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Decision

Matter of: Great Lakes Dredge & Dock Company, LLC

File: B-416073

Date: May 24, 2018

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Jonathan M. Baker, Esq., Christian N. Curran, Esq., and Lauren E. Harrison, Esq., Crowell & Moring LLP, for Cashman/Dutra, JV, an intervenor.

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Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of awardee's bid under definitive responsibility criteria is denied where the record contained sufficient evidence that the awardee satisfied the criteria.
 2. Protest challenging agency's affirmative responsibility determination is denied where the record does not show that the contracting officer ignored information in making the determination.
 3. Protest challenging the agency's calculation of the independent government estimate is dismissed where the protester is not an interested party to maintain that allegation.
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DECISION

Great Lakes Dredge & Dock Company, LLC (GLDD), of Oak Brook, Illinois, protests the award of a contract to Cashman/Dutra, JV (Cashman) under invitation for bids (IFB) No. W912WJ-18-B-0004, issued by the Department of the Army, Corps of Engineers (Corps), for dredging services in the Boston Harbor. GLDD alleges that the agency unreasonably evaluated the awardee's bid as satisfying the solicitation's definitive responsibility criteria and improperly conducted its affirmative responsibility determination, and further alleges that the internal government cost estimate (IGE) was unrealistically low.

We deny the protest.

The IFB was issued on November 16, 2017, for the deepening and strategic widening of the Boston Harbor Federal Navigation Project to be completed over a 1,246-day period. Agency Report (AR), Ex. 37 Specifications, § 01 11 00 at ¶ 1.1; IFB at 36. The selected bidder would be required to dredge ordinary and hard material to various depths with the lowest depth being -51 feet Mean Lower Low Water (MLLW).¹ Id. The selected bidder would also be required to meet three definitive responsibility criteria, discussed further below. IFB at 35. All bidders were required to submit their bids by January 29, 2018. IFB, amend. 0007 at 1.

At bid opening, the agency received three bids, with Cashman bidding the lowest price and GLDD bidding the second lowest price. The relevant bid prices and the IGE were as follows:

Bidder	Price
Cashman	\$122,223,000
IGE	\$166,374,000
GLDD	\$218,855,500

AR, Ex. 16, Bid Abstract at 1. After the agency evaluated Cashman as a responsible bidder and as satisfying the definitive responsibility criteria, the agency awarded Cashman the contract and notified GLDD that its bid was unsuccessful. On February 26, GLDD filed the instant protest with our Office.

DISCUSSION

GLDD alleges that the agency unreasonably evaluated Cashman's bid as satisfying the IFB's three definitive responsibility criteria, improperly conducted its affirmative responsibility determination, and further alleges that the IGE was unrealistically low. We have reviewed all of GLDD's allegations, and find no basis to sustain the protest. We will discuss each allegation in turn.²

¹ MLLW refers to the average of the lower low water height of each tidal day observed over the National Tidal Datum Epoch. See National Oceanic and Atmospheric Administration, Tidal Datums, http://tidesandcurrents.noaa.gov/datum_options.html (last visited May 23, 2018).

² As a preliminary matter, the agency asserts that the protester lacks the direct economic interest necessary to be an interested party because 33 U.S.C. § 624(a)(2) precludes the protester from receiving award. That statute precludes the agency from making award for any river or harbor improvement project where the contract price exceeds the government's estimate of a fair and reasonable cost by 25 percent. 33 U.S.C. § 624(a)(2). Thus, because the protester's proposed price is more than 25 percent above the IGE, the agency asserts that GLDD is not an interested party.

(continued...)

Definitive Responsibility Criteria

The IFB required the selected bidder to satisfy three definitive responsibility criteria:

1. Within the last 10 years, dredged by mechanical means a minimum of 350,000 cubic yards in a consecutive 30-day period;
2. Within the last 10 years, dredged hard material, as defined in specification section 00 32 00, to depths of 35' [MLLW] or more using mechanical equipment; and
3. Equipment to be used on this project capable of dredging hard material as defined in specification section 00 32 00 to a depth of 50' MLLW or greater and meets the equipment requirements of specification section 01 11 00, 1.1 paragraph 3.

IFB at 35. GLDD alleges that Cashman could not satisfy any of these criteria.

