



April 13, 2021

BY EMAIL

W. Brad English, Esq.
Maynard Cooper Gale
655 Gallatin Street SW
Huntsville, AL 35801-4936
Email: benglish@maynardcooper.com

Re: Supplier Disagreement Resolution No. SDR-21-CS-0004

Dear Mr. English:

This letter responds to your business disagreement submitted on December 17, 2020 on behalf of Global K9 Protection Group, 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").

Solicitation Background

The United States Postal Service (the "Postal Service" or "USPS") issued the Solicitation for the 3PK9-C and Alarm Resolution services on September 22, 2020, with a due date of October 5, 2020. Between September 22 and October 29, the Postal Service issued 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 (SOW), § 1.2. These services had been previously provided by TSA; however, the Postal Service would now be required to provide both services going forward. In addition, the Solicitation stated that offerors' proposals would be evaluated based on the following evaluation factors:

- Evaluation Factor 1 - Capability (Explosive Detection Canine Service)
- Evaluation Factor 2 - Capability (Alarm Resolution)
- Evaluation Factor 3 - Past Performance

See Solicitation, Attachment - Evaluation Factors, p.1. The evaluation factors were listed in descending order of importance. See Solicitation, Instructions and Evaluation Criteria, p.5. The Postal Service also stated that: "USPS is more concerned with making an award or awards based on a superior technical proposal than with awarding at the lowest price. The Offeror's technical proposal and the corresponding evaluation factors are therefore more important than price. However, USPS will not make an award or awards for a significantly higher price for minor or marginal increases in performance." *Id.*

On October 5, 2020, the closing date for proposals, Global submitted a proposal to the contracting officer (CO) in response to the Solicitation for both the 3PK9-C and Alarm Resolution scopes of work. After thorough review, the Technical Evaluation Team ("TET") determined that Global's technical proposal ranked 2nd among the seven (7) proposals received; however, its evaluated pricing was the highest of all offerors. Ultimately, the CO concluded that Global did not provide the best value to the Postal Service for the Solicitation.

On November 9, 2020, the Postal Service awarded a single contract to Michael Stapleton Associates, Ltd., d/b/a MSA Security ("MSA") for both of the Solicitation's scopes of work (the "Contract"). Global received a debriefing on November 19, 2020, and thereafter submitted an initial business disagreement to the CO on November 30, 2020. The CO timely rendered a written resolution to Global's initial business disagreement, which was sent to you on December 10, 2020. You timely lodged this SDRO disagreement (the "SDRO Disagreement") on behalf of Global on December 17, 2020.

OCI Investigation Background

At the time of proposal submission, another offeror, American K-9 Detection Services, LLC ("AMK9") submitted a pre-award business disagreement to the CO, raising in part the organization conflict of interest ("OCI") issue that Global now raises. As a result, the CO performed an investigation of the purported OCI and concluded that no OCI existed. AMK9 appealed the CO's decision to this SDRO, which also found that MSA did not have unequal access to the solicitation-related information.¹ AMK9 appealed that decision to the U.S. Court of Federal Claims. On March 8, 2021, the court stayed the case and remanded the OCI claim to the CO for further investigation. See *American K-9 Detection Servs., LLC v. United States*, No. 20-1614, 2021 WL 1086225, at *25 (Fed. Cl. Mar. 19, 2021). On April 5, 2021, in accordance with the court's March 8 Order, the CO furnished the entire supplemental OCI investigation to the court, which was likewise furnished to the SDRO on April 8.

The Disagreement

In your December 17, 2020 letter, you state that the bases for Global's disagreement to the SDRO are as follows:

1. USPS did not identify and address obvious OCIs for MSA, the awardee; and
2. USPS unreasonably evaluated Global's proposal by assessing it certain weaknesses for each evaluation factor.

¹ See Supplier Disagreement Resolution No. SDR-21-CS-001, at <https://about.usps.com/suppliers/disagreement-decisions/sdr-21-cs-001.pdf>

See SDRO Disagreement, pp. 6,8. I will address each basis for your disagreement separately below.

