

Ayer



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Oakland Scavenger Company
File: B-241577; B-241584
Date: February 13, 1991

Stephen McKae, Esq., Hardin, Cook, Loper, Engel & Bergez, for the protester.
Robert G. Hamlin, Esq., Hamlin & Sasser, P.A., for U.S. Eagle, Inc., an interested party.
Paul M. Fisher, Esq., Department of the Navy, for the agency.
Roger H. Ayer, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably found that provision of Resource Conservation and Recovery Act, 42 U.S.C. § 6961 (1988), requiring federal agencies to comply with local requirements respecting control and abatement of solid waste, does not require either the Alameda Naval Air Station and Annex, or the Naval Aviation Depot located on the air station to use Alameda, California's exclusive franchisee for refuse collection. Although the air station, annex and depot are within the corporate limits of the city of Alameda, the agency reasonably determined it is a major federal facility under the guidelines of the Environmental Protection Agency and should be treated as though it were a separate municipality entitled to contract for its own refuse collection services.

DECISION

Oakland Scavenger Company protests the Department of the Navy's exercise of options under contract Nos. N62474-88-C-8291 and N62474-87-C-2429 for refuse collection and disposal services for the Alameda Naval Air Station and Annex and the Naval Aviation Depot, which is located on the air station, respectively. Oakland Scavenger contends that exercise of the options was improper because it is the only firm legally authorized to provide refuse collection services in Alameda, California.

We deny the protests.

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Our Office has considered in several cases the issue of whether a protester's possession of an exclusive franchise to provide waste disposal services in various jurisdictions within the State of California precludes government agencies with facilities located in those jurisdictions from issuing solicitations to competitively procure services from other firms. See, e.g., Waste Mgmt. of North Am., B-241067, Jan. 8, 1991, 91-1 CPD ¶ _____; Oakland Scavenger Co., B-236685, Dec. 9, 1989, 89-2 CPD ¶ 565; Solano Garbage Co., 66 Comp. Gen. 237 (1987), 87-1 CPD ¶ 125; Monterey City Disposal Serv., Inc., 64 Comp. Gen. 813 (1985), 85-2 CPD ¶ 261; see also Parola v. Weinberger, 848 F.2d 956 (9th Cir. 1988). This limitation on government contracting is authorized by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6961 (1988), which generally subjects federal agencies to local requirements respecting solid waste abatement and control.

Oakland Scavenger contends that the options should not have been exercised because Oakland Scavenger's June 1, 1982, exclusive franchise agreement with the city grants Oakland Scavenger the exclusive right to collection and transport of refuse within the city limits of Alameda, California.^{1/}

^{1/} Article II, Section 1, of the franchise agreement provides, in part, that:

"[the city] . . . grants to the [Oakland Scavenger] Company for a period of twenty (20) years from the 1st day of June, 1982 the exclusive franchise, right and privilege to collect, remove, and dispose of, in a lawful manner, all refuse accumulating in the Jurisdiction that is required to be accumulated and offered for collection to the Company in accordance with the Jurisdiction's legislation and consistent with this agreement."

Oakland Scavenger relies on two sections of the Alameda City Ordinance:

(1) Section 15-627, which provides that:

"[a]ll refuse and garbage within the City of Alameda shall be collected and transported through the streets of said city by scavengers only, at the time, and in the manner hereinafter set forth"; and

(2) Section 15-611(c), which defines "Scavenger,"

". . . to mean the person, firm, corporation, or

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Oakland Scavenger relies on Parola v. Weinberger, 848 F.2d at 956, supra, which held that the RCRA generally requires federal installations to comply with local arrangements for solid waste collection and disposal.

RCRA charged the Environmental Protection Agency (EPA) with developing federal guidelines for the submission of state plans governing, in part, federal facility compliance with local environmental laws and regulations. Under the RCRA framework, the states are responsible for formulating and implementing plans for local regulation of solid waste. The State of California has delegated to local governments (city and county) the responsibility for aspects of solid waste handling that are of local concern. This includes such aspects as frequency and means of collection, level of services, charges and fees, and whether collection services are provided by means of an exclusive or nonexclusive franchise. See California Plan (Oct. 1981), 47 Fed. Reg. 6834 (1982); Cal. Gov't Code § 66757 (Deering Supp. 1985).

