

**RESPONSIVE STATEMENT
(36 CFR 251.94)**

**TO THE NOTICE OF APPEAL
OF
SARA MCDERMITT**

**OVER THE DECISION OF
THE
GALLATIN NATIONAL FOREST SUPERVISOR
SELECTING A CONCESSIONAIRE
FOR THE
MAINTENANCE AND OPERATION OF
BEAVER CREEK AND CABIN CREEK CAMPGROUNDS**

**Gallatin National Forest
Hebgen Lake Ranger District**

January 27, 1999



DECISION UNDER APPEAL

The decision under appeal is the December 2, 1998 letter, signed by Gene L. Gibson for David P. Garber, Forest Supervisor, notifying Sara McDermitt that Campfire Lodge Resort, Inc. was selected for operation and maintenance of Beaver Creek and Cabin Creek Campgrounds, and related recreation facilities on the Hebgen Lake Ranger District. Ms. McDermitt was an applicant for that permit.

NOTICE OF APPEAL

A copy of Sara McDermitt's Notice of Appeal (NOA), dated December 31, 1998, was received by the Gallatin National Forest Supervisor's Office on January 5, 1999. One issue and two contentions were identified from the Notice of Appeal.

Issue

Whether the selection of Campfire Lodge Resort, Inc. as the concessionaire for maintenance and operation of Beaver Creek and Cabin Creek Campgrounds, and related recreation facilities was predetermined and made without consideration of other applications.

1. "In conversation with Gene Hardin he stated that the present permittee had done a good job, they were well pleased with them, and it would be hard to obtain the permit." (From NOA, paragraph 2)
2. "When we previously bid this package approximately 5 years ago the current permittee was selected with the understanding that bear proof food storage containers among other things would be place(d) in the campground. According to Mr. Hardin, this has not been done." (From NOA, paragraph 2).

Relief Requested

The appellant requests that "this prospectus be put back out for rebidding." (From NOA, paragraph 4).

BACKGROUND

Cabin Creek Campground and Beaver Creek Campgrounds, located in the Hebgen Lake Ranger District of the Gallatin National Forest have been managed by concessionaires for many years. The most recent permit was to expire at the end of calendar year 1998. To assure continuous service to the public and management of the campgrounds, Gene Hardin, the District Recreation Assistant who administers the campground concessionaire permits, started the appropriate actions for advertising and soliciting applicants for a new campground concession permit. The initial notification of all interested parties was sent out in July 1998 to allow adequate time for anyone interested in compiling their bid; for the bids to be evaluated; and finally for the permit to be awarded and for the new permit holder to make preparations for the following summer season. This initial notification requested that anyone who was interested in bidding on the permit should request in writing, a copy of the prospectus. As these requests came in, the

prospectuses were sent out. In addition to the initial notification letter, legal notices were also placed in local newspapers. By this time, Floyd McDermitt had expressed interest, had requested a prospectus and had asked the district some specific questions, in writing, about the operation of the campgrounds, to which Gene Hardin responded in writing. Floyd McDermitt also telephoned Gene several times with other questions concerning the prospectus. By early November, 1998, the deadline for receiving applications had expired and all applications had been received. At that time an evaluation committee was formed and an evaluation procedure finalized (see following Appendix A "Selection Process for Hebgen Lake Ranger District Campground Prospectus"); the applications scored and the recommendation made to Stan Benes, Hebgen Lake District Ranger. The recommendation of the committee was to award this permit to Campfire Lodge Resort, Inc. Stan accepted the recommendation, which he, in turn, forwarded to the Forest Supervisor, David P. Garber, who then issued the official decision notice in early December, 1998. It is this decision that Sara McDermitt is currently appealing.

DECIDING OFFICER'S RESPONSE TO THE ISSUES AND RELIEF REQUESTED

Appellant's Issue and Contentions

Whether the selection of Campfire Lodge Resort, Inc. as the concessionaire for maintenance and operation of Beaver Creek and Cabin Creek Campgrounds, and related recreation facilities was predetermined and made without consideration of other applications.

1. "In conversation with Gene Hardin he stated that the present permittee had done a good job, they were well pleased with them, and it would be hard to obtain the permit." (From NOA, paragraph 2)
2. "When we previously bid this package approximately 5 years ago the current permittee was selected with the understanding that bear proof food storage containers among other things would be place(d) in the campground. According to Mr. Hardin, this has not been done." (From NOA, paragraph 2).

Forest Service Response

Gene Hardin (Hebgen Lake Ranger District permit administrator) did have several conversations with Floyd McDermitt (Sara McDermitt's husband). Mr. McDermitt questioned Gene on the performance of Campfire Lodge Resort in operating Beaver Creek and Cabin Creek Campgrounds. It is true that Gene told Mr. McDermitt that Chuck Sperry had done a good job and that the district was pleased with him. However Gene never stated that it would be hard for Mr. McDermitt to obtain the permit nor gave any indication that the decision to issue the permit had already been made.