Discussion

1. Global Waived Its OCI Claim.

Global first challenges the CO's identification and resolution of the potential OCI involving MSA and its employee, [REDACTED]. Global states that the CO "failed to identify and address obvious organizational conflicts of interest." See SDRO Disagreement, p.2. However, Global's disagreement also admits that it could have raised the "obvious" OCI claim in a pre-award disagreement to the CO, but instead Global elected to wait until after the award was made to another offeror. See SDRO Disagreement, p.8. While Global's disagreement asserts that it is not required to raise any OCI issue in a pre-award protest, this argument demonstrates a misunderstanding of Postal Service regulations and applicable caselaw.

Postal Service regulations make clear that, "[f]or disagreements that concern alleged improprieties in a solicitation, the contracting officer must receive the disagreement before the time set for the receipt of proposals . . ." 39 CFR 601.107(b); see *Blue & Gold Fleet L.P. v. United States*, 492 F.3d 1308, 1313 (Fed. Cir. 2007). Federal caselaw also makes clear that a solicitation impropriety waiver includes instances where a protester fails to raise an OCI claim before the close of the bidding process. See *Concourse Grp., LLC v. United States*, 131 Fed. Cl. 26, 29 (2017). "The Federal Circuit adopted this rule to prevent contractors from 'taking advantage of the government and other bidders' by sitting on their rights during the bidding process, which leads to expensive post-award litigation." *Id.* Global's disagreement concedes that it was aware MSA was competing for the contract, and that it had knowledge of the facts surrounding the purported OCI prior to the award. See SDRO Disagreement, p.8. As Global admits that it sat on its rights during the pre-award phase in order to spring the OCI claim on the Postal Service in a post-award disagreement, Global has undoubtedly waived its rights to assert an OCI claim now.

2. The CO Identified and Resolved any Potential OCI.

However, irrespective of Global's clear waiver of its OCI claim, I have reviewed its allegations regarding the purported OCIs and the CO's resolution thereof, and will discuss each further below. Generally, an OCI exists when the nature of the work to be performed under a contract may give an offeror or supplier an unfair competitive advantage and when an offeror or supplier has other interests that may impair its objectivity or ability to render impartial assistance or advice or to provide objectivity in performing the contract work. See USPS Supplying Principles & Practices ("SPs & Ps"), 7-15.2. Thus, there are generally 3 categories of OCIs: 1) Unequal Access to Information; 2) Biased Ground Rules; and 3) Impaired Objectivity.

The Postal Service prohibits these OCIs through Clause 1-7: Organizational Conflicts of Interest, which was incorporated into the Solicitation here. In the event that the CO determines that there may be the potential for an OCI, the CO should "consult with assigned counsel and obtain the assistance of appropriate technical specialists to consider the potential to avoid, neutralize or mitigate the organizational conflict of interest." See SPs & Ps, 7-15.2.1. If, as Global has done here, an offeror objects to the CO's conclusion that an OCI does not exist or can be successfully mitigated, a disappointed offeror must identify "hard facts" to support its objections. See *PAI Corp. v. United States*, 614 F.3d 1347, 1352 (Fed. Cir. 2010). "[A] mere inference or suspicion of an actual or apparent conflict is not enough." *Id.*

A. MSA did not have an unfair advantage due to unequal access to Solicitation-related Information.

Global first asserts that MSA had an Unequal Access to Information OCI. In support, Global alleges that MSA received “solicitation amendments that were not available to any other offeror.” SDRO Disagreement, p.7. However, as the CO already addressed in its response to Global’s initial disagreement, and Global’s own disagreement admits, Global’s allegation in this respect is categorically false. See CO’s Response dated December 10, 2020, p.1; SDRO Disagreement, p.2. Global, and all other offerors, received all six (6) Amendments to the Solicitation. *Id.*

Global next asserts that MSA received “nonpublic information” not available to any other offerors. SDRO Disagreement, p.7. However, Global does not cite to any of the purported nonpublic information it alleges “caused an unequal evaluation of proposals.” *Id.* Absent any “hard facts” in support of its claims, I find that Global has only shown that MSA may have received the same advantages that any other pilot program participant would typically receive. Thus, I find that Global has not demonstrated that MSA had an OCI based upon unequal access to information.

