

TAB TWO

EXCERPT FROM CASE

CITY OF MISSION VS. BFI 2013

a contract limiting this risk, cities and municipalities would be forced to pay a significant premium for services requiring such initial investments. In light of this, the Court notes it seems quite unlikely that the Texas Constitution was intended to make it prohibitively difficult for a city to enter a contract longer than one year and to gain the economic benefits of a long-term contract without stating this more explicitly.

2. The Contract Complied with the Competitive Bidding Requirements of Texas Local Government Code

Next, the Court considers Plaintiff's contention that the Contract is void for allegedly failing to comply with the competitive bidding requirements mandated by the Texas Local Government Code. (Doc. 11 at 11) (citing TEX. LOCAL GOV'T CODE § 252.021). The Court finds that the law and evidence in this case plainly support Defendant's position that no competitive bidding was required.

The Texas Local Government Code requires that cities and municipalities of over 50,000 residents comply with its competitive-bidding procedures for acquisitions worth over \$10,000. TEX. LOCAL GOV'T CODE § 252.021. However, the code exempts from such procedures "a procurement necessary to preserve or protect the public health or safety of the municipality's residents." *Id.* § 252.022. **The Court holds, as Texas state courts have, that contracts for the collection and disposal of solid waste fall within the public-health exception defined in § 252.022.** See TEX. LOCAL GOV'T CODE § 252.022; see also *Browning-Ferris, Inc. v. Leon Valley*, 590 S.W.2d 729, 733-34 (Tex. Civ. App.—San Antonio 1979, writ ref'd n.r.e.). **Therefore, the parties did not need to comply with the competitive bidding practices defined in § 252.021.** See TEX. LOCAL GOV'T CODE § 252.021.

The Court disagrees with Plaintiff's position that a showing of necessity must be made for the exception to apply. See (Doc. 11 at 10). The plain language of the statute does not reference any such requirement, and Texas courts have not read the statute to require a showing of necessity. See *Hoffman v. Mt. Pleasant*, 89 S.W.2d 193, 194 (Tex. 1936) (holding that the creation of a sewage system was necessary for the protection of public health and defining the question as being "one purely of statutory construction"); see also *Browning-Ferris, Inc. v. Leon Valley*, 590 S.W.2d at 733-34 (finding, without an evidentiary showing of necessity, that a garbage-collection contract could be awarded without competitive bidding based on the public-health exception).

III. Conclusion

*6 For the foregoing reasons, the Court finds that the parties' Contract complied with the requirements of the Texas Constitution and the Texas Local Government Code. Accordingly, the Court hereby **ORDERS** that Plaintiff's Motion for Summary Judgment is **DENIED** and Defendant's Motion for Partial Summary Judgment is **GRANTED**.

SO ORDERED this 19th day of July, 2013, at McAllen, Texas.

All Citations

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