

[REDACTED]

1. Identification of the agency and contracting activity

a. Federal agency and contracting activity

Department of Health & Human Services/Centers for Medicare and Medicaid Services (DHHS/CMS)/ Office of Acquisitions and Grants Management (OAGM)

b. Sponsoring organization

Office of Financial Management/Provider Compliance Group

c. Project Officer Information.

[REDACTED]
Centers for Medicare and Medicaid Services
7500 Security Blvd. Baltimore, MD 21244
Mailstop C3-09-27
[REDACTED]

2. Nature and/or description of the action being approved

a. Acquisition purpose and objectives

This justification for other than full and open competition is for the authority to extend the active recovery auditing period for the existing four Medicare fee for service Recovery Audit Program contracts through December 31, 2015. This will allow CMS to fulfill its congressional mandate to correct improper payments in efforts to protect the Medicare Trust Funds while the procurement process is temporarily halted due to a protest at the Court of Federal Claims.

The Recovery Auditors will continue to be under contract for the administrative/reconciliation period through April 30, 2017. During this period, the Recovery Auditors will support the appeals process, refund contingency fee payments for claims overturned on appeal, as well as invoice for contingency fees on claims corrected during the active recovery-auditing period.

b. Project background

Section 1893(h) of the Social Security Act requires that the Secretary use Recovery Auditors to identify Medicare overpayments and underpayments and recoup Medicare overpayments. Recovery Auditors (RA) receive payment on contingency fee collections and funds repaid back to providers. CMS began the procurement process for the RA contract awards in March 2013. There was a pre-award protest filed and CMS

subsequently took corrective action to modify the terms of the contract. CMS completed its corrective action and reissued five new Requests for Quotations (RFQs) through the General Services Administration (GSA) between December 2013 and January 2014.

The current RA contracts were originally scheduled to end in February 2014. CMS had previously modified the RA contracts to allow active recovery auditing to continue for an additional four months (through June 1, 2014) and added an additional administrative and reconciliation period (through April 30, 2016), which would allow Recovery Auditors to receive contingency fees on work performed during the active recovery-auditing period, and CMS to collect back contingency fees for claims that subsequently overturned on appeal.

In early 2014, CMS received several pre-award protests on the new RFQs. Thus far, CMS has received favorable decisions at both the GAO and the Court of Federal Claims. However, one protestor has continued on to the Court of Appeals for the Federal Circuit, which will delay awarding Regions 1, 2, and 4 until at least late summer 2015, when the judge's ruling is expected.

The Medicare fee-for-service deemed a "high risk" program by the Government Accountability Office due to the sheer size and complexity of the program. CMS pays 1.5 million providers for health care for 54 million beneficiaries under the Medicare program. The Office of Management and Budget has determined that Medicare is also a "high error" program due to its annual estimated error amount. Since November 2009, President Obama has issued multiple directives calling on Federal Agencies to reduce improper payments and expand efforts to recover improper payments. CMS has continued aggressively pursuing improper payments and implemented significant corrective actions to prevent them from occurring. While CMS has made progress in reducing improper payments, more work remains. Since the implementation of the Recovery Audit Program in 2009 through the third quarter of FY 2014, the Recovery Auditors have collected \$8.8 billion in improper payments.

3. Description of the supplies or services required to meet the agency's needs (including the estimated value).

a. Project title – Fee for Service Medicare Recovery Audit Program

b. Project description

The Recovery Audit program identifies and corrects improper payments (both over and under payments) on fee for service Medicare claims. The CMS originally stopped active recovery auditing in June 2014, in anticipation of transitioning to new Recovery Auditor contract awards. However, multiple pre-award protests have continued to delay the new awards. While CMS is awaiting the Court's decision, it is imperative that CMS continue to use its contractors to detect and correct improper payments and protect the Medicare Trust Funds.

After Recovery Auditors have ceased doing active reviews, the CMS will continue to use the remaining contracting period, until April 30, 2017, for administrative functions and payment reconciliation, during which Recovery Auditors will receive payment for residual claim collections, pay back owed contingency fees, and support claims through the appeal process. The CMS expects that there will be some overlap in contracts, but not in active recovery audit activities.

c. Requirement type

- Research & development (R&D)
- R & D support services
- Support services (non-R&D)
- Supplies/equipment
- Information technology (IT)
- Construction
- Architect-engineer (A & E) services
- Design-build
- Other (specify) claim reviews

d. Type of action

- New requirement
- Follow-on work to a new contractor
- Other (specify) Contract Modification

• **Proposed contract/order type.**

- Firm-fixed-price
- Other fixed-price (specify, e.g., fixed-price award-fee, fixed-price incentive-fee): _____
- Cost-plus-fixed-fee
- Other cost reimbursement: cost-plus-award-fee
- Time and materials
- Indefinite delivery (specify whether indefinite quantity, definite quantity or requirements): _____
- Other (specify) contingency fee
- Completion Form Term form

c. Total estimated dollar value and performance/delivery period. This contract modification is to allow active recovery auditing from January 1, 2015 through December 31, 2015. CMS plans to continue to administrative and reconciliation period for the period of January 1, 2016 through April 30, 2017. The CMS does not estimate that this contract modification will result in any additional cost to the Government, as Recovery Auditors receive contingency fees from improper payments that they identify and that are corrected.