B. MSA did not have a Role in Developing the Solicitation’s Requirements.

Global next alleges that MSA had participated in drafting the Solicitation’s SOW and that ██████ shaped the requirements for the Solicitation (i.e., a Biased Ground Rules OCI). While I agree, if true, these actions would result in an impermissible OCI, here, again, Global provides no evidence to supports these contentions. While a “best practices” presentation was created as a result of the pilot, this presentation was created by U.S. Postal Inspection Service (“USPIS”) – not MSA as Global alleges. Furthermore, the CO confirmed with TSA that ██████ had only a limited role at TSA regarding the Mail Amendment in advising as a subject matter expert on explosive detecting canine capabilities, and did not “shape the requirements for this acquisition” as Global alleges. See SDRO Disagreement, p.8. Upon his employment with MSA, he was walled off from participating in the 3PK9 pilot program to avoid the possibility or appearance of a conflict of interest. The CO also confirmed that, following the pilot program, USPIS alone prepared the SOW based upon the lessons it learned from the pilot program and in accordance with TSA regulations.

C. USPS’s Actions to Resolve OCI Were Appropriate.

Since Global asserts, without factual support, that the CO “failed to identify and address” MSA’s purported OCI, I will address the CO’s actions in response to the OCI. See SDRO Disagreement, p.7-8. After another offeror timely raised the OCI issue to the CO in a pre-award bid protest, the CO consulted with his assigned counsel concerning the allegations and discussed the Mail Amendment with the USPIS. The Mail Amendment was a document created and controlled by the Transportation Service Administration (“TSA”) that regulated entities with the authority to handle mail screening. The Mail Amendment was strictly under the control of the TSA. As the CO had not been provided with the Mail Amendment by TSA or otherwise during the procurement, he attempted to gain insight into what the Mail Amendment was and what type of information was contained in it. Upon review, the CO concluded that the Solicitation’s SOW provided the key details that offerors would need in order to compete equally under the Contract.

Furthermore, the CO had the USPIS contact TSA in an attempt to obtain release of the Mail Amendment to all offerors. On October 15, 2021, TSA responded that it would “only provide the mail amendment to the CCSF-K9 providers who will be carrying out the procedures of the

amendment.”² On October 8, 2020, the CO additionally wrote to MSA to obtain details of [REDACTED] involvement at TSA and the pilot program, as discussed above. After this investigation, the CO correctly concluded that MSA did not have an OCI nor an unfair advantage in the competition.

Following the remand by the U.S. Court of Federal Claims, the CO obtained significant additional information that confirmed the conclusion of his first investigation. This included multiple correspondences and telephone interviews with MSA and TSA regarding the role [REDACTED] played at TSA and in the pilot, the scope of the Mail Amendment, and MSA’s participation the “best practices” presentation. [REDACTED] also provided a declaration in support of his statements to the CO. Throughout this extensive investigation, no evidence of an improper OCI was discovered.

Finally, I also reviewed the pilot program Mail Amendment (which I understand was almost identical to the final Mail Amendment), the Postal Service’s award recommendation, and the TET’s evaluation report, and I cannot find any 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 Global’s proposal, or the proposal of any other offeror. As discussed further below, the several weaknesses identified in Global’s proposal were not requirements of the Mail Amendment. Therefore, even if MSA had unequal access to the Mail Amendment, the access provided it no unfair advantage.³

In conclusion, as I cannot evaluate unsubstantiated allegations, and all evidence before me demonstrates that the CO acted reasonably in identifying and determining that an OCI did not exist for the 3P-K9 Solicitation, I must reject Global’s OCI challenge to the Solicitation.

3. USPS Fairly Evaluated Global’s Proposal

For its second challenge to the award, Global generally asserts: “USPS unreasonably evaluated Global K9’s proposal, arbitrarily assigning weaknesses/risks/deficiencies and failing to recognize strengths.” However, Global does little to support this bold assertion. In fact, Global fails to cite to a single section of its proposal that would contradict the TET’s determinations. See SDRO Disagreement, 8-9. In addition, Global only objects to four (4) of the [REDACTED] weaknesses assigned against it by the TET. However, I will address each of these 4 weaknesses below by evaluation factor.

A. The TET Properly Assessed Weaknesses for Evaluation Factor 1

For the first evaluation factor, Capability (EDC Service), the Solicitation stated that offerors’ proposals would be evaluated as follows:

The offeror must demonstrate its current capability to meet the requirements in the SOW. The Postal Service will evaluate the offeror’s ability to provide canine handler resources adequate to perform the work as outlined with the SOW and relevant attachments; its ability to meet the required or proposed delivery

² The CO advised you of this in his response to Global’s initial disagreement, which your SDRO Disagreement erroneously omits. See CO’s Response dated December 10, 2020, p.1.

