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**DECISION**



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

*[Propriety of Army Contribution to Cost of Sewage Treatment Plants]*

FILE: B-199534  
B-200086

DATE: October 2, 1980

MATTER OF: Contribution by Army to Capital Costs of Sewage Treatment Plants serving Fort Bliss, Texas, and Fort Monroe, Virginia

**DIGEST:**

EPA refused to fund part of 75% Federal Water Pollution Control Act grants to El Paso, Texas, and Hampton Roads Sanitation District, Virginia, for wastewater treatment works construction attributed to Fort Bliss, Texas, and Fort Monroe, Virginia respectively. FY 1979 Military Construction Authorization and Appropriation Acts provided budget authority of \$1,209,000 for Fort Bliss and \$550,000 for Fort Monroe for these purposes. Since Congress intended to make up construction grant shortfall resulting from EPA's funding policy, Army may make otherwise proper contributions without requiring additional legal consideration. See 59 Comp. Gen. 1 (1979).

We have received separate requests for advance decisions from the Army regarding the propriety of its making a contribution to the City of El Paso, Texas, for part of the capital costs of the Haskell Street Treatment Plant serving Fort Bliss, Texas, and a contribution to the Hampton Roads Sanitation District, Virginia, for part of the capital costs of the District's Boat Harbor Plant serving Fort Monroe, Virginia. Since the requests are similar they will both be considered here.

About Fort Bliss, the submission indicates that expansion of facilities was undertaken by the City of El Paso pursuant to an Environmental Protection Agency (EPA) grant made under the Federal Pollution Control Act, 33 U.S.C. §§1251, et seq. (1976). However, EPA refused to fund the amount attributed to Fort Bliss, and funds were subsequently appropriated in accord with the Military Construction Authorization Act, 1979, for this purpose. We are told that the Army had attempted to negotiate a modification of the utility service contract with the City of El Paso for lower service rates in exchange for a contribution of funds appropriated for the project. After our decision, Federal Facility Contributions to Capital Costs of Sewage Treatment Plants,

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59 Comp. Gen. 1 (1979), the City of El Paso tentatively agreed that the Army's share would be \$907,613, which represents 11.5% of the total 75% Federal contribution.

A utility service contract between the Hampton Roads Sanitation District and the Army, for Fort Monroe, has been in effect since 1949, providing for service at the lowest available rate for similar conditions of service. On June 25, 1976, EPA notified the District of the award of a Federal grant under the Federal Water Pollution Control Act of 75% of the estimated eligible project costs of construction for the Boat Harbor wastewater treatment works with a deduction of \$508,750 as the Federal facility contribution based on 2% of the total design flow. On August 11, 1977, the Army agreed to participate in the capital cost of construction contingent on approval by the Congress of a request for funding. It was stated that Army participation would require modification of existing rates charged for Fort Monroe if payment of a 100% share of the costs attributed to the fort were agreed upon. For example, debt service or debt retirement costs for the remaining portion of the project would not be included in the charges. The proposal was accepted by the District. The Military Construction Authorization Act, 1979, authorized \$550,000 as a contribution to the sewer treatment facility construction. According to the District's billing of July 14, 1980, the payment for Fort Monroe was calculated at 75% of project cost, based on 1.77% flow, instead of the originally planned 100%. The amount is \$371,782.54. Fort Monroe would continue to be charged service rates as provided for by the current contract since the Army is not paying 100% of the cost attributed to the Fort but only the amount deducted under EPA's funding policy.

For the reasons stated below, we believe that the Army is authorized to make the proposed contributions, if otherwise proper, in lieu of EPA funding of 75% of construction costs of wastewater treatment works attributed to Fort Bliss and Fort Monroe.

