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Decision

Matter of: ManTech Advanced Systems International, Inc.

File: B-419657; B-419657.2

Date: June 17, 2021

Jason A. Carey, Esq., and J. Hunter Bennett, Esq., Covington & Burling, LLP, for the protester.

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DIGEST

1. Protest challenging the agency's evaluation of awardee's proposed labor rates for positions that are currently filled by incumbent personnel is sustained where the record does not demonstrate that the agency evaluated in accordance with the requirements of Federal Acquisition Regulation provision 52.222-46.
 2. Protest that agency similarly misevaluated awardee's proposal with regard to proposed labor rates for positions that are not currently filled by incumbent personnel is denied.
 3. Protest that agency unreasonably evaluated protester's proposal under the staffing subfactor of the technical capability evaluation factor is denied.
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DECISION

ManTech Advanced Systems International, Inc., of Herndon, Virginia, protests the Department of the Air Force's award of an indefinite-delivery, indefinite-quantity (IDIQ) contract, and issuance of associated task orders, to General Dynamics One Source, LLC (GDOS), of Falls Church, Virginia, pursuant to request for proposals (RFP) No. FA8240-19-R-3501. The solicitation sought proposals to provide security support services for classified programs throughout the world. ManTech, the incumbent contractor, challenges the agency's evaluation of GDOS's proposed

labor rates; evaluation of ManTech's technical proposal; and best-value tradeoff determination.

We sustain the protest in part and deny it in part.

BACKGROUND

On September 30, 2019, the agency issued the classified RFP to a limited number of potential offerors,¹ seeking proposals to provide "highly skilled," cleared professional staff to perform security support services under a cost-type contract during a 10-year performance period; the ceiling value of this procurement is \$4.45 billion. AR Tab 4, RFP at 3, 8, 101-102, 126-127.² The solicitation was issued pursuant to part 15 of the Federal Acquisition Regulation (FAR); contemplated award of one or more IDIQ contracts, as well as associated task orders; and provided that source selection decisions would be based on the following evaluation factors: technical capability,³ technical risk, and cost/price. RFP at 1602. Of relevance here, the solicitation provided that a proposal must be evaluated as technically acceptable with low technical risk in order to be eligible for an IDIQ contract--and, accordingly, to be permitted to compete on a best-value basis for issuance of task orders.⁴ *Id.* More specifically, the solicitation provided that any proposal that was evaluated as reflecting moderate or high risk would be ineligible for award. *Id.* at 1602-1603.

Section L of the solicitation directed offerors to submit not-to-exceed direct labor rates⁵ for "all positions and locations" identified in the solicitation's L-2 and L-4

¹ Prior to issuance of the solicitation, the agency executed a justification & approval document (J&A) supporting its use of less than full and open competition on the basis that the procurement involves [REDACTED] that cannot be released to the public without compromising national security. Agency Report (AR), Tab 18, J&A at 1.

² The page numbers referenced in this decision are the electronic bates numbers in the documents provided with the agency report.

³ Under the technical capability factor, the solicitation established three subfactors: transition, contractor program management office, and staffing. RFP at 1602.

⁴ The solicitation provided that technical risk would only be evaluated with regard to award of the IDIQ contract. *Id.* That is, unless and until an offeror's proposal was evaluated as reflecting low technical risk, it would not be further considered. *Id.*

⁵ The solicitation elaborated that: "The Offeror shall use the direct labor rates proposed for the contract base year and apply the mandatory [2%] escalation as provided below; no other changes shall be made to the direct hourly rates in the contract out-years. These rates shall be proposed as a not-to-exceed rate for the entirety of the contract's period of performance." RFP at 105-106.

matrices.⁶ RFP at 106, 1580. The solicitation further required that each offeror submit a professional employee compensation plan (PECP); provided that the completed L-4 unburdened direct labor rate matrix would be considered in evaluating the PECP; and stated that PECPs would be evaluated in accordance with FAR provision 52.222-46, Evaluation of Compensation for Professional Employees. RFP at 46, 101, 108, 130, 1612-13.

