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Decision

Matter of: Cargo Transport Systems Company

File: B-411646.6; B-411646.7

Date: October 17, 2016

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David C. Hammond, Esq., John E. McCarthy Jr., Esq., Robert J. Sneckenberg, Esq., and Hart W. Wood, Esq., Crowell & Moring, LLC, for KGL Transportation Company, KSCC, the intervenor.

Maj Samuel T. Miller and Lt Col Damund E. Williams, Department of the Air Force, for the agency.

Pedro E. Briones, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's contention that an agency improperly relied on an initial negative responsibility determination is denied where the record shows that the agency had a reasonable basis for its initial concerns, even though the initial negative determination was reversed after the agency subsequently decided to open discussions--at which point the protester submitted information establishing that it was, in fact, a responsible offeror--and the discussions ultimately resulted in another offeror improving its competitive position by lowering its price and receiving the award.
 2. Protest that an agency properly could not open discussions with the protester and the awardee to address responsibility matters is denied where the agency reasonably exercised its discretion to engage in discussions consistent with the solicitation's stated evaluation process and award criteria, and with applicable procurement laws and regulations.
 3. Protest of an agency's affirmative responsibility determination is dismissed where the assertion does not constitute the type of allegation that triggers review under GAO's Bid Protest Regulations.
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DECISION

Cargo Transport Systems Company (CTSC) of Safat, Kuwait, protests the award of a contract to KGL Transportation Company KSCC (KGL) of Shuwaikh, Kuwait, under request for proposals (RFP) No. HTC711-15-R-R014, issued by the United States Transportation Command (USTRANSCOM) for stevedoring and related terminal services. CTSC challenges the agency's responsibility determinations and the decision to conduct discussions.

We deny the protest in part and dismiss the protest in part.

BACKGROUND

On May 14, 2015, the agency issued the RFP, under Federal Acquisition Regulation (FAR) parts 12 and 15, for stevedoring and related terminal services at the Ports of Shuaiba, Shuwaikh, and Kuwait Naval Base, Kuwait. RFP at 1, 33; attach. 1, Performance Work Statement (PWS), at 17.¹ The solicitation contemplated the award--on a lowest-priced, technically acceptable basis--of a fixed-price, indefinite-delivery, indefinite-quantity contract for a base year and four option years. RFP at 7, 10-11, 33. The RFP stated that the agency intended to make award without discussions, but reserved the right to hold discussions if necessary, or if it was in the government's best interest. See id. at 32, 34.

The solicitation provided for a multi-step evaluation process. First, proposals would be ranked according to price.² Id. at 33. Second, the technical proposal with the lowest price would be evaluated on an acceptable/unacceptable (i.e., pass/fail) basis under two subfactors: technical approach, and information assurance and cyber security.³ Id. at 33-34. Third, if the technical proposal was found acceptable, price would be evaluated for fairness, reasonableness, and unbalanced pricing. Id. at 33-35. Fourth, if the price proposal was determined fair, reasonable, and balanced, the agency would conduct a responsibility determination of the offeror under FAR section 9.104-1. Id. at 34.

The RFP stated that if the offeror with the lowest-priced, technically acceptable proposal was found responsible, award would be made to that offeror without

¹ Our references are to the conformed version of the solicitation provided by the agency in its report.

² Specifically, proposals would be ranked according to their total evaluated price, which the RFP defined as the sum of the offeror's prices for each contract line item (CLIN) and for each performance period. See RFP at 35.

³ The RFP advised that a technical proposal found unacceptable under any subfactor would be found unacceptable overall. RFP at 34.

further consideration of any other proposal; if the offeror was found non-responsible, the evaluation process would repeat in order of ascending price, until a proposal was found technically acceptable, with fair, reasonable, and balanced pricing, from an offeror deemed responsible, or until all offers had been evaluated. Id.

On June 18, 2015, the agency received proposals from five offerors, including KGL and CTSC, the incumbent's subcontractor. See Contracting Officer's Statement (COS) at 6-7. CTSC's and KGL's initial proposals had the lowest and second lowest prices, respectively. Agency Report (AR), Exh. 20, Initial Source Selection Evaluation Board (SSEB) Report, at 3. These proposals were evaluated successively, following the process described above, and found technically acceptable, with fair, reasonable, and balanced pricing; however, both offerors were initially deemed non-responsible due to questions regarding their ability to operate at one or more of the required ports. AR, Exh. 24, Competitive Range Determination, at 1-5. The third and fourth lowest-price proposals were found technically acceptable, but unreasonably priced, and the fifth (highest priced) proposal was rejected as technically unacceptable. Id. at 3. At this point, the contracting officer, who was the Source Selection Authority (SSA), concluded that it was in the best interest of the agency to hold discussions, because the four technically acceptable proposals could become eligible for award through discussions. See id. at 2.

