



Comptroller General  
of the United States

Washington, D.C. 20548

(Jordan)

## Decision

**Matter of:** Cygna Project Management

**File:** B-236839

**Date:** January 5, 1990

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### DIGEST

1. Inclusion of a proposal in the competitive range does not necessarily mean that it is technically equal to other proposals in the competitive range so as to make price determinative of award.
2. Agency reasonably determined to award contract to higher-priced, higher technically rated proposal where evaluation criteria provided that technical quality was more important than price.
3. An agency properly may consider the impact of a best and final offer (BAFO) on an otherwise unchanged technical proposal and the offeror assumes the risk that changes in its BAFO might raise questions which result in a lower technical score.

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### DECISION

Cygna Project Management protests the award of a contract under solicitation No. RFP-PBS-9PPC-87-21575 to Abide American, Inc. for construction quality management (CQM) services during asbestos removal at and renovation of the Phillip Burton Federal Building and U.S. Courthouse in San Francisco, California. Cygna contends that it was improperly downgraded in the technical evaluation and should have received the award.

We deny the protest.

The solicitation sought proposals for provision of all management supervision, labor, materials, supplies, and equipment, and for planning, scheduling, coordination, and assurance of effective performance of the asbestos abatement and renovation of the 1.4 million square foot building. Among other things, proposals were to include information on key personnel and staff, as well as the capabilities and involvement of consultants.

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Proposals were to be evaluated in three technical areas:

Qualifications of Organization	40%
Management Plan	35%
Qualifications of Personnel	25%

Offerors could receive raw scores of up to 5 points for each factor, which score was multiplied by the stated percentage, resulting in a weighted score. The weighted scores then would be added together. Award was to be made to the offeror whose proposal conformed to the solicitation and was most advantageous to the government, price and technical factors considered. The evaluation factors emphasized that "technical quality is more important than cost or price," but also advised that as proposals became more equal in technical merit, evaluated price became more important.

Four offerors, including Cygna and Abide, submitted proposals in April 1988. One of the other two offerors subsequently withdrew its proposal. After the construction project was restructured, necessitating changes to the instant solicitation, each offeror received an amendment detailing the changes and a letter advising it of weak or deficient areas in its proposal. All three offerors submitted revised proposals and were determined to be in the competitive range. Best and final offers (BAFOs) were then solicited from each offeror.

In early June 1989, the source selection evaluation board evaluated the revised proposals, and awarded Abide a score of 3.00 and Cygna a score of 2.69. The Board found these technical scores close enough to make price the determining factor. Thus, Cygna, with a BAFO price of \$2,923,090, was apparently in line for award over Abide with a BAFO price of \$3,014,805.

In July 1989, prior to making a final decision, the Board was advised that an "architect-engineer cost estimate" attached to Cygna's BAFO had not been provided to it for evaluation. In light of this oversight, the Board reevaluated Cygna's proposal. During the reevaluation the Board discovered that Cygna's approximate \$1.5 million cost reduction at BAFO was attributable to the elimination of costs for its principal-in-charge, and asbestos consultant, Hall-Kimbrell, Inc., and to an overhead reduction of more than 40 percent. From this the Board concluded that Cygna no longer offered an asbestos consultant and downgraded its proposal in all three evaluation areas. Although Cygna's proposal was considered acceptable, with a score of 2.19, the Board concluded that Abide, with a score of 3.00, was

the most technically qualified. The source selection authority agreed with the Board's conclusion and Abide was awarded the contract on August 15, 1989. After a debriefing, Cygna filed its protest with our Office.

Relying upon the request for proposal evaluation criterion which provides that price becomes more important as proposals become more equal in technical merit, Cygna contends that all offerors in the competitive range are "by definition" nearly equal in technical merit and thus, it should receive the award as low offeror. We disagree.

The competitive range is determined on the basis of cost or price and other factors stated in the solicitation and includes all proposals that have a reasonable chance of being selected for award. Federal Acquisition Regulation § 15.609(a) (FAC 84-16). Further, when there is doubt as to whether a proposal is in the competitive range, it should be included. Id. Thus, mere inclusion in the competitive range does not necessarily mean that an offeror is "equal" in technical merit with other offerors in the range so as to make price the determining factor.

In reviewing an agency's selection decision, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. Unisys Corp., B-232634, Jan. 25, 1989, 89-1 CPD ¶ 75. The determination of the relative desirability and technical adequacy of the proposals is primarily a function of the procuring agency which enjoys a reasonable range of discretion in proposal evaluation. Biological Research Faculty & Facility, Inc., B-234568, Apr. 28, 1989, 89-1 CPD ¶ 409. Award can be made to a higher-rated, higher-cost offeror where the decision is rationally based and consistent with the evaluation criteria set forth in the solicitation. Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441. We have reviewed the proposals, the BAFOs, the agency's evaluation, and its cost/technical tradeoff, and conclude that the agency's decision was rationally based and in accordance with the stated evaluation criteria.

