U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Jacobs Technology, Inc.

File: B-421739.3; B-421739.4; B-421739.5

Date: January 31, 2024

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Barbara Behn Ayala, Esq., General Services Administration, for the agency.
Nathaniel S. Canfield, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency improperly evaluated the protester's proposal as technically unacceptable due to the unavailability of a proposed key individual is denied where the agency's evaluation was consistent with the solicitation's terms, and the agency was not required to enter into discussions to permit a substitution.

2. Protest that the agency failed to consider relevant information in making an affirmative responsibility determination is denied where the protester has not demonstrated that the agency knew or should have known about the information.

3. Protest that the agency unreasonably failed to conduct a Procurement Integrity Act investigation is dismissed as factually and legally insufficient.

DECISION

Jacobs Technology Inc., of Tullahoma, Tennessee, protests the issuance of a task order to Peraton Inc., of Herndon, Virginia, under task order request (TOR) No. 47QFCA23R0003, issued by the General Services Administration (GSA), Federal Systems Integration and Management Center, for network operations and technical support services required by the United States Special Operations Command (USSOCOM). The protester contends that the agency unreasonably found that the protester's proposal was unacceptable due to the unavailability of a proposed key

person, improperly determined that Peraton was responsible, and unreasonably refused to conduct a Procurement Integrity Act (PIA) investigation.[1]

We deny in part and dismiss in part the protest.

BACKGROUND

The agency issued the TOR pursuant to the fair opportunity source selection procedures of Federal Acquisition Regulation (FAR) subpart 16.5 to firms holding indefinite-delivery, indefinite-quantity contracts under the GSA's Alliant 2 Governmentwide Acquisition Contract. Contracting Officer's Statement (COS) at 1. The TOR, which the agency amended once, sought proposals for the provision to USSOCOM of global network operations and maintenance, cyber network defense, service desk, hardware and software engineering and infrastructure improvements, asset management and configuration, satellite communications, mobile device management, and cloud migration services to enhance and modernize platforms and networks to support special operations.[2] *Id.* The TOR contemplated issuance of a single, cost-plus-fixed-fee task order, with a 1-year base period of performance, four 1-year option periods, and three 1-year award term periods, as well as a 6-month option to extend services. Agency Report (AR), Tab 2, TOR at 75, 122.[3]

The TOR provided for a best-value tradeoff using five non-cost factors, which are listed in descending order of importance: technical approach; SITEC 3 EOM project scenario approach; management approach; key personnel and project staffing; and corporate experience. *Id.* at 155. Only the key personnel and project staffing factor is at issue here.

The TOR specified five positions that were key, including, as relevant here, the quality assurance manager. *Id.* at 89. The TOR required offerors to name each key person proposed, as well as to provide letters of commitment signed by each key person (1) stating that the individual is employed by the offeror or its subcontractor; (2) stating that the individual is available and committed to begin work on the project start date;

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[1] The procurement integrity provisions of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. §§ 2101-2107, provide, among other things, that a federal government official "shall not knowingly disclose 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(a)(1). Contracting officers who receive or obtain 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.

[2] This effort is referred to as Special Operations Forces Information Technology Enterprise Contract (SITEC) 3 Enterprise Operations and Maintenance (EOM), which is a "follow-on" to the previously-issued SITEC II task order. COS at 1.

[3] Page references to the TOR are to the Adobe PDF page numbers.

and (3) providing evidence that the individual has an active clearance at the appropriate level at the time of proposal submission. *Id.* at 144. Additionally, the TOR required an offeror to identify all proposed key personnel in its project staffing plan, and that all key personnel must be available to begin work immediately on the project start date. *Id.* at 145.

The agency received three timely proposals by the TOR's submission date of April 5, 2023, including from the protester and Peraton. COS at 2. The agency rejected the third offeror's proposal. *Id.*

On May 31, the agency notified the protester that it had rejected the protester's proposal because a component of the protester's proposal--its oral technical proposal presentation (OTPP) slides--had been determined to contain classified information. *Id.* That rejection was the subject of a previous protest before our Office, which we dismissed as academic following the agency's notice that it intended to take corrective action. *See Jacobs Tech., Inc.*, B-421379, Aug. 10, 2023 (unpublished decision).

