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Decision

Matter of: Marine Terminals Corporation-East, Inc.

File: B-410698.9

Date: August 4, 2016

Constance A. Wilkinson, Esq., and Meghan F. Weinberg, Esq., Epstein Becker & Green, PC, for the protester.
Donald C. Holmes, Esq., Donald C. Holmes & Associates, P.A., for Portus Services, LLC, the intervenor.
Erika L. Whelan Retta, Esq., Department of the Air Force, for the agency.
Kenneth Kilgour, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency unreasonably included the awardee's proposal in the competitive range is denied where, after initial technical evaluations, the awardee's proposal was among those most highly-rated.
 2. Protest challenging agency's evaluation of technical proposals is denied where the solicitation requirement was unambiguous, and the agency's evaluation reasonably applied that requirement.
 3. Protest that the agency improperly accepted a proposal that was underpriced is denied where the solicitation announced that the agency would assess price reasonableness, not price realism; protest that the agency failed to assess the risk of unbalanced pricing lacks merit where the protester asserts only that the awardee's price proposal underbid the rate for one service.
 4. Protest that agency unreasonably found awardee to be a responsible contractor is dismissed where the allegation does not rise to the threshold level that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible as contemplated by our Bid Protest Regulations.
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DECISION

Marine Terminals Corporation-East, Inc. (MTCE), of Garden City, Georgia, protests the award of a contract to Portus Services, LLC, of Jacksonville, Florida, under

request for proposals (RFP) No. HTC711-14-R-R003, the Master Solicitation, Call 0006, issued by the Department of the Air Force, United States Transportation Command (USTRANSCOM), for stevedoring and related terminal services at Military Ocean Terminal Sunny Point (MOTSU), North Carolina. The protester challenges the inclusion of Portus Services' proposal in the competitive range, the agency's evaluation of Portus Services' technical and price proposal, and the agency's conclusion that Portus Services is a responsible offeror.

We deny the protest.

BACKGROUND

On August 28, 2014, USTRANSCOM issued a Master Solicitation, under Federal Acquisition Regulation (FAR) parts 12 and 15, for stevedoring and related terminal services, which includes the management and operations required in connection with the receipt, processing, and/or loading or unloading of cargo from ocean vessels, via multiple conveyances. Agency Report (AR), Exh. 2, Master Solicitation Notice, at 1; RFP at 55. The Master Solicitation would remain open for three years from its effective date, and the agency would solicit individual requirements for specific ports using a call for proposals against the Master Solicitation. AR, Exh. 2, Master Solicitation Notice, at 1. The Master Solicitation contemplated the award of a single indefinite-delivery, indefinite-quantity (ID/IQ), fixed-price contract for a base year and four 1-year option periods for each call for proposals. Id.; RFP at 3-5; RFP, Amend. 0001, at 3, 6; Contracting Officer's Statement of Facts (COSF) at 2. On September 24, 2014, the agency issued call for proposals 0006 for stevedoring and related terminal services for MOTSU. AR, Exh. 8, Call 0006, at 1. Call for proposals 0006 explained that offerors must submit their proposals in accordance with the instructions set forth in the Master Solicitation, and the agency would review and evaluate proposals in accordance with the procedures identified in the Master Solicitation. Id. at 4.

The Master Solicitation stated that awards for each call would be made on a lowest-priced technically acceptable basis. RFP at 34; RFP, Amend. 0001, at 8. There were two evaluation factors, price and technical, and the technical factor contained the following four subfactors: technical approach; small business subcontracting plan (large businesses only); small business utilization plan (small businesses only); and information assurance and cyber security. RFP, Amend. 0001, at 6. The four technical subfactors would be evaluated as either acceptable (proposal clearly meets the minimum requirements of the solicitation) or unacceptable (proposal does not clearly meet the requirements of the solicitation). Id. at 9. A proposal evaluated as unacceptable under any of the four technical subfactors would be evaluated as unacceptable overall and ineligible for award. Id.