Although it was not addressed in Parola v. Weinberger, an agency need not employ a firm that holds an exclusive license to provide waste management services for an agency facility that qualifies as a "major federal facility" under the EPA guidelines. Waste Mgmt. of North Am., B-241067, supra.; Solano Garbage Co., 66 Comp. Gen. 237, supra. While Oakland Scavenger questions the applicability of the EPA guidelines, we treated these matters in Solano. In Solano, we explained that while RCRA requires federal agencies to comply with local requirements respecting the control and abatement of solid waste, we think it is unreasonable to interpret this requirement as a mandate that any federal facility located within a local government's jurisdiction must use that local government's exclusive refuse collector. In this respect, the guidelines of the EPA at 40 C.F.R. part 255 (1990) specify that "major federal facilities" are to be treated as "incorporated municipalities."2/ In Solano, we interpreted

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association . . . to whom the City of Alameda shall have granted a permit, or designated as duly authorized to collect, receive, carry, haul or transport refuse, garbage, rubbish or dirt . . . within the said city."

2/ Specifically, 40 C.F.R. § 255.33 provides:

"Major Federal facilities and Native American Reservations should be treated for the purposes of these guidelines as though they are incorporated

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the EPA guidelines to mean that under the California Plan's delegation of refuse collection responsibilities to local governments, federal facilities falling within the scope of the EPA guidelines should be afforded the same refuse collection status as is enjoyed by a similarly situated California municipality. That is, a federal facility is entitled to contract for its own refuse collection services when by virtue of its size and function it constitutes a major federal facility, since it would then be treated as though it were a separate municipality entitled to contract for its own refuse collection service.

Oakland Scavenger advises that under the California Plan the non-hazardous waste planning authority for Alameda County is vested exclusively in the Alameda County Solid Waste Management Authority (Authority) and that Alameda and other cities have representatives on the Authority while the Navy's Alameda facility does not. Oakland Scavenger interprets the Navy facility's lack of participation on the Authority, as well as its lack of any historical role in such planning, as subjecting, in effect, the Navy facility to the city of Alameda's authority to regulate refuse collection on the facility.

We disagree. 42 U.S.C. § 6961 subjects federal facilities-- both major and minor--to all "local" waste abatement requirements that are applicable to "any person." The term "person" includes a number of entities ranging from individuals to interstate bodies, see 42 U.S.C. § 6903(15),^{3/} each entity having varying degrees of authority vis-a-vis whether they can themselves establish requirements (e.g., the state) or are merely subject to the requirements set by others

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municipalities, and the facility director or administrator should be considered the same as a locally elected official." [42 U.S.C. § 6961 is cited as authority for this provision.]

3/ "The term 'person' means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body."

(e.g., the individual).^{4/} The EPA guidelines make clear that within this hierarchy "major" federal facilities are to be accorded the same relative authority as is enjoyed by municipalities. If municipalities, such as Alameda, are subject to local requirements, issued by governmental authorities below the state level, but above the municipal level, e.g., the Authority, we think major federal facilities may be subject to the same requirements. However, there is no allegation that municipalities within the Authority, e.g., Alameda, are subject to any particular regulations of the Authority governing refuse collection services. It is clear that the city of Alameda's seat on the Authority is not sufficient to delegate the Authority's power to Alameda for the purpose of regulating refuse collection on a major federal facility.

In Solano, we looked to the facility's size and function to determine whether an agency has reasonably characterized a particular facility as a "major" facility, since the term "major federal facility" is undefined. We considered Travis Air Force Base to be a major federal facility because of its size and function--more than 5,200 acres and more than 10,000 military residents existing as a self-contained military community separate and distinct from the adjoining civilian community of Fairfield, California. Similarly, in Waste Mgmt of North Am., B-241067, supra, we found El Toro Marine Corps Air Station with 4,800 acres and over 10,000 military residents to be a major federal facility, not subject to Orange County's waste abatement authority. Although the Alameda facilities cover fewer acres (1,500 acres) than Travis and El Toro, we see no basis to distinguish between Travis, El Toro and Alameda in this regard, since Alameda is a separate self-contained military installation having more than 10,000 military residents (albeit primarily day-time residents) that has historically regulated its own refuse collection.

^{4/} For example, under RCRA a condition for state plan approval is that the state plan provide that no local government within the state shall be prohibited, by state or local law from negotiating and entering into long-term contracts for the supply of solid waste to resource recovery facilities. 42 U.S.C. § 6943(a)(5).

Under the circumstances, we find the Navy reasonably found that it was not required to honor the Alameda exclusive franchise. Therefore, the exercise of the options in question for refuse collection services at the Alameda Naval Air Station and Annex, and the Naval Aviation Depot was proper.

The protests are denied.


for James F. Hinchman
General Counsel