

H. CARL McCALL
STATE COMPTROLLER



A.E. SMITH STATE OFFICE BUILDING
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

January 11, 2000

Col. Vincent A. Albers, Jr. - Ret.
HSF Inc. - Albers Associates
PO Box 357, Rt 87 South
Dunshore, PA 18614

Re: Office of General Services Procurement for
County Probation Management Information System - IFB
#3511
Our File # SF-19990080

Dear Col. Albers:

You protested to the Office of General Services ("OGS") regarding their award of a contract emanating from the above procurement. Your bid was not considered by OGS because OGS believed it to be untimely. Therefore, the contract was awarded to another bidder whom OGS considered to be timely (and the lowest responsive and responsible bidder).

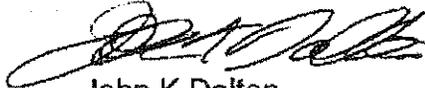
You subsequently forwarded to this Office a copy of your protest to OGS and the decision of OGS rejecting your protest. This Office has reviewed your position and that of OGS, pursuant to our contract approval authority under State Finance Law, Section 112. Following our review, we have determined to uphold the position of OGS and therefore have approved the contract.

You submitted to OGS documentation from Federal Express indicating that your bid was delivered before the deadline for receipt of bids had passed. OGS submitted documentation indicating that Federal Express delivered the bid late. The Federal Express driver was, however, unable to recall the specific events of that day, while the OGS employee charged with receiving bids had a specific recollection of the events, and a record that your bid was actually delivered late (at approximately 11:54 a.m. on the date of the bid opening).

The OGS documentation of an 11:54 a.m. delivery to OGS is not negated by the affidavit submitted by the paralegal at Federal Express, which is not based on anyone's personal recollection, nor by the Federal Express record annexed to the affidavit, purporting to be a signature by "C. Marsh" at 10:20 a.m. Indeed, the result may have been different if Federal Express had submitted a record which was, in fact, a single unified shipping receipt date-stamped at 10:20 a.m. and signed by "C. Marsh." Rather, upon close analysis, this submission appears to be a Federal Express compilation summary of information about the package, pieced together for the purpose of the affidavit. It is not a shipping receipt on which Ms. Marsh affixed her signature. Under these circumstances, we were not in a position to overrule the determination by OGS.

Please feel free to contact me at (518)474-6011 if you have any questions regarding this matter.

Very truly yours,



John K Dalton
Associate counsel

JKD/ik

cc: Randolph Treece
Kristina Burns
Susan Zeronda
William Hughes