With respect to subfactor 1, technical approach, the RFP advised offerors that the government would evaluate proposals to determine whether a proposed approach

“demonstrates the offeror’s capabilities to successfully conduct” a comprehensive list of contract requirements. RFP, Amend. 0001, at 9 (emphasis added). In comparison, the PWS informed offerors that the “Contractor shall provide stevedoring and related terminal services and management services” and that the “Contractor shall provide sufficient qualified labor, gear and equipment and materials to satisfy the scope of this contract.” AR, Exh. 8, Call 0006, PWS, § 1.2.1, at 6 (emphasis added).

The agency received three proposals, from the awardee, the protester, and Offeror C. Because the protester argues that the proposal of Portus Services was improperly included in the competitive range, we set forth below the summary of the agency’s evaluation of initial proposals prior to the establishment of the competitive range:

SUBFACTOR/FACTOR	OFFEROR		
	Portus	MTCE	Offeror C
Subfactor 1: Technical Approach	Unacceptable	Acceptable	Unacceptable
Subfactor 2: Small Business Subcontracting Plan	N/A	Unacceptable	Unacceptable
Subfactor 3: Small Business Utilization	Acceptable	N/A	N/A
Subfactor 4: Information Assurance & Cyber Security	Acceptable	Acceptable	Unacceptable
Price	\$19,551,040.43	\$22,752,061.83	\$22,562,975.94

AR, Exh. 16, Competitive Range Determination, Jan. 28, 2015, at 2.

The source selection authority (SSA), who was also the CO, determined, based on a review of price and the initial technical evaluation, that it was in the government’s best interest to include Portus Services and MTCE in the competitive range and to not include Offeror C. AR, Exh. 16, Competitive Range Determination, Jan. 28, 2015, at 2-3.¹ After discussions, both competitive range proposals were evaluated as acceptable under all technical subfactors and acceptable overall; Portus

¹ The RFP advised offerors that proposals would be ranked in order of price, lowest to highest, based on the total evaluated price. RFP, Amend. 0001, at 8. The lowest-priced proposal would then be evaluated for technical acceptability. Id. If evaluated as acceptable, the agency would then evaluate the offeror’s pricing and if the agency found that the proposed price was fair and reasonable and that any risk posed by unbalanced pricing was not unacceptable, the government would perform a responsibility determination in accordance with the criteria specified in FAR § 9.104-1. If that offeror were found responsible, award would be made to that offeror, without further consideration of any other offeror. Id.

Services offered the lower price. AR, Exh. 33, Source Selection Evaluation Board (SSEB) Report, Mar. 10, 2015, at 9. The SSA performed a responsibility determination and concluded that “Portus Stevedoring, LLC” was a responsible contractor. AR, Exh. 34, Responsibility Determination, April 7, 2015, at 2.

Award was made to Portus Services, and a series of protests followed; all were either dismissed or withdrawn. Of relevance to this protest, MTCE protested the fourth contract award made to Portus Services. AR, Exh. 40, MTCE Protest, Apr. 27, 2015. In the course of preparing its agency report, the agency determined that it had incorrectly evaluated offerors on whether they had provided a sufficient qualified labor force, where the “RFP did not require any offeror to specifically demonstrate an ability to acquire a capable labor force.” COSF at 23. The agency took corrective action, announcing that it would reevaluate proposals of those offerors remaining in the competitive range for technical approach, without committing to a new responsibility determination for Portus Services. See AR, Exh. 46, Corrective Action Notice, May 19, 2015 at 3. We dismissed that protest. See Marine Terminals Corp.-East, B-410698.5, May 27, 2015 (non-digested dismissal).

The agency again made award to Portus Services, and MTCE again challenged the award, asserting that the agency’s evaluation of technical proposals was unreasonable, and that the agency’s determination that Portus Services was a responsible contractor was unreasonable. AR, Exh. 57, MTCE Protest, Aug. 4, 2015. The agency announced that it would make a new responsibility determination, responsive to the protester’s allegation that the prior responsibility determination was conducted on Portus Stevedoring, rather than Portus Services; the agency did not commit itself to a reevaluation of proposals. See AR, Exh. 68, Corrective Action Notice, Sept. 18, 2015, at 1. We again dismissed the protest. See Marine Terminals Corp.-East, B-410698.6, B-410698.7, Sept. 30, 2015 (non-digested dismissal).

