(3) Terminate the contract.

[73 FR 55771, Sept. 26, 2008]

§455.240 Conflict of interest resolution.

(a) Review Board: CMS may establish a Conflicts of Interest Review Board to assist in resolving organizational conflicts of interest.

(b) Resolution: Resolution of an organizational conflict of interest is a determination by the contracting officer that:

(1) The conflict is mitigated.

(2) The conflict precludes award of a contract to the offeror.

(3) The conflict requires that CMS modify an existing contract.

(4) The conflict requires that CMS terminate an existing contract.

(5) It is in the best interest of the government to contract with the offeror or contractor even though the conflict of interest exists and a request for waiver is approved in accordance with 48 CFR 9.503.

[73 FR 55771, Sept. 26, 2008]

Subpart D—Independent Certified Audit of State Disproportionate Share Hospital Payment Adjustments

SOURCE: 73 FR 77951, Dec. 19, 2008, unless otherwise noted.

§455.300 Purpose.

This subpart implements Section 1923(j)(2) of the Act.

§455.301 Definitions.

For the purposes of this subpart—

Independent certified audit means an audit that is conducted by an auditor that operates independently from the Medicaid agency or subject hospitals and is eligible to perform the DSH audit. Certification means that the independent auditor engaged by the State reviews the criteria of the Federal audit regulation and completes the verification, calculations and report under the professional rules and generally accepted standards of audit practice. This certification would include a review of the State's audit protocol to ensure that the Federal regulation is satisfied, an opinion for each verification detailed in the regulation, and a determination of whether or not the State made DSH payments that exceeded any hospital's specific DSH limit in the Medicaid State plan rate year under audit. The certification should also identify any data issues or other caveats that the auditor identified as impacting the results of the audit.

Medicaid State Plan Rate Year means the 12-month period defined by a State's approved Medicaid State plan in which the State estimates eligible uncompensated care costs and determines corresponding disproportionate share hospital payments as well as all other Medicaid payment rates. The period usually corresponds with the State's fiscal year or the Federal fiscal year but can correspond to any 12-month period defined by the State as the Medicaid State plan rate year.

§455.304 Condition for Federal financial participation (FFP).

(a) *General rule.* (1) The State must submit an independent certified audit to CMS for each completed Medicaid State plan rate year, consistent with the requirements in this subpart, to receive Federal payments under Section 1903(a)(1) of the Act based on State expenditures for disproportionate share hospital (DSH) payments for Medicaid State plan rate years subsequent to the date the audit is due, except as provided in paragraph (e) of this section.

(2) FFP is not available in expenditures for DSH payments that are found in the independent certified audit to exceed the hospital-specific eligible uncompensated care cost limit, except as provided in paragraph (e) of this section.

(b) *Timing.* For Medicaid State plan rate years 2005 and 2006, a State must submit to CMS an independent certified audit report no later than the last day of calendar year 2009. Each subsequent audit beginning with Medicaid State plan rate year 2007 must be completed by the last day of the Federal fiscal year ending three years from the end of the Medicaid State plan rate year under audit. Completed audit reports must be submitted to CMS no later than 90 days after completion.