



U.S. Department of the Interior
Office of Inspector General

AUDIT REPORT

**CONCESSION CONTRACTING PROCEDURES,
NATIONAL PARK SERVICE**

**REPORT NO. 99-I-626
JUNE 1999**



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

Memorandum

JUN 30 1999

To: Director, National Park Service

From: Robert J. Williams *Robert J. Williams*
Assistant Inspector General for Audits

Subject: Audit Report on Concession Contracting Procedures, National Park Service
(No. 99-I-626)

This report presents the results of our audit of the National Park Service's concession contracting procedures. The objective of the audit was to determine whether the National Park Service conducted its concession contracting activities in compliance with Federal law and Park Service regulations.

We found that the Park Service did not conduct concession contracting activities in full compliance with Federal law and Park Service regulations or ensure that a fair return was obtained from all concessioners operating in the national park system. Specifically, the Park Service did not reissue expired concession contracts and permits in a timely manner; periodically adjust concessioners' fees as required by the Concessions Policy Act; establish special accounts in accordance with Park Service guidance; or compute fees for the use of park facilities, including housing, that were assigned to concessioners. These deficiencies occurred because the Park Service had not issued sufficient guidance to ensure that designated responsibilities for concession contracting were performed or completed in a timely manner, had not established clear lines of authority, and had insufficient internal controls to properly monitor compliance with law and regulations. As a result, concessioners operated under expired concession contracts and permits that contained provisions which were not advantageous to the Park Service, the Government lost or delayed opportunities to gain additional revenues, and the Park Service may not have received an adequate return from concessioners, special accounts or from their use of park facilities.

In the May 27, 1999, response (Appendix 4) to the draft report from the Director, National Park Service, the Park Service indicated concurrence with Recommendations 1, 5, 6, 7, 8, and 9 and said that Recommendations 2, 3, and 4 were "under consideration, and a final decision should be made within the next few weeks." Based on the response, we consider Recommendations 5 and 7 resolved and implemented. Also based on the response, we request that the Park Service reconsider its responses to Recommendations 1, 2, 3, 4, 6, and 8, which are unresolved, and provide additional information for Recommendation 9 (see Appendix 5).

In accordance with the Departmental Manual (360 DM 5.3), we are requesting a written response to this report by August 13, 1999. The response should provide the information requested in Appendix 5.

The legislation, as amended, creating the Office of Inspector General, requires semiannual reporting to the Congress on all audit reports issued, the monetary impact of audit findings (Appendix 1), actions taken to implement audit recommendations, and identification of each significant recommendation on which corrective action has not been taken.

We appreciate the assistance of Park Service personnel in the conduct of our audit.

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INTRODUCTION

BACKGROUND

The National Park System Concessions Policy Act of 1965 (Public Law 89-249) authorized concessions operations in the national parks. The Act directed the Secretary of the Interior “to administer national park system areas in accordance with the fundamental purposes of conserving their scenery, wildlife, natural and historic objects, and providing for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations.” To provide for public use of the parks, the Act authorized the Secretary “to encourage and enable” concessioners to provide and operate facilities and services deemed desirable for the accommodation of visitors to the national parks.

To authorize concessions operations, the Park Service issues permits or awards contracts to “private persons and corporations.” According to the Park Service’s Concessions Management Guideline, NPS-48, Chapter 24, permits are issued usually for periods of fewer than 5 years and for concessions operations that are not expected to gross more than \$100,000 a year. Longer term concessions operators having estimated gross receipts of more than \$100,000 generally are awarded concession contracts.¹ Contracts and permits (referred to hereafter as agreements) specify the terms and conditions of a concessioner’s operations, including the services, accommodations, or facilities offered; the period of performance; concessioner responsibility for maintenance and repair of facilities; and financial reporting and fee payment requirements.

Section 3(d) of the Act provides for concessioners to pay a fee to the Government for the “probable value ... of the privileges granted by the particular contract or permit involved.” Typically, concessioners pay a franchise fee to the Government based on a percentage of the gross receipts from the concessions operations. According to the Act, the fee must be reconsidered at least every 5 years. In addition, some concessioners are required to establish and make payments to concessioner improvement accounts (special accounts).² Further, concessioners that use Government facilities may be required to pay a building use fee. In calendar year 1997 (the most recent data available, according to a Park Service official), concessioners paid franchise fees of \$17.1 million and deposited \$26.2 million into special accounts. The Park Service also reported that concessioners provided other consideration

¹According to the Code of Federal Regulations (36 CFR 51.3), contracts are used for larger concession operations and permits are used for “those of less complexity.”

²There are two types of special (capital improvement) accounts: government improvement accounts and capital improvement accounts. According to Park Service guidance, moneys paid to these accounts are to be used “to rehabilitate or construct facilities which directly support concessioner services as authorized and/or required by a concession contract.” Government improvement accounts finance capital improvements made to Government-owned facilities, and capital improvement accounts finance capital improvements made to concessioner-constructed facilities.

to the Government in 1997, including about a \$9.1 million liquidation of their possessory interests (ownership) in concessions facilities.³

Concessions program responsibilities are assigned to employees at all levels of the Park Service. For example, the Concessions Management Division in Washington, D.C., provides direction and policy guidance for the concessions program, and the Division's Concessions Program Center in Denver, Colorado, is responsible for concessions planning and analysis, including technical services such as business analyses and feasibility studies, that support concessions management officials at field locations. At the Park Service's support offices, which are affiliated with the regional offices, concessions personnel are responsible for providing or obtaining professional, technical, and administrative services, and at the parks, employees are assigned concessions program responsibilities, such as ensuring that concessioners operate in compliance with contract provisions and operating/maintenance plan requirements. According to the Park Service, about 219 employees were assigned to the concessions program in 1997, of which 129 employees were assigned on a full-time basis and 90 employees were assigned on a collateral-duty basis. In fiscal year 1996, the concessions program received funding of \$7.2 million, and in fiscal year 1997, the program received funding of \$7.8 million. According to Park Service records, as of September 30, 1997, the Park Service had 216 contracts and 420 permits issued to concessioners that operated at 133 park units nationwide.

Since 1990, the Park Service has made several changes to its concession contracting procedures. For example, in December 1990, the Park Service issued Special Directive 90-7, "Revised Delegations of Authority for Concession Contracting," which required the approval of the Park Service Director for all concession agreements that had terms of 5 years or more or expected annual gross receipts of more than \$100,000. In September 1992, regulations on concession contracting were revised (36 CFR 5.1) to increase competition and to improve oversight of the sale and assignment of concession interests.⁴ In January 1993, the Park Service revised the standard concession contract language to conform to the provisions of the new regulations, and in July 1995, the Park Service issued Special Directive 95-9, "Revised Delegations of Authority for Concession Contracting," which decentralized the concession contracting process by delegating authority for concession contracting actions to field directors (now regional directors) and for concession permit actions to park superintendents.

³ Public Law 89-249 provides for concessioners to have a possessory interest in park improvements that they construct. The law states that just compensation for a concessioner's possessory interest, "unless otherwise provided by agreement," should be "an amount equal to the sound value of such structure, fixture, or improvement. . . determined upon the basis of reconstruction cost less depreciation evidenced by its condition and prospective serviceability in comparison with a new unit of like kind, but not to exceed fair market value."

The Regulation amended the definition of and placed some restrictions on the concessioner's preferential right to new and additional services, increased the amount of concessions financial information that is available to the public, and clarified the Park Service's authority over the sale or transfer of concessions interests.