On February 4, 2016, the contracting officer established a competitive range, and sent evaluation notices (ENs) to the four offerors whose proposals were assessed as acceptable. See id. With respect to CTSC and KGL, the contracting officer informed both that their respective proposals were technically acceptable, with fair, reasonable, and balanced pricing, but that the offerors could not be found responsible prospective contractors in accordance with FAR 9.104-1.⁴ As relevant here, the two offerors were asked to provide current documentation verifying their authority to perform stevedoring and related terminal services at the required ports, and both were permitted to revise their respective technical and price proposals, "as applicable."⁵ Id. CTSC and KGL both provided documents purporting to show that they could operate at ports in Kuwait. See AR, Exh. 61, Final SSEB Report, at 9. At this point, neither offeror revised its technical or price proposals.⁶ Id. at 8-9.

⁴ Specifically, CTSC was advised that the agency uncovered information, verified by the Kuwait Port Authority, that the company was in the process of being evicted from all Kuwait port facilities. AR, Exh. 25, CTSC EN, at 3. KGL was advised that the agency uncovered information, verified by the port authority, that the company's contract with the Port of Shuaiba expired on December 31, 2015. AR, Exh. 26, KGL EN, at 2.

⁵ The discussions with the third and fourth offerors pertained only to certain CLINs that were found unreasonably priced. See Exh. 64, Final SSEB Report, at 9-10.

⁶ CTSC does not challenge the agency's technical or price evaluation conclusions.

Based on this first round of discussions, CTSC was deemed responsible. AR, Exh. 44, Final CTSC Responsibility Determination, at 1-2.

On May 18, the agency informed KGL that it had been removed from the competitive range because the SSEB could not verify with the Kuwait Port Authority that the company could operate at the required ports. AR, Exh. 40, KGL Notice of Exclusion from Competitive Range, at 1-3. KGL was advised that it could not be considered for award. Id. The SSEB recommended that the contract be awarded to CTSC. See AR, Exh. 45, Interim SSEB Report, at 10.

On May 25, before the agency could make award to CTSC, KGL filed a protest with our Office challenging its exclusion from the competitive range. COS at 13. In response, the agency took corrective action by reinstating KGL to the competitive range, reopening discussions, and requesting final proposal revisions (FPRs) from the four offerors in the competitive range. AR, Exh. 49, Corrective Action Mem., at 1-2; Exh. 64, Final SSEB Report, at 4. We subsequently dismissed KGL's protest as academic. See KGL Transp. Co. KSCC, B 411646.5, June 9, 2016 (unpublished decision).

Upon reviewing FPRs, the agency noted that CTSC, again, did not revise its technical or price proposal. See COS at 15; AR, Exh. 61, Final SSEB Report, at 8-9. In contrast, while KGL did not revise its technical proposal, it submitted additional information regarding its ability to operate at the required ports, and lowered its price (by approximately \$[DELETED]), making KGL the lowest-priced offeror. Id. at 8-11; COS at 15. In reviewing the material submitted with its FPR, the agency also concluded that KGL had sufficiently established that it was a responsible offeror. AR, Exh. 62, Final KGL Responsibility Determination, at 1-2.

On June 28, the US Transportation Command awarded the contract to KGL for \$26,699,700,⁷ and this protest followed. AR, Exh. 64, Source Selection Decision Doc., at 1-5.

DISCUSSION

CTSC primarily raises three protest contentions. CTSC argues that the agency unreasonably determined (initially) that CTSC was non-responsible, resulting in the agency's unreasonable decision to evaluate the remaining proposals; that the agency's decision to include responsibility matters in discussions was inconsistent with the solicitation and the FAR; and that KGL was improperly found responsible. CTSC raises a number of other arguments, and although our decision does not

⁷ CTSC's price was \$27,890,037. AR, Exh. 61, Final SSEB Report, at 8.

specifically address each of CTSC's arguments, we have considered all of the protester's assertions and find none furnishes a basis for sustaining the protest.⁸

CTSC's Initial Non-Responsibility Determination

CTSC contends that its initial negative responsibility determination was unreasonable, conclusory, and "completely unsupported." Protester's Comments at 3, 10, 16, 20. CTSC claims that it was prejudiced because it would have received award under the RFP's iterative evaluation scheme, but for the contracting officer's initial unreasonable non-responsibility determination and subsequent decision to evaluate the remaining proposals.⁹ Id. at 3, 24.