³ I would also note that I am perplexed as to how you can claim that Global lacked access to any version of the Mail Amendment, yet also specifically cite to parts of the Mail Amendment. See *id.* at p.7,11.

schedules; and the ability to obtain the necessary certifications and security badges required at each location....

The offeror's demonstrated capability of the following factors will be considered in the aggregate in reaching an overall rating for this evaluation factor[:] ...Offeror's demonstrated responsiveness to the attached Roll-out Schedule.

The TET assessed two weaknesses to Global's proposal in its evaluation of Factor 1. However, Global has only objected to the second weakness with respect to Global's [REDACTED]

I would note also that, while the TET's final evaluation report did not identify this weakness, earlier versions of the TET evaluation did express concern over Global's rollout capability, and the TET verbally confirmed to the CO that this weakness should be incorporated into the final Award Recommendation. However, even if this weakness was assessed erroneously, I find that Global suffered no prejudice from the assessment of this weakness. Assuming the TET ignored both weaknesses in Evaluation Factor 1, and Global had received the highest rank possible in Evaluation Factor 1 (i.e., Excellent), it still would have been ranked technically second - below MSA - overall. Considering the substantial price difference between Global and the other offerors, Global could not have been best value because it would still have ranked lower than MSA technically with a much higher price.

B. The TET properly assessed weaknesses for Evaluation Factor Two – Capability (Alarm Resolution).

For the second evaluation factor, Capability (Alarm Resolution), the Solicitation stated that offerors' proposals would be evaluated as follows:

The Postal Service will evaluate the offeror's technical approach to meeting the requirements of the SOW. Based upon the material presented in the offeror's proposal, the Postal Service will evaluate the offeror's understanding of the requirements of the SOW and the degree to which the offeror's approach represents a detailed and comprehensive approach in terms of accomplishing the contract requirements.

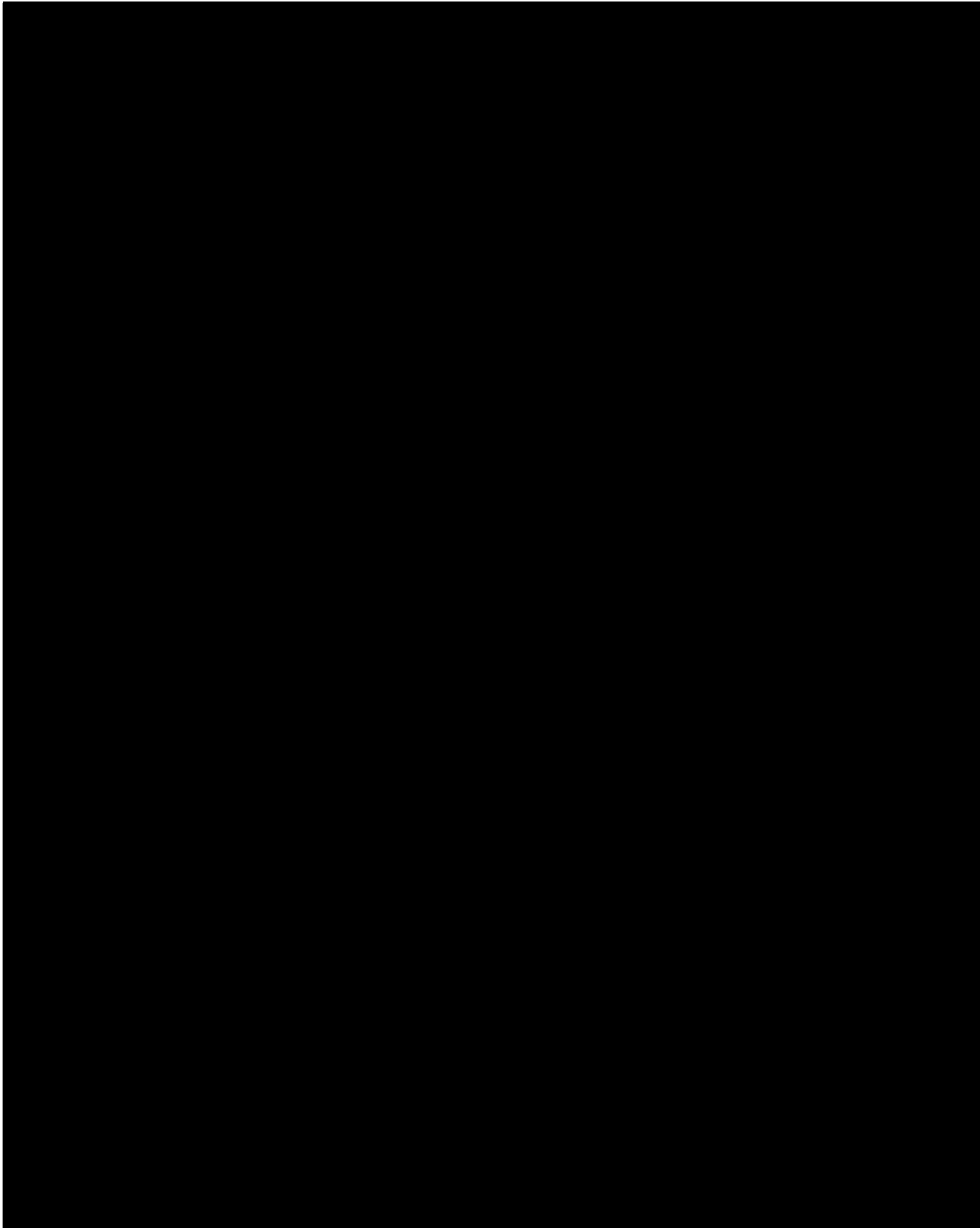
The following will be considered in reaching an overall rating for this evaluation factor;