On November 13, **1998, the** President signed the National Park Service Concessions Management Improvement Act of 1998, Public Law 105-91, which repealed the 1965 Concessions Policy Act but did not affect the validity of any concession contract or permit entered into under the 1965 Act. The 1998 Act retains certain provisions of the rescinded Act, such as the role of the concessions operator as a provider of public accommodations, facilities, and services in the parks and payment of franchise fees “or such other monetary consideration as determined by the Secretary, upon consideration of the probable value to the concessioner of the privileges granted by the particular contract involved.” However, the 1998 Act also contains some significant changes to the former concessions legislation, including provisions for the Park Service to retain franchise fees and other monetary consideration paid by concessioners that previously were retained by the Federal Government, discontinuation of the granting of preferential rights to concession contract renewal or to new or additional services (with certain limited exceptions), a shift from possessory interests to “leasehold surrender interests” in capital improvements constructed by a concessioner, the establishment of minimum requirements for proposed concessions operations, the establishment of a National Park Service Concessions Management Advisory Board, and the authorization of contractor support “to conduct or assist in those elements of the management” of the Park Service’s concessions program.

In the December 1, 1998, issue of the “Federal Register,” the Park Service gave public notice that as a result of the legislation, it was canceling all outstanding solicitations for concession agreements except for permits for cruise ship services. The Concessions Program Manager said that the Park Service planned to issue draft concession contract regulations in March 1999, provide training on new contract provisions to Park Service personnel involved in the concessions program in the spring of 1999, and resume contracting by the end of the summer of 1999.

OBJECTIVE AND SCOPE

The objective of the audit was to determine whether the National Park Service conducted its concession contracting activities in compliance with Federal law and Park Service regulations. The scope of our audit, in general, covered activities that occurred during fiscal years 1996 and 1997, including the reissuance or extension of expired agreements (according to Park Service records, as of September 30, 1997, 232 of the 636 concession agreements were in an expired status) and the periodic reconsideration of concessions fees (we identified 56 agreements that were due for fee reconsiderations during fiscal years 1996 and 1997).

We conducted our review at the Concessions Management Division in Washington, D.C.; the Concessions Program Center in Denver, Colorado; and the Park Service’s Intermountain Regional Office in Denver. We also contacted the regional and park offices listed in Appendix 2 to obtain copies of concession agreements, fee determinations, and special account projects and to interview officials about concessions operations. To evaluate concession contracting procedures, we reviewed (1) a judgmental sample of 24 of the 196 concession agreements that, according to Park Service records, had been issued or reissued

in fiscal years 1996 and 1997; (2) all 19 franchise fee determinations that had been performed during this 2-year period; and (3) all 12 concession contracts that had reported 1995 revenues (the most recent data available on concessioner revenues at the time of our review) of \$500,000 or more and that had been in an expired status for 5 or more years as of September 30, 1997.

Our audit was made in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances. As part of our review, we evaluated the system of internal controls over the concession contracting process to the extent we considered necessary to accomplish the audit objective. We found internal control weaknesses in the Park Service's supervision and oversight of concession contracting activities as discussed in the Finding and Recommendations section of this report. Our recommendations, if implemented, should improve internal controls in these areas.

We also reviewed the Departmental Reports on Accountability for fiscal years 1996 and 1997, which include information required by the Federal Managers' Financial Integrity Act, and found that the Park Service had not reported any material weaknesses related to the objective and scope of our audit.

PRIOR AUDIT COVERAGE

During the past 6 years, the Office of Inspector General has issued seven reports and the General Accounting Office has issued three reports that contained findings on concession contracting activities. These reports are summarized in Appendix 3.

FINDING AND RECOMMENDATIONS

CONCESSION CONTRACTING ACTIVITIES

The National Park Service did not fully comply with Federal law or Park Service regulations or ensure that it obtained a fair return from all concessioners operating in the national park system. Specifically, the Park Service did not ensure that expired concession agreements were reissued in a timely manner, franchise fees were periodically adjusted, and special accounts were established and used properly. Also, the Park Service did not comply with guidance on determining building use fees or determine whether concessioners should pay for their employees' use of park housing. Park Service guidance, including the Concessions Management Guidelines, NPS-48, and guidance issued by the Park Service's Associate Director for Operations limit the length of time a concession contract can be extended, and the Concessions Policy Act (Public Law 89-249) and Park Service guidance require that franchise fees be reconsidered "at least every five years." Also, Park Service guidance requires the establishment of special accounts on the basis of the costs of planned projects that are to be financed with account funds and the determination of a use fee based on the fair value of park facilities that are assigned to concessioners. The deficiencies occurred because the Park Service had not issued specific guidance to ensure that designated responsibilities for concession contracting were performed or completed in a timely manner, had not established clear lines of authority, and had inadequate internal controls to monitor compliance with law and regulations. As a result, Park Service concessioners continued to operate under expired concession agreements that contained provisions which were not advantageous to the Park Service, the Government lost or delayed the opportunity to receive additional revenues, and the Park Service may not have received a fair return from concessioners' special accounts or from their use of park facilities.

Director's Approval

Special Directive 95-9, "Revised Delegation of Authority for Concession Contracting," assigned responsibility for most concession contracting functions to field-level officials. However, the Directive required the Director's approval for (1) prospectuses for concession contracts that had expected annual gross receipts of \$500,000 or more, (2) proposed amendments to existing contracts that reduced the Government's return, and (3) all franchise fee determinations and reconsiderations. In addition, the Directive stated that the Director or his designee must approve all sales and transfers of concession authorizations.

We found that the Park Service had not implemented the Directive's requirement that certain concession contracting actions should receive the Director's approval. Specifically, the Director did not approve prospectuses for all 7 contracts reviewed that had expected annual gross receipts of \$500,000 or more, the 2 sales or transfers of concession authorizations reviewed, and all 19 franchise fee determinations and 2 other fee adjustments reviewed. Because we identified no proposed amendments to existing contracts that reduced the

Government's return, we could not determine whether the Director had approved such transactions.

According to the Concessions Program Manager, the Director had not approved the concession contracting actions in accordance with the Directive's requirements because the approval authority had been delegated to the Concessions Management Division and the Concessions Program Center. After completion of our audit fieldwork, the Director, in February 1999, issued the memorandum "Delegation of Approval Authority, Concession Contracts and Permits," which delegated to the Associate Director, Park Operations and Education, authority to approve the Directive's listed contracting actions "except for those concession operations where gross receipts are expected to exceed \$1 0,000,000 annually."

Contract Reissuance and Extension

The Park Service's Concessions Management Guideline (NPS-48, Chapter 10) and memoranda issued by the Associate Director for Operations provide guidance on concession contract issuance and authorize two methods for extending the contract performance period: issuance of interim letters of authorization or issuance of contract amendments. NPS-48, issued in January 1986, states that interim letters of authorization were to be used for "emergency situations only and should not be relied upon as a standard method of operation" and that extensions "normally" were of a "limited duration." NPS-48 further states that "if a 1 or 2-year extension" would not allow adequate time "to fully effect a new contract before the proposed extension expires ... the park and region should consider issuing a S-year contract to ensure that further extensions will not be necessary." In fiscal year 1995, the Associate Director for Operations issued guidance stating that after fiscal year 1995, interim letters of authorization could only be "approved on a case-by-case basis by the Washington Concessions Division." In a February 1996 memorandum, the Associate Director further stated that concession contract extensions could be issued for 1 or 2 years but that 3-year extensions should be "reserved for unusual circumstances" and that extensions of more than 3 years "may not be issued."

