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# Decision

**Matter of:** Waste Management, Inc. of Florida

**File:** B-421918

**Date:** November 20, 2023

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Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest that the agency unreasonably issued solicitation to firms not having an exclusive franchise agreement for solid waste collection in Brevard County, Florida, is denied where the terms of the franchise agreement did not extend to the federal facility in question.

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## DECISION

Waste Management, Inc. of Florida (WM), of Boca Raton, Florida, protests the terms of request for quotations (RFQ) No. 80GRC023Q0003, issued by the National Aeronautics and Space Administration (NASA) for refuse collection and disposal services at the John F. Kennedy Space Center, Merritt Island, Florida. WM argues that NASA unreasonably issued the RFQ to historically underutilized business zone (HUBZone) vendors because only WM, as the exclusive franchise agreement holder for solid waste disposal in Brevard County, Florida, is eligible to provide the requisite services.

We deny the protest.

## BACKGROUND

On August 3, 2023, NASA issued the RFQ to procure solid waste, refuse, and disposal services at the Kennedy Space Center. Agency Report (AR), Tab 8, RFQ at 204, 206;

AR, Tab 14, RFQ, Performance Work Statement at 285.<sup>1</sup> The RFQ was restricted to HUBZone small businesses. RFQ at 204. The RFQ contemplated the award of a fixed-price indefinite-delivery, indefinite-quantity contract to be performed over a 1-year base period, and four 1-year option periods. *Id.* at 205-207. Award would be made on a lowest-price technically acceptable basis considering technical capability and price factors. *Id.* at 210-211. The contract has an estimated value of [DELETED]. Contracting Officer's Statement (COS) at 2.

Prior to the August 25, close of the solicitation period, WM filed this protest with our Office.

## DISCUSSION

WM asserts that NASA unreasonably issued the RFQ because it is the only eligible vendor for solid waste disposal services in Brevard County, Florida. Applicable statutory provisions require NASA to comply with local solid waste collection franchise laws and WM argues that it has exclusive authority to collect and dispose of solid waste material at the Kennedy Space Center pursuant to a franchise agreement between WM and Brevard County, Florida.<sup>2</sup> Protest at 3-4. WM contends that the franchise agreement provides the firm with the right to collect all solid waste from unincorporated areas, including the Kennedy Space Center. *Id.*

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<sup>1</sup> The agency assigned BATES page numbers to its report, and we use those page numbers as needed.

<sup>2</sup> Section 6001 of the Resource Conservation and Recovery Act of 1976 (RCRA) provides, in relevant part, as follows:

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) 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 (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges.

42 U.S.C. § 6961(a). NASA explains that this statute requires the agency to comply with local solid waste collection franchise laws. Memorandum of Law (MOL) at 4; see *also Red River Service Corp.*, B-279250, May 26, 1998, 98-1 CPD ¶ 142 at 6 (explaining that agency restricted competition to solid waste contractors having solid waste management agreements with the local government because the section 6001 of the RCRA requires federal agencies to comply with local solid waste collection laws).

The agency responds that the Kennedy Space Center is not located within the service area (*i.e.*, Benefit Unit) referenced in WM's franchise agreement. MOL at 3-4. As support, the agency points to maps showing that the franchise agreement does not include the Kennedy Space Center as part of the service area, and communications from the Brevard County Solid Waste Management Department explaining that Brevard County does not intend to contract on behalf of the NASA or the Kennedy Space Center. *Id.* at 6. Thus, the issue before our Office is whether WM has exclusive authority to collect and dispose of solid waste material at the Kennedy Space Center pursuant to the established franchise agreement between WM and Brevard County, thereby requiring NASA to procure its solid waste services from WM on a sole-source basis.

Where a protester and agency disagree over the meaning of a germane contract, we will resolve the matter by reading the contract as a whole and in a manner that gives effect to all its provisions. *Black & Veatch Special Projects Corp.*, B-417166, Mar. 5, 2019, 2019 CPD ¶ 101 at 4. Where a dispute exists as to a contract's terms, we will examine the plain language of the contract. *Id.*

On this record, we agree with the agency that the protester has failed to demonstrate that the Kennedy Space Center is a part of the Benefit Unit. To illustrate, the franchise agreement includes the following operative provision:

The CONTRACTOR shall have the sole and exclusive right and duty to collect all solid waste as provided under the terms and provisions of this Contract *within the service area described in the Benefit Unit.*

AR, Tab 17, Franchise Agreement at 328 (emphasis added). The franchise agreement defines "Benefit Unit" as follows:

The term "benefit unit" refers to the Brevard County Solid Waste Municipal Service Benefit Unit, as described in 94-31, Code of Ordinances of Brevard County, Florida, as amended.

