



May 25, 2022

BY EMAIL AND CERTIFIED MAIL

W. Brad English, Esq.
Maynard Cooper Gale
655 Gallatin Street SW
Huntsville, AL 35801-4936

Re: Supplier Disagreement Resolution No. SDR-22-CS-003

Dear Mr. English:

This letter responds to the business disagreement (the “Disagreement”) you submitted on April 22, 2022 on behalf of Global K9 Protection Group (“Global”) to the Supplier Disagreement Resolution Official (the “SDRO”) concerning Solicitation Nos. 2B-22-A-0015 (Third-Party Canine Mail Screening “3PK9”) and 2B-22-A-0016 (Mail Screening Alarm Resolution “Alarm Resolution”) (collectively, the “2022 Solicitations”). For the following reasons, Global’s Disagreement is sustained in part and denied in part.

Background

The Combined Solicitation, Award, and Disagreement

The United States Postal Service (the “Postal Service” or “USPS”) issued Solicitation No. 2B-20-A-0087 for 3PK9 and Alarm Resolution services (the “Combined Solicitation”) on September 21, 2020. The Combined 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 Combined Solicitation, Statement of Work § 1.2. The Transportation Security Administration (“TSA”) previously provided these services; however, the Postal Service issued the Combined Solicitation because it would be required to provide both services going forward.

On October 5, 2020, the closing date for proposals, Global submitted a proposal to the contracting officer in response to the Combined Solicitation encompassing both 3PK9 and Alarm Resolution services. 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 Combined Solicitation’s scopes of work. Thereafter, Global submitted an initial business disagreement to the contracting officer on November 30, 2020. Among other things, Global contended that the Postal Service had not identified or addressed certain organizational conflicts of interest for the awardee, MSA. On December 10, 2020, the contracting officer denied Global’s initial disagreement. Global then lodged its disagreement with the SDRO on December 17, 2020 again arguing, among other things, that the Postal Service had not identified or addressed organizational conflicts of interest for MSA. On April 13, 2021, the SDRO denied Global’s disagreement finding alternatively that Global had waived its organizational conflict of interest claim and that the contracting officer had identified and resolved any potential organizational conflicts of interest.

AMK9 2020 Pre-Award Disagreement and Court of Federal Claims Proceedings

On October 5, 2020, American K-9 Detection Services, LLC (“AMK9”) submitted a pre-award initial disagreement to the contracting officer raising in part the same organizational conflict of interest issue that Global raised in its post-award disagreement. As a result of the AMK9 disagreement, the contracting officer performed an investigation of the purported conflict and concluded that none existed. AMK9 appealed the contracting officer’s decision to the SDRO, which also found that MSA did not have a conflict.¹ AMK9 appealed that decision to the United States Court of Federal Claims (“COFC” or the “court”). See *Am. K-9 Detection Servs., LLC v. United States*, No. 20-1614, 2021 WL 1086225 (Fed. Cl. Mar. 19, 2021) (“AMK9”).² Global appealed the SDRO’s decision on its post-award disagreement to the COFC, and the court consolidated that appeal with AMK9’s appeals in AMK9.

On March 8, 2021, the court stayed AMK9 and remanded the organizational conflict of interest claim to the contracting officer for further investigation. On April 5, 2021, in

¹ See Supplier Disagreement Resolution No. SDR-21-CS-001.

² I am generally familiar with and, in connection with this decision, have reviewed relevant portions of the administrative record submitted to the COFC in the AMK9 action. Citations to “AR” refer to the AMK9 administrative record.

accordance with the court's March 8, 2021 order, the contracting officer furnished his supplemental OCI investigation to the court.

On August 4, 2021, the court issued an opinion and order ruling on the *AMK9* parties' competing motions for judgment on the administrative record. *AMK9* at 256-57. With respect to the parties' contention that the Postal Service had failed to identify and mitigate organizational conflicts of interest, the court found that certain of the contracting officer's remand investigation conclusions required further investigation and substantiation. *AMK9* at 296-97. Accordingly, the court ordered the contracting officer for the Combined Solicitation, or another contracting officer designated by the Postal Service, to conduct a second remand investigation of real or apparent organizational conflicts of interest involving MSA. See *id.*

At the same time the COFC was considering *AMK9*, on November 9, 2020, the Postal Service awarded MSA a combined contract for 3PK9 and Alarm Resolution services, Contract No. 2BEMPS-21-B-0014 (the "2020 Contract"), through the Combined Solicitation. Due to the exigent need for 3PK9 and Alarm Resolution services to further the safety of mail transportation by domestic and international air carriers, the Postal Service did not stay performance of the award, and MSA commenced providing 3PK9 and Alarm Resolution services to the Postal Service under the 2020 Contract. The COFC did not issue injunctive relief enjoining MSA's performance of the 2020 Contract. See *AMK9* at 263.

On October 22, 2021, Contracting Officer Nathan T. Franklin ("CO Franklin") issued a Contracting Officer's Report Following Second Remand discussing the results of his OCI investigation (the "Remand Report").³

Remand Report and Consideration of Organizational Conflicts of Interest in the 2022 Solicitations

CO Franklin's Remand Report considered various alleged organizational conflicts of interest involving MSA, including former TSA employee ██████████'s job search and subsequent employment with MSA, AR3667-77, and whether MSA had an unfair advantage due to access to information and program design work in connection with the 2020 Combined Solicitation. AR3677-3682.

With respect to ██████████, CO Franklin's investigation revealed that he "did not provide any direct or substantive input into the MSA offer on the USPS solicitation," "has 'not been involved in the preparation of any proposals since [he has] been at MSA" and "[was] not consulted on MSA's technical response or any other part of MSA's proposal." AR at 3667. Moreover, a separate MSA representative confirmed that ██████████ had no

³ In connection with resolving Global's Disagreement, I have reviewed the Remand Report and the record documents cited therein.

involvement in the development of MSA's proposal for the 3PK9 services. . . . [REDACTED] was walled off from participation in any of MSA's federal business, including the USPS contract, for the first year of his employment with MSA." *Id.*

CO Franklin also asked TSA whether it would opine on any post-employment ethics conflicts or restrictions for [REDACTED] in his job at MSA. AR 3669. TSA would not provide such an analysis. *Id.* Nor was USPS ethics counsel able to provide an opinion regarding post-employment ethics restrictions of a non-USPS employee. *Id.* Nonetheless, CO Franklin found that post-employment ethics restrictions were not relevant to his Remand Report because MSA walled-off [REDACTED] from participation in its federal business, including contract solicitations with the Postal Service. AR 3670.

While it is undisputed that [REDACTED] had limited involvement with the mail screening pilot project while a TSA employee, his "role was minor as compared to others and, in this regard, would not be considered to be substantive." AR 3675. And, although [REDACTED] also had limited correspondence with USPS personnel regarding the planning of a statement of work for the 2020 Combined Solicitation, CO Franklin found: (a) that MSA had walled off [REDACTED] from the 2020 Combined Solicitation procurement process while at MSA and (b) that [REDACTED]'s involvement in the pilot project while a TSA employee did not create a biased ground rules conflict for MSA. AR 3677.

By contrast, CO Franklin found that MSA, apart from its employment of [REDACTED], had organizational conflicts of interest in the 2020 Combined Solicitation.

In particular, CO Franklin stated that "MSA had unequal access to information and possibly benefited from biased ground rules[.]" AR 3682. In coming to this conclusion, CO Franklin reviewed an extensive record of communications between and among USPS, USPIS, TSA, and MSA. CO Franklin made, among others, the following findings:

- In November 2019, MSA appears to have created a presentation containing information regarding locations, mail volumes, days on which screening would be required, network information, and rollout schedule information. AR 3678.
- In January 2020, MSA received a copy of an Investment Review Committee presentation from a member of the Technical Evaluation Committee that disclosed potential savings, costs, and a rollout plan for the 2020 Solicitation. AR 3677.
- In July 2020, records indicate that MSA may have contributed to Quality Control Audit and other program documentation. AR3678. CO Franklin explained that MSA appeared to have played essentially a consulting role regarding such documentation without a consulting contract. *Id.*
- MSA prepared, in part, a "Speed of the Mail" document reflecting best practices, including a practice of having 3PK9 detection teams arriving on site 30 minutes prior to the start of a shift. AR 3679.

- MSA contributed, through iterative questions and answers, to a “Playbook” of detection and alarm resolution procedures; the Playbook reflected MSA-specific procedures. AR3681.
- With respect to the 2020 Combined Solicitation statement of work, CO Franklin found there to be no evidence that MSA “was directly involved in drafting the SOW.” AR3682. He further found that “[t]he Postal Service designed the SOW, with some input from TSA in the early stages of the SOW drafting (before the pilot), when it was based almost exclusively upon the existing cargo screening program.” AR3682. “It appears that the SOW was improved upon over time, including after the pilot. However, . . . MSA did appear to be heavily involved in the designing of processes and procedures for the USPIS 3PK9 program.”

