OVERSIGHT OF CONTRACT MANAGEMENT

AT THE CENTERS FOR

MEDICARE AND MEDICAID SERVICES

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WEDNESDAY, APRIL 28, 2010

United States Senate,

Ad Hoc Subcommittee on Contracting Oversight,

Committee on Homeland Security and Governmental Affairs,

Washington, D.C.

The Subcommittee met, pursuant to notice, at 2:34 p.m., in Room 342, Dirksen Senate Office Building, Hon. Claire McCaskill, Chairman of the Subcommittee, presiding.

Present: Senators McCaskill, Pryor, and Brown.

OPENING STATEMENT OF SENATOR McCASKILL

Senator McCaskill. I am going to begin without Senator Brown here, but I am sure he will be here momentarily and we will go ahead and get started since it is past the witching hour for this hearing to begin. So this hearing will now, in fact, come to order.

This is a hearing on contract management at the Centers for Medicare and Medicaid. Just over a year ago, this Subcommittee began its oversight of Government contracts. Over the last year, the Subcommittee has held more than ten hearings on issues ranging from private security contractors to contract databases, covering areas from Afghanistan to

Alaska. These hearings share a common focus: Making Government contracting more efficient, more transparent, and more accountable.

Today's hearing examines one of our Government's most important agencies, the Centers for Medicare and Medicaid Services, known as CMS, which is within the Department of Health and Human Services. CMS is responsible for administering Medicare, Medicaid, and the Children's Health Insurance Program, which provides health care coverage for almost 100 million Americans.

Over the last year, Medicare and Medicaid have gotten a great deal of attention as we in Congress have worked to pass comprehensive health care and health care insurance reform legislation. This is not a hearing about that legislation. I was pleased that that health insurance reform was signed into law. We needed reform to ensure that the health care didn't bankrupt average Americans and we also needed it to reduce our country's deficit.

But that is not what we are here to talk about today. This hearing is about how CMS manages the Medicare and Medicaid programs, and most importantly, the contracting in those programs. We are here in the Subcommittee because, in fact, those programs are largely administered by contractors.

Medicare contractors pay providers, enroll physicians, process appeals. They also answer questions from the public. The 1-800-MEDICARE hotline, that is brought to you by a contractor who made $258 million last year for that contract. It is contractors who provided day-to-day administration of the Medicare and Medicaid and Children's Health Insurance Programs.

Welcome, Senator Brown.

Senator Brown. Sorry I am late.

Senator McCaskill. That is okay.

It is also contractors who provide oversight of Medicare and Medicaid to the tune of almost $855 million in contracts last year alone. In total, CMS spent nearly $4 billion in contracts in 2009.

The importance of the tasks performed by CMS contractors highlight the need for these contracts to be properly managed and overseen by CMS officials. According to GAO, however, that kind of oversight is exactly what CMS isn't currently doing. Last October, GAO reported significant deficiencies with contract management and internal controls at CMS. This report follows a 2007 report with almost the same findings, and report after report documenting problems with CMS's financial management. In fact, Medicare has been on the GAO's High-Risk List for 20 years, in part because of its management problems, including management of contractors.

Despite all the reports documenting mismanagement, nothing seems to improve. Today, we want to ask what is necessary to ensure that CMS makes the necessary improvements to make sure that it is the best possible custodian of taxpayers' dollars as we move forward.

In preparation for this hearing, my staff examined in detail one CMS program administered by a contractor, the Medicare Secondary Payer Recovery Contractor, called the MSPRC. Without objection, I would now ask that the Majority Staff Fact Sheet about MSPRC be admitted into the record.

[The Majority Staff Fact Sheet follows:]

/ SUBCOMMITTEE INSERT

Senator Brown. No objection.

Senator McCaskill. The MSPRC is supposed to recover money for the Medicare program in cases where Medicare isn't a primary payer for a beneficiary's medical expense. One example is when a Medicare beneficiary is covered by their employer's health plan or if they have expenses that should be covered by Workers' Compensation or liability insurance.

Last year, a group of lawyers in Kansas City contacted my office to bring to my attention how frustrated they were with CMS because they were trying to pay them. They were trying to send CMS money and no one was home to take the money. Imagine the irony of those phone calls in the context of the debates that were ongoing at that time. Here we were, discussing every day the incredible deficits that our country is facing because of the Medicare program, struggling with very controversial and difficult and complex decisions as to how we reform the system, and I have got lawyers calling me saying, we are trying to send them a check and no one will take it. That is when I realized we needed to do a hearing on contract oversight at CMS. They had been trying to return money to Medicare and the agency would not take it.

The MSPRC had significant performance problems. In 2001, independent auditors found that the contractor, a Tribally-owned business called Chickasaw Nation Industries, failed to respond to communications from beneficiaries, attorneys, and insurance companies. CMS also found problems with the contractor's internal controls and case management. Reportedly, the MSPRC has now significantly improved its performance.

In 2003, CMS recovered only 38 cents for every dollar spent on recovery. Today, the contractor reports that it is recovering $8.97 for every dollar spent on recovery. One of the things we are going to try to do today in this hearing is determine whether or not that figure is accurate, according to CMS.

The improvements on this contract would be encouraging, but the overall picture painted by GAO should be a wake-up call for CMS on the need to take swift action. I hope CMS will listen carefully to what GAO and the members of the Subcommittee have to say about how to improve their management and oversight of contracts.

I am encouraged that we now have a nominee in Dr. Donald Berwick to be Administrator of CMS and I hope that my Senate colleagues will recognize that leadership is needed here and at other Federal agencies. We need to begin to work together to put the President's nominees in place so that Government can work at its very best for the taxpayers of this country. If there are any measures that can be taken to improve their stewardship of taxpayer dollars, this

Subcommittee will work with CMS to achieve those goals.

I look forward to hearing the witnesses' testimony and hope that this hearing represents a step forward in ensuring that the costs of health care are kept under control by solid, aggressive contract management at CMS.

Senator Brown?

OPENING STATEMENT OF SENATOR BROWN

Senator Brown. Thank you, Madam Chair. I appreciate it. I apologize. I try to be punctual. I lost track of time. I apologize.

Senator McCaskill. That is okay.

Senator Brown. As you know, this is my second meeting as Ranking Member of this Subcommittee, and again, it is an honor to join with you, Madam Chair, in exploring the important issues of this Subcommittee and I look forward to trying to tackle these tough issues.

I just want to put my opening statement and make it part of the record and then I just want to ad lib a little bit, if that is all right. So I would like to submit that as part of the record.

The bottom line is, with all due respect, I am very concerned about where the taxpayer dollars are going and the oversight of those, what is it, $4 billion and counting of tax-obligated dollars in CMS--the complaints, the lack of oversight, some of the failure to grab monies that are owed the Government and the people of the United States in a timely manner. I am curious as to whether it is a tools and resources problem, where you need more of something. Is it an IT problem? Is it an oversight problem? Where and how can we streamline this process to make sure that we can save the taxpayers money and get more bang for our dollar? That is my bottom-line concern.

In listening to the Chairwoman's comments and opening statement, I think she shares very similar concerns about, gosh, if someone is trying to pay us, I mean, just show me where the check is. I will hand-deliver it. We will go get it. If they want to give money, we should be sending somebody out for them to get the money and get it in the system and get reimbursed as quickly as possible.