In its proposal, Cygna had proposed Hall-Kimbrell as its asbestos abatement consultant to monitor the scope of work and provide reports and recommendations concerning air quality monitoring, protective equipment, ingress and egress procedures, inspection results and other related concerns. It identified a full-time asbestos inspector and two asbestos construction inspector/air monitors who were employees of Hall-Kimbrell. It also identified Cygna employees, including a construction quality superintendent

with toxic materials handling experience, a general inspector with some asbestos related experience, and a construction inspector/field inspector with certifications including asbestos. In Cygna's BAFO however, Hall-Kimbrell was not listed among its other consultants. From this the agency concluded that Hall-Kimbrell was no longer being proposed as asbestos consultant and its employees would not be working on the project. The absence of this key consultant and the general lack of asbestos-related experience by Cygna's own employees caused the Board to downgrade Cygna's qualifications of organization and personnel in the areas of available resources, and familiarity and expertise with asbestos abatement. Similarly, it downgraded Cygna on its management plan with regard to staffing and recognition of major problem areas.

Conversely, Abide scored higher than Cygna in all three factors, including asbestos abatement related matters. In particular, it received high scores for exceeding standards for its management plan. The Board concluded that Abide's higher technical score represented a significant technical superiority over Cygna. Specifically, the board stated that it was concerned with obtaining the most capable management of supervision of asbestos abatement, as well as other critical areas of construction, and believed that the additional cost of \$91,715 in awarding to Abide was justified by that firm's technical superiority.

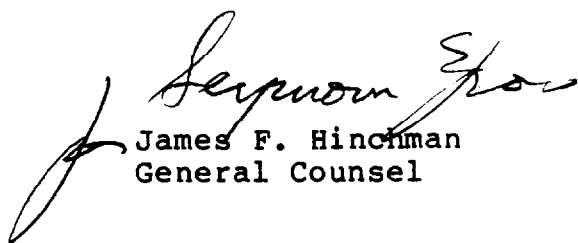
Cygna contends that its technical proposal was improperly interpreted and evaluated on the basis of its cost proposal. Cygna denies that it eliminated Hall-Kimbrell as its asbestos consultant and asserts that it planned to obtain payment for Hall-Kimbrell through a cost-reimbursement provision of the contract and as part of its overhead. Further, Cygna states that under this fixed price contract, it would bear any risk of failing to propose a price sufficient to cover all required services. In any event, Cygna believes its proposal demonstrated that its own employees had sufficient asbestos abatement experience to meet the RFP requirements.

It is well settled that in a negotiated procurement, where a proposal consists of a cost or price section in addition to technical or other sections, the agency may consider the cost or price proposal in evaluating an offeror's understanding of the solicitations requirements. Electronic Communications, Inc., 55 Comp. Gen. 636 (1976), 76-1 CPD ¶ 15; Systems & Processes Eng'g Corp., B-234142, supra (agency may downgrade a BAFO as being technically deficient when it does not contain adequate explanation for price

reductions from a previously acceptable initial proposal). We believe the agency is equally entitled to evaluate an otherwise unchanged technical proposal on the basis of changes or ambiguities introduced in a BAFO. An offeror assumes the risk that changes in its final offer might raise questions about its ability to meet the requirements of the solicitation and, thus, result in rejection or downgrading of its proposal. See Comarco, Inc., B-225504, B-225504.2, Mar. 18, 1987, 87-1 CPD ¶ 305. We note that in this situation, an agency is under no obligation to reopen negotiations to provide an offeror the opportunity to remedy any perceived defects. Id.

Here, the agency reasonably interpreted the elimination of costs for the asbestos consultant as elimination of the consultant. While Cygna claims that its own employees possess the necessary qualifications, and that its consultant was "value added," we note that the majority of expertise and experience originally proposed was found in Hall-Kimbrell's employees, not in Cygna's. In view of the technical proposal's strong reliance on Hall-Kimbrell for asbestos abatement related services, we find the agency reasonably downgraded Cygna, even assuming minimum qualifications in its own employees. Although Cygna now explains its rationale for the changes in its BAFO, including the reasonableness of the decrease in its overhead rate, Cygna should have provided that explanation in its BAFO, not after losing the competition. By failing to include this explanation in its BAFO, Cygna assumed the risk that questions might be raised and that it would not be provided an opportunity to answer those questions. Comarco, Inc., B-225504.2, B-225504.2, supra.

Accordingly, the protest is denied.

  
James F. Hinchman  
General Counsel