

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WESTERN REGIONAL OFFICE

MANUEL ALCARAZ,)
Appellant,)
)
v.)
)
DEPARTMENT OF HOMELAND)
SECURITY, TRANSPORTATION)
SECURITY ADMINISTRATION,)
Agency.)

DOCKET NUMBER:
SF-0752-10-1001-I-1

Date: October 13, 2010

MOTION TO SEAL THE RECORD AND CLOSE THE HEARING

This case involves information designated by the Agency as Sensitive Security Information (SSI), information which must be protected in accordance with the provisions of 49 C.F.R. § 1520. Accordingly, the Agency moves to seal the entire record in this case, including all documents filed with the Board to date and the transcript of the hearing, which has been requested but not yet scheduled. The Agency also moves to close the proceedings of the hearing in this matter, to non-covered parties, as described in detail below. Appellant has indicated that he opposes this Motion.

I. SENSITIVE SECURITY INFORMATION

A. Background: Sensitive Security Information

1. Prior to TSA, the Federal Aviation Administration (FAA) was responsible for managing aviation security. As part of its duties, under 49 U.S.C. § 40119, the FAA was empowered to prescribe regulations prohibiting disclosure of information obtained or developed in implementing aviation security if the FAA administrator determined, by regulation, that disclosing the information would: (a) be an unwarranted invasion of personal privacy; (b) reveal

a trade secret or confidential commercial or financial information; or (c) be detrimental to the safety of passengers in air transportation.

2. In 1997, FAA codified this authority at 14 C.F.R. § 191, which regulated a category of sensitive, but unclassified, information known as Sensitive Security Information (SSI), the unauthorized disclosure of which could compromise systems that protect aviation security. FAA's SSI regulation defined SSI in both general and specific terms. It identified types of records constituting SSI, such as airport and air carrier security programs and Security Directives, as well as general categories of SSI, including information revealing specific details of aviation security measures.

3. Following the terrorist attacks on September 11, 2001, Congress passed the Aviation and Transportation Security Act (ATSA), on November 19, 2001, Pub. L. 107-71, which established TSA within the Department of Transportation (DOT), operating under the direction of the Under Secretary of Transportation for Security.

4. ATSA transferred the responsibility for civil aviation security from the FAA to TSA, under 49 U.S.C. § 114(d). As part of this responsibility, ATSA § 101(e) also transferred the FAA's SSI authority, under 49 U.S.C. § 40119, to TSA. TSA codified its new responsibility for SSI at 49 C.F.R. § 1520 (67 FR 8340, 8351).

5. On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (HAS), Pub. L. 107-296, which transferred TSA to the newly established Department of Homeland Security (DHS). The HSA also transferred TSA's SSI authority, under 49 U.S.C. § 40119, to 49 U.S.C. § 114(s).

6. Under 49 U.S.C. § 114(s), SSI is information that TSA has determined must be protected from improper disclosure to ensure transportation security. TSA's regulations

establish certain requirements for the handling and dissemination of SSI, including restrictions on disclosure and civil penalties for violations of those restrictions.

7. Generally, SSI is information¹ that could help someone defeat transportation security measures. The purpose of implementing requirements for safeguarding SSI is to keep it from falling into the hands of those who would use it to identify and exploit potential weaknesses in transportation security.

8. The regulations at 49 C.F.R. § 1520.5(b), subparagraphs (1) through (16), designate the types of documents and information that are protected SSI. The regulations protect, in relevant part:

(b) Information constituting SSI. Except as otherwise provided in writing by TSA in the interest of public safety or in furtherance of transportation security, the following information, and records containing such information, constitute SSI:

- (11) ***Identifying information of certain transportation security personnel.***
 - (i) Lists of the names or other identifying information that identify persons as –
 - (D) Holding a position as a Federal Air Marshall.

B. Protecting Sensitive Security Information

9. Only “covered persons” may have access to SSI. 49 C.F.R. § 1520.7. Covered persons may include federal employees, like employees of the MSPB (49 C.F.R. §1520.11(b)(1)), and individuals acting on behalf of covered persons, like attorneys and legal representatives (49 C.F.R. §1520.7(k)), who have a need to know the information.

10. Once information has been designated as SSI, covered persons who are granted access to SSI are subject to the regulations governing SSI. 49 C.F.R. § 1520.7.

