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The Comptroller General
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Solano Garbage Company

**File:** B-225397; B-225398

**Date:** February 5, 1987

## DIGEST

1. General Accounting Office has jurisdiction to consider protests alleging that Travis Air Force Base is required to utilize the city of Fairfield, California's exclusive franchisee for refuse collection. Although resolution of the protests requires interpretation of the Resource Conservation and Recovery Act, the protests primarily concern procurements for property or services by a federal agency and require that GAO decide whether the protested solicitations comply with statute or regulation.

2. Provision of Resource Conservation and Recovery Act, 42 U.S.C. § 6961 (1982), requiring federal agencies to comply with local requirements respecting control and abatement of solid waste, does not require that Travis Air Force Base utilize the city of Fairfield, California's exclusive franchisee for refuse collection. Although Travis is within the Fairfield city limits, it is a major federal facility that should be treated as though it is a separate municipality, which is entitled to contract for its own refuse collection services.

## DECISION

Solano Garbage Company protests invitation for bids (IFB) Nos. FO4626-86-B-0014 and FO4626-86-B-0058 issued by Travis Air Force Base for refuse collection and disposal services. IFB No. FO4626-86-B-0058 covers refuse collection and disposal for military housing and dining facilities. IFB No. FO4626-86-B-0014 covers delivery, pick-up and dumping of 40 cubic yard rubbish containers on an as-needed basis. Solano contends that the solicitations are improper because Travis is located within the city limits of Fairfield, California, which has granted an exclusive franchise for refuse collection services to Solano. We deny the protests.

BACKGROUND

Solano relies on our decision in Monterey City Disposal Service, Inc., 64 Comp. Gen. 813 (1985), 85-2 CPD ¶ 261. In Monterey we held that the Navy Postgraduate School and the Army Presidio of Monterey, federal facilities located within the city limits of Monterey, were required to comply with a city requirement that all inhabitants of the city have their solid waste collected by the city's exclusive franchisee. We based our decision on the requirements of 42 U.S.C. § 6961 (1982) which provides:

> "Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government . . . engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural . . . respecting control and abatement of solid waste or hazardous waste disposal in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges."

We also noted that while the Competition in Contracting Act of 1984 (CICA) requires competition in government contracting, the act recognizes an exception where a statute expressly authorizes or requires that a procurement be made from a specified source. See 10 U.S.C. §§ 2301, 2304(c)(5) (Supp. III 1985). We found the exception applicable, and concluded that the protested federal solicitations should be canceled and the services of the city's franchisee used instead.

We issued our decision at the request of the United States District Court for the Northern District of California, where Monterey also had filed suit raising the same issues as in its protest to our Office. Shortly after we issued our decision, the court entered judgment in favor of the plaintiffs, stating in part that it found this Office's decision persuasive. Parola v. Weinberger, No. C-85-20303-WAI (N.D. Cal. Sept. 12, 1986). This decision is currently on appeal to the United States Court of Appeals for the Ninth Circuit. Parola v. Weinberger, Nos. 86-2963, 86-15066 (filed Dec. 18, 1986; Jan. 9, 1987).

JURISDICTION

The Air Force argues that we lack jurisdiction over this protest because CICA authorizes our Office to decide protests concerning alleged violations of procurement statutes or regulations, and no such violation has been alleged here. See 31 U.S.C. § 3552 (Supp. III 1985). Rather, the Air Force asserts, the alleged violation is of 42 U.S.C. § 6961 which is part of the Resource Conservation and Recovery Act of 1976 (RCRA), Pub. L. No. 94-580, 90 Stat. 2795. The Air Force points out that the substantive provisions of RCRA, including the one in question here, concern the management and control of solid and hazardous waste, not federal procurement.

We do not interpret CICA so narrowly. As we stated in a case involving a similar argument by the Air Force, our bid protest jurisdiction under CICA is based on whether the protest concerns a procurement for property or services by a federal agency. See Cable Antenna Systems, 65 Comp. Gen. 313 (1986), 86-1 CPD ¶ 168. This protest clearly concerns such a procurement. In addition, while not specifically involving an alleged violation of procurement statute or regulation, the protest requires us to decide whether Solano is entitled to receive a sole-source contract award in light of the requirements of 42 U.S.C. § 6961, supra. We consider this a sufficient basis for exercising our jurisdiction under CICA.

We also find no merit to the Air Force's assertion that we should not exercise our jurisdiction here because Congress has specified the United States District Courts as the appropriate forum for the resolution of disputes arising under RCRA. See 42 U.S.C. § 6972 (Supp. III 1985). The dispute in this case involves the propriety of the Air Force's solicitation for refuse collection services, and thus arises under CICA, not RCRA. While the resolution of this dispute necessarily involves the interpretation of RCRA, this does not change the fundamental nature of the dispute as one requiring us to decide, under CICA, whether a "solicitation, proposed award, or award complies with statute and regulation." See 31 U.S.C. § 3554(b)(1) (Supp. III 1985).

Accordingly, we conclude that we have jurisdiction over this protest, and that it is appropriate to exercise that jurisdiction in this case.