The agency argues that it reasonably determined CTSC to be non-responsible, based on information that was properly verified and available to the contracting officer at the time. See Supp. Mem. of Law (MOL) at 2, 8. The agency maintains that the information relied on was corroborated by a functional expert in Kuwait with knowledge of the country's ports, and that there was no indication that the information was suspect. Id. at 8; see infra n.10. The agency contends that its contracting officer was not required to conduct an exhaustive responsibility investigation, as the protester's arguments suggest. Supp. MOL at 7.

Based on our review of the record, we agree with the agency. In making a negative responsibility determination, a contracting officer is vested with a wide degree of discretion and, of necessity, must rely upon his or her business judgment in exercising that discretion. Torres Int'l, LLC, B-404940, May 31, 2011, 2011 CPD ¶ 114 at 4. Although the determination must be factually supported and made in good faith, the ultimate decision appropriately is left to the agency, since it must bear the effects of any difficulties experienced in obtaining the required performance. For these reasons, we generally will not question a negative determination of responsibility unless the protester can demonstrate bad faith on the part of the agency or a lack of any reasonable basis for the determination. Colonial Press Int'l, Inc., B-403632, Oct. 18, 2010, 2010 CPD ¶ 247 at 2.

The contemporaneous record shows that during the evaluation, the contracting officer was advised that CTSC had been evicted from one or more of the required

⁸ In its protest, CTSC also alleged that the agency improperly disclosed CTSC's price to KGL, but the protester subsequently withdrew the allegation. See Protest at 21-23; Comments at 2.

⁹ This protest ground is timely filed post-award. A pre-award protest of the agency's decision to conduct discussions would have been premature, since CTSC could have ultimately been awarded the contract. See Nuclear Production Partners, LLC, B-407948.9, Sept. 24, 2013, 2013 CPD ¶ 228 at 7 (dismissing as premature protest allegations challenging the adequacy of discussions in connection with an ongoing source selection process.).

ports. See COS at 8; AR, Exh. 12, Prime Contractor's Email to CO, Aug. 3, 2015, at 1-25. The contracting officer then verified the information with the operations officer responsible for U.S. Army operations at ports in Kuwait, who confirmed with the port authority that CTSC had been evicted from all Kuwaiti port facilities.¹⁰ AR, Exh. 13, Battalion S-3's (S-3) Email to CO, Aug. 20, 2015, at 1 (stating that, according to the Kuwait Port Authority, CTSC was evicted from all port facilities); see COS at 8. The record also shows that the operations officer forwarded various documents provided by the port authority, including: (1) a March 3, 2015, letter from the port authority that listed all companies authorized to operate in one of the required ports, but did not list CTSC; and (2) a June 1, 2015, letter from the State of Kuwait, Public Authority for Industry (PAI), to the Council of Ministers, urging that CTSC be evicted from certain sites in the Free Trade Zone (adjacent to the port), which it was allegedly improperly occupying.¹¹ Based on this information, the contracting officer concluded that CTSC failed to demonstrate that it would be able to comply with the PWS performance requirements. AR, Exh. 15, 1st CTSC Responsibility Determination, at 1. The contracting officer determined that CTSC could not be deemed responsible, and documented his findings in the procurement file. Id.

The information described above, in our view, reasonably supports the contracting officer's initial determination that CTSC could not be deemed responsible. In our review of negative responsibility determinations, we consider only whether the determination was reasonably based on the information available to the contracting officer at the time it was made. See Acquest Dev. LLC, B-287439, June 6, 2001, 2001 CPD ¶ 101 at 3. Contracting officers are generally given wide discretion in determining the amount of information that is required to assess an offeror's responsibility. See Trailblazer Health Enters., LLC, B-407486.2, B-407486.3, Apr. 16, 2013, 2013 CPD ¶ 103 at 11 (citing Impresa Costruzioni Geom. Domenico Garufi v. United States, 238 F.3d 1324, 1334-35 (Fed. Cir. 2001)).

