



## Decision

**Matter of:** DURO Health, LLC

**File:** B-421947

**Date:** November 30, 2023

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Randy Ziobro, for the protester.  
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Department of the Air Force, for the agency.  
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### DIGEST

1. Protest asserting that task order requirements are beyond the scope of the underlying indefinite-delivery, indefinite-quantity contract is denied where the protester has not shown that the principal purpose of the task order is outside the scope of the underlying contract.
2. GAO lacks jurisdiction to consider protest alleging that the agency improperly denied the protester a fair opportunity to compete for a task order, where value of the task order is less than \$25 million.

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### DECISION

DURO Health, LLC, a small business of Holladay, Utah, challenges the terms of task order request for proposals (RFP) No. FA252123QB123, issued by the Department of the Air Force for medical professional staffing services. The protester contends that the RFP, issued under the Department of Defense, Defense Health Agency's (DHA) Medical Q-Coded Service (MQS) indefinite-delivery, indefinite-quantity (IDIQ) contract vehicle, should have been solicited under United States Special Operations Command's (USSOCOM) Preservation of the Force and Family Program (POTFF) program.

We deny the protest.

## BACKGROUND

The Air Force issued the task order solicitation at issue under DHA's MQS multiple award contract vehicle.<sup>1</sup> Agency Report (AR), Tab 2, RFP Performance Work Statement (PWS) at 1; AR, Tab 10, MQS Ordering Guide at 7. The MQS contract is a mandatory source acquisition vehicle for DHA and "military departments," seeking "procurement[s] of health care staffing requirements," including "physician, nurse, dental, and ancillary contract services" at military treatment facilities (MTFs).<sup>2</sup> AR, Tab 6, Memorandum on Mandatory Use of MQS Contract by MTFs at 1; AR, Tab 7, Memorandum on Task Order Set-Asides under DHA MQS at 1. The scope of work for the MQS IDIQ contracts is limited to providing full-time equivalent health care workers, specifically, "supplement[ing] the medical staff at . . . MTFs with a wide range of qualified clinical credentialed . . . and non-credentialed" staff. AR, Tab 10, MQS Ordering Guide at 13.

At issue here, the MQS contract contemplates providing "ancillary services," which the contract defines as:

services provided by [health care workers] who deliver patient treatment or assist in the provision of patient treatment including, but not limited to, audiologists, clinical laboratory personnel, dietitians, mid-level providers (*i.e.*, nurse practitioners, physician assistants), occupational therapists, pharmacists, physical therapists . . . and clinical support staff such as medical assistants.

AR, Tab 9, MQS Basic Contract PWS at 1.

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<sup>1</sup> Specifically, the requirement sought services supporting the 308th Rescue Squadron (RQS), which is an Air Force Reserve unit comprised of Air Force Special Warfare airmen who provide military combat rescue operations and missions in hostile or denied areas and provide domestic search and rescue operations in national emergencies. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 1-2. The 308 RQS is embedded within the 920 Rescue Wing, which is part of the Air Force Reserve Command. *Id.*

<sup>2</sup> The use of MQS contracts was prescribed by section 727 of the National Defense Authorization Act for Fiscal Year 2017, which required the Secretary of Defense to "develop and carry out a performance-based, strategic sourcing acquisition strategy with respect to entering into contracts for the service of health care professional staff at military medical treatment facilities." See Pub. L. No. 114-328, § 727(a)(1). Pursuant to that mandate, DHA created the MQS multi-award IDIQ contract vehicle, set aside for small businesses, for the provision of medical services. *Id.* § 727(a)(2)(1)(A); see also AR, Tab 6, Memorandum on Mandatory Use of MQS Contract by MTFs at 6.

On August 30, 2023, the agency posted the task order RFP to DHA's ordering portal, Symphony. AR, Tab 10, MQS Ordering Guide at 26. As relevant here, DURO is not an MQS contract holder. Protest at 1-2.

