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Decision

Matter of: American Roll-On Roll-Off Carrier Group, Inc.

File: B-418266.9; B-418266.11; B-418266.13

Date: March 3, 2022

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DIGEST

1. Protest challenging contracting officer's affirmative responsibility determination is denied where the protester's allegations do not establish that the contracting officer failed to consider available relevant information when making the responsibility determination.
2. Protest challenging the agency's evaluation of offerors' technical proposals is denied where the agency's evaluation was reasonable and in accordance with the solicitation.
3. Protest that the agency performed an unreasonable price reasonableness evaluation is denied where the price reasonableness evaluation was consistent with the solicitation and the Federal Acquisition Regulation.
4. Protest challenging the agency's best-value tradeoff analysis is denied where the record reflects the agency's source selection rationale was documented and consistent with the stated evaluation criteria.

DECISION

American Roll-On Roll-Off Carrier Group, Inc. (ARC)¹, of Parsippany, New Jersey, protests the award of a contract to HomeSafe Alliance, LLC², of Houston, Texas, under request for proposals (RFP) No. HTC711-19-R-R004, issued by the Department of Defense (DOD), U.S. Transportation Command (USTRANSCOM), for complete, global household goods (HHG) relocation services for DOD service members and civilians and U.S. Coast Guard members. ARC challenges the adequacy of the agency's responsibility determination, asserts that the agency's evaluation of technical and price proposals was unreasonable, and argues that the best-value tradeoff analysis was flawed.

We deny the protest.

BACKGROUND

For the first time, USTRANSCOM is seeking a contractor to perform household goods relocation services now performed by the government. The contractor will provide all personnel, supervision, training, licenses, permits and equipment necessary to perform household goods relocation transportation and storage-in-transit (SIT) warehouse services worldwide. Upon receipt of the customer's relocation requirement, the contractor will prepare, pick-up, and deliver shipments for relocation transportation and storage, and will deliver personal property no later than the required delivery date. AR, Tab 4, Conformed RFP attach. 1, Performance Work Statement (PWS), amend. 07, at 2. From start to finish, the successful offeror in this procurement will be fully responsible for the movement of HHG.

To procure these services, the agency issued this RFP in accordance with Federal Acquisition Regulation (FAR) part 12, acquisition of commercial items, and part 15, contracting by negotiation. The solicitation contemplated the award of a single indefinite-delivery, indefinite-quantity contract referred to as the Global Household Goods Contract (GHC). AR, Tab 3, Conformed RFP at 16. The RFP included a 9-month transition period, a 3-year base period, three 1-year option periods, two 1-year award terms, and an option to extend the contract for 6 months. *Id.* at 3-7. Award would be made to the offeror deemed responsible in accordance with FAR part 9, contractor qualifications, and whose proposal represented the best value to the government. *Id.* at 16.

The RFP contained four evaluation factors: business proposal, technical capability, past performance, and price. The solicitation provided for evaluation of the business proposal and past performance factors as acceptable or unacceptable. *Id.* at 17. An

¹ ARC is an affiliate of Wallenius Wilhelmsen ASA, a large multi-national corporation.

² HomeSafe Alliance is a joint venture of KBR Services, LLC, and Tier One Relocation LLC. Agency Report (AR), Tab 239, HomeSafe Technical Capability Proposals at 2.

unacceptable rating under the business proposal factor would render a proposal ineligible for award. *Id.* The technical capability factor was comprised of the following four equally-weighted subfactors: operational approach; capacity and subcontractor management; transition/volume phase-in; and information technology (IT) services. *Id.* The technical capability factor and its subfactors would be evaluated on an adjectival scale ranging from outstanding to unacceptable.³ Price would be evaluated, but not rated. The RFP advised offerors that, in the best-value tradeoff analysis, the technical capability and price factors would be evaluated on an approximately equal basis. *Id.* at 17.

Offerors were to provide their proposals in four volumes, corresponding to the four evaluation factors: business proposal, technical capability proposal, past performance proposal, and price proposal. *Id.* at 17-20.

Business Proposal

The RFP required offerors to include in their business proposals all documents and information required by the solicitation but not part of the technical capability, past performance, or price proposals. *Id.* at 80. Offerors were required to complete RFP attachment 6, the Financial Information Questionnaire, including information for each member of a joint venture. *Id.* at 81. The Financial Information Questionnaire required offerors to include with it an organizational chart and a copy of the request sent to the offeror's financial institution or institutions authorizing release of financial information to the contracting officer (CO). See AR, Tab 11, Financial Information Questionnaire. The RFP reiterated that both of those documents should be submitted along with the completed questionnaire. RFP at 81.

Technical Capability Volume

The RFP provided that the agency would assign each technical capability subfactor a technical rating and a risk rating. RFP at 17. For the technical ratings--outstanding, good, acceptable, marginal, or unacceptable--the agency would consider the offeror's approach and understanding of the requirements and an assessment of the strengths,

³ The RFP provided that an outstanding rating indicates a proposal with an exceptional approach and understanding of the requirements and contains multiple strengths; a good rating indicates a proposal with a thorough approach and understanding of the requirements and that the proposal contains at least one strength; an acceptable rating indicates a proposal with an adequate approach and understanding of the requirements; a marginal rating indicates a proposal that has not demonstrated an adequate approach and understanding of the requirements; and an unacceptable rating indicates that the proposal does not meet the requirements of the solicitation and, thus, contains one or more deficiencies and is unawardable. *Id.* at 17.

weaknesses, significant weaknesses, and deficiencies of the proposal.⁴ The RFP advised offerors that the agency would incorporate into the contract the strengths identified during source selection that exceeded the PWS requirements. *Id.* The assessment of technical risk would consider the potential for disruption of schedule, degradation of performance, the need for increased government oversight, or the likelihood of unsuccessful contract performance. *Id.* at 18. The risk rating would be heavily dependent on whether a proposal contained weaknesses, significant weaknesses, or deficiencies. *See id.* at 17-18. Possible risk ratings were low, moderate, high, and unacceptable. *Id.* A low risk proposal “may contain weakness(es) which have little potential to cause disruption of schedule, increased cost or degradation of performance.” *Id.* at 18. In contrast, a proposal with a moderate or high risk rating “contains a significant weakness or combination of weaknesses.” *Id.*

Under the capacity and subcontractor management subfactor, the RFP required offerors to submit a detailed plan demonstrating how the offeror would manage move capacity and subcontractors throughout contract performance. *Id.* at 82. The plan was required to identify and describe the offeror’s approach to: securing capacity during peak and non-peak seasons; soliciting subcontractors, and establishing the criteria for award of subcontracts; managing subcontractor performance, “to ensure the highest quality during the move”; soliciting small business participation to meet or exceed the solicitation’s requirements; and managing international shipments requiring air and ocean shipments. *Id.* at 82-83. The challenge for offerors was to propose a method for securing sufficient high-quality capacity, during periods of peak and non-peak demand, and across more and less desirable routes. *See id.*

Under the transition/volume phase-in subfactor, the offeror was required to describe how it would meet the RFP’s requirements during the transition period and the volume phase-in period. For the transition period, offerors were to explain how they would

⁴ The agency explained that the adjectival technical rating “involved a bifurcated analysis.” Contracting Officer’s Statement (COS) at 10. That is, “two separate analyses were conducted when determining the Technical Rating: 1) the approach and understanding of the requirements; and 2) the number of Strengths or Deficiencies.” COS at 10. Thus, for a proposal to obtain a technical rating of outstanding under a particular technical capability subfactor, the proposal “must have 1) indicated an exceptional approach and understanding of the requirements **and** 2) contained multiple strengths.” *Id.*

The RFP defined a strength as an aspect of an offeror’s proposal that had merit or exceeded specified performance or capability requirements in a way that would be advantageous to the government during contract performance. A weakness was defined as a proposal flaw that increased the risk of unsuccessful contract performance. A significant weakness was defined as a proposal flaw that appreciably increased the risk of unsuccessful contract performance. A deficiency was defined as a material failure of a proposal to meet a government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level. *Id.* at 17-18.

transition from the agency's legacy IT system to the offeror's system, including related requirements such as training and cybersecurity. For the volume phase-in period, offerors were to describe their approach and timelines for becoming fully operational, and providing complete global HHG relocation services. *Id.* at 83. The solicitation advised offerors that the agency "intend[ed] to transfer responsibility for complete, global HHG relocation services" to the awardee via a phased approach. AR, Tab 17, RFP append. A, Transition Phase-In/Phase-Out, amend. 13, at 3-4. The phase-in was to be conducted in four steps, each step comprising 25 percent of the requirement. See *id.* at 4.