¹ SSI includes any form of information, whether written, spoken, or communicated in any other way, that, if improperly disclosed, could compromise the nation’s transportation security. SSI takes the form of both tangible documents and intangible communications. Here, the documents already part of the record as well as the testimony that will be elicited at the hearing constitute SSI.

11. Covered persons must “take reasonable steps to safeguard SSI in [their] possession or control from unauthorized disclosure. When a person is not in physical possession of SSI, the person must store it in a secure container, such as a locked desk or file cabinet or in a locked room.” 49 C.F.R. § 1520.9(a)(1).

12. Regarding MSPB matters in particular, the MSPB and TSA recently entered into a Statement of Work and an Interagency Agreement, which provide guidance on managing cases involving SSI. Exhibit A, Statement of Work; Exhibit B, Interagency Agreement. Section G.5 of the Statement of Work states “in any case where an MSPB record discusses or reveals SSI, the MSPB record shall be sealed.” Exhibit A. Section F.1 states “hearings, or portions thereof, in which SSI may be disclosed, always shall be closed to the public.” Exhibit A. Section F.2 states that “at any MSPB hearing held by videoconference or telephone, the MSPB Administrative Judge shall require each participant to certify that he or she is in a location away from the public where there is no risk of being overheard.” Exhibit A.

13. Covered persons who fail to take appropriate actions to safeguard SSI, as required at § 1520.9, may be subject to civil penalty and “other enforcement or corrective action,” including “appropriate personnel action for Federal employees.” 49 C.F.R. § 1520.17.

II. THE RECORD MUST BE SEALED AND THE HEARING MUST BE CLOSED.

In this case, even the most basic information constitutes SSI and must be protected from disclosure. An order to seal the record and close the hearing is the only appropriate and efficient means of providing this protection.

The record is replete with SSI. Under 49 C.F.R. § 1520.5(b)(11)(i)(D), the identity of the Federal Air Marshals (FAMs) who acted with respect to Appellant’s conduct and progressive discipline are considered SSI. The record contains numerous documents indicating the names of

various FAMs. At the hearing, the identity of these FAMs may be disclosed in testimony regarding Appellant's conduct and progressive discipline. Accordingly, the hearing should be closed.

The recent Statement of Work and Interagency Agreement into which TSA and the MSPB entered address protecting SSI and provide guidance on how cases involving SSI should be handled. The Statement of Work requires that MSPB appeals involving SSI must be handled with particular care not to improperly disclose SSI. The Statement of Work requires that "in any case where an MSPB record discusses or reveals SSI, the MSPB record *shall* be sealed." Exhibit A, § G.5. (emphasis added). It also requires that "hearings, or portions thereof, in which SSI *may* be disclosed, always *shall* be closed to the public" (Exhibit A, §F.1) and "in any case where an MSPB record discusses or reveals SSI, the MSPB record *shall* be sealed." (*Id.* at § G.5). Section F.2 states that "at any MSPB hearing held by videoconference or telephone, the MSPB Administrative Judge *shall* require each participant to certify that he or she is in a location away from the public where there is no risk of being overheard."

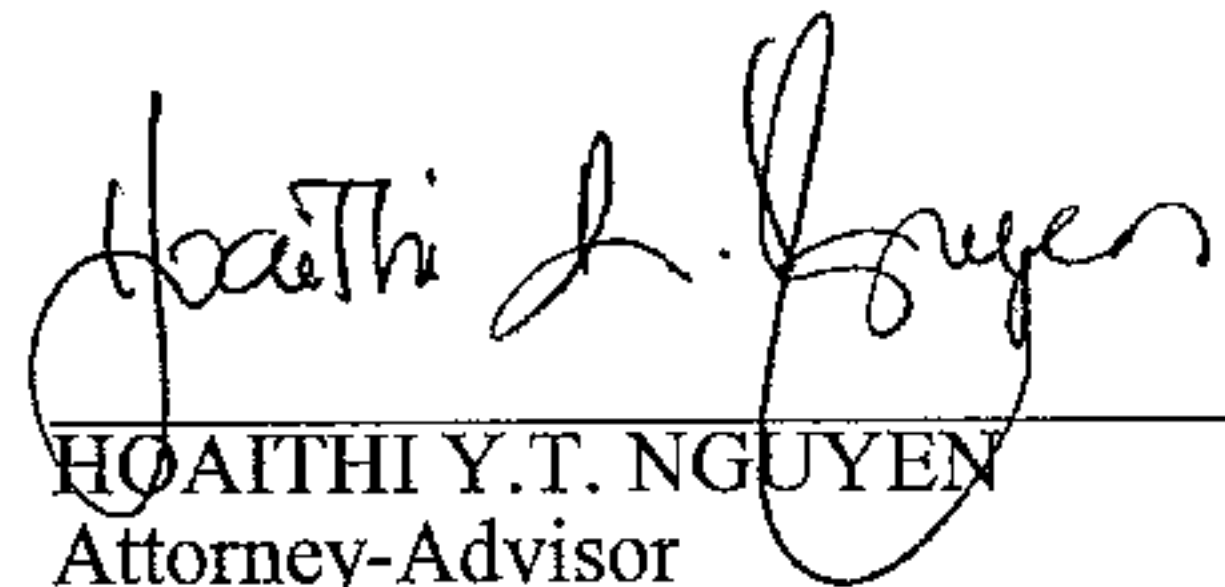
Moreover, Federal Statute and the Code of Federal Regulations provide for consequences for improper disclosure of SSI, including civil penalties and adverse personnel action for Federal employees. 49 C.F.R. § 1520.17. Thus, if the record is not sealed and the hearing is not closed, the Agency will have no choice but to refrain from participating in the hearing. The Agency and its representatives cannot willingly participate in the improper disclosure of SSI.