CO Franklin explained in the Remand Report that “3PK9 screening of mail is a critical service, which is both legally required and directly related to safety. Thus, it needs to continue without interruption to the air network for mail transportation[.]” Nonetheless, CO Franklin directed the Postal Service to take corrective action by terminating the 2020 Contract one year earlier than the end of the base period and “(1) to immediately prepare a new solicitation and Statement of Work based on lessons learned during the initial first year of the 3PK9 program; (2) a year following the completion of (1) to conduct the competition and resolve any protests, if they arise; and (3) . . . transition any new contractor or contractors into our program, with minimal risk of disruption of this critical service.” Remand Report at 19.

Corrective Action Solicitations

Upon issuance of CO Franklin’s Remand Report, the Postal Service commenced taking corrective action. This involved, at the outset, evaluating lessons learned during the initial first year of the 3PK9 program and determining whether there continued to be organizational conflicts of interest that would require disqualification of MSA or other mitigation measures.

In planning the 2022 Solicitations, the contracting officer learned through discussions with relevant stakeholders that the Postal Service’s preference for a single awardee for both 3PK9 and Alarm Resolution services was unnecessary. The contracting officer further learned through additional market research that, due to the passage of time, materially more potential suppliers had obtained SAFETY Act approvals for 3PK9 or Alarm Resolution services by 2022 than had approvals in 2020. Accordingly, the contracting officer decided to solicit 3PK9 and Alarm Resolution services separately.⁴

⁴ See generally Michael Stapleton Associates, Ltd. Supplier Disagreement Resolution No. SDR-22-CS-0001 (May 17, 2022).

In addition, as part of the purchase planning process, the contracting officer, in consultation with USPS counsel and internal business partners, attempted to identify organizational conflicts of interest and, where appropriate, take action to avoid, neutralize, or mitigate them. See Postal Service Supplying Principles and Practices (“SPP”) 7-15.2.1; 2022 Solicitations Purchase Plan Organizational Conflict of Interest (OCI) Review for Solicitations (2B-22-A-0015, 2B-22-A-0016) (the “OCI Analysis”).

In the OCI Analysis, the contracting officer reviewed and took into account the findings of CO Franklin’s Remand Report. With respect to unequal access to information, the contracting officer noted the following:

- The 2022 Solicitations contained an entirely new rollout schedule, and no potential offerors had seen the rollout schedule.
- An Investment Review Committee (“IRC”) cost savings estimate that was improperly shared with MSA contained pricing information from 2019. Since the time the Postal Service created the IRC cost savings estimate, air cargo pricing had increased significantly due to contractual fuel adjustments, commercial air pricing differed due to the exercise of certain contractual options, and the “pricing of most goods and services has changed over the last two years, especially considering the challenges caused by the pandemic.” OCI Analysis at 2. Accordingly, the contracting officer found that the rollout schedule and cost savings information in the IRC presentation was not competitively useful or advantageous information for the 2022 Solicitations.
- A November 14, 2019 email from MSA contained a presentation with information regarding “locations that will require screening, including airlines that are at the locations, mail volumes for the locations, days of the week, and number of hours required.” *Id.* This information was not competitively useful or advantageous for the 2022 Solicitations because the rollout schedule had changed, new sites had been added, and no potential offerors had access to the new rollout schedule prior to issuance of the 2022 Solicitations. The contracting officer noted that, although MSA has teams at certain of the newly solicited locations, this is an ordinary incumbent advantage. OCI Analysis at 2. (I note further that mail volume and airline schedule information from 2019 would not be competitively useful information for the 2022 Solicitations in light of substantial changes to both during the course of the pandemic.)⁵
- The contracting officer found that MSA did not have unequal access to information based on its employment of [REDACTED] because of new requirements in the 2022 Solicitations’ statements of work and lessons learned from the current contract performance. OCI Analysis at 3. “TSA was not involved in these updates, nor was [REDACTED] employed at TSA during the relevant time period, during which USPS

⁵ See generally, e.g., USPS FY2020 Form 10-K, available at <https://about.usps.com/what/financials/10k-reports/fy2020.pdf>.

was drafting the updated SOWs.” Accordingly, the contracting officer found that [REDACTED]’s current employment with MSA did not require mitigation.⁶

- With respect to the Mail Amendment document, which was substantially similar to cargo screening requirements to which any experienced potential offeror would have access, TSA “will allow access by those 3PK9 entities who are certified. Such offerors will be provided direct access to the document by TSA.” OCI Analysis at 3. Because TSA will provide access to the Mail Amendment to certified offerors, such as Global, access to information contained within the Mail Amendment document is not unequal.

With respect to program design and potential biased ground rules organizational conflicts of interest, the contracting officer concluded the following:

- “Although the Postal Service is not subject to the FAR, the principles set forth in [*AAR Manufacturing, Inc. v. United States*, 149 Fed. Cl. 514, 524 (2020)] are instructive here.” *AAR Manufacturing* noted and discussed FAR 9.505-2(b)(2), which provides that “a biased-ground-rules OCI must be excluded from the competition for the system or service for which it helped develop the work statement, unless ‘[i]t has participated in the development and design work[.]’” OCI Analysis at 4 (citing *AAR Manufacturing*).
- Regarding statements of work, the contracting officer noted that the Remand Report and his own investigation revealed “no evidence . . . that MSA directly participated in drafting the [2020 Combined Solicitation] SOW[.] . . . Rather, it appeared that MSA provided and/or contributed to program documents that were used for internal program development/administration purposes.” OCI Analysis at 4. The 2022 Solicitations’ statements of work had been revised and updated by USPIS, separated into two independent statements of work, and MSA neither drafted nor contributed to the new statements of work. *Id.*
- Although MSA did not directly contribute to the 2022 Combined Solicitation statement of work, it did provide input into certain program design documentation. *Id.* at 5.
- MSA created, in part, content in an internal quality control audit document that the Postal Service has updated and revised to account for lessons learned since the 3PK9/Alarm Resolution program began. *Id.* Although MSA contributed to earlier versions of this document, that does not give rise to a biased-ground-rules organizational conflict of interest. See FAR 9/505(b)(2); *AAR Manufacturing*. To the extent that familiarity with the internal quality control audit document may have provided MSA with unequal access to information, the contracting officer proposed to mitigate this conflict by providing all offerors the opportunity to obtain a copy of the current version of the document. OCI Analysis at 5.

⁶ The contracting officer’s conclusions were unchanged by his review of the documents Global attached to its Disagreement as Exhibits 2 and 3, with which I agree as discussed below.

- With respect to the “Playbook” document, any unequal access to information or biased ground rules organizational conflict of interest has been mitigated by providing offerors the opportunity to obtain a copy of the portion of the Playbook containing USPIIS processes and requiring the eventual awardee to tailor the remainder of the Playbook to the awardee’s specific alarm resolution processes. *Id.*⁷

The Postal Service issued the 2022 Solicitations on February 18, 2022.

2022 Solicitations Amendment 1

On March 29, 2022, the Postal Service issued Amendment 1 to the 3PK9 Solicitation and Amendment 1 to the Alarm Resolution Solicitation.

Amendment 1 to the 3PK9 Solicitation provided:

Non-Disclosure Agreement (NDA) included – please review, sign, and return –

As referenced in our response to a question during the Q&A process, we planned to release additional program documents in which MSA, the current USPS 3PK9 supplier, had some input, once all rights to use those documents had been cleared. We have now secured the needed rights. This is being done to ensure a fair competition and to provide all offerors with as much information as possible that could benefit offerors in preparation of their offers.

These documents contain sensitive program information, including [sensitive security information], which must be handled accordingly. Therefore, USPS requires that the attached NDA be signed and returned prior to release of these documents.

Once the NDA is signed and returned to the contracting officer, we will send you:

- 1) The Playbook

⁷ MSA prepared in large part a “Speed of the Mail” document. AR3334-46. Best practices in this document have been made requirements of the current solicitations, such as a requirement for handlers to arrive 45 minutes prior to commencing screening. OCI Analysis at 6. I agree with the contracting officer’s finding that, even if MSA proposed an early arrival time for handlers and previously benefited in its technical evaluation from this proposal, an early arrival time is now a requirement of the 3PK9 Solicitation statement of work and in no way provides any offeror an unfair competitive advantage.

2) USPIS 3PK9 Audit document

3PK9 Solicitation Amendment 1.

Amendment 1 to the Alarm Resolution provided:

Non-Disclosure Agreement (NDA) included – please review, sign, and return –

As disclosed in response to a question we received in the canine solicitation Q&A process, we planned to release additional program documents in which MSA, the current USPS 3PK9 supplier, had some input, once all rights to use those documents had been cleared. We have now secured the needed rights. This is being done to ensure a fair competition and to provide all offerors with as much information as possible that could benefit offerors in preparation of their offers.

The Playbook program document contains sensitive program information. Therefore, USPS requires that the attached NDA be signed and returned prior to release of the Playbook. Once the NDA is signed and returned to the contracting officer, the above-referenced document will be sent to you.

