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00189 - [A0590618]

Concessions Management by the National Park Service, Department of the Interior. December 9, 1976. 12 pp.

Testimony before Rep. Joe L. Evins, Chairman, House Committee on Small Business: Energy and Environment Subcommittee; by Henry Eschwege, Director, Community and Economic Development Div.

Issue Area: Land Use Planning and Control: Federally-owned and Federally Supported Recreation Areas (2310).

Contact: Community and Economic Development Div.

Budget Function: Natural Resources, Environment, and Energy: Recreational Resources (303).

Organization Concerned: Landmark Services, Inc.; National Park Service; Rocky Mountain National Park Co.

Congressional Relevance: House Committee on Government Operations; House Committee on Small Business: Energy and Environment Subcommittee.

Authority: Disputes Act (41 U.S.C. 321). H.R. 15822 (94th Cong.). Concessions Policy Act of 1965. Small Business Act. 16 U.S.C. 20b(d). 5 U.S.C. 706.

In 1974, GAO reviewed (1) the monitoring and evaluation of concessions operations, (2) the encouragement of competition and the considerations given small business in the award and renewal of concession contracts, (3) the adequacy of policies and practices for establishing concessioner franchise fees, and (4) the extent of compliance with environmental requirements in approving new facilities. Language in a new contract form is legally acceptable and will not diminish the level of protection afforded the concessioner in performance of his functions, as was feared, nor will the "disputes" clause differ from the generally applicable procedure for disputes in Government procurement. H.R. 15822 could serve to enhance competition for concessioners and all interested parties could be afforded greater opportunities to participate in concessioner activities, but, if the bill is reintroduced, section 8 should be reconsidered since in its present form it is inconsistent with existing law. The Park Service is leasing warehouse property and office space and charging 40% of the rent it pays to its concessioner in the Washington, D.C. area, and, in additional office space, has begun charging a commercially viable rate until the end of contract. Because of contract termination and safety hazards, facilities at Hidden Valley Ski area have been assessed at \$1,048,000 by the cost approach, at \$1,023,000 by the market data approach, and at \$698,000 by the income approach. Based on these figures, a final purchase price of \$750,000 for the concessioner's possessory interest was offered, with the concessioner having salvage rights for the chair lift, estimated at \$100,000. Although GAO questioned the interpretation made by the Park Service, both parties were in agreement, and the interpretation stands. (Author/SS)

00189

UNITED STATES GENERAL ACCOUNTING OFFICE
Washington, D.C. 20548

For Release on Delivery
Expected at 10:00 a.m. on
December 9, 1976

STATEMENT OF
HENRY ESCHWEGE, DIRECTOR
COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION
UNITED STATES GENERAL ACCOUNTING OFFICE
BEFORE THE
ENERGY AND ENVIRONMENT SUBCOMMITTEE
OF THE
COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES
ON
CONCESSIONS MANAGEMENT
BY THE
NATIONAL PARK SERVICE
DEPARTMENT OF THE INTERIOR

Mr. Chairman:

We are here today at your request to discuss the actions taken or planned by the Department of the Interior to implement the recommendations contained in the March 3, 1976, Joint Report of the House Committees on Government Operations and Small Business.

Specifically, you asked us to provide our views and comments on:

- The Department of the Interior's response to the recommendations made in the Joint Report and the current status of the Department's actions;
- The Department's proposed standard form contract for concession operations in National Parks and other areas under the control and jurisdiction of the National Park Service, and to give our

views on the comments of the concessioners on the proposed standard form contract; and

--Proposed legislation (H.R. 15822) to amend the Small Business Act and the Concessions Policy Act of 1965.

As you know, Mr. Chairman, this Subcommittee and the Subcommittee on Conservation, Energy, and Natural Resources asked GAO in September 1974 to review (1) the monitoring and evaluation of concessions operations, (2) the encouragement of competition and the considerations given small business in the award and renewal of concession contracts, (3) the adequacy of policies and practices for establishing concessioner franchise fees, and (4) the extent of compliance with environmental requirements in approving new facilities.

