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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Oakland Scavenger Company

File: B-236685

Date: December 19, 1989

DIGEST

Solicitation for refuse collection and disposal services should be canceled where federal facility, located within city limits, is by statute subject to local requirement to use city's exclusive franchisee for refuse collection and transportation, and does not constitute a "major federal facility" exempt from statutory requirement to use local franchisee.

DECISION

Oakland Scavenger Company protests the United States Coast Guard's competitive procurement of refuse collection and disposal services for Coast Guard Island, Alameda, California, under invitation for bids (IFB) No. DTCG89-89-B-70072. Oakland contends that the solicitation is improper because Coast Guard Island is located within the city limits of Alameda, which has granted an exclusive franchise for refuse collection and transportation to Oakland.

We sustain the protest.

The protest raises the issue of when federal installations located within municipalities must comply with local requirements in their procurement of solid waste collection and disposal services under 42 U.S.C. § 6961 (1982), which in part 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."

The legislative history of section 6961 reveals that its purpose is to require federal agencies to provide leadership in dealing with solid and hazardous waste disposal problems by having them comply not only with federal controls on the disposal of waste, but also with state and local controls as if they were private citizens. See Monterey City Disposal Service, Inc., 64 Comp. Gen. 813 (1985), 85-2 CPD ¶ 261. The Environmental Protection Agency (EPA) was charged with developing federal guidelines in part to identify areas having common problems which would be appropriate units for planning regional solid waste management services. See 42 U.S.C. § 6942(a). These guidelines include the following provision:

> "Major Federal facilities and Native American Reservations should be treated for 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." 40 C.F.R. § 255.33.

We first considered the issue of federal facility compliance with local requirements in the procurement of solid waste collection and disposal services in Monterey City Disposal Service, Inc., 64 Comp. Gen. 813, supra, at the request of the United States District Court for the Northern District of California, where Monterey had filed suit raising the same issues as in its protest to our Office. In Monterey, we held, on the basis of 42 U.S.C. § 6961, that the Naval Postgraduate School and the Army Presidio of Monterey, federal facilities located within the city limits of Monterey, were required to follow a city requirement that all inhabitants of the city have their solid waste collected by the city's exclusive franchisee. Shortly after we issued our decision, the court entered judgment for the plaintiffs. Parola v. Weinberger, No. C-85-20303-WAI (N.D. Cal. Sept. 12, 1986). This decision was appealed to the United States Court of Appeals for the Ninth Circuit which reviewed de novo the district court's interpretation of the applicable statutes and affirmed the lower court decision holding that federal installations were required to comply with local arrangements for solid waste collection and disposal including exclusive garbage collection franchises. Parola v. Weinberger, 848 F.2d 956 (9th Cir. 1988).

In a similar case concerning refuse collection services at Travis Air Force Base, California, the Department of the Air Force raised the argument that Travis should be treated for purposes of 42 U.S.C. § 6961 as a separate incorporated municipality since it qualified as a major federal facility under the EPA guidelines. There, the record supported the Air Force's contention that Travis was a major federal facility, and we concluded that although Travis was within the city limits of Fairfield, California, under the EPA guidelines it should be treated as though it were a separate municipality entitled to contract for its own refuse collection services. Solano Garbage Co., 66 Comp. Gen. 237 (1987), 87-1 CPD ¶ 125. Later district court decisions have viewed this approach to resolution of this issue favorably. See Waste Management of North America, Inc. v. Weinberger, No. CV 87-4329 DT (C.D. Cal. Sept. 28, 1988) (granting summary judgment to the defendant-government because El Toro Marine Corps Air Station, California, is a major federal facility entitled to treatment as an incorporated municipality for purposes of the application of state and local environmental laws); Carmel Marina Corp. v. Carlucci, No. C-87-20789-WAI (N.D. Cal. Apr. 20, 1988) (denying plaintiff-protester's request for a preliminary injunction in part because Fort Ord, California, is a major federal facility).

In light of the Court of Appeals decision in Parola v. Weinberger that federal installations generally are required to comply with local arrangements for solid waste collection and disposal, the agency's solicitation of competitive bids in violation of the local Alameda franchise agreement with Oakland is proper only if Coast Guard Island qualifies as a "major federal facility" under the EPA guidelines, since it would then be treated as though it were a separate municipality entitled to contract for its own refuse collection services. As we explained in Solano Garbage Co., 66 Comp. Gen. 237, supra, 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 franchise for refuse collection sources. Rather, we think that a facility is entitled to contract for its own refuse collection sources when by virtue of its size and function, it constitutes a major federal facility. This position is consistent with the EPA guidelines, 40 C.F.R. § 255.33, which specify that major federal facilities be treated as "incorporated municipalities," and, as noted above, has been adopted by the district courts which have considered

the issue of refuse collection services at El Toro Marine Corps Air Station and Fort Ord.

In this case, the Coast Guard argues that Coast Guard Island is exempt from the statutory requirement to use the local trash removal franchisee because the Island is self-contained, having such facilities as office buildings, living quarters and recreational facilities. The Coast Guard's argument, however, ignores the fact that an essential element, by definition, of a "major" federal facility is its size. See Solano Garbage Co., 66 Comp. Gen. 237, supra.

Here, the record shows that Coast Guard Island (population of 2,000 on 65 acres) does not approach the size of Travis Air Force Base (population 10,000 on more than 5,000 acres), which we held constituted a major federal facility in Solano Garbage Co. On the contrary, except for its physical isolation from the mainland, to which it is connected by a causeway, Coast Guard Island is essentially a smaller version of the Naval Postgraduate School (population of 3,000 on 620 acres) and the Presidio of Monterey (population of 5,580 on 392 acres), which the Court of Appeals in Parola decided must comply with local requirements. Under these circumstances, we see no basis to conclude that Coast Guard Island is a major federal facility exempt from the statutory requirement to use the services of the city of Alameda's exclusive franchisee to collect its solid waste. The Coast Guard cites the self-contained nature of the Island as the basis for excluding it from the statutory requirement.1/ The Island's geographic separation from the mainland simply does not bring it within the regulatory exception for major federal facilities; excluding the Island from the statutory requirement on this basis in our view should be accomplished through amendment to the applicable regulation.

The Coast Guard also argues that Oakland's franchise agreement involves a constitutionally impermissible tax on the United States because it provides for payment by Oakland of a 10 percent fee to the city of Alameda. We fail to see how the terms of a particular franchise agreement calling

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1/ With regard to the self-contained nature of the Island, the protester states that the Island receives electrical services from the Alameda Bureau of Electricity, and that the city of Alameda provides medical, paramedic and fire services to the Island, as well as police protection on major calls; the Island thus does not appear to function completely autonomously or independently from the local government.

for payment by the franchisee, not the federal government, to the local government, in any way constitutes a tax on the United States.

In view of our conclusion, we recommend that the Coast Guard cancel the solicitation and use the services of the city's franchisee to satisfy the collection requirements at Coast Guard Island. In addition, since we sustain the protest, we find that Oakland is entitled to recover the costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.6(d)(1).

The protest is sustained.

Shelton J. Docter

for Comptroller General
of the United States