



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Superlative Technologies, Inc.

File: B-310489.4

Date: June 3, 2008

Kenneth D. Brody, Esq., and Thomas K. David, Esq., David, Brody & Dondershine, LLP, for the protester.

Rafael A. Madan, Esq., John L. Pensinger, Esq., Melinda D. Hart, Esq., and Rhonda Jones, Esq., Department of Justice, for the agency.

Glenn G. Wolcott, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's cancellation of solicitation, based on a potential "unfair advantage" provided to one or more of the offerors as a result of the agency's communications with and disclosure of information to the various offerors, cannot be reasonably reconciled with the agency's subsequent sole-source contract award to a team comprised of one of the offerors with whom the various communications occurred and to whom the information was disclosed, absent the agency's determination and creation of documentation regarding the substance of the communications with and the specific information disclosed to the various offerors.
2. Where agency has canceled a solicitation on the basis of concerns regarding procurement integrity violations and/or organizational conflicts of interest, and subsequently reopened the procurement under another contract vehicle, the agency must comply with Federal Acquisition Regulation requirements regarding identifying and resolving procurement integrity issues and/or organizational conflicts of interest.

DECISION

Superlative Technologies, Inc. (SuperTec) protests the failure of the Department of Justice (DOJ), Office of Justice Programs (OJP), to establish and document the facts surrounding the agency's prior cancellation of a procurement, where that cancellation was based on the agency's concerns that communications with and disclosure of information to various offerors, including ManTech International Corporation, created potential procurement integrity violations and/or organizational conflicts of interest.

We sustain the protest.

BACKGROUND

In June 2007, the agency issued request for quotations (RFQ) No. 2007Q-025 to provide information security support services for OJP's Office of the Chief Information Officer (OCIO); the tasks contemplated under this solicitation are to be directed and managed by the OCIO's Information Technology Security Division (ITSD).¹ The solicitation contemplated award of a contract for a 12-month base period, with four 12-month option periods and a total estimated value of \$13.5 million, established various technical and cost/price evaluation factors, and stated that "technical merit is more important than cost or price." First Agency Report (AR1), RFQ No. 2007Q-025, Tab 1, at A-3.²

The ITSD director, who was also the contracting officer's technical representative (COTR), was primarily responsible for determining the substance of the solicitation's statement of work (SOW), and for presenting the procurement request to DOJ/OJP executives for funding and approval.³ Prior to issuance of the solicitation, the ITSD director/COTR engaged in various communications regarding the solicitation requirements with personnel employed by ManTech, SuperTec, and another contractor.

¹ SuperTec was the incumbent contractor for a portion of the services sought; however, the scope of work under RFQ No. 2007Q-025 was substantially expanded from the prior SuperTec contract.

² The agency submitted its first report, responding to SuperTec's initial protest and supplements thereto, in November 2007; this decision refers to that report as "AR1." The agency submitted a second report, responding to SuperTec's most recent protest, in April 2008; this decision refers to that report as "AR2."

³ In February 2007, the ITSD director/COTR was recruited by DOJ/OJP management from DOJ's Federal Bureau of Investigation (FBI) to perform a 120-day temporary assignment as the acting director of ITSD; in June 2007, she was hired by DOJ/OJP as the permanent ITSD director. Prior to February 2007, the ITSD director/COTR had performed information security services for the FBI; ManTech was the support contractor for those services. During her 120-day temporary assignment, the ITSD director/COTR negotiated with DOJ/OJP's Deputy Assistant Attorney General to provide two ManTech employees, with whom the ITSD director/COTR had previously worked, to assist her in performing her duties pursuant to a reimbursable agreement between DOJ/OJP and DOJ/FBI.

On or about July 12, proposals were submitted by ManTech, SuperTec, and a third offeror;⁴ these proposals were thereafter evaluated and discussions were conducted. Shortly thereafter, the ITSD director/COTR became concerned that the substance of her communications with ManTech and the third offeror had been improper. Specifically, in an email to the contracting officer dated July 24, 2007, the ITSD director/COTR notified the contracting officer that, in preparing the solicitation's requirements, she had "consulted with ManTech and [the third offeror]" regarding "requirements, pricing and labor categories," and that these communications "may have provided an unfair advantage to ManTech and [the third offeror] because they had an idea what the labor categories might be in advance." AR1, Tab F. She concluded that she should be "recused from further proceedings."⁵ Id.