However, we found that Park Service personnel did not fully comply with this guidance. Specifically, as of September 30, 1997, 47 contracts and 98 permits (about 23 percent of all agreements) had been in an expired status for more than the maximum authorized 3-year period for extensions. On average, these contracts and permits had been extended for about 6.2 years and 5.1 years, respectively. In extending the performance periods, the Park Service often used letters of authorization for lengthy periods, and in some cases, it did not prepare an authorization to extend the performance period. For example, we identified six expired agreements for which no extensions, either letters of authorization or amendments, had been prepared for periods of 6 to 50 months.

According to Special Directive 95-9, "Revised Delegations of Authority for Concession Contracting," park superintendents and regional directors are "accountable for proper management of the concession program under his or her authority" and "compliance with program [concession contracting] standards and results achieved will be taken into

consideration in the course of annual performance reviews.” To determine whether this directive had been implemented and to obtain information on the causes for delays in the reissuance of agreements and the lengthy extensions of performance periods, we interviewed concessions specialists in the parks, regional and support offices, and the Concessions Program Office; park superintendents; and regional office directors.

Park and regional officials attributed delays in processing concession agreements primarily to the “confusion” resulting from a restructuring of the Park Service that occurred after a November 1994 “Restructuring Plan for the National Park Service” was implemented.⁵ Even though the Park Service had issued guidance on the assignment of responsibility, including Special Directive 95-9 and a March 1997 memorandum from the Concessions Program Manager that described the concessions support services that were provided by personnel at the Concessions Management Division and at the Concessions Program Center, officials at all nine parks interviewed said that the reorganization had created confusion. For example, one official said that he was uncertain as to “who does what,” and another official said that it was unclear “who works for whom.”

We found that the Restructuring Plan did not provide clear and detailed guidance on concession contracting. Although the Plan said that a “comprehensive analysis” and a “detailed concessions management plan” would be developed to implement the Plan, we found that such an analysis or plan had not been issued. The Concessions Program Manager did issue a February 1995 memorandum, “Concession Program Strategy,” as a “framework from which we can organize our Concessions Program.” However, the Strategy did not provide detailed implementing instructions but stated that the “necessary procedures and requirements will be implemented” and that the “standards and procedures to assure quality products (contracts, evaluations, rate approvals, etc.) must be further developed and communicated.” The Strategy also did not establish a clear line of authority between those who were held accountable for concession contracting actions (park superintendents and regional directors) and those who provided concession contracting technical support services (the Concessions Program Center and regional support offices).

We also found that Park Service officials did not effectively communicate concessions policy to field personnel, which contributed to the backlog of contracting actions. For example, in October 1991, the then-Secretary of the Interior issued the memorandum “Concessions Management Reforms,” which imposed “temporary measures” to “refrain from entering into new long term concessions agreements or renewing existing agreements for extended periods” pending review of proposed concessions management reforms. Park and regional officials referred to these measures as a “moratorium” and stated that they had never received formal notification that the restrictions on contracting had been lifted. They also attributed delays in processing agreements to proposed legislation to reform the concessions program and the frequent changes in concession contracting policies and practices that had been made in response to the anticipated legislative reforms.

⁵The Plan reduced the Park Service’s 10 regional offices to 7 field directorates with support offices. In February 1997, the field directorates were redesignated regional offices.

We also found that the Park Service had not implemented management controls to ensure compliance with Park Service regulations or Federal law and timely reissuance of agreements. For example, although Special Directive 95-9 stated that concessions contracting would be taken "into consideration" during park superintendents' and regional directors' annual performance reviews, we found that the superintendents' and regional directors' performance standards contained no critical elements related to their concession contracting duties. Also, park and regional management said that they had not received or issued any guidance or directives establishing milestones or schedules for the completion of contracting actions. We also found no indication that park or regional officials had taken actions to curtail excessive use of interim letters of authorization and amendments to extend the performance periods or to conduct internal control reviews of the parks' concession contracting programs. Moreover, the Park Service's Annual Performance Plan for fiscal year 1999 did not contain goals for processing concession contracting actions.

We concluded that by not reissuing agreements in a more timely manner, the Park Service delayed the opportunity to obtain more favorable terms and conditions for the Government. Specifically, based on our analysis of the 24 agreements that had been reissued during the scope of our audit and of the 12 agreements that had been in an expired status for 5 or more years as of September 30, 1997, we found that reissued agreements contained provisions which were more favorable to the Government, such as a higher financial return, the reduction of possessory interest over the life of a contract, an extended period for the reconsideration of fees, greater utility and maintenance cost reimbursements, and the elimination of preferential rights, as described in the paragraphs that follow.

Financial Compensation. For 10 of the 12 agreements that had expired and had not been reissued, there was no record that the franchise fees had been reconsidered or adjusted during the past 5 years. For example, one contract that expired in 1990 had no record of a fee reconsideration since 1970, when the contract was issued. Under the existing contract, the concessioner pays a franchise fee of 1.5 percent of gross receipts.

Ten of the 24 reissued agreements reviewed provided better returns to the Government, with some franchise fees increasing significantly over prior levels (in two cases, the rates increased by 100 percent or more). For example, in one reissued contract, compensation to the Government increased from a building use fee of \$200 a year to a payment of 1 percent of gross receipts and \$7,620 a year into a special account, an investment of \$1,362,000 in an improvement program, and payment of a franchise fee of \$2,400 a year. The 14 other reissued agreements either had the same return to the Government or the fee structure had changed, and we could not determine the effect of the rate change on the Government's return.

Fee Reconsideration Period. Eleven of the 12 expired agreements provided a 60-day period for fee reconsideration, and the remaining agreement provided a 90-day reconsideration period.

The reissued agreements contained provisions that provided the Park Service a 1 SO-day period to reconsider fees. A longer reconsideration period, in our opinion, will provide the Park Service with additional time to prepare more comprehensive financial analyses and to engage in negotiations for fee adjustments.

Utility Cost Reimbursement. Six expired contracts did not require the concessioner to fully reimburse the Government for the cost of utility services provided by the Park Service.

Two agreements that previously had provisions for the reimbursement of utility services at a "reasonable" rate were reissued with provisions for the Park Service to be fully reimbursed for its cost of providing the service. Park Service guidance requires concessioners to pay fully for the cost of Park Service-provided utility services.

Maintenance. One contract that expired in 1991 (and had not been reissued) required the Park Service to maintain the exterior of the building used by the concessioner; install, repair, and replace heating, plumbing, and electrical systems; provide road surfacing; clear water and drainage lines to the building; and install, repair, and replace pilings and bulkheads at a dock area used by the concessioner. Another expired contract required the Park Service to assume responsibility for maintenance work on Government facilities assigned to the concessioner if the repair cost was more than \$300.

Three agreements that previously did not assign maintenance responsibilities to concessioners were reissued with provisions which required the concessioners to maintain all facilities used in their operations. Another agreement, which previously assigned the concessioner responsibility only for maintaining its own facilities, was reissued with a provision that required the concessioner to maintain both concessioner and Government facilities.

Preferential Rights Nine expired agreements granted the concessioners preferential rights to all additional commercial opportunities within the general area of operation.

None of the reissued agreements granted concessioners preferential rights to renewal or to additional commercial opportunities within the general area of operation. The Code of Federal Regulations (36 CFR 5 I, "Concession Contracts and Permits") states that restricting preferential rights "would enhance competition by limiting the availability of the anti-competitive preferential right to additional services."