III. CONCLUSION

Because the protection of SSI is critical to the Agency's mission to safeguard the general public from terrorist attacks, and because the disclosure of SSI could subject all of the individuals involved in this litigation to civil penalty and adverse employment action that would prevent the Agency from participating in the hearing, the Agency requests that the Administrative Judge grant this consented motion to seal the record and close the hearing.

Dated: October 13, 2010

Respectfully submitted,



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STATEMENT OF WORK

1. **PURPOSE:** This Statement of Work details the procedures to be followed by the Merit Systems Protection Board (MSPB or Board) during the MSPB's adjudication of allegations of retaliation due to whistleblower disclosures made by Transportation Security Officers (TSOs) and applicants for TSO positions through Individual Right of Action (IRA) appeals and petitions for corrective action filed by the U.S. Office of Special Counsel (OSC).

2. **SCOPE:** This Statement of Work applies to the MSPB based on the Memorandum of Agreement (MOA), dated February 26, 2008, setting forth the terms and conditions under which the MSPB will provide services to adjudicate IRA appeals filed by TSOs and applicants for TSO positions and petitions for corrective action filed by OSC. Under the scope of the MOA, the MSPB shall be required to provide any or all of the following tasks:

(a) Reviewing IRAs based on alleged whistleblower retaliation submitted by TSOs, former TSOs, or applicants for TSO positions. The following types of actions are covered:

(1) IRA appeals of personnel actions;

(2) Requests for stays of personnel actions allegedly based on whistleblowing, pursuant to 5 C.F.R. § 1201.134(a) and §§ 1209.8 1209.11; and

(3) Petitions for enforcement of MSPB orders determining the outcome of IRA appeals, pursuant to 5 C.F.R. §§ 1201.181 – 1201.183.

(b) Applying existing Board precedent in TSO IRA appeals and related appeals, except to the extent that precedent conflicts with the applicable TSA directives, policies, and rules.

(c) Adjudicating TSO IRA appeals and related appeals consistent with 5 C.F.R. Parts 1201 and 1209, except as modified herein.

(d) Reviewing petitions for corrective action filed by OSC.

3. **PROCEDURES:** The procedures set out in 5 C.F.R. Parts 1201 and 1209, as modified by TSA Management Directive No. 1100.75.5 apply to IRA appeals filed by TSOs and applicants for TSO positions and petitions for corrective action filed by OSC. In addition, MSPB must adhere to the following procedures:



(a) Hearings: The hearings shall be closed to the public absent good cause shown for holding hearings open to the public. Where the appellant requests a hearing and summary judgment is not appropriate, generally the parties, the witnesses, and the administrative judge shall attend hearings in person. However, the administrative judge, in his or her discretion, may hold the hearing in whole or in part by telephone, videoconference, or in person at the MSPB's regional or field office or at a designated hearing site listed in Appendix III to 5 C.F.R. Part 1201. Among the factors that the administrative judge will consider in deciding whether to hold a hearing in whole or in part by videoconference or telephone are:

- (1) Whether the Agency Representative is able to secure use of video conferencing equipment;
- (2) A comparison of the total costs of holding a hearing, a videoconference and a telephonic conference;
- (3) The distance the parties and their witnesses would have to travel to appear in person; and
- (4) Whether appearance by videoconference or telephone of the appellant or his or her witnesses would unduly prejudice the appellant.

