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March 2014

# DEFENSE HEALTH CARE

## Acquisition Process for TRICARE's Third Generation of Managed Care Support Contracts

# Report Documentation Page

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# GAO Highlights

Highlights of [GAO-14-195](#), a report to the Committee on Armed Services, U.S. Senate

## Why GAO Did This Study

DOD provides certain health care services through its TRICARE Program, which complements the health care services provided in military treatment facilities. DOD acquires these health care services through MCSCs with private sector companies. As of October 1, 2013, DOD's Defense Health Agency is responsible for awarding, administering, and overseeing TRICARE's MCSCs. Prior to this date TMA handled these duties.

DOD's health care costs have more than doubled from \$19 billion in fiscal year 2001 to its fiscal year 2014 budget request of more than \$49 billion. Senate Report 112-173, which accompanied a version of the National Defense Authorization Act for Fiscal Year 2013, cited concerns with the growth of DOD's health care costs and identified private sector health care contracts as an area for potential savings and efficiencies.

The Senate report mandated that GAO review DOD's process for acquiring TRICARE's MCSCs. This report examines: (1) TMA's acquisition process to award TRICARE's third generation MCSCs; (2) the extent to which issues were raised in the bid protests involving these MCSCs, including identifying any common themes; and (3) lessons learned from the acquisition process to award these MCSCs and how these lessons may be used in future acquisitions. GAO reviewed relevant federal statutes, regulations, policy documentation, and the bid protest decisions for TRICARE's third generation MCSCs. GAO also interviewed TRICARE officials about the acquisition process and lessons learned.

View [GAO-14-195](#). For more information, contact Debra A. Draper at (202) 512-7114 or [draperd@gao.gov](mailto:draperd@gao.gov).

March 2014

## DEFENSE HEALTH CARE

### Acquisition Process for TRICARE's Third Generation of Managed Care Support Contracts

## What GAO Found

The TRICARE Management Activity (TMA) within the Department of Defense (DOD) used the acquisition process prescribed by federal regulations to acquire health care services for the TRICARE Program through the third generation of TRICARE's managed care support contracts (MCSC). This process included a three-phased contract award process outlined in the figure below.

TMA's Contract Award Process: Phases and Activities in the Acquisition Process



Source: GAO analysis of DOD information.

TMA policy also defined steps for the acquisition process beyond what was required in the federal regulations, including developing additional documentation and obtaining additional approvals from senior TRICARE acquisition officials. For example, peer reviews of the acquisition process are conducted and documented for certain DOD contracts, including TRICARE's MCSCs.

TMA awarded a contract for each TRICARE region (North, South, and West), but challenges (bid protests) to the agency's award decisions were filed by unsuccessful offerors in all three regions. Of the six bid protests filed, three were sustained and three were denied. Following the resolution of the bid protests, the MCSCs in all three regions were awarded to a different offeror than was initially awarded the contract. The offerors who filed the bid protests cited various issues, most frequently TMA's evaluation of proposals. For example, four bid protests challenged TMA's evaluation of offerors' proposed network provider discounts, which are discounts of provider payment rates negotiated by offerors to reduce overall health care costs to the government.

TRICARE acquisition officials said that sustained bid protests and TMA's implementation of corrective actions prompted them to identify lessons learned where changes could be made to improve the acquisition process for subsequent TRICARE MCSCs. Lessons learned included (1) improvements in communication and documentation to increase transparency during the evaluation of proposals and (2) increases to the length of the acquisition process to allow for more time to evaluate proposals and for the transition from one MCSC to another. TRICARE acquisition officials also said that some of these lessons have been applied in other contracting activities; however, they could not confirm which, if any, of these lessons will be incorporated into the acquisition process for the next generation of TRICARE MCSCs, scheduled for 2018.

GAO requested comments from DOD on the draft report, but none were provided.

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## Abbreviations

DFARS	Defense Federal Acquisition Regulation Supplement
DHA	Defense Health Agency
DOD	Department of Defense
FAR	Federal Acquisition Regulation
MCSC	managed care support contracts
RFP	request for proposals
TMA	TRICARE Management Activity

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March 7, 2014

The Honorable Carl Levin  
Chairman  
The Honorable James M. Inhofe  
Ranking Member  
Committee on Armed Services  
United States Senate

In fiscal year 2012, the Department of Defense (DOD) provided health care to nearly 9.7 million servicemembers, retirees, and their families through its TRICARE Program.<sup>1</sup> DOD uses private sector contractors to develop and maintain the health care provider networks that make up TRICARE's purchased care system, which complements the health care provided by the U.S. military's health care system—a direct care system of military treatment facilities. TRICARE is a regionally structured program that provides health care services and support to beneficiaries in three U.S. regions: North, South, and West.<sup>2</sup> As of October 1, 2013, DOD's Defense Health Agency (DHA) is responsible for awarding, administering, and overseeing TRICARE's managed care support contracts (MCSC). Prior to October 1, 2013, the TRICARE Management Activity (TMA) handled these responsibilities.<sup>3</sup> Under TRICARE's MCSCs, three private sector contractors provide certain health care services for TRICARE

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<sup>1</sup>TRICARE includes a health maintenance organization option called TRICARE Prime, a preferred-provider organization option called TRICARE Extra, and a fee-for-service option called TRICARE Standard. A separate benefit, TRICARE for Life, supplements Medicare coverage for eligible beneficiaries.

<sup>2</sup>The TRICARE Program also provides health care services in overseas regions called "areas" in Eurasia-Africa, Latin America and Canada, and the Pacific. For the purposes of this report, we focused on TRICARE managed care support contracts in the U.S. regions.

<sup>3</sup>Beginning on October 1, 2013, responsibilities for the TRICARE Program, including awarding, administering, and overseeing TRICARE MCSCs, were transitioned from TMA to the DHA. In this report, we discuss the acquisition process conducted prior to October 2013 by TMA and will refer to this agency throughout the document. DOD officials we interviewed regarding the TRICARE MCSCs are referred to as TRICARE acquisition officials in this report. For additional information about the establishment of DHA, see GAO, *Defense Health Care Reform: Additional Implementation Details Would Increase Transparency of DOD's Plans and Enhance Accountability*, [GAO-14-49](#) (Washington, D.C.: November 2013).

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beneficiaries, such as specialty care referrals, enrollment, medical management, claims processing, customer service, and data collection.<sup>4</sup>

DOD's health care costs have more than doubled from \$19 billion in fiscal year 2001 to its fiscal year 2014 budget request of \$49.4 billion.<sup>5</sup> The Congressional Budget Office reported that DOD's health care costs are projected to reach \$59 billion by 2016 and nearly \$92 billion by 2030.<sup>6</sup> An advisory committee to the Secretary of Defense reported that rising health costs result from a number of factors that impact DOD, such as increased utilization of services.<sup>7</sup> Additionally, the cost of health care programs—including those supported by purchased care contracts—is taking up more of DOD's budget and may eventually compete with critical defense acquisition and operational programs, according to a report by a DOD advisory board.<sup>8</sup>

As of fiscal year 2012, the third generation of TRICARE's MCSCs comprised DOD's largest purchased care contracts.<sup>9</sup> The costs of these three contracts were expected to total approximately \$53 billion over a 5-year performance period ending in 2015. However, according to a senior TRICARE acquisition official, the final costs of these contracts could increase if DOD decides to add option years to the performance periods of the MCSCs to align their end dates with the revised schedule for initiating performance under TRICARE's fourth generation MCSCs,

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<sup>4</sup>DOD awarded one managed care support contract for the TRICARE Program in each of the three U.S. regions.

<sup>5</sup>DOD's fiscal year budget request of \$49.4 billion includes funds for its Defense Health Program, military medical personnel, military construction, as well as funds set aside for the Medicare-Eligible Retiree Health Care Fund. The total does not include overseas contingency operations funds and certain transfers.

<sup>6</sup>Congressional Budget Office, *Long-Term Implications of the 2012 Future Years Defense Program*, Pub. No. 4281 (June 2011).

<sup>7</sup>Other factors include increasingly expensive technology and pharmaceuticals, growing numbers of users, and the aging of the retiree population. See Defense Health Board, *Task Force on the Future of Military Health Care* (December 2007).

<sup>8</sup>Defense Business Board, *Focusing a Transition* (January 2009).

<sup>9</sup>TRICARE's first generation MCSCs were awarded in 1996 and 1997. The second generation MCSCs were awarded in 2003.

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originally planned for 2015, but now delayed until 2018.<sup>10</sup> This delay stems from the fact that several bid protests were filed by unsuccessful offerors challenging the award decisions in connection with the third generation MCSCs, which had been set to begin on April 1, 2010.<sup>11</sup> The agency suspended performance during the resolution of the various protests, some of which were sustained and resulted in TMA taking corrective actions.

Senate Report 112-173, which accompanied the Senate Committee on Armed Services' version of the National Defense Authorization Act for Fiscal Year 2013, mandated that GAO conduct a comprehensive review of DOD's health care contracts and acquisition process.<sup>12</sup> The report raised concerns regarding the growth in DOD's health care costs and identified health care contracts with private sector companies under its TRICARE Program as an area for potential savings and efficiencies. GAO was directed to review DOD's process for awarding TRICARE contracts, including the MCSCs, and the degree to which this process is transparent. GAO was also asked to assess DOD's planning activities for TRICARE's fourth generation MCSCs and make recommendations for any improvements that could be incorporated in the acquisition process. However, as of December 2013, the acquisition process for TRICARE's fourth generation MCSCs had just been initiated, according to a TRICARE program official. Therefore, this review focuses on the acquisition process for TRICARE's third generation MCSCs and identifies potential impacts on the planning and acquisition activities of future MCSCs. In this report we examine: (1) TMA's acquisition process to award TRICARE's third generation MCSCs; (2) the extent to which issues were raised in the bid protests involving TRICARE's third generation

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<sup>10</sup>According to a TRICARE program official, the performance periods for the MCSCs are expected to end in 2015 in the North region, in 2017 in the South region, and in 2018 in the West region.

<sup>11</sup>An offeror is a competitor for a government contract. An offeror that was not awarded a contract may challenge a federal agency's award or proposed award of a contract based on an alleged violation of statute or regulation. Such a challenge, known as a post-award bid protest, may be filed with the contracting agency (referred to as an agency-level protest), the U.S. Court of Federal Claims, or GAO. GAO's bid protest function—in contrast to its audit function—is an adjudicative process that is carried out by attorneys in GAO's Procurement Law group, who prepare bid protest decisions resolving disputes concerning the awards of federal contracts.

<sup>12</sup>S. Rep. No. 112-173, at 131-132.

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MCSCs, including the identification of any common themes; and (3) lessons learned, if any, from the acquisition of TRICARE's third generation MCSCs and how, if at all, DHA plans to use these lessons in future contracting activities.

To describe TMA's acquisition process for awarding TRICARE's third generation MCSCs, we reviewed relevant statutes and federal regulations, including the Federal Acquisition Regulation (FAR)<sup>13</sup> and Defense Federal Acquisition Regulation Supplement (DFARS).<sup>14</sup> We also obtained and reviewed DOD and TRICARE policy documents as well as contract documentation specific to TRICARE's third generation MCSC acquisition process. In addition, we interviewed TRICARE acquisition officials about the process used to acquire services through these MCSCs. Our analysis focused on TMA's acquisition process and not the actual evaluation of proposals, which was the subject of various post-award bid protest decisions related to TRICARE's third generation MCSCs.

To describe the issues that were raised in bid protests involving TRICARE's third generation MCSCs, we obtained and reviewed the various post-award bid protest decisions. We analyzed these decisions to identify the issues raised and whether there were any common themes across the individual bid protests.

To describe the lessons learned from the acquisition of TRICARE's third generation MCSCs and how, if at all, DHA plans to use these lessons in future contracting activities, we obtained documentation that identified opportunities for improvements in the acquisition process. We also conducted interviews with TRICARE acquisition officials to identify what lessons, if any, were learned from the acquisition process and how this information was used or may be used in subsequent contracting activities. To gain additional insights, we reviewed previous GAO work related to

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<sup>13</sup>The FAR defines uniform policies for the acquisition of supplies and services across the federal government. The FAR is codified in title 48 of the Code of Federal Regulations.

<sup>14</sup>The DFARS defines uniform policies for the acquisition of supplies and services for DOD that supplement the FAR, and delegates authorities for deviations from the FAR requirements. In general, agencies may grant deviations from the FAR when necessary to meet the specific needs and requirements of each agency, unless precluded by law, executive order, or regulation. See FAR § 1.402.

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the acquisition process and the implementation of TRICARE's first and second generation MCSCs.

We conducted this performance audit from February 2013 to March 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

In 1995, DOD's TMA introduced TRICARE's purchased care system. Since then, TMA has implemented three generations of contracts to support that system. The first generation of TRICARE contracts included seven MCSCs that covered 11 geographic health care regions nationwide. In 2001, GAO testified about the acquisition process for TRICARE's first generation of MCSCs, reporting that TMA's approach to the acquisition process for these contracts resulted in administrative challenges and contributed to funding shortfalls.<sup>15</sup> In 2002, TMA made changes to its second generation of TRICARE MCSCs, consolidating the number of regions from 11 to 3, and reducing the number of MCSCs from seven to three. TMA also changed the management and oversight of TRICARE's purchased care and direct care systems through the development of a governance plan. The plan established a new, regional governance structure, including the creation of TRICARE regional offices to manage the three newly established U.S. regions: North, South, and West.

TMA retained the three regions for the third generation of TRICARE MCSCs. In 2008, TMA issued a request for proposals (RFP) and six offerors submitted seven proposals—two proposals in the North region, three in the South region, and two in the West region. One offeror submitted a proposal in both the South and West regions. The RFP provided that an offeror could not receive an award for more than one of the three U.S. regions. Therefore, TMA awarded one regional contract to three different offerors. TMA initially awarded a contract to Aetna

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<sup>15</sup>GAO, *Defense Health Care: Lessons Learned From TRICARE Contracts and Implications for the Future*, [GAO-01-742T](#) (Washington, D.C.: May 17, 2001).

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Government Health Plan (Aetna) in the North region, UnitedHealth Military & Veterans Services (UnitedHealth) in the South region, and TriWest Healthcare Alliance Corporation (TriWest) in the West region. Each award decision was protested; protests were filed with GAO in the North and South regions, and an agency-level protest was filed in the West region.<sup>16</sup> As a result of sustained decisions in all three regions, TMA implemented corrective actions to address the recommendations in the post-award bid protest decisions and announced different awards in all three regions. Specifically, Health Net Federal Services (Health Net), the incumbent contractor, was awarded the North region MCSC; Humana Military Healthcare Services (Humana), also an incumbent contractor, received the South region MCSC; and UnitedHealth, a non-incumbent contractor, received the West region MCSC.<sup>17</sup> The award decisions in the

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<sup>16</sup>Health Net Federal Services, LLC, B-401652, Oct. 13, 2009, 2009 CPD 213 (GAO protest of the award to Aetna in the North region denied); Humana Military Healthcare Services, B-401652.2 *et al.*, Oct. 28, 2009, 2009 CPD 219 (GAO protest of the award to UnitedHealth Military & Veterans Services in the South region sustained); Health Net Federal Services, LLC, B-401652.3, B-401652.5, Nov. 4, 2009, 2009 CPD 220 (GAO protest of the award to Aetna in the North region sustained); UnitedHealth Military & Veterans Services, April 6, 2011 (agency-level protest of the award to TriWest in the West region sustained). DOD does not publish agency-level protest decisions; however, GAO obtained a copy of the UnitedHealth Military & Veterans Services decision for purposes of our review.

<sup>17</sup>Each contract consisted of a base period that included a transition-in period of approximately 10 months plus five 1-year option periods and a transition-out period. The transition-in period may vary based on the time necessary to conduct the subsequent acquisition and if incumbents succeed themselves. According to 10 U.S.C. § 1095c(b), DOD is generally required to allow non-incumbents a 9 to 12 month transition-in period. A 10-month transition-in period is considered by the industry as the minimum time necessary for non-incumbents to transition-in. If the incumbent is not awarded the new contract, the transition-out period for TRICARE's MCSCs is timed to run concurrently with the transition-in period.

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South and West region were protested, but withstood these challenges when the protests were denied.<sup>18</sup>

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## Federal Regulations and TMA Policy Defined the Acquisition Process for TRICARE's Third Generation MCSCs

Federal regulations—the FAR and DFARS—largely defined the acquisition process TMA used to obtain health care services through TRICARE's third generation MCSCs. This acquisition process included steps necessary to plan for, develop, and award these contracts. TMA policy provided further guidance on the acquisition planning and process steps beyond what was required in the federal regulations. This included developing additional documentation and obtaining additional approvals from senior acquisition officials within TMA, as well as conducting peer reviews of the acquisition process.<sup>19</sup>

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## A Three-Phased Approach Was Used for TMA's Contract Award Process for TRICARE's Third Generation MCSCs

TMA's acquisition staff conducted a three-phased approach to the contract award process—(1) planning the acquisition, (2) issuing the RFP and soliciting responses, and (3) awarding the contracts—for TRICARE's third generation MCSCs.<sup>20</sup> (See fig. 1.)

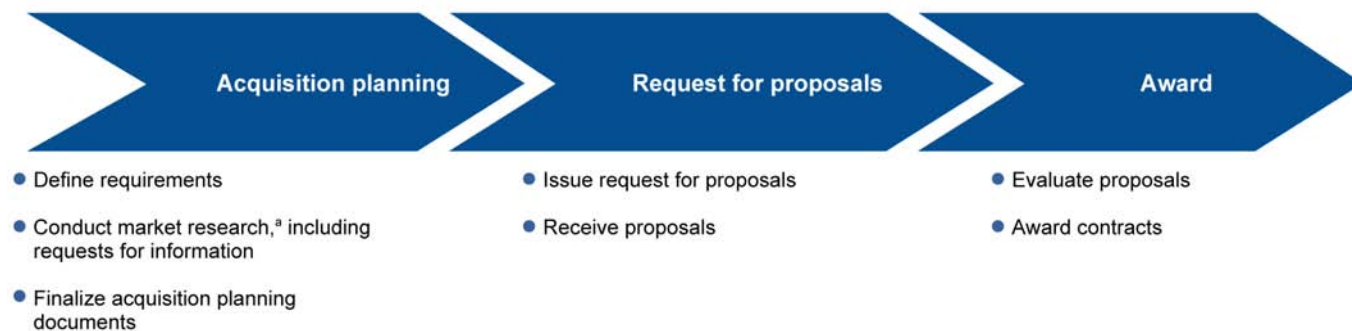
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<sup>18</sup>TriWest Healthcare Alliance Corporation, B-401652.12, B-401652.13, July 2, 2012, 2012 CPD 191 (GAO protest of the award to UnitedHealth in the West region denied); UnitedHealth Military & Veterans Services, LLC, B-401652.8 et al., June 14, 2011, 2012 CPD 83 (GAO protest of the award to Humana in the South region denied). After GAO denied UnitedHealth's protest, the firm filed its protest with the U.S. Court of Federal Claims, which also denied it. See UnitedHealth Military & Veterans Services, LLC v. United States, Case No. 11-405C, 2011 U.S. Claims LEXIS 2128 (Fed. Cl. Oct. 25, 2011). Because the U.S. Court of Federal Claims addressed the same broad protest issues and reached the same disposition as GAO, we used the GAO decision as the basis for our findings and did not separately discuss the subsequent U.S. Court of Federal Claims decision.