Alarm Resolution Solicitation Amendment 1.

Global returned an executed NDA, dated April 4, 2022, to the Postal Service at the same time it submitted its proposals for the 2022 Solicitations.

Initial Disagreement

Along with its proposals, Global submitted its initial disagreement to the contracting officer on April 4, 2022. On April 14, 2022, the contracting officer denied Global's initial disagreement. Thereafter, Global timely lodged its disagreement with the SDRO.

The Disagreement

In its April 22, 2022 Disagreement, Global states that the bases of its Disagreement to the SDRO are as follows:

1. It is unreasonable and unlawful for USPS to ignore potential post-employment restrictions of former Transportation Security Administration employee [REDACTED]; and
2. The awardee of the 2020 Contract, MSA, has immitigable organizational conflicts of interest.

Disagreement at 5-6. Global requests that I direct the contracting officer to undertake a reasonable analysis of the impact of [REDACTED]'s personal conflicts of interest under 18 U.S.C. § 207 and disqualify MSA from receiving an award under the 2022 Solicitations due to immitigable organizational conflicts of interest. Disagreement at 8.

I will address each basis for Global's SDRO Disagreement separately below.

Discussion

The Postal Service's Supplying Principles and Practices provide that the Postal Service "has an interest in the early identification and remediation of organizational conflicts of interest on the part of its suppliers. The Postal Service will attempt to avoid situations in which a supplier has an unfair competitive advantage or other interests that may impair the supplier's objectivity in dealing with the Postal Service or in its ability to perform satisfactorily on Postal Service contracts." SPP (General Overview of United States Postal Service Supplying Principles).

"An organizational conflict of interest 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." *Id.* § 7-15.2. Where potential organizational conflicts are foreseeable, contracting officers should avoid, neutralize, or mitigate them. *Id.* § 7-15.2.1. Where organizational conflicts of interest are foreseeable, the SPPs broadly contemplate the "adoption of . . . measures to ensure as fair a competition as possible." *Id.* The SPPs do not require any particular avoidance, neutralization, or mitigation methods. While disqualification of potential offerors is an available mitigation method, it is not required where other appropriate and effective methods of mitigating organizational conflicts of interest are available. *See id.*

- 1. The Postal Service Gave Appropriate Consideration to Post-Employment Restrictions of Former Transportation Security Administration Employee [REDACTED].**

Global argues that MSA must be disqualified from participating in the 2022 Solicitations based on alleged ethical restrictions applicable to ██████████ under 18 U.S.C. § 207.⁸ Disagreement at 2.

Federal law restricts certain representational activities by former federal employees with respect to particular matters in which the former employee participated personally and substantially as an employee. See 18 U.S.C. § 207. Violations of these post-employment restrictions are criminal matters and are therefore enforced by the United States Department of Justice. Neither a Postal Service contracting officer nor the SDRO has the authority to enforce criminal statutes. With respect to this Disagreement, I view ██████████'s employment with the TSA and MSA to be relevant to Global's allegation of an organizational conflict of interest insofar as ██████████ may have provided MSA with an unfair competitive advantage through unequal access to competitively-relevant nonpublic information.

As set forth above, although ██████████ participated in the pilot project and, as a TSA employee, was consulted regarding the statement of work, CO Franklin found that his overall involvement was minimal. USPIS "would run ideas by ██████████ regarding the SOW in the very early days of the SOW draft that pre-dated the pilot." Remand Report at 8. The Mail Amendment was not finalized until after ██████████ departed from TSA. *Id.* at 9. And while ██████████ was at TSA, "no comments [in the Mail Amendment] could be attributed to him." *Id.* at 11. As CO Franklin found,

His actual involvement in the pilot can only be traced to a few e-mails relating to a type of cart that was permissible for use in the canine screening processes and a September 4, 2019 e-mail relating to a caning screening test in Phoenix. TSA confirmed that it has no record of ██████████ traveling to the pilot site and they did not have any record of ██████████ personally participating in the program. . . . [N]either ██████████ nor anyone at TSA assisted in the selection process for USPS contractors.

Id. at 11-12. More importantly, CO Franklin found that MSA had "walled off" ██████████ from involvement in the procurement process for the 2020 Contract. MSA explained to CO Franklin:

⁸ Global's Disagreement references other regulations pertaining to current employee's recusal from matters while seeking outside employment. Disagreement at 5; 5 C.F.R. Part 2635. Whether ██████████ should have recused himself from certain matters while seeking employment with MSA is a matter for determination by the Transportation Security Administration. ██████████ was not a TSA employee at any time during the planning or procurement process for the 2022 Solicitations and has never been a Postal Service employee. Global states that its Disagreement is based upon 18 U.S.C. § 207, and that is, accordingly, the focus of this decision.

██████████ had no involvement in the development of MSA's proposal for the 3PK9 services. In walling ██████████ off, MSA made no distinction between MSA's USPS business and MSA's other federal business. ██████████ was walled off from participation in any of MSA's federal business, including the USPS contract, for the first year of his employment with MSA. ██████████ had no involvement in any effort to gain USPS business (except for being listed as a key employee . . .). ██████████ performed no work for MSA related to MSA's USPS business until approximately January or February of 2021[.]”

Remand Report at 7.

Global casts doubt on CO Franklin's conclusions regarding ██████████ by noting alleged inconsistencies in information regarding an exit letter and purported ethics advice TSA provided him. *Id.* at 2-3 (claiming “no record of any ethics advice to ██████████”). I find, however, that CO Franklin appropriately relied on record evidence to conclude that ██████████ sought and received general ethics advice from TSA. This is based upon information CO Franklin received from ██████████ (and while Global may discount the credibility and weight of ██████████ statements regarding his receipt of ethics advice, they are, themselves, evidence that he received it.) CO Franklin also explained his findings that TSA would not likely have documented oral advice, that “letters like the one ██████████ provided are routinely available and provided to employees,” and that a TSA management directive requires TSA to provide departing employees with a memorandum regarding post-employment ethics guidance. AR 3668.

Citing two emails that the Postal Service produced in the administrative record in *AMK9*, Global intimates that ██████████ was heavily involved in designing alarm resolution aspects of the 2020 Combined Solicitation SOW. Disagreement at 2, Ex. 2-3. These emails were before CO Franklin when he conducted the investigation leading to the Remand Report and, among the other correspondence he reviewed, informed findings in the Remand Report that ██████████'s involvement in creating a statement of work for the 2020 Combined Solicitation or other program documents was minimal. *See generally* AR3674-77. I have also reviewed the unredacted versions of Disagreement Exhibits 2 and 3. Exhibit 2 indicates that ██████████, while a TSA employee, was “separated from 3PK9 with a lot of other things added to my plate” but agreed to put a USPS employee in contact with others at TSA to discuss “gaps in the SOW.” Disagreement Exhibit 2. The unredacted version of Exhibit 3, which I understand is available to Global's counsel through the administrative record in *AMK9*, simply appears to discuss a function that 3PK9 teams should not conduct and, in any event, is addressed in the 2022 Solicitations'

Statements of Work.⁹ These exhibits do not indicate any significant involvement in the creation of the 2020 Combined Solicitation. More relevant here, the fact that the current requirements in the 2022 Solicitations differ from the suggestion contained in the unredacted correspondence from ██████████ undermines the contention that ██████████ had “written involvement in developing” requirements for the 2022 Solicitations.

Against this background, I find Global’s contention that the Postal Service “unreasonabl[y] and unlawf[ul] ignore[d] ██████████’s potential restrictions under 18 U.S.C. § 207” in the instant solicitations unpersuasive. Disagreement at 5. First, the Postal Service did not ignore this issue; to the contrary, the contracting officer directly addressed it in the 2022 Solicitations’ purchase plans’ OCI Analysis. OCI Analysis at 3. And, while I reiterate that enforcement of 18 U.S.C. § 207 is a matter for the Department of Justice, and not the Postal Service, I have also considered its application here.

18 U.S.C. § 207(a)(1) restricts former employees from “knowingly mak[ing], with the intent to influence, any communication to or appearance before any officer or employee of any . . . agency . . . on behalf of another person . . . in connection with a particular matter . . . in which the person participated personally and substantially as such officer or employee, and . . . which involved a specific party or specific parties at the time of such participation[.]” The focus of the prohibition “is on representational activity, that is, communications to or appearances before the federal government by a former employee with the intent to influence.” *CAN Corp. v. United States*, 81 Fed. Cl. 722, 730 (2008). In the context of procurements, separate contracts awarded through separate competitions are not the same “particular matter.” 5 C.F.R. § 3641.201(h)(5). This is true even if “no major changes were made in the contract terms[.]” *Id.*

Here, based on the information learned through CO Franklin’s second remand investigation, ██████████’s involvement with the 2020 Combined Solicitation while a TSA employee appears insubstantial, and, as an MSA employee, he did not make communications to or appearances before the Postal Service to influence its 2020 award decision, as MSA had walled him off from participation in its pursuit of contracts with the federal government. In addition, the Postal Service’s 2022 Solicitations are not the same particular matter in which ██████████ arguably participated while a TSA employee. Accordingly, I do not view ██████████’s post-employment restrictions as a basis for granting relief in this Disagreement.