(b) Sensitive Security Information (SSI): The MSPB will safeguard SSI as required by the Appendix to this Statement of Work.

APPENDIX TO STATEMENT OF WORK

SENSITIVE SECURITY INFORMATION (SSI) PROCEDURES

A. General.

1. SSI is a category of sensitive but unclassified (SBU) information that is governed by the provisions of 49 Code of Federal Regulations (C.F.R.) part 1520. As defined in 49 C.F.R. § 1520.5, SSI is information obtained or developed in the conduct of security activities, including research and development, the disclosure of which TSA has determined would, if disclosed, be detrimental to the security of transportation. Requirements related to the possession, safeguarding, transmission, marking, disclosure, use, and destruction of SSI are set forth in 49 C.F.R. part 1520.

B. Access to SSI in Merit Systems Protection Board (MSPB) Proceedings.

1. Individuals identified as "covered persons" under 49 C.F.R. § 1520.7 may have access to or create records containing SSI if they have a need to know the information. Federal employees, including employees of the MSPB, are covered persons. 49 C.F.R. § 1520.11(b)(1). Current and former TSA employees and their designated representatives also are covered persons under 49 C.F.R. §§ 1520.7(k)-(j) and 1520.11(a)(5). In addition, covered persons include court reporters who are under contract to a covered person and who sign a DHS Non-Disclosure Agreement.

2. A covered person has a "need to know" SSI, as defined in 49 C.F.R. § 1520.11. Generally, a covered person has a need to know specific SSI when he or she requires access to the information in the performance of his or her official duties or when he or she requires access in order to represent a covered person in connection with an MSPB proceeding.

3. If, at any time, TSA determines that a covered person possesses SSI for which he or she does not have a "need to know," as defined by 49 C.F.R. § 1520.11, TSA may require the return of, redactions to, or destruction of said SSI.

C. Protecting SSI.

1. Generally: All covered persons who possess records containing SSI are responsible for ensuring that those records are safeguarded at all times to prevent disclosure to unauthorized persons. When unattended, SSI shall be secured in a locked container or in a room or area that has sufficient physical access control measures to afford adequate protection and prevent unauthorized access by members of the public, visitors, or other persons without a need to know, such as a locked room, or an authorized area where access is controlled by a guard, cipher lock, or card reader. When SSI is removed from an authorized storage location and persons without a need to know are present, or where casual observation would reveal SSI to unauthorized persons, measures such as an unmarked folder, envelope, or SSI cover sheet shall be used to prevent unauthorized or inadvertent disclosure.

2. Electronic Files: Any electronic file containing SSI shall be password-protected. All passwords shall be of eight character minimum length, have at least one letter capitalized, contain at least one number, and not be a word in the dictionary.

3. Email: A record containing SSI may be transmitted to an authorized person via email if that record is password-protected. No SSI may be placed in the body of an email; it shall be transmitted as a password-protected attachment. The same password may be applied to multiple documents. The sender of an email containing SSI may transmit the password either in person, by telephone, or in an email sent separately from the SSI record it is protecting.

4. Facsimile: Before sending a fax containing SSI, the sender shall confirm that the fax number of the covered person is current and valid, and that the recipient is available at the receiving location to promptly retrieve the information. Faxed SSI must have a cover sheet that clearly identifies the sender's name and telephone number, and it shall contain the following warnings:

This facsimile is intended for the recipient only. If this is received by someone other than the intended recipient, the person receiving the message should immediately contact the sender for further instructions.

The protective marking SENSITIVE SECURITY INFORMATION and/or the distribution limitation statement on this document are canceled when the attachments containing SSI are removed.

5. Mail: SSI may be transmitted by the U.S. Postal Service first class mail or regular parcel post, or by other delivery services (e.g., Federal Express, UPS). SSI sent by mail or by a delivery service shall be wrapped in an opaque envelope, wrapping or carton to prevent inadvertent visual disclosure. The package shall be addressed with an attention line containing the name and office of the recipient to help ensure the SSI material is received and opened only by authorized personnel.

