



## Decision

**Matter of:** A-Z Cleaning Solutions

**File:** B-415228

**Date:** November 6, 2017

---

David A. Rose, Esq., The Rose Consulting Law Firm, LLC, for the protester.  
Elizabeth Young, Esq., Department of the Treasury, for the agency.  
Michael Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

---

### DIGEST

The United States Mint, a federal agency within the Department of the Treasury, is not subject to the Government Accountability Office's bid protest jurisdiction under the Competition in Contracting Act of 1984, because the Mint is statutorily exempt from all federal procurement laws and regulations.

---

### DECISION

A-Z Cleaning Solutions, of Pittsburg, California, protests the award of a contract to Clean Solutions Services, Inc., of San Francisco, California, under solicitation No. USM-SF-17-0004 issued by the Department of the Treasury, United States Mint for janitorial and laundry services in San Francisco. The protester contends that the agency erred in its evaluation of proposals and in its best-value tradeoff decision.

We dismiss the protest for lack of jurisdiction.

The United States Mint, an agency within the United States Department of the Treasury, asserts that it is statutorily exempt from our bid protest jurisdiction, and therefore this protest should be dismissed. We agree.

Under the Competition in Contracting Act of 1984 (CICA), our Office has jurisdiction to resolve bid protests concerning solicitations and contract awards that are issued "by a Federal agency." 31 U.S.C. § 3551(1). CICA provides that the term "Federal agency" has the meaning given in 40 U.S.C. § 102. 31 U.S.C.A. § 3551(3). Section 102 of Title 40 defines the term "Federal agency" as including any "executive agency," which is defined as any executive department or independent establishment in the executive branch of the government." 40 U.S.C. § 102(4), (5). The Mint, as part of the

Department of the Treasury, is an executive agency that otherwise would be subject to our bid protest jurisdiction under CICA.

In 1996, however, Congress established the United States Mint Public Enterprise Fund (USMPEF) to finance the programs and operations of the Mint. See Treasury, Postal Service, and General Government Appropriations Act, 1996, Pub L. No. 104-52, § 522 (1995) (codified as amended at 31 U.S.C. § 5136). Of note, the establishing legislation for the USMPEF included the following proviso: “Provided further, That provisions of law governing procurement or public contracts shall not be applicable to the procurement of goods or services necessary for carrying out Mint programs and operations.” 31 U.S.C. § 5136. The same provision defines Mint programs and operations as follows:

(1) the activities concerning, and assets utilized in, the production, administration, distribution, marketing, purchase, sale, and management of coinage, numismatic items, the protection and safeguarding of Mint assets and those non-Mint assets in the custody of the Mint, and the Fund; and (2) includes capital, personnel salaries and compensation, functions relating to operations, marketing, distribution, promotion, advertising, official reception and representation, the acquisition or replacement of equipment, the renovation or modernization of facilities, and the construction or acquisition of new buildings.

Id. The provision further contemplates that all receipts from Mint operations and programs be deposited in the USMPEF, and that all expenses incurred for operations and programs of the Mint that the Secretary of the Treasury determines to be ordinary and reasonable incidents of Mint operations and programs be paid out of the USMPEF. Id. As a result of these provisions, the agency represents that the Mint is entirely funded by and operates within the USMPEF. Agency Response to Opposition to Request to Dismiss at 1.

Because the establishing legislation provides that federal procurement laws and regulations do not apply to the procurement of goods or services necessary for carrying out the Mint’s operations and programs, and those operations and programs are defined broadly enough to encompass substantially all of the Mint’s activities, we conclude that the Mint is not subject to the terms of CICA.<sup>1</sup> Furthermore, because the bid protest

---

<sup>1</sup> The protester contends that because the Treasury is provided with a similar, but narrower exemption from procurement statutes for the production of enumerated numismatic items at 31 U.S.C. § 5112, that the exemption in 31 U.S.C. § 5136 should be read in light of the other provision to apply only to numismatic items. Protester’s Response to Request to Dismiss at 2-3. This argument ignores that the underlying activities governed by 31 U.S.C. § 5112 are different in scope than those covered by 31 U.S.C. § 5136, and, furthermore, that section 5136 explicitly enumerates the Mint operations and programs which it exempts from procurement laws. Specifically, 31 U.S.C. § 5136 separately contemplates that not only operations and programs  
(continued...)

jurisdiction of our Office derives from CICA, we must conclude that the Mint is not subject to that jurisdiction.<sup>2</sup>

Our Office reached a similar conclusion when considering whether our bid protest jurisdiction extended to the United States Postal Service (USPS) and to the Presidio Trust. The USPS is an independent establishment of the executive branch, 39 U.S.C. § 201 (2000), and thus it is a federal agency, like the Mint, that would otherwise be subject to our bid protest jurisdiction. 31 U.S.C. § 3551(3); 40 U.S.C. § 102(4), (5). Under 39 U.S.C. § 410(a) (2000), however, the USPS is expressly exempted from any “Federal law dealing with public or Federal contracts,” except for those laws enumerated in 39 U.S.C. § 410(b). Since CICA is not included in the list of statutes expressly made applicable to USPS under section 410(b), we concluded that the USPS

---

(...continued)

relating to numismatic items, but substantially all other Mint functions will also be exempt. 31 U.S.C. § 5136.

<sup>2</sup> This is distinguishable from a category of cases in which we have found that an agency is subject to our statutory jurisdiction because it is not exempt from the provisions of CICA providing our Office with bid protest jurisdiction, but is otherwise exempt from the substantive provisions of basic procurement statutes, such as the Armed Services Procurement Act (ASPA) or the Federal Property and Administrative Services Act (FPASA), both of which have been amended by CICA. Compare 31 U.S.C. § 3551(1), (3) and 40 U.S.C. § 102(4), (5) with 10 U.S.C. § 2303(a) and 41 U.S.C. §§ 3101 and 3301(a). In these cases, we have reviewed the agency’s actions for reasonableness, and for consistency with the statutes and regulations that apply. See, e.g., Gino Morena Enters., B-224235, Feb. 5, 1987, 87-1 CPD ¶ 121 at 5 (Air Force procurement of a concession to be financed with nonappropriated funds is within our jurisdiction because it was conducted by a federal agency which is not exempt from the jurisdictional provisions of CICA, but the procurement was not subject to substantive procurement statutes because it did not involve the expenditure of appropriated funds); Starfleet Marine Transportation, Inc., B-290181, July 5, 2002, 2002 CPD ¶ 113 at 9-10 (procurement conducted under alternative procedures authorized by statute, and therefore not subject to the requirements of FPASA per 41 U.S.C. § 3301(a), was subject to GAO’s jurisdiction because it was not exempt from the jurisdictional provisions of CICA); Superior Reporting Services, Inc., B-230585, June 16, 1988, 88-1 CPD ¶ 576 at 3 (Administrative Office of the United States Courts, an establishment in the judicial branch, is subject to our jurisdiction because it is not exempt from the jurisdictional provisions of CICA, but is not subject to basic procurement statutes and regulations which apply only to the executive branch); cf. MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 6-7 (statutory provisions authorizing agency to take certain actions notwithstanding any other provision of law that do not expressly exempt an agency from procurement statutes or authorize alternative procurement procedures do not create an exemption from basic procurement statutes or from our jurisdiction).

is not subject to our bid protest jurisdiction. Falcon Sys., Inc., B-222549, May 14, 1986, 86-1 CPD ¶ 462 at 1, aff'd, Falcon Sys., Inc.--Recon., B-222549.2, June 5, 1986, 86-1 CPD ¶ 526 at 2. The Court of Appeals for the Federal Circuit reached the same conclusion regarding our jurisdiction over the USPS. See Emery Worldwide Airlines, Inc. v. United States, 264 F.3d 1071, 1079 n.7 (Fed. Cir. 2001) (holding that the USPS is not subject to GAO's bid protest jurisdiction because the USPS is exempt from all federal procurement laws not specifically enumerated in 39 U.S.C. § 410(b), and CICA is not specifically enumerated in 39 U.S.C. § 410(b)).

Similarly, the Presidio Trust, a wholly-owned government corporation, would otherwise be subject to our jurisdiction, but is statutorily exempt from all federal procurement laws and regulations but for certain enumerated exceptions, which do not include CICA. See Performance Excavators, Inc., B-291771, Mar. 17, 2003, 2003 CPD ¶ 63 at 2-3. Because CICA is not one of the enumerated exceptions, we likewise concluded that the Presidio Trust is not subject to our jurisdiction. Id.

In conclusion, because the Mint is statutorily exempt from federal procurement laws and regulations, to include the provisions of CICA that provide our Office with bid protest jurisdiction, the Mint is not subject to our bid protest jurisdiction.

The protest is dismissed

Susan A. Poling  
General Counsel