2. The Postal Service Has Appropriately Mitigated MSA’s Potential Unequal Access to Information Organizational Conflict of Interest.

⁹ The 2022 Solicitations’ Statements of Work contain a 3PK9 Alert Resolution Process flow chart. The flow charts state, among other things: “██████████” and “██████████.” See, e.g., Alarm Resolution Solicitation Statement of Work § 3.2.1.

“[F]or a bid protester to succeed on an ‘unequal access to information’ OCI claim, it must demonstrate ‘the awardee was in the unique position of [] having access to information to which no other offeror had access.’” *AMK9*, 155 Fed. Cl. at 284. And access to that information must have provided an unfair competitive advantage. SPP § 7-15.2.

CO Franklin conducted an extensive, thorough investigation, including the review of relevant email correspondence gathered through a search conducted through the Postal Service’s e-discovery vendor.¹⁰ Through his investigation, CO Franklin identified competitively useful nonpublic documents and information to which MSA had unequal access. These consisted of a November 2019 presentation, a January 2020 IRC presentation, the “Quality Control Audit Document,” the “Speed of the Mail” document, the “Playbook,” and the “Mail Amendment.” Due to changed requirements, including a new rollout schedule, changed market conditions, and the passage of time, I concur with the contracting officer’s determination in the OCI Analysis and resolution of Global’s initial disagreement that the information in the November 2019 presentation, January 2020 IRC presentation, and the Speed of the Mail document are stale and not competitively useful, or have been incorporated into the 2022 Solicitations’ statements of work, e.g., the requirement for canine teams to arrive 45 minutes in advance of screening. Accordingly, I find that access to these documents and information does not present an organizational conflict of interest.

For purposes of this decision, I assume that the Quality Control Audit document, the Playbook, and the Mail Amendment (collectively, the “Mitigation Documents”) contain competitively useful nonpublic information. Both the Quality Control Audit document and the Playbook have been changed and updated since MSA’s involvement with their creation. The portion of the Playbook relevant to the 2022 Solicitations contains USPIIS process information and will eventually be tailored to the processes of the alarm resolution awardee.

Importantly, in order to mitigate any unequal access to information, each of these Mitigation Documents is available to the offerors participating in the 2022 Solicitations, including Global. See 2022 Solicitations Amendment 1; see also *ARINC Eng’g Servs., LLC v. U.S.*, 77 Fed. Cl. 196, 202 (2007) (unequal access requires that “an offeror had access to nonpublic information that was *unavailable to the protester*”) (emphasis added). The fact that MSA may have rights to certain intellectual property in the documents is not relevant to the question whether the information was available to Global. Although Global elected not to provide a signed NDA before it submitted its initial disagreement or proposal, thus depriving itself of the information in the Mitigation Documents, the fact

¹⁰ Global contends that “there are no detail[s] as to the full extent of MSA’s work designing and building the USPS 3PK9 mail screening program [due to] USPS’s incomplete analysis and reporting.” Disagreement at 7. I disagree. CO Franklin’s Remand Report evinces a reasonable and thorough investigation and describes in reasonably sufficient detail MSA’s work on the 3PK9 screening program that is germane to potential organizational conflicts of interest.

remains that the Mitigation Documents were and remain available to Global, and to each of the current offerors.¹¹

In sum, I find that, through Amendment 1, MSA's access to competitively useful nonpublic information in the 2022 Solicitations was not unequal, notwithstanding Global's lack of diligence in seeking actual access to the Mitigation Documents.

3. The Postal Service Reasonably Found that MSA Does Not Have a Biased Ground Rules Organizational Conflict of Interest

"A biased ground rules OCI exists when contractors, 'by participating in the process of setting procurement ground rules, have special knowledge of the agency's future requirements that may skew the competition in its favor.' . . . A biased ground rules OCI may occur when a firm 'has, in some sense set the ground rules for another government contract by, for example, writing the statement of work or the specifications.'" *AMK9*, 155 Fed. Cl. at 284-85.

That said, "[i]n development work, it is normal to select firms that have done the most advanced work in the field. . . . [W]hile the development contractor has a competitive advantage, it is an unavoidable one that is not considered unfair[.]" FAR 9.505-2(a)(3).¹² Thus, "[i]f a contractor prepares, or assists in preparing, a work statement . . . or provides material leading directly, predictably, and without delay to such a work statement," the contractor may still participate in a subsequent solicitation where "it has participated in the development and design work." FAR 9.505-2(b)(1). "[N]o prohibitions are imposed on development and design contractors." *Id.* 9.505-2(b)(3).

As the Court of Federal Claims noted in *AMK9*, MSA, through the pilot project, participated in the "development" of a "new program" that implemented a "novel process" for mail screening. *Id.* at 272, 284-85 (citing FAR 9.505-2(b)(1)(ii)). Global agrees, stating that MSA "designed" and "develop[ed] the entire USPS 3PK9 mail screening program[.]" Disagreement at 3. Although I disagree that MSA designed and developed "the entire . . . program," it is undisputed that MSA participated in the design and development work. It is also undisputed that MSA provided the Postal Service information that led, in part, to the development of a work statement, e.g., the Speed of the Mail document.

To the extent that MSA has a competitive advantage from its design and development work, which it may, that advantage is not unfair. See FAR 9.505-2(a)(3). And because the advantage is not an unfair advantage, it is not the basis of an organizational conflict of interest.

¹¹ As discussed below, the contracting officer is directed to provide Global with the Mitigation Documents upon receipt of this decision, other than the Mail Amendment, which offerors are permitted to request directly from TSA.

¹² Although the Postal Service is not bound by the FAR, I consider FAR provisions to be persuasive authority in reviewing related topics within the Postal Service SPP.

As to the actual solicitation requirements, MSA's role in crafting a statement of work for the 2020 Combined Solicitation was indirect. The requirements of the statement of work reflect requirements TSA's cargo screening requirements and Mail Amendment and, to an extent, MSA's development and design work which, as noted above, is not unfair. The requirements of the 2022 Solicitations' statements of work have continued to evolve, and MSA did not participate in drafting the statements of work for the 2022 Solicitations.

Moreover, it is notable that Global has not identified any particular requirements in the 2022 Solicitations which it contends would provide MSA with an unfair competitive advantage. Having reviewed the 2022 Solicitations' statements of work, this is unsurprising, given that the requirements are all stated at a high level of generality, permit offerors to propose a variety of solutions that may meet the requirements, and with respect to the Alarm Resolution statement of work, expressly require cooperation in the creation of a new Playbook tailored to the eventual awardee's procedures.

When considering Global's initial disagreement, the contracting officer explained that the requirements of the 2022 Solicitations' statements of work differ from the requirements of the 2020 Combined Solicitation statement of work in material ways. Initial Disagreement Resolution at 5-6. Although I find that these changes are not major departures from the requirements of the 2020 Combined Solicitation's statement of work, the changes, among other things, incorporate certain best practices referenced in MSA-influenced documents, e.g., the requirement for canine teams to arrive 45 minutes prior to commencing screenings, and they reduce the impact of MSA's prior involvement in design and development work by requiring the creation of a new, customized Playbook document based on an awardee's processes and procedures. Alarm Resolution Solicitation Statement of Work § 3.2.1.

In sum, MSA may have advantages from having assisted with the design and development of the 3PK9 mail screening program and provided the Postal Service material that is reflected in some aspects of the 2022 Solicitations statements of work. These advantages, however, are not unfair in light of MSA's design and development work. See FAR 9.505-2. MSA did not otherwise participate in or contribute to the drafting of the 2022 Solicitations' statements of work. And they differ in certain material respects from the 2020 Combined Solicitation statement of work.

Taken together, I find that no biased ground rules organizational conflict of interest exists that would require MSA's disqualification or mitigation measures beyond those already undertaken.

4. MSA's Incumbent Advantage Should be Further Mitigated in the Evaluation of Offers under the 2022 Solicitations.

As a general matter, any incumbent has inherent advantages over other potential offerors for a contract, and these advantages are not unfair. “Incumbent status by itself is insufficient to create an OCI.” *AMK9*, 155 Fed. Cl. at 285. “An offeror’s competitive advantage gained through incumbency is generally not an unfair advantage that must be eliminated.” *Id.* (quoting *WinStar Commc’ns, Inc. v. United States*, 41 Fed. Cl. 748, 763 (1998)).

As an example of MSA’s incumbent advantages, Global argues that “MSA’s alarm resolution infrastructure is rolled out across the country already and USPS intends to allow that to continue through November 2023.” Disagreement at 7. “Obviously, the prospect of requiring a new contractor to replace that alarm resolution infrastructure will weigh heavily in USPS’s decision.” *Id.* The potential burden of replacing alarm resolution infrastructure is not a stated evaluation criterion in either the 3PK9 or Alarm Resolution Solicitations. Thus, it should not “weigh heavily in USPS’s decision.” Indeed, it should not be a consideration at all for the 2022 Solicitations’ technical evaluation teams or contracting officer. But aside from the issue of alarm resolution infrastructure, it is undeniable that experience and past performance from incumbency is generally advantageous.

Under normal circumstances, the advantages that MSA derives from incumbency would be wholly unproblematic and, indeed, beneficial to the Postal Service. Here, however, CO Franklin determined that MSA had an unequal access to information organizational conflict of interest and that the competitively useful information it had “could have been especially helpful [in the 2020 Combined Solicitation], given the rapid pace of the competition.” Remand Report at 14. I agree that MSA had unequal access to competitively useful information in the November 2019 presentation, January 2020 IRC presentation, and other program documents discussed above.¹³ Global thus argues that “USPS cannot reasonably label MSA’s advantage as one of the perks of being an incumbent.” Disagreement at 7. I agree. Although the Postal Service has effectively mitigated the potential unequal access to information conflict, and no biased ground rules conflict exists, in the unique circumstances of these solicitations, MSA’s advantages as an incumbent are tainted by the unmitigated unequal access to information conflict in the 2020 Combined Solicitation.

SDRO Decision

Having reviewed the matter, I conclude that the Postal Service has given appropriate consideration to ██████████’s post-employment restrictions and found that 18 U.S.C. § 207 does not provide a basis for the Postal Service to disqualify MSA. Further, I find that the Postal Service has appropriately mitigated MSA’s potential unequal access to information organizational conflict of interest and that MSA does not have a biased ground rules organizational conflict of interest with respect to the 2022 Solicitations. Finally,

¹³ As explained above, I do not agree that MSA had a biased ground rules conflict.

although incumbent advantages are not organizational conflicts of interest and are generally advantageous to the Postal Service, in the unique circumstances of this matter, I find that the contracting officer should modify the evaluation criteria of the 2022 Solicitations to further deemphasize the advantages of incumbency for the reasons discussed above.

I have considered Global's request that MSA be disqualified from participating in the 2022 Solicitations. Disqualification is a drastic and blunt remedy. Given that no inadequately mitigated organizational conflicts of interest exist, a remedy more tailored to address MSA's incumbency advantages is appropriate. Disqualification is also an inappropriate remedy in light of the unique importance of the 2022 Solicitations. The technical competence of the eventual awardee(s) is of paramount importance. The goal of the services sought under the 2022 Solicitations is to prevent explosives and other potentially hazardous materials from being loaded onto commercial aircraft. This is an issue of national security, and anyone who has been a passenger in an airplane understands how critical it is for the Postal Service to be able to consider the technical merits of as many potential offerors as possible.

Accordingly, MSA is not excluded from competing for awards under the 2022 Solicitations. Rather, I direct that the evaluation criteria for the 2022 Solicitations be revised to deemphasize the benefits MSA may derive from its status as an incumbent in accordance with Exhibits 1 and 2; namely, in evaluating past performance, the TET shall not give any preferential weight to past performance involving mail screening over past performance involving cargo screening and should reduce the minimum duration of past performance, below which an offeror could receive a less favorable past performance rating based on duration, from 36 to 24 months. The contracting officer shall issue an amendment to the 2022 Solicitations with the revised evaluation criteria, promptly provide Global a copy of the Mitigation Documents other than the Mail Amendment, which Global can request from TSA, and provide each offeror no less than 5 business days to submit revised proposals if they choose to do so.

For the reasons discussed above, Global's Disagreement is denied in part and sustained in part. In accordance with 39 C.F.R. § 601.108(g), this is my final and binding resolution of this matter.

Global shall notify the SDRO within three days of receipt of this decision whether it requests any redactions prior to publication on the SDRO's internet site.

Sincerely,

E-SIGNED by ROBERT D'ORSO
on 2022-05-25 12:34:52 CDT

Robert D'Orso

Supplier Disagreement Resolution Official
Manager, Policy, Compliance & Audit

cc: Jeremy Baker, Contracting Officer

EXHIBIT 1

Instructions and Evaluation Criteria Sol. 2B-22-A-0015

Background

The objective for this solicitation is to execute one or more contracts via geographical clusters for commercial suppliers to provide, disseminate, and administer Explosive Detection Canine (EDC) teams across the United States (US) with the purpose to screen mail intended for transportation on domestic and international Commercial Air Carriers (CAIR).

Following the September 11, 2001, attacks, the 9/11 Commission issued a Federal mandate, part of the Post 9/11 Act to the Transportation Security Administration (TSA) requiring 100% screening of all air cargo on passenger airlines by 2020. The Postal Service is held to this mandate by the TSA/FAA regulations under the Aircraft Operator Standard Security Program (AOSSP), which includes other mail. Instructions for CCTS are available at <https://concon.usps.gov/conconweb/splash.html>.

Offeror Inquiries, Proposal Submission and USPS Designated Point of Contact

- i. **Offeror Inquiries.** All inquiries or other communications regarding this solicitation shall be exclusively directed to the USPS Supply Management Designated Point of Contact identified below. This requirement also applies to Offerors' affiliates, officers, employees, agents, consultants, and subcontractors. Any unauthorized communications with the USPS, officers or employees may result in the disqualification of the Offeror from consideration of contract award.
- ii. **Proposal Submission.** One (1) electronic copy (email) of your company's proposal must be submitted via email consistent with the instructions set forth herein and using the listing of deliverables and naming conventions stated in the below Appendix, Proposal Deliverables & Naming Conventions. Responses/proposals must be clearly identified with **RFP # 2B-22-A-0015** and Offeror's name, address, and contact information. The Postal Service's logo, trademarks and other identifying marks are proprietary and MAY NOT be incorporated into offeror's proposal without the Postal Service's written permission.
- iii. **USPS Designated Point of Contact.** The "Offeror Notice Not to Participate" and all other documentation, responses, and communication is to be e-mailed directly to the USPS Designated Point of Contact identified below:

United States Postal Service Supply Management
Employee, Financial, and Tactical Services – Category Management Center
Attn: Russell B. Jacobs, Purchasing and Supply Management Specialist
3300 S. Parker Road, Suite #601, Aurora CO 80014
Russell.B.Jacobs2@USPS.Gov
303-681-6532

Solicitation Milestones

The following table captures important milestones related to this solicitation. The stated dates may be subject to change pursuant to Postal Service needs and/or priorities. The “Offeror Notice Not to Participate” must be submitted via email to the contact listed in Paragraph 2(iii), USPS Designated Point of Contact.

| Activity | Due Date |
|---|-----------------|
| Solicitation Issued | 02/18/2022 |
| Offeror Question Submission | 03/08/2022 |
| USPS Response to Questions | 03/16/2022 |
| Offeror Notice of Intent Not to Participate | 03/21/2022 |
| Offeror Proposals | 03/28/2022 |

Offeror Solicitation Questions & USPS Responses

As indicated above in Solicitation Milestones, there is one submission period for Offeror questions. The Postal Service will not entertain verbal questions at any time. It’s requested that all questions be submitted via email to the USPS Designated Point of Contract above. Questions that pertain to specific solicitation requirements should reference the solicitation document, page number, paragraph number and topic to reinforce the context of the question. Questions and responses will be compiled and shared with all participating Offerors. The Postal Service reserves the right to paraphrase, group and respond to what it considers to be similar questions.

Proposal Content and Structure

The section provides an overview of document submission requirements. Appendix 1, Proposal Deliverables & Naming Conventions, provides a comprehensive listing of required documents and submission instructions that include document sequencing and naming conventions. The following overview and the comprehensive listing of documents are provided to facilitate the generation and submission of proposal responses and to facilitate Postal Service review. Failure to provide complete information in the format specified may result in the Offeror being eliminated from the selection process at the Postal Service’s discretion.

- i. **Company Financials.** Financial statements, including Balance Sheet and Earnings Statements, that are independently audited, and published (if applicable), for the immediate past three (3) fiscal years together with the latest available interim report for the current fiscal year. Further, a self-certifying statement is required that indicates that neither your company, nor any other organization providing services on behalf of your company under a possible USPS contract, have declared bankruptcy, or filed for protection under any bankruptcy or insolvency statutes with the past three (3) years. This information is to be provided as a file attached to your submission email. Also, if this financial information is available via a link to your company website, then submission of

the link would also be desired. This information will be safeguarded and held confidential for use in award evaluations (only) by the USPS.

- ii. **Technical Proposal.** The components of the Technical Proposal with more detailed submission requirements are captured below. Other components of the Technical Proposal include pertinent ancillary documents captured in Appendix 1. The Technical Proposal is not to include any pricing content.
 - a. **Cover Letter:** A one-page letter capturing: Company name, address, point-of-contact (name, title, address, phone number and e-mail address), and summary information that your company would like to highlight.
 - b. **Combined Responses to the Statement of Work and Evaluation Factors:** Proposal responses to Statement of Work combined with the responses to the Evaluation Factors requirements are limited to a total twenty (20) pages, not including any requested or relevant attachments. Commencing with Section 3 in the Statement of Work, Supplier Staffing & Responsibilities, and ending with Section 3.8, Time and Deliverable Tracking, the Offeror shall submit a detailed response to each Statement of Work paragraph/subparagraph. It is advised that each Offeror's response be in the context of "how" the Offeror will meet/exceed a requirement. A response that simply confirms a requirement may be viewed as a weakness and graded accordingly. The resulting contract will be based upon USPS requirements, terms and conditions. So if an Offeror's standard contract with its other customers contains any requirements, parameters or restrictions relative to Statement of Work topics, then the Offeror's response should also address any areas that the Offeror proposes be carried forward into a resulting USPS contract.
 - d. **Ancillary Documents.** Appendix, Proposal Deliverables & Naming Conventions, provides a comprehensive list of Offeror proposal documents and their corresponding naming convention. This is inclusive of the above documents and other ancillary documents. All documents referenced in Appendix are to be submitted with the Offeror's proposal. Only Appendix documents that are relevant to the USPS Technical Evaluation will be evaluated as part of the Offeror's Technical Proposal.
- iii. **Pricing Proposal.** The Offeror shall submit completed tables referenced in Appendix, Pricing. Responses relevant to pricing topics will constitute the Offeror's pricing proposal. Submitted pricing will be evaluated and ranked consistent with Price Evaluation below.

Proposal Evaluation

- i. Offeror proposal submissions will be evaluated by an assigned USPS Evaluation Team which will include USPS employees.
- ii. The USPS will evaluate each Offeror's financial information to determine the Offeror's financial stability, viability, and risk. This financial assessment will be conducted independent of, the technical evaluation and will be evaluated on a **Pass or Fail** basis.

Offerors must receive a passing score in order to continue in the source selection process and to be eligible for contract award. If the financial assessment is considered a fail, the Offeror's proposal will NOT be considered for award. Any Offeror who does not pass USPS financial assessment will be notified via email.

- iii. The USPS Technical Evaluation Team (TET) will review technical proposal responses, rate, and rank the responses consistent with the Evaluation Factors & Rating Scale below.
 - a. The TET will analyze each proposal and identify strengths, weaknesses, deficiencies and risks associated with responses to stated requirements.
 - b. USPS will evaluate the Offeror's demonstrated understanding of, and approach to, meeting/exceeding the various functional and technical requirements of the Statement of Work. USPS therefore encourages Offerors to provide responses that address "how" the Offeror will meet/exceed requirements and differentiate themselves from others.
- iv. The USPS TET will evaluate pricing proposals and rank them separately from the technical proposals as further described Price Evaluation below.
- v. For best value source selection, technical factors are considered more important than price. Although technical factors are more important than price, price may become a determinative factor when choosing between proposals that have comparable technical merit. The Postal Service will not pay more for only a marginal increase in technical performance.
- vi. Offerors may choose to propose on one or more, or all clusters, but must propose on all sites within a given cluster to be considered responsive. Individual site proposals will not be evaluated.
- vii. An initial best value selection will be made for each geographic cluster and will be based on best value following an evaluation of technical factors, price, and overall proposal risk.
- viii. However, a further analysis will be made to consider the optimal number of awards, which would achieve overall best value for the Postal Service. In making such further considerations, the Postal Service will consider factors including: relative rankings within clusters, efficiency, operational impact, USPS contract administration resources and duties, and the appropriate number of supplier mix to mitigate risk. The Postal Service will consider the number of awards that would provide overall best value.

Evaluation Factors & Rating Scale

- i. **Evaluation Factors**. The evaluation factors described below will be used and are listed in descending order of importance, in addition to price and other factors as specified, to determine which proposal offers the best value to USPS. A USPS TET has been established (subject to change at USPS discretion) to evaluate the proposals submitted in response to this solicitation. It is of paramount benefit to the Offeror to be as complete

and detailed as possible in preparing their proposal. USPS reserves the right to contact some, all, or none of the Offerors for clarifications or additional explanations concerning their respective proposals.

- **Evaluation Factor One – Service Capability (EDC Service)**

- 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; ability to meet the required or proposed schedule A; ability to provide a management and staffing plan; and the ability to obtain the necessary certifications and security badges required at each location. This shall include any current certification relative to the SAFETY Act including Exhibit A and Certificate of Safety Act Designation.
 - 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 must possess Third-Party Canine-Cargo Certification (3PK9-C) teams certified by a TSA-approved 3PK9-C Certifier. All 3PK9-C teams are required to be listed on the Certified Canine Team List (CCTL) maintained by TSA
 - Offeror must possess Support Anti-Terrorism by Fostering Effective Technologies Act (SAFETY Act) DHS SAFETY Act Designations and/or Certifications
 - Certified Cargo Screening Facility – Canine (CCSF-K9) canine for explosive screening and detection

- **Evaluation Factor Two – Resource Allocation and Roll-out responsiveness**

- Offeror's demonstrated responsiveness to 'Attachment B - Roll-out Schedule'

- **Evaluation Factor Three - Past Performance**

- The Postal Service will evaluate the depth of the offeror's experience and degree to which successful performance has occurred in the past for a national level program for cargo or mail screening. The evaluation of past performance must include the following:
 - Demonstrated support for the execution of cargo or mail screening across the U.S. including the planning and administration of such a national level program.
 - Offeror's national roll-out support experience
 - Copies of offeror's TSA audit/test records, including all pass/fail information overall and relating to specific K9-teams that would be used for this project. TSA audit/test records must include TSA verifiable data for at least the previous ~~36~~24 months. Less than ~~36~~24 months of data will be accepted as responsive (with more data history available and provided will potentially result in a more

favorable rating) should less than ~~36~~24 months of data exist (upon verification with TSA records).

- o For purposes of evaluating past performance, past performance involving mail screening or cargo screening is equivalent. No offeror shall receive a more or less favorable past performance rating based on the fact that its past performance involved mail or cargo screening.

Price Evaluation

The Postal Service will use the attached Microsoft Excel spreadsheet file 'Attachment A - Offeror Pricing Sheet – Canine Mail Screening' as the price evaluation methodology. For each cluster of sites included on each tab in Attachment A that the offeror wishes to offer on, each site within that cluster must be completed.

The price evaluation will culminate with the Postal Service ranking each offeror's pricing proposal.

Insert a fully burdened hourly rate in the column "Hourly Rate" for the base period and each option period for canine and handler together (inclusive of all costs). The total price will calculate by cluster for the base period and option periods in Attachment A. This will be used for price ranking.

TSA Mail Amendment

TSA is willing to grant direct access to the Mail Amendment to TSA verified 3PK9 companies who are interested in participating in this solicitation. Here is the process that you must follow to get such access. If interested, please follow these steps as soon as possible so that the TSA verification process can begin. Note the Mail Amendment will come directly from TSA.

1. Inform USPS Contract Specialist Russell Jacobs in writing, via e-mail at (Russell.B.Jacobs2@USPS.Gov), of your company's interest in the solicitation. Include the full name of the company and the 3PK9 TSA-certificate number. That will ensure that the entity interested in proposing has been certified by the TSA under the 3PK9 program.
2. USPS will notify TSA of the 3PK9 company's interest and its TSA certification number.
3. TSA will verify that the 3PK9 is a TSA-Certified 3PK9 and, if so verified, then directly provide that offeror with a copy of the template amendment, which is marked as SSI material, that lays out the screening procedures the entity will use in preparation of its offer.

Other Solicitation/Proposal Requirements

- i. Offerors will bear all costs associated with the preparation of responses and participation in this solicitation. USPS will assume no financial responsibility, direct or indirect, for the cost of preparation of proposals or in the Offeror's participation.

- ii. The issuance of this solicitation does not obligate USPS to negotiate, enter into any contract, or to undertake any financial obligations relating to the requirements referred to herein. Accordingly, the USPS reserves all rights, including without limitation, the right to reject any proposal(s) received, to not award a contract, to award one or more contracts, to negotiate with any Offeror, to request supplemental information from any Offeror, to alter or waive certain solicitation requirements should Offeror provide alternate solution deemed acceptable by USPS, to reject proposals at its discretion, and/or to reject without consideration proposals that arrive late.
- iii. Proposals may be modified after submission by withdrawal and resubmission prior to the due date stated in Solicitation Milestones above. Modifications offered in any other manner will not be considered.
- iv. All material submitted in response to this solicitation will become the property of USPS and shall be retained by USPS for its official files.
- v. The Offeror is required to clearly explain any assumptions or conditions it imposes on or includes in its response. The Offeror is obligated to furnish all information as requested and complete all forms according to the relevant instructions. Any deviations or exceptions to USPS requirements should be noted and explained. Failure to provide complete information in the format specified may result in the Offeror being eliminated from the selection process at the Postal Service's discretion.
- vi. Proposal Labeling. Offeror proposal information that is not to be used or disclosed by the Postal Service for any purpose other than for solicitation analysis is to be labeled consistent with Provision A-1 Restriction on Disclosure and Use of Data (March 2006)
- vii. Contractual Commitment of Proposal. The contents of submitted proposals and any subsequent material submitted in response to requests for additional information, which will be incorporated into the proposal, will be considered obligations of the successful Offeror. No information should be submitted that is not intended to be incorporated into the proposal and any resulting contract. Offerors who wish to vary the requirements of the solicitation should submit specific alternate language, which must be clearly indexed and referenced. Any requirements contained in the solicitation, not altered by the Offeror's proposal will be an offer by the Offeror, which can be accepted by USPS. Unless expressly provided to the contrary, any suggestions or requests for change to the Offeror's proposal, made by USPS shall not constitute a rejection of the proposal or any portion thereof.
- viii. Confidentiality. Any specification, drawings, sketches, data or documentation or other technical or business information ("Information") furnished or disclosed to the Offeror hereunder shall be deemed the property of USPS and must be returned to USPS upon request. Unless such Information was previously known to the Offeror free of any obligation to keep it confidential, or has been or is subsequently made public by USPS or a third party, it shall be held in confidence by the Offeror, must be used only for the purposes hereunder, and may be used for other purposes only upon such terms and conditions as may be mutually agreed upon in writing.