Provision 52.222-46 of the FAR notes that "[r]ecompetition of service contracts may in some cases result in lowering the compensation . . . [for] professional employees" and warns that "[t]his lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance." Among other things, the provision provides that the compensation proposed for professional employees must "be considered in terms of its impact upon recruiting and retention"; elaborates that "proposals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity [and] uninterrupted high-quality work"; and cautions against "lowered compensation for essentially the same professional work." FAR 52.222-46(a), (b).

Finally, the solicitation identified "floor" rates that the agency viewed as minimally acceptable. See RFP at 133-134, 1609. Offerors were advised that, although the agency considered the floor rates to be realistic, they were "set intentionally low" to "drive unique solutions," see COS/MOL, Apr. 26, 2021 at 13, and further warned that proposed rates "marginally above" the floor rates "are likely to introduce greater risk." RFP at 1609.

On or before the December 18, 2019 closing date, proposals were submitted by three offerors, including ManTech and GDOS.⁷ GDOS's staffing approach was based on a "[DELETED]% incumbent capture" strategy. AR, Tab 6c, GDOS Technical Proposal at 6-7. More specifically, GDOS's proposal represented that its "understanding of the unique workforce . . . results in a [DELETED]% incumbent capture rate" which "will ensure a low risk transition," *id.* at 7; acknowledged that its ability to provide "100% staffing by the start of [task order performance]" was contingent on retaining [DELETED]% of the incumbent

⁶ The solicitation included matrices, designated as L-2 and L-4, to be used in evaluating the cost and technical evaluation factors, respectively; the agency explains that these "are the same matri[ces] utilized within both evaluations." Contracting Officer's Statement and Memorandum of Law (COS/MOL), Apr. 26, 2021, at 10; see RFP at 116, 1272. In this regard, the RFP describes the L-4 matrix as containing a "comprehensive direct labor list for each individual skill set and location." RFP at 101.

⁷ The third offeror's proposal is not relevant to this protest.

personnel, *id.* at 7, 123; and summarized the result of its proposed staffing approach by asserting that GDOS's retention of [DELETED] incumbent personnel would provide "a smooth transition" and "uninterrupted mission support." *Id.* at 426.

In evaluating GDOS's initial proposal, the agency assigned various significant weaknesses to GDOS's proposal based on the low labor rates that GDOS proposed--concluding that these rates created an unacceptable level of technical risk. AR, Tab 76, Initial Technical Evaluation (GDOS) at 92. Specifically, based on the level of GDOS's proposed labor rates, the agency concluded that [REDACTED].⁸ *Id.* In documenting its evaluation, the agency noted that "the market for SSS [security support services] is becoming ever more competitive"; elaborated that "salaries will continue to increase beyond what is accounted for in GDOS's proposed labor rates"; concluded that GDOS's low rates could "cause disruption of schedule, increased cost or degradation of performance" due to the agency's projection that GDOS employees "will leave GDOS"; and noted that GDOS's proposal "did not propose additional solutions" to offset its low labor rates. *Id.* at 86, 92, 95.

On this basis, the agency concluded that GDOS's proposed labor rates, along with its staffing strategy of retaining [DELETED] incumbent staff, created an unacceptable level of technical risk and rendered GDOS's proposal ineligible for contract award. *Id.* Thereafter, the agency conducted discussions with all three offerors, requesting and receiving responses to the agency's identification of weaknesses, significant weaknesses, and/or deficiencies. Among other things, the agency advised GDOS of its concerns regarding its proposed labor rates.

The three offerors subsequently submitted proposal revisions where, among other things, GDOS increased its proposed labor rates. In evaluating GDOS's revised rates, the agency concluded that, now, only [DELETED]% of incumbent personnel would [DELETED].⁹ AR, Tab 81, Interim Technical Evaluation (GDOS) at 2. In reaching its conclusions regarding [DELETED], the agency established and relied upon benchmarks to evaluate proposed rates. *Id.* at 153-162. On the basis of GDOS's revised labor rates, the agency evaluated GDOS's proposal as technically acceptable with low risk, making it eligible for award of an IDIQ contract and, thus, eligible to compete for issuance of task orders. *Id.*; AR, Tab 100, Source Selection Evaluation Board Evaluation (SSEB) Report at 25.