*Id.* at 322. Section 94-31, Code of Ordinances of Brevard County, Florida provides:

There is hereby created the solid waste collection and recycling program municipal service benefit unit under the authority of [Florida Statutes (F.S.)] § 125.01. The boundaries of the benefit unit shall be the property within the unincorporated areas of the county, a description of which is on file in the office of the director.

Solid Waste Collection and Recycling Program Municipal Service Benefit Unit Created; Boundaries, Code of Ordinances of Brevard County, Florida, 94-31.<sup>3</sup> Thus, based on the plain terms of the franchise agreement, the scope of the Benefit Unit is property in unincorporated areas as defined by a file maintained by Brevard County's Director of Solid Waste Management.

In this regard, the record shows that the agency contacted the director to obtain the solid waste franchise collection areas map, which shows the portions of the county that are within the Benefit Unit. MOL at 5. The agency explains, and our review of this map confirms, that the Kennedy Space Center is treated as an incorporated area and therefore excluded from the Benefit Unit. AR, Tab 28, Emails Between Brevard County Solid Waste Management and Service Benefit Map at 393. Indeed, the director explained that the map "shows clearly that the federal properties are not part of the franchise areas." *Id.* at 391. While the protester may argue that the map is unclear as to which areas are excluded, we are unpersuaded because the service areas are highlighted in green and orange, and the non-service areas, which include the Kennedy Space Center, are white. See *id.* at 393; accord AR, Tab 24, Unincorporated Brevard County Curbside Residential Collection Web App Map at 383.

Additionally, the contract contains Exhibit B, Legal Description of Service Areas and Map.<sup>4</sup> AR, Tab 17, Franchise Agreement at 359-361. As explained by the agency, the legal description describes the outer limits of the northern and southern service areas. MOL at 5; AR, Tab 17, Franchise Agreement at 359-360. The legal description appears to establish the northern service area as encompassing County Commission Districts 1 and 2, and the southern service as encompassing County Commission Districts 3, 4, and 5. MOL at 5; AR, Tab 17, Franchise Agreement at 359-360. The agency also explains that the legal description encompasses municipalities, including Titusville, Florida, and Rockledge, Florida. MOL at 5. Thus, the agency explains, and we agree, that the legal description does not singularly shed light on whether the Kennedy Space Center is included in the Benefit Unit, but rather simply describes the outer boundaries of the northern and southern service areas. *Id.*

In contrast, the service map identifies the specific collection areas within the northern and southern service areas. MOL at 5; AR, Tab 17, Franchise Agreement at 361. While the service map's legend does not explain what the highlighting signifies, we agree with the agency that the highlighted portions refer to the collection areas because the municipalities (*i.e.*, undisputed incorporated areas where solid waste is not to be collected) are not highlighted. AR, Tab 17, Franchise Agreement at 361. Similarly,

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<sup>3</sup> Section 94-1 of the Brevard County, Florida, Code of Ordinances defines "director" as referring to the director of the solid waste management department of Brevard County. Code of Ordinances of Brevard County, Florida, § 94-1.

<sup>4</sup> Section 94-91(c) of the Brevard County, Florida, Code of Ordinances requires collection agreements to contain a description of the solid waste and recyclable materials service area. See Comments at 8.

Kennedy Space Center is not highlighted, and therefore, not included as part of the Benefit Unit. See COS at 4. Thus, we deny the protest allegation because, even though the Kennedy Space Center may technically be an unincorporated area, the maps and terms of the franchise agreement plainly exclude the Kennedy Space Center from the Benefit Unit.

Finally, we note that the director clarified that Brevard County never understood or intended for the franchise agreement to cover the Kennedy Space Center. AR, Tab 20, Letter from Director to NASA at 373 (“Brevard County has not, and does not intend to contract on behalf of, or to require other governmental entities including NASA and the Kennedy Space Center.”). Accordingly, and in light of the record before us, we deny the protest.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel