

THE RUTHERFORD INSTITUTE

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July 3, 2019

Angela Washington, FOIA Officer
Cybersecurity and Infrastructure Security Agency Stop 0380
U.S. Department of Homeland Security
245 Murray Lane
Washington, D.C. 20528-038
E-mail: NPPD.FOIA@dhs.gov

Re: Freedom of Information Act Request / 5 U.S.C. § 552

Dear Ms. Washington:

The Rutherford Institute, a non-profit civil liberties organization, hereby makes the following request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(3) for records, documents, and other information, regardless of format, relating to the Statement of Work for Media Monitoring Services issued by the Department of Homeland Security (DHS) on or about April 3, 2018, a copy of which is attached to this letter.

This FOIA request seeks the following records relating to the above-referenced Statement of Work:

(1) All contracts entered into between the United States government, DHS, the National Protection and Programs Directorate, or the Cybersecurity and Infrastructure Security Agency, pursuant to or as a result of the Statement of Work;

(2) All records relating to the scope or details of work to be provided to the United States government, DHS, the National Protection and Programs Directorate, or the Cybersecurity and Infrastructure Security Agency, pursuant to or as a result of the Statement of Work;

(3) All records relating to any and all databases or lists of “media influencers” created or compiled pursuant to the Statement of Work or any contract entered into pursuant to the Statement of Work;

(4) All records relating to the criteria for including a person or entity on a list or database of “media influencers” pursuant to the Statement of Work or any contract entered into pursuant to the Statement of Work;

(5) All records of information compiled concerning “media influencers” pursuant to the Statement of Work or any contract entered into pursuant to the Statement of Work; and

(6) All records of actions taken by the United States government, DHS, the National Protection and Programs Directorate, or the Cybersecurity and Infrastructure Security Agency, or a contractor under the Statement of Work directed at a “media influencer.”

The Rutherford Institute requests a waiver of fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), because disclosure of the information is in the public interest in that it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Under 6 C.F.R. 5.11(k), a DHS component considers the following factors in determining whether disclosure of information is in the public interest: (i) the subject of the request must concern identifiable operations or activities of the federal government, (ii) disclosure must be meaningfully informative about government operations or activities in order to “likely to contribute” to an increased public understanding of those operations or activities and is not already publicly available, (iii) disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject—the requester’s expertise in the subject area and intention to effectively convey information to the public shall be considered, and (iv) the public’s understanding of the subject in question must be enhanced by the disclosure to a significant extent.

Disclosure of the requested records and information satisfies all of these criteria:

- The records and information relate to a DHS program involving surveillance of the activities of persons or entities who provide information to the public;
- It is important that the public know of and understand the nature and extent of that surveillance, particularly as it applies to persons or entities protected by the First Amendment’s guarantee to freedom of the press;
- All citizens have an interest in knowing how the government is engaged in monitoring independent sources of information and how that affects the government’s activities. Over many years, The Rutherford Institute has developed an expertise in matters of government surveillance and has tried to educate the public on the threat posed by it; and
- The records and information sought will be used to further those efforts of The Rutherford Institute.

Additionally, The Rutherford Institute requests that any fees be limited to reasonable standard charges for document duplication under 5 U.S.C. § 552(a)(4)(A)(ii)(II), because the request is being made by a representative of the news media. Under DHS FOIA regulations, a “representative of the news media” includes an “entity that actively gathers information of

potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 6 C.F.R. § 5.11(b)(6). The definition includes “news organizations that disseminate solely on the Internet.” *Id.* In *Electronic Privacy Information Center v. Dept. of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003), the court ruled that a public interest organization that published a bi-weekly on-line, electronic newsletter on privacy civil liberty, and other policy issues was a “representative of the news media” for purposes of the FOIA fee limitation. *See also Cause of Action v. Federal Trade Commission*, No. 13-5355 (D.C. Cir. Aug. 25, 2013) (district court erred in denying news media status to non-profit public interest entity that advocated and educated the public on economic freedom issues through the publication of on-line articles and press releases).

The Rutherford Institute fits comfortably within the definition of a representative of the news media. The Institute is a non-profit organization dedicated to advocating on and educating the public about civil liberties and human rights issues, including the freedoms protected by the First Amendment and the rights of individual privacy. The Institute, maintains a website, www.rutherford.org, at which it publishes, more often than weekly, original articles and news stories relating to these issues.¹ This original on-line content is drawn from various information sources, including court decisions, government publications, and other independent news sources. As such, this FOIA request is entitled to the fee limitation set forth in 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 6 C.F.R. § 5.11(d)(1).

