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The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Cornelius Architectural Products

File: B-224140

Date: October 29, 1986

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### DIGEST

Where IFB requires that bid prices include all applicable taxes, a bid which provides "Price does not include any applicable taxes," without specifying amount of tax excluded, is nonresponsive.

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### DECISION

Cornelius Architectural Products (Cornelius) protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) No. 501-85-86, issued by the Veterans Administration (VA) for fabrication and installation of signs at its Medical Center in Albuquerque, New Mexico. The VA rejected Cornelius' bid because, among other reasons, it included a statement that "Price does not include any applicable taxes," whereas the IFB required that the bid price include all applicable federal, state and local taxes. Cornelius contends that the federal government does not pay taxes, and that the statement in its bid merely confirms this.

We deny the protest.

The Federal Acquisition Regulation (FAR) generally requires that all solicitations for fixed-price contracts performed in the United States contain a clause requiring the bidder or offeror to include all applicable federal, state, and local taxes and duties. FAR, 48 C.F.R. § 29.401-3 (1985). Since contractors generally are more familiar with the application of state and local taxes than the contracting officer, this clause places the burden on the bidder to ascertain if any taxes are applicable and to include the amount of such taxes in its price. NASCO Products Co.--Reconsideration, B-192116 Feb. 16, 1979, 79-1 C.P.D. ¶ 116.

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Nearly all of the 50 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--some jurisdictions impose the tax on the vendor, while others impose the tax on the purchaser. Id. Concerning Cornelius' contention that the federal government does not pay taxes, it is true that where the legal incidence of the tax falls directly on the United States as the buyer of goods, Kern Limeric, Inc. v. Scurlock, 347 U.S. 110 (1954) or as the consumer of services, 53 Comp. Gen. 410 (1973), or as the owner of property, United States v. Allegheny County, 332 U.S. 17 (1944), it may not be taxed by states and their inferior governmental units. However, if the legal incidence of the tax falls directly on a business enterprise (the "vendor") which is supplying the federal government as a customer with goods or services, it is the contract or other agreement which determines what the government must pay for the items supplied. Contract language stating that the price includes all applicable taxes will authorize full payment of the contract price, even though some of the cost of the item is attributable to taxes paid by the vendor. 45 Comp. Gen. 19 (1965); B-160129, Dec. 7, 1966.

Unless otherwise specified in the IFB, the inclusion of the standard tax clause constitutes notice to all bidders that bids will be evaluated on a tax-included basis. The George Sollitt Construction Co., B-190743, Sept. 25, 1978, 78-2 C.P.D. ¶ 224. The submission of a bid on a tax-excluded basis is viewed as evidence of the bidder's belief, absent definite information to the contrary, that taxes may be assessed, and of his unwillingness to assume payment of such taxes at his bid price. NASCO Products Co., B-192116, Nov. 27, 1978, 78-2 C.P.D. ¶ 364. Nevertheless, the bid still may be considered if the class and amount of the tax are specified elsewhere in the bid, because such information permits all bids to be evaluated on an equal basis. J & W Welding and Fabrication, B-209430, Jan. 25, 1983, 83-1 C.P.D. ¶ 92. Absent such information the bid cannot be evaluated on an equal basis with other bids, and must be considered nonresponsive. Trail Equipment Co., B-206975, Apr. 20, 1982, 82-1 C.P.D. ¶ 366. Since Cornelius' bid stated only that "Price does not include any applicable taxes," without further explanation, it was properly rejected as nonresponsive.

Cornelius suggests that the defect in its bid should be waived as a minor informality or irregularity. However, because of the effect of the excluded taxes on Cornelius' price, the defect in its bid cannot be waived. See Federal

Acquisition Regulation, 48 C.F.R. § 14.405 (1985); NASCO Products Co.--Reconsideration, B-192116, supra, at 2.

Cornelius argues that the government would save money by accepting its bid. Although rejection of Cornelius' bid may result in additional cost to the government on this procurement, we have consistently held that a nonresponsive bid may not be accepted even though it would result in savings to the government, since acceptance of such a bid would compromise the integrity of the competitive bidding system. Industrial Structures, Inc., 64 Comp. Gen. 768 (1985), 85-2 C.P.D. ¶ 165.

The protest is denied.

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