6. E-filing: SSI may be transmitted via an MSPB electronic filing system only if the e-filing system permits electronic files to be password-protected consistent with section C.2 of this Appendix. If an MSPB electronic filing system does not permit users to password protect electronic files, no filing or MSPB issuance containing SSI shall be transmitted via such system. Should the MSPB discover, or receive notice from either party, that non-password-protected SSI is present on an MSPB electronic filing system, it shall immediately remove any such material.

D. Marking SSI.

1. A person who creates a record containing SSI shall, in accordance with 49 C.F.R. § 1520.13, include a protective marking and distribution limitation statement that clearly identifies the record as containing SSI.

a. Protective Marking: The protective marking shall be applied to all records that contain SSI. It shall be typed or stamped in a plain style bold type. The protective marking is: "SENSITIVE SECURITY INFORMATION."

b. Distribution Limitation Statement: The distribution limitation statement shall be applied to all records that contain SSI. It shall be typed or stamped in a plain style bold type. The distribution limitation statement is:

Warning: This record contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons without a "need to know", as defined by 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520.

E. Filings in MSPB Proceedings.

Covered persons shall file any pleadings, motions or exhibits containing SSI under seal. All such filings shall be marked and protected in accordance with sections C and D of this Appendix.

F. Closed MSPB Hearings.

1. MSPB hearings shall be closed to the public, absent good cause shown for opening hearings or portions thereof. Hearings, or portions thereof, in which SSI may be disclosed, always shall be closed to the public. Transcripts, including video or audio, of hearings shall be protected in accordance with sections C and G of this Appendix.

2. At any MSPB hearing held by videoconference or telephone, the MSPB Administrative Judge shall require each participant to certify that he or she is in a secure location away from the public where there is no risk of being overheard.

G. Protecting SSI contained in the Record and in MSPB Decisions.

1. A covered person in possession of the record of an MSPB proceeding, decision, or appendix to a decision containing SSI shall protect such SSI in accordance with section C of this Appendix.

2. Release to parties: MSPB decisions, including appendices, that discuss or reveal SSI shall be marked in accordance with 49 C.F.R. § 1520.13 and shall be served on the parties in a manner consistent with section D of this Appendix.

3. Redaction by TSA SSI Office prior to publication or release to non-parties: In any case where an MSPB decision discusses or reveals SSI, the MSPB, prior to publishing its decision or releasing its decision to any non-party, shall submit a copy of the decision, and any appendices that may include SSI, to the TSA SSI Office for redaction of SSI. No change to an MSPB decision or appendix, other than redaction of SSI, is permitted under this provision.

4. Release to non-parties: Redacted decisions and appendices may be published and released to non-parties. Where a decision addresses all SSI matters in an appendix, the decision, but only a redacted SSI appendix, may be published or released to non-parties.

5. Records of MSPB cases: In any case where an MSPB record discusses or reveals SSI, the MSPB record shall be sealed. Prior to opening any MSPB record containing SSI to the public, the MSPB shall submit a copy of the record to the TSA SSI Office for redaction of SSI. No change to an MSPB record, other than redaction of SSI, is permitted under this provision. Redacted records may be made available to the public.

a. At the end of an MSPB proceeding, including all appeals, covered persons shall promptly return and/or destroy any and all records (including electronic records) containing SSI in their possession to TSA, except that the MSPB may maintain SSI in any permanent record required by the Federal Records Act. Destruction of records must be accomplished by any method that will destroy the record so completely so as to preclude recognition or reconstruction of the information.

b. At the end of an MSPB proceeding, including all appeals, covered persons shall certify in writing to TSA that they have returned and/or destroyed any and all records containing SSI. This certification is not required as to SSI contained in any permanent record required by the Federal Records Act.

INTERAGENCY AGREEMENT
BETWEEN
THE TRANSPORTATION SECURITY ADMINISTRATION
AND
THE MERIT SYSTEMS PROTECTION BOARD
For the Adjudication of Certain Whistleblower Appeals Before the MSPB

1. General

This Payable Interagency Agreement (IA) and the attached Statement of Work (SOW) constitute a Payable IA between the requesting agency, the Transportation Security Administration (TSA), and the servicing agency, the Merit Systems Protection Board (MSPB). This agreement shall be effective on the date of the final signature by authorized officials of both agencies, and shall renew automatically every 12 months for up to five years, or until terminated in accordance with the Cancellation or Termination provisions of this document.