The potential benefits of reissuing agreements in a more timely manner is further illustrated by one contract that was in an expired status for 10 1/2 years as of September 30, 1997, and that was reissued in January 1998 to the same concessioner. Although the original 1975 contract established a franchise fee of 3 percent of gross receipts (which remained in effect until contract reissuance), the reissued contract established a franchise fee payment of 11 percent. If, upon expiration, the contract had been reissued with the higher fee, the

Government would have received additional franchise fees of \$79,119 in 1996 and additional fees of \$83,452 in 1997.

Fee Reconsiderations/Fee Determinations

To establish a recommended return from a concessions operator, the Park Service performs fee determinations. These financial analyses entail a review of a concessioner's financial operations, typically for a 5-year period. The recommended rates usually are based on a return that enables the concessioner to operate at a level of profitability within the median range of profitability of comparable businesses, as measured by the return on equity, assets, and revenues. Fee determinations are performed to establish the fees in new or reissued contracts and to negotiate fee adjustments during the fee reconsideration process.

Of the 19 fee determinations that were performed during fiscal years 1996 and 1997, we found that the Park Service complied with its internal procedures for performing fee determinations and that it computed recommended fees on the basis of "the opportunity for net profit in relation to both gross receipts and capital invested," as required by the Concessions Policy Act. In 13 of 19 cases, recommended fees were computed at amounts that enabled the concessioners to earn a return on equity, gross receipts, and assets equivalent to industry averages. However, in four cases, the recommended rates provided a higher than industry average return, and in two cases, the recommended rates provided a lower than industry average return.

The Park Service, however, did not periodically reconsider franchise fees at least every 5 years, as required by the Concessions Policy Act. We identified 56 agreements that were due for a periodic fee reconsideration during fiscal years 1996 and 1997 and found that only 8 fee determinations were performed for a reconsideration of the fees of the existing concessioners and that Park Service officials negotiated fee adjustments for 2 other agreements. As such, about 82 percent (46 of 56) of the required, periodic franchise fee reconsiderations were not performed.

Of the 10 agreements that had reconsidered fees in fiscal years 1996 and 1997, fee adjustments were recommended in 8 cases and no fee adjustments were recommended in 2 cases. The Park Service implemented six of the eight recommended fee adjustments. It did not implement one fee adjustment, which would have increased fees by 67 percent, because a natural disaster at the park might have an adverse effect on the concessioner's business, according to a park official. The park, however, had not prepared an analysis of the adverse effect to justify continued use of the existing rate. In the other case in which a 50 percent increase in fees was recommended, a park official said that the park, having not received a copy of the fee determination, was unaware that the financial analysis had been performed.

We found that the Park Service had not established a clear line of authority to ensure that fees were periodically reconsidered. A memorandum issued in March 1997 by the Concessions Program Manager assigned responsibility for performing the fee determinations to the Concessions Program Center, but the memorandum did not state whether the parks or

the regions were responsible for requesting these analyses. Consequently, park officials expressed different opinions as to which organization had responsibility for making the requests. Of the nine parks and four regions contacted, officials at three parks and two regions stated that they did not know whether the parks or the regions should request the analyses, officials at three parks stated that it was the parks' responsibility to request the analyses, and officials at the remaining three parks and two regions stated that it was the regions' responsibility to request the fee determinations. Based on the conditions noted, we concluded that the recommendation in our September 1994 audit report "Concessions Management, National Park Service " (No. 94-I-121 1) to issue and implement "a policy directive that identifies the required actions, responsible parties, and time frames needed to ensure that franchise fee reconsiderations are expeditiously completed and implemented" had not been fully implemented.

To evaluate the monetary impact of fee determinations, we reviewed the 21 fee determinations/analyses that were performed in fiscal years 1996 and 1997 for fee reconsiderations (8 agreements) and for contract reissuances or purposes such as the proposed sale of a concessions interest (13 agreements).⁶ These fee determinations recommended fee adjustments for 17 agreements (8 of which were implemented) and no fee adjustments for 4 agreements. Based on our comparison of the concessioners' established fees and those fees recommended in the fee determinations, we found that Government revenues would have increased on average by more than 38 percent (based on an analysis of 11 of the 17 agreements for which rate comparisons could be made) if the recommended fee adjustments had been implemented.

In one of the eight cases in which fee adjustments were implemented, the Park Service imposed lower than recommended fees. In this case, a fee determination led to a recommendation that the concessioner should pay fees of 6.25 percent of gross receipts, consisting of a 3.50 percent franchise fee and a 2.75 percent payment to a special account, and make an investment of \$1.5 million in a building improvement program. 'Also, the concessioner's possessory interest was to be written off over a 30-year period. After the fee determination, the Park Service awarded a new contract to the concessioner in which it required a franchise fee payment of 3.50 percent of gross receipts, a special account contribution of 1 percent, and an improvement program investment of \$1.5 million. The new contract also reduced the period of time during which the concessioner's possessory interest would be written off to 15 years, thereby increasing the Government's return by accelerating the write-off of possessory interest. We estimated that the Government will receive **\$1,118,660** less over the 15-year term of the contract as a result of the Park Service's having negotiated a compensation package that provides the Government with a 4.5 percent (3.5 percent franchise fee and 1 percent capital account contribution) return rather than the recommended 6.25 percent return (adjusted for the effect of the accelerated write-off of

⁶In fiscal years 1996 and 1997, the Park Service reconsidered the fees for 10 agreements. However, two of the fee reconsiderations were based on fee determinations that had been performed in prior years. Therefore, we excluded these fee determinations (one recommended a fee increase from 2.5 percent to 3.0 percent, and the other recommended a fee increase from 1.5 percent to 9.0 percent) from our analysis.

possessory interest). The park's concessions management chief did not provide any reasons for implementing the lower than recommended fees.

We believe that the Government may have lost revenues by not reissuing agreements in a timely manner and by not reconsidering the franchise fees of existing concessioners at least every 5 years, as required by law. An independent accounting firm noted in its October 1996 report "National Park Service Franchise Fee and AFR [Annual Financial Report] Review" that "if fees are never reconsidered .. there is a considerable potential loss" for the Park Service. For example, the Government would have earned additional revenues of about \$116,600 in 1996 and \$116,100 in 1997 had recommended rate increases been implemented on seven of the nine contracts (we could not compare rates in two cases) that had unimplemented recommended rate increases.

Special Accounts

The Park Service's "Concession Improvement Account Procedures," issued in August 1995, contains procedures for the establishment of special accounts, stating that "when an improvement account is prepared, the park must have a list of proposed projects, upon which to justify the amount of the account (as a percentage of gross receipts)." The "Procedures" also states that the concession contract and maintenance plan should "provide direction about the Concessioner's responsibility to maintain and repair facilities" and that a special account "is not intended to absorb such costs or to serve as an alternative to an active maintenance and repair program."

Eight of the sampled 36 agreements (24 reissued and 12 expired agreements) established special accounts after issuance of the August 1995 guidance. For three of these agreements, we found no record that the Park Service determined the estimated costs of projects in establishing one or more of the concessioners' special accounts. For example, Park Service officials did not provide any documentation to show that a project listing with estimated project costs had been prepared for a special account that required the concessioner to deposit 1 percent of gross receipts (about \$15,000 a month, according to the park's concessions chief) into the account. We also found no record that the Park Service determined project costs in establishing the amount to be deposited into two special accounts (one of which was funded with 7 percent of gross receipts and the other with a \$9,792 annual payment). Another contract established two special accounts, one of which provided funding of about \$1.4 million based on the estimated costs of specific projects (\$375,000 of which was for "yet-to-be identified improvements"). However, the amount of payment to the other account, 1 percent of gross receipts and \$7,620 annually, was not supported with a list of projects and estimated project costs.