The Rutherford Institute hereby requests the information and records set forth in more detail above. Pursuant to 5 U.S.C. § 552(a)(6)(A), a response to this request is expected within 20 days of its receipt. Communications regarding this request can be made by telephone at (434) 978-3888, or by electronic mail to legal@rutherford.org. Thank you for your attention to this matter.

Sincerely,



Douglas R. McKusick, Senior Staff Attorney
The Rutherford Institute

Attachment

Cc: John W. Whitehead

¹ *See, e.g.*, John W. Whitehead, “The Omnipresent Surveillance State: Orwell’s 1984 Is No Longer Fiction,” *The Rutherford Institute* (June 10, 2019), https://www.rutherford.org/publications_resources/john_whiteheads_commentary/the_omnipresent_surveillance_state_orwells_1984_is_no_longer_fiction.

DEPARTMENT OF HOMELAND SECURITY (DHS)

STATEMENT OF WORK (SOW) FOR *Media Monitoring Services*

1.0 GENERAL

1.1 BACKGROUND

NPPD's mission is to lead the national effort to protect and enhance the resilience of the nation's physical and cyber infrastructure. NPPD includes the Office of the Under Secretary (OUS) and five sub-components: the Office of Cybersecurity and Communications (CS&C), the Office of Infrastructure Protection (IP), the Federal Protective Service (FPS), the Office of Biometric Identity Management (OBIM) and the Office of Cyber and Infrastructure Analysis (OCIA), which are headquartered with the National Capital Region (NCR). Along with NPPD/OUS, Public Affairs is responsible for media communication.

1.2 SCOPE

The contractor shall provide NPPD/OUS with traditional and social media monitoring and communications solutions.

1.3 OBJECTIVE

Services shall enable NPPD/OUS to monitor traditional news sources as well as social media, identify any and all media coverage related to the Department of Homeland Security or a particular event. Services shall provide media comparison tools, design and rebranding tools, communication tools, and the ability to identify top media influencers.

NPPD/OUS has a critical need to incorporate these functions into their programs in order to better reach Federal, state, local, tribal and private partners.

2.0 SPECIFIC REQUIREMENTS/TASKS

2.1 Tasks One: Online & Social Media Monitoring

Ability to track global online sources for coverage relevant to Washington and the six media hubs:

- Ability to track > 290,000 global news sources
- Ability to track online, print, broadcast, cable, radio, trade and industry publications, local sources, national/international outlets, traditional news sources, and social media
- Ability to track media coverage in > 100 languages, including Arabic, Chinese and Russian. Translation function to instantly translate these articles to English.
- Ability to create up to 20 searches with each unlimited keywords
- Unlimited coverage per search (no cap on coverage)
- Ability to change the searches at keywords at any given time
- Ability to create unlimited data tracking, statistical breakdown, and graphical analyses on any coverage on an ad-hoc basis

2.2 Task Two: Media Intelligence and Benchmarking Dashboard Platform

24/7 Access to a password protected, online platform for users to access:

- Overview of search results in terms of online articles and social media conversations
- Customized and Interactive Dashboard that provide real-time monitoring, analysis, and benchmark of media coverage.
- Ability to analyze the media coverage in terms of content, volume, sentiment, geographical spread, top publications, media channels, reach, AVE, top posters, influencers, languages, momentum, circulation.
- Ability to select time-period of analysis: per day, week, month, and selected dates
- Ability to build media lists based on beat, location, outlet type/size, and journalist role
- Automated weekly overview of these dashboards sent via email

2.3 Task Three: Email Alerts

Daily email alerts with new search results:

- Ability to customize these email alerts per user

2.4 Task Four: Access to Mobile app

24/7 Access to a password protected, mobile app for users to access:

- Overview of search results in terms of online articles and social media conversations
- Ability to view coverage written in Arabic, Chinese and Russian. Ability to access English translation of this coverage within the mobile app.
- Ability to set up push notifications to be alerted of new search results
- Ability to forward media coverage via email, sms or what's app

2.5 Task Five: Media Engagement

24/7 Access to a password protected, media influencer database, including journalists, editors, correspondents, social media influencers, bloggers etc.

