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DECISION THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-215536 **DATE:** January 14, 1985

MATTER OF: West End Associates

DIGEST:

GAO will not review the award of a franchise for shuttle bus services to Navy personnel where appropriated funds will not be used to pay for the service, no direct benefit will be provided to appropriated fund activities, and no income will flow to the government from the franchise. The government's potential liability for the costs of an improper default termination is not sufficient to invoke GAO's review.

West End Associates (West End) protests the award of a shuttle bus franchise to Consultants Internationale, under request for proposals No. N00236-84-14-0001, issued by the Naval Air Station, Alameda, California.

We dismiss the protest.

West End alleges that the Navy improperly enhanced Consultants Internationale's competitive position by permitting it to operate an interim shuttle bus service prior to the protested procurement. West End also argues that Consultants Internationale has no previous experience operating such a service, and does not possess the facilities or personnel to operate the franchise successfully.

The Navy argues that GAO does not have jurisdiction in this case because the contract does not involve the expenditure of appropriated funds, and GAO's bid protest jurisdiction is based on its authority to adjust and settle appropriated fund accounts. 31 U.S.C. § 3526 (1982). The Navy points out that the bus service is "unofficial" transportation and is to be paid for by those individuals using the service. The government is not liable for start-up costs, and is not obligated to provide property or support for the franchise. The government is, however, obligated to compensate the franchisee if the government wrongly terminates the franchise for default.

The Navy also states that the franchisee does not provide services or any other direct benefit to the government, as distinguished from individual members of the Navy. Additionally, the government receives none of the income generated by the franchise. The Navy is permitting the franchisee to use the Navy Exchange Service Station, which is not in use, as an operating center. The franchisee will not pay rent for the use of the station, but will reimburse the Navy for any expenses involved in using the station.

The Navy recognizes that GAO has assumed jurisdiction in some cases that did not involve the expenditure of appropriated funds, but argues that the elements on which GAO based its jurisdiction in those cases are not present here. According to the Navy, GAO has assumed jurisdiction where the government receives income or a direct benefit, or where a franchisee is providing services for appropriated fund activities. The Navy admits that GAO has also assumed jurisdiction in two cases in which the government was liable for termination costs, as it is here. Those cases are Teleprompter of San Bernardino, Inc., B-191336, July 30, 1979, 79-2 C.P.D. ¶ 61 and B.M.I., Inc., B-212286, Nov. 2, 1983, 83-2 C.P.D. ¶ 524. However, the Navy argues that in both of those cases the franchise was providing a direct benefit to the government, and it is not doing so in this case.

We agree with the Navy's reading of the cited GAO decisions. In John C. Lozinyak, B-211923, Sept. 7, 1983, 83-2 C.P.D. ¶ 339, we summarized the circumstances in which we would consider protests of franchises or contracts that do not involve the expenditure of appropriated funds. Those circumstances are where a franchisee is providing a direct benefit to the government or is providing services for appropriated fund activities, or where the government receives income generated by the franchise.

As the Navy pointed out, in Teleprompter and B.M.I. we did mention government liability for termination costs as one factor to be considered in determining whether we would review procurements not involving the expenditure of appropriated funds. However, in both cases we also discussed the fact that the franchise was to provide direct services to appropriated fund activities. In fact, in Teleprompter appropriated funds were used to pay for the

direct services. In our view, the provision of direct services to the government is the more important factor in deciding whether we will review such procurements. This view is supported by the discussion of Teleprompter in the Lozinyak case, which refers only to the direct services to the government as the reason for our review of the award of the franchise. We do not think that the government's potential liability for costs associated with an improper default termination is sufficient to invoke our review.

In this case, the franchise provides no direct service or benefit to the government. No income generated by the franchise will flow to the government. The franchisee's reimbursement to the government of the expenses of using the exchange service station does not constitute the payment of rent or income to the government. See John C. Lozinyak, B-211923, supra. The only factor present in this case is the government's liability for an improper default termination.

Therefore, the protest is dismissed.

Harry R. Van Cleve
General Counsel