



Comptroller General  
of the United States

Washington, D.C. 20548

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B-223852

September 9, 1986

The Honorable Warren B. Rudman  
Subcommittee on Commerce, Justice,  
State, the Judiciary, and Related Agencies  
Committee on Appropriations  
United States Senate

Dear Senator Rudman:

This responds to your letter of April 10, 1986, in which you and Representative Neal Smith, Chairman, Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies, House Committee on Appropriations, requested this Office to investigate the Legal Services Corporation's (LSC) use of appropriated funds to purchase 260 micro-computers. A few weeks ago, we briefed certain of your staff members on the results of our investigation. During this briefing, your staff members requested that we provide you with a written legal opinion on whether the correspondence between LSC and PC National Corporation about the procurement of the computers constituted a binding contract between the parties. It is our opinion that a legally binding contract did result from the correspondence.

Under the provisions of 42 U.S.C. § 2996d(e), LSC is not considered to be an agency or instrumentality of the Federal Government, and therefore is not subject to the Federal Acquisition Regulation. Rather, under 42 U.S.C. § 2996e(a), LSC, as a District of Columbia Nonprofit Corporation, is authorized to exercise the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act, which would include entering into legally binding contracts with other parties.

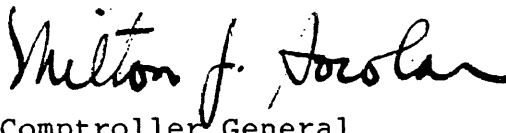
During September 1985, LSC developed a request for a proposal (RFP) soliciting certain computer suppliers to provide it with a definitive proposal setting forth the price and conditions for supplying LSC with approximately 260 micro-computers that met certain LSC specifications. LSC received four proposals which were considered responsive to the RFP, including that of PC National Corporation. The PC National proposal contained detailed specifications of the equipment, delivery data, warranty information and unit price quotes for 260 computers, and was selected by LSC. Written across the

top of the copy of this proposal that LSC maintained in its files was the statement "Letter serves as contract." On November 18, 1985, LSC issued a Purchase Order with the number 86-1411-0066 to PC National Corporation for 260 micro-computers for a total of \$734,500.

Under section 2-204 of the Uniform Commercial Code (UCC) a contract for the sale of goods may be made in any manner sufficient to show "agreement" which under section 1-201(3) may be found not only in the language of the parties but by implication from other circumstances. Giant Food, Inc. v. Washington Coca-Cola Bottling Co., Inc., 16 UCC Rep. 340; 273 Md 592, 332 A 2d 1 (1975). A contract is defined as "an agreement between two or more persons consisting of a promise or mutual promises which the law will enforce, or the performance of which the law in some way recognizes as a duty." (Laurence Simpson, Handbook of the Law of Contracts (2d ed. 1965)). The essential elements of a legally binding executory contract of sale is an offer made by the offeror to the offeree and acceptance of that offer by the offeree. In its proposal, PC National made an offer to LSC to supply approximately 260 computers at a certain price. LSC accepted the offer on November 18, 1985, when it issued its purchase order for 260 computers at the price established by PC National.

Accordingly, we conclude that a legally binding executory contract of sale for 260 computers was effected when LSC issued its purchase order on November 18.

Sincerely yours,

*for*   
Comptroller General  
of the United States