Appendix: Proposal Deliverables & Naming Conventions

The following table addresses the proposal documents and the proposal naming convention that must be used when submitting the proposal via email:

| Name | Description/Reference | Naming Convention |
|--|---|------------------------------|
| Company Financials | Provide company financials consistent with Company Financials. | Company Name_ Financials |
| PS Form 8203 | Provide a completed Form 8203: Complete addresses and contact information in the PS Form 8203, blocks 14, Supplier, and 16, Remittance Address, and signed name, printed name/title and date in blocks 27a, 27b, and 27c (Note: Instructions say to fill out Block 13, Discount Terms, this is not required). | Company Name_8203 |
| Solicitation Provisions  USPS Provisions -Third-Party Canine | Complete and submit: Provision 4-3, Representations and Certifications; | Company Name_ Provisions |
| Subcontracting Plan  Provision 3-1, Subcontracting Plan.d | Provide a subcontracting plan as required by the attached Solicitation Provision 3-1. | Company Name_ Subcontracting |
| Cover Letter | Provide a Cover Letter consistent with Proposal and Content Structure | Company Name_CoverLtr |
| Statement of Work and Evaluation Factors Response  Evaluation Factors - Third-Party Canine-1  Statement of Work - Third-Party Canine-M | Provide Statement of Work and Evaluation Factors responses consistent with Proposal Content and Structure and Evaluation Factors and Rating Scale | Company Name_SOW and Eval |
| Pricing  Attachment A - Offeror Pricing Shee | Provide completed Attachment A – Offeror Pricing Sheet – Canine Mail Screening | Company Name_Pricing |

| | | |
|--|---|-----------------------|
| TSA Pass/Fail Rate Percentage Document | Per Evaluation Factor 3, provide TSA audit/test records, including all pass/fail information overall and relating to specific K9-teams that would be used for this project. | Company Name_TSAScore |
|--|---|-----------------------|

EXHIBIT 2

Instructions and Evaluation Criteria Sol. 2B-22-A-0016

Background

The objective for this planned solicitation is to execute one (1) contract with a commercial supplier to provide, disseminate, and administer Alarm Resolution and Alarm Responses via Real-Time X-ray Analysis and Interpretation to coincide with existing Explosive Detection Canine (EDC) teams located at domestic Commercial Air Carriers (CAIR) and International Service Centers (ISC) under the international Commercial Air Carriers (ICAIR).

Following the September 11, 2001, attacks, the 9/11 Commission issued a Federal mandate, part of the Post 9/11 Act to the Transportation Security Administration (TSA) requiring 100% screening of all air cargo on passenger airlines by 2020. The Postal Service is held to this mandate by the TSA/FAA regulations under the Aircraft Operator Standard Security Program (AOOSP), which includes other mail. Instructions for CCTS are available at <https://concon.usps.gov/conconweb/splash.html>.

Offeror Inquiries, Proposal Submission and USPS Designated Point of Contact

- i. **Offeror Inquiries.** All inquiries or other communications regarding this solicitation shall be exclusively directed to the USPS Supply Management Designated Point of Contact identified below. This requirement also applies to Offerors' affiliates, officers, employees, agents, consultants, and subcontractors. Any unauthorized communications with the USPS, officers or employees may result in the disqualification of the Offeror from consideration of contract award.
- ii. **Proposal Submission.** One (1) electronic copy (email) of your company's proposal must be submitted via email consistent with the instructions set forth herein and using the listing of deliverables and naming conventions stated in the below Appendix, Proposal Deliverables & Naming Conventions. Responses/proposals must be clearly identified with **RFP # 2B-22-A-0016** and Offeror's name, address, and contact information. The Postal Service's logo, trademarks and other identifying marks are proprietary and MAY NOT be incorporated into offeror's proposal without the Postal Service's written permission.
- iii. **USPS Designated Point of Contact.** The "Offeror Notice Not to Participate" and all other documentation, responses, and communication is to be e-mailed directly to the USPS Designated Point of Contact identified below:

United States Postal Service Supply Management
Employee, Financial, and Tactical Services – Category Management Center
Attn: Russell B. Jacobs, Purchasing and Supply Management Specialist

3300 S. Parker Road, Suite #601, Aurora CO 80014
Russell.B.Jacobs2@USPS.Gov
303-681-6532

Solicitation Milestones

The following table captures important milestones related to this solicitation. The stated dates may be subject to change pursuant to Postal Service needs and/or priorities. The “Offeror Notice Not to Participate” must be submitted via email to the contact listed in Paragraph 2(iii), USPS Designated Point of Contact.

| Activity | Due Date |
|---|------------|
| Solicitation Issued | 02/18/2022 |
| Offeror Question Submission | 03/08/2022 |
| USPS Response to Questions | 03/16/2022 |
| Offeror Notice of Intent Not to Participate | 03/21/2022 |
| Offeror Proposals | 03/28/2022 |

Offeror Solicitation Questions & USPS Responses

As indicated above in Solicitation Milestones, there is one submission period for Offeror questions. The Postal Service will not entertain verbal questions at any time. It's requested that all questions be submitted via email to the USPS Designated Point of Contract above. Questions that pertain to specific solicitation requirements should reference the solicitation document, page number, paragraph number and topic to reinforce the context of the question. Questions and responses will be compiled and shared with all participating Offerors. The Postal Service reserves the right to paraphrase, group and respond to what it considers to be similar questions.

Proposal Content and Structure

The section provides an overview of document submission requirements. Appendix 1, Proposal Deliverables & Naming Conventions, provides a comprehensive listing of required documents and submission instructions that include document sequencing and naming conventions. The following overview and the comprehensive listing of documents are provided to facilitate the generation and submission of proposal responses and to facilitate Postal Service review. Failure to provide complete information in the format specified may result in the Offeror being eliminated from the selection process at the Postal Service's discretion.

- i. **Company Financials.** Financial statements, including Balance Sheet and Earnings Statements, that are independently audited, and published (if applicable), for the immediate past three (3) fiscal years together with the latest available interim report for the current fiscal year. Further, a self-certifying statement is required that indicates that neither your company, nor any other organization providing services on behalf of your company under a possible USPS contract, have declared bankruptcy, or filed for

protection under any bankruptcy or insolvency statutes with the past three (3) years. This information is to be provided as a file attached to your submission email. Also, if this financial information is available via a link to your company website, then submission of the link would also be desired. This information will be safeguarded and held confidential for use in award evaluations (only) by the USPS.

- ii. **Technical Proposal.** The components of the Technical Proposal with more detailed submission requirements are captured below. Other components of the Technical Proposal include pertinent ancillary documents captured in Appendix 1. The Technical Proposal is not to include any pricing content.
 - a. **Cover Letter:** A one-page letter capturing: Company name, address, point-of-contact (name, title, address, phone number and e-mail address), and summary information that your company would like to highlight.
 - b. **Combined Responses to the Statement of Work and Evaluation Factors:** Proposal responses to the Statement of Work combined with the responses to the Evaluation Factors for Real-Time X-ray Analysis and Interpretation requirements are limited to a total twenty (20) pages, not including any requested or relevant attachments. Commencing with Section 3 in the Scope of Work, Offeror Staffing & Responsibilities, and ending with Section 3.5, Documentation Requirements, the Offeror shall submit a detailed response to each Statement of Work paragraph/subparagraph. It is advised that each Offeror's response be in the context of "how" the Offeror will meet/exceed a requirement. A response that simply confirms a requirement may be viewed as a weakness and graded accordingly. The resulting contract will be based upon USPS requirements, terms, and conditions.
 - c. **Ancillary Documents.** Appendix, Proposal Deliverables & Naming Conventions, provides a comprehensive list of Offeror proposal documents and their corresponding naming convention. This is inclusive of the above documents and other ancillary documents. All documents referenced in Appendix are to be submitted with the Offeror's proposal. Only Appendix documents that are relevant to the USPS Technical Evaluation will be evaluated as part of the Offeror's Technical Proposal.
- iii. **Pricing Proposal.** The Offeror shall submit completed tables referenced in Attachment A – Offeror Pricing Sheet – X-ray Analysis. Offeror must complete the pricing sheet in full, including pricing for Option Period One and Option Period Two. Responses relevant to pricing topics will constitute the Offeror's pricing proposal. Submitted pricing will be evaluated and ranked consistent with Price Evaluation below.