I am going to reserve the opening statement. I certainly appreciate it. It is easier to do it on the record, which I will do, and I will submit that. But I just want to get down to business and start asking questions. Thank you.

[The prepared statement of Senator Brown follows:]

/ SUBCOMMITTEE INSERT

Senator McCaskill. Thank you, Senator Brown.

Let me introduce the witnesses today. Kay Daly is the Director of the Financial Management and Assurance team at the U.S. Government Accountability Office, in my opinion, the premier Government auditing agency in the world, where her responsibilities include financial management systems, improper payments, contracting costs analysis, and health care financial management issues. Ms. Daly joined GAO in 1989 and has participated on a number of high-profile and groundbreaking assignments.

Rodney Benson serves as the Director of the Office of Acquisition and Grants Management at the Centers for Medicare and Medicaid Services. In this position, he is responsible for the award and administration of all contracts and discretionary grants for CMS. Mr. Benson has served in this position since October of 1997.

It is the custom of this Subcommittee to swear in all witnesses that appear before us, so if you don't mind, I would like you to stand and take the following oath.

Do you swear that the testimony that you will give before this Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. Daly. I do.

Mr. Benson. I do.

Senator McCaskill. Let the record reflect that the witnesses answered in the affirmative. We will be using a timing system today. We would ask that your oral testimony be no more than around five minutes. We are not strict in this Subcommittee. We would ask that you submit your written testimony for the record in its entirety.

And we will turn to you first, Ms. Daly.

TESTIMONY OF KAY L. DALY, DIRECTOR, FINANCIAL MANAGEMENT AND ASSURANCE, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. Daly. Thank you so much, Madam Chairman and members of the Subcommittee. I am pleased to be here today to discuss contract management at the Centers for Medicare and Medicaid Services, known as CMS. CMS administers Medicare and Medicaid, two programs that are included on GAO's High-Risk List, and relies extensively on contractors to assist in carrying out its basic mission.

In fiscal year 2008, CMS reported that it had obligated about $3.6 billion under contracts for a variety of goods and services, including contracts to administer, oversee, and audit claims made under the Medicare program, provide information technology systems, and operate the 1-800-MEDICARE help line.

In November 2007, we reported pervasive deficiencies in internal control over certain contracts that were used by CMS. We reported that CMS's internal control deficiencies resulted in millions of dollars of questionable payments to contractors, primarily because CMS did not obtain adequate support for billed costs from certain contractors. Internal control, that is the plans, methods, and procedures used to meet missions, are the first line of defense in safeguarding assets and protecting our taxpayer dollars.

Our follow-up audit was a comprehensive, in-depth review of internal controls over CMS's contract management practices. This review, which culminated in a report in October 2009, again found pervasive deficiencies in internal control over contracting and payments to contractors. The internal control deficiencies occurred throughout the contracting process and increased the risk of improper payments or waste. These deficiencies were due in part to a lack of agency-specific policies and procedures to ensure that the Federal Acquisition Regulation, that is commonly known as the FAR, and other control objectives were met.

As a result of our work, we estimated that at least 84 percent of FAR-based contract actions made by CMS in fiscal year 2008 contained at least one instance in which a key control was not adequately implemented. Not only was the number of internal control deficiencies widespread, but also many contract actions had more than one deficiency. We estimated that at least 37 percent of FAR-based contract actions made in fiscal year 2008 had three or more instances in which a key control was not adequately implemented.

For example, based on our statistical sample of the fiscal year 2008 contract actions, we estimated that at least 59 percent of those contract actions, the project officer did not always certify the invoices. We noted in our 2007 report that CMS had used negative certification.

That is a process whereby it pays contractor invoices without knowing whether they were reviewed or approved in order to ensure that the invoices are paid timely. Now, this policy continued throughout 2008. In one case, although a contractor submitted over 100 invoices for fiscal year 2008, only eight were certified by the project officer. The total value of this contract through January 2009 was about $64 million.

The control deficiencies we identified in our statistical sample stemmed from a weak overall control environment. CMS's control environment was characterized by the lack of strategic planning to identify the necessary staffing and funding, reliable data for effectively carrying out contract management responsibilities, and follow-up to track, investigate, and resolve contract audit and evaluation findings for purposes of cost recovery.

Now, GAO has made a total of 19 recommendations to address the shortfalls in contract management we identified in the two audits and the agency has agreed with each of our 19 recommendations, but has disagreed with our determination that actions to address about five of those were not sufficient. We believe that the limited actions CMS management had taken to date on those recommendations had fell short of what our expectations were and did not always address the intent of them.

In conclusion, the continuing weaknesses in the contract activities and limited progress in addressing the known deficiencies really raises questions on whether they have got the appropriate tone at the top regarding contract management. Until CMS management takes actions to address those additional recommendations and deficiencies that were identified in our report, its contracting activities will continue to pose a significant risk of improper payments, waste, and mismanagement.

So, Madam Chair and members of the Subcommittee, this concludes my prepared statement and I would be happy to answer any questions you may have.

[The prepared statement of Ms. Daly follows:]

Senator McCaskill. Thank you, Ms. Daly.

Mr. Benson?

TESTIMONY OF RODNEY L. BENSON, DIRECTOR, OFFICE OF ACQUISITION AND GRANTS MANAGEMENT, CENTERS FOR MEDICARE AND MEDICAID SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. Benson. Thank you, Chairman McCaskill, Ranking Member Brown. I am Rodney Benson, the Director of the Office of Acquisition and Grants Management, or OAGM, an office within the Centers for Medicare and Medicaid Services. I welcome today's opportunity to speak with the Subcommittee on contract management oversight at CMS.

CMS is committed to the highest degree of integrity in the performance of its many responsibilities, and more specifically in the management and oversight of its contracting activities. We serve the aged, disabled, and poor of our Nation, the most vulnerable of our population.

I am extremely proud of the contracting staff of OAGM and the important work we do in overseeing its many contracts. OAGM staff is dedicated to meeting the mission of Medicare and Medicaid programs and our more than 100 million beneficiaries. Furthermore, OAGM's manager, contracting officers, and contracting staff are highly skilled and dedicated to the agency. I can assure you that the staff of OAGM is committed to excellence in everything we do.

However, we are aware there is always room for continued improvement and new approaches to effective oversight. CMS appreciates the attention that GAO has given to our contracting processes and the issues they have raised. The thorough and thoughtful work of GAO and this Subcommittee is serving as an important catalyst to drive new improvements to CMS's contracting functions and internal controls and has helped to enhance our contracting oversight.

Our work is highly technical and complex, yet we have an obligation to the American taxpayers to perform our work in accordance with applicable acquisition laws and policies. I firmly believe that the most significant internal control to ensure the proper performance of CMS's contracting functions is the knowledge and skills of our contracting staff. We have worked hard to recruit people with technical and contracting expertise and to provide the CMS acquisition workforce with necessary skills, resources, and leadership to perform their jobs effectively.

To this end, we have instituted a number of changes and initiatives to ensure the appropriate resolution of GAO's findings. We conduct monthly internal training for contracting staff that includes topics such as invoice review and approval, acquisition data entry, contract types, and the use of competition. We also made available to our staff a web-based acquisition tool that gives access to the information they need to be efficient and effective.

