

15065 *Final*  
GCM

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

*[Propriety of Army Contribution to Cost of Sewage Treatment Plants]*

FILE: B-198450

DATE: October 2, 1980

**MATTER OF:** Contribution by Army to Fairfax County, Virginia, for Part of Capital Cost of Sewage Treatment Project Serving Fort Belvoir, Virginia.

**DIGEST:** EPA refused to fund part of 75% grant to Fairfax County, Virginia, for wastewater treatment works construction under Federal Water Pollution Control Act, attributed to Fort Belvoir, Virginia. Army submitted cost variation report to congressional Armed Services Committees under section 603 of 1976 Military Construction Authorization Act for additional project cost because of the EPA denial. Such approval of use of funds originally authorized under Title I of 1971 Military Construction Authorization Act constitutes authority to make contribution without requiring additional consideration to Government in lieu of part of 75% EPA grant.

We have received a request for an advance decision from the Department of the Army regarding the propriety of its making a contribution to Fairfax County, Virginia, for the cost attributed to Fort Belvoir, Virginia, for construction of the Dogue Creek-Accotink pumpover line and related facilities (Project).

The statement of facts enclosed with the request and supporting documents show that in January 1976, a utility service contract, DACA 31-76-C-0003, was entered into between the United States and Fairfax County under which the county as contractor would furnish sewage service for Fort Belvoir at the lowest available rate for similar conditions of service. The county was to furnish at its expense all facilities necessary to its performance, to the specified points of delivery for the fort. In lieu of an availability or connection charge, the United States would construct and maintain the on-post collection system, connecting and metering facilities, and make available to the county a right-of-way through the Post. The contract could be terminated by the Government upon 30 days' advance written notice.

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Subsequently, the Environmental Protection Agency (EPA) informed the Baltimore District, Corps of Engineers (Engineers) that under EPA policy--Program Guidance Memorandum No. 62--the Army would be required to pay its "fair share" of the capital cost of the county's project which would include sewerage service for Fort Belvoir. This amount would be deducted from the total project cost before computation of the EPA project grant.

By letter of July 6, 1976, EPA was informed by the Baltimore District that funds were not currently available for Fort Belvoir's "share" of the project construction cost under Program Guidance Memorandum No. 62, but that action had been initiated to request the required congressional approval and appropriation of funds.

On July 8, 1976, EPA advised Fairfax County of the award of a grant under Public Law No. 92-500, 33 U.S.C. §1251, et seq. (1976), for the construction of a wastewater treatment works, but that the grant amount was reduced by \$1,131,150 for the cost allocable to the treatment of waste from Fort Belvoir, a major Federal facility.

[By letter of July 27, 1976, the county advised EPA that construction contracts for the pumpover facilities would not be awarded until a firm commitment was provided either by the Army or by EPA for full grant funding of Fort Belvoir's share of the total project cost.]

The Baltimore District was advised by the Office of the Chief of Engineers on October 18, 1976, that the proposed increase in authorization for Fort Belvoir to include the Federal facility contribution had been approved by the House Armed Services Committee on September 1, 1976. By letter of July 5, 1977, Fairfax County was informed of congressional approval and appropriation of funds for payment of Fort Belvoir's share of the project cost. The letter also indicated that negotiations would begin on a supplemental agreement modifying the sewerage service contract to include a provision for payment of a share of the project construction cost. Fairfax County began construction of the pumpover line in September 1977.

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By letter of August 10, 1978, the Baltimore District Engineer advised Fairfax County that one of our decisions prohibited the renegotiation of the existing utility service contract to include this type of payment provision and that it would be impossible for the Army to make any contribution to the cost of the project. Department of the Air Force-Sewage Utility Contracts, B-189395, April 27, 1978. On August 30, 1978, the county advised EPA of the Army position and requested that the construction grant be increased to include costs allocable to Fort Belvoir.

On October 14, 1979, the county advised the Engineers that it had advanced the necessary funds for project completion but that until such time as payment for the Federal facility portion of the project cost was received, it would not permit connection to be made to the pumpover facilities from the sewer service facilities constructed on Fort Belvoir.

Afterward, based on our decision, Federal Facility Contributions to Capital Costs of Sewage Treatment Projects, B-195507 and B-194912, dated October 4, 1979, 59 Comp. Gen. 1, the Engineers and Fairfax County officials tentatively agreed on \$722,250 as the 75% grant share the county would have received from the EPA grant but for the EPA funding policy.

[For the reasons stated below, we believe that the Army is authorized to make the proposed contribution, if otherwise proper, in lieu of EPA funding of 75% of the construction cost attributed to Fort Belvoir.]

