

Ayer



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Oakland Scavenger Company

**File:** B-232958

**Date:** February 1, 1989

## DIGEST

1. Protest alleging that agency improperly solicited competitive bids for refuse collection and disposal services at a federal facility located within the protester's exclusive franchise territory is dismissed as untimely where not filed until after bid opening.

2. General Accounting Office (GAO) will consider an untimely protest under the significant issue exception to GAO's timeliness rules only where the protest involves a matter that has not been considered on the merits in previous decisions and which is of widespread interest to the procurement community.

## 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. DTCG89-88-B-90037. 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 dismiss the protest as untimely.

The Coast Guard urges that Oakland's protest, filed with our Office on September 30, is untimely because it involves an apparent solicitation impropriety (the issuance of a competitive IFB instead of a sole-source solicitation) but was not filed before bid opening on September 13, as required by our Bid Protest Regulations. See 4 C.F.R. § 21.2(a)(1) (1988). The Coast Guard points out that Oakland got its exclusive franchise in June 1982 and that the issuance of a competitive solicitation was notice of the government's intention not to award it a sole source

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contract for the services. Moreover, the Coast Guard has competed its refuse services contracts since 1982, awarding the 1983 and 1984 contracts to another firm, and the 1985, 1986 and 1987 contracts to the protester.

Oakland's position is that receipt of the previous contracts lulled it into expecting the award of the current contract despite the competitive nature of the solicitation, and that issuance of the IFB was not notice that the Coast Guard would make an illegal award. Oakland notes that it protested within 2 days of receiving notice of the Coast Guard's intent to award the contract to another firm.

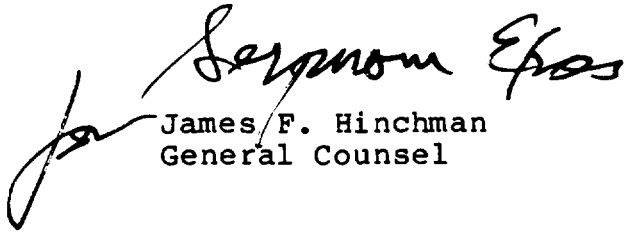
We agree with the Coast Guard that the protest is untimely filed. If Oakland thought that the solicitation of competition was improper, it was obligated to file its protest before bid opening. Nevertheless, Oakland participated throughout the procurement process and did not object to it until the process had been concluded and Oakland learned that it would not receive the award. Since Oakland did not file its protest until September 30, well beyond the bid opening date of September 13, the protest is untimely. See Koch Construction, Inc., B-232585, Sept. 26, 1988, 88-2 CPD ¶ 287.

Oakland contends that the case presents a significant issue and should be considered under the significant issue exception to our timeliness rules. 4 C.F.R. § 21.2(b). We disagree.

Generally, it is our practice to review an untimely protest under this exception only when the protest involves a matter that has not been considered on the merits in a previous decision and is of widespread importance or interest to the procurement community. See Hunter Environmental Services, Inc., B-232359, Sept. 15, 1988, 88-2 CPD ¶ 251. The exception is strictly construed and used sparingly to prevent our timeliness rules from being rendered meaningless. Id. We have previously considered 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 subjects executive branch departments to local requirements concerning solid waste control and abatement). See Solano Garbage Co., 66 Comp. Gen. 237 (1987), 87-1 CPD ¶ 125; Monterey City Disposal Service, Inc., 64 Comp. Gen. 813 (1985), 85-2 CPD ¶ 261. Moreover, we fail to see how the issue raised would be of widespread

interest to the procurement community since it relates primarily to the proper interpretation of environmental statutes and regulations and whether a particular firm is entitled to a sole-source award. Therefore, we will not consider the protest under the significant issue exception.

The protest is dismissed.

A handwritten signature in black ink, appearing to read "James F. Hinchman". The signature is written in a cursive style with a large initial "J".

James F. Hinchman  
General Counsel