- Ability to browse the database based on location, beat and type of influencer
- Ability to perform ad-hoc searches on the database based on keywords, concepts, or using Boolean search terms
- Ability to perform searches in other languages including Arabic, Chinese and Russian, in order to find influencers that publish in these languages.
- For each influencer found, present contact details and any other information that could be relevant, including publications this influencer writes for, and an overview of the previous coverage published by the media influencer
- Ability to create unlimited media lists for specific topics
- Ability to export the contact details of the media influencers per media list.
- Ability to send out unlimited press releases via the platform and to monitor the open-rate of the press releases send out.
- Ability to manage contacts

2.6 Task Six: Customer Service

Implementation Support:

- The contractor shall provide access to an implementation consultant who is an experienced trainer and implementer and whose goal is to prepare NPPD/OUS to go live with the solution and provide best practices. The contractor shall work closely with NPPD/OUS project managers throughout the implementation process.
- Ongoing Support: The contractor shall manage technical requests and issues through a ticketing system via phone, email, or online during regular business hours in the U.S Eastern timezone. In addition, 24-hour emergency online support must be available during off-business hours.

3.0 OTHER APPLICABLE CONDITIONS

3.1 PERIOD OF PERFORMANCE

The period of performance for this contract is base year one (1) 12-month, and four (4) 12-month option periods. The period of performance will be determined after award

3.2 PLACE OF PERFORMANCE

The principal place of work will be at the contractor's facility or its designated alternate work place.

3.3 DISCLOSURE OF INFORMATION

Information furnished by the contractor under this contract may be subject to disclosure under The freedom of information act (FOIA). Therefore, all items that are confidential to business, or Contain trade secrets, proprietary, or personally-identifiable information must be clearly marked. Any information made available to the contractor by the government must be used only for the Purpose of carrying out the requirements of this contract and must not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract.

3.4 Advertisements, Publicizing Awards, and News Releases

All press releases or announcements about agency programs, projects, and contract awards need to be cleared by the Program Office and the Contracting Officer. Under no circumstances shall the Contractor, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any publicity news release or commercial advertising without first obtaining explicit written consent to do so from the Program Office and the Contracting Officer.

3.5 GENERAL REPORT REQUIREMENTS

The Contractor shall provide all written reports in electronic format with read/write capability using applications that are compatible with DHS workstations (Windows XP and Microsoft Office Applications).

3.6 SECTION 508 COMPLIANCE

Section 508 of the Rehabilitation Act, as amended by the Workforce Investment Act of 1998 (P.L. 105-220) requires that when Federal agencies develop, procure, maintain, or use electronic and information technology (EIT), they must ensure that it is accessible to people with disabilities. Federal employees and members of the public who have disabilities must have equal access to and use of information and data that is comparable to that enjoyed by non-disabled Federal employees and members of the public.

All EIT deliverables within this work statement shall comply with the applicable technical and functional performance criteria of Section 508 unless exempt. Specifically, the following applicable EIT accessibility standards have been identified:

36 Code of Federal Regulations (CFR) 1194.21 Software Applications and Operating Systems, applies to all EIT software applications and operating systems procured or developed under this work statement including but not limited to GOTS and COTS software. In addition, this standard is to be applied to Web-based applications when needed to fulfill the functional performance criteria. This standard also applies to some Web based applications as described within 36 CFR 1194.22.

36 CFR 1194.22 Web-based Intranet and Internet Information and Applications, applies to all Web-based deliverables, including documentation and reports procured or developed under this work statement. When any Web application uses a dynamic (non-static) interface, embeds custom user control(s), embeds video or multimedia, uses proprietary or technical approaches such as, but not limited to, Flash or Asynchronous JavaScript and XML (AJAX) then 1194.21 Software standards also apply to fulfill functional performance criteria.

36 CFR 1194.41 Information Documentation and Support, applies to all documents, reports, as well as help and support services. To ensure that documents and reports fulfill the required 1194.31 Functional Performance Criteria, they shall comply with the technical standard associated with Web-based Intranet and Internet Information and Applications at a minimum. In addition, any help or support provided in this work statement that offer telephone support, such as, but not limited to, a help desk shall have the ability to transmit and receive messages using TTY.