Definitive responsibility criteria are specific and objective standards established by an agency for use in a particular procurement to measure a bidder's ability to perform the contract. Federal Acquisition Regulation (FAR) § 9.104-2. These special standards of responsibility limit the class of bidders to those meeting specified qualitative and quantitative qualifications necessary for adequate contract performance. M&M Welding & Fabricators, Inc., B-271750, July 24, 1996, 96-2 CPD ¶ 37 at 2. In evaluating whether a bidder meets definitive responsibility criteria, a contracting agency has broad discretion since the agency must bear the brunt of any difficulties experienced in obtaining the required performance. Id. Nevertheless, the agency must obtain evidence that a bidder meets the criteria so that compliance with the requirement, which

(...continued)

Under our Bid Protest Regulations, a protest may be filed only by an "interested party," defined as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the contract at issue. 4 C.F.R. § 21.0(a). Here, although the statute effectively renders GLDD's bid unacceptable, we conclude that GLDD is nevertheless an interested party because there are no intervening bidders in line for award. To illustrate, if our Office sustained the protest, then Cashman would be ineligible for award and the agency would be faced with potentially resoliciting the requirement. Because the protester would be eligible to compete on a resolicitation, it is an interested party to challenge whether Cashman constitutes a responsible bidder. Cf. CGI Federal, Inc., B-410714, Jan. 28, 2015, 2015 CPD ¶ 67 at 5,n.2 (concluding that a protester was an interested party, even though its proposal was technically deficient, because there were no intervening offerors in line for award and the protester would be eligible to compete on a potential resolicitation).

is a prerequisite to award, can be determined. Id. Where an allegation is made that a definitive responsibility criterion has not been satisfied, we will review the record to ascertain whether evidence of compliance has been submitted from which the contracting officer reasonably could conclude that the criterion has been met. Id.

Definitive Responsibility Criterion No. 1

The first criterion required the selected bidder to demonstrate that it has dredged by mechanical means a minimum of 350,000 cubic yards (CY) in a consecutive 30-day period within the last 10 years. IFB at 35. Cashman submitted evidence that its mechanical dredge, the “Dale Pyatt,” exceeded the criterion when it dredged [DELETED] CY in a consecutive 30-day period while dredging the Portland, Maine Federal Navigation Project on a different contract commissioned by the agency. AR, Ex. 22, Cashman Definitive Responsibility Criteria Response at 1. To support its claim, Cashman submitted a dredging production spreadsheet, which showed the gross ([DELETED]) and net ([DELETED] CY) amounts dredged from February 14 through March 20, 2014. Id. at Ex. A. In reviewing the response, the agency verified Cashman’s experience by reviewing its Disposal Area Monitoring System (DAMOS) records. The DAMOS record showed that Cashman averaged [DELETED] scow loads per day of material. AR, Ex. 28B, Agency E-mails at 1. The agency assumed that the scows were approximately 80 percent full, and therefore, it calculated that Cashman dredged about [DELETED] CY at an average production rate of [DELETED] CY per day. Id. The agency identified that amount as consistent with Cashman’s representation. Based on that evidence, the agency concluded that Cashman satisfied the first criterion. Id.; AR, Ex. 26, Project Manager’s Bid Verification Memorandum.

GLDD argues that Cashman’s experience is insufficient to demonstrate compliance with the criterion. The protester asserts that Cashman’s experience is not comparable to the instant requirement because the material in the Boston Harbor is more dense and in deeper water. Protester’s Comments at 7. In our view, GLDD’s argument improperly reads into the solicitation an additional requirement not present. That is, the plain language of the solicitation required that the selected bidder demonstrate that it had dredged by mechanical means a minimum of 350,000 CY in a consecutive 30-day period within the last 10 years; the solicitation did not contain additional requirements that the dredged material or water depth be similar to the conditions found in the Boston Harbor or attach any additional qualifying language. Thus, whether or not Cashman’s experience involved dredging softer material in more shallow water would not be relevant to analyze whether Cashman’s experience satisfied the first criterion.

GLDD also asserts that the record does not contain sufficient evidence to document Cashman’s experience. GLDD points out that Cashman merely submitted a spreadsheet containing unverified dredging figures and that the agency’s calculation is unreliable because it only tracked the capacity of the scow. Protester’s Comments at 6. Contrary to GLDD’s assertion, we find the agency’s determination reasonable. While GLDD may believe that the data should have been provided in a different format that is more readily verifiable, the IFB, as above, did not contain any such requirement.

Instead, Cashman provided its dredging production spreadsheet which was consistent with the agency's record of dredging production on that project. In view of that consistency, we find that the agency had sufficient evidence to determine that Cashman met the first criterion.