⁸ The agency also considered the size of [DELETED], and states that it evaluated GDOS's proposal "by incumbent employee position." COS/MOL, Apr. 26, 2021, at 16; see AR, Tab 76, Initial Technical Evaluation (GDOS) at 91-92.

⁹ Again, the agency also considered the size of [DELETED]. AR, Tab 81, Interim Technical Evaluation (GDOS) at 2.

However, of particular significance, the record establishes that the benchmarks on which the agency relied in reaching its conclusions regarding [DELETED] and/or [DELETED] for incumbent personnel were *not* the salaries (labor rates) being paid to those personnel. Rather, the agency's conclusions regarding reduced compensation for incumbent personnel were based on comparisons of GDOS's proposed labor rates to what the agency describes as "government average" rates. AR, Tab 1, Contracting Officer's Statement (COS) at 18; see AR, Tab 77, Comparison of GDOS Rates to Government Average Rates. Although the record does not disclose the specific bases for the agency's calculation of the "government average" rates, the agency states that they were "developed independently" based on "multiple data points," including "historicals,"¹⁰ industry input, salary surveys, OPM.gov and SME [subject matter expert] input." AR, Tab 1, COS at 18, 20; Tab 26, Industry Day #3 at 268. The agency acknowledges that the "government average" rates are lower than the incumbent rates (asserting, generally, that they "are not substantially lower.")¹¹ COS/MOL, Apr. 26, 2021, at 9. Despite its failure to compare the proposed labor rates to current incumbent labor rates, the agency nonetheless asserts that it "evaluated GDOS's direct labor rates to be . . . capable of achieving its [DELETED]% incumbent capture." *Id.* at 14.

On February 26, 2021, the agency informed ManTech that GDOS had been selected for award of an IDIQ contract and all of the competed task orders.¹² This protest followed.

¹⁰ The "historical" information the agency considered appears to be the fully-burdened labor rates that were forecast in September 2018 for calendar year 2019. COS/MOL, Apr. 26, 2021, at 12-13; see AR, Tab 11, Historical OY3 [option year 3] Estimate vs. Funding by Payee Chart.

¹¹ ManTech's proposal included incumbent salary information for approximately 85% of the solicitation's full-time equivalent requirements. (ManTech's proposal did not provide information for its subcontractors.) AR, Tab 5c, ManTech Proposal at 897-905. In acknowledging that the "government average" rates are lower than the incumbent rates, the agency does not challenge the accuracy of ManTech's salary information.

¹² GDOS's total evaluated cost/price for this competition was [REDACTED] AR, Tab 103, Source Selection Decision Document (SSDD) at 14, 23. ManTech and the third offeror were each awarded a basic IDIQ contract, with a minimum order guarantee of \$5,000 and authorization to maintain a Special Access Program Facility. See RFP at 3. Because the value of GDOS's task order exceeds \$25 million, this protest is within our jurisdiction. 10 U.S.C. § 2304c(e)(1)(B).

DISCUSSION

ManTech's protest primarily challenges the agency's evaluation of GDOS's labor rates; evaluation of ManTech's technical proposal; and best-value tradeoff determination.¹³

Evaluation of GDOS's Labor Rates

First, ManTech challenges the agency's evaluation of GDOS's proposed labor rates with regard to labor categories/positions that are currently being performed by incumbent personnel, noting that GDOS's proposed technical approach is based on retaining [DELETED]% of the incumbent staff. More specifically, ManTech protests that the agency's comparison of GDOS's proposed labor rates to the "government average" rates--which the agency acknowledges are lower than the incumbent rates--was not a valid basis for drawing conclusions regarding [DELETED] for incumbent personnel and, thus, did not reasonably support the agency's conclusion that GDOS would successfully retain [DELETED] of the incumbent personnel. Further, ManTech asserts that, based on a proper comparison, the agency would have concluded that GDOS's proposed labor rates will force approximately [DELETED]% of the incumbent staff [DELETED]. Second Supp. Protest, Apr. 12, 2021, at 7-15. Finally, ManTech notes that, when the agency evaluated GDOS's initial proposal as leading to similar levels of [DELETED] for incumbent personnel, the agency concluded that the proposed rates created an unacceptable level of technical risk, rendering the proposal ineligible for award of an IDIQ contract or issuance of any task orders. *Id.* Accordingly, ManTech asserts that the agency's evaluation of GDOS's proposal was unreasonable and failed to comply with the solicitation requirements.

