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

B-204144.2

September 8, 1981

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The Honorable Marge Roukema  
House of Representatives

Dear Ms. Roukema:

We refer to your letter of August 13, 1981, on behalf of Endeeco, 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.

The solicitation was for a multiple award schedule contract. You state that you are aware that Endeeco's late proposal was not considered in view of General Accounting Office's recommendation that GSA establish firm cut-off dates for the receipt of proposals under multiple award schedule solicitations. The reason for the recommendation was that without such dates late offerors have the chance to learn what their competitors are offering before submitting their own offers, and thus can gain competitive advantages.

You suggest that the rationale for our recommendation does not apply to Endeeco's situation, since the contracting activity 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, and the offer was in GSA's hands before that time. Also, you enclosed with your letter a copy of GSA Federal Supply Schedule Procurement Letter No. 324, dated March 13, 1981, in which GSA stated that after that date 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 further states that "prudent judgment" should be used when deciding whether to accept a late proposal. Accordingly, and since Endeeco 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.

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Endevco's late proposal was not 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 adopted the rule in FPR § 1-3.203-1 for application to multiple award schedule contract solicitations in response to May 2, 1979 and August 22, 1980, recommendations by our Office, the substance of which you have described.

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 Endevco's late offer here.

We often have 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.

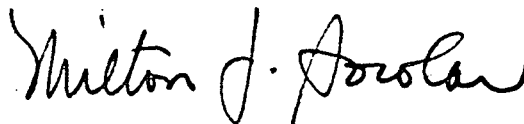
By application of its late proposal rule, we realize that the Government may lose the benefit of a proposal that offers terms more advantageous than those received on time. Maintenance of confidence in the competitive system, however, is of greater importance than the possible advantage to be gained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

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We point out here that Procurement Letter No. 324, which you enclosed, clearly indicates that the exception that it established to the late proposal rule did not apply before March 13, 1981. Also, in a May 5 Procurement Letter, GSA rescinded Procurement Letter No. 324 to delete that exception.

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-79-1) (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,



Acting Comptroller General  
of the United States

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