Comptroller General
of the United States

Washington, D.C. 20548

Decision

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Matter of: MCR Federal, Inc.

File: B-280969

Date: December 14, 1998

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David R. Johnson, Esq., Gibson, Dunn & Crutcher, for PricewaterhouseCoopers, an intervenor.
John F. Ruoff, Esq., Defense Finance and Accounting Service, for the agency.
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DIGEST

Protest of proposal evaluation and source selection under solicitation where technical factors are more important than price is sustained where the contracting officer's determination that the awardee's lower-priced proposal was technically superior to that of the protester is inconsistent with the solicitation's evaluation scheme, and where the record provides insufficient contemporaneous documentation to either support agency's post-protest assertion that the proposals are technically comparable--so that price would become an appropriate discriminator for award--or show that the source selection authority ever considered whether the protester's higher rating in one area (key personnel) was worth the cost premium associated with its proposal.

DECISION

MCR Federal, Inc. protests the award of contracts to KPMG Peat Marwick, (KPMG) and PricewaterhouseCoopers (PWC) under request for proposals (RFP) No. MDA220-98-R-0004, issued by the Defense Finance and Accounting Service (DFAS) for contract reconciliation services.[1] MCR challenges the agency's source selection decision as inconsistent with the stated evaluation scheme for award.

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[1]The contractor is to provide reconciliation and special studies services to DFAS and other Department of Defense entities to reconcile accounting, finance, and contractual records, including out-of-balance conditions, problem financial records, and contract close-out requirements.

We sustain the protest of the award to PWC, and deny the protest of the award to KPMG.

The RFP, issued February 17, 1998, contemplated the award of multiple indefinite-delivery/indefinite-quantity, time-and-materials technical support services contracts to be performed over 1 base year, with up to 4 option years. RFP §§ B, L.9. Award was to be made to the offerors determined to have submitted the proposals most advantageous (in terms of offering the best value) to the government, considering price and other factors. RFP § M.3(b). Section M of the RFP provided three criteria to be considered by the agency in its determination as to which proposals offered the best value: technical factors, past performance, and price. Section M.3(d) of the RFP provided that "[w]hen combined, all evaluation factors other than cost or price are significantly more important than cost or price."

The RFP provided the following technical evaluation factors for award, listed in "descending order of importance": (1) technical approach (where the first subfactor, sample tasks, was "substantially more important" than the second subfactor, overall understanding and approach in the tasking areas); (2) key personnel; and (3) management plan. RFP § M.2(a). Adjectival ratings were provided for use as "general guidance" in assessing the proposals under each technical factor, and for rating the overall technical proposal.[2] RFP § M.2(b).

Past performance, identified as an additional non-cost factor for evaluation in the best value analysis, was to be considered as equal in importance to technical approach, the most important of the three stated technical evaluation factors. RFP § M.7(a). Past performance evaluations were to be based on information provided by the offerors in their proposals, detailing previous or current contracts of similar scope, magnitude, and complexity, as well as additional information obtained by the agency. RFP §§ L.4(c), M.7(c). The past performance of proposed critical subcontractors was to be considered "to the extent warranted by the subcontractor's involvement in the proposed effort." RFP § M.7(b). An adjectival rating was to be assigned to each proposal for past performance.[3] RFP § M.7(d).

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[2]The RFP provided the following adjectival ratings: "outstanding" (proposal very significantly exceeds most or all solicitation requirements); "better" (proposal fully meets all solicitation requirements and significantly exceeds many of the solicitation requirements); "acceptable" (proposal meets all solicitation requirements); "marginal" (proposal is deemed less than acceptable, but has a reasonable chance of becoming at least acceptable after discussions); and "unacceptable" (proposal has many deficiencies or gross omissions). RFP § M.2(b).

[3]The RFP provided the following adjectival ratings for past performance: "neutral" (no relevant past performance information was available for evaluation);

(continued...)