- Offeror's Alarm Resolution Plan
- Offeror's Management and Staffing Plan for K9's and Handlers
- Offeror's Quality Assurance and Performance Tracking Plans

The TET assessed several weaknesses to Global's proposal in its evaluation of Factor 2. However, Global has only objected to the following two (2) weaknesses:

- Global's x-ray imaging was not the best possible and potentially limited the ability [REDACTED] to easily see and review the x-ray image; and
- Global did not provide a secondary location for their global command center.

I will address each of these weaknesses below.





Therefore, I find that Global was properly assigned this weakness for Evaluation Factor 2.

C. The TET properly assessed a weakness for Evaluation Factor Three – Past Performance.

For the third evaluation factor, Past Performance, the Solicitation stated that offerors' proposals would be evaluated as follows:

The Postal Service will evaluate the depth of the offeror's experience and degree to which successful performance has occurred in the past. The evaluation of past performance may include, but will not be limited to, the following:

- Demonstrated support for the execution of canine handler teams across the U.S. including the planning and administration of such a national level program.
- Proven experience in developing national level canine handler programs.
- Offeror's National Roll-out Canine Support Experience

Global objects to the TET's assessment of a weakness for Global's [redacted]

[REDACTED]

Therefore, I find that Global was properly assessed this weakness.


4. Request for Stay

Global’s Disagreement also requests the additional relief of a stay of performance of the Contract during the pendency of its Disagreement. However, a stay of performance is not warranted in this instance. As demonstrated herein, the Postal Service performed a thorough and well-reasoned analysis of all proposals and reasonably determined that an award of the Contract to Global would not present the best value to the Postal Service. Global was not able to raise any valid objections to the TET’s assessment of any weaknesses that resulted in it being ranked 2nd technically (lower than MSA), while having the highest price of any offeror. Furthermore, the Postal Service thoroughly evaluated the purported OCI related to MSA and properly concluded that no OCI existed. Therefore, Global’s request for a stay of performance of the Contract is denied.

SDRO Decision

I have reviewed the matter and conclude that Global has not raised any valid challenges to the Award. Not only was the post-award OCI challenge untimely, but the CO also properly investigated Global’s concerns regarding a potential OCI and concluded that the awardee did not have an OCI. In addition, the Postal Service properly evaluated Global’s proposal and determined that it did not provide the best value for the Contract. Therefore, it is my decision to deny Global’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 ROBERT D'ORSO
on 2021-04-13 14:53:24 CDT

Robert D’Orso
Supplier Disagreement Resolution Official

cc: Jeremy Baker, Contracting Officer