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# Decision

**Matter of:** TRAX International Corporation

**File:** B-416927.3; B-416927.4

**Date:** May 2, 2019

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## DIGEST

Protester’s contention that an agency failed to investigate and resolve adequately a Procurement Integrity Act violation is denied where the record shows that the agency did, in fact, place certain data relating to the protester’s performance of the predecessor contract on a government computer that was potentially accessible by other contractors, but also shows that: (1) upon learning of the availability of the protester’s information, the agency acted promptly to safeguard the information by removing it from its accessible computer; (2) much of the information was placed on the government computer after final proposal revisions were submitted to the agency, and thus could not have compromised the integrity of this procurement; and (3) the remainder of the information was not competitively useful.

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## DECISION

TRAX International Corporation, of Las Vegas, Nevada, protests the actions of the Department of the Army in connection with request for proposals No. W91151-18-R-0005, issued for mission support services at White Sands Missile Range. TRAX, the current incumbent contractor for these requirements, argues that the agency failed to investigate and resolve adequately an alleged Procurement Integrity Act (PIA) violation.

We deny the protest.

## BACKGROUND

This is TRAX's second protest filed in connection with this acquisition. In September, 2018, TRAX's proposal was eliminated from the competitive range. In early October, TRAX filed a protest with our Office challenging the elimination of its proposal from the competition. After development of the record in that case, we denied TRAX's protest, finding that the agency acted reasonably. TRAX International Corporation, B-416927, Jan. 9, 2019, 2019 CPD ¶ \_\_.

During the initial protest, the record showed that, although TRAX proposed to retain 100 percent of the incumbent staff for performance of the follow-on requirement, it also proposed a significant departure from the staffing strategy it previously had employed on the incumbent contract. Specifically, TRAX proposed to perform the solicited requirement by converting its incumbent full-time staff to a staff comprised of [deleted] percent part-time employees and [deleted] percent full-time employees. TRAX also proposed that the part-time employees be stripped of their vacation time, sick leave and holiday leave fringe benefits.

The agency found that TRAX's proposed approach introduced an unacceptable level of risk, both for purposes of transitioning from the predecessor contract to the solicited requirement, and also in terms of TRAX's overall ability to recruit and retain highly-skilled employees. The agency particularly was concerned that TRAX's proposed approach could result in a union strike at the time of transition or shortly thereafter. Also, the agency expressed concern that TRAX's plan to convert long-time incumbent employees to part-time employees, and strip them of their benefits, could result in a disgruntled workforce, have a negative impact on mission operations, and result in the loss of highly-skilled and well-trained employees. We found that the agency's concerns were reasonable and therefore denied TRAX's first protest.

While its earlier protest was proceeding, TRAX discovered that certain data relating to its performance of the predecessor contract had been placed on a government computer maintained by the agency at White Sands Missile Range which potentially was accessible to other contractors. On January 4, TRAX notified the agency of its concerns that its data could be accessed by its competitors, and alleged a possible PIA violation based on its discovery. The contracting officer performed an investigation and determined that there was no possible impact on the competition based on the concerns raised by TRAX. The agency's contracting officer forwarded his findings to the individual designated for review of the matter, and that individual concurred in the contracting officer's finding. After being notified of the agency's determination by letter dated January 14, TRAX filed this protest.

## DISCUSSION

TRAX challenges the propriety of the agency's actions in response to its identification of a potential PIA. First, TRAX challenges the agency's actions in handling its allegedly sensitive information once TRAX's concerns were brought to the agency's attention.

Second, TRAX argues that, to the extent the agency performed any investigation, its investigation was inadequate and could not possibly have led the agency reasonably to conclude that there was no possible impact on the competition for the current requirement.

We find no merit to TRAX's protest. The procurement integrity provisions of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. §§ 2101-2107, known as the Procurement Integrity Act, provide, among other things, that except as provided by law, a person shall not knowingly disclose or obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates. 41 U.S.C. § 2102(b). The Federal Acquisition Regulation (FAR) states that a contracting officer who receives or obtains information of a violation or possible violation of the PIA must determine if the reported violation or possible violation has any impact on the pending award or selection of the contractor. FAR § 3.104-7(a). If the contracting officer determines that there is no impact on the procurement, he or she must forward the information concerning the violation or possible violation, along with documentation supporting the determination that there is no impact on the procurement, to an individual designated in accordance with agency procedures. FAR § 3.1-04-7(a)(1). If that individual agrees with the contracting officer's analysis, the procurement may proceed. FAR § 3.104-7(a)(1)(i).