⁴ Although the solicitation identified itself as an "RFQ," the term "proposal," as opposed to "quotation," appears repeatedly throughout both the solicitation and the agency's procurement record and the solicitation contemplated an evaluation and source selection scheme similar to those used in negotiated procurements. For the sake of consistency, our decision adopts the terminology used by the solicitation and the agency record.

⁵ More specifically, the email stated:

I am the Director of ITSD for the office of the OCIO. I am handling my first big procurement and felt that I had enough on the job training to see my way through the process. Because this is my first big contract, I have had to rely on information from other staff, contractors and my own skill set of knowing what was needed to get the job done for OJP. I am taking the COTR certification course and today is day two. I am learning many things in the class, which indicated to me that I have made mistakes.

I was told that I could discuss the procurement before it was let. When figuring out requirements, pricing and labor categories, I consulted with ManTech and [the third offeror]. Because our labor categories were so restricted and every one failed, but ManTech came close, I felt that I may have provided an unfair advantage to ManTech and [the third offeror] because they had an idea what the labor categories might be in advance. As I was listening in class today, I also learned that a protest could happen if the contract was too restrictive. After learning there are laws with civil penalties associated with them for disclosure that provides unfair advantage, I felt that I needed to disclose what I had done in order to protect the reputation of OJP as well as my reputation as Director of ITSD. . . . I feel that it is in the best interest of

(continued...)

On July 25, the contracting officer canceled the solicitation, summarizing the basis for cancellation as follows:

Prior to receipt of revised proposals, [I] learned of a potential procurement integrity issue that occurred during market research activities. The COTR, an OCIO employee, engaged in activity that appeared to raise concerns about the integrity of the pending procurement because of the disclosure of information about pricing and labor categories to the offerors. Upon further research and consultation with the Office of the General Counsel, [I] canceled the solicitation due to the tainted procurement.

Contracting Officer's Statement, Nov. 5, 2007, at 2.⁶

The agency record indicates that, at the time the solicitation was canceled, there was virtually no documentation establishing the scope of the agency's communications with the offerors or the specific information that had been disclosed. In this regard, the agency stated, in response to the protester's subsequent request for documents,

(...continued)

the government and OJP if I am recused from further proceedings and to start the procurement over to make sure that the playing field is level for all parties.

AR1, Tab F.

⁶ Agency counsel characterized the situation as an "organizational conflict of interest," and further acknowledged that cancellation was intended to avoid the scrutiny of a bid protest, stating:

The COTR was new to the position and disclosed information about proposed staffing, pricing, and labor categories to the offerors. After negotiations concluded, prior to the receipt of revised proposals, the CO learn[ed] of this potential organizational conflict of interest (OCI) issue. . . . Upon further research and consultation with the OGC, the contracting officer canceled the solicitation due to the tainted procurement.

.

Also, this cancellation was a prudent course of action under the circumstances, as . . . the agency was concerned about a possible bid protest (on the basis of the OCI). . . .

Legal Memorandum, Nov. 5, 2007, at 3, 5.

that: “[After cancellation] [t]he agency did not proceed with any further investigation because of its decision to cancel the RFQ. The CO [contracting officer] determined that no further action was needed under these circumstances.” Letter from DOJ/OJP Counsel to SuperTec Counsel, Nov. 26, 2007, at 2.

Shortly after the solicitation was canceled, and despite the ITSD director/COTR’s statement that she should be recused from further proceedings, she engaged in “additional market research” to identify procurement vehicles under which the solicited services could be obtained. Contracting Officer’s Statement, Nov. 5, 2007, at 2. Specifically, in an email to the contracting officer, dated July 31, under the heading “Contract Vehicles,” the ITSD director/COTR listed various existing contracts—all of which were ManTech contracts. AR1, Tab O. Approximately an hour after sending that email listing the various ManTech contracts, the ITSD director/COTR sent another email to the contracting officer stating:

Found out tonight that [a named DOJ employee] is adding ManTech to his BPA and found out that they are on the JCON contract already[.] [W]ould either of those be easier for us?

Id.

On August 20, the agency met with Technical Management Resources (TMR), a small disadvantaged business contractor with a General Services Administration (GSA) 8(a) STARS (streamlined technology acquisition resources services) GWAC (government-wide acquisition contract) with whom ManTech had a prior relationship; the meeting was set up by DOJ/OJP to discuss performance of the requirements sought under the canceled solicitation. At the GAO hearing conducted in connection with this matter,⁷ the contracting officer acknowledged that ManTech personnel attended the August 20 meeting.⁸ Hearing DVD at 10:03, 10:29.

On August 24, the agency issued RFQ No. 2007Q-045, which contained a SOW virtually identical to the SOW contained in the canceled solicitation. However, RFQ No. 2007Q-45 contemplated only one 12-month performance period, with an estimated procurement value of \$2.7 million. This new solicitation provided that, “pending an acceptable proposal,” the agency anticipated a sole-source award to TMR pursuant to its GSA 8(a) STARS GWAC, stating: “Since the estimated value of this award will not exceed the 8(a) STARS competitive threshold of \$3.5 million for

⁷ In responding to this protest, this Office conducted a hearing during which testimony was taken from the contracting officer and the ITSD director/COTR. The hearing was recorded on digital video disc (DVD).

⁸ Prior to the hearing, the agency’s various submissions discussing the August 20 meeting referenced only attendance by TMR personnel.

directed 8(a) awards, the resultant award will be issued to your company on a sole source basis.”⁹ AR1, Tab 9, at 1.

Thereafter, TMR submitted a proposal that responded to the new RFQ, offering to provide ManTech as its primary subcontractor to perform a substantial portion of the contract requirements. The record establishes that the proposal TMR submitted was prepared by ManTech, and that the ManTech-prepared proposal was substantially similar to the proposal ManTech had previously submitted in response to the canceled RFQ. The ManTech-prepared proposal was subsequently evaluated by the ITSD director/COTR as “technically exceptional” under each of the evaluation factors,¹⁰ AR1, Tab 3, at 6, and a sole-source contract was subsequently awarded to the TMR/ManTech team.

To summarize, the record establishes that: (1) the agency canceled RFQ No. 2007Q-025 based on the ITSD director/COTR’s disclosure of information regarding proposed staffing, pricing, and labor categories that “may have provided an unfair advantage to ManTech,” which the contracting officer characterized as a “potential procurement integrity issue” and agency counsel characterized as a “potential organizational conflict of interest,” Contracting Officer’s Statement, Nov. 5, 2007; Legal Memorandum, Nov. 5, 2007;¹¹ (2) the agency stated that, because of the cancellation, it “did not proceed with any further investigation” and concluded that “no further action was needed under these circumstances,” Letter from DOJ/OJP Counsel to SuperTec Counsel, Nov. 26, 2007, at 2; and (3) approximately two months after canceling the solicitation, the agency awarded a sole-source contract to a team comprised of TMR and ManTech, based on a ManTech-prepared proposal that was substantially similar to the proposal ManTech had submitted under the canceled solicitation.

In September 2007, SuperTec filed its initial protest, challenging, among other things, “the bad faith and improper transfer of work from [the canceled solicitation] to a directed source task order.” SuperTec Protest, Sept. 28, 2007, at 1. SuperTec’s protest further maintained that the agency’s cancellation of RFQ No. 2007Q-025 was merely a pretext to avoid conducting a competitive procurement.

⁹ The 8(a) STARS GWAC is a set-aside contract for small disadvantaged businesses under which directed-source (that is, non-competed) task orders valued at less than \$3.5 million may be issued.

¹⁰ Again, the ITSD director/COTR’s evaluation was made despite her prior statement that she should be “recused from further proceedings.” AR1, Tab F.

¹¹ At the hearing conducted by this Office, the contracting officer testified, “We felt strongly that there was a conflict of interest.” Hearing DVD at 9:55.

In January 2008, this Office sustained SuperTec's protest. Superlative Technologies, Inc., B-310489, B-310489.2, Jan. 4, 2008, 2008 CPD ¶ 12. In sustaining the protest, we concluded that the agency's stated concerns regarding the basis for cancellation could not be reasonably reconciled with the agency's subsequent sole-source award of a contract for those same services to the TRM/ManTech team (based on a ManTech-prepared proposal that was substantially similar to ManTech's prior proposal responding to the canceled solicitation)—particularly where the agency had failed to establish the scope of the prior communications with the various offerors, including ManTech, and the specific information that was disclosed to, or received from, the offerors.

