



Comptroller General
of the United States

Washington, D.C. 20548

H. Ayer

Decision

Matter of: Waste Management of North America, Inc.

File: B-241067

Date: January 18, 1991

VerLyn N. Jensen, Esq., and Michael B. Schwerdtfeger, Esq., Nossaman, Guthner, Knox & Elliott, for the protester. Christopher J. Jaekels, Esq., for Laidlaw Waste Systems, 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

1. 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 the El Toro Marine Air Station to use Orange County, California's exclusive permittee for refuse collection. Although the air station is within the unincorporated limits of Orange County, 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.
2. Protest, contending that proposed agency procurement of waste disposal services is improper because of the existence of protester's exclusive franchise as sole refuse collector within city limits, is denied where city code expressly excludes federal facilities from the scope of the franchise.

DECISION

Waste Management of North America, Inc., protests invitation for bids (IFB) No. N62474-90-D-5666 issued by the Department of the Navy for refuse collection and disposal services for Marine Corps Air Stations at El Toro and Tustin, California. Waste Management contends the solicitation is improper because its two wholly owned subsidiaries, Great Western Reclamation, Inc. and Dewey's Rubbish Service, Inc., are the only firms legally authorized to provide refuse collection services in the jurisdictions in which the air stations are located.

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We deny the protest.

Our Office has considered in various 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 these services from other firms. See, e.g., Oakland Scavenger Co., B-236685, Dec. 19, 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.

Regarding the El Toro air station, Waste Management contends that no IFB should be issued because Waste Management, through Dewey and Great Western, has the exclusive solid waste collection permit in the County of Orange, Solid Waste Collection Permit Area 6, in which El Toro is located. Waste Management relies on Parola v. Weinberger, 848 F.2d at 956, 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).

On June 10, 1986, the Orange County Board of Supervisors directed that "effective July 1, 1991, solid waste hauling services be provided on an exclusive basis for each permit area." Previously, Orange County had issued permits on a nonexclusive basis and other firms could obtain permits for the same area. See Waste Mgmt. of North Am. v. Weinberger, 862 F.2d 1393, at 1395 (9th Cir. 1988). Waste Management contends that the Board of Supervisors' grant of exclusive

collection rights in Area 6 to Waste Management constitutes a local solid waste requirement, with which RCRA requires El Toro to comply.

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. See Solano Garbage Co., 66 Comp. Gen. 237, supra. While Waste Management attacks 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 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."^{1/} In Solano, we interpreted 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 services. Since the term "major federal facility" is undefined, we looked to the facility's size and function to determine whether an agency has reasonably characterized a particular facility as a "major" facility.

In Solano, 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,

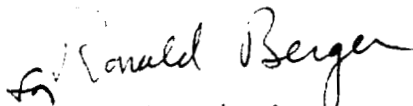
^{1/} Specifically, 40 C.F.R. § 255.33 provides:

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

California. We see no basis to distinguish between Travis and El Toro in this regard, since El Toro is a separate military installation occupying 4,800 acres and having more than 10,000 military residents. See Waste Mgmt. of North Am., 862 F.2d at 1395. Cf. Oakland Scavenger Co., B-236685, *supra* (where we rejected the argument that 65 acre federal facility inhabited by 2,000 residents was a "major federal facility"). Under the circumstances, the Navy is not required to honor the Orange County exclusive permit and may issue this IFB for refuse collection services at El Toro air station.

Regarding the Tustin air station, Waste Management contends that it, through Great Western, has an exclusive franchise from the City of Tustin, California, designating it as the sole refuse collector for all refuse collections within the city limits of Tustin, including the area of the Tustin air station. The Navy reports that the Tustin City Code specifically excludes federal facilities from its waste disposal exclusive franchise provisions.^{2/} Waste Management does not dispute the Navy's advice. In absence of an applicable exclusive franchise, this aspect of the protest has no merit. See Solano Garbage Co., B-222931, May 7, 1986, 86-1 CPD ¶ 442.

The protest is denied.


James F. Hinchman
General Counsel

^{2/} Tustin City Code, Solid Waste Collection, part 3, Solid Waste Responsibilities - Collector, sec. 4332, "Removal Limited" reads:

"The City shall provide for the collection and disposal of solid waste material from all premises at least once each calendar week. Such provision may be made either by letting a contract for such collection and removal, or otherwise. The City, its duly authorized agents, servants and employees, or any Contractor with whom the City may contract therefor, and the agents, servants and employees of such Contractor, while any such contract shall be in force, shall have the exclusive right to gather, collect, and remove solid waste material from all premises in the City (excluding State and Federal facilities)."
(Emphasis added.)