Seven initial proposals were submitted by the April 30 closing time for receipt of proposals; two proposals were found to be unacceptable and were excluded from the competitive range. By letters of June 9, the agency conducted written discussions with the remaining five offerors, including MCR, KPMG, and PWC.[4] Each of the competitive range technical proposals had been rated "marginal" overall, and the discussion letters, tailored for each offeror, included questions about those areas of their proposals that did not satisfy RFP requirements. All offerors were also reminded during discussions about certain price-related requirements, and some of the offerors were requested to provide clarification in certain minor areas (e.g., although the firm's management plan proposal was found acceptable, MCR was requested to clarify a reconciliation approach depicted in an exhibit to that portion of the firm's technical proposal). The five competitive range proposals' evaluated prices, prior to discussions, ranged between $[deleted] and $[deleted].

Revised proposals and final proposal revisions were received and evaluated. The following chart shows the final overall technical and past performance ratings assigned to the final proposals:

Offeror	Overall Technical	Past Performance	Evaluated Price
PWC	Acceptable	Better	$[deleted]
KPMG	Better	Outstanding	$[deleted]
MCR	Acceptable	Better	$[deleted]
Offeror A	Acceptable	Satisfactory	$[deleted]
Offeror B	Better	Satisfactory	$[deleted]

Contracting Officer's Statement at 7. The overall technical ratings, listed above, for the protester's and awardees' proposals were based on the following underlying adjectival ratings assigned to the proposals under each of the three technical evaluation factors:

	MCR's Proposal	PWC's Proposal	KPMG's Proposal

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[3](...continued)
"outstanding" (past performance information demonstrates no risk anticipated with delivery, quality, degradation of performance, or lack of customer satisfaction); "better" (very little risk is anticipated); "satisfactory" (some potential risk exists); and "marginal" (significant potential risk in performance of the contract requirements). RFP § M.7(d).

[4]PWC's proposal and discussion responses were submitted by Coopers & Lybrand, LLP, the incumbent contractor of these services; that firm merged with Pricewaterhouse, LLP, on July 1, to form PWC. Although references in the evaluation record are made to Coopers & Lybrand, we reference them in this decision as PWC.

Technical Approach	Acceptable	Acceptable	Better
-Sample Task 1	Acceptable	Acceptable	Acceptable
Sample Task 2	Acceptable	Acceptable	Better
-Overall Understanding and Approach	Acceptable	Better	Outstanding
Key Personnel	Better	Acceptable	Acceptable
Management Plan	Acceptable	Acceptable	Better

Id. The contracting officer ranked the offerors' proposals in terms of technical merit in the following order: (1) Offeror B; (2) KPMG; (3) PWC; (4) MCR; and (5) Offeror A. His written rationale for this technical merit ranking was included as an itemized list in the Business Clearance Memorandum prepared prior to award. That list included the following noted discriminators with respect to PWC and MCR:

> [PWC's] proposal was rated higher than MCR's and [Offeror A's] because they scored a "Better" in the overall understanding of the technical approach. . . . MCR's proposal was rated higher than [Offeror A's] proposal because they were rated "Better" on their Key Personnel. [Emphasis added.]

Rationale for Ranking, Business Clearance Memorandum, Aug. 10, 1998, Attachment 8 at 1.

The contracting officer then listed the overall ranking of proposals for best value, which ranking is explained only in a general descriptive heading to the list which provides that the order is based on a consideration of the evaluated technical proposals, past performance, and price. The proposals were ranked in the following overall order in terms of offering the best value to the government: (1) KPMG; (2) PWC; (3) MCR; (4) Offeror A; and (5) Offeror B. Id. at 2. The only other information provided in this best value overall ranking was the technical proposal's overall adjectival rating, the proposal's adjectival ratings for past performance (with separate ratings for the past performance proposal submission and the client survey responses), and the proposal's evaluated price. The source selection authority (SSA) adopted the best value ranking of the proposals presented by the contracting officer, without providing additional comments about the merits of or differences between the proposals. Business Clearance Memorandum at 2. The agency decided to award two contracts, and the SSA selected the offers submitted by KPMG and PWC for award. After a debriefing held by DFAS with the firm, MCR filed this protest.