The Military Construction Authorization Act, 1971, Pub. L. No. 91-511, 84 Stat. 1204, 1205, October 26, 1970, in section 101, Title I, provided construction authorization totaling \$4,959,000 for Fort Belvoir. According to House Report Number 91-1098, 91st Cong., 2d Sess. 9 (1970), this included sewage facilities at Fort Belvoir. The Military Construction Appropriations Act, 1971, Pub. L. No. 91-544, 84 Stat. 1409, December 11, 1970, provided appropriations for fiscal year 1971 to remain available until expended to include construction for the Army as currently authorized in military public works or military construction Acts. Included was \$2.2 million "to allow

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Fort Belvoir to join with a regional sewage treatment facility." (S. Rep. No. 91-1318, 91st Cong., 2d Sess. 51 (1970)).

Section 603(c) of the Military Construction Authorization Act, 1976, Pub. L. No. 94-107, 89 Stat. 546, 563, October 7, 1975, provides that where amounts authorized for military construction or acquisition must be increased by percentages in excess of those prescribed in section 603 in order to accomplish the authorized project, construction or acquisitions may proceed after a written report of the facts relating to the increase is submitted to the Committees on Armed Services of the House of Representatives and of the Senate and either (1) 30 days have elapsed from the date of submission of each report or (2) both committees have indicated approval of such construction or acquisition. The total amount authorized to be appropriated under the particular title of the Authorization Act may not be exceeded as a result of this action, section 603(d).

By letters dated August 23, 1976, the Deputy Assistant Secretary of Defense (Installations and Housing) informed the Chairmen of both congressional Armed Services Committees that costs for a sanitary sewer connection designed in conjunction with a Fairfax County pumpover project had increased in cost from the 1971 authorization of \$2,200,000 by 140.5 percent to \$5,290,000 and that authorization of the increased amount would not exceed the total amount authorized under Title I (Army) of Public Law No. 91-511. The enclosed cost variation report explained that part of the increased cost resulted from "a recent requirement by EPA for Army funding of Fort Belvoir's share of the Fairfax County sewer pumpover construction amounting to approximately \$1,500,000."

By letter of August 31, 1976, the cost variation report was amended because new data showed that the cost of Fort Belvoir's "fair share" would be \$1,260,927 instead of \$1,500,000. At a hearing held on September 1, 1976, the Subcommittee on Military Installations and Facilities of the House Armed Services Committee approved the amended cost variation report.

In our decision of October 4, 1979, to which we previously referred, we considered the propriety of payment by the Navy of part of the costs of constructing sewage

treatment plants which were built under the Federal Water Pollution Control Act and which would serve nearby naval facilities. We concluded as follows:

"while we do not believe that EPA's funding policy is authorized by law, the Congress has chosen to make up the shortfall in construction grant support of wastewater treatment facilities by specifically appropriating funds to cover the Navy's share of the costs. If Navy contributes no more than 75 percent of the costs attributable to its use of a treatment system, no further consideration to offset this contribution is necessary. If it is required to or chooses to contribute more than 75 percent of the costs, it should insist on an additional benefit to the Government. The exact nature of such consideration is a matter for negotiation between the parties." 59 Comp. Gen. 1 at 11.

We believe that the similar considerations apply to the present case.

The Army regards the contribution to Fairfax County as an additional cost of securing upgraded wastewater treatment for Fort Belvoir. On-post construction was authorized and funds appropriated under the respective 1971 Military Construction Authorization and Appropriations Acts. The funds were obligated and we understand the construction has been completed. Under the procedure outlined in section 603 of the Military Construction Authorization Act, 1976, the Army informed the House and Senate Armed Services Committees that the sanitary sewer connection project would cost an additional \$1,260,927 because of "a recent requirement by EPA for Army funding of Fort Belvoir's share of the Fairfax County sewer pumpover construction."

This cost variation report was affirmatively approved by the House Committee and not objected to by its Senate counterpart. By this method, authority for construction and

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acquisition for Army projects under Title I of the 1971 Military Construction Authorization Act was made available for the capital contribution. Thus, the Congress apparently has consented to the Army's contributing funds to the project in lieu of some of the funds which EPA ordinarily would have expended on the project.

Accordingly, if otherwise proper, we believe that the Army may pay 75% of the costs of construction of the Dogue Creek-Accotink Project attributed to Fort Belvoir, currently estimated at \$722,250, without requiring additional legal consideration from Fairfax County.



For the Comptroller General  
of the United States