



November 27, 2020

BY EMAIL AND CERTIFIED MAIL

Andrew Wible  
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Re: Supplier Disagreement Resolution No. SDR-21-CS-001

Dear Mr. Wible:

This letter responds to your business disagreement submitted on October 23, 2020 on behalf of American K-9 Detection Services, LLC ("AMK9") to the Supplier Disagreement Resolution Official (the "SDRO") concerning Solicitation No. 2B-20-A-0087 (the "Solicitation") for Third-Party Canine Mail Screening ("3PK9-C") with Real-Time X-Ray Analysis and Interpretation ("Alarm Resolution").

### **Background**

The United States Postal Service (the "Postal Service" or "USPS") issued the Solicitation for the 3PK9-C and Alarm Resolution services on September 21, 2020, with a proposal due date of October 5, 2020. Between September 21 and October 5, 2020, the Postal Service issued six (6) Amendments to the Solicitation via email. The Solicitation sought one or more suppliers to provide the following:

1. The services of a TSA-approved Third-Party Canine-Cargo (3PK9-C teams) explosive detection canine team to screen Priority Mail and mail weighing 16 ounces or greater transported on domestic and international passenger commercial air carriers on a nationwide basis.
2. Alarm Resolution protocols for instances when a canine alerts to a mail piece. The Postal Service required a combined comprehensive improvised explosive device (IED) screening, detection, analysis and interpretation solution which includes technology used in conjunction with Postal Service or air transportation offerors' (air carriers) owned x-ray screening machines to facilitate remote alarm resolution analysis by FBI Hazardous Device School (HDS) or Naval School Explosive Ordinance Disposal (NAVSCOLEOD) certified bomb technicians.

See Solicitation, Statement of Work, § 1.2. These services had been previously provided by TSA; however, the Postal Service will now provide both the 3PK9-C and Alarm Resolution services going forward. The Postal Service intended to award one or more contracts for the 3PK9-C and Alarm Resolution in mid-November 2020, prior to the start of the peak mailing season.<sup>1</sup>

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<sup>1</sup> Due to a record surge in e-commerce caused by the COVID-19 pandemic, the 2020-2021 holiday season has been dubbed a "super peak" season for parcel shippers.

The Postal Service did not limit the competition to only those companies that could provide both 3PK9-C and Alarm Resolution services, but rather determined to evaluate both scopes of work as follows:

The Postal Service holds a strong preference for awarding one award that will encompass all requirements of the SOW. However, the Postal Service is willing to consider multiple awards, if that were determined to provide best value. The Postal Service will first make a preliminary best value decision among offerors who have proposed on the entire scope of work. Should the Postal Service be satisfied with that best value determination, it will proceed to award without further best value considerations.

See Solicitation, Evaluation Factors, p. 2.

On October 5, 2020, the closing date for proposals, AMK9 submitted a proposal to the contracting officer (CO) in response to the Solicitation for both the 3PK9-C and Alarm Resolution scopes of work. In addition, that same day, AMK9 submitted an initial business disagreement to the CO. The CO timely rendered a written resolution to AMK9's initial business disagreement, which was mailed and emailed to you as counsel for AMK9 on October 15, 2020. AMK9 timely lodged this SDRO disagreement (the "SDRO Disagreement") on October 23, 2020.

### **The Disagreement**

In your October 23, 2020 letter, you state that the basis for AMK9's Disagreement to the SDRO is as follows:

1. The terms of the Solicitation improperly bundle requirements for 3PK9-C services with Alarm Resolution services, unduly restricting competition;
2. The requirements are written around a single offeror's product; and
3. The Solicitation includes unreasonable evaluation methods, contains ambiguous and incomplete provisions, and implicates TSA regulations that are known only to one offeror, substantially prejudicing AMK9.

See Disagreement, p.1. AMK9 did not request a stay of the 3PK9-C and Alarm Resolution services contract award in the instant SDRO Disagreement, nor to the CO in its initial business disagreement.

I will address each basis for AMK9's SDRO disagreement separately below.

### **Discussion**

#### **1. The Solicitation's Bundling of 3PK9-C Services with Alarm Resolution Services**

AMK9 first challenges the Solicitation's "bundling" of services, or including the 3PK9-C services with Alarm Resolution services under one contract. AMK9 states that "the terms of the Solicitation improperly bundle requirements for 3PK9-C services with Alarm Resolution services, unduly restricting competition." See SDRO Disagreement, p.1. However, AMK9 provides little support beyond conclusory allegations that the bundling was either improper or unfairly restricted competition. Furthermore, after my review of the Solicitation and requirements, I have determined that the CO's preference for both scopes of work in one contract was appropriate.