MCR contends that the agency's best value determination regarding the PWC proposal, and the resulting award to that firm, is improper, since, under the stated evaluation factors for award, it is based on a determination of technical superiority that is inconsistent with the stated evaluation scheme for award. Specifically, MCR points out that, since, under the stated evaluation factors for award, key personnel is more important than the subfactor of overall understanding and approach, the

protester's higher evaluation rating for key personnel shows that its proposal should have been ranked ahead of the PWC proposal for technical merit, requiring the SSA to conduct a price/technical tradeoff analysis prior to awarding the contract to PWC. MCR contends that the record does not include contemporaneous documentation to either demonstrate that the PWC and MCR proposals were technically equivalent, making price the determinative factor for award, or to show that the SSA meaningfully considered and differentiated between the merits of the proposals. MCR argues that the evaluation record shows that the PWC proposal was ranked as technically superior to the MCR proposal on an improper basis. We agree.

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the solicitation's stated evaluation criteria. All Star Maintenance, Inc., B-271119, June 17, 1996, 96-1 CPD ¶ 278 at 3. In a negotiated procurement, contracting officials have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results. PharmChem Labs., Inc., B-244385, Oct. 8, 1991, 91-2 CPD ¶ 317 at 4. However, they do not have the discretion to announce in the solicitation that they will use one evaluation plan, and then follow another; once offerors are informed of the criteria against which their proposals will be evaluated, the agency must adhere to those criteria in evaluating proposals and making its award decision, or inform all offerors of any significant changes made in the evaluation scheme. Dewberry & Davis, B-247116, May 5, 1992, 92-1 CPD ¶ 421 at 5.

Of course, agencies may make cost/technical tradeoffs in deciding between competing proposals; the propriety of such a tradeoff turns not on the difference in technical scores, per se, but on whether the contracting agency's judgment concerning the significance of that difference was reasonable in light of the solicitation's evaluation scheme. Dayton T. Brown, Inc., B-229664, Mar. 30, 1988, 88-1 CPD ¶ 321 at 4-5. However, where cost is secondary to technical considerations under a solicitation's evaluation scheme, as here, selection of a lower-priced proposal over a proposal with a higher technical rating requires an adequate justification, i.e., one showing the agency reasonably concluded that notwithstanding the point or adjectival differential between the two proposals, they were essentially equal in technical merit, or that the differential in the evaluation ratings between the proposals is not worth the cost premium associated with selection of the higher technically rated proposal. Dewberry & Davis, supra; Dayton T. Brown, Inc., supra, at 6-7. Where there is inadequate supporting rationale in the record for a decision to make award to a lower-priced offeror with a lower technical ranking notwithstanding a solicitation's emphasis on technical factors, we cannot conclude that the agency had a reasonable basis for its decision. Dewberry & Davis, supra.

MCR's proposal is approximately [deleted] percent higher in price than PWC's. The RFP provided, however, that non-cost factors were more important than price. MCR's and PWC's proposals received identical ratings for all technical factors and subfactors, with two exceptions. MCR's proposal received a "better," while PWC's received an "acceptable," for key personnel. For overall understanding and approach, the situation was reversed: PWC's proposal was rated "better," while MCR's was "acceptable." Key personnel was the second most important technical evaluation factor, and it was more important than overall understanding and approach, the less important subfactor of the technical approach factor.[5] There is no discussion, or even acknowledgment, in this record that reflects the fact that the MCR proposal received a higher rating than the PWC proposal under a more important evaluation factor than the subfactor under which the PWC proposal was more highly rated. Rather, the record plainly shows that the PWC proposal was found to be technically higher rated overall because of its higher rating under that single subfactor. Whether the evaluators, the contracting officer, or the SSA meant something other than what the record clearly states--that "[PWC's] proposal was rated higher than MCR's . . . because they scored a 'Better' in the overall understanding of the technical approach,"--is not apparent from any document in the record. As it stands, however, this judgment is squarely inconsistent with the stated evaluation scheme.

