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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: White Sands Concessions, Inc.

File: B-295932

Date: March 18, 2005

Janet T. White for the protester.

Dana E. Jacobsen, Esq., Department of the Interior, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against the terms of a prospectus for proposals for the award of a concession contract for the operation of a gift shop and snack bar at a National Park Service visitor center is dismissed as beyond the scope of the Government Accountability Office's bid protest jurisdiction where the contract to be awarded does not involve the delivery of goods or services of more than de minimis value to the government.

DECISION

White Sands Concessions, Inc. protests the terms of prospectus No. WHSA001-05, issued by the Department of the Interior, National Park Service for proposals for the award of a concession contract for operation of a gift shop and snack bar in the visitor center at White Sands National Monument in New Mexico.

We dismiss the protest because it does not pertain to a contract for the procurement of property or services and thus is outside the scope of our bid protest jurisdiction.

Our authority to decide bid protests derives from the Competition in Contracting Act of 1984 (CICA), as amended, and encompasses written objections by interested parties to "a solicitation or other request by a federal agency for offers for a contract for the procurement of property or services." 31 U.S.C. § 3551(1)(A) (2000). Where the government invites offerors to compete for a business opportunity such as a concession contract, the performance of which also involves the delivery of goods or services of more than de minimis value to the government, the contract is one for the procurement of property or services within the meaning of CICA and, therefore, is encompassed within our Office's bid protest jurisdiction. Great South Bay Marina, Inc., B-293649, May 3, 2004, 2004 CPD ¶ 108 at 2. Where, on the other hand, the

government invites offerors to compete for a business opportunity that does not involve the delivery of goods or services or that involves the delivery of goods or services that are de minimis in value, the contract is not one for the procurement of property or services within the meaning of CICA; accordingly, it is not within our Office's bid protest jurisdiction. Starfleet Marine Transp., Inc., B-290181, July 5, 2002, 2002 CPD ¶ 113 at 6, 8; Crystal Cruises, Inc., B-238347, Feb. 1, 1990, 90-1 CPD ¶ 141 at 2, aff'd, B-238347.2, June 14, 1990, 90-1 CPD ¶ 560.

Here, the only services that the concessionaire is required to furnish in connection with its operation of the snack bar/gift shop are maintenance, repairs, housekeeping, groundskeeping, and pest and weed control for the concession facilities themselves. Prospectus, Tab IV (Draft Contract) at 11, 15. In other words, the only services that the concessionaire is required to furnish are those pertaining to the upkeep of the space in which it operates its business. We think that the provision of such services is properly viewed as de minimis, given that the benefit conferred upon the government--which would have no need for performance of the services but for the concessionaire's operation of its business--is minimal. In this regard, the facts of this case are distinguishable from the facts in cases that involved the delivery of services to the government of more than minimal value that the government might otherwise have had to purchase or perform itself. See, e.g., Great South Bay Marina, Inc., supra (concessionaire required to commit to reconstruction and rehabilitation services valued at over \$3 million for government-owned facilities); Shields & Dean Concessions, Inc., B-292901.2, B-292901.3, Feb. 23, 2004, 2004 CPD ¶ 42, recon. denied, B-292901.4, Mar. 19, 2004, 2004 CPD ¶ 71 (concessionaire required to provide maintenance, repair and other services for government facility, as well as facility improvement valued at over \$800,000); Starfleet Marine Transp., Inc., supra (concessionaire for ferryboat services required to provide janitorial services for agency's docks and piers, equip ferries with public address systems for use by Park Ranger, and provide transportation for Park Ranger); Alpine Camping Servs., B-238625.2, June 22, 1990, 90-1 CPD ¶ 580, recon. denied, B-238625.3, Aug. 28, 1990, 90-2 CPD ¶ 161 (campground concessionaire required to recondition and maintain recreational facilities and enforce Forest Service rules and regulations).

The protest is dismissed.

Anthony H. Gamboa
General Counsel