The CO, in conducting a new responsibility determination, requested that Portus Services

clarify the relationship between Portus Services, LLC and Portus Stevedoring, LLC, and how the resources of Portus Stevedoring, LLC will be provided to, or relied upon by, Portus Services, LLC for contract performance and will have meaningful involvement in the MOTSU contract performance.

AR, Exh. 72, Letter from CO to Portus Services, Oct. 2, 2015, at 2. In response, the president of Portus Holdings LLC² explained that Portus Holdings is the holding company for all Portus entities, and noted that “a core management team” manages all Portus entities, utilizing the “same accounting system, terminal operating system, and activity based recording system universally.” AR, Exh. 73, Letter from Portus Holdings LLC, Oct. 5, 2015, at 3. The president further stated that “[e]ach business entity is not managed independently, but rather as one large homogenous unit,” and that “all terminal operating equipment is pooled by all business units” and used “to meet the operational demands of the customers.” Id. at 3-4. The Portus Holdings president advised the agency that “we utilize the same equipment, management, training processes, etc. across different legal entities,” and, as an example, explained that when the company worked on prior contracts, it utilized employees from Portus Services and Portus Stevedoring and all employees worked as “one cohesive unit.” Id. at 4.

The CO’s responsibility determination found the following:

Portus Services LLC has demonstrated adequate financial resources to perform the contract, or to obtain the resources to perform the contract, through its record of performance of similar requirements (stevedoring and related services) for Sea Star at JaxPort. Portus Services LLC has a five-year contract with an estimated value of \$90 million. According to Sea Star, Portus Services LLC has performed in an outstanding manner. Its employees are very proficient at operating all of the Government vehicles including tanks, trucks, etc. and will go to great lengths to get the job done as safely and efficiently as possible. Portus Services LLC also has access to the financial resources of Portus Stevedoring LLC through the parent company, Portus Holdings LLC.

AR, Exh. 74, Determination of Contractor Responsibility, Oct. 7, 2015, at 1. The responsibility determination stated that the CO was not aware of any issues with Portus Services’ record of business ethics or integrity, and concluded that the awardee had or had access to the necessary organization, experience, accounting and operation controls, technical skills, and equipment and facilities necessary to manage and perform the contract requirements. Id. at 3. Having made those determinations, the CO found Portus Services to be a responsible contractor. Id. at 4.

² The president of Portus Holdings was one of two individuals who, per the awardee’s proposal, was authorized to negotiate with the government. See AR, Exh. 9, Portus Proposal, at 3.

The agency notified MTCE that it had completed a responsibility determination for Portus Services, finding the firm a responsible contractor, and informed MTCE that the source selection decision therefore did not change. AR, Exh. 76, Notice to Unsuccessful Offeror, Oct. 15, 2015, at 1. MTCE again protested, challenging the agency's price and technical evaluations and the responsibility determination. AR, Exh. 78, MCTE Protest, Oct. 28, 2015, at 2. We dismissed that protest when the agency took corrective action, indicating that it would reevaluate proposals in the competitive range, reserving the right to re-open discussions and to request final proposal revisions and to take any other corrective action the agency deemed appropriate. AR, Exh. 80, Notice of Corrective Action, Nov. 20, 2015, at 1; see Marine Terminals Corp.-East, Inc., B-410698.8, Dec. 7, 2015 (non-digested decision).

After the agency conducted discussions, received revised proposals, and evaluated proposals, both competitive range proposals continued to be evaluated as acceptable under all four technical subfactors. See AR, Exh. 109, SSEB Report, Apr. 6, 2016, at 12-14. Portus Services' final price of \$13,732,299.79 was lower than MTCE's price of \$17,451,245.06. Id. The SSEB noted that Portus Services' price was analyzed by the cost/pricing branch and determined to be fair and reasonable, and balanced. Id. at 13.

The CO conducted the third and final responsibility determination of Portus Services. This responsibility determination was not materially different from the prior one. Compare AR, Exh. 74, Determination of Contractor Responsibility, Oct. 7, 2015 with AR, Exh. 110, Determination of Contractor Responsibility, Apr. 14, 2016.

The SSA awarded the contract to Portus Services, LLC, as the responsible offeror whose proposal was evaluated as technically acceptable, with the lowest price that was deemed fair and reasonable and balanced. AR, Exh. 111, Source Selection Decision Document (SSDD), Apr. 14, 2016, at 2. This protest followed.

DISCUSSION

MTCE asserts the following bases of protest: the agency's inclusion of Portus Services in the competitive range was unreasonable; the agency's evaluation of Portus Services' technical and price proposals was unreasonable; and the agency improperly found Portus Services to be a responsible contractor. Here, we have considered all of the arguments raised by the protester, and we find they provide no basis on which to sustain the protest. We discuss several of the arguments below.

Competitive Range Determination

The protester claims that the agency improperly included the awardee in the competitive range, because it unreasonably evaluated Portus Services as

acceptable under the small business utilization subfactor and N/A under the small business subcontracting factor. Protest at 39-44. The agency argues that, at the time of the competitive range determination, the record showed that Portus Services represented itself as a small business (see AR, Exh. 9, Portus Proposal, at 34) and the agency had no authoritative determination that the awardee was other than a small business. Therefore, the agency asserts, it reasonably evaluated Portus Services' technical proposal under the small business utilization factor and included the company in the competitive range. COSF at 58-61. As explained below, we need not resolve this issue to determine that the protester's allegation is without merit.

The determination of whether a proposal is in the competitive range is principally a matter within the discretion of the procuring agency. Dismas Charities, Inc., B-284754, May 22, 2000, 2000 CPD ¶ 84 at 3. The FAR permits an agency to establish a competitive range consisting of only the most highly-rated proposals. FAR § 15.306(c). That a proposal contains weaknesses or deficiencies that may be addressed during discussions does not require the exclusion of that proposal from the competitive range. Rather, a competitive range is established for the purpose of determining which offerors will receive discussions, and to provide those offerors with an opportunity to revise proposals and address weaknesses and deficiencies, among other things. SPAAN Tech, Inc., B-400406, B-400406.2, Oct. 28, 2008, 2009 CPD ¶ 46 at 12, citing FAR §§ 15.306(c), (d).

Therefore, even if Portus Services' proposal had been evaluated as unacceptable under this and a second technical subfactor, its proposal would still have received an acceptable rating under one subfactor, and would still be more highly rated than that of Offeror C. Rather than create a competitive range of one--which would have included only the protester's proposal--the contracting officer, in his discretion, included Portus Services' proposal, as well. The record provides no basis on which to conclude that the CO abused his discretion by including the proposal of Portus Services in the competitive range.³

³ MTCE also argues that the agency's initial evaluation of the protester's proposal as unacceptable under subfactor 2, small business subcontracting, was unreasonable. Protest at 46-47. Specifically, the protester contends that, had the agency initially rated it as acceptable under the small business subcontracting factor and evaluated Portus Services' proposal as technically unacceptable under one or more subfactors, then the award would have gone to the protester as the offeror with the only technically acceptable proposal. Id. Here, the RFP required, for subfactor 2, that the offeror's proposed subcontracting plan "provide sufficient detail to demonstrate how the offeror intends to meet the proposed contract [small business] subcontracting goals" and the goals "must appear to be realistic based on the types of services to be subcontracted." RFP, Amend. 0001, at 10. The agency rated the protester as unacceptable under the small business subcontracting factor (continued...)

Technical Evaluation

MTCE, the incumbent contractor, also argues that the agency unreasonably failed to evaluate Portus Services' ability to provide a sufficient, qualified labor force to perform the contract requirements, as mandated by the Master Solicitation. Protest at 19-28; Comments on AR, June 6, 2016 (Comments) at 2-3. Specifically, MTCE contends:

The Master Solicitation required that offerors be evaluated under the Technical Approach subfactor in accordance with the site-specific Performance Work Statement ('PWS'). The MOTSU PWS required sufficient, qualified labor. Thus, in evaluating offerors USTRANSCOM was obligated to determine whether offerors could provide sufficient, qualified labor as required in the MOTSU PWS.

Id. at 3.⁴ The agency argues that its evaluation was reasonable and in accordance with the evaluation criteria, because the evaluation requirements for subfactor 1 did not require a separate and specific determination as to whether the offeror has shown that it has sufficient labor to perform the work required by the PWS. COSF at 43.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Jacobs Technology, Inc., B-411784, B-411784.2, Oct. 21, 2015, 2015 CPD ¶ 342 at 6-7. Rather, we will review the record only to determine whether the agency's evaluation

(...continued)

because it proposed a goal of zero for subcontracts to service-disabled veteran-owned, HUBZone, and disadvantaged small businesses without providing justification sufficient to warrant proposing no goal for these categories. AR, Exh. 109, SSEB Report, at 8. Based upon the language in the RFP, it was reasonable for the agency to rate the protester as unacceptable for subfactor 2 for proposing no goals, without justification, for several small business categories.

⁴ MTCE also notes that, in earlier iterations of this procurement, USTRANSCOM evaluated labor, while now it does not. However, during the course of corrective action, the agency concluded that the way in which it considered labor assessed an unstated evaluation criterion. The mere fact that a reevaluation of proposals after corrective action varies from the original evaluation does not constitute evidence that the reevaluation was unreasonable; rather, it is implicit that a reevaluation can result in different findings and conclusions. See IAP World Servs., Inc., B-406339.2, Oct. 9, 2012, 2012 CPD ¶ 287 at 3-4.

was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id. Further, where the reasonableness of the evaluation turns on the agency's interpretation of a solicitation provision, the agency's interpretation of the provision must be consistent with the solicitation when read as a whole and in a reasonable manner. Solec Corp., B-299266, March 5, 2007, 2007 CPD ¶ 42 at 2. An ambiguity in the terms of a solicitation exists where two or more reasonable interpretations of the terms or specifications are possible. DynCorp Int'l LLC, B-289863, B-289863.2, May 13, 2002, 2002 CPD ¶ 83 at 8. A party's particular interpretation need not be the most reasonable to support a finding of ambiguity; rather, a party need only show that its reading of the solicitation provisions is reasonable and susceptible of the understanding that it reached. Id.

The protester's restatement of the requirements of the Master Solicitation and the MOTSU PWS, quoted above, omits a key, determinative detail. The RFP advised that the government would evaluate offerors to determine whether a proposed approach "demonstrates the offeror's capabilities to successfully conduct" a comprehensive list of contract requirements. RFP, Amend. 0001, at 9 (emphasis added). The RFP's evaluation criteria do not state anywhere that the agency will specifically evaluate an offeror's labor workforce. In comparison, the PWS requires the contractor, not the offeror, to provide "sufficient qualified labor." AR, Exh. 8, Call 0006, PWS § 4.4, at 12. In fact, every portion of the PWS that the protester cites in support of its assertion that the agency unreasonably failed to evaluate the awardee's access to sufficient labor identifies a requirement of the contractor. Comments at 4-5 (noting requirements regarding labor imposed on "the Contractor" under PWS §§ 3.1.1, 4.4, 5.7, 6.3, and 6.15.2).