The RFP sought proposals for the services of physical therapists, certified athletic trainers, performance dietitians, licensed clinical social workers, and strength and conditioning specialists, to be provided at the 308 RQS compound located at the Patrick Space Force Base in Florida, as well as local and non-local training areas. AR, Tab 2, RFP PWS at 2, 4, 5.

Before issuing the RFP, the agency conducted an assessment of whether MQS was a proper contract vehicle for the requirement.<sup>3</sup> COS/MOL at 1-2. In this regard, the contracting officer reviewed the PWS for MQS and determined that the services being sought would fall under the category of "[a]ncillary [s]ervices." *Id.* at 2-3. The contracting officer noted that the physical therapist and performance dietitian labor categories "were expressly set forth in the definition of [a]ncillary [s]ervices." *Id.* at 3. Additionally, the contracting officer concluded that ancillary services were broadly defined and could include "any clinical support staff, as long as there was an appropriate Q-code in the Product Service Code manual" for that category. *Id.* (*citing* AR, Tab 14, Product Service Code Manual).

The contracting officer also reviewed prior RQS task orders for the requirement and documented that the five labor categories of services sought by the agency were previously procured under the Q-Code of Q526, for medical/psychiatric consultation services. *Id.* He further noted that it would also be appropriate to classify the majority of the labor categories at issue under Q518, for medical-physical medicine/rehabilitation. *Id.*

Finally, the contracting officer observed that the use of MQS was mandatory, and that the MQS ordering guide included specific instructions, as follows:

Based on the language in the 2017 National Defense Authorization Act (NDAA), the MQS contracts are a mandatory source for DHA and [military departments] to obtain Q-Coded services that are within the scope of the MQS contracts. Defense Health Agency established a waiver process for requirements that cannot be met by the MQS contracts.

AR, Tab 10, MQS Ordering Guide at 15. Accordingly, the contracting officer concluded that the MQS contract vehicle was mandatory for all the units of the Air Force Reserve Command, including the 308th RQS. COS/MOL at 3-4.

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<sup>3</sup> The agency states that the current requirement "has been a reoccurring [one] for 308 RQS since 2018, resulting in three previous task orders, all of which were procured using task orders built off of [DHA's MQS IDIQ] multiple-award contract." COS/MOL at 2.

Shortly after the agency issued the instant solicitation, DURO filed this protest with our Office.<sup>4</sup>

## DISCUSSION

DURO primarily alleges that the agency seeks services that are outside the scope of the MQS contract. The protester contends that the instant requirement is part of USSOCOM's POTFF program, and as such, the services are beyond the scope of the MQS contract vehicle.<sup>5</sup>

While we do not address every collateral argument raised by the protester, we have reviewed them all, and find no basis to sustain the protest.

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<sup>4</sup> The estimated value of the task order here is \$3,853,143. AR, Tab 4, Independent Government Estimate (IGE). As discussed below, to the extent DURO alleges that the services sought are outside the scope of the underlying MSQ IDIQ contract, this protest is within our Office's jurisdiction. In this regard, our Office has jurisdiction to hear protests of task orders issued under multiple-award contracts established within the Department of Defense (or protests of the solicitations for those task orders), where the protester asserts that the task order increases the scope, period, or maximum value of the contract under which the order is issued. 10 U.S.C. § 3406(f)(1)(A). To the extent the protester raises arguments challenging the terms of the solicitation, outside its scope challenge--for example, alleging that the issuance of the task order RFP under the MQS IDIQ contract improperly prevents DURO from having a fair opportunity to compete--GAO does not have jurisdiction.

<sup>5</sup> The protester also speculates that an MQS contractor cannot adequately perform the requirements because the specific service providers listed in the RFP will not be embedded within the military unit, as MTFs do not have oversight authority over POTFF services that are provided to members of the military. Protest at 1; Comments at 1-3. The agency asks us to dismiss this protest ground as concerning contract administration issues that are outside the jurisdiction of our Office. COS/MOL at 6-7 (*citing* 4 C.F.R. § 21.5(a)). The protester objects to the dismissal, arguing that this issue would still be "a matter under the jurisdiction of the GAO [because its jurisdiction also] includes independent audit and evaluation." Comments at 4.