CTSC's assertions to the contrary are unpersuasive and, as pointed out by the agency, based on the protester's selective reading of the record. See Supp. MOL at 6. For example, CTSC maintains that the contracting officer relied on information that was irrelevant because it related to land use, not port use. Protester's Supp. Comments at 3-4. CTSC also claims that there was no indication that the port

¹⁰ The operations officer, 840th Transportation Battalion, referred to as the Battalion S-3, was a member of the SSEB and technical evaluation team. COS at 11-12. According to the agency, the operations officer is a functional expert on ports and interacts directly with the Kuwait Port Authority. See Supp. MOL at 4.

¹¹ See AR, Exh. 71, S-3's Email to CO, Aug. 20, 2015, at 1; attaches., at 2, 12-13, 17. The contemporaneous submissions from the Kuwait Port Authority indicate that storage is not allowed within the port and that cargo handlers store cargo in the adjacent Free Trade Zone, which is managed by the PAI. See id., attaches., at 12.

authority had any involvement in CTSC's alleged eviction from sites in the Free Trade Zone, which is managed by a different entity (the PAI). Protester's Comments at 15-17. However, the record states--and CTSC does not dispute--that the Kuwait Port Authority advised the operations officer (who then advised the contracting officer) that CTSC had been evicted from all Kuwaiti port facilities. Moreover, the record states that the port authority itself provided the operations officer with a copy of the PAI's eviction letter. See AR, Exh. 71, S-3's Email to CO, Aug. 20, 2015, at 1 ("[T]hese are the documents that were supplied by the Kuwait Port Authority."). In this respect, the record also indicates that the PAI had notified the port authority that CTSC was improperly occupying storage sites in the Free Trade Zone (which, again, is adjacent to the port area in question).¹² See id., attachs. at 18-19; PWS at 28 (contractor shall perform all customs clearance procedures in compliance with all applicable customs requirements for temporary storage operations within the port area).

On this record, we have no basis to sustain CTSC's protest of the agency's initial non-responsibility determination. Simply put, a non-responsibility determination is a matter where the contracting officer is vested with broad discretion in exercising his or her business judgment, and CTSC has not shown that the contracting officer here abused that discretion or that his determination had no reasonable basis. See Kilgore Flares Co., B-292944, et al., Dec. 24, 2003, 2003 CPD ¶ 8 at 6; Rotech Healthcare, Inc., B-409020, B-409020.2, Jan. 10, 2014, 2014 CPD ¶ 28 at 11 (responsibility determinations are inherently judgmental). Accordingly, we deny this basis of CTSC's protest. See Intera Techs., Inc., B-228467, Feb. 3, 1988, 88-1 CPD ¶ 104 at 2-3 (non-responsibility determination was reasonable where procuring agency was advised by licensing authority that protester would not be able to comply in time for performance, and procuring agency was entitled to rely on this advice and was not obligated to provide protester an opportunity to respond).

Discussions

Next, CTSC challenges the contracting officer's decision to conduct discussions. Protester's Comments at 24-34. CTSC argues that the discussions were "fundamentally flawed," and contrary to the FAR and the solicitation, because, according to the protester, the scope of discussions with regard to CTSC and KGL pertained only to responsibility matters. Id. at 33-34. Citing a number of GAO decisions, CTSC asserts that, "by law, requesting responsibility information does not constitute discussions[.]" Id. at 31-34, citing, inter alia, General Dynamics-Ordnance & Tactical Sys., B-295987; B-295987.2, May 20, 2005, 2005 CPD ¶ 114 at 10. CTSC contends that since its proposal had the lowest price, once CTSC was deemed responsible in May 2016, the RFP required that it receive award "without

¹² CTSC does not allege, and nothing in the record suggests, that the contracting officer acted in bad faith in finding that CTSC could not be deemed responsible.

further consideration of any other proposal.” Protester’s Comments at 26-27, citing RFP at 34. CTSC suggests that the RFP’s evaluation scheme required the agency to award the contract to CTSC, regardless of the filing (or outcome) of KGL’s protest, which resulted in the agency’s decision to reinstate KGL back into the competitive range. See Protester’s Supp. Comments at 24-26.

The agency argues that a contracting officer’s discretion to hold discussions is broad and does not preclude discussing responsibility matters. See Supp. MOL at 13. The agency maintains that it properly determined that discussions were necessary, because no offeror was eligible for award after initial evaluations. Id.