On August 11, the agency issued a letter to the protester, requesting that the protester resubmit its OTPP slides with the classified information removed:

> Jacobs is hereby being allowed to clarify its proposal by removing all classified information from its Oral Technical Proposal Presentation slides and submitting a sanitized slide deck. . . . Jacobs shall not present any new information to the Government other than the sanitized slides. Except for removing all classified information, Jacobs shall not revise any of the slides.

AR, Tab 9, August 11 Letter to Protester.

The protester responded on August 16, stating that it would submit the oral technical presentation slides by the August 18 deadline and notifying the agency that one of its proposed key personnel had become unavailable:

> [I]n the interest of full disclosure, please be aware that one of Jacobs' proposed Key Personnel left our employment after [the agency] eliminated Jacobs from the competition. . . . Jacobs has an alternative candidate for the Quality Assurance Manager role who is a current Jacobs employee serving in the equivalent role on SITEC II. We would be glad to submit that candidate's resume and letter of commitment at the appropriate time. Please let us know whether Jacobs may submit the alternative Quality Assurance Manager candidate with its revised OTPP [slides] on August 18, 2023.

AR, Tab 10, August 16 Letter to Agency.

The following day, the agency denied the protester's request to substitute its proposed quality assurance manager:

> In response to your letter dated August 16, 2023, requesting Jacobs be allowed to submit an alternative Key Personnel candidate for the Quality Assurance Manager with its revised [OTPP slides], the request is denied.
>
> As our previous August 11, 2023, letter stated, Jacobs is hereby only allowed to clarify its proposal by removing all classified information from its OTPP slides and submitting a sanitized slide deck. . . . Jacobs shall not present any new information to the Government other than the sanitized slides. Except for removing all classified information, Jacobs shall not revise any of the slides.

AR, Tab 11, August 17 Letter to Protester.

The protester submitted its OTPP slides on August 18. COS at 3. On September 7, the protester made its presentation to the agency, during which the agency requested that the protester confirm that its proposed quality assurance manager remained unavailable. *Id.* at 3-4. The protester confirmed her continued unavailability. *Id.* at 4. Because the protester's proposed quality assurance manager would not be available at the project start date, the agency assigned a deficiency to the protester's proposal under the key personnel and project staffing factor and consequently found it technically unacceptable. *Id.* at 4; AR, Tab 4, Technical Evaluation Board Report at 37, 45, 51; Tab 7, Award Decision Document at 8.

On October 31, the agency issued a task order to Peraton and informed the protester of its source selection decision. COS at 4. On November 3, the protester requested a debriefing, which the agency provided orally on November 13. *Id.* at 5. Later that same day, the protester filed this protest with our Office.[4]

On November 27, counsel for the protester emailed the contracting officer, forwarding an anonymous letter that he said he had received earlier that day from "a frustrated Peraton employee." Supp. Memorandum of Law (MOL), exh. 1 at 1. The letter, which bore Peraton's logo and address, alleged that Peraton was ineligible to receive the SITEC 3 task order for two reasons.

First, the letter alleged that the private equity firm that owns Peraton had performed due diligence in connection with the possible acquisition of one of the protester's business units, through which that firm obtained information regarding the business unit's bidding and pricing strategies. Supp. MOL, exh. 2 at 1. The letter alleged that the firm then

[4] Based on the approximately $2.8 billion value of the task order, *see* AR, Tab 7, Award Decision Document at 55, the protest falls within our statutory grant of jurisdiction to hear protests in connection with task and delivery orders valued in excess of $10 million issued under civilian agency multiple-award IDIQ contracts. 41 U.S.C. § 4106(f).

provided that information to Peraton, which used it to develop its proposal for the SITEC 3 procurement. *Id.*

Second, the letter alleged that, in connection with a Department of Justice investigation, Peraton had admitted to its involvement in a bid rigging scheme and consequently been granted immunity from prosecution. *Id.* The letter alleged that Peraton had failed to disclose that conduct to the Department of Defense and other agencies as required. *Id.*

Citing FAR subsection 3.104-7 and the PIA, 41 U.S.C. §§ 2101-2107, counsel for the protester requested that the contracting officer "investigate the allegations in the letter, make a determination as to whether there has been an impact on the procurement, and take appropriate remedial action." Supp. MOL, exh. 1 at 1.