Under the IT services subfactor, the offeror was required to provide a technical approach to meet the web-based, mobile access requirements of PWS paragraph 1.2.2. The offeror was also required to provide a functional/operational design diagram of the proposed IT system capabilities. Offerors selected for the competitive range would have an opportunity to demonstrate, through 1-hour oral presentations, their IT and mobile capabilities, and to illustrate and amplify the capabilities set out in their written proposals. The oral presentations would be evaluated based on the same criteria as the written proposals. RFP at 83. At the conclusion of each oral presentation, the agency would "hold a Question and Answer (Q&A) session" of not more than one hour "to address the Government's questions and/or concerns regarding the Offeror's presentation/demonstration." *Id.* at 83-84.

Past Performance Volume

Each offeror's past performance proposal was to contain no more than three past performance references for the offeror--that is, the prime contractor or joint venture--and no more than nine subcontractor past performance references. All references were to involve work performed within the previous three calendar years and similar in nature to the current requirement. *Id.* Offerors were also required to submit past performance documentation demonstrating their ability to meet small business goals under contracts for which a subcontracting plan was required within the previous three calendar years. *Id.* at 84. The agency's evaluation of past performance is not at issue in this protest.

Price Volume

Offerors were required to complete RFP attachment 2, pricing rate table. *Id.* at 85. The pricing rate table instructed offerors to propose peak and non-peak service prices for various total evaluated price (TEP) and non-TEP tasks, including domestic and international transportation, packing and unpacking, and storage. See AR, Tab 5, RFP attach. 2, Pricing Rate Table, amend. 6. The agency would evaluate price for completeness, and the proposed price would be considered complete if the offeror entered a proposed price in all cells with a light blue background in the pricing rate table. RFP at 20. To be eligible for award, an offeror's TEP must have been considered fair and reasonable using one or more of the techniques set forth in FAR section 15.404-1(b)(2). Prices not included in the TEP, as identified in the pricing rate table, would also be evaluated for fairness and reasonableness. The RFP advised offerors that the agency might find a price proposal unacceptable if the prices proposed

were materially unbalanced. The solicitation advised that unbalanced pricing exists when, despite a fair and reasonable TEP, the price of one or more line items is significantly overstated or understated and poses an unacceptable risk to the agency. *Id.*

Prior Award Decisions and Protests

The agency received proposals from seven offerors, including Connected Global Solutions, LLC (CGSL), HomeSafe, and ARC. *HomeSafe Alliance, LLC*, B-418266.5 *et al.*, Oct. 21, 2020, 2020 CPD ¶ 350 at 6. Following the initial evaluation, four proposals, including those of the three firms identified above, were included in the competitive range. *Id.* The Air Force determined that ARC's proposal represented the best value to the agency, and the contracting officer determined that ARC was a responsible contractor. *Id.* at 7. Following the responsibility determination, the agency made award to ARC. HomeSafe and CGSL protested that award with our Office.⁵ Prior to the due date for the agency reports on the protests, the agency took corrective action; our Office dismissed both of the pending protests. See *Connected Global Sols., LLC*, B-418266.2, June 16, 2020 (unpublished decision); *HomeSafe Alliance, LLC*, B-418266.3, June 16, 2020 (unpublished decision).

The agency reevaluated proposals and again found ARC's proposal to represent the best value to the government. *HomeSafe Alliance, LLC*, B-418266.5 *et al.*, *supra* at 10. After a second responsibility determination, the contracting officer again found ARC to be a responsible contractor and made award to ARC for a second time. *Id.*

HomeSafe and CGSL protested that award with our Office. We sustained both protests. See *HomeSafe Alliance, LLC*, B-418266.5 *et al.*, *supra* at 1-2 (sustaining protest on the following grounds: the contracting officer's affirmative determination of the awardee's responsibility failed to consider pertinent information; the agency conducted misleading discussions; the agency failed to adequately document oral presentations and the related discussions; and the agency disparately evaluated technical capability proposals); *Connected Global Solutions, LLC*, B-418266.4, B-418266.7, Oct. 21, 2020, 2020 CPD ¶ 349 at 1-2 (sustaining protest on the following grounds: the contracting officer's affirmative determination of the awardee's responsibility failed to consider pertinent information; the agency failed to adequately document oral presentations and the related discussions; the record did not provide a basis for finding that the conduct of discussions was fair; and the agency disparately evaluated technical capability proposals).

Latest Corrective Action, Responsibility Determination, and Award

⁵ Those two protests were not the first in this procurement. The first protest was a preaward challenge to the terms of the solicitation. GAO dismissed that protest when the agency took corrective action by agreeing to revise the solicitation to address an ambiguity. See *Hi-Line Moving Servs., Inc.*, B-418266, Dec. 11, 2019 (unpublished decision).

For its reevaluation after the decisions sustaining the protests of the earlier award, the agency staffed a new evaluation team and provided it with enhanced training. COS at 3. In particular, the training included a “Lessons Learned From Protest” slide which indicated that the team must “complete **both** steps of the bifurcated analysis to determine an offeror’s adjectival rating” and that “[s]trengths must **both** have merit or exceed specified performance or capability requirements and be done in a way that is advantageous to the Government.” *Id.* at 3-4, *quoting* AR, Tab 373, Technical Team Training⁶, at 27. Because GAO had sustained the protests, in part, on the basis that USTRANSCOM had inconsistently assigned proposal strengths, the training emphasized the definition of “strength.” COS at 5-6, *citing* RFP at 17 (other citations omitted). The source selection evaluation board (SSEB) Chairperson states that the evaluation team members were “specifically advised not to consider the previous technical evaluation, to the point that the technical team did not have access to any previous source selection documentation.” AR, Tab 375, decl. of SSEB Chairperson at 3. The agency made other alterations to evaluation process and to the conduct of discussions. See COS at 3-6.

After receiving final proposal revisions on August 11, 2021, USTRANSCOM evaluated the proposals of HomeSafe and ARC as acceptable under the business proposal and past performance factors. AR, Tab 315, SSEB Report at 12, 14. The SSEB report summarized the final evaluation ratings for the proposals of HomeSafe and ARC under the technical capability factor and the proposals’ prices as shown below:

Technical Capability Subfactors		ARC	HomeSafe
Subfactor 1: Operational Approach	Technical Rating	Good	Acceptable
	Risk Rating	Low	Low
Subfactor 2: Capacity & Subcontractor Management	Technical Rating	Acceptable	Good
	Risk Rating	Low	Low
Subfactor 3: Transition/Volume Phase-In	Technical Rating	Acceptable	Acceptable
	Risk Rating	Low	Low
Subfactor 4: IT Services	Technical Rating	Acceptable	Good
	Risk Rating	Low	Low
Total Evaluated Price (TEP) ⁷		\$19,533,278,941	\$17,908768,040

Id. at 16.

The Source Selection Advisory Council (SSAC) conducted a comparative analysis of the three proposals. See AR, Tab 365, SSAC Report. Comparing the proposals of ARC and HomeSafe, the SSAC noted that “[t]here are two (2) technical sub-factors

⁶ The Technical Team Training slides were attachment 1 to the declaration of the SSA. See AR, Tab 372, decl. of SSA.

⁷ The agency determined both TEPs to be fair and reasonable. *Id.* at 7, 14.

(Operational Approach and Transition/Volume Phase-In) in which ARC's proposal was determined to be more advantageous." *Id.* at 357. The SSAC further noted that "HomeSafe's proposal was determined to be more advantageous in the remaining two (2) technical sub-factors (Capacity and Subcontractor Management and IT Services)." *Id.* "Consequently," the SSAC stated, the proposals of "ARC and HomeSafe were both determined to be more advantageous in the same number of [equally-weighted] technical sub-factors." *Id.* The SSAC asserted that "[t]he combined magnitude of the difference between the proposals under the Sub-Factors where HomeSafe was determined to be more advantageous ([capacity and subcontractor management and IT services]) is roughly equivalent to the combined magnitude of the difference between the proposals under the Sub-Factors where ARC was determined to be more advantageous ([operational approach and transition/volume phase-in])." *Id.* at 358. The SSAC thus determined the proposals of ARC and HomeSafe to be "roughly equivalent from a Technical Proposal standpoint." *Id.*

After completing its comparative analysis of all three proposals, the SSAC determined HomeSafe's proposal provided a better value to the government than the other two proposals; the SSAC thus recommended contract award to HomeSafe. AR, Tab 365, SSAC Report at 544.

The source selection authority (SSA) read the SSEB and SSAC Reports and accepted their findings and recommendations. AR, Tab 366, Source Selection Decision Document (SSDD) at 1. The SSA noted that, "[a]s described in the SSAC Report, ARC and HomeSafe had roughly equivalent Technical Proposals." *Id.* at 2. Based on the "qualitative comparative assessment of ARC and HomeSafe's Technical Proposals," the SSA "concur[ed] with the SSAC's determination that ARC and HomeSafe's Technical Proposals are considered roughly equivalent." *Id.* The SSA determined that award should be made to HomeSafe, as the offeror proposing the lower price. *Id.* at 20.

Responsibility Determination and New Award

After the SSA determined that award should be made to HomeSafe, the contracting officer considered HomeSafe's responsibility. The FAR provides that, prior to contract award, the contracting officer must make a determination that the prospective awardee is a responsible contractor. FAR 9.103(b). In making the responsibility determination, the contracting officer must determine, among other things, that the contractor has adequate financial resources and "a satisfactory record of integrity and business ethics." FAR 9.104-1(a), (d).

USTRANSCOM requested that a contractor for the Office of the Secretary of Defense, Exiger, conduct a “risk assessment” into HomeSafe. AR, Tab 361, Review of Exiger Report⁸, at 1. The agency explains that while “the performance work statement of the Exiger contract was not developed for purposes of collecting information related to Responsibility Determinations,” the agency nevertheless “believed the contract could assist it in conducting the FAR Part 9.103(b) Responsibility Determination.” Supp. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 124. Exiger’s report discussed the following risk assessments: foreign ownership, control, and influence (FOCI), operational, supply chain, reputational, and cyber security. AR, Tab 361, Review of Exiger Report, at 1.

Exiger found that HomeSafe’s “ultimate beneficial owners (KBR and Sun Capital) have extensive foreign exposure, with locations in high-risk jurisdictions like China, Russia, Azerbaijan, and Kazakhstan.” *Id.*, Exiger Report at 24. Exiger reported that, “[w]hile KBR’s presence in these locations is frequently tied to its performance on U.S. Government contracts, Sun Capital’s foreign exposure arises largely through its investments, including two portfolio companies in China, one in Hong Kong, and one in Russia.” *Id.* Exiger further noted that “Sun Capital’s investment partners also include foreign governments, including the Russian government and Russian state-owned companies.” *Id.* Exiger reported that Sun Capital Fund VI, the fund with ownership in HomeSafe, has “176 undisclosed beneficial owners, and the fund disclosed it is 58% beneficially owned by non-U.S. persons.” *Id.*

The Exiger Report concluded that “Sun Capital’s foreign investments expose that company and its personnel to foreign influence risks.” *Id.* at 19. Exiger found that “Sun Capital’s investments in high-risk jurisdictions like China or Russia create exposure and potential vulnerability to foreign intelligence targeting operations.” *Id.* Exiger advised the Air Force that “[a] determined foreign intelligence activity could elicit valuable operational information from tracing the movements of U.S. military and special forces personnel around the U.S. or the world.” *Id.*

The agency acknowledged that the Exiger report had assessed HomeSafe’s FOCI Risk ‘Medium-High,’ but USTRANSCOM “[did] not concur with said assessment.” *Id.*, Review of Exiger Report at 4. The agency explained that “the Government has determined that Sun Capital Partners is not a principal of HomeSafe.” *Id.* The agency asserted that, “[a]lternatively, the Government has determined there to be no nexus between Sun Capital Partners’ fund which invests money in Tier One Relocation LLC and any possible foreign-based influence.” *Id.*

The Exiger Report also examined what it called HomeSafe’s operational risk. *See id.*, Exiger Report at 54. Exiger reported that Tier One Relocation--a firm with 49

⁸ The document at tab 361 contains the agency’s review of Exiger’s report followed by the report itself. Tab 361 citations will be either to the “Review of Exiger Report” or to the “Exiger Report.” The Exiger Report is unnumbered; citations are to the Adobe pdf pages of tab 361.

employees as of December 2020--had a "Commercial Credit Stability Risk rating" of "Medium-High" and a "Commercial Credit Delinquency Risk rating" of "Medium." *Id.* USTRANSCOM "acknowledge[d] the overall 'Medium-High' risk assessment associated with Sun Capital Partners." *Id.*, Review of Exiger Report at 7. However, the agency found that its determination that Sun Capital Partners was not a principal of HomeSafe "negat[ed] the perceived risk associated with said information." *Id.* Thus, the agency stated, "no further response or action is found to be necessary as it pertains to the conclusion [that Sun Capital Partners had an overall 'Medium-High' risk]." *Id.*

USTRANSCOM also noted that the Exiger report had assessed Tier One Relocation LLC's operational risk from a financial standpoint. *Id.* at 12. The agency concluded, however, that, "pursuant to FAR 9.104-3(a),⁹ 'an exception applies which negates the requirement to determine that the Offeror has 'adequate financial resources.'" *Id.* The responsibility determination explained that "[b]ecause HomeSafe proposes to perform the contract by subcontracting, as evidenced in its Technical Proposal, no evidence of the prospective contractor's ability to obtain the required financial resources is required." AR, Tab 358, Responsibility Determination at 1. Thus, the agency "determined no further response or action to be necessary as it pertains to [Exiger's finding that Tier One Relocation has a 'Medium-High' 'Commercial Credit Stability Risk rating']." AR, Tab 361, Review of Exiger Report at 12.

Award was made to HomeSafe, and ARC protested that award to our Office.¹⁰

DISCUSSION

ARC challenges the agency's determination that HomeSafe is a responsible contractor, asserts that the agency's evaluation of technical and price proposals was unreasonable, and argues that the agency conducted a flawed best-value tradeoff analysis. We consider these arguments and find them to be without merit.¹¹

⁹ Under FAR section 9.104-3(a), the contracting officer is required to assess whether a contractor has sufficient resources, proposes to perform the requirement through subcontracting, or has the ability to obtain the resources.

¹⁰ CGSL also protested the award of this contract. That protest is the subject of a separate decision.

¹¹ While we do not discuss every allegation, we considered them all and found none to have merit. The protester advances several arguments that amount to disagreement with the agency's evaluation. A protester's disagreement with the agency's judgment in its determination of the relative merit of competing proposals, without more, does not establish that the evaluation was unreasonable. *Armedia, LLC, B-415525 et al.*, Jan. 10, 2018, 2018 CPD ¶ 26 at 4. For example, ARC contends that the agency should have evaluated the protester's unique plan to launch an [DELETED] as a strength. Protest at 26-27. The agency argues that, "while the Government did not assess this approach to warrant the assignment of a strength, the Government did consider this aspect of ARC's approach to 'contribute[d] to its deep and meaningful

USTRANSCOM's Responsibility Determination of HomeSafe

ARC asserts two challenges to the agency's conclusion that HomeSafe is a responsible contractor. First, the protester contends that the agency unreasonably ignored the national security risks--known as foreign ownership, control, or influence (FOCI)--identified in the Exiger risk assessment regarding HomeSafe's ownership structure. Comments and Second Supp. Protest at 55. Second, ARC asserts that USTRANSCOM's responsibility determination failed to conduct an analysis--required under the FAR--of whether HomeSafe has adequate financial resources to perform the contract. *Id.* at 66, *citing* FAR 9.104-3(a). As discussed below, we find neither of these allegations to have merit.¹²

