

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

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**FILE:** B-209500; B-209500.2 **DATE:** February 17, 1983

**MATTER OF:** , Best Western Quantico Inn/Conference Center;  
Cliffside Inn

**DIGEST:**

Where a firm's submission in response to a competitive request for proposals (RFP) consisted only of a Cost Pricing Proposal which did not reference the RFP or include or refer to any technical proposal required by the solicitation, the submission did not constitute an acceptable offer and award of a contract to that firm was improper.

Best Western Quantico Inn/Conference Center and Cliffside Inn protest the award of contract No. SBA-7103-OTS-82 to Xerox International Training Center resulting from request for proposals (RFP) No. 82-24 issued by the Small Business Administration (SBA) for training facilities and lodging accommodations for certain specified SBA-sponsored training courses to be held during fiscal year 1983. Essentially, the protesters contend that SBA's low technical evaluations of their proposals--both of which offered a lower price than Xerox--were unreasonable.

Our review of the entire record here reveals a fundamental defect in this procurement, unrelated to the evaluation of the protester's proposals, which renders improper the award made to Xerox. Therefore, we sustain the protests.

Background

SBA provided RFPs to Xerox, Best Western, Cliffside and three other firms expressing an interest in competing for the requirement. The RFP required firms to submit technical and cost proposals to provide the training and lodging facilities as specified in the RFP's statement of work.

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SBA reported to us that proposals were received from Xerox, Best Western, Cliffside, and two other firms. SBA's technical evaluation committee rated Xerox as technically perfect with regard to the technical evaluation criteria established in the RFP. On the basis of the RFP's formula which established a 70/30 ratio of technical/cost importance, the SBA determined that Xerox's evaluated technical superiority over other firms offset its higher price and therefore SBA awarded a contract to Xerox on the basis of initial proposals in the amount of \$101,690.

#### Xerox's "Proposal"

The fundamental defect we have found in this procurement is that Xerox did not submit a valid offer in response to a competitive RFP which properly could have been accepted for award, much less evaluated, by SBA.

Xerox's only response to the RFP consisted of an undated "Contract Pricing Proposal" (GSA Optional Form 60) which made no reference to the RFP. SBA's contracting officer informed us that since Xerox submitted no technical proposal, the SBA technical evaluation panel's perfect rating of Xerox was based solely on the panel's personal knowledge of Xerox's performance under previous Government contracts.

It is a basic principle of contract formation that an offer must be sufficiently definite to show the offeror's intent to form a binding agreement upon acceptance. See George Rosen & Son, Inc., VACAB 429, 65-2 BCA 4936 (1965). In this regard, a valid offer must contain, or at the very least make sufficient reference to, the terms by which the offeror will be bound under any contract resulting from the acceptance of the offer. See Ordnance Parts & Engineering Co., ASBCA 12820, 68-1 BCA 6870 (1968) (price quotation standing alone is not an offer). Thus, under basic contract rules of offer and acceptance requiring contractual agreements to be based upon mutuality of obligation, Xerox's submission of an undated, unreferenced "Contract Pricing Proposal" fails as a valid offer which was subject to acceptance.

Moreover, Xerox's mere submission of its "Contract Pricing Proposal" clearly does not constitute an offer

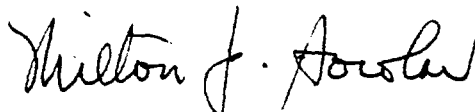
that complies with the specific terms of the RFP which, among other things, required proposers to "complete the solicitation and submit separate technical and \* \* \* cost proposals for all work \* \* \* in accord with the \* \* \* Statement of Work."

In this regard, we have held that even a timely submitted "contract letter" offering to comply with an RFP's specifications at a firm fixed price and incorporating by reference the offerors' actual technical, managerial and financial proposals (which were delivered after the date for receipt of proposals) did not constitute a timely submission of portions of the proposal incorporated by reference. E-Systems, Inc., B-188084, March 22, 1977, 77-1 CPD 201. In this case, therefore, Xerox's submission clearly did not constitute a proposal that was subject to any consideration.

#### Conclusion and Remedial Actions

The protests are sustained. We note here that the fixed requirements have already been performed, and so we have no basis to recommend remedial relief. Nonetheless, SBA appears to have placed additional orders with Xerox for training facilities and accommodations over and above the fixed requirements of the contract. We therefore are recommending that there be no further modifications made to the Xerox contract for additional training requirements. If additional needs arise, they should be obtained through competitive means. On the other hand, if this is an ongoing requirement, and if SBA desires and can justify a need for a requirements-type contract for training facilities and accommodations, any resolicitation for these services should be properly structured as one that would result in the award of a requirements-type contract.

By letter of today we are advising the Administrator of the Small Business Administration of our recommendation.

*for*   
Comptroller General  
of the United States