

Testimony to U.S. House of Representatives  
March 24, 2006  
Subcommittee on National Parks  
Washington, DC 20515

Testimony From Southwest Waterworks Contractors Inc.  
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Ref : H.R. 3961, to authorize the National Park Service to pay for services rendered by subcontractors under a General Services Administration Indefinite Deliver / Indefinite Quantity Contract issued for work to be completed at Grand Canyon National Park.

## Introduction

My name is Michael Richardson, from Phoenix, Arizona. I am one of the owners of Southwest Waterworks Contractors Inc., a corporation located in Phoenix, Arizona. I have been involved with a group of 34 subcontractors that worked on various task orders for Pacific General Inc., a California corporation referred to as "PGI", issued against the above mentioned GSA IDIQ contract.

Southwest Waterworks and other contractors started to experience payment problems with PGI in October and November of 2003. Southwest was working on (5) task orders at this time for PGI. It was not until Late January 2004 did we learn there were no bonds on these task orders. We were confused because when we first started working for PGI in 2001, they had bonds on this same IDIQ contract. In addition when we were doing our monthly pay applications with PGI, we saw their pay applications to the NPS, and PGI had charged the NPS for bonds. In January 2004, we started to hear rumors from other contractors that there were large amounts of monies owed to subcontractors going back to the summer of 2003. Southwest Waterworks had a preconstruction meeting with the NPS and PGI on a task order to install sway cables on the Black Bridge at Phantom Ranch. Prior to this my partner John Bailey had requested a meeting with Mr. Mark Johnson of the NPS so we could advise the NPS of the problems of non-payment and the apparent lack of bonds. Our request was ignored, so my partner Mr. John Bailey, president and part owner of Southwest Waterworks, decided we would bring this matter up during the preconstruction meeting since Mr. Johnson was the project manager in charge and would be in attendance. Towards the end of the meeting Mr. Johnson called in the Helicopter personnel to set up when we could schedule the delivery of our equipment to the bottom of the canyon and at that time Mr. Bailey advised Mr. Johnson that Southwest would not be working on this project until we got answers on PGI's non-payments and the fact that PGI had no bonds on any of their projects. PGI was represented in this meeting by (2) of their project managers, Mr. Larry Hostetler and Mr. Eric Peterson. They confirmed that PGI did not have any of their jobs bonded. The meeting was abruptly over and on Feb. 6, 2004, all PGI task orders were suspended. In this meeting one of the park employees stated that "Gordon said PGI did not have to have bonds". We were shocked, at the time, we felt confident that the NPS would take control of the situation and resolve it. We had no idea that there would be such a complete lack of indecision and that we would be sitting in this situation, over 2 years removed from that meeting, and still have this problem sitting in limbo. To add to this, we were told later in 2004, that the project for the bridges, mentioned above, was not a valid contract and that the work was not approved. We thought that was curious, since we were requested by PGI and the NPS to attend the pre construction meeting on NPS property and were scheduled to fly to the bottom of the canyon and perform the work the following week. PGI gave us written authorization to perform this work. We had ordered special cables for this job and have been sitting on them until just last month, the NPS finally purchased these sway cables from us, we are awaiting payment now.

Mr. Navik sent a cure notice to PGI on Feb. 19 th 2004, for non payment and lack of bonds. The NPS went through the formalities involved with their contract and in April of 2004 the contracts were suspended. The subcontractors started to talk, and started forming an alliance to resolve this situation. PGI advised us that they were shutting down operations and Bob McFarland, the owner, became unavailable. He assigned power of attorney to a Mr. Ron Clear. He was apparently a hired consultant to lead PGI into shutdown. They shutdown and ceased doing business in May of 2004. In the first part of 2006, we received a notice from an attorney in Florida, that Mr. McFarland was filing personal bankruptcy. All of the subcontractors were listed as debtors. He listed next to nothing for assets.