Furthermore, we have senior leadership in place working alongside our staff as experienced resources and efforts to guide and mentor our staff as they acquire the knowledge and abilities they need to perform their jobs well and advance to the GS-1102 certification levels.

We recently created a deputy position which is responsible for acquisition policy and for strategically placing OAGM in a position to meet CMS's contracting needs. We were extremely fortunate to have a very senior and experienced Government executive who has an extensive background in Government contracts and is a Certified Public Contracts Manager assume this position for our organization.

We also hired a new Director for our Division of Policy and Support who is responsible for issuing acquisition policies, establishing internal controls, and acquisition career development. This individual came with a wealth of experience and expertise in acquisition policies and acquisition workforce development and was recruited from the Veterans Affairs Acquisition Academy Internship School for this position.

We have also created a new Cognizant Contracting Officer position which will be devoted to ensuring the proper oversight of our cost reimbursement contracts.

We have developed a detailed and comprehensive plan to address every one of GAO's findings. We have engaged an audit firm to review our plans and ensure that we have it right. The firm has extensive expertise regarding internal controls that apply to all Federal activities, which will provide us with guidance about best practices in other agencies and ensure we put in place the internal controls that will fully address GAO's concerns. This same firm will assist us in developing a comprehensive and strategic acquisition workforce plan.

A lot remains to be done. You can be sure that you have the commitment of CMS to improving our contracting oversight. I am sincerely grateful for the work that GAO has done for our agency. I am also appreciative for the interest and the support of this Subcommittee.

Thank you again for the opportunity to talk with you this afternoon about CMS's contracting activities.

[The prepared statement of Mr. Benson follows:]

Senator McCaskill. Thank you both very much for being here.

Let me start out with you, Ms. Daly. You found in the latest work that the contract management, the problems were, and I am quoting the report, "pervasive." That is a troubling word to use when we have $4 billion worth of contracts. In light of your findings, including staffing issues, data problems, lack of contract management and controls, what do you think, if you had to prioritize the problems and if Mr. Benson called and said, list them for us, what would you put at the top of the list that they need to go after first?

Ms. Daly. Well, Senator McCaskill, that is a very good question. There were, like I said, pervasive problems when you have got 84 percent of the contracts we looked at had at least one key control failure. There are a number of issues I mentioned in my oral statement about negative certification, and that is one that is troubling to me in that--

Senator McCaskill. Explain negative certification so that people who are not familiar with the term understand it.

Ms. Daly. Certainly. Negative certification is a process where the invoices, when they come in, they are paid within the time frame without being first reviewed and approved. So they will not be paid if someone raises their hand and says, don't pay this. There is an issue with it. But if not, it is gone ahead and it is paid. So if there is an issue--

Senator McCaskill. So there is an assumption that the invoice be paid unless someone raises something negative?

Ms. Daly. Exactly. Exactly. So that is one where then you can become part of that pay-and-chase cycle that we see a lot of times with other agencies, that once the dollars have gone out the door and then you realize there is a problem, then that has to be addressed. So that is certainly very troubling.

There is also the issue of getting good incurred cost audits done, all of the audit assertions done very timely. CMS does a lot of cost reimbursement-type contracts, so it is critical that the contractors for those contracts have good cost accounting systems in order to be able to bill accurately to the Federal Government. In CMS, we found error rates as high as about 50 percent in getting those contract audits done timely. And then again, there were issues with contract close-outs, the last chance the Government has to recoup those costs. So I think it is very important that those are some of the key issues that be addressed sooner rather than later.

Senator McCaskill. So just to boil it down in, I hope-

-not that I mind the terminology used by auditors--to make sure that in plain language what you are saying is because so many of the contracts, the amount of money these contractors are paid are based on assertions they make about what their costs are in performing those contracts, and the only way the Government has to, quote-unquote, "keep them honest" is by auditing those costs.

So if you have a cost plus contract or a cost incurred contract, there is not an incentive on the part of the contractor to keep costs down, because whatever their costs are, they are going to get paid. So there is not any incentive. It is not a fixed cost. It is costs incurred.

So the incentive is to turn in big bills. So if the audits aren't done, if the agency that is paying the money is not doing the audits, if they don't have a constant sense that someone is looking over their shoulder, that is where you can have runaway costs. And it is even worse if it doesn't happen--a serious accounting doesn't happen before the closeout, because once the closeout happens, then the only way you get that money back is with very expensive lawyers. Is that a fair summary of what cost incurred auditing and closeout means?

Ms. Daly. I can tell you have been here before.

[Laughter.]

Senator McCaskill. Okay. I just want to make sure that everybody understands that this is not just terminology that is thrown around. This is real money. This is real money that we are probably letting go out the door that we shouldn't.

What allowed CMS--and I would like both of you to weigh in on this--how did we get to the point that we have such a large reliance on contracting? I am not--I have said in this Committee many times, I am not against contractors, but it does appear that our Government, especially in the last decade, has really, really expanded contracting without the requisite acquisition personnel and oversight to manage it. So any hope we had of saving money by contracting out, I think at this point I would characterize as a pipe dream because I don't think that has been the case at all based on the work of this Committee.

So let us start with you, Mr. Benson. Why do you think that the contracting has become the meat and potatoes at CMS instead of the appetizer or dessert?

Mr. Benson. Well, Senator McCaskill, I have 35 years of experience in Government contracting, most of it working with the CMS in various capacities, and I could give you a long story, but I will spare you. And I think the reason for the reliance goes to our statutory authorities.

For most of CMS's existence, we had major contracts with Medicare Intermediary Carriers. They are our legacy contractors. They paid the claims. They had the call center. They did the fraud and abuse for us. They did the audit recovery, the MSP recovery work. They did everything. All our work was performed by these contractors.

Over time--and it was pursuant to statutory authority. There was authority in the Social Security Act that actually required, for example, for paying Part A claims, we contracted with fiscal intermediaries, and they were organizations who were nominated by providers to make payments to them.

Senator McCaskill. Is that right?

Mr. Benson. Yes, very unique statutory authorities.

Senator McCaskill. I did not realize that.

Mr. Benson. Congress kind of really controls what we do. Congress started reengineering the Medicare program to a large degree. They formed the Medicare Integrity Program, so we were required to contract out the fraud and abuse functions to different contractors. They have contracted out, like different kinds of reviews. We have contractors called Qualified Independent Contractors--I am sorry. We have so many acronyms. But they do second-level appeals of decision, again, pursuant to statutory authorities.

So we had statutory authorities that require that we contract out certain functions. We as an agency, too, in order to manage the program more efficiently and effectively, we started also pulling out functions from the Medicare Intermediary Carriers. It used to be that our data centers, we had individual data centers at every one of those contractors. When I first started, there were like 135 of them. You can imagine, that was pretty inefficient and ineffective. Now, we have consolidated data centers. We maintain the software for paying the claims ourselves.

We have been able to manage the program on a much smaller budget, much more efficiently and effectively, by consolidating those functions. But we started out from the get go pursuant to a statutory theme with having the program managed by contractors and it evolved to where, as I said, pursuant to the statutory schemes and in order to manage to the program in the most efficient and effective manner possible, we use a number of different contractors to manage our program.

Senator McCaskill. Well, there was not a statutory requirement that you consolidate data centers with a contractor.

Mr. Benson. There was not a statutory requirement, no.