TIMELINESS

The Air Force argues that the protests are untimely because they involve an apparent solicitation impropriety but were not filed prior to bid opening, as required by our Bid

Protest Regulations. See 4 C.F.R. § 21.2(a)(1) (1986). Solano acknowledges that its protests were filed after bid opening but argues that the protests nevertheless are timely because no impropriety in the solicitations was apparent prior to bid opening. In this connection, Solano notes that at the time of bid opening on each solicitation, Travis was excluded from Solano's exclusive refuse collection franchise. However, after bid opening but prior to award, the city council of Fairfield passed and adopted a resolution approving an amendment to the franchise agreement which eliminated the exclusion of Travis from the franchised area. Therefore, Solano argues that its bases of protest did not arise until after bid opening and that the protests are timely because they were filed within 10 working days after the city passed the resolution on which the protests are based. See 4 C.F.R. § 21.2(a)(2). We agree.

We believe it is clear that the bases of Solano's protests were not apparent prior to bid opening, but instead arose when the city eliminated Travis' exclusion from the franchised area. Since Solano's protests were filed within 10 working days thereafter, they are timely and will be considered. See Arrowhead Construction, Inc., B-220386, Jan. 8, 1986, 86-1 CPD ¶ 16.

MERITS

As we noted in Monterey, the State of California has delegated to local governments (city and county) the responsibility for aspects of solid waste handling which 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 exclusive or nonexclusive franchise. See California Plan (Oct. 1981), 47 Fed. Reg. 6834 (1982); Cal. Gov't. Code § 66757 (Deering Supp. 1985).

The Fairfield, Cal. Code, § 9.5 (1984), authorizes the city to enter into a contract for the collection of refuse within the city limits, and authorizes the city council to provide by resolution for the inclusion in the contract of terms deemed necessary to protect the interest of the city. Section 9.11 of the Code establishes the exclusive right of the city's contractor to collect refuse within the city and prohibits any other person (except the city) from collecting refuse in the city. Solano argues that these requirements, combined with the city council resolution eliminating the exclusion of Travis from the franchised area, constitute

local requirements under 42 U.S.C. § 6961, supra, with which Travis must comply.

The Air Force argues that unlike the Navy Postgraduate School and the Presidio in Monterey, Travis must be treated for purposes of 42 U.S.C. § 6961 as though it is a separate incorporated municipality which cannot be required by Fairfield to use that city's exclusive franchisee for refuse collection. The Air Force notes that Travis is a major military installation of more than 5,200 acres, which is owned by the United States Government, and which includes more than 10,000 military residents who use and occupy hundreds of buildings including offices, workshops, storage facilities and residences. The Air Force also points out that Travis is surrounded by a chain link security fence and that it is a self-contained military community separate and distinct from the adjoining civilian community.

To further support its position, the Air Force relies on a provision in the Environmental Protection Agency (EPA) guidelines at 40 C.F.R. pt. 255 (1986). These guidelines were issued to assist state and local governments in identifying regions or areas that have common solid waste management problems and which are appropriate units for planning solid waste management services. The guidelines also provide criteria and procedures for identifying state and local agencies and their respective responsibilities for developing and implementing a state solid waste management plan. The approval by EPA of such a state plan is a requirement for eligibility for federal assistance under RCRA. See 42 U.S.C. § 6947 (1982).1/

Specifically, the Air Force relies on 40 C.F.R. § 255.33 which provides:

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

Solano argues that this provision does not support the Air Force's position. Solano notes that no definition of "major

1/ EPA approved the California Plan (Oct. 1981) on February 8, 1982. 47 Fed. Reg. 6834 (1982).

federal facility" is provided by the guidelines or by RCRA and argues that the provision therefore should be considered void for vagueness. Further, Solano asserts that, at best, the provision should be read as referring only to major federal facilities that are not incorporated within any municipality.

We agree with the Air Force that Travis should be treated as though it is a separate municipality that cannot be required by Fairfield to use that city's exclusive franchisee for refuse collection. While 42 U.S.C. § 6961 requires that federal agencies 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 the city limits of a municipality use that municipality's exclusive franchisee for refuse collection services. Rather, when by virtue of its size and function a facility actually is a separate military community, as Travis is in this case, we believe it should be regarded as a separate municipality that is entitled to contract for its own refuse collection services.

As the Air Force points out, the EPA guidelines at 40 C.F.R. § 255.33 support the conclusion that a facility such as Travis must be regarded as a separate jurisdiction that may independently provide for its own refuse collection services. The provision clearly evidences an intent that "major federal facilities" be considered "as though they are incorporated municipalities" for planning purposes under RCRA, which includes planning for the disposal of municipal solid waste. 40 C.F.R. §§ 255.30-.33 (1986). While the term "major federal facility" is not defined, we think it is apparent that given its size and function, Travis is such a facility. Further, as previously noted, the California Plan delegates to local government the responsibility for refuse collection. Since Travis, as a major federal facility is to be afforded the same status as a municipality, it follows that Travis may provide for its own refuse collection services.

We also find this situation distinguishable from that before us in Monterey. There, the protested solicitations covered refuse collection services for small federal facilities, the Navy Postgraduate School and the Presidio of Monterey. These clearly were not major federal facilities; they were not

separate military communities, distinct from the adjoining civilian community, as Travis is in this case. Accordingly, we find that our holding in Monterey is not controlling here.

The protests are denied.

for Seymour Efros
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General Counsel