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

B-200769

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The Honorable Carl D. Perkins  
Chairman, Subcommittee on Elementary,  
Secondary, and Vocational Education  
Committee on Education and Labor  
House of Representatives

Dear Mr. Chairman:

*Question concerning* This responds to your letter dated October 1, 1980, concerning whether funds available under the Career Education Incentive Act, ~~Public Law 95-207~~, were illegally rescinded by the Administration.

Of the funds appropriated to the Office of Education, Department of Health, Education, and Welfare, in fiscal year 1980, for special projects and training, \$20 million was available for the program of career education incentives authorized by the Career Education Incentive Act. Under section 1402 of the Impoundment Control Act (31 U.S.C. 1402), the President proposed in his seventh special message to the Congress, dated April 16, 1980, that \$10 million of the funds available for the program be rescinded. Congress failed to pass a rescission bill within the 45-day period of continuous session during which funds can be withheld pending Congressional consideration of a rescission proposal. On June 23, 1980, we reported to the Congress that the funds withheld were apportioned by the Office of Management and Budget for allotment to the program.

The Congress completed action on the Supplemental Appropriations and Rescission Act of 1980, Public Law 96-304, on July 2, 1980, and it became law on July 8, 1980. That law rescinded \$5 million of the funds available for the career education incentives program. This action left \$15 million available for the program for FY 1980. You informed us that over \$500,000 of the funds had not been spent when the fiscal year ended on September 30, 1980, and, therefore, the funds will be returned to the Treasury. You have asked us to review the Administration's actions and determine whether the Administration's failure to obligate these funds was intentional, and thereby, constituted a rescission, which the Comptroller General is authorized to report under section 1015 of the Impoundment Control Act, 31 U.S.C. 1405.

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We discussed this matter with Department of Education officials and reviewed documents relating to plans to obligate funds available for the program. We verified that approximately \$532,211 remained unobligated on September 30, 1980, and obligational authority was cut off as of that date, as required.

As part of its program of career education incentives, the Department planned to issue contracts for the demonstration and validation of a comprehensive elementary/secondary career education project. The contracting officer wrote the Commerce Business Daily on July 3, 1980, the day after Congress completed action on the Supplemental Appropriations and Rescission Act, to request that it publish a notice of a Request for Proposals (RFP) for the contract. The notice appeared on July 15, 1980, containing an announcement that the RFP would be issued on July 21, 1980.

RFP 80-81 contained a closing date for accepting offers of September 2, 1980. The RFP later was amended to change the closing date to September 8 because, according to the contracting officer, the Department's policy is that the closing date will be at least 45 days after the date the RFP is issued. September 8 was the 49th day after the RFP was issued.

Twenty offerors submitted responses to the RFP. A panel of employees familiar with the program was appointed by the project officer to evaluate the responses, using criteria contained in the RFP. The panel completed its work on September 16, 1980, and reported the results on Friday, September 19 to the Grants and Procurement Management Division. Fourteen of the responses were considered unacceptable.

The remaining six offerors were informed on September 24 that clarifications on technical aspects of their proposals were needed and September 26 was established as the deadline for submitting the clarifications and a revised cost proposal. During discussions with the bidders, it became apparent to the Department that the September 26 deadline could not be met. The deadline was extended to September 29.

The panel met on September 30 at 9:00 a.m. to consider the six revised proposals. Its report was submitted to the contracts group of the Grants and Procurement Management Division at 12:10 p.m. The next step was to allow the bidders to submit their "best and final" offers. However, the contracting officer decided that there was not enough time to complete the procurement process for several reasons. The contracting

officer considered it unreasonable that bidders would have less than 1 day to develop and present their "best and final" offers. The Department was sensitive to the possible criticism it would receive if it rushed the completion of the contract award process, thereby allowing the bidders and agency officials very little time to evaluate the proposals. The contracting officer also was concerned with the difficulty of having the eventual awardee sign the contract before the fiscal year expired later that day because five of the six bidders were located outside the Washington area. Therefore, no award was made on the RFP.

Rescission is not specifically defined in the Impoundment Control Act. However, section 1012 (31 U.S.C. 1402) provides guidance as to when a rescission exists. Section 1012 requires the President to report a proposed rescission

"Whenever the President determines that all or part of any budget authority will not be required to carry out the full objectives or scope of programs for which it is provided or \* \* \* should be rescinded for fiscal policy or other reasons \* \* \* or \* \* \* provided for only one fiscal year is to be reserved from obligation for such fiscal year \* \* \*."

The funds involved here have been available for obligation continuously since our report of June 23, 1980. No reserve has been established. We have found no evidence to establish that the President, or any agency official, determined that the funds should not be spent for the program because they were not needed, or for fiscal policy or other reasons.

Likewise we are unable to conclude that the procurement process engaged in by the agency was so unusual or unreasonably long that an intent to delay the obligation of funds until the fiscal year expired can be imputed to the agency. The fact that funds lapse, or that proposed contracts are not awarded does not, by itself, constitute a rescission. This is true even when the cause is the agency's ineffective administration of the program. In this regard, we note that you have notified the Secretary of Education of your concerns on how the Department administers their programs and the funds appropriated to them.

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I hope this addresses your inquiry. If we can be of further assistance, please contact Mr. Jeffrey Jacobson of our Office of General Counsel.

Sincerely yours,

Mary E. [unclear]

For the Comptroller General  
of the United States