Senator McCaskill. And there is not a statutory requirement that you do the Medicare help line with a contractor.

Mr. Benson. There is not a statutory requirement, no, ma'am, there is no.

Senator McCaskill. So, I mean, that is my question. There are some, obviously, that are statutory. But the preference for contractors, do you think that it is saving money?

Mr. Benson. Umm, that is a very difficult question to answer. But you say, saving money. It certainly is saving money over the way that we have historically--the way we had historically administered the program.

Senator McCaskill. But that has a lot to do with combining data centers, not necessarily hiring contractors to do the work.

Mr. Benson. Right.

Senator McCaskill. I mean, you guys realized efficiencies, but the work that you did to realize those efficiencies could have been done by Government employees and contractors and you still would have enjoyed the efficiencies.

Mr. Benson. Yes, ma'am.

Senator McCaskill. Okay. GAO found their internal controls at CMS were deficient and resulted in inadequate strategic planning for both staffing and resourcing. I understand that you ere planning to hire Grant Thornton to conduct a staffing study for you. First, when do you expect the study to be complete?

Mr. Benson. We expect the study to be complete, I believe by the end of May, very beginning of the summer.

Senator McCaskill. And is this study going to also show you what the right mix of contractors and Government employees are?

Mr. Benson. No, ma'am. We are really looking for this study, it is an acquisition capital workforce plan. It is going to focus on the workforce for the acquisition function.

Senator McCaskill. All right. Should I be worried that we need to hire somebody to tell you that?

Mr. Benson. Well--

Senator McCaskill. I am curious what they cost. What are you paying Grant Thornton for this?

Mr. Benson. I am not exactly sure, but I think it is-- there is a lot of work that is on the Grant Thornton task order because they are particularly focusing on the internal controls. Altogether, I believe we are paying about $500,000, but that is for a fairly robust task order. This is just one part of it, that the workforce development.

Senator McCaskill. I would like to see the task order--

Mr. Benson. Sure.

Senator McCaskill. --that we are paying a half-a-million dollars for.

Mr. Benson. Yes, ma'am.

Senator McCaskill. GAO has given you a pretty specific list about internal controls, and they didn't charge you for it. I am concerned in some ways that we feel that we need to contract out somebody to tell you how many folks you need to do just acquisition. How many people do you have working in acquisition?

Mr. Benson. We currently have a ceiling of 126, and we just have just over 100 of those would be devoted to the acquisition function.

Senator McCaskill. And what is the payroll on those 100 employees on an annual basis?

Mr. Benson. We don't budget for an office exactly by total payroll. Our average salary would be around a GS-13. I am sorry, I don't know exactly whatever that would compute to, but I don't know the overall--

Senator McCaskill. Clearly, you are not a GS-13 anymore or you would know.

I am just trying to think in my mind, calculate what we are spending on figuring out how many people we need versus what we pay how many people we are using a year. That is a pretty hefty price tag, so I would be anxious to see the task order.

Let me turn it over to Senator Brown now for some questions and I will return for a number of questions after he has an opportunity to question.

Senator Brown. Thank you, Madam Chair. You actually asked one of my questions, which is how much the Grant Thornton contract is going to be, and I mirror your thoughts. We had GAO that did a nice review, made recommendations, yet we are then going to an outside entity, paying them another half-a-million dollars which we don't have, and what if they come back and confirm what they said? I mean, are we better off, worse off? I don't get it.

Mr. Benson. Senator, the main purpose of the Grant Thornton task order is to help make sure that we get right our solutions to the--that we put the right internal controls in place. They have experience working throughout the Government with other Federal agencies. They are an audit firm, think like an audit firm, and they can help us to make sure that our internal controls are exactly right.

Senator Brown. But you guys have been doing this for quite a while. I mean, if the audit control is on right now, what do we have to say with what has happened in the past in terms of collecting money, you know, hiring contractors. I mean, if this stuff has been broken, because apparently you are doing a study to find out what needs to be done better, what confidence should we have in what has been done prior to?

Mr. Benson. Well, Senator, improvement and change is a continuous and an iterative process. We try to bring every resource we can to make sure we are doing things in the right way.

Senator Brown. Okay. I think a GS-13 makes about $85,000 and you have 120, 126 employees, just for the record. But in your initial statement, you said we are a highly technical and complex agency. Am I correct that you are still doing your billing manually?

Mr. Benson. It is not our billing, exactly. We do receive invoices from contractors in hard copy, and that is because we are in the process now of developing a new internal accounting system. We haven't been able--it wouldn't be a wise investment today of resources to build the interfaces between our acquisition system and the accounting system because we are about to--we are in the process now of developing a new overall accounting system for the agency.

Senator Brown. Because it seems to me that if you are highly technical and complex and yet we are still doing billing manually, it doesn't make much sense to me. Let me just tell you what my impression is after doing the research and having some experience dealing with your agency back home in the State Senate, is there are some efficiency problems and they bother me greatly, because as somebody who prides himself in being a fiscal conservative, I want to make sure that not only me as a taxpayer, but everybody else as taxpayers are getting the best value for their dollar.

And now that we have done a health care bill that is going to basically provide you more money and resources to apparently go out and get fraud when we haven't even collected some of the monies from the fraud and abuse that we have already identified, it seems like we are just adding good money after bad.

I personally, Madam Chair, have a little bit of trepidation and confidence as to whether you can, in fact, save money when we give you additional money to go and seek out that fraud and abuse. What are your comments on that?

Mr. Benson. Well, in my position, I am responsible for the contracting function itself. We have a center that is devoted to the actual program work around the program integrity work.

Senator Brown. Is that under your jurisdiction?

Mr. Benson. It is not under my jurisdiction.

Senator Brown. Okay. That is your answer? So you don't have any comments on that? Okay. That is fine.

I had another question. Would you agree or is it true that the CMS is, in fact, addressing a lot of the concerns--or let me backtrack. Do you think it is possible for you to address the concerns in the GAO report, and if so, what time frame are we talking about and how much will it cost?

Mr. Benson. Sir, that is a great question, and we intend to fully address every single one of those GAO findings. We take them very seriously and we are committed to addressing each one of them. We are putting together schedules and plans. We have plans in place to address those findings quickly and aggressively.

And as far as the cost, beyond the Grant Thornton, the assistance we are getting there, we will be doing that entirely with our own staff. So there wouldn't be any additional cost.

Senator Brown. So are you responsible at all as to how the fraud money is allocated, for fighting fraud? Does that--

Mr. Benson. No, sir, I am not.

Senator Brown. Madam Chair, I am going to just table for a minute and give it back to you because I do have a whole host. I just want to get my thought process organized a little bit. Thank you.

Senator McCaskill. Okay. Senator Pryor, welcome to the hearing. We are glad you are here.

Senator Pryor. Thank you. Thank you for doing this today, Madam Chair.

Let me start, I guess with you, Mr. Benson, and talk about where you see most of the waste, fraud, and abuse in Medicare and Medicaid contracts. What is the biggest problem?

Mr. Benson. Well, in terms of our contracting itself, we haven't encountered a lot of fraud. We had waste or abuse. We haven't really encountered a whole lot in terms of any sort of GAO IG report of our contractors.

Senator Pryor. Ms. Daly, what are the biggest areas--where is the biggest concern from your standpoint? Where is most of the fraud and the waste and the abuse in the system?

Ms. Daly. Well, Senator Pryor, in our 2007 report, we had identified some issues that we were concerned about that appeared to be waste. It looked as though there were some contractors that were subcontracting with each other. And therefore, because of that, instead of having CMS directly contract with them, a contractor when it contracts with someone else can have their add-on fees for serving that function be paid by the Government also. So I think there was a total of close to, I want to say $3.6 million that we thought was questionable because of that and should be addressed.

Senator Pryor. And when you talk about contracting, just for clarification, are you talking about where CMS actually as an agency enters into a contract, or are you talking about for services provided under Medicare and Medicaid?

Ms. Daly. Sir, I am referring to where CMS enters into a contract, not as part of the provider providing care to

American--

Senator Pryor. Okay. And, let me see, I think you said in your written testimony that GAO estimates that there is at least 46 percent of fiscal year 2008 contract actions that did not meet the Federal Acquisition Regulation requirements, is that right?

Ms. Daly. Well, yes sir. We were specifically referring to the controls in that area. They considered whether the cost accounting system had been approved prior to contract award, and these are in the cases where it is a cost reimbursement contract. So that is what I think is very important for cost reimbursement contracts, that the contracting systems that are being used by those contractors be reviewed and approved ahead of time to make sure that what is billed to the Government are fair charges.

Senator Pryor. Okay. And do you know if the agency is addressing that?

Ms. Daly. I am not aware of the status of addressing that particular recommendation.

Senator Pryor. Mr. Benson?

Mr. Benson. We are addressing those recommendations. We are taking our obligations in the administration of cost reimbursement contracts very seriously. We have done a number of things, primarily of which is to create a contracting officer's position which is entirely focused on ensuring the proper administration of cost contracts.

Senator Pryor. Okay. Will that result in less waste?

Mr. Benson. Well, sir, it will result in making sure that the contract terms are adhered to. I am not sure that I consider that to be waste, exactly, but we want to make sure that the contract terms and the rules in the FAR are strictly followed.

Senator Pryor. Okay. Ms. Daly, are there, I guess I would call them best practices for the Federal Government in contracting?

Ms. Daly. Well, Senator Pryor, the Federal Acquisition Regulations certainly serve as the basis for all of Government contracting throughout all the agencies, and I am not aware of any particular best practice studies that may have been done, but I am certain that there may be vendors out there willing to help you with that.

Senator Pryor. Is there room for improvement over at CMS?

Ms. Daly. From our work, it shows that there is clearly room for improvement, but I--

Senator Pryor. And why? What is it about CMS that--why are they not doing the things that they should do?

Ms. Daly. Well, what we saw were some of the root causes was that they had not determined what was the appropriate level of staff and resources needed to do what they had been tasked with doing. So it is basically they needed to analyze what their workload was and then identify, well, what resources are needed to accomplish those tasks.

We also noted that their policies and procedures had not kept pace with what the Federal Acquisition Regulations called for, and they have been working to try to address that. One of the things they had done was they had implemented a web-based system that provides the staff with access to the FAR and other things, but we still think they need to customize that so it explains how it should be done at CMS, you know, to use the specific forms, what is appropriate then and what supervisor it goes to, those kinds of things, to help them in doing their day-to-day activities.

Senator Pryor. And tell me about the Contract Review Board. Is there a Contract Review Board and how is CMS doing with that?

Ms. Daly. Well, the Contract Review Board was what appeared to be a promising control to put in place to help ensure that some of the regulatory and quality assurances were provided, but unfortunately, it wasn't fully implemented as envisioned. They did not do the number of reviews that they had expected to do, nor were all of their reviews acted upon. So its value as an internal control was not the best that it could be.

Senator Pryor. Mr. Benson, do you know why you didn't do all the reviews that they were supposed to do and why they didn't follow up?

Mr. Benson. Well, the Contract Review Board was something that we created internally to try to enhance the effectiveness and efficiency of our contracts. We are in the process now of revising that policy and we are really going to bolster it, making sure that we look at more of our contracts, that we really do a thorough job with that board. And I am going to, as a result of our new review policy, going to be reviewing contracts over $50 million personally. So we are in the process now of trying to make sure that we do have an effective Contract Review Board.

Senator Pryor. And Ms. Daly, you also included in your written testimony that GAO found that in 54.9 percent of the contracts, CMS did not promptly perform or request an audit of direct costs. Do you want to comment on that?

Ms. Daly. Yes, sir. I think that has been one of the problematic areas at CMS. The audit of direct costs generally occur towards the end of the contract and it is very important that that be done very promptly and very timely so that you are sure that the contractor has billed for the amounts correctly.

Senator Pryor. And how does CMS's number compare with the other Government agencies?

Ms. Daly. I am not aware of statistics related to that for other agencies, so I could try to get back to you with that information.

Senator Pryor. Thank you.

Madam Chair, that is all I have. Thank you.

Senator McCaskill. Thank you very much, Senator Pryor.

Mr. Benson, one of the things that is most frustrating to people who do audit work is when they do a report and then they come back and they do another report and the things they reported on the first one don't appear to have been fixed. That is a waste of money for the taxpayers who are paying the folks at GAO, because if they produce a product and nobody pays any attention to it, that is the same as all those hours of work just basically going up in smoke.

Two years later, after there were nine recommendations, GAO is indicating that on seven of the nine recommendations, they had not been fulfilled. Let us talk about that. What is--give me your best excuse as to why you need longer than two years to do something as basic as criteria for negative certification. Why would that not get fixed in two years? That is pretty basic to paying attention to the money going out the door.

Mr. Benson. Ma'am, I agree, and I don't want to make excuses. We took actions as a result of the original GAO findings. GAO came back and said what we did was not sufficient. So this time, we want to get it right. This time, we are going to make the changes, make sure--we changed, for example, we changed our invoice review policies, but GAO didn't feel we went far enough in making those changes. So now we are going to do what we need to do on all those findings to make sure that we satisfy GAO's findings.

Senator McCaskill. You are going to be--because of all of the things that must occur as it relates to our Medicare program over the coming years, there is going to be a lot of scrutiny on your agency. I cannot stress enough that a very basic would be getting the GAO stuff done. You know, you talk about cranky. If this GAO stuff doesn't get done, like immediately, it is a real problem because this is really not--you know, this is not--this is low-hanging fruit.

Let me--and this is awkward, if this is true. It is my understanding that the original report found $90 million in questionable contract payments. Now, we are not talking about payments to medical providers here. We are talking about payments you made to contractors. You all have stated that your current investigation and an audit will address $67 million of those costs.

Now, here is the problem. The $90 million they identified was for years 2004, 2005, and 2006. The audit you did where you found $67 million was in 2008. So you didn't even audit the right year to address what they found in the previous years. Do you see what I am saying?

Mr. Benson. Yes, ma'am.

Senator McCaskill. Now, that doesn't inspire confidence.

Mr. Benson. Yes, ma'am.

Senator McCaskill. Do you want to speak to that and make me feel better?

Mr. Benson. When we got the initial GAO report, our practice is to resolve audit findings when we do the close-out audit of the contracts. We had intended to do those contract audits expeditiously. We didn't. We now have a very concrete plan to get those audits done in the next few months and we are going to make sure that no payments under those contracts were made inappropriately.