As noted above, the FAR provides that contract award may not be made unless the contracting officer makes an affirmative determination of the prospective awardee's responsibility. FAR 9.103(b). In making the responsibility determination, the contracting officer must determine, among other things, that the contractor has "a satisfactory record of integrity and business ethics." FAR 9.104-1(d). In most cases, responsibility determinations involve subjective business judgments that are within the broad

approach and understanding of the requirement,' with respect to PWS § 1.2.3. (Customer Support)." COS at 29, *quoting* AR, Tab 318, SSEB Evaluation, ARC Technical Capability Proposal, Operational Approach Subfactor at 5-6. ARC's continued assertion that it--not the agency--should determine what proposal features qualify as strengths, provides no basis on which to question the reasonableness of the agency's evaluation. See Comments and Second Supp. Protest at 27

¹² ARC raises new challenges to the agency's responsibility determination in its Comments on the Supp. COS/MOL. As discussed below, ARC initially asserted that the agency unreasonably ignored national security risks and failed to conduct a FAR-mandated analysis of whether HomeSafe has adequate financial resources to perform the contract. Comments and Second Supp. Protest at 55, 66. In its comments on the supplemental agency report, ARC alleges, for the first time, that: the agency failed to consider the information that the agency requested and received regarding HomeSafe's responsibility; that the agency ignored possible foreign access to personally identifiable--and other unclassified--information; and numerous other specific factual and legal grounds. Comments on Supp. COS/MOL at 49, 55.

HomeSafe asserts that these allegations are untimely. Intervenor's Brief, Feb. 2, 2022, at 2, *citing* *Peraton, Inc.*, B-417088, Feb. 6, 2019, 2019 CPD ¶ 190 at 17 (noting that GAO's Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety). Here, ARC asserts numerous new alternate legal arguments--involving different facts--that were available to the protester at the receipt of the agency report. Because these allegations were not asserted until ARC's comments on the supplemental agency report, we agree with HomeSafe that these challenges to the adequacy of the agency's responsibility determination are untimely, and we dismiss them.

discretion of the contracting activity. *Mountaineers Fire Crew, Inc., et al.*, B-413520.5 *et al.*, Feb. 27, 2017, 2017 CPD ¶ 77 at 10. GAO will review challenges to an agency's affirmative responsibility determination when the protester presents specific evidence that the contracting officer may have unreasonably ignored information that, by its nature, would be expected to have a strong bearing on whether the agency should find the awardee responsible. 4 C.F.R. § 21.5(c); see *Southwestern Bell Tel. Co.*, B-292476, Oct. 1, 2003, 2003 CPD ¶ 177 at 10-11. The information in question must concern very serious matters, for example, potential criminal activity or massive public scandal. *IBM Corp.*, B-415798.2, Feb. 14, 2019, 2019 CPD ¶ 82 at 11.

FOCI Risk

ARC first asserts that the contracting officer failed to consider information concerning the awardee's FOCI risk. Comments and Second Supp. Protest at 55. The protester contends that HomeSafe's parent companies are "engaged in business relationships in 'high-risk jurisdictions' that [make] HomeSafe uniquely susceptible to espionage from adversaries such as Russia and China." *Id.* ARC repeatedly alleges that "hostile nations could obtain advance notice of military and special forces deployments" based on the troop movements that are at the center of this requirement. Comments and Second Supp. Protest at 8; see *also id.* at 58 (arguing that the agency "essentially ignored" "a real risk of foreign influence and espionage, including advance notice of military and special forces deployments"). In response, the agency contends that neither the RFP nor the FAR required a FOCI analysis as part of the responsibility determination, and that, in any event, the contract does not implicate FOCI concerns. Moreover, USTRANSCOM argues that "GAO has not examined FOCI as a very serious matter which must be considered during an affirmative responsibility determination in the performance of unclassified contracts." Supp. COS/MOL at 128.

Federal regulations provide that an entity will be considered to be "under FOCI" when "[a] foreign interest has the power to direct or decide issues affecting the entity's management or operations in a manner that could either: (A) Result in unauthorized access to classified information; or (B) Adversely affect performance of a classified contract or agreement." 32 C.F.R. 117.11(a)(1).¹³

As an initial matter, we agree with the agency that the terms of the RFP did not require it to conduct a FOCI analysis as part of its responsibility determination. See Suppl. COS/MOL at 129-130. While an agency may include a special responsibility criterion pursuant to FAR section 9.104-2(a)¹⁴ prohibiting the participation of foreign firms or U.S. companies determined to be under FOCI, see *A. Finkl and Sons, Co. DBA Finkl Steel*,

¹³ While the protester alleges that award to HomeSafe could lead to national security risks, ARC does not assert that the alleged foreign influence would adversely affect performance of the contract. See Comments and Second Supp. Protest at 55-66.

¹⁴ The FAR provides that, "[w]hen it is necessary for a particular acquisition or class of acquisitions, the contracting officer shall develop, with the assistance of appropriate specialists, special standards of responsibility." FAR 9.104-2(a), Special Standards.

B-416582.4, Dec. 10, 2018, 2018 CPD ¶ 415 at 2, this solicitation contained no such special responsibility criterion. See RFP at 29-36. In addition, ARC has provided no legal support for its assertion that the agency was required by the FAR to consider FOCI concerns when determining HomeSafe to be a responsible contractor, and we are not aware of any.

Moreover, the agency argues that award of this requirement to HomeSafe does not give rise to FOCI concerns because the solicitation and the resulting contract are not classified. USTRANSCOM contends that “[t]his is not a contract for the movement of troops, material, and Special Forces in support of contingency or wartime operations.” Supp. COS/MOL at 131. Rather, the agency argues, “[t]he GHC contract is a contract for the movement of couches, TVs, and dishes to established, publicly-known US military bases worldwide.” *Id.*; see AR, Tab 4, PWS ¶ 1.2.6.3 (requiring the contractor to “prepare, pack/unpack and load/unload all personal property to protect all real and personal property against loss and/or damage”). Unlike contingency operations, the agency argues that the moves required under this contract are “predictable, stable, and occur on [a] regular basis.” Supp. COS/MOL at 131.

As evidence of that, the agency notes that the solicitation included historical data to assist offerors in planning their operational approaches. *Id.*, citing RFP at 82, 86; see AR, Tab 15, RFP attach. 10, Historical Documents (containing 78 documents with 6 years’ worth of historical data). The contracting officer contends that, “[h]ad there been any classified sensitivity whatsoever with respect to the movement of GHC customers, USTRANSCOM would not have been able to publicly share its historical data.” Supp. COS/MOL at 116. Ultimately, USTRANSCOM argues the GHC contractor’s advanced knowledge of routine, predictable Permanent Change of Station movements of DOD employees to military bases with a U.S. military presence is simply not classified information. Supp. COS/MOL at 116. USTRANSCOM explains that the off-the-shelf “illumination” provided by Exiger “inherently included various areas, one of which being FOCI,” and the agency contends that, notwithstanding that “a FOCI risk assessment was included in Exiger’s report, FOCI is not applicable to GHC.”¹⁵ Supp. COS/MOL at 116.

The content of the RFP, and not the unsupported assumptions of the Exiger report, provide evidence of whether the contract provides access to classified information.¹⁶

¹⁵ The agency also contends that the foreign ownership of Sun Capital Partners is so broadly distributed, and the funds from it so widely dispersed, that “any realistic possibility of foreign control or influence over Sun Capital Partners, let alone Tier One Relocation LLC, as recipient of capital from the fund” is “effectively eliminate[d].” AR, Tab 361, Review of Exiger Report at 2. Because the agency reasonably concluded that performance of this contract would not lead to unauthorized access to classified material, we do not address this argument.

¹⁶ ARC relies exclusively on statements in the Exiger report as support for the protester’s assertion that the contract could provide Russian and China “an open line on troop and special forces movements.” Comments and Second Supp. Protest at 59,

The agency notes that the solicitation is not classified and that the contract will not be classified. USTRANSCOM notes further that voluminous historical information on troop movements--which was to be used to anticipate the requirements of this contract--was included as part of the solicitation. On this record, we find no basis to disagree with the agency's position that performance of this contract will not "[r]esult in unauthorized access to classified information." 32 C.F.R. 117.11(a)(1)(i)(A). As discussed above, neither the FAR nor the RFP required a FOCI analysis as part of the contracting officer's responsibility determination. Even if such an analysis were required, we find no merit to the allegation that the contracting officer ignored information related to an unmitigated FOCI issue when determining HomeSafe to be a responsible contractor.