We also found that the projects for one reissued contract inappropriately included maintenance work that was listed in the concessioner's maintenance plan such as painting and repainting spaces in a parking lot (the concessioner operated a parking lot); removing roots, leaves, and pine needles to provide for proper drainage; and purchasing a tractor for "regularly recurring maintenance of lawn, curbside and wooded areas." According to the

park's concessions specialist, maintenance work was included as special account projects because the park was inexperienced in preparing project listings and there was "a fine line" between "extraordinary maintenance expenses" and expenses that qualified for special account financing.

We believe that if the provision for special account contributions is not based on projects and project cost estimates which are identified at contract issuance, the Park Service is at risk of special account funds being spent on lower priority or unneeded projects or being used to subsidize concessioners' operations. Also, we believe that the use of special account funds to finance concessioners' routine operating and maintenance costs does not represent a return to the Government and should not be reported as such.' Although we identified only one account that was established partially to pay maintenance expenses, the "National Park Service Franchise Fee and AFR [Annual Financial Report] Review" stated that "funds for special accounts [were] not always used for improvements but sometimes for general maintenance-type expenses."

Government Facilities Used by Concessioners

The Concessions Policy Act requires concessioners to pay compensation to the Government for the "probable value to the concessioner of the privileges granted by the particular contract or permit involved" and that consideration of revenue to the Government should be "subordinate to the objectives of protecting and preserving the areas and of providing adequate and appropriate services for visitors at reasonable rates." Also, NPS-48, Chapter 24, requires the Park Service to determine the fair value of buildings assigned to concessioners, and Office of Management and Budget Circular A-45, "Rental and Construction of Government Quarters," provides guidance on fees for the use of Government housing.

Building Use Fees. Chapter 24 of NPS-48 states that for facilities assigned to concessioners, the Park Service should establish a building use fee that is based on the fair value return to the Government as determined in accordance with acceptable industry practices. This guidance further states that fee adjustments can be made taking into consideration factors regarding reasonable profit as stated in the Concessions Policy Act but requires that documentation (including the appraisal of the property and support for any adjustments) be maintained. In December 1995, the Concessions Management Division issued a memorandum providing guidance on computing building use fees.

The Park Service, however, generally did not determine the value of Government facilities assigned to concessioners. Of the 24 agreements issued in fiscal years 1996 and 1997 that

⁴According to the Park Service, payments to special accounts in fiscal year 1997 (the most recent data available) were about \$26.2 million and franchise fee payments were about \$17.1 million. In its Annual Performance Plan for fiscal year 1999, the Park Service stated that its average return for park concession contracts was 6.6 percent of gross concessioners' revenues in 1997 and that it planned to increase the return to 7 percent in fiscal year 1998 and to 8 percent by September 30, 2002.

we reviewed, 10 agreements provided concessioners with Government facilities that were subject to a building use fee.⁸ However, we found only one case in which a building use fee had been computed based on the Park Service's 1995 procedures. According to Park Service officials, building use fees were not computed as required for nine agreements for the following reasons: in four cases, fees were determined before the guidance was issued; in four other cases, the concessions operations were marginally profitable and the concessioners were unable to pay a fee based on the building valuation; and in the remaining case, no explanation was provided.

We recognize that the Park Service considers the total return to the Government in establishing concessions fees and rates and that the process of computing a building use fee might not result in additional compensation to the Government. However, we believe that the Park Service would be able to make better decisions on the economic feasibility of a concessions operation and on the best use of park facilities by determining the value of Government property assigned to concessioners.

Employee Housing. Office of Management and Budget Circular A-45. "Rental and Construction of Government Quarters," establishes policies and administrative guidance regarding "Federally-owned housing (exclusive of military barracks) for civilian and military personnel, as well as for employees of Government contractors, whether provided on a rental basis or free of charge." The Circular contains standards for payments for the use of Government quarters, stating that (1) the rental rates should be based on their "reasonable value ... to the employee. .. in the circumstances under which the quarters are provided," (2) the rental amount should not "serve as an inducement in the recruitment or retention of employees," and (3) the rental rates should be fair and consistent. According to the Park Service official responsible for employee housing, the Park Service charges rent to all employees, contractors, and cooperators who obtain park housing directly from the Park Service.

In 7 of the 36 agreements reviewed, we found that Government housing was assigned to concessioners. However, none of the agreements contained provisions requiring concessioners to pay the Government rent for employee housing,⁹ and there was no Park Service official responsible for determining whether concessioners should pay rent for the use of Government housing. For example, the Director of the Concessions Management Division stated that Park Service housing officials should establish housing rental rates, while the Park Service official who was responsible for employee housing said that the Concessions Management Division should establish rental rates for concessioner housing.

⁸Two other agreements assigned Government facilities to concessioners. One agreement allowed a concessioner to use a Government dock (for which a use fee was charged), and another agreement assigned a Government building to a state agency concessioner that was not required to pay building use fees.

⁹All seven agreements that provided for concessioner use of Government housing had provisions for the concessioners to pay building use fees and/or to make special account payments. These payments, however, were not based on a per employee fee for the use of Government housing.

The Department of the Interior's Quarters Officer said that the payment of rent for the use of Government housing by concessioners' employees is a "legal issue that needs to be resolved." According to this official, the Park Service, although it does not have authority to charge rent to concessioners' employees, does have the authority to charge concessioners a fee for the use of facilities that house their employees.

We believe that concession contracts do not protect the Government's interest with regard to provisions for concessioner use of Government housing. Of seven concessioners that were assigned Government housing for their employees, we identified four concessioners that received reimbursements from their employees for housing or housing-related expenses. These reimbursements were excluded from the revenue base on which franchise fees were computed, as provided under Park Service policy. For example:

- One concession contract provided buildings (referred to as Buildings C- 1 through C- 15 in the concession contract) for housing concessioner employees. This concessioner, in 1997, reported reimbursements of \$3,254 from employees for meals, lodging, and transportation.

- Two other concessioners filed financial reports in 1997 that showed employee reimbursements for meals, lodging, and transportation totaling \$6,481.

- Another concessioner received reimbursements of \$40 a month from employees for utility costs associated with the employees' use of Government housing.

We believe that the Park Service should determine whether concessioners are or should be subject to the same requirement as Park Service employees, contractors, and cooperators who obtain Government housing directly from the Park Service and are required to pay rent at amounts that do not "serve as an inducement to recruit or retain employees." We estimated that the Government would have received additional revenues of about \$3.8 million in fiscal year 1998, based on an average monthly rent of \$106.84 for each of these employees. If it had charged fees for housing that was provided to almost 4,000 concessioner employees who used 979 Park Service housing units (based on September 1998 data supplied by the Park Service).¹⁰ While we recognize that concessioners are required to maintain the housing and, in some cases, pay for capital improvements to the property, we believe that the Park Service should determine the rental value of housing assigned to concessioners and, based on comparable rents charged to other users of park housing, ensure that the Government receives equitable compensation for the use of the housing. However, there may be legal issues involved in assessing a fee for Government facilities that are assigned to concessioners and used to house concessioners and/or concessioners' employees. As such, we believe that the Park Service should seek a Solicitor's opinion as to whether the Park Service is

¹⁰The average monthly housing rate was based on dormitory rental rates established by the Bureau of Reclamation, which is responsible for setting Park Service housing rates, in surveys conducted at eight parks in fiscal years 1996 and 1997. The total amount of estimated additional revenues was computed on the basis of each employee residing in Park Service housing for a 9-month period each year.

authorized to charge concessioners a rental fee for their employees' use of Government quarters.