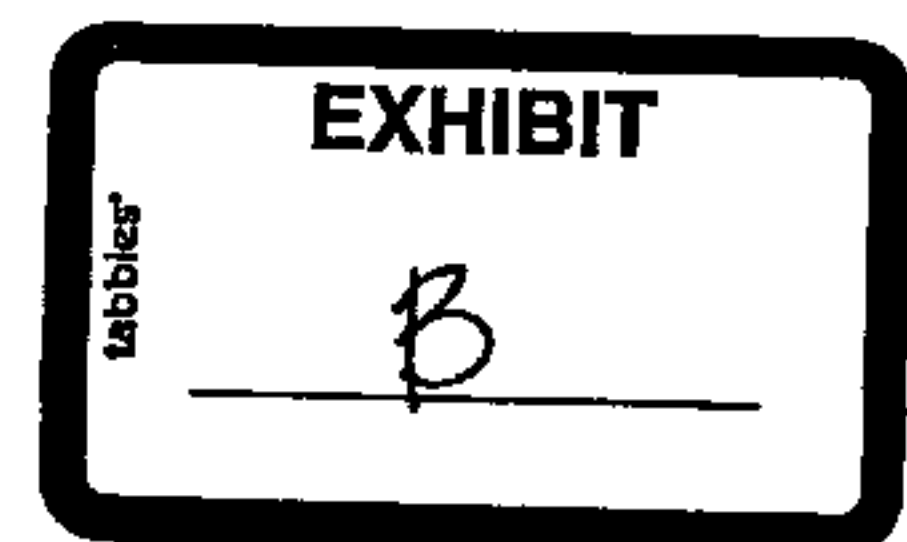
2. Background

On February 26, 2008, the MSPB and TSA entered into a Memorandum of Agreement (MOA) (attached hereto) setting forth a general framework for MSPB authority to adjudicate allegations of retaliation due to whistleblower disclosures made through Individual Right of Action (IRA) appeals and related addendum actions filed by TSA Transportation Security Officers (TSOs) or applicants for TSO positions or petitions for corrective action filed by the U.S. Office of Special Counsel (OSC). The purpose of this earlier memorandum was for the parties to agree in principle that the Board would have authority over such IRA appeals and OSC petitions for corrective action and to commence work on detailed procedures applicable to the Board's adjudication of such cases.

3. Purpose

The purpose of this Payable IA is to establish a mechanism for TSA to reimburse the actual costs incurred by the MSPB in performing the aforementioned adjudications and set forth the terms and conditions under which the MSPB will be granted authority to adjudicate certain IRA appeals and related addendum actions and petitions for corrective action filed by OSC. TSA MD No. 1100.75-5 Whistleblower Protections for TSOs and SSI Procedures Appendix, and the Statement of Work and SOW SSI Procedures Appendix will set forth the specified procedures applicable to the adjudication of the aforementioned cases. The MD and SOW with Appendices are attached hereto.

4. Definitions



COTR/POC: the requesting agency's Contracting Officer's Technical Representative/Point of Contact.

Requesting Agency: TSA or any duly authorized representative.

Servicing Agency: MSPB, or any duly authorized representative.

5. Sensitive Security Information

The TSA and the MSPB, including any contractors of the MSPB, agree to adhere to all requirements related to the possession, safeguarding, transmission, marking, disclosure, use, and destruction of Sensitive Security Information (SSI) as set forth in 49 C.F.R. Part 1520, and the SSI procedures outlined in the Statement of Work and SSI Appendix, attached hereto.

For cases involving SSI, MSPB contractors (including court reporters) performing work pursuant to this Agreement shall execute the standard Department of Homeland Security Non-Disclosure Agreement (DHS NDA) (attached hereto) prior to performing any work pursuant to this Agreement. Additionally, for cases involving SSI, MSPB contractors (including court reporters) performing work pursuant to this Agreement are deemed to be "covered persons" as defined in 49 C.F.R. Part 1520.

TSA and MSPB agree to cooperate in responding to Freedom of Information Act (FOIA) requests that concern cases involving SSI. The MSPB point of contact for FOIA issues is Arlin Windefordner, (202) 653-6772, ext. 1162. The TSA point of contact for FOIA issues is the TSA FOIA Officer, (571) 227-2688; kevin.janet@dhs.gov.

In the event that questions arise concerning the requirements relating to the possession, safeguarding, transmission, marking, disclosure, use, and destruction of SSI or the requirement to execute a DHS Non-Disclosure Agreement, the following persons should be contacted:

MSPB: General Counsel or Deputy General Counsel, (202) 653-6772, ext. 1286 or ext. 1291.

