

“Soldiers’ and Sailors’ Civil Relief Act” heretofore quoted. The wording of that act is particularly unambiguous, and in my opinion is sufficient to require substitution of six (6%) per cent interest for interest and penalty otherwise provided by law in this state.

To specifically answer your question, it is my opinion that as to taxes which come within the scope of the provisions of the “Soldiers’ and Sailors’ Civil Relief Act” quoted herein the County Treasurer is required to accept, in lieu of the penalties and interest normally otherwise charged, interest of six (6%) per cent per annum.

OFFICIAL OPINION NO. 24

April 21, 1953.

John A. Cartwright, Director,
Division of Public Works and Supply,
404 State House,
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion which reads as follows:

“In a great many instances in requesting bids on various items, quotations are received from both In-State and Out-State vendors. In some cases bids are so close that the State Gross Income Tax paid by the In-State bidder, if considered, would establish the low bid, therefore will you please render an official opinion, upon the following, to-wit:

“Whether or not the Gross Income Tax that is paid by vendors located in the State of Indiana in bidding on purchases by the State, can be considered in bidding against vendors from outside State of Indiana.

“I also would like your official opinion as to what discretion I may have in determining the lowest and best bidder in case of purchases by the State of Indiana, and the highest responsible

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bidder in case of sales, as set out in Acts of 1947, Chapter 279, Section 13.”

In order to answer your question it is necessary to determine first what is the lowest or best bidder.

It has frequently been held that a statute requiring the acceptance of the lowest and best bidder is not a mandate to accept the lowest bid, e. g.

Boseker v. Wabash County Commissioners (1882),
88 Ind. 267.

In this regard it has also been held that the word “responsible” does not refer solely to pecuniary responsibility only:

Douglass v. Commonwealth (1885), 108 Pa. 559, 42
Leg. Int. 337;

Commonwealth v. Mitchell (1876), 82 Pa. 343;

Hoole v. Kindead (1881), 16 Nev. 217.

See also:

Panozzo v. City of Rockford (1940), 306 Ill. App.
443, 28 N. E. (2d) 748;

State *ex rel.* Howell v. Schiele (1949), 85 Ohio App.
356, 88 N. E. (2d) 215.

Some of the factors which may be considered are quality of material:

Mitchell v. Walden Motor Co. (1937), 235 Ala. 34,
177 So. 151.

the judgment and skill of the bidder:

O'Brien v. Carney (1934), 6 F. Supp. 761.

the experience, efficiency, and reputation of the bidder:

Chaffee v. Crowley (1922), 49 N. D. 111, 190 N. W.
308;

People v. Omen (1919), 290 Ill. 59, 124 N. E. 860;

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Hudson v. Board of Education of Wheelersburg Rural School Dist. (1931), 41 Ohio App. 402, 179 N. E. 701;

Wilson v. City of New Castle (1930), 301 Pa. 358, 152 A. 102;

Duboise Construction Co. v. City of South Miami (1933), 108 Fla. 362, 146 So. 833;

State v. Board of Commissioners of State Institutions of Nebraska (1921), 105 Neb. 570, 181 N. W. 530.

the character, moral worth, integrity, credit and conscientiousness of the bidder:

Williams v. City of Topeka (1911), 85 Kan. 857, 118 P. 864, 38 L. R. A. (N. S.) 672, Ann. Cas. 1913 A, 497;

Hutto v. State Board of Education (1932), 165 S. C. 37, 162 S. E. 751;

Ellingson v. Cherry Lake School Dist. (1927), 55 N. D. 141, 212 N. W. 773;

State v. Rickards (1896), 16 Mont. 145, 40 P. 210, 28 L. R. A. 298, 50 Am. St. 476;

Wilson v. Lord-Young Engineering Co. (1912), 21 Haw. 87;

Bright v. Ball (1925), 138 Miss. 508, 103 So. 236;

Willis v. Hathaway (1928), 95 Fla. 608, 117 So. 89;