The distinction is meaningful. This Office has upheld the reasonableness of the agency's decision not to inspect a disappointed offeror's facilities prior to contract award where a solicitation advises offerors that the agency will evaluate the "offeror's description" of its facilities, but will conduct an "ON-SITE INSPECTION OF CONTRACTOR FACILITIES." See DDD Co., B-237052, Dec. 14, 1989, 89-2 CPD ¶ 554 at 3, citing RFP § M-6. Similarly, a requirement that a "contractor" comply with certain local laws does not require that an "offeror" demonstrate compliance prior to contract award. DynCorp Int'l LLC et al., B-408554.5 et al., Dec. 9, 2013, 2014 CPD ¶ 6 at 11. Simply put, where a solicitation provision imposes a requirement on a contractor, we will not automatically impute that requirement to the offeror. See Lifecare Mgmt. Partners, B-297078, B-297078.2, Nov. 21, 2005, 2006 CPD ¶ 8 at 7-8 (noting that the requirement that "[t]he contractor shall designate a Site Manager," RFP, Amend. 0001, § C.1.1.2, did not "clearly establish[] a proposal requirement"). Where, as here, the RFP required only that offerors demonstrate their capability to perform the contract, we will not read into the solicitation the requirement that the agency evaluate an offeror's proposed labor force. The plain language of the solicitation and our case law provide no basis on which to conclude that the protester's interpretation of the requirement is reasonable.

Moreover, even assuming the reasonableness of the protester's interpretation of the solicitation requirement, we see no prejudice to the protester. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. Enola-Caddell JV, B-292387.2, B-292387.4, Sept. 12, 2003, 2003 CPD ¶ 168 at 6. Where a solicitation contains a latent ambiguity, prejudice is measured with respect to the agency's intended meaning of the ambiguous provision. Thus, we examine whether the offeror would have altered its proposal to its competitive advantage if it had had the opportunity to respond to the intended meaning. CW Constr. Servs. & Materials, Inc., B-279724, July 15, 1998, 98-2 CPD ¶ 20 at 8-9. Using this test, we find nothing in the record to support a finding that the protester, the incumbent contractor, was prejudiced. Had MTCE known that the terms of the solicitation did not require an offerors' proposal to identify its workforce in advance of contract award, there is no indication that it would have altered its proposal in this respect.⁵

Price Evaluation

MTCE poses two challenges to the agency's price evaluation of Portus Services, first arguing that the price for the container stuffing commodity rate was "significantly underbid," and that the agency failed to evaluate whether the price quoted for the stuffing commodity rate was reasonable or might have contributed to unbalanced pricing. Comments at 18. The agency argues that it properly determined that Portus Services' pricing was fair, reasonable, and balanced. COSF at 63-64.

The RFP stated that the agency will review the prices proposed to determine if unbalanced pricing exists pursuant to FAR § 15.404-1(g) and whether the price is fair and reasonable pursuant to FAR § 15.404-1(b)(2). RFP, Amend. 0001, at 8, 11. Price reasonableness is an assessment of whether a price is unreasonably high, while price realism is an assessment of whether a price is too

⁵ MTCE argues in the alternative that, even if the requirement was for each offeror merely to describe how it would obtain the necessary labor force, the agency's evaluation nevertheless remains unreasonable where the awardee's proposal failed to do so. Protest at 33-34. The protester asserts that Portus Services' plan to hire displaced workers under the prior contract would, as a long term solution, be unsuccessful, because Portus Services has no agreement in place with the International Longshoremen's Association. Id. at 33. However, the RFP did not require offerors to provide signed labor agreements. Further, MTCE acknowledges that the awardee does in fact have such an agreement. Id. at n.24. The protester's assertion that the agency's evaluation was unreasonable here is without merit.

low. See, e.g., The Matthews Group, Inc. t/a TMG Constr. Corp., B-408003.3, B-408004.3, Mar. 21, 2014, 2014 CPD ¶ 104 at 8. The RFP did not provide for a review of price realism. Here, the awardee is the lowest-priced offeror, and the protester's allegation that the awardee's price is too low provides no basis on which to find error in the agency's price reasonableness analysis.