The group of 34 contractors that I am associated , is owed monies by PGI for services and materials for the various task orders issued against this GSA IDIQ contract . In August of 2004, at the request of Mr. Roy Navik , Chief of Contracting and Property Management Intermountain Region of The Department of the Interior, National Park Service, I delivered to Denver copies of all outstanding invoices and contracts for all the various task orders from the 34 contractors. I met with Mr. Navik, and Mr. Nicky Lindig, of the National Park Service, Grand Canyon National Park. I delivered to them a packet

from each of the 34 contractors .These packets contained invoices to PGI, and copies of the contracts with PGI. This was to help the NPS (National Park Service) piece together how much money was outstanding on the various task orders, also to determine if the invoices from the subcontractors had been paid to PGI already. I have seen references of 43 subcontractors or suppliers, but 34 was the count that was associated with our original group. At this time, in August, I was told that the NPS was searching for a way to release the portion of the \$900,000.00 that was owed to the subcontractors.

On November 1, 2004 myself and other subcontractors received a letter from Mr. Roy Navik stated that they were ready to release money to pay subcontractors for their work . We all sent our claims to The Department of Interior as requested. Finally in February of 2005 The NPS started releasing money to subcontractors that were owed by PGI for work performed that the NPS was holding. Some were paid in full, some paid partially, and some didn't receive any payment. At this point I am involved with a group of (8) subcontractors, listed below. These contractors are owed the largest sums of money left on these claims. The (8) subcontractors listed below got together in September of 2005. The rest of the (34) I am not sure of, as contact was lost. We as a group have requested an accounting of this money but we were denied. I know there is still other people owed money, I am just not aware who they are.

Subcontractor list:

- . Southwest Waterworks Contractors Inc.
- . Universal Mechanical
- . Sunland Asphalt
- . Philpott Construction
- . Spray Systems of Arizona
- . R & W Excavating
- . Moreno Welding
- . L.P.Excavating

In early 2004, R & W Excavating requested FOIA information on all information related to PGI and this contract. They received this information and sent a copy to us in June or July of 2004. Attached is some of the information we uncovered. After looking over these documents it was obvious that the NPS was interested in protecting their interests, and not doing the right thing. We were going to have to look out for our own interests, as right and wrong had nothing to do with this situation. I have attached some documents we pulled from that information R&W Excavating received in their original FOIA request.

Attachment "A"

Acquisition Management Review at the Grand Canyon National Park , from the Manager of Washington Contracting and Procurement, dated March 10, 2004 (10 pages).

This report clearly states and shows the gross negligence on the part of the NPS in managing these task orders. I don't believe we were supposed to see this report, because after excerpts of this report appeared in a July 31, 2004 article in the Salt Lake City Tribune, Mr. Navik called me, and said, " You don't have to tell me, but where did you get that report from". At this point we realized that we were going to have to fight for anymore information related to this mess. I will touch on some of the points I felt are relevant to showing the gross negligence of the NPS., but the whole report should be read in its entirety as it shows the complete disregard of contract management.

- . (page 5, b., item 2) "The apparent, nearly total disregard of Federal, agency, and bureau procurement regulations and policy in contract activities warrant an IG investigation". John Bailey and myself met with I.G. investigators in August of 2004. We were told that they hoped to have their report completed in a couple of months. That has been over 1-1/2 years ago.
- . (page 9, 7. A/E, a. findings, second paragraph) This point shows that either the CO was completely incompetent or that there was collusion between PGI and the NPS.

This report should be read, especially pages 6-10. This was not just an isolated oversight, but a complete breakdown. We were told that the NPS was sorry, but that doesn't go very far. It was the NPS's responsibility to manage these contracts. Had they required PGI to acquire the bonds that are required, by the very wording in their GSA contract, and as required by law "The Miller Act", we would not be in this situation.

Attachment "C"

E-mail from Roy Navik dated 3/9/2004 about a phone call from Mr. Ron Piceno ( from Rep. Ed Pastor's office).

To me this shows that the NPS is in the wrong,

#### Attachment "D"

E-mail from Roy Navik dated 2/26/2004, discussing the lack of documentation on the PGI task orders. This is pretty much what the AMR report, (attachment "A"), said.

#### Attachment "E"

E-mail from Roy Navik dated 2/18/2004, Discussing with Nicky Lindig that Jerry (I believe is Jerry O'Nan from the solicitor's office) believes they may be liable legally to pay the subs. This e-mail really makes me angry, this shows that justice is definitely not the issue here.

#### Attachment "F"

E-mail from Roy Navik dated 3-11-2004. I am not for sure what this IG audit request is, but it was to be kept confidential.

#### Attachment "G"

E-mail from Leah McGinnis dated 4/15/2004. We, the subcontractors, have noticed that when either the media or the congressional people get involved activity seems to increase. This e-mail sounds like they were hoping this would go unnoticed.

#### Attachment "H"

E-mail from Roy Navik dated 4/6/2004. This is apparently a copy of the agreement that allowed Gordon to administer the GSA IDIQ contract with PGI. It also shows 2 months after work was suspended at the Grand Canyon, the GSA awarded a new IDIQ contract to PGI. We had called the GSA to ask how they could do this, we were told that PGI was a good company with good references.

In conclusion on the FOIA information, we have requested on (2) different occasions, more information and were denied.

#### Subcontractors

Listed below is breakdown of the eight subcontractors that I am representing and the difficulties and hardships we have had to endure.

- Southwest Waterworks Contractors Inc.

The original claim submitted by Southwest Waterworks, was for 5 task orders in various stages of completion. The amount owed to Southwest by PGI was over \$368,000.00 at the time the contracts were terminated in April 2004. We were owed the most money at that time. The bad part of this is that the NPS was withholding payments from PGI, approx. \$297,000.00 of this money had never been paid to PGI. The NPS was holding this money. Had the NPS arranged something to get us our money, in a timely fashion, we would have been able to keep our company operational.

On May 31, 2004, John Bailey and I were forced to shutdown our company. We could not continue to operate with all of this debt. We were able to relocate all but (2) of our employees. John and I took positions running Duncan Pump Co. in Phoenix, Arizona, which is where we relocated our employees to. We sold the majority of our assets to Duncan Pump at a reduced price, so we could get cash to satisfy our bank. We wrote all our vendors and informed them of our situation. We received our final partial payment from the NPS, this was the money the NPS was withholding from PGI. This was in February of 2005. We were able to start operating Southwest Waterworks on a part time basis, working nights and weekends, for no pay. We have since paid all our vendors. But John and I still owe over \$70,000.00 in credit card debt. This money has been accruing interest since December 2003. My partner and I have been living a nightmare since this started, which has also consumed our families into this mess. When our company was hit with the suspension of work on Feb 6, 2004, our company had a net worth of over \$100,000.00. Because of this situation, we went from having a net worth to extreme personal debt.

When we first stated working for PGI, at the GRCA National Park in 2001, PGI had bonds on these jobs. Since they were operating under the same GSA contract we assumed that the bonds were in place. We had seen several of PGI's

pay applications submitted to the NPS and they were charging the NPS for bonds, so we assumed that there the bonds were in place. See an attached internal memo from PGI Vice-President Wayne Heidle. In this memo you can see where the NPS was charged for bonds on several task orders, when in fact the bonds did not exist. This is very suspicious as this was very close to the time when the whole situation blew up. I obtained this from Larry Hostetler after he was let go from PGI and PGI had gone out of business. ( See Attachment "B").

- Universal Mechanical

The original claim submitted by Universal Mechanical, was for 5 task orders in various stages of completion. The amount owed to Universal Mechanical by PGI was over \$250,000.00 at the time the contracts were terminated in April 2004. I am not exactly sure of the exact dollar amount, but I know that the majority of this money, had not been paid to PGI yet. Universal is a small business, similar to Southwest. This company has endured similar hardships. The owner has also acquired extreme personal debt, because of the lack of non-payment.

- Philpott Construction

The original claim submitted by Philpott, was for 2 task orders in various stages of completion. The amount owed to Philpott by PGI was over \$88,000.00 at the time the contracts were terminated in April 2004. Mr Philpott has received virtually nothing, as it was determined that PGI had been paid for the work he performed. This non-payment has caused extreme hardship on Mr. Philpott. Again his situation is the same as the rest of us. The interest charges on money that he owes keeps increasing and he has received no compensation for his work.

