



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

B-178862

40049  
October 10, 1973

J. L. Krause, Esquire  
Post Office Box 81693  
Lincoln, Nebraska 68501

Dear Sir:

By letter dated June 7, 1973, you protested on behalf of the Frieden Construction Company the award of a contract to McCrea Water Tower Maintenance and Repair Company (McCrea). The contract was awarded on May 25, 1973 by the Veterans Administration Hospital, Lincoln, Nebraska, under solicitation No. 597-30-73 for the demolition of a water tower at the hospital.

Bids were opened at 1:30 p.m., April 16, 1973. Two bids were received. At 10:50 a.m., April 17, 1973, a bid was received from McCrea. The bid had been sent by registered Air Mail from Mission, Texas and was postmarked April 12, 1973.

The sending and receiving post offices were both contacted and the information submitted by them indicated that McCrea's bid normally should have been received prior to bid opening.

In this regard the applicable Federal Procurement Regulations (FPR 1-2.303-3) provide that late bids sent by registered mail may be considered for award if:

"\* \* \* it is determined that the lateness was due solely to a delay in the mails (based on evidence obtained pursuant to § 1-2.303-3 (h), (c), and (d)) for which the bidder was not responsible.

"(b) Registered mail. The time of mailing of a late bid mailed by registered mail may be determined by the date in the postmark on the registered mail receipt or registered mail wrapper. The time of mailing shall be deemed to be the last minute of the date shown in such postmark unless the bidder furnishes evidence from the post office station of mailing which establishes an earlier time \* \* \* .

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"(d) Delivery time. Information concerning the normal time for delivery shall be obtained by the procuring 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 in writing."

The record indicates that the postmark on the registered mail wrapper or envelope was April 12, 1973. A letter from the sending post office states that the subject letter left that post office at 5:15 p.m. on April 12, 1973. We have been informed that this is the only daily mail shipment from Mission, Texas. The postmaster at the Lincoln, Nebraska Post Office, the post office serving the procuring activity, advises that under normal circumstances this letter should have been received prior to bid opening. Based on this information, we conclude that the contracting officer complied with the applicable regulations. We do not attach any significance to the fact that the agency, rather than the bidder, obtained the evidence establishing the time of mailing as required by FPR 1-2.303-3(b).

In this regard, you have referred in your letter to the failure of the agency to comply with certain provisions of the Administrative Procedure Act (APA). However, we note that the APA specifically excludes agency contracts from the requirements of the Act. See 5 U.S.C. 553 (a)(2).

Accordingly, we have no grounds upon which to object to consideration of McCrea's bid, and therefore your protest is denied.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States