Concerning the appellant's statement that "the current permittee was selected with the understanding that bear proof food storage containers among other things would be placed in the campground", there is no record of this being a requirement of issuing the permit to the current permittee (this is referring to the permit that expired Jan 1, 1999).

Irregardless of who said what, evaluation and recommendations on the applications were performed by a committee, not just one individual. The evaluation committee followed a formal defined process and spent several days evaluating the different applications before making a final recommendation to the deciding officer. See attached Appendix A - Selection Process for Hebgen Lake Ranger District Campground Prospectus and Appendix B - Rationale for Selection of Campfire Lodge Resort for Offering B. The Forest Service has no interest in limiting competition for its concession operated campgrounds. The Forest Service's goal is to award special use permits to the applicant that, in its judgement, provides the best overall customer service while obtaining a fair return to the government.

Appellant's Relief Requested

The appellant requests that "this prospectus be put back out for rebidding." (From NOA, paragraph 4).

Forest Service Response

The Gallatin National Forest completed a fair and impartial evaluation of all applications received for the operation of the campgrounds on the Hebgen Lake Ranger District. The process was started early in the fall in order to give all applicants ample time to respond to the prospectus and to allow for sufficient time to award the permit to the successful applicant. It is necessary to award the permit no later than mid February 1999 in order to give the successful applicant time to secure the necessary insurance, hire hosts, order signs and other supplies in order to open the campgrounds in a timely manner. To put the prospectus back out for bidding would leave the Hebgen Lake Ranger District without a concessionaire to operate Beaver Creek and Cabin Creek campgrounds for the summer of 1999. This would force the district to close these two campgrounds for the summer.

/s/ David P. Garber

2/1/99

DAVID P. GARBER
Forest Supervisor

DATE

Appendix A

Selection Process for Hebgen Lake Ranger District Campground Prospectus (both offerings A and B)

1. A letter was sent to all interested parties on July 15, 1998 announcing that two prospectuses would be offered in the near future on the Gallatin National Forest, one for Hebgen Lake Ranger District (with two offerings) and one for the Bozeman Ranger District. Interested parties were told to contact the respective ranger districts by September 25, 1998 if they were interested in receiving a prospectus.
2. The Hebgen Lake Ranger District put a legal notice announcing the prospectus in the West Yellowstone News on September 10 and the Bozeman Daily Chronicle on September 14 1998. Applicants were given until October 26, 1998 to respond. Prospectuses were sent to those who requested one.
3. Applicants responding to the prospectus were as follows: Offering A - L&L, Klungervik, Berrett, and Gallatin Canyon Campgrounds. Offering B - Chuck Sperry, Gallatin Canyon Campgrounds and Sara McDermitt.
4. A four person evaluation committee was put together in early November. The following were members of the evaluation committee: Jane Ruchman - Developed Recreation Manager for the Gallatin National Forest, Dave Cary - Recreation Forester Bozeman Ranger District, Kathy Quane - Resource Assistant for Special Uses Gallatin National Forest and Gene Hardin - Recreation Forester Hebgen Lake Ranger District.
5. The members spent one day developing scoring sheets and deciding on procedures for evaluating the applications, based upon the criteria set out in the prospectus. Three more days were spent evaluating the applications before a final recommendation was submitted to the deciding officer.

Evaluation Criteria #1 Proposed Operation Plan Provisions :

For this part of the evaluation process, at least two members of the evaluation team reviewed each proposed operating plan and rated each item (as listed in outline form in the Table of Contents of the prospectus) on a scale of 0-8 (with 4 equating to "meeting the minimum requirement" as stated in the example evaluation sheet (Appendix Y of the prospectus). Scores were assigned by how the applicants' respective operating plans compared with the required

elements in the prospectus. Those elements are listed in the prospectus , as well as the table of contents. After at least two members had reviewed the operating plan provisions, three of the members, then jointly reviewed and discussed the scoring and came to a consensus score. The consensus scores for each of the items were added and averaged to get a total score average. This total score average was multiplied by a factor weight of 6 (as shown in Appendix Y) to reach a final weighted score for the operation plan.

Evaluation Criteria #2 Business Plan and Business Experience :

This criteria was evaluated by the Resource Assistant who compared the Business Plans and experience of the applicants and assigned a numerical rating of 0 - 8 based on the criteria listed in the prospectus. An average for the Business Plan and Experience was calculated and this number was multiplied by the factor weight of 5 (as listed in Appendix Y) to come up with final weighted score for this criteria.