In response to that request, we issued a report on July 21, 1975 (RED-76-1), on improvements needed in administration of concession operations in the National Parks. On July 25, 1975, we testified before the two subcommittees on the findings, conclusions, and recommendations contained in that report.

We are pleased to note that many of the weaknesses which we identified in our report have been recognized and included in the recommendations made in the Joint Report.

With respect to actions taken by the National Park Service, I would like to say at the outset that in accordance with the suggestion made by you and Chairman Moorhead on July 30, 1975,

the Park Service has, during the period since we testified, submitted to us for review and comment a number of draft proposals including

- a proposal for a pricing comparability study,
- draft instructions for use by the Park Service in evaluating concession operations, and
- a draft of the proposed standard concession contract.

In each case, we provided written comments and suggestions to the Park Service.

Needless to say, we welcome the opportunity to comment on such matters and to work with the Park Service in its efforts to improve the administration of its programs and activities.

Department of the Interior response
to Joint Report Recommendations

In accordance with your request, Mr. Chairman, I will briefly summarize the overall actions taken or planned by the Department.

The Department and the National Park Service have, for the most part, attempted to be responsive to the Joint Report's 16 recommendations. However, for the recommendations to be fully implemented and effective, much work remains to be accomplished. For example, the new proposed standard form contract is, in our opinion, an improvement over the present contract and should result in better administration of the Park Service

concession management program. The timeframe for finalizing the contract has not, however, been established by the Park Service.

Also the Department has not yet been able to establish criteria for determining comparability rates charged by concessioners. To comply with the Joint Report's recommendation, the Department has entered into a contract with a national public accounting firm to perform a price comparability study and to develop a formula or formulas to be used for establishing such rates. This study is scheduled to be completed in October 1977. Again, the Department is attempting to take action, but compliance with the recommendation will depend first on successful completion of the study and, second, on proper implementation and monitoring by the Park Service of an approved criteria.

Finally, the Joint Report, in several of its recommendations, suggests that the Department commit to Federal Regulations its policy guidelines and criteria for program operations. To comply with the recommendations, proposed regulations were drafted. However, the Department's Solicitor's Office questioned whether certain proposals should take the form of published regulations. For example, the Solicitor's Office said if the Park Service were to put its criteria for annual evaluations of concessioners in regulation form, the Secretary would be unable to terminate an unsatisfactory

concessioner, unless each and every procedural requirement of the regulation had been fulfilled by the park superintendent. Notwithstanding the Solicitor's comments, we believe that it is important, both to the concessioner and to the general public, that the Department commit to regulations the guidelines and criteria under which its programs will operate.

Proposed Standard Contract

You asked us to provide our views and comments on the Department's proposed standard form contract and the concessioners' comments on several sections of the contract.

The Conference on National Park Concessioners, as you know, submitted their views to the Park Service on October 6, 1976. They stated that the proposed contract language as published by the Park Service in the Federal Register on July 13, 1976, would in effect destroy the present concession system and would also obviate the intention and direct provision of Public Law 89-249 which Congress enacted to govern concession policy.

On September 24, 1976, we provided our views and comments to the Department on the proposed contract. We understand that a copy of our comments has been provided to the Subcommittee staff. We have reviewed the contract language and have no objections from a legal viewpoint. The comments we provided dealt essentially with the need for clarification or specificity in certain sections of the contract. According

to Department officials, our comments will be considered before the contract document is finalized.

With regard to the concessioners' concerns about the preamble of the proposed standard contract and the omission of the authorization for the Secretary to release the concessioner of certain obligations, we find no legal objection to the proposed language and do not believe that the level of protection afforded the concessioner in carrying out his functions is in any way diminished by deletion of the language from the preamble of the contract.