<sup>19</sup>In 2008, DOD instituted a policy that required that the acquisition process of certain service contracts be peer reviewed. TMA established a peer review policy applicable to all large service contracts with an aggregate estimated value of \$6.5 million or more and where certain contracting decisions need to be made. For example, a pre-award peer review is conducted when certain decisions, such as amendments to an RFP, are required. Similarly, post-award peer reviews of these types of contracts are conducted in instances where changes such as modifications to an awarded contract are needed.

<sup>20</sup>For the purposes of this report, we did not focus on the post-award phases of the acquisition process, which include the performance and monitoring of an awarded contract.

**Figure 1: TMA's Contract Award Process: Phases and Activities in the Acquisition Process**



Source: GAO analysis of DOD information.

<sup>a</sup>Market research is the collection and analysis of information about capabilities within the market to satisfy the agency's needs.

**Acquisition planning.** According to a senior TRICARE acquisition official, staff in the former TMA Requirements Branch developed requirements for TRICARE's third generation MCSCs during the acquisition planning phase.<sup>21</sup> This senior official explained that the Requirements Branch was disbanded in 2009 because TMA leadership officials determined that the responsibility for developing requirements should be located within the program management office requiring the services and not TMA's acquisition office.<sup>22</sup> An official who participated in the third generation MCSCs' acquisition process told us that the Requirements Branch reviewed the contract requirements of the second

<sup>21</sup>Acquisition planning is the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency's needs in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition. FAR § 2.101. Federal regulations generally require agencies to perform acquisition planning for all acquisitions. See FAR § 7.102(a).

<sup>22</sup>According to DOD policy, a program management office is responsible for identifying the need for a product or service and then developing the contract requirements that represent the specific tasks, outcomes, and standards that must be achieved to meet the need and thus fulfill the contract requirements. DHA's Policy and Benefits Branch, which manages the TRICARE Program, is the program management office responsible for developing requirements for future TRICARE MCSCs, according to a DHA program official.

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generation MCSCs, as well as any modifications, as a starting point for developing the requirements for the third generation MCSCs.<sup>23</sup>

TRICARE acquisition officials developed one document that combined the acquisition strategy and plan for the third generation MCSCs.<sup>24</sup> The document outlined a statement of need that identified why health care services were being acquired and the objectives to be achieved. The document also specified activities, such as market research, TMA would undertake prior to issuing an RFP.<sup>25</sup> Market research was accomplished by publishing requests for information, which led to meetings between TMA and companies in the health care industry to collect information and feedback about the acquisition.<sup>26</sup> TMA conducted further market research by sharing the draft RFP with companies in the industry to solicit feedback on the RFP, which included the proposed contract requirements. TMA also developed a source selection plan, which defined the evaluation factors and subfactors, and how much weight or importance should be assigned to each factor and subfactor when making a source selection. In addition, the plan identified the source selection team—key individuals participating in the evaluation and source selection process, as well as the procedures to be followed.

**Request for proposals.** Following the acquisition planning phase, TMA issued an RFP. The RFP documented TMA's requirements, including the contract type, significant contract dates, pricing arrangements, and the criteria to be used to assess offerors' proposals. The RFP also

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<sup>23</sup>According to DOD policy, officials should consider how the requirements were previously satisfied when developing new requirements.

<sup>24</sup>An acquisition strategy is a high-level description of the milestones in the acquisition process and how the milestones will be achieved. An acquisition plan documents the specific actions necessary to execute the approach outlined in the approved acquisition strategy.

<sup>25</sup>Market research is the collection and analysis of information about capabilities within the market to satisfy the agency's needs. FAR § 2.101. According to a TRICARE acquisition official who participated in the third generation MCSC acquisition process, market research is an important component of planning for the acquisition because it ensures that the acquisition process is transparent and that potential offerors are aware of TMA's intentions to acquire the products or services.

<sup>26</sup>Requests for information are publically released documents that allow the government to obtain feedback from industry on items such as the contract requirements.

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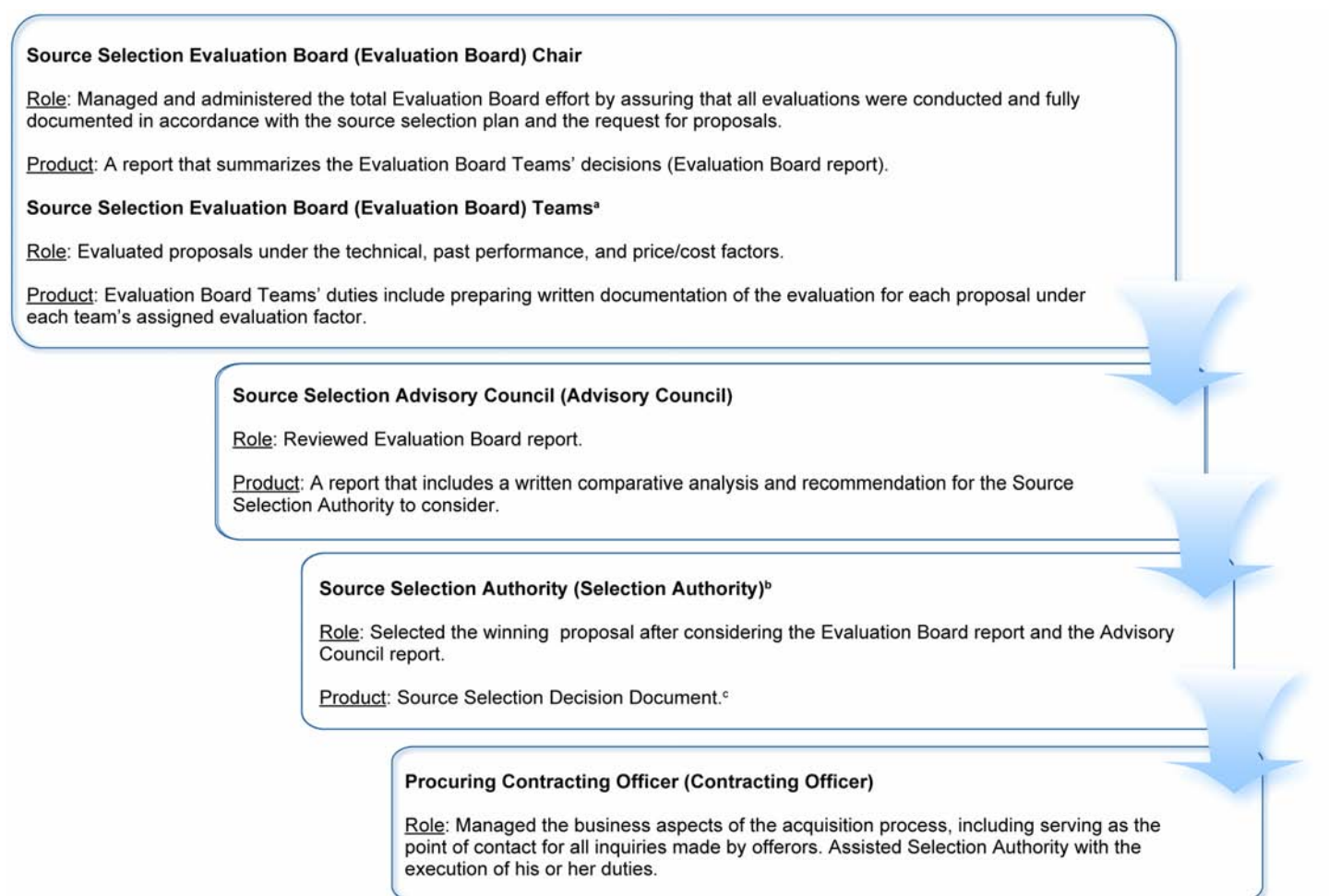
documented information presented in both the acquisition and the source selection plans.

**Award.** Once proposals were received, the proposals were evaluated by the source selection team consisting of four primary entities: the teams that comprised the Source Selection Evaluation Board (Evaluation Board), the group that made up the Source Selection Advisory Council (Advisory Council), an individual serving as the Source Selection Authority (Selection Authority),<sup>27</sup> and an individual serving as the Procuring Contracting Officer (Contracting Officer). Each entity had specific tasks to complete during the award phase and performed these in a specific order. (See fig. 2.)

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<sup>27</sup>The Selection Authority for the third generation MCSCs was a person with technical knowledge and understanding of the Military Health System, including purchased care, as it related to the contract requirements for these MCSCs.

**Figure 2: Source Selection Team Roles and Responsibilities for TRICARE’s Contract Award Process**



Source: GAO analysis of DOD information.

<sup>a</sup>The board is comprised of a technical evaluation team, a past performance evaluation team, and a price/cost evaluation team.

<sup>b</sup>The Selection Authority for the third generation MCSCs was a person with technical knowledge and understanding of the Military Health System, including purchased care, as it related to the contract requirements for these MCSCs.

<sup>c</sup>The source selection decision document is the single summary document supporting selection of the winning proposal consistent with the stated evaluation criteria.