Proposal Evaluation

- i. Offeror proposal submissions will be evaluated by an assigned USPS Evaluation Team which will include USPS employees.
- ii. The USPS will evaluate each Offeror's financial information to determine the Offeror's

financial stability, viability, and risk. This financial assessment will be conducted independent of, the technical evaluation and will be evaluated on a **Pass or Fail** basis. Offerors must receive a passing score in order to continue in the source selection process and to be eligible for contract award. If the financial assessment is considered a fail, the Offeror's proposal will NOT be considered for award. Any Offeror who does not pass USPS financial assessment will be notified via email.

- iii. The USPS Technical Evaluation Team (TET) will review technical proposal responses, rate, and rank the responses consistent with the Evaluation Factors & Rating Scale below.
 - a. The TET will analyze each proposal and identify strengths, weaknesses, deficiencies, and risks associated with responses to stated requirements.
 - b. USPS will evaluate the Offeror's demonstrated understanding of, and approach to, meeting/exceeding the various functional and technical requirements of the Statement of Work. USPS therefore encourages Offerors to provide responses that address "how" the Offeror will meet/exceed requirements and differentiate themselves from others.
- iv. The USPS TET will evaluate pricing proposals and rank them separately from the technical proposals as further described Price Evaluation below.
- v. 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. The USPS Evaluation Team may therefore have to make trade-off judgments of technical merit relative to price.
- vi. USPS will award a contract resulting from this solicitation to the Offeror whose proposal, conforming to the solicitation, is most advantageous to the USPS, with price and other factors considered.
- vii. USPS may reject any and all proposals and may waive minor informalities and irregularities in the proposals it receives. USPS may make an award without discussions and, Offerors are therefore encouraged to present their best offer with their initial proposal submission. USPS reserves the right to contact some, all, or none of the Offerors for clarifications or explanations of their proposals.

Evaluation Factors & Rating Scale

- i. **Evaluation Factors**. The evaluation factors described below will be used and are listed in descending order of importance, in addition to price and other factors as specified, to determine which proposal offers the best value to USPS. A USPS TET has been established (subject to change at USPS discretion) to evaluate the proposals submitted in response to this solicitation. It is of paramount benefit to the Offeror to be as complete and detailed as possible in preparing their proposal. USPS reserves the right to contact some, all, or none of the Offerors for clarifications or additional explanations concerning

their respective proposals.

1. Evaluation Factor One - Capability (Real-Time X-ray Analysis and Interpretation)

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 are not subfactors but will be considered in reaching an overall rating for this evaluation factor;

- i. Offeror's Alarm Resolution Plan
- ii. Offeror's Management and Staffing Plan
- iii. Offeror's Quality Assurance and Performance Tracking Plans
- iv. Offeror's live-demonstration of their Alarm Resolution process

2. Evaluation Factor Two – Resource Allocation and Roll-out responsiveness

- i. The offeror's demonstrated capability of the following factors will be considered in the aggregate in reaching an overall rating for this evaluation factor.
 1. Offeror's demonstrated responsiveness to 'Attachment B – Roll-out Schedule'
 2. As required by the SOW, the offeror's ability to provide their own independent and encrypted internet connect (Wi-Fi, Mobile Data, or LAN) at each site location

3. Evaluation Factor Three - Past Performance

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

- Demonstrated support for the execution of similar programs across the U.S. including the planning and administration of such a national level program.
- Proven experience in developing national level alarm resolution.
- Offeror's national roll-out support experience.

For purposes of evaluating past performance, past performance involving alarm resolution of mail screening or cargo screening is equivalent. No offeror shall receive a more or less favorable past performance rating based on the fact that its past performance involved alarm resolution of mail or cargo screening.

Price Evaluation

The Postal Service will use the attached Microsoft Excel spreadsheet file 'Offeror Pricing Sheet – X-ray Analysis' as the price evaluation methodology. Offerors must complete in totality the spreadsheet. Detailed information regarding the number of X-ray machines per site and the schedule of screening for each site are included in the second and third tabs of the spreadsheet.

The price evaluation will culminate with the Postal Service ranking each offeror's pricing proposal.

All rates must be fully loaded (inclusive of all costs).

Other Solicitation/Proposal Requirements

- i. Offerors will bear all costs associated with the preparation of responses and participation in this solicitation. USPS will assume no financial responsibility, direct or indirect, for the cost of preparation of proposals or in the Offeror's participation.
- ii. The issuance of this solicitation does not obligate USPS to negotiate, enter into any contract, or to undertake any financial obligations relating to the requirements referred to herein. Accordingly, the USPS reserves all rights, including without limitation, the right to reject any proposal(s) received, to not award a contract, to award one or more contracts, to negotiate with any Offeror, to request supplemental information from any Offeror, to alter or waive certain solicitation requirements should Offeror provide alternate solution deemed acceptable by USPS, to reject proposals at its discretion, and/or to reject without consideration proposals that arrive late.
- iii. Proposals may be modified after submission by withdrawal and resubmission prior to the due date stated in Solicitation Milestones above. Modifications offered in any other manner will not be considered.
- iv. All material submitted in response to this solicitation will become the property of USPS and shall be retained by USPS for its official files.
- v. The Offeror is required to clearly explain any assumptions or conditions it imposes on or includes in its response. The Offeror is obligated to furnish all information as requested and complete all forms according to the relevant instructions. Any deviations or exceptions to USPS requirements should be noted and explained. Failure to provide complete information in the format specified may result in the Offeror being eliminated from the selection process at the Postal Service's discretion.
- vi. Proposal Labeling. Offeror proposal information that is not to be used or disclosed by the Postal Service for any purpose other than for solicitation analysis is to be labeled consistent with Provision A-1 Restriction on Disclosure and Use of Data (March 2006)
- vii. Contractual Commitment of Proposal. The contents of submitted proposals and any subsequent material submitted in response to requests for additional information, which will be incorporated into the proposal, will be considered obligations of the successful Offeror. No information should be submitted that is not intended to be incorporated into the proposal and any resulting contract. Offerors who wish to vary the requirements of the solicitation should submit specific alternate language, which must be clearly indexed and referenced. Any requirements contained in the solicitation, not altered by the Offeror's proposal will be an offer by the Offeror, which can be accepted by USPS. Unless expressly provided to the contrary, any suggestions or requests for change to the Offeror's proposal,

made by USPS shall not constitute a rejection of the proposal or any portion thereof.

- viii. Confidentiality. Any specification, drawings, sketches, data or documentation or other technical or business information (“Information”) furnished or disclosed to the Offeror hereunder shall be deemed the property of USPS and must be returned to USPS upon request. Unless such Information was previously known to the Offeror free of any obligation to keep it confidential, or has been or is subsequently made public by USPS or a third party, it shall be held in confidence by the Offeror, must be used only for the purposes hereunder, and may be used for other purposes only upon such terms and conditions as may be mutually agreed upon in writing.

Appendix: Proposal Deliverables & Naming Conventions

The following table addresses the proposal documents and the proposal naming convention that must be used when submitting the proposal via email:

| Name | Description/Reference | Naming Convention |
|---|---|------------------------------|
| Company Financials | Provide company financials consistent with Company Financials. | Company Name_ Financials |
| PS Form 8203 | Provide a completed Form 8203: Complete addresses and contact information in the PS Form 8203, blocks 14, Supplier, and 16, Remittance Address, and signed name, printed name/title and date in blocks 27a, 27b, and 27c (Note: Instructions say to fill out Block 13, Discount Terms, this is not required). | Company Name_8203 |
| Solicitation Provisions  USPS Provisions - Real-Time X-ray Ana | Complete and submit: Provision 4-3, Representations and Certifications; | Company Name_ Provisions |
| Subcontracting Plan  Provision 3-1, Subcontracting Plan.d | Provide a subcontracting plan as required by the attached Solicitation Provision 3-1. | Company Name_ Subcontracting |
| Cover Letter | Provide a Cover Letter consistent with Proposal and Content Structure | Company Name_CoverLtr |
| Statement of Work and Evaluation Factors Response  Statement of Work - Real-Time X-ray Analy | Provide Statement of Work and Evaluation Factors responses consistent with Proposal Content and Structure and Evaluation Factors and Rating Scale | Company Name_SOW and Eval |

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|  Evaluation Factors - X-ray.docx | | |
| Pricing  Attachment A - Offeror Pricing Shee | Provide completed Attachment A – Offeror Pricing Sheet – X-ray Analysis | Company Name_Pricing |