TSA: Deputy Chief Counsel (Litigation), TSA Office of Chief Counsel, (571) 227-2712.

6. Competition Requirements for the Servicing Agency

All acquisitions awarded by the servicing agency in performance of this Payable IA shall comply with the Competition in Contracting Act (CICA), Public Law 98-369 and Part 6 of the Federal Acquisition Regulation (FAR), as applicable.

7. Funding and Reimbursement

The servicing agency (MSPB) is limited to recovery of actual costs only. Based upon historical data, the MSPB incurs actual costs averaging \$1,953 for the adjudication of an initial appeal and \$2,168 for the adjudication of a petition for review. Reimbursements under this agreement will initially be made in accordance with these historical MSPB average costs. During the first six months of this agreement the MSPB will track actual costs in cases adjudicated pursuant to this agreement. Based upon data collected during this six-month period, the estimated costs charged per initial appeal and petition for review will be adjusted prospectively to reflect the actual costs of adjudicating such cases. The parties may agree to extend this six-month data collection if additional time is needed to develop reliable data.

Special Terms for One-Year Funding:

The total amount to be reimbursed shall not exceed the total amount obligated for the current fiscal year. This agreement is being entered into under the authority given to the Administrator of the Federal Aviation Administration in 49 USC §106(l) and (m) as prescribed in the Aviation and Transportation Security Act of 2001 (ATSA), 49 USC §114(m), Pub Law 107-71, providing the Administrator of the Transportation Security Administration with the same authority as that authority given to the Administrator of the Federal Aviation Administration (FAA).

8. Billing Instructions/Support Documentation for Expenditures

Billing and reimbursement may be handled through the Intra-governmental Payment and Collection (IPAC) system, or the servicing agency may submit invoices when the work is completed or as otherwise authorized. The Payable IA number, Task Order number(s) [as appropriate], the Agency Locator Codes, appropriate accounting code(s), and associated dollar amounts must be referenced on all IPAC transactions or invoices.

If IPAC is used, the servicing agency shall provide documentation supporting all charges to the requesting agency's COTR/POC.

The MSPB shall send a quarterly report to TSA detailing the number of cases heard and the actual costs incurred. This report will be provided to the COTR no later than the 5th business day of each quarter.

Both agencies agree to promptly discuss and resolve issues and questions regarding payments. The servicing agency will promptly initiate year-end and closeout adjustments once final costs are known.

9. Travel

All travel performed by the servicing agency (MSPB), including any of its contractors, under this Payable IA shall be in accordance with the Federal Travel Regulations. Any travel performed by the TSA shall be in accordance with TSA MD 1000.6 Temporary Duty Travel Policy and the FAA Travel Policy (followed by TSA) attached hereto.

10. Modifications

The requesting agency may issue a unilateral administrative modification where the modification does not alter the parties' duties under the agreement. Examples of a unilateral administrative modification include adding funds with no change to the SOW or changing a COTR/POC name. A written bilateral modification (i.e., agreed to and signed by authorized officials of both parties) will be issued to change the Payable IA, modify the SOW, etc. All changes to this Agreement, except as specifically set forth in this Agreement, may only be made through a written modification signed by a Contracting Officer (CO).

11. Program Office/COTR Responsibilities

The requesting agency COTR/POC and the servicing agency program office shall be responsible for technical oversight of the specified product or service, as set forth in the SOW of this agreement. In carrying out these responsibilities, they will operate within the scope of applicable regulations, specifically delegated authorities, and the program authorities and funding limitations of the Payable IA. The COTR/POC has no authority to make changes to the terms of the Payable IA.

The MSPB servicing program office point of contact is Kevin Smith, Budget Officer, phone: (202) 653-6772, 1113; e-mail: Kevin.Smith@mspb.gov.

The TSA COTR/POC is Bonnie Osler, Deputy Chief Counsel (Litigation), TSA Office of Chief Counsel, (571) 227-2712; email: Bonnie.Osler@dhs.gov.

12. Property

Non-expendable property purchased from funds supplied under this agreement shall become an asset of the requesting agency unless otherwise agreed to in writing by both agencies. Purchase of equipment required for performance of the work must be authorized under this Payable IA.

17. Accessibility of Electronic and Information Technology

Each Electronic and Information Technology (EIT) product or service furnished under this agreement shall comply with the Electronic and Information Technology Accessibility Standards (36 CFR 1194), which implements section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d).