Recommendations

We recommend that the Director, National Park Service:

1. Ensure compliance with the February 9, 1999, revised provisions of Special Directive 95-9 which require that the specified concession contracting actions be approved by the Associate Director, Park Operations and Education, or by the Director or the Deputy Director.

2. Assign, to a senior-level management official such as the Deputy Director, the authority to ensure that park superintendents and regional directors successfully perform their designated concession contracting responsibilities.

3. Include, for officials involved in the concession contracting process, a critical element for the successful completion of assigned concession contracting duties in their annual performance standards.

4. Include in the National Park Service's Annual Performance Plan specific, quantifiable, and appropriate measures for the concession contracting program activity and develop and implement controls to ensure that concession contracting accomplishments included in the Performance Plan are reported accurately.

5. Issue and implement procedures to ensure that clear lines of authority, responsibility, and accountability are established for personnel, whether under contract or in-house, who provide technical support for concession contracting.

6. Issue guidance and establish controls to ensure that franchise fees are periodically reconsidered, as required by the law in effect at the date of contract or permit issuance, and that recommended fee adjustments are implemented unless deviations are fully justified and documented.

7. Establish controls to ensure that the amounts to be paid into concessioners' special accounts are supported with documentation which lists the specific projects and project costs that are to be funded from the accounts and that projects identified for special account funding are capital improvements and not maintenance work.

8. Ensure that building use fees are computed during the fee determination process for each Government facility used by concessioners and that controls are implemented which provide assurance that building use fees are considered in evaluating the feasibility of concessions operations.

9. Request a Solicitor's opinion on whether the Park Service is authorized to charge a rental fee for Government quarters assigned to concessioners for use by concessioners' employees and whether the fee should be computed in accordance with Office of Management and Budget Circular A-45. If such a fee is authorized, policies and procedures should be established to implement a rental charge for concessioner use of Government quarters.

National Park Service Response and Office of Inspector General Reply

In the May 27, 1999, response (Appendix 4) to the draft report, from the Director, National Park Service, the Park Service indicated concurrence with Recommendations 1, 5, 6, 7, 8, and 9 and said that Recommendations 2, 3, and 4 were "under consideration." Based on the response, we consider Recommendations 5 and 7 resolved and implemented. Also based on the response, we request that the Park Service reconsider its responses to Recommendations 1, 2, 3, 4, 6, and 8, which are unresolved, and provide additional information for Recommendation 9 (see Appendix 5).

Recommendation 1. Concurrence indicated.

National Park Service Response. The Park Service stated that the recommendation had "been adopted, as evidenced by issuance of the February 9, 1999, memorandum." It also said that reviews of contracting actions conducted by the Concession Program Center and Washington Office were "summarized and presented to the Associate Director, Park Operations and Education and/or the Director, as appropriate, for final determinations."

Office of Inspector General Reply. The Park Service did not indicate how it would ensure compliance with its February 9, 1999, memorandum, which assigned to the Associate Director, Park Operations and Education, approval authority for certain concession contracting actions and reserved the approval authority for concession operations "where gross receipts are expected to exceed \$10,000,000 annually" to the Director. Park Service personnel did not comply with the prior guidance (Special Directive 95-9), which required the Director's approval of certain concession contracting actions, and the Park Service, in its response, did not state whether additional controls would be implemented to ensure that its personnel comply with the newly revised guidance on approval authorities. During our audit, we found no indication that the Concession Program Center or the Washington Office conducted Servicewide reviews of contracting actions. The Park Service is requested to provide information on the actions it plans to take to ensure that Park Service personnel obtain the appropriate approval for concession contracting actions, in accordance with its February 1999 "Delegation of Approval Authority. Concession Contracts and Permits."

Recommendations 2, 3, and 4. Concurrence/nonconcurrence not indicated.

National Park Service Response. The Park Service said that these three recommendations were "under consideration, and a final decision should be made within the next few weeks."

Office of Inspector General Reply. The Park Service is requested to provide information on the controls (such as those described in Recommendations 2, 3, and 4) it plans to implement to ensure that concession contracting actions are conducted in accordance with applicable policies and procedures.

Recommendation 6. Concurrence indicated.

National Park Service Response. The Park Service said that it had issued the guidance and that it had provided our office a copy of the guidance.

Office of Inspector General Reply. In our report, we stated that guidance had been issued on franchise fee reconsiderations for contracts that were issued under Public Law 89-249, which was repealed in November 1998. However, we found that Park Service personnel had not complied with the guidance. At the conclusion of our fieldwork, the Park Service had not issued new guidance on fee reconsiderations under the new concession legislation (Public Law 105-91), which changed the conditions under which fees could be reconsidered. The Park Service is requested to provide information on the actions it plans to take to ensure that fee reconsiderations are conducted in accordance with the concession program legislation in effect at contract issuance.

Recommendation 8. Concurrence indicated.

National Park Service Response. The Park Service said that "[b]uilding use fees will be computed as part of the fee determination process." It also said that the requirement for building use fee computation would be "incorporated in a forthcoming staff manual that will be issued after regulations and management policies have been adopted."

Office of Inspector General Reply. Although the Park Service indicated concurrence with the recommendation, it did not provide information on the actions it plans to take to ensure that building use fees are computed and considered in determining fees and evaluating the feasibility of concessions operations.

Recommendation 9. Concurrence indicated.

National Park Service Response. The Park Service said that it would "request a Solicitor's Opinion on whether we [the Park Service] are authorized to charge a rental fee for Government quarters assigned to concessioners for use by concessioners, employees and whether the fee must be computed in accordance with Office of Management and Budget Circular A-45."

Office of Inspector General Reply. The Park Service is requested to provide a date by which it will request a Solicitor's opinion on charging concessioners a rental fee for the use of Government-assigned quarters and the title of the official who will be responsible for requesting the opinion.

Additional Comments on Finding

The Park Service stated that the report did not recognize its “many significant accomplishments.” The Park Service, in providing support for this statement, said that it had reduced its backlog of expired contracts and permits from about 95 percent in 1995 to 28 percent by November 1998. It also said that it had developed a detailed concession contracting training program and had offered “numerous training sessions” to concessions personnel during 1997 and 1998.

Our audit scope generally covered concession contracting activities that occurred in fiscal years 1996 and 1997; therefore, we cannot comment on whether the Park Service reduced its backlog of expired contracts and permits by 67 percent during the 4-year period cited, fiscal year 1995 through November 1998. Also, based on discussions with Park Service concessions personnel, we believe that a reduction in the backlog may not necessarily have resulted in commensurate benefits to the Government. For example, in an interview, a Southeast Regional official initially said that the Region had reissued 29 expired contracts in fiscal year 1998. In a later discussion, another Regional official said that although the Park Service had attempted to reissue 29 contracts in fiscal year 1998, it had issued 2-year extensions for 26 expired contracts and had not negotiated extensions for 3 other expired contracts. The official further stated that the extensions contained updated contract language but did not contain changed terms and conditions for contractor performance or changes in the amount of compensation paid to the Government (such as a reconsideration of the franchise fees). Although the backlog of expired contracts was reduced, these actions were merely extensions of existing contracts without reconsideration of the contracts’ terms and conditions. Regarding the Park Service’s comments on its training program, we did not review training during the audit because concessions personnel did not indicate that they were not sufficiently skilled or trained in concession contracting procedures.