#### Analysis

Sec. 101, Title I, of the Military Construction Authorization Act, 1979, Pub. L. No. 95-356, 92 Stat. 565, September 8, 1978, authorized acquisition and construction of projects at Fort Bliss, Texas, \$4,758,000, and at Fort

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Monroe, Virginia, \$550,000. Senate Report No.95-847, 95th Cong., 1st Sess. 16, 17 (1978) shows approval of a regional sewage system upgrade project at Fort Bliss and a project for participation in a regional sewage treatment plant for Fort Monroe.

The Military Construction Appropriation Act, 1979, Pub. L. No. 95-374, 92 Stat. 707, September 18, 1978, made appropriations for the Army as currently authorized in military public works or military construction Acts to remain available until September 30, 1983. House Report No.95-1246, 95th Cong., 2nd Sess. 64 (1978) indicated approval of requests for \$1,209,000 for regional sewage treatment plant upgrade at Fort Bliss, and for \$550,000 for a similar purpose at Fort Monroe. These amounts were also approved by the Senate.

Project data sheet DD Form 1391c, dated January 30, 1978, prepared to support the Army's budgetary request for Fort Bliss for \$1,209,000 stated:

"This project provides funds for the Army's proportional share of capital costs for required improvements to the City of El Paso's Haskell Street Sewage Treatment Plant which treats Fort Bliss sewage."

A request for \$550,000 for Fort Monroe is explained as follows:

"This project provides funds for the Army's proportional share of capital costs for sewage treatment plant upgrade by the Hampton Roads Sanitary District. The existing plant, which provides only primary treatment, will be expanded and upgraded to provide secondary treatment."

In 59 Comp. Gen. 1, to which we previously referred, we considered the propriety of payment by the Navy of part of the costs of constructing sewage treatment plants which were built under the Federal Water Pollution Control Act and which would serve nearby naval facilities. We concluded as follows:

"while we do not believe that EPA's funding policy is authorized by law, the Congress has chosen to make up

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the shortfall in construction grant support of wastewater treatment facilities by specifically appropriating funds to cover the Navy's share of the costs. If Navy contributes no more than 75 percent of the costs attributable to its use of a treatment system, no further consideration to offset this contribution is necessary. If it is required to or chooses to contribute more than 75 percent of the costs, it should insist on an additional benefit to the Government. The exact nature of such consideration is a matter for negotiation between the parties."

We believe that the similar considerations apply to the present cases.

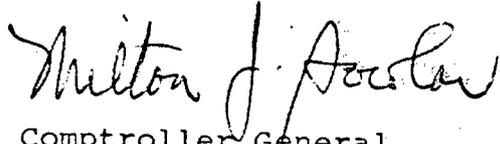
In its Fiscal Year 1979 budget submissions, the Army specifically requested authorization and appropriations for the Army's proportional share of capital costs for required improvements to the sewage facilities serving Forts Bliss and Monroe. Passage of the 1979 Military Construction Authorization and Appropriation Acts provided budget authority of \$1,209,000 for Fort Bliss and \$550,000 for Fort Monroe for these purposes. From the foregoing, it appears clear that the Congress intended to make up the construction grant shortfall resulting from EPA's funding policy.

Section 605 of the Military Construction Authorization Act, 1980, Pub. L. No. 96-125, November 26, 1979, 93 Stat. 928, 944, provides that certain authorizations for appropriations, including those contained in Title I of the Military Construction Authorization Act, 1979, are repealed, with stated exceptions, as of October 1, 1980, or the date of the enactment of the 1981 Military Construction Authorization Act, whichever is later. We note that sec. 605 of this proposed Act, as passed by the House and Senate, contains an extension of the prior construction authorizations for both forts until October 1, 1982, or the date of enactment of the 1983 Authorization Act, whichever is later.

Accordingly, we believe that the Army is authorized to make the proposed contributions, if otherwise proper, in lieu

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of full EPA funding of 75% of construction costs of wastewater treatment works, without requiring additional legal consideration: \$907,613 tentatively agreed to for Fort Bliss, Texas, and \$371,782.54, the interim billing for Fort Monroe, Virginia.



For the Comptroller General  
of the United States