In our decision sustaining the protest, we recommended that the agency rescind the prior cancellation and “document its consideration of the procurement integrity and/or OCI issues presented by the [ITSD director/]COTR's disclosure of information.” Id. at 9. More specifically, we recommended that the agency's actions “should include, but not necessarily be limited to, determining what information was disclosed and to whom, whether ManTech or any other offeror should be disqualified from the competition, and/or whether a level playing field can be established.” Id. Finally, we recommended that, following its determinations regarding the procurement integrity and/or OCI issues, the agency should conduct a competitive procurement for the requirements. Id.

By letter to our Office dated February 20, 2008, DOJ/OJP's Acting Assistant Attorney General stated: “The agency is in the process of implementing your recommended course of action and following your recommendations.”¹² Letter from DOJ/OJP to GAO General Counsel (Feb. 20, 2008).

DISCUSSION

On March 17, SuperTec filed this protest alleging, among other things, that the agency had failed to address or document any determinations regarding the potential procurement integrity violations or organizational conflicts of interest that led to cancellation of RFQ No. 2007Q-025.¹³

On April 7, the agency submitted a report responding to SuperTec's March 17 protest. With regard to our recommendation that the agency “document its

¹² The agency further stated that it intends to conduct a competitive procurement for the information security services following expiration of the 12-month TMR/ManTech contract, performance of which has continued during the prior protest process.

¹³ The DOJ/OJP's February 20 letter was not sent to SuperTec; counsel for SuperTec subsequently obtained the letter on March 7.

consideration of the procurement integrity and/or OCI issues,” the agency report stated:

Agency documentation of the procurement integrity and/or OCI issues occurred at the point where the COTR acknowledged the extent of her market research. Upon discussion of this issue between the Contracts Office and the General Counsel’s Office, the solicitation was canceled. No further documentation was developed.

AR2, Tab 3, ¶ 2.

With regard to our recommendation that the agency “determin[e] what information was disclosed and to whom, whether ManTech or any other offeror should be disqualified from the competition, and/or whether a level playing field can be established,” the agency report stated:

The extent of information disclosed . . . by the COTR to the three vendors (SuprTek, ManTech and [deleted]) was provided by the COTR in earlier emails. The agency determined the GSA 8(a) STARS GWAC was the most feasible vehicle to meet the GAO’s recommendation regarding establishing a level playing field. By utilizing this vehicle, the protester’s assertion of favoritism for ManTech would be mitigated since both ManTech and Missing Link are not eligible as prime contractors on this GWAC. With regard to disqualifying ManTech or any other vendors, this issue becomes moot utilizing the agreed procurement strategy.

AR2, Tab 3.

In short, contrary to the agency’s representation that it was implementing our recommendations, and despite the agency’s express acknowledgment that it had not investigated the scope of the communications with the offerors nor identified the specific information that was disclosed, the agency responded to SuperTec’s March 17 protest stating that no further inquiry or documentation regarding these issues was necessary. Additionally, the agency asserts, as it did in defending against SuperTec’s prior protest, that ManTech’s status as a subcontractor renders any potential procurement integrity and/or OCI issues “moot.”¹⁴

¹⁴ DOJ/OJP is fundamentally mistaken. As we stated in our prior decision, it is well settled that, where a subcontractor’s knowledge or interests create an unfair competitive advantage, that advantage is generally imputed to the prime contractor. See, e.g., Ktech Corp., B-285330, Aug. 17, 2000, 2002 CPD ¶ 77 at 4-6. The agency’s assertion that ManTech’s status as a subcontractor somehow shields it from scrutiny regarding procurement integrity or OCI issues is wholly without merit.

Following receipt of the agency report, this Office advised the parties that a hearing would be conducted during which testimony would be taken from the ITSD director/COTR and the contracting officer. On April 21, the day prior to the scheduled hearing, the agency for the first time acknowledged the existence of—and produced—documents identifying certain specific information that had been disclosed by the ITSD director/COTR to ManTech personnel. Among other things, the documents produced, along with hearing testimony the following day, established that the ITSD director/COTR provided ManTech personnel with a document¹⁵ containing the following list of labor categories and corresponding hours that the ITSD director/COTR believed would be required under the subsequently-issued, and subsequently-canceled, solicitation.