The agency responds that its comparison of GDOS's proposed labor rates to "government average" rates (which the agency viewed as realistic) was sufficient to comply with the general requirements for conducting cost realism assessments. COS/MOL, Apr. 26, 2021, at 7-17. Among other things, the agency notes that, as a general rule, cost realism assessments "need not achieve scientific certainty." *Id.* at 7; see, e.g., *SGT, Inc.*, B-294722, July 28, 2005, 2005 CPD ¶151 at 7. The agency further states that, both before and after the award decision, the agency calculated total labor cost pools and/or salary averages from GDOS's proposal, and compared those to similar total costs/averages the agency asserts were drawn from performance of the prior

¹³ ManTech also challenged the agency's evaluation of GDOS's proposed fringe benefits and indirect rates, and asserted that the agency failed to properly consider organizational conflicts of interest in GDOS's proposal. ManTech subsequently withdrew these allegations.

contract during calendar year 2019. However, the agency does not disclose the particular sources for its benchmark calculations, nor does it elaborate on the relevance of total costs/averages in light of the solicitation provisions that, as noted above, state:

The Offeror shall use the direct labor rates proposed for the contract base year and apply the mandatory [2%] escalation as provided below; no other changes shall be made to the direct hourly rates in the contract out-years. These rates shall be proposed as a not-to-exceed rate for the entirety of the contract's period of performance.

RFP at 105-06.

Where, as here, an offeror's technical approach is based on retaining a substantial portion of incumbent personnel, a procuring agency must reasonably consider whether the offeror's proposed compensation will be sufficient to retain the incumbents. See, e.g., *Target Media Mid Atlantic, Inc.*, B-412468.6, Dec. 6, 2016, 2016 CPD ¶358 at 5-6. More specifically, we have stated that, in conducting a recompetition for professional services, a solicitation incorporating FAR provision 52.222-46 requires procuring agencies to consider whether a proposal envisions professional employee compensation below that of the predecessor contract "by comparing the incumbent rates and the proposed rates." *SURVICE Eng'g Co., LLC*, B-414519, July 5, 2017 2017 CPD ¶ 237 at 6.

In this regard, the requirements established by FAR provision 52.222-46 go beyond the basic requirements for conducting cost realism assessments, since even proposed compensation levels that might be considered "realistic"--but are lower than incumbent compensation levels--may cause staff turnover and associated disruption. See *OMV Medical, Inc. v. United States*, 219 F.3d 1337, 1343 (Fed. Cir. 2000) (holding that solicitation's requirements for price/cost realism assessments as well as comparison of proposed salaries to incumbent salaries "serve different purposes," are "calculated differently," and are "not interchangeable"). As noted above, FAR provision 52.222-46 expressly provides that proposals "will be evaluated on the basis of maintaining program continuity [and] uninterrupted high-quality work. . . ." FAR 52.222-46(b). Thus, an agency's reliance on a valid basis for assessing program continuity and uninterrupted high-quality work by comparing proposed labor rates to incumbent labor rates or salaries is critical when a proposed approach is based on retaining all, or nearly all, of the incumbent personnel.

Here, GDOS's proposed staffing approach was based on "[DELETED]% incumbent capture" to "ensure" a "smooth transition" and "uninterrupted mission support." AR, Tab 6c, GDOS Technical Proposal at 6-7, 132, 426. As discussed above, the record contains no contemporaneous documentation of any agency comparison between GDOS's proposed levels of compensation and actual

incumbent compensation. The record further establishes that the basis for the agency's determination that GDOS's proposal reflected low technical risk was the agency's assessments regarding the specific [DELETED].

Finally, the record shows that the agency's risk assessments were based on a comparison of GDOS's proposed rates to "government average" rates--which the agency viewed as realistic, but were "lower than what the incumbent personnel are being paid." See COS/MOL, Apr. 26, 2021, at 9. On this record, we disagree with the agency's assertion that it had a reasonable basis for concluding that GDOS's proposal reflected low technical risk and that the agency's evaluation of GDOS's proposed labor rates complied with the requirements of FAR provision 52.222-46, which was incorporated in this solicitation. We sustain the protest on this basis. *SURVICE Eng'g Co., LLC, supra* (sustaining protest where agency failed to reasonably compare awardee's salaries to incumbent salaries, "a necessary step" in complying with the requirements of FAR provision 52.222-46).