On December 7, the contracting officer responded, stating that he had concluded that there was no action for the agency to take. Supp. MOL, exh. 3 at 1. The contracting officer stated that, even assuming the allegations were true, they did not establish a violation of the PIA. *Id.* at 1-2.

DISCUSSION

The protester alleges that the agency's evaluation of its proposal as unacceptable due to the unavailability of the protester's proposed quality assurance manager was unreasonable and inconsistent with the TOR. The protester further alleges that the agency improperly determined that Peraton is responsible, and unreasonably failed to conduct a PIA investigation. For the reasons discussed below, we find no basis on which to sustain the protest.

Key Personnel

The protester first alleges that the agency's evaluation of its proposal as unacceptable due to the quality assurance manager's unavailability was not consistent with the TOR. The protester points to the TOR's listing of specific pass/fail elements, among which were the requirements to name key personnel and provide a letter of commitment for each key individual at the time of proposal submission. Protest at 8-9. The protester argues that its proposal satisfied those criteria, and that the TOR therefore did not permit the agency to find the protester's proposal unacceptable because of the subsequent unavailability of the protester's proposed quality assurance manager. *Id.* at 9-10. The protester contends alternatively that it was unreasonable for the agency to refuse to permit the protester to substitute its proposed quality assurance manager, as the originally proposed quality assurance manager left the protester's employment only after the agency previously rejected the protester's proposal for including classified information. *Id.* at 11-12.

The agency responds that it reasonably evaluated the protester's proposal in accordance with the TOR's evaluation criteria. MOL at 2-3. In that regard, the agency did not conclude that the protester's proposal was unacceptable pursuant to the

pass/fail elements identified by the protester; rather, the agency determined that the protester's proposal did not meet the requirements of the key personnel and project staffing factor. *Id.* at 3. The agency further responds that it had the discretion whether to permit the protester to revise its proposal, and it was not required to allow the protester to substitute its proposed quality assurance manager. *Id.* at 4.

With respect to the protester's first argument, we conclude that the agency evaluated the protester's proposal in accordance with the terms of the TOR. Where a protester and agency disagree over the meaning of a solicitation's provisions, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Point Blank Enters., Inc.*, B-415021, Oct. 16, 2017, 2017 CPD ¶ 319 at 3. Here, the protester's proffered interpretation is not consistent with the TOR when read as a whole.

The protester is correct that the TOR's instructions specifically identified certain pass/fail elements--including the naming of key personnel and provision of letters of commitment for them--for which a failure would result in no further evaluation of the proposal. *See* TOR at 144. As the agency points out, however, those were not the only provisions pertinent to the evaluation of key personnel. Relevant here, the evaluation criteria for the key personnel and project staffing factor stated that the agency would evaluate proposals under that factor "to assess the degree to which [they] compl[y] with the requirements outlined in Section L.6.1, L.6.1.1, and L.6.2[.]" *Id.* at 157. Section L.6.1, in turn, stated that "[a]ll [k]ey [p]ersonnel proposed shall be . . . available to begin work immediately on the [p]roject [s]tart [d]ate[.]" *Id.* at 145. Thus, read as a whole, the TOR required a proposal to name key personnel and include letters of commitment for them in order to be evaluated. Once a proposal met that threshold, the agency would evaluate it for, among other things, whether the proposed key personnel would be available on the project start date. Thus, the agency's evaluation of the protester's proposal as unacceptable because the protester had notified the agency that its proposed quality assurance manager would not be available on the project start date was consistent with the terms of the TOR.

The protester's alternative argument that the agency unreasonably refused to permit the protester to revise its proposal to substitute the quality assurance manager also provides no basis to sustain the protest. As we previously have stated, the unavailability of a key person identified in a proposal renders the proposal technically unacceptable, and the agency has the discretion whether to evaluate the technically unacceptable proposal or to conduct discussions under such circumstances. *Chenega Healthcare Servs., LLC*, B-416158, June 4, 2018, 2018 CPD ¶ 200 at 5; *see also Chenega Healthcare Servs., LLC v. United States*, 141 Fed. Cl. 254, 260-261 (2019) (similarly holding that the agency did not abuse its discretion in not conducting discussions to allow the protester to substitute an unavailable key person). With respect to the latter option, a contracting officer's discretion in deciding not to hold discussions is quite broad. *Trace Sys., Inc.*, B-404811.4, B-404811.7, June 2, 2011, 2011 CPD ¶ 116 at 5. There are no statutory or regulatory criteria specifying when an

