



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Interaction Research Institute, Inc.

File: B-234141.7

Date: June 30, 1989

DIGEST

Agency determination that proposal was technically unacceptable and was not in the competitive range will not be disturbed where proposal contained deficiencies such that the proposal had no reasonable chance for award and would require major revisions to be acceptable.

DECISION

Interaction Research Institute, Inc., protests the Office of Personnel Management's (OPM's) rejection of its proposal under request for proposals (RFP) No. 88-2795.

We deny the protest.

The RFP solicited consulting and training services for the purpose of assisting federal agencies in implementing total quality management (TQM), which is a management approach that relies on principles of quality assurance and makes managers and employees alike responsible for providing quality products and services. The statement of work (SOW) in the solicitation established the following overall goals for the implementation of TQM: (1) create an organizational culture that emphasizes excellence in service delivery; (2) meet customer requirements and increase customer satisfaction; (3) achieve continuous improvement in the quality of products and services and the processes used to produce them; (4) increase productivity; and (5) achieve participative involvement of employees in improvement efforts. The solicitation required the implementation and achievement of these goals by all levels within an agency, including the senior management, middle management, and work force, and specifically called for a description of the approach and strategies that would be used to enable federal agencies and their employees to understand TQM, make a long-term commitment to the improvement process, build and improve the necessary management structure, acquire the

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skill of systematic problem solving, and function effectively in quality improvement teams.

The solicitation contemplated the award of multiple fixed-price Federal Supply Schedule contracts against which agencies deciding to implement TQM would place delivery orders. It provided for award to be made to those responsible offerors whose offers conform to the solicitation and are most advantageous to the government, with technical quality more important than price. The RFP stated that technical proposals would be evaluated on the basis of the following evaluation criteria, listed in descending order of importance: (1) implementation strategy and relevant materials and/or services proposed; (2) relevant experience and demonstrated capability; (3) professional staff capabilities; and (4) organizational capability. The RFP stated that marginal ratings in more than one factor may lead to the determination that the proposal is unacceptable.

The agency received 80 proposals by the October 11, 1988, closing date. In the initial technical evaluation, the technical evaluation panel, composed of 3 members, rated 25 proposals as acceptable and 55 proposals as unacceptable and not reasonably susceptible of being made acceptable. The protester's proposal was determined technically unacceptable, principally for failure to provide an acceptable TQM implementation strategy and to clearly establish prior substantive TQM experience. OPM rejected Interaction's proposal as having no reasonable chance for award.

Interaction offered a five-phase program titled "organizational process management," which it described as a method that provides predictive information for decision-making. Despite the difference in terminology, the firm considered its program synonymous with TQM. In the first phase, a feasibility study would be conducted to determine where statistical process control (SPC) methods could be applicable. (The protester describes SPC as a methodology that, after collection of data from in-house processes, determines responsibility for improvement, pinpoints causes of discrepancies, and quantifies the effect of corrective actions.) In the next phase, SPC training and workshops would be implemented and would include implementation of pilot projects. In the third phase, demonstration, the effectiveness of key projects would be evaluated. In the fourth phase, expansion, a quality council would establish a plan for SPC projects and additional training would be conducted. Finally, in the last phase, consolidation, the system would be monitored and evaluated in order to provide feedback for future decisions.

The agency maintains that to accomplish the RFP objectives, a proposed implementation strategy had to address what it describes as both the quantitative and human dimensions of TQM, that is, the proposal had to demonstrate both the knowledge and skills the offeror would provide to the management and the workforce, and how the offeror would assist agencies in attaining the participative involvement of employees in TQM improvement efforts (implementation goal number five, as listed in the SOW). The agency determined that the protester's proposal provided for a drawn-out process for making quality improvements through the use of statistical process control, but failed to include other TQM dimensions, particularly the strategic, organizational, and human resource (i.e., participative involvement of employees) dimensions. Because of these deficiencies, the agency determined that the firm's proposal offered an incomplete and unacceptable TQM strategy. As for experience, the agency determined that while the firm's proposal showed that it had provided statistical process control courses in many private companies and several federal agencies, it did not indicate specific TQM implementation experience, nor did the resumes submitted demonstrate a TQM implementation capability. Consequently, the protester's proposal received marginal ratings in three of the four criteria: implementation strategy, relevant experience and demonstrated capability, and professional staff capabilities, which led to the determination that the proposal was unacceptable.