ManTech also protests the agency's evaluation of GDOS's proposed labor rates for labor categories/positions that are currently unfilled under the incumbent contract.¹⁴ ManTech asserts that GDOS's proposed rates for these positions are [DELETED] than the solicitation's floor rates; notes that, although the agency stated it considered the floor rates to be realistic, the Air Force also advised that the rates were "set intentionally low" in order to "drive unique solutions," and warned offerors that rates "marginally above" the floor rates would likely "introduce greater risk." Second Supp. Protest, Apr. 12, 2021, at 15-18; ManTech Comments, May 3, 2021, at 15-18; see *also* COS/MOL, Apr. 26, 2021 at 17-19; RFP at 133-34, 1609; AR, Tab 16, Industry Day #3 at 242. In this context, ManTech complains that the contemporaneous evaluation record does not reflect any agency consideration of risk associated with GDOS's labor rates for unfilled positions.

The agency responds that offerors were advised that the floor rates were realistic and that, in evaluating the proposed rates for unfilled positions, it determined that all of GDOS's rates exceeded the floor rates. COS/MOL, Apr. 26, 2021, at 17-18.

Here, based on the fact that offerors were advised that the agency considered the floor rates to be realistic, along with the fact that the positions at issue are not currently filled---thereby rendering GDOS's incumbent capture strategy largely irrelevant to the agency's evaluation of these proposed rates--we decline to sustain ManTech's protest challenging this aspect of the agency's evaluation. *Cf. SURVICE, supra*.

¹⁴ The agency agrees that "The solicitation contained 150 positions for which offerors had to propose rates, but not full-time equivalents (FTEs)" staff, because those positions are not currently being performed. COS/MOL, Apr. 26, 2021, at 17.

Evaluation of ManTech's Technical Proposal

Next, ManTech protests the reasonableness of the agency's evaluation of ManTech's proposal under the staffing subfactor of the technical capability evaluation factor. In this regard, the agency identified three strengths in ManTech's proposal under the staffing subfactor,¹⁵ and assigned a rating of good.¹⁶ ManTech complains that the agency's evaluation was improper because it "should have resulted in the Air Force assigning the highest possible rating of 'Outstanding' to ManTech's proposal." Protest, Mar. 10, 2021, at 27. ManTech's assertion was based on the fact that the agency assigned three strengths to ManTech's proposal related to its [DELETED].

The agency responds that it evaluated ManTech's proposed approach under the staffing subfactor and concluded that, in the judgment of the agency evaluators, ManTech's proposal reflected a thorough, but not an exceptional, approach. AR, Tab 1, Contracting Officer's Statement, at 26.

The evaluation of a proposal's technical merits is a matter generally within a procuring agency's discretion. See, e.g., *Serco Inc.*, B-406061, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61 at 9. An offeror's disagreement with the agency's judgment, without more is insufficient to establish that the agency acted unreasonably. See, e.g., *STG, Inc.*, B-405101.3 *et al.*, Jan. 12, 2012, 2012 CPD ¶ 48 at 7. We will not substitute our judgment for that of the agency, and will question the agency's conclusions only where they are inconsistent with the solicitation or procurement statutes/regulations, undocumented, or unreasonable. *Id.*

Here, as noted above, the solicitation described a rating of outstanding as applicable where a proposal "indicates an exceptional approach and understanding of the requirements and contains multiple strengths," and described a rating of good as applicable where a proposal "indicates a thorough approach and understanding of requirements and contains at least one strength." RFP at 1604. We have reviewed the agency's evaluation of ManTech's proposal and find no basis to question the agency's determination that ManTech's proposed approach under the staffing subfactor

¹⁵ The strengths were based on ManTech's proposed [DELETED]. AR, Tab 102, Comparative Analysis Report at 7-8.

