

DECISION

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

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60956

FILE: B-186123

DATE: June 4, 1976

MATTER OF: Domar Industries

98857

DIGEST:

Protest that low bidder did not include Federal Excise Tax (F.E.T.) in its bid price under invitation which provided that all Federal, State and local taxes (including F.E.T.) were included in bid price and resulting contract price is denied as bidder took no exception to requirement and unless bid affirmatively shows that taxes are excluded, it is presumed that taxes are included in bid price.

The United States Army Tank-Automotive Command, Warren, Michigan, issued invitation for bids (IFB) No. DAAE07-76-B-1904 for 1,527 wiring harnesses for the 3/4-ton two-wheeled cargo trailer.

The two lowest unit price bids of \$5.78 and \$5.95 were submitted by Aurora Cord & Cable Company (Aurora) and Domar Industries (Domar), respectively. Domar has protested any award to Aurora under the IFB because, allegedly, Aurora did not include Federal Excise Tax (F.E.T.) in its bid as required.

The bidding schedule of the IFB provided that the unit price included all Federal, State and local taxes, including F.E.T. In addition, the IFB incorporated by reference the standard tax clause prescribed by Armed Services Procurement Regulation § 7-103.10(a) (1975 ed.) which provides that the contract price includes, inter alia, all applicable Federal taxes.

Domar contends that it has knowledge that Aurora, as a standard practice, does not include the F.E.T. in its bids on Government contracts and, therefore, if the applicable F.E.T. is added to Aurora's bid, Domar's bid is low.

A review of Aurora's bid shows that no exception was taken to the requirement that F.E.T. was applicable and included in the bid price. See 49 Comp. Gen. 782, 786 (1970). There was no requirement in the IFB that the F.E.T. be priced separately but only a lump-sum-unit price was required. Cf. 37 Comp. Gen. 864 (1958). Therefore, Domar has submitted a responsive bid and is liable for any taxes applicable to the instant procurement including F.E.T. Unless a bid affirmatively shows that taxes are excluded from the bid price, it is presumed that taxes are included in that price. 16 Comp. Gen. 1095 (1937). There need be no affirmative statement that taxes are included in the bid price. 20 Comp. Gen. 711, 715 (1941). Contrast Allis-Chalmers Material Handling Sales and Service, B-183228, May 6, 1975, 75-1 CPD 280, and 41 Comp. Gen. 289 (1961), where bids on a tax-excluded basis were found to be properly rejected as non-responsive.

Finally, Domar requests that our Office review the F.E.T. returns of Aurora for the past several years to ascertain if Aurora has been paying the F.E.T. where applicable. Domar indicates that an audit by the Internal Revenue Service of Aurora's 1973 F.E.T. procedures is unresolved to date. We believe the matter of Aurora's prior tax practices has no effect on the acceptability of that firm's bid here.

Accordingly, the protest is denied.



Acting Comptroller General
of the United States