TMA used a process established in the source selection plan to evaluate offerors’ proposals. To accomplish this, Evaluation Board teams reviewed offerors’ proposals against the three RFP evaluation factors and their relevant subfactors. The evaluation factors, in descending order of importance, were: (1) technical approach, (2) past performance, and

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(3) price/cost. These evaluation factors were developed to target critical aspects of the program for review and evaluation. The Evaluation Board evaluated each proposal against these factors. Ratings were assigned to each of the offerors' proposals under the technical and past performance evaluation factors, and each offeror's total proposal price was determined during the price/cost evaluation. The source selection team used a best-value tradeoff process to compare the relative merits of the offerors' proposals under the various evaluation factors. The RFP provided that the technical approach and past performance factors, combined, were significantly more important than the price/cost factor, which allowed TMA to accept other than the lowest priced proposal in favor of a technically superior proposal in the best-value tradeoff decision.<sup>28</sup>

#### Technical Approach Factor

The technical approach factor was used to evaluate the offerors' proposed approach—how the offeror intended to deliver services to fulfill contract requirements. Under this factor, the RFP identified seven evaluation subfactors, including network development and maintenance (which encompassed the consideration of network provider discounts),<sup>29</sup> and claims processing.<sup>30</sup> Each subfactor was assigned an individual rating and the subfactors were equally weighted during the evaluation. The technical evaluation team's responsibility was to evaluate how well an offeror's proposed approach met or exceeded TMA's minimum requirements for each subfactor.

#### Past Performance Factor

The past performance factor was used to evaluate an offeror's ability to supply services based on a demonstrated record of performance. If an offeror did not have relevant past performance, the Evaluation Board's past performance evaluation team was allowed to consider information from a predecessor company or parent organization. The subsequent ratings assigned to past performance considered each offeror's demonstrated recent and relevant record of performance to predict the

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<sup>28</sup>Best value means the expected outcome of an acquisition that, in the government's estimation, provides the greatest overall benefit in response to the requirements. FAR § 2.101.

<sup>29</sup>Network provider discounts are obtained when a contractor negotiates discounted payment rates with network providers, thereby reducing health care costs.

<sup>30</sup>Claims processing includes requirements for verifying eligibility; determining benefit policy; correctly applying deductibles, cost-shares, copays, and referrals/authorizations; accurately coordinating benefits with other health insurances; and accurately reimbursing network and non-network claims.

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offeror's likelihood of success in meeting the current contract requirements.

## Price/Cost Factor

The price/cost factor was used to evaluate whether the prices and costs in each offeror's proposal were reasonable and realistic.<sup>31</sup> In evaluating proposals under the RFP's price/cost factor, the Evaluation Board was to arrive at a total evaluated price for each of the proposals and could also use the results of a price realism analyses in assessing performance risks.<sup>32</sup>

An official who participated in the third generation MCSC acquisition process told us that offerors were able to ask the Contracting Officer clarifying questions about the RFP and adjust their proposals based on those discussions. According to this official, after the Contracting Officer received the final proposal revisions, the Evaluation Board teams completed their evaluation and the Chair prepared the report. The Selection Authority considered information provided in the Evaluation Board report, as well as the recommendations presented in the Advisory Council report, and then selected the offeror whose proposal represented the best-value to the government. The final source selection decisions represented the Selection Authority's independent judgment, which in some instances deviated from the judgments made during the underlying evaluations. For example, in the 2009 award decision in the South region, the Selection Authority disagreed with the judgment of the Evaluation Board that the proposal of one offeror was more advantageous than the awardee's proposal under one of the technical subfactors, finding instead that the two proposals were equally advantageous under that subfactor. After TMA announced the awards to the selected offerors, post-award bid protests were filed by unsuccessful offerors.

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<sup>31</sup>The phrase "price/cost factor" reflects the fact that the RFP included both cost-reimbursement and fixed-price contract line items.

<sup>32</sup>A price realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed price estimates to determine whether the estimated proposed price elements are realistic for the work to be performed, reflect a clear understanding of the work requirements, and are consistent with other parts of the proposal. Although price realism is not ordinarily considered in the evaluation of competitive fixed-price proposals, an RFP may provide for such an evaluation, as this one did, in order to measure the offeror's understanding of the requirements and/or to assess the risk inherent in an offeror's proposal.

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## Two Independent Post-Award Peer Reviews Were Conducted of the Acquisition Process for TRICARE's Third Generation MCSCs

Peer reviews of the acquisition process for certain contracts became TMA policy in September 2008 after the issuance of the RFP for TRICARE's third generation MCSCs.<sup>33</sup> Following bid protests in 2009, the Selection Authority requested that, as a best business practice, a peer review of the acquisition process for these contracts be conducted. The Deputy Director of Defense Procurement and Acquisition Policy documented in a memorandum the peer review team's findings related to the acquisition process, identifying some of the same issues that were raised in the bid protests, such as the adequacy of discussions during TMA's evaluation. The memorandum also included TMA's responses to the peer review team's concerns, citing whether TMA agreed or disagreed with each finding and why. If TMA agreed with a finding, it also identified how the issue would be addressed.

According to a senior TRICARE acquisition official, post-award peer reviews are expected to be conducted before the exercise of each option-year period for each MCSC. This official explained that two independent post-award peer reviews of TRICARE's third generation MCSCs have been conducted. The first review conducted in March 2012 and the second in March 2013 found no significant issues or concerns regarding the performance of any of the MCSC contractors. Subsequent post-award peer reviews of the third generation MCSCs will be conducted concurrently on an annual basis prior to the exercise of future option-year periods. Documentation from the peer reviews is to be included as part of the acquisition file for TRICARE's third generation MCSCs.

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## Bid Protests of Third Generation MCSC Awards Were Filed in All TRICARE Regions; Proposal Evaluation Was a Common Theme

Bid protests were filed by unsuccessful offerors in all three TRICARE regions. Most of the bid protests raised issues related to TMA's evaluation of offerors' proposals under the three RFP evaluation factors: technical approach, past performance, and price/cost.

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<sup>33</sup>The RFP for the third generation MCSCs was issued in March 2008.

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## Six Post-Award Bid Protests Were Filed across the Three TRICARE Regions, Three Were Sustained and Three Were Denied

There were six bid protests from offerors across the three TRICARE regions.<sup>34</sup> Four offerors filed five separate bid protests with GAO, and one offeror filed an agency-level protest with TMA. Out of the six bid protests filed across the three TRICARE regions, two protests were sustained by GAO, one protest was sustained by TMA, and the remaining three protests were denied by GAO.<sup>35</sup> In response to decisions and recommendations made in the sustained bid protest decisions, TMA implemented corrective actions that resulted in new award decisions in each of the three TRICARE regions.<sup>36</sup> The new award decisions withstood subsequent bid protest challenges, which were filed in two of the three TRICARE regions, the South and the West.

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## Bid Protests for Each of the MCSC Awards in the Three TRICARE Regions Most Often Cited Issues with TMA's Evaluation of Proposals

For TRICARE's third generation MCSCs, the offerors that filed the six bid protests raised various issues and each protest varied in the number of issues raised. However, a common theme cited by all offerors was TMA's evaluation of proposals under the three evaluation factors: technical approach, past performance, and price/cost. Of the three evaluation factors, offerors that filed bid protests most frequently challenged TMA's evaluation of proposals under the technical approach factor and, in particular, the subfactor under which TMA evaluated network provider discounts. Network provider discounts may result in reduced health care costs, and TMA was to consider an offeror's proposed network provider discounts, if any, during the evaluation of technical proposals under the network development and maintenance subfactor.

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<sup>34</sup>After GAO denied the sixth bid protest included in our review, the unsuccessful offeror filed its protest with the U.S. Court of Federal Claims. We have not separately discussed this bid protest in our findings because the court addressed the same broad issues and reached the same decision as GAO.

<sup>35</sup>In considering protests challenging TMA's evaluation of proposals, GAO and TMA did not reevaluate proposals; rather, the agencies examined the record to determine whether TMA's evaluation conclusions were reasonable and consistent with the terms of the RFP and applicable procurement laws and regulations. GAO and TMA either sustained the protest if they determined that one or more of the alleged bid protest issues had merit or denied the protest after determining that the alleged protest issues lacked merit. Protests may contain both sustained and denied protest issues, as was the case with two of the sustained protests we reviewed. In these cases, GAO and TMA sustained the protests in part based on specific issues, while denying other protest issues.

<sup>36</sup>The types of corrective action an agency may take in response to a sustained bid protest vary depending on the facts of the case and can result in the same or a different offeror being awarded the contract.

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Offerors challenged TMA's evaluation of network provider discounts in four protests, two of which were sustained and two of which were denied. In general, the issue concerned whether TMA properly evaluated offerors' proposed network provider discounts in evaluating the relative merit of competing technical proposals under the network development and maintenance subfactor. Offerors that filed bid protests also raised issues related to TMA's evaluation of proposals under the past performance and price/cost factors. For example, in one bid protest, the offeror that filed the protest claimed that TMA improperly evaluated the awardee's past performance based on the past performance of its affiliated companies. Additionally, in the same protest, the offeror that filed the bid protest also alleged that TMA conducted a flawed price realism analysis in evaluating the awardee's proposal under the price/cost factor. Offerors that filed bid protests sometimes raised issues that went beyond TMA's evaluation of proposals under specific evaluation factors. Other issues raised by offerors that filed bid protests included improper business practices, unfair competitive advantage, conflict of interest, improper source selection, inadequate discussions to resolve proposal weaknesses, and TMA's alleged failure to penalize offerors for not following RFP instructions regarding right of first refusal, page limits, and Medicare rate uncertainty.<sup>37</sup> (See table 1.) Appendix I includes additional details on each of the six bid protests.