The record shows that the SSA was unaware of this improper basis for technically ranking these two proposals, and that this ranking, once combined with past performance and price information, led to the best value overall ranking. There is no other documentation in the evaluation or source selection record that shows any comparison of (or any discussion of the differences between) the proposals to establish how the selection of PWC for award was consistent with the RFP's

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[5]As the protester points out, the RFP language suggests that the key personnel factor may be as much as three times as important as the subfactor for overall understanding and approach. While the RFP provided no point formula for weighing each factor and subfactor, it did provide that the factors were listed in a descending order of importance. In a reasonable descending progression of factor importance, where the second factor (here, key personnel) is not substantially less important than the first factor (technical approach), a substantially less important subfactor of that first factor necessarily must be of less weight than the second factor. For example, assuming a 50-30-20 point differential among the three technical evaluation factors here, since the RFP provides that the first subfactor (sample tasks) is substantially more important than the second subfactor (overall understanding and approach), the 50 points for technical approach reasonably may be divided into a 30-20 (or even 40-10) point split between the two stated subfactors. In this example, the 30 points for key personnel clearly outweigh the 20 (or even 10) points for the subfactor for overall understanding and approach of the technical approach factor.

evaluation scheme, which provided that technical merit was more important than price. There is no support for either of the agency's post-protest suggestions: that the proposals were viewed as technically comparable, so that low price could become an appropriate determining factor for award; or, alternatively, that an award on the basis of MCR's technically higher-rated proposal would not be worth the cost premium involved. While we recognize that either of these approaches could have reasonably been adopted, neither was. Moreover, given this evaluation record and the RFP's evaluation scheme, which ranked key personnel as an important technical evaluation factor for award, the agency could have made award to MCR if it determined that the protester's proposal was technically superior, due to its higher key personnel rating, and that it was worth the cost premium associated with it. Instead, the record shows that the agency ranked the proposals in a way inconsistent with the stated evaluation factors, and failed to discuss its overall comparison of the proposals and what effect the price difference would have had in a proper price/technical tradeoff. Ogden Support Servs., Inc., B-270012.2, Mar. 19, 1996, 96-1 CPD ¶ 177 at 6-7; Dewberry & Davis, supra, at 6-7. Accordingly, we sustain this aspect of the protest.

MCR raises additional evaluation challenges which we have reviewed, but have found to provide no independent basis for sustaining the protest. MCR alleges that the evaluation of its past performance (overall "better" based upon a "better" rating for proposal information and an "outstanding" rating for client survey), and that of PWC (overall "better" based upon "better" ratings for both subfactors) is flawed. In essence, MCR contends its subfactor past performance ratings should have been "rounded up," while PWC's should have been lowered for alleged personnel retention problems and concerns about its management interaction with the agency. Our review of the record does not support the protester's contentions regarding the past performance evaluation.

First, although requested, no client survey was received for MCR itself; only one survey response was received, and it described the outstanding past performance of a [deleted] subcontractor to MCR. In accordance with the RFP's evaluation scheme, at § M.7(b), a subcontractor's past performance could be considered only to the extent warranted by the subcontractor's involvement in the performance of the contract. Since the subcontractor here will be performing only [deleted] of the overall work required under the RFP, we do not find reasonable the protester's contention that MCR's overall past performance rating should be increased (to "outstanding") solely on the basis of this subcontractor's favorable performance survey.[6]

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[6]MCR generally alleges that PWC's proposal should be assessed as having greater risk, since the awardees' price is low compared to the actual costs of the predecessor contract and the government estimate. The record shows, however,
(continued...)