Labor Category	Estimated Hours
Program Manager	910
C&A Subject Matter Expert	3,760
Information System Security C&A Spec.	1,880
DR/COOP Subject Matter Expert	3,760
Lead Information System Security Officer	1,880
Information System Security Officer (3)	5,640
Lead Senior Security Engineer	1,880
Senior Security Engineer	3,760
Mid-level Security Engineer	3,760
Trainer I	1,880
Trainer II	910
Technical Writer	1,880
Administrative Assistant	1,880

Briefing to DOJ/OJP Executives (May 17, 2007); Hearing DVD at 11:40-41

The ITSD director/COTR testified that she provided the above information to ManTech personnel in the “April/May” 2007 timeframe, requesting that they provide applicable labor rates for “good people” for the various labor categories. Hearing DVD at 11:26-27, 11:40-41, 11:43. She also testified that the information above was not provided to SuperTec personnel because they “didn’t have time [to respond].” Id. at 11:43. The ITSD director/COTR further testified that she had engaged in various email communications with ManTech personnel prior to issuing the solicitation,¹⁶ id.

¹⁵ The document was provided to the specific ManTech employee who was subsequently proposed to serve as project manager under the contract.

¹⁶ In responding to SuperTec’s earlier request for production of documents reflecting communications between ManTech and the ITSD director/COTR, agency counsel stated: “The communications with all three of the vendors was by phone or oral.”

(continued...)

at 12:35, that she had asked ManTech personnel to provide various job descriptions, id. at 12:44, and that ManTech's subsequently-proposed program manager "might have typed up some language" in response to her request.¹⁷ Id. at 12:45.

Following our review of the hearing testimony, this Office requested that DOJ/OJP produce all recoverable email communications between the ITSD director/COTR and ManTech personnel during the time period from January 1, 2007 through July 31, 2007.¹⁸ In response to our request, various email communications were produced, including a May 5, 2007 email from a ManTech Vice President for business development to other ManTech personnel,¹⁹ which stated:

One of us needs to contact [DOJ/OJP's] Director of Procurement . . . first thing Monday AM. I spoke with him late Wed afternoon. He said he had a \$3.5M a year IT security program he wanted us to work. He was out Thursday and I missed him Friday but owe him a call. He wants a vehicle he can use, prefers no competition or vehicle we can compete where he retains control. I spoke with [named ManTech employee] on this Thursday; not sure if this ties with other DOJ stuff CFIA is working. Send a note or call me so we can move on this quickly. Thanks.

Agency Post-Hearing Comments, attach. 9.

The following day, ManTech's subsequently-proposed program manager sent an email to the ITSD director/COTR, to which the above email was attached, stating:

(...continued)

Email from DOJ/OJP Counsel to Protester's Counsel (Nov. 29, 2007). The agency has offered no explanation regarding its clearly inaccurate earlier representation.

¹⁷ The ITSD director/COTR also testified that she similarly discussed the solicitation requirements with, and sought information from, other contractors, including SuperTec.

¹⁸ It appears that some of these emails went to or from the ITSD director/COTR's FBI email account. FBI representatives have stated that such emails are no longer recoverable.

¹⁹ The email between ManTech personnel was an attachment to an email sent to the ITSD director/COTR by the ManTech employee who was subsequently proposed to serve as the program manager under the canceled procurement, and who has served as program manager under the sole-source contract awarded to the TMR/ManTech team.

Looks like we will be able to talk to [DOJ/OJP's director of procurement] about contracting options, see below. . . . I talked to our contracting shop and they said MOBIS is just like any other GSA schedule so I think it would be best if we do something with our GSA schedule 84 which will work for all the services you want. We will call [the DOJ/OJP director of procurement] Monday morning. . . . I'll keep you pos[t]ed.

Id.

Following production of the email quoted above—which indicates that DOJ/OJP's director of procurement, as well as the ITSD director/COTR engaged in various communications with ManTech prior to issuance of the solicitation—this Office initiated a telephone conference call with counsel for the parties. During that call, in response to this Office's questions regarding the existence of email between DOJ/OJP's director of procurement and ManTech personnel, counsel for the agency stated that there has been no attempt to obtain such documentation.²⁰ Additionally, consistent with this Office's practice of providing "outcome prediction" alternative dispute resolution (ADR),²¹ during the call this Office expressly advised agency counsel that there was a substantial chance SuperTec's protest would be sustained due to the agency's failure to meaningfully address, and document, the scope of communications between DOJ/OJP and ManTech personnel, on which the procurement integrity and OCI concerns leading to cancellation of RFQ No. 2007Q-025 were apparently based. Notwithstanding our specific advice, the agency has not indicated that it intends to take any further action with regard to these issues.