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<sup>37</sup>Right of first refusal refers to the requirement that MCSCs give military treatment facilities the first chance to accept or refuse patient referrals, in order to accommodate the beneficiary within the military treatment facility or refer the beneficiary to a civilian provider. Medicare rate uncertainty refers to the relationship between TRICARE reimbursement rates and Medicare rates, which are uncertain and subject to change.

**Table 1: Frequency and Types of Issues Raised in TRICARE’s Managed Care Support Contracts Bid Protests, by Region**

Issues raised in bid protest	TRICARE region						Total number of protests that raised each issue
	North		South		West		
	Protest 1	Protest 2	Protest 1	Protest 2	Protest 1	Protest 2	
Technical <sup>a</sup>		√	√	X	X	X	5
Past performance <sup>b</sup>		√	X		X	X	4
Price/cost <sup>c</sup>		√		X		X	3
Other <sup>d</sup>	X	√		X	√	X	5

Legend: √ = bid protest issues that were found to have merit and were sustained by GAO or TMA; X = bid protest issues that were found not to have merit and were denied by GAO or TMA.

Source: GAO review of bid protest decisions.

Note: We have reported both the sustained and denied protest issues in tabulating our results in Table 1. In addition, we categorized protest issues at the level of evaluation factors rather than any subfactors.

<sup>a</sup>Issues with the technical approach factor raised by the unsuccessful offerors included TMA not adequately accounting for network provider discounts.

<sup>b</sup>Issues related to the past performance factor raised by the unsuccessful offerors included TMA improperly evaluating the awardee’s past performance based on the performance of its affiliated companies.

<sup>c</sup>Issues with the price/cost evaluation factor raised by the unsuccessful offerors included challenges to TMA’s price realism analysis, such as TMA’s alleged use of outdated labor rate information in assessing the realism of an offeror’s proposed prices.

<sup>d</sup>“Other” is a category that encompasses protest issues beyond the evaluation of an offeror’s proposal under one of the three RFP evaluation factors: technical approach, past performance, and price/cost. For example, other issues raised by unsuccessful offerors included: improper business practices; unfair competitive advantage; conflict of interest; improper source selection; inadequate discussions to resolve proposal weaknesses; and TMA’s failure to penalize offerors for not following the request for proposal instructions regarding items such as page limits.

## TRICARE Acquisition Officials Identified and Applied Some Lessons Learned from the Third Generation MCSC Acquisition

TRICARE acquisition officials reported they have identified several areas where changes could be made to improve the acquisition process for future TRICARE MCSC acquisitions, including those scheduled to be awarded in 2018. According to TRICARE acquisition officials, preliminary lessons learned from the third generation acquisition process and resulting bid protests include (1) improvements in communication and documentation to increase transparency during the evaluation of the proposals and (2) increases to the length of the acquisition process to allow for additional time to evaluate proposals and for the transition from one MCSC to another.

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## TRICARE Acquisition Officials Learned That Better Communication and Documentation Are Needed During Proposal Evaluation

For TRICARE's third generation MCSCs, TRICARE acquisition officials told us the sustained bid protest decisions in all three TRICARE regions prompted them to take corrective actions and evaluate revised proposals. According to TRICARE acquisition officials, among the issues they considered was whether TMA had clearly communicated to offerors through the RFP how it would evaluate the technical approach factor, specifically the subfactor related to network provider discounts, and whether TMA had adequately documented discussions during its evaluation of the proposals. In response to the sustained bid protests, TRICARE acquisition officials told us they were able to identify some preliminary lessons learned, which they implemented during their evaluation of revised proposals in the South and West regions.<sup>38</sup> TMA accomplished this in two ways.

**Communication:** To more clearly communicate how TMA would evaluate proposals, TMA issued an amended RFP for the South and West regions and allowed offerors to submit proposal revisions. In the amended RFP, TMA added language to clarify how network provider discounts would be considered as part of the technical evaluation and the subsequent best value analysis.

**Documentation:** To address the need for adequate documentation of discussions during the evaluation process, TRICARE acquisition officials who participated in the MCSC evaluation process told us they improved their documentation during the reevaluation of proposals in the South and West regions. Specifically, these officials said that they were more thorough in their evaluation of the revised proposals and more rigorous in documenting their discussions. Adequate documentation of discussions during the evaluation process ensured that the documentation accurately reflected the evaluation process that occurred and that all evaluations were conducted in accordance with the RFP.

Additionally, one of these officials told us that TMA had incorporated these preliminary lessons learned from the third generation MCSC acquisition process in subsequent acquisitions. For example, TMA incorporated these preliminary lessons learned into the RFPs for TRICARE's three dental plans. Specifically, this official told us that in

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<sup>38</sup>In the South and West regions, TMA amended the original RFP, reissued the RFP to enable offerors to revise their proposals in certain areas, conducted discussions, and made another source selection and award.

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drafting the RFP for one of TRICARE’s dental plans—the TRICARE Dental Program—officials made sure to clearly define how TMA planned to assess the evaluation factors in the RFP to ensure that potential offerors understood the scope and magnitude of how the evaluation factors would be considered for awarding the contract.

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### TRICARE Acquisition Officials Believe More Time May Be Needed for the Acquisition Process

TRICARE acquisition officials told us they also learned from the TRICARE third generation MCSC awards that more time may be required for the acquisition process. Specifically, officials said that additional time may be required to conduct proposal evaluations. In addition, officials said that the transition period may need to be longer to accommodate a change in contractors.

### Additional Time to Conduct Proposal Evaluations

TRICARE acquisition officials who participated in the evaluation of TRICARE’s third generation MCSCs told us that TMA underestimated how much time was needed to evaluate proposals. Specifically, these officials told us that more time might be needed to conduct the evaluation of proposals under the technical approach factor because of the multiple evaluation subfactors that must also be considered. Out of the three evaluation factors—technical approach, past performance, and price/cost—the technical approach factor had the most subfactors. According to one TRICARE acquisition official, the number of technical subfactors made it more difficult to conduct the evaluation in the time allotted. This official suggested that for future MCSC acquisitions, DHA should consider whether all seven technical approach subfactors are necessary.<sup>39</sup> Furthermore, the official stated that since some of these subfactors encompassed required administrative functions of the TRICARE Program and are laid out in its Operations Manual and other policy and guidance documents, offerors who are awarded the contract are expected to perform the required administrative functions.

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<sup>39</sup>DHA will be responsible for making decisions for TRICARE’s fourth generation MCSC acquisition process.

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Additional Time to Allow for  
Transition from One MCSC to  
Another

A senior TRICARE acquisition official told us that DHA is considering adding 2 or 3 months to the transition-in period for the fourth generation MCSCs to accommodate delays that may occur when responding to any bid protests that may be filed and transitioning from one contract to the next. This official explained that delays in initiating the contract performance periods for TRICARE's third generation MCSCs could potentially increase costs if option periods are added to align the MCSCs' end dates.<sup>40</sup> The official explained that this is because terms for these option periods would be negotiated in a non-competitive environment, which may affect the government's ability to get the best value in terms of price and quality.

Other factors can also add time to the transition from one generation of MCSCs to the next, according to TRICARE acquisition officials. For example, the start of the performance period for TRICARE's third generation MCSC in the West region was delayed because a decision on the bid protest in that region could not be made until TMA made a new source selection decision in the South region following a sustained bid protest. In particular, the agency held UnitedHealth's July 2009 West region protest in abeyance while TMA took corrective action following a sustained bid protest in the South region, where UnitedHealth was also an offeror. Because the same offeror could not win contract awards in more than one region, UnitedHealth's West region protest would have become moot if it received the South region award following TMA's evaluation of the revised proposals. After TMA awarded the South region contract to Humana in February 2011, UnitedHealth's agency-level protest in the West region was revived.

A senior TRICARE acquisition official also told us that transition delays may affect the beneficiaries who rely upon the services provided by the MCSC contractor. Specifically, the official said that more time may be required to transition from an incumbent contractor to a new contractor. A new contractor may need additional time to implement services for TRICARE beneficiaries, whereas the incumbent contractor essentially provides a continuation of services. For example, beneficiaries reported

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<sup>40</sup>As a result of the bid protest process and TMA's implementation of corrective actions to address the issues in the sustained bid protests, the performance periods of the finalized MCSCs are no longer aligned. According to a TRICARE program official, the performance periods for the MCSCs are expected to end in 2015 in the North region, in 2017 in the South region, and in 2018 in the West region.

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problems with referral authorization as well as customer service when UnitedHealth assumed management of the TRICARE West region contract on April 1, 2013.<sup>41</sup>

Despite the implementation of lessons learned from TRICARE's third generation acquisition process and the related bid protests, TRICARE acquisition officials told us that they cannot confirm which, if any, of these lessons will be incorporated into the acquisition process for TRICARE's fourth generation MCSCs scheduled for 2018. However, these officials noted that the acquisition process for previous TRICARE MCSCs, including lessons learned from related bid protests, are generally considered when initiating the acquisition process for the next generation of TRICARE MCSCs. DHA began developing an acquisition plan for TRICARE's fourth generation MCSCs during the first quarter of fiscal year 2014, according to a TRICARE program official.

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## Agency Comments

We requested comments from DOD, but none were provided.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Defense, and other interested parties. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

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<sup>41</sup>TRICARE beneficiaries in the West region cited concerns with access to specialty care. TMA responded to these concerns and issued a memorandum that allowed TRICARE Prime beneficiaries to receive recommended specialty care without first obtaining authorization from UnitedHealth and waived the usual penalty fees levied on those who see a specialist without prior approval. This emergency measure—that affected all medical care beginning April 1, 2013—went into effect in early May 2013 and was extended multiple times, through July 2, 2013.