The protester contends that PWC's proposal should be downgraded due to alleged personnel retention problems, and a notation in the evaluation record regarding the failure of PWC management to interact with the agency. However, our review of the record shows that the protester has not provided any credible support for the claimed personnel retention problems; and as for the cited management interaction concern, the record reasonably shows that this was appropriately considered by the agency--in fact, the PWC past performance rating would have been "outstanding" but for the reduction for this stated minor concern.[7]

MCR also contends that the evaluation of the proposals was improper because, although its proposal was rated at times on the basis of a straight averaging of subfactor ratings, the ratings of other offerors' proposals were, at times, "rounded up." For example, MCR's proposal received two "better" ratings and three "acceptable" ratings for the five items targeted for consideration by the evaluators under the least important technical evaluation factor, management plan, for which factor its proposal was rated as "acceptable" overall. MCR contends that, instead, the agency should have rated MCR's management plan as "better" overall. To support its argument, MCR points out that the evaluation record shows another

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[6](...continued)
that the agency reasonably had no concern about the realism of PWC's lower price, since [deleted], were adequately supported in the PWC proposal. MCR also contends that the awardee's previous personnel retention problems warrant a higher risk assessment for the PWC proposal. However, the protester fails to provide persuasive evidence of the existence of any such problems, which otherwise are not documented in the record; in fact, the agency reports that substituted personnel under the prior contract were commended for having improved qualifications.

[7]There is much discussion in the record between the parties concerning whether the agency was required to assign an overall adjectival rating to each proposal after combining the technical and past performance evaluation ratings. Our review of the record shows that the RFP did not expressly require such an overall rating, and the agency did not assign an overall rating to the proposals, but the Business Clearance Memorandum, June 9, 1998, at 12, did refer to an "overall" (although not necessarily adjectival) rating. In any event, the protester's argument is based upon its allegation that its past performance rating should be higher, which, MCR contends, would boost its proposal's overall rating higher than that of PWC's proposal, since past performance is as important as the technical approach evaluation factor. In light of our above discussion confirming the reasonableness of the "better" past performance ratings assigned to both the MCR and PWC proposals, we consider the protester's argument academic; the "better" past performance ratings in effect cancel each other out (since the evaluation scheme gives past performance as much importance as the technical approach factor), because both proposals were also rated "acceptable" for technical approach.

offeror's rating was rounded up where similar ratings were received under a different evaluation area--the example MCR provides involves the evaluation of the KPMG proposal under the sample task 2 sub-subfactor of the technical approach factor, where for the five items targeted for consideration by the evaluators, the KPMG proposal received three "acceptable" and two "better" ratings, but a rating of "better" overall for the sub-subfactor.

To the extent MCR seeks a mathematical or mechanical application of evaluation ratings for all offerors' proposals, its contention is without merit, since evaluation ratings are for use only as general guides to intelligent decision-making, and need not be mechanically applied to reach an overall assessment rating; rather, it is the documented qualitative findings about the proposals that govern the reasonableness of an agency's overall proposal assessment. See Wesley Med. Resources, Inc.; Human Resource Sys. Inc., B-261938.5, B-261938.6, Nov. 20, 1995, 95-2 CPD ¶ 230 at 9, n.2. Here, our review of the record confirms the reasonableness of the evaluation of the protester's proposal under the management plan factor--while MCR submitted a favorable, complete management plan, it simply did not significantly exceed many of the RFP requirements, as required for the higher evaluation rating. As for MCR's challenge, by comparison, to the "rounded up" rating received by the KPMG proposal under the sample task 2 sub-subfactor, we think the strengths of that proposal for sample task 2 support the favorable rating received, which, with the KPMG proposal's unchallenged "outstanding" rating under the overall understanding and approach factor, amply support the reasonableness of that proposal's higher technical approach rating.[8]

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[8]MCR only generally challenges the agency's determination to award a contract to KPMG, and has not provided any persuasive basis to question the award to KPMG, the higher technically rated, lower-priced offeror. The propriety of the award to KPMG based on its proposal's technical superiority over the MCR proposal in both the most important and least important technical factors, as well as its higher past performance rating, and lower price, is reasonably supported by the record.

MCR also challenges the adequacy of discussions held with the firm.[9] The protester essentially contends that the agency should have discussed with it those areas in which its proposal could have received a higher rating, since any higher ratings may have materially improved its potential for award. The protester also generally alleges that discussions were unfair, since the awardees were questioned about certain areas of their initial proposals that were found "marginal" (where MCR's proposal had been found "acceptable" in those areas, and the areas were not discussed with MCR), and those offerors' revised proposals' ratings improved to equal or exceed MCR's proposal's ratings.

