



The Comptroller General
of the United States

Washington, D.C. 20548

Aug 82-I

Decision

Matter of: Monterey City Disposal Services, Inc.

File: B-218624.3

Date: February 6, 1987

DIGEST

Protest that raises the issue of the propriety of a particular sole-source award of refuse collection services contract is dismissed where the same issue is encompassed in the broader issues (propriety of past, current and future sole-source refuse collection procurements) of a civil action initiated by the same awardee and the court has not expressed interest in a General Accounting Office decision.

DECISION

Monterey City Disposal Services, Inc. (Monterey), protests the Department of the Army's award of a sole-source contract for refuse collection at Fort Ord, California, to Carmel Marina Corporation (Carmel) under request for proposals (RFP) No. DAKF03-87-R-0507 (-0507). We dismiss the protest because the issues raised are before a court of competent jurisdiction.

The Army awarded Carmel the sole-source contract based on the Solid Waste Disposal Act, 42 U.S.C. § 6961 (1982), which requires departments of the executive branch to comply with local requirements regarding control of solid waste. The Army understood it to be a local solid waste disposal requirement that only the city franchisee collect refuse generated within city limits, and since a portion of Fort Ord falls within the city limits of Seaside and Marina, California, and Carmel holds the exclusive franchise to collect refuse within those city limits, the Army canceled a competitive solicitation, and made an award to Carmel, to comply with the act.

The Army's interpretation of the act is based on a United States District Court, Northern District of California, decision, Gary Parola and Monterey City Disposal Service, Inc. v. Casper Weinberger, et al., No. C-85-20303WAI, which

037966

adopted our decision, Monterey City Disposal Service, Inc., 64 Comp. Gen. 813 (1985), 85-2 C.P.D. § 261, affirmed, B-218624.2, B-218880.2, Sept. 19, 1985, 85-2 C.P.D. ¶ 306. These cases held that, in view of the provisions of the act, federal agencies seeking waste disposal services for certain federal facilities within the city of Monterey, California, were required to contract with the city's franchisee, as called for by local regulations.

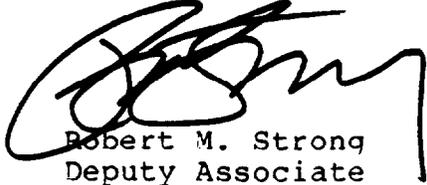
Monterey contends in the present case that Fort Ord is not subject to Carmel's exclusive franchise as sole refuse collector within the city limits because, unlike in the prior case, neither Seaside nor Marina has evidenced a clear intent to subject Fort Ord to the local requirement. Monterey also objects to the Army's awarding of a contract to Carmel in the face of Monterey's agency protest of the competitive solicitation's cancellation; the Army's failure to justify its use of noncompetitive procedures; and the Army's failure to stay performance pending resolution of the protest.

Carmel has filed suit against the Army in District Court, Carmel Marina Corp. v. Casper Weinberger, et al., No. C-86-20134WAI9(SJ), asserting Carmel's sole right to collect refuse at Fort Ord, and seeking a permanent injunction to prevent the Army from contracting with any other entity for refuse collection at Fort Ord. Although Carmel's suit is not per se founded on the protested solicitation, the issue of whether Carmel is entitled to be the exclusive waste disposal contractor at Fort Ord necessarily encompasses the question of whether Carmel was entitled to a sole-source award under RFP-0507 and, thus, whether cancellation of the competitive solicitation was proper. If the court agrees with Carmel, then it follows that the cancellation and sole-source award were proper. Conversely, the noncompetitive award would be improper were the court to hold that Carmel does not have the exclusive rights it claims by virtue of the act.

We conclude that Carmel's complaint puts at issue the substance of Monterey's protest. Our Bid Protest Regulations, 4 C.F.R. § 21.3(f)(11) and § 21.9(a) (1986), provide for the dismissal of any protest where the matter involved is the subject of litigation before a court of competent jurisdiction and the court has not expressed an interest in

our opinion. Since the court has not requested our decision,
we will not review the matter.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the typed name.

Robert M. Strong
Deputy Associate
General Counsel