Definitive Responsibility Criterion No. 2

The second criterion required the selected bidder to demonstrate that it has dredged hard material, as defined in the solicitation, to depths of -35 feet MLLW or more using mechanical equipment within the last 10 years. IFB at 35. The solicitation defined hard material as including Pleistocene Till Nos. 1 and 2, and Weathered Cambridge Argillite. AR, Ex. 37, Specifications, Document 00 32 00 at ¶ 1.5. As evidence that it met this criterion, Cashman cited its 2010 to 2013 performance on two dredging contracts in the Arthur Kill Channel using its mechanical dredge, the "AJ Fournier." AR, Ex. 22, Cashman Definitive Responsibility Criteria Response at 1-2. To perform these contracts, Cashman opted to release the "Kraken," a hydraulic drilling barge, in order to drill and blast underwater rock prior to dredging by the AJ Fournier at depths of -53.5 feet MLLW. AR, Ex. 28E, Cashman News Report, Apr. 17, 2013; AR, Ex. 22, Cashman Definitive Responsibility Criteria Response at 2. When reviewing Cashman's performance, the agency determined that Cashman was "wholly hard digging material of one type or another." Supp. Agency Report, Internal Agency E-mail, Feb. 1, 2018 (7:39 a.m.).

As part of its review, the agency also determined that Cashman had performed eight test digs in the Arthur Kill Channel in 2011 as part of another contract that did not involve drilling and blasting. The test digs required Cashman to dredge pits to depths of -53.5 feet MLLW. AR, Ex. 29, Test Digs Report at 1. In performing the contract, Cashman was able to dig three pits to depths of at least -53.5 feet MLLW, and an additional three to depths of greater than -50 feet MLLW. *Id.* at 24. When dredging these pits, Cashman removed weathered and unweathered shale and sandstone, as well as initial layers of glacial clay, glacial till, silt, and broken rock. *Id.* at 32-70. An agency technical expert and the project manager determined that the weathered and unweathered shale and sandstone constituted material more dense than the ordinary material in the Boston Harbor, and that therefore the AJ Fournier could dredge hard material as specified in the solicitation. Supplemental Agency Report, Internal Agency E-mail, Feb. 6, 2018. Based on Cashman's dredging experience and the agency's conclusion that the material excavated from the Arthur Kill Channel was of comparable density to the material located in the Boston Harbor, the agency determined that Cashman satisfied the second criterion. AR, Ex. 31, Contracting Officer's (CO) Determination of Cashman's Compliance with Definitive Responsibility Criteria at 2.

In our view, the record contains sufficient evidence that Cashman satisfied this criterion because the test digs report shows that Cashman dredged hard material to the requisite depths. Although the protester asserts that the test digs report does not satisfy the criterion because it did not involve contracts for dredging but rather was designed to determine whether a small excavator could rip the bottom rock of the New York Harbor,

we find this distinction unpersuasive. In contributing to the test digs report, Cashman performed the quintessential aspects of dredging because it was responsible for digging and excavating material from underwater depths. In fact, the test digs report contains multiple photographs showing the AJ Fournier excavating sandstone and shale and depositing it into scows. AR, Ex. 29, Test Digs Report at 28-31. Furthermore, under the protester's proffered definition of dredging (*i.e.*, process of excavating sediments and other materials from underwater locations), it is not discernible how Cashman's activity does not qualify as dredging because the definition covers exactly what Cashman was doing. While Cashman may have dredged smaller amounts of material in creating test pits than it would have on a full dredging contract, it nonetheless still dredged material as required by the criterion.

Additionally, we find that the agency had sufficient evidence that the material dredged constituted hard material as specified. The agency's technical expert, a trained geologist, reviewed the report and determined that the weathered and unweathered sandstone and shale constituted hard material that is more resistant than the ordinary material in the Boston Harbor. In addition, the project manager reviewed the report and determined that the material was harder than any material in the Boston Harbor. Furthermore, the test digs report shows that the sandstone and shale had seismic velocities between 3,000 and 5,000 meters per second. AR, Ex. 29, Test Digs Report at 120. That material is much harder than the material to be removed from the Boston Harbor which has seismic velocities less than 2,700 meters per second. AR, Ex. 37, Specifications, Section 00 32 00 at ¶ 1.5. While the protester asserts that this data is not meaningful because both were not tested under laboratory conditions, we have recognized that the relative quality of the evidence is a matter for judgment of the contracting officer, not our Office. Calculus, Inc., B-228377.2, Dec. 7, 1987, 87-2 CPD ¶ 558 at 3. Accordingly, we find that the agency officials' conclusions combined with the test digs report data provided sufficient evidence to find that Cashman met the second criterion.