The Federal Acquisition Regulation (FAR) establishes various responsibilities for procuring agencies and contracting officers with regard to identifying and resolving potential procurement integrity and OCI issues. With regard to procurement integrity, the FAR states: "A contracting officer who receives or obtains information

²⁰ The agency subsequently submitted a declaration from DOJ/OJP's director of procurement acknowledging his communications with ManTech personnel, but maintaining that his statements were "taken out of context," asserting that, "[w]hen the full context of my conversation is known, nothing inappropriate was said or intended," and providing an explanation regarding his basis for this assertion. Agency's Post-Hearing Comments, attach. 10.

²¹ In "outcome prediction" ADR, the GAO attorney handling the case convenes all of the participating parties, usually by teleconference, and advises them of what he or she believes the likely outcome will be and the reasons for that belief.

of a violation or potential violation of [procurement integrity provisions]²² must determine if the reported violation or possible violation has any impact on the pending award or selection of the contractor.” FAR § 3.104-7(a). With regard to OCIs, the FAR provides that contracting officers must “[i]dentify and evaluate potential [OCIs] as early in the acquisition process as possible.” FAR § 9.504. With regard to the general conduct of procurement officials, the FAR states:

Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of Government personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.

FAR § 3.101.

On the basis of the record discussed above, the agency has failed to establish that its cancellation of RFQ No. 2007Q-025 can be reasonably reconciled with the agency’s subsequent sole-source award of a contract to the TMR/ManTech team. In short, the agency’s unwillingness or inability to establish and document the scope of communications between DOJ/OJP and the offerors, and the specific information that was disclosed to each offeror, precludes a conclusion that the cancellation, followed by the subsequent sole-source award under which ManTech is performing a substantial portion of the services sought under the canceled solicitation, was reasonable and appropriate.

Further, as discussed above, the FAR establishes various responsibilities for procuring agencies and contracting officers with regard to identifying and resolving potential procurement integrity and OCI issues. Here, the agency canceled RFQ No. 2007Q-025, following submission and evaluation of proposals, on the basis of what the agency described as potential procurement integrity violations and/or OCI concerns flowing from communications with and disclosure of information to, ManTech and other offerors. Thereafter, the agency essentially re-opened the procurement under a different contract vehicle, and awarded a sole-source contract

²² The Office of Federal Procurement Policy Act contains various restrictions regarding disclosing or obtaining bid or proposal information, or source selection information before the award of a Federal agency procurement to which the information relates. 41 U.S.C. § 423 (2000).

under which ManTech is performing a substantial portion of the contract requirements--while failing to meaningfully address the FAR requirements regarding identification and resolution of procurement integrity and/or OCI issues. On this record, the agency's actions are not reasonable, nor are they consistent with the FAR requirements.

The protest is sustained.

RECOMMENDATION

We, again, recommend that the agency, as expeditiously as feasible, establish and document the scope of communications that took place between DOJ/OJP and the various offerors, which led the agency to cancel RFQ No. 2007Q-025 because of procurement integrity and/or OCI concerns, as contemplated by the procurement integrity provisions of the Office of Federal Procurement Policy Act, 41 U.S.C. § 423, and FAR § 3.104, and the OCI requirements of FAR Subpart 9.5. The agency's actions should include, but not necessarily be limited to, determining what information was disclosed and to whom, whether ManTech or any other offeror should be disqualified from the competition, and/or whether a level playing field can be established.

We also recommend that the agency review all recoverable email communications between all ManTech personnel and all DOJ/OJP procurement personnel during the period prior to cancellation of the RFQ, including email between ManTech personnel and DOJ/OJP's director of procurement. We further recommend that, until the agency completes its documented determination with regard to the facts surrounding the prior RFQ cancellation and its documented resolution regarding the procurement integrity and/or OCI issues presented, no subsequent contract be awarded under which any of the offerors participating in the prior, canceled solicitation will participate in contract performance. Finally, we recommend that SuperTec be reimbursed its costs of filing and pursuing its protest, including reasonable attorneys' fees. SuperTec should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the agency within 60 days of receipt of this decision. 4 C.F.R. § 21.8(f)(1) (2008).

Gary L. Kepplinger
General Counsel