agency should or should not initiate discussions. *Id.* As a result, an agency's decision not to initiate discussions is a matter we generally will not review. *See, e.g.*, *SOC, LLC*, B-415460.2, B-415460.3, Jan. 8, 2018, 2018 CPD ¶ 20 at 8; *United Airlines, Inc.*, B-411987, B-411987.3, Nov. 30, 2015, 2015 CPD ¶ 376 at 11; *Six3 Sys., Inc.*, B-405942.4, B-405942.8, Nov. 2, 2012, 2012 CPD ¶ 312 at 8; *Booz Allen Hamilton*, B-405993, B-405993.2, Jan. 19, 2012, 2012 CPD ¶ 30 at 13.

Here, the TOR advised offerors that the agency reserved the discretion to issue the task order without conducting discussions. *See* TOR at 136 ("The Government may make award based on initial offers received, without discussion of such offers."), 153 ("[T]he Government may . . . [a]ward on initial proposals, without discussions."). Thus, the TOR did not obligate the agency to permit the protester to revise its proposal to substitute its proposed quality assurance manager. Additionally, as we have noted, an agency need not conduct discussions with a technically unacceptable offeror. *SOC, LLC*, *supra* at 8. As discussed above, the agency's evaluation of the protester's proposal as technically unacceptable was consistent with the TOR's terms. Therefore, we have no basis to question the reasonableness of the agency's exercise of its discretion not to conduct discussions.[5]

[5] The protester further suggests that this protest "presents GAO with the opportunity to revisit its approach to the key personnel issue generally and follow the rule in the Court of Federal Claims decisions in *KPMG LLP v. United States*, 166 Fed. Cl. 588, 597 (2023), and *Golden IT, LLC v. United States*, 157 Fed. Cl. 680, 705 (2022)." Protest at 10-11 n.1. Neither of those decisions, however, supports the protester's position.

In both *KPMG* and *Golden IT*, the court held that there is no obligation for an offeror to notify the agency of the departure of a key individual absent a requirement in the solicitation to do so. *See KPMG*, *supra* at 597; *Golden IT*, *supra* at 704-05. Here, however, whether or not the protester had an obligation to notify the agency of the unavailability of its proposed quality assurance manager is not at issue, as the protester so notified the agency. Indeed, in circumstances where an agency has been notified of the unavailability of key personnel, the court has held that the agency may either evaluate the proposal as submitted or engage in discussions. *See, e.g.*, *Chenega Healthcare Servs., LLC v. United States*, *supra* at 260-61; *PAE Applied Techs., LLC v. United States*, 153 Fed. Cl. 573, 581-82 (2021). This is consistent with the decisions of our Office and our conclusion discussed above. Additionally, key to the holding in *KPMG* was the court's finding that the record did not demonstrate that the individual in question was, in fact, unavailable, as he had not yet left employment, but, rather, had only submitted his notice of resignation. *See KPMG*, *supra* at 597. Here, there is no question that the protester's proposed quality assurance manager left the protester's employment. Thus, as our decision here is consistent with the court's discussion in *Chenega Healthcare* and *PAE Applied Technologies*, we decline the protester's invitation to adopt the inapposite conclusions of *KPMG* and *Golden IT*.

Responsibility Determination

Next, the protester alleges that the agency improperly determined Peraton to be a responsible contractor because the agency ignored Peraton's alleged admission to bid rigging described in the anonymous letter sent to the protester's counsel. Supp. Protest at 4-6. The protester alleges that information would have been available to the contracting officer at the time of his responsibility determination, as the letter alleged that the investigation had begun in or around November 2022, and Peraton's admission would have created an obligation to disclose the conduct to the government.[6] *Id.* at 5-6.

The agency responds that it had no information regarding allegations of bid rigging by Peraton prior to the November 27 email from the protester's counsel. Supp. MOL at 3-4; Supp. COS at 1. Additionally, the contracting officer reviewed Peraton's information in the Federal Awardee Performance and Integrity Information System (FAPIIS) and the System for Award Management (SAM) and found no information demonstrating that Peraton was not responsible. Supp. COS at 2. Consequently, the agency contends, the protester has not demonstrated that the contracting officer ignored relevant information regarding Peraton's responsibility. Supp. MOL at 4.