Definitive Responsibility Criterion No. 3

The third criterion required the selected bidder to demonstrate that it had a large cutter head or hydraulic excavator capable of dredging hard material to depths of -50 feet MLLW. To satisfy this criterion, Cashman submitted drawings and specifications of the AJ Fournier. AR, Ex. 22, Cashman Definitive Responsibility Criteria Response, Ex. B at 1-2; AR, Ex. 28A, Cashman E-mail to Agency. These drawings and specifications showed that the AJ Fournier had a maximum dredging depth of -65 feet, and that it was equipped with 95 foot spuds (*i.e.*, large stakes used to anchor the dredge). AR, Ex. 22, Cashman Definitive Responsibility Criteria Response, Ex. B at 1-2; AR, Ex. 28A, Cashman E-mail to Agency. Based on this information and the test digs report, the agency determined that Cashman satisfied this criterion. AR, Ex. 31, CO Determination of Cashman's Compliance with Definitive Responsibility Criteria at 2-3.

The protester asserts that Cashman did not demonstrate compliance with the criterion because the AJ Fournier was unable to dredge each of the test pits to depths greater

than -50 feet MLLW. Protester's Comments at 16. Additionally, the protester asserts that the test digs do not demonstrate compliance because the Boston Harbor's tidal range is greater than the New York Harbor's tidal range. Id. at 16-17. To match the Boston Harbor tidal range, the protester asserts that the test digs must have shown that Cashman could dredge to depths of -55 feet MLLW in the New York Harbor. Id.

In our view, the protester's arguments mischaracterize the criterion. As to the former argument, whether Cashman in fact dredged each test pit to the requisite depths is irrelevant because the criterion required Cashman to demonstrate its capability. The common dictionary definition of "capable" refers to "showing general ability," or "having attributes required for performance." Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/capable> (last visited May 23, 2018). Being capable therefore is a lower bar than having a 100 percent success rate because capability involves examining potential for performance. The test digs showed that Cashman was capable because it dredged at least some of the pits to -53.8 feet MLLW. AR, Ex. 29, Test Digs Report at 24. Moreover, the AJ Fournier's specification sheet stated that it could dredge to depths of -65 feet. As to the latter argument, GLDD also mischaracterizes the criterion because the criterion did not require the selected bidder to demonstrate that it possessed equipment capable of dredging to -50 feet MLLW specifically in the Boston Harbor and subject to the fluctuations in the Boston Harbor tidal range; rather, the criterion only required Cashman to demonstrate that it had equipment capable of dredging to -50 feet MLLW. IFB at 35. Cashman satisfied this criterion by showing that some of the pits were dredged to below that depth. AR, Ex. 29, Test Digs Report at 24. Accordingly, we find that Cashman provided sufficient evidence to demonstrate that it satisfied this criterion.

Affirmative Responsibility Determination

GLDD raises several challenges to the agency's responsibility determination. As a general matter, our Office does not review affirmative determinations of responsibility by a contracting officer. 4 C.F.R. § 21.5(c); FCi Fed., Inc., B-408558.4 et al., Oct. 20, 2014, 2014 CPD ¶ 308 at 7. One of the circumstances in which we will make an exception to the general rule is where a protest identifies evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information. Verestar Gov't Servs. Grp., B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68 at 4. This exception was intended to encompass protests raising supported allegations that the contracting officer ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. Greenleaf Constr. Co., Inc., B-293105.18, B-293105.19, Jan. 17, 2006, 2006 CPD ¶ 19 at 14.

The allegations that our Office has reviewed in the context of an affirmative determination of responsibility generally pertain to very serious matters, such as potential criminal activity. See, e.g., FN Mfg., Inc., B-297172, B-297172.2, Dec. 1, 2005, 2005 CPD ¶ 212 at 7-8 (reviewing an allegation that the agency failed to consider an ongoing investigation into whether the awardee defrauded the government on a prior

contract for the same requirement); Southwestern Bell Tel. Co., B-292476, Oct. 1, 2003, 2003 CPD ¶ 177 (reviewing an allegation that the agency failed to consider that the awardee's CEO had been indicted for conspiracy and fraud). In contrast, a protester's mere disagreement with the reasonableness of an agency's price evaluation does not rise to the level needed to trigger a review by our Office of a contracting officer's responsibility determination. MicroTechnologies, LLC, B-415214, B-415214.2, Nov. 22, 2017, 2018 CPD ¶ 48 at 8 (dismissing allegation that agency was obligated to consider a Dun & Bradstreet report, among other things, in making an affirmative responsibility determination because it "does not meet our threshold for review in this area").