As noted, TRAX argues that the agency failed to handle its sensitive information in a reasonable fashion. Specifically, TRAX alleges that the agency caused its information to be placed in a location on its computer system that potentially was accessible to other contractors. TRAX further suggests that the agency "destroyed" its information--along with other information placed in the same location--when it endeavored to remove TRAX's information from the location where it had been placed. To address these issues, we set forth below additional relevant information about the agency's actions.

#### Additional Background on the Handling of TRAX's Allegedly Sensitive Information

The record shows that the agency maintains an array of computing and data storage assets. Among those assets is what the parties refer to as the "Z-Drive." The agency describes the Z-Drive as a network drive accessible to authenticated users that is managed in accordance with various Army information technology policy guidance requirements.

TRAX states that it discovered its sensitive information on the Z-Drive during the late-night hours of December 21, 2018 and early-morning hours of December 22. Specifically, an employee of TRAX states that he was accessing the Z-Drive, and in particular, a folder labeled "Accounting."<sup>1</sup> This individual states that he viewed a

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<sup>1</sup> The employee in question was a technical writer/editor for TRAX during performance of the predecessor contract. Declaration of TRAX employee, Jan. 31, 2019, at 1. There  
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number of files in the Accounting folder that included TRAX proprietary data derived from the firm's performance of the predecessor contract, and that he made a screenshot to record the date and time that the files were viewed by him, and also to preserve the file structure and location of the folder at issue. Declaration of TRAX employee, Jan. 31, 2019, at 1. By letter dated January 4, 2019, TRAX, through counsel, advised the agency that it had concerns about a possible PIA violation based on this alleged discovery.<sup>2</sup>

After receipt of the TRAX letter, the record shows that the agency began investigating the matter, and also took action to remove any potentially sensitive information from the Z-Drive. The agency's investigation disclosed that its director of resource management was responsible for copying certain files to the Z-Drive. The record includes a statement from her in which she describes how and when the information in question was initially placed on the Z-Drive, as well as how and when the information was removed.

Specifically, she states that on the afternoon of November 26, 2018, she created a sub-folder in the Accounting folder called the "Contract Functional Review" sub-folder. AR, exh. 9, Memorandum for the Record from the Director of Resource Management, at 1. She states that the reason for creating the sub-folder was to provide access for agency personnel to certain contractor and civilian information that was needed for official agency business. Id. She also states that, among the files she placed in the Contract Functional Review sub-folder was certain information relating to TRAX's performance of the incumbent contract. Id. at 2.

She further explains that there was a second sub-folder within the Accounting folder labeled "Resumes." AR, exh. 9, Memorandum for the Record from the Director of Resource Management, at 3. She explains that this sub-folder was created in March 2018 to support a hiring action by the government, and that certain TRAX employees'

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is no information in the record that explains why he was accessing the "Accounting" folder on the Z-Drive overnight. The agency advises that it has no record of this individual (or another individual that was his supervisor who also represented to have accessed the Accounting folder on the Z-Drive) requesting (or, presumably) receiving access authority, screenshot authority or dissemination authority for the Accounting folder on the Z-Drive. Agency Report (AR), exh. 13, Information Management Directorate Memorandum for the Record, at 2.

<sup>2</sup> According to the protester's letter, it became concerned that the Z-Drive had proprietary and confidential information relating to TRAX's performance of the predecessor contract, including employee labor categories, hourly rates, year-to-date direct and indirect hours, TRAX organizational charts, TRAX position descriptions, TRAX's direct and indirect performance ratios, TRAX's cross-utilization data and TRAX employee resumes. AR, exh. 4, TRAX PIA Letter, Jan. 4, 2019, at 1-2.

resumes were included in the sub-folder to facilitate their being hired by the government. Id. She further states that TRAX was aware of these hiring actions, assisted its employees where possible, and was aware that some of these individuals have already transitioned to the government, while many of the remaining employees have pending job offers from the government. Id.