We reject the protester's argument here and agree with the agency. As we have previously explained, our Office generally does not review protest allegations that an awardee will not perform the contract as required. Issues involving an awardee's after-award contract performance are ultimately matters of contract administration, which our Office does not review as part of our bid protest function. 4 C.F.R. § 21.5(a)); *Fidelis Logistic and Supply Servs.*, B-414445, B-414445.2, May 17, 2017, 2017 CPD ¶ 150 at 8. Other subject matters handled by GAO, including "independent audit and evaluation," are outside the purview of the organizational entity within GAO that resolves bid protests. Comments at 4.

DURO alleges that the instant requirement is part of USSOCOM's POTFF program, and for that reason, it should have been solicited under that program. Protest at 1; Comments at 4.

The agency responds that the requirement is not part of USSOCOM's POTFF program, and that this program has its own contract that can be used only by USSOCOM units. COS/MOL at 9. Importantly, the agency explains that the 308 RQS is not part of USSOCOM, but instead is "part of [the] Air Force Reserve Command and part of the conventional United States Air Force." *Id.* The agency contends that because the current requirement is "an Air Force requirement, using Air Force funds, [with] an Air Force contracting officer, [it] must comply with Air Force policy and regulations, including MQS mandatory use policies." *Id.* at 8.

Under the Federal Acquisition and Streamlining Act of 1994, as modified by the National Defense Authorization Act of Fiscal Year 2017, our Office is authorized to hear protests of task orders that are issued under multiple-award contracts established within the Department of Defense (or protests of the solicitations for those task orders) where the task order is valued in excess of \$25 million, or where the protester asserts that the task order increases the scope, period, or maximum value of the contract under which the order is issued. 10 U.S.C. § 3406(f); *Erickson Helicopters, Inc.*, B-415176.3, B-415176.5, Dec. 11, 2017, 2017 CPD ¶ 378 at 7. When a protester alleges that the issuance of a task or delivery order under a multiple-award contract is beyond the scope of the contract, we analyze the protest in essentially the same manner as those in which the protester argues that a contract modification is outside the scope of the underlying contract. *DynCorp Int'l LLC*, B-402349, Mar. 15, 2010, 2010 CPD ¶ 59 at 6. In determining whether a task or delivery order is outside the scope of the underlying contract, our Office examines whether the order is materially different from the original contract, as reasonably interpreted. *Id.*

On the record before us, we find that the agency properly used the MQS IDIQ contract to procure the instant requirement, and that the services sought are within the scope of the underlying MQS contract. The stated scope of the MQS IDIQ contract covers the provision of health care workers to supplement Department of Defense MTF clinical staff in providing direct health care services to eligible beneficiaries. AR, Tab 10, MQS Ordering Guide at 13. The MQS IDIQ solicitation specifically lists some of the positions outlined in the instant task order RFP, including physical therapist and performance dietitian, as examples of ancillary services that are to be provided under the MQS contract. AR, Tab 9, MQS Basic Contract PWS at 1.

Moreover, MQS broadly defines ancillary services as those that "deliver patient treatment or assist in the provision of patient treatment." *Id.* The remaining positions sought by the Air Force, *i.e.*, certified athletic trainer, licensed clinical social worker, and strength and conditioning specialist, are fully encompassed within the ancillary services definition included in the MQS contract, as services delivering patient treatment or

assisting in the provision of patient treatment. AR, Tab 2, RFP PWS at 15-18 (describing patient services to be provided by the above three positions).

Accordingly, we find DURO's allegation that the task order RFP exceeds the scope of the underlying multiple-award IDIQ contract to be without merit. While the crux of the protester's challenge is that the instant requirement should have been solicited under USSOCOM's POTFF program, using a contract vehicle intended for that program, DURO has not demonstrated that the task order RFP here represents a material departure from the terms of the MQS IDIQ. Moreover, as the agency explains, the Air Force was obligated to use this contract vehicle while procuring the medical professional staffing services at issue. In sum, we find no basis to sustain this protest ground.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel