

DEPARTMENT OF THE INTERIOR

Respectfully referred to the
for information and guidance.

Chief Clerk.

COMPTROLLER GENERAL OF THE UNITED STATES
Washington

A-19335

NOV 15 1927

The Honorable
The Secretary of the Interior.

Sir:

Consideration has been given your letter of August 15, 1927, relative to the matter of securing competition in connection with the granting of concessions for hotels, camps, transportation (freight and passenger) and other privileges, both for the benefit of the Government and the general public, in the national parks and monuments. You contend that the requirements of section 3709, Revised Statutes, are not applicable to such concessions, and that the "broad discretion given to the Secretary of the Interior under the act of August 25, 1916, 39 Stat. 535, in the matter of granting concessions, is sufficient authority for the practice of granting such concessions without advertising.

Section 3709, Revised Statutes, reads:

"All purchases and contracts for supplies or services, in any of the Departments of the Government, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the service. When immediate delivery or performance is required by the public exigency, the articles or service required may be procured by open purchase or contract, at the places and in the manner in which such articles are usually bought and sold, or such services engaged, between individuals.

While the statute above quoted makes specific reference to purchases and contracts for supplies or services, the reasons for securing competition as a measure of economy and efficiency apply with equal force to sales and contracts therefor, and for services involving receipts for the benefit of the public treasury. It is a recognized budgetary principle to which all Government departments and establishments are committed that as much care should be taken in making every reasonable effort to secure the maximum amount of receipts to which the Government is entitled, as to economize in expenditures. One is just as important and necessary as the other.

(Over)

It was said on this subject in 5 Comp. Gen. 799, in connection with the exchange of old material for new:

"In requesting bids as required under section 5709, Revised Statutes, for the new motors, there would appear to be no legal objection to asking the bidder to state what allowance would be made for the old motors in exchange. At the same time separate bids should be invited for the sale of the old motors separate and apart from the purchase of the new ones. The bid or bids resulting in the lowest net cost to the Government should be accepted. * * *."

This rule for conserving the interests of the United States is restated and emphasized in decision of September 23, 1927, A-18952, and applies with equal force to the sale or lease of tangible public property and intangible property rights where purchases may or may not be involved.

The act of February 26, 1919, 40 Stat. 1175 (referred to in your letter), establishing the Grand Canyon National Park and providing that concessions "shall be let at public bidding to the best and most responsible bidder," which act it will be noted is subsequent to the general Park Service act of August 25, 1916, 39 Stat. 535, is considered as indicative of the purpose of the Congress in this and similar matters and should be construed as an intent to establish a business policy which if good for one park reservation is good for the others, rather than the contrary view that said act is special and intended to support the theory that the law of competition does not apply to the granting of concessions in national parks and monuments generally. While it is not required that concessions should be let without regard to other considerations, such as the responsibility of the highest bidders and the personal element (best bidder), these considerations are not so paramount as to justify the exclusion of efforts to secure the best prices obtainable by inviting bids therefor, and, generally speaking, they can be provided for by appropriate provisions in the contract or agreement and by administrative supervision. Where the award is made to other than the highest bidder (best in point of price) for these concessions, a statement of the reasons therefor should accompany the copy of the written permit, license or lease covering the concession submitted to this office in accordance with the requirements of law and paragraphs 17 - 25 of General Regulations No. 51, June 18, 1926, 5 Comp. Gen. 1062. See in this connection 6 Comp. Gen. 642; also decision of March 31, 1926, A-13008, and May 14, 1927, A-17771.

Respectfully,

(Signed) J. R. McCarl
Comptroller General
of the United States.