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

B-204144

August 18, 1981

The Honorable Harold C. Cap Hollenbeck
House of Representatives

Dear Mr. Hollenbeck:

We refer to your letters of July 16 and July 31, 1981, on behalf of Endevco, San Juan Capistrano, California concerning the General Services Administration's (GSA) rejection of that firm's late offer under solicitation No. FCGS-F-90200-N-2-18-81.

Your letters indicate that the solicitation was for a multiple award schedule contract. You state that GSA advised you that Endevco's proposal could not be considered because it did not come within any of the exceptions to the rule against the consideration of late offers in Federal Procurement Regulations (FPR) § 1-3.802-1 (1964 ed.). GSA also advised you that the agency adopted the rule in FPR § 1-3.802-1 for application to multiple award schedule contract solicitations in response to May 2, 1979 and August 22, 1980, recommendations by our Office that GSA establish firm cut-off dates for the receipt of proposals under those solicitations. GSA points out that the reason for our recommendations was that without firm cut-off dates late offerors can gain competitive advantages because they have the chance to learn what their competitors are offering before submitting their own offers.

You suggest that the rationale for our recommendation does not apply to Endevco's situation, since GSA received the firm's offer only five minutes after the time for proposal receipt specified in the solicitation, 3 p.m. on February 18, 1981. Accordingly, and since Endevco asserts that the Government would save money by accepting the firm's offer, you suggest it would be in the Government's interest to consider the offer.

[Rejection of Late Proposal]

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The late proposal rule in FPR § 1-3.802-1 allows a contracting agency to consider a late proposal only if it was sent by registered or certified mail not later than the fifth calendar day before the date specified in the solicitation for receipt of offers; the proposal was mailed (or sent by telegram if authorized) and the late receipt was caused by Government mishandling after receipt at the Government installation; or it is the only proposal received.

The GSA competition was conducted under that rule, and we believe that it would not be appropriate for GSA to deviate from the rule to consider Endeveco's late offer here.

We have often recognized that the strict application of the rule in FPR § 1-3.802-1 and its attendant principles can lead to ostensibly harsh results, occasionally penalizing firms that probably would not have received a competitive advantage if their late proposals were considered. Nonetheless, those situations must be viewed against the realization that the relaxation of these standards inevitably would lead to confusion and unequal treatment of offerors. The manner in which the Government conducts its procurements must be subject to clearly defined standards that apply equally to all to ensure fair and impartial treatment. There must be a time after which offers may not be received, and to permit one offeror to deliver its proposal after the closing date in our view would tend to subvert the competitive system.

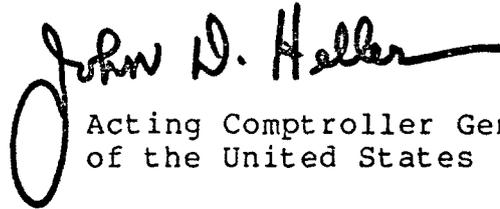
By application of its late proposal rule, we realize that the Government may lose the benefit of a proposal that offers terms more advantageous than those received on time. Maintenance of confidence in the competitive system, however, is of greater importance than the possible advantage to be gained by considering a late proposal in a single procurement.

We note here that you enclosed with your July 31 letter a copy of GSA Federal Supply Schedule Procurement Letter No. 324, dated March 13, 1981, in which GSA stated that thereafter it would accept a late proposal for a multiple award schedule contract if the proposal offers significant cost or technical advantages to the Government and is received before any awards have been made. The document clearly indicates, however, that the exception to the late proposal rule did not apply before March 13, 1981. Also, the enclosures to your July 16 letter show that GSA rescinded Procurement Letter No. 324 on May 5 to delete that exception.

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For your information, we are enclosing a copy of the May 2, 1979 report in which we recommended that GSA establish firm cut-off dates for the receipt of proposals in multiple award schedule contract procurements: "Ineffective Management of GSA's Multiple Award Schedule Program--A Costly, Serious and Longstanding Problem" (PSAD-79-71) (pages 20 and 49). We are also enclosing a copy of our August 22, 1980 report to Senator Chiles on GSA's actions to improve the program.

Sincerely yours,

A handwritten signature in black ink, reading "John D. Heller". The signature is written in a cursive style with a large, looped initial "J".

Acting Comptroller General
of the United States

Enclosures - 2

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DIGEST

Proposal under General Services Administration solicitation for multiple award schedule contract, received after time specified in solicitation, may not be accepted where none of exceptions to rule against consideration of late proposals applies.