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Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

# Decision

**Matter of:** Santa Rita, LLC

**File:** B-411467; B-411467.2

**Date:** July 20, 2015

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Richard F. Busch II, Esq., for Santa Rita, LLC, the protester.  
Wade L. Brown, Esq., Department of the Army, for the agency.  
Cherie J. Owen, Esq., and David A. Ashen, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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## DIGEST

Protest of the terms of a solicitation for the direct sale of scrap metal and other recyclable materials 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 minimus value to the government.

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## DECISION

Santa Rita, LLC protests the terms of solicitation No. W52P1J-15-R-DV02, issued by the Department of the Army, Army Materiel Command, for the sale of scrap metal. Santa Rita contends that certain terms in the solicitation are ambiguous and that the solicitation fails to adequately inform offerors of the evaluation factors upon which the selection will be based.

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.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3556. Under CICA, our authority to decide bid protests encompasses written objections by interested parties to "[a] solicitation or other request by a [f]ederal agency for offers for a contract for the procurement of property or services." 31 U.S.C. § 3551(1)(A).

Our jurisdiction generally does not extend to challenges concerning the sale or lease of government property, since these activities, by their nature, are not

procurements. National Aeronautics & Space Admin.--Recon., B-408823.2, May 8, 2014, 2014 CPD ¶ 147 at 3. Nevertheless, we have taken jurisdiction where an agency's action involved both a sale (or lease) of government property and a procurement of goods or services, which we characterize as a mixed transaction. See, e.g., DNC Parks & Resorts at Yosemite, Inc., B-410998, April 14, 2015, 2015 CPD ¶ 127 at 7; Blue Origin, LLC, B-408823, Dec. 12, 2013, 2013 CPD ¶ 289 at 6. We have found that our Office has jurisdiction over two categories of mixed transactions: (1) where the agency receives a direct intangible benefit, which aids the agency in the discharge of its mission, and/or (2) where the agency receives a concrete tangible benefit that involves the delivery of goods and/or services to the government that are of more than a de minimus value. National Aeronautics & Space Admin.--Recon., supra.

As stated above, the first category of cases where we have taken jurisdiction is where the agency receives some direct, but arguably intangible, benefit that aids the agency in the discharge of its mission. For example, we have found that a benefit was conferred to the government through a concession for haircuts for new Air Force recruits (paid for by the recruits), because "the concession agreement is a contract for services under which the [agency] will satisfy its need to obtain initial haircuts for its recruits--which the agency insists is an important aspect of the training experience." Gino Morena Enters., B-224235, Feb. 5, 1987, 87-1 CPD ¶ 121 at 4. Similarly, we have found that a benefit was conferred on the government through a concession for photocopy services at a U.S. District Court because the use of a concession-type contract aided the court's mission by reducing its workload and also providing a benefit to the public of more effective access to court records. West Coast Copy, Inc.; Pacific Photocopy & Research Servs., B-254044, B-254044.2, Nov. 16, 1993, 93-2 CPD ¶ 283 at 5-6; see also, New York Tel. Co., et al., B-236023, B-236097, Nov. 7, 1989, 89-2 CPD ¶ 435 at 2-3 (concession to provide pay phone services to employees and visitors at a General Services Administration facility was subject to GAO protest jurisdiction where the services were intended to satisfy agency mission needs).

The second category is those cases where a more concrete or tangible benefit is conferred on the agency as part of a mixed transaction. These cases require the delivery of goods and/or services to the government that are of more than a de minimus value. For example, in Open Spirit, LLC, B-410428, B-410428.2, Dec. 15, 2014, 2014 CPD ¶ 373, we found that the contract was a "mixed transaction" where the value of the in-kind consideration was at least equal to the fair market value of the leased premises. Similarly, in DNC Parks & Resorts at Yosemite, Inc., supra, we concluded that a concession contract was a "mixed transaction" where the concessioner was required to provide services and supplies valued at approximately \$28.6 million, including snow removal, litter removal, maintenance, paving, and painting; provision of medical supplies and equipment; visitor and agency employee transportation services, including three pre-established shuttle routes and after-hours, on-demand visitor and employee transportation

services; and allowing agency vehicles to refuel at the concessioner's gas stations. See also, Great S. Bay Marina, Inc., B-293649, May 3, 2004, 2004 CPD ¶ 108 at 2 (concessioner required to provide 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., B-290181, July 5, 2002, 2002 CPD ¶ 113 (concessionaire required to provide janitorial services, equip ferries with public address systems for use by park rangers, and provide transportation for rangers).

In White Sands Concessions, Inc., B-295932, March 18, 2005, 2005 CPD ¶ 62, we dismissed a protest challenging the award of a concession contract, finding that our Office did not have jurisdiction because the value of the goods and services provided to the government was de minimus. In that case, the only services that the concessionaire was required to furnish in connection with its operation of a snack bar/gift shop were maintenance, repairs, housekeeping, groundskeeping, and pest and weed control for the concession facilities themselves. In other words, the only services that the concessionaire was required to furnish were those pertaining to the upkeep of the space in which it operated its business. Id. at 2.

Similarly, under the protested solicitation here, the only goods or services that the contractor will be required to furnish are directly connected with its purchase of the scrap metals and recyclable materials. Specifically, the contractor will be required to provide containers to hold the scrap metals it purchases and to pick up the materials at regular intervals. Solicitation at 2. Agency personnel, not the contractor, will gather the materials, sort the materials, fill the containers, weigh the metal, and contact the company when the containers are ready to be picked up. Dismissal Request at 2; see Solicitation at 2. Further, the agency emphasizes that the contractor will not be required to provide any maintenance or upkeep of the facilities. Dismissal Request at 3. We think that the provision of these goods and services is properly viewed as de minimus, given that the benefit conferred upon the government is minimal and is directly related to the sale of the scrap metal. Therefore, the protested solicitation does not pertain to a contract for the procurement of property or services, and is outside our protest jurisdiction.

We dismiss the protest.

Susan A. Poling  
General Counsel