Senator McCaskill. Why are all these contracts cost incurred? Why aren't they fixed price?

Mr. Benson. Well, the Federal Acquisition permits us to use cost--

Senator McCaskill. I am not asking you why. I am asking you--I am not asking if you can. I am asking you why.

Mr. Benson. Because our program is subject to continuous change and we have contract statements of work that are subject to continuous change, and a cost reimbursement contract is generally appropriate when the Government can't draft a statement of work with sufficient, like, certainty to assure--to shift the risk to the contractor of performance. And because of the statutory changes, the regulatory changes, the changes in the Medicare program, we just have not been able to develop statements of work with sufficient certainty to facilitate fixed price solutions.

Senator McCaskill. Is the Medicare hotline cost incurred?

Mr. Benson. Yes, it is.

Senator McCaskill. Really?

Mr. Benson. Well--

Senator McCaskill. I mean, really? How can that not be fixed cost?

Mr. Benson. Ma'am, if I could, may I get back to you? I actually--I think there is a per call cost and then there are certain aspects of it that are fixed price, but I need to clarify that for the record, if I may.

Senator McCaskill. Well, let me just say that a per call cost for a Medicare hotline, you know, doesn't seem to pass the common sense test to me. You are going to have to hire so many people to man the hotline whether the phone is ringing or not. It seems to me you ought to be able to resource a hotline with sufficient folks and set a price for that and get some bids and do it on fixed price.

I watched--I have watched so many contracts get out of control when it is cost incurred, cost plus, and the incentives are on the wrong side of the table. They are not on the taxpayers' side of the table, they are on the contractors' side of the table. They are easier to administer, admittedly, because you don't have to work as hard on the scope. You don't have to work as hard on what it is that you are laying out in terms of what is going to be performed on the contract, and I realize that is challenging in the Medicare-Medicaid environment, but it doesn't appear to me that you all are even focusing on a way that you can move as many contracts that is practicable to a fixed-cost price.

I just would encourage you to--and we may follow up with more specific information about cost incurred, cost plus versus fixed price on the various areas that Medicare and Medicaid are, in fact, contracting now. I think it is important.

Let me ask about--the Subcommittee asked GAO to provide some additional background on some of the case studies. There was a company called Palmetto GBA. You awarded a cost reimbursement contract to them despite the contracting officer's knowledge that this contractor had an inadequate accounting system. So this is what I was just discussing, except it is even worse, because not only have you given them cost plus, cost incurred, you are giving it to a contractor that you already know doesn't have an appropriate accounting system to keep track of what they should be charging you. Why would that occur? Why would a contracting officer give a contract to a company when you knew they had inadequate accounting in order to document what we owe them?

Mr. Benson. That should not occur, ma'am.

Senator McCaskill. Okay. I think we agree on that. Is the contracting officer that did that, have they been disciplined? Have they been held accountable?

Mr. Benson. They have not been disciplined. We have done internal training to reinforce to all of our contracting officers the FAR requirement that a contractor have an approved accounting system.

Senator McCaskill. Okay. In another, GAO found the contractor submitted over 100 invoices of which only eight had been certified by the project officer. Now, your policy provides that the project officer review each contractor invoice, recommend payment approval or disapproval, and sign a certification form. The contract value of this particular contract was more than $90 million. What happened here? Why weren't these invoices being reviewed?

Mr. Benson. Again, they should have been reviewed. We have done a lot of training of both our contracting staff and our project staff. We are also taking the GAO recommendation, which was to start having managers review some sample to make sure that, in fact, all the invoices that are in a contract file have been approved by both the project officer and the contracting officer. That is our policy.

Senator McCaskill. Well, I think one of the things that is going to have to start happening, if things have been this loosey-goosey over there, that you are awarding cost incurred contracts to people who don't have an approved accounting system and you have got eight out of 100 invoices that have been certified when 100 percent should be certified, I think just saying to people, we really mean it this time, it may take more than that. You may have to, as somebody who is managing this effort, you may have to say to these employees, you are going to be disciplined if this stuff occurs. We have watched, especially in the Department of Defense, when people don't get disciplined, nobody takes it seriously. It is like Monopoly money to them.

This is really important, that we hone in or home in--I have been told that I should say home in--on this problem because it is--this is a huge amount of money. And candidly, if the contractors know that you are not paying close attention, they are on the front lines. That encourages the kind of environment where they don't have to pay close attention. And now we are talking about hundreds of billions of dollars--hundreds of billions of dollars.

Let me turn it over to Mr. Brown for any of his questions.

Senator Brown. Thank you.

So it is 2010. You have been in this position since 1997, is that accurate?

Mr. Benson. Yes, sir.

Senator Brown. And I am listening and I am learning. I know I don't know it all, Madam Chair, but I think we are bonding because the question you asked about the recouping of 90--

Senator McCaskill. I just had this thought for a minute.

[Laughter.]

Senator Brown. We are bonding.

Senator McCaskill. We are bonding.

Senator Brown. We are reading each other's minds, because I am curious as to the fact that, I mean, when she was asking the question, I said, my gosh, she is cheating. She is looking at my notes here.

[Laughter.]

Senator Brown. And what I am finding is that in a

November 2007 report, that $88 million or $90 million from prior years hasn't been recouped and it is 2010. And you say, well, we are working on it. We are doing this. We have got more checks and balances. We are doing this and doing that. With all due respect, how long does it take to collect the money and get reimbursed from the people that have been overpaid or there have been losses or whatever?

Mr. Benson. Sir, as I said, we have a plan in place and we are going to be as expeditiously as possible addressing every one of those findings and making sure that we have made any appropriate adjustments--

Senator Brown. Well, who is responsible, though, for having--I mean, why does it take coming to the hearing, or why does it take the GAO recent report to deal with a GAO report that is from 2007? That one hasn't been addressed yet. So what confidence would I have or would the American taxpayers have or this Committee Chair and the members have to think that the new report is going to be adhered to?

Mr. Benson. Sir, our office needed some change and some improvement. We are making those changes now. We are going to address those findings.

Senator Brown. Well, you have, you say, it is a highly technical and highly specialized office, and I am presuming that the contractors and the--I am sorry, the contract approval officers have training. They have been schooled.

They are certified. And yet they haven't bothered to check to see if basic common sense stuff that should have been done when signing off on a contract wasn't done.

And now you are getting more bodies, you are getting more money, and you are getting more opportunity for, I hate to say it, for problems. What assurances do we have, once again, if these same people who have made these mistakes or didn't adhere to their basic training are still making these decisions, what confidence should I have?

Mr. Benson. Sir, I understand. As I said, we have made some really significant changes--

Senator Brown. Well, like what? Like what? I have heard that, like, ten times. Like what?

Mr. Benson. Thank you. One of the things we have done, as Ms. Daly pointed out, we have instituted an automated system for all our contracting staff that sets forth in a very concise way all the requirements of law and regulation. We are customizing that with all our own internal rules. So, first of all, contracting officers have, or contract professionals have the tools they need to make sure they know the policies, they have the policies right there at their fingertips and they are following them.

Senator Brown. All right. What tools? What tools are you talking about that they have now that they didn't have before?

Mr. Benson. This is a--we have a web-based tool that is in a very comprehensive way--

Senator Brown. Is it a checklist that they have to go through--

Mr. Benson. It has checklists--

Senator Brown. --when they are signing off on a contract?