4. Identification of the statutory authority permitting other than full and open competition.

This acquisition is conducted under the authority of 41USC §253(c)(2) as implemented by Federal Acquisition Regulation (FAR) , 6.302-1 - Only one responsible source and no other supplies or services will satisfy agency requirements

This acquisition is conducted under the authority of 41 United States Code (U.S.C.) 253(c)(1) as set forth in Federal Acquisition Regulation (FAR) 6.302- 1.

FAR 6.302-1 - Only one responsible source and no other supplies or services will satisfy agency requirements.

This acquisition is conducted under the authority of section 4202 of the Clinger-Cohen Act of 1996.

N/A

This acquisition is conducted under the authority of the Services Acquisition Reform Act of 2003 (41 U.S.C. 428a).

N/A

5. Demonstration that the proposed contractor(s) unique qualifications or the nature of the acquisition requires use of the authority cited.

a. Name and address of the proposed contractor(s)

Recovery Auditor Region A - HHSM-500-2009-00005C
Performant Recovery
333 North Canyons Parkway, Suite 100
Livermore, CA 94551

Recovery Auditor Region B - HHSM-500-2009-00003C
CGI Federal Inc.
1001 Lakeside Avenue, Suite 300
Cleveland, OH 44114

Recovery Auditor Region C - HHSM-500-2009-00004C
Connolly, Inc.
50 Danbury Road
Wilton, CT 06897

Recovery Auditor Region D - HHSM-500-2009-00006C
HealthDataInsights
9275 West Russell Road, Suite 100
Las Vegas, NV 89148

b. Nature of the acquisition and proposed unique qualifications of the contractor(s).

In the Medicare fee-for-service Recovery Audit program, Recovery Auditors are tasked with identifying and correcting claims with improper payments. The CMS awarded the current Recovery Auditor contracts in February 2009 and only recently stopped reviews in June 2014 in anticipation of the new contract awards. However, due to the unexpected delay in awarding new contracts, modifications were made to extend reviews through December 31, 2014. Through June 2014, the Recovery Auditors had corrected over \$8.8 billion in improper payments. The current CMS contractors already have secure connectivity to CMS and to Medicare Administrative Contractors (MACs) in their jurisdiction. These contractors already have staff in place to conduct the approved reviews. In addition, providers/suppliers are already familiar with the contractors and with the appropriate CMS contacts. Further, these contractors are still under contract through April 30, 2017 for administrative purposes. To protect both the Government's and taxpayers interests, CMS proposes allowing the current Recovery Auditors to perform active reviews until December 31, 2015, by which time CMS anticipates being able to award the new contracts.

6. Description of the efforts made to ensure that offers are solicited from as many potential sources as practicable. Indicate whether a FedBizOpps notice was or will be publicized as required by FAR Subpart 5.2 and, if not, which exception under FAR 5.202 applies.

A notice was published to FedBizOpps on December 11, 2014. CMS received a response from Source Diversified Inc. and Gianfranco Ricciardella CPA. Both emails are attached hereto.

7. Determination by the Contracting Officer that the anticipated cost/price to the Government will be fair and reasonable.

The CMS does not expect this contracting action to result in any additional cost to the Government. Recovery Auditors are only paid from improper payment amounts collected. All contingency fees and associated program costs will be subtracted from the total amount that is returned to the CMS trust fund.

8. Description of the market research conducted (see FAR Part 10) and the results, or a statement of the reasons market research was not conducted.

Market research was not necessary because CMS already has contracts with the Recovery Auditors identified in this justification. The Recovery Auditors have performed recovery-auditing activities and have collected contingency fees on corrected improper payments. The CMS is simply extending the period for which they will complete active recovery audits while CMS is unable to award new contracts.

9. Any other facts supporting the use of other than full and open competition.

The CMS has historical knowledge from the current Recovery Audit Program that lead CMS to believe that modifying the current Recovery Audit contracts is in the best interest of the Government, due to the compelling urgency to prevent Medicare improper payments and save valuable Trust Fund dollars, and because the contractors are already under contract with CMS.

10. Listing of sources, if any, that expressed, in writing, an interest in the acquisition.

N/A

11. Statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the required supplies or services.

This JOFOC covers an approximately 12-month period (January 1, 2015 – December 31, 2015) for active recovery auditing, and an additional 16-month period (January 1, 2016 – April 30, 2017) for administrative tasks and payment reconciliation only. During this time CMS will continue the procurement for the next fee for service Recovery Audit Program contracts.

