

DECISION



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

FILE: B-222931

DATE: May 7, 1986

MATTER OF: Solano Garbage Company

DIGEST:

1. Protest, contending that proposed agency procurement is improper because of the existence of protester's exclusive franchise as sole refuse collector within city limits, is dismissed where terms of protester's franchise expressly exclude the federal facility in question from the scope of the franchise.
2. Question concerning small business size status definition is not for consideration by GAO as conclusive authority over such matters is vested by statute in SBA.

Solano Garbage Company (Solano) protests the issuance by the Department of the Air Force of invitation for bids (IFB) No. F04626-86-B-0003 for refuse collection at Travis Air Force Base, California.

Solano contends that it has an exclusive franchise from the City of Fairfield, California, which designates it as the sole refuse collector for all refuse collected within the city limits of Fairfield, including the area of Travis Air Force Base. Solano argues that the Solid Waste Disposal Act, 42 U.S.C. § 6961, (1982), and our decision in Monterey City Disposal Service, Inc., B-218624, B-218880, Sept. 3, 1985, 64 Comp. Gen. _____, 85-2 C.P.D. ¶ 261, require the Air Force, to the extent that the IFB concerns services to be performed within the city limits, to utilize Solano's services because of its exclusive franchise with the city. Solano further contends that the IFB contains an improper small business size definition.

We dismiss the protest.

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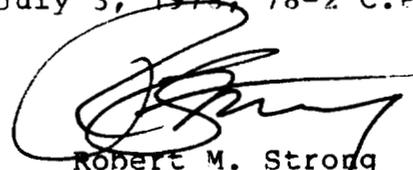
Solano has furnished a copy of its contract with the City of Fairfield, dated December 20, 1983, which shows that in granting Solano its exclusive franchise, the city expressly excluded Travis Air Force Base from the scope of the franchise. Specifically, paragraph 19 reads:

"It is understood and agreed that this contract is made subject to the right of the United States government to make a contract with a person or firm other than the CONTRACTOR named herein to cover garbage disposal from Travis Air Force Base within the city limits of the City of Fairfield, the CITY having no control hereof."

It is therefore clear that Solano does not have a franchise encompassing Travis Air Force Base despite the base's location within the Fairfield city limits.

Accordingly, this aspect of the protest is dismissed for failure to state a valid basis of protest under our Bid Protest Regulations. 4 C.F.R. § 21.3(f) (1985).

Solano's second basis of protest is also dismissed since we do not consider protests involving small business size status, 4 C.F.R. § 21.3(f)(2), because, under 15 U.S.C. § 637(b)(6) (1982), the Small Business Administration has conclusive authority to determine this matter. See Aydin Controls, B-191805, July 3, 1978, 78-2 C.P.D. ¶ 3.



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