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If you or your staff have any questions about this report, please contact me at (202) 512-7114 or at [draperd@gao.gov](mailto:draperd@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contribution to this report are listed in appendix II.



Debra A. Draper  
Director, Health Care

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# Appendix I: Description of Bid Protests of TRICARE's Third Generation Managed Care Support Contract Awards

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There were six bid protests filed by unsuccessful offerors across the three TRICARE regions. Out of the six bid protests filed across the three TRICARE regions, two protests were sustained by GAO, one protest was sustained by the TRICARE Management Activity (TMA), and the remaining three protests were denied by GAO.<sup>1</sup> In response to decisions and recommendations made in the sustained bid protest decisions, TMA implemented corrective actions that resulted in new award decisions in each of the three TRICARE regions.<sup>2</sup> The new award decisions withstood subsequent bid protest challenges that were filed in two of the three TRICARE regions, the South and the West.

This appendix provides summary information regarding the issues raised in the six bid protests. With respect to sustained bid protests, we describe only the issues sustained and not the issues denied, which did not form the basis for the ultimate decision in the case. In addition, we categorized protest issues at the level of evaluation factors, which were (1) technical approach, (2) past performance, and (3) price/cost. In some protests, unsuccessful offerors raised issues that went beyond the evaluation of proposals. We used the term "other" to encompass any protest issue that was not specific to the evaluation of a proposal under one of the three request for proposal (RFP) evaluation factors.

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## North Region Bid Protests

Health Net Federal Services (Health Net) filed two bid protests challenging the award to Aetna Government Health Plans (Aetna) in the North region in July 2009. GAO sustained one of the two protests and recommended that TMA reevaluate proposals and take other actions

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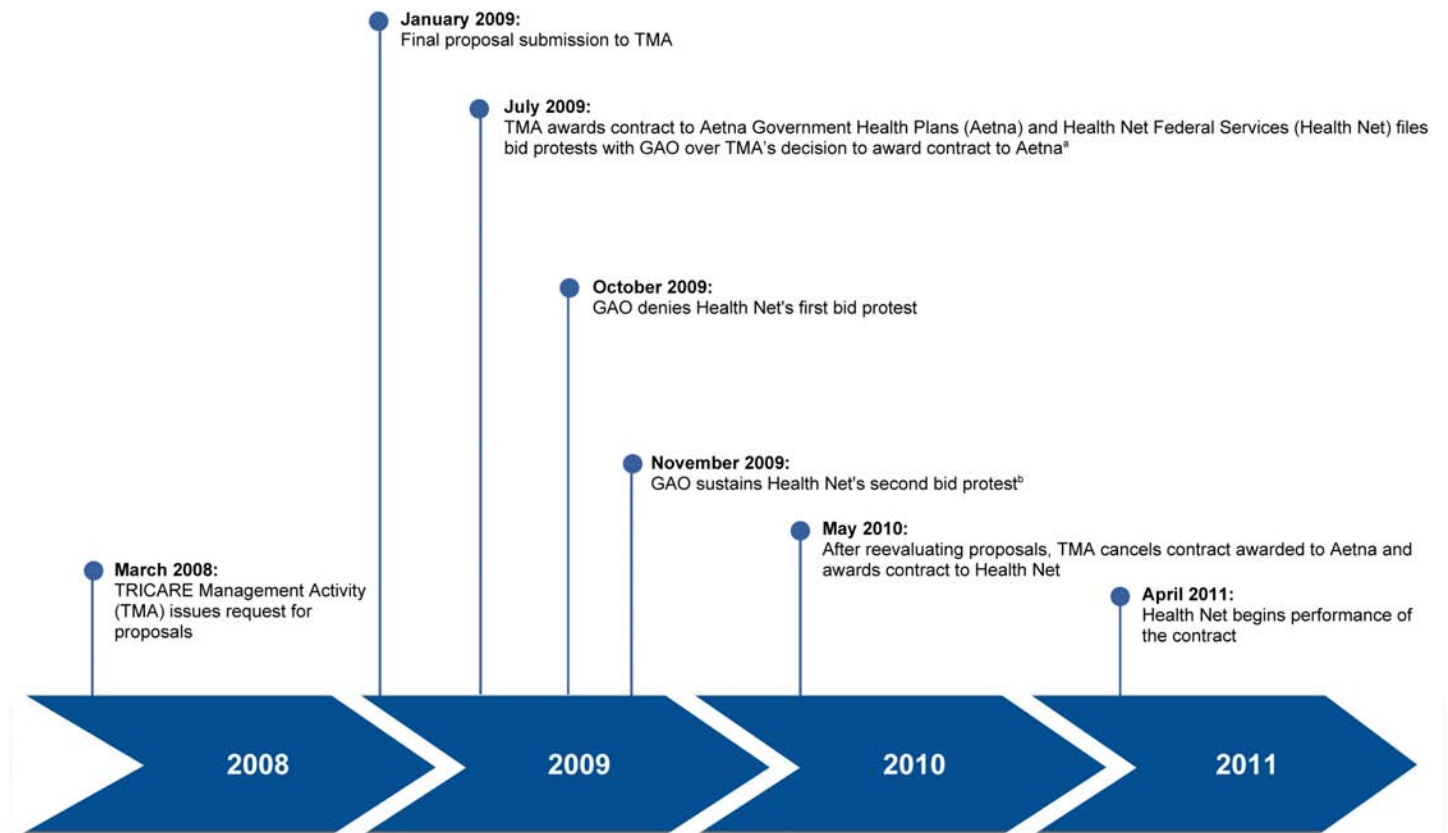
<sup>1</sup>In considering protests challenging TMA's evaluation of proposals, GAO and TMA did not reevaluate proposals; rather, the agencies examined the record to determine whether TMA's evaluation conclusions were reasonable and consistent with the terms of the RFP and applicable procurement laws and regulations. GAO and TMA either sustained the protest if they determined that one or more of the alleged bid protest issues had merit and warranted corrective action, or denied the protest after determining that the alleged protest issues lacked merit. Protests may contain both sustained and denied protest issues, as was the case with two of the sustained protests we reviewed. In these cases, GAO and TMA sustained the protests in part based on specific issues, while denying other protest issues.

<sup>2</sup>The types of corrective action an agency may take in response to a sustained bid protest vary depending on the facts of the case and can result in the same or a different offeror being awarded the contract.

**Appendix I: Description of Bid Protests of TRICARE's Third Generation Managed Care Support Contract Awards**

consistent with the bid protest decision.<sup>3</sup> TMA subsequently cancelled the award to Aetna based on GAO's decision sustaining the protest and made an award to Health Net, the incumbent contractor, which is currently performing in the North region. (See fig. 3.)

**Figure 3: Timeline of Bid Protest Events for TRICARE's North Region Third Generation Managed Care Support Contract**



Source: GAO.

<sup>a</sup>Health Net's second bid protest, filed in July 2009, raised different issues than its first bid protest, which was also filed in July 2009, but was denied.

<sup>b</sup>In the sustained bid protest, GAO recommended that TMA reevaluate the proposals and take other actions consistent with the bid protest decision.

<sup>3</sup>Health Net Federal Services, LLC, B-401652, Oct. 13, 2009, 2009 CPD 213 (GAO protest of the award to Aetna in the North region denied). Health Net Federal Services, LLC, B-401652.3, B-401652.5, Nov. 4, 2009, 2009 CPD 220 (GAO protest of the award to Aetna in the North region sustained).

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North Region Bid Protest One

In the first bid protest, Health Net contended that TMA violated federal procurement law by improperly disclosing Health Net's proprietary pricing information prior to the award of the contract, which, for purposes of this report, we have classified in the category of "other" protest issues that go beyond the evaluation of proposals.<sup>4</sup> GAO denied the bid protest as follows.

**Other.** Health Net alleged that TMA posted Health Net's pricing and proposal information on a public website, and also provided the information to Congress without disclosing that the information was competitively sensitive. GAO recognized that serious errors had occurred, but determined that the Contracting Officer had reasonably concluded that the competition was not compromised, in part because the website disclosure did not occur until after final proposals were due. Therefore, Aetna—Health Net's competitor—could not have used the information to its advantage.

North Region Bid Protest Two

In the second protest, Health Net successfully challenged the award of the contract to Aetna on the basis of a number of issues including TMA's evaluation of proposals and possible conflicts of interest. GAO sustained the bid protest based on the following reasons.

**Technical approach.** Health Net argued that TMA failed in its evaluation to adequately account for the network provider discounts associated with its existing TRICARE network. GAO agreed and sustained this protest issue because TMA had not properly accounted for the potentially significant cost savings to the government that would result from Health Net's proposed network provider discounts.

**Past performance.** Health Net contended that TMA improperly assigned the highest past performance rating to Aetna's proposal based on the past performance of its affiliated companies. GAO agreed and sustained this protest issue because TMA did not establish which of these affiliated companies were involved in the prior contracts or the roles, if any, that each of the affiliated companies would play in performing the TRICARE contract. In addition, GAO found that TMA failed to consider the fact that

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<sup>4</sup>The procurement integrity provisions of the Office of Federal Procurement Policy Act prohibit certain activities by personnel involved in the procurement process, including disclosing procurement information before the award of the contract. See 41 U.S.C. § 2102(a).

the contracts previously performed by the affiliates—evaluated as part of the past performance factor—were not comparable in size to the TRICARE managed care support contract (MCSC).

