

108628

E. Wells
Tr...



DECISION

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

9197

FILE: B-192116

DATE: February 16, 1979

MATTER OF: NASCO Products Company - Reconsideration

DIGEST:

DAR 7-103.10 requires bidders to include all applicable taxes in the bid price and the insertion in the bid of the words "All Taxes Excluded" makes the bid nonresponsive.

NASCO Products Company (NASCO) requests reconsideration of our decision in NASCO Products Company, B-192116, November 27, 1978, 78-2 CPD 364. In that decision we denied a protest to the action of the Defense General Supply Center at Richmond, Virginia, in rejecting, as nonresponsive, the bid of NASCO which provided "All Taxes Excluded."

NASCO contends that no taxes were applicable under its bid and that the purpose of inserting "All Taxes Excluded" in the bid was to warrant that no amounts had been included in its bid for taxes. NASCO also contends that the GAO failed to consider the failure of other bidders to include warranties that taxes were not included in their bids. NASCO further urges that it is the Government's burden, when Invitation for Bids are requested, to inform contractors of any applicable taxes.

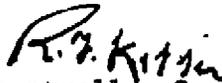
Paragraph 7-103.10 of the Defense Acquisition Regulations (DAR) provides under subparagraph (a) that the price bid shall include all applicable Federal, State, and local taxes and duties. The burden is thus placed on each participating bidder to ascertain if any taxes are applicable and to include the amount of such taxes in the prices bid. The applicability of state and local taxes varies from state to state and from one locality to another. Some jurisdictions impose their tax on the vendor, others impose the tax on the purchaser. Since state and local governments may not impose a tax on the Federal Government, taxes levied on the purchaser are not for payment by the Federal Government. Since nearly all of the 50 states and numerous localities impose taxes, and since contractors are generally more familiar with the application of those particular taxes than the contracting officer, the Government has required the bidding contractor to include all applicable taxes in the bid price.

If, however, an additional Federal excise tax or duty becomes applicable after a contract is awarded, subparagraph (b) of DAR 7-103.10 permits the contractor to ask for an increase in the contract amount to recover the additional taxes, providing the contractor warrants in writing that no part of the amount claimed was included in the initial bid price as a contingency reserve. The written warranty is required only where there is an increase in applicable taxes after the contract has been awarded.

NASCO contends that the contracting officer should have requested deletion of the objectionable condition, but subparagraph (5) of DAR paragraph 1-2.404-2 provides that deletion of objectionable material can be requested only if the condition does not go to the substance of the bid as distinguished from the form of the bid. Subparagraph (5) further provides that the condition goes to the substance of the bid where the condition affects the price. Since the addition of any applicable taxes would affect the total price, a request for deletion of "All Taxes Excluded" would have been improper.

NASCO's bid does not state that no taxes were applicable. It states, "All Taxes Excluded." Thus if any taxes were applicable at the time of the bid, a contractor might claim payment for them from the Government. To avoid this possibility the Invitation for Bids required bidders to include all applicable taxes in the bid prices.

The prior decision is affirmed.


Deputy Comptroller General
of the United States