14.2 Section 508 Applicable Exceptions

Exceptions for this work statement have been determined by DHS and only the exceptions described herein may be applied. Any request for additional exceptions shall be sent to the COR and a determination will be made in accordance with DHS Management Directives (MD) 4010.2. DHS has identified the following exceptions that may apply: 36 CFR 1194.3(b) Incidental to Contract, all EIT that is exclusively owned and used by the contractor to fulfill this work statement does not require compliance with Section 508. This exception does not apply to any EIT deliverable, service or item that will be used by any Federal employee(s) or member(s) of the public. This exception only applies to those contractors assigned to fulfill the obligations of this work statement and for the purposes of this requirement, are not considered members of the public.

14.3 Section 508 Compliance Requirements

36 CFR 1194.2(b) (COTS/GOTS products), When procuring a product, each agency shall procure products which comply with the provisions in this part when such products are available in the commercial marketplace or when such products are developed in response to a

Government solicitation. Agencies cannot claim a product as a whole is not commercially available because no product in the marketplace meets all the standards. If products are commercially available that meets some but not all of the standards, the agency must procure the product that best meets the standards. When applying this standard, all procurements of EIT shall have documentation of market research that identify a list of products or services that first meet the agency business needs, and from that list of products or services, an analysis that the selected product met more of the accessibility requirements than the non-selected products as required by FAR 39.2. Any selection of a product or service that meets less accessibility standards due to a significant difficulty or expense shall only be permitted under an undue burden claim and requires authorization from the DHS Office of Accessible Systems and Technology (OAST) in accordance with DHS MD 4010.2.

All tasks for testing of functional and/or technical requirements must include specific testing for Section 508 compliance, and must use DHS Office of Accessible Systems and Technology approved testing methods and tools. For information about approved testing methods and tools send an email to accessibility@dhs.gov.

4.0 INVOICES AND PAYMENT PROVISIONS

Invoices shall be prepared per Section VII, Contract Clauses; Paragraph A. entitled "FAR CLAUSES INCORPORATED BY REFERENCE," FAR Clause 52.232-25 Prompt Payment, and FAR Clause 52.232-7, Payments under Time and Materials and Labor-Hours. In addition to invoice preparation as required by the FAR, the Contractor's invoice shall include the following information:

- 1) Cover sheet identifying DHS;
 - 2) Task Order Number;
 - 3) Modification Number, if any;
 - 4) DUNS Number;
 - 5) Month services provided
 - 6) CLIN and Accounting Classifications
 - 7) ATTN: NPPD/OUS
- B. The contractor shall submit invoices monthly.
- C. Contract Line Item Number (CLIN) and description for each billed item.
- D. Any additional backup information as required by this contract.
- E. The Contractor shall submit the invoice electronically to the address below:

E-mail: NPPDInvoice.Consolidation@ice.dhs.gov

- F. Simultaneously provide an electronic copy of the invoice to the following individuals at the addresses below:

E-mail: <Contract Officer>

<Contract Specialist>

Remond Ragin
Contracting Officer Representative (COR)
1616 N. Fort Myer Drive
Arlington, VA 22209
Phone: 703-235-2164

remond.ragin@hq.dhs.gov

The contractor shall submit invoices to the email addresses above. Additionally, the contractor shall prepare and submit a sufficient and procurement regulatory compliant invoice and receiving report for technical certification of inspection/acceptance of services and approval for payment. The contractor shall attach back up information to the invoices and receiving reports substantiating all costs for services performed. The receiving agency's written or electronic acceptance by the COR and date of acceptance shall be included as part of the backup documentation.

If the invoice is submitted without all required back up documentation, the invoice shall be rejected. The Government reserves the right to have all invoices and backup documentation reviewed by the Contracting Officer prior to payment approval.

5.0 DELIVERABLES

The Contractor shall consider items in **BOLD** as having mandatory due dates. Items in *italics* are deliverables or events that must be reviewed and/or approved by the COR prior to proceeding to next deliverable or event in this SOW.

ITEM	SOW REFERENCE	DELIVERABLE / EVENT	DUE BY	DISTRIBUTION
1	2.1	Online & Social Media Monitoring	Within 5 business days of award.	COR
2	2.2	Media Intelligence and Benchmarking Dashboard Platform	Within 5 business days of award.	COR
3	2.3	Email Alerts	Within 5 business days of award.	COR
4	2.4	Access to Mobile app	Within 5 business days of award.	COR
5	2.5	Media Engagement	Within 5 business days of award.	COR
6	2.6	Customer Service	Within 5 business days of award.	COR