Financial Risk

ARC also argues that FAR section 9.104-3(a) requires agencies to evaluate whether the awardee has "acceptable evidence of the prospective contractor's ability to obtain required resources" to perform the contract, except to the extent that the awardee proposes to entirely perform the contract by subcontracting. Comments and Second Supp. Protest at 66. The contracting officer, in the responsibility determination, noted the FAR requirement that, "[e]xcept to the extent that a prospective contractor has sufficient resources or proposes to perform the contract by subcontracting, the contracting officer shall require acceptable evidence of the prospective contractor's ability to obtain required resources." AR, Tab 358, Responsibility Determination at 1, *quoting* FAR 9.104-3(a). The contracting officer contends that, "because 'HomeSafe proposes to perform the contract by subcontracting, as evidenced in its Technical Proposal, no evidence of the prospective contractor's ability to obtain the required financial resources is required.'" COS at 140, *quoting* AR, Tab 358, Responsibility Determination at 1.

As noted above, GAO will review challenges to an agency's affirmative responsibility determination when the protester presents specific evidence that the contracting officer may have unreasonably ignored information that, by its nature, would be expected to have a strong bearing on whether the agency should find the awardee responsible. 4 C.F.R. § 21.5(c); *see Southwestern Bell Tel. Co., supra*. The information in question must concern very serious matters, for example, potential criminal activity or massive public scandal. *IBM Corp., B-415798.2, supra*.

The agency asserts that GAO does not review allegations that offerors lack the resources required for contract performance unless the allegations concern information the contracting officer should have reviewed because they raise very serious matters. Supp. COS/MOL at 123, *citing Marine Terminals Corp.-East, Inc., B-410698.9, Aug. 4,*

citing AR, Tab 361, Exiger Report; *see also* Comments and Second Supp. Protest at 62, *quoting* AR, Tab 361, Exiger Report at 19; Comments and Second Supp. Protest at 65, *quoting* AR, Tab 361, Exiger Report at 6. The Exiger report itself contains a single reference to special forces, *see* AR, Tab 361, Exiger Report at 19, and no documentation supporting the assumption that the contract includes the movement of special forces.

2016, 2016 CPD ¶ 212 at 11. We agree with USTRANSCOM that ARC's contention that award to HomeSafe creates a risk of unsatisfactory contract performance, given the awardee's allegedly deficient financial position, does not implicate the types of serious matters--such as potential criminal activity or massive public scandal--that trigger our review of an affirmative responsibility determination. This allegation is therefore not for our review, and we dismiss it.

Challenges to the Evaluation of Technical Capability Proposals

ARC raises numerous challenges to the reasonableness of USTRANSCOM's evaluation of technical proposals. The protester asserts that the agency unreasonably evaluated the offerors' proposed methods to minimize layers of subcontracting. ARC argues that the agency unreasonably failed to identify a material misrepresentation in HomeSafe's proposal regarding the level of security that the firm would provide for access to its IT system. ARC contends that the agency disparately evaluated the offerors' proposed approaches to capacity optimization. We consider each of these allegations, and we find that none provides a basis on which to find unreasonable the agency's evaluation of technical proposals.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor will we substitute our judgment for that of the agency; the evaluation of proposals is a matter within the agency's discretion. *Paragon Sys., Inc.; SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 7. The relevant question for our Office, in reviewing this subjective judgment, is whether the evaluation judgment was reasonable and consistent with the solicitation. *Id.* A protester's disagreement with the agency's judgments, without more, is insufficient to render the evaluation unreasonable. *Armedia, LLC, B-415525 et al.*, Jan. 10, 2018, 2018 CPD ¶ 26 at 4. When a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the proposals. See *Paragon Sys., Inc.; SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169, *supra* at 8-9.

Approach to Minimizing Layers of Subcontracting

ARC argues that in evaluating proposals under the capacity and subcontractor management subfactor, the agency unreasonably found that both offerors would minimize layers of subcontracting through their method of assigning subcontracts. ARC contends that, unlike HomeSafe, ARC, as the prime contractor, directly assigns all subcontracts. ARC further argues that it, unlike HomeSafe, proposes no use of intermediaries. We consider these contentions, and, as explained below, find no support for them in the record. We therefore find these allegations to be without merit.

The requirement at issue pertains to the second of five areas that offerors were to address under subfactor 2, capacity and subcontractor management. RFP at 82-83. It states: "2. Offeror's approach to solicit requirements to subcontractors (if applicable) and the selection criteria for award during peak and non-peak seasons, to include specifically how the approach minimizes the necessity for further layers of

subcontracting of physical move activities wherever possible.” *Id.* at 82. The agency found that both offerors would “subcontract directly with [] move providers.” AR, Tab 365, SSAC Report at 287. USTRANSCOM identified this proposal feature as one way to minimize the layers of subcontracting. *Id.*

ARC first asserts that it proposed to “eliminate subcontracting layers” by assigning all orders directly from the “Prime level.” Comments and Second Supp. Protest at 20, *citing* AR, Tab 108, ARC Technical Capability Proposal at 54 (noting that ARC “eliminate[s] the potential for additional subcontracting layers by giving all subcontractors equal opportunity to win business and assigning orders to the most qualified performer directly from the Prime level”). ARC contends that, in contrast, HomeSafe proposed to rely on an intermediary--the [DELETED]--for moves outside the continental United States (OCONUS). *Id.* at 20-21; see AR Tab 251, HomeSafe Technical Capability Proposal at 30 (noting that “[t]he centerpiece of [HomeSafe’s] OCONUS capacity management strategy is our teaming arrangement with the [DELETED] who will serve as General Agent for all OCONUS moves”). Given the different proposed approaches of ARC and HomeSafe, the protester contends that “the Agency incorrectly concluded that both offerors would ‘subcontract directly with [] move providers.’” *Id.* at 20, *quoting* AR, Tab 365, SSAC Report at 287. The agency asserts that it properly evaluated the proposals as similar, because HomeSafe’s proposal “specifically indicates that [HomeSafe] will ‘[e]xecute formal subcontracts with every subcontractor.’” Agency Response to Questions at 2, *quoting* AR, Tab 251, HomeSafe Technical Capability Proposal at 49 (emphasis in comments omitted).

ARC asserts that its proposal states the protester “will eliminate subcontracting layers by ‘assigning orders to the most qualified performer directly from the Prime level.’” Comments and Second Supp. Protest at 20, *quoting* AR, Tab 108, ARC Technical Capability Proposal at 54. The term “Prime level” is used nowhere else in ARC’s proposal, and is thus undefined. See AR, Tab 108, ARC Technical Capability Proposal. ARC contends it’s use of the term “from the Prime level” is an “explicit [proposal] statement[]” that the “**Prime offeror** will subcontract directly with suppliers.” Protester’s Brief, Feb. 17, 2022, at 8.