This solicitation was issued after the January 1, 1998 effective date of the revised discussion rules of Part 15 of the Federal Acquisition Regulation. Those revised rules, in pertinent part, provide, at § 15.306(d)(3), that:

> The contracting officer shall . . . indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal . . . that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award. The scope and extent of discussions are a matter of contracting officer judgment.

Discussions must be meaningful, equitable, not misleading, and fair. I.T.S. Corp., B-280431, Sept. 29, 1998, 98-2 CPD ¶ 89 at 6. We have reviewed each of the protester's alleged discussion improprieties and conclude that they lack merit--the record shows that the agency's actions were reasonable and proper.

MCR contends that, if the agency had raised any question (MCR does not identify which question it believes would be appropriate) about its proposal's sample task 2 response, it might have been able to improve its proposal rating for the subfactor to "better," as KPMG had done in response to discussions with the firm about its

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[9]MCR also protests that the evaluation was flawed by the use of an unstated evaluation factor favoring the so-called "Fabulous Five" accounting firms, which include KPMG and PWC. MCR's offered proof of this impropriety consists of certain investigative reports that it has recently learned about that examined earlier DFAS awards that were questioned on this basis. DFAS explains that the reports concern procurements unrelated to the current one and were conducted prior to recent agency controls to prevent any such bias. We have reviewed this record separate from the reports, which do not include review of the current procurement, since each procurement stands on its own. The record provides no support for the protester's allegations of improper bias toward the awardees.

"marginal" response to sample task 2.[10] MCR is essentially arguing that, since this is an area where its proposal received less than a perfect rating (even though not a "marginal" one), it should have been discussed to place its proposal in a more advantageous competitive position for award. We do not read the revised Part 15 language to change the legal standard so as to require discussion of all proposal areas where ratings could be improved.[11] See DAE Corp., B-259866, B-259866.2, May 8, 1995, 95-2 CPD 12 ¶ at 4-5 (an agency is not required to discuss every aspect of an offeror's acceptable proposal that receives less than the maximum score).

We recommend that the DFAS document a reasoned source selection determination that, in accordance with the stated evaluation factors for award, considers the comparative merits of the technical and past performance proposals, as well as the offerors' proposed prices, to determine which offer is the most advantageous to the government. If an offeror other than PWC is selected for award of the contract that has been awarded to PWC, the DFAS should terminate PWC's contract for the convenience of the government and make award to that offeror. We also recommend that the protester be reimbursed the reasonable cost of filing and pursuing its protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1) (1998). The

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[10]Although MCR contends discussions were unequal, there is no showing in the record that KPMG was treated more favorably than MCR in discussions. Just as with MCR, KPMG was told of those areas of its proposal that were considered "marginal."

[11]The protester also contends that if the agency had mentioned that an evaluator thought MCR's experience was [deleted], Technical Evaluation Consensus Report for MCR, June 26, 1998 at 6, that its [deleted] failed to significantly exceed many requirements, or that its past performance proposal had not been rated "outstanding" overall, it could have materially improved its potential for award. As discussed above, the record does not support the protester's contention that discussions were required in these relatively minor aspects of the evaluation record. Specifically, our review shows: there is no indication that the firm's proposal was downgraded for the [deleted] comment of one evaluator--in fact, the evaluation record shows that this was a very minor point expressed about the firm's overall understanding and approach, which otherwise was viewed favorably by the evaluators; given the firm's high ratings for past performance (which, related to the above discussion, specifically included credit for MCR's [deleted], there is no credible basis for the protester to contend the agency was required to discuss how the protester could improve its rating to the highest possible overall rating of "outstanding"; and, as for the acceptable [deleted] submitted by MCR, there is no showing in the record that more detailed discussions were warranted in this area, which had, in fact, been identified in discussions with MCR as an area to address in the firm's final proposal.

protester should submit its claim for costs, detailing and certifying the time expended and costs incurred, with the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest of the award to PWC is sustained; the protest of the award to KPMG is denied.

Comptroller General
of the United States