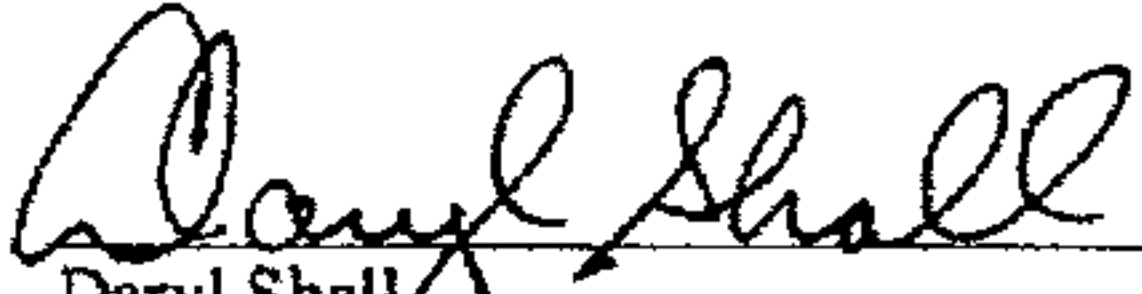
18. Attachments

- a. TSA Management Directive No. 1100.00-75.5 Whistleblower Protections for TSOs and SSI Procedures Appendix
- b. Statement of Work and SSI Procedures Appendix
- c. DHS Form 11000-6, DHS Non-Disclosure Agreement
- d. TSA MD 1000.6 Temporary Duty Travel Policy
- e. Federal Aviation Administration Travel Policy

19. Effective Date

The terms of this agreement will become effective on the last date of execution of this agreement.

Approved By:



Daryl Shall
Deputy Assistant Administrator for Acquisitions
Transportation Security Administration

7-28-2008
(Date)



Veronica Bullock
Marin Systems Protection Board

7/28/08
(Date)

CERTIFICATE OF SERVICE

I certify that the attached Motion to Seal the Record and Close the Hearing was sent on this day to the following:

Administrative Judge

LuNell C. Anderson
Merit Systems Protection Board
Western Regional Office
201 Mission Street, Suite 2310
San Francisco, CA 94105

Fed Ex

Appellant's Representative

Michael P. Baranic, Esq.
Gathey and Baranic
2445 Fifth Ave, Suite 350
San Diego, CA 921010

Fed Ex

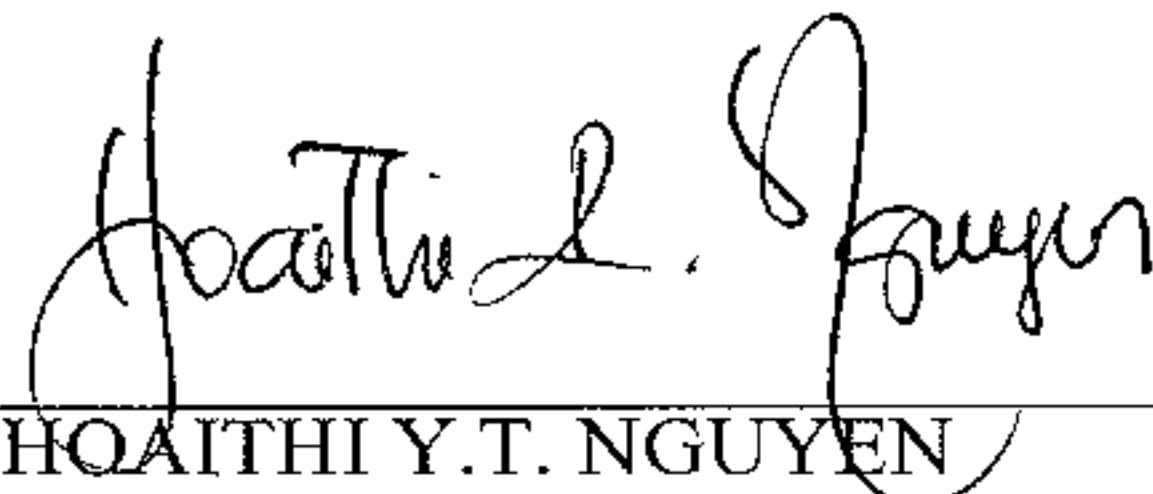
Appellant

Manuel Alcaraz
22966 Via Nuez
Mission Viejo, CA 92601

Fed Ex

Date: October ¹⁵~~14~~, 2010

Respectfully submitted,



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