The record does not support ARC’s assertion. The proposal states that the subcontracts will be issued from the prime level, an undefined proposal term, as opposed to issued by the prime offeror. The term “Prime offeror” is used once in ARC’s proposal to provide the information required under RFP attachment 9. See AR, Tab 108, ARC Technical Capability Proposal at 1 (requiring offeror to “[c]heck the applicable size and the categories for the **PRIME** offeror only”). Thus, ARC’s proposal contains no statement that ARC, as the prime contractor, will assign all subcontracts.¹⁷

¹⁷ Furthermore, the context in which ARC’s proposal uses the term “Prime level” does not support the protester’s claim that ARC, as the prime contractor, issues all subcontracts. As an example, ARC’s proposal states that “Team ARC and [Team ARC’s Affiliated Agent Network (TAAN)] bring all capacity needed to service moves.” AR, Tab 108, ARC Technical Capability Proposal at 54. The “TAAN agents” in Kansas

ARC also contends that HomeSafe's proposal, but not ARC's, relies on the use of intermediaries. Comments and Second Supp. Protest at 20-21. It is clear from HomeSafe's proposal that the awardee's performance uses [DELETED] to facilitate OCONUS moves. See AR, Tab 251, HomeSafe Technical Capability Proposal at 5. HomeSafe contends that ARC's proposal, likewise, uses a general agent for OCONUS contract performance. Intervenor's Brief, Feb. 17, 2022, at 3-4. ARC's proposal states that "Team ARC Partner [DELETED] will bring its vast experience as a general agent to manage and coordinate shipment volumes with [DELETED] agents." AR, Tab 108, ARC Technical Capability Proposal at 50. ARC's proposal goes on to state that "[w]e use [DELETED] to increase capacity by advancing loading/unloading efficiencies, which allows [DELETED]." *Id.* Elsewhere, ARC's proposal states that "[w]e incorporate our in-place safeguards into all Service Level Agreements (SLAs) with associated port agents, overseas general agents, and all responsible parties to ensure the protection of [personally identifiable information] throughout all shipment stages and in all systems." *Id.* at 32. HomeSafe asserts that, "whatever challenges ARC raises regarding the use of a 'general agent' for international moves, ARC's proposal confirms it too will be using 'overseas general agents.'" Intervenor's Brief, Feb. 17, 2022, at 3. The record supports the intervenor's assertion.

Again, the solicitation instructed offerors to minimize layers of subcontracting wherever possible. RFP at 82. USTRANSCOM recognized that both proposals would reduce layers of subcontracting vertically through the use of subcontracting relationships, rather than "move-managers and/or freight forwarders." AR, Tab 365, SSAC Report at 362. As discussed above, the record supports the reasonableness of that finding. ARC's proposal was also recognized for its proposed use of [DELETED]. *Id.* at 363. USTRANSCOM thus found that only ARC's proposal reduced the layers of subcontracting horizontally. *Id.* We agree with the intervenor that "[t]he Agency evaluated the proposals correctly, and that ARC got the credit it claims to deserve" with respect to minimizing layers of subcontracting.¹⁸ Intervenor's Brief, Feb. 17, 2022, at 8. The record provides no basis to find that the agency unreasonably evaluated the offerors' proposals regarding the extent which they minimized layers of subcontracting--where ARC's proposal was evaluated more favorably. Accordingly, this allegation is denied.

are a part of "Team ARC." *Id.* ARC, itself, is not mentioned in this example. See *id.* ARC's proposal states that Team ARC and Team ARC's agents--not ARC itself--are providing the capacity necessary to service moves in Kansas. See *id.*

¹⁸ Nevertheless, USTRANSCOM found that "the additional benefit of reduced layers of subcontracting associated with ARC's proposal does not outweigh the massive customer-oriented benefit associated with HomeSafe's innovative and efficient award management system." AR, Tab 365, SSAC Report at 363.

Material Misrepresentation Allegation

Under the IT services subfactor, offerors were to submit their “technical approach to meet [nine] web-based, mobile access requirements in accordance with PWS paragraph 1.2.2. [Information Technology (IT) Services],” one of which is secure access. RFP at 83. ARC alleges that the agency should have rejected HomeSafe’s proposal because it contains a “material misrepresentation about the impact level to which a key component of its approach to meeting the Secure Access requirement has been authorized.” Comments and Second Supp. Protest at 29. The agency contends that it reasonably evaluated HomeSafe’s proposal under the IT services subfactor. COS at 92-93.

It is well settled that, for a protester to prevail on a claim of material misrepresentation, the record must show that the information at issue is false. *ERIMAX, Inc.*, B-410682, Jan. 22, 2015, 2015 CPD ¶ 92 at 6 (denying that awardee’s proposal materially misrepresented the use of a proposed subcontractor’s name where the protester did not show the representation to be false); *Supreme Foodservice GmbH*, B-405400.6, B-405400.7, Mar. 27, 2013, 2013 CPD ¶ 93 at 8. *Vizada Inc.*, B-405251 *et al.*, Oct. 5, 2011, 2011 CPD ¶ 235 at 9 (denying allegation that proposal contained a material misrepresentation where there was no “convincing evidence” that the protester knew of the imminent replacement of a proposal satellite); *Commercial Design Grp., Inc.*, B-400923.4, Aug. 6, 2009, 2009 CPD ¶ 157 at 6 (denying allegation that awardee’s proposal contained a material misrepresentation where protester’s “doubts” were insufficient support for the claim).

Where a protester speculates that an awardee did not intend to perform the contract as proposed, the awardee fails to demonstrate that the alleged misrepresentation is “false.” *ANHAM FZCO*, B-415969 *et al.*, May 8, 2018, 2018 CPD ¶ 184 at 14. When resolving allegations of material misrepresentation, our Office may consider information raised during the protest that was not reasonably known to the agency during the evaluation. *See, e.g., Patricio Enters., Inc.*, B-412738, B-412738.2, May 26, 2016, 2016 CPD ¶ 145 at 8-9 (considering whether the awardee actually possessed signed employment offers from proposed key personnel); *see also Johnson Controls Sec. Sys.*, B-296490, B-296490.2, Aug. 29, 2005, 2007 CPD ¶ 102 at 11-12 (considering whether the awardee had actually scheduled required certification training as its proposal represented).

As noted above, under the IT services subfactor, offerors were to describe their technical approaches to meeting a number of web-based, mobile access requirements, one of which is secure access. RFP at 83. Paragraph 1.2.2 of the PWS required contractors to “provide and maintain an easy to use, secure, web-based, mobile-device compatible IT system able to manage complete household goods relocation services globally during peak (surge) and non-peak seasons.” To meet the secure access requirement, HomeSafe proposed the use of [DELETED] products and services. AR, Tab 251, HomeSafe Technical Capability Proposal, at 83-84. HomeSafe’s proposal includes the following claim: “As [DELETED] has achieved FedRAMP High compliance, HomeSafe is able to take advantage of [DELETED]’s Authority To Operate (ATO) to

ensure its own FedRAMP compliance.”¹⁹ AR, Tab 251, HomeSafe Technical Capability Proposal, at 83.

ARC asserts that HomeSafe’s proposal misrepresented [DELETED]’s FedRAMP level as high, when the actual rating is medium. Comments and Second Supp. Protest at 30. The intervenor argues that HomeSafe’s proposal accurately conformed to the information publically available from [DELETED], as validated by the experience of the president of HomeSafe’s proposed subcontractor, MoveHQ.²⁰ HomeSafe Brief, Feb. 2, 2022, at 8; *id.*, exh. 1, decl. of MoveHQ Pres. at 1.

MoveHQ’s President explained that “MoveHQ works with both [DELETED] and [DELETED] in the commercial arena and its applications are integrated and operational in the [DELETED] Government Cloud.” HomeSafe Brief, Feb. 2, 2022, exh. 1, decl. of MoveHQ Pres. at 1; see AR, Tab 251, HomeSafe Technical Capability Proposal at 4. HomeSafe--and, more particularly, MoveHQ--leverages “a number of existing, best-in-class technologies to create HomeSafe Connect,” the MoveHQ President explained. HomeSafe Brief, Feb. 2, 2022, exh. 1, decl. of MoveHQ Pres. at 1; see, e.g., AR, Tab 251, HomeSafe Technical Capability Proposal at 79-80, exhs. D-1 and D-2.

As the HomeSafe subcontractor that supplied the awardee with proposal language regarding [DELETED]’s compliance with FedRAMP, MoveHQ’s President states that MoveHQ “drew the assertions from [DELETED]’s website.” HomeSafe Brief, Feb. 2, 2022, exh. 1, decl. of MoveHQ Pres. at 3. MoveHQ’s President explained that MoveHQ revisited [DELETED]’s website and consulted with [DELETED]’s Federal Chief Security Officer in order to reconstruct the information that MoveHQ relied on when providing HomeSafe the disputed proposal language. See *id.* As relevant to this protest allegation, MoveHQ provided the following [DELETED] guidance:

[DELETED]

¹⁹ The Federal Risk and Authorization Management Program (FedRAMP) provides a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services as a prerequisite for use by the federal government. Federal Information Processing Standard (FIPS) 199 provides the standards for categorizing information and information systems, which is the process Cloud Service Providers (CSP) use to ensure their services meet the minimum security requirements for the data processed, stored, and transmitted on them. AR, Tab 427, decl. of Program IT Integration Branch Chief at 3.

