



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Bay View Refuse Service, Inc.
File: B-241579.2
Date: April 16, 1991

John F. Nolan, Esq., Sheppard, Mullin, Richter & Hampton, for the protester.
Stephen McKae, Esq., Hardin, Cook, Loper, Engel & Bergez, for Oakland Scavenger Company, an interested party.
Paul M. Fisher, Esq., and Vicki E. O'Keefe, 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

Alleged untimeliness of protest before the General Accounting Office is no bar to agency's taking corrective action where agency properly determined that such action is warranted.

DECISION

Bay View Refuse Service, Inc. protests the termination for convenience of contract No. N62474-87-C-2537, issued by the Department of the Navy for refuse collection services at the Oakland Naval Hospital, Oakland, California, and the agency's negotiation of a contract with Oakland Scavenger Company for the same services.

We deny the protest.

The Navy made a competitive award for these services to Bay View and later exercised the contract's 2 yearly options. On October 10, 1990, Oakland Scavenger protested the agency's exercise of the last option contending that, under Parola v. Weinberger, 848 F.2d 956 (9th Cir. 1988), the option exercise violated a provision of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6961 (1988), which generally requires federal agencies to comply with local requirements respecting

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control and abatement of solid waste, including honoring local exclusive franchises for refuse collection. Oakland Scavenger urged that the Navy's continued use of Bay View violated the Act since the City of Oakland required persons within its jurisdiction to use the refuse collection services of the city's exclusive franchisee, Oakland Scavenger.

The Navy agreed with Oakland's position and took corrective action by terminating for convenience its contract with Bay View. After learning of the Navy action, we dismissed the Oakland Scavenger protest on November 19, 1990, because the action rendered Oakland Scavenger's protest academic.

Bay View contends that the Navy should not have taken corrective action because the Oakland Scavenger protest was untimely filed in that Oakland Scavenger knew or should have known since 1989 that Bay View was performing these services.

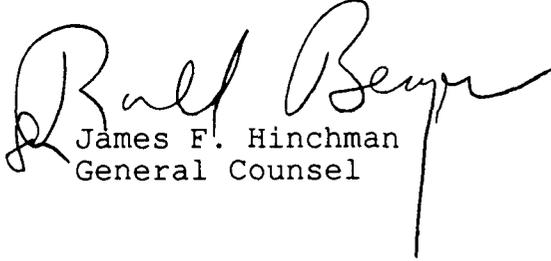
The Navy determined that Oakland Scavenger held the exclusive franchise for the City of Oakland, that the Navy facility was located within the city's jurisdiction, and that the facility was not a "major federal facility" eligible to undertake competitive procurements for refuse removal as if the facility were a municipality. See Oakland Scavenger Co., B-241577; B-241584, Feb. 13, 1991, 91-1 CPD ¶ 166. Since the hospital is not a major federal facility, RCRA subjects it to local requirements respecting solid waste abatement and control, including the City of Oakland's exclusive refuse collection requirements.^{1/} From our review of the record, we conclude that the agency's analysis is correct.

Assuming for the sake of argument that Oakland Scavenger's protest was untimely, it is clear that the Navy acknowledged all facts necessary to establish the validity of Oakland Scavenger's objections to the exercise of the option. Under

^{1/} The protester also contends that the exclusive franchise should not be recognized because it does not include the collection of salvageable or recyclable materials. The agency reports that the hospital does not currently have a recycling program and, even if there were a program, recyclable materials would amount to substantially less than 1 percent of the hospital's refuse. Under the circumstances, this requirement was reasonably found not to bar honoring Oakland Scavenger's exclusive franchise.

the circumstances, lack of timeliness is no bar to the Navy's taking corrective action--which may determine whether we will consider a protest under 4 C.F.R. part 21 (1991)--since an agency may always take appropriate corrective action, regardless of when the matter is brought to its attention. See International Bus. Machines Corp., B-197188, Oct. 21, 1980, 80-2 CPD ¶ 302.

The protest is denied.


James F. Hinchman
General Counsel