Koich v. Cvar (1941), 111 Mont. 463, 110 P. (2d) 964;

Picone v. City of New York (1941), 176 Misc. 967, 29 N. Y. S. (2d) 539.

the ability of the bidder to respond and answer in accordance with what is expected or demanded and to fulfill in letter and spirit the contract made with him:

People v. Dorsheimer (1878), 55 How. Prac. (N. Y.) 118;

Hallet v. City of Elgin (1912), 254 Ill. 343, 98 N. E. 530;

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- O'Neil v. City of Chicago (1918), 205 Ill. App. 508;
People *ex rel.* Assyrian Asphalt Co. v. Kent (1896),
160 Ill. 655, 43 N. E. 760;
Sanderlin v. Luken (1910), 152 N. C. 738, 68 S. E.
225.

What is in one way the most important consideration of all, the public authorities in granting contracts on bids may take into advisement the accessibility of the bidder and of his source of supply to the granting authorities, the project concerned, and the law enforcement powers of the sovereign:

Osborn v. Mitten (1926), 30 Ariz. 372, 6 P. (2d) 902.

Furthermore, in the application of these principles and facts the granting must not give a mere perfunctory examination to them but must exercise the discretionary powers given them by the Legislature and consider the entire matter in a deliberative fashion, considering the whole problem in its entirety and rendering a decision only after all of the above facts and principles have been brought into harmony with the circumstances of the particular case to form a united and indivisible totality of cause, effect and result:

Interstate Vitrified Brick & Paving Co. v. City of Philadelphia (1894), 164 Pa. 477, 30 A. 383;

Hibbs v. Arensburg (1923), 276 Pa. 24, 119 A. 727;

West v. City of Oakland (1916), 30 Cal. App. 556,
159 P. 202;

Mazet v. City of Pittsburgh (1890), 137 Pa. 548, 20
A. 693;

Commonwealth *ex rel.* Snyder v. Mitchell (1876), 82
Pa. 343;

Hannan v. Board of Education of the City of Lawton
(1909), 25 Okl. 372, 107 P. 646, 30 L. R. A. (N. S.)
214;

Board of Commissioners of Wyandotte County v.
Davis (1914), 92 Kan. 672, 141 P. 555, L. R. A.
1915 A, 198;

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Reuting v. City of Titusville (1896), 175 Pa. 512, 34 A. 916;

State v. Board of Education of Columbus (1899), 6 Ohio N. P. 336;

Hodgman v. City of San Diego (1942), 53 Cal. App. (2d) 610, 128 P. (2d) 412;

Culpepper v. Moore (1949), 40 So. (2d) 366 (Fla.).

Thus it is readily apparent that the fact that a bidder was a resident of Indiana might well make him the lowest and best bidder although his bid was substantially higher than the bid of a non-resident of this state. F

An examination of the statutes relative to the duties of the Division of Public Works and Supply and the Director thereof fails to show any authorization for a direct consideration as such of whether a bidder is subject to payment of Indiana Gross Income Tax. See for example Section 6, Chapter 110 of the Acts of 1945 which is found in Burns' Indiana Statutes Annotated (1951 Repl.), Section 60-617, and Section 13, Chapter 279 of the Acts of 1947 which is found in Burns' Indiana Statutes Annotated (1951 Repl.), Section 60-1813.

Summarily the Gross Income Tax Act contains no specific authority to include gross income tax as such in any contract or sale price. See for example Section 2, Chapter 50 of the Acts of 1933 as last amended, which is found in Burns' Indiana Statutes Annotated (1951 Repl.), Section 64-2602.

To answer your question specifically, on the basis of these authorities, whether or not a prospective vendor is subject to gross income tax is not a direct consideration in determining which bidder is the lowest and best bidder.

In answer to your second question you have wide discretion in determining the lowest and best bidder. You may consider the various factors heretofore enumerated including the accessibility of the bidder. G