Initially, the protester argues that the underlying concept upon which OPM judged proposals is unsound. The protester believes that SPC, i.e., what the agency describes as the quantitative element, should be the emphasis of TQM, and that the agency's emphasis on the human element in implementing TQM is misguided.

This argument is essentially a disagreement with the agency's philosophy of TQM implementation and the determination of its minimum needs. While the protester contends that this basis of protest did not become evident until the debriefing after rejection of its proposal, we believe it should have been evident from the face of the RFP. The RFP listed the proposed implementation strategy as the most important evaluation criterion. The SOW specifically indicated that in TQM implementation OPM was seeking to achieve the participative involvement of employees in improvement efforts. In a prior decision, we specifically held that while the SOW termed employee involvement a TQM "goal," it was clear from the RFP as a whole that the proposed strategy for achieving this goal was to be a primary consideration in the evaluation of proposals and it should have been apparent from this description of the

requirements that a successful proposal would need to address the human element of TQM implementation. Stat-a-Matrix, Inc., et al., B-234141 et al., May 17, 1989, 89-1 CPD ¶ _____. Our view in this regard remains the same here. Alleged improprieties in a solicitation must be protested prior to the closing date for submission of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988). As Interactive did not file its protest until after its proposal was rejected, this aspect of the protest is untimely and will not be considered.

Interactive argues alternatively that its proposal in fact satisfied the RFP requirements, but that the evaluation panelists lacked sufficient knowledge of the firm's statistical process control approach to realize that it included an implementation strategy with a human dimension. The composition of technical evaluation panels is within the discretion of the contracting agency; we thus will question the make-up of a panel only where there is a showing of bad faith, conflict of interest, or of actual bias by certain evaluators. Stat-a-Matrix, Inc. et al., supra. The protester contended in its original protest that one panel member was biased against the firm, but presented no evidence in support of the contention. Such an unsupported statement does not constitute the hard facts necessary to establish favoritism or antagonism toward a particular offeror. Computer Brokers, B-226103.2, Nov. 30, 1987, 87-2 CPD ¶ 526. We thus have no basis to question the composition of the panel.

As for the propriety of the evaluation itself, the determination of the relative merits of proposals is primarily the responsibility of the contracting agency, which must bear the burden of any difficulties resulting from a defective evaluation. Pitney Bowes, B-233100, Feb. 15, 1989, 68 Comp. Gen. _____, 89-1 CPD ¶ 157. Accordingly, in reviewing complaints about the evaluation of a technical proposal and the resulting determination of whether the proposal is within the competitive range, we will not reevaluate the proposal and independently judge its merits; we will only consider whether the evaluation was reasonable and otherwise consistent with procurement laws and regulations. Educational Computer Corp., B-227285.3, Sept. 18, 1987, 87-2 CPD ¶ 274.

We find no basis to question the determination of technical unacceptability of Interaction's proposal. Our review of the proposal supports OPM's finding that it simply did not address the requirements set forth in the RFP. Although the protester now points to scattered information in its proposal as showing compliance with the requirements, the

agency was not required to piece together the protester's implementation strategy, including the extent to which there would be participative involvement of all employees, from the protester's proposal; rather, it was Interaction's responsibility to set forth a clear, comprehensive strategy, as called for by the RFP. Communications and Data Systems Assocs., B-223988, Oct. 29, 1986, 86-2 CPD ¶ 491.

While the protester contends, for instance, that its implementation strategy was indicated in all phases of its plan (i.e., feasibility, training, demonstration, expansion and consolidation) and was emphasized in the pilot projects, the first three phases of the plan appear to be only preparatory to implementation. Further, it is not clear that TQM will be implemented at all levels in the expansion phase. Rather, the proposal seems to indicate that this fourth phase will include a steering committee or quality council comprised of senior management personnel which is to establish a plan for SPC projects and guide the activities of quality improvement teams in what the proposal previously describes as addressing only pilot, or key, projects. Although these pilot projects are proposed to be expanded to control critical processes throughout the organization, we agree with OPM that specific TQM implementation beyond the proposed pilot projects is simply not clear from the proposal, and that implementation of pilot projects is not equivalent to TQM implementation throughout an entire organization, at all levels, as required by the RFP.

Also, regarding the human element (i.e. participative involvement of employees at all levels in implementing TQM), the protester maintains that OPM ignored the fact that the definition of SPC encompasses control of the human resources process, and also disregarded its proposal of participative involvement of employees in selection and training of quality improvement teams to address pilot projects. Again, however, while definitionally SPC may include the human resources process as the protester contends, it remains that the firm's proposal did not describe a specific strategy including participative involvement. Moreover, Interaction's proposal of employee involvement in pilot projects does not indicate inclusion of all employees in an overall implementation plan.