Evaluation Criteria #3 Financial Resources:

The evaluation members decided to make this a pass/fail rating so as to not unfairly penalize an applicant with lower, yet completely adequate and sufficient funds. Offering A applicants who had at least \$10,000 equity (the approximate amount needed for start up costs and expenses for about 1/4 of the season) were assigned a score of 4 for a total score average. Offering B applicants who had at least \$5000 equity (the approximate amount needed for start up costs and expenses for about 1/4 of the season) were assigned a score of 4 for a total score average. This number was multiplied by the factor weight of 4 (as listed in Appendix y) to get the final weighted score for this criteria.

Evaluation Criteria #4 Fees Paid to the Government:

Applicants who proposed the minimum percentage return to the government (as listed in the prospectus) were assigned a score of 4. An additional 1 point was assigned for each percentage point proposed to be returned to the government above the minimum percentage.

If a variable percentage return was proposed, applicants were ranked by looking at total \$ return to government based on highest revenue year for last three years as indicated on page 17 of the prospectus. \$62,715.00 for Offering A and \$32,303.00 for Offering B.

Example Only: Applicant bid 7% for first \$30,000 and 10% for gross revenue over \$30,000. The % return to the government would be figured as follows:

$$.07 \times 30,000 = \$2,100 + .10 \times 2,303 = \$230.30 \text{ for a grand total of } \$2,330.3$$

$$\$2330.30 / \$32303 = 7.213\% \text{ fees paid to the government}$$

$$7.213 - 6.125 = 1.088 \quad 1.088 + 4 = 5.088$$

5.088 would be multiplied by a factor weight of 3 to get the final weighted score for this criteria.

Evaluation Criteria #5 Fees Charged to the Public

Existing fees for these campgrounds are 10.00 for first vehicle for all campgrounds except Baker's Hole Campground, which is \$12.50. These figures were used as a base to establish the following scores:

Scoring for all campgrounds except Baker's Hole Campground is as follows:

| Fee Proposed | Score |
|--------------------|-------|
| (less than \$6.00) | 8 |
| (\$6.01-8.00) | 6 |
| (8.01-10.00) | 4 |
| (10.01-12.00) | 0 |

Scoring for Baker's Hole Campground is as follows:

| Fee Proposed | Score |
|---------------|-------|
| (8.00-10.00) | 8 |
| (10.01-12.00) | 6 |
| (12.01-12.50) | 4 |
| (12.51 +) | 0 |

Scoring for extra vehicles
Pass

Age)

| Fee Proposed | Score |
|--------------|-------|
| (0) | 8 |
| (1.00-3.00) | 6 |
| (3.01-5.00) | 4 |

Scoring for extra vehicles for Golden Age

(If applicant proposes discount for Golden

| Fee Proposed | Score |
|--------------|-------|
| (0) | 8 |
| (0.1-1.50) | 6 |
| (1.51-3.00) | 4 |

| | | | |
|-------------|---|-------------|---|
| (5.01-6.00) | 2 | (3.01-5.00) | 2 |
| (6.01+) | 0 | (5.01+) | 0 |

Each score was added and an average score was figured for total score average which was multiplied by a factor weight of 2 to determine the final weighted score for each proposal.

Evaluation Criteria #6 Optional Criteria.

Customer service improvements were listed and compared to other proposals. These included:

- Maintenance of facilities not listed in the prospectus
- Additional Maintenance
- Firewood
- Recycling
- Additional Campground Managers
- Other customer service improvements

Applicants were scored 0-8 on proposed customer service improvements as compared to other applicants within that offering. Three evaluation panel members discussed and came to consensus on the scores. This number was multiplied by a factor weight of 2 (as shown in Appendix Y) to determine the final weighted score for this portion of optional criteria.

Special Safety Considerations

- Extra measures to ensure people follow food storage requirements
- Extra law enforcement

Applicants were rated 0-8 on proposed special safety considerations as compared to other applicants within that offering. Three evaluation panel members discussed and came to consensus on the rating. This number was multiplied by a factor weight of 1 (as shown in Appendix Y) to determine the final weighted score for this portion of optional criteria.

Extended operating season

Min operating season score 4 points

+ one week score 5 points

+ two weeks score 6 points

+ three weeks score 7 points

+ four weeks score 8 points

Score for extended operating season was multiplied by the factor weight of 1 (as shown in Appendix Y) to determine the final weighted score for this portion.

Interpretive Services

Applicants received a score from 0-8 based on a comparison among the applicants of the interpretive Services proposed. This score was multiplied by a factor weight of 1 (as shown in Appendix Y) to determine a final weighted score for this criteria.