Mr. Benson. Exactly. It has--

Senator Brown. So that hasn't been in place before?

Mr. Benson. We instituted it just over a year ago.

Senator Brown. Okay.

Mr. Benson. And we also have been developing a contract checklist in concert with the Department of Health and Human Services that are going to also--it was one of the GAO's recommendations that in a meaningful way should assure that contracting officers have complied with all the steps in awarding a contract.

Some of the other things we have done, and I think this is really significant, is made some really significant leadership changes. I think I said earlier in my opening statement that we have created a second deputy position to help us focus not only just the strategic aspects of managing our office, but on the policies, the internal controls, somebody who is very experienced in Government acquisition. We also have--

Senator Brown. Who was handling that stuff before?

Mr. Benson. Well, before, it was really more or less on my plate and the other managers in the office.

Senator Brown. So how many managers are in the office?

Mr. Benson. Well, we had--previously, we had myself and a deputy, and then we have two groups in the office, two group directors, and we have seven divisions. So we had, what, nine people.

Senator Brown. So now you have a new deputy that has this amazing experience, so he is going to solve all the problems, or she?

Mr. Benson. Well, I believe that when you assign accountability and responsibility to somebody, things get done.

Senator Brown. But didn't the head of CMS give that accountability and responsibility to you guys?

Mr. Benson. Yes. So we have created a position to help us really focus and make sure we get this right. We have also created a--well, not created, we have hired a new Director for our Division of Policy and Support, someone who, first of all, comes to us from the Veterans Affairs Acquisition Workforce Academy, who has extensive experience in workforce development, is a nationally recognized expert in that field, as well as extensive experience and expertise in developing acquisition policy.

Senator Brown. But don't the taxpayers have the right to make sure that you do get it right, because we are not talking about a few hundred thousand dollars here. We are talking about hundreds of millions of dollars. You are getting a pay increase now to do your job to find fraud, and yet we haven't even been able to collect the overpayments from 2004, 2005, 2006, 2007. You haven't been able to follow through in this 2007 report. We had another report that talks about waste and other types of things.

I tell you, Madam Chair, I am concerned, and I am hoping to submit some additional questions about the fact that you are getting all this money and you have all--we are going to do this, we are going to do that, we haven't done this, we haven't done that. I don't have much confidence. I know I am new here, but maybe I am looking at it in a different way to try to figure out who is responsible.

I know you are not the top guy, but you are one of the senior people. Is it fair to say that--and my initial question which I tried to get, and I wasn't saying it quite correctly, is is it true that you are responsible for approving or issuing the contracts and hiring the contractors that are responsible for pursuing fraud and improper payments? Is that your responsibility?

Mr. Benson. It is the responsibility of my office, yes, sir.

Senator Brown. Okay. So who is overseeing those contractors to make sure that they are doing their jobs in pursuing the fraud and waste and improper payments and then making sure that they collect the money and give it back to the Treasury of the United States?

Mr. Benson. Yes, sir. In the award and administration of contracts, there is a team of Government officials involved. We perform the contracting officer function in my office, which is the legal aspects of awarding, negotiating and awarding a contract in accordance with the FAR. We also have a program staff. There is an official there, the contracting officers, technical representative, but there is a project manager, a program manager. They oversee and manage the program aspects of a contract.

Senator Brown. So if that is the case, then if we have all these people doing all these jobs, why haven't we still collected--I am still getting back to the basic--why haven't we still collected the money that is outstanding that should be coming back that the GAO has identified?

Mr. Benson. Well, sir--

Senator Brown. Why is it taking so long? I mean, we could use the money. You know that, right? We are almost at a $13 trillion debt.

Mr. Benson. Yes, sir.

Senator Brown. We could use the money.

Mr. Benson. Yes, sir.

Senator Brown. So who is responsible?

Mr. Benson. Well, as I said earlier, I think, our normal process for resolving audit findings like that are to perform an audit of the contract and to resolve those findings at the time we close out the contract. We realize that process here was taking too long, so we are going to put particular attention, specific attention, expedited attention on those findings--

Senator Brown. All right. So when is the 2004 contract, when is that going to be closed? Is that closed?

Mr. Benson. It is not closed yet. Again, we are going to be taking expedited action to address that.

Senator Brown. All right. I know I am taking a lot of time, Madam Chair, but Ms. Daly, do you have confidence--what confidence do you have that--you have heard my line of questioning. I don't want to throw stones, believe me. I just want to solve problems and try to find out how we can better help your agency to perform a very valuable function for our citizens. I have got to tell you, I mean, what confidence do you have with all the new money that they are getting that they will be able to fulfill all of the concerns that the Chair and I have?

Ms. Daly. Well, Senator Brown, Mr. Benson has made some very important promises to all of us here and I am certainly hopeful that he will follow through with those and make sure that CMS does take action, because just as you have noted, there is a lot of money at stake here. The Medicare and Medicaid programs are two of the largest in the Federal Government. And to make sure that the contractor is handling all of that, ensuring that improper payments and all of those, we combat those improper payments so that we can try to prevent them, if possible, making sure we have the right contractors on board to do that is critical. I think this year, improper payments for Medicare and Medicaid totaled something like $55 billion, and addressing that will be exceptionally important.

So what has been entrusted to Mr. Benson and his staff is critical. I don't know that I could put a particular rating, if I had to, on it, but I am encouraged that they seem to have a good attitude about trying to fix things.

Senator Brown. You are being very generous. I am wondering, do you have a time frame that we have made a recommendation that they implement these things, or is it open-ended like some of these other things?

Ms. Daly. Well, yes, sir. Our recommendations in general are open-ended. We would like, of course, them to be fixed as soon as possible. We generally start to follow up anywhere six months to a year after the recommendation has occurred, and then we hope to have everything closed out no later than four years, which is one of GAO's performance metrics.

Senator Brown. Great. Thank you.

Senator McCaskill. Let me ask, when I visited with you about Palmetto a minute ago, I didn't realize at the time that it was the fourth-largest contractor. Since this contract was entered into with you all full well knowing that they did not have a qualified accounting system to have the kind of contract they have, what has happened to address that in the interim? I mean, do they now have the appropriate accounting system?

Mr. Benson. Yes, ma'am, they do.

Senator McCaskill. Okay. I wanted to make sure I didn't leave that detail hanging. I believe we spend over $130 million a year with that contractor and it puts them in the top five of the companies that you contract with.

The Medicare Secondary Payor Recovery Contractor, which really kind of--that whole problem is what piqued my interest in this area, that we were having a hard time getting Medicare to accept money that Medicare was owed--never a good sign--let me ask, this is a cost-plus-fee contract also, correct?

Mr. Benson. Yes, ma'am.

Senator McCaskill. Once again, I don't understand why this area would be particularly complicated, why you would need to make this cost incurred. Did they receive the full amount of the award fee?

Mr. Benson. Ma'am, I will have to get back to you on that. I don't know the answer.

Senator McCaskill. Was this awarded on a sole source basis?

Mr. Benson. Not exactly. It was awarded pursuant to special authority under Section 8(a) of the Small Business Act, which permitted us to award a contract to this organization because they qualified as a Native Alaskan contractor.