First, GLDD alleges that the agency ignored evidence that Cashman did not have sufficient equipment to meet the required production rates and performance schedule. Protester's Comments at 17. GLDD highlights the Test Digs Report showing that the AJ Fournier did not successfully dredge every pit to depths below -53.5 feet MLLW. Id. at 18. GLDD also highlights information from the AJ Fournier's manufacturer purportedly showing that the AJ Fournier would "operate close to its working limits during 50% of the tide cycle," and uses that information to assert that the AJ Fournier would be incapable of dredging below -53 feet MLLW. Id. at 19. In our view, these allegations do not meet the threshold for review because they do not highlight any specific evidence that the contracting officer ignored. The record shows that the contracting officer specifically considered the information available in the Test Digs Report when she concluded that Cashman possessed equipment that could dredge to the requisite depths. AR, Ex. 31, CO Determination of Cashman's Compliance with Definitive Responsibility Criteria at 2-3. As for the information from the AJ Fournier's manufacturer, GLDD identified a minor specification that does not definitively show that the AJ Fournier is incapable of dredging at the requisite depths and is thus irrelevant for the affirmative responsibility determination. Accordingly, we dismiss this allegation because it does not show that the agency ignored any specific evidence that would be expected to have a strong bearing on whether Cashman should be found responsible. Robert F. Hyland & Sons, LLC, supra at 3-4 ("As the protester has not shown that the [contracting officer] failed to consider any available information in making his responsibility determination, the protest fails to state a sufficient legal or factual basis for consideration.").

Second, GLDD alleges that the agency should have rejected Cashman's bid because Cashman's "absurdly and unrealistically low bid price" indicated that Cashman would be unable to adequately perform the contract. Protester's Comments at 17-18, 20. In this regard, GLDD seemingly takes issue with the agency's suspected mistake in Cashman's bid price and subsequent verification because it asserts that the agency attempted to verify Cashman's bid price, was unable to do so, and improperly made award to Cashman anyway. Protester's Comments at 23. As to that allegation, our Office has consistently stated that only the contracting parties (here, the agency and Cashman) are in a position to assert rights and bring forth all the necessary evidence to resolve mistakes in bid questions. Riverport Indus., Inc., B-218122, Feb. 14, 1985, 85-1 CPD ¶ 201 at 2. Accordingly, GLDD's objection to that process is not for consideration by our Office. L. Washington & Assocs., Inc., B-276556 et al., June 26, 1997, 97-1

CPD ¶ 229 at 3 (stating “[i]f a contracting officer suspects there is a mistake in a bid, verification of the bid is to be requested of the bidder. If the bidder verifies the bid, the contracting officer is to consider the bid original submitted. [The protester’s] objection to that process is not for consideration by our Office”) (internal citation omitted).

In any event, the record shows that the agency was able to verify Cashman’s bid. The record shows that Cashman dug test pits, performed spud drops, and reviewed its own internal borings data prior to bidding. AR, Ex. 28, Project Manager’s Technical Memorandum at 1; AR, Ex. 30, Bid Verification Memorandum at 2. Based on that research, Cashman determined that it could remove more material with a clamshell dredge than the agency anticipated. AR, Ex. 30, Bid Verification Memorandum at 2. Cashman also hired another firm to review its determination, and the other firm reached a similar conclusion regarding precisely how much of the material would actually require an excavator dredge. AR, Ex. 28, Project Manager’s Technical Memorandum at 1-2. In conducting the bid verification meeting with agency officials, Cashman was asked to review the scope of work and its method of construction. AR, Ex. 30, Bid Verification Memorandum at 1. Cashman provided its research, explained that it would satisfy the terms of the solicitation, and clarified that its lower price was based on its alternate technical assumption. Id. at 1-2. Thus, the record shows that the agency was able to verify Cashman’s bid as based on Cashman’s research and not a mistake. Id.

