator perceived the Center's Director to be obstructing CMS's implementation of the initiative in November 2002. Regardless of the merit of the Administrator's view of the Center's Director and concerns about his involvement in the other initiative, the Administrator was not authorized to effectively change the substance of the proposal on which the award to RAND had been based. Therefore, in GAO's view, the Administrator's action was improper and undermined the integrity of CMS's procurement process.

Communications between the Administrator and the Center suggested that the Administrator's decision to exclude the Center was limited to the RAND task order. However, senior CMS staff understood the Administrator's instructions to exclude the Center to extend to other contracting opportunities and thus attempted to limit the involvement of the Center in other CMS contracts.