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**DECISION**



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

FILE: B-200718.2

DATE: September 29, 1981

MATTER OF: A. J. Fowler Corporation--Request for  
Reconsideration

**DIGEST:**

Prior decision sustaining protest against award of refuse collection and disposal contract is affirmed since record does not establish that decision was based on any error of law or fact.

A. J. Fowler Corporation requests reconsideration of our decision in Moore Service, Inc., B-200718, August 17, 1981, 81-2 CPD 145, in which we sustained a protest against award to Fowler under invitation for bids (IFB) DABT51-80-P-0048 issued by the Department of the Army. The IFB sought bids for refuse collection and disposal services at 3,582 quarters at Fort Bliss, Texas. We sustained the protest because the Army failed to advise offerors of its plans to increase the number of 80-84 gallon "mobile toters" which the Army expected to provide in place of the 30 gallon galvanized containers at most of the quarters. We found that a competition based on the imminent availability of that increased number of toters may have yielded a substantial reduction in the bid prices. We therefore recommended that the Fowler contract renewal option not be exercised, and that the Army conduct a new procurement and award a new contract for the fiscal year 1982 requirement.

According to Fowler, our decision was in error because we failed to recognize that the contractual obligation on which offerors bid was to provide service based on quarters, not on toters or 30 gallon containers. Fowler contends that each bid reflected agreement to service all 3,582 quarters at Fort Bliss at the bid price, regardless of whether the Army furnished toters, cans, or some other container. Since the material contract specification--the number of quarters to be serviced--never changed, Fowler believes our decision should be reversed.

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Contrary to Fowler's belief, however, we did recognize in our prior decision that no change in the description of the service to be performed was involved. We sustained Moore's protest because to allow contracting personnel to make an award which they should know is not based on the conditions under which performance will occur undermines the integrity of the competitive bidding system in the same way as does an award based on specifications that the agency knows will change materially. We indicated that we considered a substantial modification to the amount or nature of Government-furnished equipment--here, an increase from 1,425 to 3,582 in the number of quarters to be equipped with toters--to be a material change in the conditions of performance.

Regarding this last point, Fowler states that even if it had known of the projected increased number of toters, it would have made no change in its bid, since it would have used the same size crew and the same amount of equipment.

Whether there would have been enough of a potential savings through increased efficiency (as Moore claimed), or not (Fowler's view), to have altered the outcome of the original procurement is at this point largely academic. Fowler cannot be granted the relief it seeks in any event.

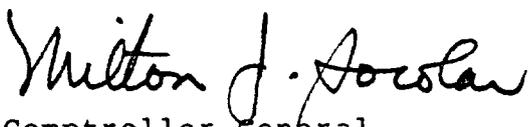
Concerning relief, Fowler argues that it was in no way responsible for the Army's action but will bear the burden caused by what has occurred if it is denied exercise of the two remaining annual renewal options. In this connection, Fowler states that it invested \$750,000 in equipment to perform the contract expecting that the options would be exercised, and will be placed in financially difficult circumstances if it is unable to continue performance.

The Army has filed a letter with our Office supporting Fowler in this regard. The Army points out that Moore was the incumbent contractor for about 20 years. According to the Army, Fowler was able to challenge Moore successfully because the Army invited and evaluated bids on one base and two option years, allowing Fowler to risk the capital involved in start-up and equipment costs.

While we sympathize with Fowler's position, the Government's desire to continue contracting with Fowler in order to permit the firm to write off start-up and equipment costs is not a basis recognized for option exercise under the Defense Acquisition Regulation (DAR). Instead, the DAR requires that the contracting officer determine whether exercise of an option is in the Government's interest by soliciting bids unless he has reason to believe that better pricing cannot be obtained. DAR § 1-1505(d) (1976 ed.). Fowler's and the Army's concern stems from their belief that better pricing can be obtained, since both fear Moore will underbid Fowler's price. Thus, in the absence of our August 17 recommendation, the Army could exercise the Fowler contract option, according to the regulation governing the exercise of an option, only if resolicitation fails to produce a lower price.

Since the record on reconsideration does not establish that our prior decision was based on any error of law or fact, that decision is affirmed. General Kinetics, Inc. - Reconsideration, B-196813.2, May 6, 1981, 81-1 CPD 348.

Acting

  
Comptroller General  
of the United States