CLASSIFICATION OF MONETARY AMOUNTS

<u>Description</u>	<u>Potential Additional Revenues</u>	<u>Lost Revenues</u>
Implementation of recommended fee increases (based on calendar year 1996 and 1997 unimplemented increased fees for seven contracts)	\$232.700	
Delay in reissuance of an expired agreement (based on additional revenues that might have been earned in fiscal years 1996 and 1997)		\$162,600
Concession fees at less than recommended amount		1,118,700
Rental fees from concessioner use of Government housing	<u>3,800,000</u>	<u> </u>
Total	<u><u>\$4,032,700</u></u>	<u><u>\$1,281,300</u></u>

OFFICES CONTACTED

OFFICE	LOCATION
Concessions Program Division	Washington. D.C.
Concession Program Center	Lakewood, Colorado
Alaska Regional Office	Anchorage. Alaska
Denali National Park	Denali Park. Alaska
Glacier Bay National Park	Gustavus, Alaska
Intermountain Regional Office	Denver, Colorado
Dinosaur National Monument	Dinosaur, Colorado
Canyonlands National Park	Moab, Utah
Glacier National Park	West Glacier. Montana
Glen Canyon National Recreation Area	Page, Arizona
Grand Canyon National Park	Grand Canyon, Arizona
Grand Teton National Park	Moose, Wyoming
Rocky Mountain National Park	Estes Park, Colorado
Yellowstone National Park	Yellowstone, Wyoming
Zion National Park	Springdale, Utah
Midwest Regional Office	Omaha, Nebraska
Buffalo National River	Harrison, Arkansas
Isle Royal National Park	Houghton, Michigan
Jefferson National Expansion Memorial	
National Historic Site	St. Louis, Missouri
Sleeping Bear Dunes National Lakeshore	Empire, Michigan
Voyageurs National Park	International Falls, Minnesota
National Capitol Regional Office	Washington. D.C.
Northeast Regional Office	Philadelphia, Pennsylvania
Fort McHenry National Monument	Baltimore, Maryland
Gateway National Recreation Area	Brooklyn. New York
Gettysburg National Military Park	Gettysburg, Pennsylvania
Pacific West Regional Office	San Francisco, California
Death Valley National Park	Death Valley, California
Golden Gate National Recreation Area	San Francisco, California
Lake Mead National Recreation Area	Boulder City. Nevada
Mount Rainier National Park	Ashford, Washington
North Cascades National Park Complex	Sedro Woolley, Washington
Olympic National Park	Port Angeles, Washington
Point Reyes National Seashore	Point Reyes, California
Whiskeytown-Shasta-Trinity National Recreation Area	Whiskeytown, California
Yosemite National Park	Yosemite, California
Southeast Regional Office	Atlanta, Georgia
Big South Fork National River and Recreation Area	Oneida, Tennessee
Cape Lookout National Seashore	Harkers Island, North Carolina
Everglades National Park	Homestead, Florida
Gulf Islands National Seashore	Gulf Breeze. Florida
Virgin Islands National Park	St. Thomas, Virgin Islands

PRIOR AUDIT COVERAGE

During the past 6 years, the Office of Inspector General has issued seven audit reports and the General Accounting Office has issued three reports related to National Park Service concession contracting and management.

Office of Inspector General Reports

The Office of Inspector General has issued the following reports:

- The April 1998 report "Followup of Recommendations Concerning Utility Rates Imposed by the National Park Service"(No. 98-I-406) stated that the Park Service did not implement prior audit report recommendations to (1) revise a directive to provide employees with guidance on the recovery of utility system capital investment costs; (2) recover fully all utility system operational costs provided to non-Governmental users, including concessioners; and (3) ensure that internal controls over the collection and deposit of receipts for utility services are in compliance with Park Service regulations. The report contained six recommendations, all of which were considered resolved but not implemented.

- The March 1998 report "Concessioner Improvement Accounts" (No. 98-I-389) stated that the Park Service had not provided clear, sufficient, and timely guidance to ensure that account funds were used appropriately and that the Park Service allowed concessioners to use these funds before procedures were issued. Also, concessioners made improper deductions from recorded gross receipts in determining the amounts required to be deposited into improvement accounts. As a result, improvement account funds were used or planned for (1) projects that did not directly support concessions operations or that benefitted both the Park Service and concessioners and would have been appropriate for cost sharing (\$17.5 million), (2) expenditures that related to concessions operations which would not be considered proper uses of the funds under the new procedures (\$1.2 million), and (3) capital projects for which the concessioner inappropriately was granted possessory interest (\$823,000). We also found that additional funds of about \$124,800 should have been deposited into these accounts. The report contained three recommendations, of which one was considered resolved and implemented and two were considered unresolved.

- The March 1998 report "Followup of Maintenance Activities, National Park Service" (No. 98-I-344) stated that the Park Service did not fully implement three of eight recommendations in the two prior audit reports "Maintenance Work Performed for Non-Government Recipients, National Park Service," issued in September 1991, and "Maintenance of the National Park System, National Park Service." issued in February 1992. We found that the Park Service had not taken sufficient actions to recover its costs of maintaining facilities used by concessioners and other non-Governmental entities and had "essentially" discontinued use of its standardized maintenance management system. Three of the report's four recommendations were considered unresolved. and one was considered resolved and implemented.

- The June 1997 report “National Park Service Financial Statements for Fiscal Years 1995 and 1996” (No. 97-I-936) stated that the Park Service had not established a process to allow it to collect, in a timely manner, reliable information on the number of “special concession accounts” and their balances, deposits, and disbursements to ensure that information in the notes to its financial statements was complete and accurate. The report contained one recommendation on this issue, which was considered resolved and partially implemented.

- The February 1997 report “Oversight of Concessions Operations and Fee Payments, Guest Services, Inc.. and Rock Creek Park Horse Centre, Inc.” (No. 97-I-5 15) stated that the Park Service needed to strengthen its oversight and to implement additional controls to ensure that concessioners complied fully with Park Service guidance (NPS-48) and with the terms and conditions of the concession contracts. The report contained eight recommendations, of which seven were considered resolved and implemented and one was considered resolved but not implemented.

- The September 1994 report “Concessions Management. National Park Service” (No. 94-I-121 1) stated that the Park Service did not reconsider franchise fees in a timely manner, undercharged concessioners for the use of Government-owned facilities, overcompensated a concessioner for its possessory interest, and unnecessarily allowed concessioners to exclude certain revenues from gross receipts. The report also stated that the Park Service had not adequately monitored special accounts which financed maintenance work and capital improvements. The report contained 13 recommendations, of which 12 were considered resolved and implemented and 1 was considered resolved but not implemented.

- The May 1993 report “Compliance With the Federal Managers’ Financial Integrity Act by Selected Bureaus” (No. 93-I-1 0 11) stated that concession fees were not reconsidered in a timely manner, concession contracts were extended without increasing fees, concessioners were permitted to sell their concession rights at inflated prices, models for pricing facility use charges had not been developed, and concessioners’ possessory interests were compensated at amounts which were not based on the value of the concessioners’ possessory interests. The report contained one recommendation on this issue, which was considered resolved and implemented.