One final point, Mr. Chairman, which you asked us to comment on concerning the proposed contract, related to section 17 of the contract entitled "Disputes." Specifically, you asked if the Department can or should limit its attempt to provide for court reviews of disputes between the concessioners and the Park Service in light of the provisions of 5 U.S.C. 706. The disputes clause is consistent with the Disputes Act (41 U.S.C. sections 321, 322 (1970)). In this respect, the proposed contract follows the procedure which is generally applicable to disputes in Government procurements. The concessioner is entitled to relief when agency decisions are not based on "substantial evidence," which is the same standard applicable under 5 U.S.C. 706, concerning judicial review of agency actions.

Accordingly, we find no legal objection to the language contained in section 17 of the proposed standard contract.

With respect to H.R. 15822, introduced on October 1, 1976, to amend the Small Business Act, as amended, and the Concession Policy Act of 1965, we believe that the provisions of the bill, if properly implemented, would serve to enhance competition for concessioners and that all interested parties, including small business, would be afforded a greater opportunity to participate in concessioner activities. There is, however, one section which may warrant further consideration if the bill is reintroduced in its present form in the next Congress. Section 8 of the bill would amend 16 U.S.C. 20b(d) to provide that if the Park Service and the concessioner cannot agree to a revised franchise fee, the matter shall be submitted to arbitration, but the new fee may not be at less than the previous level. This provision appears to be inconsistent with the requirement of 16 U.S.C. 20b(d) that franchise fees shall be determined on consideration of the probable value to the concessioner of the privileges granted, with that value defined as the opportunity for net profit in relation to gross receipts and capital invested. This statutory standard could call for a lower fee while the amendment prevents it.

By way of comparison, the proposed standard form contract lets the Secretary set the new franchise fee according to the statutory standard in case of dispute, whether higher or lower, but the Secretary's decision would be final and conclusive with no arbitration.

Your staff, Mr. Chairman, requested that we obtain certain information on two other matters: (1) the rental fees charged by the Park Service for facilities provided to Landmark Services, Inc., the concessioner operating a tour bus service in the Washington, D.C., area, and (2) the procedures followed by the Park Service in arriving at the value of the concessioner's possessory interest in the Hidden Valley Ski area at the Rocky Mountain National Park.

Leasing of Warehouse Property and Office Space to Landmark Services, Inc.

Your main concern, as we understand, is whether the Park Service is charging for the leasing of warehouse property used by the concessioner to repair and store its tourmobiles and to maintain related supplies and equipment for the operation of the tourmobiles.

The facilities are located on land that is owned by the Richmond, Fredricksburg, and Potomac Railroad. The Park Service estimates that the concessioner is using about 40 percent of the 3.6 acres of land it leases from the railroad. We previously testified in July 1975 that the Park Service proposed to charge the concessioner for its share of the annual rent fee. Effective October 1, 1975, the Park Service began paying an annual rate to the railroad of \$50,400 and this rate is to remain in effect, under the current contract, until September 30, 1977.

The Park Service and Landmark agreed that beginning on October 1, 1975, the concessioner would pay \$20,160 per year or 40 percent of the current rental fee. With regard to the amount charged the concessioner for the use of the warehouse itself, we previously testified that the Park Service had charged \$1,250 a year but had intended to increase its charge to \$3,030 a year. The Park Service, however, is still charging \$1,250 a year for the warehouse facilities.

Park Service officials recently told us that the Park Service in the near future, will have an appraisal made of the facility to more accurately ascertain what an appropriate charge to the concessioner should be for the use of this facility. The revised fee is to be established by January 1977.

Additional property located at 900 Ohio Drive in Southwest Washington, D.C., was made available to Landmark by the Park Service. The property encompasses 1,794 square feet of office space and the Park Service had been charging an annual fee of only \$202 for this facility. We took the position in our previous testimony that concessioners should pay an amount that approximates commercially established rates for similar types of facilities and/or services. Effective January 1, 1976, the Park Service began charging the concessioner \$11,000 a year and said it will charge this amount until the contract is terminated on December 31, 1977. Park Service officials stated that the value of the property was arrived at following an appraisal on the basis of fair

rental value. According to the Park Service, Landmark Services, Inc., is to vacate 900 Ohio Drive as of December 31, 1977.