The agency's director of resource management further states that, on January 7, after learning of the concerns over a possible violation of the PIA raised by TRAX, she moved the majority of the contents of the Accounting folder--including the Contract Functional Review and Resumes sub-folders--from the agency's shared Z-Drive to the hard drive located on her laptop. AR, exh. 9, Memorandum for the Record from the Director of Resource Management, at 2-3. The record further shows that she was directly observed by the agency's administrative contracting officer for the incumbent contract when she moved the majority of the contents of the accounting folder to her hard drive. AR, exh. 12, Memorandum for the Record from the Administrative Contracting Officer, at 1. The administrative contracting officer further states that the agency's director of resource management advised him at the time that the sub-folders, other than the Contract Functional Review and Resumes sub-folders, contained internal accounting information relating to the incumbent contract, but did not contain any TRAX proprietary or confidential information. Id. at 2.

Based on the information discussed above, it appears that there were two sub-folders located in the Accounting folder--specifically the Contract Functional Review sub-folder and the Resumes sub-folder--that contained information relating to TRAX's performance of the predecessor contract. The first of these (the Contract Functional Review sub-folder) was created on the afternoon of November 26 and the second of these (the Resumes sub-folder) was created in March 2018. In addition, both folders were moved to the laptop of the agency's director for resource management on January 7, 2019.

#### Additional Arguments from TRAX

The protester disputes the agency's position that there were only two folders containing TRAX information, and speculates that there could have been other sub-folders or files within the Accounting folder that may have contained TRAX proprietary or confidential information. The protester's contention relies on the difference between the size of the Accounting folder on the one hand (approximately 2.14 gigabytes) compared to the size of the Contract Functional Review sub-folder (approximately 11 megabytes) and the Resumes sub-folder (approximately 22.6 megabytes). Based on this difference, TRAX speculates that there could have been other sub-folders or files included in the Accounting folder that also had TRAX proprietary data.

We find no evidence to support the protester's speculation. As noted, the agency's director of resource management specifically represented that the remaining sub-folders contained only internal accounting information that did not include TRAX proprietary or confidential information. Moreover, the representations of the director of resource management are corroborated by the statement in the record submitted by the agency's

administrative contracting officer. This evidence supports the agency's representation that only the Contract Functional Review and Resumes sub-folders contained TRAX proprietary information.

In addition, and of significance, TRAX holds--but elected not to provide--evidence that potentially could shed light on whether there were other sub-folders or files within the Accounting folder that contained TRAX proprietary information. Specifically, TRAX's employee represented in an affidavit that he took a screenshot when he discovered TRAX's information on the Z-Drive in order to establish the date and time of his discovery, and also to preserve the file structure and location of the folder where he identified the TRAX information. Declaration of TRAX Employee, Jan. 31, 2019, at 1. However, TRAX did not produce the screenshot in question despite concerns about the timing of the firm's discovery being an issue.<sup>3</sup>

To the extent that this screenshot shows a location that may be different from the location of TRAX's information identified by the agency, the protester has failed to produce the evidence. All protesters have an affirmative, ongoing obligation throughout the protest process to submit evidence to support their allegations. Given the evidence submitted by the agency discussed above, and in light of the protester's failure to produce evidence to support the speculation to the contrary, we conclude that the record before us shows that TRAX's data was located solely in the Contract Functional Review and Resumes sub-folders.

#### Availability and Utility of the TRAX Information

Turning to the contents of these sub-folders, the record shows that there is no possibility that the information in these two sub-folders could have provided any other firm a competitive advantage vis-a-vis TRAX for several reasons; it follows that the contracting officer's determination that there was no potential impact on the competition was reasonable.

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<sup>3</sup> In this connection, the agency filed an initial request for dismissal before submission of its report arguing that the protest should be dismissed as untimely because the agency maintained that TRAX may have discovered the information earlier than it claimed. Counsel for the protester represented that TRAX had preserved the screenshot showing when the information was discovered, and would make it available in redacted form solely for our in camera review in connection with the agency's dismissal request. According to protester's counsel, the screenshot ultimately was not produced because of the file type and the fact that it captures an image of multiple other non-relevant files on the individual's computer. Our Office concluded that any doubt regarding the timing of TRAX's discovery--and thus the timeliness of the protest--should be resolved in favor of the protester, notwithstanding the protester's failure to produce the screenshot. Alliant Solutions, LLC, B-415994, B-415994.2, May 14, 2018, 2018 CPD ¶ 173 at 5.