Senator McCaskill. I thought they were Oklahoma. They qualified under the Native American, not the Alaskan--

Mr. Benson. Oh, I am sorry. Did I say Alaskan? Excuse me. American. Excuse me. I am sorry. Excuse me.

Senator McCaskill. So because they qualified in that program, you didn't have to compete it?

Mr. Benson. Yes, ma'am.

Senator McCaskill. Well, I would be interested to know, a company that was not returning phone calls and taking money, if they got--how long has this contract been in place?

Mr. Benson. Uh--

Senator McCaskill. Two-thousand-and-six, I see.

Mr. Benson. Right. Yes, ma'am.

Senator McCaskill. You consolidated several of these into a single cost plus contract awarded on a sole source basis to Chickasaw Nation Industries. So I would be interested to know if they have been getting the award fees on the various years they have had the contract, since clearly there were pervasive problems with this contractor.

Now, they are now claiming--in 2003, you have stated you only recovered 38 cents for every dollar spent on recovery activities. That would mean we were losing money trying to recover money.

Mr. Benson. Yes, ma'am.

Senator McCaskill. You don't need an accountant to tell you that is a bad outcome. You are now--the contractor is now claiming they are recovering $8.97 for every dollar we are spending on recovering this money. Do you have confidence that is a correct number?

Mr. Benson. Ma'am, again, the programmatic responsibility, the officials that are responsible for that statistic are in another area of CMS. We can provide you more information regarding how that return on investment was arrived at. But I am not--I can't really speak to that.

Senator McCaskill. Well, it is important, and let me just tell you, I know that you are going to say this maybe isn't under you, but here is why I think you should know about it. Are you involved in deciding whether they get an award fee? Is your office involved?

Mr. Benson. Yes. Yes, ma'am, it would be.

Senator McCaskill. And wouldn't how well they are doing collecting money be relevant to whether or not they should get an award fee?

Mr. Benson. It would be, yes.

Senator McCaskill. So that is my point here. We should not be giving award fees to sole source contractors that are cost-incurred contractors unless we are confident that they deserve an award fee because they have done an outstanding job. So I would hope in these kinds of contracts that you would not only be checking ahead of time to make sure they have the appropriate accounting system so we are getting charged the amount of money, but on the back end, that you know how well they have done.

There has been a way-too-common practice in Government just to give award fees because everybody gets them. That needs to stop. I mean, that is like tipping 25 percent for bad service. You know, we can't afford to do that in our Government.

This is a sweet contract for them. This is sweet. They don't have to compete. It is big. Clearly, there wasn't a lot of oversight going on until all of a sudden members of Congress started getting notified that they were hearing from their people at home that nobody would take their money.

So I would like you to follow up on those and find out, and if it takes me having to inquire in the program office or in the Secretary's office to find out--and I want to know when this contract is up and if there is any intention on competing it.

And I will look into whether or not this is one of these exceptions that it doesn't matter how big they get. Do you know if this is a front or whether they are actually doing the work?

Mr. Benson. Umm--

Senator McCaskill. And let me explain what I mean by that for the record. You know what I mean--

Mr. Benson. Yes, ma'am.

Senator McCaskill. --but I want to make sure everybody understands. This is this carve-out that we are busy campaigning against that certain contractors--typically in the 8(a) program, you get some leverage and advantage for being in the 8(a) program, but when you get to a certain size, you age out of the 8(a) program. Well, there is a carve-out, and that is if you are an Alaska Native corporation, you can be as big as you want to be for as long as you want to be, and even more importantly, you don't even have to do the work. You can apply as the contractor and then subcontract the whole thing, and really what you do is you rent out your corporation for purposes of not having to compete.

Is this a situation that they have subcontracted for all the work?

Mr. Benson. Ma'am, I am not exactly sure what proportion of the work is subcontracted. We can provide that information.

Senator McCaskill. I think that is important. I am determined--I have nothing against the 8(a) program, but within the 8(a) program, it needs to be fair, it needs to be balanced, and it needs to be equal. Because you are an Alaska Native corporation should not allow you to get non-compete contracts that you actually aren't doing the work on.

You have told the Subcommittee staff that you are exceeding the goal for small businesses. I am curious if that is because the CNI has such a big contract.

Mr. Benson. Actually, those dollars aren't counted in our small business goals and it is because we use money that was appropriated under statute for the Medicare Integrity Program. It is considered--I am not sure why, but it is considered to be non-appropriated funds. So we count--so, actually, no, it is not counted in that goal.

Senator McCaskill. Okay. Do you know how many contractors your assertion that your goal has been met, do you know how many contractors go into that? I am trying to get at we found that in some of these agencies, they say they are making their goal for small contractors, but it is because they sometimes have one or two big ones as opposed to many smaller businesses.

Mr. Benson. To the best of my knowledge, we don't have those big contractors like you are talking about, like a CNI, in that base. It is a number of smaller contractors.

Senator McCaskill. Okay. That is terrific.

Let me also ask you, the MSPRC rule, there is a new rule that they have put in, and in October of last year, for some reason, they changed the number of consent forms that primary plan and third-party administrators have to sign. I think the need for beneficiary consent is legally required and important, but I am trying to figure out why we went from one to three forms. That is usually a bad sign, that we have to go from one form to three forms. And what is happening is that it is our understanding that it is causing these files to stay open for months because there aren't three forms.

If you can track down who the person was that thinks we need three forms instead of one, I would be happy to have a conversation with them in this hearing room about it, because I don't--somebody needs to explain why that is necessary.

Mr. Benson. Yes, ma'am. We will provide you that information.

Senator McCaskill. Thank you very much. I have no more questions.

Do you have any, Senator Brown?

Senator Brown. Thank you, Madam Chair. One more.

What percentage of contractors are actually getting award fees? Do you know that? And if not, you could provide it to me in writing. I think--

Mr. Benson. I will provide that, sir.

Senator Brown. Because if it is 100 percent, I mirror what your thoughts are on this. It is almost like your analogy, tipping for bad service. There is no incentive to do well. It is a disincentive if they know, at the end of the term, regardless of how they do, they are going to get an automatic bonus. It is a joke. So I wanted to just ask if you could submit that to the Committee.

Senator McCaskill. I want to thank both of you for being here today. I want to thank Senator Brown. We will note for the record that bonding was put on the record today. I think that is a good sign, right, Senator?

Senator Brown. A most flattering--

Senator McCaskill. I like that. I like that.

I do want to say sincerely, Mr. Benson, that it is time for you to be aggressive. We have this new health care bill that is going to put even more pressures and responsibilities on accountability, and this Committee is not going anywhere. Whether I am here or not, the Committee is going to be here, and I can assure you, we are going to keep looking. I see the role of this Committee as giving voice and volume to many of these GAO audits that have been done so that we don't come back in another two years and have another seven findings that were repeated from the findings before that, repeated from the findings before that. That has to stop.

Accountability has to begin within your agency. And if you need tools, if you don't have the tools to do the job, now is the time to speak up and let us know, because we are not going to take that as an excuse two or three or four years down the line when we have problems implementing the new law because you are not ready and you don't have the proper internal controls or contract oversight management in place.

Thank you, Mr. Benson, and thank you, Ms. Daly.

The Subcommittee is adjourned.

[Whereupon, at 3:51 p.m., the Subcommittee was adjourned.]