First, AMK9 does not identify any law or regulation applicable to the Postal Service that limits the CO's ability to include two interdependent services under one contract, particularly where the Postal Service has never before contracted for these services.<sup>2</sup> However, even if such limitation existed in the law, ample support exists for the Postal Service's stated preference for awarding both the 3PK9-C and Alarm Resolution services to one supplier. In his response to AMK9's initial disagreement, the CO detailed the benefits to the U.S. Postal Inspection Service ("USPIS") and USPS of a complete, turn-key solution to the entire K9 screening process:

The USPS strongly desires a single supplier because these two closely related services are interdependent pieces of the two-step screening process. Effective and efficient interoperability between the K9 detection and technological alarm resolution serves both to support airline safety and law enforcement efforts the Inspection Service may need to undertake in relation to suspect pieces. The evidentiary value in a seamless alarm clearing and notification process is therefore critical and necessary to the screening program. The desire for one supplier has also stemmed from inefficient and inconsistent results with respect to alarm clearing under the current screening methods, which has not always resulted in the prompt notification to the Inspection Service of alarms by canines. A single integrated solution is most likely to ensure smooth program administration, as there will need to be swift and efficient communication between the canine screening team, the alarm resolution professionals, and the Inspection Service.

See CO's Resolution to Initial Disagreement, p. 1-2.

In rebuttal, AMK9's disagreement to the SDRO does not provide any factual support to refute the CO's rationale. Rather, AMK9 merely states that the CO needs to provide even more evidence to support what appears to be a simple, rational conclusion: two interrelated services are far more likely to operate seamlessly when performed by one supplier under one contract than by two independent suppliers under two separate contracts. See SDRO Disagreement, p.8. Of course, a seamless flow of interdependent services is of the utmost importance whereas, here, the interdependent services are a bomb detection system for mail that is loaded onto commercial passenger planes. In addition, the CO further discussed the pattern of inconsistencies that resulted under the legacy screening system, particularly with Alarm Resolution services, which have prevented prompt notification of alerts to USPIS. See CO's Final Decision, p. 2. Thus, the CO provided ample support for its preference for the services under one contract – a decision which a USPS CO has wide latitude to make.

Second, nothing restricted the Solicitation's stated preference to only offerors who could self-perform all scopes of work. All offerors were permitted to subcontract any portion of the work they could not self-perform. See Solicitation, Statement of Work, § 3.6. While AMK9 asserts that the CO's statement permitting subcontracting contradicts the contention that the Postal Service desires "seamless alarm clearing and notification," AMK9 seems to misapprehend what the prime supplier's role is in any resulting contract. See SDRO Disagreement, p.8. Whether one supplier

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<sup>2</sup> The SPs & Ps upon which AMK9 cites are guidelines "intended for internal use only to assist the Postal Service in obtaining best value and to efficiently conduct its SCM functions. They are advisory and illustrative of approaches that may generally be used by Postal Service employees to conduct SCM activities, and are intended to provide for flexibility and discretion in their application to specific business situations." See Introduction to the Postal Service SPs & Ps, p.1. Since they are non-binding, the SPs & Ps do not give AMK9 any enforceable rights against the Postal Service.

will self-perform the entire scope of work, or one supplier subcontracts out a portion of the work<sup>3</sup>, there is one contractor (the prime) at the bomb detection site responsible for coordinating the entirety of the scope of work, achieving a more seamless bomb detection system.

Third, the CO did not actually limit the competition to companies that could propose solutions for both scopes of work. Rather than limit competition, the Postal Service stated a preference for a turn-key solution, and left the door open for separate contracts in the event adequate competition was not achieved with a combined services contract. See Solicitation, Instructions & Evaluation Criteria, p.7. Thus, at no point was AMK9, nor any other participant, excluded from the competition if it chose to offer only 3PK9-C services.

In conclusion, the CO properly solicited both services with a preference for awarding both portions under the same contract, and articulated more than a sufficient basis for doing so. Therefore, I deny AMK9's first basis for its disagreement.

## **2. Adequate Competition**

AMK9 next challenges the drafting of the requirements in the solicitation as favoring one specific offeror, Michael Stapleton Associates, Ltd., d/b/a MSA Security. Although this section of its SDRO Disagreement is absent of any substantive argument, the remainder of its Disagreement raises several complaints about MSA being better positioned to win the award due to it being the only current provider of both the 3PK9-C services and the Alarm Resolution services. In order to overturn the Solicitation on this ground, AMK9 would have to demonstrate that the Postal Service drafted the Solicitation in such a manner that only MSA had a reasonable chance of winning the contract award and that the CO had no rational basis for doing so.

