

DECISION

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

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FILE: B-220465 **DATE:** January 28, 1986
MATTER OF: Tumpane Services Corporation

DIGEST:

1. A protester, which did not submit a proposal but is a potential competitor if the protest is successful, is an interested party to pursue a protest that firm was unable to submit a proposal because of its uncertainty concerning the applicability of a state leasehold excise tax which would affect offeror's price.
2. Where request for proposals requires that the contract price include all applicable taxes, state leasehold excise tax which is of doubtful applicability must be included in an offer.
3. Where solicitation requires that the contract price include all applicable taxes and prospective offerors have information which is needed to compute amount of state leasehold excise tax, prospective offeror could have prepared offer including an amount for state leasehold excise tax of doubtful applicability.

Tumpane Services Corporation (Tumpane) protests that the uncertain applicability of the Washington State leasehold excise tax makes it impossible to prepare a price proposal under request for proposals (RFP) No. 10PN-NCS-0408 issued by the General Services Administration (GSA) for operation of the GSA Fleet Management Center in Vancouver, Washington. This solicitation was issued as part of a cost comparison under Office of Management and Budget Circular No. A-76 to determine whether it is less expensive to contract out the work instead of performing it in-house.

We deny the protest.

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Initially, GSA argues that Tumpane did not submit an offer under this RFP and therefore is not an interested party for purposes of filing a protest on this procurement. Tumpane reports that it attended the preproposal conference and site visit and was in the process of preparing its proposal when it filed this protest prior to the closing date for the receipt of proposals. An interested party is defined in the Competition in Contracting Act of 1984 (CICA), 31 U.S.C.A. § 3551(2) (West Supp. 1985), as an "actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract." This statutory definition of an "interested party" is reflected in the language of our Bid Protest Regulations, which implement CICA. 4 C.F.R. § 21.0(a) (1985). Under CICA and our implementing Bid Protest Regulations, Tumpane's interest as a potential competitor if the protest is successful is sufficient for it to be considered an interested party. See Deere & Co., B-212203, Oct. 12, 1983, 83-2 C.P.D. ¶ 456.

The RFP requires that the contract price include all applicable federal, state and local taxes. Tumpane is uncertain whether the Washington State leasehold excise tax is applicable to contracts with the federal government due to pending litigation challenging the applicability of this tax. It further argues that, assuming the Washington State leasehold excise tax is applicable here, the tax is based on the fair market rental value of government furnished facilities and equipment, but that the RFP does not provide data such as the age, condition and estimated useful life of the government furnished items which are necessary for determining the rental value of those items possibly subject to the tax. Therefore, it argues that it cannot determine the amount of the tax. Tumpane asserts that the closing date for the receipt of proposals should have been delayed until the Washington State Department of Revenue (Department of Revenue) determined the applicability and the amount of the leasehold excise tax.

GSA responds that it is the protester's burden to ascertain whether any taxes apply and to include an amount for taxes in its offer. GSA argues that, since Tumpane was aware of the Washington State leasehold excise tax, the solicitation listed all of the government furnished items, and there was a site visit allowing offerors to examine the management center, Tumpane had available all of the information necessary to determine an amount for the leasehold excise tax.

Unless otherwise specified in the RFP, an RFP clause requiring that the contract price include all applicable taxes constitutes notice to all offerors that offers will be evaluated on a tax-included basis and places the burden on the offeror to ascertain whether any taxes apply and to include the amount of such taxes in its price. See NASCO Products Co.--Reconsideration, B-192116, Feb. 16, 1979, 79-1 C.P.D. ¶ 116. This burden is placed on offerors because they generally are more familiar with the application of state and local taxes than is the contracting officer. Nearly all of the states and numerous localities impose taxes, and the applicability of state and local taxes varies from state to state and from one locality to another. See Trail Equipment Co., B-206975, Apr. 20, 1982, 82-1 C.P.D. ¶ 366. Additionally, contracting agencies generally are not sufficiently familiar with offerors' operations, e.g., whether or not the offeror intends to use all of the government furnished items, to make determinations concerning applicability of taxes to the contract, and it would be inappropriate to impose on them the burden of examining the tax situation of each offeror who may elect to submit an offer. See J & W Welding and Fabrication, B-209430, Jan. 25, 1983, 83-1 C.P.D. ¶ 92.

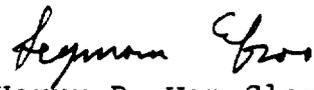
The purpose of soliciting offers on a tax-included basis is to limit the government's payment obligation to the price offered--the contractor could not claim at a later date that the government should reimburse the firm for any taxes that the firm ultimately has to pay which allegedly were not contemplated when the offer was submitted. See The Goodyear Tire & Rubber Co., B-203212, Mar. 1, 1982, 82-1 C.P.D. ¶ 172.

Here, Tumpane has objected to GSA's proceeding with this procurement without having the Department of Revenue determine whether the Washington State leasehold excise tax applies to this contract and, if so, the amount of the tax. Tumpane suggests that GSA was required to refer the tax question to Washington State. As indicated above, Tumpane was required under the RFP to include the Washington State leasehold excise tax in its contract price even though it was not certain that the tax applied in this case and thus it was Tumpane's responsibility to consider the tax in pricing its offer. Under these circumstances, the agency was not required to delay the closing date and refer the determination of the tax's applicability to Washington State.

Tumpane also argues that without the aid of the Department of Revenue, it could not determine the amount of the Washington State leasehold excise tax and therefore could not prepare an intelligent offer. We disagree. As a contractor, the burden is on Tumpane to determine the amount of the tax. The record indicates that the solicitation listed all of the government furnished items and that offerors had the opportunity to examine these items during the on-site visit. Furthermore, as a contractor in this field of operations, Tumpane should be familiar with the type of items involved here, e.g., overhead lubrication reels and motor oil pumps, and their value. We think Tumpane should have had sufficient information to assess the fair market rental value of the government furnished items and then compute the amount of tax to include in its offer. We note that although Tumpane may not have known the exact fair market rental values and would have to estimate those values in order to compute the amount of tax to include in its offer, risk is inherent in most contracts and offerors are expected to allow for that risk in computing their offers. See Palmetto Enterprises, B-190060, Feb. 10, 1978, 78-1 C.P.D. ¶ 116. Thus, the determination of the amount of the Washington State leasehold excise tax also does not provide a basis for delaying the closing date.

We, therefore, conclude that Tumpane had the information necessary to prepare a price proposal which took into consideration the magnitude of the Washington State leasehold excise tax and, thus, GSA was not required to postpone the closing date and refer this matter to the Department of Revenue. See DEL-JEN, INC., B-219950, Sept. 18, 1985, 85-2 C.P.D. ¶ 301.

The protest is denied.

for 
 Harry R. Van Cleve
 General Counsel