Interactive contends that exhibits it submitted with its offer, consisting of program manuals and course offerings and materials, should have been considered as part of its implementation strategy. According to the protester, since the technical evaluation factor stated that implementation strategy and relevant materials and/or services proposed

would be considered, the agency improperly failed to consider the firm's exhibits as part of its strategy. However, while course offerings and materials were submitted, we do not think OPM was required to consider them as a substitute for an overall, detailed strategy that might have included, for example, a comprehensive explanation of how the materials would be used to satisfy the RFP requirement. Moreover, it appears that at least some of the materials submitted related to other programs, and were not prepared for this requirement. For example, Interactive submitted a manual written specifically for the Leadership Evaluation and Analysis Program it designed for the Marine Corps. Again, the protester's position, in effect, would require the agency evaluators to piece together an implementation strategy from the firm's exhibits in lieu of the comprehensive plan the protester was called on to submit; in taking this approach, the protester ran the risk of rejection. Vista Videocassette Services, Inc., B-230699, July 15, 1988, 88-2 CPD ¶ 55.

The protester also challenges the agency's determination that the firm failed to show sufficient experience. The protester maintains that it described in its proposal experience in implementing its offered plan throughout an aerospace firm, as well as implementation of organizational processes for two packaging firms.

We think OPM reasonably concluded that these activities did not show relevant TQM implementation experience. First, since the firm's proposed plan was determined deficient for the current requirement, any previous experience in implementing it was discounted to the extent it did not show TQM implementation experience relevant to the RFP requirements. Further, the courses and training materials discussed and exhibited in the offeror's proposal emphasize SPC, which the protester has not shown to fully address all aspects of TQM implementation, including the so-called human element or participative involvement of all employees. While establishment of quality improvement teams or quality circles is described in a few of the offeror's listings of past experience, OPM considered this limited experience insufficient by itself. We have no basis to question the agency's determination in this regard.

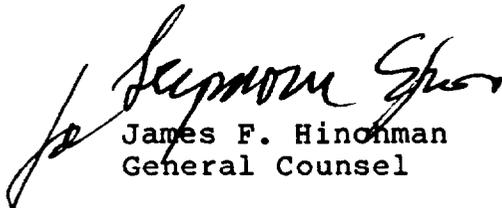
In connection with the evaluation of the firm's experience, the protester complains of a discrepancy in scoring: one rating of 30 points out of 30 possible points, a second rating of 5 points and a third rating of 10 points. It is not unusual, however, for individual evaluators to reach disparate conclusions when judging competing proposals since both objective and subjective judgments are involved.

Digital Radio Corp., B-216441, May 10, 1985, 85-2 CPD ¶ 526. Thus, the mere fact that an individual evaluator gives a perfect score or that the scores of certain evaluators appear extreme or inconsistent does not, by itself, render the scores invalid. Panuzio/Rees Assocs., B-197516, Nov. 26, 1980, 80-2 CPD ¶ 395. We find no indication in the record that the scoring by the technical evaluation panel reflects other than their personal informed judgment as to Interaction's proposal. The one evaluation panel member who gave Interaction a perfect score on experience, while obviously disagreeing with the other evaluators as to Interaction's experience, nonetheless gave the firm's offer an overall score of only 60 (out of 100) and, along with the other evaluators, determined the firm's offer to be unacceptable. In these circumstances, the variance in the scoring, by itself, does not give us reason to question the scoring.

Finally, the protester complains that the evaluation panel's written assessment of its proposal did not comply with the agency's internal guidelines for conducting the evaluation, which required a specific and detailed explanation for a proposal's unacceptability. We will not consider the matter. An agency's internal instructions and procedures do not have the force and effect of law, so that the alleged failure to comply with them in a particular instance involves a matter for consideration within the agency itself, rather than through the bid protest process. Holmsman Services Corp., B-230248, May 20, 1988, 88-1 CPD ¶ 484. However, we note that while the protester is concerned over the brevity of comments on the evaluation reports and summary, the protester has not shown the evaluation of the cited deficiencies to be unreasonable.

We conclude that it was not unreasonable for the agency to determine that Interaction's proposal would require major revisions to be made acceptable, and to eliminate the firm's proposal from the competitive range on the basis that it had no reasonable chance for award.

The protest is denied.


James F. Hinonman
General Counsel