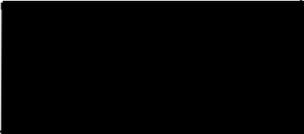
12. Program office certification

This is to certify that the portions of this justification that have been developed by the undersigned program office personnel, including supporting information and/or data verifying the Government’s minimum needs, schedule requirements and other rationale for other than full and open competition, are accurate and complete.

Official	Name & Title	Signature	Date
Project Officer	Narcessa Davis COR III Division of Recovery Audit Operations		
Project Officer's Immediate Supervisor	Brian Elza Director, Division of Recovery Audit Operations		12/23/14
Head of the Sponsoring Program Office	Deborah Taylor Director, Office of Financial Management		12/23/14

13. Contracting Officer Certification

This is to certify that the justification for the proposed acquisition has been reviewed and that to the best of my knowledge and belief the information and/or data provided to support the rationale and recommendation for approval is accurate and complete.

Official	Name & Title	Signature	Date
Contracting Officer	Nicole Hoey Contracting Officer		12/23/14

14. Chief of the Contracting Office and Head of the Contracting Activity signature(s)

Official	Name & Title	Signature	Date
Cognizant Division Director	Theresa Schultz Director, Division of Program Integrity and Financial Management Contracts		12/23/14

Menefee, Justin (CMS/OAGM)

From: Optonline (gjrcpa) <gjrcpa@optonline.net>
Sent: Tuesday, December 16, 2014 2:30 PM
To: Hoey, Nicole E. (CMS/OAGM)
Subject: Re: notice HHS500200900003C_4C_5C_6C

Thank you for the response please advise should anything change.

Gianfranco Ricciardella CPA, P.C.
129 Main Street
Irvington, NY 10533
Phone: 914-591-3295
Fax: 914-231-5990

From: Hoey, Nicole E. (CMS/OAGM)
Sent: Tuesday, December 16, 2014 10:46 AM
To: Optonline (gjrcpa)
Subject: RE: notice HHS500200900003C_4C_5C_6C

Good Morning,

Thank you for submitting your interest in the Recovery Audit Program. However, the notice posted is not a solicitation. At this time CMS is extending the period of performance on the four current Recovery Audit Contractors (RAC) while the procurement process is halted due to a pending protest decision.

Thank you,

Nicole Hoey
Contracting Officer
Division of Medicare Support Contracts
Phone: 410-786-0489
BlackBerry: 410-960-4108
Fax: 410-786-9088
MailStop: B2-14-21
nicole.hoey@cms.hhs.gov

From: Optonline (gjrcpa) [<mailto:gjrcpa@optonline.net>]
Sent: Saturday, December 13, 2014 6:51 PM
To: Hoey, Nicole E. (CMS/OAGM)
Subject: notice HHS500200900003C_4C_5C_6C

Solicitation Number:
HHS500200900003C_4C_5C_6C
Notice Type:
Special Notice

Dear Ms. Hoey,

I am interested in your Solicitation notice. Please advise how to proceed.

Thank you,

Gianfranco Ricciardella CPA
Gianfranco Ricciardella CPA, P.C.
129 Main Street
Irvington, NY 10533
Phone: 914-591-3295
Fax: 914-231-5990
Cage code 6LYU5

Menefee, Justin (CMS/OAGM)

From: Hoey, Nicole E. (CMS/OAGM)
Sent: Tuesday, December 16, 2014 10:42 AM
To: Al Ortiz
Subject: RE: HHSM500200900003C_4C_5C_6C

Hi Al,

There will be four sole source modifications for the current Recovery Audit Contracts (RAC). Below is a list of the current RAC contractors:

HealthDataInsights
Connolly LLC
Performant Recovery Inc.
CGI Federal Inc.

Further information regarding the A/B RAC program can be found on www.cms.gov.

Thank you,

Nicole Hoey
Contracting Officer
Division of Medicare Support Contracts
Phone: 410-786-0489
BlackBerry: 410-960-4108
Fax: 410-786-9088
MailStop: B2-14-21
nicole.hoey@cms.hhs.gov

From: Al Ortiz [<mailto:aortiz@sourced.com>]
Sent: Saturday, December 13, 2014 8:14 AM
To: Hoey, Nicole E. (CMS/OAGM)
Subject: HHSM500200900003C_4C_5C_6C

Hi Nicole
Would you please identify the sole source entity specified within this requirement?
And would you provide any specification of what is required?

Thank you

Al Ortiz
949.412.9126 mobile | aortiz@sourced.com
Source Diversified, Inc.
949.940.0450 | 949.203.6208 fax
www.sourced.com