While Cashman’s bid price was inconsistent with the agency’s technical assumption, there is nothing objectionable about Cashman submitting a lower-priced bid based on a different technical assumption, or for that matter even a below-cost bid, so long as its bid does not take exception to any of the material terms of the solicitation. See Atrium Contracting, Inc., B-241949, Mar. 18, 1991, 91-1 CPD ¶ 294 at 4 (“Finally, [the protester] argues that the apparent low bidder has submitted an allegedly below-cost bid. However, the submission of a below-cost bid is not, in itself, legally objectionable.”); cf. Falcon Indus., Inc., B-256419, June 3, 1994, 94-1 CPD ¶ 337 at 5 (stating “where, as here, a legitimate and viable offeror or bidder shows that an alternate technical approach, which potentially fully meets the agency’s needs, is available at competitive prices, the contracting officer, in the interests of promoting full and open competition, and in the absence of any technical reasons to reject the alternate approach, must relax the specifications to permit the alternate offeror an opportunity to compete”). Accordingly, GLDD’s objection that the agency’s failure to verify Cashman’s bid price dictated a negative responsibility determination is factually inaccurate and does not constitute a basis to sustain the protest.

To the extent that GLDD is arguing that Cashman’s bid price was unrealistically low and that the agency should have rejected Cashman’s bid on that basis, we note that the solicitation contemplated a fixed-price award and did not provide for a price realism analysis. Protester’s Comments at 22. Thus, the agency’s only obligation was to review Cashman’s price for reasonableness (i.e., whether Cashman’s price was too high). See CACI-WGI, Inc., B-408520.2, Dec. 16, 2013, 2013 CPD ¶ 293 at 7 (“Absent a solicitation provision providing for a price realism evaluation, agencies are neither required nor permitted to conduct one in awarding a fixed-price contract.”); see also

Next Tier Concepts, Inc.; MAXIMUS Federal Services, Inc., B-414337, B-414337.2, May 15, 2017, 2017 CPD ¶ 161 at 4-6 (agency was bound to perform price realism analysis when the solicitation contained permissive language notifying offerors that the agency would potentially conduct a price realism analysis and the agency had in fact partially completed a price realism analysis in evaluating proposals). Here, the record shows that the contracting officer reviewed Cashman's pricing information and determined Cashman's price to be reasonable. AR, Ex. 32, General Responsibility Determination at 4. The agency examined Cashman's line-item pricing and compared its prices to the IGE, and subsequently determined that Cashman's line-item pricing was reasonable and consistent with its technical assumption. AR, Ex. 30, Bid Verification Memorandum at 2. Consequently, because the record demonstrates that the agency considered Cashman's equipment and price for reasonableness, we have no basis to object to the agency's conduct of the acquisition in this regard.³

Calculation of the IGE

As a final matter, the protester alleges that the agency unreasonably calculated the IGE because it based its cost assumptions on a typical maintenance dredging project. Protester's Comments at 24. We dismiss this remaining allegation because GLDD is not an interested party to raise it.⁴

Under our Bid Protest Regulations, a protester must be an interested party to pursue a protest before our Office. 4 C.F.R. § 21.1. An interested party is an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). A protester is not an interested party if it would not be next in line for award if its protest were sustained.

³ GLDD also alleged in its protest that the agency failed to review Cashman's negative history of performance on multiple other contracts and history of underbidding projects when conducting its responsibility determination. Protest at 15-16. Because the agency provided a detailed rebuttal in its report (i.e., explained that it reviewed past performance information for all of Cashman's members, see Agency Legal Memorandum at 12) and GLDD merely restated its original protest allegation, we dismiss these allegations as abandoned. Mayfield Gov't Inspections, B-414528, June 13, 2017, 2017 CPD ¶ 189 at 5 ("Where an agency provides a detailed response to a protester's assertions and the protester either does not respond to the agency's position or provides a response that merely references or restates the original protest allegation without substantively rebutting the agency's position, we deem the initially raised arguments abandoned.").

⁴ Prior to submission of its report, the agency requested that our Office dismiss the protester's allegation concerning the IGE as untimely. Our Office, however, declined to dismiss the allegation at that time. Because, we ultimately dismiss this allegation on an alternate ground, any discussion concerning the timeliness of the allegation would be purely academic.

Sotera Defense Solutions, Inc., B-414056 et al., Jan. 31, 2017, 2017 CPD ¶ 46 at 8. Here, our conclusion that the agency reasonably conducted its responsibility determinations means that GLDD would not be in line for award in the event we sustained its protest. In other words, even if we were to find that the agency miscalculated the IGE, Cashman would still be in line for award as the low bidder. Accordingly, we dismiss protester's remaining allegation.

The protest is denied.

Thomas H. Armstrong
General Counsel