



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** A.J. Fowler Corporation

**File:** B-249933

**Date:** September 2, 1992

A.J. Fowler for the protester,  
Herbert F. Kelley, Jr., Esq., Department of the Army, for  
the agency.  
Stephen J. Gary, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

Protest that solicitation for refuse collection and transportation is defective is summarily dismissed for failure to state a valid basis of protest; contrary to protester's contention that bid schedule is confusing and ambiguous, and provides for payment to the contractor on the basis of an arbitrary estimated tonnage figure, the solicitation unambiguously requests bidders to enter unit prices based on tonnage hauled, and provides for payment on the basis of actual tonnage.

### DECISION

A.J. Fowler Corporation protests the terms of invitation for bids (IFB) No. DABT39-92-B-0121, issued by the Department of the Army for refuse collection and transportation at Fort Sill, Oklahoma. According to Fowler, the solicitation's bid schedule is ambiguous and confusing, and should be modified.

We summarily dismiss the protest, since on its face the protest does not state a legally valid basis of protest. See 4 C.F.R. § 21.3(m) (1992).

The solicitation's bid schedule provides four blank spaces for bidders' unit prices, based on the amount of refuse to be collected and hauled, as follows:

Tonnage Range Per Month	Unit Price Per Ton
a. 100 - 175	\$ _____
b. 176 - 250	\$ _____
c. 251 - 325	\$ _____
d. 326 - 400	\$ _____

Totals a - d

\$ \_\_\_\_\_  
[divided by] 4 =  
\$ \_\_\_\_\_ (Avg price  
per ton to be  
multiplied by "EST  
TONS" shown below

Under "EST TONS" (estimated tons to be collected and hauled), the schedule indicates 234, which is the number to be multiplied by the average price per ton to equal the total cost.

Fowler objects that the bid schedule is defective, since item (d) must be subtracted from item (a), "which if item (d) is larger is impossible." The protester also argues that bidders will be paid only for 234 tons--the figure shown under estimated tons--regardless of how many tons they actually haul. According to Fowler, this figure is arbitrary: "if you haul 400 tons, you will be paid only for 234 tons." (Fowler also objects to two other areas of the bid schedule that are set up in the same manner as the above.)

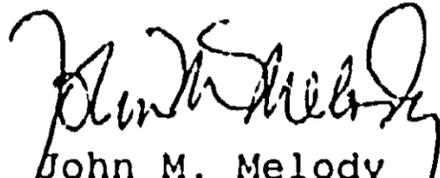
There is no basis for these objections. First, it is clear on the face of the bid schedule that "Totals a - d" does not, as Fowler argues, mean that (d) is to be subtracted from (a), but that, instead, bidders are to add up their four unit prices (lines a through d) prior to averaging them by dividing the total by four. The IFB is in no way ambiguous in this regard, but if there were any reasonable confusion possible, the IFB provides an example in note 2 to the schedule which clearly demonstrates how the calculations are to be performed. There, four different unit prices, one for each of the four tonnage ranges, are added together; the sum is then divided by four to produce an average price per ton.

Similarly, there is no basis for Fowler's assertion that the IFB can be read to provide that contract payment will be based on 234 tons rather than the tonnage actually hauled. In this regard, the IFB states that "at the completion of each month the Contractor will be paid the unit price from the tonnage range the actual tonnage is for that month." This language provides (albeit somewhat inarticulately) that the contract payment will be based on the tonnage hauled. The "estimated tons" figure, rather than provide the basis for payment, is to be used only for evaluating bid prices, as indicated by the IFB statement that: "For award purposes, the average of the unit prices per ton will be multiplied by the estimated tons shown for each of the contract line items."

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988). Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Brown Assocs. Mgmt. Servs., Inc.--Recon., B-235906.3, Mar. 16, 1990, 90-1 CPD ¶ 299. To achieve this end, our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds of a protest, 4 C.F.R. § 21.1(c)(4), and that the grounds stated be legally sufficient, 4 C.F.R. § 21.1(e). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Robert Wall Edge--Recon., B-234469.2, Mar. 30, 1989, 89-1 CPD ¶ 335.

In light of the plain meaning of the solicitation, Fowler's allegations of ambiguity and confusion in the terms clearly are without merit and thus fail to constitute a legally sufficient basis for protest.

The protest is dismissed.



John M. Melody  
Assistant General Counsel