As a general matter, our Office does not review affirmative determinations of responsibility, which are typically matters within a contracting officer's broad discretion.[7] 4 C.F.R. § 21.5(c); *Fidelis Logistic and Supply Servs.*, B-414445, B-414445.2, May 17, 2017, 2017 CPD ¶ 150 at 4. We will, however, review a challenge to an agency's affirmative responsibility determination where the protester presents specific evidence

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[6] Despite our conclusion above that the agency's evaluation of the protester's proposal as technically unacceptable was consistent with the TOR, we find that the protester is an interested party to challenge the agency's responsibility determination. Because all proposals other than Peraton's were found technically unacceptable or otherwise rejected, there would not be another offeror in line for receipt of the task order ahead of the protester were its protest on this ground to be sustained. Under such circumstances, the protester is an interested party to raise the argument. *MicroTechnologies, LLC*, B-415214, B-415214.2, Nov. 22, 2017, 2018 CPD ¶ 48 at 7 n.10; *see also TCG, Inc.*, B-417610, B-417610.2, Sept. 3, 2019, 2019 CPD ¶ 312 at 7 ("[A] protester whose proposal is found to be technically unacceptable is an interested party to challenge the eligibility of an awardee, where, as here, the exclusion of the awardee would result in no offerors being eligible for award.").

[7] Additionally, once an offeror is determined to be responsible and is awarded a contract, there is no requirement that an agency make additional responsibility determinations during contract performance, though an agency is not precluded from doing so. *ESCO Marine, Inc.*, B-401438, Sept. 4, 2009, 2009 CPD ¶ 234 at 12. Where, as here, an agency chooses to make an affirmative responsibility determination in connection with a task or delivery order, we will review the agency's actions, consistent with our general standards for review of affirmative responsibility determinations. *Fidelis Logistic*, *supra* at 4 n.4.

that the contracting officer may have ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. 4 C.F.R. § 21.5(c); *DynCorp Int'l LLC*, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 19. The FAR does not require contracting officers to contemporaneously document, or provide a written explanation for, an affirmative responsibility determination. FAR 9.105-2(a)(1); *Precision Std., Inc.*, B-310684, Jan. 14, 2008, 2008 CPD ¶ 32 at 4 n.3. Accordingly, in reviewing an affirmative responsibility determination, our Office has found that it is sometimes necessary to consider the agency's *post hoc* explanations. *See, e.g.*, *FCi Fed., Inc.*, B-408558.4 *et al.*, Oct. 20, 2014, 2014 CPD ¶ 308 at 7.

Based on our review here, we find no basis to conclude that the contracting officer ignored relevant information that would be expected to have a strong bearing on whether Peraton should be found responsible. In making the source selection decision, the contracting officer made a responsibility determination on October 31, 2023. AR, Tab 7, Award Decision Document at 54. As documented, the contracting officer initially reviewed information in FAPIIS and SAM on May 26, 2023. *Id.* The contracting officer found "no negative results for Peraton" in FAPIIS, "indicating a satisfactory past performance record." *Id.* Additionally, the contracting officer found "[n]o exclusions, debarments, or negative findings" in SAM. *Id.* The contracting officer also conducted a "final review of SAM" on October 31, which again identified "[n]o exclusions, debarments, or negative findings[.]" *Id.* The contracting officer further states that the information he reviewed in SAM on October 31 indicated that Peraton had answered "no" to the following question:

> Within the last five years, ha[s] the business or organization (represented by the Unique Entity ID on this specific SAM record) and/or any of its principals, in connection with the award to or performance by the business or organization of a Federal contract or grant, been the subject of a Federal or State
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> (1) criminal proceeding resulting in a conviction or other acknowledgement of fault;
> (2) civil proceeding resulting in a finding of fault with a monetary fine, penalty, reimbursement, restitution, and/or damages greater than $5,000, or other acknowledgement of fault; and/or
> (3) administrative proceeding resulting in a finding of fact with either a monetary fine or penalty greater than $5,000 or reimbursement, restitution, or damages greater than $100,000, or other acknowledgement of fault?

Supp. COS at 2.

