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BEFORE THE SUBCOMMITTEE ON NATIONAL PARKS
HOUSE COMMITTEE ON RESOURCES

CONCERNING 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 THE GRAND CANYON NATIONAL PARK.

March 30, 2006

Mr. Chairman, thank you for the opportunity to present the views of the Department of the Interior on H.R. 3961, a bill that would authorize the National Park Service to pay for services rendered by subcontractors under a General Services Administration Indefinite Delivery/Indefinite Quantity contract issued for work to be completed at the Grand Canyon National Park. The Department appreciates the subcommittee's efforts to address this situation but opposes the legislation.

H.R. 3961 would authorize payment of \$1.3 million, from Grand Canyon National Park's (Park) entrance fee revenues, to subcontractors who completed work under task orders to Pacific General, Incorporated (PGI) for which PGI was paid, but subcontractors were not. The work was completed under National Park Service (NPS) task orders issued against PGI's Indefinite Deliver/Indefinite Quantity (IDIQ) contract with the General Services Administration.

PGI's default has created a devastating financial burden on the affected firms. The NPS has a contractual relationship with the prime contractor, in this case, PGI, but does not have a contractual relationship with the subcontractors. NPS does not have the legal authority to pay subcontractors who completed work under PGI's IDIQ contract for which NPS already has paid PGI, but PGI has failed to render payment to subcontractors.

H.R. 3961 would authorize the Secretary to pay these subcontractors under certain conditions. The bill would authorize payment if: 1) the task orders issued to PGI by NPS have been terminated, 2) the amount owed to the subcontractors is verified, 3) all reasonable legal avenues or recourse have been exhausted by the subcontractors to recoup amounts owed directly from PGI, and 4) the subcontractors provide a written statement that payment of the amount verified represents payment in full by the United States for all work performed at the park under PGI task orders issued by NPS between Fiscal Years 2002 and 2003.

Between Fiscal Years 2002 and 2003, the Park issued approximately 40 task orders to PGI under the IDIQ. Those task orders totaled an estimated \$17 million for various construction projects throughout the park. In invoices sent to the park, PGI certified that payments were being sent to subcontractors and suppliers. The NPS paid more than \$10 million to PGI, of which an approximately \$1.4 million, based on our most recent estimates, was owed, but never paid, to subcontractors.

In January 2004, the Park began receiving complaints from subcontractors citing lack of payment by PGI. In February 2004, the NPS suspended further payment to PGI and issued a suspension notice ordering PGI to cease activity, followed by termination for default of 17 remaining task orders. PGI has had every reasonable opportunity to resolve the situation, but PGI has ceased doing business.

Following PGI's default, the NPS withheld payment to PGI and began paying subcontractors directly for work completed on PGI task orders, valued at \$906,335. Contract law generally prohibits payments directly to subcontractors because of the lack of a direct, contractual relationship between the parties. However, in this case, NPS consulted with the Government Accountability Office's (GAO) and began paying subcontractors directly for these claims. To date, NPS has made direct payments towards 25 claims by subcontractors of an estimated 76 total claims. H.R. 3961 would not affect payment to subcontractors who completed work under PGI task orders for which the subcontractors have been paid.

The impact of PGI's default was compounded by lapses in the contracting operations at Grand Canyon National Park. An acquisition management review conducted by the NPS Washington Contracting and Procurement Office, determined that

the Park had failed to obtain payment and performance bonds from PGI required by the IDIQ and the Miller Act (40 U.S.C. § 3131). To prevent future lapses, we have strengthened internal controls both at the park and regional level. For example, the park superintendent is now annually evaluated for his management of the park's contracting program. In addition, the NPS Intermountain Region will be conducting periodic acquisition management reviews of the Grand Canyon contracting program.

The Department understands the hardships PGI's default and NPS'actions in this matter have placed upon the involved subcontractors. The payment bonds required of the contractor under the Miller Act are designed to protect subcontractors who do not have the recourse of placing a lien on the property at issue, since liens cannot be placed on government property. The courts have held that, while the contractor has an obligation to provide such bonds, the Miller Act places no affirmative obligation on the Federal government to ensure the bonds have been obtained. The Department recognizes that H.R. 3961 is intended to be an equitable resolution to a difficult situation, however, it singles out one situation for relief not available to others under the Miller Act. H.R. 3691 would effectively have NPS pay for the same services twice. Thus, the Administration is concerned about the precedent set by requiring the Federal government to assume the liability for the contractor's default, particularly in a situation where no contractual relationship exists. In addition, we are strongly opposed to using recreation fees for this purpose. Recreation fees are collected from visitors to enhance facilities and services for the benefit of the visiting public, not for the situation presented in this case.

We are anxious to see this matter resolved in a fair manner to the satisfaction of all the involved parties and look forward to working further with the subcommittee. Mr. Chairman, this concludes my prepared remarks. I will be happy to answer any questions you or other members of the subcommittee might have.