²⁰ The MoveHQ President states that “MoveHQ has a widely used [the] commercial move management application that is the foundation of HomeSafe Connect.” HomeSafe Response to Feb. 1 Questions, exh. 1, decl. of MoveHQ Pres. at 1; see AR, Tab 251, HomeSafe Technical Capability Proposal at 61 (noting that “HomeSafe Connect, the backbone of our IT System, currently supports over four times the volume of moves required during GHC peak season. MoveHQ has been supporting commercial moves since 1999 and has demonstrated its scalability by supporting more than 4 [million] moves in 2019 alone.”).

Id. at 2, quoting “[DELETED],” available at [https://www.\[DELETED\].com](https://www.[DELETED].com); see also attach. to decl., [DELETED] pdf, at 1. MoveHQ’s President explains that “[t]he pdf goes on to identify the [DELETED] (internal) settings needed ‘for IL4 or FedRAMP High if needed.’” HomeSafe Brief, Feb. 2, 2022, exh. 1, decl. of MoveHQ Pres. at 2, quoting “[DELETED].” MoveHQ’s President asserts that “[t]he proposal language we crafted regarding [DELETED]’s FedRAMP status closely tracks the language in [DELETED]’s publicly available materials for [DELETED] pdf.” HomeSafe Brief, Feb. 2, 2022, exh. 1, decl. of MoveHQ Pres. at 2-3.

When resolving allegations of material misrepresentation, our Office may consider information raised during the protest that was not reasonably known to the agency during the evaluation. See, e.g., *Patricio Enters., Inc., supra*; see also *Johnson Controls Sec. Sys., supra*. The explanation provided by MoveHQ’s President is the type of pertinent technical information that GAO may use to resolve the validity of disputed proposal claims. As we noted above, for a protester to prevail on a claim of material misrepresentation, the record must show that the information at issue is false. *ERIMAX, Inc., supra*. Considering the explanation provided by MoveHQ’s President, along with the publically available material from [DELETED], we think that HomeSafe’s proposal accurately claimed that the awardee could take advantage of [DELETED]’s ATO to ensure HomeSafe’s FedRAMP high compliance. Because the record does not demonstrate that claim to be false, this allegation is denied. *ERIMAX, Inc., supra*.

Capacity Optimization

ARC contends that the agency assessed a distinction between its proposal and HomeSafe’s, even though the two firms proposed “substantively indistinguishable approaches to optimize capacity,” with the only apparent difference being the agency’s perception that HomeSafe could achieve a [DELETED] percent increase in capacity. Comments on Supp. COS/MOL at 14; Comments and Second Supp. Protest at 17-19. In this regard, the agency “assessed the Offerors’ approach with respect to securing capacity to be roughly equivalent, but assessed HomeSafe’s approach with respect to leveraging [DOD] volume to optimize capacity to be more advantageous than ARC’s approach to [do the] same.” AR, Tab 365, SSAC Report at 276. The protester contends that the “Agency was unable to identify any specific differences between the proposals,” and the finding that HomeSafe’s proposal was more advantageous than ARC’s is unreasonable. Comments on Supp. COS/MOL at 31.

The SSAC report describes, in some detail, a key difference between the proposals with respect to leveraging DOD volume. See AR, Tab 365, SSAC Report at 275. The agency notes that the “HomeSafe [model] described a procedure that [DELETED].” *Id.* HomeSafe’s proposal, the agency noted, “provided an illustration comparing three moves under the ‘current state’ vs. [DELETED] under its ‘future state’ approach.” *Id.* The agency determined that “HomeSafe’s details with respect to [DELETED] demonstrated a heightened understanding of the Government’s requirement and provided a keen understanding of the Offeror’s capacity analysis and how it will optimize its capacity based on leveraging [DOD] volume.” *Id.* HomeSafe’s proposal described

the results of the awardee's analytics and indicates "that its optimization technique equates to an approximate [DELETED]% increase in capacity." *Id.* The agency found that the details provided in HomeSafe's proposal "enable the Government to fully ascertain how HomeSafe will improve its capacity [DELETED]." *Id.*

The protester argues the awardee's results are "illusory" because the model has not been used. Comments and Second Supp. Protest at 18. The protester further asserts that this one difference between the proposals is "meaningless," because it "is based on no actual data." Comments on Supp. COS/MOL at 31. In this regard, HomeSafe's proposal, describing its proposed model and estimate for future volume capacity, states: "Based on USTRANSCOM's historical move data, our [DELETED] determined that [DELETED] additional capacity is made available through the use of power lanes." AR, Tab 251, HomeSafe Technical Capability Proposal at 7 (emphasis removed). The proposal made clear that the model was utilizing historical move data, and the evaluators understood that the estimate was the result of the demonstration of HomeSafe's "model." See AR, Tab 365, SSAC Report at 275. HomeSafe's proposal "describe[ed]" a "tool," and in the agency's view set "forth meaningful details regarding how [that tool] is constantly [DELETED]" in order "to [DELETED]." *Id.* The record demonstrates that the agency had a reasonable understanding of HomeSafe's proposal, namely, that the awardee's software was a tool that, as demonstrated using historical data, could drive capacity efficiencies.

HomeSafe argues that its proposal "explains that the estimate is based on a 'pre-award investment in [DELETED] to increase capacity through expanded use of shipment [DELETED],' and that HomeSafe's [DELETED]." Intervenor's Comments on Supp. COS/MOL at 23, *quoting* AR, Tab 251, HomeSafe Technical Capability Proposal at 37. The protester contends that HomeSafe's approach "offers nothing additional to ARC's approach to consolidate data into software to optimize shipment routes," Comments and Second Supp. Protest at 18, without explaining how its software will provide comparable benefits to the agency. See *id.*; see also AR, Tab 365, SSAC Report at 275 (explaining unique features of HomeSafe's proposed software that, in the agency's view, provide greater benefit to USTRANSCOM than ARC's proposed approach).

While both proposals use historical data to develop computer models to increase capacity, their models and their results differ. *Compare* AR, Tab 365, SSAC Report at 273 (noting that ARC's proposal "provides general details on its use of its [DELETED] software and how the usage of said software will assist in leveraging volume during peak season") *with id.* at 274 (noting that "HomeSafe's proposal incorporates a consolidated discussion of its approach to secure capacity to manage services during peak and non-peak seasons and how it intends to leverage DoD volume to improve capacity"). The record demonstrates that the difference in evaluations was driven by differences in proposals; ARC's disagreement with the agency's weighing of the relative benefits of the proposals provides no basis on which to sustain the protest.

Price Reasonableness Evaluation

ARC asserts that the agency's price reasonableness analysis was flawed because it was based on the proposed prices of the seven initial offerors, three of whom were subsequently excluded from the competitive range. Comments and Second Supp. Protest at 46-47, *citing* AR, Tab 323, Price Analysis at 2 (identifying "data sources" for the price analysis as "the competitive prices received from seven offerors in response to the solicitation"); AR, Tab 324, Competitive Range Determination at 14 (creating a competitive range of ARC, HomeSafe, CGSL, and one other offeror)²¹. ARC asserts that, although the agency found serious flaws in the prices submitted by all seven initial offerors, the agency nevertheless used these prices to establish the benchmarks that the agency depended on "as the sole basis to evaluate all future pricing." Comments and Second Supp. Protest at 47. The protester contends that USTRANSCOM's decision to calculate benchmarks for its price evaluation using pricing data from the seven initial offerors was unreasonable. *Id.*

The solicitation advised offerors that the agency would evaluate price reasonableness using one or more of the techniques set forth in FAR section 15.404-1(b)(2). RFP at 20. One of several options available to the agency included the comparison of the proposed prices received, because "[n]ormally, adequate price competition establishes a fair and reasonable price." FAR 15.404-1(b)(2)(i), (vi). The agency's price reasonableness analysis compared the proposed prices received and found ARC's price to be fair and reasonable. AR, Tab 323, Price Analysis at 64.

