

What Contractors Need to Know About the Procurement Integrity Act
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The Procurement Integrity Act (“PIA”) was enacted in 1988 in response to reports of government contracts being steered to favored contractors by the release of sensitive, non-public information concerning on-going competitive procurements. The PIA, 41 U.S. Code §423, prohibits government officials and their consultants from disclosing “contractor bid or proposal information” or “source selection information” before award of the contract to which the information relates. In addition, everyone is prohibited from improperly “obtaining” contractor bid or proposal information or source selection information before award of the contract to which the information relates.

The penalties for violation of the PIA are severe. If the PIA is violated for the purpose of selling the information or giving a competitive advantage in a government procurement, imprisonment for up to five years and fines can be imposed. Civil penalties can be imposed up to \$50,000 (for individuals) or \$500,000 (for companies) for each instance plus twice the amount of any compensation involved. Additionally, the agency can cancel a procurement (if there is no award) or rescind the contract or debar the company or individuals involved.

“Contractor bid or proposal information” is defined as information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly, and includes “cost of pricing data,” indirect costs and direct labor rates, technical and business related proprietary information and information marked by the contractor as “contractor bid or proposal information.”

“Source selection information” is defined to include various, specified types information prepared for use by a Federal agency for the purpose of evaluating a bid or proposal, such as source selection and technical evaluation plans, the evaluations themselves, and the various reports created during the proposal evaluation process.

With respect to a violation of the PIA by another offeror, a company must report the matter to the contracting officer within 14 days of discovering the violation in order to preserve a right to initiate a bid protest about the violation at GAO (but possibly not at the Court of Federal Claims). *See McKing Consulting Corp. v. U.S.*, No: 07-17 C, October 12, 2007. p. 9, fnt 12; *but see Omega World Travel, Inc. v. U.S.*, No. 08-188C, July 3, 2008, p. 36.

The PIA is implemented by the Federal Acquisition Regulation at section 3.104. The FAR essentially repeats all of the statutory restrictions and definitions. The PIA also puts restrictions on federal procurement officials' consideration of employment offers from contractors and on acceptance of compensation from contractors.

The PIA is aimed at preventing industrial espionage as a means to subvert the public procurement process. However, the PIA prohibition on “obtaining” information is broader than active espionage. A competitor's information can be obtained under innocent circumstances, but this would still constitute a violation of the PIA. In such a case, the contracting officer has the authority to protect the integrity of the procurement system by disqualifying an offeror from the competition where the firm may have

obtained an unfair competitive advantage, even if no actual impropriety can be shown. Computer Technology Associates, Inc., B-288622, November 7, 2001; Kellogg Brown & Root Services, Inc., B-400787.2; B-400861, February 23, 2009 (“Wherever an offeror has improperly obtained proprietary proposal information during the course of a procurement, the integrity of the procurement is at risk, and an agency’s decision to disqualify the firm is generally reasonable.”) In the KBR case, the information was obtained by company personnel because the contracting officer attached the wrong file to an email.

The definitions of “contractor bid or proposal information” and “source selection information” are fairly specific in the statute and regulations and would not necessarily include all information about a competitor. However, it is highly advisable that all employees engaged in obtaining market information or preparing proposals become familiar with the requirements of the PIA to avoid intentionally or inadvertently ending up with “contractor bid or proposal information” or “source selection information.” The consequences of finding that the company is in possession of this type of information are too severe to run the risks, the questionable rewards and the certain penalties that could result. Obviously, when a company discovers that it is in possession of such information, the information needs to be secured and segregated and legal counsel contacted immediately.