

McAuliffe



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Crystal Cruises, Inc.--Request for
Reconsideration

File: B-238347.2

Date: June 14, 1990

Richard D. Gluck, Esq., Lillick & Charles, for the
protester.
Mark T. Carlesimo, Esq., for Cunard Line, Inc., an
interested party.
Lars A. Hanslin, Esq., Office of the General Counsel,
Department of the Interior, for the agency.
Susan K. McAuliffe, Esq., and Michael R. Golden, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Prior decision dismissing protest for lack of jurisdiction
is affirmed where protest does not involve the procurement
of property or services within the scope of the bid protest
provisions of the Competition in Contracting Act of 1984.

DECISION

Crystal Cruises, Inc., requests that we reconsider our
decision, Crystal Cruises, Inc., B-238347, Feb. 1, 1990,
90-1 CPD ¶ 141. In that decision, we dismissed for lack of
jurisdiction Crystal's protest of the award to Cunard Line,
Inc., of concession permits for five cruise ship entries
into Glacier Bay National Park and Preserve under a
prospectus issued by the National Park Service, Department
of the Interior. We affirm our decision.

The prospectus, issued October 11, 1989, invited firms to
apply for the five nonrenewable cruise ship entry permits
to be issued by the agency pursuant to 16 U.S.C. § 3 (1988),
authorizing the issuance of "privileges, leases and permits
for the use of land" for the accommodation of park visitors.
The prospectus contained technical evaluation factors
(principally experience factors) and a price factor
consisting of a proposed franchise fee in excess of the
minimum franchise fee required. The prospectus required
that the awardee, as a condition of the permit, allow for an
aboard-ship presentation by a National Park Service
representative of a naturalist program aimed at informing

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visitors about the park. Under the terms of the prospectus, all agency costs for the naturalist program were to be reimbursed by the awardee.

In our earlier dismissal decision, we stated that the bid protest provisions of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551-3556 (1988), provide that the Comptroller General shall decide a protest concerning an alleged violation of a procurement statute or regulation if the protest is filed in accordance with the bid protest provisions of CICA. 31 U.S.C. § 3552. These provisions define a "protest" as a written objection to a solicitation by a federal agency "for the procurement of property or services" or the proposed award, or award of such a contract. 31 U.S.C. § 3551. We found that the issuance of a permit for a franchise fee granting a right of access to government land and property under the authority of 16 U.S.C. § 3, which provides for the granting of such concessions by the Secretary of the Interior, is not a procurement of property or services within the meaning of CICA. We dismissed Crystal's protest of the evaluation of its proposal for lack of jurisdiction after having determined that the granting of the right of access under the prospectus is more in the nature of a sale by the agency of a permit or license to enter government property rather than a procurement of property or services. See generally Columbia Communications Corp., B-236904, Sept. 18, 1989, 89-2 CPD ¶ 242.

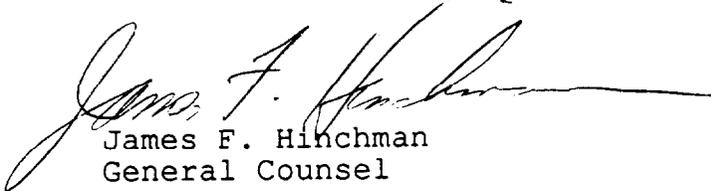
In its request for reconsideration, the protester argues that this concession award resulted from a solicitation for the purchase of services since the basic requirement furthers the agency's mission and therefore confers a direct benefit on the agency. Specifically, the protester argues that the permits are issued to cruise lines by the National Park Service so that the public can visit the park, and learn about its natural features, while preserving and conserving the park area. According to the protester, this concerns the principal mission of the agency.

We agree that this concession contract will further the agency's mission to promote park visits. Even though the concession grant is mission related, the essence of the transaction is not the acquisition of goods or services, but the grant, for a fee, of certain access rights to private contractors. This clearly is more in the nature of a sale than a procurement. As stated in our prior decision, our jurisdiction is limited to "the procurement of property or services," that is, the purchase of such goods or services. Since, in our view, the granting of the right of access here is in the nature of a sale by the agency of a permit or

license to enter government property, there is no basis to review the protest under CICA.

The protester cites Stephen Sloan Marine Corp., B-234219, May 9, 1989, 89-1 CPD ¶ 435, in support of its position that we will review concession awards. In that decision, we reviewed the renewal award of a long-term concession contract for the operation of a passenger ferry service for Liberty and Ellis Islands' Statue of Liberty National Monument. Unlike the case here, no objection to our jurisdiction was raised by the parties. Interior states that it failed to raise any objection to our jurisdiction in the Stephen Sloan case because it considered that decision an advisory opinion issued in response to numerous congressional requests for our review of the matter. Interior's failure to object to jurisdiction in that case neither waived the agency's right to object to our jurisdiction here, nor does it preclude us from addressing the question in this case, where each party has had the opportunity to submit its views in detail.

We affirm our prior decision.



James F. Hinchman
General Counsel