Determination of value of possessory
interest of Hidden Valley Ski area
at Rocky Mountain National Park

In October 1971, the Park Service contracted with the Rocky Mountain Park Company to operate the concession facilities and services at the Hidden Valley Ski area of the Rocky Mountain National Park. The 20-year contract stated that the concessioner would construct a double chair lift and also make an addition to the ski lodge. We were told by Park Service officials that agreement was reached to terminate the contract following a dispute between the concessioner and the Park Service regarding the use of the chair lift during the summer season. Prevalent high winds in the chair lift area were considered to cause a safety hazard to the public; also certain environmental damage was attributed to the use of the facility.

The Park Service contracted with an independent real estate appraiser to estimate the market value of the property. Using the cost, market data, and income approaches to appraising the property, the appraiser, in a report to the Park Service dated June 18, 1976, estimated the values at \$1,048,000, \$1,023,000, and \$698,000, respectively. The appraiser concluded that the income approach was the best

indicator of present market value of the property and concluded that the final value estimate was \$700,000.

After receipt of the appraisers report, the Park Service concluded that the income approach should have included projected income which was based on summer as well as winter use of the chair lift notwithstanding the restriction placed on the concessioner regarding summer use of the chair lift. The Park Service then estimated, by including income on the basis of the annual summer operations, that the appraised income figure should be increased by \$322,000, to a value of \$1,020,000. In subsequent negotiations between the Park Service and the Rocky Mountain Park Company, agreement was reached that the Park Service would purchase the concessioner's possessory interest in Hidden Valley Ski area for \$750,000, with the concessioner having salvage rights for the chair lift, estimated at \$100,000.

When we questioned the basis used to determine the value of the possessory interest in the chair lift--fair value vs. book value--Park Service officials advised that the contract provides for compensation to the concessioner based on (1) fair value if a successor is to assume operations or (2) book value if operations are discontinued, or if any concessioner improvements are removed or demolished. In arriving at the amount of compensation for the chair lift, the Park Service considered that the fair value provision of its contract with the Rocky Mountain Park Company was applicable because

successor will continue to operate the ski area even though the chair lift, as such, is to be discontinued and removed.

From a reading of the contract provisions, we find it difficult to agree with the interpretation which the Park Service has adopted concerning valuation of possessory interest in the chair lift. However, contract interpretation is, of course, a matter of the intent of the parties who, in this case, are apparently in agreement on this point.

Mr. Chairman, this concludes our testimony. We will be glad to respond to any questions you or the members of the Subcommittee may have.

NOTICE OF HEARINGS

Committee : House Committee on Small Business
Subcommittee on Energy and Environment

Subject : Improvements being made by the National Park Service
in managing concessioners

Date : December 9, 1976

Time : 10 A.M.

Room : 2361 Rayburn House Office Building

Membership : John D. Dingell, Chairman (D.-Mich.)

Majority : (8 D.) Representatives Dingell, Steed (Okla.),
St Germain (R.I.), LaFalce (N.Y.), Krebs (Calif.),
Russo (Ill.), Badillo (N.Y.), and Fithian (Ind.)

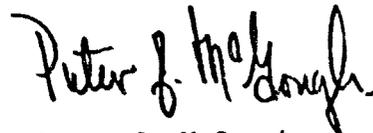
Minority : (4 R.) Representatives Conte (Mass.), Fish (N.Y.),
Cohen (Maine), and Butler (Va.)

Principal Staff: Mike Ward and Dave Finnegan, Counsel

GAO Witness : Henry Eschwege, Director, CED

Accompanied By: Frank Subalusky, Assistant Director, CED
Barry Bedrick, Attorney, OGC
Peter J. McGough, Legislative Adviser, OCR

Car will leave G Street, First Basement at 9:45 a.m.



Peter J. McGough
Legislative Adviser, OCR