Unbalanced pricing exists where the prices of one or more line items are significantly overstated or understated, despite an acceptable total evaluated price (typically achieved through underpricing of one or more other line items). General Dynamics--Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 5. To prevail on an allegation of unbalanced pricing, a protester must show that one or more prices in the allegedly unbalanced proposal are overstated; that is, it is insufficient for a protester to show simply that some line item prices in the proposal are understated. See Academy Facilities Mgmt.--Advisory Opinion, B-401094.3, May 21, 2009, 2009 CPD ¶ 139 at 15. This is so because low prices (even below-cost prices) are not improper and do not themselves establish (or create the risk inherent in) unbalanced pricing. *Id.* Here, the protester only argues that the awardee "significantly underbid its stuffing commodity rate" since the rate proposed was lower than the protester's proposed rate. Comments at 18. There is thus no merit to the protester's claim that the awardee's price may be unbalanced, where the support for that assertion is that one price out of many has been understated, but there is no allegation or showing that one or more prices are overstated.

Responsibility Determination

Finally, the protester asserts that, once the evaluation was completed, the agency's responsibility determination improperly considered the capabilities, resources, and past performance of Portus Stevedoring, a firm owned by Portus Holdings, which also owns Portus Services. Protest at 36-39; Comments at 15. The agency argues it properly relied on the information that Portus Services provided when it clarified the relationship between Portus Services and Portus Stevedoring in making its responsibility determination. Agency's Response to MTCE's Comments on the AR, June 16, 2016, 5-7.

We will consider a protest of an affirmative determination of responsibility only where it is alleged that definitive responsibility criteria in the solicitation were not met, or where the protest identifies evidence raising serious concerns that, in reaching the responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. Bid Protest Regulations, 4 C.F.R. § 21.5(c); T.F. Boyle Transp., Inc., B-310708.2, Jan. 29, 2008, 2008 CPD ¶ 52 at 5. We will review a challenge to an agency's affirmative responsibility determination where the protester presents specific evidence that the contracting officer may have ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee

should be found responsible. Verestar Gov't Servs. Group, B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68 at 4-5. We therefore have reviewed credible allegations that an agency failed to properly consider that a contractor committed fraud, FN Mfg., Inc., B-297172.2, Dec. 1, 2005, 2005 CPD ¶ 212 at 11-12, that principals of a contractor had criminal convictions, Southwestern Bell Tel. Co., B-292476, Oct. 1, 2003, 2003 CPD ¶ 177 at 5, or that a contractor engaged in improper financial practices and improperly reported earnings. Verestar Gov't Servs. Group, *supra*. In contrast, we will not review, and will dismiss, arguments that the agency made an improper affirmative determination of responsibility based on unsupported allegations of illegal action reported in the news media, MD Helicopters, Inc.; Agusta Westland, Inc., B-298502 *et al.*, Oct. 23, 2006, 2006 CPD ¶ 164 at 41 n.40, or allegations concerning financial issues confronting a contractor, such as whether the company has sufficient cash on hand, or has declining net worth. Advanced Tech. Sys., Inc., B-296493.6, Oct. 6, 2006, 2006 CPD ¶ 151 at 6 n.8.

As discussed above, the agency took corrective action based on the fact that an early responsibility determination identified Portus Stevedoring, LLC, rather than Portus Services--the offeror here. AR, Exh. 68, Corrective Action Notice, Sept. 18, 2015, at 1. The later responsibility determinations expressly addressed and clarified the firms' relationship. AR, Exh. 74, Determination of Contractor Responsibility, Oct. 7, 2015, at 1. This issue of the agency's early confusion of Portus Stevedoring and Portus Services is thus no longer part of this dispute.

Instead, MTCE argues that there is no "firm commitment" that the financial resources of Portus Stevedoring can be accessed through the parent company, Portus Holdings, and the "record does not include any reference to a subcontract or intercompany agreement to perform the work." Comments at 15-16. This allegation does not rise to the threshold level of specific evidence that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible as contemplated by our Bid Protest Regulations. Advanced Tech. Sys., Inc., *supra*, citing 4 C.F.R. § 21.5(c); Transcontinental Enters., Inc., B-294765, Nov. 30, 2004, 2004 CPD ¶ 240 at 3; Universal Marine & Indus. Servs., Inc., B-292964, Dec. 23, 2003, 2004 CPD ¶ 7 at 2. Accordingly, this allegation is dismissed.

The protest is denied.

Susan A. Poling
General Counsel