**Price/cost.** Health Net contended that TMA's evaluation of Aetna's proposal and subsequent price realism analysis were flawed. GAO agreed and sustained this protest issue because TMA did not reasonably evaluate whether Aetna's staffing plan, as related to its price/cost proposal, reflected a lack of technical understanding or proposal risk. GAO also found that TMA had not reasonably considered whether Aetna's proposal to hire a high percentage of incumbent staff at reduced wages was realistic.

**Other.** Health Net contended that Aetna gained an unfair competitive advantage in competing for TRICARE's MCSC in the North region because Aetna had retained a former senior TMA official to assist with the preparation of its proposal. GAO found that the official had access to proprietary information related to Health Net's performance of its incumbent contract and that this created at least the appearance of impropriety. GAO sustained the protest on the grounds that the Contracting Officer should have reviewed the matter, but did not do so because it was not brought to his attention.

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## South Region Bid Protests

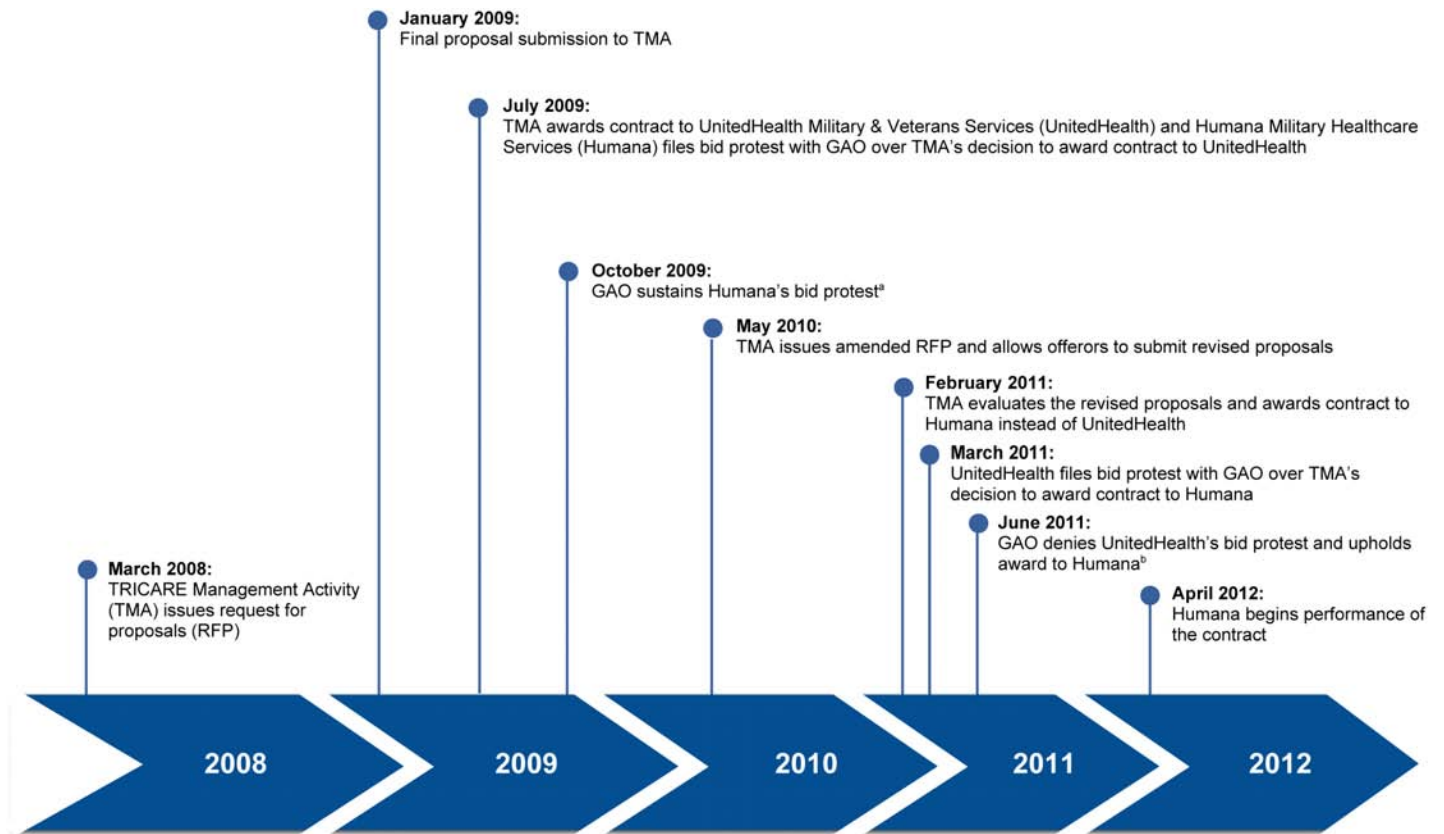
There were two bid protests in the South region. The first protest was filed by Humana Military Healthcare Services (Humana) in July 2009 challenging TMA's award to UnitedHealth Military & Veterans Services (UnitedHealth). GAO sustained this protest and recommended that TMA reevaluate proposals consistent with its bid protest decision and make a new source selection decision. In implementing GAO's recommendations, TMA issued an amended RFP and allowed offerors to submit revised proposals. TMA then reviewed the revised proposals and, based on this evaluation of revised proposals, awarded the contract to Humana, a different offeror than was initially awarded the contract. After TMA announced this award, a second protest was filed in the South region by UnitedHealth in March 2011. GAO denied this second protest.<sup>5</sup>

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<sup>5</sup>Humana Military Healthcare Services, B-401652.2 et al., Oct. 28, 2009, 2009 CPD 219 (GAO protest of the award to UnitedHealth Military & Veterans Services in the South region sustained). UnitedHealth Military & Veterans Services, LLC, B-401652.8 et al., June 14, 2011, 2012 CPD 83 (GAO protest of the award to Humana in the South region denied).

Humana—the incumbent contractor—is the current contractor for the South region. (See fig. 4.)

Figure 4: Timeline of Bid Protest Events for TRICARE's South Region Third Generation Managed Care Support Contract



Source: GAO.

<sup>a</sup>In the sustained bid protest, GAO recommended that TMA reevaluate proposals consistent with its decision and make a new source selection decision.

<sup>b</sup>After GAO denied the bid protest, UnitedHealth filed its protest with the U.S. Court of Federal Claims. The Court of Federal Claims denied UnitedHealth's bid protest and upheld the award to Humana.

### South Region Bid Protest One

In its protest, Humana contended that TMA failed in its evaluation to adequately account for the network provider discounts associated with its existing TRICARE network. GAO agreed and sustained the protest as follows.

**Technical approach.** Humana claimed that TMA, during its technical evaluation, did not adequately account for the potentially significant cost savings to the government that would result from Humana's network

provider discounts. GAO recommended that TMA reevaluate the proposals consistent with GAO's decision and make a new source selection decision.

Following the sustained GAO decision in the Humana bid protest, TMA amended and reissued the RFP in the South region and provided the offerors an opportunity to revise their proposals, including providing more information about network provider discounts. After evaluating the revised proposals, TMA selected Humana for the contract award.

#### South Region Bid Protest Two

In its protest filed with GAO of TMA's contract award to Humana, UnitedHealth raised a number of issues involving TMA's technical evaluation of network provider discounts, as well as other issues related to its analysis of the price/cost evaluation factor and its failure to penalize offerors for not following RFP instructions. GAO determined that none of these issues had merit and denied the bid protest for the following reasons.<sup>6</sup>

**Technical approach.** UnitedHealth contended that TMA failed to consider the substantial risk related to Humana's ability to achieve its proposed network provider discounts. GAO found that TMA reasonably evaluated Humana's proposed network provider discounts and denied this aspect of UnitedHealth's protest.

**Price/cost.** In challenging TMA's price realism evaluation, UnitedHealth argued that TMA should have assigned a greater risk level to Humana's revised proposal based on Humana's plan to significantly reduce underwriting fees during the revision process.<sup>7</sup> GAO found that TMA had reasonably assessed the risk associated with Humana's revised

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<sup>6</sup>After GAO denied the bid protest, UnitedHealth filed its protest with the U.S. Court of Federal Claims. Because the court addressed the same broad protest issues and reached the same decision as GAO, we used the GAO decision as the basis for our findings and did not separately discuss the subsequent U.S. Court of Federal Claims decision in our discussion. See *UnitedHealth Military & Veterans Services, LLC v. United States*, Case No. 11-405C, 2011 U.S. Claims LEXIS 2128 (Fed. Cl. Oct. 25, 2011).

<sup>7</sup>Underwriting fees refer to the fixed-fee elements of an offeror's price/cost proposal in the TRICARE acquisition. An offeror's underwriting fees represent the potential for profit, or cushion against loss, in response to any cost fluctuations that might arise during contract performance, for example, if an offeror was unable to achieve its proposed network provider discounts. TMA evaluated proposed underwriting fees in assessing the realism, or performance risk, of an offeror's price/cost proposal.

underwriting fees and denied this issue. In addition, UnitedHealth argued that TMA failed to assign additional risk to Humana's proposal based on the reduced staffing level of its claims processing subcontractor. GAO found that TMA adequately reviewed the subcontractor's proposal and factored it into its overall assessment.