Appendix B - Rationale for Selecting Campfire Lodge Resort for Offering B

Chuck Sperry has been the concessionaire for the campgrounds in Offering B since they were first operated under special use permit in 1985. Mr. Sperry has extensive personnel knowledge of the campground facilities and the area and has continued to provide quality service to the camping public for the past 13 years. Mr. Sperry is also the owner of Campfire Lodge Resort which is operated under special use permit from the Forest Service. Campfire Lodge Resort is right across the highway from Cabin Creek Campground and is also Mr. Sperry's permanent residence. Due to the proximity of Campfire Lodge Resort to Cabin Creek Camp Ground Mr. Sperry was considered as an onsite concessionaire, having full authority in all aspects of dealing with the Forest Service. A very important aspect of Mr. Sperry's proposal is the fact that he personally meets with the host and workers three times a day at breakfast, lunch and dinner at Campfire Lodge Resort to discuss campground operations, provide direction and training for hosts and employees. The evaluation team members felt that having the concessionaire on site was a big advantage to the Forest Service as any problems could be discussed directly with the concessionaire. It was also felt that by having a concessionaire with the vast personal experience of Mr. Sperry on site, better customer service would be provided due to the additional oversight and extra monitoring of the campground host and other employees, especially since they meet three times a day with Mr. Sperry. Mr. Sperry proposed to continue plowing the roads to the campgrounds in the early season to assure they are opened on time. This is a much needed service especially for the Beaver Creek Campground where many times the campsites are snow free but the entrance road into the campground is snow packed due to drifts. Mr. Sperry's personal knowledge of the campground water systems gained over the 13

years he has operated them means that the Forest Service will not have to spend time training him in the use and operation of those systems.

The evaluation team felt that the additional customer services proposed by Mr. Sperry under the optional criteria were better than any of the other applicants and provided additional benefits to the customers and the Forest Service. These include: free phone message service to campers, messages would be taken at Campfire Lodge Resort and delivered free of charge to campers; campers would also be allowed to make free local telephone calls from Campfire Lodge Resort; campers would also be provided with free mail service at Campfire Lodge Resort; showers and laundry services would be available at Campfire Lodge Resort for a fee. Mr. Sperry also proposed to paint the interior of the toilets every two years instead of every three as required. Mr. Sperry proposed to maintain the toilet and picnic table at Ghost Village and to maintain the toilet at Potamogeton Park and Beaver Creek Cabin two times per week. This last item alone makes up for any difference in the fees to the government offered by any other applicant as it represents a savings to the Forest Service of approximately \$4500 per year in maintenance costs. Many of the same customers who utilize the two campgrounds visit the three above mentioned sites.

The proposed fees for the campgrounds are \$10.00 for the first vehicle and \$3.00 for the second vehicle. Mr. Sperry proposes to keep the fees the same through out the 5 year permit period.

Even though Mr. Sperry did not propose the highest return to the government, the evaluation team felt that Mr. Sperry's proposal provided the best customer service at a reasonable fee to the public and provided a good return to the government. As stated on page 2 of Chapter One B. 4. of the Prospectus "The FS is not obligated to accept the application with the highest return to the Government", and

7, "Award may not necessarily be made to that offer submitting the best minimum annual maintenance plan and percent of gross sales proposal".

Note:

Current direction for dealing with appeals and FOIAs for campground concessioner permits is covered in the USDA, FS publication "Campground Concession Desk Guide" #FS-611, October 1997. On page 4-4, the section entitled "Follow-Up" states:

"Furnish the basis for the selection decision to any unsuccessful applicant who requests it in writing. Include the FS's evaluation of significant deficiencies in the requester's application. Do not make comparisons with other applications or reveal the evaluation scoring....."

The section entitled "FOIA Requests" provides further direction:

"Information submitted in response to a prospectus may be withheld if it qualifies as confidential business information under exemption (b) (4) of FOIA. Financial statements would probably qualify under exemption (b) (4)."

The direction continues on page 4-5:

"Information may be withheld under exemption (b)(5) of FOIA if it is involved in the FS's deliberative process. To justify use of exemption (b)(5), it must be shown that release of the information would harm the FS's ability to make a decision based on that information. This justification is also necessary to meet the Attorney General's foreseeable-harm policy on exemption (b)(5)."

"A request for evaluation scores and ratings before or after a decision is made to issue a permit would probably qualify under exemption (b)(5). As a general rule, the application evaluation process should be protected from disclosure before, during, and after the evaluation, to maintain the integrity of the process...."

Based upon this direction, the information supplied in this responsive statement does not include any of the scores. Furthermore, also based upon that direction, the preceding section, which outlines the reasons for awarding the permit to the successful applicant, attempts to avoid making any comparisons among the applicants.