In our view, CTSC has not shown that the agency’s decision to conduct discussions was unreasonable or contrary to procurement laws or regulations. An agency’s discretion to hold discussions is quite broad, and is not generally reviewed by this Office. Alliance Worldwide Distrib., LLC, B-408491, Sept. 12, 2013, 2013 CPD ¶ 223 at 3. The decision to establish a competitive range and the determination whether a proposal should be included therein is principally a matter within the sound judgment of the procuring agency. Dismas Charities, Inc., B-284754, May 22, 2000, 2000 CPD ¶ 84 at 3. The precise content of discussions is largely a matter of the contracting officer’s judgement. See Apptis Inc., B-403249; B-403249.3, Sept. 30, 2010, 2010 CPD ¶ 237 at 4-5. There are no statutory or regulatory criteria specifying when an agency should or should not initiate discussions. L-3 Services, Inc., B-406292, Apr. 2, 2012, 2012 CPD ¶ 170 at 14. Thus, the protester’s complaint regarding the agency’s decision to conduct discussions is unavailing.

We have long held that the rules relating to clarifications and discussions have no application to possible inquiries regarding matters of responsibility. See, e.g., id.; Engility Corp., B-413202; B-413202.2, Sept. 2, 2016, 2016 CPD ¶ 251 at 8. At issue, in this line of cases, is whether the rules relating to clarifications and discussions are triggered simply because an agency may request information from an offeror regarding responsibility matters. See, e.g., General Dynamics-Ordnance & Tactical Sys., supra (a request for or providing information that relates to offeror responsibility, rather than proposal evaluation, does not trigger requirement to hold discussions with other competitive range offerors). For example, while the FAR requires that an agency conduct meaningful discussions with all offerors in the competitive range, the fact that the agency requests information regarding responsibility matters from only one offeror, does not establish that the agency engaged in improper or unequal discussions. See Coast Int’l Sec., Inc., B-411756; B-411756.2, Oct. 19, 2015, 2015 CPD ¶ 340 at 13. Similarly, the fact that an agency, after receipt of FPRs, may request information regarding a responsibility matter (such as the adequacy of an offeror’s cost accounting system) does not require the agency to reopen discussions with the other offerors in the competitive range. Lockheed Martin Corp., B-410329 et al., Dec. 11, 2014, 2015 CPD ¶ 7 at 13; PMO P’ship Joint Venture, B-401973.3; B-401973.5, Jan. 14, 2010, 2010

CPD ¶ 29 at 8 (denying protest that communicating with an offeror concerning the adequacy of its accounting system required opening discussions with all competitive range offerors).

However, contrary to the protester's faulty inference, these decisions do not suggest that an agency is precluded from establishing a competitive range and holding discussions encompassing responsibility matters, as the agency did here. Our decisions are permissive in this respect, recognizing that, as stated above, the discretion to hold discussions is quite broad and the precise content of discussions is largely a matter of agency judgement. We have said, for example, that an agency's exchanges with an offeror regarding matters of responsibility do not constitute discussions--"provided such dialogue does not seek, or result in, proposal changes." Lockheed Martin Corp., *supra*; Coast Int'l Sec., Inc., *supra* (exchanges regarding responsibility matters do not constitute discussions, provided such dialogue does not seek, or result in, modifications to the offeror's proposal). Likewise, we have said that questions pertaining to an offeror's capacity and capability involve issues of responsibility that "may be requested or provided without resulting in the conduct of discussions." Advance Gear & Mach. Corp., B-228002, Nov. 25, 1987, 87-2 CPD ¶ 519 at 3. Communicating with an offeror concerning its responsibility, that is, addressing agency concerns about the offeror's ability to perform, do not constitute discussions, so long as the offeror does not change its proposed cost or otherwise materially modify its proposal.¹³ PMO P'ship Joint Venture, *supra*. In other words, procuring agencies, as here, have discretion to request information regarding responsibility matters at any point during the evaluation and award process, including in the context of discussions.

Moreover, we disagree with CTSC that it was prejudiced by the agency's decision to conduct discussions.¹⁴ Notably, once the contracting officer deemed CTSC non-responsible, the agency was under no obligation to discuss that matter with CTSC. *See, e.g., Israel Aircraft Indus. Ltd.*, B-242552, May 10, 1991, 91-1 CPD ¶ 454 at 7. As a result of the agency's decision to conduct discussions, CTSC, to its advantage here, was given the opportunity to provide information regarding its

¹³ There is no question that the exchanges here constituted discussions. We generally consider that discussions have taken place if, as here, an offeror is given the opportunity to revise its initial proposal, either in terms of price or technical approach. Advance Gear & Mach. Corp., *supra*. As discussed above, all offerors within the competitive range, including CTSC and KGL, were permitted to revise their respective technical and price proposals.