First, as discussed above, the CO had more than a rational basis for preferring both 3PK9-C services and Alarm Resolution services under one contract. Second, as also discussed above, the bundling of services was only a preference. Had the Postal Service not achieved adequate competition, it would have considered whether separate contracts provided it with the best value.

Third, AMK9 could have subcontracted or partnered with another entity to perform the Alarm Resolution services. In fact, prior to its October 23 submission to the SDRO, AMK9 had submitted a proposal in response to the Solicitation for the entire scope of work – both 3PK9-C and Alarm Resolution – something it now argues to the SDRO that it was impossible for any supplier other than MSA to do.<sup>4</sup> Furthermore, all of the offerors that provided proposals based on the Solicitation submitted proposals that included both 3PK9-C services and Alarm Resolution services. Thus, the presence of multiple “combined” offers, including one from AMK9 itself, demonstrates that the Solicitation was not drafted so as to exclude all other offerors or advantage only MSA.

Therefore, I deny AMK9's second basis for its disagreement as lacking merit.

## **3. The Mail Amendment**

For its third challenge to the Solicitation, AMK9 states that “[t]he Solicitation includes unreasonable evaluation methods, contains ambiguous and incomplete provisions, and implicates TSA regulations that are known only to one offeror, substantially prejudicing AMK9.”

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<sup>3</sup> The Alarm Resolution services are a small portion of the dollar value of any resulting contract, and thus could be more easily subcontracted out, as AMK9 and all other offerors did here.

<sup>4</sup> Notably, this key fact was not disclosed once to the SDRO in AMK9's 11-page SDRO Disagreement.

See SDRO Disagreement, p.1. However, AMK9 does not identify any “evaluation method” that it considers to be unreasonable, nor any of the provisions that it believes to be “ambiguous and incomplete.” Rather, AMK9 argues only that the non-disclosure of the TSA’s Mail Amendment to all offerors provided MSA with an unfair advantage. See SDRO Disagreement, p.10. Again, AMK9’s disagreement offers few facts to support these allegations.

AMK9 incorrectly states that the Postal Service “failed to make the Mail Amendment available until after award.” See SDRO Disagreement, p.10. This statement, of course, assumes that the Postal Service had the ability to disclose the Mail Amendment to offerors, a false assumption that the CO already corrected. Despite requests from the Postal Service, the TSA did not authorize the Postal Service to release the Mail Amendment to any offerors for the program.<sup>5</sup> See CO’s Resolution to Initial Disagreement. Thus, the Postal Service could not have acted arbitrarily in not disclosing the Mail Amendment to offerors because the Postal Service was not allowed to do so. Furthermore, AMK9 suffered no prejudice from the non-disclosure of the Mail Amendment, because no offerors received the Mail Amendment.

Next, AMK9 alleges that [REDACTED], an employee of MSA, had an “organizational conflict of interest” because he may have had knowledge of the Mail Amendment by way of his employment with TSA and MSA’s participation in the USPS pilot program. See SDRO Disagreement, p.10. However, the Mail Amendment was not finalized until after the conclusion of MSA’s pilot program with the Postal Service, and AMK9 offers no support for its allegation that Mr. [REDACTED] had access to the Mail Amendment while employed with TSA. Furthermore, even if MSA had unequal access to the Mail Amendment, I have reviewed the Postal Service’s award recommendation, which detailed the evaluation performed for the Solicitation, and I cannot find harm that resulted from any offeror’s lack of access to the Mail Amendment. The evaluation team did not use the Mail Amendment to evaluate AMK9’s proposal, or the proposal of any other offeror. Therefore, unequal access to the Mail Amendment, if any, could not have provided MSA an unfair advantage.

As all evidence before me demonstrates that the Postal Service did not have authority to disclose the Mail Amendment to any offeror and did not unfairly favor any offer that could have had access to the Mail Amendment, I must reject AMK9’s third challenge to the Solicitation.

### **SDRO Decision**

I have reviewed the matter and conclude that AMK9 has not raised any valid challenges to the Solicitation. The Postal Service did not unfairly bundle the 3PK9-C and Alarm Resolution services, did not publish requirements that favored one supplier, and was not able to disclose the Mail Amendment to offerors. Therefore, it is my decision to deny AMK9’s business disagreement. In accordance with 39 C.F.R. § 601.108(g), this is my final and binding resolution of this matter.

Sincerely,

E-SIGNED by Nicholas.G Faiola  
on 2020-11-27 12:11:01 CST

Nicholas Faiola  
Supplier Disagreement Resolution Official  
Manager, Supply Management Infrastructure

cc: Jeremy Baker, Contracting Officer

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<sup>5</sup> TSA would only disclose the Mail Amendment to the contract(s) awardee at the time of award.