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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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B-156101

MAY 4 - 1965

Hercules Powder Company, Inc.
Explosives and Chemical Propulsion
Department
Wilmington, Delaware 19899

Attention: J. D. Hayes
General Manager

Gentlemen:

1965
Your telegram of April 2, 1965, as supplemented by your letter of April 5, requests that we reconsider our decision B-156101 of March 25, relative to your protest against consideration of two late mailed bids. The bids in question, which were submitted under Invitation for Bids No. 197-175-65, issued November 10, 1964, by the United States Naval Ordnance Plant, Louisville, Kentucky, were received in the bid opening office subsequent to the time fixed in the IFB for bid opening. In our decision, we held that one of the bids, submitted by the Arlind Company of Fairfield, New Jersey, could be considered for award, and it is this part of our decision with which you take issue.

Briefly, the IFB stated that bids would be opened at 1:30 p.m., Eastern Standard Time, December 2, 1964. The Arlind bid was mailed by registered mail, air mail special delivery, from the West Caldwell branch of the Caldwell, New Jersey, post office. The assistant superintendent of the West Caldwell branch post office furnished a statement that the bid had been mailed prior to 5:00 p.m. on December 1. The postmaster at the Louisville, Kentucky, post office, which serves the bid opening office, furnished a statement that a bid so mailed should have been delivered to the bid opening office prior to the 1:30 p.m. bid opening on December 2. Accordingly, we held that pursuant to the provisions of Armed Services Procurement Regulation 2-303.3, which governs the consideration of late mailed bids, the bid was eligible for consideration for award. In this connection, we have been informally advised by the Department of the Navy that award was made to Arlind on March 30.

You question the credibility of the statement of the Louisville postmaster regarding the normal delivery time for the Arlind bid. You state that you have mailed several test letters by registered

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airmail special delivery at various afternoon hours from the West Caldwell branch post office to the bid office in Louisville and that none of the letters reached the bid office by 1:30 p.m. the following day. Therefore, you state, it is clear that a bid so mailed at 5:00 p.m. is not likely to reach the bid office prior to 1:30 p.m. the following day, especially during the Christmas mail rush. Accordingly, you contend that the present evidence, which you consider to be "far more reliable than any statement which is based on mere theory," indicates that the statement of the Louisville postmaster is not reliable.

ASPR 2-303.3(c), which sets forth the evidentiary requirements concerning delivery time of late mailed bids, reads as follows:

"(c) Delivery Time. Information concerning the normal time for mail delivery shall be obtained by the purchasing activity from the postmaster, superintendent of mails, or a duly authorized representative for that purpose, of the post office serving that activity. When time permits, such information shall be obtained in writing."

Under such provision, the normal time for mail delivery is the deciding factor. There is no requirement that a bidder furnish evidence that his bid could have been timely delivered with allowance for abnormal delays. Accordingly, while it is questionable whether the Christmas mail rush could have delayed the delivery of an item sent by first-class mail more than three weeks before Christmas, such factor need not be considered under the regulation.

Concerning the reliability of the statement of the Louisville postmaster as opposed to your experience involving mail between the points in question, the regulation requires that the evidence of delivery time be obtained from the postal officials at the post office serving the purchasing activity. Whether normal mail handling schedules, as stated by a responsible post office official, are consistently maintained in actual operations is not in our view a proper subject of inquiry under the regulations here in question. It must be presumed that a prospective bidder inquiring of the postal authorities as to when a bid should be mailed in order to be delivered on time would be advised on the basis of the normal schedules, and we believe that the bidder would be entitled to rely upon that advice. On the same basis we believe that the regulation correctly requires

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that full credence be given by the contracting agency to the statement of the postal authorities as to normal time for mail delivery. Furthermore, the mere fact that mail transmitted between the points in question subsequent to the bid opening date did not reach the bid opening office within a specified time does not render incorrect the statement of the Louisville postmaster concerning normal delivery time on the bid opening date.

Accordingly, we must conclude that the evidence of both time of mailing and normal time of delivery of the Aerial bid was strictly in compliance with the controlling regulation, which is binding upon our Office as well as upon the contracting agency.

For the reasons stated, we find no reason to change or modify our previous decision, even if award had not already been made in reliance thereon.

Very truly yours,

Joseph Campbell

Comptroller General
of the United States