¹⁴ Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice. *See, e.g., Special Servs.*, B-402613.2, B-402613.3, July 21, 2010, 2010 CPD ¶ 169 at 4.

ability to operate at Kuwaiti ports, and further given the opportunity to submit a revised technical or price proposal. AR, Exh. 25, CTSC EN, at 1-3; Exh. 51, CTSC FPR Request, at 1-3. In this respect, the record shows that following the first round of discussions, CTSC's competitive position improved, because its proposal continued to have the lowest price and CTSC was now found to be responsible.¹⁵ AR, Exh. 45, Interim SSEB Report, at 8-10.

Lastly, we find that the agency's conduct of discussions was consistent with the multi-step evaluation process prescribed by the RFP here. The solicitation put offerors on notice that the responsibility determination would be one of a number of steps in an evaluation process that could, potentially, "repeat in order of ascending price, until a proposal is found technically acceptable, with fair, reasonable, and balanced pricing, from a responsible offeror, or until all offers have been evaluated." RFP at 34 (emphasis added); see, e.g., Advanced Commc'ns Sys., Inc., B-271040; B-271040.2, June 10, 1996, 96-1 CPD ¶ 274 at 7 (responsibility determination was part of evaluation process and protest denied where evaluation and award were consistent with RFP criteria). Furthermore, the solicitation reserved the right to conduct discussions if the agency determined it necessary or in the government's best interest to do so, and stated that if the SSA determined that it was in the government's best interest to enter into discussions, the source selection team would complete the discussion process and request FPRs. See RFP at 32, 34; Milcom Sys. Corp., B-255448.2, May 3, 1994, 94-1 CPD ¶ 339 at 6 (nothing improper with agency's decision to open discussions where solicitation advised that discussions would be conducted if necessary).

In sum, CTSC has not shown that the agency's decision to conduct discussions was unreasonable or violated procurement laws or regulations, and we deny this aspect of CTSC's protest.

KGL's Final Responsibility Determination

Finally, we dismiss CTSC's challenge to KGL's affirmative responsibility determination. Our Office 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. GAO 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; Verestar Gov't Servs. Grp.,

¹⁵ The fact that CTSC lost its competitive advantage following the final round of discussions (because KGL reduced its proposed price), also provides no reason to sustain CTSC's protest, because we otherwise find that the agency reasonably found CTSC non-responsible at first, and reasonably decided to address that matter through discussions.

B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68 at 4-5. We therefore have reviewed circumstances such as: 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; allegations that principals of a contractor had criminal convictions, Southwestern Bell Tel. Co., B-292476, Oct. 1, 2003, 2003 CPD ¶ 177 at 5; or allegations that a contractor engaged in improper financial practices and improperly reported earnings. Verestar Gov't Servs. Grp., *supra*.

CTSC's protest of KGL's affirmative responsibility determination, which relates to KGL's continuing license to operate at the required ports (*see* Protester's Comments at 35-40), fails to meet our threshold for review. Furthermore, the record demonstrates that the contracting officer was well aware of concerns regarding KGL's license to operate at the required ports when making his affirmative responsibility determination.¹⁶ This aspect of CTSC's protest is therefore dismissed. *See, e.g., Marine Terminals Corp.-East, Inc.*, B-410698.9, Aug. 4, 2016, 2016 CPD ¶ 212 at 11-12 (agency corrective action expressly addressed earlier responsibility determination that awardee could perform stevedoring services).¹⁷

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel

¹⁶ *See* AR, Exh. 26, KGL EN at 2 (requesting information that KGL would be authorized to operate at the ports in question after December 31, 2015); Exh. 29, KGL Response to EN, at 3-8 (providing copy of a judgment of the Kuwait Court of First Instance cancelling the Kuwait Port Authority's decision not to renew KGL's license to operate at Shuaiba port); Exh. 39, Interim KGL Responsibility Determination, at 1 (unable to verify KGL's ability to operate after discussions with port authority); Exh. 62, Final KGL Responsibility Determination, at 1 (KGL demonstrated an apparent successful adjudication cancelling the port authority's decision not to renew its proposed subcontractor's port license).

¹⁷ We also dismiss CTSC's allegations that KGL made material representations in its proposal, because the allegation relates entirely to CTSC's challenge of KGL's affirmative responsibility determination. *See* Protester's Comments at 35-40; Protester's Supp. Comments at 27-29; Sprint Commc'n Co. LP; Global Crossing Telecomm., Inc.--Protests & Recons., B-288413.11, B-288413.12, Oct. 8, 2002, 2002 CPD ¶ at 4.