First, the record shows that the Contract Functional Review sub-folder was created by the agency's director of resource management after the offerors remaining in the competitive range submitted their respective final proposal revisions (FPRs). Specifically, the memorandum for the record prepared by the agency's director of resource management includes a screenshot of the properties of the Contract Functional Review sub-folder showing that it was created at 12:43 p.m. local time on November 26. AR, exh. 9, Memorandum for the Record from the Director of Resource Management, at 2. The agency represents that the FPRs from the competitive range offerors were submitted either the day before the Contracts Functional Review sub-folder was created on the Z-Drive, or on the morning of the day when the sub-folder was created, but prior to the time when the sub-folder was created. Contracting Officer's Statement of Facts, at 2.<sup>4</sup>

The protester takes issue with the date identified by the director of resource management as the date on which the Contracts Functional Review sub-folder was created. According to the protester, the folder includes files that were modified on dates earlier than the date that the agency represents the folder was created. The protester therefore speculates that the Contract Functional Review sub-folder may have been created on a date earlier than the date identified by the agency. However, the record includes a memorandum prepared by the agency's information management directorate that provides the following explanation for this apparent discrepancy:

The metadata of the files and folders can be confusing and may lead to misinterpretation. The "Date Modified" field reflects the last time the system sees an actual change to a file. Simply moving a file to another directory or drive without changing the contents of that file will not change the "Date Modified" field for that file. The "Date Created" property would in fact be the date and time the folder was created. As such, "Date Created" tells us the earliest possible time that files or folders could have been placed into a given folder. Copying a file creates a new file. So, a copied file will keep the original "Date Modified" but will have a "Date Created" set to the date and time when the file was copied to the new location. It is possible to have a "Date Modified" value earlier than the "Date Created" value for such a file.

AR, exh. 13, Information Management Directorate Memorandum for the Record, at 2.

Based on this explanation, we conclude that the protester's argument regarding the date on which the Contract Functional Review sub-folder was created amounts to no

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<sup>4</sup> We note that the Contract Functional Review sub-folder contained the overwhelming majority of information that arguably could be characterized as proprietary or confidential information, such as TRAX's labor rates, organization charts and other information relating to TRAX's performance of the predecessor contract.

more than speculation unsupported by any evidence. In addition, because the record shows that there was no possibility that this information could have been accessed by the competitive range offerors before submitting their respective FPRs, they necessarily could not have derived any improper competitive advantage from the information. Thus, we find reasonable the contracting officer's determination that the concerns identified by TRAX relating to this information had no impact on the competition.

Second, as to the Resumes sub-folder, the record does show that it was created prior to the date on which FPRs were submitted. However, the protester has not argued or demonstrated that these resumes were submitted with its own proposal, or that knowledge of the fact that these employees may have worked for TRAX would provide any other firm with an improper competitive advantage.

As the agency has explained, the individuals whose resumes were in that sub-folder had been identified by the agency as personnel that were working for TRAX that the agency wanted to hire as government employees. Some of those individuals already have been hired by the agency, and many more of them have pending job offers from the agency. In short, the record shows that many--if not all--of these employees are being hired by the agency.

Perhaps more importantly, while these resumes might be characterized as proprietary or confidential information of TRAX's, there is nothing in the record to show that this information could be considered competitively useful in this procurement. As noted, the FAR requires contracting officers to determine whether an actual or potential PIA violation has any impact on the pending award or selection of a contractor in the procurement in question. FAR § 3.104-7(a). Such a determination necessarily requires the contracting officer to consider, among other things, whether the information underlying the actual or potential PIA violation is, or could be considered, competitively useful in the context of the acquisition.

In addition, TRAX's decision not to use these resumes in its proposal further undercuts any assertion that a possible disclosure of these resumes compromises the integrity of this procurement--a necessary predicate for a PIA violation. Presumably, if TRAX viewed these resumes as useful in this competition, it would have included them in its proposal.<sup>5</sup> Accordingly, on the issue of the resumes as well, we find that the

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<sup>5</sup> As a final matter, we note that, unlike many PIA cases, there is no showing in the record here that any of TRAX's competitors actually obtained these resumes (or, for that matter, any of TRAX's other allegedly proprietary or confidential information) or knew the identity of these individuals.

contracting officer reasonably concluded that the possible PIA violation identified by TRAX had no possible impact on the competition.

The protest is denied.

Thomas H. Armstrong  
General Counsel