In short, the record demonstrates that the contracting officer reviewed the information available to him at the time he made his responsibility determination, including Peraton's negative response to the question quoted above, which bears on the

allegations of Peraton's admission to bid rigging contained in the anonymous letter. Furthermore, to whatever extent the allegations in the anonymous letter are credible, the contracting officer reports that he was not aware of them until the protester's counsel forwarded the letter on November 27, well after the responsibility determination, and after the agency had issued the order to Peraton on October 31. Supp. COS at 1. The protester therefore has not demonstrated that the contracting officer ignored that information in making his responsibility determination.

The protester contends that the fact that the contracting officer became aware of those allegations only upon receipt of the letter from the protester's counsel "underscores the inadequacy of [the agency's] responsibility determination[,]" citing our decision in *FCi Federal*, *supra* for the proposition that "a contracting officer cannot 'stick his head in the sand' and simply presume that an offeror is responsible." Comments at 5. *FCi Federal*, however, presented facts that distinguish it from the protest before us.

In *FCi Federal*, after the agency had received proposals but before it had made its award decision, the Department of Justice (DOJ) announced it was intervening in a *qui tam* lawsuit filed under the False Claims Act against the awardee's parent company. *FCi Fed.*, *supra* at 4. Thereafter, also before the award decision, DOJ filed its own complaint under the False Claims Act. *Id.* During a hearing conducted by our Office, the contracting officer testified that she became aware of the allegations of fraud through media reports around the time of DOJ's intervention in the initial lawsuit. *Id.* at 5. The contracting officer further testified that, prior to making her responsibility determination, she did not read DOJ's civil complaint, request or receive information regarding the complaint from the awardee, discuss the allegations with any other agency personnel, seek information from the relevant suspension and debarment officials, or contact anyone at DOJ regarding the allegations. *Id.* at 5. We sustained the protest of the agency's affirmative responsibility determination based, in part, on the contracting officer's failure to adequately consider the specific allegations of fraudulent activity made by DOJ.[8] *Id.* at 7-8, 11.

Thus, the record in *FCi Federal* demonstrated that, at the time the contracting officer made her responsibility determination and prior to award, she had actual knowledge that DOJ had made allegations of fraud against the awardee's parent company but made no effort to obtain a complete understanding of the facts involved. Here, in contrast, the record demonstrates that the contracting officer had no knowledge of any allegations that Peraton had admitted to bid rigging until he received the anonymous letter forwarded by the protester's counsel. Moreover, the record contains no information demonstrating that the contracting officer was or should have been aware of the substance of those allegations at the time he made the responsibility determination or the award. Accordingly, we deny this protest allegation.

[8] We further based our decision on the contracting officer's failure to consider the relationship between the awardee and its parent company, as well as her apparent misunderstanding of the legal standards related to affirmative responsibility determinations. *FCi Fed.*, *supra* at 8-11.

Procurement Integrity Act

Finally, the protester alleges that the agency unreasonably failed to conduct a PIA investigation in response to the forwarded anonymous allegations regarding Peraton's receipt of bidding and pricing strategies.[9] 2nd Supp. Protest at 3-4. The agency responds that its conclusion that the allegations contained in the anonymous letter did not demonstrate a PIA violation was reasonable. 2nd Supp. MOL at 3. The agency argues that a violation of the PIA requires a "government nexus," *i.e.*, some improper conduct on the part of someone acting at the government's direction, and the anonymous letter describes only the actions of private parties. *Id.* The protester disagrees, pointing to the PIA's prohibition against "any person from knowingly obtaining bid or proposal information before the award of a federal contract to which the information relates." Supp. Comments at 3.

Our Bid Protest Regulations, 4 C.F.R. §§ 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds of protest with evidence or allegations sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claims of improper agency action. *TRAX Int'l Corp.*, B-420361.6, Mar. 9, 2023, 2023 CPD ¶ 69 at 2. For the reasons that follow, we find that the protester's PIA allegation fails to state a legally or factually sufficient basis of protest, and therefore dismiss the allegation.

The PIA provides that a federal government official "shall not knowingly disclose 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(a)(1). This prohibition applies to anyone who "(i) is a present or former official of the Federal Government; or (ii) is acting or has acted for or on behalf of, or who is advising or has advised the Federal Government with respect to, a Federal agency procurement." *Id.* at § 2102(a)(3)(A). The PIA further requires that, other than "as provided by law, a person shall not knowingly 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). Section 2107 of the PIA, referred to as the "savings provisions," provides that the Act does not "restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information." *Id.* at § 2107(2).