**Other.** UnitedHealth alleged that Humana failed to follow the RFP requirements regarding the following issues:

- **Right of first refusal:** UnitedHealth argued that Humana's proposal deviated from the RFP requirement that military treatment facilities be given a right of first refusal to patient referrals and that TMA should have rejected the proposal or deemed it a significant weakness. GAO declined to consider UnitedHealth's claim that Humana improperly deviated from these requirements because UnitedHealth had made a contradictory argument in the first South region bid protest.
- **Page limits:** UnitedHealth contended that Humana failed to adhere to a page limit on proposal revisions. GAO denied UnitedHealth's argument, finding that Humana met the page limit in revisions to its technical proposal.
- **Medicare rates:** UnitedHealth alleged that Humana did not comply with an RFP requirement to acknowledge and discuss the linkage between TRICARE reimbursement rates and Medicare rates, which are uncertain and subject to change. In denying this issue, GAO rejected UnitedHealth's interpretation of the RFP as requiring Humana to assume that Medicare rates would decline.

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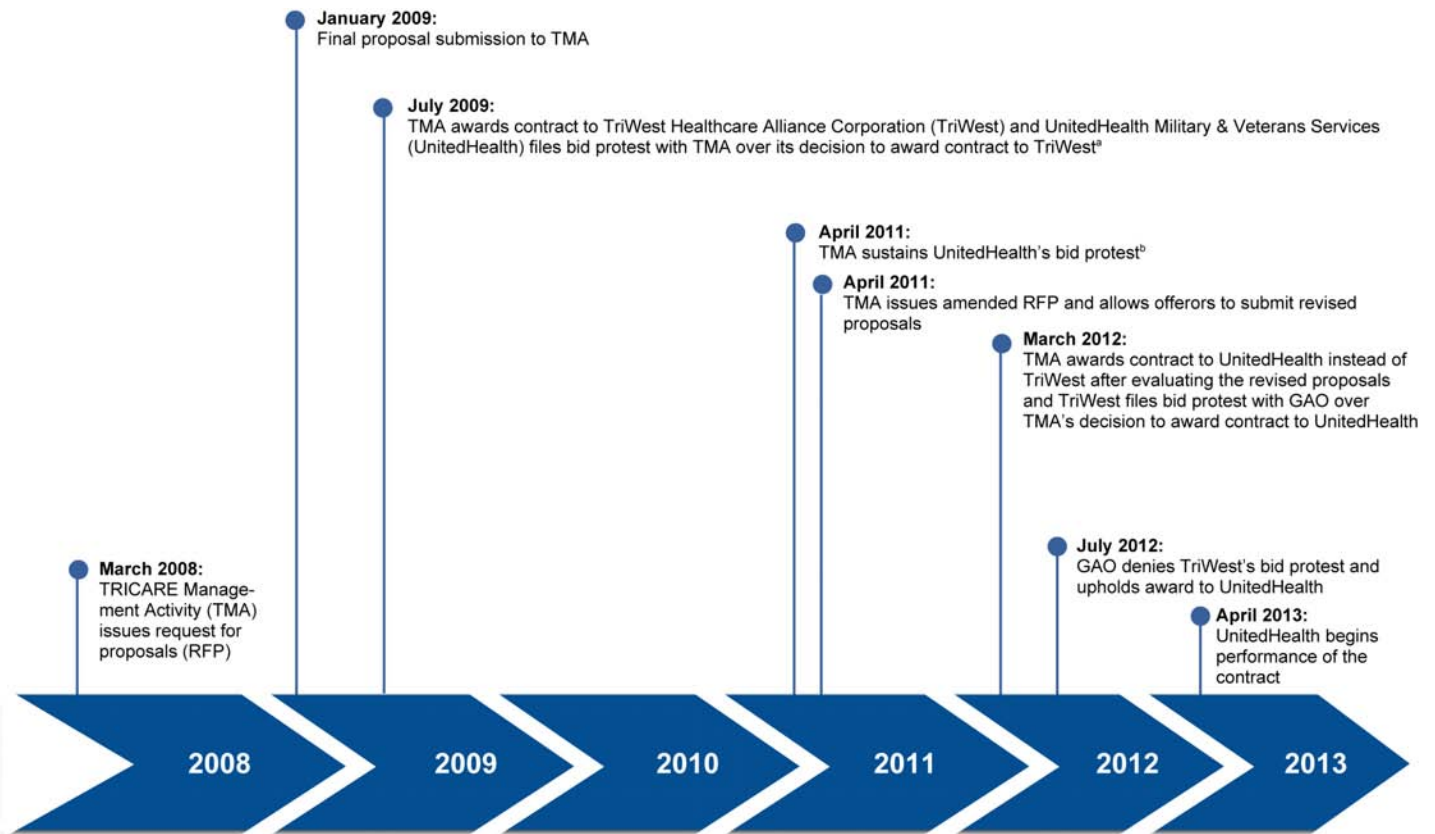
## West Region Bid Protests

There were two bid protests in the West region. The first protest was an agency-level protest filed by UnitedHealth in July 2009 challenging the award to TriWest Healthcare Alliance Corporation (TriWest). This protest was sustained and included a recommendation that TMA reevaluate proposals and make a new source selection decision that was reasonable and consistent with the RFP. In implementing this recommendation, TMA issued an amended RFP and allowed offerors to submit revised proposals. TMA then reviewed the revised proposals and, based on this evaluation of revised proposals, awarded the contract to UnitedHealth, a different offeror than was initially awarded the contract. After TMA announced the new award, a second West region protest was filed by

**Appendix I: Description of Bid Protests of TRICARE's Third Generation Managed Care Support Contract Awards**

TriWest in March 2012. GAO denied the second protest and UnitedHealth is the current contractor for the West region.<sup>8</sup> (See fig. 5).

**Figure 5: Timeline of Events for TRICARE's West Region Third Generation Managed Care Support Contract**



Source: GAO.

<sup>a</sup>The agency held UnitedHealth's July 2009 West region protest in abeyance while TMA took corrective action following a sustained bid protest in the South region, where UnitedHealth was also an offeror. Because the same offeror cannot win contract awards in more than one region, UnitedHealth's West region protest would have become moot if it received the South region award following TMA's evaluation of revised proposals. After TMA awarded the South region contract to Humana in February 2011, UnitedHealth's agency-level protest in the West region was revived.

<sup>8</sup>UnitedHealth Military & Veterans Services, April 6, 2011 (agency-level protest of the award to TriWest in the West region sustained). DOD does not publish agency-level protest decisions; however, GAO obtained a copy of the UnitedHealth Military & Veterans Services decision for purposes of our review. TriWest Healthcare Alliance Corporation, B-401652.12, B-401652.13, July 2, 2012, 2012 CPD 191 (GAO protest of the award to UnitedHealth in the West region denied).

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<sup>b</sup>In the sustained agency-level bid protest, TMA's Contracting Officer recommended that TMA reevaluate proposals and make a new source selection decision.

### West Region Bid Protest One

In the first West region bid protest, an agency-level protest filed with the Contracting Officer, UnitedHealth claimed that TMA did not conduct meaningful discussions that would have enabled UnitedHealth to correct a documented weakness in its technical proposal and that this weakness unreasonably tipped the source selection decision in favor of TriWest. For purposes of this report, we have classified this issue as "other" rather than a proposal evaluation issue, which TMA sustained as follows.

**Other.** UnitedHealth alleged that TMA failed to conduct meaningful discussions to alert UnitedHealth to a weakness assigned to its proposal under one of the technical approach evaluation subfactors involving claims processing. Under this subfactor, TMA had assessed a weakness in UnitedHealth's plan for dealing with claims submitted by providers that were outside the West region. After reviewing the record of discussions between TMA and UnitedHealth during the contract evaluation process, TMA's Contracting Officer determined that TMA had not conducted meaningful discussions in the area of claims processing. In addition to TMA's failure to identify the proposal weakness through meaningful discussions, the Contracting Officer also found that the weakness was so minor it should not have been the tipping factor in selecting TriWest for the award. As a result, the Contracting Officer sustained the protest.

Following the sustained agency-level decision in the UnitedHealth bid protest, TMA issued a series of amendments to the RFP in the West region and allowed offerors to submit revised proposals. After evaluating the revised proposals, TMA selected UnitedHealth for the contract award.

### West Region Bid Protest Two

After the award was made to UnitedHealth in the West region, TriWest—the other remaining competitor—filed a protest with GAO. TriWest raised a number of issues involving TMA's evaluation of proposals and source selection decision. GAO determined that none of these issues had merit and denied the bid protest for the following reasons.

**Technical approach.** TriWest contended that TMA did not give its proposal sufficient credit for its network provider discounts, and that the discounts offered by UnitedHealth were overstated. GAO found no basis to question TMA's evaluation of either offerors' network provider discounts.

**Past performance.** TriWest challenged the past performance rating TMA assigned to UnitedHealth on several grounds, including the relevance of its past work and the scope of the past performance information TMA considered. TriWest also challenged its own past performance rating. GAO found no merit to these allegations.

**Price/cost.** TriWest asserted that TMA's evaluation of UnitedHealth's labor rates and subsequent price realism analysis was based on outdated information. GAO concluded that TMA conducted a proper price realism analysis of UnitedHealth's proposal.

**Other.** TriWest argued that TMA's Selection Authority gave undue weight to some of the evaluation subfactors, even though the RFP said that all subfactors would be weighted equally. GAO found, however, that the Selection Authority properly relied on those subfactors thought to be key discriminators in selecting UnitedHealth for the award.

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# Appendix II: GAO Contact and Staff Acknowledgments

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## GAO Contact

Debra A. Draper, (202)512-7114 or [draperd@gao.gov](mailto:draperd@gao.gov)

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## Staff Acknowledgments

In addition to the contact name above, Marcia A. Mann, Assistant Director; Jacob L. Beier; Kathryn A. Black; Sarah C. Cornetto; Victoria C. Klepacz; Deitra H. Lee; Laurie L. Pachter; and William T. Woods made key contributions to this report.

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