- R & W Excavating

The original claim submitted by R & W, was for 4 task orders in various stages of completion. The amount owed to R&W by PGI was over \$300,000.00 at the time the contracts were terminated in April 2004. R&W received only a fraction of a percent of the \$300,000.00 they were owed. They have had to carry this debt for over 2 years. This has caused extreme hardship on their small company. Because of this they have lost an undeterminable amount of money, in addition to the \$300,000.00.

## 5. Moreno Welding

The original claim submitted by Moreno, was for 1 task orders at the Desert View Entrance Station. The amount owed to Moreno by PGI was over \$95,000.00 at the time the contracts were terminated in April 2004. A large portion of this money was being held by the NPS. Because they did not receive their payment in a timely manner Moreno Welding was forced to shutdown operations. When they started working at the Canyon, at the end of 2003, Moreno was in Chapter 11 reorganization, and close to emerging from Chapter 11, when this non payment happened. Because of the non-payment Moreno got in trouble with the IRS, and now owes huge penalties and interest on the principle balance. This could have been avoided. Moreno received a partial payment in 2005, but it was not enough and since it was so late the IRS charges had gotten huge. They are also attempting to reopen now, but are facing huge penalties and interest from the IRS. The IRS is threatening to go after the principles personally. They are in a desperate situation.

## 6. Sunland Asphalt

The original claim submitted by Sunland Asphalt, was for 1 task order. The amount owed to Sunland by PGI was over \$130,000.00 at the time the contracts were terminated in April 2004.

Sunland completed work to the satisfaction of the owner and PGI. They have not received any payments to date. Thus they have had to carry this debt for over 2 years. They have also incurred an undeterminable amount of cost due to this problem of non-payment.

## 7. Spray Systems of Arizona.

The original claim submitted by Spray Systems, was for 2 task orders. The amount owed to Spray Systems by PGI was over \$126,000.00 at the time the contracts were terminated in April 2004. I believe they have not received a payment and are owed the full amount. They also have had to carry this debt for more than 2 years.

## 8. L.P. Excavating

The original claim submitted by L.P., was for 3 task orders. The amount owed to L.P. by PGI was over \$72,000.00 at the time

the contracts were terminated in April 2004.

## Conclusion

Because of the Department of Interior, National Park Service's lack of administration on these task orders, the subcontractors on these jobs have lost not only the money that was not paid for services rendered, but an undeterminable amount of money for costs incurred because of the non-payment. Not to mention all of the hours we have spent getting to this point. All of these subcontractors have had to go through some form of hardship, some more than others. I cannot believe that we have had to wait this long for some form of decision. By doing nothing for so long this bad situation has been compounded into a worse situation. Our group has lost all confidence in the idea of justice. It seems the NPS is more concerned in protecting themselves than accepting their responsibility. This is not an isolated incident. This is a complete breakdown in governmental contracting. If the NPS is not held accountable for the extreme gross negligence, then why have the "Miller Act". It appears to me it has no meaning. These consequences do not only effect the small businesses listed as first tier subcontractors, but all the suppliers and subcontractors of each of those 43 subcontractors. This "Miller Act" was instituted to protect the subcontractors, suppliers, and also the government. We are told that the government has sovereign immunity from violation of the "Miller Act". Why have the law if the government is not to be held accountable. If I, as a contractor, made these kind of errors, that caused this kind of harm, we would suffer the consequences and be held accountable for all damages. So where is the justice. Had the NPS contracting officer done his job, as the law and contract require, the NPS and the subs would not be in this situation. PGI was apparently in financial trouble and incapable of acquiring the bonds, and even if they were able to acquire the bonds then again we would not be in this situation. The NPS knew about the lack of bonds and the non-payment. They also knew about the hardship to the contractors, and their response has been slow and negligible. The other impact that should be considered is the fact that many of these contractors do not want to ever work on Federal projects again. This is an extreme loss to the United States. If the Government steps in now by passing the bill, it is possible that some of these contractors and those that heard about the grave situation will once again be willing to work as contractors for the Federal Government, including the National Park Service.

A lot of damage has been done by waiting so long. We implore the congress to pass this bill to help give some relief to the subcontractors who have not seen justice to this point.