As an initial matter, it is not clear that the protester has alleged that Peraton knowingly obtained bid or proposal information before the award of a contract to which the information relates. As discussed above, the anonymous letter alleges that Peraton's parent company obtained information regarding the bidding and pricing strategies of a business unit of the protester and provided that information to Peraton, which used it to

[9] As a potential outcome of a PIA investigation is the voiding or rescission of the task order, *see* FAR 3.104-7(d)(2)(ii), we find that the protester is an interested party to raise this argument for the reasons outlined in note 6, *supra*.

develop its proposal. The protester has not alleged, however, that the business unit--or its bidding and pricing strategies--was involved in the development of the protester's proposal here. Thus, to whatever extent the anonymous letter credibly alleges that Peraton obtained that information, the protester has not alleged that the information relates to this procurement, as the PIA requires to establish a violation under 41 U.S.C. § 2102(b).

Furthermore, the anonymous letter alleged that Peraton's parent company obtained the information at issue as a result of due diligence in connection with a potential acquisition of the protester's business unit, *i.e.*, that the information was voluntarily disclosed in connection with a potential corporate transaction. As we previously have noted, the savings provisions of the PIA do not restrict such disclosures, and a dispute as to the possible misuse of that information is a dispute between private parties that is not for our consideration. *TRAX*, *supra* at 6. Therefore, we find the protester's allegations with respect to an alleged violation of the PIA are legally and factually insufficient, and we dismiss them. *See id.* (protest did not sufficiently allege PIA violation where protester voluntarily disclosed information to teaming partner that, after dissolution of the teaming agreement, was acquired by the firm that subsequently was awarded the contract).

We also previously have found that where a protester fails to allege any government misconduct or involvement in the disclosure of proprietary information, it has failed to allege a legally or factually sufficient basis of protest that a violation of the PIA occurred. *Id.*; *IBM Corp.*, B-415798.2, Feb. 14, 2019, 2019 CPD ¶ 82 at 7-8.[10] In such circumstances, we have found no basis to review protest allegations challenging the adequacy of the agency's PIA investigation. *IBM Corp.*, *supra* at 8. Here, while the

[10] Our decision in *IBM Corporation* agreed with the holding of the U.S. Court of Federal Claims in *Geo Group, Inc. v. United States*, 100 Fed. Cl. 223 (2011) that allegations devoid of any alleged government involvement in the enumerated acts prohibited by the PIA fail to set forth a viable allegation of a PIA violation. *See IBM Corp.*, *supra* at 6 (citing *Geo Group*, 100 Fed. Cl. at 227). The protester contends that "subsequent federal court decisions [explain that] those holdings are contrary to the PIA's plain language and overstate the alleged import of the PIA's legislative history[,]" citing the decision in *United States v. Kuciapinksi*, 434 F. Supp. 3d 939 (D. Colo. 2020). 2nd Supp. Protest at 4. In *Kuciapinski*, however, the court was addressing the contention that only a government employee can violate 41 U.S.C. § 2102(b), an argument the court rejected. *See Kuciapinski*, *supra* at 944. Our decision in *IBM Corporation* does not state that only a government employee can violate that provision; rather it states that, to sufficiently allege that a private individual violated 41 U.S.C. § 2102(b), there must be a credible allegation of government misconduct, or misconduct by a person who was acting for or on behalf of the government. *IBM Corp.*, *supra* at 6-7. *Kuciapinski*, which involved alleged misconduct with a clear government nexus, therefore does not support the protester's contention. *See United States v. Kuciapinski et al.*, 18-CR-00429-WJM, Dkt. 204, Superseding Indictment, at ¶ 19.B (alleging that a government technical expert "disclosed source selection information to defendant [ ] before the source selection information was authorized to be released to the public").

agency did not conduct a PIA investigation, the protester does not allege that such an investigation would establish any misconduct on the part of the government. As the protester has failed to demonstrate a nexus between the absence of an investigation and any alleged government misconduct or involvement in the alleged disclosure, we find that these allegations fail to state a valid basis to challenge the agency's decision not to conduct a PIA investigation. *TRAX*, *supra* at 6-7.

The protest is denied in part and dismissed in part.

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