General Accounting Office Reports

The General Accounting Office has issued the following reports:

- The March 1998 report “Concession Reform Issues” (No. GAO/T-RCED-98- 122) stated that for concession agreements which were either initiated or extended during fiscal year 1994, concessioners in land management agencies paid the Government an average of about 3.0 percent of their gross revenues (the Park Service’s average return was about 3.5 percent). In contrast, according to the report, concessioners in nonland management agencies paid fees of about 9.0 percent of their gross revenues. The report contained no recommendations.

- The May 1996 report "Information on Special Account Funds at Selected Park Units" (No. GAO/RCED-96-90) stated that Park Service officials acknowledged that they did not have a system in place to routinely or systematically collect information on concessioners' special accounts but that a computerized tracking system to monitor the accounts would be implemented. The report contained no recommendations.

- The September 1993 report "Improvements Needed in Managing Short-Term Concessioners" (No. GAO/RCED-93-177) stated that nationwide, about 6,000 short-term agreements (of 5 years or less) existed under which concessioners provide goods and services to the public on Federal land managed by the National Park Service, the U.S. Fish and Wildlife Service, the Bureau of Land Management, and the U.S. Forest Service. The report stated that the policies and procedures for administering short-term agreements varied considerably among the four agencies in the areas of annual overall performance evaluations, health and safety inspections, and fees paid to the Government for the use of its lands. In the report, the General Accounting Office recommended that the four agencies develop and present to the Congress a policy to achieve greater consistency and that the Park Service reevaluate each concessioner operating under a commercial-use license to determine whether the activities should be authorized under a permit.



United States Department of the Interior

APPENDIX 4

Page 1 of 3

NATIONAL PARK SERVICE

P.O. Box 37127

Washington, D. C. 20013-7127

IN REPLY REFER TO:

C3823(2410)

MAY 27 1999

Memorandum

To: Assistant Inspector General for Audits

From: Director, National Park Service

Subject: Draft Audit Report on Concession Contracting Procedures, National Park Service (Assignment No. **E-IN-NPS-014-97-D**)

This will respond to your March 31 memorandum, transmitting for our review and comment the draft audit report on concession contracting procedures.

As we indicated during the exit interview, we are somewhat concerned that the report does not present a balanced picture. While we recognize that there are programmatic improvements that need to be made, we do not believe that the report recognizes many significant accomplishments. For example, the backlog of expired contracts and permits was reduced from approximately 95 percent in 1995 (when contracting was resumed) to 28 percent by November 1998. This reduction was accomplished during a period of downsizing and organizational restructuring, as well as uncertainty about the future of the concession contracting program due to pending legislation. Several of the contracts awarded during this period were major ones that resulted in substantial improvements in the Government's position. Examples include contracts for food and lodging facilities and services at Yosemite and Sequoia/Kings Canyon, and the renewal of the contracts for river running services at Grand Canyon. A detailed concession contracting training program was developed and numerous training sessions for concession personnel were offered during 1997 and 1998. Most park and regional personnel with full time or collateral duty concession responsibilities have now been trained in concession contracting.

As a result of the passage of the National Park Service Concessions Management Improvement Act of 1998 (P.L. **105-391**), contracting activities have again been suspended pending the development of revised contracting regulations and standard contract language consistent with the provisions of the new legislation. Draft regulations were developed by the National Park Service within 3 months of the passage of the new legislation, and are currently undergoing Office of Management and Budget review.

Our responses to the specific recommendations of the report are as follows.

1. Ensure compliance with the February 9, 1999, revised provisions of Special Directive 95-9 which require that the Associate Director, Park Operations and Education, and the Director should approve specified concession contracting actions.

This recommendation has been adopted, as evidenced by issuance of the February 9, 1999, memorandum. Reviews of contracting actions conducted by concession staff at the Concession Program Center and/or the Washington Office are summarized and presented to the Associate Director, Park Operations and Education and/or the Director, as appropriate, for final determinations.

2. Assign, to a senior-level management official such as the Deputy Director, the authority to ensure that park superintendents and regional directors successfully perform their designated concession contracting responsibilities.

This recommendation is under consideration, and a final decision should be made within the next few weeks.

3. Include, for officials involved in the concession contracting process, a critical element for the successful completion of assigned concession contracting duties in their annual performance standards.

This recommendation is under consideration, and a final decision should be made within the next few weeks.

4. Include in the National Park Service's Annual Performance Plan specific, quantifiable, and appropriate measures for the concession contracting program activity and develop and implement controls to ensure that concession contracting accomplishments included in the Performance Plan are reported accurately.

This recommendation is under consideration, and a final decision should be made within the next few weeks.

5. Issue and implement procedures to ensure that clear lines of authority, responsibility, and accountability are established for personnel, whether under contract or in-house, who provide technical support for concession contracting.

This recommendation has been adopted. Lines of authority, responsibility and accountability have been outlined in a February 5, 1999, memorandum to all regional directors. A copy of this memorandum was provided previously to the Office of Inspector General.

6. Issue guidance and establish controls to ensure that franchise fees are periodically reconsidered, as required by the law in effect at the date of contract or permit issuance, and that recommended fee adjustments are implemented unless deviations are fully justified and documented.

We agree with this recommendation. Guidance has been issued and a copy has been provided previously to the Office of Inspector General.

7. Establish controls to ensure that the amounts to be paid into concessioners' special accounts are supported with documentation which lists the specific projects and project costs that are to be funded from the accounts and that projects identified for special account funding are capital improvements and not maintenance work.

We agree with this recommendation. Controls have been established, particularly the development of Exhibit H for concession contracts containing special accounts. These procedures are being reviewed and will be updated to assure that projects identified for special account funding are capital improvements and not maintenance work. As a result of the passage of the National Park Service Concessions Management Improvement Act of 1998, no new contracts containing special account provisions will be issued.

8. Ensure that building use fees are computed during the fee determination process for each Government facility used by concessioners and that controls are implemented which provide assurance that building use fees are considered in evaluating the feasibility of concession operations.

We agree with this recommendation. Building use fees will be computed as part of the fee determination process for each Government facility used by concessioners. This requirement will be incorporated in a forthcoming staff manual that will be issued after regulations and management policies have been adopted.

9. Request a Solicitor's opinion on whether the Park Service is authorized to charge a rental fee for Government quarters assigned to concessioners for use by concessioners' employees and whether the fee should be computed in accordance with Office of Management and Budget Circular A-45. If such a fee is authorized, policies and procedures should be established to implement a rental charge for concessioner use of Government quarters.

We agree with this recommendation. The National Park Service will request a Solicitor's Opinion on whether we are authorized to charge a rental fee for Government quarters assigned to concessioners for use by concessioners' employees and whether the fee must be computed in accordance with OMB Circular A-45. A final policy decision on this matter will be made upon receipt and review of the Solicitors Opinion.

If we can provide any additional information on this matter, please let us know.

A handwritten signature in black ink, appearing to be "D. J. L.", followed by a long horizontal line extending to the right.

STATUS OF AUDIT REPORT RECOMMENDATIONS

Finding/Recommendation Reference	Status	Actions Rewired
1, 2, 3, 4, 6, and 8	Unresolved	Reconsider responses to the recommendations, and provide plans for implementing corrective actions, including target dates and titles of officials responsible for implementation.
5 and 7	Implemented	No further response is required.
9	Management concurs; additional information needed.	Provide a target date and title of the official responsible for implementation.

**ILLEGAL OR WASTEFUL ACTIVITIES
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