ARC contends that the agency, when creating its reasonableness benchmark, was required to exclude from consideration prices offered by firms not included in the competitive range. See Comments and Second Supp. Protest at 51. In support of its argument, the protester cites *Lifecycle Constr. Servs., LLC*, B-406907, Sept. 27, 2012, 2012 CPD ¶ 269, which, ARC maintains, stands for the "straightforward principle: a benchmark based on unacceptable pricing is an unacceptable benchmark." *Id.* at 47. USTRANSCOM argues that its price evaluation was reasonable, equal, and consistent with the solicitation's stated terms. Supp. COS/MOL at 86.

ARC misreads our decision in *Lifecycle Construction Services*, which involved circumstances not present here. In that case, offerors proposed price coefficients, and, as part of its price realism analysis, the agency calculated the median of the coefficients proposed.²² In its calculation of the median, the agency included price coefficients that the agency knew to be "unreasonably high," and other price coefficients from offerors whose proposals "were determined to be unacceptable or ineligible for award." *Id.* at 8. One price coefficient that the agency knew to be unreasonably high was 65 percent

²¹ The fourth offeror included in the competitive range subsequently removed itself from the competition. AR, Tab 324, Competitive Range Determination at 14.

²² Price reasonableness is a measure of whether a price is too high, not whether it is too low. *Bannum, Inc.*, B-408838, Dec. 11, 2013, 2013 CPD ¶ 288 at 4. Whether a proposed price is too low concerns price realism. *Id.*

above the government estimate. *Id.* at 4. The median was then used in a price realism analysis that found the protester's price unrealistic. *Id.* at 5. The facts that led to our decision in *Lifecycle* are not present here.

Specifically, in *Lifecycle*, the agency expressly concluded that certain of the offerors' prices (coefficients) used in calculating the median price (coefficient) were drawn from proposals whose prices should not reasonably have been included in the calculation. Here, there is no basis in the record to conclude that any of the proposals excluded from the competitive range had been found "unreasonably high," as in *Lifecycle*. There is also no basis to conclude that the proposals were in any way "unacceptable or ineligible for award," as in *Lifecycle*. For these reasons, among others, we see no basis to find improper the agency's determination to use the prices of all the offerors--including those not included in the competitive range--to calculate benchmarks for its price reasonableness evaluation.

ARC also relies on our decision in *AvKARE, Inc.*, B-417250, Apr. 18, 2019, 2019 CPD ¶ 236, in which we considered a price reasonableness--not realism--analysis. Again, ARC asserts an overly broad application of the decision. In *AvKARE*, the agency included in its price evaluation benchmark "prices from products manufactured by non-designated countries, despite the RFP's prohibition on offers comprised of such products." *Id.* at 3. The only other factor that the agency used to determine price reasonableness was the price of the one other offeror that "was found technically unacceptable for failure to obtain a letter of commitment from a manufacturer committing to an uninterrupted source of sufficient supply." *Id.* at 4. In other words, the record in *AvKARE* "demonstrate[d] that the agency's price analysis relied exclusively on comparisons of *AvKARE*'s proposed price to two benchmark prices that could not properly form the basis of award under the solicitation." *Id.*

Lifecycle Construction Services, LLC, and *AvKARE, Inc.* are inapplicable here. The protester asserts that the prices of the offerors excluded from the competitive range should not have been included in the calculation of evaluation benchmarks, but the record provides no support for an assertion that the agency should have found those prices unreasonable before conducting a price analysis. Rather, the record supports the agency's assertion that its price reasonableness analysis was conducted in a manner consistent with the FAR, the RFP, and our decisions. The assertion that the analysis was unreasonable is therefore denied.²³

²³ ARC also alleges that the agency's price evaluation was flawed because the agency failed to conduct a complete price analysis of cost levers--which "reflected different ways of grouping the various line items that offerors were required to propose." Comments and Second Supp. Protest at 44; see AR, Tab 349, Price Analysis. Had USTRANSCOM conducted a more thorough evaluation, the protester argues, it would have found several of HomeSafe's prices too high to be considered fair and reasonable, not balanced, or both. Comments and Second Supp. Protest at 49.

Best-Value Tradeoff Analysis

Finally, ARC argues that the agency's best-value tradeoff analysis cannot reasonably support a determination "that the two proposals [from ARC and HomeSafe] are technically equal based on a documented qualitative assessment of proposals." *Id.* In answer, USTRANSCOM asserts that its best-value tradeoff analysis was reasonable and consistent with the solicitation's stated terms. Supp. COS/MOL at 106.

When a procurement provides for the award of a contract on a best-value tradeoff basis, it is the function of the selection official to perform any necessary price/technical tradeoff, that is, to determine whether one proposal's technical superiority is worth its higher price. *NCI Info. Sys., Inc.*, B-412680, B-412680.2, May 5, 2016, 2016 CPD ¶ 125 at 9. Between two technically equal proposals, price may properly become the determining factor; a documented tradeoff determination is not required where the agency selects the lowest-priced proposal among proposals the agency has reasonably determined to be equal technically based on a documented qualitative assessment of proposals. *Apogee Eng'g, LLC*, B-414829.2, B-414829.3, Feb. 21, 2019, 2019 CPD ¶ 85 at 11; *Arctic Slope Tech. Servs., Inc.*, B-411776, B-411776.2, Oct. 20, 2015, 2017 CPD ¶ 6 at 7-9. A protester's challenge to the degree of benefit that the agency would derive from a particular feature of the protester's proposal, as compared to the benefit that would be derived from the awardee's proposal, is a disagreement with the agency's subjective judgement and is not sufficient to establish that an evaluation conclusion was

The RFP specified no method for evaluating unbalanced pricing. See RFP at 20. The FAR requires that "[a]ll offers with separately priced line items or subline items shall be analyzed to determine if the prices are unbalanced," without prescribing a method of analysis. FAR 15.404-1(g)(2). The manner and depth of an agency's price analysis--including its analysis on price balance--is a matter within the sound exercise of the agency's discretion, and we will not disturb such an analysis unless it lacks a reasonable basis. *Defense Base Servs., Inc.*, B-416874.3, B-416874.4, Aug. 19, 2019, 2019 CPD ¶ 304 at 5.

Here, the record supports the reasonableness of the agency's analysis of price balance. Moreover, ARC stressed that a proper analysis of unbalanced pricing would have alerted ARC to the need to reduce its price, thereby making the protester's proposal more competitive. See Comments and Second Supp. Protest at 51. We fail to see the competitive prejudice to ARC from the agency's alleged failure to alert HomeSafe that certain of the awardee's prices were too high. See *id.*, at 49. While ARC also claims that some of HomeSafe's prices were too low, *id.* at 50, the primary risk to be assessed in an unbalanced price analysis is the risk posed by overstated prices, "because low prices (even below cost prices) are not improper and do not themselves establish (or create the risk inherent in) unbalanced pricing." *Mancon, LLC*, B-417571.5, B-417571.6, May 12, 2020, 2020 CPD ¶ 169 at 10. Finally, ARC claims that price discussions, based on the unreasonable price analysis, were misleading. Comments and Second Supp. Protest at 50. Because we find the agency's price analysis reasonable, we deny this challenge to the conduct of discussions.

unreasonable. *Karrar Sys. Corp.*, B-310661.3, B-310661.4, Mar. 3, 2008, 2008 CPD ¶ 55 at 3.

In this context, the protester challenges the agency's determination that the proposals of HomeSafe and ARC are roughly equivalent; specifically, ARC asserts what it considers the proper weight to accord the relative benefits of the competing proposals. See Comments and Second Supp. Protest at 52-53. ARC argues that its own analysis shows that "the Agency had no basis for declaring a tie," where ARC's proposal offered greater benefit to USTRANSCOM. *Id.* at 53. The protester contends that, because the agency had no basis for finding that the proposals were roughly equivalent, USTRANSCOM "had an obligation to conduct a tradeoff and consider whether ARC's advantages were worth the price premium," which the agency failed to do. *Id.* ARC's own reweighing of the relative benefit to USTRANSCOM of the competing proposals is a disagreement with the agency's subjective judgment and is not sufficient to establish that the tradeoff decision was unreasonable. *Karrar Sys. Corp.*, *supra*.

The protest is denied.

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