¹⁶ The solicitation provided that, in evaluating proposals for issuance of task orders, the agency would assign adjectival ratings of outstanding, good, acceptable, marginal, or unacceptable at the subfactor level. RFP at 1604. As relevant here, the solicitation described a rating of outstanding as applicable where a proposal "indicates an exceptional approach and understanding of requirements and contains multiple strengths," and described a rating of good as applicable where a proposal "indicates a thorough approach and understanding of requirements and contains at least one strength." *Id.*

reflected a thorough, but not an exceptional, approach; further, we find the agency's assessment to be consistent with the terms of the solicitation. Accordingly, we reject ManTech's assertion that it was unreasonable for the agency to assign a good, rather than outstanding, rating to ManTech's proposal under the staffing subfactor of the technical capability evaluation factor. ManTech's protest regarding this matter is denied.

Best-Value Tradeoff Determination

Finally, ManTech challenges the basis for the agency's best-value tradeoff determination with regard to issuance of the task orders to GDOS. ManTech complains that the agency's determination failed to properly reflect the relative merits of the competing proposals. Protest, Mar. 10, 2021, at 28.

The agency responds that it properly considered the relative merits of GDOS's and ManTech's proposals, including the agency's assessment of strengths in ManTech's proposal under the staffing subfactor. In this regard, the agency states that the source selection authority (SSA) "reviewed the specific features and relative differences among the proposals in reaching her best value determination." AR, Tab 1, COS at 28. More specifically, the agency notes that ManTech's proposal was viewed as "technically superior since it provided for better [DELETED], better [DELETED], and better [DELETED]," while GDOS's proposal "was less expensive." *Id.* at 29. Finally, the agency states that the SSA "used her business judgment and decided that the potential benefits of ManTech's higher rated proposal did not warrant the associated price premium." *Id.*

Source selection officials have broad discretion in determining the manner and extent to which they will use technical and price evaluation results. See, e.g., STG, LLC, B-418490, B-418490.2, May 19, 2020, 2020 CPD ¶ 179 at 8. Nonetheless, tradeoffs between risks and benefits must comply with the test of rationality and consistency with the solicitation's evaluation criteria. *Id.*

Here, as noted above, the agency's determination that an offeror's proposal reflected low technical risk was a mandatory predicate to competing for issuance of task orders. RFP at 1602-03. As also discussed above, we view a portion of the agency's evaluation that found GDOS's proposal eligible to compete for task orders as failing to comply with the solicitation requirements. Accordingly, to the extent the agency's best-value determination, leading to issuance of all competed task orders to GDOS, incorporated the SSA's reliance on the flawed technical risk evaluation,¹⁷

¹⁷ The SSA states that she conducted an "extensive review" of all the evaluation documentation, specifically including the initial, interim, and final technical evaluation reports, adding that she "concur[red] with the analysis and reports" in making her award decision. AR, Tab 103, SSDD at 10

we are unable to conclude that the determination was rational or consistent with the solicitation's evaluation criteria.

Our Office will not sustain a protest unless there is a reasonable possibility that the protester was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have a substantial chance of receiving the award. *Raytheon Co.*, B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 17. We resolve any doubts regarding prejudice in favor of a protester. *Intelsat Gen. Corp.*, B-412097, B-412097.2, Dec. 23, 2015, 2016 CPD ¶ 30 at 19-20. Here, had the agency properly evaluated proposed compensation under FAR provision 52.222-46, it is possible the agency would have found unacceptably high risk in GDOS's proposal, rendering the proposal ineligible for award of the IDIQ contract and issuance of task orders.

The protest is sustained in part and denied in part.

RECOMMENDATION

We recommend that the agency comply with the provisions of FAR 52.222-46 by reevaluating the proposals to include comparison of the offerors' proposed compensation levels to the compensation levels of incumbent personnel, and document that reevaluation. We further recommend that, following its reevaluation, the agency perform a new best-value tradeoff analysis and make a new source selection decision. Finally, we recommend that the agency reimburse ManTech its costs associated with filing and pursuing this protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. 21.8(d). The protester's certified claims for costs, detailing the time expended and costs incurred must be submitted to the agency within 60 days after receipt of this decision. *Id.* at 21.8(f).

Thomas H. Armstrong
General Counsel